

CREDIT AGREEMENT

Dated as of May 10, 2010

Between

PROJECT ORANGE ASSOCIATES, LLC, as  
Debtor and Debtor in Possession

and

Gas Alternative Systems, Inc., as  
Lender

CREDIT AGREEMENT dated as of May [\_\_\_], 2010 by and between PROJECT ORANGE ASSOCIATES, LLC, as debtor and debtor in possession (the "**Borrower**"), and Gas Alternative Systems, Inc., a New York limited liability company (the "**Lender**").

The Borrower filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code on April 29, 2010 (the "**Petition Date**"). The Borrower has requested the Lender to provide it with a \$150,000.00 working capital loan facility and, subject to the terms and conditions set forth herein, the Lender has agreed to provide such facility.

NOW THEREFORE, the parties hereto hereby agree, effective upon the Effective Date (as hereinafter defined), as follows:

## ARTICLE 1

### DEFINITIONS

Section 1.1 **Definitions.** As used in this Agreement the following terms have the following meanings (terms defined in the singular to have a correlative meaning when used in the plural and vice versa):

**"Agreement"** shall mean this Credit Agreement, as amended or supplemented from time to time. References to Articles, Sections, Exhibits, Schedules and the like refer to the Articles, Sections, Exhibits, Schedules and the like of this Agreement unless otherwise indicated.

**"Banking Day"** shall mean any day other than a day on which commercial banks in New York City are not authorized or required to be closed all day.

**"Bankruptcy Code"** shall mean title 11 of the United States Code, as amended.

**"Bankruptcy Court"** shall mean the United States Bankruptcy Court for the Southern District of New York or such other court having original jurisdiction over the Chapter 11 Case.

**"Borrower"** shall have the meaning assigned to such term in the preamble hereto.

**"Borrowing"** shall mean a borrowing hereunder of a Loan.

**"Budget"** shall mean the budget for the Borrower attached hereto as Exhibit C for the period commencing on or about the Effective Date and ending on or about the Final Termination Date, as the same may be amended, modified or supplemented from time to time with the Lender's consent, and subject to Bankruptcy Court Approval.

**"Carve-Out Expenses"** shall mean amounts payable pursuant to 28 U.S.C. § 1930(a)(6), (a) and any interest that has accrued thereon; (b) the aggregate allowed, accrued and unpaid fees and expenses payable under Bankruptcy Code sections 330 and 331 to professional persons retained pursuant to an order of the Court by the Debtor and any Committee, provided, however, such professional fees and expenses (in the aggregate) shall not exceed the sum of

\$100,000.00; and (c) if the instant chapter 11 case is convert to a case under chapter 7 of the Bankruptcy Code, the commissions, fees, and costs incurred by the chapter 7 trustee in connection with the property, subject to Bankruptcy Court approval, and in an amount up to \$70,000 pursuant to 28 U.S.C. § 1930(a)(6).

**"Chapter 11 Case"** shall mean the Borrower's case under chapter 11 of the Bankruptcy Code pending in the Bankruptcy Court.

**"Commitment"** shall mean the obligation of the Lender to make the Loans to the Borrower in an aggregate principal amount not to exceed \$150,000.00 as set forth in Section 2.1(a) hereof.

**"Committee"** shall mean the Official Committee of Unsecured Creditors appointed in the Borrower's Chapter 11 case.

**"Default"** shall mean any event which with the giving of notice or lapse of time, or both, would become an Event of Default.

**"Dollars"** and the sign "\$" shall mean lawful money of the United States of America.

**"Effective Date"** shall have the meaning attributed thereto in Section 6.1 hereof.

**"Event of Default"** shall have the meaning given such term in Section 10.1 hereof

**"Final Maturity Date"** shall mean the date which is the earliest of (i) the day which is one hundred and eighty (180) days after the entry of the Final Order, (ii) the effective date of a Plan of Reorganization or liquidation in the Chapter 11 Case that has been confirmed by order of the Bankruptcy Court, (iii) the date on which a sale of all or substantially all of the assets of the Borrower is consummated pursuant to Bankruptcy Code section 363 in accordance with the terms of an order of the Bankruptcy Court, and (iv) such earlier date on which the Loan shall become due and payable, in whole, in accordance with the terms of this Agreement or the Note.

