

STEAM SERVICE AGREEMENT

for

STEAM GENERATING FACILITY

between

Board of Governors for Higher Education for the State of Rhode Island

and

The University of Rhode Island
(the "University")

and

ERI Services, Inc.
(the "Contractor")

May, 1998

STEAM SERVICE AGREEMENT

TABLE OF CONTENTS

<i>ARTICLE 1. DEFINITIONS, EXHIBITS INCORPORATED BY REFERENCE</i>	6
1.01 Certain Definitions	6
1.02 Exhibits and Appendices Incorporated by Reference	6
<i>ARTICLE 2. CONSTRUCTION AND OPERATION OF FACILITY</i>	6
2.01 Site	6
2.02 Construction of Facility	7
2.03 Facility Operation	7
2.04 Coordination of Operations	10
2.05 Repair and Maintenance	11
2.06 Permits	13
2.07 Costs	13
2.08 Site Inspection/Access	13
2.09 Ownership of Facility	13
<i>ARTICLE 3. PURCHASE OF STEAM AND CONDENSATE RETURN</i>	14
3.01 Steam Purchase	14
3.02 Excess Requirements	14
3.03 Minimum Requirements	14
3.04 Condensate	14
<i>ARTICLE 4. PURCHASE PRICE FOR STEAM</i>	15
4.01 Price	15
4.02 Adjustments	15
4.03 Put or Pay	15
4.04 Additional Fees	15
4.05 University Changes	15
4.06 Change In Law Pass-Through Costs	16
<i>ARTICLE 5. INITIAL DELIVERY DATE</i>	16
5.01 Initial Steam Delivery	16

5.02 Delivery of Test Steam _____	16
ARTICLE 6. METERING _____	16
6.01 Meters _____	16
6.02 Materials _____	17
6.03 Accuracy and Performance _____	17
6.04 Access Inspections and Testing _____	17
6.05 Adjustments for Inaccuracies _____	17
6.06 The University's Measuring Equipment _____	18
ARTICLE 7. BILLING _____	18
7.01 Monthly Invoices _____	18
7.02 Interest _____	18
7.03 Records _____	18
7.04 Audit _____	18
ARTICLE 8. TAXES _____	19
ARTICLE 9. INABILITY TO DELIVER ACCEPTABLE STEAM/FORCE MAJEURE _____	19
9.01 Inability to Deliver _____	19
9.02 Non-Acceptable Steam _____	19
9.03 Force Majeure _____	20
9.04 Liquidated Damages _____	20
9.05 No Limitation _____	20
ARTICLE 10. NOTICES AND OTHER COMMUNICATIONS _____	21
10.01 Method of Giving Notice _____	19
10.02 Notices to The University _____	21
10.03 Notices to Seller _____	20
10.04 Invoices to the University _____	22
10.05 University Designated Representative _____	22
10.06 Notice Changes _____	23
ARTICLE 11. ASSIGNMENT OF AGREEMENT _____	23
11.01 General _____	23
11.02 Assignment to Lenders _____	21
11.03 Successors and Assigns _____	23
ARTICLE 12. INDEMNIFICATION _____	23

<i>ARTICLE 13. INSURANCE</i>	24
<i>ARTICLE 14. SELLER GUARANTEES OF FACILITY PERFORMANCE</i>	24
<i>ARTICLE 15. DISPUTES/ARBITRATION</i>	24
15.01 Disputes	24
15.02 Arbitration	25
<i>ARTICLE 16. TERM; TERMINATION</i>	25
16.01 Term	25
16.02 Termination	25
16.03 Survival	26
<i>ARTICLE 17. EVENTS OF DEFAULT; REMEDIES</i>	26
17.01 Event of Default by Seller	26
17.02 Event of Default by The University	27
17.03 General	28
17.04 Termination	28
17.05 Alternative to Termination	28
17.06 Termination Payment	28
<i>ARTICLE 18. MISCELLANEOUS-PROVISIONS</i>	29
18.01 Amendments; Waiver	29
18.02 Severability	29
18.03 Governing Law	29
18.04 Independent Contractor; No Partnership	29
18.05 Headings	30
18.06 Multiple Counterparts	30
18.07 Further Assurances	30
18.08 Limitation of Liability	30
18.09 Limitation of Actions	30
<i>ARTICLE 19. REPRESENTATIONS</i>	31
19.01 Representations of Seller	31

EXHIBIT 1. Termination Payment	34
EXHIBIT 2. Layout of Facility	35
EXHIBIT 3. Tie-In System	36
EXHIBIT 4. Steam Price	37
EXHIBIT 5. The University's Acceptable Steam Requirements	38
EXHIBIT 6. Liquidated Damages	39
APPENDIX A. Definitions	40
APPENDIX B. Ancillary Documents	41

STEAM SERVICE AGREEMENT

THIS STEAM SERVICE AGREEMENT, dated as of May 1/5/98, 1998, between The Board of Governors for Higher Education for the State of Rhode Island and the University of Rhode Island, (hereinafter individually and collectively called "University"), having a mailing address at Sherman Building, Kingston, Rhode Island 02881-0801, and ERI Services, Inc., a Delaware corporation, (hereinafter called "Seller"), having its principal office at 255 Main Street, Hartford, Connecticut 06106.

WITNESSETH:

WHEREAS, the University is authorized by law to enter into this Agreement with Seller to provide Acceptable Steam to the University in accordance with the terms and conditions hereof; and,

WHEREAS, the University has selected Seller, in reliance on the skill, expertise and past successful experience with steam generation technology of Seller, to design, renovate, construct, operate and maintain a steam generation facility (the "Facility") as a service to University, in accordance with the terms and conditions of this Agreement, and the Development Agreement;

WHEREAS, The University shall deliver to Seller care, custody and control of the existing facility, including the rental boilers currently on-Site;

WHEREAS, Seller will renovate, construct, build and operate the Facility including the steam lines and Condensate return lines which make up the Tie-In System to the University Steam System at the Points of Delivery;

WHEREAS, Seller shall operate and maintain the Facility and the Tie-In System as a steam generation facility;

WHEREAS, Seller acknowledges that a reliable and uninterrupted Acceptable Steam supply is critical to the operation of the University;

WHEREAS, Seller desires to provide the University with, and the University desires to purchase from Seller, in accordance with the terms, conditions and specifications set forth herein, certain quantities of Acceptable Steam required for use by the University in connection with the operation of the University;

WHEREAS, ERI Investments, Inc. ("Guarantor") has executed the Guaranty set forth in Appendix B guaranteeing the performance of Seller's obligations under this Agreement;

NOW, THEREFORE, in consideration of the premises, the execution simultaneously herewith of the Development Agreement, and of the mutual obligations undertaken herein and therein the parties, intending to be legally bound, hereby agree as follows.

ARTICLE 1. DEFINITIONS, EXHIBITS INCORPORATED BY REFERENCE

1.01 Certain Definitions

All capitalized terms used in this Agreement, unless otherwise expressly defined herein, shall have the meanings given to such terms in Appendix A or as defined in one or more of the other Project Documents.

1.02 Exhibits and Appendices Incorporated by Reference

The following Exhibits and Appendices are hereby incorporated by reference and expressly made a part hereof:

- EXHIBIT 1 - TERMINATION PAYMENT
- EXHIBIT 2 - LAYOUT OF FACILITY
- EXHIBIT 3 - TIE-IN SYSTEM
- EXHIBIT 4 - STEAM PRICE
- EXHIBIT 5 - THE UNIVERSITY'S ACCEPTABLE STEAM REQUIREMENTS
- EXHIBIT 6 - LIQUIDATED DAMAGES

APPENDIX A - DEFINITIONS

APPENDIX B - ANCILLARY DOCUMENTS

ARTICLE 2. CONSTRUCTION AND OPERATION OF FACILITY

2.01 Site

The Facility will 1) be located on the University property which will be fully accessible to Seller at all times so as to permit unimpeded performance of the Work and as may be further provided by the Project Documents; and 2) also consist of the Tie-In System.

2.02 Construction of Facility

Seller agrees that it will design, obtain all required governmental permits for, renovate, construct, start-up and Performance Test the Facility on the Site pursuant to the Development Agreement. As part of Seller's renovation and construction of the Facility, Seller shall design, obtain all required governmental permits for, construct, pay for, operate and maintain the entire Tie-In System as shown on Exhibit 3. Seller will provide all necessary safety valves and control equipment that will be capable of limiting steam pressure and temperature to those specified in Exhibit 5 at the Points of Delivery, and such control equipment and valves will be accessible to the University upon request. Seller shall cause these valves to be tested at least once during each Operating Year by persons holding a "V" or "SV" stamp from the National Board of Boiler and Pressure Vessel Inspectors and the result of such tests shall be supplied promptly to the University.

2.03 Facility Operation

- (a) Seller shall, at its sole cost and expense, provide or obtain management, supervision, personnel, materials, equipment, services, supplies, other utilities, and fuel and provide for waste disposal, as necessary, to operate, maintain and repair the Facility throughout the term of this Agreement in a manner consistent with good engineering, operations and maintenance practices and procedures for steam generation facilities and to supply Acceptable Steam in accordance with the terms of this Agreement.
- (b) Seller shall maintain and operate the Facility in full compliance with all permits, approvals and licenses and with all federal, state and local laws, rules, regulations, ordinances and by-laws applicable to the Facility, including but not limited to rules, regulations, ordinances and bylaws relating to protection of human health and the environment.
- (c) Seller agrees that it will: (a) take all reasonable precautions to prevent damage, injury or loss by reason of or related to the operation and maintenance of the Facility, to any person or real or personal property of the Facility Site, or other properties; (b) establish and maintain safety procedures for the Facility and for the protection of employees of Seller, the University and University personnel, students, and all other persons on the Facility Site and on surrounding properties in full compliance with applicable laws, regulations and good industry standards; (c) comply with all applicable laws, ordinances, by-laws, rules and regulations and lawful orders of any public authority relating to the safety of persons or property; (d) comply with all reasonable safety, fire protection and environmental health procedures prescribed from time to time by the University; (e) designate a qualified and responsible member of its organization located at the Facility whose duties, among others, shall be safety and the prevention of fires and accidents at the Facility and to coordinate such activities as shall be necessary with the

University Designated Representative and with federal, state and local officials; (f) promptly report in writing to the University Designated Representative any accident arising out of or in connection with the operation of the Facility, giving full details and statements of witnesses, and promptly notify the University Designated Representative by telephone or messenger if any death, serious injury, or serious damage occurs; and (g) promptly notify the University Designated Representative and the University in writing of any claim made by anyone against Seller or any of Seller's agents, subcontractors or employees for any such accident giving full detail and copies of written statements, if any.

- (d) Subject to the provisions of this Agreement, Seller shall operate the Facility twenty-four hours per day, seven days per week to provide continuous deliveries of Acceptable Steam up to the levels established in the Performance Guarantees. Seller understands and agrees that, subject to the terms of this Agreement, there cannot be and it is not anticipated that there will be any disruption in the delivery of Acceptable Steam during the term of this Agreement, it being understood that any such interruption would be highly detrimental to the functioning of the University. It is Seller's responsibility to take all reasonable measures to ensure that there is sufficient redundancy to the Facility including sufficient redundancy to allow for routine and non-routine repair and maintenance of the Facility to avoid any such disruption in service.
- (e) The University, at its expense, shall operate and maintain (i) all pipelines and other related equipment beyond the Points of Delivery necessary for the University to accept delivery of Acceptable Steam and for the University to return Condensate to the Points of Delivery to Seller, (ii) its electric distribution system between the utility grid and the electricity Connection Point, so as to facilitate delivery of adequate power and otherwise permit operation of the Facility in accordance with this Agreement, and (iii) its sewer system so as to accept Facility effluent in accordance with this Agreement. Seller, at its expense, shall operate and maintain all lines and equipment on the Site necessary for the delivery of Acceptable Steam to and the return and/or disposal of Condensate from the Points of Delivery.
- (f) Seller shall provide the University on the second Friday of each Billing Period, a report giving the following information:
 - (i) a summary log for each steam meter required under Article 6 for the previous Billing Period reporting the recorded measurements, calibration corrections and the next scheduled calibration; and
 - (ii) a log of all scheduled and unscheduled partial total outages and any changes in the quality of steam tendered to the University by Seller over the course of the previous Billing Period; and

- (iii) any other information reasonably requested by the University.

- (g) Seller shall submit annually to the University within 90 days of the end of each fiscal year of Seller audited financial statements in accordance with the requirements of Rhode Island Law, as then existing, amended, replaced or superseded. Seller shall provide the University with copies of the Guarantor's annual financial reports, as well as Seller's annual financial reports, if issued separately, and copies of any annual, quarterly or other interim financial filings required by the Securities and Exchange Commission, within 90 days of issuance through the Term of this Agreement. Within 90 days after the close of each fiscal year, an audited financial report of the Seller, prepared in accordance with Rhode Island Law, as then existing amended, replaced or superseded, shall be provided.

- (h) Seller shall not, without the prior written consent of the University permit the Facility, or any part thereof, to be operated by any person or firm other than Seller. Such consent may be withheld for any or no reason and no challenge to the University's withholding of consent shall be made, even if the University's decision is arbitrary and/or capricious.

- (i) The University shall provide, at its sole cost, (i) water service of such quality, pressure and quantity, and (ii) sewer service of such capacity, as may be required by Seller for the construction, operation and maintenance of the Facility. In the event of any failure by the University to provide such services, Seller shall be excused from the performance of its obligations under the Development Agreement and this Agreement to the extent such performance is prevented by such failure. Water provided by the University hereunder shall meet all federal water quality standards. Facility sewer discharge shall meet discharge criteria under Town of South Kingstown 1997 Industrial Discharge Permit for the University and Seller shall pre-treat such discharge, if necessary, to avoid any violation by the University of its Discharge Permit.

- (j) Seller shall have the unrestricted (except as specifically set forth herein) right to fully access and occupy the Facility Site, and any other University property as reasonably required for the performance of its obligations, at all times this Agreement is in effect.

- (k) The University shall (i) provide all information and cooperation reasonably requested by Seller in connection with operation of the Facility, (ii) provide all required rights of way and adequate ingress and egress for performance of Seller's responsibilities hereunder, and (iii) maintain or cause to be maintained in proper order all utility lines and other facilities and services which serve the Facility.

- (l) The University shall not withhold from the Facility Site and its surrounding area security services in accordance with its customary campus security program, including normal patrolling.

2.04 Coordination of Operations

- (a) The University shall designate a person or persons who will be designated to receive certain direct communications from Seller (the "University Designated Representative"). Such designation may change from time to time, upon notice by the University to Seller. The University may designate a person or firm as consulting engineer, which designation may change from time to time, for the purpose of aiding the University in fulfilling its obligations under this Agreement.
- (b) Not less than 10 days after the Contract Date and again 30 days prior to the Substantial Completion Date under the Development Agreement, Seller shall develop operating procedures (in draft form for the initial submission 10 days after the Contract Date) which shall be subject to the University's review and approval, to serve as guidelines for the supply of Acceptable Steam to the University and for such other operating aspects as The University may require, which shall be made part of the Operating Manual required pursuant to Article 7.06 of the Development Agreement. It is contemplated that such operating procedures may be revised from time to time at the request of the University and will be revised from time to time to reflect actual operating experience. The procedures shall describe among other things the operating responses by the Facility and the University to variations in steam dispatch demand and supply. These variations shall include, but are not limited to, time of day, academic calendar, demand or supply disruption, Facility scheduled maintenance and forced outages and other transient or expected demand conditions affecting the continuous and reliable supply of Acceptable Steam to the University. The procedures shall establish a means of continuous communication between the Facility and the University and the University Designated Representative. They shall include planning agreements, information sharing, including method and format for submitting and recording of metering data required pursuant to Article 6, joint short-term and long range planning agreements for performing concurrent maintenance and improvements, emergency notification and response procedures for system forced outages and upsets, and designation of decision authority levels for responding to Facility or the University emergencies. In addition, quarterly meetings will be held between Seller and the University to review the past quarter's activities, discuss any problems anticipated in the future, and provide a forecast of Acceptable Steam consumption by the University for the next four quarters. Such forecasts will be provided for planning purposes and shall not be a commitment to purchase.

- (c) The University and Seller shall maintain open daily communications to share information regarding operation of the Facility. Among the items to be addressed by such communication are matters relating to the scheduling of maintenance. Any scheduled maintenance requiring the shutdown of part of the steam generating capacity of the Facility shall be scheduled to coincide with periods when the University steam demand will be low, including by way of example only, summer and vacation periods. Nothing in this section shall relieve Seller of its obligation to operate the Facility, subject to the terms of this Agreement, such that the Facility is capable of providing the University's requirements of Acceptable Steam to University at all times.

2.05 Repair and Maintenance

- (a) Seller shall maintain, and if necessary, service and repair, at its own expense, the Facility such that the Facility meets the Performance Guarantees set forth in the Development Agreement for the entire Term of this Agreement, and shall keep the Facility in safe condition and shall maintain, service and repair the Facility to the same extent as companies of established reputation operating similar properties maintain, service and repair those properties, and in any event (i) in accordance the Facility's permits, (ii) in accordance with all applicable requirements of law and of any governmental authority having jurisdiction over the Facility, (iii) to the extent required to maintain the Facility, and each material portion thereof, in good operating condition for its intended purposes in accordance with the Plans and Specifications under the Development Agreement as modified and supplemented from time to time, and (iv) in accordance with the terms and conditions of all Ancillary Agreements and insurance policies in effect at any time with respect to the Facility or any part thereof so that the Facility, and each material portion thereof, will continue to have the capacity and functional ability to perform, on a continuing basis in commercial operation and in accordance with the Performance Guarantees, the functions for which it was specifically designed. The University shall have the right, but not the obligation, to make, upon ten (10) days written notice, on behalf of Seller, any payment necessary to maintain and operate the Facility as required herein which Seller has failed to pay in accordance with the requirement of this Agreement.
- (b) Seller hereby guarantees that all equipment and materials to be supplied under this Agreement including all repairs and replacements of the Facility or any part thereof (a) shall be of such quality and durability as to equal or exceed in quality and durability equipment originally installed and supplied pursuant to the Development Agreement; (b) shall be of such quality and shall be supplied in such quantity as to be consistent with the guarantees of Article 14; and (c) shall carry a manufacturer's warranty consistent with industry standards, which warranty shall be made assignable to the University, its successors and assigns.

- (c) Subject to the provisions of Section 4.06, Seller, subject to the Change in Law provisions of this Agreement, shall make such alterations to the Facility as shall be required from time to time to meet standards or requirements of law or of any governmental authority having jurisdiction.
- (d) Subject to approval of the University pursuant to this section, Seller may, at its own cost and expense, make Changes to the Facility which Seller deems necessary to comply with the Performance Guarantees or which Seller otherwise deems to be necessary or desirable. Seller shall notify the University in writing of any proposed Change and shall state in such notice (i) the reason for the proposed Change; (ii) the parts, equipment or systems Seller proposes to replace, install or substitute and the extent to which such proposed change would deviate from the Plans and Specifications in Exhibit 6 of the Development Agreement; (iii) the estimated cost and method of financing; (iv) the time required to prepare and complete the proposed Change; and (v) the effect, if any, of such proposed Change on the ability of the Facility or costs of its operation to produce or deliver Acceptable Steam or meet the Performance Guarantees. The University shall, within 30 days of the date of receipt of Seller's written notice, approve or disapprove the work proposed by Seller, which approval shall not be unreasonably withheld. The University may reasonably disapprove such work if it determines that the proposed Change would impair the quality of the Facility with respect to the requirements set forth in this Agreement. Notwithstanding anything in this Article or in the Development Agreement to the contrary, Seller shall be obligated to construct, operate and maintain the Facility such that it is capable of meeting the Performance Guarantees, irrespective of any approvals by the University or requirements contained in the Minimum Design and Equipment Specifications which may be in error, or which render the Facility incapable or unable to meet the Performance Guaranties.
- (e) Notwithstanding any provision of this Agreement to the contrary, Seller may take the Facility out of service for periods not to exceed twenty-four (24) hours as reasonably required for the performance of major maintenance. Seller shall provide not less than one week prior notice to the University and shall conduct such major maintenance during summer months or as otherwise pre-approved by the University at another time so as to minimize inconvenience to the University.
- (f) Seller shall make such additional repairs to the steam/condensate distribution system as directed by the University in years one through five of this Steam Service Agreement at a cost of up to \$300,000 per year. If after five years Seller has not spent \$1,500,000 on such repairs or improvements, the unused funds shall be used in subsequent years as directed by the University for additional repairs or improvements to the steam/condensate system. The repairs or improvements to be made under this paragraph are in addition to those

referenced precisely in the ITB to be accomplished under the Development Agreement.

2.06 Permits

Seller shall obtain, maintain and renew, when appropriate, all permits, approvals, licenses and variances necessary for the lawful renovation, construction and operation of the Facility, and the sale of Acceptable Steam hereunder, including, without limitation, all necessary environmental permits.

2.07 Costs

Except as otherwise expressly provided hereunder or in any of the Ancillary Agreements, costs associated with the Facility, including without limitation, costs associated with the design, engineering, obtaining, maintaining or renewing of permits, licensing, renovation, construction, obtaining fuel supply, electricity and other utilities, disposing of wastes (except sewer service), maintenance, repair, testing, operation of the Facility and including all taxes will be the sole responsibility of Seller.

2.08 Site Inspection/Access

The University and its respective agents, licensees or invitees, and representatives of governmental regulatory agencies may visit or inspect the Facility and the Facility Site and inspect all plans, specifications, reports, books and records of Seller and its agents relating to Seller's performance of its obligations under this Agreement, employees, contractors and subcontractors relating in any way to the Facility at any reasonable time during normal business hours after giving the Seller 24 hours notice; provided, however, that the representative of the University or the representative's designees may inspect the Facility and the Facility Site at any time during normal business hours without notice. Any such visits shall be conducted in a manner that does not cause unreasonable interference with the Seller's operations. The Seller may require any person on the Facility Site to comply with its reasonable rules and regulations. The University shall have the right to keep upon the Facility Site employees, agents and representatives of the University, and Seller shall give such employees, agents and representatives of the University access to the Facility Site in order that the University may be advised of the progress of the operation and the manner in which the operations are being performed.

2.09 Ownership of Facility

University shall own the Facility, subject to any rights of lenders pursuant to Article 11, commencing upon Substantial Completion of the Facility and thereafter throughout the term of this Agreement.

ARTICLE 3. PURCHASE OF STEAM AND CONDENSATE RETURN

3.01 Steam Purchase

During the Term of this Agreement, the University agrees to purchase all of the University steam requirements from Seller. If Seller is unable to supply all of the University's requirements for any reason, the University may purchase steam in excess of that produced by Seller from any source. Seller shall not sell steam produced at the Facility to any party other than the University without the prior written consent of the University. Such consent may be withheld for any or no reason and no challenge to the University's withholding of consent shall be made even if the University's decision is arbitrary and/or capricious.

3.02 Excess Requirements

Seller agrees to sell to the University such Acceptable Steam as demanded by the University on a continuous basis up to the Maximum Steam Load. In the event that the University's requirements exceed the Maximum Steam Load, Seller shall sell Acceptable Steam in excess of the Maximum Steam Load to the University if Seller can produce additional Acceptable Steam to meet all of the University's Requirements within the limits of good engineering practices, at the Steam Price for Acceptable Steam established pursuant to Article 4.01. In the event that Seller cannot supply all of the Acceptable Steam required by the University, the University may, at its sole discretion, purchase whatever amount of steam in excess of what Seller is able to supply from any other source.

3.03 Minimum Requirements

The University agrees to take or pay for a minimum number of pounds of Acceptable Steam per Operating Year over the Term of this Agreement as outlined in Exhibit 5. In the event that Seller is unwilling or unable to deliver the University's Requirements (up to the Maximum Steam Load) of Acceptable Steam for any reason other than a failure by the University to comply with any of its obligations set forth in this Agreement, the University's obligation to purchase Acceptable Steam shall be reduced by an amount equal to the minimum number of pounds times 1/365 for each day (prorated for any partial days of nondelivery) in which such failure of Seller to deliver the University's Requirements exists or occurs.

3.04 Condensate

The University shall return, free of hazardous waste, such Condensate as it collects to Seller for Seller's use in the generation of additional steam or for disposal by Seller. In the event the University returns condensate not in conformance with Exhibit 5, Seller may at its sole discretion accept or reject such contaminated condensate. Seller shall recycle or properly dispose of all uncontaminated Condensate. The University shall return 60% of the steam exported to the University at the Points of Delivery as 180 degrees F Condensate. In the event the University at any time returns condensate contaminated with hazardous waste or fails to return 60% of the

steam exported as set forth above, Seller shall be entitled to an equitable adjustment in the purchase price of Acceptable Steam. Furthermore, University shall be entitled to an equitable adjustment in the purchase price of steam as set forth in the ITB in the event that University returns in excess of 60% of the steam exported.

ARTICLE 4. PURCHASE PRICE FOR STEAM

4.01 Price

The University shall pay Seller for the delivery of Acceptable Steam as determined pursuant to Exhibit 4.

4.02 Adjustments

Adjustments to be made to the purchase price for Acceptable Steam will be set forth in Exhibit 4.

If Seller fails to timely notify the University in accordance with this paragraph, no increase in the purchase price for Acceptable Steam shall be allowed until the following month.

4.03 Put or Pay

On or after July 1 of each Operating Year, but no later than August 1 of that Operating Year, Seller shall provide the University with a calculation of the amount of Acceptable Steam delivered to the University during the previous Operating Year. In the event that the amount of Acceptable Steam delivered to and purchased by the University during the Operating Year is less than the minimum number of pounds for such operating year as outlined in Exhibit 5, as adjusted for any occurrence of an event of Force Majeure, or a failure of Seller to delivery Acceptable Steam pursuant to Article 3.03, Seller shall invoice the University and the University shall pay in accordance with Article 7 the difference between the minimum number of pounds as adjusted pursuant to Article 3.03 and the amount of Acceptable Steam actually delivered to the University, at a price determined pursuant to Article 4.01.

4.04 Additional Fees

Additional Fees shall be determined and assessed as set forth in Article 7.01 herein.

4.05 University Changes

Pursuant to the Development Agreement, the costs of certain University Changes, including certain environmental remediation costs, certain changes requested by the State of Rhode Island during construction of the Facility, and certain changes in law occurring prior to the issuance of the Authorization to Proceed under the Development Agreement, may be reimbursed to Seller by the University through the imposition of Additional Fees. Such Additional Fees shall be paid pursuant to Article 7.01.

4.06 Change In Law Pass-Through Costs

In the event that Seller has incurred in the aggregate over the life of this Agreement more than \$1,000,000 in Change in Law Pass-Through Costs, and further, in the event that Seller has incurred at least \$150,000 in Change in Law Pass-Through Costs during any Calendar Year (which \$150,000 amount may be a part of the \$1,000,000 threshold), an Additional Fee shall be assessed to the University to enable Seller to recover all current and future Change in Law Pass-Through Costs in excess of the \$1,000,000 threshold, but only for those Change in Law Pass-Through Costs for a Calendar Year which total in excess of \$150,000, such costs to be amortized over the lesser of 10 years or the remaining term of this Agreement at the Statutory Rate of interest, to be paid as an Additional Fee in accordance with Article 7.01. (It is the intention of the parties that no Change in Law Pass-Through Costs shall be allowed until at least \$1,000,000 of such costs have been expended by Seller. Once this \$1,000,000 threshold is reached, only costs in excess of the threshold can be recovered, and further only the amount in excess of \$150,000 to the extent that Seller accumulates more than \$150,000 in such costs in a particular calendar Year.) Such Additional Fee for Change in Law Pass-Through Costs incurred during the previous Calendar Year shall be determined by Seller and communicated to the University in accordance with Article 4.02 above.

ARTICLE 5. INITIAL DELIVERY DATE

5.01 Initial Steam Delivery

Seller shall be prepared to deliver and the University will be prepared to accept Acceptable Steam pursuant to this Agreement no later than September 8, 1999.

5.02 Delivery of Test Steam

At least ten days prior to the Initial Delivery of Steam pursuant to the Development Agreement, Seller shall deliver to the University sufficient Acceptable Steam which will allow the University to verify that the steam generated by the Facility meets the agreed upon specifications for Acceptable Steam provided, however, that the University acknowledges that this requirement can be met as part of the Performance Test pursuant to Article 9.02 of the Development Agreement.

ARTICLE 6. METERING

6.01 Meters

Seller shall purchase, install, operate and maintain standard metering devices appropriate to measure accurately the pressure, temperature, quantity and flow of steam pertaining to this Agreement. Seller shall locate the metering devices as near as practicable to the Points of Delivery. The metering devices shall record the measured variables which demonstrate that the steam delivered is Acceptable Steam continuously. Seller shall also, not less than once per day, take measurements of total solids and pH of the export steam using generally accepted test

methods. The results of such measurements shall be maintained on file at the Facility for one year. The University shall have access to the metering devices and may inspect the charts and test data during normal business hours. Seller shall also purchase, install, operate and maintain standard metering devices appropriate to measure accurately the temperature, quantity and flow of condensate returning to the Facility from the University Steam System.

6.02 Materials

Each steam line from the Facility to the Points of Delivery shall be metered. If one pressure of steam is delivered to Pressure Reduction Equipment, the metering device shall be located on the University's side of the Pressure Reduction Equipment.

6.03 Accuracy and Performance

All meters shall be industrial quality electronic equipment. Accuracy shall be maintained to within one percent (1%) of reading. Turndown shall be sufficient to maintain the above accuracy over the full operating range of that meter. Meter outputs shall be fed to the Facility for trending and archiving as required pursuant to procedures established pursuant to Article 2.04. Archived data shall be available for review by the University for a minimum of five (5) years.

6.04 Access Inspections and Testing

All meters shall be sealed by Seller. Meter seals shall be broken only by Seller and only when a meter is to be inspected, tested, adjusted, or repaired. Seller, at its own expense, shall periodically inspect and test the meters at intervals not to exceed one year. The University may, at any time, request an additional test of such meter. The cost of such additional testing shall be borne by the University unless the percentage of error is found to be greater than 1%. The University shall have the right to have a representative present at the inspection, testing, adjustment or repair of any meter and shall receive reasonable prior notice thereof.

6.05 Adjustments for Inaccuracies

If a meter fails to register, or if the measurement of a meter is found, upon testing to be inaccurate by 1% or more, an adjustment will be made for the actual period during which inaccurate measurements were recorded, if that period can be determined to the mutual satisfaction of the parties, and otherwise for one-half of the period from the date of the previous test of the meter. The amount of the adjustment will be determined by correcting the error if the percentage of error is ascertainable by calibration, tests, or mathematical calculations, or if such estimation is impractical, then by estimating on the basis of deliveries during periods under similar conditions when the meter was registering accurately. The University will pay Seller the amount of any underpayment, or Seller will refund to the University the amount of any overpayment, determined as a result of such adjustment, in either case with interest at the Statutory Rate.

6.06 The University's Measuring Equipment

The University may install, maintain, and operate at its own expense such measuring equipment as it shall desire, provided that equipment shall be so installed so as not to interfere with the proper operation of Seller's metering equipment. The accuracy of the University's measuring equipment shall be verified by the University at reasonable intervals and, if so requested, in the presence of representatives of Seller.

ARTICLE 7. BILLING

7.01 Monthly Invoices

Seller shall read its metering devices on the last day of each Billing Period. Seller shall prepare and submit monthly invoices for Acceptable Steam delivered to the University within 10 business days after the last day of the Billing Period. Any Additional Fees pursuant to Article 4.04 shall be assessed each Billing Period and listed separately on the same invoice. The University shall pay such invoices, less amounts disputed in good faith, within 45 days after the last day of the same Billing Period.

7.02 Interest

If the University fails to pay all or a portion of a disputed or undisputed amount within the time stated in Article 7.01, and if the University is subsequently determined to owe a disputed amount, the University shall owe interest, from the time such amount would have been due if undisputed until paid, at the rate of interest at the Statutory Rate on the unpaid portion of the bill. If it is subsequently determined that the University has overpaid any amount, Seller shall owe interest on the amount of such overpayment at the Statutory Rate.

7.03 Records

Both parties shall keep such records as are necessary for verification of quantities, invoiced amounts and other services provided pursuant to this Agreement. Such records shall be available for inspection by either party upon reasonable notice. All such records shall be kept for a minimum period of five years.

7.04 Audit

The University will, at its own expense, have the right to retain an independent auditor to compute and submit an audit of the invoice calculations and billings. The results of such audit shall be subject to reasonable review and verification by Seller. The University will bear the cost of such audit, however, in the event that the audit determines that there is a discrepancy between what was deemed owing and what was billed and such discrepancy is in excess of \$25,000 in favor of the University, Seller shall bear the full cost of the audit in addition to any other remedies of the University.

ARTICLE 8. TAXES

All taxes, excises and other charges which are imposed upon or with respect to this Agreement, to the Facility, or to the production, processing or sale of steam at the Facility shall be paid by Seller, subject to the Change in Law provisions set forth in Section 4.06.

ARTICLE 9. INABILITY TO DELIVER ACCEPTABLE STEAM/FORCE MAJEURE

9.01 Inability to Deliver

In the event that Seller determines that it will not be able to deliver up to the amount of Acceptable Steam necessary to meet the University's requirements (up to the Maximum Steam Load), Seller shall immediately notify the University and the University Designated Representative orally, and in writing as soon as possible, of the amount of Acceptable Steam which Seller will be able to deliver. Seller shall use all reasonable efforts, consistent with good engineering practices, to deliver as much Acceptable Steam as is possible under the circumstances. Seller shall cooperate with the University and take all actions reasonably available to mitigate the University's damages or inconvenience for Seller's failure to provide adequate Acceptable Steam. In addition to Seller's obligation to mitigate, in the event that Seller is unable to deliver Acceptable Steam up to the University's requirements (up to the Maximum Steam Load) for any reason, and such failure exists for more than 48 hours, Seller shall, within 48 hours of first interruption, provide temporary or replacement equipment capable of producing Acceptable Steam to fulfill the University's requirements (up to the Maximum Steam Load).

9.02 Non-Acceptable Steam

Seller shall immediately advise the University and the University Designated Representative orally, and in writing as soon as possible, any time that steam being delivered is Non-Acceptable Steam. The University shall notify Seller if it declines to accept such Non-Acceptable Steam. The University shall at all times have the right to stop deliveries of Non-Acceptable Steam by so advising Seller. Upon receipt of such notice, Seller shall immediately cease all deliveries of Non-Acceptable Steam. In the event that the University wishes to accept Non-Acceptable Steam, Seller shall deliver such Steam at a cost which represents an adjustment proportional to the Btu content thereof. The acceptance by the University of Non-Acceptable Steam supplied by Seller under this Article shall not constitute a waiver by the University of its rights hereunder or of the University's right to refuse to accept Non-Acceptable steam at any other time, or of any of Seller liabilities hereunder except for Seller's liability to pay liquidated damages. Seller shall have no obligation to deliver Non-Acceptable Steam if, in Seller's reasonable judgment, production or delivery of such steam would not be in accordance with good engineering practice, or may cause harm or damage to any person, the University or its property.

9.03 Force Majeure

In addition to Seller's obligations pursuant to Articles 9.01 and 9.02 above, if Seller fails to provide Acceptable Steam to the University up to the Maximum Steam Load and such failure is due to an event of Force Majeure or the University's material breach of its obligations under this Agreement or the Development Agreement, Seller shall immediately notify the University and the University Designated Representative of such event of Force Majeure, and of the estimate of Acceptable Steam which can be made available during such event, and the expected duration of the event of Force Majeure. The parties shall solely determine whether the Facility can be repaired and the appropriate schedule for such repair, and the best method for assuring prompt resumption of deliveries of Acceptable Steam to the University. Seller shall undertake such repairs or other remedial actions as are reasonably required by the University. Nothing in this paragraph shall relieve Seller of its obligation to use all reasonable efforts to provide temporary or replacement equipment to provide Acceptable Steam pursuant to Article 9.01 in the event of Force Majeure. If the University determines in its sole judgment and discretion that due to Force Majeure the Facility cannot be repaired, this Agreement shall terminate.

9.04 Liquidated Damages

In the event that Seller fails for more than one continuous hour, except for an event of Force Majeure or a failure by the University to timely perform any of its obligations set forth in this Agreement or the Development Agreement, to provide steam which meets the requirements for Acceptable Steam, Seller shall pay the University liquidated damages in the amounts as set forth on Exhibit 6. Such liquidated damages shall be in addition to any other rights or remedies that the University may have under this Agreement, including the right to direct or consequential damages to property or for bodily or personal injury. Nothing in this Article shall impair the right of the University to exercise any of the rights granted to the University under this Agreement or the Ancillary Agreements, except as they may herein limited. Seller acknowledges that due to the difficulties involved in calculating the actual damages caused by a failure to provide steam at pressures and temperatures required under the definition of Acceptable Steam, and the infeasibility of the University to otherwise obtaining an adequate remedy, liquidated damages as required hereunder are appropriate and the amounts so fixed are reasonable in light of the circumstances.

9.05 No Limitation

Notwithstanding anything to the contrary contained in this Agreement (except for (i) any obligation to pay money, or (ii) any provision which expressly states that it shall apply despite the occurrence and/or continuance of an event of Force Majeure), neither party shall be liable to the other for any failure or delay in performance of any obligation under this Agreement if to the extent such failure or delay is due to the occurrence of an event of Force Majeure. Seller shall not be liable to the University for any failure or delay in performance of any obligation under this Agreement to the extent such failure or delay is due to any material breach by the University in the performance of any of its material obligations under this Agreement.

ARTICLE 10. NOTICES AND OTHER COMMUNICATIONS

10.01 Method of Giving Notice

Any notice required or permitted under this Agreement shall, except as otherwise expressly permitted by this Agreement, be in writing and shall be deemed to have been duly given on the date of receipt, and shall be either served personally on the party to whom notice is to be given or mailed to the party to whom notice is to be given by recognized overnight commercial courier or first class registered or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address stated opposite its name below, or at the most recent address specified by written notice given to the other party in the manner provided in this Article. As a matter of convenience, but not a requirement, the sending party where possible also will transmit to the other party a copy of the communication by electronic means such as Telex or Telefax, if available to the parties. Notices concerning emergency situations may be orally communicated in person or by telephone, or sent by either hand delivery or telegraphic, teleprinter, or teletypewriter service, but shall be promptly confirmed by supplemental written notice as provided herein.

10.02 Notices to The University

Notices to the University shall be addressed to:

**Mr. Paul DePace
Office of Capital Projects
University of Rhode Island
Sherman Building
Kingston, RI 02881-0801**

**Phone: (401) 874-2725
Fax: (401) 874-5599**

with copies to:

**Louis J. Saccoccio, Esq.
Office of General Counsel
University of Rhode Island
Charlotti Administration Building
Kingston, RI 02881-0806**

Phone: (401) 874-4486

10.03. Notices to Seller

Notice to Seller shall be addressed to:

**Mr. Paul Romanelli
ERI Services, Inc.
255 Main Street, Suite 500
Hartford, CT 06106**

**Phone: (860) 249-4321
Fax: (860) 549-2528**

with copies to:

**Laurie Hunt, Esq.
ERI Services, Inc.
255 Main Street, Suite 500
Hartford, CT 06106**

**Phone: (860) 249-4321
Fax: (860) 549-2528**

10.04. Invoices to the University

Invoices to the University shall be sent to the following address:

**Mr. Paul DePace
Office of Capital Projects
University of Rhode Island
Sherman Building
Kingston, RI 02881-0801**

10.05 University Designated Representative

All communications shall be sent to the University Designated Representative as follows:

**Mr. Paul DePace
Office of Capital Projects
University of Rhode Island
Sherman Building
Kingston, RI 02881-0801**

**Phone: (401) 874-2725
Fax: (401) 874-5599**

10.06 Notice Changes

The addresses or designated persons to receive communications may be changed by notification to the other party pursuant to Article 10.01.

ARTICLE 11. ASSIGNMENT OF AGREEMENT

11.01 General

Seller may not assign this Agreement in whole or in part, or any rights granted hereunder, or delegate or subcontract to another party any of the duties hereunder, without the prior written consent of the University, which consent may be unreasonably withheld in its sole discretion. Such consent may be withheld for any or no reason and no challenge to the University's withholding of consent shall be made even if the University's decision is arbitrary and/or capricious.. Any assignment shall not relieve Seller or the Guarantor of its obligations under this Agreement.

11.02 Assignment to Lenders

Subject to prior written consent of the University, such consent not to be unreasonably withheld, Seller may mortgage, pledge, assign for security or otherwise encumber its interest in this Agreement, to a financial institution lending funds for the construction or permanent financing of the Facility or any related improvements provided that Seller has obtained the commitment from the lender that lender will not reassign its interest in the Agreement without the University's prior written consent, which consent shall not be unreasonably withheld. The University shall provide such reasonable cooperation as Seller may request in connection therewith, including execution of customary security documents and the like. Except as provided in this Paragraph, Seller's interest in this Agreement shall not be further assigned or transferred whether voluntary or following foreclosure without the University's prior written consent, as required pursuant to Article 11.01.

11.03 Successors and Assigns

Except with respect to an assignment consented to by the University pursuant to Article 11.01 or Article 11.02 , no assignment of this Agreement by either party shall be valid until all the obligations of the assignor hereunder shall have been assumed by the assignee by written agreement delivered to the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

ARTICLE 12. INDEMNIFICATION

To the fullest extent allowed by law, Seller agrees to defend, indemnify and hold harmless the University (including its officers, employees, subcontractors and agents) from and against any and all liabilities (including third-party liabilities), claims, injuries (including death resulting

therefrom) property damage, fine, penalty or assessment by any public agency (insofar as not prohibited by law), cost or expense (including costs of defense, settlement and reasonable attorneys' fees), which are directly or indirectly caused by any act or omission of Seller, its agents, employees or subcontractors associated with, or arising from Seller's performance or nonperformance of its obligations under this Agreement. Such obligations are in addition to the University's right to liquidated or other damages.

ARTICLE 13. INSURANCE

Seller, at its expense, shall obtain and maintain in effect during the Term of this Agreement all Facility insurance coverages required to be in effect under the Development Agreement except Builder's All Risk insurance coverage, subject to reasonable deductibles, and will maintain and keep the Facility in a safe condition in accordance with the terms and conditions of such Facility insurance coverages. In the event any subcontractor is employed, with or without the University's consent, for any of the services covered in this Agreement, then Seller assumes full responsibility to insure that the subcontractor's services are covered reasonable insurance coverages in accordance with normal industry standards.

ARTICLE 14. SELLER GUARANTEES OF FACILITY PERFORMANCE

Every 5 years from the Authorization to Proceed Date, Seller shall provide to the University an opinion of an independent professional engineering firm selected by Seller experienced in the operation of steam generation facilities and reasonably acceptable to the University (which acceptance shall be obtained from the University prior to issuance of the opinion hereunder) that in that engineer's judgment the Facility is currently capable, normal wear and tear excepted, of meeting the Acceptable Steam needs of University (up to the Maximum Steam Load) for the period from the date of the opinion until a date of 26 years from the date of this Agreement, without replacement of the steam generating equipment, assuming normal operation, maintenance and repair. In the event that the engineer is not able to give this opinion, Seller shall undertake, and complete within one year of the date of the opinion, repairs or improvements as are required in order for the engineer to render the opinion required pursuant to this Article. In the event that Seller is unable to bring the Facility into compliance with this Article and the University undertakes such repairs, Seller shall pay the University the reasonably incurred cost of the required repairs.

ARTICLE 15. DISPUTES/ARBITRATION

15.01 Disputes

In case of a controversy, claim or dispute arising out of or relating to this Agreement or the breach thereof, the parties shall meet and exert their best efforts to reach an amicable settlement. Failing such agreement, the University and Seller agree to submit the matter under dispute to non-binding mediation conducted under the auspices of the American Arbitration Association or such other mediation services as the parties agree upon.

15.02 Arbitration

To the extent the parties are unable to resolve a controversy, claim or dispute pursuant to Article 11.01 above, the following provision shall apply:

All claims, disputes, and other matters in question arising out of or relating to this contract or the performance or interpretation thereof shall be submitted to arbitration. Arbitration shall be commenced by a demand in writing made by one party to the contract upon the other within a reasonable time after the dispute, claim, or other matter in question arose but in no event after payment in full of the contract price has been made and accepted. The written demand shall contain a statement of the question to be arbitrated and a detailed statement of each item or matter in dispute and the name of the arbitrator appointed by that party. The other party to the contract within ten (10) days of the receipt of the written demand shall appoint an arbitrator and give notice in writing thereof to the party who commenced arbitration. The two (2) arbitrators appointed by the parties shall within ten (10) days of the date of the appointment of the second arbitrator select a third arbitrator who shall be designated as a chairperson and who immediately shall give written notice to the parties of his or her appointment. The third arbitrator shall select a time, date, and place for hearing and give each party five (5) days notice in writing thereof. The date for hearing shall not be more than fifteen (15) days after the date of appointment of the third arbitrator. The arbitrators shall render their award in writing to each of the parties not more than thirty (30) days after the date hearing shall commence unless the parties shall otherwise agree in writing. In the event the party of whom arbitration is demanded shall fail to appoint his or her arbitrator within the time specified or the two (2) arbitrators appointed by the parties are unable to agree on an appointment of the third arbitrator within the time specified, either party may petition the presiding justice of the superior court to appoint a single arbitrator who shall hear the parties and make an award as provided herein. The petitioner shall give five (5) days notice in writing to the other party before filing his or her petition.

ARTICLE 16. TERM; TERMINATION

16.01 Term

This Agreement shall become effective upon the execution hereof by both parties and, unless earlier terminated in writing pursuant to this Agreement, shall remain in effect to the date twenty (20) years from the Initial Delivery Date.

16.02 Termination

This Agreement shall terminate upon expiration of the Term. Notwithstanding the foregoing, this Agreement may be terminated by the University without liability, by written notice to Seller if the Initial Delivery Date shall not have occurred on or before forty-eight (48) months from the date of execution of this Agreement.

16.03 Survival

Article 4, Article 12, and Article 15 shall survive the termination of this Agreement.

ARTICLE 17. EVENTS OF DEFAULT; REMEDIES

17.01 Event of Default by Seller

Each of the following shall be an Event of Default by Seller hereunder:

- (a) the failure or refusal for any reason, other than Force Majeure, Unforeseen Circumstance, or a material breach by the University to perform any of its obligations hereunder, by Seller or Guarantor to deliver up to the University's requirements of Acceptable Steam up to the Maximum Steam Load for more than a total of 60 hours (not necessarily continuous) during any 12 month period;
- (b) the persistent or repeated failure or refusal (which shall mean at least four times in any 12 month period) by Seller or Guarantor to fulfill any of its other material obligations in accordance with this Agreement;
- (c) Seller's filing of a petition in bankruptcy or for reorganization, adoption of an arrangement with creditors under the Bankruptcy Act or similar act or making a general assignment for the benefit of creditors;
- (d) the institution against Seller of bankruptcy proceedings or proceedings for the liquidation of Seller which proceedings have not been terminated, stayed or dismissed within sixty (60) days from the commencement thereof;
- (e) the failure by Seller to pay any amount due under this Agreement when such amount becomes due and payable, and such amount remains unpaid for forty-five (45) days after written notice that such payment is past due and that failure to make such payment will constitute an Event of Default hereunder;
- (f) a material breach by Seller of any of the Ancillary Agreements beyond the applicable grace period;
- (g) abandonment of operation by Seller.

The University may immediately terminate this Agreement by giving written notice to Seller and Guarantor for an Event of Default pursuant to Article 17.01(a), provided that the University has previously provided notice to Seller and Guarantor stating that a cumulative total of at least 48 hours of such failure to provide Acceptable Steam has occurred, and that the University will have

the right to terminate this Agreement if and when such cumulative total reaches 60 hours during the applicable twelve (12) month period.

The University may terminate this Agreement immediately for an Event of Default pursuant to Article 17.1(b), provided the University has previously provided notice to Seller and Guarantor that at least three failures to fulfill material terms of this Agreement have occurred during the previous 12 months.

For any other Event of Default, the University may terminate this agreement upon giving written notice to Seller and Guarantor stating that a particular default or defaults exist, which will, unless corrected, constitute a material breach of this Agreement unless such default is corrected within 30 days, or if such default is not amenable to remedy within such thirty (30) day period, Seller has not commenced a cure or has not continued to diligently pursue such cure.

17.02 Event of Default by The University

Each of the following shall be an Event of Default by the University hereunder:

- (a) the persistent or repeated failure or refusal by the University to fulfill any of its material obligations in accordance with this Agreement, provided, that no such failure or refusal shall constitute an Event of Default unless and until:
 - (i) Seller shall have given prior written notice to the University stating that a particular default or defaults exist, which will, unless corrected, constitute a material breach of this Agreement unless such default is corrected within thirty (30) days, and
 - (ii) the default shall not have been corrected nor shall reasonable steps have been initiated to correct the same within thirty (30) days from the date of the notice given in clause (i) above, provided that if reasonable steps shall have been commenced to correct such default, the same shall not constitute an Event of Default for as long as reasonable steps are continuing to correct such breach.
- (b) the failure by the University to pay any amount due under this Agreement when such amount becomes due and payable (except for amounts in dispute pursuant to Article 7.01), and such amount remains unpaid for fifteen (15) days after written notice that such payment is past due and that failure to make such payment will constitute an Event of Default hereunder.
- (c) (i) the failure by the University to provide full and unencumbered access to its premises and systems to the extent reasonably required for the performance of Seller's obligations under this Agreement, and such failure continues for longer than forty-eight (48) hours after notification by Seller, (ii) the University

becoming insolvent or bankrupt, or (iii) failure by the University to provide water or sewer services as required hereunder.

17.03 General

Whenever an Event of Default shall have occurred and be continuing, the applicable notice shall have been given and the grace period shall have expired, the non-defaulting party shall have the option to terminate this Agreement.

17.04 Termination

In the event that this Agreement is terminated by the University for reason of an Event of Default by Seller, the University shall have, in addition to any rights under this Agreement, and not limiting its rights under law, the right to exercise certain rights under the Development Agreement. Termination of this Agreement shall not limit the University's rights to damages under this Agreement.

17.05 Alternative to Termination

The University shall have the right upon the occurrence of an Event of Default by Seller or in emergency, and the expiration of any applicable cure periods, as an alternative to termination of this Agreement under Article 17.04, to enforce this Agreement by taking possession of the System and operating the System, pursuant to the terms hereof. This right to take possession and operate the System shall be subject to any prior rights of lenders as such rights may exist in the financing and other agreements entered into by Seller in connection with the operation of the System.

As operator of the Facility under the provisions of this Article the University shall be entitled to expend all reasonable amounts to repair and maintain the Facility and to charge Seller's account for such amounts, including reasonable carrying charges for any such capital amounts expended from its own sources, provided the University (i) complies with the terms and conditions (including the payment provisions) of Seller's agreements with the lender, the fuel supplier and other third parties and (ii) continues to pay or credit Seller the capacity payment in accordance with Exhibit 4, subject to appropriate offsets or charge-backs.

17.06 Termination Payment

In the event of termination of this Agreement for any reason other than an Event of Default by Seller, the University shall pay to Seller, in addition to any other payments required hereunder, the appropriate amount set forth in Exhibit 1, prorated for any partial year.

ARTICLE 18. MISCELLANEOUS PROVISIONS

18.01 Amendments; Waiver

This Agreement may not be amended, supplemented, waived or modified except by an instrument in writing signed by both of the parties hereto. Any failure by either party to enforce any provisions hereof including, without limitation, the right to suspend the purchase or sale of Acceptable Steam at any time after the occurrence of grounds therefor, or to resort to any other remedy or to exercise any one or more of such alternative remedies, shall not constitute a waiver by that party of its right subsequently to enforce the same or any other provision hereof or to resort to any one or more of such rights or remedies on account of any such ground then existing or which may subsequently occur. The failure of either party to insist in any instance on strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any such provision or the relinquishment of any rights but the same shall continue and remain in full force and effect.

Further, no action or inaction by the University shall be deemed a waiver of its rights hereunder, unless such waiver is specifically identified as such in writing by the University. Contractor may not rely on any action or inaction of the University as a waiver if the action or inaction is not (i) expressly acknowledged as a waiver in writing by the University, and (ii) contemporaneously confirmed by the Contractor in writing to be a waiver.

18.02 Severability

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith to agree to such amendments, modifications, or supplements of or to this Agreement and take such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented or otherwise affected by such action, remain in full force and effect.

18.03 Governing Law

This Agreement shall in all respects be governed and construed in accordance with the laws of the State of Rhode Island, including all matters of construction, validity and performance. The venue of any court proceeding to interpret or enforce the provisions of this Agreement shall be Providence, Rhode Island.

18.04 Independent Contractor; No Partnership

Seller shall be an independent contractor with respect to the sale of steam and to the performance of its obligations hereunder. Except as otherwise explicitly provided herein, nothing in this

Agreement shall be deemed to constitute any party hereto a partner, agent or legal representative of any other party hereto or to create any fiduciary relationship between or among such parties.

18.05 Headings

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

18.06 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such counterparts provided that the counterpart produced bears the signature of the party sought to be bound.

18.07 Further Assurances

The University and Seller further covenant to cooperate with one another in all reasonable respects necessary to consummate the transactions contemplated by this Agreement, and each will take all reasonable actions within its authority to secure cooperation of its officials, officers, agents and other third parties.

18.08 Limitation of Liability

Notwithstanding anything herein to the contrary, in no event shall the Seller be entitled to recover from the University under a theory of tort, contract, or any other statutory or common law theory of liability whatsoever, indirect, special, or consequential damages, including, but not limited to, lost profits, out-of-pocket expenditures, as well as loss of benefit of the bargain, or any other damage whatsoever; with the exception that in the event that the Seller is able to prove in a court of competent jurisdiction that the University intentionally and wrongfully breached its contract by premature or improper termination, liability shall exist in the amount set forth in Exhibit 1 (Termination Payment). As an alternative to seeking damages, the Seller may seek specific performance of this Agreement.

18.09 Limitation of Actions

Notwithstanding any provisions of this Agreement to the contrary, no recourse shall be had for the payment of any sum due Seller or for any claim based on or in respect of this Agreement against any present or future Trustee of University or against any present or future officer, employee or other individual of the University in any such case under any rule of law or statute or otherwise or by any enforcement, assessment, penalty or judgment.

ARTICLE 19. REPRESENTATIONS

19.01 Representations of Seller

Seller represents and warrants to the University that as of the date of this Agreement:

- (a) **Organization** - Seller is duly organized, validly existing and in good standing under the laws of Delaware, is duly qualified to do business in the State of Rhode Island and has the power and authority to enter and perform its obligations under this Agreement.
- (b) **No Conflict** - Seller's entry into this Agreement and performance of its obligations hereunder does not conflict with the terms of any law, order, rule, regulation or judgment applicable to it and does not and will not contravene or result in any default under any agreement or instrument to which it is a party or by which any of its properties may be bound.
- (c) **Litigation** - There are no actions or proceedings pending or threatened before any court or agency or any outstanding unsatisfied judgment that will have a material adverse affect on Seller's ability to perform Seller's obligations hereunder, nor does Seller know of any events which could give rise to a claim against it which will have a material adverse affect on its ability to perform its obligations hereunder.
- (d) **Financial Condition** - Seller is not insolvent, has not filed or had filed or had filed against it a petition in bankruptcy, has not made an assignment for the benefit of creditors or otherwise had a receiver or trustee appointed with respect to its properties or affairs and has not incurred any obligations or liabilities, contingent or otherwise, which would cause it to become insolvent, and that the information provided in its bid concerning this project remains complete and accurate in all material respects as of the date hereof.
- (e) **Contracts** - Seller acknowledges receipt of and has reviewed the Development Agreement. Seller represents that it can design and construct the Facility such that the Facility shall have the physical plant characteristics to enable Seller to perform its obligations under this Steam Service Agreement.
- (f) **Governmental Approvals** - Neither the execution and delivery by Seller of the Agreement, nor the consummation by Seller of any of the transactions contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any federal, state or other governmental authority or agency, except such as are not yet required (Seller having no reason to believe that

the same will not be readily obtainable in the ordinary course of business upon due application therefor).

- (g) **Payment of Taxes** - All tax returns and reports of Seller required to be filed by it have been timely filed, and all taxes, assessments, fees and other governmental charges upon the Seller and upon its respective properties, assets, income and franchises which are due and payable have been paid when due and payable, or were paid as of the date hereof. The Seller knows of no proposed tax assessment against it that would be material to the condition (financial or otherwise) of the Seller and the Seller has not contracted with any government entity in connection with taxes.
- (h) **Enforceable Contract** - Seller has duly executed and delivered the Agreement, and, assuming the due authorization, execution and delivery thereof by the other parties thereto, such Agreement constitutes a valid and binding obligation of Seller enforceable against it in accordance with its terms, except as (i) such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, liquidation, moratorium or similar laws affecting creditors, or lessors, rights generally and (ii) the application of general equitable principles may limit the availability of certain remedies.
- (i) **Professional Skills** - Seller has all the required skills and capacity necessary to perform and shall diligently perform the work in a first-class, timely and professional manner, utilizing sound engineering principles, project management procedures and supervisory procedures, all in accordance with this Agreement.
- (j) **The University Provided Information** - Seller understands that as background information and as an accommodation to Seller, the University may provide or may have provided Seller with copies of certain studies, reports or other information, including information contained in the ITB. Seller further understands the University makes no representations or warranties, with respect to the accuracy of such documents or the information or opinions therein contained or expressed. Seller is relying solely upon its own investigation and due diligence in connection with this Agreement, the Site, and all information provided by the University.
- (k) **Legal Requirements** - Seller has knowledge of all of the legal requirements and business practices that must be followed in performing the work and the work will be in conformity with such requirements and practices and in compliance with all applicable laws and applicable permits.
- (l) **Licenses** - Seller holds or works under the general supervision of a person holding any and all licenses, both construction and operating permits or special licenses required by applicable law to perform the work under this Agreement.

19.02 Representations of the University

The University represents and warrants to Seller that as of the date of this Agreement:

- (a) the persons signing this Agreement on behalf of the University are duly authorized by the University and has the full power and authority to execute this Agreement on behalf of the University;

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the day and year first above written.

SELLER: *ERI Services, Inc.*

By: *Paul J. Amunelli*

Title: *Senior Vice President*

THE UNIVERSITY OF RHODE ISLAND:

By: *Kenneth N. Kenner*

Title: *VICE PRESIDENT, BUSINESS & FINANCE*

BOARD OF GOVERNORS:

By:

Title:

EXHIBIT 1

TERMINATION PAYMENT
(Transfer of Ownership Schedule)

Transfer of Ownership Schedule

Year	Termination Payment
1	\$17,704,759
2	\$17,206,268
3	\$16,675,375
4	\$16,109,974
5	\$15,507,823
6	\$14,866,531
7	\$14,183,555
8	\$13,456,186
9	\$12,681,538
10	\$11,856,538
11	\$10,977,913
12	\$10,042,178
13	\$9,045,619
14	\$7,984,284
15	\$6,853,962
16	\$5,650,170
17	\$4,368,131
18	\$3,002,759
19	\$2,124,571
20	\$1,548,639
21	\$1

EXHIBIT 2
LAYOUT OF FACILITY
SK-2 from the ITB

EXHIBIT 3

TIE-IN SYSTEM

SK-3 from the ITB

EXHIBIT 4

STEAM PRICE

/

**EXHIBIT 4
STEAM PRICING**

The monthly charges for services hereunder shall consist of a Capacity Charge and a Variable Charge for Acceptable Steam delivered to the Delivery Point, calculated as follows:

Capacity Charge

The Capacity Charge shall be:

Prior to Initial Delivery Date:

\$0 per month

Contract Years 1 through 20:

\$110,000 per month

Variable Charge

The Variable Charge per month (in dollars) for Acceptable Steam delivered shall be:

Prior to Initial Delivery Date:

\$4.40 x Mlb

Contract Years 1 through 20:

The sum of:

Commodity Charge - Gas:

$\$2.72 \times \text{Mlb} \times \text{Gas Price} / 2.040 \times \text{Gas Use} / \text{Total Fuel} \times \text{CA} / 1075$

plus

Commodity Charge - Fuel Oil

$\$6.26 \times \text{Mlb} \times \text{Oil Price} / 0.5688 \times \text{Oil Use} / \text{Total Fuel} \times \text{CA} / 1075$

plus

Gas Transportation and Distribution Charge:

$\$1.89 \times \text{Mlb} \times \text{T\&D} / 1.42 \times \text{Gas Use} / \text{Total Fuel}$

plus

O&M Charge:

For all Acceptable Steam up to 300,000 Mlb annually:

$\$2.80 \times \text{Mlb} \times \text{CPI} / 160.1$

For all Acceptable Steam above 300,000 Mlb annually:

$\$0.25 \times \text{Mlb} \times \text{CPI} / 160.1$

Amendment One Adjustments

Financing Rate Benefit

The Financing Rate Benefit (FRB) shall be a credit to the monthly Capacity Charge calculated as the greater of:

\$2083.33 or

$0.50 \times (\$110,000 - \text{Monthly Amount})$

Where:

$$\text{Monthly Amount} = [\$14,538,260 \times [\text{FR} \times (1+\text{FR})^{20}] / [(1+\text{FR})^{20}-1]] / 12$$

and

FR = the final rate, per annum, determined as an all-in true interest cost at the time of permanent financing, inclusive of issuance, underwriting, credit insurance and trustee costs, but in no event greater than the base rate of 6.5%.

Fuel Pre-Purchase Benefit

The Fuel Pre-Purchase Benefit (FPPB) shall be a credit to the Commodity Charge calculated as 50% of the difference between what would have been charged using the then current Gas Price or Oil Price and charges determined using gas or oil commodity pricing as established in a tax-exempt fuel pre-purchase arrangement. In no event shall the calculation of the FPPB result in an increase in the Commodity Charge.

Fuel Benchmark Benefit

The Fuel Benchmark Benefit (FBB) shall be a credit to the Variable Charge calculated as 50% of the difference between what would have been charged using the then current Gas Price, Oil Price and T&D charge and charges determined using the actual gas price, oil price, and costs for transmission and distribution service to Seller for the then current billing month. In no event shall the calculation of the FBB result in an increase in the Variable Charge.

where:

Mlb = thousand pounds of Acceptable Steam delivered.

Gas Price = the settlement price of the New York Mercantile Exchange's (NYMEX) Natural Gas futures price (in \$/MMBtu) for the current month determined as of the close of the trading day five business days prior to the end of the previous month, as reported in the *Wall Street Journal* four business days prior to the end of the previous month.

Oil Price = the settlement price of the NYMEX Heating Oil No.2 futures price (in \$/gallon) for the current month determined as of the close of the last business trading day of the previous month, as reported in the *Wall Street Journal* on the first business day of the current month.

Gas Use = the total amount of Natural Gas, in MMBtu HHV, consumed in the production of Acceptable Steam in the then current month of operation (unless otherwise determined through information provided by fuel supplier, unit conversions, as may be required, shall be on the basis of 1028 Btu HHV/cu.ft.).

Oil Use = the total amount of Fuel Oil, in MMBtu HHV, consumed in the production of Acceptable Steam in the then current month of operation (unless otherwise determined through information provided by fuel supplier, unit conversions, as may be required, shall be on the basis of 137,000 Btu HHV/gallon).

Total Fuel = the combined total of Natural Gas and Fuel Oil, in MMBtu HHV, consumed in the production of Acceptable Steam in the then current month of operation.

CA = an adjustment for variations in percentage and temperature of condensate returned by Buyer to Seller during the then current month as determined by the following formula:

$$1190 \cdot [GC / (GC + GM) \times (TCA - 32) + GM / (GC + GM) \times (TMA - 32)]$$

where:

GC = Total gallons of condensate returned

GM = Total gallons of makeup water

TCA = Average temperature (°F) of condensate returned

TMA = Average temperature (°F) of makeup water

T&D = the then current costs for natural gas transportation and distribution service to the Facility (in \$/MMBtu HHV), as established and controlled by FERC and RIPUC.

CPI = the then most current final Consumer Price Index (CPI) for the greater Boston area (U.S. Bureau of Labor Statistics, All Urban Consumers, All Items-Metropolitan Boston, 1982-84=100) as determined on June 1 of each year. The price adjustment so determined will become effective as of July 1 of each year and will remain in effect through June 30 of the following year.

EXHIBIT 5

THE UNIVERSITY'S ACCEPTABLE STEAM REQUIREMENTS

EXHIBIT 5**A. THE UNIVERSITY'S ACCEPTABLE STEAM REQUIREMENTS**Acceptable Steam

100 psig \pm 5 psig saturated at the Delivery Point. (for low pressure requirements, 15 psig \pm 1 psig)

Raw Water Supply

Raw water supplied hereunder by the University to Contractor, regardless of source, shall not contain hazardous waste or hazardous material in violation of any applicable law or regulation, and shall meet the Rhode Island Department of Health Water Quality Standards, Section 16 and the requirements of the Community Water System.

Condensate Returned

Condensate returned hereunder to the Contractor by the University shall not contain hazardous waste or hazardous material in violation of any applicable law or regulation. In addition, condensate returned shall not have characteristics or contain materials which would cause Contractor to be in violation of the Wastewater Discharge Limitations of the Town of South Kingston Industrial Wastewater Discharge Permit for the University of Rhode Island, Kingston Campus.

B: PUT OR PAY AMOUNTS

Prior to Initial Delivery Date – 250,000,000 pounds of steam

Operating Year 1 – 300,000,000 pounds of steam

Operating Years 2 through 20 – 320,000,000 pounds of steam

CENTRAL BOILER PLANT OPERATION SCHEDULE
Exhibit 5C

	Operating Year 1							Operating Year 2							Operating Year 3																					
	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	J
Contractor takes over boiler plant - does not provide steam to University																																				
Contractor provides steam to University from existing central boiler plant																																				
Contractor commissions new boiler plant - does not provide steam to University																																				
Contractor provides steam to University from new central boiler plant																																				
University operates satellite boilers and provides summer herd load																																				
University operates Athletic Complex boiler plants and provides steam year round																																				
University operates Sherman Building boiler plant and provides steam in winter																																				

Notes:

Operating Year 1 - Effective date of the contract through June 30, 1999

Operating Year 2 - July 1, 1999 through June 30, 2000

Operating Year 3 - July 1, 2000 through June 30, 2001

██████████ - Indicates estimated dates of Central Boiler Plant startup

EXHIBIT 6

LIQUIDATED DAMAGES

\$500/hour for the first ten (10) hours of any continuous event, and \$100/hour for each subsequent hour of the same continuous event.

APPENDIX A

DEFINITIONS

[See Appendix A from the Development Agreement]

014

APPENDIX B

Ancillary Documents (incorporated by reference)

- A. Site Plan
- B. Development Agreement
- C. Guaranty

119803_1.DOC

AMENDMENT ONE

to

**DEVELOPMENT AGREEMENT and
STEAM SERVICE AGREEMENT**

for

STEAM GENERATING FACILITY

between

Board of Governors for Higher Education for the State of Rhode Island
and
The University of Rhode Island
(the "University")

and

ERI Services, Inc.
(the "Contractor")

May, 1998

AMENDMENT ONE

This Amendment One (hereinafter "Amendment") is dated as of May 2/5^T, 1998 between the Board of Governors for Higher Education for the State of Rhode Island and the University of Rhode Island (hereinafter severally and collectively called "University") and ERI Services, Inc. (hereinafter called "Contractor" or "Seller") (hereinafter, individually a "Party" or collectively the "Parties").

WITNESSETH

WHEREAS, Contractor and the University have entered into a certain Development Agreement dated as of May 2/5^T, 1998;

WHEREAS, Seller and the University have entered into a certain Steam Service Agreement dated as of May 2/5^T, 1998;

WHEREAS, the Contractor/Seller agrees to assume certain additional responsibilities and to provide certain services and consideration over and above those required under the Development Agreement and the Steam Service Agreement (hereinafter "Agreements"), as set forth herein;

WHEREAS, the University consents to certain modifications to the Agreements in consideration of such additional obligations in order to, *inter alia*, facilitate financing of construction and operation of the Facility;

WHEREAS, the Parties wish to make certain clarifications and technical changes to the Agreements.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

1. All capitalized terms used in this Amendment, unless otherwise expressly defined herein, shall have the meanings given to such term in the Agreements.
2. Contractor/Seller shall assume and perform the following additional responsibilities, obligations and consideration under the Development Agreement and the Steam Service Agreement, as appropriate, in addition to those otherwise set forth therein:

- (a) The Invitation to Bid (ITB) stipulated the Contractor guarantee 150,000 lb/hr of steam production at 100 psig saturated (hereinafter, "Guaranteed Performance"). Contractor shall increase the Guaranteed Performance level to 200,000 lb/hr at 100 psig saturated at no additional cost.
- (b) The existing fuel tanks contain an inventory of University fuel. Seller shall purchase the inventory from the University at cost, relieving the University of the obligation to remove and find a buyer. Purchase shall be in the form of a rebate on the initial invoice from Seller.
- (c) Contractor shall provide drawings over the course of design and construction as available for University review.
- (d) The ITB does not require the Contractor/Seller to hire any current University personnel. Contractor/Seller shall make all reasonable efforts to hire at least one operator from the current University boiler plant staff.
- (e) The University has filed an application for permits for the operation of the temporary boilers. Contractor/Seller shall assume administrative responsibility for obtaining the temporary permits and provide staffing to operate the units until final permits are obtained. Contractor/Seller shall assume full responsibility for rental agreements and operations upon receipt of permits from RIDEM.

(f) Contractor/Seller's bid was based upon a tax-exempt financing rate of 6.5%. Seller shall provide University with 50% of the net benefit from financing at rates less than 6.5% in accordance with the Financing Rate Benefit formula contained in Exhibit 4, guaranteeing University a minimum benefit of \$25,000 per year. The University recognizes the potential benefit to the University from Contractor/Seller's achievement of tax-exempt financing and acknowledges that the University's reasonable cooperation may be required for Contractor/Seller to obtain such an arrangement; provided, however, that nothing contained herein shall be construed to make tax exempt financing, or the University's willingness to cooperate in such an effort, a condition of the Agreements or of the Contractor/Seller's obligations thereunder.

BOND ISSUE
DATED MAY 15, 1999
MODIFIES THIS CLAUSE
OF THE AMENDMENT

- (g) Contractor/Seller is planning to pre-purchase fuel under a tax-exempt financing structure. Contractor/Seller shall provide the University with 50% of the net benefit from such a structure in accordance with the Fuel Pre-Purchase Benefit formula contained in Exhibit 4. The University recognizes the potential benefit to the University from Contractor/Seller's achievement of tax-exempt financing and acknowledges that the University's reasonable cooperation may be required for Contractor/Seller to obtain such an arrangement; provided, however, that nothing contained herein shall be construed to make tax exempt financing, or the University's willingness to cooperate in such an effort, a condition of the Agreements or of the Contractor/Seller's obligations thereunder.
 - (h) Under the Steam Services Agreement, the fuel price component of steam is to be adjusted with changes in actual commodity, transportation and distribution costs from benchmark levels in Seller's ITB responses. Seller shall provide University with 50% of the net benefit derived from Seller's ability to reduce fuel purchase costs below the benchmark levels in accordance with the Fuel Benchmark Benefit formula contained in Exhibit 4.
3. The following clarifications, amendments and qualifications are hereby incorporated into the Agreements as though fully set forth therein:
- (a) The University shall defend, indemnify and hold harmless Contractor/Seller and its officers, directors, employees and subcontractors, with respect to any Hazardous Waste pre-existing on the Facility Site and not otherwise the obligation of the Contractor/Seller as expressly set forth in the Development Agreement, or brought onto or introduced into such Facility Site by the University, provided however, such obligation of the University shall not pertain to the extent of Contractor's/Seller's negligence in regard to such Hazardous Waste.
 - (b) Notwithstanding any provision of either Agreement to the contrary, the University shall not assess liquidated damages due to delay against Contractor/Seller, nor shall either Agreement be terminated by the University due to expiration of a Milestone Deadline, for the period of six (6) months after the Milestone Deadline, so long as Contractor/Seller:

- (i) Establishes and implements reasonable procedures to correct such default or delay and achieves the Milestone within the six month grace period; and
 - (ii) Provides steam to the University of the same quantity and quality and at the same price as required by the Development Agreement prior to the Milestone, and if so required, commences and continues to provide steam under the Steam Service Agreement.
- (c) Contractor/Seller's liability to the University for special, indirect, or consequential damages shall be limited to the greater of the following: (a) \$2,000,000 in the aggregate or (b) the total amount recoverable from the actually available (as distinct from stated in the aggregate) limits of insurance coverage (plus any deductible or self-insured retention amounts) referenced in Exhibit 2 to the Development Agreement and the Steam Services Agreement.
- (d) The definition in Appendix A of Change in Law is hereby amended as follows: so much of the last sentence as states "taxes, license fees, permit fees or other fees" is deleted, and the phrase "income, employment, social security and/or property taxes" is inserted in its place.
- (e) The definition of Force Majeure in Appendix A is replaced with the following: Contractor/Seller shall not be held responsible for any losses resulting if fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of Contractor/Seller and which by the exercise of reasonable diligence, the Contractor/Seller is unable to prevent, provided, however, the following shall not be considered Force Majeure: (i) strikes or labor disputes that are specific to Contractor/Seller or its subcontractors, vendors or suppliers and are specific to the work or services to be provided under the Agreements and (ii) Contractor shall not be able to claim that delay or failure of subcontractors, suppliers or vendors constitute Force Majeure unless the Contractor, vendors or suppliers is delayed or prevented due to a Force Majeure event.

(f) Change In Law Pass-Through Costs shall include those additional costs associated with any change in the design, construction, start-up, conduct of performance test, operation or maintenance of the Facility incurred by Contractor/Seller due to a Change In Law. Seller's maximum responsibility for Change In Law Costs under Section 4.06 of the Steam Service Agreement shall be \$1.25 million. Seller's maximum annual responsibility for Change In Law Costs shall be \$50,000/year for the first ten years and \$75,000/year thereafter.

4. The change in the commencement of the Work from August 1997 to May 1998 requires a change in the sequence of performance of the Work pertaining to the temporary boilers and the existing underground tanks. The following amendments relating thereto are hereby incorporated into the Agreements as though fully set forth therein:

(a) Contractor shall remove the existing underground oil storage tanks referred to in the Invitation to Bid no later than December 23, 1998.

(b) The University shall make available sufficient space for storage and recommissioning of the temporary boilers.

(c) The University shall (i) assign to Contractor/Supplier the contract for the rental of the existing temporary boilers at the rates set forth in the previous contract; and (ii) remove, relocate and reinstall, including re-piping and reinstallation of electrical interconnections, the temporary boilers, or cause such removal, relocation and reinstallation to be performed, in a timely fashion so as not to unreasonably interfere with Contractor's work schedule.

(d) Contractor shall be responsible for increased fuel costs resulting from the removal of the underground tanks.

(e) Contractor /Supplier shall make reasonable efforts to adapt the existing No. 4 Boiler to operate on No. 2 fuel oil, and the University shall compensate Contractor/Supplier for the reasonable costs incurred in connection therewith.

(f) The University will obtain a temporary air permit valid for one year or more commencing September 1, 1998.

*AMENDED PER
AMENDMENT 2
DATED MAY 21, 1998*

- (g) The University shall be responsible for costs incurred as a result of changes required by such air permit, including, but not limited to, the metering requirements of Regulation 8.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement under seal the date and year first above written.

ATTEST: CORPORATE SEAL (CONTRACTOR)

ERI SERVICES, INC.

ATTEST: (SEAL)

By: *Anthony P. Paganelli*
Title: *Senior Vice President*

THE UNIVERSITY OF RHODE ISLAND

By: *Kenneth N. Ferris*
Title: *VICE PRESIDENT, BUSINESS + FINANCE*

BOARD OF GOVERNORS

By:
Title:

119887_1.DOC

AMENDMENT TWO

Amendment one dated May 21, 1998 between the undersigned parties is further amended by adding the following paragraph:

4(h) The assignment in 4(c) shall be made upon receipt of the temporary permit referenced in 4(f). Contractor shall reimburse University for one-half of University's cost for rental of the existing temporary boilers from the date here of through receipt of the permit referenced in 4(f).

IN WITNESS WHEREOF, the Parties hereto have executed this amendment two on this 21st day of May 1998

ERI SERVICES, INC.

By: *Paul Panavelli*
Title: *Senior Vice President*

THE UNIVERSITY OF RHODE ISLAND

By: *Kenneth N. Kerney*
Title: *Vice President, Business & Finance*

AMENDMENT THREE

This Amendment Three (hereinafter "Amendment") is dated as of July 25, 2000 between the Board of Governors for Higher Education for the State of Rhode Island and the University of Rhode Island (hereinafter severally and collectively called "University") and ERI Services, Inc. (hereinafter called "Contractor" or "Seller") (hereinafter, individually a "Party" or collectively the "Parties").

WITNESSETH

WHEREAS, Contractor and the University have entered into a certain Steam Service Agreement (the "Agreement") dated as of May 21st, 1998 and amended by Amendment One and Amendment Two thereto, both dated as of May 21st, 1998; and

WHEREAS, the parties now wish to further amend the Agreement;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

1. All capitalized terms used in this Amendment, unless otherwise expressly defined herein, shall have the meanings given to such terms in the Agreement.
2. Section 2.05(e) of the Agreement shall be deleted and replaced with a new Section 2.05(e), to read as follows:

"Notwithstanding any provision of this Agreement to the contrary, Seller may take the Facility out of service for periods not to exceed twenty-four (24) hours as reasonably required for the performance of major maintenance, and once per calendar year for one continuous seven-day period in order to inspect and repair or replace the gunite stack liner. The provisions of Sections 9.01 and 9.04 below shall not apply to such maintenance periods. Seller shall provide not less than one week prior notice to the University and shall conduct such major maintenance during summer months or as otherwise pre-approved by the University at another time so as to minimize inconvenience to the University."

3. The second sentence of Section 6.01 shall be deleted, and the following inserted in its place:

"Seller's metering devices shall be located at each Facility boiler and at the Facility's parasite header for internal steam plant loads unless otherwise agreed in writing by the Parties."

4. The first sentence of Exhibit 4, Steam Pricing, shall be amended to read as follows:

"The monthly charges for services hereunder shall consist of a Capacity Charge and a Variable Charge for Acceptable Steam delivered to the University, calculated as follows:"

5. The definition of Mlb set forth in Exhibit 4, Steam Pricing, shall be amended to read as follows:

"Mlb = thousand pounds of Acceptable Steam; for purposes of this Exhibit, Mlbs of Acceptable Steam delivered to the University shall be calculated by totaling the metered number of Mlbs. produced by each boiler and subtracting from such total the metered load of the said Facility parasite header."

6. The Commodity Charge formulas for Gas and Fuel Oil set forth in Exhibit 4, Steam Pricing, shall be amended to read as follows:

"The sum of:

Commodity Charge – Gas

$\$2.72 \times \text{Mlb} \times \text{Gas Price} / 2.040 \times \text{Gas Use} / \text{Total Fuel} \times \text{CA} / 1090$

plus

Commodity Charge – Fuel Oil

$\$6.26 \times \text{Mlb} \times \text{Oil Price} / 0.5688 \times \text{Oil Use} / \text{Total Fuel} \times \text{CA} / 1090$ "

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment Three as of the date first above written.

ERI SERVICES, INC.

By: 

Title:

Murry S. Gerber
President

THE UNIVERSITY OF RHODE ISLAND

By: 

Title:

Asst. VP for Business Serv.

URI and ERI Services met on May 26, 2000 and agreed to the following:

1. Make-up: Observations regarding process water used for blow-down were discussed. There will be no change in the calculation for what constitutes make-up water.
2. We will execute a certified letter to address changes in contacts and associated addresses for URI and ERI.
3. We have discussed and agreed upon normal interaction procedures between Facilities Services and the Plant Manager.
 - There will be a weekly fax of URI requested data.
 - Manager will attend weekly meetings.
 - The Plant Manager is committed to participate in the update of the URI SPCC plan by June 15, 2000.
4. The University has agreed to utilize the remaining balance in the current steam distribution fund to meet the cost of completed repairs and provision of the gunite stack liner at a cost of \$133,956. ERI and URI agree that, with the completion of the outstanding punch list items in process, there are no remaining change order requests associated with the steam plant and distribution system project. Upon the full completion, verified by satisfactory University inspections of the above remaining items, ERI will submit a notice of final completion which URI is prepared to certify.
5. The Parties have agreed to the terms and conditions in the attached Amendment Three.

The parties agree and commit their respective entities to the above agreed items as evidenced by their signatures herein.

Scott M. Murrelli - Signing for:

ERI

Johnathan Pyron
URI



UNIVERSITY OF
RHODE ISLAND

May 26, 2000

Paul Romanelli
Senior Vice President, ERI Services
255 Main St.
Hartford, CT 06106

Dear Mr. Romanelli:

During the construction phase of our relationship with ERI Services; much of the interaction between your personnel and the university community took place through Mr. Paul DePace and the Office of Capital Projects. This worked effectively during the renovation work in the heating plant and steam distribution systems.

However, as our relationship is now maturing into one more characterized through the daily operation of a university operation that provides a critical utility to campus customers, it is important that your focal point move to our Utilities Engineer, Mr. Steve Pucino. Steve is most directly responsible for overseeing the effective management of all campus utilities. As such, on a daily basis, he needs to be our principal contact for the heating plant interaction with the University staff.

To effectively achieve his responsibilities, I would like to establish a more formal relationship for your plant personnel to follow. In addition to the information that is forwarded to Steve with the monthly invoices, I would ask that your plant manager provide a brief written weekly report to Mr. Pucino by noon each Monday, at fax 401-874-2329. If a holiday occurs on a Monday, please forward the information on the next workday. This brief report should address the following reflecting the previous week's activity:

- Campus steam distribution load
- Condensate return and average temperature
- Water make up
- Synopsis of issues and mutual concerns

I hope we can immediately start this reporting process.

Since we are responsible for advising our senior managers and budget office of issues concerning utility availability and consumption, we need to be fully aware of the status and condition of all campus utility systems. In this regard, we rely completely on your support for the steam system. While we don't anticipate problems, nevertheless, they have a way of creeping up every so often. Please help us keep the university community informed.

I welcome your comments or concerns, and trust we will continue for years to come the very positive relationship that has begun to evolve between our organizations.

Sincerely,

Edward M. Smith
Director, Facilities Services

5

**NKE N.K. Engineers, Inc.****SENT VIA FAX**

TO : Bob Joyal
FROM : Naveen C. Kapur
DATE : June 17, 1998
SUBJECT : Steam metering for the URI plant.

Dear Bob,

This will confirm our telecon of last week wherein you had agreed to accept our proposed steam metering for billing to URI.

In summary, a steam meter will be installed at each boiler and at the plant's parasite header. Steam delivered to URI will be calculated by adding the steam produced by each boiler, and subtracting the steam used by the plant.

All meters will be tested in accordance with the requirements of the contract documents.

cc Paul De Pace †
Frank Wolak
Brian Grosjean †
Ed Mc Naught

AMENDMENT FOUR

to

**DEVELOPMENT AGREEMENT and
STEAM SERVICE AGREEMENT**

for

STEAM GENERATING FACILITY

between

Board of Governors for Higher Education for the State of Rhode Island

and

The University of Rhode Island
(the "University")

and

ERI Services, Inc.
(the "Contractor")

May, 1998

RECEIVED

JAN 17 2006

FACILITIES SERVICES

AMENDMENT FOUR

This Amendment Four (hereinafter "Amendment") is dated as of ~~May 6~~^{December}, 2005, between the Board of Governors for Higher Education for the State of Rhode Island and the University of Rhode Island (hereinafter severally and collectively called "University") and Energy Infrastructure LLC, successor in interest to ERI Services, Inc. (hereinafter referred to as "Contractor" or "Seller") (hereinafter, individually a "Party" or collectively the "Parties").

WITNESSETH

WHEREAS, Contractor and the University have entered into a certain Development Agreement dated as of May 21st, 1998;

WHEREAS, Seller and the University have entered into a certain Steam Service Agreement dated as of May 21st, 1998; as amended thereto by Amendment One, dated May 21, 1998, Amendment Two, dated May 21, 1998; and Amendment Three, dated July 25, 2000 collectively referred to as the "Agreement";

WHEREAS, the Contractor/Seller and University agree to set the price of natural gas consumed in a given period set forth in the Steam Service Agreement;

WHEREAS, the Parties wish to make certain modifications to the Steam Service Agreement to permit the Parties to pre-purchase fuel and establish the mechanism for doing so;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

1. All capitalized terms used in this Amendment, unless otherwise expressly defined herein, shall have the meanings given to such term in the Agreements.
2. Contractor/Seller and University agree that the following clarifications, amendments and qualifications are hereby incorporated into the Steam Service Agreement as though fully set forth therein:
 - (a) The definition of Gas Price, in Exhibit 4, Steam Pricing, is hereby deleted in its entirety and replaced as follows:

"the settlement price of the New York Mercantile Exchange's (NYMEX) Natural Gas futures price (in \$/MMBtu) for the current month determined as of the close of the last futures trading day of the previous month, as reported in the *Wall Street Journal* on the next business day of the previous month (the "Settlement Price"), plus any one of the following adjustments: (i) Fuel Pre-Purchase Benefit (FPPB) or (ii) Fuel Futures Benefit (FFB). The aforementioned adjustment mechanisms shall not be combined in any given month."
 - (b) The definition of Oil Price, in Exhibit 4, Steam Pricing, is hereby deleted in its entirety and replaced as follows:

"the settlement price of the New York Mercantile Exchange's (NYMEX) Heating Oil No.2 futures price (in \$/gallon) for the current month determined as of the close of the last business trading day of the previous month, as reported in the *Wall Street Journal* on the first business day of the current month (the "Settlement Price"), plus any one of the following adjustments: (i) the Fuel Pre-Purchase Benefit (FPPB) or (ii) the Fuel

Futures Benefit (FFB). The aforementioned adjustment mechanisms shall not be combined in any given month."

- (c) The definition of Fuel Pre-Purchase Benefit, in Exhibit 4, Steam Pricing, is hereby deleted in its entirety and replaced as follows:

"In the event that natural gas is purchased or sold and such purchases or sales are not in their entirety subject to the settlement price, an "Alternate Gas Price" will be utilized, which shall be the weighted average cost of the total gas transactions for the applicable month. In the event that Heating Oil No.2 is purchased or sold and such purchases or sales are not in their entirety subject to the settlement price, an "Alternate Heating Oil No.2 Price" will be utilized, which shall be the weighted average cost of the total Heating Oil No.2 transactions for the applicable month.

"The Fuel Pre-Purchase Benefit (FPPB) shall be an adjustment to the Gas Price and or Oil Price calculated as 50% of the difference between the Alternate Gas Price and or the Alternate Heating Oil No.2 Price for the current billing month minus what would have been charged using the applicable settlement price. The Parties may initiate fuel pre-purchase arrangements or fuel hedging arrangements by advising the other Party and mutually agreeing in writing to such arrangements. In all instances, however, the Contractor shall execute such arrangements directly with the then current Fuel Broker.

Fuel Benchmark Benefit (FBB) = 50% x (Alternate Gas Price – Settlement Price)
Fuel Benchmark Benefit (FBB) = 50% x (Alternate Oil Price – Settlement Price)

As an example:

If the Gas Settlement Price was \$9.00, and the Alternate Gas Price was \$8.00, then:

the FPPB = 50% x (\$8.00 - \$9.00) or \$-0.50; and

the Gas Price = \$9.00 + (-\$0.50) or \$8.50

As another example:

If the Gas Settlement Price was \$5.00 and the Alternate Gas Price was \$7.00, then:

the FPPB = 50% x (\$7.00 - \$5.00) or \$1.00 and

the Gas Price = \$5.00 + (\$1.00) or \$6.00"

- (d) The Fuel Benchmark Benefit is hereby deleted in its entirety.
(e) The following shall be added as an additional paragraph into Exhibit 4, Steam Pricing:

"Fuel Futures Benefit

If either Party wishes to pre-purchase natural gas or Heating Oil No. 2, and it is not mutually agreeable, then either Party can solely pre-purchase either fuel by notifying the other Party in writing. In the event that natural gas and or Heating Oil No. 2 is solely purchased or sold and such purchases or sales are not in their entirety subject to the settlement price, an "Alternate Gas Price" and or an "Alternate Heating Oil No.2 Price" will be utilized, which shall be the weighted average cost of the total gas and or oil transactions for the applicable month. In all instances, however, the Contractor shall execute such arrangements directly with the then current Fuel Broker.

In the event that the University solely pre-purchases natural gas and or Heating Oil No. 2, then the Fuel Futures Benefit (FFB) shall be an adjustment to the Gas Price and or Oil Price calculated as 100% of the difference between the charges determined using the Alternate Gas Price and or the Alternate Heating Oil No.2 Price for the current

billing month minus what would have been charged using the applicable settlement price.

Fuel Futures Benefit (FFB) = 100% x (Alternate Gas Price – Settlement Price)
Fuel Futures Benefit (FFB) = 100% x (Alternate Oil Price – Settlement Price)

As an example:

If the Gas Settlement Price was \$10.00, and the Alternate Gas Price was \$6.00,
then:
the FFB = 100% x (\$6.00 - \$10.00) or \$-4.00 and
the Gas Price = \$10.00 + (-\$4.00) or \$6.00
”

In the event that the Contractor solely pre-purchases natural gas and or Heating Oil No. 2, then the Fuel Futures Benefit (FFB) shall be an adjustment to the Gas Price and or Oil Price calculated as 0% of the difference between the charges determined using the Alternate Gas Price and or the Alternate Heating Oil No.2 Price for the current billing month minus what would have been charged using the applicable settlement price.

Fuel Futures Benefit (FFB) = 0% x (Alternate Gas Price – Settlement Price)
Fuel Futures Benefit (FFB) = 0% x (Alternate Oil Price – Settlement Price)

As an example:

If the Gas Settlement Price was \$10.00, and the Alternate Gas Price was \$6.00,
then:
the FFB = 0% x (\$6.00 - \$10.00) or \$0.00 and
the Gas Price = \$10.00 + (\$0.00) or \$10.00”

3. The following shall be added as an additional definition in Appendix A:

“1.68 FUEL BROKER: A Person that Contractor has an agreement with for either the delivery, distribution or commodity supply of gas or fuel oil. The Contractor shall notify the University in writing of the name, business address, and terms of service for the current fuel broker(s).”

4. The following shall be added as an additional paragraph 2.03(m):

“Upon request of the University, Seller shall procure chemical supplies required for the preservation of the University Steam System. University shall make such request for supply, including requisite quantities, in writing to Seller and Seller shall obtain the then current pricing on behalf of the University. In the event the University wishes to execute such purchases, Seller shall do so and invoice University for such purchases plus a fifteen percent (15%) mark up. Such billing shall adhere to the invoicing procedures referenced in paragraph 7.01. Seller shall also sample condensate returned by the University for appropriate pH levels in accordance with the University accepted, vendor recommended pH range. Seller shall administer the University approved chemicals as recommended by the chemical vendor to maintain the aforementioned pH levels. Seller makes no representations or warranties as to the appropriateness of use of such chemicals on or in the University Steam System. Further, Seller accepts no liability of any kind whatsoever for the University Steam System.”

5. Paragraph 4.03 “Put or Pay” is hereby deleted in its entirety and replaced with the following:

"On or after July 1 of each Operating Year, but no later than August 1 of that Operating Year, Seller shall provide the University with a calculation of the amount of Acceptable Steam delivered to the University during the previous Operating Year. In the event that the amount of Acceptable Steam delivered to and purchased by the University during the Operating Year is less than the Put or Pay amount for such Operating Year as outlined in Exhibit 5, as adjusted for any occurrence of an event of Force Majeure, or a failure of Seller to deliver Acceptable Steam pursuant to Article 3.03, Seller shall invoice the University and the University shall pay in accordance with Article 7 the O&M Charge relating to the difference between the minimum number of pounds as adjusted pursuant to Article 3.03 and the amount of Acceptable Steam actually delivered to the University, at the O&M price set forth in Article 4.01 and Exhibit 4."

6. The provisions setting forth the Variable Charges related to the O&M Charge are deleted in their entirety and replaced with the following provisions:

O&M Charge (or charges pursuant to the Put or Pay provisions of Section 4.03 of this Agreement):

Acceptable Steam Levels	Associated Charge
For Acceptable Steam up to 300,000 Mlb annually (or for steam not purchased or not accepted by the University through no fault of the Seller)	$\$2.80 \times \text{Mlb} \times \text{CPI}/160.1$
For Acceptable Steam in excess of 300,000 Mlb annually (or for steam not purchased or not accepted by the University through no fault of the Seller)	$\$.25 \times \text{Mlb} \times \text{CPI}/160.1$

7. Paragraph 6.03 line 2: Delete the word "reading" and replace with the words "meter range."
8. Paragraph 2(g) and paragraph 2(h) of Amendment 1 dated May 21, 1998 are hereby deleted in their entirety.
9. All other terms and conditions of the contract shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date and year first above written.

SELLER:

By:



Title:

THE UNIVERSITY OF RHODE ISLAND:

By:



Title:

Assistant V.P. for Business Services

BOARD OF GOVERNORS:

By:

Title:

