

O&M SERVICES AGREEMENT

between

CPV FAIRVIEW, LLC

and

NAES CORPORATION

Dated as of

March 24, 2017

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O&M SERVICES AGREEMENT

This O&M SERVICES AGREEMENT, dated as of _____, 2017 (the “Effective Date”) is entered by and between CPV FAIRVIEW, LLC (“Owner”), a Delaware limited liability company, with offices located at 50 Braintree Hill Office Park, Suite 300, Braintree, MA 02184, and NAES CORPORATION (“NAES”), a Washington corporation, with offices located at 1180 NW Maple Street, Suite 200, Issaquah, WA 98027.

RECITALS

1. Owner owns the Facility (these and other capitalized terms are defined in Article II).
2. Owner desires to retain NAES to perform certain services with respect to the Facility, and NAES is willing to perform such services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and of the mutual covenants, undertakings and conditions set forth below, the Parties agree as follows:

ARTICLE I - AGREEMENT

1.1. Entire Agreement. This Agreement consists of the recitals, and the terms and conditions set forth in this Agreement, as well as the appendices that are referenced in the table of contents and attached to this Agreement. The recitals, appendices and terms and conditions must be read together to obtain a full understanding of the intent of the Parties. This Agreement contains the entire agreement between the Parties with respect to NAES’s provision of Services with respect to the Facility and supersedes all prior negotiations, undertakings, agreements and business term sheets. Neither Party will be bound by or deemed to have made any representations, warranties, commitments or undertakings, except as expressly stated in this Agreement.

1.2. Relationship of the Parties. Owner is retaining NAES as an independent contractor to provide the Services set forth in Appendix A with respect to the Facility in support of Owner’s operation of the Facility. Subject to any limitations expressly set forth in this Agreement, as between the Owner and NAES, Owner delegates to NAES, and NAES accepts from Owner, the responsibility of providing those Services with respect to the Facility. Owner and NAES agree that the scope of delegation is strictly limited to the matters set forth in the Agreement. Without limiting the generality of the foregoing, Owner retains the ultimate authority and obligation to determine whether and to what extent the Facility operates, and NAES shall never cause the Facility to generate power except as expressly directed to do so by Owner or any dispatching authority specified by Owner. NAES has no obligation to upgrade or replace Facility systems except as expressly directed by Owner, nor shall it be obligated to spend funds outside the Project Account or otherwise employ its own credit to support the Facility.

ARTICLE II - DEFINITIONS

For all purposes of this Agreement (including the preceding sections and recitals), unless otherwise required by the context in which any defined term appears, capitalized terms have the meanings specified in this Article II. The singular includes the plural, as the context requires. The terms “includes” and “including” mean “including, but not limited to.” The terms “ensure” and “reasonable efforts” will not be construed as a guarantee, but will imply only a duty to use reasonable effort and care, consistent with Prudent Operation and Maintenance Practices, and will include reasonable expenditures of money and at least such efforts as NAES would undertake for its own assets, services or maintenance, or for services provided to an Affiliate. “Gross negligence” will not be construed as simple or ordinary negligence, it being the intent of the Parties to preserve a distinction between errors made inadvertently while attempting to perform with due care and actions taken with a knowing disregard for a substantial foreseeable risk, notwithstanding whether a court would otherwise apply such distinction at common law. “Day” (regardless of capitalization) shall mean a calendar day, unless specifically designated as a Business Day. References to articles, sections and appendices mean the articles and sections of, and appendices to, this Agreement, except where expressly stated otherwise.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person. The term “control” (including related terms such as “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this O&M Services Agreement, as the same may be modified or amended from time to time in accordance with its provisions.

“Applicable Law” means any United States federal, state or local laws, regulations, codes, judgments, orders, Permits or other Governmental Approvals as may be applicable to the Facility, Owner or NAES.

“Asset Management Agreement” means the Asset Management Agreement, dated as of the date hereof, between Owner and Asset Manager.

“Asset Manager” means Competitive Power Ventures, Inc., a Delaware corporation, and any successor or replacement entity.

“Bankruptcy” means a situation in which

(i) a Person files a voluntary petition for relief under the federal bankruptcy laws of the United States or of any other country or files any petition, answer, or consent seeking a reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution, or other similar insolvency relief under any other present or future applicable law for the relief of debtors of the United States or of any other country or of any state, province, or territory thereof;

(ii) a Person seeks, consents, or acquiesces in the entry of an order, judgment, or decree for the appointment of any trustee, receiver, custodian, conservator, liquidator, or similar official of such Person, or of all or any substantial part of such Person’s assets (the term “acquiesce”, as

used in this definition, includes the failure to file a notice of appeal, petition, or motion to appeal, vacate, or discharge any such order, judgment, or decree within the applicable time limit after entry of such order, judgment or decree), and such order, judgment, or decree remains unappealed, unstayed or unvacated for thirty (30) days from the date of entry thereof;

(iii) a court of competent jurisdiction enters an order for relief, judgment, decree or other order approving or granting a petition filed against any Person seeking a reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution, or other similar insolvency relief regarding the Person or all or any substantial part of such Person's assets under any federal bankruptcy law of the United States or any other country or under any other present or future applicable law for the relief of debtors of the United States or of any other country or any state, province, or territory thereof and such order for relief, judgment, decree, or other order, remains unappealed, unstayed, or unvacated for sixty (60) days from the date of entry thereof;

(iv) a Person admits in writing its inability to pay its debts in the ordinary course of business or as the debts mature; or

(v) a Person makes a general assignment of all or any substantial part of such Person's assets for the benefit of creditors or takes any other similar action for the protection or benefit of creditors (other than in the ordinary course of such Person's business).

Bonus means a payment from Owner to NAES pursuant to Section A of Appendix B.

Budget means a budget adopted or amended pursuant to Section 5.3.

Business Day means any day other than a Saturday, Sunday or other day on which banks, in the place where a Party is required to render performance, are permitted or required to be closed.

Claims means any and all claims, assertions, demands, suits, investigations, inquiries, and proceedings, including those that are judicial, administrative or third-party.

Confidential Information has the meaning set forth in Section 12.1.

Dispute means a Technical Dispute or a Non-Technical Dispute.

Draw Request means a written request delivered by NAES to Owner that requests Owner to deposit a specified sum in the Project Account to be used to pay Site Costs, and to fund any required minimum balance in the Project Account.

Due Date means the date specified in this Agreement for payment of the applicable invoices or Draw Request, or, if no date is so specified, the date that is twenty (20) days following the date on which the applicable invoice or Draw Request is received.

Effective Date means the date first above written in the pre-amble.

Emergency has the meaning set forth in Section 3.7.

“Employee Bonus” means the employee bonus set forth in Section B of Appendix B.

“Energy Management Agreement” means the Energy Management Agreement, dated as of the date hereof, between Owner and Energy Manager.

“Energy Manager” means an entity, to be named by Owner, who is in the business of energy management, and any successor or replacement entity.

“Environmental Law” means any United States federal, state or local statute, rule, regulation, order, code, Permit, directive or ordinance and any binding judicial or administrative interpretation or requirement pertaining to (i) the regulation or protection of employee health or safety, public health or safety, or the indoor or outdoor environment; (ii) the conservation, management, development, control or use of land, natural resources, or wildlife; (iii) the protection or use of surface water or ground water; (iv) the management, manufacture, possession, presence, use, generation, treatment, storage, disposal, transportation, or handling of, or exposure to any Hazardous Material; or (v) pollution (including release of any hazardous substance to air, land, surface water and ground water), including the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the Occupational Safety and Health Act, any so-called “Superlien” law, all as now or hereafter amended or supplemented, and any regulations promulgated thereunder, and any other similar federal, state, or local statutes, rules and regulations.

“EPC Contract” means that agreement, dated on or about the date hereof, between Owner and EPC Contractor for the engineering, procurement, and construction of the Facility.

“EPC Contractor” means Kiewit Power Constructors Co.

“Escalation Factor” has the meaning set forth in Appendix C.

“Executive Settlement” has the meaning set forth in Section 14.7.3.

“Extraordinary Item” means any purchase order issued by NAES on behalf of Owner in an amount greater than Fifty Thousand Dollars (\$50,000) or, if an annual blanket purchase order, that NAES reasonably anticipates will exceed Fifty Thousand Dollars (\$50,000) during a Year.

“Facility” means the nominal 1,050 MW dual-fuel combined cycle power generation facility located in Jackson Township, Cambria County, Pennsylvania, including all electrical or thermal devices and related structures and connections (up to the points of interconnection identified in Appendix D) that are located at the Site and used for the production of power for the benefit of Owner, all as more fully described in Appendix D.

“Facility Equipment” has the meaning set forth in Section 13.1.

“Facility Manuals” means Facility equipment manuals, system descriptions, system operating instructions, equipment maintenance instructions and pertinent design documentation created by the Persons that constructed the Facility or manufactured its equipment, to the extent provided to NAES by Owner pursuant to Section 4.4.1.

Fee means the sum of Fifty Thousand Dollars (\$50,000) during the Mobilization Period and the sum of Two Hundred Twenty-Five Thousand Dollars (\$225,000) per Year during the Operational Period.

Financing Documents means any and all loan agreements, notes, bonds, indentures, security agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, participation agreements, guarantees and other documents relating to the construction, interim and long-term financing for the construction, operation and maintenance of the Facility and any refinancing thereof (including a lease pursuant to which Owner is the lessee of the Facility) provided by the Lenders, including any and all modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

Force Majeure Event has the meaning set forth in Section 14.6.1.

General Manager has the meaning set forth in Section 5.2.

Governmental Approval means any consent, license, approval, exemption, Permit, “no objection certificate” or other authorization of whatever nature that is required to be granted by any Governmental Authority or any third party with respect to the siting, construction, operation, service, and maintenance of the Facility in accordance with this Agreement, or otherwise necessary to enable Owner or NAES to exercise its rights, or observe or perform its obligations, under this Agreement.

Governmental Authority means any United States federal, state, local or foreign governmental department, commission, board, bureau, authority, agency, court, instrumentality or judicial or regulatory body or entity.

Gross Annual Wages/Salaries is the sum of annual base wages/salary and annual overtime wages.

Hazardous Materials means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyl's (“PCBs”); (b) any chemicals, materials or substances that are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under Applicable Law; or (c) any other chemical, material, substance or waste declared to be hazardous, toxic or polluting material by any Governmental Authority, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority.

“Home Office Costs” has the meaning set forth in Section 7.3.

“Home Office Personnel” means the employees of NAES who are engaged in the provision of the Services, except for Site Personnel.

“Indemnifying Party” means Owner or NAES, as applicable.

“Indemnified Party” means a NAES Indemnitee or an Owner Indemnitee, as applicable.

“Indemnity Claim” means a request for indemnification pursuant to Article X.

“Initial Negotiation Period” has the meaning set forth in Section 14.7.2.

“Labor Costs” has the meaning set forth in Section 7.4.

“Late Payment Rate” means a rate of interest per annum equal to the lesser of (i) two percent (2.0%) above the “prime” reference rate of interest quoted to substantial commercial borrowers on ninety (90) day loans by Wells Fargo Bank or (ii) the maximum rate of interest permitted by Applicable Law.

“Lender” means any entity or entities providing financing or refinancing under the Financing Documents in connection with construction, interim or long-term financing for the Facility, and their permitted successors and assigns.

“Liabilities” means, collectively, any and all Claims, damages, judgments, losses, obligations, liabilities, actions and causes of action, fees (including reasonable attorneys' fees and disbursements), costs (including court costs), expenses, penalties, fines and sanctions.

“Maximum Bonus” means the sum of Two Hundred Forty Thousand Dollars (\$240,000) per Year.

“Mobilization Period” means that period commencing on Owner's delivery of Notice to Proceed to NAES and ending on the Takeover Date.

“Mobilization Period Services” means those services to be performed by NAES during the Mobilization Period, as described in Section 3.1 and set forth in Appendix A.

“NAES” means NAES Corporation and includes NAES's successors and permitted assigns hereunder.

“NAES Party” has the meaning set forth in Section 4.9.

“NAES Indemnitees” has the meaning set forth in Section 10.2.

“NAES Proprietary Information” has the meaning set forth in Section 13.3.

“NAES’s Executive” has the meaning set forth in Section 14.7.2.

“NERC” means the North American Electric Reliability Corporation, or any successor thereto.

“Non-Technical Dispute” has the meaning set forth in Section 14.7(b).

“Notice to Proceed” means that written notice to proceed issued by Owner to NAES as described in Section 3.1.

“O&M Manuals” means the operation and maintenance procedures and Facility systems descriptions, training, safety, chemistry and environmental manuals, together with the documents and schedules described in such manuals.

“Operational Period” means that period during the Term starting on the Takeover Date and ending with the termination of this Agreement.

“Operational Period Services” mean those Services to be performed by NAES during the Operational Period, as described in Section 3.1 and set forth in Appendix A.

“Operations Director” has the meaning set forth in Section 5.1.1.

“Owner” means CPV Fairview, LLC, and includes Owner’s successors and permitted assigns hereunder.

“Owner Indemnitees” has the meaning set forth in Section 10.1.

“Owner’s Executive” has the meaning set forth in Section 14.7.2.

“Party” means a party to this Agreement and **“Parties”** means, collectively, both Parties to this Agreement, unless the context clearly requires a different construction.

“Permit” means any permit, license, consent, approval or certificate that is required for the operation or maintenance of the Facility or the performance of any Service and includes Permits required under Environmental Laws.

“Person” means any Party, individual, partnership, corporation, association, limited liability company, business trust, government or political subdivision thereof, governmental agency or other entity.

“Plan” means a plan adopted or amended pursuant to Section 5.3.

“Plant Manager” has the meaning set forth in Section 5.1.2.

“Preliminary Settlement” has the meaning set forth in Section 14.7.2.

"Pre-Mobilization Services" means those services to be performed by NAES prior to the commencement of the Mobilization Period.

"Project Account" has the meaning set forth in Section 7.2.2.

"Project Agreements" means this Agreement, the Asset Management Agreement, the Energy Management Agreement, each of the other agreements, contracts, permits and documents listed on Appendix G, and each other contract, agreement, permit and other similar document entered into from time to time by (or issued to) Owner and designated as a Project Agreement by Owner and provided to NAES, including applicable equipment maintenance agreements in effect or entered into from time to time by Owner, and equipment contracts with regard to warranties and equipment design and specifications and portions of the Financing Documents relevant to this Agreement.

"Prudent Operation and Maintenance Practices" means those practices, methods and acts generally employed in the power generation industry that at the particular time in question, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was being made, would have been expected to accomplish the desired result of such decision consistent with the goals established in a Budget and Plan, the requirements of Applicable Law, the reliability standards of the applicable electric reliability organization (including NERC), and the market rules and protocols of the Public Utility. With respect to NAES, Prudent Operation and Maintenance Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather include a spectrum of possible practices, methods or acts commonly employed in the power generation industry, including taking reasonable actions to provide a sufficient number of Persons who are available and adequately trained to provide Services at the Facility, and timely perform preventive, routine, and non-routine maintenance and repairs, as exemplified and generally described in Appendix A, subject, in all cases, to the limitations on NAES's authority and duties as set forth in this Agreement.

"Public Utility" means PJM Interconnection, L.L.C. and its permitted successors and assigns.

"Renewal Date" means the December 31st next following the third (3rd) anniversary of the Takeover Date.

"Second Negotiation Period" has the meaning set forth in Section 14.7.3.

"Services" means all the work to be performed by NAES's Home Office Personnel or Site Personnel as described or referenced in Section 3.1 and set forth in Appendix A.

"Site" means the land on which the Facility is situated, as more fully described in Appendix D.

"Site Costs" has the meaning set forth in Section 7.2.1.

“Site Personnel” mean those individuals employed by NAES in the performance of its obligations under this Agreement who are permanently assigned to the Facility Site.

“Standards of Performance” means the standards for NAES’s performance of the Services set forth in Section 3.4.

“Takeover Date” means the date on which NAES initiates its provision of the Operational Period Services pursuant to the terms of this Agreement.

“Technical Dispute” means any dispute (a) which this Agreement expressly provides shall be a Technical Dispute or (b) in the absence of such an express provision, any dispute which the parties to such dispute agree, by its nature, will require either (i) the application of engineering principles or such other specialized technical knowledge in order to reach resolution thereof or (ii) the application of financial or accounting standards and principles in order to reach resolution thereof.

“Technical Expert” means a neutral third-party engaged for the resolution of a Technical Dispute, in accordance with the provisions of Appendix F.

“Term” means the initial term set forth in Section 8.1, together with any extensions thereunder.

“Termination Payment” has the meaning set forth in Section 8.5.

“Termination Transition Period” has the meaning set forth in Section 8.7.

“Third Party Liability” has the meaning set forth in Section 10.3.2.

“U.S. Dollars” or “Dollars” means United States Dollars, the lawful currency of the United States of America.

“Year” means the calendar year. With respect to the Year in which the Takeover Date occurs, a Year will be deemed to begin on the Takeover Date and end on December 31st of such Year. If the Agreement terminates, the final Year will be deemed to end on the date that termination occurs.

ARTICLE III - RESPONSIBILITIES OF NAES

NAES shall perform the Services set forth in Appendix A with its Home Office Personnel or Site Personnel, as applicable, in order to operate and maintain the Facility on behalf of Owner in accordance with this Agreement. This Article III sets forth the processes, limitations and standards applicable to NAES’s performance of the Services.

