

# Virgin Islands Water and Power Authority

**General Electric International, Inc.**

**Contract Number: 1508208**

**Date: May 29, 2020**

**Rental of  
Power Generation Equipment and Balance of Plant**

**And Sale of  
Associated Services**

**This Contract is offered as of the Effective Date by:**

**GENERAL ELECTRIC INTERNATIONAL, INC.**, a Delaware corporation, registered to conduct business in the US Virgin Islands (the “Seller”);  
and between **VIRGIN ISLANDS WATER AND POWER AUTHORITY**, a municipal corporation existing under the laws of the United States Virgin Islands having a principal place of business at 8189 Subbase, St. Thomas, US Virgin Islands 00802 (the “Buyer.”)

The Buyer and the Seller are referred to herein individually as a “Party” and collectively as the “Parties.”

**Recitals**

**WHEREAS**, the Seller is engaged in the business of renting various kinds of power plant equipment and of providing services and balance of plant in support of the installation and use thereof; and

**WHEREAS**, the Buyer desires to rent from the Seller, and the Seller desires to rent to the Buyer one TM2500 Mobile Power Plant and the Balance of Plant, together with Services in connection with Buyer’s Project located at the Randolph Harley Power Plant, 8189 Subbase, St. Thomas, US Virgin Islands (the “Site”), all subject to the terms set forth herein;

**WHEREAS**, the given the critical need for standby reserves for planned and unplanned outages, Buyer, in accordance with authorization granted it pursuant to 3 VIC section 116 (a) (1) of the US Virgin Island code, waived competitive bids to lease from the Seller the TM2500 Mobile Power Plant and the Balance of Plant, together with Services from Seller.

**NOW, THEREFORE**, in consideration of the mutual promises stated herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Equipment Rental**

Buyer shall rent the Equipment and Balance of Plant from Seller for the Rental Term.

**a. TM2500+**

Each TM2500+ consists of two trailers and related auxiliary equipment to create one unit (“Unit” or “Equipment”) as more fully described in Appendix A. The trailers include the main trailer and auxiliary trailer. The inlet air filter assembly and exhaust duct assembly ship loose and are assembled onto the main trailer during commissioning.

Seller shall, at its own cost except as otherwise provided herein and on behalf of Buyer, operate the Equipment and Balance of Plant for up to twenty-four hours per day for the first month of the Rental Term.

Seller considers the applicable sections of the US and ISO Codes and Standards in Appendix A to be the most relevant Standards for gas turbine equipment. Seller’s designs and procedures are generally compliant with applicable sections of Appendix A.

Without Seller’s prior written consent, Buyer shall not make any alterations, additions or improvements to the Equipment, its software, connections or configurations or its connection to the data stream, and will not add tags, links to local area networks, or other devices or systems or otherwise change the Equipment’s setup, functioning, and configuration or connectivity if the setup was performed by Seller. In addition to other rights, Seller may elect, at its sole option, to have any alteration, addition or improvement to the Equipment which is made by Buyer, with or without Seller’s consent, become the property of Seller, or to have Buyer remove the alteration, addition or improvement and restore the Equipment to its prior condition, all at Buyer’s expense. Buyer shall not (a) attempt to access any data, displays, information, software, or other parts or functions of the Equipment not specifically made available to Buyer by Seller; or (b) paint the Equipment or alter, cover, obscure or remove from the Equipment any nameplate, logo or other identification label or marking, operating instructions or safety warnings or markings.

## **b. The Balance of Plant**

The balance of plant equipment includes the following items A through F, the “Balance of Plant:”

- A. Blackstart  
A used 3516B Diesel engine drive black start generator and associated auxiliary transformer are included with the offer. The generator and transformer are sized to pick up Unit load during a blackstart condition.
- B. 2500A auxiliary transformer  
A used 480V/13.8KV 3 phase auxiliary transformer shall be provided to power the Unit’s auxiliary electrical loads. The existing transformer and electrical equipment will be used to reconnect the Unit.
- C. Diesel forwarding & filtration skids  
A used, standalone diesel fuel forwarding and filtration skid is included. It is sized to deliver diesel fuel to the Unit.
- D. Plant Manager’s Office  
A temperature control ISO container is included as an office for site personal. This includes air conditioning, office furniture, desks and chairs.
- E. Water Transfer system  
A demineralized water forwarding skid is included. This skid will transfer Buyer supplied demineralized water to the Unit for NOX abatement.
- F. Balance of Plant control panel  
A RX3i based BOP control system will be supplied to automate the Unit’s operation and interface with Buyer’s SCADA system. The BOP control panel will be installed inside the Unit’s control house trailer. A desktop based HMI will be used as operator interface.

## **2. Services**

### **I. Services**

Seller’s Services scope of supply under this Contract is limited to the following (the “Services”), which Seller shall perform in accordance with the terms hereof, at no additional cost to Seller in excess of the Estimated Contract Price except as otherwise provided herein:

- A. Installation of the Equipment includes the following activities (“Installation of the Equipment”):
  - i. Conduct an installation planning meeting with the Buyer
  - ii. Perform receiving and inspection of the Equipment
  - iii. Tie Equipment into the grounding system
  - iv. Setup, level, and align the main trailer and generator inlet and exhaust
  - v. Install the air filter module
  - vi. Install the exhaust silencer module
  - vii. Setup auxiliary trailer
  - viii. Connect mechanical interconnections
  - ix. Connect electrical interconnections
  - x. Fill fluid reservoirs in accordance with Seller’s specifications

The Parties recognize that the Equipment has already been installed at Site. Some of these installation activities may be only partially required or not be required.

- B. Commissioning of the Equipment, per Appendix N, Commissioning Checklist, including the following activities (“Commissioning of the Equipment”):
- i. Conduct a commissioning planning meeting with the Buyer
  - ii. Perform static Equipment checks
  - iii. Perform Equipment system configurations, inspections, & commissioning with auxiliary power
  - iv. Conduct high speed crank test
  - v. Execute first fire of the gas turbine
  - vi. Conduct full speed no load generator checks
  - vii. Seller and Buyer shall check phase rotation and Seller shall correct phase rotation if necessary
  - viii. Synchronize to the grid
  - ix. Tune the fuel and water systems from minimal load to full load
  - x. Perform test run
  - xi. Declare the Equipment commercially available

The Parties recognize that the Equipment has already been commissioned at Site. Some of these commissioning activities may be only partially required or not be required.

- C. Demobilization of the Equipment including the following activities (“Demobilization of the Equipment”):
- i. Conduct a demobilization planning meeting with the Buyer
  - ii. Isolate Equipment from all non-Seller owned equipment; including, but not limited to, all fuel, water, and electrical connections
  - iii. Disconnect all the Equipment interconnections
  - iv. Disassemble all of the trailers and the ship-loose components
  - v. Prepare the Equipment for shipment
  - vi. Prepare parts and tool containers for shipment
  - vii. Remove all Seller-owned Equipment and Seller-owned material from the site
  - viii. Conduct final Site assessment with Buyer
- D. Full operation and maintenance services for the Equipment and Balance of Plant for up to twenty-four hours per day for the first month of the Rental Term (or longer based on Buyer’s aptitude on operating and maintaining the Equipment and Balance of Plant, as decided by the Parties,) as more specifically described in Appendix C. Once Buyer’s operation and maintenance personnel are trained and approved to operate the Equipment and Balance of Plant by the Seller, Buyer shall operate and maintain the Equipment and Balance of Plant with oversight from Seller’s Resident Technical Advisor.
- E. Resident Technical Advisor services for the entire Rental Term as more specifically described in Appendix D, (the “Resident Technical Advisor.”)
- F. Not Used
- G. provide information reasonably necessary to assist the Buyer in obtaining Buyer’s permits, if any
- H. If required, round trip transportation of the Equipment, Balance of Plant, and tooling from Seller’s point of origin to Buyer’s Site and then back again.

The Buyer will be responsible for services and balance of plant other than those performed by Seller as set forth in this Section 2 and the relevant appendices.

### **3. Buyer Responsibilities**

An outline of Buyer Responsibilities is available in Appendix B.

### **4. Estimated Contract Price**

In exchange for the Equipment and Balance of Plant rental and associated Services identified in Articles 1 and 2 above, Buyer will pay the Seller the approximate amount of \$15,697,894.72 (the “Estimated Contract Price) plus

Fired Hour Fee as incurred by the Buyer in United States Dollars or as otherwise adjusted as described herein, further details of which are described in Section A of Appendix P, Confidential Information.

## **5. Transportation**

If applicable, Seller will provide transportation of the Equipment and Balance of Plant between Seller's facility or other point of origin, the Site and back again.

Should Seller ship any items in error due to Seller's error, Seller shall re-ship the replacement item(s) at Seller's expense.

Seller shall be given free access to the Site for the purpose of inspecting it or the Equipment.

## **6. Taxes and Duties**

6.1 Seller shall be responsible for, and shall pay directly, any and all corporate and individual taxes that are measured by net income or profit imposed by any governmental authority of any country on Seller, its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder (the "Seller Taxes.") If Buyer deducts or withholds Seller Taxes, Buyer shall, within one month, furnish to Seller accurate official receipts from the appropriate governmental authority for each deducted or withheld Seller Tax. Except as set forth in Section 6.3, Seller shall be responsible for, and shall pay directly when due and payable, any and all Project Taxes (defined in Section 6.2 below.)

6.2 "Project Taxes" means all taxes, duties, fees, or other charges (including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, license, property, sales, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), other than Seller Taxes, imposed by the government of the US Virgin Islands on Seller or its employees or subcontractors due to the execution of any agreement or the performance of or payment for rental of Equipment, Balance of plant, or Services hereunder. In the case where Buyer Purchases the Equipment and/or Balance of Plant at the end of the Rental Term, stamp tax is excluded from Project Taxes and any stamp tax due on the purchase shall be borne by the Buyer. Equipment and Balance of Plant delivered to a location outside the country of origin are presumed to be exempt from Project Taxes levied within the country of origin. When requested by Seller, Buyer agrees to furnish, without charge, evidence of tax or duty exemption acceptable to the taxing or customs authorities. Furthermore, if Buyer arranges for export shipment, Buyer agrees to provide Seller, without charge, an export bill of lading.

