O&M Agreement Template

GENERATION PROJECT

OPERATION AND MAINTENANCE CONTRACT

This OPERATION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of ***[Date]*** by and between ***[Legal name, form and country of RET Project Owner]*** ("Owner"), and ***[Legal name, form and country of O&M firm]*** ("Operator").

RECITALS

WHEREAS, Owner owns a ***[Description of RET Project]***, ***[Name of Project]*** ("Project") and desires to contract for operation, maintenance and management of the Project,

WHEREAS, Operator provides operation, maintenance and management services for ***[RET type]*** generation facilities and has agreed to provide those services for the Porject on the terms and conditions set forth in this Agreement,

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

ARTICLE 1
AGREEMENT

Section 1.1 - *Agreement*. This Agreement consists of the terms and conditions set forth in the sections captioned by numbered article designations ("Articles") and the following appendices, which are incorporated and made part this Agreement by this reference and are included in any reference to this Agreement.

Appendix A - Scope of Services
Appendix B - Compensation
Appendix C - Communication Protocols

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

Section 1.2 - *Effective Date and Term.* This Agreement shall be effective and shall govern the rights and obligations of the parties from and after the date of this Agreement for a period of ***[Define term of Agreement in appropriate units of time]*** years/months.

Section 1.3 - *Relationship of The Parties*. Operator has been retained by Owner as an independent contractor to operate, maintain and manage the Project on behalf of Owner, in accordance with Prudent Utility Practice and the requirements of the Project Agreements. Owner has delegated to Operator overall responsibility for operating, maintaining and managing the Project to ensure that the Project is available to produce electric energy for sale by Owner and meets all requirements under the Project Agreements. Neither Operator nor any of its employees, subcontractors or agents shall be deemed to have any other status, except that Operator is the agent of Owner to the limited extent that this Agreement expressly grants Operator the authority to act on behalf of Owner.

Section 1.4 - *Representatives*. Owner and Operator shall each designate a representative ("Designated Representative") to act on its behalf in overseeing the performance of this Agreement. Owner and Operator may change their respective Designated Representatives upon written notice to the other party given as provided in this Agreement. Designated Representatives shall be the primary means for communication and all other interactions between Owner and Operator that are required under this Agreement. Designated Representatives shall have the power and authority to bind their respective principals under the terms of this Agreement, with any required internal
corporate approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal.

ARTICLE 2
DEFINITIONS

Section 2.1 - *Definitions*. Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Article 2. Terms that are defined in other Articles shall have the meanings given to them in those Articles.

"Annual Budget" has the meaning set forth in Section 6.2(a).

"Annual Project Operating Plan" has the meaning set forth in Section 6.2.

"Annual Operating Fee" means an annual operating fee paid to Operator during each Contract Year as set forth in Section 5.2.

"Bankruptcy" means a situation in which (i) a party's actions under applicable debtor relief laws demonstrate an inability to pay its debts as they mature or a need for protection from its creditors; (ii) a court of competent jurisdiction approves a petition filed against a party, which petition

sought relief for the party's creditors, and the action of the court remains in effect for an aggregated period of 60 days (whether or not consecutive); (iii) a party admits in writing its inability to pay its debts as they mature; (iv) a party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or (v) a party makes an assignment for the benefit of creditors or takes other similar action for the protection or benefit of its creditors.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close in ***[Country of Project]***.

"Contract Year" means: (i) for the first Contract Year, that period from the date of this Agreement to and including December 31 of such year; and (ii) for each Contract Year thereafter, the calendar year.

"Five-Year Budget" has the meaning set forth in Section 6.2(d).

"Force Majeure Event" means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of Section 15.3 *(Force Majeure)*. Subject to the foregoing, "Force Majeure Event" shall include, as to either party, explosion and fire (in either case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of the Project, which events were not pending on the date of this Agreement.

"Lender(s)" means

(i) any person that has made loans to Owner, its successors or permitted assigns for the financing or refinancing of the Project (or any part thereof) or which loans are secured by the Project (or any part thereof),

(ii) the holder(s) of indebtedness evidencing any such loans or any person or entity lawfully acting on behalf of such holders, or

(iv) any person or entity that purchases the Project in connection with a sale-leaseback or other lease arrangement in which Owner is the lessee of the Project pursuant to a net lease.

"Operating Manuals" means the operating data, design drawings, specifications, vendors' manuals, warranty requirements, procedures (including those for maintenance of the Project and environmental and safety compliance), and similar materials with respect to the Project.

"Procedures Manual" has the meaning set forth in Section 5.1.

"Project" means the ***[Size, technology and other decriptive information about the Project]*** generating Project and related assets, together with other facilities and related assets, to be constructed on certain real property in ***[Location of Project]***

"Project Agreements" means the agreements relating to the Project, including any Power Purchase Agreement, Interconnection Agreement, Loan Agreements, this Agreement and all other agreements applicable to the Project, permits, and licenses required for the operation, maintenance and management of the Project, as identified in writing by Owner.

"Prudent Utility Practice" means (i) any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the country and geographic region where the Project is located during the relevant time period, or (ii) practices, methods and acts that, in the exercise of reasonable judgment on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

"Reference Rate" means the rate published in the Money Rates table of The Wall Street Journal, from time to time, as the "prime rate", plus 1%.

"Reimbursable Costs" has the meaning set forth in Section 5.3.

"Services" has the meaning set forth in Article 3.1.

ARTICLE 3
SERVICES

Section 3.1 - *Scope of Services*. Operator shall (i) operate, maintain and manage the Project on behalf of Owner ("Services") and (ii) also perform the specific duties set forth in this Agreement if they are not otherwise required by the standards defined in Section 3.2.

