



RESOLUTION NO. 2018 – 04

**RELATIVE TO APPROVAL OF THE PHASE II RENEWABLE ENERGY
ACQUISITION AWARD TO HANWHA ENERGY CORPORATION
FOR 60 MW OF RENEWABLE ENERGY CAPACITY**

WHEREAS, in May 2016 GPA announced GPA Multi-Step Bid No: GPA- 070-16 for 60MW of Renewable Energy Resource capacity with ESS for ramp control; and

WHEREAS, in January 2017 GPA obtained the price bids and Hanwha Energy Corporation is one of the two (2) lowest responsive bidders with having two proposals for 30MW solar PV projects totaling 60 MW of solar PV capacity with ESS for ramp control; and

WHEREAS, Hanwha Energy Corporation provided \$62.45/MWH & \$65.99/MWH price proposals (first year) for the energy and ramp controls to include interconnection costs. **Exhibit A** provides a summary of the energy price proposals; and

WHEREAS, GPA evaluates bidder's price proposal against GPA's variable operating costs primarily made up of fuel costs; and

WHEREAS, GPA has determined that Hanwha Energy Corporation proposals would provide substantial savings to GPA over the term of the contracts based on current and projected LEAC rates (**Exhibit B**); and

WHEREAS, GPA considers renewable energy as an effective hedge against rising fuel oil prices; and

WHEREAS, the bid prices proposed are an excellent fuel hedge as the bidders' energy prices are fixed with escalations no more than 1% annually for all proposals. **Exhibit C** summarizes GPA historical LEAC; and

WHEREAS, renewable energy is sustainable energy and good for the island; and

WHEREAS, Public Law 29-62 sets renewable goals under the Renewable Portfolio Standards (RPS); and

27 **WHEREAS**, the award of 120MW contracts including KEPCO-LG CNS Mangilao Solar,
28 LLC 60 MW project is projected to increase GPA's ratio of renewable energy to sales up to 26% by
29 2020. **Exhibit D & E** is a projected RPS outlook; and

30 **WHEREAS**, Hanwha Energy Corporation has concurred with GPA recommendations from
31 the system impact study which is incorporated in the contract documents; and

32 **WHEREAS**, GPA would like to proceed with an approval to award Hanwha Energy
33 Corporation a total of 60MW of renewable energy capacity contract subject (the "Agreement") to
34 PUC approval.

35 **WHEREAS**, the Agreement, in the unexecuted form attached hereto as **Exhibit F**, has been
36 reviewed by the CCU.

37 **WHEREAS**, this (Agreement shall be effective on the Effective Date as defined therein
38 provided that the obligations of the parties thereunder shall be subject to the satisfaction of the
39 following conditions precedent:

- 40 (i) Receipt by GPA of a final, non-appealable approval of this Agreement by the Guam
41 Public Utilities Commission ("PPA Approval");
- 42 (ii) Execution of the Interconnection Agreement by the Parties;
- 43 (iii) Receipt by GPA of a final, non-appealable approval of the Interconnection
44 Agreement (ICA) by the Guam Public Utilities Commission ("ICA Approval"); and

45 **WHEREAS**, Title 12 of the Guam Code Annotated, Chapter 8, Section 8306 provides that
46 the Guam Power Authority may enter into alternate energy agreements to develop alternate energy
47 or to purchase alternate energy only if all of the following conditions are met:

- 48 (a) Local funds of the government of Guam or the Guam Power Authority Funds may
49 be used to develop alternate energy sources (including power generated from
50 windmills, solar ponds and Ocean Thermal Energy Conversion) as may be later,
51 appropriated by the Legislature or approved by law for that specific purpose.
- 52 (b) Any power produced or sold from alternate energy sources (including power
53 generated from windmills, solar ponds and Ocean Thermal Energy Conversion
54 (OTEC) cannot be purchased by Guam Power Authority or the government of Guam
55 at a cost greater than the average cost of producing power found in the Islandwide
56 Power System (not inclusive of backup diesel generators), specifically the two
57 Cabras Units, the two Tanguisson Units, and the Piti Power Plant.

- 58 (c) No contract may be signed by the government of Guam or the Guam Power
59 Authority to develop or purchase power from alternate energy sources (including
60 power generated from windmills, solar ponds and Ocean Thermal Energy
61 Conversion), if such contract will result in increased expenses and costs for the
62 Guam Power Authority. No such alternate energy contract may be signed until the
63 board of directors of the Guam Power Authority has so certified that the agreement
64 is consistent with all bond covenants and that the price paid for electricity pursuant
65 to the agreement does not exceed actual current avoided cost.
- 66 (d) For so long as the Navy Power Pool Agreement is in effect, neither the Guam Power
67 Authority nor the government of Guam may contract to purchase any power
68 generated from alternate energy source (including power generated from windmills
69 and solar ponds and Ocean Thermal Energy Conversion) without giving the United
70 States Navy prior written notification.
- 71 (e) Any contract to purchase alternate energy (including power generated from
72 windmills and solar ponds and Ocean Thermal Energy Conversion) must provide
73 that any loss or damage to the Islandwide Power System, Guam Power Authority
74 and the U.S. Navy or to consumers as a result of or proximately caused by the
75 negligence of alternate energy supplier or by the quality of alternate energy supplied
76 will be borne solely by the alternate energy supplier who will hold Guam Power
77 Authority and the government of Guam harmless.
- 78 (f) All interface facilities to provide usable alternate energy (including power generated
79 from windmills, solar ponds and Ocean Thermal Energy Conversion) shall be
80 installed and maintained at the expense of the supplier of alternate energy. Any such
81 interconnections shall be at existing lines owned and operated by the Islandwide
82 Power System, and such interfaces shall be subject to the engineering standards and
83 approval set by the Guam Power Authority.
- 84 (g) Any contract to purchase alternate energy (including power generated from
85 windmills, solar ponds and Ocean Thermal Energy Technology) must provide that
86 neither the government of Guam nor the Guam Power Authority shall be obligated to
87 purchase electrical power not needed by the Guam Power Authority.

88

89

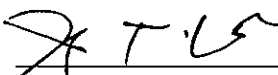
90 **NOW, THEREFORE, BE IT RESOLVED, by the CONSOLIDATED COMMISSION**
91 **ON UTILITIES, the GOVERNING BODY of the GUAM POWER AUTHORITY as**
92 **FOLLOWS:**

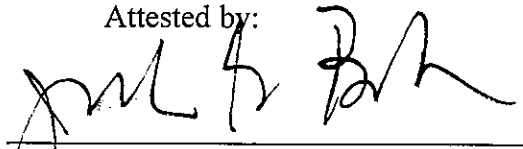
- 93 1. The CCU authorizes GPA to petition the PUC for approval to award Phase II Renewable
94 Acquisition Bid of two 30MW proposals totaling 60MW to Hanwha Energy Corporation as
95 required under the PUC Procurement Protocol.
- 96 2. The CCU authorizes GPA to contract Hanwha Energy Corporation for renewable energy
97 subject to PUC approval.
- 98 3. The CCU certifies and confirms that the requirements of 12 GCA Section 8306 as set forth
99 above are met and satisfied in connection with the Agreement as follows:
- 100 a. The requirements of 12 GCA Section 8306(a) are satisfied in connection with the
101 Agreement in that GPA, pursuant to the provisions of Public Law 30-66 (as codified
102 in Title 12 of the Guam Code Annotated, Section 8104(n)) and other applicable laws,
103 is authorized to enter into the Agreement, together with any other agreement to be
104 entered into by the parties in connection therewith, and perform all the obligations
105 imposed upon GPA as set forth therein, including, without limitation, the obligation
106 to purchase Renewable Energy as defined in the Agreement and pay all amounts due
107 and owing under the terms of the Agreement. No separate and specific appropriation
108 or approval by *Liheslaturan Guahan* is required for such purpose.
- 109 b. The requirements of 12 GCA Section 8306(b) and (c) are satisfied in connection
110 with the Agreement in that the CCU hereby certifies that the Agreement and the
111 purchase of Renewable Energy by GPA at the time of the execution of the
112 Agreement pursuant to the terms therein will not result in (A) costs to GPA which
113 exceed the average cost of producing power under the Islandwide Power System
114 owned and operated by GPA not inclusive of energy production from any backup
115 diesel generators or other renewable energy sources, or (B) increased expenses and
116 costs for GPA. Further, the CCU hereby certifies that the Agreement is consistent
117 with and does not violate any and all bond covenants applicable to and imposed
118 upon GPA and that the price to be paid by GPA for Renewable Energy as provided
119 therein does not exceed GPA's actual current avoided cost.
- 120 c. The requirements of 12 GCA 8306(d) are not applicable with regard to the
121 Agreement since GPA is not a party to a pooling agreement or any other agreement
122 with the United States Department of Navy or any other federal agency, department
123 or instrumentality ("Federal Government) which requires GPA to notify or obtain the
124 approval of the Federal Government of this Agreement as contemplated.

- 125 d. The requirements of 12 GCA Section 8306(e) are satisfied as the Agreement
126 contemplates that the Hanwha entity executing the Agreement is obligated to
127 indemnify and hold harmless GPA from any loss or damage to the Islandwide Power
128 System as a result of or proximately caused by such entity or by the quality of
129 alternate energy supplied.
- 130 e. The requirements of 12 GCA Section 8306(f) are satisfied as the Agreement and any
131 interconnection agreements executed in connection therewith provide that all
132 interface facilities to provide the Renewable Energy shall be installed and
133 maintained at the expense of the Hanwha entity thereunder and that any such
134 interconnections shall be at existing lines owned and operated by the Islandwide
135 Power System, and such interfaces shall be subject to the engineering standards and
136 approval set by GPA.
- 137 f. The requirements of 12 GCA Section 8306(g) are satisfied in connection with the
138 Agreement as any and all Renewable Energy to be purchased by GPA pursuant to
139 the terms of the Agreement constitute electrical power needed and required by GPA
140 in connection with the operation and stability of the Islandwide Power System and in
141 order to meet renewable energy portfolio standards which GPA is mandated to
142 achieve and satisfy by law including without limitation, the mandates as set forth in
143 Public Law 29-062 as codified in Title 12 of the Guam Code Annotated, Section
144 8311.
145

146 **RESOLVED**, that the Chairman certifies and the Board Secretary attests to the adoption of
147 this Resolution.

148 **DULY AND REGULARLY ADOPTED AND APPROVED THIS 27TH DAY OF**
149 **FEBRUARY 2018.**

150
151 Certified by:
152
153 
154 _____
155 **JOSEPH T. DUENAS**
156 Chairperson
157 Consolidated Commission on Utilities
158

151 Attested by:
152
153 
154 _____
155 **J. GEORGE BAMBA**
156 Secretary
157 Consolidated Commission on Utilities
158

160
161 **I, J. George Bamba**, Secretary for the Consolidated Commission on Utilities (CCU), as
162 evidenced by my signature above do certify as follows:
163 The foregoing is a full, true, and accurate copy of the resolution duly adopted at a regular
164 meeting of the members of Guam Consolidated Commission on Utilities, duly and legally held
165 at a place properly noticed and advertised at which meeting a quorum was present and the
166 members who were present voted as follows:

167
168 Ayes: 5
169 Nays: 0
170 Absent: 0
171
172 Abstain: 0
173
174



EXHIBIT A
Summary of Bid Proposals

Contract Year	Proposal 1			Proposal 2		
	Annual Price (\$/MWH)	Guaranteed Net Annual Generation (MWH/YR)	MicroGrid Operations Fixed Annual Fee	Annual Price (\$/MWH)	Guaranteed Net Annual Generation (MWH/YR)	MicroGrid Operations Fixed Annual Fee
1	\$ 62.45	72,005.00	\$ 1,287,082	\$ 65.99	72,005.00	\$ 1,287,082
2	\$ 63.08	71,831.00	\$ 1,264,710	\$ 66.65	71,831.00	\$ 1,264,710
3	\$ 63.71	71,245.00	\$ 1,244,969	\$ 67.32	71,245.00	\$ 1,244,969
4	\$ 64.35	70,865.00	\$ 1,225,229	\$ 67.99	70,865.00	\$ 1,225,229
5	\$ 64.99	70,485.00	\$ 1,206,804	\$ 68.67	70,485.00	\$ 1,206,804
6	\$ 65.64	70,306.00	\$ 1,188,380	\$ 69.36	70,306.00	\$ 1,188,380
7	\$ 66.30	69,724.00	\$ 1,171,271	\$ 70.05	69,724.00	\$ 1,171,271
8	\$ 66.96	69,344.00	\$ 1,155,479	\$ 70.75	69,344.00	\$ 1,155,479
9	\$ 67.63	68,693.00	\$ 1,139,686	\$ 71.46	68,693.00	\$ 1,139,686
10	\$ 68.31	68,780.00	\$ 1,123,894	\$ 72.17	68,780.00	\$ 1,123,894
11	\$ 68.99	68,202.00	\$ 1,108,101	\$ 72.89	68,202.00	\$ 1,108,101
12	\$ 69.68	67,821.00	\$ 1,093,625	\$ 73.62	67,821.00	\$ 1,093,625
13	\$ 70.37	67,440.00	\$ 1,079,149	\$ 74.36	67,440.00	\$ 1,079,149
14	\$ 71.08	67,252.00	\$ 1,064,672	\$ 75.10	67,252.00	\$ 1,064,672
15	\$ 71.79	66,678.00	\$ 1,051,512	\$ 75.85	66,678.00	\$ 1,051,512
16	\$ 72.51	66,296.00	\$ 1,038,352	\$ 76.61	66,296.00	\$ 1,038,352
17	\$ 73.23	65,915.00	\$ 1,025,191	\$ 77.38	65,915.00	\$ 1,025,191
18	\$ 73.96	65,722.00	\$ 1,012,031	\$ 78.15	65,722.00	\$ 1,012,031
19	\$ 74.70	65,151.00	\$ 998,871	\$ 78.93	65,151.00	\$ 998,871
20	\$ 75.45	64,770.00	\$ 987,026	\$ 79.72	64,770.00	\$ 987,026
21	\$ 76.21	64,388.00	\$ 975,182	\$ 80.52	64,388.00	\$ 975,182
22	\$ 76.97	64,190.00	\$ 963,338	\$ 81.33	64,190.00	\$ 963,338
23	\$ 77.74	63,623.00	\$ 951,493	\$ 82.14	63,623.00	\$ 951,493
24	\$ 78.52	63,241.00	\$ 939,649	\$ 82.96	63,241.00	\$ 939,649
25	\$ 79.30	62,859.00	\$ 927,805	\$ 83.79	62,859.00	\$ 927,805

EXHIBIT B
Proposal Evaluation Summary

CASE	Description	Project Size	5 Year Projected Savings On Current LEAC (\$115/MWH)	5 Year Projected Savings on Projected LEAC
1	Hanwha Energy Corporation Proposal 1&2 (60MW)	60 MW	\$ 22,820,053	\$ 44,934,650

Contract Year	Year 1	Year 2	Year 3	Year 4	Year 5	TOTALS
Hanwha Proposal 1 Energy Rate (\$/MWH)	62.45	63.08	63.71	64.35	64.99	
Energy Guarantee (MWH)	72,005	71,831	71,245	70,865	70,485	
Hanwha Proposal 2 Energy Rate (\$/MWH)	65.99	66.65	67.32	67.99	68.67	
Energy Guarantee (MWH)	72,005	71,831	71,245	70,865	70,485	
Hanwha Microgrid Operations Option	\$ 2,574,164	\$ 2,529,420	\$ 2,489,938	\$ 2,450,458	\$ 2,413,608	
Phase II Energy Costs	\$ 11,822,486	\$ 11,848,056	\$ 11,825,170	\$ 11,828,732	\$ 11,834,633	\$ 59,159,077
Current LEAC Rate (\$/MWH)	115	115	115	115	115	
Current Energy Costs	\$ 16,561,150	\$ 16,521,130	\$ 16,386,350	\$ 16,298,950	\$ 16,211,550	\$ 81,979,130
Proposed Savings	\$ 4,738,664	\$ 4,673,074	\$ 4,561,180	\$ 4,470,218	\$ 4,376,917	\$ 22,820,053

Year	2019	2020	2021	2022	2023	TOTALS
Projected LEAC Rate* (\$/MWH)	122.27	140.02	154.63	154.03	159.65	
Current Energy Costs	\$ 17,608,221	\$ 20,115,743	\$ 22,033,092	\$ 21,830,945	\$ 22,505,726	\$ 104,093,728
Proposed Savings	\$ 5,785,735	\$ 8,267,687	\$ 10,207,922	\$ 10,002,213	\$ 10,671,093	\$ 44,934,650

STRATEGIST CASE SUMMARY

	Base Case (No Phase II)	Case 1 (60MW)	SAVINGS
Present Value Utility Cost ³ (\$000)	6,896,417	6,662,844	233,572

Notes:

1. The Current LEAC is used in this case evaluation to demonstrate minimum savings potential with \$115/MWH LEAC rate presently proposed for next LEAC period.
2. Projected LEAC is based on STRATEGIST software output that analyzes generation costs for various generation resources and its operating characteristics. This LEAC is based on load and fuel forecasts done by LEIDOS in 2016.
3. Present Value Utility Cost is an evaluation of generation operating costs in the STRATEGIST software. This is used to determine cost impact of generation resources and their operation variables (efficiency, fuel costs, capacity, etc.) based on energy requirements.

EXHIBIT C
Historical LEAC Summary

EFFECTIVE DATES	FUEL RECOVERY RATE (\$ per Kwh)
10/01/00	0.053613
04/01/01	0.053613
10/01/01	0.048625
04/01/02	0.042901
10/01/02	0.048831
04/01/03	0.048831
10/01/03	0.062333
04/01/04	0.059753
10/01/04	0.059753
01/01/00	0.073010
01/01/00	0.088918
01/01/00	0.098589
02/01/07	0.108893
08/13/07	0.123957
03/01/08	0.150467
06/01/08	0.170440
10/01/08	0.187750
12/01/08	0.171050
02/01/09	0.157630
05/01/09	0.136450
08/01/09	0.129670
02/01/10	0.150460
08/31/10	0.124650
02/01/11	0.161530
08/01/11	0.192220
02/01/12	0.191980
04/01/12	0.192310
02/01/13	0.209271
08/01/13	0.182054
02/01/14	0.172986
08/01/14	0.176441
11/01/14	0.146666
02/01/15	0.102054
08/01/15	0.104871
02/01/16	0.086613
08/01/16	0.086613
02/01/17	0.105051
08/01/17	0.115725

EXHIBIT D

Projected Renewable Energy & Renewable Portfolio Standards (RPS) for 120 MW Phase II Award

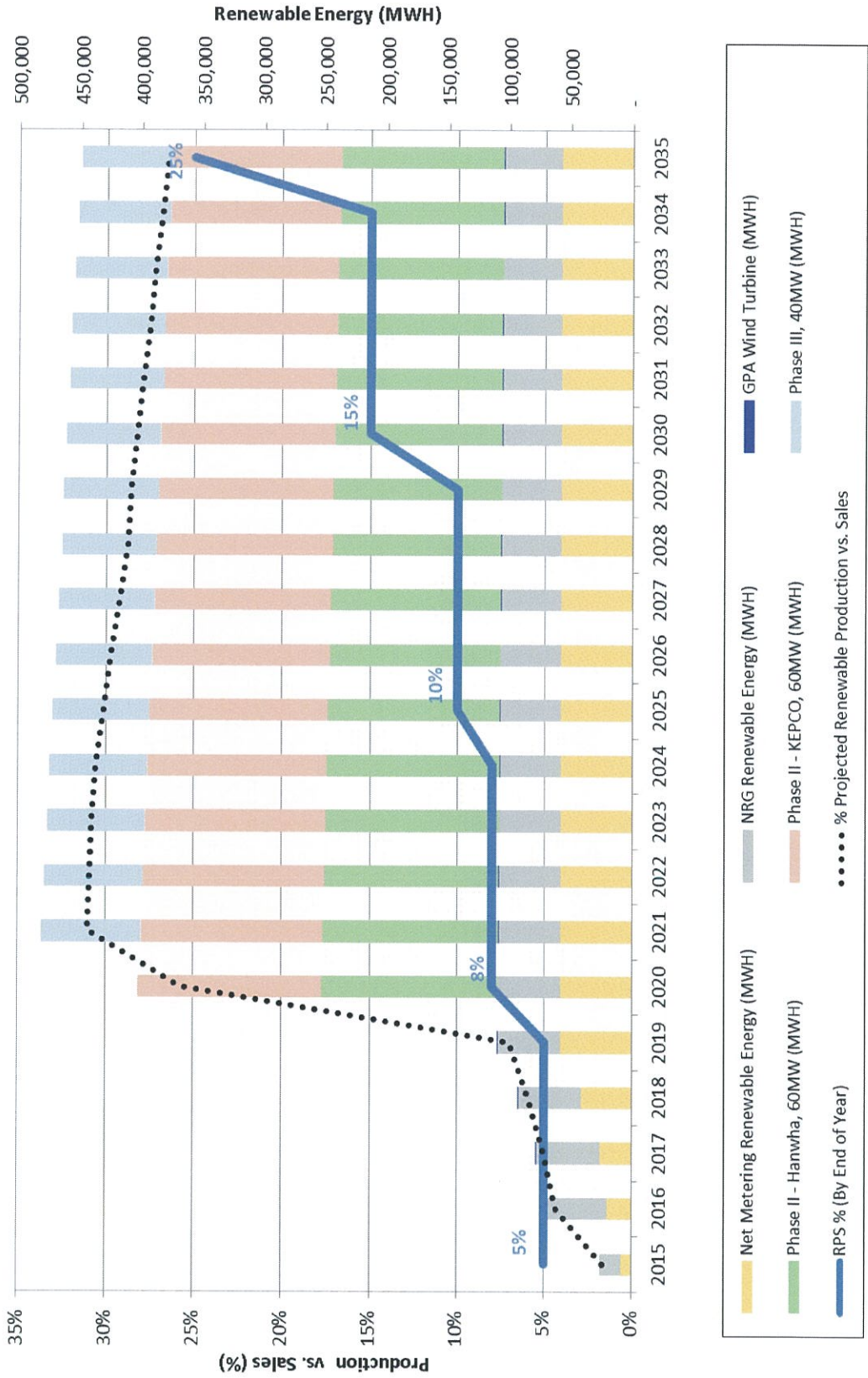
	Net Metering Renewable Energy (MWH)	NRG Renewable Energy (MWH)	GPA Wind Turbine (MWH)	Phase II - Hanwha, 60MW (MWH)	Phase II - KEPCO, 60MW (MWH)	Phase III, 40MW (MWH)	Total Renewable Production (MWH)	GPA Total Sales (MWH)	% Projected Renewable Production vs. Sales	RPS % (By End of Year)
2015	8,034	17,597					25,630	1,536,927	2%	5%
2016	19,559	48,221	474				68,253	1,584,685	4%	5%
2017	25,271	51,627	482				77,380	1,546,044	5%	5%
2018	40,393	51,412	482				92,287	1,554,108	6%	5%
2019	57,629	51,133	482				109,244	1,557,331	7%	5%
2020	57,629	50,992	482	144,010	149,085		402,198	1,558,272	26%	8%
2021	57,629	50,601	482	143,662	147,949	80,510	480,834	1,547,800	31%	8%
2022	57,629	50,393	482	142,490	147,209	80,175	478,377	1,544,574	31%	8%
2023	57,629	50,083	482	141,730	146,468	79,740	476,131	1,544,540	31%	8%
2024	57,629	49,781	482	140,970	146,118	79,520	474,499	1,550,854	31%	8%
2025	57,629	49,599	482	140,612	144,986	78,911	472,219	1,566,472	30%	10%
2026	57,629	49,391	482	139,448	144,245	78,585	469,780	1,577,646	30%	10%
2027	57,629	49,122	482	138,688	143,504	78,102	467,527	1,597,005	29%	10%
2028	57,629	48,987	482	137,386	143,146	77,631	465,262	1,614,448	29%	10%
2029	57,629	48,612	482	137,560	142,023	77,348	463,654	1,620,517	29%	10%
2030	57,629	48,411	482	136,404	141,282	77,023	461,230	1,631,977	28%	15%
2031	57,629	48,147	482	135,642	140,541	76,604	459,045	1,644,069	28%	15%
2032	57,629	48,017	482	134,880	140,175	76,393	457,577	1,661,486	28%	15%
2033	57,629	47,649	482	134,504	139,059	75,808	455,131	1,670,464	27%	15%
2034	57,629	47,451	482	133,356	138,319	75,495	452,731	1,684,195	27%	15%
2035	57,629	47,191	482	132,592	137,578	75,083	450,555	1,698,373	27%	25%

Notes:

1. Sales is from 2016 forecast for 2017-2035 (LEIDOS Jan. 2016 Forecast)
2. Net Metering projection is from LEIDOS Forecast for 2017 thru 2019 and fixed thereafter
3. NRG (Phase I) production is based on contract guarantees from 2017 thru 2035
4. Phase II is based on Project Guarantees for **120MW**. Phase III renewable projections are based NRG contract guarantees.
5. GPA wind turbine assumes average capacity factor since commissioning (20%) from 2017 thru 2035
6. DSM values are not included.

EXHIBIT E

Renewable Portfolio Standards (RPS) Tracking Projection thru 2035



GPA Contract No. _____

**RENEWABLE ENERGY
PURCHASE AGREEMENT**

**BETWEEN
GUAM POWER AUTHORITY
AND**

[HANWHA ENERGY CORPORATION]¹

¹ Please note that it is expected that Hanwha Energy Corporation will establish a special-purpose entity to execute the PPA

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**RENEWABLE ENERGY
PURCHASE AGREEMENT
BETWEEN
GUAM POWER AUTHORITY
AND
[HANWHA ENERGY CORPORATION]²**

THIS RENEWABLE ENERGY PURCHASE AGREEMENT (the "Agreement"), effective as of last date set forth on the signature page hereto (the "Effective Date"), is entered into by and between and Guam Power Authority, ("GPA" or "Buyer") and [Hanwha Energy Corporation]³, a _____ ("Seller"). The purpose of this Agreement is to establish the terms and conditions under which Seller shall sell and GPA shall purchase Renewable Energy and associated Renewable Energy Credits, as defined herein. In this Agreement, Seller and GPA may be individually referred to as a "Party" or collectively as "Parties."

Recitals

WHEREAS, Seller desires to sell to GPA at the Delivery Point a portion of the Renewable Energy and associated RECs from the Facility and GPA desires to buy the same from the Seller at the Delivery Point.

WHEREAS, on the date hereof, Seller and GPA have entered into a Renewable Energy Purchase Agreement as to the remaining capacity of the Facility (the "Additional PPA").

Therefore, for good and valuable consideration, including, without limitation, the covenants and agreements of the Parties contained in this Agreement, the receipt and sufficiency of which consideration is acknowledged, the Parties agree as follows:

ARTICLE ONE: DEFINITIONS

The following definitions apply to this Agreement:

1.1 "Actual Renewable Energy" means the actual output of the Facility (expressed in MWhs), measured at the Delivery Point, including all Renewable Energy and all Stored Energy, over any Production Measurement Period. Actual Renewable Energy shall be measured by the Seller Metering Equipment, and adjusted as applicable in accordance with Section 7.4.

1.2 "Affiliate" means, with respect to any party, any other party (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 "Annual Facility Test" has the meaning set forth in Section 4.9.

1.4 "Annual Microgrid Payment" means, as to each Contract Year, the amount set forth in Appendix A.

1.5 "Appraisal Price" means the average of three (3) appraisals of the market value of the Facility at the end of the Delivery Term, delivered by three (3) independent appraisers qualified by experience and expertise to

² Please note that it is expected that Hanwha Energy Corporation will establish a special-purpose entity to execute the PPA

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determine the arm's length market value of the Facility. If the Parties do not agree on the independent appraisers then they shall be determined by arbitration in accordance with Section 12.9.

1.6 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such valid petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.7 "Bid Security" or "Bid Bond" means the \$150,000.00, which is the amount of the security provided by Seller in connection with its initial bid to GPA for the Project.

1.8 "Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday or an official Guam holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the Notice or payment or delivery is to be received.

1.9 "Buyout Payment" means, with respect to Seller's election not to re-build the Facility pursuant to Section 12.2, an amount equal to: Minimum Production x the number of Contract Years (or portion thereof) remaining in the Delivery Period x Incremental Price

1.10 "Change Event" has the meaning set forth in Section 4.16(c).

1.11 "Charging Energy" means Renewable Energy generated by the Facility and used to charge the Microgrid Unit as contemplated in Appendix C.

1.12 "Claiming Party" has the meaning set forth in Section 4.9.

1.13 "Claims" means all claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise.

1.14 "COD Extension" has the meaning set forth in Section 4.2(a).

1.15 "COD Extension Payment" has the meaning set forth in Section 4.2(a).

1.16 "Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Good Utility Practices, including, without limitation, electric system reliability and stability or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. "Commercially Reasonable" or "Commercially Reasonable Efforts" shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

1.17 "Commercial Operation" has the meaning set forth in Section 4.1.

1.18 "Commercial Operation Date" or "COD" means the date that Commercial Operation of the Project has been achieved in accordance with Section 4.1.

1.19 "Confidential Information" means all information, whether written or oral, that is disclosed or otherwise available in connection with this Agreement or the performance by either Party of any of its duties hereunder, except any information which: (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement); (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Confidential Information, provided that such source is not bound by a confidentiality agreement that protected the Confidential Information; or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Agreement.

1.20 "Contract Price" means the price in U.S. Dollars (unless otherwise provided for) rounded to the nearest \$0.01, to be paid by GPA to Seller for the purchase of the Renewable Energy, as described in Appendix A.

1.21 "Contract Year" means the annual period, beginning on the Commercial Operation Date, and renewing thereafter on each anniversary of the Commercial Operation Date.

1.22 "Conventional Energy Resource" is an energy resource that is non-renewable in nature, such as natural gas, coal, oil, and uranium, or electricity that is produced with energy resources that are not Renewable Energy resources.

1.23 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties.

1.24 "Cure Plan" has the meaning set forth in Section 4.7.

1.25 "Daily Delay Liquidated Damages" has the meaning set forth in Section 4.2(b).

1.26 "Defaulting Party" has the meaning set forth in Section 6.1.

1.27 "Deficiency Amount" has the meaning set forth in Section 4.8

1.28 "Delivery Period" means the period of delivery under this Agreement, commencing on the Commercial Operation Date and continuing for the Term, as such period may be extended in accordance with this Agreement.

1.29 "Delivery Point" means the point at which the Renewable Energy (including Stored Energy) will be delivered and received, as specified in Section 2.1 herein, or such other delivery point as may be agreed to by the Parties in writing.

1.30 "Development Security" means the security deposit during construction of the renewable project or facility prior to Commercial Operation Date. The Development Security shall be 50% of the total projected payment for the 1st contract year based on the contractor's 1st Contract Year energy rate and the guaranteed energy production. Refer to Section 9.1 for additional requirements.

1.31 "Dispatch Down" means any curtailment is initiated by GPA for reasons other than Force Majeure or Seller Event of Default.

1.32 "Early Termination Date" has the meaning set forth in Section 6.2.

1.33 "Effective Date" means the date first set forth above.

1.34 "Eligible Renewable Energy Resources" are applications of the following defined technologies that displace Conventional Energy Resources that would otherwise be used to provide electricity to GPA's customers: biogas electricity generator, biomass electricity generator, fuel cell that use only renewable fuels, geothermal

generator, hybrid wind and solar electric generator, landfill gas generator, solar electricity resources, wind generator and such other generally accepted renewable energy resources.