6.3 Gross Receipts Tax.

The Parties agree to the following:

a. Supplies of goods and services are subject to the Virgin Islands Gross Receipt Tax (the "GRT").

b Buyer must withhold the GRT from the payments due to Seller

c. Buyer must remit the withheld GRT to the taxing authorities by the respective due dates

d. Buyer must provide Seller proof of their GRT withholding remittance within ten days of the date that Buyer remits the GRT to the taxing authorities.

e. Should the Buyer fail to withhold or remit the GRT such that the Seller is assessed and/or penalized by the taxing authorities for any late-paid GRT, then Seller shall be entitled to recover the amounts of such assessments/penalties from the Buyer.

## **7. Rental Term**

The rental term commences on the Commercial Operation Date and continues for two years thereafter (the “Rental Term”). Commercial Operation Date is defined as the date of Seller’s issuance of the successfully completed Commissioning Checklist Certificate, an example of which is documented in Appendix N, Commissioning Checklist Certificate the “Commercial Operation Date”).

Seller and Buyer confirm their intent that the rental of the Equipment and Balance of Plant as designated by and pursuant to the Contract shall be a true lease and not a sale or financing transaction and that neither the execution nor the filing of any financing statement with respect to any of the Equipment or Balance of Plant or with respect to the Contract, or the recording hereof, shall in any manner imply otherwise.

**8. Rental Extension**

Buyer may request a one-year extension of the Rental Term in writing ninety days prior to the original Rental Term end date. Rental extension prices are described in Section A of Appendix P, Confidential Information. Upon Contract extension, the price for the rental Equipment and Balance of Plant shall reduce as described in Section A of Appendix P, Confidential Information and the Payment Security (as defined in Appendix P) shall be extended.

**9. Buyer Liquidated Damages For Non-Return of the Equipment**

If, at the end of the Rental Term, Buyer and Seller have not reached a written agreement extending the Rental Term or are not negotiating in good faith towards an extension or purchase of the Equipment and Balance of Plant, then the Buyer owes the Seller liquidated damages calculated according to the following table until the date that the Equipment is returned to the designated Seller location, if any such delay in return is caused by Buyer.

<u>Number of Days From Rental Term End Date</u>	<u>Liquidated Damages Amount (\$USD)</u>
0-30	The Daily Rental Rate for each day or portion of each day.
31 and higher	Two times the Daily Rental Rate for each day or portion of a day after 31 days from the Rental Term expiration.

The daily Equipment rental rate is: 1/15<sup>th</sup> of the monthly Rental Fee (the “Daily Rental Rate.”)

**10. Contract Termination**

- a. Buyer may terminate this Contract for Buyer’s convenience provided that:
  - A. Buyer provides Seller 90 days advance written notice of termination; and
  - B. Buyer must pay to Seller according to the Termination Schedule below:

**Termination Schedule**

<b>Termination Time</b>	<b>Percentage of Rental Fee for Remainder of Rental Term</b>
Contract signature through 3rd month of Rental Term	50%
4th through 6th month of Rental Term	45%
7th through 9th month of Rental Term	40%
10th through 21 <sup>st</sup> month of end of Rental Term	35%
After 22nd month	Rental Fee for the Remainder of the Rental Term

plus, in each case, the Demobilization Service Fee (as defined in Appendix P.)

Such payment must be made by Buyer to Seller at least thirty (30) days prior to the designated termination date and any such termination shall be effective upon receipt of such payment by Seller. Seller will invoice for payment within thirty (30) days after Buyer's Contract termination notice.

- b. The Buyer shall have the right to terminate this Contract for cause in the event that the Seller:
- (i) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or
  - (ii) substantially breaches and fails to comply or perform its material obligations hereunder (but only with respect to a material obligation for which this Contract does not provide exclusive remedies), provided that:
    - (A) the Buyer shall first have provided the Seller with written notice (return receipt requested) of the nature of such breach and of the Buyer's intention to terminate this Contract as a result of such breach, and
    - (B) the Seller shall have failed within forty-five (45) calendar days after receipt of such notice (or such extended period as is considered reasonable by the Parties) either:
      - (1) to commence to cure such breach and diligently thereafter to pursue such cure, but in any event, the cure will take no longer than 75 days or such other time as may be reasonably agreed to by the Parties under the circumstances or
      - (2) to provide reasonable written evidence, with supporting documentation, that no such breach has occurred which shall be provided from the Seller to the Buyer within fifteen (15) days from Buyer's written notice. Buyer shall then have fifteen (15) days to respond to the Seller in writing to advise if Buyer is withdrawing its notice of breach or advise Seller that Buyer shall not withdraw its notice of breach including the reason behind such advice, in which case the Seller shall commence to cure the breach within the time period as stated in Article 10, Section b., (ii), B, (1).

c. If the Buyer terminates this Contract for cause as provided in Section 10b, the Buyer shall pay the Seller for that unpaid portion of the Rental Fee or Operational Services Fee allocable to the Equipment and Balance of Plant Rental, and/or Services performed prior to the effective date of the termination. If the payments received by the Seller as of the effective date of such termination are in excess of the Seller-collected Rental Fee or Operational Services Fee, the Seller shall return the excess of such payments to the Buyer within thirty days of termination. In addition, the Seller shall pay to Buyer an amount equal to the difference between that portion of the Rental Fee and/or Operational Services Fee allocable to the terminated work and such actual and reasonable amount paid by the Buyer to another vendor for equipment or services comparable to those terminated.

d. Termination of the Contract shall not relieve either Party of any obligation arising out of work performed prior to termination.

e. The Seller shall have the right to terminate this Contract for cause in the event that the Buyer substantially breaches and fails to comply or perform its material obligations as follows:

1. In the case of Buyer failing to make operable the Payment Security within 60 calendar days from Effective Date of the Contract, Seller i) shall provide written notice to Buyer of Seller's intent to terminate the Contract ii) a minimum of 7 calendar days thereafter, if Buyer has not made operable the Payment Security or provided an additional Payment Guarantee in the same amount of the Payment Security, Seller may terminate for cause as described in this Article 10 and collect the termination amount as described in Article 10a.B.

2. In the case of Payment Default, if Buyer shall have failed to make any payment when due for more than 45 calendar days, then Seller, on or after the 45<sup>th</sup> day of Buyer's late payment, i) shall provide written notice to Buyer of Seller's intent to call the Payment Security, including the amount of such call, ii) a minimum of 7 calendar days thereafter, if Buyer's payments are still past due, then Seller shall be entitled to call on first demand and immediately, such amount from the Payment Security.

Any call by Seller upon the Payment Security shall require Buyer to immediately replenish the called amount so that the Payment Security is maintained as if no call had been made. The amounts called upon the Payment Security shall not be returned to Buyer but applied to the outstanding payments as set-forth in this Contract. If Buyer fails to replenish the Payment Security within 15 calendar days after Seller's call on the Payment Security, the Seller may terminate for cause as described in this Article 10 and collect the termination amount as described in Article 10a.B. Seller shall be entitled to apply any outstanding balance of called upon amount against the Demobilization Service Fee, Termination amount, or any other outstanding payments. Such called upon amounts in relation to the Payment Security are made on non-refundable basis, except if such amounts exceed the amounts due to Seller upon termination in which case Seller shall promptly refund any such excess amounts to Buyer.

3. In any other case, provided:

(A) that the Seller shall first have provided the Buyer with written notice (return receipt requested) of the nature of such failure and of the Seller's intention to terminate this Contract as a result of such failure, and

(B) either:

i. that the Buyer shall have failed within forty-five (45) calendar days after receipt of such notice to correct such failure, or

ii. the Buyer shall either:

(1) commence to cure such breach and diligently thereafter to pursue such cure, but in any event, the cure will take no longer than 75 days or such other time as may be reasonably agreed to by the Parties under the circumstances or

(2) provide reasonable written evidence, with supporting documentation, that no such breach has occurred which shall be provided from the Buyer to the Seller within fifteen (15) days from Seller's written notice. Seller shall then have fifteen (15) days to respond to the Buyer in writing to advise if Seller is withdrawing its notice of breach or advise Buyer that Seller shall not withdraw its notice of breach including the reason behind such advice, in which case the Buyer shall commence to cure the breach within the time period as stated in Article 10, Section e., 3.

(C) then, in the case of 10,.3.(B)i above, Seller shall be entitled to terminate for cause and collect the termination amount as described in Article 10a.B.

f. If Buyer is in possession of any Equipment or Balance of Plant at the time Seller terminates the Contract or portion thereof pursuant to the terms and conditions in this Contract, in addition to its other rights thereunder, Seller may also require Buyer at Buyer's expense to return promptly all or any portion of the Equipment or Balance of Plant to Seller; Seller, with consent of Buyer, may enter upon the premises where the Equipment and/or Balance of Plant is located and take immediate possession and remove some or all of it, all without liability to Buyer; or Seller may exercise any other right or remedy available to it under any applicable law. No right or remedy of Seller referred to in this Article is exclusive, but each is cumulative and in addition to any other right or remedy otherwise available to Seller at law or in equity.

g. If Buyer becomes bankrupt or insolvent, or if any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy laws or any insolvency laws, Seller shall be entitled to terminate this Contract. Buyer shall pay Seller its termination charges in the event of such termination in accordance with Article 10.a B above.

## **11. Equipment Security**



Upon demobilization of the Equipment and Balance of Plant, at the end of the Rental Term, Buyer must allow for Equipment and Balance of Plant exportation and/or shipment back to Seller's designated location within thirty days after Equipment demobilization.

