



1 **MARIANNE WOLOSCHUK**  
2 Legal Counsel  
3 Guam Power Authority  
4 Gloria B. Nelson Public Building  
5 688 Route 15  
6 Mangilao, Guam 96913  
7 Telephone: (671) 648-3203  
8 Fax No. (671) 648-3290  
9 Email: [mwoloschuk@gpagwa.com](mailto:mwoloschuk@gpagwa.com)

10 *Attorney for Guam Power Authority*

11 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

12 **IN THE MATTER OF:**

**GPA DOCKET NO. 24-25**

13 **GUAM POWER AUTHORITY'S**  
14 **PHASE IV RENEWABLE ENERGY**  
15 **ACQUISITION AWARD**

**SUPPLEMENT TO GPA PETITION TO**  
**APPROVE PHASE IV RENEWABLE**  
**ENERGY ACQUISITION AWARD TO**  
**KEPCO-EWP-SAMSUNG C&T**  
**CONSORTIUM**

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18  
19 In compliance with the report of the Chief Administrative Law Judge issued on October 29,  
20 2024, the Guam Power Authority hereby supplements its Petition seeking approval for the  
21 Phase IV Renewable Acquisition award to KEPCO-EWP-Samsung C&T Consortium by  
22 submitting the final contract. *See Attached Supplement.* Due to the need for review and approval  
23 by the Attorney General and uncertainty as to how long that might take, certain provisions, such  
24 as the Effective Date and the Commercial Operation Date, will be filled in when the parties are  
25 closer to executing the contract.

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27  
28 Respectfully submitted this 4th day of November, 2024.

29  
30 *Attorney for Guam Power Authority*

31 By: *M. Woloschuk*  
32 Marianne Woloschuk  
GPA Legal Counsel

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**RENEWABLE ENERGY  
PURCHASE AGREEMENT**

**BETWEEN  
GUAM POWER AUTHORITY  
AND  
KEPCO-EWP-SCT YONA SOLAR, LLC**

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**PURCHASE AGREEMENT  
BETWEEN  
GUAM POWER AUTHORITY  
AND  
KEPCO-EWP-SCT YONA SOLAR, LLC**

THIS RENEWABLE ENERGY PURCHASE AGREEMENT (the "Agreement"), effective as of last date set forth on the signature page hereto (the "Effective Date"), is entered into by and between Guam Power Authority, ("GPA" or "Buyer") and KEPCO-EWP-SCT Yona Solar, LLC, ("Seller"). The purpose of this Agreement is to establish the terms and conditions under which Seller shall sell and GPA shall purchase Renewable Energy and associated Renewable Energy Credits ("RECs") and Environmental Attributes, as defined herein. In this Agreement, Seller and GPA may be individually referred to as a "Party" or collectively as the "Parties."

**Recitals**

WHEREAS, Seller desires to sell to GPA at the Delivery Point all of the Renewable Energy and associated RECs and Environmental Attributes from the Facility and GPA desires to buy the same from the Seller at the Delivery Point.

Therefore, for good and valuable consideration, including, without limitation, the covenants and agreements of the Parties contained in this Agreement, the receipt and sufficiency of which consideration is acknowledged, the Parties agree as follows:

**ARTICLE ONE: DEFINITIONS**

The following definitions apply to this Agreement:

1.1 "Actual Renewable Energy" means the actual energy output of the Facility (expressed in MWhs), measured at the Delivery Point, over any Production Measurement Period. Actual Renewable Energy shall be measured by the Seller Metering Equipment and adjusted as applicable in accordance with Section 7.4.

1.2 "Affiliate" means, with respect to any party, any other party (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 "Agreement" has the meaning set forth in the initial paragraph above.

1.4 "Appraisal Price" means the average of three (3) appraisals of the market value of the Facility at the end of the Delivery Period, delivered by three (3) independent appraisers qualified by experience and expertise to determine the arms' length market value of the Facility and assuming that energy and Environmental Attributes produced by the Facility will be sold at fair market value prices over the remaining economic useful life of the Facility. If the Parties do not agree on the independent appraisers, then they shall be determined by arbitration in accordance with Section 12.9.

1.5 "Approval" or "Approvals" means all permits, licenses, consents, authorizations, approvals, no objection certificates, visas, registrations, grants, acknowledgements or agreements required under the laws to be obtained from any Governmental Authority for the Project, including but not limited to the electricity license, main permit from Guam Land Use Commission;

1.6 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, including but not limited to, under Chapter 11 or Chapter 9 of the United States Bankruptcy Code and Title III of Puerto Rico Oversight, Management and Economic Stability Act, or has any such valid petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.7 "Bid Security" or "Bid Bond" means \$150,000.00, which is the amount of the security provided by Seller in connection with its initial bid to GPA for the Project prior to entering into the PPA.

1.8 "Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday or an official Guam holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the Notice or payment or delivery is to be received.

1.9 "Buyer" has the meaning set forth in the initial paragraph above.

1.10 "Buyout Payment" means, with respect to Seller's election not to re-build the Facility pursuant to Section 12.2, an amount equal to: Minimum Production x the number of Contract Years (or portion thereof) remaining in the Delivery Period x the Incremental Price,

1.11 "Change Event" has the meaning set forth in Section 4.16(c).

1.12 "Claiming Party" has the meaning set forth in Section 4.11.

1.13 "Claims" means all claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise.

1.14 "COD Extension" has the meaning set forth in Section 4.2(a).

1.15 "COD Extension Payment" has the meaning set forth in Section 4.2(a).

1.16 "Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Good Utility Practices, including, without limitation, electric system reliability and stability or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. "Commercially Reasonable" or "Commercially Reasonable Efforts" shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

1.17 "Commercial Operation" has the meaning set forth in Section 4.1.

1.18 "Commercial Operation Date" or "COD" means the date that Commercial Operation of the Project has been achieved in accordance with Section 4.1.

1.19 "Confidential Information" means all information, whether written or oral, that is disclosed or otherwise available in connection with this Agreement or the performance by either Party of any of its duties hereunder, except any information which: (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement); (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Confidential Information, provided that such source is not bound by a confidentiality agreement that protected the Confidential Information and the Party receiving such Confidential Information is aware of such confidentiality agreement; or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Agreement.

1.20 "Contract Price" means the price in U.S. Dollars (unless otherwise provided for) rounded to the nearest \$0.01, to be paid by GPA to Seller for the purchase of the Renewable Energy, as described in Appendix A.

1.21 "Contract Year" means the annual period, beginning on the Commercial Operation Date, and each annual period thereafter commencing on each anniversary of the Commercial Operation Date.

1.22 "Conventional Energy Resource" is an energy resource that is non-renewable in nature, such as natural gas, coal, oil, and uranium, or electricity that is produced with energy resources that are not Renewable Energy Resources.

1.23 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties.

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

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

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

1.27 "Delivery Period" means the period of delivery under this Agreement, commencing on the Commercial Operation Date and continuing for a term of twenty five (25) Contract Years or up to 30 Contract Years if contract extensions are applied

1.28 "Delivery Point" means the point at which the Renewable Energy will be delivered and received, as specified in Section 2.1 herein, or such other delivery point as may be agreed to by the Parties.

1.29 "Development Security" means the security required to be posted by Seller during construction of the Facility prior to Commercial Operation Date. Pursuant to Section 9.1. The Development Security shall be 50% of the total projected payment for the 1<sup>st</sup> Contract Year based on the Seller's 1<sup>st</sup> Contract Year Contract Price and the Guaranteed Output for the first Contract Year. The amount of the Development Security is set out in Section 2.1.

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

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

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

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

1.34 "Energy Storage System" shall mean the energy storage system described in Appendix C that is integrated with the Project as part of the Facility.

1.35 “Environmental Attributes” means environmental characteristics that are attributable to Renewable Energy or the Project, including credits; credits towards achieving local, national or international renewable portfolio standards; green tags; Renewable Energy Credits; greenhouse gas or emissions reductions, credits, offsets, allowances or benefits; actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, PM<sub>10</sub>, mercury, and other emissions avoided; and any and all other green energy or other environmental benefits associated with the generation of Renewable Energy (regardless of how any present or future law or regulation attributes or allocates such characteristics). Such Environmental Attributes shall be expressed in kWh or, as applicable in the case of emissions credits, in tonne equivalent or other allowance measurement. Environmental Attributes do not include Tax Benefits, or any energy, capacity, reliability, or other power attributes used by Seller to provide electricity services.

1.36 “EPC Contractor” means the contractor(s) under the engineering, procurement and construction contract for the Project.

1.37 “Event of Default” has the meaning set forth in Section 6.1.

1.38 “Excused Hours” means the hours in the applicable Production Measurement Period in which (i) Seller or Buyer has declared Force Majeure, (ii) GPA has initiated a Dispatch Down, or (iii) Seller’s delivery to GPA of Renewable Energy is adversely affected as a result of failure by GPA to perform its obligations under this Agreement or the Interconnection Agreement, provided, however, if the Project is not able to generate Renewable Energy during any hour of a Production Measurement Period due solely to Seller’s failure to establish and maintain the “Voltage and Frequency Ride-Through Settings” set forth in Appendix C (“Voltage and Frequency Ride-Through Settings”), such hours shall not constitute Excused Hours.

1.39 “Facility” means all of the following: the Project, as defined in Section 2.1 of this Agreement, the purpose of which is to produce Renewable Energy including Seller’s Interconnection Facilities and Energy Storage System and all equipment and other tangible assets, land rights and contract rights owned by Seller and reasonably necessary for the construction, operation, and maintenance of the Project.

1.40 “Facility Capacity” has the meaning set forth in Section 2.1.

1.41 “Facility Test” has the meaning set forth in Section 4.1 (e).

1.42 “Facility Debt” means the obligations of Seller or its Affiliates to any direct or indirect Facility lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing. Facility Debt does not include trade debt or obligations incurred in the ordinary course of business.

1.43 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.44 “Financing Arrangement Deadline” has the meaning set forth in Section 4.3.

1.45 “Financing Arrangement Provision Date” has the meaning set forth in Section 4.3.

1.46 “Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing for the Facility (including any portfolio debt financing of which the Facility is included), including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller and/or its Affiliates in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

1.47 “Forced Outage” means the shutdown or unavailability of the Facility, or a portion thereof other than as a Planned Outage, for reasons including, but not limited to, unanticipated equipment breakdown, human error, or Emergency conditions. A Forced Outage shall not include any Outage that may be deferred consistent with Good Utility Practices and without causing safety risk damage to equipment or additional costs.



1.48 "Forced Outage Notice" has the meaning set forth in Section 4.12(b).

1.49 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Transaction, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. So long as the requirements of the preceding sentence are met, a "Force Majeure" event may include, but shall not be limited to, flood, drought, military ordinances or archaeological discoveries at the Project site, change in applicable law or interpretation or application thereof, failure or delay by any Governmental Authority in issuing any required permit, earthquake, storm, fire, lightning, epidemic, war, terrorism, riot, opposition or interference from neighboring residents or communities. Notwithstanding the foregoing, Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Renewable Energy purchased hereunder; (iii) the loss or failure of Seller's supply, including materials or equipment, unless such loss or failure is caused by a Force Majeure event; (iv) the delay in or inability of Seller to obtain financing or economic hardship of any kind unless such delay or inability is caused by a Force Majeure Event; or (v) Seller's ability to sell the Renewable Energy at a price greater than the Contract Price or Buyer's ability to purchase the Renewable Energy at a price less than the Contract Price; or (vi) strike or other labor dispute (other than strikes at a national, Guam or regional level). Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a transmission provider unless such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the transmission provider's tariff.

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

1.51 "Good Utility Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with good business practices, economy, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods, or acts.

1.52 "Governmental Authority" means any federal, territorial or local government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

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

1.54 "GPA" has the meaning set forth in the initial paragraph above.

1.55 "GPA Delay" means any excessive and unreasonable delay by GPA in performing deliberate and required obligations under this Agreement or under the Interconnection Agreement which if not exclusively for GPA's delay results in a delay to Seller achieving COD.

1.56 "Guaranteed Output" is equal to the Minimum Production as set forth in the third column of the table in Appendix A.

1.57 "Incremental Price" means, at the time of its calculation, the LEAC Rate minus the Contract Price, provided, however, if the LEAC Rate is less than the Contract Price then the Incremental Price shall be deemed to be zero.

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

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

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

1.61 "ITC" means the federal income tax credit available under Sections 38(b)(1), 46 and 48(a) of the Internal Revenue Code, and any federal grants, credits or other incentives issues or arising in addition to or in lieu thereof.

1.62 "kWh" means kilowatt hour.

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

1.64 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's, in substantially the form set forth in Appendix F hereto; provided, however that such form may be modified by the issuing bank as long as such modifications are acceptable to the beneficiary in its reasonable discretion. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.65 "Make-up Renewable Energy" for Contract years where Seller has not met the Minimum Production but has produced 90% or more of the Minimum Production, means the difference between the Minimum Production and the Actual Production. This number shall be at most 10% of the Minimum Production. For Contract years where Seller has produced less than 90% of the Minimum Production, Make-up Renewable Energy means 10% of the Minimum Production.

1.66 "Merger Event" means, with respect to a Party, that such Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder and such benefits are not replaced with equivalent credit support or (iii) the resulting entity's Credit Rating upon the occurrence of the Merger Event is lower than that of such Party immediately prior to such action and is not supplemented by credit support such that the resulting entity's credit is equal to or better than the predecessor entity.

1.67 "Minimum Production" has the meaning set forth in Section 4.8.

1.68 "Month" means a calendar Month. The term "Monthly" shall have a meaning correlative to a Month.

1.69 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.70 "MW" or "MWh" means megawatt or megawatt hour, in each case rounded to the nearest whole

MW or MWh.

- 1.71 "NAR" means the North American Renewables Registry.
- 1.72 "NAR Operating Procedures" means any and all guidelines, procedures, requirements and obligations established by the NAR, including the terms of use, operating procedures, and fee schedules, as such may be amended from time to time.
- 1.73 "Non-Defaulting Party" has the meaning set forth in Section 6.
- 1.74 "Notice" has the meaning set forth in Section 12.7.
- 1.75 "Notice to Proceed" means the written notice provided by Seller to the EPC Contractor to begin full (and not limited) procurement and construction activity at the Project site.
- 1.76 "Outage" means the period during which the Facility or a portion thereof is out of service.
- 1.77 "Outside Commercial Operation Date" has the meaning set forth in Section 4.2(b).
- 1.78 "Party" and "Parties" has the meaning set forth in the initial paragraph above.
- 1.79 "Planned Outage" means any Outage that is not a Forced Outage, and refers to the shutdown or unavailability of the Facility or a portion thereof for inspection or maintenance in accordance with an advance schedule.
- 1.80 "Production Measurement Period" has the meaning set forth in Section 4.8.
- 1.81 "Project" has the meaning set forth in Section 2.1.
- 1.82 "QRE" means the Qualified Reporting Entity as such term is defined in the NAR Operating Procedures.
- 1.83 "Quantity" means the actual quantity of Renewable Energy sold by Seller and purchased by and delivered to GPA pursuant to this Agreement. The Quantity shall be measured based on the metered data from the Seller Metering Equipment at the Delivery Point.
- 1.84 "Renewable Energy" means energy derived from a Renewable Energy Resource.
- 1.85 "Renewable Energy Credit" ("REC") means the unit created to track kWh derived from an Eligible Renewable Energy Resources or kWh equivalent of Conventional Energy Resources displaced by Renewable Energy Resources.
- 1.86 "Renewable Energy Resource" means an energy resource that is replaced rapidly by a natural, ongoing process and that is not nuclear or fossil fuel.
- 1.87 "Replacement Price" means the price at which GPA, acting in a commercially reasonable manner, purchases electricity in place of Renewable Energy.
- 1.88 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.89 "SCADA" means "supervisory control and data acquisition" and shall refer to that category of software application program that can be used to gather data from the Facility remotely in real time in order to monitor Facility equipment and conditions.
- 1.90 "Schedule," "Scheduled" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, of notifying, requesting and confirming to each other the quantity and type of Renewable Energy to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.
- 1.91 "Scheduled Commercial Operation Date" has the meaning set forth in Section 4.2(a).
- 1.92 "Seller" has the meaning set forth in the initial paragraph above.
- 1.93 "Seller Failure" has the meaning set forth in Section 5.1.

- 1.94 "Seller Failure Damages" has the meaning set forth in Section 5.1.
- 1.95 "Seller's Interconnection Facilities" means Seller's equipment as specified in the Interconnection Agreement.
- 1.96 "Seller Metering Equipment" means all metering equipment and data processing equipment used to measure the Quantity delivered to the Delivery Point.
- 1.97 "Shortfall Damages" has the meaning set forth in Section 4.8.
- 1.98 "Study" means the Renewable IFB System Impact Study (S&C Electric Company, October 28, 2024).
- 1.99 "Tax Benefits" means Renewable Energy related tax credits or other benefits, including those established under Section 45 and Section 48 of the Internal Revenue Code, as amended, or any similar or successor provision of the Internal Revenue Code.
- 1.100 "Term" has the meaning set forth in Section 12.1.
- 1.101 "Termination Damages" has the meaning set forth in Section 4.4.
- 1.102 "Test Energy" means non-firm Renewable Energy generated by the Facility prior to the Commercial Operation Date, subject to immediate interruption, fluctuations or reduction/increase with no prior Notice, due to unit performance.
- 1.103 "Transaction" means the transaction relating to the purchase or sale of Renewable Energy and Environmental Attributes as contemplated in this Agreement.
- 1.104 "Unit Contingent" means that the Renewable Energy is intended to be supplied from the Facility as it is produced.
- 1.105 "Weather Hours" means the total hours in any Production Measurement Period, as applicable, in which the Facility is derated as a result of cumulative weather conditions which are outside historical average conditions for any applicable Month during the Production Measurement Period in which the deration occurs, calculated in accordance with Appendix K.

**ARTICLE TWO: COMMERCIAL TERMS**

2.1 Commercial Terms.

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

<b>Buyer:</b> GPA	<b>Seller:</b> KEPCO-EWP-SCT Yona Solar, LLC
<b>Project:</b> KEPCO-EWP-SCT Yona Solar Project	
<b>Delivery Point:</b> Seller's meter located on the Project site at the interconnection with the transmission line extending from the Project site to GPA's Piti substation	
<b>Guaranteed Output (MWhs):</b>  As set forth in the third column of Appendix A (also known as Minimum Production)	<b>Estimated Annual Production (Minimum Production (MWhs)):</b>  As set forth in the third column of Appendix A
	<b>Facility Capacity (MWs):</b> 132 MW
<b>Delivery Period:</b> 25 Contract Years with Option of a Five-Year Extension	<b>Contract Price (\$/MWh):</b> See Appendix A
<b>Renewable Energy Type:</b> Unit Contingent (solar and ESS) and associated RECs	<b>Development Security:</b> \$ 20,934,562
<b>Day(s) of week:</b> Monday through Sunday, including Holidays	<b>Hours:</b> Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Chamorro Standard Time (CHST), Guam time
<b>Commercial Operation Date:</b>	
<p><b>Test Energy:</b>            Seller agrees to sell and Buyer agrees to purchase all Test Energy from the Facility. Test Energy Period shall be up to 6 months from the commencement date identified in Seller's advance notice. The price of such Test Energy for the first month shall be the higher of the Year 1 Contract Price set out in Appendix A and current LEAC Rate and then shall be the Year 1 Contract Price set out in Appendix A for the second month up to sixth month. Test Energy shall be delivered in accordance with the Scheduling provisions contained herein. Both Parties agree that Seller will use Commercially Reasonable Efforts to pre-schedule the Test Energy, but Buyer shall nonetheless be obligated to accept all Test Energy up to 60 MW per hour of Test Energy. Seller shall provide to Buyer all RECs and other Environmental Attributes associated with the Test Energy produced by the Facility in accordance with Section 4.16.</p>	

## **ARTICLE THREE: REPRESENTATIONS AND WARRANTIES**

### **3.1 Mutual Representations and Warranties.**

On the Effective Date of this Agreement, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) It has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement (other than permits or regulatory authorizations to be obtained by Seller for the construction, operation or maintenance of the Facility, which Seller reasonably anticipates it will be able to obtain in due course);
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and the Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses.
- (d) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (e) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (f) No Event of Default or potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and
- (g) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

### **3.2 Seller Representations and Warranties.**

Seller affirmatively represents and warrants to GPA that:

- (a) On the Effective Date of this Agreement, or in due course as required in accordance with the Scheduled Commercial Operation Date, Seller has (or reasonably expects to have in due course), good defensible title, or valid and effective leasehold rights in the case of leased property, to the Facility, free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens, charges, claims, pledges, security, interests, equities and encumbrances relating to Facility Debt as provided for herein, or that are permitted by the Facility Debt, or that in the aggregate do not materially detract from or interfere with the ability of Seller to deliver the Quantity of the Renewable Energy;
- (b) All acts necessary to the valid execution, delivery and performance of this Agreement by Seller have or will be taken and performed as required under Seller's ordinances, operating agreement, or other regulations including, but not limited to (i) the valid authority of the person executing this Agreement to bind Seller and (ii) the Term of this

Agreement does not extend beyond any limitation applicable to Seller imposed by relevant governing documents and applicable law; and

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

**3.3 GPA Representations and Warranties.**

GPA represents and warrants that the board of directors of GPA and the Consolidated Commission on Utilities has made all certifications required by the Guam Public Utilities Commission and the Guam legislature in order for GPA to execute this Agreement.

