

**LLA**

**GUAM POWER AUTHORITY  
LEASE**

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**[TO BE UPDATED]**

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**LEASE AGREEMENT  
BETWEEN  
GUAM POWER AUTHORITY  
AND**

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This LEASE AGREEMENT, is made and executed this \_day of \_2019, by and between GUAM POWER AUTHORITY, (hereinafter referred to as “GPA”), a public corporation and autonomous instrumentality of the Government of Guam, and (COMPANY) (hereinafter referred to as the “Project Company”), a private corporation, duly organized and existing under the laws of Guam, duly registered to do business in Guam, with its local address at\_\_\_\_\_. (GPA and the Project Company may sometimes jointly be referred to herein as the “Parties”).)

**R E C I T A L S**

**WHEREAS**, GPA holds the title for property;

**WHEREAS**, GPA, through its solicitation process (**MS BID GPA-034-18**) has entered into an Energy Conversion Agreement with the Project Company on (Insert ECA Date) (hereinafter referred to the “ECA”) in relation to a 198MW power generation facility to be built owned and operated by Project Company on the Premises (as hereinafter defined); and

**WHEREAS**, GPA desires to lease the Premises to the Project Company and the Project Company desires to accept such lease upon and subject to terms and conditions set forth herein for the purposes of implementing the ECA.

**NOW THEREFORE**, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE 1: LEASE**

GPA leases to the Project Company on the terms and conditions in this Lease Agreement the Premises set forth in Exhibit “A”, Survey Maps & Legal Description, attached hereto and incorporated herein by this reference.

As used in this Lease Agreement, the term “Premises” refers to the real property described in Exhibit “A” on which the Project Facilities are to be installed (defined by the boundaries [plot designation or coordinates]<sup>1</sup>), and to any personal property and improvements located on said real property on Commencement Date (as defined below).

Capitalized terms included but not defined in this Lease Agreement shall have the meanings set forth in the ECA. In the event of any inconsistency between any provisions of this Lease Agreement and those of the ECA, the provisions of the ECA shall prevail.

**ARTICLE 2: TERM**

The term of this Lease Agreement (the “Term”) will commence on upon the date of signature of the ECA (the “Commencement Date”) and shall terminate twenty five (25) Contract Years after the Commercial Operation Date (the “Termination Date”), provided, however, that the Term shall be extended or earlier terminated to match any extension or early termination of the ECA. In no event shall this Lease Agreement be terminated by GPA while the ECA is in effect.

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<sup>1</sup> Sponsors to provide plot design or coordinates prior to signing the Lease Agreement.

**ARTICLE 3: DELIVERY OF POSSESSION**

Possession of the Premises will be delivered to Project Company on Commencement Date. If GPA, for any reason whatsoever, cannot deliver possession of the Premises to Project Company on Commencement Date, this Lease Agreement shall not be void or voidable. GPA shall be responsible for, and Project Company is entitled to, the full compensation for any loss, damage, cost, expense incurred due to any delays in the delivery of the Premises. Project Company is further entitled to the extension of time for its performance of obligations under the ECA for the time being delayed by GPA to deliver the Premises.

Project Company (together with its agents (including independent consultants), lenders, employees, contractors and subcontractors) shall have the right to enter unto or upon and exit the Premises at any time prior to the Commencement Date for the purpose of making necessary investigations and conducting site studies; provided, however, that Project Company shall not commence construction or other activity upon the Premises that alters or changes the Premises in any manner prior to the Commencement Date, except in relation to the carrying out of [site investigations, site grading, site studies, site surveys, road paying work and building foundation]<sup>2</sup> by the Project Company or its Construction Contractor.

**ARTICLE 4: RENT**

Project Company will pay to GPA as rent, without deduction, setoff, notice, or demand, the annual sum of \$100.00 (U.S. Dollars), which shall be paid as follows: [•].

Project Company shall be responsible for any and all of the costs related to compliance with its obligations set forth herein.

**ARTICLE 5: USE OF PREMISES**

The Premises will be used and occupied by Project Company only for the purpose of its planning, development, construction, commissioning, testing, operation, repair, and maintenance of the Project Facilities and all things reasonably incidental to the foregoing.

