



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

**DISTRIBUIDORA DE ELECTRICIDAD DE OCCIDENTE, SOCIEDAD
ANONIMA, DISTRIBUIDORA DE ELECTRICIDAD DE ORIENTE,
SOCIEDAD ANONIMA AND EMPRESA ELÉCTRICA DE GUATEMALA,
SOCIEDAD ANONIMA**

OPEN TENDER TERMS PEG-1-2010

**OPEN TENDER TO CONTRACT ELECTRIC POWER AND ENERGY
SUPPLY FOR FINAL DISTRIBUTION CONSUMERS**

This is not the official document for the bid. This shall be used just as a reference. The official Tender Terms is issued only in Spanish. Please contact Empresa Eléctrica de Guatemala and/or DEORSA / DEOCSA to get the official documents.

Guatemala, February 3, 2011.



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

OPEN TENDER PEG-1-2010

TENDER TERMS

OPEN TENDER TO CONTRACT ELECTRIC POWER AND ENERGY SUPPLY FOR FINAL CONSUMERS SERVICED BY DISTRIBUIDORA DE ELECTRICIDAD DE OCCIDENTE, SOCIEDAD ANONIMA, DISTRIBUIDORA DE ELECTRICIDAD DE ORIENTE, SOCIEDAD ANONIMA AND EMPRESA ELÉCTRICA DE GUATEMALA, SOCIEDAD ANONIMA

1. INTRODUCTION:

The General Law of Electricity Decree No. 93-96 of the Congress of the Republic of Guatemala Regulates the development of the set of activities of generation, transmission, distribution and Marketing of electricity and as such it extends its application to all people who carry out activities In generation, transmission, distribution and marketing of electricity, be it individual or legal entities, with private, mixed or government participation.

Article 53 of the General Law of Electricity establishes that the grantees of the final distribution service are required to have existing contracts with generating companies that will guarantee its total power and energy requirement, and Article 62 of the Law, states that electricity purchases by distributors of the Final Distribution Service are carried out through an open tender and all information related to the bid and bid award shall be publicly accessible.

Additionally, Article 65 of the Rules of the General Law of Electricity states that the Distributors must carry out an open tender to contract the supply which will guarantee their power and energy requirements, providing further that according to the needs of the Distributors and the Indicative Generation Expansion Plan, the Commission will draw up terms of reference to define the criteria that the Distributors must meet to develop the open bidding to carry out the procurement processes of power and energy. The bidding rules that the Distributors develop must be submitted to the Commission for approval, which shall decide on its admissibility or inadmissibility. Once the rules are approved, the Distributors shall call an open tender.

The Social Tariff Act for the Supply of Energy, Decree No. 96-2000 of Congress of the Republic of Guatemala, also states in its article 2 that the National Commission of Electric Energy shall issue and determine the standards, methods, procedures and energy source needed for the implementation of the Social Tariff for the Supply of Electricity, article 3 indicates that the Distributors must carry out an open tender for the acquisition of power and energy, with the authorization of the National Commission of Electricity and Energy, whose destination will be the supply of social tariff consumers under the terms of reference to be established by the Commission, and in its article 4 notes that the energy purchase price by the Distributors that are recognized in the Tariff must reflect strictly the condition obtained in the open tender, as provided in Article 3 of the Social Tariff Act.

1.1. Aims of the Tender

For the above and the agreed terms of reference issued by the National Commission of Electric Energy in Resolution CNEE-185-2010 and its amendments, Empresa Eléctrica de Guatemala, Sociedad Anonima, Distribuidora de Electricidad de Occidente, Sociedad Anonima and Distribuidora de Electricidad de Oriente, Sociedad Anonima, hereinafter called "Distributors or the Tender Board", made the



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

following tender rules jointly, although the awards may result in the signing of supply contracts with each of them individually. This tender aims to:

- a. The supply contracts up to eight hundred megawatts (800 MW) of Guaranteed Power by Distribuidora de Electricidad de Occidente, Sociedad Anonima, Distribuidora de Electricidad de Oriente, Sociedad Anonima and Empresa Eléctrica de Guatemala, Sociedad Anonima, hereinafter the Distributors, for its consumers of Final Distribution Service for a period of fifteen (15) years starting one (1) May two thousand and fifteen (2015).
- b. The power supply for consumers of the Final distribution Service of the Distributors, according to the conditions established in the Supply Contracts signed in accordance to the present Tender rules with each of them.

1.2. Definitions

The following terms will have the meanings set forth below, which are complementary to those established in the General Law of Electricity and its Regulations. The expressions in the singular include the plural where appropriate and vice versa.

Addendum: These are documents issued by the Distributor or the Tender Board with the previous approval of the CNEE, to modify, extend or clarify the contents of the Tender rules.

Wholesale Market Administrator or AMM: Is the body responsible for managing and coordinating the Wholesale Market, as set forth in article forty four (44) of the General Law of Electricity.

Seasonal Year: Has the meaning given in Article One (1) of the Regulations of the Wholesale Market Administrator.

Governmental Authority: Means any entity of government, executive, legislative, judiciary, whether state or municipal, or secretariat, department, tribunal, commission, council, agency, body or similar authority of any such government entities of the Republic of Guatemala.

Tender Terms: Are the guidelines, general provisions and technical specifications contained in the document prepared by the Tender Board in accordance with the Terms of Reference approved by the CNEE, to be met by bidders to present their offers.

Commitment Letter: Is the document content in a Notarized affidavit, which the Bidders must submit within their Technical Offer in accordance with the concepts, set out in paragraph 6.4 of these Rules.

Central: Has the meaning given by the Regulation of the General Law of Electricity.

National Commission of Electric Energy, CNEE, or Commission: Is the simple nomination that will be used interchangeably, referring to the technical organ of the Ministry of Energy and Mines, created under the General Law of Electricity Law, Decree No. 93-96.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Consortium: The Bidder consists of a group or association of individuals or corporations, domestic or foreign, who presents an Offer to participate in the Bidding Process, without becoming a separate legal entity of that of its members.

Guaranteed Heat Consumption Net Unit or CTUNG: Is the amount of fuel required to generate a Megawatt-hour of electricity, guaranteed in the Bid Offer, also considering the losses from the fuel inlet to the delivery of electricity to the Point of the Delivery terminals, taking into account degradation during the life of the Contract, in all environmental conditions of the installation site.

Supply Contract or "The Contract": The document contents in a notarized document which each of the distributors will enter with the Awardee(s), which establishes the terms under which the power and energy supply Awarded to each Bidder will be delivered to the consumers corresponding for each of the Distributors, as well as price, payment, guarantees and other technical, economic and legal issues concerning the delivery, being each Distributor individually responsible for their undersigned contracts.

Load Curve Difference Contract: The type of contract described in subparagraph a) of paragraph 13.4.1 of the Commercial Coordination Regulation No. 13 of the AMM.

Energy Generation Contract: The type of contract described in subparagraph f) of paragraph 13.4.1 of the Commercial Coordination Regulation No. 13 of AMM.

Energy Power Purchase Option Contract: The type of contract described in subparagraph c) of paragraph 13.4.1 of the Commercial Coordinating Regulation No. 13 of the AMM.

Power Support Contract: The type of contract described in paragraph 13.4.3 of the Commercial Coordination Regulation No. 13 of AMM.

Secure Contract: Has the meaning given in Article two (2) of the Commercial Coordination Regulation Number ten (10), of the AMM.

Firm demand: Has the meaning given in Article One (1) of the Regulation of the Wholesale Market Administrator and is calculated as provided in the Commercial Coordination Regulation number two (2) of the AMM.

Distributor: Has the meaning given in section six (6) of the General Law of Electricity, also called the Distributor.

Dollars or U.S. \$: Is the legal tender in the United States of America.

Environmental Impact Assessment or EIA: Means the study which evaluates the environmental impact of a project, required by the Applicable Laws, assessed by the competent authority for granting approval in matters of environmental impact, for the construction and operation of the project facilities.

Supply Start Date: Has the meaning set forth in paragraph 8 of the Rules of the Tender.

Scheduled Start Date of Negotiations: It has the meaning set forth in the memorandum of the Supply Contract, contained in paragraph 8 of these Rules.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Contract Sheet Validation Date: Has the meaning set forth in the memorandum of the Supply Contract, contained in paragraph 8 of these Rules.

Subsidiary: Means any individual or legal entity that is represented directly or indirectly by any other person who has a business interest of at least thirty percent (30%) in it, and who intervenes through their representatives in the direction of management or policies through such person, whether through ownership of shares or other stock with voting rights or any other means.

Offer Sustainability Guaranteed: Is the document issued by an authorized entity to do so in Guatemala, which must be submitted by each Bidder within its Technical Bid, together with the Letter of Commitment, as set forth in paragraph 4.3 of these Rules.

Preoperative Guarantee: Is the document to be presented by the Awarded Bidder to each Distributor at the time of the signing of each contract, to ensure compliance with the obligations derived there from, as established by the terms of reference, the Rules and the signed Supply Contract.

Renewable Distributed Generation: Has the meaning given in Article One (1) of the Rules of the General Law of Electricity.

Stakeholder: Any individual or entity that acquires the Tender Rules, as set forth in paragraph 2.1 of these Rules.

Tender Board or the Board: It is the set of people appointed by the Distributors to develop the Open Tender PEG-1-2010, and will be integrated with six members and four alternates, as follows: Three members and two alternates appointed by Empresa Electrica de Guatemala, SA, and three members and two alternates appointed by Distribuidora de Electricidad de Occidente, SA and Distribuidora de Electricidad de Oriente, SA. The functions of this Board are set out in resolution CNEE-185-2010 and as well as the internal Rules of procedures of the Board.

Law: The General Law of Electricity, Decree number ninety-three dash ninety-six (93-96) of Congress of the Republic of Guatemala.

Applicable Laws: Are the current laws, regulations and standards of the Republic of Guatemala.

Social Tariff Law for the Supply of Electricity: It is Decree No. 96-2000 of Congress of the Republic of Guatemala, which may also be called the Social Tariff Law.

Bidder: It is the interested party who has submitted an Offer in accordance with the requirements of the Tender Rules.

Awarded Bidder: It is the Bidder who meets the requirements established in the Rules of the Tender, to which each of the Distributors awarded one or more Supply Contracts.

Offer: This means the proposal submitted by the Bidder pursuant to the Rules of the Tender, including the Technical Bid and Economic Bid.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Firm Efficient Offer: Has the meaning given in Article One (1) of the Regulations of the Wholesale Market Administrator and it is calculated according to the provisions of the Commercial Coordination Regulations Number two (2) of the AMM.

Economic Participation: It means the direct or indirect investment (whether in the form of shares or subordinated debt) in the entity that will sign a Supply Contract in his Awarded Bidder capacity.

Strategic Participant: It is one of the members of a consortium that has an economic stake of at least thirty percent (30%) in the Consortium and in the Guatemalan corporation to be established, and complies with the requirements of technical and economic capabilities established under the Rules of the Tender.

Permits: Means all licenses, authorizations, orders, exemptions, registrations, approvals or other authorizations to be obtained from any Governmental Authority, or to be issued by them, including the approval of the Environmental Impact Assessment for the Contract compliance.

Contract Form: It is the medium through which the AMM incorporates the conditions set out in the Supply Contract in the futures Market, for the technical and commercial management of the Contract, in accordance with the provisions of the Commercial Coordination Regulations number thirteen (13) of the AMM.

Generating Plant: It is a New Generating Plant, Power Plant in Operation or indication of an International Transaction as a Firm Import Contract, offered under the provisions of paragraph 7.1 of these Rules with which the Bidder offers to provide Guaranteed Power and energy to the Distributors.

New Generating Plant: The Station or Stations, with which a Bidder offers to supply Guaranteed Power and Electricity to the Distributors, who have started or will start commercial operations in the Wholesale Market in Guatemala after one (1) January two thousand and ten (2010).

Generating Plant in Operation: Are the Station or Stations that have been in commercial operations in the wholesale market before one (1) of January 2010.

Guaranteed Power (GP): It is the net power guaranteed in the Bid to be delivered by the Bidder to the Distributors' Delivery Point as an Efficient Firm Supply, to meet their Firm Demand.

Tender Process: Activities carried out by the Distributor from the call to the signing of the Supply Contract of the Open Bid PEG-1-2010.

Connecting Point: It is the National Interconnected System node-SNI-where a new generating plant or one in operation connects and which offers a Guaranteed Power Supply and Electricity to the distributors as established under the Rules of the Tender. This node is also where a commercial measurement device will be enabled by Wholesale Market, whichever is applicable.

Delivery Point: In the case of New Power Plants or plants in Operation it is the point of connection, or in the case of International Transactions it is the node of the Main System SNI, where delivery of Guaranteed Power and Electricity for the Distributors of each Awarded Bidder.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Regulation of the General Law of Electricity: It is the content of Governmental Agreement No. 256-97 of the Presidency of the Republic of Guatemala and its amendments.

Regulation of the Wholesale Market Administrator: Contained in Governmental Agreement No. 299-98 of the Presidency of the Republic of Guatemala and its amendments.

Legal Representative: The person designated as such by a Bidder under paragraph 3.2 of these Rules.

Authorized Agent: It is the person designated as such by a stakeholder under paragraph 2 of these Rules.

Final Distribution Service: Has the meaning given in Article six (6) of the General Law of Electricity.

Main System: Has the meaning given in Article 6 of the General Law of Electricity.

Secondary Transmission Systems: Has the meaning given by the numeral nine point two (9.2) of the Commercial Coordination Regulation number nine (9) of the AMM.

Secondary Sub-transmission Systems: Has the meaning given by the numeral nine point two (9.2) of the Commercial Coordination Regulation number nine (9) of the AMM.

Strategic Partner: It is one of the partners or associates of a legal entity that has directly or indirectly an economic interest of at least thirty percent (30%) in the Bidder and in the Guatemalan Corporation to be established, and complies with the requirements of technical expertise and economic capabilities established by the Rules of the Tender.

Terms of Reference: Are the guidelines, general provisions and technical specifications approved by the CNEE through CNEE Resolution 185-2010 and amendments, with which the Distributors elaborated the Open Bid Tender PEG-1-2010.

International Transaction: Has the meaning given in Article 1 of the Regulation of the Wholesale Market Administrator.

1.3. Description of the Tender Process

The Tender Rules shall regulate the development of the Bidding Process from the publication of the call until the signing of the Supply Contracts with each Awarded Bidder with the Distributors.

The Tender Board will evaluate the offers submitted in accordance with the Rules of the Tender, starting with the technical bids, which will be described as "technically solvent" or "not Technically solvent," according to the results of that assessment. Later, it will proceed to the opening of Economic offers from those Bidders whose Technical Bids have been described as "Technically Solvent."

For the Tender Process the Bidder shall indicate in its Bid the type of generating technology which will supply the Guaranteed Power and Electricity to the Distributors, according to the provisions of the Rules of the Tender.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

The Guaranteed Power to be contracted as part of the Firm Demand of the Distributors is up to eight hundred megawatts (800 MW) for the supply of consumers of Final Distribution of the Distributors.

Distributors must award the Bid or the set of Bids that minimize the total cost of supply for its consumers of its Final Distribution Service, according to the conditions established under the Rules of the Tender.

In view of the above and once the Contracts are signed, each Awarded Bidder shall:

- a. Ensure the supply of the Guaranteed Power during the supply period, through an Efficient Firm Offer to meet own Firm Demand or through Backup Power Contracts in the case of New Generating Plants or in operation; or through Firm Import Contracts, in the case of international transactions, according to the provisions of the Commercial Coordination Regulation number two (2) of the AMM and the Supply Contract, when it undertakes Guaranteed Power.
- b. Supply energy to the Distributors at the Delivery Point in the form of trading in the futures market accordant to the type of contract set out in the Bid, according to the Commercial Coordination regulation number thirteen (13) of the AMM.
- c. Validate the Contract Forms where the established supply conditions must be recorded in each Supply Contract signed with the Distributors.
- d. To fulfill any other condition or requirement established in the signed Supply Contract, current legislation or in the Rules of the Tender.

1.4. Legal Basis for the Tender

The present tender process is being convened by the Distributors on the basis of contract needs to cover power demand and electricity and the Indicative Generation Expansion System Plan in accordance with the provisions of the Law, which in its Article 53 states that the winners of the final distribution service are required to have current contracts with generating companies that will guarantee its total requirement of power and energy for the current year and the next calendar year at least, in its Article 62 stipulates purchases of electricity by distributors of Final Distribution Service shall be by open tender, with all the information about the tender and award of tenders publicly accessible, and additionally in Article 71, it further provides that the power purchase price by the distributor to be recognized in the rates should reflect strictly the conditions obtained in the bids referred to in Article 62 and related.

The Social Tariff Law for the Supply of Electricity, also stated in Article 2 that the National Commission of Electric Energy shall issue and determine the standards, methods, procedures and energy sources necessary for the implementation of the Social Tariff for the Supply of Electricity, Article 3 states that Distributors shall carry out an open tender to purchase power and energy, with



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

the previous authorization of the National Commission of Electric Energy, whose destination will be to supply consumers of the Social Tariff, under the terms of reference to be prepared by the Commission, and Article 4 stipulates that the power purchase price by the distributor to be recognized in the tariff must reflect strictly the condition obtained in the open tender as stipulated in article 3 of cited Law.

Likewise, Article 65 of the Rules of the General Law of Electricity provides that the final distributor must carry out an open tender to contract the supply contract to guarantee the power and energy requirements, establishing further that according to the needs of the distributors and the Indicative Generation Expansion Plan, the Commission will prepare the terms of reference to define the criteria that Final Distributors must comply with to develop the open tender to carry out the procurement processes of power and energy. The bidding rules that the Distributor prepares must be submitted for approval to the Commission, which shall decide on its admissibility or inadmissibility within the next thirty calendar days. Once the rules are adopted, the distributor shall call an open tender.

1.5. Absence of Contractual Link

The Distributors, its officers, consultants, shareholders, financial advisors, strategic, legal, and technical or any other person under its authority, do not guarantee that the information submitted under the Rules of the Tender is complete or accurate, nor guarantee that such information constitutes information needed to prepare a Bid.

Each Bidder accepts full responsibility to carry out an independent analysis of the feasibility of its Offer, and to collect and present information necessary for the preparation and presentation of the same.

In this regard, with the presentation of the Bid, Distributors assume that the Bidder accepts the Terms of Tender, and presents its Offer to be assessed by the Distributors. Therefore, the Bidder assumes all risks associated with the preparation of its bid and therefore cannot make changes or adjustments based on subsequent allegations to the date of filing the same.

Accordingly, the Bidder expressly disclaims liability entirely from the Distributors, its shareholders, financial advisors, strategic, legal, technical and other advisors, officers or consultants for the use which might be made of the information contained in the Offer, for any inaccuracies thereof, for their shortcomings, or any other cause attributable to the Bidder.

It is further established the sole responsibility of the Bidders for the integrity, reliability and accuracy of the information received on or in connection with the Offer, either orally or in writing, as well as the use that such Bidders or third parties may give to such information.

It also establishes the irrevocable and unconditional waiver by the Bidder, of any action, claim, plaint or request for damages against the Distributors, his shareholders, financial advisors, strategic, legal, technical and other advisors, officers and consultants for Open Bid PEG-1-2010.

Presenting a Bid implies the acceptance, without limitation as provided in the Tender Terms by the Bidder.

All information submitted in response to the tender documents, that is to say, as part of the Bid, becomes the property of the Distributors, therefore Distributors, its shareholders, strategic financial advisors, legal, technical and other advisors, officers or consultants accept no responsibility to keep confidential all material received, nor trade secrets or other information that may

considered the property of the Bidder, contained in those documents, given that the act of tendering and contracting is a public event, according to the provisions of Article 62 of the Law.

1.6. Powers of the Distributors

The distributors are empowered to:

- Designate the personnel that will form the Tender Board for the Open Tender PEG 1-2010.
- To call upon the Open Tender PEG-1-2010.
- Request from the CNEE modifications to the Terms of Reference approved by Resolution CNEE-185-2010 and the present Tender Terms.
- Award totally or partially under their responsibility the set of Bids that result in the lowest cost of supply for the Consumers of the Final Distribution Service.
- To execute the Offer Sustainability Guarantee supporting the supply offer, when it corresponds according to the Terms of the Tender.
- Not to award those Offers where prices or other conditions are harmful to the interests of final consumers of the Distributors, without liability on their part. Non-allocation of a Bidder shall have approval of the CNEE.
- Declare the Open Tender PEG-1-2010 void according to the provisions of the Terms of the Tender and prior authorization of the CNEE.
- Receive the income from the concept of the acquisition of the Terms of the Tender from the stakeholders, according to the provisions established in numeral 2.1 of these Terms in order to finance the activities arising from the Open Tender PEG-1-2010.

1.7. Tender Event Chronogram

Event	Date
Publication of the call for Tender	Ten days after the approval of the Terms by the CNEE
Acquisition of the Terms of the Tender	Since the publication of the notice until a day before the submission of Bids
First informative meeting	April 13, 2011
Second informative meeting	July 7, 2011
Deadline to submit requests for clarifications to the Tender	September 29, 2011
Third informative meeting	September 14, 2011
Deadline for responses to requests for clarification to the Tender or questions for the issuance of Addenda to the Tender	October 7, 2011
Deadline of submission of technical and economic offers and opening of technical bids	October 28, 2011
Date of opening of economic Bids	November 14, 2011
Award date	December 6, 2011
Deadline for signing of each Supply Contract	January 30, 2012

The dates specified in the above table may be modified as determined by the Tender Board or the Distributors.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

1.8. Correspondence

All communication in relation to the Open Tender PEG 1-2010 should be directed to:

Junta de Licitacion PEG-1-2010/Empresa Eléctrica de Guatemala, Sociedad Anonima.
6^a. Avenida 8-14 zona 1 de la ciudad de Guatemala.
Tel: +502 - 223 00659
Email address: crodas@eegsa.net

Or

Junta de Licitacion PEG-1-2010/Distribuidora de Electricidad de Occidente, Sociedad Anonima.
Distribuidora de Electricidad de Oriente, Sociedad Anonima.
10 Avenida 14-14, zona 14 de la ciudad de Guatemala.
Tel: +502 - 236 79407
Email Address: dcarranza@uef.com.gt

Delivery of Bids and opening acts for the Open Tender PEG-1-2010 will be held at the address provided by the Distributors to the Stakeholders, to Bidders and the CNEE as applicable, at least five (5) days before the date of each activity described in paragraph 1.7 of these Terms.

Communications to Stakeholders from the Distributors must be made in writing to the address of the Authorized Representative or by e-mail provided in accordance to paragraph 2.1 of these Terms.

2. ACQUISITION OF THE TERMS OF THE TENDER, CLARIFICATIONS, ADDENDUMS, AND NOTIFICATIONS

2.1. Acquisition of the Terms of the Tender by the Stakeholder

Hard copies of the Terms of the Tender may be picked up at any of the addresses of the Distributors established in paragraph 1.8 of these Terms, on weekdays from Monday to Friday from 8:00 A.M. to 13:00 P.M. and from 14:00 to 16:00 P.M. after payment is made by the stakeholder. The purchase of the Terms of the Tender includes the right to Bid, make questions and requests for clarification, receive answers and Addendums, and receive additional information that is generated corresponding to the Open Bidding PEG-1-2010. When picking up copies of the Tender, the applicant must, by mandate or power of attorney, appoint an Authorized Representative and indicate an address (within the perimeter of Guatemala City), a phone number, fax and email address.

The authorized representative must be fully empowered to:

- a. Receive notices and communications on behalf of the stakeholder they represent.
- b. Carry out consultations, comments, or requests for clarification, amendments to the Terms of the Tender on behalf of the stakeholder.

The amount Stakeholders must pay to pick up the Terms of the Tender is fifteen thousand dollars (U.S. \$ 15,000.00), except generators which qualify for Renewable Distributed Generation as



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

defined in section 1.2. This will pay a thousand dollars (U.S. \$ 1,000.00). In both cases this amount will not be refundable and shall be made in accordance to the following options:

- a. Cashier check in the name of the Distributor where the Terms were purchased.
- b. Through a bank wire transfer to the account:
 - i. Banco Industrial 000-207663-6 de Empresa Eléctrica de Guatemala, Sociedad Anonima.
 - ii. Banco Industrial 000-649568-3 de Distribuidora de Electricidad de Occidente, Sociedad Anonima y
 - iii. Banco Industrial 000-649569-1 de Distribuidora de Electricidad de Oriente, Sociedad Anonima.

In the case of bank wire transfer from abroad, the Distributors must be contacted via telephone or via email to receive further instructions.

2.2. Requests for clarification to the Terms of the Tender

Stakeholders who have purchased the Terms of the Tender and who have questions or seek clarification on any part of the Terms of the Tender must submit them in writing with electronic copy attached, on weekdays from Monday to Friday from 8:00 A.M to 13:00 P.M and 14:00 to 16:00 P.M, to the address established in Terms of the Tender. The Tender Board will respond to those questions, with the approval of the CNEE, in accordance with the Schedule of Events established in paragraph 1.7 of the present Terms of the Tender. Responses issued by the Tender Board, including their respective questions, without identifying the name of the person who has entered, will be notified to all Stakeholders and the CNEE and it will be posted on the website www.eegsa.com, www.unionfenosa.com.gt and the CNEE website www.cnee.gob.gt / peg once they have been notified.

The Tender Board may, but is not obliged to answer questions or requests for clarification raised after the dates specified in the Tender. Requests for clarification or questions should be submitted using the format contained in paragraph 6.5 of the Terms of the Tender and through an optical electronic medium.

The Tender Board will hold informative briefings and clarification of questions established in the schedule of events of the Tender, informing Stakeholders three (3) days prior to each informative meeting the place where each will be held. Information provided in such meetings shall not be binding, being valid only for the purpose of preparing the Bid, clarifications, answers to questions or Addenda issued by the referred Board.

2.3. Addenda to the Terms of the Tender

If the Tender Board or the Distributors, to the date indicated by the Terms of the Tender, consider it necessary to modify the Terms of the Tender, Addenda will be issued with approval of the CNEE, which will be communicated to all stakeholders and published on the website www.eegsa.com, www.unionfenosa.com.gt and the CNEE website www.cnee.gob.gt / peg.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

The Addenda will become part of the Terms of Tender and will be therefore binding to all concerned, it may rescind any part, including any previous modification and any response from the Tender Board to any inquiry from any interested stakeholder, to the extent that contradicts it.

2.4. Language

Unless expressly stated otherwise in the Terms of the Tender, all inquiries, requests for clarification, questions, responses and procedures related to the Bidding process, as all the documents submitted with the Bid must be submitted in Spanish or must be accompanied by certified translations into Spanish under the Applicable Laws. In the case of an identified discrepancy between the texts in different languages of any document, the text in Spanish will prevail.

3. INSTRUCTIONS TO BIDDERS

3.1. Bidders

Any Stakeholder may constitute itself into a Bidder. The applicant may submit an offer through a legal person, as stipulated in paragraph 3.1.2 or through a consortium, as stipulated in paragraph 3.1.1.

Any Bidder will be responsible that their Offer meets the requirements of the Terms of the Tender. No person, including any affiliate thereof, may integrate or be part of more than one Bidder

Except as provided in paragraph 5.2.2, the failure to submit any of the information or the submission of an Offer that does not meet the requirements of the Tender shall be cause for this Offer to be rejected by the Tender Board without liability on their part.

To present a Bid it will be necessary that the Bidder has a Stakeholder quality as in the case of a Consortium, which is composed of at least one Stakeholder and who has purchased the Terms of the Tender.

3.1.1. Consortium

A group or association of individuals or legal entities may establish a consortium with the purpose of participating in the Bidding Process by filing a single offer as the same Bidder, provided they comply with the following:

- a. Each Consortium has within their members at least one Stakeholder or a subsidiary of a Stakeholder.
- b. The members of a Consortium are obliged to the Distributors, with joint solidarity, to meet all and each of the acquired commitments through the presented Offer, which will be accredited through a notarized legal certification.
- c. Designate from within their members a legal representative empowered to deal and resolve any questions of a technical, commercial, financial, and legal natures or others derived from the Tender Process. However, in case that this said designation was not possible due to corporate or legal limitations imposed to the members of the consortium, they may be represented by more than one legal representative. This special mandate shall be established with representation to take effect in the Republic of Guatemala.



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

- d. Each member of the Consortium will sign the certified Commitment Letter before a Notary Public. The Distributors can effectively execute the total amount of the Guarantee supporting the supply bid offer in case the Consortium or any of its members fails to meet the obligations established in the Letter of Commitment, extreme which must be established in the guarantee.

Each of the Consortium members, if they are legal persons, must submit, as applicable to them, the documents referred to in paragraph 3.1.2 of these Terms.

3.1.2. Legal Person

In the case of legal persons domiciled in the Republic of Guatemala, they must submit the following documents duly attested by Notary:

- a. Corporate deed dully registered.
- b. Corporate and commercial patents.
- c. Legal representation appointment stating that it has the powers established in paragraph 3.2 of the Terms.

In the case of legal persons not residents of the Republic of Guatemala, they must present the following documents properly legalized and meet the requirements of applicable laws for documents from abroad:

- a. Corporate deed and statutes dully registered.
- b. Official certificate of existence of the legal person in the place of its incorporation.
- c. Mandate to take effect in the Republic of Guatemala with the authority described in paragraph 3.2 of these Terms

3.1.3. State Agency

If the Bidder was an autonomous or semi-autonomous state institution, centralized or decentralized, it will not proceed to file a corporate deed and statutes or commercial patents, it will be sufficient the form of their constitution and the personality under which his legal representative will act.

3.2. Legal Representative of Bidder

Once Bids are submitted, the communication between the Tender Board and the Bidders shall be made through their legal representatives.

Each Bidder shall indicate who their legal representative is. Bidders who are foreign companies without a subsidiary established in Guatemala, will designate for the filing of the offer a mandate with representation domiciled in Guatemala, with broad powers to perform all acts, including all ordinary legal acts, as well as the legal representation of the corporation and submit with the Offer, a proper mandate registered with the Registro Electronico de Poderes del Archivo General de Protocolos del Organismo Judicial.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

The Legal Representative of the Bidder must be fully empowered by the Bidder to:

- a. Present the Bid, committing the Bidder to back the offer.
- b. Deal with the Tender Board with all of the issues that will arise in relation to the documents presented with the Technical Offer, Economic Offer and in general, with all the documents and paperwork related to the Open Tender PEG-1-2010.
- c. Answer, in the name of the Bidder with binding effect to its mandates, all of the questions or clarifications the Tender Board makes.
- d. Sign the Supply Contract; in the case it is awarded to him.

In the event the Bidder's Legal Representative does not have broad powers as specified above, or that such powers are not clear from the existent document, a corresponding authorization granted by the competent corporate body must be submitted with the offer, on by the competent corporate body. In the case the Bidder acts through a mandate, it must be duly empowered to perform the actions mentioned above.

The mandate issued outside the Republic of Guatemala for the purpose of appointing the legal representative of the Consortium or representative of foreign Bidders must comply with the legal steps, namely:

- a. Properly issued or legalized before a competent consulate of Guatemala.
- b. Endorsed before the Ministry of Foreign Affairs of the Republic of Guatemala.
- c. In Spanish, if this is the language of the granting country, or certified translation according to applicable laws.
- d. Notarized and reasoned by the appropriate Registry.

In all cases when dealing with required documents and are issued or granted abroad, they must be properly authenticated to take effect in the country, as stipulated in Articles 37 and 38 of the Judiciary Body Law.

The information to be provided in relation to the Legal Representative or mandate holder of foreign Bidders shall be as follows: name, identification document, address, telephone, fax and email address.

All communications to the Bidder will be made through the Legal Representative or mandate of foreign Bidders, through written notice, in which case it is understood as being served at the time of delivery, it is also understood as effective and efficient any notice issued to the Legal Representative's address or mandate holder of foreign Bidders.

3.3. Limited Liability and Cost Preparation of Bids

Bidders must absorb the costs associated with the preparation and delivery of their Bids, including assessment of technical and economic feasibility of New Generating Plants or the commercial qualification of International Transactions offered in the Bid. The Distributors or the CNEE in any case will be responsible for those costs, or costs associated with the signing the Supply Contract and any other document to be signed, not even in the event that the Tender Process is declared void, invalid or canceled.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

All Bidders in compliance with the provisions of the Terms of the Tender, will base the submission of their Bids, in their own studies, investigations, examinations, inspections, visits, studies, technical and economic feasibility of projects, interviews and others.

The submission of an offer constitutes recognition and acceptance by the Bidder as to the presentation of it, it is not limited by any document or information made available by the Government of Guatemala, the Ministry of Energy and Mines, the National Commission of Electric Energy or any state agency or entity, its officers, consultants and agents or materials provided (or statements) during the course of any visit by the Distributors of any informative memorandum or descriptive document. In particular, nothing contained in the Terms of the Tender constitutes a guarantee or declaration with respect to the achievement or reasonableness of the projections, prospects or operational performance or financial, if any, for the signing of the Supply Contract and its validity.

Neither receipt of the Terms of Tender from the Stakeholder, or any information provided during the Tender Process development or subsequent communication to any Stakeholder or Bidder, either verbally or in writing, regarding the Tender Process, should be considered as investment advice, sale of power and electricity, legal, fiscal or otherwise, in favor of any stakeholder and Bidder from the CNEE, the Tender Board or the Distributors, its officers, employees, advisors, or representatives.

Each Bidder shall be solely responsible for tax planning and compliance with applicable laws on taxation in connection with their participation in the Bidding Process and the submission of their Bid. Also, each Bidder awarded as a result of the Tender Process, will be responsible for meeting its obligations under Applicable Laws as a result of the execution and Supply Contract performance, with the understanding that the monthly payments are not to be adjusted for errors or deficiencies in the underlying tax planning subjacent to the Bid.

The limitation of liability established in this paragraph will also apply to the information provided through clarifications, addenda, or any other form of communication.

3.4. Acceptance of Liability by the Bidder stemming from the Offer

The mere filing of an Offer by the Bidder, shall, without further act, be the acceptance of the provisions of paragraph 3.3 of these Terms.

3.5. Restrictions

May not participate in the bidding process entities having any of the following conditions:

- a. Those who have provided false information, who acted with malice or bad faith or who have not supported their Bid in a Tender Process for a contract to be awarded by the Distributors at its conclusion, during its term or in a presentation of relief of a grievance.
- b. That, as suppliers in arrears in the delivery of goods and services for reasons attributable to them, regarding compliance with other contracts and who have affected the Distributors.
- c. That is declared bankrupt, in a state of insolvency, payment default or is subject of bankruptcy.
- d. The entity has on its staff people who have worked in the CNNE, or the Distributor or were directly or indirectly involved in the preparation, review or approval of the Terms of Reference, the Terms of the Tender and Tender Addenda of the Open Tender PEG-1-2010.
- e. Participant Producers who are Traders.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

4. CONTENT OF THE OFFER

4.1. Content of the Technical Offer

Bidders must submit their Technical Offer with the documentation required in this paragraph and in the following order:

- A.** Letter of presentation of Technical Offer and Technical Bid form, as established in paragraph 6.1, which should be signed by the Legal Representative.
 - a. Documents proving the legal status of the Bidder and of the legal person(s) who appear signing the Offer and the Letter of Commitment, as the cases shown below:
 - b. If the Bidder is an individual, it must present legally notarized photocopies of:
 - i. The Company's Commercial Patent (or its equivalent if foreigner);
 - ii. Cedula or -DPI- or personal identity card (or Passport if foreigner nor domiciled in the Republic of Guatemala).
 - c. If the Bidder is a legal person, it must present legally notarized photocopies of:
 - i. Its Corporate charter and its amendments (or its equivalent if foreigner);
 - ii. The Commercial and Corporate Patents (or its equivalent if foreigner);
 - iii. The document states the appointment of the Legal Representative or mandate with representation signing the Offer.
 - iv. The cedula or -DPI- or personal identity card of the Legal Representative or mandate with representation (or passport if foreigner nor domiciled in the Republic of Guatemala).
 - d. If the offer presented by a Consortium, it must attach all the documentation that corresponds to each of its members and also legally notarized photocopies of the public deed stating:
 - i. The group accord, which establishes the agreements to meet the obligations established in the Supply Contract; and
 - ii. Declaration of the members of the Consortium in which, if they were awarded the Supply Contract, all shall be jointly severally liable for compliance of the Supply Contract to be signed.
 - B.** Name and address in the department of Guatemala, as well as the telephone numbers, fax and email address, to receive notifications, communications or correspondence.
 - C.** Notarized deed of sworn declaration, that contains the concepts established in the model stated in paragraph 6.4 of these Terms. (If the Bid is presented by a Consortium, each and all of its members must present said sworn declaration).
 - D.** A notarized sworn declaration that the assumptions established in paragraph 3.5 of the Terms, are not applicable to the Bidder or any of its shareholders or members, and that the Bidder is not legally prevented by any reason to submit a bid or sign the Supply Contract.
 - E.** Sworn declaration by the Bidder, if awarded, that it will have a Firm Efficient Offer to cover its own Firm Demand or through Backup Power Contracts in the case that New



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Generating Plants or in operation are offered, or through Firm Import Contracts in the case that International Transactions are offered, enough to take on the commitment acquired to provide the supply, according to the requirements of the Terms of the Tender.

- F.** The Offer Support Guarantee specified in paragraph 4.3 using the model established in paragraph 6.3 of the Terms of the Tender, and annexed to the sworn declaration established in paragraph 6.4.
- G.** The Supply Contract model, contained in paragraph 8 of the Terms, initialed on every page, as a sign of understanding and acceptance.
- H.** The information established in paragraph 7 of these Terms, on the requirements of technical experience and economic capacity.
- I.** Financial statements for the past two fiscal years. The financial statements must be expressed in Dollars, in quetzals, or in the currency in which they are made; and audited, signed and stamped by a Certified Public Accountant and Auditor legally recognized by the Superintendencia de Administracion Tributaria - SAT – of the republic of Guatemala or its equivalent in the country where they financial statements were extended. In the specific case of Bids presented by a Consortium, each of its members must comply with the presentation of individual financial statements, as established in this paragraph. The financial statements corresponding to the Strategic Participant or Strategic Partner, or appropriate, should be fully identified.
- J.** In the case of an individual person as a Bidder, a document that describes his capital structure at the moment of filling the Bid. The financial information shall be for the last two fiscal years.
- K.** Constancia del pago por el retiro de las Bases de Licitacion, en el caso de una persona juridica, por uno de sus socios o accionistas directos o indirectos, o en el caso de que se trate de un Consorcio, uno de sus miembros, o cualquier Filial o miembro del Consorcio.
- L.** In case of Consortia, a document describing the Strategic Participant, to each of its remaining members and the corresponding capital structure of each. It also should include a description of the role and the responsibilities of each of the members, including the identity of the member who will keep the leadership of the consortium, who will coordinate the activities with the other members and shall act as the sole intermediary between the Consortium and the Distributors, and must include the identity of the member(s) responsible for the design, construction, operation and maintenance of each new Generating Plant. The Strategic Participant in the consortium must be clearly indicated.
- M.** In case of a legal person, a document describing the Strategic Partner, if necessary, and the corresponding capital structure.
- N.** The preliminary Draft of the Project Execution, according to the model established in paragraph 6.6.
- O.** If the Bidder is an autonomous or semiautonomous state entity it will be exempted of presenting articles of incorporation, Commercial Patent or specific requirements of a corporate entity.

The information requested in this paragraph shall be submitted signed and initialed, as appropriate, by each of its members, or the common representative of all the members, legally empowered by public deed before a notary public

A Bid submitted by a Consortium, shall be signed by a legal representative of each Consortium member, who preferably should be a common legal representative appointed by all members of the same, in accordance with subparagraph b of paragraph 3.1.1 .



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

En caso de que la Oferta sea presentada por un Consorcio, la informacion requerida en el presente numeral deberá ser presentada por y para cada uno de los miembros del Consorcio.

4.2. Content of the Economic Offer

Bidders must submit its Financial Bid the Presentation Letter of the Economic Offer and Financial Bid Form as established in paragraph 6.2.

4.2.1. Type of contract

The Bidder shall indicate the type of supply contract as follows:

- a. In the case of Generating Plants whose technology type is generation with Renewable Resources, it will have a Load Curve Difference Contract or a Power Purchase Option Contract.
- b. In the case of Generating Plants whose technology is generation with Non-Renewable Resources it will have a Power Purchase Option contract.
- c. In the case of New Generating Plants or in Operation, whose technology type is based on wind power, solar or plants whose given characteristics are considered Renewable Distributed Energy, will have Difference of Curve Contracts, or Power Purchase Option Contracts or Generated Energy Contracts.
- d. International Transactions will be considered under a Firm Import Contract, according to what is established in the Commercial Coordination Regulation Number ten (10).

4.2.2. Price of Power

The Bidder must state a price for power (PPG) in United States Dollars per kilowatt-month (U.S. \$ / kW-month) as appropriate depending on the type of contract offered, according to the Financial Bid Format established in paragraph 6.2 per Generating Plant offered. The Price of Power established in the Bid shall be fixed and invariable during the term of the Contract and cannot be indexed under any reason during the term of the Supply Contract. Price should not include Value Added Tax (VAT).

When the type of supply contract is offered, as established by the present Terms of the Tender, the Energy Generation Contract shall not indicate a power (PPG) price.

4.2.3. Price of Electricity

When the Bidder offers Generating Plants whose type of generating technology is from Renewable Resources, it should indicate in its offer a price of energy-PEO, in Dollars per MWh (U.S. \$ / MWh) for each generating plant, according to the format provisions in paragraph 6.2. The operation and maintenance component shall not exceed ten percent (10%) of the price of energy offered. This component will be indexed during the term of the Supply Contract in accordance with the provisions of these Terms.

When the Bidder offers Power Plants whose type of generating technology is Non-renewable Resources it should indicate in its offer the Guaranteed Net Unit Heat Consumption CTUNG-and-Charge Unit for Operation and Maintenance, O & M, in accordance with the established format in paragraph 6.2.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

4.2.4. Types of Generating Technologies

The Bidder shall indicate in its offer the type of generation technology, between generating technology with Renewable Resources and Non-renewable Resources. For generating technologies of non-renewable resources, the Bidder may only consider the types of fuels that are shown in the following table:

Type of Fuels
Coal
Bunker
Liquefied Natural Gas LNG

The types of energy generation from Renewable Resources are those that use solar energy, wind, hydro, geothermal and biomass, which should be expressly stated in the Offer.

Bidders who by their own characteristics offer two generating technologies (Renewable Resources and Non-renewable Resources), should participate providing a clear indication the monthly periods they offer with each technology; it is understood that each of the monthly periods have conditions that apply to each type of generating technology (Renewable Resources and Non-renewable), in accordance with the provisions of the Terms of the Tender, namely for the monthly periods to be offered with each type of technology can opt for the types of contracts established in paragraph 4.2.1 of these Terms.

4.3. Offer Sustainability Guarantee

Each Bidder shall provide an Offer Sustainability Guarantee for an amount equivalent to multiplying the value of Maximum Guaranteed Power (MW) offered by fifty thousand dollars of the United States of America (U.S. \$ 50,000.00). The power which determines the amount of the Offer Sustainability Guarantee, in the case of Bids with Power Generation Contracts, shall be the maximum power (MW) provided in the Bid under the appropriate format.

The Offer Sustainability Guarantee must be valid for four (4) months counted from the date of submission of Bids. The Offer Sustainability Guarantee will assist in ensuring the sustainability of the offer for the Distributors.

The Offer Sustainability Guarantee must be denominated in Dollars and shall be provided by letter of credit, unconditional, irrevocable, that is confirmed in favor of the Distributors and should be issued by a financial institution acceptable to the Distributors, using the format in paragraph 6.3. Bidders may submit unconditional letters of credit issued by a financial institution that does not operate legally in the Republic of Guatemala, as long as the Distributors can execute the Offer Sustainability Guarantee in Guatemala. The Offer Sustainability Guarantees must be submitted on the letterhead of the issuing institution. Any Bid not secured in accordance with this paragraph, will be rejected.



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Offer Sustainability Guarantees will be returned after the date of the evaluation of technical Bids, to the Bidders whose Bids are declared "not Technically Solvent," and after the date of signing the Supply Contract between the Distributors and each Awarded Bidder, and the Bidders whose Offer has not been awarded.

The Offer Sustainability Guarantee will be returned to the Awarded Bidder Awarded when it is replaced by Preoperative Guarantee.

The Offer Sustainability Guarantee will be executed in the following cases:

- a. If the Bidder withdraws its Bid from the Distributors during the period it should remain current in conformity to the Terms of the Tender.
- b. That the Awarded Bidder, in cases where applicable, does not constitute the corporation in conformity to the Terms of the Tender.
- c. That the Awarded Bidder does not sign the corresponding Contract(s) on the fixed date for such purpose in conformity with the Terms of the Tender.
- d. That the Awarded Bidder does not constitute the Preoperative Guarantee, according to the established in the Terms of the Tender and the Contract.

4.4. Validity of the Bids

The Bids shall remain valid until the end of the term of the Offer Sustainability.

4.5. Format of Bids

The documents contained in the Bid may only be submitted in person. The Tender Board will not accept or receive documents that are sent by mail, fax, email or any other means of communication.

Bidders must submit an original of their Bids and to facilitate the review process three (3) additional paper copies, all the above with their corresponding optical or electronic copy of commercial use. Each original and copies must be packed separately and each must be fully identified as original, copy 1, copy 2, copy 3 and electronic copy. In case of any discrepancy:

- a. Between the original and the copies, the original will prevail.
- b. Between the amount written in words and the amount written in numbers the amount written in letters will prevail and
- c. Between two numbers that refer to the same concept, the lower number will prevail.

The documents presented in the original Bid and each of the copies must be legible and shall be clearly foliated and consecutively starting with the folio 0001, including, if any, brochures, catalogs, separators or blank pages.

The original offer and each copy shall contain an index indicating the location of the documentation to be evaluated for compliance with the requirements of the Terms of the Tender.

The Commitment Letter must be signed by the person(s) authorized by the Bidder or by all members of the Consortium, as applicable. All the original pages of each Bid (including a copy of the Contract) shall be initialed by the persons signing the Commitment Letter, in the sense that if you have several legal representatives, it shall be sufficient that only one of them initial all pages of the original of each Bid, without prejudice to the requirement that each and every one of the representatives initial and sign the Commitment Letter. For the record of the initials of the legal

representative(s), they should include their initials next to his signature(s) or signatures appearing in the Commitment Letter and the Contract.

The text of the copies of the Bids provided in the electronic or optical storage means should be prepared using a word processor compatible with the systems used by the Tender Board (using MS Word for Windows package, version 6.0 ®) at least including, where possible, any table, image, graphic, etc. within the same file and readable.

Each Bidder must properly identify the contents of the optical or electronic means referred to in the above paragraph. The Bids shall not contain erasures or omissions or corrections.

5. PRESENTATION OF BIDS AND AWARDS

5.1. Presentation of Bids

Bids must be submitted to the Tender Board sealed and clearly marked on the front with the following:

- i. Licitacion Abierta PEG-1-2010.
- ii. "Oferta Técnica" or "Oferta Económica", respectively.
- iii. Name of Bidder, and
- iv. "Original", "Copia 1", "Copia 2" or "Copia 3", whichever is applicable
- v. Copias electronicas de "Oferta Técnica" y "Oferta Económica"

The room where they will perform the act of reception will be open one hour before the time indicated on the Terms of the Bid and it will not allow the entry of any person once the event has started. During its development, none of the representatives of the Bidders present may leave the room where it takes place. No document may be added or removed from the room where the event takes place. The Tender Board will receive Bids for the first sixty minutes of the act of submission and opening of the Bids.

No Bid may be modified after the date of submission of the Bid, or may be withdrawn during the period of validity established in paragraph 4.4.

The Bidders and the Tender Board should sign the envelopes containing the Economic Offers of all Bidders, whose Technical Bids are received as provided and established in paragraph 5.2.1, leaving the Economic Offers in the custody of an entity of the Guatemalan banking system that the Tender Board designated for that purpose.

The Tender Board may request in writing from the Bidders, with copies to the CNEE, clarification of their Bids and they must respond in writing to such requests, with the understanding that no changes will be accepted in the Offers. The submission of offers that do not comply with the provisions established in the Terms of the Tender shall result in their rejection.

5.2. Technical Offer

The procedure for the opening and evaluation of Technical Offers is described below:

5.2.1. Opening of the Technical Offer

According to the date and time that was allocated to the reception of Bids from each Bidder, it shall proceed to the opening and review of the Technical Offers by the Tender Board in the presence of at least one representative of the CNEE, as established in the Schedule of Events of the Terms of the Tender, in accordance with the following stipulation:

- I. In the presence of an authorized representative of the Bidder, who will identify himself with a legal mandate accrediting him as a representative, the Tender Board will preside the opening ceremony of the Technical Offers at the time and date designated for such an event established in the Schedule of Events of the Tender Process.
- II. Only those accepted for detailed evaluation will be the Technical Offers that contain the documents and information requested in the Terms of the Tender. The determination of the Tender Board on the implementation of a Bid, in relation to the provisions established in the Terms of the Tender, shall be based only on the documents submitted, without consideration of any type of any external evidence.
- III. The Tender Board will verify that the Technical Offers meet all of the requirements established in the Terms of the Tender for the submission of a Bid.
- IV. All of the Bidders must initial the indexes and the last foliated page of the Technical Offers accepted by the Tender Board.

The Tender Board will record the minutes at the end of the ceremony summarizing what happened. The minutes shall include: (i) the names of the participants, (ii) the indication of the representation held and the means used to accredit it, (iii) the list of Bids received. The minutes shall be signed by members of the referred Board and by authorized representatives of the Bidders who are present at the event.

5.2.2. Evaluation of the Technical offers

The Tender Board will proceed to a detailed evaluation of technical Bids received during the period between the opening of Technical Bids and the opening of the Economic Bids, as established in the Schedule of Events, based on the detailed analysis the Board it will determine which Bids have the character of "Technically Solvent." It is understood that an offer is "Technically Solvent", when in the evaluation stage it is determined to have met the requirements of the Terms of the Tender.

It will be necessary to receive a grade of "Technically Solvent" in all aspects, so that Bids can pass to the economic evaluation. Aspects to be considered in the evaluation of Technical Bids are described below:

- A. It will be verifies that the Bid contain the information and documentation required of the Technical Offer, according to the provision established in paragraph 4.1.
- B. It will verify that the Bidder submits the information required in conformity to the provisions established in paragraph 7. In the case that the Bidder fails to deliver the required information, the Bid will be declared by the Tender Board "Technically non Solvent" without liability on their part.

- C. It will be verified that the Generating Plants offered correspond to the definition of New Generating Plant, in Operation or International Transaction, if the declaration for New Generating Plant does not correspond with its type, and then the Bid will be rejected by the Tender Board without liability on their part.
- D. It will be verified that the Bidder does not appear under the established prohibitions in paragraph 3.5, in case it appears in one of the prohibitions it will give rise to a rejection of the Bid by the Board, without liability on their part.

The Tender Board may request clarification or additional information for the previous paragraphs, if it considers that the information provided by the Bidder is incomplete or inconsistent with the provisions established in the Terms of the Tender, pointing to the effect the period to correct or complete the information. If the Bidder does not provide, within the given period, the required documentation, the Board will reject the Bid without liability on their part.

The Tender Board will inform in writing to each Bidder whose Technical Bid has been declared as "Not Technically Solvent, before the opening of Economic Offers, stating the reasons why its Technical Offer was declared" not Technically Solvent. "

The Bidder whose Technical Offer has been declared "not Technically Solvent" will be returned its Economic Offer, without being open, three (3) days after the opening event of the Economic Offers.

5.3. Economic Offers

The procedure for opening, evaluation of the Financial Offer and award, is described below:

5.3.1. Opening of the Economic Offer

It shall proceed to the opening of the envelopes containing the Economic Offers of only those Bidders whose Technical Offers have been declared as "Technically Solvent, " which will be delivered by the custodian bank at the place and date established in the Terms of the Tender, to the Tender Board in the presence of at least one representative of the CNEE, according to the following procedure:

- I. In the presence of at least one, but no more than three authorized representatives of each Bidder, who must identify and show a mandate which accredits it as a representative(s), the tender Board will begin the ceremony of the opening of economic Offers and the evaluation of same, on the assigned date on the Schedule of Events in conformity to the Terms of the Tender. The room where the ceremony will take place will be open one hour before the appointed time in the Schedule of Events and no person will be allowed entry once the ceremony begins. During the course of the event, each Bidder representative will verify the integrity of his Economic Offer. None of the Bidders' representatives will be able to leave the room during the opening ceremony of the economic Offers. No documents may be added or removed from the room where the event takes place.
- II. The Tender Board will prepare the minutes of the opening of the Economic Offers summarizing what happened on the spot. The minutes shall include: (i) the names of the participants, (ii) the indication of the representation held and the means used to accredit it, (iii) the list of the Bids received, and in their effect, rejected along with the reasons of their rejection. The minutes must be signed by the members of the referred Board and by all of the Bidder

representatives whose Technical offer was declared as "Technically Solvent", who are present at the opening ceremony of the Economic Offers.

5.3.2. Evaluation of Economic Offers and Awards

After the expired stage established in the previous paragraph, the Tender Board shall proceed to finally grade the Economic Offers, according to the evaluation procedure established in the Terms of the Tender for which it must issue an opinion and inform the CNEE. As a result, the Board must award the set of offers where the minimum cost of supply was obtained, indicating the Supply Contracts that each distributor will sign with each awarded Bidder. Similarly they may refrain from awarding, with the approval of the CNEE, informing in writing to each Bidder the outcome of the Tender.

Each Supply Contract will be awarded to the Bidders whose bids obtained the lowest cost of supply for consumers of the Final Distribution Service for each of the distributors, according to the following approach:

$$\text{Minimizar} \left\{ \sum [(PG_{ik} \times PPG_k) + (EG_{jk} \times PEO_{jk})] \right\}$$

Where:

- PG_{ik}** = Guaranteed Power (MW) for Seasonal Year "*i*" and the Generating Plant "*k*", according to the format established in paragraph 6.1.2.
- PPG_k** = Price of Power offered in US\$/kW-month for Generating Plant "*k*", according to paragraph 4.2.2.
- EG_{jk}** = Guaranteed Electricity per month (MWh) of month "*j*" and the Generating Plant "*k*", according to the format established in paragraph 6.1.2.
- PEO_{jk}** = Price of Energy in US\$/MWh of month "*j*" and the Generating Plant "*k*", according to paragraph 4.2.3.

Subject to the following conditions:

- i. Cover the value of eight hundred megawatts (800MW) belonging to the Firm Demand of the Distributors.
- ii. Cover the monthly energy demand and hourly projection of the Distributors, shown in the following tables:

Unitary hourly curve of energy, to evaluate Offers
--

Monthly energy projection of the Distributors for each Seasonal Year for Offer evaluation



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

HOUR	%
00:00 a 00:59	2.76%
01:00 a 01:59	2.60%
02:00 a 02:59	2.53%
03:00 a 03:59	2.55%
04:00 a 04:59	2.84%
05:00 a 05:59	3.50%
06:00 a 06:59	3.82%
07:00 a 07:59	3.99%
08:00 a 08:59	4.27%
09:00 a 09:59	4.45%
10:00 a 10:59	4.53%
11:00 a 11:59	4.60%
12:00 a 12:59	4.56%
13:00 a 13:59	4.48%
14:00 a 14:59	4.43%
15:00 a 15:59	4.42%
16:00 a 16:59	4.39%
17:00 a 17:59	4.55%
18:00 a 18:59	5.83%
19:00 a 19:59	6.57%
20:00 a 20:59	6.11%
21:00 a 21:59	5.10%
22:00 a 22:59	3.98%
23:00 a 23:59	3.14%
Total	100.00%

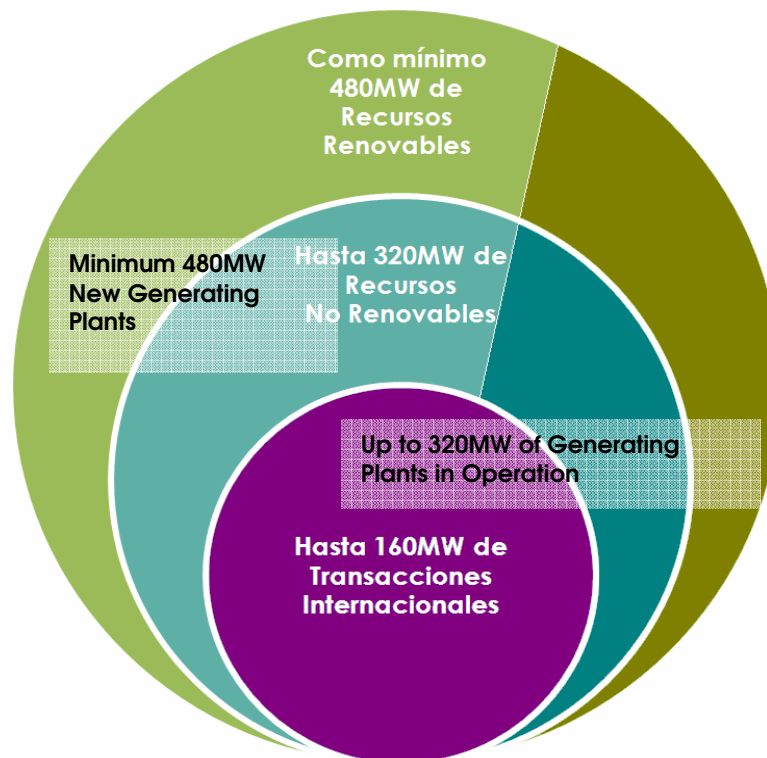
Month	MWh
May	377,510
June	365,333
July	377,510
August	377,510
September	365,333
October	377,510
November	365,333
December	377,510
January	377,510
February	340,977
March	377,510
April	365,333

- iii. That the monthly electricity supplied “**EG_{jk}**” is lower or equal to the monthly guaranteed electricity guaranteed by each Bidder.
- iv. That the hourly energy does not exceed the Guaranteed Power awarded. In the case of Difference of Curve Contracts, the assigned energy is proportional to the Guaranteed Power awarded, so that the hourly energy curve will be adjusted in proportion to the resulting decrease of the award between the maximum Guaranteed Power and the awarded.
- v. Assign the Contracts within the values of the maximum Guaranteed Power and each Bidders’ minimum.
- vi. That the sum of the monthly electricity awarded for New Generating Plants or in Operation that participate through the modality of Generated Energy Contract, must be less or equal to twenty per cent (20%) of the monthly energy contracted by the Distributors. Additionally, the monthly electricity awarded to each New Generating Plant or in Operation that participate through the modality of Generated Energy Contract is greater or equal to fifty per cent (50%) of the monthly estimate in the Bid and less than or equal to the value of the monthly electricity estimated in the Bid.
- vii. Meet the contract quotas established for Generating Plants as shown in the following tables and descriptions:

Type of Generating Technology	Contract Quotas of the 800MW	Observations
Renewable Resources	Minimum 480MW	It will be awarded a minimum 480MW from Centrals sing Renewable Resources possibly contracting up to 800MW.

Con Non renewable Resources	Up to 320MW	It will be awarded between zero and 320MW from Centrals using Renewable Resources
-----------------------------	-------------	---

Types of Generating Plants	Contract Quotas of the 800MW	Observations	
New Generating Plants	Minimum 480MW	It will be awarded a minimum of 480MW to New Generating Plants that use Renewable Resources and Non Renewable Resources possibly contracting up to 800MW.	
Generating Plants in Operation	Up to 320MW	It will be awarded between zero and 320MW of Generating Plants in Operation	It must be considered that the awarded total of Generating Plants in Operation and International Transactions will not exceed 320MW.
International Transaction	Up to 160MW	It will be awarded between zero and 160MW of International Transactions, which will be considered within the contracted quotas which correspond to Generating Plants in Operation	



viii. Incorporating a virtual offer with the following characteristics:

- The quantity of Power and energy to supply from the virtual offer will be enough to cover the total established demand in the Terms of the Tender.
- The virtual offer may award independent power or energy (electricity), as the case may be, and the contracting quotas will not apply to the same. The offer's objective is to make feasible the optimization problem in the eventual case that there are not enough offers to cover the supply of power and energy (electricity),
- It will have a price reference established by the National Commission of Electric Energy of Electricity and Energy after the date of receipt of the Bids.

In order to guarantee competitive conditions or obtain the lowest cost of supply for consumers of the Final Distribution Service of the Distributors, the Tender Board may at any time modify the conditions previously established with the approval of the CNEE. In the event that a modification to the conditions takes places, such modifications shall be notified to all Bidders prior to making the Economic Offer evaluation.

In the absence of Bids to meet the minimum established conditions for Generating Plants using Renewable Resources, the remaining Power and Energy will not be awarded.

The price of energy -PEO- , for Generation Plants whose technology uses Non-renewable resources, the calculation will be as follows in the evaluation of Bids:

$$PEO_{jk} = \frac{(CTUNG_k \times F_0 \times \frac{F_i}{F_0}) + (OyM_k \times \frac{PPI_i}{PPI_0})}{FPN_k}$$

Where:

PEO_{jk} = Price of energy for year “j” and the Generating Plant “k” in US\$/MWh, this Price does not include value added tax (VAT).

CTUNG_k = Bid of Net Unit Heat Consumption Guarantee for Generating Plant “k”, for which during the evaluation it must be dimensionally as follows:

Type of Fuel	Dimensionally per type of fuel for Consumption of Net Unit Heat Consumption Guarantee -CTUNG-	
Bunker	Barrels per Megawatt-hour	BBL/MWh
Coal	Metric Ton per Megawatt-hour	BTU/MWh (1000 BTU/MWh = 1 BTU/kWh)
Liquefied Natural Gas LNG	BTU* per Megawatt-hour	BTU/MWh (1000 BTU/MWh = 1 BTU/kWh)
**“BTU” is the abbreviation for British Thermal Unit and is the quantity that is required to heat by one degree Fahrenheit the temperature of one pound of water under normal atmospheric conditions.		

OyM_k = Bid of Unit Cost of Operation and maintenance for Generating Plant “k”, in US\$/MWh.

F₀ = It is the price of fuel for the evaluation of the bid determined in the following table, these values will be published through Addenda and will be determined as indicated in the table:

Type of Fuel	Value indicators of fuel for evaluation			Price of fuel for evaluation	
Bunker	US Gulf 3%	Platts, Oilgram Price Report, Five-Day rolling Average.	It is the average of the average of the daily minimum and maximum prices corresponding to those published the previous month prior to the date of the issuance of Addenda.		US\$/BBL

Coal	FOB Richards Bay (6000 kcal/kg equivalent to 23.76 BTU/TM)	Platts, Coal Trader International, Daily Snapshot, Dailey Physical Coal Trading, 90-Day Prices	It is the average of daily prices corresponding to those published for the previous month prior to the date of the issuance of Addenda.		US\$/MT
Liquefied Natural Gas NG	Henry Hub Prices	Platts, Gas Daily, Daily Price survey, Midpoint.	It is the average of daily prices corresponding to those published for the previous month prior to the date of the issuance of Addenda.		US\$/MM BTU

k_j = Multiplier factor for year “j” for the evaluation of Bids, which establishes, that for each type of fuel, the forecast of the tendency of the behavior of the price of fuel Generated by the *Energy Information Administration – EIA* – of the government of the united State of America according to the document “Annual Energy Outlook 2010” published in the webpage <http://www.eia.doe.gov/oiaf/aeo/index.html>. The prices in the table were calculated taking into account the year 2011 as a reference and are shown as follows:

Prices of the multiplier factor k_j , per unit, of each fuel for the evaluation of Bids			
Year	Bunker	Natural Gas	Coal
2011	1.000	1.000	1.0000
2012	1.087	1.087	1.0234
2013	1.174	1.079	1.0514
2014	1.244	1.072	1.0701
2015	1.294	1.105	1.1028
2016	1.345	1.122	1.1168
2017	1.386	1.124	1.1449
2018	1.429	1.132	1.1636
2019	1.457	1.145	1.1869
2020	1.482	1.169	1.2103
2021	1.499	1.186	1.2336
2022	1.518	1.219	1.2570
2023	1.537	1.225	1.2897
2024	1.555	1.217	1.3224
2025	1.575	1.231	1.3505
2026	1.596	1.260	1.3879
2027	1.619	1.283	1.4252
2028	1.644	1.326	1.4626
2029	1.670	1.368	1.5000
2030	1.690	1.417	1.5421

The values in the above table will be updated by the Tender Board through Addenda to the last publication available prior to the acceptance of Bids.

$\frac{PPI_t}{PPI_0}$ = It is the corresponding Price of the tendency of the anual index of Prices to the Consumer, that for the Evaluation of the Bids it is determined that the anual growth of the PPI will be of three percent (3%).

FPN_k = Nodal Loss Factor at the Point of Interconnection of the Generating Plant “k”. For evaluating the Bids the prices of the energy calculated and offered, as appropriate, will be referred at the Point of delivery in Guatemala Sur 230kV, dividing said prices between the nodal losses factors established in the Annual Seasonal Schedule 2011-2012 for each Point of Connection for the rainy season

(May to October) and dry season seca (November to April) and for the periods of maximum demand, medium and minimum as defined in the Commercial Coordination Regulations of the AMM. In the case of Centrals that are in commercial operation and whose Nodal Loss Factor is not in the Annual Seasonal Schedule 2011-2012, it will be requested to the AMM the corresponding projection of the Nodal Loss Factor.

The price of energy –PEO–, for Generating Plants whose technology is generating with Renewable Resources, will be calculated for the evaluation of the Bids:

$$PEO_{jk} = \frac{PEO_k + OyM_k \times \frac{PPI_i}{PPI_o}}{FPN_k}$$

- PEO_{jk}** = Price of energy for the month “j” and the Generating Plant “k” in US\$/MWh.
- PEO_k** = Price of offered energy for Generating Plant “k”, this Price does not include Value Added Tax (VAT).
- OyM_k** = Offer of Cost of Unit of Operation and Maintenance for Generating Plant “k”, in US\$/MWh, this Price cannot be higher than ten per cent (10%) of **PEO_k** .
- $\frac{PPI_i}{PPI_o}$** = This is the corresponding value of the tendency of the annual index of Prices to the Producer. For evaluating the Bids, it will be determined that the annual growth of the PPI will be 3.0%.
- FPN_k** = Nodal Loss Factor at the Point of Interconnection of the Generating Plant “k”. For evaluating the Bids the prices of the energy calculated and offered, as appropriate, will be referred at the Point of delivery in Guatemala Sur 230kV, dividing said prices between the nodal losses factors established in the Annual Seasonal Schedule 2011-2012 for each Point of Connection for the rainy season (May to October) and dry season seca (November to April) and for the periods of maximum demand, medium and minimum as defined in the Commercial Coordination Regulations of the AMM. In the case of Centrals that are in commercial operation and whose Nodal Loss Factor is not in the Annual Seasonal Schedule 2011-2012, it will be requested to the AMM the corresponding projection of the Nodal Loss Factor.

5.4. Causes to declare the Tender Process Void

The Tender Board may declare the Bidding Process void only with the approval of the CNEE, when it is established that:

- I. No One Acquires the Terms of the Tender.
- II. No Bids are submitted.
- III. All submitted Bids have been rejected; or
- IV. The prices of all of the Bids are not competitive in relation to the market provided.

Upon approval by the CNEE, the Tender Board reserves the right to cancel or suspend the bid, reject the Bids submitted before the date established for the awards or declare it void pursuant to the provisions established in paragraph 5.4, without incurring any liability on their part.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

5.5. Constituting an Address in Guatemala and Signing of Contract

Each Awarded Bidder signing a Supply Contract must be domiciled in the Republic of Guatemala.

In the case of Consortia and legal persons not domiciled in Guatemala, must establish a subsidiary or a corporation in the Republic of Guatemala that must be registered, at least provisionally, before the date established for signing of the Supply Contract. The establishment of the subsidiary or corporation shall be credited before the Distributor prior to signing the Supply Contract, through a certified copy of the covenant of the corporation or subsidiary, appointment of legal representative and registered certification proving the provisional registration.

The Supply Agreement will be signed on the date specified in the Terms of the Tender, or the date agreed by the parties, provided that the Offer Sustainability guarantee is in force, with prior approval of the CNEE.

5.6. Preoperative Guarantee

The Preoperative Guarantee shall be denominated in Dollars and shall be provided through a letter of credit, unconditional and irrevocable and in favor of the corresponding Distributor, issued by a financial institution acceptable to the Distributor, using the format established in paragraph 6.7 and of According to the allocation of awarded contracts made and notified to each Awarded Bidder. The Bidders may submit unconditional letters of credit issued by a financial institution that is not operating legally in the Republic of Guatemala, provided that the Distributor may enforce the guarantee in Guatemala, they must also be alerted and notified by a financial institution legally operating in Guatemala. The Preoperative Guarantee must be submitted on letterhead of the financial institution

In order to ensure compliance with the obligations of the Awarded Bidder under The Tender Process, it must provide, on the date of signing the Supply Contract established in the Terms of the Tender, the Preoperative Guarantee with the following conditions:

5.6.1. Amount of Coverage of the Preoperative Guarantee

The Preoperative Guarantee must be issued the amount equivalent to multiplying the maximum price in megawatts of the prices of Guaranteed Power Awarded and assigned as described in the following table:

Range	Multiplier
$PG \leq 5$	US\$ 50,000.00 per MW of PG awarded
$5 < PG \leq 50$	US\$ 100,000.00 per MW of PG awarded
$50 < PG \leq 100$	US\$ 150,000.00 per MW of PG awarded
$PG > 100$	US\$ 200,000.00 per MW of PG awarded

The amounts of the guarantees will be used to cover the breach of the obligations acquired by the Bidder.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

The price of power output which determines the amount of the Preoperative Guarantee, in the case of Awarded Bids under the modality of Generated Power Contract shall be the maximum power (MW) indicated in the Bid.

5.6.2. Validity and administration of the Preoperative Guarantee

The Preoperative Guarantee shall remain effective from the date of filing it, in accordance to the Terms of the Tender, until the date of the Supply Startup Date of each Awarded. The Preoperative Guarantee will be administered as established in the Supply Contract.

6. FORMAT PRESENTATION OF DOCUMENTS

6.1. Presentation requirements of the Technical Offer

6.1.1. Letter of Presentation of the Technical Offer

Guatemala, _____ of _____ of 20____



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Messrs.

Empresa Eléctrica de Guatemala, Sociedad Anonima.

6ª. Avenida 8-14 zona 1

Distribuidora de Electricidad de Occidente, Sociedad Anonima.

Distribuidora de Electricidad de Oriente, Sociedad Anonima.

10 Avenida 14-14 zona 14

Tender Board _____

Ciudad de Guatemala

Ref.: Open Tender PEG-1-2010.

Dear _____:

I, _____, of _____ years of age, (indicate marital status, nationality, occupation and residence), I identify myself with identification document No. _____ and with registry No. _____ extended by Municipal Mayor of _____ (Personal Identification Document (DPI)) or (passport if foreigner with no residence), citing as the place to receive notifications the following address: _____, in the city of Guatemala; I appear in my capacity as a Legal representative of _____, capacity I accredit through _____, y by this means I present the Technical Offer for the Open Tender consisting of _____ folios.

I declare that we are aware of the contents of the Terms of Reference, approved by the CNEE, the Terms of the Tender and its Addenda, if any; that we have examined and analyzed carefully and by implication, the mere filing of this Offer, We accept it; And, in case We are awarded, we offer to comply with all conditions and requirements established therein. I further declare that we are subject to the dispositions of the laws of the Republic of Guatemala.

Term of the Sustainability of the Offer:

The term of the sustainability of the Offer is of four (4) months counted from the date of the submission of Bids

Attached to this, is the format of the Technical Offer and other documents required in the Terms of the Tender.

Sincerely,

(Name, Signature and Legal Representative Seal)

6.1.2. Format of the Technical Offers

The Technical Bid Form provided in this paragraph, comprises Tables 1, 2, 3 and 4, which must be completed for each generation plant listed in the table in which it offers the Guaranteed Power and Energy, established in the table of paragraph 7, whichever is applicable. Tables 1, 2 and 3 correspond to those offers with the Energy Option contract and Load Curve Differences Contract, and Table 4 corresponds to those Bids with Energy Produced Contract.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Through Table 1, the Bidder shall offer a single maximum price of Guaranteed Power for Seasonal Years offered and will have the option to offer a single minimum price of Guaranteed Power for the same years, meaning in fact that the Tender Board may award any price between the maximum and minimum Guaranteed Power, both prices should have a maximum of two (2) decimal places. In case of not offering a minimum price of Guaranteed Power, it is understood that the price of minimum Guaranteed Power is equal to the price of maximum Guaranteed Power. New Generating Plants or International Transactions may offer to start up supply of the Guaranteed Power between seasonal years which begin on 05/01/2015 and 05/01/2019, so it may be awarded from the Startup date of supply of the Seasonal Year offered to the Seasonal Year ending in 2030. In the case of Operating Power Plants they must offer to commence delivery from 05/01/2015, understanding that they can be awarded for any number of continuous Seasonal Years to a maximum of five (5) years.

The Bidder shall indicate in Table 1, the type of generating technology it will use for electricity production and the corresponding fuel it wishes to index, within the options established in paragraph 4.2.4, in case the type of generating technology is from Renewable Resources, it should also indicate in the space of fuel the type of resource within the list established in paragraph 4.2.4.

Table 1.

Seasonal Year	Power Offer – Generating Plant No. ¹	
	Maximum Power Guaranteed	Minimum Power Guaranteed
	MW	MW

¹ The Generating Plant number must be exactly to the number indicated in the table of paragraph 7.1 of the Terms of Reference for the Generating Plant offered.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

01/May/2015	30/April/2016		
01/May/2016	30/April/2017		
01/May/2017	30/April/2018		
01/May/2018	30/April/2019		
01/May/2019	30/April/2020		
01/May/2020	30/April/2021		
01/May/2021	30/April/2022		
01/May/2022	30/April/2023		
01/May/2023	30/April/2024		
01/May/2024	30/April/2025		
01/May/2025	30/April/2026		
01/May/2026	30/April/2027		
01/May/2027	30/April/2028		
01/May/2028	30/April/2029		
01/May/2029	30/April/2030		
Type of Generating Technology		Renewable Resource / Non-renewable Resource	
Type of fuel		Coal / Bunker / Natural Gas	
New Generating Plant / Generating Plant in Operation / International Transaction			

Using Table 2, the Bidder shall show, for Power Plants using Renewable Resources generating technology, the monthly electricity guaranteed for all Seasonal Years in which Guaranteed Power is offered up to a maximum of two (2) decimal places. The prices offered in Table 2 shall, if it is awarded, be the monthly energy that the Bidder guarantees and must be available during the term of the contract period. The Tender Board will verify that: the sum of monthly prices provided in Table 2, corresponding to a Seasonal Year must be at least a minimum of forty percent (40%) of electricity associated with the maximum Guaranteed Power for the said Seasonal Year and that each price for Guaranteed Power offered is of at least a minimum of twenty percent (20%) of electricity associated with the maximum Guaranteed Power offered to the corresponding month, in view of the above monthly guaranteed electricity prices will not be accepted if they are equal to zero.

In the case of a Generating Plant with Non-renewable Resources generating technology, must not fill in Table 2, as it should be understood that the electricity offered will be associated to the maximum Guaranteed Power.

Table 2.

Energy Offer – Generating Plant__ ²	
Month of the Seasonal Years when the Guaranteed Power is offered	Monthly Energy guaranteed in the Seasonal Years when the Guaranteed

² The number of the Generating Plant must be exactly to the number indicated in the table of paragraph 7.1 of the Terms of Reference for the Generating plant offered.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

	Power is offered
	MWh
May	
June	
July	
August	
September	
October	
November	
December	
January	
February	
March	
April	

In Table 3, the Bidder shall indicate the hourly electricity guaranteed which is distributed during the hours of a typical day guaranteed the monthly guaranteed energy, this hourly energy time may be different for each month of the Seasonal Year, to take into account the availability of the generating resources and the particular characteristics of the Generating Plants offered. The prices offered for the hourly guaranteed energy should have a maximum of two (2) decimal places.

The hourly guaranteed electricity in MWh, in no event shall exceed hourly Guaranteed Power and the sum of hourly energy multiplied by the number of days in the month, should correspond to the monthly guaranteed energy for that month.

Table 3.

Hourly Guaranteed energy for each day of the month for the Seasonal Year in MWh, - Generating Plant No. <u>3</u>												
Hour	May	June	July	August	September	October	November	December	January	February	March	April
00:00 to 00:59												
01:00 to 01:59												
02:00 to 02:59												
03:00 to 03:59												
04:00 to 04:59												
05:00 to 05:59												
06:00 to 06:59												
07:00 to 07:59												
08:00 to 08:59												
09:00 to 09:59												
10:00 to 10:59												
11:00 to 11:59												
12:00 to 12:59												
13:00 to 13:59												
14:00 to 14:59												
15:00 to 15:59												
16:00 to 16:59												
17:00 to 17:59												
18:00 to 18:59												
19:00 to 19:59												
20:00 to 20:59												
21:00 to 21:59												

³ The number of the Generating Plant must be exactly to the number indicated in the table of paragraph 7.1 of the Terms of Reference for the Generating plant offered.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

22:00 to 22:59												
23:00 to 23:59												
Total Sum												

Using Table 4, the Bidder that offers electricity for a Power Generation Contract shall indicate the estimated monthly energy and the maximum Power of the New Generating Plant or in Operation. It is understood that the estimated energy indicated in the Bid is for 15 years.

Table 4.

Estimated energy offered- Generating Plant No. <u>4</u>		
Month of the Seasonal Years in which the estimated energy is offered	Monthly estimated energy for the Seasonal Years	Maximum Power of the New Generating Plant or in Operation of the facility
	MWh	MW
May		
June		
July		
August		
September		
October		
November		
December		
January		
February		
March		
April		

The Tender Board will seek clarification from Tables 1, 2, 3 and 4, if in case the information presented is not coherent between the energy hourly curves, the monthly energy guaranteed and Guaranteed Power.

6.2. Presentation of the Economic Offer

6.2.1. Letter of Presentation of the Economic Offer

Guatemala, _____ of _____ of 20____

Messrs.:

Empresa Eléctrica de Guatemala, Sociedad Anonima.

⁴The number of the Generating Plant must be exactly to the number indicated in the table of paragraph 7.1 of the Terms of Reference for the Generating plant offered.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Distribuidora de Electricidad de Occidente, Sociedad Anonima.
Distribuidora de Electricidad de Oriente, Sociedad Anonima.
(Address).

Ref.: Tender _____.

Dear _____:

I, _____, of _____ years of age, (indicate marital status, nationality, occupation and residence), I identify myself with identification document No. _____ and with registry No. _____ extended by Municipal Mayor of _____ (Personal Identification Document (DPI)) or (passport if foreigner, with no residence), citing as the place to receive notifications the following address: _____, in the city of Guatemala; I appear in my capacity as a Legal representative of _____, capacity I accredit through _____, y by this means I present the Economic Offer according to the provisions established in the Terms of the Tender which does not include the Value Added Tax (VAT), and according to paragraphs 4.2 y 6.2.2 of the Terms of the Tender.

Attached to this letter is the Format of the economic Offer.

Sincerely,

(Name, Signature, and Legal Representative Seal)

6.2.2. Format of the Economic Offer

The Financial Bid Format provided in this paragraph shall be completed for each generating plant listed within the listing with which the Bidder offers Guaranteed Power and established in the table of paragraph 7.1, whichever is applicable, subject in all cases it corresponds to each Technical Bid Form submitted. Any inconsistency between the Technical Bid Format and the Economic Bid Format will cause the rejection of the Economic Bid. Tables 4 and 5 correspond to those offers with to the energy Purchase Option Contract and the Load Curve Differences Contract, and Table 6 correspond to those offers with Generated Energy Contract.

For each Generating Plant offered whose technology type is generation with Renewable Resources, the Bidder shall use the format in Table 4, indicate per Generating Plant a price for Power and a price for Energy, meeting the provisions established in section 4.2. The Price of Power should include the transmission tolls for secondary transmission systems used by the Awarded, that connect the generating plant offered to the Primary System, and in case of International Transactions through a Firm Contract they shall also include the transmission rights and any other costs associated to the Delivery Point. The price of power and energy prices should have two (2) decimal places.

Table 4.

Economic Offer – Generating Plant No. ⁵
--

⁵ The number of the Generating Plant must be exactly to the number indicated in the table of paragraph 7.1 of the Terms of Reference for the Generating plant offered.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Price of Power (PPG)	Price of Energy (PEO)	Unitary Cost of Operation and Maintenance (O&M)
Dollars per kilowatt-month (US\$/kW-month)	Dollars per megawatt-hour (US\$/MWh)	Dollars per megawatt-hour (US\$/MWh)
Type of Contract	Load Curve Difference Contract / Energy Purchase Option Contract	

For each Generating Plant using Non-renewable Resources generating technology the Bidder must, through the Format established in Table 5, indicate per generating plant the price of Power, a price per **Unitary Heat Thermal Consumption Guarantee –CTUNG-** and the **Unitary Cost of Operation and Maintenance –O&M-**, complying with the provisions established in paragraph 4.2. The Price of Power should include the transmission tolls for secondary transmission systems used by the Awarded, that connect the generating plant offered to the Primary System, and in case of International Transactions through a Firm Contract they shall also include the transmission rights and any other costs associated to the Delivery Point. The price of power and energy prices should have two (2) decimal places, and the price of Guaranteed Heat Consumption Net Unit must have three (3) decimal places.

Table 5.

Generating Plant No. ____ ⁶		
Price of Power (PPG)	Unitary Heat Thermal Consumption Guaranteed (CTUNG)	Unitary Cost of Operation and Maintenance (O&M)
Dollars per kilowatt-month (US\$/kW-month)	(dimensionally) ⁷	(US\$/MWh)
Type of Contract	Energy Purchase Option Contract	

For Power Plants in Operation the maximum value of the price of power that can be offered by a Bidder will be eight point ninety dollars per kilowatt-month (U.S. \$ 8.90 / kW-month).

Using Table 6, the Bidder that offers electricity for an Energy Produced Contract shall indicate the price of electricity as follows:

Table 6.

Economic Offer – Generating Plant No. ____ ⁸

⁶ The number of the Generating Plant must be exactly to the number indicated in the table of paragraph 7.1 of the Terms of Reference for the Generating plant offered

⁷ It must be established that the format for the dimensional, in the case that the type of fuel is Bunker the dimensional is BBL/MWh, in the case of coal the dimensional is BTU/kWh y for Liquefied Natural Gas the dimensional is BTU/kWh

⁸The number of the Generating Plant must be exactly to the number indicated in the table of paragraph 7.1 of the Terms of Reference for the Generating plant offered.



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Price of Energy (PEO)	Cost of Operation and Maintenance (O&M)
Dollars per megawatt-hour (US\$/MWh)	Dollars per megawatt-hour (US\$/MWh)
Type of Contract	Energy Produced contract



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

6.3. Model of Offer Sustainability Guarantee

MODEL 1
LETTER OF CREDIT
OFFER SUSTAINABILITY GUARANTEE
LETTERHEAD OF ISSUING ENTITY
(GUATEMALAN ISSUING ENTITY)

Date: _____
Irrevocable Standby Letter of Credit No. _____
(The Distributors)

(Name of the Bidder)

Dear Sirs:

At the request of our client(s), _____ and following the instructions of the same, the issuing entity (the "Issuing Entity") establishes through this irrevocable standby letter of credit (the "Letter of Credit") for the amount of _____ United States of America dollars (US\$ _____) (la "The Guaranteed Amount") in favor of the (*Distributors*), in guarantee of the obligations of (*Insert the name of the person(s) who will present the Bid and in the case of Consortia the name of all of the members of the same*) (the "Bidder"), to sustain the Offer, as well as complying with each and all of the obligations in his charge derived from: (a) the Terms of the Tender expended according to Open Tender No. _____, published on ____ of ____ of 20__ (The "Terms of the Tender") for signing the Supply Contract (the "Contract") and (b) the Commitment Letter required of the Terms of the Tender and signed by the Bidder (the "Letter of commitment").

Subject to the other stipulations contained in this letter of credit,, together with the (*the Distributors*) they may require from the Issuing Entity partial payments or the total amount of the Guaranteed Amount through the presentation of a written requirement the amount of payment and indicating the existence of some established cases in the Terms of the Tender.

The Issuing Entity will honor the payment Requirements that are made (*Distributors*) in conformity with the terms of this Letter of Credit, and it is obligated to pay the total Guaranteed Amount in sight of the Payment Requirement.

The Payment Requirement should be presented in days and hours the Issuing Entity is open to the public. The Issuing Entity is obligated to pay to the (*Distributors*) requested amounts in the corresponding Payment Requirements in funds immediately available, within three business days following the date in which the (*Distributors*) have presented to the Issuing Entity the respective Payment requirement, without counting, to the effect of the term the hours corresponding or those days the Issuing Entity is not open to the public according to the established by the Bank Superintendent. If the Payment requirement failed to comply with a requirement in this Letter of Credit, the Issuing Entity will notify immediately the (*Distributors*) through written notice delivered to the address and the established area in the heading of this Letter of Credit or to the address that the (*Distributors*) previously determined in writing to that end. The notice will contain the reason for which the Issuing Entity rejected the Payment Requirement and will make available the disposition to the (*Distributors*) of said payment Requirement. (*Distributors*) may present any Payment Requirement (be it after the initial rejection or any other subsequent rejection). All payments that the Issuing Entity makes to (*Distributors*) under this Letter of Credit will be made through electronic wire transfer of funds immediately available, to the bank account that the (*Distributors*) mentioned in the corresponding Payment Requirement.

This Letter of Credit will expire on the first date (the "Expiry Date") between: (a) the date the Bidder submits to the Issuing Entity this original Letter of Credit, (b) on the date full payment is made of the Guaranteed Amount in conformity with the terms of the present Letter of Credit, (c) on the date in



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

which the group (*Distributors*) notify the Issuing Entity the cancelation of this Letter of Credit, (d) The date on which the Bidder is informed that his Technical Offer is "Not Technically Solvent", (e) the date in which the Bidder is informed that he has not been awarded or (f) the date (*insert the date corresponding to four months after the submission of Bids*). (*The Distributors*) cannot present to the Issuing Entity any Payment Requirements, once they have expired nor the Issuing Entity is obligated to realize any payment under this Letter of Credit in relation to any Payment Requirement presented after the Expiry Date.

All of the charges of the Issuing Entity related to the emission or compliance of this Letter of Credit (including without limitation to the negotiation, payment, extension of expiry date, or transfer) will be to the account of the Bidder, and in no case will be charged to the Issuing Entity or the (*Distributors*).

In any case all that is not envisaged by the same, this Letter of Credit will be governed or interpreted in conformity with the laws of Guatemala. Any controversy that arises from the same must be resolved exclusively before the competent courts of Guatemala based in the city of Guatemala. Any communication effected by the (*Distributors*) with respect to this Letter of Credit must be made in writing, and must be hand delivered with receipt confirmation in the corresponding address.

Sincerely,

Issuing Entity

Agent of Issuing Entity

Address of Guatemalan Issuing Entity



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

MODEL 2 LETTER OF CREDIT OFFER SUSTAINABILITY GUARANTEE LETTERHEAD OF THE ISSUING ENTITY (FOREIGN ISSUING ENTITY)

Date: _____
Irrevocable Standby Letter of Credit No. _____
(The Distributors)
(Address of the Distributors)

(Name of the Bidder)

Dear Sirs:

At the request of our client(s), _____ and following the instructions of the same, the issuing entity (the "Issuing Entity") establishes through this irrevocable standby letter of credit (the "Letter of Credit") for the amount of _____ United States of America dollars (US\$ _____) (la "The Guaranteed Amount") in favor of the (*Distributors*), in guarantee of the obligations of (*Insert the name of the person(s) who will present the Bid and in the case of Consortia the name of all of the members of the same*) (the "Bidder"), to sustain the Offer, as well as complying with each and all of the obligations in his charge derived from: (a) the Terms of the Tender expended according to Open Tender No. _____, published on _____ of _____ of 20____ (The "Terms of the Tender") for signing the Supply Contract (the "Contract") and (b) the Commitment Letter required of the Terms of the Tender and signed by the Bidder (the "Letter of commitment").

Subject to the other stipulations contained in this letter of credit, together with the (*the Distributors*) they may require from the Issuing Entity partial payments or the total amount of the Guaranteed Amount through the presentation of a written requirement the amount of payment and indicating the existence of some established cases in the Terms of the Tender.

The Issuing Entity will honor the payment Requirements that are made (*Distributor*) in conformity with the terms of this Letter of Credit, and it is obligated to pay the total Guaranteed Amount in sight of the Payment Requirement.

The Payment Requirement should be presented in days and hours the Issuing Entity is open to the public in the City of New York, State of New York, United States of America, in the address of the Issuing Entity later indicated. The Issuing Entity is obligated to pay to the (*Distributors*) requested amounts in the corresponding Payment Requirements in funds immediately available, within three business days following the date in which the (*Distributors*) have presented to the Issuing Entity the respective Payment requirement, without counting, to the effect of the term the hours corresponding or those days the Issuing Entity is not open to the public in the City of New York, State of New York, United States of America as long as the documentation presented meets all the corresponding requirements. If the Payment requirement failed to comply with a requirement in this Letter of Credit, the Issuing Entity will notify immediately the (*Distributors*) through written notice delivered to the address and the established area in the heading of this Letter of Credit or to the address that the (*Distributors*) previously determined in writing to that end. The notice will contain the reason for which the Issuing Entity rejected the Payment Requirement and will make available the disposition to the (*Distributors*) of said payment Requirement. (*Distributors*) may present any Payment Requirement (be it after the initial rejection or any other subsequent rejection). All payments that the Issuing Entity makes to (*Distributors*) under this Letter of Credit will be made through electronic wire transfer of funds immediately available, to the bank account that the (*Distributors*) mentioned in the corresponding Payment Requirement.

This Letter of Credit will expire on the first date (the "Expiry Date") between: (a) the date the Bidder submits to the Issuing Entity this original Letter of Credit, (b) on the date full payment is made of the Guaranteed Amount in conformity with the terms of the present Letter of Credit, (c) on the date in which the group (*Distributors*) notify the Issuing Entity the cancelation of this Letter of Credit, (d) The



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

date on which the Bidder is informed that his Technical Offer is "Not Technically Solvent", (e) the date in which the Bidder is informed that he has not been awarded or (f) the date *(insert the date corresponding to four months after the submission of Bids)*. *(The Distributors)* cannot present to the Issuing Entity any Payment Requirements, once they have expired nor the Issuing Entity is obligated to realize any payment under this Letter of Credit in relation to any Payment Requirement presented after the Expiry Date.

All of the charges of the Issuing Entity related to the emission or compliance of this Letter of Credit (including without limitation to the negotiation, payment, extension of expiry date, or transfer) will be to the account of the Bidder, and in no case will be charged to the Issuing Entity or the *(Distributors)*.

In any case all that is not envisaged by the same, this Letter of Credit will be governed or interpreted in conformity with the laws of the State of New York, United States of America. Any controversy that arises from the same must be resolved although not exclusively before the competent courts of the United States of America based in Manhattan, City of New York. Any communication effected by the *(Distributors)* with respect to this Letter of Credit must be made in writing, and must be hand delivered with receipt confirmation in the corresponding address.

Sincerely,

Issuing Entity

Agent of the Issuing Entity
Address of the Foreign Issuing Entity

6.4. Model of Letter of Commitment within Sworn Declaration.**SWORN DECLARATION OF BIDDER BEFORE NOTARY PUBLIC****LETTER OF COMMITMENT**

(Distributors)

(Address)

Dear Sirs:

In Reference to: (i) the Terms of the Tender, including its Annexes and Addenda, that have been submitted by the Distributors in the Tender Process, identified as Open Tender PEG-1-2010, (ii) to the published call to offer by the Distributors the day _____ of _____ of two thousand _____, and (iii) the format of the Supply contract, we express our knowledge and integral acceptance of the same.

Based on the above the undersigned hereby declare that:

1. We have full knowledge of the law and other applicable regulation.
2. We know the Terms of Reference, approved by the CNEE, the Terms of the Tender and Addenda, which we accept and submit to the established terms therein.
3. We agree that this Letter of Commitment shall be deemed as an unconditional offer for the corresponding legal effects, until the Supply Contract is signed.
4. We accept that the Distributors execute the total amount of the Offer Sustainability Guarantee in the event of not fulfilling its obligations under this Letter of Commitment or in the Terms of the Tender.
5. We agree that this Letter of Commitment shall be governed and construed in accordance with the laws of the Republic of Guatemala. Any controversy or claim arising from or relating to this Letter of Commitment shall be subject to the exclusive jurisdiction of the courts in Guatemala City.
6. That all information provided in our Bid is true and can be verified by the Tender Board at its discretion.
7. We accept the application of Guatemalan and submission to the jurisdiction of the courts of the Republic of Guatemala, waiving the application of any foreign jurisdiction governed agreements or regulations of any kind.
8. That the information provided to the Distributors, will be used solely and exclusively for the preparation of the Bid being prohibited from reproducing it totally or partially, and we will not invoke registration or property rights from information and documentation provided.
9. The Validity of the Bid will be for a period of four (4) months from the date of submission.
10. We accept that the Distributors determine whom or who the Awarded Bidders will be, as established in the Terms the Tender.
11. We are solely responsible of obtaining the Permits that apply to the Generating Power Plant or Plants with those offered for Guaranteed Power and Energy, for which we have considered the costs for these items in our Bid.

Should we be awarded during the Tender Process, by the Distributors, we will commit to the following:

12. To develop each new Generating Plant offered, and if it is awarded all or part its Guaranteed Power and/or Energy.
13. At my own expense to obtain the approval of the Environmental Impact Assessment for each new Generating Plant offered, of which Guaranteed Power shall be total or partially Awarded.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

14. Accept the allocation and assignment made by the Tender Board of the Guaranteed Power and the monthly guaranteed electricity of every Supply Contract.
15. To complete the steps in accordance with the Applicable Laws as needed by Government Authorities to assign the Efficient Firm Demand Offer, to meet Firm Demand by International Transactions via a Firm Import Contract Awarded.
16. To sign a Supply Contract according to terms and conditions stipulated in the Terms of Tender, with the understanding that the technical and economic information required in the Tender will be attached to our Bid.
17. If for reasons attributable to us, the Supply Contract is not signed on the date stated in the Schedule of Events of the Tender; the Distributor will have the right to execute the full amount of the Offer Sustainability Guarantee, attached to this Letter of Commitment.
18. If for reasons attributable to us, we do not provide the Preoperative Guarantee on the date specified in the Terms of the Tender, the Distributors will have the right to execute the full amount of the Offer Sustainability Guarantee, attached to this Letter of Commitment.
19. Validate the schedule Contract sheets so they contain the conditions of each Supply Contract signed, so that the AMM fully incorporates integrally into the Futures Market for technical and commercial management from the day of the Supply Startup Date. If for reasons attributable to us the schedules Contract sheets are not validated by the AMM, the distributors will have the right to execute the Preoperative Guarantee's total amount as established in the Supply Contract.

Guatemala, (days) of (month), 20_____.

(Name of the Bidder)

For: (Name of Duly Authorized Legal Representative)

Signature



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

6.5. Model to carry out requests for clarification and consultations.

Guatemala, _____ of _____ of 20_____

Messrs:

Empresa Eléctrica de Guatemala, Sociedad Anonima.

Distribuidora de Electricidad de Occidente, Sociedad Anonima.

Distribuidora de Electricidad de Oriente, Sociedad Anonima.

Dear Sirs:

By this means and attention to what is described in paragraph 2.2 of the Terms of the Tender, we refer to you our requests for clarification and questions as continued:

QUESTIONS AND ANSWERS			
No. of Questions	Numeral, Format Annex	General Theme	Questions and Answers
1			QUESTION:
			ANSWER:
2			QUESTION:
			ANSWER:
:			QUESTION:
			ANSWER:
N			QUESTION:
			ANSWER:

(Name and signature of Authorized Representative)



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

6.6. Model of critical Events.

The following model shows the list of Critical Events from the Date of Business Start Schedule to Date of Contract Form Validation, that each Bidder shall submit preliminarily in the Bid for each New Generating Plant as final as established in the provisions of the Supply Contract for each New Generating Plant awarded

MODEL OF PROJECT IMPLEMENTATION SCHEDULE

Distribuidora de Electricidad de Oriente, S.A
Distribuidora de Electricidad de Occidente, S.A.
Empresa Eléctrica de Guatemala, S.A.

Reference: (Name of New Generating Plant)

Dear Sirs:

In compliance with the provisions of the Terms of the Tender, which correspond to the Open Tender PEG-1-2010, I, (Name of Legal Representative of the Bidder) hereby notify this to (The Distributors) that the entity I represent, has or has reasonable grounds to say that we have the financial resources to meet its obligations under the contract to build the (Name of New Generating Plant established in paragraph 7.1) and have begun work under a continuous and consistent program with the Project Implementation Program, and confirm that, consequently, the timing of critical events in the Project Implementation Schedule is as follows:

En atencion a lo dispuesto en las Bases de Licitacion, que corresponden a la Licitacion Abierta PEG-1-2010, yo, (Nombre del Representante Legal del Oferente) por medio de la presente notifico a (Las Distribuidoras) que la entidad que represento, ha obtenido o tiene razon fundada para afirmar que contará con los recursos financieros para cumplir con sus obligaciones conforme al Contrato de construir la (*Nombre de la Planta de Generacion Nueva conforme el numeral 7.1*) o ha iniciado las Obras, bajo un programa continuo y consistente con el Programa de Ejecucion del Proyecto, y confirma que en consecuencia, las fechas de los Eventos Criticos en el Programa de Ejecucion del Proyecto queda de la siguiente manera:



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

CRITICAL EVENT	DATE OF CRITICAL EVENT
Schedule Start Date Formalities	Is the established date in the Schedule of Events
Date of completion of the purchase order by the project team	
Date of the start of the construction by the contractor (notice to proceed)	
Cargo Manifest Arrival Certificate Notice of turbogenerators, engines or turbines, as it corresponds	
Date of approval of the Ministry of Environment and Natural Resources for Environmental Impact Study	
Date of presentation of the electrical study according to NEAST (if accordance to the General Law of Electricity if requested)	
Obtaining permission for the use of Public Domain from the Ministry of energy and Mines, where applicable	
Completion of assembly or turbogenerators, engines and turbines (for technology generating with renewable and non-renewable resources	
Completion of the mounting of generators	
Register as Agents with the Ministry of Energy and Mines	
Approval of the Access Standards Study according to the NTAUCT ⁹ , or approval of the application on the opinion of capacity and connection for a Renewable, according to the NTGDR ¹⁰ , where applicable.	
Start of Commissioning Tests (Commissioning)	
Date of Commercial Commissioning to participate in the Spot Market, according to the Coordination Regulations of the AMM	
Commercial Operation Date	
Validation Date of Contract Form	Thirty (30) Days before the Supply Startup Date

In virtue of the above. I deemed the Project Implementation Schedule submitted in proper form and in a timely manner.

En virtud de lo anteriormente expuesto solicito que se tenga por presentado en tiempo y forma, el presente Programa de Ejecucion del Proyecto

Guatemala, _____ of _____ of 20_____

(Name and signature of Authorized Legal Representative).

⁹ Access Standards Study and Use of Transport Capacity, Resolution CNEE-33-98

¹⁰ Technical Regulations for Connection, Control and Marketing of Renewable and Distributed Generation and Self-producing Consumers with Surplus Energy, Resolution CNEE-171-2008



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

6.7. Modelo of Preoperative Guarantee.

MODEL 1
LETTER OF CREDIT
PREOPERATIVE GUARANTEE
LETTERHEAD OF ISSUING ENTITY
(GUATEMALAN ISSUING ENTITY)

Date: _____
Irrevocable Standby Letter of Credit No. _____
(The Distributors)

(Name of the Bidder)

Dear Sirs:

At the request of our client(s), _____ and following the instructions of the same, the issuing entity (the "Issuing Entity") establishes through this irrevocable standby letter of credit (the "Letter of Credit") for the amount of _____ United States of America dollars (US\$ _____) (la "The Guaranteed Amount") in favor of the *(Distributors)*, in guarantee of the obligations of *(Insert the name of the person(s) who will present the Bid and in the case of Consortia the name of all of the members of the same)* (the "Bidder"), to sustain the Offer, as well as complying with each and all of the obligations in his charge derived from: (a) the Terms of the Tender expended according to Open Tender No. _____, published on ____ of ____ of 20__ (The "Terms of the Tender") for signing the Supply Contract (the "Contract") and (b) the Commitment Letter required of the Terms of the Tender and signed by the Bidder (the "Letter of commitment").

Subject to the other stipulations contained in this letter of credit,, together with the *(the Distributors)* they may require from the Issuing Entity partial payments or the total amount of the Guaranteed Amount through the presentation of a written requirement the amount of payment and indicating the existence of some established cases in the Terms of the Tender.

The Issuing Entity will honor the payment Requirements that are made *(Distributor)* in conformity with the terms of this Letter of Credit, and it is obligated to pay the total Guaranteed Amount in sight of the Payment Requirement.

The Payment Requirement should be presented in days and hours the Issuing Entity is open to the public. The Issuing Entity is obligated to pay to the *(Distributors)* requested amounts in the corresponding Payment Requirements in funds immediately available, within three business days following the date in which the *(Distributors)* have presented to the Issuing Entity the respective Payment requirement, without counting, to the effect of the term the hours corresponding or those days the Issuing Entity is not open to the public according to the established by the Bank Superintendent. If the Payment requirement failed to comply with a requirement in this Letter of Credit, the Issuing Entity will notify immediately the *(Distributors)* through written notice delivered to the address and the established area in the heading of this Letter of Credit or to the address that the *(Distributors)* previously determined in writing to that end. The notice will contain the reason for which the Issuing Entity rejected the Payment Requirement and will make available the disposition to the *(Distributors)* of said payment Requirement. *(Distributors)* may present any Payment Requirement (be it after the initial rejection or any other subsequent rejection). All payments that the Issuing Entity makes to *(Distributors)* under this Letter of Credit will be made through electronic wire transfer of funds immediately available, to the bank account that the *(Distributors)* mentioned in the corresponding Payment Requirement.

This Letter of Credit will expire on the first date (the "Expiry Date") between: (a) the date the Bidder submits to the Issuing Entity this original Letter of Credit, (b) on the date full payment is made of the Guaranteed Amount in conformity with the terms of the present Letter of Credit, (c) on the date in which the group *(Distributors)* notify the Issuing Entity the cancelation of this Letter of Credit, (d) The



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

date on which the Bidder is informed that his Technical Offer is "Not Technically Solvent", (e) the date in which the Bidder is informed that he has not been awarded or (f) the date *(insert the date corresponding to four months after the submission of Bids)*. *(The Distributors)* cannot present to the Issuing Entity any Payment Requirements, once they have expired nor the Issuing Entity is obligated to realize any payment under this Letter of Credit in relation to any Payment Requirement presented after the Expiry Date.

All of the charges of the Issuing Entity related to the emission or compliance of this Letter of Credit (including without limitation to the negotiation, payment, extension of expiry date, or transfer) will be to the account of the Bidder, and in no case will be charged to the Issuing Entity or the *(Distributors)*.

In any case all that is not envisaged by the same, this Letter of Credit will be governed or interpreted in conformity with the laws of Guatemala. Any controversy that arises from the same must be resolved exclusively before the competent courts of Guatemala based in the city of Guatemala. Any communication effected by the *(Distributors)* with respect to this Letter of Credit must be made in writing, and must be hand delivered with receipt confirmation in the corresponding address.

Sincerely,

Issuing Entity

Agent of Issuing Entity
Address of Guatemalan Issuing Entity



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

MODEL 2 LETTER OF CREDIT PREOPERATIVE GUARANTEE LETTERHEAD OF ISSUING ENTITY (FOREING ISSUING ENTITY)

Date: _____
Irrevocable Standby Letter of Credit No. _____
(The Distributors)
(Address of the Distributors)

(Name of the Bidder)

Dear Sirs:

At the request of our client(s), _____ and following the instructions of the same, the issuing entity (the "Issuing Entity") establishes through this irrevocable standby letter of credit (the "Letter of Credit") for the amount of _____ United States of America dollars (US\$ _____) (la "The Guaranteed Amount") in favor of the (*Distributors*), in guarantee of the obligations of (*Insert the name of the person(s) who will present the Bid and in the case of Consortia the name of all of the members of the same*) (the "Bidder"), to sustain the Offer, as well as complying with each and all of the obligations in his charge derived from: (a) the Terms of the Tender expended according to Open Tender No. _____, published on _____ of _____ of 20____ (The "Terms of the Tender") for signing the Supply Contract (the "Contract") and (b) the Commitment Letter required of the Terms of the Tender and signed by the Bidder (the "Letter of commitment").

Subject to the other stipulations contained in this letter of credit, together with the (*he Distributors*) they may require from the Issuing Entity partial payments or the total amount of the Guaranteed Amount through the presentation of a written requirement the amount of payment and indicating the existence of some established cases in the Terms of the Tender.

The Issuing Entity will honor the payment Requirements that are made (*Distributor*) in conformity with the terms of this Letter of Credit, and it is obligated to pay the total Guaranteed Amount in sight of the Payment Requirement.

The Payment Requirement should be presented in days and hours the Issuing Entity is open to the public in the City of New York, State of New York, United States of America, in the address of the Issuing Entity later indicated. The Issuing Entity is obligated to pay to the (*Distributors*) requested amounts in the corresponding Payment Requirements in funds immediately available, within three business days following the date in which the (*Distributors*) have presented to the Issuing Entity the respective Payment requirement, without counting, to the effect of the term the hours corresponding or those days the Issuing Entity is not open to the public in the City of New York, State of New York, United States of America as long as the documentation presented meets all the corresponding requirements. If the Payment requirement failed to comply with a requirement in this Letter of Credit, the Issuing Entity will notify immediately the (*Distributors*) through written notice delivered to the address and the established area in the heading of this Letter of Credit or to the address that the (*Distributors*) previously determined in writing to that end. The notice will contain the reason for which the Issuing Entity rejected the Payment Requirement and will make available the disposition to the (*Distributors*) of said payment Requirement. (*Distributors*) may present any Payment Requirement (be it after the initial rejection or any other subsequent rejection). All payments that the Issuing Entity makes to (*Distributors*) under this Letter of Credit will be made through electronic wire transfer of funds immediately available, to the bank account that the (*Distributors*) mentioned in the corresponding Payment Requirement.

This Letter of Credit will expire on the first date (the "Expiry Date") between: (a) the date the Bidder submits to the Issuing Entity this original Letter of Credit, (b) on the date full payment is made of the Guaranteed Amount in conformity with the terms of the present Letter of Credit, (c) on the date in which the group (*Distributors*) notify the Issuing Entity the cancelation of this Letter of Credit, (d) The



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

date on which the Bidder is informed that his Technical Offer is "Not Technically Solvent", (e) the date in which the Bidder is informed that he has not been awarded or (f) the date *(insert the date corresponding to four months after the submission of Bids)*. *(The Distributors)* cannot present to the Issuing Entity any Payment Requirements, once they have expired nor the Issuing Entity is obligated to realize any payment under this Letter of Credit in relation to any Payment Requirement presented after the Expiry Date.

All of the charges of the Issuing Entity related to the emission or compliance of this Letter of Credit (including without limitation to the negotiation, payment, extension of expiry date, or transfer) will be to the account of the Bidder, and in no case will be charged to the Issuing Entity or the *(Distributors)*.

In any case all that is not envisaged by the same, this Letter of Credit will be governed or interpreted in conformity with the laws of the State of New York, United States of America. Any controversy that arises from the same must be resolved although not exclusively before the competent courts of the United States of America based in Manhattan, City of New York. Any communication effected by the *(Distributors)* with respect to this Letter of Credit must be made in writing, and must be hand delivered with receipt confirmation in the corresponding address.

Sincerely,

Issuing Entity

Agent of the Issuing Entity
Address of the Foreign Issuing Entity

7. TECHNICAL AND ECONOMIC REQUIREMENTS TO FULFILL BY THE BIDDER

7.1. Backup Generating Plants for Guaranteed Power

For purposes of evaluation of the Technical Offer the Bidder must complete the following information:

The Bidder shall describe each Generating Plant supporting the Power Guarantee offered, indicating the order of generating plants in operation, the indication of an International Transaction through a Firm Import Contract and New Generating Plants, completing the following tables as follows:

No.	Name of Generating Plant ¹¹	Type of Generating Plant ¹²	Complies with the condition of New Generating Plant ¹³	Geographical Location, UTM Coordinates	Point of Delivery ¹⁴	Maximum Power of net Capacity in MW	Date of Commercial Operation ¹⁵
1							
2							
:							
n							

Failure to provide the information contained in this paragraph, as requested, will be cause for rejection of the Offer. A single Generating Plant may not be offered by different bidders.

7.2. Technical Experience of Bidder

For purposes of the evaluation of Technical Offers to the Bidder is required to have the following Experience:

- a. In the event the Tender considers New Generating Plants larger than five (5) megawatts, the Bidder must accredit that it has been responsible of designing and engineering or the procurement of the design and engineering of at least one generating project of each of the generating technologies offered, as established in paragraph 4.2.4 of the Terms of the Tender, that are of a generating capacity equal to or larger than each of the technologies offered, for which it must provide the requested in the following table:

¹¹ Indicate the name of the New Generating Plant or in Operation. In the case of International Transactions through a Firm Import Contract, indicate also the name of the Plant.

¹² Consign NGP when it is New Generating Plant, OGP when is an Operating Generating Plant and IT when is an International Transaction through a Firm Import Contract.

¹³ The Bidder must indicate, when offering New Generating Plants, which condition(s) it complies with to qualify it as a New Generating Plant, according to the definition established in paragraph 1.2 of the Terms of the Tender.

¹⁴ It must indicate the node as the Point of Connection in the National Interconnected System –SIN- of New Generating Plants Interconnected or in Operation, a node of the Principal System in the SIN for an International Transaction.

¹⁵ In the column denominated "Date of Commercial Operation" for an Operating Plant or an International Transaction, must indicate the date it started the commercial operation, and for New Generating Plants, it must indicate the Date of Commercial Operation offered, which must always be prior to the period of supply offered, complying with the provisions established in the Terms of the Tender and Contract.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Information	Project 1	Project 2	Project ...n
Technical Offer Folio			
Contracting Entity			
Generating Project Description			
Generating Technology			
Location (Country, region, department, etc.)			
Description of the roles and participation of the Bidder, a member of the Consortium, subsidiary or proposed contractor in connection with the ownership, design and project engineering			
%age share in the project implementation			
Amount of the contract			
Contractual Date of commercial operation			
Date of commercial operation			
Contact			

- b. In the event the Tender considers New Generating Plants larger than five (5) megawatts, the Bidder must accredit that it has been responsible of the construction and the commercial commission, or the construction procurement and the commercial commissioning for each of the generating technologies offered, as established in paragraph 4.2.4 of the Terms of the Tender, that are of a generating capacity equal to or larger than each of the technologies offered, for which it must provide the requested in the following table:

Information	Project 1	Project 2	Project ...n
Technical Offer Folio			
Contracting Entity			
Generating Project Description			
Generating Technology			
Location (Country, region, department, etc.)			
Description of the roles and participation of the Bidder, a member of the Consortium, subsidiary or proposed contractor in connection with the ownership, design and project engineering			
%age share in the project implementation			
Amount of the contract			
Contractual Date of commercial operation			
Date of commercial operation			
Contact			

- c. Each Bidder that offers Generating Plants larger than five (5) megawatts must accredit that it has been responsible of the operation and maintenance or the procurement of operation and maintenance of at least one generation Project for each one of the technologies offered, , as established in paragraph 4.2.4 of the Terms of the Tender, that are of a generating capacity equal to or larger than each of the technologies offered, and presently in commercial operation, during two (2) or more years, for which it must provide the requested in the following table:



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Information	Project 1	Project 2	Project ...n
Technical Offer Folio			
Contracting Entity			
Description of the Generating Project			
Generating Technology			
Location (Country, region, department, etc.)			
Description of the roles and participation of the Bidder, a member of the Consortium, subsidiary or proposed contractor in connection with the ownership, design and project engineering			
%age of the participation in the services of operation and maintenance of the project			
Amount of Contract			
Date of commercial operation			
Years of operation and maintenance of the project			
Contact			

When experience has been acquired through contracts carried out in consortium or temporary unión, it must accredit its direct participation in the aspect of experience which is proposed for evaluation.

Also, it will be necessary to accredit the corresponding contracts, which is pretends to accredit the respective experience, attaching a simple copy of the referred contracts. When copies of the contracts cannot be obtained, certifications extended by the compnies or contracting entities outlining the amount of the contract that contains the requirements corresponding to the information submitted in the formats of this annex. The certifications that are not related will not be evaluated.

The Tender Board may verify the the truth of the information acccredited by the Bidders and , in the case of proving that some part of the accredited information is not true, will be cause or a Bid rejection. The Tender Board reserves the right to request clarifications of the documents presented by the Bidder to accredit the technical experience.

7.3. Economic capacity of the Bidder

Stockholders' equity or net worth (the difference between Total Assets and Total Liabilities and consisting of: contribution of the owners or shareholders, capital reserves, net income) of the Bidder, at the close of its last fiscal year preceding the filing of the Bid must be equal to or greater than the value obtained from the result of multiplying the value of Guaranteed Power for each Seasonal Year in the period of supplied offer by the corresponding price according to the following table:

Range	Multiplier
-------	------------



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

GP ≤ 5	US\$ 50,000.00 by MW of GP
5 < GP ≤ 50	US\$ 300,000.00 by MW of GP
50 < GP ≤ 100	US\$ 400,000.00 by MW of GP
GP > 100	US\$ 500,000.00 by MW of GP

The power that determines stockholders 'capital or equity, in the case of Bids with an Energy Produced Contract, shall be the maximum power established in the Bid.

The determination of net equity referred to in the preceding paragraph shall be subject to the following provisions:

- i. When the Bidder is an individual or legal person, it must present a certification of its net worth based on financial statements, and must be signed with proper seal of a certified public accountant and authorized auditor by the Superintendencia de Administracion Tributaria –SAT–, of Guatemala or its equivalent of country of origin of the Bidder, United States of America dollars, according to the required format.
- ii. In case of Bids presented by a Consortium, these must demonstrate its group participation through a public deed, additionally they must present certification of net worth of each and every one of the entities represented, the certification of the Strategic Participant must be clearly identified. These certifications must be signed with proper seal of a Public Accountant and Auditor or Auditing Firm, both authorized by the Superintendencia de Administracion Tributaria –SAT–, of Guatemala or its equivalent of country of Origin of Bidder, in United States of America dollars, according to the required format.

Equity of Certification Format of the Bidders, in Dollars of the United States of America

DESCRIPTION	Member 1	Member 2	Member X...	TOTAL
NET EQUITY				
Contribution by the owners				
Unfunded Contributions				
RESERVED EARNINGS				
Legal reserves				
Other reserves				
RETAINED EARNINGS				
Fiscal year results				
Profit or Loss				
TOTAL NET EQUITY				



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

7.4. Additional Requirements

7.4.1. Site Selection

When the Bidder considers its New Generation Plant Offer, it must provide the following information in the Offer:

Sworn Declaration before a Notary Public of Site Selection

I _____, the Bidder, manifests that I have selected the site named "_____", and declare that I have verified all of the requirements and studies required by the Applicable Laws, as well as the Permits related to environmental impact required for the presentation of the Bid, they can be and will be covered, in case that I result an Awarded Bidder. By the above, I accept being the only one responsible for the elaboration of the studies, obtain the Permits and comply with all of the established requirements in the Terms of the Tender, under no circumstance failure to obtain any of the Permits, property rights or any other circumstance relative to the above, will give the right to modify the Critical Event Dates, prices established in the Offer, or any other term established in the Bid.

NAME AND SIGNATURE OF LEGAL REPRESENTATIVE OF BIDDER

7.4.2. Water Supply

For New Generating Plants where the type of generating technology uses non-renewable resources:

Sworn Declaration before a Notary Public on water Supply

I, _____, the Bidder manifest that I have verified the existence and viability of the use of water and I agree to carry out the paperwork necessary to obtain the title of concession or agreement from the competent authority that permit the use of water from the source. In case that I result Awarded Bidder and I can't obtain, use or exploit the supply of water, for motives beyond my control, the costs that these changes may cause to the installations of the New Generating Plant, including the possibility of a change of the type of cooling system, will be solely my responsibility, and these changes will not give the right to modify the Critical Event Dates, technical and economic values established in the Bid, or any other term established in the Offer.

NAME AND SIGNATURE OF THE REPRESENTATIVE OF THE BIDDER



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

7.4.3. Fuel Supply

For Generating Plants with where the type of generating technology uses non renewable resources.

Sworn Declaration before a Notary Public on the responsibility of Fuel Supply

I _____, the Bidder, manifest that I have verified all of the requirements in the Terms of the Tender respect the purchase and supply of fuel, in case I result n Awarded Bidder I will be responsible for obtaining the Permits, supply, construction, tests, commissioning, operation and maintenance, and to obtain of the rights to the site of the Generating Plant, as well as the permits in matter of environmental impact required in accordance to applicable laws. By the above, under no circumstance, failure to obtain any permits, rights, or any other circumstance relative to the above, will give me the right to modify the Critical Event Dates, technical and economic values established in the Bid, or any other term established in the Offer; reason for which I will not invoke a case of fortuitous event or Force Majeure nor will it be reason to terminate the Contract.

NAME AND SIGNATURE OF THE REPRESENTATIVE OF BIDDER

7.4.4. General Arrangement of Generating Plant an Site Description

The Bidder must include in his Bid a general arrangement diagram of each Generating Plant including the central plant that backs each International Transaction, one that has to include the principal components, such as the power block, the substation, the cooling system (if applicable), the areas and installations to handle fuel (if applicable).

Also the Bidder must submit the following information:

- A brief description of the selected site, including location and surface.
- Map location of site selected, indicating coordinates, and surface destined for the Project, adjacencies and access road.
- Property regime and present use of ground of site.

7.4.5. Commercial Habilitation of International Transactions.

For each International Transaction a sworn declaration before a notary public must be presented As follows:

Sworn Declaration of commercial Habilitation of International Transactions

I _____, the Bidder, manifest that I will realize the paperwork that are regulated in the Applicable Laws to commercially habilitate International Transactions through Firm Import contract in the Republic of Guatemala (name of the plant and identification corresponding to the list in paragraph 7.1), so that the Validation Date of Contract form is (a date that is within (30) days before the Star up of Supply), for which i declare that I have verified all requirements in the Terms of the Tender and Applicable Laws concerning the compliance of the obligations for the International Transactions through a Firm Import Contract, in the case I result an Awarded Bidder I will be responsible for the compliance of all Permits, paperwork, steps, approvals that have to be issued by the AMM and the CNEE, any Governmental Authority and any entity created for international treaties for electrical interconnection, of which Guatemala is a part of. By



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

the above, under any circumstance, failure to obtain any permit, rights or any other circumstance relative to the above, will give me the right to modify the Validation Date of the Contract Form for the International Transaction, technical and economic values, or any term established in the Offer; reason for which I accept that the full amount of the Preoperative Guarantee be executed for infringement before here described, for which I will not invoke a case of Fortuitous event or Force Majeure, nor will it be reason to terminate the Contract.

NAME AND SIGNATURE OF REPRESENTATIVE OF THE BIDDER

8. MEMORANDUM OF SUPPLY CONTRACT

NUMBER _____ (____). In Guatemala City, on _____ of _____ the year two thousand 20 _____, **BEFORE ME**, _____, Notary Public, appear: on one part Mr. _____, who acts in his capacity of _____ the entity _____, that in the course of the present instrument will be named also as "_____" or "**The Awarded**", which _____ is _____ accredited _____ with _____; and on the other part appear Messrs _____, who act in their capacity of _____ the entity named _____, **SOCIEDAD ANONIMA**, from here on, "**The Distributor**" which is accredited with _____. I, the Notary Public, **ATTEST**: a) What has been presented; b) Has had in sight all the documents that the individuals appearing used to accredit their representation under which they act, representations that, in conformity with the law and in my judgment, are ample and sufficient for granting this instrument; c) That the individuals assured me and claim to be the same as those in the personal identifications consigned, as well as exercising in the free exercise of their civil rights and have agreed to sign this **SUPPLY CONTRACT (POWER WITH AN ENERGY PURCHASE OPTIONT, WITH LOAD CURVE DIFFERENCES OR GENERATED ENERGY) FOR CONSUMERS OF THE FINAL DISTRIBUTION SERVICE** in conformity with the following: **FIRST: Background: One (I)**. The legal representatives of the Distributor, declared that: **One point one (I.1)** Their representation is of a private entity, with its own legal personality and capital, that in their actions as authorized distributors of the Final Distribution Service of electricity is governed by the General Law of Electricity of the Republic of Guatemala and its Regulations, and has the faculties required for the execution and performance of this Contract and the faculties to sign the same. **One point two (I.2)** To satisfy the supply of the consumers of the Final Distribution Service (affected or unaffected to the Social Tariff Law) and according to the procedures established in the present regulation, requires contracting the supply of electricity in its components of Power and Energy. **One point three (I.3)** the National Commission of Electric Energy through its resolution CNN dash one hundred and eighty five dash two thousand and ten (CNEE-185-2010) approved the Distributors' Terms of Reference which authorize the elaboration of the Terms of the Tender, and in consequence the present Supply Contract. **Two (II)**. The representative of the Awardee declares that **Two point one (II.1)** Is a corporation established under the laws of the of the State that _____ is registered in the Registro Mercantil General de la Republica de Guatemala, under number _____, folio _____ of the book _____. **Two point three (II.2)** It has the legal personality and authorizations to execute and fulfill this Contract, and the technical and economic capacity to fulfill the terms of the same. **Two point three (II.3)** That whom they represent know of the content and requirements that are established in the General Law of Electricity and its Regulation and also rectifies that is solvent in its fiscal obligations, for it which manifests no legal impediment for this matter. **SECOND: DEFINITIONS, HEADERS AND REFERENCES. Two point one (2.1) Definitions.** To the effects of this Contract, the following terms, when they are in capital letters, will have the meaning that are described as follows: "**Creditors**" are the people that provide financing to the Awarded under the financial terms to acquire the rights for the construction or operation of the Generating Plant or to replace or supply, totally or partially, said financing by other in the medium and long term, as well as the people who sign contracts with the Awarded protecting interest rates or Exchange rates in relation to any financing (in the understanding that said contracts will be linked to the financial contracts and will not have speculative ends), as long as said financing have not been paid in its entirety on the date in question. "**Assets**" mean the Plant and the property rights, if any, all the contracts, rights, equipment and necessary systems in part or all to generate Guaranteed Power. "**Awarded**" means (name of the Awarded). "**Wholesale Market Administrator or AMM**" Wholesale Market, according to the established in article forty four (44) of the General Law of Electricity. "**Governmental Authority**" means any



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

government entity, executive power, legislative power, judicial power, be it state or municipal, or a secretariat, department, tribunal, commission, council, dependency, body, or authority similar to any of said government entities of the republic of Guatemala. **"Terms of the Tender"** Are the terms, dispositions, generals and technical specifications in the document prepared by the Distributors, in accordance to the Terms of Reference approved by the National Commission of Electric Energy through resolution CNEE-185-2010, that the Awarded has complied with. **"Changes in the law"** means any change in the Applicable Laws, from the date of reception of the Bid in conformity with the Terms of the Tender including, but only in the extent that said change: (a) refers to: (i) fiscal issues, (ii) customs, (iii) environmental, (iv) labor and workplace safety and (v) changes in the commercial Coordination Regulations and Operational in the AMM related with the regulation of energy; or (b) affects the Wholesale Market Agents of foreign capital and wholesale market agents of domestic capital in different manners. **"Central"** has the significance that is given by the Regulations of the General Law of Electricity. **"National Commission of Electric Energy, CNEE or Commission"** Is the technical body of the Ministry of Energy of Mines, created in conformity to the General Law of Electricity, Decree number ninety three dash ninety six (93-96) of the Congress of the Republic of Guatemala. **"Coordination Committee"** means the committee established by the Distributor and the Awarded according to Clause Fifteenth of the present contract. **"Guaranteed Net Thermal Consumption Unit, o CTUNG"** is the consumption of fuel required to generate one Megawatt-hour of electricity guaranteed in the Bid, having to consider the losses from the entry point of fuel to the delivery of electricity in the terminal son the upper side of the transformer in the point of delivery, taking into account degradation for the term of the Contract in all environmental conditions of the site of installation. **"Supply Contract, or the Contract"** It is the present document contained in a notarized form signed by the Distributor and the Awardees where the terms are established as to how the supply of power and energy will be provided by the awardee to the consumers of the Final Distribution Service (*affected or unaffected by the Social tariff Law*) of the Distributor, as well as the price, form of payment, guarantees and other technical conditions as related to said supply. **"Load Curve Difference Contract"** Is the type of contract that is described in paragraph a) 13.4.1 of the Commercial Coordination Regulation No. 13 of the AMM. **"Generated Energy Contract"** Is the type of contract described in paragraph f) 13.4.1 of the Commercial Coordination Regulation No. 13 of the AMM. **"Energy Purchase Option Contract"** Is the type of contract that is described in paragraph c) thirteen point thirteen point four point one (13.4.1) of the Commercial Coordination Regulation number thirteen (13) of the Wholesale Market Administrator. **"Backup Power Contract"** Is the type of contract that is described in paragraph thirteen point three point four point three (13.4.3) of the Commercial Coordination Regulation number thirteen (13) of the Wholesale Market Administrator. **"Firm Contract"** It has the meaning given in article two (2) of the Commercial Coordination Regulation number ten (10), of the Wholesale Market Administrator. **"Business Day or Day"** means any day, except: (i) Saturdays and Sundays and (ii) those considered as days off and holidays by the Applicable Law or by labor contracts of which the Distributor and the Awardees are part of at any given time. **"Business Day or Banking Day"** means any Day the financial entities are obligated or authorized to provide service to the public in Guatemala, during business hours. **"Firm Demand"** has the significance given in article one (1) Regulation of the Wholesale Market Administrator **"Dollars, or US\$"** means the currency of legal tender in the United States of America. **"Environmental Impact Study, or EIA"** Means the study for the assessment of environmental impact of the New Generation Plant, required according to Applicable Laws, and that is evaluated by the competent authority for the granting of the authorization in matters of environmental impact for the construction and operation of the installations. **"Event of Default"** means any of the events described in clause Eleventh of the present Contract. **"Start Date"** It has the significance established in paragraph six point seven (6.7) of the Sixth Clause **"Start Date of Scheduled Negotiations"** Is the date in which the Awardee must begin the paperwork for New Generating Plants before Governmental Authorities for obtaining the Permits, which is (the



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

date in the Schedule of Events of the Tender). **“Start Date of Supply”** is the date established in the Fifth Clause of the Present Contract, in which starts the supply of Power and Energy from the Awardee to the Distributor, in conformity to the established in the present Contract and the Contract Form. **“Date of Validation of the Contract Form”** Is the date on which the AMM has analyzed and verified the Contract Form that the Awardee and the Distributor have entered in the informatics system of the AMM, which has to be thirty (30) Days before the Date of the start of Supply. **“Agent”** Means any person who is represented directly or indirectly by any other person who has a minimum economic participation of up to thirty percent (30%) in the same and intervenes through his representative in the direction of the administration or in the policies of said legal person, through the ownership of participating shares or other securities with a right to vote through any other means. **“Force Majeure”** means all accidents or natural or fortuitous event that: (a) precludes or delays the affected party to comply with its obligations in accordance to the present Contract, (b) is beyond reasonable control of the affected party, (c) is not its fault or negligence and (d) it could not be avoided by the affected party that suffers, through the exercise of due diligence including, without limitation, the cost of the total reasonable amount given the investment of the Awardee in the assets, all the benefits of available insurance for the Awardee. Subject to satisfying the established conditions in the subsections (a) to (d) of the previous definition, Force Majeure will include, without limitation: (i) natural phenomena, such as storms, flooding, lightning and earthquakes; (ii) wars, civil unrest, revolts, insurrection, sabotage, and trade embargos against Guatemala or against any other country, (iii) transport disasters, such as maritime, railway, ground or air; (iv) strikes or other labor conflicts in Guatemala that are not motivated by the infringement of a labor contract by the affected Party; (v) fire; and (vi) acts or omissions from a Governmental Authority that were not voluntarily solicited or promoted by the affected Party nor caused by the infringement of its obligations under the present Contract or Applicable Law. Force Majeure will not include any of the following events: (A) economic difficulties; (B) market changes conditions; unless established in the subsection; (iv) previous, (C) delays in compliance by a contractor or delays in the delivery of machinery, main equipment of Generating Plant, parts or consumables, unless when it due to force majeure within the terms of Applicable Laws. **“Preoperative Guarantee”** Has the significance established in paragraph six point four (6.4) of the Sixth Clause. **“Renewable Distributed Generation”** It has the meaning given in Article 1 of the General Law of Electricity. **“Burden”** means guarantee, mortgage, easement, usufruct, guaranteed trust or any easement or burden on an Asset or right. **“Taxes”** mean all or any of the contributions (including without limitation, income tax, gross income tax, sales tax, property tax, valued added tax and fiscal stamps), charges (including without limitation for documentation, license or registrations) taxes, duties, retentions of any nature together with all and each one of the penalties, fines, increases to taxes and interests of the same, charges or determined by any Governmental Authority. **“Applicable Laws”** Are the laws, regulations and current norms of the Republic of Guatemala. **“Social Tariff Law for the Supply of Electricity or Social Tariff Law.”** Is the Decree number ninety six dash two thousand (96-2000) of the Congress of the Republic of Guatemala. **“Bid”** means the proposal submitted by the Bidder in conformity to the Terms and Conditions, including the Technical and Economic Offers **“Firm Efficient Supply”** Has the meaning given in article one (1) of the Wholesale Market Regulation. **“Parties”** means the Distributor and the Awardee, such as its respective successors or assignees permitted under the provisions of this contract. **“Participant”** means: (a) an individual Bidder, (b) any member of a Consortium, or (c) any agent or direct or indirect shareholder of an individual Bidder or a Consortium used to comply with one or all of the established requirements of the Terms of the Tender. **“Supply Period”** Is the period of time when the Awardee supplies Guaranteed Power and Energy, according to the terms established in this contract and will be established in the Form of the Contract that begins on the Date Supply Starts. **“Permits”** means all of the permits, licenses, authorizations, consents, decrees, exemptions, registrations, approvals or other authorizations that must be obtained with any Governmental Authority or issued by these, including the approval of the

Environmental Impact Study, for the signing and compliance of this contract. **“Contract From”** Means through which the AMM incorporates the present Supply Contract in the Futures Market according to the provisions of the Commercial Coordination Regulation number thirteen (13), for its technical and commercial paperwork, according to the same. **“Generating Plant”** refers to the New Generating Plants, Generating Plants in Operation or the indication of International Transactions as Firm Import Contracts, listed in the Annex of this Contract, under which Guaranteed Power and Energy will be supplied by the Awardee. **“New Generating Plant”** is the Central or Centrals awarded, with which the Awardee supplies Guaranteed Power and Energy to the Distributors, that have started or will start commercial operation in the Wholesale Market of Guatemala after one (1) of January of two thousand and ten (2010) complying with the present Contact. **“Generating Plant in Operation”** is the Central or Centrals awarded, which do not comply with the condition of New Generating Plants and are in operation since before one (1)1 of January two thousand and ten (2010)). **“Surplus Power”** means the capacity of power in excess of the Guaranteed Power the Generating Plant possesses, like Firm Efficient Offer to cover Firm Demand. **“Maximum Power”** means maximum Power that each Generating Plant is capable of supplying in the Point of delivery; said power will be determined according to the established process in the Commercial Coordination number (2) of the AMM. **“Guaranteed Power”** Is the power that the Awardee supplies to the Point of Delivery as Firm Efficient Offer to cover Firm Demand, established in the Annex of this Contract. **“Price of Power”** will have the meaning established in the Annex of this Contract. **“Price of Energy”** will have the meaning established in the Annex of this Contract. **“Financial Participation”** Means the direct or indirect investment (as shares, participation or subordinate debt) in the Awardee. **“Point of Connection”** Is the node of the National Interconnected System -SNI- where the New Generating Plant or a Generating Plant in Operation and where Guaranteed Power and Energy are supplied to the Distributors, according to the established provisions of the Terms of the Tender. This node is also where the commercial measurement of the Wholesale Market will be enabled, where it corresponds. **“Point of Delivery”** Is the node of the National interconnected System established in the Annex of this Contract, where Guaranteed Power and Energy are delivered by the awardee to the distributor. **“Regulation of the General Law of Electricity”** Governmental Accord number two hundred and fifty six dash ninety seven (256-97) of the Presidency of the Republic of Guatemala and its reforms. **“Regulation of the Wholesale Market Administrator”** Government Accord number two hundred and ninety nine dash ninety eight (299-98) of the Republic of Guatemala and its reforms. **“Sound Engineering Practices”** are all of the activities of a technical and administrative nature that are not detailed in the Terms of the Tender and in this contract, and are necessary and that the Awardee must carry out in compliance of the obligations established in this Contract. **“Final Distribution Service”** it has the meaning given in article six (6) of the General Law of Electricity. **“Principal System”** it has the meaning given in article six (6) of the General Law of Electricity. **“Secondary Transmission Systems”** It has the meaning given in paragraph nine point two of (9.2) of the Commercial Coordination Regulation number nine (9) of the AMM **“Term of Reference”** are the guidelines, general dispositions approved by the CNEE through resolution CNEE dash one hundred and eighty five dash two thousand and ten (CNEE-185-2010) from which the Distributor prepared the Terms of the Tender. **“International Transaction”** it has the meaning given in article one (1) of the Wholesale Market Regulation. **Two point two (2.2) in the Use of the Singular and Plural.** The terms defined in paragraph two point one (2.1) of the Second Clause of this Contract may be used in singular as well as in plural. **Two point three (2.3) References.** Unless, contrary disposition of this contract, all the references or clauses or annexes, it is understood to be relative to the Clauses and Annex of this Contract. **THIRD: OBJECT OF THE CONTRACT.** The object of this Contract is the supply for the consumers of the Final Distribution Service (affected and unaffected by the Social Tariff Law) of the (Distributor), by the Awardee of: a) Guaranteed Power established in paragraph four point three (4.3) of the Annex of this Contract, and b) Energy in the Point of Delivery according to the established in paragraph four point four (4.4) of the Annex of the Contract, complying with indicated in

the (subsection (a), subsection (c) or subsection (f) of paragraph thirteen (13) of the AMM, the above according to the conditions established in the Contract. **FOURTH: DECLARATIONS AND GUARANTEES. Four point one (4.1) Declarations and Guarantees of the Awardee.** The Awardee declares and guarantees to the Distributor the following: (a) each one of its declarations contained at the beginning of the Contract are true and correct in all substantial aspects. (b) Nor the signing of this Contract, nor the compliance of its obligations derived from the same: (i) will be in conflict with a result in an infringement or constitute a violation or infringement to any of the Applicable laws or any emission contract of , bonds, mortgage, trust or any instrument or contract (including, without limitation, any clause prohibiting easements or a similar clause) of which the Awardee is part of or in virtue required or subject to any of its assets, or (ii) result in the creation or imposition of an Easement on any Asset owned by the Awardee. (c) The signing and compliance by the Awardee of this Contract have been duly authorized through all necessary corporate actions. This Contract has been duly signed by the Awardee and assuming the proper authorization and signing by the Distributor, constitutes a legal obligation, valid and compulsory of the Awardee, required according to its terms, subject to the limitations established by the current regulation. (d) It is not necessary a permit from the part of Governmental Authority for the signing of the Contract by the Awardee. (e) There is no legal dispute or proceeding pending, nor is aware of any threat of lawsuit or proceeding that, if resolved disfavorably against the Awardee or any participant could affect substantially in a negative manner its operations or financial status or the validity, legality or enforceability of the obligations acquired by the Awardee in virtue of this Contract or the consummation of the operations provided in this contract. That any action or proceeding have been established, nor has any order, decree, providence, of any type, by any Governmental Authority, been issued, to prevent, restrict, or in any way impede the consummation of the Awardee of transactions contained in this Contract. (f) All of the declarations effected and all of the information submitted to the Distributor, in relation with Tender for which the present Contract was issued, is true and will continue to be true and correct in all substantial aspect and said information does not omit to manifest any relevant fact that is necessary to manifest in order to make said information, altogether, is not deceiving in light of circumstances, for which said information was provided. From the date of delivery to the Distributor, of any part of the information required in conformity with the Terms of the Tender, no event has occurred that has resulted or could result in a substantial adverse change in the operation or financial situation of the Awardee or in the Guaranteed Power offered to comply with the obligations of this Contract. **Four point two 4.2). Declarations and Guarantees of the Distributor.** The Distributor declares and guarantees to the Awardee the following: (a) Each one of the declarations contained at the beginning of the Contract are true and correct in all its substantial aspects; c) Nor the signing of this Contract, nor the compliance of the obligations by the Distributor derived from the same: (i) will be in conflict with a result in an infringement or constitute a violation or infringement to any of the Applicable laws or any emission contract of , bonds, mortgage, trust or any instrument or contract (including, without limitation, any clause prohibiting easements or a similar clause) of which the Distributor is part of or in virtue required or subject to any of its assets, or (ii) result in the creation or imposition of an Easement on any Asset owned by the Distributor. (c) The signing and compliance by the Distributor of this Contract have been duly authorized through all necessary corporate actions. This Contract has been duly signed by the Distributor and assuming the proper authorization and signing by the Distributor, constitutes a legal obligation, valid and compulsory of the Distributor, required according to its terms, subject to the limitations established by the current regulation. (d) There is no legal dispute or proceeding pending, nor is aware of any threat of lawsuit or proceeding that, if resolved disfavorably against the Distributor or any participant could affect substantially in a negative manner its operations or financial status or the validity, legality or enforceability of the obligations acquired by the Distributor in virtue of this Contract or the consummation of the operations provided in this contract. That any action or proceeding have been established, nor has any



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

order, decree, providence, of any type, by any Governmental Authority, been issued, to prevent, restrict, or in any way impede the consummation of the Distributor, of transactions contained in this Contract. **Four point three (4.3). Changes to Information.** Each party must inform, in writing to the other party, any circumstance that may affect the veracity of its declarations vested in this Clause. Said notification must be carried out as soon as possible or in any case five (5) business day after the date in which it has knowledge of said circumstance. **FIFTH. SUPPLY PERIOD OF SUPPLY CONTRACT.** The start of the Supply Period of this Contract is **at zero (00:00) hours of** _____ date constituted as the Start of Supply and ends **at twenty four hours (24:00)** _____. This Contract will be valid from the date it is signed until the end of the Supply Period established in this Clause. **SIXTH: OBLIGATIONS OF THE AWARDEE PRIOR TO THE START DATE OF SUPPLY. Six point one (6.1) Authorizations and permits of the activity.** The Awardee must, at its own cost, obtain timely and maintain in full force and effect all of the Permits, including in expository, the authorization and registration before the Ministry of Energy and Mines as Agent of the Wholesale Market, its commercial habilitation in the AMM to participate in the Spot Market as Agent, and the validation of the Contract Form before the AMM for the Supply Period. **Six point two (6.2) Supply of Fuel.** Prior to the start of the Supply Period the Awardee will be responsible to sign all of the supply of fuel contracts, in accordance to the established in the Annex of this Contract, in case it is necessary. **Six point three (6.3) Date of Commercial Operation of New Generating Plants.** The Awardee who offers to comply with his obligations to supply power and energy with New Generating Plants, must reach the Date of Commercial Operation, accredited by the AMM, of each New Generating Plant, no later than forty (40) days before the Supply Date start established in its Fifth Clause. **Six point four (6.4) Preoperative Guarantee.** (a) To guarantee the compliance of its obligations, derived from this Contract from the date of signing to the Supply Start Date of the Generating Plants established in this Contract, the Awardee must provide the Distributors simultaneously to the signing of this Contract, an irrevocable and unconditional letter of credit in favor of the Distributor, issued by a financial entity acceptable to the distributor, for the amount of (_____), on the understanding that the Awardee could present letters of credit issued by a financial entity that does not operate legally in Guatemala, as long as the Distributor can execute the Preoperative Guarantee in Guatemala. In case the Preoperative Guarantee is issued by a financial entity that does not operate legally in Guatemala, they must be advised and notified by a financial entity that operates legally in Guatemala that is its corresponding agent. The Preoperative Guarantee will be paid at the first requirement of the Distributor to the issuer and must constitute according to the established format in the Terms of the Tender. In case of extension of dates in Critical Events according to subsection (b) of paragraph six point eight (6.8) of the present Clause, the Awardee must extend the term of any letter of credit issued according to this Clause, by the period of the extension, in a way that the Preoperative Guarantee is current to the terms and amounts required. The Awardee must prove reliably the extension in the current letters of credit to the Distributor with at least twenty (20) Dias before the original expiry of the same. The infringement of the Awardee to increase the amount to affect the extension of the terms in the letters of credit as established in the present Contract will be cause of termination of Contract and the stipulation in clause eleventh (11) of this contract will be applied, (b) the Distributor will have the right to execute the Preoperative Guarantee in order to collect conventional penalties or reimbursements paid in excess by the Distributor or any other amount owed by any other concept by the Awardee to the Distributor in relation to this Contract. In case of anticipated termination of this Contract with pending claims, the Awardee will provide to the Distributor a letter of credit to guarantee the reasonable amount estimated by the Distributor for each said claims that have not been paid by the Awardee by Awardee to the Distributor within five (5) Banking Days starting from the payment request in writing effected by Distributor. In case the Distributor executes the Preoperative Guarantee by any of the causes established above, this will notify the Awardee of the execution and the corresponding reasons and as long as it's not a conventional penalty for termination of this contract. The Awardee, within



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

ten (10) Days following said notification, must replace the Preoperative Guarantee to the total amount in Dollars that is required at that moment in accordance to the established in subsection (a) of the present Clause; on the understanding that the Awardee will not be obligated to carry out a replacement before the start Date. (c) In case that the Awardee does not comply with any Critical Event on or before the Date of the Critical Event, must increase the amount of the Preoperative Guarantee by seven thousand five hundred Dollars per megawatt awarded of Guaranteed Power (US\$ 7,500.00 per MW of GP Awarded) per Critical Event, *(in the case of Centrals under Generated Energy Contracts, the price of Power under which is calculated the increase in the amount of the Preoperative guarantee will be the maximum power of the installation, established in the Annex of this Contract)*. Each of the additional guarantees must be maintained in full force and effect until after twenty (20) Days of the date of the Contract Form Validation. In case that after an additional guarantee has been delivered, the Awardee reaches any Critical Event (to and including the Date of Contract Form Validation or the Supply Start Date), no later than the Critical Event Date that corresponds, the Distributor will release all of the additional guarantees delivered, on the understanding that in said case the Awardee will not have responsibility for the conventional penalties that would have been guaranteed by said additional guarantees.

If the Awardee infringes in timely delivering any additional guarantees in accordance to this Contract, the Distributor will have the right to execute the Preoperative Guarantee to collect the conventional penalties as corresponding. In the case of imputable causes to the Awardee and does not meet the Commercial Operation Date within a period of one (1) year counted from the Supply Start Date, the Distributor will have the right to terminate this Contract through notification to the Awardee in conformity with the Termination Clause of this Contract, In such a case the Distributor will have the right to execute the amount of the Preoperative Guarantee corresponding to conventional penalties. (d) The Awardee will cease to have the obligation to maintain current the Preoperative Guarantee on the date that happens first between the Supply Start Date and after sixty (60) Days of the termination of this contract. On that date the Preoperative Guarantee will be freed from the Awardee after the amounts have been cashed in corresponding in conformity to subsection (b) of the present Clause. (e) In case that the Distributor unduly cashes the Preoperative Guarantee and charges any other amount that is not owed by the Awardee to the distributor, in conformity to this Contract, the Distributor must refund said amount to the Awardee within fifteen (15) Days following to that in which it was determined that it was unduly charged, together with any interest earned from the date of the unduly charge to the date of refund. **Six point five (6.5) Termination of Contract before the Supply Start Date.**

In case that any Infringement Event by the Awardee occurs prior to the Supply Start Date and the Distributor enforces its right in terminating this Contract in conformity with paragraph eleven point four (11.4) of the Eleventh Clause of this contract, the Awardee must pay to the Distributor, as a conventional penalty, an amount equal to the sum of the total amount of the Preoperative Guarantee in conformity to paragraph six point four (6.4) of the Sixth Clause of this Contract, amount that the Distributor can charge cashing the Preoperative Guarantee, if this is possible despite having made reasonable efforts. The Awardee will give indemnify the Distributor for damages suffered as a result of infringement by the Awardee in supplying the Guaranteed Power and Energy, under the terms contemplated in this contract. This conventional penalty will be independent from all other responsibilities of the Awardee to the Distributor for events or infringements that do not consist in the lack of supply of Guaranteed Power and Energy, under the terms contemplated in this contract. **Six point six (6.6) Revision of Information.** With the signing of this Contract, the Awardee confirms that it has revised and accepted the Terms of the Tender and all of the documents and information provided by the distributor prior to the date of signing of this Contract and declares that they are adequate to complying with the object of this Contract. The Awardee will not be exempted of any responsibility, nor could it request an increase in the charges offered or any modification to the terms of this Contract, as a consequence of any omission in the revision of the issues, data and information to the reference in this Contract. **Six**



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

point seven (6.7) Schedule of Project Performance. Subject to the dispositions in the present clause, the Awardee must provide to the Distributor the model contained in the Terms of the Tender, a Schedule of Project Performance for each New Generating Plant contained in the Contract, signed by the legal representative, in which it notifies that the Awardee has obtained the financial resources or has founded reason to affirm that it will have the financial resources to meet its obligations in conformity with this Contract or has started the work, under a continuous schedule and consistent with Critical Events. The Day that the Awardee delivers to the Distributor each Schedule of Project Performance will constitute the Start date, that will have to happen no later than the Scheduled Start Date of Paperwork. Those considered as Critical Events for Generating Plants in Operation and International Transactions, will be the Validation Date of the Contract Form and the Supply Start Date. **Six point eight (6.8) Critical events of Schedule of Project Performance.** (a) No later than each Critical Event Date, the Awardee will be obligated to demonstrate to the Distributor, that the corresponding Critical Event has been fulfilled according to the terms of this contract. (b) In case that the Awardee is delayed in meeting any Critical Event corresponding to the Date of the Critical Event as a result of Force Majeure, the infringement of the Distributor with its obligations under this contract or any delay attributable to the Distributor; the corresponding Critical Event Date and all subsequent Critical Event Dates will be extended, for a period of time, mutually agreed upon by the parties, which will not exceed the delay period; on the understanding that there will be no more extensions unless the Awardee has requested for an extension in writing specifying the reason for the same no later than ten (10) Business Days after the Awardee has knowledge of the occurrence of Force Majeure or the act or omission by the distributor that has caused said delay. (c) In case that the imputable causes by the Awardee, including a declarative but without limitation of the occurrence of the Infringement Event by the Awardee, infringes in its obligation to meet the Commercial Operation Start Date no later than forty (40) Days before the Supply Start Date, it must pay in advance and in monthly periods, in order to solve the conventional penalties owed for each month of delay and for each megawatt of Guaranteed Power of the New Generation Plants contained in this Contract, in the following manner: Of one (1) to six (6) months of delay a fine will be applicable of seven thousand five hundred Dollars per megawatt awarded of Guaranteed Power (US\$ 7,500.00 per MW awarded of GP), and six (6) to twelve (12) months of delay a fine will be applicable of fifteen thousand Dollars per megawatt awarded of Guaranteed Power (US\$ 15,000.00 per MW awarded of GP), *(for the case of Centrals under a Generated Energy Contract, the price of power in megawatts (MW) under which payments in advance are calculated and in monthly periods will be the maximum power that the installation has, established in the Annex of this contract)*. It is understood that when the infringement is less or equal to fifteen (15) Days then no fines will apply considering it as a month delay. In case the Awardee does not meet the Commercial Operation Date within a period of one year from the Supply Start Date, the Distributor will have the right to terminate this Contract through notice to the Awardee in conformity with paragraph eleven point four (11.4) of the Eleventh Clause of this Contract, in which case for imputable causes the Awardee, including a declarative without limitation of the occurrence of an Infringement Event by the Awardee, its obligation to validate the Contract Form no later than the Validation Date of Contract Form, it must make payments in advance and for monthly periods, in order to solve the conventional penalties owed for each month of delay and for each megawatt of Guaranteed Power of the New Generation Plants contained in this Contract, in the following manner: Of one (1) to six (6) months of delay a fine will be applicable of seven thousand five hundred Dollars per megawatt awarded of Guaranteed Power (US\$ 7,500.00 per MW awarded of GP), and six (6) to twelve (12) months of delay a fine will be applicable of fifteen thousand Dollars per megawatt awarded of Guaranteed Power (US\$ 15,000.00 per MW awarded of GP), *(for the case of Centrals under a Generated Energy Contract, the price of power in megawatts (MW) under which payments in advance are calculated and in monthly periods will be the maximum power that the installation has, established in the Annex of this contract)*. It is understood that when the

infringement is less or equal to fifteen (15) Days then no fines will apply considering it as a month delay. In case the Awardee does not meet the Commercial Operation Date within a period of one year from the Supply Start Date, the Distributor will have the right to terminate this Contract through notice to the Awardee in conformity with paragraph eleven point four (11.4) of the Eleventh Clause of this Contract, in which case the Distributor will have a right to charge the conventional penalty established in paragraph six point five (6.5) of the present clause. **Six point nine (6.9) Progress Reports.** Twenty (20) days before the Schedule Start Date of Negotiations, the Awardee could present, for consideration by the Distributor, the modifications proposed to the Critical Event Dates established in the Schedule of Project Performance; on the understanding that the Awardee could not suggest modifications to the Schedule Start Date of Negotiations, the Commercial Operation Date, the Contract Form Validation Date or the Supply Start Date, ones which must remain without change. The Distributor could approve or reject the proposed modifications. If the parties agree on the modifications to the Critical Event Dates, the Schedule of Project Performance that corresponds must reflect the modifications to said dates. (b) the distributor will have the right to appoint a representative, who will have the authority to revise, follow up and physically inspect the compliance of the Critical Events, on the understanding that the Distributors, as well as complying with reasonable instructions of the Awardee, will not interfere unjustly with the development and construction of the works with the proof of operation of the installations or with the compliance of the security regulations of the Awardee. The representatives of the Distributor will have access to information of the installations of the New Generating Plants and its contractors involved in its design, construction and proof, with the result of verifying the compliance of Critical Events. The Distributor will have the right to maintain representatives or employees at the site with the finality of verifying the compliance of Critical Events. None of the stipulated in this subsection, will release the Awardee from complying with any obligation in conformity to this Contract or any way diminish its responsibility with respect to the same. (a) The technical revisions, recommendations, approvals and inspections by the distributor in relation to the installation of the New Generating Plants, nor will they be interpreted neither as a rectification of the design of the same, nor as a security guarantee, durability, reliability or aptitude of the installations. The exercise or the lack of exercise of rights in the present subsection grants to the Distributor, will not be considered a waiver to any cleansing, action or recourse the distributor may have, nor will it release the Awardee of complying with any obligations, nor diminish its responsibility to the same. (d) The Awardee will designate a representative to act as a Manager of each Project during the preparation of engineering, construction and proof of installations. The Manager of each project will be obligated to receive notification from the Distributor with respect to any issue related with the present Contract and notify in writing the representative of the Distributor the state of work performance that arise from such notifications in a term no greater than twenty (20) Days from the date of notification. (e) Commencing on the date of signing the present Contract to the Supply Start Date, the Awardee must elaborate a trimester report that summarizes the progress in the development of each New Generating Plant, including a detailed form of the physical advances of the same, with the finality of verifying the compliance with Critical Events. Each report will be handed in within the first seven (7) Days following the conclusion of each trimester. (f) All the documents of each New Generating Plant, including without limitations, in the construction contract(s) and any modification or addition to the same, must be in the terms and conditions compatible with the obligations of the Awardee and the rights of the distributor in conformity with this Contract and the conditions in the Terms of the Tender.

SÉVENTH. GUARANTEED POWER COMMITMENT. Seven point one (7.1) Capacity Commitment.

The Awardee must have at all moments, during the Supply Period, when the supply is made through a Energy Purchase Option or Load Curve Differences Contract, Firm Efficient Offer Contract to cover Firm Demand, assigned by the AMM through Backup Power Contracts, to make Guaranteed Power available to the Distributor during the Supply Period established in the Fifth Clause of this Contract and (b) the Distributor must acquire the Awardee's



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Guaranteed Power during the Supply Period. **Seven point two (7.2) Priority in the Assignment of Maximum Power.** In case the Awardee had committed with a third party the Surplus Power, in the first place the commitment by the Awardee to offer the Distributor Guaranteed Power will be applied, not being subject, in any case, said Maximum Power by the Generating Plant to proportional distribution between the Distributor and any clients of the Awardee who have not contracted through the Open Tender PEG dash one dash two thousand and ten PEG-1-2010).

EIGHTH: OBLIGATIONS OF THE AWARDEE DURING THE SUPPLY PERIOD. Eight point one (8.1) Operation. During the term of the present Contract, the Awardee will operate and keep each Generating Plant in conformity with Clean Engineering Practices, the Technical Regulations issued by the CNEE, the Commercial Coordination Regulation and Operative of the AMM, Applicable Laws and other terms and conditions established in this Contract. Without limitation to the above, the Awardee will be responsible to: (i) inspect and carry out maintenance of the Generating Plant; and (ii) repair or correct the defects that are found in any part of the Generating Plant, independently that said defects are related to design, labor or manufacturing of the materials or are derived from the normal use and operation of the Generating Plant. **Eight point two (8.2) Dispatch Orders.** The dispatch of each Generating Plant will be carried out according to the Commercial Coordination and Operative of the AMM. **Eight point three (8.3) Invoicing.** The invoicing will be carried out according to the established Annex of this Contract. **Eight point four (8.4) Record of Measurements.** The Awardee must keep records of the measurements that correspond according to the established Applicable Laws and the current Regulation for the AMM. **Eight point five (8.5) Notification of Infringement Event** As soon as the Awardee has knowledge of the existence of an Infringement Event, will notify such circumstance in writing to the Distributor, indicating in detail the circumstances that caused such an Event and specifying the actions that it plans to carry out in respect. **Eight point six (8.6) Compliance Guarantee.** To guarantee the compliance of the obligations of the Awardee derived from this Contract, of the supply of Guaranteed Power and energy to the Distributor in conformity to this contract after the Date of the Supply Start, it is agreed that during the Supply Period both Parties can establish the compliance guarantees in a mutually and timely convenient satisfaction. **NINETH: OBLIGATIONS OF THE DISTRIBUTORS DURING THE SUPPLY PERIOD. Nine point one (9.1) Price and Payment Obligation.** The Distributor is obligated to recognize in favor of the Awardee the Price of Power when it corresponds to a Energy Purchase Option Contract or to a Load Curve differences Contract, and the Price of energy, indicated in the Annex of this Contract and make payment in conformity to the Annex of this Contract and to the provisions in paragraph nine point two (9.2) of this clause. **Nine point two s (9.2) Date and Currency of Payment.** The currency of payment could be in Dollars or in legal tender of Guatemala which is the Quetzal. In the case that the currency is the Quetzal and to the effect that the invoicing will be applied the type of currency that is published by the Banco de Guatemala for the last Business Day of supply invoiced, in conformity to the publications issued in the web page of cited Banco on the days of greater circulation in the Republic of Guatemala, relative to the exchange of reference of currency of Quetzal in relation to United States of America Dollars. The payments will be made by the Distributor in conformity to the instructions in writing by the Awardee. In case that the scheduled Day is not a Banking Day, the Distributor must make payment on the following Banking Day. **Nine point three (9.3) Arrears.** The Distributor will pay interests on any expired payment, from the time of the expired date until full payment has been made to the interest rate for legal operations in dollars, according to the established in article one thousand nine hundred and forty seven (1947) of the Civil Code, for purposes of computing said interests, the value added tax will not be considered corresponding to said expired payments not yet paid. **Nine point four (9.4) Invoicing Disputes.** In case of any dispute concerning to all or in part to the statement of account or invoices issued under this Contract, the Distributor must pay the total amount in dispute on the dates in which they must be paid according to this Contract and will notify the Awardee of the portion of the contested invoice. The resolution of the disputes must include a compensation for the financial costs to the Interest rate legal to all operations in United States



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

of America dollars according to the established in article one thousand nine hundred and forty seven (1947) of the Civil Code. Each invoice and its corresponding statement of account will be considered as final when the Distributors has not notified the Awardee of any objection within the three (3) following Months of the Month in which the statements of account were delivered, unless a Guatemalan Governmental Authority requests a refund in conformity with Applicable Laws as a consequence of excess payment. **Nine point five (9.5) Payment Guarantee.** To guarantee the compliance of the obligations of the Distributor derived from this Contract, in relation to the payment to the Awardee, it is agreed that during the Supply Period both parties can establish the payment guarantees timely and mutually agreed satisfaction, when the Distributor incurs costs related to the Payment Guarantee, the same may be recognized in the tariff with prior authorization of the CNEE. **TENTH: MEASUREMENT.** All related to the measurement equipment, the Parties must comply with the established in the Commercial Coordination Regulation fourteen (14) (NCC14) of the AMM. **ELENTH FIRST TERM, INFRINGEMENT AND RECOURSES. Eleven point one (11.1) Term of the Contract.** This Contract will be current from the date of signing and, unless it is terminated in conformity with the terms of the same, it will remain current from its signing to the Supply Start Date and during the Supply Period established in the Fifth Clause. **Eleven point two (11.2) Infringement Events by the Awardee.** Each of the following events, unless resulting from Force Majeure, will be considered as an Infringement Event, and will give the right to the Distributor to execute the Preoperative Guarantee, as long as it is proven of the Awardee by the Distributor: (a) any of the following facts: (i) that does not have the Firm Efficient Offer to cover Firm demand assigned by the AMM, through the Backup Power Contracts or through International Transactions through Firm Import Contracts, when it corresponds to an Energy Purchase Option Contract or to a Load Curve Differences Contract, to supply Guaranteed Power to the Distributor from the Supply Start Date. (ii) That it does not make available to the Distributor the Guaranteed Power and energy established in this Contract or (iii) that it has sufficient evidence of the delay of the entry of commercial operation of the New Generating Plants or the commercial habilitation of International Transaction through a Firm Import Contract; (b) that any declaration or Awardee guarantee in conformity to this Contract: (i) is proven to be incorrect in any aspect from the date of signing of this Contract, (ii) during the moment of proving that it was incorrect, it results prejudicial to the interests of the Distributor under this Contract and (iii) if is susceptible to correction, continues without correction for a period of twenty (20) Days from the time the Awardee receives notification from the Distributor to that respect; (c) that the Awardee is insolvent, incapable of paying its debts at expiry of the same or requests the imposition of a trustee, administrator, liquidator or controller, or one was appointed or takes control of the Awardee totally or in part of its assets and liabilities; that the Awardee or the total or a substantial part of its properties, assets or income were subject to a process of bankruptcy, payment suspension, dissolution or liquidation; or that the Awardee carries out, signs a general assignment, an agreement in benefit of its creditors or threatens in writing to suspend its operations or any substantial part of them or any event that occurs under any Applicable Law had an analogous effect to the events mentioned in the present subsection or (d) that the Awardee does not observe, comply or carries out any obligation under this Contract, as long as said infringement continues for a period of twenty (20) Days from any communication is delivered by the Distributor to the Awardee in relation to the same and said infringement cannot be corrected or continues without correction for a period of twenty (20) Days from said communication or (e) No validation of Contract Form, for Generating Plants no later that the Contract Form Validation Date, under with the conditions established in this contract and for the Supply Period to start on the Supply Start date established in the Fifth (5) clause. **Eleven point three (11.3) Infringement Events by the Distributor.** Each one of the following events, unless resulting from an Infringement Event by the Awardee or of Force Majeure, will constitute an Infringement Event by the Distributor: (a) any infringement by the Distributor in paying the Awardee any amount owed in virtue of this Contract and it is not in dispute or controversy, which may exercise if it owes more than two (2) expired invoices. (b) That the Distributor fails to



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

observe, comply or carry out any other obligation under this Contract, as long as said infringement continues for a period of twenty (20) Days from any communication is delivered by the Awardee to the Distributor in relation to the same, (c) that the Distributor is insolvent or incapable of paying its expired debts or (d) does not validate the Contract Form with the conditions established in this Contract and for the Supply Period to begin on the Supply Start Date as established in the Fifth (5) clause. **Eleven point four (11.4) Consequences of the Infringements.** If the Infringement events subsist after the course of the terms indicated in paragraphs eleven point two (11.2) and eleven point three (11.3) above, the party that has not infringe will have the right to terminate this Contract, without the need of a judicial declaration and procure any other correction it sees fit or it corresponds by virtue of this Contract or the Applicable Laws and will give right to the Parties to execute the guarantee it corresponds and demand for damages caused. **Eleven point five (11.5) Waiver.** Any of the parties can waiver the rights that corresponds them in virtue of the infringement by the other Party. The waiver will be made in writing and in clear terms and will not limit nor affect any of the rights of the affected Party that could result in any other infringement presently or in future. **Eleven point six (11.6) No Interruption of the Supply of the Guaranteed Power and Energy During Periods of Correction.** Despite the occurrence of an event that, with notification during the period of required time could constitute an Infringement Event to the Distributor, the Awardee cannot interrupt the supply of Guaranteed Power and or Energy, until a period of correction has elapsed of a minimum of thirty (30) Days. **TWELVETH: FORCE MAJEURE. Twelve point one (12.1) Exemption of Responsibility due to Infringement.** Unless by disposition to the contrary in this Contract, none of the Parties will be responsible for infringement of any of its obligations to the extent and within the term in which the impossibility to comply by the affected party is due to Force Majeure. The Party that alleges Force Majeure must make its best efforts, including the reasonable cost to correct, mitigate or remedy the effects of Force Majeure. **Twelve point two (12.2) Obligations to Notify.** The Party that alleges Force majeure must notify the other Party in writing: (a) the occurrence of the event of Force Majeure and (b) the moment the event of Force Majeure makes it impossible for the Party to comply with this Contract. In both cases the notification will be made as soon as it is reasonably possible, but never after ten (10) Business Days following the date in which the Party in question has had knowledge of the events described in subsections (a) and (b) above. In the case that any of the parties does not make the notification mentioned in this Clause within the terms established, will lose its right to invoke Force Majeure. That Party that alleges Force Majeure will be obligated within a period of ninety (90) Days to provide documented evidence, with reports, opinions or other third party documents such as Governmental Authorities, equipment manufacturers, subcontractors, shippers, insurance companies or any other that results satisfactory and acceptable by the other Party. (i) That the event of Force Majeure that prevented or delayed it with its contractual obligations in part or totally, understanding that the impediment is partial, when only one part of its obligations is affected by the respective event; (ii) that it was not possible to prevent the Event of Force Majeure as it was beyond its reasonable control and the same was not his fault or negligence; and (iii) it made efforts to prevent the event of Force Majeure, through proper due diligence including without limitation the reasonable cost of money. Once the Party has provided all of the satisfactory information and acceptable to the other Party, will have a term of fifteen (15) Business Days to request additional reasonable information, in case that it does not do so after this period, it is understood that he is in agreement with the information provided; from this date it will have a term of ninety (90) Days to submit his approval or rejection, in case it does not reply the request will be deemed as accepted. **Twelve point three (12.3) Continued Obligation of Payment.** (a) Given the contractual modality, the obligation of the Distributor to pay the corresponding invoices, in conformity with the Ninth Clause of this Contract, will not be suspended during Force Majeure of the Awardee, until for a period of six (6) months, from the date of the occurrence of the event. (b) Subject to the established in subsection d) of this paragraph in case that the Awardee cannot comply with this Contract as a result of Force Majeure Events



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

invoked by the Distributor, the obligation of the Distributor to pay the corresponding invoices will not be suspended during the subsistence of said event of Force Majeure; the Distributor will continue to pay the corresponding invoices, for a period up to six (6) months, from the occurrence of the event, in conformity with the Ninth Clause and the Annex of this Contract, less any insurance policy for loss of profits or commercial interruption. (c) When the Awardee alleges Force Majeure, the Distributor will effect the payments referred to in subsection (b) above, as long as: (i) the Distributor agrees with the Awardee that the Force Majeure event has occurred, agreement which will not be unjustly denied or (ii) if the Distributor lacks sufficient information to reach an agreement with the Awardee, or contests in good faith the claims of the Awardee, it must first constitute an irrevocable and unconditional letter of credit in favor of the Distributor issued by a financial entity which operates legally in Guatemala and acceptable to the Distributor, with an amount equivalent to said payments, on the understanding that the Awardee could present Letters of Credit issued by a financial entity which does not operate legally in Guatemala as long as it is acceptable to the Distributor and the same may cash the letter of credit in Guatemala. In case that the letter of Credit is issued by a financial entity that does not operate legally in Guatemala, it must be advised and notified by a financial entity that operates legally in Guatemala. If it is determined later that the alleged event by the Awardee is effectively of Force majeure, the Distributor will return the guarantee to the Awardee and refund the reasonable documented costs of the issuance of the letter of credit required by present subsection. In contrary, the Distributor will cash said guarantee to obtain the refund of the payments it has made to the Awardee in conformity with literal b) of the present paragraph (d) when the Distributor alleges Force Majeure that prevents it from complying with the obligations contained in literal b) of the present paragraph, then it must first constitute an irrevocable and unconditional letter of credit in favor of the Awardee issued by a financial entity which operates legally in Guatemala and acceptable to the Distributor, with an amount equivalent to said payments, on the understanding that the Awardee could present Letters of Credit issued by a financial entity which does not operate legally in Guatemala as long as it is acceptable to the Distributor and the same may cash the letter of credit in Guatemala. In case that the letter of Credit is issued by a financial entity that does not operate legally in Guatemala, it must be advised and notified by a financial entity that operates legally in Guatemala. If later is determined that the event alleged by the Distributor is effectively Force Majeure, the Awardee must return the guarantee to the Distributor and refund all of the reasonable and documented costs of the issuance of the letter of credit. In contrary, the Awardee will cash said guarantee to obtain the refund of the payments. **Twelve point four (12.4) Burden of Proof.** When one of the Parties does not accept that Force Majeure has occurred, the Party alleging its existence, will have the burden of proof in the arbitrage proceeding, which must promote in conformity with the Eighteenth Clause of this Contract. **Twelve point five (12.5) Payments not Exempted.** Nothing established in the Twelfth Clause of this Contract, will relieve the Parties from the obligations that in nature are affected by Force Majeure, including its payment obligations in charge of the Distributor for Guaranteed Power and or the purchase of Energy supplied by the Awardee before Force Majeure. **Twelve point six (12.6) Priority in the Delivery of Energy.** In the case that the Awardee has committed Surplus Power and or Energy with third parties, that have not been contracted through the Open Tender PEG-1-2010 and that an event of Force Majeure causes a reduction in the availability of the Maximum Power of the Generating Plant that the Awardee is unable to comply with the total delivery of Energy committed to the Distributor and with said third parties, the Awardee must first deliver to the Distributor all of the surplus energy available associated with the Maximum Power up to an agreed limit to the established in paragraph five point four (4.4) of the Annex of this Contract, being able to effect deliveries to said third parties only when it has surplus over said limit. **THIRTEENTH: CHANGES TO THE LAW AND REGULATORY CHANGES.** (a) In case changes are made to a Law that involves that any of the Parties incur in greater costs, said amount must be adjusted. To the effect, the affected Party must notify the other Party, on the understanding that said

adjustment will not be applicable when the impact of the Changes to the Law can be adjusted directly or indirectly through another mechanism established in this Contract. Within forty five (45) Days of serving the notification, the affected party must deliver to the other a study and analysis of its arguments and this will have a term of sixty (60) Days to rule accepting or not the adjustment and if it does not accept it, the Parties will be free to go to arbitration, inconformity with the established in the Eighteenth Clause of this Contract. In the case that the adjustment involves an increase in the consumers' final tariff, it must have the authorization of the CNEE. It is expressly accepted that as the indicated terms pass, the affected Party by the Changes in the Law must continue complying without variation. (b) Because the contracting of the block of Power takes into account the current regulatory conditions of the supply of the Social Tariff and the rating limit of the clients with consumption greater than one hundred kilowatts (100 kW) of power and the eventual case in a regulatory change which modifies any of these two conditions originated by Decrees, Government Accords, and any other means issued by the Congress of the Republic, Ministry of energy and Mines, Presidency of the Republic and Courts or that any of the Parties cannot comply with its obligations or exercise its rights that on the terms of this Contract are established or the applicability of any of its provisions suspended, or the possibility of collection of the charges of the supply to the Final Consumers is suspended for reasons exposed above, the Parties will agree to the modification that correspond, of which the CNEE will be informed, and in the case that it exists the possibility of an increase to the tariff of final Consumers it must have the authorization of the CNEE. As a tender carried out according to the current established legislation and in the case that any modification materializes for which the casuals' described above and to guarantee the investment of the Awardee, it will be understood that the difference between the conditions contracted originally and the conditions derived from these modifications, will be transferred to the transactions of the Electricity Wholesale Market in conformity with the established in the General Law of Electricity, and its Regulation, the current legal framework and the proceedings or regulations issued by the National Commission of Electric Energy according to the powers that attribute it to the General Law of Electricity and its Regulations. **FOURTEENTH: TAXES.** Each one of the Parties will be responsible for the payment of all Taxes that are imposed in conformity with any Applicable Law, on the understanding that the Distributor may make retentions that are obligated by Applicable Laws. **FIFTEENTH: COORDINATION COMMITTEE. Members.** Within the fifteen (15) Days following the signing of this Contract, the Parties will constitute a Coordination Committee integrated by two representatives of each Party with its respective alternates. The Coordination Committee will be responsible for the Coordination between the Parties during the term of the Contract and the coordination with the CNEE and the AMM to comply with the current regulation. **SIXTEENTH: TRANSFER. Sixteenth point one (16.1) Transfer Prohibition.** Except as provided in the present Clause and with previous authorization of the CNEE, none of the parts can transfer, burden or transfer, totally or partially this Contract or any of its rights or obligations derived from the same. **Sixteen point two (16.2) Transfer by the Distributors.** The Distributor may transfer to a third party its rights and obligations in virtue of this Contract, only if it has the previous consent in writing from the Awardee. In the granting of its consent the Awardee must act in good faith and in reasonable form, taking into account the circumstances of the case. **Sixteen point three (16.3) Additional Transfer of the Distributor.** The Distributor may at any moment transfer its rights, interests and obligations of the present Contract to: (a) any of its Subsidiaries, as long as the Distributor guarantees the compliance of the Subsidiary in virtue of this Contract; and (b) any person with which the distributor fusions or consolidates with, or to whom the Distributors sells, transfers, leases or in other form transfers any relevant portion of its properties or assets, as long that this fusion, consolidation or transfer of assets does not result in an Infringement Event by the Distributor. **Sixteen point four (16.4) Transfer by the Awardee of the Right to Collect Charges.** The Awardee may transfer its right to collect charges, present or future, as well as other rights of which it holds according to this Contract, in favor of: (a) the creditors in relation to the financial agreements; (b) third parties designated by the Creditors to the extent that such a



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

transfer or burden is carried out under the terms and conditions required of this Contract, giving prior information to the Distributor; (c) any of its subsidiaries, as long as the Awardee guarantees the compliance of the obligations of the subsidiary in virtue of this contract; and (d) any person with which the Awardee fusions or consolidates with, transfer, leases or in other form transfers any relevant portion of its properties or assets, as long that this fusion, consolidation or transfer of assets does not result in an Infringement Event by the Awardee.

Sixteen point five (16.5) Obtaining Authorizations. Any transfer by the Awardee or by the Distributor permitted in this Clause will be subject to obtaining all of the necessary Permits to carry out, in case that said transfer implies modifications to the contractual conditions of the Contract, it must also include the authorization of the CNEE.

Sixteen point six (16.6) Alienation. The Awardee may sell, lease or any other form transfer totally or partially its rights over its Assets to a third party, including its creditors or other financial entities, complying with the following: (a) the Person or acquiring entity that assumes in writing to the satisfaction of the distributor all of the obligations of the Awardee in virtue of this Contract; (b) the transfer that is involved does not substantially affect adversely the operational Power and financial strength of the Awardee to comply with its obligations derived from this Contract; and (c) that it obtains all of the necessary permits.

Sixteen point seven (16.7). Liens on the Assets. For the Awardee to Burden the Assets he must obtain previous authorization in writing from the Distributor, same which cannot be unjustly denied. For the effects of the above, the Awardee must provide to the Distributor, copies of the contracts in virtue of which the Awardee will burden the assets at least thirty (30) Business Days in anticipation to the date in which it pretends to sign such contracts. The distributor must provide its authorization as long as: (a) the Lien required by the Awardee is related with the financial agreements for the development of each New Generating Plants, or is a compulsory Lien provided by the Applicable Laws, (b) said Lien is not an obstacle or impedes in any manner the exercise of rights this contracts gives the Distributor; and (c) that it complies with the Applicable Laws. The Distributor must inform the Awardee if approves or not the contracts with which it will burden the Assets, within thirty (30) Business Days following to that in which it has received copies of same. Lack of manifestation from the Distributor with regards to the referred contracts, will be considered an approval of the same. The Awardee must effect its best efforts to free as soon as possible the obligatory Liens which may have been imposed on the Assets of each New Generating Plant.

Sixteen point eight (16.8). Contribution of the Generating Plant to a Trust. The Awardee may contribute the Assets to a trust, informing the Distributor previously in writing, as long as said trust does not hinder or impedes in any form the exercise of rights that this Contract provides the Distributor and that there is compliance with all Applicable Laws.

SEVENTEENTH: VARIOUS DISPOSITIONS Seventeen point one (17.1) Modifications. This contract cannot be modified, except through a written agreement by the Parties and with approval of the CNNE, who will define the process to follow before such a situation.

Seventeen point two (17.2). Third Parties This Contract is signed exclusively in benefit to the Parties. Unless by disposition to the contrary contained in this Contract, nothing established in this Contract must be interpreted, in a manner in that it creates an obligation, burden or responsibility in favor o a burden of any person that is not Part of this Contract.

Seventeen point three (17.3). Explicit Waiver. The lack or delay of any of the Parties to demand in any given moment any of the dispositions of this Contract or require in any moment the compliance by the other Party of any disposition of this Contract, shall not be interpreted as a waiver to the compliance of such dispositions, nor will it affect the validity of this Contract or any part of the same, nor also the right of such Party to demand afterwards the compliance of each one of the dispositions, unless expressly agreed to the contrary in this Contract.

Seventeen point four (17.4). Relationship Between the Parts. The present Contract cannot be interpreted in a way in which it creates a corporation or association between the parts (*joint venture*), or that imposes societal obligations or responsibilities on any of the same. Unless by the provisions of this Contract, none of the Parties will have the right, power or authority to sign contracts or assume obligations for or to act in the name of, to act as, or to be a representative with mandate or representative of, or in any other manner force the other

Party. **Seventeen point five (17.5). Language.** The language of this Contract is Spanish. Unless by provision in this Contract, all of the documents, notifications, waivers and other communications between the parts in relation to this Contract must be in Spanish. The Parties agree that the version of this Contract in Spanish will prevail over any translation that is made.

Seventeen point six (17.6) Integrity. The present contract is the complete and exclusive compilation of all of the terms and conditions that govern the agreement between the parties in relation to the object of the same. No declaration of any agent, employee or representative of the Awardee or the distributor made before the signing of this Contract will be admitted in the interpretation of the terms of the same except by the formal answers and in writing provided by the Distributor to the Bidders in the series of questions and requests for clarifications carried out in conformity to the Terms of the Tender, on the understanding that in case that it exists a conflict between said answers, the one after in time will prevail, and in the case that there was a conflict between an answer and a disposition of the Contract, the disposition of this Contract will prevail. In case that a conflict existed between the present text of this Contract and the Annex, this Contract will prevail over the Annex. In case that a conflict existed between the text of this Contract and the Annex of this Contract, with the Bid of the Awardee and the Terms of the Tender, the text of this Contract and the Annex of this contract will prevail. **Seventeen point seven (17.7). Confidentiality.**

(a) Each one of the Parties must: (i) maintain confidentiality of all of the documents and other information, be it technical or commercial, that are of a confidential nature and have been submitted by or a in name of the other Party; and (ii) abstain from divulging said information to a third party without the previous consent and in writing by the other Party. (b) The dispositions of paragraph (a) above will not be applicable to: (i) the information of public domain that has not been made public through a violation of this Contract; (ii) the information in possession of the receiving Party that has been obtained before it was divulged, and without violating an obligation of confidentiality. (iii) the information obtained by third parties that have a right to divulge it without violating an obligation of confidentiality; (iv) the information that must be divulged by requirement of the Applicable Laws or the Governmental Authorities, as long as: (A) the fact that not divulging it may subject the required Party to civil sanctions, penal or administrative, and (B) the required Party notifies the other Party expeditiously the request of said divulgence; and (v) the information that must be divulged by requirement of the Creditors or professional consultants of the Parties. In the established case of the subsection (iv) above, the affected Party could request from the Party that has been requested that it challenges before competent courts the disposition required by the divulgence, in which case, the affected Party must cover any cost generated by the challenge. **Seventeen point eight (17.8).**

Notifications. (a) All communications between the Parties with relation to this Contract, including the invoicing, but excluding a trial emplacement or arbitration proceeding under the terms of the Eighteenth Clause of this Contract, must be effected in writing with the receipt of delivery to the other Party by messenger, telegram, confirmed facsimile, certified messenger or certified mail, to the address indicated as follows: To the Awardee: *(address of domicile)*. (b) Changes to Domicile. The Parts may, through notification in writing to the other Party, change the domicile or the person to whom said notifications or communications must be sent. (c) Legal Notifications. Any other notification of legal character will be made in conformity with the conduits that are established by Applicable Laws. **Seventeen point nine (17.9) Financial**

Cost. For the cases not provided expressly in this Contract, any amount that the Parties are owed, the debtor Party will pay interests on any expired amount and not yet paid, from the date of expiry until the full amount has been paid with the legal Interest Rate for operations in dollars, as to the established in article one thousand nine hundred and forty seven (1947) of the Civil Code. **Seventeen point ten (17.10) Bid and Terms of the Tender.** The grantors indicate and accept the expressed without any reserve, that the Bid of the Awardee, the Terms of the Tender and its Addenda, the answers to the questions provided by the Distributor and the Terms of Reference approved through the resolution CNNE dash one hundred and eight five dash two thousand and ten (CNEE-185-2010) and its modifications, are part of the present



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Contract. **Seventeen point eleven (17.11) Documentation and Financing.** The Distributor must supply the documentation and information related with the entity that normally provides it, inclusive of considering it adequate, to sign, give or take any agreement with the Awardee or the financial entity that the Awardee requests from the Distributor, or that is reasonably appropriate for this type of operation according to market practices, to expedite obtaining from the Awardee the financing required of each New Generating Plant; on the understanding that the Distributor will provide the documentation or information that is generally available to its own Creditors, the Distributor will not be obligated to recognize any economic cost or compensation, nor any other obligation of any type in relation with said financing, unless the provisions in paragraphs sixteen point four (16.4) and sixteen point seven (16.7) of is Sixteenth Clause of this Contract and nothing herewith established freed the Awardee of its exclusive responsibility of obtaining all of the financing for each New Generating Plant. The Distributor must give said documentation and information as soon as it is reasonably possible after the request is received in writing from the Awardee requiring such information, and the Awardee must sign those confidentiality agreements with the Distributor that it reasonably considers appropriate with respect with the information requested. The Awardee must pay for the costs and reasonable charges, including legal fees that the Distributor incurs in relation with the preparation of said documentation or information as well as any other assistance that the Distributor at its sole discretion could provide in relation with said financing. Except to the expressly provided in this Contract, the Distributor will not have any obligation during the period prior to the Supply Start Date. **Seventeen point twelve (17.12) Changes in the corporate structure of the Awardee.** The Awardee will not permit any substantial change, directly or indirectly, in the composition of its capital that diminishes the economic participation of those participants used in the Bid to comply with the required technical and economic capacity, unless that it has the previous consent in writing from the Distributor. For the effects of the present Clause, a change will not be considered as substantial, and therefore, will not require the consent of the Distributor, but it must be notified, if the Economic Participation of the Participant in the Awardee, after the change has been effected, continues to be at least less or equal to twenty percent (20%) of the social capital of the Awardee, or the original Economic Participation of the Participant is treated according to the Bid. In case that a substantial change is proposed to occur in the composition of the capital of the Awardee, this one will not notify the distributor as soon as possible of the proposed change and will request its consent to the same. The Distributor will not deny or delay its consent to said substantial change as long as the Awardee shows that the change in question will not affect adversely the ability of the Awardee to comply with its obligations in conformity with this Contract. **Seventeen point thirteen (17.13) Responsibilities and Compensations.** The Awardee will be responsible in conformity to the Applicable Laws, of compensating of all damages it causes to people and property, related directly with the construction of the New Generating Plants or operation and maintenance of the Generating Plants. It is clearly established between the Parties, that the Distributor does not have, nor assumes any responsibility with any person the Awardee contracts, who undertakes to comply with the current labor dispositions and with all of the Applicable Laws. **EIGHTEENTH: RESOLUTION OF DISPUTES. Eighteen point one (18.1) Applicable Law.** This Contract must be executed and carried out in conformity with the laws of the Republic of Guatemala. **Eighteen point two (18.2) Resolution of disputes via the direct route.** Any doubt, difference or dispute between the Parties on the interpretation, application, execution or effects of this Contract, during its term as its termination, will be resolved via the direct route between the Parties. If despite this instance was exhausted, it does not resolve the doubt, dispute or interpretation, then it will be resolved, according to the provision in paragraph eighteen point three (18.3) of the present Clause. **Eighteen point three (18.3) Arbitration.** All of the disputes or claims that are related with the application, interpretation and compliance of the present Contract, by any cause, must go to arbitration in conformity to the following: within a period of thirty (30) Days will be subject to the scrutiny of the National Commission of Electric Energy and resolved via



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

conciliation, once this phase is exhausted and without conciliation between the parties they will accept and are committed expressly to subject it to a legal arbitration process, in conformity with the Arbitration Regulation of the International Chamber of Commerce – in force at this time – and will be managed by the International Court of Arbitration. The arbitration will be substantiated in all and each one of its phases in Spanish and the place will be Guatemala. The arbitration will be conducted by three arbitrators. The party that begins the arbitration (the Claimant) must appoint his arbitrator under the requirement of arbitration (the Requirement). The other party (the Recipient) must appoint its arbitrator in a period no greater than (30) days of receipt of the requirement and must notify the Claimant of said appointment in writing. In the case that the Recipient did not appoint an arbitrator in the term stipulated, the International Arbitration Court, from here on the Court, must appoint the arbitrator as long as required by the Claimant. Once both arbitrators have been appointed, between them they will name the third arbitrator, situation that must happen between thirty (30) days following that the recipient or the Court have appointed the second arbitrator. Once the third arbitrator has accepted the post, each and everyone one of the two arbitrators must notify the party that appointed him on his designation and acceptance of the post by the third arbitrator. For the case that the two arbitrators could not agree on the appointment of the third arbitrator, the designation will be made by the Court. The third arbitrator will act as the President of the Arbitration Tribunal. The arbitration award must be made in writing, declaring the reasons why it has ruled and it will be final and executable between the Parties. The award must contain a statement on the costs, including the legal and expert fees, the costs that according to the arbitration award correspond to the Distributor and may be transferred to the tariff, with previous authorization from the CNNE. The arbitration award must be executed in the jurisdiction of each one of the Parties. **Eighteen point four (18.4) Immunity.** Both the Distributor and the Awardee agree that this present Contract and the operations contemplated in it constitute as commercial activities of the parts. In the measure in that the Applicable Law, including the General Law of Electricity and its Regulation, as permitted, each one of the Parties by this means waives expressly and irrevocably to any right to immunity of each of them or of its assets that they have or acquire in future (be it characterized as sovereign immunity or another) with respect to any arbitration proceeding carried out in conformity to paragraph eighteen point three (18.3) of this Clause or legal proceeding followed to execute any arbitration award that is the result of any arbitration process, in Guatemala or in any foreign jurisdiction, including, without limitation, immunity to be subpoenaed, jurisdiction immunity or the sentence of any court or tribunal, immunity of execution of sentence, and immunity from precautionary embargo of any of its assets. **NINETEENTH: ATTESTATION.** The grantees, through their representatives, agree expressly for request from the undersigned Notary Public, the attestation of the document identified throughout this instrument as an Annex, contained in _____ () pages. In virtue of the above, the undersigned Notary Public proceeds to the attestation at this moment the document hereby referred, which will become an integral part of this deed and hence of this protocol, corresponded by the following folio numbers: from _____ to _____ inclusive, and will remain inserted between the Protocol sheets number of the Order _____ of Registration _____ that correspond the folio number _____ and Order number _____ and of Registration _____ to which corresponds the folio number _____. **TWENTIETH: ACCEPTANCE.** In the related terms and the qualities under which they act, the grantees accept the integral content of this instrument. As a Notary Public I as a Notary Public, **I ATTEST:** A) That I had all documents related with this deed in plain; and B) That I read in its entirety all written to the grantees, which were fully aware the content, object, validity and legal purpose, accepted, rectified and sign together with the undersigned Notary Public

THE DISTRIBUTOR

THE AWARDEE



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

ANEXX OF THE SUPPLY CONTRACT

Technical Specifications

The Payments that the Distributor must make to the Awardee for Guaranteed Power and or the supply of Energy, established in the present Annex, will be carried out according to the following:

1. POINT OF DELIVERY

The Delivery Point of the Guaranteed Power and energy will be the Connection Point of the New Generating Plant or in Operation, to the National Interconnected System, where the commercial measurement is enabled by the AMM, in the case of an International Transaction will be the node or nodes of the Principal System in the National Interconnected System established by the corresponding regulation. The Delivery Point will be consigned in the Contract Form and is established in paragraph 4.5 of this Annex.

2. MEDICION

For the measurement of total energy that the Distributor consumes each month, measuring equipment property of the same will be utilized, which are commercially enabled by the AMM to settle the commercial transactions in the Wholesale Market of the Distributor, in compliance of the Commercial Coordination Regulation No. 14 and from time to time the methodology established by the National Commission of Electric Energy to quantify the blocks of energy corresponding to the Social Tariff. The electricity at each hour that the Distributor consumes to supply the consumers of the Final Distribution Service, results from the sum of all of the points of injection to the grid by the Distributor, minus all of the demand by consumers not considered under the present process of the tender. The AMM, according to the conditions established in the Contract Form, is responsible for assigning hour to hour the electricity to supply by the Awardee. The quantities of electricity that the Distributors will buy monthly to cover the block that corresponds to consumers of the final distribution service, will be determined by the Wholesale Market Administrator, in conformity with the current regulation.

3. PERIOD

The period of supply of the Guaranteed Power, in the case of an Energy Purchase Option Contract or a Load Curve with Differences Contract, and of the electricity is during the Supply Period established in the Fifth Clause of the Contract.

4. PRICE

In conformity with the established in the Contract, the Awardee is obligated to deliver to the Distributor the power and energy indicated at the following prices:

4.1 PRECIO DE LA POTENCIA

The Price of Power for each Generating Plant is shown in the following table and will be in dollars per kilowatt per month (US\$ /kW-month) fixed and invariable, without Value Added Tax (IVA) and without indexation during the term o the Contract. Said price includes all of the costs necessary to deliver the Guaranteed Power t the Point of Delivery, as well as the tolls of the Secondary Transmission Systems that connect the Generating Plants to the Principal System that the Awardee

uses and in the case of International Transactions through Firm Import Contracts will also include the transmission rights and any other cost associated to the Delivery Point.

Seasonal Year		Price of Power of the Supply Period, in US\$ / kW-month				
		Generating Plant No.				
		1	2	3	...	n
01/May/2015	30/April/2016					
01/May/2016	30/April/2017					
01/May/2017	30/April/2018					
01/May/2018	30/April/2019					
01/May/2019	30/April/2020					
01/May/2020	30/April/2021					
01/May/2021	30/April/2022					
01/May/2022	30/April/2023					
01/May/2023	30/April/2024					
01/May/2024	30/April/2025					
01/May/2025	30/April/2026					
01/May/2026	30/April/2027					
01/May/2027	30/April/2028					
01/May/2028	30/April/2029					
01/May/2029	30/April/2030					

4.2 PRICE OF ENERGY

The only price of monthly energy which the Awardee may invoice the energy to the distributor for the month of supply, will be calculated in the following manner:

In the case of Generating Plants whose type of technology is generation with Renewable resources the Price of the monthly energy will be calculated in the following manner (*in case of an Energy Purchase Option Contract said price will also be the price of the exercise of the purchase option*):

$$PEO_{jk} = PEO_k + OyM_k \times \frac{PPI_i}{PPI_0}$$

Whereas:

- PEO_{jk}** = Price of energy per month "j" and the Generating Plant "k" in US\$/MWh.
- PEO_k** = Price of the energy offered for the Generating Plant "k", this price does not include the Value Added Tax (VAT).
- OyM_k** = Offer of Unitary Cost of Operation and Maintenance of Generating Plant "k", en US\$/MWh, this value can be greater than twenty per cent (20%) of **PEO_k** .
- PPI_0** = Annual Index of Prices to the Producer –PPI– for Industrial commodities less fuels (*Annual Producer Price Index Industrial commodities less fuels –WPU03T15M05–*) of the United States of America, published by the "U.S. Department of Labor, Bureau of Labor Statistics", whose price is 176.5.
- PPI_i** = Annual index of Prices to the Producer –PPI– for Industrial commodities less fuels (*Annual Producer Price Index Industrial commodities less fuels –WPU03T15M05–*) of the United States of America, published by the "U.S. Department of Labor, Bureau of Labor Statistics". This component will be adjusted every may one starting in the year

2011, with the last annual price published from the published index for the previous year to the calculated year to establish the factor $\frac{PPI_i}{PPI_0}$ for each period from may one of the current year and April 30 of the following year.

In the case of Generating Plants using Renewable Energies, the monthly Price of Energy is calculated in the following manner and will be the price of the exercise of the energy purchase option:

$$PEO_{jk} = CCOM_k + \left(OYM_k \times \frac{PPI_i}{PPI_0} \right)$$

Whereas:

PEO_{jk} = Price of the Energy for the month "j" and the Generating Plant "k" in US\$/MWh, this price does not include the Value Added Tax (VAT).

CTUNG_k = The Net Unitary Thermal Consumption Guarantee for Generating Plant "k", that according to the type of fuel, which has the following prices:

CCOM_k = The Cost for Fuel Consumption for Generating Plant "k", that according to the type of fuel will be determined according to the following:

- a. For the case that the type of fuel is Bunker will be calculated as follows:

$$CCOM_k = CTUNG_k \times F_j$$

Where **F_j** is the Price of Bunker fuel corresponding to the month "j" according to the following table:

Type of Fuel	F _j		
Bunker	Indicator of Bunker fuel		It is the average of the average of the minimum prices and daily maximums corresponding to the published for the previous month to the month of supply
	US Gulf 3%	Platts, Oilgram Price Report, Five-Day rolling Averages.	US\$/BBL
In the case of the previous indexer or index will cease publication by the corresponding entities, same will be informed by the Parties to the National Commission of Electric Energy so that it may establish a new indexer or index.			

- b. For the case that the type of fuel is coal or natural gas will be determined in conformity with the proceeding established in paragraph 4.7 of this Annex.

OyM_k = Unitary cost of Operation and Maintenance for the Generating Plant "k", in US\$/MWh.

PPI₀ = Annual Index of Prices to the Producer –PPI– for Industrial Commodities less fuels (*Annual Producer Price Index Industrial commodities less fuels –WPU03T15M05*) of the United States of America published by the "U.S. Department of Labor, Bureau of Labor Statistics", whose price is 176.5.

PPI_i = Annual Index of Prices to the Producer –PPI– for Industrial Commodities less fuels (*Annual Producer Price Index Industrial commodities less fuels –WPU03T15M05–*) of the United States of America published by the "U.S. Department of Labor, Bureau of Labor Statistics". This component will be adjusted for may one from the year 2011, with the last annual price published from the index of the previous year to the year



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

$$\frac{PPI_i}{PPI_0}$$

under calculation to establish the factor $\frac{PPI_i}{PPI_0}$ for each period from may one of the current year and april 30 of the following year.

4.3 GUARANTEED POWER TO BE SUPPLIED.

The Guaranteed Power by the Awardee that will be supplied to the Distributor will be as follows:

Seasonal Year		Guaranteed Power for each Supply Period in MW					
		Generating Plant No.					Total
		1	2	3	...	n	
01/May/2015	30/April/2016						
01/May/2016	30/April/2017						
01/May/2017	30/April/2018						
01/May/2018	30/April/2019						
01/May/2019	30/April/2020						
01/May/2020	30/April/2021						
01/May/2021	30/April/2022						
01/May/2022	30/April/2023						
01/May/2023	30/April/2024						
01/May/2024	30/April/2025						
01/May/2025	30/April/2026						
01/May/2026	30/April/2027						
01/May/2027	30/April/2028						
01/May/2028	30/April/2029						
01/May/2029	30/April/2030						

When the type of Contract is a Generated Energy Contract this paragraph does not apply.

4.4 ENERGY TO BE SUPPLIED.

The Energy to be supplied by the Awarded Bidder, {in the case of an energy power purchase option contract will be the lower price associated to the Guaranteed Power established in paragraph 4.3 or one needed by the Distributor to supply consumers of the final distribution service} or {in the case of a Load Curve with Differences contract the load will be the energy according to the following tables, to supply consumers of the final distribution service} or {in the case of a Generated Energy Contract will be the registered energy commercial measured by the AMM, limited to the maximum power the installation has}, in any case this condition will be consigned to the Contract Form for the liquidation of the Contract.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Monthly guaranteed energy per Generating Plant						
Month of each Seasonal Year that corresponds to the Guaranteed Power	Monthly guaranteed energy for each Seasonal Year that corresponds to Guaranteed Power in MWh					
	Generating Plant No. ¹⁶					
	1	2	3	...	n	Total
May						
June						
July						
August						
September						
October						
November						
December						
January						
February						
March						
April						

Hourly guaranteed energy for each month of the seasonal Year in MWh – Generating Plant No. <u>17</u>												
Hour	May	June	July	August	September	October	November	December	January	February	March	April
00:00 a 00:59												
01:00 a 01:59												
02:00 a 02:59												
03:00 a 03:59												
04:00 a 04:59												
05:00 a 05:59												
06:00 a 06:59												
07:00 a 07:59												
08:00 a 08:59												
09:00 a 09:59												
10:00 a 10:59												
11:00 a 11:59												
12:00 a 12:59												
13:00 a 13:59												
14:00 a 14:59												
15:00 a 15:59												
16:00 a 16:59												
17:00 a 17:59												
18:00 a 18:59												
19:00 a 19:59												
20:00 a 20:59												
21:00 a 21:59												
22:00 a 22:59												
23:00 a 23:59												
Total sum												

The hourly electricity guaranteed for each month, at no moment shall exceed during each hour the Guaranteed Power established in the Contract Forms.

¹⁶ The number of the Generating Plant must correspond exactly to the number indicated in the table of paragraph 4.6 of the present Annex of the Supply Contract.

¹⁷ The number of the Generating Plant must correspond exactly to the number indicated in the table of paragraph 4.6 of the present Annex of the Supply Contract.

4.5 GENERATING PLANTS FROM WHICH GUARANTEED POWER AND ENERGY ARE SUPPLIED BY THE AWARDEE

The following table contains the information of each Generating Plant with which the Awardee will supply Guaranteed Power and or energy, said information must be equal to the established in the Bid for the Generating Plant or Generating Plants with which power and energy will be supplied.

No.	Name of Generating Plant ¹⁸	Type of Generating Plant ¹⁹	Geographic Location	Point of delivery ²⁰	Net Capacity of Maximum Power (MW)	Date of Commercial Operation ²¹
1						
2						
:						
n						

4.6 SHIPPING AND FUEL SUPPLY.

All of the negotiations carried out by the Awardee for the shipment and supply of fuel will be its responsibility, maintaining the necessary stock so as to guarantee the supply of power and energy to the Distributor, declaring that all related to shipment and supply of fuel does not qualify as a Force Majeure cause.

4.7 COST OF FUEL CONSUMPTION.

The Awardee must supply and purchase the fuel and cover all of its related costs, such as shipping from its place of origin to the Central, insurance, port costs, negotiations, duties, port rates, taxes, inspection costs and analysis, shipping agent and any other service required to comply with the requirements of this Contract.

The cost of fuel consumption when the type of fuel is Coal, expressed in, US\$/MWh, will be calculated as the product of the cost of each shipment divided between the heating value of the fuel according to the quality certificate, multiplied by the **CTUNG_k**.

$$CCOM_k = \left[\frac{CEM_i}{PCAL_i} \right] \times CTUNG_k$$

CCOM_k = the cost per Fuel consumption for the Generating Plant "k", in US\$/MWh

CEM_i = Cost of the shipment "i" in US\$/TM. It includes fuel, shipment from its place of origin to the central, insurance, port costs, negotiations, duties, inspection costs and analysis, shipping agent and any other service required to comply with all of the requirements of this contract, as long as it is prudent, reasonable and verifiable.

¹⁸ Indicate the name of the New Generating Plant or in Operation, or in the case of International Transaction through a Firm Import Contract indicate as well the name of the central that will back the transaction.

¹⁹ Consign PGN, when it is a New Generating Plant, PGO when it is a Generating Plant in Operation and TI when it is an International Transaction.

²⁰ It will be the node established in the Bid, as a Point of Connection in the National Interconnected System for New Generating Plants or in Operation or the node of the Principal System of the SIN established in the Bid for an International Transaction.

²¹ In the column denominated "Date of Commercial Operation" for Generating Plants in Operation or International Transactions, it must indicate the date in which the commercial operation has started and for New Generating Plants, it must be indicated the Date of Commercial Operation offered, one which must comply with that established in the Contract.

- PCAL_i** = Heating value of the Fuel of shipment "i" in BTU/TM in the case of Coal according to the quality certificate.
- CTUNG_k** = Heat Consumption Guaranteed Unit according to that established in paragraph 4.2 of this Annex.

The cost of fuel consumption when the type of fuel is Natural Gas, expressed in, US\$/MWh, will be calculated as the product of the cost per million BTU per each shipment according to the quality certificate by the **CTUNG_k**.

$$CCOM_k = CEM_i \times CTUNG_k$$

- CCOM_k** = the cost per Fuel consumption for the Generating Plant "k", in US\$/MWh
- CEM_i** = Cost of the shipment "i" in US\$/TM. It includes fuel, shipment from its place of origin to the central, insurance, port costs, negotiations, duties, inspection costs and analysis, shipping agent and any other service required to comply with all of the requirements of this contract, as long as it is prudent, reasonable and verifiable
- CTUNG_k** = Heat Consumption Guaranteed Unit according to that established in paragraph 4.2 of this Annex.

4.7.1 INTERNATIONAL TENDERS FOR THE SHIPPING AND SUPPLY OF FUEL

In all negotiations carried out by the Awardee for the shipment of fuel there will be international tenders, which may be for the shipping and supply of fuel together or separately. In the case of tenders that are carried out together it must be detailed separately the costs of fuel and transportation.

The tenders will be aimed at suppliers of fuel or transportation properly qualified, according to the terms of reference proposed by the Awardee, taking into account the following minimum requirements:

- The tenders will be aimed to at least three bidders that qualify as suppliers of fuel and transportation.
- The tenders will not have special conditions that make the tender a particular event directed to one specific supplier of fuel and transportation.
- The determination of the most favorable Bid will be based in an evaluation that has as an object obtain the minimum cost of fuel supply, considering all of the relevant facts and under the approval of the Distributor.
- The tenders will be conducted and documented according to prudent practices, commonly used in the international field. All documentation resulting from the international tender will be filed for at least a period of five years.
- All documentation from the fuel suppliers or fuel transportation will be given to the distributor and the CNEE, if requested.

The Awardee will provide to the Distributor the terms of reference of the international tender three months prior to the submission of bids with copy to the CNEE. Within fifteen (15) Days the Distributor will return its observations to the terms of reference to the Awardee with a copy to the CNEE. Said terms of reference must comply with the stipulations of this Contract and the Terms of the Tender.

Should the terms of reference don't comply with the stipulated with the present paragraph and paragraph 4.7.2 of this Annex, the Awardee must make changes or modifications considered by the Distributor.

The Awardee will give, within thirty (30) Days to the Distributor and the CNEE copies of the invoices of all of the services used for the supply and shipment of fuel after each shipment.

4.7.2 TERMS AND CONDITIONS REQUIRED IN THE SUPPLY AND SHIPMENT OF FUEL.

- a) **Prices:** In all contracts, the prices of coal or natural gas and its shipment must be competitive according to the established standards in international markets, the quality of the coal or natural gas and the costs of shipment and delivery. In no case, may the Awardee and the supplier of fuel or shipments manipulate or control the prices of the above. In all contracts of supply or shipment of fuel that has a term of more than a calendar year, will be permitted for index application to determine base price adjustments of the terms of the tender of the supply or transport of fuel. The prices of any contract of supply of fuel or transport will not be modified by the Awardee without the approval of the Distributor.
- b) **Alternate arrangements to the supply:** In all contracts of supply and shipment of fuel procedures of conflict resolution will be included in clear and comprehensive terms to reach agreements when there are disagreements or disputes by the Awardee and the suppliers of fuel and transportation, said processes will be designed to ensure that the Awardee can make alternate arrangements for the supply and transportation of fuel. Any increase in Price in the supply of fuel or transportation related to the alternate arrangements of supply will not be transferred to the Distributor.

4.7.3 REPLACEMENT OR TERMINATION OF A FUEL SUPPLY OR TRANSPORTATION CONTRACT.

The Awardee cannot replace, modify or terminate a fuel supply or transportation contract before its termination date, without the prior approval of the Distributor.

4.7.4 PURCHASES IN THE OPPORTUNITY MARKET IN LIEU OF AN EMERGENCY IN THE SUPPLY.

Whenever it is necessary and due to an event of Force Majeure, that involves a supplier of fuel or transportation of fuel of the Awardee or related to a lack of supply of fuel, the Awardee may purchase from the fuels opportunity market. The Awardee must immediately notify the Distributor of the requirement of the purchase of fuel from the opportunity market, as well it will provide copies of all of the documentation related of said requirement. After five (5) Days of the reception of said documentation, the Distributor and the CNEE may object said requirement or approve said purchase and its terms of reference.

4.7.5 CHANGES TO FUELS TO CONSIDER IN THE CONTRACT

The Awardee may choose at any moment, to use a fuel that is not specified in the offer. If in any given year and in any percentage of the fuel it purchases the type is different and is of a lower cost than specified in the Bid, then the Awardee must notify the Distributor and provide sufficient information to allow a calculations of the reductions in its variable costs of production, with the purchases of the new type of fuel.



COMISION NACIONAL DE ENERGIA ELECTRICA

4^a. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

Within twenty (20) Days following the end of each calendar year, the Awardee must calculate the aggregate savings obtained during said calendar year, due to the purchases of a different type of fuel and for its lower cost than specified in this Contract and must, in an invoice submitted before the fifteen (15) of February of the following year, reduce the amount that has been invoiced to the Distributor, by the amount equal to sixty per cent (60%) of the associated savings. At the Distributor's petition, the Awardee must provide a sworn declaration, attesting to the price of fuel used.

5. INVOICING

The Awardee must submit the invoice(s) in conformity of the following process: ten (10) Days following the date of reception of the Economic Transactions Report of the AMM for the supply month that corresponds, the corresponding invoice will be submitted containing solely the following charges:

- a. Charge for Guaranteed Power, priced strictly with the indication of paragraph 4.1 of the present Annex, when it is an Energy Purchase Option Contract or a Load Curve with differences Contract.
- b. Charge for the Price of supplied energy assigned by the AMM, priced strictly with the indication of paragraph 4.2 of the present Annex, in conformity to the conditions established in this Supply Contract, the Contract Form and the Economic Transactions Report.
- c. Charge for the Toll of the Principal System, when it is strictly assigned to the Awardee by the AMM for each Unit of Guaranteed Power in the Economic Transactions Report for the supply month, calculated in conformity with the current regulation, for the case of an Energy Purchase Option Contract or a Load Curve with Differences Contract.

All invoicing submitted by the Awardee will be delivered in the main offices of the Distributor in the address_____. The invoices that will be issued for the supply, in conformity with this Contract, must be paid within the fifteen (15) Days following the presentation of said invoice.

Said payment must be made in the offices of the legal representative of the Awardee indicated in writing to the Distributor, as long as is within the city limits of Guatemala.

In the case that the Distributor stops paying on the stipulated date, will be considered automatically in arrears without the need to charge judicially or extra judiciary and will accrue interests for the arrears as defined in the Contract.

The Distributor will pay the charge in concept of Operative Rolling Reserve and Quick Reserve that the AMM assigns in each Economic Transactions report, considering the established in the Commercial Coordination Regulation number eight (8) of the Wholesale Market Administrator.

The distributor will pay the charges in concept of costs overruns for Forced Generation that the AMM assigns in each Economic Transaction report, considering the established in the Commercial Coordination regulation number (5) of the Wholesale Market Administrator.

The Distributor will pay the charges in concept of Costs Differentials that the AMM assigns in each Economic Transactions Report, considered that described in article forty (40) of the Regulation of the Wholesale Market Administrator and Resolution CNEE-180-2005 and modifications.



COMISION NACIONAL DE ENERGIA ELECTRICA

4ª. AV. 15-70 ZONA 10, EDIFICIO PALADIUM NIVEL 12, GUATEMALA, C.A. 01010
TEL. PBX. (502) 2321-8000 E-mail: cnee@cnee.gob.gt FAX (502) 2321-8002

The Tolls of the Secondary Systems of Sub transmission that the Distributor uses must be assigned to the Distributor by the AMM in conformity with the current Regulations and will be paid by the same.

The Distributor will pay for the transmission losses that the AMM determines in the Economic Transactions Report of the corresponding month, calculated in conformity to the current regulations.