

Operation and Maintenance Agreement

Contract 16 in the Commonwealth
Model Contract Series



The Commonwealth

Model Contracts for Infrastructure, Extractives and Energy Industries in Commonwealth Countries

The Commonwealth Secretariat recognises the need for standardised contracts within the infrastructure, extractives and energy industries across its member countries.

The lack of uniformity in these contracts has led to inefficiencies, imbalances and loopholes that do not serve the best interests of the member countries. To address this issue, the Secretariat is developing model contracts that foster fairness, balance and sustainability in investment relationships, while protecting the interests of governments and citizens.

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This series of model contracts will serve as valuable resources for government lawyers, aiding them in drafting and reviewing foreign investment projects and related contracts. By promoting fairness, balance and sustainability, these model contracts will contribute to the overall development and economic wellbeing of Commonwealth member countries.

Moreover, the establishment of this central repository underlines the commitment of Commonwealth member countries to fostering a conducive environment for sustainable investments.

To deliver this suite of model contracts, the Commonwealth Secretariat has constituted a working group comprising of officials nominated by 19 member countries who are leveraging their expertise, and working with a designated expert, to conclude the project.

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This work is adapted from World Bank (2021), ‘Power Purchase Agreement (PPA) (Example 1)’. https://ppp.worldbank.org/sites/default/files/2024-09/o_m_agreement_template_EN.pdf

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Operation and Maintenance Agreement

This agreement sets out contractual terms on which an Operator will provide operation, maintenance, and management services for a renewable energy technology (RET) project. The model draws upon materials developed by The World Bank PPP in Infrastructure Resource Center for Contracts, Laws, and Regulations (PPPIRC), and associated guidance on good practice. Specifically, it has builds upon work undertaken by the Caribbean Renewable Energy Development Programme (CREDP), and CARICOM, to ensure an approach appropriate (and relevant) to small-state / island state Member Countries.

OPERATION AND MAINTENANCE AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT ("Agreement")

is made and entered into as of

[## INSERT Date]

by and between

[## INSERT Legal name, form and country of RET Project Owner] ("The Owner"),

and _

[## INSERT Legal name, form and country of O&M firm] (The Operator")

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WHEREAS, The Owner owns a [## INSERT] (“Project”) and desires to contract for operation, maintenance and management of the Project,

WHEREAS, The Operator provides operation, maintenance and management services for [## INSERT RET type]_generation facilities and has agreed to provide those services for the Project on the terms and conditions set forth in this Agreement,

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. AGREEMENT

1.1 Agreement

- 1.1.1 This Agreement consists of the terms and conditions set forth in the sections captioned by numbered article designations ("Articles") and the following appendices, which are incorporated and made part this Agreement by this reference and are included in any reference to this Agreement.

Appendix A - Scope of Services

Appendix B - Compensation

Appendix C - Communication Protocols

- 1.1.2 If the terms and conditions of the Articles of this Agreement vary or are inconsistent with any portion of the Appendices, the terms of the Articles this Agreement shall control and be given priority, and the provisions of the Appendices shall be subject to the terms of the Articles. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. Neither party will be bound by or be deemed to have made any representations, warranties, commitments or other undertakings with respect to the subject matter of this Agreement that are not contained in this Agreement.

1.2 Effective Date and Time:

This Agreement shall be effective and shall govern the rights and obligations of the parties from and after the date of this Agreement for a period of ### INSERT years/months.

1.3 Relationship of The Parties

The Operator has been retained by The Owner as an independent contractor to operate, maintain and manage the Project on behalf of The Owner , in accordance with Prudent Utility Practice and the requirements of the Project Agreements. The Owner has delegated to The Operator overall responsibility for operating, maintaining and managing the Project to ensure that the Project is available to produce electric energy for sale by The Owner and meets all requirements under the Project Agreements. Neither The Operator nor any of its employees, subcontractors or agents shall be deemed to have any other status, except that The Operator is the agent of The Owner to the limited extent that this Agreement expressly grants The Operator the authority to act on behalf of The Owner .

1.4 Representatives

The Owner and The Operator shall each designate a representative ("Designated Representative") to act on its behalf in overseeing the performance of this Agreement. The Owner and The Operator may change their respective Designated Representatives upon written notice to the other party given as provided in this Agreement. Designated Representatives shall be the primary means for communication and all other interactions between The Owner and The Operator that are required under this Agreement. Designated Representatives shall have the power and authority to bind their

respective principals under the terms of this Agreement, with any required internal corporate approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal.

2. DEFINITIONS

Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Article 2. Terms that are defined in other Articles shall have the meanings given to them in those Articles.

Annual Budget	Has the meaning set forth in Section 6.2(a).
Annual Project Operating Plan	Has the meaning set forth in Section 6.2.
Annual Operating Fee	An annual operating fee paid to The Operator during each Contract Year as set forth in Section 5.2.
Bankruptcy	<p>A situation in which</p> <ul style="list-style-type: none"> (i) A party's actions under applicable debtor relief laws demonstrate an inability to pay its debts as they mature or a need for protection from its creditors; (ii) A court of competent jurisdiction approves a petition filed against a party, which petition sought relief for the party's creditors, and the action of the court remains in effect for an aggregated period of 60 days (whether or not consecutive); (iii) A party admits in writing its inability to pay its debts as they mature; (iv) A party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or (v) A party makes an assignment for the benefit of creditors or takes other similar action for the protection or benefit of its creditors.
Business Day	means any day other than a Saturday, Sunday or other day on which commercial banks are authorised or required to close in <u>[Country of Project]</u> .
Contract Year	<ul style="list-style-type: none"> (i) For the first Contract Year, that period from the date of this Agreement to and including December 31 of such year; and (ii) For each Contract Year thereafter, the calendar year.
Five-Year Budget	Has the meaning set forth in Section 6.2(d).
Force Majeure Event	An event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not

	<p>have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of Section 15.3 (<i>Force Majeure</i>). Subject to the foregoing, "Force Majeure Event" shall include, as to either party, explosion and fire (in either case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labour dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of the Project, which events were not pending on the date of this Agreement.</p>
Lender(s)	<ul style="list-style-type: none"> (i) Person that has made loans to The Owner, its successors or permitted assigns for the financing or refinancing of the Project (or any part thereof) or which loans are secured by the Project (or any part thereof), (ii) The holder(s) of indebtedness evidencing any such loans or any person or entity lawfully acting on behalf of such holders; or (iii) Any person or entity that purchases the Project in connection with a sale-leaseback or other lease arrangement in which The Owner is the lessee of the Project pursuant to a net lease.
Operating Manuals	The operating data, design drawings, specifications, vendors' manuals, warranty requirements, procedures (including those for maintenance of the Project and environmental and safety compliance), and similar materials with respect to the Project.
Procedures Manual	Has the meaning set forth in Section 5.1.
Project	The [## INSERT SIZE, TECHNOLOGY AND OTHER DESCRIPTIVE INFORMATION ABOUT THE PROJECT] generating Project and related assets, together with other facilities and related assets, to be constructed on certain real property in [## INSERT LOCATION OF PROJECT]
Project Agreements	The agreements relating to the Project, including any Power Purchase Agreement, Interconnection Agreement, Loan Agreements, this Agreement and all other agreements applicable to the Project, permits, and licenses required for the operation, maintenance and

	management of the Project, as identified in writing by The Owner.
Prudent Utility Practice	(i) Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the country and geographic region where the Project is located during the relevant time period; or (ii) Practices, methods and acts that, in the exercise of reasonable judgment on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.
Reference Rate	The rate published in the Money Rates table of The Wall Street Journal, from time to time, as the "prime rate", plus 1%.
Reimbursable Costs	Has the meaning set forth in Section 5.3.
RET	Renewable energy technology
Services	Has the meaning set forth in Article 3.1.

3. SERVICES

3.1 Scope of Services.

The Operator shall:

- (i) Operate, maintain and manage the Project on behalf of The Owner ("Services"); and
- (ii) Also perform the specific duties set forth in this Agreement if they are not otherwise required by the standards defined in Section 3.2.