**ARTICLE 6: CONDITION OF PREMISES**

Subject to the provisions of the ECA, Project Company has inspected, and accepts the condition and state of the Premises. Project Company acknowledges that no representations, statements, or warranties, express or implied, have been made by or on behalf of GPA in respect to the condition of the Premises, including all facilities located thereon, or whether the intended use or occupation may be made of them.

**ARTICLE 7: OWNERSHIP OF IMPROVEMENTS**

All improvements erected or placed on the Premises after the Commencement Date by and on behalf of Project Company are and shall be the property of Project Company during the Term, subject to the terms and condition of this Lease Agreement. Upon the expiration or termination of the Lease Agreement, all such improvements shall become the property of GPA; provided, however, that the payment of any necessary costs and expenses are duly made by GPA as the concurrent condition.

**ARTICLE 8: ALTERATIONS**

Project Company will not make, or cause to be made any alterations, improvements, additions and changes in or to the Premises without the prior written consent of GPA unless such alterations,

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<sup>2</sup> Note to GPA: Sponsors to provide works that may need to be done prior to Commencement Date.

improvements, additions and changes are part of the design, construction, commissioning, operation or maintenance of the Facility or the Electrical Connection Facilities pursuant to the ECA.

Project Company shall not undertake any activity that may affect a historic or archeological property, including excavation, construction, alteration, or repairs of the Premises, without the prior approval of the applicable Government Authority and in compliance with section 106 of the National Historic Preservation Act (16 U.S.C. § 470), and the Archeological Resources Protection Act of 1979 (16 U.S.C. §470aa). Buried cultural materials may be present on the Premises. If those materials are encountered, Project Company shall stop work immediately and notify GPA and the relevant Government Authority.

**ARTICLE 9: ENTRY / ACCESS**

GPA shall have the right to enter the Premises pursuant to the applicable terms of the ECA to inspect the Premises or the performance by Project Company of the terms and conditions of this Lease Agreement and the ECA. Any claims by the Project Company against GPA for damages arising from such entry shall be governed by the Government Claims Act (5 GCA Section 6101 et. seq.). Nothing in this Lease Agreement shall be deemed to prejudice the rights of the Project Company under any contract, other agreement or law including, but not limited to the Government Claims Act. All necessary keys to the buildings and Premises occupied by Project Company shall be made available to GPA upon request.

Project Company, its employees, vendors, and invitees will be granted reasonable access to the Premises under this Lease Agreement. Project Company, and their employees, vendors, and invitees, agree to adhere to local and federal regulations regarding installation security, ingress, egress, safety and sanitation.

**ARTICLE 10: ASSIGNMENT AND SUBLETTING**

Subject to Article 13 of this Lease Agreement and Section 22.11 of the ECA, Project Company shall neither transfer, assign, nor sublet this Lease Agreement or any interest in it, or any property on the Premises, or grant any interest, privilege, or license whatsoever in connection with this Lease Agreement without the prior written consent of GPA.

**ARTICLE 11: COMPLIANCE WITH LAW - WASTE AND NUISANCE PROHIBITED**

During the Term of this Lease Agreement, Project Company shall observe and comply with applicable Law affecting the Premises, the equipment and any improvements by Project Company in and on the Premises, or any part of the Premises, and of all governmental departments, agencies, bureaus and officials.

Project Company shall not commit, or suffer to be committed, any waste on the Premises, or any nuisance unless related to the design, construction, commissioning, operation and maintenance of the Facility and the Electrical Connection Facilities in compliance with Prudent Utility Practices.

**ARTICLE 12: ABANDONMENT OF PREMISES**

Project Company shall not vacate or abandon the Premises at any time during the term of this Lease Agreement. If Project Company abandons, vacates, or surrenders the Premises or is dispossessed by process of law, or otherwise, any personal property belonging to Project Company and left on the Premises shall be deemed to be abandoned.

**ARTICLE 13: PROJECT FINANCING**

GPA acknowledges and accepts that the Project Company plans to obtain third party debt financing from Lenders to construct the Facility and hereby consents to customary lender mortgage and rights to step-in and assume the rights and obligations of the Project Company under this Lease Agreement as set forth in the Lender's Direct Agreement.