3.1 Division of Services into Pre-Mobilization Services, Mobilization Period and Operational Period. Pre-Mobilization Services shall be performed by NAES upon Owner’s request prior to the commencement of the Mobilization Period. The Mobilization Period begins on a date

that is chosen by Owner and communicated to NAES via issuance of a written notice to proceed (the “Notice to Proceed”). Upon receipt of Notice to Proceed, NAES shall commence performance of the Mobilization Period Services. The Takeover Date shall occur on the date that Owner accepts, in consultation with NAES, “Substantial Completion” under the EPC Contract, as communicated by Owner to NAES, provided that the Facility has all equipment and systems reliably functional and adequate to meet the requirements of the Project Agreements, Permits and Applicable Law. NAES shall complete any Mobilization Period Services that are not completed on the Takeover Date as soon as practicable thereafter. During the Operational Period, NAES shall have full access to, and care custody and control of, the Facility in order to perform all of the Operational Period Services under this Agreement.

3.2 Procurement.

3.2.1 General. NAES shall nominate, subject to Owner’s written approval, responsible Persons from among the Site Personnel to sign purchase orders for goods and services to be delivered to the Facility, and to issue such purchase orders to vendors. NAES shall sign such purchase orders in the name of Owner. NAES acknowledges that such purchase orders are for the exclusive benefit of Owner and the Facility. NAES shall endeavor to negotiate with vendors from standard terms and conditions, including reasonable warranties in favor of Owner.

3.2.2 Non-Budgeted Items. Unless approved by Owner in writing, NAES shall manage purchasing within the line-by-line spending approved in a Budget. NAES may make non-budgeted purchases without first receiving Owner approval only if, in NAES’s reasonable judgment, such purchases are required to address an Emergency.

3.2.3 Extraordinary Items. Notwithstanding that a purchase is contemplated by a Budget, NAES shall obtain Owner’s written approval prior to procurement of any Extraordinary Item. Owner may elect to directly procure Extraordinary Items.

3.2.4 Affiliate Contracts. If NAES intends to issue a purchase order to an Affiliate or specialty service division of NAES, NAES shall first disclose such relationship to Owner. NAES may only issue such purchase orders following NAES’s receipt of written approval from Owner. NAES will not provide information to or solicit bids from an Affiliate for any goods or services for the Facility without the prior written approval of Owner, which approval may be through the approval by Owner of a written policy regarding the provision of information to and the solicitation of bids from NAES Affiliates.

3.3 Dispatch. NAES shall comply with any applicable dispatch instructions of the Public Utility, Owner or Energy Manager (or any successor of any of them, or other Person identified by Owner in writing to NAES as being authorized to provide dispatch instructions). In the event NAES receives conflicting dispatch instructions, NAES shall follow the dispatch instructions of Energy Manager unless NAES determines, in its reasonable judgment, that so doing would be reasonably likely to be in violation of Applicable Law, in which case it will inform Owner of the potential violation and await further instructions from Owner. NAES will give Owner and Energy Manager prompt notice of any inability to make deliveries of power or capacity required and of NAES’s plan to restore operation of the Facility and of any plan by the counter-

party (where a Project Agreement is involved) to do so (if NAES has been notified thereof). In case of any interruption, curtailment or reduction in (i) supplies of fuel or (ii) acceptance of energy or capacity by the Public Utility, or in case of any other dispatch constraint imposed on the Facility, NAES shall promptly notify Owner and Energy Manager and await further instructions from Owner or Energy Manager. Upon removal of the constraint, NAES shall use its reasonable efforts to restore the availability of the Facility for dispatch as promptly as possible.

3.4 Standards for Performance of the Services. NAES shall perform the Services in accordance with (i) the O&M Manuals, (ii) the Facility Manuals, (iii) the applicable Budget and Plan, (iv) Applicable Laws, (v) Prudent Operation and Maintenance Practices, (vi) insurer requirements delivered to NAES by Owner in writing, (vii) the requirements in the Project Agreements and (viii) this Agreement. NAES will perform the Services and other obligations under this Agreement in a manner consistent with this Agreement, or, if provided, Owner's directions. The Parties acknowledge and agree that actions taken (or not taken) by NAES pursuant to Owner's direction shall be deemed to comply with the Standards of Performance, and NAES shall have no liability for acting or refraining to act in accordance with Owner's directions. The Parties further acknowledge that reference to the Project Agreements is not intended to and does not make NAES a party to the Project Agreements or to impose any obligations on NAES to the counterparties under the Project Agreements.

3.5 Personnel Matters. Consistent with the Plan and Budget, NAES shall provide and make available as necessary all such labor, professional, supervisory and managerial personnel as are required to perform the Services. The Site Personnel and Home Office Personnel that perform the Services shall be qualified (including the possession of appropriate licenses, if necessary) and experienced in the operation and/or maintenance of power generation facilities similar to the Facility and in the duties to which they are assigned and shall meet the requirements for personnel of the Facility under the Financing Documents and in accordance with Prudent Operation and Maintenance Practices. Except as provided herein and in Section 3.8.1 below, NAES shall be solely responsible for determining the working hours, rates of compensation and all other matters relating to the employment of NAES's Site Personnel and Home Office Personnel. NAES shall retain sole authority, control and responsibility with respect to its employment policy. NAES shall submit for Owner's approval the staffing requirements for the Facility. NAES shall submit its selection for Plant Manager and Operations Director to Owner, who will have written approval over NAES's selection of such personnel, which approval shall not be unreasonably delayed or denied. NAES shall inform Owner prior to replacement of its Plant Manager or Operations Director. NAES shall obtain Owner's written approval prior to offering employment to a replacement Plant Manager or Operations Director, which approval shall not be unreasonably delayed or denied.

3.6 No Liens or Encumbrances. NAES will keep and maintain the Facility free and clear of all liens and encumbrances resulting from the personal debts and obligations of NAES or the failure by NAES to perform the Services.

3.7 Emergency Action. In the event of an imminent or actual emergency affecting the safety, health or protection of, or otherwise endangering, the environment or any persons or property located at or about the Facility (each such event, an "Emergency"), NAES shall take

immediate action consistent with the Standards of Performance to prevent or mitigate any damage, injury or loss threatened by such Emergency, and shall notify Owner of such Emergency and NAES's response as soon as practical under the circumstances. To the extent NAES deems reasonable in response to an Emergency, NAES may procure goods and services as necessary to respond to an Emergency, the costs of which shall be Site Costs.

3.8 Site Personnel during Commissioning.

3.8.1 Activities in Support of EPC Contractor. During the Mobilization Period, the Services include the provision of Site Personnel to work under the direction and supervision of the EPC Contractor, in fulfillment of certain Owner's obligations under the EPC Contract. Notwithstanding any other provision of this Agreement to the contrary, but provided NAES provides appropriately qualified personnel for this purpose, NAES shall have no liability for acts and omissions of Site Personnel acting under the direction and supervision of the EPC Contractor. Notwithstanding any provisions of Section 10.1 or Section 10.2 to the contrary, Owner shall defend, indemnify and hold harmless the NAES Indemnitees from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings (including reasonable fees and disbursements of counsel) resulting from the acts or omissions of Site Personnel acting under the direction and supervision of EPC Contractor pursuant to this Section 3.8.1.

3.8.2 Turnover of Facility Systems prior to Takeover Date. In the event that NAES is requested by Owner to assume responsibility for Facility systems following their turnover by the EPC Contractor and in advance of the Takeover Date, NAES's liability resulting from the acts or omissions of Site Personnel operating and maintaining such systems shall be no greater than it would be following the Takeover Date. Notwithstanding any provisions of Section 10.1 or Section 10.2 to the contrary, Owner shall defend, indemnify and hold harmless the NAES Indemnitees from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings (including reasonable fees and disbursements of counsel) resulting from the acts or omissions of Site Personnel operating and maintaining such Facility systems prior to the Takeover Date, except to the extent NAES would be liable to Owner for such acts or omissions following the Takeover Date.

3.9 Licenses. NAES shall obtain and maintain all Permits, licenses and other Governmental Approvals required by Applicable Law to be maintained by NAES or any of its employees, in its or their own name, to enable NAES to provide the Services hereunder.

3.10 Owner Corporate Policies and Procedures. NAES shall use its best efforts to comply with Owner's Corporate Policies and Procedures, as the same may be modified or amended by Owner from time to time. A list of Owner's current Corporate Policies and Procedures is set forth on Appendix H. Owner shall notify NAES of any modifications or additions to its Corporate Policies and Procedures promptly after such modification or addition becomes effective.

ARTICLE IV - ITEMS TO BE FURNISHED BY OWNER

4.1 General. Owner expressly reserves the exclusive authority to make, and shall make, such business and strategic decisions as it deems appropriate from time to time in reference to the operation and maintenance of the Facility. Upon request from NAES, Owner shall promptly furnish to NAES, at Owner's expense, the information, access, materials, instructions and other items described in this Article IV. All such items will be made available at such times and in such manner as may be reasonably required for the expeditious and orderly performance of the Services by NAES.

4.2 Information. Owner shall provide to NAES copies of all Project Agreements, and any modifications or additional Project Agreements promptly after execution thereof, as well as all Governmental Approvals with respect to the Facility and technical, operational and other Facility information in Owner's possession that supports NAES's performance of the Services. Subject to the Standards of Performance, NAES will be entitled to rely upon any information provided by Owner or any other party to the Project Agreements in the performance of the Services.

4.3 Access to Facility. Owner shall provide NAES access to the Site, and to persons and data at the Facility.

4.4 Other Owner Supplied Items. Owner shall make available to NAES the following items:

4.4.1 Facility Manuals. Owner shall provide the master copies of the Facility Manuals to NAES for use in development of the O&M Manuals. Thereafter, Owner shall provide NAES with any updates to the Facility Manuals received from equipment manufacturers.

4.4.2 Fuel; Water; Stand-by Electricity. Owner shall furnish and deliver to the Facility fuel, water and stand-by electricity in amounts sufficient to operate the Facility.

4.4.3 Spare Parts. Owner shall provide and furnish, in consultation with NAES, an initial inventory of spare parts as necessary for NAES to perform the Services and Owner shall fund additional purchases of spare parts and supplies as set forth in a Budget.

4.5 Instructions, Approvals, Budgeting.

4.5.1 Instructions and Approvals. Owner shall provide or cause to be provided to NAES all instructions NAES is required to obtain in accordance with this Agreement. Owner shall not unreasonably withhold approvals required by this Agreement.

4.5.2 Budgeting. Owner shall make timely and commercially reasonable budgeting decisions to permit the Facility to operate safely and in accordance with Applicable Law and to permit NAES to perform its obligations hereunder.

4.6 Compliance. Owner shall not direct NAES to take any action inconsistent with Applicable Law or otherwise adversely affecting the safety, health or protection of any persons or property located at or about the Facility.

4.7 Project Agreements. Owner shall administer and comply with the Project Agreements. Owner shall provide NAES written notice of any changes to requirements under the Project Agreements or a copy of any agreement replacing any Project Agreement.

4.8 Permits. Owner shall obtain from the appropriate Governmental Authorities all Permits for the ownership, operation and maintenance of the Facility, and shall obtain all such Permits in Owner's name. Unless otherwise agreed by NAES and Owner in a separate writing, Owner shall make any and all applicable functional registrations as required by NERC on behalf of the Facility.

4.9 Environmental Matters.

4.9.1 Compliance with Environmental Laws. During the Term of this Agreement, NAES shall cooperate and assist Owner with Owner's acquisition of data and information, and preparation and filing with appropriate Governmental Authorities of any notices, plans, submissions, or other materials and information necessary for compliance with applicable Environmental Laws and the requirements of any Governmental Approvals related to the Facility. All such environmental reports shall be submitted by, and in the name of, Owner and not NAES. All costs associated therewith, including the costs of any outside consultants, legal services, Governmental Authority charges, sampling and remedial work, shall be paid by Owner as a Site Cost or reimbursed to NAES as a Home Office Cost. Any action taken by NAES pursuant to any such applicable Environmental Law, including proceedings and filings made in connection therewith, shall be undertaken, and any Home Office Costs associated with any such compliance action shall only be incurred, by NAES with Owner's prior consent, unless a Governmental Authority or Applicable Law requires NAES to incur such costs and expenses prior to obtaining such consent.

4.9.2 Corrective Action. Nothing contained herein shall be construed as requiring NAES to take any corrective action with respect to the operation, maintenance, use or condition of the Facility unless (y) affirmatively and expressly directed in writing to so do by Owner and appropriate funding is made available by Owner, or (z) affirmatively and expressly directed to do so by a Governmental Authority, in order to comply with any Environmental Law, in which case the cost of any corrective actions so undertaken shall be deemed a Site Cost. Owner shall serve as the "Responsible Official" for purposes of Clean Air Act permitting and reporting, as "Designated Representative" for purposes of applicable environmental "Cap and Trade" programs requiring such, including but not limited to Acid Rain Program, Clean Air Interstate Rule or its replacement and Regional Greenhouse Gas Initiative, as applicable, and as corporate responsible official for other environmental programs, permitting and reporting. NAES and Owner agree (i) in the course of performing Services under this Agreement, neither NAES nor any of its officers, directors, employees, agents, representatives or Affiliates (collectively, the "NAES Parties") is, has been or will be asserted by Owner to be, nor will any such Person have responsibility as, in each case before an environmental protection government agency, an "operator" of the Facility for purposes of, and as that term is used in, Environmental Law; and (ii) Owner shall not assert before any environmental protection governmental agencies that a NAES Party is the "operator" of the Facility for purposes of, and as that term is used in, Environmental Law. Owner agrees to use its

commercially reasonable efforts to take or cause to be taken all reasonable actions, to do or cause to be done, and to assist and cooperate with NAES in doing all reasonable things, to establish before such environmental governmental protection agencies that no NAES Party is the “operator” of the Facility.

4.10 Asset Manager; Energy Manager.

4.10.1 Asset Manager. In accordance with the Asset Management Agreement, Asset Manager provides comprehensive management and administrative services for the Facility. Owner appoints Asset Manager as Owner’s agent and representative for purposes of this Agreement, and Asset Manager shall have authority to act on Owner’s behalf with respect to all matters relating to this Agreement (including such matters as may be undertaken under this Agreement at Owner’s sole discretion). To the extent of any conflict between the directions or requests given by Owner and Asset Manager, NAES shall be obligated to follow the directions or requests given by Owner unless Owner has notified NAES in writing that Asset Manager’s directions should prevail. Owner may terminate or limit Asset Manager’s authority to act as Owner’s agent under this Agreement at any time by giving prior written notice to NAES.

4.10.2 Energy Manager. In accordance with the Energy Management Agreement, Energy Manager provides energy management services for the Facility. NAES shall cooperate with Energy Manager and provide information to Energy Manager, subject to approval of Owner, required to fulfill their responsibilities with respect to the Facility.

ARTICLE V - REPRESENTATIVES, BUDGETS AND REPORTS

5.1 Representatives of NAES.

5.1.1 NAES Operations Director. Subject to Section 3.5, and promptly after the Effective Date, NAES shall appoint an individual, the “Operations Director,” from among its Home Office Personnel who shall be authorized to represent NAES with Owner concerning NAES’s performance of the Services. The Operations Director shall also coordinate the Home Office Personnel in supporting the Site Personnel. NAES is bound by the written communications, directions, requests and decisions made by its Operations Director on its behalf. NAES shall notify Owner in writing of the identity of its Operations Director, and of any successors. The Operations Director has no authority to modify, amend or terminate this Agreement or, absent written notice by NAES to the contrary, to enter into any other agreement on behalf of NAES other than as provided herein. If in the reasonable opinion of Owner the Operations Director is not adequately performing the requirements of the job function, Owner shall have the right to request that NAES replace the Operations Director, provided that Owner identifies specific reasons for such request. NAES will evaluate Owner’s request and make commercially reasonable efforts to effect such replacement in light of the circumstances, Applicable Law, and NAES’s human resource policies and procedures.

5.1.2 NAES Plant Manager. Subject to Section 3.5, NAES shall appoint an individual, the “Plant Manager,” who shall direct and manage NAES’s Site Personnel in the

performance of the Services. For issues arising out of the day-to-day administration of the Operational Period Services, the Plant Manager or his designee may communicate directly with Owner, the Asset Manager, and the Energy Manager. The Plant Manager has no authority to modify, amend or terminate this Agreement or to enter into any other agreement on behalf of NAES other than as provided herein. If in the reasonable opinion of Owner the Plant Manager is not adequately performing the requirements of the job function, Owner shall have the right to request that NAES replace the Plant Manager. NAES shall evaluate such request and take action as is appropriate in light of the circumstances, Applicable Law, and NAES's human resource policies and procedures (including modifying the Plant Manager's performance to the satisfaction of Owner), and shall respond in writing to Owner setting forth NAES's explanation for the taking of such action.

5.2 Representatives of Owner. Owner, or Asset Manager on behalf of Owner, shall appoint an individual (the “General Manager”) who shall be authorized and empowered to act for and on behalf of Owner on all matters concerning the operation of the Facility, the day-to-day administration of this Agreement and Owner’s obligations hereunder. Subject to and without limiting Section 14.8, in all such matters, Owner shall be bound by the written communications, directions, requests and decisions made by the General Manager. Owner shall notify NAES in writing upon the appointment of the General Manager, and of any successors. The General Manager has no authority to modify, amend or terminate this Agreement or, absent written notice by Owner to the contrary, to enter into any other agreement on behalf of Owner other than as provided herein.

5.3 Plans and Budgets.

5.3.1 Adoption.

5.3.1.1 Mobilization Period. As soon as practicable following Owner’s delivery of Notice to Proceed to NAES, NAES shall deliver to Owner a proposed budget for the accomplishment of the Mobilization Period Services. Owner and NAES shall then meet to finalize this budget. NAES shall not undertake Mobilization Period Services unless having received from Owner an approved Budget for the Mobilization Period or other written authorization from Owner to incur Site Costs and Home Office Costs by performing the Mobilization Period Services.