Section 3.2 - *Standards for Performance of the Services*. Operator shall perform the Services required under this Agreement, including those set forth in Appendix A, in a prudent, reasonable, and efficient manner and in accordance with (i) Operating Manuals, the Administrative Procedures Manual and applicable vendor

warranties, (ii) the applicable Annual Project Operating Plan and Annual Budget, (iii) all applicable Laws, (iv) Prudent Utility Practices, (v) the Project Agreements, (vi) the requirements of any System Operator, and (vii) all insurance policies specified in Article 9 of this Agreement. Operator shall use all reasonable efforts to optimize the useful life of the Project and to minimize Reimbursable Costs and Project outages or other unavailability.

Section 3.3 - *Operator's Personnel Standards*. Operator shall provide as reasonably necessary all labor and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned and shall meet any requirements for Project personnel under the Project Agreements. All individuals employed by Operator to perform the Services shall be employees of Operator, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by Operator (subject to Owner's approval rights with respect to the Annual Budget). With respect to labor matters, hiring personnel, and employment policies, Operator shall comply with all applicable Laws. Operator also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and with Operator’s acknowledgment (hereby given) that Operator has no authority to enter into any contracts with respect to labor matters that purport to bind or otherwise obligate Owner.

Section 3.4 - *Compliance*. Operator shall comply with all Laws applicable to the operation, maintenance and management of the Project and the performance of the Services. Operator shall apply for and obtain, and Owner shall assist Operator in applying for and obtaining, all necessary permits, licenses and approvals (and renewals of the same) required to allow Operator to do business or perform the Services in the jurisdictions where the Services are to be performed. Operator shall provide reasonably necessary assistance to Owner, to secure permits, licenses, and approvals (and renewals of the same) that Owner is required to obtain from or file with any governmental agency regarding the Project. Operator also shall file such reports, notices, and other communications as may be required by any governmental agency regarding the Project.

Section 3.5 - *Operating Records and Reports*. Operator shall maintain, at a location acceptable to Owner, the Project operating logs, records, and reports that document the operation and maintenance of the Project, all in form and substance sufficient to meet Owner's reporting requirements under the Project Agreements. Operator shall maintain current revisions of drawings, specifications, lists, clarifications and other materials related to operation and maintenance of the Project provided to Operator by Owner and vendors. Operator shall provide Owner reasonably necessary assistance in connection with Owner's compliance with reporting requirements under the Project Agreements, applicable Laws or any other agreement to which Owner is a party relating to the Project. Such assistance shall include providing reports, records, logs and other information that Owner may reasonably request as to the Project or its operation.

Section 3.6 - *No Liens or Encumbrances*. Operator shall maintain the Project free and clear of all liens and encumbrances resulting from any action of Operator or work done at the request of Operator, except for such liens or encumbrances that result directly from nonpayment by Owner of amounts due and owing to Operator under this Agreement.

Section 3.7 - *No Action*. Except where such action is expressly permitted by this Agreement, Operator shall not take any action that would cause a default under any Project Agreement.

Section 3.8 - *Emergency Action*. If an emergency endangering the safety or protection of persons, the Project, or property located near the Project occurs, Operator shall promptly notify Owner and take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. Operator shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

Section 3.9 - *Action in Extraordinary Circumstances*. In the event that

(A) the Project or major Project equipment suffers an unplanned outage (or Operator reasonably believes that such an occurrence is imminent), and

(B) Operator has made reasonable, but unsuccessful, efforts to notify and communicate with Owner regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement,

then Operator shall

(i) take all necessary action to prevent or to mitigate such unplanned outage,

(ii) make reasonable efforts to minimize any cost associated with such remedial action,

(iii) continue to attempt to notify and communicate with Owner regarding the occurrence and the remedial action, and

(iv) shall not expend for such purposes more than an aggregate of ***[Amount of cap]*** in any Contract Year.

ARTICLE 4
OWNER RESPONSIBILITIES

Section 4.1 - *Information*. Owner shall provide Operator with all vendor manuals, spare parts lists, Project data books and drawings which are provided to Owner pursuant to any Project Agreement or by any contractor responsible for construction, installation, repair or maintenance of the Project or a part thereof. Subject to the standards of performance set forth in Section 3.2,
Operator shall be entitled to rely upon such information in performance of the Services. Owner shall also provide Operator with copies of all Project Agreements and any amendments thereto and any other documents that define the Project's operating requirements.

Section 4.2 - *Overhaul of Major Equipment and Capital Improvements*. The cost of all major equipment teardowns and overhauls and all capital improvements shall be the responsibility of Owner. Operator shall promptly notify Owner in writing of any such teardowns and overhauls of major equipment or capital improvements that Operator believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements. To the extent reasonably possible, the costs of all major equipment teardowns and overhauls and all capital improvements shall be incorporated into the applicable Annual Budget. If such costs have been incorporated into the applicable approved Annual Budget, or if Owner has otherwise consented in writing to reimburse Operator for such costs, Operator shall schedule, coordinate, contract and oversee the performance of such activities. Operator also shall be responsible for monitoring and enforcing contract compliance by the contractor performing such work, including

taking such steps, short of litigation, to enforce any warranties granted to Owner by such contractor.

Section 4.3 - *Annual Budget and Project Operating Plan*. In accordance with Article 6, Owner shall be responsible for approval of the Annual Budget, the Annual Project Operating Plan and the Five-Year Budget.

ARTICLE 5
COMPENSATION AND PAYMENT

Section 5.1 - *Payments*. As compensation to Operator for performance of the Services hereunder, Owner shall pay Operator the Annual Operating Fee (or a pro rata portion thereof in the case of a Contract Year of less than 12 months). In addition, Owner shall (at Owner's Option) either (i) reimburse Operator, in the manner and at the times specified in this Article 5 and Appendix B, as modified from time to time, for all Reimbursable Costs or (ii) pay such Reimbursable Costs directly to the applicable third parties.

Section 5.2 - *Annual Operating Fee*. For the first Contract Year and each subsequent Contract Year, Owner shall pay to Operator the sum of ***[Monthly amount]*** per month of the Contract Year, for an annual fee of ***[Annual amount]*** (the "Annual Operating Fee"). Beginning on the first day of the second Contract Year and on the first day of each Contract Year thereafter, the Annual Operating Fee (and the corresponding monthly operating fee) shall be adjusted to reflect changes in the ***[Escalation factor and calculation method]***.