**ARTICLE 14: LIABILITY FOR LIENS ON PREMISES**

[Subject to Article 13, Project Company shall not permit any lien, charge, or encumbrance to be filed against the title of GPA with respect to the Premises including, but not limited to, by reason of work, labor, services or materials supplied to Project Company or anyone holding the Premises or any part of the Premises by, through or under Project Company. As to any and all alterations, additions, improvements, repairs and work installed or performed by Project Company on the Premises, or labor performed or material furnished in connection therewith, neither GPA nor the Premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, but rather, all alterations, additions, improvements, and repairs, and labor and material, shall be made, furnished, and performed at the expense of Project Company unless specified otherwise in the ECA. Project Company shall be solely responsible to contractors, laborers, and material suppliers furnishing and performing the labor and material unless specified otherwise in the ECA.

If any lien, charge, or order for the payment of money shall hereafter be filed against the title or other estate of GPA in the Premises or any buildings or improvements on the Premises, or against GPA, whether or not the lien, charge, or order is valid or enforceable, Project Company shall, at the expense of Project Company cause the lien to be cancelled and discharged of record or bonded within thirty (30) days after the notice to Project Company of the filing of such item.]

**ARTICLE 15: REPAIRS, UTILITIES AND TAXES TO BE LIABILITY OF PROJECT COMPANY**

[Project Company shall maintain, or cause to be maintained, the Premises in reasonable order and condition in light of the use of the Premises and the condition of the Premises immediately prior to the Commencement Date.

Project Company, shall, at all times during the Term, at the expense of Project Company, keep and maintain in thorough repair and good, safe, and substantial order and condition, having regard to normal wear and tear, all buildings and improvements, and all building service equipment, on the land portion of the Premises at the commencement of the Term hereof and thereafter erected on the Premises, or forming part of the Premises, and promptly make all necessary repairs, both inside and outside, structural and non-structural, extraordinary and ordinary, whether or not the repairs were necessitated by wear, tear, obsolescence, or defects, latent or otherwise.

Project Company shall use reasonable precaution to prevent waste, damage, or injury, and shall at the expense of Project Company, keep, replace, and maintain in thorough repair, good order, and safe condition, and free from rubbish, and other obstructions or encumbrances, the areas in front of and adjacent to the Premises.

GPA shall in no event be required to make any alterations, additions, improvements, replacements, renewals or repairs of any kind, nature, or description, whatsoever during the term of this Lease Agreement, nor shall GPA be required to furnish Project Company any utilities or services of any kind whatsoever during the term unless specified otherwise in the ECA.]

Project Company shall be responsible for obtaining utilities and services for the Premises unless specified otherwise in the ECA. Project Company shall have the right, subject to Article 8, to install utilities, or make improvements to existing utilities on the Premises, including but without limitation,

the installation of emergency power generators, that may be necessary for the operation of the Project Facilities.

Project Company shall pay to the proper authority when and as the same become due and payable all taxes, assessments, and similar charges that, at any time during the Term of this Lease Agreement may be imposed on the Premises.

#### **ARTICLE 16: LIABILITY ON DESTRUCTION OF PREMISES**

If, during the Term of this Lease Agreement, buildings, improvements, or the building service equipment in and on the Premises at the commencement of the term] or thereafter erected on or in the Premises shall be destroyed or damaged in whole or in part by fire or other cause, Project Company shall give to GPA notice thereof. [Project Company shall, in accordance with its obligations under the ECA and to the extent such costs are covered by insurance policies obtained by the Project Company as required by the ECA, promptly repair, replace, and rebuild the destroyed buildings, improvements, or equipment on the premises, at least to the extent of the value and as nearly as possible to the character thereof at the commencement of the term and thereafter erected on the Premises.] In no event shall GPA be called on to repair, replace, or rebuild any buildings, improvements, or equipment, or to pay any of the expenses thereof, unless such destruction is caused by the negligent act or omission or intentional act of GPA, its agents, or employees.

