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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re UNION POWER PARTNERS, L.P. PANDA GILA RIVER, L.P. TRANS-UNION INTERSTATE PIPELINE, L.P. UPP FINANCE CO., LLC Debtors.	In Proceedings Under Chapter 11 Case Nos. _____ through _____ (Joint Administration Requested) Judge _____ **NOTICE OF FILING AGREEMENTS**
This Filing Applies to: ■ All Debtors ❒ Specified Debtors	

PLEASE TAKE NOTICE that UNION POWER PARTNERS, L.P. ("**UPP**"), PANDA GILA RIVER, L.P. ("**PGR**"), TRANS-UNION INTERSTATE PIPELINE, L.P. ("**Trans-Union**"), and UPP FINANCE CO., LLC ("**Finance Co.**", and, collectively with UPP, PGR and Trans-Union, the "**Debtors**"), debtors and debtors-in-possession in the above-captioned Chapter 11 cases, have filed with the Court the "Operation and Maintenance Agreement" between UPP and TPS Arkansas Operations Company dated February 8, 2001, the "Operation and Maintenance Agreement" between PGR and TPS Arizona Operations Company dated March 12, 2001, the "Amended and Restated Operation and Maintenance Agreement" between PGR and TPS Arizona Operations Company dated May 25, 2001;

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and the "Transition Services Agreement" between the Gila River Transition Energy Management AssetCo, LLC. And UPP (the "**Agreements**")

PLEASE TAKE FURTHER NOTICE that parties wishing to view the Agreements and any exhibits thereto may access the Debtors' web site at http://www.kccllc.net/unionpower. If you are a registered PACER user, the Agreements may be obtained electronically at www.azb.uscourts.gov.

Dated this 26th day of January, 2005.

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: *\/s/ Craig D. Hansen*

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Proposed Counsel to Debtors and
Debtors-in-Possession

Execution Version

OPERATION AND MAINTENANCE AGREEMENT

BETWEEN

UNION POWER PARTNERS, L. P.

AND

TPS ARKANSAS OPERATIONS COMPANY

February 8, 2001

OPERATION AND MAINTENANCE AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into on the 8th day of February, 2001, by and **between Union Power Partners, L.P.** ("Owner"), a Delaware limited partnership and **TPS Arkansas Operations Company** ("Operator") an Arkansas corporation.

WHEREAS, Owner intends to construct and operate a natural gas nominal 2,140 net megawatt (approximately) electric generation facility (the "Facility") in Union County, Arkansas and pursuant to which Owner will sell and certain persons including but not limited to utilities, factories, and power marketers will purchase Electrical Energy produced by the Facility; and

WHEREAS, Owner desires to have Operator provide operation and maintenance services at the Facility and Operator desires to provide such services.

NOW, THEREFORE, in consideration of the foregoing and of the premises hereinafter contained, Owner and Operator agree as follows:

SECTION I

DEFINITIONS

Whenever the following terms appear in this Agreement, they shall have the following meanings:

"Affiliate" shall mean, with respect to any corporation, a corporation which controls, is controlled by, or is under common control with, such corporation or successor thereto.

"Agent for the Lenders" shall mean that institution as defined in the Financing Documents.

"Agreement" shall mean the Operation and Maintenance Agreement made and entered into on the date set forth above by and between Owner and Operator.

"Annual Budget" shall mean the budget of all costs and expenses anticipated to be incurred by Operator to meet its obligations under this Agreement during any calendar year, or part thereof.

"Applicable Laws" shall mean any law, regulation, ordinance, statute, ruling, appeal or any other legal pronouncement issued by a governmental agency, governmental organization, or court of law, which has jurisdiction over the Facility or the parties hereto.

"Approved Budget" shall mean the annual budget prepared and submitted by Operator pursuant to Section 2.17 (n) hereof, which has been approved by Owner.

"Authorization To Proceed" shall mean Owner's written notice to Operator to commence the work required by this Agreement.

"Claims" shall have the meaning given such term in Section 9.02 (a) hereof.

"Commencement Date" shall mean the calendar date upon which Operator is to commence the work required by this Agreement as specified in the Authorization to Proceed.

"Consumables" shall be the meaning set forth in Section 2.07 hereof.

"Customers" shall mean the Power Manager and any purchasers of Electrical Energy through any Power Agreement from the Facility.

"Delivery Facilities" shall mean the lines and pipes used to deliver gas and water to the facility.

"Electrical Energy" shall mean the capacity, energy, and ancillary services provided by the Facility.

"EPC Agreements" shall mean, collectively, the Turnkey EPC Agreement and the Switchyard EPC Agreement.

"Facility" shall mean the nominal 2,140 net megawatt combined cycle, natural gas fired facility to be built by Owner, to supply "Electrical Energy" to a power marketer (to be determined by Owner) and other customers and all equipment contained therein and parts thereof. It shall include, without limitation, Delivery Facilities, the portion of the natural gas pipeline located on the Site, interconnection facilities to interconnect with the Transmission Provider (to the extent located on Owner's side of the interconnection point that is on the high side of Owner's step-up transformer) and other equipment and systems described in the EPC Agreements.

"Facility Funding" shall mean the date upon which the Lender makes the initial loan to Owner.

"Financing Documents" shall mean those documents related to the financing and/or the refinancing (on the part of Owner in favor of the Lenders) for the development, construction, ownership, operation or maintenance of the Facility, or any portion thereof.

"Indemnitee" shall have the meaning set forth in Section 9.02(a) hereof.

"Lender" and "Lenders" shall mean the financing entities, security holders, investors, and other entities that provide financing to or on behalf of Owner, for the development, construction, ownership, operation, and maintenance of the Facility or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.

"Maintenance Reserve" shall mean the fund established to cover major maintenance expenditures such as combustion turbine overhauls and other equipment major maintenance overhauls.

"Operator" shall mean TPS Arkansas Operations Company, an Arkansas corporation.

"Operator Proprietary Information" shall include any and all technical and other analyses, data, plans, programs, schedules, maps, records, reports, tapes and other information of any kind whatsoever developed or acquired at any time by Operator, other than with funds provided to Operator pursuant to this Agreement.

"Owner" shall mean Union Power Partners, L.P., a Delaware limited partnership.

"Phase I Commercial Operation" shall mean the commencement of regular deliveries of Electrical Energy to Customers pursuant to any Power Agreements, which will occur on or after the Commercial Operation Date.

"Phase I Commercial Operation Date" shall mean the actual date of achieving Phase I Commercial Operation as determined pursuant to the Turnkey EPC Agreement.

"Plant Manager" shall mean Operator's on-site employee responsible for the operation and maintenance of the Facility.

"Power Agreement" shall mean any agreement that may be entered into during the term of this Agreement for the purchase and sale of Electrical Energy from the Facility.

"Prudent Utility Practices" shall mean those practices generally followed by the United States electric utility industry with respect to the operation and maintenance of electric generating, transmission and distribution facilities (including, but not limited to, the operating and safety practices generally followed by the electric utility industry).

"Reimbursable Costs" or "Reimbursable Cost" shall mean all reasonable and actual direct costs properly incurred pursuant to Sections 2.01 through 2.08, 2.09, 2.13, 9.01(b)(ii) and 10.2 of this Agreement.

"Scheduled Outages" shall mean an interruption or reduction of the Facility's electrical generating capacity that is planned by Owner, as such plans may be revised or scheduled by Owner from time to time.

"Site" shall mean that real property upon which the Facility is located.

"Switchyard EPC Agreement" shall mean that certain Switchyard Engineering, Procurement and Construction Agreement for Combined-Cycle Generation Facility, dated September 15, 2000, between Owner and Switchyard Contractor relating to the design, construction, testing and starting up of the switchyard and transmission lines, as may be amended, supplemented or modified from time to time.

"Switchyard EPC Contractor" shall mean Dashiell Corporation, a Texas corporation.

"Substantial Subcontractor" means a subcontractor whose contract or contracts (in the aggregate) with contractor require payments by contractor of at least $50,000.

"Termination Payment" shall be a lump-sum payment as defined in Section 8.01 hereof.

"Transmission Provider" shall mean Entergy Arkansas, Inc., an Arkansas corporation.

"Turnkey EPC Agreement" shall mean that certain Turnkey Engineering, Procurement and Construction Agreement for Combined-Cycle Generation Facility, dated December 15, 2000, between Owner and Turnkey EPC Contractor relating to the design, construction, testing and starting up of the Facility, as may be amended, supplemented or modified from time to time.

"Turnkey EPC Contractor" shall mean National Energy Production Corporation, a Delaware corporation.

SECTION II

SERVICES TO BE PERFORMED BY OPERATOR

Operator will provide all operation and maintenance services necessary for the efficient, sound and effective operation of the Facility. Operator will maintain the Facility in good mechanical and operating repair and condition in accordance with Prudent Utility Practices. Without limiting the generality of the foregoing, Operator shall do the following:

2.01 Personnel. Operator shall hire, train and provide, in a manner consistent with Prudent Utility Practice, competent qualified personnel to operate and maintain the Facility including, without limitation, the following:

(a) A Plant Manager assigned to the Facility full time, to manage on-site operations and maintenance which individual shall be approved in writing by Owner;

(b) Additional full time on-site personnel as needed; and

(c) Additional engineering support, maintenance, and management personnel not located full time at the Facility, as needed to perform the requirements of this Agreement.

Without limiting the generality of the foregoing, Operator will (i) staff the Facility with qualified operators (in the control room or electronically connected thereto when elsewhere on the Facility site) during all hours when the Facility is in operation or when the generator is electrically connected to the Transmission Provider's system; (ii) provide those full time on-site personnel required to operate the Facility in accordance with Prudent Utility Practices, including, without limitation, those positions identified in Exhibit A hereto (as may be amended by Operator from time to time); and (iii) provide the home office support identified in Exhibit B hereto. The direct and indirect cost of the Facility staff identified in Exhibit A shall be a pass through to the Owner,

without markup, as a Reimbursable Cost. The direct labor cost only and expenses of home office support identified in Exhibit B shall be passed through to the Owner, with a multiplier of two applied to the direct labor cost only, as a Reimbursable Cost.

2.02 Initial Staffing, Startup and Testing. After receiving Authorization to Proceed, Operator shall prepare a hiring schedule for the personnel identified in Exhibit A. After review and written approval of the hiring schedule by Owner, Operator shall commence initial hiring of personnel. Operator shall adjust the hiring schedule, as requested by Owner in writing, in accordance with changes in the construction, start-up, and Phase I Commercial Operation Date.

Operator shall provide qualified operating personnel to assist in startup and testing of the Facility under the direction and supervision of the Turnkey EPC Contractor. It is understood that Owner is obligated to pay for Operator's services during startup and testing as provided herein but that Turnkey EPC Contractor shall furnish total supervision and direction (including sole control over and responsibility therefor) of Operator's startup and testing activities and Turnkey EPC Contractor will have care, custody and control of the Facility prior to the Phase I Commercial Operation Date.

2.03 Operation and Maintenance. Operator shall operate and maintain the Facility, seven days a week, twenty-four hours per day, in accordance with Prudent Utility Practices, manufacturers' and the Turnkey EPC Contractor's recommendations, as applicable, and as required by any Power Agreements, Financing Documents and this Agreement. In addition, the Operator will operate the Facility in a manner calculated to maximize the useful life of the equipment, avoid excessive fuel consumption, minimize downtime for repairs, and avoid forced outages. Operator shall consult with Owner in order to clarify its obligations in the event that any conflict exists in these obligations under this Agreement. Operator shall be solely responsible for the operation and maintenance of the Facility hereunder but will follow the directions of Owner with respect to financial or economic matters as long as compliance with such directions will not be likely to materially and adversely affect the operation and maintenance of the Facility as required hereunder.

2.04 Tools.

(a) Operator shall review the tool list developed by the Turnkey EPC Contractor pursuant to the Turnkey EPC Agreement, and shall identify and prepare a list of recommended tools required to adequately perform the requirements of this Agreement. Said list will be submitted to Owner in one or more increments and shall be modified or supplemented throughout the term of this Agreement by agreement of the parties as necessary to permit the timely acquisition thereof. The initial list of such tools shall, in no event, be submitted to Owner later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date.

(b) The initial supply of tools identified on the list described in paragraph (a) shall be subject to the written approval of Owner and will be purchased by Operator to Owner's account as provided in Section 4 of this Agreement or as a Reimbursable Cost. Operator shall promptly notify Owner in writing of tools that were not approved that could impact its obligations and duties hereunder.

(c) Operator shall be responsible for annually, or as otherwise reasonably requested by Owner in writing, preparing and presenting to Owner an accurate reconciliation of the Facility's tool inventory.

(d) Operator shall be responsible for the use, management, control, care, and custody of Facility tools.

(e) Operator shall repair or replace as required, as a Reimbursable Cost or to the account of Owner, as provided in Section 4, tools that deteriorate due to normal use.

(f) Operator shall periodically, and no less frequently than annually, review Facility tools, and make recommendations to Owner for additional tools that would improve Facility operations.

2.05 Spare Parts.

(a) Operator shall review the spare parts list developed by the Turnkey EPC Contractor pursuant to their Agreements, and shall identify and prepare a list of recommended spare parts required to adequately perform the requirements of this Agreement. Said list will be submitted to Owner in one or more increments and shall be modified or supplemented throughout the term of this Agreement by agreement of the parties as necessary to permit the timely acquisition thereof. The initial list of such spare parts shall, in no event, be submitted to Owner later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date. Spare parts will be determined with reference to generally accepted practices in the industry and with reference to manufacturer's recommendations.

(b) The initial supply of spare parts identified on the list described in paragraph (a) shall be subject to the written approval of Owner and will be purchased by Operator for Owner's account as provided in Section 4 of this Agreement or as a Reimbursable Cost.

(c) Operator shall, subsequent to submitting the initial list of spare parts described in paragraph (a) be responsible for purchasing, for Owner's account as provided in Section 4 hereof or as a Reimbursable Cost, replacements for said listed spare parts as necessary.

(d) Operator shall be responsible for the use, care, custody, management and control of said spare parts.

(e) Operator shall be responsible for performing and presenting to Owner an accurate reconciliation of the Facility's spare parts inventory on an annual basis, or as otherwise reasonably requested by Owner in writing.

(f) Operator shall be responsible for establishing proper and effective on-Site warehousing and inventory controls for such spare parts. Owner shall provide the on-Site warehouse.

(g) Operator shall purchase additional parts or replacement parts to maintain inventory at levels to support Facility requirements, as a Reimbursable Cost or to the account of Owner as provided for in Section 4.

2.06 Equipment.

(a) Operator shall identify and prepare a list of recommended equipment required to adequately perform the requirements of this Agreement. Said list will be submitted to Owner in one or more increments and shall be modified or supplemented throughout the term of this Agreement by agreement of the parties as necessary to permit the timely acquisition thereof. The initial list of such equipment shall, in no event, be submitted to Owner later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date.

(b) The equipment identified on the list of such equipment described in paragraph (a) shall be subject to the written approval by Owner and shall be purchased by Operator for Owner's account as provided in Section 4 or as a Reimbursable Cost. Operator shall promptly notify Owner in writing of equipment that was not approved that could impact Operator's obligations and duties hereunder.

(c) Operator shall periodically review the equipment required to perform under this Agreement and make recommendations to Owner of modifications or additions to Facility equipment throughout the term of this Agreement that would improve or enhance Facility operations.

(d) Operator shall be responsible for the use, management, care, custody, operation and maintenance of said equipment. Operator shall repair or replace, as a Reimbursable Cost or to the account of Owner as provided for in Section 4, this equipment.

(e) Operator shall, when approved in advance by Owner in writing, purchase and install additional equipment as a Reimbursable Cost or to the account of Owner as provided for in Section 4.

2.07 Consumables and Other Materials.

(a) Operator shall identify those consumable, expendable, and other materials and supplies ("Consumables") necessary to perform the requirements of this Agreement. Said Consumables will be identified to Owner throughout the term of this Agreement as necessary to permit the timely acquisition thereof. The initial list of such Consumables shall, in any event, be identified and submitted to Owner in writing no later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date.

(b) Operator shall use, manage, care for, control and maintain Consumables as required to support the needs of the Facility, and purchase Consumables, as Reimbursable Costs or to Owner's account as provided in Section 4, throughout the term of this Agreement.

2.08 Purchased Parts, Labor and Services. Operator shall identify and purchase as Reimbursable Costs or for the account of Owner as provided for in Section 4, parts other than spare parts and

purchased labor and services throughout the term of this Agreement as necessary to perform the requirements of this Agreement, including but not limited to the labor and services identified in Exhibit C hereto. This will include purchases for the services of factory personnel, or personnel trained and qualified to provide equivalent services, to perform manufacturer's recommended service procedures when deemed necessary. Without limitation, Operator shall purchase as a Reimbursable Cost third-party Contracts to clean up and remove hazardous waste and solid waste, except such waste arising out of the gross negligence or fault of Operator. Any maintenance or repair that can reasonably be performed by regular full time on-site personnel, provided pursuant to Section 2.01 above and Exhibit A, will be performed by them, without additional compensation.

2.09 Maintenance and Repairs. Operator shall comply with procedures developed pursuant to Section 2.10 below and otherwise provide all maintenance and repair services necessary to keep the Facility in good working order in a manner consistent with Prudent Utility Practice, to correct by appropriate measures any damage to or malfunction of the Facility, and provide all necessary information to and cooperate with Owner so that Owner may enforce or make warranty claims with respect to any repair or malfunction. Any parts utilized in performing operation and maintenance services shall be new or refurbished according to manufacturer's recommendations. Operator shall assign to Owner the manufacturer's warranty on all parts Operator has purchased.

2.10 Operating, Maintenance and Safety Plans and Procedures. Using the operations and maintenance manuals supplied to Owner by the Turnkey EPC Contractors pursuant to the Turnkey EPC Agreement, and all other equipment and supplier manuals, as supplemented by Operator's standard procedures developed for like facilities, Operator shall develop (and furnish copies to Owner for review and approval in writing) necessary operating, maintenance and safety plans and procedures including, without limitation, the following (each of which shall satisfy the requirements set forth in any Power Agreement):

(a) Startup, operating, dispatching and shutdown procedures for Facility equipment and systems including appropriate periodic checks of and/or for water quality and treatment requirements, fluid or gaseous leaks, improper temperatures, excessive noise and vibrations, proper pressures and liquid levels, and other pertinent operating information indicative of equipment condition;

(b) Periodic maintenance plans identifying schedules and procedures for equipment lubrication, packing and seal checks, filter checks and services, and electrical and control system checks;

(c) A ten year plan and other plans and procedures for long-term maintenance and overhaul of Facility equipment;

(d) Plans and procedures for as-needed repairs and overhauls;

(e) Plans and procedures for emergency service and repairs as needed, twenty-four (24) hours a day, each day of the year. Such procedures will provide for expedited service and repairs; for the availability of Operator's management personnel, in connection with such services, on a twenty-four (24) hours a day, each day of the year basis; for notification of and expediting the availability of factory or service personnel when necessary repairs are beyond the capabilities of on-site personnel, and for the

immediate notification of Owner of any emergency event or condition, of anticipated corrective actions to be taken and of anticipated service and repair times and consequences;

(f) Procedures for identifying, acquiring and maintaining required spare parts to ensure that the Facility has an adequate inventory of spare parts, in accordance with Section 2.05 of this Agreement; and

(g) Procedures for notice to and approval by Owner of any alterations to the Facility, so that no alterations to the Facility will be made without the written consent of Owner.

Operator will, without limitation, provide in such plans and procedures for visual, mechanical or instrumental inspection as necessary in order to provide early detection of required adjustments, repairs or replacements so that required adjustments, repairs or replacements can be scheduled with minimum interference to Facility operations insofar as possible. Such procedures will be consistent with applicable manufacturer's recommendations, will provide for the services of factory representatives and/or outside consultants where appropriate and will provide for orderly shutdowns and minimum interference with operations. Such procedures will be reviewed as required and in no event less frequently than annually with a copy of the review provided to Owner. No alterations to the Facility shall, in any event, be made without the prior written approval of Owner.

2.11 Records. Operator shall keep and maintain financial, maintenance and operation records for the Facility and for the equipment therein. Such records shall satisfy both the requirements set forth in any Power Agreements and Lenders' requirements under the Financing Documents and shall include, without limitation: the logging of daily exception reports; daily Operator's logs; a record of all maintenance and repairs performed; copies of all plans and procedures developed pursuant to Section 2.10 above or otherwise; emissions and compliance reports; equipment and instrument calibration records; fuel consumption records; steam production; water consumption, consumption and delivery records; and electricity production, consumption and delivery records. All records shall be made available for examination by Owner during normal working hours.

2.12 Reports. Operator shall prepare and furnish a monthly operations report within fifteen (15) business days following the close of each calendar month, including the following:

(a) A review of operations for the prior month (fuel consumption; electricity and steam production, consumption and deliveries, etc.);

(b) Identification of significant exceptions to the normal status of equipment;

(c) Identification of all major repairs or alterations made to equipment during the prior month;

(d) Identification and explanation of significant performance deviations from the prior month or from anticipated performance;

(e) Identification of maintenance and shutdowns planned for the succeeding twelve (12) months; and

(f) Such other matters as may be reasonably requested by Owner in writing;

Operator shall also provide all notices required in connection with the operation and maintenance of the Facility by applicable permits, laws and regulations and any Power Agreement and the Financing Documents within the times required. Owner shall be responsible, pursuant to Section 3.09(c), for providing those documents which identify all required notices relating to the operation and maintenance of equipment contained in the Facility that are required by this paragraph.

2.13 Governmental, Regulatory, Utility And Safety Requirements. Operator shall operate and maintain the Facility in compliance with all applicable laws, permits, approvals, ordinances, rules, regulations and orders of Federal, State and local governmental authorities. Operator shall also comply with all safety and other rules and regulations reasonably established by Owner with respect to the Facility, by Transmission Provider with respect to interconnection delivery facilities and property owned by or leased from the Transmission Provider, and with all safety requirements with respect to all other third party Contracts to which the owner is a party. In the event that such requirements change during the term of the Agreement, and such changes require additional costs of Operator, these additional costs shall be reimbursed to Operator by Owner as Reimbursable Costs. In the event such changes require alteration to the Facility, Owner shall be responsible for the costs of such alterations.

2.14 Liens And Encumbrances. Operator shall keep all real property and all personal property and equipment associated with or part of the Facility free and clear of all liens and encumbrances caused by an action or failure to act by Operator or any of its consultants, suppliers or subcontractors in the performance of its obligations under this Agreement, including, without limitation, failure by Operator to pay, when due, any bill or charge for labor or services performed or materials or equipment furnished for use in connection with this Agreement. Nothing herein contained shall require Operator to pay any claims for labor, materials or services which Operator, in good faith disputes and which Operator, at its own expense, is currently and diligently contesting.

2.15 Metering. Operator shall verify the accuracy of meters and devices used to measure the delivery of energy as required, but in no event less frequently than quarterly and shall verify the accuracy of meters and devices used to measure the delivery of electricity, natural gas, steam and water as required, but in no event less frequently than annually. Such verification is to be performed in a manner consistent with standard industry practice and all applicable third party Contracts to which the Owner is a party.

2.16 Waste. Operator shall not allow any hazardous or solid waste to accumulate on the Site in contravention of any applicable law, regulation or governmental permit or license, any Power Agreement, or the Financing Documents.

2.17 Scope of Work. Operator shall perform those services described in this Agreement. Such services shall be performed and supplied in connection with, but not limited to, the following:

(a) Preparation of the Facility for Phase I Commercial Operation including, without limitation, the following:

(i) The review of engineering drawings; provided however, such review shall not give Operator any responsibility for the design of the Facility;

(ii) Participation with Owner in design review meetings, in construction reviews, in the development of training programs and in development of Facility checkout and startup procedures; and

(iii) The hiring and training of qualified Operator personnel;

(b) Testing and acceptance of the Facility from the Turnkey EPC Contractor including: (i) review of turnover packages, (ii) system walkdowns and acceptance, and (iii) assistance in developing punchlists;

(c) Testing of the Facility required by this Agreement, the Switchyard EPC Agreement and Power Agreements. Operator shall provide trained and qualified operating personnel to assist in the startup and testing of the Facility under the direction and supervision of the Turnkey EPC Contractor prior to Phase I Commercial Operations;

(d) Startup of the Facility in connection with each dispatch from the Transmission Provider or for the Customers;

(e) Management and provision of all activities required for Facility support and operation, under the direction of Owner, including but not limited to: community interface, fuel scheduling, and management of other Agreements and services necessary to support the Facility;

(f) Operation of the Facility;

(g) Management of all operation and maintenance requirements of the Facility;

(h) Maintenance of the Facility;

(i) Furnishing Electrical Energy to the Customers, together with the maintenance schedules and other records required by the Customers;

(j) Providing home office support activities for the Facility including but not limited to those of Exhibit B;

(k) Assist Owner in obtaining and renewing the necessary permits and licenses of Section 3.04 when requested by Owner in writing;

(l) Submit a desired schedule of Scheduled Outages as required in any Power Agreement (including the duration of each outage) to Owner at least four (4) weeks before Owner is required to supply same to Customers;

(m) Cooperate with Customers and Owner in scheduling and performing all scheduled maintenance outages, routine maintenance and major overhaul outages in accordance

with Owner's obligations of any Power Agreements or as set forth in the Financing Documents.

(n) Prepare and submit to Owner, for Owner's approval, an Annual Budget for the Facility, at least ninety (90) days before the beginning of each calendar year. Such budget shall be consistent with the requirements of this Agreement and meet the requirements of any Power Agreements or the Financing Documents; and

(o) Provide sufficient training to operating and maintenance personnel to assure that their capabilities and qualifications are maintained.

2.18 Operator Proprietary Information. Operator Proprietary Information shall remain the property of the Operator and may be used by the Owner only in connection with the development, construction and operation of the Facility. Owner shall hold and treat all Operator Proprietary Information in the strictest confidence and shall not disclose any Operator Proprietary Information without the prior written consent of the Operator. Owner may disclose Operator Proprietary Information to those of its employees or agents on a need-to-know basis and *provided* such employees or agents are informed of the confidential nature of such information and the purposes for which the Operator Proprietary Information may be used in accordance with the provisions of this Agreement. If Owner receives a request from a governmental agency to disclose Operator Proprietary Information, Owner shall immediately notify Operator of such request, consult with the Operator on the course of action with respect to the request (including cooperating with Operator in seeking a protective order) and if disclosure is required, furnish only that portion of the Operator Proprietary Information which it is legally compelled to disclose.