**"Final Order"** shall mean an order or judgment of the Bankruptcy Code approving this Agreement and the underlying Loans, substantially in the form of Exhibit D hereto, as to which final order: (a) any appeal or petition for review or rehearing that has been taken has been finally determined or dismissed, or (b) the time for appeal has expired and no notice of appeal or petition for review or rehearing has been filed..

**"Interest Rate"** shall have the meaning set forth in Section 3.2(a).

**"Interim Financing Amount"** shall mean the maximum principal amount of the Loan approved by the Bankruptcy Court in the Interim Order to be made available to the Borrower prior to the date of entry of the Final Order.

**"Interim Order"** shall mean an order of the Bankruptcy Court, in form and substance satisfactory to the Lender and its counsel, approving this Agreement and all or a portion of the extension of credit to be made by the Lender in accordance with this Agreement on an interim basis, and finding, among other things, that the Loans are in good faith and otherwise satisfy section 364(e) of the Bankruptcy Code as the same may be amended, modified or supplemented

from time to time with the express written joinder or consent of the Lender and its counsel.

**"Lender"** shall have the meaning assigned to such term in the preamble hereto.

**"Lien"** shall mean any lien (statutory or otherwise), security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other encumbrance or similar right of others, or any agreement to give any of the foregoing.

**"Loan"** shall mean each loan made by the Lender to the Borrower in accordance with Section 2.1(a) hereof and will be collectively referred to as the **"Loans"**.

**"Note"** shall mean the promissory grid note provided for by Section 2.3 hereof and all promissory notes delivered in substitution or exchange therefor, in each case, as the same shall be modified and supplemented and in effect from time to time.

**"Obligations"** shall mean all indebtedness, obligations and liabilities of the Borrower to the Lender incurred under or related to this Agreement or the Note, whether such indebtedness, obligations or liabilities are direct or indirect, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising, including the principal amount of the Loans outstanding, together with interest thereon, and all expenses, fees and indemnities hereunder or under the Note, from time to time arising under or in connection with or evidenced by this Agreement or the Note.

**"Person"** shall have the meaning provided in Bankruptcy Code section 101(41).

**"Petition Date"** shall have the meaning assigned to such term in the preamble hereto.

**"Plan of Reorganization"** shall mean any chapter 11 plan filed by the Borrower in the Chapter 11 Case.

**"Post-Default Rate"** shall mean, in respect of any principal of any Obligation or any other amount due or payable under this Agreement or any Note that is not paid when due (whether at stated maturity; by acceleration, or otherwise), at a rate per annum during the period from and including the due date to but excluding the date on which such amount is paid in full equal to the Interest Rate plus three percent (3%) per annum.

## **ARTICLE 2**

### **THE CREDITS**

Section 2.2 The Commitment. Subject to the terms and conditions set forth in this Agreement, the Lender agrees to advance up to One Hundred and Fifty Thousand Dollars (\$150,000.00) or the Interim Financing Amount, whichever is less upon entry of the Final Order. Notwithstanding anything herein to the contrary, the Lender shall have no obligation to make Loans hereunder in excess of the amounts authorized in any Interim or Final Order of the Bankruptcy Court. Notwithstanding anything to the contrary in this Agreement, the Lender's right to payment shall be subordinated to the Carve-Out Expenses. Only after the Carve-Out

Expenses have been satisfied in full, shall the Lender be entitled to receive payments on account of the Loans as provided in this Agreement. The Lender shall not exercise any of the remedies pursuant to Section 10.3 of this Agreement or otherwise until the Carve-Out Expenses have been paid in full.

Section 2.2 Use of Proceeds. The Borrower hereby covenants, represents and warrants that the proceeds of the Loans made to it will be used solely to fund the Borrower's payroll obligations, other continued ordinary course operations, and working capital needs, in each case solely in accordance with the Budget.

Section 2.3 Note. The Loans made by the Lender hereunder shall be evidenced by a single promissory note of the Borrower in substantially the form and substance of Exhibit A hereto, dated as of the date hereof, payable to the Lender in a principal amount equal to the amount of the Commitment and otherwise duly completed. The date and amount of each Loan made by the Lender to the Borrower, and all payments and prepayments made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of the Note, endorsed by the Lender on the schedule attached to such Note or any continuation thereof; provided, however, that any failure by the Lender to make any such notation shall not affect the obligations of the Borrower hereunder or under such Note in respect of such obligations.

