

**CONTRACT FOR THE OPERATION AND MAINTENANCE OF
A BIOMASS-FIRED POWER PRODUCTION FACILITY**

by and between

GAINESVILLE RENEWABLE ENERGY CENTER, LLC

and

NAES CORPORATION

dated as of June 14, 2011

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CONTRACT FOR THE OPERATION AND MAINTENANCE OF A BIOMASS-FIRED POWER PRODUCTION FACILITY, dated as of June [], 2011 (this “Agreement”), by Gainesville Renewable Energy Center, LLC, a Delaware Limited Liability Company (“Owner”) and NAES Corporation, a Washington Corporation (“NAES”).

1 CONTRACT DOCUMENTS; INTERPRETATION

1.1 Appendices. The following Appendices are made a part of this Agreement:

<u>Appendix I</u>	<u>O&M Scope of Work</u>
<u>Appendix II</u>	<u>O&M Project Team</u>
<u>Appendix III</u>	<u>Approvals, Licenses and Permits</u>
<u>Appendix IV</u>	<u>Facility</u>
<u>Appendix V</u>	<u>Facility Site</u>
<u>Appendix VI</u>	<u>Performance Incentives, Bonus and Liquidated Damages</u>
<u>Appendix VII</u>	<u>Projected O&M Budget</u>
<u>Appendix VIII</u>	<u>EPC Contract (attached under separate cover)</u>
<u>Appendix IX</u>	<u>Interconnection Agreement</u>
<u>Appendix X</u>	<u>Power Purchase Agreement</u>
<u>Appendix XI</u>	<u>Project Schedule</u>
<u>Appendix XII</u>	<u>Task Authorization Form</u>
<u>Appendix XIII</u>	<u>NAES Home Office Personnel Rates</u>

1.2 Entire and Complete Agreement. This Agreement, including any referenced attachments, and any other documents incorporated by reference therein, shall constitute the complete agreement between Owner and NAES relating to the Work, superseding all prior agreements or undertakings. Any exceptions or additional terms in NAES’s acknowledgment of this Agreement are hereby rejected unless specifically agreed to in writing by Owner and NAES. No course of prior dealing or performance between Owner and NAES or usage of trade shall be relevant to supplement, explain, interpret or modify any term, condition or instruction used in this Agreement.

1.3 Independent Contractor. Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party, except to the extent provided in Section 10, or to create any fiduciary relationship between the

parties. NAES is, and shall remain, an independent contractor in the performance of the Work, maintaining complete control of its personnel, workers, subcontractors and operations required for performance of the Work.

- 1.4 Third Party Beneficiaries. This Agreement shall be for the benefit of Owner and NAES and for such other parties only as expressly provided in this Agreement and then subject to the terms of this Agreement.
- 1.5 English Language. Owner and NAES agree that the official language of this Agreement shall be English. NAES hereby represents that it has sufficient knowledge of the English language to fully understand this Agreement. This Agreement shall be in the English language and all documentation related thereto, including without limitation, any documentation to be provided by NAES or its subcontractors shall also be in the English language. NAES shall bear all costs of translation and assumes all risk of such translation.
- 1.6 English Units. Owner and NAES agree that the official system of units of this Agreement shall be the United States Standard measure (English) unit system. All drawings and other written material shall show English units.
- 1.7 Headings. Captions and heading in this Agreement are for reference only and do not constitute a part of the substance of this Agreement.
- 1.8 Intentionally omitted.
- 1.9 Complementary Reading. All documents comprising this Agreement, including any modifications or additions thereto, shall be read in a complementary manner.
- 1.10 Order of Precedence. In the event of an irreconcilable conflict, discrepancy, error or omission, the following order of precedence shall govern:
 - a) Written amendments to this Agreement signed by both parties – those of a later date shall take precedence over those of an earlier date;
 - b) This Agreement comprising the written agreement between Owner and NAES;
 - c) The O&M Scope of Work and the other Appendices;
 - d) The Operation and Maintenance Manuals, prepared under Section 9.10
- 1.11 Amendments. This Agreement may be amended or modified only by a written agreement between the parties hereto.
- 1.12 Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof. Any invalid or unenforceable provision shall be deemed severed from this Agreement and the balance of this Agreement shall be reformed in such a manner as to effect to the

maximum extent possible the original intent of Owner and NAES.

- 1.13 Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and not be deemed to waive any other breach under this Agreement.
- 1.14 Remedies. All rights and remedies available to Owner and NAES in connection herewith whether arising in contract, tort (including negligence or strict liability), warranty or otherwise shall be exclusively those set forth in this Agreement and may be exercised concurrently.
- 1.15 Survival. Obligations of the parties that are by the terms hereof to be performed after the Termination Date and any warranties of NAES hereunder shall continue in full force and effect notwithstanding the occurrence of the Termination Date.
- 1.16 Confidentiality.
- 1.16.1 Each of the parties agrees that it shall keep strictly confidential all Confidential Information (as defined in Section 1.16.2); however, either Party may disclose the terms hereof to its attorneys, accountants and other consultants involved in assisting the parties with the Work, provided that such parties agree in writing to be bound by the foregoing confidentiality requirement
- 1.16.2 “Confidential Information” shall mean the terms of this Agreement and any materials or information, marked or identified as confidential, regarding the Work or any portion of the Work (including, without limitation, any data delivered by Owner to NAES) delivered or received in connection herewith and any other agreements entered into pursuant hereto.
- 1.16.3 Confidential Information shall not include: (a) information in the public domain through no fault or breach of this Agreement by the party that receives (the “Receiving Party”) such information from the other party (the “Disclosing Party”); (b) information previously and lawfully known by the Receiving Party prior to disclosure by the Disclosing Party; (c) information rightfully learned from a third party not under restriction of disclosure; and (d) information independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information.
- 1.16.4 Confidential Information shall be used by the Receiving Party solely in connection with the performance of the Work.

- 1.16.5 Upon termination or expiration of this Agreement or the Disclosing Party's request at any time, the Receiving Party shall promptly return to the Disclosing Party all Confidential Information and all copies thereof.
- 1.16.6 If the Receiving Party receives any subpoena or court order requiring disclosure of Confidential Information, the Receiving Party shall immediately notify the Disclosing Party. The Receiving Party shall, at the Disclosing Party's direction and cost, cooperate fully with the Disclosing Party in challenging any subpoena or court order requiring the disclosure of Confidential Information.
- 1.16.7 Each party acknowledges that the unauthorized disclosure of any Confidential Information may cause irreparable harm and significant injury that may be difficult or impossible to ascertain. Each party therefore agrees that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Agreement. The Receiving Party shall not allege or assert that the Disclosing Party has an adequate remedy at law in respect to the relief sought in any such proceeding, nor shall it seek the posting of a bond by the other party in any such action.
- 1.16.8 Unless the parties agree otherwise, the confidentiality and other obligations imposed by this Section shall survive for a period of three (3) years after termination or expiration of this Agreement.
- 1.17 Duty of NAES as to Work. Nothing contained in the O&M Scope of Work shall be construed as relieving NAES from the responsibility for operating and maintaining the Facility in accordance with this Agreement. Owner and NAES agree that the scope of delegation is strictly limited to the matters set forth in the Agreement. Without limiting the generality of the foregoing, Owner retains the ultimate authority and obligation to determine whether and to what extent the Facility operates, and NAES shall never cause the Facility to generate power except as expressly directed to do so by Owner or any dispatching authority specified by Owner. NAES has no obligation to upgrade or replace Facility systems except as expressly directed by Owner, nor shall it be obligated to spend funds outside the Operating Account or otherwise employ its own credit to support the Facility.

2 DEFINITIONS

- 2.1 Definitions. The following Definitions are made a part of this Agreement:

“Administrative Procedures Manual” means the manual, developed and provided by NAES that includes, among other things, information, policies, and procedures pertinent to NAES's performance hereunder, including (i) reporting, (ii) correspondence and review procedures, (iii) procurement and contracting procedures, and (iv) accounting, bookkeeping and record keeping.

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

“Agreement” means this Agreement, the Appendices, and any other documents incorporated or referenced therein.

“Annual Budget” has the meaning specified in Section 5.1 hereof.

“Annual Operating Plan” has the meaning specified in Section 5.2 hereof.

“Approved Subcontractor” means any Subcontractor that does work for NAES (other than the Facility Work Force) concerning this Agreement, whom Owner has approved in writing.

“Business Day” means any day except Saturdays, Sundays and other days on which the bank institutions of Gainesville, Florida, do not provide services pursuant to Legal Requirements or the policies of the bank institutions.

“Bonus” means a payment from Owner to NAES pursuant to Appendix VI.

“Commercial Operation Date” has the meaning specified in Section 13.3 hereof.

“Confidential Information” has the meaning specified in Section 1.16 hereof.

“Construction Commencement Date” means the date that Owner will commence construction of the Facility as set forth in a written notice from Owner to NAES.

“Contract Term” has the meaning specified in Section 13.5 hereof.

“Contract Year” has the meaning specified in Section 13.4 hereof.

“Disclosing Party” has the meaning specified in Section 1.16 hereof.

“Division Director” means that member of NAES’s Home Office Personnel who supervises the Project Manager and the Plant Manager.

“Draft Annual Budget” has the meaning specified in Section 5.4 hereof.

“Draft Annual Operating Plan” has the meaning specified in Section 5.4 hereof.

“Draw Request” has the meaning specified in Section 15.4 hereof.

“Emergency” has the meaning specified in Section 9.9 hereof.

“Effective Date” means the date specified in the introductory paragraph hereof.

“Employee Bonus” means the employee bonus set forth in Appendix VI.

“Environmental Law” means any federal, state or local statute, rule, regulation, order, code, Permit, directive or ordinance and any binding judicial or administrative interpretation or requirement pertaining to (i) the regulation and protection of health, safety, and the indoor or outdoor environment; (ii) the conservation, management, development, control or use of land, natural resources, or wildlife; (iii) the protection or use of surface water and ground water; (iv) the management, manufacture, possession, presence, use, generation, transportation, or handling of, or exposure to any Hazardous Material; or (v) pollution (including, without limitation, release of any hazardous substance to air, land, surface water and ground water).

“EPC Contract” means the Amended and Restated Turnkey Contract for the Engineering, Procurement, Construction and Installation of a Biomass-Fired Power Production Facility between Gainesville Renewable Energy Center, LLC and Fagen, Inc., dated as of April 20, 2011, attached as Appendix VIII hereto.

“EPC Contractor” means Fagen, Inc., a Minnesota corporation.

“Extraordinary Item” has the meaning specified in Section 10.3 hereof.

“Facility” has the meaning specified in Section 3.1 hereof.

“Facility Agreements” means this Agreement, consulting, engineering, and construction contracts for the building of the Facility, including the EPC Contract, the Interconnection Agreement, the Power Purchase Agreement, applicable equipment maintenance agreements in effect or entered into from time to time by Owner, and equipment contracts with regard to warranties and equipment design and specifications and portions of the Financing Agreements relevant to this Agreement.

“Facility Financing” means construction, interim and long-term financing for the acquisition, construction, improvement, operation and maintenance of the Facility and any refinancing thereof (including a lease pursuant to which Owner is the lessee of the Facility) provided by the Financing Parties, including any and all modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

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

“Facility Site” has the meaning specified in Section 18.1 hereof.

“Facility Work Force” has the meaning specified in Section 18.1 hereof.

“Financing Agreements” means any and all loan agreements, notes, bonds, indentures, security agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, participation agreements and other documents relating to the Facility Financing.

“Financing Parties” means any and all party or parties participating in the Facility Financing.

“Force Majeure” means only Acts of God, acts or omissions of government, acts of a public enemy, wars (declared or undeclared), blockades, commercial embargoes between countries, insurrections, rebellions, revolutions, riots, terrorism, civil disturbances, sabotage, epidemics, quarantines, landslides, earthquakes, fires, droughts, named storms, lightning, floods, hurricanes, tornados, nuclear accident, any strike directed specifically at Owner or any of its owners, subsidiaries or affiliates, any industry-wide or tradewide strike not particular to the Facility Site, NAES or NAES’s Subcontractors, in each case to the extent that the event of Force Majeure (i) in fact affects the Work, (ii) is not the fault of the party relying on the event or the fault of any of its Subcontractors, consultants or vendors, or any of its or their employees, agents or contractors, and (iii) could not have been prevented by the party’s exercise of reasonable diligence. Notwithstanding anything to the contrary, the term Force Majeure shall not be deemed to include (A) any labor disturbance affecting NAES, (B) the general climate for the geographic area of the Facility Site, or (C) any delay, default or failure, direct or indirect, in obtaining materials, any delay of a Subcontractor or worker performing any Work, or any other delay, default or failure, financial or otherwise, of a Subcontractor, vendor or supplier performing the Work.