Section 5.3 - *Reimbursable Costs*. Owner shall reimburse Operator for all costs incurred by Operator in performing the Services, including the costs set forth in Appendix B (collectively, the "Reimbursable Costs"). Owner's obligation under this provision is

subject to (i) Owner's express approval of the costs as part of an Annual Budget or separately in writing, or (ii) Operator incurring costs in accordance with Section 3.8 (*Emergency)*, 3.9 (*Extraordinary Circumstances*). Expenditures made by Operator in excess of the Annual Budget that are required to comply with any Law applicable to the Services or to the Project, shall be approved and reimbursed by Owner. Subject to Owner's right to modify the provisions of this Section 5.3 from time to time upon the reasonable request of the Lenders, Owner shall pay Reimbursable Costs as follows:

(a) Owner will advance to Operator on a mutually agreed basis, funds required for Operator to make payments as they become due in accordance with the Annual Budget. Not less than fifteen (15) days before the first day of each calendar month during the term of this Agreement, Operator shall submit to Owner an estimate of funds required for such month, which estimate shall be in accordance with the Annual Budget. Owner shall pay to Operator the amount of such estimate prior to the time such funds are required by Operator. Such advances shall be deposited in a separate account in Operator's name, as agent for Owner, in a bank or banks approved by Owner, subject to withdrawal by Operator solely for the purpose of making required payments. Within fifteen (15) days of the end of each month, Operator shall submit to Owner a statement of receipts and disbursements, in detail satisfactory to Owner, together with supporting documentation.

(b) Operator shall not incur Reimbursable Costs unless they are incurred in accordance with the applicable Annual Budget, or are permitted by Sections 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*). If Operator becomes aware that Reimbursable Costs exceed or will exceed the amount provided in the applicable Annual Budget by 5% or more, Operator shall use all reasonable efforts to notify Owner within ten (10) days and shall not, without Owner's approval to amend the applicable Annual Budget or Owner’s authorization for Operator to make such expenditure, perform any further Services that will cause or increase a budget overrun, except as provided in 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*). If Owner refuses to authorize expenditures in excess of the Annual Budget, Operator shall be relieved of those duties or obligations of this Agreement that cannot be performed without the expenditures Owner refuses to approve.

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

Section 5.4 - *Adjustments and Conditions*. Notwithstanding the payment of any amount pursuant to the foregoing provisions, Owner shall remain entitled to conduct a subsequent audit and review of all Reimbursable Costs incurred and paid by Owner and of any supporting documentation for a period of 2 years after the applicable Contract Year. If such audit and review shows that any amount previously paid by Owner to Operator did not constitute a Reimbursable Cost, Owner may (a) recover such amount from Operator, plus interest at the Reference Rate, calculated from the date the audit

commenced, or (b) deduct such amount from any payment that thereafter may become due to Operator.

Section 5.5 - *Billing and Payment*. Within 15 days following the end of each month, Operator shall submit the receipts and disbursements showing Reimbursable Costs for such month in accordance with Subsection 5.2(a). Within 15 days after receipt of any such invoice, Owner shall:

(a) Pay Operator the sum specified in such invoice, less (i) any amounts previously deposited with Operator relating to such invoice, and (ii) any portion of such invoice amount that Owner disputes in good faith or is permitted to offset under this Agreement; and

(b) With respect to any disputed portion of such invoice, provide Operator with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article 14.

Section 5.6 - *Interest*. Any amount owed to either party under this Agreement by the other party which remains unpaid more than 30 days after the date such amount is due and

payable shall begin to accrue interest at the Reference Rate commencing on the thirty-first day after such due date.

ARTICLE 6
PROCEDURES, PLANS AND REPORTING

Section 6.1 - *Procedures Manual*. The parties have approved a procedures manual that includes procedures for (i) reporting and correspondence pursuant to this Agreement, (ii) procurement and contracting, and (iii) accounting, bookkeeping and record-keeping ("Procedures Manual"). The Procedures Manual shall govern the covered activities of Operator for the term of this Agreement, subject to such revision and amendment as agreed in writing by Owner and Operator.

Section 6.2 - *Annual Project Operating Budget and Plan*

(a) Proposal. At least 90 days before the beginning of each Contract Year, Operator shall prepare and submit to Owner a proposed annual budget for the Contract Year, established on a monthly basis. The proposed annual budget shall include separate operating and capital budgets. The proposed annual budget shall also set forth, in detail acceptable to Owner, (i) anticipated operations, repairs and capital improvements, (ii) maintenance and overhaul schedules, (iii) planned procurement (including equipment, spare parts, and consumable inventories), (iv) labor activities (including staffing, labor rates, and holidays), (v) administrative activities, and (vi) other work proposed to be undertaken by Operator, together with an itemized estimate of all Reimbursable Costs to be incurred. Each proposed annual budget shall be accompanied by a proposed annual

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

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

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

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

(e) Five-Year Budget. At least 60 days before the first day of each Contract Year, Operator shall prepare and submit to Owner a proposed budget for the next 5 Contract Years or the remaining term of the Agreement, whichever period is shorter. The proposed five-year budget shall be established on an annual basis and shall include separate operating and capital budgets. The proposed five-year budget shall also set forth, in detail acceptable to Owner, (i) anticipated operations, repairs and capital improvements, (ii) maintenance and overhaul schedules, (iii) planned procurement (including equipment, spare parts, and consumable inventories), (iv) labor activities (including staffing, labor rates, and holidays), (v) administrative activities, and (vi) other work proposed to be undertaken by Operator, together with an itemized estimate of all Reimbursable Costs to be incurred, accompanied by the underlying assumptions and implementation plans of the proposed five-year budget. Owner shall review Operator's proposed five-year budget within 30 days following receipt of the proposal. Owner may, by written request, propose changes, additions, deletions and modifications to the proposals. Owner and Operator will then meet and use their reasonable commercial efforts to agree upon a final five-year budget (the "Five-Year Budget"), which shall be approved in writing by both Parties. If a final Five-Year Budget is not approved in its entirety by both parties, the proposed five-year budget submitted by Operator, together with Owner's final suggested changes, additions, deletions and modifications shall serve as the Five-Year Budget. The

Five-Year Budget shall be used only for planning and comparison purposes, and shall not constrain Operator in its actions or expenditures, provided, however, that Operator shall be required to conform in its operations to the Annual Budget and Annual Project Operating Plan as provided in this Agreement.