SECTION III

SERVICES TO BE PERFORMED BY OWNER

From and after the Commencement Date, Owner shall be responsible for the following:

3.01 Office Space, Equipment, And Administrative Services. Owner shall provide office and administrative space, administrative services and equipment for Operator at the Facility.

3.02 Tools, Spare Parts, Equipment And Consumables. Owner will:

(a) Provide written approval or give timely objections to the lists of tools, spare parts, equipment, and Consumables identified by Operator pursuant to Sections 2.04, 2.05, 2.06, and 2.07 hereinabove.

(b) Pay for approved supplies of tools, spare parts, equipment, Consumables, and purchased parts, labor and services and Reimbursable Costs required by Operator to perform its responsibilities as defined in Section II of this Agreement, as provided for in Section 4.01(b), 4.02(b), and 4.03.

3.03 Utilities. Owner will provide and pay for all utilities.

3.04 Permits And Licenses. Owner will obtain all necessary permits and licenses, except those that are issued in the name of Operator.

3.05 Staffing Schedules. Owner will provide written approval or give timely objections in connection with staffing schedule approval required in Section 2.02.

3.06 Manuals. Owner shall deliver copies of operating and maintenance manuals for all equipment installed in the Facility and any and all additional documents received from any contractor under the EPC Agreements including, but not limited to, as-built drawings of the Facility, record books, vendor manuals and operations and maintenance manuals, as Owner deems necessary for Operator's successful operation of the Facility.

3.07 Training. Owner shall cause Turnkey EPC Contractor to provide training to the employees of Operator in the start-up and operation of the Facility and any and all related machinery and equipment.

3.08 Payments. Owner shall make payments to Operator in accordance with Sections IV, V, and VI of this Agreement.

3.09 Other. Owner will

(a) Provide and pay for all natural gas, fuel oil, and chemicals required throughout the term of this Agreement;

(b) Pay all property or other taxes related to the Facility or its activities but not income or employment related taxes of the Operator or its employees; and

(c) Provide all necessary documents that Operator needs to perform its obligations relating to the operation and maintenance of equipment contained in the Facility under this Agreement. Owner and Operator shall consult with each other to determine the obligations under such documents for which the Operator is responsible.

3.10 Direct Labor Costs. Owner shall pay all direct labor costs for Operator's plant personnel as Reimbursable Costs.

3.11 Applicable Laws. Owner shall, at all times, conform to all laws, ordinances, rules and regulations applicable to it.

SECTION IV

COMPENSATION

4.01 Before Phase I Commercial Operation Date. Owner shall pay Operator a fee for services provided by Operator from the Commencement Date to the Phase I Commercial Operation Date as follows:

(a) Fixed monthly payments in the amount or $14,583 starting from Commencement Date through and inclusive of Phase I Commercial Operation Date. For the month during which the Commencement Date occurs, the fixed monthly payment shall be prorated for the portion of the month subsequent to the Commencement Date. For the month during which the Actual Phase I Commercial Operation Date occurs, the fixed monthly payment shall be prorated for the portion of the month prior to the Phase I Commercial Operation Date;

Plus,

(b) All Reimbursable Costs properly incurred pursuant to this Agreement.

4.02 <u>After Phase I Commercial Operation Date</u>. Beginning on the Phase I Commercial Operation Date, Operator shall be compensated by Owner as follows:

(a) A fixed price fee of $29,166 per month for all services to be provided by Operator pursuant to this Agreement except as otherwise provided for in this Agreement. Said monthly payment shall be adjusted annually commencing on the first day of each year subsequent to Phase I Commercial Operation Date, by the change in index values of the (i) immediately preceding month of December and (ii) the prior month of December, as specified in the Consumer Price Index for All Urban Consumers, U.S. City Average, Table 1, in the row titled "Services" under the column heading "Unadjusted percent change to..." as published in the CPI Detailed Report for the immediately preceding December; plus

(b) All Reimbursable Costs properly incurred pursuant to this Agreement.

4.03 <u>Operator Procurement to Owner's Account</u>. Operator may procure those items and services which are considered Reimbursable Costs and are included in the Approved Budget by issuing purchase orders to be paid directly by Owner on Owner's purchasing and requisition forms. Operator shall supply a confirming copy of the purchase order to Owner. For purchase orders in excess of $25,000 or for any items not in the Approved Budget, Operator is required to receive written authorization from Owner's Representative prior to issuing purchase orders to be paid directly by Owner on Owner's purchasing and requisition forms.

4.04 <u>Effect of Change in Control of Owner</u>. Any material change in the percentage of direct or indirect ownership of Owner or any material change in the percentage of direct or indirect ownership of any parent company directly or indirectly owning an interest in Owner consistent with Section 8.03(e)) shall result in an automatic and immediate increase in the fees owing Operator under Section 4.01 and 4.02. In the event of such change in control of Owner, the fees payable to Operator under each of Section 4.01 and 4.02 shall be increased by a multiplier of 2.5.

SECTION V

AGREEMENT PRICE ADJUSTMENT

Beginning with the Phase I Commercial Operation Date, a bonus program will be put in place for the plant personnel and will be based on the personnel earning a bonus up to a percentage of their direct pay. During the annual budget cycle, Owner and Operator will mutually establish the goals for the bonus program for the following year. The targets and indicators and potential bonus will be defined and reviewed with the Plant Manager each year. It is anticipated that these targets and indicators and bonus percentage will be adjusted annually according to specific operating requirements for the following year at the Owner's and Operator's discretion. Areas of evaluation include, but are not limited to, the areas listed below.

Employee Safety
Facility Safety Programs
Facility Heat Rate
Equivalent Availability Factor
Forced Outage Occurrences
Planned Outage Duration
Environmental Compliance
Regulatory Compliance
Energy Sales Condition Compliance
Budget Control
Facility Capacity Factor
Development of Plans and Procedures
Completion of Individual Qualification
Completion of Preventive Maintenance Work Orders
Maintenance Backlog

Criteria for performance evaluations will be provided to the Operator at the beginning of each annual period. At the end of each annual period, based on the preceding twelve monthly evaluations, Operator shall pay to its plant personnel a bonus representative of how well the established targets for that year have been met.

SECTION VI

PAYMENT

6.01 Payment of Monthly Compensation. The payment required by Sections 4.01 and 4.02 above will be made on a calendar month basis. Operator shall submit its invoices on or before the tenth (10th) day of the month following the month during which services were provided or Reimbursable Costs were incurred. Owner shall pay the amount due to Operator on or before the thirtieth (30th) day following the date Owner receives the invoice. Operator shall submit its billing together with copies of supporting invoices, vouchers, receipts, and such other evidence of payment as Owner shall require.

6.02 Payment Of Termination Payment. Owner shall pay the amount due pursuant to Section 8.01 to Operator on or before the thirtieth (30th) day following the date the invoice for such amount is received by Owner.

6.03 Payment Disputes. In the event of a dispute or question regarding any invoice submitted by Operator, (i) all amounts not disputed or in question shall be promptly paid as and when required by Section 6.01 above, (ii) an explanation of the dispute shall be promptly transmitted by Owner to Operator, (iii) Owner and Operator shall immediately seek to resolve the dispute or question, and (iv) payment shall be made within ten (10) days of any remaining amount due when the dispute is resolved.

6.04 Interest on Overdue Amounts. If Owner fails to make timely payments of any amount due and not in dispute hereunder, interest on such amount shall accrue from the date due at a rate per annum equal to the prime rate for commercial loans as indicated from time to time by the headquarters of The Chase Manhattan Bank, N.A. in effect at the time the payment is due, plus a margin of 2% per annum.

SECTION VII

TERM

7.01 Term. This Agreement shall become effective as of the date of execution of this Agreement, and shall continue in effect thereafter until the twelfth anniversary of the Phase I Commercial Operation Date unless otherwise terminated as provided in this Agreement.

7.02 Extension of Term. Any extension of the term of this Agreement will be effected by written agreement between the parties. All of the terms and conditions of this Agreement which are not modified or changed in any such written agreement shall remain in full force and effect throughout any such extended term.

7.03 Authorization to Proceed. Obligations of Owner and Operator shall commence on the Commencement Date.

7.04 Phase I Commercial Operation Date. Written notification of the anticipated Phase I Commercial Operation Date shall be given by Owner to Operator at least three (3) months prior to such date.

SECTION VIII

TERMINATION

8.01 Termination By Owner Without Cause. Owner shall have the right to terminate this Agreement for convenience should the Facility be sold to a third party who intends to operate the Facility and Lender shall have the right to terminate this Agreement for convenience should it declare an Event of Default under the Financing Documents. Upon termination pursuant to this Section VIII, Owner or Lender, as applicable, shall pay Operator:

(a) All outstanding costs pursuant to Section 4.02 hereof;

(b) Reasonable costs actually incurred by Operator in support of the termination of this Agreement; and

(c) Reasonable severance costs resulting from the termination of employment of Operator's employees.

Neither party may otherwise terminate this Agreement except as provided in this Section VIII.

8.02 Termination By Owner for Cause. Owner may terminate this Agreement upon written notice to Operator as provided for in Section 8.05 upon the occurrence of any of the following:

(a) Operator's failure to provide adequate qualified personnel to perform its obligations under the Agreement;

(b) Failure of the Operator to perform in any material respect any service or obligation to be performed by it hereunder or if any representation or warranty shall prove to be incorrect in any material respect;

(c) The appointment of a receiver, liquidator or trustee for Operator by a court of competent jurisdiction or an adjudication of bankruptcy or insolvency by any such court or the filing by Operator of a petition seeking an adjudication of bankruptcy or insolvency;

(d) Continuance of a Force Majeure by Operator for more time than that allowed in Section 13.01.

8.03 Termination By Operator For Cause. Operator may terminate this Agreement upon written notice to Owner as provided for Section 8.05 upon the occurrence of any of the following:

(a) Failure to pay undisputed amounts due to Operator under this Agreement in accordance with Section VI;

(b) Failure of Owner to approve, and pay for tools, parts, equipment, or Consumables required by Operator to perform its obligations under this Agreement;

(c) Failure of Owner to perform in any material respect any service or obligation to be supplied or performed by it or if any representation or warranty shall prove to be incorrect in any material respect;

(d) Continuance of a Force Majeure by Owner for more time than that allowed in Section 13.01; and

(e) Any material change in the percentage of direct or indirect ownership of Owner or any material change in the percentage of direct or indirect ownership of any parent company directly or indirectly owning an interest in Owner. For purposes of this provision, a "material change" shall mean a change by which Operator's affiliate, TPS reduces its direct or indirect ownership interest in Owner below ten percent (10%)

during the Term hereof; provided, however, that the transfer of an ownership interest to an Affiliate shall not be deemed to be a material change.

8.04 Termination Under Section 8.01. In the event Owner gives a written termination notice pursuant to the provision of Section 8.01, this Agreement shall terminate as of the date specified in such notice which shall be no earlier than sixty (60) days after the date the notice is given.

8.05 Termination Under Sections 8.02 and 8.03. In the event a written termination notice is given pursuant to Sections 8.02 or 8.03, such notice shall set forth the circumstances providing the basis for such notice and the Party which receives such notice shall have thirty (30) days to remedy such condition. In the event such circumstance is not corrected by the Party receiving such notice, or the Party receiving such notice has not taken substantive action acceptable to the other Party in its sole discretion to correct the circumstances by the end of such thirty (30) day period, this Agreement shall terminate.

8.06 Termination Procedure. Operator shall, in the event of termination, take all reasonable steps necessary to assure an orderly transfer of operation and maintenance responsibility to Owner or to Owner's designee including, without limitation, the delivery of all of the following to Owner or to any such designee:

(a) All operation, maintenance or other records, manuals and procedures associated with the Facility;

(b) All tools, Consumables, spare parts and equipment associated with the Facility; and

(c) At the option of Owner or such designee, assignments to Owner or such designee, in form reasonably satisfactory to Owner or such designee, of any agreements between Operator and third parties relating to the performance of the obligations of Operator under this Agreement.

8.07 Owner Cure of Operator's Default. In the event of a default by Operator in its obligations hereunder and after the applicable cure period, Owner may, but shall not be required to, cure such default and may charge Operator any additional incremental costs incurred by Owner to cure such default. The exercise by Owner of this right shall not waive any other rights of Owner hereunder or at law.

8.08 Rights and Remedies in Law or Equity. In the case of a material breach by either Party of its representations, warranties or obligations hereunder, in addition to, or in lieu of, the right to terminate this Agreement pursuant to Section 8.02 and 8.03 hereof, each Party shall have all other rights and remedies provided for in law or equity, except that Operator's rights for breach shall be limited to receipt of its fees under Sections 4.01 and 4.02 through the remaining term of the Agreement, plus any actual and demonstrable demobilization (and employee termination) costs.

8.09 Survival of Terms. Upon termination of this Agreement pursuant to this Section VIII, the rights and obligations of the parties hereunder shall terminate except for (a) rights and obligations accrued as of the termination, (b) rights and obligations arising out of events occurring prior to the termination and (c) all other rights and obligations of the Parties which by their terms survive termination or which by their nature or by implication are intended to survive termination,

including but not limited to, those rights and obligations contained in Sections [2.11, 2.18, 6.01, 6.02 and 9.02].

SECTION IX

INSURANCE AND INDEMNIFICATION

9.01 Insurance.

(a) Owner's Coverages. Owner shall secure and maintain (or cause to be secured and maintained) during the term of this Agreement the following insurance for the protection of Owner and Operator:

(i) Workers' Compensation, subject to statutory limits, covering Owners' employees, but only if Owner has any employees working at the Site. In lieu of the foregoing, Owner shall be entitled to provide self-insurance for Workers' Compensation risks, to the extent permitted by Law and prudent risk management principles and in conformance therewith.

(ii) Employer's Liability, with minimum limits as follows:

(a) Bodily Injury by Accident - U.S. $1,000,000 per accident;
(b) Bodily Injury by Disease - U.S. $1,000,000 policy limit,

but only if Owner has any employees working at the Site. In lieu of the foregoing, Owner shall be entitled to provide self-insurance for Employers' Liability risks, to the extent permitted by Law and prudent risk management principles and in conformance therewith.

(iii) General Liability Umbrella Insurance having minimum limits in an amount equal to Ten Million Dollars (U.S.$10,000,000) per occurrence, "combined single limit" property damage/bodily injury coverage. Such insurance policy shall include Premises/Operations, Explosion, Collapse and Underground Hazards, Broad Form Contractual, Independent Contractors, Products/Completed Operations, Broad Form Property Damage and Personal Injury.

(iv) Automobile Liability in an amount required by Law and not less than a "combined single limit" coverage for bodily injury and property damage limit of One Million Dollars (U.S. $1,000,000) per accident, in comprehensive form and covering hired, owned and non-owned vehicles. Such insurance shall name Operator and Lender as Additional Insureds.

(v) Property Insurance on an "All Risk" basis covering loss to real and personal property of Owner located at the Site and other equipment for which Owner has an insurable interest, and to include among other things Boiler and

Machinery coverage, if such is commercially available under the "All Risk" policy.

(vi) Boiler and Machinery Insurance (if not provided in paragraph (v) above) for all insurable objects, including but not limited to pressure vessels, turbine and equipment, electrical generators, motors, air tanks, machinery, pressure piping or similar apparatus, on a comprehensive form. Such insurance policy shall cover objects at all locations required to be insured under paragraph (v) above. Owner shall have the right at any time, and from time to time, at Owner's sole option, to combine the Property Insurance and the Boiler and Machinery Insurance into a single policy.

(vii) The General Liability and Auto Liability Insurance policy required under paragraphs (iii) and (iv) above shall be endorsed naming Operator as a named insured for the Services to be performed pursuant to this Agreement only. Such insurance coverage and any corresponding umbrella liability insurance coverage naming Operator as a named insured shall be the primary coverage to Owner and Operator in the event of a covered loss and shall be exhausted before Operator's insurance carrier(s) shall have any liability for said loss. Owner agrees that the Property and B&M insurance will be endorsed naming Operator as a named insured and shall be the primary coverage to Owner and Operator in the event of a covered loss. Owner hereby waives and shall cause all its insurers to waive subrogation rights against Operator and its insurance carrier(s) in the event of any covered loss under the policy described above.

(b) Operator's Coverages. Operator shall secure and maintain (or cause to be secured and maintained) as a minimum during the term of this Agreement the following insurance:

(i) Workers' Compensation, and other similar forms of insurance which is required by Law covering employees of the Operator.

(ii) Employer's Liability, with minimum limits as follows:

(a) Bodily Injury by Accident - U.S. $1,000,000 per accident;
(b) Bodily Injury by Disease - U.S. $1,000,000 policy limit.

(iii) Automobile Liability in an amount required by Law and not less than a "combined single limit" coverage for bodily injury and property damage limit of One Million Dollars (U.S. $1,000,000) per accident, in comprehensive form and covering hired, owned and non-owned vehicles. Such insurance shall only be required if Operator owns vehicles. Such insurance, if so required, shall name Owner and Lender as Additional Insureds.

(c) Form and Content of Insurance. All policies, and binders with respect to insurance provided pursuant to this Section 9.01 shall be as follows:

(i) Additional Insured shall include the Lender and the officers, directors and employees of each entity so named as its interests may appear.

(ii) All liability insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or Additional Insured in the same manner as if separate policies had been issued to each.

(iii) All insurance shall provide that there shall be no recourse against the Additional Insureds for the payment of premiums or commissions or (if such policies provide for the payment thereof) additional premiums or assessments.

(iv) The insurance maintained by Owner and Operator shall provide for the waiver of any right of subrogation by the insurers thereunder against Operator and Owner, as the case may be, and its officers, directors and employees, agents and representatives.

(v) All insurance shall provide that it may not be canceled or materially changed without giving the Owner, Operator and Lender thirty (30) days prior written notification thereof, except in cases of non-payment of premium for which ten (10) days prior written notice shall be provided (unless a longer notice period for non-payment is agreed to by the relevant insurer).

(vi) In the event that Owner does not provide or maintain any of the insurance coverage referred to in this Section, Operator shall have the right to provide or maintain such coverage at Owner's expense either by direct charge or set-off from amounts due hereunder.

(vii) In the event that Operator does not provide or maintain any of the insurance coverage referred to in this Section, Owner shall have the right to provide or maintain such coverage at Operator's expense either by direct charge or set-off from amounts due hereunder.

(d) Additional Requirements.

(i) Prior to the performance of any Services by Operator hereunder, each party shall furnish certificates of insurance to the other party and to Lender evidencing the insurance required of such party pursuant to this Agreement.

(ii) Payment of Deductibles and Self-Insured Retention Amounts. Subject to paragraph (a), Owner shall be responsible for deductibles or self-insured retentions under all of the insurance policies required to be carried by Owner pursuant to paragraph (a) of Section 9.01. In addition, subject to paragraph (b), Operator shall be responsible for all deductibles and self-insured retentions under other policies maintained by Operator pursuant to paragraph (b) of this Section.

(iii) Operator shall require all subcontractors and suppliers to obtain, maintain, and keep in force, prior to entry on the Site and during the time in which they

are engaged in performing services to be furnished by Operator adequate coverage in accordance with Operator's normal practice and shall provide Operator with current certificates of insurance evidencing such coverage.

9.02 Indemnification.

(a) Operator agrees to defend and indemnify Owner and Lenders and their respective directors, officers, employees, and agents (collectively "Indemnitee") against, and to hold them harmless from any and all claims, suits, losses, liabilities and legal expenses (collectively "Claims") to the extent resulting from or in connection with Operator's grossly negligent performance or non-performance of its obligations hereunder, provided that Operator shall be promptly notified in writing of such Claim or suit brought against such Indemnitee and shall be permitted to participate in the defense thereof; and

(b) Owner agrees to defend and indemnify Operator and its directors, officers, employees, and agents against, and to hold them harmless from any and all Claims, resulting from or in connection with Owner's negligent performance or non-performance of its obligations hereunder, provided that the same notification to, and opportunity to participate, specified in Section 9.02(a) above is afforded to Owner.

(c) The Operator's liability for all claims by the Owner, whether or not covered by insurance arising out of events occurring in any calendar year hereunder in connection with this Agreement or the performance, non-performance or breach thereof, whether in contract, tort, negligence, strict liability or otherwise shall not exceed, irrespective of applicable insurance coverage under Owner's or Operator's insurance coverage in manner set forth on Section 9.01, an amount equal to the fixed fee calculated pursuant to Section 4.01(a) or 4.02(a), as applicable, for such calendar year.

9.03 Additional Insured. Lender shall be named as an additional insured under the foregoing policies of insurance.

9.04 Damage Limitation. Neither Operator nor Owner shall have liability to the other party hereunder for indirect, incidental or consequential damages, including, without limitation, loss of revenues.

SECTION X

PERMITS AND LICENSES

10.01 Owner Permits and Licenses. Owner shall be responsible for obtaining and maintaining all permits and licenses, required to be in the name of Owner, necessary for the operation and maintenance of the Facility. Operator shall cooperate with Owner in obtaining and maintaining such permits and licenses and in preparing reports required thereunder.

10.02 Operator Permits and Licenses. Operator shall be responsible for obtaining and maintaining all permits and licenses required to be in the name of Operator. All associated fees will be considered Reimbursable Cost.

SECTION XI

INDEPENDENT CONTRACTOR

11.01 Independent Contractor. At all times, Operator shall perform the requirements of this Agreement as an independent contractor to Owner. Except as otherwise provided in this Agreement, Operator shall have full responsibility for the control and direction of its employees, servants and agents in the performance of Operator's obligations hereunder. Operator shall be fully and solely responsible for the payment of such employees, servants and agents and for the payment of all obligations incurred by Operator in performing the requirements of this Agreement. This Agreement is not intended to and shall not create a partnership of any kind or type. Except for as provided in Section 4.03, Operator shall not be an agent for and may not bind Owner. Owner shall not be an agent for and may not bind Operator.

SECTION XII

COORDINATION AND ACCESS

12.01 Access. Owner shall provide Operator and its employees, agents, and subcontractors with full and free access to the Facility at all times to perform its obligations under this Agreement. Operator shall furnish Owner with a list of employees engaged in operation and maintenance of the Facility and shall inform Owner in writing of all changes thereto. Operator, its employees, agents and subcontractors shall comply with all safety and other requirements established by Owner in connection with such access.

12.02 Coordination; Required Level of Performance. Promptly upon execution hereof each of Owner and Operator shall appoint and designate in writing to the other party a person authorized to act on behalf of such party under this Agreement. The parties may, from time to time, designate an alternate or alternates, who shall have the same authority, duty, and power as the originally appointed representative.

The representative of Owner shall: (i) approve requests for funds submitted by the Operator, provided such requests are within the Budget plus any approved variances or amendments; otherwise assist in seeking approval for such funds under (iii) below; (ii) make decisions on such matters relating to this Agreement as are set forth in the writing evidencing his or her appointment; (iii) communicate in writing authorizations, approvals or disapprovals on behalf of Owner which may be called for or contemplated by this Agreement and give advice as to obtaining such authorizations and approvals; and (iv) carry out the Owner's responsibilities hereunder.

Operator's appointed representative will interface with the appointed representative of Owner and with appropriate representatives of Transmission Provider. Operator shall accept daily instructions from the Transmission Provider and Owner as to Facility requirements, subject to the design limits of the Facility. In the event of any interruption of the operation of the Facility or in the event Operator is unable to operate the Facility so as to meet the requirements of Transmission Provider, and Owner, Operator shall immediately notify Owner of the circumstance and shall exert its best efforts to restore the Facility to its required operating level.

SECTION XIII

FORCE MAJEURE

13.01 Force Majeure. Force Majeure shall include circumstances beyond a party's reasonable control including, without limitation, deficiencies attributable to acts of God; unusually severe weather conditions; any labor difficulty not involving employees of any parties hereto, any labor difficulty involving employees of parties hereto to the extent such employees are members of a labor union and such labor difficulty is in violation of a labor agreement or in violation of Applicable Laws; any labor difficulty involving employees of parties hereto, not caused by the act or the failure to act on the part of the relevant party hereto, to the extent such employees are in the process of becoming members of a labor union; war; inability to obtain fuel for the Facility; riots; requirements, actions or failures to act on the part of governmental authorities preventing performance; changes in law, inability despite due diligence to obtain required licenses; accident; fire; damage to or breakdown of necessary facilities; or transportation delays or accidents (such causes hereinafter called "Force Majeure"); provided that:

(a) The non-performing party shall give the other party written notice within a reasonable time after the discovery of the Force Majeure describing the particulars of the occurrence;

(b) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure but under no circumstances shall the Force Majeure exceed one hundred and eighty (180) days; however, if such Force Majeure is declared by Operator and results in the inability of the Facility to furnish Dependable Capacity to the Customers, then the Force Majeure shall not exceed thirty (30) days;

(c) The party with a deficiency in its performance uses its best efforts to remedy such deficiency;

(d) When the non-performing party is able to resume performance of its obligations under this Agreement that party shall give the other party written notice to that effect; and

(e) The Force Majeure shall not excuse failure to apply money obligations nor shall it excuse any deficiency in performance to the extent caused by any negligent or intentional act, error, or omission, or failure to comply with any law, rule, regulation, order or ordinance.

13.02 Extension of Agreement by Force Majeure. Except as otherwise provided, in no event will any condition of Force Majeure extend this Agreement beyond its stated term.

SECTION XIV

OPERATOR AND OWNER REPRESENTATIONS AND WARRANTIES

14.01 Representations and Warranties of Operator. Operator represents and warrants, as of the date hereof, as follows:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of Arkansas;

(b) it has taken all necessary action to authorize the execution, delivery and performance of its obligations under this Agreement, which action has not been superseded or modified, and this Agreement constitutes the legal, valid and binding obligation of Operator, enforceable in accordance with its terms;

(c) the execution, delivery and performance of this Agreement do not violate (i) its articles of incorporation or by-laws or any resolution of its Board of Directors or other committees charged with the governance of its affairs, (ii) any Agreement to which it or, to the best of its knowledge, any of its Affiliates is a party or (iii) any law, rule, regulation, order writ, judgment, injunction, decree or determination affecting Operator or any of its properties;

(d) it has not filed any petition for relief under the bankruptcy laws of the United States of America, has not made nor is making an assignment for the benefit of creditors, initiated nor been the subject of any proceeding seeking to have a receiver or trustee appointed to liquidate or manage its affairs, and none of its properties is subject to the jurisdiction of any bankruptcy court of the United States of America or any receivership proceeding;

(e) no litigation is pending or, to its knowledge, threatened which seeks to restrain it from performing its obligations hereunder or the adverse outcome of which would materially affect its business or its ability to perform its obligations hereunder;

(f) no authorization or approval or other action by, and notice to or filing with, any government agency or regulatory body is required for the due execution, delivery and performance by Operator of this Agreement which have not been obtained;

(g) it or one of its Affiliates is experienced in the operation, maintenance and repair of electrical generating facilities, has complied with the provisions of all applicable laws, including, without limitation, environmental laws, respecting the operation of such facilities and has not been and is not currently subject to any judgment or settlement of any claim imposing significant liability on it for noncompliance with law or mismanagement in its operation of any electric power generating facility;

(h) it is familiar with the terms of the Customer sales agreements that affect or relate to the operation of the Facility.