## **12. Title, Delivery, and Right to Access Equipment and Balance of Plant**

a. The Equipment and Balance of Plant is, and shall at all times be and remain, solely and exclusively the property of Seller or its affiliates, and no right, title or interest in the Equipment or Balance of Plant shall pass to Buyer other than, conditioned upon Buyer's compliance with and fulfillment of the terms and conditions of the Contract, the right of Buyer to maintain, as lessee, possession and use as described in the Contract of the Equipment and Balance of Plant for the Rental Term, as defined herein. The Equipment is, and shall at all times remain, personal property notwithstanding that the leased Equipment, Balance of Plant or any part thereof may now be, or hereafter become, in any manner affixed or attached to any other personal or real property.

b. If applicable, provided that Seller has not initiated the Equipment shipment, if any Equipment cannot be finally shipped to Buyer when ready due to any cause not attributable to Seller, upon notice to Buyer, Seller may ship such Equipment to storage. If such Equipment is placed in storage, including storage at the facility where manufactured, the following conditions shall apply: (i) any amounts otherwise payable to Seller upon delivery or shipment shall be payable upon presentation of Seller's invoices and certification as to cause for storage; (ii) all expenses incurred by Seller, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any taxes shall be payable by Buyer upon submission of Seller's invoices; and (iii) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of the Equipment to the originally agreed point of delivery.

c. Title to Services shall pass to Buyer as performed.

d. Seller shall have access to the Site, the Equipment, and the Balance of Plant at any and all times for Seller's operational and project management staff. Seller shall have access to the Site for Seller's other employee's as reasonably required, subject to giving advance notice to Buyer and subject to reasonable limitations or restrictions imposed by Buyer for safety or regulatory reasons.

## **13. Payment Schedule/Payment Security**

Payment Schedule/Payment Security details are contained in Section F of Appendix P, Confidential Information. Past due payments will be subject to interest at the rate of three-month Libor plus 600 basis points per month. Disputed portions of an invoice shall not be cause for nonpayment or delay of payment of any undisputed portions of an invoice.

## **14. Terms & Conditions**

Rental of any Equipment, Balance of Plant or sale of any Services identified herein is expressly conditioned on the Buyer's assent to the terms and conditions contained or referred to herein (hereinafter "Terms and Conditions.") Any additional or different terms or conditions proposed by Buyer are expressly objected to and will not be binding upon Seller unless specifically assented to in writing by Seller's authorized representative. Any order for, or any statement of intent to purchase hereunder, or any direction to perform work or any assent to Seller's performance of work shall constitute assent to these Terms and Conditions.

The Equipment, Balance of Plant, and Services hereunder are not intended for application, and shall not be used, in connection with any nuclear facility or activity except as expressly provided in Article 35 (Prohibition on Nuclear Use).

## **15. Changes**

(a) Buyer-Initiated Changes. The Buyer shall have the right to request that the Seller consider changes to the

Equipment, the Services, or Balance of Plant, including modifications, alterations, additions, or non-Seller caused delays. If the Buyer wishes to request such a change, the Buyer shall notify the Seller in writing. Within forty-eight (48) hours after receipt of such notice (unless otherwise extended by mutual agreement), the Seller shall advise the Buyer of the feasibility of the requested change, and shall submit to the Buyer a draft Change Order, unless the matter requires further investigation and research in which case Seller will provide an estimate of the time frame in which Seller will be able to submit a detailed response to Buyer.

- (b) Seller-Initiated Changes. If the Seller wishes to propose a change, or if the Seller is entitled to a Change Order pursuant to the provisions of this Contract, the Seller shall submit to the Buyer a draft Change Order.
- (c) Contents of Draft Change Order. The draft Change Order shall include: (i) a technical description of the proposed change in such detail as the Buyer may reasonably require, (ii) a price adjustment (increase or decrease) in the Rental Fee or Operational Services Fee as applicable, if any, caused by the proposed change, (iii) all potential effect(s), if any schedule or date for performance by the Seller hereunder and (iv) all potential effect(s), if any, on the Seller's ability to comply with any of its obligations hereunder.
- (d) Process for Concluding Change Order. The Buyer shall, within twenty-four (24) hours from the date of receipt of such information, either approve or disapprove the draft Change Order in writing or request additional time to consider the draft Change Order. If the Buyer approves the Change Order, the Buyer and the Seller shall then sign the Change Order that shall operate as an amendment to this Contract.
- (e) Agreement Required. All changes under this contract shall be subject to mutual agreement, and no Change Order will be effective until signed by both Parties.

#### **16. Contract**

The following documents shall comprise the Contract, and shall together be referred to as the "Contract":

- (a) This Contract;
- (b) Appendix A, TM2500 Equipment and Codes and Standards;
- (c) Appendix B, Buyer Responsibilities;
- (d) Appendix C, Operational Responsibilities;
- (e) Appendix D, Resident Technical Advisor Services;
- (f) Appendix E, Not Used
- (g) Appendix F, Typical Test Specification;
- (h) Appendix G, Not Used;
- (i) Appendix H, General Arrangement and Single Line Diagram; [In process]
- (j) Appendix I, Not Used;
- (k) Appendix J, Estimated Schedule;
- (l) Appendix K, Fuel and Water Specifications;
- (m) Appendix L, Payment Security;
- (n) Appendix M, High Wind Response Plan;
- (o) Appendix N, Commissioning Checklist;
- (p) Appendix O, Performance Testing; Not Used and
- (q) Appendix P, Confidential Information

Should any terms in the (a) Contract conflict with any terms in any of the other Appendices, the Contract terms shall take precedence.

The Contract represents the entire agreement between the Parties, and no modification, amendment, rescission, waiver or other change shall be binding on either Party unless assented to in writing by the Parties' authorized representatives. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced in the Contract shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Contract.

The invalidity, in whole or in part, of any provision of the Contract shall not affect the validity of the remainder of the Contract.

The specifications and standards explicitly cited in the statement of work, drawings, or elsewhere in the Contract, are first tier specification and standards, and are applicable only to the extent specified in the Contract. Second tier and lower documents referenced in those first tier documents are for guidance only, and are not contractually binding. Seller shall only comply with the specifications specifically included in the Contract and shall have no obligation to comply with any additional specifications incorporated within those specifications or otherwise referenced.

The following Articles and Sections shall survive termination or cancellation of, and completion of work under, the Contract between Buyer and Seller: Article 6 (Taxes and Duties); Sections 19.3 and 19.5 of Article 19 (Compliance With Laws, Codes and Standards); Article 25 (Warranty), Article 27 (Limitation of Liability), Article 35 (Prohibition on Nuclear Use), Article 28 (Dispute Resolution, Governing Law), Article 29 (Confidentiality), Article 26 (Indemnification).

#### **17. Effective Date**

The Effective Date of this Contract shall be the date when both Parties have signed it. Seller will prepare for mobilization of Equipment and Balance of Plant upon Seller's receipt of the Payment Guarantee.

#### **18. Liens or Subletting**

Buyer shall keep the Equipment and Balance of Plant and its interest in the Contract free and clear of all liens, charges, security interests and encumbrances and shall indemnify Seller for all reasonable costs resulting from any breach of this obligation. Buyer shall not assign, sell, pledge or hypothecate the Contract or any of its rights hereunder, in whole or in part, whether directly, indirectly or by operation of law, or sublease any Equipment or Balance of Plant, without the prior written consent of Seller which consent shall not be withheld unreasonably. No permitted assignment or sublease shall relieve Buyer of any of its obligations under the Contract.

#### **19. Compliance with Laws, Codes and Standards**

- 19.1 The price is based on Seller's design, manufacture, testing and delivery of the Equipment and performance of the Services pursuant to (i) its design criteria, manufacturing processes and procedures and quality assurance program, (ii) those portions of industry specifications, codes and standards in effect as of the date of Seller's manufacture of the Equipment or performance of the Services, (iii) the national laws and rules of the United States of America in effect on the date of Seller's proposal to Buyer and (iv) any mutually agreed upon specification.
- 19.2 The price will be equitably adjusted to reflect additional costs incurred by Seller resulting from changes required to comply with applicable regulatory, legal or industrial requirements in the location where the Equipment will be installed and the Services performed, as agreed with Buyer. In the event that the Buyer elects not enter into a Change Order, Seller shall have no responsibility for failure to comply with such requirements. Buyer shall advise Seller of requirements affecting the Equipment and Services resulting from the applicability of any laws, rules or regulations in the location where the Equipment will be installed and the Services performed. Reasonable adjustments will be made to the delivery date, performance evaluation criteria and Service performance dates as may be appropriate to comply with the foregoing.
- 19.3 All transactions hereunder shall at all times be subject to and conditioned upon compliance with all applicable export control laws and regulations of the U.S. Government and any amendments thereof. Buyer and Seller hereby agree that Buyer or Seller shall not, except as said laws and regulations may expressly permit, make any disposition by way of transshipment, re-export, diversion or otherwise, of U.S. origin goods or technical data (including computer software,) or the direct product thereof, furnished by GE

hereunder, other than in and to the ultimate country of destination specified on Buyer's order and/or declared as the country of ultimate destination on Seller's invoice.

- 19.4 Notwithstanding any other provisions herein, and excluding the Seller's Virgin Islands business license, Buyer shall be responsible for timely obtaining any required authorization, such as a work permit or any other governmental authorization, even though any such authorization may be applied for by Seller. Buyer and Seller shall provide each other reasonable assistance in obtaining required authorizations. Seller shall not be liable if any authorization is delayed, denied, revoked, restricted or not renewed and Buyer shall not be relieved thereby of its obligations to pay Seller for the Equipment, Balance of Plant, or Services. Unless stated otherwise in Appendix C, Operational Responsibilities, Buyer shall comply with all codes, laws, rules and regulations applicable to the performance of the Contract, including ensuring that the Equipment selected by Buyer is and remains in compliance therewith.
- 19.5 Seller acknowledges that, in connection with the performance of the Contract, the import and customs laws and regulations of the country in which the Site is located apply to the furnishing and shipment of the Equipment.
- 19.6 Seller shall not comply with any law, regulation or requirement which would subject Seller to criminal or civil penalties or loss of tax benefits under any federal, state or local law or regulation of the U.S.A., and the execution of the Contract does not constitute the furnishing of, or an agreement to furnish, any information which would subject Seller to any of the above mentioned penalties or loss of tax benefits.
- 19.7 Notwithstanding anything to contrary in this Contract or Seller's proposal, Buyer acknowledges and agrees that (i) the Equipment is required to meet an emergency and temporary requirement in the Virgin Islands, (ii) the Equipment was designed and constructed to withstand wind speeds of up to 75 MPH, (iii) there is not sufficient time, nor does Buyer desire to have Seller redesign and retrofit the Equipment to withstand winds exceeding 75 MPH and (iv) Seller has provided Buyer with an emergency anticipated high wind response plan that will provide reasonable protection of the Equipment in the event of winds in excess of 75 MPH as described in Appendix M, High Wind Response Plan. Buyer agrees to indemnify Seller and hold Seller harmless from and against any claims, penalties, or fines asserted against Seller due to the Equipment not being designed to withstand wind speeds in excess of 75 MPH.

