

**PARTS AND REPAIR SERVICES AGREEMENT**

**BETWEEN**

**GENERADORA DEL ATLANTICO S.A**

**AS OWNER**

**AND**

**PROENERGY SERVICES INTERNATIONAL, INC.**

**AS CONTRACTOR**

**DATED: DECEMBER 5, 2008**

10  
24

## PARTS AND REPAIR SERVICES AGREEMENT

THIS Parts and Repair Services Agreement is made between:

- (1) ProEnergy Services International, Inc. ("Contractor"), a company incorporated under the laws of the State of Missouri, USA and
- (2) Generadora Del Atlantico S.A. ("Owner") a company incorporated under the laws of the Republic of Panama.

Contractor 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) Owner will require an inventory of spare parts for the adequate operation and maintenance the Facility; and
- (C) From time to time certain components of the equipment at the Facility will require being removed from the Facility and repaired or overhauled at service depot facilities outside of Panama; and
- (D) Contractor can provide the inventory of parts, and along with its subcontractors, has service depot facilities located in the United States and elsewhere outside of Panama, and has the expertise in the maintenance and repair of the equipment of the type and character installed in the Facility; and further desires to provide these parts and repair services outside of Panama in relation to said equipment on the terms and subject to the conditions set forth in this Agreement; and
- (E) Owner desires to appoint Contractor to provide said parts, and repair services outside of Panama 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, Contractor 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 Parts and Repair Services 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 (i) the Equipment Contractor has completed the simple cycle performance testing for the equipment purchased and as required under the Project Equipment and Services Agreement; and (ii) 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 have the meaning provided in the preamble hereof;

**"Contractor Employees"** shall mean the employees or Subcontractors of Contractor who are directly engaged by Contractor to perform Services under this Agreement.

**"Contractor Indemnitees"** shall have the meaning set forth in Clause 12.1.

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

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

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

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

**"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.

**"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 equipment, spare parts, components or parts that are subject to the Services.

**"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 Equipment Contractor for the supply of equipment and services for the Facility. **"Equipment Contractor"** shall mean the entity contracting with Owner under the Equipment and Services Agreement.

**"Expiration Date"** shall mean the date in which the O&M Agreement ceases to be in full force and effect.

**"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 Contractor'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.

**"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 authorizations from, or filing with or notice to, any Government Authority in connection with Owner, 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.

**"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).

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

**"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).

**"Inventory Cost"** shall have the meaning set forth in Clause 9.2.

**"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, 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.

10  
AME  
24

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

**"Maintenance Program"** shall mean the equipment maintenance program for the Facility prepared by Operator pursuant to the O&M Agreement.

**"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 Procedures Manual"** shall mean the O&M procedures manual prepared by Operator pursuant to the O&M Agreement.

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

**"Operator"** shall mean the entity appointed by Owner to provide operation and maintenance services for the Facility under the O&M Agreement.

**"Operating Plan"** shall mean, with respect to any period of time, the operating plan for such period prepared by Operator pursuant to the O&M Agreement.

**"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.

**"O&M Agreement"** shall mean the Operation and Maintenance Agreement entered into between Owner and Operator for operation and maintenance of the Facility.

**"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.

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

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

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

**"Services"** shall mean (i) the sale of the inventory of parts by Contractor to Owner as provided herein; and (ii) to the repair and complete the major maintenance services to be performed by Contractor at Contractor's and its Subcontractor's service depot facilities outside of Panama as described in the Recitals above and as further described in Article 3.

**"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 and 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 Contractor and any Subcontractor.

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

**"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 Contractor 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.

**"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 United States 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 Contractor solely as a result of such Party's actual or alleged role in the drafting of this Agreement.

## ARTICLE 2. APPOINTMENT OF CONTRACTOR AND TERM

2.1. Appointment. Owner appoints Contractor and Contractor accepts the appointment 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.

### ARTICLE 3. SCOPE OF SERVICES

3.1. **Generally.** Contractor shall perform the Services in accordance with and subject to the provisions of this Agreement.