## ARTICLE FOUR: PERFORMANCE REQUIREMENTS & APPROVALS

### 4.1 Commercial Operation.

Seller shall achieve Commercial Operation of the Project no later than the Scheduled Commercial Operation Date, except to the extent such date is extended pursuant to Section 4.2, in which case Commercial Operation shall occur on or prior to the Outside Commercial Operation Date. Commercial Operation shall be achieved as of the date on which Seller certifies to Buyer in writing that each of the following conditions precedent has been satisfied or waived in writing by the Parties, as applicable ("Commercial Operation"):

- (a) Seller shall have obtained all governmental and regulatory authorizations, including any applicable permits, required for the construction, ownership, operation and maintenance of the Project and for the sale of the Renewable Energy therefrom (except for any permits or authorizations typically obtained after Commercial Operation and that Seller reasonably believes will be obtained in due course);
- (b) Seller and Buyer shall have entered into the Interconnection Agreement;
- (c) Seller shall have established SCADA information and real time data feed to enable GPA to view parameters or data points that relate to Facility availability, Renewable Energy data and other actual resource data for the Facility;
- (d) Seller shall be capable of delivering the Renewable Energy from the Facility to GPA at the Delivery Point.
- (e) Seller shall perform at its cost a capacity test in accordance with the protocol outlined in Appendix I to determine the capacity of the Facility ("Facility Test"). GPA shall receive the entire Renewable Energy from the Facility during such test as contemplated in Section 2.1. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

GPA shall use all available Commercially Reasonable Efforts to assist Seller in achieving the Scheduled Commercial Operation Date. Seller shall present to GPA a certificate executed by its duly executed officer, and by an Independent Engineer as to items (d) and (e), verifying that each of the foregoing conditions has been satisfied or waived in writing by the Parties and Commercial Operation shall be deemed to have occurred upon the delivery of such certificate to GPA unless GPA objects to such certificate on the grounds that the condition has not been satisfied within ten (10) Business Days of delivery thereof and such objections are either agreed by Seller or resolved pursuant to Section 12.9 hereof. Upon any acceptance or deemed acceptance of Seller's certificate by GPA, all conditions, set forth above shall no longer be a condition precedent to Commercial Operation of the Project. If the Commercial Operation Date does not occur on or before the Outside Commercial Operation Date, as such date may be extended in accordance with Section 4.2 herein; either Party shall have the right to terminate the Agreement upon written Notice to the other Party. In the event of such termination by either Party, GPA shall be entitled to Termination Damages set forth in Section 4.4; provided, however, that in accordance with Section 4.2(c), GPA shall not be entitled to such Termination Damages if the Outside Commercial Operation Date is not achieved due to a Force Majeure event or a GPA Delay.

### 4.2 Extension of Commercial Operation Date.

- (a) Planned Extension. The Parties agree that the Commercial Operation Date is expected to occur on or before [REDACTED] ("Scheduled Commercial Operation Date"). Seller may elect to extend the Commercial Operation Date beyond the Scheduled Commercial Operation Date (the "COD Extension") by paying GPA for such extension (the "COD Extension Payment"). The COD Extension Payment shall be in the amount of fifty percent (50%) of the daily Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year) per day for each day (or portion thereof) after but not including the date of the COD Extension until, but not including, the date on



which the Project actually achieves Commercial Operation. Shortfall Damages for purposes of calculating COD Extension Payment shall follow the formula in Appendix L hereto, based on ninety percent (90%) of the Minimum Production for the first Contract Year and the "Incremental Price" shall mean \$25/MWh (e.g., 50% x (210,523.50 MWh x \$25/MWh), pro-rated for each month of extension). To extend the Commercial Operation Date, Seller must, as early as reasonably possible, but in no event later than fourteen (14) days prior to the first day of the proposed extension, provide GPA with Notice of its election to extend the Commercial Operation Date along with an estimate of the duration of the extension. The COD Extension Payment is in addition to and not to be considered part of the Development Security, and shall be paid to GPA in arrears on a monthly basis after delivery of the Notice hereunder. Seller's request to extend the Commercial Operation Date shall not be valid unless proper Notice and payment are timely received by GPA. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein, and GPA shall not have the right to terminate the Agreement or to receive Termination Damages with respect to such extension so long as Seller has provided the Notice, estimation and payment as provided in this Section 4.2(a). Seller may further extend the Commercial Operation Date beyond the original COD Extension, subject to the foregoing Notice, estimation and payment terms applicable to the original COD Extension.

Seller shall be entitled to a prompt refund, without interest, of any portion of the COD Extension Payment held by GPA which exceeds the amount required to cover the number of days by which the Commercial Operation Date was actually extended. In no event may Seller extend the Commercial Operation Date by more than six (6) months through the payment of the COD Extension Payment, except as provided in Section 4.2(b). In the event that the Project does not achieve Commercial Operation on or before the expiration of any COD Extension period as provided herein, either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights pursuant to Sections 4.2(b) or (c) below. In the event of such termination by either Party in accordance with this provision, GPA shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

- (b) Unplanned Extension/Additional Planned Extension. In the event that (i) the Project does not achieve Commercial Operation by the Scheduled Commercial Operation Date and Seller fails to provide sufficient Notice and/or payment in order to extend the Commercial Operation Date as provided in Section 4.2(a), or (ii) the Commercial Operation Date shall not have occurred within the six (6) months extension period provided under Section 4.2(a), then Seller may still extend the Commercial Operation Date by paying GPA damages ("Daily Delay Liquidated Damages"). The Daily Delay Liquidated Damages shall be in the amount of one hundred percent (100%) of the Shortfall Damages (based on ninety percent (90%) of the Minimum Production for the first Contract Year (Shortfall Damages for purposes of calculating Daily Delay Liquidated Damages shall follow the formula in Appendix L hereto, based on ninety percent (90%) of the Minimum Production for the first Contract Year and the "Incremental Price" shall mean \$25/MWh (e.g., 210,523.50 MWh x

\$25/MWh, pro-rated for each month of extension) per day for each day (or portion thereof) after but not including the earlier of the dates set forth in sub-clauses (i) or (ii) above, or until, but not including, the date on which the Project actually achieves Commercial Operation, and shall be payable on a monthly basis in arrears within ten (10) Business Days following receipt of an invoice from GPA for any such Daily Delay Liquidated Damages. No Event of Default shall be deemed to have occurred with respect to Seller's extension as provided herein and GPA shall not have the right to terminate the Agreement with respect to such extension or to receive Termination Damages so long as Seller has extended the Commercial Operation Date and pays the Daily Delay Liquidated Damages as provided in this Section 4.2(b).

In the event that the Project does not achieve Commercial Operation on or before twelve (12) months from the Scheduled Commercial Operation Date (as extended pursuant to this Agreement, the "Outside Commercial Operation Date"), then either Party shall have the right to terminate the Agreement upon written Notice to the other, subject to any further extension rights pursuant to Section 4.2(c) below. In the event of such termination by either Party in accordance with this provision, GPA shall be entitled to Termination Damages as set forth in Section 4.4 as its sole and exclusive remedy, subject to Section 4.2(c).

- (c) Force Majeure and GPA Delay Extension. The Scheduled Commercial Operation Date and the Outside Commercial Operation Date shall also be extended, without payment or other penalty being accrued to GPA, on a day-for-day basis for each day of delay caused by reason of Force Majeure (a "Force Majeure Extension") or by reason of GPA Delay. Any Force Majeure Extension or GPA Delay shall also extend the period of any planned or unplanned extensions pursuant to Sections 4.2(a) or (b) on a day-for-day basis for each day during the Force Majeure Extension or GPA Delay, and Seller shall not be required to pay any COD Extension Payments or Daily Delay Liquidated Damages, as applicable, for any days during the Force Majeure Extension or GPA Delay. Notwithstanding any other provision in this Agreement, if, due solely to a Force Majeure event, the Project does not achieve Commercial Operation on or before the Outside Commercial Operation Date, then the Parties by mutual agreement may terminate this Agreement without penalty or further obligation to either Party, and after one hundred and eighty (180) days following the Outside Commercial Operation Date, either Party may unilaterally terminate this Agreement without penalty or further obligation to either Party. For the sake of clarity, in the event of any such termination, GPA shall not be entitled to Termination Damages.

In the case of any delays caused by GPA Delay in excess of fifteen (15) days beyond a reasonable time to cure, and as noticed to GPA in writing, Seller shall be entitled to all remedies available under Section 6.3, as well as reimbursement for Seller's costs and expenses including but not limited to (i) the cost of network upgrades and interconnection costs incurred by Seller, (ii) costs incurred under construction, equipment and other contracts entered into in connection with the development, construction, operation and maintenance of the Facility, (iii) any tax equity investment and financing costs and expenses (including but not limited to principal, interest, fees and any interest rate hedge termination payments) incurred by the Seller and/or its affiliates in connection with the development, construction, operation and maintenance of the Facility and (iv) Seller's costs and expenses in connection with the Facility and its performance under this Agreement. Such Seller's costs and expenses shall be payable by GPA within 30 days of the receipt of an invoice from the Seller. No event of default with regard to a GPA Delay shall be deemed to have occurred with respect to GPA, unless Seller has notified GPA of such occurrence in writing and GPA

has been provided with a reasonable period of time to cure such delay. Seller shall not have the right to terminate the agreement with respect to any GPA Delay any earlier than 15 days after the date set for GPA's reasonable time to cure. In the event of termination of this Agreement by Seller due to GPA Delay, GPA shall not be entitled to Termination Damages.

**4.3 Financing Arrangement Deadline.**

Seller shall make Commercially Reasonable Efforts to (i) obtain confirmation from the applicable Governmental Authority on whether or not the Project, Seller or its owners, as a U.S partnership for tax purposes, is eligible to receive ITC, (ii) secure a third party financing sufficient for the successful completion of the Project as soon as practicable, and (iii) procure a binding credit agreement for such financing be executed no later than one (1) year after the Effective Date (the "Financing Arrangement Deadline") unless extended by written agreement of the Parties, or in case Force Majeure or GPA Delay occurs. Seller shall provide GPA with a copy of the executed credit agreement within three (3) Business Days after the execution of such credit agreement (the date on which GPA receives such copy is hereinafter referred to as the "Financing Arrangement Provision Date").

In the event that Seller fails to procure the execution of a binding credit agreement by the Financing Arrangement Deadline, GPA may terminate the Agreement and shall be entitled to Termination Damages set forth in Section 4.4 as its sole and exclusive remedy unless such Financing Arrangement Deadline is extended under other provisions of this Agreement, including Section 4.11.

**4.4 Termination Damages.**

Prior to the Commercial Operation Date, Seller may terminate this Agreement at any time for its convenience or by reason of Force Majeure, GPA Delay and Event of Default by GPA. GPA shall be entitled to termination damages, payable solely from the Bid Security or the Development Security established in Section 9.1 (as applicable) ("Termination Damages"), in the amounts set forth in the table below, if: (a) subject to the last sentence of this Section 4.4, Seller terminates the Agreement prior to the Commercial Operation Date for any reason other than: (i) a Force Majeure event (ii) a GPA Delay, or (iii) an Event of Default by GPA; and/or (b) GPA terminates the Agreement as a result of Seller failing to achieve the Commercial Operation Date on or prior to the Scheduled Commercial Operation Date, as the same may have been extended pursuant to Section 4.2, and subject to Section 4.2. The Termination Damages are designed to help compensate GPA for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and GPA's potential failure to meet its applicable renewable energy portfolio requirements and do not constitute a penalty payment. Accordingly, Seller shall pay to GPA Termination Damages, from Bid Security or the Development Security in the following amounts, based upon when the termination occurs:

With respect to the foregoing, no event of default with regard to a GPA Delay shall be deemed to have occurred with respect to GPA, unless Seller has notified GPA of such occurrence in writing and GPA has been provided with a reasonable period of time to cure such delay. Seller shall not have the right to terminate the agreement with respect to any GPA Delay any earlier than 15 days after the date set for GPA's reasonable time to cure.

Up to Financing Arrangement Provision Date	100% of the Bid Security
Up to Six (6) months after Financing Arrangement Provision Date	50% of the Development Security
Up to Twelve (12) months after Financing Arrangement Provision Date from Six (6) months after Financing	75% of Development Security

<b>Arrangement Provision Date</b>	
<b>Twelve (12) months after Financing Arrangement Provision Date forward:</b>	<b>100% of Development Security</b>

No later than five (5) Business Days after the Financing Arrangement Provision Date, GPA shall return the Bid Security to Seller, to the extent GPA has not validly claimed the Bid Security in respect of Termination Damages on or prior to Financing Arrangement Provision Date. Notwithstanding the foregoing, in the event that Seller terminates this Agreement for any reason prior to the posting date for the Development Security as set forth in Section 9.1 herein, then Seller shall owe GPA no Termination Damages and such termination shall be without penalty to Seller.

#### 4.5 Seller's and Buyer's Obligations.

Subject to Appendix H, Seller shall sell and deliver, or cause to be delivered, and GPA shall purchase and receive, or cause to be received, all Renewable Energy generated by the Facility including all Test Energy and Renewable Energy from the Annual Facility Test, at the Delivery Point, and GPA shall pay Seller the Contract Price for such Quantity of Renewable Energy as measured by the Seller Metering Equipment at the Delivery Point; provided that for quantities of Renewable Energy in excess of 100% of the Estimated Annual Production, as shown in the third column of Appendix A, which are not make-up quantities for delivery deficiencies in prior Production Measurement Periods pursuant to Section 4.8, the price payable by GPA shall be offered to GPA at a 15% discount of the lesser of the two following prices: 1) the Bidder's guaranteed price applicable to the then current time period or 2) the effective Levelized Energy Adjustment Clause (LEAC) fuel recovery cost incurred by GPA's ratepayers. For Seller's failure to deliver Renewable Energy as required hereunder, GPA's remedies shall be as set forth in Section 4.8. For GPA's failure to purchase and receive Renewable Energy as required hereunder, Seller's damages and remedies shall be set forth in Appendix K.

Seller shall be responsible for any costs or charges imposed on or associated with the Renewable Energy or its delivery up to the Delivery Point. GPA shall be responsible for any costs or charges imposed on or associated with Renewable Energy or its receipt at and from the Delivery Point. Title to and risk of loss of Renewable Energy from the Facility delivered to the Delivery Point shall transfer to GPA at the Delivery Point. Seller warrants that it will deliver to Buyer Renewable Energy free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point. Notwithstanding the foregoing Seller's obligation to supply and sell, and GPA's obligation to accept and purchase, Renewable Energy shall be limited to such Renewable Energy that is actually deliverable from the Facility to the Delivery Point during such period.

#### 4.6 Operation of Facility.

Seller shall operate and maintain the Facility in accordance with Good Utility Practices.

#### 4.7 [Reserved].

#### 4.8 Minimum Production.

The Facility is expected to produce a minimum number of MWhs of Renewable Energy in each one (1) Contract Year period as set forth in the third column of Appendix A (such annual MWh production is the "Minimum Production"). Seller during the Delivery Period shall (i) during each such Contract Year period, deliver to GPA at least ninety percent (90%) of the Minimum Production (which calculated amounts are set forth in the fourth column of Appendix A), and for any consecutive five (5) Contract Years during the Delivery Period, deliver to GPA at least one hundred percent (100%) of the aggregate Minimum Production (which calculated amounts are set forth in Appendix A) during such period (any such time period a "Production Measurement Period" and each such guaranteed amount of delivered Renewable Energy during any Production Measurement Period, the "Guaranteed Output"). Any shortfall of Renewable Energy deliveries to Buyer from the applicable Guaranteed Output during a Production Measurement Period shall be deemed a "Deficiency Amount".

GPA shall be entitled to receive damages for any Deficiency Amount ("Shortfall Damages") which are not due to Excused Hours. GPA shall calculate such Shortfall Damages as follows:

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

For purposes of clarity, if Actual Renewable Energy for any given Production Measurement Period is less than the Guaranteed Output for that period (even if due to Excused Hours), there shall be a "shortfall", and Seller shall be entitled to deliver to GPA energy in that amount in subsequent Performance Measurement Periods, and this Agreement may be extended as necessary for a period of up to six (6) months in order to provide Seller with the opportunity to deliver Renewable Energy to Buyer up to the amount of the Deficiency Amount that would not otherwise be eligible for sale to Buyer under this Agreement. There shall be no Shortfall Damages owing to GPA for any Performance Measurement Period unless such Actual Renewable Energy is less than the Guaranteed Output

amount for that Performance Measurement Period, and such shortfall is not due to Excused Hours.

In the event Shortfall Damages are due for a Production Measurement Period of five (5) rolling Contract Years, then such Shortfall Damages shall be reduced by the amount of any Shortfall Damages previously paid for any Contract Year during such five (5) year Production Measurement Period. Seller's payment of Shortfall Damages shall be Seller's sole liability and obligation, and GPA's sole right and remedy, with respect to Seller's failure to deliver the Guaranteed Output during any Production Measurement Period.

Seller shall be entitled to sell, and GPA shall purchase, quantities of Renewable Energy for which Shortfall Damages are paid hereunder (the "Make-up Renewable Energy"), during any remaining Production Measurement Period during the Delivery Period. The price for the Make-up Renewable Energy shall be the Contract Price in effect at time of the supply of such Make-up Renewable Energy. During any Contract Year, all Renewable Energy delivered by Seller to GPA in excess of the Guaranteed Output shall be credited against makeup of any outstanding Deficiency Amounts, with oldest Deficiency Amounts made up first.

To the extent any Deficiency Amount is due to Weather Hours and Excused Hours, Seller shall be excused from any liability with respect thereto.

#### 4.9 Facility Testing.

In addition to the Facility Test referenced in Section 4.1(e), the capacity of the Facility shall be tested during each Contract Year during the Delivery Period (the "Annual Facility Test"). Seller shall notify GPA of the specific date on which it intends to conduct the Annual Facility Test at least ten (10) Business Days in advance and shall permit GPA to be present at such test. GPA shall have the right to receive copies of the results of the Annual Facility Test, which shall be conducted in accordance with the protocol set forth in Appendix I. Any dispute regarding the results of the Annual Facility Test shall be resolved as set forth in Section 12.9 of this Agreement.

GPA shall receive, in accordance with Section 4.5, the entire Renewable Energy from the Facility during any Annual Facility Test or re-test. Renewable Energy deliveries during testing shall be measured at the Delivery Point.

#### 4.10 Scheduling.

Seller agrees to supply at the Delivery Point all Renewable Energy produced by the Project, net of Renewable Energy self-generated and consumed at the Facility and net of any generation losses prior to the Delivery Point, up to the Facility Capacity, in accordance with the scheduling and coordination procedures set out in Appendix H. GPA agrees to take at the Delivery Point all Renewable Energy tendered by Seller in accordance with the foregoing sentence.

The Schedules and estimates provided pursuant to Appendix H shall be made by Seller in good faith and based on information available to it at such time, but in no event shall such Schedules be binding on Seller nor shall Seller be liable for any inaccuracies in such Schedules.

#### 4.11 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Transaction and such Party (the "Claiming Party") gives Notice and details of the Force Majeure to the other Party promptly upon the occurrence of the Force Majeure event, then the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due hereunder). The Claiming Party shall exercise Commercially Reasonable Efforts to remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its corresponding obligations to the Claiming Party (other than the obligation to make payments then due or becoming due hereunder) until the Claiming Party resumes its performance. If the Force Majeure event extends for a continuous period of three hundred and sixty-five (365) days, either Party may terminate this Agreement without further obligation by either Party.

#### 4.12 Facility Outages and Maintenance Scheduling.

- (a) Planned Outages. Seller shall provide written Notice to GPA prior to conducting any Planned Outages of the Facility. Within ninety (90) days prior to the Commercial Operation Date, as the same may be extended in accordance with the provisions of Section 4.2, and on or before the first day of each subsequent Contract Year, Seller shall provide GPA with a schedule of such proposed Planned Outages in accordance with Appendix H. The proposed Planned Outages schedule shall be submitted electronically to GPA, using a reasonably acceptable format provided by GPA. Such format is subject to change from time-to-time during the Term of this Agreement by agreement of the Parties, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist GPA in planning for the decreased output and/or availability of the Facility as a result of the Outage.

GPA shall promptly review Seller's proposed schedule and may request modifications within thirty (30) days of GPA's receipt of such schedule. Changes to the schedule may be requested by either Party and each Party shall make Commercially Reasonable Efforts to accommodate such changes, provided further that Seller shall have no obligation to agree to GPA's proposed modifications or revisions to any Planned Outage schedule.

- (b) Forced Outages. In the event of any Forced Outage, Seller shall promptly notify GPA of the same. Seller shall as quickly as practicable notify GPA verbally and shall then, within twenty-four (24) hours thereafter, provide written Notice to GPA of the Forced Outage (the "Forced Outage Notice"). The Forced Outage Notice shall be submitted electronically to GPA, using a reasonably acceptable format provided by GPA. Such format is subject to change from time-to-time during the Term of this Agreement by agreement of the Parties, but will generally describe the nature of the Outage, the expected duration, and any other pertinent information that will assist GPA in planning for the decreased output and/or availability of the Facility as a result of the Outage. Seller shall return the Facility to service as soon as possible, consistent with Good Utility Practices, after the Forced Outage ceases to exist.
- (c) GPA Parts Inventory. To the extent GPA maintains an inventory of parts or components that are used or useful in the Facility and provided it can prudently do so under its own ordinary course operating practices and restrictions, GPA shall cooperate with Seller in a Commercially Reasonable manner by making such parts or components available to Seller at its request during the period of time Seller is obtaining replacement parts or components for the Facility in order to maximize output of Renewable Energy. If Seller obtains a replacement part or component from GPA, it shall at GPA's option either replace such part or component with the new part or component ordered by Seller or return the borrowed part or component to GPA at such time as Seller obtains the replacement. Seller shall bear the installation, transportation and labor charges relating to GPA's replacement parts or components, and if the parts or components are returned to GPA then Seller shall reimburse GPA for any damage to such parts or components while in Seller's possession.