## **20. Seller's Insurance**

Commercial General Liability. The Seller shall furnish and maintain Commercial General Liability insurance for third party bodily injury and property damage with limits of not less than \$5,000,000 per occurrence and in the aggregate annually. Such policy shall include contingent Automobile Liability coverage.

Automobile Liability. The Seller shall furnish and maintain automobile liability insurance with limits of not less than \$5,000,000 combined single limit per occurrence for owned automobiles.

Worker's Compensation. The Seller will comply with all federal and state workers compensation or similar laws.

Certificates of Insurance. On or before the Kickoff Meeting, the Seller shall furnish the Buyer with certificates of insurance evidencing that insurance has been provided to meet the above requirements. Buyer's acceptance of Seller's evidence of insurance shall not be deemed a waiver or modification of Seller's insurance, indemnity, or other obligations, under the Contract.

Deductibles. Except as otherwise provided, Seller shall be responsible for any and all deductibles with regard to the insurance required of and provided by Seller.

## **21. Equipment and Balance of Plant Purchase Option**

Buyer shall have the opportunity to purchase the Equipment and the Balance of Plant as more fully described in Section G of Appendix P, Confidential Information.

## **22. Buyer Insurance**

Buyer shall obtain, at its expense, and shall at all times during which Equipment is at the Site or otherwise in Buyer's possession or control, maintain the following insurance:

Commercial General Liability and Automobile Liability insurance for third party bodily injury and property damage with limits of not less than \$5,000,000 per occurrence and in the aggregate annually. Such policy shall include coverage for owned, non-owned and hired automobiles.

Worker's Compensation. The Buyer will comply with all federal and state worker's compensation or similar laws.

All Risks Property Insurance. The Buyer or Owner shall maintain or cause to be maintained through the end of the Warranty Period, as it might be extended, "All Risk" Property Insurance on existing property/Facility/plant/Site and including Equipment and Balance of Plant taken over during the term of the Contract. The policy shall cover "all risks" of physical loss or damage including coverage for boiler and machinery (electrical and mechanical breakdown), in an amount equal to the fair market value of the relevant property. Buyer or Owner and its insurers, for these property insurances, including any business interruption coverage, shall waive right of recovery or subrogation against the Seller, its Affiliates, Suppliers and Subcontractors. The policy shall not be canceled or materially changed without thirty (30) Days' advance written notice to the Seller, or, in the case of non-payment, ten (10) Days' advance written notice. To the extent that any damage for such property is caused by the negligence of the Seller in the performance of the Contract Seller shall be responsible for the lesser of (i) the actual cost to repair or replace any such damage (ii) the Buyer's insurance deductible related to such damage, or (iii) \$100,000 per event. Buyer may elect to self-insure the existing property/Facility/plant/Site and including Equipment and Balance of Plant for windstorm risk instead of including such risk in the all risk property insurance, in which case Buyer shall assume all risk from windstorm damage and protect Seller as if such insurance were in place.

Deductibles. Except as otherwise provided, Buyer shall be responsible for any and all deductibles with regard to the insurance required of and provided by Buyer.

Certificates of Insurance. Buyer will provide Seller with evidence of Buyer's insurance on or Before the Kickoff Meeting. Seller's acceptance of Buyer's evidence of insurance shall not be deemed a waiver or modification of Buyer's insurance, indemnity, or other obligations, under the Contract.

## **23. Not Used**

## **24. Excusable Delays**

**24.1 "Uncontrollable Circumstance"** means any act, event or condition, that is not caused by the negligence or lack of reasonable due diligence of the Party relying thereon as justification for any failure of performance hereunder, that is beyond the reasonable control of such party, and that has a material adverse effect on the performance of either Party's obligations under this Contract, including:

- (a) act of God, hurricane, tornado, lightning, earthquake, fire, explosion, flood, act of public enemy, threats or acts of terrorism, war, blockade, insurrection, riot or civil disturbance, sabotage, or the exercise of the power of eminent domain, condemnation or other taking by or on behalf of any public, quasi-public or private entity; and
- (b) change in Law; or

(c) COVID-19 VIRUS: The parties acknowledge that the COVID-19 pandemic and government actions in response to it have affected and will continue to affect Seller's ability to deliver goods and services around the world (the "COVID-19 Impact"). In the event that the COVID-19 Impact affects Seller's ability to deliver on time or at the bid price, Seller shall be entitled to an equitable adjustment in schedule and price as appropriate, subject to Seller's obligation to work in good faith with Buyer to mitigate the impact on schedule and/or cost;

provided, that the following acts or events shall not be considered an Uncontrollable Circumstance:

i equipment breakdown (or inability to use equipment) caused by its design, construction, operation, maintenance.

**24.2 Effect of Uncontrollable Circumstance.** Neither Party shall be liable to the other Party for failure to perform or delay in performance of any obligation hereunder, when such failure is the result of the occurrence of an Uncontrollable Circumstance after the Effective Date; provided, however, that neither Party shall be excused from any obligation to pay amounts due under this Contract by reason of an Uncontrollable Circumstance. Upon becoming aware of the occurrence of an Uncontrollable Circumstance, or that any such event is reasonably expected to occur, the affected Party shall immediately notify the other Party of such event, or such pending event, as the case may be. The suspension of performance shall be of no greater scope and of no longer duration than is required by the Uncontrollable Circumstance. The non-performing Party shall proceed with reasonable diligence to remedy its inability to perform and shall provide weekly progress reports to the other Party describing actions taken to end the Uncontrollable Circumstance. When the non-performing Party is able to resume performance of its obligations under this Contract, the non-performing Party shall give the other Party written notice to that effect. Except as otherwise expressly provided for in this Contract, the existence of an Uncontrollable Circumstance shall not relieve the Parties of their obligations under this Contract (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by such Uncontrollable Circumstance.

**24.3 Changes Due to Uncontrollable Circumstance** Immediately following the initial notice of the Uncontrollable Circumstance by either Party pursuant to, the notifying Party shall provide the other Party with a written preliminary evaluation of the extent of the adverse effect on the performance of such other Party's obligations caused by the Uncontrollable Circumstance or on the operation and maintenance of the Equipment. Upon completion of the notifying Party's final analysis of such adverse impact, including completion of engineering estimates, if necessary, and of any necessary modifications or repairs to the Equipment, the notifying Party shall provide the other Party with a final written report of the overall impact on the Equipment.

**24.4 Termination Due to Uncontrollable Circumstance** If delay excused by this Article extends for more than one hundred eighty (180) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either party (except where delay is caused by Buyer, in which event only Seller,) upon thirty (30) days written notice, may terminate the order with respect to the unexecuted portion of the work, whereupon Buyer shall promptly pay Seller for Demobilization charges that include transportation charges back to Seller's Equipment storage location.

## 25. Warranty

### A. Equipment and Services Warranty

25.1 Seller warrants to Buyer that the Equipment: (a) upon commencement of the Rental Term will be fit for the purpose of generating electrical power, and operable, and (b) when properly installed, operated, and maintained in accordance with Seller's and manufacturer's recommendations and the terms of the Contract, will remain fit for the purpose of generating electrical power, and operable; and that the Services will be performed in a competent and diligent manner in accordance with any mutually agreed specifications, and in the absence of such mutually agreed specifications, in accordance with prudent industry standards. Seller provides no warranty for Balance of Plant, which is rented on an as-is basis, nor incidental materials and

consumables utilized in the performance of the Services and only the warranty given by the manufacturer, if any, shall apply.

- 25.2 If any failure to meet the foregoing Equipment and Services warranty appears within the Rental Term, Buyer shall promptly notify Seller and make the Equipment available promptly for correction. Seller shall thereupon correct any defect by re-performing the defective Services.
- 25.3 The foregoing warranties for Equipment and Services shall apply to defects that appear within the Rental Term.
- 25.4 The reperformance of Services by Seller pursuant to Section 25.2 shall not extend the duration of the Warranty Period. Seller shall not be responsible for removal or replacement of systems, structures or other portions of Buyer's facility. The condition of any tests shall be mutually agreed upon and Seller shall be notified of and may be represented at all tests that may be made.
- 25.5 Seller does not warrant the Services or Equipment (i) against normal wear and tear including that due to environment or operation, including excessive operation at peak capability outside of the recommendations in Seller's Operations and Maintenance manuals, type of fuel, detrimental air inlet conditions or erosion, corrosion or material deposits from fluids or (ii) which have been involved in an accident. The warranties and remedies set forth herein are further conditioned upon the following:

- (i) if not provided by the Seller, the proper storage, installation, operation, and maintenance of the Equipment and conformance with the operation instruction manuals (including revisions thereto) provided by Seller and/or its subcontractors, as applicable and
- (ii) if not provided by the Seller, the repair or modification pursuant to Seller's instructions or approval.

Seller does not warrant any equipment or services of others designated by Buyer where such equipment or services are not normally supplied by Seller.

- 25.6 The preceding Sections of this Article 25 set forth the exclusive remedies for all claims based on failure of or defect in the Equipment and Services provided under the Contract, whether the failure or defect arises before or during the Rental Term and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

## **26. Indemnification**

- 26.1 General Indemnity. Seller hereby agrees to indemnify and hold harmless Buyer from the cost of (i) repairing or, in the case of destruction, replacing physically damaged tangible property of third parties or (ii) injury to persons, including death, to the extent resulting directly from the negligence or willful misconduct of Seller or its officers, servants, agents, employees, and/or assigns while engaged in activities under this Contract. Buyer shall likewise indemnify and hold harmless Seller from the cost of (i) repairing or, in the case of destruction, replacing physically damaged tangible property of third parties or (ii) injury to persons, including death, to the extent resulting directly from the negligence or willful misconduct of Buyer, its officers, servants, agents, employees, and or assigns, while engaged in activities relating to this Contract. In no case, however, shall Seller or Buyer have any obligation under the foregoing unless Seller or Buyer is liable to the third party claimant under the law otherwise normally applicable. In the event such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss shall be borne by each party in proportion to its respective negligence.

