

**Parallel Operation and Energy Purchase Agreement**  
**Between**  
**City of Naperville Department of Public Utilities – Electric**  
**and**  
**NALCO Company LLC**

This Parallel Operation and Energy Purchase Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF NAPERVILLE, Illinois, (“Utility”), with offices located at 400 South Eagle Street, Naperville, Illinois 60540 and NALCO COMPANY LLC, a Delaware limited liability Company, (“Customer”), with principal offices located at 1601 West Diehl Road, Naperville, Illinois 60563, with reference to the following facts and circumstances:

**RECITALS**

**WHEREAS**, Utility owns and operates an electric distribution system (“System”) which provides electric service to retail customers located within the City of Naperville (“City”), Illinois;

**WHEREAS**, Utility owns no electric generation on the date of this Agreement and purchases all electricity required to meet the needs of its retail customers;

**WHEREAS**, Customer owns and operates a research and office complex (“Complex”) located at 1601 West Diehl Road, Naperville, Illinois;

**WHEREAS**, Customer owns and operates a cogeneration facility fueled by natural gas (“Facility”) with a gross generating capacity of 4000 kW that is located at the Complex and which operates in parallel with Utility’s System;

**WHEREAS**, the Customer’s Facility is a Qualifying Facility as defined in the Public Utility Regulatory Policies Act of 1978 (“PURPA”) as of the date of this Agreement, including amendments contained in the Energy Policy Act of 2005;

**WHEREAS**, the Customer’s Facility is interconnected with Utility’s system at a voltage of 12.47 Kilovolts and served by a dedicated 12.47 Kilovolt Utility feeder;

**WHEREAS**, the Customer's Facility is operated when such operation is deemed economical by Customer;

**WHEREAS**, when Customer's Facility is in operation, the Facility supplies a portion of the electricity required by Customer's Complex;

**WHEREAS**, electricity required at the Complex which is not generated by Customer is purchased from Utility under Utility's Primary Metering tariff rate entitled "Standby Primary Metering";

**WHEREAS**, pursuant to a contract between Utility and Customer dated August 27, 1985 ("1985 Agreement"), Customer sells to Utility electric energy generated by Customer's Facility in excess of that electric energy consumed at the Complex; and

**WHEREAS**, Customer wishes to sell to the Utility, and the Utility agrees to purchase from the Customer, the electric energy generated by Customer's Facility in excess of the electric energy required by the Complex in accordance with the provisions of the PURPA and pursuant to this Agreement which is intended to replace and supersede the 1985 Agreement in its entirety.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Customer and the Utility agree as follows:

Recitals Incorporated By Reference. The Recitals set forth above are specifically incorporated into and made a part of this Agreement as though fully set forth herein.

## **ARTICLE I DEFINITIONS**

The following terms shall have the meaning set forth herein:

"Agreement" shall have the meaning set forth in the Preamble.

“Complex” means the corporate headquarters and research complex owned and operated by Customer and located at 1601 West Diehl Road, Naperville, Illinois.

“Customer” shall have the meaning set forth in the Preamble.

“Effective Date” means the date first written above.

“Facility” or “Customer’s Facility” means a cogeneration facility located at Customer’s Complex which is fueled by natural gas with a nameplate generating capacity of 5.0 MW and a net generating capacity of 3.65 MW.

“Force Majeure” means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure, which prevents such party from performing its obligations hereunder, including, without limitation, acts of God, sudden actions of the elements, and actions by federal, state and municipal agencies, provided however that an action by Utility shall not be deemed an event of Force Majeure hereunder.

“IMEA” means the Illinois Municipal Electric Agency.

“IMEA Power Sale Contract” shall have the meaning set forth in Section 8.1.

“Interconnection Facilities” means those facilities installed by Utility on Utility’s System to permit Utility to purchase electric energy from Customer or to permit Customer’s Facility to operate in parallel with Utility’s System.

“kV” means one kilovolt of electric potential.

“MW” means one megawatt of electric power.

“Maintenance Service” means that electric service provided by Utility to Customer during scheduled outages of the Qualifying generation.

“Net Average Monthly Power Factor” means the power factor measured at the Point of Interconnection which results from the electric service provided to Customer by Utility. Net Average Monthly Power Factor (NAMPF) shall be calculated as follows:

$$\text{NAMPF} = \frac{\text{KWhr}}{\text{Square Root } [( \text{KWhr}^2 ) + ( \text{KVARhr}^2 )]}$$

KWhr = Net monthly energy flow across interconnect  
measured in kilowatt hours

KVARhr = Net monthly reactive energy flow across  
interconnect measured in kilovar hours

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Net Average Monthly Power Factor will be calculated only when both the net real and reactive energy flows across the interconnect are positive. Positive flows of both real and reactive energy are defined as flows from Utility to Customer.

“Point of Interconnection” means that point where Customer’s 12.47 kV electric conductors are connected to Utility’s system at Customer’s 12.47 kV bus at 1601 West Diehl Road, Naperville, Illinois.

“Prudent Electrical Practices” means those practices, methods and equipment which, from time to time, are commonly used in prudent electrical engineering and operations to design and operate electric equipment lawfully and with safety, dependability, efficiency and economy. Prudent electrical practices include, without limitation, (1) compliance with the National Electric Safety Code, the National Electric Code, OSHA and any other applicable industry standards such as IEEE, ANSI and NEMA; (2) compliance with manufacturers’ warranties; and (3) compliance with applicable laws and regulations. Prudent electrical practices are not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather include a spectrum of possible practices, methods or acts which could have been reasonably expected to accomplish a desired result consistent with reliability, safety and expediency.

“PURPA” shall have the meaning set forth in the Recitals.

“Special Metering” means that metering installed by Utility at its sole expense, pursuant to Article VI Paragraph 6.5 hereof.

“Supplemental Service” means that electric service provided by Utility to Customer in excess of Customer’s Facility’s output.

“Term” shall have the meaning set forth in Section 10.1.

“Utility” shall have the meaning set for in the Preamble.

“Utility’s System or System” shall have the meaning set forth in the Recitals.

## **ARTICLE II QUALIFYING STATUS**

Customer warrants that, as of the Effective Date its Facility is, and covenants that at all times during the term of this Agreement its Facility will continue to be a Qualifying Facility, as that term is defined in PURPA and the regulations thereunder, as PURPA and said regulations may be amended or revised during the Term of this Agreement. Copies of all documents filed by Customer with FERC with respect to the Facility’s status as a Qualifying Facility and any orders, receipts or acknowledgements of filing issued by FERC have been provided to Utility, including without limitation any documents filed or issued pursuant to amendments to PURPA contained in the Energy Policy Act of 2005 and rules adopted pursuant to such amendments. Copies of any documents filed with FERC or issued by FERC with respect to the Facility after the Effective

Date will be provided to Utility by Customer within thirty (30) days after any such filing or issuance.

### **ARTICLE III SALE AND PURCHASE OF ELECTRICITY AND RELATED SERVICES**

3.1 Utility Purchase of Electric Energy. Utility agrees to purchase that electric energy generated by Customer's Facility which Customer delivers to Utility from time to time, at Customer's discretion and which is in excess of that electric energy required by the Complex, subject to the terms and conditions of this Agreement, provided that Customer is in compliance with the terms and conditions of this Agreement and with all applicable laws and regulations.

3.2 No Sale of Electric Energy to Third Parties. Customer shall not sell or deliver electric energy generated by the Facility or purchased by Customer from Utility to any third party.

3.3 Supplemental Service. Utility agrees to provide Supplemental Service to Customer, subject to the terms and conditions of this Agreement, provided that Customer is in compliance with the terms and conditions of this Agreement.

3.4 Maintenance Service. Utility agrees to provide Maintenance Service to Customer, as provided for in this Agreement, and subject to Customer's compliance with this Agreement. Utility shall supply Customer with Maintenance Service, including electric energy and capacity, during scheduled outages of the Qualifying Facility generation. Customer shall provide Utility with ninety (90) days written request for Maintenance Service and such written request for Maintenance Service shall be agreed upon by Utility. Maintenance Service is limited to a maximum of thirty (30) days per calendar year, a maximum of fifteen (15) consecutive days per event; and no more than three (3) Maintenance Service events per calendar year. Scheduled Maintenance Service may be adjusted within ninety (90) days of the scheduled Maintenance Service upon written request by Customer and agreement by Utility. Maintenance capacity shall be limited to the accredited capacity of the Qualifying Facility.

3.5 Energy Efficiency and Demand Response Programs. Utility does not offer energy efficiency or demand response programs as of the Effective Date. However, Utility reserves the right to become the sole provider of energy efficiency and demand response programs to its customers, including Customer, including without limitation any curtailment service programs available through the Illinois Municipal Electric Agency, Commonwealth Edison Company or the PJM Interconnection. Utility shall notify Customer of any energy efficiency or demand response programs offered by Utility. During periods of time when Utility does not offer energy efficiency or demand response programs, Customer may (unless prohibited pursuant to Utility's tariffs or applicable laws or regulations) participate in such programs that may be available from other sources, subject to all applicable Utility requirements, including without limitation requirements contained in contracts between Utility and its supplier(s). Customer shall bear any costs incurred by Utility or Utility's wholesale energy supplier(s) in connection with any such participation by Customer and Customer shall, on a timely basis, provide notices and other

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information required by Utility or Utility's supplier(s) in connection with any such participation.

#### **ARTICLE IV CUSTOMER'S FACILITY AND RELATED EQUIPMENT**

4.1 Permits and Authorization. Customer shall obtain and maintain in effect all permits and authorizations required for the operation of the Facility and for the construction or installation of any modifications or additions to the Facility.

4.2 Customer's Facilities and Equipment. Customer shall design, construct, install, own, operate, maintain and repair, at its sole expense, Customer's Facility and all Facilities and equipment on Customer's side of the Point of Interconnection which are necessary for the delivery of electric energy to Utility for the operation of Customer's Facility in parallel with Utility's System and the receipt by Customer of Supplemental Service from Utility in accordance with Prudent Electrical Practices and in good working order. Customer shall operate, maintain and repair all of its Facilities and equipment so they are in good working order at all times. Customer shall perform all of its obligations pursuant to the Agreement in accordance with Prudent Electrical Practices.

4.3 Protective Devices. Customer's Facility and the related equipment shall include protective devices consisting of automatic synchronization equipment, relays and other protective devices adequate to (1) protect Customer's equipment and Facilities from damage due to a flow of current or voltage surge from Utility's system to Customer's equipment and Facilities and (2) protect Utility's System from damage due to a flow of current or voltage surge from Customer's equipment and Facilities. Such protective devices shall, in Utility's sole judgment, be adequate to prevent disruption of service to Utility's other customers as a result of the parallel operation of Customer's Facility with Utility's System.

4.4 Utility Review of Customer Design.

a. Before making any modifications to the Facility and associated equipment and protective devices, Customer shall submit to Utility detailed drawings and design specifications for the proposed modifications to the Facility and associated equipment and protective devices for Utility's review and recommendations. Customer shall provide Utility information as to proposed relay setting modifications and periodic maintenance schedules for the Facility and associated equipment and protective devices. Customer shall modify the design of protective devices and proposed relay settings as required by Utility.

b. Utility's review of drawings, design and specifications and of proposed equipment, protective devices, relay settings and maintenance schedules shall not be construed as confirming or endorsing said designs and specifications, relay settings and maintenance schedules, or as warranting their safety, durability, reliability or fitness for

their intended purpose. By reason of such review and any recommendations, or lack of review and recommendations, Utility shall not be responsible for the strength, design details, adequacy or capacity of any equipment or facilities constructed or modified by Customer.

c. Customer shall modify its equipment during the Term of this Agreement at Customer's sole expense as may be required by Utility to protect Utility's System or to insure continuity and quality of service to Utility's other customers.

d. Customer shall submit to Utility final and complete Facility one-line and three-line drawings depicting any and all such modifications, with revisions distinctly marked. The Customer also shall submit all information included on the generator's nameplate. Within thirty (30) days after the Effective Date, and again within thirty (30) days after completion of any modifications to the Facility, including, without limitation, associated equipment or protective devices (including settings) which may affect the operation of the Customer's Facilities in parallel with Utility's System, Customer shall submit to Utility one (1) set of final and complete one-line and three-line drawings depicting the current (or modified, if applicable) status of the Facility. The drawings, sized 24 inches x 36 inches or relatively equivalent, shall be provided to Utility together with an AutoCAD digital version of the drawings on compact disc. Additionally, the Customer shall supply the Utility with an electronic copy of its current (or modified, if applicable) electrical system model.

4.5 Testing. If installed, the line current differential protection scheme shall be tested at intervals of no less than every three (3) years, except in the event of a modification of either Party's equipment that affects the line current differential protection scheme. Utility will provide Customer reasonable advance notice of when this testing is to be scheduled. Utility and Customer each shall be responsible for conducting the testing on its own side of the Point of Interconnection. In the event of any modification or replacement of either Party's equipment which affects the line current differential protection scheme, the party whose equipment is modified or replaced shall contact the other Party to schedule testing of the differential protection scheme before the modified or replaced equipment is returned to service. Each Party shall be responsible for all costs incurred with respect to testing on its side of the Point of Interconnection.

Before commencing testing as described above, Customer shall provide Utility with the name of the InterNational Electrical Testing Association (NETA)-accredited company which will be performing testing of Customer's equipment. A copy of the testing crew leader's valid NETA Level IV certification card shall also be provided and the testing crew leader shall be present on the Customer's site for the duration of the testing process.

4.6 Disconnecting Service. At all times during the Term, Customer shall have installed and operable, as part of Customer's Facilities and equipment, a disconnecting device adequate for use as a protective lockout between Utility's System and Customer's equipment and Facilities. Customer's disconnecting device shall be capable of being locked in an open position by Utility. Utility will provide Customer with 24-hour advance notice that Utility plans to lock

the disconnecting device in open position, except in an emergency or other situation where Utility determines that such advance notice is not practical. Customer shall not remove Utility's lock when Utility has locked the disconnecting device in the open position. Utility shall maintain an unlisted telephone line for the Utility System Control Center and shall provide Customer with the telephone number for use during emergency situations. Customer shall not disclose the telephone number other than to employees or contractors of Customer with a need to know the number and shall require any such employees or contractors to agree in writing not to disclose the number.

4.7 Customer's Facility as of Effective Date. As of the Effective Date, Customer's Facility is authorized for parallel operation.

## **ARTICLE V UTILITY'S INTERCONNECTION FACILITIES**

5.1 Utility Facilities. Utility shall design, construct, install, own, operate, maintain and repair, at Customer's sole expense, all Interconnection Facilities. Utility may, in its sole discretion, remove all Interconnection Facilities from its System upon termination of this Agreement.

5.2 Customer Reimbursement of Utility Expenses. Customer shall reimburse Utility for all costs and expenses incurred in connection with the design, construction, installation, modification, operation, maintenance and repair of the Interconnection Facilities, in accordance with the provisions of Article VIII of this Agreement.

5.3 Charges by Transmission Owners or Utility Wholesale Supplier. Customer shall pay any costs or charges imposed on Utility by the Commonwealth Edison Company or any successor, Illinois Municipal Electric Agency or any successor, by the PJM Interconnection or any successor or by Utility's wholesale supplier(s) for any modifications or additions required by such entities to their respective systems, to Utility's System or to Customer's Facility (including associated equipment and protective devices) in connection with Utility's purchase of energy from Customer and the operation of Customer's Facility in parallel with Utility's System pursuant to this Agreement. Utility shall give Customer reasonable advance written notice and documentation of any anticipated costs or charges related to any such modifications or additions.

5.4 Status of Interconnection Facilities. The Interconnection Facilities in place as of the Effective Date are acceptable to Utility and, as of the Effective Date, no charges have been imposed pursuant to Section 5.3. Notwithstanding the foregoing, Utility reserves the right to modify the Interconnection Facilities during the Term at Customer's expense, as Utility deems necessary or appropriate, in its sole judgment. Utility shall give Customer reasonable advance notice and documentation of any such modifications.

## **ARTICLE VI METERS AND METERING**



6.1 Meters. Electric energy purchased by Utility hereunder shall be measured by electric meters which bi-directionally record kilowatt-hour and kilovar-hour. Demand calculations based on these energy values will be performed by Utility pursuant to guidelines set forth in the Utility Service Rules & Policies as provided in Section 8-1B-1 of the Naperville Municipal Code. These meters measure the Supplemental Service and Maintenance Service provided by Utility. If Utility determines that additional or different metering or equipment is required in addition to or instead of the meters installed as of the Effective Date, then Utility may modify the meters or equipment accordingly. If requested by Utility, Customer shall install a dedicated 15A 120V AC circuit at an agreed upon location to supply power to external meter communication equipment. Utility shall allow Customer access to real-time kilowatt-hour metered data collected by the metering equipment described above, through communication (pulse) channels to be installed, owned, operated and maintained by Customer.

6.2 Cost of Metering. All meters installed pursuant to this Article VI, except for Special Metering, shall be specified, provided, installed, owned, operated, and maintained by Utility in Utility's sole discretion and at Customer's sole expense. Customer shall reimburse Utility for all costs and expenses incurred in connection with the purchase, installation, modification or upgrade of all such metering equipment as provided in Article VIII of this Agreement.

6.3 Meter Testing. Utility shall inspect and test all meters required by Utility pursuant to this Agreement upon installation and at least once every twelve (12) months thereafter. Customer shall be given reasonable advance notice of all meter tests and may have its representatives present during such tests. Customer may request a special meter test at any time. Customer shall reimburse Utility for the costs of all meter tests requested by Customer other than the cost of any special meter test that discloses that the tested equipment is inaccurate by more than one percent (1%), which cost shall be borne by Utility. Metering equipment that is found to be inaccurate shall be restored to accuracy within ten (10) days after each test.

6.4 Billing Adjustments for Meter Error.

a. If a meter test reveals that the meter was inaccurate by one percent (1%) or less, no adjustments in billing shall be made for the period of inaccuracy.

b. If a meter test reveals that a meter was inaccurate by more than one percent (1%) and the period of inaccuracy can be ascertained by reference to Customer's meter readings or otherwise, all bills based on the readings of the inaccurate meter shall be corrected for the period of inaccuracy.

c. If a meter test reveals that a meter was inaccurate by more than one percent (1%) and the period of inaccuracy cannot be ascertained, all bills based on the readings of the inaccurate meter shall be corrected for the elapsed time since Customer notified Utility that Utility's meters and Customer's meters have divergent readings, or if the inaccuracy is discovered by Utility, for the elapsed time since Utility discovered the inaccuracy.

d. If Utility determines that a meter is so inaccurate that billing adjustments cannot be made as described above, Utility shall estimate the deliveries of energy by Customer and/or the deliveries of Supplemental Service and Maintenance Service to Customer during the period of meter non-registration or inaccuracy, based on the best available information, including without limitation, deliveries of energy and Utility service during prior periods. In making such an estimate, the Utility shall consider readings of meters installed by Customer as part of the control package of Customer's Facility, if Utility determines that Customer's records concerning calibration and testing of such meters are adequate to insure the meter's accuracy.

e. Billing adjustments shall be limited to a period of two years.

6.5 Special Metering. The Utility may, in its sole discretion and at its sole expense, install meters or other associated equipment (including without limitation mounted antennas) to measure electrical parameters associated with the parallel operation of Customer's Facility and the Utility's System, the delivery of electric energy by Customer to Utility or such other parameters as the Utility deems necessary or desirable. Customer hereby grants Utility the right to install such meters and instrumentation on Customer's property at no charge to Utility for such use of Customer's property, provided however, that any such installation shall not unreasonably interfere with the operation of Customer's Facility or Complex.

6.6 Inspection of Records. Utility shall make available for Customer inspection, Utility's meter reading records pertaining to Customer's Supplemental Service and Maintenance Service for the purpose of allowing Customer to verify the results of its meter readings. Such inspection shall take place at Utility's offices during normal business hours and upon reasonable advance notice.

## **ARTICLE VII OPERATION OF CUSTOMER'S FACILITY**

7.1 Parallel Operation After Modification of Customer's Facility. Customer shall not operate its Facility in parallel with Utility's System after modifications to facilities, equipment, and protective devices (including settings) until a representative of Utility has inspected the equipment, protective devices (including settings), and facilities modified on Customer's side of the Point of Interconnection, and until Utility has given Customer written approval to commence parallel operation. Customer shall notify Utility when any modifications of Customer's Facility or any modifications of related equipment, protective devices (including settings), or facilities have been completed and are ready for inspection. Prior to inspection, and prior to submittal of final drawings to Utility as required in Paragraph 4.4(a), Customer shall submit pre-final one-line and three-line drawings that include protective device settings. For purposes of this Section 7.1, routine maintenance work and engine overhauls are not modifications that require Utility inspection and approval so long as the net output of the generator is not increased or decreased.

7.2 Utility Inspection of Customer Facilities. Utility shall conduct its inspection within fourteen (14) days after Customer's notice pursuant to Section 7.1 that the modifications to Facility, related equipment, and protective devices have been completed and are ready for

inspection. Utility shall notify Customer of the results of its inspection within seven (7) days after the inspection and whether parallel operations may commence. If parallel operation is not authorized, Utility's notice shall set out the reason authorization was withheld. By authorizing parallel operation, Utility shall not be deemed to make any warranty or representation as to the ability of Customer's Facility to operate in parallel with Utility's system or the adequacy or reliability of Customer's Facility or any equipment installed by customer.

7.3 Customer Notices and Testing. Customer shall provide notices to Utility as follows:

a. Customer shall notify Utility System Control Center by phone fourteen (14) days in advance of each of the following, unless such action is taken pursuant to a demand response program that requires Customer to begin or end parallel operation on shorter notice, in which event Customer will provide such notice as agreed to in writing by Customer and Utility before Customer's participation in such program commences:

1. Resumption of parallel operation of Customer's Facility with Utility's system after Customer's Facility has not been operating for thirty (30) days or more; or
2. Removal of Customer's Facility from parallel operation with Utility's System to allow Customer to perform maintenance or for economic reasons or for any other reason other than an emergency condition.

b. Customer shall notify Utility System Control Center by phone within four (4) hours after each of the following:

1. Customer removes Facility from parallel operation with Utility's System due to emergency condition; or
2. Customer decreases or increases Facility generation output by two (2) or more MW while in parallel operation with Utility's system.

7.4 Operating Parameters.

a. Under normal operating conditions, Customer shall maintain voltage level at Customer's 12.47 kV bus within plus or minus five percent (5%) of nominal voltage, provided, however, that if the voltage measured at the 12.47 kV bus at Utility's Pebblewood Substation source deviates from 12.47 kV, Customer shall maintain a voltage level within plus or minus five percent (5%) of the actual bus voltage. The maximum rate of voltage change at the Point of Interconnection caused by Customer's operations and equipment shall be no more than five percent (5%) per minute.

b. Customer shall operate its Facility to provide a reactive power required by Customer's Complex and shall maintain the net flow of vars across the

interconnection with the Utility as close as possible to zero (0). Customer shall maintain a Net Average Monthly Power Factor (NAMPF) of ninety-five percent (95%) or greater.

c. Customer shall operate its Facility in compliance with this Agreement, the Naperville Municipal Code and all Utility rules and regulations applicable to non-utility owned generators connected to Utility's System, as the Naperville Municipal Code and/or those rules and regulations may be modified or amended from time to time during the Term, and in compliance with all applicable state and federal laws and regulations.

#### 7.5 Disruptive Service.

a. At any time, if Utility determines that operation of Customer's Facility in parallel with Utility's System is causing harmonic distortion on Utility's System, Utility may so notify Customer and, except in an emergency, give Customer seven (7) days to remedy the condition which is causing the harmonic distortion. If Customer fails to remedy the cause of the harmonic distortion within seven (7) days, Utility may require Customer to disconnect its Facility from Utility's System. Utility shall authorize Customer to reconnect its Facility to Utility's System when Customer has demonstrated, to Utility's satisfaction, that the cause of the harmonic distortion has been remedied. Customer will be required to comply with all policies that may be adopted by Utility with respect to harmonic distortion.

b. Harmonic distortion shall be governed by IEEE Standard 519-2014 (or future revision) entitled IEEE Recommended Practices for Harmonic Control in Electrical Power Systems. The limits at the NALCO 12.47 kV metering points at the Pebblewood Substation shall be as follows:

(i) The voltage total harmonic distortion shall be less than 5% and any individual voltage harmonics shall be less than 3% of the fundamental.

(ii) The current total demand distortion shall be less than 12% and individual harmonics less than 11 shall be less than 10%, harmonics from 11 through 16 shall be less than 4.5%, harmonics from 17 through 22 shall be less than 4%, harmonics from 23 through 35 shall be less than 1.5%, and harmonics greater than 35 shall be less than 0.7%.

c. Customer shall operate its Facility in a manner which avoids disruptive service including, without limitation, harmonic distortions, voltage dips and spikes, frequency fluctuations, and equipment overloads. Utility may require Customer to eliminate any disruptive service or condition which, in Utility's sole judgment, causes undesirable effects on Utility's System or with respect to the provision of service to Utility's other customers. Except in an emergency, Utility shall notify Customer of a condition of disruptive service and Customer shall remedy the condition causing the

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undesirable service within seven (7) days after receipt of Utility's notice. If Customer fails to remedy the disruptive service condition within said seven (7) days, then Utility may require that Customer disconnect its Facility from Utility's System until Customer has remedied the disruptive service to Utility's satisfaction. If Customer is unable to remedy the cause of the disruptive service, Utility may, at Customer's expense, take any steps necessary to eliminate the effect of the disruptive service on Utility's System. Utility may, in its sole discretion, permit Customer to continue operating its Facility at less than full capacity if such reduced level of operation reduces the disruptive service to a tolerable level as determined by Utility, provided that Customer commences steps to cure the cause of the disruptive service within seven (7) days after the date of Utility's notice, and thereafter diligently pursues such cure to completion.

d. Customer shall notify Utility immediately of any planned or unplanned maintenance activity which may affect Utility's System.

e. In the event of an emergency that, in Utility's sole judgment threatens the health or safety of persons or damage to property, Utility reserves the right to require that Customer immediately disconnect its Facility from Utility's System and, if Customer fails to do so or delays, then Utility may take all steps necessary to disconnect the Facility from Utility's System.

7.6 Customer Records. During the term of this Agreement, Customer shall develop and maintain such records concerning the operation and maintenance of its Facility and related equipment as are consistent with Prudent Electrical Practices and such records as are required by Utility. Customer shall allow Utility to inspect such records on Customer's premises during normal business hours, subject to reasonable advance notice.

## **ARTICLE VIII RATES, BILLING AND PAYMENT**

8.1 Utility Purchase of As-Available Energy. For each kilowatt hour of electric energy delivered by Customer to Utility pursuant to this Agreement, Utility shall pay to Customer an amount equal to the average cost of power supply paid by Utility to the Illinois Municipal Electric Agency (IMEA) during IMEA's immediately preceding fiscal year ending on April 30, as defined in that certain Power Sales Contract between Utility and IMEA ("IMEA Power Sales Contract") dated February 6, 2007. For purposes of this Agreement, the amounts payable to Customer by Utility shall in no event include any premiums paid by Utility to IMEA pursuant to Section 3 of the IMEA Power Sales Contract, as amended.

8.2 Supplemental Service. Customer shall pay Utility for all Supplemental Service provided hereunder at the rate entitled "Standby Primary Metering" in Utility's Primary Metering tariff schedule, as Utility's tariff may be amended during the Term or, if such rate is discontinued, at any successor rate. The billing demand for the month when Supplemental Service is provided shall be based on Customer's contribution to the Utility's wholesale peak billing demand during the Customer's monthly billing period. Energy billed for the month when Supplemental Service is provided shall be the total energy used during the Customer's monthly

billing period. A copy of the Primary Metering tariff schedule which is in effect as of the Effective Date is attached hereto as Attachment A.

8.3 Maintenance Service. Customer shall pay Utility for all Maintenance Service provided hereunder at the rate entitled "Standby Primary Metering" in Utility's Primary Metering tariff schedule, as Utility's tariff may be amended during the Term or, if such rate is discontinued at any successor rate. The billing demand for the month when Maintenance Service is provided shall be based on Customer's contribution to the Utility's wholesale peak billing demand during the Customer's monthly billing period. Energy billed for the month when Maintenance Service is provided shall be the total energy used during the Customer's monthly billing period.

8.4 Customer Service Charge. Customer shall pay Utility a Customer Service Charge each billing period during the Term to compensate Utility for meter reading and billing pursuant to this Agreement. The Customer Service Charge shall be the applicable charge contained in Utility's Customer Charges fee tariff schedule, as provided for in Section 8-1C-4 of the Naperville Municipal Code, as amended from time to time during the term hereof. Will this be in the attachment or please define-Nalco? In attachment (MC)

8.5 Customer Standby Capacity Charge. Customer shall pay Utility a Customer Standby Capacity Charge each billing period during the Term to compensate Utility for costs incurred to have capacity available to serve peak demand of Customer's Facility or Complex in accordance with the terms of this Agreement. The Customer Standby Capacity Charge shall be the applicable charge contained in Utility's Primary Metering tariff schedule, as amended from time to time during the Term.

8.6 Customer Reimbursement for Utility Costs. Customer shall reimburse Utility for all costs or expenses incurred by Utility during the term hereof which Utility would not have incurred in the absence of Customer's Facility, including, without limitation, costs of modifications to the Interconnection Facilities and metering equipment, or elsewhere on the Utility's system which the Utility deems necessary (a) to meet changes conditions on Utility's system; (b) to maintain the quality of the interconnection between Utility and Customer; or (c) to meet revised safety standards or procedures. Utility shall provide Customer with details of the basis for any such reimbursable costs or expenses together with Utility's request for reimbursement by Customer. Whenever possible, Utility shall give Customer reasonable advance notice and documentation of the basis for any such costs or expenses.

8.7 Statements and Payment. Utility shall provide Customer with a statement setting out the amount Customer is obligated to pay Utility each billing period, together with the same documentation of the basis for calculating the amount due that Utility routinely provides to its customers. Customer shall pay the full amount due by the due date on each statement.

8.8 Billing for Utility Service and Utility Energy Purchases.

a. For purposes of this Agreement, Customer's billing period shall be a monthly interval of approximately thirty (30) days, as determined by Utility.

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b. Utility shall read the meters installed for purposes of measuring Supplemental Service and Maintenance Service provided hereunder, and for measuring Utility purchases of energy from Customer once during each billing period. Utility shall provide a statement to Customer no later than thirty (30) days after the end of each billing period setting out the amounts due from Customer for Supplemental Service, Maintenance Service, and any other charges applicable to Customer pursuant to this Agreement or pursuant to Utility's tariff, any amount due Customer for energy delivered to Utility, and any applicable tax payable by Customer. Amounts due Customer will be credited to Customer's account with Utility and the credit will be applied to amounts owed to Utility by Customer in the current and subsequent billing periods. If the total credit in Customer's account equals or exceeds Twenty Thousand Dollars (\$20,000.00), then Utility will issue a check to Customer for the full amount of the credit. If the amount due Utility exceeds the amount due Customer for any billing period, then Utility's statement shall set out the net amount due Utility, after crediting Customer for any amounts due Customer from Utility. Customer shall pay the full amount shown by the due date on each statement. Notwithstanding the above, Utility's statement to Customer for each billing period shall reflect any changes or corrections in the amounts due Customer hereunder based on final statements issued by the Illinois Municipal Electric Agency (IMEA), which set out the final amount payable by Utility for electric energy purchased by Utility during each fiscal year beginning May 1.

c. If either party discovers an error in a statement issued by Utility within twenty-four (24) months after the statement is issued, such party shall notify the other party and any amount due to correct the error shall be paid within thirty (30) days after the notice of error.

d. If Utility determines that adjustment to a past statement is required pursuant to Section 6.4 due to meter inaccuracy or due to billing system inaccuracy, Utility shall re-compute the amount due either party (taking into account any amounts previously paid) for the period of inaccuracy and shall issue a corrected statement. Payment due to either party as a result of any such re-computation shall be due within thirty (30) days after the date of Utility's corrected statement.

e. Payments hereunder made after the due date shall bear interest at an annual rate equal to 3% as provided by City of Naperville Ordinance 98-93, provided that the interest rate will be adjusted to reflect any amendments to Ordinance 98-93 during the term of this Agreement.

f. Any existing or new Federal, state or local tax which either party is required to pay in connection with service received hereunder, shall be paid by such party. Customer shall remit to Utility any taxes that Utility is required or entitled to collect from Customer from time to time during the term hereof.

g. If Utility's wholesale supplier or suppliers impose any charge or rate upon Utility due to the operation of Customer's Facility in parallel with Utility's System, or due to Utility's purchase of energy from Customer, Customer shall pay the full amount of

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such charge. Utility shall give Customer reasonable advance notice of the imposition of any such charge or rate, to the extent practicable, and shall provide Customer with documentation of any such charges or rates.

8.9 Change in Utility Supply Situation. Utility has advised Customer that as of the Effective Date, Utility purchases all of its electric energy and capacity requirements from a single wholesale supplier and that Utility may purchase electricity from additional suppliers or install its own electric generating facilities during the Term. In the event of any such changes, Utility may modify the rates charged Customer hereunder for Supplemental or Maintenance Service to reflect any associated changes in Utility's Primary Metering tariff. Utility shall give Customer notice of any such changes no later than the advance notice Utility customarily provides to its customers of changes in their electric rates.

## **ARTICLE IX INSURANCE**

9.1 Customer shall, at the Customer's expense, secure and maintain in effect throughout the duration of this Agreement, insurance of the types and limits shown below. Customer shall furnish additional insured endorsement naming the Utility as an additional insured (to the extent of the limits herein) within ten (10) days after the Effective Date of this Agreement. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A, according to the latest edition of A.M. Best Company; and shall include a provision preventing cancellation of the insurance policy (in accordance with the policy provisions but in no event less than fifteen (15) days prior written notice is given to Utility. Said cancellation provision shall be so stated on each endorsement.

9.2 The Customer shall provide coverage in not less than the following amounts:

a. Commercial General Liability:

- i. Coverage to include Premise/Operations, Products/Completed Operations, Independent Contractors, Broad Form Property Damage, Contractual, Personal Injury and all claims arising out of the Customer's operations or premises, any person directly or indirectly employed by Customer, and the Customer's obligations under indemnification under this Agreement.
- ii. Limits:

1.General Aggregate	\$2,000,000
2.Products/Completed Operations	\$2,000,000
3.Each Occurrence	\$2,000,000

b. Workers' Compensation:

- i. Coverage shall be in accordance with the provisions of the laws of the State of Illinois.

c. Comprehensive Automobile Liability:

- i. Coverage shall include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.

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ii. Limits:

1. Combined Single Limit per Accident \$2,000,000

d. Employers Liability:

i. Limits:

1. Each Accident \$2,000,000

2. Each Employee Bodily Injury by Disease \$2,000,000

3. Policy Limit Bodily Injury by Disease \$2,000,000

e. Umbrellas for each of the above-named insurance policies, except workers' compensation:

i. Limits:

1. Each Occurrence/Aggregate \$10,000,000

**ARTICLE X**

**TERM AND TERMINATION**

10.1 Term. The Term of this Agreement shall commence on the Effective Date, and shall continue through the termination of Utility's current IMEA power purchase contract. During such Term, this Agreement may be terminated by either party for any reason, upon sixty (60) days advance written notice of the termination date. In addition, either party may terminate for cause during the Term pursuant to Section 10.2 or 10.3.

10.2 Termination by Utility or Customer. Utility or Customer may terminate this Agreement upon the occurrence of any of the following, by written notice to the other party thirty (30) days in advance of termination:

a. In the terminating party's sole judgment, further performance of its obligations hereunder would be uneconomic.

b. Failure by the other party to pay any amounts due hereunder within sixty (60) days after such other party's receipt of notice that a payment due hereunder is overdue by at least sixty (60) days or failure by Customer to pay any amounts due Utility as required by the Naperville Municipal Code.

c. A material breach of any term, warranty or condition of this Agreement by the other party, provided that such other party has failed to cure such breach within sixty (60) days after receiving notice of the breach, or if such breach cannot be cured within sixty (60) days, such other party fails to commence steps to cure the breach within said sixty (60) days and to diligently pursue the cure to completion.

d. The inability or admission by the other party of its inability to pay its debts as they become due or the making of an assignment for the benefit of, or entry into any arrangement with its creditors.

e. The adjudication of the other party as bankrupt or insolvent pursuant to a petition in bankruptcy or insolvency proceedings filed against Utility

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f. The authorization or filing by the other party of a voluntary petition in bankruptcy or commencement by such other party of proceedings relating thereto under any bankruptcy, reorganization, readjustment of debts, insolvency, dissolution, liquidation or other similar law of any jurisdiction, unless such proceeding is dismissed or filing withdrawn within ninety (90) days.

g. The commencement of any proceedings against the other party seeking the appointment of a receiver, trustee or liquidator of all of such other party's assets, or its dissolution, with or without its authorization consent or application and the continuation of such proceeding for ninety (90) days without being dismissed as to such other party.

10.3 Termination by Utility. Utility may terminate this Agreement upon the occurrence of any of the following by written notice to Customer thirty (30) days in advance of termination:

a. Customer's loss of its status as a Qualifying Facility under PURPA and the regulations there under, as amended or revised from time to time during the Term where such loss is permanent and has not been waived by the Federal Energy Regulatory Commission or is not temporary as contemplated under Section 11.1;

b. Utility is no longer required to purchase energy generated by Customer under PURPA.

10.4 Effect of Termination. This Agreement shall terminate on the date set out in the terminating party's notice of termination pursuant to this Article X, and neither party shall have any further obligation to the other hereunder except that all amounts due either party for services provided prior to termination shall remain due and owing. Upon termination by either party for any reason, electric service provided to Customer by Utility shall be provided upon the applicable terms and conditions contained in Utility's tariffs. Termination of the Agreement shall in no event entitle Customer to receive electric service from a supplier other than Utility.

## **ARTICLE XI ABATEMENT OF UTILITY'S PURCHASE OBLIGATION**

11.1 Temporary Loss of Qualifying Status. If Customer's Facility temporarily ceases to be a Qualifying Facility under PURPA at any time during the Term and Customer demonstrates to Utility's satisfaction that the Facility's loss of Qualifying Facility status is temporary, Utility shall not be obligated to purchase electric energy generated at Customer's Facility and all electric service provided by Utility to Customer shall be at the rate entitled "Primary Metering" in Utility's Primary Metering tariff until Customer's Facility's Qualifying Facility status is restored. Utility shall resume purchases of electric energy from Customer promptly after Customer demonstrates to Utility's satisfaction that the Facility has regained its status as a Qualifying Facility under PURPA. Customer shall provide Utility with a statement

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that Customer's Facility has operated in accordance with PURPA and the regulations thereunder no later than May 1<sup>st</sup> of each year during the Term.

11.2 Utility Interruption of Purchases. Utility may interrupt or curtail its purchases of as-available energy from Customer and may require Customer to disconnect its Facility from Utility's system upon the occurrence of any of the following:

a. The occurrence of an emergency on Utility's system or the Utility's determination in its sole judgment that such interruption or curtailment is necessary to prevent an emergency or for safety reasons.

b. Provision of disruptive service by Customer which Customer fails to cure, pursuant to Article VII.

c. When necessary, in Utility's sole judgment, in order to construct, install, maintain, repair, replace, remove, investigate or inspect any of its equipment or any part of its system or to inspect Customer's facilities and equipment. Utility shall make reasonable efforts to coordinate any such interruption with Customer's schedule. Determination by Utility that interruption, curtailment or disconnection is necessary because of forced outages, Force Majeure, compliance with Prudent Electrical Practices or due to curtailment, outage or interruption of deliveries by Utility's supplier(s). Reconnection shall be promptly established once the cause of interruption has been remedied.

11.3 Notice of Interruptions. When possible in Utility's sole judgment, Utility shall give Customer reasonable advance notice of a planned interruption or disconnection. Where advance notice is not provided, Utility shall advise Customer of the reason for interruption or disconnection as soon as practicable thereafter. It is the Customer's responsibility to keep current contact information on file with the Naperville System Control Center at all times.

## **ARTICLE XII INDEMNITY**

12.1 Indemnity. The Customer shall indemnify and hold harmless and defend Utility, its officers, employees, and its agents from any and all third party claims, suits, actions, costs, and fees, including reasonable attorneys' fees, of every nature or description arising from, growing out of, or connected with the engineering, design, construction, maintenance, or operation of; or the making of additions, modifications or replacements to the Customer's Facilities, or due to any act or omission, neglect, or misconduct of the Customer, its employees and agents. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided.

12.2 Damage to Utility Equipment. Notwithstanding the above, Customer shall be responsible for any loss, liability or damage to Utility's equipment and service to the extent caused by Customer's failure to install and properly maintain its protective devices in good

working order and repair or otherwise to comply with this Agreement or Utility's rules, regulations, and tariff.

12.3 Utility Unplanned Outages. Utility shall have no liability to Customer for damages to Customer's Facility resulting from unplanned outages on Utility's system.

12.4 Utility Defense of Claims, Actions or Suits. Nothing contained herein shall be construed as prohibiting Utility, its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claim, actions or suits brought against them. Customer shall be liable for the costs, fees, and expenses incurred in the defense of any claims, actions, or suits.

### **ARTICLE XIII FORCE MAJEURE**

If either Party is rendered unable, in whole or in part, by Force Majeure, to carry out its obligations hereunder, other than to make any payment when due hereunder, it is agreed that, upon such party giving notice and reasonably full particulars of such Force Majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied upon, the obligations of the party giving such notice, insofar as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, to the extent possible, be remedied with all reasonable dispatch.

### **ARTICLE XIV UTILITY ACCESS TO COMPANY'S FACILITY**

At all times during the term hereof, Customer shall permit Utility employees, agents or representatives free egress and ingress to and from Customer's property and free access to Customer's Facility, and all equipment installed by Customer in connection with the performance of its obligations hereunder, including without limitation the disconnecting device(s) required pursuant to this Agreement, and any metering and other facilities installed by Utility on Customer's property pursuant to this Agreement for purposes of (a) testing and isolation of Customer's Facility from Utility's system; (b) inspection of protective equipment and relays (and settings); and (c) installing, constructing, operating, maintaining, replacing, repairing, moving and removing Interconnection Facilities and metering equipment. Except in an emergency, Utility shall endeavor to notify Customer's designated representative twenty-four (24) hours in advance of the time Utility's employees, agents or representatives will require access to Customer's Complex. . In exercising the right granted pursuant to this Article, Utility's employees, agents and representatives shall not unreasonably interfere with Customer's operations and shall comply with all of the rules and policies at the Complex or Facility, to the extent Utility has been provided copies of all such rules and policies.

### **ARTICLE XV MISCELLANEOUS**

15.1 Choice of Law. This Agreement shall be interpreted in accordance with the laws of the State of Illinois.

15.2 Waiver. Failure of a party to enforce any right it may have hereunder shall not operate as a waiver of the party's ability to enforce such right at any other time during the Term hereof.

15.3 Assignment. This Agreement shall inure to the benefit of the permitted heirs, successors and assigns of the party. Customer shall not assign or transfer this Agreement without Utility's prior consent, which consent shall not be unreasonably withheld., provided however that Customer may assign or transfer this Agreement to any party to whom Customer sells the Complex provided that, if in Utility's reasonable judgment any such party possesses the technical ability required to perform Customer's obligations pursuant to this Agreement and financial capability comparable to Customer's financial capability as of the execution of this Agreement, and provided that any such proposed assignee agrees in writing to be bound by all terms and conditions of this Agreement.

15.4 Notices. Any notice, demand or request authorized or required by this Agreement shall be in writing and shall be deemed delivered when received as evidenced by a Certified Mail Receipt of the United States Postal Service or the receipt of a private express mail service or courier service, or if sent by electronic mail (e mail) actual receipt of the communication by the addressee, as evidenced by an acknowledgement returned to the sender by the addressee.

Notices shall be addressed as follows:

To Utility: City of Naperville  
400 South Eagle Street  
Naperville, Illinois 60540  
Attn: Director of Public Utilities-Electric

To Customer: NALCO Company LLC  
1601 West Diehl Road  
Naperville, Illinois 60563  
Attn: Facility Director

For Payments:

To Utility: City of Naperville  
400 South Eagle Street  
Naperville, Illinois 60540  
Attn: Director of Finance

To Customer: NALCO Company LLC  
1601 West Diehl Road  
Naperville, Illinois 60563  
Attn: Facility Director

Either party may change the address at which it receives notices or payments by delivering notice of the change to the other party as set out above.

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WHEREFORE, the parties hereto have executed this Agreement as of the date first set out above.

City of Naperville

NALCO Company LLC

By: \_\_\_\_\_

By: *Maul F* KTC

Title \_\_\_\_\_

Title *Facility Director*

ATTEST:

By: \_\_\_\_\_

Pam Gallahue, Ph.D.  
City Clerk

Date: \_\_\_\_\_