



**Execution Version**

**OPERATIONS AND MAINTENANCE AGREEMENT**  
**BETWEEN**  
**US VIRGIN ISLANDS WATER AND POWER AUTHORITY**  
**AND**  
**Wärtsilä Caribbean, Inc.**

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## OPERATIONS AND MAINTENANCE AGREEMENT

This **Operations and Maintenance Agreement** (the "**Agreement**"), dated as of May 15<sup>th</sup>, 2019, (the "**Execution Date**"), is made between **Wärtsilä Caribbean, Inc.**, a company organized under the laws of Puerto Rico, with its principal place of business Rd. 887 Km. 0.6 Barrio Martin Gonzalez Julio N Matos Industrial Park Carolina, PR 00987 (the "**Operator**"),

and

**US VIRGIN ISLANDS WATER AND POWER AUTHORITY**, an autonomous governmental instrumentality established under the laws of the United States Virgin Islands, with its principal place of business in 9720 Estate Thomas, St. Thomas, Virgin Islands 00801 (the "**Owner**").

Owner and Operator are individually referred to herein as a "**Party**" and collectively as the "**Parties**".

### PRELIMINARY STATEMENT

**WHEREAS**, Owner owns, operates and maintains a liquid propane (LPG) fired reciprocating engine power plant with a gross electrical capacity of 21.081 MW located at the Randolph Harley Generating Complex in St. Thomas, U.S. Virgin Islands ("**the Facility**") ; and

**WHEREAS**, Owner wishes to appoint an operator to share the operations and maintain the Facility and will enter into an agreement with such an operator for that purpose; and

**WHEREAS**, Operator is experienced in mobilization, operations and maintenance of facilities similar to the Facility; and

**WHEREAS**, Owner desires to utilize the services of Operator in the mobilization, operations and maintenance of the Facility; and

**WHEREAS**, Owner and Operator now desire to set forth the terms and conditions under which the Operator shall provide such services for the Facility.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### ARTICLE 1 RULES OF INTERPRETATION AND DEFINITIONS

#### 1.1 Rules of Interpretation

- 1.1.1 Except as otherwise expressly provided herein, capitalized terms used herein are defined in Section 1.2.
- 1.1.2 The headings and paragraph numbering are for convenience only and shall be ignored in construing this Agreement.




- 1.1.3 The singular includes the plural and vice versa, the masculine shall include the feminine and the neuter as the context requires.
- 1.1.4 The words "herein," "hereof" and "hereunder", and words of similar import, shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; the words "include," "includes" or "including" shall be deemed to be followed by "without limitation" or "but not limited to", whether or not they are followed by such phrases or words of similar import; and words denoting natural Persons shall be interpreted as referring to corporations and any other legal entities and vice versa.
- 1.1.5 References to Articles, Sections, Recitals, Paragraphs and Appendices are, unless the context otherwise requires, references to articles, sections, recitals, and paragraphs of, or appendices to, this Agreement.
- 1.1.6 A reference to an Appendix is unless the context otherwise requires, a reference to all sub appendices to such Appendix.
- 1.1.7 Reference to any legal Person includes its successors and permitted assigns.
- 1.1.8 For the avoidance of doubt, nothing stated herein shall be construed or interpreted to establish a joint venture, an implied trust, implied contract or implied agency between the Operator and Owner or a transfer of intellectual property rights to Owner.
- 1.1.9 This Agreement is the result of negotiations between, and has been reviewed by, each Party and/or its legal counsel. Accordingly, this Agreement shall be deemed to be the product of both Parties and there shall be no presumption that an ambiguity should be construed in favour of or against a Party solely as a result of such Party's role in drafting this Agreement. Each waiver, exclusion or limitation of liability expressed herein results from a negotiation process and is deemed fair by the Parties in light of the overall terms and conditions of this Agreement.
- 1.1.10 Owner acknowledges and agrees that this Agreement does not create a consumer relationship and that the services contemplated herein are used by Owner in connection with the performance of its business activities.

## 1.2 Definitions

**ADR:** Shall have the meaning as set forth in Section 15.1.

**Affiliate:** Shall mean with respect to any Party hereto, any entity that is a direct or indirect parent or subsidiary of such Party or that directly or indirectly: (i) owns a majority interest or controls such Party; (ii) is owned or controlled by such Party; or (iii) is under common ownership or control with such Party. For the purposes of this definition, "control" shall mean the power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, Owner and the Operator shall not be deemed to be Affiliates of each other.





**Agreement:** Shall mean this Operations and Maintenance Agreement.

**Annual Availability:** Shall mean the availability of each Wartsila Generator Set as per calculations set forth in Appendix 3.

**Annual Availability Guarantee:** Shall mean the guarantee that the Annual Availability shall not be lower than the value as set forth in Appendix 3.

**Annual Operating Plan:** Shall mean the annual operating plan prepared by Operator substantially in the form of Appendix 7.

**Annual Turn Over:** Shall mean the total received Operating Fee by Operator during an Operating Year.

**Appendix/Appendices:** Shall mean any of the appendix /appendices listed in the table of contents.

**Authorization:** Shall mean any approval, consent, license, permit, waiver, exemption, authorization or other permission to be granted by a Governmental Authority required for the construction, ownership, operations and maintenance of the Facility or the enforcement of rights or the performance of obligations under this Agreement by a Party.

**Bankruptcy:** Shall mean the occurrence of any of the following events: (i) the passing of a resolution by the shareholders of Owner or Operator for the winding up of Owner or Operator, respectively; (ii) the admission in writing by Owner or Operator to the other Party, of its inability generally to pay its debts as they become due; (iii) the appointment of a provisional manager, receiver, trustee or liquidator in a winding up proceeding after notice to Owner or Operator and due hearing, as appropriate; or (iv) the making by a court of competent jurisdiction of an order winding up Owner or Operator.

**Change of Law:** Shall mean: (i) the enactment, adoption, promulgation, and modifications or repeal of any Governmental Rule or Authorization after the Execution Date; or (ii) the adoption of a new official interpretation of any Governmental Rule or Authorization after the Execution Date; or (iii) the issuance of resolutions or other administrative acts by any Governmental Authority after the Execution Date.

**Change Order:** Shall have the meaning as set forth in Section 6.1.

**Change Order Proposal:** Shall have the meaning as set forth in Section 6.2.1.

**Commercial Date of Delivery or COD:** Shall mean the Day immediately following the date in which Owner has executed and received Substantial Completion as defined in Section 10.3 of the Contractor or has taken the Facility to Commercial Operations as defined in Section 1.9 of Construction Contract, whichever occurs first.

**Contractor:** Shall mean Wärtsilä North America, Inc. who were contracted by Owner to engineer, procure, construct, commission and test the Facility, or any of their subcontractors, under the Construction Contract.



**Construction Contract:** Shall mean the agreement for the construction of the (1) 21.081 MW power plant between the Owner and Wärtsilä North America, Inc. as Contractors dated as of the 15<sup>th</sup> March 2017.

**Confidential Information:** Shall mean any information or data (including all oral and visual information or data and all information or data recorded in writing or in any other medium or by any other method) disclosed to or obtained by Owner under this Agreement.

**Contract Manager:** Shall mean Operator's representative as appointed pursuant to Section 2.1.3.

**Cost to Remedy:** Shall mean the estimated cost to remedy a Loss. The estimated cost shall be based upon the prevailing price lists of Operator or its subcontractors.

**Country:** Shall mean U.S. Virgin Islands.

**Damage Surveyor:** Shall have the meaning as set forth in Section 4.3.

**Damage Surveyor Report:** Shall have the meaning as set forth in Section 4.3.

**Daily Report:** Shall mean the daily operations report that is provided from the Operator to Owner by 10:00 a.m. each Day.

**Day:** Shall mean the 24-hour period beginning and ending at 12:00 midnight.

**Dollar or US\$ or USD:** Shall mean the lawful currency of the United States of America.

**Effective Date:** Shall have the meaning as set forth in Section 7.1.

**Electrical Capacity:** Shall mean the capacity of the Facility as per calculations set forth in Appendix 3.

**Electrical Capacity Guarantee:** Shall mean the guarantee that the Electrical Capacity shall not be lower than the value established in accordance with Appendix 3.

**Electrical Capacity Test:** Shall mean a capacity test for the Facility to be conducted four times per year as set forth in the guidelines and procedures in Appendix 4.

**Electrical Energy:** Shall mean the electrical energy measured at each engines respective Power Monitor Unit during an Electrical Power Test.

**Electrical Energy for Heat Rate Test:** Shall mean the Electrical Energy measured at the Heat Rate Guarantee Point during a Heat Rate Test.

**Electrical Power:** Shall mean the electrical power calculated from the measured Electrical Energy during an Electrical Power Test.

**Electrical Power Test:** Shall mean the Electrical Power for the Facility to be conducted four times per year as set forth in the guidelines and procedures in Appendix 4.

**Emissions Guarantee:** Shall mean the emissions guarantee set forth in Appendix 3, Section 5.



**Engine Running Hour:** Shall mean every hour each Wärtsilä Generator Set is running as measured and recorded by the Power Monitor Unit.

**European Producer Price Index (EPPI):** Shall mean the index known as Total producer prices Manufacturing – subheading "European Union" (Index 2015=100) as published by OECD, 2 rue André Pascal, F-75775 Paris Cedex 16, France or in the OECD website <http://stats.oecd.org/index.aspx>, → Prices and Purchasing Power Parities → Prices and Price Indices → Producer Prices, or any valid update, modification or replacement of the European Producer Price Index and/or its criteria."

**Exchange Spare Parts:** Shall mean the Operator's exchange spare parts listed in Appendix 2A or purchased by Owner under Section 3.1.21.

**Excluded Equipment:** Shall mean concrete foundations, tanks and tank farms, power house, stacks, step-up transformer windings and bodies and major switchyard components.

**Facility:** Shall mean the Wartsila 3 x W20V34LPG Power Station installed at the Randolph Harley Generating Complex, as set forth in Appendix 1.

**Fixed Fee:** Shall have the meaning as set forth in Section 5.3.

**Facility Site:** Shall mean the Randolph Harley Generating Complex site as set forth in Appendix 1.C where the Facility is located.

**Forbearance Agreement:** Shall mean the Forbearance Agreement by and between Wartsila North America, Inc. and US Virgin Islands Water and Power Authority with an Execution Date of May 14<sup>th</sup> 2019. mt  
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**Force Majeure:** shall mean any cause or occurrence affecting the ability of a Party to perform its obligations under this Agreement, which cause or occurrence is beyond the reasonable control of the Party affected and not due to an act or omission of the Party affected and which could not have been avoided by the exercise of reasonable diligence, including, acts of God or the public enemy; expropriation or confiscation of facilities; compliance with any Governmental Rule or Authorization, including issues related to compliance arising from the failure of a duly authorized governmental authority to issue an Authorization or revision thereto; trade or economic sanction; sabotage, acts of war (declared or undeclared); blockade; embargo; insurrection; hostilities; civil unrest; riots; military or guerrilla action; terrorist activity or threats of terrorist activities which, under the circumstances, would be considered a precursor to actual terrorist activity; banditry; abnormally adverse weather conditions not reasonably anticipated by the Parties; adverse weather conditions on the high seas; inability to obtain and maintain rights of way for, or ingress to or egress from the Facility Site, necessary for the performance of the Work; unforeseen soil and subsoil conditions; fires; floods; explosion; accidents; riots; strikes, work stoppages, boycotts, walkouts or other labour disturbances, failures in common carrier services or utility services; epidemics or any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of the Party affected and which, by the exercise of reasonable diligence, the Party affected is unable to prevent.

**Governmental Authority:** Shall mean the Government of the Country and any state or local government or other political subdivision thereof, or any governmental, quasi-governmental, judicial,

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public or statutory instrumentality, administrative agency, authority, body or other entity thereof having proper jurisdiction in respect of this Agreement or either Party or the Facility.

**Governmental Rule:** Shall mean any foreign, national, state, provincial or local statute, law, regulation, ordinance, rule, term or provision of an Authorization, constitution, ministerial accord, order, decree, regulation, directive, judgment, injunction, writ or similar action or decision duly implementing any of the foregoing which has been enacted, issued or promulgated by any Governmental Authority having jurisdiction in respect of this Agreement or either Party or the Facility.

**Hazardous Substances:** Shall mean "hazardous substances" or "pollutant" or "opacity" or "contaminant", including any material designated as a "hazardous substance", "hazardous waste" or "waste" pursuant to the Governmental Rules or Authorizations or the regulations promulgated thereunder, or any other pollutant or substance which may be the subject of liability for costs of response or remediation.

**Heat Rate:** Shall mean the average ratio of the total fuel energy consumed over the Electrical Energy for Heat Rate Test, as recalculated to site reference conditions, as set forth in Appendix 4.

**Heat Rate Guarantee:** Shall mean the guarantee that the Heat Rate during a Heat Rate Test shall not exceed the value stated in Appendix 3.

**Heat Rate Guarantee Point:** Shall mean the point, as specified in Appendix 4 where the Electrical Energy is measured during the Heat Rate Test.

**Heat Rate Test:** Shall mean a test conducted as set forth in Appendix 4 to determine the Heat Rate.

**Indemnified Party:** Shall have the meaning as set forth in Section 10.3.

**Indemnifying Party:** Shall have the meaning as set forth in Section 10.3.

**Interconnection Point:** Shall mean the electrical interconnection point as set forth in Appendix 1.A and in Appendix 1.B.

**LD Notice:** Shall have the meaning as set forth in Section 5.8.

**Loss:** Shall mean any Unplanned Maintenance, breakdown, theft, loss, defect, destruction, damage or failure (other than a Major Generator Breakdown) in the Facility, the Facility Site, or in any part thereof.

**Lube Oil Consumption:** Shall mean the average annual lube oil consumption of the Wartsila Generator Set as per calculations set forth in Appendix 3.

**Lube Oil Consumption Guarantee:** Shall mean the guarantee that the Lube Oil Consumption shall not exceed the value stated in Appendix 3.

**Major Generator Breakdown** shall mean an unforeseen and sudden internal physical damage to any of the Wartsila Generator Set, occurring during the term of this Agreement, necessitating repair or replacement and which Cost to Remedy exceeds Seventy Five Thousand USD (\$75,000).