14.02 Representations and Warranties of Owner. Owner represents and warrants, as of the date hereof, as follows:

(a) it is a partnership duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) it has taken all necessary action to authorize the execution, delivery and performance of its obligations under this Agreement, which action has not been superseded or modified, and this Agreement represents the valid and binding obligation of Owner, enforceable in accordance with its terms;

(c) the execution, delivery and performance of this Agreement do not violate (i) its articles of incorporation or by-laws or any resolution of its Board of Directors or other committees charged with the governance of its affairs, (ii) any Agreement to which it is a party or (iii) any law, rule, regulation, order, writ, judgment, injunction, decree or determination affecting Owner or any of its properties;

(d) it has not filed any petition for relief under the bankruptcy laws of the United States of America, has not made nor is making an assignment for the benefit of creditors, has not initiated nor been the subject of any proceeding seeking to have a receiver or trustee appointed to liquidate or manage its affairs, and none of its properties is subject to the jurisdiction of any bankruptcy court of the United States of America or any receivership proceeding;

(e) no litigation is pending or, to its knowledge, threatened which seeks to restrain the performance of its obligations hereunder or the adverse outcome of which could materially affect its business or its ability to perform its obligations hereunder; and

(f) no authorization or approval or other action by, and notice to or filing with, any government agency or regulatory body is required for the due execution, delivery and performance by Operator of this Agreement which have not been obtained.

SECTION XV

NOTICES

All notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been delivered and received (i) if personally delivered or if delivered by telegram or courier service, when actually received by the party to whom notice is sent, (ii) if delivered by telex or facsimile, on the first business day following the day transmitted (with confirmation of receipt), or (iii) if delivered by mail (whether actually received or not), at the close of business on the third business day following the day when placed in the mail, postage prepaid, registered or certified, return receipt requested, addressed to the appropriate party, at the address and/or facsimile number set forth below (or at such other address as such party may designate by written notice to the other party in accordance with this Section):

If to Operator:

TPS Arkansas Operations Company
702 N. Franklin St.
Tampa, Florida 33602
ATTN: John Duff, Vice President

If to Owner:
Union Power Partners, L.P.
4100 Spring Valley Road, #1001
Dallas, Texas 75243
ATTN: General Counsel

SECTION XVI

APPLICABLE LAW

This Agreement shall be performed in the State of Arkansas. It shall be construed in accordance with the laws of the State of New York.

SECTION XVII

NON-WAIVER

The failure of Owner or of Operator to enforce any of the terms and conditions or to exercise any right or privilege under this Agreement shall not be construed as waiving any such term or condition or right or privilege and the same shall continue and remain in force and effect as if no such failure to enforce or exercise has occurred. No waiver shall be valid unless so stated in writing.

SECTION XVIII

TITLE

Title to all tools, equipment, supplies and parts purchased by Operator for which Operator is directly reimbursed and of all reports, record logs and documentation prepared by Operator pursuant to this Agreement shall pass immediately upon payment by Owner.. Said tools, equipment, supplies and parts shall be and become the property of Owner free of all liens and encumbrances except as provided for in Section 2.14

SECTION XIX

ASSIGNMENT

Neither Operator nor Owner shall assign this Agreement or any portion hereof, or any of the rights or obligations hereunder, whether by operation of law or otherwise, without the prior written

consent of the other party; provided, however, that Owner may assign its rights hereunder as security for the financing of the Facility and either of the parties may assign its rights hereunder to an affiliate in each case without the prior consent of the other Party or Lenders. This Agreement and any such assignment shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties.

SECTION XX

LENDERS

20.01 Lenders. Operator acknowledges that Owner will borrow certain funds from the Lenders for the construction of the Facility and that, as a condition to making loans to Owner, the Lenders may from time to time require certain documents from Operator and its subcontractors and vendors. In connection therewith, Operator agrees to furnish to the Lenders, and to use its best efforts to cause its subcontractors and vendors to furnish to the Lenders, such written information, certificates, copies of invoices and receipts, lien waivers (upon payment), affidavits and other like documents as shall be within the reasonable control of Operator to provide and as the Lenders may reasonably request. Operator shall negotiate in good faith amendments to this Agreement reasonably requested by the Lenders. In addition, Operator shall promptly execute any additional documentation, as may be mutually agreed upon in form and substance, that is reasonably requested by the Lenders.

20.02 Additional Documentation. Operator shall promptly execute any additional documentation as may be mutually agreed on form and substance, and which is reasonably requested by the Lenders, including, but not limited to, documents evidencing Operator's consent to assignment of this Agreement as a security to the Lenders or otherwise upon the occurrence of events specified in such documents and any reasonable modifications to this Agreement.

20.03 Subordination of Liens. Operator hereby subordinates any liens to which it may be entitled under Applicable Law or under the provisions of this Agreement to any lien granted in favor of the Lenders, whether such lien in favor of the Lenders is created, attached or perfected prior to or after the lien in favor of Operator.

20.04 Owner's Default. In the event of Owner's default under this Agreement, the Lenders shall have the right to cure Owner's default and, in such event, Operator's duties and obligations under this Agreement shall be unaffected. In that regard, the Lenders shall have (i) thirty (30) days from the date notice of default is delivered to the Lenders to cure such default if such default is the failure to pay amounts to Operator which are due and payable under the Agreement or (ii) not fewer than ninety (90) days to cure such default if the breach or default cannot be cured by the payment of money to Operator so long as the Lenders or their designee shall have commenced to cure the default within such ninety (90) day period and thereafter diligently pursue such cure to completion and continue to perform any monetary obligations under the Agreement and all other obligations under the Agreement are performed by Owner or the Lenders. If possession of the Facility is necessary to cure such breach or default, and the Lenders declare Owner in default and commence foreclosure proceedings, the Lenders will be allowed [a reasonable period] to complete such proceedings. If the Lenders are prohibited by any court order or proceedings from curing the default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition. Operator further agrees to

perform its obligations hereunder for the benefit of the Lenders in the event of Owner's default under this Agreement or under the Financing Documents, provided that the Lenders shall have cured all defaults of Owner's obligations hereunder and shall have paid all amounts then due, including costs to cure. In such event, the Lenders shall have the rights and obligations of Owner under this Agreement, provided the Lenders shall have no personal liability to Operator for the performance of such obligations, and the sole recourse of Operator in seeking the enforcement of such obligations shall be to such parties' interest in the Facility.

Owner and Operator agree that the Lenders are intended to be a third party beneficiary of Section XIX, and Section XX. In that regard, Owner and Operator will not, without the prior written consent of the Lenders, amend or modify Section XIX, and Section XX in any respect.

SECTION XXI

MISCELLANEOUS

21.01 Amendments. All amendments to this Agreement must be written and must be signed by both parties hereto.

21.02 Invalidity. If any provision of this Agreement shall be found to be invalid by any court of competent jurisdiction, such finding shall not invalidate any other provision hereof.

21.03 Successors & Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and upon their respective successors and assigns.

21.04 Entire Agreement. This Agreement contains the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges and supersedes all prior agreements, commitments, representations, and discussion between the Parties pertaining to the subject matter of this Agreement.

21.05 Third Party Beneficiaries. Excluding rights of the Lenders to the Facility, this Agreement is not intended to create any third party beneficiary or rights.

21.06 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

Executed on the first day above written.

Union Power Partners, L.P.
By: Union Power I, LLC
Its General Partner

By: Ralph T. Killian
Name: Ralph T. Killian
Title: Sr. Vice President, Asset Management

TPS Arkansas Operations Company

By: _____
Name: John Duff
Title: Vice President

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EXHIBIT A

Site Personnel

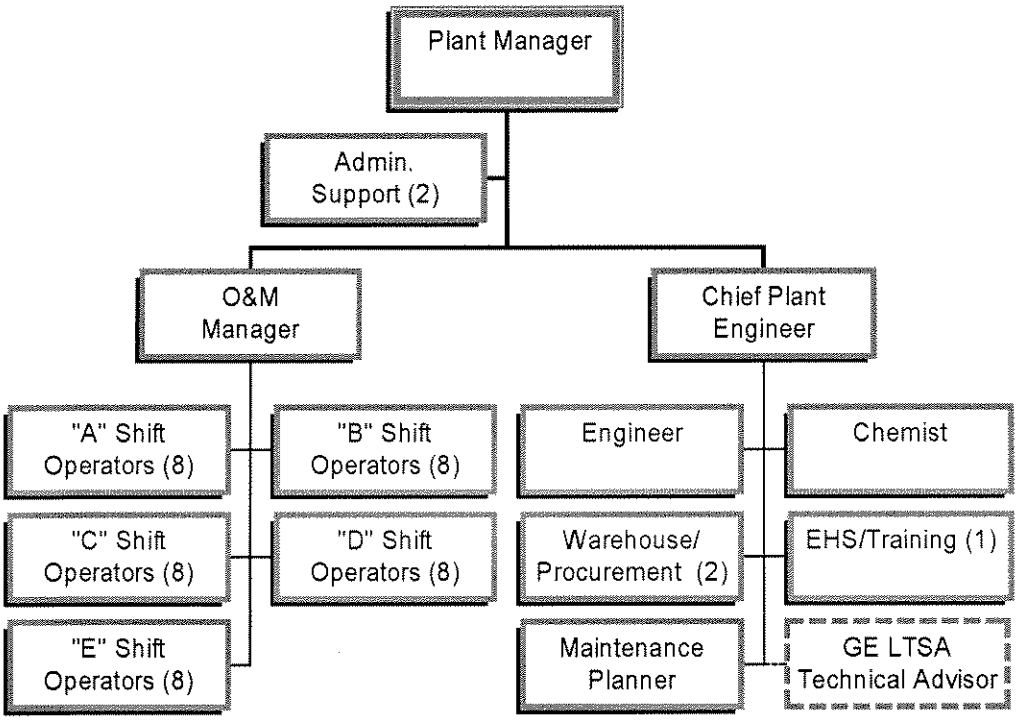

EXHIBIT B

HOME OFFICE SUPPORT

The home office shall provide the following services and all associated costs are to be considered as Reimbursable Cost.

Overall job management

Annual Operations audit and report

Engineering review of Facility performance and efficiency

Maintenance planning assistance programs

Inventory tracking control programs

Agreement administration and interpretation assistance

Troubleshooting support

Site safety and hazardous materials programs

Environmental Compliance

Capital Facility engineering support (conceptualization, analysis, and recommendation)

Problem analysis and resolution

Warranty administration assistance

Clerical and administrative

Payroll

Payment of emissions fees, if any

Travel and living expenses of home office personnel

In the event that support services beyond the scope or intent of those identified above are required; Operator shall identify the expanded scope and associated costs required. Said expanded scope shall be provided upon receipt of written authorization to proceed from Owner.

EXHIBIT C

Purchased Parts, Purchased Labor and Services

Operator will procure parts, other than spare parts, purchased labor and services throughout the term of the Agreement as necessary to perform the requirements of the Agreement. Any maintenance or repair that can reasonably be performed by the regular full-time on-site personnel provided pursuant to Section 2.01 of the Agreement will be performed by them without additional compensation.

The following are examples of services, which would not be performed by regular full-time on-site personnel.

1. General Purchase Order Labor (used to supplement site labor force on a Facility basis)
2. Water System Analysis & consultants
3. Fuel Analysis
4. Emissions testing (one test per source per year)
5. Gas Turbine Maintenance, Inspections, and Repairs
6. Steam Turbine Maintenance, Inspections and Repairs
7. Boiler Maintenance, Inspection and Repairs (HRSG)
8. Control System Service
9. Switchgear Service and Repairs
10. Motor, Compressor & Pump Service and Repairs
11. Emissions Control Service
12. Meter Certification and Calibration

OPERATION AND MAINTENANCE AGREEMENT

BETWEEN

PANDA GILA RIVER, L. P.

AND

TPS ARIZONA OPERATIONS COMPANY

Dated as of March 12, 2001

OPERATION AND MAINTENANCE AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into on the 12th day of March, 2001, by and between **Panda Gila River, L. P.** ("Owner"), a Delaware limited partnership and **TPS Arizona Operations Company** ("Operator") a Florida corporation.

WHEREAS, Owner intends to construct and operate a natural gas nominal 2,140 net megawatt (approximately) electric generation facility (the "Facility") in Maricopa County, Arizona and pursuant to which Owner will sell and certain persons including but not limited to utilities, factories, and power marketers will purchase Electrical Energy produced by the Facility; and

WHEREAS, Owner desires to have Operator provide operation and maintenance services at the Facility and Operator desires to provide such services.

NOW, THEREFORE, in consideration of the foregoing and of the premises hereinafter contained, Owner and Operator agree as follows:

SECTION I

DEFINITIONS

Whenever the following terms appear in this Agreement, they shall have the following meanings:

"Affiliate" shall mean, with respect to any corporation, a corporation which controls, is controlled by, or is under common control with, such corporation or successor thereto.

"Agent for the Lenders" shall mean that institution as defined in the Financing Documents.

"Agreement" shall mean the Operation and Maintenance Agreement made and entered into on the date set forth above by and between Owner and Operator.

"Annual Budget" shall mean the budget of all costs and expenses anticipated to be incurred by Operator to meet its obligations under this Agreement during any calendar year, or part thereof.

"Applicable Laws" shall mean any law, regulation, ordinance, statute, ruling, appeal or any other legal pronouncement issued by a governmental agency, governmental organization, or court of law, which has jurisdiction over the Facility or the parties hereto.

"Approved Budget" shall mean the annual budget prepared and submitted by Operator pursuant to Section 2.17 (n) hereof, which has been approved by Owner.

"Authorization To Proceed" shall mean Owner's written notice to Operator to commence the work required by this Agreement.

"Claims" shall have the meaning given such term in Section 9.02 (a) hereof.

"Commencement Date" shall mean the calendar date upon which Operator is to commence the work required by this Agreement as specified in the Authorization to Proceed.

"Consumables" shall be the meaning set forth in Section 2.07 hereof.

"Customers" shall mean the Power Manager and any purchasers of Electrical Energy through any Power Agreement from the Facility.

"Delivery Facilities" shall mean the lines and pipes used to deliver gas and water to the facility.

"Electrical Energy" shall mean the capacity, energy, and ancillary services provided by the Facility.

"EPC Agreements" shall mean, collectively, the Turnkey EPC Agreement and the Switchyard EPC Agreement.

"Facility" shall mean the nominal 2,140 MW (net) combined cycle, natural gas-fired electrical generating facility to be built by Owner, to supply "Electrical Energy" to a power marketer (to be determined by Owner) and other customers and all equipment contained therein and parts thereof. It shall include, without limitation, Delivery Facilities, the portion of the natural gas pipeline located on the Site, interconnection facilities to interconnect with the Transmission Provider (to the extent located on Owner's side of the interconnection point that is on the high side of Owner's step-up transformer) and other equipment and systems described in the EPC Agreements.

"Facility Funding" shall mean the date upon which the Lender makes the initial loan to Owner.

"Financing Documents" shall mean those documents related to the financing and/or the refinancing (on the part of Owner in favor of the Lenders) for the development, construction, ownership, operation or maintenance of the Facility, or any portion thereof.

"Indemnitee" shall have the meaning set forth in Section 9.02(a) hereof.

"Lender" and "Lenders" shall mean the financing entities, security holders, investors, and other entities that provide financing to or on behalf of Owner, for the development, construction, ownership, operation, and maintenance of the Facility or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.

"Maintenance Reserve" shall mean the fund established to cover major maintenance expenditures such as combustion turbine overhauls and other equipment major maintenance overhauls.

"Operator" shall mean TPS Arizona Operations Company, a Florida corporation.

"Operator Proprietary Information" shall include any and all technical and other analyses, data, plans, programs, schedules, maps, records, reports, tapes and other information of any kind whatsoever developed or acquired at any time by Operator, other than with funds provided to Operator pursuant to this Agreement.

"Owner" shall mean Panda Gila River, L. P., a Delaware limited partnership.

"Phase I Commercial Operation" shall mean the commencement of regular deliveries of Electrical Energy to Customers pursuant to any Power Agreements, which will occur on or after the Commercial Operation Date.

--"Phase I Commercial Operation Date" shall mean the actual date of achieving Phase I Commercial Operation as determined pursuant to the Turnkey EPC Agreement.

"Plant Manager" shall mean Operator's on-site employee responsible for the operation and maintenance of the Facility.

"Power Agreement" shall mean any agreement that may be entered into during the term of this Agreement for the purchase and sale of Electrical Energy from the Facility.

"Prudent Utility Practices" shall mean those practices generally followed by the United States electric utility industry with respect to the operation and maintenance of electric generating, transmission and distribution facilities (including, but not limited to, the operating and safety practices generally followed by the electric utility industry).

"Reimbursable Costs" or "Reimbursable Cost" shall mean all reasonable and actual direct costs properly incurred pursuant to Sections 2.01 through 2.08, 2.09, 2.13, 9.01(b)(ii) and 10.2 of this Agreement.

"Scheduled Outages" shall mean an interruption or reduction of the Facility's electrical generating capacity that is planned by Owner, as such plans may be revised or scheduled by Owner from time to time.

"Site" shall mean that real property upon which the Facility is located.

"Switchyard EPC Agreement" shall mean that certain Switchyard Engineering, Procurement and Construction Agreement for Combined-Cycle Generation Facility, dated December 21, 2000, between Owner and Switchyard Contractor relating to the design, construction, testing and starting up of the switchyard and transmission lines, as may be amended, supplemented or modified from time to time.

"Switchyard EPC Contractor" shall mean GE-Hitachi HVB Inc.

"Substantial Subcontractor" means a subcontractor whose contract or contracts (in the aggregate) with contractor require payments by contractor of at least $50,000.

"Termination Payment" shall be a lump-sum payment as defined in Section 8.01 hereof.

"Transmission Provider" shall mean Arizona Public Service Company, an Arizona corporation.

"Turnkey EPC Agreement" shall mean that certain Turnkey Engineering, Procurement and Construction Agreement for Combined-Cycle Generation Facility, dated February 28, 2001, between Owner and Turnkey EPC Contractor relating to the design, construction, testing and starting up of the Facility, as may be amended, supplemented or modified from time to time.

"Turnkey EPC Contractor" shall mean National Energy Production Corporation, a Delaware corporation.

SECTION II

SERVICES TO BE PERFORMED BY OPERATOR

Operator will provide all operation and maintenance services necessary for the efficient, sound and effective operation of the Facility. Operator will maintain the Facility in good mechanical and operating repair and condition in accordance with Prudent Utility Practices. Without limiting the generality of the foregoing, Operator shall do the following:

2.01 Personnel. Operator shall hire, train and provide, in a manner consistent with Prudent Utility Practice, competent qualified personnel to operate and maintain the Facility including, without limitation, the following:

(a) A Plant Manager assigned to the Facility full time, to manage on-site operations and maintenance which individual shall be approved in writing by Owner;

(b) Additional full time on-site personnel as needed; and

(c) Additional engineering support, maintenance, and management personnel not located full time at the Facility, as needed to perform the requirements of this Agreement.

Without limiting the generality of the foregoing, Operator will (i) staff the Facility with qualified operators (in the control room or electronically connected thereto when elsewhere on the Facility site) during all hours when the Facility is in operation or when the generator is electrically connected to the Transmission Provider's system; (ii) provide those full time on-site personnel required to operate the Facility in accordance with Prudent Utility Practices, including, without limitation, those positions identified in Exhibit A hereto (as may be amended by Operator from time to time); and (iii) provide the home office support identified in Exhibit B hereto. The direct and indirect cost of the Facility staff identified in Exhibit A shall be a pass through to the Owner, without markup, as a Reimbursable Cost. The direct labor cost only and expenses of home office

support identified in Exhibit B shall be passed through to the Owner, with a multiplier of two applied to the direct labor cost only, as a Reimbursable Cost.

2.02 Initial Staffing, Startup and Testing. After receiving Authorization to Proceed, Operator shall prepare a hiring schedule for the personnel identified in Exhibit A. After review and written approval of the hiring schedule by Owner, Operator shall commence initial hiring of personnel. Operator shall adjust the hiring schedule, as requested by Owner in writing, in accordance with changes in the construction, start-up, and Phase I Commercial Operation Date.

Operator shall provide qualified operating personnel to assist in startup and testing of the Facility under the direction and supervision of the Turnkey EPC Contractor. It is understood that Owner is obligated to pay for Operator's services during startup and testing as provided herein but that Turnkey EPC Contractor shall furnish total supervision and direction (including sole control over and responsibility therefor) of Operator's startup and testing activities and Turnkey EPC Contractor will have care, custody and control of the Facility prior to the Phase I Commercial Operation Date.

2.03 Operation and Maintenance. Operator shall operate and maintain the Facility, seven days a week, twenty-four hours per day, in accordance with Prudent Utility Practices, manufacturers' and the Turnkey EPC Contractor's recommendations, as applicable, and as required by any Power Agreements, Financing Documents and this Agreement. In addition, the Operator will operate the Facility in a manner calculated to maximize the useful life of the equipment, avoid excessive fuel consumption, minimize downtime for repairs, and avoid forced outages. Operator shall consult with Owner in order to clarify its obligations in the event that any conflict exists in these obligations under this Agreement. Operator shall be solely responsible for the operation and maintenance of the Facility hereunder but will follow the directions of Owner with respect to financial or economic matters as long as compliance with such directions will not be likely to materially and adversely affect the operation and maintenance of the Facility as required hereunder.

2.04 Tools.

(a) Operator shall review the tool list developed by the Turnkey EPC Contractor pursuant to the Turnkey EPC Agreement, and shall identify and prepare a list of recommended tools required to adequately perform the requirements of this Agreement. Said list will be submitted to Owner in one or more increments and shall be modified or supplemented throughout the term of this Agreement by agreement of the parties as necessary to permit the timely acquisition thereof. The initial list of such tools shall, in no event, be submitted to Owner later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date.

(b) The initial supply of tools identified on the list described in paragraph (a) shall be subject to the written approval of Owner and will be purchased by Operator to Owner's account as provided in Section 4 of this Agreement or as a Reimbursable Cost. Operator shall promptly notify Owner in writing of tools that were not approved that could impact its obligations and duties hereunder.

(c) Operator shall be responsible for annually, or as otherwise reasonably requested by Owner in writing, preparing and presenting to Owner an accurate reconciliation of the Facility's tool inventory.

(d) Operator shall be responsible for the use, management, control, care, and custody of Facility tools.

(e) Operator shall repair or replace as required, as a Reimbursable Cost or to the account of Owner, as provided in Section 4, tools that deteriorate due to normal use.

(f) Operator shall periodically, and no less frequently than annually, review Facility tools, and make recommendations to Owner for additional tools that would improve Facility operations.

2.05 Spare Parts.

(a) Operator shall review the spare parts list developed by the Turnkey EPC Contractor pursuant to their Agreements, and shall identify and prepare a list of recommended spare parts required to adequately perform the requirements of this Agreement. Said list will be submitted to Owner in one or more increments and shall be modified or supplemented throughout the term of this Agreement by agreement of the parties as necessary to permit the timely acquisition thereof. The initial list of such spare parts shall, in no event, be submitted to Owner later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date. Spare parts will be determined with reference to generally accepted practices in the industry and with reference to manufacturer's recommendations.

(b) The initial supply of spare parts identified on the list described in paragraph (a) shall be subject to the written approval of Owner and will be purchased by Operator for Owner's account as provided in Section 4 of this Agreement or as a Reimbursable Cost.

(c) Operator shall, subsequent to submitting the initial list of spare parts described in paragraph (a) be responsible for purchasing, for Owner's account as provided in Section 4 hereof or as a Reimbursable Cost, replacements for said listed spare parts as necessary.

(d) Operator shall be responsible for the use, care, custody, management and control of said spare parts.

(e) Operator shall be responsible for performing and presenting to Owner an accurate reconciliation of the Facility's spare parts inventory on an annual basis, or as otherwise reasonably requested by Owner in writing.

(f) Operator shall be responsible for establishing proper and effective on-Site warehousing and inventory controls for such spare parts. Owner shall provide the on-Site warehouse.

(g) Operator shall purchase additional parts or replacement parts to maintain inventory at levels to support Facility requirements, as a Reimbursable Cost or to the account of Owner as provided for in Section 4.

2.06 Equipment.

(a) Operator shall identify and prepare a list of recommended equipment required to adequately perform the requirements of this Agreement. Said list will be submitted to Owner in one or more increments and shall be modified or supplemented throughout the term of this Agreement by agreement of the parties as necessary to permit the timely acquisition thereof. The initial list of such equipment shall, in no event, be submitted to Owner later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date.

(b) The equipment identified on the list of such equipment described in paragraph (a) shall be subject to the written approval by Owner and shall be purchased by Operator for Owner's account as provided in Section 4 or as a Reimbursable Cost. Operator shall promptly notify Owner in writing of equipment that was not approved that could impact Operator's obligations and duties hereunder.

(c) Operator shall periodically review the equipment required to perform under this Agreement and make recommendations to Owner of modifications or additions to Facility equipment throughout the term of this Agreement that would improve or enhance Facility operations.

(d) Operator shall be responsible for the use, management, care, custody, operation and maintenance of said equipment. Operator shall repair or replace, as a Reimbursable Cost or to the account of Owner as provided for in Section 4, this equipment.

(e) Operator shall, when approved in advance by Owner in writing, purchase and install additional equipment as a Reimbursable Cost or to the account of Owner as provided for in Section 4.

2.07 Consumables and Other Materials.

(a) Operator shall identify those consumable, expendable, and other materials and supplies ("Consumables") necessary to perform the requirements of this Agreement. Said Consumables will be identified to Owner throughout the term of this Agreement as necessary to permit the timely acquisition thereof. The initial list of such Consumables shall, in any event, be identified and submitted to Owner in writing no later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date.