3.2 **Parts Inventory.**

- (a) Contractor shall sell to Owner spare parts and inventories as further specified in Schedule 1.
- (b) During Contractor's performance of the Services, Contractor shall provide or repair any component of the inventory that is needed to be installed in the Facility. The replaced component or part shall be repaired by Contractor, consistent with Good Operating Practices and relevant technical criteria, or replaced by a new component or part in the event making such repair is inefficient or impossible, at Contractor's cost. The Contractor shall provide or repair the spare parts needed as requested by Operator and in connection with the spare parts inventory that the Facility shall maintain according to the Manufacturer's Recommendations.
- (c) All existing parts inventory pursuant to Clause 3.2 (a) shall be transferred to Owner at the termination of this Agreement free of charge, *provided* that the Inventory Cost has been paid in full.

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

- (a) Subject to the following provisions of this Clause 3.3, Contractor 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 Contractor since the Contractor may perform the Services based on its own judgment and in this Agreement in connection to time, place and methods. The Contractor 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, Contractor 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 spare parts;

- (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) engage in any 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 spare parts except with the permission of Owner, (3) give rise to any claim by Equipment Contractor against Owner not available to Equipment Contractor under the Equipment and Services Agreement, or (4) affirmatively release any Liens created pursuant to the Loan Documents.

3.4 **Liaison with Contractors.** Contractor 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 **Major Maintenance Services.** Contractor shall be responsible for the major maintenance and repairs to be performed outside of Panama that occur during the Operating Period on the 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. Contractor's obligations for such maintenance and repairs of the turbines and the Maintenance Fee shall not cover those repairs not resulting from normal wear and tear or as otherwise excluded under Clause 9.1. However, Contractor shall inform the Owner, immediately, of any maintenance or reparation needed due to those repairs not resulting from normal wear and tear.

3.6 **Standard for Performance of Obligations.**

- (a) Contractor shall perform all the Services hereunder in good faith and in accordance with:
  - (vii) all Applicable Laws;
  - (viii) all Governmental Approvals;
  - (ix) the requirements under the Project Contracts;
  - (x) the terms of this Agreement;
  - (xi) the limits and constraints relating to the operation and maintenance of the Facility;
  - (xii) the Operating Plan and Maintenance Program;
  - (xiii) 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 Contractor;

10  
APC  
per

- (x) all applicable requirements under the insurance policies obtained by Owner or Contractor for the Facility; and
  - (xi) all applicable Equipment Contractor, Subcontractor, contractors and vendor warranties.
- (b) If Contractor 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 Contractor should perform the Services. Contractor 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).
- (c) Contractor 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.

3.7 **Liens.** Contractor shall not permit any Lien to be filed or otherwise imposed on any spare 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 Contractor shall not be responsible for any Lien resulting from Owner's breach of its responsibilities hereunder.

3.8 **Qualification to Contractor's Obligations.** Contractor (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 Contractor 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:

- (a) Contractor'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 Contractor which is different from those otherwise provided by this Agreement;
- (b) Owner's failure to comply with its obligations under this Agreement or any other Project Contract which failure has an adverse effect on Contractor's ability to perform the Services;
- (c) the absence or lapse of any required Government Approval which Contractor is not required to obtain;
- (d) a design or construction defect or design error in the Facility or any component incorporated therein not otherwise attributable to Contractor's negligence; or
- (e) where Owner fails to make timely payment of the Inventory Cost or the Maintenance Fee.

3.9 **Intentionally left blank.**

3.10. **Project Contracts.** In performing the Services the Contractor shall abide by the terms, conditions and requirements of the Power Purchase Agreement and the other Project Contracts, and Contractor shall otherwise cooperate in good faith with and assist, Owner when complying with its obligations under this Agreement, in administering and complying with the Project Contracts.

12  
ABC  
24

3.11. **Contractor Licenses.** Contractor 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 Contractor to engage in performance of the Services as contemplated by this Agreement (collectively, "Contractor Licenses").

#### **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 the O&M Agreement; and
- (b) pay to Contractor any sums due under the terms of this Agreement.

4.2. **Owner's Retained Rights.** Owner shall retain all rights and powers relating to the Services not specifically granted to Contractor 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 Contractor; and
- (b) performance of any material obligations of Contractor if Contractor 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 Contractor 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 Contractor 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 Contractor Licenses). With respect to replacements and renewals of such Governmental Approvals (other than Contractor Licenses) obtained by Owner, Contractor shall provide any information, monitoring and testing required by Owner in connection with the Services to replace, renew, obtain or comply with such Government Approval.