**Mobilization Fee:** Shall mean the payment as set forth in Section 5.1.

**Mobilization Manager:** Shall have the meaning as set forth in Section 2.1.2.

**Mobilization Period:** Shall mean the period from the Effective Date and is estimated to be six (6) Months in length.

**Month:** Shall mean a calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last Day of the preceding month and ending at 12:00 midnight on the last Day of that month.

**Monthly Operations Report:** Shall mean the report prepared by Operator monthly basis which shall include to the extent applicable: (i) an accident/incident report; (ii) a maintenance summary for the Month and maintenance planned for the forthcoming Month; (iii) fuel and lubricating oil inventory; and (iv) Facility Performance Parameters.

**Notification of Loss:** Shall have the meaning as set forth in Section 4.2.

**Original Equipment Manufacturer or OEM:** Shall mean original equipment manufacturer that designed and/or manufactured the components and/or products that make up the Facility.

**Operating Fee:** Shall mean the fees which Owner shall pay to Operator as set forth in Section 5.3.

**Operating Period:** Shall mean the period commencing from the COD until the expiry or earlier termination of this Agreement.

**Operating Year:** Shall mean any of the following:

- (i) the initial period from the COD to December 31st of the year in which the COD occurs;
- (ii) each full calendar year period occurring after the Initial period during the Operating Period; and
- (iii) the last period from January 1st of the last year in the Operating Period until and including the last Day of the Operating Period.

**Operator Default Notice:** Shall have the meaning as set forth in Section 7.2.2.

**Operator Event of Default:** Shall have the meaning as set forth in Section 7.2.2.

**Operator Loss:** Shall mean any Major Generator Breakdown and any Loss except for any Owner Loss.

**Operator Taxes:** Shall mean taxes imposed on Operator's corporation, property, and payroll taxes imposed on Operator's personnel, as well as gross receipts tax.

**Owner Default Notice:** Shall have the meaning as set forth in Section 7.3.2.

**Owner Event of Default:** Shall have the meaning as set forth in Section 7.3.2.

**Owner Loss:** Shall mean:



- (i) any Loss (other than a Major Generator Breakdown), to the extent the Cost to Remedy exceeds Seventy Five Thousand (\$75,000 USD) Dollars except to the extent that such Loss is directly due to the Operator's gross negligence or Wilful Misconduct; or
- (ii) any Major Generator Breakdown or Loss:
  - (a) arising out of Force Majeure, except for a Loss to Operator's property or personnel;
  - (b) arising out of acts or omissions of Owner under this Agreement or any matter for which Owner is responsible;
  - (c) arising out of acts or omissions by Third Parties, except for a Loss to Operator's property or personnel;
  - (d) to Excluded Equipment or arising as a result of a Loss to Excluded Equipment;
  - (e) to Third Party Equipment or arising as a result of Third Party Equipment, except for a Loss to Operator's property or personnel;
  - (f) covered under warranty under the Construction Contract; or
  - (g) arising out of acts, omissions, or failure of Owner's Personnel to adhere to Operator's procedures and instructions.
- (iii) Notwithstanding the foregoing, the Parties agree that the costs to remedy any Owner Loss to the Facility Site (exclusive of the Wartsila Generator Set) shall be borne proportionately to the extent of each Party's simple or gross negligence for any amounts in excess of \$75,000 USD and up to \$500,000 USD, only.

**Owner's Personnel:** Shall mean the operation and maintenance personnel made available to Operator by Owner as further detailed in Appendix 10 preliminary organization chart. Owner's personnel shall remain under Owner's payroll and responsibility for the duration of the Agreement.

**Owner Payment Security:** Shall have the meaning set forth in Section 5.7.

**Owner's Representative:** Shall mean US Virgin Islands Water and Power Authority representative as appointed pursuant to Section 3.1.14.

**Owner's Safety Policy:** Shall mean the Owner's safety policies as set forth in Appendix 11.

**Performance Guarantees:** Shall mean the performance parameters guaranteed by Operator as set forth in Appendix 3.

**Performance Liquidated Damages:** Shall mean the liquidated damages as set forth in Article 8.

**Performance Parameters:** Shall mean the Electrical Energy, the Heat Rate and the availability of the Facility.

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**Performance Test:** Shall mean the Heat Rate Test and the Electrical Power Test following the guidelines of Appendix 4.

**Person:** Shall mean any natural person or any company, partnership, company, joint venture, firm, corporation, association, trust, enterprise or other body corporate or any Governmental Authority.

**Planned Maintenance:** Shall mean maintenance and/or overhauls of the Wartsila Generator Sets other equipment incorporated into the Facility which have been scheduled in accordance with the Annual Operating Plan and the Preventive Maintenance Program as established by the Original Equipment Manufacturer ("OEM").

**Power Monitor Unit:** Shall mean the device located at the control panel in the control room of the Facility which measures and records the Engine Running Hours among other parameters. This device will be used for gathering the data for the Variable Fee.

**Preventive Maintenance Program:** Shall have the meaning as set forth in Section 2.3.8.

**Prohibited Payment:** Shall mean any offer, gift, payment, promise to pay or authorization of the payment of any money or anything of value, directly or indirectly, to or for the use or benefit of any official (including to or for the benefit of any other Person if Operator or Owner knows, or has reasonable grounds for believing, that the other Person would use such offer, gift, payment, promise or authorization or payment for the benefit of any such official) for the purpose of influencing any act or decision or omission of any official in order to obtain, retain or direct business to, or to secure any improper benefit or advantage for, Operator or Owner, its Affiliates or any other Person in connection with the Facility or this Agreement.

**Prudent Operating Practice:** Shall mean those practices and methods and acts which, in the exercise of reasonable judgment in the light of the facts known to a Party at the time that a decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with licensing and regulatory considerations, environmental considerations, and in a manner consistent with applicable OEM requirements and industry standards and codes. Prudent Operating Practice is not intended to be limited to optimum practice or methods to the exclusion of all others, but rather shall be a spectrum of reasonable and prudent practices, methods or acts employed by operators of facilities similar in size and operational characteristics to the Facility that take into consideration the conditions specific to the Facility and the exercise of judgment, including those involving the use of new concepts of technology.

**Punch List:** Shall have the meaning set forth in Section 2.2.4.

**Quarter or Quarterly:** shall mean a consecutive three-month period.

**Reimbursable Costs:** Shall mean costs incurred by Operator as defined and in accordance with Section 5.3.c.

**Safety Spare Parts:** Shall mean Operator's spare parts maintained at the Facility as per Appendix 2A or purchased by Owner under Section 3.1.21.

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**Taxes:** Shall mean any taxes including without limitation withholding taxes, asset taxes, property taxes, duties (including import and custom duties), stamp duties, tariffs, fees, income taxes, sales taxes, value added taxes, or other charges, including surcharges, interests and penalties imposed thereon, imposed by any applicable Governmental Authority pursuant to any Governmental Rules or Authorizations.

**Third Party:** Shall mean any Person that is not the Owner or the Operator. The Parties expressly agree that the employees of Owner and Operator are Third Parties as intended and defined in this Agreement.

**Third Party Equipment:** Shall mean equipment and spare parts not provided by Operator or any of its Affiliates.

**USCPI:** Shall mean the "Consumer Price Index Published by US Department of Labor, Bureau of Labor Statistics on <http://www.bls.gov> → Databases & Tables → All Urban Consumers (Current Series) (Consumer Price Index – CPI) → Top Picks → U.S. All Items, 1982-84 =100, CUUR000SA0 → Retrieve Data.

**Unplanned Maintenance:** Shall mean any maintenance except for Planned Maintenance.

**Variable Fee:** Shall have the meaning as set forth in Section 5.3.

**Wartsila Generator Set:** Shall mean each of the 3 Wartsila generator set units, each consisting of the assembly of a Wärtsilä 20V34LPG engine, flywheel, mechanical coupling and generator.

**Weekly Report:** Shall mean the weekly operations report provided by Operator to Owner each Friday at 1600.

**Wilful Misconduct:** Shall mean a conscious and voluntary act or omission of a Party in reckless disregard of a legal duty (including contractual duty), which seriously deviates from a diligent course of action and which disregards the harmful consequences to the other Party.

**Work:** Shall mean Operator's obligations as set forth in this Agreement.

**Year:** Shall mean a consecutive twelve (12) Month period.

## **ARTICLE 2 OPERATOR'S RESPONSIBILITIES**

### **2.1 General**

- 2.1.1 O&M Obligations. Operator shall be responsible for the operations and maintenance of the Facility, and shall perform or cause to be performed the services and related activities provided for in this Agreement. Operator shall cause the Facility to be operated and the services to be performed in accordance with Prudent Operating Practices and other terms and conditions of this Agreement. In addition, Operator shall make all reasonable and practical efforts to ensure that the Facility shall at all times be kept in good and clean condition.



- 2.1.2 Mobilization Manager. Operator shall notify Owner, in writing, no later than thirty (30) Days following the Effective Date, of the individual to act as the project manager during the Mobilization Period (the "**Mobilization Manager**") and as soon as possible of any changes in the identity of the Mobilization Manager. The Mobilization Manager shall be authorised and empowered to act for and on behalf of Operator in all matters concerning the Work during the Mobilization Period.
- 2.1.3 Contract Manager. Operator shall notify Owner, in writing, by the COD of the individual to act as the Contract Manager (the "**Contract Manager**") and as soon as possible of any changes in the identity of the Contract Manager. The Contract Manager shall be authorised and empowered to act for and on behalf of Operator in all matters concerning this Agreement during the Operating Period.
- 2.1.4 Within twenty one (21) Days of the signing of this Agreement, Operator shall provide to Owner an executed parent company guarantee, substantially in the form attached hereto as Appendix 13, to be in force over the term of the Agreement.
- 2.1.5 Operator agrees to comply with Owner's general terms and conditions as set forth in Exhibit 17.

## 2.2 Mobilization Period

During the Mobilization Period:

- 2.2.1 Required Authorizations. With the reasonable assistance of Owner, Operator shall obtain, maintain and comply with all Authorizations necessary to be obtained in Operator's name to allow Operator to perform the Work during the Mobilization Period.
- 2.2.2 Procurement of Required Goods and Services. Operator shall supply as part of the Mobilization Fee the spare parts, tools, and equipment listed in Appendix 2, under DAP, Facility, St. Thomas, USVI Incoterms® 2010 basis. For the importation process the spare parts, tools, and equipment are to be consigned to the Owner. For clarity, the spare parts in Appendix 2A shall remain the property of the Operator until the end of the Agreement and the Owner pays the Spare Part Fee, Article 5.3 (e).
- 2.2.3 Not Used.
- 2.2.4 Not Used.
- 2.2.5 Operator to provide an office container for its personnel during term of this Agreement.
- 2.2.6 Hiring of Personnel. Operator shall pursuant to Section 2.3.31 hire and make available the personnel to perform the Work during the Mobilization Period. The Operator's




personnel shall be subject to drug and alcohol, health, and safety policies of the Operator and Owner. The Owner's safety policies are provided in Appendix 11.

- 2.2.7 Operator shall review Owner's safety policies to assess the safety equipment required for Operator's personnel. Operator shall provide Operator's safety equipment to its own personnel meeting the OSHA and Owner's Safety Policy.
- 2.2.8 Annual Operating Plan. Operator shall, no later than forty five (45) Days after the Effective Date, prepare and submit to Owner, for its review and approval, a proposed Annual Operating Plan. If Operator has not received approval of the proposed Annual Operating Plan from Owner ten (10) Days after submittal, the proposed Annual Operating Plan shall be deemed as approved.
- 2.2.9 Insurance. Operator shall obtain and provide the insurance coverage set forth in Article 12.
- 2.2.10 Training Program of Owner Personnel. During the Mobilization Period, the Operator shall establish a training program for the Owner's personnel. This training program shall use the methodology of gap analysis, where possible, to focus on the training needs of the Owner's personnel. This training program shall be paid by the Owner as the training occurs and in accordance with the fee structure in Section 5.3 (f). The initial assessment of the Owner's personnel will be performed by using the online assessment tool with the Wartsila Land and Sea Academy. This initial assessment is paid through the Mobilization Fee.
- 2.2.11 Test Procedures. Operator shall establish fuel, lubricating oil and water quality test procedures as per the Appendix 5 specifications with the supplier of the fuel and the lubricating oil. The water quality test will be established as per Appendix 5.C.
- 2.2.12 Delivery Terms. All spare parts, tools, and equipment supplied under the Mobilization Period by the Operator shall be delivered DAP Facility, St. Thomas, USVI Incoterms® 2010 basis.
- 2.2.13 Monitor Performance Testing. The Operator shall assist the Owner and Owner's designated project manager in monitoring performance testing, advise the Owner regarding the progress of the performance testing and advise the Owner and Owner's designated project manager, for their determination, whether the Operator believes that the Facility has successfully passed the performance tests conducted under the Construction Contract during the Mobilization Period. The Operator shall request that the Contractor provide the performance test protocol no later than 20 days prior to testing.
- 2.2.14 Punch List. During the Mobilization Period, the Operator shall (i) assist the Owner and Owner's designated project manager in reviewing and commenting on the list of punch list items prepared by the Contractor and agreed between the Owner and the Contractor pursuant to the Construction Contract, (ii) monitor the Contractor



performance in correcting the punch list items; and (iii) advise the Owner and Owner's designated project manager, for their determination, when such punch list items have been corrected.

