

OPERATION AND MAINTENANCE AGREEMENT

BETWEEN

GENERADORA DEL ATLANTICO S.A

AS OWNER

AND

PROENERGY SERVICES PANAMA S DE R.L.

AS OPERATOR

DATED: DECEMBER 5, 2008

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OPERATION AND MAINTENANCE AGREEMENT

THIS Operation and Maintenance Agreement is made between:

- (1) ProEnergy Services Panama S De R.L. ("Operator"), a company incorporated under the laws of the Republic of Panama and
- (2) Generadora Del Atlantico S.A. ("Owner") a company incorporated under the laws of the Republic of Panama.

Operator and Owner are individually referred to herein as a "Party" and collectively as the "Parties".

WHEREAS,

- (A) Owner is developing a power generation plant at or near Colon, Panama with an output of a nominal 100MWs in simple cycle and a nominal 150 MWs in combined-cycle which is hereinafter defined as the Facility; and
- (B) Operator has expertise in the operation and maintenance of electric power generation facilities of the type and character of the Facility and desires to provide operation and maintenance services to the Facility on the terms and subject to the conditions set forth in this Agreement; and
- (C) Owner desires to appoint Operator to operate and maintain the Facility on the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereto agree as follows:

ARTICLE 1. DEFINITIONS; INTERPRETATION

1.1. **Definitions.** In this Agreement the following terms shall have the following meanings:

"Affiliate" shall mean, in relation to any Person, a Person that controls, is controlled by or is under common control with such Person, except that, for the purposes of this Agreement, Operator and Owner shall not, unless otherwise expressly stated herein, constitute Affiliates of one another. As used in this definition the terms "control", "controlled by" or "under common control with" shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of such Person or the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

"Agreement" shall mean this Operation and Maintenance Agreement.

"Applicable Laws" shall mean the laws of Panama.

"Business Day" shall mean a Day on which banks in Panama are open for business.

"Commercial Operations" shall mean that the Contractor has completed the simple cycle performance testing for the equipment purchased and as required under the Project Equipment and Services Agreement and Operator has determined that the Facility can be operated in a safe and reliable manner.

"Commercial Operations Date" shall mean the date upon which the Facility achieves Commercial Operations.

"Confidential Information" shall have the meaning set forth in Clause 17.1(a).

"Contractor" shall mean the entity contracting with Owner under the Equipment and Services Agreement.

"Day" shall mean the twenty-four (24) Hour period from 00:00:01 a.m. to 24:00:00 p.m. LPT.

"Delivery Point" shall mean (i) as to electric power produced by the Facility, the designated substation Bahia Las Minas and/or Santa Rita, or any other substation used for such purposes, and (ii) as to Fuel delivered to the Facility, the point where the Fuel Suppliers deliver Fuel to the Facility for Owner.

"De-Mobilization Expenses" shall have the meaning set forth in Clause 11.6(b).

"Dispute" shall have the meaning set forth in Clause 19.1.

"Dollar" or **"\$"** shall mean the lawful currency of the United States of America.

"Effective Date" shall mean January 1, 2009.

"Electrical Output" shall mean electric power produced by the Facility, measured in MW.

"Emergency" shall mean any situation which is likely to impose an immediate threat of injury to any individual or material damage or material economic loss to all or any part of the Project Facilities or to any other property located at the Site.

"Equipment and Services Agreement" shall mean collectively (i) that certain Equipment and Services Agreement dated January 18, 2008 as amended by Amendment effective as of the same date, and (ii) that certain Equipment and Services Agreement dated April 3, 2008, as amended by Amendment dated June 27, 2008, entered into between Owner and Contractor for the supply of equipment and services for the Facility.

"Expiration Date" shall mean eight (8) years, counted as from the Commercial Operations Date.

"Facility" shall have the meaning described in the Recitals hereto along with all energy producing equipment and its auxiliary equipment, fuel storage and handling facilities and equipment, electrical transformers, interconnection facilities and metering facilities, as may be required for receipt of fuel and for delivery of electricity, management facilities and buildings and all other improvements, assets or equipment necessary for the generation of electricity related solely to the Facility and located on the Site.

"Force Majeure" shall mean any circumstances beyond the reasonable control of the party claiming Force Majeure including, but not limited to, the following:

- (a) explosions, fires, nuclear radiation, contamination, hurricanes, earthquakes, floods, natural disasters, epidemics, other acts of God, and any other similar circumstances;
- (b) war and other hostilities (whether declared or not), revolution, public disorders, insurrection, rebellion, sabotage, acts of public officials or terrorist action;
- (c) failure of any third party supplier of goods or services, transporter of fuel, transmitter of Electrical Output, purchaser of Electrical Output or the Site interconnections, where such events constitute force majeure under Owner's or Operator's contract with that party;
- (d) any action taken by any Government Authority after the date of this Agreement, including without limitation any order, legislation, enactment, judgment, ruling or decision thereof; and
- (e) Labor Disputes.

provided, however, that (i) none of the circumstances in paragraphs (a) through (f) shall be considered to be an event of Force Majeure to the extent such circumstance is due to the act, neglect, omission, breach of contract or Applicable Law or of statutory duty, negligence or misconduct of the party claiming Force Majeure, its Representatives, its Subcontractors or such Subcontractor's respective Representatives; (ii) Force Majeure events shall expressly exclude a Party's financial inability to perform; and (iii) for an event to be considered Force Majeure, it must effectively and materially impair the relevant Party' from being able to comply with one or more of its obligations under this Agreement.

"Fuel" shall have the meaning set forth in the Fuel Supply Agreement or any similar term in a succeeding fuel supply agreement.

"Fuel Supplier" shall mean the supplier of Fuel pursuant to any Fuel Supply Agreement.

"Fuel Supply Agreement" shall mean any fuel supply agreement between Owner and Fuel Supplier for the supply of Fuel to the Facility, as well as any succeeding fuel supply agreement.

"Fuel Transportation Agreement" shall mean any agreement between Owner and any third party for the transportation of Fuel to the Facility or any succeeding fuel transportation agreement.

"Good Operating Practices" shall mean the practices, methods and acts (including Manufacturer's Recommendations, if applicable) engaged in or approved internationally by the majority of private thermal electric generating companies that, at that particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Government Approvals, reliability, safety, economy and environmental protection.

"Government" shall mean the Government of the Republic of Panama and any state and local governments.

"Government Approvals" shall mean all permits, licenses, approvals, consents, concessions, acknowledgments, agreements, decisions and other forms of

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authorizations from, or filing with or notice to, any Government Authority in connection with Owner, Operator and the Facility.

"Government Authority" shall mean any national, provincial, municipal or local government and any political subdivision thereof of the Government as well as any other governmental, quasi-governmental, administrative, judicial, public or statutory body, ministry, department, instrumentality, agency, authority, board, bureau, corporation or commission.

"Hazardous Substances" shall mean any substance or material regulated by any Government Authority, or any substance, emission or material now or hereafter deemed by Applicable Law to be a "regulated substance", "hazardous substance", "toxic substance", "pesticide", "hazardous waste", or any similar classification, including by reason of deleterious properties, ignitability, corrosivity, reactivity, carcinogenicity or reproductive toxicity.

"Heat Rate" shall mean the quantity of fuel, measured in BTUs, necessary for the Facility to generate one kW of energy during one hour.

"Hour" or **"hour"** shall mean each of the twenty-four (24) sixty (60) minute intervals comprising a Day, as generally used and understood in the electric power industry.

"Indemnified Party" shall have the meaning set forth in Clause 12.2(a).

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"Intellectual Property" shall mean all intellectual property or other proprietary rights of every kind, including without limitation all patents, registered designs, unregistered design rights, copyrightable works, trade secrets, processes, trade names, trademarks and service marks whether registered or not, goodwill and rights in confidential information and know-how and circuit layout rights and any associated or similar rights (including, in all cases, applications and rights to apply therefor and documentation thereof).

"Interconnection Agreement" shall mean any interconnection agreement to be entered into by Owner and Empresa de Transmisión Eléctrica, S.A.

"kWh" shall mean kilowatt-hour, or one thousand watts of electric power per Hour.

"Labor Disputes" shall mean any national, regional or local labor strikes, work stoppages, boycotts, walkouts or other labor difficulties or shortages, including any of the foregoing which affects access to the Project Facilities or the ability to ship or receive goods, including without limitation Fuel or spare parts.

"Lender" shall mean any person advancing or loaning funds to Owner, whose advance or loan is secured by any interest whatsoever, by lien, mortgage or otherwise, in the Project Facilities or Project Contracts.

"LIBOR" shall mean the rate per annum (rounded upwards, if necessary, to the nearest 1/10,000 of 1%) appearing on Reuters page LIBOR1 at approximately 11:00 a.m. (London time) on the relevant calculation date.

"Lien" shall mean mortgages, charges, pledges, hypothecations, assignments with provision for re-assignment, liens for taxes or assessments, builder, mechanic,

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warehousemen, materialmen, contractor, workmen, repairmen, carrier liens, or other similar security interests having the same legal or economic effect as any of the foregoing.

"Loan Documents" shall mean any documents reflecting the rights of Lender.

"Loss" shall mean any losses, liabilities, costs, expenses, claims, proceedings, actions, demands, obligations, deficiencies, lawsuits, judgments, awards or damages.

"LPT" shall mean the prevailing time in the time zone in which the Facility is located.

"Maintenance Program" shall mean the equipment maintenance program for the Facility prepared by Operator pursuant to Clause 7.1, and as may be amended from time to time in accordance with the terms hereof.

"Manufacturer's Recommendations" shall mean the instructions, procedures and recommendations which are issued by the manufacturer of any plant, spare part or equipment used at the Facility, relating to the operation, maintenance or repair of such plant and equipment, and any revisions or updates thereto from time to time issued by the manufacturer.

"Member" shall mean any Person that is a shareholder, partner, member or other owner of an interest in Owner.

"Month" shall mean a calendar month.

"MW" shall mean "megawatt," or one million watts of electric power.

"O&M Employees" shall mean the employees or contractors of Operator who are directly engaged by Operator to perform Services under this Agreement.

"O&M Intellectual Property" shall have the meaning set forth in Clause 15.1(a).

"O&M Procedures Manual" has the meaning provided in Schedule 5 hereof.

"Operating Fee" shall have the meaning set forth in Clause 9.1.

"Operating Period" shall mean the period commencing on the Commercial Operations Date and terminating on the Expiration Date or the Termination Date.

"Operating Plan" shall mean, with respect to any period of time, the operating plan for such period prepared by Operator and submitted to Owner for its approval pursuant to Clauses 7.2 et seq.

"Operator Indemnities" shall have the meaning set forth in Clause 12.1.

"Operator Intellectual Property" shall have the meaning set forth in Clause 15.1(b).

"Operator Licenses" shall have the meaning set forth in Clause 3.11.

"Operator's Representative" shall have meaning set forth in Clause 5.4(a).

"Outage" shall mean any interruption in the ability of the Facility to generate electric power or supply electric power to the Delivery Point.

"Owner Events of Default" shall have the meaning set forth in Clause 11.2.

"Owner Intellectual Property" shall have the meaning set forth in Clause 15.1(c).

"Owner's Representative" shall have the meaning set forth in Clause 5.5.

"Parts and Repair Services Agreement" shall mean the Parts and Repair Services Agreement entered into between Owner and the PRS Contractor as of [].

"Performance Bonus" shall mean the bonus payable to Operator by Owner in accordance with Clause 9.3.

"Performance Penalty" shall mean the amounts to be deducted by Owner from Operator's income hereunder as provided in Clause 9.3.

"Person" shall mean any natural person, firm, corporation, company, voluntary association, general or limited partnership, joint venture, trust, unincorporated organization, Government Authority or any other entity, whether acting in an individual, fiduciary or other capacity.

"Power Purchase Agreement" or "PPA" shall mean (i) Contract DME-009-07 with Elektra Noreste S.A., dated as of July 10, 2007, (ii) Contract 05-07 with Empresa de Distribución Eléctrica de Chiriquí, dated as of July 10, 2007, (iii) Contract number 08-07 executed with Empresa de Distribución Eléctrica Metro-Oeste dated as of July 10, 2007, and (iv) any other agreement providing for the sale of capacity or energy from or to the Facility, including any sale of energy or capacity to non-regulated users in the Republic of Panama and support agreements (*contratos de respaldo*) entered into by Owner from time to time.

"Power Purchaser" shall mean the third party purchasing the power and energy generated by the Facility pursuant to a Power Purchase Agreement, as well as its successors and permitted assigns.

"Project Contracts" shall mean any Power Purchase Agreement, Fuel Transportation Agreement, Fuel Supply Agreement, Interconnection Agreement, and any additional agreements related to the management, operation and maintenance of the Facility.

"Project Facilities" shall mean the Facility and the Site.

"PRS Contractor" shall mean ProEnergy Services International, Inc.

"Representative" shall mean, with respect to any Person, any shareholder, officer, director, attorney, agent, employee or other representative of such Person.

"Services" shall mean the services to be provided by Operator pursuant to this Agreement.

"Site" shall mean the land, spaces, waterways, roads, wells and any rights acquired or to be acquired by Owner for the purposes of the Facility on, through, above or below the ground on which all or any part of the Facility is to be built.

"Standing Procedures" shall mean the procedures, systems, policies and program for the operation and maintenance of the Facility referred to in Schedule 2 and that shall be included in O&M Procedures Manual.

"**Subcontract**" shall mean any contract for the supply of goods, work, materials, spare parts or equipment in connection with the Services provided hereunder entered into between Operator and any Subcontractor.

