

**Execution Copy**

GPA Contract No. **C-027-11-1**

**RENEWABLE ENERGY  
PURCHASE AGREEMENT**

**BETWEEN**

**GUAM POWER AUTHORITY**

**AND**

**QUANTUM GUAM POWER, LLC**

## Table of Contents

Recitals.....	1
<b>ARTICLE ONE: DEFINITIONS .....</b>	<b>1</b>
<b>ARTICLE TWO: COMMERCIAL TERMS.....</b>	<b>10</b>
2.1    Commercial Terms.....	10
<b>ARTICLE THREE: REPRESENTATIONS AND WARRANTIES .....</b>	<b>11</b>
3.1    Mutual Representations and Warranties .....	11
3.2    Seller Representations and Warranties .....	12
3.3    GPA Representations and Warranties.....	13
<b>ARTICLE FOUR: PERFORMANCE REQUIREMENTS .....</b>	<b>13</b>
4.1    Commercial Operation.....	13
4.2    Extension of Commercial Operation Date.....	14
4.3    Project Milestones.....	16
4.4    Termination Damages.....	17
4.5    Seller's and Buyer's Obligations.....	18
4.6    Operation of Facility.....	18
4.7    Availability Default and Termination.....	18
4.8    Minimum Production.....	19
4.9    Facility Testing.....	20
4.10   Scheduling.....	21
4.11   Force Majeure.....	21
4.12   Facility Outages and Maintenance Scheduling.....	21
4.13   Operating Status Reports.....	23
4.14   Resource Quality Reporting: Forecasting.....	23
4.15   Permit Violations.....	23
4.16   Delivery of RECs.....	23
<b>ARTICLE FIVE: SELLER FAILURE.....</b>	<b>24</b>
5.1    Seller Failure.....	24
<b>ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES.....</b>	<b>25</b>
6.1    Events of Default.....	25
6.2    Declaration of an Early Termination Date.....	26
6.3    Suspension of Performance and Other Remedies.....	26
<b>ARTICLE SEVEN: PAYMENT AND NETTING .....</b>	<b>26</b>
7.1    Billing Period.....	26
7.2    Timeliness of Payment.....	26
7.3    Disputes and Adjustments of Invoices.....	27
7.4    Metering and Other Facilities.....	27
7.5    Invoices.....	29
<b>ARTICLE EIGHT: LIMITATIONS .....</b>	<b>29</b>



8.1	Limitation of Remedies, Liability and Damages. ....	29
<b>ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS.....</b>		<b>30</b>
9.1	Development Security.....	30
9.2	Forfeiture of Development Security. ....	30
9.3	Return of Development Security. ....	31
9.4	Grant of Subordinated Security Interest/Remedies.....	31
<b>ARTICLE TEN: GOVERNMENTAL CHARGES.....</b>		<b>31</b>
10.1	Cooperation.....	31
10.2	Governmental Charges.....	32
<b>ARTICLE ELEVEN: MISCELLANEOUS .....</b>		<b>32</b>
11.1	Term of Agreement.....	32
11.2	Insurance.....	32
11.3	Indemnity.....	34
11.4	Assignment.....	34
11.5	Site Access and Inspection of Records.....	34
11.6	Audit.....	34
11.7	Confidentiality.....	35
11.8	Notices.....	36
11.9	Purchase Option.....	36
11.10	Alternative Dispute Resolution.....	37
11.11	Governing Law.....	38
11.12	Jurisdiction and Costs.....	38
11.13	Financial Accounting Standards.....	38
11.14	Forward Contract.....	39
11.15	General.....	39
11.16	Entire Agreement; Amendment.....	39
11.17	Appendices.....	39
11.18	Special Provisions.....	40
11.19	Waiver of Immunity.....	41

**RENEWABLE ENERGY**  
**PURCHASE AGREEMENT**  
**BETWEEN**  
**GUAM POWER AUTHORITY**  
**AND**  
**QUANTUM GUAM POWER, LLC**

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

**Recitals**

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

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

**ARTICLE ONE: DEFINITIONS**

The following definitions apply to this Agreement:

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

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

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

1.4 "Appraisal Price" means the average of three (3) appraisals of the market value of the Facility at the end of the Delivery Term, delivered by three (3) independent appraisers

qualified by experience and expertise to determine the arms length market value of the Facility. If the Parties do not agree on the independent appraisers then they shall be determined by arbitration in accordance with Section 11.10.

1.5 "Availability," expressed as a percentage, means a measure of a portion of time that the Facility or a portion thereof is capable of producing and delivering Renewable Energy. Availability shall be calculated over the Availability Measurement Period and shall be measured in minutes (or portions thereof) in which the Facility or any portion thereof is unavailable based on SCADA, operating logs and metered data with respect to the Facility (as weighted based on the contribution of the portion to the overall capacity of the Facility). Availability shall be expressed as a percentage for each Availability Measurement Period, using the following calculation:  $(\text{Contract Hours} - \text{Unavailable Hours}) / \text{Contract Hours}$ .

1.6 "Availability Default" means the measure of damages that result from Seller's failure to meet the Guaranteed Availability as set forth in Section 4.7 hereof. GPA shall calculate the Availability Default in accordance with Section 4.7 hereof.

1.7 "Availability Measurement Period" has the meaning set forth in Section 4.7.

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

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

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

1.11 "Buyout Payment" means, with respect to Seller's election not to re-build the Facility pursuant to Section 11.2, an amount equal to:  $\text{Minimum Production} \times \text{the number of Contract Years (or portion thereof) remaining in the Delivery Period} \times \text{Incremental Price}$ .

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

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

1.14 "Claims" means all claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an

indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise.

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

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

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

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

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

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

1.21 "Contract Hours" means all of the hours in the applicable Availability Measurement Period.

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

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

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

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

1.26 “Cure Plan” has the meaning set forth in Section 4.7.

1.27 “Daily Delay Liquidated Damages” has the meaning set forth in Section 4.2(b).

1.28 “Defaulting Party” has the meaning set forth in Section 6.1.

1.29 “Deficiency Amount” has the meaning set forth in Section 4.8.

1.30 “Delivery Period” means the period of delivery under this Agreement, commencing on the Commercial Operation Date and continuing for a Term of twenty-five (25) years, as such period may be extended in accordance with this Agreement.

1.31 “Delivery Point” means the point at which the Renewable Energy will be delivered and received, as specified in Section 2.1 herein, or such other delivery point as may be agreed to by the Parties.

1.32 “Development Security” has the meaning set forth in Section 9.1.

1.33 “Early Termination Date” has the meaning set forth in Section 6.2.

1.34 “Effective Date” means the date first set forth above.

1.35 “Eligible Renewable Energy Resources” are applications of the following technologies that displace Conventional Energy Resources that would otherwise be used to provide electricity to GPA’s customers: biogas electricity generator, biomass electricity generator, fuel cell that use only renewable fuels, geothermal generator, hybrid wind and solar electric generator, landfill gas generator, solar electricity resources, wind generator and such other generally accepted renewable energy resources.

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



1.37 “Environmental Attributes” means environmental characteristics that are attributable to Renewable Energy, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Credits; greenhouse gas or emissions reductions, credits, offsets, allowances or benefits; actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, PM<sub>10</sub>, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of Renewable Energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Such Environmental Attributes shall be expressed in kWh or, as applicable in the case of emissions credits, in tonne equivalent or other allowance measurement. Environmental Attributes does not include Tax Benefits, or any energy, capacity, reliability, or other power attributes used by Seller to provide electricity services.

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

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

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

1.41 “Excused Hours” means the hours in the applicable Availability Measurement Period or Production Measurement Period in which (i) Seller has declared Force Majeure, (ii) Seller has initiated a Dispatch Down (as defined in Appendix K), or (iii) Seller’s delivery to GPA of Renewable Energy is adversely affected as a result of failure by GPA to perform its obligations under this Agreement.

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

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

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

1.45 “Facility Debt” means the obligations of Seller or its Affiliates to any Facility lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing. Facility Debt does not include trade debt or obligations incurred in the ordinary course of business.

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



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

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

1.49 “Forced Outage Notice” has the meaning set forth in Section 4.10(b).

1.50 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Transaction, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a “Force Majeure” event may include, but shall not be limited to, flood, drought, military ordinances or archaeological discoveries at the Project site, change in applicable law or interpretation or application thereof (but as to Seller only with respect to such changes applicable specifically to GPA), failure or delay by any Governmental Authority in issuing any required permit, earthquake, storm, fire, lightning, epidemic, war, terrorism or riot. Notwithstanding the foregoing, Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Renewable Energy purchased hereunder; (iii) the loss or failure of Seller’s supply, including materials or equipment, unless such loss or failure is caused by a Force Majeure event; (iv) the delay in or inability of Seller to obtain financing or economic hardship of any kind; or (v) Seller’s ability to sell the Renewable Energy at a price greater than the Contract Price or Buyer’s ability to purchase the Renewable Energy at a price less than the Contract Price; or (vi) strike or other labor dispute. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a transmission provider unless (i) such Party has contracted for firm transmission with a transmission provider for the Renewable Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the transmission provider’s tariff.

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

1.52 “Good Utility Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment

in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods, or acts.

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

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

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

1.56 “GPA Lien” has the meaning set forth in Section 9.4.

1.57 “Guaranteed Availability” has the meaning set forth in Sections 2.1 and 4.7.

1.58 “Guaranteed Output” has the meaning given in Section 4.8.

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

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

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

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

1.63 “kWh” means kilowatt hour.

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

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

1.66 “Merger Event” means, with respect to a Party, that such Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity’s Credit Rating is lower than that of such Party immediately prior to such action.

1.67 “Minimum Production” has the meaning set forth in Section 4.8.

1.68 “Month” means a calendar Month. The term “Monthly” shall have a meaning correlative to a Month.

1.69 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.70 “MW” or “MWh” means megawatt or megawatt hour, in each case rounded to the nearest whole MW or MWh.

1.71 “NAR” means the North American Renewables Registry.

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

1.73 “Non-Defaulting Party” has the meaning set forth in Section 6.

1.74 “Notice” has the meaning set forth in Section 11.8.

1.75 “Notice to Proceed” means the written notice provided by Seller to the EPC Contractor to begin procurement and construction activity at the Project site.

1.76 “Outage” means the period during which the Facility or a portion thereof is out of service.

1.77 “Outside Commercial Operation Date” has the meaning set forth in Section 4.2(b).

1.78 "PGR" means Pacific Green Resources.

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

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

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

1.82 "Project Milestone" has the meaning set forth in Section 4.3.

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

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

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

1.86 "Renewable Energy Credit" or "REC" means the unit created to track kWh derived from an Eligible Renewable Energy Resource or kWh equivalent of Conventional Energy Resources displaced by distributed renewable energy resources.

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

1.88 "Replacement Price" means the price at which GPA, acting in a commercially reasonable manner, purchases electricity in place of Renewable Energy.

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

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

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

1.92 "Scheduled Commercial Operation Date" has the meaning set forth in Section 4.2(a).

1.93 "Seller Failure" has the meaning set forth in Section 5.1.

1.94 "Seller Failure Damages" has the meaning set forth in Section 5.1.

1.95 "Seller's Interconnection Facilities" means Seller's equipment as specified in the Interconnection Agreement.

1.96 "Seller Metering Equipment" means all metering equipment and data processing equipment used to measure the Quantity delivered to the Delivery Point.

1.97 "Shortfall Damages" has the meaning set forth in Section 4.8.

1.98 "Study" means the Renewable IFB System Impact Study (IR01 & IR02 Evaluation) dated May, 2012 prepared by R. W. Beck, an SAIC company, for GPA, a copy of which has been presented to Seller by GPA.

1.99 "Subordination Documents" has the meaning set forth in Section 9.4.

1.100 "Tax Benefits" means Renewable Energy related tax credits or other benefits established under Section 45 and Section 48 of the Internal Revenue Code, as amended, or any similar or successor provision of the Internal Revenue Code.

1.101 "Term" has the meaning set forth in Section 11.1.

1.102 "Termination Damages" has the meaning set forth in Section 4.4.

1.103 "Test Energy" means non-firm Renewable Energy generated prior to the Commercial Operation Date, subject to immediate interruption, fluctuations or reduction/increase with no prior Notice, due to unit performance.

1.104 "Transaction" means the transaction relating to the purchase or sale of Renewable Energy as contemplated in this Agreement.

1.105 "Unavailable Hours" means the sum of any hours or parts thereof during an Availability Measurement Period when an equipment component is out of service or derated, for any reason, minus Excused Hours and Weather Hours. The hours, or parts thereof, as described above, shall be weighted based on the contribution of the equipment component to the overall Facility output.

1.106 "Unit Contingent" means that the Renewable Energy is intended to be supplied from the Facility as it is produced, subject to the Guaranteed Availability requirement set forth in Section 4.7.

1.107 "Weather Hours" means the total hours in any Availability Measurement Period or Production Measurement Period, as applicable, in which the Facility is derated as a result of cumulative weather conditions which are outside historical average conditions for any applicable Month during the Availability Measurement Period or Production Measurement Period in which the deration occurs, calculated in accordance with Appendix K.

## ARTICLE TWO: COMMERCIAL TERMS

### 2.1 Commercial Terms.



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

<b>Buyer:</b> GPA	<b>Seller:</b> Quantum Guam Power, LLC
<b>Project:</b> Quantum Guam Power, LLC 20 MW AC solar PV project	
<b>Delivery Point:</b> Seller's meter located on the Project site at the interconnection with the transmission line extending from the Project site to GPA's Talofofu substation	
<b>Minimum Production (MWhs):</b> As set forth in <u>Appendix A</u>	<b>Estimated Annual Renewable Energy: (MWhs):</b> As set forth in the third column of <u>Appendix A</u>
<b>Guaranteed Availability (%)</b> (See <u>Section 4.7</u> ): 95%	<b>Facility Capacity (MW):</b> 20 MW during the first Contract Year
<b>Delivery Period:</b> 25 Contract Years	<b>Contract Price (\$/MWh):</b> <u>See Appendix A</u>
<b>Renewable Energy Type:</b> Unit Contingent (solar) and associated RECs	<b>Development Security:</b> \$4,000,000
<b>Day(s) of week:</b> Monday through Sunday, including NERC holidays	<b>Hours:</b> Hour Ending 0100 - Hour Ending 2400, Monday through Sunday Guam Prevailing Time
<b>Commercial Operation Date:</b> No later than the Scheduled Commercial Operation Date, subject to the extension provisions set forth in <u>Article Four</u> .	
<b>Test Energy:</b> Seller agrees to sell and Buyer agrees to purchase all Test Energy from the Facility. The price of such Test Energy shall be the LEAC Rate. Test Energy shall be delivered in accordance with the Scheduling provisions contained herein. Both Parties agree that Seller will use Commercially Reasonable Efforts to pre-schedule the Test Energy, but Buyer shall nonetheless be obligated to accept all Test Energy up to 20 MW per hour of Test Energy. Seller shall provide to Buyer all RECs associated with the Test Energy produced by the Facility in accordance with <u>Section 4.16</u> .	

### ARTICLE THREE: REPRESENTATIONS AND WARRANTIES

#### 3.1 Mutual Representations and Warranties.

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



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

### 3.2 Seller Representations and Warranties.

Seller affirmatively represents and warrants to GPA that:

- (a) On the Effective Date of this Agreement, or in due course as required in accordance with the Project Milestones (as may be extended as provided in Section 4.3), Seller has (or reasonably expects to have in due course), good defensible title, or valid and effective leasehold rights in the case of leased property, to the Facility, free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens,





charges, claims, pledges, security, interests, equities and encumbrances relating to Facility Debt as provided for herein, or that in the aggregate do not materially detract from or interfere with the ability of Seller to deliver the Quantity of the Renewable Energy;

- (b) All acts necessary to the valid execution, delivery and performance of this Agreement by Seller have or will be taken and performed as required under Seller's ordinances, bylaws, or other regulations including, but not limited to (i) the valid authority of the person executing this Agreement to bind Seller and (ii) the Term of this Agreement does not extend beyond any limitation applicable to Seller imposed by relevant governing documents and applicable law; and
- (c) Seller will have at the time of sale, title to and ownership of the RECs sold hereunder.

### 3.3 GPA Representations and Warranties.

GPA represents and warrants that the board of directors of GPA has made all certifications required by the Guam Public Utilities Commission and the Guam legislature in order for GPA to execute this Agreement.

## **ARTICLE FOUR: PERFORMANCE REQUIREMENTS**

### 4.1 Commercial Operation.

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

- (a) Seller shall have obtained all governmental and regulatory authorizations, including any applicable permits, required for the construction, ownership, operation and maintenance of the Project and for the sale of the Renewable Energy therefrom;
- (b) Seller and Buyer shall have entered into the Interconnection Agreement;
- (c) Seller shall have established SCADA information and real time data feed to enable GPA to view parameters or data points that relate to Availability, Renewable Energy data and other actual resource data for the Facility;
- (d) Seller shall in all other respects be capable of delivering the Renewable Energy to GPA at the Delivery Point.



- (e) Seller shall perform at its cost a capacity test in accordance with the protocol outlined in Appendix I to determine the capacity of the Facility ("Facility Test"). GPA shall receive the entire Renewable Energy from the Facility during such test. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

GPA shall use all available commercially reasonable efforts to assist Seller in achieving the Scheduled Commercial Operation Date. Seller shall present to GPA a certificate executed by its duly executed officer, and by an Independent Engineer as to items (d), (e) and (f), verifying that each of the foregoing conditions has been satisfied or waived in writing by the Parties and Commercial Operation shall be deemed to have occurred upon the delivery of such certificate to GPA unless GPA objects to such certificate within ten (10) Business Days of delivery thereof and such objections are either agreed by Seller or resolved in favor of GPA pursuant to Section 11.10 hereof. Upon any acceptance or deemed acceptance of Seller's certificate by GPA, all conditions set forth above shall no longer be a condition precedent to Commercial Operation of the Project. If the Commercial Operation Date does not occur on or before the Outside Commercial Operation Date, as such date may be extended in accordance with Section 4.2 herein, either Party shall have the right to terminate the Agreement upon written Notice to the other Party. In the event of such termination by either Party, GPA shall be entitled to Termination Damages set forth in Section 4.4 provided, however, that in accordance with Section 4.2(c), GPA shall not be entitled to such Termination Damages if the Outside Commercial Operation Date is not achieved due to a Force Majeure event or a GPA Delay.

#### 4.2 Extension of Commercial Operation Date.

- (a) Planned Extension. The Parties agree that the Commercial Operation Date is expected to be June 26, 2014 (as extended pursuant to the terms of this Agreement, the "Scheduled Commercial Operation Date"). Seller may elect to extend the Commercial Operation Date beyond such date (the "COD Extension") by paying GPA for such extension (the "COD Extension Payment"). The COD Extension Payment shall be in the amount of fifty percent (50%) of the Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year) per day for each day (or portion thereof) after but not including the date of the COD Extension until, but not including, the date on which the Project actually achieves Commercial Operation. To extend the Commercial Operation Date, Seller must, as early as reasonably possible, but in no event later than fourteen (14) days prior to the first day of the proposed extension, provide GPA with Notice of its election to extend the Commercial Operation Date along with an estimate of the duration of the extension. The COD Extension Payment is in addition to and not to be considered part of the Development Security, and shall be paid to GPA at the time of the Notice hereunder. Seller's request to extend the Commercial Operation Date shall not be valid unless proper Notice and payment are timely received by GPA. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein, and GPA shall not have the right to terminate the Agreement or to



receive Termination Damages with respect to such extension so long as Seller has provided the Notice, estimation and payment as provided in this Section 4.2(a). Seller may further extend the Commercial Operation Date beyond the original COD Extension, subject to the foregoing Notice, estimation and payment terms applicable to the original COD Extension.

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

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

In no event may the Commercial Operation Date be extended more than one hundred and eighty (180) days through the payment of Daily Delay Liquidated Damages, without the express written consent of GPA. In the

event that the Project does not achieve Commercial Operation on or before three hundred and sixty-five (365) days from the Scheduled Commercial Operation Date (as extended pursuant to this Agreement, the "Outside Commercial Operation Date"), then either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights pursuant to Section 4.2(c) below. In the event of such termination by either Party in accordance with this provision, GPA shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

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

#### 4.3 Project Milestones.

In order to ensure timely completion of the Project, Seller shall meet the following deadlines in connection with the construction of the Project ("Project Milestones"):

September 26, 2012	Purchase and sale agreement for the Project site is executed and delivered by the parties thereto;
March 26, 2013	All material construction, environmental, operational or other permits necessary to build and begin construction on the Project, as set forth in <u>Appendix E</u> obtained; and
June 30, 2013	Notice to Proceed given to EPC Contractor.

Notwithstanding the foregoing, if such applicable date is not a Business Day, then the applicable date shall be the next succeeding Business Day. Seller shall provide written Notice,



including supporting documentation acceptable to GPA in its sole and reasonable discretion, promptly upon its satisfaction of each Project Milestone. A Project Milestone will not be considered achieved, for purposes of this Agreement, until GPA has received such acceptable Notice and supporting documentation. If Seller fails to achieve any of the foregoing Project Milestones within thirty (30) days following the applicable deadline (as may be extended by reason of Force Majeure or GPA Delay), then either Party may terminate this Agreement upon written Notice to the other. In the event of any such termination, GPA shall be entitled to the Termination Damages set forth in Section 4.4 as its sole and exclusive remedy; provided, however, that, in accordance with Section 4.2(c), GPA shall not be entitled to such Termination Damages if failure to achieve such Project Milestone is due to a Force Majeure event or GPA Delay and Seller shall be given a day-for-day extension of time to achieve such Project Milestone; provided, further, in the event that Seller's failure to achieve such Project Milestone was solely due to an Event of Default by GPA, in no event shall GPA have a right to terminate the Agreement or to receive Termination Damages.

In addition to the foregoing, Seller shall provide GPA with prompt written Notice (and in any event within ten (10) days) following its becoming aware of information that leads to a reasonable conclusion that a Project Milestone will not be met, and shall convene a meeting with GPA to discuss the situation not later than twenty (20) days after becoming aware of such information.

#### 4.4 Termination Damages.

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

Prior to Posting Date of Development Security pursuant to <u>Section 9.1</u> :	\$0.00
September 26, 2012:	100% of the Bid Security
September 27, 2012:	50% of Development Security



April 29, 2013: 75% of Development Security

August 5, 2013 forward: 100% of Development Security

No later than October 1, 2012, GPA shall return the Bid Security to Seller, to the extent GPA has not validly claimed the Bid Security in respect of Termination Damages on or prior to September 26, 2012. Notwithstanding the foregoing, in the event that Seller terminates this Agreement for any reason prior to the posting date for the Development Security as set forth in Section 9.1 herein, then Seller shall owe GPA no Termination Damages and such termination shall be without penalty to Seller.

#### 4.5 Seller's and Buyer's Obligations.

Subject to Appendix H, Seller shall sell and deliver, or cause to be delivered, and GPA shall purchase and receive, or cause to be received, all Renewable Energy generated by the Facility, at the Delivery Point, and GPA shall pay Seller the Contract Price for such Quantity of Renewable Energy as measured by the Seller's Metering Equipment at the Delivery Point; provided that for quantities of Renewable Energy in excess of the Estimated Annual Renewable Energy Amount, as shown in the third column of Appendix A, which are not make-up quantities for delivery deficiencies in prior Production Measurement Periods, the price payable by GPA shall be the lower of the Contract Price and the LEAC Rate. For Seller's failure to deliver Renewable Energy as required hereunder, GPA's remedies shall be as set forth in Section 4.8. For GPA's failure to purchase and receive Renewable Energy as required hereunder, if Seller's damages are less than \$10,000 then Seller's remedies shall be as set forth in Appendix K. For damages in excess of that amount, Seller shall in addition have all other remedies available at law or in equity. Seller shall be responsible for any costs or charges imposed on or associated with the Renewable Energy or its delivery up to the Delivery Point. GPA shall be responsible for any costs or charges imposed on or associated with Renewable Energy or its receipt at and from the Delivery Point. Title to and risk of loss of Renewable Energy from the Facility delivered to the Delivery Point shall transfer to GPA at the Delivery Point. Seller warrants that it will deliver to Buyer Renewable Energy free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point. Notwithstanding the foregoing, in the event that transmission of Renewable Energy from the Facility to the Delivery Point is unavailable or derated for any period for any reason other than due to GPA's electric system, Seller's obligation to supply and sell, and GPA's obligation to accept and purchase, Renewable Energy shall be limited to such Renewable Energy that is actually deliverable from the Facility to the Delivery Point during such period.

#### 4.6 Operation of Facility.

Seller shall operate and maintain the Facility in accordance with Good Utility Practices.

#### 4.7 Availability Default and Termination.

GPA shall calculate the Availability of the Facility as soon as reasonably practicable at the end of each rolling three (3) year period during the Delivery Period (the "Availability Measurement Period"). In the event that the Availability of the Facility during any Availability

Measurement Period falls below ninety-five percent (95%) ("Guaranteed Availability"), it shall constitute an "Availability Default." Upon the occurrence of an Availability Default, GPA may provide Seller with written Notice of its intent to terminate the Agreement. On or before the fourteenth (14th) calendar day following its receipt of such Notice, Seller shall provide GPA with a written plan, reasonably acceptable to GPA in form and substance, for curing its failure to meet its Availability obligations set forth herein (a "Cure Plan"). The Cure Plan must specify in reasonable detail Seller's analysis of the cause(s) of the unavailability, the action(s) that Seller plans to take to correct such underperformance, and the time needed to complete such corrective action(s). Seller shall undertake any and all corrective action in a Commercially Reasonable manner and shall complete all such corrective action as soon as is commercially practicable. In no event shall such corrective action take longer than ninety (90) days to complete. Notwithstanding anything in this provision to the contrary, in the event that Seller does not timely submit a Cure Plan, or the Cure Plan is not reasonably acceptable to GPA in form and substance, then GPA may immediately terminate the Agreement upon written Notice to Seller.