3.2 Standards for Performance of the Services

The Operator shall perform the Services required under this Agreement, including those set forth in Appendix A, in a prudent, reasonable, and efficient manner and in accordance with:

- (i) Operating Manuals, the Administrative Procedures Manual and applicable vendor warranties,
- (ii) The applicable Annual Project Operating Plan and Annual Budget,
- (iii) All applicable Laws,
- (iv) Prudent Utility Practices,
- (v) The Project Agreements,
- (vi) The requirements of any System The Operator, and
- (vii) All insurance policies specified in Article 9 of this Agreement. The Operator shall use all reasonable efforts to optimise the useful life of

the Project and to minimise Reimbursable Costs and Project outages or other unavailability.

3.3 The Operator's Personnel Standards

The Operator shall provide as reasonably necessary all labour and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned and shall meet any requirements for Project personnel under the Project Agreements. All individuals employed by The Operator to perform the Services shall be employees of The Operator, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by The Operator (subject to The Owner 's approval rights with respect to the Annual Budget). With respect to labour matters, hiring personnel, and employment policies, The Operator shall comply with all applicable Laws. The Operator also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and with The Operator's acknowledgment (hereby given) that The Operator has no authority to enter into any contracts with respect to labour matters that purport to bind or otherwise obligate The Owner.

3.4 Compliance

The Operator shall comply with all Laws applicable to the operation, maintenance and management of the Project and the performance of the Services. The Operator shall apply for and obtain, and The Owner shall assist The Operator in applying for and obtaining, all necessary permits, licenses and approvals (and renewals of the same) required to allow The Operator to do business or perform the Services in the jurisdictions where the Services are to be performed. The Operator shall provide reasonably necessary assistance to The Owner, to secure permits, licenses, and approvals (and renewals of the same) that The Owner is required to obtain from or file with any governmental agency regarding the Project. The Operator also shall file such reports, notices, and other communications as may be required by any governmental agency regarding the Project.

3.5 Operating Records and Reports

The Operator shall maintain, at a location acceptable to The Owner , the Project operating logs, records, and reports that document the operation and maintenance of the Project, all in form and substance sufficient to meet The Owner 's reporting requirements under the Project Agreements. The the Operator shall maintain current revisions of drawings, specifications, lists, clarifications and other materials related to operation and maintenance of the Project provided to The Operator by The Owner and vendors. The Operator shall provide The Owner reasonably necessary assistance in connection with The Owner 's compliance with reporting requirements under the Project Agreements, applicable Laws or any other agreement to which The Owner is a party relating to the Project. Such assistance shall include providing reports, records, logs and other information that The Owner may reasonably request as to the Project or its operation.

3.6 No Liens or Encumbrances

The Operator shall maintain the Project free and clear of all liens and encumbrances resulting from any action of The Operator or work done at the request of The Operator, except for such liens or encumbrances that result directly from nonpayment by The Owner of amounts due and owing to The Operator under this Agreement.

3.7 No Action

Except where such action is expressly permitted by this Agreement, The Operator shall not take any action that would cause a default under any Project Agreement.

3.8 Emergency Action

If an emergency endangering the safety or protection of persons, the Project, or property located near the Project occurs, The Operator shall promptly notify The Owner and take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. The Operator shall make reasonable efforts to minimise any cost associated with remedial action in case of such an emergency.

3.9 Action in Extraordinary Circumstances

In the event that

- (a) The Project or major Project equipment suffers an unplanned outage (or The Operator reasonably believes that such an occurrence is imminent), and
- (b) The Operator has made reasonable, but unsuccessful, efforts to notify and communicate with The Owner regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement

then The Operator shall:

- (i) Take all necessary action to prevent or to mitigate such unplanned outage,
- (ii) Make reasonable efforts to minimise any cost associated with such remedial action,
- (iii) Continue to attempt to notify and communicate with The Owner regarding the occurrence and the remedial action, and
- (iv) Not expend for such purposes more than an aggregate of [## INSERT AMOUNT OF CAP] in any Contract Year.

4. THE OWNER RESPONSIBILITIES

4.1 Information

- 4.1.1 The Owner shall provide the Operator with all vendor manuals, spare parts lists, Project data books and drawings which are provided to The Owner pursuant to any Project Agreement or by any contractor responsible for construction, installation, repair or maintenance of the Project or a part thereof. Subject to the standards of performance set forth in Section 3.2,
- 4.1.2 The Operator shall be entitled to rely upon such information in performance of the Services. The Owner shall also provide The Operator with copies of all

Project Agreements and any amendments thereto and any other documents that define the Project's operating requirements.

4.2 Overhaul of Major Equipment and Capital Improvements

The cost of all major equipment teardowns and overhauls and all capital improvements shall be the responsibility of The Owner. The Operator shall promptly notify The Owner in writing of any such teardowns and overhauls of major equipment or capital improvements that The Operator believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements. To the extent reasonably possible, the costs of all major equipment teardowns and overhauls and all capital improvements shall be incorporated into the applicable Annual Budget. If such costs have been incorporated into the applicable approved Annual Budget, or if The Owner has otherwise consented in writing to reimburse The Operator for such costs, The Operator shall schedule, coordinate, contract and oversee the performance of such activities. The Operator also shall be responsible for monitoring and enforcing contract compliance by the contractor performing such work, including taking such steps, short of litigation, to enforce any warranties granted to The Owner by such contractor.

4.3 Annual Budget and Project Operating Plan

In accordance with Article 6, The Owner shall be responsible for approval of the Annual Budget, the Annual Project Operating Plan and the Five-Year Budget.

5. COMPENSATION AND PAYMENT

5.1 Payments

- (i) As compensation to the The Operator for performance of the Services hereunder, The Owner shall pay The Operator the Annual Operating Fee (or a pro rata portion thereof in the case of a Contract Year of less than 12 months). In addition, The Owner shall (at The Owner 's Option) either:
- (ii) Reimburse The Operator, in the manner and at the times specified in this Article 5 and Appendix B, as modified from time to time, for all Reimbursable Costs; or
- (iii) Pay such Reimbursable Costs directly to the applicable third parties.

5.2 Annual Operating Fee

For the first Contract Year and each subsequent Contract Year, The Owner shall pay to The Operator the sum of [## INSERT MONTHLY AMOUNT] per month of the Contract Year, for an annual fee of [## INSERT ANNUAL AMOUNT] (the "Annual Operating Fee"). Beginning on the first day of the second Contract Year and on the first day of each Contract Year thereafter, the Annual Operating Fee (and the corresponding monthly operating fee) shall be adjusted to reflect changes in the [## INSERT ESCALATION FACTOR AND CALCULATION METHOD].

5.3 Reimbursable Costs

- 5.3.1 The Owner shall reimburse The Operator for all costs incurred by The Operator in performing the Services, including the costs set forth in Appendix B (collectively, the "Reimbursable Costs"). The Owner's obligation under this provision is subject to
- (i) The Owner's express approval of the costs as part of an Annual Budget or separately in writing, or
 - (ii) The Operator incurring costs in accordance with Section 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*). Expenditures made by The Operator in excess of the Annual Budget that are required to comply with any Law applicable to the Services or to the Project shall be approved and reimbursed by The Owner.
- 5.3.2 Subject to The Owner's right to modify the provisions of this Section 5.3 from time to time upon the reasonable request of the Lenders, The Owner shall pay Reimbursable Costs as follows:
- (a) The Owner will advance to The Operator on a mutually agreed basis, funds required for The Operator to make payments as they become due in accordance with the Annual Budget. Not less than fifteen (15) days before the first day of each calendar month during the term of this Agreement, The Operator shall submit to The Owner an estimate of funds required for such month, which estimate shall be in accordance with the Annual Budget. The Owner shall pay to The Operator the amount of such estimate prior to the time such funds are required by The Operator. Such advances shall be deposited in a separate account in The Operator's name, as agent for The Owner, in a bank or banks approved by The Owner, subject to withdrawal by The Operator solely for the purpose of making required payments. Within fifteen (15) days of the end of each month, The Operator shall submit to The Owner a statement of receipts and disbursements, in detail satisfactory to The Owner, together with supporting documentation.
 - (b) The Operator shall not incur Reimbursable Costs unless they are incurred in accordance with the applicable Annual Budget, or are permitted by Sections 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*). If The Operator becomes aware that Reimbursable Costs exceed or will exceed the amount provided in the applicable Annual Budget by 5% or more, The Operator shall use all reasonable efforts to notify The Owner within ten (10) days and shall not, without The Owner's approval to amend the applicable Annual Budget or The Owner's authorisation for The Operator to make such expenditure, perform any further Services that will cause or increase a budget overrun, except as provided in 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*). If The Owner refuses to authorise expenditures in excess of the Annual Budget, The Operator shall be relieved of those duties or obligations of this Agreement that cannot be performed without the expenditures The Owner refuses to approve.

