

ARTICLE 8

TITLE AND RISK OF LOSS

8.1 Title to Gas and Water. CILCO or its Affiliate at all times shall retain title to all quantities of Gas delivered to the Facility pursuant to Section 7.1. Medina shall not take title to any Water delivered to the Facility pursuant to Section 7.3.

8.2 Risk of Loss and Indemnity.

8.2.1 General. Without regard to title as provided in Section 8.1 above, as between the Parties, CILCO shall be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of Gas and Water prior to the Delivery Point therefor and of Energy, Steam Heat Service, Chilled Water Service, other Market Output and Wastewater at and after the Delivery Point therefor, and Medina shall be deemed to be in exclusive possession and control (and be responsible for any damage or injury resulting therefrom or caused thereby) of Gas at and from the Delivery Point therefor and of Energy, Steam Heat Service, Chilled Water Service, and other Market Output prior to the Delivery Point therefor. Risk of loss related to Gas and Water shall transfer from CILCO to Medina at the Delivery Point therefor and risk of loss related to Energy, Steam Heat Service, Chilled Water Service, other Market Output and Wastewater shall transfer from Medina to CILCO at the Delivery Point therefor. CILCO shall indemnify, defend and hold harmless Medina from and against any liability arising out of or in any way relating to CILCO's possession or control of Gas and Water up to the Delivery Point therefor or its possession and control of Energy, Steam Heat Service, Chilled Water Service, other Market Output and Wastewater at and after the Delivery Point therefor, and Medina shall indemnify, defend and hold harmless CILCO from and against any liability arising out of or in any way relating to Medina's possession or control of Gas and Water at and from the Delivery Point therefor or its possession and control of Energy, Steam Heat Service, Chilled Water Service, other Market Output and Wastewater prior to the Delivery Point therefor.

8.2.2 Risk of Non-Conforming Gas and Water. CILCO shall be responsible for, and shall indemnify, defend and hold harmless Medina with respect to, any and all injury or damage, including damage to the Facility, caused by the failure of any Gas delivered to the Facility to be pipeline quality natural gas. CILCO shall be responsible for, and shall indemnify, defend and hold harmless Medina with respect to, any and all injury or damage caused by the failure of any Water delivered to the Facility to meet the specifications in Exhibit E.

ARTICLE 9

INTERCONNECTION FACILITIES

9.1 Electrical Interconnection Facilities. At its expense, Medina shall install, own and operate, or cause to be installed, owned and operated, all Electrical Interconnection Facilities on its side of the applicable Delivery Point. No later than January 1, 2001, at its expense, CILCO shall install, own and operate, or cause to be installed, owned and operated, all Electrical Interconnection Facilities on its side of the applicable Delivery Point. CILCO shall pay directly

to the Transmission Provider, or shall reimburse Medina for the payment by Medina of, all amounts payable by Medina under Sections 4.3, 6.2, 8.1 and 8.2 of the Interconnection Agreement, or under similar provisions contained in any interconnection agreement entered into in replacement of the Interconnection Agreement.

9.2 Gas Interconnection Facilities. At its expense, Medina shall install, own and operate, or cause to be installed, owned and operated, all Gas Interconnection Facilities on its side of the applicable Delivery Point. No later than December 15, 2000, at its expense, CILCO shall install, own and operate, or cause to be installed, owned and operated, all Gas Interconnection Facilities on its side of the applicable Delivery Point.

9.3 Water Interconnection Facilities. At its expense, Medina shall install, own and operate, or cause to be installed, owned and operated, all Water Interconnection Facilities on its side of the applicable Delivery Point. No later than November 15, 2000, at its expense, CILCO shall install, own and operate, or cause to be installed, owned and operated, all Water Interconnection Facilities on its side of the applicable Delivery Point.

9.4 Wastewater Interconnection Facilities. At its expense, Medina shall install, own and operate, or cause to be installed, owned and operated, all Wastewater Interconnection Facilities on its side of the applicable Delivery Point. No later than November 15, 2000, at its expense, CILCO shall install, own and operate, or cause to be installed, owned and operated, all Wastewater Interconnection Facilities on its side of the applicable Delivery Point.

ARTICLE 10

METERING

10.1 Energy Output Meter. Energy generated by the Facility shall be metered at the Delivery Point by the Energy Output Meter installed by CILCO at Medina's expense, and owned, operated, maintained, calibrated, tested, and read by CILCO, at CILCO's expense, in accordance with Good Operating Practice. Such installation shall be completed no later than January 1, 2001. Subject to Section 10.6, the Energy Output Meter shall be used to determine conclusively the amount of Energy delivered by Medina at the Delivery Point. Medina shall have the right to receive data in electronic form in real time on a continuous basis from the Energy Output Meter, and CILCO shall install at the Facility an Energy Output Meter that is capable of providing such data to Medina. Medina shall pay for the costs of installing, maintaining, testing, and calibration of all facilities to accept the data from CILCO's Energy Output Meter

10.2 Steam Heat Service Output Meter and Chilled Water Service Output Meter. Steam Heat Service and Chilled Water Service provided by the Facility shall be metered at the Delivery Point therefor by the Steam Heat Service Output Meter and the Chilled Water Service Output Meter installed, owned, operated, maintained, calibrated, tested, and read by Medina, at Medina's expense, in accordance with Good Operating Practice. Such installation shall be completed no later than is required for the Performance Tests. Subject to Section 10.6, the Steam Heat Service Output Meter and the Chilled Water Service Output Meter shall be used to

determine conclusively the amount of Steam Heat Service and Chilled Water Service provided by Medina at the Delivery Point. CILCO shall have the right to receive data in electronic form in real time on a continuous basis from the Steam Heat Service Output Meter and the Chilled Water Service Output Meter, and Medina shall install a Steam Heat Service Output Meter and Chilled Water Service Output Meter which is capable of providing such data to CILCO. CILCO shall pay for the costs of installing, maintaining, testing, and calibration of all facilities to accept the data from Medina's Steam Heat Service Output Meter and Chilled Water Service Output Meter.

10.3 Gas Meter. Gas delivered by CILCO to the Facility shall be metered at the applicable Delivery Point by a Gas Meter installed, owned, operated, maintained, calibrated, tested, and read by CILCO, in accordance with Good Operating Practice. Such installation shall be completed no later than December 15, 2000. Subject to Section 10.6, the Gas Meter shall be used to determine conclusively the quantity of Gas delivered at the Delivery Point. Medina shall have the right to receive data in electronic form in real time on a continuous basis from the Gas Meter, and CILCO shall install a Gas Meter that is capable of providing such data to Medina. Medina shall pay for the costs of installing, maintaining, testing, and calibration of all facilities to accept the data from CILCO's Gas Meter.

10.4 Check Meters. Each Party, at its option and expense, may install, operate and maintain one or more check meters ("Check Meters") at the Delivery Points to check the other Party's meters. Such Check Meters shall be for check purposes only and shall not be used for measurement for purposes of this Agreement, except as provided in Section 10.6 below. The Check Meters shall be subject at all reasonable times to inspection and examination by the other Party or its designee. The installation, operation and maintenance of Check Meters shall be performed in accordance with Good Operating Practices. Each Party shall grant the other Party access to the Delivery Points for the purpose of installing, operating and maintaining Check Meters.