Promptly upon completing its corrective action, Seller shall provide Notice to GPA of the same. Beginning on the date of such notification, the next Availability Measurement Period shall begin. If the Facility fails to achieve the Guaranteed Availability over the term of the subsequent Availability Measurement Period, GPA shall have the right to immediately terminate this Agreement upon written Notice to Seller and, presuming Seller does not exercise or is not entitled to exercise its cure rights as set forth in the preceding paragraph, GPA shall be entitled to all of the rights and remedies associated with such termination as set forth in this Article Four. Seller shall be entitled to exercise its Cure Plan rights no more than two (2) times during the Term of this Agreement and there shall be a minimum of twelve (12) Months between Cure Plans.

#### 4.8 Minimum Production.

The Facility is expected to produce a minimum number of MWhs of Renewable Energy each Contract Year as set forth in the third column of Appendix A (such annual MWh production is the "Minimum Production"). Seller during the Delivery Period shall (i) during any Contract Year, deliver to GPA at least ninety percent (90%) of the Minimum Production (which calculated amounts are set forth in the fourth column of Appendix A), and for any consecutive five (5) Contract Years during the Delivery Period, deliver to GPA at least one hundred percent (100%) of the aggregate Minimum Production during such period (any such time period a "Production Measurement Period" and each such guaranteed amount of delivered Renewable Energy during any Production Measurement Period, the "Guaranteed Output"). Any shortfall of Renewable Energy from the applicable Guaranteed Output during a Production Measurement Period shall be deemed a "Deficiency Amount".

GPA shall be entitled to receive damages for any Deficiency Amount ("Shortfall Damages") which are not due to Excused Hours or Weather Hours (except, in the case of Weather Hours, as set forth below). GPA shall calculate such Shortfall Damages as follows (and in accordance with the example set forth in Schedule III to Appendix K.):

Shortfall Damages = Deficiency Amount x Incremental Price.





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

In the event Shortfall Damages are due for a Production Measurement Period of five (5) rolling Contract Years, then such Shortfall Damages shall be reduced by the amount of any Shortfall Damages paid for any Contract Year during such five (5) year Production Measurement Period. Seller's payment of Shortfall Damages shall be Seller's sole liability and obligation, and GPA's sole right and remedy, with respect to Seller's failure to deliver the Guaranteed Output during any Production Measurement Period.

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

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

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

#### 4.9 Facility Testing.



In addition to the Facility Test referenced in Section 4.1(f), the capacity of the Facility shall be tested during each Contract Year during the Delivery Period (the "Annual Facility Test"). Seller shall notify GPA of the specific date on which it intends to conduct the Annual Facility Test at least ten (10) Business Days in advance and shall permit GPA to be present at such test. GPA shall have the right to receive copies of the results of the Annual Facility Test, which shall be conducted in accordance with the protocol set forth in Appendix I. Any dispute regarding the results of the Annual Facility Test shall be resolved as set forth in Section 11.10 of this Agreement. GPA shall receive, in accordance with Section 4.5, the entire Renewable Energy from the Facility during any Annual Facility Test or re-test. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

#### 4.10 Scheduling.

Seller agrees to supply at the Delivery Point all Renewable Energy produced by the Project, net of Renewable Energy self generated and consumed at the Facility and net of any generation losses prior to the Delivery Point, up to the Facility Capacity, in accordance with the scheduling and coordination procedures set out in Appendix H. GPA agrees to take at the Delivery Point all Renewable Energy tendered by Seller in accordance with the foregoing sentence.

The Schedules and estimates provided pursuant to this Section 4.10 shall be made by Seller in good faith and based on information available to it at such time, but in no event shall such Schedules be binding on Seller nor shall Seller be liable for any inaccuracies in such Schedules.

#### 4.11 Force Majeure.

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

#### 4.12 Facility Outages and Maintenance Scheduling.

- (a) Planned Outages. Seller shall provide written Notice to GPA prior to conducting any Planned Outages of the Facility. Within ninety (90) days prior to the Commercial Operation Date, as the same may be extended in accordance with the provisions of Section 4.2, and on or before the first day of each subsequent Contract Year, Seller shall provide GPA with a schedule of such proposed Planned Outages. The proposed Planned Outages schedule shall be submitted electronically to GPA, using a reasonably acceptable format provided by GPA. Such format is subject to change from time-to-time during the Term of this Agreement by

agreement of the Parties, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist GPA in planning for the decreased output and/or Availability of the Facility as a result of the Outage.

GPA shall promptly review Seller's proposed schedule and may request modifications within thirty (30) days of GPA's receipt of such schedule. Changes to the schedule may be requested by either Party and each Party shall make Commercially Reasonable Efforts to accommodate such changes, provided further that Seller shall have no obligation to agree to GPA's proposed modifications or revisions to any Planned Outage schedule.

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

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



are returned to GPA then Seller shall reimburse GPA for any damage to such parts or components while in Seller's possession.

#### 4.13 Operating Status Reports.

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

#### 4.14 Resource Quality Reporting: Forecasting.

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

#### 4.15 Permit Violations.

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

#### 4.16 Delivery of RECs.

- (a) Use of North American Renewables Registry. At least ten (10) days prior to COD, Seller shall transfer to GPA the authority to create, own and transfer all Environmental Attributes associated with the Renewable Energy produced by the Facility, by executing and delivering the form entitled "Generator Owner's Designation of Responsible Party" published by NAR, wherein Seller shall designate GPA as the "responsible party" for all matters relating to the creation, ownership and transfer of RECS. Thereafter, GPA shall be responsible for all obligations relating to creating



and transferring RECs and Seller shall have no further obligations or liabilities with respect thereto, provided, however, that Seller shall reimburse to GPA its costs of creating and maintaining the NAR account and NAR's fees charged to transfer the RECs, up to an aggregate maximum amount of \$5,000 per annum. In the event this Agreement is terminated for any reason, the Parties agree to each consent to the termination of such designation in accordance with NAR procedures.

- (b) GPA Registration as a QRE. GPA shall be the QRE for the Facility as required by NAR and shall comply with any and all NAR Operating Procedures relating to the registration and operation as a QRE and the reporting of generation data from the Facility to NAR. As the QRE, each month upon receipt of an invoice and associated interval metering data from Seller in accordance with Section 7.5 herein, GPA shall report such data to NAR within three (3) Business Days following receipt of such data. The Parties shall cooperate to ensure that the Seller Metering Equipment and the resulting interval metering data meet the NAR requirements for metering equipment and generation data.
- (c) Change Event. During the Term, in the event that (i) the NAR Operating Procedures are amended or changed such that it becomes impossible for the Parties to utilize NAR as the REC tracking method and/or for GPA to continue as "responsible party" for purposes of creating, owning and transferring RECs attributable to the Facility; (ii) the fees or charges imposed by NAR on either Seller or GPA to utilize the NAR REC tracking system are materially increased such that use of the NAR REC tracking system becomes uneconomic or infeasible; or (iii) the NAR REC tracking system is eliminated (each one individually, a "Change Event"), then the Parties shall promptly negotiate in good faith to reform the terms of this Agreement in order to give effect to the original intention of the Parties to the extent reasonable under the circumstances, including utilizing an alternative method for transferring RECs to GPA, but in no case shall Seller's cost with respect thereto exceed \$5,000 per annum.

## **ARTICLE FIVE: SELLER FAILURE**

### **5.1 Seller Failure.**

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



from GPA. If the Replacement Price is less than the Contract Price, then the Seller Failure Damages are deemed to be zero. The Seller Failure Damages represent the sole and exclusive remedy for Seller's failure as described herein, except as provided in Section 6.1(h).

Nothing herein shall be deemed to be inconsistent with or to limit any of Seller's obligations pursuant to Article Four with respect to maintaining the Guaranteed Availability of the Facility. If, at any time, the Facility fails to achieve the required Guaranteed Availability as described in Section 2.1 and Section 4.7, then Seller shall be subject to the Availability Default set forth in Section 4.7.

## **ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES**

### **6.1 Events of Default.**

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

- (a) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written Notice;
- (b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, if such failure is not remedied within thirty (30) Business Days after written Notice, or such longer time, not to exceed sixty (60) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for such Party's obligations to deliver or receive the Renewable Energy, the remedies for which are provided in Article Five) if such failure is not remedied within thirty (30) Business Days after written Notice, or such longer time, not to exceed sixty (60) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (d) Such Party becomes Bankrupt (or if the Bankruptcy is involuntary, the failure of such Party to achieve dismissal of the Bankruptcy within ninety (90) days);
- (e) A Merger Event occurs with respect to such Party;
- (f) If during the Term of this Agreement there have occurred three (3) or more Seller Failures as that term is used in Section 5.1;



- (g) With respect to Seller, a material permit violation occurs and such violation is not remedied within fifteen (15) Business Days after Notice by either GPA or the relevant permitting authority, or such longer time, not to exceed sixty (60) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (h) With respect to Seller, the occurrence of an Availability Default and the expiration of any cure period set forth in Section 4.8; and
- (i) With respect to Seller, failure to maintain the Development Security and failure to reinstate the same within five (5) Business Days after Seller's receipt of written Notice thereof from GPA.

#### 6.2 Declaration of an Early Termination Date.

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

#### 6.3 Suspension of Performance and Other Remedies.

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

### **ARTICLE SEVEN: PAYMENT AND NETTING**

#### 7.1 Billing Period.

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

#### 7.2 Timeliness of Payment.





Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each Month, or if later the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

### 7.3 Disputes and Adjustments of Invoices.

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

### 7.4 Metering and Other Facilities.

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

Upon an inaccurate read of the Seller Metering Equipment or if Seller knows of any material inaccuracy or material defect in Seller Metering Equipment, Seller shall notify GPA in writing within forty-eight (48) hours of such defect. Seller shall be solely responsible for



adjusting, repairing, replacing or recalibrating such metering device as near as practicable to a condition of zero (-0-) error, and for paying any expenses associated with such adjustment, repair, replacement or recalibration. If a metering device fails to register or is found upon testing to be inaccurate, an adjustment will be made correcting all measurements by the inaccurate or defective metering device in the following manner:

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

Seller and GPA agree that no system transmission stability upgrades or network upgrades will be required as a result of the installation and operation of this Facility only, so long as the Facility's inverters have included the "extended ride-through option", which Seller agrees to include therein, and that under no circumstances will any system transmission stability upgrades be required regardless of any installation of other facilities by third parties, including PGR. Pursuant to the Study, Seller and GPA agree that certain network upgrades may be required solely as a result of the installation of PGR's facilities and operation of PGR's facilities in combination with the Facility. Seller's sole responsibility for any such network upgrades shall be as follows: In the event that PGR develops a wind/solar power generating facility in the area of the Facility having the specifications and size described in the Study, and interconnects all or any phase of such facility into the metering, interconnection and transmission facilities constructed by Seller, pursuant to and as further described in the Interconnection Agreement, then the cost of (i) Seller's interconnection and transmission facilities and (ii) any network upgrades required as a result of such interconnection shall be shared with PGR in the ratio of



57% to Seller and 43% to PGR; provided that in no event shall Seller be required to bear more than \$5,925,696.00 in the aggregate for all such network upgrades and GPA shall be responsible for any further network upgrade costs. In connection with any such interconnection, GPA shall require PGR to pay or reimburse its 43% share of such costs at the time of interconnection of all or a phase of PGR's project into the Facility. Seller shall have the right to perform at its own expense, subject to such sharing ratio, any network upgrades required as a result of such interconnection by PGR. Except as described in the previous sentence, Seller shall bear no cost or liability associated with any network upgrades, system transmission stability upgrades or transmission facilities required as a result of any other generating station.

#### 7.5 Invoices.

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

### **ARTICLE EIGHT: LIMITATIONS**

#### 8.1 Limitation of Remedies, Liability and Damages.

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

DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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

## **ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS**

### **9.1 Development Security.**

In order to secure Seller's obligations prior to Commercial Operation of the Facility, Seller shall post a Letter of Credit or cash in the amount of \$4,000,000 (the "Development Security"). The Development Security shall be held by GPA as security for Seller's obligations prior to the Commercial Operation Date including its obligation to satisfy the Project Milestones, but GPA may draw on the Development Security at any time only in the amounts and according to the schedule set forth in Section 4.4. Seller shall post the Development Security in accordance with the following terms and conditions:

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

### **9.2 Forfeiture of Development Security.**

In the event that the Commercial Operation Date does not occur on or before the Scheduled Commercial Operations Date, as extended pursuant to the terms of this Agreement, and to the extent Seller does not remit any COD Extension Payment or Daily Delay Liquidated Damages payment when due, then GPA shall be entitled to proceed against the Development Security in accordance with the terms thereof, to the extent of the amount(s) due and owing from time to time. If the Development Security is exhausted and further such payments are due, then GPA shall be entitled to terminate this Agreement as its sole and exclusive remedy and Seller shall have no further liability for damages hereunder. Seller acknowledges and agrees that forfeiture of all or a portion of the Development Security, as provided herein, represents reasonable compensation to GPA for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and GPA's potential failure to meet its applicable renewable energy portfolio requirements as a result of Seller's failure to achieve





Commercial Operation by the Scheduled Commercial Operation Date. Notwithstanding the foregoing, if Seller terminates this Agreement prior to the Commercial Operation Date for the sole purpose of selling the Renewable Energy to a third party, GPA shall be entitled to both the Development Security and any other remedies available at law or in equity to the extent that GPA's actual damages exceed the value of the Development Security.

### 9.3 Return of Development Security.

Concurrently with the grant of the GPA Lien, GPA shall return to Seller any remaining portion of the Development Security still held by GPA and to which GPA has no claim pursuant to the terms of this Agreement. If the Development Security was posted as a Letter of Credit, GPA shall return the Letter of Credit to Seller and Seller shall be entitled to immediately cancel such Letter of Credit. If the Development Security was posted in cash, GPA shall return to Seller the balance of the Development Security, together with daily interest at the Interest Rate, from and including the date that the Development Security was posted until, but not including, the date on which the Development Security is returned by GPA.

### 9.4 Grant of Subordinated Security Interest/Remedies.

To secure its obligations under this Agreement, Seller hereby agrees to grant to GPA a subordinated security interest in, and lien on all real and personal property constituting the Project, to be effective as of the Commercial Operation Date (the "GPA Lien"), and Seller agrees to take such action as GPA reasonably requires in order to perfect GPA's security interest in, and lien on, such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Concurrently with the issuance of the GPA Lien, GPA shall enter into such subordination, inter-creditor and other agreements with the senior Facility lenders as they may reasonably require (the "Subordination Documents"). Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, if GPA is the Non-Defaulting Party it may do any one or more of the following, subject to the Subordination Documents: (i) exercise any of the rights and remedies of a secured party with respect to the GPA Lien, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of Seller in the possession of GPA or its agent; and (iii) liquidate all collateral then held by or for the benefit of GPA, subject to the terms of any inter-creditor agreements then in effect. GPA shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement, subject to (a) GPA's obligation to return any surplus proceeds remaining after such obligations are satisfied in full and (b) Seller remaining liable for any amounts owing to GPA after such application.

## **ARTICLE TEN: GOVERNMENTAL CHARGES**

### 10.1 Cooperation.

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



## 10.2 Governmental Charges.

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

## **ARTICLE ELEVEN: MISCELLANEOUS**

### 11.1 Term of Agreement.

The Term of this Agreement shall commence on the Effective Date and shall remain in effect for the duration of the Delivery Period, as set forth in Section 2.1, unless earlier terminated by either Party in accordance with this Agreement herein (the "Term"); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.

### 11.2 Insurance.

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

- Commercial General Liability with limits of \$1,000,000 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Commercial Auto Liability in the amount of \$1,000,000 combined single limit for bodily injury and property damage. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Excess Liability with limits of \$5,000,000. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- Workers Compensation and Employers Liability with statutory limits and \$1,000,000/\$1,000,000/\$1,000,000 respectively. Seller shall add a waiver of subrogation endorsement in favor of GPA.



- Pollution Liability, when applicable, with limits for \$5,000,000. GPA is to be an additional insured. Seller shall grant a waiver of Subrogation in favor of GPA.
- Builder's Risk or Installation Floater, when applicable, is to be furnished by Contractor.
- Property insurance that will keep the premises, property, improvements, structures, and machinery and equipment on the premises insured, at a minimum, against with an all risk property policy for full replacement value as determined from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in Guam, and shall contain the standard form of waiver of subrogation. Nothing contained herein shall be construed as creating any liability or responsibility on the part of GPA for the adequacy of insurance coverage on the premises. As to any insurable risks of loss or damage to the premises not required to be insured hereunder, Seller shall bear the cost of the same. Seller shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.
- Seller is also required to carry Business Interruption and Extra Expense insurance in the amount of \$3,000,000.

If the Facility is lost or damaged due to a casualty, Seller shall re-build the Facility promptly and in a commercially reasonable manner; provided, however, (i) if the time to re-build the Facility would result in less than five (5) years remaining in the Delivery Period then (A) Seller shall have the option in lieu of re-building the Facility to pay to GPA the Buyout Payment and terminate this Agreement with no further costs or penalties, or (B) if Seller nevertheless elects to re-build the Facility then GPA shall reimburse Seller for any deductibles payable by Seller under its property insurance (not to exceed \$500,000), and (ii) regardless of when the casualty event occurs, if Seller re-builds the Facility then the Delivery Period shall be extended for the greater of one (1) year or two (2) times the length of the interruption of the sale of Renewable Energy (pro rated based on the Minimum Production for partial interruptions), and the Contract Price shall be the price in effect, without escalation, at the beginning of the re-building period.

Within ten (10) Business Days after receipt of a request for the same from GPA, Seller shall deliver to GPA a certificate of insurance for any or all policies maintained in accordance with this Section 11.2, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions.

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



way limiting the Seller's liability under this Agreement. GPA shall be an additional insured on all liability coverage and certificates of insurance shall clearly indicate such.

### 11.3 Indemnity.

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

### 11.4 Assignment.

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder): (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party; or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, and whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.

### 11.5 Site Access and Inspection of Records.

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

### 11.6 Audit.

Subject to Section 7.3, each Party has the right, at its sole expense and during normal working hours, to examine copies of the records of the other Party to the extent reasonably

necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.

#### 11.7 Confidentiality.

The Parties will make Commercially Reasonable Efforts to safeguard Confidential Information against disclosure by employing the same means to protect such Confidential Information as that Party uses to protect its own non-public, confidential or proprietary information, and otherwise in accordance with the provisions of this Section 11.7. Specifically, no receiving Party shall itself, or permit its employees, consultants and/or agents to disclose to any person, corporation or other entity the Confidential Information without the prior written consent of the Party providing the Confidential Information, except a receiving Party may distribute the Confidential Information to its and its Affiliates' board members, officers, employees, agents, consultants, actual or potential investors, actual or potential purchasers, Facility lenders, and others who have a need for such Confidential Information.

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

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

Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Agreement, **although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Agreement,**

**whether a claim is based in contract, tort or otherwise.** The Parties agree that the respondent in any action for an injunction, specific performance decree or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. Under no circumstances will either Party's directors, management, employees, agents or consultants be individually liable for any damages resulting from the disclosure of Confidential Information in violation of the terms of this Agreement.

#### 11.8 Notices.

All notices, requests, statements or payments ("Notices") shall be made as specified on Appendix B attached hereto and incorporated herein by reference. Notices (other than with respect to scheduling) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Notices relating to Facility operations and Scheduling, as required pursuant to Appendix H, may be given electronically and shall be deemed effective upon receipt; otherwise, electronic notices shall not be effective unless affirmatively acknowledged in writing (including by reply e-mail) by the receiving Party. A Party may change its addresses by providing Notice of same in accordance herewith.

#### 11.9 Purchase Option.

- (a) Transfer During the Delivery Period. In the event that Seller desires to sell the Facility during the Delivery Period, Seller shall provide prior written Notice of the same to GPA, and agrees to engage in discussions with GPA during an exclusivity period with GPA if GPA desires to purchase the Facility. Within ninety (90) days following Seller's Notice to GPA of its intent to sell the Facility, GPA may deliver to Seller an indicative purchase price at which it would be willing to purchase the Facility. If GPA does not deliver the indicative purchase price within ninety (90) days, then Seller shall be free to transfer the Facility under any terms and conditions at any time thereafter. If GPA delivers the indicative purchase price within ninety (90) days, then the Parties shall negotiate exclusively for a period of up to sixty (60) days after GPA delivers the indicative purchase price. If no binding agreement is entered into by the Parties during such sixty (60)-day period then Seller shall be free to transfer the Facility to any person on materially comparable terms, including price, better than GPA's indicative offer, and neither Party shall have any further liability or obligation to the other Party in connection with such sale or as a result of the terminated negotiations. If Seller does not transfer the Facility on such basis within one (1) year following the end of the sixty (60)-day exclusive negotiation period, then the procedure in this paragraph shall apply to any subsequent sale of the Facility during the Term of this Agreement.



- (b) Transfer or Extension of Delivery Period. GPA, by Notice delivered to Seller at least one hundred and eighty (180) days prior to the end of the Delivery Period, may either (i) extend the Term of this Agreement on a year-to-year basis, in which case the Contract Price during the extension of the Term shall be eighty percent (80%) of the LEAC Rate in effect from time to time during such extension (whereupon either Party may thereafter terminate this Agreement on one hundred and eighty (180) days Notice prior to the end of any extension year), or (ii) purchase the Facility from Seller at eighty percent (80%) of the Appraisal Price, within thirty (30) days of the determination of the Appraisal Price. If GPA fails to send such Notice then this Agreement shall terminate in accordance with the terms hereof.

11.10 Alternative Dispute Resolution.

All disputes arising under this Agreement are subject to the provisions of this Section 11.10.

- (a) Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under a Claim relating to the terms of this Agreement, or the breach thereof, shall be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this Agreement to arbitrate and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the Notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10) calendar days after written Notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The chairperson shall be bound to schedule and hear the dispute in its entirety within three (3) Months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitration proceeding shall be conducted in Honolulu, Hawaii, or another neutral location mutually

agreed to by the Parties; provided, however, either Party may provide all witnesses, deponents and other ancillary personnel by video telecast or other electronic media, it being the intent of the Parties to minimize expenses of conducting the arbitration. It is further agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed Confidential Information.

- (b) Judicial Relief. Either Party may petition a court of appropriate jurisdiction, as described in Section 11.12, for non-monetary relief relating to any claim of breach of this Agreement in order to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 11.10.

11.11 Governing Law.

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

11.12 Jurisdiction and Costs.

Subject to the mandatory arbitration provisions herein, with respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the Parties hereby consent to the exclusive jurisdiction of the federal courts sitting in Guam. Both Parties waive any right to trial by jury in such action. In the event such judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its costs and reasonable attorneys' fees incurred in connection with such proceedings.

11.13 Financial Accounting Standards.

Under the latest interpretations of the Financial Accounting Standards Board's Interpretation No. 46(R) (FIN No. 46(R)), "Consolidation of Variable Interest Entities," GPA may be required to consolidate a Seller's entity for which GPA has entered into a long-term power purchase agreement. Seller agrees to provide all information needed in order for GPA to



determine whether or not the special purpose entity which owns the Seller's generating facility must be consolidated by GPA under FIN No. 46(R). If it is determined that GPA needs to consolidate such special purpose entity, Seller agrees to provide all information needed to comply with the consolidation requirements of FIN 46(R) in a timely manner every calendar quarter. If GPA is required to consolidate the special purpose entity that owns the Seller's generating facility in its financial statements, Seller agrees to provide access to any needed records and personnel, as requested, so GPA's independent auditor, Deloitte & Touche LLP, can conduct financial statement audits in accordance with generally accepted auditing standards, as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002.

11.14 Forward Contract.

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

11.15 General.

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

11.16 Entire Agreement; Amendment.

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

11.17 Appendices.

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



<u>Appendix A</u>	Contract Price and Minimum Production
<u>Appendix B</u>	Notice Addresses
<u>Appendix C</u>	[Not Used]
<u>Appendix D</u>	Independent Engineers
<u>Appendix E</u>	Permits
<u>Appendix F</u>	Form of Letter of Credit
<u>Appendix G</u>	[Not Used]
<u>Appendix H</u>	Scheduling and Coordination
<u>Appendix I</u>	Base Conditions and Facility Test Protocol
<u>Appendix J</u>	Interconnection Agreement
<u>Appendix K</u>	Calculation of Weather Hours Deration

#### 11.18 Special Provisions.

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

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

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand,

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

Seller warrants that no person providing services on behalf of Seller or in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of Seller relative to this Agreement. If any person employed by Seller and providing services under this Agreement is convicted subsequent to the date of this Agreement, then Seller warrants that it will notify GPA of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services under this Agreement. If Seller is found to be in violation of any of the provisions of this paragraph, then GPA shall give Notice to Seller to take corrective action. Seller shall take corrective action within twenty-four hours of Notice from GPA, and Seller shall notify GPA when action has been taken. If Seller fails to take corrective steps within twenty-four hours of Notice from GPA, then GPA in its sole discretion may suspend this Agreement temporarily.

#### 11.19 Waiver of Immunity.

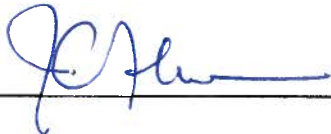
To the extent that GPA may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to GPA or its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

*[Signature page follows]*



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

**GUAM POWER AUTHORITY  
GPA or Buyer**

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

Name: Joaquin C. Flores, P.E.