- (c) In all cases, The Operator shall use reasonable commercial efforts to mitigate any adverse effect from The Owner 's refusal to authorise expenditures in excess of the Annual Budget. The Owner 's reimbursement of any cost related to the Services shall not be construed as The Owner 's approval or acceptance of the Services.

5.4 Adjustments and Conditions

Notwithstanding the payment of any amount pursuant to the foregoing provisions, The Owner shall remain entitled to conduct a subsequent audit and review of all Reimbursable Costs incurred and paid by The Owner and of any supporting documentation for a period of 2 years after the applicable Contract Year. If such audit and review shows that any amount previously paid by The Owner to The Operator did not constitute a Reimbursable Cost, The Owner may:

- (a) Recover such amount from The Operator, plus interest at the Reference Rate, calculated from the date the audit commenced; or
- (b) Deduct such amount from any payment that thereafter may become due to The Operator.

5.5 Billing and Payment

Within 15 days following the end of each month, The Operator shall submit the receipts and disbursements showing Reimbursable Costs for such month in accordance with Subsection 5.2(a). Within 15 days after receipt of any such invoice, The Owner shall:

- (a) Pay The Operator the sum specified in such invoice, less (i) any amounts previously deposited with The Operator relating to such invoice, and (ii) any portion of such invoice amount that The Owner disputes in good faith or is permitted to offset under this Agreement; and
- (b) With respect to any disputed portion of such invoice, provide The Operator with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article 14.

5.6 Interest

Any amount owed to either party under this Agreement by the other party which remains unpaid more than 30 days after the date such amount is due and payable shall begin to accrue interest at the Reference Rate commencing on the thirty-first day after such due date

6. PROCEDURES, PLANS AND REPORTING

6.1 Procedures Manual

The parties have approved a procedures manual that includes procedures for:

- (i) Reporting and correspondence pursuant to this Agreement,
- (ii) Procurement and contracting, and
- (iii) Accounting, bookkeeping and record-keeping ("Procedures Manual").

The Procedures Manual shall govern the covered activities of The Operator for the term of this Agreement, subject to such revision and amendment as agreed in writing by The Owner and The Operator.

6.2 Annual Project Operating Budget and Plan

(a) Proposal.

At least 90 days before the beginning of each Contract Year, The Operator shall prepare and submit to The Owner a proposed annual budget for the Contract Year, established on a monthly basis. The proposed annual budget shall include separate operating and capital budgets. The proposed annual budget shall also set forth, in detail acceptable to The Owner:

- (i) Anticipated operations, repairs and capital improvements,
- (ii) Maintenance and overhaul schedules,
- (iii) Planned procurement (including equipment, spare parts, and consumable inventories),
- (iv) Labour activities (including staffing, labour rates, and holidays),
- (v) Administrative activities, and
- (vi) Other work proposed to be undertaken by The Operator, together with an itemised estimate of all Reimbursable Costs to be incurred.

Each proposed annual budget shall be accompanied by a proposed annual operating plan setting forth the assumptions and implementation plans underlying the proposed annual budget. Any actions to be performed by The Operator under the proposed annual operating plan shall be consistent with The Operator's obligations set forth in this Agreement.

(b) Adoption

The Owner shall review The Operator's proposed annual budget and annual operating plan within 30 days following receipt of the proposals. The Owner may, by written request, propose changes, additions, deletions and modifications to the proposals. If requested by The Operator, The Owner shall provide The Operator any cost information in The Owner's possession from previous Contract Years applicable to items in the proposed annual budget. The Owner and The Operator will then meet and use their reasonable commercial efforts to agree upon a final budget and plan (the "Annual Budget" and "Annual Project Operating Plan", respectively), which shall be approved in writing by both parties. Except to the extent that the terms of Sections 3.8 and 3.9 permit The Operator to take actions which are outside the final Annual Budget without the consent of The Owner, the final Annual Budget and Annual Project Operating Plan shall remain in effect throughout the applicable Contract Year, subject to revisions and amendments proposed by either party and consented to in writing by the other party.

(c) Changes

The Operator shall notify The Owner as soon as reasonably possible of any significant deviations or discrepancies from the projections contained in the Annual Budget or Annual Project Operating Plan.

(d) Failure to Adopt

If, by the first day of any Contract Year after the first Contract Year, the parties are unable to reach agreement concerning any item or portion of the Annual Budget for such Contract Year, then the amount(s) of such item or portion of the Annual Budget for such Contract Year shall be equal to 105% of the amount for the corresponding item or portion of the Annual Budget for the preceding Contract Year.

(e) Five-Year Budget

At least 60 days before the first day of each Contract Year, The Operator shall prepare and submit to The Owner a proposed budget for the next 5 Contract Years or the remaining term of the Agreement, whichever period is shorter. The proposed five-year budget shall be established on an annual basis and shall include separate operating and capital budgets. The proposed five-year budget shall also set forth, in detail acceptable to The Owner,

- (i) Anticipated operations, repairs and capital improvements,
- (ii) Maintenance and overhaul schedules,
- (iii) Planned procurement (including equipment, spare parts, and consumable inventories),
- (iv) Labour activities (including staffing, labour rates, and holidays),
- (v) Administrative activities, and
- (vi) Other work proposed to be undertaken by The Operator, together with an itemised estimate of all Reimbursable Costs to be incurred, accompanied by the underlying assumptions and implementation plans of the proposed five-year budget.

The Owner shall review The Operator's proposed five-year budget within 30 days following receipt of the proposal. The Owner may, by written request, propose changes, additions, deletions and modifications to the proposals. The Owner and The Operator will then meet and use their reasonable commercial efforts to agree upon a final five-year budget (the "Five-Year Budget"), which shall be approved in writing by both Parties. If a final Five-Year Budget is not approved in its entirety by both parties, the proposed five-year budget submitted by The Operator, together with The Owner's final suggested changes, additions, deletions and modifications shall serve as the Five-Year Budget. The Five-Year Budget shall be used only for planning and comparison purposes, and shall not constrain The Operator in its actions or expenditures, provided, however, that The Operator shall be required to conform in its operations to the Annual Budget and Annual Project Operating Plan as provided in this Agreement.

6.3 Operating Data and Records

The Operator shall monitor and record all operating data and information that (i) The Owner must report to any person or entity under any Project Agreement, (ii) The Owner must report to any government agency or other person or entity under applicable Laws and (iii) The Owner reasonably requests. The Operator shall report required or requested operating data and information to The Owner as specified by The Owner to support monthly invoicing under the Project Agreements, and within 15 Business Days following a request by The Owner . Operating data to be reported include information from operating logs, meter and gauge readings and maintenance records.

6.4 Accounts and Reports

The Operator shall cooperate with The Owner in complying with reporting requirements set forth in the Project Agreements and shall, during the term of this Agreement, furnish or cause to be furnished to The Owner the following reports concerning the Project operations and the Services:

a) Monthly Reports

Within ten (10) Business Days following the last day of each calendar month, The Operator shall submit:

- (i) A progress report, in detail acceptable to The Owner , covering all activities during such month with respect to operations and maintenance (including information regarding the amount of electric energy generated, hours of operation, heat rate, availability, outages, accidents and emergencies), capital improvements, labour relations, other significant matters, and Services. The monthly report shall include a comparison of such items to the corresponding values for the preceding month and for the corresponding portion of the previous Contract Year, a listing of any significant operating problems along with immediately planned remedial actions, and a brief summary of major activities planned for the next reporting period, and
- (ii) A statement setting forth all Reimbursable Costs paid or incurred in such month, which statement shall itemise, in detail acceptable to The Owner , the computation of such Reimbursable Costs and shall state whether or not the Project operations have conformed to the applicable Annual Project Operating Plan and Annual Budget during such reporting period and if not, the extent and reasons for any deviation and the planned remedial action.

b) Annual Reports.