5.3.1.2 Operational Period. As soon as practicable following Owner’s delivery of Notice to Proceed to NAES, with respect to the initial Year, and one hundred twenty (120) days prior to the beginning of each subsequent Year, Owner and NAES shall use reasonable efforts to agree on the key assumptions for such Year that NAES shall use to construct the proposed Budget and Plan with respect to the Services. The key assumptions are fuel costs, an inflation factor for Site Costs and the Facility operating profile (Facility capacity factor and production schedule). NAES shall structure each Budget on a monthly basis and shall project, in detail reasonably acceptable to Owner, all Site Costs and Home Office Costs to be expended in the performance of the Services. Each Plan shall state the key assumptions upon which the related Budget is based as well as the implementation plans for the Services, including: (i) anticipated maintenance and repairs, (ii) routine maintenance and overhaul schedules (including planned major maintenance), (iii) procurement, (iv) staffing, personnel and labor activities, (v)

administrative activities, (vi) capital improvements, and (vii) other work proposed to be undertaken by NAES. NAES shall deliver to Owner the proposed Budget and Plan ninety (90) days prior to each Year. Owner shall review each proposed Budget and Plan within thirty (30) days of submission by NAES (or as soon as possible with respect to the Budget for the initial Year) and may, by written request, require changes, additions, deletions and modifications thereto. Owner and NAES shall then use reasonable efforts to agree upon a final Budget and Plan prior to the commencement of the applicable Year. Each final Budget and Plan shall remain in effect throughout the applicable Year, subject to updating, revision and amendment proposed by either Party and consented to in writing by the other Party.

5.3.1.3 Amendments. If either Party becomes aware of facts or circumstances that it believes necessitate a change to a Budget or Plan, that Party shall immediately notify the other Party, specifying the impact upon the Budget and the reasons for the change. The NAES Operations Director or NAES Plant Manager shall then discuss appropriate amendments to the Budget with the General Manager.

5.3.1.4 Failure to Agree. Subject to Section 4.5.2, the Parties acknowledge that it is necessary that Owner retain ultimate authority with respect to expenses incurred for the Facility. Accordingly, NAES shall accept each Budget as finally determined by Owner. To the extent that Owner limits funds for Site Costs and Home Office Costs, NAES is relieved from performance that would incur such costs. A Dispute as to whether a Budget is consistent with Section 4.5.2 shall be handled as a Technical Dispute.

5.3.3 Variance from Budget. Except as otherwise permitted in response to an Emergency in accordance with Section 3.7, NAES will obtain Owner's approval for any expenditures that (a) exceed an approved budgeted line item expense or capital project by the lesser of ten percent (10%) or twenty-five thousand dollars (\$25,000), (b) are an unbudgeted expense or capital project greater than ten thousand dollars (\$10,000), or (c) NAES proposes to re-allocate in the event that there is an opportunity to re-allocate approved budgeted line item expenses to a comparable unbudgeted or under-budgeted expense. In the event that cumulative budget overruns exceed two hundred thousand dollars (\$200,000) in any Year, NAES will thereafter obtain Owner's approval for any expenditure greater than ten thousand dollars (\$10,000).

5.4 Availability of Operating Data and Records. NAES shall deliver Facility data recorded, prepared or maintained by NAES to Owner: (i) to assist Owner in complying with requirements of Governmental Authorities, Governmental Approvals and Project Agreements; or (ii) upon any request by Owner.

5.5 Litigation and Permit Lapses. Upon obtaining actual knowledge, either Party shall submit prompt written notice to the other Party of the following, to the extent relating to the Facility or the Services: (i) any litigation, claims or actions filed by or with any Governmental Authority; (ii) any actual refusal to grant, renew or extend, or any action filed with respect to the granting, renewal or extension of, any Governmental Approval; (iii) all penalties or notices of violation issued by any Governmental Authority; (iv) any dispute with any Governmental Authority that

may affect the Facility; and (v) with respect to the matters identified in items (i), (ii), (iii) or (iv), any threats of such matters, which matters may affect the Facility.

5.6 Reporting.

5.6.1 Daily Reporting. Each day NAES shall provide Owner an electronic mail transmission of the operational condition of the Facility including a summary of Facility operations for the preceding twenty-four (24) hours and any expected material operational issues or maintenance activities expected in the subsequent twenty-four (24) hour period, in reasonable detail as requested by Owner.

5.6.2 Monthly Reporting. Within ten (10) Business Days after the end of each calendar month, NAES shall submit a report, in a form mutually agreed upon by the Parties, summarizing all operations and maintenance conducted during such calendar month, including without limitation information regarding power generation, availability, heat rates and fuel consumption (each on a monthly and year-to-date basis), procurement, capital improvements, labor relations, training activities, safety issues, significant interactions with governmental authorities, significant environmental and permit issues including any notices of violation, significant operating problems along with remedial actions planned, a brief summary of major activities planned for the next two reporting periods and other significant matters, which report shall include (with respect to quantitative items) a comparison of actual values to corresponding values in the current Budget and Plan.

5.6.3 Annual Reporting. As soon as available, and in any event within thirty (30) days after the end of each Year, NAES shall submit an annual report certified by the Plant Manager describing, in detail substantially similar to that contained in the monthly reports referred to in Section 5.6.2 above, all of the Facility operations for such Year and presenting a comparison of such Facility operations with the goals set forth in the Plan and Budget for such Year and with those obtained for the preceding Year, if any, and an explanation of any substantial deviations. Within thirty (30) days after the submission of each annual report, the Plant Manager shall meet with Owner and Asset Manager to review and discuss the report and to report upon any other aspects of the Facility operations that Owner or Asset Manager may wish to discuss.

5.7 Other Information. NAES shall promptly submit to Owner any material information concerning new or significant aspects of the Facility operations and, upon Owner's request, shall promptly submit any other information concerning the Facility or the Services. Such information may include any information and certifications required by any Lender with respect to the Services.

ARTICLE VI - LIMITATIONS ON AUTHORITY

6.1 General Limitations. NAES has no authority to make policies or decisions with respect to the overall operation or maintenance of the Facility as a commercial enterprise. Owner shall determine all such matters. Notwithstanding any provision in this Agreement to the contrary, unless previously approved in a Budget and Plan or otherwise approved in writing by Owner, in connection with NAES's provision of Services hereunder, NAES is prohibited from:

6.1.1 Disposal of Assets. Selling, leasing, pledging, mortgaging, encumbering, conveying, or making any license, exchange or other transfer or disposition of the Facility, the Site or any other property or assets of Owner, including any property or assets purchased by NAES, the cost of which is a Site Cost or a Home Office Cost;

6.1.2 Make Expenditures. Making any expenditure or acquiring on a Site Cost or a Home Office Cost basis any goods or services from third parties, except in conformity with a Budget or as authorized by Owner's General Manager; provided, however, that in the event of an Emergency, NAES, without prior approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.7;

6.1.3 Other Actions. Taking or agreeing to take any other action or actions that, individually or in the aggregate, materially varies from the applicable Budget and Plan; provided, however, that in the event of an Emergency, NAES, without prior approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 3.7;

6.1.4 Act Regarding Lawsuits and Settlements. Settling, compromising, assigning, pledging, transferring, releasing or consenting to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by Owner or NAES, the cost of which, in the case of NAES, would be a Site Cost or a Home Office Cost hereunder, or submitting any such claim, dispute or controversy to arbitration or judicial process, or stipulating in respect thereof to a judgment, or consent to the same; provided, however, that such prohibition shall not apply to, nor shall it be construed as a release or waiver of, any of NAES's rights or obligations pursuant to this Agreement or any other agreement between the Parties;

6.1.5 Pursue Transactions. Engaging in any other transaction on behalf of Owner not permitted under this Agreement;

6.1.6 No Action. Taking any action that would cause Owner to default under any Project Agreement or Financing Document or to violate any Applicable Law; or

6.1.7 Contract. Making, entering into, executing, amending, modifying, supplementing or giving or accepting any waivers under, any contract or agreement on behalf of or in the name of Owner or holding itself out as having the authority to do so or entering into or initiating any dispute resolution under any Project Agreement.

ARTICLE VII - COMPENSATION AND PAYMENT

7.1 General. Owner shall pay NAES, or fund, as applicable, in the manner and at the times specified in this Article VII, all Site Costs, Home Office Costs, Labor Costs and the Fee plus, to the extent earned by NAES, the Bonus, all as further described below.

7.2 Site Costs Payment.

7.2.1 Definition. “Site Costs” include costs for the following: (i) equipment, material, supplies, consumables, spare parts, replacement components, tools, office equipment and supplies and utilities used at the Facility Site; (ii) special training of Site Personnel conducted on-Site or off-Site and associated travel and living expenses; (iii) third party advisors, consultants, attorneys, accountants and contractors providing work in support of the Services that cannot reasonably be performed by Site Personnel; (iv) Governmental Approvals; (v) community relations and labor relations activities; and (vi) any other activity exclusive of those listed in Section 7.3 that NAES performs under this Agreement for the benefit of the Facility or that is approved in a Budget pursuant to the terms of this Agreement.

7.2.2 Project Account. On or before Owner’s issuance of the Notice to Proceed, Owner shall establish, or cause to be established, a bank account (the “Project Account”) in the name of Owner. Owner shall at all times maintain any required minimum balance in the Project Account. Any interest accruing on such Project Account is for the benefit of Owner. If Owner elects from time to time, NAES shall nominate Site Personnel, to be approved by Owner, who shall have the written authority to sign checks against the Project Account in accordance with the terms of this Agreement. NAES acknowledges that it has no right, title or interest in or to the Project Account and waives any right to claim a security interest in, or take a lien against, the Project Account.

7.2.3 Payment Process. No later than fifteen (15) days prior to the start of each calendar month, NAES will deliver to Owner a Draw Request for sufficient funds as reasonably anticipated by NAES to become due and payable during the immediately following month (the first Draw Request will be made as soon as practicable following issuance of Notice to Proceed by Owner). NAES shall itemize each Draw Request in reasonable detail. NAES shall base each Draw Request upon the applicable Budget and any modifications thereof, and adjust the Draw Request to: (i) credit Owner for amounts deposited in the Project Account in response to previous Draw Requests that have not been spent as of the time of the current Draw Request, except for (A) any minimum balance and (B) amounts not yet spent but for which commitments have been incurred; (ii) credit Owner for all interest that has accrued in the Project Account since the most recent adjustment; and (iii) claim all bank charges relating to the Project Account that have accrued since the most recent adjustment. On or before the last day of the month during which a Draw Request is made, Owner shall deposit in the Project Account an amount equal to the amount set forth in the applicable Draw Request. NAES shall act as Owner’s payment agent with respect to third party providers of goods and services, and shall pay such third parties only from funds provided by Owner via the Project Account, and never from NAES’s own funds. NAES shall provide Owner with descriptions of Site Costs in the preceding calendar month supported by

receipts and other appropriate documentation by the tenth (10th) Business Day of each calendar month.

7.3 Home Office Costs. Subject to the applicable Budget, Owner shall reimburse NAES for the following costs (the “Home Office Costs”) incurred by NAES in performing the Services: (i) relocation and recruitment expenses for NAES’s Site Personnel; (ii) costs incurred in response to an Emergency; (iii) time and travel costs incurred by Home Office Personnel when providing the Pre-Mobilization Services requested by Owner and the Mobilization Period Services set forth in Appendix A(I) in each case at the applicable rates set forth in Appendix E; (iv) time and expenses for providing Services provided under Appendix A(V) at the applicable rates set forth in Appendix E; (v) cost of the insurance maintained by NAES in accordance with Section 9.1; (vi) to the extent approved by Owner, third party advisors, consultants, attorneys, accountants and contractors retained and managed by Home Office Personnel in support of the Services; and (vii) any other cost designated by the Parties as a Home Office Cost pursuant to the terms of this Agreement, including Services performed under Appendix A(VII).

For the applicable Budget as referenced above, NAES will refine the existing Mobilization Period budget and Operational Period budget as referenced in the NAES proposal to Owner dated October 07, 2016 and as further amended by email correspondence dated November 04, 2016 and January 04, 2017 (“NAES Proposal”). NAES acknowledges that these budgets are estimates based on then-current known information, however, NAES believes that the final Budgets as developed will not be materially different than the estimated budgets in the NAES Proposal.

NAES will review and, if necessary, revise the Home Office Costs amount included in the Mobilization Budget during the Mobilization Period (“Revised Mob Period Home Office Costs Budget”). Actual Home Office Costs charged by NAES during the Mobilization Period shall not exceed Five Hundred Forty-Two Thousand Dollars (\$542,000).

7.3.1 Additional Support Services Included in the Fee. In addition to the Home Office Personnel Operational Period Services described in Appendix A(IV), NAES shall provide to Owner, at no additional cost over and above the Fee, the following non-routine Home Office Personnel support services to support Facility operations:

- (i) during the first year of the Operational Period, up to three hundred (300) hours of non-routine Home Office Personnel support services; and
- (ii) during each of the second and third years of the Operational Period up to two hundred (200) hours of non-routine Home Office Personnel support services.
- (iii) thirty (30) hours of engineering Home Office Personnel support services over the Term of this Agreement at the discretion of the Owner.
- (iv) during the Mobilization Period, environmental review of the air permit by a Home Office Personnel environmental specialist.

For the avoidance of doubt, (a) third party costs associated with the provision of such non-routine Home Office Personnel support services, including, but not limited to, travel expenses, constitute Home Office Costs under the Agreement and are not included within the Fee; and (b) Home Office Personnel support services performed beyond the hours specified in paragraphs (i) and (ii) above shall be invoiced at the same rates applicable to the Service performed under Section 7.3(iv) above. All non-routine Home Office Personnel support services hours will be scheduled by mutual agreement between NAES and Owner, and shall be subject to the reasonable availability of NAES's personnel. NAES shall provide Owner a monthly report as to the number of such hours accrued through the end of the prior month.

7.4 Labor Costs. Owner shall reimburse NAES for the following costs (collectively, "Labor Costs") for Site Personnel: (i) wages and salaries (including short term disability, flex leave, holidays, or other paid time off in accordance with NAES's policies and procedures); (ii) overtime pay; (iii) Employee Bonus; (iv) customary or agreed severance payments; (v) worker's compensation premiums; (vi) unemployment insurance, (vii) long term disability insurance, group medical, dental and life insurance, defined contribution retirement plans and other employee benefits; and (viii) payroll taxes imposed on any of the above.

7.5 Fee.

7.5.1 Mobilization Period. Owner shall pay to NAES the Fee in equal monthly installments commencing with the month during which Owner issues the Notice to Proceed and ending on the month of the then scheduled Takeover Date. The Fee during Mobilization Period shall not be prorated. If the Takeover Date fails to occur within three (3) months of the scheduled Takeover Date set forth in the Notice to Proceed, provided that the delay is not directly caused by NAES, then commencing on the fourth (4th) month after the scheduled Takeover Date Owner shall pay an amount equal to Ten Thousand Dollars (\$10,000) for each month that the Takeover Date is delayed, as an additional Fee. If the Takeover Date occurs earlier than the scheduled Takeover Date there will be no reduction in the Mobilization Period Fee. On or before the tenth (10th) Business Day of each calendar month following issuance of Notice to Proceed, NAES shall submit monthly invoices to Owner for payment of the Fee. Owner shall pay the Fee no later than the Due Date for the applicable invoice.

7.5.2 Operational Period. Commencing on the Takeover Date and thereafter during the Operational Period, Owner shall pay to NAES the Fee. The Fee shall be paid in monthly installments of one-twelfth (1/12) of such Fee. If the Takeover Date occurs on a day other than the first day of a calendar month or the termination of the Agreement occurs on a day other than the last day of a calendar month, NAES shall prorate the Fee for such month to reflect the actual number of days in such month that NAES provided Operational Period Services. Those Services listed in Appendix A(IV) are included in the Fee during the Operational Period.

7.6 Bonus. During each Year, NAES may earn a Bonus. NAES shall calculate the payment by comparing actual Facility and NAES performance to the performance goals defined in Appendix B and submit such calculation to Owner no later than February 1.

7.7 Late Payment. To the extent Owner or NAES fails to pay any amount required to be paid under this Agreement by the Due Date, the unpaid amount shall accrue interest each day at the Late Payment Rate from the Due Date until such amount (plus accrued interest) is paid in full.

7.8 Escalation. The Fee and Maximum Bonus will be escalated annually beginning on January 1 of the Year following the Effective Date by applying the Escalation Factor to each amount pursuant to the method set forth in Appendix C.

7.9 Invoicing. On or before the 10th Day of each month (or, as soon as practicable, for the first invoice following issuance of the Notice to Proceed), NAES shall submit an invoice to Owner for the following: (i) the Fee for the next following month; (ii) the Bonus (if due) for the preceding period in accordance with Section 7.6 and Appendix B; (iii) Labor Costs reasonably anticipated to be incurred in the next following month; (iv) the Home Office Costs incurred by NAES in the preceding month. The invoice shall be accompanied by supporting documentation and a true-up reflecting the amounts actually incurred in Labor Costs during the preceding month. Owner shall pay the invoice not later than the last calendar day of the month.

7.10 Cost Audit. Owner is entitled to conduct, or cause to be conducted, an audit and review of NAES's records with respect to all Home Office Costs together with any supporting documentation for a period of three (3) years from and after the date of the audited payment. If, pursuant to such audit and review, it is agreed that any amount previously paid by NAES was not properly incurred as a Home Office Cost, NAES shall credit such amount to Owner in the next subsequent Invoice. Any dispute with respect to the findings of an audit conducted pursuant to this Section 7.10 shall be resolved as a Technical Dispute.

ARTICLE VIII - TERM

8.1 Term. The initial Term of this Agreement is from and including the Effective Date to and including the Renewal Date, which is the December 31st next following the third (3rd) anniversary of the commencement of the Operational Period. This Term shall extend in increments of one additional Year following the Renewal Date until a Party notifies the other Party of its intent not to extend the Term by written notice delivered at least six (6) months prior to the Renewal Date or the end of any subsequent Year during the extended Term. Notwithstanding the foregoing, this Agreement and the Term is subject to earlier termination pursuant to Sections 8.2 and 8.3.