“Good Utility Practice” means any practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, environmental responsibility, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region. With respect to the Facility, Good Utility Practice includes but is not limited to taking reasonable steps to ensure the following but, subject to Operator’s obligations set forth in Section 3.5, the last sentence of Section 5.7 and the proviso in Section 10.2, only to the extent within the authority granted to NAES in the Annual Budget and this Agreement:

- (1) That adequate equipment, materials, resources and supplies are available to meet the Facility’s needs;

- (2) That sufficient operating personnel are available and are adequately experienced, trained, and licensed as necessary to operate the Facility properly and efficiently, and who are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the Facility;
- (3) That preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
- (4) That appropriate monitoring and testing are performed to ensure that equipment is functioning as designed;
- (5) That equipment is not operated recklessly, or in a manner that is unsafe to workers, the general public, or the environment, or without regard to defined limitations, such as steam pressure, temperature, and moisture content, chemical content of make-up water, flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, or control system limits;
- (6) That equipment will function properly under both normal and reasonably expected emergency conditions; and
- (7) That the Facility is operated in conformance with the Interconnection Agreement.

“Governmental Authority” means any federal, state, regional, municipal or foreign governmental agency, department, commission, board, bureau, authority, court, officer, instrumentality, judicial or regulatory body, entity or other legally constituted regulating authority.

“Gross Annual Wages/Salaries” has the meaning set forth in Appendix VI.

“Hazardous Materials” means substances defined as “hazardous substances” pursuant to Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Sections 9601 et seq.); those substances defined as “hazardous waste” pursuant to Section 1004(5) of the Resource, Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); those substances designated as a “hazardous substance” pursuant to Section 311(b)(2)(A) or as a “toxic pollutant” pursuant to Section 307(a)(1) of the Clean Water Act (33 U.S.C. Sections 1251 et seq.); those substances defined as “hazardous materials” pursuant to Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 et seq.); those substances regulated as a “chemical substance or mixture” or as an “imminently hazardous chemical substance or mixture” pursuant to Section 6 or 7 of

the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.); those substances defined as “contaminants” pursuant to Section 1401 of the Safe Drinking Water Act (42 U.S.C. Sections 300f et seq.), if present in excess of permissible levels; those substances regulated pursuant to the Oil Pollution Act of 1990 (33 U.S.C. Sections 2701 et seq.); those substances defined as a “pesticide” pursuant to Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 and by the Federal Pesticide Act of 1978 (7 U.S.C. Sections 136 et seq.); those substances defined as a “source,” “special nuclear” or “by product” material pursuant to Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. Section 2014 et seq.); those substances defined as “residual radioactive material” in Section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7901 et. seq.); those substances defined as “toxic materials” or “harmful physical agents” pursuant to Section 6 of the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.); those substances defined as “hazardous air pollutants” pursuant to Section 112(a)(6), or “regulated substance” pursuant to Section 112(r)(2)(B) of the Clean Air Act (42 U.S.C. Sections 7401 et seq.); those substances defined as “extremely hazardous substances” pursuant to Section 302(a)(2) of the Emergency Planning & Community Right to Know Act of 1986 (42 U.S.C. Sections 11001 et seq.); and those other hazardous substances, hazardous wastes, toxic pollutants, hazardous materials, chemical substances or mixtures, imminently hazardous chemical substances or mixtures, contaminants, pesticides, source materials, special nuclear materials, by product materials, residual radioactive materials, toxic materials, harmful physical agents, air pollutants, regulated substances, or extremely hazardous substances defined in any regulations promulgated pursuant to any of the above- referenced environmental laws; and any and all other contaminants, toxins, pollutants, hazardous substances, and contaminated, polluted, toxic and/or hazardous materials the use, disposition, possession or control of which is regulated by any one or more of the Laws and Regulations.

“Immediate Outage” means the occurrence of an immediate reduction or suspension of the electrical output from the Facility in response to an abnormal operating condition. An Immediate Outage is distinguished from an Unplanned Required Outage in that the abnormal condition causing an Immediate Outage requires prompt shutdown or curtailment of the Facility.

“Indemnified Parties” has the meaning specified in Section 20.1 hereof.

“Indemnifying Party” has the meaning specified in Section 20.1 hereof.

“Independent Engineer” means Black & Veatch Corporation, a Delaware corporation.

“Index” means the percentage change in the Consumer Price Index Series SUUR0000SA0, U.S. City Average, All Items, published by the Bureau of Labor Statistics, US Department of Labor for the 12 month period ending in September of the previous Contract Year. CPI data is available at the U.S. Department of Labor,

Bureau of Labor Statistics website: <http://www.bls.gov>. In the event the Index is discontinued or superseded, a reasonable substitute or replacement datum will be proposed by NAES and agreed to in good faith by Owner.

“Interconnection Agreement” means that certain Large Generator Interconnection Agreement (LGIA) dated November 16, 2010, between The City of Gainesville d/b/a Gainesville Regional Utilities and the Gainesville Renewable Energy Center, LLC regarding the interconnection of the Facility to the electricity grid attached as Appendix IX hereto.

“Late Payment Rate” means, in relation to any period for which a late payment charge may be incurred under this Agreement, the prime rate as announced from time to time by the Bank of America plus two percent (2%) calculated on the basis of a 365-day year and compounded monthly.

“Legal Requirements” means and includes all applicable laws, statutes, ordinances, codes, standards, rules, regulations, and orders of any Governmental Authority having jurisdiction over the Work.

“Liquidated Damages” means a payment from NAES to Owner pursuant to Appendix VI.

“Monthly Report” has the meaning specified in Section 5.3 hereof.

“NAES” has the meaning specified in the introductory paragraph hereof.

“NAES Home Office Personnel” has the meaning specified in Section 8.2 hereof.

“NAES Proprietary Information” has the meaning specified in Section 7.3 hereof.

“Operating Account” has the meaning specified in Section 14.1 hereof.

“Operating Costs” has the meaning specified in Section 14.2 hereof.

“Operation and Maintenance Manual” means the operating procedures and Facility systems descriptions, maintenance procedures, training and safety manuals, together with the documents and schedules described in such manuals.

“Operator” means any Person who within the meaning of Environmental Laws owns, leases, operates, controls, or supervises the Facility or any Facility equipment, or any Person who is an officer, director, employee, agent, representative or Affiliate of any such Person. The parties intend that NAES is not the Operator of the Facility.

“Owner” has the meaning specified in the introductory paragraph hereof.

“Owner’s Representative” shall have the meaning specified in Section 6.2 hereof.

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

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

“Phase I” has the meaning specified in Section 3.2 hereof.

“Phase II” has the meaning specified in Section 3.3 hereof.

“Phase II Commencement Date” has the meaning specified in Section 13.2 hereof.

“Phase II Management Fee” has the meaning specified in Section 15.2.2 hereof.

“Phase III” has the meaning specified in Section 3.4 hereof.

“Phase III Management Fee” has the meaning specified in Section 15.3.2 hereof.

“Planned Maintenance” means the occurrence of reduced or suspended operation of the Facility for the purpose of performing routine or regular maintenance in accordance with Good Utility Practice. Planned Maintenance is distinguished from Immediate Outages and Unplanned Required Outages in that the duration and timing of Planned Maintenance can be reasonably forecast.

“Plant Manager” has the meaning set forth in Section 6.1.2.

“Project Manager” has the meaning set forth in Section 6.1.1.

“Power Purchase Agreement” means the Power Purchase Agreement for the Supply of Dependable Capacity, Energy and Environmental Attributes From a Biomass-Fired Power Production Facility between Gainesville Renewable Energy Center, LLC and the City of Gainesville, Florida d/b/a Gainesville Regional Utilities dated as of April 29, 2009, attached as Appendix X hereto.

“Project Schedule” means the project schedule set forth in Appendix XI hereto.

“Reimbursable Costs” has the meaning specified in Section 14.3 hereof.

“Receiving Party” has the meaning specified in Section 1.16 hereof.

“Renewal Term” has the meaning specified in Section 13.6 hereof.

“Subcontractor” means any Person providing materials or services to the Facility on behalf of NAES, but does not include any person, firm or corporation providing materials or services on an Operating Cost or Reimbursable Cost basis.

“Task Authorization” has the meaning specified in Section 3.2 hereof.

“Term” means the Contract Term, together with any Renewal Terms.

“Termination Date” has the meaning specified in Section 13 hereof.

“Termination Transition Period” has the meaning specified in Section 13.8 hereof.

“Unplanned Required Outage” means the occurrence of reduced or suspended operation of the Facility caused by abnormal operating conditions that require corrective action. An Unplanned Required Outage is distinguished from an Immediate Outage in that the required repair or maintenance for an Unplanned Required Outage can be delayed or scheduled.

“Work” has the meaning specified in Section 3.1 hereof.

3 SCOPE OF WORK

- 3.1 Scope of Work in General. NAES shall operate and maintain a biomass-fired power production facility (the “Facility”) meeting the detailed requirements and specifications set forth more particularly in the O&M Scope of Work attached as Appendix I hereto. The responsibilities of NAES hereunder are sometimes called the “Work”. The scope of NAES’s responsibilities hereunder is set forth more particularly in the Appendices hereto and includes furnishing all services, supervision, labor, and insurance required to perform the Work.
- 3.2 Phase I Scope of Work. During Phase I, NAES shall assist Owner with the review of construction and performance data provided by EPC Contractor and shall perform an operability review of the Facility design. Without limiting the foregoing, NAES shall perform the services specified in the Phase I section of the O&M Scope of Work. All such services shall be performed in accordance with a written statement of work in the form attached hereto as Appendix XII (the “Task Authorization”) detailing a description of the services to be provided, (ii) a not-to-exceed estimate of the compensation to be paid to NAES for the provision of the services, (iii) a schedule for the performance of the services, (iv) the name of the individual professional who will be responsible for the management and supervision of the services; and (v) any additional requirements or information that may be relevant to the provision of the services.
- 3.3 Phase II Scope of Work. During Phase II, NAES shall assist Owner with the construction, commissioning, start-up and testing of the Facility. NAES shall perform the services specified in the Phase II section of the O&M Scope of Work.
- 3.4 Phase III Scope of Work. During Phase III, NAES shall operate and maintain the Facility. NAES shall perform the services specified in the Phase III section of the O&M Scope of Work.

- 3.5 Emergencies. Notwithstanding any limitations otherwise imposed in the Annual Budget and Annual Operating Plan, NAES shall take any necessary actions to respond appropriately to, and to mitigate emergencies that involve the safety of persons or the security of property, and which interfere with the normal operation of the Facility. NAES shall develop procedures for emergencies. NAES shall notify Owner immediately of any such emergencies.
- 3.6 Changes to the Facility. NAES shall not make any material changes to the Facility, other than maintenance and repairs, or any changes in the exterior appearance of the Facility, without the prior written approval of the Owner.
- 3.7 Approvals; Licenses; Permits. NAES shall obtain at its own expense all permits necessary for the ordinary conduct of its business as contemplated by this Agreement. No work shall be undertaken or materials ordered without obtaining such permits, licenses and approvals. Originals of these documents shall be submitted to Owner for permanent retention, with a copy of each available at the Facility Site.

4 OWNER'S OBLIGATIONS.

- 4.1 Owner's Authority. Owner expressly reserves the authority to make, and shall make, such business and strategic decisions as it deems appropriate from time to time in reference to the operation and maintenance of the Facility. Owner shall furnish to NAES, at Owner's expense, the information, services, materials and other items described in this Section 4. All such items will be made available at such times and in such manner as may be reasonably required for the expeditious and orderly performance of the Work by NAES.
- 4.2 Information. Owner shall provide to NAES copies of all Facility Agreements as soon as practicable following the Construction Commencement Date, and any modifications or additional Facility Agreements promptly after execution of Facility Agreements, as well as copies of all technical, operational and other Facility information reasonably available to Owner or in Owner's possession and supportive of NAES's performance of the Work. Subject to the performance standards in Section 9, NAES shall be entitled to rely upon any information provided by Owner or any of the other parties to the Facility Agreements in the performance of the Work.
- 4.3 Access to Facility. Subject to clarification in Section 18, Owner shall provide a Facility capable of being operating in accordance with the Permits and Legal Requirements, including Environmental Laws, and shall provide NAES unlimited access to the Facility and the Facility Site as required by NAES for the Work. Nothing in this Section 4.3 shall be interpreted so as to limit in any way NAES's responsibility to perform the Work in accordance with the Permits and Legal Requirements, including but not limited to in accordance with Environmental Laws.
- 4.4 Other Owner Supplied Items. Owner shall make available to NAES the following items:

- 4.4.1 Facility Manuals. Owner shall provide the master copies of the Facility Manuals to NAES for use in development of the O&M Manuals. Thereafter, Owner shall provide any updates to the Facility Manuals received from equipment manufacturers to NAES.
- 4.4.2 Biomass Fuel; Reclaimed Water; Natural Gas; Stand-by/Start-up Electricity. Owner shall furnish and deliver to the Facility biomass fuel, reclaimed water, natural gas and stand-by/start-up electricity.
- 4.4.3 Spare Parts and Supplies. Owner shall provide and furnish to NAES an initial inventory of spare parts and supplies as necessary for NAES to perform the Work and Owner shall fund additional purchases as set forth in the Annual Budget.
- 4.4.4 Instructions, Approvals. Owner shall provide or cause to be provided to NAES all instructions NAES is required to obtain in accordance with this Agreement. Owner shall not unreasonably withhold approvals required by this Agreement. Owner shall not direct NAES to take any action inconsistent with Legal Requirements or otherwise adversely affecting the safety, health or protection of any persons or property located at or about the Facility.
- 4.5 Facility Agreements. Subject to Section 9.1 and 9.6, Owner shall administer (except to the extent certain day-to-day operational tasks have been delegated to NAES) and comply with the Facility Agreements. Owner shall provide NAES written notice of any changes to requirements under the Facility Agreements or a copy of any agreement replacing any Facility Agreement.
- 4.6 Approvals; Licenses; Permits. Owner shall obtain from the appropriate Governmental Authorities, all Permits for the ownership, operation and maintenance of the Facility other than Permits required by Legal Requirements to be in the name of NAES.