As soon as available, and in any event within 60 days after the end of each Contract Year, The Operator shall submit an annual report describing, in detail substantially similar to that contained in the monthly reports referred to in Section 6.4(a), the Project activities and operating data for such Contract Year. The annual report shall present a comparison of such Project activities and operating data

with the goals set forth in the Annual Project Operating Plan and Annual Budget for such Contract Year, and with those achieved during the preceding Contract Year (if applicable) and an explanation of any substantial deviations. Within 30 days after submission of each annual report, The Operator shall meet with The Owner to review and discuss the report and any other aspects of Project operations that The Owner may wish to discuss.

c) Litigation, Permit Lapses

Upon obtaining knowledge thereof, The Operator shall promptly notify The Owner in writing of:

- (i) Any event of default under any of the Project Agreements;
- (ii) Any litigation, claims, disputes or actions, threatened or filed, concerning the Project or the Services;
- (iii) 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 license, permit, warranty, approval, authorisation or consent relating to the Project or the Services; and
- (iv) Any dispute with any governmental authority relating to the Project or the Services.

d) Other Information

The Operator shall promptly submit to The Owner any material information concerning new or significant aspects of the Project's activities and, upon The Owner 's request, shall promptly submit any other information concerning the Project or the Services.

6.5 Additional Communications

The Operator shall communicate certain additional events specified in Appendix C to The Owner and third parties in accordance with the communication protocols set forth in Appendix C to this Agreement.

7. LIMITATIONS ON AUTHORITY

7.1 General Limitations

Notwithstanding any provision in this Agreement to the contrary, unless previously approved by The Owner in writing or through The Owner 's approval of the Annual Budget, The Operator and any employee, representative, contractor or other agent of The Operator are prohibited from taking the specified actions with respect to the matters indicated below.

a) Disposition of Assets.

Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of The Owner , including any property or assets purchased by The Operator where the purchase cost is a Reimbursable Cost;

b) Contract

Make, enter into, execute, amend, modify or supplement any contract or agreement:

- (i) on behalf of, in the name of, or purporting to bind The Owner;
or
- (ii) that prohibits or otherwise restricts The Operator's right to assign such contract or agreement to The Owner at any time;

c) Expenditures

Make or consent or agree to make any expenditure for equipment, materials, assets or other items which would be a Reimbursable Cost, except in conformity with the Annual Budget; provided, however, that solely in connection with actions taken by The Operator pursuant to Sections 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*), The Operator may, without prior approval from The Owner , make limited expenditures outside the Annual Budget in accordance with those provisions;

d) Other Actions

Take or agree to take any other action that materially varies from the applicable Annual Project Operating Plan, Annual Budget or the requirements of any Project Agreement;

e) Lawsuits and Settlements

Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, The Owner or The Operator, the cost of which, in the case of The Operator, would be a Reimbursable Cost hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;

f) Liens

Create, incur or assume any lien upon the Project;

g) Transactions on Behalf of Others

Engage in any other transaction on behalf of The Owner or any other person or entity not expressly authorised by this Agreement or that violates applicable Laws, this Agreement or any Project Agreement; or

h) Agreements

Enter into any agreement to do any of the foregoing.

7.2 Execution of Documents

Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of The Owner) to be executed by The Operator shall be executed by the authorised representative of The Operator or, subject to prior written notice to The Owner , by such

other representative of The Operator who is authorised and empowered by The Operator to execute such documents.

8. TERM AND TERMINATION

8.1 Term

The term of this Agreement shall be from and including the date of this Agreement to and including [## INSERT EXPIRATION DATE]. Upon agreement of The Owner and The Operator, this Agreement may be extended for [## INSERT NUMBER OF EXTENSIONS] periods of [## INSERT LENGTH OF EXTENSIONS] each. This Agreement is subject to earlier termination pursuant to Sections 8.2, 8.3, 8.4, or 8.5.

8.2 Immediate Termination By The Owner

Subject to the terms of any Project Agreements, The Owner may terminate this Agreement immediately:

- (i) Upon the Bankruptcy of The Operator or
- (ii) Upon the occurrence of a Force Majeure Event that is not remedied within 120 days of its initial occurrence.

If the Agreement is terminated by The Owner pursuant to Section 8.2(i) or 8.2(ii), The Operator shall be compensated for all Reimbursable Costs incurred by The Operator to and including the date of termination. In addition, if the Agreement is terminated by The Owner pursuant to Section 8.2(ii), The Operator shall be paid all unpaid Annual Operating Fees to and including the date of termination.

8.3 Termination Upon Notice By The Owner

Subject to the terms of any Project Agreements, The Owner may terminate this Agreement upon 10days prior written notice to The Operator in the event:

- (i) That The Operator violates, or consents to a violation of, any Laws applicable to the Services or the Project, where the violation has or may have a material adverse effect on the maintenance or operation of the Project or The Owner 's interest, and The Operator does not cure such violation within 30 days (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided The Operator diligently commences and pursues such cure and indemnifies The Owner for all related costs, of whatever kind), or
- (ii) Of a material breach by The Operator in the performance of the Services, if The Operator does not cure such breach within 30 days from the date of The Operator's receipt of notice from The Owner demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided The Operator diligently commences and pursues such cure and indemnifies The Owner for all related costs, of whatever kind). If the Agreement is terminated by The Owner pursuant to this Section 8.3, The Operator shall be compensated for all Reimbursable Costs

incurred by The Operator and all unpaid Annual Operating Fees to and including the date of termination.

8.4 Other Termination Upon Notice By The Owner

Subject to the terms of any Project Agreements, The Owner may terminate this Agreement with 2 months prior written notice to The Operator, upon the occurrence of:

- (a) A sale or transfer by The Owner of its rights in the Project or a sale or transfer of all or substantially all of the assets of or interests in The Owner;
- (b) The Operator's Reimbursable Costs for Services exceeding 110% of the approved Annual Budget with respect to Reimbursable Costs, for any 2 consecutive Contract Years, where such overruns are the fault of, or due to the negligent operation of the Project by, The Operator;
- (c) A determination by The Owner that, for any reason, it no longer intends to continue operation of the Project; or
- (d) A determination by The Owner that it does not wish to extend this agreement pursuant to Section 8.1.

If the Agreement is terminated by The Owner pursuant to this Section 8.4, The Operator shall be compensated for all Reimbursable Costs incurred by The Operator and all unpaid Annual Operating Fees to and including the date of such termination under this Section 8.4.

8.5 Termination By The Owner Without Cause

In addition to its rights set forth in this Article 8, subject to the terms of any Project Agreements, The Owner reserves the right to terminate this Agreement without cause upon 90 days written notice to The Operator. If the Agreement is terminated by The Owner pursuant to this Section 8.5, The Operator shall be compensated for all Reimbursable Costs incurred by The Operator and all unpaid Annual Operating Fees to and including the date of such termination under this Section 8.5. Such payments, together with the termination payment set forth in Section 8.8, shall be The Operator's sole remedy in respect of such termination and shall be made by The Owner within 30 days of receipt of a final invoice from The Operator.

8.6 Termination By The Operator

Subject to the terms of any Project Agreements, The Operator may terminate this Agreement for cause upon 15 days prior written notice to The Owner in the event of:

- (i) The Owner 's Bankruptcy; or
- (ii) The Owner 's failure to perform in a timely manner any of its material obligations under this Agreement and such failure is not cured within 30 days of The Owner 's receipt of a notice from The Operator demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days,

provided that The Owner diligently commences and continues to pursue such cure).