Section 6.3 - *Operating Data and Records*. Operator shall monitor and record all operating data and information that (i) Owner must report to any person or entity under any Project Agreement, (ii) Owner must report to any government agency or other person or entiity under applicable Laws and (iii) Owner reasonably requests. Operator shall report required or requested operating data and information to Owner as specified by Owner to support monthly invoicing under the Project Agreements, and within 15 Business Days following a request by Owner. Operating data to be reported include information from operating logs, meter and gauge readings and maintenance records.

Section 6.4 - *Accounts and Reports*. Operator shall cooperate with Owner in complying with reporting requirements set forth in the Project Agreements and shall, during the term of this Agreement, furnish or cause to be furnished to Owner the following reports concerning the Project operations and the Services:

(a) Monthly Reports. Within ten (10) Business Days following the last day of each calendar month, Operator shall submit: (i) a progress report, in detail acceptable to Owner, covering all activities during such month with respect to operations and maintenance (including information regarding the amount of electric energy generated, hours of operation, heat rate,

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

(b) Annual Reports. As soon as available, and in any event within 60 days after the end of each Contract Year, Operator shall submit an annual report describing, in detail substantially similar to that contained in the monthly reports referred to in Section 6.4(a), the Project activities and operating data for such Contract Year. The annual report shall present a comparison of such Project activities and operating data with the goals set forth in the Annual Project Operating Plan and Annual Budget for such Contract Year, and with those achieved during the preceding Contract Year (if applicable) and an explanation of any substantial deviations. Within 30 days after submission of each annual report, Operator shall meet with Owner to review and discuss the report and any other aspects of Project operations that Owner may wish to discuss.

(c) Litigation, Permit Lapses. Upon obtaining knowledge thereof, Operator shall promptly notify Owner in writing of: (i) any event of default under any of the Project Agreements; (ii) any litigation, claims, disputes or actions, threatened or filed, concerning the Project or the Services; (iii) any refusal or threatened refusal to grant, renew or extend (or any action pending or threatened that might affect the granting, renewal or extension of) any license, permit, warranty, approval, authorization or consent relating to the Project or the Services; and (iv) any dispute with any governmental authority relating to the Project or the Services.

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

Section 6.5 - *Additional Communications*. Operator shall communicate certain additional events specified in Appendix C to Owner and third parties in accordance with the communication protocols set forth in Appendix C to this Agreement.

ARTICLE 7
LIMITATIONS ON AUTHORITY

Section 7.1 - *General Limitations*. Notwithstanding any provision in this Agreement to the contrary, unless previously approved by Owner in writing or through Owner's approval of the Annual Budget, Operator and any employee, representative, contractor or other agent of Operator are prohibited from taking the specified actions with respect to the matters indicated below.

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

(b) Contract. Make, enter into, execute, amend, modify or supplement any contract or agreement (i) on behalf of, in the name of, or purporting to bind Owner or (ii) that prohibits or otherwise restricts Operator's right to assign such contract or agreement to Owner at any time;

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

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

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

(f) Liens. Create, incur or assume any lien upon the Project;

(g) Transactions on Behalf of Others. Engage in any other transaction on behalf of Owner or any other person or entity not expressly authorized by this Agreement or that violates applicable Laws, this Agreement or any Project Agreement; or

(h) Agreements. Enter into any agreement to do any of the foregoing.

Section 7.2 - *Execution Of Documents*. Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of Owner) to be executed by Operator shall be executed by the authorized representative of Operator or, subject to prior written notice to Owner, by such other representative of Operator who is authorized and empowered by Operator to execute such documents.

ARTICLE 8
TERM AND TERMINATION

Section 8.1 - *Term*. The term of this Agreement shall be from and including the date of this Agreement to and including ***[Expiration date]***. Upon agreement of Owner and Operator, this Agreement may be extended for ***[Number of extensions]*** periods of ***[Length of extensions]*** each. This Agreement is subject to earlier termination pursuant to Sections 8.2, 8.3, 8.4
or 8.5.

Section 8.2 - *Immediate Termination By Owner*. Subject to the terms of any Project Agreements, Owner may terminate this Agreement immediately (i) upon the Bankruptcy of Operator or (ii) upon the occurrence of a Force Majeure Event that is not remedied within 120 days of its initial occurrence. If the Agreement is terminated by Owner pursuant to Section 8.2(i) or 8.2(ii), Operator shall be compensated for all Reimbursable Costs incurred by Operator to and including the date of termination. In addition, if the Agreement is terminated by Owner pursuant to Section 8.2(ii), Operator shall be paid all unpaid Annual Operating Fees to and including the date of termination.

Section 8.3 - *Termination Upon Notice By Owner*. Subject to the terms of any Project Agreements, Owner may terminate this Agreement upon 10days prior written notice to Operator in the event (i) that Operator violates, or consents to a violation of, any Laws applicable to the Services or the Project, where the violation has or may have a material adverse effect on the maintenance or operation of the Project or Owner's interest, and Operator does not cure such violation within 30 days (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90

days, provided Operator diligently commences and pursues such cure and indemnifies Owner for all related costs, of whatever kind), or (ii) of a material breach by Operator in the performance of the Services, if Operator does not cure such breach within 30 days from the date of Operator's receipt of notice from Owner demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided Operator diligently commences and pursues such cure and indemnifies Owner for all related costs, of whatever kind). If the Agreement is terminated by Owner pursuant to this Section 8.3, Operator shall be compensated for all Reimbursable Costs incurred by Operator and all unpaid Annual Operating Fees to and including the date of termination.