"**Subcontractor**" shall mean any Person party to a Subcontract with Operator.

"**Successor Operator**" shall have the meaning set forth in Clause 11.7(a).

"**Suspension Notice**" shall have the meaning set forth in Clause 11.9(a).

"**Tax**" shall mean any tax, duty, fees, customs, permits, licenses, impost, and levy of any nature whatsoever (including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto) and wherever charged (whether state, local, or national), levied or imposed, together with any interest and penalties in relation thereto imposed by any Governmental Authority of any country on Operator or its employees or Subcontractors due to the execution of this Agreement or the performance of any Services hereunder.

"**Term**" shall have the meaning set forth in Clause 2.2.

"**Termination Date**" shall have the meaning set forth in Clause 11.5.

"**Termination Notice**" shall have the meaning set forth in Clause 11.5.

"**Termination Payment**" shall have the meaning set forth in Clause 11.6.

"**Year**" shall mean the Period following the Commercial Operations Date commencing 12:00 midnight LPT on the Commercial Operations Date through 12:00 midnight LPT on December 31 of the calendar year in which the Commercial Operations Date occurs, and thereafter the Period from 12:01 a.m. LPT on January 1, through 12:00 midnight LPT on December 31 of each calendar year, provided that the final Year shall terminate on the Expiration Date or the Termination Date.

1.2. Where the context requires, words imparting the singular shall include the plural and vice versa.

1.3. A reference in this Agreement to any Article, Clause, sub-clause or paragraph is, except where it is expressly stated to the contrary or the context otherwise requires, a reference to such Article, Clause, sub-clause or paragraph herein. A reference to a particular Schedule is, except where it is expressly stated to the contrary or the context otherwise requires, a reference to such Schedule.

1.4. Headings are for convenience of reference only and shall not be used for purposes of construction or interpretation of this Agreement.

1.5. Each reference to any document, contract or agreement (including without limitation this Agreement) shall (i) be construed at the particular time as a reference to such agreement, document or contract as amended, varied or supplemented and in effect from time to time and (ii) subject to Clause 22.6, include all exhibits, schedules and other attachments thereto.

1.6. Each reference to any Applicable Law shall be construed as a reference to such Applicable Law as it may have been, or may from time to time be, amended, replaced or re-enacted and shall include any subordinate legislation, rule or regulation promulgated under any such laws.

1.7. Where reference is made herein to any document being submitted to or on behalf of Owner, such submission shall be deemed to require Owner's approval, unless such approval is specifically not required.

1.8. The terms "hereof", "herein", "hereto", "hereunder", and words of similar or like import, refer to this entire Agreement and not any one particular Article, Clause, Schedule, or other subdivision of this Agreement. The terms "include" and "including", and words of similar or like import, shall mean "including, without limitation".

1.9. Any accounting terms used but not expressly defined herein shall have the meanings given to them under generally accepted NIIF accounting principles.

1.10. In computing any period of time prescribed or allowed under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included. If the last day of the period so computed is not a working day in the place where performance is due, then the period shall run until the close of business on the immediately succeeding working day.

1.11. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of each Party hereto, and there shall be no presumption that an ambiguity should be construed in favor of or against Owner or Operator solely as a result of such Party's actual or alleged role in the drafting of this Agreement.

ARTICLE 2. APPOINTMENT OF OPERATOR AND TERM

2.1. **Appointment.** Owner appoints Operator and Operator accepts the appointment to operate and maintain the Facility in Panama, and to perform the Services on and subject to the terms and conditions of this Agreement.

2.2. **Term.** This Agreement shall continue in full force and effect from the Effective Date until the Expiration Date, unless otherwise terminated prior to the Expiration Date (the "Term").

ARTICLE 3. SCOPE OF SERVICES

3.1. **Generally.** Operator shall operate and maintain the Facility in accordance with and subject to the provisions of this Agreement.

3.2. **Not Used.**

3.3. **Operator to Act as Independent Contractor.**

- (a) Subject to the following provisions of this Clause 3.3, Operator agrees to carry out the functions of, and to act as, an independent contractor for the purpose of the performance of the Services in accordance with the terms of this Agreement. It is understood by the Parties that no section of this Agreement shall be interpreted as creating a labor relation between the Owner and the Operator since the Operator may perform the Services based on its own judgment and in this Agreement in connection to time, place and methods. The Operator

declares that it will render the Services as an independent professional and that it is neither under legal subordination nor economic dependency on the Owner.

- (b) Except as expressly authorized by this Agreement or any Operating Plan or by Owner from time to time, Operator and its Representatives shall not, and shall cause each Subcontractor and their respective Representatives to not:
- (i) describe itself as agent or representative of Owner;
 - (ii) pledge the credit of Owner in any way in respect of any commitments for which it has not received written authorization from Owner;
 - (iii) make any warranty or representation relating to Owner;
 - (iv) sell, lease, pledge, mortgage, encumber, convey, license, exchange or make any other transfer, assignment or disposition of the Project Facilities or any other property or assets of Owner, other than the removal and disposal of waste material from the Site;
 - (v) settle, compromise, assign, pledge, transfer, release, waive or consent to the compromise, assignment, settlement, pledge, transfer, waiver or release of, any claim, suit, debt, demand or judgment against or due by Owner, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate to a judgment or consent with respect thereto on behalf of Owner;
 - (vi) make, enter into, execute, amend, modify or supplement any Project Contract or any other contract or agreement on behalf of, or in the name of Owner; (vi) engage in any other transaction on behalf of, or in the name of, Owner which is not expressly permitted under this Agreement; or
 - (viii) take any action that would (1) invalidate any warranty that runs to Owner under the Equipment and Services Agreement, (2) release any contractor from its obligations under any contract pertaining to the Facility except with the permission of Owner, (3) give rise to any claim by Contractor against Owner not available to Contractor under the Equipment and Services Agreement, or (4) affirmatively release any Liens created pursuant to the Loan Documents.

3.4 **Liaison with Contractors.** Operator acknowledges that prior to the Commercial Operation Date it shall cooperate with all reasonable requests made by Owner and its other contractors during the construction phase in order that the Facility can be completed.

3.5 **Operations and Maintenance.** During the Operating Period, Operator shall undertake the operation and maintenance of the Facility and shall ensure that all necessary services required to operate and maintain the Facility, including without limitation the Services set out in this Agreement and Schedule 1, the Operating Plan, and the Maintenance Program, are properly performed in accordance with the terms hereof. For the avoidance of doubt, risk of loss for the Project Facilities shall remain with Owner except as otherwise expressly provided for under the terms of this Agreement. Operator shall also be responsible for the scheduled major maintenance to be performed in Panama that occurs during the Operating Period on the boilers, turbines and other equipment necessary for generating power which are initially or afterwards installed at the Site as part of the Facility as part of the simple cycle phase or

combined cycle phase. Operator's obligations for such scheduled maintenance of the turbines shall not cover the services provided in the PRS Agreement.

3.6 Standard for Performance of Obligations.

- (c) Operator shall operate and maintain the Facility and perform all the Services hereunder in good faith and in accordance with:
 - (i) all Applicable Laws;
 - (ii) all Governmental Approvals;
 - (iii) the requirements under the Project Contracts;
 - (iv) the terms of this Agreement;
 - (v) the limits and constraints relating to the operation and maintenance of the Facility;
 - (vi) the Operating Plan and Maintenance Program;
 - (vii) the O&M Procedures Manual, the Standing Procedures and the Manufacturer's Recommendations;
 - (viii) Good Operating Practices;
 - (ix) All permits and licenses of the Owner, copies of which will be furnished to the Operator;
 - (x) all applicable requirements under the insurance policies obtained by Owner or Operator for the Facility; and
 - (xi) all applicable Contractor, Subcontractor, contractors and vendor warranties.
- (d) If Operator is aware of a conflict between any of the above requirements, it shall inform Owner accordingly and the Parties shall in good faith discuss and reach agreement on the manner in which Operator should perform the Services. Operator shall not be in breach of the terms of this Agreement if it acts in accordance with the terms of this Clause 3.6(b) and Clause 3.6(c).
- (e) Operator hereby agrees that while performing any Services under this Agreement, it shall abide by those requirements under the Project Contracts and shall cooperate in good faith with and assist Owner in complying with all other terms contained in the Project Contracts. Owner shall provide Operator with written notice of any changes to the requirements under the Project Contracts of any agreement replacing any Project Contract, as well as licenses and permits obtained by Owner with respect to the Facility, and shall provide Operator with copies thereof; and, with Operator's consent, which shall not be unreasonably withheld, such changed requirements or requirements contained in any replacement agreement shall be incorporated by Operator into the Operating Plan. This Clause 3.6(c) shall not be deemed to make Operator a party to the Project Contracts or replacements thereof or to impose any obligations on Operator under the Project Contracts or replacements thereof other than as provided herein.

3.7 Liens. Operator shall not permit any Lien to be filed or otherwise imposed on any part of the Project Facilities as a result of the Services or its employment of any

Subcontractor for the performance of the Services hereunder; provided, however, that Operator shall not be responsible for any Lien resulting from Owner's breach of its responsibilities hereunder.

3.8 Qualification to Operator's Obligations. Operator (i) shall not be liable to Owner for any Loss suffered or incurred by Owner or any third Person, or for any liquidated damages, and (ii) shall be fully indemnified and held harmless by Owner for any Loss suffered or incurred by Operator in respect of the claims of any third Person, to the extent such Loss or liquidated damages, as the case may be, are as a direct result of:

- (f) Operator's compliance with any instruction, direction or parameter given in writing by Owner, Owner's Representative, a party to any Project Contract, as long as in compliance with said Project Contract, or any constraint imposed by Owner at any time upon Operator which is different from those otherwise provided by this Agreement;
- (g) Owner's failure to comply with its obligations under this Agreement or any other Project Contract which failure has an adverse effect on Operator's ability to perform the Services;
- (h) the absence or lapse of any required Government Approval which Operator is not required to obtain;
- (i) a design or construction defect or design error in the Facility or any component incorporated therein not otherwise attributable to Operator's negligence; or
- (j) where Owner fails to make timely payment of the Mobilization Fee or any Operating Fee.

3.9 Mobilization Services. As part of the Services, during the two (2) month period prior to the scheduled Operating Period, the Operator shall perform the mobilization services provided in Schedule 1 in order to prepare and be ready to operate the Facility upon Commercial Operation of the Facility.

3.10. Project Contracts. Operator shall abide by the terms, conditions and requirements for the operation and maintenance of the Facility set forth in the Power Purchase Agreement and the other Project Contracts, and Operator shall otherwise cooperate in good faith with and assist Owner in administering and complying with the Project Contracts. Without limiting the generality of the foregoing, Operator shall:

- (a) Within the first seven (7) days of each month, prepare and submit to Owner for delivery by Owner under each Power Purchase Agreement, monthly invoices for Capacity and Net Energy made available to each Power Purchaser corresponding to the month just ended, plus any other amounts due from the Power Purchaser, together with supporting information reasonably satisfactory to Owner;
- (b) At Owner's request, review any invoice or account payable submitted to Owner by any third party, in the event Operator's input or review is required or in the event such invoice or account payable has been incurred by Owner as a result of, or pursuant to, the operation and maintenance of the Facility;
- (c) in the event any of the Power Purchaser objects to or disputes any invoice or any

portion thereof, prepare information reasonably requested by Owner to respond to the Power Purchaser's objections or correct any errors or lack of supporting information in any invoice, in each case within the time period contemplated by the Power Purchase Agreement ; and

- (d) If errors are discovered in the registration of any Facility metering equipment which requires an invoicing adjustment under the Power Purchase Agreement, prepare information reasonably requested by Owner and assist Owner in achieving an invoicing adjustment with the Power Purchaser in accordance with the Power Purchase Agreement.

3.11. **Operator Licenses.** Operator shall in its name and at its sole cost and expense obtain and maintain until the termination of this Agreement, any and all permits which are necessary for Operator to do business in Panama and engage in performance of the Services as contemplated by this Agreement, including but not limited to, permits required for any employees, contractors or Subcontractors of Operator who are not citizens of Panama to work, reside or otherwise perform the Services in Panama (collectively, "Operator Licenses"). Owner shall cooperate with Operator for obtaining the Operator Licenses required to be obtained by Operator for the operation of the Facility.

3.12. **Access to Facility.**

- (a) Owner and its agents and Representatives shall have access at all times and consistent with relevant safety procedures to the Facility, all operations relating to the Services and any documents, materials and records and accounts relating to such operations for purposes of inspection and review; provided, however, that Owner shall use reasonable efforts to provide such prior notice to Operator as may be consistent with the purpose of such Inspection or review. Operator shall also provide such access to such other persons as Owner shall reasonably request.
- (b) During any such inspection or review of the Facility, Owner and its respective agents and Representatives shall comply with all of Operator's safety and security procedures, including the rules set forth in the procedures manual concerning visitors to the Facility, and Owner its respective agents and Representatives shall conduct such inspection and reviews in such a manner as not to interfere unreasonably with Operator's activities. Operator also shall cooperate with Owner in allowing other visitors access to and tours of the Facility under conditions mutually agreeable to the Parties. In the event that Operator provides access to the Facility to any Person other than as required or permitted by this Clause 3.12, Operator shall immediately notify Owner of the same.
- (c) Operator shall permit Owner and its agents and Representatives to witness any Heat Rate tests of the Facility, any calibration tests of the invoice meters, and the monthly reading of the invoice meters conducted by Operator in accordance with this Agreement, the Power Purchase Agreement or Governmental Approvals.