- 2.2.15 **Preventive Maintenance Program.** The Operator shall prepare and implement a preventive maintenance program (the "**Preventive Maintenance Program**"). The Preventive Maintenance Program shall be consistent with the requirements of this Agreement. The Preventive Maintenance Program shall cover the regular inspection, testing, calibration and servicing of the equipment, instrumentation and components utilized in connection with the operation of the Facility. The Preventive Maintenance Program shall establish a reporting system which shall include: (i) the scheduling and tracking of preventive maintenance Work to be performed in relation to the Facility; (ii) the documentation of any major maintenance problems encountered when undertaking such preventive maintenance Work; and (iii) the documentation of the preventive maintenance Work performed. The Operator shall provide the Preventive Maintenance Program to the Owner as soon as possible after the Effective Date. For clarity, the Operator will be using the Owner's CMMS (Maximo system) that will be updated by the Contractor.
- 2.2.16 **Spare Parts Inventory Control and Tracking System.** The Operator shall utilize the Owner's CMMS (Maximo system) computer based spare parts inventory control and tracking system designed to facilitate the accurate accounting for the spare parts and tools and equipment located at the Facility during the Mobilization Period. The Operator shall establish and furnish as part of the inventory of Safety Spare Parts a minimum level of spare parts that are required to be on site at all time for the continuous emissions monitoring system (herein after referred to as "CEMS") and regenerative thermal oxidizer (herein after referred to as "RTO") units which directly affect the emissions control level.
- 2.2.17 **O&M Procedures.** Establish and prepare operations and maintenance procedures and policies.
- 2.2.18 **Dispatch Procedures.** In coordination with Owner, Operator shall develop and implement procedures for (i) the day-to-day communications protocol among the power plant and Grid Operator, (ii) the dispatch format for notification for the Facility, (iii) dealing with emergency situations and (iv) recovery from shutdown or blackout conditions (collectively, the "**Dispatch Procedures**")
- 2.2.19 **Security.** Operator's security procedures shall comply with the Owner's Safety Policy.
- 2.2.20 **Taxes.** Operator shall pay all Operator Taxes and Taxes imposed on Operator's income.
- 2.2.21 **Remote Monitoring.** Operator shall connect the Facilities to the Wartsila remote monitoring system. Remote monitoring is not intended and shall not provide to the Operator the ability to control the operations of the Facility remotely, or to make changes to the software or control parameters via the remote connection.
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- 2.2.22 Vehicles for Operator use. Operator shall be responsible to provide up to two (2) vehicles for Operator during the term of this Agreement.




### 2.3 Operating Period



During the Operating Period:

- 2.3.1 Operations and Maintenance. Except as set forth elsewhere in this Agreement, Operator shall have the responsibility to provide operations and maintenance services necessary to operate and maintain the Facility in accordance with Prudent Operating Practice.
- 2.3.2 Electrical Energy Delivery. Operator shall coordinate Facility outages and power deliveries with Owner in accordance with the Annual Operating Plan. The Electrical Energy delivery services to be provided by Operator shall include, but not limited to the operational services of isochronous control and droop control for frequency regulation, voltage regulation, reactive power control, Facility isolation, and start-up of the Facility following a system shutdown.
- 2.3.3 Annual Operating Plan. Operator shall no later than one hundred and twenty (120) Days prior to the beginning of each Operating Year (other than the initial Operating Year), but no earlier than sixty (60) Days after Operator's receipt of Owner's proposed Facility dispatch, prepare and submit to Owner, for its review and approval, a proposed Annual Operating Plan. Owner shall, within 60 days of receipt of the Annual Operating Plan from Operator, propose amendments to any aspect of the Annual Operating Plan it deems necessary. Where an amendment is proposed the Parties shall use reasonable efforts to settle the terms of the Annual Operating Plan. If Operator does not receive any objection or proposed amendment to the Annual Operating Plan thirty (30) Days before the beginning of the Operating Year the proposed Annual Operating Plan shall be deemed to be approved by Owner.
- 2.3.4 Manuals. Operator shall regularly update as necessary the operation and maintenance manuals of the Wartsila Generator Set and, when updated, provide access through the online tools in order for the Owner to download such updated manuals.
- 2.3.5 Operations Report. Operator shall provide daily reports, weekly, and monthly operations reports. The daily report shall be provided by 10:00 a.m. each Day. The weekly report shall be provided each Friday at 1600. The Operator shall, within five (5) Days after the end of each Month, prepare and submit to Owner a Monthly Operations Report in a form to be agreed upon by the Parties. This report shall include a report on the Performance Parameters. Operations Reports must include emissions data via the hourly continuous monitoring system of the emissions.
- 2.3.6 Personnel. Operator shall provide and pay sufficient numbers of skilled personnel to perform the Work in accordance with Prudent Operating Practices, applicable Governmental Rules, the manuals, and ensure that sufficient numbers of personnel are on duty during the performance of the Work. Provided, however, that Owner shall provide during the Operating Period, at its own cost, personnel as provided in Section 3.1.7.





- 2.3.7 **Records.** Operator shall maintain at the Facility accurate and up to date operating logs, records and the Operations Reports for the term of the Agreement. Such operating logs shall include, but not limited to: (i) real and reactive power production during each hour the Facility is dispatching Electrical Energy; (ii) changes to the Facility's operating status; (iii) Heat Rate of Wartsila Generator Set; (iv) emissions monitoring of Facility; and (v) the number of start-ups of each Wartsila Generator Set.
- 2.3.8 **Preventive Maintenance Program.** Utilizing the Owner's CMMS Operator shall implement and update the Preventive Maintenance Program which shall be consistent with the requirements of this Agreement.
- 2.3.9 **Technical Evaluations.** Operator shall prepare any technical evaluations of the Facility as may be reasonably requested by Owner; provided, however, if Operator is required to utilize outside subcontractors or additional personnel to perform such technical evaluations for non OEM equipment, Operator shall request a Change Order as set forth in Article 6.
- 2.3.10 **Equipment Overhauls and Maintenance.** Operator shall perform Planned Maintenance and remedy any Operator Loss required on the Wartsila Generator Sets and the other equipment present at the Facility.
- 2.3.11 **Delivery Terms.** Operator shall procure all the spare parts and inventory required for the Work on a DAP Facility, St. Thomas, USVI Incoterms® 2010 basis.
- 2.3.12 **Tools, equipment, and Consumables.** Operator shall procure, provide, and maintain adequate quantities of consumables and supplies (other than LPG, lube oils, and water) as well as procure, provide, and maintain adequate hand tools and equipment to ensure the reliable operation of the Facility. Operator shall repair or replace any equipment and tools listed in Appendix 2B or provided by Owner pursuant to Section A7 of Appendix 1 of the Construction Contract that may be damaged by the Operator during the term of this Agreement. The repair or replacement of the tools shall not be included within Owner Loss. At the term of this Agreement, the Operator shall hand over all equipment and tools listed in Appendix 2B or provided by Owner pursuant to Section A7 of Appendix 1 of the Construction Contract.
- 2.3.13 **Engineering Support.** Operator shall provide technical engineering support for solving operations and maintenance problems. If Operator is required to utilise outside subcontractors or additional personnel for non OEM equipment to solve operations and maintenance problems, Operator shall request a Change Order as set forth in Article 6.
- 2.3.14 **Capital Improvements.** Operator may recommend to Owner modifications and improvements to the Facility and shall request such modifications or improvements as a Change Order.
- 2.3.15 **Accounting Records.** Maintain accounting records regarding the Work in accordance with international generally acceptable accounting principles.
- 2.3.16 **Meetings and Communication with Governmental Authorities.** At the reasonable request of Owner, Operator shall cooperate in communications with, or the providing of information to, Governmental Authorities.
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- 2.3.17 Daily and weekly planned availability reports. Operator shall prepare and submit to Owner, every day, a daily planned availability report; and every week a weekly planned availability report; in a form to be agreed upon by the Parties. These reports shall include the planned availability of real and reactive power of the Facility for the following day or week respectively.
- 2.3.18 Measurements and Calibration. Operator shall read, operate, maintain, test and recalibrate all tools, controls, instrumentation and measuring devices in accordance with Prudent Operating Practice.
- 2.3.19 Warranties. Operator shall with respect to the Facility or any part thereof, identify, investigate, administer, file and enforce (whether directly or on Owner's behalf) all manufacturer, subcontractor and vendor warranties and guarantees obtained by Operator or by Owner.
- 2.3.20 Forecasting Requirements for Operating Media. Based upon the dispatch of the Facility, Operator shall forecast the Facility's LPG, lube oil requirements, cooling water treatment, raw water requirements, and emission abatement products and provide forecasts of such fluids requirements to Owner not later than ninety (90) days in advance. Operator shall also monitor the quantity and quality of LPG, lube oil, chemicals, and water which shall include the taking of samples and having such samples tested to determine their strict compliance with Appendix 5. Operator shall not be responsible for the quality of such fluids supplied by Owner nor for any costs, damages, and expenses resulting directly from fluids which are not in accordance with the specifications set forth in Appendix 5. In the event that the Operator fails to provide the forecast of the fluids requirements as specified in this Section 2.3.20, and as a result the Owner is not able to purchase and deliver the operating media required for the operation of the Wartsila Generator Set, the resulting shut down time for the Wartsila Generator Set shall not be counted as standby hours in the calculation of the Annual Availability.
- 2.3.21 Required Authorizations. With the reasonable assistance of Owner, Operator shall obtain, maintain and comply with all Authorizations necessary to be obtained by Operator to perform the Work and comply with all Governmental Rules and any other obligations contemplated hereunder. At the request of Owner, Operator shall provide reasonable assistance to Owner in obtaining and maintaining all Authorizations required for Owner to comply with any Governmental Rules; provided however, that Owner shall be responsible to obtain any Authorizations necessary to start delivery of energy to the grid.
- 2.3.22 Taxes. Operator shall pay all Operator Taxes.
- 2.3.23 Subcontractors. Operator shall hire, schedule and supervise all of the subcontractors and vendors that may be required, in Operator's reasonable judgment, to assist in the performance of the Work. All subcontractors shall be qualified, licensed (to the extent required by applicable law) and experienced in the duties which they are contracted to provide, consistent with qualification and experience levels which are typical for contractors performing similar functions for facilities similar to the Facility.
- 2.3.24 Insurance. Operator shall provide and maintain the insurance coverage's set forth in Article 12.
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- 2.3.25 Fire Protection. Operator shall perform regular testing and inspections of, and maintain all fire protection and safety equipment at the Facility, including tests and inspections required by any Governmental Authority.
- 2.3.26 Performance Testing. Operator shall perform a Quarterly Performance Test at the end of each Quarter, during each Year after the COD, at a time mutually agreed between the Parties.
- 2.3.27 Auditing of Inventory. Operator and Owner shall audit the inventory of the Operator during the term of this Agreement every six (6) months.
- 2.3.28 Not Used.
- 2.3.29 Training. Operator shall implement the training program (the "Training Plan") for Owner's Personnel development by the Operator under the Mobilization Period. The training program shall include on and off Facility Site training. The Training Plan schedule shall be reported monthly within the Monthly Report and annually in the Annual Plan. Training occurring off Facility Site, or using training personnel from the Wartsila Land and Sea Academy at the Facility Site, or using external contractors shall be invoiced as a Reimbursable Cost to the Owner. As part of the Training Plan, the Operator shall perform the following and outlined in Appendix 12:

Customized Engine Practical, W34LPG and W32LG. 5 days each training session can occur twice over the term of the Agreement. This training will occur in the Wartsila Land and Sea Academy in Turku, Finland. Each training session has a minimum of four (4) persons and maximum of eight (8) persons.

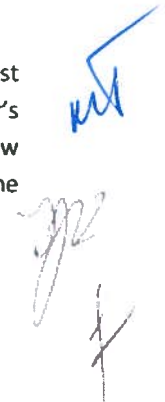
Power plant operations and maintenance. 10 days each training session to occur twice over the term of the Agreement. This training will occur on site. Each training session has a minimum of eight (8) persons and maximum of twenty (20) persons.

Power plant (gas) electrification. 5 days each training session to occur twice over the term of the Agreement. This training will occur on site. Each training session has a minimum of eight (8) persons and maximum of twenty (20) persons.

Power plant management. 5 days each training session to occur twice over the term of the Agreement. This training will occur on site. Each training session has a minimum of eight (8) persons and maximum of twenty (20) persons.

Customized follow up. 5 days each training session to occur three times over the term of the Agreement. Each training session has a minimum of eight (8) persons and maximum of twenty (20) persons.

Online Assessment. This assessment is the follow up from the initial assessment and the first training sessions. This is done to test the development of specific skills of the Owner's personnel, to perform the gap analysis of each individual allowing for the customized follow up course to be defined based on the training needs of the personnel, to track and report the



status and results one per year. The analysis reporting from the Operator will be provided to the Owner once per year. This assessment is for up to 55 Owner's personnel.

- (i) Perform an assessment of Owner's Personnel,
- (ii) Develop and implement within the Training Plan a matrix of training including but shall not be limited to, engine training mechanical and electrical, operational training, power plant management training, EHS (environmental, health, and safety) training, and other trainings that may be necessary in Operator's opinion to develop the Owner's Personnel to perform tasks assigned on them under this Agreement,
- (iii) Develop and implement a training schedule for the Owner's Personnel,
- (iv) Report within Monthly Report the progress of training by Owner's Personnel including but not limited to:

number of man days of training by training grouping (operations, mechanical, electrical, administration, etc.) outlined in the Training Plan,

planned training verse actual training performed by the number of Owner's Personnel.

- 2.3.30 Operator's Management Personnel. In addition to the Contract Manager, Operator shall provide all additional supervisory personnel as deemed necessary, in Operator's reasonable judgment, for Operator to perform the Work. The Operator shall present the nomination a team leader to the Owner for approval, which approval shall not be unreasonably withheld.
- 2.3.31 Hiring of Operator's Personnel. Operator shall interview, evaluate and hire all operations and maintenance and administrative personnel that, in Operator's reasonable judgment, are necessary and in sufficient numbers for Operator to perform the Work. Operator's personnel need to have the Transportation Work Identification Credential, TWIC, card.
- 2.3.32 Employment Standards. Operator shall ensure that all Operator's personnel shall be qualified in the duties to which they are assigned and shall have qualifications and experience levels which are typical for personnel managing, supervising, administering, operating and maintaining power plants that are similar to the Facility.
- 2.3.33 Safety Spare Parts. Operator shall manage the inventory of spare parts listed in Appendix 2A. These spare parts shall be stored at Facility Site. The Operator shall maintain the minimum level of Safety Spare Parts that is required for the CEMS and RTO units to operate in compliance of the Governmental Rules and Authorization. During the term of this Agreement, the Operator may use and shall replenish any Safety Spare Parts.
- 2.3.34 Cybersecurity Protection. To the extent that Contractor is supplying any equipment to be integrated into the Facility, Contractor shall deliver such equipment together with its logic-bearing system components (e.g., hardware, firmware, and software hereafter referred to collectively as the "Critical Components") free of any software virus and malware detectable



by Prudent Operating Practice. The Operator shall be responsible for any system integrations and/or system security engineering. It is the Operator's responsibility to protect Critical Components from any External Cybersecurity Threat or Internal Cybersecurity Threat, including against hardware and software vulnerabilities. In recognition of the foregoing, the Operator agrees and covenants that it shall use the degree of care appropriate to prevent unauthorized access, use, or hacking of the Critical Components provided in connection with equipment by Contractor and shall do so in a manner that is no less rigorous than any recommendations provided by Contractor and Operator and accepted industry practices. Owner agrees to collaborate and assist Operator in its compliance with its responsibilities in this paragraph, in accordance with the Prudent Operating Practices.