Title: General Manager

Date: June 27, 2012

**QUANTUM GUAM POWER, LLC or  
Seller**

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

Name: Dirk Straussfeld

Title: Authorized Person

Date: June 27, 2012

*[Signature Page to Renewable Energy Purchase Agreement]*



## **APPENDIX A**

### **CONTRACT PRICE AND MINIMUM PRODUCTION**

Contract Year	Contract Price (\$/MWh)	Estimated Annual Renewable Energy Amount (MWh) - Minimum Production	90% of Minimum Production (MWh)
1	\$196.00	40,502	36,452
2	\$197.00	40,301	36,271
3	\$198.00	40,192	36,173
4	\$199.00	39,899	35,909
5	\$199.90	39,698	35,728
6	\$200.90	39,500	35,550
7	\$201.90	39,394	35,455
8	\$203.00	39,107	35,196
9	\$204.00	38,909	35,018
10	\$205.00	38,717	34,845
11	\$206.00	38,611	34,750
12	\$207.00	38,330	34,497
13	\$208.10	38,138	34,324
14	\$209.10	37,947	34,152
15	\$210.20	37,846	34,061
16	\$211.20	37,568	33,811
17	\$212.30	37,383	33,645
18	\$213.30	37,195	33,476
19	\$214.40	37,094	33,385
20	\$215.50	36,823	33,141
21	\$216.60	36,638	32,974
22	\$217.60	36,455	32,810
23	\$218.70	36,357	32,721
24	\$219.80	36,092	32,483
25	\$220.90	35,911	32,320



## **APPENDIX B**

### **NOTICE ADDRESSES**

(a) All notices of an operational nature:

	If to Seller:	If to GPA:
Company Name:	Quantum Guam Power, LLC	Guam Power Authority
Attn:	Dirk Straussfeld	Joaquin C. Flores, General Manager  cc: Melinda R. Camacho, Asst. General Manager – Optns
Address:	1401 McKinney Street, Suite 1800	P.O. Box 2977
City, State, Zip:	Houston, Texas 77010	Hagatna, Guam 96932-2977
Fax:	(713) 485-8651	(671) 648-3290
24 Hour Phone:	713-560-9638	Office Hrs: (671) 648-3225/3001  Other Hrs: 475-1472 /3 /4 (Power System Control Center)
E-mail:	dstraussfeld@quantumug.com	<a href="mailto:jflores@gpagwa.com">jflores@gpagwa.com</a> cc: <a href="mailto:mcamacho@gpagwa.com">mcamacho@gpagwa.com</a>

(b) Notices of an administrative nature:

	If to Seller:	If to GPA:
Company Name:	Quantum Guam Power, LLC	Guam Power Authority
Attn:	Tim Sullivan	Joaquin C. Flores, General Manager  cc: Melinda R. Camacho, Asst. General Manager – Optns
Address:	1401 McKinney Street, Suite 1800	P.O. Box 2977



City, State, Zip:	Houston, Texas 77010	Hagatna, Guam 96932-2977
Fax:	(713) 485-8631	(671) 648-3290
Phone:	(713) 485 8630	(671) 648-3225/3001
E-mail:	tsullivan@quantumug.com	<a href="mailto:jflores@gpagwa.com">jflores@gpagwa.com</a> cc: <a href="mailto:mcamacho@gpagwa.com">mcamacho@gpagwa.com</a>

(c) Notices for statement and billing purposes:

	If to Seller:	If to GPA:
Company Name:	Quantum Guam Power, LLC	Guam Power Authority – Accounts Payable
Attn:	Chris Sanders	<b>Rodrigo Bumagat, Accounts Payable Supervisor</b>  cc: Lenora M. Sanz, Controller
Address:	1401 McKinney Street, Suite 1800	P.O. Box 2977
City, State, Zip:	Houston, Texas 77010	Hagatna, Guam 96932-2977
Fax:	(713) 485-8660	(671) 648-3168
Phone:	(713) 485 8661	(671) 648-3125
E-mail:	csanders@quantumug.com	<a href="mailto:rabumagat@guampowerauthority.com">rabumagat@guampowerauthority.com</a>  cc: <a href="mailto:lmsanz@guampowerauthority.com">lmsanz@guampowerauthority.com</a>

(d) Information concerning Electronic Funds Transfers:

	If to Seller:	If to GPA:
Company Name:	Quantum Guam Power, LLC	Guam Power Authority – Accounts Payable
Attn:	Sean O'Donnell	<b>Rodrigo Bumagat, Accounts Payable Supervisor</b>

		cc: Lenora M. Sanz, Controller
Address:	1401 McKinney Street, Suite 1800	P.O. Box 2977
City, State, Zip:	Houston, Texas 77010	Hagatna, Guam 96932-2977
Fax:	(713) 485-8620	(671) 648-3168
Phone:	(713) 485 8621	(671) 648-3125
E-mail:	sodonnell@quantumug.com	<a href="mailto:rabumagat@guampowerauthority.com">rabumagat@guampowerauthority.com</a>
		cc: lmsanz@guampowerauthority.com

With a copy of all notices, including notices of any defaults, sent to:

Lance Schuler  
Quantum Utility Generation, LLC  
General Counsel  
1401 McKinney Street, Suite 1800  
Houston, Texas 77010  
Fax: (713) 485-8641  
Phone: (713) 485-8640  
lschuler@quantumug.com

With copy of all legal related notices sent to:

Graham Botha  
Guam Power Authority  
Legal Counsel  
P.O. Box 2977  
Hagatna, Guam 96932-2977  
Fax: (671) 648-3290  
Phone: (671) 648-3203  
gbotha@guampowerauthority.com

**APPENDIX C**

**NOT USED**



## **APPENDIX D**

### **INDEPENDENT ENGINEER**

URS Corp., San Francisco, Calif.
Black and Veatch, Kansas City, Kan.
E3 Consulting, Denver, Colo.
Perkins+Will, Chicago, Ill.
SAIC, San Diego, Calif.
Tetra Tech Inc., Pasadena, Calif.
CH2M HILL, Englewood, Colo.
HDR, Omaha, Neb.
NBBJ, Seattle, Wash.
HKS Inc., Dallas, Texas
Jacobs, Pasadena, Calif.



## **APPENDIX E**

### **PERMITS**

<b>Re-Zoning from "A" Agricultural to conditional use to construct a Utility or Solar Farm</b>	Guam Land Use Commission
<b>Wetlands Survey and Assessment.</b>	<p>Coordination with various agencies</p> <p>National Wetland Inventory Maps required. Consultation with US Corp. of Engineers required, other consultation (EPA/State) required, Wetland Delineation required</p>
<b>Cultural Resources Survey, and Endangered Species Assessment</b>	<p>Consultation with US Fish &amp; Wildlife</p> <p>Consultation with U.S. National Resource Conservation Service</p> <p>State Historic Preservation Office</p>
<b>Federal Consistency Review</b>	Guam Coastal Management Program (Bureau of Planning)
<b>Finding Regarding Environmental Impact Assessment</b>	Guam Environmental Protection Agency (GEPA)
<b>Approval of Environmental Protection Plan/Erosion Control Plan</b>	GEPA
<b>CWA § 401 Water Quality Certification</b>	<p>GEPA</p> <p>401 water quality certification (WQC) issuance identifies construction or operation of a proposed project or facility would be conducted in a manner consistent with the Guam Water Quality Standards. All CWA Section 404 permits for work in marine waters, rivers, streams and wetlands require 401 WQC.</p>



Permit	Issuing Agency
<b>National Pollutant Discharge Elimination System</b>	US Environmental Protection Agency (US EPA)  Seek coverage under US EPA construction General Permit (CGP) for stormwater discharge from large and small construction activities. Requirements include filing a Notice of Intent, a Notice of Termination and a Construction Stormwater Pollution Prevention Plan
<b>Flood Proofing/Flood Hazard</b>	Guam Department of Public Works
<b>Stormwater Control Plan</b>	GEPA
<b>Elevation Certificate</b>	Government of Guam
<b>Elevation Certificate, FEMA National Flood Insurance Program</b>	Professional Land Surveyor
<b>Clearing and Grading Permit</b>	Guam Department of Public Works
<b>Permit to Construct</b>	GEPA
<b>Building Permit</b>	Guam Department of Public Works
<b>Certificate of Occupancy</b>	Guam Office of Building Permits and Inspections
<b>Spill Prevention Control and Countermeasures Plan</b>	US EPA with Guam EPA concurrence
<b>Storm Water Pollution Prevention Plan</b>	US EPA with Guam EPA concurrence

## **APPENDIX F**

### **FORM OF LETTER OF CREDIT**

Citibank, N.A.

\_\_\_\_\_, 2012

Irrevocable Standby Letter of Credit No. \_\_\_\_\_

**Beneficiary:**

Guam Power Authority

P.O. Box 2977

Guam 96932-2977

Attn: Randall V. Wiegand, Chief Financial Officer

TBD

**Applicant:**

Quantum Energy Partners V, LP

1401 McKinney Street, Suite 2700,

Houston, TX 77010

Dear Sir:

We hereby establish for the account of Quantum Energy Partners V, LP ("Applicant") our irrevocable standby letter of credit in your favor for an amount of USD 4,000,000 (Four Million United States Dollars). Applicant has advised us that this letter of credit is issued in connection with the Renewable Energy Purchase Agreement, dated as of \_\_\_\_\_, 2012, by and between Quantum Guam Power, LLC, an affiliate of the Applicant, and the Beneficiary (the "PPA"). This letter of credit shall become effective immediately on the date hereof and shall expire on \_\_\_\_\_ [the date that is 910 days after the Effective Date of the PPA ] (such date, or such later date(s) as determined by Applicant in accordance with the next succeeding sentence, the "Expiration Date"). The Expiration Date can be extended on one or more occasions by written notice to us from the Applicant, provided that such written notice is received at least 10 days prior to the Expiration Date. This letter of credit is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation, and (b) the original of the letter of credit (the "Accompanying Documents") and presented at our office located at Citibank N.A., c/o its servicer Citicorp North America, Inc., 3800 Citibank Center, Building B, 3<sup>rd</sup> Floor, Tampa, FL 33610 attention U.S. Standby Dept. (or at any other office which may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a "Business Day"). If we receive your draft and the Accompanying Documents at such office on any Business Day, all in strict conformity with the terms and conditions of this letter of credit, we will honor the same by making payment in accordance with your payment instructions on the third succeeding Business Day after presentation.



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

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

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

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

Very truly yours,

\_\_\_\_\_

Authorized signature  
Citibank, N.A.



**ANNEX 1**  
**TO LETTER OF CREDIT NO. \_\_\_\_\_**

Draft under Letter of Credit No. \_\_\_\_\_

To:  
Citibank N.A.  
c/o it servicer Citicorp North America, Inc.  
3800 Citibank Center  
Building B, 3<sup>rd</sup> Floor  
Tampa, FL 33610  
Attn: U.S. Standby Dept.

[ Month , Day , Year ]

On Sight

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

Wire to:  
Bank's Name: Bank of Guam  
Bank's Location: 111 Chalan santo Papa St., Hagatna, Guam 96910  
Bank's Mailing Address: P.O. Box BW, Hagatna, Guam 96932  
Account Name :Guam Power Authority Revenue Fund Account  
Acct. No. 0601-026246  
Routing No. 121405115

For value received and charge to account of Letter of Credit No. \_\_\_\_\_ of Quantum Energy Partners V,  
LP

**GUAM POWER AUTHORITY**

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

Name: \_\_\_\_\_

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





**ANNEX 2**  
**TO LETTER OF CREDIT NO. \_\_\_\_\_**

Drawing under Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

To:  
Citibank N.A.  
c/o it servicer Citicorp North America, Inc.  
3800 Citibank Center  
Building B, 3<sup>rd</sup> Floor  
Tampa, FL 33610  
Attn: U.S. Standby Dept.

The undersigned, a duly authorized officer of the Guam Power Authority, ("Beneficiary"), hereby certifies on behalf of Beneficiary to Citibank, N.A. and to Quantum Guam Power, LLC (the "Applicant's Subsidiary") with reference to irrevocable standby Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued for the account of Quantum Energy Partners V, LP ("Applicant"), that:

- 1) pursuant to the Renewable Energy Purchase Agreement, dated as of \_\_\_\_\_, 2012, by and between Applicant's Subsidiary and Beneficiary and as of the date hereof Beneficiary is entitled to draw under the Letter of Credit;
- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$\_\_\_\_\_, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft; and
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the remaining amount to which Beneficiary is entitled to draft under said Renewable Energy Purchase Agreement.

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

Date: \_\_\_\_\_

**GUAM POWER AUTHORITY**

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



**ANNEX 3**  
**TO LETTER OF CREDIT NO. \_\_\_\_\_**

Notice of surrender of Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

To:  
Citibank N.A.  
c/o it servicer Citicorp North America, Inc.  
3800 Citibank Center  
Building B, 3<sup>rd</sup> Floor  
Tampa, FL 33610  
Attn: U.S. Standby Dept.

Re: Letter of Credit No. \_\_\_\_\_ issued for the account of Quantum Energy  
Partners V, LP

Ladies and Gentlemen:

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

Very truly yours,

GUAM POWER AUTHORITY

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

Name: \_\_\_\_\_

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



**APPENDIX G**

**NOT USED**

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several loops and a final downward stroke.

## **APPENDIX H**

### **SCHEDULING AND COORDINATION PROCEDURES**

The Parties acknowledge that as of the Effective Date GPA has not yet established protocols for scheduling solar intermittent power to permit photovoltaic solar projects to participate in GPA's scheduling process. As soon as practicable, in consultation with Seller (and after taking into account and accommodating Seller's reasonable comments), GPA shall establish such protocols. As soon as practicable after such protocols have been established, become effective and been provided to Seller, but not more than ninety (90) days thereafter, Seller shall use commercially reasonable efforts to cause the Project to become certified as an available resource, including negotiating and executing documents to become an available resource in Guam. Following certification and whenever applicable, Seller shall use commercially reasonable efforts to comply with all additional reasonable protocols issued by GPA relating to available resources during the Delivery Period, and GPA shall consult with Seller (and take into account and accommodate Seller's reasonable comments) in connection with the preparation of any such additional protocols.

#### **1.1 General**

- (a) **Notices.** Seller shall submit to GPA notices and updates required under this Agreement regarding the Project's status, including, but not limited to, outage requests, forced outages and forced outage reports. If a web based system is not available, Seller shall promptly submit such information to GPA (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.
- (b) **GPA Settlements.** GPA shall be responsible for all settlement functions within GPA related to the Project.
- (c) **Resource Data Template.** Seller shall provide the data to the GPA that is required for GPA's resource data template (or successor data system) for the Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.
- (d) **Annual Delivery Schedules.** No later than forty-five (45) days before (A) the first day of the first Contract Year and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Actual Renewable Energy for the following calendar year.
- (e) **Monthly Delivery Schedules.** Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average expected Actual Renewable Energy for the following month ("Monthly Delivery Forecast").

- (f) Daily Delivery Schedules. By 5:30 AM Guam Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide GPA with a non-binding forecast of the Project's available energy (a "Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's estimate of the Project's available energy. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by GPA, in which case Seller shall promptly provide GPA with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to GPA's on-duty scheduling coordinator. If Seller fails to provide GPA with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only GPA shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or GPA's best estimate based on information reasonably available to GPA and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or GPA's best estimate.
- (g) Hourly Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason, including Forced Outages (other than a scheduling change imposed by GPA), that results in a change to its deliveries (whether in part or in whole), Seller shall notify GPA immediately by calling GPA's on-duty scheduling coordinator. Seller shall notify GPA of Forced Outages in accordance with this Agreement. Seller shall keep GPA reasonably informed of any developments that are reasonably expected to affect either the duration of the outage or the availability of the Project during or after the end of the outage.

## 1.2 Dispatch Down/Curtailment.

- (a) GPA shall have the right to order Seller to curtail deliveries of Renewable Energy from the Project to the Delivery Point pursuant to a Notice of a Dispatch Down (as defined in Appendix K) delivered to Seller, provided that the value attributable to any Renewable Energy in an aggregated quantity of more than 2% of the Minimum Production for any Contract Year which is not delivered during such curtailment periods, whether for transmission unavailability, operational dispatch or pre-set ramping parameters or otherwise, shall be reimbursed to Seller as provided below.
- (b) Seller shall have the right in its discretion to make up any curtailed quantities of Renewable Energy as a result of a Dispatch Down ("Dispatch Down Makeup Production"), for which it is not reimbursed pursuant to this Appendix H, in the first and any subsequent Contract Year in which at least the Minimum Production is delivered and to extend the Term to the extent necessary, but not to exceed six (6) months, to make up any



curtailed quantities. The Contract Price for the Contract Year in which the make-up occurs shall apply to Dispatch Down Makeup Production up to the Minimum Production amount for the Contract Year in which the Dispatch Down originally occurred. For production quantities in excess of the Minimum Production for the Contract Year in which the Dispatch Down originally occurred, the price will be the lesser of the then current LEAC Rate or the Contract Price in the Contract Year in which the make-up occurs. Production in excess of Minimum Production for any Contract Year will first be applied to any previous years' Deficiency Amounts, then to Dispatch Down Makeup Production, then treated under this Agreement as production in excess of Minimum Production.

- (c) GPA shall provide to Seller all technical information necessary to justify and support each Dispatch Down.
- (d) GPA shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such curtailment in excess of 2% of Minimum Production for such Contract Year occurred, an amount equal to the product of the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to GPA but for such curtailment ("Lost Revenue"). During the Contract Year-end annual true-up process, any payments made by GPA to the Seller for production (MWh) in excess of the Minimum Production for that Contract Year, whether such production results from actual generation surpluses or Lost Revenue, will be adjusted to reflect the lesser of the Contract Price for the then current Contract Year or then current LEAC Rate. For purposes of clarification, for any given Contract Year, GPA will not be required to pay the Contract Price on amounts of production beyond the Minimum Production if the Contract Price for that Contract Year is higher than the LEAC Rate for that Contract Year. Seller agrees to reduce the Project's Renewable Energy as set forth in such a Notice of Dispatch Down that meets the requirements set forth herein.
- (e) For purposes of clarification, no curtailment by GPA, as a result of a warranted failure of or defect in the interconnection facilities transferred by Seller to GPA pursuant to the Interconnection Agreement, during the one-year warranty term thereof, shall count against the 2% curtailment threshold set forth above. During the one-year warranty term of the interconnection facilities transferred, any curtailment by GPA which results from such failure of or defect in the interconnection facilities transferred will not be eligible for reimbursement by GPA to Seller, Lost Revenue payments, or Dispatch Down Makeup Production in future Contract Years.

### 1.3 Outage Notification.

- (a) Planned Outages. Seller shall schedule Planned Outages in accordance with Good Utility Practices and with the prior written consent of GPA,





which consent may not be unreasonably withheld, conditioned or delayed. Nonetheless, the Parties acknowledge that in all circumstances, Good Utility Practices shall dictate when Planned Outages should occur. Seller shall notify GPA of Seller's proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1<sup>st</sup> of each year during the Delivery Period. The Planned Outage schedule is subject to GPA's concurrence, which concurrence may not be unreasonably withheld, conditioned or delayed. GPA shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its commercially reasonable efforts in accordance with Good Utility Practices to accommodate GPA's requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed form of outage notification to GPA no later than fourteen (14) days prior to each Planned Outage and reasonably appropriate outage information or requests to GPA. Seller shall contact GPA with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without GPA's concurrence, not to be unreasonably withheld, conditioned or delayed.

- (b) Forced Outages. Within two hours of any Forced Outage Seller shall submit a completed form of outage notification to GPA in accordance with the instructions shown on the agreed form and shall submit outage information to GPA. Seller shall not substitute Renewable Energy from any other source for the output of the Project during a Forced Outage.
- (c) Coordination with GPA. GPA shall cooperate with Seller in arranging and coordinating all Project outages.

#### 1.4 Operations Logs and Access Rights.

- (a) Operations Logs. Seller shall maintain a log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, and control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to GPA within five days of GPA's request.
- (b) Access Rights. GPA, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance notice and for any purposes reasonably connected with this Agreement.



## **APPENDIX I**

### **BASE CONDITIONS AND FACILITY TEST PROTOCOL**

#### **1. Definitions – for purposes of this Appendix I only**

- (a) “Actual kWh” means the actual electricity produced during the applicable Facility Test.
- (b) “Facility Test Difference” means the amount of kWh determined in accordance with Section 2 of this Appendix I.
- (c) “Calculated kWh” means the amount of kWh as calculated using PVSYST energy simulation software (or other software as agreed by the Parties) using actual Weather Data, and with all other model inputs the same as that used by the Independent Engineer in calculating its energy forecast based on the Facility design, which energy forecast shall be confirmed and adjusted as necessary at the time of Facility commissioning.
- (d) Weather Data shall have the meaning given in Appendix K..
- (e) “Design Capacity” means the potential generation for each hour during the Facility Test based on the Facility design.
- (f) “kWh” means electric energy expressed in kilowatt-hours and measured by multiplying the amount of electric power delivered (measured in kilowatts) by the amount of time over which the electricity was consumed (measured in hours). One kilowatt-hour equals one thousand watt-hours.

#### **2. Facility Test**

A Facility Test shall last no longer than one day. If at the end of the Facility Test, the Hourly Difference (as defined below) during such operations hour is less than 90% of the Calculated kWh, the Facility shall be deemed derated.

If the Hourly Difference during the Facility Test is a positive number, then the Facility shall be deemed to be operated in accordance to its Design Capacity.

Calculation of Hourly Difference. Subject to the provisions of this Section 2, Seller shall determine the Hourly Difference, the facility generation, and the results of the Calculated kWh using PVSyst within thirty (30) days after the end of the Facility Test using the following calculation:

$$\text{Hourly Difference} = \text{Actual kWh} - \text{Calculated kWh} \times (1 - D_a)^{(CY-1)} \times 90\%$$



Where  $D_a$  is the annual degradation rate assumption for the System of 0.75%, and CY is the Contract Year: year 1 = 1, year 2 = 2, etc.).

- (i) The process for obtaining Actual kWh and data for determining Calculated kWh for each Facility Test shall be as follows:
  - (1) Initial Data Collection. During the Facility Test, Seller shall collect Actual kWh and actual Weather Data. PVSYST (or other software as agreed by the Parties) will be run for each hour using actual Weather Data to arrive at Calculated kWh.
  - (2) Testing and Replacement. The measurement equipment shall be tested to verify its accuracy, and if necessary replaced or corrected, every twelve months or otherwise as the Parties may agree, both as to timing and as to methodology. Seller shall notify Buyer of the scheduled testing date and time, and shall provide Buyer written proof of testing upon the written request of Buyer.
  - (3) Contingency for Equipment Failure. In the event of hardware, communication, or other failure Seller shall use commercially reasonable efforts to resolve the issue in a timely manner. In the event that data is lost, the following procedure shall be used to account for such data when determining the Actual kWh:
    - (a) With respect to lost meteorological data, Seller shall substitute meteorological data from a nearby meteorological station that the Parties select for such purpose.
    - (b) With respect to lost electrical data, Seller shall read the cumulative electrical data directly from the local utility's electrical meter and calculate the electricity generated during any missing interval. In the event that it is not practical to read the GPA electrical meter due to a meter failure or other issue, Seller shall reasonably estimate the electrical production during the missing interval by using actual meteorological data.
- (ii) At any time during the Facility Test, Buyer may have an independent, qualified third party, at Buyer's own cost, verify data collection, calibration, metering, and energy calculations. Seller shall share all data with such third party.

### **3. Certain Seller Responsibilities**

Throughout the Facility Test, Seller shall not make any alterations or repairs to any material equipment comprising all or a portion of the Facility, except those made by the panel or inverter manufacturers pursuant to the product warranties for such equipment or in accordance with the applicable equipment manufacturer's specifications. Notwithstanding the previous sentence,



Seller may retain a qualified third party to clean the pyranometers to ensure accurate readings of insolation.

#### **4. Exclusions**

The Facility Test shall be redone if any of the following occur during the Facility Test:

- (i) Failure of the Facility to perform caused by legislative, administrative, or executive regulation, order or requisition of the government, local utility or public utilities commission, or any state, provincial or municipal government or official;
- (ii) Use of the Facility beyond the scope contemplated in its operating manuals or technical specifications;
- (iii) Force Majeure events or GPA Delays; or
- (iv) Disconnection from the utility grid not caused by Seller or its subcontractors.



**APPENDIX J**

**SGIA**

*[separately executed and delivered on the Effective Date]*

A handwritten signature in blue ink, appearing to be 'JAB' with a checkmark, located in the bottom right corner of the page.

**Execution Copy**

**SMALL GENERATOR  
INTERCONNECTION AGREEMENT**

**BETWEEN**

**GUAM POWER AUTHORITY**

**AND**

**QUANTUM GUAM POWER, LLC**



## TABLE OF CONTENTS

Page No.