Section 8.4 - *Other Termination Upon Notice By Owner*. Subject to the terms of any Project Agreements, Owner may terminate this Agreement with 2 months prior written notice to Operator, upon the occurrence of (a) a sale or transfer by Owner of its rights in the Project or a sale or transfer of all or substantially all of the assets of or interests in Owner, (b) Operator's Reimbursable Costs for Services exceeding 110% of the approved Annual Budget with respect to Reimbursable Costs, for any 2 consecutive Contract Years, where such overruns are the fault of, or due to the negligent operation of the Project by, Operator, (c) a determination by Owner that, for any reason, it no longer intends to continue operation of the Project or (d) a determination by Owner that it does not wish to extend this agreement pursuant to Section 8.1. If the Agreement is terminated by Owner pursuant to this Section 8.4, Operator shall be compensated for all Reimbursable Costs incurred by Operator and all unpaid Annual Operating Fees to and including the date of such termination under this Section 8.4.

Section 8.5 - *Termination By Owner Without Cause*. In addition to its rights set forth in this Article 8, subject to the terms of any Project Agreements, Owner reserves the right to terminate this Agreement without cause upon 90 days written notice to Operator. If the Agreement is terminated by Owner pursuant to this Section 8.5, Operator shall be compensated for all Reimbursable Costs incurred by Operator and all unpaid Annual

Operating Fees to and including the date of such termination under this Section 8.5. Such payments, together with the termination payment set forth in Section 8.8, shall be Operator's sole remedy in respect of such termination and shall be made by Owner within 30 days of receipt of a final invoice from Operator.

Section 8.6 - *Termination By Operator*. Subject to the terms of any Project Agreements, Operator may terminate this Agreement for cause upon 15 days prior written notice to Owner in the event of: (i) Owner's Bankruptcy; or (ii) Owner's failure to perform in a timely manner any of its material obligations under this Agreement and such failure is not cured within 30 days of Owner's receipt of a notice from Operator demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that Owner diligently commences and continues to pursue such cure).

Section 8.7 - *Project Condition At End Of Term*. Upon expiration or termination of this Agreement, Operator shall remove its personnel from the Project. Operator shall leave the Project in as good condition as it was on the Effective Date, normal wear and tear and casualty excepted. Operator shall be paid all unpaid Reimbursable Costs. All special tools, improvements, inventory of supplies, spare parts, safety equipment, Operating Manuals and Procedures Manuals, operating logs, records and documents maintained by Operator pursuant to Section 3.5 and any other items furnished on a Reimbursable Cost basis under this Agreement will be left at the Project and will become or remain the property of Owner without additional charge. Owner shall also have the right, in its sole discretion, to assume and become liable for any contracts or obligations that Operator may have undertaken with third parties in connection with the Services. Operator shall cooperate in taking all reasonable steps requested by Owner required to effect the assumption of the contracts, provided that Owner agrees to indemnify and hold harmless Operator for all liabilities arising out of events and obligations arising from the assumption of contract rights and obligations after the date of any such assumption. Operator shall use commercially reasonable efforts to cooperate with Owner or a succeeding operator to assure that the operation, maintenance and management of the Project are not disrupted.

Section 8.8 - *Termination Payment*.

(a) Defined Terminations. In the event of a termination of this Agreement pursuant to the above Sections 8.2 (ii), 8.4 (a), 8.4 (c), 8.4 (d) or 8.5, Operator shall be entitled, in addition to all other amounts due under this Agreement as of the date of termination, to a demobilization and cancellation payment equal to the total of all relocation and severance costs incurred with respect to Operator's employees and all costs Operator is at such time contractually or legally obligated to pay to its employees, or which are incurred with the prior written approval of Owner. Severance costs for each of Operator's employees shall equal ***[Description of payment amount, e.g., number of pay periods and hours]*** for each year such employee has worked for Operator at the Project. Subject to Owner's right to conduct a subsequent audit and review pursuant to Section 8.8(a), such amounts shall be due and payable by Owner within 30 days of Operator's submission of an invoice, which invoice shall include a statement of all such costs and expenses

in the form and with the substantiation required by Section 6.2(a). Owner shall pay any and all legal costs incurred by Operator to collect payments under this Section 8.8.

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

deduct or cause to be deducted such amount from any payment that may be due to Operator.

ARTICLE 9
INSURANCE

Section 9.1 - *Coverage*.

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

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

►For each category of insurance the Owner must assess the risks and the value of protected assets or magnitude of possible casualty loss in setting coverage minimum amounts.
►Specific minimum coverage amounts and any special provisions or riders that Owner requires should also be specified.

(i) General Liability Insurance: Liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage.

(ii) Automobile Liability Insurance: Automobile liability insurance against claims for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable.

(iii) Workers' Compensation Insurance: Workers' compensation insurance as required by applicable laws, including employers liability insurance for all employees of Operator.

(iv) Excess Liability Insurance: Excess liability insurance on an occurrence basis covering claims in excess of the underlying insurance described in the foregoing subsections (i), (ii) and (iii).

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

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

(v) All policies of liability insurance to be maintained by Operator shall provide for waivers of subrogation in favor of Owner, the Lenders and such other persons as may be required by the Project Agreements. These policies shall include the following:

(A) a severability of interests or cross liability clause;

(B) insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner or the Lenders; and

(C) Owner, Lenders and such other persons or entities as may be required by the Project Agreements named as additional insureds.