8.2 Termination by Owner.

8.2.1 Termination for Convenience. Subject to Section 8.5.2, Owner may terminate this Agreement without cause and for Owner's convenience at any time by giving ninety (90) days prior written notice of such termination to NAES. Until the effective date of such termination, NAES shall continue to perform the Services and Owner shall continue to compensate NAES in accordance with this Agreement.

8.2.2 Termination for Cause. Owner is permitted to terminate this Agreement if any of the following events occur: (i) Bankruptcy of NAES; (ii) payment default by NAES (other

than a disputed payment) that NAES fails to cure within ten (10) days after NAES has received written notice of such default; (iii) default by NAES in the performance of its obligations under this Agreement that has a material effect on the functioning of the Facility and that NAES has failed to cure or make substantial progress in the reasonable opinion of Owner towards curing within ninety (90) days of written notice of such failure; or (iv) if NAES incurs the maximum liability under Section 11.2.2 in any Year.

8.2.3 Termination for Sale or Change of Control. Subject to Section 8.5.2, in the event of a direct or indirect sale or transfer of the Facility (other than to an Affiliate) or a change of control of Owner, whether by merger, sale of equity interests, or otherwise (other than to an Affiliate), Owner may terminate this Agreement by giving NAES ninety (90) days prior written notice of Owner's good faith estimate of such termination. Until the effective date of such termination, NAES shall continue to perform the Services and Owner shall continue to compensate NAES in accordance with this Agreement. If the sale or change in control occurs earlier or later than estimated by Owner, this Agreement will terminate upon the occurrence of the sale or change in control; provided, that in the event the sale or change in control occurs earlier than estimated, Owner shall still be obligated to compensate NAES for the Fee for the entire ninety (90) day notice period.

8.3 Termination by NAES. NAES is permitted to terminate this Agreement if any of the following events occur: (i) payment default by Owner (other than a disputed payment) that is not cured within ten (10) days after the Due Date for any invoice or Draw Request; (ii) Bankruptcy of Owner; (iii) default by Owner of any other obligation under this Agreement that has a material effect on NAES's ability to perform the Services and that Owner has failed to cure or make substantial progress in the reasonable opinion of NAES towards curing within ninety (90) days of written notice of such failure; or (iv) actions or omissions by Owner that, in the reasonable opinion of NAES, have a material negative effect on the capability of the Facility to meet the requirements of the Project Agreements and Permits. In lieu of termination, NAES may suspend the Services or take such other action as it deems reasonable to mitigate its risks pending cure by Owner.

8.5 Termination Payments.

8.5.1 As soon as practicable after all cost information is gathered following termination of this Agreement, NAES shall invoice Owner for (i) Services rendered by NAES through the termination date, including all Home Office Costs, the Fee and the Bonus, if any, earned through the date of termination but not paid; and (ii) for terminations other than pursuant to Section 8.2.2, an amount equal to its reasonable demobilization costs (collectively, the "Termination Payment"). Owner shall pay the invoice for the Termination Payment no later than the Due Date.

8.5.2 In addition to the Termination Payment, in the event Owner terminates this Agreement pursuant to Section 8.2.1 or Section 8.2.3, Owner shall pay NAES an additional termination payment in an amount equal to (x) one hundred percent (100%) of the then applicable single-Year Fee, if such termination occurs before the first (1st) anniversary of the Takeover Date; or (y) fifty percent (50%) of the then applicable single-Year Fee, if such termination occurs after the first (1st) anniversary of the Takeover Date, but before the second (2nd) anniversary of the

Takeover Date; or (z) fifty percent (50%) of the then applicable single-Year Fee, or the remaining amount of the Fee for the final year of the initial Term, whichever is less, if such termination occurs after the second anniversary of the Takeover Date, but before the third (3rd) anniversary of the Takeover Date. For the avoidance of doubt, no additional termination payment shall be payable by Owner in the event Owner terminates this Agreement for convenience during any extensions of the initial term of this Agreement. Owner shall pay such additional termination payment, if any, no later than the Due Date for payment of the Termination Payment.

8.6 Transfer of Facility Custody. Upon expiration or termination of this Agreement, NAES shall transfer care, custody and control of the Facility to Owner or Owner's designee and NAES shall leave at the Facility all Facility documents and records, tools, supplies, spare parts, safety equipment, and O&M Manuals. NAES shall execute all documents and take all other steps as may be reasonably requested by Owner to assign to and vest in Owner all rights, benefits, warranties, interests and title in connection with any contracts NAES executed in its own name for the benefit of the Facility. If Owner does not accept assignment from NAES of any such contract, Owner will pay to NAES all cancellation or other costs associated with the early termination of such contract. Owner assumes all liabilities arising under such contracts once assigned.

8.7 Services Upon Termination. Upon notice of termination of this Agreement by either NAES or Owner, unless Owner has defaulted on any payment obligations under this Agreement, Owner has the right to specify a period of transition of not longer than ninety (90) days (the "Termination Transition Period") during which NAES shall: (i) continue to provide Services at the Facility in accordance with this Agreement; (ii) cooperate with Owner in planning and implementing a transition to any replacement provider of Services; and (iii) use its reasonable efforts to minimize disruption of Facility operations in connection with such activities. Owner shall compensate NAES in accordance with this Agreement during the Termination Transition Period. NAES shall permit the new service provider to hire or to contract with the Site Personnel that the new service provider desires to retain at the Facility. To facilitate employee transfer, NAES will permit the new service provider to interview Site Personnel in a manner and at times that do not interfere with NAES's responsibility to perform the Services.

ARTICLE IX - INSURANCE

9.1 NAES Insurance. NAES shall throughout the Term maintain the insurance set forth below:

9.1.1 Workers Compensation. Workers compensation insurance covering NAES's employees as required by Applicable Law, and employers liability insurance with a limit of \$1,000,000 per occurrence/annual aggregate.

9.1.2 Automobile Liability. Automobile bodily injury, including coverage for automobiles owned or hired by NAES with limits of not less than \$1,000,000 per occurrence.

9.1.3 Third Party Liability Coverage. NAES shall provide and maintain an excess liability policy with a per occurrence and annual limit of Thirty-Five Million Dollars (\$35,000,000)

and a deductible no greater than Five Hundred Thousand Dollars (\$500,000). Such policy shall also provide coverage in excess of the insurance described in Sections 9.1.1 and 9.1.2 above.

9.2 Owner Insurance. Owner shall throughout the Term maintain the insurance set forth below:

9.2.1 Property. Prior to the Takeover Date, Builder's All Risk Insurance and Delay in Start-up Insurance, and, following the Takeover Date, property insurance, including boiler and machinery insurance, and business interruption insurance, in amounts determined in Owner's sole discretion. Owner acknowledges that in order to reduce overall contract costs, Owner will be responsible for insuring against damage to its property caused by the actions or inactions or NAES, regardless of cause or fault, and that NAES has no obligation to obtain similar coverage. For all claims with respect to Owner's property, regardless of cause or fault, the insurance provided by Owner shall be primary and non-contributory to any other insurance or self-insurance required to be provided by NAES (except for willful misconduct and gross negligence). NAES shall have no obligation whatsoever to insure the Facility Site or Owner's property.

9.2.2 Workers Compensation. Workers compensation insurance covering Owner's employees as required by law and employers liability insurance with a limit of \$1,000,000 per occurrence/annual aggregate.

9.2.3 Commercial General Liability. Commercial general liability insurance with limits of not less than \$1,000,000 per occurrence/annual aggregate.

9.2.4 Automobile Insurance. Automobile liability insurance covering automobiles owned or hired by Owner with limits of \$1,000,000 per occurrence, and collision/comprehensive coverage in amounts deemed appropriate by Owner.

9.2.5 Additional Coverage. Umbrella or excess liability insurance in excess of the insurance described in Sections 9.2.2(employers liability), 9.2.3 and 9.2.4 will be carried with limits of not less than \$5,000,000 per occurrence/annual aggregate.

9.3 Waiver of Subrogation; Additional Insured. Owner shall cause its insurers to waive any rights of subrogation against NAES and its Affiliates together with their respective officers, directors and employees, and Owner shall make each such Person an additional insured with respect to the builder's all risk and all liability policies procured by Owner pursuant to this Agreement (other than workers compensation policies). NAES shall cause its insurers to waive any rights of subrogation against Owner and Lenders together with their respective officers, directors, Affiliates and employees, and NAES shall make each such Person an additional insured with respect to all liability policies procured by NAES pursuant to this Agreement (other than workers compensation policies). For the avoidance of doubt, the Parties intend that each Party have the maximum protection available to that Party from the insurance policies owned by the other Party.

9.4 Form and Content. All insurance policies with respect to insurance maintained by either Owner or NAES pursuant to this Article IX shall:

9.4.1 Insurer Rating. Be placed with insurance companies that have a Best's rating of at least A-VII or with companies that are otherwise reasonably acceptable to Lenders, Owner and NAES;

9.4.2 Claims-Made Form. If written on a claims made policy form, be maintained with a retroactive date that is prior to the Effective Date for a period of at least two (2) Years following the last Year in which such policy provides coverage under the terms of this Agreement;

9.4.3 Primary Coverage. State that such policy (other than an excess policy) is primary with respect to any other insurance coverage available to Owner or NAES or any additional insured, and that all provisions, except the policy limits, shall operate in the same manner as if there were a separate policy covering such insured under each such policy;

9.4.4 Non-Recourse Premiums. Grant no recourse for payment of any premium against NAES or any additional insured for insurance required to be furnished by Owner pursuant to Section 9.2 and no recourse for payment of any premium against Owner or any additional insured for insurance required to be furnished by NAES pursuant to Section 9.1; and

9.4.5 Cancellation Notice. Provide that the insurer give thirty (30) days prior written notice of cancellation of such policies unless cancellation is for non-payment of premiums, in which case a minimum of ten (10) days' notice must be provided.

9.5 Certificates. Each Party shall furnish the other Party with certificates evidencing that the required insurance is in effect.

9.6 Deductibles. Each Party shall be solely responsible for the payment of all deductibles on insurance policies obtained by such Party pursuant to this Agreement; provided, however, that NAES shall be responsible for the payment of any deductible amount, subject to the limits set forth in Section 11.1, under any insurance policy described in this Article 9 related to any claim against or other cost to Owner covered under any such insurance policy which arose because of the willful misconduct or gross negligence of NAES; provided further, however, that for any coverage specified in this Article IX for which a deductible amount is not specified, such deductible amount shall be assumed to be no more than one hundred thousand dollars (\$100,000) for purposes of this Section 9.6.

ARTICLE X - INDEMNIFICATION

10.1 NAES Indemnification. Subject to the limitations of liability in Sections 11.1 and 11.2, NAES shall indemnify and hold harmless Owner and its Affiliates, and their respective officers, directors, employees, agents and representatives (collectively, the "Owner Indemnitees"), from and against, and no Owner Indemnitee shall be responsible for, any and all Liabilities sustained or suffered by any Owner Indemnitee in connection with injury or death to third parties or loss of or damage to the property of third parties, to the extent caused by NAES's gross negligence, willful misconduct, willful violation of any Applicable Law or willful breach of any representation, warranty or covenant in this Agreement. Any Liabilities paid by NAES pursuant

to its indemnity obligation under this Section 10.1 are not Home Office Costs.

10.2 Owner Indemnification. Subject to the limitations of liability in Sections 11.1 and 11.2, Owner shall indemnify and hold harmless NAES and its Affiliates, and their respective officers, directors, employees, agents and representatives (collectively, the “NAES Indemnitees”), from and against, and no NAES Indemnitee shall have responsibility for, any and all Liabilities sustained or suffered by any NAES Indemnitee in connection with injury or death to third parties or loss of or damage to property of third parties, to the extent caused by Owner’s gross negligence, willful misconduct or willful violation of any Applicable Law or willful breach of any representation, warranty or covenant in this Agreement.

10.3 Indemnification Provisions. The following provisions shall apply to any Indemnity Claim:

10.3.1 Notice. Promptly after becoming aware of an Indemnity Claim (but in no event later than forty-five (45) days thereafter), the Owner Indemnitee or NAES Indemnitee, as applicable, shall provide to NAES or Owner, as the case may be, notice of the Indemnity Claim specifying (to the extent that such information is available):

(a) the factual basis for the Indemnity Claim and the amount of the Indemnity Claim or, if an amount is not then determinable, and, if an estimate is feasible in the circumstances, an estimate of the amount of the Indemnity Claim;

(b) a reasonably detailed description of the basis for its potential claim for indemnification with respect to such Indemnity Claim; and

(c) a complete copy of all notices, pleadings and other papers related to such Indemnity Claim that have been received by the Indemnified Party prior to the date such notice is provided to the Indemnifying Party;

10.3.2 Settlement. If an Indemnity Claim relates to an alleged liability to a third party (a “Third Party Liability”), including any Governmental Authority, the Indemnified Party shall not, except as contemplated by Section 10.3.4 settle, compromise or pay any Third Party Liability as to which the Indemnified Party proposes to assert an Indemnity Claim, except with the prior consent of Indemnifying Party.

10.3.3 Acceptance of Indemnity Claim. If Indemnifying Party first admits the Indemnified Party’s right to receive indemnification for the Third Party Liability, the following procedures shall apply:

(a) The Indemnifying Party shall have the right to assume the conduct and control of the defense of or any negotiations in connection with the compromise or settlement of any proceeding in respect of the Third Party Liability; provided, that the Indemnified Party shall have the right and shall be given the opportunity to: (i) participate in the defense of such proceeding, subject to Indemnifying Party’s control; (ii) consult with Indemnifying Party in the settlement of the Third Party Liability and the conduct of the

proceeding (including consultation with Indemnifying Party's counsel); and (iii) retain, at the Indemnified Party's sole cost and expense, its own counsel to monitor the progress and status of the Indemnity Claim; provided further, however, that if the Indemnified Party reasonably concludes (A) that there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such claim, or (B) the Indemnifying Party shall not have employed counsel to assume the defense of such claim within a reasonable time after notice of the commencement thereof or shall not be pursuing the defense of such claim with due diligence or in good faith, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and participate in the defense, at Indemnifying Party's sole cost and expense.

(b) The Indemnified Party shall cooperate with Indemnifying Party in relation to the Third Party Liability, shall keep Indemnifying Party fully advised with respect thereto, shall provide Indemnifying Party with copies of all reasonably relevant documentation as it becomes available, shall provide Indemnifying Party with reasonable access to all records and files pertinent to the defense of the Third Party Liability and shall meet with, and cause its officers, directors and employees reasonably necessary to carry out the defense or negotiations regarding such Third Party Liability to meet with, the attorneys and other representatives of Indemnifying Party at all reasonable times to discuss the Third Party Liability.

(c) No compromise or settlement of such Third Party Liability may be effected by Indemnifying Party without the Indemnified Party's consent. Such consent shall not be unreasonably withheld, provided (i) there is no finding or admission of any violation of Applicable Law, (ii) such compromise or settlement does not involve the entry by the Indemnified Party of a consent order or similar agreement with any Governmental Authority, and (iii) the sole relief provided is monetary damages that are paid in full by Indemnifying Party.

10.3.4 Rejection of Indemnity Claim. If Indemnifying Party does not admit the Indemnified Party's right to indemnification or declines to assume the conduct and control of the defense or settlement of, or any proceeding relating to, the Third Party Liability, then the following provisions shall apply:

(a) the Indemnified Party, at its discretion, shall conduct and, control the defense or settlement of the proceeding relating to the Third Party Liability and may defend or settle the Third Party Liability on any terms the Indemnified Party, acting reasonably and in good faith, considers advisable; and

(b) any Dispute as to whether or not the Indemnified Party's right to indemnification applies, and the amount of the Indemnity Claim (as it may have been compromised or settled by the Indemnified Party, or determined in a proceeding, pending resolution of such Dispute) shall be resolved in accordance with the Dispute resolution procedures set forth in Article XIV.

10.4 Survival of Indemnity Obligations. The indemnities set forth in this Article X shall survive the termination or expiration of this Agreement for a period of one (1) year following said termination or expiration. All Indemnity Claim notices must be delivered to the applicable Party prior to the expiration of such period. If an Indemnity Claim notice is timely delivered pursuant to this clause, the indemnifying period with respect to all Indemnity Claims identified in such notice, including the indemnity obligation of the Parties with respect to such Indemnity Claim, shall extend through the final, non-appealable resolution of such Indemnity Claims.

ARTICLE XI - LIABILITIES OF THE PARTIES

11.1 Limitations of Liability. Notwithstanding any provision in this Agreement that may be susceptible to contrary interpretation, neither of the Parties nor any Owner Indemnitees or NAES Indemnitees shall be liable for consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill, increased Site Costs or any special or incidental damages, provided, however, that the foregoing shall not limit a Party's obligation to defend, indemnify and hold harmless the NAES Indemnitees or Owner Indemnitees, as applicable, from third party claims indemnifiable under this Agreement. The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability and limitations of liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply in all circumstances, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party indemnified, released or whose liabilities are limited, and shall extend to the Owner Indemnitees and NAES Indemnitees.

11.2 Further Limitation of NAES's Liability. Notwithstanding any provision in this Agreement that may be susceptible to contrary interpretation, NAES's liability hereunder shall further be limited as follows:

11.2.1 Not Used.

11.2.2 NAES's Total Aggregate Liability. Except for third party claims indemnifiable by NAES under this Agreement, the total aggregate liability of NAES to Owner for all Liabilities arising out of any events occurring or Claims made in connection with the performance of the Services under this Agreement in any Year, is the sum of the Fee payable in such Year plus any Bonus paid to NAES for the prior Year. Any deductible amounts paid in any Year by NAES under Section 9.6, or under the insurance policies NAES is required to maintain in Section 9.1, shall count toward the calculation of NAES's total aggregate liability for such Year.