1.35 "Emergency" means any abnormal interconnection or system condition (including, without limitation, equipment or transmission limitations and constraints caused by thermal limits, stability, voltage, or loop flows) that Buyer determines in accordance with Good Utility Practices): (a) requires automatic or immediate manual operation to prevent or limit loss of Buyer's system or generation supply; (b) could adversely affect the reliability of the Buyer system or generation supply; (c) could adversely affect the reliability of any interconnected electric system; or (d) could otherwise pose a threat to public safety.

1.36 "End Date" has the meaning given in Section 12.1(b).

1.37 "Environmental Attributes" means environmental characteristics that are attributable to Renewable Energy, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Credits; greenhouse gas or emissions reductions, credits, offsets, allowances or benefits; actual SO₂, NO_x, CO₂, CO, Carbon, VOC, PM₁₀, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of Renewable Energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Such Environmental Attributes shall be expressed in kWh or, as applicable in the case of emissions credits, in tonne equivalent or other allowance measurement. Environmental Attributes does not include Tax Benefits, or any energy, capacity, reliability, or other power attributes used by Seller to provide electricity services.

1.38 "EPC Contractor" means the contractor(s) under the engineering, procurement and construction contract for the Project.

1.39 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.40 "Event of Default" has the meaning set forth in Section 6.1.

1.41 "Excused Hours" means the hours in the applicable Production Measurement Period (i) in which Seller has declared Force Majeure, (ii) during any Planned Outage or Forced Outage but subject to an aggregate maximum of six hours per Contract Year; (ii) in which Seller has initiated a Dispatch Down or (iii) in which Seller's delivery to GPA of Renewable Energy is adversely affected as a result of failure by GPA to perform its obligations under this Agreement or the Interconnection Agreement or in which GPA does not accept delivery of Renewable Energy for any reason.

1.42 "Facility" means all of the following: the Project, as defined in Section 2.1 of this Agreement, the purpose of which is to produce Renewable Energy including the Microgrid Unit, Seller's Interconnection Facilities and all equipment and other tangible assets, land rights and contract rights reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Renewable Energy being sold under this Agreement.

1.43 "Facility Capacity" has the meaning set forth in Section 2.1.

1.44 "Facility Test" has the meaning set forth in Section 4.1(e).

1.45 "Facility Debt" means the obligations of Seller or its Affiliates to any Facility lender, tax equity investor or other financing party pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, reimbursement obligations regarding letters of credit, obligations under financing leases, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging obligations and breakage costs and any claims or interest due with respect to any of the foregoing. Facility Debt does not include trade debt or obligations incurred in the ordinary course of business.

1.46 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.47 "Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing or a tax equity investment for the Facility (including any portfolio debt financing of which the Facility is included), including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller and/or its Affiliates in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

1.48 "Forced Outage" means the shutdown or unavailability of the Facility, or a portion thereof other than as a Planned Outage, for reasons including, but not limited to, unanticipated equipment breakdown, human error, or Emergency conditions. A Forced Outage shall not include any Outage that may be deferred consistent with Good Utility Practices and without causing safety risk damage to equipment or additional costs.

1.49 "Forced Outage Notice" has the meaning set forth in Section 4.12(b).

1.50 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Transaction, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a "Force Majeure" event may include, but shall not be limited to, any act of God, an act or threatened act of the public enemy, blockade, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to, or adjuncts of, shipping or navigation, perils of the sea, air crash, shipwreck, train wrecks or other failures or delays of transportation, nuclear emergency, radioactive contamination, ionizing radiation, release of hazardous waste or materials, sabotage, invasion, riot, civil disturbance or disobedience, flood, drought, military ordinances or archaeological discoveries at the Project site, change in applicable law or interpretation or application thereof, failure or delay by any Governmental Authority in issuing or granting any required clearance, approval, arrangement, or permit, an earthquake, storm, fire, flood, tidal wave, storm, wind, explosion or any similar cataclysmic occurrence, lightning, epidemic, war (imminent, declared or otherwise), terrorism or riot. Notwithstanding the foregoing, Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Renewable Energy purchased hereunder; (iii) the loss or failure of Seller's supply, including materials or equipment, unless such loss or failure is caused by a Force Majeure event (iv) the delay in or inability of Seller to obtain financing or economic hardship of any kind; or (v) Seller's ability to sell the Renewable Energy at a price greater than the Contract Price or Buyer's ability to purchase the Renewable Energy at a price less than the Contract Price; or (vi) strike or other labor dispute. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a transmission provider unless (i) such Party has contracted for firm transmission with a transmission provider for the Renewable Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the transmission provider's tariff.

1.51 "Force Majeure Extension" has the meaning set forth in Section 4.2(c).

1.52 "Good Utility Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods, or acts.

1.53 "Governmental Authority" means any federal, territorial or local government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

1.54 "Governmental Charges" has the meaning set forth in Section 10.2.

1.55 "GPA Delay" means any delay by GPA in performing an obligation under this Agreement or under the Interconnection Agreement which results in a delay to Seller achieving COD. A GPA Delay is not an Event of Default unless it is otherwise so designated in this Agreement.

1.56 "Guaranteed Output" has the meaning given in Section 4.8.

1.57 "Incremental Price" means, at the time of its calculation, the LEAC Rate minus the Contract Price, provided, however, if the LEAC Rate is less than the Contract Price then the Incremental Price shall be deemed to be zero. Sample calculations of the Incremental Price are shown in Schedule III to Appendix K.

1.58 "Independent Engineer" shall mean one of the engineering firms set forth in Appendix D hereto, and any other independent engineer or engineering firm, nationally recognized in the United States and having knowledge and expertise in the United States generation industry (including specifically the design and construction of utility scale solar photovoltaic power projects), and which is mutually agreed to by the Parties.

1.59 "Interconnection Agreement" means the agreement for interconnection service relating to the Facility between GPA and Seller, executed and delivered as of the Effective Date in the form attached hereto as Appendix J.

1.60 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.61 "kWh" means kilowatt hour.

1.62 "LEAC Rate" means the "Fuel Recovery Charge" (expressed in US\$/MWh) as set forth in GPA's most recent approved tariff in effect as of any date of determination of the LEAC Rate under this Agreement.

1.63 "Letter(s) of Credit" means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's, in substantially the form set forth in Appendix [F-1] hereto; provided, however that such form may be modified by the issuing bank as long as such modifications are acceptable to the beneficiary in its sole discretion. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.64 "Merger Event" means, with respect to a Party, that such Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder unless such credit support is replaced by the resulting, surviving or transferee entity in accordance with this Agreement.

1.65 "Minimum Production" has the meaning set forth in Section 4.8.

1.66 "Month" means a calendar Month. The term "Monthly" shall have a meaning correlative to a Month.

1.67 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.68 "MW" or "MWh" means megawatt or megawatt hour, in each case rounded to the nearest whole MW or MWh.

1.69 "NAR" means the North American Renewables Registry.

1.70 "NAR Operating Procedures" means any and all guidelines, procedures, requirements and obligations established by the NAR, including the terms of use, operating procedures, and fee schedules, as such may be amended from time to time.

1.71 "Non-Defaulting Party" has the meaning set forth in Section 6.

1.72 "Notice" has the meaning set forth in Section 12.7.

1.73 "Outage" means the period during which the Facility or a portion thereof is out of service.

1.74 "Outside Commercial Operation Date" has the meaning set forth in Section 4.2(b).

1.75 "Payment and Performance Bond" means one or more payment and performance bonds issued by an insurance company or other institution having an investment grade Credit Rating from S&P, Moody's or Fitch, in substantially the form set forth in Appendix [F-2] hereto; provided, however that such form may be modified by the issuing entity as long as such modifications are acceptable to the beneficiary in its sole discretion.

1.76 "Planned Outage" means any Outage that is not a Forced Outage, and refers to the shutdown or unavailability of the Facility or a portion thereof for inspection or maintenance in accordance with an advance schedule.

1.77 "Production Measurement Period" has the meaning set forth in Section 4.8.

1.78 "Project" has the meaning set forth in Section 2.1.

1.79 "QRE" means the Qualified Reporting Entity as such term is defined in the NAR Operating Procedures.

1.80 "Quantity" means the actual quantity of Renewable Energy (including Stored Energy) sold by Seller and purchased by and delivered to GPA pursuant to this Agreement. The Quantity shall be measured based on the metered data from the Seller Metering Equipment at the Delivery Point.

1.81 "Renewable Energy" means energy derived from a Renewable Energy Resource.

1.82 "Renewable Energy Credit" or "REC" means the unit created to track kWh derived from an Eligible Renewable Energy Resource or kWh equivalent of Conventional Energy Resources displaced by distributed renewable energy resources if and to the extent recognized under applicable law.

1.83 "Renewable Energy Resource" means an energy resource that is replaced rapidly by a natural, ongoing process and that is not nuclear or fossil fuel.

1.84 "Replacement Price" means the price at which GPA, acting in a Commercially Reasonable Manner, purchases electricity in place of Renewable Energy.

1.85 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.86 "SCADA" means "supervisory control and data acquisition" and shall refer to that category of software application program that can be used to gather data from the Facility remotely in real time in order to monitor Facility equipment and conditions.

1.87 "Schedule," "Scheduled" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, of notifying, requesting and confirming to each other the quantity and type of Renewable Energy (including Stored Energy) to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

- 1.88 “Scheduled Commercial Operation Date” has the meaning set forth in Section 4.2(a).
- 1.89 “Seller Failure” has the meaning set forth in Section 5.1.
- 1.90 “Seller Failure Damages” has the meaning set forth in Section 5.1.
- 1.91 “Seller’s Interconnection Facilities” means Seller’s equipment as specified in the Interconnection Agreement.
- 1.92 “Seller Metering Equipment” means all metering equipment and data processing equipment used to measure the Quantity delivered to the Delivery Point.
- 1.93 “Shortfall Damages” has the meaning set forth in Section 4.8.
- 1.94 “Sponsor Interest” means an upstream ownership interest held by an entity that is an Affiliate of the Seller as of the Effective Date which represents a partial indirect ownership interest in Seller and which is established in connection with a tax equity financing.
- 1.95 “Microgrid Unit” means the energy storage unit to be installed by Seller as part of the Facility, as contemplated in Appendix C.
- 1.96 “Stored Energy” means Charging Energy stored in the Microgrid Unit which is later delivered to the Delivery Point as contemplated in Appendix C.
- 1.97 “Tax Benefits” means any and all tax benefits arising from the ownership and operation of the Facility, including without limitation Renewable Energy related tax credits or other benefits established under Section 45 and Section 48 of the Internal Revenue Code, as amended, or any similar or successor provision of the Internal Revenue Code, or any other applicable tax law, regulation, or code.
- 1.98 “Tax Equity Investor Interest” means an upstream ownership interest held by a financing party (including a financial institution, insurance company or other third party not affiliated with the Seller except based on the applicable tax equity investment or other similar investments or financings) as of the Effective Date which represents a partial indirect ownership interest in Seller and which is established in connection with a tax equity financing.
- 1.99 “Term” has the meaning set forth in Section 12.1.
- 1.100 “Termination Damages” has the meaning set forth in Section 4.4.
- 1.101 “Test Energy” means non-firm Renewable Energy generated prior to the Commercial Operation Date, subject to immediate interruption, fluctuations or reduction/increase with no prior Notice, due to unit performance.
- 1.102 “Transaction” means the transaction relating to the purchase or sale of Renewable Energy as contemplated in this Agreement.
- 1.103 “Unit Contingent” means that the Renewable Energy (excluding Charging Energy but including Stored Energy) is intended to be supplied from the Facility as it is produced.
- 1.104 “Weather Hours” means the total hours in any Production Measurement Period, as applicable, in which the Facility is derated as a result of cumulative weather conditions which are outside historical average conditions for any applicable Month during the Production Measurement Period in which the deration occurs, calculated in accordance with Appendix K.

ARTICLE TWO: COMMERCIAL TERMS

2.1 Commercial Terms.

The following commercial terms apply to the Transaction that is the subject of this Agreement, each as more fully described herein:

Buyer: GPA	Seller: Hanwha Energy Corporation
Project: Hanwha Project A	
Delivery Point: The "Point of Interconnection" as defined in the Interconnection Agreement	
Guaranteed Annual Production (MWhs): As set forth in Appendix A	Estimated Annual Production: (MWhs): NOT APPLICABLE
Guaranteed Availability (%): NOT APPLICABLE	Guaranteed Capacity (MWs): NOT APPLICABLE
Delivery Period: Twenty-five (25) years from the Commercial Operation Date	Contract Price (\$/MWh): See Appendix A
Renewable Energy Type: Unit Contingent (solar) and associated RECs	Development Security: As contemplated in Section 9.1
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Chamorro Standard Time (CHST), Guam time
Commercial Operation Date: No later than 36 months after Effective Date.	
Test Energy: Seller agrees to sell and Buyer agrees to purchase all Test Energy from the Facility. The test period shall be up to six (6) months. The price of such Test Energy for the first thirty days shall be the current LEAC Rate. The price thereafter shall be the Year 1 Contract Price set out in Appendix A. Test Energy shall be delivered in accordance with the Scheduling provisions contained herein. Both Parties agree that Seller will use Commercially Reasonable Efforts to pre-schedule the Test Energy, but Buyer shall nonetheless be obligated to accept all Test Energy up to 22.5 MW per hour of Test Energy for the period set forth above. Seller shall provide to Buyer all RECs associated with the Test Energy sold hereunder in accordance with Section 4.16.	

ARTICLE THREE: REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties.

On the Effective Date of this Agreement, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) It has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement (other than permits or regulatory authorizations to be obtained by Seller for the construction, operation or maintenance of the Facility, which Seller reasonably anticipates it will be able to obtain in due course);
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses.
- (d) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (e) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (f) No Event of Default or potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and
- (g) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

3.2 Seller Representations and Warranties.

Seller affirmatively represents and warrants to GPA that:

- (a) On the Effective Date of this Agreement, or in due course as required in accordance with the Financing Arrangement Deadline (as may be extended as provided in Section 4.3), Seller has (or reasonably expects to have in due course), good defensible title, or valid and effective leasehold rights in the case of leased property, to the Facility, free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens, charges, claims, pledges, security, interests, equities and encumbrances relating to Facility Debt as provided for herein, or liens that in the aggregate do not materially detract from or interfere with the ability of Seller to deliver the Quantity of the Renewable Energy;
- (b) All acts necessary to the valid execution, delivery and performance of this Agreement by Seller have or will be taken and performed as required under Seller's ordinances, bylaws, or other regulations including, but not limited to (i) the valid authority of the person

executing this Agreement to bind Seller and (ii) the Term of this Agreement does not extend beyond any limitation applicable to Seller imposed by relevant governing documents and applicable law; and

- (c) Seller will have at the time of sale, title to and ownership of the RECs sold hereunder.

3.3 GPA Representations and Warranties.

GPA represents and warrants that:

- (a) The Commission on Consolidated Utilities has made all certifications required by the Guam Public Utilities Commission and the Guam legislature in order for the valid execution, delivery and performance of this Agreement by GPA copies of which are attached hereto as Appendix L.
- (b) Each of the PPA Approval and the ICA Approval is final, non-appealable and not subject to rehearing or other proceedings challenging its validity or enforceability.
- (c) No authorizations, approvals or consents of any governmental or regulatory authority or agency or any other person, and no filings or registrations with any governmental authority or agency, are necessary for the execution, delivery or performance by GPA of this Agreement, or for the validity or enforceability thereof, except for any authorizations, approvals, consents or filings which have been made or obtained prior to the date hereof and are in full force and effect and are conclusive, binding and final.
- (d) During the entire Term of the Agreement, all terms and conditions set forth in this Agreement shall be valid and enforceable against GPA.
- (e) All legal, statutory and regulatory requirements and conditions necessary for the validity and enforceability of this Agreement and the obligations of GPA hereunder to purchase Renewable Energy, including, without limitation, the conditions and requirements as set forth in Title 12 of the Guam Code Annotated, Section 8306, have been satisfied, and at the time of the execution of the Agreement GPA further represents and warrants specifically as to the following: **NOTE TO GPA: GPA IS TO ENSURE THE RESOLUTIONS OF THE CCU ATTEST TO THE MATTERS SET FORTH BELOW.**
 - (i) Pursuant to the provisions of Public Law 30-66 (as codified in Title 12 of the Guam Code Annotated, Section 8104(n)), GPA is authorized to enter into this Agreement, together with any other agreement to be entered into by GPA and Seller as provided herein, and perform all the obligations imposed upon GPA as set forth herein, including, without limitation, the obligation to purchase Renewable Energy and pay all amounts due and owing to the Seller under the terms of this Agreement, and that no separate and specific appropriation or approval by *Liheslaturan Guahan* is required for such purpose.
 - (ii) This Agreement and the purchase of Renewable Energy by GPA at the time of the execution of the Agreement pursuant to the terms herein will not result in (A) costs to GPA which exceed the average cost of producing power under the islandwide power system owned and operated by GPA not inclusive of energy production from any backup diesel generators or other renewable energy sources, and (B) increased expenses and costs for GPA.
 - (iii) As set forth in the resolutions attached hereto as Appendix L, the Consolidated Commission on Utilities has certified that this Agreement is consistent with and does not violate any and all bond covenants applicable to and imposed upon

GPA and that the price to be paid by GPA for Renewable Energy as provided herein does not exceed GPA's actual current avoided cost.

GPA is not a party to a pooling agreement or any other agreement with the United States Department of Navy or any other federal agency, department or instrumentality ("Federal Government) which requires GPA to notify or obtain the approval of the Federal Government of this Agreement.

- (iv) Any and all Renewable Energy to be purchased by GPA pursuant to the terms of this Agreement constitutes electrical power needed and required by GPA in connection with the operation and stability of the islandwide power system and to meet renewable energy portfolio standards which GPA is mandated to achieve and satisfy by law including without limitation, the mandates as set forth in Public Law 29-062 as codified in Title 12 of the Guam Code Annotated, Section 8311.

ARTICLE FOUR: PERFORMANCE REQUIREMENTS

4.1 Commercial Operation.

Seller shall achieve Commercial Operation of the Project no later than the Scheduled Commercial Operation Date except to the extent such date is extended pursuant to Section 4.2, in which case Commercial Operation shall occur on or prior to the Outside Commercial Operation Date. Commercial Operation shall be achieved as of the date on which each of the following conditions precedent has been satisfied or waived in writing by the Parties, as applicable ("Commercial Operation"):

- (a) Seller shall have obtained all governmental and regulatory authorizations, including any applicable permits, required for the construction, ownership, operation and maintenance of the Project and for the sale of the Renewable Energy therefrom;
- (b) Seller and Buyer shall have entered into the Interconnection Agreement;
- (c) Seller shall have established SCADA information and real time data feed to enable GPA to view parameters or data points that relate to Renewable Energy data and other actual resource data for the Facility;
- (d) The Microgrid Unit shall be capable of charging and discharging Renewable Energy;
- (e) The Project shall in all other respects be capable of delivering the Renewable Energy to GPA at the Delivery Point;
- (f) Seller shall perform at its cost a capacity test in accordance with the protocol outlined in Appendix I to determine the capacity of the Project ("Facility Test"). GPA shall receive the entire Renewable Energy from the Facility during such test. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

GPA shall use all available Commercially Reasonable Efforts to assist Seller in achieving the Scheduled Commercial Operation Date. Seller shall present to GPA a certificate executed by its duly executed officer, and by an Independent Engineer as to items (c), (d) and (e), verifying that each of the foregoing conditions has been satisfied or waived in writing by the Parties and Commercial Operation shall be deemed to have occurred upon the delivery of such certificate to GPA unless GPA objects to such certificate within ten (10) Business Days of delivery thereof and such objections are either agreed by Seller or resolved in favor of GPA pursuant to Section 12.9 hereof. Upon any acceptance or deemed acceptance of Seller's certificate by GPA, all conditions, set forth above shall no longer be a condition precedent to Commercial Operation of the Project. If the Commercial Operation Date does not occur on or before the Outside Commercial Operation Date, as such date may be extended in accordance with Section 4.2 herein; either Party shall have the right to terminate the Agreement upon written Notice to the other Party. In the event of such termination by either Party, GPA shall be entitled to Termination Damages set forth in Section 4.4; provided, however, that in accordance with Section 4.2(c), GPA shall not be entitled to such Termination Damages if the Outside Commercial Operation Date is not achieved due to a Force Majeure event or a GPA Delay.

4.2 Extension of Commercial Operation Date.

- (a) Planned Extension. The Parties agree that the Commercial Operation Date is expected to be No later than 36 months after Effective Date. (as extended pursuant to the terms of this Agreement, the "Scheduled Commercial Operation Date"). Seller may elect to extend the Commercial Operation Date beyond such date (the "COD Extension") by paying GPA for such extension (the "COD Extension Payment"). The COD Extension Payment shall be in the amount of fifty percent (50%) of the Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year per day for

each day (or portion thereof) after but not including the date of the COD Extension until, but not including, the date on which the Project actually achieves Commercial Operation]. To extend the Commercial Operation Date, Seller must, as early as reasonably possible, but in no event later than fourteen (14) days prior to the first day of the proposed extension, provide GPA with Notice of its election to extend the Commercial Operation Date along with an estimate of the duration of the extension. The COD Extension Payment is in addition to and not to be considered part of the Development Security, and shall be paid to GPA at the time of the Notice hereunder. Seller's request to extend the Commercial Operation Date shall not be valid unless proper Notice and payment are timely received by GPA. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein, and GPA shall not have the right to terminate the Agreement or to receive Termination Damages with respect to such extension so long as Seller has provided the Notice, estimation and payment as provided in this Section 4.2(a). Seller may further extend the Commercial Operation Date beyond the original COD Extension, subject to the foregoing Notice, estimation and payment terms applicable to the original COD Extension.

Seller shall be entitled to a prompt refund, without interest, of any portion of the COD Extension Payment held by GPA which exceeds the amount required to cover the number of days by which the Commercial Operation Date was actually extended. In no event may Seller extend the Commercial Operation Date by more than ninety (90) days through the payment of the COD Extension Payment, except as provided in Section 4.2(b). In the event that the Project does not achieve Commercial Operation on or before the expiration of any COD Extension period as provided herein, either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights pursuant to Sections 4.2(b) or (c) below. In the event of such termination by either Party in accordance with this provision, GPA shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

- (b) Unplanned Extension/Additional Planned Extension. In the event that (i) the Project does not achieve Commercial Operation by the Scheduled Commercial Operation Date and Seller fails to provide sufficient Notice and/or payment in order to extend the Commercial Operation Date as provided in Section 4.2(a), or (ii) the Commercial Operation Date shall not have occurred within the ninety (90) day planned extension period provided under Section 4.2(a), then Seller may further extend the Commercial Operation Date by paying GPA damages ("Daily Delay Liquidated Damages"). The Daily Delay Liquidated Damages shall be in the amount of one hundred percent (100%) of the Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year) per day for each day (or portion thereof) after but not including the earlier of the dates set forth in sub-clauses (i) or (ii) above, or until, but not including, the date on which the Project actually achieves Commercial Operation, and shall be payable within ten (10) Business Days following receipt of an invoice from GPA for any such Daily Delay Liquidated Damages. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein and GPA shall not have the right to terminate the Agreement with respect to such extension or to receive Termination Damages so long as Seller has extended the Commercial Operation Date and pays the Daily Delay Liquidated Damages as provided in this Section 4.2(b).

In no event may the Commercial Operation Date be extended more than one hundred and eighty (180) days through the payment of Daily Delay Liquidated Damages, without the express written consent of GPA. In the event that the Project does not achieve Commercial Operation on or before three hundred and sixty-five (365) days from the Scheduled Commercial Operation Date (as extended pursuant to this Agreement, the "Outside Commercial Operation Date"), then either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights

pursuant to Section 4.2(c) below. In the event of such termination by either Party in accordance with this provision, GPA shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

- (c) Additional Extension. The Scheduled Commercial Operation Date and the Outside Commercial Operation Date shall also be extended, without payment or other penalty, on a day-for-day basis for each day of delay caused by reason of Force Majeure (a "Force Majeure Extension") or by reason of GPA Delay. Any Force Majeure Extension or GPA Delay shall also extend the period of any planned or unplanned extensions pursuant to Sections 4.2(a) or (b) on a day-for-day basis for each day during the Force Majeure Extension or GPA Delay, and Seller shall not be required to pay any COD Extension Payments or Daily Delay Liquidated Damages, as applicable, for any days during the Force Majeure Extension or GPA Delay. Notwithstanding any other provision in this Agreement, if, due solely to a Force Majeure Extension and/or a GPA Delay, the Project does not achieve Commercial Operation on or before the Outside Commercial Operation Date, then the Parties by mutual agreement may terminate this Agreement without penalty or further obligation to either Party, and after one hundred and eighty 180 days following the Outside Commercial Operation Date, either Party may unilaterally terminate this Agreement without penalty or further obligation to either Party. For the sake of clarity in the event of any such termination, GPA shall not be entitled to Termination Damages.

4.3 Financing Arrangement Deadline.

Seller shall make Commercially Reasonable Efforts to secure a financing sufficient for the successful completion of the Project as and when required and procure a preliminary agreement customary for such financing (such as an engagement letter) no later than one (1) year after the Effective Date as extended day-for-day for any Force Majeure Extension or GPA Delay (the "Financing Arrangement Deadline"). After the execution of the preliminary agreement, Seller shall provide GPA with a copy of such agreement within three (3) Business Days. In the event that Seller fails to procure the execution of a preliminary agreement by the Financing Arrangement Deadline, GPA may terminate the Agreement and shall be entitled to Termination Damages set forth in Section 4.4 as its sole and exclusive remedy.

4.4 Termination Damages.

Prior to the Commercial Operation Date, Seller may terminate this Agreement at any time for its convenience. GPA shall be entitled to termination damages, payable solely from the Bid Security or the Development Security established in Section 9.1 ("Termination Damages"), in the amounts set forth in the table below, if: (a) subject to the last sentence of this Section 4.4, Seller terminates the Agreement prior to the Commercial Operation Date for any reason other than: (i) a Force Majeure event or (ii) an Event of Default by GPA; [(b) GPA terminates the Agreement as a result of Seller failing to meet any Financing Arrangement Deadline after the passage of a grace period of thirty (30) days (as extended day-for-day for any Force Majeure Extension or GPA Delay);] and/or (c) GPA terminates the Agreement as a result of Seller failing to achieve the Commercial Operation Date on or prior to the Scheduled Commercial Operation Date, as the same may have been extended pursuant to Section 4.2. The Termination Damages are designed to help compensate GPA for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and GPA's potential failure to meet its applicable renewable energy portfolio requirements and do not constitute a penalty payment. Accordingly, Seller shall pay to GPA, from the Development Security, Termination Damages in the following amounts, based upon when the termination occurs:

Prior to Posting Date of Development Security pursuant to Section 9.1:	\$0.00
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[Up to Financing Arrangement Deadline]	100% of the Bid Security
[Up to six months following Financing Arrangement Deadline]	50% of Development Security
[From six months to twelve months following Financing Arrangement Deadline]	75% of Development Security
[From twelve months following Financing Arrangement Deadline]	100% of Development Security

No later than five (5) Business Days following the Financing Arrangement Deadline, GPA shall return the Bid Security to Seller, to the extent GPA has not validly claimed the Bid Security in respect of Termination Damages on or prior to such date. Notwithstanding the foregoing, in the event that Seller terminates this Agreement for any reason prior to the posting date for the Development Security as set forth in Section 9.1 herein, then Seller shall owe GPA no Termination Damages and such termination shall be without penalty to Seller.

4.5 Seller's and Buyer's Obligations.

Subject to Appendix H and Appendix C, Seller shall sell and deliver, or cause to be delivered, and GPA shall purchase and receive, or cause to be received, all Renewable Energy generated by the Facility (excluding Charging Energy but including Stored Energy when delivered, in each case, as set forth in Appendix C), at the Delivery Point, and GPA shall pay Seller the Contract Price for such Quantity of Renewable Energy (including Stored Energy) as measured by the Seller's Metering Equipment at the Delivery Point; provided that for quantities of Renewable Energy (including Stored Energy) in excess of the Estimated Annual Renewable Energy Amount, as shown in the third column of Appendix A, which are not make-up quantities for delivery deficiencies in prior Production Measurement Periods, the price payable by GPA shall be the lower of the Contract Price and the LEAC Rate.

For Seller's failure to deliver Renewable Energy as required hereunder, GPA's remedies shall be as set forth in Section 4.8. For GPA's failure to purchase and receive Renewable Energy (including Stored Energy) as required hereunder, Seller shall in addition have all other remedies available at law or in equity. Seller shall be responsible for any costs or charges imposed on or associated with the Renewable Energy (including Stored Energy) or its delivery up to the Delivery Point. GPA shall be responsible for any costs or charges imposed on or associated with Renewable Energy (including Stored Energy) or its receipt at and from the Delivery Point. Title to and risk of loss of Renewable Energy (including Stored Energy) from the Facility delivered to the Delivery Point shall transfer to GPA at the Delivery Point. Seller warrants that it will deliver to Buyer Renewable Energy (including Stored Energy) free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

4.6 Operation of Facility.

Seller shall operate and maintain the Facility in accordance with Good Utility Practices and in accordance with the Agreed Ramp Rate as set forth in Appendix C.

4.7 Not Used.

4.8 Minimum Production.

The Facility is expected to produce a minimum number of MWhs of Renewable Energy (including Stored Energy) each Contract Year as set forth in the third column of Appendix A (such annual MWh production is the "Minimum Production"). Seller during the Delivery Period shall (i) during any Contract Year, deliver to GPA at least ninety percent (90%) of the Minimum Production (which calculated amounts are set forth in the fourth column

of Appendix A), and (ii) for any consecutive six (6) Contract Years during the Delivery Period, deliver to GPA at least ninety-five percent (95%) of the aggregate Minimum Production during such period (which shall include make-up amounts generated and delivered in any years in excess of one hundred percent (100%) of the Minimum Production for such year) (any such time period a "Production Measurement Period" and each such guaranteed amount of delivered Renewable Energy during any Production Measurement Period, the "Guaranteed Output"). Any shortfall of Renewable Energy (expressed in MWh/year) from the applicable Guaranteed Output during a Production Measurement Period shall be deemed a "Deficiency Amount." For the avoidance of doubt, (i) Stored Energy delivered to the Delivery Point shall count towards Seller's achievement of the Minimum Production during each Production Measurement Period, and (ii) Charging Energy shall not be delivered by Seller and shall not count towards any Deficiency Amount as it is used to charge the Microgrid Unit as contemplated in Appendix C.

GPA shall be entitled to receive damages for any Deficiency Amount ("Shortfall Damages") which are not due to Excused Hours or Weather Hours (except, in the case of Weather Hours, as set forth below). Shortfall Damages shall be calculated as follows on an annual basis at the end of each Contract Year (and [in accordance with the example set forth in Schedule I to Appendix K].):

$$\text{Shortfall Damages} = \text{Deficiency Amount} \times \text{Incremental Price.}$$

For purposes of clarity, if Actual Renewable Energy (including Stored Energy) for any given Contract Year is less than the Minimum Production for that year (even if due to Excused Hours or Weather Hours), there shall be a "Shortfall," and Seller shall be entitled to deliver to GPA Renewable Energy in the amount of such Shortfall in subsequent time periods (even if such make-up amounts are in excess of the Minimum Production for such subsequent year), and this Agreement may be extended as necessary for a period of up to six (6) months to allow Seller to make up any Shortfalls; however, there shall be no Shortfall Damages owing to GPA for such individual Contract Year unless such Actual Renewable Energy is less than the Guaranteed Output for the applicable Production Measurement Period, and such shortfall is not due to Excused Hours or Weather Hours (except, in the case of Weather Hours, as set forth below).