- 2.3.35 Emissions Testing. The Owner may request, at any time that does not interfere with plant operations, for the Operator to perform an emissions test. Owner shall be responsible for all third party costs involved in performing the test as a Reimbursable Cost. The Operator shall make available its personnel to perform such test, at no additional cost to the Owner.
- 2.3.36 Chemicals. Operator shall forecast the needed cooling water treatment chemicals for the Wartsila Generator Sets and provide this forecasting to Owner in the monthly reporting allowing time for the Owner to procure the future treatment chemical needs.
- 2.3.37 Remote Monitoring. Operator shall use the Wartsila remote monitoring system to support the local operating team with trending and troubleshooting for the Facility. Remote monitoring is not intended and shall not provide to the Operator the ability to control the operations of the Facility remotely, or to make changes to the software or control parameters via the remote connection.
- 2.3.38 Housing of Operator personnel. Operator shall pay for the housing of the Operators personnel and charge to Owner as a Reimbursable Cost.

### **ARTICLE 3 OWNER'S RESPONSIBILITIES**

#### **3.1 Owner's Responsibilities**

Owner shall perform the obligations in this Article 3: (i) at its own cost and risk; (ii) at such times and in such manner as may be requisite to Operator's expeditious and orderly performance of its obligations; and (iii) in accordance with Prudent Operating Practice and the other provisions of this Agreement.

- 3.1.1 Payment. Owner shall pay, by no later than their respective due dates, the Mobilization Fee, Operating Fee, Reimbursable Costs, Change Orders and other amounts owed to Operator in accordance with this Agreement.
- 3.1.2 Access to the Facility. Owner shall ensure that Operator and its subcontractors shall have free, unencumbered and safe access to the Facility at all times and that the Facility at all times shall be in compliance with Governmental Rules and Authorizations.



- 3.1.3 Utilities. Owner shall arrange and pay for wastewater and sewage disposal services and other utilities (including water, communications, internet broadband and electricity) required for the Facility and the Work and dispose of any and all waste, sludge and Hazardous Substances in accordance with all Governmental Rules and Authorizations. In respect to communications and internet broadband, Operator shall be responsible for recurring charges.
- 3.1.4 Waste products and Hazardous Substances. Subject to the provisions of Article 11, Owner shall take appropriate actions and be responsible, at its own expense, for the removal, remediation, and avoidance of any sludge, waste products and Hazardous Substances present on, under, in, or by the Facility Site as required for compliance with Environmental Laws; provided, however, that Operator shall collect such sludge, waste generated by the operation of the Facility in suitable containers, made available by Owner to Operator, at the Facility. The handling of Hazardous Substances will be Owner's responsibility.
- 3.1.5 Security. Owner shall provide Operator the information necessary for Operator to comply with Owner's current security plan. Owner shall be responsible for providing security, including security equipment and security personnel, as reasonably necessary, and in accordance with Owner's security policy, to minimize any risk relating to the safety of records, assets, property and personnel at the Facility.
- 3.1.6 Roads and Landscaping. Owner shall maintain all roads, parking lots, walkways, fences, drainage and general landscaping at the Facility Site including cutting of grass and trimming of trees. If, through the negligence of the Operator, the roads, walkways, fences, or drainage are damaged or destroyed by the Operator's personnel, then the Operator will be responsible for the cost of repair at the Facility Site.
- 3.1.7 Owner's Personnel. Owner shall provide to Operator personnel in accordance to APPENDIX 10 during the Mobilization and Operations Periods. The Operator shall inform the Owner's Representative with regard to the Owner's Personnel that may be required to perform the Work at the Facility during the Operating Period. The Owner's Representative shall ensure that Owner's Personnel are provided in the numbers and with the qualifications requested by Operator, and that Owner's Personnel follow Operator's instructions and procedures. In the event of the unavailability of Owner's personnel to operate the Facility in accordance to the Facility's operating manual, the Operator shall endeavour in consultation with the Owner to arrange for such additional personnel as may be necessary to operate the Facility, and the Operator shall be entitled to a Change Order under Article 6. Owner shall be responsible to ensure that the Owner supplied personnel follows instructions and procedures established by Operator for the Work during the Operating Period. Operator shall not be liable for Loss occurring where Owner's Personnel failed to follow the instructions of the Operator.
- 3.1.8 Information. Owner shall provide to Operator, as built drawings, specifications, diagrams and all other information regarding the Facility under the Construction

Contract as reasonably requested by Operator for the purpose of performing the Work.

- 3.1.9 Electrical Interconnection. Owner shall arrange for the electrical interconnection and for the sale of Electrical Energy produced by the Facility.
- 3.1.10 Storage and Maintenance Facilities. Owner shall provide storage and maintenance facilities, tools, lifting devices and other accommodations necessary for Operator to perform the Work.
- 3.1.11 Authorizations. Owner shall, with Operator's reasonable assistance, obtain and maintain all Authorizations (other than those Authorizations required to be obtained and maintained by Operator under this Agreement), and thereafter comply with all Authorizations and Governmental Rules, required in connection with the operations and maintenance of the Facility and the Work. Owner shall provide, at its cost, reasonable assistance to Operator in obtaining all Authorizations required to be obtained and maintained by Operator and its employees to perform the Work.
- 3.1.12 Communication. Owner shall be responsible for public relations and communications with the community and public agencies.
- 3.1.13 Approvals. Unless indicated otherwise in this Agreement, Owner shall review in a timely fashion and not unreasonably withhold its approval of all items submitted by Operator to Owner for its approval.
- 3.1.14 Owner's Representative. Owner shall notify Operator, in writing, not later than thirty (30) Days following the Effective Date of the proposed individual to act as Owner's Representative. Owner's Representative shall be authorised and empowered to act for and on behalf of Owner in all matters concerning this Agreement.
- 3.1.15 Insurance. Owner shall provide and maintain the insurance coverage set forth in Section 12.2.
- 3.1.16 Directives to Operator's Personnel. Owner shall have no right to direct the activities of any of the Operator's personnel.
- 3.1.17 Taxes. Owner shall pay all Taxes, except for the Operator Taxes.
- 3.1.18 Operator's Personnel. Owner shall respond to the nomination of team leader presented by Operator in accordance with Section 2.3.30 within ten (10) Days. If the Owner does not object to the nomination within ten (10) Days, Owner shall be deemed to have approved such nomination.
- 3.1.19 Operating Media. Owner shall provide LPG, water, cooling water treatment, and lubricating oil which shall meet the requirements as set forth in Appendix 5 for the Wartsila Generator Set. Owner shall be responsible to schedule deliveries, and assure these fluids are supplied timely and properly discharged in corresponding tanks.





Owner shall be responsible for the quality of such fluids and to make sure that such fluids are in accordance with the specifications set forth in Appendix 5.

- 3.1.20 Back-up Electricity. Owner shall provide for start-up and back-up power when required for the Facility or the Work.
- 3.1.21 Safety Spare Parts and Exchange Spare Parts. At the expiration or early termination of this Agreement, Owner shall purchase the Safety Spare Parts and Exchange Spare Parts listed in Appendix 2A and any other Safety Spare Parts on inventory at the Facility for the CEMS and RTO Units, as set forth in Article 5.3 (e).
- 3.1.22 Substation Transformers and Breakers. Owner shall schedule all services of the substation transformers and breakers following the OEM maintenance recommendations and Owner shall perform the works or subcontract to Operator. The cost of any required spare parts and subcontracted services shall be charged as a Reimbursable Cost to the Owner if supplied by Operator to Owner. Within ninety (90) Days of COD, Owner will arrange for training on the operation of the substation transformers and breakers for Owner's and Operator's personnel. Each Party shall be responsible to pay for the training of their own personnel. Should any annual training or certification be required during the term of the Agreement, it shall be borne by each Party for their own personnel.
- 3.1.23 Safety Equipment. Owner shall provide safety equipment for Owner's Personnel to perform the Work in accordance with Prudent Operating Practices and applicable Governmental Rules and safety standards; and shall replace such protective gear during the term of this Agreement.
- 3.1.24 Customs' clearance and local transportation. Owner shall arrange for customs' clearance of all of the imported equipment, spare parts, materials or supplies for the Facility during the Mobilization Period and Operating Period.
- 3.1.25 Training. Owner shall ensure that the Owner Personnel are available for the required training assessment and scheduled trainings according to the Training Plan.
- 3.1.26 Housekeeping. Owner shall maintain the Facility free and clear from all obstructions, trash and potential fire or electrical hazards.
- 3.1.27 Janitorial Services. Owner shall provide janitorial crew/services for the Facility, including janitorial services for the engine room, workshop, and storage area.
- 3.1.28 Scrap Materials. Owner shall be responsible to remove and dispose the condemned or discarded spare parts.
- 3.1.29 Owner shall provide area for Operator's office container at the Facility near the Wartsila power station. The Owner shall provide electricity, running water, and sewage connection for use by the Operator during the term of this Agreement.


### 3.2 Equipment Technical Data

Owner consents to the collection and use of information and to the ownership of the derived or incorporating works as set forth herein. Specifically, Owner shall consent to the transmission of equipment technical data through any reasonable means requested by Operator, including internet-connected devices. The term "Equipment Technical Data" refers to all data relating to the technical operating parameters of any equipment delivered, including without limitation, all information that Operator shall gather from sensors, instruments, monitors, or other industrial control or SCADA devices located at the Facility or on the equipment delivered. Equipment Technical Data shall be transmitted to Operator for purposes including, but not limited to, developing its products, solutions and services. Operator, Operator's parent, subsidiaries and/or affiliates shall own all works, products, reports and improvements each may develop based upon, derived from, or incorporating Equipment Technical Data. Equipment Technical Data may be transferred (a) to Operator's parent, subsidiaries and/or affiliates and (b) to third parties who act for or on Operator's behalf for processing in accordance with the non-exclusive purpose(s) listed above or as may otherwise be lawfully processed. Equipment Technical Data may also be disclosed to a third party if Operator is required to do so due to an applicable law, court order or governmental regulation, or if such disclosure is otherwise necessary in support of any criminal or other legal investigation. Operator's rights to use Equipment Technical Data shall survive the termination or expiration of this Agreement, any applicable warranty period and any other commercial contract between the Operator and Owner.

### 3.3 Cybersecurity Protection

Owner shall ensure that any data or communication delivered to Operator is free of any software virus and malware detectable by Prudent Operating Practice. After the expiration or earlier termination of the Agreement, the Owner shall be responsible for any system integrations and/or system security engineering. After the expiration or earlier termination of the Agreement, it is the Owner's responsibility to protect Critical Components from any External Cybersecurity Threat or Internal Cybersecurity Threat, including against hardware and software vulnerabilities. In recognition of the foregoing, the Owner agrees and covenants that it shall use the degree of care appropriate to prevent unauthorized access, use, or hacking of the Critical Components provided in connection with equipment by Contractor or Operator and shall do so in a manner that is no less rigorous than any recommendations provided by Operator and Owner and accepted industry practices. Operator agrees to collaborate and assist Owner in its compliance with its responsibilities in this paragraph, in accordance with the Prudent Operating Practices.

## ARTICLE 4 RESPONSIBILITY FOR LOSS

### 4.1 Responsibility for a Loss

Operator shall be responsible to remedy any Operator Loss and Owner shall be responsible for any Owner Loss.





## 4.2 Notification of a Loss

As soon as reasonably possible after the Operator becomes aware of a Loss, Operator shall notify Owner of the Loss in writing. The notification shall include available details of the Loss, whether the Loss is an Owner Loss or an Operator Loss, the Cost to Remedy and the estimated time to remedy the Loss (the "Notification of Loss"). Owner and Operator acknowledge that in the event of a Loss, both Parties shall exert all reasonable efforts to mitigate damages accruing from such Loss.

## 4.3 Damage Surveyor

In the event Operator finds that a Loss is to be considered an Owner Loss, the Parties shall have the option to, at the latest seven (7) Days from the date of the Notification of Loss, retain a damage surveyor (jointly selected, a "Damage Surveyor") with expertise in matters pertaining to the particular type of Loss suffered. Owner and Operator shall jointly cooperate with the Damage Surveyor and any Damage Surveyor appointed by Owner's insurer or the Operator's insurer. The Damage Surveyor and the insurer appointed damage surveyor shall prepare their respective written report (the "Damage Surveyor Report") with respect to any Owner Loss, which shall be made available to each of the Parties. The fees of the Damage Surveyor shall be borne by Owner should the event be determined to be an Owner Loss, and by Operator should the event be determined to be an Operator Loss.

## 4.4 Remedy of an Owner Loss

Within five (5) Days following the delivery to the Parties of a Damage Surveyor Report or within five (5) Days from the Notification of a Loss (in the event the Parties have opted not to utilise Damage Surveyors as set forth in Section 4.3) the Parties shall meet and determine the actions to be undertaken in order to remedy an Owner Loss. The remedy of an Owner Loss shall be implemented as a Change Order.

In the event the Parties are unable to agree upon the remedy of an Owner Loss that affects the Operator's Performance Guarantees, the Performance Guarantees set forth in Appendix 3 shall not apply to the impaired equipment until agreement is reached.

## 4.5 Major Generator Breakdowns

4.5.1 If the Operator Loss is a Major Generator Breakdown, the Operator's responsibility shall be either of the following ("Recovery Guarantee"):

- (i) repair the damaged Wartsila Generator Set to its former state of serviceability and provide the required spare parts and labour for such repair. The Operator shall also carry out the dismantling and re-erection of the damaged Wartsila Generator Set incurred for the purpose of effecting the repairs and carry out ordinary freight to and from a repair shop. Travel costs of Operator's personnel shall be borne by the Operator; or
- (ii) replace the Wartsila Generator Set with new machinery of the same kind and capacity if the Operator deems the Wartsila Generator Set not feasible to repair, and then the item shall be regarded as destroyed. The Operator shall deliver the new equipment on DAP (Incoterms® 2010) basis. The Owner shall be



responsible for all freight charges in excess of those freight charges that would normally be charged for the replacement of the Wartsila Generator Set with an identical replacement Wartsila generator set.