5 PLANS AND BUDGETS.

- 5.1 Annual Budget. NAES shall operate and maintain the Facility in accordance with an annual budget (the “Annual Budget”) approved by Owner. The Annual Budget shall be structured on a monthly and annual basis and shall be a projection, in detail reasonably acceptable to Owner, of costs to be expended in the performance of the Work. The Annual Budget shall remain in effect throughout the applicable Contract Year, subject to updating, revision and amendment proposed by either Party and consented to in writing by the other Party.
- 5.2 Annual Operating Plan. NAES shall operate and maintain the Facility in accordance with an annual operating plan (the “Annual Operating Plan”) approved by Owner. The Annual Operating Plan shall state the assumptions upon which the related Annual Budget is based and the implementation plans for the Work, including: (i) anticipated operations and repairs, (ii) routine maintenance and overhaul schedules (including

planned major maintenance), (iii) procurement, (iv) staffing, personnel and labor activities, (v) administrative activities, (vi) capital improvements, and (vii) other work proposed to be undertaken by NAES. The Annual Operating Plan shall remain in effect throughout the applicable Contract Year, subject to updating, revision and amendment proposed by either Party and consented to in writing by the other Party.

- 5.3 Monthly Report and Review. No later than the fifth (5th) Business Day of each month, NAES shall submit a written report to the Owner in reasonable detail (the “Monthly Report”). During Phase II, Owner and NAES will collaboratively develop an acceptable template for the Monthly Report. NAES’s Project Manager and Plant Manager and Owner’s Representative shall meet on or around the tenth (10th) day of each month to review the Monthly Report for the previous month and to review the Annual Budget for the next calendar month.
- 5.4 Process. At least ninety (90) days prior to the beginning of each Contract Year, NAES shall prepare and submit to Owner a draft annual budget and a draft annual operating plan with respect to the Work (the “Draft Annual Budget” and the “Draft Annual Operating Plan”). Owner shall review the Draft Annual Budget and the Draft Annual Operating Plan and respond to NAES with written comments within thirty (30) days of submission by NAES. Such comments may require changes, additions, deletions and modifications. Owner and NAES will meet and use reasonable efforts to agree upon a final Annual Budget and Annual Operating Plan prior to the commencement of the applicable Contract Year. Owner and NAES shall record the final Annual Budget and Annual Operating Plan and Owner’s approval in writing.
- 5.5 Adjustments. If either Party becomes aware of facts or circumstances that it believes necessitate a change to the Annual Budget or the Annual Operating Plan, that Party will immediately notify the other Party, specifying the impact upon the Annual Budget or Annual Operating Plan and the reasons for the change.
- 5.6 Failure to Agree. The Parties acknowledge that it is necessary that Owner retain ultimate authority with respect to expenses incurred for operation of the Facility. Accordingly, NAES shall accept each Annual Budget as finally determined by Owner. To the extent that Owner has not authorized funds, NAES is relieved from providing or purchasing services; provided that NAES delivers a written report to Owner that describes the reasons why NAES believes each disputed expense that NAES requested to be included in a Annual Budget, or any request for modifications to a Annual Budget, is prudent.
- 5.7 Notification of Variance. If NAES becomes aware that the aggregate of all Operating Costs or Reimbursable Costs exceeds or will exceed the amount provided in the applicable Annual Budget or that the Facility is operating with any significant deviations or discrepancies from the projections contained in the applicable Annual Operating Plan, NAES shall promptly so notify Owner. NAES shall make no expenditures that exceed the Annual Budget unless Owner grants prior written approval, except as otherwise necessary or prudent in response to an Emergency.

6 CONTRACT ADMINISTRATION

6.1 NAES's Representatives.

6.1.1 Project Manager. On or before the Effective Date, NAES shall appoint a "Project Manager" who shall be authorized to represent NAES with Owner concerning NAES's performance of the Work. The Project Manager will also supervise the NAES Home Office Personnel in supporting the Facility Work Force. NAES shall be bound by the written communications, directions, requests and decisions made by the Project Manager. NAES shall notify Owner in writing of the identity of the Project Manager, and of any successors. The Project Manager shall not have the authority to modify this Agreement.

6.1.2 Plant Manager. Prior to the Commercial Operations Date, NAES shall appoint an individual (the "Plant Manager"), subject to approval of Owner, who shall direct and manage the Facility Work Force with full responsibility for the performance of all of the Work. For issues arising out of the day-to-day administration of the Phase III Work, the Plant Manager may communicate directly with Owner. The Plant Manager shall or his representative shall be available 365 days per year to act as liaison between the Owner and NAES. The Plant Manager shall not have the authority to modify this Agreement.

6.2 Owner's Representative. On or before the Effective Date, Owner shall appoint an individual representative (the "Owner Representative") who shall be authorized and empowered to act for and on behalf of Owner on all matters concerning the day-to-day administration of this Agreement and Owner's obligations hereunder. In all such matters, but excluding any amendments or modifications of this Agreement, Owner shall be bound by the written communications, directions, requests and decisions made by the Owner Representative. Owner shall notify NAES in writing upon the appointment of the Owner Representative, and of any successors.

6.3 Owner Inspection. At all times, NAES shall grant Owner, Financing Parties, Independent Engineer and their agents and representatives access to the Facility, all Facility operations and any documents, materials and records and accounts relating to the Facility operations for purposes of inspection and review. NAES shall provide Owner, Financing Parties, Independent Engineer and their agents and representatives with access to all operating data and operating logs maintained at the Facility.

6.4 Compliance with NAES's Procedures. During any inspection or review of the Facility pursuant to Section 6.3, Owner, Financing Parties, Independent Engineer and their agents and representatives shall comply with all of NAES's safety and security procedures and conduct inspections and reviews in such a manner as to cause minimum interference with NAES's activities. NAES shall also cooperate with Owner in allowing other visitors access to the Facility.

- 6.5 Availability of Operating Data and Records. NAES shall make data prepared and maintained by NAES available to Owner (i) pursuant to requirements in any Facility Agreement or the Administrative Procedures Manual, or (ii) upon any request by Owner, on the Business Day following such request.
- 6.6 Accounts and Reports. NAES shall assist Owner in complying with Owner's reporting requirements with regard to Governmental Authorities or counterparties to Facility Agreements, and will furnish or cause to be furnished to Owner certain reports regarding the Work and the performance of the Facility as defined by Owner and NAES.
- 6.7 Litigation and Permit Lapses. Upon obtaining actual knowledge, a Party shall submit prompt written notice to the other Party of the following, to the extent relating to the Facility or the Work: (i) any litigation, claims, disputes, or actions filed with any Governmental Authority; (ii) any actual refusal to grant, renew or extend, or any action filed with respect to the granting, renewal or extension of, any Permit; (iii) all penalties or notices of violation issued by any Governmental Authority; (iv) any dispute with any Governmental Authority that may affect the operation and maintenance of the Facility; and (v) with respect to the matters identified in clauses (i), (ii), (iii) or (iv), any threats of such matters, which matters may affect the ownership, operation or maintenance of the Facility.

7 TITLE TO MATERIALS, DOCUMENTS AND DATA

- 7.1 Materials and Equipment. Title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by NAES on an Operating Cost or Reimbursable Cost basis shall pass directly from the vendor or supplier thereof to, and vest in, Owner. NAES has no title or other claim to such items; provided, however, that transfer of title in no way affects NAES's obligations set forth in this Agreement.
- 7.2 Documents. All documents and records, including but not limited to all O&M Manuals, procedures, data, drawings, plans, specifications, reports, operating logs and Operating Account records (including, for all documents, both paper and electronic records) prepared or developed by NAES's Facility Work Force in connection with performance of the Work shall become the property of Owner when prepared. All such documents, together with any materials and documents furnished to NAES by Owner shall, upon expiration or termination of this Agreement or upon resignation, removal or abandonment by NAES, either remain at the Facility or, upon written request of Owner, be returned to Owner or destroyed; provided, however, that NAES may retain for its records copies of documents prepared by NAES. NAES and its subcontractors shall not use such records and documents for any purpose other than the performance of the Work without the Owner's prior written approval, which shall not be unreasonably withheld.
- 7.3 Proprietary Information. Where materials or documents prepared or developed by NAES or its Affiliates, or their respective employees, representatives or contractors,

contain proprietary or technical information, systems, techniques or know how previously developed by them or acquired by them from third parties (“NAES Proprietary Information”), NAES retains the unrestricted and irrevocable right to use or dispose of such NAES Proprietary Information as NAES deems fit; provided, however, that Owner has an irrevocable license to use such NAES Proprietary Information to the extent necessary for Owner’s operation or maintenance of the Facility at no additional cost to Owner.

8 STAFFING AND PERSONNEL

- 8.1 Supervision and Coordination. NAES shall supervise and direct all of its Work and all activities at the Facility Site using NAES’s best skill, efforts and attention. Before beginning the Work, NAES shall provide to Owner a project organization chart and job descriptions.
- 8.2 Employees. NAES will provide and make available as necessary, in accordance with the requirements of this Agreement, the O&M Scope of Work, the Annual Budget and the Annual Operating Plan, all labor and professional, supervisory and managerial personnel required to perform the Work. Such personnel will be qualified for the duties to which they are assigned. All individuals employed by NAES in the performance of the obligations under this Agreement and who are permanently assigned to the Facility (the “Facility Work Force”) and non-Site personnel (the “NAES Home Office Personnel”) shall be the employees of NAES or its Affiliates, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by NAES (subject to Owner’s approval rights with respect to the Annual Budget and with respect to the Plant Manager). NAES shall retain sole authority, control and responsibility with respect to its employment policy. NAES shall submit for Owner’s approval the staffing requirements for the Facility. NAES shall always enforce good order among its employees and those of its Subcontractors, and shall not employ or permit any Subcontractor to employ, concerning its performance under this Agreement, any unfit person or anyone not skilled in the work assigned to such person. NAES shall use reasonable efforts in the employment of labor (whether directly or indirectly employed) so as to cause no conflict or interference with or between the various trades, or delay in performance of NAES’s obligations.
- 8.3 Selection of Plant Manager. NAES shall submit its selection for Plant Manager to Owner, who shall have written approval over NAES’s selection of such person.
- 8.4 Replacement of Plant Manager. NAES shall inform Owner of its intent to replace the Plant Manager. Prior to employment of the replacement Plant Manager, NAES shall obtain Owner’s written approval.

9 PERFORMANCE STANDARDS

- 9.1 Performance Standards. NAES’s performance of the Work shall conform to all other

standards set forth in this Agreement and the O&M Scope of Work. In addition, NAES shall: (i) follow Good Utility Practice and sound operating and maintenance practice; (ii) ensure that physical maintenance is of good quality and free of defects in materials or workmanship, is performed in a proper workmanlike and careful manner and utilizes appropriate materials, equipment and facilities; (iii) comply with good engineering practice and industry codes; (iv) comply with all Legal Requirements; (v) fully comply with the applicable terms of all Permits, licenses and approvals issued with respect to the Work, which Permits, licenses and approvals are attached to, incorporated by reference and constitute part of this Agreement; (vi) comply with the EPC Contract, the Interconnection Agreement, the Power Purchase Agreement, and any other agreements relating to the operation and maintenance of the Facility, each as and to the extent provided to NAES, and as each may be amended from time to time, in all cases to the extent related to the performance of the Work; (vii) comply with the operating and maintenance manuals and procedures for the Facility; (viii) comply with the other manuals and procedures prepared by NAES pursuant to the O&M Scope of Work; (ix) comply with contractor, manufacturer and vendor warranties; (x) comply with the applicable Annual Operating Plan and Budget; and (xi) comply with the business and strategic decisions of the Owner regarding the operation and maintenance of the Facility.