ARTICLE 4.
RESPONSIBILITIES AND RIGHTS OF OWNER

4.1. **Owner Responsibilities.** As between the Parties hereto, Owner shall perform its obligations hereunder and shall be responsible for the following activities:

- (a) provide and maintain insurance in accordance with Clause 14.1;
- (b) provide, through a Fuel Supplier, all Fuel of the quality and in the quantity reasonably required by Operator to perform the Services as well as the diesel fuel to be used on startups;
- (c) pay to Operator any sums due under the terms of this Agreement;
- (d) manage all Project Contracts provided that Operator shall, in any case, comply with its obligations pursuant to Clause 3.10;
- (e) cause the Facility to be designed and engineered so that it can be operated in compliance with Applicable Laws and all permits and licenses;
- (f) provide all utilities and water necessary to operate and maintain the Facility;
- (g) reimburse Operator for the magnesium acquired by it for the purposes of treating the liquid fuel prior to injection into the turbines.
- (h) provide security for the Facility and personnel at the Facility.

4.2. **Owner's Retained Rights.** Owner shall retain all rights and powers relating to the operation and maintenance of the Facility not specifically granted to Operator under this Agreement (the "Retained Rights"), including, but not limited to, the following rights and powers:

- (a) review and determination of general policies and procedures not previously delegated to Operator; and
- (b) performance of any material obligations of Operator if Operator fails to perform such material obligations after receiving written notice thereof from Owner. This is in addition to any other action the Owner may have against the Operator under Applicable Law and/or this Agreement due to its failure to perform its obligations.

4.3. **Review and Approval.** Owner shall, and except as expressly otherwise set forth in this Agreement, review in a timely fashion and not unreasonably withhold its approval of all items submitted by Operator to Owner for its approval.

4.4. **Government Approvals.** Owner shall procure, obtain and maintain on its own behalf, all Government Approvals which may be required under any Applicable Law for the ownership, operation and maintenance of the Facility (other than Operator Licenses). With respect to replacements and renewals of such Governmental Approvals (other than Operator Licenses) obtained by Owner, Operator shall provide any information, monitoring and testing required by Owner to replace, renew, obtain or comply with such Governmental.

ARTICLE 5.
O&M EMPLOYEES AND REPRESENTATIVES

5.1. O&M Employees.

- (a) Operator shall, at its own cost, identify, recruit, interview and hire all labor, professional, supervisory and managerial personnel as are required to perform the Services hereunder. All O&M Employees shall be the employees or contractors of Operator, and their working hours, rates of compensation and all other matters relating to their employment shall be determined by Operator according to Applicable Law. Under no circumstances the Owner will have any responsibility in connection to the O&M Employees. Operator shall indemnify defend and hold Owner harmless, during the Term and up until one (1) year after the termination of this Agreement or expiration of the Term, from and against any and all losses, cost, actions, claims, liabilities, damages, fines, penalties or expenses (including reasonable legal expenses) arising from or related to any claims filed by O&M Employees with respect to matters arising during the employment thereof under this Agreement.
- (b) If at any time during the Term Owner reasonably determines that any of Operator's employees engaged in the performance of the Services does not meet the standards established in this Agreement, Owner shall have the right to require Operator to terminate or reassign such person promptly, to the extent consistent with Good Operating Practices.

5.2. **Employee Compliance with Regulations.** Operator shall ensure that each O&M Employee shall at all times when such O&M Employee is at the Site after the Effective Date comply with the regulations and safety requirements provided in Applicable Laws, the procedures manual and relevant Standing Procedures. All O&M Employees engaged in the performance of the Services shall be qualified to perform and experienced in the duties to which they are assigned (or be qualified to be trained in the same) and shall meet the requirements for Facility personnel under the O&M Procedures Manual and in accordance with Good Operating Practices.

5.3. Representative of Operator.

- (a) Operator shall appoint a properly qualified, competent and experienced individual to act as the Representative of Operator (the "Operator's Representative") in connection with the operation and maintenance of the Facility. Operator's Representative shall advise Owner on issues regarding the operation and maintenance of the Facility. Operator shall notify Owner of the identity of Operator's Representative and any individual appointed in replacement thereof.
- (b) Operator's Representative is authorized and empowered to act for and on behalf of Operator on all matters concerning this Agreement and its obligations hereunder, other than any amendments to or waivers under this Agreement. In all such matters, Operator shall be bound by the written communications, directions, requests and decisions given or made by Operator's Representative (or its designee) within the scope of its responsibilities.

5.4. **Representative of Owner.** Owner shall appoint an individual ("Owner's Representative") to act as the Representative of Owner in connection with the operation and maintenance of the Facility. Owner shall notify Operator of the identity of Owner's Representative and any individual appointed in replacement thereof. Owner's Representative shall have full authority to act on behalf of Owner in all matters concerning the operation and maintenance of the Facility and the performance of Owner's obligations under this Agreement, other than authority to agree to any amendments, modifications or waivers of this Agreement, and except in relation to matters which Owner may from time to time by written notice to Operator reserve to itself. Owner shall, subject to the foregoing, be bound by the written communications, directions, requests and decisions given or made by Owner's Representative within the scope of its responsibilities.

5.5. **Operator Employment of O&M Employees.** All O&M Employees shall be employed by Operator and shall in no event be deemed to be the employees of Owner. Operator will be responsible for paying the salaries and all benefits of such employees, meeting all governmental liabilities with respect to such employees, supervising and determining all job classifications, staffing levels, duties and other terms of employment for the O&M Employees in accordance with Applicable Laws. Operator shall, at all times during the Term, have full supervision and control over the O&M Employees and shall at all times maintain appropriate order and discipline among its personnel and shall cause each Subcontractor to maintain equal standards with respect to such Subcontractor's Representatives.

5.6. **Non-Solicitation.** If Owner hires the Plant Manager, directly or indirectly through a third party, in any capacity during or within one (1) year from the termination or expiration of this Agreement, Owner agrees to pay a fee to Operator equal to thirty-five percent (35%) of the Plant Manager's estimated annualized gross compensation for employment. Estimated gross compensation includes estimates of commissions, bonuses, incentives, equity and salary. This fee is due and payable within thirty (30) calendar days from the date such person commences employment with Owner. For the avoidance of doubt, the parties agree that (i) such fee is reasonable in all respects and shall in no event be considered a penalty, and (ii) that in the event a Plant Manager appointed by Operator ceases to be an employee of Operator (not as a result of Owner requesting his removal) and a new Plant Manager is appointed, the former Plant Manager may be retained by Owner without the obligation to pay compensation hereunder one year after such former Plant Manager terminates its employment with Operator .

ARTICLE 6. INFORMATION, REPORTS, RECORDS AND AUDITS

6.1. **Information.** Owner shall provide Operator with all information in connection to Project Contracts and all permits and licenses obtained by Owner with regards to the Facility, necessary for Operator to carry out its duties hereunder. Promptly upon entering into any Project Contract or any amendment thereof, Owner shall submit the relevant Project Contract or amendment to Operator. Owner may (but will not be obligated to) request Operator's opinion on any such Project Contracts or amendments thereto, provided that Operator's opinion or comments shall not be binding for Owner.

6.2. **Reports and Written Notices.**

- (a) Operator shall provide Owner with such reports as are required by Owner and shall comply with those reporting requirements prescribed by Applicable Laws or set out in the Project Contracts, the Operating Plan, the Standing Procedures or any Government Approval, which are defined therein as being Operator responsibilities. Operator's reporting obligations shall include those provided in this Agreement including those specified in Schedule 3.
- (b) If Owner requests a projection, report or document regarding other information relating to the Facility, Operator shall prepare such document at the request of Owner and shall submit such reports to Owner for approval as soon as reasonably practicable following such request but in no event later than five (5) days after the respective request is made, provided that Operator may request a reasonable time extension in order to complete or provide reports or information that is impossible or not reasonable to complete in the above mentioned time period.
- (c) Owner may from time to time specify any reasonable changes to be made to any of the formats for any report or requested hereunder.
- (d) Upon obtaining knowledge thereof, Operator shall submit to Owner prompt written notice of:
 - (i) any lapse or termination of any Government Approval, or any refusal or threatened refusal to grant, renew or extend, or any action pending or threatened that might affect the granting, renewal or extension of any Government Approval; or
 - (ii) any dispute with, or notice of violation or penalty issued by, any Government Authority.
- (e) Operator shall promptly submit to Owner any material information concerning new or significant aspects of the operations of the Project Facilities, any complaint about the Project Facilities from any Person who complains directly to Operator and, upon Owner's request, any other information concerning the Project Facilities or the Services performed by Operator. Such information may include any information and certifications required by any Lender with respect to the services performed by Operator and documentation necessary to satisfy the requirements of the Lenders established in the Loan Documents.
- (f) Operator shall provide immediate notice to Owner in the event of any equipment failure that may affect Owner's compliance with Project Contracts, permits and licenses regarding the Facility, and Applicable Laws.
- (g) Operator will provide written notice to Owner regarding any material deviations from the Operating Plan in accordance with Clause 7.4 (b).
- (h) With respect to any equipment procured by Operator on behalf of Owner, Operator shall deliver a copy of any relevant Manufacturer's Recommendations or other industry information to Owner as soon as reasonably practicable following receipt thereof by Operator.

6.3. **Books and Records.** Operator shall maintain complete, accurate and up-to-date records, books and accounts relating to the operation and maintenance of the Facility, and

as necessary to verify (i) the incurring and payment of all capital and operating expenditures, and (ii) Operator's performance of its obligations hereunder. Operator shall retain all such books and records for five (5) years following the Expiration Date and shall deliver copies of such records to Owner upon the termination of this Agreement.

6.4. **Audits.**

- (a) Owner or its designee shall have the right to carry out audit tasks of a financial, technical or other nature in relation to the operation and maintenance of the Facility once each quarter upon not less than thirty (30) days prior notice to Operator. Operator shall make available, at the Site or at Operator's home office location, to Owner or its designee, and Owner or its designee shall have the right to review, all contracts, books, records, and other documents relating to the Services provided by Operator, and Owner or its designee may make such copies thereof or extracts therefrom as Owner or such designee may deem appropriate.
- (b) Operator shall use reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably required to be done, in connection with any financial report prepared by or on behalf of Owner, including preparing for or providing to Owner reports, certificates, schedules and opinions. Any financial reporting required of Operator shall be limited to the services associated with operating and maintaining the Facility only.
- (c) Disregarding the provisions of Clause 3.12(a) and 6.4(a), Owner shall be entitled to perform scheduled and unscheduled audits of the Facility to the extent that it does not unreasonably interfere with the compliance of Operator's obligations under this Agreement.

ARTICLE 7.

MAINTENANCE PROGRAM AND OPERATING PLANS

7.1. **Maintenance Program.** Not later than ninety (90) days following the Effective Date, and each year during the Term thereafter, Operator shall prepare and submit to Owner as a part of the Operating Plan, Operator's Maintenance Program for the immediately succeeding partial or complete Year, as the case may be. Each Maintenance Program shall comply with the requirements of any Power Purchase Agreement and shall comprise a timetable of the proposed number of hours of maintenance on major equipment, the timing of such maintenance, the dates and times of Outages and the corresponding reductions of output for each such Outage predicted to occur as a result of the implementation of such Maintenance Program.

7.2. **Operating Plans During Operating Period.** Not later than ninety (90) days following the Effective Date, and each year during the Term thereafter, Operator shall prepare and submit to Owner the Operating Plan for the immediately succeeding partial or complete Year, as the case may be. Each Operating Plan shall be prepared so as to comply and be consistent with Operator's obligations set out in Article 3. Each Operating Plan shall show, in such detail reasonably required by Owner, and on a Month-by-Month basis, all relevant information relating to the anticipated operation and maintenance of the Facility by Operator.

7.3. **Deviation.** Operator shall notify Owner promptly of any material deviations or discrepancies from the projections contained in any applicable Operating Plan;

7.4 **Owner Review and Approval.** Owner shall review Operator's proposed Maintenance Program and Operating Plan within fifteen (15) days after receipt of the same and may, by written notice, require changes, additions, deletions and modifications thereto. Owner and Operator will then meet to agree upon a final Maintenance Program and Operating Plan by the date which is sixty (60) days prior to the commencement of such Year. Upon its approval, such final Maintenance Program and Operating Plan shall remain in effect throughout the applicable Year, subject to updates prepared by Operator with the concurrence of Owner and such other updating, revision and amendment as may be proposed by either Party and consented to in writing by the other Party. If, prior to the first day of any Year, the Parties are unable to reach agreement concerning any portion of the Maintenance Program or Operating Plan for such Year, those portions of the Maintenance Program and/or Operating Plan that are in dispute for such Year shall be resolved in accordance with the dispute resolution procedures set forth in Article 19. During the pendency of the resolution of such dispute resolution proceedings the corresponding portions of the prior Year's Maintenance Program and Operating Plan, if applicable, shall remain in effect, subject to adjustment as may be agreed by Owner and Operator for the safe operation of the Facility. Those portions of the Maintenance Program and Operating Plan not in dispute shall become effective in accordance with this Clause 7.3.

ARTICLE 8. INVOICES

8.1. **Invoices.**

(a) Within the first ten (10) days of each Month, Operator shall provide Owner with an invoice setting forth the Operating Fee due to Operator under this Agreement during such Month. Each invoice shall be accompanied by appropriate records, receipts, cost accounting coding, and other information as Owner may reasonably request to verify such due amounts. Invoices for all other amounts owing to Operator by Owner under this Agreement shall be issued by Operator to Owner when such amounts become due and payable.