#### **ARTICLE 17: LIABILITY FOR INJURY OR DAMAGE UNDER LEASE AGREEMENT**

Project Company is and shall be in exclusive control and possession of the Premises as provided in this Lease Agreement, and in no event shall GPA be liable for any injury or damage to any property or to any person happening on or about the Premises, or for any injury or damage to the Premises, nor to any property of Project Company, or of any other person contained in or on the Premises, except to the extent caused by the negligent act or omission or intentional act of GPA, its agents, or employees.

#### **ARTICLE 18: LIABILITY FOR INSURANCE FOR LEASE**

During the Term of this Lease Agreement, Project Company, at the expense of Project Company, shall be responsible to ensure that there is effective insurance covering Project Company's use of the Premises and operations allowed under this Lease Agreement, as provided for and in accordance with Article 14 of the ECA.

#### **ARTICLE 19: ENVIRONMENTAL PROTECTION**

19.1. Compliance with Law. Project Company shall comply, at its sole cost and expense, with the Laws that are applicable to Project Company's activities on the Premises. Project Company shall be financially responsible for environmental contamination of the Premises which occurs during the term of this Lease Agreement, unless otherwise specified in the ECA.

19.2. Permits. Project Company shall be solely responsible for obtaining at its cost and expense any Governmental Authorizations required for its operations under this Lease Agreement as set forth in the ECA.

19.3. Indemnification. Project Company shall, to the maximum limit provided for under the relevant insurance coverage under Article 14 of the ECA, indemnify and hold harmless GPA, and defend GPA against, any damages, costs, expenses, liabilities, fines, or penalties resulting from releases, discharges, emissions, spills, storage, treatment, disposal, or any other acts or omissions by Project Company, its officers, agents, employees, or contractors, or licensees, or the invitees of any of them, giving rise to GPA liability, civil or criminal, or responsibility under environmental Laws, except to the extent caused by the negligent act or omission or intentional act of GPA, its agents, or employees. This paragraph shall survive the termination of this Lease Agreement, and Project Company's obligations



under this paragraph shall apply whenever GPA incurs costs or liabilities for Project Company's actions of the types described in this paragraph.

19.4. Inspection. GPA's rights under this Lease Agreement specifically include the right for GPA or its officials to inspect upon reasonable notice (as set forth in the ECA) the Premises for compliance with environmental, safety, and occupational health Laws, whether or not GPA is responsible for enforcing them. Those inspections may be made without prejudice to the right of duly constituted enforcement officials to make them. GPA will give Project Company twenty- four (24) hours prior notice of its intention to enter the Premises unless it determines the entry is required for imminent safety, environmental, operations, or security purposes. Any claims by Project Company against GPA for damages arising from such entry shall be governed by the Government Claims Act.

19.5. Environmental Liability of Project Company. Notwithstanding any other provision of this Lease Agreement, Project Company does not assume any liability or responsibility for environmental impacts and damage caused by the prior property owner's use of toxic or hazardous wastes, substances, or materials on any portion of the Premises unless such liability or responsibility is provided for in the ECA. Project Company has no obligation under this Lease Agreement to undertake the defense of any claim or action, whether in existence now or brought in the future, solely arising out of the use or release of any toxic or hazardous wastes, substances, or materials on or from any part of the area, including the Premises, which occurred prior to the Commencement Date.

This Paragraph 19.5 shall survive the expiration or termination of this Lease Agreement.

19.6. Response or Remedial Actions. Project Company agrees to comply with the provisions of any health or safety plan in effect or any hazardous substance remediation or response agreement with environmental regulatory authorities during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Project Company. Any claims by Project Company or subcontractor against GPA for damages arising from such actions shall be governed by the Government Claims Act.

19.7. Storage of Hazardous Wastes. Project Company must comply with all applicable Laws relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. Project Company shall not treat, store, transport, or dispose of hazardous waste unless Project Company is in possession of any required permit issued to it under the Resource Conservation and Recovery Act, as amended (RCRA). Project Company shall not treat, store, transport, or dispose of any hazardous waste under, pursuant to, or in reliance upon any permit issued to GPA. Project Company shall be liable for the cost of proper disposal of any hazardous waste generated by its approved subcontractors in the event of failure of the subcontractors to dispose properly of those wastes.

