

**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, 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,".

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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.

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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.

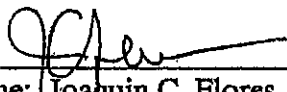
Section 13. Signatures. The exchange of copies of this Amendment and of signature pages by facsimile or other electronic transmission shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

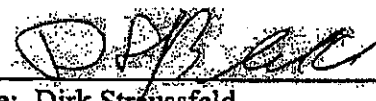
Section 14. No Other Changes. Except as amended hereby, the PPA shall continue in full force and effect in accordance with the terms and conditions thereof.

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

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FIRST AMENDMENT TO

RENEWABLE ENERGY PURCHASE AGREEMENT (SOLAR)

THIS FIRST AMENDMENT TO RENEWABLE ENERGY PURCHASE AGREEMENT (SOLAR) (this "Amendment") is made and entered into as of May 29th, 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 Pacific Green Resources, LLC ("PGR") previously entered into that certain Renewable Energy Purchase Agreement (Solar), dated March 14, 2013 (the "PPA", capitalized terms not defined herein having the meaning given in the PPA);

WHEREAS, Seller has subsequently acquired the PPA by assignment from PGR;

WHEREAS, Buyer and Seller previously entered into that certain Renewable Energy Purchase Agreement, dated June 27, 2012; a First Amendment to Renewable Energy Purchase Agreement dated February 22, 2013 and a Second Amendment to Renewable Energy Purchase Agreement dated as of the date hereof (together, the "20 MW PPA");

WHEREAS, Buyer and Seller have agreed to further amend the PPA as set forth in this Amendment in order to conform certain provisions of the PPA to the 20 MW PPA.

NOW, THEREFORE, the Parties hereby agree as follows:

Section 1. Availability. In conformance with the 20 MW PPA, the PPA is deemed amended to include an availability guarantee, by the insertion of the following provision as Section 4.7 of the PPA:

"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 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

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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."

As conforming changes, the following provisions of the PPA are also amended as follows:

(i) inserting from the 20 MW PPA the definitions of "Availability", "Availability Default", "Availability Measurement Period", "Cure Plan", "Guaranteed Availability" and "Unavailable Hours", in the form found therein;

(ii) replacing the definition of "Contract Hours" 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.";

(iii) Section 2.1, by inserting "Guaranteed Availability, 90%" into the table therein;

(iv) Section 4.1(c), by inserting "Availability," prior to the phrase "Renewable Energy data";

(v) Section 4.12(a), by inserting the phrase "and/or Availability" prior to the phrase "of the Facility" in the penultimate and final lines thereof;

(vi) Section 4.12(b), by inserting the phrase "and/or Availability" prior to the phrase "of the Facility" in the 10th line thereof;

(vii) Section 4.14, by inserting the phrase "and/or Availability" after the phrase "non-proprietary resource quality" in the first line thereof;

(viii) Section 5.1, by inserting the following as the final paragraph thereof:

"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.";

(ix) Section 6.1, by inserting the following as sub-section (g) thereof and renumbering the subsequent sub-section accordingly: "With respect to Seller, the

occurrence of an Availability Default and the expiration of any cure period set forth in Section 4.7; and"; and

(x) Appendix K, by inserting the phrase "Availability Measurement Period and" prior to the phrase "Production Measurement Period"; as it appears in the 8th line of the first paragraph and in the 7th line of the second paragraph therein.

Section 2. 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 3. Insurance. With respect to certain insurance matters under Section 12.2 of the PPA, the parties agree as follows:

(a) Property Insurance (sixth (6th) 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,".

Section 4. Extension of Delivery Period. Section 12.8(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 10,064 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 5. 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.

Section 6. 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 7. 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 8. 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.