In the event Shortfall Damages are due for a Production Measurement Period of six (6) rolling Contract Years, then such Shortfall Damages shall be reduced by the amount of any Shortfall Damages paid for any Contract Year during such six (6) year Production Measurement Period. Seller's payment of Shortfall Damages shall be Seller's sole liability and obligation, and GPA's sole right and remedy, with respect to Seller's failure to deliver the Guaranteed Output during any Production Measurement Period.

To the extent any Deficiency Amount is due to Weather Hours, Seller's sole liability and GPA's sole remedy shall be to deliver thereafter Renewable Energy equal to such Deficiency Amount attributable to Weather Hours, calculated in accordance with Appendix K (which includes a sample calculation for a hypothetical Production Measurement Period). If any portion of a Deficiency Amount due to Weather Hours is not made up in the five (5) Contract Years beginning in the first Contract Year following the Contract Year in which the Weather Hours Deficiency Amount occurred, then Seller shall pay Shortfall Damages for the remaining Deficiency Amount. Notwithstanding the foregoing, with respect to any Deficiency Amount that is due to Weather Hours, Seller shall have the option, at any time prior to the expiration of the five (5) Contract Year make-up period, to pay any remaining associated Shortfall Damages in their entirety. If the Deficiency Amount arising as a result of Weather Hours occurs in the last five (5) years of the Delivery Period, then unless Seller exercises its option to pay the Deficiency Amount early, the Delivery Period shall be extended as necessary, for a period of up to six (6) months, to achieve a make-up period of five (5) Contract Years as described above. The Contract Price for such Renewable Energy shall be the Contract Price in effect in the Contract Year in which the Deficiency Amount due to Weather Hours accrued.

Seller shall be entitled to sell, and GPA shall purchase, quantities of Renewable Energy for which Shortfall Damages are paid hereunder, during any remaining Production Measurement Period during the Delivery Period. The price therefore shall be the Contract Price in effect at the time the Shortfall Damages accrued. During any Contract Year, all Renewable Energy delivered by Seller to GPA in excess of the Minimum Production shall be credited against makeup of any outstanding Deficiency Amounts, with oldest Deficiency Amounts made up first.

To the extent any Deficiency Amount is due to Excused Hours, Seller shall be excused from any liability with respect thereto.

Notwithstanding the foregoing, in the event that the Delivery Point is unavailable for any reason other than due to GPA's electric system, Seller's obligation to supply and sell, and GPA's obligation to accept and purchase, Renewable Energy shall be limited to such Renewable Energy that is actually deliverable from the Facility to the Delivery Point during such period except this paragraph shall not apply in the case of Excused Hours or an Event of Default by either Party.

4.9 Facility Testing.

In addition to the Facility Test referenced in Section 4.1(e), the capacity of the Facility shall be tested during each Contract Year during the Delivery Period (the "Annual Facility Test"). Seller shall notify GPA of the specific date on which it intends to conduct the Annual Facility Test at least ten (10) Business Days in advance and shall permit GPA to be present at such test. GPA shall have the right to receive copies of the results of the Annual Facility Test, which shall be conducted in accordance with the protocol set forth in Appendix I. Any dispute regarding the results of the Annual Facility Test shall be resolved as set forth in Section 12.9 of this Agreement. GPA shall receive, in accordance with Section 4.5, the entire Renewable Energy from the Facility during any Annual Facility Test or re-test. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

4.10 Scheduling.

Seller agrees to supply at the Delivery Point all Renewable Energy produced by the Project, net of Renewable Energy self-generated and consumed at the Facility, and net of any generation losses prior to the Delivery Point, up to the Facility Capacity, in accordance with the scheduling and coordination procedures set out in Appendix H. GPA agrees to take at the Delivery Point all Renewable Energy tendered by Seller in accordance with the foregoing sentence. The Schedules and estimates provided pursuant to this Section 4.10 shall be made by Seller in good faith and based on information available to it at such time, but in no event shall such Schedules be binding on Seller nor shall Seller be liable for any inaccuracies in such Schedules.

4.11 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Transaction and such Party (the "Claiming Party") gives Notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due hereunder). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

4.12 Facility Outages and Maintenance Scheduling.

- (a) Planned Outages. Seller shall provide written Notice to GPA prior to conducting any Planned Outages of the Facility. Within ninety (90) days prior to the Commercial Operation Date, as the same may be extended in accordance with the provisions of Section 4.2, and on or before the first day of each subsequent Contract Year, Seller shall provide GPA with a schedule of such proposed Planned Outages. The proposed Planned Outages schedule shall be submitted electronically to GPA, using a reasonably acceptable format provided by GPA. Such format is subject to change from time-to-time during the Term of this Agreement by agreement of the Parties, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist GPA in planning for the decreased output of the Facility as a result of the Outage.

GPA shall promptly review Seller's proposed schedule and may request modifications within thirty (30) days of GPA's receipt of such schedule. Changes to the schedule may

be requested by either Party and each Party shall make Commercially Reasonable Efforts to accommodate such changes, provided further that Seller shall have no obligation to agree to GPA's proposed modifications or revisions to any Planned Outage schedule.

Notwithstanding any of the foregoing, Seller shall not commence a Planned Outage that is expected to result in an Outage of ten percent (10%) or more of the Facility without notifying GPA of the Planned Outage at least five (5) Business Days prior to the start of such Planned Outage.

- (b) Forced Outages. In the event of any Forced Outage, Seller shall promptly notify GPA of the same. Seller shall immediately notify GPA verbally and shall then, within twenty-four (24) hours thereafter, provide written Notice to GPA (the "Forced Outage Notice"). The Forced Outage Notice shall be submitted electronically to GPA, using a reasonably acceptable format provided by GPA. Such format is subject to change from time-to-time during the Term of this Agreement by agreement of the Parties, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist GPA in planning for the decreased output of the Facility as a result of the Outage. Seller shall return the Facility to service as soon as possible, consistent with Good Utility Practices, after the Forced Outage ceases to exist.
- (c) GPA Parts Inventory. To the extent GPA maintains an inventory of parts or components that are used or useful in the Facility and provided it can prudently do so under its own ordinary course operating practices and restrictions, GPA shall cooperate with Seller in a commercially reasonable manner by making such parts or components available to Seller at its request during the period of time Seller is obtaining replacement parts or components for the Facility in order to maximize output of Renewable Energy. If Seller obtains a replacement part or component from GPA, it shall at GPA's option either replace such part or component with the new part or component ordered by Seller or return the borrowed part or component to GPA at such time as Seller obtains the replacement. Seller shall bear the installation, transportation and labor charges relating to GPA's replacement parts or components, and if the parts or components are returned to GPA then Seller shall reimburse GPA for any damage to such parts or components while in Seller's possession.

4.13 Operating Status Reports.

From the Effective Date of this Agreement, through the date of Commercial Operation, Seller shall provide GPA with Monthly reports regarding material data pertaining to the operation of the Facility. The operations data is generally identified as performance, Outage, and risk data and shall be sent electronically to GPA using a reasonably acceptable format provided by GPA. The operations data report format may be modified by agreement of the Parties from time-to-time during the Term of this Agreement.

4.14 Resource Quality Reporting: Forecasting.

Seller shall provide to GPA at its request copies of non-proprietary resource quality data that could reasonably be expected to affect, in any material manner, the operation and/or productivity of the Facility, whether produced, compiled or otherwise generated by Seller or any third party in a Commercially Reasonable manner, so that GPA can evaluate the expected performance of the Facility. Seller shall provide such data as it is produced or otherwise made available to Seller. Upon Commercial Operation of the Facility, to the extent generated or procured by Seller, Seller shall also provide to GPA Monthly and day-ahead forecasting information for the Facility. Such information shall be in a format agreed to by the Parties and include, among other things: Seller's forecasts for the performance of the Facility based on Facility specifications, weather-based forecasting, and weather-related studies. Such information, which will be used by GPA solely for evaluation, Scheduling, and other purposes related to this Agreement, shall be provided as available. In no event shall the data and/or information provided to GPA pursuant to this Section 4.14 be binding upon Seller, nor shall Seller be liable for any penalties, charges or other damages based on the inaccuracy of such data or information.

4.15 Permit Violations.

Seller shall at all times during the Term of this Agreement maintain and comply with all applicable permits for the development, ownership and maintenance of the Facility in all material respects. As soon as practicable after the occurrence of any event known to Seller that would constitute or is reasonably likely to lead to a violation of any applicable permit, but in no event more than ten (10) Business Days thereafter, Seller shall provide GPA with written Notice of the same.

4.16 Change in Technical Requirements.

The Parties agree that, from and after the Effective Date, if Seller is required at any time to comply with new or modified technical or other performance requirements for the Facility or any material portion thereof (or in the manner any such facilities are to be operated or maintained) and such addition to or change in the above standards causes an increase in Seller's actual costs to perform in excess of \$25,000 in the aggregate, then the Parties shall negotiate in good faith to agree upon an adjustment to the Contract Price and/or the Annual Microgrid Payment, as applicable, to compensate Seller for such increased costs. Such a change in the technical or performance requirements may arise as a result of the scheduling protocols or the communication protocols to be established by GPA pursuant to Appendix H or any other protocols or regulations established by GPA, requirements imposed by the transmission provider or pursuant to the Interconnection Agreement, requirements imposed by GPA or another Governmental Authority pursuant to or in connection with this Agreement, among other circumstances.

Seller will deliver prompt notice of the occurrence of a change in technical or performance requirements which has or is reasonably expected to result in the additional actual costs described above. If, on the date which is forty-five (45) days following Seller's delivery of notice to GPA, the Parties are unable to agree upon an adjustment to the Contract Price and/or the Annual Microgrid Payment, as applicable, which compensates Seller for such additional costs and is otherwise mutually acceptable, then Supplier may submit such dispute for resolution pursuant to Section 12.9.

4.17 Delivery of RECs.

- (a) Use of North American Renewables Registry. At least ten (10) days prior to COD, Seller shall transfer to GPA the authority to create, own and transfer all Environmental Attributes associated with the Renewable Energy produced by the Facility, by executing and delivering the form entitled "Generator Owner's Designation of Responsible Party" published by NAR, wherein Seller shall designate GPA as the "responsible party" for all matters relating to the creation, ownership, and transfer of any RECS. Thereafter, GPA shall be responsible for all obligations relating to creating and transferring RECs and Seller shall have no further obligations or liabilities with respect thereto, provided, however, that Seller shall reimburse to GPA its costs of creating and maintaining the NAR account and NAR's fees charged to transfer the RECs, up to an aggregate maximum amount of \$5,000 per annum. In the event this Agreement is terminated for any reason, the Parties agree to each consent to the termination of such designation in accordance with NAR procedures.
- (b) GPA Registration as a QRE. GPA shall be the QRE for the Facility as required by NAR and shall comply with any and all NAR Operating Procedures relating to the registration and operation as a QRE and the reporting of generation data from the Facility to NAR. As the QRE, each month upon receipt of an invoice and associated interval metering data from Seller in accordance with Section 7.5 herein, GPA shall report such data to NAR within three (3) Business Days following receipt of such data. The Parties shall cooperate to ensure that the Seller Metering Equipment and the resulting interval metering data meet the NAR requirements for metering equipment and generation data.
- (c) Change Event. During the Term, in the event that (i) the NAR Operating Procedures are amended or changed such that it becomes impossible for the Parties to utilize NAR as the REC tracking method and/or for GPA to continue as "responsible party" for purposes of

creating, owning and transferring RECs attributable to the Facility; (ii) the fees or charges imposed by NAR on either Seller or GPA to utilize the NAR REC tracking system are materially increased such that use of the NAR REC tracking system becomes uneconomic or infeasible; or (iii) the NAR REC tracking system is eliminated (each one individually, a "Change Event"), then the Parties shall promptly negotiate in good faith to reform the terms of this Agreement in order to give effect to the original intention of the Parties to the extent reasonable under the circumstances, including utilizing an alternative method for transferring RECs to GPA, but in no case shall Seller's cost with respect thereto exceed \$5,000 per annum.

4.18 Ramp Rate Control Performance.

During the Delivery Period, Seller shall cause the Microgrid Unit to comply with the performance guarantees for ramp rate control set forth [below] (the "Ramp Rate Control Performance Guarantees").] If the Microgrid Unit System fails to meet the Ramp Rate Control Performance Guarantees over the time periods set forth [below], GPA may provide written notice to Seller of the failure to meet the Ramp Rate Control Performance Guarantees and a request for Seller to take steps needed for the Energy Storage System to meet the Ramp Rate Control Performance Guarantees. In response to such a notice, Seller shall, within two (2) weeks from the date of such notice, provide GPA with a written remedial action plan that provides a detailed description of Seller's course of action and plan to meet the Ramp Rate Control Performance Guarantees and shall take steps to implement such remedial action within six (6) months of the date of such action plan; provided, however, GPA shall not be entitled to such a remedial action plan if the failure to achieve the Ramp Rate Control Performance Guarantees is due to a Force Majeure event, GPA Delay or an Event of Default by GPA. Seller's sole obligation with respect to any deficiency in the Ramp Rate Control Performance Guarantees is to follow its remedial action plan.

If ramp rate is greater than 3 MW/minute seller shall reduce plant output until ramp rate is less than 3 MW/minute. If system issues remain, GPA reserves the right to restrict Seller's plant output until seller restores operation with a ramp rate less than 3 MW/minute. The Interconnection Agreement shall define conditions for Seller's plant reduction and implementation of GPA's restrictions.

ARTICLE FIVE: SELLER FAILURE

5.1 Seller Failure.

In the event Seller fails to deliver to GPA any Quantity of Renewable Energy to which GPA is entitled in accordance with the terms of this Agreement and instead sells such Quantity of Renewable Energy to which GPA is entitled to a third party in violation of this Agreement ("Seller Failure"), then Seller shall pay to GPA the "Seller Failure Damages," which shall mean the positive difference, if any, between the Replacement Price and the Contract Price for the period of such Seller failure, times such Quantity of Renewable Energy. GPA shall calculate the Seller Failure Damages and shall provide to Seller an invoice for such amount, including a written statement explaining in reasonable detail the calculation of such amount. Seller shall pay the Seller Failure Damages not later than ten (10) days following its receipt of such an invoice from GPA. If the Replacement Price is less than the Contract Price, then the Seller Failure Damages are deemed to be zero. The Seller Failure Damages represent the sole and exclusive remedy of GPA for Seller's failure as described herein.

ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES

6.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after receipt of written Notice;
- (b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, if such failure is not remedied within thirty (30) Business Days after receipt of written Notice, or such longer time, not to exceed sixty (60) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for such Party's obligations to deliver or receive the Renewable Energy, the remedies for which are provided in Article Five) if such failure is not remedied within thirty (30) Business Days after written Notice, or such longer time, not to exceed sixty (60) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (d) Such Party becomes Bankrupt (or if the Bankruptcy is involuntary, the failure of such Party to achieve dismissal of the Bankruptcy within ninety (90) days);
- (e) A Merger Event occurs with respect to such Party;
- (f) If during the Term of this Agreement there have occurred three (3) or more Seller Failures as that term is used in Section 5.1;
- (g) With respect to Seller, a material permit violation occurs, such violation has or is reasonably likely to result in a material adverse effect on the Seller's ability to perform its obligations under this Agreement and such violation is not remedied within fifteen (15) Business Days after Notice by either GPA or the relevant permitting authority, or such longer time, not to exceed sixty (60) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (h) With respect to Seller, failure to maintain the Development Security as required pursuant to this Agreement and the failure to reinstate the same within ten (10) Business Days after Seller's receipt of written Notice thereof from GPA.

6.2 Declaration of an Early Termination Date.

If an Event of Default with respect to a Defaulting Party shall have occurred on or after the Commercial Operation Date and be continuing, the other Party (the "Non-Defaulting Party") shall have the right but not the obligation to: (i) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement between the Parties; (ii) withhold any payments due to the Defaulting Party under this Agreement as setoff against termination costs and liabilities as determined herein (and until such amounts are determined); and (iii) suspend its performance under this Agreement.

6.3 Suspension of Performance and Other Remedies.

Except as otherwise expressly provided in this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity including any specific remedies set forth in this Agreement; provided, however, that any damages shall include only the direct actual damages incurred by the Non-Defaulting Party as provided in Section 8.1.

ARTICLE SEVEN: PAYMENT AND NETTING

7.1 Billing Period.

Unless otherwise specifically agreed upon by the Parties, the calendar Month shall be the standard period for all payments under this Agreement. The Annual MicroGrid Payment shall be divided into twelve equal monthly payments each Contract Year. No later than the tenth (10th) day after the end of each Month, each Party will render to the other Party an invoice (in the case of Seller, such invoice being rendered in accordance with Section 7.5) for the payment obligations of non-invoicing Party, if any, incurred hereunder during the preceding Month.

7.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the tenth (10th) day of each Month, or if later the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) Months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Except as otherwise provided in this Agreement, payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twelve (12) Months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance of a Transaction occurred, the right to payment for such performance is waived.

7.4 Metering and Other Facilities.

Seller shall be responsible, at its sole expense, for providing the Seller Metering Equipment in accordance with Good Utility Practices. In accordance with the terms of the Interconnection Agreement, the Seller may elect to have GPA provide Seller with the Seller Metering Equipment; provided, however, the cost of such meters shall be borne solely by Seller at no cost to GPA. Seller shall be solely responsible for operating, maintaining, and repairing the Seller Metering Equipment at its own expense throughout the Term of this Agreement. Seller shall inspect and test the Seller Metering Equipment upon its installation and at least once every year at Seller's expense. Seller shall give GPA reasonable advance Notice of any test, and promptly provide GPA with the results of any such test. GPA may observe the test and conduct its own tests, at GPA's expense, to verify Seller's procedures and results.

Upon an inaccurate read of the Seller Metering Equipment or if Seller knows of any material inaccuracy or defect in Seller Metering Equipment, Seller shall notify GPA in writing within forty-eight (48) hours of such defect. Seller shall be solely responsible for adjusting, repairing, replacing or recalibrating such metering device as near as practicable to a condition of zero (-0-) error, and for paying any expenses associated with such adjustment, repair,

replacement or recalibration. If a metering device fails to register or is found upon testing to be inaccurate, an adjustment will be made correcting all measurements by the inaccurate or defective metering device in the following manner:

- (a) In the event that an adjustment factor cannot be reliably calculated, the Parties shall use the measurements from GPA-owned meters if they are installed, fully operational and calibrated in accordance with Good Utility Practices. If for any reason the measurements cannot be obtained from GPA owned meters, the Parties shall use data from Seller's computer monitoring system to determine the relevant measurements. If Seller's computer monitoring system is found to be inaccurate by more than two (2) percent, the Parties shall estimate the amount of the necessary adjustment using the site meteorological information for the period of the inaccuracy based upon deliveries of Renewable Energy delivered to GPA at the Delivery Point from the Facility during periods of similar operating conditions when the Seller Metering Equipment was registering accurately. The adjustment will be made for the period during which inaccurate measurements were made.
- (b) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted will be the shorter of: (1) the last one-half of the period from the last previous test of the metering device to the test that found the metering device to be defective or inaccurate; or (2) the one hundred and eighty 180-day period immediately preceding the test that found the metering device to be defective or inaccurate.
- (c) Upon determination of corrected measurements, the required payment adjustment shall be made according to the procedures set forth in Section 7.3.

7.5 Invoices.

Seller shall maintain and read the Seller Metering Equipment for measuring the Renewable Energy (including Stored Energy) delivered hereunder. For review purposes, Seller shall furnish GPA with a written invoice reflecting the Contract Price and the interval data from the Seller Metering Equipment used to calculate that invoice; and any other charges due, within ten (10) Business Days after Seller reads the Seller Metering Equipment. Seller shall furnish GPA with a written invoice reflecting the applicable portion of the Annual Microgrid Payment the tenth (10th) day after the end of each Month. Such invoices may be furnished to GPA by facsimile transmission or by such other method as the Parties agree.

ARTICLE EIGHT: LIMITATIONS

8.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED HEREIN, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

Notwithstanding the foregoing, if GPA is the Defaulting Party, the Parties agree that the actual damages recoverable to Seller hereunder on account of an Event of Default by GPA shall include loss of Tax Benefits on a grossed up after tax basis, using the highest applicable United States marginal personal income tax rate.

Any assets transferred to GPA as required by the Interconnection Agreement shall require a one year warranty on all construction work and assignment of any manufacturer warranties from the transfer of such assets; provided, however, that the obligations and liability of Seller pursuant to such warranty and obligation to assign shall be subject to any limitations and exclusions set forth in the Interconnection Agreement.

ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS

9.1 Development Security.

In order to secure Seller's obligations prior to Commercial Operation of the Facility, hereunder, Seller shall post the Development Security in the form of a Letter of Credit or cash deposit in the amount of \$2,375,805. The Development Security shall be held by GPA as security for Seller's obligations prior to the Commercial Operation Date including its obligation to satisfy the Financing Arrangement Deadline, but GPA may draw on the Development Security at any time only in the amounts and according to the schedule set forth in Section 4.4. Seller shall post the Development Security in accordance with the following terms and conditions:

- (a) Seller shall post the Development Security within ten business (10) days following the Effective Date of this Agreement.
- (b) If the Development Security is posted as a Letter of Credit, it shall be in substantially the form attached hereto as Appendix [F-1].
- (c) Any Development Security posted in cash shall bear simple interest at a rate equal to the Interest Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 9.3 of this Agreement.

9.2 Forfeiture of Development Security.

In the event that the Commercial Operation Date does not occur on or before the Scheduled Commercial Operations Date, as extended pursuant to the terms of this Agreement, and to the extent Seller does not remit any COD Extension Payment or Daily Delay Liquidated Damages payment when due, then GPA shall be entitled to proceed against the Development Security in accordance with the terms thereof, to the extent of the amount(s) due and owing from time to time. Seller acknowledges and agrees that forfeiture of all or a portion of the Development Security, as provided herein, represents reasonable compensation to GPA for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and GPA's potential failure to meet its applicable renewable energy portfolio requirements as a result of Seller's failure to achieve Commercial Operation by the Scheduled Commercial Operation Date. Notwithstanding the foregoing, if Seller terminates this Agreement prior to the Commercial Operation Date for the sole purpose of selling the Renewable Energy to a third party, GPA shall be entitled to both the Development Security and any other remedies available at law or in equity to the extent that GPA's actual damages exceed the value of the Development Security.

9.3 Return of Development Security.

At the end of the Term or upon the termination of this Agreement following the settlement and payment of any damages owed as a result of such termination, GPA shall return to Seller any remaining portion of the Development Security still held by GPA and to which GPA has no claim pursuant to the terms of this Agreement. If the Development Security was posted as a Letter of Credit, GPA shall return the Letter of Credit to Seller and Seller shall be entitled to immediately cancel such Letter of Credit. If the Development Security was posted in cash, GPA shall return to Seller the balance of the Development Security, together with daily interest at the Interest Rate, from and including the date that the Development Security was posted until, but not including, the date on which the Development Security is returned by GPA.

9.4 Performance Security.

In order to secure Seller's obligations after Commercial Operation of the Facility and during the Delivery Period hereunder, Seller shall post security in one of the forms contemplated below, each of which is deemed acceptable by GPA (the "Performance Security"):

- (a) A Letter of Credit or cash in the amount of \$4,751,610; or
- (b) A Payment and Performance Bond in the amount of \$4,751,610; or

- (c) A subordinated second lien on the Sponsor Interest and Seller agrees to take such action as is reasonably required in order to perfect GPA's security interest in, and lien on, such collateral and any and all proceeds resulting therefrom; provided, that concurrently with the grant of such lien, GPA shall enter into such subordination, inter-creditor and other agreements with the senior financing parties as they as may reasonably require pursuant to which GPA shall agree that their rights and remedies pursuant to their second lien shall be subordinated in all respects to the senior first lien held by the financing parties; provided further, for the avoidance of doubt, there shall be no lien granted on the Tax Equity Investor Interest.

The Performance Security shall be held by GPA as security for Seller's obligations after the Commercial Operation Date and during the Delivery Period, but GPA may draw on the Performance Security at any time only in the amounts actually due and payable by Seller to GPA pursuant to this Agreement. Seller may (i) post the Performance Security by posting a combination or one or more of the above acceptable forms of credit support in an aggregate amount of \$4,751,609.95, and (ii) at any time elect to substitute any form of one or more of the above acceptable forms of credit support for any existing Performance Security in which case GPA shall return the replaced Performance Security and reasonably cooperate with Seller in the exchange or cancellation of such credit support.

Seller shall post the Performance Security in accordance with the following terms and conditions:

- (a) Seller shall post the Development Security within ten (10) business days following the Commercial Operation Date.
- (b) If the Performance Security is posted as a Letter of Credit, it shall be in substantially the form attached hereto as Appendix [F-1].
- (c) If the Performance Security is posted as a Payment and Performance Bond, it shall be in substantially the form attached hereto as Appendix [F-2].
- (d) Any Performance Security posted in cash shall bear simple interest at a rate equal to the Interest Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 9.5 of this Agreement.

9.5 Return of Performance Security.

At the end of the Term or upon the termination of this Agreement following the settlement and payment of any damages owed as a result of such termination, GPA shall return to Seller any remaining portion of the Performance Security still held by GPA and to which GPA has no claim pursuant to the terms of this Agreement. If the Performance Security was posted as a Letter of Credit or a Payment and Performance Bond, then GPA shall return the Letter of Credit or Payment and Performance Bond to Seller and Seller shall be entitled to immediately cancel such Letter of Credit or Payment and Performance Bond. If the Performance Security was posted in cash, GPA shall return to Seller the balance of the Performance Security, together with daily interest at the Interest Rate, from and including the date that the Performance Security was posted until, but not including, the date on which the Performance Security is returned by GPA.

ARTICLE TEN: GOVERNMENTAL CHARGES

10.1 Cooperation.

Each Party shall use Commercially Reasonable Efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Government Authority ("Governmental Charges") on or with respect to the Renewable Energy or this Agreement arising prior to the Delivery Point. GPA shall pay or cause to be paid all Governmental Charges on or with respect to the Renewable Energy or this Agreement at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Renewable Energy and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges, which are GPA's responsibility hereunder, GPA shall promptly reimburse Seller for such Governmental Charges. If GPA is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, GPA may deduct the amount of any such Governmental Charges from the sums due to Seller under Article Seven of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE ELEVEN: ASSIGNMENT

11.1 Buyer Assignment.

Buyer may not assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, without Seller's consent, not to be unreasonably withheld.

11.2 Seller Assignment.

Seller may perform any of the following, without the consent of the Buyer (1) transfer, pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds hereof, in connection with any financing or other financial arrangements for the Facility, (2) transfer or assign this Agreement to any of its Affiliates in connection with a transfer of the Facility to such Affiliate, (3) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, and (4) transfer or assign this Agreement to _____ or to any of its Affiliates; provided, that Seller provides Buyer prior notice of any such transfer or assignment and, with respect to any transfer to an such assignee of Seller, (A) such assignee posts replacement credit support in accordance with this Agreement, and (B) such Affiliate enters into an assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, pursuant to which Affiliate assumes all of Seller's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Seller agrees that it will provide written notice to Buyer of any assignment of this Agreement by Seller within five (5) Business Days of the date of such assignment.

Except as stated above, neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of Buyer, void.

11.3 Liability After Assignment.

A Party's assignment or transfer of rights or obligations pursuant to this Article 11 shall relieve said Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment.

11.4 Transfers of Ownership.

Subject to any rights of first offer or refusal under this Agreement, during the Term, Seller shall not sell, transfer, assign or otherwise dispose of its interest in the Facility to any third-party absent (1) a transfer of this Agreement to such third-party and (2) Seller entering into an assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, with such third-party.

11.5 Successors and Assigns.

This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

11.6 Collateral Assignment by Seller.

In the event that Seller pursuant to Section 11.2 (1) transfers, pledges, encumbers or collaterally assigns this Agreement to Seller's lenders, Seller shall provide written notice to Buyer of such transfer, pledge, encumbrance or assignment, including the address of Seller's lenders. In connection with any financing or refinancing of the Facility, Buyer at Seller's request shall negotiate in good faith with Seller and Seller's lenders to agree upon a reasonable direct agreement with respect to this Agreement, which shall be in form and substance reasonably agreed to by Buyer, Seller and Seller's lenders, and which shall, among other terms, include provisions substantially as follows:

- (a) The Parties shall not amend or modify this Agreement in any material respect without the prior written consent of the Seller's lenders;
- (b) Prior to exercising its right to terminate this Agreement as a result of an Event of Default by Seller, Buyer shall give notice of such Event of Default by Seller to the administrative agent of Seller's lenders, which Buyer has been provided written notice of; and
- (c) Seller's lenders shall have the right, but not the obligation, to cure an Event of Default on behalf of Seller in accordance with the provisions of this Agreement, provided that Seller's lenders shall be provided an additional forty-five (45) days, from the end of the cure periods provided pursuant to Section 6.1, to effect a cure of such Event of Default.

ARTICLE TWELVE: MISCELLANEOUS

12.1 Term of Agreement; Conditions Precedent.

- (a) The Term of this Agreement shall commence on the Effective Date and shall remain in effect for the duration of the Delivery Period, as set forth in Section 2.1, unless earlier terminated by either Party in accordance with this Agreement herein (the “Term”); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.
- (b) This Agreement shall be effective on the Effective Date provided that the Parties’ obligations hereunder shall be subject to the satisfaction of the following conditions precedent:
- (i) Receipt by GPA of a final, non-appealable approval of this Agreement by the Guam Public Utilities Commission (“PPA Approval”);
 - (ii) Execution of the Interconnection Agreement by the Parties;
 - (iii) Receipt by GPA of a final, non-appealable approval of the Interconnection Agreement by the Guam Public Utilities Commission (“ICA Approval”); and

GPA shall submit this Agreement for approval by the Guam Public Utilities Commission within thirty (30) days of the Effective Date. GPA shall also submit the Interconnection Agreement for approval by the Guam Public Utilities Commission within thirty (30) days of the execution of the Interconnection Agreement. Each Party shall use Commercially Reasonable Efforts to satisfy the conditions precedent prior to the End Date; provided that neither Party shall be obligated to execute the Interconnection Agreement except on terms acceptable to such Party in its sole discretion. Seller shall have the right in its sole discretion to waive the conditions precedent set forth in section 12.1(b) above.

Either Party has the right to terminate this Agreement by Notice, which will be effective five (5) Business Days after such Notice is given, if the conditions precedent set forth above have not been satisfied (or waived in accordance herewith) within [to be determined based on date of signing – between 60-120 days consistent with proposed project schedule] days after the Effective Date (“End Date”). If either Party exercises its termination right pursuant to this Section 12.1(b), no Termination Damages will be due or owing by either Party and Seller will be entitled to a return of any Development Security provided to GPA.

12.2 Insurance.

At all times during the Term of this Agreement, Seller shall maintain at its own expense insurance policies for the Facility and its tangible assets in such amounts and against such risks and losses as are consistent with Good Utility Practices and those policies listed below. Such insurance policies shall be maintained only with insurers rated at least A- VII by MVI Best or comparable ratings agency.

- Commercial General Liability with limits of \$1,000,000 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Commercial Auto Liability in the amount of \$1,000,000 combined single limit for bodily injury and property damage. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.

- Excess Liability with limits of \$5,000,000. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Workers Compensation and Employers Liability with statutory limits and \$1,000,000/\$1,000,000/\$1,000,000 respectively. Seller shall add a waiver of subrogation endorsement in favor of GPA.
- Pollution Liability, when applicable, with limits for \$5,000,000. GPA is to be an additional insured. Seller shall grant a waiver of Subrogation in favor of GPA.
- Builder's Risk or Installation Floater, when applicable, is to be furnished by Contractor.
- Property insurance that will keep the premises, property, improvements, structures, and machinery and equipment on the premises insured, at a minimum, against with an all risk property policy for full replacement value as determined from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in Guam, and shall contain the standard form of waiver of subrogation. Nothing contained herein shall be construed as creating any liability or responsibility on the part of GPA for the adequacy of insurance coverage on the premises. As to any insurable risks of loss or damage to the premises not required to be insured hereunder, Seller shall bear the cost of the same. Seller shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.

