

**MODEL POWER PURCHASE AGREEMENT**

**by and between**

**VIRGIN ISLANDS WATER AND POWER AUTHORITY**

**and**

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**dated as of**

**\_\_\_\_\_, 2008**

**MODEL POWER PURCHASE AGREEMENT**

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## POWER PURCHASE AGREEMENT

**THIS POWER PURCHASE AGREEMENT** (this “Agreement”) is made and entered into as of \_\_\_\_\_, 2008 by and between the VIRGIN ISLANDS WATER AND POWER AUTHORITY (“WAPA”), a public authority established and existing under the laws of the United States Virgin Islands (the “U.S. Virgin Islands”), and \_\_\_\_\_ (“Seller”), a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_. Each of WAPA and Seller may be referred to in this Agreement as the “Party” and collectively as the “Parties”.

### RECITALS

**WHEREAS**, Seller desires to [construct,] own and operate a \_\_\_ kW [type of fuel or energy source] electric generating facility (as more fully described in Exhibit A hereto, the “Facility”) located at [\_\_\_\_\_] on the island of [St. Croix][St. Thomas];

**WHEREAS**, Seller desires to sell and deliver to WAPA, and WAPA desires to purchase and accept from Seller, the electric energy produced by the Facility; and

**WHEREAS**, Seller has responded to WAPA's December \_\_\_, 2007, Request for Proposals (PR-\_\_\_-\_\_\_) to provide electric energy (the “RFP”) and WAPA has accepted Seller's offer in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of each Party to the other contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS

The following terms shall have the meanings set forth below:

“**AGC**” means Automatic Generation Control.

“**Agreement**” has the meaning set forth in the Preamble.

“**Applicable Laws**” means any and all federal, the U.S. Virgin Islands, state, or local statutes, laws, municipal charter provisions, regulations, ordinances, rules, mandates, judgments, orders, decrees, Permits and Approvals, codes or license requirements, or other governmental requirements or restrictions, or any interpretation or administration of any of the foregoing by any governmental authority, that apply to the services or obligations of either Party under this Agreement, whether now or hereafter in effect.

“**Billing Period**” means each month, commencing on the Commercial Operation Date and ending on the last Day of the Contract Term; provided, that the first Billing Period shall commence

on the Commercial Operation Date and shall end at 11:59 p.m. on the last Day of the month in which the Commercial Operation Date occurs and the last Billing Period shall end at 12:00 midnight on the last Day of the Contract Term.

**“Black Start Capable”** means capable of being started without electric energy being supplied from WAPA's Electric System.

**“Change in Law”** means the enactment, adoption, promulgation, modification, repeal or change after the Contract Date, of any Applicable Law that (a) applies directly to Seller, WAPA, the Facility, the Site, or WAPA's Electric System, and (b) establishes requirements that significantly and adversely impact either Party financially or operationally, or impose on either Party burdens significantly greater than those that were in effect with respect to operation of the Facility or WAPA's Electric System on the Contract Date.

**“Closing Date”** means the date when Seller and the Senior Lender complete financial closing and Seller has received all necessary proceeds (including the initial draw on the Senior Debt) and commitments to pay for the cost of the financing, development, design, construction, completion, start-up, and operation of the Facility.

**“Codes and Standards”** means all industrial or engineering codes, standards, or guidelines, and insurance requirements, applicable to the design, engineering, construction, completion, start-up, testing, commissioning, operation, or maintenance of the Facility.

**“Commercial Operation Date”** means the date that WAPA provides notice to Seller, pursuant to Section 3.3, that all of the conditions set forth on Schedule 3 have been satisfied.

**“Commercial Operation Deadline”** has the meaning set forth in Section 3.3.

**“Construction Security”** has the meaning set forth in Section 3.11.

**“Consulting Engineer”** means a reputable engineering firm, experienced in the electric power industry, selected by WAPA with the approval of Seller, such approval not unreasonably to be withheld or delayed, and retained by WAPA at Seller's expense.

**“Contract Date”** means the date of execution of this Agreement.

**“Contract Term”** has the meaning set forth in Section 2.1.

**“Day”** means a calendar day.

**“Delivery Point”** means the physical point on the Interconnection Facilities at which Electric Energy will be delivered to WAPA in accordance with this Agreement and the Interconnection Agreement.

**“Dollars”** or **“\$”** means United States Dollars.

**“Electric Capacity”** means the firm net electric capacity (expressed in kW) generated, or capable of being generated, by the Facility on a continuous basis, determined at the Delivery Point.

**“Electric Energy”** means net electrical energy in kWh generated by the Facility and delivered by Seller to WAPA at the Delivery Point as provided herein.

**“Electric Energy Charge”** means the price, in Dollars per kWh, payable by WAPA for each kWh of Electric Energy delivered in On-Peak Hours or Off-Peak Hours, as applicable, up to the Minimum Monthly Dispatch for On-Peak Hours and for Off-Peak Hours, as applicable, as calculated pursuant to Schedule 2.

**“Electric Meter”** means the integrated meter installed by WAPA at the Delivery Point pursuant to Schedule 6.

**“Electric System Emergency”** means the existence of a physical or operational condition, including transmission or distribution contingencies, or the occurrence of an event on WAPA's Electric System, that in WAPA's sole judgment (i) is imminently likely to endanger life or property; or (ii) impairs or imminently will impair: (a) WAPA's ability to discharge its statutory obligations to provide safe, adequate and proper service to its electric customers, or (b) the safety or reliability of WAPA's Electric System.

**“Excess Energy”** means, with respect to any Billing Period, the Electric Energy scheduled by Seller, dispatched by WAPA, and delivered by Seller in the On-Peak Hours or Off-Peak Hours of such Billing Period, as applicable, that exceeds the Minimum Monthly Dispatch for On-Peak Hours or Off-Peak Hours for such Billing Period.

**“Excess Energy Charge”** has the meaning set forth in Section 4.3.

**“Expected Output”** means \_\_\_ kW.

**“Extended Milestones”** has the meaning set forth in Section 3.4.

**“Extended Outage”** means (i) a complete outage at the Facility for more than thirty (30) Days, for any reason, or (ii) the failure of the Seller to schedule at least \_\_\_ kWh from the Facility over any sixty (60) Day period, for any reason.

**“Facility”** has the meaning set forth in the Recitals.

**“Facility Output”** means the Expected Output, as adjusted upon any Output Test as contemplated by Article 6.

**“Good Engineering and Operating Practices”** means generally accepted and sound utility industry practices, methods and acts applicable to similarly situated U.S. facilities, which at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Applicable Laws, reliability, safety, environmental protection, economy

and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

(a) adequate materials, resources and supplies, including fuel in sufficient reliable volumes and quality, are available to meet the Facility's needs under normal conditions and reasonably anticipated abnormal conditions;

(b) sufficient qualified operating, maintenance and supervisory personnel are available and adequately experienced and trained to operate, maintain and supervise the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions;

(c) preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable and safe long-term operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools and procedures;

(d) appropriate monitoring and testing are done periodically to ensure that equipment and systems are functioning as designed and to assure that equipment and systems will function properly under normal conditions and emergency conditions; and

(e) equipment and systems are operated in a manner safe to workers, the general public and the environment, and with regard to design and operating limitations such as [steam pressure, temperature and moisture content, chemical content and quality of make-up water,] operating voltage range, current, frequency, rotational speed, polarity, synchronization, control system limits, etc.

**“Guaranteed Monthly Output”** means, with respect to the On-Peak Hours and Off-Peak Hours, as applicable, of any Billing Period, the minimum quantity of Electric Energy to be scheduled and made available for dispatch by Seller from the Facility in such On-Peak Hours and Off-Peak Hours of such Billing Period, as set forth on Schedule 5, (i) prorated for partial months for the first and last Billing Period of the Contract Term, (ii) further prorated by the fraction equal to one minus the ratio of the number of hours of Scheduled Maintenance Outages in such Billing Period, if any, to the total number of hours in such Billing Period, and (iii) further adjusted from time to time as provided in Article 6.

**“Initial Output Test”** has the meaning set forth in Section 6.2.

**“Initial Term”** has the meaning set forth in Section 2.1.

**“Interconnection Agreement”** means the separate agreement to be entered into by and between Seller and WAPA for interconnection of the Facility to WAPA's Electric System, as such agreement may be amended from time to time.

**“Interconnection Facilities”** means the facilities necessary to connect WAPA's Electric System to the Facility at the Delivery Point, including breakers, bus work, bus relays, visible disconnect devices, and associated equipment installed for the direct purpose of interconnecting the

Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities and any upgrades to WAPA's Electric System necessitated by the interconnection of the Facility to WAPA's Electric System; the Interconnection Facilities include Seller's Interconnection Facilities and WAPA's Interconnection Facilities. Arrangements for the installation and operation of the Interconnection Facilities shall be governed by the Interconnection Agreement.

**“Intercreditor Agreement”** has the meaning set forth in Section 3.12.

**“Invoice”** has the meaning set forth in Section 5.1.

**“kW”** means kilowatt.

**“kWh”** means kilowatt hour.

**“LIBOR”** means the interest rate determined by reference to the British Bankers' Association Interest Settlement Rates for deposits in U.S. dollars.

**“Milestones”** has the meaning set forth in Section 3.4.

**“Minimum Output”** has the meaning set forth in Section 6.3.

**“Minimum Monthly Dispatch”** means the Guaranteed Monthly Output, as adjusted as applicable as provided in Article 4 and Article 6.

**“Off-Peak Hours”** means those hours of each Day, not to exceed [eight (8)] hours per Day, designated from time to time by WAPA by notice to Seller as being “Off-Peak Hours”.

**“On-Peak Hours”** means all hours of each Day that are not Off-Peak Hours.

**“Output Test”** has the meaning set forth in Section 6.1.

**“Performance Security”** has the meaning set forth in Section 5.4.

**“Permits and Approvals”** means any and all federal, U.S. Virgin Islands, state, or local governmental authority permits, approvals, consents, authorizations, agreements, licenses, and inspection certificates.

**“PTCs”** means any production tax credits applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. § 45, or any substantially equivalent tax credit that provides Seller or its owners with a tax credit based on energy production from any portion of the Facility.

**“Reference Conditions”** means the testing conditions set forth on Schedule 13.

**“Scheduled Maintenance Outage(s)”** means those scheduled electric maintenance outages for the Facility planned by Seller each calendar year pursuant to Article 8.

**“Seller's Back-Up Metering”** has the meaning set forth on Schedule 6.

**“Seller's Interconnection Facilities”** means the equipment between the high side disconnect of the step-up transformer and the Delivery Point, including all related relaying protection and physical structures as well as all transmission facilities required to access WAPA's Electric System, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer it includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement.

**“Senior Debt”** means debt financing to finance the construction or ownership of the Facility (including indebtedness of Seller secured by the Facility or the Site incurred in connection with a conversion of a construction loan or bridge loan, or refinancing of the Senior Debt), in the principal amount not to exceed [ \$ \_\_\_\_\_ ], amortized on a straight-line basis commencing on the Commercial Operation Date over the Initial Term; provided, that no such conversion or refinancing shall increase the original principal amount, as so amortized; provided, further, that any reimbursement obligation with respect to the Construction Security or the Performance Security shall not constitute Senior Debt. Subject to the preceding sentence, and subject to the Intercreditor Agreement, Senior Debt shall continue to constitute Senior Debt, notwithstanding the fact that such Senior Debt or any claim for such Senior Debt is subordinated, avoided or disallowed under the federal Bankruptcy Code or other applicable law.

**“Senior Financing Documents”** means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, pledge agreements, swap agreements, letters of credit and other documents evidencing, securing or otherwise relating to the development, bridge, construction or permanent debt financing or other extensions of credit for the Facility, including any repair, reconstruction or modification thereof. Senior Financing Documents shall (i) include any credit enhancement, credit support, swaps, caps, floors, collars, hedging agreements, 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 in connection with development, construction, ownership, leasing, operation or maintenance of the Facility, and (ii) exclude the Construction Security and the Performance Security and any related documentation.

**“Senior Lenders”** means, collectively, the lenders providing Senior Debt and their successors and assigns.

**“Site”** means the parcel of land more particularly described on Exhibit A where the equipment comprising the Facility is situated.

**“Subordinated Mortgage”** has the meaning set forth in Section 3.12.

**“Termination Amount”** means, with respect to any termination of this Agreement by Seller under Section 14.4(a), the amount set forth on Schedule 14 with respect to the year in which such termination occurs.

**“Test Energy”** has the meaning set forth in Section 3.10.

**“Test Protocol”** has the meaning set forth in Section 3.9.

**“Tested Output”** means the Electric Capacity of the Facility demonstrated by the most recent Output Test.

**“UCC”** means the Uniform Commercial Code of the U.S. Virgin Islands.

**“Uncontrollable Circumstance”** means any act, event or condition, that is not reasonably foreseeable, that is not caused by the negligence or lack of due diligence of the Party relying thereon as justification for any failure of performance hereunder, that is beyond the reasonable control of such party, and that has a material adverse effect on the performance of either Party’s obligations under this Agreement, including: (a) act of God, hurricane, tornado, lightning, earthquake, fire, explosion, flood, act of public enemy, war, blockade, insurrection, riot or civil disturbance, sabotage, or the exercise of the power of eminent domain, condemnation or other taking by or on behalf of any public, quasi-public or private entity; and (b) Change in Law; provided, that the following acts or events shall not be considered an Uncontrollable Circumstance: (i) equipment breakdown (or inability to use equipment) caused by its design, construction, operation, maintenance or inability to meet regulatory standards existing at the time of execution of this Agreement or otherwise caused by an event originating at the Facility; (ii) Seller's inability or failure to obtain any Permits and Approvals required by this Agreement; (iii) any event or circumstance arising from the Facility's failure to meet the requirements of Sections 3.1 or 3.2; and (d) any event of circumstance that the Facility is to be designed to withstand in accordance with Sections 3.1 and 3.2.

**“U.S. Virgin Islands”** has the meaning set forth in the Preamble.

**“WAPA's Cost of Cover”** means, with respect to any hour, the amount, if any, by which (a) the amount set forth on Schedule 15 with respect to each On-Peak Hour or Off-Peak Hour, as applicable, of each Billing Period, exceeds (b) the Energy Charge with respect to Electric Energy applicable to each such hour.

**“WAPA's Electric System”** means WAPA's Interconnection Facilities, the electric power generation, transmission, substation, switching station, and distribution facilities owned, operated and maintained from time to time by WAPA.