- 9.2 Availability. NAES shall, consistent with Good Utility Practice, use reasonable efforts to operate the Facility in a manner that maximizes the Facility's Equivalent Availability Factor, as defined by the North American Energy Reliability Corporation.
- 9.3 Output and Heat Rate. NAES shall, consistent with Good Utility Practice, use reasonable efforts to operate the Facility in a manner that maximizes the Facility's net output and minimizes the Facility's net heat rate, as such terms are commonly understood in the electric power industry.
- 9.4 Key Performance Standards. In its performance of the Work, NAES shall:
- 9.4.1 Train employees in the skills, techniques, and procedures needed to perform the Work in accordance with Good Utility Practice and good engineering and operating procedures;
 - 9.4.2 Optimize the useful life of the Facility, and minimize unscheduled downtime, with the overall goal of maximizing the profitability of the Facility for the Owner;
 - 9.4.3 Implement management programs for preventive maintenance of plant equipment and inventory control of spare parts;
 - 9.4.4 Schedule Planned Maintenance to minimize the loss of revenues and to remain in compliance with the terms of the Facility Agreements;
 - 9.4.5 Maintain the Facility in good working order (subject to normal wear and tear)

and perform as necessary any repairs or replacements; and

- 9.4.6 Coordinate and communicate with Owner regarding the operation and maintenance of the Facility in accordance with the provisions of the Power Purchase Agreement and of the Administrative Procedures Manual adopted by the parties pursuant to the O&M Scope of Work.
- 9.5 Inventory. NAES shall be responsible for proper maintenance, control and storage of the inventory located at the Facility throughout the Contract Term, and shall, pursuant to Section 10, be responsible for procuring such additional inventory as NAES may determine to be necessary or appropriate from time to time. NAES shall be authorized to receive and store materials and supplies on behalf of Owner that Owner directly purchases.
- 9.6 Compliance with Facility Agreements. NAES shall abide by the requirements of the Facility Agreements as delivered to NAES, and will otherwise cooperate in good faith with and assist Owner in complying with all material terms contained in such Facility Agreements, in each case to the extent related to the performance of the Work. NAES shall incorporate any requirements contained in Facility Agreements, as needed, into the Administrative Procedures Manual. This Section shall not be deemed to make NAES a party to the Facility Agreements or to impose any obligations on NAES under the Facility Agreements. NAES shall not be charged with knowledge of the form or content of any Facility Agreement unless and until it has been provided to NAES by Owner.
- 9.7 Compliance. In order to alert the Facility Work Force to compliance issues, NAES shall insert appropriate procedures in the O&M Manuals, including procedures related to safety and environmental matters.
- 9.8 Operating Records and Reports. NAES shall prepare and maintain operating logs, records and reports documenting the operation and maintenance of the Facility. Such operating data shall include meter, gauge and monitoring readings, maintenance records and fuel records. NAES shall also prepare reports and data that are related to NAES's management of any wastes and Hazardous Materials on-Site in a manner complying with Environmental Laws. All such documents that may be submitted to any Governmental Authority by NAES on behalf of Owner shall be transmitted to Owner for review and approval prior to submittal.
- 9.9 Emergency Action. In the event of an emergency affecting the safety, health or protection of, or otherwise endangering, any persons or property located at or about the Facility (an "Emergency"), NAES shall take immediate action to prevent or mitigate any damage, injury or loss threatened by such Emergency, and shall endeavor to notify Owner of such Emergency and NAES's response as soon as practical under the circumstances. To the extent NAES deems reasonable in response to an Emergency, NAES may take actions and expend funds as necessary to respond to an Emergency. NAES shall develop procedures for a safe and orderly shutdown of the

Facility or other necessary or prudent actions in the event of an Emergency.

- 9.10 O&M Manuals. NAES shall draft and submit to Owner preliminary versions of the O&M Manuals, during Phase II. If Owner submits to NAES proposed revisions or updates to the O&M Manuals, NAES shall, within thirty (30) days of receipt, submit written comments thereon to Owner, and thereafter the Parties will negotiate a final disposition of such proposal. The O&M Manuals shall remain in effect for the Term, subject to revision, amendment or supplementation, and NAES shall be entitled to rely on the existing O&M Manuals until they are revised, amended or supplemented by mutual agreement of the Parties.
- 9.11 Environmental Safety. NAES shall at all times take all reasonable precautions to preserve natural surroundings both within and adjacent to the Facility Site from damage or injury due to its operations. No foreign material or debris shall be permitted to enter the grounds or waters of the Facility Site. No Hazardous Materials shall be stored at the Facility Site without prior approval from Owner.
- 9.12 Protection of Property of Others. NAES shall at all times take reasonable precautions to preserve and protect from injury all property, either public or private, along and adjacent to the Work. NAES shall exercise special care during its operations to avoid injury to underground structures, including, without limitation, wells, pipelines and cables. When necessary, NAES shall cooperate with representatives of public services companies in order to avoid damage to their structures by furnishing and/or erecting suitable supports, props, shoring, or other means of protection. Prior to digging, dredging, boring, drilling, blasting, pile driving or any similar activities reaching the below the surface or below the seabed, NAES shall serve reasonable notice thereof to any operating official or company, or companies, leasing or owning wells, pipelines and cables, and other such structures in danger of being injured by the said operations in order that a representative of said company may be present at the Facility Site.
- 9.13 Safety. NAES shall at all times take all reasonable precautions to maintain the health and safety of, and shall provide reasonable protection to prevent injury to, employees engaged in the Work, employees of Subcontractors and other persons who may be affected thereby. NAES shall at all times comply with all applicable health and safety Legal Requirements. NAES shall have responsibility for developing, implementing and maintaining a comprehensive health and safety program for the Work in accordance with applicable Occupational Safety & Health Administration standards and industry standards.
- 9.14 Security. During Phase II, NAES will develop facility security measures and procedures and submit same to Owner for approval. During Phase III, NAES shall implement or arrange for implementation of security measures in accordance with the Facility security plan. NAES shall at all times take all reasonable precautions, within the scope of the Work, to maintain the security of the Facility in accordance with the Facility security plan.

- 9.15 Labor; Nondiscrimination. NAES shall comply with all applicable state and federal labor and nondiscrimination laws, including, but not limited to, the Fair Labor Standards Act of 1938, as amended, laws related to nonsegregated facilities and equal employment opportunity (including the seven paragraphs appearing in Sec. 202 of Executive Order 11246, as amended), and all standards, rules, regulations, and orders issued pursuant to such state and federal laws.
- 9.16 No Liens. To the extent that payments have been made to NAES by Owner pursuant to the terms hereof, NAES shall not directly or indirectly create, incur, assume or suffer to be created by any of its Subcontractors, laborers, materialmen or other suppliers of goods or services or by any other person, any lien or encumbrance on the Facility Site, the Facility or any part thereof or interest therein, and NAES shall pay or discharge (by bond or otherwise) any such lien or encumbrance for labor, materials, supplies or other charges that, if unpaid, might be or become a lien upon the Facility Site or the Facility or any component thereof. NAES further agrees to discharge immediately of record, by bond or otherwise, any lien or encumbrance that may be filed against the Work, the Facility Site, the Facility or any component thereof, by any of its laborers, suppliers or Subcontractors. NAES shall immediately notify Owner and Financing Parties of the assertion of any lien or encumbrance asserted upon the Work, the Facility Site, the Facility, or any part thereof. Upon the failure of NAES promptly to pay or discharge any lien or encumbrance as required hereby, and following ten (10) days' written notice to NAES, Owner may pay or discharge such lien or encumbrance and immediately recover the reasonable, direct and documented expenses, including, but not limited to, attorneys' fees, incurred by it in connection with such payment or discharge from NAES or set off such expenses against any sums owed by Owner to NAES. If NAES fails to cause such lien either to be released or discharged within said ten (10) day period, then, without limiting any other rights or remedies of Owner hereunder, at law or in equity, Owner shall have the right to deduct one hundred fifty percent (150%) of the amount of the lien from the next payment(s) until NAES shall have caused such lien to be released or discharged. Without limiting the foregoing, NAES shall indemnify, defend and hold harmless Owner from all claims, losses, demands, causes of action or suits of whatever nature arising out of any such lien.

10 PROCUREMENT

- 10.1 Procurement in General. Subject to the Annual Budget and Annual Operating Plan, NAES shall procure goods, services, consumables, parts and equipment as needed from time to time for the operation and maintenance of the Facility. NAES shall nominate, subject to Owner's written approval, responsible persons from among the Facility Work Force to sign purchase orders on behalf of Owner; provided, however, that such purchase orders shall be signed in the name of Owner, and shall be for the exclusive benefit of Owner and the Facility. NAES shall endeavor to negotiate with vendors from standard terms and conditions that are set forth in the Administrative Procedures Manual, including, but not limited to, reasonable warranties in favor of

Owner. NAES shall procure such goods, services, consumables, parts and equipment on a competitive basis and shall obtain at least three proposals before executing any agreement or purchase order if such agreement or purchase order will total more than [REDACTED]. NAES shall notify Owner in writing if NAES is unable to comply with the competitive bidding standard. NAES and NAES's employees shall not accept cash, gifts, discounts or other goods and services of value in connection with the procurement of goods, services, consumables, parts and equipment for the Facility, except for such gifts, meals, or other items that are customarily exchanged in the ordinary course of business.

- 10.2 Non-Budgeted Items. NAES shall not exceed the overall total spending approved in an Annual Budget without prior written approval from Owner; provided, however, that no such approval by Owner is required if, in NAES's reasonable judgment, such purchases are required to address an Emergency.
- 10.3 Extraordinary Items. Notwithstanding that a purchase is contemplated by a Annual Budget, NAES will obtain Owner's written approval prior to a procurement in an amount greater than [REDACTED] or, if an annual blanket purchase order, that NAES reasonably anticipates will exceed [REDACTED] during a Contract Year ("Extraordinary Item"). Owner may elect to directly procure Extraordinary Items.
- 10.4 Contract Administration. NAES shall administer routine vendor relations under purchase orders issued by NAES on behalf of Owner. NAES shall perform certain day-to-day operational tasks required under the Facility Agreements, including, but not limited to, communicating nominations, and scheduling of fuel supplies and power sales in accordance with Owner's written specifications. NAES shall not be deemed to have assumed any of Owner's contractual obligations under the Facility Agreements by means of such performance.
- 10.5 Affiliate Contracts. If NAES intends to issue a purchase order to an Affiliate of NAES, the costs of which are Operating Costs, the terms of any such purchase order shall be in accordance with normal commercial practice, at arm's length on such terms as would be appropriate if the purchase order had been entered into with a person other than an Affiliate of NAES. All such purchase orders shall be subject to prior written approval by Owner.
- 10.6 Waste Management. In accordance with Legal Requirements, NAES shall collect, store and manage on the Facility Site all wastes (including, but not limited to, Hazardous Materials) generated by the operation and maintenance of the Facility. NAES shall coordinate with third party waste transportation and disposal providers for the removal of wastes from the Facility Site by such third parties for disposal. In the course of performing the Work, NAES will not take title or ownership of any wastes (including, but not limited to, Hazardous Materials).

11 SUBCONTRACTS

11.1 Subcontracts. NAES agrees that it is as fully responsible to Owner for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by NAES. NAES covenants to cause any and all Subcontractors, sub-Subcontractors and agents of NAES, whether director or remote, to carry out their respective work, and all performance hereunder in conformance with all performance standards set forth in this Agreement. It is understood that Owner's approval of Subcontractors does not relieve NAES of any of its responsibilities hereunder.

12 LIMITATION ON AUTHORITY

12.1 General Limitations. NAES shall have no authority to make policies or decisions with respect to the overall operation of the Facility as a commercial enterprise; such matters shall be determined by Owner.

12.2 Disposition of Assets. NAES shall have no authority to sell, lease, pledge, mortgage, encumber, convey, or make any license, exchange or other transfer or disposition of the Facility, the Site or any other property or assets of Owner, including, but not limited to, any property or assets purchased by NAES.

12.3 Expenditures. NAES shall have no authority to make any expenditure or acquire any goods or services from third parties, except in substantial conformity with an Annual Budget or as authorized by Owner's Representative; provided, however, that in the event of an Emergency, NAES, without approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 9.9.

12.4 Other Actions. NAES shall have no authority to take or agree to take any other action or actions that, individually or in the aggregate, materially varies from the applicable Annual Budget and Annual Operating Plan; provided, however, that in the event of an Emergency, NAES, without approval from Owner, is authorized to take all reasonable actions to prevent or mitigate such threatened damage, injury or loss in accordance with Section 9.9.

12.5 Lawsuits and Settlements. NAES shall have no authority to settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by Owner or NAES, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to the same.

12.6 Prohibited Transactions. NAES shall have no authority to engage in any other transaction on behalf of Owner not permitted under this Agreement.

13 CONTRACT TERM

- 13.1 Phase I Commencement. NAES's responsibilities under Phase I shall commence on the Effective Date.
- 13.2 Phase II Commencement. NAES's responsibilities under Phase II shall commence on the day following the date on which Owner gives NAES notice to proceed with the Phase II Scope of Work (the "Phase II Commencement Date").
- 13.3 Phase III Commencement. NAES's responsibilities under Phase III shall commence on the day following the date on which Owner notifies NAES that the Facility has achieved commercial operation and is capable of operation compliant with the Permits and Legal Requirements (the "Commercial Operation Date").
- 13.4 Contract Year. The first "Contract Year" shall begin on the Commercial Operation Date and end on December 31 of such year. For each successive year, the Contract Year shall commence on January 1 and end on December 31 of such year, or such earlier date that this Agreement is terminated during any such Contract Year.
- 13.5 Contract Term. Subject to Sections 24.2, 24.3 and 24.6, this Agreement shall remain in full force and effect until the end of the 6th Contract Year (the "Contract Term").
- 13.6 Renewal. This Agreement shall automatically renew, and the Term will extend for one or more additional five (5) year periods (each, a "Renewal Term") following the end of the Contract Term, unless a Party notifies the other Party of its intent to not renew by written notice delivered at least six (6) months prior to the end of any Contract Term.
- 13.7 Transfer of Facility Custody. Upon expiration or termination of this Agreement, NAES shall leave all Facility documents and records, tools, supplies, spare parts, safety equipment, O&M Manuals, and any other items furnished on an Operating Cost or a Reimbursable Cost basis at the Facility, all of which shall remain the property of Owner without additional charge. NAES shall execute all documents and take all other reasonable steps as may be reasonably requested by Owner to assign to and vest in Owner all rights, benefits, interests and title in connection with third party contracts, if any, NAES executed in its own name for the benefit of the Facility; provided, however, that Owner shall assume all liabilities arising under such contracts after the date of assignment. Upon expiration or termination of this Agreement, NAES shall remove its personnel from the Facility Site and will leave the Facility in as good condition as on the Commercial Operation Date, normal wear and tear and any other degradation for which NAES is not responsible excepted, and with an equivalent supply of spare parts, special tools, Consumables and other operating Material as was maintained by NAES hereunder throughout Phase III.
- 13.8 Work Upon Termination. Upon notice of expiration or termination of this Agreement by either NAES or Owner, Owner shall have the right to specify a period of transition

(the “Termination Transition Period”) during which NAES shall (i) continue to operate the Facility in accordance with this Agreement, (ii) cooperate with Owner in planning and implementing a transition to any replacement service provider, and (iii) use its reasonable efforts to minimize disruption of Facility operations in connection with such activities. Owner shall compensate NAES in accordance with this Agreement during the Termination Transition Period. NAES shall permit the new service provider to hire or to contract with the non-managerial Facility Work Force that the new service provider desires to retain at the Facility. To facilitate employee transfer, NAES shall permit the new service provider to interview non-managerial Facility Work Force in a manner and at times that do not interfere with NAES’s responsibility to perform the Work.

14 OPERATING AND REIMBURSABLE COSTS

- 14.1 Operating Account. Beginning with the commencement of Phase II, Owner shall establish a bank account (the “Operating Account”) in the name of Owner for the funding of Operating Costs, and maintain any required minimum balance in the Operating Account. Any interest accruing on such Operating Account shall be for the benefit of Owner. NAES shall nominate Facility Work Force members, to be approved by Owner, who shall have the written authority to sign checks against the Operating Account. NAES shall act as Owner’s payment agent with respect to third party providers of goods and services, and shall pay such third parties only from funds provided by Owner via the Operating Account, and never from NAES’s own funds. As payment agent, NAES acknowledges that it has no right, title or interest in or to the Operating Account and waives any right to claim a security interest in, or take a lien against, the Operating Account.
- 14.2 Operating Costs. Subject to the applicable Annual Budget, NAES shall issue payments from the Operating Account for the “Operating Costs,” which shall include the following:
- 14.2.1 Consumables. Those items consumed or needing regular periodic replacement during operation and maintenance of the Facility, such as, but not limited to, small tools, lubricants, rags, oils, filter media, ammonia, additives and anti corrosion devices, CO₂, water treatment chemicals and other expendable materials, but not including, but not limited to, fuel and spare parts;
- 14.2.2 Equipment and Materials. Equipment, materials, supplies, spare parts, replacement components, tools, office equipment and supplies and utilities used at the Facility Site;
- 14.2.3 Labor. Facility Work Force wages, salaries, overtime, Employee Bonus, customary or required severance payments, unemployment and disability insurance, payroll taxes imposed on wages and benefits, worker’s compensation costs and holidays, vacations and paid time off, group medical, dental and life insurance, defined contribution plans and other employee

benefits;

- 14.2.4 Training. Special training of Facility Work Force conducted at the Facility Site or off the Facility Site and associated travel and living expenses;
 - 14.2.5 Outside Services. Third party advisors, consultants, attorneys, accountants and contractors providing work in support of the Work that cannot reasonably be performed by Facility Work Force;
 - 14.2.6 Regulatory Fees. Fees for Permits required for NAES or Facility Work Force to perform Work;
 - 14.2.7 Community Relations. Community relations and labor relations activities; and
 - 14.2.8 Other Operating Activities. Other activities that NAES must perform under this Agreement for the benefit of the Facility or that are approved in a Budget pursuant to the terms of this Agreement.
- 14.3 Reimbursable Costs. Subject to the applicable Annual Budget, Owner shall reimburse NAES for the following costs incurred by NAES in performing the Work (the “Reimbursable Costs”):
- 14.3.1 Insurance Costs. Costs incurred by NAES for insurance as required by Section 21.2 hereof;
 - 14.3.2 NAES Home Office Time. Home Office Personnel time when performing or supporting the Phase I or Phase II Scope of Work at the rates set forth in Appendix XIII;
 - 14.3.3 NAES Home Office Travel Costs. Reasonable travel expenses for NAES Home Office Personnel when supporting the Work;
 - 14.3.4 Labor Recruitment Costs. Reasonable relocation and recruitment expenses for NAES's Facility Work Force;
 - 14.3.5 Emergency Costs. Costs incurred in response to an Emergency;
 - 14.3.6 Other Reimbursable Costs. Other costs designated by the Parties as Reimbursable Costs pursuant to the terms of this Agreement
- 14.4 No Markup. In no event shall NAES add any mark-up to the Operating Costs or the Reimbursable Costs, provided however that (i) contracts to be performed by an Affiliate or division of NAES and (ii) Home Office Personnel time for Phase I work or extra work under Section 14.6.2 shall not be subject to this limitation, if approved by Owner consistent with the requirements of this Agreement.
- 14.5 Reasonableness Test. In all cases, Operating and Reimbursable Costs shall be

commercially reasonable.

14.6 Home Office Personnel Work.

14.6.1 In Phase III Management Fee. In addition to all of the Services provided by the Facility Work Force, the Phase III Management Fee is intended by the Parties to provide Owner with the benefit of the general knowledge of Home Office Personnel that is relevant to the Facility. Although not capable of exhaustive definition, Home Office Personnel work included within the Phase III Management Fee consists of the following: (i) development and production of standard tools and templates; (ii) transmission of know-how/lessons-learned developed in NAES's fleet; (iii) development and coordination of O&M conferences and webinars; (iv) NAES-initiated Home Office Personnel visits to the Facility, including one safety and one environmental site program evaluation per year, the scope of which is established by NAES; (v) quality assessment and management of Site Personnel performance; (vi) provision of responses to Site Personnel questions regarding human resources, accounting, payroll and legal issues that arise during performance of the Services; (vii) publication and delivery of general O&M guidance materials; (viii) processing of payroll, benefits administration, and accounting relating to NAES invoicing; and (ix) monitoring regulatory developments in human resources, federal environmental law, safety and NERC reliability standards, and provision of periodic updates regarding these compliance matters to Site Personnel.

14.6.2 Exclusions. For the avoidance of doubt, Home Office Personnel work that is in the nature of consulting, customized research, analysis, adaptation or population of general NAES materials specifically for the Facility is excluded from the Phase III Management Fee. Although not capable of exhaustive definition, examples of work or items excluded from the Fee that Owner may elect to have performed by Home Office Personnel for additional compensation include: (i) environmental consulting, compliance and reporting services, program development, auditing, permitting, legacy or pre-existing issues support, and monitoring of state environmental law; (ii) safety consulting or audits of safety practices; (iii) engineering or other support for plant emergencies, operational events, capital projects or other Facility improvement initiatives; (iv) drafting of O&M Manuals; (v) input of Facility data into Facility information systems; (vi) labor union consulting, bargaining and grievance procedures; (vii) NERC consulting, audits or audit preparation; (viii) staffing services performed by NAES's staffing services division; and (ix) asset management functions. If the Plant Manager or Home Office Personnel identify a need for such extra work, NAES may recommend such work or offer to perform such work, and the Plant Manager or Home Office Personnel will pursue approval for such work with the Owner's Representative.

15 BILLING AND PAYMENT

15.1 Phase I Billing and Payment. During Phase I, Owner shall compensate NAES on a time and material basis for services performed at the request of Owner per a Task Authorization, in the form set out in Appendix XII. For such services, NAES shall invoice Owner as provided for in Section 15.5.

15.2 Phase II Billing and Payment. During Phase II, Owner shall compensate NAES on a cost reimbursable basis and fixed fee basis for the Phase II Scope of Work as detailed in Appendix I.

15.2.1 Owner shall pay the Operating Costs and Reimbursable Costs as described in Section 14.

15.2.2 Phase II Management Fee. NAES shall be entitled to a fee of [REDACTED] [REDACTED] (the "Phase II Management Fee") upon the Phase II Commencement Date, which Phase II Management Fee shall be payable in equal monthly installments beginning on the Phase II Commencement Date, calculated based upon the projected Commercial Operation Date as of the Phase II Commencement Date, as adjusted by the net percentage increase and payable within thirty (30) days of Owner's receipt of the monthly invoice provided to Owner by NAES as set forth below in this Section 15.2.2. Owner may prepay the Phase II Management Fee in whole or in part at any time without penalty. If the actual Commercial Operation Date occurs prior to the previously projected Commercial Operation Date, any unpaid Phase II Management Fee shall be payable to NAES on the actual Commercial Operation Date. If the actual Commercial Operation Date does not occur on or prior to the previously projected Commercial Operation Date, Owner shall pay to NAES an additional fee of [REDACTED] [REDACTED] for each month past the projected Commercial Operation Date that the actual Commercial Operation Date does not occur, which additional fee shall be pro-rated for partial months. Effective as of January 1, 2012, any unpaid portion of the Phase II Management Fee shall be increased by the net percentage increase, if any, between the most recently published Index available on such day and the Index in effect twelve months prior to such day. On or before the fifth (5th) day of each month, NAES shall invoice Owner for the Phase II Management Fee for the preceding calendar month. In the event of any dispute between Owner and NAES over the invoiced amount, Owner shall pay to NAES all undisputed amounts and the parties shall resolve all disputed amounts pursuant to Section 26 of this Agreement.

15.3 Phase III Billing and Payment. During Phase III, Owner shall compensate NAES on a cost reimbursable, fixed fee and incentive fee basis.

15.3.1 Owner shall pay the Operating Costs and Reimbursable Costs as described in Section 14.

15.3.2 Phase III Management Fee. Owner shall pay to NAES an annual fee of [REDACTED] (the “Phase III Management Fee”). The Phase III Management Fee shall be earned in monthly installments of one-twelfth (1/12) of such fee. Effective as of January 1, 2012, and as of each January 1st thereafter during the Contract Term, the Phase III Management Fee shall be increased by the net increase, if any, between the most recently published Index available on such day and the Index in effect twelve months prior to such day. On or before the fifth (5th) day of each month, NAES shall invoice Owner for the Phase III Management Fee for the preceding calendar month. Owner shall pay NAES within thirty (30) days following receipt of such invoice.

15.3.3 Phase III Bonus/Liquidated Damages. During each Operating Year, NAES is eligible to earn a Bonus or pay Liquidated Damages to Owner, provided that the Maximum Bonus shall not exceed [REDACTED] and the Maximum Liquidated Damages shall not exceed [REDACTED] which amounts shall be escalated in the same manner as the Phase III Management Fee. The Bonus/Liquidated Damages payment is calculated annually by comparing actual Facility and NAES performance to the performance goals defined in Appendix VI. NAES will submit its calculation to Owner for approval no later than February 1 following the Operating Year for which the payment is calculated together with an invoice for the Bonus, if any. Owner will pay NAES the undisputed portion of the Bonus or NAES will pay Owner the undisputed portion of Liquidated Damages, if any, by the Due Date for the applicable invoice.

15.3.4 Limitation on Liquidated Damages. NAES will not be required to pay Liquidated Damages or pay increased Liquidated Damages as a result of failure of the Facility or any equipment therein to the extent that such failure results from any cause beyond the control or without the fault of NAES.

15.3.5 Necessity for Liquidated Damages. The Parties acknowledge and agree that (i) Owner suffers damage by failure of NAES to achieve certain performance levels, (ii) it is difficult or impossible to determine with precision the amount of damages that would, or might be, incurred by Owner as a result of a failure by NAES to achieve certain performance levels, (iii) any sums that become payable by NAES to Owner are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and (iv) such Liquidated Damages represent a reasonable endeavor by the Parties to estimate a fair compensation for the losses that are reasonably be anticipated from such failure. Liquidated Damages are the sole and exclusive remedy for Owner for the failure of NAES to meet the standards set forth in Appendix VI.