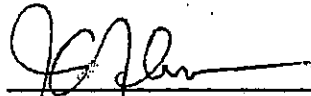
Section 9. Signatures. The exchange of copies of this Amendment and of signature pages by facsimile or other electronic transmission shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

Section 10. 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

**RENEWABLE ENERGY
PURCHASE AGREEMENT
BETWEEN
GUAM POWER AUTHORITY
AND
PACIFIC GREEN RESOURCES, 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, a Guam Public Corporation, ("GPA" or "Buyer") and Pacific Green Resources, LLC, a Guam limited liability company ("PGR" or "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 "Additional Production" means, during any Contract Year, any MWh (up to 1,140 MWh) of Renewable Energy produced by the Facility in excess of the Minimum Production for that Contract Year.

1.3 "Additional Production Price" means, for the applicable Contract Year, the corresponding price shown in the second column of Appendix A-1.

1.4 "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.

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

1.6 "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 12.9.

1.7 "Availability Measurement Period" means each rolling three (3) year period during the Delivery Period.

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 12.2, an amount equal to: Minimum Production x the number of Contract Years (or portion thereof) remaining in the Delivery Period x Incremental Price.

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

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

1.28 "Deficiency Amount" has the meaning set forth in Section 4.8.

1.29 "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.

1.30 "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.

1.31 "Development Security" has the meaning set forth in Section 9.1.

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

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

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

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

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

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

1.38 "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.

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

1.40 "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.

1.41 "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.

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

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

1.44 "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.

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

1.46 "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.

1.47 "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.

1.48 "Forced Outage Notice" has the meaning set forth in Section 4.10(b).

1.49 "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, monsoon, drought, environmental catastrophes, government regulation for environmental assets and species protection, 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 (neither caused by Seller's negligence nor comprising a GPA Delay) of any transmission line or substation between the Facility and the Delivery Point, failure or delay by any Governmental Authority in issuing any required permit, earthquake, storm, fire, lightning, volcanic ash, mudslides, tsunamis, typhoons, epidemic, high winds, war, worldwide economic collapse, economic collapse of the United States of America, economic collapse of the Government of Guam, 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.

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

1.51 "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.

1.52 "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.

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

1.54 "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. "GPA Delay" shall also include, but not be limited to, (1) a

delay caused by GPA or Quantum Guam Power, LLC, under the June 27, 2012, "Renewable Energy Purchase Agreement Between Guam Power Authority and Quantum Guam Power, LLC" (e.g. failure by Quantum Guam Power, LLC, to obtain funding for its project); (2) a delay caused by GPA or Quantum Guam Power, LLC, under the June 27, 2012, "Small Generator Interconnection Agreement Between Guam Power Authority and Quantum Guam Power, LLC" (e.g. failure by Quantum Guam Power, LLC, to obtain funding or to develop and/or install the Network Upgrades or the Interconnection Facilities, as defined in that June 27, 2012, Interconnection Agreement); and (3) a delay or breach by GPA or any third party with whom GPA is in privity of contract, which delay or breach involves the GPA network, system, or transmission, or any upgrades thereof directly or indirectly affecting the Facility, the construction of the Facility, and/or the delivery of electricity by Seller to the Delivery Point. A GPA Delay is not an Event of Default unless it is otherwise so designated in this Agreement.

1.55 "GPA Lien" has the meaning set forth in Section 9.4.

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

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

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

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

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

1.61 "kWh" means kilowatt hour.

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

1.63 "Lessor" has the meaning set forth in Section 2.2.

1.64 "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.

1.65 "Maximum Liability" has the meaning set forth in Section 8.2.

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 "Network Upgrades" has the meaning set forth in the Interconnection Agreement.

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

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

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

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

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

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 12.1.

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 "Unit Contingent" means that the Renewable Energy is intended to be supplied from the Facility as it is produced.