8.7 Project Condition At End Of Term

Upon expiration or termination of this Agreement, The Operator shall remove its personnel from the Project. The Operator shall leave the Project in as good condition as it was on the Effective Date, normal wear and tear and casualty excepted. The Operator shall be paid all unpaid Reimbursable Costs. All special tools, improvements, inventory of supplies, spare parts, safety equipment, Operating Manuals and Procedures Manuals, operating logs, records and documents maintained by The Operator pursuant to Section 3.5 and any other items furnished on a Reimbursable Cost basis under this Agreement will be left at the Project and will become or remain the property of The Owner without additional charge. The Owner shall also have the right, in its sole discretion, to assume and become liable for any contracts or obligations that The Operator may have undertaken with third parties in connection with the Services. The Operator shall cooperate in taking all reasonable steps requested by The Owner required to effect the assumption of the contracts, provided that The Owner agrees to indemnify and hold harmless The Operator for all liabilities arising out of events and obligations arising from the assumption of contract rights and obligations after the date of any such assumption. The Operator shall use commercially reasonable efforts to cooperate with The Owner or a succeeding Operator to assure that the operation, maintenance and management of the Project are not disrupted.

8.8 Termination Payment

(a) Defined Terminations

In the event of a termination of this Agreement pursuant to the above Sections 8.2 (ii), 8.4 (a), 8.4 (c), 8.4 (d) or 8.5, The Operator shall be entitled, in addition to all other amounts due under this Agreement as of the date of termination, to a demobilisation and cancellation payment equal to the total of all relocation and severance costs incurred with respect to The Operator's employees and all costs The Operator is at such time contractually or legally obligated to pay to its employees, or which are incurred with the prior written approval of The Owner . Severance costs for each of The Operator's employees shall equal [## INSERT DESCRIPTION OF PAYMENT AMOUNT, E.G., NUMBER OF PAY PERIODS AND HOURS] for each year such employee has worked for The Operator at the Project. Subject to The Owner 's right to conduct a subsequent audit and review pursuant to Section 8.8(a), such amounts shall be due and payable by The Owner within 30 days of The Operator's submission of an invoice, which invoice shall include a statement of all such costs and expenses in the form and with the substantiation required by Section 6.2(a). The Owner shall pay any and all legal costs incurred by The Operator to collect payments under this Section 8.8.

(b) Audit.

Notwithstanding payment of any amount pursuant to this Section 8.8, The Owner shall remain entitled to conduct a subsequent audit and review of all costs incurred and paid by The Owner pursuant to this Section 8.8, together with any supporting documentation requested by The Owner, for a period of 2 years from and after the date of such payment. If, pursuant to such audit and review, it is determined that any amount previously paid to The Operator did not constitute, in whole or in part, a reimbursable item pursuant to this Section 8.8, The Owner may recover such amount from The Operator plus interest at the Reference Rate calculated from the date such audit commences, or The Owner may deduct or cause to be deducted such amount from any payment that may be due to The Operator.

9. INSURANCE

9.1 Coverage

(a) Obligation to Obtain

The Owner and The Operator shall obtain and maintain the insurance set forth in Sections 9.1(b) and 9.1(c). Such insurance may be maintained under individual or blanket insurance policies.

(b) The Operator Coverage

The Operator shall maintain during the term of this Agreement the insurance described below with insurance companies acceptable to The Owner and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

For each category of insurance The Owner must assess the risks and the value of protected assets or magnitude of possible casualty loss in setting coverage minimum amounts.

Specific minimum coverage amounts and any special provisions or riders that The Owner requires should also be specified.

- (i) General Liability Insurance: Liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage.
- (ii) Automobile Liability Insurance: Automobile liability insurance against claims for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable.
- (iii) Workers' Compensation Insurance: Workers' compensation insurance as required by applicable laws, including employers liability insurance for all employees of The Operator.
- (iv) Excess Liability Insurance: Excess liability insurance on an occurrence basis covering claims in excess of the underlying

insurance described in the foregoing subsections (i), (ii) and (iii).

The amounts of insurance required in the foregoing subsections (i), (ii), (iii) and (iv) may be satisfied by The Operator purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified. Upon mutual agreement of The Owner, The Operator may provide equivalent self-insurance in lieu of the requirements set forth in this Section.

Provisions such as the following may be required by lenders or by other agreements relating to the Project.

- (v) All policies of liability insurance to be maintained by The Operator shall provide for waivers of subrogation in favour of The Owner, the Lenders and such other persons as may be required by the Project Agreements. These policies shall include the following:
 - (A) a severability of interests or cross liability clause;
 - (B) insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by The Owner or the Lenders; and
 - (C) The Owner, Lenders and such other persons or entities as may be required by the Project Agreements named as additional insureds.

All policies of insurance required to be maintained pursuant to Section 9.1 shall include a provision that bars any cancellation or reduction in coverage in a manner that affects the interests of The Owner, without 60 days prior written notice to The Owner, except for termination for non-payment of premium which shall require 10 days prior written notice to The Owner. The Owner has the option in placing the coverages listed above and naming The Operator as an additional insured.

(c) The Owner Coverage

The Owner shall maintain from and after the date of this Agreement the insurance described below and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

(i) Liability Insurance: Liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage. The Owner may provide adequate self-insurance in lieu of the requirements set forth in this Section.

(d) Cost

All costs incurred by The Operator with respect to payment of any deductible relating to the insurance coverage set forth in this Section 9.1, except as set forth in Section 9.3 (*Payment of*

Deductible Amounts) or Section 10.1(a) (*Indemnification by The Operator*), or any losses in excess of insurance coverage, except as set forth in Section 10.1(a), shall be deemed Reimbursable Costs.

9.2 Certificates

On or before the date on which insurance must be provided, each party shall furnish certificates of insurance to the other party evidencing the insurance required pursuant to this Agreement. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

9.3 Payment of Deductible Amounts

Notwithstanding which party hereto shall have purchased, or been responsible for the purchase of, any insurance in respect of the Project or otherwise referred to in this Agreement, The Operator shall promptly pay to The Owner any deductible amount related to any claim against or other cost to The Owner covered under any such insurance policy which arose due to the gross negligence of The Operator.

10. INDEMNIFICATION AND LIABILITIES

10.1 Indemnification

(a) Indemnification by The Operator

The Operator shall indemnify, defend and hold harmless The Owner , the members thereof, and their respective officers, directors, employees, agents, Affiliates and representatives (the "The Owner Indemnified Parties"), from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of or in any way connected with, but only to the extent of, any gross negligence, fraud or willful misconduct of The Operator or anyone acting on The Operator's behalf or under its instructions, in connection with this Agreement and The Operator's obligations thereunder. Any costs or expenses incurred by The Operator pursuant to its indemnity obligations under this Section 10.1(a), including the cost of deductibles with respect to the insurance maintained by The Operator or The Owner pursuant to Article 9 or losses in excess of such insurance coverage, shall not constitute a Reimbursable Cost under this Agreement.

(b) Indemnification by The Owner

The Owner shall indemnify, defend and hold harmless The Operator, its officers, directors, employees, agents, Affiliates and representatives (the "The Operator Indemnified Parties") from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of or in any way connected with, but only to the extent of, any gross negligence, fraud or willful misconduct of The Owner or anyone acting on The Owner 's behalf or under its instructions (other than The Operator and its suppliers, subcontractors, venders, and their subcontractors and vendors and any employee or agent of the foregoing), in connection with this Agreement and The Owner 's obligations thereunder.

10.2 Environmental Liability

(a) The Operator Liability

The Operator shall not be responsible for claims directly or indirectly related to hazardous materials present at the Project before the date of this Agreement, except to the extent The Operator acted with respect to such materials in a grossly negligent manner. The Owner shall defend, indemnify and hold The Operator harmless against such claims, except to the extent such claims arise from The Operator's grossly negligent or intentional acts.

(b) The Owner Liability

The Owner shall not be responsible for claims directly related to hazardous materials at the Project arising out of the grossly negligent or intentional acts of The Operator. This provision of the Agreement shall not be construed to require The Operator to take corrective action with respect to any hazardous materials at the Project before the date of this Agreement.