(b) Operator shall use, manage, care for, control and maintain Consumables as required to support the needs of the Facility, and purchase Consumables, as Reimbursable Costs or to Owner's account as provided in Section 4, throughout the term of this Agreement.

2.08 Purchased Parts, Labor and Services. Operator shall identify and purchase as Reimbursable Costs or for the account of Owner as provided for in Section 4, parts other than spare parts and purchased labor and services throughout the term of this Agreement as necessary to perform the requirements of this Agreement, including but not limited to the labor and services identified in Exhibit C hereto. This will include purchases for the services of factory personnel, or personnel trained and qualified to provide equivalent services, to perform manufacturer's recommended service procedures when deemed necessary. Without limitation, Operator shall purchase as a Reimbursable Cost third-party Contracts to clean up and remove hazardous waste and solid waste, except such waste arising out of the gross negligence or fault of Operator. Any maintenance or repair that can reasonably be performed by regular full time on-site personnel, provided pursuant to Section 2.01 above and Exhibit A, will be performed by them, without additional compensation.

2.09 Maintenance and Repairs. Operator shall comply with procedures developed pursuant to Section 2.10 below and otherwise provide all maintenance and repair services necessary to keep the Facility in good working order in a manner consistent with Prudent Utility Practice, to correct by appropriate measures any damage to or malfunction of the Facility, and provide all necessary information to and cooperate with Owner so that Owner may enforce or make warranty claims with respect to any repair or malfunction. Any parts utilized in performing operation and maintenance services shall be new or refurbished according to manufacturer's recommendations. Operator shall assign to Owner the manufacturer's warranty on all parts Operator has purchased.

2.10 Operating, Maintenance and Safety Plans and Procedures. Using the operations and maintenance manuals supplied to Owner by the Turnkey EPC Contractors pursuant to the Turnkey EPC Agreement, and all other equipment and supplier manuals, as supplemented by Operator's standard procedures developed for like facilities, Operator shall develop (and furnish copies to Owner for review and approval in writing) necessary operating, maintenance and safety plans and procedures including, without limitation, the following (each of which shall satisfy the requirements set forth in any Power Agreement):

(a) Startup, operating, dispatching and shutdown procedures for Facility equipment and systems including appropriate periodic checks of and/or for water quality and treatment requirements, fluid or gaseous leaks, improper temperatures, excessive noise and vibrations, proper pressures and liquid levels, and other pertinent operating information indicative of equipment condition;

(b) Periodic maintenance plans identifying schedules and procedures for equipment lubrication, packing and seal checks, filter checks and services, and electrical and control system checks;

(c) A ten year plan and other plans and procedures for long-term maintenance and overhaul of Facility equipment;

(d) Plans and procedures for as-needed repairs and overhauls;

(e) Plans and procedures for emergency service and repairs as needed, twenty-four (24) hours a day, each day of the year. Such procedures will provide for expedited service and repairs; for the availability of Operator's management personnel, in connection with such services, on a twenty-four (24) hours a day, each day of the year basis; for

notification of and expediting the availability of factory or service personnel when necessary repairs are beyond the capabilities of on-site personnel, and for the immediate notification of Owner of any emergency event or condition, of anticipated corrective actions to be taken and of anticipated service and repair times and consequences;

(f) Procedures for identifying, acquiring and maintaining required spare parts to ensure that the Facility has an adequate inventory of spare parts, in accordance with Section 2.05 of this Agreement; and

(g) Procedures for notice to and approval by Owner of any alterations to the Facility, so that no alterations to the Facility will be made without the written consent of Owner.

Operator will, without limitation, provide in such plans and procedures for visual, mechanical or instrumental inspection as necessary in order to provide early detection of required adjustments, repairs or replacements so that required adjustments, repairs or replacements can be scheduled with minimum interference to Facility operations insofar as possible. Such procedures will be consistent with applicable manufacturer's recommendations, will provide for the services of factory representatives and/or outside consultants where appropriate and will provide for orderly shutdowns and minimum interference with operations. Such procedures will be reviewed as required and in no event less frequently than annually with a copy of the review provided to Owner. No alterations to the Facility shall, in any event, be made without the prior written approval of Owner.

2.11 Records. Operator shall keep and maintain financial, maintenance and operation records for the Facility and for the equipment therein. Such records shall satisfy both the requirements set forth in any Power Agreements and Lenders' requirements under the Financing Documents and shall include, without limitation: the logging of daily exception reports; daily Operator's logs; a record of all maintenance and repairs performed; copies of all plans and procedures developed pursuant to Section 2.10 above or otherwise; emissions and compliance reports; equipment and instrument calibration records; fuel consumption records; steam production; water consumption, consumption and delivery records; and electricity production, consumption and delivery records. All records shall be made available for examination by Owner during normal working hours.

2.12 Reports. Operator shall prepare and furnish a monthly operations report within fifteen (15) business days following the close of each calendar month, including the following:

(a) A review of operations for the prior month (fuel consumption; electricity and steam production, consumption and deliveries, etc.);

(b) Identification of significant exceptions to the normal status of equipment;

(c) Identification of all major repairs or alterations made to equipment during the prior month;

(d) Identification and explanation of significant performance deviations from the prior month or from anticipated performance;

(e) Identification of maintenance and shutdowns planned for the succeeding twelve (12) months; and

(f) Such other matters as may be reasonably requested by Owner in writing;

Operator shall also provide all notices required in connection with the operation and maintenance of the Facility by applicable permits, laws and regulations and any Power Agreement and the Financing Documents within the times required. Owner shall be responsible, pursuant to Section 3.09(c), for providing those documents which identify all required notices relating to the operation and maintenance of equipment contained in the Facility that are required by this paragraph.

2.13 Governmental, Regulatory, Utility And Safety Requirements. Operator shall operate and maintain the Facility in compliance with all applicable laws, permits, approvals, ordinances, rules, regulations and orders of Federal, State and local governmental authorities. Operator shall also comply with all safety and other rules and regulations reasonably established by Owner with respect to the Facility, by Transmission Provider with respect to interconnection delivery facilities and property owned by or leased from the Transmission Provider, and with all safety requirements with respect to all other third party Contracts to which the owner is a party. In the event that such requirements change during the term of the Agreement, and such changes require additional costs of Operator, these additional costs shall be reimbursed to Operator by Owner as Reimbursable Costs. In the event such changes require alteration to the Facility, Owner shall be responsible for the costs of such alterations.

2.14 Liens And Encumbrances. Operator shall keep all real property and all personal property and equipment associated with or part of the Facility free and clear of all liens and encumbrances caused by an action or failure to act by Operator or any of its consultants, suppliers or subcontractors in the performance of its obligations under this Agreement, including, without limitation, failure by Operator to pay, when due, any bill or charge for labor or services performed or materials or equipment furnished for use in connection with this Agreement. Nothing herein contained shall require Operator to pay any claims for labor, materials or services which Operator, in good faith disputes and which Operator, at its own expense, is currently and diligently contesting.

2.15 Metering. Operator shall verify the accuracy of meters and devices used to measure the delivery of energy as required, but in no event less frequently than quarterly and shall verify the accuracy of meters and devices used to measure the delivery of electricity, natural gas, steam and water as required, but in no event less frequently than annually. Such verification is to be performed in a manner consistent with standard industry practice and all applicable third party Contracts to which the Owner is a party.

2.16 Waste. Operator shall not allow any hazardous or solid waste to accumulate on the Site in contravention of any applicable law, regulation or governmental permit or license, any Power Agreement, or the Financing Documents.

2.17 Scope of Work. Operator shall perform those services described in this Agreement. Such services shall be performed and supplied in connection with, but not limited to, the following:

(a) Preparation of the Facility for Phase I Commercial Operation including, without limitation, the following:

(i) The review of engineering drawings; provided however, such review shall not give Operator any responsibility for the design of the Facility;

(ii) Participation with Owner in design review meetings, in construction reviews, in the development of training programs and in development of Facility checkout and startup procedures; and

(iii) The hiring and training of qualified Operator personnel;

(b) Testing and acceptance of the Facility from the Turnkey EPC Contractor including: (i) review of turnover packages, (ii) system walkdowns and acceptance, and (iii) assistance in developing punchlists;

(c) Testing of the Facility required by this Agreement, the Switchyard EPC Agreement and Power Agreements. Operator shall provide trained and qualified operating personnel to assist in the startup and testing of the Facility under the direction and supervision of the Turnkey EPC Contractor prior to Phase I Commercial Operations;

(d) Startup of the Facility in connection with each dispatch from the Transmission Provider or for the Customers;

(e) Management and provision of all activities required for Facility support and operation, under the direction of Owner, including but not limited to: community interface, fuel scheduling, and management of other Agreements and services necessary to support the Facility;

(f) Operation of the Facility;

(g) Management of all operation and maintenance requirements of the Facility;

(h) Maintenance of the Facility;

(i) Furnishing Electrical Energy to the Customers, together with the maintenance schedules and other records required by the Customers;

(j) Providing home office support activities for the Facility including but not limited to those of Exhibit B;

(k) Assist Owner in obtaining and renewing the necessary permits and licenses of Section 3.04 when requested by Owner in writing;

(l) Submit a desired schedule of Scheduled Outages as required in any Power Agreement (including the duration of each outage) to Owner at least four (4) weeks before Owner is required to supply same to Customers;

(m) Cooperate with Customers and Owner in scheduling and performing all scheduled maintenance outages, routine maintenance and major overhaul outages in accordance with Owner's obligations of any Power Agreements or as set forth in the Financing Documents.

(n) Prepare and submit to Owner, for Owner's approval, an Annual Budget for the Facility, at least ninety (90) days before the beginning of each calendar year. Such budget shall be consistent with the requirements of this Agreement and meet the requirements of any Power Agreements or the Financing Documents; and

(o) Provide sufficient training to operating and maintenance personnel to assure that their capabilities and qualifications are maintained.

2.18 Operator Proprietary Information. Operator Proprietary Information shall remain the property of the Operator and may be used by the Owner only in connection with the development, construction and operation of the Facility. Owner shall hold and treat all Operator Proprietary Information in the strictest confidence and shall not disclose any Operator Proprietary Information without the prior written consent of the Operator. Owner may disclose Operator Proprietary Information to those of its employees or agents on a need-to-know basis and *provided* such employees or agents are informed of the confidential nature of such information and the purposes for which the Operator Proprietary Information may be used in accordance with the provisions of this Agreement. If Owner receives a request from a governmental agency to disclose Operator Proprietary Information, Owner shall immediately notify Operator of such request, consult with the Operator on the course of action with respect to the request (including cooperating with Operator in seeking a protective order) and if disclosure is required, furnish only that portion of the Operator Proprietary Information which it is legally compelled to disclose.

SECTION III

SERVICES TO BE PERFORMED BY OWNER

From and after the Commencement Date, Owner shall be responsible for the following:

3.01 Office Space, Equipment, And Administrative Services. Owner shall provide office and administrative space, administrative services and equipment for Operator at the Facility.

3.02 Tools, Spare Parts, Equipment And Consumables. Owner will:

(a) Provide written approval or give timely objections to the lists of tools, spare parts, equipment, and Consumables identified by Operator pursuant to Sections 2.04, 2.05, 2.06, and 2.07 hereinabove.

(b) Pay for approved supplies of tools, spare parts, equipment, Consumables, and purchased parts, labor and services and Reimbursable Costs required by Operator to perform its responsibilities as defined in Section II of this Agreement, as provided for in Section 4.01(b), 4.02(b), and 4.03.

3.03 Utilities. Owner will provide and pay for all utilities.

3.04 Permits And Licenses. Owner will obtain all necessary permits and licenses, except those that are issued in the name of Operator.

3.05 Staffing Schedules. Owner will provide written approval or give timely objections in connection with staffing schedule approval required in Section 2.02.

3.06 Manuals. Owner shall deliver copies of operating and maintenance manuals for all equipment installed in the Facility and any and all additional documents received from any contractor under the EPC Agreements including, but not limited to, as-built drawings of the Facility, record books, vendor manuals and operations and maintenance manuals, as Owner deems necessary for Operator's successful operation of the Facility.

3.07 Training. Owner shall cause Turnkey EPC Contractor to provide training to the employees of Operator in the start-up and operation of the Facility and any and all related machinery and equipment.

3.08 Payments. Owner shall make payments to Operator in accordance with Sections IV, V, and VI of this Agreement.

3.09 Other. Owner will

(a) Provide and pay for all natural gas, fuel oil, and chemicals required throughout the term of this Agreement;

(b) Pay all property or other taxes related to the Facility or its activities but not income or employment related taxes of the Operator or its employees; and

(c) Provide all necessary documents that Operator needs to perform its obligations relating to the operation and maintenance of equipment contained in the Facility under this Agreement. Owner and Operator shall consult with each other to determine the obligations under such documents for which the Operator is responsible.

3.10 Direct Labor Costs. Owner shall pay all direct labor costs for Operator's plant personnel as Reimbursable Costs.

3.11 Applicable Laws. Owner shall, at all times, conform to all laws, ordinances, rules and regulations applicable to it.

SECTION IV

COMPENSATION

4.01 Before Phase I Commercial Operation Date. Owner shall pay Operator a fee for services provided by Operator from the Commencement Date to the Phase I Commercial Operation Date as follows:

(a) Fixed monthly payments in the amount or $14,583 starting from Commencement Date through and inclusive of Phase I Commercial Operation Date. For the month during which the Commencement Date occurs, the fixed monthly payment shall be prorated for the portion of the month subsequent to the Commencement Date. For the month during which the Actual Phase I Commercial Operation Date occurs, the fixed monthly payment shall be prorated for the portion of the month prior to the Phase I Commercial Operation Date;

Plus,

(b) All Reimbursable Costs properly incurred pursuant to this Agreement.

4.02 After Phase I Commercial Operation Date. Beginning on the Phase I Commercial Operation Date, Operator shall be compensated by Owner as follows:

(a) A fixed price fee of $29,166 per month for all services to be provided by Operator pursuant to this Agreement except as otherwise provided for in this Agreement. Said monthly payment shall be adjusted annually commencing on the first day of each year subsequent to Phase I Commercial Operation Date, by the change in index values of the (i) immediately preceding month of December and (ii) the prior month of December, as specified in the Consumer Price Index for All Urban Consumers, U.S. City Average, Table 1, in the row titled "Services" under the column heading "Unadjusted percent change to..." as published in the CPI Detailed Report for the immediately preceding December; plus

(b) All Reimbursable Costs properly incurred pursuant to this Agreement.

4.03 Operator Procurement to Owner's Account. Operator may procure those items and services which are considered Reimbursable Costs and are included in the Approved Budget by issuing purchase orders to be paid directly by Owner on Owner's purchasing and requisition forms. Operator shall supply a confirming copy of the purchase order to Owner. For purchase orders in excess of $25,000 or for any items not in the Approved Budget, Operator is required to receive written authorization from Owner's Representative prior to issuing purchase orders to be paid directly by Owner on Owner's purchasing and requisition forms.

4.04 Effect of Change in Control of Owner. Any material change in the percentage of direct or indirect ownership of Owner or any material change in the percentage of direct or indirect ownership of any parent company directly or indirectly owning an interest in Owner consistent with Section 8.03(e)) shall result in an automatic and immediate increase in the fees owing

Operator under Section 4.01 and 4.02. In the event of such change in control of Owner, the fees payable to Operator under each of Section 4.01 and 4.02 shall be increased by a multiplier of 2.5.

SECTION V

AGREEMENT PRICE ADJUSTMENT

Beginning with the Phase I Commercial Operation Date, a bonus program will be put in place for the plant personnel and will be based on the personnel earning a bonus up to a percentage of their direct pay. During the annual budget cycle, Owner and Operator will mutually establish the goals for the bonus program for the following year. The targets and indicators and potential bonus will be defined and reviewed with the Plant Manager each year. It is anticipated that these targets and indicators and bonus percentage will be adjusted annually according to specific operating requirements for the following year at the Owner's and Operator's discretion. Areas of evaluation include, but are not limited to, the areas listed below.

Employee Safety
Facility Safety Programs
Facility Heat Rate
Equivalent Availability Factor
Forced Outage Occurrences
Planned Outage Duration
Environmental Compliance
Regulatory Compliance
Energy Sales Condition Compliance
Budget Control
Facility Capacity Factor
Development of Plans and Procedures
Completion of Individual Qualification
Completion of Preventive Maintenance Work Orders
Maintenance Backlog

Criteria for performance evaluations will be provided to the Operator at the beginning of each annual period. At the end of each annual period, based on the preceding twelve monthly evaluations, Operator shall pay to its plant personnel a bonus representative of how well the established targets for that year have been met.

SECTION VI

PAYMENT

6.01 Payment of Monthly Compensation. The payment required by Sections 4.01 and 4.02 above will be made on a calendar month basis. Operator shall submit its invoices on or before the tenth (10th) day of the month following the month during which services were provided or Reimbursable Costs were incurred. Owner shall pay the amount due to Operator on or before the thirtieth (30th) day following the date Owner receives the invoice. Operator shall submit its billing together with copies of supporting invoices, vouchers, receipts, and such other evidence of payment as Owner shall require.

6.02 Payment Of Termination Payment. Owner shall pay the amount due pursuant to Section 8.01 to Operator on or before the thirtieth (30th) day following the date the invoice for such amount is received by Owner.

6.03 Payment Disputes. In the event of a dispute or question regarding any invoice submitted by Operator, (i) all amounts not disputed or in question shall be promptly paid as and when required by Section 6.01 above, (ii) an explanation of the dispute shall be transmitted by Owner to Operator within thirteen (13) days after Owner's receipt of the invoice, (iii) Owner and Operator shall immediately seek to resolve the dispute or question, and (iv) payment shall be made within ten (10) days of any remaining amount due when the dispute is resolved.

6.04 Interest on Overdue Amounts. If Owner fails to make timely payments of any amount due and not in dispute hereunder, interest on such amount shall accrue from the date due at a rate per annum equal to the prime rate for commercial loans as indicated from time to time by the headquarters of The Chase Manhattan Bank, N.A. in effect at the time the payment is due, plus a margin of 2% per annum.

SECTION VII

TERM

7.01 Term. This Agreement shall become effective as of the date of execution of this Agreement, and shall continue in effect thereafter until the twelfth anniversary of the Phase I Commercial Operation Date unless otherwise terminated as provided in this Agreement.

7.02 Extension of Term. Any extension of the term of this Agreement will be effected by written agreement between the parties. All of the terms and conditions of this Agreement which are not modified or changed in any such written agreement shall remain in full force and effect throughout any such extended term.

7.03 Authorization to Proceed. Obligations of Owner and Operator shall commence on the Commencement Date.

7.04 Phase I Commercial Operation Date. Written notification of the anticipated Phase I Commercial Operation Date shall be given by Owner to Operator at least three (3) months prior to such date.

SECTION VIII

TERMINATION

8.01 Termination By Owner Without Cause. Owner shall have the right to terminate this Agreement for convenience should the Facility be sold to a third party who intends to operate the Facility and Lender shall have the right to terminate this Agreement for convenience should it declare an Event of Default under the Financing Documents. Upon termination pursuant to this Section VIII, Owner or Lender, as applicable, shall pay Operator:

(a) All outstanding costs pursuant to Section 4.02 hereof;

(b) Reasonable costs actually incurred by Operator in support of the termination of this Agreement; and

(c) Reasonable severance costs resulting from the termination of employment of Operator's employees.

Neither party may otherwise terminate this Agreement except as provided in this Section VIII.

8.02 Termination By Owner for Cause. Owner may terminate this Agreement upon written notice to Operator as provided for in Section 8.05 upon the occurrence of any of the following:

(a) Operator's failure to provide adequate qualified personnel to perform its obligations under the Agreement;

(b) Failure of the Operator to perform in any material respect any service or obligation to be performed by it hereunder or if any representation or warranty shall prove to be incorrect in any material respect;

(c) The appointment of a receiver, liquidator or trustee for Operator by a court of competent jurisdiction or an adjudication of bankruptcy or insolvency by any such court or the filing by Operator of a petition seeking an adjudication of bankruptcy or insolvency;

(d) Continuance of a Force Majeure by Operator for more time than that allowed in Section 13.01.

8.03 Termination By Operator For Cause. Operator may terminate this Agreement upon written notice to Owner as provided for Section 8.05 upon the occurrence of any of the following:

(a) Failure to pay undisputed amounts due to Operator under this Agreement in accordance with Section VI;

(b) Failure of Owner to approve, and pay for tools, parts, equipment, or Consumables required by Operator to perform its obligations under this Agreement;

(c) Failure of Owner to perform in any material respect any service or obligation to be supplied or performed by it or if any representation or warranty shall prove to be incorrect in any material respect;

(d) Continuance of a Force Majeure by Owner for more time than that allowed in Section 13.01; and

(e) Any material change in the percentage of direct or indirect ownership of Owner or any material change in the percentage of direct or indirect ownership of any parent company directly or indirectly owning an interest in Owner. For purposes of this provision, a "material change" shall mean a change by which Operator's affiliate, TPS reduces its direct or indirect ownership interest in Owner below ten percent (10%) during the Term hereof; provided, however, that the transfer of an ownership interest to an Affiliate shall not be deemed to be a material change.

8.04 Termination Under Section 8.01. In the event Owner gives a written termination notice pursuant to the provision of Section 8.01, this Agreement shall terminate as of the date specified in such notice which shall be no earlier than sixty (60) days after the date the notice is given.

8.05 Termination Under Sections 8.02 and 8.03. In the event a written termination notice is given pursuant to Sections 8.02 or 8.03, such notice shall set forth the circumstances providing the basis for such notice and the Party which receives such notice shall have thirty (30) days to remedy such condition. In the event such circumstance is not corrected by the Party receiving such notice, or the Party receiving such notice has not taken substantive action acceptable to the other Party in its sole discretion to correct the circumstances by the end of such thirty (30) day period, this Agreement shall terminate.

8.06 Termination Procedure. Operator shall, in the event of termination, take all reasonable steps necessary to assure an orderly transfer of operation and maintenance responsibility to Owner or to Owner's designee including, without limitation, the delivery of all of the following to Owner or to any such designee:

(a) All operation, maintenance or other records, manuals and procedures associated with the Facility;

(b) All tools, Consumables, spare parts and equipment associated with the Facility; and

(c) At the option of Owner or such designee, assignments to Owner or such designee, in form reasonably satisfactory to Owner or such designee, of any agreements between Operator and third parties relating to the performance of the obligations of Operator under this Agreement.

8.07 Owner Cure of Operator's Default. In the event of a default by Operator in its obligations hereunder and after the applicable cure period, Owner may, but shall not be required to, cure such default and may charge Operator any additional incremental costs incurred by Owner to cure such default. The exercise by Owner of this right shall not waive any other rights of Owner hereunder or at law.

8.08 Rights and Remedies in Law or Equity. In the case of a material breach by either Party of its representations, warranties or obligations hereunder, in addition to, or in lieu of, the right to terminate this Agreement pursuant to Section 8.02 and 8.03 hereof, each Party shall have all other rights and remedies provided for in law or equity, except that Operator's rights for breach shall be limited to receipt of its fees under Sections 4.01 and 4.02 through the remaining term of the Agreement, plus any actual and demonstrable demobilization (and employee termination) costs.

8.09 Survival of Terms. Upon termination of this Agreement pursuant to this Section VIII, the rights and obligations of the parties hereunder shall terminate except for (a) rights and obligations accrued as of the termination, (b) rights and obligations arising out of events occurring prior to the termination and (c) all other rights and obligations of the Parties which by their terms survive termination or which by their nature or by implication are intended to survive termination, including but not limited to, those rights and obligations contained in Sections 2.11, 2.18, 6.01, 6.02 and 9.02.

SECTION IX

INSURANCE AND INDEMNIFICATION

9.01 Insurance.

(a) Owner's Coverages. Owner shall secure and maintain (or cause to be secured and maintained) during the term of this Agreement the following insurance for the protection of Owner and Operator:

(i) Workers' Compensation, subject to statutory limits, covering Owners' employees, but only if Owner has any employees working at the Site. In lieu of the foregoing, Owner shall be entitled to provide self-insurance for Workers' Compensation risks, to the extent permitted by Law and prudent risk management principles and in conformance therewith.

(ii) Employer's Liability, with minimum limits as follows:

(a) Bodily Injury by Accident - U.S. $1,000,000 per accident;
(b) Bodily Injury by Disease - U.S. $1,000,000 policy limit,

but only if Owner has any employees working at the Site. In lieu of the foregoing, Owner shall be entitled to provide self-insurance for Employers' Liability risks, to the extent permitted by Law and prudent risk management principles and in conformance therewith.

(iii) General Liability Umbrella Insurance having minimum limits in an amount equal to Ten Million Dollars (U.S.$10,000,000) per occurrence, "combined single limit" property damage/bodily injury coverage. Such insurance policy shall include Premises/Operations, Explosion, Collapse and Underground Hazards, Broad Form Contractual, Independent Contractors, Products/Completed Operations, Broad Form Property Damage and Personal Injury.

(iv) Automobile Liability in an amount required by Law and not less than a "combined single limit" coverage for bodily injury and property damage limit of One Million Dollars (U.S. $1,000,000) per accident, in comprehensive form and covering hired, owned and non-owned vehicles. Such insurance shall name Operator and Lender as Additional Insureds.

(v) Property Insurance on an "All Risk" basis covering loss to real and personal property of Owner located at the Site and other equipment for which Owner has an insurable interest, and to include among other things Boiler and Machinery coverage, if such is commercially available under the "All Risk" policy.

(vi) Boiler and Machinery Insurance (if not provided in paragraph (v) above) for all insurable objects, including but not limited to pressure vessels, turbine and equipment, electrical generators, motors, air tanks, machinery, pressure piping or similar apparatus, on a comprehensive form. Such insurance policy shall cover objects at all locations required to be insured under paragraph (v) above. Owner shall have the right at any time, and from time to time, at Owner's sole option, to combine the Property Insurance and the Boiler and Machinery Insurance into a single policy.

(vii) The General Liability and Auto Liability Insurance policy required under paragraphs (iii) and (iv) above shall be endorsed naming Operator as a named insured for the Services to be performed pursuant to this Agreement only. Such insurance coverage and any corresponding umbrella liability insurance coverage naming Operator as a named insured shall be the primary coverage to Owner and Operator in the event of a covered loss and shall be exhausted before Operator's insurance carrier(s) shall have any liability for said loss. Owner agrees that the Property and B&M insurance will be endorsed naming Operator as a named insured and shall be the primary coverage to Owner and Operator in the event of a covered loss. Owner hereby waives and shall cause all its insurers to waive subrogation rights against Operator and its insurance carrier(s) in the event of any covered loss under the policy described above.