#### 4.13 Operating Status Reports.

From the date of Commercial Operation through the Term, Seller shall provide GPA with Monthly reports regarding material data pertaining to the operation of the Facility. The operations data is generally identified as performance, Outage, and risk data and shall be sent electronically to GPA using a reasonably acceptable format provided by GPA. The operations data report format may be modified by agreement of the Parties from time-to-time during the Term of this Agreement.

#### 4.14 Resource Quality Reporting: Forecasting.

Seller shall provide to GPA at its request copies of non-proprietary resource quality data in Seller's possession that could reasonably be expected to affect, in any material manner, the operation and/or productivity of the Facility, whether produced, compiled or otherwise generated by Seller or any third party in a Commercially Reasonable manner, so that GPA can evaluate the expected performance of the Facility. Seller shall provide such data as it is produced or otherwise made available to Seller. Upon Commercial Operation of the Facility, to the extent generated or procured by Seller, Seller shall also provide to GPA Monthly and day-ahead forecasting information for the Facility. Such information shall be in a format agreed to by the Parties and include, among other things: Seller's forecasts for the performance of the Facility based on Facility specifications, weather-based forecasting, and weather-related studies. Such information, which will be used by GPA solely for evaluation, Scheduling, and other purposes related to this Agreement, shall be provided as available. In no event shall the data and/or information provided to GPA pursuant to this Section 4.14 be binding upon Seller, nor shall Seller be liable for any penalties, charges or other damages based on the inaccuracy of such data or information.

#### 4.15 Permit Violations.

Seller shall at all times during the Term of this Agreement maintain and comply in all material respects with all applicable permits for the development, ownership and maintenance of the Facility.

#### 4.16 Delivery of RECs and Environmental Attributes.

- (a) Use of North American Renewables Registry. At least ten (10) days prior to COD, Seller shall transfer to GPA the authority to create, own and transfer all Environmental Attributes associated with the Renewable Energy produced by the Facility, by executing and delivering the form entitled "Generator Owner's Designation of Responsible Party" published by NAR, wherein Seller shall designate GPA as the "responsible party" for all matters relating to the creation, ownership, and transfer of RECs and Environmental Attributes from the Facility. Thereafter, GPA shall be responsible for all obligations relating to creating and transferring RECs and Environmental Attributes from the Facility and Seller shall have no further obligations or liabilities with respect thereto, provided, however, that Seller shall reimburse to GPA its costs of creating and maintaining the NAR account and NAR's fees charged to transfer the RECs and Environmental Attributes, up to an aggregate maximum amount of \$5,000 per annum. In the event this Agreement is terminated or suspended for any reason, the Parties agree to each consent to the termination of such designation in accordance with NAR procedures.
- (b) GPA Registration as a QRE. GPA shall be the QRE for the Facility as required by NAR and shall comply with any and all NAR Operating Procedures relating to the registration and operation as a QRE and the reporting of generation data from the Facility to NAR. As the QRE, each month upon receipt of an invoice and associated interval metering data from Seller in accordance with Section 7.5 herein, GPA shall report such data to NAR within three (3) Business Days following receipt of such data. The Parties shall cooperate to ensure that the Seller Metering Equipment and the resulting interval metering data meet the NAR requirements for metering equipment and generation data.
- (c) Change Event. During the Term, in the event that (i) the NAR Operating Procedures are amended or changed such that it becomes impossible for the Parties to utilize NAR as the REC tracking method and/or for GPA to continue as "responsible party" for purposes of creating, owning and transferring RECs and Environmental Attributes attributable to the Facility; (ii) the fees or charges imposed by NAR on either Seller or GPA to utilize the NAR REC tracking system are materially increased such that use of the NAR REC



tracking system becomes uneconomic or infeasible; or (iii) the NAR REC tracking system is eliminated (each one individually, a "Change Event"), then the Parties shall promptly negotiate in good faith to reform the terms of this Agreement in order to give effect to the original intention of the Parties to the extent reasonable under the circumstances, including utilizing an alternative method for transferring RECs to GPA, but in no case shall Seller's cost with respect thereto exceed \$5,000 per annum.

4.17 [Reserved].

4.18 Energy Shifting and Rapid Reserve Response.

Seller shall be required to use ESS for the purpose of delivering produced energy at a different period of time than its production period. GPA shall receive all of the stored renewable energy before the next solar production period. The active, or real, power shall be dispatchable at the point of interconnection, between the hours of 6:00 PM to 6:00 AM, as required by the GPA Power System Control Center operators or a SCADA control point. The available capacity may also be dispatched outside of these hours if deemed necessary by the GPA Power System Control Center operators. The delivered output to the GPA grid shall be firm, non-intermittent power with a ramp-up and ramp-down rate limited to 1% of rated power output per minute. However, this rate may be exceeded at the request of the GPA Power System Control Center operators. Seller shall also provide a dispatchable reactive capability requirement up to 0.80 lag to lead at the point of interconnection as required by the GPA Power System Control Center operators or a SCADA control point. The project shall perform at +/- 0.80 PF Dynamic Range up to and including the maximum MW output and shall not reduce reactive capability near the peak real power output. The total energy available for dispatching shall be provided to the GPA Power System Control Center through a SCADA point every second. The additional function of the ESS is to provide rapid reserve in response to under-frequency events. The total energy exported for these events shall be included in the annual minimum energy requirement.

During the Delivery Period, Seller shall allow GPA to negotiate a revision in the ESS control function or integration with a grid controller to improve the reliability and/or stability of the GPA grid.

4.19 Performance.

During the Delivery Period, Seller shall cause the Facility to comply with the performance requirements set forth in Appendix C. If the Facility fails to meet the requirements, GPA may provide written notice to Seller of the failure to meet the requirements and a request for Seller to take steps needed to meet the requirements. In response to such a notice, Seller shall, within two (2) weeks from the date of such notice, provide GPA with a written remedial action plan that provides a detailed description of Seller's course of action and plan to meet the requirements and shall take steps to implement such remedial action within six (6) months of the date of such action plan; provided, however, GPA shall not be entitled to such a remedial action plan if the failure to achieve the requirements is due to a Force Majeure event, GPA Delay or an Event of Default by GPA. Seller's sole obligation with respect to any deficiency in the requirements is to follow its remedial action plan.

## **ARTICLE FIVE: SELLER FAILURE**

### **5.1 Seller Failure.**

In the event Seller fails to deliver to GPA any Quantity of Renewable Energy to which GPA is entitled in accordance with the terms of this Agreement and instead sells such Quantity of Renewable Energy to which GPA is entitled to a third party in violation of this Agreement ("Seller Failure"), then Seller shall pay to GPA the "Seller Failure Damages," which shall mean the positive difference, if any, between the Replacement Price and the Contract Price for the period of such Seller failure, times such Quantity of Renewable Energy. GPA shall calculate the Seller Failure Damages and shall provide to Seller an invoice for such amount, including a written statement explaining in reasonable detail the calculation of such amount. Seller shall pay the Seller Failure Damages not later than ten (10) days following its receipt of such an invoice from GPA. If the Replacement Price is less than the Contract Price, then the Seller Failure Damages are deemed to be zero. The Seller Failure Damages represent the sole and exclusive remedy for Seller's failure as described herein, except as provided in Section 6.1(f).

## **ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES**

### **6.1 Events of Default.**

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written Notice;
- (b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, if such failure is not remedied within thirty (30) Business Days after written Notice, or such longer time, not to exceed ninety (90) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for such Party's obligations to deliver or receive the Renewable Energy, the remedies for which are provided in Article Five) if such failure is not remedied within thirty (30) Business Days after written Notice, or such longer time, not to exceed ninety (90) Business Days, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (d) Such Party becomes Bankrupt (or if the Bankruptcy is involuntary, the failure of such Party to achieve dismissal of the Bankruptcy within ninety (90) days);
- (e) A Merger Event occurs with respect to such Party;
- (f) If during the Term of this Agreement there have occurred three (3) or more Seller Failures as that term is used in Section 5.1;
- (g) With respect to Seller, a material permit violation (that is not due to a GPA Delay) occurs and such violation is not remedied within forty (40) Business Days after Notice by either GPA or the relevant permitting authority, or such longer time, as is reasonably required to remedy such failure, provided the Defaulting Party is employing Commercially Reasonable Efforts to achieve the remedy;
- (h) With respect to Seller, failure to maintain the Development Security and failure to reinstate the same within thirty (30) Business Days after Seller's receipt of written Notice thereof from GPA;

### **6.2 Declaration of an Early Termination Date.**

If an Event of Default with respect to a Defaulting Party shall have occurred on or after the Commercial Operation Date and be continuing, the other Party (the "Non-Defaulting Party") shall have the right but not the obligation to: (i) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement between the Parties; (ii) withhold any payments due to the Defaulting Party under this Agreement as setoff against termination costs and liabilities as determined herein (and until such amounts are determined); and (iii) suspend its performance under this Agreement.

### 6.3 Suspension of Performance and Other Remedies.

Except as otherwise expressly provided in this Agreement, if an Event of Default or a GPA Delay shall have occurred and be continuing, the Non-Defaulting Party, upon written Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; and (ii) to the extent an Event of Default or a GPA Delay shall have occurred and be continuing to exercise any remedy available at law or in equity for such suspension and/or termination including any specific remedies set forth in this Agreement; provided, however, that any damages shall include only the direct actual damages incurred by the Non-Defaulting Party as provided in Section 8.1, (including, but not limited to, if the Non-Defaulting Party is the Seller, any tax equity investment and financing costs and expenses (including but not limited to principal, interest, fees and any interest rate hedge termination payments) incurred by the Seller and/or its affiliates in connection with the development, construction, operation and maintenance of the Facility), and Seller's aggregate total liability hereunder shall not exceed the amounts set forth in Section 4.4 prior to the Commercial Operation Date.

Any dispute arising under or out of this Contract is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

## ARTICLE SEVEN: PAYMENT AND NETTING

### 7.1 Billing Period.

Unless otherwise specifically agreed upon by the Parties, the calendar Month shall be the standard period for all payments under this Agreement. No later than the tenth (10<sup>th</sup>) day after the end of each Month, each Party will render to the other Party an invoice (in the case of Seller, such invoice being rendered in accordance with Section 7.5) for the payment obligations of the non-invoicing Party, if any, incurred hereunder during the preceding Month.

### 7.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20<sup>th</sup>) day of each Month, or if later the tenth (10<sup>th</sup>) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

### 7.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) Months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Except as otherwise provided in this Agreement, payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twelve (12) Months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) Months after the close of the Month during which performance of a Transaction occurred, the right to payment for such performance is waived.

### 7.4 Metering and Other Facilities.

Seller shall be responsible, at its sole expense, for providing the Seller Metering Equipment in accordance with Good Utility Practices. In accordance with the terms of the Interconnection Agreement, the Seller may elect to have GPA provide Seller with the Seller Metering Equipment; provided, however, the cost of such meters shall be borne solely by Seller at no cost to GPA. Seller shall be solely responsible for operating, maintaining, and repairing the Seller Metering Equipment at its own expense throughout the Term of this Agreement. Seller shall inspect and test the Seller Metering Equipment upon its installation and at least once every year at Seller's expense. Seller shall give GPA reasonable advance Notice of any test, and promptly provide GPA with the results of any such test. GPA may observe the test and conduct its own tests, at GPA's expense, to verify Seller's procedures and results. GPA shall give Seller reasonable advance Notice of any such test, and may observe the tests. GPA shall provide Seller with the results of any test by GPA promptly upon receipt of the results. Access by GPA for any such testing shall be in compliance with Section 12.4.

Upon an inaccurate read of the Seller Metering Equipment or if Seller knows of any inaccuracy or material defect in Seller Metering Equipment, Seller shall notify GPA in writing within forty-eight (48) hours of such defect. Seller shall be solely responsible for adjusting, repairing, replacing or recalibrating such metering device as near as practicable to a condition of zero (-0-) error, and for paying any expenses associated with such adjustment, repair,

replacement or recalibration. If a metering device fails to register or is found upon testing to be inaccurate, an adjustment will be made correcting all measurements by the inaccurate or defective metering device in the following manner:

- (a) In the event that an adjustment factor cannot be reliably calculated, the Parties shall use the measurements from GPA-owned meters if they are installed, fully operational and calibrated in accordance with Good Utility Practices. If for any reason the measurements cannot be obtained from GPA-owned meters, the Parties shall use data from Seller's computer monitoring system to determine the relevant measurements. If Seller's computer monitoring system is found to be inaccurate by more than two (2) percent, the Parties shall estimate the amount of the necessary adjustment using the site meteorological information for the period of the inaccuracy based upon deliveries of Renewable Energy delivered to GPA at the Delivery Point from the Facility during periods of similar operating conditions when the Seller Metering Equipment was registering accurately. The adjustment will be made for the period during which inaccurate measurements were made.
- (b) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted will be the shorter of: (1) the last one-half of the period from the last previous test of the metering device to the test that found the metering device to be defective or inaccurate; or (2) the one hundred and eighty 180-day period immediately preceding the test that found the metering device to be defective or inaccurate.
- (c) Upon determination of corrected measurements, the required payment adjustment shall be made according to the procedures set forth in Section 7.3.

#### 7.5 Invoices.

Seller shall maintain and read the Seller Metering Equipment for measuring the Renewable Energy delivered hereunder. For review purposes, Seller shall furnish GPA with a written invoice reflecting the Contract Price; interval data from the Seller Metering Equipment used to calculate that invoice; and any other charges due, within ten (10) Business Days after Seller reads the Seller Metering Equipment. Such invoices may be furnished to GPA by facsimile transmission or by such other method as the Parties agree.

## **ARTICLE EIGHT: TERMINATION FOR DEFAULT**

### **8.1 Termination for Default**

#### **8.1.1 Default.**

If Seller refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this Contract, GPA may notify Seller in writing of the delay or non-performance and if not cured in thirty days or any longer time specified in writing by GPA, GPA may terminate Seller's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. It is clarified that Seller shall be paid all such amounts due to Seller until the termination. In the event of termination in whole or in part GPA may procure similar supplies or services in a manner and upon terms deemed appropriate by GPA. Seller shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

#### **8.1.2 Seller's Duties.**

If applicable, notwithstanding termination of the Contract and subject to any directions from GPA, Seller shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Seller in which GPA has an interest.

#### **8.1.3 Compensation.**

If applicable, notwithstanding termination of the Contract and subject to any directions from GPA, Seller shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Seller in which GPA has an interest.

#### **8.1.4 Excuse for Nonperformance or Delayed Performance.**

Except with respect to defaults of subcontractors, Seller shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Seller to make progress in the prosecution of the work hereunder which endangers such performance) if Seller has notified GPA within 15 (fifteen) days after the cause of the delay and the failure arises out of Force Majeure causes such as: acts of God; acts of the public enemy; acts of GPA and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Seller shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Seller to meet the contract requirements. Upon request of Seller, GPA shall ascertain the facts and extent of such failure, and, if such GPA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Seller's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of GPA under the Clause entitled "Termination". (As used in this Clause the term "subcontractor" means subcontractor at any tier.)

#### **8.1.5 Erroneous Termination for Default.**

If, after notice of termination of Seller's right to proceed under the provisions of this Clause, it is determined for any reason that Seller was not in default under the provisions of this Clause, or that the delay was excusable under the provisions of Clause 20.2.4 (Excuse for Nonperformance or Delayed Performance), the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of GPA, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this Contract does not contain a clause providing for termination for convenience of GPA, the Contract shall be adjusted to compensate for such termination and the Contract modified accordingly subject to Seller's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

#### 8.1.6 Additional Rights and Remedies.

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

#### 8.2 Written Notice Requirement.

Seller may at any time terminate this Contract with immediate effect by giving written notice to GPA if:

8.2.1 GPA fails to pay any amount due under this Contract on the Due Date for payment and remains in default for more than 30 (thirty) days after the Due Date; or

8.2.2 GPA commits a breach of any term of this Contract (other than failure to pay any amounts due under this Contract) and, if such breach is remediable, fails to remedy that breach within a period of 30 (thirty) days after being notified in writing to do so;

8.2.3 GPA suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

8.2.4 An event of total loss or irreparable breakdown of all or part of the Plant occurs which is not attributable to Seller; or

8.2.5 GPA breaches any obligation undertaken in Clause 5.8 and, if such breach is remediable, fails to remedy that breach within a period of 7 (seven) days after being notified in writing to do so.

8.2.6 If the total Reservation Fee reaches the capped amount and the Effective Date hasn't occurred 7 days later.

8.3 In the event that either Party, at any time during the term of this Contract, becomes insolvent under any of the provisions of any applicable statute or makes a voluntary assignment of its assets for the benefit of creditors, is adjudged bankrupt, either upon its voluntary petition in bankruptcy or upon the petition of its creditors, or any of them, or should a judgment be executed on any of its goods or equipment, or if either Party shall have a receiver, administrator, administrative receiver and/or manager appointed in respect of all or any of its assets, an application or order is made or a resolution is passed to wind up either Party or if either Party shall go into liquidation (whether voluntarily or otherwise) or if either Party becomes subject, under the applicable laws of any jurisdiction, to any event having an analogous effect to any of the foregoing, the other Party may terminate this Contract with immediate effect by notice in writing to that Party or to the receiver or liquidator or to any person in whom this Contract may become vested.

8.4 The termination or expiry of this Contract shall be without prejudice to the rights and obligations of the Parties up to and including the date of such termination or expiry, and shall not affect or prejudice any term of this Contract that is expressly or by implication provided to come into effect on, or continue in effect after, such termination or expiry.

8.5 In the event of termination under any provision of this Contract, Seller shall promptly cease performance of the Services (or relevant part thereof) and shall remove all Plant and Seller Personnel from the Site. GPA hereby authorizes Seller to enter GPA's premises and take possession of all Plant in the event of termination. Until the Plant has been returned to Seller, GPA shall be solely responsible for its safe keeping.

#### 8.6 On termination of this Contract for any reason

8.6.1 GPA shall immediately pay to Seller all of Seller's outstanding unpaid invoices together with any interest accrued and, in respect of Services supplied but for which no invoice has yet been submitted, Seller shall submit an invoice, which shall be payable by GPA immediately on receipt;

8.6.2 The accrued rights and remedies of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.



## ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS

### 9.1 Development Security.

In order to secure Seller's obligations prior to Commercial Operation of the Facility, Seller shall post a Letter of Credit or cash in the amount of \$20,934,562 (the "Development Security"). The Development Security shall be held by GPA as security for Seller's obligations prior to the Commercial Operation Date under the Agreement. To the extent permitted under Section 4.4, GPA may draw on the Development Security at any time prior to the Commercial Operation Date, but only in the amounts and according to the schedule set forth in Section 4.4. Seller shall post the Development Security in accordance with the following terms and conditions:

- (a) Seller shall post the Development Security within ten (10) Business Days from the date when a binding credit agreement is executed pursuant to Section 4.3 but no later than the Financing Arrangement Deadline.
- (b) If the Development Security is posted as a Letter of Credit, it shall be in substantially the form attached hereto as Appendix F, respectively with such changes thereto as may be approved by Buyer and Seller in their reasonable discretion.
- (c) Any Development Security posted in cash shall bear simple interest at a rate equal to the Interest Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 9.3 of this Agreement.

### 9.2 Forfeiture of Development Security.

In the event that the Commercial Operation Date does not occur on or before the Scheduled Commercial Operation Date, as extended pursuant to the terms of this Agreement, and to the extent Seller does not remit any COD Extension Payment or Daily Delay Liquidated Damages payment when due pursuant to Section 4.2, then GPA shall be entitled to proceed against the Development Security in accordance with the terms thereof, to the extent of the amount(s) due and owing from time to time under Section 4.2. If the Development Security is exhausted up to the limits in Section 4.4 and further payments are due, then GPA shall be entitled to terminate this Agreement as its sole and exclusive remedy if Seller otherwise refuses to pay the amount due, and Seller shall have no further liability for damages hereunder. Seller acknowledges and agrees that forfeiture of all or a portion of the Development Security, as provided herein, represents reasonable compensation to GPA for, among other things, transactions that it did not consummate because it relied on this Agreement with Seller, and GPA's potential failure to meet its applicable renewable energy portfolio requirements as a result of Seller's failure to achieve Commercial Operation by the Scheduled Commercial Operation Date. Notwithstanding the foregoing, if Seller terminates this Agreement prior to the Commercial Operation Date for the sole purpose of selling the Renewable Energy to a third party, GPA shall be entitled to both the Development Security and any other remedies available at law or in equity to the extent that GPA's actual damages exceed the value of the Development Security.

### 9.3 Return of Development Security.

Concurrently with the achievement of the Commercial Operation Date or the earlier termination of the Agreement pursuant to Section 4.2, GPA shall return to Seller any remaining portion of the Development Security still held by GPA and to which GPA has no claim pursuant to the terms of this Agreement. If the Development Security was posted as a Letter of Credit, GPA shall return the Letter of Credit to Seller and Seller shall be entitled to immediately cancel such Letter of Credit. If the Development Security was posted in cash, GPA shall return to Seller the balance of the Development Security, together with daily interest at the Interest Rate, from and including the date that the Development Security was posted until, but not including, the date on which the Development Security is returned by GPA.