**“WAPA's Interconnection Facilities”** means the facilities necessary to connect WAPA's Electric System to Seller's Interconnection Facilities, including breakers, bus work, bus relays, and associated equipment installed for the direct purpose of interconnecting the Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities.

## ARTICLE 2 TERM AND EARLY TERMINATION

**Section 2.1 Contract Term.** The term of this Agreement (as extended in accordance with Section 2.2, the “Contract Term”) shall commence on the Commercial Operation Date and shall expire on the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date (the “Initial Term”), unless sooner terminated in accordance with Section 3.4, Article 12 or Article 13 or extended in accordance with Section 2.2.

**Section 2.2 Extension of Contract Term.** WAPA may extend the Initial Term for one additional five (5) year period by delivering a notice of such extension to Seller not less than one year prior to the expiration of the then current Contract Term.

**Section 2.3 Condition Precedent.** Each Party shall have the right to terminate this Agreement, without any further financial or other obligation to the other Party as a result of such termination, by fifteen (15) Days' notice to the other Party given not later than the date \_\_\_\_\_ (\_\_) Days after the Contract Date, if the Virgin Islands Public Services Commission shall not have granted a final and non-appealable order approving this Agreement by the date \_\_\_\_\_ (\_\_) Days after the Contract Date.

**Section 2.4 Removal and Remediation.** [Subject to Section 18.1(c),] Seller shall comply with all obligations, if any, that may be imposed by Applicable Law to remove the Facility or to restore or remediate the Site, promptly after the expiration of the Contract Term or the earlier termination of this Agreement as provided herein.

## ARTICLE 3 CONSTRUCTION OF THE FACILITY

**Section 3.1 Description and Location of the Facility.** The Facility shall be a [\_\_] kW [type of fuel or energy source] electric generation facility located at the Site. Exhibit A hereto provides a more detailed description of the Facility and the Site, including identification of the equipment and components which make up the Facility and a drawing and a map identifying the location of such equipment.

**Section 3.2 Design of the Facility.** Seller shall proceed with due diligence to design, engineer, procure, and construct the Facility in accordance with this Agreement, the Codes and Standards, Good Engineering and Operating Practices and Applicable Laws. In addition to the requirements of the Interconnection Agreement, the Facility shall adhere to the specifications set forth in Schedule 1.

**Section 3.3 Commercial Operation Date.** The Facility shall achieve the Commercial Operation Date when Seller has demonstrated to WAPA, and WAPA has accepted by written notice to Seller, that each of the conditions set forth on Schedule 3 have been satisfied. Unless extended as provided herein, Seller shall cause the Facility to achieve the Commercial Operation Date and to be

fully capable of reliably producing and delivering all Electric Energy required in accordance with this Agreement no later than [\_\_\_\_\_, 20\_\_] (the "Commercial Operation Deadline"). WAPA reserves the right (but shall have no obligation) to delay the Commercial Operation Deadline due to problems with the Facility which could adversely affect WAPA's operations. In such event, WAPA shall give Seller notice of such problems and Seller shall remedy them. Except for such delay, the Commercial Operation Deadline may only be extended as a result of Uncontrollable Circumstances as provided in Section 3.4.

**Section 3.4 Construction Milestones.** Seller shall submit its construction schedule for WAPA's review at least forty-five (45) Days prior to starting construction of the Facility. In order to achieve the Commercial Operation Date by the Commercial Operation Deadline, Seller agrees to meet the construction milestones set forth on Schedule 4 (the "Milestones"). If Seller fails to achieve any Milestone within thirty (30) Days of the date set forth on Schedule 4, Seller shall pay WAPA liquidated damages in the amount of \$[\_\_\_\_\_] per kW of Expected Output. Upon payment of such liquidated damages the Milestones schedule and the Commercial Operation Deadline shall be extended by sixty (60) days ("Extended Milestones"). If Seller fails to meet any of the Extended Milestones, WAPA may terminate this Agreement by notice to Seller and Seller shall pay WAPA the liquidated damages with respect to such termination applicable to the next unmet Milestone on the Milestones schedule as set forth on Schedule 4. If Seller's failure to meet the Milestones or the Extended Milestones is directly attributable to an Uncontrollable Circumstance, Seller shall not be required to pay the liquidated damages provided in this Section 3.4 and shall have up to an additional ninety (90) days within which to achieve such Milestone or Extended Milestone before WAPA becomes entitled to terminate this Agreement.

**Section 3.5 Site Report.** Seller shall conduct a Phase I and Phase II environmental investigation of the Site and provide WAPA, on or before the date indicated on Schedule 4, with: (i) a copy of the report summarizing such investigation, (ii) any data or information generated pursuant to such investigation, and (iii) a confirmation from an environmental engineer that the Site has been inspected for environmental contamination and that the Site complies with all Applicable Laws relating to environmental or occupational health and safety matters and hazardous materials.

**Section 3.6 Permits and Approvals.** Seller shall, at its expense, acquire and maintain in effect, and shall comply with, all Permits and Approvals from all federal, U.S. Virgin Islands, state, and local agencies, commissions and authorities with jurisdiction over Seller, the Facility, or the Site, and shall complete all environmental impact studies necessary for the ownership, construction, or completion of the Facility or the Site, including the disposal of any waste, by-products, or hazardous materials, if any, and for Seller to perform its obligations under this Agreement. WAPA shall not be responsible in any way whatsoever for any Permits and Approvals or environmental studies or assessments that may be necessary for Seller to perform its obligations under this Agreement.

**Section 3.7 Facility Contracts.** Seller shall provide to WAPA within the timeframe specified by the construction milestones on Schedule 4 copies of the following major contracts governing the design and construction of the Facility and the ability of Seller to deliver Electric Energy in accordance with this Agreement: (i) contracts for lease or purchase of the Site; (ii)

contracts for the manufacture, delivery and installation of the generating equipment and step-up transformers; (iii) engineering, procurement and construction, or other general contractor agreements; (iv) operating agreements, warranty agreements, and long-term service agreements; (v) electric transmission or interconnection agreements; (vi) fuel supply, transportation and/or interconnection agreements; and (vii) waste disposal contracts. Upon WAPA's reasonable notice and request, Seller shall provide WAPA with other Facility construction contracts and major engineering drawings. Seller shall also provide WAPA with reasonable evidence that it has the capability to finance construction of the Facility. Seller shall provide sufficient information for WAPA to be reasonably assured that Seller has contracted with financially responsible vendors as part of the Facility construction process.

**Section 3.8 Progress Reports.** Seller shall submit progress reports in a form reasonably satisfactory to WAPA on the first Day of every month until the Commercial Operation Date and notify WAPA of any changes to such schedules in a timely manner. WAPA shall have the right to monitor the construction, completion, start-up, testing, and commissioning of the Facility.

**Section 3.9 Inspection and Testing.** Seller shall submit its start-up and test schedule for the Facility (including the Initial Output Test) for WAPA's review at least sixty (60) Days prior to start-up and testing. WAPA and Seller shall agree on the testing protocol (which shall utilize, among other parameters, the original equipment manufacturers' published correction curves), to be used to establish whether the Commercial Operation Date has occurred (the "Test Protocol"). WAPA shall have the right to have representatives present for such testing. Seller shall cooperate in such physical inspections of the Facility as may be reasonably required by WAPA during the Contract Term. WAPA's technical review and inspection of the Facility shall not be construed as endorsing the design thereof nor as any warranty of the safety, durability or reliability of the Facility.

**Section 3.10 Test Energy.** Seller shall coordinate the production and delivery of Electric Energy during the construction, start-up, testing, and commissioning of the Facility after initial synchronization of the Facility with WAPA's Electric System and prior to the Commercial Operation Date ("Test Energy") with WAPA. WAPA shall cooperate with Seller to facilitate Seller's testing of the Facility and shall accept delivery of all Test Energy at the Delivery Point and purchase such Test Energy at a price of \$[\_\_\_\_\_] per kWh. WAPA shall not be required to accept or purchase Test Energy in excess of the Electric Energy associated with the Expected Output. The Parties shall use good faith efforts to schedule the delivery of Test Energy for the times when it would otherwise be economically dispatched by WAPA.

**Section 3.11 Construction Security.** On the Contract Date, Seller shall provide a letter of credit from a bank reasonably acceptable to WAPA in the form of Schedule 8 in the amount of \$[\_\_\_\_\_] per kW of Expected Output to secure Seller's obligations to meet the Milestones and to pay liquidated damages as provided in Section 3.4 and Schedule 4, which letter of credit shall remain in full force and effect until the Commercial Operation Date (the "Construction Security").

### **Section 3.12 Additional Security.**

(a) Prior to the applicable date set forth on Schedule 4, as additional security for Seller's performance of its obligations hereunder, including any amounts owed by Seller to WAPA pursuant to this Agreement, Seller or WAPA, as the case may be, shall execute and record, as appropriate, separate agreements, documents, or instruments under which Seller will provide WAPA, in a form reasonably acceptable to WAPA and the Senior Lender, with a fully perfected subordinated security interest and mortgage lien (collectively the "Subordinated Mortgage") in the Facility and in any and all real and personal property rights, contractual rights, Permits and Approvals, or other rights that Seller requires in order to construct or operate the Facility. Such Subordinated Mortgage shall be subordinate in right of payment, priority, and remedies only to the interests of the Senior Lender for the Facility, to the extent of the Senior Debt, subject to the terms of the Subordinated Mortgage and the Intercreditor Agreement. The collateral subject to the Subordinated Mortgage shall not include the pledge, assignment, or other interest in any stock, limited liability company, partnership, or other ownership interest in Seller; provided, that Seller shall not pledge or assign, or cause or suffer to be pledged or assigned, any such ownership interest in Seller as collateral to any party other than the Senior Lender.

(b) WAPA agrees to cooperate with Seller and diligently to negotiate in good faith, at Seller's request, the form of the Subordinated Mortgage and any intercreditor agreement requested by the Senior Lender (the "Intercreditor Agreement"). The Parties shall confirm, define, and perfect such Subordinated Mortgage by executing, filing, and recording, at the expense of Seller, the Subordinated Mortgage. In addition, Seller agrees to cooperate with WAPA in the execution and filing of such UCC or other financing statements, and to take such further action and execute such further instruments, as reasonably be may be requested by WAPA to confirm and continue the validity, priority, and perfection of the Subordinated Mortgage. The granting of the Subordinated Mortgage shall not be to the exclusion of, nor be construed to limit, the amount of any claims, causes of action or other rights accruing to WAPA by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of the Contract Term. The Subordinated Mortgage shall be discharged and released, and WAPA shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Contract Term. Seller shall reimburse WAPA for its reasonable costs associated with the discharge and release of the Subordinated Mortgage and any other documents evidencing the Subordinated Mortgage.

(c) The Subordinated Mortgage shall provide that if WAPA acts to obtain title to the Facility by exercise of its rights thereunder, Seller shall cooperate diligently with WAPA in connection with the transfer to WAPA all Permits and Approvals necessary to operate the Facility.

## **ARTICLE 4 ELECTRIC POWER PURCHASE AND SALE**

**Section 4.1 Sale and Purchase of Electricity.** Commencing on the Commercial Operation Date and continuing throughout the Contract Term and subject to the terms and conditions of this Agreement, Seller shall sell and deliver to WAPA, and WAPA shall purchase and accept from

Seller, the Electric Energy scheduled by Seller, dispatched by WAPA, and delivered by Seller as provided herein.

**Section 4.2 Electric Energy Charge.** Promptly following the end of each Billing Period, WAPA shall determine the amount of Electric Energy dispatched by WAPA and delivered to the Delivery Point during each On-Peak Hour and each Off-Peak Hour of such Billing Period as provided in Article 9. WAPA shall pay Seller for the Electric Energy delivered in respect of each On-Peak Hour and each Off-Peak Hour of such Billing Period, in accordance with Article 5, an amount equal to:

(a) with respect to the Minimum Monthly Dispatch, the product of (i) the lesser of (A) the Minimum Monthly Dispatch for On-Peak Hours and Off-Peak Hours, as applicable, and (B) the Electric Energy actually dispatched and delivered during such hours, and (ii) the Electric Energy Charge for such hours of such Billing Period; and

(b) with respect to the Excess Energy, the product of (i) the Excess Energy actually dispatched and delivered during the On-Peak Hours and Off-Peak Hours of such Billing Period, as applicable, and (ii) the Excess Energy Charge for hours of such Billing Period.

**Section 4.3 Excess Energy.** The price for Excess Energy for each On-Peak Hour and each Off-Peak Hour of each Billing Period (the "Excess Energy Charge") shall be the greater of (a) [zero], or (b) the amount agreed from time to time in writing by the Parties. WAPA shall have no obligation to dispatch, accept, or purchase any Excess Energy unless otherwise agreed by the Parties in writing. Unless expressly agreed by the Parties in writing, Excess Energy shall not include any Electric Energy in excess of the Electric Energy associated with the Facility Output or due to an expansion, repowering, or upgrade to the Facility.

**Section 4.4 Electrical Specifications; Guaranteed Monthly Output.** Seller warrants that (a) the Electric Energy delivered to WAPA shall meet the quality standards and technical specifications set forth in Schedule 7, and (b) the aggregate quantity of Electric Energy to be scheduled by Seller for delivery from the Facility to the Delivery Point for the On-Peak Hours and the Off-Peak Hours, as applicable, in any Billing Period shall not be less than the Guaranteed Monthly Output for On-Peak Hours and Off-Peak Hours, as applicable. Seller shall have no obligation to schedule, deliver or sell any Electric Energy in excess of the Guaranteed Monthly Output for On-Peak Hours or Off-Peak Hours unless otherwise agreed by the Parties in writing.

**Section 4.5 Scheduling and Dispatch.**

(a) Seller shall schedule the availability of the Facility to generate and deliver Electric Energy to the Delivery Point, in accordance with the procedures set forth on Schedule 12.

(b) WAPA's Electric System operator shall have the right to determine the dispatch control of the Facility, including the Facility's start-ups, shutdowns and generation loading levels, through the AGC system or otherwise in accordance with the procedures set forth on Schedule 12.

#### **Section 4.6 Scheduling and Dispatch Obligations.**

(a) Commencing on the Commercial Operation Date and continuing throughout the Contract Term and subject to the terms and conditions of this Agreement:

(i) Seller shall schedule, deliver, and sell to WAPA, not less than the Guaranteed Monthly Output each Billing Period; and

(ii) WAPA shall dispatch, accept, and purchase not less than the Minimum Monthly Dispatch in each Billing Period.