4.5.2 Taxes and Duties are excluded and shall be paid by the Owner.

4.5.3 The Operator shall not be responsible for any costs for any repair services undertaken by the Owner. The liability of the Operator under this Recovery Guarantee in respect of any Wartsila Generator Set shall cease if the said item is kept in operation after the Major Generator Breakdown has occurred or if temporary repairs are carried out without the Operator's consent.

4.5.4 Unless otherwise notified by the Operator to the Owner, the title to the replaced Wartsila Generator Set or parts shall transfer to the Operator at no cost to either Party.

4.5.5 The Recovery Guarantee is conditional upon the following:

- (i) That all spare parts for the Wartsila Generator Set are purchased by the Owner from the Operator or any of its Affiliates during the term of this Agreement;
- (ii) That the Owner has not undertaken and has not permitted any party other than the Operator to operate, maintain or repair the Wartsila Generator Set or any part thereof;
- (iii) That the Facility can be remotely monitored by the Operator. For this purpose, the Facility must be equipped with a CBM system during the entire duration of the Agreement and Owner must grant internet access and ensure that the functionality of the CBM system is upheld and maintained in accordance with OEM manuals; and
- (iv) That the Owner complies fully with its other obligations under the Agreement.

If the abovementioned conditions are not complied with by the Owner at any time during the term of this Agreement, the Recovery Guarantee shall become invalid and the Operator shall have no further obligations under the Recovery Guarantee.

4.5.6. The Operator's liability limitations set out in Article 14 of the Agreement shall apply for Operator's responsibilities for Loss; provided, however, that the maximum aggregate liability set out in Article 14.5 shall not limit the costs of repair or replacement to be undertaken by the Operator under the Recovery Guarantee.

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## ARTICLE 5 CHARGES FOR SERVICES

### 5.1 Mobilization Fee

Owner shall pay to Operator a mobilization fee (the "**Mobilization Fee**") of Two Hundred Ninety Eight Thousand Six Hundred Thirty USD and Twenty Three Cents (\$298,630.23 USD). The Mobilization Fee shall be invoiced by Operator according to Section 5.6.1.

### 5.2 Not Used

### 5.3 Operating Fee and Recovery Guarantee Payment

The Operating Fee shall be invoiced Monthly commencing upon COD for the duration of this Agreement. The Operating Fee consists of: (i) a fixed fee (a "**Fixed Fee**"); (ii) a variable fee for the Wartsila Generating Sets (a "**Variable Fee**"); (iii) an overhaul fee for the 12,000, 16,000 and 24,000 hour services (an "**Overhaul Fee**"), (iv) Reimbursable Costs, (v) a spare part fee for the Wartsila safety parts and exchange parts provided in Appendix 2A (a "**Spare Parts Fee**"), (vi) a training fee for the individual training courses (a "**Training Fee**"), and (vii) the Recovery Guarantee fee (a "**Recovery Guarantee Fee**").

- (a) The Fixed Fee is Fifty Nine Thousand One Hundred Eighty Eight USD and Twelve Cents (\$59,188.12 USD) per Month, or pro-rata thereof for the first and last Month of the Operating Period if the first or last Month of the Operating Period is less than a full Month, as the case may be.
- (b) The Variable Fee is Twenty Four USD and Fifty Seven Cents (\$24.57 USD) per Engine Running Hour.
- (c) The Overhaul Fees are broken down to specific overhaul interval per engine (herein referred to as the "Overhaul Fees")

12,000 hour Overhaul Fee	\$69,960.61 USD per engine event
16,000 hour Overhaul Fee	\$349,371.79 USD per engine event
24,000 hour Overhaul Fee	\$172,285.87 USD per engine event

- (d) Reimbursable Costs are those reasonable and documented costs incurred by Operator in the performance of the Work related to: (i) any and all repair costs for damages arising from Owner's supply of LPG which does not conform to Appendix 5A; (ii) freight and handling charges for spare parts related to an Owner Loss, (iii) any additional work requested by Owner outside the Work performed by Operator, (iv) any office supplies for Operator's office, (v) any Owner-requested tax or external audit, (vi) any special tool required by Operator to perform the Work that have not been provided under the Construction Contract (vii) housing of Operator's personnel, (viii) travel cost of Operator's



training instructors as per Section 5.3(f), and (ix) any other costs that are designated as Reimbursable Costs in this Agreement. Reimbursable Costs shall be invoiced by Operator to Owner at Operator's external cost plus 8% (except for the housing of Operator's personnel). Housing for up to five (5) Operator's personnel in St. Thomas shall be charged at cost, up to a maximum amount for each of \$2000 USD per Month.

(e) Spare Parts Fee (payable at the expiration or early termination of this Agreement) is One Million Four Hundred Twenty Two Thousand Four Hundred Twenty Six USD and Forty Six Cents (\$1,422,426.46 USD)

(f) Training Fee

Customized Engine Practical, W34LPG and W32LG	3,802.50 USD / participant / event
Power plant operations and maintenance day	3,931.20 USD / instructor / day
Power plant (gas) electrification day	3,931.20 USD / instructor / day
Power plant management day	3,931.20 USD / instructor / day
Customized follow up day	3,931.20 USD / instructor / day
Online Assessment	17,550 USD / assessment
All travel cost (economy class airplane ticket, car rental, hotel, per diem / meal) of the instructor will be charged as an Reimbursable Cost.	

(g) Recovery Guarantee Fee is Thirty Five Thousand USD (\$35,000 USD) on an annual basis.

#### 5.4 Escalation

The Fixed Fee and Variable Fee shall be increased according to the indexes and formulas detailed in Appendix 6.

#### 5.5 Payment and Interest

All payments due to Operator under this Agreement shall be made in full and without any set off or deduction. If the Facility is not operational due to breach of Construction Contract, or suspension of this Agreement under Section 7.7, or Force Majeure under Article 9, the Owner shall pay only the Operator invoices for Works performed up to the date of breach or suspension. All expenses for remitting payments shall be borne by Owner. Payments by Owner to Operator under this Agreement shall be made to the bank account indicated on Operator's Invoice. Any and all payment obligations of Owner may not be transferred to another party without Operator's express written consent.

Payments to Operator received after the invoice is due (including amounts disputed in accordance with Section 5.9, below, which are subsequently determined to be properly due) shall incur interest for each day after the date the invoice is due at the rate of one and one quarter (1.25%) percent per month, compounded monthly, unless the late payment is the subject a dispute that is found to be the result of an invoicing error by the Operator. The late payment resulting from this invoicing error by Operator shall not be subject to interest.

## **5.6 Payment Procedures**

5.6.1 The Operator's Mobilization invoices shall be submitted to Owner according the following schedule.

Forty percent (40%) of the Mobilization Fee upon signing of this Agreement and Operator providing the Parent Company Guarantee

Four (4) equal invoices equal to fifteen percent (15%) of the Mobilization Fee. The first of such invoices shall be issued 45 calendar Days from the Execution Date of this Agreement, and thereafter each subsequent invoice shall be issued at 45 calendar Days' intervals.

All Payments by Owner shall be made within thirty (30) Days from the date the Operator's invoice was submitted to the Owner.

5.6.2 The Operator's invoice for the Operating Fee shall be submitted to Owner within thirty (30) Days after the end of each Month.

All payments by Owner to the Operator shall be made within thirty (30) Days from the date the Operator's invoice was submitted to Owner.

5.6.3 The Operator's invoice for the Overhaul Fees shall be issued in two invoices for any given Overhaul Fee in accordance to the Annual Operating Plan. The first invoice shall be issued sixty (60) days prior to the scheduled maintenance overhaul and shall be the equivalent of thirty five percent (35%) of each Overhaul Fee. The second invoice shall be issued upon completion by Operator of such scheduled maintenance overhaul and shall be the equivalent of sixty five percent (65%) of each Overhaul Fee plus any Reimbursable Cost.

All Payments by Owner shall be made within forty (40) Days from the date the Operator's invoice was submitted to the Owner.



5.6.4 The Operator's invoice for the Recovery Guarantee shall be issued prior to COD and on every anniversary date of COD thereafter.

All Payments by Owner shall be made within thirty (30) Days from the date the Operator's invoice was submitted to the Owner.

## 5.7 Payment Security

The Owner shall deposit with Operator Four Hundred Eighteen Thousand USD (\$418,000 USD) as a payment security (the "**Owner Payment Security**"). The Operator shall hold the Owner Payment Security in a non interest bearing account in a bank with minimum Standard & Poor's credit rating of BB+. The Owner Payment Security shall be used by Operator in the event that the Owner does not pay the Operating Fees. If any portion of the Owner Payment Security is used by Operator to pay for Operating Fees, the Owner shall replenish the amount used such that at all times the Payment Security is equal to three (3) months' Operating Fee. At the end of the Agreement term, this payment security shall be used towards the last three (3) months of the Operating Fees, and the Operator shall return any amounts not applied as set forth above to Owner at the end of this Agreement.

## 5.8 Payment of Performance Liquidated Damages

The Performance Liquidated Damages for each Year shall be determined by the Operator and the Operator shall within thirty (30) days after the end of each six-month period, in which two (2) of the four (4) Quarterly Performance Test are taken in accordance with Section 2.3.26, inform Owner in writing of such determination, with such substantiating detail as is reasonable under the circumstances ("LD Notice"). The calculations for determining the Heat Rate Liquidated Damages and Facility Capacity Liquidated Damages shall be based upon the results of the relevant Performance Test.

In the event Owner does not agree with the Operators determinations in the LD Notice Owner shall notify the Operator in writing within seven (7) days after receipt of the LD Notice, which notice shall include justified reasons for its disagreement. In the event Owner fails to notify the Operator within the above period the Owner shall be deemed to have accepted the determinations in the LD Notice, and Operator shall pay the Performance Liquidated Damages within fifteen (15) calendar days following the LD Notice.

In the event Owner provides notice of its disagreement within the above period and the Parties do not agree upon the determination of Performance Liquidated Damages within thirty (30) days from receipt by the Operator of the Owner's notice of disagreement, each Party shall be entitled to submit the matter to dispute resolution pursuant to Section 15.1.

## 5.9 Payment Disputes

In the case of a dispute with respect to a portion of any payment amount, the Operator or Owner, as the case may be, shall pay the undisputed portion in accordance with the provisions of this Agreement. The Operator's or Owner's acceptance of partial payment shall not be deemed to constitute a waiver of its right to receive amounts which are in dispute and the Operator or Owner shall use their best efforts to resolve all disputed amounts as soon as practicable.





In the event of a dispute between the Parties regarding any payments made hereunder, either Party shall have the right to refer the dispute to settlement proceedings in accordance with Section 15.1 of this Agreement.

## **ARTICLE 6 CHANGE ORDERS**

### **6.1 Change Order**

In the event the Operator reasonably determines that there is a requirement for a change in the Work, this Agreement and/or the Operating Fee due to:

- (i) Owner:
  - (a) failing to adhere to its obligations under this Agreement;
  - (b) failing to provide the Owner's Personnel for the operation as provided in Sections 2.2.16 and 2.3.6;
  - (c) making any modifications to the Facility that adversely affects the Operator's performance of the Work hereunder; or
  - (d) requests the Operator to perform any services not covered by the Work;
- (ii) any Owner instructions that have additional cost implications;
- (iii) a Change of Law;
- (iv) an Owner Loss;
- (v) any event of Force Majeure; or
- (v) any Section of this Agreement which provides that a change in the Work shall be implemented as a Change Order,

the Operator shall be entitled to request a change order adjusting this Agreement and/or the Operating Fee and/or the Work and/or other compensation, as the case may be, as set forth in Section 6.2.

In the event that Owner desires to make a change to the Work, Owner may request a change order adjusting the Work (any change order, whether requested by Operator or requested by Owner, is herein referred to as a "Change Order").

### **6.2 Change Order Procedure**

- 6.2.1 If either Party requests to a Change Order, the Operator shall prepare (to the extent applicable) and submit to Owner as soon as practicable (a "Change Order Proposal"):





- (i) a description of the proposed Work to be performed and the timelines for its execution and any potential operational impact;
- (ii) the anticipated change in the Annual Operating Plan, including an estimate of any increase or decrease in the cost projection in the Annual Operating Plan; and
- (iii) the proposal for adjustment to the Performance Guarantees, Operating Fee, and/or other modifications to this Agreement, accompanied by detailed pricing and documentary evidence if any.

6.2.2 Owner shall review the Change Order Proposal with the Operator for the purpose of determining whether to proceed with the Change Order Proposal and, if so, for the purpose of agreeing on the matters set forth therein, including any changes to the Annual Operating Plan, mutually acceptable adjustment to the Performance Guarantees, Operating Fee, and / or the Work. As soon as practicable after receipt of a Change Order Proposal, and in any case within thirty (30) Days after such receipt, Owner shall either approve or disapprove the Change Order Proposal, in writing.

6.2.3 A Change Order Proposal shall neither be implemented nor be effective until such time that Owner approves the Change Order Proposal, in writing, as a Change Order.

6.2.4 If Owner approves the Change Order in writing, Owner and the Operator shall then, as soon as practicable, sign the Change Order, which shall then operate as an amendment to this Agreement.

6.2.5 If a Change Order is pending either the approval of Owner in terms of this Section 6.2 or a determination pursuant to Section 15.1, Owner agrees to indemnify the Operator against any and all losses, claims, expenses, liabilities, damages and costs whatsoever that may arise, to the extent related to the Change Order, while waiting for Owner's approval or determination, as the case may be.

## ARTICLE 7 TERM AND TERMINATION

### 7.1 Term of Contract

This Agreement shall be effective upon the later of (the "Effective Date"): (i) execution by the Parties of this Agreement; (ii) receipt by Owner of Operator Parent Company Guarantee, (iii) receipt of Owner Payment Security, and (iv) receipt by the Operator payment of forty percent (40%) of the Mobilization Fee. This Agreement shall remain in effect for three (3) Years from the COD of the Facility unless terminated earlier according to this Article 7 (the "Term").