8.2 **Wire Instructions; Late Payments.** All invoices issued pursuant to this Agreement shall be due thirty (30) days upon receipt without offset, withholding, backcharge or retainage of any kind or nature (other than such applicable offsets, withholdings, backcharges and retainages pursuant to Clause 8.3 below, which shall be made by Owner and payable in U.S. dollars; and will be electronically transferred to Operator's bank account # 048-268726-001 at HSBC Panama pursuant to wiring instructions to be provided by Operator to Owner.

All late payments by Owner of invoices properly submitted by Operator under this Agreement shall accrue interest at the LIBOR plus four percent (4%) from the date due until paid.

8.3 **Taxes.** Operator shall be responsible for any and all applicable taxes to its activities and the services it will provide to Owner, in any and all jurisdictions, including, but not limited to, U.S and Panama. Regarding Panamanian withholding taxes that may apply to the services provided by Operator or otherwise applicable to any of the amounts paid by Owner to the Operator under this Agreement, Owner shall apply the corresponding withholding taxes applicable under the Applicable Law and make the corresponding payment to the appropriate Government Authority. Operator shall also be responsible for the payment of all U.S., Panama or any other jurisdiction applicable tax to any of its Subcontractors.

ARTICLE 9. FEES; PERFORMANCE BONUS

9.1. **Mobilization Fee.** Operator shall be paid a mobilization fee of U.S.\$1,500,000. The mobilization fee shall be invoiced and paid to Operator in ten (10) monthly installments, the first of which shall be invoiced by Operator upon the earlier of (i) January 1, 2009 or (ii) immediately after the execution of this Agreement.

9.2. **Operating Fee.** Operator shall be paid a fixed fee for each Year of the Operating Period equal to U.S.\$2,500,000.00 (the "Operating Fee"). The Operating Fee shall be subject to an escalation of three percent (3.0%) per annum for each Year that the Agreement is in effect. The Operating Fee shall be paid in Panama to Operator in equal Monthly installments during each Year of the Operating Period.

9.3. **Performance Bonus and Penalty.** Operator shall be entitled to a Performance Bonus or shall pay a Performance Penalty to be determined in accordance with the Schedule 4 attached hereto.

9.4. **Disputed Items.** If any statement rendered by a Party or an amount due from one Party to the other Party hereunder is disputed or subject to question in good faith by the recipient, the Parties shall use all reasonable efforts to resolve the dispute as soon as practicable, but the disputing Party shall pay all undisputed amounts in accordance with this Article 9. If the Parties cannot resolve the dispute, such dispute shall be resolved according to Clause 19. If the dispute (or any portion thereof) is resolved against the disputing Party, such Party shall within three (3) days of the date of such resolution pay the other Party an amount corresponding to such portion of the dispute which has been resolved against the disputing Party, plus interest on such amount.

9.5. **Currency.** All sums payable under this Agreement shall be stated in Dollars and shall be paid in Dollars.

ARTICLE 10. FORCE MAJEURE

10.1. **Excuse of Performance.** Neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent that such failure of performance or its inability to deliver or accept services hereunder shall be due to Force Majeure; provided, however, that Force Majeure shall not excuse the payment of monies

due and payable hereunder. The suspension of performance due to Force Majeure shall be of no greater scope and no longer duration than that which is necessary.

10.2. **Obligation to Diligently Cure Force Majeure.** If either Party shall rely on the occurrence of a Force Majeure event as a basis for being excused from performance of its obligations under this Agreement, then the Party relying on the event or condition shall:

- (a) provide immediate notice to the other Party of the occurrence of the Force Majeure event, but in no case more than 72 hours from the occurrence thereof, which notice shall provide details with respect to the circumstances constituting the Force Majeure event, an estimate of its expected duration and the probable impact on the affected Party's performance of its obligations hereunder;
- (b) exercise all reasonable and diligent efforts to continue to perform its obligations hereunder;
- (c) expeditiously take all reasonable and diligent action to correct or cure the event or condition constituting the Force Majeure event;
- (d) exercise all reasonable and diligent efforts to mitigate or limit the adverse effects of the Force Majeure event and damages to the other Party, to the extent such action would not adversely affect its own interests; and
- (e) provide periodic notices to the other Party with respect to its actions and plans for actions in accordance with (b), (c) and (d) above.
- (f) provide notice to the other Party of the cessation of the Force Majeure event within four (4) days thereafter.

ARTICLE 11. EVENTS OF DEFAULT; REMEDIES

11.1. **Operator Events of Default.** The following shall constitute events of default on the part of Operator ("Operator Events of Default") under this Agreement:

- (a) the bankruptcy, insolvency, dissolution or cessation of business of Operator;
- (b) gross negligence or willful misconduct by Operator in the performance of its obligations hereunder;
- (c) a material failure by Operator to perform any of its obligations hereunder, unless Operator has cured such breach within fifteen (15) days time from receipt of notice of the necessity of such cure or has initiated and is diligently pursuing the cure of such failure, or the effects thereof, and thereafter continues to diligently pursue such cure, provided that such cure is in fact effected within such period as may be reasonably necessary to effect such cure, which shall in no event exceed any date on which penalties would be imposed on Owner or Operator, or a Government Approval would be subject to termination or forfeiture, as a result of such failure;
- (d) a default by Operator in its payment obligations to Owner unless Operator has cured such breach within thirty (30) days from receipt of written notice from Owner;
- (e) if Operator violates or consents to the violation of any Applicable Law and such violation has or could reasonably be expected to have a material adverse effect

on the Facility, Owner or Operator's performance of the Services, unless Operator has cured such breach within fifteen (15) days from the point at which Operator knew or reasonably should have known of such violation or has initiated and is diligently pursuing the cure of such violation, or the effects thereof, and thereafter continues to diligently pursue such cure, provided that such cure is in fact effected within such period as may be reasonably necessary to effect such cure, which shall in no event exceed any date on which penalties would be imposed on Owner or Operator, or a Government Approval would be subject to termination or forfeiture, as a result of such violation; or

- (f) if any representation, warranty or statement of Operator set forth in this Agreement shall have been false or misleading in any material respect as of the time made or deemed made.

11.2. **Owner Events of Default.** The following shall constitute events of default on the part of Owner ("Owner Events of Default") under this Agreement:

- (a) the bankruptcy, insolvency, dissolution or cessation of business of Owner;
- (b) gross negligence or willful misconduct by Owner in the performance of its obligations hereunder;
- (c) a material failure by Owner to perform any of its obligations hereunder (other than Owner's payment obligations), unless Owner has cured such breach within fifteen (15) days from its receipt of written notice from Operator or has initiated and is diligently pursuing the cure of such failure, or the effects thereof, and thereafter continues to diligently pursue such cure, provided that such cure is in fact effected within such period as may be reasonably necessary to effect such cure, which shall in no event exceed any date on which penalties would be imposed on Owner or Operator, or a Government Approval would be subject to termination or forfeiture, as a result of such failure;
- (d) a default by Owner in its payment obligations to Operator, unless Owner has cured such breach within thirty (30) days from receipt of written notice from Operator;
- (e) if any representation, warranty or statement of Owner set forth in this Agreement shall have been false or misleading in any material respect as of the time made or deemed made; or
- (f) if Owner violates or consents to the violation of any Applicable Law and such violation has or could reasonably be expected to have a material adverse effect on Operator's performance of the Services, unless Owner has cured such breach within fifteen (15) days from Owner's receipt of written notice from Operator demanding such cure or has initiated and is diligently pursuing the cure of such violation, or the effects thereof, and thereafter continues to diligently pursue such cure, provided that such cure is in fact effected within such period as may be reasonably necessary to effect such cure, which shall in no event exceed any date on which penalties would be imposed on Owner or Operator, or a Government Approval would be subject to termination or forfeiture, as a result of such violation.

11.3. **Remedies.**

- (a) Upon the occurrence and during the continuance of an Operator Event of Default, Owner shall, subject to Clause 11.6, have the right, in its sole and absolute discretion, to do any or all of the following: (i) terminate this Agreement and (ii) exercise its rights to perform Operator's obligations hereunder and pursue any and all remedies available at law or in equity.
- (b) Upon the occurrence and during the continuance of an Owner Event of Default, Operator shall have the right, in its sole and absolute discretion, to do any or all of the following: (i) terminate this Agreement and (ii) pursue any and all other remedies available at law or in equity.
- (c) Upon expiration of the Term, there having been no extension of this Agreement pursuant to Clause 2.2, or upon the expiration of the Term of any extension of this Agreement not followed by a new extension, or upon the termination of this Agreement, the Parties shall proceed to liquidate this Agreement in good faith and this Agreement shall be considered terminated as of the day following the expiration of the Term or the termination date, as a matter of law, without the necessity of a declaration by the Parties or a competent Government Authority. Upon any termination of this Agreement pursuant to this Article 11 neither Party shall have any obligation to any other under this Agreement other than those obligations established in this Agreement.
- (d) The cure of the event of default shall not excuse the Operator or Owner from its responsibility to repay and indemnify, defend and hold the other Party harmless from and against any and all losses, cost, actions, claims, liabilities, damages, fines, penalties or expenses (including reasonable legal expenses) arising from or related to any and all damages caused by its failure, according to the terms provided in this Agreement.

11.4. **Additional Termination Rights.** Notwithstanding anything herein to the contrary and subject to Article 19:

- (a) either Owner or Operator may terminate this Agreement:
 - (i) upon thirty (30) days written notice, if Owner permanently abandons the construction or operation of the Facility; or
 - (ii) at any time upon written notice upon expropriation of the Project Facilities or other involuntary transfer of the Project Facilities to a Government Authority or similar action with respect to all or substantially all of the assets or rights of Owner with respect to the Project Facilities;
- (b) Owner may terminate this Agreement at any time upon written notice if the effects of a Force Majeure event affecting Operator are not remedied or overcome within two (2) months following the occurrence of such Force Majeure event; and
- (c) Owner may terminate this Agreement before the expiration of the Term, subject to Clause 11.6.

- (d) Any termination under this Agreement will be treated as a termination under the Parts and Repair Services Agreement and visa versa unless otherwise mutually agreed by the Parties.

11.5. **Termination Procedure.** In the event of an Operator Event of Default, Owner Event of Default or if an event set forth in Clause 11.4 has occurred, the non-defaulting Party or Party entitled to seek termination, as the case may be, shall give a written notice of termination to the other Party (a "Termination Notice") which shall specify in reasonable detail the circumstances giving rise to the Termination Notice. This Agreement shall terminate on the date specified in the Termination Notice ("Termination Date"), which date shall not be earlier than the date upon which the applicable Party is entitled to effect such termination as provided herein.

11.6. **Payments Upon Termination or Expiration.**

- (a) If this Agreement is terminated early for any reason other than Operator Events of Default, Operator will be entitled to a lump sum Termination Payment in the terms provided below, *provided, however*, that Owner may in no event terminate this Agreement prior to the third anniversary of the Commercial Operations Date:
- (i) If the Termination Date corresponds to a day of the period of time comprised between (but excluding) the third anniversary of the Commercial Operations Date and the fourth anniversary thereof, the Termination Payment shall be equal to US\$800,000;
 - (ii) If the Termination Date corresponds to a day of the period of time comprised between (but excluding) the fourth anniversary of the Commercial Operations Date and the fifth anniversary thereof, the Termination Payment shall be equal to US\$600,000;
 - (iii) If the Termination Date corresponds to a day of the period of time comprised between (but excluding) the fifth anniversary of the Commercial Operations Date and the sixth anniversary thereof, the Termination Payment shall be equal to US\$400,000;
 - (iv) If the Termination Date corresponds to a day of the period of time comprised between (but excluding) the sixth anniversary of the Commercial Operations Date and the seventh anniversary thereof, the Termination Payment shall be equal to US\$200,000;
 - (v) If the Termination Date corresponds to a day of the period of time comprised between (but excluding) the seventh anniversary of the Commercial Operations Date and the Expiration Date, the Termination Payment shall be equal to US\$100,000;

The Termination Payment is not in lieu of and shall not include any sums due and owing under this Agreement to Operator prior to or as a result of the termination of this Agreement.

- (b) Upon the Termination Date (other than due to Operator Events of Default) or the Expiration Date, as the case may be, Operator shall be entitled to U.S.\$300,000 as full payment of all the costs and expenses incurred in de-mobilizing and vacating the Facility ("De-Mobilization Expenses") which shall be paid by Owner,

along with any applicable Termination Payment, upon seven (7) Days following receipt of invoice and supporting documents of such costs and expenses.