(b) Operator's Coverages. Operator shall secure and maintain (or cause to be secured and maintained) as a minimum during the term of this Agreement the following insurance:

(i) Workers' Compensation, and other similar forms of insurance which is required by Law covering employees of the Operator.

(ii) Employer's Liability, with minimum limits as follows:

(a) Bodily Injury by Accident - U.S. $1,000,000 per accident;
(b) Bodily Injury by Disease - U.S. $1,000,000 policy limit.

(iii) Automobile Liability in an amount required by Law and not less than a "combined single limit" coverage for bodily injury and property damage limit

of One Million Dollars (U.S. $1,000,000) per accident, in comprehensive form and covering hired, owned and non-owned vehicles. Such insurance shall only be required if Operator owns vehicles. Such insurance, if so required, shall name Owner and Lender as Additional Insureds.

(c) Form and Content of Insurance. All policies, and binders with respect to insurance provided pursuant to this Section 9.01 shall be as follows:

(i) Additional Insured shall include the Lender and the officers, directors and employees of each entity so named as its interests may appear.

(ii) All liability insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or Additional Insured in the same manner as if separate policies had been issued to each.

(iii) All insurance shall provide that there shall be no recourse against the Additional Insureds for the payment of premiums or commissions or (if such policies provide for the payment thereof) additional premiums or assessments.

(iv) The insurance maintained by Owner and Operator shall provide for the waiver of any right of subrogation by the insurers thereunder against Operator and Owner, as the case may be, and its officers, directors and employees, agents and representatives.

(v) All insurance shall provide that it may not be canceled or materially changed without giving the Owner, Operator and Lender thirty (30) days prior written notification thereof, except in cases of non-payment of premium for which ten (10) days prior written notice shall be provided (unless a longer notice period for non-payment is agreed to by the relevant insurer).

(vi) In the event that Owner does not provide or maintain any of the insurance coverage referred to in this Section, Operator shall have the right to provide or maintain such coverage at Owner's expense either by direct charge or set-off from amounts due hereunder.

(vii) In the event that Operator does not provide or maintain any of the insurance coverage referred to in this Section, Owner shall have the right to provide or maintain such coverage at Operator's expense either by direct charge or set-off from amounts due hereunder.

(d) Additional Requirements.

(i) Prior to the performance of any Services by Operator hereunder, each party shall furnish certificates of insurance to the other party and to Lender evidencing the insurance required of such party pursuant to this Agreement.

(ii) Payment of Deductibles and Self-Insured Retention Amounts. Subject to paragraph (a), Owner shall be responsible for deductibles or self-insured retentions under all of the insurance policies required to be carried by Owner pursuant to paragraph (a) of Section 9.01. In addition, subject to paragraph (b), Operator shall be responsible for all deductibles and self-insured retentions under other policies maintained by Operator pursuant to paragraph (b) of this Section.

(iii) Operator shall require all subcontractors and suppliers to obtain, maintain, and keep in force, prior to entry on the Site and during the time in which they are engaged in performing services to be furnished by Operator adequate coverage in accordance with Operator's normal practice and shall provide Operator with current certificates of insurance evidencing such coverage.

9.02 Indemnification.

(a) Operator agrees to defend and indemnify Owner and Lenders and their respective directors, officers, employees, and agents (collectively "Indemnitee") against, and to hold them harmless from any and all claims, suits, losses, liabilities and legal expenses (collectively "Claims") to the extent resulting from or in connection with Operator's grossly negligent performance or non-performance of its obligations hereunder, provided that Operator shall be promptly notified in writing of such Claim or suit brought against such Indemnitee and shall be permitted to participate in the defense thereof; and

(b) Owner agrees to defend and indemnify Operator and its directors, officers, employees, and agents against, and to hold them harmless from any and all Claims, resulting from or in connection with Owner's negligent performance or non-performance of its obligations hereunder, provided that the same notification to, and opportunity to participate, specified in Section 9.02(a) above is afforded to Owner.

(c) The Operator's liability for all claims by the Owner, whether or not covered by insurance arising out of events occurring in any calendar year hereunder in connection with this Agreement or the performance, non-performance or breach thereof, whether in contract, tort, negligence, strict liability or otherwise shall not exceed, irrespective of applicable insurance coverage under Owner's or Operator's insurance coverage in manner set forth on Section 9.01, an amount equal to the fixed fee calculated pursuant to Section 4.01(a) or 4.02(a), as applicable, for such calendar year.

9.03 Additional Insured. Lender shall be named as an additional insured under the foregoing policies of insurance.

9.04 Damage Limitation. Neither Operator nor Owner shall have liability to the other party hereunder for indirect, incidental or consequential damages, including, without limitation, loss of revenues.

SECTION X

PERMITS AND LICENSES

10.01 Owner Permits and Licenses. Owner shall be responsible for obtaining and maintaining all permits and licenses, required to be in the name of Owner, necessary for the operation and maintenance of the Facility. Operator shall cooperate with Owner in obtaining and maintaining such permits and licenses and in preparing reports required thereunder.

10.02 Operator Permits and Licenses. Operator shall be responsible for obtaining and maintaining all permits and licenses required to be in the name of Operator. All associated fees will be considered Reimbursable Cost.

SECTION XI

INDEPENDENT CONTRACTOR

11.01 Independent Contractor. At all times, Operator shall perform the requirements of this Agreement as an independent contractor to Owner. Except as otherwise provided in this Agreement, Operator shall have full responsibility for the control and direction of its employees, servants and agents in the performance of Operator's obligations hereunder. Operator shall be fully and solely responsible for the payment of such employees, servants and agents and for the payment of all obligations incurred by Operator in performing the requirements of this Agreement. This Agreement is not intended to and shall not create a partnership of any kind or type. Except for as provided in Section 4.03, Operator shall not be an agent for and may not bind Owner. Owner shall not be an agent for and may not bind Operator.

SECTION XII

COORDINATION AND ACCESS

12.01 Access. Owner shall provide Operator and its employees, agents, and subcontractors with full and free access to the Facility at all times to perform its obligations under this Agreement. Operator shall furnish Owner with a list of employees engaged in operation and maintenance of the Facility and shall inform Owner in writing of all changes thereto. Operator, its employees, agents and subcontractors shall comply with all safety and other requirements established by Owner in connection with such access.

12.02 Coordination; Required Level of Performance. Promptly upon execution hereof each of Owner and Operator shall appoint and designate in writing to the other party a person authorized to act on behalf of such party under this Agreement. The parties may, from time to time, designate an alternate or alternates, who shall have the same authority, duty, and power as the originally appointed representative.

The representative of Owner shall: (i) approve requests for funds submitted by the Operator, provided such requests are within the Budget plus any approved variances or amendments; otherwise assist in seeking approval for such funds under (iii) below; (ii) make decisions on such matters relating to this Agreement as are set forth in the writing evidencing his or her appointment;

(iii) communicate in writing authorizations, approvals or disapprovals on behalf of Owner which may be called for or contemplated by this Agreement and give advice as to obtaining such authorizations and approvals; and (iv) carry out the Owner's responsibilities hereunder.

Operator's appointed representative will interface with the appointed representative of Owner and with appropriate representatives of Transmission Provider. Operator shall accept daily instructions from the Transmission Provider and Owner as to Facility requirements, subject to the design limits of the Facility. In the event of any interruption of the operation of the Facility or in the event Operator is unable to operate the Facility so as to meet the requirements of Transmission Provider, and Owner, Operator shall immediately notify Owner of the circumstance and shall exert its best efforts to restore the Facility to its required operating level.

SECTION XIII

FORCE MAJEURE

13.01 Force Majeure. Force Majeure shall include circumstances beyond a party's reasonable control including, without limitation, deficiencies attributable to acts of God; unusually severe weather conditions; any labor difficulty not involving employees of any parties hereto, any labor difficulty involving employees of parties hereto to the extent such employees are members of a labor union and such labor difficulty is in violation of a labor agreement or in violation of Applicable Laws; any labor difficulty involving employees of parties hereto, not caused by the act or the failure to act on the part of the relevant party hereto, to the extent such employees are in the process of becoming members of a labor union; war; inability to obtain fuel for the Facility; riots; requirements, actions or failures to act on the part of governmental authorities preventing performance; changes in law, inability despite due diligence to obtain required licenses; accident; fire; damage to or breakdown of necessary facilities; or transportation delays or accidents (such causes hereinafter called "Force Majeure"); provided that:

(a) The non-performing party shall give the other party written notice within a reasonable time after the discovery of the Force Majeure describing the particulars of the occurrence;

(b) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure but under no circumstances shall the Force Majeure exceed one hundred and eighty (180) days; however, if such Force Majeure is declared by Operator and results in the inability of the Facility to furnish Dependable Capacity to the Customers, then the Force Majeure shall not exceed thirty (30) days;

(c) The party with a deficiency in its performance uses its best efforts to remedy such deficiency;

(d) When the non-performing party is able to resume performance of its obligations under this Agreement that party shall give the other party written notice to that effect; and

(e) The Force Majeure shall not excuse failure to apply money obligations nor shall it excuse any deficiency in performance to the extent caused by any negligent or intentional act, error, or omission, or failure to comply with any law, rule, regulation, order or ordinance.

13.02 Extension of Agreement by Force Majeure. Except as otherwise provided, in no event will any condition of Force Majeure extend this Agreement beyond its stated term.

SECTION XIV

OPERATOR AND OWNER REPRESENTATIONS AND WARRANTIES

14.01 Representations and Warranties of Operator. Operator represents and warrants, as of the date hereof, as follows:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of Florida and will be qualified to do business in the State of Arizona;

(b) it has taken all necessary action to authorize the execution, delivery and performance of its obligations under this Agreement, which action has not been superseded or modified, and this Agreement constitutes the legal, valid and binding obligation of Operator, enforceable in accordance with its terms;

(c) the execution, delivery and performance of this Agreement do not violate (i) its articles of incorporation or by-laws or any resolution of its Board of Directors or other committees charged with the governance of its affairs, (ii) any Agreement to which it or, to the best of its knowledge, any of its Affiliates is a party or (iii) any law, rule, regulation, order writ, judgment, injunction, decree or determination affecting Operator or any of its properties;

(d) it has not filed any petition for relief under the bankruptcy laws of the United States of America, has not made nor is making an assignment for the benefit of creditors, initiated nor been the subject of any proceeding seeking to have a receiver or trustee appointed to liquidate or manage its affairs, and none of its properties is subject to the jurisdiction of any bankruptcy court of the United States of America or any receivership proceeding;

(e) no litigation is pending or, to its knowledge, threatened which seeks to restrain it from performing its obligations hereunder or the adverse outcome of which would materially affect its business or its ability to perform its obligations hereunder;

(f) no authorization or approval or other action by, and notice to or filing with, any government agency or regulatory body is required for the due execution, delivery and performance by Operator of this Agreement which have not been obtained;

(g) it or one of its Affiliates is experienced in the operation, maintenance and repair of electrical generating facilities, has complied with the provisions of all applicable laws, including, without limitation, environmental laws, respecting the operation of such facilities and has not been and is not currently subject to any judgment or settlement of any claim imposing significant liability on it for noncompliance with law or mismanagement in its operation of any electric power generating facility;

(h) it is familiar with the terms of the Customer sales agreements that affect or relate to the operation of the Facility.

14.02 Representations and Warranties of Owner. Owner represents and warrants, as of the date hereof, as follows:

(a) it is a partnership duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) it has taken all necessary action to authorize the execution, delivery and performance of its obligations under this Agreement, which action has not been superseded or modified, and this Agreement represents the valid and binding obligation of Owner, enforceable in accordance with its terms;

(c) the execution, delivery and performance of this Agreement do not violate (i) its articles of incorporation or by-laws or any resolution of its Board of Directors or other committees charged with the governance of its affairs, (ii) any Agreement to which it is a party or (iii) any law, rule, regulation, order, writ, judgment, injunction, decree or determination affecting Owner or any of its properties;

(d) it has not filed any petition for relief under the bankruptcy laws of the United States of America, has not made nor is making an assignment for the benefit of creditors, has not initiated nor been the subject of any proceeding seeking to have a receiver or trustee appointed to liquidate or manage its affairs, and none of its properties is subject to the jurisdiction of any bankruptcy court of the United States of America or any receivership proceeding;

(e) no litigation is pending or, to its knowledge, threatened which seeks to restrain the performance of its obligations hereunder or the adverse outcome of which could materially affect its business or its ability to perform its obligations hereunder; and

(f) no authorization or approval or other action by, and notice to or filing with, any government agency or regulatory body is required for the due execution, delivery and performance by Operator of this Agreement which have not been obtained.

SECTION XV

NOTICES

All notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been delivered and received (i) if personally delivered or if delivered by telegram or courier service, when actually received by the party to whom notice is sent, (ii) if delivered by telex or facsimile, on the first business day following the day transmitted (with confirmation of receipt), or (iii) if delivered by mail (whether actually received or not), at the close of business on the third business day following the day when placed in the mail, postage prepaid, registered or certified, return receipt requested, addressed to the appropriate party, at the address and/or facsimile number set forth below (or at such other address as such party may designate by written notice to the other party in accordance with this Section):

If to Operator:
TPS Arizona Operations Company
702 N. Franklin St.
Tampa, Florida 33602
ATTN: John Duff

If to Owner:
Panda Gila River, L. P.
4100 Spring Valley Road, #1001
Dallas, Texas 75244
ATTN: Don Thorpe

SECTION XVI

APPLICABLE LAW AND DISPUTE RESOLUTION

16.01 Applicable Law. This Agreement shall be performed in the State of Arizona. It shall be construed in accordance with the laws of the State of Arizona.

16.02 Dispute Resolution By Management. The parties agree to the following dispute resolution procedures:

(a) Any controversy, dispute, or claim between Operator and Owner which cannot be resolved informally will initially be referred, on five days written notice, to a meeting between a representative designated by each party. With respect to matters of costs or pricing claimed by Operator, Operator shall provide reasonably sufficient substantiation of the claimed damages to permit evaluation by Owner.

(b) If the controversy, dispute, or claim is not resolved at the meeting referred to in (a) above or, if such meeting does not occur, either party may within fifteen days after the date of such written notice, present the matter to the appropriate officer of Operator and Owner for resolution (or other representative of Operator and Owner

authorized to resolve the matter). Operator and Owner agree to a meeting of such officers within seven days following presentation of the matter to such officers.

(c) If the matter is not resolved within twenty-five days after the meeting held pursuant to the provisions of (b) above, or if such meeting is not held within thirty-five days of the written notice in (a) above, either party is free to pursue arbitration pursuant to Section 16.02.

16.03 Dispute Resolution by Arbitration. Any controversy, dispute, or claim arising out of or relating to this Agreement or the breach thereof, may, subject to the requirement of Section 16.02, be resolved by arbitration pursuant to the procedure set forth in this Section 16.03.

(a) American Arbitration Association. If there is a dispute arising under, out of, or in connection with, the making, performance, or execution of this Agreement or the performance of the Services, then the dispute shall be submitted to the American Arbitration Association in Phoenix, Arizona for arbitration. Any such arbitration shall be conducted in accordance with the principles set forth in this Section XVI and the rules of the American Arbitration Association or such other principles as to which the parties may then mutually agree.

(b) Demand for Arbitration. Upon written demand of either party, the parties shall meet and attempt to appoint a single arbitrator. If the parties are unable to agree on a single arbitrator within twenty days after a party first demands appointment of an arbitrator, or if one of the parties fails to meet within ten days of a written demand being forwarded, then either party may apply to have the arbitrator appointed by the American Arbitration Association.

(c) Qualifications. The arbitrator selected to act hereunder shall be qualified by education or training to pass upon the particular question or questions in dispute. No arbitrator shall be an officer, director, employee, agent or consultant of either party or any of its respective Affiliates.

(d) Decisions Final. The decision of the arbitrator shall be in writing and signed by the arbitrator and shall be final and binding upon the parties as to any question or questions so submitted to arbitration and the parties shall be bound by such decision and perform the terms and conditions thereof.

(e) Compensation of Arbitrator. The compensation and expenses of the arbitrator (unless determined by the arbitrator to be payable by the non-prevailing party or in some other manner) shall be paid in equal proportions by Operator and Owner. Furthermore, any out-of-pocket expenses incurred by either party to obtain the appointment of an arbitrator pursuant to this Section 16.03 shall be shared equally by Owner and Operator.

(f) Performance to Continue. All performance required by either party under this Agreement shall continue during arbitration proceedings, except as provided by the decision of the arbitrator, or as otherwise provided herein.

(g) Agreement Controlling. In all respects not provided for elsewhere in this Section XVI, the rules of the American Arbitration Association shall strictly govern any dispute hereunder submitted to arbitration. If there is a conflict between the provisions of this Agreement and such rules, the provisions of this Agreement shall strictly prevail.

SECTION XVII

NON-WAIVER

The failure of Owner or of Operator to enforce any of the terms and conditions or to exercise any right or privilege under this Agreement shall not be construed as waiving any such term or condition or right or privilege and the same shall continue and remain in force and effect as if no such failure to enforce or exercise has occurred. No waiver shall be valid unless so stated in writing.

SECTION XVIII

TITLE

Title to all tools, equipment, supplies and parts purchased by Operator for which Operator is directly reimbursed and of all reports, record logs and documentation prepared by Operator pursuant to this Agreement shall pass immediately upon payment by Owner. Said tools, equipment, supplies and parts shall be and become the property of Owner free of all liens and encumbrances except as provided for in Section 2.14

SECTION XIX

ASSIGNMENT

Neither Operator nor Owner shall assign this Agreement or any portion hereof, or any of the rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party; provided, however, that Owner may assign its rights hereunder as security for the financing of the Facility and either of the parties may assign its rights hereunder to an affiliate in each case without the prior consent of the other Party or Lenders. This Agreement and any such assignment shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties.

SECTION XX

LENDERS

20.01 Lenders. Operator acknowledges that Owner will borrow certain funds from the Lenders for the construction of the Facility and that, as a condition to making loans to Owner, the Lenders may

from time to time require certain documents from Operator and its subcontractors and vendors. In connection therewith, Operator agrees to furnish to the Lenders, and to use its best efforts to cause its subcontractors and vendors to furnish to the Lenders, such written information, certificates, copies of invoices and receipts, lien waivers (upon payment), affidavits and other like documents as shall be within the reasonable control of Operator to provide and as the Lenders may reasonably request. Operator shall negotiate in good faith amendments to this Agreement reasonably requested by the Lenders. In addition, Operator shall promptly execute any additional documentation, as may be mutually agreed upon in form and substance, that is reasonably requested by the Lenders.

20.02 Additional Documentation. Operator shall promptly execute any additional documentation as may be mutually agreed on form and substance, and which is reasonably requested by the Lenders, including, but not limited to, documents evidencing Operator's consent to assignment of this Agreement as a security to the Lenders or otherwise upon the occurrence of events specified in such documents and any reasonable modifications to this Agreement.

20.03 Subordination of Liens. Operator hereby subordinates any liens to which it may be entitled under Applicable Law or under the provisions of this Agreement to any lien granted in favor of the Lenders, whether such lien in favor of the Lenders is created, attached or perfected prior to or after the lien in favor of Operator.

20.04 Owner's Default. In the event of Owner's default under this Agreement, the Lenders shall have the right to cure Owner's default and, in such event, Operator's duties and obligations under this Agreement shall be unaffected. In that regard, the Lenders shall have (i) thirty (30) days from the date notice of default is delivered to the Lenders to cure such default if such default is the failure to pay amounts to Operator which are due and payable under the Agreement or (ii) not fewer than ninety (90) days to cure such default if the breach or default cannot be cured by the payment of money to Operator so long as the Lenders or their designee shall have commenced to cure the default within such ninety (90) day period and thereafter diligently pursue such cure to completion and continue to perform any monetary obligations under the Agreement and all other obligations under the Agreement are performed by Owner or the Lenders. If possession of the Facility is necessary to cure such breach or default, and the Lenders declare Owner in default and commence foreclosure proceedings, the Lenders will be allowed [a reasonable period] to complete such proceedings. If the Lenders are prohibited by any court order or proceedings from curing the default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition. Operator further agrees to perform its obligations hereunder for the benefit of the Lenders in the event of Owner's default under this Agreement or under the Financing Documents, provided that the Lenders shall have cured all defaults of Owner's obligations hereunder and shall have paid all amounts then due, including costs to cure. In such event, the Lenders shall have the rights and obligations of Owner under this Agreement, provided the Lenders shall have no personal liability to Operator for the performance of such obligations, and the sole recourse of Operator in seeking the enforcement of such obligations shall be to such parties' interest in the Facility.

Owner and Operator agree that the Lenders are intended to be a third party beneficiary of Section XIX, and Section XX. In that regard, Owner and Operator will not, without the prior written consent of the Lenders, amend or modify Section XIX, and Section XX in any respect.

SECTION XXI

MISCELLANEOUS

21.01 Amendments. All amendments to this Agreement must be written and must be signed by both parties hereto.

21.02 Invalidity. If any provision of this Agreement shall be found to be invalid by any court of competent jurisdiction, such finding shall not invalidate any other provision hereof.

21.03 Successors & Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and upon their respective successors and assigns.

21.04 Entire Agreement. This Agreement contains the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges and supersedes all prior agreements, commitments, representations, and discussion between the Parties pertaining to the subject matter of this Agreement.

21.05 Third Party Beneficiaries. Excluding rights of the Lenders to the Facility, this Agreement is not intended to create any third party beneficiary or rights.

21.06 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

Executed on the first day above written.

Panda Gila River, L. P.
By: Panda Gila River I, LLC

By: Ralph T. Killian
Name: Ralph T. Killian
Title: Sr. Vice President – Asset Management

TPS Arizona Operations Company

By: _____
Name: John Duff
Title: Vice-President

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By: Panda Gila River I, LLC

By:_____
Name: Ralph T. Killian
Title: Sr. Vice President – Asset Management

TPS Arizona Operations Company

By: _____
Name: John Duff
Title: Vice-President

AMENDED AND RESTATED
OPERATION AND MAINTENANCE AGREEMENT

BETWEEN

PANDA GILA RIVER, L. P.

AND

TPS ARIZONA OPERATIONS COMPANY

May 25, 2001

AMENDED AND RESTATED
OPERATION AND MAINTENANCE AGREEMENT

This AMENDED AND RESTATED OPERATION AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into on the 25th day of May, 2001 and effective as of March 12, 2001, by and between **Panda Gila River, L. P.** ("Owner"), a Delaware limited partnership and **TPS Arizona Operations Company** ("Operator") a Florida corporation.

WHEREAS, Owner intends to construct and operate a natural gas nominal 2,140 net megawatt (approximately) electric generation facility (the "Facility") in Maricopa County, Arizona and pursuant to which Owner will sell and certain persons including but not limited to utilities, and power marketers will purchase Electrical Energy produced by the Facility; and

WHEREAS, Owner and Operator entered into that certain Operation and Maintenance Agreement dated as of March 12, 2001 (the "Original O&M Agreement") pursuant to which the Operator agreed to provide operation and maintenance services at the Facility.

WHEREAS, the Owner and Operator desire to amend and restate the Original O&M Agreement to amend Section XVI, Applicable Law and Dispute Resolution.

WHEREAS, the Owner and Operator hereby approve, adopt and confirm that this Agreement hereby supercedes and replaces the Original O&M Agreement in its entirety.

NOW, THEREFORE, in consideration of the foregoing and of the premises hereinafter contained, Owner and Operator agree as follows:

SECTION I

DEFINITIONS

Whenever the following terms appear in this Agreement, they shall have the following meanings:

"Affiliate" shall mean, with respect to any corporation, a corporation which controls, is controlled by, or is under common control with, such corporation or successor thereto.

"Agent for the Lenders" shall mean that institution as defined in the Financing Documents.

"Agreement" shall mean the Operation and Maintenance Agreement made and entered into on the date set forth above by and between Owner and Operator.

"Annual Budget" shall mean the budget of all costs and expenses anticipated to be incurred by Operator to meet its obligations under this Agreement during any calendar year, or part thereof.

"Applicable Laws" shall mean any law, regulation, ordinance, statute, ruling, appeal or any other legal pronouncement issued by a governmental agency, governmental organization, or court of law, which has jurisdiction over the Facility or the parties hereto.

"Approved Budget" shall mean the annual budget prepared and submitted by Operator pursuant to Section 2.17 (n) hereof, which has been approved by Owner.

"Authorization To Proceed" shall mean Owner's written notice to Operator to commence the work required by this Agreement.

"Claims" shall have the meaning given such term in Section 9.02 (a) hereof.

"Commencement Date" shall mean the calendar date upon which Operator is to commence the work required by this Agreement as specified in the Authorization to Proceed.

"Consumables" shall be the meaning set forth in Section 2.07 hereof.

"Customers" shall mean the Power Manager and any purchasers of Electrical Energy through any Power Agreement from the Facility.

"Delivery Facilities" shall mean the lines and pipes used to deliver gas and water to the facility.

"Electrical Energy" shall mean the capacity, energy, and ancillary services provided by the Facility.

"EPC Agreements" shall mean, collectively, the Turnkey EPC Agreement and the Switchyard EPC Agreement.

"Facility" shall mean the nominal 2,140 MW (net) combined cycle, natural gas-fired electrical generating facility to be built by Owner, to supply "Electrical Energy" to a power marketer (to be determined by Owner) and other customers and all equipment contained therein and parts thereof. It shall include, without limitation, Delivery Facilities, the portion of the natural gas pipeline located on the Site, interconnection facilities to interconnect with the Transmission Provider (to the extent located on Owner's side of the interconnection point that is on the high side of Owner's step-up transformer) and other equipment and systems described in the EPC Agreements.

"Facility Funding" shall mean the date upon which the Lender makes the initial loan to Owner.

"Financing Documents" shall mean those documents related to the financing and/or the refinancing (on the part of Owner in favor of the Lenders) for the development, construction, ownership, operation or maintenance of the Facility, or any portion thereof.

"Indemnitee" shall have the meaning set forth in Section 9.02(a) hereof.

"Lender" and "Lenders" shall mean the financing entities, security holders, investors, and other entities that provide financing to or on behalf of Owner, for the development, construction, ownership, operation, and maintenance of the Facility or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.

"Maintenance Reserve" shall mean the fund established to cover major maintenance expenditures such as combustion turbine overhauls and other equipment major maintenance overhauls.

"Operator" shall mean TPS Arizona Operations Company, a Florida corporation.