(b) The hours excused pursuant to Section 4.7(a) shall be applied to reduce WAPA's Minimum Monthly Dispatch obligations and, to the extent set forth in Section 4.7(b), to reduce the Guaranteed Monthly Output, in each case with respect to On-Peak Hours or Off-Peak Hours, as applicable.

(c) If WAPA fails to dispatch the Facility in accordance with its Minimum Monthly Dispatch obligations and such failure is not excused pursuant to Section 4.7, WAPA shall pay Seller liquidated damages in the amount of \$[\_\_\_\_\_] per kWh for On-Peak Hours or \$[\_\_\_\_\_] per kWh for Off-Peak Hours, as applicable, of such Billing Period, multiplied by the difference between the Minimum Monthly Dispatch for On-Peak Hours or for Off-Peak Hours, as applicable, for such Billing Period and the Electric Energy actually dispatched in such hours of such Billing Period.

#### **Section 4.7 Exceptions to Obligation to Schedule and Dispatch Electric Energy.**

(a) WAPA shall not be obligated to accept Test Energy or to dispatch the Facility and accept or purchase Electric Energy in accordance with this Article 4, and the Minimum Monthly Dispatch shall be reduced on a kWh-for-kWh basis for each applicable On-Peak Hour or Off-Peak Hour, as applicable, to the extent any of the following circumstances apply:

(i) WAPA is unable to back down its own generation sufficiently to accept the Electric Energy from the Facility without jeopardizing the integrity of WAPA's Electric System;

(ii) transmission facilities are loaded to their maximum capability and continued or increased power output from the Facility would adversely affect the reliability of WAPA's Electric System;

(iii) during any periods of time when the Facility does not comply with the requirements set forth in Section 4.4 and Schedule 7;

(iv) during any periods when the Facility is unavailable for dispatch due to a Scheduled Maintenance Outage or otherwise;

(v) WAPA intentionally interrupts acceptance of the Facility's Electric Energy to conduct planned maintenance of the interconnection or adjacent transmission or subtransmission facilities;

(vi) during any Electric System Emergency if such purchases would contribute to such Electric System Emergency or if the Facility must be disconnected; or

(vii) during any period in which performance by either Party is prevented by Uncontrollable Circumstances.

(b) Seller shall not be obligated to schedule the Facility or to deliver and sell Electric Energy in accordance with this Article 4, and the Guaranteed Monthly Output shall be reduced on a kWh-for-kWh basis for each applicable On-Peak Hour or Off-Peak Hour, as applicable, to the extent:

(i) Section 4.7(a)(v) or Section 4.7(a)(vi) applies, and such circumstances continue for an aggregate of \_\_\_\_\_ (\_\_) On-Peak Hours or \_\_\_\_\_ (\_\_) On-Peak Hours, as applicable, in the applicable Billing Period;

(ii) the circumstances set forth in Section 4.7(a)(vii) applies and Seller is the Party affected by the Uncontrollable Circumstance; or

(iii) the circumstances set forth in Section 4.7(a)(vii) applies, WAPA is the Party affected by the Uncontrollable Circumstance, and such circumstances continue for an aggregate of \_\_\_\_\_ (\_\_) On-Peak Hours or \_\_\_\_\_ (\_\_) On-Peak Hours, as applicable, in the applicable Billing Period.

(c) Where practicable, each Party shall give the other Party reasonable advance notice of any interruption, curtailment or reduction effected pursuant to this Section 4.7, the circumstances requiring or necessitating the interruption, curtailment or reduction of WAPA's acceptance of the Facility's Electric Energy and, if able, the reasons therefore, and the extent and duration thereof. In the event that a Party is unable, for any reason, to give the other Party such advance notice, such Party shall, as soon thereafter as practicable, contact the other Party explaining the circumstances requiring or necessitating the interruption, curtailment or reductions, and, if able, furnish the reasons therefore and the extent and duration thereof. WAPA shall resume the acceptance of the Facility's Electric Energy when WAPA has determined that the cause for the interruption, curtailment or reduction no longer exists.

(d) WAPA shall not be liable for damages of any kind to Seller or any third party due to WAPA's failure to dispatch or accept the Facility's Electric Energy pursuant to this Section 4.7.

**Section 4.8 Title and Risk of Loss.** As between the Parties, Seller shall be deemed to be in control of the Electric Energy output from the Facility up to and until delivery and receipt at the Delivery Point and WAPA shall be deemed to be in control of Electric Energy from and after delivery and receipt at the Delivery Point. Title and risk of loss related to the Electric Energy shall transfer from Seller to WAPA at the Delivery Point.

**Section 4.9 Exclusivity.** Seller shall not sell any electric capacity, electric energy, ancillary services, or other products generated or produced at the Facility to any person other than WAPA except as agreed to between the Parties.

**Section 4.10 Government Grants, Credits, Incentives, or Abatements.** In the event that the United States federal government or the U.S. Virgin Islands or any department or agency thereof provides or makes available to Seller any grant, credit, incentive, or abatement that reduces the capitalized costs of the Facility or increases Seller's internal rate of return from the Facility, including PTCs, the Electric Energy Charge shall be reduced to reflect the receipt of such grant, credit, incentive, or abatement. Seller shall promptly give WAPA notice of its receipt of any such grant, credit, incentive, or abatement and shall provide WAPA with any information necessary for WAPA to calculate the amount of the rate reduction provided in this Section 4.10. In addition, WAPA shall have the right, from time to time, to cause a reputable third-party accounting firm to audit the books and records of Seller and its owners, including their federal, U.S. Virgin Islands, and local tax returns, to verify that Seller is in compliance with the requirements of this Section 4.10. WAPA shall bear the expense of such audit, unless such audit determines that Seller is not in compliance with this Section 4.10, in which case Seller promptly shall reimburse WAPA for the reasonable costs and expenses of such audit.

## ARTICLE 5 BILLING AND PAYMENT

**Section 5.1 Meter Reading; Invoicing.** Each Billing Period, meters shall be read and the quantity of Electric Energy delivered by Seller to WAPA at the Delivery Point shall be recorded for billing purposes by representatives of Seller and WAPA, simultaneously, unless such quantity is determined by electronic means as contemplated by Schedule 6. Promptly following the end of each Billing Period, Seller shall prepare and deliver to WAPA, an invoice (the "Invoice") for the Electric Energy dispatched by WAPA and delivered by Seller to the Delivery Point during such Billing Period, in accordance with this Agreement.

**Section 5.2 Payment of Invoices.** Unless otherwise specified herein, payments due under this Agreement shall be due and payable in Dollars on or before the thirtieth (30th) Day following receipt of the Invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates that the payment was mailed on or before the thirtieth (30th) Day following receipt of the Invoice.

**Section 5.3 Invoice Disputes.** In the event of a bona fide dispute about the correctness of an Invoice, WAPA shall pay the undisputed amount in accordance with Section 5.2 pending the resolution of the dispute. Additional amounts owed by WAPA or refunds due to WAPA upon resolution of the billing dispute shall accrue interest at the rate equal to LIBOR plus two percent (2%).

**Section 5.4 Performance Security.** As security for the performance of its obligations under this Agreement, Seller shall provide a replenishable letter of credit from a bank reasonably acceptable to WAPA in the form of Schedule 8 in the amount of \$[\_\_\_\_\_] per kW of Facility Output

prior to the Commercial Operation Date (the “Performance Security”). Seller shall cause such a letter of credit to remain in effect until the expiration of the Contract Term.

## **ARTICLE 6 PERFORMANCE TESTING AND RE-RATINGS**

**Section 6.1 Tested Output; Facility Output.** The Tested Output of the Facility shall be the Electric Capacity of the Facility, measured in kW at the Delivery Point and determined by testing and correction in accordance with the Test Protocol as described in Section 6.6 (the “Output Test”). The Facility Output shall be adjusted from time to time as provided in this Article 6.

**Section 6.2 Initial Output Test.** The initial Tested Output shall be determined by the initial Output Test conducted prior to the Commercial Operation Date. Seller shall notify WAPA when the Facility is ready for such initial Output Test (hereafter the “Initial Output Test”). Seller shall perform, and shall afford WAPA and its representatives an opportunity to monitor, the Initial Output Test within fourteen (14) Days of WAPA's receipt of such notice. Upon the completion of the Initial Output Test, Seller shall provide WAPA with a report of the Initial Output Test results and related test data.

### **Section 6.3 Initial Facility Output.**

(a) To be deemed successful, the Initial Output Test must demonstrate an Electric Capacity at least equal to [eighty percent (80%)] of the Expected Output (the “Minimum Output”). Seller may request up to two (2) additional Output Tests to establish the Facility Output prior to the Commercial Operation Date if Seller is not satisfied with the Initial Output Test. If the Facility demonstrates the Minimum Output but fails to demonstrate the Expected Output in the Initial Output Test, Seller shall be allowed an additional one hundred eighty (180) Day period after the Commercial Operation Date to achieve full Expected Output. If the Facility fails to demonstrate that the Electric Capacity of the Facility is not less than the Expected Output by the expiration of such one hundred eighty (180) Day period, then not later than ten Days after the end of such one hundred eighty (180) Day period, Seller shall pay WAPA liquidated damages in the amount equal to \$[\_\_\_\_\_] per kW multiplied by the difference equal to the Expected Output minus the Tested Output.

(b) Upon the payment of such liquidated damages, and provided that the Facility shall have demonstrated a Tested Output not less than the Minimum Output:

(i) the Facility Output shall be adjusted to be equal to the Tested Output demonstrated during the last Output Test conducted prior to the expiration of such one hundred eighty (180) Day period; and

(ii) the Guaranteed Monthly Output and the Minimum Monthly Dispatch for On-Peak Hours and Off-Peak Hours shall be adjusted in proportion to the ratio of such Facility Output to the Expected Output.

**Section 6.4 Output Tests.** The latest Output Test shall be deemed to be the effective test at any time, whether or not successful.

**Section 6.5 Electric Re-Rating.**

(a) Every [January/ July] after the Commercial Operation Date throughout the Contract Term, the Facility shall be re-rated by testing as described in this Article 6. In addition, WAPA by notice to Seller may require new Output Tests within thirty (30) Days after any Extended Outage. Seller shall notify WAPA when the Facility is ready for such Output Test and shall perform, and afford WAPA and its representatives an opportunity to monitor, such Output Test within fourteen (14) Days of Seller's receipt of such notice from WAPA. Upon the completion of the Output Test, Seller shall provide WAPA with a report of the Output Test results and related test data. If the Facility in any such Output Test fails to demonstrate a Tested Output not less than the then-current Facility Output, Seller shall pay WAPA liquidated damages in the amount equal to \$[\_\_\_\_\_] per kW multiplied by the difference equal to the then-current Facility Output minus the Tested Output (provided that the Tested Output shall at least equal the Minimum Output).

(b) Upon the payment of such liquidated damages, (i) the Facility Output shall be adjusted to be equal to the Tested Output, and (ii) the Guaranteed Monthly Output and the Minimum Monthly Dispatch for On-Peak Hours and Off-Peak Hours shall be adjusted in proportion to the ratio of the Tested Output to the Facility Output prior to such Output Test.

(c) The Facility Output shall not exceed the Expected Output. Without the consent of WAPA in its sole discretion, the Facility Output shall not be increased if any Output Test demonstrates a Tested Output greater than the then-current Facility Output.

**Section 6.6 Output Testing Procedures.** Output Tests shall comply with the following provisions:

(a) each Output Test shall last for seventy-two (72) hours from the time Seller initiates such Output Test, and shall require that the Facility continuously produce an Electric Capacity not less than one hundred percent (100%) of the Minimum Output for such seventy-two (72) hour period;

(b) the Electric Capacity shall be determined in the testing period for the appropriate season by converting each half-hour integrated kW of net Electric Energy reading from the Electric Meter in accordance with the Test Protocol;

(c) back-up or black start generators must not be operated during this test, and there must be no power flowing from WAPA to the Facility during such test;

(d) normal station service use of unit auxiliaries, including without limitation cooling towers and other equipment required by regulatory or governmental authority, is required during the period when Output Tests are conducted;

(e) normal operating conditions, nameplate ratings, temperatures, pressures and other parameters defined by the applicable manufacturers must not be exceeded;

(f) Output Tests shall be based on Reference Conditions and all actual test results shall be corrected to the Reference Conditions in accordance with the original equipment manufacturers' correction curves;

(g) Output Tests shall comply at all times with Applicable Law, including all applicable requirements of the Permits and Approvals, and shall not exceed any applicable emissions or other limits; and

(h) WAPA may require additional data to complete the Output Test including: (i) hourly ambient temperature during demonstration and (ii) rating curve or graph reflecting a full range (60°F - 90°F) of ambient temperatures versus MW output.

## **ARTICLE 7 INTERCONNECTION**

**Section 7.1 Facility.** The Facility [is] [shall be] located at the Site on the [\_\_\_\_] side] of the island of [St. Croix][St. Thomas].

**Section 7.2 Interconnection Agreement.** The Parties shall enter into an Interconnection Agreement which, among other things, shall set forth arrangements for the installation and operation of the Interconnection Facilities.

**Section 7.3 Seller's Obligations.** Seller shall be responsible for the design, construction, installation, maintenance and ownership of the Facility, which includes auxiliaries, and the design, construction and installation of the Interconnection Facilities.

**Section 7.4 Interconnection Facilities.** Seller shall, at its sole cost and expense, complete the design, construction and installation of the Interconnection Facilities within the time frame determined in the interconnection study performed in accordance with Section 7.7 and in accordance with WAPA's specifications and Good Engineering and Operating Practices. Upon the completion of the Interconnection Facilities, but no later than Commercial Operation Date, Seller shall transfer to WAPA full ownership and control, including any and all required Permits and Approvals, of WAPA's Interconnection Facilities.

**Section 7.5 WAPA's Obligations.** Upon the completion of the transfer contemplated by Section 7.4, WAPA, at Seller's expense, shall be responsible for the maintenance and ownership of WAPA's Interconnection Facilities in accordance with Good Engineering and Operating Practices. WAPA shall invoice Seller each Billing Period, in advance, for its anticipated costs incurred in performing such obligations, each such invoice to include a reconciliation and adjustment for actual costs incurred, if any, in the Billing Period prior to such invoice.

**Section 7.6 Data to be Provided by Seller.** Within sixty (60) Days of the Contract Date, Seller shall provide to WAPA data required in Schedule 9 attached hereto, in form and substance reasonably satisfactory to WAPA.