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

(c) *Owner Coverage*. Owner shall maintain from and after the date of this Agreement the insurance described below and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

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

(d) *Cost*. All costs incurred by Operator with respect to payment of any deductible relating to the insurance coverage set forth in this Section 9.1 -- except as set forth in Section 9.3 *(Payment of Deductible Amounts)* or Section 10.1(a) *(Indemnification by Operator)* -- or any losses in excess of insurance coverage --except as set forth in Section 10.1(a) -- shall be deemed Reimbursable Costs.

Section 9.2 - *Certificates*. On or before the date on which insurance must be provided, each party shall furnish certificates of insurance to the other party evidencing the insurance required pursuant to this Agreement. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

Section 9.3 - *Payment Of Deductible Amounts*. Notwithstanding which party hereto shall have purchased, or been responsible for the purchase of, any insurance in respect of the Project or otherwise referred to in this Agreement, Operator shall promptly pay to Owner any deductible amount related to any claim against or other cost to Owner

covered under any such insurance policy which arose due to the gross negligence of Operator.

ARTICLE 10
INDEMNIFICATION AND LIABILITIES

Section 10.1 - *Indemnification*.

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

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

Section 10.2 - *Environmental Liability.*

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

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

(c) Governmental Actions. If action is required at the Project to comply with any applicable environmental laws during the term of this Agreement, Owner (with Operator's

assistance) shall be responsible for the costs of compliance. Costs for such compliance action shall only be incurred by Operator only with Owner's prior written consent, unless a governmental authority requires Operator to incur such costs and expenses prior to obtaining such written consent.

ARTICLE 11
LIMITATIONS OF LIABILITY

Section 11.1 - *Limitations Of Liability*.

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

(b) Damages Limited to Annual Operating Fee. The aggregate liability of Operator (except for those claims that are subject to the provisions of Section 10.1(a) (*Indemnification by Operator)* or covered by the insurance set forth in Article 9, and then only to the extent such claims are actually covered thereby, after giving effect to any deductibles, exclusions, limits, or self-insured retentions thereunder) with respect to claims of Owner arising out of the performance or nonperformance of obligations under this Agreement. Operator’s liability shall in no event exceed, during any Contract Year, the Annual Operating Fee payable to Operator during such Contract Year plus the amount necessary to satisfy Operator's indemnification responsibilities under Article 10.

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

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

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

ARTICLE 12
CONFIDENTIALITY

Section 12.1 - *Operator*. Operator agrees to hold in confidence for a period of ***[Period of confidential treatment]*** from the date of disclosure, any information supplied to Operator by Owner or others acting on its behalf. Operator further agrees, to the extent requested by the supplier of such information, to require its subcontractors, vendors, suppliers and employees to enter into appropriate nondisclosure agreements relative to such information, prior to the receipt thereof.

Section 12.2 - *Owner*. Owner agrees to hold in confidence for a period of ***[Period of confidential treatment]*** from the date of disclosure, any information supplied to Owner by Operator or others acting on its behalf, provided that Owner may disclose such information as is required by Lenders (including their agents and advisors), provided Lenders enter into appropriate nondisclosure agreements. Owner further agrees, to the extent requested by the supplier of such information, to require its members and contractors to enter into such appropriate nondisclosure agreements relative to such information, prior to their receipt thereof.

Section 12.3 - *Exceptions*. The provisions of this Article shall not apply to information that was in the public domain, was already in the receiving party's possession, or was received lawfully and free of any obligation to treat it as confidential.

Section 12.4 - *Required Disclosure*. If a receiving party or any of its respective representatives is required by applicable law to disclose any of the information that is otherwise required to remain confidential pursuant to this Article 12, the receiving party will notify the other party promptly in writing so that the other party may seek a protective order or other appropriate remedy (which the receiving party will not oppose), or, in the other party's sole discretion, waive compliance with the terms of this Agreement.

ARTICLE 13
TITLE, DOCUMENTS AND DATA

Section 13.1 - *Materials And Equipment*. Title to all materials, equipment, tools, supplies, consumables, spare parts and other items purchased or obtained by Operator on a Reimbursable Cost basis hereunder shall pass immediately to and vest in Owner upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect Operator's obligations as set forth in this Agreement.

Section 13.2 - *Documents*. All materials and documents prepared or developed by Operator, its employees, representatives or contractors in connection with the Project or performance of the Services, including all manuals, data, drawings, plans, specifications, reports and accounts, shall become Owner's property when prepared, and Operator, its agents, employees, representatives, or contractors shall not use such materials and documents for any purpose other than performance of the Services, without Owner's prior written approval. All such materials and documents, together with any materials and documents furnished to Operator, its agents, employees, representatives, or contractors by

Owner, shall be delivered to Owner upon expiration or termination of this Agreement and before final payment is made to Operator.

Section 13.3 - *Review By Owner*. All materials and documents referred to in Section 13.2 hereof shall be available for review by Owner or Lenders (including their agents or advisors) at

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

Section 13.4 - *Proprietary Information*. Where materials or documents prepared or developed by Operator or its agents, employees, representatives or contractors contain proprietary information, systems, techniques, or know-how acquired from third parties by Operator or others acting on its behalf, such persons or entities shall retain all rights to use or dispose of such information, provided, however, that Owner shall have the right to the same to the extent necessary for operation or maintenance of the Project.

ARTICLE 14
RESOLUTION OF DISPUTES

Section 14.1 - *Resolution Through Discussions*. If any dispute or difference of any kind (a Dispute") arises between Owner and Operator in connection with, or arising out of, this Agreement, the Owner and Operator within 30 days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of Owner and Operator shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within 5 Business Days, the Dispute shall be referred within 2 Business Days of the lapse of the 5 Business Day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Owner and Operator have had at least 5 Business Days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this section, either party may deliver notice to the other party of its intent to submit the Dispute to arbitration ("Arbitration Notice"). The Arbitration Notice shall include the specific issues concerning the Dispute which must be resolved by the arbitration.

Section 14.2 - *Arbitration. A*ny Dispute arising out of, or in connection with, this Agreement and not settled by the procedure prescribed in Section 14.1, shall (regardless of the nature of the Dispute) be finally settled in accordance with UNCITRAL Rules of International Arbitration for a single arbitrator.