At any time prior to the expiration of the Agreement, the Parties may agree to extend the term of the Agreement.

## 7.2 Termination by Owner

### 7.2.1 Owner shall have the right to terminate this Agreement:

- (i) if an event of Force Majeure continues for more than one hundred eighty (180) consecutive Days; or
- (ii) upon the occurrence of an Operator Event of Default; or
- (iii) if the Construction Contract is terminated.

### 7.2.2 If, at any time during the term of this Agreement, one or more of the following events occurs:

- (i) the Bankruptcy of the Operator;
- (ii) a material failure by the Operator to perform any of its obligations in this Agreement;
- (iii) a failure by the Operator to pay any amounts to Owner when due;
- (iv) the Operator or any Affiliate has made a Prohibited Payment; or
- (v) any representation or warranty made by the Operator shall prove to be incorrect at any time in any material respect,

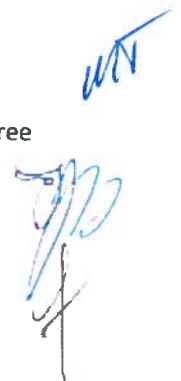
Owner may give the Operator notice (an "**Operator Default Notice**"), in writing, specifying that such an event has occurred and giving reasonable details of such an event. Upon receipt of the Operator Default Notice, the Operator must, if such event is curable, cure such event within thirty (30) Days of receipt of the Operator Default Notice. If such event is not capable of being cured or has not been cured within thirty (30) Days after the Operator has received that Operator Default Notice, an "**Operator Event of Default**" shall be deemed to have occurred and Owner may terminate this Agreement by written notice to the Operator.

## 7.3 Termination by Operator

### 7.3.1 The Operator shall have the right to terminate this Agreement:

- (i) if an event of Force Majeure continues for more than one hundred eighty (180) consecutive Days;
- (ii) upon the occurrence of an Owner Event of Default;
- (iii) if the Construction Contract is terminated; or
- (v) if a suspension as set forth in Section 7.7 persists for a period of more than three (3) Months in aggregate.

### 7.3.2 If one or more of the following events occurs:



- (i) the Bankruptcy of Owner;
- (ii) a material failure by Owner to perform any of its obligations hereunder;
- (iii) a failure by Owner to pay any material amounts to the Operator when due;
- (iv) Owner fails to provide or replenish the Owner Payment Security; or
- (v) any representation or warranty made by Owner shall prove to be incorrect at any time in any material respect,


Operator may give Owner notice (an "**Owner Default Notice**"), in writing, specifying that such an event has occurred and giving reasonable details of such event. Upon receipt of Owner Default Notice, Owner must, if such event is curable, cure such event within thirty (30) Days of receipt of Owner Default Notice. If such event is not capable of being cured or has not been cured within thirty (30) Days after Owner has received Owner Default Notice, an "**Owner Event of Default**" shall be deemed to have occurred and the Operator may terminate this Agreement with immediate effect by written notice to Owner.

#### **7.4 Payments Upon Termination**

- 7.4.1 In the event of termination of this Agreement by the Owner during the term of this Agreement, the Owner shall pay to the Operator the Spare Part Fee as per Section 5.3 (e) unless this fee has already been paid by the Owner for the purchase of the Safety Spare Parts, and such payment shall be made by the Owner to the Operator within thirty (30) Days following the date of termination.
- 7.4.2 In the event of termination of this Agreement pursuant to Section 7.2, the Operator shall be entitled to payment of the Operating Fee up to the date of termination. Such payment shall be made by Owner to the Operator within thirty (30) Days of the date of termination.
- 7.4.3 In the event of a termination pursuant to Section 7.3.1 or Section 7.3.2, Owner shall pay to the Operator, within thirty (30) Days of being invoiced therefor, the amount of the Operating Fee up to the date of termination, the Operator's reasonable demobilization costs and all other amounts due under this Agreement as of the date of termination. Subject to Owner's right to conduct a subsequent audit and review, such amounts shall be due and payable by Owner within 90 days of Operator's submission of an invoice, which invoice shall include a statement of all such costs and expenses.

#### **7.5 Additional Duties of Operator**

- 7.5.1 Unless otherwise set forth elsewhere in this Agreement, the Operator shall upon the termination or expiry of this Agreement and subject to receipt in full of all amounts invoiced under this Agreement hand over the Facility to Owner in a condition similar to the condition of the Facility at the Effective Date, subject to fair wear and tear and Operator's maintenance obligations during the term of this Agreement.



7.5.2 In the event of termination pursuant to Section 7.2.1 (ii), the Operator shall:

- (i) meet with Owner and agree on the time schedule of hand over, the inventory list, the tool list, the operating documentation over the term of the agreement, performance testing, and performance in accordance with OEM Manuals of any scheduled or unscheduled maintenance due to be performed by Operator as set forth in this Agreement;
- (ii) at the written request of Owner, continue operating the Facility and performing the Work for a period up to ninety (90) Days and during such period, this Agreement shall (notwithstanding the purported termination of this Agreement by Owner pursuant to Section 7.2.1 (ii)) remain valid, except that any Performance Guarantees shall not apply, and the Owner shall continue to pay the Operator the Operating Fee;
- (iii) at request of Owner, hand over the Facility to a successor operator;
- (iv) inspect the Facility and take inventory of equipment, spare parts, tools and consumables; and
- (v) hand over to Owner the maintenance history of the Facility.

#### **7.6 Termination/Expiration Certificate**

The Operator shall, within thirty (30) Days from the date of termination or expiry of this Agreement, sign and submit to Owner two acknowledgements of termination/expiration certificates in accordance with the format as set forth in Appendix 8. Owner shall sign the acknowledgement of termination/expiration certificates and return one signed copy to the Operator within twenty one (21) Days from the Operator's submittal thereof. In the event the Operator has not received a signed acknowledgement of termination/expiration certificate or a rejection within the above mentioned period of time, the acknowledgement of termination/expiration certificate shall be deemed accepted and signed by Owner.

#### **7.7 Suspension by Operator**

If (a) Owner fails to pay Operating Fees or any material amounts due under this Agreement and such default shall not have otherwise been cured within thirty (30) Days after Owner's receipt of the Operator's written notice thereof, or (b) the Contractor terminates its undertaking to forbear pursuant to Section 7 of the Forbearance Agreement, the Operator may suspend its performance of Work under this Agreement with a written notice to Owner.

Owner shall be responsible for Owner's losses, claims, expenses, liabilities, damages, costs and consequences arising out of or relating to such suspension.

#### **ARTICLE 8 LIQUIDATED DAMAGES**

Without limiting Owner's right to terminate pursuant to Section 7.2, Operator shall be liable for the Performance Liquidated Damages set forth in this Section Article 8, which amounts shall be paid as set forth in Sections 58 and 5.9, provided, however, that, notwithstanding the provisions of Section



5.5, Owner shall have the right to set-off any amount of Performance Liquidated Damages owed by the Operator against any amounts owed by the Owner to the Operator under this Agreement.

## **8.1 Performance Liquidated Damages**

### **8.1.1 Annual Availability Liquidated Damages**

In the event that the Annual Availability is less than the Annual Availability Guarantee, the Operator shall be liable for payment of liquidated damages to Owner in accordance with Appendix 15.

### **8.1.2 Heat Rate Liquidated Damages**

In the event that the biannual average of the Heat Rate measured on a Quarterly basis, exceeds the Heat Rate Guarantee, the Operator shall be liable for payment of liquidated damages to Owner in accordance with Appendix 15.

### **8.1.3 Lube Oil Consumption Liquidated Damages**

In the event that the Lube Oil Consumption exceeds the annual Lube Oil Consumption Guarantee, the Operator shall be liable for payment of liquidated damages to Owner in accordance with Appendix 15.

### **8.1.4 Electrical Capacity Liquidated Damages**

In the event that the biannual average of the Electrical Capacity measured on a Quarterly basis, is less than the Electrical Capacity Guarantee, the Operator shall be liable for payment of liquidated damages to the Owner in accordance with Appendix 15.

## **ARTICLE 9 FORCE MAJEURE**

### **9.1 Force Majeure**

Neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement, when and to the extent failure of performance shall be due to an event of Force Majeure, provided, however, an event of Force Majeure shall not excuse any failure to pay amounts due under Article 5. For the duration of the Force Majeure, the Operator shall waive any late payment interest as the Owner may not be able to make a payment transaction.

### **9.2 Obligation to Diligently Cure Force Majeure**

If either Party relies on the occurrence of an event of Force Majeure as a basis for being excused from performance of its obligations under this Agreement, then the Party relying on the event or condition shall:



- (i) provide prompt notice to the other Party of the occurrence of the said event of Force Majeure giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder;
- (ii) exercise all reasonable efforts to continue to perform its obligations hereunder;
- (iii) expeditiously take action to correct or cure the event of Force Majeure excusing performance;
- (iv) exercise all reasonable efforts to mitigate or limit any Loss to the other Party to the extent such action does not adversely affect its own interest; and
- (v) provide prompt notice to the other Party of the cessation of the event of Force Majeure giving rise to its excused performance.

An extension of time for the completion of the Work shall be granted to the Operator to the extent the performance of the Work is delayed by an event of Force Majeure.

For the avoidance of doubt, in the event the Facility suffers Loss as a result of an event of Force Majeure Owner shall be responsible to remedy such Loss at its own cost and risk.

### **9.3 Effect of Continued Event of Force Majeure**

If an event of Force Majeure continues for a period of more than one hundred eighty (180) consecutive Days, either Party may terminate this Agreement by providing a thirty (30) Day notice of such termination to the other Party; provided that the said thirty (30) Day notice period may run concurrently with such one hundred eighty (180) Day period.

## **ARTICLE 10 INDEMNIFICATION**

### **10.1 Indemnification by Owner**

Owner, on behalf of itself and its successors and assigns, agrees to save, indemnify and hold harmless the Operator against any and all losses, claims, expenses, liabilities, damages and costs whatsoever for: (i) personal injury to or death of any Third Party; and (ii) direct loss or damage to any Third Party property, except in the event such personal injury, death, loss or damage is a direct result of the negligence, Wilful Misconduct, or fraud of Operator or anyone acting on Operator's behalf or under its instructions, in connection with this Agreement and Operator's obligations hereunder.

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## 10.2 Indemnification by Operator

- 10.2.1 The Operator, on behalf of itself and its successors and assigns, agrees to save, indemnify and hold harmless Owner against any and all losses, claims, expenses, liabilities, damages and costs whatsoever for: (i) personal injury to or death of any Third Party; and (ii) direct loss or damage to any Third Party property but, in either case, only to the extent such personal injury, death, loss or damage is a direct result of negligence, gross negligence or Wilful Misconduct of Operator or anyone acting on Operator's behalf or following Operator's instructions, in connection with this Agreement and Operator's obligations hereunder.
- 10.2.2 Without limiting the generality of the foregoing and notwithstanding the provision of Section 14.5, Operator agrees to indemnify Owner, up to a maximum of \$100,000 during the third year of this Agreement, for the aggregate of all fines and penalties incurred by Owner during the third year of this Agreement, as a result of failure of the Facility to comply with the Emissions Guarantee except for: (a) periods of 160 hours of scheduled maintenance of each Engine; (b) periods of unscheduled maintenance of each Engine for a period not to exceed 200 hours per calendar year; (c) periods of 24 hours of scheduled maintenance of each RTO each year; (d) periods of unscheduled maintenance of each RTO for a period not to exceed 150 hours per calendar year; and (e) to the extent such failure results from Owner's negligence or Wilful Misconduct or an event of Force Majeure or other reason not attributable to the Operator or the Work. For purposes of determining its obligations hereunder, Operator shall have access to all documentation relevant to the fines or penalties, including all correspondence from Governmental Authorities related thereto and all recorded data from continuous emission testing sensors used to monitor emissions produced by the Facility or any of the Wartsila Generator Sets. The parties acknowledge that a Governmental Authority may include the fines or penalties indemnifiable to Owner under this Section 10.2.2 with other fines or penalties that are not indemnifiable to Owner in the same citation, notice of violation, penalty assessment or similar document without specifying the amount associated with the Facility or Wartsila Generator Sets. In such event, Owner agrees to attempt (in writing) to obtain from the Governmental Authority an itemization of the fines or penalties being assessed to identify the amount indemnifiable under this Section 10.2.2. In the event Owner cannot obtain such itemization, the parties shall work together cooperatively and in good faith to reasonably determine the amount indemnifiable under this Section 10.2.2. Owner agrees that this indemnification shall be the only remedy to the Owner for failure of the Facility or any of the Wartsila Generator Sets to comply with the Emissions Guarantee.

## 10.3 Notices

If a Party entitled to indemnification hereunder (the "Indemnified Party") intends to seek indemnification under this Article 10 from the other Party (the "Indemnifying Party") with respect to any losses, claims, expenses, liabilities, damages and costs, the Indemnified Party shall promptly give the Indemnifying Party written notice of such losses, claims, expenses, liabilities, damages and costs.

The Indemnifying Party shall have no liability under this Article 10 for any losses, claims, expenses, liabilities, damages and costs for which such written notice is not promptly provided, except to the

extent the failure to give such notice does not actually prejudice the Indemnifying Party. Likewise, the Indemnifying Party shall have no liability under Article 10.2.2 for any losses, claims, expenses, liabilities, damages and costs, to the extent that the Indemnified Party does not take reasonable efforts to assist the Indemnifying Party to remediate the conditions causing it to fail to meet the Emissions Guarantee.

The Indemnifying Party shall have the right to assume the defence of any such losses, claims, expenses, liabilities, damages and costs with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any cause of action for such losses, claims, expenses, liabilities, damages and costs include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defences and to otherwise participate in the defence of such losses, claims, expenses, liabilities, damages and costs on behalf of such Indemnified Party.

Should the Indemnified Party be entitled to indemnification under this Section as a result of a claim or action by a Third Party, and should the Indemnifying Party fail to assume the defence of such claim or action, the Indemnified Party may, at the expense of the Indemnifying Party, contest or, with the prior consent of the Indemnifying Party, settle such claim or action.