(c) Governmental Actions

If action is required at the Project to comply with any applicable environmental laws during the term of this Agreement, The Owner (with The Operator's assistance) shall be responsible for the costs of compliance. Costs for such compliance action shall only be incurred by The Operator only with The Owner's prior written consent, unless a governmental authority requires The Operator to incur such costs and expenses prior to obtaining such written consent.

11. LIMITATIONS OF LIABILITY

11.1 Limitations Of Liability

(a) Consequential Damages

Notwithstanding any provision in this Agreement to the contrary, The Operator and The Owner each agree not to assert against the other any claim, demand or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Agreement, and each party hereto waives any such claim, demand or suit against the other in connection with this Agreement.

(b) Damages Limited to Annual Operating Fee

The aggregate liability of The Operator (except for those claims that are subject to the provisions of Section 10.1(a) (*Indemnification by The Operator*) or covered by the insurance set forth in Article 9, and then only to the extent such claims are actually covered thereby, after giving effect to any deductibles, exclusions, limits, or self-insured retentions thereunder) with respect to claims of The Owner arising out of the performance or nonperformance of obligations under this Agreement. The Operator's liability shall in no event

exceed, during any Contract Year, the Annual Operating Fee payable to The Operator during such Contract Year plus the amount necessary to satisfy The Operator's indemnification responsibilities under Article 10.

(c) Personal Liability Limited

The Operator and The Owner each understand and agree that there shall be absolutely no personal liability on the part of any of the members, partners, officers, employees, directors, agents, authorised representatives or Affiliates of The Owner or The Operator for the payment of any amounts due hereunder, or performance of any obligations hereunder. The Operator shall look solely to the assets of The Owner for the satisfaction of each and every remedy of The Operator in the event of any breach by The Owner . The Owner shall look solely to the assets of The Operator for the satisfaction of each and every remedy of The Owner in the event of any breach by The Operator.

(d) Survival

The parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorised representatives, and affiliates of such party.

(e) Exclusivity

The provisions of this Agreement constitute The Operator's and The Owner 's exclusive liability, respectively, to each other, and The Operator's and The Owner 's exclusive remedy, respectively, with respect to the Services to be performed hereunder and The Owner hereby releases The Operator performing Services hereunder, and The Operator hereby releases The Owner performing its obligations hereunder, from any further liability.

12. CONFIDENTIALITY

12.1 The Operator

The Operator agrees to hold in confidence for a period of [## INSERT PERIOD OF CONFIDENTIAL TREATMENT] from the date of disclosure, any information supplied to The Operator by The Owner or others acting on its behalf. The Operator further agrees, to the extent requested by the supplier of such information, to require its subcontractors, vendors, suppliers and employees to enter into appropriate nondisclosure agreements relative to such information, prior to the receipt thereof.

12.2 The Owner

The Owner agrees to hold in confidence for a period of [## INSERT PERIOD OF CONFIDENTIAL TREATMENT] from the date of disclosure, any information supplied to The Owner by The Operator or others acting on its behalf, provided that The Owner may disclose such information as is required by Lenders (including their agents and advisors), provided Lenders enter into appropriate nondisclosure agreements. The Owner further agrees, to the extent requested by the supplier of such information, to require its members and contractors to enter into such appropriate nondisclosure agreements relative to such information, prior to their receipt thereof.

12.3 Exceptions

The provisions of this Article shall not apply to information that was in the public domain, was already in the receiving party's possession, or was received lawfully and free of any obligation to treat it as confidential.

12.4 Required Disclosure

If a receiving party or any of its respective representatives is required by applicable law to disclose any of the information that is otherwise required to remain confidential pursuant to this Article 12, the receiving party will notify the other party promptly in writing so that the other party may seek a protective order or other appropriate remedy (which the receiving party will not oppose), or, in the other party's sole discretion, waive compliance with the terms of this Agreement.

13. TITLE, DOCUMENTS AND DATA

13.1 Materials and Equipment

Title to all materials, equipment, tools, supplies, consumables, spare parts and other items purchased or obtained by The Operator on a Reimbursable Cost basis hereunder shall pass immediately to and vest in The Owner upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect The Operator's obligations as set forth in this Agreement.

13.2 Documents

All materials and documents prepared or developed by The Operator, its employees, representatives or contractors in connection with the Project or performance of the Services, including all manuals, data, drawings, plans, specifications, reports and accounts, shall become The Owner's property when prepared, and The Operator, its agents, employees, representatives, or contractors shall not use such materials and documents for any purpose other than performance of the Services, without The Owner's prior written approval. All such materials and documents, together with any materials and documents furnished to The Operator, its agents, employees, representatives, or contractors by The Owner, shall be delivered to The Owner upon expiration or termination of this Agreement and before final payment is made to The Operator.

13.3 Review by The Owner

All materials and documents referred to in Section 13.2 hereof shall be available for review by The Owner or Lenders (including their agents or advisors) at all reasonable times during development and promptly upon

completion. All such materials and documents required to be submitted for approval by The Owner shall be prepared and processed in accordance with the requirements and specifications set forth in the Administrative Procedures Manual. However, The Owner's approval of materials and documents submitted by The Operator shall not relieve The Operator of its responsibility for the correctness thereof or of its obligation to meet all requirements of this Agreement.

13.4 Proprietary Information

Where materials or documents prepared or developed by The Operator or its agents, employees, representatives or contractors contain proprietary information, systems, techniques, or know-how acquired from third parties by The Operator or others acting on its behalf, such persons or entities shall retain all rights to use or dispose of such information, provided, however, that The Owner shall have the right to the same to the extent necessary for operation or maintenance of the Project.

14. RESOLUTION OF DISPUTES

14.1 Resolution Through Discussions

If any dispute or difference of any kind (a "Dispute") arises between The Owner and The Operator in connection with, or arising out of, this Agreement, The Owner and The Operator within 30 days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of The Owner and The Operator shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within 5 Business Days, the Dispute shall be referred within 2 Business Days of the lapse of the 5 Business Day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of The Owner and The Operator have had at least 5 Business Days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this section, either party may deliver notice to the other party of its intent to submit the Dispute to arbitration ("Arbitration Notice"). The Arbitration Notice shall include the specific issues concerning the Dispute which must be resolved by the arbitration.

14.2 Arbitration

Any Dispute arising out of, or in connection with, this Agreement and not settled by the procedure prescribed in Section 14.1, shall (regardless of the nature of the Dispute) be finally settled in accordance with UNCITRAL Rules of International Arbitration for a single arbitrator.

14.3 Continued Performance

During the pendency of any arbitration, The Operator and The Owner shall continue to perform their obligations under this Agreement.

15. ANTI BRIBERY AND ANTI CORRUPTION CLAUSES

In the event that this contract was procured, facilitated, awarded and/or otherwise generated through corrupt or other improper practices, in whole or in part, it will be deemed to be void ab initio.

16. MISCELLANEOUS PROVISIONS

16.1 Assignment

Neither The Owner nor The Operator party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto, except that this Agreement may be assigned by The Owner without such prior consent to any successor of The Owner , to a person or entity acquiring all or substantially all of the Project, or to a Lender or any purchaser of the Project upon the exercise of remedies under a Project Agreement by a Lender. The Operator hereby consents to the assignment by The Owner of a security interest in this Agreement to Lenders. The Operator further agrees to execute documentation to evidence such consent reasonably required by the Lenders typical for project finance. The Operator recognises that such consent may grant certain rights to such Lenders, which shall be fully described in the consent documents.

16.2 Access to Project

(a) The Owner

The Owner, Lenders and their respective agents and representatives shall have access at all times to the Project and any documents, materials and records and accounts relating to Project operations for purposes of inspection and review. Upon the request of The Owner , Lender or their respective agents and representatives, The Operator shall make available to such persons or entities and provide them with access to any operating data and all operating logs.

(b) Cooperation

During any such inspection or review of the Project, each of The Owner, Lender and their respective agents and representatives shall use its reasonable commercial efforts to cause authorised visitors to comply with The Operator's safety and security procedures and to conduct such inspection and review in a manner which causes minimal interference with The Operator's activities. The Operator agrees to cooperate fully with The Owner , Lender and their respective agents and representatives in providing requested information and documentation for the support of any financial or legal transactions associated with the Project.