Section 2.4 Optional Prepayments. The Borrower shall have the right to prepay, subject to Bankruptcy Court approval, the Loans at any time or from time to time, provided the Borrower shall give the Lender at least five (5) days prior notice of each such prepayment.

### ARTICLE 3

#### PAYMENTS OF PRINCIPAL AND INTEREST

Section 3.1 Amortization. The entire unpaid principal amount of each Loan shall be accelerated, due and payable on the Final Maturity Date, subject to Bankruptcy Court approval.

Section 3.2 Interest. (a) The Borrower hereby promises to pay to the Lender interest on the unpaid principal amount of each Loan, for the period from and including the date the Loans are made to the date the Loans are paid in full, at a rate per annum equal to the prime lending rate as in effect on the date hereof as announced in the Wall Street Journal plus three percent (3%) per annum (the "**Interest Rate**").

(b) Notwithstanding the foregoing, the Borrower hereby promises to pay to the Lender interest on the Loans at the Post-Default Rate (i) upon the occurrence and during the continuance of an Event of Default hereunder and (ii) on any principal of any Loan and on any other amount payable by the Borrower hereunder or under the Note which shall not be paid in full when due (whether at stated maturity, by acceleration, or otherwise), for the period from and including the due date thereof to but excluding the date the same is paid in full.

(c) All accrued and unpaid interest on the Loans shall be payable on each date that a payment of principal is paid or becomes due under the Loans and any interest accrued pursuant to subsection (b) above shall be due on demand.

## **ARTICLE 4**

### **PAYMENTS; COMPUTATIONS; ETC.**

Section 4.1 Payments. (a) All payments of principal, interest and other amounts to be made by the Borrower to the Lender under this Agreement and the Note shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim.

(b) If the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Banking Day, such date shall be extended to the next succeeding Banking Day, and interest shall be payable for any principal so extended for the period of such extension.

Section 4.2 Computations. Interest hereunder shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

## **ARTICLE 5**

### **ADMINISTRATIVE CLAIM STATUS**

Section 5.1 Administrative Claim Status. Pursuant to the Interim or Final Order approving this Agreement, the Obligations of the Borrower shall constitute allowed administrative expenses in the Chapter 11 Case of the kind specified in sections 364(b) and 503(b) of the Bankruptcy Code, subject, as to priority, only to the Carve-Out Expenses or any other valid secured claims.

Section 5.2 Construction. This Agreement, the Interim and Final Orders and such other loan documents supplement each other, and the grants, priorities, rights and remedies of the Lender hereunder and thereunder are cumulative, but the provisions of the Interim Order and the Final Order shall control in the event of any express conflict.

Section 5.3 No Modification. The administrative priorities and other rights and remedies granted to the Lender pursuant to this Agreement, the Interim and Final Orders and the Notes (specifically including, but not limited to, the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of debt by the Borrower (pursuant to section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Case, or by any other act or omission whatsoever.

## **ARTICLE 6**

### **CONDITIONS PRECEDENT**

Section 6.1 Conditions Precedent. The Lender shall not be obligated to make any disbursement under the Loans until all of the following conditions have been satisfied by proper evidence, execution and/or delivery to the Lender of the following items, all in form and

substance reasonably satisfactory to the Lender and the Lender's counsel:

(a) the Note duly executed by the Borrower in form and substance satisfactory to the Lender and its counsel shall have been delivered to the Lender;

(b) evidence shall have been provided to the Lender that either the Interim Order or the Final Order, as the case may be, in form and substance satisfactory to the Lender and its counsel shall have been entered by the Bankruptcy Court approving the Commitment and this Agreement and the Note, and that such order shall be in full force and effect and shall not have been revoked, stayed, modified or amended;

(c) the Lender shall otherwise be satisfied in all material respects (in its sole discretion) with the results of its business, operational and legal due diligence in respect of the Borrower; and

(d) such other approvals, opinions or documents as the Lender may reasonably request shall have been provided to the Lender.