"Operator Proprietary Information" shall include any and all technical and other analyses, data, plans, programs, schedules, maps, records, reports, tapes and other information of any kind whatsoever developed or acquired at any time by Operator, other than with funds provided to Operator pursuant to this Agreement.

"Owner" shall mean Panda Gila River, L. P., a Delaware limited partnership.

"Phase I Commercial Operation" shall mean the commencement of regular deliveries of Electrical Energy to Customers pursuant to any Power Agreements, which will occur on or after the Commercial Operation Date.

"Phase I Commercial Operation Date" shall mean the actual date of achieving Phase I Commercial Operation as determined pursuant to the Turnkey EPC Agreement.

"Plant Manager" shall mean Operator's on-site employee responsible for the operation and maintenance of the Facility.

"Power Agreement" shall mean any agreement that may be entered into during the term of this Agreement for the purchase and sale of Electrical Energy from the Facility.

"Prudent Utility Practices" shall mean those practices generally followed by the United States electric utility industry with respect to the operation and maintenance of electric generating, transmission and distribution facilities (including, but not limited to, the operating and safety practices generally followed by the electric utility industry).

"Reimbursable Costs" or "Reimbursable Cost" shall mean all reasonable and actual direct costs properly incurred pursuant to Sections 2.01 through 2.08, 2.09, 2.13, 9.01(b)(ii) and 10.2 of this Agreement.

"Scheduled Outages" shall mean an interruption or reduction of the Facility's electrical generating capacity that is planned by Owner, as such plans may be revised or scheduled by Owner from time to time.

"Site" shall mean that real property upon which the Facility is located.

"Switchyard EPC Agreement" shall mean that certain Switchyard Engineering, Procurement and Construction Agreement for Combined-Cycle Generation Facility, dated December 21, 2000, between Owner and Switchyard Contractor relating to the design, construction, testing and starting up of the switchyard and transmission lines, as may be amended, supplemented or modified from time to time.

"Switchyard EPC Contractor" shall mean GE-Hitachi HVB Inc.

"Substantial Subcontractor" means a subcontractor whose contract or contracts (in the aggregate) with contractor require payments by contractor of at least $50,000.

"Termination Payment" shall be a lump-sum payment as defined in Section 8.01 hereof.

"Transmission Provider" shall mean Arizona Public Service Company, an Arizona corporation.

"Turnkey EPC Agreement" shall mean that certain Turnkey Engineering, Procurement and Construction Agreement for Combined-Cycle Generation Facility, dated February 28, 2001, between Owner and Turnkey EPC Contractor relating to the design, construction, testing and starting up of the Facility, as may be amended, supplemented or modified from time to time.

"Turnkey EPC Contractor" shall mean National Energy Production Corporation, a Delaware corporation.

SECTION II

SERVICES TO BE PERFORMED BY OPERATOR

Operator will provide all operation and maintenance services necessary for the efficient, sound and effective operation of the Facility. Operator will maintain the Facility in good mechanical and operating repair and condition in accordance with Prudent Utility Practices. Without limiting the generality of the foregoing, Operator shall do the following:

2.01 Personnel. Operator shall hire, train and provide, in a manner consistent with Prudent Utility Practice, competent qualified personnel to operate and maintain the Facility including, without limitation, the following:

(a) A Plant Manager assigned to the Facility full time, to manage on-site operations and maintenance which individual shall be approved in writing by Owner;

(b) Additional full time on-site personnel as needed; and

(c) Additional engineering support, maintenance, and management personnel not located full time at the Facility, as needed to perform the requirements of this Agreement.

Without limiting the generality of the foregoing, Operator will (i) staff the Facility with qualified operators (in the control room or electronically connected thereto when elsewhere on the Facility site) during all hours when the Facility is in operation or when the generator is electrically connected to the Transmission Provider's system; (ii) provide those full time on-site personnel required to operate the Facility in accordance with Prudent Utility Practices, including, without limitation, those positions identified in Exhibit A hereto (as may be amended by Operator from time to time); and (iii) provide the home office support identified in Exhibit B hereto. The direct and indirect cost of the Facility staff identified in Exhibit A shall be a pass through to the Owner, without markup, as a Reimbursable Cost. The direct labor cost only and expenses of home office support identified in Exhibit B shall be passed through to the Owner, with a multiplier of two applied to the direct labor cost only, as a Reimbursable Cost.

2.02 Initial Staffing, Startup and Testing. After receiving Authorization to Proceed, Operator shall prepare a hiring schedule for the personnel identified in Exhibit A. After review and written approval of the hiring schedule by Owner, Operator shall commence initial hiring of personnel. Operator shall adjust the hiring schedule, as requested by Owner in writing, in accordance with changes in the construction, start-up, and Phase I Commercial Operation Date.

Operator shall provide qualified operating personnel to assist in startup and testing of the Facility under the direction and supervision of the Turnkey EPC Contractor. It is understood that Owner is obligated to pay for Operator's services during startup and testing as provided herein but that Turnkey EPC Contractor shall furnish total supervision and direction (including sole control over and responsibility therefor) of Operator's startup and testing activities and Turnkey EPC Contractor will have care, custody and control of the Facility prior to the Phase I Commercial Operation Date.

2.03 Operation and Maintenance. Operator shall operate and maintain the Facility, seven days a week, twenty-four hours per day, in accordance with Prudent Utility Practices, manufacturers' and the Turnkey EPC Contractor's recommendations, as applicable, and as required by any Power Agreements, Financing Documents and this Agreement. In addition, the Operator will operate the Facility in a manner calculated to maximize the useful life of the equipment, avoid excessive fuel consumption, minimize downtime for repairs, and avoid forced outages. Operator shall consult with Owner in order to clarify its obligations in the event that any conflict exists in these obligations under this Agreement. Operator shall be solely responsible for the operation and maintenance of the Facility hereunder but will follow the directions of Owner with respect to financial or economic matters as long as compliance with such directions will not be likely to materially and adversely affect the operation and maintenance of the Facility as required hereunder.

2.04 Tools.

(a) Operator shall review the tool list developed by the Turnkey EPC Contractor pursuant to the Turnkey EPC Agreement, and shall identify and prepare a list of recommended tools required to adequately perform the requirements of this Agreement. Said list will be submitted to Owner in one or more increments and shall be modified or supplemented throughout the term of this Agreement by agreement of the parties as necessary to permit the timely acquisition thereof. The initial list of such tools shall, in

no event, be submitted to Owner later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date.

(b) The initial supply of tools identified on the list described in paragraph (a) shall be subject to the written approval of Owner and will be purchased by Operator to Owner's account as provided in Section 4 of this Agreement or as a Reimbursable Cost. Operator shall promptly notify Owner in writing of tools that were not approved that could impact its obligations and duties hereunder.

(c) Operator shall be responsible for annually, or as otherwise reasonably requested by Owner in writing, preparing and presenting to Owner an accurate reconciliation of the Facility's tool inventory.

(d) Operator shall be responsible for the use, management, control, care, and custody of Facility tools.

(e) Operator shall repair or replace as required, as a Reimbursable Cost or to the account of Owner, as provided in Section 4, tools that deteriorate due to normal use.

(f) Operator shall periodically, and no less frequently than annually, review Facility tools, and make recommendations to Owner for additional tools that would improve Facility operations.

2.05 Spare Parts.

(a) Operator shall review the spare parts list developed by the Turnkey EPC Contractor pursuant to their Agreements, and shall identify and prepare a list of recommended spare parts required to adequately perform the requirements of this Agreement. Said list will be submitted to Owner in one or more increments and shall be modified or supplemented throughout the term of this Agreement by agreement of the parties as necessary to permit the timely acquisition thereof. The initial list of such spare parts shall, in no event, be submitted to Owner later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date. Spare parts will be determined with reference to generally accepted practices in the industry and with reference to manufacturer's recommendations.

(b) The initial supply of spare parts identified on the list described in paragraph (a) shall be subject to the written approval of Owner and will be purchased by Operator for Owner's account as provided in Section 4 of this Agreement or as a Reimbursable Cost.

(c) Operator shall, subsequent to submitting the initial list of spare parts described in paragraph (a) be responsible for purchasing, for Owner's account as provided in Section 4 hereof or as a Reimbursable Cost, replacements for said listed spare parts as necessary.

(d) Operator shall be responsible for the use, care, custody, management and control of said spare parts.

(e) Operator shall be responsible for performing and presenting to Owner an accurate reconciliation of the Facility's spare parts inventory on an annual basis, or as otherwise reasonably requested by Owner in writing.

(f) Operator shall be responsible for establishing proper and effective on-Site warehousing and inventory controls for such spare parts. Owner shall provide the on-Site warehouse.

(g) Operator shall purchase additional parts or replacement parts to maintain inventory at levels to support Facility requirements, as a Reimbursable Cost or to the account of Owner as provided for in Section 4.

2.06 Equipment.

(a) Operator shall identify and prepare a list of recommended equipment required to adequately perform the requirements of this Agreement. Said list will be submitted to Owner in one or more increments and shall be modified or supplemented throughout the term of this Agreement by agreement of the parties as necessary to permit the timely acquisition thereof. The initial list of such equipment shall, in no event, be submitted to Owner later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date.

(b) The equipment identified on the list of such equipment described in paragraph (a) shall be subject to the written approval by Owner and shall be purchased by Operator for Owner's account as provided in Section 4 or as a Reimbursable Cost. Operator shall promptly notify Owner in writing of equipment that was not approved that could impact Operator's obligations and duties hereunder.

(c) Operator shall periodically review the equipment required to perform under this Agreement and make recommendations to Owner of modifications or additions to Facility equipment throughout the term of this Agreement that would improve or enhance Facility operations.

(d) Operator shall be responsible for the use, management, care, custody, operation and maintenance of said equipment. Operator shall repair or replace, as a Reimbursable Cost or to the account of Owner as provided for in Section 4, this equipment.

(e) Operator shall, when approved in advance by Owner in writing, purchase and install additional equipment as a Reimbursable Cost or to the account of Owner as provided for in Section 4.

2.07 Consumables and Other Materials.

(a) Operator shall identify those consumable, expendable, and other materials and supplies ("Consumables") necessary to perform the requirements of this Agreement. Said Consumables will be identified to Owner throughout the term of this Agreement as necessary to permit the timely acquisition thereof. The initial list of such Consumables

shall, in any event, be identified and submitted to Owner in writing no later than one hundred eighty (180) days prior to the Phase I Commercial Operation Date.

(b) Operator shall use, manage, care for, control and maintain Consumables as required to support the needs of the Facility, and purchase Consumables, as Reimbursable Costs or to Owner's account as provided in Section 4, throughout the term of this Agreement.

2.08 Purchased Parts, Labor and Services. Operator shall identify and purchase as Reimbursable Costs or for the account of Owner as provided for in Section 4, parts other than spare parts and purchased labor and services throughout the term of this Agreement as necessary to perform the requirements of this Agreement, including but not limited to the labor and services identified in Exhibit C hereto. This will include purchases for the services of factory personnel, or personnel trained and qualified to provide equivalent services, to perform manufacturer's recommended service procedures when deemed necessary. Without limitation, Operator shall purchase as a Reimbursable Cost third-party Contracts to clean up and remove hazardous waste and solid waste, except such waste arising out of the gross negligence or fault of Operator. Any maintenance or repair that can reasonably be performed by regular full time on-site personnel, provided pursuant to Section 2.01 above and Exhibit A, will be performed by them, without additional compensation.

2.09 Maintenance and Repairs. Operator shall comply with procedures developed pursuant to Section 2.10 below and otherwise provide all maintenance and repair services necessary to keep the Facility in good working order in a manner consistent with Prudent Utility Practice, to correct by appropriate measures any damage to or malfunction of the Facility, and provide all necessary information to and cooperate with Owner so that Owner may enforce or make warranty claims with respect to any repair or malfunction. Any parts utilized in performing operation and maintenance services shall be new or refurbished according to manufacturer's recommendations. Operator shall assign to Owner the manufacturer's warranty on all parts Operator has purchased.

2.10 Operating, Maintenance and Safety Plans and Procedures. Using the operations and maintenance manuals supplied to Owner by the Turnkey EPC Contractors pursuant to the Turnkey EPC Agreement, and all other equipment and supplier manuals, as supplemented by Operator's standard procedures developed for like facilities, Operator shall develop (and furnish copies to Owner for review and approval in writing) necessary operating, maintenance and safety plans and procedures including, without limitation, the following (each of which shall satisfy the requirements set forth in any Power Agreement):

(a) Startup, operating, dispatching and shutdown procedures for Facility equipment and systems including appropriate periodic checks of and/or for water quality and treatment requirements, fluid or gaseous leaks, improper temperatures, excessive noise and vibrations, proper pressures and liquid levels, and other pertinent operating information indicative of equipment condition;

(b) Periodic maintenance plans identifying schedules and procedures for equipment lubrication, packing and seal checks, filter checks and services, and electrical and control system checks;

(c) A ten year plan and other plans and procedures for long-term maintenance and overhaul of Facility equipment;

(d) Plans and procedures for as-needed repairs and overhauls;

(e) Plans and procedures for emergency service and repairs as needed, twenty-four (24) hours a day, each day of the year. Such procedures will provide for expedited service and repairs; for the availability of Operator's management personnel, in connection with such services, on a twenty-four (24) hours a day, each day of the year basis; for notification of and expediting the availability of factory or service personnel when necessary repairs are beyond the capabilities of on-site personnel, and for the immediate notification of Owner of any emergency event or condition, of anticipated corrective actions to be taken and of anticipated service and repair times and consequences;

(f) Procedures for identifying, acquiring and maintaining required spare parts to ensure that the Facility has an adequate inventory of spare parts, in accordance with Section 2.05 of this Agreement; and

(g) Procedures for notice to and approval by Owner of any alterations to the Facility, so that no alterations to the Facility will be made without the written consent of Owner.

Operator will, without limitation, provide in such plans and procedures for visual, mechanical or instrumental inspection as necessary in order to provide early detection of required adjustments, repairs or replacements so that required adjustments, repairs or replacements can be scheduled with minimum interference to Facility operations insofar as possible. Such procedures will be consistent with applicable manufacturer's recommendations, will provide for the services of factory representatives and/or outside consultants where appropriate and will provide for orderly shutdowns and minimum interference with operations. Such procedures will be reviewed as required and in no event less frequently than annually with a copy of the review provided to Owner. No alterations to the Facility shall, in any event, be made without the prior written approval of Owner.

2.11 Records. Operator shall keep and maintain financial, maintenance and operation records for the Facility and for the equipment therein. Such records shall satisfy both the requirements set forth in any Power Agreements and Lenders' requirements under the Financing Documents and shall include, without limitation: the logging of daily exception reports; daily Operator's logs; a record of all maintenance and repairs performed; copies of all plans and procedures developed pursuant to Section 2.10 above or otherwise; emissions and compliance reports; equipment and instrument calibration records; fuel consumption records; steam production; water consumption, consumption and delivery records; and electricity production, consumption and delivery records. All records shall be made available for examination by Owner during normal working hours.

2.12 Reports. Operator shall prepare and furnish a monthly operations report within fifteen (15) business days following the close of each calendar month, including the following:

(a) A review of operations for the prior month (fuel consumption; electricity and steam production, consumption and deliveries, etc.);

(b) Identification of significant exceptions to the normal status of equipment;

(c) Identification of all major repairs or alterations made to equipment during the prior month;

(d) Identification and explanation of significant performance deviations from the prior month or from anticipated performance;

(e) Identification of maintenance and shutdowns planned for the succeeding twelve (12) months; and

(f) Such other matters as may be reasonably requested by Owner in writing;

Operator shall also provide all notices required in connection with the operation and maintenance of the Facility by applicable permits, laws and regulations and any Power Agreement and the Financing Documents within the times required. Owner shall be responsible, pursuant to Section 3.09(c), for providing those documents which identify all required notices relating to the operation and maintenance of equipment contained in the Facility that are required by this paragraph.

2.13 Governmental, Regulatory, Utility And Safety Requirements. Operator shall operate and maintain the Facility in compliance with all applicable laws, permits, approvals, ordinances, rules, regulations and orders of Federal, State and local governmental authorities. Operator shall also comply with all safety and other rules and regulations reasonably established by Owner with respect to the Facility, by Transmission Provider with respect to interconnection delivery facilities and property owned by or leased from the Transmission Provider, and with all safety requirements with respect to all other third party Contracts to which the owner is a party. In the event that such requirements change during the term of the Agreement, and such changes require additional costs of Operator, these additional costs shall be reimbursed to Operator by Owner as Reimbursable Costs. In the event such changes require alteration to the Facility, Owner shall be responsible for the costs of such alterations.

2.14 Liens And Encumbrances. Operator shall keep all real property and all personal property and equipment associated with or part of the Facility free and clear of all liens and encumbrances caused by an action or failure to act by Operator or any of its consultants, suppliers or subcontractors in the performance of its obligations under this Agreement, including, without limitation, failure by Operator to pay, when due, any bill or charge for labor or services performed or materials or equipment furnished for use in connection with this Agreement. Nothing herein contained shall require Operator to pay any claims for labor, materials or services which Operator, in good faith disputes and which Operator, at its own expense, is currently and diligently contesting.

2.15 Metering. Operator shall verify the accuracy of meters and devices used to measure the delivery of energy as required, but in no event less frequently than quarterly and shall verify the accuracy of meters and devices used to measure the delivery of electricity, natural gas, steam and water as required, but in no event less frequently than annually. Such verification is to be performed in a manner consistent with standard industry practice and all applicable third party Contracts to which the Owner is a party.

2.16 Waste. Operator shall not allow any hazardous or solid waste to accumulate on the Site in contravention of any applicable law, regulation or governmental permit or license, any Power Agreement, or the Financing Documents.

2.17 Scope of Work. Operator shall perform those services described in this Agreement. Such services shall be performed and supplied in connection with, but not limited to, the following:

(a) Preparation of the Facility for Phase I Commercial Operation including, without limitation, the following:

(i) The review of engineering drawings; provided however, such review shall not give Operator any responsibility for the design of the Facility;

(ii) Participation with Owner in design review meetings, in construction reviews, in the development of training programs and in development of Facility checkout and startup procedures; and

(iii) The hiring and training of qualified Operator personnel;

(b) Testing and acceptance of the Facility from the Turnkey EPC Contractor including: (i) review of turnover packages, (ii) system walkdowns and acceptance, and (iii) assistance in developing punchlists;

(c) Testing of the Facility required by this Agreement, the Switchyard EPC Agreement and Power Agreements. Operator shall provide trained and qualified operating personnel to assist in the startup and testing of the Facility under the direction and supervision of the Turnkey EPC Contractor prior to Phase I Commercial Operations;

(d) Startup of the Facility in connection with each dispatch from the Transmission Provider or for the Customers;

(e) Management and provision of all activities required for Facility support and operation, under the direction of Owner, including but not limited to: community interface, fuel scheduling, and management of other Agreements and services necessary to support the Facility;

(f) Operation of the Facility;

(g) Management of all operation and maintenance requirements of the Facility;

(h) Maintenance of the Facility;

(i) Furnishing Electrical Energy to the Customers, together with the maintenance schedules and other records required by the Customers;

(j) Providing home office support activities for the Facility including but not limited to those of Exhibit B;

(k) Assist Owner in obtaining and renewing the necessary permits and licenses of Section 3.04 when requested by Owner in writing;

(l) Submit a desired schedule of Scheduled Outages as required in any Power Agreement (including the duration of each outage) to Owner at least four (4) weeks before Owner is required to supply same to Customers;

(m) Cooperate with Customers and Owner in scheduling and performing all scheduled maintenance outages, routine maintenance and major overhaul outages in accordance with Owner's obligations of any Power Agreements or as set forth in the Financing Documents.

(n) Prepare and submit to Owner, for Owner's approval, an Annual Budget for the Facility, at least ninety (90) days before the beginning of each calendar year. Such budget shall be consistent with the requirements of this Agreement and meet the requirements of any Power Agreements or the Financing Documents; and

(o) Provide sufficient training to operating and maintenance personnel to assure that their capabilities and qualifications are maintained.

2.18 Operator Proprietary Information. Operator Proprietary Information shall remain the property of the Operator and may be used by the Owner only in connection with the development, construction and operation of the Facility. Owner shall hold and treat all Operator Proprietary Information in the strictest confidence and shall not disclose any Operator Proprietary Information without the prior written consent of the Operator. Owner may disclose Operator Proprietary Information to those of its employees or agents on a need-to-know basis and *provided* such employees or agents are informed of the confidential nature of such information and the purposes for which the Operator Proprietary Information may be used in accordance with the provisions of this Agreement. If Owner receives a request from a governmental agency to disclose Operator Proprietary Information, Owner shall immediately notify Operator of such request, consult with the Operator on the course of action with respect to the request (including cooperating with Operator in seeking a protective order) and if disclosure is required, furnish only that portion of the Operator Proprietary Information which it is legally compelled to disclose.

SECTION III

SERVICES TO BE PERFORMED BY OWNER

From and after the Commencement Date, Owner shall be responsible for the following:

3.01 Office Space, Equipment, And Administrative Services. Owner shall provide office and administrative space, administrative services and equipment for Operator at the Facility.

3.02 Tools, Spare Parts, Equipment And Consumables. Owner will:

(a) Provide written approval or give timely objections to the lists of tools, spare parts, equipment, and Consumables identified by Operator pursuant to Sections 2.04, 2.05, 2.06, and 2.07 hereinabove.

(b) Pay for approved supplies of tools, spare parts, equipment, Consumables, and purchased parts, labor and services and Reimbursable Costs required by Operator to perform its responsibilities as defined in Section II of this Agreement, as provided for in Section 4.01(b), 4.02(b), and 4.03.

3.03 Utilities. Owner will provide and pay for all utilities.

3.04 Permits And Licenses. Owner will obtain all necessary permits and licenses, except those that are issued in the name of Operator.

3.05 Staffing Schedules. Owner will provide written approval or give timely objections in connection with staffing schedule approval required in Section 2.02.

3.06 Manuals. Owner shall deliver copies of operating and maintenance manuals for all equipment installed in the Facility and any and all additional documents received from any contractor under the EPC Agreements including, but not limited to, as-built drawings of the Facility, record books, vendor manuals and operations and maintenance manuals, as Owner deems necessary for Operator's successful operation of the Facility.

3.07 Training. Owner shall cause Turnkey EPC Contractor to provide training to the employees of Operator in the start-up and operation of the Facility and any and all related machinery and equipment.

3.08 Payments. Owner shall make payments to Operator in accordance with Sections IV, V, and VI of this Agreement.

3.09 Other. Owner will

(a) Provide and pay for all natural gas, fuel oil, and chemicals required throughout the term of this Agreement;

(b) Pay all property or other taxes related to the Facility or its activities but not income or employment related taxes of the Operator or its employees; and

(c) Provide all necessary documents that Operator needs to perform its obligations relating to the operation and maintenance of equipment contained in the Facility under this Agreement. Owner and Operator shall consult with each other to determine the obligations under such documents for which the Operator is responsible.

3.10 Direct Labor Costs. Owner shall pay all direct labor costs for Operator's plant personnel as Reimbursable Costs.

3.11 Applicable Laws. Owner shall, at all times, conform to all laws, ordinances, rules and regulations applicable to it.

SECTION IV

COMPENSATION

4.01 Before Phase I Commercial Operation Date. Owner shall pay Operator a fee for services provided by Operator from the Commencement Date to the Phase I Commercial Operation Date as follows:

(a) Fixed monthly payments in the amount or $14,583 starting from Commencement Date through and inclusive of Phase I Commercial Operation Date. For the month during which the Commencement Date occurs, the fixed monthly payment shall be prorated for the portion of the month subsequent to the Commencement Date. For the month during which the Actual Phase I Commercial Operation Date occurs, the fixed monthly payment shall be prorated for the portion of the month prior to the Phase I Commercial Operation Date;

Plus,

(b) All Reimbursable Costs properly incurred pursuant to this Agreement.

4.02 After Phase I Commercial Operation Date. Beginning on the Phase I Commercial Operation Date, Operator shall be compensated by Owner as follows:

(a) A fixed price fee of $29,166 per month for all services to be provided by Operator pursuant to this Agreement except as otherwise provided for in this Agreement. Said monthly payment shall be adjusted annually commencing on the first day of each year subsequent to Phase I Commercial Operation Date, by the change in index values of the (i) immediately preceding month of December and (ii) the prior month of December, as specified in the Consumer Price Index for All Urban Consumers, U.S. City Average, Table 1, in the row titled "Services" under the column heading "Unadjusted percent change to..." as published in the CPI Detailed Report for the immediately preceding December; plus

(b) All Reimbursable Costs properly incurred pursuant to this Agreement.

4.03 Operator Procurement to Owner's Account. Operator may procure those items and services which are considered Reimbursable Costs and are included in the Approved Budget by issuing purchase orders to be paid directly by Owner on Owner's purchasing and requisition forms. Operator shall supply a confirming copy of the purchase order to Owner. For purchase orders in excess of $25,000 or for any items not in the Approved Budget, Operator is required to receive written authorization from Owner's Representative prior to issuing purchase orders to be paid directly by Owner on Owner's purchasing and requisition forms.

4.04 Effect of Change in Control of Owner. Any material change in the percentage of direct or indirect ownership of Owner or any material change in the percentage of direct or indirect ownership of any parent company directly or indirectly owning an interest in Owner consistent

with Section 8.03(e)) shall result in an automatic and immediate increase in the fees owing Operator under Section 4.01 and 4.02. In the event of such change in control of Owner, the fees payable to Operator under each of Section 4.01 and 4.02 shall be increased by a multiplier of 2.5.

SECTION V

AGREEMENT PRICE ADJUSTMENT

Beginning with the Phase I Commercial Operation Date, a bonus program will be put in place for the plant personnel and will be based on the personnel earning a bonus up to a percentage of their direct pay. During the annual budget cycle, Owner and Operator will mutually establish the goals for the bonus program for the following year. The targets and indicators and potential bonus will be defined and reviewed with the Plant Manager each year. It is anticipated that these targets and indicators and bonus percentage will be adjusted annually according to specific operating requirements for the following year at the Owner's and Operator's discretion. Areas of evaluation include, but are not limited to, the areas listed below.

Employee Safety
Facility Safety Programs
Facility Heat Rate
Equivalent Availability Factor
Forced Outage Occurrences
Planned Outage Duration
Environmental Compliance
Regulatory Compliance
Energy Sales Condition Compliance
Budget Control
Facility Capacity Factor
Development of Plans and Procedures
Completion of Individual Qualification
Completion of Preventive Maintenance Work Orders
Maintenance Backlog

Criteria for performance evaluations will be provided to the Operator at the beginning of each annual period. At the end of each annual period, based on the preceding twelve monthly evaluations, Operator shall pay to its plant personnel a bonus representative of how well the established targets for that year have been met.