15.4 Operating Cost Funding Process. No later than fifteen (15) days prior to the start of

each month, NAES shall deliver to Owner a Draw Request for sufficient funds as reasonably anticipated by NAES to become due and payable during the following month as Operating Costs. NAES shall itemize each Draw Request in reasonable detail. NAES shall base each Draw Request upon the applicable Annual Budget and any modifications thereof, and adjust the Draw Request to (i) credit Owner for amounts deposited in the Operating Account in response to previous Draw Requests that have not been spent as of the time of the current Draw Request, except for (A) any minimum balance and (B) amounts not yet spent but for which commitments have been incurred; (ii) credit Owner for all interest that has accrued in the Operating Account since the most recent adjustment; and (iii) claim all bank charges relating to the Operating Account that have accrued since the most recent adjustment. On or before the last day of the month during which a Draw Request is made, Owner shall deposit the requested funds in the Operating Account.

- 15.5 Reimbursable Cost Invoicing Process. On or before the fifth (5th) day of each month, NAES shall invoice Owner for Reimbursable Costs. The invoice shall include the Reimbursable Costs incurred during the preceding calendar month and be supported by receipts and other appropriate documentation. Owner shall pay NAES within thirty (30) days following receipt of such invoice.
- 15.6 Records and Accounts. NAES shall keep and maintain books, records, accounts and other documents in accordance with generally accepted accounting principles consistently applied sufficient to reflect accurately and completely all costs incurred pursuant to this Agreement, during all phases of this Agreement, together with any other costs which are the basis of a claim by NAES hereunder. Such records shall include payroll information and reports, receipts, vouchers, inventories, and accounts pertaining to the services, as well as complete copies of all subcontracts, purchase orders, service agreements and other such agreements entered into in connection therewith. Owner, its representatives and any firm of independent auditors appointed by the Owner shall, at Owner's expense, have access, upon reasonable advance notice in writing during normal business hours, to all such records maintained by NAES, for purposes of auditing and verifying any such costs and expenses claimed to be due and payable hereunder; provided, however, that such audit rights will not extend to any fixed amounts or fixed rates agreed to in advance by Owner. Owner shall have the right to reproduce such records at its expense, and NAES shall keep and preserve all such records for a period of at least two years from and after the close of the Contract Year in which such costs or expenses were incurred. Upon completion of any such audit, the parties will prepare a written summary of the audit findings.
- 15.7 Right to Adjustment. If pursuant to any audit or review conducted by either NAES or Owner, the reviewing party determines that an amount previously reported or invoiced by NAES and paid by the Owner was incorrect, the reviewing party may recover such amount from the other party, or deduct such amount from any payment which thereafter may become due under this Agreement, in each case with interest from the date of the invoice or payment, as appropriate, at the Late Payment Rate.

However, neither party shall have the right to challenge any monthly statement rendered or received hereunder, or to bring any court or administrative action questioning the propriety of the amount or invoice, after a period two (2) years from the day the amount was reported or the invoice was rendered.

- 15.8 Late Payment. Any amounts not paid to NAES when due shall bear interest at the Late Payment Rate from the due date to the date of payment.

16 ASSIGNMENT

- 16.1 Assignment by Owner. Owner may assign or collaterally assign its interest and obligations hereunder to Financing Parties or any financial institution or institutions participating in the financing of the Facility. This Agreement shall not be assigned by Owner to any other party without the prior written consent of NAES, which consent shall not be unreasonably withheld. In the event of the assignment of this Agreement by Owner to Financing Parties or any financial institution or institutions participating in the financing of the Facility, Owner shall remain fully responsible according to this Agreement for all of its obligations and liabilities hereunder. No such assignment shall alter or impair the rights of any surety. NAES agrees to provide such legal opinions and consents as may be reasonably requested by Owner and Financing Parties in connection with such financing.
- 16.2 Assignment by NAES. This Agreement shall not be assigned by NAES without the prior written consent of Owner.
- 16.3 Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any successor or assignee acquiring an interest hereunder consistent with Sections 16.1 and 16.2 hereof.

17 TAXES AND FEES

- 17.1 NAES to Pay. NAES shall pay (a) all corporate income taxes, state professional service taxes, employer taxes or corporate licensing taxes, and (b) all governmental fees, assessments, charges or levies imposed upon NAES concerning the Work (other than fees and charges for approvals, licenses and permits required to be obtained by Owner pursuant to Section 4.6 hereof)
- 17.2 Owner's Remedy. Upon the failure of NAES to promptly pay any tax or fee for which it is liable pursuant to this Section, Owner may pay such tax or fee following ten (10) days' written notice to NAES, and immediately recover the expenses incurred by it concerning such payment from NAES or set off such expenses against any sums owed by Owner to NAES. Notwithstanding the foregoing, Owner shall provide NAES with a valid tax exemption certificate to the extent such a certificate is available.
- 17.3 Other Taxes and Fees. Owner shall pay all taxes and fees imposed by any

Governmental Authority that NAES is not obligated to pay pursuant to Section 17.1.

18 FACILITY SITE

- 18.1 Facility Site. The “Facility Site” shall be the Facility Site set forth more particularly in Appendix V hereto.
- 18.2 Rights in Facility Site. Owner hereby grants to NAES a license to enter upon and to use the Facility Site for the purposes of performing the Work. NAES shall occupy and use the Facility Site solely to perform the Work according to the provisions of this Agreement. NAES shall not occupy or use any part of the Facility Site for any purpose, operation or use that is not necessary or incidental to the purposes set forth in this Agreement.
- 18.3 Clean-Up. NAES shall always keep the Facility Site free from accumulation of excess waste materials or rubbish caused by its performance of the Work.

19 LIMITATION OF LIABILITY

- 19.1 Limitation on Liability. In no event shall Owner or NAES, or their respective subcontractors, vendors of any tier, or their respective officers, directors, employees, agents or affiliates be liable for any indirect, special, incidental or consequential damages of any nature arising at any time for any reason arising out of this Agreement or the breach thereof, whether based on contract, tort (including negligence), strict liability, professional liability, contribution, warranty, or otherwise, including, without limitation, loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, service interruptions, cost of purchased or replacement power, claims of customers, or loss of use of capital or revenue. The remedies available to Owner and NAES in connection herewith whether arising in contract, tort (including negligence or strict liability), warranty or otherwise shall be exclusively those expressly set forth herein. The Parties further confirm that the express remedies and measures of damages provided by this Agreement satisfy the essential purposes of the Agreement.
- 19.2 Further Limitation of NAES’s Liability. Notwithstanding any other provision in this Agreement to the contrary, NAES's liability hereunder shall further be limited as follows:
- 19.2.1 Liquidated Damages. NAES's liability for any failure of the Facility to achieve any required level of performance is limited to the Maximum Liquidated Damages, as determined in accordance with Appendix VI. Payment of Liquidated Damages under Appendix VI is Owner's sole and exclusive remedy for lost Facility performance resulting from any deficiencies in NAES's performance of the Work.
- 19.2.2 NAES's Total Aggregate Liability. Notwithstanding anything to the contrary

in this Agreement, the total aggregate liability of NAES to Owner for all liabilities arising out of any events occurring or claims made in connection with the performance of the Work under this Agreement in any Contract Year, is the sum of the Management Fee applicable to such Contract Year provided, however, that this limitation does not apply to any third party bodily injury and property damage indemnity obligation of NAES arising under Section 20.

- 19.3 No Implied Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR GUARANTEES TO THE OTHER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND BOTH PARTIES DISCLAIM AND WAIVE ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 19.4 No Recourse. No recourse under or upon any obligation contained in this Agreement shall be had against American Renewables, LLC, BayCorp Holdings, Ltd., Energy Management, Inc., Tyr Energy, Inc., EMI Nacogdoches, LLC, BayCorp Nacogdoches, LLC, Tyr Biomass, LLC or any partner, member, manager, stockholder, director, officer or employee of Owner, Owner or thereof. NAES expressly waives and releases all right to assert liability under this Agreement against, or to satisfy any claim arising hereunder or thereunder against, any such person out of any assets of any such person other than the interest of any such person in Owner.

20 INDEMNIFICATION

- 20.1 Indemnities. Each Party (the “Indemnifying Party”) agrees to indemnify fully and hold harmless the other Party and its affiliates and principals, and the managers, members, stockholders, directors, officers, agents and employees of each of them (the “Indemnified Parties”), from and against any and all damages, costs, claims, expenses and liabilities (including, without limitation, reasonable attorneys fees) (i) for bodily injury or death to any individual, or damage to a third party’s property that may arise from the Indemnifying Party’s fault, negligent act or omission, or willful misconduct hereunder, except to the extent arising from the fault, negligent act or omission, or willful misconduct of the Indemnified Parties, (ii) because of any violation of laws, codes, ordinances or regulations to be complied with by the Indemnifying Party hereunder.
- 20.2 NAES’s Lien Indemnity. NAES, as the Indemnifying Party, agrees to indemnify fully and hold harmless the Indemnified Parties from and against any and all damages, costs, claims, expenses and liabilities (including, without limitation, reasonable attorneys fees) as a result of any demands, claims or liens by laborers, mechanics, materialmen, suppliers or subcontractors for nonpayment of amounts due as a result of furnishing materials or work to NAES that are payable by NAES for the Work to the extent that Owner has paid NAES for the same pursuant to the terms hereof.

20.3 Owner Indemnity for Claims that NAES is Operator. Notwithstanding anything to the contrary contained herein, it is understood and agreed that: (i) in the course of performing Work hereunder, neither NAES nor any of its officers, directors, employees, agents, representatives or Affiliates is, has been or will be deemed to be, nor will any such Person have responsibility as, an Operator of the Facilities for purposes of Environmental Law; and (ii) Owner is now and shall at all times be deemed to be, and shall be solely responsible as, and shall take no position inconsistent with its status as, the sole Operator of the Facilities for purposes of Environmental Law. Owner agrees to use its best efforts to take or cause to be taken all action, to do or cause to be done and to assist and cooperate with NAES in doing all things necessary, proper or advisable to establish that Owner is the sole Operator of the Facility for purposes of Environmental Law, and to defend any claim that NAES or any of its officers, directors, employees, agents, representatives or Affiliates is an Operator of the Facility for such purposes.

20.4 Environmental Indemnification.

20.4.1 Owner Indemnity for Environmental Liabilities. Subject to the limitations of liability in Section 19.1, Owner shall indemnify and hold harmless the NAES Indemnified Parties from and against, and no NAES Indemnified Parties shall be responsible hereunder for, any liabilities, including all civil and criminal fines or penalties and other costs and expenses incurred, assessed or sustained by or against any Person, as a result of or in connection with any matters governed by Environmental Laws directly or indirectly related to or arising out of (i) the design, permitting or construction of the Facility or the condition of the Site, and any adjacent parcels, (ii) the operation, maintenance, ownership, control or use of the Facility or otherwise related to the Facility, including any claims that NAES is an Operator of the Facility, and (iii) the offsite transportation, treatment or disposal of all wastes generated at the Facility and any properties included within or adjacent to the Site, whether occurring before or after the Effective Date (collectively, "Environmental Liabilities"), including any Environmental Liabilities arising out of (x) any non-compliance by Owner with any condition, reporting requirement or other environmental requirement under any Permit or Environmental Law or other Applicable Law, whether related to air, opacity, water, solid waste or Hazardous Materials, or (y) the actual or alleged existence, generation, use, emission, collection, treatment, storage, transportation, disposal, recovery, removal, release, discharge or dispersal of Hazardous Materials, provided, however, Owner's indemnification obligation in this Section 20.4.1 shall exclude any NAES Environmental Liabilities for which NAES is liable under Section 20.4.2.

20.4.2 NAES Indemnity for Environmental Liabilities. Subject to the provisions of Sections 20.1 and 20.3 and the limitations of liability in Sections 19.1 and 19.2, NAES shall indemnify and hold harmless the Owner Indemnified Parties

from and against, and no Owner Indemnified Party shall be responsible hereunder for any liabilities, including all civil and criminal fines or penalties and other costs and expenses incurred, assessed or sustained by or against any person as a result of or in connection with any matters governed by Environmental Laws to the extent caused by NAES's (i) failure to perform the Services in accordance with the provisions of this Agreement and Good Utility Practice or (ii) fraud, negligence or willful misconduct (the "NAES Environmental Liabilities"). NAES understands and agrees that any NAES Environmental Liabilities paid by NAES pursuant to this Section 20.4.2 shall not be Reimbursable Costs hereunder.