### 9.4 Performance Security.

In order to secure Seller's obligations after Commercial Operation of the Facility and during the Delivery Period hereunder, Seller hereby agrees to post security in one of the forms contemplated below, each of which is deemed acceptable by GPA (the "Performance Security"):

- (a) A Letter of Credit or cash in the amount of \$41,869,124; or

- (b) A Payment and Performance Bond in the amount of \$41,869,124; or
- (c) A subordinated lien on all real and personal property constituting the Project, to be effective as of the Commercial Operation Date (the "GPA Lien") and Seller agrees to take such action as is reasonably required in order to perfect GPA's security interest in, and lien on, such collateral and any and all proceeds resulting therefrom; provided, that concurrently with the grant of the such lien, GPA shall enter into such subordination, inter-creditor and other agreements with the senior financing parties pursuant to which GPA shall agree that their rights and remedies pursuant to their lien shall be subordinated in all respects to the senior first lien held by or the financing parties.

The Performance Security shall be held by GPA as security for Seller's obligations after the Commercial Operation Date and during the Delivery Period, but GPA may draw on the Performance Security at any time only in full the amounts actually due and (b) payable by Seller remaining liable to GPA pursuant to this Agreement. Seller may (i) post the Performance Security by posting a combination or one or more of the above acceptable forms of credit support in an aggregate amount of \$41,869,124, and (ii) at any time elect to substitute any form of one or more of the above acceptable forms of credit support for any existing Performance Security in which case GPA shall return the replaced Performance Security and reasonably cooperate with Seller in the exchange or cancellation of such credit support.

Seller shall post the Performance Security in accordance with the following terms and conditions:

- (a) Seller shall post the Performance Security within ten (10) business days following the Commercial Operation Date.
- (b) If the Performance Security is posted as a Letter of Credit, it shall be in substantially the form attached hereto as Appendix[F-1].
- (c) If the Performance Security is posted as a Payment and Performance Bond, it shall be in substantially the form attached hereto as Appendix [F-2].
- (d) Any Performance Security posted in cash shall bear simple interest at a rate equal to the Interest Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 9.5 of this Agreement.

#### 9.5 Return of Performance Security.

At the end of the Term or upon the termination of this Agreement following the settlement and payment of any damages owed as a result of such termination, GPA shall return to Seller any remaining portion of the Performance Security still held by GPA and to which GPA has no claim pursuant to the terms of this Agreement. If the Performance Security was posted as a Letter of Credit or a Payment and Performance Bond, then GPA shall return the Letter of Credit or Payment and Performance Bond to Seller and Seller shall be entitled to immediately cancel such Letter of Credit or Payment and Performance Bond. If the Performance Security was posted in cash, GPA shall return to Seller the balance of the Performance Security, together with daily interest at the Interest Rate, from and including the date that the Performance Security was posted until, but not including, the date on which the Performance Security is returned by GPA.

## ARTICLE TEN: GOVERNMENTAL CHARGES

### 10.1 Cooperation.

Each Party shall use Commercially Reasonable Efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

### 10.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Government Authority ("Governmental Charges") on or with respect to the Renewable Energy, Environmental Attributes or this Agreement arising prior to the Delivery Point. GPA shall pay or cause to be paid all Governmental Charges on or with respect to the Renewable Energy, Environmental Attributes, or this Agreement at and from the Delivery Point. All other tax or income taxes on the sale of the Renewable Energy by Seller hereunder and are, therefore, the responsibility of the Seller. In the event Seller is required by law or regulation to remit or pay Governmental Charges, which are GPA's responsibility hereunder, GPA shall promptly reimburse Seller for such Governmental Charges. If GPA is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, GPA may deduct the amount of any such Governmental Charges from the sums due to Seller under Article Seven of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

## ARTICLE ELEVEN: ASSIGNMENT

### 11.1 Buyer Assignment.

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

### 11.2 Seller Assignment.

Seller shall not sell, transfer, pledge, encumber or assign this Agreement or any of the rights, interests or obligations hereunder without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed, except that Buyer shall have the right to withhold its consent if, in Buyer's reasonable determination, such sale, transfer, pledge, encumbrance or assignment will have a materially adverse effect on the timely construction of the Project or the economic interests of Buyer. Notwithstanding the foregoing, Seller may sell, transfer, pledge, encumber, or assign this Agreement or any of its rights, interests or obligations hereunder without the consent of Buyer, but with at least thirty (30) days' advance written notice to Buyer, either: (1) in connection with any financing or other financial arrangements for the Facility, including, but not limited to, any tax equity financing or any sale-leaseback financing arrangement; (2) to any of its Affiliates in connection with a transfer of the Facility to such Affiliate; or (3) to any person or entity succeeding to all or substantially all of the assets of Seller. In connection with any sale, transfer, pledge, encumbrance or assignment in accordance with the foregoing: (A) Seller's security shall remain in place until the assignee or transferee posts replacement credit support in accordance with this Agreement; and (B) Seller and Assignee shall enter into an assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, pursuant to which the assignee or transferee assumes all of Seller's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Any assignment of this Agreement in violation of the foregoing shall be, at the option of Buyer, void.

### 11.3 Liability After Assignment.

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

### 11.4 Transfers of Ownership.

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

### 11.5 Successors and Assigns.

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

### 11.6 Collateral Assignment by Seller.

In the event that Seller pursuant to Section 11.2(1) transfers, pledges, encumbers or collaterally assigns this Agreement to Seller's lenders, Seller shall provide written notice to Buyer of such transfer, pledge, encumbrance or assignment, including the address of Seller's lenders. In connection with any financing or refinancing of the Facility, including tax equity financing, Buyer at Seller's request shall negotiate in good faith with Seller and Seller's lenders and financing parties to agree upon reasonable direct agreements, estoppels, opinions and other customary documentation to support the financing(s) with respect to this Agreement, which shall be in form and substance reasonably agreed to by Buyer, Seller and Seller's financing parties. The direct agreement shall include (but not be limited to) provisions substantially as follows:

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

- (b) Prior to exercising its right to terminate this Agreement as a result of an Event of Default by Seller, Buyer shall give notice of such Event of Default by Seller to the administrative agent of Seller's lenders of Seller's financing parties, which Buyer has been provided written notice of; and
- (c) Seller's lenders or financing parties shall have the right, but not the obligation, to cure an Event of Default on behalf of Seller in accordance with the provisions of this Agreement, provided that Seller's lenders or financing parties shall be provided an additional ninety (90) days, from the end of the cure periods provided pursuant to Section 6.1, to effect a cure of such Event of Default.

## ARTICLE TWELVE: MISCELLANEOUS

### 12.1 Term of Agreement.

The Term of this Agreement shall commence on the Effective Date and shall remain in effect for the duration of the Delivery Period, as set forth in Section 2.1, unless earlier terminated by either Party in accordance with this Agreement herein (the "Term"); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.

### 12.2 Insurance.

At all times during the Term of this Agreement, Seller shall maintain at its own expense insurance policies for the Facility and its tangible assets in such amounts and against such risks and losses as are consistent with Good Utility Practices and those policies listed below. Such insurance policies shall be maintained only with insurers rated at least A- VII by MVI Best or comparable ratings agency.

- (a) Commercial General Liability with limits of \$1,000,000 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- (b) Commercial Auto Liability in the amount of \$1,000,000 combined single limit for bodily injury and property damage. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- (c) Excess Liability with limits of \$5,000,000. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- (d) Workers Compensation and Employers Liability with statutory limits and \$1,000,000/\$1,000,000/\$1,000,000 respectively. Seller shall add a waiver of subrogation endorsement in favor of GPA.
- (e) Pollution Liability, when applicable, with limits for \$5,000,000. GPA is to be an additional insured. Seller shall grant a waiver of Subrogation in favor of GPA.
- (f) Builder's Risk or Installation Floater, when applicable, is to be furnished by Contractor.
- (g) Property insurance that will keep the premises, property, improvements, structures, and machinery and equipment on the premises insured, at a minimum, against with an all risk property policy for full replacement value as determined from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in Guam, and shall contain the standard form of waiver of subrogation. Nothing contained herein shall be construed as creating any liability or responsibility on the part of GPA for the adequacy of insurance coverage on the premises. As to any insurable risks of loss or damage to the premises not required to be insured hereunder, Seller shall bear the cost of the same. Seller shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.

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

- (a) Commercial General Liability with limits of \$1,000,000.00 including products, completed operations, and contractual for this Agreement. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.

- (b) Excess Liability with limits of \$5,000,000.00. GPA shall be an additional insured. Seller shall grant a waiver of subrogation in favor of GPA.
- (c) Workers Compensation and Employers Liability with statutory limits and \$1,000,000/\$1,000,000/\$1,000,000 respectively. Seller shall add a waiver of subrogation endorsement in favor of GPA.
- (d) Property insurance that will keep the premises, property, improvements, structures, and machinery and equipment on the premises insured, at a minimum, against with an all risk property policy for full replacement value as determined from time to time. Such insurance shall be issued by any financially responsible insurer duly authorized to do business in Guam, and shall contain the standard form of waiver of subrogation. Nothing contained herein shall be construed as creating any liability or responsibility on the part of GPA for the adequacy of insurance coverage on the premises. As to any insurable risks of loss or damage to the premises not required to be insured hereunder, Seller shall bear the cost of the same. Seller shall be deemed to be self-insured as to the deductible or co- insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.
- (e) Seller is also required to carry Business Interruption in the amount of \$1,000,000.00.

If the Facility is lost or damaged due to a casualty, Seller shall re-build the Facility promptly and in a commercially reasonable manner; provided, however, (i) if the time to re-build the Facility would result in less than five (5) years remaining in the Delivery Period then (A) Seller shall have the option in lieu of re-building the Facility to pay to GPA the Buyout Payment and terminate this Agreement with no further costs or penalties, or (B) if Seller nevertheless elects to re-build the Facility, then GPA shall reimburse Seller for any deductibles payable by Seller under its property insurance (not to exceed \$500,000), and (ii) regardless of when the casualty event occurs, if Seller re-builds the Facility, then the Delivery Period shall be extended for the greater of one (1) year or two (2) times the length of the interruption of the sale of Renewable Energy (pro-rated based on the Minimum Production for partial interruptions) after the end of the Term, and the Contract Price shall be the price in effect, without escalation, at the end of the Term.

Within ten (10) Business Days after receipt of a request for the same from GPA, Seller shall deliver to GPA a certificate of insurance for any or all policies maintained in accordance with this Section 12.2, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions.

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

### 12.3 Indemnity.

If a party's performance of any of its obligations under the agreement is prevented or delayed by any act or omission by the other party, claims for money damages arising out of the agreement are to be resolved through the process set out in Guam's procurement law and Guam's Government Claims Act. All other disputes are to be resolved in the process set out in Guam law to include referral to the Office of the Public Auditor.

### 12.4 Site Access and Inspection of Records.

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

#### 12.5 Audit.

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

#### 12.6 Confidentiality.

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

The Parties acknowledge, however, that a Party may need to disclose the Confidential Information in connection with its regulatory filings or to otherwise satisfy its governmental and regulatory requirements. In the event that a Party intends to disclose any of the Confidential Information to its regulatory authorities including, but not limited to, the Guam Public Utilities Commission, the FERC, or any employee, staff member, consultant, and/or agent of the foregoing, it shall give the other Party prompt prior written Notice of its intention so that the other Party may seek a protective order or other appropriate remedy. In addition, each Party specifically agrees not to use the other Party's name in connection with this Agreement or the Facility in any press releases, public meetings or hearings, or other public communications, including any release to any newswire service, without the express written consent of the other Party. The Parties anticipate that at some future time it may be in the best interests of one or both of them to disclose Confidential Information to the media and the Parties anticipate entering into a subsequent agreement that will govern the terms of such disclosure. The Parties expressly agree, however, that unless and until such subsequent agreement is executed between the Parties, the terms of this Agreement shall be binding with respect to such disclosure.

In the event that any Party receiving the Confidential Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the legally compelled Party shall give the other Party providing the Confidential Information prompt prior written Notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof to the extent of the required disclosure.

Each Party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. Each Party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Agreement, **although neither Party shall be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Agreement, whether a claim is based in contract, tort or otherwise.** The Parties agree that the respondent in any action for an injunction, specific performance decree or similar relief shall not allege or assert that the initiating Party has an adequate remedy at law



in respect to the relief sought in the proceeding, nor shall the respondent seek the posting of a bond by the Party initiating the action. Under no circumstances will either Party's directors, management, employees, agents or consultants be individually liable for any damages resulting from the disclosure of Confidential Information in violation of the terms of this Agreement.

#### 12.7 Notices.

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

#### 12.8 Purchase Option.

- (a) Transfer During the Delivery Period. In the event that Seller desires to sell the Facility during the Delivery Period, Seller shall provide prior written Notice of the same to GPA, and agrees to engage in discussions with GPA for the purchase of the Facility by GPA during the exclusivity period described in this Section with GPA if GPA desires to purchase the Facility. Within ninety (90) days following Seller's Notice to GPA of its intent to sell the Facility, GPA may deliver to Seller an indicative purchase price at which it would be willing to purchase the Facility. If GPA does not deliver the indicative purchase price within ninety (90) days of receipt of the Notice, then Seller shall be free to transfer the Facility under any terms and conditions at any time thereafter. If GPA delivers the indicative purchase price within ninety (90) days of receipt of the Notice, then the Parties shall negotiate exclusively for a period of up to sixty (60) days after GPA delivers the indicative purchase price. If no binding agreement is entered into by the Parties during such sixty (60)-day period then Seller shall be free to transfer the Facility to any person on transactions terms, including price, that are better for Seller than GPA's indicative offer, and neither Party shall have any further liability or obligation to the other Party in connection with such sale or as a result of the terminated negotiations. If Seller does not transfer the Facility on such basis within one (1) year following the end of the sixty (60)-day exclusive negotiation period, then the procedure in this paragraph shall apply to any subsequent sale of the Facility during the Term of this Agreement.
  
- (b) Extension of Delivery Period and Facility Purchase at End of Delivery Period. At least one (1) year prior to the end of the Delivery Period, GPA and Seller may agree to extend the Term of this Agreement up to five (5) years in the aggregate, in which case the Contract Price and terms shall be mutually agreeable to GPA and the Seller. At least one (1) year prior to the end of the Delivery Period, GPA may provide Notice to Seller that it elects to purchase the Facility at the end of the Delivery Period at a purchase price equal to the higher of (i) 100% of the Appraised Price of the Facility at the end of the Delivery Period and (ii) the sum of (x) the amount necessary to repay any Facility Debt (including any swap or interest rate hedging breakage costs related thereto) in full plus (y) the amount which when applied pursuant to the governing documents for the Seller or any relevant subsidiary or upstream holding company through which the tax equity invests in the Facility is sufficient to repay any Facility Debt, including back-leverage financing and including any swap or interest rate hedging breakage costs related thereto, and for the tax equity investors to recover (to the extent not previously recovered) the higher of (1) their investment balance together with their targeted return or (2) the amount necessary to avoid a loss under US GAAP. If GPA fails to send such Notice of purchase then this Agreement shall terminate in accordance with the terms hereof. If GPA provides such a Notice of the purchase, Seller and GPA shall exercise Commercially Reasonable Efforts to consummate the purchase within thirty (30) days of the end of the Delivery Period, and at the end of such time period the purchase option shall expire. The documentation for the sale shall be mutually agreeable to the Parties. Any such sale will be on an "as is" basis, without the giving of any representations or warranties, except as to (i) each party's organization, power and authority; (ii) good standing; (iii) Seller's ownership of the Facility to be sold

in such sale, and the existing liens and encumbrances thereon; (iv) the instrument(s) conveying the Facility to GPA constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller, in accordance with its terms; (v) such conveyance will not violate any contract or legal requirement applicable to Seller; and (vi) subject to applicable regulatory approvals, no consents, approvals, or filings are required to be obtained or made by Seller to convey the Facility to GPA other than those that have previously been obtained or made and are in full force and effect as of the date of the conveyance.

## 12.9 Disputes

GPA and Seller agree to attempt resolution of all controversies which arise under, or are by virtue of, this Contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the controversy shall be decided by GPA in writing within sixty (60) days after Seller shall request GPA in writing to issue a final decision. If GPA does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then Seller may proceed as though GPA had issued a decision adverse to Seller.

GPA shall immediately furnish a copy of the decision to Seller, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

GPA's decision shall be final and conclusive, unless fraudulent or unless Seller appeals the decision as follows:

- (a) For disputes involving money owed by or to GPA under this Contract, Seller files appeal of the decision in accordance with the Government Claims Act by filing a government claim with GPA no later than eighteen months after the decision is rendered by GPA or from the date when a decision should have been rendered.
- (b) For all other disputes arising under this Contract, Seller files an appeal with the Office of the Public Accountability pursuant to 5 GCA §§ 5706(a) and 5427(e) within sixty days of GPA's decision or from the date the decision should have been made.
- (c) Seller shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.
- (d) Seller shall comply with GPA's decision and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract, except where Seller claims a material breach of this Contract by GPA. However, if GPA determines in writing that continuation of services under this Contract is essential to the public's health or safety, then Seller shall proceed diligently with performance of the Contract notwithstanding any claim of material breach by GPA.

## 12.10 Governing Law.

This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of Guam, without regard to principles of conflicts of law.

## 12.11 Jurisdiction and Costs.

Subject to and without prejudice to the mandatory arbitration provision set out in Section 12.9 hereof, each Party hereby consents to the exclusive jurisdiction of the United States federal courts sitting in Guam for any action or proceeding to enforce the foregoing agreement to arbitrate, or ancillary to such arbitration proceedings, or to confirm or set aside any award rendered in such proceeding. Both Parties waive any right to trial by jury in any such action. described in this Section 12.11. In the event such judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its costs and reasonable attorneys' fees incurred in connection with such proceedings.

## 12.12 Financial Accounting Standards.

Under the latest interpretations of the Financial Accounting Standards Board's Interpretation No. 46(R) (FIN No. 46(R)), "Consolidation of Variable Interest Entities," GPA may be required to consolidate a seller's entity for which GPA has entered into a long-term power purchase agreement. Seller agrees to provide all reasonable commercially non-sensitive information needed and in Seller's possession in order for GPA to determine whether or not Seller or any special purpose entity which owns the Seller's Facility must be consolidated by GPA under FIN No. 46(R) upon request from GPA. If it is determined that GPA needs to consolidate Seller or such special purpose entity, Seller agrees to provide the minimum information in its possession that is needed to comply with the consolidation requirements of

FEN 46(R) in a timely manner every calendar quarter during the Term upon request from GPA. If GPA is required to consolidate Seller or the special purpose entity that owns the Seller's Facility in its financial statements, Seller agrees to provide access to any needed records in its possession and personnel, as requested by GPA, so GPA's independent auditor, Ernst & Young LLP, can conduct financial statement audits in accordance with generally accepted auditing standards, as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002.

#### 12.13 Forward Contract.

The Parties intend that in any relevant proceedings, each be regarded as a forward contract merchant in respect of this Agreement and that the Transaction and this Agreement be a forwards contract for purposes of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended from time to time, and the Puerto Rico Oversight, Management and Economic Stability Act, including Title III thereof.

#### 12.14 General.

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

#### 12.15 Entire Agreement; Amendment.

This Agreement, together with any appendices, schedules, and any written supplements hereto constitutes the entire agreement between the Parties relating to the subject matter hereof. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

#### 12.16 Appendices.

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

<u>Appendix A</u>	Contract Price and Minimum Production
<u>Appendix B</u>	Notice Addresses
<u>Appendix C</u>	Energy Storage System and Performance Criteria
<u>Appendix D</u>	Independent Engineers
<u>Appendix E</u>	Permits
<u>Appendix F</u>	Form of Letter of Credit
<u>Appendix G</u>	Calculation of Curtailed Amount Due to Dispatch Down
<u>Appendix H</u>	Scheduling and Coordination
<u>Appendix I</u>	Base Conditions and Facility Test Protocol
<u>Appendix J</u>	Interconnection Agreement
<u>Appendix K</u>	Calculation of Weather Hours
<u>Appendix L</u>	Calculation of Shortfall Damages

## 12.17 Special Provisions.

12.17.1 Prohibition Against Discrimination. It is the policy of GPA not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Seller certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in GPA's contracted programs or activities, on the grounds of such person's handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Guam law; nor shall any person be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in performance of contracts with GPA or in the employment practices of GPA's contractors. Accordingly, all persons entering into contracts with GPA shall, upon request, be required to show proof of such nondiscrimination and to post notices of nondiscrimination in conspicuous places that are available to all employees and applicants.

12.17.2 Prohibition Against Contingent Fees. Seller hereby represents that Seller has not been retained or retained any persons to solicit or secure a contract from GPA upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this section is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA and any Government Authority.

12.17.3 Statement Concerning Ethical Standards. In accordance with 2 GAR, Div. 4 § 11103(b), Seller represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontractor or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA and any Governmental Authority.

12.17.4 Prohibition Against Employment of Sex Offenders. Seller warrants that no person providing services on behalf of Seller or in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of Seller relative to this Agreement. If any person employed by Seller and providing services under this Agreement is convicted subsequent to the date of this Agreement, then Seller warrants that it will notify GPA of the conviction within twenty-four hours of being made aware of the conviction, and will immediately remove such convicted person from providing services under this Agreement. If Seller is found to be in violation of any of the provisions of this paragraph, then GPA shall give Notice to Seller to take corrective action. Seller shall take corrective action within twenty-four hours of Notice from GPA, and Seller shall notify GPA when action has been taken. If Seller fails to take corrective steps within twenty-four hours of Notice from GPA, then GPA in its sole discretion may suspend this Agreement temporarily upon prior written Notice to Seller until the individual in question is removed from service to GPA.