At all times after achieving COD, Seller may discontinue or otherwise cancel each of the aforementioned policies, except the following insurance policies, which shall be maintained with the limits set forth below:

- Commercial General Liability with limits of \$1,000,000.00 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Excess Liability with limits of \$3,000,000.00. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Property insurance that will keep the premises, property, improvements, structures, and machinery and equipment on the premises insured, at a minimum, against with an all risk property policy for full replacement value as determined from time to time. Such insurance shall be issued by any financially responsible insurer duly authorized to do business in Guam, and shall contain the standard form of waiver of subrogation. Nothing contained herein shall be construed as creating any liability or responsibility on the part of GPA for the adequacy of insurance coverage on the premises. As to any insurable risks of loss or damage to the premises not required to be insured hereunder, Seller shall bear the cost of the same. Seller shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.
- Seller is also required to carry Business Interruption and Extra Expense insurance in the amount of \$1,000,000.00.

If the Facility is lost or damaged due to a casualty, then only if and to the extent Seller is not required to use available insurance proceeds to prepay any Facility Debt then outstanding, Seller shall re-build the Facility promptly and in a commercially reasonable manner if and to the extent technically feasible and commercially reasonable in

light of the available insurance proceeds and subject to the procurement by Seller of the consent of any lender or financing party pursuant to the Financing Documents if required thereunder; provided, however, (i) if the time to re-build the Facility would result in less than five (5) years remaining in the Delivery Period then (A) Seller shall have the option in lieu of re-building the Facility to pay to GPA the Buyout Payment and terminate this Agreement with no further costs or penalties provided that the Buyout Payment shall not in any case exceed the available insurance proceeds remaining following full prepayment of the Facility Debt, or (B) if Seller nevertheless elects to re-build the Facility then GPA shall reimburse Seller for any deductibles payable by Seller under its property insurance, and (ii) regardless of when the casualty event occurs, if Seller re-builds the Facility then the Delivery Period shall be extended for the greater of one (1) year or two (2) times the length of the interruption of the sale of Renewable Energy (pro rated based on the Minimum Production for partial interruptions), and the Contract Price shall be the price in effect, without escalation, at the beginning of the re-building period.

Within ten (10) Business Days after receipt of a request for the same from GPA, Seller shall deliver to GPA a certificate of insurance for any or all policies maintained in accordance with this Section 12.2, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions.

Seller shall furnish certificates of insurance and waiver of subrogation endorsement to GPA prior to commencement of construction of the Facility showing evidence of such coverage, including the statement to the effect that cancellation or termination of the insurance shall not be effective until at least thirty (30) days after receipt of written Notice to GPA. At all times Seller's insurance shall be primary and non-contributory to any other insurance that may be carried by GPA. The statement of limits of insurance coverage shall not be construed as in any way limiting the Seller's liability under this Agreement. GPA shall be an additional insured on all liability coverage and certificates of insurance shall clearly indicate such.

12.3 Indemnity.

To the extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Renewable Energy is vested in such Party, unless a Claim is due to such Party's willful misconduct or gross negligence. To the extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Ten. Notwithstanding anything to the contrary contained in this Agreement, no individual representative of either Party shall have any personal liability to the other Party as a result of the breach of any representation, warranty, covenant or agreement contained herein.

12.4 Site Access and Inspection of Records.

Seller shall provide GPA with reasonable access to the Facility site for purposes of review and inspection during regular business hours within a reasonable time after a request for the same is made by GPA. During such reviews and inspections, GPA representatives shall be permitted to review such records relating to the Facility and reasonably related to the performance of this Agreement, including Facility maintenance and operations logs. GPA shall have access to the Facility site for the limited purposes described herein, but Seller shall at all times remain responsible and liable for the control and operation of the Facility and the Facility site. GPA representatives shall follow Seller's safety procedures when accessing the Facility site and shall conduct themselves in a manner that will not interfere with the operation of the Facility. Seller will provide GPA with information about such safety procedures to enable GPA to comply with this requirement.

12.5 Audit.

Subject to Section 7.3, each Party has the right, at its sole expense and during normal working hours, to examine copies of the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.

12.6 Confidentiality.

The Parties will make Commercially Reasonable Efforts to safeguard Confidential Information against disclosure by employing the same means to protect such Confidential Information as that Party uses to protect its own non-public, confidential or proprietary information, and otherwise in accordance with the provisions of this Section 12.6. Specifically, no receiving Party shall itself, or permit its employees, consultants and/or agents to disclose to any person, corporation or other entity the Confidential Information without the prior written consent of the Party providing the Confidential Information, except a receiving Party may distribute the Confidential Information to its and its Affiliates' board members, officers, employees, agents, consultants, actual or potential investors, actual or potential purchasers, actual or potential Facility lenders or financing parties, and others who have a need for such Confidential Information.

The Parties acknowledge, however, that a Party may need to disclose the Confidential Information in connection with its regulatory filings or to otherwise satisfy its governmental and regulatory requirements. In the event that a Party intends to disclose any of the Confidential Information to its regulatory authorities including, but not limited to, the Guam Public Utilities Commission, the FERC, or any employee, staff member, consultant, and/or agent of the foregoing, it shall give the other Party prompt prior written Notice of its intention so that the other Party may seek a protective order or other appropriate remedy. In addition, each Party specifically agrees not to use the other Party's name in connection with this Agreement or the Facility in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service, without the express written consent of the other Party. The Parties anticipate that at some future time it may be in the best interests of one or both of them to disclose Confidential Information to the media and the Parties anticipate entering into a subsequent agreement that will govern the terms of such disclosure. The Parties expressly agree, however, that unless and until such subsequent agreement is executed between the Parties, the terms of this Agreement shall be binding with respect to such disclosure.

In the event that any Party receiving the Confidential Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the legally compelled Party shall give the other Party providing the Confidential Information prompt prior written Notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof.

Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Agreement, **although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Agreement, whether a claim is based in contract, tort or otherwise.** The Parties agree that the respondent in any action for an injunction, specific performance decree or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. Under no circumstances will either Party's directors, management, employees, agents or consultants be individually liable for any damages resulting from the disclosure of Confidential Information in violation of the terms of this Agreement.

12.7 Notices.

All notices, requests, statements or payments ("Notices") shall be made as specified on Appendix B attached hereto and incorporated herein by reference. Notices (other than with respect to scheduling) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Notices relating to Facility operations and Scheduling, as required pursuant to Appendix H, may be given electronically and shall be deemed effective upon receipt; otherwise,

electronic notices shall not be effective unless affirmatively acknowledged in writing (including by reply e-mail) by the receiving Party. A Party may change its addresses by providing Notice of same in accordance herewith.

12.8 Purchase Option.

- (a) Transfer During the Delivery Period. In the event that Seller desires to sell the Facility during the Delivery Period, Seller shall provide prior written Notice of the same to GPA, and agrees to engage in discussions with GPA during an exclusivity period with GPA if GPA desires to purchase the Facility. Within ninety (90) days following Seller's Notice to GPA of its intent to sell the Facility, GPA may deliver to Seller an indicative purchase price at which it would be willing to purchase the Facility. If GPA does not deliver the indicative purchase price within ninety (90) days, then Seller shall be free to transfer the Facility under any terms and conditions at any time thereafter. If GPA delivers the indicative purchase price within ninety (90) days, then the Parties shall negotiate exclusively for a period of up to sixty (60) days after GPA delivers the indicative purchase price. If no binding agreement is entered into by the Parties during such sixty (60)-day period then Seller shall be free to transfer the Facility to any person on materially comparable terms, including price, better than GPA's indicative offer, and neither Party shall have any further liability or obligation to the other Party in connection with such sale or as a result of the terminated negotiations. If Seller does not transfer the Facility on such basis within one (1) year following the end of the sixty (60)-day exclusive negotiation period, then the procedure in this paragraph shall apply to any subsequent sale of the Facility during the Term of this Agreement.
- (b) Transfer or Extension of Delivery Period. GPA, by Notice delivered to Seller at least one hundred and eighty (180) days prior to the end of the Delivery Period, may either (i) extend the Term of this Agreement on a year-to-year basis, in which case the Contract Price during the extension of the Term shall be eighty percent (80%) of the LEAC Rate in effect from time to time during such extension (whereupon either Party may thereafter terminate this Agreement on one hundred and eighty (180) days' Notice prior to the end of any extension year), or (ii) purchase the Facility from Seller at eighty percent (80%) of the Appraisal Price, within thirty (30) days of the determination of the Appraisal Price. If GPA fails to send such Notice then this Agreement shall terminate in accordance with the terms hereof.

12.9 Alternative Dispute Resolution. All disputes arising under this Agreement are subject to the provisions of this Section 12.9.

- (a) If a dispute, controversy or claim arises out of, relates, or is in connection with, this Agreement, or the breach, termination or validity thereof, whether sounding in contract, tort, unfair competition, equity, or other legal form, it shall be settled solely in the manner provided for in this Section 12.9. A meeting of the Parties shall be held within ten (10) Business Days after either Party gives the other Party written Notice of the dispute. The Notice shall set forth in reasonable detail the aggrieved Party's position and its proposal for resolution of the dispute. A representative of each Party who has authority to resolve the dispute shall be in attendance at all meetings. If the dispute is not resolved within thirty (30) days after the first meeting of the Parties, or such other period of time as to which the Parties agree, the dispute shall be settled by arbitration in the manner provided in this Section 12.9. A Party's failure to comply with this Section 12.9 shall entitle the other Party to recover its costs and reasonable attorney's fees in any judicial proceedings that circumvent this dispute resolution provision. Settlement discussions undertaken under this Section 12.9 shall be privileged and confidential and no position taken or communication made by a party during or in connection with said settlement discussions may be presented as evidence in the ensuing arbitration should settlement fail to achieve a negotiated result.

- (a) Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under a Claim relating to the terms of this Agreement, or the breach thereof, may be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this Agreement to arbitrate and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the Notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10) calendar days after written Notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The chairperson shall be bound to schedule and hear the dispute in its entirety within three (3) Months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitration proceeding shall be conducted in Honolulu, Hawaii, or another neutral location mutually agreed to by the Parties; provided, however, either Party may provide all witnesses, deponents and other ancillary personnel by video telecast or other electronic media, it being the intent of the Parties to minimize expenses of conducting the arbitration. It is further agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed Confidential Information.
- (b) Judicial Relief. Either Party may petition a court of appropriate jurisdiction, as described in Section 12.11, for non-monetary relief relating to any claim of breach of this Agreement in order to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 12.9.

12.10 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF GUAM, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

12.11 Jurisdiction and Costs.

Subject to the mandatory arbitration provisions herein, with respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the Parties hereby consent to the exclusive jurisdiction of the local and federal courts in the Territory of Guam. Both Parties waive any right to trial by jury in such action. In the event such judicial proceedings are

instituted by either Party, the prevailing Party shall be entitled to award of its costs and reasonable attorneys' fees incurred in connection with such proceedings.

12.12 Financial Accounting Standards.

Under the latest interpretations of the Financial Accounting Standards Board's Interpretation No. 46(R) (FIN No. 46(R)), "Consolidation of Variable Interest Entities," GPA may be required to consolidate a Seller's entity for which GPA has entered into a long-term power purchase agreement. Seller agrees to provide all information needed in order for GPA to determine whether or not the special purpose entity which owns the Seller's generating facility must be consolidated by GPA under FIN No. 46(R). If it is determined that GPA needs to consolidate such special purpose entity, Seller agrees to provide all information needed to comply with the consolidation requirements of FIN 46(R) in a timely manner every calendar quarter. If GPA is required to consolidate the special purpose entity that owns the Seller's generating facility in its financial statements, Seller agrees to provide access to any needed records and personnel, as requested, so GPA's independent auditor, Deloitte & Touche LLP, can conduct financial statement audits in accordance with generally accepted auditing standards, as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002.

12.13 Forward Contract.

The Parties intend that in any relevant proceedings, each be regarded as a forwards trading merchant in respect of this Agreement and that each Transaction be a forwards contract for purposes of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended from time to time.

12.14 General.

No delay of a Party in the exercise of, or the failure to exercise, any rights under this Agreement shall operate as a waiver of such rights, a waiver of any other rights under this Agreement or a release of the other Party from any of its obligations under this Agreement. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if such an event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) Months. This Agreement shall be binding on each Party's successors and permitted assigns.

12.15 Entire Agreement; Amendment.

This Agreement, together with any appendices, schedules, and any written supplements hereto constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

12.16 Appendices.

The following Appendices are included in this Agreement for all purposes:

<u>Appendix A</u>	Contract Price and Minimum Production
<u>Appendix B</u>	Notice Addresses
<u>Appendix C</u>	Ramp Rate Control and Microgrid

<u>Appendix D</u>	Independent Engineers
<u>Appendix E</u>	[Not Used]
<u>Appendix F</u>	Form of Letter of Credit
<u>Appendix G</u>	[Not Used]
<u>Appendix H</u>	Scheduling and Coordination
<u>Appendix I</u>	Base Conditions and Facility Test Protocol
<u>Appendix J</u>	Interconnection Agreement
<u>Appendix K</u>	Additional Terms regarding Ramps Rates and Dispatch Down
<u>Appendix L</u>	Resolutions of Consolidated Committee on Utilities

12.17 Special Provisions.

It is the policy of GPA not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Seller certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in GPA's contracted programs or activities, on the grounds of such person's handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Guam law; nor shall any person be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in performance of contracts with GPA or in the employment practices of GPA's contractors. Accordingly, all persons entering into contracts with GPA shall, upon request, be required to show proof of such nondiscrimination and to post notices of non-discrimination in conspicuous places that are available to all employees and applicants.

Seller hereby represents that Seller has not been retained or retained any persons to solicit or secure a contract from GPA upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this section is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA and any Government Authority.

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontractor or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA and any Governmental Authority.

Seller warrants that no person providing services on behalf of Seller or in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense

defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of Seller relative to this Agreement. If any person employed by Seller and providing services under this Agreement is convicted subsequent to the date of this Agreement, then Seller warrants that it will notify GPA of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under this Agreement. If Seller is found to be in violation of any of the provisions of this paragraph, then GPA shall give Notice to Seller to take corrective action. Seller shall take corrective action within twenty-four hours of Notice from GPA, and Seller shall notify GPA when action has been taken. If Seller fails to take corrective steps within twenty-four hours of Notice from GPA, then GPA in its sole discretion may suspend this Agreement temporarily.

12.18 Waiver of Immunity.

To the extent that GPA may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to GPA or its assets or revenues such immunity (whether or not claimed), GPA agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

IN WITNESS THEREOF, the Parties hereto made and executed this Agreement, signed by their duly authorized officers or individuals, as of the dates listed below.

GUAM POWER AUTHORITY
GPA or Buyer

HANWHA ENERGY CORPORATION Seller

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[Signature Page to Renewable Energy Purchase Agreement]

APPENDICES

APPENDIX A

CONTRACT PRICE AND MINIMUM PRODUCTION

Contract Year	Annual Price (\$/MWH)	Guaranteed Net Annual Generation (MWH/YR)
1	65.99	72,005
2	66.65	71,831
3	67.32	71,245
4	67.99	70,865
5	68.67	70,485
6	69.36	70,306
7	70.05	69,724
8	70.75	69,344
9	71.46	68,693
10	72.17	68,780
11	72.89	68,202
12	73.62	67,821
13	74.36	67,440
14	75.10	67,252
15	75.85	66,678

Contract Year	Annual Price (\$/MWH)	Guaranteed Net Annual Generation (MWH/YR)
16	76.61	66,296
17	77.38	65,915
18	78.15	65,722
19	78.93	65,151
20	79.72	64,770
21	80.52	64,388
22	81.33	64,190
23	82.14	63,623
24	82.96	63,241
25	83.79	62,859
26		
27		
28		
29		
30		

ESS MICRO GRID

Contract Year	Micro Grid Operation Price (\$)
1	1,287,082
2	1,264,710
3	1,244,969
4	1,225,229
5	1,206,804
6	1,188,380
7	1,171,271
8	1,155,479
9	1,139,686
10	1,123,894
11	1,108,101
12	1,093,625
13	1,079,149
14	1,064,672
15	1,051,512

Contract Year	Micro Grid Operation Price (\$)
16	1,038,352
17	1,025,191
18	1,012,031
19	998,871
20	987,026
21	975,182
22	963,338
23	951,493
24	939,649
25	927,805

APPENDIX B

NOTICE ADDRESSES

APPENDIX C

RAMP RATE CONTROL & MICROGRID

I. Description of Storage Unit

A. Specifications. The Facility shall include the Storage Unit as more fully described in the technical specifications set forth in Schedule C-1 attached hereto ("Storage Technical Specifications").

B. Operations. The operation of the Storage Unit shall at all times be subject to the operating restrictions and limitation set forth in Schedule C-2 attached hereto ("Storage Operating Restrictions"). At no time will Seller be expected to operate the Storage Unit in a manner that is inconsistent with the Storage Operating Restrictions notwithstanding any contrary terms in this Agreement.

C. Metering. Seller will install and maintain a separate meter for the Storage Unit and the operation and maintenance of such meter shall be governed by section 7.4 of this Agreement. The Storage Unit will not serve station use and Seller shall separately meter station use.

D. Augmentation. Seller shall be entitled to determine the actions necessary to achieve the Guaranteed Storage Output (as defined below) from time to time, including without limitation, whether to augment the batteries included in the Storage Unit solely as determined by Seller in its discretion.

E. Ramp Rate Control. The Storage Unit shall be operated such that the charging and output of the Storage Unit does not exceed 1% of the Project's nameplate capacity per minute; provided that Seller shall only be obligated to achieve such ramp rate as set forth in the table below on an average basis during each Contract Year ("Agreed Ramp Rate").

Contract Year	Agreed Ramp Rate
1	98.00%
2	97.90%
3	97.80%
4	97.70%
5	97.60%
6	97.50%
7	97.40%
8	97.30%
9	97.20%
10	97.10%
11	97.00%
12	96.90%
13	96.80%
14	96.70%
15	96.60%
16	96.50%
17	96.40%
18	96.30%
19	96.20%

20	96.10%
21	96.00%
22	95.90%
23	95.80%
24	95.70%
25	95.60%

F. Ramp Rate Control Performance

Energy Storage System will control the ramping rate under 1% of the Facility Capacity (i.e. 600 kW) per minute and the control period [for the ramping rate] will be no more than 1 second. Detailed ramping control algorithm will be finalized through discussions between GPA and Seller after the final design of the Energy Storage System is put in place but no later than one (1) month before the commissioning test of the Facility will start.

Evaluation of Performance Verification:

During the Delivery Period, on an annual basis, Seller shall carry out the evaluation process for the performance verification of the Energy Storage System, including power test and 1% ramp-rate control test in the presence of GPA, once every year with annual data storage in the Facility database and GPA SCADA. [Note: specify what is to be measured and equation below.]

$$\left| \frac{\sum_{t-\Delta t}^t PV_i(x)}{\Delta t} - \frac{\sum_{t-2\Delta t}^{t-\Delta t} PV_i(x)}{\Delta t} \right| > P_{ramp}$$

Where:

- Δt = 60 seconds
- $PV_i(x)$: PV generation at time t
- $i = 1,2,3, \dots, 60$ seconds
- P_{ramp} : active power considering ramp rate limit per 1min window
Ramp Rate Control shall be based on a plus or minus (\pm) 1% of rated power of 60MW plant ("Measured Value"). Ramp Rate Control Failure means a plus or minus (\pm) 2% of Measured Value.

Ramp Control Penalty:

Penalty will apply to failure to meet the 1% ramp per minute rate for both under and over power. Ramp-Control must be controlled within 1 second. The failure percentage is as below:

- Failure Percentage (FP) = (E1 – E2)

Symbol	Item	Unit	Remarks
E1	Guaranteed value of Succeed Ramp-Rate	%	Proposal (offer) shown in table below

E2	Output of Ramp Rate Controlled	%	1% ramping requirement with 2% measurement error
----	--------------------------------	---	--

If FP is greater than 0 (zero), then Penalty shall be calculated as follow:

- Under Power Failure Penalty = (AF_U) *(C_U)*(FP_U)
- Over Power Failure Penalty= (AF_O) *(C_O)*(FP_O)

Symbol	Item	Value	Unit
C_U	Nominal Ramp Down Cost	1.96	\$/min/MW
C_O	Nominal Ramp Up Cost	0.49	\$/min/MW

The penalty is calculated only for the portion exceeding the guaranteed value.

Where:

- Failure Power of Under Power (FP_U) = |Ramp Rate Required Power – CP| [MW]
- Failure Power of Over Power (FP_O) = |CP – Ramp Rate Required Power| [MW]
- Controlled Power (CP) =1 minute Average Power of 1% Ramp Rate Controlled by 1 second
- Acceleration Factor of Under Power (AF_U) = 0.5
- Acceleration Factor of Over Power (AF_O) = 0.5

G. Time Shifting. As described herein, the Storage Unit will be charged during the day and discharged during the night and in this manner will provide GPA with delayed deliveries of Renewable Energy.

E. Communication Protocols. Seller and GPA shall mutually agree (in writing) upon communication protocols to allow GPA to have access to SCADA information and a real-time data feed with respect to the Facility.

II. *Delivery of Stored Energy for Dispatch*

A. Charging. During the Delivery Period, Seller shall (i) operate and maintain the Storage Unit, (ii) charge the Storage Unit with a portion of the Renewable Energy generated by the Project (referred to as Charging Energy), and (iii) then shall store, discharge and deliver the Stored Energy to the Delivery Point. Charging Energy shall be drawn from the Renewable Energy generated by the Project and Stored Energy when delivered shall count towards the Minimum Production of the Project each Contract Year. In no case shall Seller be penalized for a reduction in the Renewable Energy delivered based on Charging Energy used to charge the Storage Unit.

B. Discharging. Seller shall sell and deliver, or cause to be delivered, and GPA shall purchase and receive, or cause to be received, all Stored Energy discharged by the Storage Unit, at the Delivery Point, and GPA shall pay Seller the Annual Storage Payment as compensation for Seller's operation of the Storage Unit and deliver of such Quantity of Stored Energy to the Delivery Point.

Stored Energy shall be discharged each day during the Delivery Period beginning from a time out of the 6 options as follows: 6 pm, 7 pm, 8 pm, 9 pm, 10 pm and 11 pm local time and shall be delivered to the Delivery

Point except during any Excused Hours and Weather Hours. The Discharge Energy shall be fixed as 5MW and the Delivery Period ends once all remaining Energy in the Microgrid has been discharged until the designated SOC of the Microgrid has been met.

If GPA desires to change the daily start time of the dispatch of the Storage Unit at any time during the Delivery Period, then GPA shall deliver Notice to Seller of such proposed change at least seven (7) days prior to the date on which Seller is being asked to implement such change ("Dispatch Instruction"). Seller shall not be obligated to accept and implement Dispatch Instruction requested by GPA if (i) such Dispatch Instruction is not consistent with the Operating Parameters, Good Utility Practices, any Planned Outages, applicable law or any limits set forth in any permit or approval received by Seller in connection with the Facility, or (ii) implementation of such dispatch instructions would limit, interfere with or prevent Seller's operation and maintenance of the Facility and/or its performance of its obligations under this Agreement, including without limitation, Seller's obligations with respect to the Guaranteed Dispatch Rate and/or Minimum Production and any make-up amounts Seller reasonably expects to deliver in any Contract Year, or (iii) implementation of such dispatch instructions would limit, interfere with or prevent Seller's performance of its obligations under the Interconnection Agreement. Any Dispatch Instruction delivered by GPA shall remain in effect until another valid Dispatch Instruction is delivered by GPA to Seller in accordance herewith.

Contract Year	Estimated Annual Stored Energy to be discharged from the Storage Unit and delivered to the Delivery Point referred to herein as the "Guaranteed Dispatch Rate"
1	6,570
2	6,554
3	6,501
4	6,466
5	6,431
6	6,415
7	6,362
8	6,327
9	6,293
10	6,276
11	6,223
12	6,188
13	6,153
14	6,136
15	6,084
16	6,049
17	6,015
18	5,997
19	5,945
20	5,910
21	5,875
22	5,857
23	5,805
24	5,771
25	5,736

The annual estimate of Stored Energy to be delivered shall be subject to the terms set forth in part II.C below.

C. Guaranteed Storage Output. The Storage Unit is expected to allow Seller to deliver a minimum number of MWhs of Stored Energy each Contract Year as set forth above (such annual MWh production is the "Guaranteed Dispatch Rate").

Seller during the Delivery Period shall (i) during any Contract Year, deliver to GPA at least ninety percent (90%) of the Guaranteed Dispatch Rate, and (ii) for any consecutive six (6) Contract Years during the Delivery Period, deliver to GPA at least ninety percent (90%) of the aggregate Guaranteed Dispatch Rate during such period (which shall include make-up amounts generated and delivered in any years in excess of one hundred percent (100%) of the Guaranteed Dispatch Rate for such year) (any such time period a "Storage Measurement Period" and each such guaranteed amount of delivered Stored Energy during any Storage Measurement Period, the "Guaranteed Storage Output"). Any shortfall of Stored Energy (expressed in MWhs/year) from the applicable Guaranteed Storage Output during a Storage Measurement Period shall be deemed a "Storage Deficiency Amount."

The Annual Storage Payment for the following Contract Year shall be adjusted for any Storage Deficiency Amount which is not due to Excused Hours or Weather Hours (except, in the case of Weather Hours, as set forth below) ("Shortfall Adjustment"). The Shortfall Adjustment will be calculated as set forth below:

$$\text{Adjusted Annual Storage Payment} = (\text{Storage Deficiency Amount} / \text{Guaranteed Dispatch Rate}) \times \text{Annual Storage Payment}$$

For purposes of clarity, Seller shall be entitled to deliver to GPA Renewable Energy or Stored Energy in the amount of such Storage Shortfall in subsequent time periods (even if such make-up amounts are in excess of the Guaranteed Dispatch Rate for such subsequent year), and this Agreement may be extended as necessary for a period of up to six (6) months to allow Seller to make up any Storage Deficiency Amount; however, there shall be no Shortfall Adjustment for such individual Contract Year unless such Stored Energy delivered hereunder is less than [ninety percent (90%) of the] Guaranteed Storage Output for the applicable Storage Measurement Period, and such shortfall is not due to Excused Hours or Weather Hours (except, in the case of Weather Hours, as set forth below).

In the event Shortfall Adjustment applies to a Storage Measurement Period of six (6) rolling Contract Years, then such Shortfall Adjustment shall be reduced by the amount of any Shortfall Adjustment paid for any Contract Year during such six (6) year Storage Measurement Period. The Shortfall Adjustment to the Annual Storage Payment shall be Seller's sole liability and obligation, and GPA's sole right and remedy, with respect to Seller's failure to deliver the Guaranteed Output during any Storage Measurement Period.

To the extent any Storage Deficiency Amount is due to Weather Hours, Seller's sole liability and GPA's sole remedy shall be to deliver thereafter Renewable Energy or Stored Energy equal to such Storage Deficiency Amount attributable to Weather Hours, calculated in accordance with Appendix K (which includes a sample calculation for a hypothetical Storage Measurement Period). If any portion of a Storage Deficiency Amount due to Weather Hours is not made up in the five (5) Contract Years beginning in the first Contract Year following the Contract Year in which the Weather Hours Storage Deficiency Amount occurred, then a Shortfall Adjustments shall be applied for the remaining Storage Deficiency Amount. Notwithstanding the foregoing, with respect to any Storage Deficiency Amount that is due to Weather Hours, Seller shall have the option, at any time prior to the expiration of the five (5) Contract Year make-up period, to elect to apply any remaining Shortfall Adjustment in its entirety. If the Storage Deficiency Amount arising as a result of Weather Hours occurs in the last five (5) years of the Delivery Period, then unless Seller exercises its option to apply any remaining Shortfall Adjustment early, the Delivery Period shall be extended as necessary, for a period of up to six (6) months, to achieve a make-up period of five (5) Contract Years as described above.

Seller shall be entitled to sell, and GPA shall purchase, quantities of Stored Energy for which Shortfall Adjustments are paid hereunder, during any remaining Storage Measurement Period during the Delivery Period. During any Contract Year, all Renewable Energy delivered by Seller to GPA in excess of the Guaranteed Dispatch Rate shall be credited against makeup of any outstanding Storage Adjustment, with oldest Storage Adjustment made up first.

To the extent any Storage Adjustment is due to Excused Hours, Seller shall be excused from any liability with respect thereto.

D. Remedies. For Seller's failure to deliver Stored Energy as required hereunder, GPA's remedies shall be as set forth in part II.C above. For GPA's failure to purchase and receive Stored Energy as required hereunder, Seller shall in addition have all other remedies available at law or in equity.

E. Title and Risk of Loss. Seller shall be responsible for any costs or charges imposed on or associated with the Stored Energy or its delivery up to the Delivery Point. GPA shall be responsible for any costs or charges imposed on or associated with Stored Energy or its receipt at and from the Delivery Point. Title to and risk of loss of Stored Energy from the Facility delivered to the Delivery Point shall transfer to GPA at the Delivery Point. Seller warrants that it will deliver to Buyer Stored Energy free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

III. Compensation for Storage Unit Operations

Compensation to Seller for the operation of the Storage Unit during the Delivery Period shall consist of an Annual Storage Payment as set forth in Appendix A. The Annual Storage Payment shall be paid in accordance with Sections 7.1, 7.2 and 7.5 of this Agreement.

The Annual Storage Payment shall only be subject to reduction or offset for, and GPA's sole remedy for Seller's failure to deliver Stored Energy and Seller's operation of the Storage Unit shall be, the application of any Shortfall Adjustment in accordance with Section II.C above.

Schedule C-1
Technical Specifications for Storage Unit

- Microgrid Capacity: 20MW PCS, 32.5MWh usable energy (Actual installed capacity shall be determined at later stage)
- The Microgrid will normally perform the ramp rate control as required, but if the Power Plant output exceeds 22.5MW, it will charge the excess amount into the Microgrid.
- The Microgrid will also force charge the Microgrid if the weather conditions are not sufficient enough to make the Power Plant to reach production amounts above 22.5MW to ensure that the Microgrid will discharge every year the agreed on discharge amount.

Schedule C-2
Operating Parameters for Storage Unit

- The output that the Facility delivers to the grid shall be limited to 22.5MWac throughout the Delivery Period.
- [Seller to provide additional Operating Parameters]

APPENDIX D

NOT USED

APPENDIX E

NOT USED

APPENDIX F-1

FORM OF LETTER OF CREDIT

(Provided is sample which may be replaced by Bank / Financial Institution Form)

(Bank or Financial Institution)

_____, 201__

Irrevocable Standby Letter of Credit No. _____

Beneficiary:

Guam Power Authority

P.O. Box 2977

Guam 96932-2977

Attn:

Applicant:

Dear _____:

We hereby establish for the account of (Company Name) ("Applicant") our irrevocable standby letter of credit in your favor for an amount of USD 4,000,000 (Four Million United States Dollars). Applicant has advised us that this letter of credit is issued in connection with the Renewable Energy Purchase Agreement, dated as of _____, 2012, by and between the Applicant, and Guam Power Authority (the "Beneficiary"). This letter of credit shall become effective immediately on the date hereof and shall expire on _____ [the date that is XX days after the Effective Date of the PPA] (such date, or such later date(s) as determined by Applicant in accordance with the next succeeding sentence, the "Expiration Date"). The Expiration Date can be extended on one or more occasions by written notice to us from the Applicant, provided that such written notice is received at least 10 days prior to the Expiration Date. This letter of credit is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation, and (b) the original of the letter of credit (the "Accompanying Documents") and presented at our office located at (Bank/Financial Institution Address) attention _____. (or at any other office which may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a "Business Day"). If we receive your draft and the Accompanying Documents at such office on any Business Day, all in strict conformity with the terms and conditions of this letter of credit, we will honor the same by making payment in accordance with your payment instructions on the third succeeding Business Day after presentation.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, accompanied by this letter of credit for cancellation, or (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the succeeding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. This letter of credit is issued and subject to the International Standby Practices 1998 (ISP98) International Chamber of Commerce Publication No. 590, and as to matters not addressed by ISP98, shall be governed by and construed in accordance with the laws of the State of New York and application of U.S. Federal Law.

4. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2 and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 5.

5. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no.

_____.

Very truly yours,

Authorized signature
(Bank or Financial Institution)

ANNEX 1
TO LETTER OF CREDIT NO. _____

under LETTER OF CREDIT No. _____

To:
(Bank or Financial Institution)
(Bank/Financial Institution Address)
Attn: _____

[Month, Day, Year]

On Sight

Pay to Guam Power Authority U.S. \$ _____ [not to exceed amount available to be drawn]

Wire to:
Bank's Name: Bank of Guam
Bank's Location: 111 Chalan Santo Papa St., Hagatna, Guam 96910
Bank's Mailing Address: P.O. Box BW, Hagatna, Guam 96932
Account Name: Guam Power Authority Revenue Fund Account
Acct. No.: (to be provided)
Routing No.: (to be provided)

For value received and charge to account of Letter of Credit No. _____ of (Company Name)

GUAM POWER AUTHORITY

By: _____

Name: _____

Title: _____

ANNEX 2
TO LETTER OF CREDIT NO. _____

Drawing under Letter of Credit No. _____

Date: _____

To:

(Bank or Financial Institution)

(Bank/Financial Institution Address)

Attn: _____

The undersigned, a duly authorized officer of the Guam Power Authority, ("Beneficiary"), hereby certifies on behalf of Beneficiary to (Bank or Financial Institution) and to (Company Name) (the "Applicant") with reference to irrevocable standby Letter of Credit No. _____ (the "Letter of Credit") issued for the account of (Company Name) ("Applicant"), that:

- 1) pursuant to the Renewable Energy Purchase Agreement, dated as of _____, 201__, by and between Applicant and Beneficiary and as of the date hereof Beneficiary is entitled to draw under the Letter of Credit;
- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$_____, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft; and
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the remaining amount to which Beneficiary is entitled to draft under said Renewable Energy Purchase Agreement.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

Date: _____

GUAM POWER AUTHORITY

By: _____

Name: _____

Title: _____

ANNEX 3
TO LETTER OF CREDIT NO. _____

Notice of surrender of Letter of Credit No. _____

Date: _____

To:

(Bank or Financial Institution)

(Bank/Financial Institution Address)

Attn: _____

Re: Letter of Credit No. _____ issued for the account of *(Company Name)*

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the "Letter of Credit"). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

GUAM POWER AUTHORITY

By: _____

Name: _____

Title: _____

APPENDIX F-2

To be provided

APPENDIX G

NOT USED

APPENDIX H

SCHEDULING AND COORDINATION PROCEDURES

The Parties acknowledge that as of the Effective Date GPA has not yet established protocols for scheduling (firm or intermittent) power to permit solar projects to participate in GPA's scheduling process. As soon as practicable, Seller and GPA shall establish such protocols by mutual agreement in writing. Seller shall use Commercially Reasonable Efforts to comply with all additional reasonable protocols issued by GPA relating to available resources during the Delivery Period, and GPA shall consult with Seller (and take into account and accommodate Seller's reasonable comments) in connection with the preparation of any such additional protocols. The foregoing shall be subject to Section 4.16 of this Agreement.

1.1 General

- (a) Notices. Seller shall submit to GPA notices and updates required under this Agreement regarding the Project's status, including, but not limited to, outage requests, forced outages and forced outage reports. If a web based system is not available, Seller shall promptly submit such information to GPA (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information. **Need to include PSCC requirements for Hourly Reports, Daily Production Reports, etc.**
- (b) GPA Settlements. GPA shall be responsible for all settlement functions within GPA related to the Project.
- (c) Resource Data Template. Seller shall provide the data to the GPA that is required for GPA's resource data template (or successor data system) for the Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.
- (d) Annual Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Actual Renewable Energy for the following calendar year.
- (e) Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average expected Actual Renewable Energy for the following month ("Monthly Delivery Forecast").
- (f) Daily Delivery Schedules. By 5:30 AM Guam Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide GPA with a non-binding forecast of the Project's available energy (a "Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's estimate of the Project's available energy. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by GPA, in which case Seller shall promptly provide GPA with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to GPA's on-duty scheduling coordinator. If Seller fails to provide GPA with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period

only GPA shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or GPA's best estimate based on information reasonably available to GPA and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or GPA's best estimate.

- (g) Hourly Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason, including Forced Outages (other than a scheduling change imposed by GPA), that results in a change to its deliveries (whether in part or in whole), Seller shall notify GPA immediately by calling GPA's on-duty scheduling coordinator. Seller shall notify GPA of Forced Outages in accordance with this Agreement. Seller shall keep GPA reasonably informed of any developments that are reasonably expected to affect either the duration of the outage or the availability of the Project during or after the end of the outage.

1.2 Dispatch Down/Curtailment.

- (a) GPA shall have the right to order Seller to curtail deliveries of Renewable Energy from the Project to the Delivery Point pursuant to a Notice of a Dispatch Down as defined in Appendix K delivered to Seller, provided that the value attributable to any Renewable Energy [in an aggregated quantity of more than 2% of the Minimum Production for any Contract Year] which is not delivered during such curtailment periods, whether for transmission unavailability, operational dispatch or pre-set ramping parameters or otherwise, shall be reimbursed to Seller as provided below.
- (b) GPA shall have the right to order Seller to curtail deliveries of Stored Energy from the Microgrid Unit to the Delivery Point pursuant to a Notice of a Dispatch Down as defined in Appendix K delivered to Seller, provided that GPA shall remain obligated to pay Seller the complete Annual Microgrid Payment without adjustment notwithstanding such curtailments, whether for transmission unavailability, operational dispatch or pre-set ramping parameters or otherwise.
- (c) Seller shall have the right in its discretion to make up any curtailed quantities of Renewable Energy as a result of a Dispatch Down ("Dispatch Down Makeup Production"), for which it is not reimbursed pursuant to this Appendix H, in the first and any subsequent Contract Year in which at least the Minimum Production is delivered and to extend the Term to the extent necessary, but not to exceed six (6) months, to make up any curtailed quantities. The Contract Price for the Contract Year in which the make-up occurs shall apply to Dispatch Down Makeup Production up to the Minimum Production amount for the Contract Year in which the Dispatch Down originally occurred. For production quantities in excess of the Minimum Production for the Contract Year in which the Dispatch Down originally occurred, the price will be the lesser of the then current LEAC Rate or the Contract Price in the Contract Year in which the make-up occurs. Production in excess of Minimum Production for any Contract Year will first be applied to any previous years' Deficiency Amounts, then to Dispatch Down Makeup Production, then treated under this Agreement as production in excess of Minimum Production.
- (d) GPA shall provide to Seller all technical information necessary to justify and support each Dispatch Down.
- (e) GPA shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such curtailment in excess of 2% of Minimum Production for such Contract Year occurred], an amount equal to the product of the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to

GPA but for such curtailment (“Lost Revenue”). During the Contract Year-end annual true-up process, any payments made by GPA to the Seller for production (MWh) in excess of the Minimum Production for that Contract Year, whether such production results from actual generation surpluses or Lost Revenue, will be adjusted to reflect the lesser of the Contract Price for the then current Contract Year or then current LEAC Rate. For purposes of clarification, for any given Contract Year, GPA will not be required to pay the Contract Price on amounts of production beyond the Minimum Production if the Contract Price for that Contract Year is higher than the LEAC Rate for that Contract Year. Seller agrees to reduce the Project’s Renewable Energy as set forth in such a Notice of Dispatch Down that meets the requirements set forth herein.

- (f) For purposes of clarification, no curtailment by GPA, as a result of a warranted failure of or defect in the interconnection facilities transferred by Seller to GPA pursuant to the Interconnection Agreement, during the one-year warranty term thereof, shall count against the 2% curtailment threshold set forth above. During the one-year warranty term of the interconnection facilities transferred, any curtailment by GPA which results from such failure of or defect in the interconnection facilities transferred will not be eligible for reimbursement by GPA to Seller, Lost Revenue payments, or Dispatch Down Makeup Production in future Contract Years.

1.3 Outage Notification.

- (a) Planned Outages. Seller shall schedule Planned Outages in accordance with Good Utility Practices and with the prior written consent of GPA, which consent may not be unreasonably withheld, conditioned or delayed. Nonetheless, the Parties acknowledge that in all circumstances, Good Utility Practices shall dictate when Planned Outages should occur. Seller shall notify GPA of Seller’s proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1st of each year during the Delivery Period. The Planned Outage schedule is subject to GPA’s concurrence, which concurrence may not be unreasonably withheld, conditioned or delayed. GPA shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its Commercially Reasonable Efforts in accordance with Good Utility Practices to accommodate GPA’s requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed form of outage notification to GPA no later than fourteen (14) days prior to each Planned Outage and reasonably appropriate outage information or requests to GPA. Seller shall contact GPA with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without GPA’s concurrence, not to be unreasonably withheld, conditioned or delayed.
- (b) Forced Outages. Within two hours of any Forced Outage Seller shall submit a completed form of outage notification to GPA in accordance with the instructions shown on the agreed form and shall submit outage information to GPA. Seller shall not substitute Renewable Energy from any other source for the output of the Project during a Forced Outage.
- (c) Coordination with GPA. GPA shall cooperate with Seller in arranging and coordinating all Project outages.

1.4 Operations Logs and Access Rights.

- (a) Operations Logs. Seller shall maintain a log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, and control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to GPA within five days of GPA's request.

- (b) Access Rights. GPA, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance notice and for any purposes reasonably connected with this Agreement.

APPENDIX I

BASE CONDITIONS AND FACILITY TEST PROTOCOL

[Since this bid is opened to different renewable resources GPA is requiring bidders to provide their own test protocols for GPA's review and approval.]

APPENDIX J
INTERCONNECTION AGREEMENT
(TO BE PROVIDED UPON ITS EXECUTION)

APPENDIX K

ADDITIONAL TERMS REGARDING WEATHER HOURS AND DISPATCH DOWN

WEATHER HOURS

For each applicable period, Seller shall calculate (1) the expected production of the Facility using the historical Weather Data from "WeatherBank PGUM_2004-PRES_solar data" provided in bid Amendment 2 (the "Expected Historical Production") and (2) the expected production of the Facility using the actual Weather Data (the "Expected Actual Production"). Seller shall then obtain the quotient, rounded to the fourth decimal place (the "Production Factor"), equal to the Expected Actual Production divided by the Expected Historical Production. If the Production Factor is greater than one (1), then no Weather Hours shall be deemed to have occurred. However, if the Production Factor is less than one (1), then Weather Hours shall be deemed to have occurred. The portion of any Deficiency Amount (as defined in the Agreement) attributable to such Weather Hours shall be the difference equal to (A) the aggregate Minimum Production amount for that period minus (B) the product of (x) the Production Factor and (y) the aggregate Minimum Production amount for that period. The Deficiency Amount due to weather shall not be penalized.

The Deficiency Amount due to weather shall be audited annually by an independent auditor to be selected and the cost shared by both Parties.

DISPATCH DOWN

Buyer shall pay Seller, on the date payment would otherwise be due in respect of the day in which any curtailment is initiated by GPA for reasons of Dispatch Down, an amount equal to the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to Buyer but for such Dispatch Down. The determination of the curtailed amount associated with any Dispatch Down shall be calculated as follows:

- 1) Identification of weather conditions for the period of Dispatch Down
For any period the Facility was Dispatched Down, Seller shall document the Weather Data associated therewith. ("Weather Data" means solar irradiation, wind speed, and ambient temperatures.)
- 2) Curtailed amount calculation
 - a. Seller shall use PVSyst energy simulation software or other software as agreed by the Parties to generate hypothetical generation amounts for the Dispatch Down period (curtailed amount MWh) by utilizing the Weather Data.
 - b. In addition to "Annual Facility Test" (as described in Section 4.9 of this Agreement), GPA shall be entitled to check the accuracy of the equipment associated with the Weather Data once in each Contract Year as agreed with Seller.

APPENDIX L

RESOLUTIONS OF CONSOLIDATED COMMITTEE ON UTILITIES

GPA Contract No. _____

**RENEWABLE ENERGY
PURCHASE AGREEMENT**

**BETWEEN
GUAM POWER AUTHORITY
AND**

[HANWHA ENERGY CORPORATION]¹

¹ Please note that it is expected that Hanwha Energy Corporation will establish a special-purpose entity to execute the PPA

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**RENEWABLE ENERGY
PURCHASE AGREEMENT
BETWEEN
GUAM POWER AUTHORITY
AND
[HANWHA ENERGY CORPORATION]²**

THIS RENEWABLE ENERGY PURCHASE AGREEMENT (the "Agreement"), effective as of last date set forth on the signature page hereto (the "Effective Date"), is entered into by and between and Guam Power Authority, ("GPA" or "Buyer") and [Hanwha Energy Corporation]³, a _____ ("Seller"). The purpose of this Agreement is to establish the terms and conditions under which Seller shall sell and GPA shall purchase Renewable Energy and associated Renewable Energy Credits, as defined herein. In this Agreement, Seller and GPA may be individually referred to as a "Party" or collectively as "Parties."

Recitals

WHEREAS, Seller desires to sell to GPA at the Delivery Point a portion of the Renewable Energy and associated RECs from the Facility and GPA desires to buy the same from the Seller at the Delivery Point.

WHEREAS, on the date hereof, Seller and GPA have entered into a Renewable Energy Purchase Agreement as to the remaining capacity of the Facility (the "Additional PPA").

Therefore, for good and valuable consideration, including, without limitation, the covenants and agreements of the Parties contained in this Agreement, the receipt and sufficiency of which consideration is acknowledged, the Parties agree as follows:

ARTICLE ONE: DEFINITIONS

The following definitions apply to this Agreement:

1.1 "Actual Renewable Energy" means the actual output of the Facility (expressed in MWhs), measured at the Delivery Point, including all Renewable Energy and all Stored Energy, over any Production Measurement Period. Actual Renewable Energy shall be measured by the Seller Metering Equipment, and adjusted as applicable in accordance with Section 7.4.

1.2 "Affiliate" means, with respect to any party, any other party (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 "Annual Facility Test" has the meaning set forth in Section 4.9.

1.4 "Annual Microgrid Payment" means, as to each Contract Year, the amount set forth in Appendix A.

1.5 "Appraisal Price" means the average of three (3) appraisals of the market value of the Facility at the end of the Delivery Term, delivered by three (3) independent appraisers qualified by experience and expertise to

² Please note that it is expected that Hanwha Energy Corporation will establish a special-purpose entity to execute the PPA

³ Please note that it is expected that Hanwha Energy Corporation will establish a special-purpose entity to execute the PPA

determine the arm's length market value of the Facility. If the Parties do not agree on the independent appraisers then they shall be determined by arbitration in accordance with Section 12.9.

1.6 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such valid petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.7 "Bid Security" or "Bid Bond" means the \$150,000.00, which is the amount of the security provided by Seller in connection with its initial bid to GPA for the Project.

1.8 "Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday or an official Guam holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the Notice of payment or delivery is to be received.

1.9 "Buyout Payment" means, with respect to Seller's election not to re-build the Facility pursuant to Section 12.2, an amount equal to: Minimum Production x the number of Contract Years (or portion thereof) remaining in the Delivery Period x Incremental Price

1.10 "Change Event" has the meaning set forth in Section 4.16(c).

1.11 "Charging Energy" means Renewable Energy generated by the Facility and used to charge the Microgrid Unit as contemplated in Appendix C.

1.12 "Claiming Party" has the meaning set forth in Section 4.9.

1.13 "Claims" means all claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise.

1.14 "COD Extension" has the meaning set forth in Section 4.2(a).

1.15 "COD Extension Payment" has the meaning set forth in Section 4.2(a).

1.16 "Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Good Utility Practices, including, without limitation, electric system reliability and stability or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. "Commercially Reasonable" or "Commercially Reasonable Efforts" shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

1.17 "Commercial Operation" has the meaning set forth in Section 4.1.

1.18 "Commercial Operation Date" or "COD" means the date that Commercial Operation of the Project has been achieved in accordance with Section 4.1.

1.19 "Confidential Information" means all information, whether written or oral, that is disclosed or otherwise available in connection with this Agreement or the performance by either Party of any of its duties hereunder, except any information which: (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement); (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Confidential Information, provided that such source is not bound by a confidentiality agreement that protected the Confidential Information; or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Agreement.

1.20 "Contract Price" means the price in U.S. Dollars (unless otherwise provided for) rounded to the nearest \$0.01, to be paid by GPA to Seller for the purchase of the Renewable Energy, as described in Appendix A.

1.21 "Contract Year" means the annual period, beginning on the Commercial Operation Date, and renewing thereafter on each anniversary of the Commercial Operation Date.

1.22 "Conventional Energy Resource" is an energy resource that is non-renewable in nature, such as natural gas, coal, oil, and uranium, or electricity that is produced with energy resources that are not Renewable Energy resources.

1.23 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties.

1.24 "Cure Plan" has the meaning set forth in Section 4.7.

1.25 "Daily Delay Liquidated Damages" has the meaning set forth in Section 4.2(b).

1.26 "Defaulting Party" has the meaning set forth in Section 6.1.

1.27 "Deficiency Amount" has the meaning set forth in Section 4.8

1.28 "Delivery Period" means the period of delivery under this Agreement, commencing on the Commercial Operation Date and continuing for the Term, as such period may be extended in accordance with this Agreement.

1.29 "Delivery Point" means the point at which the Renewable Energy (including Stored Energy) will be delivered and received, as specified in Section 2.1 herein, or such other delivery point as may be agreed to by the Parties in writing.

1.30 "Development Security" means the security deposit during construction of the renewable project or facility prior to Commercial Operation Date. The Development Security shall be 50% of the total projected payment for the 1st contract year based on the contractor's 1st Contract Year energy rate and the guaranteed energy production. Refer to Section 9.1 for additional requirements.

1.31 "Dispatch Down" means any curtailment is initiated by GPA for reasons other than Force Majeure or Seller Event of Default.

1.32 "Early Termination Date" has the meaning set forth in Section 6.2.

1.33 "Effective Date" means the date first set forth above.

1.34 "Eligible Renewable Energy Resources" are applications of the following defined technologies that displace Conventional Energy Resources that would otherwise be used to provide electricity to GPA's customers: biogas electricity generator, biomass electricity generator, fuel cell that use only renewable fuels, geothermal

generator, hybrid wind and solar electric generator, landfill gas generator, solar electricity resources, wind generator and such other generally accepted renewable energy resources.

1.35 "Emergency" means any abnormal interconnection or system condition (including, without limitation, equipment or transmission limitations and constraints caused by thermal limits, stability, voltage, or loop flows) that Buyer determines in accordance with Good Utility Practices): (a) requires automatic or immediate manual operation to prevent or limit loss of Buyer's system or generation supply; (b) could adversely affect the reliability of the Buyer system or generation supply; (c) could adversely affect the reliability of any interconnected electric system; or (d) could otherwise pose a threat to public safety.

1.36 "End Date" has the meaning given in Section 12.1(b).

1.37 "Environmental Attributes" means environmental characteristics that are attributable to Renewable Energy, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Credits; greenhouse gas or emissions reductions, credits, offsets, allowances or benefits; actual SO₂, NO_x, CO₂, CO, Carbon, VOC, PM₁₀, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of Renewable Energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Such Environmental Attributes shall be expressed in kWh or, as applicable in the case of emissions credits, in tonne equivalent or other allowance measurement. Environmental Attributes does not include Tax Benefits, or any energy, capacity, reliability, or other power attributes used by Seller to provide electricity services.

1.38 "EPC Contractor" means the contractor(s) under the engineering, procurement and construction contract for the Project.

1.39 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.40 "Event of Default" has the meaning set forth in Section 6.1.

1.41 "Excused Hours" means the hours in the applicable Production Measurement Period (i) in which Seller has declared Force Majeure, (ii) during any Planned Outage or Forced Outage but subject to an aggregate maximum of six hours per Contract Year; (ii) in which Seller has initiated a Dispatch Down or (iii) in which Seller's delivery to GPA of Renewable Energy is adversely affected as a result of failure by GPA to perform its obligations under this Agreement or the Interconnection Agreement or in which GPA does not accept delivery of Renewable Energy for any reason.

1.42 "Facility" means all of the following: the Project, as defined in Section 2.1 of this Agreement, the purpose of which is to produce Renewable Energy including the Microgrid Unit, Seller's Interconnection Facilities and all equipment and other tangible assets, land rights and contract rights reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Renewable Energy being sold under this Agreement.

1.43 "Facility Capacity" has the meaning set forth in Section 2.1.

1.44 "Facility Test" has the meaning set forth in Section 4.1(e).

1.45 "Facility Debt" means the obligations of Seller or its Affiliates to any Facility lender, tax equity investor or other financing party pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, reimbursement obligations regarding letters of credit, obligations under financing leases, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging obligations and breakage costs and any claims or interest due with respect to any of the foregoing. Facility Debt does not include trade debt or obligations incurred in the ordinary course of business.

1.46 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.47 "Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing or a tax equity investment for the Facility (including any portfolio debt financing of which the Facility is included), including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller and/or its Affiliates in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

1.48 "Forced Outage" means the shutdown or unavailability of the Facility, or a portion thereof other than as a Planned Outage, for reasons including, but not limited to, unanticipated equipment breakdown, human error, or Emergency conditions. A Forced Outage shall not include any Outage that may be deferred consistent with Good Utility Practices and without causing safety risk damage to equipment or additional costs.

1.49 "Forced Outage Notice" has the meaning set forth in Section 4.12(b).

1.50 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Transaction, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a "Force Majeure" event may include, but shall not be limited to, any act of God, an act or threatened act of the public enemy, blockade, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to, or adjuncts of, shipping or navigation, perils of the sea, air crash, shipwreck, train wrecks or other failures or delays of transportation, nuclear emergency, radioactive contamination, ionizing radiation, release of hazardous waste or materials, sabotage, invasion, riot, civil disturbance or disobedience, flood, drought, military ordinances or archaeological discoveries at the Project site, change in applicable law or interpretation or application thereof, failure or delay by any Governmental Authority in issuing or granting any required clearance, approval, arrangement, or permit, an earthquake, storm, fire, flood, tidal wave, storm, wind, explosion or any similar cataclysmic occurrence, lightning, epidemic, war (imminent, declared or otherwise), terrorism or riot. Notwithstanding the foregoing, Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Renewable Energy purchased hereunder; (iii) the loss or failure of Seller's supply, including materials or equipment, unless such loss or failure is caused by a Force Majeure event (iv) the delay in or inability of Seller to obtain financing or economic hardship of any kind; or (v) Seller's ability to sell the Renewable Energy at a price greater than the Contract Price or Buyer's ability to purchase the Renewable Energy at a price less than the Contract Price; or (vi) strike or other labor dispute. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a transmission provider unless (i) such Party has contracted for firm transmission with a transmission provider for the Renewable Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the transmission provider's tariff.

1.51 "Force Majeure Extension" has the meaning set forth in Section 4.2(c).

1.52 "Good Utility Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods, or acts.

1.53 "Governmental Authority" means any federal, territorial or local government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

1.54 "Governmental Charges" has the meaning set forth in Section 10.2.

1.55 "GPA Delay" means any delay by GPA in performing an obligation under this Agreement or under the Interconnection Agreement which results in a delay to Seller achieving COD. A GPA Delay is not an Event of Default unless it is otherwise so designated in this Agreement.

1.56 "Guaranteed Output" has the meaning given in Section 4.8.

1.57 "Incremental Price" means, at the time of its calculation, the LEAC Rate minus the Contract Price, provided, however, if the LEAC Rate is less than the Contract Price then the Incremental Price shall be deemed to be zero. Sample calculations of the Incremental Price are shown in Schedule III to Appendix K.

1.58 "Independent Engineer" shall mean one of the engineering firms set forth in Appendix D hereto, and any other independent engineer or engineering firm, nationally recognized in the United States and having knowledge and expertise in the United States generation industry (including specifically the design and construction of utility scale solar photovoltaic power projects), and which is mutually agreed to by the Parties.

1.59 "Interconnection Agreement" means the agreement for interconnection service relating to the Facility between GPA and Seller, executed and delivered as of the Effective Date in the form attached hereto as Appendix J.

1.60 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.61 "kWh" means kilowatt hour.

1.62 "LEAC Rate" means the "Fuel Recovery Charge" (expressed in US\$/MWh) as set forth in GPA's most recent approved tariff in effect as of any date of determination of the LEAC Rate under this Agreement.

1.63 "Letter(s) of Credit" means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's, in substantially the form set forth in Appendix [F-1] hereto; provided, however that such form may be modified by the issuing bank as long as such modifications are acceptable to the beneficiary in its sole discretion. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.64 "Merger Event" means, with respect to a Party, that such Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder unless such credit support is replaced by the resulting, surviving or transferee entity in accordance with this Agreement.

1.65 "Minimum Production" has the meaning set forth in Section 4.8.

1.66 "Month" means a calendar Month. The term "Monthly" shall have a meaning correlative to a Month.

1.67 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.68 "MW" or "MWh" means megawatt or megawatt hour, in each case rounded to the nearest whole MW or MWh.

1.69 "NAR" means the North American Renewables Registry.

1.70 "NAR Operating Procedures" means any and all guidelines, procedures, requirements and obligations established by the NAR, including the terms of use, operating procedures, and fee schedules, as such may be amended from time to time.

1.71 "Non-Defaulting Party" has the meaning set forth in Section 6.

1.72 "Notice" has the meaning set forth in Section 12.7.

1.73 "Outage" means the period during which the Facility or a portion thereof is out of service.

1.74 "Outside Commercial Operation Date" has the meaning set forth in Section 4.2(b).

1.75 "Payment and Performance Bond" means one or more payment and performance bonds issued by an insurance company or other institution having an investment grade Credit Rating from S&P, Moody's or Fitch, in substantially the form set forth in Appendix [F-2] hereto; provided, however that such form may be modified by the issuing entity as long as such modifications are acceptable to the beneficiary in its sole discretion.

1.76 "Planned Outage" means any Outage that is not a Forced Outage, and refers to the shutdown or unavailability of the Facility or a portion thereof for inspection or maintenance in accordance with an advance schedule.

1.77 "Production Measurement Period" has the meaning set forth in Section 4.8.

1.78 "Project" has the meaning set forth in Section 2.1.

1.79 "QRE" means the Qualified Reporting Entity as such term is defined in the NAR Operating Procedures.

1.80 "Quantity" means the actual quantity of Renewable Energy (including Stored Energy) sold by Seller and purchased by and delivered to GPA pursuant to this Agreement. The Quantity shall be measured based on the metered data from the Seller Metering Equipment at the Delivery Point.

1.81 "Renewable Energy" means energy derived from a Renewable Energy Resource.

1.82 "Renewable Energy Credit" or "REC" means the unit created to track kWh derived from an Eligible Renewable Energy Resource or kWh equivalent of Conventional Energy Resources displaced by distributed renewable energy resources if and to the extent recognized under applicable law.

1.83 "Renewable Energy Resource" means an energy resource that is replaced rapidly by a natural, ongoing process and that is not nuclear or fossil fuel.

1.84 "Replacement Price" means the price at which GPA, acting in a Commercially Reasonable Manner, purchases electricity in place of Renewable Energy.

1.85 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.86 "SCADA" means "supervisory control and data acquisition" and shall refer to that category of software application program that can be used to gather data from the Facility remotely in real time in order to monitor Facility equipment and conditions.

1.87 "Schedule," "Scheduled" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, of notifying, requesting and confirming to each other the quantity and type of Renewable Energy (including Stored Energy) to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

- 1.88 “Scheduled Commercial Operation Date” has the meaning set forth in Section 4.2(a).
- 1.89 “Seller Failure” has the meaning set forth in Section 5.1.
- 1.90 “Seller Failure Damages” has the meaning set forth in Section 5.1.
- 1.91 “Seller’s Interconnection Facilities” means Seller’s equipment as specified in the Interconnection Agreement.
- 1.92 “Seller Metering Equipment” means all metering equipment and data processing equipment used to measure the Quantity delivered to the Delivery Point.
- 1.93 “Shortfall Damages” has the meaning set forth in Section 4.8.
- 1.94 “Sponsor Interest” means an upstream ownership interest held by an entity that is an Affiliate of the Seller as of the Effective Date which represents a partial indirect ownership interest in Seller and which is established in connection with a tax equity financing.
- 1.95 “Microgrid Unit” means the energy storage unit to be installed by Seller as part of the Facility, as contemplated in Appendix C.
- 1.96 “Stored Energy” means Charging Energy stored in the Microgrid Unit which is later delivered to the Delivery Point as contemplated in Appendix C.
- 1.97 “Tax Benefits” means any and all tax benefits arising from the ownership and operation of the Facility, including without limitation Renewable Energy related tax credits or other benefits established under Section 45 and Section 48 of the Internal Revenue Code, as amended, or any similar or successor provision of the Internal Revenue Code, or any other applicable tax law, regulation, or code.
- 1.98 “Tax Equity Investor Interest” means an upstream ownership interest held by a financing party (including a financial institution, insurance company or other third party not affiliated with the Seller except based on the applicable tax equity investment or other similar investments or financings) as of the Effective Date which represents a partial indirect ownership interest in Seller and which is established in connection with a tax equity financing.
- 1.99 “Term” has the meaning set forth in Section 12.1.
- 1.100 “Termination Damages” has the meaning set forth in Section 4.4.
- 1.101 “Test Energy” means non-firm Renewable Energy generated prior to the Commercial Operation Date, subject to immediate interruption, fluctuations or reduction/increase with no prior Notice, due to unit performance.
- 1.102 “Transaction” means the transaction relating to the purchase or sale of Renewable Energy as contemplated in this Agreement.
- 1.103 “Unit Contingent” means that the Renewable Energy (excluding Charging Energy but including Stored Energy) is intended to be supplied from the Facility as it is produced.
- 1.104 “Weather Hours” means the total hours in any Production Measurement Period, as applicable, in which the Facility is derated as a result of cumulative weather conditions which are outside historical average conditions for any applicable Month during the Production Measurement Period in which the deration occurs, calculated in accordance with Appendix K.

ARTICLE TWO: COMMERCIAL TERMS

2.1 Commercial Terms.

The following commercial terms apply to the Transaction that is the subject of this Agreement, each as more fully described herein:

Buyer: GPA	Seller: Hanwha Energy Corporation
Project: Hanwha Project B	
Delivery Point: The "Point of Interconnection" as defined in the Interconnection Agreement	
Guaranteed Annual Production (MWhs): As set forth in Appendix A	Estimated Annual Production: (MWhs): NOT APPLICABLE
Guaranteed Availability (%): NOT APPLICABLE	Guaranteed Capacity (MWs): NOT APPLICABLE
Delivery Period: Twenty-five (25) years from the Commercial Operation Date	Contract Price (\$/MWh): See Appendix A
Renewable Energy Type: Unit Contingent (solar) and associated RECs	Development Security: As contemplated in Section 9.1
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Chamorro Standard Time (CHST), Guam time
Commercial Operation Date: No later than 36 months after Effective Date.	
Test Energy: Seller agrees to sell and Buyer agrees to purchase all Test Energy from the Facility. The test period shall be up to six (6) months. The price of such Test Energy for the first thirty days shall be the current LEAC Rate. The price thereafter shall be the Year 1 Contract Price set out in Appendix A. Test Energy shall be delivered in accordance with the Scheduling provisions contained herein. Both Parties agree that Seller will use Commercially Reasonable Efforts to pre-schedule the Test Energy, but Buyer shall nonetheless be obligated to accept all Test Energy up to 22.5 MW per hour of Test Energy for the period set forth above. Seller shall provide to Buyer all RECs associated with the Test Energy sold hereunder in accordance with Section 4.16.	