SECTION VI

PAYMENT

6.01 Payment of Monthly Compensation. The payment required by Sections 4.01 and 4.02 above will be made on a calendar month basis. Operator shall submit its invoices on or before the tenth (10th) day of the month following the month during which services were provided or Reimbursable Costs were incurred. Owner shall pay the amount due to Operator on or before the thirtieth (30th) day following the date Owner receives the invoice. Operator shall submit its billing together with copies of supporting invoices, vouchers, receipts, and such other evidence of payment as Owner shall require.

6.02 Payment Of Termination Payment. Owner shall pay the amount due pursuant to Section 8.01 to Operator on or before the thirtieth (30th) day following the date the invoice for such amount is received by Owner.

6.03 Payment Disputes. In the event of a dispute or question regarding any invoice submitted by Operator, (i) all amounts not disputed or in question shall be promptly paid as and when required by Section 6.01 above, (ii) an explanation of the dispute shall be transmitted by Owner to Operator within thirteen (13) days after Owner's receipt of the invoice, (iii) Owner and Operator shall immediately seek to resolve the dispute or question, and (iv) payment shall be made within ten (10) days of any remaining amount due when the dispute is resolved.

6.04 Interest on Overdue Amounts. If Owner fails to make timely payments of any amount due and not in dispute hereunder, interest on such amount shall accrue from the date due at a rate per annum equal to the prime rate for commercial loans as indicated from time to time by the headquarters of The Chase Manhattan Bank, N.A. in effect at the time the payment is due, plus a margin of 2% per annum.

SECTION VII

TERM

7.01 Term. This Agreement shall become effective as of the date of execution of this Agreement, and shall continue in effect thereafter until the twelfth anniversary of the Phase I Commercial Operation Date unless otherwise terminated as provided in this Agreement.

7.02 Extension of Term. Any extension of the term of this Agreement will be effected by written agreement between the parties. All of the terms and conditions of this Agreement which are not modified or changed in any such written agreement shall remain in full force and effect throughout any such extended term.

7.03 Authorization to Proceed. Obligations of Owner and Operator shall commence on the Commencement Date.

7.04 Phase I Commercial Operation Date. Written notification of the anticipated Phase I Commercial Operation Date shall be given by Owner to Operator at least three (3) months prior to such date.

SECTION VIII

TERMINATION

8.01 Termination By Owner Without Cause. Owner shall have the right to terminate this Agreement for convenience should the Facility be sold to a third party who intends to operate the Facility and Lender shall have the right to terminate this Agreement for convenience should it declare an Event of Default under the Financing Documents. Upon termination pursuant to this Section VIII, Owner or Lender, as applicable, shall pay Operator:

(a) All outstanding costs pursuant to Section 4.02 hereof;

(b) Reasonable costs actually incurred by Operator in support of the termination of this Agreement; and

(c) Reasonable severance costs resulting from the termination of employment of Operator's employees.

Neither party may otherwise terminate this Agreement except as provided in this Section VIII.

8.02 Termination By Owner for Cause. Owner may terminate this Agreement upon written notice to Operator as provided for in Section 8.05 upon the occurrence of any of the following:

(a) Operator's failure to provide adequate qualified personnel to perform its obligations under the Agreement;

(b) Failure of the Operator to perform in any material respect any service or obligation to be performed by it hereunder or if any representation or warranty shall prove to be incorrect in any material respect;

(c) The appointment of a receiver, liquidator or trustee for Operator by a court of competent jurisdiction or an adjudication of bankruptcy or insolvency by any such court or the filing by Operator of a petition seeking an adjudication of bankruptcy or insolvency;

(d) Continuance of a Force Majeure by Operator for more time than that allowed in Section 13.01.

8.03 Termination By Operator For Cause. Operator may terminate this Agreement upon written notice to Owner as provided for Section 8.05 upon the occurrence of any of the following:

(a) Failure to pay undisputed amounts due to Operator under this Agreement in accordance with Section VI;

(b) Failure of Owner to approve, and pay for tools, parts, equipment, or Consumables required by Operator to perform its obligations under this Agreement;

(c) Failure of Owner to perform in any material respect any service or obligation to be supplied or performed by it or if any representation or warranty shall prove to be incorrect in any material respect;

(d) Continuance of a Force Majeure by Owner for more time than that allowed in Section 13.01; and

(e) Any material change in the percentage of direct or indirect ownership of Owner or any material change in the percentage of direct or indirect ownership of any parent company directly or indirectly owning an interest in Owner. For purposes of this provision, a "material change" shall mean a change by which Operator's affiliate, TPS reduces its direct or indirect ownership interest in Owner below ten percent (10%) during the Term hereof; provided, however, that the transfer of an ownership interest to an Affiliate shall not be deemed to be a material change.

8.04 Termination Under Section 8.01. In the event Owner gives a written termination notice pursuant to the provision of Section 8.01, this Agreement shall terminate as of the date specified in such notice which shall be no earlier than sixty (60) days after the date the notice is given.

8.05 Termination Under Sections 8.02 and 8.03. In the event a written termination notice is given pursuant to Sections 8.02 or 8.03, such notice shall set forth the circumstances providing the basis for such notice and the Party which receives such notice shall have thirty (30) days to remedy such condition. In the event such circumstance is not corrected by the Party receiving such notice, or the Party receiving such notice has not taken substantive action acceptable to the other Party in its sole discretion to correct the circumstances by the end of such thirty (30) day period, this Agreement shall terminate.

8.06 Termination Procedure. Operator shall, in the event of termination, take all reasonable steps necessary to assure an orderly transfer of operation and maintenance responsibility to Owner or to Owner's designee including, without limitation, the delivery of all of the following to Owner or to any such designee:

(a) All operation, maintenance or other records, manuals and procedures associated with the Facility;

(b) All tools, Consumables, spare parts and equipment associated with the Facility; and

(c) At the option of Owner or such designee, assignments to Owner or such designee, in form reasonably satisfactory to Owner or such designee, of any agreements between Operator and third parties relating to the performance of the obligations of Operator under this Agreement.

8.07 Owner Cure of Operator's Default. In the event of a default by Operator in its obligations hereunder and after the applicable cure period, Owner may, but shall not be required to, cure such default and may charge Operator any additional incremental costs incurred by Owner to cure such default. The exercise by Owner of this right shall not waive any other rights of Owner hereunder or at law.

8.08 Rights and Remedies in Law or Equity. In the case of a material breach by either Party of its representations, warranties or obligations hereunder, in addition to, or in lieu of, the right to terminate this Agreement pursuant to Section 8.02 and 8.03 hereof, each Party shall have all other rights and remedies provided for in law or equity, except that Operator's rights for breach shall be limited to receipt of its fees under Sections 4.01 and 4.02 through the remaining term of the Agreement, plus any actual and demonstrable demobilization (and employee termination) costs.

8.09 Survival of Terms. Upon termination of this Agreement pursuant to this Section VIII, the rights and obligations of the parties hereunder shall terminate except for (a) rights and obligations accrued as of the termination, (b) rights and obligations arising out of events occurring prior to the termination and (c) all other rights and obligations of the Parties which by their terms survive termination or which by their nature or by implication are intended to survive termination, including but not limited to, those rights and obligations contained in Sections 2.11, 2.18, 6.01, 6.02 and 9.02.

SECTION IX

INSURANCE AND INDEMNIFICATION

9.01 Insurance.

(a) Owner's Coverages. Owner shall secure and maintain (or cause to be secured and maintained) during the term of this Agreement the following insurance for the protection of Owner and Operator:

(i) Workers' Compensation, subject to statutory limits, covering Owners' employees, but only if Owner has any employees working at the Site. In lieu of the foregoing, Owner shall be entitled to provide self-insurance for Workers' Compensation risks, to the extent permitted by Law and prudent risk management principles and in conformance therewith.

(ii) Employer's Liability, with minimum limits as follows:

(a) Bodily Injury by Accident - U.S. $1,000,000 per accident;
(b) Bodily Injury by Disease - U.S. $1,000,000 policy limit,

but only if Owner has any employees working at the Site. In lieu of the foregoing, Owner shall be entitled to provide self-insurance for Employers' Liability risks, to the extent permitted by Law and prudent risk management principles and in conformance therewith.

(iii) General Liability Umbrella Insurance having minimum limits in an amount equal to Ten Million Dollars (U.S.$10,000,000) per occurrence, "combined single limit" property damage/bodily injury coverage. Such insurance policy shall include Premises/Operations, Explosion, Collapse and Underground Hazards, Broad Form Contractual, Independent Contractors, Products/Completed Operations, Broad Form Property Damage and Personal Injury.

(iv) Automobile Liability in an amount required by Law and not less than a "combined single limit" coverage for bodily injury and property damage limit of One Million Dollars (U.S. $1,000,000) per accident, in comprehensive form and covering hired, owned and non-owned vehicles. Such insurance shall name Operator and Lender as Additional Insureds.

(v) Property Insurance on an "All Risk" basis covering loss to real and personal property of Owner located at the Site and other equipment for which Owner has an insurable interest, and to include among other things Boiler and Machinery coverage, if such is commercially available under the "All Risk" policy.

(vi) Boiler and Machinery Insurance (if not provided in paragraph (v) above) for all insurable objects, including but not limited to pressure vessels, turbine and equipment, electrical generators, motors, air tanks, machinery, pressure piping or similar apparatus, on a comprehensive form. Such insurance policy shall cover objects at all locations required to be insured under paragraph (v) above. Owner shall have the right at any time, and from time to time, at Owner's sole option, to combine the Property Insurance and the Boiler and Machinery Insurance into a single policy.

(vii) The General Liability and Auto Liability Insurance policy required under paragraphs (iii) and (iv) above shall be endorsed naming Operator as a named insured for the Services to be performed pursuant to this Agreement only. Such insurance coverage and any corresponding umbrella liability insurance coverage naming Operator as a named insured shall be the primary coverage to Owner and Operator in the event of a covered loss and shall be exhausted before Operator's insurance carrier(s) shall have any liability for said loss. Owner agrees that the Property and B&M insurance will be endorsed naming Operator as a named insured and shall be the primary coverage to Owner and Operator in the event of a covered loss. Owner hereby waives and shall cause all its insurers to waive subrogation rights against Operator and its insurance carrier(s) in the event of any covered loss under the policy described above.

(b) Operator's Coverages. Operator shall secure and maintain (or cause to be secured and maintained) as a minimum during the term of this Agreement the following insurance:

(i) Workers' Compensation, and other similar forms of insurance which is required by Law covering employees of the Operator.

(ii) Employer's Liability, with minimum limits as follows:

(a) Bodily Injury by Accident - U.S. $1,000,000 per accident;
(b) Bodily Injury by Disease - U.S. $1,000,000 policy limit.

(iii) Automobile Liability in an amount required by Law and not less than a "combined single limit" coverage for bodily injury and property damage limit of One Million Dollars (U.S. $1,000,000) per accident, in comprehensive form and covering hired, owned and non-owned vehicles. Such insurance shall only be required if Operator owns vehicles. Such insurance, if so required, shall name Owner and Lender as Additional Insureds.

(c) Form and Content of Insurance. All policies, and binders with respect to insurance provided pursuant to this Section 9.01 shall be as follows:

(i) Additional Insured shall include the Lender and the officers, directors and employees of each entity so named as its interests may appear.

(ii) All liability insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or Additional Insured in the same manner as if separate policies had been issued to each.

(iii) All insurance shall provide that there shall be no recourse against the Additional Insureds for the payment of premiums or commissions or (if such policies provide for the payment thereof) additional premiums or assessments.

(iv) The insurance maintained by Owner and Operator shall provide for the waiver of any right of subrogation by the insurers thereunder against Operator and Owner, as the case may be, and its officers, directors and employees, agents and representatives.

(v) All insurance shall provide that it may not be canceled or materially changed without giving the Owner, Operator and Lender thirty (30) days prior written notification thereof, except in cases of non-payment of premium for which ten (10) days prior written notice shall be provided (unless a longer notice period for non-payment is agreed to by the relevant insurer).

(vi) In the event that Owner does not provide or maintain any of the insurance coverage referred to in this Section, Operator shall have the right to provide or maintain such coverage at Owner's expense either by direct charge or set-off from amounts due hereunder.

(vii) In the event that Operator does not provide or maintain any of the insurance coverage referred to in this Section, Owner shall have the right to provide or maintain such coverage at Operator's expense either by direct charge or set-off from amounts due hereunder.

(d) Additional Requirements.

(i) Prior to the performance of any Services by Operator hereunder, each party shall furnish certificates of insurance to the other party and to Lender evidencing the insurance required of such party pursuant to this Agreement.

(ii) Payment of Deductibles and Self-Insured Retention Amounts. Subject to paragraph (a), Owner shall be responsible for deductibles or self-insured retentions under all of the insurance policies required to be carried by Owner pursuant to paragraph (a) of Section 9.01. In addition, subject to paragraph (b), Operator shall be responsible for all deductibles and self-insured retentions under other policies maintained by Operator pursuant to paragraph (b) of this Section.

(iii) Operator shall require all subcontractors and suppliers to obtain, maintain, and keep in force, prior to entry on the Site and during the time in which they are engaged in performing services to be furnished by Operator adequate coverage in accordance with Operator's normal practice and shall provide Operator with current certificates of insurance evidencing such coverage.

9.02 Indemnification.

(a) Operator agrees to defend and indemnify Owner and Lenders and their respective directors, officers, employees, and agents (collectively "Indemnitee") against, and to hold them harmless from any and all claims, suits, losses, liabilities and legal expenses (collectively "Claims") to the extent resulting from or in connection with Operator's grossly negligent performance or non-performance of its obligations hereunder, provided that Operator shall be promptly notified in writing of such Claim or suit brought against such Indemnitee and shall be permitted to participate in the defense thereof; and

(b) Owner agrees to defend and indemnify Operator and its directors, officers, employees, and agents against, and to hold them harmless from any and all Claims, resulting from or in connection with Owner's negligent performance or non-performance of its obligations hereunder, provided that the same notification to, and opportunity to participate, specified in Section 9.02(a) above is afforded to Owner.

(c) The Operator's liability for all claims by the Owner, whether or not covered by insurance arising out of events occurring in any calendar year hereunder in connection with this Agreement or the performance, non-performance or breach thereof, whether in contract, tort, negligence, strict liability or otherwise shall not exceed, irrespective of applicable insurance coverage under Owner's or Operator's insurance coverage in manner set forth on Section 9.01, an amount equal to the fixed fee calculated pursuant to Section 4.01(a) or 4.02(a), as applicable, for such calendar year.

9.03 Additional Insured. Lender shall be named as an additional insured under the foregoing policies of insurance.

9.04 Damage Limitation. Neither Operator nor Owner shall have liability to the other party hereunder for indirect, incidental or consequential damages, including, without limitation, loss of revenues.

SECTION X

PERMITS AND LICENSES

10.01 Owner Permits and Licenses. Owner shall be responsible for obtaining and maintaining all permits and licenses, required to be in the name of Owner, necessary for the operation and maintenance of the Facility. Operator shall cooperate with Owner in obtaining and maintaining such permits and licenses and in preparing reports required thereunder.

10.02 Operator Permits and Licenses. Operator shall be responsible for obtaining and maintaining all permits and licenses required to be in the name of Operator. All associated fees will be considered Reimbursable Cost.

SECTION XI

INDEPENDENT CONTRACTOR

11.01 Independent Contractor. At all times, Operator shall perform the requirements of this Agreement as an independent contractor to Owner. Except as otherwise provided in this Agreement, Operator shall have full responsibility for the control and direction of its employees, servants and agents in the performance of Operator's obligations hereunder. Operator shall be fully and solely responsible for the payment of such employees, servants and agents and for the payment of all obligations incurred by Operator in performing the requirements of this Agreement. This Agreement is not intended to and shall not create a partnership of any kind or type. Except for as provided in Section 4.03, Operator shall not be an agent for and may not bind Owner. Owner shall not be an agent for and may not bind Operator.

SECTION XII

COORDINATION AND ACCESS

12.01 Access. Owner shall provide Operator and its employees, agents, and subcontractors with full and free access to the Facility at all times to perform its obligations under this Agreement. Operator shall furnish Owner with a list of employees engaged in operation and maintenance of the Facility and shall inform Owner in writing of all changes thereto. Operator, its employees, agents and subcontractors shall comply with all safety and other requirements established by Owner in connection with such access.

12.02 Coordination; Required Level of Performance. Promptly upon execution hereof each of Owner and Operator shall appoint and designate in writing to the other party a person authorized to act on behalf of such party under this Agreement. The parties may, from time to time, designate an alternate or alternates, who shall have the same authority, duty, and power as the originally appointed representative.

The representative of Owner shall: (i) approve requests for funds submitted by the Operator, provided such requests are within the Budget plus any approved variances or amendments; otherwise assist in seeking approval for such funds under (iii) below; (ii) make decisions on such matters relating to this Agreement as are set forth in the writing evidencing his or her appointment; (iii) communicate in writing authorizations, approvals or disapprovals on behalf of Owner which may be called for or contemplated by this Agreement and give advice as to obtaining such authorizations and approvals; and (iv) carry out the Owner's responsibilities hereunder.

Operator's appointed representative will interface with the appointed representative of Owner and with appropriate representatives of Transmission Provider. Operator shall accept daily instructions from the Transmission Provider and Owner as to Facility requirements, subject to the design limits of the Facility. In the event of any interruption of the operation of the Facility or in the event Operator is unable to operate the Facility so as to meet the requirements of Transmission Provider, and Owner, Operator shall immediately notify Owner of the circumstance and shall exert its best efforts to restore the Facility to its required operating level.

SECTION XIII

FORCE MAJEURE

13.01 Force Majeure. Force Majeure shall include circumstances beyond a party's reasonable control including, without limitation, deficiencies attributable to acts of God; unusually severe weather conditions; any labor difficulty not involving employees of any parties hereto, any labor difficulty involving employees of parties hereto to the extent such employees are members of a labor union and such labor difficulty is in violation of a labor agreement or in violation of Applicable Laws; any labor difficulty involving employees of parties hereto, not caused by the act or the failure to act on the part of the relevant party hereto, to the extent such employees are in the process of becoming members of a labor union; war; inability to obtain fuel for the Facility; riots; requirements, actions or failures to act on the part of governmental authorities preventing performance; changes in law, inability despite due diligence to obtain required licenses; accident; fire; damage to or breakdown of necessary facilities; or transportation delays or accidents (such causes hereinafter called "Force Majeure"); provided that:

(a) The non-performing party shall give the other party written notice within a reasonable time after the discovery of the Force Majeure describing the particulars of the occurrence;

(b) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure but under no circumstances shall the Force Majeure exceed one hundred and eighty (180) days; however, if such Force Majeure is declared by Operator and results in the inability of the Facility to furnish Dependable Capacity to the Customers, then the Force Majeure shall not exceed thirty (30) days;

(c) The party with a deficiency in its performance uses its best efforts to remedy such deficiency;

(d) When the non-performing party is able to resume performance of its obligations under this Agreement that party shall give the other party written notice to that effect; and

(e) The Force Majeure shall not excuse failure to apply money obligations nor shall it excuse any deficiency in performance to the extent caused by any negligent or intentional act, error, or omission, or failure to comply with any law, rule, regulation, order or ordinance.

13.02 Extension of Agreement by Force Majeure. Except as otherwise provided, in no event will any condition of Force Majeure extend this Agreement beyond its stated term.

SECTION XIV

OPERATOR AND OWNER REPRESENTATIONS AND WARRANTIES

14.01 Representations and Warranties of Operator. Operator represents and warrants, as of the date hereof, as follows:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of Florida and will be qualified to do business in the State of Arizona;

(b) it has taken all necessary action to authorize the execution, delivery and performance of its obligations under this Agreement, which action has not been superseded or modified, and this Agreement constitutes the legal, valid and binding obligation of Operator, enforceable in accordance with its terms;

(c) the execution, delivery and performance of this Agreement do not violate (i) its articles of incorporation or by-laws or any resolution of its Board of Directors or other committees charged with the governance of its affairs, (ii) any Agreement to which it or, to the best of its knowledge, any of its Affiliates is a party or (iii) any law, rule, regulation, order writ, judgment, injunction, decree or determination affecting Operator or any of its properties;

(d) it has not filed any petition for relief under the bankruptcy laws of the United States of America, has not made nor is making an assignment for the benefit of creditors, initiated nor been the subject of any proceeding seeking to have a receiver or trustee appointed to liquidate or manage its affairs, and none of its properties is subject to the jurisdiction of any bankruptcy court of the United States of America or any receivership proceeding;

(e) no litigation is pending or, to its knowledge, threatened which seeks to restrain it from performing its obligations hereunder or the adverse outcome of which would materially affect its business or its ability to perform its obligations hereunder;

(f) no authorization or approval or other action by, and notice to or filing with, any government agency or regulatory body is required for the due execution, delivery and performance by Operator of this Agreement which have not been obtained;

(g) it or one of its Affiliates is experienced in the operation, maintenance and repair of electrical generating facilities, has complied with the provisions of all applicable laws, including, without limitation, environmental laws, respecting the operation of such facilities and has not been and is not currently subject to any judgment or settlement of any claim imposing significant liability on it for noncompliance with law or mismanagement in its operation of any electric power generating facility;

(h) it is familiar with the terms of the Customer sales agreements that affect or relate to the operation of the Facility.

14.02 Representations and Warranties of Owner. Owner represents and warrants, as of the date hereof, as follows:

(a) it is a partnership duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) it has taken all necessary action to authorize the execution, delivery and performance of its obligations under this Agreement, which action has not been superseded or modified, and this Agreement represents the valid and binding obligation of Owner, enforceable in accordance with its terms;

(c) the execution, delivery and performance of this Agreement do not violate (i) its articles of incorporation or by-laws or any resolution of its Board of Directors or other committees charged with the governance of its affairs, (ii) any Agreement to which it is a party or (iii) any law, rule, regulation, order, writ, judgment, injunction, decree or determination affecting Owner or any of its properties;

(d) it has not filed any petition for relief under the bankruptcy laws of the United States of America, has not made nor is making an assignment for the benefit of creditors, has not initiated nor been the subject of any proceeding seeking to have a receiver or trustee appointed to liquidate or manage its affairs, and none of its properties is subject to the jurisdiction of any bankruptcy court of the United States of America or any receivership proceeding;

(e) no litigation is pending or, to its knowledge, threatened which seeks to restrain the performance of its obligations hereunder or the adverse outcome of which could materially affect its business or its ability to perform its obligations hereunder; and

(f) no authorization or approval or other action by, and notice to or filing with, any government agency or regulatory body is required for the due execution, delivery and performance by Operator of this Agreement which have not been obtained.

SECTION XV

NOTICES

All notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been delivered and received (i) if personally delivered or if delivered by telegram or courier service, when actually received by the party to whom notice is sent, (ii) if delivered by telex or facsimile, on the first business day following the day transmitted (with confirmation of receipt), or (iii) if delivered by mail (whether actually received or not), at the close of business on the third business day following the day when placed in the mail, postage prepaid, registered or certified, return receipt requested, addressed to the appropriate party, at the address and/or facsimile number set forth below (or at such other address as such party may designate by written notice to the other party in accordance with this Section):

If to Operator:
TPS Arizona Operations Company
702 N. Franklin St.
Tampa, Florida 33602
ATTN: John Duff

If to Owner:
Panda Gila River, L. P.
4100 Spring Valley Road, #1001
Dallas, Texas 75244
ATTN: Don Thorpe

SECTION XVI

APPLICABLE LAW AND DISPUTE RESOLUTION

16.01 Applicable Law. This Agreement shall be performed in the State of Arizona. It shall be construed in accordance with the laws of the State of New York.

16.02 Dispute Resolution By Management. The parties agree to the following dispute resolution procedures:

(a) Any controversy, dispute, or claim between Operator and Owner which cannot be resolved informally will initially be referred, on five days written notice, to a meeting between a representative designated by each party. With respect to matters of costs or pricing claimed by Operator, Operator shall provide reasonably sufficient substantiation of the claimed damages to permit evaluation by Owner.

(b) If the controversy, dispute, or claim is not resolved at the meeting referred to in (a) above or, if such meeting does not occur, either party may within fifteen days after the date of such written notice, present the matter to the appropriate officer of Operator and Owner for resolution (or other representative of Operator and Owner

authorized to resolve the matter). Operator and Owner agree to a meeting of such officers within seven days following presentation of the matter to such officers.

(c) If the matter is not resolved within twenty-five days after the meeting held pursuant to the provisions of (b) above, or if such meeting is not held within thirty-five days of the written notice in (a) above, either party is free to pursue arbitration pursuant to Section 16.02.

16.03 Dispute Resolution by Arbitration. Any controversy, dispute, or claim arising out of or relating to this Agreement or the breach thereof, may, subject to the requirement of Section 16.02, be resolved by arbitration pursuant to the procedure set forth in this Section 16.03.

(a) American Arbitration Association. If there is a dispute arising under, out of, or in connection with, the making, performance, or execution of this Agreement or the performance of the Services, then the dispute shall be submitted to the American Arbitration Association in New York, New York for arbitration. Any such arbitration shall be conducted in accordance with the principles set forth in this Section XVI and the rules of the American Arbitration Association or such other principles as to which the parties may then mutually agree.

(b) Demand for Arbitration. Upon written demand of either party, the parties shall meet and attempt to appoint a single arbitrator. If the parties are unable to agree on a single arbitrator within twenty days after a party first demands appointment of an arbitrator, or if one of the parties fails to meet within ten days of a written demand being forwarded, then either party may apply to have the arbitrator appointed by the American Arbitration Association.

(c) Qualifications. The arbitrator selected to act hereunder shall be qualified by education or training to pass upon the particular question or questions in dispute. No arbitrator shall be an officer, director, employee, agent or consultant of either party or any of its respective Affiliates.

(d) Decisions Final. The decision of the arbitrator shall be in writing and signed by the arbitrator and shall be final and binding upon the parties as to any question or questions so submitted to arbitration and the parties shall be bound by such decision and perform the terms and conditions thereof.

(e) Compensation of Arbitrator. The compensation and expenses of the arbitrator (unless determined by the arbitrator to be payable by the non-prevailing party or in some other manner) shall be paid in equal proportions by Operator and Owner. Furthermore, any out-of-pocket expenses incurred by either party to obtain the appointment of an arbitrator pursuant to this Section 16.03 shall be shared equally by Owner and Operator.