10.5 Access. Medina shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installation, repairing, inspection, testing, calibrating or adjusting of the Energy Output Meter or Gas Meter. All records from such Energy Output Meters and Gas Meter shall be the property of CILCO, but upon reasonable advance notice and during normal business hours, CILCO shall make available to Medina all data, records and charts relating to the Energy Output Meter and Gas Meter for inspection and verification. CILCO shall also keep and maintain, for a period of two (2) years or longer if required by Law, accurate and detailed records relating to the Facility's hourly deliveries of Energy and Gas consumption, which records shall be available for inspection and copying by Medina and its designees during normal business hours upon reasonable notice.

10.6 Testing and Adjustment. CILCO shall inspect and calibrate the Energy Output Meter at least once every four (4) Contract Years, and CILCO shall inspect and calibrate the Gas Meter at least once every ten (10) Contract Years. Medina shall inspect and calibrate the Steam Heat Service Output Meter and the Chilled Water Service Output Meter at least once every Contract Year. Either Party may request an inspection and calibration of the other Party's meters. The cost of the inspection and calibration shall be paid by the Party that owns the meters; provided, however, that the Party requesting such inspection and calibration shall

reimburse the costs if no correction is made. If any such calibration shows a measurement error of one percent (1%) or less, or such lower percentage as may be established by tariff applicable to a retail customer, then no correction shall be made. If any such calibration shows a measurement error of more than one percent (1%), or such lower percentage as may be established by tariff applicable to a retail customer, a retroactive correction shall be made for the period during which the measurement instruments were in error, by using the period of inaccuracy if such period can be determined, or a Check Meter, if installed and registering accurately. If the period of inaccuracy cannot be determined, or a Check Meter is not installed and registering accurately, the retroactive correction shall be made for one-half (1/2) of the period elapsed since the last date the meter was inspected and calibrated. If the last inspection and calibration occurred more than six (6) months before, such inspection and calibration shall be deemed to have occurred six (6) months before. In addition, the meter shall be adjusted immediately at the expense of the Party owning such meter so as to measure accurately.

ARTICLE 11

OPERATION AND MAINTENANCE

11.1 Operation and Maintenance Obligation. At all times during the Term, Medina shall be responsible for the start-up, testing, operation and maintenance of the Facility and shall bear all costs and expenses incurred in connection therewith, including the cost of labor, parts, supplies, insurance and applicable Taxes. CILCO shall supply any Gas and Water required by Medina to perform the start-up and any testing of the Facility. Such start-up, testing, operation and maintenance shall be performed by Medina in accordance with Good Operating Practices, applicable Law, and the regulations, standards and guidelines adopted from time to time by MAIN or the Transmission Provider. Medina shall have full and complete control over the Facility at all times, and Medina shall be entitled at any time and from time to time to suspend operation of the Facility or temporarily disconnect the Facility from the Interconnection Facilities whenever and for such periods of time as, in accordance with Good Operating Practices, may be necessary for emergency, reliability, environmental, or safety reasons.

11.2 Operating Committee. The Parties hereby establish an operating committee consisting of representatives of the Parties (the "Operating Committee"). The Parties agree that Caterpillar may attend meetings of the Operating Committee. The Operating Committee shall meet regularly to coordinate with respect to:

- (a) Market Output provided by the Facility;
- (b) Capacity Tests of the Facility;
- (c) Steam Heat Service and Chilled Water Service requirements;
- (d) Scheduled Maintenance and other maintenance for the Facility;
- (e) Forced Outages;
- (f) Procedures for calibration of Output Meters, Gas Meters and any other metering equipment; and

(g) Safety procedures.

11.3 Scheduled Maintenance. No later than one hundred twenty (120) days prior to the end of each Contract Year, Medina shall submit to the Operating Committee a proposed Scheduled Maintenance program for the following Contract Year. Within sixty (60) days thereafter, the Operating Committee shall confer and agree on the Scheduled Maintenance program for the following Contract Year. The Scheduled Maintenance and other Facility maintenance may be scheduled and rescheduled in coordination with the Operating Committee. Medina may perform any maintenance at any time if Medina determines it is required by Good Operating Practice.

11.4 Outages. Notice, coordination, reporting and related requirements with respect to Forced Outages and Scheduled Maintenance Outages occurring at the Facility are set forth in the Facility Operating Procedures. After a Forced Outage, Medina shall use commercially reasonable efforts to return the Facility to service.

11.5 Access. During the Term, CILCO and its representatives shall have accompanied access to the Facility at all reasonable times in order (a) to verify, review and monitor the operation of the Facility and all appurtenant electrical and steam equipment for the purpose of determining Medina's compliance with this Agreement, and (b) to inspect, examine and test equipment and facilities as authorized under this Agreement. Such access shall be subject to compliance by CILCO and its representatives with Medina's safety and security requirements, and CILCO and its representatives shall at all times conduct themselves so as not to impair the Facility's operations.

11.6 Maintenance of Records. Medina shall keep and maintain at the Facility (and shall retain for a minimum of two (2) years) accurate and complete operating records and logs in a manner consistent with Good Operating Practices and as required by applicable Law and the regulations, standards and guidelines adopted from time to time by the MAIN or as required pursuant to the Interconnection Agreement. Such records shall include Market Output, Heat Rate, and Outage information. Medina shall make such records and logs available to CILCO on a real-time basis as specified in the Facility Operating Procedures, and also for inspection and copying at the Facility, during normal business hours upon reasonable notice.

ARTICLE 12

PRICE AND PAYMENT

12.1 Contract Price. As compensation in full to Medina for the Contract Capacity made available to CILCO and for the Gas Conversion Service and Water Conversion Service performed by Medina, CILCO shall pay Medina: the Fixed Payment and the Variable Payments. CILCO shall also pay Medina the applicable Heat Rate Bonus and the Steam Bonus. Payment of the Fixed Payment shall commence upon the respective Commercial Operation Dates for Steam Heat Service, Chilled Water Service, and Energy, and shall continue during the Term of this Agreement. Payment of the Variable Payments shall commence upon the Effective Date and shall continue during the Term of this Agreement. Such amounts shall be paid in accordance with Monthly statements issued by Medina as provided in Section 12.4.

12.1.1 Fixed Payment. The Fixed Payment with respect to each Month commencing on the respective Commercial Operation Date and during the Term (prorated on a daily basis for any portion of a Month for the first Month after the respective Commercial Operation Date and for the last Month of the Term, if required) shall be as calculated pursuant to Exhibit G. The Fixed Payment shall be paid each Month for the following Month.

12.1.2 Variable Payments. The Variable Payments with respect to each Month commencing on the Effective Date and during the Term shall be calculated pursuant to Exhibit G. The Variable Payments shall be paid each Month for the previous Month.

12.2 Availability Rebate to Fixed Payment. The Energy Fixed Payment, the Steam Heat Service Fixed Payment, and the Chilled Water Service Fixed Payment, but not the Variable Payments or the O&M Charge, shall be subject to rebate by Medina to CILCO on a quarterly basis during the Term in the respective amount of the Energy Availability Rebate, the Steam Heat Service Availability Rebate, and the Chilled Water Service Availability Rebate (each, an "Availability Rebate"), if any, calculated in accordance with Exhibit C. An Availability Rebate, if any, shall be paid by Medina to CILCO on the thirtieth (30th) day after the end of each calendar quarter. CILCO agrees that the payment of an Availability Rebate and interest thereon shall be subordinate to Medina's obligations to the Project Lender. Accumulated amounts of an Availability Rebate not paid by Medina for a calendar quarter shall be carried over and accumulated for the next calendar quarter. The amount of any Availability Rebate outstanding and unpaid after the regular quarterly payment date shall bear interest at the Delayed Payment Rate until paid. For the purpose of clarification, an illustration of the calculation of an Availability Rebate for a calendar quarter is in Exhibit C-1. CILCO shall have no right to set off the Availability Rebate, or any portion thereof, against its obligations to pay the Fixed Payment or the Variable Payments hereunder.