20.4.3 Governmental Actions. During the Term of this Agreement, NAES shall cooperate and assist Owner with Owner's acquisition of data and information, and preparation and filing with appropriate Governmental Authorities of any notices, plans, submissions, or other materials and information necessary for compliance with applicable Environmental Laws and the requirements of any Permits related to the Facility. All such environmental reports shall be submitted by, and in the name of, Owner and not NAES. All costs associated therewith, including the costs of any outside consultants, legal services, Governmental Authority charges, sampling and remedial work, shall be paid by Owner as an Operating Cost or reimbursed to NAES as a Reimbursable Cost, unless such costs are incurred arising out of or associated with (i) NAES Environmental Liabilities that are subject to NAES's indemnity obligation pursuant to Section 20.4.2 hereof or (ii) categories of O&M Scope of Work set forth in Section 14.6.1. Any action taken by NAES pursuant to any such applicable Environmental Law, including proceedings and filings made in connection therewith, shall be undertaken, and any Reimbursable Costs associated with any such compliance action shall only be incurred, by NAES with Owner's prior consent, unless a Governmental Authority or Legal Requirement requires NAES to incur such costs and expenses prior to obtaining such consent. Nothing contained herein shall be construed as requiring NAES to take any corrective action with respect to the operation, maintenance, use or condition of the Facility unless (x) affirmatively and expressly directed in writing to so do by Owner and appropriate funding is made available by Owner, or (y) affirmatively and expressly directed to do so by a Governmental Authority, in order to comply with any Environmental Law, in which case the cost of any corrective actions so undertaken shall be deemed an Environmental Liability subject to Owner's indemnity obligation pursuant to Section 20.4.1 hereof (if not otherwise paid as a Reimbursable Cost hereunder), unless such Environmental Liability arises out of or is associated with NAES Environmental Liabilities subject to NAES's indemnity obligation pursuant to Section 20.4.2 hereof.

20.5 Defense. When required to indemnify an Indemnified Party, the Indemnifying Party shall assume and conduct with due diligence and in good faith the defense of any such

suit against such party, whether the Indemnifying Party be joined therein; provided, however, that without relieving the Indemnifying Party of its obligations hereunder, the Indemnified Party may elect to participate, at its own expense, in the defense of any such suit.

21 INSURANCE

21.1 Insurance by Owner. Owner shall maintain in full force and effect at all times within ten (10) days after the Construction Commencement Date and continuing through the Contract Term, insurance policies with insurance companies authorized to do business in the State of Florida with a Best Insurance Reports rating of “A-“ or better and a financial size category of “IX” or higher (or other companies acceptable to the Financing Parties), with limits and coverage provisions in no event less than the limits and coverage provisions set forth below:

21.1.1 All Risk Property. All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against “all risks” of physical loss or damage, including coverage for earth movement, flood and boiler and machinery. The All Risk Property insurance may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The All Risk Property insurance shall be maintained in accordance with the terms available in the insurance market for similar facilities. The All Risk Property insurance shall be primary with respect to any other insurance coverage that may be available to NAES for Owner’s property, except in the event of NAES’s gross negligence or willful misconduct.

21.1.2 Workers’ Compensation Insurance: Workers’ compensation insurance as required by state laws.

21.1.3 Employer’s Liability Insurance: Employer’s liability insurance for all employees of Owner in the amount of [REDACTED] per accident or equivalent self-insurance.

21.1.4 General Liability Insurance: Liability insurance against claims for personal injury (including bodily injury and death) and property damage. Such insurance shall provide coverage for products completed operations, blanket contractual, explosion, collapse and underground coverage, broad form property damage and personal injury insurance with a [REDACTED] limit per occurrence and [REDACTED] in the aggregate.

21.1.5 Automobile Liability Insurance: Automobile liability insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned (if any), leased, non-owned and hired vehicles used in the performance of Owner’s obligations under this Agreement with a [REDACTED] minimum limit per occurrence for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever

applicable.

21.1.6 The amounts of insurance required in the foregoing subsections 21.1.4 and 21.1.5 may be satisfied by Owner purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified above.

21.2 Insurance by NAES. NAES shall maintain in full force and effect at all times within ten (10) days after the Construction Commencement Date and continuing through the Contract Term, insurance policies with insurance companies authorized to do business in the State of Florida with a Best Insurance Reports rating of “A-“ or better and a financial size category of “IX” or higher (or other companies acceptable to the Financing Parties), with limits and coverage provisions in no event less than the limits and coverage provisions set forth below:

21.2.1 Workers’ Compensation Insurance: Workers’ compensation insurance as required by state laws.

21.2.2 Employer’s Liability Insurance: Employer’s liability insurance for all employees of NAES in the amount of [REDACTED] per accident or equivalent self-insurance.

21.2.3 General Liability Insurance: Liability insurance against claims for personal injury (including bodily injury and death) and property damage. Such insurance shall have a [REDACTED] minimum limit per occurrence and in aggregate for combined bodily injury and property damage.

21.2.4 Automobile Liability Insurance: Automobile liability insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned (if any), leased, non-owned and hired vehicles used in the performance of NAES’s obligations under this Agreement with a [REDACTED] minimum limit per occurrence for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever applicable.

21.2.5 Excess Coverage. Excess liability insurance covering liability in excess of the insurance described in Sections 21.2.2, 21.2.3 and 21.2.4 with a [REDACTED] minimum limit per occurrence/annual aggregate. The amounts of insurance required in the foregoing Sections 21.2.2, 21.2.3 and 21.2.4 may be satisfied by NAES purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified in this Section.

21.2.6 Aircraft Insurance: If the performance of this Agreement requires the use of any aircraft that is owned, leased or chartered by NAES or any of its Subcontractors, aircraft liability insurance with a [REDACTED] minimum limit

per occurrence for property damage and bodily injury, including passengers and crew.

- 21.3 Additional Insureds. Each of Owner and Financing Parties, together with their respective officers, directors, Affiliates and employees shall be an additional insured with respect to all liability policies procured by NAES pursuant to this Agreement (other than workers compensation policies). Each of NAES, its respective officers, directors, Affiliates and employees shall be an additional insured with respect to all liability policies procured by Owner pursuant to this Agreement (other than workers compensation policies).
- 21.4 Waiver of Subrogation. Owner shall waive any rights of subrogation of its insurers against NAES and its Affiliates together with their respective officers, directors, Affiliates and employees. NAES shall waive any rights of subrogation of its insurers against Owner and Financing Parties together with their respective officers, directors, Affiliates and employees.
- 21.5 Certificates of Insurance. Certificates of insurance in a form reasonably satisfactory to Owner shall be furnished by NAES to Owner on or before the Construction Commencement Date.
- 21.6 Cancellation. NAES shall provide at least thirty (30) days notice to Owner before cancellation or material change to policies required hereunder.
- 21.7 Primary Coverage. Insurance maintained by NAES shall state that such policy (other than an excess policy) is primary, except to the extent provided in 21.1.1, with respect to any other insurance coverage available to Owner or NAES or any additional insured, and that all provisions, except the policy limits, shall operate in the same manner as if there were a separate policy covering such insured under each such policy.
- 21.8 Non-Recourse Premiums. Insurance maintained by NAES shall grant no recourse for payment of any premium against Owner or any additional insured for insurance required to be furnished by NAES.
- 21.9 Evidence of Insurance for Financing Parties. Owner shall cause NAES, after the Effective Date and upon request from time to time, to deliver to the Financing Parties such suitable evidence of insurance as may be reasonably requested by the Financing Parties.

22 REPRESENTATIONS AND WARRANTIES

22.1 Owner's Representations and Warranties.

- 22.1.1 Organization. Owner represents and warrants to NAES that Owner is duly organized and validly existing under the laws of the State of Delaware and

that Owner is qualified to do business in the State of Florida.

- 22.1.2 Power and Authority. Owner represents and warrants to NAES that Owner has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
- 22.1.3 Duly Authorized. Owner represents and warrants to NAES that the execution, delivery and performance of this Agreement by Owner have been duly authorized by all requisite corporate action.
- 22.1.4 Duly Executed. Owner represents and warrants to NAES that this Agreement has been duly executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditor's rights generally and to general principles of equity.
- 22.1.5 No Breach of Existing Indebtedness. Owner represents and warrants to NAES that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Owner or any valid order of any court, or any regulatory agency or other body having authority to which Owner is subject.
- 22.1.6 No Breach of Law. Owner represents and warrants to NAES that none of the execution, delivery and performance by Owner of this Agreement, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflicts or will conflict with or result in a breach or violation of its operating agreement or any of the terms, conditions, or provisions of any law, governmental rule or regulation or any applicable order, writ, injunction, judgment or decree of any Governmental Authority against Owner.
- 22.1.7 No Governmental Authorization Needed. Owner represents and warrants to NAES that no authorization, consent, approval, order of, notice to or registration, qualification, declaration or filing with, any Governmental Authority, is required for the execution, delivery and performance by Owner of this Agreement or the carrying out by Owner of the transactions contemplated hereby.
- 22.1.8 Financial Condition. Owner represents and warrants to NAES that there are, to the best of Owner's knowledge, no judgments, lawsuits, actions or proceedings, pending or threatened, whether involving a governmental authority or private party, against Owner (or any member entities), that, if decided adversely against Owner (or any member entity), would prevent it

from fulfilling its obligations hereunder or under this Agreement.

22.2 NAES's Representations and Warranties.

22.2.1 Organization. NAES represents and warrants to Owner that NAES is duly organized and validly existing under the laws of the State of Washington and that NAES is qualified to do business in the State of Florida.

22.2.2 Power and Authority. NAES represents and warrants to Owner that NAES has the requisite power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

22.2.3 Duly Authorized. NAES represents and warrants to Owner that the execution, delivery and performance of this Agreement by NAES have been duly authorized by all requisite corporate action.

22.2.4 Duly Executed. NAES represents and warrants to Owner that this Agreement has been duly executed and delivered by NAES and constitutes the legal, valid and binding obligation of NAES, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditor's rights generally and to general principles of equity.

22.2.5 No Breach of Existing Indebtedness. NAES represents and warrants to Owner that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on NAES or any valid order of any court, or any regulatory agency or other body having authority to which NAES is subject.

22.2.6 No Breach of Law. NAES represents and warrants to Owner that none of the execution, delivery and performance by NAES of this Agreement, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflicts or will conflict with or result in a breach or violation of NAES's corporate charter or any of the terms, conditions, or provisions of any law, governmental rule or regulation or any applicable order, writ, injunction, judgment or decree of any Governmental Authority against NAES.

22.2.7 No Governmental Authorization Needed. NAES represents and warrants to Owner that no authorization, consent, approval, order of, notice to or registration, qualification, declaration or filing with, any Governmental Authority, is required for the execution, delivery and performance by NAES of this Agreement or the carrying out by NAES of the transactions contemplated hereby.

- 22.2.8 Financial Condition. NAES represents and warrants to Owner that there are, to the best of NAES's knowledge, no judgments, lawsuits, actions or proceedings, pending or threatened, whether involving a governmental authority or private party, against NAES, that, if decided adversely against NAES, would prevent it from fulfilling its obligations hereunder or under this Agreement.
- 22.2.9 Personnel. NAES represents and warrants to Owner that its operating personnel shall be qualified and experienced in operating bubbling fluidized bed boiler power plants generally and that, after completion of the Facility training provided by NAES hereunder, all NAES personnel shall be qualified and experienced in the specific duties to which they are assigned.
- 22.2.10 Labor Relations. NAES represents and warrants to the Owner that NAES is not a party to any collective bargaining or other similar agreement with its employees that would impact its activities under this Agreement and is not, to NAES's knowledge, the object of any union organization effort with respect to its employees. NAES at all times shall use and cause its subcontractors to use best reasonable efforts to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes. Notwithstanding any provision herein to the contrary, NAES acknowledges and agrees that it does not have the authority to, and shall not, enter into any contract or collective bargaining with respect to labor matters concerning the Facility that purports to bind or otherwise obligate the Owner or any successor of the Owner.

23 COVENANTS RELATING TO CONSTRUCTION FINANCING

- 23.1 Certificates Requested by Financing Parties. NAES shall provide, execute and deliver to Owner, or at Owner's request, to Financing Parties, such documents, certificates, instruments and information as shall be within the control of NAES to provide and as Owner or Financing Parties may reasonably request as a condition to any takedown of any portion of the Facility Financing; provided in no event shall NAES be obligated to amend or modify its rights or obligations under this Agreement or incur any incremental or out-of-pocket costs to provide such cooperation.
- 23.2 Additional Documents Requested by Financing Parties. NAES shall promptly execute any additional documentation as may be mutually agreed to in form and substance, reasonably requested by Financing Parties, including, but not limited to, documents evidencing NAES's consent to assignment of this Agreement as a security to Financing Parties or otherwise upon the occurrence of events specified in such documents and any reasonable modifications to this Agreement.
- 23.3 Amendments Requested by Financing Parties. NAES acknowledges and agrees that, as a condition to making loans to Owner, Financing Parties may from time to time require amendments to this Agreement and certain documents from NAES. In

connection therewith, NAES agrees to furnish to Financing Parties written information, certificates, opinions, affidavits and other like documents as Financing Parties may reasonably request. NAES shall negotiate in good faith amendments to this Agreement reasonably requested by Financing Parties. In addition, NAES shall promptly execute any additional documentation, as may be mutually agreed upon in form and substance that is reasonably requested by Financing Parties.

- 23.4 Financing Parties as Third-party Beneficiary. NAES acknowledges and agrees that Financing Parties is intended to be a third party beneficiary of the provisions of this Agreement regarding assignment. In that regard, NAES acknowledges and agrees that it will not, without the prior written consent of Financing Parties, amend or modify any such provisions regarding assignment of this Agreement in any respect.