(f) Performance to Continue. All performance required by either party under this Agreement shall continue during arbitration proceedings, except as provided by the decision of the arbitrator, or as otherwise provided herein.

(g) Agreement Controlling. In all respects not provided for elsewhere in this Section XVI, the rules of the American Arbitration Association shall strictly govern any dispute hereunder submitted to arbitration. If there is a conflict between the provisions of this Agreement and such rules, the provisions of this Agreement shall strictly prevail.

SECTION XVII

NON-WAIVER

The failure of Owner or of Operator to enforce any of the terms and conditions or to exercise any right or privilege under this Agreement shall not be construed as waiving any such term or condition or right or privilege and the same shall continue and remain in force and effect as if no such failure to enforce or exercise has occurred. No waiver shall be valid unless so stated in writing.

SECTION XVIII

TITLE

Title to all tools, equipment, supplies and parts purchased by Operator for which Operator is directly reimbursed and of all reports, record logs and documentation prepared by Operator pursuant to this Agreement shall pass immediately upon payment by Owner. Said tools, equipment, supplies and parts shall be and become the property of Owner free of all liens and encumbrances except as provided for in Section 2.14

SECTION XIX

ASSIGNMENT

Neither Operator nor Owner shall assign this Agreement or any portion hereof, or any of the rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party; provided, however, that Owner may assign its rights hereunder as security for the financing of the Facility and either of the parties may assign its rights hereunder to an affiliate in each case without the prior consent of the other Party or Lenders. This Agreement and any such assignment shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties.

SECTION XX

LENDERS

20.01 Lenders. Operator acknowledges that Owner will borrow certain funds from the Lenders for the construction of the Facility and that, as a condition to making loans to Owner, the Lenders may

from time to time require certain documents from Operator and its subcontractors and vendors. In connection therewith, Operator agrees to furnish to the Lenders, and to use its best efforts to cause its subcontractors and vendors to furnish to the Lenders, such written information, certificates, copies of invoices and receipts, lien waivers (upon payment), affidavits and other like documents as shall be within the reasonable control of Operator to provide and as the Lenders may reasonably request. Operator shall negotiate in good faith amendments to this Agreement reasonably requested by the Lenders. In addition, Operator shall promptly execute any additional documentation, as may be mutually agreed upon in form and substance, that is reasonably requested by the Lenders.

20.02 Additional Documentation. Operator shall promptly execute any additional documentation as may be mutually agreed on form and substance, and which is reasonably requested by the Lenders, including, but not limited to, documents evidencing Operator's consent to assignment of this Agreement as a security to the Lenders or otherwise upon the occurrence of events specified in such documents and any reasonable modifications to this Agreement.

20.03 Subordination of Liens. Operator hereby subordinates any liens to which it may be entitled under Applicable Law or under the provisions of this Agreement to any lien granted in favor of the Lenders, whether such lien in favor of the Lenders is created, attached or perfected prior to or after the lien in favor of Operator.

20.04 Owner's Default. In the event of Owner's default under this Agreement, the Lenders shall have the right to cure Owner's default and, in such event, Operator's duties and obligations under this Agreement shall be unaffected. In that regard, the Lenders shall have (i) thirty (30) days from the date notice of default is delivered to the Lenders to cure such default if such default is the failure to pay amounts to Operator which are due and payable under the Agreement or (ii) not fewer than ninety (90) days to cure such default if the breach or default cannot be cured by the payment of money to Operator so long as the Lenders or their designee shall have commenced to cure the default within such ninety (90) day period and thereafter diligently pursue such cure to completion and continue to perform any monetary obligations under the Agreement and all other obligations under the Agreement are performed by Owner or the Lenders. If possession of the Facility is necessary to cure such breach or default, and the Lenders declare Owner in default and commence foreclosure proceedings, the Lenders will be allowed a reasonable period to complete such proceedings. If the Lenders are prohibited by any court order or proceedings from curing the default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition. Operator further agrees to perform its obligations hereunder for the benefit of the Lenders in the event of Owner's default under this Agreement or under the Financing Documents, provided that the Lenders shall have cured all defaults of Owner's obligations hereunder and shall have paid all amounts then due, including costs to cure. In such event, the Lenders shall have the rights and obligations of Owner under this Agreement, provided the Lenders shall have no personal liability to Operator for the performance of such obligations, and the sole recourse of Operator in seeking the enforcement of such obligations shall be to such parties' interest in the Facility.

Owner and Operator agree that the Lenders are intended to be a third party beneficiary of Section XIX, and Section XX. In that regard, Owner and Operator will not, without the prior written consent of the Lenders, amend or modify Section XIX, and Section XX in any respect.

SECTION XXI

MISCELLANEOUS

21.01 Amendments. All amendments to this Agreement must be written and must be signed by both parties hereto.

21.02 Invalidity. If any provision of this Agreement shall be found to be invalid by any court of competent jurisdiction, such finding shall not invalidate any other provision hereof.

21.03 Successors & Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and upon their respective successors and assigns.

21.04 Entire Agreement. This Agreement contains the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges and supersedes all prior agreements, commitments, representations, and discussion between the Parties pertaining to the subject matter of this Agreement.

21.05 Third Party Beneficiaries. Excluding rights of the Lenders to the Facility, this Agreement is not intended to create any third party beneficiary or rights.

21.06 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

Executed on the first day above written.

Panda Gila River, L. P.
By: Panda Gila River I, LLC

By: Ralph T. Killian
Name: Ralph T. Killian
Title: Sr. Vice President – Asset Management

TPS Arizona Operations Company

By: John Duff
Name: John Duff
Title: Vice-President

TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this "Agreement"), dated as of January [___], 2005, is by and between Gila River Transition Energy Management AssetCo, LLC ("AssetCo"), a Delaware limited liability company, Union Power Partners, L.P. ("Union Power"), a Delaware limited partnership, Panda Gila River, L.P. ("Gila River"), a Delaware limited partnership, and Trans-Union Interstate Pipeline, L.P. ("Trans-Union, and, together with Union Power and Gila River, the "Project Companies"), a Delaware limited partnership.

RECITALS

WHEREAS, AssetCo and each Project Company is a subsidiary of TECO Energy, Inc. ("TECO");

WHEREAS, Gila River is the owner and operator of an approximately 2,146 MW natural gas-fired, combined-cycle generating facility located in Maricopa County, Arizona, (the "Gila River Facility"), Union Power is the owner and operator of an approximately 2,205 MW gas-fired, combined cycle generating facility located in Union County, Arkansas, and Trans-Union is the owner and operator of the pipeline transporting natural gas to the Union Power electric generating facility (the Trans-Union pipeline together with the Union Power generating facility, the "Union Power Facility");

WHEREAS, each Project Company, AssetCo, TECO and certain other subsidiaries of TECO have entered into that Energy Management Contribution and Option Agreement dated _____, 2004, (the "Contribution Agreement") pursuant to which TECO granted to Administrative Agent (as that term is defined herein) an option for Administrative Agent or its designee to acquire the equity interests in AssetCo; and

WHEREAS, each Project Company desires for AssetCo to provide certain Transition Services (as that term is defined herein) related to the Gila River and Union Power Facilities on a temporary basis, and AssetCo desires to provide such Transition Services.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Defined Terms. In this Agreement, unless the context otherwise requires, the following terms shall have the meanings respectively assigned to them:

"Actual Costs" has the meaning set forth in Section 3.1(b).

"Adjustment Amount" has the meaning set forth in Section 3.1(c).

"Administrative Agent" means Citibank, N.A.

"Affiliate" means any entity which, directly or indirectly, controls or is controlled by or under common control with a Party to this Agreement. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to such Party, means the power to direct or cause the direction of the management and policies of such Party, directly or indirectly, whether through ownership of voting securities or by contract or otherwise. Ownership of 50% or more of the voting securities of a corporation, either directly or indirectly, shall constitute control of such corporation, but the foregoing shall not preclude a finding that a party may control another corporation through ownership of less than 50% of such voting securities.

"Agreement" has the meaning set forth in the preamble to this Agreement, and includes any and all amendments, modifications and supplements from time to time.

"AssetCo" has the meaning set forth in the preamble to this Agreement.

"AssetCo Indemnified Party" has the meaning set forth in Section 5.2.

"Claim" has the meaning set forth in Section 5.1.

"Contribution Agreement" has the meaning set forth in the Recitals.

"Credit Risk Guidelines" means that certain TPGC Credit Risk Guidelines of February 28, 2002 as amended from time to time.

"Energy Management Plan" means that certain TPGC Energy Management Plan: El Dorado and Gila River Projects, dated as of June 12, 2001, as amended from time to time.

"Facility" means, with respect to Gila River, the Gila River Facility and, with respect to Union Power and Trans-Union, the Union Power Facility.

"Gila River" has the meaning set forth in the preamble to this Agreement.

"Gila River Facility" has the meaning set forth in the Recitals.

"Good Business Practices" means the then current practices, methods and acts, as changed from time-to-time, that are commonly used in the independent power industry to perform or fulfill the activities comprising the Transition Services, or any practices, methods or acts, that, in the exercise of reasonable judgment in light of the facts and risks known at the time, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition; provided, however, that Good Business Practices is not intended to be limited to optimum practices, methods or acts to the exclusion of all others, but rather to be a range of possible practices, methods or acts taken or engaged in by entities in the independent power industry, including past practices employed in the provision of services similar to the Transition Services to the Project Companies over the previous eighteen (18) months. Whether any particular practice, method or act complies with Good Business Practices is to be judged in light of the facts known at the time such particular practice, method or act was performed or taken.

"Monthly Statement" has the meaning set forth in Section 3.1(a).

"Monthly Budgeted Costs" has the meaning set forth in Section 3.1(a).

"Party" means each Project Company and AssetCo.

"Project Company" has the meaning set forth in the preamble to this Agreement.

"Project Company Indemnified Party" has the meaning set forth in Section 5.1.

"Reimbursable Affiliate Costs" means, with respect to Transition Services provided to a Project Company by an Affiliate of AssetCo in a particular month, an amount equal to (i) the product of (a) the number of billable hours worked by any employee of such Affiliate in directly providing such Transition Services during such month, (b) the hourly rate of such employee (calculated as the annual base salary of such employee, excluding bonuses, divided by 2080), and (c) 2.2; plus (ii) the actual, reasonable, customary, direct business expenses incurred by such employee during such month in providing the Transition Services.

"Reimbursable AssetCo Costs" means an amount equal to the actual direct and indirect costs, fees, expenses and disbursements of any kind that AssetCo incurs or pays to provide Transition Services to a Project Company in a particular month. Reimbursable AssetCo Costs shall include but not be limited to (i) the payroll costs and benefits for any AssetCo employee performing the Transition Services, and (ii) the actual costs incurred by AssetCo to (A) lease office space from any Affiliate of AssetCo, and (B) obtain services related to the management of such space from any Affiliate of TECO, including the provision of janitorial, information technology and telecommunications services and other similar services.

"Risk Policy" means that certain TPGC Risk Management Plan dated August 24, 2001, as amended from time to time.

"TECO" has the meaning set forth in the Recitals.

"TPGC" means TECO PANDA Generating Company, L.P., a subsidiary of TECO.

"Transition Services" has the meaning set forth in Section 2.1.

"Transition Services Account" means a bank account established and maintained by AssetCo into which each Project Company shall make payments pursuant to this Agreement.

"Union Power" has the meaning set forth in the preamble to this Agreement.

"Union Power Facility" has the meaning set forth in the Recitals.

ARTICLE II
PROVISION OF TRANSITION SERVICES

2.1 Transition Services. Each Project Company appoints AssetCo, and AssetCo accepts such appointment, to provide certain services as needed (the "Transition Services"),

either directly or through one or more other Affiliates, at the direction of, and subject to the oversight of, such Project Company. Such Transition Services are those services identified in Schedule A to this Agreement.

2.2 Coordination of Transition Services. AssetCo shall coordinate the provision of Transition Services to each Project Company with a representative of such Project Company.

2.3 Management of Each Party. Notwithstanding anything in this Agreement to the contrary, the management and business of each Project Company shall at all times be subject to the overall direction of the management of such Project Company, and the management and business of AssetCo shall at all times be subject to the overall direction of the management of AssetCo.

2.4 Standard of Conduct. AssetCo shall perform, or cause its Affiliates to perform, the Transition Services in accordance with Good Business Practices.

ARTICLE III
MONTHLY COST REIMBURSEMENT

3.1 The Monthly Statement.

(a) Each month, AssetCo shall submit to each Project Company a statement (each, a "Monthly Statement") that provides an estimated budget of (1) the Reimbursable AssetCo Costs that AssetCo anticipates it will incur or pay in the subsequent month to perform the Transition Services on behalf of such Project Company, and (2) the Reimbursable Affiliate Costs that AssetCo anticipates will be incurred in the subsequent month for any Affiliate of AssetCo to perform the Transition Services on behalf of such Project Company (together, the "Monthly Budgeted Costs"). In calculating the Monthly Budgeted Costs for each Project Company, any Reimbursable AssetCo Costs that AssetCo anticipates it will incur or pay that are not specifically attributable to a particular Facility or Project Company, such as general and administrative costs, and any Reimbursable Affiliate Costs that AssetCo anticipates will be incurred that are not specifically attributable to a particular Facility or Project Company, shall be allocated by AssetCo 65% to Gila River and 35 % to Union Power, provided that the Parties may at any time agree to revise such allocation methodology.

(b) The Monthly Statement shall also provide a statement itemizing for each Project Company (i) the actual Reimbursable AssetCo Costs incurred or paid by AssetCo in connection with the performance of the Transition Services on behalf of such Project Company during the prior month, and (ii) the actual Reimbursable Affiliate Costs incurred in connection with the performance of the Transition Services on behalf of such Project Company during the prior month (together, the "Actual Costs").

(c) The Monthly Statement shall also calculate an amount for each Project Company that is equal to (i) the Actual Costs for such Project Company during the prior month less (ii) the Monthly Budgeted Costs for such Project Company for the prior month (the "Adjustment Amount").

3.2 Monthly Payments. Each month, each Project Company shall deposit into the Transition Services Account an amount equal to the Monthly Budgeted Costs for the Project Company for the subsequent month (i) plus the Adjustment Amount for such Project Company for the prior month if such Adjustment Amount is a positive number, or (ii) less the Adjustment Amount for such Project Company for the prior month if such Adjustment Amount is a negative number. Notwithstanding anything herein to the contrary, no failure by AssetCo to deliver the Monthly Statement in a timely manner shall relieve any Project Company of any obligation to deposit amounts into the Transition Services Account in accordance with this Section 3.2.

3.3 First Month Budget. Upon the effective date of this Agreement, AssetCo shall provide each Project Company with a Monthly Statement that includes the Monthly Budgeted Costs for the subsequent month as well as the Monthly Budgeted Costs for the remainder of the current month.

3.4 Direct Invoicing. AssetCo may at any time (i) directly invoice a Project Company for actual direct or indirect costs, fees, expenses and disbursements of any kind incurred or paid by AssetCo in providing the Transition Services to such Project Company, and (ii) provide for a third party to directly invoice a Project Company for any direct or indirect costs, fees, expenses and disbursements of any kind that would otherwise be incurred by AssetCo in the provision of Transition Services to such Project Company. If any Project Company receives an invoice pursuant to this Section 3.4, upon review and approval of such invoice, such Project Company shall promptly deposit into the Transition Services Account or pay the third party, as applicable, the amount payable under such invoice.

ARTICLE IV
LIMITATIONS OF LIABILITY

4.1 Notwithstanding any other provision of this Agreement, no Party shall be liable to any other Party for any lost profits or revenues, or indirect, incidental or consequential damages under, arising out of, due to or in connection with this Agreement.

4.2 This Agreement is solely and exclusively between the parties hereto, and any obligations created herein shall be the obligations solely of the parties. Under no circumstances shall an Affiliate of AssetCo be liable or responsible to any Project Company for obligations or liabilities arising from this Agreement (unless the Affiliate was acting as a subcontractor for AssetCo and the Project Company was an intended third-party beneficiary thereof), and each Project Company hereby expressly waives any and all claims against such Affiliates of AssetCo now and in the future based on such obligations or liabilities. No Party shall have recourse to any parent, partner, subsidiary, joint venture, affiliate, director or officer of the other Party for performance of such obligations, unless such obligations are assumed in writing by the person against whom recourse is sought.

4.3 **ASSETCO MAKES NO WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Each Project

Company assumes full responsibility for selection of the Transition Services to be performed by AssetCo to achieve such Project Company's purposes.

ARTICLE V
INDEMNIFICATION

5.1 AssetCo shall indemnify, defend and hold harmless any Project Company and its respective officers, directors, and employees (the "Project Company Indemnified Parties") from and against any and all third-party claims, demands, suits, actions, liabilities, losses, damages, judgments, fines, penalties and legal or other expenses ("Claims") that may arise directly from or in connection with AssetCo's gross negligence or willful misconduct in performing the Transition Services. If a Claim is asserted or action brought against a Project Company Indemnified Party as to which such Project Company Indemnified Party believes it is entitled to indemnification under this Section 5.1, such Project Company shall promptly notify AssetCo in writing of such Claim. Failure of a Project Company to give prompt notice as contemplated in the preceding sentence shall not absolve AssetCo of liability hereunder except to the extent AssetCo is actually prejudiced by such failure. Indemnification under this Article shall not be available with respect to any Claim to the extent such Claim results from a Project Company Indemnified Party's gross negligence or willful misconduct.

5.2 A Project Company shall indemnify, defend and hold harmless AssetCo and its officers, directors, and employees (the "AssetCo Indemnified Parties") from and against any and all Claims that may arise directly from or in connection with such Project Company's breach of its obligations under this Agreement or such Project Company's gross negligence or willful misconduct in the performance of this Agreement. If a Claim is asserted or action brought against an AssetCo Indemnified Party as to which such AssetCo Indemnified Party believes it is entitled to indemnification under this Section 5.2, AssetCo shall promptly notify the Project Company in writing of such Claim. Failure of AssetCo to give prompt notice as contemplated in the preceding sentence shall not absolve such Project Company of liability hereunder except to the extent the Project Company is actually prejudiced by such failure. Indemnification under this Article shall not be available with respect to any Claim to the extent such Claim results from an AssetCo Indemnified Party's gross negligence or willful misconduct.

5.3 Notwithstanding any term or provision of this Agreement to the contrary, any indemnity payments owed by a Party shall be reduced by any tax benefits to the indemnified Party and increased by any tax detriments to the indemnified Party resulting from such indemnity payment.

5.4 The rights of indemnity shall not be exclusive with respect to any other right or remedy provided for in this Agreement or otherwise in law or equity. The indemnification provisions of this Article V shall apply to the fullest extent permitted by law and shall survive termination of this Agreement.

ARTICLE VI
MISCELLANEOUS

6.1 Effective Date and Termination. The term of this Agreement shall commence as of the date first above written and shall terminate on the earlier of (1) the date on which Administrative Agent or its designee acquires the equity interests in AssetCo pursuant to the Contribution Agreement or (2) sixty (60) days after the interests in or assets of the Project Companies are transferred, directly or indirectly, to the lenders to Gila River and Union Power; provided, however, that any Project Company may terminate this Agreement with respect to such Project Company at any time upon thirty (30) days' prior written notice to AssetCo.

6.2 Energy Management Plan, Risk Policy and Credit Risk Guidelines. The Parties agree that (i) the Energy Management Plan, Risk Policy and Credit Risk Guidelines provide the general guidelines and parameters pursuant to which each Project Company operates its business, including selling and purchasing fuel, power and related products to and from its respective Facility, and (ii) AssetCo shall provide the Transition Services in a manner consistent with the Energy Management Plan, Risk Policy and Credit Risk Guidelines.

6.3 Availability of Information. AssetCo shall make available for inspection to each Project Company any information or data related to a Facility or the provision of the Transition Services, and each Project Company shall (i) make available for inspection to AssetCo any information or data necessary for the provision of the Transition Services, and (ii) provide AssetCo with access to its respective Facility for purposes of providing the Transition Services.

6.4 Changes in the Scope of Transition Services. A Project Company may at any time alter the scope of the Transition Services provided by AssetCo to such Project Company.

6.5 Control of Facilities. Notwithstanding anything in this Agreement to the contrary, (i) each Project Company retains ultimate decision-making authority and control with respect to its Facility, including but not limited to authority and control relating to (A) the sale of power and related products from the Facility and the purchase of fuel for the Facility, (B) the dispatch of the Facility, and (C) the availability of the Facility to produce power and related products; and (ii) AssetCo shall perform the Transition Services subject to the direction and oversight of the Project Companies.

6.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of law provisions thereof.

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

UNION POWER PARTNERS, L.P.
By: UNION POWER LLC
Its General Partner

By:_____

Title:_____

GILA RIVER TRANSITION ENERGY MANAGEMENT ASSETCO, LLC

By:_____

Title:_____

PANDA GILA, L.P.
By: GILA RIVER POWER LLC
Its General Partner

By:_____

Title:_____

TRANS-UNION INTERSTATE PIPELINE, LP

By:_____

Title:_____

SCHEDULE A – TRANSITION SERVICES

A. Asset Management Services:

(i) assisting with the protection of each Project Company's title to and interest in its respective Facility;

(ii) coordinating collection efforts against debtors to each Project Company and assisting with warranty administration, to the extent necessary;

(iii) coordinating the payment of all debts and obligations of each Project Company, including expenses of such Project Company, to the extent that funds of such Project Company are available;

(iv) representing each Project Company before federal, state, and municipal authorities and in arbitration proceedings;

(v) overseeing and coordinating the Transition Services provided to each Project Company by any Affiliate of AssetCo;

(vi) serving as liaison with the Administrative Agent on proposed changes to the Energy Management Plan and various financing documents;

(vii) coordinating reporting requirements and obligations as required by various financing documents; and

(viii) administering each Project Company's insurance program, including obtaining, renewing and the processing of claims under insurance policies.

B. Energy Management Services:

(i) Fuel and Power Marketing:

(a) arranging for the purchase, sale, storage or transportation of fuel to or from each Facility, including daily, hourly and real time trading activities;

(b) arranging for the scheduling and dispatching of fuel, power and related products to or from each Facility;

(c) arranging for the purchase, sale or transmission of power and related products to or from each Facility including the daily, hourly and real time trading activities; and

(d) developing regulatory and governmental affairs strategies for the Facilities and monitoring such activities at the federal, state and local levels.

(ii) Financial Derivatives

(a) evaluating forward price risk and risk management strategies for the merchant capacity of each Facility;

(b) evaluating risk that accompanies origination and forward trades;

(c) recommending and executing appropriate financial derivative transactions on behalf of the Project Companies for the merchant capacity, origination and forward trades;

(d) performing analyses to determine quantities, structures and pricing of financial derivatives;

(e) developing and maintaining models to quantify derivative pricing; and

(f) monitoring market pricing of financial derivatives on a daily basis.

C. Power and Gas Origination Services:

(i) developing and maintaining business relationships with load serving entities and other potential market counterparties;

(ii) negotiating long-term agreements for fuel, power and related products; and

(iii) providing settlement and other necessary services to facilitate the implementation of all executed long-term fuel, power and related agreements.

D. Structuring and Analysis Services:

(i) developing and maintaining forward market price curves based on established industry practices;

(ii) developing expertise to model options to derive market value of the instrument;

(iii) conducting valuation analyses for deal structures in purchase/sale proposals made to each Project Company (all contract terms/durations);

(iv) proposing deal structures to each Project Company for all structured sale proposals for power and related products made by such Project Company to third-parties (wholly or primarily long term sales agreements and other contracts concluded in support of such agreements); and

(v) supporting negotiations of structured transactions.

E. Market Risk Services:

(i) measuring and reporting the risks associated with each Facility, including the maintenance of all position reports, mark-to-market and risk parameter reports; and

(ii) monitoring the positions established by each Project Company to advise whether such Project Company is remaining within the position and risk limits established in the Risk Policy and is consistent with past practices over the immediately preceding eighteen (18) months.

F. Credit Risk Services:

(i) assisting each Project Company in administering its credit policy pursuant to the Credit Risk Guidelines;

(ii) facilitating assignment of internal credit ratings, which includes obtaining external published credit ratings from Standard & Poors Corp. and Dunn & Bradstreet, to be used, along with certain quantitative factors, in the development of third-party credit limits;

(iii) monitoring credit exposure against assigned credit limits; and

(iv) reviewing contracts, agreements and collateral instruments and advising each Project Company on credit language.

G. Contract Administration Services:

(i) assisting with the review and drafting of contracts with potential market counterparties;

(ii) assisting with the development and execution of contract templates for standard contract forms which relate to over-the-counter derivatives, and the purchase and sale of fuel, power and related products (*e.g.*, ISDA, EEI and NAESB agreements) and other legal forms; and

(iii) administering existing contracts, including monitoring necessary contractual deadlines, notice requirements and performance provisions.

H. Financial Reporting and Outside Auditor Services:

(i) preparing annual, monthly and quarterly financial statements, including footnotes, for external and internal distribution;

(ii) assisting with the preparation of financial statements;

(iii) assisting with the management of the audit process;

(iv) assisting with the implementation of new accounting standards, as applicable; and

(v) acting as liaison with outside accounting firms in relation to preparing tax returns and identification/resolution of tax issues, and providing financial information required by IRS or other agencies.

I. Accounting Services:

(i) vouchering, coding and recording all approved construction and operating invoices;

(ii) processing a weekly check run of current invoices approved by each Project Company.

(iii) reconciling monthly bank statements and preparing related journal entries;

(iv) preparing all month-end closing schedules;

(v) obtaining market valuations of interest rate swaps;

(vi) preparing and entering month-end journal entries into the general ledger system; and

(vii) reconciling all balance sheet and income statement accounts and preparing balance sheet detail report.

J. Legal Services:

(i) providing basic legal services including client counseling, the negotiation, documentation and closing of Project Company business transactions, and support of litigation and regulatory activities;

(ii) providing management services relating to the retention and oversight of outside counsel;

(iii) providing preventive law training;

(iv) maintaining a clearinghouse of contract document and legal research information; and

(v) providing energy transaction review and support.

AssetCo shall employ and dedicate a single attorney for the provision of the Legal Services to the Project Companies. Such attorney shall be managed administratively by TECO consistent with the management of TECO's other inside legal counsel, but such attorney shall coordinate the provision of Legal Services (described above) with counsel for each Project Company.