11.7. **Successor to Operator.** Upon receipt of a Termination Notice from Owner and or upon the expiration of the Term and provided Owner is not in default of its payment obligations to Operator under this Agreement:

- (a) Operator shall use all reasonable efforts to facilitate the appointment and commencement of duties of any Person to be appointed by Owner to provide operation and maintenance services in connection to the Facility (the "Successor Operator") so as not to disrupt the normal operation and maintenance of the Facility and shall provide full access to the Facility and to all relevant information, data and records relating thereto to the Successor Operator and its Representatives, and accede to all reasonable requests made by such Persons in connection with preparing for taking over the operation and maintenance of the Facility.
- (b) Upon termination of the Agreement or expiration of the Term, Operator shall deliver to (and shall, with effect from termination, hold in trust for and to the order of) Owner or to the Successor Operator all property in its possession or under its control that has been paid for and owned by Owner or leased or licensed to Owner. All spares, supplies, consumables, special tools, operating logs, books, records, operation and maintenance manuals and any other items (including inventories and software developed or acquired by Operator) shall be left at the Site.
- (c) Operator, to the extent allowed by such agreements and approvals, and if requested by Owner, shall transfer to the Successor Operator, as from the date of termination, its rights as Operator under all contracts entered into by it, and all Government Approvals obtained and maintained by it, in the performance of its obligations under this Agreement or relating to the operation and maintenance of the Facility. Pending such transfer, Operator shall hold its rights and interests thereunder for the account and to the order of Owner, Successor Operator or Owner's designee; provided that Owner shall indemnify Operator for all liabilities incurred by Operator under such contracts to the extent that such liabilities are caused by Owner, the Successor Operator or Owner's designee during the continuation and performance of such contracts by Owner, the Successor Operator or Owner's designee, as applicable. Operator shall execute all documents and take all other actions reasonably required to assign and vest in Owner all rights, benefits, interest, and title in connection with such contracts.
- (d) Deliver a written account of (i) outstanding purchase and service orders issued to vendors and subcontractors; (ii) all materials, equipment, supplies, consumables, spare parts and other items and services ordered (but not received) from vendors and subcontractors, (iii) all books and records referring to the Facility; (iv) confirm that all sums due to vendors or subcontractors have at the date of the termination been settled, that there are no disputes between Operator and vendors or subcontractors, and to the extent that there are any sums outstanding or any disputes, Operator shall indemnify, defend and hold Owner harmless from and against any and all losses, cost, actions, claims, liabilities, damages, fines, penalties or expenses (including reasonable legal expenses) arising from or related to such outstanding sums or disputes. Operator shall use its best efforts

to include a provision in any third party agreement related to the Facility to allow the assignment of said agreement to the Owner upon the termination of this Agreement.

- (e) Upon the expiration of the Term or termination of this Agreement, Operator shall transfer all its personnel to the Owner who elect to remain at the Facility and shall leave each portion of the Facility in the same condition as at the date on which Operator assumed responsibility for each such portion of the Facility, normal wear and tear excepted, together with the inventory of parts. All special tools, improvements, inventory of supplies, Spare Parts, safety equipment, the O&M Procedures Manual (in each case as provided to, obtained by or provided by, and as modified by Operator pursuant to this Agreement during the Term) shall be left at the Facility and will remain or become the property of Owner without any additional charge to Owner.
- (f) Offer Owner the option of purchasing any Operator owned tools located at the Facility and the Site.
- (g) Generally, deliver the Facility to the Successor Operator or the Owner without causing the Facility to stop working at any time.

11.8. **Survival.** Expiration or termination of this Agreement shall not affect any rights or obligations, which have arisen or accrued before such expiration or termination, including any in respect of antecedent breach. In addition, the obligations set out in (i) Clauses 11.6, 11.7 and Article 19, shall survive in full force and effect the expiration or termination of this Agreement, and (ii) Articles 12, 13 and 17 shall survive in full force and effect the expiration or termination of this Agreement for a period of five (5) years following the Expiration Date or Termination Date of this Agreement.

11.9. **Suspension of Services.**

- (a) In the event that, following the Effective Date, Owner determines that suspension of the Services is necessary, but does not wish to exercise its rights to terminate under Clause 11.4, Owner may require Operator to suspend all or a portion of the Services for a period of time by delivering written notice (a "Suspension Notice") to Operator.
- (b) The Suspension Notice shall set forth in reasonable detail (i) whether all or a certain portion of the Services should be suspended and (ii) the date on which, or on which Owner reasonably expects, such suspension will end. Within ten (10) days of Operator's receipt of the Suspension Notice, the Parties shall meet to discuss and agree upon a mutually acceptable adjustment to the then current Operating Fee as a result of such suspension, which shall reflect:
 - (i) Operator's continued and on-going cost to perform the Services, if any, during such period;
 - (ii) any de-mobilization and re-mobilization costs incurred by Operator to the extent such costs are a result of such suspension;

- (iii) Operator's ability to mitigate such costs, including through the suspension or cancellation of Subcontracts, purchase orders and delivery of equipment, materials, consumables and other supplies; and
 - (iv) any other extraordinary costs incurred or which could reasonably be expected to be incurred by Owner or Operator as a result of such delay.
- (c) Any suspension under this Agreement shall not entail a suspension of the Parts and Repair Services Agreement, unless otherwise mutually agreed by the Parties.

ARTICLE 12. INDEMNIFICATION

12.1. Loss or Damage.

- (a) Operator shall indemnify, defend and hold harmless Owner and its Members and their respective Representatives (other than Operator, any Subcontractor and their respective Representatives) against any and all Losses of whatever kind and nature, including all related costs and expenses incurred in connection therewith, in respect of personal injury to or death of third parties and in respect of loss of or damage to any third party property to the extent that the same arises out of:
- (i) any breach by Operator or its employees, agents Subcontractors or Representatives of Operator's obligations hereunder;
 - (ii) any negligent act or omission on the part of Operator, or its employees, agents, Subcontractors or Representatives; and
 - (iii) any gross negligence, willful misconduct or other breach of duty on the part of Operator, its employees, agents, Subcontractors or Representatives.
- Any indemnification payable by Operator to Owner hereunder shall be net of any insurance proceeds received by Owner under insurance policies with respect to the circumstances giving rise to Operator's indemnification of Owner hereunder.
- (b) Owner shall indemnify, defend and hold harmless Operator, its members, officers, employees, agents, Representatives or Subcontractors (the "Operator Indemnitees") against any and all claims for Losses of whatever kind and nature, including all related costs and expenses incurred in connection therewith, in respect of personal injury to or death of third parties and in respect of loss of or damage to any third party property to the extent that the same arises out of:
- (i) any breach by Owner or its employees, agents, contractors (other than Operator, any Subcontractor or their respective Representatives), or Representatives of Owner's obligations hereunder;
 - (ii) any negligent act or omission on the part of Owner or its employees, agents, contractors (other than Operator, any Subcontractor or their respective Representatives), or Representatives; and

- (iii) any gross negligence, willful misconducts or other breach of duty on the part of Owner or its employees, agents, contractors (other than Operator, any Subcontractor or their respective Representatives), or Representatives.
- (c) Operator's performance of Services at the Facility may involve handling and disposal of any Hazardous Substances generated by the Facility. Operator shall act as Owner's agent in the handling, storage and disposal of all Hazardous Substances. All costs associated with the handling, storage, transportation and disposal of Hazardous Substances (i) used, applied, generated or stored at the Site, (ii) emanating from the Facility, or (iii) otherwise discovered or encountered at the Site, is not included as part of the Operating Fee and shall be invoiced and paid separately by Owner. Owner shall defend, indemnify and hold harmless Operator, its members, Subcontractors and their respective Representatives against any and all claims for losses of any type in regard to Operator's fulfilling of its obligations hereunder.

Any indemnification payable by Owner to Operator hereunder shall be net of any insurance proceeds received by Operator under insurance policies with respect to the circumstances giving rise to Owner's indemnification of Operator hereunder.

- (d) Except as provided in Clauses 12.1 (c) above, 12(e) below and in Article 13, in the event that any Losses arise, directly or indirectly, in whole or in part, out of the joint or concurrent negligence of both Parties and their respective Representatives, (i) each Party's liability therefor shall be limited to such Party's proportionate degree of fault, and (ii) each Party's contractual obligation of indemnification shall not extend to the percentage of the other Party's liability for damages due to that Party's negligence, strict liability, breach of contract or warranty, violation of statute, or other fault.
- (e) Operator responsible for physical loss or damage to the Project Facility resulting solely from the negligence of Operator Indemnitees shall not exceed U.S.\$250,000. Owner releases Operator from and waives all other claims against Operator for physical loss or damage to the Project Facility regardless of whether such loss or damage arises from the sole, partial or concurrent negligence, strict liability, breach of contract or warranty, violation of law, or other fault of Operator Indemnitees.

12.2. Conduct of Claims.

- (a) The Party seeking indemnification under this Article 12 (the "Indemnified Party") shall notify the other Party (the "Indemnifying Party") in writing of any matter that may result in an indemnity payment under this Article 12 promptly upon the discovery of such matter and, in the case of any action or claim which has been brought against an Indemnified Party in respect of any such matter, the Indemnifying Party shall be entitled at its expense to assume the defense thereof in place of the Indemnified Party. In such circumstances, the Indemnified Party shall provide the Indemnifying Party with such information and assistance as the Indemnifying Party shall reasonably request. If the Indemnifying Party assumes the defense of the relevant claim or action, it shall not be liable for any settlement thereof that is made without its consent.

- (b) The obligations of an Indemnifying Party shall not extend to any loss, damage and expense of whatever kind and nature (including all related costs and expenses) which may result from the settlement or compromise of any action or claim brought against the Indemnified Party made or effected, or the admission by that Indemnified Party of any claim or the taking by the Indemnified Party of any action (unless required by law or applicable legal process), which would prejudice the successful defense of the action or claim, without, in any such case, the prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld in a case where the Indemnifying Party has not, at the time such consent is sought, assumed the defense of the action or claim) or to any legal expenses being costs, charges and expenses which may result from the employment by the Indemnified Party of its own legal advisers in connection with any action or claim against it after the defense of such action or claim has been assumed by the Indemnifying Party.

ARTICLE 13. LIMITATION OF LIABILITY

13.1. Mitigation of Loss. In all cases the Party establishing or alleging negligence or misconduct, and its directors, employees, agents or subcontractors, shall be under a duty to take all necessary measures to mitigate the Loss which has occurred, provided that it can do so without unreasonable inconvenience or cost to such Party.

13.2. Limitation of Operator Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE AGGREGATE AMOUNT OF DAMAGES, COMPENSATION OR OTHER SUCH LIABILITIES PAYABLE BY THE OPERATOR INDEMNITEES SHALL BE LIMITED TO, AND SHALL IN NO EVENT EXCEED, IN THE CASE OF EACH YEAR DURING THE OPERATING PERIOD, AN AMOUNT EQUAL TO TWENTY-FIVE PERCENT (25%) OF THE OPERATING FEE FOR THAT YEAR EVEN IF CAUSED BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF THE OPERATOR INDEMNITEES PROVIDED THAT THE CAP ON LIABILITY UNDER THIS CLAUSE 13.2 SHALL NOT APPLY TO LIABILITY OF OPERATOR ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ANY AND ALL CLAIMS AGAINST ANY OF OPERATOR INDEMNITEES ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL EXPIRE ONE (1) YEAR FROM THE EXPIRATION OR TERMINATION DATE HEREOF UNLESS SUCH CLAIM IS THE SUBJECT OF ANY PENDING ARBITRATION PROCEEDING PURSUANT TO CLAUSE 19.

13.3. Consequential Damages OWNER AND THE OPERATOR INDEMNITEES SHALL NOT BE LIABLE AS A RESULT OF ANY ACT OR OMISSION UNDER THIS AGREEMENT OR OTHERWISE (INCLUDING NEGLIGENCE, STRICT OR ABSOLUTE LIABILITY, BREACH OF CONTRACT OR BREACH OF STATUTORY DUTY) FOR ANY LOSS OF PROFIT, LOSS OF REVENUE, COST OF CAPITAL, FACILITIES OR SERVICES, DOWNTIME COSTS, LOSS OF OPPORTUNITY, LOSS OF DATA, LOSS OF GOODWILL, COST OF PURCHASED OR REPLACEMENT POWER, LOSS OF PRODUCTION, LOSS OF CONTRACTS, LOSS DUE TO BUSINESS INTERRUPTION OR FOR ANY OTHER SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY BE SUFFERED BY OWNER OR THE OPERATOR INDEMNITEES, AND THE CLAIMS OF CUSTOMERS OF THE OWNER FOR SUCH DAMAGES, EVEN IF SUCH LOSSES OR

DAMAGES ARE CAUSED BY THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF OWNER OR OPERATOR INDEMNITEES.

**ARTICLE 14.
INSURANCE**

14.1. Owner's Insurance.

- (a) Owner shall obtain and maintain throughout the Term, as required by and in accordance with the Project Contracts, insurance for (i) physical loss or damage to the Facility or any portion of the Site and (ii) third party liability. Operator shall be named as an additional insured on all third party liability insurance required herein. Promptly after having obtained such policy or policies, Owner shall provide Operator with copies of such policies.
- (b) The insurance maintained by Owner shall contain a clause to the effect that the insurers have agreed to waive all rights of subrogation against Operator and shall provide for thirty (30) days' written notice to be given to Operator prior to any cancellation or material modification of such policies. All policies obtained by Owner relating to the Project Facilities shall be primary to any insurance taken out by Operator covering the same risks.

14.2. Operator's Insurance.

- (a) Without prejudice to its obligations under this Agreement or otherwise at law, Operator shall obtain and maintain in full force and effect at all times during Term, insurance on with responsible insurance companies authorized to operate in Panama with a A.M. Best Insurance Reports rating of A - or better and a size category of "IX" or higher, or if not rated by A.M. Best, a S&P's claims paying ability rating of BBB + or higher, of the kind and with limits and coverage, in no less than the limits and coverage provisions set forth:
 - (i) insurance in respect of claims for personal injury to or death of any Person in the employment of Operator and the O&M Employees and arising out of and in the course of such employment, which insurance shall comply with all applicable requirements of the Project Contracts and all Applicable Laws where Services are performed, and with any limit on coverage required by the Project Contracts and such Applicable Laws, with a coverage on at least US\$1,000,000;
 - (ii) third party liability insurance with a limit on coverage of not less than U.S.\$2,000,000;
 - (iii) such motor vehicle and other insurance with a limit on coverage of not less than U.S.\$2,000,000;
 - (iv) covers compliance by Operator of all its obligations before its workers, including salaries, benefits and compensations for at least US\$500,000; and
 - (iv) covers Operator's due performance of its obligations provided for under the Agreement for at least US\$ 2,000,000.