**Section 7.7 Interconnection Study.** WAPA, at Seller's expense, shall perform an interconnection study within one hundred and twenty (120) Days of Seller's completion of the requirements of Section 7.6 above under conditions agreed upon by the Parties. The interconnection study shall, at a minimum, (a) determine the location of the Delivery Point and the Interconnection Facilities, (b) determine the time required to complete the Interconnection Facilities, and (c) designate the WAPA operations center that will coordinate the operations of the Facility.

**Section 7.8 Technical Requirements and Operations.**

(a) The Parties agree that the interconnection with, and delivery of Electric Energy into, WAPA's Electric System must be accomplished in accordance with WAPA's standards as specified in Schedule 10.

(b) Each Party shall immediately notify the other Party and WAPA's Electric System dispatcher by telephone of any actual or pending Electric System Emergency associated with the Parties' parallel operations. Each Party agrees to promptly take whatever appropriate corrective action is necessary to correct the hazardous or unsafe conditions.

**Section 7.9 Site Access.** In order to help ensure the continuous, safe, reliable and compatible operation of the Facility with WAPA's Electric System, Seller hereby grants WAPA for the period of interconnection the reasonable right of ingress and egress, consistent with safe operation of the Facility, over property leased or controlled by Seller to the extent WAPA deems such ingress and egress reasonably necessary in order to examine, test, calibrate, coordinate, operate, maintain or repair any interconnection equipment involved in the parallel operation of the Facility and WAPA's Electric System, including WAPA's metering equipment. Except in the event of actual or pending Electric System Emergency, or as otherwise provided in the Interconnection Agreement, WAPA shall give reasonable prior notice to Seller prior to such ingress or egress.

**ARTICLE 8  
OPERATION AND MAINTENANCE**

**Section 8.1 Operations Schedule.** At least ninety (90) Days prior to each calendar year during the Contract Term, WAPA shall provide Seller its planned electric outage schedule and a non-binding forecasted dispatch schedule for the following calendar year. At least sixty (60) Days prior to each calendar year during the Contract Term, Seller shall provide to WAPA, in writing, its planned Scheduled Maintenance Outages for such calendar year, the expected operation of the Facility for the immediately succeeding calendar year, and a good faith estimate of the amount of electricity to be generated by the Facility and delivered to WAPA each Billing Period of such calendar year. The Parties shall in good faith negotiate a mutually acceptable schedule of the Facility's Scheduled Maintenance Outages. Upon the conclusion of such negotiations, WAPA shall provide Seller with a revised schedule of the Facility's Scheduled Maintenance Outages and

expected dispatch. WAPA may revise such schedule upon reasonable notice to Seller; provided, that any such revisions to the schedule of the Facility's Scheduled Maintenance Outages shall not have a material adverse effect on Seller or the Facility. Seller may reschedule a Scheduled Maintenance Outage upon WAPA's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

**Section 8.2 Scheduled Maintenance Outages.** Seller shall exercise all reasonable efforts to coordinate Scheduled Maintenance Outages with WAPA to avoid, where reasonably possible, overlap with WAPA's planned outages of its generating units. Seller shall not schedule any maintenance outages for the Facility, except for outages associated with Electric System Emergencies, without the prior written approval of WAPA. Seller shall not allow Scheduled Maintenance Outages to exceed twenty-one (21) days in each calendar year in the aggregate; provided, that Seller shall be allowed additional [\_\_] days each [\_\_] years of Scheduled Maintenance Outages for major overhauls.

**Section 8.3 Permits and Approvals.** Seller shall, at its expense, acquire and maintain in effect, and shall comply with, all Permits and Approvals from all federal, U.S. Virgin Islands, state, and local agencies, commissions and authorities with jurisdiction over Seller and/or the Facility necessary for the ownership, operation, maintenance, removal, or remediation of the Facility or the Site, including the disposal of any waste, byproduct(s), or hazardous materials, if any, and for Seller to perform its obligations under this Agreement. WAPA shall not be responsible in any way whatsoever for any Permits and Approvals, environmental studies or assessments that may be necessary for Seller to perform its obligations under this Agreement.

**Section 8.4 Operation and Maintenance.** Seller shall operate and maintain the Facility in all respects (including handling and disposal of any waste, byproduct(s), or hazardous materials, if any) in accordance with Good Engineering and Operating Practice, the Codes and Standards, and Applicable Laws.

**Section 8.5 Operating Representatives.**

(a) At least thirty (30) Days prior to the scheduled Commercial Operation Date, each Party shall appoint a member and an alternate member as Operating Representatives and provide written notice of such appointments to the other Party. Such appointments may be changed at any time by similar written notice. The respective Operating Representatives shall meet as necessary at a mutually agreeable time and place upon prior written notice. Each Operating Representative and alternate shall be a responsible person working with the day-to-day operations of in the case of WAPA, WAPA's Electric System and, in the case of Seller, the Facility. The Operating Representatives shall represent the Parties in all matters arising under this Agreement which may be delegated to them by mutual agreement of the Parties.

(b) The duties of the Operating Representatives shall include those specifically identified elsewhere in this Agreement, and the following:

- (i) Coordinate operation and outage schedules;

(ii) Establish control and operating procedures consistent with the provisions of this Agreement;

(iii) Provide a list of Operating Representatives of each Party;

and

(iv) Such other duties as may be conferred upon them by mutual agreement of the Parties.

(c) Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter falling under their jurisdiction, such matter shall be referred by the Operating Representatives to their principals for decision. All decisions and agreements made by the Operating Representatives or principals shall be evidenced in writing.

**Section 8.6 Environmental Credits.** The Parties acknowledge that current or future legislation or regulation may create value in the ownership, use or allocation of environmental and renewable energy credits. To the extent applicable, WAPA shall own or be entitled to claim, and Seller, for no additional consideration, hereby conveys to WAPA, all environmental and renewable energy credits to the extent such credits may exist during the Contract Term. For purposes of this section, “environmental and renewable energy credits” means any environmental, renewable energy, carbon reduction, or air quality credits, off-sets or other benefits related to the ownership or operation of the Facility or the generation of energy at the Facility, the sale of energy to WAPA hereunder or the other transactions contemplated by this Agreement, or the reduction, displacement, or off-set of any emissions resulting from the combustion of fuel at any other location, pursuant to any foreign, federal, state, territorial, or local legislation or regulation, or voluntary market, and the aggregate amount of credits, offsets or other benefits related to WAPA's current marketing program, any successor green pricing program or other environmental or renewable energy credit trading program derived from the use, purchase or distribution of renewable energy from the generation of energy at the Facility or any similar program pursuant to any foreign, federal, state, territorial, or local legislation or regulation, or voluntary market.

**Section 8.7 Equal Opportunity Employment Certification.** Seller acknowledges that as a government contractor WAPA is subject to various federal and/or U.S. Virgin Islands laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to WAPA. All applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal and U.S. Virgin Islands laws, executive orders, and regulations, including 41 C.F.R. §60-1.4(a)(1-7).

## **ARTICLE 9 METERING**

**Section 9.1 Meter Calibration.** Unless the Parties otherwise agree, the metering for determining Electric Energy deliveries to WAPA shall be the meters utilized at the Delivery Point. WAPA shall, at Seller's cost and expense, be responsible for meter calibration at least twice each calendar year.

**Section 9.2 Installation of Meters.** Meters for measuring Electric Energy deliveries shall be obtained and installed, calibrated and tested by WAPA at Seller's cost and expense. Such installation, calibration and testing of such meters shall occur on a schedule mutually agreed to by the Parties, provided that such activities shall be completed by WAPA prior to the Commercial Operation Date.

**Section 9.3 Measurement and Invoicing of Electric Energy Delivered; Testing of Meters.** The quantity and quality of the Electric Energy delivered to WAPA shall be measured, monitored, tested and recorded by WAPA in accordance with the methods specified in Schedule 6.

## **ARTICLE 10 AUDITS**

**Section 10.1 Audit Rights.** Seller shall have the right, upon reasonable notice and during normal business hours, to audit relevant information provided by WAPA for Seller's preparation of any Invoice(s). During the terms of this Agreement and for five years thereafter, WAPA shall have the right, upon reasonable notice and during normal business hours, to audit relevant electric generation and cost information relevant to Seller's obligations hereunder and the calculation of any amounts payable by WAPA hereunder and all the information required to be maintained hereunder. The Parties shall provide each other with copies of records in computer – readable format as well as hard copies. In the event that WAPA's audit uncovers overcharges in excess of 0.5% of any Invoice, Seller shall reimburse WAPA for the costs incurred in connection with such audit.

**Section 10.2 Operating Records.** Seller and WAPA shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including such records as may be required by federal, U.S. Virgin Islands, state or local regulatory authorities. WAPA reserves the right to audit any records necessary to evaluate and verify Seller's compliance with this Agreement and WAPA's business ethics policies.

**Section 10.3 Operating Log.** Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of real and reactive power production for each hour; changes in operating status; scheduled maintenance and forced outages; number of generating unit starts, and any unusual conditions found during inspections. Seller must maintain accurate and up-to-date logs of dispatched and scheduled energy, including Test Energy, and other records needed in order to comply with this Agreement. Seller shall also maintain hourly metering information.

**Section 10.4 Billing and Payment Records.** To facilitate payment and audit, Seller and WAPA shall keep all books and records necessary for billing and payments in accordance with this Agreement. All records of Seller pertaining to the operation of a Facility shall be maintained on the premises of the Facility.

## **ARTICLE 11 INSURANCE**

**Section 11.1 Evidence of Insurance.** Seller shall, on or before June 1 of each year following the Contract Date and pursuant to the corresponding Construction Milestone, provide WAPA with two copies of evidence of insurance acceptable to WAPA documenting that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Schedule 11. Such evidence of insurance must be in compliance with section C3 of Schedule 11, Evidence of compliance with Insurance Requirements at Contract Date, or section C4, Evidence of Renewal or Replacement Policies, as applicable.

Seller's liability under this Agreement is not limited to the amount of insurance coverage required herein.

WAPA shall have the right, at times deemed appropriate to WAPA during the Contract Term, to request Seller to modify the insurance minimum limits specified in Schedule 11 in order to maintain reasonable coverage amounts. Seller shall make all commercially reasonable efforts to comply with any such request.

**Section 11.2 Term and Modification of Insurance.** All insurance required under this Agreement shall cover occurrences during the Contract Term and for a period of two (2) years after the expiration of the Contract Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Contract Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) years after the Contract Term.

## **ARTICLE 12 UNCONTROLLABLE CIRCUMSTANCES**

**Section 12.1 Effect of Uncontrollable Circumstance.** Neither Party shall be liable to the other Party for failure to perform any obligation hereunder, when such failure is the result of the occurrence of an Uncontrollable Circumstance after the Contract Date; provided, that neither Party shall be excused from any obligation to pay amounts due under this Agreement by reason of an Uncontrollable Circumstance. Upon becoming aware of the occurrence of an Uncontrollable Circumstance, or that any such event is reasonably expected to occur, the affected Party shall immediately notify the other Party of such event, or such pending event, as the case may be. The suspension of performance shall be of no greater scope and of no longer duration than is required by the Uncontrollable Circumstance. The non-performing Party shall proceed with reasonable diligence to remedy its inability to perform and shall provide weekly progress reports to the other

Party describing actions taken to end the Uncontrollable Circumstance. When the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect. Except as otherwise expressly provided for in this Agreement, the existence of an Uncontrollable Circumstance shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by such Uncontrollable Circumstance.

**Section 12.2 Changes Due to Uncontrollable Circumstance.** Immediately following the initial notice of the Uncontrollable Circumstance by either Party pursuant to Section 12.1, the notifying Party shall provide the other Party with a written preliminary evaluation of the extent of the adverse effect on the performance of such other Party's obligations caused by the Uncontrollable Circumstance or on the operation and maintenance of the Facility. Upon completion of the notifying Party's final analysis of such adverse impact, including completion of engineering estimates, if necessary, and of any necessary modifications or repairs to the Facility, the notifying Party shall provide the other Party with a final written report of the overall impact on the Facility.

**Section 12.3 Termination Due to Uncontrollable Circumstance.** In the event that Seller's delay or failure of performance caused by Uncontrollable Circumstances continues for an uninterrupted period of one hundred eighty (180) Days, WAPA may terminate this Agreement upon written notice to Seller. In the event that WAPA's delay or failure of performance caused by Uncontrollable Circumstances continues uninterrupted for a period of eighteen (18) months, Seller may terminate this Agreement upon written notice to WAPA. If the Agreement is terminated pursuant to this Section 12.3, neither Party shall have any further obligations hereunder except as to costs and balances incurred prior to the effective date of such termination and provisions expressly surviving termination pursuant to Section 18.6.

## ARTICLE 13 DEFAULT AND TERMINATION

**Section 13.1 Seller Default.** WAPA may declare Seller in default under this Agreement if any of the following shall occur:

(a) The Facility fails to demonstrate a Tested Output at least equal to the Minimum Output in any Output Test.

(b) Seller becomes liable for liquidated damages in a rolling period of [\_\_\_\_\_] consecutive Billing Periods an amount in excess of [\$\_\_\_\_\_\_], or becomes liable for liquidated damages in an amount of [\$\_\_\_\_\_\_] in the aggregate.

(c) Either:

(i) [\_\_\_\_\_] percent (\_\_\_%) of the Facility Output is actually available for dispatch by WAPA for an aggregate of [\_\_\_\_\_] (\_\_\_) Days in any rolling [\_\_\_\_\_] (\_\_\_) Day period];

(ii) less than [\_\_\_\_\_ percent (\_\_%)] of the Facility Output is actually available for dispatch by WAPA for a period of [\_\_\_\_\_ (\_\_\_)] Days]; or

(iii) Seller fails to schedule, or Seller fails to deliver from the Facility to the Delivery Point when dispatched by WAPA, in accordance with this Agreement, at least [\_\_\_\_\_ percent (\_\_%)] of the Guaranteed Monthly Output for On-Peak Hours or [\_\_\_\_\_ percent (\_\_%)] of the Guaranteed Monthly Output for Off-Peak Hours for any [\_\_\_\_\_] consecutive Billing Periods or for an aggregate of [\_\_\_\_\_] Billing Periods in any rolling period of [\_\_\_\_\_] consecutive Billing Periods.

(d) Seller fails to pay undisputed amounts due to WAPA under this Agreement within fifteen (15) Days following notice from WAPA.