- 26.2 The indemnities provided for in Article 26.1 shall only apply if the party demanding to be indemnified gives the other party prompt notice of any such claim and all necessary information and assistance so that the other party, at its option, may defend or settle such claim and the party demanding to be indemnified does not take any adverse position in connection with such claim. For purposes of Article 26.1, property of “third parties” shall not include property of: (i) the Buyer; (ii) the subsidiaries, parents, affiliates, agents, successors or assigns of the Buyer, or (iii) any party with any equity interest in the foregoing entities, or (B) with a security interest of any nature in an such entity’s assets or property, or (C) which claims or seeks to claim any of the rights, powers or privileges of the Buyer under this Contract or claims or seeks to claim as a third party beneficiary of the Buyer under this Contract.
- 26.3 a. The Parties acknowledge that no specific data regarding subsoil condition and pre-existing contamination is available at the Effective Date of this Contract. Seller shall not be responsible for any remediation costs, fines and penalties arising out or relating to any contamination of the Site caused by the release of any hazardous material, present at, or under, the Site or, released at the site, which contamination or release occurred prior to Seller’s access to the site, whether or not discovered before or after the Effective Date of the Contract, and Buyer shall indemnify and hold Seller harmless from any such remediation costs, fines, and penalties.
- b. Nor will Seller be responsible for any remediation costs, fines or penalties arising out of or relating to any contamination of the Site as a result of the release of any hazardous material at any time caused by the Buyer or any third party, and the Buyer shall indemnify and hold harmless Seller from any such, fines, penalties and remediation costs.
- c. Seller will indemnify and hold Buyer harmless from any remediation costs, fines and penalties, and costs of remediation, to the extent resulting from any hazardous materials that are actually released at the Site by the negligence or willful misconduct of the Seller while performing the Contract, provided that
- (i) the Seller is the cause of release; provided, however, that in the event such release is caused by the joint or concurrent action or inaction of Seller and Buyer, the loss shall be borne by each party in proportion to its respective negligence.
  - (ii) Immediately after a release of hazardous material from Seller’s operation has occurred, either, the Seller shall immediately notify the Buyer’s project manager or control room shift supervisor and/or the Buyer shall immediately notify the Seller’s project manager or site leader, depending on which Party is aware of the release at the time it occurs; provided, however, that either party’s failure to so notify the other party’s project manager shall not be grounds for such failing party to avoid liability under this paragraph;
  - (iii) within 24 hours after the release notification, the Buyer, with the assistance and concurrence of Seller, shall produce a written report assessing the release. Seller’s delay in providing Buyer with required release details shall be grounds for extending the 24 hour period on a one-for-one hour basis.

At the conclusion of the cleanup of any hazardous material release meeting the indemnity requirements outlined in the preceding paragraph, the Buyer shall present the Seller with an invoice outlining the scope of work and the remediation cost for clean up the hazardous material released by Seller at the site, whereupon the Seller shall within thirty (30) days of presentation of the invoice remit payment to the Buyer, failing which Buyer may deduct such payment from any payment owed the Seller.

Any contamination found at the site is presumed to be preexisting unless Buyer can show that it was released at the Site by the negligent or willful misconduct of Seller.

All liability of Seller for release of hazardous materials or contamination of the Site or otherwise directly or indirectly related to the soil, subsoil or groundwater at or near the Site shall terminate upon the expiration or termination of this Contract, and Buyer shall indemnify and hold Seller harmless against all



such claims; provided, however that Seller shall remain responsible for incremental costs of remediation of hazardous materials in accordance with the preceding paragraph for remediation of hazardous materials to the extent released at Site by the negligence or willful misconduct of Seller during the performance of the Contract, unless any contamination resulting from such materials has been remediated upon expiration or termination of the Contract.

It is agreed that the Buyer will retain responsibility for reporting any release to the local governing body as required by law.

## **27 Limitation of Liability**

- 27.1 a. The total liability of Seller, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of or related to the Contract or its performance or breach, or from use of any Equipment, Balance of Plant, or Services, other than for third-party indemnity claims pursuant to Article 26, or in the event of intentional fraud or willful misconduct by Seller, shall not exceed the price allocable one year of rental of Equipment or Balance of Plant or sale of Services giving rise to the claim. All liability of Seller on all claims of any kind between the Parties shall terminate upon expiration of the Rental Term or early termination of the Contract, provided that Buyer may enforce a claim of such liability accruing during the Rental Term by an action timely commenced in accordance with the applicable statute of limitations and/or statute of repose, but in no event greater than three years after the expiration of the Rental Term.
- b. With the exception of payments to be made pursuant to this Contract, or in the event of intentional fraud or willful misconduct by Buyer, Buyer's liability to Seller pursuant to this Contract, whether based on contract, warranty or tort, including intentional acts, errors or omissions, negligence, indemnity, strict liability, or otherwise, or any other claim or cause of action shall not in the aggregate exceed the Estimated Contract Price as stated herein and in no event shall Buyer be liable to Seller for consequential, special, incidental, speculative, punitive, or exemplary damages. The forgoing shall not limit the Buyer's third party indemnity claims pursuant to Article 26.
- 27.2 In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, other than in the case of willful misconduct, shall Seller or its subcontractors or suppliers be liable for loss of profit or revenues, loss of use of the Equipment, Balance of Plant, and Services or any associated equipment, facilities or vessels, cost of capital, cost of substitute equipment and services (except for substitute equipment or services purchased as a direct result of Buyer's termination for Seller's default as expressly provided in Section 10(c)) or any associated equipment, facilities, services or replacement power, downtime costs, damage to associated equipment or facilities, claims for damages or costs related to the clean-up, removal, release or threatened release, remediation or disposal of or any response to any hazardous materials (except as described in Article 26.3), or nuclear materials, or any special, consequential, incidental, indirect, speculative, punitive or exemplary damages, or claims of Buyer's customers for any of the foregoing damages. The forgoing shall not limit the Seller's third party indemnity claims pursuant to Article 26.
- 27.3 If Seller furnishes Buyer with advice or assistance concerning any Equipment, Balance of Plant, Services, systems or work which is not required pursuant to this Contract or any mutually agreed written specification, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.
- 27.4 Except as provided by Article 22, Buyer waives rights of recovery against Seller, whether Buyer's claim is brought under breach of contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, for loss or damage to the tangible property of Buyer

27.5 Not Used.

27.6 For the purposes of this Article 27, Article 35 (Prohibition on Nuclear Use, the term "Seller" shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, whether individually or collectively.

27.7 The provisions of this Article 27, Article 35 (Prohibition on Nuclear Use) shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the Contract between Buyer and Seller, except to the extent that such provisions further restrict Seller's liability.

## **28. Dispute Resolution, Governing Law**

### ***a) Referral to Senior Management.***

Any and all controversies, disputes or differences between the Parties to this Contract, if not amicably settled by the Parties within thirty (30) Days following written notice of dispute, shall be referred to senior management of the Parties for resolution in accordance with the Notices provisions of Article 43, Notices. In the event the dispute has not been resolved within forty-five (45) Days following referral to senior management, or such longer period as the Parties may mutually agree, then either Party may, subject to limitations and exclusions of liability and remedies herein, pursue their remedies at law.

### ***b) Venue.***

Any legal action or proceeding with respect to this Contract shall be brought in the United States District Court for the Southern District of New York or, if such court lacks jurisdiction, in the Supreme Court of the State of New York in New York County. Each of the Parties hereby accepts and consents to, generally and unconditionally, the jurisdiction of the aforesaid courts and applicable appellate courts for any appeal thereof. Each Party irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such Party at the address first set forth in this Contract. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Contract brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

### ***c) Governing Law.***

This Contract, including but not limited to, the validity, performance and all matters relating to the interpretation and effect of this Contract and all further documents executed pursuant to it, shall be construed and interpreted in accordance with the laws of the State of New York, excluding its conflict of law rules, provided that any provision of such law invalidating any provision of this Contract or modifying the intent of the Parties as expressed in the terms of this Contract shall not apply.

## **29. Confidentiality**

29.1 In connection with this transaction, Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information. Buyer shall not provide any Confidential Information to Seller without Seller's prior written consent to receive it. "Confidential Information" as used in this Contract shall mean all Equipment and Balance Of Plant rental and Services pricing, and all information related to the business or products of the Disclosing Party that is not generally known to the public, or to the competitors of the Disclosing Party, provided that the obligations of this Article shall not apply as to any portion of the Confidential Information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, or (ii) is or becomes available to the Receiving Party or its

representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party, or (iii) has been or is subsequently independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information, or (iv) is necessarily disclosed in connection with permitted uses of the Equipment, or (v) is required to be disclosed by law or pursuant to legal process.

- 29.2 The Receiving Party agrees, except as otherwise required by law: (i) to use the Confidential Information only in connection with this transaction and permitted uses of the Equipment, Balance Of Plant, and Services, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees to the extent necessary to facilitate this transaction and permitted uses of the Equipment, Balance of Plant, and Services.
- 29.3 Neither Party shall disclose Confidential Information, unless required to do so by law. If either party or any of their respective affiliates or representatives is requested or required (by interrogatories, subpoena, or similar legal process) to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt notice of each such request, to the extent practicable, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Article 29, or both.
- 29.4 Nothing in the Contract shall be construed (i) to allow export or re-export of technical information in violation of Section 19.3, or (ii) to limit or abridge the protection of trade secrets under applicable trade secrets law, or (iii) as granting (by implication, estoppel or otherwise) any licenses or rights under any patents, copyrights, mask works or other legally protectable intellectual property rights (present or future) of either party (although the Parties may provide for such a license in an express written agreement), or (iv) subject to Section 25.4., as precluding Buyer from using or furnishing to others information and data necessary to effect any contract or arrangement under which there is to be performed for Buyer, by others (excluding competitors of Seller), non-infringing modification, overhaul, or maintenance work on the Equipment, Balance of Plant, and Services, subject to the same limitations set forth above, which shall be confirmed in a written agreement with the party to whom further disclosure is made.

### **30. Health and Safety Matters.**

- 30.1 During the time period that the Seller is operating the Equipment and Balance of Plant, Seller is responsible for implementing an Environmental Health and Safety plan over the portion of the Site for which Seller has direct control and for those activities of which Seller has direct control. Buyer will take all necessary precautions, at all times, for the safety of Seller personnel at Site. This includes, but is not limited to, instruction of Buyer's safety practices, proper and safe handling of hazardous substances and protection of Seller's personnel from exposure thereto, energization / de-energization of all power systems (electrical, mechanical and hydraulic) using a safe and effective lock-out tag procedure, and conducting periodic safety meetings during construction and start-up.