ARTICLE THREE: REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties.

On the Effective Date of this Agreement, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) It has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement (other than permits or regulatory authorizations to be obtained by Seller for the construction, operation or maintenance of the Facility, which Seller reasonably anticipates it will be able to obtain in due course);
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses.
- (d) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (e) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (f) No Event of Default or potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and
- (g) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

3.2 Seller Representations and Warranties.

Seller affirmatively represents and warrants to GPA that:

- (a) On the Effective Date of this Agreement, or in due course as required in accordance with the Financing Arrangement Deadline (as may be extended as provided in Section 4.3), Seller has (or reasonably expects to have in due course), good defensible title, or valid and effective leasehold rights in the case of leased property, to the Facility, free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens, charges, claims, pledges, security, interests, equities and encumbrances relating to Facility Debt as provided for herein, or liens that in the aggregate do not materially detract from or interfere with the ability of Seller to deliver the Quantity of the Renewable Energy;
- (b) All acts necessary to the valid execution, delivery and performance of this Agreement by Seller have or will be taken and performed as required under Seller's ordinances, bylaws, or other regulations including, but not limited to (i) the valid authority of the person

executing this Agreement to bind Seller and (ii) the Term of this Agreement does not extend beyond any limitation applicable to Seller imposed by relevant governing documents and applicable law; and

- (c) Seller will have at the time of sale, title to and ownership of the RECs sold hereunder.

3.3 GPA Representations and Warranties.

GPA represents and warrants that:

- (a) The Commission on Consolidated Utilities has made all certifications required by the Guam Public Utilities Commission and the Guam legislature in order for the valid execution, delivery and performance of this Agreement by GPA copies of which are attached hereto as Appendix L.
- (b) Each of the PPA Approval and the ICA Approval is final, non-appealable and not subject to rehearing or other proceedings challenging its validity or enforceability.
- (c) No authorizations, approvals or consents of any governmental or regulatory authority or agency or any other person, and no filings or registrations with any governmental authority or agency, are necessary for the execution, delivery or performance by GPA of this Agreement, or for the validity or enforceability thereof, except for any authorizations, approvals, consents or filings which have been made or obtained prior to the date hereof and are in full force and effect and are conclusive, binding and final.
- (d) During the entire Term of the Agreement, all terms and conditions set forth in this Agreement shall be valid and enforceable against GPA.
- (e) All legal, statutory and regulatory requirements and conditions necessary for the validity and enforceability of this Agreement and the obligations of GPA hereunder to purchase Renewable Energy, including, without limitation, the conditions and requirements as set forth in Title 12 of the Guam Code Annotated, Section 8306, have been satisfied, and at the time of the execution of the Agreement GPA further represents and warrants specifically as to the following: **NOTE TO GPA: GPA IS TO ENSURE THE RESOLUTIONS OF THE CCU ATTEST TO THE MATTERS SET FORTH BELOW.**
 - (i) Pursuant to the provisions of Public Law 30-66 (as codified in Title 12 of the Guam Code Annotated, Section 8104(n)), GPA is authorized to enter into this Agreement, together with any other agreement to be entered into by GPA and Seller as provided herein, and perform all the obligations imposed upon GPA as set forth herein, including, without limitation, the obligation to purchase Renewable Energy and pay all amounts due and owing to the Seller under the terms of this Agreement, and that no separate and specific appropriation or approval by *Liheslaturan Guahan* is required for such purpose.
 - (ii) This Agreement and the purchase of Renewable Energy by GPA at the time of the execution of the Agreement pursuant to the terms herein will not result in (A) costs to GPA which exceed the average cost of producing power under the islandwide power system owned and operated by GPA not inclusive of energy production from any backup diesel generators or other renewable energy sources, and (B) increased expenses and costs for GPA.
 - (iii) As set forth in the resolutions attached hereto as Appendix L, the Consolidated Commission on Utilities has certified that this Agreement is consistent with and does not violate any and all bond covenants applicable to and imposed upon

GPA and that the price to be paid by GPA for Renewable Energy as provided herein does not exceed GPA's actual current avoided cost.

GPA is not a party to a pooling agreement or any other agreement with the United States Department of Navy or any other federal agency, department or instrumentality ("Federal Government) which requires GPA to notify or obtain the approval of the Federal Government of this Agreement.

- (iv) Any and all Renewable Energy to be purchased by GPA pursuant to the terms of this Agreement constitutes electrical power needed and required by GPA in connection with the operation and stability of the islandwide power system and to meet renewable energy portfolio standards which GPA is mandated to achieve and satisfy by law including without limitation, the mandates as set forth in Public Law 29-062 as codified in Title 12 of the Guam Code Annotated, Section 8311.

ARTICLE FOUR: PERFORMANCE REQUIREMENTS

4.1 Commercial Operation.

Seller shall achieve Commercial Operation of the Project no later than the Scheduled Commercial Operation Date except to the extent such date is extended pursuant to Section 4.2, in which case Commercial Operation shall occur on or prior to the Outside Commercial Operation Date. Commercial Operation shall be achieved as of the date on which each of the following conditions precedent has been satisfied or waived in writing by the Parties, as applicable ("Commercial Operation"):

- (a) Seller shall have obtained all governmental and regulatory authorizations, including any applicable permits, required for the construction, ownership, operation and maintenance of the Project and for the sale of the Renewable Energy therefrom;
- (b) Seller and Buyer shall have entered into the Interconnection Agreement;
- (c) Seller shall have established SCADA information and real time data feed to enable GPA to view parameters or data points that relate to Renewable Energy data and other actual resource data for the Facility;
- (d) The Microgrid Unit shall be capable of charging and discharging Renewable Energy;
- (e) The Project shall in all other respects be capable of delivering the Renewable Energy to GPA at the Delivery Point;
- (f) Seller shall perform at its cost a capacity test in accordance with the protocol outlined in Appendix I to determine the capacity of the Project ("Facility Test"). GPA shall receive the entire Renewable Energy from the Facility during such test. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

GPA shall use all available Commercially Reasonable Efforts to assist Seller in achieving the Scheduled Commercial Operation Date. Seller shall present to GPA a certificate executed by its duly executed officer, and by an Independent Engineer as to items (c), (d) and (e), verifying that each of the foregoing conditions has been satisfied or waived in writing by the Parties and Commercial Operation shall be deemed to have occurred upon the delivery of such certificate to GPA unless GPA objects to such certificate within ten (10) Business Days of delivery thereof and such objections are either agreed by Seller or resolved in favor of GPA pursuant to Section 12.9 hereof. Upon any acceptance or deemed acceptance of Seller's certificate by GPA, all conditions, set forth above shall no longer be a condition precedent to Commercial Operation of the Project. If the Commercial Operation Date does not occur on or before the Outside Commercial Operation Date, as such date may be extended in accordance with Section 4.2 herein; either Party shall have the right to terminate the Agreement upon written Notice to the other Party. In the event of such termination by either Party, GPA shall be entitled to Termination Damages set forth in Section 4.4; provided, however, that in accordance with Section 4.2(c), GPA shall not be entitled to such Termination Damages if the Outside Commercial Operation Date is not achieved due to a Force Majeure event or a GPA Delay.

4.2 Extension of Commercial Operation Date.

- (a) Planned Extension. The Parties agree that the Commercial Operation Date is expected to be No later than 36 months after Effective Date. (as extended pursuant to the terms of this Agreement, the "Scheduled Commercial Operation Date"). Seller may elect to extend the Commercial Operation Date beyond such date (the "COD Extension") by paying GPA for such extension (the "COD Extension Payment"). The COD Extension Payment shall be in the amount of fifty percent (50%) of the Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year per day for

each day (or portion thereof) after but not including the date of the COD Extension until, but not including, the date on which the Project actually achieves Commercial Operation]. To extend the Commercial Operation Date, Seller must, as early as reasonably possible, but in no event later than fourteen (14) days prior to the first day of the proposed extension, provide GPA with Notice of its election to extend the Commercial Operation Date along with an estimate of the duration of the extension. The COD Extension Payment is in addition to and not to be considered part of the Development Security, and shall be paid to GPA at the time of the Notice hereunder. Seller's request to extend the Commercial Operation Date shall not be valid unless proper Notice and payment are timely received by GPA. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein, and GPA shall not have the right to terminate the Agreement or to receive Termination Damages with respect to such extension so long as Seller has provided the Notice, estimation and payment as provided in this Section 4.2(a). Seller may further extend the Commercial Operation Date beyond the original COD Extension, subject to the foregoing Notice, estimation and payment terms applicable to the original COD Extension.

Seller shall be entitled to a prompt refund, without interest, of any portion of the COD Extension Payment held by GPA which exceeds the amount required to cover the number of days by which the Commercial Operation Date was actually extended. In no event may Seller extend the Commercial Operation Date by more than ninety (90) days through the payment of the COD Extension Payment, except as provided in Section 4.2(b). In the event that the Project does not achieve Commercial Operation on or before the expiration of any COD Extension period as provided herein, either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights pursuant to Sections 4.2(b) or (c) below. In the event of such termination by either Party in accordance with this provision, GPA shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

- (b) Unplanned Extension/Additional Planned Extension. In the event that (i) the Project does not achieve Commercial Operation by the Scheduled Commercial Operation Date and Seller fails to provide sufficient Notice and/or payment in order to extend the Commercial Operation Date as provided in Section 4.2(a), or (ii) the Commercial Operation Date shall not have occurred within the ninety (90) day planned extension period provided under Section 4.2(a), then Seller may further extend the Commercial Operation Date by paying GPA damages ("Daily Delay Liquidated Damages"). The Daily Delay Liquidated Damages shall be in the amount of one hundred percent (100%) of the Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year) per day for each day (or portion thereof) after but not including the earlier of the dates set forth in sub-clauses (i) or (ii) above, or until, but not including, the date on which the Project actually achieves Commercial Operation, and shall be payable within ten (10) Business Days following receipt of an invoice from GPA for any such Daily Delay Liquidated Damages. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein and GPA shall not have the right to terminate the Agreement with respect to such extension or to receive Termination Damages so long as Seller has extended the Commercial Operation Date and pays the Daily Delay Liquidated Damages as provided in this Section 4.2(b).

In no event may the Commercial Operation Date be extended more than one hundred and eighty (180) days through the payment of Daily Delay Liquidated Damages, without the express written consent of GPA. In the event that the Project does not achieve Commercial Operation on or before three hundred and sixty-five (365) days from the Scheduled Commercial Operation Date (as extended pursuant to this Agreement, the "Outside Commercial Operation Date"), then either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights

pursuant to Section 4.2(c) below. In the event of such termination by either Party in accordance with this provision, GPA shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

- (c) Additional Extension. The Scheduled Commercial Operation Date and the Outside Commercial Operation Date shall also be extended, without payment or other penalty, on a day-for-day basis for each day of delay caused by reason of Force Majeure (a "Force Majeure Extension") or by reason of GPA Delay. Any Force Majeure Extension or GPA Delay shall also extend the period of any planned or unplanned extensions pursuant to Sections 4.2(a) or (b) on a day-for-day basis for each day during the Force Majeure Extension or GPA Delay, and Seller shall not be required to pay any COD Extension Payments or Daily Delay Liquidated Damages, as applicable, for any days during the Force Majeure Extension or GPA Delay. Notwithstanding any other provision in this Agreement, if, due solely to a Force Majeure Extension and/or a GPA Delay, the Project does not achieve Commercial Operation on or before the Outside Commercial Operation Date, then the Parties by mutual agreement may terminate this Agreement without penalty or further obligation to either Party, and after one hundred and eighty 180 days following the Outside Commercial Operation Date, either Party may unilaterally terminate this Agreement without penalty or further obligation to either Party. For the sake of clarity in the event of any such termination, GPA shall not be entitled to Termination Damages.

4.3 Financing Arrangement Deadline.

Seller shall make Commercially Reasonable Efforts to secure a financing sufficient for the successful completion of the Project as and when required and procure a preliminary agreement customary for such financing (such as an engagement letter) no later than one (1) year after the Effective Date as extended day-for-day for any Force Majeure Extension or GPA Delay (the "Financing Arrangement Deadline"). After the execution of the preliminary agreement, Seller shall provide GPA with a copy of such agreement within three (3) Business Days. In the event that Seller fails to procure the execution of a preliminary agreement by the Financing Arrangement Deadline, GPA may terminate the Agreement and shall be entitled to Termination Damages set forth in Section 4.4 as its sole and exclusive remedy.

4.4 Termination Damages.

Prior to the Commercial Operation Date, Seller may terminate this Agreement at any time for its convenience. GPA shall be entitled to termination damages, payable solely from the Bid Security or the Development Security established in Section 9.1 ("Termination Damages"), in the amounts set forth in the table below, if: (a) subject to the last sentence of this Section 4.4, Seller terminates the Agreement prior to the Commercial Operation Date for any reason other than: (i) a Force Majeure event or (ii) an Event of Default by GPA; [(b) GPA terminates the Agreement as a result of Seller failing to meet any Financing Arrangement Deadline after the passage of a grace period of thirty (30) days (as extended day-for-day for any Force Majeure Extension or GPA Delay);] and/or (c) GPA terminates the Agreement as a result of Seller failing to achieve the Commercial Operation Date on or prior to the Scheduled Commercial Operation Date, as the same may have been extended pursuant to Section 4.2. The Termination Damages are designed to help compensate GPA for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and GPA's potential failure to meet its applicable renewable energy portfolio requirements and do not constitute a penalty payment. Accordingly, Seller shall pay to GPA, from the Development Security, Termination Damages in the following amounts, based upon when the termination occurs:

Prior to Posting Date of Development Security pursuant to Section 9.1:	\$0.00
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[Up to Financing Arrangement Deadline]	100% of the Bid Security
[Up to six months following Financing Arrangement Deadline]	50% of Development Security
[From six months to twelve months following Financing Arrangement Deadline]	75% of Development Security
[From twelve months following Financing Arrangement Deadline]	100% of Development Security

No later than five (5) Business Days following the Financing Arrangement Deadline, GPA shall return the Bid Security to Seller, to the extent GPA has not validly claimed the Bid Security in respect of Termination Damages on or prior to such date. Notwithstanding the foregoing, in the event that Seller terminates this Agreement for any reason prior to the posting date for the Development Security as set forth in Section 9.1 herein, then Seller shall owe GPA no Termination Damages and such termination shall be without penalty to Seller.

4.5 Seller's and Buyer's Obligations.

Subject to Appendix H and Appendix C, Seller shall sell and deliver, or cause to be delivered, and GPA shall purchase and receive, or cause to be received, all Renewable Energy generated by the Facility (excluding Charging Energy but including Stored Energy when delivered, in each case, as set forth in Appendix C), at the Delivery Point, and GPA shall pay Seller the Contract Price for such Quantity of Renewable Energy (including Stored Energy) as measured by the Seller's Metering Equipment at the Delivery Point; provided that for quantities of Renewable Energy (including Stored Energy) in excess of the Estimated Annual Renewable Energy Amount, as shown in the third column of Appendix A, which are not make-up quantities for delivery deficiencies in prior Production Measurement Periods, the price payable by GPA shall be the lower of the Contract Price and the LEAC Rate.

For Seller's failure to deliver Renewable Energy as required hereunder, GPA's remedies shall be as set forth in Section 4.8. For GPA's failure to purchase and receive Renewable Energy (including Stored Energy) as required hereunder, Seller shall in addition have all other remedies available at law or in equity. Seller shall be responsible for any costs or charges imposed on or associated with the Renewable Energy (including Stored Energy) or its delivery up to the Delivery Point. GPA shall be responsible for any costs or charges imposed on or associated with Renewable Energy (including Stored Energy) or its receipt at and from the Delivery Point. Title to and risk of loss of Renewable Energy (including Stored Energy) from the Facility delivered to the Delivery Point shall transfer to GPA at the Delivery Point. Seller warrants that it will deliver to Buyer Renewable Energy (including Stored Energy) free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

4.6 Operation of Facility.

Seller shall operate and maintain the Facility in accordance with Good Utility Practices and in accordance with the Agreed Ramp Rate as set forth in Appendix C.

4.7 Not Used.

4.8 Minimum Production.

The Facility is expected to produce a minimum number of MWhs of Renewable Energy (including Stored Energy) each Contract Year as set forth in the third column of Appendix A (such annual MWh production is the "Minimum Production"). Seller during the Delivery Period shall (i) during any Contract Year, deliver to GPA at least ninety percent (90%) of the Minimum Production (which calculated amounts are set forth in the fourth column

of Appendix A), and (ii) for any consecutive six (6) Contract Years during the Delivery Period, deliver to GPA at least ninety-five percent (95%) of the aggregate Minimum Production during such period (which shall include make-up amounts generated and delivered in any years in excess of one hundred percent (100%) of the Minimum Production for such year) (any such time period a "Production Measurement Period" and each such guaranteed amount of delivered Renewable Energy during any Production Measurement Period, the "Guaranteed Output"). Any shortfall of Renewable Energy (expressed in MWh/year) from the applicable Guaranteed Output during a Production Measurement Period shall be deemed a "Deficiency Amount." For the avoidance of doubt, (i) Stored Energy delivered to the Delivery Point shall count towards Seller's achievement of the Minimum Production during each Production Measurement Period, and (ii) Charging Energy shall not be delivered by Seller and shall not count towards any Deficiency Amount as it is used to charge the Microgrid Unit as contemplated in Appendix C.

GPA shall be entitled to receive damages for any Deficiency Amount ("Shortfall Damages") which are not due to Excused Hours or Weather Hours (except, in the case of Weather Hours, as set forth below). Shortfall Damages shall be calculated as follows on an annual basis at the end of each Contract Year (and [in accordance with the example set forth in Schedule I to Appendix K]):

$$\text{Shortfall Damages} = \text{Deficiency Amount} \times \text{Incremental Price.}$$

For purposes of clarity, if Actual Renewable Energy (including Stored Energy) for any given Contract Year is less than the Minimum Production for that year (even if due to Excused Hours or Weather Hours), there shall be a "Shortfall," and Seller shall be entitled to deliver to GPA Renewable Energy in the amount of such Shortfall in subsequent time periods (even if such make-up amounts are in excess of the Minimum Production for such subsequent year), and this Agreement may be extended as necessary for a period of up to six (6) months to allow Seller to make up any Shortfalls; however, there shall be no Shortfall Damages owing to GPA for such individual Contract Year unless such Actual Renewable Energy is less than the Guaranteed Output for the applicable Production Measurement Period, and such shortfall is not due to Excused Hours or Weather Hours (except, in the case of Weather Hours, as set forth below).

In the event Shortfall Damages are due for a Production Measurement Period of six (6) rolling Contract Years, then such Shortfall Damages shall be reduced by the amount of any Shortfall Damages paid for any Contract Year during such six (6) year Production Measurement Period. Seller's payment of Shortfall Damages shall be Seller's sole liability and obligation, and GPA's sole right and remedy, with respect to Seller's failure to deliver the Guaranteed Output during any Production Measurement Period.

To the extent any Deficiency Amount is due to Weather Hours, Seller's sole liability and GPA's sole remedy shall be to deliver thereafter Renewable Energy equal to such Deficiency Amount attributable to Weather Hours, calculated in accordance with Appendix K (which includes a sample calculation for a hypothetical Production Measurement Period). If any portion of a Deficiency Amount due to Weather Hours is not made up in the five (5) Contract Years beginning in the first Contract Year following the Contract Year in which the Weather Hours Deficiency Amount occurred, then Seller shall pay Shortfall Damages for the remaining Deficiency Amount. Notwithstanding the foregoing, with respect to any Deficiency Amount that is due to Weather Hours, Seller shall have the option, at any time prior to the expiration of the five (5) Contract Year make-up period, to pay any remaining associated Shortfall Damages in their entirety. If the Deficiency Amount arising as a result of Weather Hours occurs in the last five (5) years of the Delivery Period, then unless Seller exercises its option to pay the Deficiency Amount early, the Delivery Period shall be extended as necessary, for a period of up to six (6) months, to achieve a make-up period of five (5) Contract Years as described above. The Contract Price for such Renewable Energy shall be the Contract Price in effect in the Contract Year in which the Deficiency Amount due to Weather Hours accrued.

Seller shall be entitled to sell, and GPA shall purchase, quantities of Renewable Energy for which Shortfall Damages are paid hereunder, during any remaining Production Measurement Period during the Delivery Period. The price therefore shall be the Contract Price in effect at the time the Shortfall Damages accrued. During any Contract Year, all Renewable Energy delivered by Seller to GPA in excess of the Minimum Production shall be credited against makeup of any outstanding Deficiency Amounts, with oldest Deficiency Amounts made up first.

To the extent any Deficiency Amount is due to Excused Hours, Seller shall be excused from any liability with respect thereto.

Notwithstanding the foregoing, in the event that the Delivery Point is unavailable for any reason other than due to GPA's electric system, Seller's obligation to supply and sell, and GPA's obligation to accept and purchase, Renewable Energy shall be limited to such Renewable Energy that is actually deliverable from the Facility to the Delivery Point during such period except this paragraph shall not apply in the case of Excused Hours or an Event of Default by either Party.

4.9 Facility Testing.

In addition to the Facility Test referenced in Section 4.1(e), the capacity of the Facility shall be tested during each Contract Year during the Delivery Period (the "Annual Facility Test"). Seller shall notify GPA of the specific date on which it intends to conduct the Annual Facility Test at least ten (10) Business Days in advance and shall permit GPA to be present at such test. GPA shall have the right to receive copies of the results of the Annual Facility Test, which shall be conducted in accordance with the protocol set forth in Appendix I. Any dispute regarding the results of the Annual Facility Test shall be resolved as set forth in Section 12.9 of this Agreement. GPA shall receive, in accordance with Section 4.5, the entire Renewable Energy from the Facility during any Annual Facility Test or re-test. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

4.10 Scheduling.

Seller agrees to supply at the Delivery Point all Renewable Energy produced by the Project, net of Renewable Energy self-generated and consumed at the Facility, and net of any generation losses prior to the Delivery Point, up to the Facility Capacity, in accordance with the scheduling and coordination procedures set out in Appendix H. GPA agrees to take at the Delivery Point all Renewable Energy tendered by Seller in accordance with the foregoing sentence. The Schedules and estimates provided pursuant to this Section 4.10 shall be made by Seller in good faith and based on information available to it at such time, but in no event shall such Schedules be binding on Seller nor shall Seller be liable for any inaccuracies in such Schedules.

4.11 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Transaction and such Party (the "Claiming Party") gives Notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due hereunder). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

4.12 Facility Outages and Maintenance Scheduling.

- (a) Planned Outages. Seller shall provide written Notice to GPA prior to conducting any Planned Outages of the Facility. Within ninety (90) days prior to the Commercial Operation Date, as the same may be extended in accordance with the provisions of Section 4.2, and on or before the first day of each subsequent Contract Year, Seller shall provide GPA with a schedule of such proposed Planned Outages. The proposed Planned Outages schedule shall be submitted electronically to GPA, using a reasonably acceptable format provided by GPA. Such format is subject to change from time-to-time during the Term of this Agreement by agreement of the Parties, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist GPA in planning for the decreased output of the Facility as a result of the Outage.

GPA shall promptly review Seller's proposed schedule and may request modifications within thirty (30) days of GPA's receipt of such schedule. Changes to the schedule may

be requested by either Party and each Party shall make Commercially Reasonable Efforts to accommodate such changes, provided further that Seller shall have no obligation to agree to GPA's proposed modifications or revisions to any Planned Outage schedule.

Notwithstanding any of the foregoing, Seller shall not commence a Planned Outage that is expected to result in an Outage of ten percent (10%) or more of the Facility without notifying GPA of the Planned Outage at least five (5) Business Days prior to the start of such Planned Outage.

- (b) Forced Outages. In the event of any Forced Outage, Seller shall promptly notify GPA of the same. Seller shall immediately notify GPA verbally and shall then, within twenty-four (24) hours thereafter, provide written Notice to GPA (the "Forced Outage Notice"). The Forced Outage Notice shall be submitted electronically to GPA, using a reasonably acceptable format provided by GPA. Such format is subject to change from time-to-time during the Term of this Agreement by agreement of the Parties, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist GPA in planning for the decreased output of the Facility as a result of the Outage. Seller shall return the Facility to service as soon as possible, consistent with Good Utility Practices, after the Forced Outage ceases to exist.
- (c) GPA Parts Inventory. To the extent GPA maintains an inventory of parts or components that are used or useful in the Facility and provided it can prudently do so under its own ordinary course operating practices and restrictions, GPA shall cooperate with Seller in a commercially reasonable manner by making such parts or components available to Seller at its request during the period of time Seller is obtaining replacement parts or components for the Facility in order to maximize output of Renewable Energy. If Seller obtains a replacement part or component from GPA, it shall at GPA's option either replace such part or component with the new part or component ordered by Seller or return the borrowed part or component to GPA at such time as Seller obtains the replacement. Seller shall bear the installation, transportation and labor charges relating to GPA's replacement parts or components, and if the parts or components are returned to GPA then Seller shall reimburse GPA for any damage to such parts or components while in Seller's possession.

4.13 Operating Status Reports.

From the Effective Date of this Agreement, through the date of Commercial Operation, Seller shall provide GPA with Monthly reports regarding material data pertaining to the operation of the Facility. The operations data is generally identified as performance, Outage, and risk data and shall be sent electronically to GPA using a reasonably acceptable format provided by GPA. The operations data report format may be modified by agreement of the Parties from time-to-time during the Term of this Agreement.

4.14 Resource Quality Reporting: Forecasting.

Seller shall provide to GPA at its request copies of non-proprietary resource quality data that could reasonably be expected to affect, in any material manner, the operation and/or productivity of the Facility, whether produced, compiled or otherwise generated by Seller or any third party in a Commercially Reasonable manner, so that GPA can evaluate the expected performance of the Facility. Seller shall provide such data as it is produced or otherwise made available to Seller. Upon Commercial Operation of the Facility, to the extent generated or procured by Seller, Seller shall also provide to GPA Monthly and day-ahead forecasting information for the Facility. Such information shall be in a format agreed to by the Parties and include, among other things: Seller's forecasts for the performance of the Facility based on Facility specifications, weather-based forecasting, and weather-related studies. Such information, which will be used by GPA solely for evaluation, Scheduling, and other purposes related to this Agreement, shall be provided as available. In no event shall the data and/or information provided to GPA pursuant to this Section 4.14 be binding upon Seller, nor shall Seller be liable for any penalties, charges or other damages based on the inaccuracy of such data or information.

4.15 Permit Violations.

Seller shall at all times during the Term of this Agreement maintain and comply with all applicable permits for the development, ownership and maintenance of the Facility in all material respects. As soon as practicable after the occurrence of any event known to Seller that would constitute or is reasonably likely to lead to a violation of any applicable permit, but in no event more than ten (10) Business Days thereafter, Seller shall provide GPA with written Notice of the same.

4.16 Change in Technical Requirements.

The Parties agree that, from and after the Effective Date, if Seller is required at any time to comply with new or modified technical or other performance requirements for the Facility or any material portion thereof (or in the manner any such facilities are to be operated or maintained) and such addition to or change in the above standards causes an increase in Seller's actual costs to perform in excess of \$25,000 in the aggregate, then the Parties shall negotiate in good faith to agree upon an adjustment to the Contract Price and/or the Annual Microgrid Payment, as applicable, to compensate Seller for such increased costs. Such a change in the technical or performance requirements may arise as a result of the scheduling protocols or the communication protocols to be established by GPA pursuant to Appendix H or any other protocols or regulations established by GPA, requirements imposed by the transmission provider or pursuant to the Interconnection Agreement, requirements imposed by GPA or another Governmental Authority pursuant to or in connection with this Agreement, among other circumstances.

Seller will deliver prompt notice of the occurrence of a change in technical or performance requirements which has or is reasonably expected to result in the additional actual costs described above. If, on the date which is forty-five (45) days following Seller's delivery of notice to GPA, the Parties are unable to agree upon an adjustment to the Contract Price and/or the Annual Microgrid Payment, as applicable, which compensates Seller for such additional costs and is otherwise mutually acceptable, then Supplier may submit such dispute for resolution pursuant to Section 12.9.

4.17 Delivery of RECs.

- (a) Use of North American Renewables Registry. At least ten (10) days prior to COD, Seller shall transfer to GPA the authority to create, own and transfer all Environmental Attributes associated with the Renewable Energy produced by the Facility, by executing and delivering the form entitled "Generator Owner's Designation of Responsible Party" published by NAR, wherein Seller shall designate GPA as the "responsible party" for all matters relating to the creation, ownership, and transfer of any RECS. Thereafter, GPA shall be responsible for all obligations relating to creating and transferring RECs and Seller shall have no further obligations or liabilities with respect thereto, provided, however, that Seller shall reimburse to GPA its costs of creating and maintaining the NAR account and NAR's fees charged to transfer the RECs, up to an aggregate maximum amount of \$5,000 per annum. In the event this Agreement is terminated for any reason, the Parties agree to each consent to the termination of such designation in accordance with NAR procedures.
- (b) GPA Registration as a QRE. GPA shall be the QRE for the Facility as required by NAR and shall comply with any and all NAR Operating Procedures relating to the registration and operation as a QRE and the reporting of generation data from the Facility to NAR. As the QRE, each month upon receipt of an invoice and associated interval metering data from Seller in accordance with Section 7.5 herein, GPA shall report such data to NAR within three (3) Business Days following receipt of such data. The Parties shall cooperate to ensure that the Seller Metering Equipment and the resulting interval metering data meet the NAR requirements for metering equipment and generation data.
- (c) Change Event. During the Term, in the event that (i) the NAR Operating Procedures are amended or changed such that it becomes impossible for the Parties to utilize NAR as the REC tracking method and/or for GPA to continue as "responsible party" for purposes of

creating, owning and transferring RECs attributable to the Facility; (ii) the fees or charges imposed by NAR on either Seller or GPA to utilize the NAR REC tracking system are materially increased such that use of the NAR REC tracking system becomes uneconomic or infeasible; or (iii) the NAR REC tracking system is eliminated (each one individually, a "Change Event"), then the Parties shall promptly negotiate in good faith to reform the terms of this Agreement in order to give effect to the original intention of the Parties to the extent reasonable under the circumstances, including utilizing an alternative method for transferring RECs to GPA, but in no case shall Seller's cost with respect thereto exceed \$5,000 per annum.

4.18 Ramp Rate Control Performance.

During the Delivery Period, Seller shall cause the Microgrid Unit to comply with the performance guarantees for ramp rate control set forth [below] (the "Ramp Rate Control Performance Guarantees").] If the Microgrid Unit System fails to meet the Ramp Rate Control Performance Guarantees over the time periods set forth [below], GPA may provide written notice to Seller of the failure to meet the Ramp Rate Control Performance Guarantees and a request for Seller to take steps needed for the Energy Storage System to meet the Ramp Rate Control Performance Guarantees. In response to such a notice, Seller shall, within two (2) weeks from the date of such notice, provide GPA with a written remedial action plan that provides a detailed description of Seller's course of action and plan to meet the Ramp Rate Control Performance Guarantees and shall take steps to implement such remedial action within six (6) months of the date of such action plan; provided, however, GPA shall not be entitled to such a remedial action plan if the failure to achieve the Ramp Rate Control Performance Guarantees is due to a Force Majeure event, GPA Delay or an Event of Default by GPA. Seller's sole obligation with respect to any deficiency in the Ramp Rate Control Performance Guarantees is to follow its remedial action plan.