11.2.3 Latent Defects. In no event shall NAES be liable under this Agreement for any loss or damage whatsoever arising from NAES's failure to discover latent defects or defects inherent in the design of the Facility, its equipment, and systems.

11.2.4 Start-up and Commissioning. NAES shall have no liability or responsibility for acts or omissions of NAES personnel acting under the direction, control and supervision of Owner's construction, start-up and/or commissioning contractor(s).

11.3 Further Limitation on NAES's Liability. Notwithstanding anything else to the contrary in this Agreement, NAES shall not be in breach of this Agreement, and Owner shall release, defend, indemnify and hold harmless the NAES Indemnitees from Liabilities to the extent the result of:

- (a) any act or omission of NAES that is committed or omitted, as the case may be, solely upon the direction of Owner and without the concurrence of NAES;
- (b) equipment or system failure or design deficiency, unless such failure or deficiency was caused by NAES's failure to operate and maintain the Facility in accordance with this Agreement;
- (c) a Force Majeure event;
- (d) Owner's disapproval of NAES's reasonable request for expenditures with respect to the Facility or the Services;
- (e) Owner's failure to agree on a reasonable revision to the Budget and Plan requested by NAES;
- (f) NAES's suspension of the performance of all or any portion of the Services in accordance with this Agreement; or
- (g) a material breach of this Agreement by Owner.

11.4 No Warranties or Guarantees. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR GUARANTEES TO THE OTHER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND BOTH PARTIES DISCLAIM AND WAIVE ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11.5 Exclusive Remedies. The remedies available to Owner under this Agreement in respect of or in consequence of (i) any breach of contract, (ii) any negligent act or omission, (iii) death or personal injury, or (iv) loss of or damage to any property, are to the exclusion of any other remedy that Owner may have against NAES under Applicable Law.

ARTICLE XII - CONFIDENTIALITY

12.1 General. During the Term, and for three (3) Years after the termination of this Agreement, each Party shall hold in confidence any Confidential Information supplied by the other Party. "Confidential Information" means with respect to each Party, all written or oral information of a proprietary, intellectual or similar nature, relating to a Party's business, projects, operations, activities or affairs, whether of a technical or financial nature or otherwise (including environmental assessment reports, financial information, business plans and proposals, ideas, concepts, trade secrets, know-how, processes, pricing of services or products, and other technical

or business information, whether concerning this Agreement, each Party's respective businesses or otherwise) that has not been publicly disclosed and that the receiving Party acquires directly or indirectly from the disclosing Party. Each receiving Party further agrees, to the extent requested by the disclosing Party, to require its contractors, vendors, suppliers and employees, agents or prospective purchasers to preserve the confidentiality of Confidential Information. The receiving Party may make necessary disclosures to third parties directly engaged in the operation, ownership or financing of the Facility if such third parties are under an obligation to receive and hold such Confidential Information in confidence.

12.2 Exceptions. The provisions of this Article XII do not apply to information within one or more of the following categories:

12.2.1 Public Domain. Information that was in the public domain prior to the receiving Party's receipt or that subsequently becomes part of the public domain by publication or otherwise, except by the receiving Party's wrongful act, or

12.2.2 Prior Receipt. Information that the receiving Party can demonstrate was in its possession prior to receipt thereof from the disclosing Party, or

12.2.3 Third Party Delivery. Information received from a third party having no obligation of secrecy with respect thereto.

12.3 Required Disclosure. Notwithstanding the foregoing, any receiving Party required by law, rule, regulation, subpoena or order, or in the course of administrative or judicial proceedings, to disclose Confidential Information that is otherwise required to be maintained in confidence pursuant to this Article XII, may make disclosure notwithstanding the provisions of this Article XII. Prior to doing so, the receiving Party, immediately upon learning of the requirement, shall notify the disclosing Party of the requirement and cooperate to the maximum extent practicable to minimize the disclosure of Confidential Information. Any receiving Party disclosing Confidential Information pursuant to this Section 12.3 shall use reasonable efforts, at the disclosing Party's cost, to obtain proprietary or confidential treatment of Confidential Information by the third party to whom the information will be disclosed, and to the extent such remedies are available, shall use reasonable efforts to seek protective orders limiting the dissemination and use of Confidential Information. Nothing in this Agreement is intended to prevent the disclosing Party from appearing in any proceedings and objecting to the disclosure.

ARTICLE XIII - TITLE, DOCUMENTS AND DATA

13.1 Materials and Equipment. NAES shall ensure that title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by NAES on a Site Cost or Home Office Cost basis ("Facility Equipment") passes directly from the vendor or supplier to, and vests in, Owner. NAES has no title or other claim to such items. Owner shall retain title to all wastes (including Hazardous Materials) generated by NAES's performance of the Services.

13.2 Documents. All O&M Manuals, operational data, Facility drawings, NAES reports and records (both paper and electronic) created by NAES in connection with performance of the

Services are the property of Owner. NAES may retain for its records copies of documents prepared by NAES.

13.3 Proprietary Information. Where materials or documents prepared or developed by NAES or its Affiliates, or their respective employees, representatives or contractors, contain proprietary or technical information, systems, techniques or know-how previously developed by them or acquired by them from third parties (the “NAES Proprietary Information”), NAES retains the unrestricted and irrevocable right to use or dispose of such NAES Proprietary Information as NAES deems fit. Notwithstanding the foregoing, Owner has an irrevocable license to use such NAES Proprietary Information to the extent necessary for Owner’s operation or maintenance of the Facility at no additional cost to Owner.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.1 Assignment. This Agreement is not assignable by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that this Agreement may be collaterally assigned by Owner without such consent to Lender in connection with Lender's financing of the Facility, and may be assigned by any Party to such Party's Affiliates. Assignment pursuant to this Section 14.1 shall not relieve the assigning Party of any of its obligations under this Agreement that arose prior to the date of such assignment. NAES shall negotiate in good faith any consent to assignment and such other reasonable documents in connection with an assignment to Lender as Lender may request that does not result in a diminution of NAES's rights or obligations hereunder. All of NAES's costs in connection therewith shall be Home Office Costs hereunder (including the fees and disbursements of NAES's attorneys). This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

14.2 Effect of Bankruptcy. If a bankruptcy case is commenced under the United States Bankruptcy Code, 11 U.S.C. Sec. 101, et seq., any right to payment under this Agreement which becomes enforceable after the filing of the bankruptcy petition shall be deemed to be an actual, necessary cost of preserving the bankruptcy estate that is entitled to allowance as a priority administrative expense under 11 U.S.C. Sec. 503(b)(1)(A).

14.3 Access. Owner and Lenders and their agents and representatives shall have access to the Facility, all Facility operations and any documents, materials and records and accounts relating to the Facility operations for purposes of inspection and review. Upon the reasonable request of Owner, and its agents and representatives, NAES shall provide such Persons with access to all data and logs NAES maintains regarding its provision of Services at the Facility. During any inspection or review of the Facility, Owner and Lenders and their agents and representatives shall comply with all of NAES's safety and security procedures, and shall conduct inspections and reviews in such a manner as to cause minimum interference with NAES's activities. NAES also shall cooperate with Owner in allowing other visitors access to the Facility, including such access to the Facility for third parties that is contemplated under the Project Agreements.

14.4 Subcontractors. Subcontracting of the Services shall not relieve NAES of its duties, liabilities or obligations to Owner. Owner has the right, in its sole discretion, to approve the retention of any subcontractors.

14.5 Not for Benefit of Third Parties. Except where a contrary intention is expressly stated, this Agreement and each and every provision hereof are for the exclusive benefit of the Parties that executed this Agreement and not for the benefit of any third party.

14.6 Force Majeure.

14.6.1 Events Constituting Force Majeure. A “Force Majeure Event” is any event that (a) renders either Owner or NAES unable to perform its obligations under this Agreement, (b) is not reasonably within the control of the Party affected or caused by the default or negligence of the affected Party and (c) cannot be overcome or avoided by the exercise of due care. Force Majeure Events include failure of a Party to perform due to drought, flood, earthquake, storm, fire, lightning, epidemic, war, terrorism, acts of Governmental Authorities, civil disturbances, sabotage, work stoppages (i.e., strikes), accident or curtailment of supply, unavailability of construction materials or replacement equipment beyond the affected Party's control, inability to obtain and maintain Permits from any Governmental Authority for the Facility after due application therefor, restraint by court order, and changes in Applicable Law that affect performance under this Agreement. Except for the obligation of each Party to make payments of amounts owed to the other Party, each Party is excused from performance and will not be considered to be in default in respect to any obligation if performance cannot occur due to a Force Majeure Event. Neither Party shall be relieved of its obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations.

14.6.2 Notice. If a Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event, the Party claiming such inability shall (i) promptly notify the other Party of the Force Majeure Event and its cause and confirm the same in writing within five (5) Business Days of its discovery, (ii) promptly supply such available information about the Force Majeure Event and its cause as reasonably may be requested by the other Party and (iii) initiate efforts to remove the cause of the Force Majeure Event or to lessen its effect.

14.6.3 Scope. The suspension of performance arising from a Force Majeure Event shall be of no greater scope and no longer duration than necessary. The excused Party shall use its reasonable efforts to remedy its inability to perform.

14.7 Dispute Resolution. All (a) Technical Disputes and (b) any other claim, controversy or dispute arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement, whether a Dispute qualifies as a Technical Dispute, or the scope and interpretation of this Section 14.7) arising under this Agreement between the Parties (each a “Non-Technical Dispute”) shall be resolved in accordance with the Dispute resolution procedures as set forth in this Section 14.7.

14.7.1 Notice of Dispute. A Party asserting the existence of a Dispute shall deliver a written dispute notice to the other Party, describing the nature and substance of the Dispute and

proposing a resolution of the Dispute. In the case of a Dispute asserted by Owner, the dispute notice shall be delivered to the NAES Operations Director. In the case of a Dispute asserted by NAES, the dispute notice shall be delivered to the General Manager.

14.7.2 Initial Negotiation. The Parties shall first attempt in good faith to resolve the Dispute through negotiations between (i) the NAES Operations Director and (ii) the General Manager during the ten (10) Business Days following delivery of the dispute notice (including any agreed extension, the “Initial Negotiation Period”). Upon the written agreement of NAES Operations Director and the General Manager, the Initial Negotiation Period may be extended up to an additional ten (10) Business Days. If such negotiations result in an agreement in principle among the negotiators to settle the Dispute, they shall cause a written settlement agreement to be prepared (a “Preliminary Settlement”). Within the Initial Negotiation Period, such Preliminary Settlement shall be signed, dated and submitted for review and approval by an authorized executive officer of NAES (“NAES’s Executive”) and an executive officer of Owner (“Owner’s Executive”), who shall, if in agreement with the Preliminary Settlement, endorse their signatures within ten (10) Business Days after the end of the Initial Negotiation Period, whereupon the Dispute shall be deemed settled, and not subject to further dispute resolution.

14.7.3 Executive Negotiation. If a Preliminary Settlement is not achieved at the conclusion of the Initial Negotiation Period, or the Preliminary Settlement is unacceptable to NAES’s Executive or Owner’s Executive, the Parties shall then attempt in good faith to resolve the Dispute through negotiations between NAES’s Executive and Owner’s Executive during the ten (10) Business Days (the “Second Negotiation Period”) following the earlier of (x) the date of the Preliminary Settlement or (y) the end of the Initial Negotiation Period, as the case may be, before pursuing any further means of dispute resolution. Upon the written agreement of NAES’s Executive and Owner’s Executive, the Second Negotiation Period may be extended up to an additional ten (10) Business Days. If such negotiations result in an agreement in principle among the negotiators to settle the dispute, they shall cause a written settlement agreement to be prepared, signed and dated within the Second Negotiation Period (the “Executive Settlement”), whereupon the Dispute shall be deemed settled, and not subject to further dispute resolution.

14.7.4 Technical Disputes. If a Technical Dispute is not resolved during the Initial or Second Negotiation Periods, either Party may, by notice to the other Party, refer the Technical Dispute to a Technical Expert selected in accordance with the procedures set forth in Appendix F.

14.7.5 Forum, Fees and Costs. If an Executive Settlement is not achieved at the conclusion of the Second Negotiation Period, any Non-Technical Dispute arising out of or relating to this Agreement, or the breach thereof, either Party may bring an action in a court of competent jurisdiction. In any judicial action brought by a Party to resolve a Non-Technical Dispute under this Agreement, the predominantly prevailing Party shall be entitled to an award of compensation from the other Party for all costs and expenses, including attorney fees and any costs incurred. The term “predominantly prevailing” shall mean (i) in the case of the claimant, that it shall have received an award of at least 75% of the amount claimed in the court action; or (ii) in the case of a defendant, that the award to the claimant shall have been no more than 25% of amount claimed in the court action. If there is no predominantly prevailing Party, there shall be no award of costs and expenses.

14.7.6 Confidential Settlement Context. All negotiations, discussions, offers, counteroffers, data exchanges, proposed agreements and other communications between the Parties in connection with negotiations or other dispute resolution procedures shall be Confidential Information. Without limiting the preceding sentence, all such communications shall be deemed to be in the context of attempting to settle a disputed claim and shall not be construed as an admission or agreement as to the liability of any Party, nor be admitted in evidence in any related arbitration, litigation or other adversary proceeding.

14.7.7 Limitations on Disputes. The delivery of a dispute notice suspends the running of any statute of limitations applicable to the Dispute until fourteen (14) Business Days after the conclusion of the Second Negotiation Period. Except as suspended by the preceding sentence, the time period during which a Party may assert a Dispute shall run for 365 consecutive days following the termination of this Agreement, and the Parties shall be barred from asserting a Dispute thereafter.

14.7.8 Exception for Injunctive Relief. Notwithstanding the provisions set forth above in this Section 14.7, the requirement to submit Disputes to negotiation shall not apply if, and to the extent, that there exists an imminent threat of irreparable injury to a Party and that Party seeks and obtains a temporary restraining order or preliminary injunction in an expedited court proceeding in response to such threat. If the court rejects the application for injunctive relief, then the Party that initiated such action shall reimburse the defending Party for its reasonable and documented attorneys' fees and related costs directly related to such court proceedings.

14.8 Amendments. No amendments or modifications of this Agreement are valid unless in writing and signed by duly authorized representatives of the Parties.

14.9 Survival. Notwithstanding any provisions to the contrary, the obligations set forth in Article VII and Article VIII (with respect to payments), Article X and Article XII, Section 14.7 and the limitations on liabilities set forth in Article XI will survive, in full force, the expiration or termination of this Agreement.

14.10 No Waiver. No delay, waiver or omission by Owner or NAES to exercise any right or power arising from any breach or default by Owner or NAES with respect to any of the terms, provisions or covenants of this Agreement shall be construed to be a waiver by Owner or NAES of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Owner or NAES.

14.11 Notices. Any written notice required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be either delivered personally to the Party to whom notice is given, or mailed to the Party to whom notice is to be given, by facsimile, email, courier service or first class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address indicated on the first page of this Agreement, or at the most recent address specified by written notice given in the manner provided in this Section 14.11.

14.12 Representations and Warranties. Each Party represents and warrants to the other Party that, as of the date hereof:

14.12.1 Existence. It is duly organized and validly existing under the laws of the state of its organization and has all requisite power and authority to own its property and assets and conduct its business as presently conducted or proposed to be conducted under this Agreement.

14.12.2 Authority. It has the power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

14.12.3 Validity. It has taken all necessary action to authorize its execution, delivery and performance of this Agreement, and this Agreement constitutes the valid, legal and binding obligation of such Party enforceable against it in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the rights of creditors or by general equitable principles (whether considered in a proceeding in equity or at law).

14.12.4 No Conflict. Neither the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, nor the fulfillment of the terms and conditions hereof, conflicts with or violates any provision of its constituting documents.

14.12.5 No Consent. No consent or approval (including any Permit that such warranting Party is required to obtain) is required from any third party (including any Governmental Authority) for either the valid execution and delivery of this Agreement, or the performance by such Party of its obligations under this Agreement, except such as have been duly obtained or will be obtained in the ordinary course of business.

14.12.6 No Breach. None of the execution or delivery of this Agreement, the performance by such Party of its obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof either conflicts with, violates or results in a breach of, any Applicable Law currently in effect, or conflicts with, violates or results in a breach of, or constitutes a default under or results in the imposition or creation of, any lien or encumbrance under any agreement or instrument to which it is a party or by which it or any of its properties or assets are bound.

14.12.7 No Material Claims. It is not a party to any legal, administrative, arbitral or other proceeding, investigation or controversy pending or threatened that would adversely affect such Party's ability to perform its obligations under this Agreement.

14.13 Additional Representation and Warranty by NAES. NAES further represents and warrants to Owner that it has substantial expertise and experience in the provision of services to power generation facilities and it is fully qualified to provide such services at the Facility in accordance with the terms of this Agreement.

14.14 Counterparts. The Parties may execute this Agreement in counterparts that, when signed by each of the Parties, constitute one and the same instrument. Thereafter, each counterpart shall be deemed an original instrument as against any Party who has signed it.

14.15 Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of New York, exclusive of the conflicts of law provisions thereof (other than Section 5-1401 of the New York General Obligations Laws).

14.16 Interpretation. Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All exhibits and appendices attached hereto are considered a part hereof as though fully set forth herein. This Agreement was jointly drafted and negotiated by the Parties. In the event of a Dispute, the Agreement shall not be construed against either Party based upon its drafting.

