

TERM SHEET FOR EPC CONTRACT
SAN LUIS POWER PROJECT - REPUBLIC OF CARMEN¹

This Term Sheet is supplemented by the specifications and related documents dated July 28, 2004 (the "Specifications") and issued by San Luis Energy Partners to prospective bidders for the EPC Contract (as described below), as amended in accordance with the Specifications. This Term Sheet and the Specifications are not legally binding. They are intended, however, to form the framework for negotiations between San Luis and Contractor relating to a definitive EPC Contract.

1. San Luis: San Luis Energy Partners ("San Luis"), a consortium consisting of Universal Electric ("Universal"), the Alta Group ("Alta"), Constructores de Carmen ("Constructores") and General Generators ("GG", and, together with Universal, Alta and Constructores, the "Sponsors").
2. Contractor: [to be selected] ("Contractor"). A contract for the design, engineering, procurement and fabrication of a power generation facility in two phases will be entered into between San Luis and Contractor on a fixed schedule, fixed price, lump sum, turnkey basis (the "EPC Contract"). Certain existing contracts for the purchase of certain components (the "Separate Equipment Agreements") of the Plant (as described below) will be assigned to and assumed by Contractor.
3. Operator: [to be selected] ("Operator")
4. Project: The project covered by this term sheet (the "Project") is located at a site owned by Corporación de la Electricidad de Carmen ("CDEC") in San Luis, Carmen (the "Site"), and will consist, in Phase I, of a nominal 500MW heavy fuel-fired simple-cycle power generation facility (capable of operating on natural gas), and, in Phase II, of a nominal 700MW gas-fired combined-cycle power facility (integrating the Phase I facility, and capable of operating on heavy fuel), together with ancillary plant and equipment (collectively, at any time, the "Plant"), and related Permits, agreements, drawings and manuals, and other work; the scope of work shall consist of the engineering, procurement, construction and testing of the Project, as more fully described in Section 9 below (the "Work"), and will include the assumption of the Separate Equipment Agreements. The Project will be owned by San Luis and operated on behalf of San Luis by the Operator.

¹ Prepared by Thomas E Weil, *Skadden Arps Slate Meagher & Flom LLP (Houston)*, based on a form drafted by Mark Thurber. The comments hereon of other members of the panel have been received with appreciation. This term sheet addresses the construction of the San Luis power generation facility; the balance the Project would be constructed under other EPC agreements, such as a pipeline EPC agreement and, if necessary, a transmission line EPC agreement (collectively, the "Other EPC Agreements"). This draft contains a number of owner-favorable provisions, and should not be viewed as a fully-negotiated term sheet reflecting current market terms.

5. Contract Price: The total price to perform the Work will be [\$___] million, as adjusted (the "Contract Price"). The Contract Price will be adjusted only by a San Luis Variation as described in Section 28 herein.

Contractor is responsible for payment of all applicable national, provincial, federal, state and local taxes, duties, fees or assessments ("Taxes"), including without limitation all import, excise, customs and value added Taxes, except for sales and use taxes included in the Contract Price under the succeeding paragraph.

Contractor will separately identify production equipment, materials, labor and services on new construction and the balance of the Contract Price on its quote and invoices. Contractor will separately state the amount expended for the balance of the Contract Price, which amount will be inclusive of all applicable sales and use tax. To the extent that any sales or use taxes may be applicable, and to the extent that resale exemptions therefor may be available: (a) Contractor will not pay any sales tax for production equipment and materials or labor and services on new construction; and (b) Contractor will issue a resale certificate to its suppliers and vendors and San Luis will issue an exemption certificate to Contractor.

At the election of either San Luis or the Contractor, the EPC Contract may be comprised of separate contracts for on-shore and off-shore design, engineering, procurement and fabrication of the various elements of the Plant, but Contractor shall be liable under at least one such contract, which may be in the form of a separate wrap agreement, for any failure to achieve the substantial completion, testing and final completion of the Plant on the schedule and with the required performance agreed between the parties.

6. Conditions Precedent; Notice to Proceed: Contractor will not commence the Work until the date San Luis issues a notice to proceed (such date being the "NTP Date"). Conditions precedent to San Luis's issuance of the notice to proceed will include execution of financing agreements for the construction phase of the Project, and such other items as are included in the EPC Contract.

Notwithstanding the foregoing, it is acknowledged that the EPC Contract may provide that certain work will be undertaken by Contractor prior to the NTP Date, and such work will become part of the Work under the EPC Contract.

7. Financing: San Luis's development and construction of the Project will be financed on a non-recourse project finance basis by lenders to be selected by San Luis (collectively, the "Lenders", which term may also be used to refer to any agent for such Lenders). Contractor will assist San Luis in its endeavors relating to the financing of the Project, and cooperate with the Lenders by providing such information and access, and in entering into and delivering such subordination agreements, consents, opinions, certificates and other matters, as the Lenders may reasonably require or as otherwise may be customary in transactions of this type.

8. Credit Support from Contractor: Contractor will provide the following (each in form and substance acceptable to San Luis and the Lenders):

a. a guarantee from a creditworthy parent or other affiliate of Contractor of all of Contractor's performance and payment obligations under the EPC Contract (the "Guarantee");

b. payment and performance bonds as described in the Specifications;
and

c. a letter of credit or a retention bond ("Retention Bond") equal to ten percent (10%) of the Contract Price, which shall be posted by Contractor at Phase II Substantial Completion, which bond or letter of credit will expire at the end of the warranty period. The entity giving any of the bonds or the letter of credit shall be rated at least A by Standard & Poor's and Moody's.

9. Scope of Contractor's Services: As part of the Contract Price, Contractor will provide or cause to be provided all services, materials, equipment and other items described in the Specifications and in the EPC Contract that are required for the final completion of the Work and the Project, to include, but not be limited to, the following:

a. design and engineering;

b. procurement, supply, and expediting (if necessary) of equipment, machinery, material, supplies, tools, strategic spares, other spare parts, spare parts lists, an initial fill of greases, lubricants and other consumables, operating and maintenance manuals, equipment manuals, and the transportation, importation, handling, security and storage of all such items, including coordinating and expediting equipment supplied by San Luis.

c. incorporation of the Separate Equipment into the design and fabrication of the Project;

d. construction, including the furnishing of all supervision, labor and construction tools, consumables and equipment;

e. coordination with all parties with which the construction of the Project requires interconnections ("Interconnection Parties"), such as fuel, water intakes and discharges, electrical power and transmission, rights of way, communications, and the like, including contractors under Other EPC Agreements, in the design and construction of such interconnections, such that no contractor under an Other EPC Agreement may assert a valid change order or delay claim as a result of Contractor's acts or failure to act.

f. management, supervision and control of all construction, start-up and testing activities;

g. preparation of Final Drawings and Specifications reflecting the final "as-built" configuration of the Project, operating manuals and the training of San Luis's operating personnel or the personnel of the Operator and handover of the Project to the Operator;

h. providing fuels other than start-up fuel, electricity other than start-up power, water and other consumable items and utilities necessary at the Site to enable Contractor to perform the Work; and

i. providing security for the Site until San Luis has assumed such responsibilities upon Phase II Substantial Completion (as described below).

10. Technical Specifications: The design and technical specifications and criteria that Contractor will be required to meet will be based on the Specifications. The Project will be designed and constructed to meet all applicable environmental, health and safety standards and Site restrictions, as well as all requirements of the Power Purchase Agreement between the Government of Carmen and San Luis (the "PPA").

11. Contractor's Representative: A Contractor's representative with authority to bind Contractor will be designated in the EPC Contract and empowered to represent and bind the Contractor in connection with the Project.

12. Lender's Independent Engineer: An Independent Engineer will be appointed by the Lenders to represent the Lenders in connection with the financing of the Project. The Independent Engineer's duties will include monitoring, checking, inspecting and witnessing the carrying out of the Work and issuing or confirming various certificates in connection with the progress of the Work, entitlement to payment and testing. The Independent Engineer's activities will neither relieve Contractor of any liability nor prevent San Luis from exercising any rights available to it under the EPC Contract.

13. Governmental Consents: The EPC Contract will include a breakdown of responsibility for obtaining government licenses, permits, approvals, consents, etc. (collectively, "Permits"). Other than the Permits specifically identified as the responsibility of San Luis, the EPC Contract will provide that all other Permits will be obtained by Contractor, in San Luis's name, or, if not required for the operation of the Plant after Substantial Completion, in Contractor's name, and Contractor will bear the risk of failure to obtain such Permits. Contractor will keep San Luis informed of progress and comply with San Luis's reasonable instructions. San Luis will reserve the right to take over conduct of all or any applications for Permits.

14. Site Inspection and Conditions: San Luis will provide Contractor with non-exclusive access to the Site, utility easements to the Site, and construction laydown areas. Contractor will be deemed to have inspected and satisfied itself as to all matters affecting the Site, including but not limited to access to the Site, adequacy of laydown areas, geotechnical conditions, and subsurface obstructions. Except for pre-existing hazardous

materials conditions and archeological finds, Contractor will assume the cost and risk of all matters and conditions related to the Site and the performance of the Work, and no increase of the Contract Price or extension of the time for completion will be permitted for other Site-related reasons. In no event may Contractor rely on any Site studies performed by San Luis or the Sponsors.

15. Errors and Omissions: Contractor will verify the accuracy and completeness of all information Contractor requires relating to the performance of the Work, whether received from San Luis or otherwise. Except for work performed by or on behalf of San Luis prior to the effective date of the EPC Contract, Contractor will have full design responsibility and will not be entitled to any variation or other relief based on any flaws, errors or omissions in any specifications, drawings, data or other information furnished by or on behalf of San Luis.

16. Testing: Contractor will conduct certain acceptance tests to demonstrate achievement of the performance guarantees, and verify combustion and steam turbine guaranteed operational capabilities for each of Phase I and Phase II, as applicable. A detailed description of such tests are found in the Specifications. In summary, they consist of (i) a reliability test extending over fourteen (14) consecutive days during which the Plant must demonstrate its reliability under varying loads, power factors and steam extraction flows, (ii) a net dependable capacity test to verify maximum continuous rating, (iii) a net plant heat rate test to establish compliance with the heat rate guarantee at net dependable capacity, (iv) an emissions test to demonstrate compliance with local regulations and laws and the standards described in the Specifications and (v) a noise test to demonstrate compliance with local regulations and laws and the standards described in the Specifications (all such tests, the "Acceptance Tests").

The Phase I Acceptance Tests shall be conducted on the Phase I Plant while burning heavy fuel oil meeting the Specifications. The Phase II Acceptance Tests shall be conducted on the Phase II Plant (which incorporates the Phase I Plant) while burning heavy fuel oil and while burning natural gas. In the event that a natural gas supply is not available to the Plant at the later of (a) the time Contractor is prepared to perform the Phase II Acceptance Tests, and (b) the scheduled commencement of natural gas delivery to the Plant, Contractor's satisfaction of the Acceptance Tests on heavy fuel shall relieve Contractor of Delay Liquidated Damages for failure to satisfy the Phase II Acceptance Tests on natural gas. Contractor shall remain liable for satisfying the Phase II Performance Guarantees and Specific Performance Guarantees on natural gas (as adjusted to reflect projected Plant performance degradation) upon the delivery of a natural gas supply to the Plant within one year following the satisfaction of the Phase II Acceptance Tests on heavy fuel oil.

If Contractor fails any of the Acceptance Tests, Contractor will make any necessary adjustments, modifications, repairs and replacements and the Acceptance Tests will then be repeated until passed, subject to the monetary limits hereinafter described. Contractor will be responsible for the additional costs incurred by reason of any and all repeated tests.

17. Inspections: Throughout the performance of the Work, San Luis, Lenders, the Independent Engineer and their representatives will have access (i) to the Site to inspect the Work and witness tests to verify that the Work complies with the requirements of the EPC Contract and (ii) to designated manufacturing facilities and the right to witness all factory acceptance tests. Contractor will provide sufficient, safe and proper facilities for such access and inspection. No inspection by San Luis, Lenders, Independent Engineer or any representative of them will relieve Contractor of any obligation under the EPC Contract.

18. Performance and Specific Performance Guarantees: Contractor will guarantee that the Project will meet the performance guarantees (the "Performance Guarantees") as set forth in the Specifications for each of Phase I and Phase II for (i) net Project electrical output (capacity) at the specified delivery point(s), (ii) net Project heat rate operating on heavy fuel oil in Phase I, and on natural gas and heavy fuel, respectively, in Phase II (in each case conforming to the fuel specifications set forth in the respective fuel supply agreements for each such Phase), (iii) availability and reliability, (iv) noise and (v) emissions of pollutants. Contractor will also guarantee a specified derating curve and heat rate over the life of the PPA.

To attain San Luis acceptance and qualify the Project for Substantial Completion for each Phase, the Acceptance Tests shall establish that the Plant has achieved, with respect to the applicable Performance Guarantees, the following minimum performance levels (the "Specific Performance Guarantees"), all in compliance with applicable Permits and laws:

- (i) at least 95% of the guaranteed net Project electrical output for each applicable fuel,
- (ii) no more than 105% of the guaranteed net heat rate for each applicable fuel,
- (iii) at least 95% of the guaranteed availability for each applicable fuel, and
- (iv) achieved the guaranteed levels for noise and emissions of pollutants for each applicable fuel.

Contractor's obligation to achieve the Specific Performance Guarantees, as specified above in (i), (ii) and (iii), will not be subject to Contractor's right to pay liquidated damages or other buydowns.

19. Performance Liquidated Damages: In the event that the Plant fails to meet the Performance Guarantees for a Phase, then prior to Substantial Completion of such Phase, Contractor will pay to San Luis performance liquidated damages ("Performance Liquidated Damages") as follows:

- a. In the event that the Plant does not meet the Performance Guarantee for net electrical output for a Phase, Contractor will pay to San Luis as

liquidated damages the amount of \$ ____/kW of shortfall in Phase I, \$ ____/kW of shortfall for heavy fuel firing in Phase II, and \$ ____/kW of shortfall for natural gas firing in Phase II; provided, however, so long as Mechanical Completion has been achieved for such Phase, the limitation for net electrical output liquidated damages will be 20% of the Contract Price; and

b. In the event that the Plant's heat rate at demonstrated dependable capacity exceeds the Performance Guarantee for heat rate, Contractor will pay to San Luis as liquidated damages the amount of \$ _____ per Btu/kWh of excess heat rate in Phase I, \$ _____ per Btu/kWh of excess heat rate for heavy fuel firing in Phase II, and \$ _____ per Btu/kWh of excess heat rate for natural gas firing in Phase II (each an indicative amount, based on current information), determined based upon the LHV; provided, however, so long as Mechanical Completion has been achieved for such Phase, the limitation for heat rate liquidated damages is 20% of the Contract Price.

20. Milestone Schedule: The Work will be carried out in accordance with a Milestone Schedule set forth in the Specifications (the "Milestone Schedule"). Contractor will be permitted to accelerate the Milestone Schedule.

21. Time for Completion: Phase I is to be completed by [date of execution of PPA + eighteen (18) months] (the "Phase I Guaranteed Completion Date"). Phase II is to be completed by Phase I Guaranteed Completion Date + ____ months (the "Phase II Guaranteed Completion Date"). Each Guaranteed Completion Date and other major milestones set forth in the Milestone Schedule will be extended only by a San Luis Variation or a Contractor Variation, as described in Section 28 below.

22. Mechanical Completion: The completion of the design, engineering, procurement, fabrication, installation and, on a systems basis, testing, of all plant and equipment and all other components of the Plant (except in minor respects that will not affect the safe, efficient and full use of the Project for its intended purpose) for the applicable Phase.

23. Substantial Completion: Substantial Completion for each Phase will occur when, in compliance with applicable Permits and laws, Mechanical Completion for such Phase has been achieved, the Acceptance Tests for such Phase have been successfully completed at or above the level of the Specific Performance Guarantees, the Work for such Phase has been completed in accordance with the EPC Contract (except in minor respects that will not affect the safe, efficient and full use of the Project for its intended purpose and as listed on an agreed punchlist), the Plant for such Phase has been demonstrated to be operational, Contractor has paid all Performance Liquidated Damages, Delay Liquidated Damages and any other amounts due and owing for such Phase, Contractor has provided to San Luis final "as-built" drawings and substantially complete drafts of the operation and maintenance manuals, and has completed all required training for such Phase, and the completion of the Acceptance Tests and the Work for such Phase has been accepted in writing by San Luis and the Lenders. The EPC Contract will include provisions for operating the Plant on an interim basis at the option of San Luis at performance levels below the Specific Performance Guarantees.

24. Delay Liquidated Damages: If Substantial Completion for a Phase has not occurred by the respective Guaranteed Completion Date, Contractor will pay San Luis liquidated damages for schedule delays ("Delay Liquidated Damages"). Based on current information, indicative amounts for schedule delays are \$_____ per day for Phase I and \$_____ per day for Phase II. This payment will continue until the Specific Performance Guarantee for net electrical output is demonstrated for such Phase, or, so long as Mechanical Completion has been achieved for such Phase, until a limit of ___% of the Contract Price is reached.

Phase I: If the Plant is unavailable after _____, or is unable to generate a dependable net output of at least ____MW, Contractor will pay San Luis \$_____ per month, or portion thereof. This payment will continue until a dependable output of at least ____MW is established.

Phase II: If the Plant is unavailable after _____, or is unable to generate a dependable net output of at least ____MW, Contractor will pay San Luis \$_____ per month, or portion thereof. This payment will continue until a dependable output of at least ____MW is established.

Delay Liquidated Damages for a Phase will cease as of Substantial Completion for such Phase, unless after Substantial Completion Contractor requests (and San Luis agrees to) a shutdown or load reduction in order to enable Contractor to achieve the Performance Guarantees for such Phase.

25. Final Completion: The Project as a whole will be deemed to have achieved final completion ("Final Completion") once all punchlist items have been completed and accepted by San Luis; San Luis has received lien releases from Contractor (and Contractor has received lien releases from all subcontractors and vendors), all drawings, manuals, permits, lists and materials required to be provided by the EPC Contract (to the extent not needed or required earlier); Contractor has removed all supplies, equipment, waste and temporary facilities from the Site; and Contractor has performed all of its other obligations under the EPC Contract, including the correction of any defects that have occurred since Substantial Completion of each of Phase I and Phase II, and payment to San Luis of all amounts due under the EPC Contract. Final Completion will be demonstrated only for the Project as a whole.

26. Payment: Subject to the terms of applicable financing arrangements and the EPC Contract, the Contract Price will be paid against the achievement of major elements of the Work ("Milestones") to be identified in the Milestone Schedule. Payment provisions will include:

- a. Payments against achievement of Milestones; and
- b. Retention by San Luis of ten percent (10%) of each payment under the Drawdown Schedule, the retained amount (less two times the value of all outstanding

punchlist items) to be released to Contractor following Substantial Completion of Phase II and upon the receipt by San Luis of the Retention Bond.

In no event will payment of the Contract Price at any time exceed the Drawdown Schedule without the prior written consent of San Luis and the Lenders, notwithstanding completion of any Milestone or any portion thereof.

The retained amount relating to punchlist items will be released upon completion of the punchlist. The Retention Bond will be released only after the warranty period has ended, provided defects are made good according to the defects liability provisions.

27. Events of Force Majeure: a. "Events of Force Majeure" will be limited to those customary in project financing and expressly set forth in the EPC Contract, but only if and to the extent (i) such circumstance is not within the reasonable control of the party affected, (ii) such circumstance, despite the exercise of reasonable diligence, cannot be prevented, avoided or removed by such party, (iii) such event materially and adversely affects the ability of the affected party to timely fulfill its obligations under the EPC Contract, (iv) the affected party has taken and is continuing to take all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the affected party's ability to fulfill its obligations under the EPC Contract and to mitigate the consequences thereof, and (v) such event is not the result of any failure of such party to perform any of its obligations under the EPC Contract.

b. Notwithstanding that an Event of Force Majeure in clause (a) may otherwise exist, Contractor will not be permitted to claim a Force Majeure, and no Variations for Contractor's benefit will arise on account of, any of the following:

- (1) vendor or supplier non-performance, including under any Separate Equipment Agreements assigned by San Luis to Contractor;
- (2) non-payment of taxes and duties;
- (3) customs procedures, except for material changes after submittal of Contractor's proposal;
- (4) permitting, including construction permitting;
- (5) noncompliance with law, except for material changes after submittal of Contractor's proposal;
- (6) reasonably foreseeable unfavorable weather and other Site-related conditions;
- (7) the importation, transportation to and storage/housing at the Site of all necessary tools, equipment and personnel to construct the Works;

(8) the unavailability at the Site of all necessary water and other utilities and startup spares;

(9) late delivery of equipment or materials;

(10) failure to perform by Contractor caused by: Contractor's failure to engage qualified subcontractors and suppliers, or to hire an adequate number of personnel or labor; inefficiencies on the part of Contractor; or Contractor's failure to adequately coordinate with Interconnection Parties and contractors under Other EPC Agreements; or

(11) flaws in the Specifications requiring Contractor to redesign or re-engineer any portion of the Works.

c. Contractor will bear its own delay costs occasioned by any Event of Force Majeure.

28. Variations: a. San Luis will be entitled at any time by written instructions or drawings issued to Contractor to require Contractor to make changes, issue additional instructions, require additional goods or work or direct the omission of goods or Work previously ordered (any such change, a "San Luis Variation").

b. Contractor will be entitled to request a delay in the Guaranteed Completion Date or the Milestone Schedule (each, a "Contractor Variation") in the following circumstances:

(1) suspension of the Work ordered by San Luis;

(2) Event of Force Majeure;

(3) delay in the execution or availability of Site interconnections, provided that Contractor has used best endeavors to coordinate such interconnection; or

c. Contractor will not be entitled to a Contractor's Variation if:

(1) Contractor or its subcontractors or vendors (the "Contractor Parties") have failed to use all reasonable endeavors to mitigate any delay or increased costs (including, where appropriate and reasonable under the circumstances, adjusting the construction schedule);

(2) Contractor has failed to give notice within five (5) days of the event giving rise to the delay or increase;

(3) the event in question is attributable to Contractor Parties' acts, omissions or defaults, or such event is not otherwise allowed to result in a Variation because of other restrictions in the EPC Contract.

d. Contractor will quote in writing on a lump sum basis any change to the Contract Price resulting from any San Luis Variation proposed, and will quote any extension or acceleration of time under the Milestone Schedule that will be necessary for such Variation. Such price will include the actual direct and variable indirect costs or savings for carrying out the Variation, including the cost of maintaining the Milestone Schedule, and a _____ percent (___%) profit, and Contractor will itemize each such cost. Contractor will use all reasonable endeavors to minimize any delay or increase in costs. All Contractor Variations will be subject to approval by San Luis and the Lenders. In the event of a dispute, San Luis will be entitled to direct Contractor to proceed with a Variation on a time and materials basis pending resolution of the dispute.

29. Suspension by San Luis: San Luis will be entitled to suspend at any time the carrying out of the whole or any part of the Works. In the event of a suspension of the EPC Contract, Contractor will be entitled to a pro rata payment of the Milestone for the work completed (subject to the Drawdown Schedule), but will not be entitled to payment of anticipated profits.

30. Default and Termination: Subject to provisions relating to notice and opportunity to cure to be set forth in the EPC Contract, San Luis's right to terminate the EPC Contract will include the following:

- a. Contractor becomes insolvent, Contractor makes an assignment for the benefit of creditors, or a receiver or trustee is appointed for the benefit of Contractor's creditors, or Contractor makes a filing for protection from creditors under any bankruptcy or insolvency laws, or any such filing is made against Contractor;
- b. unauthorized assignment by Contractor;
- c. Contractor abandons or suspends the Work without the approval of San Luis for more than five (5) days;
- d. Contractor fails to make a substantial start on the Work within thirty (30) days of the NTP Date;
- e. Contractor fails to make good any material defect in the Work;
- f. Contractor performs the Work in breach of the Contract;
- g. subcontracting in breach of the Contract;
- h. any other material breach of the Contract;

i. Substantial Completion of either Phase has not occurred within one hundred twenty (120) days of the Guaranteed Completion Date for such Phase, or if it is reasonably apparent at any time that Substantial Completion will not occur by that time due to reasons attributable to Contractor or for which Contractor has undertaken responsibility;

j. failure of Contractor to comply with applicable laws, Site restrictions, or proper instructions by San Luis;

k. failure to achieve the Specific Performance Guarantees for either Phase within one hundred twenty (120) days of the Guaranteed Completion Date for that Phase; or

l. Contractor fails to make any payment, to San Luis or any subcontractor or vendor, when due.

If San Luis terminates in such circumstances, San Luis will be entitled to complete the Work at Contractor's risk and expense, and Contractor will not be entitled to any further payments until the cost of completing the Work and all other costs and losses which have been sustained and which are in the nature of those recoverable by San Luis under the EPC Contract have been ascertained. If the total of such sums, when added to the total amounts already paid to Contractor, exceeds what would otherwise have been paid to Contractor, Contractor will pay the excess to San Luis.

Contractor will have the right to suspend the Work after thirty-five (35) days of non-payment of undisputed amounts, and, if undisputed amounts remain unpaid for ninety (90) days, to terminate the EPC Contract.

If the EPC Contract is terminated, Contractor will, at the option and direction of San Luis, assign to San Luis and/or the Lenders and/or a contractor designated by San Luis or the Lenders, any or all of the material subcontracts or purchase orders into which Contractor has entered.

31. Termination for Convenience: San Luis will be entitled to terminate the EPC Contract at any time with or without cause. Upon any such termination, Contractor will be entitled to the proportion of the Contract Price reasonably attributable to the Work then completed based on the Milestones in the Milestone Schedule and (if not covered by such payment):

a. the reasonable cost of protecting and making the Work safe, as requested by San Luis;

b. the cost of specific materials and/or major pieces of equipment listed on a schedule to the EPC Contract and approved in advance by San Luis and the Independent Engineer, of which Contractor is bound to make payment; and

c. Contractor's reasonable direct and indirect costs of demobilization.

32. Assignment: Contractor will not be permitted to assign the EPC Contract other than with the prior written consent of San Luis. San Luis will be permitted to assign the EPC Contract to a transferee of its interest in the Project upon notice to Contractor. In addition, it is anticipated that San Luis will assign or pledge the EPC Contract by way of security to the Lenders, and Contractor will execute appropriate consents to such security assignment and enter into a direct agreement with the Lenders, and deliver such certificates and opinions as may be requested with respect thereto.

33. Subcontracting: Contractor may subcontract certain major equipment, systems, supplies, services and components to vendors identified on a bid list to be appended to the EPC Contract, or otherwise as agreed in writing by San Luis.

All subcontracts will allow for assignment to San Luis and the Lenders, and are to be assignable at the direction of San Luis under circumstances specified in the EPC Contract. In no event will subcontracting relieve Contractor of any obligation or liability under the EPC Contract.

34. Care of Works; Risk of Loss: a. Subject to the following subsection (b), Contractor will be responsible for the care of the Work until Substantial Completion. If any damage, loss or injury happens to the Work from any cause whatsoever prior to Substantial Completion of Phase II, Contractor will repair, replace and make good the same. Risk of loss to the Work will pass to San Luis upon Substantial Completion of Phase II (except that risk of loss for punchlist and warranty work will remain with Contractor).

b. Upon Substantial Completion for Phase I, except for any punchlist or warranty work to be performed by Contractor, San Luis, or Operator on behalf of San Luis, shall be responsible for the operation and maintenance of the Phase I Plant, and Contractor shall not unreasonably interfere with such activities. Upon Substantial Completion for Phase II, except for any punchlist or warranty work to be performed by Contractor, San Luis, or Operator on behalf of San Luis, shall be responsible for the operation and maintenance of the Plant. Contractor shall use its best efforts to avoid adversely affecting San Luis's operation of the Phase I Plant, and shall coordinate with San Luis to schedule necessary shutdowns or reduced operations of the Phase I Plant, whether for purposes of integrating the Phase II work or testing the combined-cycle facility or otherwise, at the least inconvenient time for San Luis, and for the briefest periods possible.

35. Transfer of Title: Title to the Work will pass to San Luis on the earliest of the date on which Contractor becomes entitled to payment for such portion of the Work, the date delivered to the Site or the laydown areas, the date dedicated to the Work, or the date incorporated in the Work. Contractor, with each application for payment and upon Substantial and Final Completion for Phase II, will provide a complete release of all charges and liens of itself, subcontractors, materialmen and laborers, or Contractor will

furnish a bond acceptable to San Luis and the Lenders. Contractor shall not permit and shall promptly remove and discharge all such liens against the Work and Site. San Luis may take all actions necessary to release any such lien and Contractor shall reimburse San Luis for all such costs or San Luis may deduct such costs from sums owed Contractor under the EPC Contract. San Luis and Contractor will arrange for earlier passage of title to the extent there would be an import duty exemption or other economic benefit to San Luis.

36. Title to Drawings: Title to drawings and specifications will pass to San Luis upon payment for Work related thereto, but Contractor may retain a copy of all documents for internal use only. For drawings and specifications unable to be transferred, Contractor will grant to San Luis an irrevocable, royalty-free, non-exclusive license to copy and assign Contractor's technical information, drawings and design information for any purpose related to the Works.

37. Project Design Patents: a. Contractor will grant to San Luis a non-exclusive, royalty-free, irrevocable license under any patent, if any are now or hereafter owned or controlled by Contractor, so far as may be necessary or expedient for the engineering, construction, operation, modification, repair or duplication of any part of the Project. Said license shall be transferable to any purchaser of the Plant or any portion thereof.

b. Contractor agrees to disclose promptly to San Luis any inventions, discoveries, know-how or improvements conceived or made by Contractor's employees solely or jointly with others during Contractor's performance under the EPC Contract or within one (1) year thereafter, which are based on proprietary information to be held in confidence by Contractor. Contractor, warranting that it has the right to do so, will grant to San Luis a nonexclusive, irrevocable, worldwide, royalty-free license under such inventions, discoveries, know-how or improvements, together with the right to extend said license to others without accounting to Contractor.

c. Contractor will obtain from its subcontractors and vendors the patent licenses and licensing rights for San Luis that Contractor is required to provide by the EPC Contract.

d. Contractor shall not use or incorporate in its drawings, designs or specifications, without San Luis's written consent, any materials, methods or process features that are covered by patents owned or controlled by others and which would require the payment of a royalty or license fee or would restrict the sale of any product produced by San Luis.

38. Defects: Contractor will remedy all defects arising or discovered before Substantial Completion of either Phase. Contractor will also remedy at its cost all defects and deficiencies in the Work (including any necessary uncovering and recovering) arising or discovered until three (3) years following Substantial Completion of Phase II in the case of the combustion turbine generators, and twelve (12) months following such Substantial Completion for all other portions of the Work, including defects arising from:

- a. defective materials, workmanship or design, whether or not caused by flaws in the Specification;
- b. any act, omission or breach (including breach of warranty) by Contractor; or
- c. mechanical failure or breakdown of the Project, provided that San Luis shall have performed in all material respects in accordance with the operation and maintenance manuals supplied by Contractor.

In relation to any part made good, the warranty period will be extended for twelve (12) months after it has been made good. The warranty period also will be extended by the period during which the Project cannot be fully used because of such defect.

For each Phase, San Luis will be entitled to require Contractor to repeat all or part of the Acceptance Tests (adjusted for degradation) following making good of defective work that impacts plant performance at the level of the Performance Guarantees.

Contractor will be responsible for making good any latent defect (and damage caused by or resulting from such defect, and including uncovering and recovering) that subsisted at the end of the warranty period but was not revealed through normal Project operations, and that is discovered within five (5) years after Substantial Completion of Phase II.

39. Contractor's Maximum Liability: a. Contractor's maximum aggregate liability will not be limited in the case of liability for third party injury and property damage caused by acts or omissions of Contractor Parties or claims against use of new technology or patent infringement.

b. Subject to the foregoing subsection (a), prior to achieving Mechanical Completion for Phase II, Contractor's overall liability will be limited to one hundred percent (100%) of the Contract Price.

c. Subject to the foregoing subsections (a) and (b), Contractor's maximum aggregate liability will be limited to:

i. thirty percent (30%) of the Contract Price for payment in the aggregate of Performance Liquidated Damages (as described in Section 19) and Delay Liquidated Damages (as described in Section 23);

ii. forty percent (40%) of the Contract Price for breach of its obligations to achieve the Specific Performance Guarantees (as described in Section 18).

40. Consequential Damages: Except where and to the extent specifically provided for in the EPC Contract, neither San Luis nor Contractor will be liable to the other for any

loss of profit, loss of use, loss of production, loss of contracts or for any indirect or consequential damage suffered by the other.

41. Contractor's General Obligations: Contractor's covenants will include:

a. at all times exercise the skill, care and diligence in the carrying out and completion of the Work as should be exercised by a first class contractor, fully skilled and experienced in the carrying out of work similar to the Work;

b. carry out and complete the Work in accordance with all applicable laws, permits and authorizations, including environmental, health and safety standards and any applicable Site restrictions and Lender requirements, and in accordance with recognized good industry practice and standards, taking into consideration optimizing the operability and maintainability of the Project;

c. provide plant and equipment that will be merchantable, new and of first class quality and that will be suitable and fit for the purposes or uses and capable of operation in every case as specified in the EPC Contract;

d. design and carry out the Work to ensure the full, efficient, economic and safe commercial operation of the Project with the minimum interruption for maintenance or repair throughout the design life of the Project;

e. at all times have the resources, experience, qualifications and capabilities as are required fully to perform its obligations under the EPC Contract;

f. carry out and complete each element of the Work with diligence within the time for completion set out in the Milestone Schedule;

g. inspect and expedite the delivery of all materials and equipment, keeping San Luis fully informed as to the status of deliveries; if any of such materials or equipment are not being properly manufactured or fabricated in accordance with specifications, or do not otherwise conform with the Specifications or the EPC Contract, Contractor will promptly notify San Luis and take necessary corrective action;

h. keep the Site clear of debris and rubbish caused by Contractor's operation under the EPC Contract, and at the completion of the Project leave the Site clean and ready for use;

i. deliver the Project at Substantial Completion for Phase II free of any liens arising through Contractor or any subcontractor thereof, together with lien waivers and indemnifications satisfactory to the Lenders;

j. design, engineer, manufacture, procure, supply, erect, construct, install, complete, test, commission, carry out and complete the Works in accordance with the EPC Contract, including the regulations and standards specified therein; and

k. to provide a fully functional facility that is fit for its intended purposes as expressed by the EPC Contract or that may be reasonably inferred therefrom.

42. Contractor's General Warranties: Contractor's warranties will include, for the benefit of San Luis and the Lenders:

a. all equipment, materials, supplies and other goods will be new and of good quality, and the Work will be free from inherent or latent defects, whether in design, engineering, workmanship, materials or otherwise;

b. Contractor shall perform all engineering and design services using its best skill and in accordance with sound engineering practices;

c. the Work will be performed in a good and workmanlike manner in accordance with good construction practices of generally recognized engineering and construction services;

d. the Work when complete will be such that all Performance Guarantees (or Specific Performance Guarantees, where liquidated damages for failure to meet the Performance Guarantees have been paid) and the other guarantees in the EPC Contract will be met;

e. the Work when complete will comply with the Specifications and the EPC Contract;

f. the design life of the Project will meet the requirements of the Specifications;

g. when completed, the Project will operate in accordance with all applicable laws and permits;

h. no infringement of any patents, trademark, registered design, copyright, design right or other registerable or proprietary intellectual property right of any kind, will result from the performance of the EPC Contract or the operation or ownership of the Project; and

i. good title to the Work will vest in San Luis free from any charge, lien, encumbrance or security interest of any kind.

43. Vendor Warranties: Contractor will assign all vendor warranties to San Luis upon Substantial Completion of Phase II, but Contractor will still be fully responsible for enforcing all warranties for the applicable warranty periods hereunder. Contractor will determine the cost increases for extending any vendor warranties for a warranty period of twenty-four (24) months as opposed to twelve (12) months, and will preserve San Luis's

right to extend such warranties upon Substantial Completion of Phase II at San Luis's expense.

44. Representations and Warranties: San Luis and Contractor will each make such other representations and warranties as are customary in contracts for international power projects.

45. Indemnities: Contractor will provide such indemnities for the benefit of San Luis, Lender and others as are customary in contracts for international power projects, including without limitation indemnities for Contractor's actions, personal injury and property damage, intellectual property claims and liens.

46. Insurance: Contractor will arrange and pay for insurance as specified in Attachment B hereto.

47. Other Contractors: San Luis reserves the right to let other contracts for work at the Site. Contractor will not interfere with and will cooperate in all material respects with other contractors, and shall provide access opportunities for all other contractors to the Site, and for the storage of their materials and equipment. Contractor will coordinate its work with the work of all other contractors.

48. Confidentiality: a. Contractor will refrain from using any proprietary information except in connection with the Project, or from disclosing it to any third party other than to its subcontractors, who require it in performance of the Project and except to such other third persons as San Luis may otherwise authorize in writing. If disclosure is made to Contractor's subcontractors or other authorized third parties, Contractor shall enter into, with said party, a confidentiality agreement containing provisions with respect to use and disclosure of proprietary information substantially the same as those contained in the EPC Contract.

b. Contractor agrees to take reasonable precautions to safeguard any documents containing proprietary information which San Luis may supply to Contractor hereunder. Contractor may copy, in whole or in part, such documents to the extent necessary for the performance of the Work and Contractor shall return to San Luis upon the completion of the Project, all such documents and copies.

c. Information which Contractor supplies San Luis shall not be subject to any obligation of confidence (notice on Contractor's drawings, proposals, graphs, tables, specifications and the like to the contrary notwithstanding) and San Luis shall not be liable for use or disclosure of such information except for such liability as may arise out of infringement of valid patents. Contractor will not disclose to San Luis any information held by Contractor subject to an obligation of confidence to any third party.

49. Public Relations: All public relations matters arising out of or in connection with the Project will be the responsibility of and handled by San Luis. Contractor will obtain

San Luis's prior approval of the text of any announcement or publication concerning the Project to be made on behalf of Contractor or any of its subcontractors. No photographs of the Project will, at any time, be taken or published by or on behalf of Contractor, its subcontractors or suppliers unless prior written authorization is obtained from San Luis.

50. Compliance with Laws: Contractor will comply with all applicable laws.

51. Compliance with Policies/Regulations: Contractor will observe and cause its subcontractors, and the employees of each of them, to observe all of the policies and regulations of San Luis as they may be revised from time to time including, without limitation, those pertaining to maintenance of a drug-free work place, the safety and security of persons and property, housekeeping, and work hours.

52. Removal of Contractor Personnel: Contractor will, at the request of San Luis, immediately remove or cause to be removed from performance of the Project any of Contractor's or any of its subcontractors' personnel deemed unacceptable by San Luis. Such removal will not relieve Contractor of its obligation to select and assign qualified personnel.

53. Independent Contractor: Contractor will perform and assume full responsibility for the work on the Project at its sole risk and account, and will assume full responsibility therefor. Nothing in the EPC Contract will be deemed to constitute Contractor, or any of its employees, as the agent, representative or employee of San Luis. Contractor will have complete and sole control over its employees, the details of the Project, and the methods by which the Project is accomplished. Contractor will not make contrary representations to third parties.

54. Condemned Work: Within 24 hours after receiving notice from San Luis, Contractor will remove all materials condemned by San Luis from the Site, whether or not yet incorporated into the Work, and take down all portions of the Work which will by like notice be condemned as unsound or improper or in any manner failing to conform to the EPC Contract, and will restore all work condemned at Contractor's sole expense to conform with the EPC Contract.

55. Rights and Remedies: The rights, powers, elections and remedies of the parties to the EPC Contract are cumulative and in addition to those which the parties have at law or in equity.

56. Governing Law; Venue; Dispute Resolution: The EPC Contract will be governed by _____ law, and will provide for senior management dispute resolution procedures, followed by binding arbitration pursuant to _____ rules. Arbitration proceedings will be conducted in _____. Arbitration proceedings for unresolved disputes regarding Contractor's rights to Variations in the Contract Price or any Guaranteed Completion Date will be deferred until after Substantial Completion of Phase II. Contractor will continue to perform the Work notwithstanding the existence of a dispute.

57. Project Schedule: The timely completion of the Project is of significant importance to San Luis. The EPC Contract will provide that time is of the essence. The Contractor shall establish and maintain a linked-logic project schedule (showing, without limitation, a breakdown of the projected manpower levels by craft) in an acceptable format to the San Luis (the "Project Schedule"), and shall revise and update the Project Schedule monthly. If at any time (i) San Luis shall reasonably determine that the Contractor is not on schedule for a timely completion, as measured against the Project Schedule and Milestones, and an on-time completion could be accomplished by the application of additional man-hours and/or resources; and (ii) the Contractor has not brought forth an acceptable plan of its own to remedy an impending late finish, then, before the fact of an actual late finish or further deterioration of the schedule, San Luis may demand that the Contractor accelerate the pending late work by the addition of resources and/or manpower at the Contractor's sole expense, until such time as the Contractor can reasonably demonstrate that the Work is being conducted in compliance with the Project Schedule and Milestones.

Attachments:

1. Attachment A - Separate Equipment

[to come]

2. Attachment B - Insurance

Prior to commencement of any of the Project, Contractor and each of its subcontractors will obtain and maintain, at their sole cost and expense, throughout the performance of the Work the following coverages:

B. Workers' Compensation in accordance with the statutory requirements of the State in which any Work is to be performed, and Employer's Liability with minimum limits of not less than \$_____ per occurrence.

C. Commercial General Liability with minimum limits of not less than \$_____ combined single limit per occurrence coverage for property damage and bodily injury. Such policies will also provide:

1. Broad form property damage liability endorsement.
2. EPC Contractor's Protective Liability.
3. Blanket contractual liability insurance sufficiently broad to include paragraph "indemnification."
4. Completed operations liability insurance including Broad Form Property Damage provisions.
5. If the work includes excavating or blasting, an endorsement eliminating the excavating and blasting exclusions.

6. Asbestos Abatement endorsement.

D. Automobile Liability (if any motor driven vehicle is used in performing the Work) with minimum limits of not less than \$ _____ combined single limit per occurrence coverage for property damage and bodily injury, covering all automobiles owned, hired, rented and used by Contractor and automobiles not owned by but used on behalf of Contractor.

E. Architects and Engineers Professional Liability with minimum per occurrence limits of not less than \$ _____ and a deductible no greater than \$ _____.

F. Umbrella form excess liability insurance with limits of not less than \$ _____ per occurrence and terms at least as broad as the underlying coverages.

All insurance coverages required in the EPC will be primary and non-contributing with any other insurance coverage available to Contractor and will be with reputable insurance carriers experienced in issues relating to international power projects that are acceptable to San Luis and the Lenders. San Luis and the Lenders and any of their parents, subsidiaries and affiliated companies will be granted a waiver of subrogation under coverage specified above (unless specifically prohibited by local statutory requirements) and will be made additional insured on policies specified in Sections B, C and E. San Luis will be furnished certificates of insurance evidencing the required coverage requested prior to the commencement of the Work. Such certificates will unequivocally state that policies will not be canceled or materially changed without thirty (30) days' written notice to San Luis and the Lenders. Insurance coverage required under this agreement will be additional security for the liability that Contractor has assumed hereunder and will in no way be deemed to limit any such liability nor will such requirements be considered the ultimate amount or types of insurance Contractor should carry to adequately protect itself from the risks of its occupation.

San Luis, at its option, may purchase Builder's All Risk Insurance for physical damage or loss upon the entire Work at the Site. This insurance, if purchased, will be written to the full insurable value of the Work, and will include the interests of San Luis, Contractor, subcontractors, vendors, and their agents, employees, officers, and directors on the Work including:

1. All materials to be incorporated in the Project and located on the Site, and approved off-Site warehouses, whether owned by Contractor or any of Contractor's subcontractors.
2. The Work.
3. Property of San Luis and Contractor located on the Site.
4. Waiver of subrogation against Contractor and/or Contractor's subcontractors.

Contractor assumes responsibility for all loss of, damage to, or destruction of Contractor's tools, machinery, equipment, appliances, shoring, scaffolding, falsework, and sheds, and personal property of Contractor's employees, from whatever cause arising.

Contractor and its subcontractors will give prompt notice (24 hours) of any possible loss covered by insurance by San Luis.

San Luis will have the power to adjust and settle any loss on insurance provided by San Luis.

No subcontractors of Contractor, or sub-subcontractors, shall be permitted access to the Site without proof of adequate insurance.