12.17.5 Prohibition Against Employment of Sex Offenders. Seller has read and understands the provisions of 5 GCA § 5801 and § 5802 governing wage and benefits determination. Seller acknowledges the obligation to pay its employees on Guam who are delivering services to Guam in accordance with the U.S. DOL Wages and Benefits Determination as stated in 5 GCA §§ 5801 and 5802. A copy of the most recent U.S. DOL Wages and Benefits Determination for the Guam Region is attached hereto and incorporated by reference to this Contract. Seller shall apply the Wage and Benefits Determination for Guam promulgated by the U.S. Department of Labor on a date most recent to the renewal date of the Contract in accordance with 5 GCA §§ 5801 and 5802. [MUST attach copy of USDOL

12.18 Waiver of Immunity.

To the extent that GPA may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process, and to the extent that in any such jurisdiction there may be attributed to GPA or its assets or revenues such immunity (whether or not claimed), GPA agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

12.19 Contract Documents.

- (a) Documents Included. The following list of documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the contract documents, all of which are made a part hereof, and collectively evidence and constitute the contract between the parties hereto, and they are as fully a part of this Agreement as if they were set out verbatim and in full herein, and are designated as follows in their order of precedence:
1. This Renewable Energy Purchase Agreement (REPA), Interconnection Agreement (IA) and Amendments to the REPA and IA
  2. Amendments to Multi-Step Bid No.: GPA-012-23
  3. Multi-Step Bid No.: GPA-012-23
  4. Seller's Proposals and Submittals for Multi-Step Bid No.: GPA-012-23
- (b) Discrepancies. In the case of discrepancies or conflicts between the above-referenced contract documents, the REPA and IA shall take precedence over GPA-012-23, and Seller's proposal submitted in response to the Multi-Step Bid. In case of discrepancies or conflicts between the Amendments to GPA-012-23, the Amendments shall take precedent. If Seller believes that there is any discrepancy or inconsistency between this Agreement and the other contract documents, Seller shall bring such discrepancy to the attention of the General Manager before proceeding with the work affected thereby.
- (c) Presumption of Familiarity. It will be conclusively presumed that Seller has read, examined and agreed to each and every term, condition, provision, covenant or agreement contained within each and every Contract Document. Seller is assumed to be familiar with all federal (U.S.) and local laws, ordinances, rules and regulations of Guam that in any manner affect the work. Ignorance of law on the part of Seller will not relieve Seller from responsibility.

IN WITNESS THEREOF, the Parties hereto made and executed this Agreement, signed by their duly authorized officers or individuals, as of the dates listed below.

**GUAM POWER AUTHORITY**  
**GPA or Buyer**

(abbreviation if any) or Seller

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

*[Signature Page to Renewable Energy Purchase Agreement]*

## **APPENDICES**



## APPENDIX A

### CONTRACT PRICE, MINIMUM PRODUCTION AND GUARANTEED OUTPUT

<b>Contract Year</b>	<b>Annual Contract Price (\$/MWh)</b>	<b>Estimated Annual Production (MWh) (= Minimum Production or Guaranteed Output)</b>	<b>90% of Minimum Production (MWh)</b>
1	178.9929	233,915.00	210,523.50
2	180.7828	235,062.00	211,555.80
3	182.5907	234,447.00	211,002.30
4	184.4166	233,863.00	210,476.70
5	186.2607	233,959.00	210,563.10
6	188.1233	232,699.00	209,429.10
7	190.0046	232,120.00	208,908.00
8	191.9046	231,543.00	208,388.70
9	193.8237	231,639.00	208,475.10
10	195.7619	230,393.00	207,353.70
11	197.7195	229,768.00	206,791.20
12	199.6967	229,198.00	206,278.20
13	201.6937	229,084.00	206,175.60
14	203.7106	227,857.00	205,071.30
15	205.7477	227,291.00	204,561.90
16	207.8052	226,727.00	204,054.30
17	209.8833	226,817.00	204,135.30
18	211.9821	225,604.00	203,043.60
19	214.1019	224,913.00	202,421.70
20	216.2429	224,356.00	201,920.40
21	218.4054	192,491.00	173,241.90
22	220.5894	191,823.00	172,640.70
23	222.7953	191,640.00	172,476.00
24	225.0233	191,457.00	172,311.30
25	227.2735	191,817.00	172,635.30

**APPENDIX B**

**NOTICE ADDRESSES**

**[GPA and Seller shall complete the Notice Addresses prior to COD]**

## APPENDIX C

### ENERGY STORAGE SYSTEM AND PERFORMANCE CRITERIA

As part of the Facility, Seller shall install the Energy Storage System for the purpose of meeting GPA's requirements set forth in Section 4 and this Appendix C.

1.1 The Energy Storage System shall be comprised of:

84 MW/326 MWh Energy Storage System which will have the capability to control the Facility's ramp-rate under 1% of the Facility Capacity (i.e. 600 kW) per minute. The control period for the ramp-rate will be no more than 1 second and the Energy Storage System's performance will be verified as set out in this Appendix C below. The Energy Storage System may be dedicated to meet GPA's requirements for energy shifting and rapid reserve as described in Section 4.18.

1.2 Voltage and Frequency Ride-through

The Facility shall meet the voltage and frequency ride-through requirements shown in Table 1 below. Voltage and frequency measurements in the table are to be taken at the Delivery Point.

**Table 1 – Voltage and Frequency Ride-through Settings**

	Settings at Point of Interconnection (34.5 kV) (V is magnitude in per unit) (F is frequency in Hz) (T is time in seconds)	
	Setpoint	Trip Time
Under-voltage	$V < 0.88$	$T > 2.00$
Normal voltage	$0.88 < V < 1.10$	no trip allowed
Over-voltage	$1.10 < V < 1.20$	$T > 2.00$
Over-voltage	$1.20 < V$	$T > 0.16$
Under-frequency	$F < 57.0$	$T > 0.16$
Normal frequency	$57.0 < F < 63.0$	no trip allowed
Over-frequency	$63.0 < F$	$T > 0.16$

1.3 General Performance

1.3.1 Seller's output shall not produce undesirable effects on the GPA grid, such as issues with outages, frequency or voltage. GPA shall notify Seller of such undesirable effects and shall have the right to order Seller to curtail deliveries of Renewable Energy from the Project to the Delivery Point until Seller has corrected the issue. GPA will not be required to pay for any curtailments during this period.

1.3.2 Evaluation of Performance Verification

During the Delivery Period, Seller shall submit a performance verification report of the Seller's output and Energy Storage System for GPA's review on a monthly basis. Seller shall also provide annual data storage in the Facility database and GPA SCADA.

## 1.4 Ramp-Rate Control Performance

1.4.1 Energy Storage System will control the ramping rate under 1% of the Facility Capacity (i.e. 600 kW) per minute and the control period for the ramping rate will be no more than 1 second. Detailed ramping control algorithm will be finalized through discussions between GPA and Seller after the final design of the Energy Storage System is put in place but no later than one (1) month before the commissioning test of the Facility will start. Notwithstanding the foregoing, Seller will be required to adhere to the ramp-rate control requirement specified in this Appendix C at all times, unless requested otherwise by PSCC, including the period when the Energy Storage System is used for energy-shifting purposes as described in Section 4.18.

### 1.4.2 Evaluation of Performance Verification

- (a) During the Delivery Period, on an annual basis, Seller shall carry out the evaluation process for the performance verification of the Energy Storage System, including power test and 1% ramp-rate control test in the presence of GPA, once every year with annual data storage in the Facility database and GPA SCADA. Seller shall include the 1% ramp-rate control success rate in the monthly report submitted to GPA. The performance data shall be downloaded from the Facility database by GPA for verification of success rate calculation.

Given that the meter logs data for delivered power at a given time,  $t$ , we can represent the ramp-rate controlled power in kW as:

$$P_{ramp} = |P(t) - P(t - \Delta t)|$$

The ramp-rate shall be calculated every second in one-minute intervals, using the following equation:

$$RR = \frac{|P(t) - P(t - \Delta t)|}{\Delta t}$$

or simply:

$$RR = \frac{P_{ramp}}{\Delta t}$$

Where:

$t$  = time

$\Delta t$  = 1 minute

$P(t)$  = ramp-rate-controlled power in kW at time,  $t$

$P_{ramp}$  = active power considering ramp-rate per 1min window

RR = the ramp-rate, in kW per minute

Satisfaction of the following equation shall be considered a failure case of ramp rate control performance:

$$P_{ramp} > 0.01 P_{rated}$$

Conversely, the satisfaction of the following equation shall be considered a success case of ramp-rate control performance:

$$P_{ramp} \leq 0.01 P_{rated}$$

- (b) Ramp-rate control shall be based on a plus or minus ( $\pm$ ) 1% of rated power of 60MW plant ("Measured Value").
- (c) At least 95 % of the total number of calculated ramp-rate-controlled power outputs must be successful.

Success rate of ramp-rate control output is calculated as follows:

$$SR_{annual} = \frac{N_{successes}}{N_{total}} \times 100\%$$

Where:

$$\begin{aligned} SR_{annual} &= \text{annual success rate (\%)} \\ N_{successes} &= \text{number of successful tests in a year} \\ N_{total} &= \text{number of tests (each second) in a year} \end{aligned}$$

The guaranteed success rate of 95% is considered to have been met by Seller during the energy production period if the following equation is satisfied:

$$\frac{N_{successes}}{N_{total}} \times 100\% \geq 95\%$$

or simply:

$$SR \geq 95\%$$

- (d) If the success rate exceeds the guaranteed 95%, GPA will not provide any credits or deductions against future penalties for under-performance. In other words, achieving a success rate higher than 95% will not offset or reduce penalties for failing to meet the 95% success rate in future periods.
- (e) The 1% ramp-rate guaranteed success rate shall be 95% for Contract Years 1 through 25.

### 1.4.3 Ramp-Rate Control Liquidated Damages

GPA will not pay for the portion of the energy that falls short of the guaranteed success rate. Specifically, liquidated damages will be applied if the guaranteed success rate for ramp control (95%) is not achieved for the energy delivery period.

The liquidated damages amount is calculated using the formula:

$$AP = (95\% - SR_{annual}) \times E \times C$$

Where:

$AP$  = annual penalty, in USD (\$)  
 $SR_{annual}$  = Ramp Control Success Rate, in %  
 $E$  = contractor's total energy delivered at the POI for the delivery period (i.e. Contract Year), in MWh  
 $C$  = contract year energy price in \$/MWh

For example, if the calculated annual success rate for one contract year is 93%, Then GPA will not pay for 2% (95%-93%) of the annual energy. The liquidated damages may be deducted from one of the monthly invoices or the Seller may issue a separate liquidated damages payment check to GPA. The liquidated damages calculation amount shall not exceed 2.5% of the annual energy delivered to the GPA grid.

## **APPENDIX D**

### **INDEPENDENT ENGINEER**

A&R Corporation, Barrigada, Guam  
Acme Universal Inc., Barrigada, Guam  
AECOM Technical Services, Inc., Hagatna, Guam  
AIC International Inc., Hagatna, Guam  
Allied Pacific Builders, Inc., Barrigada, Guam  
American Builder LLC, Tumon, Guam  
Amorient Contracting, Inc., Tamuning, Guam  
Anen Construction, Dededo, Guam  
APTIM, Tamuning, Guam  
ARS Aleut Construction, Tamuning, Guam  
ART Constructors LLC, Tamuning, Guam  
Asanuma Corporation, Barrigada, Guam  
Beacon Construction Co., Mangilao, Guam  
Black Construction Corporation, Barrigada, Guam  
Black and Veatch, Kansas City, Kansas  
BME & Sons Inc., Barrigada, Guam  
Brixco LLC, Tamuning, Guam  
Brownstone Construction, Inc., Tamuning, Guam  
BW24 Corporation, Tamuning, Guam  
Caddell-Nan JV (CNJV), Montgomery, Alabama  
CH Construction, LLC, Tamuning, Guam  
Chugach Consolidated Solutions, LLC, Tamuning, Guam  
CH2M HILL, Englewood, Colorado  
Circle A Construction, Barrigada, Guam  
Citi Development & Construction, Inc., Tamuning, Guam

Clayarch, Inc., Tamuning, Guam  
CMS Corporation, Barrigada, Guam  
Core Tech International Corporation, Tamuning, Guam  
DMS Construction, Yigo, Guam  
Detry Corporation, Tamuning, Guam  
DLR Corporation, Tamuning, Guam  
DN Tanks Inc., El Cajon, California  
DZSP21 LLC, Hagatna, Guam  
E.M.B. Electrical, Inc., Barrigada, Guam  
EMC2 Mechanical, Inc., Barrigada, Guam  
E3 Consulting, Denver, Colorado  
Environmental Chemical Corporation (ECC), Tamuning, Guam  
Fargo Pacific Inc., Hagatna, Guam  
First Pacific Builders, LLC, Tamuning, Guam  
Fix Builders, Barrigada, Guam  
Future World Corporation, Barrigada, Guam  
Geo-Engineering & Testing, Inc., Tamuning, Guam  
Global Pacific Design Builders, LLC, Tamuning, Guam  
GPPC, Inc., Saipan, Northern Mariana Islands  
Granite Construction Company Guam, Tamuning, Guam  
Green Community Development, dba Surface Solutions, Tamuning, Guam  
GSI Pacific, Inc., Dededo, Guam  
GTX Construction, LLC, Barrigada, Guam  
Guam Advance Enterprises, Inc., Tamuning, Guam  
Guam Marine Services, Inc., Yigo, Guam  
Guam Pacific Mechanical and Electrical, LLC, Dededo, Guam  
Hagens Inc., Tamuning, Guam  
Hardwire Electrical, Dededo, Guam  
Hawaiian Rock Products, Mangilao, Guam



HDCC Guam, LLC, Dededo, Guam  
HDR, Omaha, Nebraska  
Healy Tibbitts Builders, Inc., Hagatna, Guam  
Hensel Phelps Construction Co., Tamuning, Guam  
HEXEL Works, Inc. fma Rokko & Associates, Inc., Tamuning, Guam  
HKS Inc., Dallas, Texas  
I-Built Construction, Yigo, Guam  
IAN Corporation, Barrigada, Guam  
IMC Construction Group, Tamuning, Guam  
Infratech International LLC, Tamuning, Guam  
J&B Modern Tech, Tamuning, Guam  
J&RS Equipment Company, Tamuning, Guam  
Jacobs, Pasadena, California  
JHC Corporation, Tamuning, Guam  
JMI Edison, Tamuning, Guam  
JMSI Electrical LLC, Tamuning, Guam  
JRN Air Conditioning & Refrigeration, Inc., Tamuning, Guam  
Kinden Corporation, Tamuning, Guam  
Korando Corporation, Barrigada, Guam  
LAA Construction, Barrigada, Guam  
MCS Constructors Inc., Tamuning, Guam  
Mega United Corp. Ltd., Tamuning, Guam  
Modern International, Inc., Tamuning, Guam  
Motorola, Inc., Harmon, Guam  
Mott MacDonald Group, United Kingdom  
MZ Corporation, Barrigada, Guam  
N.C. Macario & Associates, Inc., Hagatna, Guam  
Nakoa Guam, Inc., Tamuning, Guam  
Nan Inc., Barrigada, Guam

NBBJ, Seattle, Washington  
Obayashi Corporation, Dededo, Guam  
P.E.P Construction, Barrigada, Guam  
Pacific Armor Screen, Tamuning, Guam  
Pacific Metal Works Corporation, Tamuning, Guam  
Pacific Modair Corporation, Tamuning, Guam  
Pacific Rim Constructors, Inc., Dededo, Guam  
Pacific Unlimited Inc., Tamuning, Guam  
Paxia Builders, Inc., Tamuning, Guam  
Perkins+Will, Chicago, Illinois  
PW Investment Corporation, Tamuning, Guam  
QRONUS8 Corporation, Barrigada, Guam  
Reaction Co., Barrigada, Guam  
REG Builders General Construction, Dededo, Guam  
Reliable Builders Inc., Tamuning, Guam  
Relyant Global, LLC, Tamuning, Guam  
SAIC, San Diego, California  
SE Construction Corp, Tamuning, Guam  
Serrano Construction and Development Corp., Dededo, Guam  
Smithbridge Guam, Yigo, Guam  
Southcall Construction, Dededo, Guam  
Sumitomo Mitsui Construction Co. Ltd., Tamuning, Guam  
TC Pacific Construction, LLC, Tamuning, Guam  
TECHNI-CON, INC., Tamuning, Guam  
Tetra Tech Inc., Pasadena, California  
TG Engineers, PC, Barrigada, Guam  
Triple Tech Incorporated, Barrigada, Guam  
Tutugan Hill Group, Ltd., Tamuning, Guam  
Uniss Enterprises, LLC, Tamuning, Guam

**URS Corp., San Francisco, California**

**Valcon Guam, LLC, Barrigada, Guam**

**Vertex Guam, Barrigada, Guam**

**VICC International, LLC, Herndon, Virginia**

**VRM General Contractor, Tamuning, Guam**

**West Enterprises, Incorporated, Tamuning, Guam**

**WJ Construction Guam, LLC**

**APPENDIX E**

**PERMITS**

**[NOT USED]**

## APPENDIX F

### FORM OF LETTER OF CREDIT

*(Provided is sample which may be replaced by Bank / Financial Institution Form)*

(Bank or Financial Institution)

\_\_\_\_\_, 202\_\_

Irrevocable Standby Letter of Credit No. \_\_\_\_\_

**Beneficiary:**

Guam Power Authority

P.O. Box 2977

Guam 96932-2977

Attn:

Applicant:

Dear \_\_\_\_\_:

We hereby establish for the account of (Company Name) (“Applicant”) our irrevocable standby letter of credit in your favor for an amount of USD \$[\_\_\_\_\_] ([\_\_\_\_\_] United States Dollars). Applicant has advised us that this letter of credit is issued in connection with the Renewable Energy Purchase Agreement, dated as of \_\_\_\_\_, 2024, by and between the Applicant, and Guam Power Authority (the “Beneficiary”). This letter of credit shall become effective immediately on the date hereof and shall expire on \_\_\_\_\_ [the date that is XX days after the date first set forth above] (such date, or such later date(s) as determined by Applicant in accordance with the next succeeding sentence, the “Expiration Date”). The Expiration Date can be extended on one or more occasions by written notice to us from the Applicant, provided that such written notice is received at least 10 days prior to the Expiration Date. This letter of credit is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation, and (b) the original of the letter of credit (the “Accompanying Documents”) and presented at our office located at (Bank/Financial Institution Address) attention \_\_\_\_\_ (or at any other office which may be designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a “Business Day”). If we receive your draft and the Accompanying Documents at such office on any Business Day, all in strict conformity with the terms and conditions of this letter of credit, we will honor the same by making payment in accordance with your payment instructions on the third succeeding Business Day after presentation.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, accompanied by this letter of credit for cancellation, or (ii) our close of business at our aforesaid office on the Expiration Date, or if the

Expiration Date is not a Business Day, then on the succeeding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. This letter of credit is issued and subject to the International Standby Practices 1998 (ISP98) International Chamber of Commerce Publication No. 590, and as to matters not addressed by ISP98, shall be governed by and construed in accordance with the laws of the State of New York and application of U.S. Federal Law.

4. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2 and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 4.

5. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no.

\_\_\_\_\_.

Very truly yours,

\_\_\_\_\_

Authorized signature  
*(Bank or Financial Institution)*

under LETTER OF CREDIT No. \_\_\_\_\_

To:

(Bank or Financial Institution)

(Bank/Financial Institution Address)

Attn: \_\_\_\_\_

[ Month, Day, Year ]

On Sight

Pay to Guam Power Authority U.S. \$ \_\_\_\_\_ [not to exceed amount available to be drawn]

Wire to:

Bank's Name: Bank of Guam

Bank's Location: 111 Chalan Santo Papa St., Hagatna, Guam 96910

Bank's Mailing Address: P.O. Box BW, Hagatna, Guam 96932

Account Name: Guam Power Authority Revenue Fund Account

Acct. No.: (to be provided)

Routing No.: (to be provided)

For value received and charge to account of Letter of Credit No. \_\_\_\_\_ of (Company Name)

GUAM POWER AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Drawing under Letter of Credit No. \_\_\_\_\_

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

To:

(Bank or Financial Institution)

(Bank/Financial Institution Address)

Attn: \_\_\_\_\_

The undersigned, a duly authorized officer of the Guam Power Authority, ("**Beneficiary**"), hereby certifies on behalf of Beneficiary to (Bank or Financial Institution) and to (Company Name) (the "**Applicant**") with reference to irrevocable standby Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued for the account of (Company Name) ("**Applicant**"), that:

- 1) pursuant to the Renewable Energy Purchase Agreement, dated as of \_\_\_\_\_, 202\_\_, by and between Applicant and Beneficiary and as of the date hereof, Beneficiary is entitled to draw under the Letter of Credit;
- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$ \_\_\_\_\_, as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft; and
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the remaining amount to which Beneficiary is entitled to draft under said Renewable Energy Purchase Agreement.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

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

**GUAM POWER AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notice of surrender of Letter of Credit No. \_\_\_\_\_

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



To:

(Bank or Financial Institution)

(Bank/Financial Institution Address)

Attn: \_\_\_\_\_

Re: Letter of Credit No. \_\_\_\_\_

issued for the account of (Company Name)

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the "Letter of Credit"). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

GUAM POWER AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **APPENDIX G**

### **CALCULATION OF CURTAILED AMOUNT DUE TO GPA DISPATCH DOWN**

Buyer shall pay Seller, on the date payment would otherwise be due in respect of the day in which any curtailment is initiated by GPA for reasons other than Force Majeure or Seller Event of Default (“Dispatch Down”), an amount equal to the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to Buyer but for such Dispatch Down, pursuant to the limitations provided in Appendix H, Section 1.2, which allow GPA to curtail energy delivered from Seller 2% of the Guaranteed Output in each Contract Year. The determination of the curtailed amount associated with any Dispatch Down shall be calculated as follows:

1) Identification of weather conditions for the period of Dispatch Down

For any period the Facility was Dispatched Down, Seller shall document the Weather Data associated therewith. (“Weather Data” means solar irradiation, wind speed, and ambient temperatures.)