12.2.1 Calculation of the Availability Rebate. Within ten (10) days after the end of each Month, Medina shall determine the Energy Availability Rebate, the Steam Heat Service Availability Rebate and the Chilled Water Service Availability Rebate, if any, for the immediately preceding Month in accordance with Exhibit C and shall submit such determination in writing to CILCO, together with such documents and supporting information as CILCO may reasonably request. Such Monthly determination by Medina shall be deemed to be final and binding on the Parties for purposes of this Agreement, unless it is disputed in writing by CILCO within fifteen (15) days following the receipt thereof.

12.2.2 Reduction of the Availability Rebate. During each calendar quarter, the accumulated amounts of the Energy Availability Rebate, the Steam Heat Service Availability Rebate, and the Chilled Water Service Availability Rebate shall be reduced, but not below zero, for Availability in such category that is higher than the Guaranteed Availability for any Month during such quarter. Availability that is higher than Guaranteed Availability in one category shall not be used to reduce an Availability Rebate in another category. The amount of the reduction shall be calculated in accordance with Exhibit C. A negative value calculated according to the formulae in Exhibit C shall increase an accumulated Availability Rebate. A positive value calculated according to the formulae in Exhibit C shall reduce an accumulated Availability Rebate.

12.2.3 Limitations. Notwithstanding any of the foregoing provisions contained in this Section 12.2, no Availability Rebate shall be due and payable by Medina to the extent of any failure to achieve the Guaranteed Availability due to any of the limitations described in Section 4.3 hereof.

12.3 Steam Heat Service Capacity Bonus or Rebate. On January 1, 2001, CILCO shall pay Medina a bonus of \$1000 per day for each day Steam Heat Service Capacity is available before January 1, 2001 ("Steam Bonus"). Upon CILCO's payment of the first Fixed Payment, Medina shall pay CILCO a one-time rebate of \$1000 per day for each day of delay in the occurrence of the Commercial Operation Date for Steam Heat Service Capacity after February 15, 2001 ("Steam Rebate"). The Steam Rebate shall be CILCO's sole remedy for Medina's failure to make the Contract Capacity available on the dates specified in Section 4.1.

12.4 Invoicing and Payment.

12.4.1 Monthly Statements. On or before the tenth (10th) day of each Month, Medina shall provide CILCO a Monthly statement, which statement shall set forth:

- (a) The Fixed Payment due and owing for the following Month;
- (b) The amount of Energy, Steam Heat Service, and Chilled Water Service provided by Medina to CILCO during the previous Month and the Variable Payments due and owing;
- (c) The quantities of Gas consumed in each hour of the previous Month, the Monthly Heat Rate, and the Heat Rate Payment or the Heat Rate Bonus, if any;
- (d) The Energy Availability Rebate, the Steam Heat Service Availability Rebate, and the Chilled Water Service Availability Rebate, for the previous Month, any reduction in such Availability Rebate pursuant to Section 12.2.2, the total accumulated amount of such Availability Rebate, and any interest accrued pursuant to Section 12.2;
- (e) The Steam Rebate or Bonus, if any; and
- (f) Such other data and information as may be necessary to determine the amounts payable by CILCO hereunder.

Such statement shall be accompanied by any supporting documentation and other information reasonably requested by CILCO to determine the accuracy of the statement.

12.4.2 Payment. Within fifteen (15) days following the date Medina issues each statement under Section 12.4.1, CILCO shall pay or cause to be paid to Medina the full undisputed amount of the statement; provided that payment of any Availability Rebate shall be due at the times specified in Section 12.2 and shall be subordinated as described therein. All such payments shall be made by wire transfer of immediately available funds to the account of Medina at such depository as Medina shall designate by written notice to CILCO. If the payment due date falls on a day other than a Business Day, the payment shall be due on the next Business Day.

12.4.3 Late Payments and Disputed Invoices. If CILCO disputes any amount in the statement issued by Medina, the amount not in dispute shall be timely paid by CILCO, and any disputed amount which is ultimately determined to have been payable shall be paid within ten (10) days following such determination, together with interest at the Delayed Payment Rate from the date the amount was originally payable to and including the date of payment. Any dispute which is not promptly resolved by mutual agreement of the Parties shall be resolved in accordance with the provisions of Article 18.

12.4.4 Interest. Amounts not paid by either Party to the other when due under any provision of this Agreement, including the provisions of this Article 12, shall bear interest, from the date payment was due to and including the date of payment, at the Delayed Payment Rate.

12.5 Adjustments and Audit.

12.5.1 Adjustment. In the event adjustments or corrections to Monthly statements are required as a result of inaccurate Output Meters or Gas Meter or other errors in computation or billing, the Parties shall promptly recompute amounts due from or to each other hereunder during the period of inaccuracy and correct any errors in such statements. If the corrected total amount is less than the total amount already paid by a Party for that period, the difference shall be promptly paid to that Party or offset by that Party against amounts due.

12.5.2 Audit. Each Party and its representatives shall have the right, at its sole expense, upon reasonable notice and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party documents in its possession or control pertaining to the amounts of Energy, Steam Heat Service, Chilled Water Service, Gas and Water delivered at the applicable Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be promptly made and shall bear interest calculated at the Delayed Payment Rate from the date the overpayment or underpayment was made until paid. No adjustment of any statement or payment shall be made unless objection to the accuracy thereof is made within two (2) years from the date of the statement. This Section 12.5.2 shall survive any expiration or other termination of the Agreement for a period of two (2) years from the date of such termination for the purpose of such statement and payment objections.

12.6 Nature of Rebates and Limitation of Damages. The Parties agree that the damages and losses to CILCO are difficult or impossible to ascertain for Medina's failure to achieve the Guaranteed Availability and the Heat Rate Guarantee, and to make the Contract Capacity available to CILCO by the dates specified in Section 4.1, and the payments and rebates in Sections 7.2, 12.2 and 12.3 are reasonable and not penalties and shall be applicable regardless of the amount of losses or damages actually suffered. CILCO's sole and exclusive remedy for Medina's failure: (i) to achieve the Monthly Heat Rate Guarantee shall be the Heat Rate Payment; (ii) to achieve the Guaranteed Availability and to make the Contract Capacity available to CILCO, or to provide Energy, Gas Conversion Service, Water Conversion Service, Steam Heat Service or Chilled Water Service as required by this Agreement, shall be the Availability

Rebate; and (iii) to make the Contract Capacity available by the dates specified in Section 4.1 shall be the Steam Rebate.

ARTICLE 13

INDEMNITIES

13.1 General Indemnity. Subject to Section 12.6, to the fullest extent permitted by Law, each Party shall defend, indemnify and hold harmless the other Party, its Affiliates, partners, shareholders, directors, officers, agents and employees from and against all loss, liability, damage, cost and expense, including damage and liability for bodily injury to or death of third persons or damage to property of third persons, and including court costs and reasonable attorneys' fees (collectively, "Losses"), to the extent arising out of, in connection with or resulting from (a) the indemnifying Party's breach of any of the representations or warranties made in, or the indemnifying Party's failure to perform any of its obligations under, this Agreement, (b) the indemnifying Party's violation of any applicable Law in connection with its performance hereunder, or (c) the indemnifying Party's design, installation, construction, ownership, operation, repair, relocation, replacement, removal or maintenance of, or the failure of, any of such Party's equipment and facilities, including the Facility, and any Interconnection Facilities, and any appurtenances thereto, and any electric transmission, gas facilities, steam facilities, or chilled water facilities used in connection with this Agreement; provided, however, that neither Party shall have any indemnification obligations hereunder or under Section 13.2 below in respect of any Losses to the extent caused by an indemnified person's fault or negligence.