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- (b) Owner shall be named as an additional insured on each policy of insurance required under this Clause 14.2. Operator shall, promptly after having obtained any such policy or policies, provide Owner with a certificate of insurance and shall notify Owner in writing of any changes therein from time to time or, prior to so doing, of the cancellation of any such policy or policies.
- (c) The cost of obtaining and maintaining all the insurance policies required by Clause 14.2(a) shall be included in the Operating Fee.

14.3. **Disclosure of Claims.**

- (a) Each Party shall promptly furnish the other Party with all information reasonably available to it relating to the operation and maintenance of the Facility as is necessary to enable the first party to comply with its disclosure obligations under the insurance which it has taken out, the terms of which have been disclosed to the other Party in writing.
- (b) Each Party shall promptly notify the other Party of any claim with respect to any of the insurance policies referred to in Clauses 14.1 and 14.2, accompanied by full details of the incident giving rise to such claim.
- (c) Each Party shall afford to the other Party all such assistance as may reasonably be required for the preparation and negotiation of insurance claims, save where such claim is against the Party required to give assistance.

**ARTICLE 15.
INTELLECTUAL PROPERTY**

15.1. **Ownership and License of Intellectual Property.**

- (a) If any Intellectual Property is specifically developed by Operator for use at the Facility in the course of performing its obligations under this Agreement (the "O&M Intellectual Property"), such O&M Intellectual Property shall belong to Owner.
- (b) Operator shall make available to and hereby licenses Owner to use free of charge all Intellectual Property owned by Operator (or licensed to Operator by its Affiliates) which is required in connection with the performance of its obligations under this Agreement (the "Operator Intellectual Property"). This license is for the purposes of the Facility but no other purpose. Such license shall terminate upon the Expiration Date or Termination Date, as the case may be, but shall otherwise be irrevocable and royalty free, but shall not be transferable or carry the right to grant sub-licenses. No less than sixty (60) days prior to the Expiration Date of this Agreement Operator shall notify Owner of any such licenses that are not transferable to Owner.
- (c) Owner shall, subject to any applicable third party restrictions, grant Operator during the Term a royalty free, non-exclusive, personal and non-transferable license to use Intellectual Property that is owned by or licensed to Owner by third parties (the "Owner Intellectual Property") only to the extent necessary to enable Operator to perform its obligations under this Agreement. The license is for the purpose of the Facility but no other purpose. Such license shall terminate upon the Expiration Date or Termination Date, as the case may be, but otherwise shall

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be irrevocable and royalty free, but shall not be transferable or carry the right to grant sub-licenses.

ARTICLE 16. ASSIGNMENT

16.1. Assignment by Operator. Notwithstanding anything herein to the contrary, Operator shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of Owner provided, however, that Operator may assign this Agreement without consent of Owner to any subsidiary or Affiliate of Operator. Any assignment not expressly permitted hereunder shall be null and void and have no further force and effect.

16.2. Assignment by Owner. Notwithstanding anything herein to the contrary, Owner shall not assign or otherwise transfer all or any portion of its rights or obligations under this Agreement without the prior written consent of Operator; provided, however, that Owner may assign this Agreement without consent of Operator to (a) any subsidiary or Affiliate of Owner, or (b) any Person for purposes of any financing arrangement. Any assignment not expressly permitted hereunder shall be null and void and have no further force and effect.

ARTICLE 17. CONFIDENTIALITY

17.1. Confidential Information.

- (a) Subject to Clause 17.1(b), Operator shall keep confidential all matters relating to the Services, the Project Facilities, the Project Contracts, and this Agreement, and will not make any disclosure, and shall prevent its Representatives, Subcontractors and the respective Representatives of each Subcontractor, from disclosing to any Person, any information, data, experience and know-how, documents, manuals, policies or procedures, computer software, secrets, dealings, transactions or affairs of or relating to Owner, the Project Facilities, the Project Contracts, or this Agreement (the "Confidential Information").
- (b) The restrictions on disclosure of Confidential Information by Operator shall not apply to the following:
 - (i) any matter which is already generally available and in the public domain other than through unauthorized disclosure by Operator, its representatives, Subcontractors or Subcontractors' Representatives; or
 - (ii) any disclosure which may reasonably be required for the performance of Operator's obligations under this Agreement, or any disclosure by Operator to its accountants, lenders, financial or legal advisors, or any disclosure which may be required for the compliance by Operator with any statutory obligation or for the purposes of legal proceedings; provided, however, that Operator shall notify Owner prior to any such disclosure, and Owner shall have the right to take all actions available under applicable law to prevent or limit the scope of disclosure and to obtain confidential treatment of any Confidential Information which is ultimately disclosed.

ARTICLE 18. EMERGENCIES

18.1. **Emergencies.** Notwithstanding anything herein to the contrary, in the case of an Emergency, Operator shall take immediate and diligent actions to prevent or minimize such threatened damage, injury or loss or to counteract or otherwise mitigate the effects of such Emergency.

18.2. **Notice; Further Action.** In the event of an Emergency, Operator shall notify Owner's Representative of the Emergency as soon as practicable following the occurrence thereof, which notice shall include detail with respect to any action being taken by Operator in response thereto and any expenditures incurred, or expected to be incurred, by Operator in connection with such Emergency. Operator shall take all reasonable steps to minimize the cost to Owner of its actions, having regard to the circumstances and the need to act promptly. Following such notification, at the request of Owner's Representative, the Parties shall discuss without delay the further actions, which should be taken as a result of the Emergency and the estimated expenditure, associated therewith.

18.3. **Owner's Notice.** If Owner considers that an Emergency has arisen in relation to the Project Facilities, Owner may give notice to Operator specifying the nature of the Emergency which it has identified and the manner in which it requests such Emergency to be rectified. Operator shall rectify such Emergency with all due diligence. If Operator fails to comply with such notice promptly, Owner or its designees shall have the right to take such actions as may be necessary to rectify the Emergency.

ARTICLE 19. DISPUTE RESOLUTION

19.1 **Arbitration.** In case any claim, controversy or dispute arising under, related or in connection with this Agreement, including the interpretation or execution of this Agreement (a "Dispute"), such Dispute shall be submitted to arbitration in law, at a proceeding administered by the *Centro de Conciliación y Arbitraje de la Cámara de Comercio, Industria y Agricultura* of the Republic of Panama, to which rules the Parties unconditionally voluntarily submit and claim knowledge thereof. The Dispute shall be resolved in accordance with the substantive Applicable Law and the procedural rules of the *Centro de Conciliación y Arbitraje de la Cámara de Comercio, Industria y Agricultura* of the Republic of Panama or, in its defect, applicable procedural rules under Applicable Law. The arbitration shall take place in Panama City, Republic of Panama and proceedings shall be in English. The Dispute will be resolved by a panel of three arbitrators. Each party to the Dispute shall appoint an arbitrator. The Party filing the Dispute shall name its arbitrator when it submits the Dispute to arbitration. The other party shall name its arbitrator within 30 days after it is served and receives formal notice of the Dispute being submitted to arbitration. Within 20 days of the second Party appointing its arbitrator the two named arbitrators will consult with one another and appoint the third arbitrator who will preside over the panel. The third arbitrator shall be neutral and not be a citizen of the Panama, U.S. or, Colombia unless otherwise agreed by the Parties, and shall have at least 10 years experience in the construction of power plant facilities. In deciding the substance of any such Dispute, the arbitrators shall apply the substantive Applicable Law without reference to any rule thereof that would require the application of the law of another jurisdiction; provided, however, that the arbitrators shall have no authority to award punitive damages under any circumstances (whether it be exemplary damages, treble damages, or any other penalty or punitive type of damages) regardless of whether such damages may be available under

Applicable Law or any other law, the Parties hereby waiving their right, if any, to recover punitive damages in connection with any such Dispute. The award rendered pursuant to such arbitration shall be in writing, shall be final, binding and conclusive between the Parties. The award shall have no further recourse and the Parties waive the right to seek further judicial relief, except for those provided for annulment or enforcement of the award in accordance with Applicable Laws. Once the award is rendered and is final, it will produce the effects of *res judicata* and the parties shall comply with the award without delay notwithstanding that either Party may have filed further judicial proceedings seeking to annul or enforce the arbitration award. .

All costs and expenses related to the arbitration proceeding shall be borne by the Parties to the Dispute in equal parts. Each Party will cover the costs of its own legal counsel and expert witnesses, except as they expressly agree otherwise or the arbitrators so decide in the final award.

19.2 **Continuation of Services.** Except as otherwise provided hereunder, pending final resolution of any Dispute, whether or not submitted to arbitration hereunder, the Parties shall continue to fulfill their respective obligations under this Agreement.

ARTICLE 20. NOTICES

20.1 **Notice.** Any notice, consent, approval or other communication under this Agreement shall be in writing, in the English language, and shall be personally delivered, sent by pre-paid mail or by an internationally recognized overnight courier, electronic mail or transmitted by facsimile to a Party as follows (or to such other address or facsimile number as the Party may substitute by notice in accordance with this Clause 20.1 after the date of this Agreement):

To Owner: Generadora Del Atlantico S.A.
Calle 7 No 39 – 215 Oficina 705
Medellin, Colombia
Telephone: 57 4 268 2864
Attn: Uriel Salazar, President
Fax: 57 4 312 3479
Email: urielsalazar@une.net.co

To Operator: ProEnergy Services Panama S De R.L.
2031 Adams Road
Sedalia, Missouri 65301 USA
Attn: Jeff Canon, President
Fax No.: 660-829-1160
Email: jcanon@proenergyservices.com

20.2 **Effective Time of Notice.** A notice, consent, approval or other communication given to a Party in accordance with this Article 20 shall be deemed to have been given and received:

- (a) if personally delivered to a Person's address, on the day of delivery;
- (b) if sent by courier, on day after posting; and

- (c) if transmitted by facsimile or electronic mail to a Person's facsimile number or electronic mail address, and a correct and complete transmission report is received by the sender, on the day of transmission.

**ARTICLE 21.
REPRESENTATIONS AND WARRANTIES**

21.1 **Representations and Warranties by Each Party.** Each Party represents and warrants to the other Party as to itself, that, as of the date hereof:

- (a) it is duly organized and validly existing under the laws of its jurisdiction of organization and has all requisite power and authority to own its property and assets and conduct its business as presently conducted or proposed to be conducted under this Agreement;
- (b) it has the power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder;
- (c) it has taken all necessary action to authorize its execution, delivery and performance of this Agreement, and this Agreement constitutes the valid, legal and binding obligation of such Party enforceable against it in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors or by general equitable principles (whether considered in a proceeding in equity or at law);
- (d) no Government Approval is required for (i) the valid execution and delivery of this Agreement or (ii) the performance by such Party of its obligations under this Agreement, except (A) such as have been duly obtained or made, and (B) in the case of Owner, such as are or will be acquired for the construction, testing, ownership, operation and maintenance of the Facility, and any agreements concerning same and all activities incidental thereto;
- (e) none of the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof shall: (i) conflict with or violate any provision of its constituting documents, (ii) conflict with, violate or result in a breach of, any Applicable Law currently in effect, or (iii) conflict with, violate or result in a breach of, or constitute a default under or result in the imposition or creation of, any security under any agreement or instrument to which it is a Party or by which it or any of its properties or assets are bound;
- (f) no meeting has been convened for its dissolution or winding-up, no such step is intended by it and, so far as it is aware, no petition, application or the like is outstanding or threatened for its dissolution or winding-up; and
- (g) it is not a party to any legal, administrative, arbitral or other proceeding, investigation or controversy pending, or, to the best knowledge of such Party, threatened, that would adversely affect such Party's ability to perform its obligations under this Agreement.

ARTICLE 22. MISCELLANEOUS

22.1 **Severability.** The invalidity or unenforceability, in whole or in part, of any of the foregoing sections or provisions of this Agreement shall not affect the validity or enforceability of the remainder of such sections or provisions. In the event any material provision of this Agreement is held invalid or unenforceable, the Parties shall promptly renegotiate in good faith new provisions to replace such invalid or unenforceable provision so as to restore this Agreement as nearly as possible to its original intent and effect.

22.2 **Entire Agreement.** This Agreement, including any schedules, exhibits or attachments hereto, contains the complete agreement between Owner and Operator with respect to the matters contained herein and supersedes all other agreements, whether written or oral, with respect to the subject matter hereof.

22.3 **Amendment.** No modification, amendment, or other change will be binding on any Party unless consented to in writing by both Parties.

22.4 **Additional Documents and Actions.** Each Party agrees to execute and deliver to the other Party such additional documents, and to take such additional actions and provide such cooperation, as may be reasonably required to consummate the transactions contemplated by, and to effect the intent of, this Agreement.

22.5 **Delay and Waiver.** No delay or omission to exercise any right, power or remedy accruing upon the occurrence of any Operator Event of Default or Owner Event of Default hereunder or any breach or default of any Party hereto under this Agreement shall impair any such right, power or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single Operator Event of Default or Owner Event of Default or other breach or default be deemed a waiver of any other Operator Event of Default or Owner Event of Default or other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party hereto of any Event of Default described in the preceding sentence or other breach or default under this Agreement, or any waiver on the part of any party hereto of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

22.6 **Schedules.** The schedules, exhibits and attachments to this Agreement form part of this Agreement.

22.7 **Interest for Late Payment.** Except as otherwise provided for in Clause 8.2, any amount properly due to a Party pursuant to this Agreement and remaining unpaid after the date when payment was due shall bear interest (both before and after judgment), such interest to accrue from day-to-day from the date such payment was due until such amount is paid in full at a rate equal to the lesser of (i) four (4) percentage points above the LIBOR as adjusted from time-to-time, and (ii) the maximum rate permitted by law, from the date when payment was due until the amount due is actually received by the payee.

