

ENERGY CONVERSION AGREEMENT

for the

INTERIM POWER STATION

between

GUAM POWER AUTHORITY

and

**TAIWAN ELECTRICAL AND MECHANICAL
ENGINEERING SERVICES, INC.**

September 30, 1996

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This Agreement is made and entered into as September 30, 1996 by and between:

TAIWAN ELECTRICAL AND MECHANICAL ENGINEERING SERVICES, INC., a legal entity duly registered to do business in Taiwan, the Republic of China, with its principal address at 10th Fl., 285 Chung Hsiao E. Road, Sec. 4, Taipei, Taiwan, the Republic of China, which shall be licensed to do business in Guam, represented by its President, Ting Huang Chang, who is duly authorized to represent it in this Agreement, hereinafter referred to as the **Proponent**;

- and -

GUAM POWER AUTHORITY, an autonomous government agency, with its office located at the 2nd Floor of Sunny Plaza, Tamuning, Guam, represented herein by its Acting General Manager, Ricardo S. Unpingco, who is duly authorized to represent it in this Agreement, hereinafter referred to as **GPA**;

RECITALS

WHEREAS, GPA has an urgent need for additional power plant capacity to meet its power supply deficiencies; and

WHEREAS, the Governor of Guam called an emergency special session of the Guam Legislature on June 22, 1996 to address the ongoing emergency and urgent need to ensure the adequacy and reliability of Guam's electrical power generation system, and the shortage of electrical power generation capacity; and

WHEREAS, the Guam legislature enacted, and the Governor of Guam approved Public Law 23-103, which is an act to provide for emergency procurement for the island's power generation; and

WHEREAS, Public Law 23-103 authorized GPA to procure power generation, substation and transmission services upon a declaration of emergency approved by the Governor under executive order; and

WHEREAS, Executive Order No. 96-23 declared the existence of emergency conditions in Guam with regard to the adequacy and reliability of the electrical power generation system and authorized GPA to procure power generation, substation and transmission services, pursuant to Public Law No. 23-103; and

WHEREAS, GPA issued a request for proposal, among other things, the construction, operation and maintenance of a peakload power plant of nominal 40 MW capacity;

WHEREAS, the Proponent submitted a statement of qualifications, an interest in providing such service, and a proposal for the construction, operation and maintenance of the requested interim power plant; and

WHEREAS, GPA upon evaluation of the submitted bid proposals, determined that the Proponent is the best qualified to provide certain of the services set forth in the request for proposals, and the negotiations of compensation have been determined to be fair and reasonable; and

WHEREAS, GPA has agreed to supply fuel to the Power Station upon the terms and subject to the conditions hereinafter appearing; and

WHEREAS, the Proponent has advised GPA that Pacific Energy Development Corporation, a subsidiary of Sino-American Group, whose mailing address is P.O. Box 26-576, Taipei, Taiwan, as the Proponent's coordinator in connection with the Project, has assisted the Proponent and may be responsible for the liaison and coordination of work in connection with the Power Station; and

WHEREAS, the Proponent has agreed to supply and GPA has agreed to accept a distillate fuel fired power station on a build, operate and transfer basis upon the terms and subject to the conditions hereinafter appearing.

NOW THEREFORE, in consideration of the mutual premises set forth herein, and the terms and conditions hereinafter set forth, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Proponent and GPA hereby agree as follows:

ARTICLE 1 Definition of Terms

1.01 In this Agreement and in the recitals hereto:

“**Accession Undertaking**” means an agreement in the form substantially set out in the Tenth Schedule pursuant to which the Assignee, if any, becomes a party hereto as therein provided;

“**Black Start**” means the capability of the Power Station to start-up and supply electricity to the GPA grid in circumstances where, due to failure of other power station connected to the Island Wide Power System, it is impossible for GPA to supply the necessary start-up electricity for the power station;

“**Capacity Fees**” means the fees payable by GPA to the Proponent in respect of the Contracted Capacity as provided in Article 11 and Attachment 2;

“Completion Date” means the day upon which the Proponent certifies that the Power Station has successfully completed its testing and guarantees that the Power Station is capable of operating in accordance with the Specified Operating Parameters under the Second Schedule of this Agreement;

“Contracted Capacity” shall mean commencing from the Completion Date the net capacity guaranteed to be delivered to GPA measured at the high voltage side of the main power transformer of the Power Station and in each year thereafter during the Co-operation Period, the capacity of the Power Station as nominated and demonstrated by the Proponent at the beginning of each such year;

“Co-operation Period” means the period of TWENTY (20) years from the Target Completion Date or Completion Date whichever is later, as the same may be extended from time to time pursuant to the terms hereof;

“Delivery Points” means the metering points referred to in the Seventh Schedule;

“Effective Date” means the date on which GPA and the Proponent certify that all conditions contained in Article 7 have been fulfilled;

“Emergency” means unforeseen circumstances affecting the GPA to request the Proponent to supply it with power and energy as soon as practicable in order to avoid damage to GPA’s electric system and/or a failure in the continuous supply of electricity from the grid;

“Equivalent Availability Factor” means the ratio (in percent) which represents the time the Facility is available for service whether operated or not, either partially or totally (in hours), to the total time period under consideration calculated in accordance with the formula defined by the North American Electric Reliability Council (NERC) Generating Availability Data System (GADS) (without application of the seasonal adjustment) as of the date of this Agreement;

“Fixed O&M Fees” means the payment for the portion of operating expenses that are fixed (adjusted for inflation as described in Attachment 2) for the duration of the Co-operation Period, details of which are further defined in the Eighth Schedule;

“Force Majeure” shall have the meaning specified in Article 14.01;

“Forced Outage” shall have the meaning given to it in the Sixth Schedule;

“Fuel” means the distillate fuel delivered by GPA and shall have the fuel specification described in the Fourth Schedule;

“Fuel Management Agreement” means the agreement to be entered into pursuant to Article 9.06;

"Fuel Specifications" means the specifications as to the quality and method of storage supply and delivery of the fuel for the Power Station described in Article 9 and in the Fourth Schedule;

"Fuel Supply Procedures" means the procedures and parameters from the supply and delivery of fuel by GPA described in Article 9 and in the Fourth Schedule;

"Major Overhaul" means, in relation to the turbine and generator sets engine, the overhauling/inspection as recommended by the engine manufacturer relative to the Operating Hours or as required by the Proponent;

"Month" means the period commencing at 12:00 midnight on the 25th of each calendar month pursuant to the Seventh Schedule and ending at 12:00 midnight on the 25th of the next calendar month; in the case of the first month "Month" means the period commencing on the first day of the Co-operation Period and ending at 12:00 midnight on the 25th of the current calendar month (or the next calendar month if the period commenced on or after the 25th of the current calendar month) and in the case of the last month "Month" means the period commencing immediately after the end of the immediately preceding Month and ending at 12:00 midnight on the next day following the Termination Date (all payments for fixed fees for a beginning and ending short month shall be prorated on the basis of days in the short month to days in the calendar month);

"Nominal Capacity" shall mean the sum of the nominal ratings of the installed generator sets at each site measured at the high side of the main power transformer;

"Operating Parameters" means the operating parameters of the Power Station described in the Second Schedule;

"Planned Outage" shall have the meaning given to it in the Sixth Schedule;

"Power Station" means the interim power station to be built pursuant to Article 2.01;

"Project" means the financing, design, construction, erection, testing, commissioning of the Power Station;

"Project Scope" means the scope of the supply of work of the Proponent in connection with the construction of the Power Station as described in the First Schedule;

"Site" means the site for the Interim Power Plant at Piti in Guam which shall be provided by GPA as more particularly described in the First Schedule;

"Sludge" means the fuel extract as a result of fuel treatment and processing by the Proponent along with used lubricating oils from turbines/engines and other wastes/by-products of the Power Station which shall be stored and be disposed of by the proponent

subject to the provisions of the Fuel Management Agreement as prescribed in the Fourth Schedule;

“Specifications” means the specifications of the Power Station described in the First Schedule;

“Target Completion Date” means, subject to terms of this Agreement, July 31, 1997;

“Termination Date” means on the date this Agreement is terminated pursuant to its terms, the day following the last day of the Co-operation Period;

“Transmission Line” means the transmission line to be provided and connected by GPA.

1.02 Any reference in this Agreement to an “Article”, a “Schedule”, or an “Attachment” is a reference to a clause hereof, a schedule hereto, or an attachment hereto.

1.03 In this Agreement:

(i) “\$” and “dollar(s)” denote lawful currency of the United States of America;

(ii) “MW” denotes a megawatt;

(iii) “kW” denotes a kilowatt;

(iv) “kWh” denotes a kilowatt hour; and

(v) “BTU” denotes a British Thermal Unit.

ARTICLE 2

The Project

2.01 The Proponent shall cause the financing, design, engineering, supply of equipment, development, construction, installation, testing and commissioning of distillate fuel fired power generating plant as described in Schedules 1-12 and Attachments 1-2.

2.02 Subject as herein provided, all costs of the Proponent in connection with the building of the Power Station as provided in Article 2.01 shall be borne by the Proponent and the Proponent shall be responsible for arranging all necessary funding including any available preferential credits.

2.03 The Proponent shall ensure that all necessary utilities, except fuel, as provided in Section VI of the First Schedule are made available at the Site as necessary for the construction, testing and commissioning of the Power Station.

- 2.04 GPA shall supply fuel and start-up electricity, upon request of the Proponent, after an allowable outage/maintenance state of the required quantity and quality and at the required time for the testing and commissioning of the Power Station and shall take all electricity generated during testing and commissioning.
- 2.05 All costs of GPA (except in respect of start-up electricity which will be priced at the same as rates for GPA industrial consumers) in connection with its obligations under Article 2.04 and Section VI of the First Schedule shall be borne by GPA.
- 2.06 From the date hereof until the Termination Date, the Proponent shall own the Power Station and all the fixtures, fittings, machinery and equipment on the Site or used in connection with the Power Station.
- 2.07 Until the Termination Date, GPA shall, at its own cost, supply and deliver all fuel required by the Power Station and shall take electricity generated by the Power Station as determined by GPA's economic dispatch requirements.
- 2.08 During the Co-operation Period, the Proponent shall ensure the provision of utilities, except for fuel, to the Power Station as provided in the First Schedule. All the cost/liability under this sub-clause where such utility is withdrawn as a result of the Proponent failing to pay normal market rates for the utilization of the same shall be for the account of the Proponent. GPA shall have no liability under this clause where such utility is withdrawn as a result of the Proponent failing to pay normal market rate for utilization of the same.
- 2.09 The parties hereto shall mutually collaborate with each other in order to achieve the objectives of this Agreement and the performance by each of the parties hereto of their respective obligations hereunder. GPA covenants to and agrees with the Proponent that it will provide its full and timely co-operation in connection with the Proponent's efforts to finance the Power Station on a non-recourse, project finance basis, including, without limitation, responding to all reasonable requests for information of this Agreement, provided, however, that GPA shall have no obligation to co-operate to the extent that GPA or its interest in the Project would be adversely affected, financially and/or materially.
- 2.10 During the Co-operation Period, if GPA desires to make use of the Site for any purpose other than the Power Station, GPA shall consult with the Proponent before making such use of the Site. GPA shall make no use of the Site for any purpose which would interfere with or disrupt the Proponent's building, operation, or maintenance of the Power Station unless GPA fully and fairly compensates the Proponent for such interference and/or disruption.
- 2.11 GPA shall assist the Proponent on a best efforts basis in obtaining all governmental approvals for the importation and transportation of equipment to the Site, and for obtaining of building, construction, operating and other permits, licenses and approvals for

the Project, and of visas and work permits for foreign personnel, the recruitment of local labor and compliance with all local and other regulations including the payment of all fees, duties and costs thereof. The Proponent shall, at its cost and expense, obtain all applicable permits, licenses and authorizations necessary for the construction and operation of the Project which are required to be obtained on or before the date of commencement of operations.