2) Curtailed amount calculation

a. Seller shall use PVSyst energy simulation software or other software as agreed by the Parties to generate hypothetical generation amounts for the Dispatch Down period (curtailed amount MWh) by utilizing the Weather Data.

b. In addition to “Annual Facility Test” (as described in Section 4.9 of this Agreement), GPA shall be entitled to check the accuracy of the equipment associated with the Weather Data once in each Contract Year as agreed with Seller. However, GPA shall be entitled to additional Facility Tests if an issue arises with the measured data.

During Excused Hours,

- a. In the event only a part of the inverters are Dispatched Down, the curtailed amount shall be calculated using the average generation amount of the inverters in normal operation.

- b. In the event all of the inverters are Dispatched Down, the curtailed amount shall be calculated using the formula below. Provided, that if measured values taken by pyranometers cannot be used as Weather Data (due to operation failure or unreliability of values taken by such pyranometers etc.), Weather Data provided by a third party institution agreed upon between GPA and Seller (an independent institution such as Solargis or NASA) shall be used. If mutually agreed to by GPA and Seller, the formula and ratios in Table 1 may be adjusted if needed.

$$\sum_i EN_{AC_i} = \sum PR_{monthly} * \left\{ P_{STC} * \left( \frac{G_{POA_i}}{G_{STC}} \right) \right\} * TS_i$$

$EN_{AC_i}$  = Net AC energy measured at the PV production meter during time step  $i$  [kWh]

$P_{STC}$  = Total DC power installed based on module quantity and rated power [kW]

$G_{POA_i}$  = Measured plane-of-array irradiance as the average of measurements from all tilted pyranometers, averaged for time step  $i$  [ $W/m^2$ ]

$G_{STC}$  = Irradiance at Standard Test Condition (STC) [ $1000 W/m^2$ ]

$TS_i$  = Time step duration for the data interval  $i$  (5 minutes = 0.08333hr) [hr]

$i$  = 5 minute time step

$PR_{Monthly}$  = Monthly PR based on PVsyst (from Table 1 – Base Case Performance Ratios)

Table 1 – Base Case Performance Ratios [to be completed based on Independent Engineer Report]

Month	Monthly PR [%]	Ambient Temperature[°C] (Applied in Monthly PR)	POA irradiance[kWh/m'] (Applied in Monthly PR)
January	82.4	24	175.8
February	81.9	25	171.9
March	78.5	26	199.5
April	78.2	26	201.3
May	80.1	26	204.3
June	80.9	27	195.0
July	77.6	27	198.2
August	76.9	27	196.2
September	78.1	27	184.8
October	81.4	26	181.8
November	79.9	27	181.0
December	82.2	27	178.9

## **APPENDIX H**

### **SCHEDULING AND COORDINATION PROCEDURES<sup>6</sup>**

The Parties acknowledge that as of the Effective Date GPA has not yet established protocols for scheduling (firm or intermittent) power to permit solar energy generating projects to participate in GPA's scheduling process. As soon as practicable, in consultation with Seller (and after taking into account and accommodating Seller's reasonable comments), GPA shall establish such protocols. As soon as practicable after such protocols have been established, become effective and been provided to Seller, but not more than ninety (90) days thereafter, Seller shall use commercially reasonable efforts to cause the Project to become certified as an available resource, including negotiating and executing documents to become an available resource in Guam. Following certification and whenever applicable, Seller shall use commercially reasonable efforts to comply with all additional reasonable protocols issued by GPA relating to available resources during the Delivery Period, and GPA shall consult with Seller (and take into account and accommodate Seller's reasonable comments) in connection with the preparation of any such additional protocols. Seller shall not be required to incur additional costs to comply with such future protocols or to become an available resource under future requirements to be established by GPA. In the event that any protocols for scheduling (firm or intermittent) power to permit solar energy generating projects to participate in GPA's scheduling process is established after the Effective Date and such protocols conflict with the procedures set forth in this Appendix H, the procedures set forth in this Appendix H shall control.

#### 1.1 General

- (a) **Notices.** Seller shall submit to GPA notices and updates required under this Agreement regarding the Project's status, including, but not limited to, outage requests, Forced Outages and Forced Outage reports. If a web based system is not available, Seller shall promptly submit such information to GPA (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information. Seller shall also provide additional reporting requirements specified by the GPA Power System Control Center.
- (b) **GPA Settlements.** GPA shall be responsible for all settlement functions within GPA related to the Project.
- (c) **Resource Data Template.** Seller shall provide the data to GPA that is required for GPA's resource data template (or successor data system) for the Project consistent with this Agreement. Neither Party shall change the template for such data without the other Party's prior written consent.

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<sup>6</sup> Appendix H and scheduling and coordination procedures TBD (including PSCC requirements for Hourly Reports, Daily Production Reports, etc.).

- (d) **Annual Delivery Schedules.** No later than forty-five (45) days before (A) the first day of the first Contract Year and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Period, Seller shall provide a non-binding forecast of each month's average-day expected Actual Renewable Energy for the following calendar year.
- (e) **Monthly Delivery Schedules.** Ten (10) Business Days before the beginning of each month during the Delivery Period, Seller shall provide a non-binding forecast of each day's average expected Actual Renewable Energy for the following month ("Monthly Delivery Forecast") .
- (f) **Daily Delivery Schedules.** By 5:30 AM Guam Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide GPA with a non-binding forecast of the Project's available energy (a "Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's estimate of the Project's available energy. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by GPA, in which case Seller shall promptly provide GPA with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to GPA's on-duty scheduling coordinator. If Seller fails to provide GPA with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only GPA shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or GPA's best estimate based on information reasonably available to GPA and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or GPA's best estimate.
- (g) **Hourly Delivery Schedules.** Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason, including Forced Outages (other than a scheduling change imposed by GPA), that results in a change to its deliveries (whether in part or in whole), Seller shall notify GPA immediately by calling GPA's on-duty scheduling coordinator. Seller shall notify GPA of Forced Outages in accordance with this Agreement. Seller shall keep GPA reasonably informed of any developments that are reasonably expected to affect either the duration of the outage or the availability of the Project during or after the end of the outage.

## 1.2 Dispatch Down/Curtailment.

- (a) GPA shall have the right to order Seller to curtail deliveries of Renewable Energy from the Project to the Delivery Point pursuant to a Notice of a Dispatch Down (as defined in Appendix G) delivered to Seller at least one (1)

day prior to the curtailment date, when practical, provided that the value attributable to any Renewable Energy curtailed of more than 2% of the Guaranteed Output for any Contract Year which is not delivered during such curtailment periods, whether for transmission unavailability, operational dispatch or pre-set ramping parameters or otherwise shall be reimbursed in accordance with subsection (b) below.

- (b) Seller shall have the right in its discretion to make up any curtailed quantities, as calculated in accordance with Appendix G, of Renewable Energy as a result of a Dispatch Down (“Dispatch Down Makeup Production”), for which it is not reimbursed pursuant to this Appendix H, in the first and any subsequent Contract Year in which at least the Minimum Production is delivered and to extend the Term to the extent necessary, but not to exceed six (6) months, to make up any curtailed quantities. The Contract Price for the Contract Year in which the make-up occurs shall apply to Dispatch Down Makeup Production. Production in excess of Guaranteed Output for any Contract Year as set forth in the third column of Appendix A will first be applied to any previous years’ Deficiency Amounts, then to Dispatch Down Makeup Production, then treated under this Agreement as production in excess of Guaranteed Output.
- (c) GPA shall provide to Seller all technical information necessary to justify and support each Dispatch Down. Seller agrees to reduce the Project’s Renewable Energy as set forth in such a Notice of Dispatch Down that meets the requirements set forth herein.
- (d) For each MWh of Renewable Energy from the Facility curtailed by GPA until the end of this Agreement, GPA shall pay Seller, on the date payment would otherwise be due in respect of the month in which any such curtailment occurred, an amount equal to the product of the Contract Price times the amount of Renewable Energy that Seller could reasonably have delivered to GPA but for such curtailment (“Lost Revenue”); provided that no Lost Revenue shall be due and payable from GPA to Seller for curtailments of up to 2% of the Guaranteed Output and curtailments due to undesirable effects on the GPA grid caused by Seller’s output.
- (e) For purposes of clarification, no curtailment by GPA, as a result of a warranted failure of or defect in the interconnection facilities transferred by Seller to GPA pursuant to the Interconnection Agreement, during the one-year warranty term thereof, shall count against the 2% curtailment threshold set forth above. During the one-year warranty term of the interconnection facilities transferred, any curtailment by GPA which results from such failure of or defect in the interconnection facilities transferred will not be eligible for reimbursement by GPA to Seller as Lost Revenue payments.

1.3 Outage Notification.

- (a) **Planned Outages.** Seller shall schedule Planned Outages in accordance with Good Utility Practices and with the prior written consent of GPA, which consent may not be unreasonably withheld, conditioned or delayed. Nonetheless, the Parties acknowledge that in all circumstances, Good Utility Practices shall dictate when Planned Outages should occur. Seller shall notify GPA of Seller's proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1<sup>st</sup> of each year during the Delivery Period. The Planned Outage schedule is subject to GPA's concurrence, which concurrence may not be unreasonably withheld, conditioned or delayed. GPA shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its commercially reasonable efforts in accordance with Good Utility Practices to accommodate GPA's requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed form of outage notification to GPA no later than fourteen (14) days prior to each Planned Outage and reasonably appropriate outage information or requests to GPA. Seller shall contact GPA with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without GPA's concurrence, not to be unreasonably withheld, conditioned or delayed.
- (b) **Forced Outages.** Within two hours of any Forced Outage Seller shall submit a completed form of outage notification to GPA in accordance with the instructions shown on the agreed form and shall submit outage information to GPA. Seller shall not substitute Renewable Energy from any other source for the output of the Project during a Forced Outage.
- (c) **Coordination with GPA.** GPA shall cooperate with Seller in arranging and coordinating all Project outages.

#### 1.4 **Operations Logs and Access Rights.**

- (a) **Operations Logs.** Seller shall maintain a log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, and control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to GPA within five days of GPA's request.
- (b) **Access Rights.** GPA, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business

hours upon reasonable advance notice and for any purposes reasonably connected with this Agreement and in accordance with Section 12.4 and the other applicable requirements of this Agreement.



## **APPENDIX I**

### **BASE CONDITIONS AND FACILITY TEST PROTOCOL** **[GPA and Seller shall complete a mutually agreed process for commissioning and performance testing prior to COD and to any curtailment claims]**

#### 1. Notice of Test plan to GPA

#### 2. Facility Test

There are two types of “Facility Test”: “Ramp-Rate Control” and “Output Capacity Test” performed for 1 (one) day each. Before the test, SCADA should be installed completely for data acquisition and analysis, and data such as power generation and irradiation should be collected automatically. The “Facility Test” results could be differ depending on the weather condition, so if it is determined that there is a weather condition problem, “Facility Test” should be performed another day within a week.

##### 2.1 Ramp Rate Control

- (1) Test procedure for one day follows “1.3.2 Evaluation Performance Verification of Appendix C.
- (2) If success rate is equal or greater than the Guaranteed Success Rate (in Appendix C), then Facility shall be deemed to be operated in accordance to its Design Capacity.
- (3) If success rate is less than the Guaranteed Success Rate (in Appendix C), then contractor shall analyze and solve the cause, and test should be performed the following day.

##### 2.2 Output Capacity

- (1) One day output capacity should be measured at Delivery Point.
- (2) If measured one day output capacity values is equal or greater than 90% of the expected average daily output capacity as set forth in the fourth column of Appendix A ([“90% of Minimum Production (MWh)”]/365), then the Facility shall be deemed to be operated in accordance to its Design Capacity.
- (3) If measured one day output capacity value is less than 90% of expected average daily output capacity ([“90% of Minimum Production (MWh)”]/365), then contractor shall compare the irradiance of tested day and expected irradiance ( $2268.7/365 = \text{total sum}$

of "POA irradiance [kWh/m<sup>2</sup>] (Applied in Monthly PR)" of Appendix G/365). If irradiance of tested day is less than expected irradiance, then test should be performed another day within a week.

### 3. Exclusion

The Facility Test shall be redone if any of the following occur during the Facility Test

- (a) Failure of Facility to perform caused by legislative, administrative, or executive regulation, order or requisition of the government, local utility or public utilities commission, or any state, provincial or municipal government or official;
- (b) Force Majeure events or GPA Delays; or
- (c) Disconnection from the utility grid not caused by Seller or its subcontractors.

**APPENDIX J**  
**FORM OF INTERCONNECTION AGREEMENT**

**Execution Version**

**INTERCONNECTION AGREEMENT**

**BETWEEN**

**GUAM POWER AUTHORITY**

**AND**

**KEPCO-EWP-SCT YONA SOLAR, LLC**

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## **ATTACHMENTS**

**Attachment 1 – Glossary of Terms**

**Attachment 2 – Description and Costs of the Generating Facility, Interconnection facilities, and Metering Equipment**

**Attachment 3 – One-line Diagram Depicting the Generating Facility, Interconnection Facilities and Metering Equipment**

**Attachment 4 – Milestones**

**Attachment 5 – Additional Operating Requirements for the Transmission Provider’s Transmission System Needed to Accept the Interconnection Customer**

**Attachment 6 – Transmission Provider's Description of its Network Upgrades and Network Upgrade Costs**

**Attachment 7 - Bill of Sale**

## INTERCONNECTION AGREEMENT

This Interconnection Agreement ("Agreement") is made and entered into this [●]th day of [November], 2024 (the "Effective Date"), by Guam Power Authority ("GPA" or "Transmission Provider"), and KEPCO-EWP-SCT YONA SOLAR, LLC ("Interconnection Customer" or "Contractor") each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

### Transmission Provider Information

Transmission Provider: Guam Power Authority  
Attention: John M. Benavente, P.E. , General Manager  
Address: P.O. Box 2977, Hagatna Guam 96932

Physical Address: Gloria B. Nelson Public Service Bldg.  
688 Route 15, Mangilao Guam 96913  
Phone: (671) 648-3180  
Email: jbenavente@gpagwa.com  
Fax: (671) 648-3290

cc: [Jennifer G. Sablan, P.E., Assistant General Manager, Operations  
jsablan@gpagwa.com]

### Interconnection Customer Information

Interconnection Customer: KEPCO-EWP-SCT YONA SOLAR, LLC  
Attention: [Mr. ●●]  
Physical Address: [●●]  
Phone: [●●]  
Email: [●●]  
Fax: [●●]

Interconnection Customer Application No: [2024-]

In consideration of the mutual covenants set forth herein, the Parties agree as follows:



## **Article 1. Scope and Limitations of Agreement**

- 1.1 This Agreement governs the terms and conditions under which the Interconnection Customer's Generating Facility will interconnect with, and operate in parallel with, the Transmission System.
- 1.2 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power. The purchase or delivery of power and other services that the Interconnection Customer may require will be covered under a separate agreement. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity to GPA in accordance with GPA's standard procedures, as provided by GPA to Interconnection Customer no later than ninety (90) days prior to commencement of testing of the Generating Facility.
- 1.3 Responsibilities of the Parties
  - 1.3.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.
  - 1.3.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct or cause to be constructed the Interconnection Facilities in accordance with this Agreement, Good Utility Practice and the requirements of Section 1.3.4 below.
    - 1.3.2.1 The cost of constructing, interconnecting, operating and maintaining the Generating Facility shall be borne entirely by Interconnection Customer.
    - 1.3.2.2 The cost of developing, designing, procuring, constructing and installing the Interconnection Facilities shall be borne by Interconnection Customer
    - 1.3.2.3 On or before the Commercial Operation Date (as defined in the Power Purchase Agreement), the Interconnection Customer shall transfer the Interconnection Facilities (other than as contemplated in this Agreement, Power Purchase Agreement or as otherwise agreed to between the Parties) to GPA by execution and delivery of the Bill of Sale attached hereto as Attachment 7.
  - 1.3.3 GPA shall operate and maintain the Transmission System, the Interconnection Facilities and the Network Upgrades in accordance with this Agreement and Good Utility Practice.

1.3.3.1 The Parties agree that System Stability Upgrades and Network Upgrades will be required solely as a result of Interconnection Customer installing the Generating Facility and the Interconnection Facilities.

1.3.4 The Interconnection Customer agrees to construct the Interconnection Facilities in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE Standards, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design and install its Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of GPA.

1.3.5 Interconnection Customer shall be responsible for the safe installation of the Interconnection Facilities. Following transfer by Interconnection Customer in accordance with Section 1.3.2.3, GPA shall be responsible for the safe operation, maintenance, repair, inspection and condition of the Interconnection Facilities and the Transmission System, including System Stability Upgrades and Network Upgrades.

1.3.6 *GPA shall provide without cost to Interconnection Customer the reasonable use of labor, personnel and equipment necessary for Interconnection Customer's installation of the Small Generating Facility and the Interconnection Facilities, so long as GPA does not incur material out-of-pocket cost or constraint of resources as a result thereof.*

#### 1.4 Parallel Operation Obligations

Once the Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Generating Facility in the Guam control area, including, but not limited to: 1) the rules and procedures concerning the operation of generation set forth by the Transmission Provider for the Transmission System and 2) the Operating Requirements set forth in Appendix H of the Power Purchase Agreement.

#### 1.5 Metering

The Parties' responsibilities with respect to purchase, installation, operation, maintenance, testing, repair and replacement of metering and data acquisition equipment are specified in Section 7.4 of the Power Purchase Agreement.

## 1.6 Reactive Power

The Interconnection Customer shall design its Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at all power factors over the range of 0.95 leading to 0.95 lagging, unless GPA has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The Generating Facility shall be capable of continuous dynamic operation throughout the power factor design range as measured at the Point of Interconnection.

## 1.7 Definitions

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of this Agreement.

## **Article 2. Inspection, Testing, Authorization, and Right of Access**

### 2.1 Equipment Testing and Inspection

2.1.1 The Interconnection Customer shall test and inspect its Generating Facility and the Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify GPA of such activities no fewer than five Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. The notification shall be made by submitting a test plan for GPA's approval prior to the first scheduled testing date. GPA shall provide feedback within ten (10) business days. The test plan shall include all relevant testing details including but not limited to the date and time of each test, and expected MW and MVAR output of the Generating Facility. Testing and inspection shall occur on a Business Day. GPA may, at its own expense, send qualified personnel to the Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide GPA a written test report when such testing and inspection is completed.

2.1.2 GPA shall provide the Interconnection Customer written acknowledgment within five (5) Business Days, that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by GPA of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Generating Facility.

## 2.2 Authorization Required Prior to Parallel Operation

- 2.2.1 GPA has listed applicable parallel operation requirements in Appendix H of the Power Purchase Agreement. Additionally, GPA shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. GPA shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date specified in Attachment 4.
- 2.2.2 The Interconnection Customer shall not operate its Generating Facility in parallel with the Transmission System without the one-time prior written authorization of GPA. GPA will provide such authorization once GPA receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements set forth in Appendix H of the Power Purchase Agreement. Such authorization shall not be unreasonably withheld, conditioned, or delayed.
- 2.2.3 GPA shall have control of the power transmission system including the interconnecting transmission line breaker at the point of interconnection.

## 2.3 Right of Access

- 2.3.1 Upon reasonable notice, GPA may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit.
- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without written notice in the event of an emergency or hazardous condition, GPA shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers. Within forty-eight (48) hours after a GPA access due to an emergency or hazardous condition, GPA shall provide a written summary of any such access and of any work performed during such access.
- 2.3.3 Each Party shall be responsible for its own costs associated with following this article.

### **Article 3. Effective Date, Term, Termination, and Disconnection**

#### **3.1 Effective Date**

This Agreement shall become effective on the Effective Date.

#### **3.2 Term of Agreement**

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of twenty-five (25) years, and plus optional five (5) years according to the Power Purchase Agreement, from the Commercial Operation Date (as defined in the Power Purchase Agreement), or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 3.3 of this Agreement. In no event, however, shall GPA be entitled to terminate this Agreement unless and until the Power Purchase Agreement is terminated.

#### **3.3 Termination**

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving GPA twenty (20) Business Days written notice.

3.3.2 Transmission Provider may terminate this Agreement if the Generating Facility has ceased commercial operation for three (3) consecutive years, beginning with the last date of commercial operation for the Generating Facility, after giving the Interconnection Customer twenty (20) Business Days advance written notice. The Small Generating Facility will not be deemed to have ceased commercial operation for purposes of this Article 3.3.2 if the Interconnection Customer can document that it has taken other significant steps to maintain or restore operational readiness of the Generating Facility for the purpose of returning the Generating Facility to commercial operation as soon as possible.

3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.

3.3.4 Upon termination of this Agreement, the Generating Facility will be disconnected from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination

resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

3.3.5 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

3.3.6 The provisions of this Article shall survive termination or expiration of this Agreement.

#### 3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice in accordance with Section 1.2(d) of Appendix H of the Power Purchase Agreement.

##### 3.4.1 Emergency Conditions

"Emergency Condition" shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of GPA, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Transmission System or the Interconnection Facilities; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility, or with respect to the Interconnection Facilities until transferred to GPA pursuant to this Agreement. Under Emergency Conditions, if GPA believes that the Emergency Condition may reasonably be expected to affect the Transmission System or the Interconnection Facilities, GPA may immediately suspend interconnection service and temporarily disconnect the Generating Facility. GPA shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Generating Facility. The Interconnection Customer shall notify GPA promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Transmission System. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

##### 3.4.2 Routine Maintenance, Construction, and Repair by GPA

GPA may interrupt interconnection service or curtail the output of the Generating Facility and temporarily disconnect the Generating Facility from the Transmission System when necessary, according to Good Utility Practice, for routine maintenance and non-emergency construction and repairs on the Transmission System. GPA shall provide the Interconnection Customer with ten (10) Business Days notice prior to such interruption. GPA shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer. The interruption or curtailment shall continue only for so long as reasonably necessary under Good Utility Practice.