1.106 "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 AND STRUCTURE

2.1 Commercial Terms.

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

Buyer: GPA	Seller: PGR
Project: Pacific Green Resources, LLC, 5.65 MW solar PV project	
Delivery Point: Seller's meter located on the Dandan Substation (to be constructed near project site) with a transmission line extending from the Dandan substation to GPA's Talofoto substation	
Minimum Production (MWhs): As set forth in <u>Appendix A</u>	Estimated Annual Renewable Energy: (MWhs): As set forth in the third column of <u>Appendix A</u>

Guaranteed Availability (%) Not applicable	Facility Capacity (MW): 5.65 MW (Maximum)
Delivery Period: 25 Contract Years	Contract Price (\$/MWh): See Appendix A
Renewable Energy Type: Solar	Development Security: \$750,000.00
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 - Hour Ending 2400, Monday through Sunday Guam Prevailing Time
Commercial Operation Date: No later than the Scheduled Commercial Operation Date, subject to the extension provisions set forth in Article Four.	
Test Energy: 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 five and sixty-five one hundredths (5.65) 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 Section 4.16.	

2.2 Seller Structure.

An Affiliate of Seller ("Lessor") may be formed 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 this Agreement. Accordingly, Buyer agrees that any of Seller's obligations under this Agreement or the Interconnection Agreement 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 this Agreement or the Interconnection Agreement by Lessor or an Affiliate of Seller as Seller's valid and sufficient performance for all purposes, *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 this Agreement and the Interconnection Agreement and to cure any Seller default hereunder or 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 this Agreement and the Interconnection Agreement shall be deemed to be modified as follows:

- (a) Any reference in this Agreement or in the Interconnection Agreement 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 12.8 of this

Agreement, Seller shall procure that Lessor or Seller's Affiliate, 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 this Agreement;

- (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 this Agreement;
- (d) Seller may transfer any right under this Agreement or the Interconnection Agreement to Lessor or to any Affiliate, including without limitation Seller's right to reasonable use of labor, personnel and equipment under the Interconnection Agreement;
- (e) Buyer agrees at Seller's written request to bill Lessor or any Affiliate directly for any Network Upgrades pursuant to the Interconnection Agreement; and
- (f) The conveyance under the Interconnection Agreement of the Seller's Interconnection Facilities to Buyer may be satisfied by Lessor or any Affiliate as a conveying party under the bill of sale attached to the Interconnection Agreement.

Notwithstanding any provision of this Agreement to the contrary, including Section 6.1, 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 this Agreement or (ii) any limitation on or modification of the rights, obligations and liabilities of Seller under this Agreement or the Interconnection Agreement.

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

- (d) Seller makes no representations or warranties as to (1) the entitlement of any Party or third party to any REC for solar energy produced by the Facility under any law, (2) the existence of any such REC under United States of America or Guam law, and (3) the entitlement of any Party or third party to any other tax benefit relating to the solar energy produced by the Facility. Any property right or benefit at law that is associated with, contingent upon, or otherwise a product of the Facility shall remain the property of Seller except as expressly provided otherwise herein.

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 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 [March 14, 2015] *[insert date that is twenty-four (24) Months from the Effective Date]* (as extended pursuant to the terms of this Agreement, the "Scheduled Commercial Operation Date"). Seller may elect to extend the Commercial Operation Date beyond such date (the "COD Extension") by paying GPA for such extension (the "COD Extension Payment"). The COD Extension Payment shall be in the amount of fifty percent (50%) of the Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year) per day for each day (or portion thereof) after but not including the date of the COD Extension until, but not including, the date on which the Project actually achieves Commercial Operation. To extend the Commercial Operation Date, Seller must, as early as reasonably possible, but in no event later than fourteen (14) days prior to the first day of the proposed extension, provide GPA with Notice of its election to extend the Commercial Operation Date along with an estimate of the duration of the extension. The COD Extension Payment is in addition to and not to be considered part of the Development Security, and shall be paid to GPA at the time of the Notice hereunder. Seller's request to extend the Commercial Operation Date shall not be valid unless proper Notice and payment are timely received by GPA. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein, and GPA shall not have the right to terminate the Agreement or to receive Termination Damages with respect to such extension so long as Seller has provided the Notice, estimation and payment as provided in this Section 4.2(a). Seller may further extend the Commercial Operation Date beyond

the original COD Extension, subject to the foregoing Notice, estimation and payment terms applicable to the original COD Extension.