19.8. Environmental Records. Project Company must maintain and make available to GPA all records, inspection logs, and manifests that track the generation, handling, storage, treatment, and disposal of hazardous waste relevant to the Premises, as well as all other environmental records required to be maintained by Project Company in connection with its use and activities on the Premises by applicable Laws. GPA reserves the right to inspect the Premises and Project Company's records for compliance with applicable Laws relating to the generation, handling, storage, treatment, and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by GPA to appropriate regulatory agencies, as required by applicable law. Project Company shall be liable for the payment of any fines and penalties that may accrue as a result of the actions of Project Company.

19.9. Spill Plans. If hazardous waste, fuel, chemicals, or other regulated hazardous substances will be present on the Premises, Project Company shall prepare a completed and approved plan prior to Commercial Operation Date on the Premises for responding to hazardous waste, fuel, and

other chemical spills. The plan shall comply with all applicable requirements and shall be updated from time to time as may be required to comply with changes in Site conditions or applicable Laws, and where required, shall be approved by the Government Authority having regulatory jurisdiction over the plan. The plan shall be independent of GPA spill prevention and response plans. Project Company shall not rely on use of GPA's personnel or equipment in execution of its plan. Project Company shall file a copy of the approved plan and approved amendments thereto with the \_\_\_ within fifteen (15) days of approval. Notwithstanding the foregoing, should GPA provide any personnel or equipment, whether for initial fire response or spill containment or otherwise on request of Project Company, or because Project Company was not, in the sole opinion of GPA, conducting timely cleanup actions as required of Project Company under applicable laws and regulations, Project Company agrees to reimburse GPA for its costs in accordance with all applicable Laws.

19.10. RCRA Compliance. Project Company shall comply with the hazardous waste permit requirements under the RCRA or its state equivalent and any other applicable hazardous waste Laws pertaining to Project Company's use or activities on the Premises. Project Company must provide at its own expense hazardous waste storage facilities that comply with all applicable Laws that it may need for storage. GPA hazardous waste storage facilities will not be available to Project Company. Any violation of the requirements of this Paragraph shall be deemed a material breach of this Lease Agreement.

19.11. Discharge of Fill. Project Company shall not discharge, or allow the discharge of, any dredged or fill material into any waters or wetlands on the Premises except in compliance with the express written consent of the applicable Governmental Authority with jurisdiction over such matters.

19.12. Pesticides. Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act, Project Company shall prepare a plan for storage, mixing, and application of pesticides (Pesticide Management Plan). The Pesticide Management Plan shall be sufficient to meet all applicable Federal, state, and local pesticide requirements. Project Company shall store, mix, and apply all pesticides within the Premises only in strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.

19.13. National Pollutant Discharge Elimination System (NPDES) Permit. Project Company shall comply with all requirements of the Federal Water Pollution Control Act, as amended, the NPDES, and any applicable State or local requirements. If Project Company discharges wastewater to a publicly owned treatment works, Project Company must submit an application for its discharge prior to the start of this Lease Agreement. Project Company shall be responsible for meeting all applicable wastewater discharge permit standards. Project Company shall not discharge wastewater except under the authority of any NPDES permit, pretreatment permit, or any other permit issued for the Project. Project Company shall not install or use any septic tank facility.

19.14. Environmental Access. GPA, U.S. EPA/Guam EPA, and the government of Guam, and their respective officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to Project Company to enter upon the Premises, to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, and testing soil borings, if applicable.

## **ARTICLE 20: INDEMNIFICATION**

GPA shall not be liable for any loss, injury, death, or damage to persons or property that at any time may be suffered or sustained by Project Company or by any person whatsoever may at any time be using or occupying or visiting the Premises or be in, on or about the Premises, whether the loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Project Company or of any occupation, visitor, or user of any portion of the Premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different

kind than the matters of things above set forth. Project Company shall indemnify and hold harmless GPA against any and all claims, liabilities, losses, or damage whatsoever on account of any such loss, injury, death, or damage. Project Company waives all claims against GPA for damages to the buildings and improvements that are now on or hereafter placed or built on the Premises and to the property of Project Company in, on, or about the Premises, and for injuries to persons or property in or about the Premises, from any cause arising at any time. As to Project Company's obligations to GPA under this Article, the two preceding sentences shall not apply to loss, injury, death, or damage arising by reason of the negligent act or omission or misconduct of GPA, its agents, or employees.