Section 14.3 - *Continued Performance*. During the pendency of any arbitration, Operator and Owner shall continue to perform their obligations under this Agreement.

ARTICLE 15
MISCELLANEOUS PROVISIONS

Section 15.1 - *Assignment*. Neither Owner nor Operator party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto,

except that this Agreement may be assigned by Owner without such prior consent to any successor of Owner, to a person or entity acquiring all or substantially all of the Project, or to a Lender or any purchaser of the Project upon the exercise of remedies under a Project Agreement by a Lender. Operator hereby consents to the assignment by Owner of a security interest in this Agreement to Lenders. Operator further agrees to execute documentation to evidence such consent reasonably required by the Lenders typical for project finance. Operator recognizes that such consent may grant certain rights to such Lenders, which shall be fully described in the consent documents.

Section 15.2 - *Access to Project*.

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

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

Section 15.3 - *Force Majeure*. If either Owner or Operator is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform.. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

Section 15.5 - *Amendments*. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

Section 15.6 - *Survival*. Notwithstanding any provisions herein to the contrary, the obligations set forth in Articles 7, 10, 12 and 14, and the limitations of liabilities set forth in Article 11, shall survive in full force despite the expiration or termination of this Agreement.

Section 15.7 - *No Waiver*. It is understood and agreed that any delay, waiver or omission by Owner or Operator with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by Owner or Operator of any subsequent breach or default of the same or other required performance on the part of Owner or Operator.

Section 15.8 - *Notices*. All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address or fax number set forth in this Section 15.8 or at such other address or fax number as hereafter specified as provided in this Section 15.8. All Notices shall be (i) delivered personally or (ii) sent by fax, electronic mail, telegraph, registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to given (A) when transmitted if sent by fax, electronic mail, or telegraph (provided the transmittal is confirmed), or (B) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

To Operator:

[Name of O&M firm]
[Address of O&M firm]
ATTN: ***[Name of representative designated pursuant to Section 1.4]***
Tel: ***[Telephone number, including country code, if needed]***
Fax: ***[Facsimile machine number, including country code, if needed]***
E-Mail: ***[E-mail address]***

To Owner:

[Name of Owner &M firm]
[Address of Owner firm]
ATTN: ***[Name of representative designated pursuant to Section 1.4]***
Tel: ***[Telephone number, including country code, if needed]***
Fax: ***[Facsimile machine number, including country code, if needed]***
E-Mail: ***[E-mail address]***

Section 15.9 - *Fines And Penalties*. If during the term of this Agreement any governmental or regulatory authority or agency assesses any fines or penalties against Operator or Owner arising from Operator's failure to operate and maintain the Project in accordance with applicable Laws without Owner's prior written consent, such fines and penalties shall, subject to the limitations set forth in Article 11, be the sole responsibility of Operator and shall not be deemed a Reimbursable Cost.

Section 15.10 - *Representations And Warranties*. Each party represents and warrants to the other party that:

(a) such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;

(b) to the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or
organizational requirement of such party; and

(c) there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

Section 15.11- *Counterparts*. The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

Section 15.12 - *Governing Law*. This Agreement is executed and intended to be performed in ***[Country of Project]*** and the laws of country shall govern its construction, interpretation and effect.

Section 15.13 - *Partial Invalidity*. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

Section 15.14 - *Captions*. Titles or captions of Sections contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

Section 15.15 - *Dollar Amounts*. All amounts of money in this Agreement are denominated in the currency of ***[Currency of Agreement]*** (written as "***[conventional notation]***").

Section 15.16 - *Vendor's Warranties*. For Owner's benefit, Operator shall obtain from sellers of equipment, material, or services (other than the Services), warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable, and, to the extent of any such warranties actually obtained, Owner releases

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

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

[Legal Name of Owner]

By:

Name:
Title:

[Legal Name of Operator]

By:

Name:
Title:

<u>APPENDIX A</u>
SCOPE OF SERVICES

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

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

I. Programs

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

A. The program for establishing specific operating goals for each functional Project area, for managing resources to minimize personnel turnover, and for qualifying personnel, to operate and maintain the Project (including the basis for qualification of personnel).

B. The program for communicating and cooperating with Owner and governmental agencies.

C. The Project management standards for conduct of operations, Project safely, conduct of maintenance, housekeeping, material condition, and records management.

D. The program for preparing supporting documentation, meter readings and information necessary to accurately prepare, justify and support monthly invoices in accordance with the terms and conditions of the Project Agreements.

E. Developing the procedures used to operate the Project as well as monitoring, evaluating, and proposing revisions to such procedures.

F. The Project operations and monitoring program which provides the requirements for:

1. *Monitoring of Project Performance*
2. *Monthly Project Performance Calculations and Report*
3. *Monthly Fuel Consumption Calculations and Report*
4. *Project Permitting and Environmental Reporting*
5. *Shift Routines / Operating Practices*
6. *Control of Equipment*
7. *Project Chemistry Control and Water Treatment*
8. *Training Programs*

9. Operator Qualifications
10. Operating Procedures
11. Status of Major Equipment

G. The maintenance program which provides the requirements for:
1. Maintenance Planning
2. Maintenance Procedures
3. Preventive Maintenance
4. Predictive Maintenance
5. Maintenance Training

H. The materials management program which provides the requirements for:
1. Procuring Materials and Tools
2. Inventory Levels and Control
3. Renewal of Inventories

I. The diagnostic testing program for maintaining the Project and Project equipment, including both system and component level testing.

J. The housekeeping / cleanliness program which provides the requirements for:
1. Hazardous Material Control
2. General Project Cleanliness
3. Equipment Condition Inspections
4. Hazardous Waste Program

K. The problem assessment program which provides the procedure for determining the cause(s) of operational or equipment failures and preventing future failures through recommended improvements, including justification for such recommendations (i.e., basis of recommendation and economic analysis).