14.17 Non-Solicitation of Home Office Personnel. During the term of this Agreement, and for a period of one year after its termination or expiration, neither Owner nor its Affiliates or agents shall solicit for employment any Home Office Personnel. Notwithstanding the provisions of this section, in the event that an individual employed as Home Office Personnel responds to employment advertising in newspapers, trade publications, web sites or other public commercial media without other solicitation, Owner or its Affiliate or agents may hire the individual without violating the terms of this provision.

14.18 Severability. If any provision of this Agreement, or the application of any such provision to any Person or circumstance, is held invalid by any court or other forum of competent jurisdiction, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner materially adverse to a Party. Upon any such determination of invalidity, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that this Agreement is consummated as originally contemplated to the greatest extent possible.

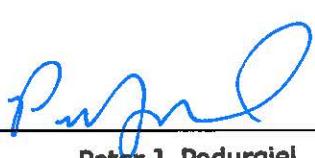
14.19 Non-Recourse. This Agreement may only be enforced against, and any claims or causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the entities that are expressly identified as parties hereto and no Affiliates of any party shall have any liability for any obligations or liabilities of the parties to this Agreement or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of the transactions contemplated hereby or in respect of any oral representations made or alleged to be made in connection herewith.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

CPV FAIRVIEW, LLC

By: _____
Name: _____
Title: _____



Peter J. Podurgiel
Authorized Signatory

NAES CORPORATION

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

CPV FAIRVIEW, LLC

By: _____

Name:

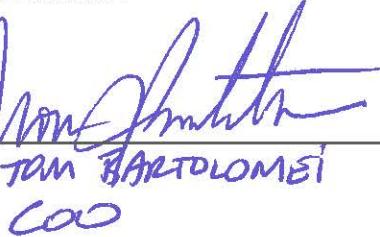
Title:

NAES CORPORATION

By: _____

Name:

Title:

A handwritten signature in blue ink, appearing to read "Tom Bartolomei".

APPENDIX A – SCOPE OF SERVICES

I. HOME OFFICE PERSONNEL: PRE MOBILIZATION AND MOBILIZATION PERIOD SERVICES

A. Develop Budgets and Plans

1. Meet with Owner to prepare for Mobilization Services.
2. Upon receipt of Notice to Proceed, commence Mobilization Period Services designed to enable NAES to initiate the Operational Period Services.
3. Develop a proposed Mobilization Period Budget and Plan, including schedule; finalize in conjunction with Owner
4. Develop a Budget and Plan for the first year following the Takeover Date.

B. Review EPC Contractor Data

1. Review and provide comments to Owner on EPC contractor data related to Facility design, spare parts lists, and Site Personnel training.
2. Review and provide comments to Owner on Facility/machinery plans and drawings with respect to their impact on Facility operations and maintenance

C. Hire and Manage Site Personnel

1. Prepare HR recruitment and hiring plan and schedule
2. Create organization chart.
3. Prepare Facility-specific human resources policies and procedures manual.
4. Locate appropriate clinic for Site Personnel use.
5. Prepare and issue employment offer letters.
6. Conduct pre-employment screening and fitness for duty assessments, including drug testing, as required.
7. Conduct employee orientation and benefits enrollment
8. Administer pay and benefits policies and programs
9. Manage Site Personnel performance

D. Develop NAES Safety Program

1. Develop Site-specific Safety Manual.
2. Work with EPC Contractor to implement key provisions of the NAES safety program during Facility commissioning and systems turnover.

E. Develop Environmental Compliance Program for Operations Period

1. Review Permits made available to NAES and provide comments from an Operations perspective.
2. Provide assistance to Owner in its application for Permits.
3. Provide orientation to appropriate member(s) of the Site Personnel on NAES environmental programs and policies.

4. Develop a preliminary environmental calendar of primary recurring environmental reports that will come due during NAES Operations period, based upon the information provided by Owner.
5. Develop a preliminary Environmental Binder summarizing the ongoing Operational environmental requirements based upon information available.
6. Review Owner's and/or EPC Contractor's checklist or timeline of Owner's construction and Mobilization Period environmental tasks and responsibilities such as permitting, notices, plans, certifications and Mobilization Period monitoring and reporting; provide comments from an Operations perspective.

F. Develop NERC Program

1. Assist with preparing and filing the appropriate NERC registration documentation.
2. Identify any notices/registration modifications required due to NAES's role under this Agreement.
3. Develop Generator Owner and Generator Operator NERC program documents.

G. Development and Initial Implementation of Administrative Programs

1. Develop NAES's administrative programs in the areas of general administration, accounting, payroll, budget and procurement.
2. Accounting
 - i. Determine accounting scope.
 - ii. Install/implement accounting software.
 - iii. Recommend check signers for Project Account.
 - iv. Train appropriate members of the Site Personnel on NAES-implemented accounting program.
 - v. Process Site Personnel expense reports if requested by Owner.
3. Payroll
 - i. Setup Site Personnel in payroll system.
 - ii. Prepare and distribute Facility time card approval and processing procedures.
 - iii. Administer and process payroll taxes.
 - iv. Train responsible site employee on payroll system.
 - v. Perform payroll processing services, other than those performed by Site Personnel; assist to Site Personnel in usage of payroll software and respond to Site Personnel payroll questions.
4. Procurement and Computerized Maintenance Management System (CMMS)
 - i. Collect CMMS-related data from EPC/OEM.
 - ii. Build/populate new CMMS with data collected.
 - iii. Configure CMMS software and install on site.
 - iv. Provide end-user training.
5. Develop Facility security measures and procedures for Owner's approval.

H. Insurance

1. Issue certificates of insurance.
2. Ensure Site Personnel are integrated into NAES's worker's compensation insurance program.

I. Information Systems

1. Evaluate the suitability of the Site information technology infrastructure, including internet connectivity, phone systems, hardware, and software such as PI and PI data historian, to support NAES's provision of Services under this Agreement.
2. Make recommendations to Owner for upgrades, changes, or additions, as needed.

J. Develop Operations Program

1. **Systems Descriptions.** Develop a description of each Facility system and how the system interfaces with other Facility systems, including a description of system components and their functions, principles and modes of system operation, details of system instrumentation, controls, and protective features.
2. **Operations Procedures.** Develop comprehensive system operations procedures, including precautions and prerequisites, alarms, and protective actions, with integrated procedures for startup, shutdown normal operations, and abnormal/emergency procedures.

K. Develop Maintenance Program

1. Develop a maintenance program, addressing preventive/condition-based maintenance, predictive maintenance, corrective maintenance, and maintenance support activities.
2. Develop and issue maintenance policy manual containing NAES's maintenance policies.

L. Develop Training Program

1. Develop and implement formal training to prepare Site Personnel for startup and commercial operations, integrating vendor, OEM, and EPC training.
2. Conduct effective testing to ensure adequate knowledge levels.
3. Implement a training and qualifications program for Site Personnel.
4. Issue training and qualifications manual for the Facility.

M. Develop Chemistry Program

1. Select a chemical service provider.
2. Work with selected service provider to develop site specific procedure chemistry procedures for control of steam, boiler water, circulating water control, closed cooling and other systems, as applicable.

N. Issue NAES assessment manual

O. Develop and Implement a Communication Plan

1. Generate contact lists for key personnel within Owner's group and NAES.
2. Develop and implement protocol for communication of routine activities and reports.

3. Develop and issue a plan for emergencies and other extraordinary communications.

P. Project Agreements

1. Review Project Agreements and permits for key compliance issues; provide comments to Owner with respect to impact on Services; incorporate into compliance matrix via Gen Suite as appropriate.
 2. Review OEM long-term service agreements; provide comments and recommendations to assist the Owner to extract maximum value from the agreement(s).
- Q. Reliability Assessment Program. Support Owner in preparing and participating in a reliability assessment program using a Failure Mode and Effects Analysis (“FMEA”) approach.

II. SITE PERSONNEL: MOBILIZATION PERIOD SERVICES

A. Systems Turnover.

1. Assist the Owner in reviewing the EPC contractor’s turnover procedures.
2. Review and assist and the development and finalization of turnover packages punch lists, and lockout/tagout protocols.
3. Conduct Facility walk downs and inspections to identify actual Facility conditions.

B. Training

1. Participate in training provided by EPC contractor, NAES and outside vendors.
2. Attend specialty schools, as assigned.
3. Implement qualification program to prepare Facility operators and technicians for safe startup and commercial operations. Integrate vendor, OEM, and EPC on-the-job practice and training. Conduct effective testing to ensure adequate knowledge levels.

C. Administration

1. To the extent applicable during the Mobilization Period, implement NAES programs developed as part of the Mobilization Period Services.
2. Collect and review timesheets for accuracy. Enter timesheets into payroll system and submit them to Home Office Personnel for processing.
3. In coordination with appropriate Home Office Personnel and in compliance with NAES policies and procedures, execute required administrative and human resource processes. Address employee matters as they arise.
4. Reports. Prepare and submit to Owner service reports as requested relative to NAES’s Mobilization Period Services
5. Process Site Personnel expense reports
6. Set-up the warehouse, document room and office spaces in the administration building.

D. Start-up and Commissioning Support

1. Support the EPC contractor with Facility startup and testing activities (limited to time available on a not-to-interfere basis with the Mobilization Period Services required of NAES).
 2. Operate the Facility under the direction of the EPC contractor (limited to time available on a not-to-interfere basis with the Mobilization Period Services required of NAES).
 3. Perform routine and scheduled preventive maintenance on Facility systems as they are turned over to NAES in accordance with the NAES maintenance policy.
- E. Procurement and Computerized Maintenance Management System (CMMS).
1. Develop and Implement site specific Procurement Policy (AMP-501).
 2. Implement a Computerized Maintenance Management System (CMMS), including Purchasing Module
 3. Procure tools, spare parts, consumables, and other supplies not provided under the EPC Agreement.
 4. Subject to Owner's approval, review, recommend, procure (at Owner's expense) and properly store initial spare parts inventory.
 5. Support initial fills for chemical and oils.

III. SITE PERSONNEL: OPERATIONAL PERIOD SERVICES

A. Routine Services

1. Consistent with Owner-approved Budget and Plan, provide Facility Services to optimize electrical power generation.
2. Assign work to either Site Personnel or vendors as cost-effective and appropriate based on guidance from Owner. Normally, Site Personnel conduct preventive maintenance and actions requiring a high degree of Facility knowledge and vendors perform tasks needing equipment or expertise that are not cost-effective to maintain at the Facility (e.g., code welding, safety valve testing, specialized calibrations, stack testing). Vendors also perform tasks that make sense to minimize outage time and costs.

B. Program Implementation

1. Implement NAES programs, policies, and procedures developed and issued as part of the Mobilization Period Services.
2. Implement Facility's existing operations and maintenance procedures, chemistry procedures, NERC compliance processes, and environmental compliance processes, unless otherwise directed by Owner.
3. In conjunction with the Operations Director, implement NAES's assessment program utilizing the assessment manual.

C. Routine, Preventive and Predictive Maintenance

1. Perform routine and preventive maintenance actions on all Facility systems and equipment in accordance with vendor instructions and the Plan.

2. Service Checks. Conduct frequent visual equipment inspections and log significant parameters such as pressures, temperatures, and flow rates. Trend and analyze this information as appropriate
3. Routine and Fixed Interval Maintenance. Using the CMMS database, identify all preventive maintenance requirements. Schedule and assign routine maintenance during Facility operation, planned outages, and forced or unscheduled outages
4. Perform predictive maintenance to identify potential equipment failures or oversee performance by third parties, as appropriate in light of Owner-approved staffing levels and capabilities of Site Personnel.

D. Major Maintenance and Repairs

1. In coordination with and support of the Project Agreements and generation plan, arrange for scheduled inspections and overhauls on major equipment.
2. Retain vendors on behalf of Owner for unscheduled major repairs as required; manage and oversee all repairs and modifications.

E. Facility Outages

1. Develop and implement a five year outage schedule.
2. Within the CMMS, identify all maintenance that requires a Facility outage or equipment to be taken out of service.
3. To the extent consistent with Project Agreements and Owner direction, manage all Facility outages (planned, unscheduled, forced) to minimize outage duration, impact on production and cost.
4. Develop and implement a detailed schedule to track all outage work and testing, including corrective maintenance actions, vendor work and scheduled preventive maintenance. Obtain Owner approval of the schedule. Conduct preparations to support this plan, including ordering and receiving all required spare parts.

F. Facility Administration

1. Budgeting. Prepare annual Budgets and Plan and submit them for Owner approval. Prepare monthly Draw Request and submit to Owner for funding of Project Account. Manage operations to comply with each Budget and Plan. Generate budget variance reports, as required.
2. Payroll. Collect and review timesheets for accuracy. Enter timesheets into payroll system and submit them to NAES Home Office Personnel for processing.
3. Procurement. Implement the procurement procedure, which was issued as part of Mobilization Period Services, to maintain an effective and efficient purchasing system. Procure, as agent for Owner, all materials, equipment, chemicals, supplies, services, parts, and other miscellaneous items required for the provision of the Services. Contract using terms and conditions approved by Owner in advance. Utilize the CMMS in all stages of procurement.
4. Accounts Payable. Ensure all vendor invoices and Site Personnel expense reimbursement forms have supporting documents and enter them into accounting

system. Make timely payments from the Project Account for all invoices that are not directly paid by Owner. Ensure monthly reconciliations of Project Account, petty cash, as well as debt or credit card purchases are submitted to Owner.

5. Inventory Control. Implement a cost-effective inventory control system designed to ensure that spare parts, materials, and supplies are properly stored and accounted for and that adequate supplies are available at all times to support the provision of the Services.
6. Personnel Matters.
 - i. In coordination with Home Office Personnel and in compliance with NAES human resources policies and procedures, execute required human resources processes and address employee matters as they arise.
 - ii. In coordination with the Home Office Personnel, acquire and retain qualified Site Personnel to maintain the staffing levels and skill mix required for successful long-term provision of the Services.
7. Arrange for janitorial, garbage pickup, landscape services, snow removal (if needed), extermination services, and maintain all access roads, office buildings, and other structures in good repair at all times.
8. Reports. Prepare and submit to Owner operation and maintenance service reports as requested relative to performance, maintenance and repair status, Facility operating data, and any other information reasonably requested by Owner.
9. Environmental Data and Reporting. Collect facility environmental data, including required air and water/waste water monitoring data and permit compliance information, and prepare draft environmental reports for Owner review. Obtain professional environmental support for environmental reports that are new, complex, non-routine (such as state or federal requests or event-triggered reports), or beyond the capabilities of current Site Personnel, as necessary to satisfy permit and regulatory reporting requirements.
10. Environmental Plans. Implement permit or regulatory required environmental plans, such as spill prevention plans, Stormwater Pollution Prevention Plans, CEMS QA/QC plans, Greenhouse Gas Monitoring Plans or Accidental Release Prevention/Risk Management Plans, as applicable. Obtain professional environmental support for environmental plan development, modification, renewal or implementation as necessary to satisfy permit and regulatory requirements.
11. Waste and Hazardous Materials. Manage hazardous materials and wastes on site in accordance with applicable regulations. Coordinate waste disposal in accordance with Agreement.
12. General Environmental Management. Review information, programs and tools provided by Home Office Personnel environmental group for applicability to the

- site and implement as applicable and required, requesting assistance as needed to supplement site staff experience and/or resources.
13. Security. Implement or arrange for implementation of security measures in accordance with the Owner-approved Facility security plan.
 14. Drawings/Manuals Maintenance. Maintain the Facility library and update Facility manuals and vendor service manuals. Update (or arrange for updating) Facility drawings to reflect changes to the as-built configuration. In addition to document management, maintain physical Facility configuration control.
 15. Community Relations. In coordination with the Owner, conduct a community relations program to establish the Facility and its Site Personnel as “good citizens” in the local community.
- G. Training. Implement a continuing program of training designed to orient new Site Personnel, refresh/cross-train existing Site Personnel, qualify/re-qualify Site Personnel, and keep all Site Personnel aware of Owner-approved Facility safety requirements and emergency procedures.

IV. HOME OFFICE OPERATIONAL PERIOD SERVICES INCLUDED IN FEE

A. Monitoring of Regulatory Compliance

1. Safety
 - i. Monitoring regulatory developments in safety, and provision of periodic updates to Site Personnel and Owner.
 - ii. Maintenance of safety statistics and communication of lessons learned.
 - iii. Regular NAES-initiated visits to the Facility to perform safety assessments.
 - iv. Develop and make available to the Site Personnel standard tools, templates and general safety guidance materials, such as training templates, guidance on implementing programs and updated safety procedures.
2. Environmental
 - i. Develop and make available to the Site Personnel standard tools, templates and general O&M guidance materials, such as management checklists for federal programs, training templates for federal programs, and guidance on implementing federal programs.
 - ii. Monitor regulatory developments in federal environmental law as it pertains to power plant operations and compliance, and provide periodic updates to Site Personnel.
 - iii. Regular NAES-initiated visits to the Facility to perform an environmental program assessments, the scope of which is established by NAES.
3. Reliability Compliance

- i. Monitoring regulatory developments in reliability compliance, and provision of periodic program updates and communications regarding these compliance matters to Site Personnel and Owner.
- ii. Arranging quarterly NERC calls segmented by NERC region and inviting Site Personnel and Owner personnel to attend.

B. Monitoring of Site Personnel and Facility Performance

1. Oversee Site Personnel training and qualification activities, by updating training program as appropriate, overseeing its implementation, and coordinating for web-based and other training mechanisms.
2. Quality assessment and management of Site Personnel performance and their implementation of Facility programs.
3. Oversee program implementation by Site Personnel under Appendix A, II(B) by implementing the assessment manual in conjunction with the Plant Manager and by making NAES-initiated Site visits.
4. Review reports prepared by Site Personnel under Appendix A, II(F)(8)
5. Outage plan review and guidance.
6. Tracking of performance indicators and evaluating Facility performance against the NAES fleet.