ARTICLE 3 Construction of the Power Station

- 3.01 The Proponent shall be responsible for the design, engineering, construction, equipment installation, testing and commissioning of the Power Station.
- 3.02 In pursuance of its obligations under Article 3.01, the Proponent shall have full right to :
- (i) call for tenders and award contracts with or without tender;
 - (ii) arrange for the preparation of detailed designs and approve or reject the same;
 - (iii) appoint and remove consultants and professional advisers;
 - (iv) purchase equipment and maintain all warranties with respect thereto;
 - (v) appoint, organize and direct staff, manage and supervise the Project;
 - (vi) enter into contracts for the supply of materials and services, including contracts with GPA;
 - (vii) enter and occupy the Site for any and all purposes related to performance under this Agreement; and
 - (viii) do all other things necessary or desirable for the completion of the Power Station in accordance with the Specifications and generally accepted engineering standards by the Target Completion Date.
- 3.03 In pursuance of its obligations under Article 3.01, the Proponent shall, where possible, award contracts to local contractors and suppliers of materials and services provided that, in its opinion, the quality, delivery time, costs, reliability and other terms are comparable to those offered by foreign contractors and/or suppliers.
- 3.04 GPA shall be entitled at its own cost to monitor the progress and quality of the construction and installation work and for this purpose the Proponent shall:

- (i) ensure that GPA and any experts appointed by GPA in connection with the Project are afforded reasonable access to the Site at all times to be agreed with the Proponent provided that such access does not materially interfere with the works comprising the Project or expose any person on the Site to any danger;
- (ii) make available for inspection and reproduction at the Site copies of any or all plans and design; and
- (iii) within two months of the completion of the Power Station, supply GPA with one set of reproducible copies and five sets of white print copies (or equivalent) of all as-builts engineering plans and designs.

3.05 The Proponent:

- (i) shall in no way represent to any third party that, as a result of any review by GPA, GPA is responsible for the engineering soundness of the Power Station; and
- (ii) shall, subject to the other provisions of this Agreement, be solely responsible, during the Co-operation Period only for the economic and technical feasibility, operational capability and reliability of the Power Station.

3.06 GPA shall assist the Proponent on a best efforts basis, that all infrastructure requirements and utilities necessary for the completion of the Power Station in accordance with the Specifications by the Target Completion Date are made available in a timely fashion and accordingly shall assist at the Proponent's cost on the following:

- (i) ensure that there is provided to the Site water, electricity telephone and fax as provided and at the times set out in Section VI of the First Schedule the cost of the utilization of which and normal fees shall be for the Proponent's account; and
- (ii) ensure that there is installed and connected interconnection facility from the main transformer through the new circuit breaker to the switching facility of the 34.5 kV Piti switchyard within the scope of work to be pursued by the Proponent which is capable of operating within the specifications set out in the First and Fifth schedule.

3.07 The Proponent shall not sell, distribute or otherwise dispose of power to any person other than GPA, without written authorization from GPA.

ARTICLE 4
Specifications and Operating Parameters

- 4.01 The Power Station shall be constructed and equipped in accordance with the Specifications and Project Scope set out in the First Schedule.
- 4.02 Following the Completion Date the Power Station shall be capable of operating within the Operating Parameters set out in the Second Schedule.

ARTICLE 5
Construction Timetable

- 5.01 GPA and the Proponent shall work together in order to endeavor to achieve the timely completion of the Project in accordance with the following timetable:

<u>Activity Completed</u>	<u>Date</u>
Mobilization Date	October 15, 1996
Commencement of Works	January 5, 1997
First Synchronization Date	June 30, 1997
Target Completion Date	July 31, 1997

- 5.02 In the event that the satisfaction of the requirements in Articles 7.02 to 7.06 occurs after January 5, 1996, each of the other dates set out in Article 5.01 shall be adjusted to occur later by the number of days that the delay occurs after January 5, 1996.
- 5.03 In the event that, due to the fault of the Proponent, the Proponent fails to complete the Power Station as provided in Article 4.01 on the Target Completion Date, the Proponent shall pay GPA for each day thereafter until the Completion Date a daily penalty as provided in the Third Schedule, which daily penalty shall not exceed US Dollars Five Thousand (\$5,000).
- 5.04 In the event that, due to the fault of the Proponent, the Completion Date has not occurred on or before the day falling one hundred eighty (180) days after the Target Completion Date or, after the sum of US Dollars One Million (US\$1,000,000), has been accumulated under Article 5.03, the Proponent shall have no other liability in respect of such failure to complete the Power Station and upon such sum becoming payable, or being paid by the Proponent prior to it becoming due, the Proponent shall have no further liability, to make any payments of whatever nature hereunder and thereupon this Agreement shall be null, void and of no force and effect. Under these circumstances, the Proponent shall remain liable for all debt with respect to any project financing; provided, that GPA shall pay to the

Proponent the fair value to GPA of material and equipment provided or performed by the Proponent as determined by an independent appraiser.

- 5.05 Upon substantial completion of the Power Station, the Proponent may certify that the Power Station has successfully completed testing and that accordingly the Completion Date has occurred notwithstanding that the Power Station is unable to produce the net capacity or to achieve the heat rate provided in Section 9 of Part A of the Second Schedule but in that event adjustments shall be made to the Capacity Fees and Fixed O&M Fees as provided in the Eighth Schedule; in the event the substantial completion as provided in this Article 5.05 occurs on or before the Target Completion Date, Articles 5.03 and 5.04 shall not apply.

ARTICLE 6 Testing & Commissioning

- 6.01 The parties shall meet and agree to the procedures, standards, protective settings and a program for the testing of the Power Station in accordance with the ASME Power Test Code PTC-22-1966 "Gas Turbine Power Plants" and GPA undertakes to take all electricity generated during any such testing.
- 6.02 The Proponent shall give notice to GPA not less than 14 days, or such lesser period as the parties hereto may agree, of its intention to commence any testing. In any event, the Proponent shall be obligated to inform GPA immediately upon learning of any difficulty in obtaining any permit or other government approval required for testing and commercial operation of the Power Station.
- 6.03 GPA shall ensure that there is made available for any testing supplies of fuel and start up electricity in sufficient quantity for the proper completion of such testing and of the quality specified in the Schedules hereto.
- 6.04 All costs related to the fuel to be supplied by GPA pursuant to Article 6.03 shall be for GPA's account.
- 6.05 GPA and/or its experts shall be entitled to be present at any testing.
- 6.06 Forthwith upon the completion of any testing, the Proponent and GPA shall jointly certify whether or not the Power Station has satisfactorily completed such tests and the Proponent shall provide copies for both parties of such certificate.
- 6.07 The "Joint Certificate" shall be the basis for the computation of all fees payable to the Proponent or any penalty payable to GPA subject to this Agreement.

ARTICLE 7
Conditions Precedent

7.01 It shall be a condition precedent to the continuing obligations of GPA under this Agreement that by December 1, 1996 or such later date as the parties hereto may agree, the following are supplied to GPA by the Proponent, each in form and substance satisfactory to GPA or that such condition precedent is waived by GPA:

- (i) copies of applicable corporate documents evidencing registration and licensing in the Territory of Guam certified by the company secretary of the Proponent in a manner satisfactory to GPA;
- (ii) copies of resolutions adopted by the Proponent's Board of Directors authorizing the execution delivery and performance by the Proponent of this Agreement certified by the company secretary of the Proponent in a manner satisfactory to GPA;
- (iii) the Performance Bond; and
- (iv) a legal opinion of the Proponent's counsel regarding the enforceability of this Agreement against the Proponent, in form and substance satisfactory to GPA.

7.02 It shall be a condition precedent to the continuing obligations of the Proponent under this Agreement that by December 1, 1996 or such later date as the parties hereto may agree, the following are supplied to the Proponent by GPA, each in form and substance satisfactory to the Proponent or that such condition precedent is waived by the Proponent:

- (i) copies of each law, regulation, decree, or other governmental action authorizing the execution delivery and performance by GPA of this Agreement, each certified by an authorized officer in a manner satisfactory to the Proponent;
- (ii) copies of such consent, licenses, permits, approvals and registrations by or with any governmental agency or other authority in Guam as may be necessary to ensure the validity and binding effect of this Agreement and to permit the performance by GPA its obligations under this Agreement;
- (iii) a certificate of an authorized officer of GPA confirming that all necessary approvals and action have been duly obtained and taken for the execution, delivery and performance by GPA of this Agreement;
- (iv) a legal opinion of GPA's General Counsel in the form set out in the Twelfth Schedule; and

- (v) a Site lease, with the annual rent not exceeding US\$100, and Fuel Management Agreement executed by a duly authorized officer of GPA, each containing terms and conditions consistent with this Agreement and such other terms and conditions reasonably satisfactory to the Proponent.

7.03 It shall be a condition precedent to the continuing obligations of the Proponent under this Agreement that by April 5, 1997, or such later date as the parties hereto may agree, the following are received by the Proponent, each in form and substance satisfactory to the Proponent or that such a condition precedent is waived by the Proponent:

- (i) the permits, licenses, registration by or with any government agency or authority, approvals, opinions and documents as may be necessary to ensure the performance of obligations under this Agreement by the Proponent, and
- (ii) a certificate from GPA and the Proponent to the effect that the representations and warranties of GPA and the Proponent contained or incorporated by reference herein shall be true and correct in all material respects on and as of the Effective Date with the same force as though made on and as of the Effective Date; the certificate shall be signed by a duly authorized officer of each party.

GPA shall assist the Proponent on a best efforts basis in obtaining all governmental approvals for the importation and transportation of equipment to the Site, and for obtaining of building, construction, operating and other permits, licenses and approvals for the Project, and of visas and work permits for foreign personnel, the recruitment of local labor and compliance with all local and other regulations including the payment of all fees, duties and costs thereof. The Proponent shall, at its cost and expense, obtain all applicable permits, licenses and authorizations necessary for the construction and operation of the Project which are required to be obtained on or before the date of commencement of operations shall have been obtained.

Any delay in meeting the target dates in the milestone schedule caused by the Proponent's inability to obtain permits, licenses and approvals from any city, municipality, province, county or non-government organization including without limitation the United States Environmental Protection Agency or the inability to obtain fuel, water, construction and start up electricity or any other utilities to the Site, shall be a Force Majeure within the meaning of Article 14.01(b) resulting in a day for day delay in the Target Completion Date of the Power Station and as a result of such delay, the Proponent will not be subject to delay penalties. If, on or before May 5, 1997 or such later date as the parties hereto may agree, the Effective Date has not occurred, GPA shall reimburse and indemnify the Proponent for all loss, damage, cost and expense incurred by the Proponent, which in any event shall not exceed \$14,500,000 dollars. GPA's obligations under this Article 7.03 shall be effective notwithstanding that the Effective Date has not occurred or that all or any of the conditions precedent set out in Articles 7.02, 7.03 and 7.06 have not been satisfied or waived. GPA may, upon reasonable notice to the Proponent, conduct an audit with respect to any indemnity claimed by the Proponent pursuant to this Article 7.03 for the

purpose of determining if the amount of the Proponent's claim for reimbursement has been computed in accordance with the provisions of this Agreement. On payment of the \$14,500,000 by GPA or such lesser amount as determined by the audit, the Proponent shall transfer all equipment, material, plant and other work to GPA free and clear of any lien or encumbrances.

- 7.04 If all the conditions set forth in Article 7.01 which condition the continuing obligations of GPA, and Articles 7.02, 7.03 and 7.06 which condition the continuing obligations of the Proponent, have been satisfied, then GPA and the Proponent shall meet and jointly certify that each of their respective obligations under this Agreement are no longer subject to the conditions set forth in Articles 7.01, 7.02, 7.03 and 7.06 and that the Effective Date has occurred.
- 7.05 If all conditions set forth in Articles 7.01, 7.02, 7.03 and 7.06 hereof have not been satisfied as of April 5, 1997, the parties hereto shall meet and endeavor to agree on a new effective date; if no agreement is reached on or before May 5, 1997, this Agreement shall, subject to Article 7.03, be declared automatically canceled unless the parties agree otherwise (except as required in respect of Article 7.03) and the parties shall have no liability with respect to each other except as provided in Article 7.03.
- 7.06 The parties understand that the Power Station Site is presently leased to GPA by the United States Navy. Consent by the United States Navy to performance of the obligations contained hereunder and issuance of a lease by GPA to the Proponent on the Power Station premises is a condition precedent of this Agreement.