(e) Seller fails to maintain solvency, including:

(i) inability, failure, or refusal to pay debts as they mature; entry into an arrangement with or for the benefit of its creditors; consent to or acquiescence in the appointment of a receiver, trustee, or liquidator for a substantial part of Seller's property;

(ii) bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by or against Seller under the laws of any jurisdiction, which proceeding is not dismissed within ninety (90) Days;

(iii) any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding in which Seller approves of, consents to, or acquiesces in, any such proceeding;

(iv) the levy of any distress, execution, or attachment upon Seller's property which shall substantially interfere with Seller's performance hereunder; provided, that this form of insolvency shall not be deemed to have occurred if the insolvency is caused primarily by WAPA's failure to make any payment due pursuant to this Agreement within thirty (30) Days of when it becomes due and payable.

(f) Seller fails to achieve any Extended Milestone described in Section 3.4.

(g) Seller fails to maintain, renew or replenish when required any letter of credit or other security in the amount required to be provided hereunder.

(h) Seller's failure to maintain adequate insurance in accordance with Article 11 and Schedule 11 hereof.

(i) Seller abandons the construction or operation of the Facility.

(j) Seller fails to perform any material obligation (other than the defaults addressed in (a) through (i) above) which remains uncured for thirty (30) Days after Seller receives notice from WAPA of such failure, with such notice describing in reasonable detail the nature of the failure.

**Section 13.2 WAPA Default.** Seller may declare WAPA in default under this Agreement if any of the following shall occur:

(a) WAPA fails to pay undisputed amounts due to Seller under this Agreement within thirty (30) Days following a notice from Seller;

(b) WAPA fails to maintain solvency, including:

(i) inability, failure, or refusal to pay debts as they mature; entry into an arrangement with or for the benefit of its creditors; consent to or acquiescence in the appointment of a receiver, trustee, or liquidator for a substantial part of WAPA's property;

(ii) bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by or against WAPA under the laws of any jurisdiction, which proceeding is not dismissed within ninety (90) Days;

(iii) any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding in which WAPA approves of, consents to, or acquiesces in, any such proceeding;

(iv) the levy of any distress, execution, or attachment upon WAPA's property which shall substantially interfere with WAPA's performance hereunder.

(c) WAPA fails to perform any material obligation (other than the defaults addressed in (a) and (b) above) which remains uncured for thirty (30) Days after WAPA receives notice from Seller of such failure, with such notice describing in reasonable detail the nature of the failure; provided, that WAPA's failure to meet its Minimum Monthly Dispatch obligations shall not constitute a default as long as WAPA pays Seller liquidated damages as provided in Section 4.6(c).

**Section 13.3 Termination for Seller or WAPA Default.** If Seller or WAPA shall default under and pursuant to either Section 13.1 or 13.2 of this Agreement, the non-defaulting Party may, at its option, exercise one or more of the following remedies:

(a) upon thirty (30) Days prior written notice, terminate this Agreement; and

(b) pursue and have recourse to any other right or remedy to which it may be entitled by law, at equity, or under this Agreement, including, but not limited to, specific performance, injunction, or the right to recover all damages, losses, costs and expenses (including reasonable attorney fees) received as a result of such default.

**Section 13.4 Liquidated Damages.**

(a) If in any Billing Period, Seller fails to schedule the Guaranteed Monthly Output for On-Peak Hours or Off-Peak Hours of such Billing Period as provided herein, then Seller shall pay WAPA liquidated damages in the amount equal to the product of (A) WAPA's Cost of Cover for On-Peak Hours or Off-Peak Hours, as applicable, for such Billing Period, multiplied by (B) the amount by which the Guaranteed Monthly Output for On-Peak Hours or Off-Peak Hours of such Billing Period, as applicable, exceeds the Electric Energy scheduled by Seller for delivery to the Delivery Point in the On-Peak Hours and Off-Peak Hours of such Billing Period, as applicable.

(b) In addition to the liquidated damages payable under Section 13.4(a), to the extent that Seller fails to deliver to the Delivery Point in any hour any Electric Energy scheduled by Seller and dispatched by WAPA for such hour as provided herein, then Seller shall pay WAPA liquidated damages in the amount equal to the product of (A) the amount of Electric Energy scheduled and dispatched but not delivered to the Delivery Point in each On-Peak Hour and each Off-Peak Hour of such Billing Period, as applicable, multiplied by (B) [insert WAPA's Cost of Cover or other negotiated amount] for each such hour.

### **Section 13.5 WAPA's Right to Possess, Control and Operate Facility.**

(a) Upon an event of default by Seller under Section 13.1, prior to any termination of this Agreement by WAPA under Section 13.3 above, WAPA shall have the right (but not the obligation) to possess, assume control of and operate the Facility as agent for Seller during the term hereof. Seller shall not grant any person a right to possess, assume control of, and operate the Facility that is equal to or superior to WAPA's right under this Section 13.5. In addition to an event of default, WAPA shall have the right to possess, assume control of, and operate the Facility as provided herein in the following circumstances:

(i) Seller permanently ceases to operate any Facility; or

(iii) Seller fails to remedy any deficiencies in respect of its covenants pursuant to Article 8.

(b) WAPA shall give notice to Seller at least thirty (30) Days in advance of exercising its rights under this Section 13.5.

(c) During any period that WAPA is in possession of and operating the Facility, WAPA shall purchase Electrical Energy from the Facility pursuant to the terms and conditions of this Agreement and at the price stated herein, without any penalty or premium or the payment of any additional consideration. WAPA shall use the proceeds from any such sales: (i) first, to reimburse WAPA for any and all expenses reasonably incurred by WAPA in taking possession of and operating the Facility; and (ii) second, to satisfy Seller's then-current obligations to the Senior Lender. Any balance of payments for Electric Energy remaining after application as provided in the foregoing sentence shall be remitted to Seller.

(d) During any period that WAPA is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and WAPA shall assume management control solely as agent for Seller. As soon as practicable after the execution of this Agreement and in any

event not later than ninety (90) Days prior to the Commercial Operation Date, Seller agrees to grant WAPA, its employees, and contractors, right, licenses and easements, which are irrevocable during the term of this Agreement, to enter upon the Site for the purpose of operating the Facility as provided herein. Seller hereby irreversibly appoints and constitutes WAPA as its attorney in fact (which right shall be deemed a power coupled with an interest), during the Contract Term, to take all actions as may be required to effectuate the purposes of this Section 13.5. Seller shall make such filings as may be necessary to effectuate WAPA's rights under this Agreement.

(e) Seller may resume operation of the Facility and WAPA shall relinquish its right to operate upon the earlier of (i) the exercise of remedies by the Senior Lender with respect to its security interest in the Facility, consistent with the Subordinated Mortgage and the Intercreditor Agreement, or (ii) the date on which Seller demonstrates that it has removed the ground(s) authorizing WAPA to operate the Facility, as provided in this Section 13.5. Additionally, WAPA shall not be required to relinquish its rights to operate the Facility until any documented expenditures made by WAPA to safely and adequately operate the Facility are recovered through either WAPA's use of the proceeds from the sale of Electric Energy generated by the Facility or a payment from Seller.

(f) WAPA's exercise of its rights hereunder to possess, control and operate the Facility shall not be deemed an assumption by WAPA of any liability attributable to Seller. For the period during which WAPA is in possession of the Facility, each Party shall indemnify, save harmless and defend the other Party against all claims, demands, judgments and associated costs and expenses, related to property damage, bodily injuries or death suffered by third parties resulting from any act or failure to act by the indemnifying Party related to this Agreement.

**Section 13.6 Remedies Cumulative.** Except as provided in Section 14.4, each right or remedy of the Parties under this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided herein, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

## ARTICLE 14 LIMITATION ON LIABILITY AND INDEMNIFICATION

**Section 14.1 Exclusion of Consequential Damages, Etc.** Except as otherwise specifically provided in this Agreement, in no event, whether because of a breach of any provision contained in this Agreement or any other cause, whether based upon contract, negligence (including tort or strict liability), warranty, or otherwise, shall either Party be liable for or obligated in any manner to pay incidental, special, punitive, consequential, exemplary, or indirect damages of any nature whatsoever incurred by either Party.

**Section 14.2 Indemnification by Seller.** Seller agrees to indemnify and save harmless WAPA and its officials, employees, agents and contractors from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees) caused by or resulting from (1) any negligent or willful act or omission of Seller, its directors, officers, employees, agents or contractors,

(2) the breach by Seller of any agreements, representations or warranties of Seller contained in this Agreement; provided, that Seller shall not indemnify WAPA or any of its officials, employees, agents or contractors from any loss, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees) caused by or arising out of any negligent or willful act or omission of, or the breach of this Agreement by, WAPA or any of its officials, employees, agents or contractors.

**Section 14.3 Indemnification by WAPA.** WAPA agrees to indemnify and save harmless Seller, its directors, officers, employees, agents and contractors from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees) caused by or resulting from (1) any negligent or willful act or omission of WAPA or its officials, employees, agents or contractors, or (2) the breach by WAPA of any of the representations, covenants or warranties of WAPA contained in this Agreement; provided, that WAPA shall not indemnify Seller, its directors, officers, employees, agents or contractors, from any loss, liability, penalty, fine, forfeiture, demand, cause of action, suit and cost and expense incidental thereto (including cost of defense, settlement and reasonable attorney's fees) caused by or arising out of any negligent or willful act or omission of or breach of this Agreement by Seller, or any of its directors, officers, employees, agents, or contractors.

**Section 14.4 Termination Remedy; Liquidated Damages.**

(a) In the event of WAPA's breach of its obligations under Section 4.6, Seller's sole and exclusive remedy shall be to declare WAPA in default under Section 13.2(c), terminate this Agreement under Section 13.3, and seek cover damages as defined in Section [\_\_\_\_] of the UCC, subject to Section 14.5(a).

(b) TO THE EXTENT ANY DAMAGES UNDER THIS AGREEMENT ARE LIQUIDATED, INCLUDING THE DETERMINATION OF COVER DAMAGES UNDER SECTION 13.4, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS AND NOT A PENALTY.

**Section 14.5 Limitation on Liability.**

(a) WAPA's liability to Seller under this Agreement, whether based on contract, warranty or tort, including intentional acts, errors or omissions, negligence, indemnity, strict liability, or otherwise, (i) upon any termination of this Agreement by Seller as provided by Section 14.4(a), shall not exceed the lesser of (A) Seller's cover damages under Section [\_\_\_\_] of the UCC, or (B) the Termination Amount, and (ii) with respect to any other claim or cause of action, shall not exceed \$[\_\_\_\_] per kW of Expected Output per year nor \$[\_\_\_\_] per kW of Expected Output in the aggregate.

(b) Seller's liability to WAPA under this Agreement, whether based on contract, warranty or tort (including intentional acts, errors or omissions, negligence, indemnity, strict liability, or otherwise), or any other claim or cause of action, shall not exceed \$[\_\_\_\_\_] per kW of Expected Output per year nor at \$[\_\_\_\_\_] per kW of Expected Output in the aggregate.

## **ARTICLE 15 REPRESENTATIONS AND WARRANTIES**

**Section 15.1 Representations and Warranties of Seller.** Seller represents and warrants as of the date hereof as follows:

(a) Seller is a [corporation] duly organized and validly existing under the laws of [\_\_\_\_\_] , is duly qualified to conduct business in the U.S. Virgin Islands, and has full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) Seller has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors rights generally.

(c) Neither the execution nor the delivery by Seller of this Agreement nor the performance by Seller of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to Seller; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, franchise, agreement (including without limitation, the certificate of incorporation of Seller) or instrument to which Seller is a party or by which Seller or any of its properties or assets addressed in the Solid Contract are bound, or constitutes a default under any such judgment, decree, agreement or installment.

(d) There is no action, suit or other proceeding as of the date hereof at law or in equity, before or by any court or governmental authority, pending or, to its knowledge, threatened against Seller, which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by Seller in connection with the transaction contemplated hereby, or which would materially and adversely affect the performance by Seller of its obligations hereunder or under any such other agreement or instrument.

(e) Except for those permits, consents, approvals, licenses and authorizations identified in Exhibit B, which cannot be obtained as of the Contract Date under the Applicable Laws and which Seller anticipates will be obtained by Seller in the ordinary course of business prior to the Commercial Operation Date, all Permits and Approvals to authorize Seller's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect.

**Section 15.2 Representations and Warranties of WAPA.** WAPA represents and warrants as of the date hereof as follows:

(a) WAPA is a public authority duly established and validly existing under the constitution and laws of the U.S. Virgin Islands, is duly qualified to conduct business in the U.S. Virgin Islands, and has full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) WAPA has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by WAPA and constitutes a legal, valid and binding obligation of WAPA, enforceable against WAPA in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors rights generally.

(c) Neither the execution nor the delivery by WAPA of this Agreement nor the performance by WAPA of its obligations hereunder, to the knowledge of WAPA: (1) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to WAPA; or (2) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, franchise, agreement or instrument to which WAPA is a party or by which WAPA or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(d) There is no action, suit or other proceeding as of the date hereof at law or in equity, before or by any court or governmental authority, pending or, to its knowledge, threatened against WAPA, which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by WAPA in connection with the transaction contemplated hereby, or which would materially and adversely affect such an agreement or instrument.

## **ARTICLE 16 DISPUTE RESOLUTION**

**Section 16.1 Continued Performance.** Each Party shall continue to perform its obligations under this Agreement pending resolution of any dispute pursuant to this Article 16. Neither Party shall be required to make any disputed payment(s) to the other Party so long as such dispute has been referred to the process for resolution pursuant to this Article 16; provided, that to the extent any amounts owed to either Party by the other Party are not disputed and can be segregated from amounts with respect to which there is a dispute, such undisputed amounts shall, in good faith, be identified by the Parties and paid as required by this Agreement. To the extent that any disputed amount was withheld from a Party, and such Party is ultimately found to be entitled to all or any portion of such disputed amount pursuant to this Article 16, then such Party shall be entitled to the payment of interest on any withheld amount, at the rate of LIBOR plus two percent (2%), from the original due date for payment of such amount until the payment of such disputed amount.

**Section 16.2 Negotiations.** If any dispute, controversy or claim arises under or relates to this Agreement or the breach, termination or validity thereof (the "Dispute"), such Dispute should be referred by each Party to its designated senior officer for resolution upon five (5) Days' written notice from either Party (the "Dispute Notice"). If the designated officers of the Parties are unable to reach agreement within thirty (30) Days of the Dispute Notice, upon the request of either Party,

such Dispute shall be referred to Arbitration in accordance with Section 16.3. The Parties agree to attempt to resolve all Disputes promptly and equitably and to provide each other with reasonable access during regular business hours to any and all non-privileged records, information and data pertaining to any such Dispute.