Except to the extent expressly provided herein, no Indemnified Party shall settle any claim or action with respect to which it has sought or intends to seek indemnification pursuant to this Section 10.3 without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

#### **10.4 Employees**

Neither Party nor its directors, officers, employees, agents, Affiliates or representatives, nor any independent subcontractors engaged by it in connection with the performance of this Agreement, shall be deemed an employee of the other Party. Neither Party shall bring any claim against the other Party or its directors, officers, Affiliates, agents, representatives, employees or independent subcontractors with respect to any liability for compensation under an applicable statute or any applicable Governmental Authority, including worker's compensation and/or employer's liability claims of employees.

#### **10.5 Survival of Obligation**

The duty to indemnify under this Article 10 is a continuing obligation separate and independent from the other obligations of each of the Parties, and shall continue in full force and effect notwithstanding the expiration or termination of this Agreement with respect to any liabilities indemnifiable under this Article 10, based on facts or conditions, which occurred prior to such expiration or termination. As previously stated, the duty to indemnify set forth Section 10.2.2 is limited to fines and penalties incurred during the third year of this Agreement.



## **ARTICLE 11 ENVIRONMENTAL RESPONSIBILITIES**

### **11.1 Environmental Responsibilities of Owner**

Subject to Section 11.2, Owner shall be responsible for all costs and expenses associated with the clean-up, removal, and/or remediation of any and all: (i) Hazardous Substances that are required by a Governmental Authority to be cleaned up, removed or remediated; (ii) Hazardous Substances pre-existing at the Facility Site or subsequently brought onto the Facility Site by Owner or any Third Parties; and (iii) Hazardous Substances present at the Facility Site that pose a danger to the safety or health of employees of Owner, the Operator or others lawfully present at the Facility Site, as reasonably determined by the Operator in accordance with Prudent Operating Practices.

### **11.2 Environmental Responsibilities of Operator**

The Operator shall be responsible for, and the Operator shall reimburse Owner for, all reasonable costs associated with the clean-up, removal and/or remediation of any and all Hazardous Substances that were brought onto the Facility Site by the Operator and that were released to the environment, to the extent such release of Hazardous Substances is caused by the Operator.

### **11.3 Notice of Release, Investigation and Response**

If the Operator encounters or discovers at the Facility Site: (i) any materials that it reasonably believes may be Hazardous Substances (excluding any Hazardous Substances brought onto the Facility Site by the Operator) the presence or disturbance of which the Operator reasonably determines may present a threat or danger to human health, safety, or the environment; or (ii) any release of Hazardous Substances, it shall promptly notify Owner, and Owner shall undertake an investigation and/or response consistent with applicable Governmental Rules and Authorizations.

## **ARTICLE 12 INSURANCE**

### **12.1 Operator's Coverage**

The Operator shall obtain and maintain in force throughout the term of this Agreement and for each renewal thereafter. The insurance coverage shall be in accordance to Appendix 14.

### **12.2 Owner's Coverage**

Owner shall obtain and maintain in force throughout the term of this Agreement and for each renewal thereafter. The insurance coverage shall be in accordance to Appendix 14.

### **12.3 Independent Contractor's Coverage**

Owner and the Operator shall require all their respective independent contractors and subcontractors to obtain, maintain and keep in force for the time during which they are engaged in performing services in connection with the Facility, reasonable adequate coverage in accordance with Prudent Operating Practice and reasonably acceptable to Owner or the Operator, as the case may be, and to furnish



acceptable evidence of such insurance upon request. Owner and the Operator shall have no responsibility for the payment of premiums and claims for such insurance.

#### **12.4 Form and Content of Policies**

All policies with respect to insurance maintained by the responsible Parties pursuant to this Article 12 shall:

- 12.4.1 With respect to liability insurance only, state that such insurance is primary, or excess only with respect to the specific primary policy provided by the same Party for such coverage, and not excess or contributing in respect to any other insurance (or self-insurance) available to Owner, the Operator or the additional insured and that all provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured under each such policy;
- 12.4.2 Provide that the following cross liability clause is incorporated into each and every liability insurance policy: "In the event of claims being made by reason of: (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable; or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance";
- 12.4.3 Provide that there will be no recourse against any additional insured for the payment of premiums or commissions, or deductibles or, if such policies provide for the payment thereof, additional premiums or assessments or deductibles, it being understood that these are obligations of the Party providing such insurance pursuant to this Agreement;
- 12.4.4 Waive any right of subrogation of the insurers against Owner, the Operator and the officers, directors and employees of each of them and any right of the insurers to any set off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under such policy;
- 12.4.5 With respect to the coverage under Article 12, include the Operator and Owner as an additional named insureds;
- 12.4.6 With respect to the interest of any additional named insured, provide that such insurance shall not be invalidated regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured or any other named insured; and
- 12.4.7 The insurance policies for the all risk property and machinery breakdown insurance shall contain an obligation on the insurance provider to inform the Operator of any expiry, cancellation or changes to such insurance policies.

## **12.5 Certificates**

Thirty (30) Days after the Execution Date of this Agreement Owner and the Operator shall each furnish to the other, certificates of insurance, issued by the insurance companies providing the relevant insurances, evidencing the insurance required pursuant to this Agreement.

## **12.6 Deductibles and Claims Management**

- 12.6.1 Claims Management: In the event of a Loss, Owner and the Operator shall first take all reasonable steps to recover the costs associated with such Loss through the appropriate insurance policies.
- 12.6.2 Insurance Deductible: Owner and the Operator shall each be responsible for the deductibles applicable with respect to the insurance policies that each is required to obtain and maintain pursuant to Sections 12.1 and 12.2.

## **ARTICLE 13 REPRESENTATIONS AND WARRANTIES**

### **13.1 Representations by Operator**

The Operator represents and warrants to Owner as follows:

- 13.1.1 Organization. The Operator is a corporation established under the laws of Puerto Rico, and the execution, delivery and performance of this Agreement have been duly authorised by all necessary corporate action and will not violate any provisions of any applicable laws, its by-laws or charter. This Agreement has been duly executed and delivered by the Operator and constitutes a legal, valid and binding obligation of the Operator, enforceable in accordance with its terms, except as such enforceability may be limited by Bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally, from time to time in effect, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- 13.1.2 No Violation of Law. The Operator is not in violation of any applicable law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect the Operator's ability to perform its obligations under this Agreement.
- 13.1.3 Litigation. The Operator is not a party to any legal, administrative, arbitral, investigatory or other proceeding or controversy pending, or, to the best of the Operator's knowledge, threatened, that would adversely affect the Operator's ability to perform under this Agreement.

### **13.2 Representations by Owner**



Owner represents and warrants to the Operator as follows:



- 13.2.1 Organization. Owner is an autonomous governmental instrumentality established under the laws of the US Virgin Islands, and the execution, delivery and performance of this Agreement have been duly authorised by all necessary corporate action and will not violate any provisions of any applicable laws, its organizational documents. This Agreement has been duly executed and delivered by Owner, and constitutes a legal, valid and binding obligation of Owner, enforceable in accordance with its terms, except as such enforceability may be limited by Bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally, from time to time in effect, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- 13.2.2 No Violation of Law. Owner is not in violation of any applicable law or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would affect Owner's ability to perform its obligations under this Agreement.
- 13.2.3 Litigation. Owner is not a party to any legal, administrative, arbitral, investigatory or other proceeding or controversy pending, or, to the best of Owner's knowledge, threatened, that would adversely affect Owner's ability to perform under this Agreement.
- 13.2.4 Ownership, Compliance and other contracts. Owner has full and unencumbered ownership and is in legal possession of the Facility. The execution and delivery of this Agreement by Owner and the performance of its obligations hereunder will not constitute or result in any breach of, default under or violation of any agreement to which it's a party.

### 13.3 Warranty by Operator at Expiration or Termination

The terms of this Section 13.3 will only apply for the period of time commencing on the date of expiration or termination of this Agreement and ending as per Section 13.3.3 for parts and Section 13.3.4 for labor thereafter (the "Warranty Period"). The Parties acknowledge and agree that the Performance Guaranties shall not apply, and Liquidated Damages shall not be caused, during the Warranty Period.

- 13.3.1 Operator's Warranty. The Operator shall repair or replace, in its sole discretion, in whole or in part, defective Parts within the Operator's scope of supply which appear during the Warranty Period. The Operator shall immediately take appropriate steps to prevent any defect from becoming more serious, and file with supplier all warranty claims with respect to this warranty in writing without delay and not later than fourteen (14) Days following discovery of such defect during the warranty period.
- 13.3.2 Replaced Parts. Replaced Parts shall be destroyed by Owner, or by Operator if so authorized by Owner. If the Operator requests the Parts for further investigation, Owner shall not reasonably deny the request and Operator shall bear the cost for the shipment. The Operator shall bear the costs of repairing or replacing the defective Parts as well as the costs occasioned
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by the transport of the defective and of the repaired or replaced Parts between the Operator and the place of delivery as originally agreed in the delivery terms.

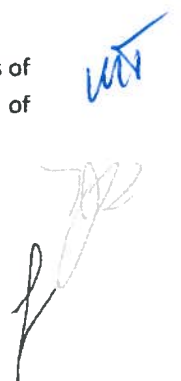
13.3.3 **Warranty Period for Parts.** The warranty period for the Parts provided by the Operator begins on the date of delivery and ends twelve (12) Months from the date when the Part is placed in service or eighteen (18) Months from the date of delivery, whichever occurs later. For the Safety Spare Parts purchased at the end of term of this Agreement, the warranty of the Safety Spare Parts begins on the date expiration or termination of the Agreement and end twelve (12) Months from the date when the Part is placed in service or eighteen (18) Months from the date of delivery, whichever occurs later. The warranty period in respect of Parts which have been repaired or replaced under warranty shall expire six (6) Months following the date when: (i) the repaired or replacement Part is placed in service; or (ii) upon expiration of the warranty period applicable to the originally supplied Parts, whichever is later. Notwithstanding any provision to the contrary in this Agreement, the warranty period of any Part will not extend beyond the eighteen (18) Months from the date when the Part is placed in service.

13.3.4 **Warranty Period for Labor.** The warranty period for labor begins on the date of delivery and ends six (6) months from the last day of performance of the applicable labor. The warranty period in respect to labor which has been re-performed under warranty shall expire six (6) months following the last day on which the labor was re-performed under warranty. Notwithstanding any provisions to the contrary in this Agreement, the warranty period of any labor will not extend beyond twelve (12) Months from the date of original warranty for the labor.

13.3.5 **WARRANTY EXCLUSIONS. THIS WARRANTY DOES NOT COVER ANY DEFECT DUE TO OR CONNECTED WITH THE FOLLOWING: (I) MATERIALS, COMPONENTS, TOOLS, OR DESIGNS PROVIDED BY THE OWNER OR ON BEHALF OF THE OWNER; (II) NEGLIGENCE OR OTHER IMPROPER ACTS OR OMISSIONS TO THE EXTENT CAUSED BY THE OWNER, ITS EMPLOYEES OR AGENTS OR OTHER THIRD PARTIES; (III) INSTALLATION, SERVICE, OPERATION, OR ALTERNATIONS DONE BY THE OWNER NOT CONFORMING TO THE OPERATOR'S OR SUBCONTRACTOR'S MANUALS, INSTRUCTIONS, OR SPECIFICATIONS, OR OTHERWISE NOT IN ACCORDANCE WITH PRUDENT OPERATING PRACTICE; (IV) PARTS, ACCESSORIES, OR OTHER ATTACHMENTS THAN THOSE SUPPLIED BY THE OPERATOR; (V) NORMAL WEAR AND TEAR; OR (VI) IMPROPER SERVICE WORK CARRIED OUT BY THE OWNER.**

**THE WARRANTY OBLIGATION DOES NOT INCLUDE ANY ELECTRICITY, SCAFFOLDING, ASSISTING WORK, OR CRANAGE. FURTHERMORE, THIS WARRANTY OBLIGATION DOES NOT INCLUDE ANY EXCLUDED EQUIPMENT, UNLESS THE OPERATOR EXPRESSLY AGREED IN WRITING WITH THE OWNER TO PROVIDE A SCOPE OF SUPPLY OF CERTAIN PARTS RELATED TO THE EXCLUDED EQUIPMENT.**

13.3.6 The Owner is responsible for the provision of free, effective and safe access to the portions of the Facility where such warranty is applicable. All removal, cutting or similar modification of the Facility structures are the responsibility of the Owner.



13.3.7 THE EXPRESS WARRANTIES EXPLICITLY MADE BY OPERATOR IN THIS AGREEMENT ARE THE ONLY WARRANTIES PROVIDED BY THE OPERATOR APPLICABLE TO WORK TO BE PROVIDED HEREUNDER AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY OR GUARANTEE EXPRESSED OR IMPLIED AGAINST DEFECTS, LATENT OR OTHERWISE AND THE OWNER HEREBY WAIVES ANY CLAIM THEREUNDER. THE OPERATOR NEITHER ASSUMES, NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER WARRANTY OBLIGATION IN CONNECTION WITH THE WORK PROVIDED HEREUNDER OR ANY PART THEREOF.

## **ARTICLE 14 LIMITATION AND EXCLUSIONS OF LIABILITY**

### **14.1 General**

Notwithstanding anything else to the contrary stated in this Agreement the following limitations of the Operator's liability in this Article 14 shall apply.

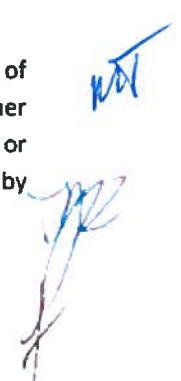
### **14.2 Exclusion of Consequential Loss**

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, AND WHETHER ARISING BEFORE, DURING OR AFTER THE EFFECTIVE DATE, SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONTINGENT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS OR DAMAGE INCLUDING, WITHOUT LIMITATION AND WITHOUT BEING LIMITED BY THE MEANING OF "INDIRECT", "CONTINGENT", "SPECIAL", "CONSEQUENTIAL" OR "INCIDENTAL", ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS OR REVENUE OR ANY FAILURE TO REALISE ANTICIPATED SAVINGS, LOSS OF OPPORTUNITY, BUSINESS OR BUSINESS OPPORTUNITIES, ANY PENALTIES PAYABLE UNDER AGREEMENTS OTHER THAN THIS AGREEMENT, LOSS OF GOODWILL, LOSS OF PRODUCTION, LOSS OF USE, WASTED OVERHEADS, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR LOSS OF TIME OR USE OF ANY EQUIPMENT, INSTALLATION SYSTEM, OPERATIONS OR SERVICE INTO WHICH PARTS MAY BE PUT, OR WITH RESPECT TO WHICH ANY SERVICES MAY BE PERFORMED BY THE OPERATOR, HOWEVER CAUSED OR ARISING, INCLUDING ARISING IN CONTRACT, TORT (INCLUDING FOR NEGLIGENCE OR STRICT LIABILITY), UNDER STATUTE OR ON ANY OTHER BASIS IN LAW OR EQUITY.