13.2 Environmental Indemnity.

13.2.1 Medina Environmental Indemnity. Subject to Section 12.6, Medina shall protect, defend, indemnify and save harmless CILCO, its officers, directors, shareholders, agents, employees, successors and assigns from, against and in respect of, any and all Losses, directly or indirectly imposed upon, incurred by, or asserted against such indemnitees, arising out of or in connection with (a) Medina's use, generation, refining, manufacture, transportation, transfer, production, processing, storage, handling, or treatment of any Hazardous Materials on, under or from the Facility; (b) Medina's Release, or threatened Release, of any Hazardous Materials on, under or from the Facility; (c) any personal or bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, including any damage arising out of any cleanup required by Governmental Authorities or Environmental Laws; (d) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; or (e) any violation of Laws, orders, rules, regulations, requirements, guidelines, or demands of Governmental Authorities, including permits and licenses under Environmental Laws, which are based upon or in any way related to such Hazardous Materials.

13.2.2 CILCO Environmental Indemnity. CILCO shall protect, defend, indemnify and save harmless Medina, its officers, directors, shareholders, agents, employees, successors and assigns from, against and in respect of, any and all Losses, directly or indirectly imposed upon, incurred by or asserted against, any such indemnitee, arising out of or in

connection with: (a) CILCO's use, generation, refining, manufacture, transportation, transfer, production, processing, storage, handling, or treatment of any Hazardous Materials; (b) CILCO's Release, or threatened Release, of any Hazardous Materials; (c) any personal or bodily injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, including any damage arising out of any cleanup required by Governmental Authorities or Environmental Laws, (d) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; or (e) any violation of Laws, orders, rules, regulations, requirements, guidelines, or demands of Governmental Authorities, including permits and licenses under Environmental Laws, which are based upon or in any way related to such Hazardous Materials.

13.3 Employee Claims. With respect to any and all claims against an indemnified Party by an employee of the indemnifying Party or of anyone for whom the indemnifying Party is responsible hereunder, the indemnification obligation stated in Section 13.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for such person under any applicable worker's compensation Law, disability Law, or other employee benefit Law.

13.4 Notice of Claim. An indemnified person (an "Indemnitee") shall reasonably promptly after the receipt of notice of the commencement of any legal action or of any claims against such Indemnitee in respect of which indemnification may be sought pursuant to the foregoing provisions of this Article 13, notify the indemnifying Party (the "Indemnitor") in writing thereof; provided, that the failure of an Indemnitee reasonably promptly to provide any such notice shall only reduce the Indemnitor's liability by the amount of any damages attributable to the failure of the Indemnitee to give such notice in such manner. In case any such claim or legal action shall be made or brought against an Indemnitee and such Indemnitee shall notify the Indemnitor thereof, the Indemnitor may, or if so requested by such Indemnitee shall, assume the defense thereof, without any reservation of rights, with counsel reasonably satisfactory to such Indemnitee, and after notice from the Indemnitor to such Indemnitee of an election to assume the defense thereof and approval by the Indemnitee of such counsel, the Indemnitor will not be liable to such Indemnitee under this Article 13 for any legal fees and expenses subsequently incurred by such Indemnitee in connection with the defense thereof. No Indemnitee shall settle any indemnified claim over which the Indemnitor has not been afforded the opportunity to assume the defense without the Indemnitor's approval, which approval shall not be unreasonably withheld. The Indemnitor shall control the settlement of all claims over which it has assumed the defense; provided, however, that the Indemnitor shall not conclude any settlement which requires any action or forbearance from action by an Indemnitee or any of its Affiliates or payment by an Indemnitee or any of its affiliates, without the prior approval of the Indemnitee. The Indemnitee shall provide reasonable assistance to the Indemnitor when the Indemnitor so requests, at the Indemnitor's expense, in connection with such legal action or claim. In all cases the Indemnitee shall have the right to participate in and be represented by counsel of its own choice and at its own expense in any such legal action or with respect to any claim.

13.5 Payment. In the event either Party is required to make an indemnity payment under this Article 13, such Party shall promptly pay the Indemnitee the amount so determined. The amount owing to the Indemnitee shall be the amount of such Indemnitee's actual Losses, net

of any insurance or other recovery paid to such Indemnitee in respect thereof. If there should be a dispute as to the amount or manner of determination of any indemnity obligation, the Indemnitor shall nevertheless pay when due such portion, if any, of the obligation as is not subject to dispute, and the matter shall be referred to dispute resolution in accordance with the provisions of Article 18. Upon the payment in full of any claim, the Indemnitor making payment shall be subrogated to the rights of the Indemnitee against any person with respect to the subject matter of such claim.

13.6 Taxes.

13.6.1 CILCO Taxes. The compensation paid by CILCO to Medina pursuant to Article 12 does not include reimbursement for, and CILCO shall be solely liable for and shall pay, cause to be paid, or reimburse Medina promptly upon demand if Medina is required to pay, any and all Taxes relating to or arising out of:

(a) the transportation, delivery, use or consumption of Gas or Water hereunder (whether at, prior to or after the Delivery Point therefor); and

(b) the delivery, transmission, sale or consumption of Market Output hereunder (whether at or after the Delivery Point therefor);

provided, however, that in the event and to the extent that any such Taxes shall, in the opinion of CILCO, be payable by Caterpillar to CILCO under the Service Agreement, CILCO shall so notify Medina, and in any such case CILCO's reimbursement obligation pursuant to this Section 13.6.1 shall not be due and payable until ninety (90) days after such demand by Medina.

As between CILCO and Medina, CILCO shall also be liable for any net income taxes imposed upon CILCO with respect to the transactions contemplated hereunder. CILCO shall indemnify, defend and hold harmless Medina from and with respect to liability for any such Taxes.

13.6.2 Medina Taxes. Medina shall be liable for and shall pay, cause to be paid, or reimburse CILCO if CILCO is required to pay, any and all Taxes imposed on or with respect to the Facility or any other tangible property owned by Medina, as well as Taxes imposed on or with respect to the performance by Medina of Gas Conversion Service hereunder, and Medina shall indemnify, defend and hold harmless CILCO from and with respect to liability for any such Taxes. As between Medina and CILCO, Medina shall also be liable for any net income taxes imposed upon Medina or its members with respect to the transactions contemplated hereunder.

13.6.3 Exemptions. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from any Taxes, and shall use all reasonable efforts to obtain or maintain for, or to enable the other Party to obtain or maintain, any exemption from or reduction of any Tax, whether currently available or becoming available in the future. Without limiting the generality of the foregoing, the Parties agree that, if it is beneficial to the efforts of either Party to obtain or maintain any exemption from or reduction of any Tax, whether currently available or becoming available in the future, the Parties shall cooperate to restructure the transactions contemplated by

this Agreement so as to enable either Party to obtain or maintain such exemption or reduction, as the case may be.

13.7 Survival. The Parties expressly acknowledge and agree that the provisions of this Article 13 shall survive the expiration or other termination of this Agreement with respect to events, occurrences and claims arising on or before such expiration or other termination.

ARTICLE 14

INSURANCE

14.1 Medina Insurance. From and after the Effective Date for the Term of the Agreement, Medina shall obtain and maintain at its expense the minimum insurance coverage for the Facility set forth in Exhibit H under individual or blanket insurance policies, with insurance companies rated "A" or better by Best's Insurance Guide and Key Ratings, or otherwise reasonably acceptable to CILCO.

14.2 Requirements of Medina Insurance. The insurance obtained by Medina pursuant to Section 14.1 (other than workers' compensation coverage) shall name CILCO as an additional insured and shall include provisions or endorsements stating that such insurance is primary insurance with respect to the interests of CILCO and that any insurance maintained by CILCO is excess and not contributory insurance with the insurance required hereunder

14.3 Payment of Deductibles. Medina's insurance shall have reasonable deductibles and Medina shall be solely responsible for the payment of all such deductible amounts, unless the loss or damage is caused in whole or in part by the fault or negligence of CILCO or any of its contractors, in which case the deductible shall be shared or apportioned as between Medina and CILCO in proportion to the degree of fault of each Party. Any losses under Medina's insurance shall be adjusted by Medina, with assistance from CILCO as necessary to document the loss, and Medina and the Project Lender shall be designated as loss payee with respect to any property insurance covering the Facility.

14.4 Certificates of Insurance. On or before the Effective Date and from time to time thereafter upon the reasonable request of CILCO, Medina shall deliver to CILCO certificates of insurance evidencing that the insurance required under Section 14.1 is in effect, which certificates shall adequately show that such insurance complies with the requirements of Section 14.2.

14.5 Nonwaiver. The failure of Medina to comply with the foregoing insurance requirements of this Article 14 shall in no way affect its obligations or liabilities under this Agreement, nor shall the failure of any insurance company for any reason to pay claims accruing with respect to such insurance affect, negate or release either Party from any of the provisions of this Agreement, including the indemnity obligations set forth in Article 13. The insurance coverages to be provided by each Party hereunder are not intended to and shall not in any manner limit or qualify the obligations of such Party under this Agreement, except to the extent any proceeds of such insurance are applied in satisfaction of such Party's obligations.

ARTICLE 15

FORCE MAJEURE

15.1 Excused Performance. Except for the obligation to timely make the payments required under this Agreement, and except as otherwise provided herein, each Party shall be excused from performance, and shall not be considered to be in default, if and to the extent that its failure of, or delay in, performance is due to an event of Force Majeure; provided, that:

(a) Such Party gives the other Party written notice describing the particulars of the Force Majeure as soon as is reasonably practicable but in no event later than five (5) days after the Party first becomes aware of the occurrence or commencement of such event;

(b) The suspension or delay of performance is of no greater scope and of no longer duration than is reasonably required by the event of Force Majeure;

(c) No default by the affected Party which occurred before the occurrence of the event of Force Majeure shall be excused as a result of such occurrence;

(d) The affected Party uses its reasonable efforts to overcome or mitigate the effects of such occurrence; and

(e) When the affected Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party oral notice, followed by written notice within five (5) days thereafter to that effect, and shall promptly resume performance hereunder.

15.2 Burden of Proof. In the event the Parties are unable in good faith to agree that an event of Force Majeure has occurred, the Parties shall submit the dispute for resolution pursuant to Article 18, and the Party claiming a Force Majeure shall have the burden of proof as to whether such Force Majeure has occurred.

15.3 Extended Force Majeure. Notwithstanding any provision in this Agreement to the contrary, in the event either Party is rendered substantially unable to perform its material obligations hereunder due to Force Majeure and the continuing effect of such Force Majeure has not been fully removed or alleviated within eighteen (18) Months after the date such Force Majeure was initially declared, then either Party shall have the right, so long as such Force Majeure (or the effect thereof) continues, to terminate the Agreement, without further liability or responsibility hereunder (except for any liability which expressly survives the termination of the Agreement), upon thirty (30) days written notice to the other Party; provided that CILCO shall not exercise its right to terminate the Agreement pursuant to this Section 15.3 if Medina has been unable to fully remove the effect of a Force Majeure event within the aforesaid eighteen-month period despite its diligent efforts to do so, so long as Medina is continuing diligently in good faith to complete remedial actions (including such construction or restoration work as is necessary) in order to remove the effect of such Force Majeure.

ARTICLE 16

DEFAULT AND EARLY TERMINATION

16.1 Termination for Default.

16.1.1 Event of Default. A Party shall be in default (the "Defaulting Party") under this Agreement upon the occurrence of any one or more of the following (an "Event of Default"):

- (a) The Bankruptcy of the Defaulting Party;
- (b) A failure by the Defaulting Party to make, when due, any undisputed payment required pursuant to this Agreement, if the Defaulting Party does not cure such failure within thirty (30) days following receipt of notice from the other Party demanding payment; provided that failure by Medina to make any payment of an Availability Rebate due to the operation of the subordination provision described in Section 12.2 shall not constitute an Event of Default hereunder;
- (c) A failure by the Defaulting Party to perform any other of its material obligations under this Agreement in accordance with the requirements of this Agreement, if the Defaulting Party does not cure such failure within thirty (30) days following receipt of notice from the other Party demanding such cure (or, if such failure is curable, within such longer period of time, not to exceed a maximum cure period of ninety (90) days, as is reasonably necessary to accomplish such cure without material adverse effect on the other Party, if the cure cannot be reasonably accomplished within such thirty (30)-day period and the Defaulting Party diligently commences and completes such cure in such longer period); provided, however, that, for avoidance of doubt, no Event of Default shall be deemed to exist hereunder as a result of (i) the failure of the Facility to meet the Monthly Heat Rate Guarantee set forth in Section 7.2 above (which failure shall be governed by the provisions of Section 7.2), (ii) the failure to make the Contract Capacity available to CILCO (which failure shall be governed by the provisions of Section 12.2), (iii) the failure to provide the Market Output to CILCO hereunder (which failure shall be governed by the provisions of Section 12.2), (iv) the failure of the Facility to achieve the Guaranteed Availability set forth in Section 5.3 above (which failure shall be governed by the provisions of Section 12.2), or (v) the failure of Medina to make the Contract Capacity available on the dates specified in Section 4.1 (which failure shall be governed by the provisions of Section 12.3);
- (d) A breach by the Defaulting Party of any material representation or warranty of such Party set forth in this Agreement, if within thirty (30) days following receipt of notice from the other Party demanding such

cure, the Defaulting Party does not cure such breach by curing the facts underlying such incorrect representation or warranty so as to make such incorrect representation or warranty correct (or, if such breach is curable, within such longer period of time, not to exceed a maximum cure period of ninety (90) days, as is reasonably necessary to accomplish such cure without material adverse effect on the other Party, if the cure cannot be reasonably accomplished within such thirty (30)-day period and the Defaulting Party diligently commences and completes such cure in such longer period); or

- (e) A failure by the Defaulting Party to comply with the terms of any final resolution of a dispute pursuant to Article 18 below, if the Defaulting Party does not cure such failure within thirty (30) days following receipt of notice from the other Party demanding such cure (or, if such failure is curable and does not constitute a failure to pay money, within such longer period of time, not to exceed a maximum cure period of ninety (90) days, as is reasonably necessary to accomplish such cure without material adverse effect on the other Party, if the cure cannot be reasonably accomplished within such thirty (30)-day period and the Defaulting Party diligently commences and completes such cure in such longer period).

16.1.2 Remedies. Subject to the limitations set forth in Articles 12, 16 and 17, upon the occurrence and during the continuation of an Event of Default, the Party not in default shall have the right to pursue any remedy under this Agreement now or hereafter existing under applicable Law or in equity, including an action for direct damages and specific performance and including termination of the Agreement upon twenty (20) days written notice to the Defaulting Party; provided, however, that in the case of an Event of Default by Medina, CILCO shall provide the Project Lender with notice of such Event of Default and the Project Lender shall have the rights set forth in the Consent and Agreement to be entered into among Medina, CILCO and the Project Lender pursuant to the provisions of Section 21.3 below. Notwithstanding the foregoing and notwithstanding any other provision in this Agreement to the contrary, Medina shall have the right, in addition to all other rights and remedies hereunder, after five (5) days prior notice to CILCO, to suspend or curtail the performance of Gas Conversion Service hereunder upon and during an Event of Default as to CILCO involving a failure of CILCO to timely pay any undisputed amounts under this Agreement.

16.1.3 Remedies Cumulative. Except as otherwise expressly provided herein, all rights and remedies of the Parties set forth in this Agreement shall be cumulative and no remedy available to a Party not in default hereunder shall be exclusive of any other remedy.

16.2 Optional Termination by CILCO. Notwithstanding any provision in this Agreement to the contrary, CILCO, at its sole election, may terminate the Agreement at any time for its convenience upon sixty (60) days prior written notice to Medina. Upon a termination pursuant to this Section 16.2, CILCO shall have no further liability or obligation to Medina (except as provided in this Section and except for any other liability which expressly survives termination of the Agreement), and Medina shall accept in full satisfaction and discharge of all

obligations owed to Medina with respect to the Agreement, an amount equal to the sum of the following:

(a) All amounts due or becoming due pursuant to this Agreement for Gas Conversion Service, Water Conversion Service, Steam Heat Service, Chilled Water Service and Energy provided, and Contract Capacity made available, up to the Agreement termination date, less any applicable Availability Rebate under Section 12.2; plus

(b) An amount equal to the amount required to repay in full the principal amount of and accrued interest on all Project Debt outstanding under the Financing Documents as of the date of the termination payment described below, but not to exceed the one hundred ten percent (110%) of the principal amount of Project Debt on the Conversion Date, plus accrued interest thereon, reduced by an amount equal to the principal repayments actually made up to the termination date; plus

(c) An amount equal to the amount required to pay all interest period breakage costs, prepayment premiums and penalty, interest rate swap breakage costs and other similar termination payments and any other amounts payable under the Financing Documents or under other agreements entered into by Medina in connection with the Financing Documents with respect to the Project Debt as of such date.

CILCO shall pay such amounts to Medina within five (5) days following the termination date, or within fifteen (15) days following CILCO's receipt of Medina's invoice therefor (together with such supporting documentation as CILCO may reasonably request), whichever is later. The determination of all amounts payable pursuant to the foregoing with respect to the Financing Documents shall be certified in writing by the Project Lender, which certification shall be included with Medina's invoice therefor.

16.3 Optional Purchase by CILCO. Notwithstanding any provision in this Agreement to the contrary, CILCO, at its sole election, may purchase the Facility at any time for its convenience upon sixty (60) days prior written notice to Medina. Upon a purchase pursuant to this Section 16.3, CILCO shall have no further liability or obligation to Medina (except as provided in this Section and except for any other liability which expressly survives termination of the Agreement), and Medina shall accept in full satisfaction and discharge of all obligations owed to Medina with respect to the Agreement, and in full satisfaction of the purchase price for the conveyance and transfer of all right, title and interest in the Facility, an amount equal to the sum of the following:

(a) All amounts due or becoming due pursuant to this Agreement for Gas Conversion Service, Water Conversion Service, Steam Heat Service, Chilled Water Service and Energy provided, and Contract Capacity made available, up to the Agreement termination date, less any applicable Availability Rebate under Section 12.2; plus

(b) The greater of:

(i) An amount equal to the amount required to repay in full the principal amount of and accrued interest on all Project Debt outstanding under the Financing Documents as of the purchase date described below, but not to exceed one hundred ten percent

(110%) of the principal amount of Project Debt on the Conversion Date, plus accrued interest thereon, reduced by an amount equal to the principal repayments actually made up to the purchase date, plus an amount equal to the amount required to pay all interest period breakage costs, prepayment premiums and penalty, interest rate swap breakage costs and other similar termination payments and any other amounts payable under the Financing Documents or under other agreements entered into by Medina in connection with the Financing Documents with respect to the Project Debt as of such date, and

(ii) The fair market value of the Facility, which is the amount, which in any event shall not be less than zero, that is the greater of: (y) that would be paid in cash for the Facility in its then existing state of repair and condition in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, and (z) the net present value, discounted at ten and one-half percent (10.5%), of the after-tax cash flow to be realized under any then-existing agreements for the sale of the Market Output from the Facility, including this Agreement.

CILCO shall pay such amounts to Medina on the purchase date, or within fifteen (15) days following CILCO's receipt of Medina's invoice therefor (together with such supporting documentation as CILCO may reasonably request), whichever is later. The determination of all amounts payable pursuant to the foregoing with respect to the Financing Documents shall be certified in writing by the Project Lender, which certification shall be included with Medina's invoice therefor.

ARTICLE 17

LIABILITY

17.1 Limitation of Heat Rate Payment and Availability Rebate. Subject to the overall limitation on Medina's liability under this Agreement in Section 12.6 above and in Section 17.2 below, the Parties agree that the aggregate cumulative liability of Medina during any Contract Year for the Heat Rate Payments plus the Availability Rebates shall not exceed an amount in the aggregate equal to thirty percent (30%) of the Fixed Payment payable by CILCO with respect to such Contract Year.

17.2 Aggregate Yearly Limit of Liability. Notwithstanding any other provision in this Agreement to the contrary, except to the extent covered by Medina's insurance required pursuant to Article 14, and except to the extent arising under Sections 13.1 and 13.2, the Parties agree that Medina's aggregate cumulative liability to CILCO in any Contract Year arising out of or relating to this Agreement from any and all causes, including liability for Availability Rebates to the Fixed Payment and liability for Heat Rate Payments shall not exceed an amount equal to the Fixed Payment for such Contract Year.

17.3 Waiver of Consequential Damages. Except with respect to payments and amounts expressly provided for in this Agreement, including payments under Sections 12.2 and 16.2, in no event shall either Medina or CILCO, or their respective officers, directors, partners, shareholders, Affiliates, agents, employees, successors, assigns, suppliers or contractors be liable

to the other Party hereunder or to its officers, directors, partners, shareholders, Affiliates, agents, employees, successors, assigns, suppliers or contractors for special, indirect, consequential, punitive or exemplary damages of any nature or kind whatsoever, including loss of profits or revenue, outages or service interruptions of the Facility, loss of contracts, cost of capital or claims of customers, and Medina hereby releases CILCO therefrom, and CILCO hereby releases Medina therefrom.

17.4 Intent. The Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Agreement shall apply, whether in contract, tort or otherwise, even in the event of the fault, negligence (in whole or in part), strict liability or breach of contract of the Party released or whose liability is waived, disclaimed, limited, apportioned or fixed by such exclusive remedy provision, and shall extend to such Party's Affiliates, contractors and suppliers, and to its and their partners, shareholders, directors, officers, employees and agents. The Parties also intend and agree that such provisions shall continue in full force and effect notwithstanding the expiration or earlier termination of the Agreement. The Parties confirm that (a) the exclusive remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof, (b) for breach of any provision for which an exclusive remedy or measure of damages is provided, such exclusive remedy or measure of damages shall be the sole and exclusive remedy, (c) the obligor's liability shall be limited as set forth in such provisions, and (d) with respect to such provisions, all other remedies or damages at law or in equity are waived.

17.5 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, MEDINA MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, CONCERNING THE FACILITY, THE CONTRACT CAPACITY, MARKET OUTPUT, HEAT RATE, AVAILABILITY OR ANY OTHER MATTER UNDER THIS AGREEMENT, AND MEDINA DISCLAIMS ANY REPRESENTATION, WARRANTY OR GUARANTY IMPLIED BY LAW, AND ANY REPRESENTATIONS OR WARRANTIES OF CUSTOM OR USAGE.

ARTICLE 18

DISPUTE RESOLUTION

18.1 Negotiation of Disputes. In the event of any claim, dispute or disagreement (a "Dispute") arising out of or relating to the implementation or performance of this Agreement which the Parties have been unable to settle or agree upon within a period of thirty (30) days after the Dispute arises and which is not a Dispute involving an alleged Event of Default by either Party, senior officers of each Party shall meet, upon the request of either Party in a good faith effort to reasonably resolve the Dispute. If such senior officers are unable to resolve the Dispute within fifteen (15) days of the request, then either Party may by notice to the other submit the Dispute to arbitration in accordance with the provisions of Section 18.2 below. If the Dispute involves an alleged Event of Default by either Party, then either Party may by notice to the other submit the Dispute directly to arbitration in accordance with the provisions of Section 18.2 below.

18.2 Arbitration.

18.2.1 Procedures. Any Dispute to be submitted to arbitration in accordance with the provisions of Section 18.1 above shall be submitted to binding arbitration to be conducted in Chicago, Illinois in accordance with the Commercial Arbitration Rates of the American Arbitration Association.

18.2.2 Applicable Law and Arbitration Act. The agreement to arbitrate set forth in this Section 18.2 shall be enforceable in either federal or state court. The enforcement of such agreement and all procedural aspects thereof, including the construction and interpretation of this Agreement to arbitrate, the scope of the arbitrable issues, allegations of waiver, delay or defenses as to arbitrability, and the rules (except as otherwise expressly provided herein) governing the conduct of the arbitration, shall be governed by and construed pursuant to the United States Arbitration Act, 9 U.S.C. §§1-16. In deciding the substance of any such claim, dispute or disagreement, the arbitrators shall apply the substantive Laws of the State of Illinois. The arbitrators shall have no authority to award punitive damages under any circumstances (whether it be exemplary damages, treble damages, or any other penalty or punitive type of damages) or consequential damages, regardless of whether such damages may be available under Illinois Law, the Parties hereby waiving their right, if any, to recover punitive damages and consequential damages in connection with any such claims, disputes or disagreements.

18.3 Pendency of Dispute. The existence of any Dispute under this Agreement or the pendency of the Dispute settlement or resolution procedures set forth herein shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations under this Agreement.

ARTICLE 19

MEDINA REPRESENTATIONS AND COVENANTS

Medina hereby represents, warrants and covenants to CILCO as follows:

19.1 Standing. It is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Illinois and is qualified to do business in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify would have a material adverse effect on its financial condition, operations, prospects or business or its ability to perform its obligations under this Agreement.

19.2 No Violation of Law; Litigation. It is not in violation of any applicable Law promulgated or judgment entered by any national, state, or local Governmental Authority which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any governmental or regulatory authority or agency, now pending or (to the best knowledge of Medina) threatened against it which, if adversely determined, could reasonably be expected to have a material adverse effect on its financial condition, operations, prospects or business, as a whole, or its ability to perform under this Agreement.

19.3 Licenses. It has made all filings or obtained, or in the ordinary course of business shall file or obtain, all consents, licenses, permits, and other approvals from, all applicable Governmental Authorities which are required or appropriate to be made or obtained to permit it to lawfully conduct its business now and as contemplated by this Agreement.

19.4 No Breach. None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of the limited liability agreement or other organizational documents of Medina, or any applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which it is a party or by which it is bound or to which it or its property is subject, or constitute a default under any such agreement or instrument.

19.5 Authority, etc. It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by it of this Agreement have been duly authorized by all necessary limited liability company action on its part; and this Agreement has been duly and validly executed and delivered by it and constitutes the legal, valid and binding obligation of Medina enforceable against it in accordance with the terms hereof, except as such enforceability may be limited by Bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

19.6 Assets and Business. Medina's assets consist, and at all times during the Term will consist, solely of its interests in the Facility and assets reasonably related thereto, and, during the Term, so long as CILCO is in compliance with its obligations hereunder, Medina will engage only in activities and transactions contemplated by, or reasonably related to the performance of its obligations under, this Agreement. As of the first Commercial Operation Date to occur, Medina shall possess all rights and interests in the Facility and other assets necessary to perform its obligations under this Agreement.

19.7 Compliance with Law. Medina's performance of its obligations under this Agreement, including the performance of all Gas Conversion Service, will be in compliance in all respects with all applicable federal, state and local Laws, including Environmental Laws, except to the extent that such failure to comply could not reasonably be expected to have a material adverse effect upon Medina's performance of its obligations under this Agreement.

ARTICLE 20

CILCO REPRESENTATIONS AND COVENANTS

CILCO hereby represents, warrants and covenants to Medina as follows:

20.1 Standing. It is a corporation duly organized, validly existing and in good standing under the Laws of the State of Illinois and is qualified to do business in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify would have a material adverse effect on its financial condition, operations, prospects or business or its ability to perform its obligations under this Agreement.

20.2 No Violation of Law; Litigation. It is not in violation of any applicable Law promulgated or judgment entered by any national, state or local Governmental Authority which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. Except as disclosed in filings made with the U.S. Securities and Exchange Commission, there are no legal or arbitration proceedings or any proceeding by or before any governmental or regulatory authority or agency, now pending or (to the best knowledge of CILCO) threatened against CILCO which, if adversely determined, could reasonably be expected to have a material adverse effect on the financial condition, operations, prospects or business, as a whole, of CILCO, or its ability to perform under this Agreement.

20.3 Licenses. It has made all filings or obtained, or in the ordinary course of business shall file and expects to obtain, all consents, licenses, permits, and other approvals from, all applicable Governmental Authorities which are required or appropriate to be made or obtained to permit it to lawfully conduct its business now and as contemplated by this Agreement.

20.4 No Breach. None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent or approval (except such consents and approvals as have been obtained) under, the articles, bylaws or other organizational documents of CILCO, or, except for approvals required from Governmental Authorities specified in Sections 24.1(a) and 24.1(b), any applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which CILCO is a party or by which it is bound or to which it or its property is subject, or constitute a default under any such agreement or instrument.

20.5 Authority, etc. It has all necessary corporate power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by CILCO of this Agreement have been duly authorized by all necessary corporate action on its part; and this Agreement has been duly and validly executed and delivered by CILCO and constitutes the legal, valid and binding obligation of CILCO enforceable against CILCO in accordance with the terms hereof, except as such enforceability may be limited by Bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

20.6 Compliance with Law. CILCO's performance of its obligations under this Agreement, including all delivery of Gas and Water hereunder, will be in compliance in all material respects with all applicable federal, state and local Laws, including Environmental Laws.