### **Section 16.3 Arbitration.**

(a) After the expiration of the thirty (30) Day period after the Dispute Notice, either Party may submit any Dispute to arbitration by providing the other Party a written notice of arbitration, specifying the matter to be arbitrated. The other Party shall have the right to reject arbitration by providing written notice of its refusal to arbitrate within fifteen (15) Days of receipt of the written notice of arbitration. If arbitration is timely rejected or if no arbitration has been commenced within one-hundred twenty (120) Days of the receipt by a Party of a Dispute Notice, either Party may commence an action in the Territorial Court of the U.S. Virgin Islands or the U. S. District Court of the Virgin Islands, as appropriate, to resolve the Dispute. If an arbitration has been commenced and is not timely rejected, arbitration proceedings shall proceed as provided in this Section 16.3 and the Dispute shall be finally and exclusively resolved by such arbitration.

(b) The arbitration shall be held in St. Thomas, U.S. Virgin Islands and shall be governed by the American Arbitration Association (“AAA”) Commercial Arbitration Rules, then in effect, except as modified herein. If the amount in Dispute (including claims and counterclaims) is one (1) million Dollars or less, there shall be one arbitrator chosen by agreement of the Parties within thirty (30) Days of receipt by respondent of a copy of the demand for arbitration. If the amount in Dispute is greater than one (1) million Dollars, there shall be three (3) arbitrators, one chosen by each party within thirty (30) Days of receipt by respondent of a copy of the demand for arbitration and the third chosen by the two arbitrators so selected within twenty (20) Days of the appointment of the second arbitrator. If any arbitrator is not timely appointed, on the request of any Party such arbitrator shall be appointed by the AAA in accordance with the listing ranking and striking provision in its Commercial Arbitration Rules. Any arbitrator appointed by the AAA shall be a retired judge experienced with large, complex commercial cases or an attorney admitted to practice for at least fifteen years, who is experienced in the arbitration of large, complex commercial cases, if possible with experience with power-related transactions or disputes.

(c) The arbitrator(s) shall permit each Party to conduct reasonable discovery as promptly and expeditiously as possible (and both Parties shall cooperate to this end). Discovery shall be limited to requests for the production of documents and examination upon deposition by each Party of up to five (5) witnesses for no more than eight (8) hours each. Each Party’s requests for and responses to discovery including examination upon deposition shall be completed within sixty (60) Days of the arbitrators’ selection. The Parties may modify the period for discovery by mutual agreement. The arbitrator(s) shall resolve any discovery disputes between the Parties that the Parties cannot resolve themselves and may modify or extend any limit or time period contained in this Section 16.3 for good cause.

(d) The hearing shall begin as promptly and expeditiously as possible (and the Parties shall cooperate to this end) and, if practicable, not more than sixty (60) Days after the conclusion of the discovery period. Each Party shall file written direct testimony with the arbitrator(s) and serve a

copy on the other Party. The written testimony must be received by the arbitrator(s) and the other Party no later than ten (10) Days prior to the commencement of the hearing. Each Party shall be permitted to make opening statements with the Party demanding arbitration presenting its opening statement first. Immediately after opening statements, the Party demanding arbitration shall then present evidence in support of its position. The other Party then shall present evidence in support of its position. Both parties may present rebuttal witnesses. All witnesses must testify under oath, and a stenographic record and transcript of the hearing shall be made. Each Party shall have an opportunity to cross-examine the other Party's witnesses, including the witnesses for whom written direct testimony has been filed. The Parties shall be permitted to make closing statements. The Party demanding arbitration shall present its statement first. The arbitrator(s) shall, if practicable, conclude and close the hearing within thirty (30) calendar days of its commencement. The period for concluding the hearing may be modified by mutual agreement of the Parties.

(e) The determination and/or award of the arbitrator(s) shall be made no later than thirty (30) Days from the date of the completion of the hearing or, if applicable, the date when post-hearing briefs were received by the arbitrator(s) and the Parties. Such determination and/or award shall be conclusive, final, and binding. To the extent that an award includes an amount of money, such award shall include interest at the rate of LIBOR plus two percent (2%), and such interest shall accrue from the date(s) on which such money should have been paid to the prevailing Party or was incorrectly paid by that Party.

(f) The costs of the arbitration proceedings, other than the Parties' own expenses and attorneys' fees, shall be shared equally by the Parties.

(g) The arbitrator(s) shall apply U.S. Virgin Islands law and shall have no power to amend or add to this Agreement, but shall have the authority to interpret the language of this Agreement and make findings of fact, order specific performance and provide injunctive relief or any other remedy available under the terms of this Agreement as if the arbitrator(s) were a court. Subject to such limitation, the decision and award of the arbitrator(s) shall be final and binding. Judgment on an award may be enforced in any court of competent jurisdiction. Upon request of either Party, the arbitrator(s) may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject of arbitration or otherwise to avoid irreparable harm to a Party, without prejudice to the rights of the Parties in the final determination of the Dispute. Either Party may, without inconsistency with this Agreement, seek from any court of competent jurisdiction any interim or provisional relief that may be necessary to protect the rights or property of that Party or prevent irreparable harm, pending the establishment of the arbitration tribunal. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

## **ARTICLE 17**

### **TAXES**

Seller shall be solely responsible for any and all present or future taxes relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, and all ad valorem taxes relating to the Facility.

**ARTICLE 18**  
**MISCELLANEOUS**

**Section 18.1 Assignment.**

(a) Seller shall not assign this Agreement, except (i) for the collateral assignment to the Senior Lender in connection with their financing for the Facility, or (ii) upon WAPA's prior written consent. WAPA may assign this Agreement to any agency, authority or other entity having similar responsibilities, authority and independence and financial creditworthiness.

(b) Any direct or indirect change of control of Seller (whether voluntary or by operation of law) or any sale or other transfer of all or substantially all of the Facility shall be deemed an assignment requiring WAPA's prior written consent.

(c) [If at or after the expiration or earlier termination of this Agreement, WAPA wishes to acquire the Facility on the terms and conditions set forth on Schedule 16, WAPA shall notify Seller not less than one year prior to such expiration (or, in the case of an earlier termination, not less than ninety (90) Days after such termination) that WAPA elects to acquire the Facility on such terms and conditions. If WAPA so elects, the Parties shall consummate such transaction within one hundred and eighty (180) Days of later of such expiration or the date of WAPA's notice.] [To be revised for WAPA option to purchase as may be proposed by Seller and agreed by the Parties.]

**Section 18.2 Further Assurances.** Each Party agrees to, and shall use all reasonable efforts to, provide such information, execute and deliver any instruments and documents and take such action as may be necessary or reasonably requested or required by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement in order to give full force and effect to this Agreement and to carry out its intent.

**Section 18.3 Relationship of Parties.** Except as otherwise explicitly provided herein, no Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party and nothing in this Agreement shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create any fiduciary relationship between or among the Parties.

**Section 18.4 Notices.** Any notices required to be given hereunder shall be deemed delivered when deposited in the United States mail, certified and return receipt requested, addressed to the following persons or such other persons as the Parties shall designate in writing:

If to WAPA:

\_\_\_\_\_  
The Virgin Islands Water and Power Authority  
P.O. Box 1450  
St. Thomas, Virgin Islands, USA 00804-1450

If to Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 18.5 Waiver.** No waiver of any provision of this Agreement shall be effective against a Party except as expressly set forth in a writing signed by such Party. The waiver by either Party of a default or a breach by the other Party of any provision of this Agreement shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

**Section 18.6 Survival.** Notwithstanding anything provided herein to the contrary, Articles 10, 14, 16, 17, and 18 shall survive the termination of this Agreement.

**Section 18.7 Headings.** The headings or titles of the sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Agreement.

**Section 18.8 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the U.S. Virgin Islands.

**Section 18.9 Third Party Rights.** Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.

**Section 18.10 Counterparts.** This Agreement and any amendment hereto may be executed and delivered in one or more counterparts and by different Parties in separate counterparts. All of such counterparts shall constitute one and the same agreement and shall become effective (unless otherwise therein provided) when one or more counterparts have been signed by each Party and delivered to the other Party. This Agreement may be delivered by facsimile transmission.

**Section 18.11 Severability.** In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Agreement, or such other appropriate actions, as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

**Section 18.12 Terms Generally.** Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.”

**Section 18.13 Entire Document.** This Agreement, the Interconnection Agreement and each Schedule as hereinafter specified, shall constitute the entire agreement between the Parties with respect to the development, financing, design, construction and operation of the Facility and the other transactions contemplated hereby, and all prior agreements, negotiations, representations, and understandings with respect thereto, including RFP and the Proposal, are expressly superceded. No amendment, modification, or change to this Agreement or its Schedules shall be effective unless the same shall be in writing, duly executed, authorized and approved by the Parties. In the event of any conflict between the terms and conditions of this Agreement and that of any exhibit, schedule or other document referenced herein, this Agreement shall govern and control. The following Schedules and Exhibits are incorporated herein by reference as if set forth in full, whether or not attached hereto:

Exhibit A – Description of the Facility and the Site  
Exhibit B – Permits and Approvals

Schedule 1 – Facility Specifications  
Schedule 2 – Electric Energy Charge  
Schedule 3 – Requirements for Commercial Operation Date  
Schedule 4 – Construction Milestones  
Schedule 5 – Guaranteed Monthly Output  
Schedule 6 – Metering  
Schedule 7 – Electric Energy Specifications  
Schedule 8 – Form of Letter of Credit  
Schedule 9 – Data to be Provided by Seller for the Interconnection Study  
Schedule 10 – Interconnection Technical Requirements  
Schedule 11 – Insurance Requirements  
Schedule 12 – Scheduling and Dispatch  
Schedule 13 – Reference Conditions  
Schedule 14 – Termination Amount  
Schedule 15 – WAPA's Cost of Cover  
[Schedule 16 – Buyout Methodology]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives as of the date first set forth above.

ATTEST:

[SELLER]

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

ATTEST:

**VIRGIN ISLANDS WATER AND POWER  
AUTHORITY**

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

APPROVED AS TO LEGAL FORM  
AND CONTENT

APPROVED AS TO LEGAL FORM  
AND CONTENT

\_\_\_\_\_  
COUNSEL TO [SELLER]

By: \_\_\_\_\_  
COUNSEL TO THE VIRGIN ISLANDS WATER  
AND POWER AUTHORITY

**EXHIBIT A**  
**DESCRIPTION OF THE FACILITY**  
**AND THE SITE**

**[to be provided by Seller]**

**EXHIBIT B**  
**PERMITS AND APPROVALS**

**[to be provided by Seller]**

## **SCHEDULE 1**

### **FACILITY SPECIFICATIONS**

The Facility shall at all times:

- (a) accommodate WAPA's metering, generator telemetering equipment and communications equipment;
- (b) be Black Start Capable;
- (c) use Seller-owned dedicated fiber optic communication circuits from the Facility to WAPA's control center for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required for automatic generation control and fuel management by WAPA;
- (d) be capable of automatic generation control by WAPA, by separate signal, for each individual generating unit, with the AGC system integrated into WAPA's OSI system;
- (e) be capable of withstanding [three (3)] incidents of winds of up to 150 miles per hour and be located in seismic zone 4;
- (f) either not be located in a flood zone or incorporate appropriate flood mitigation measures;
- (g) have sufficient backup power capability, through batteries or backup generation, to be capable of operating all relays and breakers and other components of the Interconnection Facilities without drawing electrical energy from WAPA's Electric System; and
- (h) include VAR compensation mechanisms to deliver power to WAPA at not less than 0.95 lagging power factor but not more than 1.00 power factor.

## **SCHEDULE 2**

### **ELECTRIC ENERGY CHARGE**

The Electric Energy Charge for each Billing Period shall be determined according to the following formula:

[Seller to propose fixed monthly or yearly prices, which can differ depending on On-Peak Hours and Off-Peak Hours, if applicable. The pricing shall be "all in," which means it shall include all capital costs, fuel costs, fixed and variable O&M costs, and any other costs associated with generating and delivering the Electric Energy to the Delivery Point.]

## SCHEDULE 3

### REQUIREMENTS FOR COMMERCIAL OPERATION DATE

The Facility shall achieve Commercial Operation Date when Seller has demonstrated to WAPA, the Consulting Engineer shall have certified to WAPA, and WAPA has accepted, that each of the following conditions have been satisfied:

1. Seller has successfully completed all the tests that are conditions to commencement of commercial operations of the Facility under the Senior Financing Documents, Permits and Approvals, Interconnection Agreement, any operating agreements for the Facility, any engineering, procurements and construction contracts for the Facility, and any manufacturers' warranties;
2. the Facility has completed four (4) successful start-ups without experiencing any abnormal operating conditions and has generated continuously for a period of not less than seventy-two (72) hours while synchronized to WAPA's System at an Electric Capacity of at least 100% of the Minimum Output without experiencing any abnormal operating conditions;
3. the Facility has met the requirements for automatic generation control, has achieved initial synchronization with WAPA's System, and has demonstrated the reliability of its communications systems and communications with WAPA's system scheduling coordinator;
4. the Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this Agreement;
5. Seller is both obligated under, and in compliance with, the Interconnection Agreement and the interconnection of the Facility to WAPA's Electric System has been completed in accordance with the Interconnection Agreement;
6. Seller has made all arrangements and executed all agreements required to deliver the Contract Energy from the Facility to the Point of Delivery in accordance with the provisions of this Agreement;
7. all [fuel and] electric interconnection and metering arrangements have been completed, are in effect, and are available for the delivery and receipt at the Facility;
8. certificates of insurance evidencing the coverages required by Article 11 have been obtained and submitted to WAPA;
9. the Initial Output Test has been successfully completed demonstrating an Electric Capacity not less than the Minimum Output;
10. Seller shall have provided the Performance Security to WAPA;

11. Seller has submitted to WAPA a certificate of an officer of Seller familiar with the Facility after due inquiry stating that all Permits and Approvals to construct and/or operate the Facility in compliance with Applicable Laws and this Agreement have been obtained and are in full force and effect, and that Seller is in compliance with the terms and conditions of this Agreement in all material respects.