#### **ARTICLE 5. CONTRACTOR'S EMPLOYEES AND REPRESENTATIVES**

5.1. **Representative of Contractor.**

- (a) Contractor shall appoint a properly qualified, competent and experienced individual to act as the Representative of Contractor (the "Contractor's Representative") in connection with this Agreement. Contractor's Representative shall advise Owner on issues regarding the Services. Contractor shall notify Owner of the identity of Contractor's Representative and any individual appointed in replacement thereof.

- (b) Contractor's Representative is authorized and empowered to act for and on behalf of Contractor on all matters concerning this Agreement and its obligations hereunder, other than any amendments to or waivers under this Agreement. In all such matters, Contractor shall be bound by the written communications, directions, requests and decisions given or made by Contractor's Representative (or its designee) within the scope of its responsibilities.

5.2. **Representative of Owner.** Owner shall appoint an individual ("Owner's Representative") to act as the Representative of Owner in connection with this Agreement. Owner shall notify Contractor 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 this Agreement 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 Contractor 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.

5.3. **Contractor's Employees.** All Contractor Employees shall be employed by Contractor or its Subcontractors and shall in no event be deemed to be the employees of Owner. Contractor 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 Contractor Employees in accordance with the applicable laws of the jurisdictions where the depot facilities of the Contractor or its Subcontractors are located.

## ARTICLE 6. INFORMATION, REPORTS, RECORDS AND AUDITS

6.1. **Information.** Owner shall provide Contractor with all information in connection to Project Contracts and all permits and licenses obtained by Owner with regards to the Facility, necessary for Contractor 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 Contractor.

6.2. **Reports and Written Notices.**

- (a) Contractor shall provide Owner with such reports as are required by Owner.
- (b) If Owner requests a projection, report or document regarding other information relating to the Services, Contractor 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 Contractor 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, Contractor 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) Contractor shall promptly submit to Owner any material information concerning new or significant aspects of the Services, any complaint about the Services from any Person who complains directly to Contractor and, upon Owner's request, any other information concerning the Services performed by Contractor. Such information may include any information and certifications required by any Lender with respect to the Services performed by Contractor and documentation necessary to satisfy the requirements of the Lenders established in the Loan Documents.
- (f) Contractor shall provide immediate notice to Owner in the event of any failure or problem during the major maintenance that may affect Owner's compliance with Project Contracts, permits and licenses regarding the Facility, and Applicable Laws.
- (g) Contractor will provide written notice to Owner regarding any material deviations from the Operating Plan which relates to the Services in accordance with Clause 7.4 (b).
- (h) With respect to any equipment procured by Contractor on behalf of Owner, Contractor 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 Contractor.

6.3. **Books and Records.** Contractor shall maintain complete, accurate and up-to-date records, books and accounts relating to the Services, and as necessary to verify (i) the incurring and payment of all capital expenditures and (ii) Contractor's performance of its obligations hereunder. Contractor 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 Services once each quarter upon not less than thirty (30) days prior notice to Contractor. Contractor shall make available, at the Site or at Contractor'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 Contractor, and Owner or its designee may make such copies thereof or extracts therefrom as Owner or such designee may deem appropriate.
- (b) Contractor 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 Contractor shall be limited to the Services.

AD  
ABE  
24

- (c) Disregarding the provisions of Clause 6.4(a), Owner shall be entitled to perform scheduled and unscheduled visits and audits of locations where the Services are being carried out by Contractor, to the extent that it does not unreasonably interfere with the compliance of Contractor's obligations under this Agreement.

## ARTICLE 7. REPAIR SERVICES PLAN

### 7.1. Repair Services Plan.

- (a) Contractor shall, in cooperation with the Operator, prepare and provide Owner with the repair services program which will include a monthly reporting of the monthly fired hours on the gas turbine equipment at the Facility, based on the information provided by the Operator.
- (b) Owner may from time to time specify any reasonable changes to be made to the format of the repair services plan.
- (c) Contractor shall notify Owner promptly of any material deviations or discrepancies from the projections contained in any repair services plan.
- (d) As part of the repair services plan, with respect to any parts or equipment sold by Contractor to Owner, Contractor shall deliver a copy of any Manufacturer's Recommendations or other industry information to Owner as soon as reasonably practicable following receipt thereof by Owner.

7.2 Information. Owner shall provide Contractor with all information necessary for Contractor to carry out its duties under the repair services plan.