ARTICLE 21

ASSIGNMENT

21.1 Agreement Binding. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

21.2 Assignment. This Agreement shall not be assigned by either Party in whole or in part without the prior written consent of the other Party, which consent shall be within the sole discretion of such other Party, except that: (a) this Agreement may be collaterally assigned in whole by Medina without such consent to the Project Lender; (b) this Agreement may be assigned without such consent to the successor (by merger, consolidation, or acquisition) of either Party, or, in the case of CILCO, to any direct or indirect wholly-owned subsidiary of The AES Corporation, but such assignment shall not relieve the assigning Party of any of its obligations under this Agreement; and (c) this Agreement may be assigned to an Affiliate of either Party with the approval of the other Party, which approval shall not be unreasonably withheld. With respect to the preceding clause (c), any required approval shall not be withheld if the proposed assignee (x) is similarly creditworthy as the assignor, (y) has the industry competence and experience, and all necessary licenses and governmental approvals, to perform the assignor's obligations under this Agreement, and (z) is a permitted assignee, if applicable, under the Service Agreement. Except for an assignment to the Project Lender, no assignment by either Party of this Agreement for any purpose whatsoever shall be valid until all obligations of the assignor hereunder shall have been assumed by the assignee by written agreement delivered to the other Party. Any assignment which does not comply with the provisions of this Section 21.2 shall be null and void.

21.3 Project Lender Requested Documents. In connection with any collateral assignment by Medina of this Agreement to the Project Lender as set forth in Section 21.2 above, CILCO agrees to execute and deliver a Consent and Agreement to such assignment in the form reasonably requested by the Project Lender; provided that such Consent and Agreement, or any substitute Consent and Agreement reasonably requested by the Project Lender, shall not result in, or purport to constitute, an amendment or modification of this Agreement. CILCO further agrees to furnish the Project Lender with such other documents as may reasonably be requested by the Project Lender, including (as applicable) an opinion of counsel to CILCO, certificates of good standing, organizational certificates and resolutions of CILCO's board of directors authorizing the execution and delivery of this Agreement and the Consent and Agreement.

ARTICLE 22

PROPRIETARY & CONFIDENTIAL INFORMATION

22.1 Non-Disclosure Obligation. Neither Party shall disclose the terms of this Agreement to a third party (other than such Party's and its Affiliates' employees, lenders, counsel or accountants) except in order to comply with any applicable law, order, regulatory or exchange rule; provided each Party shall notify the other Party of any proceeding of which it is aware that may result in disclosure and use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation; provided, all monetary damages shall be limited to actual direct damages.

22.2 Term of Obligation. The confidentiality obligations of the Parties pursuant to this Article 22 shall survive the expiration or other termination of this Agreement for a period of two (2) years. Upon such expiration or other termination, each Party shall promptly return to the

other Party, upon request, any confidential information of the other Party supplied in documentary form.

ARTICLE 23

NOTICES

23.1 Writing. Any notice, invoice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement (unless expressly permitted to be sent electronically) shall be in writing signed by the Party giving such notice and shall, to the extent reasonably practicable, be sent by telecopier, and if not reasonably practicable to send by telecopier, then by hand delivery, overnight courier, or registered mail, to the other Party at the address set forth below:

If to CILCO:

Central Illinois Light Company
Attn: Robert Ferlmann
300 Liberty Street
Peoria, Illinois 61602
Phone: 309/677-5163
Fax: 309/677-5506

If to Medina:

AES Medina Valley Cogen, L.L.C.
c/o AES Medina Operations, L.L.C.
Attn: Facility Manager
1823 Neal Lane
Mossville, Illinois 61552
Phone:
Fax:

Each Party shall have the right to change the place to which notice shall be sent or delivered or to specify one additional address to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.

23.2 Timing of Receipt. Without limiting any other means by which a Party may be able to prove that a notice has been received by the other Party, a notice shall be deemed to be duly received:

- (a) If delivered by hand, overnight courier or telegram, the date when left at the address of the recipient;
- (b) If sent by registered mail, the date of the return receipt; or

- (c) If sent by telecopier, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the telecopy was sent indicating that the telecopy was sent in its entirety to the recipient's telecopier number.

In any case hereunder in which a Party is required or permitted to respond to a notice from the other Party within a specified period, such period shall run from the date on which the notice was deemed received as above provided, and the response shall be considered to be timely given if given as above provided by the last day of such period.

ARTICLE 24

MISCELLANEOUS PROVISIONS

24.1 Conditions Precedent. The obligations of Medina and CILCO to proceed with the transactions contemplated by this Agreement shall be expressly subject to notice given by each Party to the other Party of satisfaction or waiver of any conditions precedent. The date on which the last Party shall give such notice is the "Effective Date." The conditions precedent are:

- (a) Approval of this Agreement by the Federal Energy Regulatory Commission and, to the extent required by Law, the Illinois Commerce Commission;

- (b) Approval by the FERC of the status of the Facility as an Exempt Wholesale Generator pursuant to applicable Law, and obtaining any related determinations required by Law from the Illinois Commerce Commission;

- (c) Issuance of any other approvals, consents, authorizations, certifications, permits or licenses by any Governmental Authority required for Medina or CILCO to perform its obligations under this Agreement; and

- (d) Such other conditions precedent as either Party determines in its sole discretion must be satisfied in order to perform its obligations under this Agreement.

24.2 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other.

24.3 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

24.4 Severability. The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Agreement shall not affect the validity of the remaining portions of the Agreement so long as the material purposes of this Agreement can be determined and effectuated.

24.5 No Waiver. Any failure of either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this

Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each of such provisions.

24.6 Applicable Law. This Agreement shall be governed by, construed and enforced in accordance with the Laws of the State of Illinois, exclusive of conflicts of laws provisions.

24.7 Counterparts. This Agreement may be signed in any number of counterparts and such counterparts taken together shall one and the same Agreement.

24.8 Survival. The provisions of this Agreement that by their nature are intended to be performed or to be applicable, or that impose obligations, after the termination of this Agreement shall survive the expiration or earlier termination of this Agreement for the terms specified therein, if any, and otherwise indefinitely.

24.9 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to complete performance of the Parties' obligations hereunder and to effectuate the purposes and intent of this Agreement.

24.10 Independent Contractor, etc. The Parties shall each be independent contractors with respect to the performance of this Agreement, and neither Party, nor its employees, contractors, agents or representatives shall be deemed to be the servants, employees, agents or representatives of the other Party in any respect. Nothing contained in this Agreement shall be construed as constituting a joint venture, partnership or other association between Medina and CILCO, and neither Party shall be authorized to act on behalf of or to bind the other Party or to make any representation about or on behalf of such other Party.

24.11 Third Parties. Except as otherwise expressly provided in this Agreement with respect to indemnified persons, nothing in this Agreement shall be construed to create any duty to, standard of care with respect to, or any liability to any person who is not a Party to this Agreement.

24.12 Announcements. Except as otherwise required by Law or the rules of the New York Stock Exchange, for so long as this Agreement is in effect, neither Party shall, nor shall either Party permit its Affiliates to, issue or cause the publication of any press release or other public announcement with respect to the transactions contemplated by this Agreement without the prior review of the other Party.

24.13 Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each Party shall pay all of its own costs and expenses incurred in connection with the negotiation and execution of this Agreement.

24.14 Independent Agreement. This Agreement is a separate and independent agreement between the Parties, and the rights and obligations of the Parties hereunder shall not be determined by reference to, and shall not be affected by any breach or termination of or default under the Service Agreement, and this Agreement shall continue in full force and effect

in accordance with its terms notwithstanding a breach or termination of or a default under the Service Agreement.

[the remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date set forth in the preamble to this Agreement by their duly authorized representatives as follows:

AES MEDINA VALLEY COGEN, L.L.C.

By: _____

Its: _____

CENTRAL ILLINOIS LIGHT COMPANY

By: _____

Its: _____