22.8 **No Partnership.** Nothing in this Agreement shall be construed to create a partnership, joint venture or association, or establish a principal and agent relationship or any other relationship of a similar nature, between the Parties.

22.9 **No Third Party Beneficiary.** This Agreement is for the sole and exclusive benefit of the Parties hereto and shall not create a contractual relationship with, or cause of action in favor of, any third party.

22.10 **Services Only Contract.** This Agreement provides solely that Operator shall provide services to Owner and shall otherwise perform in accordance with the terms and conditions hereof.

22.11 **Counterparts. Languages.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Within 30 days following the Effective Date the Parties shall jointly prepare and agree to one Spanish translation of this document, which shall be the official Spanish version for all matters which require filing a Spanish translation of this Agreement. In the event of any inconsistency or conflict between the terms of the English and Spanish version of the Agreements, the English version shall control.

22.12 **Costs.** Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Agreement.

22.13 **Drugs/Alcohol, Weapons.** Operator agrees to advise its Representatives and the Subcontractors and their respective Representatives that:

- (a) the use, possession and/or distribution of illegal or unauthorized drugs, drug-related paraphernalia, weapons, and the use or possession of alcoholic beverages on the Site or Owner's premises is prohibited;
- (b) entry onto or presence on the Site or Owner's premises by any Person, including Operator, Operator's Representatives, Subcontractors, or Subcontractor's Representatives and visitors, are subject to the consent of the Owner to conduct searches, whether announced or unannounced, on the Site or Owner's premises of the individual and his or her personal effects for such prohibited items; and
- (c) any individual who is found in violation of the policy or who refuses to permit a search may be removed and barred from the Site or Owner's premises, at the direction of Owner.

22.14 **Guaranty.** ProEnergy Services International, Inc. "Guarantor") hereby guaranties the full and punctual payment and performance of all obligations of Operator under this Agreement, as primary obligor and not merely as surety and with respect to all such obligations howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

- (a) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation(s) of Operator under this Agreement, by operation of law or otherwise,
- (b) any modification or amendment of or supplement to this Agreement, and
- (c) any change in the corporate existence, structure or ownership of Operator. Guarantor's liability hereunder shall be and is specifically limited to the payments and obligations of Operator as set forth in this Agreement and in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of

profits, punitive, tort or any other damages or costs. Notwithstanding the terms of this guaranty, Guarantor reserves to itself all rights, setoff, counterclaims and other defenses to which Operator or Guarantor may be entitled to arising under or related to this Agreement or any other agreement with respect to the Facility.

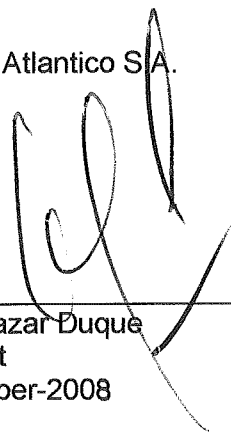
22.15 **Decision-Making by Parties.** Except where this Agreement expressly provides for a different standard, whenever this Agreement provides for a determination, decision, permission, consent or approval of a Party, the Party shall promptly make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of consent required to be made in a commercially reasonable manner shall include in reasonable detail the reason for denial or aspect of the request that was not acceptable.

22.16. **Compliance.** Owner nor Operator shall act in violation of the U.S. Foreign Corrupt Practices Act, and in connection therewith shall not make any payments, loans, or gifts, directly or indirectly, to or for the use or benefit of any official employee, agency or instrumentality of any government, political party or candidate thereof, or any other person or entity, the payment of which would violate the laws or policies of the United States, or the country or countries in which the Services are performed, in whole or in part. Each Party shall answer promptly and in reasonable detail any questionnaire or other written or oral communications, to the extent the same pertain to compliance with this Clause 22.16, whether such questionnaires or communications are from the other Party hereto, its outside auditors, or other Representatives. Owner and Operator further agrees to pay any government assessed penalties, fines, and charges, and associated damages, costs, losses, and expenses (including, without limitation, court costs and attorneys' fees) of whatever kind which a Party may incur, be required to pay or be liable for as a result of, in connection with, arising out of or related to any noncompliance of with any or all of the above laws, regulations, rules, orders, codes, criteria, standards, ordinances or resolutions by the other Party.

IN WITNESS WHEREOF the Parties have executed this Operation and Maintenance Agreement as of the respective dates set forth below.

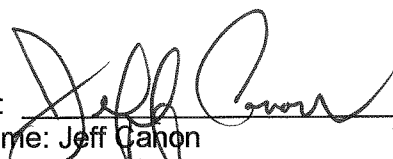
OWNER:

Generadora Del Atlantico S.A.

By: 
Name: Uriel Salazar Duque
Title: President
Date: 9-december-2008

OPERATOR:

ProEnergy Services Panama S De R.L.

By: 
Name: Jeff Canon
Title: President
Date: 9-december-2008

BY PERMISSION
SCOTT DIEBALL

SCHEDULE 1

THE SERVICES

1.0 SERVICES

Services to be provided by Operator to Owner during the Operating Period include but are not limited to:

1. Operate and maintain the Facility on a 24 hour per day, seven day per week basis, and keep the Facility in optimal operation conditions as reasonably required to attain the performance standards set forth in this Agreement;
2. Preparing a Operating Plan for each year of the Operating Period and submitting the same to Owner in accordance with Article 7 of the Agreement;
3. Performing the mobilization services and supervising, managing, directing and controlling all aspects of the day to day operation and maintenance of the Facility;
4. Implement the training courses and programs developed by Operator;
5. Provide oversight of periodic performance tests of the Facility as Owner may request and recommend to Owner or any remedial action which Operator considers necessary to correct any operational deficiencies arising from the analysis of the test results or otherwise revealed during operation of the Facility;
6. Maintaining sufficient numbers of qualified (and, if required, licensed) personnel to perform the Services required, and Operator's obligations, under this Agreement in connection with the operation and maintenance of the Facility and direct the operating and maintenance staff in the operation, maintenance and repair of the Facility pursuant to this Agreement;
7. Preparing and maintaining daily operating logs and records regarding operation and maintenance of the Facility;
8. Keeping and providing the *Centro Nacional de Despacho* ("CND") with all information needed according to Applicable Law;
9. Providing the Owner all data and information requested by the CND;
10. To the extent such designs and drawings relate to Operator's Services hereunder or the operations of the Facility, and upon the request of Owner, review and comment on the designs and drawings produced by the Contractor under the Equipment and Services Agreement;
11. Providing such information for technical evaluation thereof as may be reasonably requested by Owner;
12. Perform directly or subcontract periodic overhauls and scheduled and unscheduled maintenance (including major maintenance) required for the Facility unless specifically excluded;
13. Managing, organizing and supervising such contracted and subcontracted maintenance, repair and testing services as shall be required to carry out scheduled and unscheduled

inspections, periodic overhauls, unscheduled and scheduled maintenance and any major breakdown repairs and in the event any component of the Facility needs to be repaired or maintained outside of Panama, perform the necessary works thereon;

14. Promptly providing notice to Owner of the likelihood or occurrence of a forced outage at the Facility;
15. Promptly providing notice to Owner of the likelihood or occurrence of any event (including a Force Majeure event) adversely affecting operation of the Facility in a material way;
16. Monitoring the inventory, in accordance with the terms of this Agreement, of all required spare parts, tools, equipment, consumables and supplies and contract for certain services required for the day to day operation and maintenance of the Facility;
17. Causing to be maintained:
 - (a) all roads, yards, walkways and utilities on the Site;
 - (b) the tool room, equipment and instruments pertaining to the Facility; and
 - (c) the Facility's fire protection, health equipment and safety equipment; and
 - (d) carrying out or cause to be carried out the reading, testing and any calibration of meters, as requested by Owner, and attend and witness the reading, testing and calibration of meters;
18. Furnishing to Owner all information necessary to enable Owner to prepare invoices and review such invoices, as requested by Owner;
19. Furnishing to Owner all information necessary to enable Owner to pay all invoices submitted by Operator for the payment of the amounts owed to Operator under the Agreement;
20. Develop such systems to cause Emergency situations to be promptly and adequately responded to in accordance with the requirements of Panamanian Regulations;
21. Monitoring the sufficiency of processed water delivered to the Facility in terms of quantity and quality;
22. Implementing and supervising the preventive and predicative maintenance program, including but not limited to Computer-based Maintenance Management System (CMMS);
23. Ensuring the compliance and revision of Standing Procedures, including but not limited to the O&M Procedures Manual, by the O&M Employees, Subcontractors and all other Persons on the Site;
24. Recommending modifications, capital repairs, replacements and improvements to the Facility and components thereof and, at Owner's request, cause the same to be implemented, subject to such terms and conditions as the Parties may agree;
25. Maintaining accounting records regarding its Services hereunder in accordance with Clause 1.9 of the Agreement.
26. Cooperate in the provision of information to Owner including, without limitation, Owner's Representative, the Fuel Supplier and the Lenders and Owner's representatives, accountants and attorneys;
27. Assisting Owner in the enforcement of Contractor, Subcontractor and vendor warranties and guaranties;

28. Scheduling, hiring and supervising Subcontractors and vendors as may be necessary for the performance of the Services hereunder;
29. Promptly notifying Owner of all known defects in the Project Facilities;
30. Prior to the termination of this Agreement, preparing a recommended spare parts inventory based upon the condition of the Facility at that time;
31. Performing any other tasks reasonably requested by Owner in connection with the operation and maintenance of the Facility;
32. Prepare, update from time to time and revise the O&M procedures manual, as further provided for in Schedule 5;
33. To dispose of and manage any Hazardous Substances encountered in the Site, in accordance with Applicable Laws, the Environmental Impact Study Approval of the Owner , and Clause 12.2(c);
34. Monitor NOx, SO2 and other particulate emissions and take all necessary steps to comply with Applicable Laws and the Environmental Impact Study Approval of the Owner;
35. To manage the Maintenance Management system;
36. Operate and maintain Facility metering equipment (and that of all relevant substations) and conduct or cause to be conducted all inspections, measurements and tests Owner is responsible for in accordance with all Project Agreements and Good Operating Practices;
37. Subject to Owner's request and cost, attend all meetings with Government Authorities (including electric sector authorities), Power Purchasers and Fuel Suppliers which are related with the operation and maintenance of the Facility;
38. Take all reasonable measures in order to protect the Facility from possible damages associated with or caused by disturbances of electric failures resulting from the defective operation, or lack of operation of, any substation; and
39. Update and maintain the technical library associated with the Facility, in such a way as for such information to reflect any change or amendment to the Facility with regards to its operation and maintenance, or any other update conducted thereon.
40. Providing PRS Contractor with all the information, notices and reports necessary for the due performance of its duties under the PRS Agreement.

2.0 MOBILIZATION SERVICES

Services to be provided by Operator to Owner during the mobilization period pursuant to Clause 3.9 of this Agreement include but are not limited to:

1. Operator shall appoint an individual (the "Plant Manager"), who shall be fluent in the Spanish and English languages. Owner may in its discretion require Operator to remove and replace the Plant Manager, at the Operator's cost, at any time and from time to time if Owner determines in its reasonable judgment that cause exists for such removal (which cause shall be specified in reasonable detail to Operator (in writing if requested by Operator)). As used in this Clause, "cause" shall include negligence, misconduct or

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malfeasance in the conduct of a person's duties in performing the Services in connection with this Agreement.

2. Operator shall appoint, retain and train all necessary personnel for the operation and maintenance of the Facility as from the Commercial Operations Date.
3. Operator will prepare, implement and carry out an initial training program if deemed necessary to train personnel of Operator engaged in the operation, maintenance and repair of the Facility in their duties within ninety (90) days after the Commercial Operations Date, provided that personnel required to be appointed prior to or on such date shall be timely and duly trained by Operator. Thereafter, at reasonable intervals throughout the Term and in accordance with Good Operating Practices, Operator shall conduct training programs for personnel of Operator engaged in operating, maintaining and repairing the Facility and otherwise performing the Services as may be deemed necessary from time to time.
4. Conduct informative visits to the Site and the Facility. An initial visit to the Site shall be scheduled with Owner as soon as possible after the execution of this Agreement.
5. Provide support to Owner with regards to the receipt and acceptance of installations by Subcontractors or Owner's contractors. This shall include, but will not be limited to, an operational review of all systems and the delivery to Owner of a detailed list of defects, exceptions and problems encountered as per Operator's opinion.
6. Supervise, on behalf of Owner, the works carried out by all contractors performing work at the Facility in order for all pending issues and matters to be completed.
7. Review the Project Contracts, all the licenses and permits associated with the Facility (including, but not limited to, the Environmental Impact Study Approval and Generation License of Owner) from the standpoint of their implications over the operation and maintenance of the Facility and deliver to Owner its comments in such respect.
8. Comply with the Project Contracts and all the licenses and permits associated with the Facility (including, but not limited to, the Environmental Impact Study Approval and Generation License of Owner)
9. Prepare an initial and detailed preventive maintenance program for the Facility for Owner's comments and approval, taking into account Site conditions and in accordance with Good Operating Practices and Owner's obligations under relevant Project Contracts.
10. Prepare a system and procedure for the control of material modifications to the Facility, which shall be limited to tracking and recording such modifications on Site drawings only. Train necessary personnel for the adequate management of this system and reference this system to the purchases and accounting procedures.
11. Initiate the custody, care and control of inventory of parts.
12. Develop, jointly with Contractor, a program for the delivery of the Facility to Owner, once all required tests have been completed and Commercial Operations is achieved.
13. Coordinate with the Contractor and actively participate in all tests and startups of the Facility which will include operation and maintenance of the Facility under the direction and control of the Contractor. Operator shall inform Owner on the results of said tests and whether the Facility has complied or not with functioning requirements and shall issue a recommendation to Owner as to its acceptance of the Facility. Operator shall also assist Owner on matters related with the definition of "technical limits" within the Panamanian

electricity system during the culmination of the tests. Once the Facility has achieved Commercial Operations and is accepted by Owner, Operator shall assume its operation and maintenance and full care, custody and control.