C. Human Resource Functions in Support of Site Personnel

1. Assist Site Personnel in employee management activities under Appendix A, (II)(F)(5), by performing the following activities:
 - i. Recruiting candidates for employment and arranging interviews
 - ii. Preparing and extending offers of employment
 - iii. Administering of the pre-employment screening and relocation process
 - iv. Conducting Site Personnel employee orientation and benefits enrollment
 - v. Administering of pay and benefits policies and programs.
 - vi. Consulting regarding employee performance management, disciplinary action and termination
 - vii. Participating in the Site Personnel complaint and problem resolution process
2. Developing, maintaining, and communicating human resource policies and procedures.
3. Monitoring changes to employment regulations.

D. Accounting, Procurement, and Insurance

1. Participate in annual Budget and Plan development process.
2. Perform payroll processing services, other than that performed by Site Personnel under Appendix A(II)(F)(2); assistance to Site Personnel in usage of payroll software and responses to Site Personnel payroll questions.
3. Site Personnel expense report processing
4. Review of NAES invoices for accuracy and validity
5. Facility participation in preferred vendor pricing initiative managed by Home Office Personnel

6. Provision of responses to Site Personnel questions regarding accounting (including MAS support, if applicable), CMMS, and procurement.
 7. Administer worker's compensation program; handle worker's compensation claims.
 8. Maintain and renew blanket NAES insurance policies as required under Section 9.1
- E. NAES Fleet Integration
1. Coordinate transmission of know-how/lessons learned among NAES facilities, via email, webinars and regular conference calls among plant managers.
 2. Development and coordination of O&M conferences, conference calls, and webinars;
 3. Maintenance of web-based NAES portal and incident and injury reporting program.
 4. Update training program as appropriate; coordinate for web-based and other training mechanisms.

V. HOME OFFICE PERSONNEL SERVICES PERFORMED ON HOURLY RATE PLUS EXPENSES BASIS.

To the extent these Mobilization Period Services cannot be performed by Site Personnel and are included in the Budget or otherwise approved by Owner:

- A. Implementation of recommendations made during the Mobilization Period unless listed in Appendix A (VI), or other advisable changes, updates or additions to Facility operation and maintenance manuals, system descriptions, or drawings.
 1. Safety consulting or audits of safety practices.
 2. On-site Home Office outage support
 3. Home Office On-site assistance for regulatory visits
 4. Assistance with regulatory programs, such as Voluntary Protection Plan (VPP)
 5. Home Office On-site project safety support, as requested by Owner
- B. Input of Facility data into Facility information systems, including but not limited to population and manipulation of CMMS data.
- C. CMMS training
- D. Non-routine human resources Home Office Personnel Services, including the following:
 - a. Negotiation and assumption of union labor contracts
 - b. Development and implementation of special benefit plans or arrangements, including coordination with outside professional services
 - c. Labor arbitration case management
 - d. Union election activities and campaigns
 - e. Owner consultation services regarding employee matters contained in purchase and sale agreements or other related documents

- f. Attendance at Owner-requested Site Personnel meetings, development and implementation of employee retention and severance plans, performance of Owner-requested Site Personnel evaluations
- E. Temporary fill-in for Site Personnel by Home Office Personnel
- F. Obtain, maintain and renew insurance policies specific to the Facility or Site and required of NAES under Section 9.1.
- G. On-site Outage support
- H. On-site Project Management support, as requested by Owner, other than already included in the Operational Period Fee.
- I. Home Office Site Physical Inventory Support
- J. Legal Support to Facility operations necessitated by occurrences outside NAES's control, including Owner Affiliate bankruptcy and claims made against Owner in which NAES is not a party.
- K. Environmental support for compiling and reviewing environmental reports and plans under Appendix A, III (F)(9) and (10); customization and population of NAES standard tools and templates; state regulatory tracking, analysis and guidance; review, guidance and direct support on environmental projects and issues related to operations; and general day-to-day compliance support.

VII. NAES SERVICES PERFORMED AT NEGOTIATED RATES

- A. Environmental consulting, program development, auditing, permitting, developing customized training material or delivering training, environmental plan development or modification, legacy or pre-existing issues support or Owner business support such as due diligence, asset sale, or strategic regulatory or permitting analysis.
- B. NERC consulting, NERC program licensing, audit preparation, audit support, or functional registration with NERC on behalf of the Facility.
- C. Engineering or other support for plant emergencies, operational events, capital projects or other Facility improvement initiatives.
- D. Asset management functions
- E. Direct placement and temporary staffing services performed by NAES's staffing services division.
- F. Debit Card Account management services
- G. Maintenance services performed by NAES subsidiaries or turbine services division.
- H. CMMS consulting, including development of modification of processes and products outside of the CMMS features available before the Takeover Date, including customization of the user interface or program functionality; development of customized reporting or customized integration solutions.

APPENDIX B - BONUS PROVISIONS

A. BONUS

1. Bonus. NAES may earn a Bonus in accordance with such criteria and metrics as are established in this Appendix B. The sum total of the Bonus in respect of any Year is limited to the Maximum Bonus (including escalation of the Maximum Bonus as provided in this Agreement and Appendix C).
2. Pro-ration. For any Year that is less than twelve calendar months, the Maximum Bonus will be reduced by multiplying the then current Maximum Bonus amount by the number of days in such partial Year as divided by the total number of days in that calendar year.
3. Criteria and metrics.

3.1 Bonus

The Incentive Payment earned by NAES in a given Operating Year shall be calculated using the following formula:

$$\text{Bonus} = [(0.17 * \text{SF}) + (0.17 * \text{EF}) + (0.17 * \text{NF}) + (0.49 * \text{AAF})] * \text{MB}$$

where:

"Bonus" = the Bonus Payment for the Operating Year.

"SF" = the Safety Factor for the Operating Year, calculated in accordance with Section 3.2.

"EF" = the Environmental Factor for the Operating Year, calculated in accordance with Section 3.3.

"NF" = the NERC Factor for the Operating Year, calculated in accordance with Section 3.4.

"AAF" = the Adjusted Availability Factor for the Operating Year, calculated in accordance with Section 3.6.

"MB" = the Maximum Bonus payment for the Operating Year.

The Parties agree that the specific targets for AAF, and the relative weighting given to AAF in the IP formula above, may be adjusted annually by the agreement of the Parties. Any such proposed adjustment will be made and resolved as part of the Annual Budget process set forth in Section 5.3 of the Agreement.

3.2 Safety Factor

The Safety Factor is based upon the Facility's success in achieving the targets set forth in NAES's Safety Leading Indicators policy. The Safety Factor will be a number between 1.0 and 0 inclusive determined from the table below based on the Safety Compliance Percentage.

Safety Compliance Percentage	Safety Factor
95%	1.0
75%	0

The Safety Compliance Percentage will be the average of the safety compliance percentages achieved in each of the three categories below. In the event that the Safety Compliance Percentage is a number falling between the percentages in the left column, the safety factor will be determined by straight line interpolation.

3.2.1 Housekeeping/Safety Inspections. Housekeeping/safety inspections will be performed and recorded on a weekly basis by one or more members of the Site Personnel. The safety compliance percentage for this category will be determined by dividing by 52 the number of weeks in the year in which one or more housekeeping/safety inspections and then multiplying the result by 100.

3.2.2 Workplace Safety Observations. Workplace safety observations in a quantity equal to the number of Site Personnel will be recorded on a monthly basis. The safety compliance percentage for this category will be determined annually by dividing the total number of safety observations for the year by the number of Site Personnel times twelve and then multiplying the result by 100.

3.2.3 Required Safety Training. As part of the budget and plan process for each year, the number of required safety training sessions will be established. At the end of the year, the ratio of completed safety training sessions over required safety training sessions expressed as a percentage will be the safety compliance percentage for this category, provided that safety training sessions completed after the expiration of a regulatory deadline will not be included in the numerator.

3.3 Environmental Factor

The Environmental Factor shall be a number in the range of 0 to 1 and shall be determined using the schedule set forth below:

<u>Notices of Violation</u>	<u>Environmental Factor</u>
0	1.00
1	0.50
2 or more	0.00

Notes: (1) Terminology or measure may have to be modified for particular State permits.

(2) NOVs will be credited to the year in which the violation occurred, not tied to when the NOV is actually issued.

(3) If the Parties succeed on appeal in obtaining withdrawal of the NOV, credit shall be given to the NAES by recalculation of the EF.

3.4 NERC Factor

The NERC Factor shall be a number in the range of 0 to 1 and shall be determined using the schedule set forth below:

<u>Notices of Violation</u>	<u>NERC Factor</u>
0	1.00
1	0.50
2 or more	0.00

Notes: (1) Terminology or measure may have to be modified for particular NERC Regional Entity differences.

(2) NOVs will be credited to the year in which the violation occurred, not tied to when the NOV is actually issued.

(3) If the Parties succeed on appeal in obtaining withdrawal of the NOV, credit shall be given to the NAES by recalculation of the NF.

3.5 Adjusted Availability Factor

An Availability Factor (“AF”) is a measure of the fraction, of a given operating period, a Facility is available without any outages, and is defined the IEEE Standard 762-2005, which is recognized by the NERC GADS reporting system. The Adjusted Availability Factor (“AAF”) is a measure, similar to AF, designed to measure the fraction a Facility is available without any outages, taking into account OEM recommended and owner directed outages as well as events that are determined to be outside of management control.

The Adjusted Availability Factor in a given Operating Year shall be calculated using the following formula:

$$\text{Adjusted AF} = ((\text{SH} + \text{RSH} + \text{CPOH} + \text{OMCH} + \text{DOH} + \text{ODOH}) / \text{PH}) * 100$$

where:

“AH” = Available Hours as defined in the IEEE Standard 762-2005

“SH” = Service Hours as defined in the IEEE Standard 762-2005

“RSH” = Reserve Shutdown Hours as defined in the IEEE Standard 762-2005

“CPOH” = Customary Planned Outage Hours. Customary Planned Outage Hours are defined as the hours associated with the scheduled outages in the applicable OEM maintenance and service agreements, plus the additional hours required for preparation for and recovery from these outages.

“OMCH” = Outside Management Control Hours. Outside Management Control Hours are defined as the hours associated with events as defined in Appendix K of the GADS Data Reporting Instructions plus hours associated with other events that the Parties agree are outside of management control. Note: OMCH is a subset of FOH.

“DOH” = Discretionary Outage Hours. Discretionary Outage Hours are defined as those hours associated with forced outage events that are tied to OEM technology that the Parties agree are fortuitous events, not including outage hours which are part of the approved operating budget and plan. Note: DOH is a subset of FOH.

“ODOH” = Owner Directed Outage Hours. Owner Directed Outage Hours are defined as the hours associated with outages taken for Facility betterment. Examples of Owner Directed Outage Hours include, but are not limited to, maintenance outages or planned outages for the purpose of winterization, commissioning of new plant equipment, discretionary equipment inspections, pre-summer “tune-up” outages, and OEM required outages that are not part of the CPOH definition, as agreed to by the Parties. Also included are extended outage hours from a CPOH as a direct result of the performance of Siemens. Events that would be considered as ODOH based upon agreement of both parties are significant planned replacement or repair of ailing major equipment. For purposes of the AAF calculation, ODOH events cannot be considered DOH events. Note: ODOH is a subset of AH.

“PH” = Period Hours as defined in the IEEE Standard 762-2005

The Adjusted Availability Factor, for incentive computation purposes, shall be a number in the range of 0 to 1 and shall be determined using the schedule set forth below:

<u>Facility Adjusted Availability</u>	<u>Adjusted Availability Factor</u>
Target plus 1.5% or higher	1.00
Target	0.60
Target minus 7% or lower	0.00

“Target” = A Facility Adjusted Availability Factor of 98%.

For an Adjusted Availability Factor falling between “Target plus 1.5%” and “Target” or between “Target minus 7%” and “Target”, the Adjusted Forced Outage Rate Factor achieved will be determined using a straight line interpolation.

B. EMPLOYEE BONUS

1. NAES will pay its Site Personnel an Employee Bonus as determined in accordance with this Appendix B.
2. NAES will provide Employee Bonus payments to Site Personnel after funding of the amount due pursuant to Section 7.4 of the Agreement.
3. For each member of the Site Personnel, the Employee Bonus will be determined, using the equation below, by calculating the product of each employee's Gross Annual Wages/Salary and the decimal equivalent of the bonus opportunity percentage for each of the Site Personnel (as determined in the Budget and Plan), then multiplying such product by the Bonus as divided by the Maximum Bonus. This Employee Bonus will be paid in accordance with NAES's payroll procedures and treated as a Site Cost.

“Employee Bonus” = (Gross Annual Wages/Salary) * (applicable bonus opportunity) * [(Bonus) / (Maximum Bonus)].

APPENDIX C - FEE ESCALATION METHODOLOGY

Beginning January 1, 2018, and on each succeeding January 1st throughout the Term of this Agreement, the Fee and Maximum Bonus will be escalated by multiplying the relevant sum in effect during the immediately preceding Year by the Escalation Factor (as defined below).

“Escalation Factor” means a factor representing the percentage change found in “Table 5” on employment cost trends published by the United States Bureau of Labor Statistics entitled “Compensation (Not seasonally adjusted): Employment Cost Index for total compensation, for private industry workers, by occupational group and industry” (the “ECI”). NAES and Owner will determine the Escalation Factor for the following Year by reading the published percentage change for the 12 months ending in September of the Year for the “management, professional and related” line in the “service-providing industries” section found in the ECI. ECI data is available at the U.S. Department of Labor, Bureau of Labor Statistics website: <http://www.bls.gov>. In the event the specific ECI datum is discontinued or superseded, a reasonable substitute or replacement datum will be identified by NAES, or in the absence of such substitute or replacement datum, the Parties will agree in good faith on a reasonable method for calculation of the Escalation Factor.

NAES and Owner will meet each August after the Takeover Date to review the Escalation Factor and to reach agreement on the following calendar year Site Personnel’s changes in salaries and wages.

APPENDIX D - FACILITY DESCRIPTION AND SPECIFICATIONS

The project is being permitted as a nominally rated 1,050 MW 2x1 gas fired (dual fuel) combined cycle electrical generating facility using two General Electric (“GE”) 7HA.02 combustion turbine generators and a single GE D602 steam turbine. The Facility will bid daily into the PJM energy and ancillary services markets.

Key project features include the following:

- The Facility Site encompasses approximately 87 acres of land located in Jackson Township, Cambria County, Pennsylvania (approximately 75 miles east of Pittsburgh, Pennsylvania). The Facility Site is surrounded by residential and agricultural properties to the north, east, and south; residential and commercial properties and a segment of State Highway 271 exist along the western boundary of the Facility Site. Spectra’s TETCO 30- and 36-inch natural gas mainlines are located approximately 1 mile north of the Facility Site. Municipal water and sewage piping exists under Highway 271 located to the west of the Facility Site. Figure 1 titled “Project Site Ariels and Interconnections” shows the outline of the property and surrounding features on a recent aerial photograph.
- Figure 2 titled “Project General Arrangement” shows a general arrangement of the proposed Facility and Figure 3 titled “Project Rendering” shows a project rendering of the proposed Facility.
- The Facility will be electrically interconnected to the adjacent 500 kV high-voltage transmission line between the Metropolitan Edison Hunterstown and Penelec Conemaugh substations. Penelec will loop the transmission line through the new Penelec interconnection substation adjacent to the Facility switchyard. The Penelec interconnection switchyard is to be constructed by the EPC Contractor under the EPC Contract and will be owned by Penelec.
- Natural gas will be transported to the Facility Site via a new 16-inch lateral connecting to Spectra’s TETCO 30-inch Line No. 19 and 36-inch Line No. 27. The Owner has contracted with Cenergy for the construction of the 16-inch lateral, meter station, and associated access road. The hot taps, along with portions of the gas metering station, are to be constructed by TETCO. TETCO will operate and maintain the TETCO facilities. Ethane will also be transported to the Facility Site via a Sunoco ethane pipeline which crosses the middle portion of the Facility Site. The Facility is also designed for future ultra low sulfur diesel fuel oil firing as a back-up fuel.
- Raw water supply for the Facility (up to 8.25 million gallons per day on a peak day, and 350,000 gallons per hour in a peak hour), will be provided from two Cambria Somerset Authority system sources, the Quemahoning Reservoir as the primary source and the Hinckston Run Reservoir as the back-up source.
- Potable water to be used for potable services will be supplied to the Facility from the Jackson Township Water Authority via a connection to its existing 8-inch potable water line along Highway 271 west of the Facility Site.
- The Facility will generate certain industrial wastewaters, consisting primarily of recirculating cooling tower blowdown and RO system reject water, with additional small volume sources (e.g., floor and equipment drains), and will treat such wastewaters as

necessary to produce reclaimed water. The reclaimed water produced by the Facility (up to 2.1 million gallons per day maximum daily average, and 100,000 gallons per hour) will be used by CSA's customers for non-potable uses.

- The Facility will be connected to the sanitary sewer via the Jackson/East Taylor Sewer Authority sewer main located under and near the east side of Highway 271.