#### **ARTICLE 21: PROHIBITION OF VOLUNTARY ASSIGNMENT – EFFECT OF BANKRUPTCY OR INSOLVENCY**

Neither this Lease Agreement nor the Premises nor any interest of GPA under this Lease Agreement in the Premises or in the building of improvements of the Premises shall be subject to involuntary assignment, transfer, sale, or to assignment, transfer or sale by operation of law in any manner whatsoever; any attempt at involuntary assignment, transfer, or sale shall be void and of no effect.

Without limiting the generality of the provisions of the preceding paragraph of this Article 21, Project Company agrees that termination of the ECA shall result in automatic termination of this Lease and all rights of Project Company under this Lease Agreement in and to the Premises and also all rights of any and all persons claiming under Project Company.

#### **ARTICLE 22: PROJECT COMPANY EVENT OF DEFAULT AND REMEDIES ON DEFAULT**

22.1. Project Company Event of Default. GPA may, at its option and without limiting GPA in the exercise of any other right or remedy it may have on account of a default or breach by Project Company, exercise the rights and remedies specified in Article 4.5 of the ECA upon the occurrence of the following (“**Project Company Event of Default**”):

- (a) Project Company defaults in the payment of any money agreed to be paid by Project Company to GPA for rent or for any other purpose under this Lease Agreement, and if such default continues for fifteen (15) Business Days after written notice to Project Company by GPA;
- (b) the Premises are used for an unlawful purpose;
- (c) the Premises are left vacant, unoccupied, or deserted for a period of thirty (30) days or more (unless caused by circumstances beyond the reasonable control of Project Company) and such circumstance continues for thirty (30) days after written notice to Project Company by GPA; and
- (d) Project Company defaults in the performance of its material obligations under this Lease Agreement and such default continues for sixty (60) days after written notice to Project Company by GPA.

GPA shall deliver to the Agent a copy of any notice given under this Article 22.

22.2. Remedies. Upon the termination of the ECA due to a Project Company Event of Default pursuant to Article 4.5 of the ECA, GPA may exercise any of the following rights:

- (a) immediately reenter and, at GPA's election, remove all persons and property from the Premises, store the personal property in a public warehouse or elsewhere at the cost of, for the account of, and at the risk of Project Company. In the event of any such reentry

by GPA, GPA may make any repairs, additions, or improvements in, to or upon the Premises which may be necessary or convenient;

- (b) collect by suit or otherwise each installment of rent or other sum as it becomes due hereunder, or enforce, by suit or otherwise, any other term or provision hereof on the part of Project Company required to be kept or performed, it being specifically agreed that all unpaid installments of rent other sums shall bear interest at the highest legal rate from the due date thereof until paid; or
- (c) terminate this Lease Agreement, in which event Project Company agrees to immediately surrender possession of the Premises and any improvements thereon.

22.3. No Waiver of Default. GPA's failure to take advantage of any default or breach of covenant on the part of the Project Company shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may arise between the Parties in the course of administering this Lease Agreement be construed to waive or to lessen the right of GPA to insist upon the performance by Project Company of any term, covenant, or condition hereof, or to exercise any rights given on account of any such default. A waiver of a particular breach, or default, shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver or any term, covenant, or condition of this Lease Agreement.

22.4. Project Company's Waiver of Statute of Limitations. Project Company does further waive the benefit of any statute of limitations to which it might be entitled.

22.5. Remedies Cumulative. The rights, powers, elections, and remedies of GPA contained in this Lease Agreement shall be construed as cumulative and no one of them is or shall be considered exclusive of the other or exclusive of any rights or remedies allowed by law, and the exercise of one or more rights, powers, elections, or remedies shall not impair GPA's right to exercise any other.

#### **ARTICLE 23: GPA EVENT OF DEFAULT**

The Project Company may, at its option and without limiting Project Company in the exercise of any other right or remedy it may have on account of a default or breach by GPA, exercise the rights and remedies specified in Section 4.5 of the ECA if GPA defaults in the performance of its material obligations under this Lease Agreement and such default continues for sixty (60) days after written notice to GPA by Project Company ("**GPA Event of Default**").

#### **ARTICLE 24: TERMINATION OF LEASE AGREEMENT UPON MUTUAL AGREEMENT**

This Lease Agreement may be terminated upon the written mutual agreement of GPA and Project Company.

#### **ARTICLE 25: SURRENDER OF PREMISES**

Upon the voluntary or other termination of this Lease Agreement or any early termination of the Term from whatever cause, Project Company shall peaceably and quietly surrender and deliver up to GPA the Premises, including all buildings, alterations, rebuilding, replacements, and changes, additions, and improvements, constructed, erected, added, or placed on the Premises by Project Company, with all building service equipment in or appurtenant to the Premises, in as good condition, repair, and as clean as at the commencement of the term, and as any new buildings, structures, replacements, additions, or improvements constructed, erected, added, or placed on the Premises by Project Company were when completed, excepting the existence of the Project Facilities and the Electrical Connection Facilities and taking into account reasonable wear and tear and the intended use of the Premises for electricity generation in accordance with Prudent Utility Practices.

**ARTICLE 26: NOTICES**

All notices and demands that may be required or permitted by either party to the other will be in writing. All notices and demands shall be sent by telefax or mail, postage prepaid, addressed to:

To: *(Post Office Address)*  
GUAM POWER AUTHORITY  
General Manager  
P.O. Box 2977 Hagatña, Guam 96932

Or

*(Physical Address)*  
GUAM POWER AUTHORITY  
  
General Manager  
Gloria B. Nelson Public Service Bldg 688, Route 15-Suite 100  
Mangilao, Guam 96913-6203

To: ***(PROJECT COMPANY Address)***

**ARTICLE 27: PARTIES BOUND**

The covenants, agreements, terms, provisions and conditions contained in this Lease Agreement shall apply to and bind the successors, executors, administrators, and assigns of the Parties.

**ARTICLE 28: RELATIONSHIP OF PARTIES**

Nothing contained in this Lease Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between GPA and Project Company.

**ARTICLE 29: DISPUTE RESOLUTION**

29.1. Disputes. In the event that a dispute arises under this Lease Agreement, the Parties shall attempt in good faith to settle such dispute by mutual discussions within thirty (30) days after the date that the disputing Party gives notice of the dispute to the other Party which may include referring the dispute to the Joint Coordinating Committee pursuant to the ECA for a specified time period, subject to mutual agreement of the Parties.

In the event that the Parties do not reach agreement on the dispute within forty-five (45) days after the date that either Party gives notice of the dispute pursuant to the preceding paragraph, or such longer period as they may agree in writing, then either Party may commence resolution of the dispute in accordance with Article 29.3 or, subject to mutual agreement of the Parties in writing, submit the dispute to mediation pursuant to Article 29.2.

29.2. Mediation

- (a) In the event that the Parties mutually agree pursuant to pursuant to Article 29.1 to submit a dispute to mediation, then such dispute shall be submitted to mediation in accordance with the rules of the American Arbitration Association, subject to the conditions and limitations of this paragraph. This agreement to mediate is authorized under 5 GCA §5427 (b) and 2 GAR §9103 (a)(1). The Parties shall each pay one-half of the mediation expenses.

- (b) In the event the dispute is not resolved through mediation within ninety (90) days from the date on which either party gave notice of the dispute pursuant to Article 29.1, either Party may commence resolution of the dispute in accordance with Article 29.3.
- (c) Any mediation shall be conducted in English.
- (d) The place of mediation shall be Guam.