L. The records management program for maintaining the traceability and documentation of Project performance.

M. The Project safety program which provides the requirements for establishing:
1. Safety Monitoring
2. Accident Prevention Program
3. Accident Reporting

N. Monthly and yearly reporting systems of Project performance to Owner.

O. The security program for maintaining the security of the Project and surrounding area.

II. Specific Requirements
Operator's scope of Services is based on the Project design as described in certain of the Project Agreements, the Project Operating Manuals, vendor manuals and design

drawings. Operator will prepare Annual Project Operating Plans, which, in part, will define the operations

procedural requirements for the Project to meet the requirements of the Project Agreements. Operator, as part of the Services, is responsible for:

A. Providing such trained personnel as is reasonably necessary to operate and maintain the Project and provide the Services set forth in this Agreement.

B. Operating and maintaining the Project in accordance with the approved Annual Project Operating Plan.

C. Submitting an Annual Project Operating Plan. Not later than ninety (90) days prior to the first day of each Contract Year, Operator will submit an Annual Project Operating Plan to Owner. In addition to the requirements set forth in Section 6.2 (Annual Operating Budget and Plan), the Annual Project Operating Plan will detail maintenance, outage, and overhaul schedules, Project staffing, known capital and expense budget items, operating plans, and will provide the underlying assumptions used in developing the proposed budgets and anticipated availability for the period. Owner will review and approve the Annual Project Operating Plan. Such approval will become the basis for reimbursement under the Annual Budget.

D. Planning and managing on-site operations and maintenance activities, including:

1. Assuring that operational goals and operating plans are consistent with the Annual Project Operating Plan.
2. Assuring that the Project is operated in accordance with this Agreement and in a safe, reliable, efficient, and prudent manner.
3. Assuring that operations and maintenance personnel are trained and qualified for their assigned responsibilities and tasks, and that such qualification is maintained.
4. Assuring that the Project meets contract, regulatory, and environmental requirements set forth in the Project Agreements or otherwise identified by Owner or Operator.
5. Managing and controlling costs consistent with budget requirements.
6. Planning, scheduling and managing work and maintenance activities.
7. Defining and documenting operational technical requirements.
8. Defining and delineating responsibilities between Operator and Owner and identifying reporting requirements.
9. Establishing labor relations and personnel programs that will meet state and federal requirements and encourage employee retention.
10. Maintaining a current inventory of materials and procuring all services, spare parts, operational materials, consumables, office equipment, tools and shop equipment, or any other items or materials required to operate or maintain the Project. Operator will identify required items, cost, quantity and need date. The cost of any item or service shall be reimbursed by Owner in accordance with this Agreement.

11. Controlling outages, both planned and unplanned, by using detailed and integrated plans and schedules, and resource management.
12. Maintaining Project performance levels by using routine system and component performance testing.
13. Maintaining a file of preplanned outage-related work to allow for efficient use of any forced outage downtime.
14. Establishing open purchase order or contract agreements with Project equipment vendors, industrial suppliers, jobbers, and maintenance contractors in accordance with Project Agreements to ensure timely response to Project maintenance needs.
15. Promptly notifying Owner in writing of any teardowns and overhauls of major equipment or capital improvements that Operator believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements.

E. Performing certain tasks, duties, responsibilities and obligations assigned to Owner under the Interconnection Agreements, including, but not limited to, the following:
1. Performing routine surveillance of all equipment routinely used to communicate with the System Operator.
2. Notifying the System Operator of any routine maintenance activities which will require clearance from the System Operator.
3. Providing the System Operator and Owner's Customers with all required information regarding the Project's availability.
4. Responding to dispatch orders from the System Operator and Owner's Customers.
5. Monitoring and adjusting the reactive output of the generators to maintain transmission voltage levels within the capability of the Project's generators.
6. Responding to and correcting generator dynamic instability in accordance with instructions from the System Operator.

F. Execution or oversight of routine preventive maintenance ("PM") activities in accordance with Prudent Utility Practice, including, without limitation:

1. *Lubrication Checks*
2. *Cleaning / Flushing*
3. *Preservation*
4. *Fluid Changes and Replacement*
5. *Visual Inspections*
6. *Operational Monitoring*
7. *Vibration Analysis*
8. *Chemical Analysis (water testing)*
9. *Trend Analysis*
10. *Calibration*
11. *Measurements*
12. *Adjustments*
13. *Hydrostatic Tests*
14. *Lube Oil Analysis (sampling only)*
15. *Replacement of Wear / Sacrificial Parts*

17. Resistance Testing

G. Execution or oversight of routine corrective maintenance ("CM") activities in accordance with Prudent Utility Practices to troubleshoot, inspect, and repair the equipment upon identification and detection of certain conditions, including without limitation:

1. *Physical fault conditions such as:*
    a. *Blocked / stopped flow*
    b. *Fractures / break / breaches*
    c. *Cracks*
    d. *Distortion / displacement*
    e. *Corrosion / discoloration*
2. *Out of specification conditions such as:*
    a. *High / low flow, pressure, temperature, or chemistry*
    b. *Off voltage*
    c. *Out of limits / adjustments*
    d. *Erratic output*
    e. *Intermittent / spurious operation*
    f. *Failure to control / hold*
    g. *High / low output*
    h. *Improper timing*
3. *Demand fault conditions such as failure to:*
    a. *Start / run / operate*
    b. *Stop*
    c. *Open*
    d. *Close*
    e. *Move / release / respond*

4. *Abnormal characteristics such as:*
    a. *Overheating*
    b. *Noise*
    c. *Vibration*
    d. *Chatter*
    e. *False response*

5. *Leakage conditions such as:*
    a. *Leakage to surrounding environment*
    b. *Leakage past seats / stems / packing / seals*

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

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

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

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

APPENDIX B
REIMBURSABLE COSTS

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

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

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

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

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

APPENDIX C
NOTICE AND COMMUNICATION PROTOCOLS

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