16.3 Force Majeure

If either The Owner or The Operator is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder,

- (i) Promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimise its effect; and
- (ii) Uses its reasonable commercial efforts to remedy its inability to perform.

The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

16.4 Amendments

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorised representatives of both parties.

16.5 Survival

Notwithstanding any provisions herein to the contrary, the obligations set forth in Articles 7, 10, 12 and 14, and the limitations of liabilities set forth in Article 11, shall survive in full force despite the expiration or termination of this Agreement.

16.6 No Waiver

It is understood and agreed that any delay, waiver or omission by The Owner or The Operator with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by The Owner or The Operator of any subsequent breach or default of the same or other required performance on the part of The Owner or The Operator.

16.7 Notices

16.7.1 All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address or fax number set forth in this Section 15.8 or at such other address or fax number as hereafter specified as provided in this Section 15.8.

16.7.2 All Notices shall be:

- (i) Delivered personally; or
- (ii) Sent by fax, electronic mail, telegraph, registered or certified mail (return receipt requested and postage prepaid); or
- (iii) Sent by a nationally recognised overnight courier service.

16.7.3 Notices shall be deemed to given:

- (A) When transmitted if sent by fax, electronic mail, or telegraph (provided the transmittal is confirmed); or
- (B) Upon receipt by the intended recipient if given by any other means.

16.7.4 Notices shall be sent to the following addresses:

To The Operator:

[## INSERT NAME OF OPERATION AND MAINTENANCE FIRM]

[## INSERT ADDRESS OF OPERATION AND MAINTENANCE FIRM]

To The Owner :

[## INSERT NAME OF OWNER FIRM]

[## INSERT ADDRESS OF OWNER FIRM]

16.8 Fines and Penalties

If during the term of this Agreement any governmental or regulatory authority or agency assesses any fines or penalties against The Operator or The Owner arising from The Operator's failure to operate and maintain the Project in accordance with applicable Laws without The Owner 's prior written consent, such fines and penalties shall, subject to the limitations set forth in Article 11, be the sole responsibility of The Operator and shall not be deemed a Reimbursable Cost.

16.9 Representations and Warranties

Each party represents and warrants to the other party that:

- (a) Such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;
- (b) To the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organisational requirement of such party; and
- (c) There are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

16.10 Counterparts

The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

16.11 Governing Law

This Agreement is executed and intended to be performed in [## INSERT COUNTRY OF PROJECT] and the laws of country shall govern its construction, interpretation and effect.

16.12 Partial Invalidity

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest

of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

16.13 Captions

Titles or captions of Sections contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

16.14 Dollar Amounts

All amounts of money in this Agreement are denominated in the currency of [## INSERT CURRENCY OF AGREEMENT] (written as [## INSERT CONVENTIONAL NOTATION]).

16.15 Vendor's Warranties

For The Owner 's benefit, The Operator shall obtain from sellers of equipment, material, or services (other than the Services), warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable, and, to the extent of any such warranties actually obtained, The Owner releases The Operator from any further liability arising in respect of such equipment, material or services (other than the Services) to the extent such liability is covered by any such warranty. The Operator itself shall not be liable for any such warranties, or for any defects or damage caused by such equipment, material or services (other than the Services). Upon The Owner 's request, The Operator agrees to take such steps as are necessary, short of litigation, to enforce said warranties. Each such warranty shall be enforceable by The Owner for The Owner 's benefit or assignable by The Operator to The Owner without any further action or consent by or on the part of any third party. Unless otherwise requested, The Operator shall administer such warranties and immediately notify The Owner of any defects discovered or suspected that may be covered by such warranties. When requested, The Operator shall assign any such warranty to The Owner and assist The Owner with the administration and enforcement of such warranty, or, if such warranty is not assignable to The Owner , assist The Owner with the administration and enforcement of such warranty.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorised officers as of the date set forth in the preamble to this Agreement.

[Legal Name of The Owner]

By:

Name:

Title:

[Legal Name of The Operator]

By:

Name:

Title:

APPENDIX A: SCOPE OF SERVICES

THE OPERATOR SHALL PERFORM EACH OF THE SERVICES LISTED IN THIS APPENDIX A IN ACCORDANCE WITH THE STANDARDS REQUIRED UNDER SECTION 3.2 OF THE AGREEMENT.

The specific obligations of The Operator will depend on the Project. The following provisions (taken from an actual contract) are illustrative and are provided to identify some of the possible areas of coverage and show the level of detail that may be appropriate.

I. Programs

In addition to those responsibilities described in the Agreement, The Operator shall be responsible for the establishment and implementation of the following programs, standards and procedures, which require The Owner approval, and which are included in the "Services" to be provided by The Operator.

- A. *The program for establishing specific operating goals for each functional Project area, for managing resources to minimise personnel turnover, and for qualifying personnel, to operate and maintain the Project (including the basis for qualification of personnel).*
- B. *The program for communicating and cooperating with The Owner and governmental agencies.*
- C. *The Project management standards for conduct of operations, Project safety, conduct of maintenance, housekeeping, material condition, and records management.*
- D. *The program for preparing supporting documentation, meter readings and information necessary to accurately prepare, justify and support monthly invoices in accordance with the terms and conditions of the Project Agreements.*
- E. *Developing the procedures used to operate the Project as well as monitoring, evaluating, and proposing revisions to such procedures.*
- F. *The Project operations and monitoring program which provides the requirements for:*
 - 1. *Monitoring of Project Performance*
 - 2. *Monthly Project Performance Calculations and Report*
 - 3. *Monthly Fuel Consumption Calculations and Report*
 - 4. *Project Permitting and Environmental Reporting*
 - 5. *Shift Routines / Operating Practices*
 - 6. *Control of Equipment*
 - 7. *Project Chemistry Control and Water Treatment*
 - 8. *Training Programs*
 - 9. *The Operator Qualifications*
 - 10. *Operating Procedures*
 - 11. *Status of Major Equipment*
- G. *The maintenance program which provides the requirements for:*

1. *Maintenance Planning*
 2. *Maintenance Procedures*
 3. *Preventive Maintenance*
 4. *Predictive Maintenance*
 5. *Maintenance Training*
- H. *The materials management program which provides the requirements for:*
1. *Procuring Materials and Tools*
 2. *Inventory Levels and Control*
 3. *Renewal of Inventories*
- I. *The diagnostic testing program for maintaining the Project and Project equipment, including both system and component level testing.*
- J. *The housekeeping / cleanliness program which provides the requirements for:*
1. *Hazardous Material Control*
 2. *General Project Cleanliness*
 3. *Equipment Condition Inspections*
 4. *Hazardous Waste Program*
- K. *The problem assessment program which provides the procedure for determining the cause(s) of operational or equipment failures and preventing future failures through recommended improvements, including justification for such recommendations (i.e., basis of recommendation and economic analysis).*
- L. *The records management program for maintaining the traceability and documentation of Project performance.*
- M. *The Project safety program which provides the requirements for establishing:*
1. *Safety Monitoring*
 2. *Accident Prevention Program*
 3. *Accident Reporting*
- N. *Monthly and yearly reporting systems of Project performance to The Owner .*
- O. *The security program for maintaining the security of the Project and surrounding area.*

II. *Specific Requirements*

The Operator's scope of Services is based on the Project design as described in certain of the Project Agreements, the Project Operating Manuals, vendor manuals and design drawings. The Operator will prepare Annual Project Operating Plans, which, in part, will define the operation's procedural requirements for the Project to meet the requirements of the Project Agreements. The Operator, as part of the Services, is responsible for:

- A. *Providing such trained personnel as is reasonably necessary to operate and maintain the Project and provide the Services set forth in this Agreement.*
- B. *Operating and maintaining the Project in accordance with the approved Annual Project Operating Plan.*
- C. *Submitting an Annual Project Operating Plan. Not later than ninety (90) days prior to the first day of each Contract Year, The Operator will submit an Annual Project Operating Plan to The Owner. In addition to the requirements set forth in Section 6.2 (Annual Operating Budget and Plan), the Annual Project Operating Plan will detail maintenance, outage, and overhaul schedules, Project staffing, known capital and expense budget items, operating plans, and will provide the underlying assumptions used in developing the proposed budgets and anticipated availability for the period. The Owner will review and approve the Annual Project Operating Plan. Such approval will become the basis for reimbursement under the Annual Budget.*
- D. *Planning and managing on-site operations and maintenance activities, including:*
 - 1. *Assuring that operational goals and operating plans are consistent with the Annual Project Operating Plan.*
 - 2. *Assuring that the Project is operated in accordance with this Agreement and in a safe, reliable, efficient, and prudent manner.*
 - 3. *Assuring that operations and maintenance personnel are trained and qualified for their assigned responsibilities and tasks, and that such qualification is maintained.*
 - 4. *Assuring that the Project meets contract, regulatory, and environmental requirements set forth in the Project Agreements or otherwise identified by The Owner or The Operator.*
 - 5. *Managing and controlling costs consistent with budget requirements.*
 - 6. *Planning, scheduling and managing work and maintenance activities.*
 - 7. *Defining and documenting operational technical requirements.*
 - 8. *Defining and delineating responsibilities between The Operator and The Owner and identifying reporting requirements.*
 - 9. *Establishing labour relations and personnel programs that will meet state and federal requirements and encourage employee retention.*
 - 10. *Maintaining a current inventory of materials and procuring all services, spare parts, operational materials, consumables, office equipment, tools and shop equipment, or any other items or materials required to operate or maintain the Project. The Operator will identify required items, cost, quantity and need date. The cost of any item or service shall be reimbursed by The Owner in accordance with this Agreement.*
 - 11. *Controlling outages, both planned and unplanned, by using detailed and integrated plans and schedules, and resource management.*

12. *Maintaining Project performance levels by using routine system and component performance testing.*
 13. *Maintaining a file of preplanned outage-related work to allow for efficient use of any forced outage downtime.*
 14. *Establishing open purchase order or contract agreements with Project equipment vendors, industrial suppliers, jobbers, and maintenance contractors in accordance with Project Agreements to ensure timely response to Project maintenance needs.*
 15. *Promptly notifying The Owner in writing of any teardowns and overhauls of major equipment or capital improvements that The Operator believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements.*
- E. *Performing certain tasks, duties, responsibilities and obligations assigned to The Owner under the Interconnection Agreements, including, but not limited to, the following:*
1. *Performing routine surveillance of all equipment routinely used to communicate with the System The Operator.*
 2. *Notifying the System The Operator of any routine maintenance activities which will require clearance from the System The Operator.*
 3. *Providing the System The Operator and The Owner 's Customers with all required information regarding the Project's availability.*
 4. *Responding to dispatch orders from the System The Operator and The Owner 's Customers.*
 5. *Monitoring and adjusting the reactive output of the generators to maintain transmission voltage levels within the capability of the Project's generators.*
 6. *Responding to and correcting generator dynamic instability in accordance with instructions from the System The Operator.*
- F. *Execution or oversight of routine preventive maintenance ("PM") activities in accordance with Prudent Utility Practice, including, without limitation:*
1. *Lubrication Checks*
 2. *Cleaning / Flushing*
 3. *Preservation*
 4. *Fluid Changes and Replacement*
 5. *Visual Inspections*
 6. *Operational Monitoring*
 7. *Vibration Analysis*
 8. *Chemical Analysis (water testing)*
 9. *Trend Analysis*
 10. *Calibration*
 11. *Measurements*

12. *Adjustments*
 13. *Hydrostatic Tests*
 14. *Lube Oil Analysis (sampling only)*
 15. *Replacement of Wear / Sacrificial Parts*
 17. *Resistance Testing*
- G. *Execution or oversight of routine corrective maintenance ("CM") activities in accordance with Prudent Utility Practices to troubleshoot, inspect, and repair the equipment upon identification and detection of certain conditions, including without limitation:*
1. *Physical fault conditions such as:*
 - a. *Blocked / stopped flow*
 - b. *Fractures / break / breaches*
 - c. *Cracks*
 - d. *Distortion / displacement*
 - e. *Corrosion / discoloration*
 2. *Out of specification conditions such as:*
 - a. *High / low flow, pressure, temperature, or chemistry*
 - b. *Off voltage*
 - c. *Out of limits / adjustments*
 - d. *Erratic output*
 - e. *Intermittent / spurious operation*
 - f. *Failure to control / hold*
 - g. *High / low output*
 - h. *Improper timing*
 3. *Demand fault conditions such as failure to:*
 - a. *Start / run / operate*
 - b. *Stop*
 - c. *Open*
 - d. *Close*
 - e. *Move / release / respond*
 4. *Abnormal characteristics such as:*
 - a. *Overheating*
 - b. *Noise*
 - c. *Vibration*
 - d. *Chatter*
 - e. *False response*
 5. *Leakage conditions such as:*
 - a. *Leakage to surrounding environment*

b. Leakage past seats / stems / packing / seals

CM activities not requiring equipment shutdown shall be performed as soon as possible and in order of priority. CM activities requiring equipment shutdown shall be performed when equipment is removed from service.

H. The PM and CM activities will be inventoried and performed on a system-by-system basis and shall apply to the following equipment types:

- 1. Circuit Breakers (all types)*
- 2. Batteries (all types)*
- 3. Electric Heaters*
- 4. Heat Tracing*
- 5. Blowers*
- 6. AC Motors (synchronous / induction)*
- 7. DC Motors (synchronous / induction)*
- 8. Valves (all types)*
- 9. Valve The Operators (air / motor / hydraulic)*
- 10. Control Relays (AC / DC)*
- 11. Transformers*
- 12. Controllers*
- 13. Recorders*
- 14. Transmitters*
- 15. Switches (all types)*
- 16. Dampers*
- 17. Fans / Compressors*
- 18. Heat Exchangers*
- 19. Radiators*
- 20. Pumps*
- 21. Filters / Strainers*
- 22. Air Dryers*
- 23. Tanks / Vessels*
- 24. Pipe / Pipe Fittings / Pipe Supports*
- 25. Combustion Turbines*
- 26. Generators*

I. Performing such other tasks and services which The Owner may reasonably request from time to time in connection with operation of the Project.

APPENDIX B: REIMBURSABLE COSTS

- A. Reimbursable Cost items shall be paid to The Operator in accordance with the requirements of Articles 5 and 7.

Reimbursable Costs include:

1. Labour costs, including allowances for payroll, taxes, bonuses and benefits
2. Spare and replacement parts
3. All material, tools and equipment necessary to operate and maintain the Project
4. Chemicals
5. Lubricants (including proper disposal costs)
6. Specialised instrumentation and calibration equipment
7. Rigging and handling equipment
8. Consumables and general supplies
9. Cleaning Supplies
10. Shop equipment installed in Project
11. Authorised leased equipment
12. Specialised test and calibration equipment
13. Major equipment overhauls
14. Building repairs and maintenance (not caused by contractors under the Project Agreements)
15. Insurance costs in accordance with Section 9.1(d)
16. Taxes (excluding income) required to be paid by The Operator
17. Costs related to training of plant personnel
18. Consultants' fees and expenses, if incorporated in the Annual Budget or otherwise approved in advance by The Owner.
19. Contract Services, if incorporated in the Annual Budget or otherwise approved in advance by The Owner.

- B. The following will be Reimbursable Costs when specifically related to Project support:

1. Office supplies
2. Office equipment and furniture
3. Telephone and other communication service charges
4. Freight and express mail charges
5. Janitorial, cleaning, and groundskeeping services

All Services by The Operator that support Project activities and all Reimbursable Costs shall be approved by The Owner , through the Annual Budget or otherwise, prior to implementation by The Operator.

APPENDIX C: NOTICE AND COMMUNICATION PROTOCOLS

[This Appendix of notification and communication protocols should incorporate any processes beyond those defined in Section 15.8 for Notices required by the Agreement and for other communications between The Owner and The Operator. The protocols should include primary and alternate contact information. The protocols should also define the procedures for The Operator's communication and dealings with certain third parties on The Owner's behalf, as may be required under various other Project Agreements or if The Operator is required to act as agent for The Owner.]