Buyer may request the removal of Seller's personnel if Seller's personnel fail to comply with the Buyer's safety practices and procedures at the Site.

Each Party will provide a safety plan in accordance with local laws and regulations outlining the procedures for the safety of the personnel on Site. Each Party will undertake their respective EHS plans when operating in the portion of the Site where the respective plan is in place.

- 30.2 Seller may, from time to time, conduct safety audits to insure safe conditions exist and make recommendations to Buyer concerning same. Neither the conduct or non-conduct of safety audits nor the

making of any recommendation by Seller shall relieve Buyer of the responsibility to provide a safe place to work. If Seller's personnel require emergency medical attention, Buyer shall assist with making contact and coordinating the logistics to have local EMT and medical and hospital emergency providers response to provide medical assistance to Seller's personnel for the duration of such needs.

- 30.3 If, in Seller's opinion, the safe execution of Services at the Site is, or is apt to be, imperiled by catastrophic occurrences, or such other situations in which Seller reasonably determines that the safety of Seller's personnel is in jeopardy, Seller may remove some or all of its personnel from the Site and/or supervise performances of all or any part of its Services and/or evacuate its personnel and Buyer shall assist in said evacuation with making contact with local shelters or with travel arrangements, any of which shall be considered to be an Uncontrollable Circumstance.
- 30.4 In general, Seller personnel will have at least one day of rest in any seven (7) consecutive days. However, with Seller's written consent and where the nature of the assignment requires, Seller personnel may work seven (7) days a week for a maximum of thirty (30) days. Unless prior written agreement is obtained from Seller's headquarters, Seller personnel shall not work more than one hundred and forty (140) hours in any two (2) consecutive weeks or sixteen (16) hours in any one day.
- 30.5 The operation of Buyer's equipment at the Site is the responsibility of the Buyer. If Buyer requires or permits Seller's personnel to operate the Buyer's equipment at the Site, Buyer shall indemnify and save Seller, its employees and agents, harmless from expense and liability (including reasonable attorneys' fees) incurred by or imposed upon Seller, its employees and agents, based upon injury to persons (including death) or damage to property resulting from operation of Buyer's equipment at the Site by Seller personnel, other than as a result of the negligence or willful misconduct of Seller's personnel.
- 30.6 The Seller shall be responsible for complying with all applicable rules, regulations and guidelines issued by the U.S. Environmental Protection Agency (EPA), V.I. Department of Planning and Natural Resources (DPNR), and any other Federal, State or local regulatory agencies with regard to the discharge or spilling of oil, petroleum products, or other prohibited contaminants during the performance of the work at the Site pursuant to this Contract. Seller shall also become familiar with and adhere to the policies and practices of the Buyer regarding the discharge or spilling of oil, petroleum products and other prohibited contaminants in the performance in the scope of the work.

In the event of Seller's realization of a Seller caused release of hazardous material or other prohibited contaminants during the work at the Site, Seller shall immediately notify the Buyer's project manager or the control room shift supervisor and comply with Seller's release response plan.

### **31. Differing Site Conditions; Hazardous Materials**

- 31.1 Seller shall promptly and, if feasible, before such conditions are disturbed, notify Buyer in writing of: (i) subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract, or (ii) unknown physical conditions at the Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract. Buyer shall promptly investigate the conditions. If it is determined that such conditions do materially differ and cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and time of performance shall be made and the Contract modified in accordance with the provisions in Article 15, Changes.
- 31.2 If, at the Site, Seller encounters toxic substances, hazardous substances or hazardous wastes (as such terms may be defined in any statute or ordinance or regulations promulgated by any federal, state or local governmental authority of the United States or the country of the Site) (collectively, the "Hazardous

Materials" which require special handling and/or disposal, Buyer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions so that the work under the Contract may safely proceed. If any such Hazardous Materials cause an increase in Seller's cost of or the time required for performance of any part of the work, an equitable adjustment shall be made in the price and schedule in accordance with the provisions of Article 15, Changes.

Buyer agrees to properly dispose of all Hazardous Materials produced or generated in the course of Seller's work at the Site. Buyer shall indemnify Seller for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to (i) the presence of any Hazardous Materials which are present on the Site prior to the commencement of Seller's work or (ii) Hazardous Materials improperly handled or disposed of by Buyer or (iii) Hazardous Materials brought on to the Site or produced thereon by parties other than Seller.

Buyer will provide a suitable location at the Site to dispose of excavation spoils.

### **32. Software License**

- 32.1 "Software" means a computer program or compilation of data that is fixed in any tangible medium of expression, or any storage medium from which the program may be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device, and shall include without limitation any of Seller's proprietary operating Software, provided for the ordinary operation of the Equipment, any optional Software to enhance the operation of the Equipment, as well as any upgrades or revisions of this material the Seller provides in fulfillment of a specific written commitment or otherwise. Nothing herein shall be deemed to create an obligation on the part of Seller to provide any upgrade or revision to any Software other than pursuant to a written obligation to do.
- 32.2 Buyer is granted a limited license for any Software delivered by Seller, whether as part of any Equipment or separately. Buyer is not granted a license for any other Software. This license allows Buyer to:
- 32.3 Use the Software only on the Equipment on which it is installed at the time of delivery or, if Software is supplied separately, in connection with equipment supplied by Seller. Buyer must obtain a supplementary license from Seller (which Seller may or may not grant in its sole discretion) before using the Software in connection with any other equipment or for any other purpose.
- 32.4 Buyer may not distribute copies of the Software to others or electronically transfer the Software from one computer to another over a network. The Software contains trade secrets. In order to protect them Buyer may not decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form. BUYER MAY NOT MODIFY, ADAPT, TRANSLATE, RENT, LEASE, LOAN, RESELL FOR PROFIT, DISTRIBUTE, NETWORK, OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE OR ANY PART THEREOF.
- 32.5 All Software is protected by the copyright laws of the United States and by applicable international treaties. No rights under copyrights are transferred to Buyer, except as specifically provided above.
- 32.6 All Software provided by Seller remains Seller's property. If Buyer receives Software that renders Software that Buyer then has redundant, Buyer must return the redundant Software to Seller or certify in writing that Buyer has erased all copies of it.

### **33. Assignment**

Seller may assign or novate its rights and obligations regarding the Contract, in part or in whole, to one or more of its subsidiaries or affiliates without the consent of Buyer. Upon the effective date of such assignment or novation, all of the rights and obligations of Seller under the Contract shall vest solely in Seller's assignees and novatees. However, Seller guarantees the performance of its assignees or novatees after the assignment or novation takes effect. Buyer agrees to execute such documents as may be necessary to effect the assignment or novation. The delegation or assignment by Buyer of any or all of its duties or rights under the Contract without Seller's prior written consent shall be void. Buyer shall notify Seller immediately upon any change in its ownership or control. If Buyer fails to so notify Seller or, if Seller objects to the change in ownership or control, Seller shall have the unilateral right to terminate the Contract. In lieu of termination, Seller may require Buyer to provide adequate assurance of performance of the Contract, and/or institute special controls, including but not limited to, special controls regarding the protection of the Confidential Information of Seller.

#### **34. Publicity**

Buyer agrees to allow Seller to photograph and video tape the Equipment and the performance of Services at the Site and to use these materials as well as project details in public print ads, trade journals, technical papers, brochures, web pages and other publications, subject, in each instance, to Buyer's prior written consent.

#### **35. Prohibition On Nuclear Use**

The Equipment rented and Services sold hereunder are not intended for application (and shall not be used) in connection with any nuclear installation or activity and Buyer warrants that it shall not use the Equipment and Services for such purposes, or permit others to use or permit others to use the Equipment or Services for any such purposes. If, in breach of the foregoing, any such use occurs, Seller shall have no liability for any nuclear or other damage, injury or contamination, and Buyer shall indemnify Seller, its Affiliates and suppliers of every type and tier against any such liability, whether arising as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.

#### **36. Importation and Exportation**

In connection with any export and import of the Equipment and/or Balance of Plant, whether in delivering the Equipment and/or Balance of Plant to the Delivery Point or in returning the Equipment to Seller after the Rental Term:

Seller shall be responsible for:

- (i) paying all costs, fees, expenses and import/export duties;
- (ii) obtaining all required licenses, permits, consents and authorizations; and
- (iii) clearing customs.

#### **37. Permits**

- (a) **Permits.** The Buyer shall be responsible for obtaining all environmental and use permits, all other licenses, exemptions, permits, and approvals, local building and construction permits, and easements necessary for the construction and operation of the facility, and shall be responsible for any additional costs arising from and any delay or failure to obtain such permits.
- (b) **Permitting Support.** The Seller shall assist the Buyer in its endeavors relating to the permitting of the Site and cooperate by providing information and support during any hearings in the process of obtaining the permits. In undertaking such assistance, the Seller shall not be obligated to incur out-of-pocket costs and expenses without reimbursement from the Buyer.

#### **38. Output and Heat Rate Degradation Guarantees**

Seller's performance degradation guarantee will be based on Heat Rate and Output as determined during the Performance Tests for the Unit relative to the Baseline Heat Rate and Baseline Output levels when corrected for expected degradation. The results of each Performance Test shall be corrected to the Reference Site Conditions defined herein and this shall be the basis of evaluation.

### **Performance Testing**

For the Unit, these Performance Tests will be performed:

- a. at end of the first year of the Rental Term and
- b. at the end of the second year of the Rental Term.

The Buyer and Seller will mutually agree upon the scheduling of the annual performance testing. The Buyer shall reimburse Seller for Seller's costs directly related to performing any Performance testing including the Performance Testing Engineer's labor, travel & living, etc. The Performance Testing Engineer will collect the test data, assist with the test correction procedure, and analyze the test results.