#### 3.4.3 Forced Outages for Emergency Repairs

During any forced outage, GPA may suspend interconnection service to effect immediate repairs on the Transmission System. GPA shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, GPA shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

#### 3.4.4 Adverse Operating Effects

GPA shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, there is a significant probability that operation of the Generating Facility will cause damage to the Transmission System. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, GPA may disconnect the Generating Facility. GPA shall provide the Interconnection Customer with five (5) Business Day notice of such disconnection, unless the provisions of Article 3.4.1 apply.

#### 3.4.5 Modification of the Generating Facility

The Interconnection Customer must receive written authorization from GPA before making any change to the Generating Facility that may have a material impact on the safety or reliability of the Transmission System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without GPA's prior written authorization, GPA shall have the right to temporarily disconnect the Generating Facility until the Interconnection Customer makes necessary changes in order for the Generating Facility not to have a material impact on the safety or reliability of the Transmission System.

### 3.4.6 Reconnection

The Parties shall cooperate with each other to restore the Generating Facility, Interconnection Facilities, and the Transmission System to their normal operating state as soon as reasonably practicable following a temporary disconnection.

### 3.4.7 Outages During Construction Requested by the Interconnection Customer

For all scheduled outages required to perform the work, the Interconnection Customer shall:

- A. Submit a written request to the GPA Power System Control Center, addressed to the Chief Dispatcher, two weeks (14 days) prior to the outage date. Outages will not be granted without a written request.
- B. Coordinate closely with the GPA T&D Superintendent of Overhead Lines, or his designated representative.
- C. For outages affecting GPA customers, limit outages to a maximum of six (6) hours daily. GPA Customers shall not experience a scheduled interruption exceeding six (6) hours per day. Scheduled interruptions affecting the same customers on consecutive days are also not permitted.
- D. For outages affecting transmission circuits only (and not affecting GPA customers), limit outages to eight (8) hours per day (8:00 AM to 4:00 PM).
- E. Submit an outage plan on areas affecting schools to GPA for approval prior to the start of work. The following shall be incorporated in the outage plan in addition to the requirements indicated above:
  - i. Outages shall not be permitted during school hours.
  - ii. The outage plan shall be practical and incorporated in the project schedule to meet the required completion date.
  - iii. GPA will not consider any requests for time extension due to outage restrictions caused by school schedules.
- F. For outages affecting Navy circuits, submit a written request to GPA and Navy DZSP 30 days prior to the outage date. The Interconnection Customer shall directly coordinate with Navy DZSP for outages affecting navy circuits.
- G. Submit outage requests for one work location per day. Due to manpower limitations to monitor contractors and potential power quality issues, GPA will not approve outages at two separate work locations.

GPA will be responsible for de-energizing and re-energizing circuits as required by the project. GPA will also be responsible for notifying the media and public announcements regarding the planned outages.



## **Article 4. Cost Responsibility for Interconnection Facilities**

### **4.1 Interconnection Facilities**

The Interconnection Customer shall install and pay for the cost of the Interconnection Facilities itemized in Attachment 2 of this Agreement, and as further set forth in Section 1.3.

### **4.2 System Stability Upgrades**

It is agreed that system operational characteristic changes or Generator Facility modifications shall be required to be installed by the Interconnection Customer as a result of the development, installation or operation of the Generating Facility or other generation installed in Guam.

Transmission system relaying to line current differential upgrade is required as further described in Attachment 5. GPA shall own and operate the System Stability Upgrades described in Attachment 5 of this Agreement, which will be installed as and to the extent required as a result of the Interconnection Customer connecting to the Interconnection Facilities. Except as set forth in the next paragraph of this Section 4.2, all actual costs of such required System Stability Upgrades, including overhead costs, shall be borne by the Interconnection Customer.

For any verified costs for the System Stability Upgrades in excess of \$[●●], GPA shall reimburse the Interconnection Customer. The Interconnection Customer shall properly notify and obtain GPA's approval prior to exceeding the \$[●●] cap.

## **Article 5. Network Upgrades**

5.1 (Reserved)

5.2 (Reserved)

## **Article 6. Billing, Payment, Milestones, and Financial Security**

## 6.1 Milestones

The Parties shall, prior to financial closing under the Financing Documents (as defined under the Power Purchase Agreement) agree on milestones for which each Party is responsible and list them in Attachment 4 of this Agreement. A Party's obligations under this provision may be extended by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event as that term is defined in Section 7.5, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) requesting appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless (1) it will suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

## **Article 7. Not Used**

## **Article 8. Contract Documents**

### 8.1 Documents Included

The following list of documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the contract documents, all of which are made a part hereof, and collectively evidence and constitute the contract between the parties hereto, and they are as fully a part of this Agreement as if they were set out verbatim and in full herein, and are designated as follows in their order of precedence:

- A. This Interconnection Agreement (IA) and Renewable Energy Purchase Agreement (REPA) and Amendments to the IA and REPA
- B. Amendments to Multi-Step Bid No.: GPA-012-23
- C. Multi-Step Bid No.: GPA-012-23
- D. Contractor's Proposals and Submittals for Multi-Step Bid No.: GPA-012-23

### 8.2 Discrepancies

In the case of discrepancies or conflicts between the above-referenced contract documents, the IA and REPA shall take precedence over GPA-012-23, and Contractor's proposal submitted in response to the Multi-Step Bid. In case of discrepancies or

conflicts between the Amendments to GPA-012-23, the Amendments shall take precedent. If Contractor believes that there is any discrepancy or inconsistency between this Agreement and the other contract documents, Contractor shall bring such discrepancy to the attention of the General Manager before proceeding with the work affected thereby.

### 8.3 Presumption of Familiarity

It will be conclusively presumed that Contractor has read, examined and agreed to each and every term, condition, provision, covenant or agreement contained within each and every Contract Document. Contractor is assumed to be familiar with all federal (U.S.) and local laws, ordinances, rules and regulations of Guam that in any manner affect the work. Ignorance of law on the part of Contractor will not relieve Contractor from responsibility.

## **Article 9. Confidentiality**

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to any permitted disclosee of Confidential Information pursuant to the Power Purchase Agreement, to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.
- 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
- 9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information

without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

- 9.3 Notwithstanding anything in this Article to the contrary, if during the course of an investigation by a Governmental Authority or otherwise, a Governmental Authority requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party receiving the request, if required under Applicable Laws and Regulations, shall provide the requested information to the Governmental Authority conducting the investigation, within the time provided for in the request for information. In providing the information, the Party may request that the information be treated as confidential and non-public by the Governmental Authority and that the information be withheld from public disclosure. The Party shall notify the other Party to this Agreement when it is notified by a Governmental Authority that a request to release Confidential Information has been received, at which time either of the Parties may respond before such information would be made public. .

#### **Article 10. Disputes**

- 10.1 The Parties agree to resolve all disputes arising out of this Agreement according to the provisions of the Power Purchase Agreement.

#### **Article 11. Not Used**

#### **Article 12. Miscellaneous**

##### **12.1 Governing Law, Regulatory Authority, and Rules**

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Territory of Guam (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

## 12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

## 12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

## 12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or Default under this Agreement for any reason by the Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from GPA. Any waiver of this Agreement shall, if requested, be provided in writing.

## 12.5 Entire Agreement

This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for or any condition to, either Party's compliance with its obligations under this Agreement.

## 12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

#### 12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### 12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

#### 12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. Both Parties are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

#### 12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four (24) hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

#### 12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement;

provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall a Party be liable for the actions or inactions of the other Party or its subcontractors with respect to obligations of the first Party under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.2 The obligations under this Article will not be limited in any way by any limitation of subcontractor's insurance.

### Article 13. Notices

#### 13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national carrier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Interconnection Customer:

Interconnection Customer: KEPCO-EWP-SCT YONA SOLAR, LLC

Attention: Mr. [●●]

Physical Address: [●●]

[●●]Phone:

[●●]Email:

Fax: [●●]

If to the Transmission Provider:

Attention: Guam Power Authority  
John M. Benavente, P.E. , General Manager  
Address: P.O. Box 2977, Hagatna Guam 96932

Physical Address: Gloria B. Nelson Public Service Bldg.  
688 Route 15, Mangilao Guam 96913  
Phone: (671) 648-3180  
Email: jbenavente@gpagwa.com  
Fax: (671) 648-3290

cc: [Jennifer G. Sablan, P.E., Assistant General Manager, Operations  
jsablan@gpagwa.com]

### 13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below:

Interconnection Customer:

Interconnection Customer: [●●]  
Attention: Mr. [●●]  
Physical Address: [●●]  
[●●]  
Phone: [●●]  
Email: [●●]  
Fax: [●●]

Transmission Provider:

Attention: Guam Power Authority  
John J.E. Kim, Chief Financial Officer  
Address: P.O. Box 2977, Hagatna Guam 96932  
Physical Address: Gloria B. Nelson Public Service Bldg.  
688 Route 15, Mangilao Guam 96913  
Phone: (671) 648-3120/3119  
Email: jjekim@gpagwa.com



Fax: (671) 648-3290

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer: [●●]  
Attention: Mr. [●●]  
Physical Address: [●●]  
[●●]  
Phone: [●●]  
Email: [●●]  
[●●]  
Fax: [●●]

If to the Transmission Provider:

Guam Power Authority  
Attention: John M. Benavente, P.E. , General Manager  
Address: P.O. Box 2977, Hagatna Guam 96932  
Physical Address: Gloria B. Nelson Public Service Bldg.  
688 Route 15, Mangilao Guam 96913  
Phone: (671) 648-3180  
Email: jbenavente@gpagwa.com  
Fax: (671) 648-3290  
cc: Jennifer G. Sablan, P.E., Assistant General Manager, Operations  
jsablan@gpagwa.com

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

**Interconnection Customer's Operating Representative:**

Interconnection Customer: [●●]  
Attention: [●●]  
Physical Address: [●●]  
[●●]  
Phone: [●●]  
Email: [●●]  
[●●]  
Fax: [●●]

**Transmission Provider's Operating Representative:**

Attention: Guam Power Authority  
Jennifer G. Sablan, P.E., Assistant General  
Manager, Operations  
Address: P.O. Box 2977, Hagatna Guam 96932  
Physical Address: Gloria B. Nelson Public Service Bldg.  
688 Route 15, Mangilao Guam 96913  
Phone: (671) 648-3212  
Email: jsablano@gpagwa.com  
Fax: (671) 648-3290

With a copy of all notices, including notices of any defaults, sent to legal counsel of the applicable Party, as follows:

Interconnection Customer: [●●]  
Attention: Mr. [●●]  
Physical Address: [●●]  
[●●]  
Phone: [●●]

Email: [●●]

[●●]

Fax: [●●]

[●●]

Attention: Guam Power Authority  
Address: Marianne Woloschuk, General Counsel  
P.O. Box 2977, Hagatna Guam 96932

Physical Address: Gloria B. Nelson Public Service Bldg.  
688 Route 15, Mangilao Guam 96913

Phone: (671) 648-3203  
Email: mwoloschuk@gpagwa.com  
Fax: (671) 648-3290

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

*[Signature page follows]*

**Article 14. Signatures**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Transmission Provider

By: \_\_\_\_\_

Name: John M. Benavente, P.E.

Title: General Manager

Date: [●●], 2024

For the Interconnection Customer

By: \_\_\_\_\_

Name: [●●]

Title: [●●]

Date: [●●], 2024

## Glossary of Terms

**Applicable Laws and Regulations** – All duly promulgated applicable federal, state, territorial and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

**Business Day** – Any day except a Saturday, Sunday, a Federal Reserve Bank holiday or an official Guam holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business.

**Default** – The failure of a breaching Party to cure its breach under this Agreement, within the time periods provided in Section 7.6 hereof.

**Effective Date** -- The date first set forth in the preamble hereto.

**Good Utility Practice** – Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be generally acceptable and consistently adhered to acceptable practices, methods, or acts.

**Governmental Authority** – Any federal, territorial or local governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

**IEEE Standards** - The standards of the Institute of Electrical and Electronics Engineers (IEEE), or its IEEE Standards Association (IEEE-SA), in effect as of the Effective Date.

**Interconnection Customer** – As defined in the preamble hereto.

**Interconnection Facilities** – The Interconnection Facilities include all facilities and equipment between the Generating Facility and the Piti Substation, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to such facilities. The Interconnection Facilities are described in more detail in Attachment 2 and Attachment 3 hereto.

**Network Upgrades** – Additions, modifications, and upgrades to the Transmission System required for steady state system stability at or beyond GPA's existing substations to

accommodate the interconnection, at the Point of Interconnection, of the Interconnection Customer's facility with the Interconnection Facilities. Network Upgrades are described in more detail in Attachment 6 and do not include the Interconnection Facilities.

**Operating Requirements** – Any operating and technical requirements that may be applicable and are set forth in the Power Purchase Agreement or in this Interconnection Agreement, including Attachment 5 hereto.

**Party or Parties** – The Transmission Provider, Interconnection Customer or any combination of the above.

**Point of Interconnection** – The point at the Generating Facility site where the Generating Facility connects with the Interconnection Facilities, as shown in Attachment 3.

**Reasonable Efforts** – With respect to an action required to be attempted or taken by a Party under the Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Generating Facility** – The Interconnection Customer's device for the production of electricity, but shall not include the Interconnection Facilities.

**Power Purchase Agreement** - The Renewable Energy Purchase Agreement for the sale by Interconnection Customer and the purchase by GPA of renewable solar energy from the Generating Facility, dated as of the date hereof.

**System Stability Upgrades** – Additions, modifications, and upgrades to the Transmission System, System Operational Characteristics or Generating Facility required for power system recovery as a result of faults or loss of generation events, which are not considered as Network Upgrades.

**Tariff** – The Transmission Provider's tariff through which open access transmission service and interconnection services are offered and as amended or supplemented from time to time, or any successor tariff.

**Transmission Provider** – As defined in the preamble hereto.

**Transmission System** – The facilities owned, controlled or operated by the Transmission Provider that connect to the Interconnection Facilities and are used to provide transmission service under the Tariff.

## **Description of the Generating Facility, Interconnection Facilities, and Metering Equipment**

Equipment, including the Generating Facility, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by the Interconnection Customer or by GPA.

### **Interconnection Facilities:**

The Interconnection Facilities and the capped amounts with respect thereto (beyond which GPA will reimburse Interconnection Customer as set forth in this Agreement) include the following:

### **Description of work:**

- a) **Generating Facility Substation**
1. Interconnection Customer shall provide 1 each spare 115 kV breaker switchgear compartment for future connection of Mojave Project or other future solar projects.
  2. Interconnection Customer shall install SEL-411L and SEL-311L for the line protection relays on the switchgear.
  3. Interconnection Customer shall install SEL-787 primary and backup for bus protection on the switchgear.
  4. Interconnection Customer shall install SEL-787 and SEL-751 for transformer protection on the switchgear.
  5. Interconnection Customer shall install SEL-735 for metering on the switchgear.
  6. Interconnection Customer shall install SEL-ICON and SEL-3350 RTAC for communications processor.
  7. Interconnection Customer shall install Nxtphase Tesla Fault Recorder on the switchgear.
  8. Interconnection Customer shall provide GE G500 RTU primary and backup in a cabinet for Scada communications to GPA PSCC.
  9. Interconnection Customer shall provide Cisco network switches primary and backup in a network cabinet.

10. Interconnection Customer shall provide GPS satellite clock for time synchronization of all the devices.
11. Refer to GPA Specification E-030 for switchgear requirements.
12. Interconnection Customer shall provide cabinet, fiber patch panel, and other fiber accessories necessary for termination of the fiber optic cables.
13. Interconnection Customer shall provide battery charger and battery system in the substation.

b) From Generating Facility to Apra 115 kV Line

1. Interconnection Customer shall provide new monotube steel poles from the Generating Facility Substation to Apra Substation (no connection to Apra Substation). Monotube poles should have steel arms for 34.5 kV and 13.8 kV lines.
2. Interconnection Customer shall provide new 115 kV transmission line with 927 AAAC Greeley wire and insulators.
3. Interconnection Customer shall transfer the existing Apra X38 to Talofofu X124 34.5 kV transmission line and insulators onto new monotube poles that are along the route of the Generating Facility-Apra transmission line. The existing line will be upgraded to 927 AAAC Greeley by others on a separate contract.
4. Interconnection Customer shall transfer the existing GPA 13.8 kV feeder 336 AAC Tulip wire and insulators that are along the route of the Generating Facility-Apra transmission line.
5. Interconnection Customer shall install static wire alumoweld or stainless steel.
6. Interconnection Customer shall install 144 strand singlemode fiber optic from the Generating Facility to Apra.
7. Interconnection Customer shall remove existing concrete poles after transfer of 34.5 kV and 13.8 kV lines.
8. In accordance with the System Impact Study, Interconnection Customer shall automatically curtail active power for the specified contingency events.



c) Apra to Piti 115 kV Line

1. GPA will allow Interconnection Customer the use of the existing Piti X24 to Apra X37 34.5 kV transmission line that is built for 115 kV level but energized at 34.5 kV voltage.
2. Interconnection Customer shall verify and test if the existing transmission line can be energized at 115 kV voltage. Interconnection Customer shall replace any equipment or insulators that fail during the testing for 115 kV voltage.
3. Interconnection Customer shall install a new 34.5 kV transmission line 927 AAAC Greeley wire in place of the Piti X24 to Apra X37 34.5 kV transmission line that was used for the 115 kV transmission line.
4. Interconnection Customer shall maintain the existing Piti X20 to Orote X311 4/0 Cu transmission line on the monotube pole.
5. Interconnection Customer shall maintain the existing underbuilt 13.8 kV GPA and Navy feeders on the monotube pole.
6. Interconnection Customer shall verify integrity of the existing monotube poles when adding new loads from the transmission lines. Interconnection Customer shall replace any monotube poles that are deemed unsafe to handle the additional loads.
7. Interconnection Customer shall replace the existing wooden pole by Tenjo intersection with new monotube steel pole. The transmission line to Tenjo Power Plant shall be looped in and out of the substation rather than a lateral tap.
8. Interconnection Customer shall install 144 strand singlemode fiber optic from Piti to Apra.

**Spare Parts:**

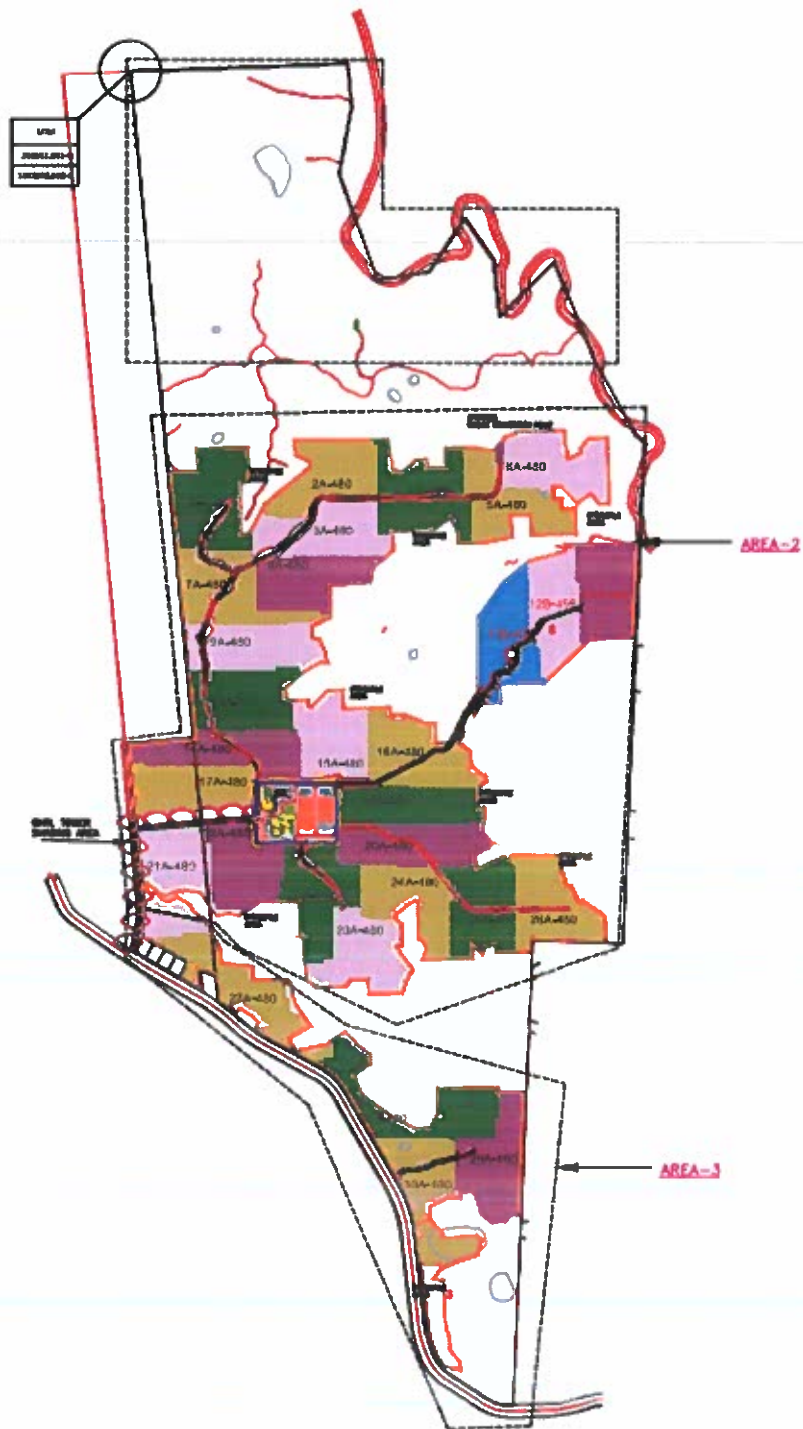
The Interconnection Customer shall provide the following spare parts with proper storage;