29.3. Arbitration

- (a) Any Dispute arising out of or in connection with this Agreement and not resolved following the procedures described in Article 29.1 and Article 29.2 shall be finally settled by arbitration under the Rules of Arbitration of the American Arbitration Association (“**AAA Rules**”).
- (b) Any arbitration shall be conducted in English, and unless otherwise agreed by the Parties, the number of arbitrators shall be three (3). The arbitrators shall be appointed in accordance with the AAA Rules
- (c) The place of arbitration shall be Los Angeles, CA, USA.
- (d) The arbitration tribunal may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to the ECA if the subject matter of the disputes arises out of or relates to essentially the same facts or transactions. Such consolidated arbitration shall be determined by the arbitration tribunal appointed for the arbitration proceeding that was commenced first in time.

29.4. Performance of Obligations. Unless otherwise provided in this Lease Agreement, during the conduct of Dispute resolution the Parties shall continue to perform their respective obligations under this Lease Agreement.

29.5. Consent to Jurisdiction. Each Party hereby consents to the jurisdiction of the District Courts of Guam for any action filed by the other Party pursuant to this Lease Agreement.

29.6. Waiver of Jury Trial. Each Party waives any right to trial by jury of any claim or action under or in connection with this Agreement, regardless of the legal theory. This waiver of right to trial by jury is given knowingly and voluntarily by each Party hereto.

**ARTICLE 30: GOVERNING LAW**

This Lease Agreement will be governed by and construed in accordance with the laws of the Territory Guam and the applicable laws of the United States of America.

**ARTICLE 31: NO WAIVER**

The failure of either party to this Lease Agreement to insist on the performance of any of its terms and conditions, or the waiver of any breach of any of the terms and conditions of this Lease Agreement, shall not be construed as thereafter waiving any such terms and conditions, but they shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**ARTICLE 32: ATTORNEYS’ FEE**

If either party commences an action against the other in connection with this Lease Agreement, the prevailing party will be entitled to recover costs of suit and reasonable attorneys’ fees.

**ARTICLE 33: EFFECT OF PARTIAL INVALIDITY**

The invalidity of any part of this Lease Agreement will not and shall not be deemed to affect the validity of any other part. In the event that any provision of this Lease Agreement is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both Parties subsequent to the expungement of the invalid provision.

**ARTICLE 34: ENTIRE AGREEMENT**

This Lease Agreement, the ECA, the Lenders Direct Agreement [insert other agreements as applicable] set forth all the agreements between GPA and Project Company concerning the Premises, and there are no agreements, either oral or written, other than as set forth in the aforementioned agreements.

**ARTICLE 35: MODIFICATION OF LEASE AGREEMENT**

Any modification of this Lease Agreement or additional obligation assumed by either party in connection with this Lease Agreement shall be binding only if evidenced by a document in writing signed by each party or an authorized representative of each party.

**ARTICLE 36: COUNTERPARTS**

This Lease Agreement may be executed in any number of counterparts, each which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

**ARTICLE 37: FURTHER ASSURANCES**

The Parties agree to execute whatever papers and documents and assurances may be necessary to effectuate the terms of this Lease Agreement and take such further action required by law or as GPA or Project Company may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Lease Agreement and to establish and protect the rights and remedies created in favor of GPA or Project Company.

**ARTICLE 38: PARAGRAPH HEADINGS**

The titles to the paragraphs of this Lease Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simply, or aid in the interpretation of the provisions of this Lease Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto have caused this Lease Agreement to be executed on the dates provided below to be effective as of the day and year first above written.

**WITNESS:**

**GUAM POWER AUTHORITY**

**By: D. GRAHAM BOTHA**  
GPA LEGAL COUNSEL  
GUAM POWER AUTHORITY

**By: JOHN M. BENAVENTE, P.E.**  
GENERAL MANAGER  
GUAM POWER AUTHORITY

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

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

**APPROVED BY THE CONSOLIDATED COMMISSION ON UTILITIES:**

By: \_\_\_\_\_  
JOSEPH T. DUENAS  
CHAIRMAN

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

CONSOLIDATED COMMISSION ON UTILITIES

**WITNESS:**

**Project Company**

By: \_\_\_\_\_  
**WITNESS NAME**  
Title  
Division  
Company

By: \_\_\_\_\_  
**LESSEE SIGNATORY**  
Title  
Division  
Company

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

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



# **Dos Amantes Planning Area**