<b>Article 1. Scope and Limitations of Agreement.</b>	<b>- 4 -</b>
1.1 Purpose.....	- 4 -
1.2 No Agreement to Purchase or Deliver Power.....	- 4 -
1.3 Limitations.....	- 4 -
1.4 Responsibilities of the Parties.....	- 4 -
1.5 Parallel Operation Obligations.....	- 6 -
1.7 Reactive Power .....	- 6 -
<b>Article 2. Inspection, Testing, Authorization, and Right of Access.....</b>	<b>- 6 -</b>
2.1 Equipment Testing and Inspection.....	- 6 -
2.2 Authorization Required Prior to Parallel Operation. ....	- 7 -
2.3 Right of Access.....	- 7 -
<b>Article 3. Effective Date, Term, Termination, and Disconnection .....</b>	<b>- 8 -</b>
3.1 Effective Date .....	- 8 -
3.2 Term of Agreement.....	- 8 -
3.3 Termination.....	- 8 -
3.4 Temporary Disconnection.....	- 9 -
3.4.1 Emergency Conditions.....	- 9 -
3.4.2 Routine Maintenance, Construction, and Repair .....	- 9 -
3.4.3 Forced Outages .....	- 10 -
3.4.4 Adverse Operating Effects.....	- 10 -
3.4.5 Modification of the Small Generating Facility .....	- 10 -
3.4.6 Reconnection.....	- 10 -
<b>Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades - 10</b>	<b>- 10 -</b>
4.1 Interconnection Facilities.....	- 10 -
<b>Article 5. Cost Responsibility for Network Upgrades .....</b>	<b>- 11 -</b>
5.1 Applicability .....	- 11 -
5.2 Network Upgrades .....	- 11 -
5.3 Rights Under Other Agreements.....	- 11 -
<b>Article 6. Billing, Payment, Milestones, and Financial Security .....</b>	<b>- 11 -</b>
6.1 Billing and Payment Procedures and Final Accounting.....	- 11 -
6.2 Milestones.....	- 12 -
<b>Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default.....</b>	<b>- 12 -</b>
7.1 Assignment .....	- 12 -
<b>Small Generator Interconnection Agreement (SGIA)</b>	<b>- 1 -</b>

7.2	Limitation of Liability.....	- 13 -
7.3	Indemnity .....	- 13 -
7.4	Consequential Damages.....	- 14 -
7.5	Force Majeure. ....	- 14 -
7.6	Default.....	- 15 -
<b>Article 8. Not Used .....</b>		<b>- 15 -</b>
<b>Article 9. Confidentiality .....</b>		<b>- 15 -</b>
<b>Article 10. Disputes .....</b>		<b>- 16 -</b>
<b>Article 11. Taxes.....</b>		<b>- 16 -</b>
<b>Article 12. Miscellaneous.....</b>		<b>- 17 -</b>
12.1	Governing Law, Regulatory Authority, and Rules .....	- 17 -
12.2	Amendment.....	- 17 -
12.3	No Third-Party Beneficiaries.....	- 17 -
12.4	Waiver.....	- 17 -
12.5	Entire Agreement .....	- 17 -
12.6	Multiple Counterparts. ....	- 17 -
12.7	No Partnership .....	- 18 -
12.8	Severability .....	- 18 -
12.9	Security Arrangements.....	- 18 -
12.10	Environmental Releases.....	- 18 -
12.11	Subcontractors.....	- 18 -
12.12	Waiver of Sovereign Immunity .....	- 19 -
<b>Article 13. Notices .....</b>		<b>- 19 -</b>
13.1	General.....	- 19 -
13.2	Billing and Payment.....	- 20 -
13.3	Alternative Forms of Notice .....	- 20 -
13.4	Designated Operating Representative.....	- 21 -
13.5	Changes to the Notice Information.....	- 22 -
<b>Article 14. Signatures.....</b>		<b>- 22 -</b>

[Attachment 1](#) – Glossary of Terms

[Attachment 2](#) – Description and Costs of the Small Generating Facility, Interconnection Facilities, and Metering Equipment

[Attachment 3](#) – One-line Diagram Depicting the Small Generating Facility, Interconnection Facilities, Metering Equipment, and Network Upgrades

[Attachment 4](#) – Milestones

[Attachment 5](#) – Additional Operating Requirements for the Transmission System Needed to Support the Interconnection Customer’s Needs

[Attachment 6](#) – Transmission Provider's Description of its Network Upgrades and Best Estimate of Network Upgrade Costs

[Attachment 7](#) - Bill of Sale

## **SMALL GENERATOR INTERCONNECTION AGREEMENT**

This Small Generator Interconnection Agreement ("Agreement") is made and entered into this 27th day of June, 2012 (the "Effective Date"), by Guam Power Authority ("GPA" or "Transmission Provider"), and Quantum Guam Power, LLC ("Quantum" or "Interconnection Customer") each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

### **Transmission Provider Information**

Transmission Provider: Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Address: P.O. Box 2977,  
Hagatna, Guam 96932  
Physical Address: 1911, Route 16  
Harmon, Guam 96911  
Phone: (671) 648-3225 / 3001 Fax: (671) 648-3290

### **Interconnection Customer Information**

Interconnection Customer: Quantum Guam Power, LLC  
Attention: Dirk Straussfeld  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8650 Fax: 713-485-8651

Interconnection Customer Application No: 01-2012

In consideration of the mutual covenants set forth herein, the Parties agree as follows:



## Article 1. Scope and Limitations of Agreement

- 1.1 This Agreement governs the terms and conditions under which the Interconnection Customer's Small Generating Facility will interconnect with, and operate in parallel with, the Transmission System.
- 1.2 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power. The purchase or delivery of power and other services that the Interconnection Customer may require will be covered under a separate agreement. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity to GPA in accordance with GPA's standard procedures, as provided by GPA to Interconnection Customer no later than ninety (90) days prior to commencement of testing of the Small Generating Facility.
- 1.3 Nothing in this Agreement is intended to affect any other agreement between the Parties.
- 1.4 Responsibilities of the Parties
  - 1.4.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.
  - 1.4.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Small Generating Facility and construct or cause to be constructed the Interconnection Facilities in accordance with this Agreement, Good Utility Practice and the requirements of Section 1.4.4 below.
    - 1.4.2.1 The cost of constructing, interconnecting, operating and maintaining the Small Generating Facility shall be borne entirely by Interconnection Customer.
    - 1.4.2.2 The cost of developing, designing, procuring, constructing and installing the Interconnection Facilities shall be borne by Interconnection Customer.
    - 1.4.2.3 In the event that the Additional Customer connects its facilities to the Interconnection Facilities, then (i) Interconnection Customer shall provide, at the Point of Interconnection, space in the switchyard and access to the bus for the benefit of the Additional Customer, and (ii) GPA shall cause the Additional Customer to (A) connect to the Interconnection Facilities at the Point of Interconnection and in the manner depicted in Attachment 3 and (B) reimburse Interconnection Customer for 43% of its verified costs of constructing the Interconnection Facilities, plus a capital recovery charge of 15% per annum.



- 1.4.2.4 On or before the Commercial Operation Date (as defined in the Power Purchase Agreement), the Interconnection Customer shall transfer the Interconnection Facilities to GPA by execution and delivery of the Bill of Sale attached hereto as Attachment 7.
- 1.4.3 GPA shall operate and maintain the Transmission System, the Interconnection Facilities and the Network Upgrades in accordance with this Agreement and Good Utility Practice.
  - 1.4.3.1 The Parties agree that no Network Upgrades will be required solely as a result of Interconnection Customer installing the Small Generating Facility and the Interconnection Facilities.
  - 1.4.3.2 In the event the Additional Customer connects its facilities to the Interconnection Facilities, then certain Network Upgrades may be required. GPA shall construct, or cause to be constructed, and shall operate and maintain, such Network Upgrades in accordance with this Agreement and Good Utility Practice.
  - 1.4.3.3 Interconnection Customer shall bear 57% of the direct, verified costs of construction of such Network Upgrades which are defined/detailed in Section 1.4.4 below and in Attachment 6. GPA shall procure that the Additional Customer shall be liable for the remaining 43% of such Network Upgrades, plus a capital recovery charge of 15% per annum.
  - 1.4.3.4 Except as set forth in this Section 1.4.3, Interconnection Customer shall bear no cost or liability with respect to any Network Upgrades.
- 1.4.4 The Interconnection Customer agrees to construct the Interconnection Facilities in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design and install its Small Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of GPA.
- 1.4.5 Interconnection Customer shall be responsible for the safe installation of the Interconnection Facilities. Following transfer by Interconnection Customer in accordance with Section 1.4.2.4, GPA shall be responsible for the safe operation, maintenance, repair, inspection and condition of the Interconnection Facilities and the Transmission System, including Network Upgrades. Interconnection Customer shall design and construct Interconnection Facilities that adequately protect GPA's Transmission System, personnel, and other persons from damage and injury.



1.4.6 GPA shall provide without cost to Interconnection Customer the reasonable use of labor, personnel and equipment necessary for Interconnection Customer's installation of the Small Generating Facility and the Interconnection Facilities, so long as GPA does not incur material out of pocket cost or constraint of resources as a result thereof. The foregoing includes, by way of example, (i) providing access to GPA technical information and engineering personnel as needed for questions and answers, (ii) utilizing GPA equipment and trucks as needed for GPA support, (iii) receiving and loading wire reels at the Port of Guam and bringing the same to the Small Generating Facility lay-down area, (iv) providing electricians and equipment for wire installation, splicing, terminations and testing, and (v) providing flag men for traffic control during wire installation, splicing and testing.

1.5 Parallel Operation Obligations

Once the Small Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Small Generating Facility in the Guam control area, including, but not limited to: 1) the rules and procedures concerning the operation of generation set forth by the Transmission Provider for the Transmission System and 2) the Operating Requirements set forth in Attachment 5 of this Agreement.

1.6 Metering

The Parties' responsibilities with respect to purchase, installation, operation, maintenance, testing, repair and replacement of metering and data acquisition equipment are specified in Section 7.4 of the Power Purchase Agreement.

1.7 Reactive Power

The Interconnection Customer shall design its Small Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at all power factors over the range of 0.95 leading to 0.95 lagging, unless GPA has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The Generating Facility shall be capable of continuous dynamic operation throughout the power factor design range as measured at the Point of Interconnection.

1.8 Definitions

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of this Agreement.

## **Article 2. Inspection, Testing, Authorization, and Right of Access**

2.1 Equipment Testing and Inspection

2.1.1 The Interconnection Customer shall test and inspect its Small Generating Facility  
Small Generator Interconnection Agreement (SGIA)



and the Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify GPA of such activities no fewer than five Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. The notification shall be made by submitting a test plan prior to the first scheduled testing date. The test plan shall include all relevant testing details including but not limited to the date and time of each test, and expected MW and MVAR output of the Small Generating Facility. Testing and inspection shall occur on a Business Day. GPA may, at its own expense, send qualified personnel to the Small Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide GPA a written test report when such testing and inspection is completed.

- 2.1.2 GPA shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by GPA of the safety, durability, suitability, or reliability of the Small Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Small Generating Facility.

## 2.2 Authorization Required Prior to Parallel Operation

- 2.2.1 GPA has listed applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, GPA shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. GPA shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.
- 2.2.2 The Interconnection Customer shall not operate its Small Generating Facility in parallel with the Transmission System without the one-time prior written authorization of GPA. GPA will provide such authorization once GPA receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements set forth in Attachment 5. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

## 2.3 Right of Access

- 2.3.1 Upon reasonable notice, GPA may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Small Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Small Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit.



- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, GPA shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.
- 2.3.3 Each Party shall be responsible for its own costs associated with following this article.

### **Article 3. Effective Date, Term, Termination, and Disconnection**

3.1 Effective Date

This Agreement shall become effective on the Effective Date.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of twenty-five (25) years from the Commercial Operation Date (as defined in the Power Purchase Agreement), or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 3.3 of this Agreement. In no event, however, shall GPA be entitled to terminate this Agreement unless and until the Power Purchase Agreement is terminated.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving GPA twenty (20) Business Days written notice.

3.3.2 Transmission Provider may terminate this Agreement if the Small Generating Facility has ceased commercial operation for three (3) consecutive years, beginning with the last date of commercial operation for the Small Generating Facility, after giving the Interconnection Customer twenty (20) Business Days advance written notice. The Small Generating Facility will not be deemed to have ceased Commercial Operation for purposes of this Article 3.3.2 if the Interconnection Customer can document that it has taken other significant steps to maintain or restore operational readiness of the Small Generating Facility for the purpose of returning the Small Generating Facility to commercial operation as soon as possible.

3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.



- 3.3.4 Upon termination of this Agreement, the Small Generating Facility will be disconnected from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.
- 3.3.5 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.
- 3.3.6 This provisions of this Article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

- 3.4.1 Emergency Conditions -- "Emergency Condition" shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of GPA, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Transmission System or the Interconnection Facilities; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Small Generating Facility, or with respect to the Interconnection Facilities until transferred to GPA pursuant to this Agreement. Under Emergency Conditions, GPA may immediately suspend interconnection service and temporarily disconnect the Small Generating Facility. GPA shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Small Generating Facility. The Interconnection Customer shall notify GPA promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Transmission System. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

GPA may interrupt interconnection service or curtail the output of the Small Generating Facility and temporarily disconnect the Small Generating Facility from the Transmission System when necessary for routine maintenance, construction, and repairs on the Transmission System. GPA shall provide the Interconnection Customer with five Business Days notice prior to such interruption. GPA shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

**3.4.3 Forced Outages**

During any forced outage, GPA may suspend interconnection service to effect immediate repairs on the Transmission System. GPA shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, GPA shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

**3.4.4 Adverse Operating Effects**

GPA shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Small Generating Facility may cause damage to the Transmission System. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, GPA may disconnect the Small Generating Facility. GPA shall provide the Interconnection Customer with five (5) Business Day notice of such disconnection, unless the provisions of Article 3.4.1 apply.

**3.4.5 Modification of the Small Generating Facility**

The Interconnection Customer must receive written authorization from GPA before making any change to the Small Generating Facility that may have a material impact on the safety or reliability of the Transmission System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without GPA's prior written authorization, the latter shall have the right to temporarily disconnect the Small Generating Facility.

**3.4.6 Reconnection**

The Parties shall cooperate with each other to restore the Small Generating Facility, Interconnection Facilities, and the Transmission System to their normal operating state as soon as reasonably practicable following a temporary disconnection.

**Article 4. Cost Responsibility for Interconnection Facilities**

**4.1 Interconnection Facilities**

The Interconnection Customer shall install and pay for the cost of the Interconnection Facilities itemized in Attachment 6 of this Agreement, and as further set forth in Section 1.4.

**4.2 System Stability Upgrades**

It is agreed that no system transmission stability upgrades shall be required as a result of



the installation of the Small Generating Facility or as a result of the Additional Customer connecting to the Interconnection Facilities.

## **Article 5. Network Upgrades and System Stability Upgrades**

### **5.1 Applicability**

No portion of this Article 5 shall apply unless the interconnection of the Additional Customer to the Point of Interconnection requires Network Upgrades.

### **5.2 Network Upgrades**

GPA shall own and operate the Network Upgrades described in Attachment 6 of this Agreement, which will be installed as and to the extent required as a result of the Additional Customer connecting to the Interconnection Facilities. All actual costs of such required Network Upgrades, including overheads, shall be borne by the Interconnection Customer and the Additional Customer as set forth in Section 1.4, but only to the extent and in the proportion set forth in the Power Purchase Agreement, it being agreed that no such upgrades will be required solely as a result of the installation of the Small Generating Facility. In no event, however, shall Interconnection Customer be required to bear more than \$5,925,696 in the aggregate for all such Network Upgrades, and GPA shall be responsible for any further upgrade costs. Interconnection Customer at its option may design, procure, construct (or cause to be constructed) and install (or cause to be installed) the Network Upgrades, in which case it shall transfer such Network Upgrades to GPA by instrument substantially in the form of Attachment 7.

### **5.3 Rights Under Other Agreements**

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Interconnection Customer shall be entitled to, now or in the future, under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements for transmission service that is not associated with the Small Generating Facility.

## **Article 6. Billing, Payment, Milestones, and Financial Security**

### **6.1 Billing and Payment Procedures and Final Accounting**

6.1.1 GPA shall bill the Interconnection Customer for the design, engineering, construction, and procurement costs of Network Upgrades contemplated by this Agreement on a monthly basis, or as otherwise agreed by the Parties. The Interconnection Customer shall pay each bill within thirty (30) calendar days of receipt, or as otherwise agreed to by the Parties.





6.1.2 Within three months of completing the construction and installation of GPA's Network Upgrades described in the Attachments to this Agreement, GPA shall provide the Interconnection Customer with a final accounting report of any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Network Upgrades, and (2) the Interconnection Customer's previous aggregate payments to GPA for such facilities or Network Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, GPA shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to GPA within 30 calendar days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, GPA shall refund to the Interconnection Customer an amount equal to the difference within 30 calendar days of the final accounting report.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Attachment 4 of this Agreement. A Party's obligations under this provision may be extended by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) requesting appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless it will (1) suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

**Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default**

7.1 Assignment

This Agreement may be assigned by either Party upon fifteen (15) Business Days prior written notice and opportunity to object by the other Party; provided that:

7.1.1 Either Party may assign this Agreement without the consent of the other Party to (i) any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement, provided that the assigning Party promptly notifies the other Party of any such assignment or (ii) to any person or entity succeeding to all or substantially all of the assets of such Party, and whose creditworthiness is equal to or higher than that of such Party;





7.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of GPA, for collateral security purposes to aid in providing financing for the Small Generating Facility, provided that the Interconnection Customer will promptly notify GPA of any such assignment.

7.1.3 Any attempted assignment that violates this Article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the Interconnection Customer. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

## 7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as authorized by this Agreement.

## 7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified person is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying party is obligated to indemnify and hold any indemnified person harmless under this article, the amount owing to the indemnified person



shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

- 7.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified person shall notify the indemnifying party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, or cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

- 7.5.1 As used in this article, a Force Majeure Event shall mean an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Affected Party, and which, by the exercise of due diligence, the Affected Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a Force Majeure Event shall include, without limitation, any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.

- 7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party



informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

## **7.6 Default**

- 7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party may give written notice of such Default to the defaulting Party. Except as provided in Article 7.6.2, the defaulting Party shall have sixty (60) calendar days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within sixty (60) calendar days, the defaulting Party shall commence such cure within twenty (20) calendar days after notice and continuously and diligently complete such cure within six months from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.
- 7.6.2 If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

## **Article 8. [Not Used]**

## **Article 9. Confidentiality**

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or

release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to any permitted disclosee of confidential information pursuant to the Power Purchase Agreement, to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.

9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.

9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

9.3 Notwithstanding anything in this Article to the contrary, if during the course of an investigation by a Governmental Authority or otherwise, a Governmental Authority requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party receiving the request, if required under Applicable Laws and Regulations, shall provide the requested information to the Governmental Authority conducting the investigation, within the time provided for in the request for information. In providing the information, the Party may request that the information be treated as confidential and non-public by the Governmental Authority and that the information be withheld from public disclosure. The Party shall notify the other Party to this Agreement when it is notified by a Governmental Authority that a request to release Confidential Information has been received, at which time either of the Parties may respond before such information would be made public. .

## **Article 10. Disputes**

10.1 The Parties agree to resolve all disputes arising out of this Agreement according to the provisions of the Power Purchase Agreement.

## **Article 11. Taxes**

11.1 The Parties agree to follow all applicable Guam tax laws and regulations.

11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

## **Article 12. Miscellaneous**

### **12.1 Governing Law, Regulatory Authority, and Rules**

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Territory of Guam (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

### **12.2 Amendment**

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

### **12.3 No Third-Party Beneficiaries**

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

### **12.4 Waiver**

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by the Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from GPA. Any waiver of this Agreement shall, if requested, be provided in writing.

### **12.5 Entire Agreement**

This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for or any condition to, either Party's compliance with its obligations under this Agreement.

### **12.6 Multiple Counterparts**

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. Both Parties are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Small Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four (24) hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.1 The creation of any subcontract relationship shall not relieve the



hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall a Party be liable for the actions or inactions of the other Party or its subcontractors with respect to obligations of the first Party under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.2 The obligations under this Article will not be limited in any way by any limitation of subcontractor's insurance.

12.12 Waiver of Sovereign Immunity

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

**Article 13. Notices**

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national carrier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Interconnection Customer:

Interconnection Customer: Quantum Guam Power, LLC  
Attention: Dirk Straussfeld  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8650 Fax: 713-485-8651

If to the Transmission Provider:

Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Mailing Address: P.O. Box 2977,  
Hagatna, Guam 96932  
Physical Address: 1911, Route 16

Harmon, Guam 96911  
Phone: (671) 648-3225 / 3001 Fax: (671) 648-3290

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below:

Interconnection Customer:

Interconnection Customer: Quantum Guam Power, LLC  
Attention: Chris Sanders  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8660 Fax: 713-485-8661

Transmission Provider:

Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Mailing Address: P.O. Box 2977,  
Hagatna, Guam 96932  
Physical Address: 1911, Route 16  
Harmon, Guam 96911

cc: Randall V. Wiegand, Chief Financial Officer  
GPA Finance Division  
rwiegand@gagwa.com

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer: Quantum Guam Power, LLC  
Attention: Dirk Straussfeld  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8650 Fax: 713-485-8651

If to the Transmission Provider:

Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Mailing Address: P.O. Box 2977,

Physical Address: Hagatna, Guam 96932  
1911, Route 16  
Harmon, Guam 96911

cc: Melinda R. Camacho, P.E. -- Asst. General Manager, Operations  
[mcamacho@gpagwa.com](mailto:mcamacho@gpagwa.com)

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: Quantum Guam Power, LLC  
Attention: Dirk Straussfeld  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8650 Fax: 713-485-8651

Transmission Provider's Operating Representative:

Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Mailing Address: P.O. Box 2977,  
Hagatna, Guam 96932  
Physical Address: 1911, Route 16  
Harmon, Guam 96911  
Email Address: [jflores@gpagwa.com](mailto:jflores@gpagwa.com)

cc: Melinda R. Camacho, P.E. -- Asst. General Manager, Operations  
[mcamacho@gpagwa.com](mailto:mcamacho@gpagwa.com)

With a copy of all notices, including notices of any defaults, sent to legal counsel of the applicable Party, as follows:

Lance Schuler  
Quantum Utility Generation, LLC  
General Counsel  
1401 McKinney Street, Suite 1800  
Houston, Texas 77010  
Fax: (713) 485-8641  
Phone: (713) 485-8640  
[lschuler@quantumug.com](mailto:lschuler@quantumug.com)

Graham Botha  
Guam Power Authority  
Legal Counsel  
P.O. Box 2977  
Hagatna, Guam 96932-2977  
Fax: (671) 648-3290  
Phone: (671) 648-3203  
gbotha@guampowerauthority.com

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

**Article 14. Signatures**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Transmission Provider

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



Name: Joaquin C. Flores, P.E.

Title: General Manager

Date: June 27, 2012

For the Interconnection Customer

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



Name: Dirk Struassfeld

Title: Authorized Person

Date: June 27, 2012

Small Generator Interconnection Agreement (SGIA)



## Glossary of Terms

**Additional Customer** -- Pacific Green Resources , with respect to the planned 14.39 MW wind/solar power generating facilities to be constructed near the Small Generating Facility site and connected to the Interconnection Facilities at the Point of Interconnection.

**Applicable Laws and Regulations** – All duly promulgated applicable federal, state, territorial and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

**Business Day** – Monday through Friday, excluding Federal Holidays.

**Default** – The failure of a breaching Party to cure its breach under this Agreement, within the time periods provided in Section 7.6 hereof.

**Effective Date** -- The date first set forth in the preamble hereto.

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

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

**Interconnection Customer** – Any entity, including the Transmission Provider, the Transmission Customer or any of the affiliates or subsidiaries of either, that proposes to interconnect its Small Generating Facility with the Transmission System.

**Interconnection Facilities** – The Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Talofoto Substation, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to such facilities. The Interconnection Facilities are described in more detail in Attachment 2 and Attachment 3 hereto.

**Network Upgrades** – Additions, modifications, and upgrades to the Transmission System beyond the Talofoto Substation required for system stability at or beyond GPA's Talofoto

Substation to accommodate the interconnection, at the Point of Interconnection, of the Additional Customer's facility with the Interconnection Facilities. Network Upgrades do not include the Interconnection Facilities.

**Operating Requirements** – Any operating and technical requirements that may be applicable and are set forth in the Power Purchase Agreement or in this Small Generator Interconnection Agreement, including Attachment 5 hereto.

**Party or Parties** – The Transmission Provider, Interconnection Customer or any combination of the above.

**Point of Interconnection** – The point at the Small Generating Facility site (Dan Dan) where the Small Generating Facility connects with the Interconnection Facilities, and where the Additional Customer's facility interconnects with the Interconnection Facilities, as shown in Attachment 3.

**Reasonable Efforts** – With respect to an action required to be attempted or taken by a Party under the Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Small Generating Facility** – The Interconnection Customer's device for the production of electricity, but shall not include the Interconnection Facilities.

**Power Purchase Agreement** -- The Renewable Energy Purchase Agreement for the sale by Interconnection Customer and the purchase by GPA of renewable solar energy from the Small Generating Facility, dated on or about the Effective Date

**Tariff** – The Transmission Provider's tariff through which open access transmission service and interconnection services are offered and as amended or supplemented from time to time, or any successor tariff.

**Transmission Provider** – As defined in the preamble hereto.

**Transmission System** – The facilities owned, controlled or operated by the Transmission Provider that connect to the Interconnection Facilities and are used to provide transmission service under the Tariff.



**Description of the Small Generating Facility,  
Interconnection Facilities, and Metering Equipment**

Equipment, including the Small Generating Facility, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by the Interconnection Customer or by GPA.

The metering switchboard proposed for the Dandan Substation, which would be directly adjacent to the Small Generating Facility and on Interconnection Customer's property, would be a unit that is rated for 34,500 volts and up to 1200 amps of power. The unit would provide protective-type circuit breakers for a currently planned 20MW solar system with provisions for an expansion of the first 20MW to 40MW of installation. This unit would provide feeder-type protection for the power conductors from the solar generators and protection for the new feeder to the GPA Talofoto Substation with a circuit breaker and a visible blade disconnect safety switch for the safety of the GPA personnel. This portion of the switchgear would be a minimum of 7 units including revenue metering and one spare fully bussed unit for future installation of a circuit breaker and cable for the expansion of an additional 20MW.

In addition, there will be provisions (in the switchgear) for a future program of the Additional Customer that will provide 15MW of additional power generation. This section of the switchgear would consist of fully bussed empty cabinets that would be designed to accommodate a future separate circuit breaker for protection of the incoming feeders, separate revenue metering, separate open blade disconnect, and a separate main circuit breaker, and Interconnection Customer will provide 1-6" conduit (empty) and a stub 5' outside the foot print of the equipment pad.

The general location of the Small Generating Facility and the DanDan Substation are noted on the attached picture.