Performance testing will be conducted at base load, steady state conditions on Liquid fuel and with water injection for NOx suppression to 42 ppm @ 15% ref O<sub>2</sub>. Performance measurements and calculations will be made using station instrumentation, and Seller correction. The performance testing procedure will follow the same testing procedure and be corrected to the same conditions used to determine the Baseline Heat Rate and Baseline Output. Seller shall lead the test and Buyer's representative(s) shall assist. All testing data shall be shared mutually between Seller and Buyer. A Site-specific testing procedure will be developed and mutually agreed to between Seller and Buyer, on the following basis of Appendix F, Typical Test Specification.

Seller's degradation guarantee is for performance associated with the Unit. Degradation caused by events or equipment not within Seller's control or scope of responsibility in this Contract shall not be charged against Seller for the purpose of determining applicable liquidated damages or bonus, which shall include, but shall not be limited to, the following:

1. Equipment falling outside the terminal points of the Unit including, but not limited to, inlet filters and evaporative coolers, if applicable.
2. Inlet, exhaust and transmission losses.
3. Action or inaction of Buyer's operator(s) or Buyer which is contrary to Seller's recommendation including, but not limited to, the completion of service bulletins, service letters, and product bulletins.
4. Degradation caused by parts or services provided or performed by third parties.
5. Failure of Buyer to ensure the following:
  - a) Station instrumentation is calibrated immediately preceding all performance tests. Calibration will be conducted according to OEM's recommendations and all testing equipment will be properly certified.
  - b) Purchase any additional instrumentation required to monitor equipment that is not part of the Unit and that may affect overall performance. Examples include instrumentation to measure inlet filter differential pressure and evaporative cooler effectiveness, if applicable.
  - c) Water wash each Unit according to Seller recommendations.
  - d) Performance an Off-line water wash of the Unit immediately preceding each Performance Test. In some instances where one crank soak wash is insufficient, Seller may require more than one

crank soak wash to complete the required off-line water wash. The off-line water wash must be conducted no more than 100 fired hours prior to conducting a Performance Test.

e) Assist Seller during each Performance Test.

f) Unit will not be operated above base firing temperature rating or in any peak firing or power augmentation regime not pre-approved with Seller.

g) Inspect inlet filters at least twice per month. If the inlet filtration does not meet Seller requirements, Buyer will replace within two weeks.

Either Seller or Buyer, at their expense, can request an ASME quality test instead of the station instrumentation test using a plant performance monitor. If an ASME test is performed, an experienced and reputable supplier of gas turbine performance testing services must perform it. The performance tests must be jointly witnessed and certified by both Seller and the Buyer representative. Seller and Buyer shall mutually share all testing data.

## Definitions

### General Definitions:

“Baseline Performance Test” shall be the performance test conducted within 720 operating hours on the Unit following the start of the Rental Term.

“Performance Test” shall be a performance test conducted per the requirements detailed herein for the purpose of measuring Output and Heat Rate for the purposes of this degradation guarantee.

“Reference Site Conditions” shall consist of the following:

- ambient pressure equivalent to an altitude of: **15 ft**,
- engine inlet temperature of: **81 deg F**,
- relative humidity of: **85%**,
- NOx suppression: **water injection to 42 ppm @15% ref. O2 running on Liquid fuel**
- facility inlet losses of: **5.2 inches of H2O**,
- facility exhaust losses of: **14.10 inches of H2O**, and
- fuel of: **Liquid Fuel with a heating value of 18400 BTU/LBM LHV following MID-TD-0000-2**

### Heat Rate Definitions:

“Baseline Heat Rate” or “BHR” for each Unit shall be:

The Heat Rate determined in the Baseline Performance Test following pre-existing condition inspection and corrective actions when corrected to Reference Site Conditions per the mutually agreed site-specific testing procedure.

“Heat Rate” is the actual measured energy consumption by a Unit in Btu/kwh-LHV.

“Heat Rate Degradation” or “HRdeg” is the anticipated degradation since the Baseline Performance Test determined according to the following maintenance milestones:

- (i) for Performance Tests performed prior to the a Hot Section exchange of the engine, HRdeg shall be no more than 2.7% on the applicable Unit at the time of testing;



- (ii) for Performance Tests after the a Hot Section exchange and prior to any Major Overhaul of the Unit's engine, HRdeg shall be no more than 7.4% on the applicable Unit at the time of testing from any Hot Section exchange performed during the Rental Term.

"Heat Rate Performance Test Results" or "HRPTR" shall be the Heat Rate measured during a Performance Test and corrected to Reference Site Conditions following the same testing procedure used to determine the Baseline Heat Rate.

"Net Heat Rate Improvement" or "NHRI" shall be the difference between the Baseline Heat Rate and Heat Rate Performance Test Results. NHRI shall be expressed as a percentage and rounded to the nearest one-hundredth of one percent. A positive NHRI indicates that the current level of performance exceeds the guaranteed performance, when corrected for expected degradation.

$$NHRI = \left[ \frac{BHR - HRPTR}{BHR} \right]$$

Example – BHR is 8407 Btu/kwh-LHV and the HRPTR result is 8,280 Btu/kwh-LHV.

$$NHRI = [ ( BHR - HRPTR ) / BHR ]$$

$$NHRI = [ ( 8407 - 8280 ) / 8407 ]$$

$$NHRI = 1.62\%$$

#### **Output Definitions:**

"Baseline Output" or "BO" for each Unit shall be:

The Output determined in the Baseline Performance Test following pre-existing condition inspection and corrective actions when corrected to Reference Site Conditions per the mutually agreed site-specific testing procedure.

"Net Output Improvement" or "NOI" shall be the difference between the Baseline Output and Output Performance Test Results. NOI shall be expressed as a percentage and rounded to the nearest one-hundredth of one percent. A positive NOI indicates that the current level of performance exceeds the guaranteed performance, when corrected for expected degradation.

$$NOI = \left[ \frac{OPTR - BO}{BO} \right]$$

Example – BO is 40.5 MW and the OPTR result is 41.0 MW.

$$NOI = [ ( OPTR - BO ) / BO ]$$

$$NOI = [ ( 41.0 - 40.5 ) / 40.5 ]$$

$$NOI = 1.23\%$$

"Output" is the actual measured electrical output of a Unit in MW.

"Output Degradation" or "Odeg" is the anticipated degradation from the Baseline Performance Test determined according to the following maintenance milestones:

- (i) for Performance Tests prior to the 1<sup>st</sup> Hot Section exchange of the engine, Odeg shall be no more than 5.2% on applicable Unit at the time of testing;
- (ii) for Performance Tests after the 1<sup>st</sup> Hot Section exchange of the engine and prior to any Major Overhaul of the Unit's engine, Odeg shall be no more than 15.5% on the applicable Unit at the time of testing from any Hot Section exchange performed during the Rental Term.

"Output Performance Test Results" or "OPTR" shall be the Output measured during a Performance Test and corrected to Reference Site Conditions following the same testing philosophy used to determine the Baseline Output.

#### **Liquidated Damages/Bonus**

The following incentive arrangement will be implemented during the Rental Term and will use Net Heat Rate Improvement and Net Output Improvement as the basis for evaluation.

The following Commercial test tolerances will be applied to the final and corrected test results of the Unit Performance Tests: two percent (2%) will be applied to the Unit output, and two percent (2%) will be applied to Unit heat rate.

#### **Heat Rate**

For each negative percentage point of Net Heat Rate Improvement, Seller shall owe Buyer a liquidated damage equal to \$25,000 per percentage point up to a maximum cap of \$125,000 per guarantee period. For each positive percentage point of Net Heat Rate Improvement, Buyer shall pay Seller a bonus equal to \$25,000 per percentage point up to a maximum cap of \$125,000 per guarantee period.

#### **Output**

For each negative percentage point of Net Output Improvement, Seller shall owe Buyer a liquidated damage equal to \$25,000 per percentage point up to a maximum cap of \$125,000 per guarantee period.

For each positive percentage point of Net Output Improvement, Buyer shall pay Seller a bonus equal to \$25,000 per percentage point up to a maximum cap of \$125,000 per guarantee period.

If Buyer fails to make any Unit available for a Performance Test per its obligations in this degradation guarantee, Buyer shall pay Seller a bonus equal to the applicable maximum cap stated above.

In any given year, the maximum liquidated damages that Seller shall credit Buyer or maximum bonus Buyer shall pay Seller or associated with the heat rate & Output Degradation guarantee defined above for the Unit will be subject to an overall annual cap of +/- \$50,000.

---

#### **Additional Provision for Guarantees**

The Unit will be operated and maintained in accordance with Prudent Industry Practices, all Seller recommendations, and in conformance with good power plant operational practices.

The compressor inlet air, fuel, cooling water (if applicable), and injected water quality must be monitored by Buyer to assure they meet the overall Seller water specifications as defined herein.

Buyer shall maintain a full, complete and accurate operating records, subject to review Seller. The operating records must document each outage event including the date and time of the outage, the hour duration of the outage, the cause of the outage, the percent capacity reduction, and the waiting and/or idle maintenance time.

Seller will be provided with a weekly log of alarms, changes in control logic parameters, preventive maintenance log, and corrective maintenance log. Seller will be consulted and pre-advised of all planned corrective and preventive maintenance. The Buyer will be responsible for providing Seller access to daily fuel quality data, monthly vibration readings, and monthly lube oil analysis. The Buyer will also be responsible for maintaining and providing access and use by Seller technical personnel to the Unit maintenance management system.

Seller will be consulted and pre-advised of all planned corrective and preventative maintenance activities that may affect the Unit.

Seller must be notified within one (1) hour of any outage event or impending outage event.

Buyer's plant operating and maintenance personnel will support and receive direction from Seller during outage events. Work during outages must be conducted on a high priority basis of 24 hours/day and 7 days/week work intensity (or equivalent) using competent and experienced personnel.

During periods when the Unit is not needed to serve power demand, Seller shall be allowed to conduct repairs, inspections, and modifications without the charging of outage time.

## **II. Degradation Guarantee Testing**

### ***Performance Tests.***

The Baseline Performance Tests and Performance Tests shall be arranged and conducted by the Buyer or its designee at Buyer's cost except.

#### ***A. Performance Testing.***

The tests for output and heat rate shall be performed using the Seller's Site-specific performance test measurement specification to be provided during the course of project execution (see Appendix F for typical specification provided as reference).

## **39. Project Manager**

### ***a. Kickoff Meeting.***

Unless otherwise agreed, the Seller will schedule a Kickoff Meeting within thirty (30) Days of the Effective Date (the "Kickoff Meeting").