ARTICLE 8

Operation of the Power Station

- 8.01 The Proponent shall, at its own cost, be responsible for the management, operation, maintenance and repair of the Power Station during the Co-operation Period and shall ensure that the Power Station is in good operating condition and capable of converting fuel supplied by GPA into electricity in a safe and stable manner within the Operating Parameters.
- 8.02 Notwithstanding Article 8.01, it is understood and agreed by GPA that in order to undertake necessary overhaul maintenance, inspection and repair, the Proponent shall be entitled to periods of Planned Outages as provided in the Sixth Schedule and, by not later than the Completion Date and each anniversary thereof, the parties hereto shall agree on an annual schedule for Planned Outages.
- 8.03 The Proponent undertakes that during the Co-operation Period, subject to the supply of the necessary fuel pursuant to Article 9 and to the other provisions hereof, it will operate

the Power Station to convert such fuel into electricity and supply it to GPA in accordance with Article 10.

- 8.04 In pursuance of its obligations under Article 8.01, the Proponent shall have full right to:
- (i) enter into contracts for the supply of materials and services, including, contracts with GPA;
 - (ii) appoint and remove consultants and professional advisers;
 - (iii) purchase replacement parts and equipment;
 - (iv) appoint, organize and direct staff, manage and supervise the Power Station;
 - (v) establish and maintain regular inspection, maintenance and overhaul procedures; and
 - (vi) do all other things necessary or desirable for the running of the Power Station within the Operating Parameters.
- 8.05 GPA, at its own cost, shall be responsible for the installation, maintenance and repair of the Transmission Line to ensure that at all times they are capable of operating within the specifications set out in the Fifth Schedule. GPA shall be responsible for the security and safety of the Transmission Lines in connection with the Project.
- 8.06 GPA and the Proponent shall organize, as GPA and the Proponent will agree, a Steering Committee which shall, from time to time, meet and discuss and agree on safety and technical guidelines for the operation of the Power Station within the Operating Parameters and for the maintenance, repair, safety and security of the Project. The Proponent shall operate the Power Station within such guidelines.
- 8.07 The Proponent shall operate the Power Station in accordance with all environmental and other Federal and local laws, regulations as of the date of this Agreement and shall comply with any changes in such laws, regulations and permits and with any new laws and regulations provided that Article 16 shall apply.
- 8.08 The equivalent availability will be determined based on annual period hours excluding the Planned Outages as provided in the Sixth Schedule and the parties will agree on an annual schedule of Planned Outages which shall be reviewed from time to time. It is agreed that there will be no bonus and penalty in connection with performance relating to the equivalent availability factor unless otherwise agreed upon by the parties hereto.
- 8.09 It is mutually agreed by the parties hereto that the Power Station shall be operated as a peak load plant with a guaranteed capacity of 40 MW and the peak load operation shall not exceed six hours continuous operation per day; the peak hours are described in Fig 2-4

of GPA's Integrated Resource Plan dated June 28, 1996. It is further agreed that the Power Station will be able to operate at any time other than peak hours as may be called upon by GPA provided that the Proponent shall not be required to operate the Power Station to generate and deliver at a capacity of more than 33 MW.

ARTICLE 9
Supply of Fuel

- 9.01 Throughout the Co-operation Period, GPA shall at all times supply all fuel required by the Proponent and necessary for the Power Station to generate the electricity for dispatch by GPA pursuant to Article 10.
- 9.02 The cost of the fuel to be supplied by GPA pursuant to Article 9.01 shall be for GPA's account.
- 9.03 All fuel and start up electricity to be supplied by GPA shall be of the quality and supplied and delivered in the manner described in the Fourth Schedule.
- 9.04 All fuel shall be tested as provided in the Fourth Schedule, and the Proponent shall be entitled to reject any fuel if the results of any tests relating to it show that it does not comply with the Fuel Specifications. Upon the Proponent's acceptance of the fuel supplied by GPA, GPA shall not have any liability to the Proponent for any direct or consequent damage to the Power Station arising from or relative to the fuel delivered, received by and used by the Proponent.
- 9.05 GPA shall ensure that at all times the necessary stocks of fuel as required by the Proponent are available for storage at the fuel storage tanks of the Power Station.
- 9.06 GPA and the Proponent will enter into a Fuel Management Agreement as further described in the Fourth Schedule, pursuant to which the Proponent will agree to manage, and shall have responsibility for security in respect of the fuel which has been delivered to the on Site fuel tanks upon terms and conditions therein appearing and subject to the payment by GPA of the fees therein provided.
- 9.07 GPA shall ensure that at all times the necessary stocks of fuel as required by the Proponent are stored at adjacent to the Site or are available for immediate delivery to the Site. GPA shall indemnify and hold the Proponent harmless against any loss, damage, cost and expense arising from any failure by GPA to timely provide fuel in a sufficient amount.

ARTICLE 10
Supply of Electricity

- 10.01 Subject to GPA supplying the necessary fuel pursuant to Article 9, the Proponent agrees to convert such fuel into electricity and deliver it to GPA in accordance with the procedures set out in the Sixth Schedule and the Operating Parameters set out in the Second Schedule.
- 10.02 The quantities of electricity delivered to GPA by the Proponent from time to time shall be monitored, measured and recorded in accordance with the provisions of the Seventh Schedule.
- 10.03 The Proponent shall notify GPA promptly of the occurrence of any event (other than Planned Outage) which results or may result in the Power Station being unable to operate in accordance with the Specifications and within the Operating Parameters.
- 10.04 The place of delivery of the generated electricity shall be at the "Delivery Point".

ARTICLE 11
Fees & Payments

- 11.01 In respect of each Month, commencing from Target Completion or Completion Date whichever is later, the Proponent will deliver to GPA an invoice in respect of Capacity Fees and Fixed O&M Fees, as adjusted pursuant to Article 11.03 and Attachment 2, and pass through pursuant to Article 11.02 for such Month and GPA shall pay to the Proponent the amount of such invoice within 30 days after the delivery of such invoice. Any delay in payment by GPA shall be subject to interest payment from the due date calculated at the maximum interest rate allowable pursuant to the Guam Prompt Act, 5 G.C.A. 22501, et. seq.
- GPA guarantees to take and purchase annually 87,600 MWh which is guaranteed to be converted and delivered by the Proponent as the minimum take of the Agreement.
- 11.02 All fees Payable to the Proponent pursuant to this Article shall be paid in U.S. Dollars in accordance with the Eighth Schedule and Attachment 2 of this Agreement together with tax thereon (which shall be separately stated in all invoices). In addition, GPA shall be responsible for the payment of taxes, duties, fees, charges and other levies imposed by any agency or instrumentality thereof to which the Proponent may at any time be or become subject in or in relation to the performance of their obligations under this Agreement other than:

- (i) taxes, exclusive of gross receipts taxes, imposed or calculated on the basis of the net income of the Proponent; and
 - (ii) reasonable construction permit fees, environmental permit fees and other similar fees and charges.
- 11.03 If GPA disputes the amount specified in any invoice it shall so inform the Proponent within twenty-one (21) days of receipt of such invoice; if the dispute is not resolved by the due date GPA shall pay the undisputed amount on or before such date and the disputed amount shall be resolved within fifteen (15) days of the due date for such invoice. Any sum paid to the Proponent in respect to the disputed amount shall be paid together with interest provided pursuant to the maximum interest rate allowable pursuant to the Guam Prompt Payment Act, 5 G.C.A. 5215, et. seq., for the period until the amount is paid.
- 11.04 Notwithstanding any other term or provision of this Agreement, if the Proponent is unable to commence testing of the Power Station (on a date agreed between the Proponent and GPA) as a result of GPA's failure to provide any personnel or resource necessary to witness and approve such testing, then in any of such events, GPA shall be obligated to commence making payments of the Capacity Fees as set out in the Eighth Schedule as set out in the Eighth Schedule to the Proponent on the 15th day after the Proponent certifies to GPA that the Power Station is complete and capable of commencing commercial operations at rated capacity.

In event that after Capacity Fees payments have commenced pursuant to this Article, the Proponent is unable to pass all of the Power Station's performance tests as set forth herein, the Proponent will be obligated to refund or credit against future capacity made available and actually delivered to GPA, that amount of Capacity Fees actually paid to and received by the Proponent prior to and during such tests which exceed the amount of Capacity Fees which the Proponent would have been paid at the lower capacity rating actually demonstrated in the testing of the Power Station.

ARTICLE 12

Insurance

- 12.01 The Proponent shall be responsible to ensure that there is effected insurance as provided in the Ninth Schedule. Unless otherwise required by any person providing finance to the Project, the proceeds of claims against such insurance (except third party liability and workmen's compensation insurance) shall be used by the Proponent solely for the reinstatement of the Power Station to previous running condition.
- 12.02 The Proponent shall secure all insurance, as far as practicable, from the insurance companies reasonably acceptable to GPA.

- 12.03 All policies of insurance (except Workmen's Compensation Insurance) required to be obtained by the Proponent pursuant to the Ninth Schedule shall include GPA and its employees as additional insureds as their interests may appear.
- 12.04 Each of GPA and the Proponent shall cause its insurers to waive all rights of subrogation against the other party and the other party's employees (and contractors working directly in connection with the Project) in respect of a claim arising under its insurance policies, unless such claim arises from the willful misconduct or gross negligence of the other party or the other party's employees or contractors.
- 12.05 Certificates of insurance, binder (if applicable), or a letter from a licensed broker or independent insurance consultant certifying compliance or documenting the status of attempts to comply with the requirements of the Ninth Schedule, shall be submitted not less than thirty (30) days prior to the Completion Date, and not less than thirty (30) days prior to any policy termination or expiration dates which arise during the terms of this Agreement and any extensions. Complete copies of policies, including all declarations, terms, conditions, endorsements and exclusions, shall be made available for inspection by GPA and remain available for inspection by GPA or its insurance consultant as certification of coverage not less than ninety (90) days after the Completion Date and any policy expiration dates which arise during the term of this Agreement and any extension.
- 12.06 If at any time through mutual agreement of GPA and the Proponent due to insurance market conditions, changes in legal requirements, or changes in the liability environment, the provisions of the Ninth Schedule are deemed obsolete, or inappropriate, those provisions may be amended.

ARTICLE 13

Liability

- 13.01 Unless otherwise provided in this Agreement, in the event that the Proponent fails to construct the Power Station because of breach of its obligations, GPA shall have no obligations to reimburse and to indemnify the Proponent for all reasonable documented out of pocket costs and liabilities incurred by the Proponent in complying with its obligations under this Agreement.
- 13.02 The Proponent's liability to GPA arising from any breach of this Agreement or otherwise in connection with the design, construction and operation of the Power Station shall be limited to payments as provided in Articles 5.03 and 5.04.
- 13.03 GPA shall indemnify and hold the Proponent, its officers and employees harmless against any claim of any person who directly or indirectly suffers as a result of an interruption of electricity supply or any disruption or surge of electricity supply arising out of or in connection with this Agreement and any of the Proponent's, its officers' or employees'

actions or omissions in connection with the same except if such claim is due to the Proponent's officers or employees gross negligence or intentional misconduct.

- 13.04 Subject to Article 13.03, the Proponent shall hold GPA its officers and employees free of and harmless from any claims or suits of any third party, other than claims for economic, loss, arising from the Proponent's operation of the Power Station, except if such claim is due to GPA's or GPA's officers or employees gross negligence or intentional breach of Agreement.
- 13.05 The Proponent is an independent contractor and except where otherwise stated in this Agreement the duties obligations and liabilities of the parties hereto are intended to be several and not joint or collective and nothing contained in this Agreement shall be constructed to create an association trust, partnership or joint venture amongst the parties hereto and each party shall be liable individually and severally for its own obligations under this Agreement.

ARTICLE 14 **Force Majeure**

- 14.01 No failure or omission to carry out or observe any of the terms, provisions or conditions, of this Agreement shall give rise to any claim by any party hereto, or be breach of this Agreement if the same shall be caused by or arise out of:
- (a) (other than as referred to in paragraph (b) below), any war, declared or not, or hostilities, or of belligerence, blockade, revolution insurrection, riot, public disorder, expropriation, requisition, confiscation or nationalization, export or import, restrictions by any governmental authorities, closing of harbors, docks, canals, or other assistances to or adjuncts of the shipping or navigation of or within any place, rationing or allocation, whether imposed by law, decree or regulation by, or by compliance of industry at the insistence of any governmental authority, or fire, unusual flood, earthquake, storm, lightning, tide (other than normal tides), tidal wave, perils of the sea, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals, or other assistances to or adjuncts of the shipping or navigation, epidemic, quarantine, strikes or combination of workmen, lockouts or other labor disturbances, protest, or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of the party affected thereby;
 - (b) war, declared or not, or hostilities involving the United States, or of belligerence, blockade, revolution, insurrection, riot, public disorder, expropriation, requisition, confiscation or nationalization by or involving the Government of Guam and the Government of the United States, export or import restrictions by any governmental authorities of or within the Government of Guam and the

Government of the United States, closing of harbors, docks, canals, or other assistance to or adjuncts of the shipping or navigation of or within the United States, rationing or allocation, whether imposed by decree or regulation by, or by compliance of industry at the insistence of any governmental authority of or within the Government of Guam and the Government of the United States, or any other event, matter or thing, wherever occurring, which shall be within the reasonable control of GPA or the government of Guam and the Government of the United States or any agency, regional or municipal authority thereof,

each of the foregoing events, matters or things being called "Force Majeure" in this Agreement.

- 14.02 Notwithstanding Article 14.01 GPA (i) shall not be entitled to claim for itself "Force Majeure" in respect of any Force Majeure mentioned in subparagraph (b) of Article 14.01; and (ii) shall not be relieved of its obligation to make Capacity Fees based on the minimum take as provided in Article 11.01 by the occurrence of any Force Majeure mentioned in subparagraph (b) of Article 14.01 whether affecting GPA or the Proponent.
- 14.03 The party invoking Force Majeure shall:
- (i) notify the other party as soon as reasonably possible by fax or cable of the nature of the Force Majeure and the extent to which the Force Majeure suspends the affected party's obligations under this Agreement; and
 - (ii) resume performance of its obligations as soon as possible after the Force Majeure condition no longer exists.
- 14.04 If Force Majeure applies prior to the Completion Date, the parties will meet to discuss a revised timetable for the completion of the Project, and if after ninety (90) days no agreement has been reached on the basis and terms to continue this Agreement, the Agreement shall be terminated and the provision of Article 15.02 shall apply.
- 14.05 If Force Majeure applies pursuant to the terms of Article 14.01, during the Co-operation Period the Co-operation Period shall be extended by a period equal to that during which the effect of the Force Majeure applies provided that if such effect applies for a period in excess of 180 days the parties hereto will meet to discuss the basis and terms upon which the arrangements set out in this Agreement may be continued, and if after ninety (90) days no agreement has been reached on the basis and terms to continue this Agreement, the Agreement shall be terminated and the provision of Article 15.03 shall apply.
- 14.06 The parties hereto will consult with each other and take all reasonable steps to minimize the losses of either party resulting from Force Majeure.
- 14.07 If any event of Force Majeure occurs which causes damage to the Project or the Power Station and such event or such damage would not ordinarily be insured against by the

Proponent, or is not insured against, then the Proponent shall not be obliged to reinstate the Power Station, or, as the case may be, complete the building of the same, until the parties hereto have agreed upon the terms for such reinstatement to completion.

ARTICLE 15 Termination

- 15.01 This Agreement shall become effective upon execution of this Agreement by GPA and the Proponent; provided that the obligation to supply electricity by the Proponent pursuant to Article 10 and to pay by GPA pursuant to Article 11 shall be subject to the satisfaction of the provisions in Article 7. The term of this Agreement shall end on the last day of the Co-operation Period of twenty (20) years from the Target Completion Date or Completion Date, whichever is later unless otherwise provided herein or subsequently agreed to by the parties.
- 15.02 If this Agreement is terminated prior to Target Completion Date and without fault of the Proponent, its agent or representative, and further with the fault of GPA, GPA shall pay the Proponent compensation equal to the aggregate of all the costs and expenses incurred by the Proponent in connection herewith as appraised by an independent appraiser jointly appointed by the parties; in case this Agreement is terminated due to the Proponent's fault, GPA shall pay the Proponent the lower of fair value of the Power Station or cost calculated above. Further, upon payment by GPA of the same, titles to such assets related to these costs and expenses shall be turned over to GPA, free of liens and encumbrances.
- 15.03 The Proponent shall be entitled to terminate this agreement upon 30 days notice if:
- (i) GPA fails to pay any sum due from it hereunder within 90 days of the date when such a sum is due in the currency and in the manner specified herein;
 - (ii) GPA commits a material breach of any other terms or conditions hereof and fails to take prompt action to the reasonable satisfaction of a Proponent to rectify the same within 90 days after receipt of a written notice; or
 - (iii) The Proponent is prevented from occupying the Site or a part thereof or the Proponent's interest under the sublease with GPA is adversely affected.
- 15.04 GPA shall be entitled to terminate this Agreement upon 30 days notice if:
- (i) The Proponent fails to pay any sum due from it within 90 days of the date when such sum is due; or

- (ii) The Proponent commits a material breach of any other terms or conditions hereof and fails to take prompt action to the reasonable satisfaction of GPA to rectify the same within 90 days after receipt of a written notice from GPA.

15.05 Where the Proponent exercises its option to terminate this Agreement under Article 15.03 above, GPA shall pay the Proponent termination charges as follows:

<u>Year</u>	<u>Termination Fee</u>
1997	USD27,784,800
1998	USD26,122,500
1999	USD24,749,100
2000	USD23,353,300
2001	USD21,933,700
2002	USD20,489,000
2003	USD19,017,500
2004	USD17,517,800
2005	USD15,988,100
2006	USD14,426,700
2007	USD12,831,500
2008	USD11,200,600
2009	USD 9,531,900
2010	USD 7,823,100
2011	USD 6,071,700
2012	USD 4,275,200
2013	USD 2,178,600
2014	USD 1,494,300
2015	USD 758,100
2016	USD 0

15.06 Where GPA exercises its option to terminate this Agreement under Article 15.04 above, the Proponent shall sell the Power Station to GPA at the price as follows:

<u>Year</u>	<u>Termination Fee</u>
1997	USD19,449,360
1998	USD18,285,750
1999	USD17,324,370
2000	USD16,347,310
2001	USD15,353,590
2002	USD14,342,300
2003	USD13,312,250
2004	USD12,262,460
2005	USD11,191,670
2006	USD10,098,690

2007	USD 8,982,050
2008	USD 7,840,420
2009	USD 6,672,330
2010	USD 5,476,170
2011	USD 4,250,190
2012	USD 2,992,640
2013	USD 1,525,020
2014	USD 1,046,010
2015	USD 530,670
2016	USD 0

Provided that any cost for fixing the Power Station to a working condition prior to such sale shall be at the Proponent's cost.

- 15.07 On termination an accounting shall be performed and, in addition to the termination fee set forth in Article 15.05 of this Agreement, the parties shall pay all amounts then due on or before the date of such termination. The Proponent shall provide reasonable cooperation in transferring the Project to GPA and shall transfer all records, software, final as built drawings, operating manuals, license and other necessary information and any equipment utilized with respect to the Power Station including spare parts and other inventory provided that GPA shall compensate the Proponent for all the inventories. However, personal property which the Proponent chooses to use to administer or facilitate the building, operation and maintenance of the Power Station, including, but not limited to, vehicles and office equipment, shall remain the property of the Proponent.
- 15.08 Any insurance proceeds received by the Proponent in respect to a termination event covered by insurance to the Proponent shall reduce GPA's obligation to make payment pursuant to Articles 5.02 and 5.07.

ARTICLE 16 Change in Circumstances

In the event that as a result of any laws or regulations of the Government of Guam, or any agency or other body under the control of the Government of the United States or any regional or municipal authority thereof coming into effect after the date hereof, or as a result of any such laws or regulations (including any official interpretation thereof which the Proponent has relied upon in entering into this Agreement) in force at the date hereof being amended, modified or repealed, the interest of the Proponent in the Project or the Power Station and/or the Proponent's economic return on its investment is materially reduced, prejudiced or otherwise adversely affected (including without limitation, any restriction on the ability to remit funds in dollars outside Guam) then the parties hereto shall meet and endeavor to agree to amendments to this Agreement and if after 90 days no such agreement has been reached the provisions of Article 15.05 shall apply. For purpose of this Article, the threshold for determining materiality shall be at \$10,000.

ARTICLE 17
Benefit of Agreement

- 17.01 GPA may not assign or transfer all or any part of its rights, benefits or obligations hereunder without consent of the Proponent provided that this Article shall not prevent GPA from merging or consolidating with any other entity where the surviving entity adopts and becomes fully liable to perform GPA's obligations hereunder.
- 17.02 The Proponent may not transfer all or any of its obligations hereunder but may, for the purpose of rearranging finance for the Project, assign or transfer to any person providing finance to the Project all or any part of its rights and benefits hereunder but not its obligations and GPA shall duly acknowledge any such assignment or transfer of which it is given notice.
- 17.03 The Proponent and GPA entered this Agreement intending to benefit only the parties thereto and there is no intent to benefit any other party. This Agreement shall not be constructed, construed, or interpreted by anyone not a party hereto.

ARTICLE 18
Warranty

The Proponent hereby warrants that neither it nor its representatives have offered any government officer and/or GPA official or employee any consideration or commission for this Agreement nor has it or its representatives exerted or utilized any corrupt or unlawful influence to secure or solicit this Agreement for any consideration or commission; that the Proponent shall not knowingly subcontract any portion or portions of the scope of the work of this Agreement awarded to any official or employee of GPA or to the relatives within the third degree of consanguinity or affinity of GPA officials who are directly or indirectly involved in contract awards or project prosecution and that if any commission is being paid to a private person, the Proponent shall disclose the name of the person and the amount being paid and that any violation of this warranty shall constitute a sufficient ground for the rescission or cancellation of this Agreement or the deduction from the contract price of the consideration or commission paid without prejudice to the filing of civil or criminal action under the Anti-Graft Law and other applicable laws against the Proponent and/or its representatives and GPA's official and employees.

ARTICLE 19

Notices

19.01 Unless otherwise stated, each communication to be made hereunder shall be made in writing but, unless otherwise stated, may be made by telefax or letter:

To: GUAM POWER AUTHORITY
General Manager
P.O. Box 2977
Agana, Guam 96910
Fax: (671) 649-6942

To: TAIWAN ELECTRICAL AND MECHANICAL
ENGINEERING SERVICES, INC.
Project Manager
10th Fl., 285 Chung Hsiao E. Road, Sec. 4, Taipei
The Republic of China
Fax: (886-2)721-7335

19.02 Any communication or document to be made or delivered by one party to another pursuant to this Agreement shall be made or delivered to that other at its address specified above or such other address notified by that party to the other party by giving not less than 15 days notice of such change of address, and shall be deemed to have been made or delivered (i) in the case of any communication made by fax with correct answerback (at the number identified with the relevant party's signature below), when dispatched, and (ii) in the case of any communication made by letter, when left at that address or otherwise received by the addressee.

ARTICLE 20

Dispute Resolution

20.01 Throughout the term of this Agreement representatives of GPA and the Proponent shall meet regularly at not less than six month intervals to discuss the progress of the Project and the operation of the Power Station in order to ensure that the arrangements between the parties hereto proceed on a mutually satisfactory basis.

20.02 The parties hereto agree that in the event that there is any dispute of difference between them arising out of this Agreement or in the interpretation of any of the provisions hereof, they shall endeavor to meet together in an effort to resolve such dispute by discussion between them but failing such resolution, the Chief Executives of GPA and the Proponent shall meet to resolve such dispute or difference and the joint decision of such Chief Executives shall be binding upon the parties hereto and in the event that a settlement of

any such dispute or difference is not reached pursuant to this sub-clause, then the provisions of Article 20.03 shall apply.

- 20.03 Where any dispute is not resolved as provided for in the preceding Articles 20.01 and 20.02 then such dispute shall be resolved pursuant to the Guam Procurement Law (5 S.G.A Section 5001 et. seq.) and the Government Claims Act (5 G.C.A. Section 6101 et. seq.).

ARTICLE 21

Law

This Agreement, shall be governed by and construed in accordance with the laws of Guam and applicable laws of the United States of America, if any.

ARTICLE 22

Jurisdiction

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 itself to 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 laws of such jurisdiction.

ARTICLE 23

Performance Bond

The Proponent shall provide to GPA in support of its obligations hereunder, Bond in the form of an irrevocable stand by letter of credit, bank guarantee, manager's check or cash or a combination of the above issued by a reputable bank acceptable to GPA securing a maximum amount equal to US\$30.00/kW. The letter of credit shall be a sight draft, callable on demand, valid for a period starting from the date of this Agreement until 180 days after the Target Completion Date and shall otherwise be reasonably acceptable in substance to GPA.

ARTICLE 24
Renewal of the Agreement

Upon the sole option of GPA, GPA and the Proponent may renew this Agreement after the Co-operation Period. If the Agreement shall be renewed, then the parties shall meet and discuss the new terms and conditions of the Agreement six months before Termination Date.

ARTICLE 25
Transfer of Ownership

- 25.01 On termination of this Agreement pursuant to the terms of this Agreement, the Proponent shall transfer to GPA, free from any lien or encumbrance created by the Proponent and without the payment of any compensation for all the inventories, all its right, title and interest in and to Power Station, provided that there is no default in payment obligations by GPA that has not been cured.
- 25.02 Six months prior to the Termination Date, GPA and the Proponent shall meet and agree on the inventories involved, the mechanics of transfer and security arrangements but the Proponent shall not be liable for any discrepancies between such inventories and the actual fixtures, fittings, plant and equipment transferred provided that following agreement on inventories the Proponent shall exercise the same care regarding the fixtures, fittings, land and equipment and all improvements thereon as it did prior to agreeing to the same and provided further that GPA shall be entitled to provide a security unit within the Site.
- 25.03 The Power Station and all other equipment transferred pursuant to this Article shall be transferred on an "AS IS" basis and any warranties which would otherwise be implied by statute or otherwise, including, without limitation, warranties as to title, fitness for a particular purpose, the absence of patent or inherent defects, description or otherwise of whatsoever nature will be excluded provided that nothing in this Article 25.03 shall be construed to affect the Proponent's obligation to maintain the Power Station during the Co-operation Period in accordance with this Agreement. From and after the Termination Date the Proponent shall be under no liability whatsoever to GPA in respect of the operation or otherwise of the Power Station by GPA or a person designated by GPA and GPA shall indemnify and keep indemnified the Proponent against any liability to any person arising from the use or operation of the Power Station after the Termination Date provided however that the Proponent shall subrogate or assign to GPA any and all rights and benefits which it is able to subrogate or assign of any unexpired warranties, licenses and permits in respect of the building, plant and equipment of the Power Station under application laws or otherwise. The Proponent agrees to cooperate with GPA in affecting the physical transfer of the Power Station to the extent reasonably necessary.

25.04 GPA shall be responsible for all costs and expenses (including legal fees and taxes or duties) incurred in connection with the transfer referred to in this Article 25 and shall at its own cost obtain or effect all governmental and other approvals licenses, registrations and filings and take such other action as may be necessary for the transfer contemplated in this Article 14, and reimburse the Proponent on demand for all such costs and expenses incurred by the Proponent in respect of such transfer.

ARTICLE 26
Intellectual Property Rights

The Proponent shall pay all royalties and license fees relating to the Power Station. The Proponent hereby warrants that the building, operation, and maintenance of the Power Station pursuant to this Agreement shall not infringe any patent, trademark or copyright of any other third person. The Proponent shall defend any claim or lawsuit brought against the GPA or any of its officials, directors, employees or representatives for infringement of any patent, trademark or copyright relating to the building, operation, or maintenance of the Power Station pursuant to this Agreement and indemnify GPA or any of its officials, directors, employees or representatives and shall hold each and all harmless against liability, judgments, decrees, damages, interests, costs and expenses (including reasonable attorneys' fees) recovered against GPA and such persons sustained by any or all by reason of any such actual or alleged infringement of any patent, trademark or copyright relating to the building, operation, or maintenance of the Power Station pursuant to this Agreement unless the infringement is results from any compliance with a specific instruction of GPA.

ARTICLE 27
Representations

The parties hereby represent that there is no court order, order of an administrative body, or legislative action that would make this Agreement illegal, nonbinding, or unenforceable.


ARTICLE 28
Miscellaneous

28.01 A holding of any court of competent jurisdiction that any provision of this Agreement is invalid shall not result in invalidation of the entire Agreement. Instead this Agreement shall be construed if possible, in a manner to give effect by means of valid provisions to the intent of the parties to the particular provision or provisions held to be invalid, and, in any event, all other terms shall remain in full force and effect.

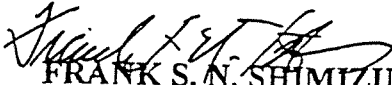
- 28.02 In order that the parties may fully exercise their rights and perform their obligations hereunder, such provisions of this Agreement that are required to insure such exercise or performance shall survive the termination of this Agreement of any cause whatsoever.
- 28.03 This Agreement, including the Schedules and Attachments which are attached hereto and made a part hereof, contains all of the understandings and agreements of whatsoever kind and nature with respect to the subject matter of this Agreement and the rights, interest, understandings, agreements and obligations of the parties hereto relating thereto, provided, however, in the case of a conflict between this Agreement and Schedules and Attachments, this Agreement and Schedules shall prevail. All prior written or oral understandings, offers or other communications of every kind pertaining to the services to be provided by the Proponent are hereby abrogated and withdrawn and shall not be admissible or relied upon by either party in any proceeding before any administrative body and court.
- 28.04 No amendment modification or change to this Agreement shall be effective unless the same shall be in writing and duly executed by the parties.
- 28.05 This Agreement may not be assigned by either party without the prior written consent of the other party, except that the Proponent may, without such consent, assign its interests herein, but not its obligations, to financial or lending institutions of the Proponent's choice for purposes of obtaining and securing financing for the Project.
- 28.06 This Agreement shall be executed in any number of duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute but one and the same instrument.
- 28.07 This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns.
- 28.08 Language herein shall not be construed against the drafter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day first above written.

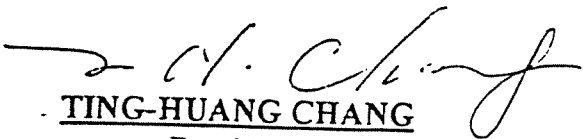
GUAM POWER AUTHORITY
BY:


RICARDO S. UNPINGCO
Acting General Manager
GUAM POWER AUTHORITY


APPROVED BY THE BOARD OF DIRECTORS
GUAM POWER AUTHORITY


FRANK S. N. SHIMIZU
Chairman, Board of Directors

TAIWAN ELECTRICAL AND MECHANICAL
ENGINEERING SERVICES, INC.
BY:


TING-HUANG CHANG
President

SIGNED IN THE PRESENCE OF:


SOLOMON S. CHENG
President
SINO AMERICAN GROUP

FIRST SCHEDULE

PROJECT SCOPE AND SPECIFICATIONS

I. SCOPE OF AGREEMENT

Proponent shall be responsible for the design, supply, delivery, installation/erection including civil works, testing and commissioning of single cycle gas turbine genset.

II. THE SITE

The Site is located within the existing Piti power station site of GPA in Piti, Guam adjacent to the existing substation. A minimum of 5 acres of land will be made available for the Power Station with the geometry of such area to be agreed by the parties under the Site lease to be entered into between GPA and Proponent.

III. EXTENT OF WORK/SUPPLY

1. The Proponent shall be responsible for the complete design, development and construction of the interim power plant. The Proponent shall own and maintain the unit for a period of twenty (20) years and transfer the unit to GPA at the end of that period.

2. The extent of works shall include:

Civil Works

- Site development including grading, gravel surfacing and drainage facilities.
- Construction of access roads from the existing site access road up to the Power Plant within the Power Station and all other roads necessary for the proper operation of the Power Station and its associated facilities, and permanent fence around the Site and at the tank farm.
- Construction of concrete foundation including piles if necessary.
- Construction of electrical duct banks as required.
- Construction of local control room, laboratory, workshop and warehouse facility as required.
- Provide a minimum of 30 days inventory level fuel oil storage tank on site including pipeline from the general bulk storage at Apra Harbour and appropriate Fire Protection System.
- Provide fuel oil unloading and receiving facilities for road tankers.

3. Electro-Mechanical Works

Supply, installation/erection tests and commissioning to put into operation the required generation unit with corresponding minimum net site rated capacity of 40,000 kW.

The scope of works to be undertaken shall include as a minimum:

- Combustion turbine - generator package consisting of the turbine and its auxiliaries, including air intake system, exhaust gas system, cooling system, lubricating system, fuel oil system and starting system.
- Synchronous generator, complete with necessary equipment and accessories including excitation and protection systems.
- Electrical equipment: including surge arrestors, main step up transformer and auxiliary transformer, segregated phase bus duct and cables: metal clad switchgear, control switchboard; motor control centres, including control panels, direct current system complete with battery charges, inverters; 34.5 kV high voltage switchgear, equipment, devices and accessories including any necessary buswork, cables, O/H conductors and hardware for interconnection of the Interim Power Plant to the existing Piti 34.5 kV switchyard to match existing switchyard equipment; local metering, protection and PLC equipment compatible with the existing GPA system (which will be notified to the Proponent prior to procurement).
- Required instrumentation and combustion turbine control systems for protection and control of turbine - generator units and their auxiliaries, complete with necessary supervisory devices, and data acquisition and control system, for safe and reliable operation of the Power Station.
- Air conditioning system for the protection of electrical equipment and instruments at the local electrical room.
- Fire protection and alarm systems.
- Instrument and plant air systems.
- Handling facilities for maintenance and repair.
- Miscellaneous electrical works, including lighting, grounding and lightning protection.
- Fuel oil valve, piping system and metering.
- Water tank, hydrant and piping systems as required.

- Special tools.
- Raw water supply system for cooling and domestic use if necessary.
- Fuel Oil Storage tank. (30 days storage capacity)

IV. DESIGN CRITERIA

1. Prime mover-generator Unit

The prime mover-generator unit with a net capacity of not less than that specified in the Second Schedule shall be capable of delivering the said output at the following site and design conditions:

- | | | |
|-----|---|-----------------------------------|
| 1.1 | Elevation (Above Mean Sea Level) | 3-10 meters |
| 1.2 | Average ambient air temperature | 27.9° celcius |
| 1.3 | Relative humidity | 86% |
| 1.4 | Temp. range | 25-37°C |
| 1.5 | Noise Level | to comply with
EPA Regulations |
| 1.6 | Environmental Regulations in conformance with Federal and local
EPA standards. | |

2. Heat Rates

The guaranteed heat rate shall be based on the maximum net kilowatt output for the conditions specified in the Second Schedule and the Lower Heating Value (LHV) of the fuel as specified in the Fourth Schedule.

3. Fuel

Fuel specifications will be in accordance with the Fourth Schedule.

4. System Fault Level

The fault level when the generator units are connected in the Guam System shall be as follows:

4.1 Piti 34.5 kV Switchyard

- Line to ground fault MVA - TBA
- Three phase fault MVA - TBA
- Interrupting Capacity at 34.5 kV - TBA

5. System Voltage Level

5.1 Piti Power Plant

- Generator Terminal Voltage 13.8kV +/-5%
- Main transformer:
 - High Voltage (Nominal) 34.5 kV
 - Off Load Tap Change TBA
 - Low Voltage 13.8 kV
- Nominal voltage for auxiliary equipment (for informational purposes)

AC System 4.16 kV, 480V
120V

DC System 125 V

6. System Frequency 60 Hertz

7. Generator and Accessories

The generator shall be designed to match the prime mover-generator units to allow base and peak operating mode. The design characteristic shall be as follows:

7.1 Interim Power Plant (Piti) @0.85 PF
47.5 MVA (min)

7.2 Three phase wye grounded through resistance.

7.3 Rated terminal voltage 13.8kV +/-5%

7.4 Rated power factor Min. of 0.85 lagging

7.5 Allowable voltage variations.

At rated MVA, frequency, power factor and inlet air temperature, the prime mover generators can operate satisfactorily even though the terminal voltage may vary +/-5% of the rated value.

Notwithstanding the above, the generator shall comply with the relevant ANSI standards as follows:

- Interim Power Plant (Piti): ANSI C50.14

V. POWER PLANT INTERFACE WITH GPA'S TRANSMISSION SYSTEM

Interim Power Plant (Piti)

The interim power plant shall connect into GPA's existing 34.5 kV switchyard via a new breaker to be provided and installed by the Proponent.

The interface shall be at the point where the new 34.5 kV breaker connects to the existing 34.5kV busbars in the switchyard.

The Proponent shall be responsible for the supply, installation and commissioning of all CT/PT wiring and control cabling to correctly interface with GPA's existing 34.5kV switchgear and switchyard equipment. The Proponent shall comply and coordinate with GPA's existing 34.5 kV protection scheme.

The Proponent shall be responsible for all work associated with the new circuit breaker integrating into the existing switchyard.

The Proponent shall be responsible for operation and maintenance of all electrical equipment associated with the power plant, including the new 34.5 kV circuit breaker in the switchyard bay and the Interim Power Plant's step up and unit auxiliary transformers.

VI. UTILITIES DURING CONSTRUCTION PERIOD

<u>Requirements:</u>	<u>Responsibility/Cost</u>
1. Construction Power	Proponent
2. Electricity for no-load test	Proponent
3. Construction water (domestic)	Proponent
4. Communication systems (tel, fax, telex, etc)	Proponent

VII. UTILITIES DURING CO-OPERATION PERIOD

<u>Requirements:</u>	<u>Responsibility/Cost</u>
1. Cooling water & domestic	Proponent
2. Communication System	Proponent
3. Start-up electricity	Proponent
Planned outage	Proponent
Unplanned outage	Proponent
4. Back-up electricity	Proponent
For House load	Proponent
For load test	Proponent
For no-load test	Proponent

SECOND SCHEDULE

OPERATING PARAMETERS

A. Operating Parameters

Proponent shall operate the Power Station in accordance with the operating criteria and guidelines of GPA, provided that GPA may not require the Power Station to operate at any time (including Emergencies) such that any equipment of the Power Station would be operated outside the performance range recommended by the manufacturer or supplier of such equipment or if such operation would pose a safety hazard to any personnel or equipment within the Power Station or the Site. Subject to the foregoing, Proponent shall cooperate with GPA in establishing emergency plans including but not limited to recovery from a local or widespread electrical blackout; voltage reduction to effect load curtailment and other plans which may arise. Proponent shall make technical references available concerning start-up times, Black Start capabilities, and minimum load carrying ability, broken down into:

1. Capacity

The net capacity of the Power Station shall be not less than 40,000 kW as measured at the high side of the main step up transformer.

2. Frequency Limitation

The frequency limitation of turbine-generator set(s) for continuous operation shall be between the range of 59 Hz and 61 Hz.

The under frequency tripping relay shall be set at 58.5 Hz.

The turbine-generator overspeed trip shall be set at 10% above normal speed.

3. Normal Voltage

The normal voltage at the high side of the step-up transformer shall be 34.5 kV, plus or minus 5 percent.

4. Load Sharing Operation

The unit shall operate satisfactorily and without structural damage in daily load sharing from 100 percent of the Contracted Capacity to the minimum capacity of the unit depending on the dispatch requirements of GPA Power Management Center as further provided in the Sixth Schedule.

5. Range and Ratio of Load Changing

At normal operation mode, the generating unit shall be capable of being operated as Annexure H in Attachment 1 of the Contract.

6. Operation Mode

The Power Station shall be utilized as a peak load plant and be expected to operate except during scheduled maintenance. The Power Station, however, is expected to operate at any other time as may be called upon by GPA during Emergency and/or abnormal system conditions (subject to safety of equipment and personnel) with adequate notice having been given by GPA and would be manned 24 hours a day.

7. Emergency Starts

It is estimated that 10 minutes notice should be given for an emergency start during which the loading rates should be restricted to those shown in Section 5.

8. Heat Rates

The Net Heat Rate of the Power Station following completion shall not be greater than 11,447 BTU/kWh LHV reckoned at full load condition in accordance with the performance tests described in the Twelfth Schedule. The Power Station will be tested to demonstrate the Net Heat Rate.

B. Operating Procedures

1. **DISPATCH PROCEDURE.** Proponent shall control and operate the Power Station consistent with GPA's system dispatch requirements within the limitations of the manufacturer's recommendations, good operation and maintenance practices.
2. **ENGINEERING STANDARDS.** The Power Station including, but not limited to, the protective apparatus shall be operated and maintained in accordance with good engineering practices in respect of synchronizing, voltage and reactive power control.
3. **PROTECTIVE DEVICES.** The Power Station shall be operated with all of its protective apparatus in service whenever the facility is connected to or is operated parallel with the GPA grid. Any deviation for brief period of emergency or maintenance shall only be by mutual agreement.
4. **INTEGRITY LOSS.** If, at any time, GPA has reason to doubt the integrity of any Proponent protective apparatus and suspects that such loss of integrity could jeopardize the GPA electric system, Proponent shall demonstrate, to GPA's reasonable satisfaction, the correct calibration and operation of the equipment in question.

5. **TESTING OF PROTECTIVE DEVICES.** Proponent shall test all protective devices with qualified personnel at intervals not to exceed one (1) year.
6. **NOTICE OF TESTS.** Proponent shall notify GPA at least seven (7) calendar days prior to: (1) the initial parallel operation of Proponent generator and (2) testing of all protective apparatus. GPA shall have the right to have a representative present at such times.
7. **SERVICE COMMITMENT.** At GPA's request, Proponent shall make all reasonable efforts to deliver power during periods of Emergency subject at all times to the provisions of this Second Schedule.
8. **MAINTENANCE DURING EMERGENCY.** In the event that a Scheduled Outage or other outage coincides with an Emergency, Proponent shall make all reasonable efforts to reschedule the Scheduled Outage or if such outage is in progress, to restore the Power Station to operation as soon as reasonably practical.
9. **DAILY OPERATING REPORT FOR RECORD PURPOSES.** Proponent shall keep GPA's Power Management Center informed as to the daily operating schedule and generation capability of its Power Station, including without limitation to, any Forced Outages as further provided in the Sixth Schedule.
10. **OPERATING AND MAINTENANCE RECORDS.** Proponent shall maintain the operating and maintenance records for the generating unit at Proponent's Power Station for a period of at least five (5) years with records of: real and reactive power production, changes in operating status, outages, protective apparatus operations and any unusual conditions found during inspections. Changes in the setting of protective apparatus shall also be logged. In addition, Proponent shall maintain records applicable to the Power Station, including the electrical characteristics of the generator and settings or adjustment of the generator control equipment and protective devices. Such information shall be made available to GPA upon request.

THIRD SCHEDULE

PENALTY OF THE PROPONENT ON DELAY OF COMPLETION DATE

Proponent's Delay—In the event that due to the fault of the Proponent and through no fault of GPA nor due to Force Majeure, the Proponent fails to substantially complete and commission the power plant on the Target Completion Date, the Proponent shall have 180 calendar Days to complete and commission the power plant but in consideration therefore, the Proponent shall pay GPA penalties as provided in the Third Schedule and the obligation of the Proponent to make such payments shall be supported by the performance bond(s) referred to in Article 23.

Without prejudice to the provisions of Article 5.04, the following formula shall apply in computing the amount of penalty to be paid by the Proponent to GPA due to delays:

$$P = (1/Nd) * \text{US\$}30/\text{kW} * (NC-AC) * Td * 1.05$$

where:

P - Amount to be paid by the Proponent to GPA for days of delay in respect of which the Proponent is required to make a payment pursuant to Article 5.03. Such amount shall be payable on the last day of each calendar month.

Nd - Number of days in the month.

NC - Nominated Capacity in KW specified in Section 4.1 of the Eighth Schedule.

AC - Actual Capacity installed and tested in accordance with the Twelfth Schedule.

Td - Number of days delayed in meeting the Target Completion Date.

FOURTH SCHEDULE
SPECIFICATIONS FOR FUEL SUPPLY

The specification for the Fuel Supply will be as follows:

Light fuel Oil (Distillate No. 2)

Specific Gravity @ 60°F	0.8602 Minimum
Viscosity SSU @ 100°F	35 Minimum
Cloud Point °F	68 Maximum
Sulfur	0.5% Maximum
Bottom Sediment & Water	0.05% Maximum
Ash	0.005% weight, Maximum
Flash Point PM °F	140 Minimum
Carbon Residue (10% Bottom)	0.2
Pour Point °F	50 Maximum
LHV Calorific Value (Average)	19,550 BTU/LB
HHV Calorific Value (Average)	19,770 BTU/LB

SUPPLY ARRANGEMENTS

Delivery

GPA and the Proponent will liaise to prepare weekly fuel schedules showing anticipated times and quantities of fuel to be utilized by the Power Stations and GPA shall be responsible for ensuring the availability of fuel supplies for the payment therefore and for all arrangement with the suppliers.

Fuel Oil Storage

Fuel Oil Storage shall be provided by the Proponent in a tank of sufficient capacity for at least 30 days consumption. The water shall be drained off weekly.

The fuel tank will be calibrated in an approved manner. The tank shall be provided with appropriate fire fighting facilities and shall have a secondary containment equal to 110% of the tank volume.

Testing

Upon each delivery of fuel to and if so required by the Proponent, from time to time thereafter, a

suitable sample will be taken and analyzed jointly by the Proponent and GPA to ensure that it meets the specification as shown above. the laboratory for anaalyzing the oil will be agreed between the Proponent and GPA.

Meters

Meters will be provided by the Proponent to meter the fuel delivered into the tank. As a check, the tank ullage will be taken before and after each delivery of fuel and in the case of discrepancy, the ullage will prevail. The Proponent will provide fuel meters with temperature compensation for measuring the delivery of fuel to the tank. Such meters will be installed within the Site area bounded by permanent Site fence. Meters shall be tested every six months at GPA's cost by a third party agreed between the Proponent and GPA.

Variation in rate of Delivery

The Proponent and GPA will liaise in estimating the fuel required to comply with GPA's annual, monthly and weekly systems operating plans.

Fuel Management Agreement

The Parties will enter into a fuel management agreement pursuant to which GPA and Proponent shall agree to delineate the responsibilities of both parties on the following:

1. Operation, maintenance and safety of the Fuel receiving facilities and storage systems which shall be at the responsibility of the Proponent.
2. Sourcing and Supply of fuel which shall be the responsibility of GPA.
3. Unloading, storage, insurance and safety of fuel which shall be Proponent's responsibility.
4. Method of inventory, metering, usage and testing including sludge disposal and Proponentship.
5. Demurages, penalties and environmental problems; and
6. Other responsibilities & works related to fuel by parties.

**Spill Prevention
Control and
Countermeasure Plan
(SPCC Plan)**

**The Proponent shall be responsible
for the preparation of SPCC plan
for the facility for EPA and GPA's
approval.**

**The Proponent shall be responsible for the full
compliance of the Facility SPCC plan.**

**Best Management
Plan (BMP)**

**The Proponent shall be responsible
for the preparation of the Facility BMP plan for
EPA and GPA's approval including full
compliance with the plan.**

FIFTH SCHEDULE

TRANSMISSION LINE SPECIFICATIONS

The Proponent shall not be responsible for the upgrade of any transmission line(s) necessary for interconnection of the power plant to GPA's system.

SIXTH SCHEDULE

ELECTRICITY DELIVERY PROCEDURES

1. Definition

"Planned Outage" means the number of hours per turbine for every year allowed to the Proponent by GPA to allow the Proponent to undertake the normal inspection, maintenance, repair and overhaul plus any other hours as a consequence of GPA's failure to perform any of its obligations.

"Forced Outage" is defined as the inability due to the fault of the Proponent to supply power to the GPA System as requested by GPA.

2. Measurement of Power Generated

Measurement of power generated transferred to GPA shall be made at the high voltage side of the main power (step up) transformer(s)

3. Notice in change of output

Specific procedures for notification of power requirements shall be agreed between the Proponent and GPA prior to the Completion Date. Subject to such procedures, the outputs of the prime movers-generator shall be as required by the system controller from time to time, provided that changes in output requested by the system controller remain within the Specifications and the Operating Parameters.

4. Notice of Downtime

GPA shall prepare annual, monthly, and weekly systems operating plans and in so doing shall coordinate with the Proponent to agree on Planned Outage.

GPA shall grant the Proponent sufficient Downtime to undertake all regular inspection and maintenance of the turbine-generator in accordance with the manufacturer's recommendations taking full account of hours run, number of starts and duration of running for each start.

The Proponent will plan with GPA to ensure that as far as practicable. Planned Outage is undertaken at times to cause minimum disruption to the GPA power system.

5. Notice of Required Electricity

While the annual, monthly, and weekly system operating plans will be prepared by GPA in consultation with the Proponent, it is agreed that the weekly plan for the following seven days will be the control plan and will be the plan referred to as "normal operation plan".

6. Normal Operation

Normal operation of the prime mover-generators are as defined below:

- Operating in accordance with the weekly normal operation plan as defined in section 5 above as agreed in writing between GPA and the Proponent with no more than one start per day.
- Operating with fuel within the specification set out in the Fourth Schedule.
- Operating frequencies of the system to be within the limits of the Operating Parameters.
- Operating at a system voltage of 34.5 kV +/- 5%.
- Start-up, synchronizing and loading to be within the limits of the Operating Parameters.
- Full access to the Site at all time for material and personnel.

7. Guaranteed Capacity and Equivalent Availability

The Proponent shall guarantee the delivery of the 40000 kW net contracted capacity of the power plant to GPA at an equivalent available factor of 95%. The Proponent shall, likewise, guarantee the delivery a minimum of 87,600,000 kWh of electricity yearly to GPA at the high voltage side of the main power transformer of the power station.

SEVENTH SCHEDULE

MEASUREMENT AND RECORDING OF ELECTRICITY

1. The meter location to record the kW, kWh and kVAR delivered to GPA shall be at high voltage side of the main step-up transformers. The meter shall automatically record and store energy deliveries in increments of 15 minutes.
2. The quantity of power and energy delivered to GPA shall be given by the in/out meters referenced in Section 1 of this Schedule.
3. In order to verify the quantity of electricity delivered by Proponent to GPA in each Month, GPA and Proponent shall at midnight or such other time agreed between GPA and Proponent on the twenty-fifth day of each Month print a report (generated by the computer in the Power Station) detailing the daily delivery of electricity from the Power Station by Proponent provided always that if GPA shall not be present at the Power Station at the agreed time, the above mentioned report shall be printed by Proponent and shall be binding on GPA for all purposes under this Agreement.
4. Proponent shall supply and install, GPA shall maintain as part of the interconnection facilities, the meter and related equipment to be utilized for the measurement of electric power (kW), energy (kWh) and reactive power (kVA) in determining GPA's payments to Proponent pursuant to this Agreement.
5. For the purpose of monitoring the Power Station's operation, GPA shall have the right to require, at Proponent's expense, the installation of metering devices at the generation side which will be specified to Proponent prior to the Effective Date.
6. The meter, installed in pursuance to this Agreement, shall be tested by GPA at its own expense every six (6) months. Other tests may be conducted at any reasonable time upon request by either party, at the requesting party's expense. If Proponent makes such request, Proponent shall reimburse said expense to GPA within thirty (30) days after presentation of a bill therefor. GPA's meter test result shall be deemed final and conclusive; provided, that Proponent reserves the right to employ, at its own expense, a qualified third party to check the calibration of the meter. GPA shall have the right to witness any such third party testing. If the third party test indicates a change in the meter calibration is required, the meter shall be recalibrated by such third party unless GPA disputes the results of the third party test. In the event GPA disputes the results of the third party calibration test, the parties shall resolve such dispute pursuant to the provisions of Articles 11 and 20 of the Contract.
7. The meter and metering transformers shall be in accordance with GPA's specifications.

8. Metering equipment found to be inaccurate shall be repaired, adjusted, or replaced by GPA at Proponent's expense such that the inaccuracy of said equipment shall be as near as possible to zero. If metering equipment inaccuracy exceeds plus or minus one percent (1%), the correct amount of energy delivered during the period of said inaccuracy shall be estimated by GPA and agreed by the parties. Adjustment for meter inaccuracy shall cover only the current Month and the Month immediately preceding it.

**EIGHTH SCHEDULE
FEES FOR POWER AND ENERGY**

1. **OBLIGATIONS OF PARTIES.** Proponent hereby agrees to convert fuel supplied by GPA into electricity and GPA hereby agrees to take at the high voltage side of the step-up transformer, the electric power and energy delivered by Proponent to GPA until the end of the Co-operation Period.

2. **CAPACITY AND FIXED O&M FEE PROVISION.** Proponent shall provide and GPA shall pay for the electric power output capacity of the Power Station as provided in Section 4.1 of this Schedule in respect of the amount of Contracted Capacity which, in respect of each Contract Year, shall be the actual net Kilowatt (kW) capability of the Power Station nominated by Proponent for such year.

At the commencement of each Contract Year of the Co-operation Period, if so requested by GPA, Proponent shall demonstrate its ability to provide GPA the Contracted Capacity within 14 days of any nomination by Proponent.

If, on the Completion Day or any anniversary thereof Proponent fails to notify GPA of the nominated amount of Contracted Capacity for the following Contract Year, the Contracted Capacity for such Contract Year shall be the Nominal Capacity.

Proponent shall provide for the fixed operation and maintenance of the Power Station and GPA shall pay therefor the fees as provided in Section 4.2 of the Schedule. The fixed O&M Fees are based on the Proponent delivering 87,600 MWh of electricity to GPA yearly.

3. **DELIVERED ENERGY.** Proponent shall convert fuel supplied by GPA into electricity and deliver it to GPA, and GPA shall take such electricity from Proponent as requested by the GPA Power Management Center. The energy delivered shall be paid for by GPA pursuant to the terms and conditions as provided in Sections 4.1 & 4.2 of this Schedule.

GPA shall make a supplemental payment to Proponent for certain costs incurred by Proponent and associated with any start-up of the Power Station or any unit therein that is a consequence of the acts or omissions of GPA. Proponent shall invoice GPA those costs associated with start-up of the Power Station or any unit therein as provided in Section 4.3 of this schedule.

4. TERMS OF PAYMENT

4.1 **CAPACITY FEES.** Capacity Fees as shown shall be computed on the daily basis of the following calculation:

<u>ANNUAL CAPACITY FACTOR</u>	<u>CAPACITY RATE (\$/kWh)</u>
0-25%	0.02899
25-50%	0.01323
50-75%	0.01002
75-90%	0.00834

Example : Power Generation - 471,000 kWh/Day

40,000 kW x 6 HRS = 240,000 kWh

33,000 kW x 6 HRS = 198,000 kWh

33,000 kW x 1 HRS = 33,000 kWh

US\$ 0.02899 x 240,000 kWh = US\$ 6,957.60

US\$ 0.01323 x 198,000 kWh = US\$ 2,619.54

US\$ 0.01002 x 33,000 kWh = US\$ 330.66

Total : US\$ 9,907.80

4.2 **FIXED O&M FEES.** Fixed O&M Fees as shown shall be computed on the daily basis of the following calculation:

<u>ANNUAL CAPACITY FACTOR</u>	<u>FIXED O&M RATE (\$/kWh)</u>
0-25%	0.03065
25-50%	0.01451
50-75%	0.01057
75-90%	0.00880

Example : Power Generation - 471,000 kWh/Day

40,000 kW x 6 HRS = 240,000 kWh

33,000 kW x 6 HRS = 198,000 kWh

33,000 kW x 1 HRS = 33,000 kWh

US\$ 0.03065 x 240,000 kWh = US\$ 7,356.00

US\$ 0.01451 x 198,000 kWh = US\$ 2,872.98

US\$ 0.01057 x 33,000 kWh = US\$ 348.81

Total : US\$ 10,577.79

4.3 **START UP CHARGES.** A Start-Up Charge equal to \$7,650 per start per turbine shall apply for each start which exceeds 345 starts in the aggregate each Contract Year that is a consequence of the acts or omissions of GPA. It is agreed that there will be no more than 2 starts per day.

ALL SUMS PAYABLE TO OWNER SHALL BE PAYABLE IN ACCORDANCE WITH ARTICLE 11 OF THE CONTRACT.

4.4 **HEAT RATE BONUS/PENALTY FACTOR.** GPA's objective is to assure the Project is operated economically with respect to fuel consumption, which has a direct impact on the cost of energy supplied to GPA. Therefore, GPA shall provide an incentive to Proponent to assure GPA's objectives are met.

GPA and Proponent agree to evaluate fuel consumption efficiency of the plant in terms of Net Heat Rate. Such fuel efficiency shall be evaluated by comparing the Contractual Heat Rate to the Adjusted Actual Heat Rate.

For purposes of this Section 4.4:

- Net Heat Rate shall mean the measure of the thermal efficiency of the Power Station expressed in British Thermal Units (HHV)(BTU) per net kilowatt hour; for the purpose of the Net Heat Rate tests, kilowatts shall be measured at the high side of the main step-up transformer; fuel consumed shall be the amount of fuel actually delivered to the turbine (clean fuel to the turbine) consumed in the period as measured by day tank meters;
- Contractual Net Plant Heat Rate shall be 11,447 BTU/kWh (LHV);
- Adjusted Actual Net Heat Rate shall be the actual Net Heat Rate demonstrated by Proponent pursuant to the Annual Performance Tests conducted pursuant to the Twelfth Schedule.

While the Proponent is operating the Power Station during the Co-operation Period:

- (i) if the Adjusted Actual Heat Rate of the Power Station are greater than 100% of the Guaranteed Net Plant Heat Rate, then Proponent shall pay GPA the additional fuel cost associated with such higher Heat Rate (i.e., the cost of the additional fuel consumed as a result of the difference between the Adjusted Actual Heat Rate) calculated on an annual basis commencing with the first anniversary of the Completion Date;
- (ii) if the Adjusted Actual Heat Rate of the Power Station is 1.5% or more below the Net Plant Heat Rate, then GPA shall pay to Proponent the equivalent 50% savings in fuel cost associated with such lower Heat Rate (i.e., the cost of the fuel saved as

a result of the difference between the Adjusted Actual Heat Rate) calculated on an annual basis commencing with the first anniversary of the Completion Date.

Such calculations will be based on clean fuel to the combustion turbine consumption. Payments will then be based upon the average cost of fuel (documented by GPA) for that period.

- Example:
- 1) Actual Annual generation is 87,600,000 kWh
 - 2) Adjusted Actual Heat Rate is 11,547 BTU/kWh LHV
 - 3) Guaranteed Net Plant Heat Rate 11,447 BTU/kWh LHV
 - 4) Documented fuel costs is \$2.50/MBTU LHV

Yearly Penalty due to GPA =

Differential Heat Rate (11547 - 11447) = 100 BTU/kWh

multiplied by actual annual generation during the year period in kWh

$$100 \times 87,600,000 \times \frac{\$2.50}{1,000,000} = \text{Fuel Cost}$$

equals = \$21,900

4.5 NET HEAT RATE BONUS FORMULA. The Net Heat Rate bonus shall be computed on the basis of the following formula:

$$S = E * FC * CHR * 1/1,000,000 * 1/2$$

Where:

S = Net Heat Rate bonus due to Proponent from GPA

E = Energy Actually delivered to GPA during the Contract Year as measured in kWh.

FC = Average Fuel Cost in Dollars per million BTU for the subject Contract Year as documented by GPA.

CHR = Contractual heat Rate minus the Adjusted Actual Heat Rate. For Purposes of calculating the Net Heat Rate bonus, CHR shall not be less than zero.

**NINTH SCHEDULE
INSURANCE**

1. **INSURANCE DURING CONSTRUCTION.** From the Effective Date until the commissioning of the Power Station, Proponent shall, at its own expense, obtain and maintain in force the following insurance:
 - a. A Marine insurance in respect of plant and equipment to be imported into Guam;
 - b. All Risks "Builder's Risk Insurance" to cover the entire works from any and all kinds of damages arising out of any cause whatsoever, and the Proponent shall cause GPA to be named as an additional insured.
 - c. "Third Party Liability Insurance" to cover injury to or death of persons (including those of GPA) or damages to property caused by the works or by Proponent's vehicles, tools and/or equipment or personnel including its sub-contractors; and the Proponent shall cause GPA to be named as an additional insured.
 - d. "Workmen's Compensation Insurance" as required under the Social Security Law.
2. **INSURANCE DURING COOPERATION PERIOD.** During the Cooperation Period, Proponent shall at its own expense keep the Power Station insured against accidental damage from all normal risks and to a level normal for prudent operators of facilities similar to the Power Station. In addition, Proponent shall secure adequate insurance cover for its employees as may be required by law.
3. The insurance effected shall be no less favorable to the insured in terms of risks covered than that normally effected by GPA in respect of its own similar operations. The insurance effected pursuant to this Ninth Schedule shall be obtained and maintained by financially sound and reputable insurers and such insurance shall generally contain provisions and deductibles which are reasonably standard in the insurance market with respect to power generating facilities of similar size and location. The scope of coverage of such insurance shall be subject to standard exclusions, exceptions and sublimits, and shall be economically reasonable.

TENTH SCHEDULE
FORM OF ACCESSION UNDERTAKING

THIS ACCESSION UNDERTAKING is made the _____ day of _____ 1996

BY

The Proponent, a private corporation, duly organised and existing under the laws of _____ with its principal address at _____ represented by its President _____, who is duly authorized to represent it in this Agreement, hereinafter referred to as "the Assignee."

GUAM POWER AUTHORITY a government owned agency represented herein by its Chairman of the Board, Frank Shimizu, who is duly authorized to represent it in this Agreement, hereinafter referred to as GPA.

WHEREAS

- (A) This Undertaking is subject to an agreement (the "Project Agreement") dated _____ 1996 and made between (1) GPA and (2) The Proponent whereby The Proponent has agreed to design, build and operate a turbine-generator power station in Guam under the Build, Operate, Own and Transfer (BOOT) Scheme.
- (B) The ("Assignee") is a corporation and a subsidiary of The Proponent.
- (C) It is a condition precedent to the effectiveness of the Project Agreement that the parties hereto enter into this Accession Undertaking.

NOW IT IS HEREBY AGREED as follows:

1. Interpretation

- (A) Terms defined in the Project Agreement shall bear the same meaning herein.
- (B) This Undertaking shall take effect on the Signing Date.
- (C) Article headings are for ease of reference only.
- (D) In this Undertaking, the singular includes the plural and vice versa.

2. Accession of "The Assignee"

- (A) The "Assignee" shall become a party to the Project Agreement and shall perform and comply with all obligations on the part of The Proponent under the Project Agreement which necessarily have to be performed in Guam in respect of the development, construction and operation of the Project, including the importation into Guam of all equipment for the Project and the operation of the Power Station and all references to

"The Assignee" in the Project Agreement (including without limitation in Articles 2, 3, 6, 8, 10, 11, 12, 14 and 16 thereof) shall be construed to be references to The Assignee to the full extent necessary to give effect to the foregoing.

- (B) GPA shall perform all obligations on its part under the Project Agreement as if The Assignee were named in the Project Agreement as if The Assignee shall be entitled to all the rights, benefits and interests under the Project Agreement as if it were named as a party thereto including (without limitation) the benefits of all warranties and undertakings on the part of GPA in the Project Agreement.
- (C) The Assignee shall be jointly and severally liable with The Proponent for the performance of the obligations undertaken by The Assignee under Article 2(A) above, and undertakes to GPA that it shall, promptly upon its receipt of written demand from GPA, perform such obligations in accordance with the provisions of the Project Agreement.
- (D) Subject only to the above provisions, the Project Agreement and the respective rights and obligations of the parties thereto under it shall continue in full force and effect.

3. References in the Project Agreement

As from the Contract Signing Date, any reference in the Project Agreement to "this Agreement" and any reference, whether express or implied, to a clause or provision of the Project Agreement shall be deemed to be a reference to the Project Agreement and to a clause or provision thereof as hereby supplemented and amended.

4. Assignment

The Proponent may for the purposes of arranging or rearranging finance for the Project, assign or transfer all or any part of its rights and benefits under the Project Agreement as hereby supplemented and GPA shall duly acknowledge any such assignment or transfer of which it is given notice.

5. Law and Jurisdiction

The provisions of Articles 19, 20 and 21 of the Project Agreement shall apply to this Undertaking as if the same were herein repeated in full mutatis mutandis.

The Proponent

By: _____

Tele: _____

Fax: _____

GUAM POWER AUTHORITY

By: _____

Tele: _____

Fax: (671) 649-6972

ELEVENTH SCHEDULE
FORM OF LEGAL OPINION OF GPA'S
GENERAL COUNSEL

FROM: General Legal Counsel to GPA

TO : The Proponent

Dear Sirs,

I have acted on behalf of GUAM POWER AUTHORITY (GPA) in connection with an agreement ("the Project Agreement") dated _____ 1996 and made between GPA (1) and The Proponent (The Proponent) (2) and an agreement ("the Accession Undertaking") and together with the Project Agreement ("the Agreements") dated [], 1996 and made between The Proponent (1), GPA (2) and "The Assignee" (3), I have examined an executed copy of the Agreements and such other documents as I have considered necessary or desirable to examine in order that I may give this opinion. Terms defined in the Agreements shall have the same meaning herein.

I am of the opinion that:

- (i) GPA is a public agency and validly existing under the laws of Guam pursuant to Organic Act No. ____ (as amended);
- (ii) GPA has the corporate or other power to enter into the Agreements and to exercise its rights and perform its obligations thereunder, and execution of the Agreements on behalf of GPA by the person(s) who executed the Agreements was duly authorized by GPA;
- (iii) all acts, conditions and things required by the laws and constitution of the United States of America to be done, fulfilled and performed in order (a) to enable GPA lawfully to enter into, exercise its rights under and perform the obligations expressed to be assumed by it in the Agreements, (b) to ensure that the obligations expressed to be assumed by it in the Agreements are valid and enforceable by appropriate proceedings and (c) to make the Agreements admissible in evidence in Guam, have been done, fulfilled and performed in compliance with the laws and constitution of the United States of America;
- (iv) the obligations expressed to be assumed by GPA in the Agreements are legal and valid obligations binding on GPA enforceable in accordance with the terms thereof;
- (v) GPA is not entitled to claim any immunity from suit, execution, attachment or other legal process in Guam, and
- (vi) under the Constitution of the United States, it is recognized that no law impairing the obligation of contracts shall be passed and consequently the validity of the Agreements and the binding nature of the obligations of the parties thereunder are constitutionally safeguarded.

This opinion is confined to matters of U.S. law and no opinion is expressed as to the laws of any other jurisdiction.

Yours faithfully,

TWELFTH SCHEDULE TESTING PROCEDURES

I. Guarantee Tests

(1) Purpose of the Guarantee Tests

Performance tests shall be performed in accordance with the ASME Power Test Code to demonstrate to GPA that the Power Station Generator output and the Power Station's Net Heat Rate are in accordance with the Specifications (the "Guarantee Tests"). The Guarantee Tests shall be performed in accordance with Article 6 of the Contract to demonstrate completion of the Power Station.

(2) Purpose of Testing during Co-operation Period

At the commencement of each Contract Year (I) a Net Heat Rate test shall be performed to determine the adjusted Actual Net heat Rate for such Contract Year and (ii) if so requested by GPA, a Capacity test shall be performed in accordance with Article 6 of the Contract to demonstrate Proponent's ability to provide GPA the Contracted Capacity ("Annual Performance Tests").

(3) Test Conditions

- a) All units of the Power Station will be tested by the Proponent and results compared to the contractual Net Heat Rate and generating capacity described in the Specifications.
- b) The measuring points will be the fuel supply meters, and the electricity billing meters.
- c) The Power Station is to be tested when the units are in clean condition. The Guaranteed Tests will be conducted as soon as reasonably possible following start-up of the Power Station. Annual Performance tests to be conducted each Contract Year to demonstrate the Adjusted Actual Net Heat Rate will be conducted within 14 days of the commencement of such Contract Year. Annual Performance Tests to demonstrate Proponent's ability to provide the Contracted Capacity will be conducted within 14 days of any nomination by Proponent.
- d) Throughout the Guarantee Tests and the Annual Performance Tests, measurements will be taken while the Power Station is operated at 100% load.

- e) If Proponent notifies GPA that the Power Station is to be tested for partial or early completion or final completion, the test conditions above and the test procedures below shall apply to such testing provided that (i) in respect of Capacity, Proponent shall only be required to achieve the minimum Capacity set forth in the Contract (it being understood and agreed that no minimum Capacity is required for partial or early completion) and (ii) in respect of the tested Net Heat Rate, a value in excess of the Contractual Net Heat Rate shall not mean a failure of the Guaranteed Tests or the Annual Performance Tests but will establish the Adjusted Actual Net Heat Rate as a basis for the Net Heat Rate bonus/penalties pursuant to the Eighth Schedule. If the Net Heat Rate test results in an Adjusted Actual Net Heat Rate in excess of the Contractual Net Heat Rate, heat rate penalties will accrue for the Contract Year until a retest is completed at Proponent's option after scheduling a retest with GPA. GPA's approval of the retest schedule shall not be unreasonably withheld or delayed.
- f) If Proponent has successfully completed a partial completion test, then the final Guarantee Tests to demonstrate completion of the Power Station shall nonetheless be for the total Power Station.

(4) Test Procedures

- a) During testing, both GPA and Proponent will make every effort to maintain the frequency, load, power factor and stator voltage steady and as near possible to specified values.
- b) Electrical power output will be measured by a three phase integrating watt hour meter (the Billing meter), calibrated at a laboratory approved by Proponent and GPA immediately prior to the tests.
- c) Fuel flow will be measured by the volumetric flow meter located on the fuel supply pipelines. The meter will be calibrated by an approved establishment for the load range and calibration curves will be produced for inspection.
- d) All test points are to be taken under steady state conditions. Steady-state conditions are assumed to exist when the variation in turbine-generator output (kW) reaches stability for a period of 15 minutes.
- e) When the following fluctuations are exceeded the test results shall be considered by both GPA and Proponent to determine whether they are acceptable or not. The term "fluctuation" is intended to mean the difference between the maximum or minimum value of a variable for a single test point and average of the values recorded for that variable at the test point.

	<u>Maximum Fluctuation</u>
inlet air temperature	= 1.5 degree C
Fuel Rate	= 2%
Speed of load turbine or system frequency	= 1%
Measured load or output in (kW)	= 2%

- f) The tests will be conducted using normal operating fuel with specifications in accordance with the Fourth Schedule. Fuel heating value and specific gravity will be determined by a properly qualified laboratory using not less than 3 samples during the test.
- g) Test readings for the Guarantee Tests and the Annual Performance Tests will be recorded at fifteen minutes intervals during a two (2) hour period after the units have achieved a steady state condition.

h) Instrumentation

Instruments used to measure performance are all panel instruments unless otherwise mentioned.

5) Tolerance

Output and heat rate at 100% Load are guaranteed with tolerance..
The measuring tolerance values at 100% Load are as follows”

Tolerance of output	:	1.75%
Tolerance of heat rate	:	3.0%

6) Heat Rate Calculation

$$\text{Station Heat Rate, } \frac{\text{BTU}}{\text{KWh}} = \frac{\text{Total Heat of Fuel Input}}{\text{Net Electrical Power Output}}$$

$$\text{Total Heat Input of Fuel, } \frac{\text{BTU}}{\text{hr}} = \text{Weight of Fuel Input,}$$

$$\frac{\text{lb}}{\text{hr}} \times \text{Heating Value, } \frac{\text{Btu}}{\text{lb}}$$

Net Electrical output is measured by the kWh meter on the high voltage side of the main transformer:

Note: The tested Actual Adjusted Net Heat Rate is the weighted average of the tested Actual Adjusted Net Heat Rates of the Guarantee Tests and the Annual Performance Tests respectively.

Doc. No. _____

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Book No. _____

Series of 1996

GUAM POWER AUTHORITY

BY:

RICARDO S. UNPINGCO
Acting General Manager,
GUAM POWER AUTHORITY

The PROPONENT

BY:

SIGNED IN THE PRESENCE OF: _____

FRANK S.N. SHIMIZU
Chairman, Board of Directors

NOTE: Final Contract will be negotiated between GPA and Proponent