



**GUAM POWER AUTHORITY**  
**ATURIDÁT ILEKTRESEDÁT GUAHAN**  
**P.O. BOX 2977, HÁGATÑA, GUAM 96932-2977**

**FUEL OIL SUPPLY CONTRACT**

**PREAMBLE**

THIS CONTRACT, shall be executed on the date of award, by and between GUAM POWER AUTHORITY, a public corporation, hereinafter referred to as "**AUTHORITY**" or "**GPA**", and PETROBRAS SINGAPORE PRIVATE LIMITED, hereinafter referred to as "**CONTRACTOR**":

**W I T N E S S E T H:**

**RECITALS**

WHEREAS, **AUTHORITY** has issued an Invitation For Bid, **IFB-GPA-001-10**, for the supply of Residual Fuel Oil requirements that will meet the needs of the **AUTHORITY**; and

WHEREAS, **GPA** will award the bid to the lowest responsible bidder whose bid conform to the material aspects of the Invitation; and

WHEREAS, if **CONTRACTOR** specified herein has been awarded the Contract, **AUTHORITY** and **CONTRACTOR** have agreed upon a THREE (3) year term fuel supply Contract with option to extend for additional TWO (2) years, renewable annually, upon mutual agreement of both parties.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto do hereby agree as follows:



*[Handwritten signature]*

## SECTION 1

### Section 1.01. DEFINITIONS.

- (a) "Contract" means the Fuel Oil Supply Contract to be entered into as a result of this Invitation for Bids.
- (b) "GPA" or "AUTHORITY" shall mean the Guam Power Authority.
- (c) "CONTRACTOR" shall mean the responsive successful bidder who was awarded with Fuel Supply Contract by the AUTHORITY.
- (d) "Barrel" means 42 U.S. gallons.
- (e) "ASTM" means American Society of Testing and Materials.
- (f) "API" means American Petroleum Institute.
- (g) "OPA'90" means Oil Pollution Act of 1990 by the U.S. Congress.
- (h) "Platt's Asia-Pacific/ Arab Gulf Marketscan" is the reference source document for fuel Contract pricing.
- (i) "Metric Ton": 1-metric ton is equivalent to 6.60 barrels.
- (j) "D.E.S." means Delivered Ex- Ship.
- (k) "Day" and "Month" mean a calendar day and month, respectively.
- (l) "Fuel oil" means a liquid hydrocarbon straight-run petroleum refinery product satisfying the specifications in Section 2.01, supra.
- (m) "Gallon" as used in the Contract, "gallon" shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.
- (n) "Receiving facility" means any wharf, dock, jetty, pier, quay, sea terminal, buoy, lighter, barge, vessel, or other suitable apparatus capable of receiving fuel oil in bulk.
- (o) "\$" refers to United States Dollars.

### Section 1.02. FUEL OIL TO BE SUPPLIED.

**CONTRACTOR** agrees to furnish and **GPA** agrees to accept and pay for all of **GPA's** residual fuel



oil requirements for power generating plants in Guam for the term of the Contract. The **estimated** total fuel oil requirement is about THREE MILLION BARRELS PER YEAR (3,000,000 bbls/yr). Minimum purchase under the Contract is estimated at TWO MILLION BARRELS PER YEAR (2,000,000 bbls/yr). The first delivery of fuel oil pursuant to the Contract is anticipated to be on or about **April 01, 2010**.

<u>Grades of Fuel</u>	<u>Estimated Quantity</u>
Low Sulfur Fuel Oil (LSFO), 1.19 % <sub>w</sub> Sulfur Max.	1, 000,000 barrels
High Sulfur Fuel Oil (HSFO), 2.00 % <sub>w</sub> Sulfur Max.	2, 000,000 barrels

**Section 1.03. TERM.**

The Contract Term shall be for THREE (3) years and shall commence on or about after 0:00 hour on **March 1, 2010**, and shall continue until midnight of **February 28, 2013**, with options to extend for TWO (2) additional One (1) year term, renewable annually, upon mutual agreement of both parties.

The contractual obligation of **GPA** to **CONTRACTOR** is subject to the availability of funds. In the event funds are not available for any succeeding months, the remainder of such Contract shall be canceled and the **CONTRACTOR** shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the fuel oil delivered under the Contract.

**Section 1.04. CONTRACT PRICE.**

The total contract price in U.S. Dollars per FORTY TWO (42) gallon barrel for all residual fuel oil delivered **D.E.S.** GUAM (discharge port) pursuant to Section 1.04 of the Fuel Oil Supply Contract to **GPA** shall be **inclusive** of all costs and liabilities incurred prior to delivery at discharge port, Cabras Island, Guam. **BID PRICE OFFER** shall be entered on Section 1.03 of Article I of the signed (bid offeror) Fuel Oil Supply Contract.

**DES (Delivered Ex- Ship) provisions .**

Under this term, the **CONTRACTOR** quotes a price including the cost of the goods, the marine insurance, and all transportation charges to the designated point of destination (**GPA**). Under this quotation, the **CONTRACTOR** must:

- (1) provide and pay for transportation to named point of destination (**GPA**);
- (2) pay applicable taxes or charges levied on the cargo outside of Guam;
- (3) provide and pay for marine insurance;



23

- (4) provide war risk insurance ;
- (5) obtain and dispatch promptly to **GPA**, or its agent, a clean bill of lading , and also insurance policy or negotiable insurance certificate;
- (6) provide **GPA** with certificates of origin, or any documents issued in the country of origin, or of shipment, or both, which **GPA** may require for importation of goods and, where necessary, for their passage in transit into another country.
- (7) where received-for-shipment ocean bill of lading may be tendered, be responsible for any loss or damage, or both, until the goods have been delivered into the custody of the ocean carrier to **GPA**;
- (8) where on-board ocean bill of lading is required, be responsible for any loss or damage, or both, until the goods have been delivered on board the vessel to **GPA**;

The **CONTRACT PRICE** shall be the **BID PRICE OFFER** calculated as the **BID REFERENCE PRICE** plus the Contractor's **FIXED PREMIUM FEE** in U.S. dollars per FORTY TWO (42) gallon barrel for all residual fuel oil delivered to **GPA** at the Port of Guam.

**BID PRICE OFFERS:**

**(D.E.S. Ex-Ship Guam):**

**BID PRICE OFFER(S) FOR THE THREE (3) – YEAR BASE PERIOD:**

**1) First Year (Year 1 of three-year base period)**

**1A: Low Sulfur Fuel Oil (LSFO) : (1.19 %<sub>w</sub> Sulfur Max) :**

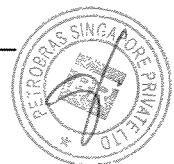
\$ 66.487 per barrel (**in three decimal places**)

(Offer in words) Sixty-six dollars point four eight seven per barrel

**1B: High Sulfur Fuel Oil (HSFO) : (2.00 %<sub>w</sub> Sulfur Max) :**

\$ 64.485 per barrel (**in three decimal places**)

(Offer in words) Sixty-four dollars point four eight five per barrel



*Handwritten initials*

**2) Second Year (Year 2 of three-year base period)**

**2A: Low Sulfur Fuel Oil (LSFO) : (1.19 %<sub>w</sub> Sulfur Max) :**

\$ 66.487 per barrel (**in three decimal places**)

(Offer in words) Sixty-six dollars point four eight seven per barrel

**2B: High Sulfur Fuel Oil (HSFO) : (2.00 %<sub>w</sub> Sulfur Max) :**

\$ 64.485 per barrel (**in three decimal places**)

(Offer in words) Sixty-four dollars point four eight five per barrel

**3) Third Year (Year 3 of three-year base period)**

**3A: Low Sulfur Fuel Oil (LSFO) : (1.19 %<sub>w</sub> Sulfur Max) :**

\$ 66.487 per barrel (**in three decimal places**)

(Offer in words) Sixty-six dollars point four eight seven per barrel

**3B: High Sulfur Fuel Oil (HSFO) : (2.00 %<sub>w</sub> Sulfur Max) :**

\$ 64.485 per barrel (**in three decimal places**)

(Offer in words) Sixty-four dollars point four eight five per barrel

**BID PRICE OFFER FOR THE FIRST (1<sup>st</sup>) YEAR EXTENSION OPTION:**

**4A: Low Sulfur Fuel Oil (LSFO) : (1.19 %<sub>w</sub> Sulfur Max) :**

\$ 66.987 per barrel (**in three decimal places**)

(Offer in words) Sixty-six dollars point nine eight seven per barrel

**4B: High Sulfur Fuel Oil (HSFO) : (2.00 %<sub>w</sub> Sulfur Max) :**

\$ 64.985 per barrel (**in three decimal places**)

(Offer in words) Sixty-four dollars point nine eight five per barrel



Handwritten initials "BB" in the bottom left corner.

**BID PRICE OFFER FOR THE SECOND (2<sup>nd</sup>) YEAR EXTENSION OPTION:**

5A: Low Sulfur Fuel Oil (LSFO) : (1.19 %<sub>w</sub> Sulfur Max) :

\$ 66.987 per barrel (in three decimal places)

(Offer in words) Sixty-six dollars point nine eight seven per barrel

5B: High Sulfur Fuel Oil (HSFO) : (2.00 %<sub>w</sub> Sulfur Max) :

\$ 64.985 per barrel (in three decimal places)

(Offer in words) Sixty-four dollars point nine eight five per barrel

**BID REFERENCE PRICE:**

The BID REFERENCE PRICE shall be based on the Platt's Singapore Products Assessment for Fuel Oil Cargoes "HSFO 180 CST" for June 01, 2009 (Schedule A)

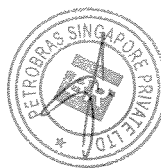
Reference date: June 01, 2009

	<u>Low (\$/MT)</u>	<u>High (\$/MT)</u>
HSFO 180 CST	\$395.89	\$395.93

The following is a sample calculation of the mean price for HSFO 180 cst published in the **Platt's Marketscan, Singapore Products Assessments** for Fuel Oil Cargoes for June 01, 2009. The conversion factor used under this Contract is 6.60 barrels per metric ton.

$$\begin{aligned} \text{Mean Singapore Spot} &= \frac{\text{Low} + \text{High}}{2} \text{ Price Assessments:} \\ &= \frac{\$395.89 + \$395.93}{2} \text{ per Metric Ton (MT)} \\ &= \$395.910 \text{ per Metric Ton (MT)} \\ &= \$59.986 \text{ per barrel} \end{aligned}$$

**BID REFERENCE PRICE = \$59.986 per barrel**



HB

(Schedule A)

## Asia-Pacific/Arab Gulf Marketscan

Volume 28 / Issue 103 / June 1, 2009

### Asia Products \$/bbl

#### Singapore

	<u>FOB Singapore</u>	<u>MOPS strip</u>	<u>Premium/discount</u>
Gasoline 97 unleaded	+82.57 - 82.61+		-17.72/17.76-
Gasoline 95 unleaded	+76.35 - 76.39+		-11.50/11.54-
Gasoline 92 unleaded	+74.13 - 74.17+		-9.28/9.32-
Gasoline 92 unleaded		+73.51/73.55+	0.59/0.63
Naphtha	+65.81 - 65.85+	+64.83 - 64.87+	
Spot naphtha	+65.23 - 65.27+		0.35/0.45
Kerosene	+72.03 - 72.07+	+72.98 - 73.02+	-0.97/-0.93
Gasoil 10 ppm	+75.47 - 75.51+		2.43/2.47 *
Gasoil 50 ppm	+75.07 - 75.11+		+2.03/2.07+ *
Gasoil 0.05% sulfur	+74.42 - 74.46+		+1.38/1.42+ *
Gasoil 0.25% sulfur	+73.97 - 74.01+		+0.93/0.97+ *
Gasoil Reg 0.5% sulfur	+73.07 - 73.11+	+73.02 - 73.06+	+0.03/0.07+
BioDiesel (\$/mt)	+839.75 - 840.25+		
Demurrage Clean (\$)	15000.00		
MTBE (\$/mt)	+769.00 - 771.00+		
Fuel oil 180 CST 2% (\$/mt)	+402.39 - 402.43+		
<b>HSFO 180 CST (\$/mt)</b>	<b>+395.89 - 395.93+</b>	+394.22 - 394.26+	+1.65/1.69+
HSFO 380 CST (\$/mt)	+393.81 - 393.85+	+391.16 - 391.20+	+2.63/2.67+
Demurrage Dirty (\$)	+18500.00		
Ex-Wharf 180 CST	+398.50 - 399.50+		
Ex-Wharf 380 CST	+394.50 - 395.50+		
LSWR Mixed/Cracked	+55.83 - 55.87+		-1.77/-1.73 **

Spread to FOB Singapore naphtha; \* Differential to FOB Singapore Gasoil Reg 0.5%; \*\* Assessment is FOB Indonesia.  
Diff to Pertamina mixed-cracked formula

#### Singapore paper

	<u>Balance Jun *</u>	<u>Jul</u>	<u>Aug</u>
Naphtha	+65.03/65.07+	+64.28/64.32+	+63.93/63.97+
Reforming spread	-8.53/8.57	-9.03/9.07	+9.38/9.42
Naphtha Japan	NA/NA	591.50/592.00	591.00/591.50
Mogas 92 unl	+73.58/73.62+	+73.33/73.37+	+73.33/73.37+
Kero	+72.73/72.77+	+73.68/73.72+	+75.00/75.04+
Gasoil Reg 0.5%	+73.08/73.12+	+72.85/72.89+	+73.65/73.69+
Gasoil EFS	9.35	-4.12	-9.41
ICE Gasoil Futures	535.25	547.00	558.25
HSFO 180 CST	+394.93/394.97+	+392.28/392.32+	+392.03/392.07+
HSFO 380 CST	+392.13/392.17+	+388.48/388.52+	+387.73/387.77+

\* Bal Month swaps will be assessed from the 1st till 15th of the month, in February from 1st till 14th of the month.

#### Arab Gulf / Japan

	<u>FOB Arab Gulf</u>	<u>Premium/discount^</u>	<u>C+F Japan</u>
Gasoline unleaded			+75.31 - 75.35+
Gasoline 95 RON unleaded *	+74.49 - 74.53+	+3.74 - 3.78+	+77.54 - 77.58+
		+4.29 - 4.33+ **	
Naphtha LR2 (\$/mt)	+575.97 - 578.47+		+593.75 - 596.25+
Naphtha (\$/mt)	+570.82 - 573.32+	11.50/12.50	591.00 - 591.50
Naphtha MOPJ Strip		3.25/4.25	591.00 - 591.50
Naphtha 2nd 1/2 Jul (\$/mt)			+598.75 - 599.25+
Naphtha 1st 1/2 Aug (\$/mt)			+595.75 - 596.25+
Naphtha 2nd 1/2 Aug (\$/mt)			+593.75 - 594.25+
Kerosene	+70.23 - 70.27+	1.18/1.22	+73.15 - 73.19+
Kerosene LR2	+70.51 - 70.55+		
Gasoil 0.05% sulfur	+72.97 - 73.01+	3.48/3.52	
Gasoil 0.25% sulfur	+71.67 - 71.71+	+2.18/2.22+	
Gasoil	+71.17 - 71.21+	+1.68/1.72+	+75.84 - 75.88+^^



**Section 1.05. INVOICE PRICE DETERMINATION:**

The Invoice Reference Price shall increase or decrease by the arithmetic average of the eleven (11) mean-price assessments defined below, all as published in Platt's Asia-Pacific/Arab Gulf Marketscan Price Reports, Spot Price Assessments for HSFO, 180 cst, FOB Singapore cargoes. The arithmetic average shall be that of the mean prices posted five (5) days immediately prior to B/L date, the B/L date, and five (5) days immediately after the B/L date. In case "no posting" on the B/L date, no price will be used, and the remaining 10-days average price will be used. All price postings are at the "Prices effective dates".

(a) **Low Sulfur Fuel Oil (LSFO), 1.19% S Max:**

The invoice price per barrel for the **Low Sulfur Fuel Oil (LSFO)** is the sum of :

- (i) The Invoice Reference Price, and
- (ii) The Contractor's **FIXED PREMIUM FEE** for **LSFO**. **FIXED PREMIUM FEES** is equal to the difference between the **BID PRICE OFFER** and the **BID REFERENCE PRICE**.

(b) **High Sulfur Fuel (HSFO), 2.00%S Max:**

The invoice price per barrel for the **High Sulfur Fuel Oil (HSFO)** is the sum of:

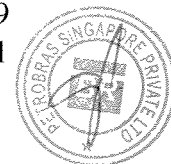
- (i) The Invoice Reference Price, and
- (ii) The Contractor's **FIXED PREMIUM FEE** for **HSFO**. **FIXED PREMIUM FEES** is equal to the difference between the **BID PRICE OFFER** and the **BID REFERENCE PRICE**.

**Sample Calculation:**

**B/L date = June 1, 2009**

**Marketscan Postings HSFO 180cst  
(\$/MT)**

	<u>Date</u>	<u>Low</u>	<u>High</u>	<u>Avg</u>
5	May 25, 2009	351.97	352.01	351.99
4	May 25, 2009	349.28	349.32	349.30
3	May 25, 2009	361.74	361.78	361.76
2	May 25, 2009	363.79	363.83	363.81
1	May 25, 2009	381.17	381.21	381.19
B/L	June 01, 2009	395.89	395.93	395.91



Handwritten initials or signature in the bottom left corner.

1	June 02, 2009	398.03	398.07	398.05
2	June 03, 2009	399.43	399.47	399.45
3	June 04, 2009	394.46	394.5	394.48
4	June 05, 2009	400.75	400.79	400.70
5	June 08, 2009	392.89	392.93	<u>392.91</u>
<b>Mean Arithmetic Average (\$/MT) =</b>				<b>380.87</b>

**Invoice Reference Price = \$380.87/MT**  
**= \$ 57.707/bbl (conversion @ 6.6 bbls/MT)**

**Invoice Price Calculation:**

Product <u>Grade</u>	Invoice Reference Price <u>(\$/bbl)</u>	Premium Fee (Sample) <u>(\$/bbl)</u>	Invoice Price <u>(\$/bbl)</u>
LSFO	57.707	3.500	<b>61.207</b>
HSFO	57.707	2.500	<b>60.207</b>

**Section 1.06. FUEL OIL DELIVERY.**

Title to the fuel oil and custody thereof shall pass from **CONTRACTOR** to **GPA** when the fuel oil has passed the vessel's permanent flange hose connection at the discharge port. Product temperature shall be maintained between one hundred five to one hundred fifteen degrees Fahrenheit (105 °F - 115°F) on arrival and during the discharge at Guam Port.

**Section 1.07. TERMS OF PAYMENT.**

Payment shall be made in U.S. Dollars Funds without off-set, deduction, or counter-claim within THIRTY (30) calendar days (30-days net term) after the Bill of Lading date provided vessel tenders its NOR within FIFTEEN (15) days after the B/L date, otherwise it extends day by day (B/L date inclusive). In case payment due on Bank holiday or Saturday in Guam, payment shall be made immediately preceding banking day. However, should payment due falls on Sunday or Monday bank holiday in Guam, payment shall be made on the immediately following banking day. This payment transaction will be secured by a **DOCUMENTARY LETTER OF CREDIT (L/C)** which will be opened by **GPA** at a first class international bank mutually agreeable to both **GPA** and the **CONTRACTOR**.

Payment shall be available at **CONTRACTOR**'s account on Maturity Date. If **GPA** fails to pay on the maturity date, **CONTRACTOR** shall be reimbursed for the interests related to the time of delay. Interest Rate shall be calculated based on the one month London Interbank Offered Rate (LIBOR) for US Dollar Deposits offered by Bloomberg Publication at 11:00 A.M. London Time as quoted on page BBAM in effect on the date **GPA**'s payment was due, plus three percent per annum.



In the event that a duly executed Documentary Letter of Credit (L/C) is amended or cancelled due to error or adjustments caused by the **CONTRACTOR**, the **CONTRACTOR** shall reimburse **GPA** for any penalties for the amendment or cancellation of the LC.

The **CONTRACTOR** shall endeavor to assist **GPA** to revise the payment due dates if requested by **GPA** accordingly.

**Section 1.08. PAYMENT OF TAXES AND OTHER GOVERNMENT CHARGES.**

All fuels under the terms of this Contract are exempt from the Government of Guam Liquid Fuel Tax and the Government of Guam Gross Receipts Tax as provided by 12 G.C.A., Section 8115. Contractor shall be responsible for filing appropriate tax returns or other filings and requesting rebates, credits, drawbacks or exemptions.

In the event any liquid fuel tax or gross receipts tax or other tax including, but not limited to, excise tax, duty, toll, fee, charge for other exaction or the amount equivalent thereto, and any increase thereof, now or hereafter imposed, levied or assessed by the United States Government, the Government of Guam, the Port Authority of Guam, or other instrumentality or agency thereof in connection with and as a result of the sale of fuel oil herein provided for is collectible or payable by **CONTRACTOR**, (except taxes, penalties, fees or other charges that may be imposed on **CONTRACTOR** because of **CONTRACTOR**'s failure to make proper tax filings including requests for credits, exemptions, drawbacks or rebates) it shall be paid by **GPA** as part of the fuel price set forth herein, on demand by **CONTRACTOR**. Any such payment shall be in addition to the price otherwise herein provided for.

Notwithstanding these provisions, should the payment of any such charges described in this section be unduly burdensome to **GPA**, it shall be grounds for renegotiation for an equitable adjustment in price, pursuant to Section 3.03 herein, without prejudice to the generality of that clause.

**CONTRACTOR** shall be solely responsible for filings and payment of income tax or taxes measured on net income.

**Section 1.09. WARRANTY AND CLAIMS.**

**CONTRACTOR** warrants that the fuel oil shall meet the specification prescribed herein under Article II and other pertinent sections. If the fuel oil fails to meet the specifications herein, **CONTRACTOR** shall be liable for any direct damages resulting therefrom.

**CONTRACTOR** shall be solely responsible for any damages caused by the **CONTRACTOR** or its agents during the process of oil shipment and delivery.

Claims against the **CONTRACTOR** for direct costs incurred on account of their negligent actions



shall be given in writing together with all supporting documents, invoices and correspondence by **GPA** within thirty days (30) from date of delivery of fuel oil as specified in Section 1.04.

**Section 1.10. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA.**

(deleted)



A handwritten signature in the bottom left corner of the page.

## SECTION 2

### Section 2.01. PRODUCT AND QUALITY.

The fuel oil delivered hereunder shall have the physical and chemical characteristics as described in the following tables:

Item	Description	Unit of Measure	Approved Test Method	Acceptable Alternate Test Methods	Minimum Allowed Value	Maximum Allowed Value	Comments
1	<b>Sulphur Content</b>	% mass	ASTM D-4294	ASTM D-2622	N/A	HSFO=2.00 LSFO= 1.19	
2	<b>Pour Point</b>	Deg C	ASTM D-97	N/A	N/A	21	
3	<b>Flash Point</b>	Deg C	ASTM D-93	N/A	66	N/A	
4	<b>Fire Point</b>	Deg C	ASTM D-92	N/A	94	N/A	
5	<b>Viscosity Saybolt Universal Seconds</b>	Seconds at 100 °F	ASTM D-445 Converted with ASTM D-2161	N/A	600	1200	
6	<b>Sediment By Extraction</b>	% mass	ASTM D-473	N/A	N/A	0.50	
7	<b>Water By Distillation</b>	% by Volume	ASTM D-95	N/A	N/A	0.50	
8	<b>Vanadium Content</b>	Parts Per Million	ASTM D-5708	a) UOP 800 b) ASTM D-5184 c) ASTM D-5863 d) IP 501 e) IP 433 f) ISO 14597 g) IP 470 h) IP 465 i) EN 13131	N/A	70	
9a	<b>Silicon Content</b>	Parts Per Million	ASTM D-5184	a) IP 470 b) IP 377 c) ISO 10487 d) IP 501	N/A	Combined Al + Si Not to exceed 70 ppm	Individual results to be reported separately
9b	<b>Aluminum Content</b>	Parts Per Million	ASTM D-5184	a) IP 470 b) IP 377 c) ISO 10487 d) IP 501	N/A		
10	<b>Guaranteed Gross Heating Value</b>	Million BTU Per US Barrel	ASTM D-240	N/A	5.9	N/A	
11	<b>Micro- Carbon Residue</b>	% mass	ASTM D-4530	ASTM D-5245 ASTM D-189 (see comments)	N/A	15	CCR result shall be converted using table in method to RCR equivalent
12	<b>Ash</b>	% mass	ASTM D-482	N/A	N/A	0.10	
13	<b>Asphaltenes</b>	% mass	ASTM D-6560	IP 143	N/A	7	
14	<b>Sodium</b>	ppm	ASTM D-58563/B	ASTM D-55708/B IP288	N/A	80	
15	<b>Total Sediment (Accelerated)</b>	% mass	ISO 10307-2	N/A	N/A	0.15	
16	<b>Compatibility</b>	a) Cleanliness ratio b) Compatibility ratio	ASTM D-4740	N/A	N/A	a) 2 b) 2	a) to be reported from loadport b) to be determined on arrival Guam unless otherwise notified in the specific instance. See Note below.
17	<b>API Gravity</b>	-	ASTM D-287	ASTM D-1298 and conversion	14.0	23.0	



Handwritten initials 'LB' in the bottom left corner.

**Note Item 16:** **CONTRACTOR** shall ensure that each shipment of fuel oil is compatible with a representative sample of the previous shipment of the same grade. Testing for compatibility will be conducted at loadport according to the test method ASTM D-4740 mutually agreed between both parties and the **CONTRACTOR** will guarantee spot rating of 2 or better.

The Authority reserves the right to require the supplier to add and to conduct additional tests as may be required.

**Section 2.02. QUANTITY AND QUALITY ASSURANCE.**

(a) Inspection of fuel oil cargo loading and discharge to determine quantity and quality shall be witnessed and or conducted by the appointed third party independent Inspector mutually acceptable to **GPA** and the **CONTRACTOR**. Such independent inspector shall also perform or witness the required sampling, gauging, and inspection of vessel and shore tanks before and after loading at load port as well as discharge port, Guam. Final determination shall be based on the discharge port findings. All quantity calculations and correction to volume at sixty (60) degree (Fahrenheit) shall be in accordance with the ASTM-IP Petroleum Measurement Tables, Table 6- the latest edition published shall be applicable. All costs and charges for the inspections for the load port shall be borne by the **CONTRACTOR**, and costs at the discharge port shall be equally shared by **GPA** and the **CONTRACTOR**.

(b) Load port samples from each individual shore loading tanks shall be sampled by the independent inspector who shall perform or witness the required tests for quality certification prior to loading. Shore tank composite from each individual shore loading tanks shall be separately tested and the quality must conform to the specifications under Section 2.01 of the contract. Vessel's composite samples from all vessel's cargo compartments shall also be obtained by the inspector for the consignee, **GPA**, in care of the ship's master. All Samples shall be equally divided into THREE (3) parts, sealed, properly identified, and designated with the required "Chain of Custody of Samples" documentations

(c) The quality of the cargo to be delivered shall be determined by an independent inspector mutually acceptable to **GPA** and the **CONTRACTOR** and is to be based on the ship composite samples taken at the port of discharge in such a manner as to secure samples which are representative of the entire cargo delivery. Discharge tanks samples and ship's composite samples shall be divided into THREE (3) parts. One part shall be for **CONTRACTOR** and TWO (2) parts shall be for **GPA**, and **GPA** shall utilize one sample for recertification and reserve the other sample as a retained referee sample. All discharge port samples shall be presented by the inspector for **GPA** in care of the Master of the ship. All samples shall be retained for not less than ONE HUNDRED TWENTY (120) days after delivery. In the event of dispute as to quality, analysis of the samples taken at the discharge port shall be made by an independent inspector, which analysis shall be final and binding upon both parties.



A handwritten signature or set of initials in the bottom left corner of the page.

**GPA** reserves the right to reject any or all deliveries that fails to conform with the quality requirements specified in Section 2.01.

**Section 2.03. BOTTOM SEDIMENT AND WATER.**

**CONTRACTOR** shall not cause to deliver fuel oil having a combined water and sediment content in excess of **ONE PERCENT (1%)** as determined by centrifuge-ASTM D-1796.

Bill of Lading quantity deduction shall be made for all water and non-petroleum sediment in excess of maximums specified in Section 2.01.

**Section 2.04. GUARANTEED HEATING VALUE.**

If the heating value of the fuel oil delivered by **CONTRACTOR** is less than specified in Section 2.01, the Bill of Lading quantity deduction shall be made for the reduced heating value calculated as the ratio of the out of specification heating value versus the guaranteed heating value specified in Section 2.01 multiplied by the Bill of Lading Quantity.

**Section 2.05. QUANTITY DETERMINATION.**

Quantity determination shall be performed by the third party independent inspector mutually acceptable to **GPA** and the **CONTRACTOR** based from the load port shore tanks gauges as to be reflected as Bill of Lading quantity NET barrels at sixty degrees Fahrenheit (60 °F). All quantities shall be corrected to volume at sixty degrees Fahrenheit (60 °F) in accordance with the ASTM-IP Petroleum Measurement Table, Table 6B, the latest edition published shall be applicable.

Quantity certification prepared by independent inspector shall be final and binding upon both parties. In the event that the variances between the B/L quantity and the discharge port (shore tanks) receipts, The **AUTHORITY** shall pay (absorb) for a quantity shortfall up to **ONE-HALF PERCENT (0.50 %)** of the barrel established quantity; shortages beyond the 0.5% shall be covered by the **CONTRACTOR**.



A small, handwritten mark or signature in the bottom left corner of the page, consisting of stylized, overlapping loops.

### SECTION 3

#### Section 3.01. SECURITY OF SUPPLY.

For security of supply, **CONTRACTOR** reserves the right to supply fuel oil meeting **GPA** specifications from any source. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in Section 1.03 above.

#### Section 3.02. GOVERNMENT LAWS AND REGULATIONS.

(a) If at any time during the term of the Contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent **GPA** from burning the type of fuel oil to be supplied hereunder, **GPA** shall use its best efforts to obtain an exemption. In the event **GPA** cannot obtain an exemption from such laws and regulations, **CONTRACTOR** shall use his best efforts to furnish **GPA** substitute fuel oil which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties. If the substitute fuel oil causes an increase or decrease in **CONTRACTOR**'s cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by **CONTRACTOR** of the notification of substitute fuel oil in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes". However, nothing in this clause shall excuse the **CONTRACTOR** from proceeding with the Contract fuel oil specifications as changed in order to comply with Government laws, rules and regulations. Only in the event that the parties cannot mutually agree upon the price at which **CONTRACTOR** is to furnish such substitute fuel oil, and **CONTRACTOR** refuses to provide such substitute fuel oil at the Contract price set out herein shall **GPA** then have the option of purchasing from other sources fuel oil at a lower price than that offered by **CONTRACTOR** in such negotiations which complies with such laws and regulations, but in any event, the **CONTRACTOR** shall have no recourse, other than those specified herein.

(b) **CONTRACTOR** shall at all times comply with all applicable laws and regulations of the Territory of Guam and the Federal Government and their respective agencies.

#### Section 3.03. SPECIFICATIONS.

Should **GPA** wish to alter any of the product quality specifications set out in Section 2.01, method of shipment, terms of delivery, for good cause, it shall give written notice to **CONTRACTOR** within thirty (30) days. If such changes cause an increase or decrease in **CONTRACTOR**'s cost of performance of Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim by **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of changed



LB

specifications, unless **GPA** grants a further period of time before the date **GPA** is required to make payment. **CONTRACTOR** and **GPA** shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If **CONTRACTOR** and **GPA** fail to agree on the adjustment to be made within thirty (30) days after **CONTRACTOR** receives notice of altered

specifications, or if **CONTRACTOR** is unwilling to meet the altered specifications, the parties shall be subject to "Disputes" clause.

#### **Section 3.04. PERMITS AND RESPONSIBILITIES.**

The **CONTRACTOR** shall, without additional expense to **GPA**, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal and Territorial laws, codes and regulations necessary for performance of the Contract by **CONTRACTOR**.

#### **Section 3.05. FORCE MAJEURE.**

No failure or omission by either party to carry out or to observe any of the terms, provisions or conditions of the Contract shall, except in relation to obligations to make payments under the Contract, give rise to any claim by one party against the party in question or be deemed to be a breach of the Contract if such failure or omission arises from any cause reasonably beyond the control of the party, including but without prejudice to the generality of the foregoing:

- (a) War, etc. War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;
- (b) Restraints. Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation. Expropriation, requisition, confiscation or nationalization;
- (d) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;
- (e) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (f) Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;
- (g) Loss for Tankers. Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;



JB

(h) Accidents. Accidents to or adjuncts of shipping navigation;

(i) Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;

(j) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;

(k) Taking by Government. Unavailability of fuel because of the election of the government of the country of its origin to take royalty product in kind;

(l) Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.

No failure or omissions to carry out or to observe any of the terms, provisions or conditions of the Contract shall give rise to any claim by one party against the other, or be deemed to be a breach of the Contract from the time of and to the extent occasioned by the Force Majeure, not from the date of notice of the Force Majeure is received.

### **Section 3.06. NOTICE TO OTHER PARTY.**

Either party whose obligations may be affected by any of the forces or causes set out in Section 3.05, supra, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after the occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and to resume performance at the earliest practicable time.

### **Section 3.07. PAYMENT REQUIRED.**

Notwithstanding the provisions of Section 3.05, supra, **GPA** shall not be relieved of any obligation to make payments for any fuel delivered to Guam dock/**GPA** tanks hereunder; however, during the force majeure condition the obligation shall be suspended, except for fuel oil deliveries made prior to the force majeure condition.

### **Section 3.08. PRORATION OR EQUITABLE ALLOCATION.**

If any of the events enumerated in Section 3.05, supra, have occurred, **CONTRACTOR** shall prorate or otherwise allocate in a fair and equitable manner among its customers, including **GPA**, the supplies of fuel oil **CONTRACTOR** has available for delivery at the time of the occurrence or for



HB

the duration of such event taking into account **GPA's** unique situation as Guam's total dependence on fuel oil. **CONTRACTOR** shall also seek an alternative source of fuel oil to fulfill its contractual obligations.

**Section 3.09. ALTERNATE SUPPLY.**

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of Section 3.05, supra, **GPA** may at its sole discretion seek an alternative source of fuel oil so long as such condition shall exist.

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of any negligence on the part of the Contractor, **GPA** may at its sole discretion seek an alternative source of fuel oil so long as such condition of negligence shall exist. If the cost of fuel during such period of negligence shall exceed the Contract price as provided in Section 1.03, the **CONTRACTOR** shall be liable to **GPA** for the difference, which may be taken from the Performance Bond.

**Section 3.10. RESUMPTION OF PERFORMANCE.**

If **CONTRACTOR** is prevented from delivering or **GPA** is prevented from receiving all or any fuel to be sold under the Contract for the reasons which fall within the provisions of Section 3.05, supra, then the party so prevented shall, as to the remainder of the fuel not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in Section 3.05, supra, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

**Section 3.11. DISPUTES.**

Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, and which are not resolved by mutual agreement shall be referred to the American Arbitration Association ('AAA') in the Territory of Guam.

(a) All controversies between the **GPA** and the **CONTRACTOR** which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by the **GPA** pursuant to Guam Procurement laws and regulations in writing, within sixty (60) days after written request by the **CONTRACTOR** for a final decision concerning the controversy; provided, however, that if **GPA** does not issue a written decision, within SIXTY (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the **CONTRACTOR** may proceed as if an adverse decision had been received.



HB

(b) **GPA** shall immediately furnish a copy of the decision to the **CONTRACTOR**, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless fraudulent, or, the **CONTRACTOR** brings an action seeking judicial review of the decision in the American Arbitration Association ('AAA') in the Territory of Guam.

(c) The **CONTRACTOR** shall comply with any decision of **GPA** and proceed diligently with performance of this Contract pending final resolution by the American Arbitration Association ('AAA') in the Territory of Guam of any controversy arising under, or by virtue of, this Contract, except where there has been a material breach of the Contract by **GPA**; provided, however, that in any event the **CONTRACTOR** shall proceed diligently with the performance of the Contract where the General Manager of **GPA** has made a written determination that continuation of work under the Contract is essential to the welfare of the territory.

### **Section 3.12. CONTRACTOR'S INSURANCE**

The **CONTRACTOR** shall maintain an insurance policy or ensure that vessel nominated have in place an insurance policy for oil pollution (throughout the entire period of the voyage to and from the discharge port) with coverage consistent with the provisions in compliance to the requirements of the U.S. Oil Pollution Act of 1990 (OPA 90) and any amendments thereto. This includes, but is not limited to, compliance with oil spill clean up plan, financial responsibility, and all other provisions of OPA 90.

### **Section 3.13. INDEMNITY.**

**CONTRACTOR** shall indemnify and hold **GPA** harmless from all damages to persons or property or to receiving facilities and delivery facilities, regardless of ownership, including the cost of enforcement of the indemnity, actually and proximately caused by **CONTRACTOR** or its agents in making deliveries hereunder. **CONTRACTOR** shall be responsible for cleaning up any oil spillage caused by it or its agent or **CONTRACTORS** during the process of oil delivery. **CONTRACTOR** shall carry at all times appropriate levels of insurance as determined by **GPA** to cover any such damage. The **CONTRACTOR** shall ensure that any vessel owned or chartered by the Contractor for deliveries under this agreement shall meet the requirements of the U.S. Oil Pollution Act of 1990 (OPA 90).

### **Section 3.14. TRANSPORTATION.**

The Authority shall nominate and advise the **CONTRACTOR** of the 10-day delivery date range not later than 30 days before the 1<sup>st</sup> calendar day of the delivery date range. The **AUTHORITY** and



A handwritten signature or set of initials, possibly "AB", located in the bottom left corner of the page.

**CONTRACTOR** shall mutually agree to narrow down to a 5-day delivery date range 21 days prior to the 1<sup>st</sup> day of the 5-day delivery date range.

(a) **CONTRACTOR** shall arrange for the transportation of the fuel oil from loading port to the Guam dock, and give **GPA** at least FIFTEEN (15) days prior notice of the approximate arrival date of each tanker.

All risk of loss, cost and liabilities prior to the time of passage of title of the fuel oil to shall be on the **CONTRACTOR**. **CONTRACTOR** or its agents shall further arrange for the use of pier receiving facilities' Manager (Tristar), U.S. Coast Guard, U.S. Custom and Immigration inspections, Guam Commercial Port authorities, Guam tug services, Port stevedores services, and others as necessary for the safe berthing of fuel tankers.

**GPA** shall exercise due diligence and make its best effort to assist **CONTRACTOR** arrange for safe berthing facilities to accommodate vessels at the F-1 dock with the following information:

Maximum LOA	237 meters
Maximum breadth	45 meters
Maximum vessel draft alongside	14.8 meters
Maximum displacement	120,000 tonnes

**GPA** shall provide the **CONTRACTOR** an estimated total cargo quantity to be delivered approximately THIRTY (30) days from estimated 10-day delivery date range.

**GPA** shall provide notification to the **CONTRACTOR** as to the final split cargo delivery quantity approximately TWENTY ONE (21) days prior to the first (1<sup>st</sup>) day of the estimated 5-day delivery date range which will also be specified in this final notice. **GPA estimates** a single delivery requirement in the range of TWO HUNDRED THIRTY THOUSAND TO TWO HUNDRED EIGHTY THOUSAND BARRELS (230,000 -280,000 bbls). The delivery may be a single cargo of either LSFO or HSFO, or a split SEGRAGATED cargo of both LSFO and HSFO, as determined by **GPA**.

For any requested grade, the minimum quantity shall be 50,000 barrels (fifty thousand barrels) in each delivery.

For each delivery **CONTRACTOR** will have an operational tolerance of 10% on the cargo size, as well as the obligation to deliver the shipment within defined delivery date range, as has been notified by **GPA**.

**(b) Tanker nomination procedures:**

The **AUTHORITY** shall advise the contractor of projected "tankers' schedule and quantities per slate" THIRTY (30) days before the commencement of the contract, and **CONTRACTOR** agrees to provide all fuel requirements of **GPA** as advised and all succeeding cargo requirements thereafter.



Handwritten initials or a signature in the bottom left corner of the page.

(b1) **Vessel Specification:**

All vessels nominated by the **CONTRACTOR** for fuel oil deliveries to **GPA** shall meet Tristar's vessel vetting requirements and be pre-approved by the F-1 dock facility manager (Tristar), having its registered office at:

414 West Soledad Avenue  
GCIC Building, Suite 500P  
Hagatna, Guam 96910

Tel : (671) 565-2300/ 565-9021  
Fax: (671) 565-3909

The **CONTRACTOR** or its agents shall be responsible in seeking vessel clearance from Tristar. In the event that vessels owned or chartered by the **CONTRACTOR** do not meet the Tristar specification, **CONTRACTOR** shall have the vessel shortfalls corrected or have another vessel nominated and ensure that a suitable vessel is cleared for timely delivery of cargo to **GPA**.

The **CONTRACTOR** shall ensure that the vessel assigned to perform the voyage should be rid of any slops before reaching the designated port and have adequate slops – storage capacity to ensure that unloading of any slops is avoided.

(c) **Ship Laytime and Demurrage:**

Ship laytime of thirty-six (36) hours at the discharge port shall commence six (6) hours after the tender of Notice of Readiness (NOR) or when the vessel berths whichever occurs first, and to cease upon last cargo hoses disconnection.

However, if the vessel arrives before the first day of the agreed arrival date range, lay time shall not commence until 06:00 AM on the first day of the agreed arrival date range or the time discharge commences whichever is earlier. If the vessel arrives after the last day of the agreed arrival date range lay time shall commence at the time discharge commences. If regulations of the Port Authorities prohibit the discharge of cargo at night, the time so lost shall not count as used lay time.

(c1) **Ship Demurrage:**

If laytime allowed is exceeded, **GPA** shall be liable to pay the **CONTRACTOR** demurrage. However, any delay due to vessel inspection and clearance by Local and Federal Authorities, breakdown of the vessel's equipment or failure by vessel to comply with the requirements of the discharge port with respect to equipment aboard, shall not be counted in the laytime used for calculating demurrage. The vessel must be able to attain a discharge pressure of up to one hundred (100) psi measured at the F-1 Dock manifold.

Demurrage cost if payable by **GPA** shall be as per Charter Party rates and terms and the **CONTRACTOR** shall furnish **GPA** with a copy of such Charter Party. Such charges must be submitted to **GPA** within 90 days after Bill of Lading date.



SB

**CONTRACTOR** 's and **GPA**'s rights and duties under Section 3.13 and 3.14 do not supersede or control the provisions of Section 3.05 Force Majeure.

(d) **Dock Use Laytime Charges:**

Dock laytime of thirty-six (36) hours at the discharge port, to commence upon cargo hose connection, and to cease upon last cargo hose disconnection. Dock laytime charges in excess of the first thirty six (36) hours is paid by GPA to the dock facility manager, Tristar.

In the event that the allowable laytime of thirty six (36) hours is exceeded due to delays caused by the vessel, the Contractor shall reimburse GPA for any charges in excess of the allowable laytime. Calculation for reimbursement shall be based on the Letter of Protest issued to the Chief Officer converted to time units multiplied by the dock excess laytime charge cost.

**Section 3.15. COORDINATION - AMMUNITION UNLOADING.**

(a) The **CONTRACTOR** is hereby advised and agrees that the unloading of fuel oil is not permitted during the time that the unloading or loading of ammunition is taking place at the U.S. Navy's ammunition wharf.

(b) Coordination to prevent conflict in unloading between ammunition and fuel oil will be effected jointly by responsible parties representing the U.S. Navy, the Port Authority, **GPA** and the **CONTRACTOR**. Any charges that may result because of demurrage caused by delay in discharge of fuel oil related to ammunition unloading or loading will be borne by the **GPA**, provided that notice of arrival of tanker is given to **GPA** by the **CONTRACTOR** at least FIFTEEN (15) days prior to ETA Guam. In absence of such notice any delay costs shall be borne solely by the **CONTRACTOR**.



## SECTION 4

### Section 4.01. FAILURE TO SUPPLY

If the **CONTRACTOR** refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure the timely delivery of fuel oil supply or commits any other substantial breach of this Contract, **GPA** may notify the **CONTRACTOR** in writing of the delay or non-performance and if not cured within THIRTY (30) days of the date of notification, **GPA** may terminate the Contract in whole or such part of the Contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, **GPA** reserves the right to procure fuel oil supply from another source immediately upon issuance of such notification or whenever it deems appropriate.

### Section 4.02. FAILURE TO PAY.

Failure to pay an invoice and any late penalties, if any, within a period of THIRTY (30) days from the due date of such invoice, shall be a default and should such a default not be cured within THIRTY (30) days of default, **CONTRACTOR** may, at its option, do either of the following:

- (a) Terminate the Contract forthwith or forthwith suspend delivery under the contract until further notice, on notifying GPA orally or by notice in writing; or
- (b) Continue to supply fuel oil and bring suit in the Superior Court of Guam for amounts past due and as they become due.

### Section 4.03. FAILURE TO COMPLY WITH LAWS.

In the event the **CONTRACTOR** or any person or entity identified as principals in the offer submitted in connection with the bid shall be found by any court or administrative agency having jurisdiction over the subject matter of the violation, to have violated any law, rule or regulation in connection with **CONTRACTOR**'s performance of the obligations under the Contract in any manner whatsoever directly or indirectly which violation shall constitute a breach of the peace, or an act involving moral turpitude or otherwise constitute endangerment of the health, safety and welfare of the citizens of the Territory of Guam, **GPA** may at its sole discretion terminate this Contract upon THIRTY (30) days written notice.

### Section 4.04. PENALTY CLAUSES

#### 1. Late deliveries:

In case of five (5) delayed deliveries beyond the last day of the stipulated delivery date range,





**GPA** reserves the right to retain the amount of the penalty clauses from his debts to the **CONTRACTOR** or from the Good Performance Bond of the Contract, or partially from both.

**Section 4.05. DEFAULT.**

(a) **Default.**

If the **CONTRACTOR** refuses or fails to perform any of their obligations under this agreement, **GPA** shall notify the **CONTRACTOR** either by e-mail or in writing within THIRTY (30) days of the breach. If the **CONTRACTOR** does not remedy the breach within 30 days after the date of notification, **GPA** may by giving written notice to **CONTRACTOR** terminate the Agreement in whole or suspend taking of delivery under the Contract.

In the event of termination or suspension under this provision, **GPA** reserves the right to procure fuel oil supply from another source immediately upon notification to **CONTRACTOR** either by e-mail or in writing. Fuel to be procured shall be at the prevailing market rate and the **CONTRACTOR** shall be liable for the difference between the contract price and the prevailing market price at the time of termination or suspension.

(b) **Compensation.**

**GPA** shall pay for fuel oil delivered to Guam Dock and shall be obliged to accept delivery of, and pay for cargo in transit to Guam prior to the receipt of **GPA's** notice of termination for default and provided cargo meets specifications.

(c) **Additional Rights and Remedies.**

The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

**Section 4.06. ATTORNEYS FEES.**

Should a default by either party result in litigation, the successful party shall be entitled to recover its reasonable attorneys fees from the defaulting party.

**Section 4.07. TERMINATION FOR CONVENIENCE.**

(a) **Termination.**

The delivery of fuel oil supply under this Contract may be terminated by **GPA** in accordance with this clause in whole, or from time to time in part.



Handwritten signature or initials in the bottom left corner of the page.

Any such termination shall be effected by delivery to the **CONTRACTOR** of a written Notice of Termination specifying the extent to which supply of fuel oil under the Contract is terminated, and the Contract shall be terminated effective THREE HUNDRED SIXTY (360) days after receipt of notice by **CONTRACTOR**. In the case of termination of this Contract, GPA shall reimburse the **CONTRACTOR** of all the expenses related to the period of the Performance Bond that were not used.

(b) **CONTRACTOR 's Obligations.**

The **CONTRACTOR** shall incur no further obligations in connection with the terminated fuel oil supply delivery and on the date set in the Notice of Termination the **CONTRACTOR** will stop delivery of fuel oil to the extent specified. The **CONTRACTOR** shall also terminate outstanding orders and Contracts, if any, as they relate to the terminated Contract for fuel oil supply. The **CONTRACTOR** shall settle the liabilities and claims arising out of the termination of orders and Contracts, if any, connected with the terminated fuel oil supply delivery. **GPA** may direct the **CONTRACTOR** to assign the Contractor's right, title and interest under the terminated orders or Contracts to **GPA**. The **CONTRACTOR** must still deliver fuel oil supply not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) **Right to Supplies.**

**GPA** may require the **CONTRACTOR** to transfer title of fuel oil cargo in transit to Guam at the time of receipt by Contractor of **GPA's** Notice of Termination.

(d) **Compensation.**

(1) The **CONTRACTOR** shall submit a termination claim specifying the amounts due because of the termination for convenience. If the **CONTRACTOR** fails to file a termination claim within ONE (1) year from effective date of termination, **GPA** may pay the **CONTRACTOR**, if at all, an amount set in accordance with subparagraph (3) of this paragraph.

(2) **GPA** and the **CONTRACTOR** may agree to a settlement provided the **CONTRACTOR** has filed a termination claim supported by cost or pricing data to the extent required by Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by **GPA**, the proceeds of any sales of supplies and manufacturing materials under the Guam Uniform Commercial Code, and the Contract price of the fuel supply not terminated.

(3) Absent complete agreement under subparagraph (1) of this paragraph, **GPA** may pay the **CONTRACTOR** the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph:

(i) Fuel oil Contract prices for supplies or services accepted under the Contract by **GPA**;



A handwritten signature or set of initials in the bottom left corner of the page.

(ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of fuel oil plus a fair and reasonable profit on such portion of the delivery (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted fuel oil supplies or services; provided, however, that if it appears that the **CONTRACTOR** would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) Costs of settling and paying claims arising out of the termination of Contracts or orders pursuant to paragraph (2) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(ii) of this paragraph;

(iv) The reasonable settlement costs of the **CONTRACTOR** including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract for the termination and settlement of Contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the **CONTRACTOR** under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the **CONTRACTOR** reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial Code.

#### **Section 4.08. REMEDIES CUMULATIVE.**

Each and all remedies available to a party in the event of the other party's failure to comply timely with any or all the terms and conditions of the Contract may be exercised independently or in combination (such rights being nonexclusive one with the other). The remedies set forth in the Contract are in addition to, and not in lieu of, all of the remedies available at law or in equity.



## SECTION 5

### Section 5.01. COVENANT AGAINST CONTINGENT FEES.

The **CONTRACTOR** warrants no person or selling agency has been employed or retained to solicit or secure the Contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the **CONTRACTOR** for the purpose of securing business. For breach or violation of this warranty, **GPA** shall have the right to annul the Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

### Section 5.02. NOTICE.

Except as otherwise expressly specified herein, any notice to be given hereunder by either party to the other shall be deemed sufficiently given if in writing and enclosed in an envelope properly stamped and addressed to the party at the address set forth in this section, and deposited in the United States mail. Either party may change its address by giving FIFTEEN (15) days prior written notice to the other party. Such address until further notice shall be:

**GPA:** General Manager  
Guam Power Authority  
Post Office Box 2977  
Hagatna, Guam 96932-2977  
TELEFAX: (671) 648-9225

**CONTRACTOR:** Petrobras Singapore Pte. Ltd.  
200 Newton Road 7<sup>th</sup> Floor  
Newton 200 Singapore - 307983

### Section 5.03. INTEREST OF OTHER PARTIES.

**CONTRACTOR** warrants that no member of the governing body of **GPA**, and no other officer, employee, or agent of **GPA** who exercises any functions or responsibilities in connection with the work to which the Contract pertains, and no employee, agent or member of the Guam Legislature or other public official of the Government of Guam, has or shall have any personal economic or financial interest, direct or indirect, in the Contract.



Handwritten initials or a signature in the bottom left corner of the page.

**Section 5.04. ASSIGNMENT.**

**CONTRACTOR** declares that the only persons or parties interested in the Contract as principals are named herein and that the Contract is made without participation by or benefit to any other person, firm or corporation, except as specified herein.

**CONTRACTOR** agrees that it will not assign to nor permit Contract participation in whole or in part by any other person, firm or corporation not specified as a principal without the prior written consent of **GPA**. If such assignment is permitted, **CONTRACTOR** will guarantee the performance of all terms and obligations of the Contract, and such assignment shall not alter **CONTRACTOR**'s obligations hereunder. No assignee of **CONTRACTOR** shall have the right to assign the Contract without **GPA**'s consent which may be given or refused at **GPA**'s absolute discretion.

**Section 5.05. TIME.**

Time is of the essence in the Contract and in every part hereof.

**Section 5.06. AMENDMENT AND WAIVER.**

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought. For purposes of this Contract, the signature of the General Manager or his designee, of the Guam Power Authority is required to bind the **AUTHORITY**, as shown by the Resolution of the Consolidated Commission on Utilities.

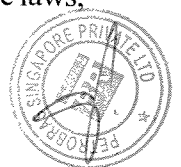
Failure by either party to object to any failure of performance by the other party of any provision of the Contract shall not constitute a waiver of, or estoppel against, the right of such party to require such performance by the other. Nor shall any such failure to object constitute a waiver or estoppel with respect to any succeeding failure of performance.

**Section 5.07. DESCRIPTIVE HEADINGS.**

The descriptive headings of the several Sections and Subsections in this Invitation are inserted for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof.

**Section 5.08. GOVERNING LAW.**

This Contract is made under, and shall be governed and construed in accordance with, only the laws,



Handwritten initials "GB" in the bottom left corner.

statutes and regulations of the Territory of Guam, to the exclusion of all other legal systems. Wherever a term defined by the Uniform Commercial Code is used in the Contract the definition contained in the Uniform Commercial Code of Guam will control, unless otherwise specified.

The parties expressly submit to the jurisdiction of the Superior Court of the Territory of Guam, for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. The Contractor agrees to accept the

jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims including but not limited to, claims for consequential, special or punitive damages. Arbitration Proceedings shall be conducted on Guam, using the arbitration rules of the American Arbitration Association (AAA), and following the Laws of the State of New York.

Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The Contractor waives all rights against GPA to claim consequential, special or punitive damages.

**Section 5.09. RELATIONSHIP OF PARTIES.**

Nothing contained in the Contract shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between **CONTRACTOR** and **GPA**, and no provisions contained in the Contract nor any acts of the parties shall be deemed to create any relationship between **GPA** and **CONTRACTOR**, other than the relationship of buyer and seller.

**Section 5.10. NUMBER AND GENDER.**

In the Contract the masculine gender includes the feminine and neuter, the singular number includes the plural, and the word "person" includes corporation, partnership, firm or association wherever the context so requires.

**Section 5.11. SUCCESSORS IN INTEREST.**

Each and all of the covenants, conditions, and restrictions in the Contract shall inure to the benefit of and shall be binding upon the permitted assignees and successors in interest of either party.

**Section 5.12. PARTIAL INVALIDITY.**

Should any part of the Contract for any reason be declared to be invalid, such decision shall not affect the validity of any remaining portion thereof, which remaining portion shall remain in force



A handwritten signature in the bottom left corner of the page.

and effect as if the Contract had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of the Contract without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid.

**Section 5.13. EQUAL OPPORTUNITY CLAUSE.**

During the performance of the Contract the **CONTRACTOR** agrees as follows:

(a) The **CONTRACTOR** will not discriminate against any employee or applicant for employment

because of race, color, religion, sex, political opinion or affiliation, or national origin. The **CONTRACTOR** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, political opinion or affiliation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demoting, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **CONTRACTOR** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the **GPA** setting forth the provisions of this equal opportunity clause.

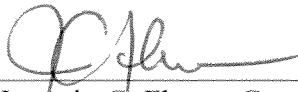
(b) The **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, political opinion or affiliation, or national origin.



**SECTION 6**

**Section 6.01. BINDING EFFECT.**

This Contract is binding upon the **CONTRACTOR** only if **CONTRACTOR** has been awarded the Contract in response to the **IFB -GPA -001-10**. This Contract is subject to the approval of **GPA** and the Public Utilities Commission and it shall not be binding on **GPA** until such approval is evidenced by order of the Public Utilities Commission (PUC). The PUC has approved the procurement in IFB-GPA-001-10, but must approve the final contract between the parties.



\_\_\_\_\_  
Joaquin C. Flores, General Manager  
Guam Power Authority (**GPA**)

2/24/10

DATE

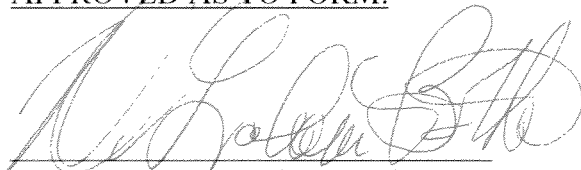


\_\_\_\_\_  
Petrobras Singapore Private Limited  
Duly Authorized Representative

11-02-2010

DATE

APPROVED AS TO FORM:



\_\_\_\_\_  
Graham Botha, Legal Counsel  
GUAM POWER AUTHORITY

2/24/10

DATE