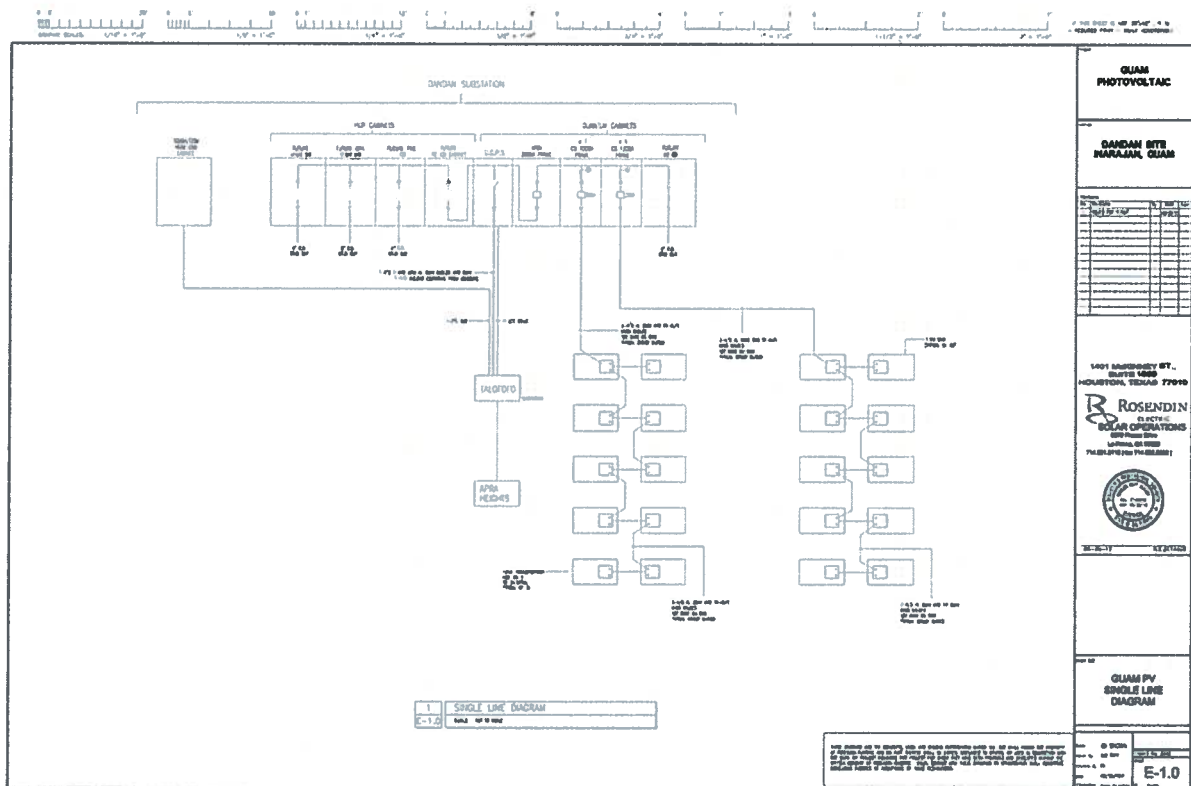


## Addendum to Attachment 2 -- Project Site Picture



*[Handwritten signature]*

# **One-line Diagram Depicting the Small Generating Facility, Interconnection Facilities, Metering Equipment, Network Upgrades and Additional Customer Tie-In Location and Requirements**



*[Handwritten signature]*

## Milestones

In-Service Date: \_\_\_\_\_

Critical milestones and responsibility as agreed to by the Parties:

	<b>Milestone/Date</b>	<b>Responsible Party</b>
(1)	Preliminary design for Interconnection Facilities (October 31, 2012)	Interconnection Customer
(2)	GPA approval of design (December 31, 2012)	GPA
(3)	GPA to have all permits in hand for Interconnection Customer construction to start on public roads (supported by Interconnection Customer engineering) (December 31, 2012)	GPA
(4)	_____	_____
(5)	_____	_____
(6)	_____	_____
(7)	_____	_____
(8)	_____	_____
(9)	_____	_____
(10)	_____	_____

Agreed to by:

For the GPA (If Applicable) \_\_\_\_\_ Date \_\_\_\_\_

For the Interconnection Customer \_\_\_\_\_ Date \_\_\_\_\_

**Additional Operating Requirements for the Transmission Provider's  
Transmission System Needed to Support  
the Interconnection Customer's Needs**

The following requirements must be met by the Interconnection Customer prior to initiating parallel operation with the Transmission Provider's Transmission System:

[\_\_\_\_\_]

*[To be agreed within 150 days of signing.]*

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## **Transmission Provider's Description of its Network Upgrades and Network Upgrade Costs**

GPA shall describe Network Upgrades and Network Upgrade costs, including overhead. Since GPA and Interconnection Customer have agreed that Interconnection Customer would construct the Interconnection Facilities, Interconnection Customer is responsible for the construction cost of the facilities estimated to include:

- a) Modifications to the Talofoto Substation up to \$925,243,
- b) Construction of a 34.5 radial connection between the Talofoto substation and the to be built DanDan substation located on the site of IR01 of approximately \$7.6MM, and
- c) Construction of the DanDan substation \$661,301.

In the event the Additional Customer also proceeds with its project, additional Network Upgrades will be required on the GPA system. Below is an estimated summary of Network Upgrades required to accommodate both interconnection requests at this location. As identified in the Study (as defined in the Power Purchase Agreement) but subject to Section 5.2 of this Agreement, the Interconnection Customer (IR01) will be responsible for 57% of the total upgrade cost required for both projects and the Additional Customer (IR02) for 43%.

- a) Modifications to the Talofoto Substation: \$1,850,485;
- b) Construction of a 34.5 radial connection between the Talofoto substation and the to be built DanDan substation located on the site of Interconnection Customer IR01: \$7,600,0900;
- c) Construction of the DanDan substation: \$661,301;
- d) Reconductor approximately 7.1 miles from Talofoto to APRA Heights 34.5: \$5.925,696; and
- e) Install 3 # 600 MCM ALU CSL-TS-HDPE-JKT 133% 35KV conductor in existing spare conduit installed under item (b): \$1,300,000.

Description of certain items to be constructed by Interconnection Customer:

The new 34.5 kV underground transmission line from the to be built Dandan substation, which would be located directly adjacent to the Small Generating Facility and on Interconnection Customer's property, to the GPA Talofoto substation, will consist of:

- (1) 6" PVC Carlon (or equal) Bore-Gard conduit containing 3 # 600 MCM ALU XLP-TS-HDPE-JKT 133% 35KV cables. This cable will come on a 72" reel that weighs approximately 10,000 LBS each;





(1) 6" PVC Carlon (or equal) Bore-Gard spare conduit for future program of the Additional Customer;

(1) 1 1/4" empty conduit for the fiber optic cable;

(1) 4/0 bare copper ground wire installed outside of the conduits;

(40+/-) 8'HX8'WX8'D concrete vaults (either precast or cast in place) installed in approximately 1,200' intervals including a ground rod in each vault (35KV cables to be spliced at each vault); and

(40+/-) 2'HX3'WX2'D concrete (precast) handholds for splicing fiber optic conduit or cables.

In addition Interconnection Customer, in coordination with and approved by GPA, subject approval not to be unreasonably withheld, delayed or conditioned, will construct modifications to the Talofoto substation as outlined in the Study (as defined in the Power Purchase Agreement) sufficient for the Small Generating Facility (as IR 01 in the Study).



## Bill of Sale

THIS BILL OF SALE (this "Bill of Sale") is made and entered into by Quantum Guam Power, LLC., a Guam limited liability company ("Seller"), and Guam Power Authority ("Buyer"), and together with Seller, the "Parties"), effective as of [\_\_\_\_], 20\_\_.

### RECITALS

WHEREAS, Seller in connection with the development, construction and ownership of a solar power generating station and related assets located in the Territory of Guam (the "Project") has designed, developed and constructed, and owns, certain transmission, switching and related assets described more fully on Exhibit "A" hereto, together with all ancillary rights and interests (including all manufacturers' and contractors' warranties) relating thereto and further described on Exhibit "A" hereto (the "Assets"); and

WHEREAS, Seller and Buyer entered into (i) a Renewable Energy Purchase Agreement dated as of [\_\_\_\_], 2012, pursuant to which Seller and Buyer have agreed to sell and purchase renewable energy generated by the Project (the "Purchase Agreement") and (ii) a Small Generator Interconnection Agreement dated as of [\_\_\_\_], 2012, pursuant to which Seller and Buyer have agreed to the installation and interconnection of the Project with Buyer's transmission system (the "SGIA"); and

WHEREAS, as contemplated by the SGIA, and in connection with the operation of the Project by Seller and the purchase and sale of renewable energy pursuant to the Purchase Agreement, Seller desires to transfer and Buyer desires to receive the Assets.

### NOW, THEREFORE, BE IT KNOWN THAT:

1. Conveyance and Assignment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby **GRANT, BARGAIN, ASSIGN, TRANSFER, SET OVER, DELIVER AND CONVEY** to Buyer all of Seller's right, title and interest in and to the Assets, **TO HAVE AND TO HOLD** the Assets by Buyer and its successors and permitted assigns, forever.

2. NO WARRANTY. **THE ASSETS ARE HEREBY CONVEYED AS IS, WHERE IS, AND SELLER HEREBY GIVES NO WARRANTY OF DESIGN, MATERIALS, WORKMANSHIP OR PERFORMANCE OF THE ASSETS, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** However, Seller covenants and agrees that the manufacturers' and contractors' warranties transferred hereby as part of the Assets shall extend for a period of at least one (1) year from the acceptance of the Assets by Seller.

3. Further Assurances. Seller for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Buyer, Seller will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required in order to assign, transfer, set over, convey, assure and confirm unto and vest in Buyer, its successors and assigns, title to the assets sold, conveyed and transferred by this Bill of Sale.

4. Counterparts. This Bill of Sale may be executed in counterparts.

5. Governing Law. This Bill of Sale shall be governed by and construed in and interpreted in accordance with the laws of the Territory of Guam.

*[Signature page follows.]*

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IN WITNESS WHEREOF, the Parties have executed this Bill of Sale as of the date above first written.

**Seller:**

**QUANTUM GUAM POWER, LLC**

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

Name: \_\_\_\_\_

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

**Buyer:**

**GUAM POWER AUTHORITY**

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

Name: \_\_\_\_\_

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

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**ACKNOWLEDGEMENTS**

GUAM, U.S.A.            )  
                              ) SS:  
MUNICIPALITY OF       )  
\_\_\_\_\_ )

ON THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for Guam, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Guam Power Authority, an autonomous instrumentality of the government of the Territory of Guam, whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said corporation, in such capacity, being fully authorized to do so, and for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_

GUAM, U.S.A.            )  
                              ) SS:  
MUNICIPALITY OF       )  
\_\_\_\_\_ )

ON THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for Guam, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Quantum Guam LLC, a Guam limited liability company, whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said corporation, in such capacity, being fully authorized to do so, and for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_



**Exhibit “A”**

***Description of Assets***

*[Description of Interconnection Facilities; see § 1.4.2.4 of SGIA]*

*[Description of Network Upgrades; see § 5.2 of SGIA]*

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## **APPENDIX K**

### **Calculation of Weather Hours Deration**

#### **Monitoring of Weather Data**

Seller shall maintain at least one monitoring system at the Facility, designed to gather and record weather data for the following parameters on a 15-minute average basis at the Facility site (for purposes of the Facility Test) and on an hourly basis each day (for reporting purposes as required in this Appendix K): solar irradiation (measured in the plane of the array – in W/m<sup>2</sup>), wind speed (in m/s), and ambient temperatures (in degrees Celsius) (collectively, “Weather Data”); such monitoring system shall include a pyranometer and an anemometer. Any such monitoring system shall be subject to approval by GPA, such approval not to be unreasonably withheld, conditioned or delayed. For each Availability Measurement Period and Production Measurement Period, Seller shall produce, and provide to GPA, a report that sets forth a compilation of the results of such Weather Data actually occurring during such period (broken down into calendar months or portions thereof) and is in a form reasonably acceptable to GPA. In addition, Seller may utilize PVSyst energy simulation software (or other software as agreed to by the Parties) configured to simulate the installed Facility to predict the theoretically generated Renewable Energy for the Facility; if such theoretically generated Renewable Energy is equal to or less than the amount that is 102% of the Actual Renewable Energy during the time frame subject to the simulation, Seller shall be deemed to have been operating the Facility within Good Utility Practices; provided, however that such theoretically generated Renewable Energy being greater than 102% of the Actual Renewable Energy shall not by itself indicate a failure by Seller to operate the Facility within Good Utility Practices. Each such report shall be provided promptly after each such applicable period and in any event within 45 days after the end of such period.

#### **Comparison of Actual Weather Results to Historical Averages**

Each such report shall also include a comparison of actual results of the Weather Data against the historical average of the Weather Data and the expected related adverse impact, if any, on the hypothetical generation of the Facility, utilizing PVSyst (or agreed replacement), based on such actual results when compared to such historical averages. For purposes of this Agreement, the Parties agree that (i) Schedule I attached to this Appendix K contains the requisite historical averages of the Weather Data by month (the “Historical Averages”), so that the appropriate months within the applicable Availability Measurement Period and Production Measurement Period could be assessed, and (ii) Schedule II attached to this Appendix K sets forth a reasonable PVSyst model for the simulation of the Facility. Schedule I with historical monthly weather averages is provided for illustrative purposes only. The actual Weather Data shall be the basis for any calculation related to any annual energy shortfalls under this Agreement.

#### **Calculation of Lost Revenues due to GPA Dispatch Down**

Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which any curtailment is initiated by GPA for reasons other than Force Majeure or Seller Event of Default (“Dispatch Down” which includes curtailment due to pre-programming of inverters as part of GPA’s required operational procedures), an amount equal to the Contract Price times the

amount of Renewable Energy that Seller could reasonably have delivered to Buyer but for such Dispatch Down, pursuant to the limitations provided in Appendix H, Section 1.2, which allow GPA to curtail energy delivered from Seller up to 2% of the Minimum Production for any Contract Year. The determination of the lost revenue associated with any Dispatch Down shall be calculated as follows:

1) Identification of weather conditions for derate hours

For each hour the Facility was Dispatched Down, Seller shall document the Weather Data associated therewith.

2) Identification of comparable Weather Data and Facility generation in historic operations logs

- a. Seller shall identify individual hours of operation in Seller's operations log for the Facility that match to the highest degree practicable the Weather Data during each individual Dispatch Down hour, based on a priority of solar irradiation, then ambient temperature and then wind speed.
- b. Seller shall identify the total Facility output in MWh for each selected comparable hour, accounting for the differences between historical production and the results of the most recent "Annual Facility Test" (as described in Section 4.9 of this Agreement), and subtract the actual delivered MWh during the relevant Dispatch Down (derate MWh).
- c. If no reasonably comparable Weather Data can be identified, Seller shall use PVSyst to generate hypothetical generation amounts for the Dispatch Down hours.

3) Calculation of lost revenue

- a. Seller shall generate a table that adds up all derate MWh during Dispatch Down hours. The total amount of derate MWh shall be added to the monthly and annual generation. The revenues corresponding to the derate MWh shall be calculated in accordance with the Contract Price in effect during such Dispatch Down. During the Contract-Year-end annual true-up process, if there is a Deficiency Amount by Seller in meeting the annual Guaranteed Output (90% of Minimum Production), the Dispatch Down MWh during such Contract Year will be credited to the Guaranteed Output Deficiency Amount, the Contract Price for the then current Contract Year will be applied, and any Shortfall Damages will be reduced accordingly. If Seller has met its annual Guaranteed Output (90% of Minimum Production), and there is a rolling production shortfall from previous year(s) or from the current year related to meeting the annual Minimum Production, any remaining Dispatch Down MWh will then be credited to this rolling deficiency using associated payment calculations as illustrated in Appendix K. If no production shortfalls remain, any remaining Dispatch Down MWh will be paid at

the lesser of the then current Contract Year's LEAC Rate or the then current Contract Year's Contract Price.

- 4) If Seller has informed GPA in Seller's day ahead schedule of a Forced Outage or availability derate, the amount of derate MWh shall be reduced by the scheduled Facility derating.

#### Calculation of Weather Hours

The provisions of this Agreement are based on the assumption that the Weather Data for each month of the year will be the same as the historical averages for Weather Data as set forth in Schedule I attached to this Appendix K. The Parties acknowledge and agree that actual adverse Weather Data, when compared to the applicable year of historical averages of the Weather Data, impact certain provisions of this Agreement.

The Parties further acknowledge and agree that variations between actual Weather Data, measured at the Facility, and the respective annual or monthly averages of such Weather Data set forth in Schedule I attached to this Appendix K would have an expected theoretical impact on the generation of electricity at the Facility. For example, based on the Weather Data in Schedule I and the PVSyst model in Schedule II, the Facility is expected to produce 40,502 MWh of electricity during the first Contract Year. Seller shall determine the extent, if any, that actual Weather Data as reported by Seller as contemplated above would adversely affect such Facility generation when compared to a hypothetical generation using the historical averages during the applicable period, in each case utilizing PVSyst energy simulation software or other software as agreed by the Parties, in each case consistently applied. For each applicable period, Seller shall calculate (1) the expected production of the Facility using the historical Weather Data in Schedule I (the "Expected Historical Production") and (2) the expected production of the Facility using the actual Weather Data (the "Expected Actual Production"). Seller then obtain the quotient, rounded to the fourth decimal place (the "Production Factor"), equal to the Expected Actual Production divided by the Expected Historical Production. If the Production Factor is greater than one (1), then no Weather Hours shall be deemed to have occurred. However, if the Production Factor is less than one (1), then Weather Hours shall be deemed to have occurred. The portion of any Deficiency Amount (as defined in the Agreement) attributable to such Weather Hours shall be the difference equal to (A) the aggregate Minimum Production amount for that period minus (B) the product of (x) the Production Factor and (y) the aggregate Minimum Production amount for that period.

#### Sample Calculations Regarding Shortfall Damages

Schedule III attached to this Appendix K sets forth sample calculations in determining shortfall damages relating to Weather Hours.

# Exhibit K -- Schedule I

PVSYST V5.56	01/05/12 08h23
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## Definition of a geographical site

Geographical Site

Inarajan

Country USA

File Inarajan.SIT of 30/04/12 16h25

Situation

Time defined as

Latitude 13.3°N

Legal Time Time zone UT+10

Longitude 144.7°E

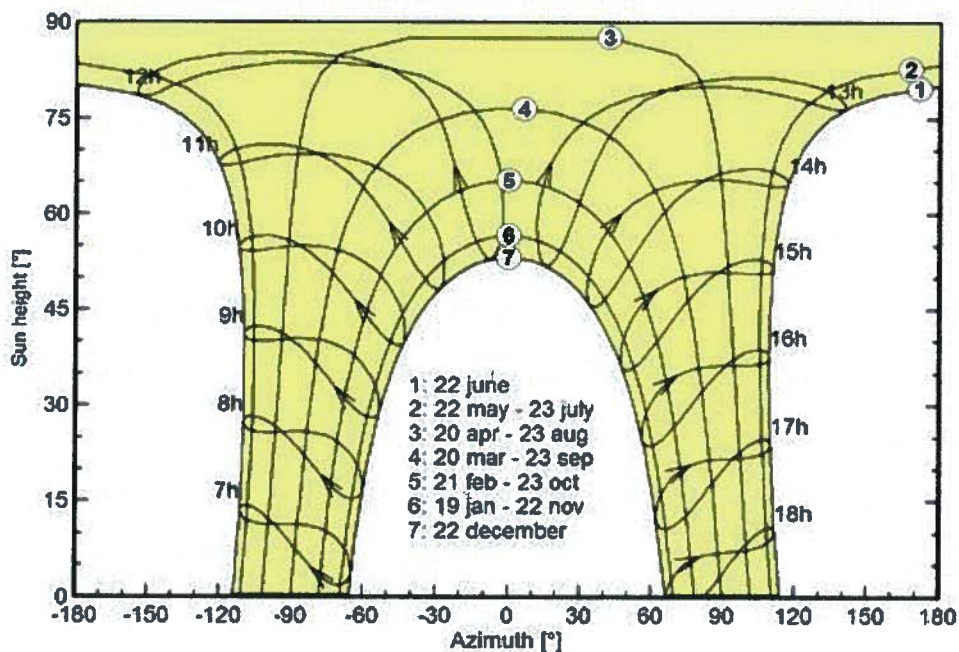
Altitude 30 m

Monthly Meteo Values

Source NREL TMY2 hourly database (1961-1990 samples)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Year	
Hor. global	147.5	151.2	193.7	202.1	208.6	196.3	186.0	172.2	161.9	160.5	145.8	144.8	2070.4	kWh/m².mth
Hor. diffuse	55.2	52.5	59.9	59.6	66.2	60.4	68.8	70.2	61.8	59.5	50.5	53.6	718.3	kWh/m².mth
Extraterrestrial	262.6	261.1	313.0	317.0	329.2	316.0	326.5	326.4	307.3	296.5	260.6	253.6	3569.6	kWh/m².mth
Clearness Index	0.562	0.579	0.619	0.637	0.634	0.621	0.570	0.528	0.527	0.541	0.559	0.571	0.580	
Amb. temper.	26.4	26.2	26.7	26.7	27.4	27.5	27.5	27.7	27.2	27.1	26.8	26.8	27.0	°C
Wind velocity	5.6	5.5	5.6	4.3	5.1	4.0	3.9	4.0	3.4	4.3	4.5	5.3	4.8	m/s

## Solar paths at Inarajan, (Lat. 13.3°N, long. 144.7°E, alt. 30 m)



*[Handwritten signature]*

## Exhibit K -- Schedule II

PVSYST V5.55	Rosendin Electric	27/03/12	Page 1/4
5572 Fresca Dr. - 90623-La Palma - USA			
<b>Grid-Connected System: Simulation parameters</b>			
<b>Project :</b>	Guam WRDC		
<b>Geographical Site</b>	Guam	<b>Country</b>	Guamls.
<b>Situation</b>	Latitude 13.6°N	<b>Longitude</b>	144.8°E
<b>Time defined as</b>	Legal Time Time zone UT+10	<b>Altitude</b>	75 m
	Albedo 0.20		
<b>Meteo data :</b>	Guam, Synthetic Hourly data		
<b>Simulation variant :</b>	New simulation variant		
	Simulation date 27/03/12 14h43		
<b>Simulation parameters</b>			
<b>Tracking plane, tilted Axis</b>	Axis Tilt 0°	<b>Axis Azimuth</b>	0°
<b>Rotation Limitations</b>	Minimum Phi -60°	<b>Maximum Phi</b>	60°
<b>Backtracking strategy</b>	Tracker Spacing 7.00 m	<b>Collector width</b>	3.00 m
<b>Inactive band</b>	Left 0.00 m	<b>Right</b>	0.00 m
<b>Horizon</b>	Free Horizon		
<b>Near Shadings</b>	No Shadings		
<b>PV Array Characteristics</b>			
<b>PV module</b>	SI-poly	<b>Model</b>	CS6P - 245P
	<b>Manufacturer</b>	Canadian Solar Inc.	
<b>Number of PV modules</b>	<b>In series</b>	28 modules	<b>In parallel</b> 3697 strings
<b>Total number of PV modules</b>	<b>Nb. modules</b>	103516	<b>Unit Nom. Power</b> 245 Wp
<b>Array global power</b>	<b>Nominal (STC)</b>	25381 kWp	<b>At operating cond.</b> 22575 kWp (50°C)
<b>Array operating characteristics (50°C)</b>	<b>U mpp</b>	+/-374 V	<b>I mpp</b> 30219 A
<b>Total area</b>	<b>Module area</b>	186507 m²	<b>Cell area</b> 151175 m²
<b>Inverter</b>	<b>Model</b>	Solaron 500	
	<b>Manufacturer</b>	Advanced Energy Industries, Inc.	
<b>Characteristics</b>	<b>Operating Voltage</b>	+/-330-550 V	<b>Unit Nom. Power</b> 500 kW AC
<b>Inverter pack</b>	<b>Number of Inverter</b>	40 units	<b>Total Power</b> 20000 kW AC
<b>PV Array loss factors</b>			
<b>Thermal Loss factor</b>	<b>Uc (const)</b>	29.0 W/m²K	<b>Uv (wind)</b> 0.0 W/m²K / m/s
<b>=&gt; Nominal Oper. Coll. Temp. (G=800 W/m², Tamb=20°C, Wind=1 m/s.)</b>			<b>NOCT</b> 45 °C
<b>Wiring Ohmic Loss</b>	<b>Global array res.</b>	0.62 mOhm	<b>Loss Fraction</b> 2.2 % at STC
<b>Array Soiling Losses</b>			<b>Loss Fraction</b> 2.0 %
<b>Module Quality Loss</b>			<b>Loss Fraction</b> 2.5 %
<b>Module Mismatch Losses</b>			<b>Loss Fraction</b> 2.0 % at MPP
<b>Incidence effect, ASHRAE parametrization</b>	<b>IAM =</b>	1 - bo (1/cos I - 1)	<b>bo Parameter</b> 0.05
<b>System loss factors</b>			
<b>AC wire loss Inverter to transfo</b>	<b>Inverter voltage</b>	480 Vac tri	
	<b>Wires</b>	80 m 3x20000 mm²	<b>Loss Fraction</b> 1.0 % at STC
<b>External transformer</b>	<b>Iron loss (24H connection)</b>	24910 W	<b>Loss Fraction</b> 0.1 % at STC
	<b>Resistive/Inductive losses</b>	0.1 mOhm	<b>Loss Fraction</b> 1.0 % at STC

**Exhibit K -- Schedule III**

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# **Schedule B to Appendix A**

Blue Text: Highlighted cells are those to be updated by users as actual numbers are produced  
Green Text: Highlighted cells are coming from the Contract Year tabs

Line B									
PRICES, RATES, AND PRODUCTIONS:									
UNIT	194.00	197.00	198.00	199.00	200.00	201.00	202.00	203.00	204.00
1 Contract Price	194.00	197.00	198.00	199.00	200.00	201.00	202.00	203.00	204.00
2 Current LDC Rate	183.96	182.91	179.00	180.00	180.00	181.15	181.15	181.15	181.15
3 Incremental Price	10.04	14.09	19.00	19.00	20.00	29.85	29.85	29.85	29.85
4 Surplus Rate (After Deficit Adjustment)	10.04	14.09	19.00	19.00	20.00	29.85	29.85	29.85	29.85
5 Minimum Production	36,452	40,401	40,152	39,899	39,646	39,394	39,142	38,890	38,638
6 Guaranteed Output, 80% of Minimum Production	29,162	32,321	32,122	31,919	31,717	31,514	31,312	31,110	30,908
7 Actual Production	30,277	41,110	40,720	33,490	33,490	43,400	43,400	43,400	43,400
8 Recoverable Dispatch Down Lost Revenue Production	19,472	41,110	41,798	35,400	33,490	43,400	43,400	43,400	43,400
9 Total Annual Production, Actual + Dispatched Down Lost Revenue	49,749	82,220	82,518	68,890	66,980	86,800	86,800	86,800	86,800
10 Recoverable Expected Production	49,749	82,220	82,518	68,890	66,980	86,800	86,800	86,800	86,800
11 Recovered Historical Production	49,749	82,220	82,518	68,890	66,980	86,800	86,800	86,800	86,800
12 Production Factor	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
13 Total Annual Production Less Minimum Production	13,297	41,719	42,320	33,400	33,400	43,400	43,400	43,400	43,400
14 Excused Hours Production, Incl. Dispatch Down Makeup	810	809	1,606	804	237	794	794	794	794
DEFICIENCY MAKEUP:									
15 Annual Surplus	810	809	1,606	804	237	794	794	794	794
16 Annual Allowable Carry Forward Deficit, Includes Excused	810	809	1,606	804	237	794	794	794	794
17 Current Year Minus 1	810	809	1,606	804	237	794	794	794	794
18 Current Year Minus 2	810	809	1,606	804	237	794	794	794	794
19 Current Year Minus 3	810	809	1,606	804	237	794	794	794	794
20 Current Year Minus 4	810	809	1,606	804	237	794	794	794	794
21 Current Year Minus 5	810	809	1,606	804	237	794	794	794	794
22 Rolling Deficiency (Surplus) (MWH)	810	809	1,606	804	237	794	794	794	794
SHORTFALL DAMAGES:									
23 Actual Deficiency Amount <50%	810	809	1,606	804	237	794	794	794	794
24 Adjusted Deficiency Amount <50%, Decreased for Weather Hours and Excused	810	809	1,606	804	237	794	794	794	794
25 Shortfall Damages - Production <50%	810	809	1,606	804	237	794	794	794	794
26 Shortfall Damages - 5 Year Deficit Not Recovered, Adj. for Excused	810	809	1,606	804	237	794	794	794	794
27 TOTAL Shortfall Damages	810	809	1,606	804	237	794	794	794	794
DISPATCH DOWN RECOVERY AND MAKEUP PRODUCTION:									
28 Dispatch Down Foregone Production	810	809	1,606	804	237	794	794	794	794
29 Less Dispatch Down 2% Threshold	810	809	1,606	804	237	794	794	794	794
30 Recoverable Dispatch Down Lost Revenue Production	810	809	1,606	804	237	794	794	794	794
31 Annual Allowable Dispatch Down Makeup Production	810	809	1,606	804	237	794	794	794	794

These calculations are for example purposes only and are subject to the actual terms of the Renewable Energy Purchase Agreement, including the related Appendices. If there is any inconsistency between these example calculations and such terms, such terms shall control.

Contract Year Ending:



**Schedule B to Attachment 11**  
**Blue Text** - All highlighted cells are those to be updated by users as actual numbers are produced  
**Green Text** - All highlighted cells are coming from the Contract Year tabs

Line #	10	11	12	13	14	15	16	17
PRICES, DATES, AND PRODUCTION:								
1	Contract Price	205.00	206.00	207.00	208.10	209.10	210.20	211.30
2	Current LEAC Rate	241.38	241.38	241.57	241.22	245.52	244.47	241.29
3	Incremental Price	36.38	35.38	34.57	33.12	36.40	33.23	30.00
4	Surplus Rate (After Deficit Adjustment)	205.00	206.00	207.00	208.10	209.10	210.20	211.30
5	Minimum Production	34,717	34,611	34,530	34,438	34,347	34,256	34,165
6	Guaranteed Output, 50% of Minimum Production	34,615	34,595	34,570	34,544	34,518	34,492	34,466
7	Actual Production	34,000	34,000	34,000	34,000	34,000	34,000	34,000
8	Recoverable Dispatch Down/Lost Business Production	-	-	-	-	-	-	-
9	Total Annual Production, Actual + Dispatched Down Lost Revenue	34,000	34,000	34,000	34,000	34,000	34,000	34,000
10	Modeler Expected Production	34,000	34,000	34,000	34,000	34,000	34,000	34,000
11	Modeler Expected Production	34,000	34,000	34,000	34,000	34,000	34,000	34,000
12	Production Factor	85.41%	85.41%	85.41%	85.41%	85.41%	85.41%	85.41%
13	Total Annual Production Less Minimum Production	(4,717)	2,093	1,812	3,862	(4,007)	1,971	3,199
14	Excused Hours Production, Incl. Dispatch Down Shutdown	-	-	237	-	-	-	-
DEFICIENCY MAKEUP:								
15	Annual Surplus	4,717	-	1,812	3,862	-	1,971	3,199
16	Annual Allowable Carry Forward Deficit, includes Excused	-	-	-	-	4,222	-	-
17	Current Year Minus 1	94	1,787	-	-	-	-	-
18	Current Year Minus 2	381	-	1,975	-	-	2,251	-
19	Current Year Minus 3	-	-	-	-	-	-	1,643
20	Current Year Minus 4	-	-	-	-	-	-	-
21	Current Year Minus 5	6,016	-	-	-	-	-	-
22	Rolling Deficiency (Surplus) (Makeup)	5,899	3,787	1,975	-	4,222	2,251	1,643
SHORTFALL DAMAGES:								
23	Actual Deficiency Amount <50%	845	-	-	-	1,152	-	-
24	Adjusted Deficiency Amount <50%, Increased for Weather Hours and Excused	-	-	-	-	728	-	-
25	Shortfall Damages - Production <50%	5	-	-	-	41,194.50	-	-
26	Shortfall Damages - 5 Year Deficit Not Recovered, Adj. for Excused	104,952.20	-	-	-	-	-	-
27	TOTAL Shortfall Damages	104,952.20	-	-	-	41,194.50	-	-
DISPATCH DOWN RECOVERY AND MAKEUP PRODUCTION:								
28	Dispatch Down Foregone Production	-	-	237	-	-	-	237
29	Lost Dispatch Down 2% Threshold	-	-	(767)	-	-	-	(751)
30	Recoverable Dispatch Down Lost Revenue Production	-	-	-	-	-	-	-
31	Annual Allowable Dispatch Down Makeup Production	-	-	237	-	-	-	237

Line #

GENERAL SUMMARY

Generation Allocation (MWh)

UNITS

Contract Year Ending:

32	Supplies	2079	1,606			4,006			
33	Current Year	40,301	40,192	33,632	30,813	33,394	33,726		33,815
34	Current Year Minus 1	609							
35	Current Year Minus 2		21						
36	Current Year Minus 3								
37	Current Year Minus 4					4,006			
38	Current Year Minus 5								
39	Excused Hour Production Not Made Up in Five Years								
40	Production Above Minimum and Deficit Adjustments								
41	TOTAL Production	41,119	41,799	33,652	30,812	42,400	38,726		38,815

Production Revenue (\$)

42	Current Year	7,538,297.00	7,559,016.00	7,044,600.00	6,733,031.00	7,797,330.00	7,861,378.00		7,919,360.00
43	Current Year Minus 1	158,373.00							
44	Current Year Minus 2								
45	Current Year Minus 3		4,118.00						
46	Current Year Minus 4					797,881.30			
47	Current Year Minus 5								
48	Excused Hour Production Not Made Up in Five Years								
49	Production Above Minimum and Deficit Adjustments								
50	TOTAL Production Revenue	7,775,712.00	7,821,215.00	7,044,600.00	6,733,031.00	7,797,330.00	7,861,378.00		7,919,360.00

RECOVERIES AND DEDUCTIONS

51	TOTAL Production Revenue	7,775,712.00	7,821,215.00	7,044,600.00	6,733,031.00	7,797,330.00	7,861,378.00		7,919,360.00
52	Less TOTAL Shortfall Damages								
53	Annual Invoice Total	7,775,712.00	7,821,215.00	7,044,600.00	6,733,031.00	7,797,330.00	7,861,378.00		7,919,360.00
54	Annual Total of Monthly Invoice Payments	7,775,712.00	7,821,215.00	7,044,600.00	6,733,031.00	7,797,330.00	7,861,378.00		7,919,360.00
55	CREDIT/(DEBIT) Adjustment to Next Invoice								

CHECK MINIMUM PRODUCTION

56	Production for Current Year Paid at Contract Price, and Return 1%	40,502.00	40,192.00	33,652.00	30,812.00	33,394.00	33,726.00		33,815.00
57	Prod. for Current Year Paid at Shortfall < 50%								
58	Prod. for Current Year Paid at Shortfall 5-14% Deficit Not Recovered								
59	Production for Current Year Paid at Shortfall 15-19% Deficit Not Recovered								
60	Total, Lines 56 + 57 + 58 + 59	40,502.00	40,192.00	33,652.00	30,812.00	33,394.00	33,726.00		33,815.00
61	Less Minimum Production	(40,502.00)	(40,192.00)	(33,652.00)	(30,812.00)	(33,394.00)	(33,726.00)		(33,815.00)
62	Check, Line 60 + 61 (Should equal 0)								



- Line # Item:
- 1 Bid Price; See Appendix A
  - 2 Hypothetical LEAC Rate at time of calculation
  - 3 If the Current LEAC Rate is less than the Contract Price, then 50, otherwise the LEAC Rate less the Contract Price
  - 4 Lesser of the Contract Price or current LEAC Rate
  - 5 Bid amount to be delivered; See Appendix A
  - 6 50% of Minimum Production, amount which must be delivered each year or Shortfall Damages paid; See Appendix A
  - 7 Hypothetical Actual Production (revised data)
  - 8 Dispatched Down Loss Revenue Production, treated the same as actual production
  - 9 Actual plus Dispatched Down Loss Revenue Production
  - 10 Hypothetical modeled production based on current year's weather data
  - 11 Hypothetical modeled production based on historical average weather data
  - 12 Modeled Expected Production/Modeled Historical Production
  - 13 Actual Production plus Excessed Hours less Minimum Production
  - 14 Annual Allowable Dispatch Down Make-up Production
  - 15 If Total Annual Production is greater than Minimum Production, Total Annual Production less Min. Production, otherwise 0 MWh.
  - 16 Up to 50% of Min. Prod. + Production Excessed for Weather Hours. Carries forward Excessed Hours Production as a Deficit, but this production will not be subject to shortfall damages if not made up in 5 years. If Total Annual Production is less than the Guaranteed Production, 10% of Minimum, otherwise, if Total Annual Production is less than the Minimum, the difference between Actual and Minimum, otherwise 0 MWh.
  - 17 -
  - 18 -
  - 19 -
  - 20 -
  - 21 -
  - 22 Rating deficiency at end of each contract year
  - 23 Based on Guaranteed Output less Total Annual Production
  - 24 Adjusted based on Production Factor and Excessed Hours Production
  - 25 Adjusted Deficiency Amount a Incremental Price
  - 26 (Deficiency of Current Year Minus 5 Years Excessed Hours Production) a Incremental Price for Current Year Minus 5
  - 27 Total of Shortfalls for Production <50% and 5 Year Deficits Not Recovered, Adjusted for Excessed Production
  - 28 Hypothetical estimated production using actual weather data for those hours dispatched down
  - 29 Production allowed to be curtailed each year by GPA without being subject to Lost Revenue Recovery = 25% of Minimum Production
  - 30 Production that is eligible to be reimbursed that year = all production curtailed above 25% of Minimum Production
  - 31 Amount that can be carried forward as deficit and will be credited if not made up in 5 years.

Line # Notes:

- 32 -
- 33 -
- 34 -
- 35 -
- 36 -
- 37 -
- 38 -
- 39 Seller can choose when to apply this Dispatch Down Makeup Production that was part of its Minimum Production. Must be recovered in a year or over several years where there is Production Above Minimum + Deficit Allowance
- 40 -
- 41 -
- 42 -
- 43 -
- 44 -
- 45 -
- 46 -
- 47 -
- 48 Seller can choose when to apply this Dispatch Down Makeup Production that was part of its Minimum Production. Must be recovered in a year or over several years where there is Production Above Minimum + Deficit Allowance
- 49 -
- 50 -
- 51 -
- 52 -
- 53 -
- 54 -
- 55 Difference between what should have been paid for the year versus actual monthly payments
- 56 All production for the year paid at this year's contract price.
- 57 All production for the year that was covered by shortfall damages for not meeting Guaranteed Output.
- 58 All production for the year that was covered by shortfall damages for not meeting the Minimum Production in 5 years time. This includes Dispatch Down Makeup Production that was not recovered within 5 years that is considered Excess Hours Production, Minimum Production, in any future year(s) where there is positive Production Above Minimum + Deficit Allowance at the then current year's contract price. If Seller has already fully recovered this line item as Dispatch Down Makeup Production within the first five years, any remaining amount shown in this line item may be recovered in future years at the surplus rate.
- 59 Total of all components of Minimum Production assigned for current year
- 60 Bid amount amount to be delivered. See Appendix A
- 61 Difference between Total of all components of Minimum Production and the bid annual amount. This should equal zero.

**20 MW PPA**

**Quantum Guam Power**

**Amendment 1**

**Effective Date: February 22, 2013**

**FIRST AMENDMENT TO  
RENEWABLE ENERGY PURCHASE AGREEMENT**

**THIS FIRST AMENDMENT TO RENEWABLE ENERGY PURCHASE AGREEMENT** (this "Amendment") is made and entered into as of February 22, 2013, by and between Guam Power Authority ("Buyer"), and Quantum Guam Power, LLC, a Guam limited liability company ("Seller", and together with Buyer, the "Parties").

**WHEREAS**, Buyer and Seller previously entered into that certain Renewable Energy Purchase Agreement, dated June 27, 2012 (the "PPA"), and a Small Generator Interconnection Agreement dated June 27, 2012 (the "SGIA"), and together with the PPA, the "Agreements", capitalized terms not defined herein having the meaning given in the Agreements);

**WHEREAS**, Guam Solar Property, LLC, a Delaware limited liability company ("Lessor"), has been formed as an Affiliate of Seller in contemplation of Lessor acquiring the real property that would function as the site for the Facility, then developing and constructing the Facility, and then leasing the Facility to Seller so that Seller may sell Renewable Energy to Buyer pursuant to the PPA;

**WHEREAS**, Seller wishes to clarify that its ownership in the Project may be pursuant to a leasehold interest rather than a fee interest;

**WHEREAS** Seller has requested, and Buyer has agreed to provide, Buyer's acknowledgement of Seller's ownership interests in the Project and that Seller's obligations under the Agreements may be performed by certain other entities, as set forth below; and

**WHEREAS**, Buyer and Seller have agreed that certain additional quantities of Renewable Energy may be sold under the PPA at the price set forth in this Amendment.

**NOW, THEREFORE**, the Parties hereby agree as follows:

**Section 1. Definitions.** The following definitions shall be inserted into the PPA after the definition of "Actual Renewable Energy", with all subsequent definitions renumbered accordingly:

(a) "Additional Production" means, during any Contract Year, any MWh (up to 4,000 MWh) of Renewable Energy produced by the Facility in excess of the Minimum Production for that Contract Year.

(b) "Additional Production Price" means, for the applicable Contract Year, the corresponding price shown in the second column of Exhibit A attached to this Amendment.

**Section 2. Seller's and Buyer's Obligations.** The first sentence of Section 4.5 of the PPA is replaced in its entirety with the following:

"Subject to Appendix H, Seller shall sell and deliver, or cause to be delivered, and GPA shall purchase and receive, or cause to be received, all Renewable Energy generated by the Facility, at the Delivery Point, and GPA shall pay Seller (i) the Contract Price for such Quantity of Renewable Energy as measured by the Seller's Metering Equipment at the Delivery Point for quantities of Renewable Energy up to the Estimated Annual Renewable Energy Amount, as shown in the third column of Appendix A for the applicable Contract



Year, and (ii) the Additional Production Price for Additional Production in such Contract Year; provided that for quantities of Renewable Energy in excess of the Additional Production for such Contract Year, which are not make-up quantities for delivery deficiencies in prior Production Measurement Periods, the price payable by GPA shall be the lower of the Contract Price and the LEAC Rate.”

**Section 3. Invoices.** The second sentence of Section 7.5 of the PPA is replaced in its entirety with the following:

“For review purposes, Seller shall furnish GPA with a written invoice reflecting the Contract Price (and the Additional Production Price, if applicable); interval data from the Seller Metering Equipment used to calculate that invoice; and any other charges due, within ten (10) Business Days after Seller reads the Seller Metering Equipment.”

**Section 4. Representations and Warranties.**

(a) As of the date of this Amendment, each Party represents and warrants to the other Party that:

(i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) Except for approvals of the Guam Public Utilities Commission, it has all regulatory authorizations necessary for it to legally perform its obligations under this Amendment (other than permits or regulatory authorizations to be obtained by Seller for the construction, operation or maintenance of the Facility, which Seller reasonably anticipates it will be able to obtain in due course); and

(iii) The execution, delivery and performance of this Amendment are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and this Amendment constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses.

(b) As of the date of this Amendment, Buyer represents and warrants to Seller that the board of directors of Buyer has made all certifications required by the Guam Public Utilities Commission and other authorities in order for Buyer to execute this Amendment.

**Section 5. Condition Precedent.** It shall be a condition to the effectiveness of Sections 1, 2 and 3 of this Amendment that Buyer obtain the approval of the Guam Public Utilities Commission and any related approvals required for the execution, delivery and performance of this Amendment by Buyer and Seller. The Parties shall cooperate and use commercially reasonable efforts to obtain all such approvals.

**Section 6. Performance by Seller Affiliate.** Buyer agrees that any of Seller’s obligations under the Agreements may be performed by Lessor, or by any Affiliate of Seller, and to accept any performance of any Seller obligation, or cure of any Seller default, under an Agreement by Lessor or an Affiliate of Seller as Seller’s valid and sufficient performance for all purposes under the Agreements, *mutatis mutandis*. Notwithstanding the foregoing, Seller agrees that, as between

Seller and Buyer, Seller shall remain liable to perform, or to cause to be so performed, all Seller obligations under the Agreements and to cure any Seller default thereunder. In furtherance of but without limitation to the foregoing, and in the event that Seller in its discretion implements the Lessor/Lessee structure described herein, then the Agreements shall be deemed to be modified as follows:

- (a) Any reference in the Agreements to “Seller’s Metering Equipment”, “Seller’s Interconnection Facilities” or other indicia of ownership in any property shall mean and refer to the lessee and lessor interest of Lessor, Seller and its Affiliates in such property, as applicable;
- (b) In the event Buyer exercises its right to purchase the Facility pursuant to Section 11.9 of the PPA, Seller shall assure that Lessor or Seller’s Affiliates, as needed, relinquishes all of its right, title and interest in the Facility for the purpose of conveying title therein to Buyer in accordance with the requirements of the PPA;
- (c) Seller shall ensure that any interest of Lessor in the Project be pledged to Buyer as necessary to satisfy the requirements of Section 9.4 of the PPA;
- (d) Seller may transfer any right under the Agreements to Lessor or to any Affiliate, including without limitation Seller’s right to reasonable use of labor, personnel and equipment under Section 1.4.6 of the SGIA;
- (e) Buyer agrees at Seller’s written request to bill Lessor or any Affiliate directly for any Network Upgrades pursuant to Section 6.1.1 of the SGIA; and
- (f) The conveyance under the SGIA of the Interconnection Facilities to Buyer may be satisfied by Lessor or any Affiliate as a conveying party under the Bill of Sale set forth as Attachment 7 to the SGIA.

**Section 7. No Default.** Buyer agrees that neither the lease of the Project by Lessor to Seller, nor the leasehold interest of Seller in the Project effected thereby, shall constitute (i) a Merger Event or any other default under the Agreements or (ii) any limitation on or modification of the rights, obligations and liabilities of Seller under the Agreements.

**Section 8. Insurance Requirements.** The Parties agree that Seller shall not be required to obtain and maintain insurance as prescribed in Section 11.2 of the PPA until such time as Seller, Lessor, or any Affiliate or contractor of Seller, is mobilized on the Project site to perform construction work on the Facility.

**Section 9. Governing Law.** This Amendment and all matters arising hereunder or in connection herewith shall be governed by and construed in accordance with the laws of Guam, without regard to conflicts of law principles.

**Section 10. Counterparts.** This Amendment may be executed by the Parties in one or more counterparts, all of which, taken together, shall constitute one and the same instrument.

**Section 11. Headings.** The headings and captions used in this Amendment are inserted for reference and convenience only and the same shall not limit or construe the sections or paragraphs to which they apply or otherwise affect the interpretation thereof.

**Section 12. Signatures.** The exchange of copies of this Amendment and of signature pages by facsimile or other electronic transmission shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

**Section 13. No Other Changes.** Except as amended hereby, the PPA shall continue in full force and effect in accordance with the terms and conditions thereof.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed by their duly authorized representatives on the date first written above.

**GUAM POWER AUTHORITY**

By: 

 Name: Joaquin C. Flores, P.E.

Title: General Manager

**QUANTUM GUAM POWER, LLC**

By: 

Name: Dirk Strausfeld

Title: Authorized Person

**Exhibit A**

**First Amendment to**

**Renewable Energy Purchase Agreement**

<b>Contract Year</b>	<b>Price (\$/MWh)</b>	<b>Additional Production Limit (MWh)</b>
1	185.00	4000
2	185.93	4000
3	186.85	4000
4	187.79	4000
5	188.73	4000
6	189.67	4000
7	190.62	4000
8	191.57	4000
9	183.60	4000
10	184.52	4000
11	185.44	4000
12	186.37	4000
13	187.30	4000
14	188.24	4000
15	189.18	4000
16	190.12	4000
17	191.07	4000
18	192.03	4000
19	192.99	4000
20	193.95	4000
21	194.92	4000
22	195.90	4000
23	196.88	4000
24	197.86	4000
25	198.85	4000

**20 MW PPA**  
**Quantum Guam Power**

**SGIA Amendment**  
**(Combines 5.65MW Solar PPA Acquisition)**

**Effective Date: April 25, 2013**

NOTE: This is a portion of the Transaction of Assignment documents which was processed through an escrow account as parties were not all available for all original signatures on each document.

**Execution Copy**

**AMENDED AND RESTATED SMALL GENERATOR  
INTERCONNECTION AGREEMENT**

**BETWEEN**

**GUAM POWER AUTHORITY**

**AND**

**QUANTUM GUAM POWER, LLC**



## TABLE OF CONTENTS

	Page No.
<b>Article 1. Scope and Limitations of Agreement.</b>	- 4 -
1.1 Purpose	- 4 -
1.2 No Agreement to Purchase or Deliver Power	- 4 -
1.3 Limitations	- 4 -
1.4 Responsibilities of the Parties	- 4 -
1.5 Parallel Operation Obligations	- 7 -
1.7 Reactive Power	- 7 -
<b>Article 2. Inspection, Testing, Authorization, and Right of Access</b>	- 7 -
2.1 Equipment Testing and Inspection	- 7 -
2.2 Authorization Required Prior to Parallel Operation	- 8 -
2.3 Right of Access	- 8 -
<b>Article 3. Effective Date, Term, Termination, and Disconnection</b>	- 9 -
3.1 Effective Date	- 9 -
3.2 Term of Agreement	- 9 -
3.3 Termination	- 9 -
3.4 Temporary Disconnection	- 10 -
3.4.1 Emergency Conditions	- 10 -
3.4.2 Routine Maintenance, Construction, and Repair	- 10 -
3.4.3 Forced Outages	- 11 -
3.4.4 Adverse Operating Effects	- 11 -
3.4.5 Modification of the Small Generating Facility	- 11 -
3.4.6 Reconnection	- 11 -
<b>Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades</b>	- 11 -
4.1 Interconnection Facilities	- 11 -
<b>Article 5. Cost Responsibility for Network Upgrades</b>	- 12 -
5.1 Applicability	- 12 -
5.2 Network Upgrades	- 12 -
5.3 Rights Under Other Agreements	- 12 -
<b>Article 6. Billing, Payment, Milestones, and Financial Security</b>	- 13 -
6.1 Billing and Payment Procedures and Final Accounting	- 13 -
6.2 Milestones	- 13 -
<b>Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default</b>	- 13 -
7.1 Assignment	- 14 -
<b>Small Generator Interconnection Agreement (SGIA)</b>	- 1 -

7.2	Limitation of Liability .....	- 14 -
7.3	Indemnity .....	- 14 -
7.4	Consequential Damages.....	- 15 -
7.5	Force Majeure.....	- 15 -
7.6	Default .....	- 16 -
<b>Article 8. Not Used .....</b>		<b>- 16 -</b>
<b>Article 9. Confidentiality .....</b>		<b>- 17 -</b>
<b>Article 10. Disputes.....</b>		<b>- 17 -</b>
<b>Article 11. Taxes.....</b>		<b>- 18 -</b>
<b>Article 12. Miscellaneous.....</b>		<b>- 18 -</b>
12.1	Governing Law, Regulatory Authority, and Rules .....	- 18 -
12.2	Amendment.....	- 18 -
12.3	No Third-Party Beneficiaries.....	- 18 -
12.4	Waiver.....	- 18 -
12.5	Entire Agreement.....	- 19 -
12.6	Multiple Counterparts.....	- 19 -
12.7	No Partnership .....	- 19 -
12.8	Severability .....	- 19 -
12.9	Security Arrangements .....	- 19 -
12.10	Environmental Releases.....	- 19 -
12.11	Subcontractors .....	- 20 -
12.12	Waiver of Sovereign Immunity .....	- 20 -
<b>Article 13. Notices .....</b>		<b>- 20 -</b>
13.1	General.....	- 20 -
13.2	Billing and Payment .....	- 21 -
13.3	Alternative Forms of Notice .....	- 21 -
13.4	Designated Operating Representative.....	- 22 -
13.5	Changes to the Notice Information.....	- 23 -
<b>Article 14. Signatures .....</b>		<b>- 24 -</b>

[Attachment 1](#) – Glossary of Terms

[Attachment 2](#) – Description and Costs of the Small Generating Facility, Interconnection Facilities, and Metering Equipment

[Attachment 3](#) – One-line Diagram Depicting the Small Generating Facility, Interconnection Facilities, Metering Equipment, and Network Upgrades

[Attachment 4](#) – Milestones

[Attachment 5](#) – Additional Operating Requirements for the Transmission System Needed to Support the Interconnection Customer’s Needs

[Attachment 6](#) – Transmission Provider's Description of its Network Upgrades and Best Estimate of Network Upgrade Costs

[Attachment 7](#) - Bill of Sale

## **AMENDED AND RESTATED SMALL GENERATOR INTERCONNECTION AGREEMENT**

This Amended and Restated Small Generator Interconnection Agreement ("Agreement") is made and entered into this [25<sup>th</sup>] day of April, 2013 (the "Effective Date"), by Guam Power Authority ("GPA" or "Transmission Provider"), and Quantum Guam Power, LLC ("Quantum" or "Interconnection Customer") each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

### **Transmission Provider Information**

Transmission Provider: Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Address: P.O. Box 2977,  
Hagatna, Guam 96932  
Physical Address: 1911, Route 16  
Harmon, Guam 96911  
Phone: (671) 648-3225 / 3001 Fax: (671) 648-3290

### **Interconnection Customer Information**

Interconnection Customer: Quantum Guam Power, LLC  
Attention: Dirk Straussfeld  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8650 Fax: 713-485-8651

Interconnection Customer Application No: 01-2012

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

## **Article 1. Scope and Limitations of Agreement**

- 1.1 This Agreement governs the terms and conditions under which the Interconnection Customer's Small Generating Facility will interconnect with, and operate in parallel with, the Transmission System. This Agreement amends and restates in its entirety that certain Small Generator Interconnection Agreement between Interconnection Customer and GPA dated as of June 26, 2012.
- 1.2 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power. The purchase or delivery of power and other services that the Interconnection Customer may require will be covered under a separate agreement. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity to GPA in accordance with GPA's standard procedures, as provided by GPA to Interconnection Customer no later than ninety (90) days prior to commencement of testing of the Small Generating Facility.
- 1.3 Nothing in this Agreement is intended to affect any other agreement between the Parties. In particular, with respect to the Additional Customer,
  - 1.3.1 the Parties acknowledge and agree that although Additional Customer may enter into a power purchase agreement and an interconnection agreement in connection with its proposed wind project, Interconnection Customer shall have no responsibility or liability to GPA with respect to any such agreements. All obligations of Interconnection Customer with respect to the Additional Customer or with respect to its wind project are explicitly limited to and prescribed by the provisions in this Agreement relating to the installation of certain Interconnection Facilities and Network Upgrades, and in such respect only to the extent set forth and described in this Agreement; and
  - 1.3.2 the Parties acknowledge and agree that this Agreement shall serve as the sole interconnection agreement with respect to any solar power generating facilities to which Additional Customer has rights or agreements with GPA in place on or prior to the Effective Date, inasmuch as all such rights and agreements have been or will be assigned to Interconnection Customer.
- 1.4 Responsibilities of the Parties
  - 1.4.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.
  - 1.4.2 The Interconnection Customer shall construct, interconnect, operate and maintain Small Generator Interconnection Agreement (SGIA)

its Small Generating Facility and construct or cause to be constructed the Interconnection Facilities in accordance with this Agreement, Good Utility Practice and the requirements of Section 1.4.4 below.

- 1.4.2.1 The cost of constructing, interconnecting, operating and maintaining the Small Generating Facility shall be borne entirely by Interconnection Customer.
- 1.4.2.2 The cost of developing, designing, procuring, constructing and installing the Interconnection Facilities shall be borne by Interconnection Customer, but shall in no event exceed \$11,411,786.00. Any verified costs in excess of such amount shall be reimbursed by GPA to Interconnection Customer, plus a capital recovery charge of 15% per annum.
- 1.4.2.3 In the event that the Additional Customer connects its facilities to the Interconnection Facilities, then (i) Interconnection Customer shall provide, at the Point of Interconnection, space in the switchyard and access to the bus for the benefit of the Additional Customer, and (ii) GPA shall cause the Additional Customer to (A) connect to the Interconnection Facilities at the Point of Interconnection and in the manner depicted in Attachment 3 and (B) reimburse Interconnection Customer for 26.71% of its verified costs of constructing the Interconnection Facilities, plus a capital recovery charge of 15% per annum.
- 1.4.2.4 On or before the Commercial Operation Date (as defined in the Power Purchase Agreement), the Interconnection Customer shall transfer the Interconnection Facilities (other than the Additional Customer Conductor) to GPA by execution and delivery of the Bill of Sale attached hereto as Attachment 7. Likewise, if the Additional Customer Conductor is installed, the Interconnection Customer shall transfer such asset to GPA by execution and delivery of the Bill of Sale attached hereto as Attachment 7.
- 1.4.3 GPA shall operate and maintain the Transmission System, the Interconnection Facilities and the Network Upgrades in accordance with this Agreement and Good Utility Practice.
  - 1.4.3.1 The Parties agree that no Network Upgrades will be required solely as a result of Interconnection Customer installing the Small Generating Facility and the Interconnection Facilities. Further, the Additional Customer Conductor shall not be required unless and until the Additional Customer connects its facilities to the Interconnection Facilities.

- 1.4.3.2 In the event the Additional Customer connects its facilities to the Interconnection Facilities, then in addition to the Additional Customer Conductor, certain Network Upgrades may be required. Interconnection Customer may, but shall not be obligated, to install such Network Upgrades and Additional Customer Conductor in accordance with Section 5.2. GPA or Interconnection Customer, as applicable, shall construct, or cause to be constructed, and shall operate and maintain, such Network Upgrades and Additional Customer Conductor in accordance with this Agreement and Good Utility Practice.
- 1.4.3.3 Interconnection Customer shall bear 73.29% of the direct, verified costs of construction of such Network Upgrades which are defined/detailed in Section 1.4.4 below and in Attachment 6, but such costs shall in no event exceed \$4,342,942.00 plus the incremental commodity cost of replacing aluminum with copper for two (2) conductors, if Interconnection Customer elects copper conductor installation. Any verified costs in excess of such amount shall be reimbursed by GPA to Interconnection Customer, plus a capital recovery charge of 15% per annum. Interconnection Customer shall be liable for a capital recovery charge of 15% per annum if Network Upgrades are performed by Additional Customer. GPA shall procure that the Additional Customer shall be liable for the remaining 26.71% of such Network Upgrades, plus a capital recovery charge of 15% per annum, if Network Upgrades are constructed by Interconnection Customer.
- 1.4.3.4 Except as set forth in this Section 1.4.3, Interconnection Customer shall bear no cost or liability with respect to any Network Upgrades.
- 1.4.4 The Interconnection Customer agrees to construct the Interconnection Facilities in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE Standards, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design and install its Small Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of GPA.
- 1.4.5 Interconnection Customer shall be responsible for the safe installation of the Interconnection Facilities. Following transfer by Interconnection Customer in accordance with Section 1.4.2.4, GPA shall be responsible for the safe operation, maintenance, repair, inspection and condition of the Interconnection Facilities and the Transmission System, including Network Upgrades. Interconnection Customer shall design and construct Interconnection Facilities that adequately protect GPA's Transmission System, personnel, and other persons from damage and injury.



1.4.6 GPA shall provide without cost to Interconnection Customer the reasonable use of labor, personnel and equipment necessary for Interconnection Customer's installation of the Small Generating Facility and the Interconnection Facilities (and the Network Upgrades if applicable), so long as GPA does not incur material out of pocket cost or constraint of resources as a result thereof. The foregoing includes, by way of example, (i) providing access to GPA technical information and engineering personnel as needed for questions and answers, (ii) utilizing GPA equipment and trucks as needed for GPA support, (iii) receiving and loading wire reels at the Port of Guam and bringing the same to the Small Generating Facility lay-down area, (iv) providing electricians and equipment for wire installation, splicing, terminations and testing, and (v) providing flag men for traffic control during wire installation, splicing and testing.

1.5 Parallel Operation Obligations

Once the Small Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Small Generating Facility in the Guam control area, including, but not limited to: 1) the rules and procedures concerning the operation of generation set forth by the Transmission Provider for the Transmission System and 2) the Operating Requirements set forth in Attachment 5 of this Agreement.

1.6 Metering

The Parties' responsibilities with respect to purchase, installation, operation, maintenance, testing, repair and replacement of metering and data acquisition equipment are specified in Section 7.4 of the Power Purchase Agreement.

1.7 Reactive Power

The Interconnection Customer shall design its Small Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at all power factors over the range of 0.95 leading to 0.95 lagging, unless GPA has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The Generating Facility shall be capable of continuous dynamic operation throughout the power factor design range as measured at the Point of Interconnection.

1.8 Definitions

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of this Agreement.

## **Article 2. Inspection, Testing, Authorization, and Right of Access**

2.1 Equipment Testing and Inspection

2.1.1 The Interconnection Customer shall test and inspect its Small Generating Facility  
Small Generator Interconnection Agreement (SGIA)



and the Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify GPA of such activities no fewer than five Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. The notification shall be made by submitting a test plan for GPA's approval prior to the first scheduled testing date. GPA shall provide feedback within ten (10) business days. The test plan shall include all relevant testing details including but not limited to the date and time of each test, and expected MW and MVAR output of the Small Generating Facility. Testing and inspection shall occur on a Business Day. GPA may, at its own expense, send qualified personnel to the Small Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide GPA a written test report when such testing and inspection is completed.

- 2.1.2 GPA shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by GPA of the safety, durability, suitability, or reliability of the Small Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Small Generating Facility.

## 2.2 Authorization Required Prior to Parallel Operation

- 2.2.1 GPA has listed applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, GPA shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. GPA shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.
- 2.2.2 The Interconnection Customer shall not operate its Small Generating Facility in parallel with the Transmission System without the one-time prior written authorization of GPA. GPA will provide such authorization once GPA receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements set forth in Attachment 5. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

## 2.3 Right of Access

- 2.3.1 Upon reasonable notice, GPA may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Small Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Small Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit.

- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, GPA shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers. Within forty-eight (48) hours after a GPA access due to an emergency or hazardous condition, GPA shall provide a written summary of any such access and of any work performed during such access.
- 2.3.3 Each Party shall be responsible for its own costs associated with following this article.

### **Article 3. Effective Date, Term, Termination, and Disconnection**

3.1 Effective Date

This Agreement shall become effective on the Effective Date.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of twenty-five (25) years from the Commercial Operation Date (as defined in the Power Purchase Agreement), or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 3.3 of this Agreement. In no event, however, shall GPA be entitled to terminate this Agreement unless and until each Power Purchase Agreement is terminated.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving GPA twenty (20) Business Days written notice.

3.3.2 Transmission Provider may terminate this Agreement if the Small Generating Facility has ceased commercial operation for three (3) consecutive years, beginning with the last date of commercial operation for the Small Generating Facility, after giving the Interconnection Customer twenty (20) Business Days advance written notice. The Small Generating Facility will not be deemed to have ceased Commercial Operation for purposes of this Article 3.3.2 if the Interconnection Customer can document that it has taken other significant steps to maintain or restore operational readiness of the Small Generating Facility for the

purpose of returning the Small Generating Facility to commercial operation as soon as possible.

3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.

3.3.4 Upon termination of this Agreement, the Small Generating Facility will be disconnected from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

3.3.5 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

3.3.6 This provisions of this Article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 Emergency Conditions -- "Emergency Condition" shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of GPA, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Transmission System or the Interconnection Facilities; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Small Generating Facility, or with respect to the Interconnection Facilities until transferred to GPA pursuant to this Agreement. Under Emergency Conditions, GPA may immediately suspend interconnection service and temporarily disconnect the Small Generating Facility. GPA shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Small Generating Facility. The Interconnection Customer shall notify GPA promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Transmission System. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

GPA may interrupt interconnection service or curtail the output of the Small Generating Facility and temporarily disconnect the Small Generating Facility

from the Transmission System when necessary for routine maintenance, construction, and repairs on the Transmission System. GPA shall provide the Interconnection Customer with five Business Days notice prior to such interruption. GPA shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

**3.4.3 Forced Outages**

During any forced outage, GPA may suspend interconnection service to effect immediate repairs on the Transmission System. GPA shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, GPA shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

**3.4.4 Adverse Operating Effects**

GPA shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Small Generating Facility may cause damage to the Transmission System. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, GPA may disconnect the Small Generating Facility. GPA shall provide the Interconnection Customer with five (5) Business Day notice of such disconnection, unless the provisions of Article 3.4.1 apply.

**3.4.5 Modification of the Small Generating Facility**

The Interconnection Customer must receive written authorization from GPA before making any change to the Small Generating Facility that may have a material impact on the safety or reliability of the Transmission System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without GPA's prior written authorization, the latter shall have the right to temporarily disconnect the Small Generating Facility.

**3.4.6 Reconnection**

The Parties shall cooperate with each other to restore the Small Generating Facility, Interconnection Facilities, and the Transmission System to their normal operating state as soon as reasonably practicable following a temporary disconnection.

**Article 4. Cost Responsibility for Interconnection Facilities**

**4.1 Interconnection Facilities**

The Interconnection Customer shall install and pay for (subject to partial reimbursement

as set forth herein) the cost of the Interconnection Facilities itemized in Attachment 2 of this Agreement, and as further set forth in Section 1.4.

**4.2 System Stability Upgrades**

It is agreed that apart from the identified Network Upgrades in Attachment 6, (i) no Transmission System stability upgrades, system operational characteristic changes or Small Generator Facility modifications shall be required to be installed by the Interconnection Customer as a result of the development, installation or operation of the Small Generating Facility or other generation installed in Guam and (ii) ramp downs will be controlled to the extent possible by the Interconnection Customer-selected inverters, since energy storage is not included in the installation..

**Article 5. Network Upgrades and System Stability Upgrades**

**5.1 Applicability**

No portion of this Article 5 shall apply unless the interconnection of the Additional Customer to the Point of Interconnection requires Network Upgrades.

**5.2 Network Upgrades**

GPA shall own and operate the Network Upgrades described in Attachment 6 of this Agreement, which will be installed as and to the extent required as a result of the Additional Customer connecting to the Interconnection Facilities. All actual costs of such required Network Upgrades, including overheads, shall be borne by the Interconnection Customer and the Additional Customer as set forth in Section 1.4, but only to the extent and in the proportion set forth in Section 1.4, it being agreed that no such upgrades will be required solely as a result of the installation of the Small Generating Facility. Interconnection Customer shall seek approval from GPA prior to proceeding with any work of which its expense would exceed the caps set forth in Attachment 6. In no event, however, shall Interconnection Customer and Additional Customer together be required to bear more than \$5,925,696.00 in the aggregate for all such Network Upgrades, and GPA shall be responsible for any further upgrade costs. Interconnection Customer at its option may design, procure, construct (or cause to be constructed) and install (or cause to be installed) the Network Upgrades, in which case it shall transfer such Network Upgrades to GPA by instrument substantially in the form of Attachment 7.

**5.3 Rights Under Other Agreements**

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Interconnection Customer shall be entitled to, now or in the future, under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements for transmission service that is not associated with the Small Generating



Facility.

## **Article 6. Billing, Payment, Milestones, and Financial Security**

### **6.1 Billing and Payment Procedures and Final Accounting**

6.1.1 If GPA installs the Network Upgrades, GPA shall bill the Interconnection Customer for the design, engineering, construction, and procurement costs of Network Upgrades contemplated by this Agreement on a monthly basis, or as otherwise agreed by the Parties, up to but not in excess of the limit set forth in Section 5.2. The Interconnection Customer shall pay each bill within thirty (30) calendar days of receipt, or as otherwise agreed to by the Parties.

6.1.2 Within three months of completing the construction and installation of any Network Upgrades installed by GPA and described in the Attachments to this Agreement, GPA shall provide the Interconnection Customer with a final accounting report of any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Network Upgrades, and (2) the Interconnection Customer's previous aggregate payments to GPA for such facilities or Network Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, GPA shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to GPA within 30 calendar days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, GPA shall refund to the Interconnection Customer an amount equal to the difference within 30 calendar days of the final accounting report.

### **6.2 Milestones**

The Parties shall agree on milestones for which each Party is responsible and list them in Attachment 4 of this Agreement. A Party's obligations under this provision may be extended by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) requesting appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless it will (1) suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

## **Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default**

## 7.1 Assignment

This Agreement may be assigned by either Party upon fifteen (15) Business Days prior written notice and opportunity to object by the other Party; provided that:

- 7.1.1 Either Party may assign this Agreement without the consent of the other Party to (i) any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement, provided that the assigning Party promptly notifies the other Party of any such assignment or (ii) to any person or entity succeeding to all or substantially all of the assets of such Party, and whose creditworthiness is equal to or higher than that of such Party;
- 7.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of GPA, for collateral security purposes to aid in providing financing for the Small Generating Facility, provided that the Interconnection Customer will promptly notify GPA of any such assignment.
- 7.1.3 Any attempted assignment that violates this Article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the Interconnection Customer. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

## 7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as authorized by this Agreement.

## 7.3 Indemnity

- 7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 7.2.
- 7.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party,



except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

- 7.3.3 If an indemnified person is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.
- 7.3.4 If an indemnifying party is obligated to indemnify and hold any indemnified person harmless under this article, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.
- 7.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified person shall notify the indemnifying party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

#### 7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, or cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

#### 7.5 Force Majeure

- 7.5.1 As used in this article, a Force Majeure Event shall mean an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Affected Party, and which, by the exercise of due diligence, the Affected Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a Force Majeure Event shall include, without limitation, any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or

accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.

- 7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

## 7.6 Default

- 7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party may give written notice of such Default to the defaulting Party. Except as provided in Article 7.6.2, the defaulting Party shall have sixty (60) calendar days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within sixty (60) calendar days, the defaulting Party shall commence such cure within twenty (20) calendar days after notice and continuously and diligently complete such cure within six months from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.
- 7.6.2 If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

## Article 8. [Not Used]

## **Article 9. Confidentiality**

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to any permitted discloser of confidential information pursuant to the Power Purchase Agreement, to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.
- 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
- 9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.
- 9.3 Notwithstanding anything in this Article to the contrary, if during the course of an investigation by a Governmental Authority or otherwise, a Governmental Authority requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party receiving the request, if required under Applicable Laws and Regulations, shall provide the requested information to the Governmental Authority conducting the investigation, within the time provided for in the request for information. In providing the information, the Party may request that the information be treated as confidential and non-public by the Governmental Authority and that the information be withheld from public disclosure. The Party shall notify the other Party to this Agreement when it is notified by a Governmental Authority that a request to release Confidential Information has been received, at which time either of the Parties may respond before such information would be made public. .

## **Article 10. Disputes**

- 10.1 The Parties agree to resolve all disputes arising out of this Agreement according to the Small Generator Interconnection Agreement (SGIA)

provisions of the Power Purchase Agreement.

## **Article 11. Taxes**

- 11.1 The Parties agree to follow all applicable Guam tax laws and regulations.
- 11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

## **Article 12. Miscellaneous**

- 12.1 Governing Law, Regulatory Authority, and Rules  
The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Territory of Guam (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.
- 12.2 Amendment  
The Parties may amend this Agreement by a written instrument duly executed by both Parties.
- 12.3 No Third-Party Beneficiaries  
This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.
- 12.4 Waiver
- 12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.
- 12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by the Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from GPA. Any waiver of this Agreement

shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. Both Parties are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Small Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four (24) hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party

copies of any publicly available reports filed with any governmental authorities addressing such events.

**12.11 Subcontractors**

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall a Party be liable for the actions or inactions of the other Party or its subcontractors with respect to obligations of the first Party under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.2 The obligations under this Article will not be limited in any way by any limitation of subcontractor's insurance.

**12.12 Waiver of Sovereign Immunity**

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

**Article 13. Notices**

**13.1 General**

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national currier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Interconnection Customer:



Interconnection Customer: Quantum Guam Power, LLC  
Attention: Dirk Straussfeld  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8650 Fax: 713-485-8651

If to the Transmission Provider:

Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Mailing Address: P.O. Box 2977,  
Hagatna, Guam 96932  
Physical Address: 1911, Route 16  
Harmon, Guam 96911  
Phone: (671) 648-3225 / 3001 Fax: (671) 648-3290

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below:

Interconnection Customer:

Interconnection Customer: Quantum Guam Power, LLC  
Attention: Chris Sanders  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8660 Fax: 713-485-8661

Transmission Provider:

Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Mailing Address: P.O. Box 2977,  
Hagatna, Guam 96932  
Physical Address: 1911, Route 16  
Harmon, Guam 96911

cc: Randall V. Wiegand, Chief Financial Officer  
GPA Finance Division  
rwiegand@gagwa.com

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:



If to the Interconnection Customer:

Interconnection Customer: Quantum Guam Power, LLC  
Attention: Dirk Straussfeld  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8650 Fax: 713-485-8651

If to the Transmission Provider:

Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Mailing Address: P.O. Box 2977,  
Hagatna, Guam 96932  
Physical Address: 1911, Route 16  
Harmon, Guam 96911

cc: Melinda R. Camacho, P.E. -- Asst. General Manager, Operations  
[mcamacho@gpagwa.com](mailto:mcamacho@gpagwa.com)

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: Quantum Guam Power, LLC  
Attention: Dirk Straussfeld  
Address: 1401 McKinney Street, Suite 1800  
City: Houston State: Texas Zip: 77010  
Phone: 713-485-8650 Fax: 713-485-8651

Transmission Provider's Operating Representative:

Guam Power Authority  
Attention: Joaquin C. Flores, P.E., General Manager  
Mailing Address: P.O. Box 2977,  
Hagatna, Guam 96932  
Physical Address: 1911, Route 16  
Harmon, Guam 96911  
Email Address: [jflores@gpagwa.com](mailto:jflores@gpagwa.com)

cc: Melinda R. Camacho, P.E. -- Asst. General Manager, Operations

[mcamacho@gpagwa.com](mailto:mcamacho@gpagwa.com)

With a copy of all notices, including notices of any defaults, sent to legal counsel of the applicable Party, as follows:

Lance Schuler  
Quantum Utility Generation, LLC  
General Counsel  
1401 McKinney Street, Suite 1800  
Houston, Texas 77010  
Fax: (713) 485-8641  
Phone: (713) 485-8640  
lschuler@quantumug.com

Graham Botha  
Guam Power Authority  
Legal Counsel  
P.O. Box 2977  
Hagatna, Guam 96932-2977  
Fax: (671) 648-3290  
Phone: (671) 648-3203  
gbotha@guampowerauthority.com

13.5 Changes to the Notice Information

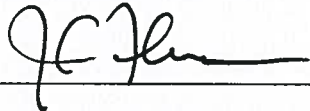
Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

*[Signature page follows]*

#### Article 14. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

##### For the Transmission Provider

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

Name: Joaquin C. Flores, P.E.

Title: General Manager

Date: April 25, 2013

##### For the Interconnection Customer

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

Name: Dirk Struassfeld

Title: Authorized Person

Date: April [\_\_], 2013

## Glossary of Terms

**Additional Customer** -- Pacific Green Resources, LLC, with respect to the planned 9.35 MW wind power generating facilities to be constructed near the Small Generating Facility site and connected to the Interconnection Facilities at the Point of Interconnection.

**Additional Customer Conductor** -- As described in sub-item (d) of Attachment 2.

**Applicable Laws and Regulations** -- All duly promulgated applicable federal, state, territorial and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

**Business Day** -- Monday through Friday, excluding Federal Holidays.

**Default** -- The failure of a breaching Party to cure its breach under this Agreement, within the time periods provided in Section 7.6 hereof.

**Effective Date** -- The date first set forth in the preamble hereto.

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

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

**IEEE Standards** - The standards of the Institute of Electrical and Electronics Engineers (IEEE), or its IEEE Standards Association (IEEE-SA), in effect as of the Effective Date.

**Interconnection Customer** -- Any entity, including the Transmission Provider, the Transmission Customer or any of the affiliates or subsidiaries of either, that proposes to interconnect its Small Generating Facility with the Transmission System.

**Interconnection Facilities** -- The Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Talofoto Substation, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small

Generating Facility to such facilities. The Interconnection Facilities include the Additional Customer Conductor (if and when installed), and are described in more detail in Attachment 2 and Attachment 3 hereto.

**Network Upgrades** – Additions, modifications, and upgrades to the Transmission System required for system stability at or beyond GPA's Talofoto Substation to accommodate the interconnection, at the Point of Interconnection, of the Additional Customer's facility with the Interconnection Facilities. Network Upgrades are summarized in Attachment 6 and do not include the Interconnection Facilities.

**Operating Requirements** – Any operating and technical requirements that may be applicable and are set forth in the Power Purchase Agreement or in this Small Generator Interconnection Agreement, including Attachment 5 hereto.

**Party or Parties** – The Transmission Provider, Interconnection Customer or any combination of the above.

**Point of Interconnection** – The point at the Small Generating Facility site (Dan Dan) where the Small Generating Facility connects with the Interconnection Facilities, and where the Additional Customer's facility interconnects with the Interconnection Facilities, as shown in Attachment 3.

**Reasonable Efforts** – With respect to an action required to be attempted or taken by a Party under the Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Small Generating Facility** – The Interconnection Customer's device for the production of electricity, but shall not include the Interconnection Facilities.

**Power Purchase Agreement** -- (i) The Renewable Energy Purchase Agreement for the sale by Interconnection Customer and the purchase by GPA of renewable solar energy from the Small Generating Facility, dated as of June 27, 2012 and (ii) the Renewable Energy Purchase Agreement for the sale by Additional Customer and the purchase by GPA of renewable solar energy, to be dated March 14, 2013 and assigned to Interconnection Customer by instrument dated as of the date of this Agreement, it being understood that the Small Generating Facility will produce electricity for sale under both contracts, and any reference in this Agreement to Power Purchase Agreement includes both contracts together.

**Tariff** – The Transmission Provider's tariff through which open access transmission service and interconnection services are offered and as amended or supplemented from time to time, or any successor tariff.

**Transmission Provider** – As defined in the preamble hereto.

**Transmission System** – The facilities owned, controlled or operated by the Transmission Provider that connect to the Interconnection Facilities and are used to provide transmission

service under the Tariff.

## **Description of the Small Generating Facility, Interconnection Facilities, and Metering Equipment**

Equipment, including the Small Generating Facility, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by the Interconnection Customer or by GPA.

### **Interconnection Facilities**

The Interconnection Facilities and the capped amounts with respect thereto (beyond which GPA will reimburse Interconnection Customer as set forth in this Agreement) include the following:

- a) Modifications to the Talofoto Substation up to \$1,850,485;
- b) Construction of a 34.5 kV radial connection (one (1) set 3#500 kcmil Cu. conductors or two (2) sets 3#600 kcmil Al. conductors) between the Talofoto substation and the to be built Dandan substation located on the site of IR01 of approximately \$8,900,000; and
- c) Construction of the DanDan substation \$661,301; and
- d) Additional Customer Conductor: In the event that the Additional Customer (IR02) proceeds with its wind project, and Interconnection Customer has chosen to install b) (1) one set of 3#500 kcmil Cu., then installation of an additional one set of 3#500 kcmil Cu. shall be performed. 100% of the incremental cost of replacing aluminum with copper shall be the responsibility of the Interconnection Customer, over and above the established not to exceed amounts.

If a third party uses the additional capacity of the second set of 3#500 kcmil Cu. conductor within five (5) years after the Commercial Operation Date (as defined in the Power Purchase Agreement), then the Interconnection Customer and Additional Customer will be entitled to a refund (calculated in accordance with established GPA procedures) of the cost of the extra conductor, such refund to be shared between Interconnection Customer and Additional Customer in the ratios of 73.29% and 26.71% respectively.

The new 34.5 kV underground transmission line from the to be built from Dandan substation, which would be located directly adjacent to the Small Generating Facility and on Interconnection Customer's property, to the GPA Talofoto substation, will consist of:

Two (2) 6" PVC Carlon (or equal) Bore-Gard conduit containing 1 set 3#500 kcmil Cu. and 1 6" PVC empty; OR 2 sets 3#600 kcmil Al. XLP-TS-HDPE-JKT 133% 35 kV cables with both 6" PVC conduits being utilized. This cable will come on a 72" reel that weighs approximately 10,000 lbs. each;

One (1) 1 1/4" empty conduit for the fiber optic cable;

(1) 4/0 bare copper ground wire installed outside of the conduits;



Approximately forty (40+/-) 8'HX8'WX8'D concrete vaults (either precast or cast in place) installed in approximately 1,200' intervals (or as allowed by proper cable pulling tension calculations) including a ground rod in each vault (35 kV cables to be looped and spliced at each vault); and

Approximately (40+/-) 2'HX3'WX2'D concrete (precast) handholes for splicing fiber optic conduit or cables.

The DanDan Substation will be housed in a concrete building.

The metering switchboard proposed for the Dandan Substation, which would be directly adjacent to the Small Generating Facility and on Interconnection Customer's property, shall include two meters, one for each Power Purchase Agreement, and would be a unit that is rated for 34,500 volts and up to 1200 amps of power. The unit would provide protective-type circuit breakers for a currently planned 25.65 MW solar system with provisions for an expansion to 40MW. This unit would provide feeder-type protection for the power conductors from the solar generators and protection for the new feeder to the GPA Talofoto Substation with a circuit breaker and a visible blade disconnect safety switch for the safety of the GPA personnel. This portion of the switchgear would be a minimum of 7 units including revenue metering and one spare fully bussed unit for future installation of a circuit breaker and cable for the expansion to 40 MW.

In addition, there will be provisions (in the switchgear) for a future program of the Additional Customer that will provide 10 MW of additional power generation. This section of the switchgear would consist of fully bussed empty cabinets that would be designed to accommodate a future separate circuit breaker for protection of the incoming feeders, separate revenue metering, separate open blade disconnect, and a separate main circuit breaker, and Interconnection Customer will provide 1-6" conduit (empty) and a stub 5' outside the foot print of the concrete building.

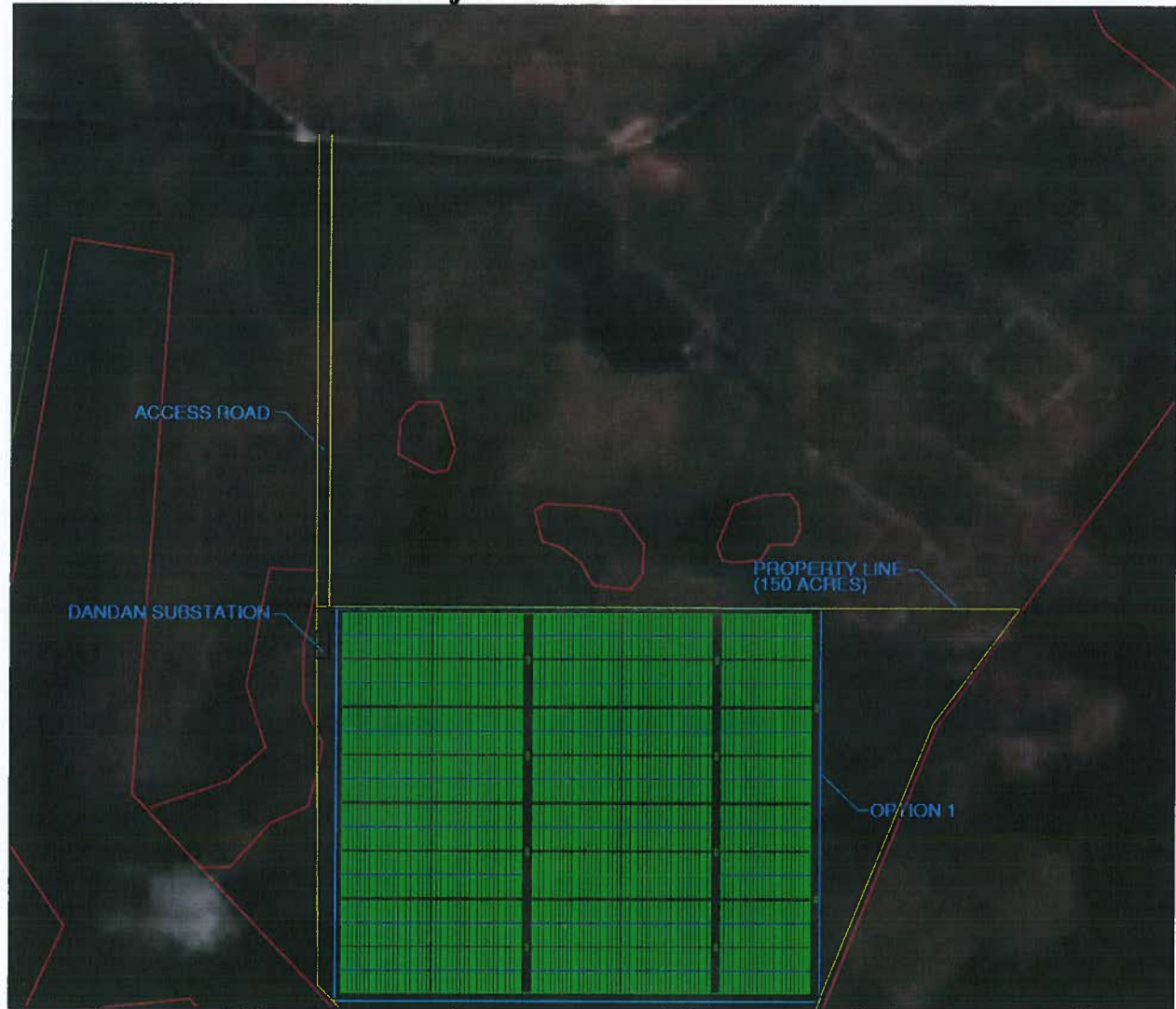
Moreover, there will be space allocated for two additional breaker positions for GPA to connect a distribution power transformer and one other future separate transmission circuit to the Dandan substation 35KV switchgear. Interconnection Customer will provide 2 – 6" conduits (empty) per breaker position and a stub 5' outside the footprint of the concrete building.

#### Small Generating Facility

The general location of the Small Generating Facility and the Dandan Substation are noted on the attached picture. The Small Generating Facility will be a 25.65 MW AC fixed tilt solar generating facility. The Facility location is on Lot B-3REM-12 in the Municipality of Inarajan. Interconnection Customer or its Affiliate has received a Conditional Use Permit to allow for the development, construction and operation of the Small Generating Facility. The Small Generating Facility will be equipped with high efficiency solar panels generating direct current that will be converted to alternating current (AC) using approximately fifty (50) 500kW (Solaron 500) inverters and two (2) 333 kW (Solaron 333-CH) inverters manufactured by Advanced Energy, each equipped with Extended Ride Through (ERT) as specified in the RW Beck Renewable IFB

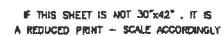
System Impact Study. The inverter will generate 480V AC power that will be transformed by approximately thirteen (13) 480V to 34.5 kV transformers located in close proximity to the inverter. The onsite underground constructed 34.5 kV collection grid will bring the solar generated electricity to the Dandan substation to be located on the site of the Small Generating Facility, where GPA will accept the metered power under the Power Purchase Agreements.

## Addendum to Attachment 2 -- Project Site Picture



### **Attachment 3**

## **One-line Diagram Depicting the Small Generating Facility, Interconnection Facilities, Metering Equipment, Network Upgrades and Additional Customer Tie-In Location and Requirements**



THESE DRAWINGS AND THE CONCEPTS, IDEAS AND DESIGNS REPRESENTED HEREBY ARE AND SHALL REMAIN THE PROPERTY OF ROSENBLUM ELECTRIC AND NO PART THEREOF SHALL BE COPIED, DISCLOSED TO OTHERS, OR USED IN CONNECTION WITH ANY WORK OR PROJECT INCLUDING THIS PROJECT FOR WHICH THEY HAVE BEEN PREPARED AND DEVELOPED WITHOUT THE WRITTEN CONSENT OF ROSENBLUM ELECTRIC. VISUAL CONTACT WITH THESE DRAWINGS OR SPECIFICATION SHALL CONSTITUTE CONCLUSIVE EVIDENCE OF ACCEPTANCE OF THESE RESTRICTIONS.

**DANDAN SITE  
INARAJAN, GUAM**

[illegible]

**R ROSENDIN**  
ELECTRIC  
**SOLAR OPERATIONS**  
5572 Fresco Drive  
La Palma, CA 90623  
714.521.8113 | fax 714.582.5006 |



06-30-12 R.E. E14409

Scale AS SHOWN  
Created By CAD DEPT.

Scale	AS SHOWN	Project No.	III
Drawn By	CAD DEPT.	Sheet	E-1.0
Checked By	XX		
Date	11/10/2007		
Filename:	QUAD E1.0.DWG	Of	Sheets

**Milestones**

In-Service Date: \_\_\_\_\_

Critical milestones and responsibility as agreed to by the Parties:

	<b>Milestone/Date</b>	<b>Responsible Party</b>
(1)	Preliminary design for Interconnection Facilities (November 10, 2012)	Interconnection Customer
(2)	GPA approval of design basis (June 1, 2013)	GPA
(3)	Interconnection Customer to have all permits in hand for Interconnection Customer construction to start on public roads (supported by GPA engineering) (June 1, 2014)	Interconnection Customer
(4)	Construction completion (one year after permits are in hand)	Interconnection Customer

Agreed to by:

For the GPA (If Applicable) \_\_\_\_\_ Date\_\_\_\_\_

For the Interconnection Customer\_\_\_\_\_ Date\_\_\_\_\_

**Additional Operating Requirements for the Transmission Provider's  
Transmission System Needed to Support  
the Interconnection Customer's Needs**

The following requirements must be met by the Interconnection Customer prior to initiating parallel operation with the Transmission Provider's Transmission System:

Ramp up rates for the Facility will be as follows:

2.5 MW/minute without wind;

1.75 MW/minute if Additional Customer's wind project is in operation (this value shall be modified to a mutually agreeable higher number, not to exceed 2.5 MW/minute, once further operational data from the wind turbine manufacturer is received).

The Facility is intended to operate at a power factor of 1.0.



**Transmission Provider's Description of its Network Upgrades  
and Network Upgrade Costs**

In the event the Additional Customer does not proceed with its wind project, Interconnection Customer shall be responsible for 100% of the cost of such Interconnection Facilities, not to exceed the amounts set forth above. However, in the event the Additional Customer proceeds with its wind project, the Interconnection Customer (IR01) will be responsible for 73.29% of the total of such Interconnection Facilities costs and the Additional Customer (IR02) for 26.71%.

In the event the Additional Customer also proceeds with its wind project, a certain Network Upgrade will be required on the GPA system. Below is a summary of the Network Upgrade required to accommodate both interconnection requests at this location. As identified in the Study (as defined in the Power Purchase Agreement) but subject to Section 5.2 of this Agreement, the Interconnection Customer (IR01) will be responsible for 73.29% of the total Network Upgrade costs required for both projects and the Additional Customer (IR02) for 26.71%. The Network Upgrade is described as follows:

- i. Reconductor existing overhead 3#4/O AWG Cu. transmission line approximately 7.1 miles from Talofoto substation to Apra Heights substation (approximately 20% of the poles will require replacement): \$5,925,696

## Bill of Sale

THIS BILL OF SALE (this "Bill of Sale") is made and entered into by Quantum Guam Power, LLC., a Guam limited liability company ("Seller"), and Guam Power Authority ("Buyer", and together with Seller, the "Parties"), effective as of [\_\_\_\_], 20\_\_.

### RECITALS

WHEREAS, Seller in connection with the development, construction and ownership of a solar power generating station and related assets located in the Territory of Guam (the "Project") has designed, developed and constructed, and owns, certain transmission, switching and related assets described more fully on Exhibit "A" hereto, together with all ancillary rights and interests (including all manufacturers' and contractors' warranties) relating thereto and further described on Exhibit "A" hereto (the "Assets"); and

WHEREAS, (i) Seller and Buyer entered into a Renewable Energy Purchase Agreement dated as of June 27, 2012, pursuant to which Seller and Buyer have agreed to sell and purchase renewable energy generated by the Project (the "Seller Purchase Agreement"), (ii) Buyer and Pacific Green Resources, LLC (as seller) entered into a Renewable Energy Purchase Agreement dated as of April [\_\_\_\_], 2013, and assigned by seller thereunder to Seller hereunder by instrument dated as of April [\_\_\_\_], 2013 (such contract, as assigned, together with the Seller Purchase Agreement, the "Purchase Agreement") and (iii) Seller and Buyer entered into an Amended and Restated Small Generator Interconnection Agreement dated as of April [\_\_\_\_], 2013, pursuant to which Seller and Buyer have agreed to the installation and interconnection of the Project with Buyer's transmission system (the "SGIA"); and

WHEREAS, as contemplated by the SGIA, and in connection with the operation of the Project by Seller and the purchase and sale of renewable energy pursuant to the Purchase Agreement, Seller desires to transfer and Buyer desires to receive the Assets.

### NOW, THEREFORE, BE IT KNOWN THAT:

1. Conveyance and Assignment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby **GRANT, BARGAIN, ASSIGN, TRANSFER, SET OVER, DELIVER AND CONVEY** to Buyer all of Seller's right, title and interest in and to the Assets, **TO HAVE AND TO HOLD** the Assets by Buyer and its successors and permitted assigns, forever.

2. NO WARRANTY. **THE ASSETS ARE HEREBY CONVEYED AS IS, WHERE IS, AND SELLER HEREBY GIVES NO WARRANTY OF DESIGN, MATERIALS, WORKMANSHIP OR PERFORMANCE OF THE ASSETS, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** However, Seller

covenants and agrees that the manufacturers' and contractors' warranties transferred hereby as part of the Assets shall extend for a period of at least one (1) year from the acceptance of the Assets by Seller.

3. Further Assurances. Seller for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Buyer, Seller will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required in order to assign, transfer, set over, convey, assure and confirm unto and vest in Buyer, its successors and assigns, title to the assets sold, conveyed and transferred by this Bill of Sale.

4. Counterparts. This Bill of Sale may be executed in counterparts.

5. Governing Law. This Bill of Sale shall be governed by and construed in and interpreted in accordance with the laws of the Territory of Guam.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Parties have executed this Bill of Sale as of the date above first written.

**Seller:**

**QUANTUM GUAM POWER, LLC**

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

Name: \_\_\_\_\_

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

**Buyer:**

**GUAM POWER AUTHORITY**

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

Name: \_\_\_\_\_

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

## ACKNOWLEDGEMENTS

GUAM, U.S.A.           )  
                                  ) SS:  
MUNICIPALITY OF       )  
\_\_\_\_\_ )

ON THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for Guam, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Guam Power Authority, an autonomous instrumentality of the government of the Territory of Guam, whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said corporation, in such capacity, being fully authorized to do so, and for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_

GUAM, U.S.A.           )  
                                  ) SS:  
MUNICIPALITY OF       )  
\_\_\_\_\_ )

ON THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for Guam, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Quantum Guam LLC, a Guam limited liability company, whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said corporation, in such capacity, being fully authorized to do so, and for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_

## **Exhibit “A”**

### ***Description of Assets***

*[Description of Interconnection Facilities; see § 1.4.2.4 of SGIA]*

*[Description of Network Upgrades; see § 5.2 of SGIA]*

**20 MW PPA**

**Quantum Guam Power**

**Amendment 2**

**Effective Date: May 29, 2013**



## SECOND AMENDMENT TO

### RENEWABLE ENERGY PURCHASE AGREEMENT

**THIS SECOND AMENDMENT TO RENEWABLE ENERGY PURCHASE AGREEMENT** (this "Amendment") is made and entered into as of May 29<sup>th</sup>, 2013, by and between Guam Power Authority ("Buyer"), and Quantum Guam Power, LLC, a Guam limited liability company ("Seller", and together with Buyer, the "Parties").

**WHEREAS**, Buyer and Seller previously entered into that certain Renewable Energy Purchase Agreement, dated June 27, 2012, and a First Amendment to Renewable Energy Purchase Agreement dated February 22, 2013 (together, the "PPA", capitalized terms not defined herein having the meaning given in the PPA);

**WHEREAS**, Buyer and Pacific Green Resources, Inc. previously entered into that certain Renewable Energy Purchase Agreement (Solar) dated March 14, 2013 (the "PGR PPA");

**WHEREAS**, Seller has subsequently acquired by assignment the PGR PPA and concurrently herewith Buyer and Seller have agreed to amend the PGR PPA to correspond as necessary to certain modifications being implemented by this Amendment; and

**WHEREAS**, Buyer and Seller have agreed to further amend the PPA as set forth in this Amendment.

**NOW, THEREFORE**, the Parties hereby agree as follows:

**Section 1. Definitions.** The definition in the PPA of "Contract Hours" is replaced in its entirety with the following:

"Contract Hours" means all of the daylight hours in the applicable Availability Measurement Period. No curtailment by GPA of Facility output during periods of time which are not Contract Hours shall be included in the calculation of GPA's 2% curtailment limit set forth in Section 1.2(a) of Appendix H."

**Section 2. Milestones.** The Parties hereby agree that the milestone dates in Sections 4.2 and 4.3 of the PPA may be extended as necessary to account for permitting delays and other events reasonably beyond Seller's control.

**Section 3. Availability.** Section 4.7 of the PPA is replaced in its entirety with the following:

"Commencing six (6) months after COD, GPA shall calculate the Availability of the Facility as soon as reasonably practicable at the end of each rolling three (3) year period during the Delivery Period (the "Availability Measurement Period"). In the event that the Availability of the Facility during any Availability Measurement Period falls below ninety percent (90%), not including outages due to planned inverter major maintenance in accordance with industry standards ("Guaranteed Availability"), it shall constitute an "Availability Default," but only in the event that Guaranteed Output has also not been achieved during any year of the Availability Measurement Period. Upon the occurrence of an Availability Default, GPA may provide Seller with written Notice of Availability Default. On or before the thirtieth (30th) calendar day following its receipt of such

[Signature Page to Second Amendment]

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Notice, Seller shall provide GPA with a reasonable written plan for curing its failure to meet its Availability obligations set forth herein (a "Cure Plan"). Any disagreement between Seller and GPA as to the suitability of the Cure Plan shall be resolved in accordance with Section 11.10. The Cure Plan must specify in reasonable detail Seller's analysis of the cause(s) of the unavailability, the action(s) that Seller plans to take to correct such underperformance, and the time needed to complete such corrective action(s). Seller shall undertake any and all corrective action in a Commercially Reasonable manner and shall complete all such corrective action as soon as is commercially practicable. In no event shall such corrective action take longer than one (1) year to complete. Notwithstanding anything in this provision to the contrary, in the event that Seller does not timely submit a reasonable Cure Plan, then following resolution of any dispute related thereto GPA may immediately terminate the Agreement upon written Notice to Seller. Notwithstanding Seller's submission and performance of any Cure Plan, the obligations of Section 4.8 with respect to Minimum Production shall continue to apply.

Promptly upon completing its corrective action, Seller shall provide Notice to GPA of the same. Beginning on the date of such notification, the next Availability Measurement Period shall begin. If the Facility fails to achieve the Guaranteed Availability over the term of the subsequent Availability Measurement Period, GPA shall have the right to immediately terminate this Agreement upon written Notice to Seller unless Seller exercises its cure rights as set forth in the preceding paragraph. If Seller does not exercise such cure rights, or is not entitled to exercise such cure rights, GPA shall be entitled to all of the rights and remedies associated with such termination as set forth in this Article Four. Seller shall be entitled to exercise its Cure Plan rights no more than three (3) times during the Term of this Agreement and there shall be a minimum of twelve (12) Months between Cure Plans."

**Section 4. Interconnection Costs and Network Upgrades.** In the event of any inconsistency between the Amended and Restated SGIA and the final paragraph of Section 7.4 of the PPA, the Amended and Restated SGIA shall control.

**Section 5. Development Security.** The following shall be added to the PPA as Section 9.1(d):

(d) Any Letter of Credit posted as Development Security may be replaced by Seller at any time by posting a substitute Letter of Credit meeting the requirements set forth in the definition thereof or, in Seller's sole discretion, by posting cash in the amount of the Development Security.

**Section 6. Insurance.** With respect to certain insurance matters under Section 11.2 of the PPA, the parties agree as follows:

(a) Pollution Liability (fifth (5th) bullet point): the Parties confirm that pollution liability is not applicable; and

(b) Property Insurance (seventh (7th) bullet Point): insert in the third (3rd) line after the phrase "full replacement value", the clause ", subject to sub-limits for earthquakes and windstorms of \$25,000,000.00,".

PCF  
D/d

**Section 7. Extension of Delivery Period.** Section 11.9(b) of the PPA shall be replaced in its entirety with the following:

“Transfer or Extension of Delivery Period. Subject to the prior termination right below, GPA, by Notice delivered to Seller at least one hundred and eighty (180) days prior to the end of the Delivery Period, may either (i) extend this Agreement for one year, in which case (A) the Contract Price and the Additional Production Price during the one (1) year extension shall be fifty percent (50%) of the Contract Price in effect during the final year of the Term and (B) the Minimum Production during the one (1) year extension shall be 35,660 MWh, or (ii) purchase the Facility (including the land on which the Facility is located) from Seller at the Appraisal Price, within thirty (30) days of the determination of the Appraisal Price. If GPA fails to send such Notice then this Agreement shall terminate at the end of the Delivery Period. In addition, if GPA exercises option (i) above, then GPA may also exercise option (ii) above by giving Notice of such election at least one hundred and eighty (180) days prior to the end of the extension period.”

**Section 8. True-Up of Lost Revenue Payments.** The second sentence of Section 1.2(d) of Appendix H of the PPA shall be replaced in its entirety with the following:

“During the Contract Year-end annual true- up process, any payments made by GPA to the Seller for production (MWh) in excess of the Minimum Production for that Contract Year, whether such production results from actual generation surpluses or Lost Revenue, will be adjusted to reflect the Additional Production Price for the Current Contract Year for results exceeding the Minimum Production amount and equal to or below the sum of the Minimum Production and the Additional Production Limit as listed in Appendix A and A-1. If the results exceed the sum of the Minimum Production and the Additional Price Limit then payments will be adjusted to reflect the lesser of the Additional Production Price or then current LEAC Rate.”

**Section 9. Representations and Warranties.**

(a) As of the date of this Amendment, each Party represents and warrants to the other Party that:

(i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; and

(ii) The execution, delivery and performance of this Amendment are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and this Amendment constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses.

(b) As of the date of this Amendment, Buyer represents and warrants to Seller that the execution and delivery of this Amendment by Buyer is within the approval authority received by Buyer from the Guam Public Utilities Commission and all other applicable Governmental Authorities with respect to the PPA and provides a commercial advantage for Buyer over the terms and conditions of the PPA prior to this Amendment.

Q&A  
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**Section 10. Governing Law.** This Amendment and all matters arising hereunder or in connection herewith shall be governed by and construed in accordance with the laws of Guam, without regard to conflicts of law principles.

**Section 11. Counterparts.** This Amendment may be executed by the Parties in one or more counterparts, all of which, taken together, shall constitute one and the same instrument.

**Section 12. Headings.** The headings and captions used in this Amendment are inserted for reference and convenience only and the same shall not limit or construe the sections or paragraphs to which they apply or otherwise affect the interpretation thereof.

**Section 13. Signatures.** The exchange of copies of this Amendment and of signature pages by facsimile or other electronic transmission shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.


**Section 14. No Other Changes.** Except as amended hereby, the PPA shall continue in full force and effect in accordance with the terms and conditions thereof.

**IN WITNESS WHEREOF,** the Parties have caused this Amendment to be executed by their duly authorized representatives on the date first written above.

**GUAM POWER AUTHORITY**

**QUANTUM GUAM POWER, LLC**

By:   
Name: Joaquin C. Flores, P.E.  
Title: General Manager

By:   
Name: Dirk Straussfeld  
Title: Authorized Person