If ramp rate is greater than 3 MW/minute seller shall reduce plant output until ramp rate is less than 3 MW/minute. If system issues remain, GPA reserves the right to restrict Seller's plant output until seller restores operation with a ramp rate less than 3 MW/minute. The Interconnection Agreement shall define conditions for Seller's plant reduction and implementation of GPA's restrictions.

ARTICLE FIVE: SELLER FAILURE

5.1 Seller Failure.

In the event Seller fails to deliver to GPA any Quantity of Renewable Energy to which GPA is entitled in accordance with the terms of this Agreement and instead sells such Quantity of Renewable Energy to which GPA is entitled to a third party in violation of this Agreement ("Seller Failure"), then Seller shall pay to GPA the "Seller Failure Damages," which shall mean the positive difference, if any, between the Replacement Price and the Contract Price for the period of such Seller failure, times such Quantity of Renewable Energy. GPA shall calculate the Seller Failure Damages and shall provide to Seller an invoice for such amount, including a written statement explaining in reasonable detail the calculation of such amount. Seller shall pay the Seller Failure Damages not later than ten (10) days following its receipt of such an invoice from GPA. If the Replacement Price is less than the Contract Price, then the Seller Failure Damages are deemed to be zero. The Seller Failure Damages represent the sole and exclusive remedy of GPA for Seller's failure as described herein.

ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES

6.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after receipt of written Notice;
- (b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, if such failure is not remedied within thirty (30) Business Days after receipt of written Notice, or such longer time, not to exceed sixty (60) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for such Party's obligations to deliver or receive the Renewable Energy, the remedies for which are provided in Article Five) if such failure is not remedied within thirty (30) Business Days after written Notice, or such longer time, not to exceed sixty (60) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (d) Such Party becomes Bankrupt (or if the Bankruptcy is involuntary, the failure of such Party to achieve dismissal of the Bankruptcy within ninety (90) days);
- (e) A Merger Event occurs with respect to such Party;
- (f) If during the Term of this Agreement there have occurred three (3) or more Seller Failures as that term is used in Section 5.1;
- (g) With respect to Seller, a material permit violation occurs, such violation has or is reasonably likely to result in a material adverse effect on the Seller's ability to perform its obligations under this Agreement and such violation is not remedied within fifteen (15) Business Days after Notice by either GPA or the relevant permitting authority, or such longer time, not to exceed sixty (60) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (h) With respect to Seller, failure to maintain the Development Security as required pursuant to this Agreement and the failure to reinstate the same within ten (10) Business Days after Seller's receipt of written Notice thereof from GPA.

6.2 Declaration of an Early Termination Date.

If an Event of Default with respect to a Defaulting Party shall have occurred on or after the Commercial Operation Date and be continuing, the other Party (the "Non-Defaulting Party") shall have the right but not the obligation to: (i) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement between the Parties; (ii) withhold any payments due to the Defaulting Party under this Agreement as setoff against termination costs and liabilities as determined herein (and until such amounts are determined); and (iii) suspend its performance under this Agreement.

6.3 Suspension of Performance and Other Remedies.

Except as otherwise expressly provided in this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity including any specific remedies set forth in this Agreement; provided, however, that any damages shall include only the direct actual damages incurred by the Non-Defaulting Party as provided in Section 8.1.

ARTICLE SEVEN: PAYMENT AND NETTING

7.1 Billing Period.

Unless otherwise specifically agreed upon by the Parties, the calendar Month shall be the standard period for all payments under this Agreement. The Annual MicroGrid Payment shall be divided into twelve equal monthly payments each Contract Year. No later than the tenth (10th) day after the end of each Month, each Party will render to the other Party an invoice (in the case of Seller, such invoice being rendered in accordance with Section 7.5) for the payment obligations of non-invoicing Party, if any, incurred hereunder during the preceding Month.

7.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the tenth (10th) day of each Month, or if later the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) Months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Except as otherwise provided in this Agreement, payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twelve (12) Months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance of a Transaction occurred, the right to payment for such performance is waived.

7.4 Metering and Other Facilities.

Seller shall be responsible, at its sole expense, for providing the Seller Metering Equipment in accordance with Good Utility Practices. In accordance with the terms of the Interconnection Agreement, the Seller may elect to have GPA provide Seller with the Seller Metering Equipment; provided, however, the cost of such meters shall be borne solely by Seller at no cost to GPA. Seller shall be solely responsible for operating, maintaining, and repairing the Seller Metering Equipment at its own expense throughout the Term of this Agreement. Seller shall inspect and test the Seller Metering Equipment upon its installation and at least once every year at Seller's expense. Seller shall give GPA reasonable advance Notice of any test, and promptly provide GPA with the results of any such test. GPA may observe the test and conduct its own tests, at GPA's expense, to verify Seller's procedures and results.

Upon an inaccurate read of the Seller Metering Equipment or if Seller knows of any material inaccuracy or defect in Seller Metering Equipment, Seller shall notify GPA in writing within forty-eight (48) hours of such defect. Seller shall be solely responsible for adjusting, repairing, replacing or recalibrating such metering device as near as practicable to a condition of zero (-0-) error, and for paying any expenses associated with such adjustment, repair,

replacement or recalibration. If a metering device fails to register or is found upon testing to be inaccurate, an adjustment will be made correcting all measurements by the inaccurate or defective metering device in the following manner:

- (a) In the event that an adjustment factor cannot be reliably calculated, the Parties shall use the measurements from GPA-owned meters if they are installed, fully operational and calibrated in accordance with Good Utility Practices. If for any reason the measurements cannot be obtained from GPA owned meters, the Parties shall use data from Seller's computer monitoring system to determine the relevant measurements. If Seller's computer monitoring system is found to be inaccurate by more than two (2) percent, the Parties shall estimate the amount of the necessary adjustment using the site meteorological information for the period of the inaccuracy based upon deliveries of Renewable Energy delivered to GPA at the Delivery Point from the Facility during periods of similar operating conditions when the Seller Metering Equipment was registering accurately. The adjustment will be made for the period during which inaccurate measurements were made.
- (b) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted will be the shorter of: (1) the last one-half of the period from the last previous test of the metering device to the test that found the metering device to be defective or inaccurate; or (2) the one hundred and eighty 180-day period immediately preceding the test that found the metering device to be defective or inaccurate.
- (c) Upon determination of corrected measurements, the required payment adjustment shall be made according to the procedures set forth in Section 7.3.

7.5 Invoices.

Seller shall maintain and read the Seller Metering Equipment for measuring the Renewable Energy (including Stored Energy) delivered hereunder. For review purposes, Seller shall furnish GPA with a written invoice reflecting the Contract Price and the interval data from the Seller Metering Equipment used to calculate that invoice; and any other charges due, within ten (10) Business Days after Seller reads the Seller Metering Equipment. Seller shall furnish GPA with a written invoice reflecting the applicable portion of the Annual Microgrid Payment the tenth (10th) day after the end of each Month. Such invoices may be furnished to GPA by facsimile transmission or by such other method as the Parties agree.

ARTICLE EIGHT: LIMITATIONS

8.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED HEREIN, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

Notwithstanding the foregoing, if GPA is the Defaulting Party, the Parties agree that the actual damages recoverable to Seller hereunder on account of an Event of Default by GPA shall include loss of Tax Benefits on a grossed up after tax basis, using the highest applicable United States marginal personal income tax rate.

Any assets transferred to GPA as required by the Interconnection Agreement shall require a one year warranty on all construction work and assignment of any manufacturer warranties from the transfer of such assets; provided, however, that the obligations and liability of Seller pursuant to such warranty and obligation to assign shall be subject to any limitations and exclusions set forth in the Interconnection Agreement.

ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS

9.1 Development Security.

In order to secure Seller's obligations prior to Commercial Operation of the Facility, hereunder, Seller shall post the Development Security in the form of a Letter of Credit or cash deposit in the amount of \$2,375,805. The Development Security shall be held by GPA as security for Seller's obligations prior to the Commercial Operation Date including its obligation to satisfy the Financing Arrangement Deadline, but GPA may draw on the Development Security at any time only in the amounts and according to the schedule set forth in Section 4.4. Seller shall post the Development Security in accordance with the following terms and conditions:

- (a) Seller shall post the Development Security within ten business (10) days following the Effective Date of this Agreement.
- (b) If the Development Security is posted as a Letter of Credit, it shall be in substantially the form attached hereto as Appendix [F-1].
- (c) Any Development Security posted in cash shall bear simple interest at a rate equal to the Interest Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 9.3 of this Agreement.

9.2 Forfeiture of Development Security.

In the event that the Commercial Operation Date does not occur on or before the Scheduled Commercial Operations Date, as extended pursuant to the terms of this Agreement, and to the extent Seller does not remit any COD Extension Payment or Daily Delay Liquidated Damages payment when due, then GPA shall be entitled to proceed against the Development Security in accordance with the terms thereof, to the extent of the amount(s) due and owing from time to time. Seller acknowledges and agrees that forfeiture of all or a portion of the Development Security, as provided herein, represents reasonable compensation to GPA for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and GPA's potential failure to meet its applicable renewable energy portfolio requirements as a result of Seller's failure to achieve Commercial Operation by the Scheduled Commercial Operation Date. Notwithstanding the foregoing, if Seller terminates this Agreement prior to the Commercial Operation Date for the sole purpose of selling the Renewable Energy to a third party, GPA shall be entitled to both the Development Security and any other remedies available at law or in equity to the extent that GPA's actual damages exceed the value of the Development Security.

9.3 Return of Development Security.

At the end of the Term or upon the termination of this Agreement following the settlement and payment of any damages owed as a result of such termination, GPA shall return to Seller any remaining portion of the Development Security still held by GPA and to which GPA has no claim pursuant to the terms of this Agreement. If the Development Security was posted as a Letter of Credit, GPA shall return the Letter of Credit to Seller and Seller shall be entitled to immediately cancel such Letter of Credit. If the Development Security was posted in cash, GPA shall return to Seller the balance of the Development Security, together with daily interest at the Interest Rate, from and including the date that the Development Security was posted until, but not including, the date on which the Development Security is returned by GPA.

9.4 Performance Security.

In order to secure Seller's obligations after Commercial Operation of the Facility and during the Delivery Period hereunder, Seller shall post security in one of the forms contemplated below, each of which is deemed acceptable by GPA (the "Performance Security"):

- (a) A Letter of Credit or cash in the amount of \$4,751,610; or
- (b) A Payment and Performance Bond in the amount of \$4,751,610; or

- (c) A subordinated second lien on the Sponsor Interest and Seller agrees to take such action as is reasonably required in order to perfect GPA's security interest in, and lien on, such collateral and any and all proceeds resulting therefrom; provided, that concurrently with the grant of such lien, GPA shall enter into such subordination, inter-creditor and other agreements with the senior financing parties as they as may reasonably require pursuant to which GPA shall agree that their rights and remedies pursuant to their second lien shall be subordinated in all respects to the senior first lien held by the financing parties; provided further, for the avoidance of doubt, there shall be no lien granted on the Tax Equity Investor Interest.

The Performance Security shall be held by GPA as security for Seller's obligations after the Commercial Operation Date and during the Delivery Period, but GPA may draw on the Performance Security at any time only in the amounts actually due and payable by Seller to GPA pursuant to this Agreement. Seller may (i) post the Performance Security by posting a combination or one or more of the above acceptable forms of credit support in an aggregate amount of \$4,751,609.95, and (ii) at any time elect to substitute any form of one or more of the above acceptable forms of credit support for any existing Performance Security in which case GPA shall return the replaced Performance Security and reasonably cooperate with Seller in the exchange or cancellation of such credit support.

Seller shall post the Performance Security in accordance with the following terms and conditions:

- (a) Seller shall post the Development Security within ten (10) business days following the Commercial Operation Date.
- (b) If the Performance Security is posted as a Letter of Credit, it shall be in substantially the form attached hereto as Appendix [F-1].
- (c) If the Performance Security is posted as a Payment and Performance Bond, it shall be in substantially the form attached hereto as Appendix [F-2].
- (d) Any Performance Security posted in cash shall bear simple interest at a rate equal to the Interest Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 9.5 of this Agreement.

9.5 Return of Performance Security.

At the end of the Term or upon the termination of this Agreement following the settlement and payment of any damages owed as a result of such termination, GPA shall return to Seller any remaining portion of the Performance Security still held by GPA and to which GPA has no claim pursuant to the terms of this Agreement. If the Performance Security was posted as a Letter of Credit or a Payment and Performance Bond, then GPA shall return the Letter of Credit or Payment and Performance Bond to Seller and Seller shall be entitled to immediately cancel such Letter of Credit or Payment and Performance Bond. If the Performance Security was posted in cash, GPA shall return to Seller the balance of the Performance Security, together with daily interest at the Interest Rate, from and including the date that the Performance Security was posted until, but not including, the date on which the Performance Security is returned by GPA.

ARTICLE TEN: GOVERNMENTAL CHARGES

10.1 Cooperation.

Each Party shall use Commercially Reasonable Efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Government Authority ("Governmental Charges") on or with respect to the Renewable Energy or this Agreement arising prior to the Delivery Point. GPA shall pay or cause to be paid all Governmental Charges on or with respect to the Renewable Energy or this Agreement at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Renewable Energy and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges, which are GPA's responsibility hereunder, GPA shall promptly reimburse Seller for such Governmental Charges. If GPA is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, GPA may deduct the amount of any such Governmental Charges from the sums due to Seller under Article Seven of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE ELEVEN: ASSIGNMENT

11.1 Buyer Assignment.

Buyer may not assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, without Seller's consent, not to be unreasonably withheld.

11.2 Seller Assignment.

Seller may perform any of the following, without the consent of the Buyer (1) transfer, pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds hereof, in connection with any financing or other financial arrangements for the Facility, (2) transfer or assign this Agreement to any of its Affiliates in connection with a transfer of the Facility to such Affiliate, (3) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, and (4) transfer or assign this Agreement to _____ or to any of its Affiliates; provided, that Seller provides Buyer prior notice of any such transfer or assignment and, with respect to any transfer to an such assignee of Seller, (A) such assignee posts replacement credit support in accordance with this Agreement, and (B) such Affiliate enters into an assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, pursuant to which Affiliate assumes all of Seller's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Seller agrees that it will provide written notice to Buyer of any assignment of this Agreement by Seller within five (5) Business Days of the date of such assignment.

Except as stated above, neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of Buyer, void.

11.3 Liability After Assignment.

A Party's assignment or transfer of rights or obligations pursuant to this Article 11 shall relieve said Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment.

11.4 Transfers of Ownership.

Subject to any rights of first offer or refusal under this Agreement, during the Term, Seller shall not sell, transfer, assign or otherwise dispose of its interest in the Facility to any third-party absent (1) a transfer of this Agreement to such third-party and (2) Seller entering into an assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, with such third-party.

11.5 Successors and Assigns.

This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

11.6 Collateral Assignment by Seller.

In the event that Seller pursuant to Section 11.2 (1) transfers, pledges, encumbers or collaterally assigns this Agreement to Seller's lenders, Seller shall provide written notice to Buyer of such transfer, pledge, encumbrance or assignment, including the address of Seller's lenders. In connection with any financing or refinancing of the Facility, Buyer at Seller's request shall negotiate in good faith with Seller and Seller's lenders to agree upon a reasonable direct agreement with respect to this Agreement, which shall be in form and substance reasonably agreed to by Buyer, Seller and Seller's lenders, and which shall, among other terms, include provisions substantially as follows:

- (a) The Parties shall not amend or modify this Agreement in any material respect without the prior written consent of the Seller's lenders;
- (b) Prior to exercising its right to terminate this Agreement as a result of an Event of Default by Seller, Buyer shall give notice of such Event of Default by Seller to the administrative agent of Seller's lenders, which Buyer has been provided written notice of; and
- (c) Seller's lenders shall have the right, but not the obligation, to cure an Event of Default on behalf of Seller in accordance with the provisions of this Agreement, provided that Seller's lenders shall be provided an additional forty-five (45) days, from the end of the cure periods provided pursuant to Section 6.1, to effect a cure of such Event of Default.

ARTICLE TWELVE: MISCELLANEOUS

12.1 Term of Agreement; Conditions Precedent.

- (a) The Term of this Agreement shall commence on the Effective Date and shall remain in effect for the duration of the Delivery Period, as set forth in Section 2.1, unless earlier terminated by either Party in accordance with this Agreement herein (the “Term”); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.
- (b) This Agreement shall be effective on the Effective Date provided that the Parties’ obligations hereunder shall be subject to the satisfaction of the following conditions precedent:
- (i) Receipt by GPA of a final, non-appealable approval of this Agreement by the Guam Public Utilities Commission (“PPA Approval”);
 - (ii) Execution of the Interconnection Agreement by the Parties;
 - (iii) Receipt by GPA of a final, non-appealable approval of the Interconnection Agreement by the Guam Public Utilities Commission (“ICA Approval”); and

GPA shall submit this Agreement for approval by the Guam Public Utilities Commission within thirty (30) days of the Effective Date. GPA shall also submit the Interconnection Agreement for approval by the Guam Public Utilities Commission within thirty (30) days of the execution of the Interconnection Agreement. Each Party shall use Commercially Reasonable Efforts to satisfy the conditions precedent prior to the End Date; provided that neither Party shall be obligated to execute the Interconnection Agreement except on terms acceptable to such Party in its sole discretion. Seller shall have the right in its sole discretion to waive the conditions precedent set forth in section 12.1(b) above.

Either Party has the right to terminate this Agreement by Notice, which will be effective five (5) Business Days after such Notice is given, if the conditions precedent set forth above have not been satisfied (or waived in accordance herewith) within [to be **determined based on date of signing – between 60-120 days consistent with proposed project schedule**] days after the Effective Date (“End Date”). If either Party exercises its termination right pursuant to this Section 12.1(b), no Termination Damages will be due or owing by either Party and Seller will be entitled to a return of any Development Security provided to GPA.

12.2 Insurance.

At all times during the Term of this Agreement, Seller shall maintain at its own expense insurance policies for the Facility and its tangible assets in such amounts and against such risks and losses as are consistent with Good Utility Practices and those policies listed below. Such insurance policies shall be maintained only with insurers rated at least A- VII by MVI Best or comparable ratings agency.

- Commercial General Liability with limits of \$1,000,000 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Commercial Auto Liability in the amount of \$1,000,000 combined single limit for bodily injury and property damage. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.

- Excess Liability with limits of \$5,000,000. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Workers Compensation and Employers Liability with statutory limits and \$1,000,000/\$1,000,000/\$1,000,000 respectively. Seller shall add a waiver of subrogation endorsement in favor of GPA.
- Pollution Liability, when applicable, with limits for \$5,000,000. GPA is to be an additional insured. Seller shall grant a waiver of Subrogation in favor of GPA.
- Builder's Risk or Installation Floater, when applicable, is to be furnished by Contractor.
- Property insurance that will keep the premises, property, improvements, structures, and machinery and equipment on the premises insured, at a minimum, against with an all risk property policy for full replacement value as determined from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in Guam, and shall contain the standard form of waiver of subrogation. Nothing contained herein shall be construed as creating any liability or responsibility on the part of GPA for the adequacy of insurance coverage on the premises. As to any insurable risks of loss or damage to the premises not required to be insured hereunder, Seller shall bear the cost of the same. Seller shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.

At all times after achieving COD, Seller may discontinue or otherwise cancel each of the aforementioned policies, except the following insurance policies, which shall be maintained with the limits set forth below:

- Commercial General Liability with limits of \$1,000,000.00 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Excess Liability with limits of \$3,000,000.00. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Property insurance that will keep the premises, property, improvements, structures, and machinery and equipment on the premises insured, at a minimum, against with an all risk property policy for full replacement value as determined from time to time. Such insurance shall be issued by any financially responsible insurer duly authorized to do business in Guam, and shall contain the standard form of waiver of subrogation. Nothing contained herein shall be construed as creating any liability or responsibility on the part of GPA for the adequacy of insurance coverage on the premises. As to any insurable risks of loss or damage to the premises not required to be insured hereunder, Seller shall bear the cost of the same. Seller shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.
- Seller is also required to carry Business Interruption and Extra Expense insurance in the amount of \$1,000,000.00.

If the Facility is lost or damaged due to a casualty, then only if and to the extent Seller is not required to use available insurance proceeds to prepay any Facility Debt then outstanding, Seller shall re-build the Facility promptly and in a commercially reasonable manner if and to the extent technically feasible and commercially reasonable in

light of the available insurance proceeds and subject to the procurement by Seller of the consent of any lender or financing party pursuant to the Financing Documents if required thereunder; provided, however, (i) if the time to re-build the Facility would result in less than five (5) years remaining in the Delivery Period then (A) Seller shall have the option in lieu of re-building the Facility to pay to GPA the Buyout Payment and terminate this Agreement with no further costs or penalties provided that the Buyout Payment shall not in any case exceed the available insurance proceeds remaining following full prepayment of the Facility Debt, or (B) if Seller nevertheless elects to re-build the Facility then GPA shall reimburse Seller for any deductibles payable by Seller under its property insurance, and (ii) regardless of when the casualty event occurs, if Seller re-builds the Facility then the Delivery Period shall be extended for the greater of one (1) year or two (2) times the length of the interruption of the sale of Renewable Energy (pro rated based on the Minimum Production for partial interruptions), and the Contract Price shall be the price in effect, without escalation, at the beginning of the re-building period.

Within ten (10) Business Days after receipt of a request for the same from GPA, Seller shall deliver to GPA a certificate of insurance for any or all policies maintained in accordance with this Section 12.2, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions.

Seller shall furnish certificates of insurance and waiver of subrogation endorsement to GPA prior to commencement of construction of the Facility showing evidence of such coverage, including the statement to the effect that cancellation or termination of the insurance shall not be effective until at least thirty (30) days after receipt of written Notice to GPA. At all times Seller's insurance shall be primary and non-contributory to any other insurance that may be carried by GPA. The statement of limits of insurance coverage shall not be construed as in any way limiting the Seller's liability under this Agreement. GPA shall be an additional insured on all liability coverage and certificates of insurance shall clearly indicate such.

12.3 Indemnity.

To the extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Renewable Energy is vested in such Party, unless a Claim is due to such Party's willful misconduct or gross negligence. To the extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Ten. Notwithstanding anything to the contrary contained in this Agreement, no individual representative of either Party shall have any personal liability to the other Party as a result of the breach of any representation, warranty, covenant or agreement contained herein.

12.4 Site Access and Inspection of Records.

Seller shall provide GPA with reasonable access to the Facility site for purposes of review and inspection during regular business hours within a reasonable time after a request for the same is made by GPA. During such reviews and inspections, GPA representatives shall be permitted to review such records relating to the Facility and reasonably related to the performance of this Agreement, including Facility maintenance and operations logs. GPA shall have access to the Facility site for the limited purposes described herein, but Seller shall at all times remain responsible and liable for the control and operation of the Facility and the Facility site. GPA representatives shall follow Seller's safety procedures when accessing the Facility site and shall conduct themselves in a manner that will not interfere with the operation of the Facility. Seller will provide GPA with information about such safety procedures to enable GPA to comply with this requirement.

12.5 Audit.

Subject to Section 7.3, each Party has the right, at its sole expense and during normal working hours, to examine copies of the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.

12.6 Confidentiality.

The Parties will make Commercially Reasonable Efforts to safeguard Confidential Information against disclosure by employing the same means to protect such Confidential Information as that Party uses to protect its own non-public, confidential or proprietary information, and otherwise in accordance with the provisions of this Section 12.6. Specifically, no receiving Party shall itself, or permit its employees, consultants and/or agents to disclose to any person, corporation or other entity the Confidential Information without the prior written consent of the Party providing the Confidential Information, except a receiving Party may distribute the Confidential Information to its and its Affiliates' board members, officers, employees, agents, consultants, actual or potential investors, actual or potential purchasers, actual or potential Facility lenders or financing parties, and others who have a need for such Confidential Information.

The Parties acknowledge, however, that a Party may need to disclose the Confidential Information in connection with its regulatory filings or to otherwise satisfy its governmental and regulatory requirements. In the event that a Party intends to disclose any of the Confidential Information to its regulatory authorities including, but not limited to, the Guam Public Utilities Commission, the FERC, or any employee, staff member, consultant, and/or agent of the foregoing, it shall give the other Party prompt prior written Notice of its intention so that the other Party may seek a protective order or other appropriate remedy. In addition, each Party specifically agrees not to use the other Party's name in connection with this Agreement or the Facility in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service, without the express written consent of the other Party. The Parties anticipate that at some future time it may be in the best interests of one or both of them to disclose Confidential Information to the media and the Parties anticipate entering into a subsequent agreement that will govern the terms of such disclosure. The Parties expressly agree, however, that unless and until such subsequent agreement is executed between the Parties, the terms of this Agreement shall be binding with respect to such disclosure.

In the event that any Party receiving the Confidential Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the legally compelled Party shall give the other Party providing the Confidential Information prompt prior written Notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof.

Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Agreement, **although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Agreement, whether a claim is based in contract, tort or otherwise.** The Parties agree that the respondent in any action for an injunction, specific performance decree or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. Under no circumstances will either Party's directors, management, employees, agents or consultants be individually liable for any damages resulting from the disclosure of Confidential Information in violation of the terms of this Agreement.

12.7 Notices.

All notices, requests, statements or payments ("Notices") shall be made as specified on Appendix B attached hereto and incorporated herein by reference. Notices (other than with respect to scheduling) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Notices relating to Facility operations and Scheduling, as required pursuant to Appendix H, may be given electronically and shall be deemed effective upon receipt; otherwise,

electronic notices shall not be effective unless affirmatively acknowledged in writing (including by reply e-mail) by the receiving Party. A Party may change its addresses by providing Notice of same in accordance herewith.

12.8 Purchase Option.

- (a) Transfer During the Delivery Period. In the event that Seller desires to sell the Facility during the Delivery Period, Seller shall provide prior written Notice of the same to GPA, and agrees to engage in discussions with GPA during an exclusivity period with GPA if GPA desires to purchase the Facility. Within ninety (90) days following Seller's Notice to GPA of its intent to sell the Facility, GPA may deliver to Seller an indicative purchase price at which it would be willing to purchase the Facility. If GPA does not deliver the indicative purchase price within ninety (90) days, then Seller shall be free to transfer the Facility under any terms and conditions at any time thereafter. If GPA delivers the indicative purchase price within ninety (90) days, then the Parties shall negotiate exclusively for a period of up to sixty (60) days after GPA delivers the indicative purchase price. If no binding agreement is entered into by the Parties during such sixty (60)-day period then Seller shall be free to transfer the Facility to any person on materially comparable terms, including price, better than GPA's indicative offer, and neither Party shall have any further liability or obligation to the other Party in connection with such sale or as a result of the terminated negotiations. If Seller does not transfer the Facility on such basis within one (1) year following the end of the sixty (60)-day exclusive negotiation period, then the procedure in this paragraph shall apply to any subsequent sale of the Facility during the Term of this Agreement.
- (b) Transfer or Extension of Delivery Period. GPA, by Notice delivered to Seller at least one hundred and eighty (180) days prior to the end of the Delivery Period, may either (i) extend the Term of this Agreement on a year-to-year basis, in which case the Contract Price during the extension of the Term shall be eighty percent (80%) of the LEAC Rate in effect from time to time during such extension (whereupon either Party may thereafter terminate this Agreement on one hundred and eighty (180) days' Notice prior to the end of any extension year), or (ii) purchase the Facility from Seller at eighty percent (80%) of the Appraisal Price, within thirty (30) days of the determination of the Appraisal Price. If GPA fails to send such Notice then this Agreement shall terminate in accordance with the terms hereof.

12.9 Alternative Dispute Resolution. All disputes arising under this Agreement are subject to the provisions of this Section 12.9.

- (a) If a dispute, controversy or claim arises out of, relates, or is in connection with, this Agreement, or the breach, termination or validity thereof, whether sounding in contract, tort, unfair competition, equity, or other legal form, it shall be settled solely in the manner provided for in this Section 12.9. A meeting of the Parties shall be held within ten (10) Business Days after either Party gives the other Party written Notice of the dispute. The Notice shall set forth in reasonable detail the aggrieved Party's position and its proposal for resolution of the dispute. A representative of each Party who has authority to resolve the dispute shall be in attendance at all meetings. If the dispute is not resolved within thirty (30) days after the first meeting of the Parties, or such other period of time as to which the Parties agree, the dispute shall be settled by arbitration in the manner provided in this Section 12.9. A Party's failure to comply with this Section 12.9 shall entitle the other Party to recover its costs and reasonable attorney's fees in any judicial proceedings that circumvent this dispute resolution provision. Settlement discussions undertaken under this Section 12.9 shall be privileged and confidential and no position taken or communication made by a party during or in connection with said settlement discussions may be presented as evidence in the ensuing arbitration should settlement fail to achieve a negotiated result.

- (a) Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under a Claim relating to the terms of this Agreement, or the breach thereof, may be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this Agreement to arbitrate and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the Notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10) calendar days after written Notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The chairperson shall be bound to schedule and hear the dispute in its entirety within three (3) Months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitration proceeding shall be conducted in Honolulu, Hawaii, or another neutral location mutually agreed to by the Parties; provided, however, either Party may provide all witnesses, deponents and other ancillary personnel by video telecast or other electronic media, it being the intent of the Parties to minimize expenses of conducting the arbitration. It is further agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed Confidential Information.
- (b) Judicial Relief. Either Party may petition a court of appropriate jurisdiction, as described in Section 12.11, for non-monetary relief relating to any claim of breach of this Agreement in order to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 12.9.

12.10 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF GUAM, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

12.11 Jurisdiction and Costs.

Subject to the mandatory arbitration provisions herein, with respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the Parties hereby consent to the exclusive jurisdiction of the local and federal courts in the Territory of Guam. Both Parties waive any right to trial by jury in such action. In the event such judicial proceedings are

instituted by either Party, the prevailing Party shall be entitled to award of its costs and reasonable attorneys' fees incurred in connection with such proceedings.

12.12 Financial Accounting Standards.

Under the latest interpretations of the Financial Accounting Standards Board's Interpretation No. 46(R) (FIN No. 46(R)), "Consolidation of Variable Interest Entities," GPA may be required to consolidate a Seller's entity for which GPA has entered into a long-term power purchase agreement. Seller agrees to provide all information needed in order for GPA to determine whether or not the special purpose entity which owns the Seller's generating facility must be consolidated by GPA under FIN No. 46(R). If it is determined that GPA needs to consolidate such special purpose entity, Seller agrees to provide all information needed to comply with the consolidation requirements of FIN 46(R) in a timely manner every calendar quarter. If GPA is required to consolidate the special purpose entity that owns the Seller's generating facility in its financial statements, Seller agrees to provide access to any needed records and personnel, as requested, so GPA's independent auditor, Deloitte & Touche LLP, can conduct financial statement audits in accordance with generally accepted auditing standards, as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002.

12.13 Forward Contract.

The Parties intend that in any relevant proceedings, each be regarded as a forwards trading merchant in respect of this Agreement and that each Transaction be a forwards contract for purposes of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended from time to time.

12.14 General.

No delay of a Party in the exercise of, or the failure to exercise, any rights under this Agreement shall operate as a waiver of such rights, a waiver of any other rights under this Agreement or a release of the other Party from any of its obligations under this Agreement. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if such an event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) Months. This Agreement shall be binding on each Party's successors and permitted assigns.