7.3 Contractor agrees to provide Operator with all information concerning the Services for the Operator to prepare the all programs, procedures and manuals under the O&M Agreement.

## ARTICLE 8. INVOICES

8.1. Invoices. As soon as practicable after the end of each Month, but in any case within ten (10) days after the end of each Month, Contractor shall provide Owner with an invoice setting forth the amounts due to Contractor under this Agreement for the Services (but excluding the Inventory Cost) 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. The Inventory Cost shall be paid by Owner in accordance with Clause 9.2.

8.2 Wire Instructions; Late Payments. All invoices issued pursuant to this Agreement shall be due thirty (30) days upon receipt and payable in U.S. dollars; and will be electronically transferred to Contractor's bank account pursuant to wiring instructions to be

provided by Contractor to Owner. All payments made by Owner shall be subject, at Contractors' cost, to applicable withholdings and taxes.

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

8.3. **Taxes.** Contractor 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 the Contractor or otherwise applicable to any of the amounts paid by Owner to the Contractor 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. Contractor shall also be responsible for the payment of all U.S., Panama or any other jurisdiction applicable tax to any of its Subcontractor.

## **ARTICLE 9. FEES**

9.1. **Maintenance Fee.** Contractor shall be paid an amount equal to U.S.\$5.25 a MW hour when the gas turbines are operated in simple or combined-cycle for the major maintenance for which Contractor will be responsible to perform pursuant to Article 3 (the "Maintenance Fee"). The Maintenance Fee includes all fees, costs and expenses related to the repair or replacement of spare parts as established in Clause 3.2 above except for those not resulting from normal wear and tear and/or the failure of the fuel used at the Facility from meeting the specifications set forth in the fuel analysis set out in Annex 1 of Schedule 4 in the O&M Agreement between Owner and ProEnergy Services Panama S De R.L.

9.2 **Inventory Cost.** Owner shall pay Contractor U.S.\$500,000, for the purchase of the initial inventory of parts, materials and consumables necessary for the operating and maintaining the Facility during the simple cycle phase, as provided in Schedule 1. The inventory cost shall be invoiced and paid to Contractor on or before January 1, 2009. Three (3) months prior to the Facility being operated in combined-cycle the Contractor shall be paid an additional U.S.\$1,000,000, to purchase additional inventory of parts, materials and consumables necessary for the operation and maintenance of the Facility in combined cycle mode during the remaining part of the Term, as provided in Schedule 1. The amounts paid to Contractor under this Clause 9.2 are collectively referred to as the "Inventory Cost".

9.3 **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.

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

- (a) the bankruptcy, insolvency, dissolution or cessation of business of Contractor;
- (b) gross negligence or willful misconduct by Contractor in the performance of its obligations hereunder;
- (c) a material failure by Contractor to perform any of its obligations hereunder, unless Contractor 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 Contractor, or a Government Approval would be subject to termination or forfeiture, as a result of such failure;

- (d) a default by Contractor in its payment obligations to Owner unless Contractor has cured such breach within thirty (30) days from receipt of written notice from Owner;
- (e) if Contractor 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 Contractor's performance of the Services, unless Contractor has cured such breach within fifteen (15) days from the point at which Contractor 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 Contractor, 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 Contractor 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 Contractor 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 Contractor, 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 Contractor, unless Owner has cured such breach within thirty (30) days from receipt of written notice from Contractor;
- (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 Contractor's performance of the Services, unless Owner has cured such breach within fifteen (15) days from Owner's receipt of written notice from Contractor 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 Contractor, 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 a Contractor Event of Default, Owner shall 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 Contractor'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, Contractor 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 Contractor 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 Contractor 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 Contractor are not remedied or overcome within two (2) months following the occurrence of such Force Majeure event.

- (c) Any termination under this Agreement will be treated as a termination under the O&M Agreement between Owner and ProEnergy Services Panama S De R.L. and visa versa unless otherwise mutually agreed by the Parties.

11.5. **Termination Procedure.** In the event of an Contractor 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. No compensation shall be due to either of the Parties for the termination of this Agreement as provided herein.

11.6. **Intentionally left blank.**

11.7. **Transfer of Contracts.** Upon receipt of a Termination Notice from Owner and provided Owner is not in default of its payment obligations to Contractor under this Agreement:

- (a) Contractor, to the extent allowed by such agreements and approvals, and if requested by Owner, shall transfer to Owner, as from the date of termination, its rights as Contractor under all contracts entered into by it, in the performance of its obligations under this Agreement or relating to the Services. Pending such transfer, Contractor shall hold its rights and interests thereunder for the account and to the order of Owner, or Owner's designee; provided that Owner shall indemnify Contractor for all liabilities incurred by Contractor under such contracts to the extent that such liabilities are caused by Owner or Owner's designee during the continuation and performance of such contracts by Owner or Owner's designee, as applicable. Contractor 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.
- (b) 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 Services; (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 Contractor and vendors or subcontractors, and to the extent that there are any sums outstanding or any disputes, Contractor 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. Contractor shall use its best efforts to include a provision in any third party agreement related to the Services to allow the assignment of said agreement to the Owner upon the termination of this Agreement.

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 11.7 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 Contractor to suspend all or a portion of the Services for a period of time by delivering written notice (a "Suspension Notice") to Contractor.
- (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 Contractor's receipt of the Suspension Notice, the Parties shall meet to discuss and agree upon a mutually acceptable adjustment to the Inventory Cost, if applicable, or Maintenance Fee as a result of such suspension, which shall reflect:
  - (i) Contractor's continued and on-going cost to perform the Services, if any, during such period;
  - (ii) Contractor'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
  - (iii) any other extraordinary costs incurred or which could reasonably be expected to be incurred by Owner or Contractor as a result of such delay.
- (c) Any suspension under this Agreement shall not entail a suspension of the O&M Agreement, unless otherwise mutually agreed by the Parties

**ARTICLE 12.  
INDEMNIFICATION**

**12.1. Loss or Damage.**

- (a) Contractor shall indemnify, defend and hold harmless Owner and its Members and their respective Representatives (other than Contractor, 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 Contractor or its employees, agents Subcontractors or Representatives of Contractor's obligations hereunder;
  - (ii) any negligent act or omission on the part of Contractor, or its employees, agents, Subcontractors or Representatives; and

- (iii) any gross negligence, willful misconduct or other breach of duty on the part of Contractor, its employees, agents, Subcontractors or Representatives.

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

- (b) Owner shall indemnify, defend and hold harmless Contractor, its members, officers, employees, agents, Representatives or Subcontractors (the "Contractor 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 Contractor, 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 Contractor, 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 Contractor, any Subcontractor or their respective Representatives), or Representatives.
- (c) Any indemnification payable by Owner to Contractor hereunder shall be net of any insurance proceeds received by Contractor under insurance policies with respect to the circumstances giving rise to Owner's indemnification of Contractor 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) Contractor responsible for physical loss or damage to the Project Facility resulting solely from the negligence of Contractor Indemnitees in connection to the Services shall not exceed U.S.\$250,000 less any amounts Operator has paid Owner pursuant to Clause 12.1(e) of the O&M Agreement. Owner releases Contractor from and waives all other claims against Contractor 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 Contractor 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 Contractor Liability.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE AGGREGATE AMOUNT OF DAMAGES, COMPENSATION OR OTHER SUCH LIABILITIES PAYABLE BY THE CONTRACTOR 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 SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (U.S.\$750,000) FOR THAT YEAR EVEN IF CAUSED BY THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF THE CONTRACTOR INDEMNITEES PROVIDED THAT THE CAP ON LIABILITY UNDER THIS CLAUSE 13.2 SHALL NOT APPLY TO LIABILITY OF CONTRACTOR ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ANY AND ALL CLAIMS AGAINST ANY OF CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR INDEMNITEES.

#### ARTICLE 14. INSURANCE

##### 14.1. Owner's Insurance.

Owner shall obtain and maintain throughout the Term the insurance policies required to be obtained and maintained pursuant to the O&M Agreement.

##### 14.2. Contractor's Insurance.

- (a) Without prejudice to its obligations under this Agreement or otherwise at law, Contractor shall obtain and maintain in full force and effect at all times during Term, insurance on with responsible insurance companies 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 Contractor and the Contractor 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 of 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 Contractor of all its obligations before its workers, including salaries, benefits and compensations for at least US\$500,000; and
  - (iv) covers Contractor's due performance of its obligations provided for under the Agreement for at least US\$ 2,000,000.

- (b) Owner shall be named as an additional insured on each policy of insurance required under this Clause 14.2. Contractor 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 Maintenance 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 Services 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 Contractor for use in the course of performing its obligations under this Agreement, such Intellectual Property shall belong to Owner.
- (b) Contractor shall make available to and hereby licenses Owner to use free of charge all Intellectual Property owned by Contractor (or licensed to Contractor by its Affiliates) which is required in connection with the performance of its obligations under this Agreement (the "Contractor Intellectual Property"). This license is for the purposes of the Services 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 Contractor shall notify Owner of any such licenses that are not transferable to Owner.
- (c) Owner shall, subject to any applicable third party restrictions, grant Contractor 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 Contractor to perform its obligations under this Agreement. The license is for the purpose of the Services but no other purpose. Such license shall terminate upon the Expiration Date or Termination date, as the case may be, but otherwise shall 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 Contractor. Notwithstanding anything herein to the contrary, Contractor 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 Contractor may assign this Agreement without consent of Owner to any subsidiary or Affiliate of Contractor. 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 Contractor; provided, however, that Owner may assign this Agreement without consent of Contractor 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), Contractor 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 Contractor 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 Contractor, its representatives, Subcontractors or Subcontractors' Representatives; or
  - (ii) any disclosure which may reasonably be required for the performance of Contractor's obligations under this Agreement, or any disclosure by Contractor to its accountants, lenders, financial or legal advisors, or any disclosure which may be required for the compliance by Contractor with any statutory obligation or for the purposes of legal proceedings; provided, however, that Contractor 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, Contractor 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, Contractor 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 Contractor in response thereto and any expenditures incurred, or expected to be incurred, by Contractor in connection with such Emergency. Contractor 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 Services, Owner may give notice to Contractor specifying the nature of the Emergency which it has identified and the manner in which it requests such Emergency to be rectified. Contractor shall rectify such Emergency with all due diligence. If Contractor 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](mailto:urielsalazar@une.net.co)

To Contractor: ProEnergy Services International, Inc.  
2031 Adams Road  
Sedalia, Missouri 65301 USA  
Attn: Jeff Canon, President  
Fax No.: 660-829-1160  
Email: [jcanon@proenergyservices.com](mailto: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 Contractor 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 Contractor 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 Contractor Event of Default or Owner Event of Default or other breach or default be deemed a waiver of any other Contractor 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) five (5) 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 Contractor shall provide services and goods 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.** Contractor 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 Contractor, Contractor'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. **No Recourse to Affiliates.** This Agreement is solely and exclusively between Owner and Contractor, and any obligations created herein shall be the sole obligations of the Parties. No Party shall have recourse to any parent, subsidiary, partner, joint venture, affiliate, director or officer of any other Party for performance of such obligations unless such obligations were assumed in writing by the Person against whom recourse is sought.

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.

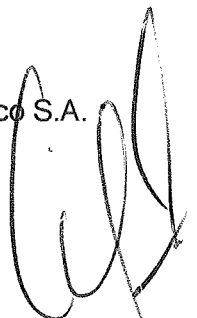
22.16. **Compliance.** Owner nor Contractor shall act in violation of the U.S. Foreign Corrupt Practices Act, and in connection therewith shall not make any payments, loans, or gifts, directly or indirectly, to or for the use or benefit of any official employee, agency or instrumentality of any government, 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 Contractor 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 Parts and Repair Services Agreement as of the respective dates set forth below.

OWNER:

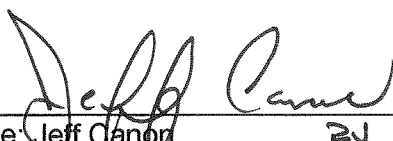
Generadora Del Atlantico S.A.



By: \_\_\_\_\_  
Name: Uriel Salazar Duque  
Title: President  
Date: 9 /December/2008

CONTRACTOR:

ProEnergy Services International, Inc.

By:  \_\_\_\_\_  
Name: Jeff Canon  
Title: President  
Date: 9 /December/2008

BY PERMISSION  
SCOTT DIERALL

19  
APR  
24

## **SCHEDULE 1**

### **PARTS INVENTORY LIST**

Contractor will prepare the Parts Inventory List and provide a copy to Owner no later than 30 days from the Effective Date which will then be included in this Agreement as Schedule 1.

10  
11/26  
21