- a. For each equipment supplied, the manufacturer's recommended spare parts shall be provided in accordance with best utility practices.
- b. Non-standard/inventory materials: Provide replacement or replacement parts.
- c. Others: TBD

**Generating Facility:**

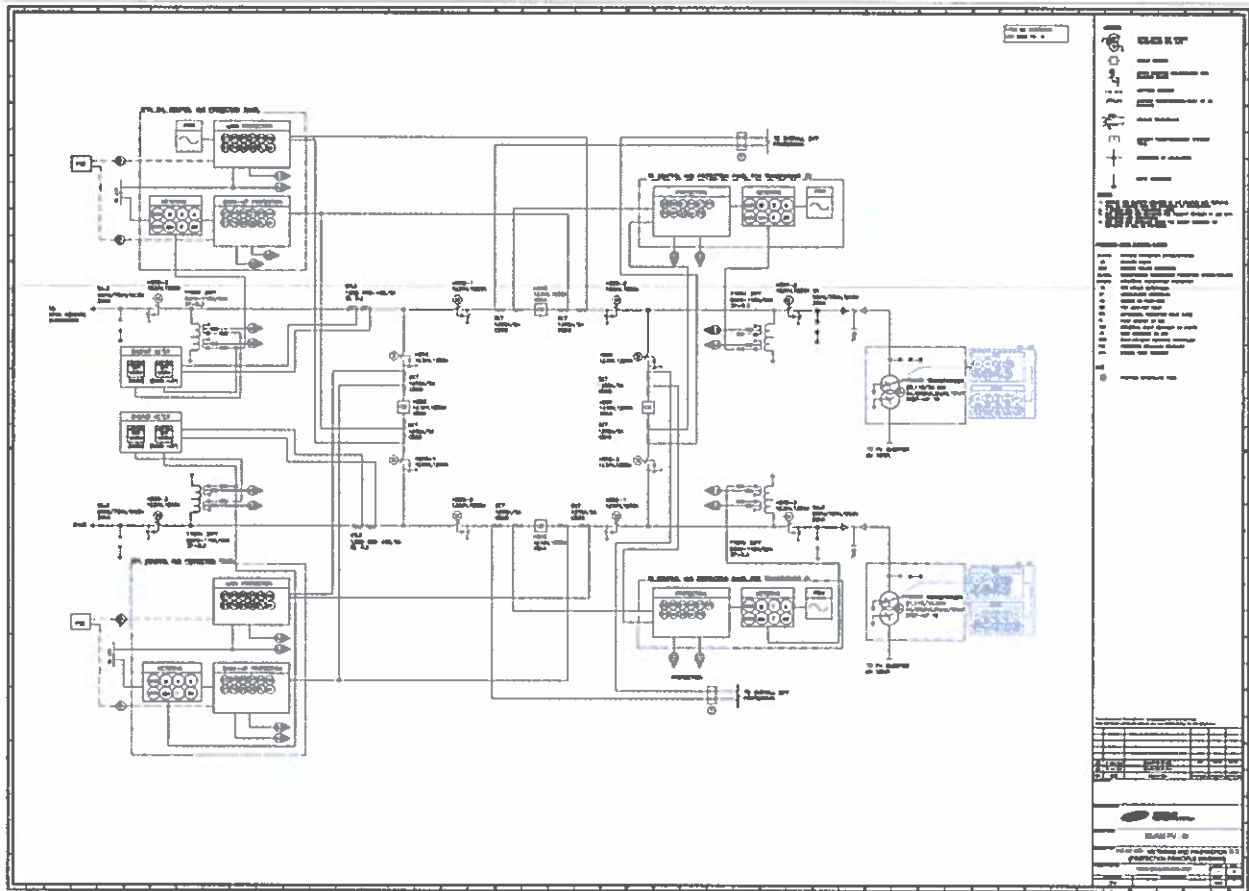
The general location of the Generating Facility and its associated Substation are noted on the attached picture. The Generating Facility will be a 132MW AC fixed tilt solar and 60MW/260MWh Energy Storage System (ESS) for Ramp-rate control and Energy Shifting generating facility. The Facility location is in Yona, Guam. Its Affiliate will receive a Conditional Use Permit to allow for the development, construction and operation of the Generating Facility. The Generating Facility will be equipped with high efficiency solar panels generating direct current that will be converted to alternating current (AC) using approximately thirty (30) for thousand for hundreds (4,400) kW inverters manufactured by SMA. Inverter will generate 660V AC power that will be transformed by thirty (30) 660V to 34.5kV transformers located in close proximity to the inverter. And also, these 132MW solar generators are connected with Renewable Integrated ESS which is located in ESS area. The ESS consist of twenty-six (26) 3,600kW PCS and 260MWh Batteries. The PCS will generate 630V AC power that will be transformed by 630V to 34.5kV transformers located in close proximity to the PCS. The onsite underground constructed 34.5kV collection grid will bring the 1% ramp rate controlled 132MW solar generated electricity to the substation to be located on the site of the Generating Facility, where GPA will accept the metered power under the Power Purchase Agreements.

**Addendum to Attachment 2 -- Project Site Plan  
[Preliminary and subject to changes]**





# One-line Diagram Depicting the Generating Facility, Interconnection Facilities and Metering Equipment



**Milestones**

**In-Service Date:** The Scheduled Commercial Operation Date (as defined under the Power Purchase Agreement, which date is [//], as may be extended pursuant to the terms of the Power Purchase Agreement)

Critical milestones and responsibility as agreed to by the Parties:

	<b>Milestone/Date</b>	<b>Responsible Party</b>
(1)	Preliminary design for Interconnection Facilities ( _____ / __ /20 _____ )	Interconnection Customer
(2)	GPA approval of design basis ( _____ / __ /20 _____ )	GPA
(3)	Interconnection Customer to have all permits in hand for Interconnection Customer construction to start on public roads (supported by GPA engineering) ( _____ / __ /20 _____ )	Interconnection Customer
(4)	Construction completion (// month after permits are in hand)	Interconnection Customer

Agreed to by:

For the GPA (If Applicable) \_\_\_\_\_ Date \_\_\_\_\_

For the Interconnection Customer \_\_\_\_\_ Date \_\_\_\_\_

## **Additional Operating Requirements for the Transmission Provider's Transmission System Needed to Accept the Interconnection Customer**

(Reserved)

### **Curtailment due to a ramp rate greater than 3MW/minute**

If ramp rate is greater than 3 MW/minute and this situation lasts more than ten (10) times per day or five (5) consecutive times per day, Seller shall reduce plant output to meet ramp rate of less than 3 MW/minute. If system issues remain, GPA reserves the right to restrict Seller's plant output until Seller restores operation with a ramp rate less than 3 MW/minute.

- (a) GPA counts the failure power is greater than 3 MW/minute.
  - i. If the number of failure is greater than ten (10) times per day or five (5) consecutive times per day, GPA SCADA sends the warning command to Seller's EMS/PMS or inform via email. The period from the initial failure to the point where successful operation continues for more than one minute shall be considered as one failure event.
  - ii. Seller's EMS/PMS double checks the number of failure times, and sends back to GPA SCADA to verify the exact number of failure times.
  - iii. Seller sends the restore documentation including analysis of the data, how to fix, fix plan and expected results to GPA for confirmation.
  - iv. When Seller restores operation with a ramp rate of less than 3MW/minute for full renewable power (60 MW), then Seller to send the restoration result documentation to GPA.
  - v. GPA reviews the restoration result documentation and allows Seller to operate Seller's renewable plant in its full capacity (60MW).

(b) If GPA's ESS or UFLS is activated twice during a single day due to Seller's failure to meet 3 MW per minute ramp rate, then GPA reserves the right to restrict Seller's plant output until Seller restores operation with a ramp rate of less than 3 MW/minute. Parties will verify ramp performance during these events at the end of each Contract Year (as defined in the Power Purchase Agreement) to determine if it qualifies as a Dispatch Down (as defined in the Power Purchase Agreement) curtailment.

The Interconnection Customer is interconnecting into an established GPA power grid. The Interconnection Customer shall design, construct, and operate its facilities to ensure compatible operations with GPA and protect its facilities against any grid events. These measures shall comply with inverter ride-through and/or ramping requirements as stated in the System Impact Study.

**Transmission Provider's Description of its Network Upgrades  
and Network Upgrade Costs**

GPA shall install fiber optic lines or provide for fiber optic line communications connectivity for each substation affected by the transmission line differential relay upgrade as described in Attachment 5, except for the Generating Facility to Piti Substation transmission lines wherein the Interconnection Customer is responsible for fiber optic lines communication.



## Bill of Sale

THIS BILL OF SALE (this "Bill of Sale") is made and entered into by KEPCO-EWP-Samsung C&T Solar, LLC ("Seller"), and Guam Power Authority ("Buyer", and together with Seller, the "Parties"), effective as of [\_\_\_\_], 20\_\_.

### RECITALS

WHEREAS, Seller in connection with the development, construction and ownership of a solar power generating station and related assets located in the Territory of Guam (the "Project") has designed, developed and constructed, and owns, certain transmission, switching and related assets described more fully on Exhibit "A" hereto, together with all ancillary rights and interests (including all manufacturers' and contractors' warranties) relating thereto and further described on Exhibit "A" hereto (the "Assets"); and

WHEREAS, Seller and Buyer entered into a Renewable Energy Purchase Agreement dated as of \_\_\_\_\_, 201\_\_\_\_, pursuant to which Seller and Buyer have agreed to sell and purchase renewable energy generated by the Project (the "Seller Purchase Agreement"), and Seller and Buyer entered into a Generator Interconnection Agreement dated as of \_\_\_\_\_, 2018, pursuant to which Seller and Buyer have agreed to the installation and interconnection of the Project with Buyer's transmission system (the "GIA"); and

WHEREAS, as contemplated by the GIA, and in connection with the operation of the Project by Seller and the purchase and sale of renewable energy pursuant to the Purchase Agreement, Seller desires to transfer and Buyer desires to receive the Assets.

### NOW, THEREFORE, BE IT KNOWN THAT:

1. Conveyance and Assignment. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby **GRANT, BARGAIN, ASSIGN, TRANSFER, SET OVER, DELIVER AND CONVEY** to Buyer all of Seller's right, title and interest in and to the Assets, **TO HAVE AND TO HOLD** the Assets by Buyer and its successors and permitted assigns, forever.

2. NO WARRANTY. **THE ASSETS ARE HEREBY CONVEYED AS IS, WHERE IS, AND SELLER HEREBY GIVES NO WARRANTY OF DESIGN, MATERIALS, WORKMANSHIP OR PERFORMANCE OF THE ASSETS, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** However, Seller covenants and agrees that the manufacturers' and contractors' warranties transferred hereby as part of the Assets shall extend for a period of at least one (1) year from the acceptance of the Assets by Seller.

3. Further Assurances. Seller for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Buyer, Seller will

do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required in order to assign, transfer, set over, convey, assure and confirm unto and vest in Buyer, its successors and assigns, title to the assets sold, conveyed and transferred by this Bill of Sale.

4. Counterparts. This Bill of Sale may be executed in counterparts.

5. Governing Law. This Bill of Sale shall be governed by and construed in and interpreted in accordance with the laws of the Territory of Guam.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Parties have executed this Bill of Sale as of the date above first written.

**Seller:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Buyer:**

**GUAM POWER AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENTS**

GUAM, U.S.A. )  
 ) SS:  
MUNICIPALITY OF )  
\_\_\_\_\_ )

ON THIS \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a notary public in and for Guam, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Guam Power Authority, an autonomous instrumentality of the government of the Territory of Guam, whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said corporation, in such capacity, being fully authorized to do so, and for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_

GUAM, U.S.A. )  
 ) SS:  
MUNICIPALITY OF )  
\_\_\_\_\_ )

ON THIS \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a notary public in and for Guam, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of \_\_\_\_\_, whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of said corporation, in such capacity, being fully authorized to do so, and for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_

**Exhibit "A"**

***Description of Assets***

***[Description of Interconnection Facilities; see § 4.1 of GIA]***

***[Description to be added, if applicable]***

## APPENDIX K

### **CALCULATION OF WEATHER HOURS; DAMAGES FOR FAILURE TO PURCHASE RENEWABLE ENERGY**

For each applicable period, Seller shall calculate (1) the expected production of the Facility using the historical Weather Data from “Solargis for irradiance and ambient temperature (the “Expected Historical Production”) and (2) the expected production of the Facility using the actual Weather Data (the “Expected Actual Production”). Seller shall then obtain the quotient, rounded to the fourth decimal place (the “Production Factor”), equal to the Expected Actual Production divided by the Expected Historical Production. If the Production Factor is greater than one (1), then no Weather Hours shall be deemed to have occurred. However, if the Production Factor is less than one (1), then Weather Hours shall be deemed to have occurred. The portion of any Deficiency Amount (as defined in the Agreement) attributable to such Weather Hours shall be the difference equal to (A) the aggregate Minimum Production amount for that period minus (B) the product of (x) the Production Factor and (y) the aggregate Minimum Production amount for that period. The Deficiency Amount due to weather shall not be penalized.

If the Parties disagree with respect to any Deficiency Amount due to weather, the Parties shall promptly negotiate in good faith to resolve such dispute for a further 5 Business Days following which, if the Parties are still unable to agree, the Parties shall appoint an independent auditor at a cost shared by both Parties equally who shall be instructed to provide its determination with respect to the Deficiency Amount and such determination shall be conclusive and binding on the Parties.

For GPA’s failure to purchase and receive Renewable Energy and/or Test Energy after both parties have determined that Seller’s energy is ready for delivery to GPA’s grid, Seller’s damages shall be an amount equal to the Contract Price times the Expected Actual Production representing the amount of Renewable Energy that Seller could reasonably have delivered to Buyer but for such failure by GPA. Seller’s energy shall not be delivered to the grid until both parties have mutually agreed on the completion of all requirements, including but not limited to, the equipment and facilities for the PV, BESS, protection and interconnection. Expected Actual Production shall be calculated using the Solargis and PVSyst with the assumptions set forth below; provided, that if measured values taken by pyranometers cannot be used as Weather Data (due to operation failure or unreliability of values taken by such pyranometers etc.), Weather Data provided by a third party institution agreed upon between GPA and Seller (an independent institution such as Solargis or NASA) shall be used.



PVsyst V7.4.0  
 VC7. Simulation data:  
 19/09/23 10:54  
 with v7.4.0

Project: 14039\_KEPCO\_GPA Guam Ph4

Variant: Akcome\_v03 (+ Aux. Consumptions)

Astrom Technical Advisors SL (Spain)

General parameters

Grid-Connected System		Sheds, single array		
<b>PV Field Orientation</b>				
Orientation		<b>Sheds configuration</b>		<b>Models used</b>
Fixed plane		No. of sheds	130 units	Transposition
Tilt/Azimuth	10 / 0 °	Single array		Diffuse
		Sizes		Circumsolar
		Sheds spacing	6.00 m	Perez
		Collector width	4.79 m	Imported
		Ground Cov. Ratio (GCR)	79.6 %	separate
		Top inactive band	0.02 m	
		Bottom inactive band	0.02 m	
		Shading limit angle		
		Limit profile angle	33.4 °	
<b>Horizon</b>		<b>Near Shadings</b>		<b>User's needs</b>
Average Height	2.0 °	According to strings		Unlimited load (grid)
		Electrical effect	100 %	
<b>Bifacial system</b>				
Model	2D Calculation			
	unlimited sheds			
<b>Bifacial model geometry</b>		<b>Bifacial model definitions</b>		
Sheds spacing	6.00 m	Ground albedo		0.17
Sheds width	4.63 m	Bifaciality factor		86 %
Limit profile angle	33.4 °	Rear shading factor		15.0 %
GCR	80.5 %	Rear mismatch loss		10.0 %
Height above ground	0.50 m	Shed transparent fraction		0.0 %

PV Array Characteristics

PV module		Inverter	
Manufacturer	Suzhou Akcome	Manufacturer	SMA
Model	SKA611HDGDC-710	Model	Sunny Central 4400 UP
(Custom parameters definition)		(Custom parameters definition)	
Unit Nom. Power	710 Wp	Unit Nom. Power	4400 kWac
Number of PV modules	201712 units	Number of Inverters	30 units
Nominal (STC)	143.2 MWp	Total power	132000 kWac
Modules	7204 Strings x 28 in series	Operating voltage	962-1325 V
At operating cond. (50°C)		Prnom ratio (DC:AC)	1.06
Pmpp	135.0 MWp		
U <sub>mpp</sub>	1129 V		
I <sub>mpp</sub>	119516 A		
<b>Total PV power</b>		<b>Total inverter power</b>	
Nominal (STC)	143216 kWp	Total power	132000 kWac
Total	201712 modules	Number of Inverters	30 units
Module area	626568 m²	Prnom ratio	1.06



PVsyst V7.4.0  
 VC7: Simulation date:  
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Astrom Technical Advisors SL (Spain)

Array losses

<b>Array Soiling Losses</b>		<b>Thermal Loss factor</b>		<b>DC wiring losses</b>				
Loss Fraction	1.5 %	Module temperature according to Irradiance		Global array res.	0.11 mΩ			
		U <sub>c</sub> (const)	29.0 W/m <sup>2</sup> K	Loss Fraction	1.1 % at STC			
		U <sub>v</sub> (wind)	0.0 W/m <sup>2</sup> K/m/s					
<b>Serie Diode Loss</b>		<b>LID - Light Induced Degradation</b>		<b>Module Quality Loss</b>				
Voltage drop	0.7 V	Loss Fraction	0.8 %	Loss Fraction	-0.8 %			
Loss Fraction	0.1 % at STC							
<b>Module mismatch losses</b>		<b>Strings Mismatch loss</b>						
Loss Fraction	1.2 % at MPP	Loss Fraction	0.1 %					
<b>IAM loss factor</b>								
Incidence effect (IAM): User defined profile								
0°	20°	40°	60°	65°	70°	75°	80°	85°
1.000	1.000	1.000	1.000	1.000	0.999	0.997	0.978	0.854

System losses

<b>Auxiliaries loss</b>	
constant (fans)	916 kW
0.0 kW from Power thresh.	
Proportional to Power	4.0 W/kW
0.0 kW from Power thresh.	
Night aux. cons.	0.10 kW

AC wiring losses

<b>Inv. output line up to MV transfo</b>	
Inverter voltage	660 Vac DC
Loss Fraction	0.04 % at STC
<b>Inverter: Sunny Central 4400 UP</b>	
Wire section (30 Inv.)	Copper 3C x 3 x 3000 mm <sup>2</sup>
Average wires length	6 m
<b>MV line up to Injection</b>	
MV Voltage	34.5 kV
Average each inverter	
Wires	Alu 3 x 165 mm <sup>2</sup>
Length	4450 m
Loss Fraction	0.30 % at STC

AC losses in transformers

<b>MV transfo</b>		<b>Operating losses at STC (full system)</b>	
Medium voltage	34.5 kV	Nb. identical MV transfos	30
<b>One transfo parameters</b>		Nominal power at STC	140.7 MVA
Nominal power at STC	4.69 MVA	Iron loss (24/24 Connexion)	140.67 kVA
Iron Loss (24/24 Connexion)	4.69 kVA	Copper loss	1266.05 kVA
Iron loss fraction	0.10 % at STC		
Copper loss	42.20 kVA		
Copper loss fraction	0.90 % at STC		
Coils equivalent resistance	3 x 0.64 mΩ		

\* The system brand, product specification and its configuration in the simulation report above is not final version and could be changed upon the final detailed design.



## APPENDIX L

### **CALCULATION OF SHORTFALL DAMAGES**

The Shortfall Damages shall be the sum of the product of Deficiency Amounts and the applicable Incremental Price for production shortfalls below 90% during Contract Year evaluation and for production shortfalls after the five year make up period for any production shortfalls between 90% and 100% of the Minimum Production.

The following sets the conditions for Incremental Price and illustrates the calculation:

The Incremental Price shall be deemed as below:

1. In the event that the Actual Renewable Energy of the Contract Year is less than the 90% of Minimum Production as set forth in the fourth column of Appendix A, "Incremental Price" means, at the time of its calculation, the LEAC Rate minus the Contract Price, provided, however, if the LEAC Rate is equal to or less than the Contract Price then the Incremental Price shall be deemed to be zero.

If LEAC Rate  $\leq$  Contract Price:  
Incremental Price = 0

If LEAC Rate  $>$  Contract Price:  
Incremental Price = (LEAC Rate – Contract Price)

2. In the event that the Actual Renewable Energy is equal to or greater than the 90% of Minimum Production as set forth in the fourth column of Appendix A and less than Guaranteed Output as set forth in the third column of Appendix A, and

The sum of Actual Renewable Energy and the Make-up Renewable Energy of consecutive five (5) Contract Years is less than the 100% of the Minimum Production as set forth in the third column of Appendix A, then "Incremental Price" means, at the time of its calculation, the LEAC Rate minus the Contract Price, provided, however, if the LEAC Rate is equal to or less than the Contract Price, then the Incremental Price shall be deemed to be zero.

If LEAC Rate  $\leq$  Contract Price:  
Incremental Price = 0

If LEAC Rate  $>$  Contract Price:  
Incremental Price = (LEAC Rate – Contract Price)