12.15 Entire Agreement; Amendment.

This Agreement, together with any appendices, schedules, and any written supplements hereto constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

12.16 Appendices.

The following Appendices are included in this Agreement for all purposes:

<u>Appendix A</u>	Contract Price and Minimum Production
<u>Appendix B</u>	Notice Addresses
<u>Appendix C</u>	Ramp Rate Control and Microgrid

<u>Appendix D</u>	Independent Engineers
<u>Appendix E</u>	[Not Used]
<u>Appendix F</u>	Form of Letter of Credit
<u>Appendix G</u>	[Not Used]
<u>Appendix H</u>	Scheduling and Coordination
<u>Appendix I</u>	Base Conditions and Facility Test Protocol
<u>Appendix J</u>	Interconnection Agreement
<u>Appendix K</u>	Additional Terms regarding Ramps Rates and Dispatch Down
<u>Appendix L</u>	Resolutions of Consolidated Committee on Utilities

12.17 Special Provisions.

It is the policy of GPA not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Seller certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in GPA's contracted programs or activities, on the grounds of such person's handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Guam law; nor shall any person be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in performance of contracts with GPA or in the employment practices of GPA's contractors. Accordingly, all persons entering into contracts with GPA shall, upon request, be required to show proof of such nondiscrimination and to post notices of non-discrimination in conspicuous places that are available to all employees and applicants.

Seller hereby represents that Seller has not been retained or retained any persons to solicit or secure a contract from GPA upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this section is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA and any Government Authority.

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontractor or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA and any Governmental Authority.

Seller warrants that no person providing services on behalf of Seller or in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense

defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of Seller relative to this Agreement. If any person employed by Seller and providing services under this Agreement is convicted subsequent to the date of this Agreement, then Seller warrants that it will notify GPA of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under this Agreement. If Seller is found to be in violation of any of the provisions of this paragraph, then GPA shall give Notice to Seller to take corrective action. Seller shall take corrective action within twenty-four hours of Notice from GPA, and Seller shall notify GPA when action has been taken. If Seller fails to take corrective steps within twenty-four hours of Notice from GPA, then GPA in its sole discretion may suspend this Agreement temporarily.

12.18 Waiver of Immunity.

To the extent that GPA may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to GPA or its assets or revenues such immunity (whether or not claimed), GPA agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

IN WITNESS THEREOF, the Parties hereto made and executed this Agreement, signed by their duly authorized officers or individuals, as of the dates listed below.

GUAM POWER AUTHORITY
GPA or Buyer

HANWHA ENERGY CORPORATION Seller

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[Signature Page to Renewable Energy Purchase Agreement]

APPENDICES

APPENDIX A

CONTRACT PRICE AND MINIMUM PRODUCTION

Contract Year	Annual Price (\$/MWH)	Guaranteed Net Annual Generation (MWH/YR)
1	62.45	72,005
2	63.08	71,831
3	63.71	71,245
4	64.35	70,865
5	64.99	70,485
6	65.64	70,306
7	66.30	69,724
8	66.96	69,344
9	67.63	68,693
10	68.31	68,780
11	68.99	68,202
12	69.68	67,821
13	70.37	67,440
14	71.08	67,252
15	71.79	66,678

Contract Year	Annual Price (\$/MWH)	Guaranteed Net Annual Generation (MWH/YR)
16	72.51	66,296
17	73.23	65,915
18	73.96	65,722
19	74.70	65,151
20	75.45	64,770
21	76.21	64,388
22	76.97	64,190
23	77.74	63,623
24	78.52	63,241
25	79.30	62,859
26		
27		
28		
29		
30		

ESS MICRO GRID

Contract Year	Micro Grid Operation Price (\$)
1	1,287,082
2	1,264,710
3	1,244,969
4	1,225,229
5	1,206,804
6	1,188,380
7	1,171,271
8	1,155,479
9	1,139,686
10	1,123,894
11	1,108,101
12	1,093,625
13	1,079,149
14	1,064,672
15	1,051,512

Contract Year	Micro Grid Operation Price (\$)
16	1,038,352
17	1,025,191
18	1,012,031
19	998,871
20	987,026
21	975,182
22	963,338
23	951,493
24	939,649
25	927,805

APPENDIX B

NOTICE ADDRESSES

APPENDIX C

RAMP RATE CONTROL & MICROGRID

I. Description of Storage Unit

A. Specifications. The Facility shall include the Storage Unit as more fully described in the technical specifications set forth in Schedule C-1 attached hereto (“Storage Technical Specifications”).

B. Operations. The operation of the Storage Unit shall at all times be subject to the operating restrictions and limitation set forth in Schedule C-2 attached hereto (“Storage Operating Restrictions”). At no time will Seller be expected to operate the Storage Unit in a manner that is inconsistent with the Storage Operating Restrictions notwithstanding any contrary terms in this Agreement.

C. Metering. Seller will install and maintain a separate meter for the Storage Unit and the operation and maintenance of such meter shall be governed by section 7.4 of this Agreement. The Storage Unit will not serve station use and Seller shall separately meter station use.

D. Augmentation. Seller shall be entitled to determine the actions necessary to achieve the Guaranteed Storage Output (as defined below) from time to time, including without limitation, whether to augment the batteries included in the Storage Unit solely as determined by Seller in its discretion.

E. Ramp Rate Control. The Storage Unit shall be operated such that the charging and output of the Storage Unit does not exceed 1% of the Project’s nameplate capacity per minute; provided that Seller shall only be obligated to achieve such ramp rate as set forth in the table below on an average basis during each Contract Year (“Agreed Ramp Rate”).

Contract Year	Agreed Ramp Rate
1	98.00%
2	97.90%
3	97.80%
4	97.70%
5	97.60%
6	97.50%
7	97.40%
8	97.30%
9	97.20%
10	97.10%
11	97.00%
12	96.90%
13	96.80%
14	96.70%
15	96.60%
16	96.50%
17	96.40%
18	96.30%
19	96.20%

20	96.10%
21	96.00%
22	95.90%
23	95.80%
24	95.70%
25	95.60%

F. Ramp Rate Control Performance

Energy Storage System will control the ramping rate under 1% of the Facility Capacity (i.e. 600 kW) per minute and the control period [for the ramping rate] will be no more than 1 second. Detailed ramping control algorithm will be finalized through discussions between GPA and Seller after the final design of the Energy Storage System is put in place but no later than one (1) month before the commissioning test of the Facility will start.

Evaluation of Performance Verification:

During the Delivery Period, on an annual basis, Seller shall carry out the evaluation process for the performance verification of the Energy Storage System, including power test and 1% ramp-rate control test in the presence of GPA, once every year with annual data storage in the Facility database and GPA SCADA. [Note: specify what is to be measured and equation below.]

$$\left| \frac{\sum_{t-\Delta t}^t PV_i(x)}{\Delta t} - \frac{\sum_{t-2\Delta t}^{t-\Delta t} PV_i(x)}{\Delta t} \right| > P_{ramp}$$

Where:

- Δt = 60 seconds
- $PV_i(x)$: PV generation at time t
- $i = 1,2,3, \dots, 60$ seconds
- P_{ramp} : active power considering ramp rate limit per 1min window
Ramp Rate Control shall be based on a plus or minus (\pm) 1% of rated power of 60MW plant ("Measured Value"). Ramp Rate Control Failure means a plus or minus (\pm) 2% of Measured Value.

Ramp Control Penalty:

Penalty will apply to failure to meet the 1% ramp per minute rate for both under and over power. Ramp-Control must be controlled within 1 second. The failure percentage is as below:

- Failure Percentage (FP) = (E1 – E2)

Symbol	Item	Unit	Remarks
E1	Guaranteed value of Succeed Ramp-Rate	%	Proposal (offer) shown in table below

E2	Output of Ramp Rate Controlled	%	1% ramping requirement with 2% measurement error
----	--------------------------------	---	--

If FP is greater than 0 (zero), then Penalty shall be calculated as follow:

- Under Power Failure Penalty = (AF_U) *(C_U)*(FP_U)
- Over Power Failure Penalty= (AF_O) *(C_O)*(FP_O)

Symbol	Item	Value	Unit
C_U	Nominal Ramp Down Cost	1.96	\$/min/MW
C_O	Nominal Ramp Up Cost	0.49	\$/min/MW

The penalty is calculated only for the portion exceeding the guaranteed value.

Where:

- Failure Power of Under Power (FP_U) = |Ramp Rate Required Power – CP| [MW]
- Failure Power of Over Power (FP_O) = |CP – Ramp Rate Required Power| [MW]
- Controlled Power (CP) =1 minute Average Power of 1% Ramp Rate Controlled by 1 second
- Acceleration Factor of Under Power (AF_U) = 0.5
- Acceleration Factor of Over Power (AF_O) = 0.5

G. Time Shifting. As described herein, the Storage Unit will be charged during the day and discharged during the night and in this manner will provide GPA with delayed deliveries of Renewable Energy.

E. Communication Protocols. Seller and GPA shall mutually agree (in writing) upon communication protocols to allow GPA to have access to SCADA information and a real-time data feed with respect to the Facility.

II. *Delivery of Stored Energy for Dispatch*

A. Charging. During the Delivery Period, Seller shall (i) operate and maintain the Storage Unit, (ii) charge the Storage Unit with a portion of the Renewable Energy generated by the Project (referred to as Charging Energy), and (iii) then shall store, discharge and deliver the Stored Energy to the Delivery Point. Charging Energy shall be drawn from the Renewable Energy generated by the Project and Stored Energy when delivered shall count towards the Minimum Production of the Project each Contract Year. In no case shall Seller be penalized for a reduction in the Renewable Energy delivered based on Charging Energy used to charge the Storage Unit.

B. Discharging. Seller shall sell and deliver, or cause to be delivered, and GPA shall purchase and receive, or cause to be received, all Stored Energy discharged by the Storage Unit, at the Delivery Point, and GPA shall pay Seller the Annual Storage Payment as compensation for Seller's operation of the Storage Unit and deliver of such Quantity of Stored Energy to the Delivery Point.

Stored Energy shall be discharged each day during the Delivery Period beginning from a time out of the 6 options as follows: 6 pm, 7 pm, 8 pm, 9 pm, 10 pm and 11 pm local time and shall be delivered to the Delivery

Point except during any Excused Hours and Weather Hours. The Discharge Energy shall be fixed as 5MW and the Delivery Period ends once all remaining Energy in the Microgrid has been discharged until the designated SOC of the Microgrid has been met.

If GPA desires to change the daily start time of the dispatch of the Storage Unit at any time during the Delivery Period, then GPA shall deliver Notice to Seller of such proposed change at least seven (7) days prior to the date on which Seller is being asked to implement such change ("Dispatch Instruction"). Seller shall not be obligated to accept and implement Dispatch Instruction requested by GPA if (i) such Dispatch Instruction is not consistent with the Operating Parameters, Good Utility Practices, any Planned Outages, applicable law or any limits set forth in any permit or approval received by Seller in connection with the Facility, or (ii) implementation of such dispatch instructions would limit, interfere with or prevent Seller's operation and maintenance of the Facility and/or its performance of its obligations under this Agreement, including without limitation, Seller's obligations with respect to the Guaranteed Dispatch Rate and/or Minimum Production and any make-up amounts Seller reasonably expects to deliver in any Contract Year, or (iii) implementation of such dispatch instructions would limit, interfere with or prevent Seller's performance of its obligations under the Interconnection Agreement. Any Dispatch Instruction delivered by GPA shall remain in effect until another valid Dispatch Instruction is delivered by GPA to Seller in accordance herewith.

Contract Year	Estimated Annual Stored Energy to be discharged from the Storage Unit and delivered to the Delivery Point referred to herein as the "Guaranteed Dispatch Rate"
1	6,570
2	6,554
3	6,501
4	6,466
5	6,431
6	6,415
7	6,362
8	6,327
9	6,293
10	6,276
11	6,223
12	6,188
13	6,153
14	6,136
15	6,084
16	6,049
17	6,015
18	5,997
19	5,945
20	5,910
21	5,875
22	5,857
23	5,805
24	5,771
25	5,736

The annual estimate of Stored Energy to be delivered shall be subject to the terms set forth in part II.C below.

C. Guaranteed Storage Output. The Storage Unit is expected to allow Seller to deliver a minimum number of MWhs of Stored Energy each Contract Year as set forth above (such annual MWh production is the "Guaranteed Dispatch Rate").

Seller during the Delivery Period shall (i) during any Contract Year, deliver to GPA at least ninety percent (90%) of the Guaranteed Dispatch Rate, and (ii) for any consecutive six (6) Contract Years during the Delivery Period, deliver to GPA at least ninety percent (90%) of the aggregate Guaranteed Dispatch Rate during such period (which shall include make-up amounts generated and delivered in any years in excess of one hundred percent (100%) of the Guaranteed Dispatch Rate for such year) (any such time period a "Storage Measurement Period" and each such guaranteed amount of delivered Stored Energy during any Storage Measurement Period, the "Guaranteed Storage Output"). Any shortfall of Stored Energy (expressed in MWhs/year) from the applicable Guaranteed Storage Output during a Storage Measurement Period shall be deemed a "Storage Deficiency Amount."

The Annual Storage Payment for the following Contract Year shall be adjusted for any Storage Deficiency Amount which is not due to Excused Hours or Weather Hours (except, in the case of Weather Hours, as set forth below) ("Shortfall Adjustment"). The Shortfall Adjustment will be calculated as set forth below:

$$\text{Adjusted Annual Storage Payment} = (\text{Storage Deficiency Amount} / \text{Guaranteed Dispatch Rate}) \times \text{Annual Storage Payment}$$

For purposes of clarity, Seller shall be entitled to deliver to GPA Renewable Energy or Stored Energy in the amount of such Storage Shortfall in subsequent time periods (even if such make-up amounts are in excess of the Guaranteed Dispatch Rate for such subsequent year), and this Agreement may be extended as necessary for a period of up to six (6) months to allow Seller to make up any Storage Deficiency Amount; however, there shall be no Shortfall Adjustment for such individual Contract Year unless such Stored Energy delivered hereunder is less than [ninety percent (90%) of the] Guaranteed Storage Output for the applicable Storage Measurement Period, and such shortfall is not due to Excused Hours or Weather Hours (except, in the case of Weather Hours, as set forth below).

In the event Shortfall Adjustment applies to a Storage Measurement Period of six (6) rolling Contract Years, then such Shortfall Adjustment shall be reduced by the amount of any Shortfall Adjustment paid for any Contract Year during such six (6) year Storage Measurement Period. The Shortfall Adjustment to the Annual Storage Payment shall be Seller's sole liability and obligation, and GPA's sole right and remedy, with respect to Seller's failure to deliver the Guaranteed Output during any Storage Measurement Period.

To the extent any Storage Deficiency Amount is due to Weather Hours, Seller's sole liability and GPA's sole remedy shall be to deliver thereafter Renewable Energy or Stored Energy equal to such Storage Deficiency Amount attributable to Weather Hours, calculated in accordance with Appendix K (which includes a sample calculation for a hypothetical Storage Measurement Period). If any portion of a Storage Deficiency Amount due to Weather Hours is not made up in the five (5) Contract Years beginning in the first Contract Year following the Contract Year in which the Weather Hours Storage Deficiency Amount occurred, then a Shortfall Adjustments shall be applied for the remaining Storage Deficiency Amount. Notwithstanding the foregoing, with respect to any Storage Deficiency Amount that is due to Weather Hours, Seller shall have the option, at any time prior to the expiration of the five (5) Contract Year make-up period, to elect to apply any remaining Shortfall Adjustment in its entirety. If the Storage Deficiency Amount arising as a result of Weather Hours occurs in the last five (5) years of the Delivery Period, then unless Seller exercises its option to apply any remaining Shortfall Adjustment early, the Delivery Period shall be extended as necessary, for a period of up to six (6) months, to achieve a make-up period of five (5) Contract Years as described above.

Seller shall be entitled to sell, and GPA shall purchase, quantities of Stored Energy for which Shortfall Adjustments are paid hereunder, during any remaining Storage Measurement Period during the Delivery Period. During any Contract Year, all Renewable Energy delivered by Seller to GPA in excess of the Guaranteed Dispatch Rate shall be credited against makeup of any outstanding Storage Adjustment, with oldest Storage Adjustment made up first.

To the extent any Storage Adjustment is due to Excused Hours, Seller shall be excused from any liability with respect thereto.

D. Remedies. For Seller's failure to deliver Stored Energy as required hereunder, GPA's remedies shall be as set forth in part II.C above. For GPA's failure to purchase and receive Stored Energy as required hereunder, Seller shall in addition have all other remedies available at law or in equity.

E. Title and Risk of Loss. Seller shall be responsible for any costs or charges imposed on or associated with the Stored Energy or its delivery up to the Delivery Point. GPA shall be responsible for any costs or charges imposed on or associated with Stored Energy or its receipt at and from the Delivery Point. Title to and risk of loss of Stored Energy from the Facility delivered to the Delivery Point shall transfer to GPA at the Delivery Point. Seller warrants that it will deliver to Buyer Stored Energy free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

III. Compensation for Storage Unit Operations

Compensation to Seller for the operation of the Storage Unit during the Delivery Period shall consist of an Annual Storage Payment as set forth in Appendix A. The Annual Storage Payment shall be paid in accordance with Sections 7.1, 7.2 and 7.5 of this Agreement.

The Annual Storage Payment shall only be subject to reduction or offset for, and GPA's sole remedy for Seller's failure to deliver Stored Energy and Seller's operation of the Storage Unit shall be, the application of any Shortfall Adjustment in accordance with Section II.C above.

Schedule C-1
Technical Specifications for Storage Unit

- Microgrid Capacity: 20MW PCS, 32.5MWh usable energy (Actual installed capacity shall be determined at later stage)
- The Microgrid will normally perform the ramp rate control as required, but if the Power Plant output exceeds 22.5MW, it will charge the excess amount into the Microgrid.
- The Microgrid will also force charge the Microgrid if the weather conditions are not sufficient enough to make the Power Plant to reach production amounts above 22.5MW to ensure that the Microgrid will discharge every year the agreed on discharge amount.

Schedule C-2
Operating Parameters for Storage Unit

- The output that the Facility delivers to the grid shall be limited to 22.5MWac throughout the Delivery Period.
- [Seller to provide additional Operating Parameters]

APPENDIX D

NOT USED

APPENDIX E

NOT USED

APPENDIX F-1

FORM OF LETTER OF CREDIT

(Provided is sample which may be replaced by Bank / Financial Institution Form)

(Bank or Financial Institution)

_____, 201__

Irrevocable Standby Letter of Credit No. _____

Beneficiary:

Guam Power Authority

P.O. Box 2977

Guam 96932-2977

Attn:

Applicant:

Dear _____:

We hereby establish for the account of (Company Name) ("Applicant") our irrevocable standby letter of credit in your favor for an amount of USD 4,000,000 (Four Million United States Dollars). Applicant has advised us that this letter of credit is issued in connection with the Renewable Energy Purchase Agreement, dated as of _____, 2012, by and between the Applicant, and Guam Power Authority (the "Beneficiary"). This letter of credit shall become effective immediately on the date hereof and shall expire on _____ [the date that is *XX* days after the Effective Date of the PPA] (such date, or such later date(s) as determined by Applicant in accordance with the next succeeding sentence, the "Expiration Date"). The Expiration Date can be extended on one or more occasions by written notice to us from the Applicant, provided that such written notice is received at least 10 days prior to the Expiration Date. This letter of credit is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation, and (b) the original of the letter of credit (the "Accompanying Documents") and presented at our office located at (Bank/Financial Institution Address) attention _____. (or at any other office which may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a "Business Day"). If we receive your draft and the Accompanying Documents at such office on any Business Day, all in strict conformity with the terms and conditions of this letter of credit, we will honor the same by making payment in accordance with your payment instructions on the third succeeding Business Day after presentation.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, accompanied by this letter of credit for cancellation, or (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the succeeding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. This letter of credit is issued and subject to the International Standby Practices 1998 (ISP98) International Chamber of Commerce Publication No. 590, and as to matters not addressed by ISP98, shall be governed by and construed in accordance with the laws of the State of New York and application of U.S. Federal Law.

4. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2 and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 5.

5. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no.

_____.

Very truly yours,

Authorized signature
(Bank or Financial Institution)

ANNEX 1
TO LETTER OF CREDIT NO. _____

under LETTER OF CREDIT No. _____

To:
(Bank or Financial Institution)
(Bank/Financial Institution Address)
Attn: _____

[Month, Day, Year]

On Sight

Pay to Guam Power Authority U.S. \$ _____ [not to exceed amount available to be drawn]

Wire to:
Bank's Name: Bank of Guam
Bank's Location: 111 Chalan Santo Papa St., Hagatna, Guam 96910
Bank's Mailing Address: P.O. Box BW, Hagatna, Guam 96932
Account Name: Guam Power Authority Revenue Fund Account
Acct. No.: (to be provided)
Routing No.: (to be provided)

For value received and charge to account of Letter of Credit No. _____ of (Company Name)

GUAM POWER AUTHORITY

By: _____

Name: _____

Title: _____

ANNEX 2
TO LETTER OF CREDIT NO. _____

Drawing under Letter of Credit No. _____

Date: _____

To:

(Bank or Financial Institution)

(Bank/Financial Institution Address)

Attn: _____

The undersigned, a duly authorized officer of the Guam Power Authority, ("Beneficiary"), hereby certifies on behalf of Beneficiary to (Bank or Financial Institution) and to (Company Name) (the "Applicant") with reference to irrevocable standby Letter of Credit No. _____ (the "Letter of Credit") issued for the account of (Company Name) ("Applicant"), that:

- 1) pursuant to the Renewable Energy Purchase Agreement, dated as of _____, 201__, by and between Applicant and Beneficiary and as of the date hereof Beneficiary is entitled to draw under the Letter of Credit;
- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$_____, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft; and
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the remaining amount to which Beneficiary is entitled to draft under said Renewable Energy Purchase Agreement.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

Date: _____

GUAM POWER AUTHORITY

By: _____

Name: _____

Title: _____

ANNEX 3
TO LETTER OF CREDIT NO. _____

Notice of surrender of Letter of Credit No. _____

Date: _____

To:

(Bank or Financial Institution)

(Bank/Financial Institution Address)

Attn: _____

Re: Letter of Credit No. _____ issued for the account of *(Company Name)*

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the "Letter of Credit"). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

GUAM POWER AUTHORITY

By: _____

Name: _____

Title: _____

APPENDIX F-2

To be provided

APPENDIX G

NOT USED

APPENDIX H

SCHEDULING AND COORDINATION PROCEDURES

The Parties acknowledge that as of the Effective Date GPA has not yet established protocols for scheduling (firm or intermittent) power to permit solar projects to participate in GPA's scheduling process. As soon as practicable, Seller and GPA shall establish such protocols by mutual agreement in writing. Seller shall use Commercially Reasonable Efforts to comply with all additional reasonable protocols issued by GPA relating to available resources during the Delivery Period, and GPA shall consult with Seller (and take into account and accommodate Seller's reasonable comments) in connection with the preparation of any such additional protocols. The foregoing shall be subject to Section 4.16 of this Agreement.

1.1 General

- (a) Notices. Seller shall submit to GPA notices and updates required under this Agreement regarding the Project's status, including, but not limited to, outage requests, forced outages and forced outage reports. If a web based system is not available, Seller shall promptly submit such information to GPA (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information. **Need to include PSCC requirements for Hourly Reports, Daily Production Reports, etc.**
- (b) GPA Settlements. GPA shall be responsible for all settlement functions within GPA related to the Project.
- (c) Resource Data Template. Seller shall provide the data to the GPA that is required for GPA's resource data template (or successor data system) for the Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.
- (d) Annual Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Actual Renewable Energy for the following calendar year.
- (e) Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average expected Actual Renewable Energy for the following month ("Monthly Delivery Forecast").
- (f) Daily Delivery Schedules. By 5:30 AM Guam Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide GPA with a non-binding forecast of the Project's available energy (a "Day-Ahead Forecast"): A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's estimate of the Project's available energy. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by GPA, in which case Seller shall promptly provide GPA with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to GPA's on-duty scheduling coordinator. If Seller fails to provide GPA with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period

only GPA shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or GPA's best estimate based on information reasonably available to GPA and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or GPA's best estimate.

- (g) Hourly Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason, including Forced Outages (other than a scheduling change imposed by GPA), that results in a change to its deliveries (whether in part or in whole), Seller shall notify GPA immediately by calling GPA's on-duty scheduling coordinator. Seller shall notify GPA of Forced Outages in accordance with this Agreement. Seller shall keep GPA reasonably informed of any developments that are reasonably expected to affect either the duration of the outage or the availability of the Project during or after the end of the outage.

1.2 Dispatch Down/Curtailment.

- (a) GPA shall have the right to order Seller to curtail deliveries of Renewable Energy from the Project to the Delivery Point pursuant to a Notice of a Dispatch Down as defined in Appendix K delivered to Seller, provided that the value attributable to any Renewable Energy [in an aggregated quantity of more than 2% of the Minimum Production for any Contract Year] which is not delivered during such curtailment periods, whether for transmission unavailability, operational dispatch or pre-set ramping parameters or otherwise, shall be reimbursed to Seller as provided below.
- (b) GPA shall have the right to order Seller to curtail deliveries of Stored Energy from the Microgrid Unit to the Delivery Point pursuant to a Notice of a Dispatch Down as defined in Appendix K delivered to Seller, provided that GPA shall remain obligated to pay Seller the complete Annual Microgrid Payment without adjustment notwithstanding such curtailments, whether for transmission unavailability, operational dispatch or pre-set ramping parameters or otherwise.
- (c) Seller shall have the right in its discretion to make up any curtailed quantities of Renewable Energy as a result of a Dispatch Down ("Dispatch Down Makeup Production"), for which it is not reimbursed pursuant to this Appendix H, in the first and any subsequent Contract Year in which at least the Minimum Production is delivered and to extend the Term to the extent necessary, but not to exceed six (6) months, to make up any curtailed quantities. The Contract Price for the Contract Year in which the make-up occurs shall apply to Dispatch Down Makeup Production up to the Minimum Production amount for the Contract Year in which the Dispatch Down originally occurred. For production quantities in excess of the Minimum Production for the Contract Year in which the Dispatch Down originally occurred, the price will be the lesser of the then current LEAC Rate or the Contract Price in the Contract Year in which the make-up occurs. Production in excess of Minimum Production for any Contract Year will first be applied to any previous years' Deficiency Amounts, then to Dispatch Down Makeup Production, then treated under this Agreement as production in excess of Minimum Production.
- (d) GPA shall provide to Seller all technical information necessary to justify and support each Dispatch Down.
- (e) GPA shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such curtailment in excess of 2% of Minimum Production for such Contract Year occurred], an amount equal to the product of the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to

GPA but for such curtailment ("Lost Revenue"). During the Contract Year-end annual true-up process, any payments made by GPA to the Seller for production (MWh) in excess of the Minimum Production for that Contract Year, whether such production results from actual generation surpluses or Lost Revenue, will be adjusted to reflect the lesser of the Contract Price for the then current Contract Year or then current LEAC Rate. For purposes of clarification, for any given Contract Year, GPA will not be required to pay the Contract Price on amounts of production beyond the Minimum Production if the Contract Price for that Contract Year is higher than the LEAC Rate for that Contract Year. Seller agrees to reduce the Project's Renewable Energy as set forth in such a Notice of Dispatch Down that meets the requirements set forth herein.

- (f) For purposes of clarification, no curtailment by GPA, as a result of a warranted failure of or defect in the interconnection facilities transferred by Seller to GPA pursuant to the Interconnection Agreement, during the one-year warranty term thereof, shall count against the 2% curtailment threshold set forth above. During the one-year warranty term of the interconnection facilities transferred, any curtailment by GPA which results from such failure of or defect in the interconnection facilities transferred will not be eligible for reimbursement by GPA to Seller, Lost Revenue payments, or Dispatch Down Makeup Production in future Contract Years.

1.3 Outage Notification.

- (a) Planned Outages. Seller shall schedule Planned Outages in accordance with Good Utility Practices and with the prior written consent of GPA, which consent may not be unreasonably withheld, conditioned or delayed. Nonetheless, the Parties acknowledge that in all circumstances, Good Utility Practices shall dictate when Planned Outages should occur. Seller shall notify GPA of Seller's proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1st of each year during the Delivery Period. The Planned Outage schedule is subject to GPA's concurrence, which concurrence may not be unreasonably withheld, conditioned or delayed. GPA shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its Commercially Reasonable Efforts in accordance with Good Utility Practices to accommodate GPA's requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed form of outage notification to GPA no later than fourteen (14) days prior to each Planned Outage and reasonably appropriate outage information or requests to GPA. Seller shall contact GPA with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without GPA's concurrence, not to be unreasonably withheld, conditioned or delayed.
- (b) Forced Outages. Within two hours of any Forced Outage Seller shall submit a completed form of outage notification to GPA in accordance with the instructions shown on the agreed form and shall submit outage information to GPA. Seller shall not substitute Renewable Energy from any other source for the output of the Project during a Forced Outage.
- (c) Coordination with GPA. GPA shall cooperate with Seller in arranging and coordinating all Project outages.

1.4 Operations Logs and Access Rights.

- (a) Operations Logs. Seller shall maintain a log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, and control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to GPA within five days of GPA's request.

- (b) Access Rights. GPA, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance notice and for any purposes reasonably connected with this Agreement.

APPENDIX I

BASE CONDITIONS AND FACILITY TEST PROTOCOL

[Since this bid is opened to different renewable resources GPA is requiring bidders to provide their own test protocols for GPA's review and approval.]

APPENDIX J
INTERCONNECTION AGREEMENT
(TO BE PROVIDED UPON ITS EXECUTION)

APPENDIX K

ADDITIONAL TERMS REGARDING WEATHER HOURS AND DISPATCH DOWN

WEATHER HOURS

For each applicable period, Seller shall calculate (1) the expected production of the Facility using the historical Weather Data from "WeatherBank PGUM_2004-PRES_solar data" provided in bid Amendment 2 (the "Expected Historical Production") and (2) the expected production of the Facility using the actual Weather Data (the "Expected Actual Production"). Seller then obtain the quotient, rounded to the fourth decimal place (the "Production Factor"), equal to the Expected Actual Production divided by the Expected Historical Production. If the Production Factor is greater than one (1), then no Weather Hours shall be deemed to have occurred. However, if the Production Factor is less than one (1), then Weather Hours shall be deemed to have occurred. The portion of any Deficiency Amount (as defined in the Agreement) attributable to such Weather Hours shall be the difference equal to (A) the aggregate Minimum Production amount for that period minus (B) the product of (x) the Production Factor and (y) the aggregate Minimum Production amount for that period. The Deficiency Amount due to weather shall not be penalized.

The Deficiency Amount due to weather shall be audited annually by an independent auditor to be selected and the cost shared by both Parties.

DISPATCH DOWN

Buyer shall pay Seller, on the date payment would otherwise be due in respect of the day in which any curtailment is initiated by GPA for reasons of Dispatch Down, an amount equal to the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to Buyer but for such Dispatch Down. The determination of the curtailed amount associated with any Dispatch Down shall be calculated as follows:

- 1) Identification of weather conditions for the period of Dispatch Down
For any period the Facility was Dispatched Down, Seller shall document the Weather Data associated therewith. ("Weather Data" means solar irradiation, wind speed, and ambient temperatures.)
- 2) Curtailed amount calculation
 - a. Seller shall use PVSyst energy simulation software or other software as agreed by the Parties to generate hypothetical generation amounts for the Dispatch Down period (curtailed amount MWh) by utilizing the Weather Data.
 - b. In addition to "Annual Facility Test" (as described in Section 4.9 of this Agreement), GPA shall be entitled to check the accuracy of the equipment associated with the Weather Data once in each Contract Year as agreed with Seller.

APPENDIX L

RESOLUTIONS OF CONSOLIDATED COMMITTEE ON UTILITIES