24 DEFAULT

- 24.1 NAES Events of Default. Each of the following shall be considered a default by NAES (each such event being called a “NAES Event of Default”):

24.1.1 NAES commits a material breach of this Agreement, including, but not limited to, a breach of the performance standards set forth in Section 9, or defaults in any respect in the observance or performance of any other material covenant, condition, or agreement of NAES contained herein and NAES has not commenced to cure such default within thirty (30) days after receipt of written notice from Owner specifying the default and demanding that the same be remedied;

24.1.2 unless approved in writing by Owner pursuant to Section 10.5, NAES adds mark-up to any Operating Costs or the Reimbursable Costs and NAES has not commenced to cure such default within thirty (30) days after receipt of written notice from Owner specifying the default and demanding that the same be remedied;

24.1.3 NAES or NAES’s employees accept cash, gifts, discounts or other goods and services of value in connection with the procurement of goods, services, consumables, parts and equipment for the Facility, except for such gifts, meals, or other items that are customarily exchanged in the ordinary course of business, and NAES has not commenced to cure such default within thirty (30) days after receipt of written notice from Owner specifying the default and demanding that the same be remedied;

24.1.4 NAES defaults in any material respect in carrying and maintaining insurance hereunder and NAES has not commenced to cure such default thirty (30) days after receipt of written notice from Owner specifying the default and demanding that the same be remedied;

24.1.5 any representation or warranty made by NAES herein or in any certificate,

statement, document or invoice given pursuant to the terms hereof proves to be false or misleading in any material respect as of the date on which it was made, and NAES has not commenced to remedy any material adverse consequences to Owner directly caused thereby within thirty (30) days after receipt of written notice from Owner specifying the default and demanding that the same be remedied;

24.1.6 NAES files a petition commencing a voluntary case under the Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other federal or state bankruptcy law, or is adjudicated a debtor or is declared bankrupt or insolvent under the Bankruptcy Code, or any other federal or state law as now or hereafter in effect relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the Bankruptcy Code or an answer proposing the adjudication of NAES as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code, any other federal or state bankruptcy law is filed in any court and NAES consents to or acquiesces in the filing thereof or such petition or answer is not be discharged or denied within thirty (30) days after the filing thereof;

24.1.7 a custodian, receiver, trustee or liquidator of NAES, or of all or substantially all of the assets of NAES, is appointed in any proceeding brought by NAES, or any such custodian, receiver, trustee, or liquidator is appointed in any proceeding brought against NAES and is not be discharged within ninety (90) days after such appointment, or if NAES consents to or acquiesces in such appointment;

24.1.8 NAES fails to pay all undisputed amounts when due to third parties and NAES has not commenced to cure such default within ten (10) days after receipt of written notice from Owner specifying the default and demanding that the same be remedied; or

24.1.9 NAES fails to comply with or violates any applicable Legal Requirements and NAES has not commenced to cure such default within (30) days after receipt of written notice from Owner specifying the default and demanding that the same be remedied.

24.2 Default by NAES. If, during the continuance of this Agreement, one or more NAES Events of Default occurs, then in any such case, Owner, while such NAES Event of Default is continuing, at its option, may (a) terminate this Agreement and (b) take control of the Facility. In addition, NAES shall be liable for all costs and expenses incurred by reason of the occurrence of any NAES Event of Default or the exercise of Owner's remedies with respect thereto, including, without limitation, all costs and expenses incurred in connection with any suit to enforce Owner's rights subject to the

limitations of liability contained herein.

- 24.3 Termination at Owner's Option. Owner may terminate this Agreement at any time by ninety (90) days written notice to NAES setting forth that the termination is for Owner's convenience and the date upon which such termination shall become effective.
- 24.4 Owner's Actions Upon Owner Termination. Within fifteen (15) days of filing any notice of termination pursuant to Section 24.2, Owner shall pay NAES for all amounts due to NAES up to the date of termination according to the provisions of Section 13.7. Following such payment, NAES shall be deemed to have waived any claim for damages, including, but not limited to, loss of anticipated profits on account of this Agreement, and NAES shall be relieved of all warranties and guarantees of this Agreement. Within fifteen (15) days of filing any notice of termination pursuant to Section 24.3, Owner shall pay NAES for Work rendered by NAES through the termination date, including all Reimbursable Costs, the Phase II Management Fee, and the then-applicable annual Phase III Management Fee and the Bonus, if any, earned through the date of termination but not paid, as such amounts are offset by any Liquidated Damages due to Owner through such date according to the provisions of Section 13.7. Within fifteen (15) days of filing any notice of termination pursuant to Section 24.3, Owner shall also pay NAES an early termination fee as follows: (i) if the termination is effective at any time after the Phase II Commencement Date and before the end of the third (3rd) Contract Year, an amount equal to one point two five (1.25) times the sum of the then-applicable annual Phase III Management Fee and the Maximum Bonus, or (ii) if the termination is effective after the first three (3) Contract Years, but prior to the end of the Contract Term an amount equal to one (1) times the sum of the then-applicable annual Phase III Management Fee and the Maximum Bonus. Following such payment, NAES shall be deemed to have waived any claim for damages, including, but not limited to, loss of anticipated profits on account of this Agreement, and NAES shall be relieved of all warranties and guarantees of this Agreement.
- 24.5 Owner Events of Default. Each of the following shall be considered a default by Owner (each such event being called a "Owner Event of Default"):
- 24.5.1 Owner defaults in the payment of any sum undisputedly due NAES payable hereunder and Owner has not commenced to cure such default within ten (10) days after receipt of written notice from NAES that such payment has become due;
- 24.5.2 Owner defaults in any respect in the observance or performance of any other material covenant, condition, or agreement of Owner contained herein, including, but not limited to, actions or omissions by Owner that will prevent the Facility from meeting Legal Requirements and Permit obligations, and Owner has not commenced to cure such default within ninety (90) days after receipt of written notice from NAES specifying the default and demanding

that the same be remedied;

24.5.3 any representation or warranty made by Owner herein or in any certificate, statement, document given pursuant to the terms hereof proves to be false or misleading in any material respect as of the date on which it was made, and Owner has not commenced to remedy any material adverse consequences to NAES directly caused thereby within ninety (90) days after receipt of written notice from NAES specifying the default and demanding that the same be remedied;

24.5.4 Owner files a petition commencing a voluntary case under the Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other federal or state bankruptcy law, or is adjudicated a debtor or is declared bankrupt or insolvent under the Bankruptcy Code, or any other federal or state law as now or hereafter in effect relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the Bankruptcy Code or an answer proposing the adjudication of Owner as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code, any other federal or state bankruptcy law is filed in any court and Owner consents to or acquiesces in the filing thereof or such petition or answer is not be discharged or denied within thirty (30) days after the filing thereof; or

24.5.5 a custodian, receiver, trustee or liquidator of Owner, or of all or substantially all of the assets of Owner, is appointed in any proceeding brought by Owner, or any such custodian, receiver, trustee, or liquidator is appointed in any proceeding brought against Owner and is not be discharged within ninety (90) days after such appointment, or if Owner consents to or acquiesces in such appointment.

24.6 Default by Owner. If, during the continuance of this Agreement, one or more Owner Events of Default shall occur, then in any such case, NAES, while such Owner Event of Default is continuing, at its option, may terminate this Agreement; provided however, that, if a financially responsible person or entity reasonably acceptable to NAES assumes the obligations of Owner hereunder and cures any such Owner Event of Default within thirty (30) days after the day on which the period described in Section 24.5.1, 24.5.2, 24.5.3, 24.5.4, or 24.5.5 (as applicable) expired, NAES may not terminate this Agreement. NAES acknowledges and agrees that Financing Parties shall be considered a financially responsible entity acceptable to NAES for purposes of this Section. Within thirty (30) days after the date of such termination, Owner shall pay NAES for Work rendered by NAES through the termination date, including all Reimbursable Costs, the Phase II Management Fee, and the Phase III Management Fee, as applicable, and the Bonus, if any, earned through the date of termination but

not paid, as such amounts are offset by any Liquidated Damages due to Owner through such date. In lieu of termination, NAES may suspend performance pending cure by Owner.

25 NOTICE

25.1 Notices. All notices, consents and other communications required or permitted by this Agreement shall be in writing and shall be delivered by hand or overnight courier service, mailed or sent by telecopy as follows:

25.1.1 If to Owner:

Gainesville Renewable Energy Center, LLC
75 Arlington Street, 5th Floor
Boston, MA 02116
Attention: James Gordon
Telephone: (617) 482-6150
Telecopy: (617) 482-6159
Confirmation: (617) 482-6150

25.1.2 If to NAES:

NAES Corporation
1180 NW Maple Street, Suite 200
Issaquah, Washington 98103
Attention: General Counsel
Telephone: (425) 961-4700
Telecopy: (425) 961-4646

25.1.3 If to Financing Parties: [to be provided by Owner]

Attention:
Telephone: ()
Telecopy: ()
Confirmation: ()

25.1.4 If to Independent Engineer:

Black & Veatch Corporation
11401 Lamar Avenue
Overland Park, KS 66211
Attention: Chris J. Klausner P.E.

Telephone: (913) 458-4377
Telecopy: (913) 458-3817

- 25.2 Receipt of Notice. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy, or on the date seven (7) days after dispatch if sent by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party.
- 25.3 Address Changes. Changes in the respective addressees or addresses to which such notices shall be directed may be made from time to time by any such person by notice to Owner and NAES.

26 DISPUTE RESOLUTION

- 26.1 Resolution Procedure. If either party hereto believes it has a claim under this Agreement, the following procedure shall be used. The representative of the claimant shall initiate a claim by submitting such claim in writing, including a detailed description to the representative of the other party hereto, which shall review the claim and shall advise in writing of its findings and recommendations concerning the claim within a reasonable time period not to exceed thirty (30) days. If the claim is not resolved within such thirty (30) day period, the claim shall be communicated in writing to chief executive officer of Owner and chief executive officer of NAES. If the claim is not resolved within thirty (30) days after the claim was communicated to two such persons, then the claimant may further pursue the claim by submitting the claim to arbitration pursuant to the paragraph below.
- 26.2 Arbitration Procedure. Any controversy, dispute or claim between NAES and Owner arising out of or relating to this Agreement, or the breach thereof, shall be settled finally and conclusively by arbitration according to the Commercial Arbitration Rules of the American Arbitration Association then in effect, unless the parties mutually otherwise agree.
- 26.2.1 Appointment of Panel. If the Parties fail to agree on a panel of three (3) arbitrators within thirty (30) days following the date of a written notice by one Party to the other calling for arbitration, either Party by written notice to the other may designate one arbitrator, the other Party shall then designate one arbitrator within ten (10) days, and the two arbitrators so designated shall, within twenty (20) days, select a third arbitrator to chair the arbitration panel from a list of persons from the National Roster following said Commercial Arbitration Rules.
- 26.2.2 Timing and Nature of Decision. Unless otherwise agreed in writing by the Parties, the arbitrators shall hold a hearing within ninety (90) days of appointment and render a decision within five (5) days after the conclusion of

the hearing. The decision shall be in writing and contain a detailed statement of findings of fact and the legal basis for the decision. The decision and award of the arbitrators shall be final and binding upon the Parties, their successors, and assigns. NAES and Owner shall each abide by and perform any resulting arbitration award. The arbitration award, when issued, shall be final and shall be enforceable in any court of competent jurisdiction.

26.2.3 Location of Arbitration. Any arbitration hereunder shall be conducted in Jacksonville, Florida, unless the Parties mutually agree upon another location.

26.2.4 Costs. The costs and expenses of arbitration shall be paid as awarded by the arbitrators. If the costs and expenses of arbitration are not awarded by the arbitrators, each Party shall bear the costs of its appointed arbitrator, its witnesses, and its own lawyers. The Parties shall share equally in the costs of any neutral arbitrator, hearing stenography and for hearing room accommodations.

26.3 Performance During Dispute. While any controversy, dispute or claim arising out of or relating to this Agreement is pending, Owner and NAES shall continue to perform their obligations hereunder to the extent possible notwithstanding such controversy, dispute or claim.

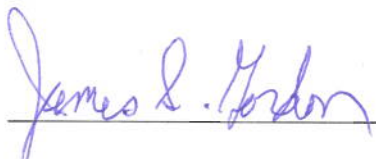
27 CHOICE OF LAW; CHOICE OF FORUM

27.1 Applicable Law. Owner and NAES agree that the laws of the State of New York shall govern the validity, interpretation, construction and performance of this Agreement without regard to their internal principles of conflict of laws.

27.2 Applicable Forum. Owner and NAES agree, subject to the provisions regarding Arbitration in Section 29, to submit to the jurisdiction of the federal courts located in the Middle District of Florida in any litigation between the parties, or, if the federal courts lack jurisdiction, the state courts of Florida located in Jacksonville.

IN WITNESS WHEREOF, Owner and NAES have caused this Agreement to be executed in their respective names by persons duly authorized to do so on their behalf.

GAINESVILLE RENEWABLE ENERGY CENTER, LLC (“Owner”)

By:  _____

Name: James S. Gordon

Title: Chief Executive Officer

NAES CORPORATION (“NAES”)

By:  _____

Name: John P. Brewster

Title: President and CEO