Seller shall be entitled to a prompt refund, without interest, of any portion of the COD Extension Payment held by GPA which exceeds the amount required to cover the number of days by which the Commercial Operation Date was actually extended. In no event may Seller extend the Commercial Operation Date by more than one hundred eighty (180) 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 one hundred eighty (180) 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). The total of any extension damages actually paid by PGR to GPA shall be applied to any balance of Termination Damages owed hereunder.

- (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.
- (d) GPA Delay Damages. For any GPA Delay, GPA shall be liable to Seller 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) that the Commercial Operation Date is delayed due to a GPA Delay if the GPA Delay occurs prior to the original Scheduled Commercial Operation Date and one hundred percent (100%) of the Shortfall Damages per day for each day (or part thereof) delayed by a GPA Delay if the GPA Delay occurs after the original Scheduled Commercial Operation Date.
- (e) In the event that both an extension pursuant to this Section 4.2 and a GPA Delay has occurred, the calculation of damages for each such extension and each such GPA Delay shall be calculated and the respective monetary damages then may be offset upon mutual agreement in writing by the Parties. In the event the Parties agree to any such offset as described in this Section 4.2(e), the writing that expresses the offset shall set forth an accounting of all sums owed by each Party pursuant to the offset agreement and shall state sums still owing subsequent to the offset.

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"):

[June 14, 2013][insert date that is 92 days from the Effective Date]	Purchase and sale agreement for the Project site is executed and delivered by the parties thereto;
[December 12, 2013][insert date that is 273 days from Effective Date]	All material construction, environmental, operational or other permits necessary to build and begin construction on the Project, as set forth in Appendix E obtained; and
[March 18, 2014][insert date that is 369 days from Effective Date]	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 Section 9.1:	\$0.00
Posting Date of Development Security to [<u>June 14, 2013</u>] [insert date that is 92 days from the Effective Date]:	100% of the Bid Security
[<u>June 15, 2013</u>] [insert date that is 93 days from Effective Date]:	50% of Development Security
[<u>January 14, 2014</u>] [insert date that is 306 days from Effective Date]:	75% of Development Security
[<u>April 20, 2014</u>] [insert date that is 402 days from Effective Date] forward:	100% of Development Security

No later than [June 18, 2013] [insert date that is 96 days from the Effective Date], 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 [June 14, 2013] [insert date that is 92 days from the Effective Date]. Notwithstanding the foregoing, in the event that Seller terminates this Agreement for any reason prior to the posting date for the Development Security as set forth in Section 9.1 herein, then Seller shall owe GPA no Termination Damages and such termination shall be without penalty to Seller.

4.5 Seller's and Buyer's Obligations.

Subject to Appendix H, 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 Additional Production 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 and 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 [Not Used]

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):

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

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 be deemed to waive its right to be present at the Annual Facility Test if GPA fails to appear at the scheduled time for the Annual Facility Test. GPA shall have the right to receive copies of the results of the Annual Facility Test, which shall be conducted in accordance with the protocol set forth in Appendix I. Any dispute regarding the results of the Annual Facility Test shall be resolved as set forth in Section 12.9 of this Agreement. GPA

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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. 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.

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(g).

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) With respect to Seller, a material permit violation occurs that is not due to a Force Majeure event or GPA Delay and such violation is not remedied within thirty (30) 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;
- (g) With respect to Seller, failure to maintain the Development Security and failure to reinstate the same within thirty (30) Business Days after Seller's receipt of written Notice thereof from GPA;
- (h) With respect to Buyer, failure by Buyer to maintain and operate the substation at the Delivery Point in accordance with Good Utility Practices, which failure causes Seller to reduce its output, if said failure is not remedied within thirty (30) Business Days after receipt of written Notice, or such longer time, not to exceed sixty (60) Business Days, as is reasonably

required to remedy such failure; provided Buyer is employing Commercially Reasonable Efforts to remedy the failure; and

- (i) With respect to Buyer, failure by Buyer to remedy and end the existence of any GPA Delay on or before the one hundred eightieth (180th) day of its existence.

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 continues beyond the deadlines prescribed in Section 6.1, 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 upon which such Notice of the declaration actually is received by the Defaulting Party and no later than twenty (20) days after such Notice is received, 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 Buyer Default Pre-COD

If an Event of Default occurs prior to the Facility achieving COD and such Event of Default is caused by or attributable to Buyer (e.g. GPA Delay, such as failure by Quantum to fund the Network Upgrades, which GPA Delay does not cease to exist on or before the one hundred eightieth day of its existence), then Buyer shall be liable to Seller for (1) the cost of all Network Upgrades for which Seller actually contracted with any third party or the damages (liquidated or otherwise) for breach, repudiation, or early termination of such contract by Seller with any third party; (2) the contract price of any EPC Contracts for the Facility that Seller executed with any third party or the damages (liquidated or otherwise) for breach, repudiation, or early termination of such contract by Seller with any third party; and (3) all of Seller's costs and expenses that it has accumulated through the date of such Event of Default, including (but not limited to) its engineering and system studies, development fees, and attorney's fees.

6.4 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 beyond the deadlines set forth in Section 6.1, 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 shall 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 shall 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. Seller Metering Equipment will be deemed inaccurate if its accuracy is outside the limits established in American National Standards Institute Code for Electricity Metering (ANSI C12.1, latest version).

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.

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 (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. Such invoices may be furnished to GPA by facsimile transmission or by such other method as the Parties agree. For the purpose of clarifying invoice production amounts for the Solar and Wind PPAs, registered production data from the single delivery point meter in the Dandan substation (to be built) will be allocated pro rata to each PPA based on the individual Solar and Wind facility meters shown in Attachment 3 of the SGIA.

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.

8.2 Cap on Liability.

The maximum aggregate liability of Seller to Buyer under this Agreement ("Maximum Liability") shall be ninety percent (90%) of the product of the difference between the LEAC Rate and the Contract Price, each at the level in effect in the Contract Year in which the liability arises (so long as the LEAC Rate is greater than the Contract Price), which difference shall be multiplied by the aggregate Minimum Production for the remainder of the Term; i.e. $\text{Maximum Liability} = 0.90 \times [(\text{LEAC Rate} - \text{Contract Price}) \times \text{Minimum Production}]$. The calculation shall be made for each Contract Year (or part thereof) remaining in the Term of this Agreement and shall adjust for escalation in the Contract Price and changes to the Minimum Production as set forth in the exhibits. This Maximum Liability shall constitute the cap on damages that Buyer may recover as against Seller under this Agreement.

ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS

9.1 Development Security.

In order to secure Seller's obligations prior to Commercial Operation of the Facility, Seller shall post a Letter of Credit, insurance bond, or cash (or cash equivalent, e.g. cashier's check), or any combination thereof, in the amount of seven hundred fifty thousand dollars (\$750,000.00) (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 thirty (30) 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: ASSIGNMENT

11.1 Buyer Assignment.

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

11.2 Seller Assignment.

Seller may perform any of the following, without the consent of the Buyer (1) transfer, pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds hereof, in connection with any financing or other financial arrangements for the Facility (2) transfer or assign this Agreement to any of its Affiliates in connection with a transfer of the Facility to such Affiliate, (3) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, and (4) transfer or assign this Agreement to Quantum

Guam Power, LLC or to any of its Affiliates; provided, that Seller provides Buyer prior notice of any such transfer or assignment and, with respect to any transfer to an Affiliate of Seller, (A) the creditworthiness of such Affiliate is equal to or superior to the creditworthiness of Seller as of the Effective Date and (B) such Affiliate enters into an assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, pursuant to which Affiliate assumes all of Buyer's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Seller agrees that it will provide written notice to Buyer of any assignment of this Agreement by Seller within five (5) Business Days of the date of such assignment.