### ***b. Project Manager.***

No later than the date of the Kickoff Meeting, the Parties will appoint a respective individual person as its respective project manager. Each Party's project manager will be authorized to act on the respective Parties' behalf in matters connected with this Contract or the Project.

## **40. Business License**

Seller must comply with all Virgin Islands' laws with respect to licensing which must be obtained in connection with its business operation(s). All necessary and applicable license(s) shall be obtained by the Seller and copies presented to the contracting officer concurrent with its execution of the Contract. Failure by Seller to present its license(s) at the time of execution of the Contract by the Seller may be grounds to consider the Contract void, or for Buyer to terminate the Contract.

#### **41. Right to Audit**

1. The Buyer reserves the right to request price justification information on all of Seller's scope of work that is based on pass-through costs marked up or any incremental costs above and beyond the original Estimated Contract Price (i.e. change orders) (the "Audit Records").
2. The Seller shall provide the Buyer with copies of records in computer-readable format as well as a hard copy.
3. Should there be incremental charges above and beyond the original Estimated Contract Price (i.e. additional service work), the Buyer reserves the right to request supporting evidence necessary to substantiate Seller's invoices.
4. The Buyer reserves the right to audit any records necessary to evaluate and verify contractor compliance with Contract requirements.
5. The Seller's Audit Records shall be subject to audit throughout the Rental Term and for a period of two year after final payment.
6. In the event that the Buyer needs to conduct audit at the Seller's facilities, the Seller shall provide adequate work space and access to photocopy machines.
7. The Buyer shall recoup the cost of the audit if the audit detects over charges greater than 0.5 % of the total Contract billings.

#### **42. Remote Diagnostic Services**

The Buyer will permit Seller to operate a data retrieval system on the Equipment to collect, transmit, diagnose, and store plant operating data, and will permit Seller to remotely access and conduct troubleshooting and adjustment of Unit control systems. The purpose of these remote services is to monitor the Equipment during the Rental Term. Upon completion of the Rental Term, remote diagnostic services will be terminated.

Buyer will provide on-site support, if requested by Seller, a high-speed connection to the internet and IT support in the configuration of the Virtual Private Network (VPN) as required for installation and operation of Seller's remote diagnostic system and services during the installation, commissioning, and the Rental Term.

#### **43. Notices**

Any notice pursuant to this Contract shall be sent via certified mail as follows:

If to Buyer:

Executive Director  
 Virgin Islands Water and Power Authority  
 PO Box 1450  
 St. Thomas, Virgin Islands 00804

And

General Counsel  
 Virgin Islands Water and Power Authority  
 PO Box 1450  
 St. Thomas, Virgin Islands 00804

If to Seller:

Senior Executive - Aeroderivative Products  
 General Electric Company  
 1 River Rd.  
 Schenectady, NY 12345-6000

#### **44. Representations And Warranties Of The Parties**

##### **44.1 Buyer Representations and Warranties**

The Buyer represents and warrants to Seller that as at the Effective Date:

- A. the Buyer is a quasi-governmental entity duly existing under the laws of the Virgin Islands with power to enter into the Contract and to exercise its rights and perform its obligations under the Contract;
- B. all corporate and other action required to authorize execution of the Contract by the Buyer and performance of the Contract or of its obligations under the Contract has been duly taken;
- C. that the relevant requests for quotation and any negotiations relating to such requests and this procurement procedure being carried out by the Buyer, as well as this Contract, comply with all requirements under Virgin Island laws and regulations (including any applicable procurement rules) and Buyer's internal regulations and documentation, and the Buyer has obtained any and all appropriate and/or required approvals, authorizations and consents arising out of or relating thereto, as well as to enter into and perform this Contract with Seller and to agree on the respective terms and conditions of such contract, including the performance of all of Buyer obligations under this Contract;
- D. All acts, conditions and things required to be done, fulfilled and performed in order to:
  - i. enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in the Contract;
  - ii. ensure that the obligations expressed to be assumed by it in the Contract are legal, valid and binding; and
  - iii. make the Contract admissible in evidence in its jurisdiction of incorporation
 have been done, fulfilled and performed;
- E. the obligations expressed to be assumed by it in the Contract are legal and valid obligations binding on it in accordance with the terms thereof;
- F. no action or administrative proceeding of or before any court, tribunal or agency which if adversely determined might have a material adverse effect on its business or financial condition has been started or threatened;
- G. the execution of the Contract and its exercise of its rights and performance of its obligations under the Contract do not and will not:
  - i. conflict with any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets to an extent or in a manner which might have a material adverse effect on its business or financial condition;
  - ii. conflict with its constitutive documents; or
  - iii. conflict with any applicable law, regulation or official or judicial order applicable to it.

##### **44.2 Seller Representations and Warranties**

Seller represents and warrants to the Buyer that as at the Effective Date:

- A. General Electric International, Inc. is a Delaware corporation licensed to conduct business in the US Virgin Islands with power to enter into the Contract and to exercise its rights and perform its obligations under the Contract;
- B. all corporate and other action required to authorize execution of the Contract by Seller and performance by the Contract or of its obligations under the Contract has been duly taken;
- C. all acts, conditions and things required to be done, fulfilled and performed in order to:
  - i. enable Seller to lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed herein;
  - ii. ensure that the obligations expressed to be assumed herein are legal, valid and binding; and
  - iii. make the Contract admissible in evidence in its jurisdiction of incorporation have been done, fulfilled and performed;
- D. the obligations expressed to be assumed herein, legal and valid obligations binding on it in accordance with the terms thereof;
- E. Seller has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its winding-up, dissolution or reorganization or for the appointment of a receiver, trustee or similar officer of it or of any or all of its assets or revenues;
- F. the execution of the Contract and its exercise of its rights and performance of its obligations under the Contract do not and will not:
  - i. conflict with any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets to an extent or in a manner which might have a material adverse effect on its business or financial condition;
  - ii. conflict with its constitutive documents; or
  - iii. conflict with any applicable law, regulation or official or judicial order applicable to it.
- G. Seller has good and marketable title to the Unit and the Balance of Plant free of all liens and encumbrances other than as resulting from this Contract. Any preexisting leases with the respect to the Unit have been terminated.

#### 44.3 Loss Arising from Breach of Representations or Warranties.

If any representation or warranty in this Article 44 is found to be inaccurate or incorrect in any material respect at the time it was given, the Party that has given such representation or warranty shall reimburse the other Party for any losses or damages incurred by such Party directly in relation to the fact that such Party has relied on such representation and warranty, given by the other Party.

#### 44.4 Proper Business Practices:

##### 44.4.1 Compliance with Laws:

Each Party represents, warrants, and covenants that, it has complied with, will comply with, and will cause its affiliates and representatives to fully comply with the following in connection with the project:

- (a) not pay, promise to pay, or authorize payments of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Agreement, the Project Contract or the transactions contemplated by this Agreement;
- (b) the Improper Payment Laws, which means all laws, rules and/or regulations (including international treaties and conventions) regarding anti-bribery or kick-backs, illegal payments and gratuities and/or similar practices including Foreign Corrupt Practices Act of 1977-FCPA,

- the UK Bribery Act 2010, and any applicable international conventions of similar effect, including the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Officials in International Business Transactions and legislation implementing any such convention, and any other applicable anti-bribery laws and/or their equivalents in Virgin Island law, all as enacted or amended from time to time;
- (c) all charitable and social contributions in relation to the project on behalf of the consortium or any Party to the consortium must be limited to those contributions approved in writing by both Parties in advance;
  - (d) the United Nations Universal Declaration of Human Rights, including the following obligations: (i) to respect human rights of its employees and others in their business operations and their activities for the Project; (ii) not to employ workers younger than sixteen (16) years of age or below the applicable minimum age, whichever is higher; or (iii) not to use forced, prison or indentured labor, or workers subject to any form of compulsion or coercion, or to engage in or abet trafficking in persons; and
  - (e) not develop any business with or engage in making any offer, payment, promise, or gift of any value to any representative or official to obtain an improper advantage in securing or retaining business or induces such official or representative to misuse his/her official position in order to obtain preferential legislation or favorable regulation which is prohibited by the Department of State or Office of Foreign Assets Control (OFAC) of the Treasury Department of the United States of America and/or prohibited by any Virgin Island law.

#### 44.4.2 Compliance breaches.

- (a) Each Party must immediately notify the other Party of any actual, potential or alleged breach of this clause 44 by it or its affiliates or representatives in connection with the Project.
- (b) If either Party has reasonable suspicion of any such breach it may notify the other Party in writing that it will be carrying out an audit of the records of the other Party or its affiliates or representatives with respect to the suspected noncompliance.

*Each Party must keep and ensure that it keeps all records necessary to permit such audits until at least two (2) years after completion of the Rental Term.*

**The remainder of this page left intentionally blank**

IN WITNESS WHEREOF the Parties have caused this document to be executed by their authorized representatives as of the Effective Date.

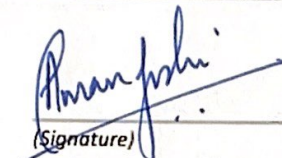
Seller

Buyer

GENERAL ELECTRIC INTERNATIONAL INC.

Virgin Islands Water and Power Authority

By:

  
(Signature)

By:

  
(Signature)

AMAN JOSHI

Lawrence J. Kupfer

(Printed Name)

(Printed Name)

GENERAL MANAGER GE AERODERIVATIVE BUSINESS, GE POWER

Executive Director / CEO

(Title)

(Title)

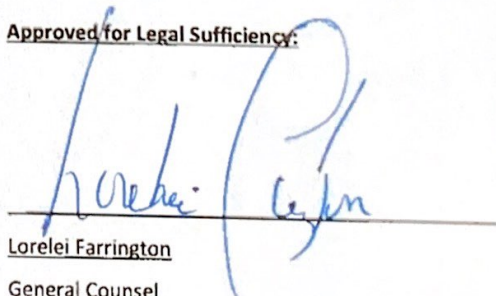
04-JUNE-2020.

5/29/2020

(Date)

(Date)

Approved for Legal Sufficiency:

  
\_\_\_\_\_  
Lorelei Farrington

General Counsel

VI WAPA