14. Review the list of pending purchase orders for supplies or services and determine which of the above, if any, should be assigned to Operator and make any such recommendation within ten (10) days following Operator completing its review of the same.
15. Cooperate in the provision of information to Owner including, without limitation, Owner's Representative, the Fuel Supplier and the Lenders and Owner's representatives, accountants and attorneys.
16. Performing any other tasks reasonably requested by Owner in connection with the operation and maintenance of the Facility.

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SCHEDULE 2

STANDING PROCEDURES

Operator shall:

1. Develop plant organization and staffing proposals together with a human resources policy to include a profile of suitable recruits, training requirements, compensation package, terms of employment, mobilization requirements, industrial relations policy, and job design;
2. Prepare a set of safety and environmental compliance procedures for the safe working on all electrical, mechanical and chemical items located at the Project Facilities;
3. Prepare a system and procedure for the control of material modifications to the Project Facilities, which shall be limited to tracking and recording such modifications on site drawings only;
4. Obtain or initiate all registers, documentation or records required by Applicable Law, including, without limitation:
 - (a) a register of all equipment test subject to statutory inspection, including recording all test dates and results; and
 - (b) a project status report, which shall be updated at regular intervals, in which the current conditions of all major items of plant and equipment is to be recorded, together with proposals and timing for major repair work and cost/benefit analyses;
5. Based on any preliminary manuals and programs developed during the mobilization period, prepare the following Facility specific manual instructions and procedures ("O&M Procedures Manual"):
 - (a) Safety;
 - (b) Operating instructions;
 - (c) Maintenance instructions;
 - (d) Chemical handling and disposal procedures;
 - (e) Administration procedures;
 - (f) Incident reporting procedures;
 - (g) Security procedures;
 - (h) Performance monitoring procedures;
 - (i) Planned maintenance schedules;
 - (j) First Aid;
 - (k) Fire Fighting;
 - (l) Emergencies;
 - (m) Environmental Compliance;
 - (n) Heat Rate test and procedures;
 - (o) Emergency response plan;
 - (p) Spill prevention plan; and
 - (q) Community emergency response plan.
6. Prepare a work control system;
7. Prepare a stores and spares inventory recording and requisitions system;
8. Prepare a procedure for the procurement of all supplies and services required by Operator to perform its obligations hereunder, including subcontractor control and supervision system

and prepare a system for the review and updating of O&M Procedures Manual for the Project Facilities.

SCHEDULE 3

REPORTS

Operator shall provide to Owner or Designee the following reports during the Operating Period:

1. Within ten (10) days of the end of each Month, a Monthly report which shall include at least the following for the immediately preceding Month:
 - (a) a review of operations for the relevant Month (including fuel consumption, reliability, actual production, availability, efficiency and Outages);
 - (b) to the extent reasonably available, identification of all major repairs or alterations made to equipment,
 - (c) information relating to safety and the incidence of accidents, Emergencies, or injury to persons or property at the Project Facilities;
 - (d) training and turnover of employees;
 - (e) such information as Owner may reasonably request in connection with compliance with all Applicable Laws relating to the operation and maintenance of the Facility;
 - (f) summary of environmental compliance;
 - (g) such other information as Owner shall have requested Operator to provide; and
 - (h) summary of spare parts inventory and consumables usage (including chemicals).
2. Within two months of the end of each Year, an annual report, which shall include at least the following with respect to such Year:
 - (a) summary of the relevant Year's repairs and maintenance;
 - (b) summary of operations for the relevant Year (including fuel consumption, reliability, load factor, actual production, availability, efficiency and Outages);
 - (c) review of the Facility's actual performance against the performance estimated in the applicable Operating Plan and any other plans or forecasts.
 - (d) summary of usage of consumables (including chemicals);
 - (e) a statement and report of environmental compliance;
 - (f) summary of use of auxiliary services including power and water; and
 - (g) other information as Owner shall reasonably request Operator to provide.
3. As soon as practicable (but in any event not later than 24 hours) after the occurrence thereof, a report of:
 - (a) any forced outage;
 - (b) any incidence of death or injury to any individual on the Site or, if such individual is driving a vehicle owned by Owner or is performing services related to this Agreement, off the Site;
 - (c) any event or circumstances which, in the opinion of Operator, has had or is likely to have a material adverse effect on Owner or the operation and maintenance of the Project Facilities including, without limitation, industrial disputes, material infringement

of environmental or other Applicable Law or Government Approval or material damage to the Project Facilities;

- (d) the breach of any relevant environmental limit; and
 - (e) any Emergency (provided that Operator shall notify Owner by telephone within eight (8) hours of Operator becoming aware of such occurrence).
- 4. With respect to any report, data or information supplied by Operator pursuant to this Agreement, such further detail and/or clarification as Owner may reasonably request.
 - 5. Within forty-eight (48) hours after obtaining actual knowledge thereof, Operator shall submit to Owner written notice of and copies of any relevant documents relating to (i) any litigation, claims, disputes or actions actually filed, or any material litigation, claims, disputes or actions which are threatened in writing, concerning in each case Owner, Operator, the Facility or the Services; (ii) any actual refusal to grant, renew or extend, or any action pending or any action filed with respect to the granting, renewal or extension of any Government Approvals or any material action threatened in writing regarding the same; (iii) any dispute with any Government Authority which may have a material adverse effect on the business or affairs of Owner or Operator, the operation or maintenance of the Facility or the performance of the Services; and (iv) without regard to their materiality all penalties imposed or notices of violation issued by any Government Authority.
 - 6. Operator shall promptly submit to Owner from time to time any other material information concerning new or significant aspects of the operation of the Facility, any complaints about the Facility from any Government Authority or any other person or entity with a *bona fide* complaint who complains to Operator.

SCHEDULE 4

PERFORMANCE BONUS AND PENALTY

For the purposes of Clause 9.3, the Parties shall negotiate in good faith the Availability and Heat Rate Performance Bonuses and Availability and Heat Rate Performance Penalties to be in force during the period in which the Facility operates in simple cycle mode within thirty (30) days after the Facility is able to operate in simple cycle mode. The Availability and Heat Rate Performance Bonuses and Availability and Heat Rate Performance Penalties for the period of time when the Facility operates in combined cycle mode shall be negotiated in good faith mode within sixty (60) days after the Facility is able to operate in combined cycle mode. The Availability and Heat Rate Performance Bonuses and Availability and Heat Rate Performance Penalties shall apply only after the Parties reach an agreement in the terms provided in this Schedule. Any performance guaranties that may be made by Operator in respect of the Facility shall be conditioned upon and adjusted for the fuel being used at the Facility meeting the fuel analysis set forth in Annex 1 to this Schedule 4. For such purposes, Owner shall reimburse Operator for the magnesium acquired for the purposes of fuel treatment as provided in Section 4.1 (g).

**ANNEX 1
TO
SCHEDULE 4**

FUEL SPECIFICATION

| | |
|---|--------|
| Gross Heat of Combustion by Bomb Method (HHV), ASTM D 240, Btu/lb | 18.163 |
| Viscosity, Kinematics, at 100°F, ASTM D 445, cSt | 856.1 |
| Viscosity, Kinematics, at 210°F, ASTM D 445, cSt | 35.4 |
| Specific Gravity 100 °F, ASTM D 1298 | 0.9792 |
| Flash Point, Pensky-Martens Closed Cup, ASTM D 93, °F | 305 |
| Pour Point of Petroleum Products, ASTM D 97, °F | 54 |
| Wax Content, UOP 46, wt% | 0.24 |
| Wax Melting Point, ASTM D 127, °F | 55.0 |
| Carbon Residue, Ramsbottom on 10% Residue, ASTM D 524, wt% | 11.56 |
| Water and Sediment, ASTM D 1796, vol% | 2.0 |
| Water Content by Distillation, ASTM D 95, vol% | 3.0 |
| Ash Content, ASTM D 482, wt% | 0.002 |
| Particulate Contamination, ASTM D 2276, mg/L | 36.000 |
| Sulfur Content, Bomb Method, ASTM D 129, wt% | 2.4 |
| Organically Bound Nitrogen by Chemiluminescence, ASTM D 4629, ppm | 1.205 |
| Hydrogen Content, ASTM D 1018, wt% | 10.34 |
| Asphaltenes, ASTM D 6560, wt% | 3.97 |
| Cleanliness and Compatibility of Residual Fuels by Spot Test, ASTM D 4740, ref spot | 3.0 |

| Metals by Atomic Absorption (AA), ASTM D 3605 | |
|---|-------|
| Vanadium, ppm | 43.1 |
| Sodium, ppm | 3.9 |
| Potassium, ppm | <0.05 |
| Lithium, ppm | <0.05 |
| Lead, ppm | <0.05 |
| Calcium, ppm | 2.8 |

Handwritten signature/initials

SCHEDULE 5

O&M PROCEDURES MANUAL

1. Preparation of O&M Procedures Manual

Operator shall prepare and submit to Owner an O&M Procedures Manual consistent with the terms of this Agreement, Good Operating Practices, Project Contracts, applicable contractor, Subcontractor, vendor and manufacturer warranties and instructions, and applicable Government Approvals. The O&M Procedures Manual will be updated by Operator with reasonable frequency.

The first draft of the O&M Procedures Manual shall be delivered by Operator to Owner for comments no later than thirty (30) days prior to the Commercial Operations Date.

The O&M Procedures Manual shall be in the Spanish language, except for any portions of the O&M Procedures Manual consisting of standard pre-printed materials supplied by manufacturers, suppliers or vendors in the English language. The Spanish translation of this O&M Agreement to be agreed among the Parties in accordance with Clause 20.11 of this Agreement shall also be included in the O&M Procedures Manual.

2. Review, Comment and Approval of O&M Procedures Manual

If Owner determines that the O&M Procedures Manual submitted by Operator pursuant to Section 1 is complete, accurate and in accordance with the standards set forth in Section 1, Owner shall notify Operator of Owner's acceptance of such O&M Procedures Manual within thirty (30) days after receipt of the same from Operator. If Owner reasonably determines that such O&M Procedures Manual is not complete, accurate or in accordance with the standards provided herein in any respect, Owner shall, within such thirty (30) day period, provide written comments on such O&M Procedures Manual to Operator stating Owner's reasons for disapproval of, and any proposed revisions to, any portion thereof. Failure to provide any such approval or disapproval in the foregoing manner within the stipulated thirty (30) day period shall be deemed the same as Owner's approval thereof. Within seven (7) days after receipt of any Owner's written comments on such O&M Procedures Manual, Operator shall respond in writing to Owner's comments stating Operator's agreement or disagreement and noting any proposed revisions to the O&M Procedures Manual or, if Operator disagrees with Owner, explaining why no change to such O&M Procedures Manual is required by the standards set forth in Section 1. Thereafter, Owner and Operator shall cooperate to agree upon O&M Procedures Manual reasonably acceptable to Owner, provided that if Owner and Operator are unable to agree upon O&M Procedures Manual within sixty (60) days after the initial receipt by Owner of such O&M Procedures Manual, then any remaining dispute with respect to the same shall be resolved in accordance with Article 19 of the Agreement. The foregoing review and approval procedure shall apply equally to each revision of the O&M Procedures Manual submitted to Owner.

3. Amendment and Modification of the O&M Procedures Manual

Owner may from time to time, consistent with the standards set forth in Section 1, request amendments or modifications to the O&M Procedures Manual. Owner and Operator shall meet to agree upon the text of any such amendments or modifications, provided that no such

amendment or modification shall be deemed included in the O&M Procedures Manual without the written approval of both Operator and Owner (which shall not be unreasonably withheld by either party).

Operator from time to time may, and when necessary shall, by written request to Owner propose amendments or modifications to the O&M Procedures Manual. Such request shall include the text of any proposed amendments and modifications as well as the reasons therefor in sufficient detail to permit Owner to consider the proposed amendments and modifications in accordance with the standards set forth herein. Within fifteen (15) days after receipt by Owner of such a request, Owner shall respond in writing to Operator stating its acceptance of the proposed amendments and modifications (or any portion thereof) or stating Owner's disapproval of any such amendments and modifications and its reasons therefor. Failure to provide any such approval or disapproval in the foregoing manner within the stipulated fifteen (15) day period shall be deemed the same as Owner's approval thereof. Owner and Operator shall thereafter meet to agree upon the final text of any amendments or modifications of the O&M Procedures Manual required by the standards set forth in Section 1; provided, however, that no such amendment or modification shall be deemed included in the O&M Procedures Manual without the approval of Owner (which approval shall not be unreasonably withheld).

Within ten (10) Business Days after approval by Owner of any amendment or modification to the O&M Procedures Manual, Operator shall provide Owner with six (6) copies of such amendments and modifications for inclusion in the O&M Procedures Manual.

Nothing contained in the O&M Procedures Manual, and no dispute with regard to any amendment or modification of such O&M Procedures Manual, shall relieve Operator of its obligations to perform the Services at all times in accordance with the standards set forth in this Agreement.