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

11.3 Liability After Assignment.

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

11.4 Transfers of Ownership.

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

11.5 Successors and Assigns.

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

11.6 Collateral Assignment by Seller.

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

(a) The Parties shall not amend or modify this Agreement in any material respect without the prior written consent of the Seller's lenders;

(b) Prior to exercising its right to terminate this Agreement as a result of an Event of Default by Seller, Buyer shall give notice of such Event of Default by Seller to the administrative agent of Seller's lenders, which Buyer has been provided written notice of; and

(c) Seller's lenders shall have the right, but not the obligation, to cure an Event of Default on behalf of Seller in accordance with the provisions of this Agreement, provided that Seller's lenders shall be provided an additional forty-five (45) days, from the end of the cure periods provided pursuant to Section 6.1, to effect a cure of such Event of Default.

ARTICLE TWELVE: MISCELLANEOUS

12.1 Term of Agreement.

The Term of this Agreement shall commence on the Effective Date and shall remain in effect for the applicable 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.

12.2 Insurance.

At all times during the Term of this Agreement, beginning with mobilization at the Project site to begin construction of the Facility, 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 \$3,000,000. 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.
- 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 any 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.

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

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

If the Facility is lost or damaged due to a casualty, 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 12.2, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions.

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

12.3 Indemnity.

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

12.4 Site Access and Inspection of Records.

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

12.5 Audit.

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

12.6 Confidentiality.

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

12.7 Notices.

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

12.8 Purchase Option.

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

the procedure in this paragraph shall apply to any subsequent sale of the Facility during the Term of this Agreement.

- (b) Transfer or Extension of Delivery Period. GPA, by Notice delivered to Seller at least one hundred and eighty (180) days prior to the end of the Delivery Period, may either (i) extend the Term of this Agreement on a year-to-year basis, in which case the Contract Price during the extension of the Term shall be the greater of (a) ninety percent (90%) of the Contract Rate or (b) ninety percent (90%) 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 one hundred percent (100%) of the Appraisal Price of the real estate upon which the Facility is located and for ninety percent (90%) of the Appraisal Price of the Facility itself, within thirty (30) days of the determination of the Appraisal Price. If GPA fails to send such Notice then this Agreement shall terminate in accordance with the terms hereof.

12.9 Alternative Dispute Resolution.

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

- (a) 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 12.11, for non-monetary relief relating to any claim of breach of this Agreement in order to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 12.9.

12.10 Governing Law.

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

12.11 Jurisdiction and Costs.

Subject to the mandatory arbitration provisions herein, with respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the Parties hereby consent to the exclusive jurisdiction of the 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.

12.12 Financial Accounting Standards.

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

12.13 Forward Contract.

The Parties intend that in any relevant proceedings, each be regarded as a 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.

12.14 General.

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

12.15 Entire Agreement; Amendment.

This Agreement, together with any appendices, schedules, and any written supplements hereto constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to

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the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

12.16 Appendices.

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

<u>Appendix A</u>	Contract Price and Minimum Production
<u>Appendix B</u>	Notice Addresses
<u>Appendix C</u>	[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

12.17 Special Provisions.

It is the policy of GPA not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Seller certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in GPA's contracted programs or activities, on the grounds of such person's handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Guam law; nor shall any 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.

12.18 Monetary Units

All monetary units set forth in this Agreement shall be in the dollar of the United States of America (USD).

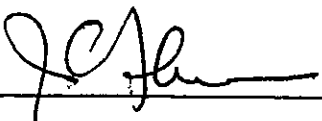
12.19 Waiver of Immunity.

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

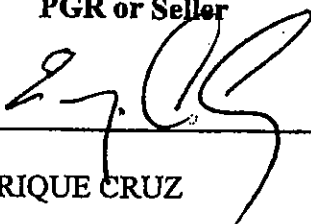
By: 

Name: JOAQUIN C. FLORES, P.E.

Title: GENERAL MANAGER

Date: MARCH 14, 2013

PACIFIC GREEN RESOURCES, LLC
PGR or Seller

By: 

Name: ENRIQUE CRUZ

Title: PRESIDENT

Date: MARCH 14, 2013

[Signature Page to Renewable Energy Purchase Agreement]