Figure 1 – Project Site Arial and Interconnections

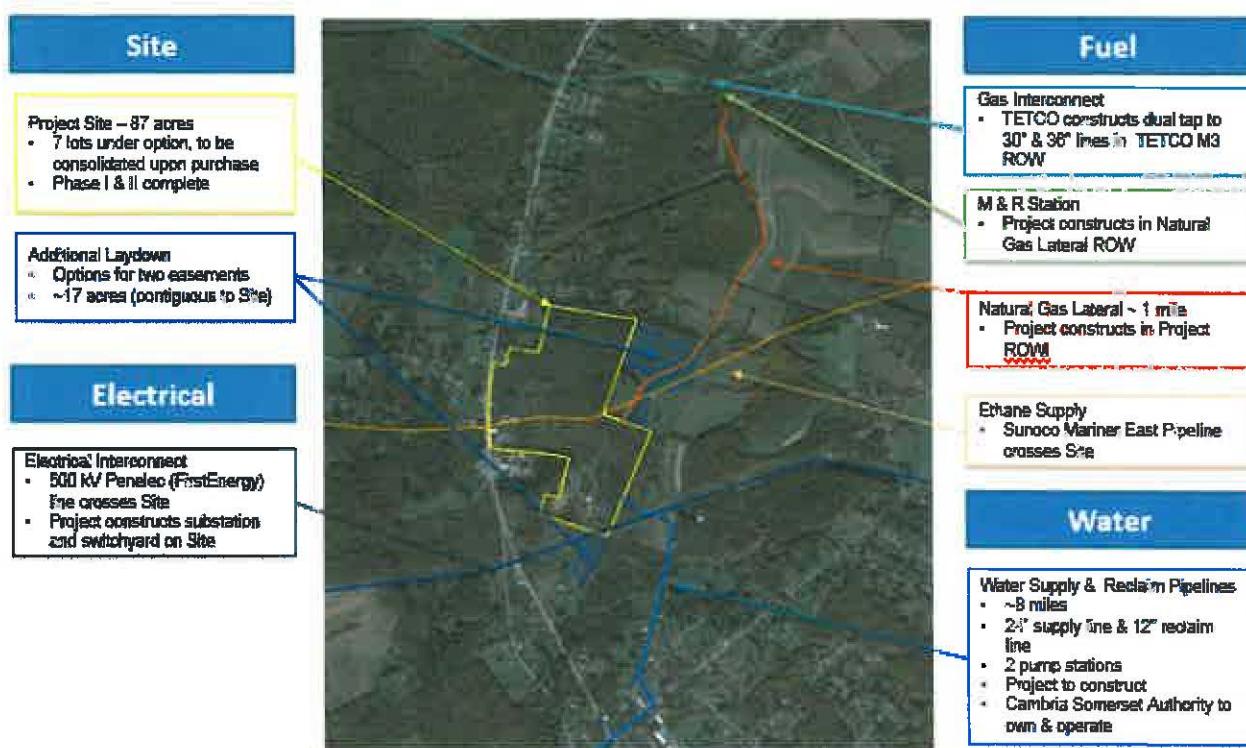


Figure 2 – Project General Arrangement

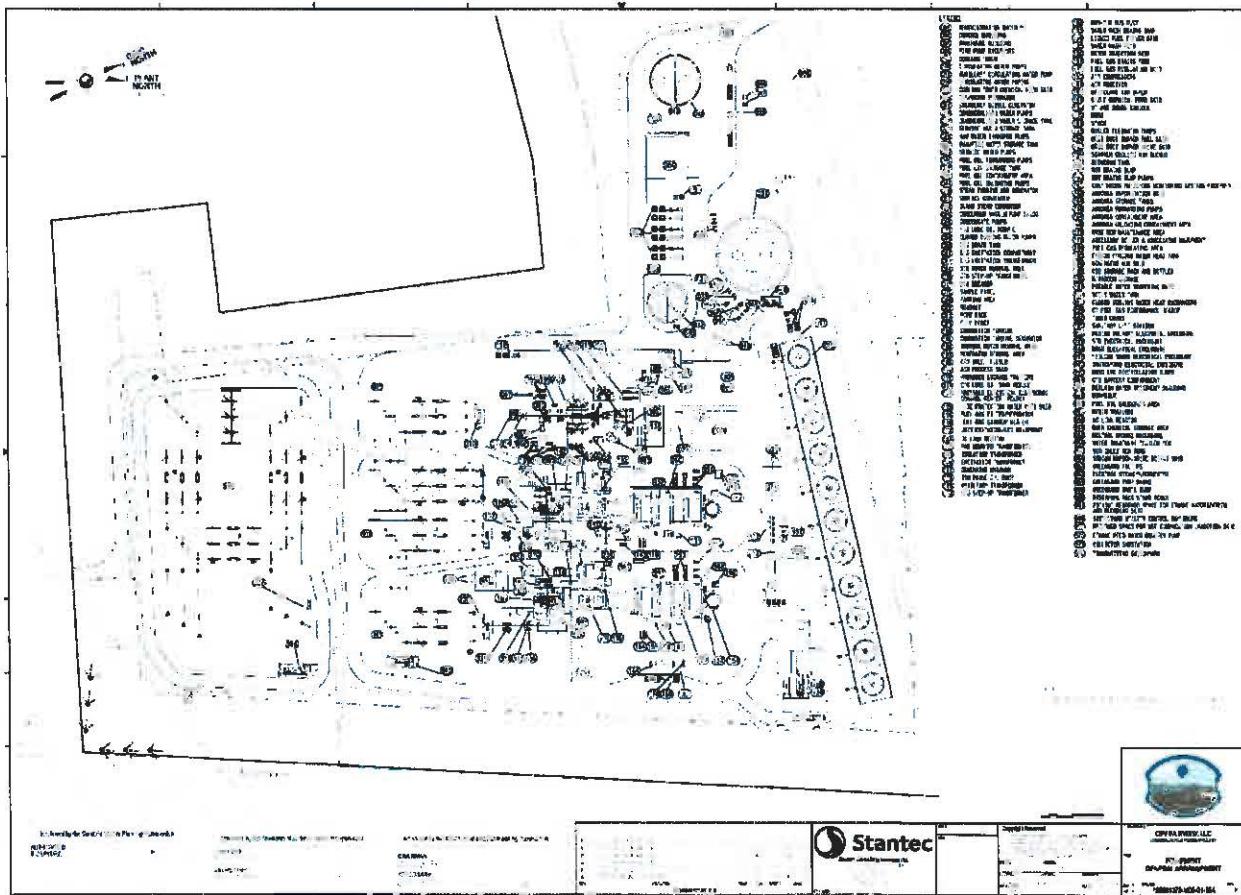


Figure 3 – Project Rendering



APPENDIX E – HOME OFFICE PERSONNEL RATES

The following hourly billing rates apply to Home Office Personnel time reimbursable under Section 7.3. These rates are valid through December 31, 2017. Rates for subsequent Years will be disclosed to Owner prior to becoming effective.

POSITION	Home Office Personnel under Section 7.3(iii)	Home Office Personnel under Section 7.3(iv)
PLANT OPERATIONS		
Sr. Vice President	\$ 317	\$ 393
Vice President	\$ 233	\$ 289
General Manager	\$ 214	\$ 265
Sr. Operations Director	\$ 193	\$ 239
Operations Director	\$ 179	\$ 221
Director, Fleet Service	\$ 204	\$ 252
Fleet Service Manager	\$ 139	\$ 172
Client Service Manager	\$ 139	\$ 172
Director, Operational Excellence	\$ 204	\$ 252
Sr. Program Manager	\$ 155	\$ 192
Program Manager	\$ 139	\$ 172
Director, Safety Operations	\$ 174	\$ 216
Sr. Safety Manager	\$ 155	\$ 192
Safety Manager	\$ 139	\$ 172
NAES SOLUTIONS		
General Manager	\$ 214	\$ 265
Director	\$ 204	\$ 252
Engineering Services:		
Director, Engineering	\$ 204	\$ 252
Chief Engineer	\$ 168	\$ 208
Sr. Project Manager	\$ 155	\$ 192
Senior Engineer	\$ 153	\$ 190
Engineer II	\$ 139	\$ 172
Engineer	\$ 126	\$ 156
Technical Services:		
Manager, Technical Services	\$ 155	\$ 192
Project Manager	\$ 126	\$ 156
Project Engineer	\$ 105	\$ 130
Software Dev. Engineer	\$ 105	\$ 130
CMMS Analyst	\$ 105	\$ 130
Sr. Operations Analyst	\$ 116	\$ 143
Operations Analyst	\$ 99	\$ 122
Environmental Services:		

POSITION	Home Office Personnel under Section 7.3(iii)	Home Office Personnel under Section 7.3(iv)
Director, Environmental Services	\$ 204	\$ 252
Sr. Environmental Manager	\$ 155	\$ 192
Sr. Environmental Specialist	\$ 139	\$ 172
Environmental Specialist	\$ 126	\$ 156
NERC Services:		
Director NERC Services	\$ 204	\$ 252
Manager NERC Services	\$ 155	\$ 192
NERC Project Manager	\$ 155	\$ 192
NERC Sr. Reliability Specialist	\$ 126	\$ 156
NERC Reliability Specialist	\$ 116	\$ 143
QA/QC		
VP, QA	\$ 229	\$ 283
QA/QC Manager	\$ 137	\$ 169
FINANCE		
Sr. Finance Manager	\$ 155	\$ 192
International Accounting Manager	\$ 116	\$ 143
Sr. Accountant / Int'l Accountant	\$ 103	\$ 127
Accountant	\$ 86	\$ 107
HUMAN RESOURCES		
VP, HR	\$ 244	\$ 302
Director HR	\$ 204	\$ 252
NAES Canada HR Manager	\$ 179	\$ 221
HR Employee Relations Mgr.	\$ 155	\$ 192
HR Mgr.	\$ 139	\$ 172
HR Specialist/Generalist	\$ 86	\$ 107
HR Associate	\$ 71	\$ 88
MISC. SUPPORT		
Sr. Business Development Mgr.	\$ 179	\$ 221
Marketing/Proposal Manager	\$ 126	\$ 156
Sr. Marketing Engr.	\$ 105	\$ 130
Director, IT Services	\$ 204	\$ 252
IT Manager/Business Application Manager	\$ 139	\$ 172
Sr. IT Support	\$ 105	\$ 130
IT Support	\$ 74	\$ 91
Marketing Engineer/Marketing Analyst	\$ 90	\$ 112
Technical Support Specialist	\$ 90	\$ 112
Executive Assistant	\$ 69	\$ 86
Administrative Assistant	\$ 67	\$ 83

APPENDIX F – TECHNICAL DISPUTE PROCEDURES

1. Commencement and Selection of Technical Expert

Within ten (10) Business Days following receipt of a disputing Party's notice referring a Technical Dispute to a Technical Expert, the disputing Parties' representatives shall confer in an effort to agree upon a Technical Expert to hear the Dispute. If the disputing Parties are unable to agree upon the appointment of a Technical Expert, then at the end of such ten (10) Business Day period each disputing Party shall, within five (5) Business Days, notify the other disputing Party in writing of its designation of three (3) proposed Technical Experts. Each disputing Party shall promptly strike two (2) of the proposed Technical Experts designated by the other disputing Party. The remaining two (2) proposed Technical Experts shall, within two (2) Business Days, select one of them to hear the Dispute; provided that if one of the disputing Parties still objects to the Dispute being heard by such selected Technical Expert, then, within two (2) Business Days, such two (2) proposed Technical Experts shall select a third Technical Expert (who may be one of the Technical Experts designated by the disputing Parties or another Technical Expert) and such third Technical Expert shall hear the Dispute.

2. Submission to Technical Expert

Each disputing Party that is subject to such Technical Dispute shall be required to put forth and endorse one proposal, budget or solution, as the case may be, as its proposed resolution to the Technical Dispute, based on an agreed statement of the nature of the Technical Dispute and agreed facts surrounding such Dispute. Each disputing Party's proposal or solution shall be delivered to the Technical Expert and the other disputing Party no later than forty-five (45) Days after the date of the notice of the disputing Party submitting the Technical Dispute to the Technical Expert. The Technical Expert shall be guided by consideration of (a) this Agreement and (b) Prudent Operation and Maintenance Practices, and be required to select one of the proposals or solutions, as the case may be, and shall not be able to select any other proposal or solution, except to the extent mutually agreed by the Parties to such Technical Dispute.

3. Decision of the Technical Expert

- (a) The Technical Expert shall render a decision resolving the matter within thirty (30) Days after receiving both proposal or solution from the disputing Parties, as provided in Section 2 above. The Technical Expert shall not award to either disputing Party any relief greater than that initially sought by such disputing Party. The decision of the Technical Expert shall be final and binding upon the disputing Parties and not subject to appeal or review, whether through arbitration or otherwise. The disputing Parties shall share equally all costs and expenses of the Technical Expert procedure and the Technical Expert shall not have the authority to award costs or attorneys' fees to either disputing Party. The Technical Expert shall act as an expert and not as an arbitrator and the provisions of the Federal

Arbitration Act and the law relating to arbitration shall not apply to the Technical Expert or his determination or the procedure by which he reaches his determination.

- (b) As used herein, “**Technical Expert**” means any individual selected in accordance with the procedure specified in Section 1 of this Appendix F and who (i) has significant professional qualifications and practical experience in the subject matter of the Dispute, (ii) has no interest, financial or otherwise, or duty which conflicts or may conflict with his functions as a Technical Expert (such individual being required to fully disclose any such interest or duty prior to his appointment) and (iii) is not at the time of appointment or during the consideration of a Technical Dispute an employee, contractor or consultant of either of the disputing Parties or any of their Affiliates, unless otherwise mutually agreed by the disputing Parties.

APPENDIX G – PROJECT AGREEMENTS [To be updated prior to Financial Close]

1. Limited Liability Company Agreement of CPV Fairview, LLC, dated July 24, 2014, between CPV PDI and GE Energy, LLC
2. Generation Interconnection Feasibility Study Agreement, dated October 21, 2014, between CPV Fairview, LLC and PJM Interconnection, L.L.C.
3. System Impact Study Agreement, dated February 27, 2015, between CPV Fairview, LLC and PJM Interconnection, L.L.C.
4. Development Services Agreement dated July 24, 2014 between CPVI and CPV Fairview, LLC
5. Contract for the Sale of Power Generation Equipment and Related Services, dated [upon financing], between CPV Fairview, LLC and General Electric Company
6. Engineering, Procurement and Construction Agreement, dated [TBD], between CPV Fairview, LLC and Kiewit Power Constructors Co.
7. Geotechnical Services Agreement, dated November 1, 2016, between CPV Fairview, LLC and Kiewit Power Constructors Co.
8. Engineering, Procurement and Construction Agreement, dated [TBD], between CPV Fairview, LLC and Cenergy, LLC
9. Engineering, Procurement and Construction Agreement, dated [TBD], between CPV Fairview, LLC and Charles J. Merlo, Inc.
10. Host Community Benefits Agreement, dated July 14, 2016, between CPV Fairview, LLC and Jackson Township, Cambria County, The Community Foundation of Greater Johnstown d/b/a The Community Foundation for the Alleghanies
11. Environmental Services Agreement, dated [TBD], between CPV Fairview, LLC and Neumeyer Environmental Services, Inc.
12. Water Supply Agreement, dated March 14, 2016, between CPV Fairview, LLC and Cambria Somerset Authority ***to be Amended & Restated**
13. Reclaimed Water Agreement, dated March 14, 2016, between CPV Fairview, LLC and Cambria Somerset Authority ***to be Amended & Restated**
14. Letter Agreement, dated February 12, 2014, between CPV Fairview, LLC and Cambria Somerset Authority
15. Compensation Agreement, dated June 3, 2016, between CPV Fairview, LLC and Arthur J. Gallagher Risk Management Services, Inc.
16. Highway Occupancy Permit and Agreement, dated October 21, 2015, between CPV Fairview, LLC, Cambria Somerset Authority and East Taylor Township
17. Highway Occupancy Permit and Agreement, dated October 29, 2015, between CPV Fairview, LLC, Cambria Somerset Authority, and Jackson Township
18. Connection Agreement, dated [TBD], between CPV Fairview, LLC and Sunoco Pipeline L.P.
19. Reimbursement, Construction, Ownership and Operation Agreement, dated [TBD], between CPV Fairview, LLC and Texas Eastern Transmission, LP
20. Interconnection Service Agreement, dated [TBD], between CPV Fairview, LLC and PJM Interconnection, and Penelec

21. Interconnection Construction Service Agreement, dated [TBD], between CPV Fairview, LLC and PJM Interconnection, and Penelec
22. Consent Order and Agreement, dated [], between CPV Fairview, LLC, Pennsylvania Department of Environmental Protection, and Stephen A. & Barbara Yurasek
23. Letter of Intent re Equipment Purchase Order, dated [], between CPV Fairview, LLC and General Electric
24. Operations & Maintenance Agreement, dated [TBD], between CPV Fairview, LLC and [TBD]
25. Contractual Services Agreement/Multi-Year Agreement, dated [TBD], between CPV Fairview and General Electric
26. Asset Management Agreement, dated [TBD], between CPV Fairview, LLC and Competitive Power Ventures, Inc.
27. Wetland Mitigation Contract, dated [TBD], between CPV Fairview, LLC and BluAcres
28. Fuel Supply Agreement, dated [TBD], between CPV Fairview, LLC and [TBD]
29. Energy Management Agreement, dated [TBD], between CPV Fairview, LLC and [TBD]
30. Commodity Hedge Agreement, dated [TBD], between CPV Fairview, LLC and [TBD]

APPENDIX H – OWNER CORPORATE POLICIES AND PROCEDURES

1. CPV Employee Handbook 12-22-2016
 - 1.A CPV Information Technologies Policies 12-15-2016
2. CPV Code of Business and Ethics 12-22-2016
3. CPV Delegation of Authority Policy 12-22-2016
4. CPV Lobbying Policy and Procedures 12-22-2016
5. CPV Gift and Gratuities Policy and Procedures 12-22-2016
6. CPV Political Contributions Policy and Procedures 12-22-2016
7. CPV Charitable Contributions and Sponsorship Policy and Procedures 12-22-2016
8. CPV Employee Expense Reimbursement Policy and Procedures 12-22-2016
9. CPV Accounting-Vendor Setup and Payment Policy and Procedures 12-22-2016
 - 9.A and B CPV Vendor Intake Questionnaire (CPV and Vendor) 12-22-2016
 - 9.C Check Request Form Template 01-23-2017
 - 9.D Wire Request Form Template 01-23-2017