## SCHEDULE 4

### CONSTRUCTION MILESTONES

	<i>Milestone</i>	<i>Deadline</i>	<i>Termination Liquidated Damages</i>
1.	Obtain legal title to, a valid and binding leasehold interest in, or a valid and binding option to purchase or lease the Site	45 Days after the Contract Date	\$[_____] per kW
2.	Apply for all Permits and Approvals necessary or desirable under Applicable Laws to enable it to construct, own and operate the Facility	60 Days after the Contract Date	\$[_____] per kW
3.	Complete Phase 1 Environmental Investigation	60 Days after the Contract Date	\$[_____] per kW
4.	Complete Phase 2 Environmental Investigation	180 Days after the Contract Date	\$[_____] per kW
5.	Provide WAPA with copies of the executed engineering, procurement and construction contracts for the Facility, as well as executed purchase orders and/or contracts for the delivery and installation of the Facility [turbine(s) and step-up transformer(s)]	180 Days after the Contract Date	\$[_____] per kW
6.	Provide WAPA with copies of the executed operation and management contracts for the Facility; [fuel supply and transportation agreements;] and the Interconnection Agreement	270 Days after the Contract Date	\$[_____] per kW
7.	Obtain all Permits and Approvals (in final, unappealable form) necessary or desirable under Applicable Laws to enable it to construct, own and operate the Facility, except as set forth on <u>Exhibit B</u>	365 Days after the Contract Date	\$[_____] per kW
8.	Provide WAPA with evidence of complying with the insurance requirements of this Agreement	365 Days after the Contract Date	\$[_____] per kW
9.	Achieve Closing Date	365 Days after the Contract Date	\$[_____] per kW
10.	Commence construction of the Facility at the Site	365 Days after the Contract Date	\$[_____] per kW
11.	Achieve initial synchronization with WAPA's Electric System in accordance with the Interconnection Agreement	December 1, 2011	\$[_____] per kW
12.	Achieve the Commercial Operation Date	January 1, 2012	\$[_____] per kW

**SCHEDULE 5**

**GUARANTEED MONTHLY OUTPUT**

Calendar Month and Year

Guaranteed Monthly Output

(Peak Hours)

(Off-Peak Hours)

[Seller to propose Guaranteed Monthly Output for On-Peak Hours and Off-Peak Hours for each Billing Period of each year of Contract Term.]

## SCHEDULE 6

### METERING

1. WAPA, at Seller's expense, shall install solid state metering devices and inspect and test all electric metering devices upon installation and at least annually thereafter. WAPA shall provide Seller with reasonable advance notice of, and permit Seller's representatives to witness and verify, such inspections and tests; provided, that Seller shall not unreasonably interfere with or disrupt WAPA's activities and shall comply with all of WAPA's safety standards. Upon Seller's reasonable request and at Seller's expense, WAPA shall perform additional inspections or tests of any electric metering device and shall permit a qualified representative of Seller to inspect or witness the testing of any such device; provided, that Seller shall not unreasonably interfere with or disrupt WAPA's activities and shall comply with all of WAPA's safety standards. If upon such repeat inspection or testing an electric metering device is found to register inaccurately by more than the allowable limits established in this Agreement, the expense of the requested additional inspection or testing shall be borne by WAPA. If requested by Seller in writing, WAPA shall provide copies of any inspection or testing reports to Seller.

2. Seller may elect to install and maintain, at its own expense, solid state backup metering devices ("Seller's Back-Up Metering") in addition to those installed and maintained by WAPA, which installation and maintenance shall be performed in a manner acceptable to WAPA. Seller, at its own expense, shall inspect and test Seller's Back-Up Metering upon installation and at least annually thereafter. Seller shall provide WAPA with reasonable advance notice of, and permit a representative of WAPA to witness and verify, such inspections and tests; provided, that WAPA shall not unreasonably interfere with or disrupt Seller's activities and shall comply with all of Seller's safety standards. Upon WAPA's reasonable request and at WAPA's expense, Seller shall perform additional inspections or tests of Seller's Back-Up Metering and shall permit a qualified representative of WAPA to inspect or witness the testing of Seller's Back-Up Metering; provided, that WAPA shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. If upon such inspection or testing, Seller's Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Agreement, the expense of the requested additional inspection or testing shall be borne by Seller. If requested by WAPA in writing, Seller shall provide copies of any inspection or testing reports to WAPA.

3. If any electric metering devices, or Seller's Back-Up Metering, are found to be defective or inaccurate, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.

4. If an electric metering device, or Seller's Back-Up Metering, fails to register, or if the measurement made by an electric metering device, or Seller's Back-Up Metering, is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective electric metering device, or Seller's Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(i) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Seller's Back-up Metering, if installed, to determine the amount of such inaccuracy, provided, that Seller's Back-Up Metering has been tested and maintained in accordance with the provisions of this Agreement. If Seller's Back-up Metering is installed on the low side of Seller's step-up transformer, the Seller's Back-up metering data shall be adjusted for losses. In the event that Seller did not install back-up metering, or Seller's Back-up Metering is also found to be inaccurate by more than one percent (1.0%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of net power and energy from the Facility during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(ii) In the event that 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 shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(iii) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by WAPA, WAPA shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by WAPA for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by WAPA to Seller; if the difference is a negative number, that difference shall be paid by Seller to WAPA, or at WAPA's discretion, may take the form of an offset to payments due Seller by WAPA. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless WAPA elects payment via an offset.

(iv) At the request of either Party, WAPA, at Seller's expense, may install (or WAPA may require Seller to install) telecommunications equipment to record or transmit metering data, or real-time production data on a continuous basis, directly to WAPA, through a SCADA system or by other means, in a manner consistent with Good Engineering and Operating Practices.

## **SCHEDULE 7**

### **ELECTRIC ENERGY SPECIFICATIONS**

The Electric Energy supplied at the Delivery Point shall have the following characteristics:

1) The operating frequency of Seller's equipment shall not deviate by more than one-third (1/3) of a hertz from a sixty (60) hertz base. Seller shall provide an automatic method of disconnecting the Facility from WAPA's Electric System within 3 cycles if the frequency cannot be maintained within such deviation limits.

2) Seller shall operate the Facility at a level of plus or minus five percent ( $\pm 5.0\%$ ) of the voltage specified in the Interconnection Agreement [13.2kV or 24.9kV on St. Croix or 34.5 kV on St. Thomas, depending on where the interconnection is made]. The Facility shall be capable of being disconnected from WAPA's Electric System within one (1) second if the voltage cannot be maintained within such tolerance.

3) Seller shall deliver to WAPA Electric Energy at a power factor of not less than 0.95 lagging but not more than 1.00. The Facility shall act as a capacitor delivering reactive power to WAPA's Electric System.

4) Seller shall not cause voltage flicker in excess of two percent (2%) as measured at the primary side of the dedicated transformer (if present). If a dedicated transformer is not present, voltage flicker shall not exceed six percent (6%) as measured at WAPA service equipment.

**SCHEDULE 8**

**FORM OF LETTER OF CREDIT**

(\*Separate LOC required for Construction & Performance Security)

\_\_\_\_\_, 200\_

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

Virgin Islands Water and Power Authority

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

At the request of, and for the account of, our customer, \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_ (the "Company"), the undersigned, \_\_\_\_\_, a banking institution organized under the laws of \_\_\_\_\_ (the "Bank"), hereby establishes on the date hereof (such date, the "Date of Issuance") in favor of Virgin Islands Water and Power Authority (together with its successors and assigns, the "Beneficiary"), this irrevocable Letter of Credit in the amount of \$\_\_\_\_\_ (hereinafter as reduced from time to time in accordance with the provisions hereof, the "Stated Amount"). This Letter of Credit is irrevocable and may be transferred only by the Beneficiary pursuant to a certificate of transfer in the form of Annex IV attached hereto.

Funds under this Letter of Credit will be made available to the Beneficiary for multiple draws against presentation, in the case of each drawing, of a sight draft to us in the form of Annex I attached hereto, and a written certificate in the form of Annex II attached hereto, appropriately completed and signed by an Authorized Officer (as hereinafter defined) of the Beneficiary, accompanied by this Letter of Credit. Presentation of such sight draft(s) and certificate(s) shall be made in person at the Bank's office located at \_\_\_\_\_, Attention: Letter of Credit Department, or at any other office in the U.S. Virgin Islands, which the Bank may designate by written notice delivered to the Beneficiary.

Demands for payment may be made by the Beneficiary under this Letter of Credit at any time during the Bank's business hours at the Bank's aforesaid address on a Business Day (as hereinafter defined). If demand is made by the Beneficiary hereunder at or prior to \_\_\_\_\_ on a Business Day, and provided that such demand for payment and the documents presented in connection therewith conform to the terms and conditions hereof, payment of the amount demanded shall be made to the Beneficiary in immediately available funds, at the Bank's office referred to above. If demand for payment is made by the Beneficiary after \_\_\_\_\_ on a Business Day, and provided that such demand

for payment and the documents presented in connection therewith conform to the terms and conditions hereof, payment of the amount demanded shall be made to such Beneficiary in immediately available funds no later than \_\_\_\_\_, on the next succeeding Business Day.

If the Beneficiary's demand for payment does not in any instance conform to the terms and conditions of this Letter of Credit, the Bank shall give the Beneficiary prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and stating that the Bank will, at the instruction of the Beneficiary, hold any documents at the Beneficiary's disposal or return the same to the Beneficiary. Upon being notified that the demand for payment was not effected in conformity with the Letter of Credit, the Beneficiary may attempt to correct any such non-conforming demand for payment to the extent that the Beneficiary is entitled to do so.

Each drawing hereunder shall permanently reduce the Stated Amount in the amount thereof and no demand for payment hereunder shall exceed the Stated Amount in effect at such time [; provided, that upon receipt by the Bank of reimbursement of the amount of any drawing hereunder plus an amount equal to the interest accrued and unpaid on such drawing [pursuant to the terms of the Reimbursement Agreement], the Stated Amount of this Letter of Credit shall be reinstated by the Bank by an amount equal to the payment made by the Bank under this Letter of Credit in respect of such drawing at 5:00 p.m. (Atlantic Standard Time) on the date of such reimbursement, and the Bank shall promptly give notice of such reinstatement to the Beneficiary].

Only the Beneficiary may make a drawing under this Letter of Credit. Upon payment to the Beneficiary or to the Beneficiary's account of an amount demanded hereunder, the Bank shall be fully discharged of its obligations under this Letter of Credit with respect to such demand for payment and the Bank shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such demand for payment to the Beneficiary or to any other person. By paying to the Beneficiary an amount demanded in accordance herewith, the Bank makes no representation as to the correctness of the amount demanded.

This Letter of Credit is issued solely in conjunction with the obligations of the Company under the Power Purchase Agreement by and between the Beneficiary and Seller (the "PPA").

Upon the earliest of (i) the Beneficiary making a drawing hereunder that reduces the Stated Amount to zero, (ii) receipt by the Bank of a certificate in the form of Annex III hereto signed by an Authorized Office of the Beneficiary which terminates this Letter of Credit or reduces the Stated Amount to zero, or (iii) the close of business on \_\_\_\_\_ (the "Expiration Date"), this Letter of Credit shall automatically terminate and be delivered to the Bank for cancellation.

As used herein the following terms shall have the following meaning:

(a) "Authorized Officer" shall mean, with respect to the Beneficiary, the President or any Vice-President [others], as appropriate, of the Beneficiary;

(b) "Business Day" shall mean any day (other than a day that is a Saturday, Sunday, or legal holiday in the U.S. Virgin Islands) on which banks are not authorized or required to close in [St. Thomas], U.S. Virgin Islands.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to the Bank at \_\_\_\_\_. Attention: Letter of Credit Department, specifically referring thereon to this Letter of Credit by number.

This Letter of Credit may not be transferred or assigned, either in whole or in part, except as provided by Annex IV.

Sixty (60) days prior to the Expiration Date, the Bank shall either (i) renew this Letter of Credit for a term of \_\_\_\_\_ or (ii) provide notice to the Beneficiary that such Letter of Credit shall not be renewed. If this Letter of Credit will not be renewed, the Beneficiary may draw the Stated Amount at any time prior to the expiration of this Letter of Credit.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, supplemented, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the forms of sight drafts and certificates referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such sight drafts and certificates.

This credit is issued subject to Uniform Customs and Practices for Documentary Credits, 1993 revision, ICC Publication No. 500 (the "Uniform Customs"). This Letter of Credit shall be deemed to be an instrument made under the laws of the State of New York and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with the laws of said State.

Very truly yours,

[Letter of Credit Bank]

By: \_\_\_\_\_  
Title:

ANNEX I  
to Letter of Credit

[Form of Sight Draft]

[insert date of drawing]

To: [Letter of Credit Bank]

Pay to the order of [Virgin Islands Water and Power Authority] the sum of  
\$ \_\_\_\_\_, by wire transfer to \_\_\_\_\_. This draft is  
drawn under Irrevocable Letter of Credit No. \_\_\_\_.

[Beneficiary]

By: \_\_\_\_\_

Title:

DRAWING CERTIFICATE

[Date]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, an Authorized Officer of [WAPA] (the “Beneficiary”) hereby certifies to the Bank that:

1. Unless otherwise defined herein, all capitalized terms used herein and defined in the above referenced Letter of Credit (the “Letter of Credit”) shall be used herein as so defined.
2. The undersigned is the Beneficiary under the Letter of Credit, and the person executing this certificate on behalf of the Beneficiary is duly authorized to do so.
3. The Beneficiary is making a drawing under the Letter of Credit in the amount of \$ \_\_\_\_\_ pursuant to Section \_\_\_\_\_ of the PPA.

IN WITNESS WHEREOF, Beneficiary has executed and delivered this Drawing Certificate as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[Beneficiary]

By: \_\_\_\_\_  
Title:

CERTIFICATE OF REDUCTION

[Date]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned Authorized Officer of [WAPA] (the “Beneficiary”) hereby certify to the Bank that:

1. Unless otherwise defined herein, all capitalized terms used herein and defined in the above referenced Letter of Credit (the “Letter of Credit”) shall be used herein as so defined.
2. The Bank may reduce the Stated Amount of the Letter of Credit to [\$ \_\_\_\_\_].

IN WITNESS WHEREOF, Beneficiary has executed and delivered this Certificate of Reduction as of the \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

[Beneficiary]

By: \_\_\_\_\_  
Title:

CERTIFICATE OF TRANSFER

[Date]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, WAPA (the "Undersigned"), Beneficiary of the above referenced Letter of Credit (the "Letter of Credit") hereby irrevocably transfers to \_\_\_\_\_ respectively (each, a "Transferee") all rights of the Undersigned under the Letter of Credit (including, without limitation, the right to draw thereunder) effective as of the date of this Certificate of Transfer. On and after the date hereof the Transferees shall have the sole rights as Beneficiary under the Letter of Credit.