THIS LIMITATION ON LIABILITY SHALL APPLY (WITHOUT LIMITATION) TO ANY LIABILITY FOR DEFAULT UNDER OR IN CONNECTION WITH THE EQUIPMENT, HARDWARE, GOODS, PARTS AND/OR SERVICES DELIVERED HEREUNDER, WHETHER BASED ON WARRANTY, FAILURE OF OR DELAY IN DELIVERY OR OTHERWISE.

### **14.3 Foreseeability**

Without prejudice to the generality of Section 14.2, in no event, whether as a result of breach of contract, breach of warranty, tort (including negligence or strict liability) or otherwise, and whether arising before, during or after completion of the Work, shall either Party be liable for any Loss or damage as could not have been reasonably foreseeable by it at the Effective Date as determined by the arbitration panel.



#### **14.4 Limitation of Liability for Liquidated Damages**

During the Term, the Performance Liquidated Damages payable shall be limited to, and shall in no event exceed Two Million US Dollars (US\$2,000,000) and shall be subject to the Section 5.8.

The liquidated damages set forth in Section 8.1 shall be the sole and exclusive remedy of Owner and the Operator's only liability with respect to any failure by the Operator to achieve the Performance Guarantees. Owner waives any right to request the Operator to achieve the Performance Guarantees where failure to reach such Performance Guarantees triggers the payment of Performance Liquidated Damages.

#### **14.5 Maximum Aggregate Liability**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT AND SUBJECT TO THE QUALIFICATION ON THE MAXIMUM AGGREGATE LIABILITY SET OUT IN SECTION 4.5.6, THE OPERATOR'S MAXIMUM AGGREGATE LIABILITY TO OWNER OR ITS EMPLOYEES, REPRESENTATIVES OR THEIR AFFILIATES PURSUANT TO OR ARISING OUT OF THIS AGREEMENT WHETHER ARISING FROM BREACH OF CONTRACT, LIQUIDATED DAMAGES, OPERATOR LOSS, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), BREACH OF CONTRACT, INDEMNITIES OR ANY OTHER CAUSE OF ACTION (EXCEPT FOR INSTANCES OF WILFUL MISCONDUCT), SHALL BE LIMITED TO AND SHALL IN NO EVENT EXCEED FIVE MILLION US DOLLARS (US\$5,000,000) DURING THE TERM OF THIS AGREEMENT.

#### **14.6 Cybersecurity Limitation of Liability**

AFTER THE EXPIRATION OR EARLIER TERMINATION OF THE AGREEMENT, WITH REGARD TO SECTION 3.3, OPERATOR AND/OR CONTRACTOR SHALL NOT BE LIABLE FOR ANY HARM, INJURY OR DAMAGES DUE TO OR ARISING IN CONNECTION WITH: (1) SOFTWARE PROVIDED BY OWNER; (2) SYSTEMS OTHER THAN THOSE PROVIDED BY OPERATOR OR CONTRACTOR; OR (3) IMPROPER SERVICE WORK, INSTALLATION OR ALTERATIONS CARRIED OUT BY OWNER.

#### **14.7 Claims Time Barred**

Any and all claims by Owner for an alleged negligent act, error or omission by the Operator in the conduct and execution of the Work shall be presented by Owner to the Operator in writing, immediately upon discovery or as soon as is reasonably practicable and in no event later than 180 days after its discovery by Owner.

The liability of the Operator shall in all cases expire three (3) Years after expiration or termination of this Agreement, whichever occurs earlier.

#### **14.8 Validity of Disclaimers**

Releases, disclaimers and limitations on liability expressed herein shall apply even in the event of the fault (other than Wilful Misconduct) of the party whose liability is released, disclaimed or limited to the extent provided in such release, disclaimer and limitation, such fault to include the negligence,

strict liability or breach of contract (including other legal bases of responsibility such as fundamental breach).

All releases, waivers, or limitations of liability given by Owner in favour of the Operator expressed in this Agreement shall apply equally to any Affiliate of the Operator.

#### **14.9 Exclusive Remedy**

Owner's rights and remedies, whether for breach of contract, breach of warranty, tort or otherwise are exhaustive as set out in this Agreement.

The express warranties and guarantees set forth in this Agreement replaces any other warranties and guarantees express or implied including any other warranties and guarantees, against vices, non-conformity or defects, hidden or otherwise, and any other obligation, term or liability whether in contract or in law and Owner hereby waives all other remedies, warranties and guarantees expressed or implied, arising by law or otherwise (including without limitation any obligations of the Operator with respect to any fitness for purpose and merchantability).

#### **14.10 Owner's Acknowledgement of Limitation on Operator's Liability**

Owner acknowledges and agrees that the charges for services charged by the Operator are based upon Owner's acceptance of and agreement to the exclusions of and limitations to the Operator's liability under this Agreement and on Owner effecting and maintaining appropriate and adequate insurance under this Agreement, and that such fees would be significantly higher in the absence of such exclusions and/or limitations, and/or such insurance obligations. Accordingly, Owner agrees that the exclusions and limitations of liability set out in this Agreement are fair and reasonable.

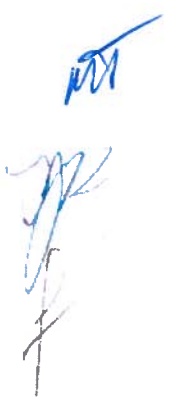
#### **14.11 Invalidity**

If any provision of this Article 14 is held by any court or other competent authority to be illegal, invalid, void or unenforceable in whole or part, the remainder of this Article 14 shall continue to be valid as to the other provisions thereof and the remainder of the affected provision. The Parties shall replace or amend any illegal, invalid, void or unenforceable provision with a legally acceptable alternative that meets or most closely meets the original intention of the Parties.

### **ARTICLE 15 MISCELLANEOUS**

#### **15.1 Arbitration**

In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, including any questions regarding its existence, validity, termination or a breach thereof, the Parties agree to submit the matter to settlement proceedings under the International Chamber of Commerce Alternative Dispute Resolution ("ADR") Rules, which rules are deemed to be incorporated by reference into this Section. If the dispute has not been settled pursuant to the said rules within forty-five (45) Days following the filing of a request for alternative dispute resolution or within such other period as the Parties may agree in writing, such dispute shall be finally settled in an arbitration proceeding under



the current Rules of Arbitration of the International Chamber of Commerce, by one (1) or more arbitrators appointed in accordance with the said Rules of Arbitration, which rules are deemed to be incorporated by reference into this Section.

The language of the ADR and arbitration shall be English and all documents submitted in connection with such proceedings shall be in the English language or, if in another language, accompanied by a certified English translation.

The seat of the ADR and arbitration shall be in New York, New York, USA.

#### **15.2 Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of the State of New York without reference to its conflict of laws principles.

#### **15.3 Severability**

The invalidity, in whole or in part, of any of the foregoing Articles, Sections or paragraphs of this Agreement will not affect the validity of the remainder of such Articles, Sections or paragraphs.

#### **15.4 Entire Agreement**

This Agreement, including Appendices and all amendments thereto, contain the complete agreement between Owner and the Operator with respect to the matters contained herein and supersedes and extinguishes any previous or contemporaneous agreements, undertakings and arrangements, whether written or oral, with respect to the matters contained herein. Each Party confirms that in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement.

#### **15.5 Contract Documents**

In the event of any conflict or ambiguity between the body of this Agreement and any of the Appendices hereto the relevant provisions shall be construed as complementary rather than conflicting or ambiguous wherever possible, but if a complementary construction is not possible, then the terms and provisions of the body of this Agreement shall take precedence over the Appendices. In the event of any conflict or ambiguity between the Appendices hereto the Operator shall advise which Appendix shall prevail taking due consideration of Prudent Operating Practices.

#### **15.6 Assignment**

Neither Party may assign this Agreement nor any of its obligations, including payment obligations, contained herein without the other Party's written consent, provided that the Operator shall have the right to assign and novate its rights and obligations to any Affiliate with prior notification.

Either Party must notify the other Party in writing if such Party will undergo a change in ownership, merger, consolidation, or similar corporate change.

### 15.7 Amendment

No modification, amendment, or other changes shall be binding on any Party unless a consent have been given in writing by both Parties.

### 15.8 Notices

All notices required or provided for in this Agreement shall be in writing and shall be delivered by hand or sent by a recognized overnight mail or courier service with delivery receipt requested as follows:

If to Owner:

US Virgin Islands Water and Power Authority

Attn. Executive Director

Tel: +1 (340) 774-3552

Attn. General Counsel

Address:

9720 Estate Thomas  
St. Thomas, USVI 00801

If to the Operator:

Wärtsilä Caribbean, Inc.

Attn: Contract Manager

Tel: +1.787.701.2288

Address:

Rd. 887 Km. 0.6  
Barrio Martin Gonzalez  
Julio N Matos Industrial Park  
Carolina, PR 00987

Notices shall be effective when received by the Party to whom the notices are addressed.

### 15.9 Waiver

Failure by either Party to exercise any of its rights under this Agreement shall not constitute a waiver of such rights. Neither Party shall be deemed to have waived any right resulting from any failure to perform by the other Party unless it has specifically waived such right in writing.

### 15.10 Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

Handwritten signatures in blue and black ink, located in the bottom right corner of the page. The blue signature appears to be 'NTV' and the black signature is a stylized 'J' or 'K'.



#### **15.11 Non-Solicitation**

Neither Party shall, during the term of this Agreement, and for one year after the end of its Term, directly or indirectly solicit or offer employment or any other form of contract for services to any of the other Party's technical and/or professional employees, associates, subcontractors or other such personnel who were directly involved in the performance of this Agreement. In the event of a breach of this Section by Owner or the Operator, respectively, the Party in breach shall pay compensation to the other Party equal to six (6) Months' gross salary or fees of the employee, associate, contractor or subcontractor in question.

#### **15.12 Confidentiality**

Both parties agree: (i) that the receiving party and its employees may disclose Confidential Information to others if required by law or with the prior written consent of the disclosing party; (ii) not to make use of Confidential Information other than for the performance of this Agreement; and (iii) that it will not use such information for its own advantage to the detriment of the disclosing party or its customers. Confidential information shall not include information which: (i) becomes generally available to the public (other than by the acts or omissions of the receiving party or its employees); (ii) was known prior to the date of this Agreement by "or becomes known to" the receiving party or its employees and was not obtained from any person under any obligation of confidentiality to the disclosing party, (iii) is independently developed by the receiving party; or (iv) is required to be disclosed pursuant to legal process or regulation.

#### **15.13 No Transfer of Intellectual Property Rights**

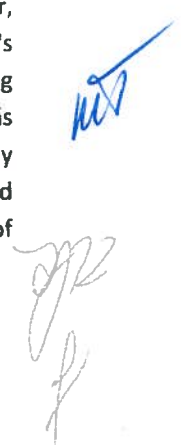
All drawings, documents, computer software and engineering and other data furnished or to be furnished by the Operator in connection with this Agreement shall remain the Operator's property. However, the Operator hereby grants to Owner a royalty free license during the term of this Agreement to retain and use all drawings, documents, computer software and engineering data for the sole and exclusive purpose of performing its obligations under this Agreement

#### **15.14 No Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, any liability to, or any right of suit or action in, any Person or other legal entity not a party to this Agreement.

#### **15.15 Non-Recourse**

Neither Party shall have recourse hereunder, and no claim shall be made, against any director, officer, shareholder or Affiliate of the other Party, in such capacity, under this Agreement, and each Party's sole recourse in the event of a breach hereunder by the other Party shall be against the breaching Party's assets, irrespective of any failure to comply with the applicable law or any provision of this Agreement. Neither Party shall have any right of subrogation to any claim of the other Party for any equity contributions to such Party from any shareholder of such Party. This acknowledgment and agreement are made expressly for the benefit of the directors, officers, shareholders and Affiliates of the Parties.



#### 15.16 Export Control

The Parties agree that all parts shall be delivered and services performed subject to all applicable export controls or restrictions imposed on technology and products by any country or organization or nation which are enforceable in the jurisdiction of the Operator, its Affiliates or parent company, including the Operator's country, the United Nations, the European Union and the United States of America. Owner acknowledges that all parts and services and all related technical information, documents and materials may not be imported or exported, re-exported, transhipped, traded, diverted or transferred, directly or indirectly, contrary to such controls or restrictions.

Owner confirms that all parts supplied and services performed will be used solely for peaceful purposes. Owner further confirms that all parts and services will not be used in connection with, or for purposes associated with any chemical, biological or nuclear weapons, missiles or any other vehicles or vessels capable of delivering such weapons, or in support of any terrorist activity, or in connection with any other military end use. Nor will the parts or services be re-sold if it is known or suspected by Owner that it is intended to be used for such purposes. Upon request by the Operator, Owner shall furnish the Operator with all the relevant certificates relating to export control laws, regulations and restrictions, such as, but not limited to, end-user certificates, in form and substance specified by the Operator.

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IN WITNESS WHEREOF the Parties have entered into this Agreement as of the date first written above.

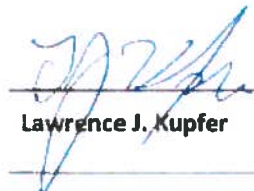
US Virgin Islands Water and Power Authority

Wärtsilä Caribbean, Inc.

(Owner)

(Operator)

By:



Name: Lawrence J. Kupfer

Title: Executive Director/CEO

Date:

By:



Name: MARC TARBOX

Title: Managing Director

Date:

By:

Name:

Title:

Date:

By:

Name:

Title:

Date: