

ATTACHMENT 5

INTERCONNECTION AGREEMENT

This **AGREEMENT** (“Agreement”) is made and entered into this _____ day of _____ by and between _____, a _____ organized and existing under the laws of the U.S. Virgin Islands, (“Customer”) and the US Virgin Island Water and Power Authority, existing under the laws of the U.S. Virgin Islands (“WAPA”).

WHEREAS, Customer is the owner and operator of a Generating Facility (“Facility”), as identified in its Interconnection Application and defined in Section 3 of this Agreement; and

WHEREAS, the Customer desires to interconnect the Facility and operate in parallel with WAPA's system upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the respective promises herein, WAPA and the Customer hereby agree as follows:

1. Scope Of Agreement: This Agreement relates solely to the conditions under which WAPA and the Customer agree that the Facility may be interconnected to and operated in parallel with WAPA’s system.
2. Parallel Operation: The Facility may interconnect and operate in parallel with WAPA's system in accordance with the terms and conditions of this Agreement.
3. Facility:
 - (a) For the purposes of this Agreement, the “Facility” is defined as the equipment and devices, and associated appurtenances, owned by the Customer, which produce electric energy for use by the Customer and are to be interconnected and operated in parallel with WAPA’s system.
 - (b) The Customer shall furnish, install, operate and maintain, at its cost, the interconnection facilities (such as circuit breakers, relays, switches, synchronizing equipment, monitoring equipment, and control and protective devices and schemes) identified in Exhibit A hereto (“Customer Interconnection Facilities”).
 - (c) The Point of Interconnection is shown on the single-line diagram and three-line diagram (provided by the Customer and reviewed by WAPA) which are attached to Exhibit A (provided that the three-line diagram is not required if the Facility’s capacity is less than 30 kW).
 - (d) The Customer agrees to test the Facility, to maintain operating records, and to follow such operating procedures, as may be specified by WAPA to protect WAPA’s system from damages resulting from the parallel operation of the Facility, including such testing, records and operating procedures as more fully described in Exhibit A attached hereto and made a part hereof.
 - (e) WAPA may inspect the Facility, as more fully described in Exhibit A .
4. Interconnection Facilities Owned by WAPA: WAPA agrees to furnish, install, operate and maintain such interconnection facilities on its side of the point of interconnection with the Facility as required for parallel

operation with the Facility and as more fully described in Exhibit C attached hereto and made a part hereof (“Company Interconnection Facilities”). All such interconnection facilities shall be the property of WAPA. Where portions of WAPA interconnection facilities are located on the Customer’s premises, the Customer shall provide, at no expense to WAPA, a suitable location for and access to all such equipment. If a 120/240 Volt power source or sources are required, the Customer shall provide these at no expense to WAPA.

5. Customer Payments:

(a) The Customer agrees to pay to WAPA a reasonable non-refundable contribution for WAPA's investment in the interconnection facilities described in Exhibit B, subject to the terms and conditions included in Exhibit B, and to pay for other reasonable interconnection costs. The interconnection costs will not include the cost of an initial technical screening of the impact of the Facility on WAPA’s system, but will include the actual cost (or such lesser amount as WAPA may specify to facilitate the processing of interconnection requests for similarly situated facilities) of additional technical study for the Facility, if additional technical study is conducted.

(b) **[FOR FEDERAL GOVERNMENT ENTITIES (the “FGE”) – Replace paragraph (a) with the following:]**

The FGE agrees to pay to WAPA a reasonable non-refundable contribution for WAPA’s investment in the interconnection facilities described in Exhibit C, and to pay for other reasonable interconnection costs by means of a modification to the existing electric service contract or other contracting vehicle. The contract modification shall be executed prior to effectuating this Agreement.

6. Commencement of Producing Energy in Parallel: After this Agreement is executed, and the Customer Interconnection Facilities and WAPA interconnection facilities are completed, the Facility may be operated in parallel with WAPA's system, provided that the Customer has satisfied the conditions in Section 3 of Exhibit A of this Agreement.

7. Incidental Deliveries of Energy: WAPA shall have no duty under this Agreement to account for, pay for, deliver, or return in kind any energy produced by the Facility and delivered into WAPA’s system, unless allowed under net-billing or net-metering.

8. Disconnection of Facility for Utility Reasons:

(a) Upon providing reasonable notice (generally not to be less than ten (10) business days for scheduled work), WAPA may require the Customer to temporarily disconnect the Facility from WAPA's system when necessary for WAPA to construct, install, maintain, repair, replace, remove, investigate, test or inspect any of its equipment or other customers’ equipment or any part of its system. If WAPA determines that such disconnection is necessary because of an unexpected system emergency, forced outage, operating conditions on its systems, or compliance with good engineering practices as determined by WAPA, WAPA will immediately attempt to notify the Customer or the Customer’s designated representatives in person, by telephone, by electronic mail, or by facsimile, of the need to disconnect the Facility. Unless the emergency condition requires immediate disconnection as determined by WAPA, WAPA shall allow sufficient time for the Customer to manually disconnect the Facility.

- (b) The Facility shall not energize a de-energized utility line under any circumstances, but may operate its Facility isolated from the utility system with an open tie point.
 - (c) Following the completion of work and/or rectification of the emergency conditions by WAPA, WAPA shall reset the Customer's service breaker, if open, as soon as practicable and shall provide, within fifteen (15) business days or such other period as is mutually agreed upon in writing by WAPA and the Customer, written documentation of the occurrence and nature of WAPA's work and/or emergency condition, and of the disconnection of the Facility.
 - (d) WAPA shall take reasonable steps to minimize the number and duration of such disconnections.
 - (e) The disconnection of the Facility under this Section 8 shall not be subject to standby service charges.
 - (f) WAPA may disconnect the Customer from WAPA's system for failure by the Customer to disconnect the Facility under this Section 8, until such time that WAPA's work or the system condition has been corrected and the normal system condition has been restored.
9. Personnel and System Safety: Notwithstanding any other provisions of this Agreement, WAPA may disconnect the Facility from WAPA's system, without prior notice to the Customer, (a) to eliminate conditions that constitute a potential hazard to WAPA's personnel or the general public; (b) if pre-emergency or emergency conditions exist on WAPA system; (c) if a hazardous condition relating to the Facility is observed by WAPA's inspection; (d) if the Facility interferes with WAPA's equipment or equipment belonging to other customers of WAPA (including non-utility generating equipment); or (e) if the Customer of the Facility has tampered with any protective device. The Facility shall remain disconnected until such time as WAPA is satisfied that the endangering condition(s) as listed above has been corrected, and WAPA shall not be obligated to allow parallel operation of the Facility during such period. If WAPA disconnects the Facility under this Section 9, it shall as soon as practicable notify the Customer in person, by telephone, by electronic mail, or by facsimile and provide the reason(s) why the Facility was disconnected from WAPA's system. Following the rectification of the endangering conditions, WAPA shall provide, within fifteen (15) business days or such other period as is mutually agreed upon in writing by WAPA and the Customer, written documentation of the occurrence of the endangering conditions, and of the disconnection of the Facility. The disconnection of a customer's generating facility shall not be subject to standby service charges provided that the disconnection was caused by the utility or the utility's equipment.
10. Transmission Service Not Provided with Interconnection: Interconnection with WAPA's system under this Agreement does not provide the Customer any rights to utilize WAPA's system for the transmission or distribution of electric power.
11. Prevention of Interference: The Customer shall not operate equipment that superimposes a voltage or current upon WAPA's system that interferes with WAPA's operations, service to WAPA's customers, or WAPA's communication facilities. Such interference shall include, but not be limited to, overcurrent, voltage imbalance, and abnormal waveforms. If such interference occurs, the Customer must diligently pursue and take corrective action at its own expense after being given notice and reasonable time to do so by WAPA. If the Customer does not take timely corrective action, or continues to operate the equipment causing interference without restriction or limit, WAPA may, without liability, disconnect the Customer's equipment from WAPA's system.

12. Location of Metering: Where Company-owned metering is located on the Customer's premises, the Customer shall provide, at no expense to WAPA, a suitable location for and access to all such metering.
13. Design Reviews and Inspections: WAPA's review and authorization to allow the Facility to interconnect and operate in parallel with WAPA's system shall not be construed as confirming or endorsing the Facility's design or as warranting the Facility's safety, durability or reliability. WAPA shall not, by reason of such review or lack of review, be responsible for the equipment, including but not limited to, the safety, strength, adequacy, durability, reliability, performance, or capacity of such equipment.
14. Permits, Approvals, and Licenses: The Customer shall obtain, at its expense, any and all authorizations, approvals, permits, and licenses required for the construction and operation of the Facility and the interconnection with WAPA's system, including but not limited to environmental permits, building permits, rights-of-way, or easements.
15. Term: This Agreement shall become effective when executed by the Customer and WAPA and shall continue in effect until terminated.
16. Termination: This Agreement may be terminated as follows: (a) the Customer may terminate this Agreement at any time, by giving WAPA at least sixty (60) days written notice, provided that the Facility is disconnected from WAPA's system and no longer operating in parallel with WAPA's system at the time this Agreement is terminated; (b) WAPA may terminate this Agreement upon failure by the Customer to generate energy from the Facility in parallel with WAPA's system within twelve (12) months after completion of the interconnection; (c) either party may terminate this Agreement by giving the other party at least thirty (30) days prior written notice that the other party is in default of any of the material terms and conditions of the Agreement, provided that the notice specifies the basis for the termination and there is a reasonable opportunity to cure the default; (d) WAPA may terminate this Agreement if the Facility is removed from permanent service; (e) WAPA and the Customer may terminate this Agreement at any time by mutual agreement provided that the agreement is in writing and signed by both parties; or (f) WAPA may terminate this Agreement by giving the Customer at least sixty (60) days prior written notice in the event that there is a material change in an applicable statute, rule or tariff.
17. Disconnection and Survival of Obligations: Upon termination of this Agreement the Facility shall be disconnected from WAPA's system. The termination of this Agreement shall not relieve the parties of their liabilities and obligations, owed or continuing at the time of the termination.
18. Indemnification:
 - (a) The Customer shall indemnify, defend and hold harmless WAPA and its officers, directors, agents and employees, from and against all liabilities, damages, losses, fines, penalties, claims, demands, suits, costs and expenses (including reasonable attorney's fees and expenses) to or by third persons, including WAPA's employees or subcontractors, for injury or death, or for injury to property, arising out of the actions or inactions of the Customer (or those of anyone under its control or on its behalf) with respect to its obligations under this Agreement, and/or arising out of the installation, operation and maintenance of the Facility and/or the Customer Interconnection Facilities, except to the extent that such injury, death or damage is attributable to the gross negligence or intentional act or omission of WAPA or its officers, directors, agents or employees.
 - (b) WAPA shall indemnify, defend and hold harmless the Customer, and its officers, directors, agents and employees, from and against all liabilities, damages, losses, fines, penalties, claims, demands,

suits, costs and expenses (including reasonable attorney's fees and expenses) to or by third persons, including the Customer's employees or subcontractors, for injury or death, or for injury to property, arising out of the actions or inactions of WAPA (or those of anyone under its control or on its behalf) with respect to its obligations under this Agreement, and/or arising out of the installation, operation and maintenance of WAPA Interconnection Facilities, except to the extent that such injury, death or damage is attributable to the gross negligence or intentional act or omission of the Customer or its officers, directors, agents or employees.

(c) Nothing in this Agreement shall create any duty to, any standard of care with reference to, or any liability to any person or entity not a party to it.

(d) **[FOR A CUSTOMER THAT IS AN AGENCY OF USVI GOVERNMENT]**

The "Agency" shall be responsible for damages or injury caused by the "Agency's" agents, officers, and employees in the course of their employment to the extent that the "Agency's" liability for such damage or injury has been determined by a court or otherwise agreed to by the "Agency". The "Agency" shall pay for such damage and injury to the extent permitted by law. The "Agency" shall use reasonably good faith efforts to pursue any approvals that may be required to obtain the funding necessary to enable the "Agency" to perform its obligations or cover its liabilities hereunder. The "Agency" shall not request Company to indemnify the "Agency" for, or hold the "Agency" harmless from, any claims for such damages or injury.

Company shall be responsible for damages or injury caused by Company, Company's agents, officers, and employees in the course of their employment to the extent that Company's liability for such damage or injury has been determined by a court or otherwise agreed to by Company, and Company shall pay for such damage and injury to the extent permitted by law. Company shall not request the "Agency" to indemnify Company for, or hold Company harmless from, any claims for such damages or injury.

(e) **[FOR A CUSTOMER THAT IS AN AGENCY OF THE FEDERAL GOVERNMENT (the "FGE") – delete paragraphs (a) through (d) and replace with the following:]**

Neither party hereto shall be responsible for loss or damage to the property of the other party or property of others, or for death or for personal injuries to the other party's officers, agents, servants, or employees, or to other persons, arising from or related to (a) WAPA's initiation of a service interruption under this contract and /or (b) the FGE's electric service being disconnected or reconnected by WAPA and/or FGE pursuant to this contract and/or (c) the parallel operation of the systems of the parties hereto or incident to the use, operation, or maintenance with respect to the furnishing of service hereunder, except for such loss, damage, death or injuries caused by the FGE for which it may be liable under the Federal Tort Claims Act and in the case of WAPA as may be caused by the negligence, wrongful act or omission of WAPA, its agents, servants or employees; nor, except for matters for which it may be liable under the Federal Tort Claims Act, shall the FGE be responsible in any way for any damage or loss of profit suffered by WAPA arising from or incident to such use, operation or maintenance.

19. Insurance:

(a) The Customer shall, at its own expense and during the term of the Agreement and any other time that the Facility is interconnected with WAPA's system, either (a) maintain in effect with a responsible insurance company authorized to do insurance business in the United States Virgin

Islands, insurance that will adequately protect the Customer and WAPA with respect to risks arising under this Agreement, including the Facility's interconnection with WAPA's system, provided the forms, amounts and conditions of such insurance coverage shall be as specified in Exhibit C hereto, or (b) self-insure, in lieu of obtaining insurance coverage from an insurance company, provided the terms of such self-insurance shall be as specified in Exhibit C hereto. Customer is responsible for determining its own level and form of insurance. The Customer's indemnity and other obligations shall not be limited by this provision. Any deductible shall be the responsibility of the Customer. In the event Customer obtains insurance from an insurance company, proof of such insurance, including certificates of insurance showing the form and amounts of coverage, must be provided to WAPA prior to any parallel interconnection. In the event Customer self-insures, documentation describing the Customer's means and capability of self-insuring must be provided to WAPA prior to any parallel interconnection.

(b) **[FOR A CUSTOMER THAT IS AN AGENCY OF THE FEDERAL GOVERNMENT (the "FGE") – delete paragraph (a) and insert the following:]**

The Customer is considered to be self-insured for the purpose of this agreement and shall not be required to maintain any separate policy of insurance under this section of the agreement. Notwithstanding the above, this shall in no event waive or otherwise release or limit the Customer's liabilities undertaken pursuant to this agreement. WAPA agrees to maintain general liability insurance or self-insurance consistent with WAPA's commercial practice. Such insurance or self-insurance shall not exclude coverage for WAPA's liabilities undertaken pursuant to this agreement. The parties to this agreement further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

20. **Force Majeure:** For purposes of this Agreement, "Force Majeure Event" means any event: (a) that is beyond the reasonable control of the affected party; and (b) that the affected party is unable to prevent or provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war, public disorder, insurrection, or rebellion; floods, hurricanes, earthquakes, lightning, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a party from fulfilling any obligations under this Agreement, such party will promptly notify the other party in writing, and will keep the other party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected party is taking to mitigate the effects of the event on its performance. The affected party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected party will use reasonable efforts to resume its performance as soon as possible.

21. **Warranties:** WAPA and the Customer each represents and warrants respectively that:

- (a) It has all necessary right, power and authority to execute, deliver and perform this Agreement.
- (b) The execution, delivery and performance of this Agreement by it will not result in a violation of any law or regulation of any governmental authority, or conflict with, or result in a breach of, or

cause a default under, any agreement or instrument to which such party is also a party or by which it is bound.

22. Good Engineering Practice:

- (a) Each party agrees to install, operate and maintain its respective equipment and facilities and to perform all obligations required to be performed by such party under this Agreement in accordance with good engineering practice in the electric industry and with applicable laws, rules, orders and tariffs.
- (b) Wherever in this Agreement and the attached Exhibits WAPA has the right to give specifications, determinations or approvals, such specifications, determinations or approvals shall be given in accordance with WAPA's standard practices, policies and procedures, which may includes IEEE Guides and Standards for Protective Relaying Systems.

23. Miscellaneous:

- (a) Amendments. Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed by the parties. Any waiver hereunder shall not be valid unless in writing and signed by the party against whom waiver is asserted.
- (b) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns.
- (c) Notices. Any written notice provided hereunder shall be delivered personally or sent by registered or certified first class mail, with postage prepaid, to the other party at the following addresses:

Company: _____

Attn: _____

Customer: The mailing address listed the Interconnection Application.

Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth day after the date of mailing, whichever is earlier. Any party hereto may change its address for written notice by giving written notice of such change to the other party hereto.

- (d) Effect of Section and Exhibit Headings. The headings or titles of the several sections and exhibits hereof are for convenience of reference and shall not affect the construction or interpretation of any provision of this Agreement.
- (e) Relationship of Parties. Nothing in this Agreement shall be deemed to constitute any party hereto as partner, agent or representative of the other party or to create any fiduciary relationship between the parties.
- (f) Entire Agreement. This Agreement constitutes the entire understanding and agreement between WAPA and the Customer.

- (g) Limitations. Nothing in this Agreement shall limit WAPA's ability to exercise its rights or expand or diminish its liability with respect to the provision of electrical service pursuant to WAPA's Tariff as filed with the Virgin Islands Public Services Commission ("Commission").
- (h) Governing Law and Regulatory Authority. This Agreement was executed in the United States Virgin Islands and must in all respects be governed by, interpreted, construed, and enforced in accordance with the laws thereof. This Agreement is subject to, and the parties' obligations hereunder include, operating in full compliance with all valid, applicable federal, territorial, and local laws or ordinances, and all applicable rules, regulations, orders of, and tariffs approved by, duly constituted regulatory authorities having jurisdiction.
- (i) Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all constitute one and the same instrument.

IN WITNESS WHEREOF, WAPA and the Customer have executed this Agreement as of the day and year first above written.

By _____
 Name
 Title
 Date

By _____
 Name
 Title
 Date

By _____
 Name
 Title
 Date

"Company"

"Customer"