IN WITNESS WHEREOF, the Undersigned has executed and delivered this Certificate of Transfer as of the \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

[Undersigned]

By: \_\_\_\_\_  
Title:

Acknowledged, this the \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

[LETTER OF CREDIT BANK]

By: \_\_\_\_\_  
Title

## **SCHEDULE 9**

### **TECHNICAL DATA TO BE PROVIDED BY SELLER FOR THE INTERCONNECTION STUDY**

1. Protective relaying schematics and protective devices to be used to protect WAPA's Electric System;
2. one-line diagram depicting the interconnecting substation and an AC/DC schematic and wiring diagram;
3. a description of the proposed communication channel, a communication diagram, and types of communication integration;
4. a description of the instrument transformers, circuit breakers, and control batteries;
5. information on schedules to, and description of, equipment maintenance for interconnection and generation equipment;
6. a narrative on the proposed substation to include its operational function, protective schedule, electrical reliability, coordination study, fault analysis, dynamic analysis, protection philosophy, and a fault current short circuit current preliminary study;
7. a description of VAR compensation mechanism used to deliver power to WAPA at a power factor not less than 0.95 lagging but not more than 1.00; and
8. information on the gathering system including size, specifications, and insulation and impedance requirements.

## SCHEDULE 10

### INTERCONNECTION TECHNICAL REQUIREMENTS AND OPERATION

1) The Facility shall not introduce excessive distortion to WAPA's Electric System's voltage and current waveforms. The harmonic distortion measurements shall be made at the point of interconnection between the Facility and WAPA's Electric System and be within the limits indicated on the Harmonics Chart below. The breaker that is closed to complete the tie must be owned by Seller and operated by WAPA.

<i>MAXIMUM ALLOWABLE HARMONIC CONTENT (CURRENT)</i>					
(In percent of total current)					
Harmonic Order Number (h)	H<11	12<h<16	17<h<23	24<h<35	36<h
Odd	4.0	2.0	1.5	.6	0.3
Even	1.0	0.5	0.38	0.15	0.08
Total current harmonic distortion may not exceed 5.0%.					

<i>MAXIMUM ALLOWABLE HARMONIC CONTENT (VOLTAGE 69kV AND BELOW)</i>
(In percent)
MAXIMUM Individual Harmonic: 3.0
Maximum Total harmonic Distortion: 5.0

2) In order to provide maximum operating flexibility for the Facility and to minimize possible adverse effects on other WAPA customers, a power transformer is usually required between Seller and WAPA owned equipment. This transformer is usually connected in such a manner to isolate the zero sequence circuit of WAPA's Electric System. The final interconnection study will determine the transformer connection and grounding configuration required.

3) Seller shall not energize a de-energized WAPA circuit. The necessary control device shall be installed by Seller to prevent the energization of a de-energized WAPA circuit by Seller. Seller also shall submit to WAPA all diagrams of necessary inter-locks and tagging schemes for review and approval.

4) Each time the Facility is tied to an energized WAPA's Electric System, it must be synchronized with WAPA's Electric System to WAPA's satisfaction before the tie breaker(s) is closed. Seller is responsible for the synchronization of the Facility to WAPA's Electric System. The breaker(s) that is closed to complete the tie must be owned by Seller. WAPA equipment will not be used for this purpose. Actual closing of the breaker will be performed by WAPA after such synchronization unless WAPA permits automatic synchronization.

5) A disconnect device shall be installed to electrically isolate the Facility from WAPA's Electric System. This device shall provide a visible air gap between WAPA and the Facility in order to establish the open break to satisfy safety requirements for maintenance and repair work on WAPA's Electric System. This disconnect must be readily accessible to, and allow padlocking by, WAPA personnel. The disconnects must be designed to allow safety

grounds on the WAPA side of the disconnect.

6) [Insert additional provisions on relay protection scheme, over/under frequency ranges, over/under voltage and VAR ranges, as needed.]

**SCHEDULE 11**

**PRELIMINARY INSURANCE REQUIREMENTS FOR THE FACILITY  
[FINAL SPECIFICATION TO BE ESTABLISHED FOLLOWING SELECTION OF  
WINNING PROPOSAL]**

<b>A</b>	<b>Liability and Workers Compensation Insurance Requirements</b>				
<p>During construction, Seller and/or its general contractor are to carry the liability and workers' compensation insurances set out below. Subcontractors are to carry the same coverages but required limits will be amended for subcontractors to reflect the size of their contracts.</p> <p>Once operations have begun, Seller shall have in place and at all times maintain the below liability and workers' compensation insurances.</p>					
	<b>Coverage Type</b>	<b>Minimum Limit</b>		<b>Maximum Deductible or Retentions</b>	
1.	Commercial General Liability	\$11,000,000*	Combined single limit per occurrence and in the aggregate where applicable	\$100,000	Per occurrence
2.	Automobile Liability	\$11,000,000*	Combined single limit per accident	\$100,000	Per accident
3.	Employers Liability	\$11,000,000*	Each accident for bodily injury by accident Each employee and policy limit for bodily injury by disease	\$100,000	Each accident or employee (for disease)
4.	Workers Compensation	Statutory requirements	Per occurrence	N.A.	N.A.
* Combination of primary and excess or umbrella liability policies. Any combination of primary and excess limits is acceptable if the total equals or exceeds the specified amount.					
<b>Liability Insurance Terms and Conditions</b>					
	a.	Additional Insured	The General Liability policy and any Excess or Umbrella Liability policy must be endorsed to name WAPA as an additional insured. Any such policy must contain language that "Such insurance as afforded by this policy for the benefit of WAPA shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by WAPA shall be excess of and noncontributing with insurance afforded by this policy".		
	b.	Completed Operations	The General Liability coverage in place during construction must include Completed Operations coverage, which coverage is to continue for a minimum of two years following completion of construction and acceptance by Seller.		
<b>B.</b>	<b>Property Insurance Requirements</b>				

Property policy(ies) must cover all risks of direct physical loss to the property, including coverage for collapse and transit (with respect to property in transit that will become a part of buildings or structures under construction).

Boiler and machinery coverage on a breakdown basis is to be included in the All Risk policy or provided in a separate policy. Testing of any equipment is to be included.

There shall be no exclusion for the perils of explosion, collapse or underground damage.

1.	Builder's Risk Property Insurance (to be in place from inception of construction through final testing and acceptance at which time property insurance converts to the permanent property insurance program (see B.2.))				
	<b>Coverage Type</b>	<b>Minimum Limit</b>		<b>Maximum Deductible or Retentions</b>	
	Earth Movement including earthquake Volcanic Activity and Subsidence.	To be determined based on values, exposure to loss and insurance market conditions.	Annual Aggregate	2% of Replacement Value	Per Occurrence
	Hurricane/ Windstorm		Annual Aggregate	2% of Replacement Value	Per Occurrence
	Flood including Tsunamis		Annual Aggregate	2% of Replacement Value	Per Occurrence
	Debris Removal	\$2,000,000	Per occurrence	Included	
	Ordinance or Law	\$5,000,000	Per occurrence	Included	
	Expediting Expense	\$2,000,000	Per occurrence	Included	
	All Other Perils (including boiler and machinery perils where applicable)	Replacement Value of Insurable Real and Personal Property	Per occurrence	\$250,000	Per Occurrence
	Soft Costs	100% of costs which would be incurred again following a total loss at the end of construction.		14 Days	Per Occurrence
2.	Property Insurance (Permanent program to be in place simultaneously with the expiration or cancellation of the Builders' Risk coverage (see B. 1.))				
	<b>Coverage Type</b>	<b>Minimum Limit</b>		<b>Maximum Deductible or Retentions</b>	

	Earth Movement including Earthquake Volcanic Activity and Subsidence.	To be determined based on values, exposure to loss and insurance market conditions.	Annual Aggregate	2% of Replacement Value	Per Occurrence
	Hurricane/Windstorm		Annual Aggregate	2% of Replacement Value	Per Occurrence
	Flood including Tsunamis		Annual Aggregate	2% of Replacement Value	Per Occurrence
	Debris Removal	\$2,000,000	Per occurrence	Included	
	<b>Coverage Type</b>	<b>Minimum Limit</b>		<b>Maximum Deductible or Retentions</b>	
	Ordinance or Law	\$5,000,000	Per Occurrence	Included	
	Business Interruption and Extra Expense (Including Expediting Expense)	Minimum of \$2,000,000 but to be adjusted to reflect 100% of incremental expense that WAPA would incur to replace the annual output, such amount to be determined with WAPA each year.	Per Occurrence	Included	
	All Other Perils (including boiler and machinery perils where applicable)	Replacement Value of Insurable Real and Personal Property	Per Occurrence	\$250,000	Per Occurrence
	Extra Expense/Expediting Expense Combined	\$2,000,000	Per Occurrence	Included	
	Business Interruption	100% of incremental expense that WAPA would incur to replace the annual output, such amount to be determined with WAPA each year. WAPA to be named as loss payee with respect to business interruption coverage.		14 Days	Per Occurrence
<b>Property Insurance Terms and Conditions</b>					
a.	Coinsurance	No property policy may contain a coinsurance clause.			

	b.	Ordinance or Law	Each property policy is to cover the costs incurred in repairing or replacing the damaged property to meet current building codes. Coverage is to be provided for: <ul style="list-style-type: none"> <li>• Loss to the Undamaged Portion of the Building</li> <li>• Demolition Cost</li> <li>• Increased Cost of Construction</li> </ul>
	c.	Terrorism	Terrorism coverage is not required.
<b>C. Requirements Applicable to All Insurance Policies</b>			
	1.	Insurance Company Rating	All insurance companies must be rated A- or better by A.M. Best's. Should an insurance company's rating fall below A- Seller (or its general contractor) must replace that insurance company with a qualifying insurance company within 60 days.
	2.	Notice of Cancellation	Each insurance company must provide written notification to WAPA 60 days prior to the effective date of any cancellation, non-renewal or material change.
	3.	Evidence of Compliance with Insurance Requirements at Contract Date	<p>At least 5 days prior to the contract date, Seller must provide evidence that these Insurance Requirements have been met. Evidence is to consist of:</p> <p>An original certificate of insurance signed by an approved officer of the insurance company or its authorized representative. The certificate must show:</p> <ul style="list-style-type: none"> <li>The name of the insurance company</li> <li>The policy period</li> <li>The policy number</li> <li>The description of the property</li> <li>The name of the Seller/Policyholder</li> <li>WAPA as an additional insured (General Liability and Excess or Umbrella Liability only)</li> <li>WAPA as loss payee (Business interruption part of the property insurance during operations)</li> <li>The 60 days cancellation notice</li> </ul> <p>Liability insurance certificates are to be on ACORD form 27 or its equivalent for property insurance and ACORD form 25 or its equivalent for liability insurance. Evidence of workers' compensation insurance must be issued by the appropriate Workers' Compensation Administration bureau of the Government of the Virgin Islands.</p>

	4.	Evidence of Renewal or Replacement Policies	Seller must advise WAPA of any renewals or replacements of the required insurances by providing the same documentation required in C.3 above. Such evidence must be provided prior to the expiration date of the policy that is being renewed or replaced.
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## SCHEDULE 12

### SCHEDULING AND DISPATCH

#### 1. Facility Availability Schedule

Each Day, no later than 6:30 a.m. AST Seller shall provide to WAPA a daily schedule of the Facility's anticipated hourly availability and Electric Energy production for the next Day.

#### 2. Scheduling of WAPA Load

(i) WAPA shall provide Seller with a daily Electric Energy schedule, no later than 9:00 a.m. local time of the preceding Day, setting forth the aggregated amount of Electric Energy anticipated to be dispatched during each hour of the applicable Day. If WAPA anticipates that actual dispatch will be materially different than the schedule provided on the preceding Day, WAPA will endeavor to communicate such expectations to Seller at least seventy-five (75) minutes before the hour of delivery.

(ii) The daily Electric Energy schedule can be amended by mutual agreement of the Parties to reflect any Electric Energy that may be requested by WAPA, provided that Seller remains obligated to provide the amounts of Electric Energy otherwise required by this Agreement.

#### 3. Rolling 10-Day Availability Forecast

By 10:00 a.m. each Day, Seller shall submit to WAPA its good-faith 10-day forecast of the anticipated hourly availability and Electric Energy production of the Facility for dispatch by WAPA. WAPA will provide Seller a corresponding non-binding estimate of expected dispatch of the Facility.

#### 4. Monthly Availability Forecast

Seller shall submit to WAPA, no later than the fifteenth (15th) day of each month, its good-faith forecast of the anticipated hourly availability and Electric Energy production of the Facility for dispatch by WAPA for the following three Billing Periods. WAPA will provide Seller a corresponding non-binding estimate of expected dispatch of the Facility.

#### 5. Operating Limits

WAPA's right to dispatch the Facility shall be subject to the following operating limits:

(a) the Facility shall not be required to operate at an Electric Capacity lower than [\_\_] kW nor in excess of [\_\_] kW;

(b) limitations on the start-up time for the Facility shall be as follows: [Seller to propose based on the Facility's technology];

(c) the Facility shall operate at the following ramp rates: [Seller to propose based on the Facility's technology]; and

(d) the Facility shall be capable of automatic generation control through WAPA's AGC system.

(i) Seller shall schedule, deliver and sell to WAPA, not less than the Guaranteed Monthly Output for On-Peak Hours and for Off-Peak Hours for each Billing Period. Seller shall not be required to schedule more than the Guaranteed Monthly Output for On-Peak Hours and Off-Peak Hours, in any Billing Period; and

(ii) WAPA shall dispatch, accept and purchase not less than the Minimum Monthly Dispatch for On-Peak Hours and Off-Peak Hours in each Billing Period.

## **SCHEDULE 13**

### **REFERENCE CONDITIONS**

Output Tests shall be based on the elevation above sea level of the site on which the unit is installed;

Output Tests shall be based on an ambient temperature of 90° F Summer and 80° F Winter;

[WAPA to add other conditions based on the Facility's technology.]

**SCHEDULE 14**

**TERMINATION AMOUNT**

Calendar Year

Termination Amount

[Insert negotiated amount for each year of Contract Term.]

**SCHEDULE 15**

**WAPA's Cost of Cover**

Calendar Year

On-Peak Amount

Off-Peak Amount

[Insert negotiated amount for each year of Contract Term.]

**SCHEDULE 16**  
**BUYOUT METHODOLOGY**

[Seller to propose buyout methodology, if desired.]