(e) the following statements shall be true and correct: (i) the representations and warranties contained herein and in each other document, certificate or other writing delivered to the Lender pursuant hereto or thereto on or prior to the Effective Date are true and correct in all material respects on and as of the Effective Date and on the date on which any disbursement is to be made as though made on and as of each of such dates and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or the date on which the disbursement is to be made or would result from this Agreement or the Note becoming effective in accordance with its or their respective terms, both immediately before and immediately after giving effect to the disbursement to be made.

If all of the foregoing conditions are not satisfied by the date that the applicable Loan is to be made (time being of the essence), the Lender shall have no further obligation to make such Loan even if the conditions are thereafter satisfied.

This Agreement shall become effective as of the Business Day (the "**Effective Date**") the Interim Order shall have been entered by the Bankruptcy Court and the Lender shall have received a copy of such order signed by the Bankruptcy Court, and such order shall be in full force and effect and shall not have been revoked, stayed, modified or amended absent prior written consent of the Lender and the Borrower

## **ARTICLE 7**

### **REPRESENTATIONS AND WARRANTIES**

The Borrower hereby represents and warrants that upon the occurrence of the Effective Date and on the date that each Loan is made:

#### **Section 7.1    Corporate Power and Authority; No Conflicts.**

Subject to Bankruptcy Court approval, the execution, delivery and performance by the Borrower of this Agreement and the Note, and the exercise by the Lender of any rights and remedies hereunder or under the Note have been duly authorized by all necessary corporate action and do not and will not: (a) contravene any provision of its charter or bylaws; (b) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Borrower or any of its affiliates (other than entry of the Interim Order or the Final Order, as the case may be); (c) result in a breach of or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which the Borrower is a party or by which it or its properties may be bound or affected which would not be cured by entry of the Interim Order or Final Order; (d) result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by the Borrower; or (e) cause the Borrower to be in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument which would not be cured by entry of the Interim Order and Final Order.

Section 7.2 Legally Enforceable Agreements. Subject to Bankruptcy Court approval, this Agreement and the Note are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms.

(a) Administrative Priority. The Obligations constitute allowed administrative expenses in the Chapter 11 Case of the kind specified in sections 364(b) and 503(b) of the Bankruptcy Code, subject to, as to priority, only to the Carve-Out Expenses or any valid secured claims.

Section 7.3 Bankruptcy Court Orders. The Interim Order or the Final Order, as the case may be, is in full force and effect, and has not been revoked, stayed, modified or amended.

## **ARTICLE 8**

### **AFFIRMATIVE COVENANTS**

So long as any Note shall remain unpaid and any Obligation remains unsatisfied, the Borrower shall:

Section 8.1 Maintenance of Existence. Preserve and maintain, its corporate existence and good standing in the jurisdiction of its organization, and qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is required.

Section 8.2 Conduct of Business. (a) Continue to engage in an efficient and economical manner in a business of the same general type as conducted by it on the date of this Agreement, and (b) obtain from time to time all licenses, permits, authorizations or other forms of permission which under federal, state and local laws are necessary or advisable for operating and maintaining the conduct of the business of the Borrower if the failure to so obtain or maintain any such license, permit, authorization or other form of permission would result in a material adverse change in the financial condition of the Borrower.



Section 8.3     Maintenance of Properties, Executory Contracts and Leases. Maintain, keep and preserve, all of its properties (tangible and intangible) including leased property, necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and shall use its best efforts to ensure that all leases and executory contracts necessary or useful in the Borrower's business or operations remain in full force and effect (without prejudice, however, to the Borrower's right to assume or reject such leases or executory contracts under section 365 of the Bankruptcy Code), except to the extent otherwise consented to by the Lender or to the extent that failure to do so would not result in a material adverse change in the financial condition of the Borrower.

Section 8.4     Maintenance of Records. Keep adequate records and books of account, in which complete entries will be made reflecting all financial transactions of the Borrower.

Section 8.5     Compliance with Laws. Comply in all respects with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property, subject to the limitations and requirements of the Bankruptcy Code.

Section 8.6     Right of Inspection. At any reasonable time and from time to time, permit the Lender or any agent or representative thereof, to examine and make copies and abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with any of its officers and directors and the Borrower's independent accountants.

Section 8.7     Further Assurances. Execute, acknowledge, deliver, record, file, register, perform and do any and all such further acts, estoppel certificates, assurances and other instruments as the Lender may reasonably request from time to time in order (a) to carry out more effectively the purposes of this Agreement or the Note, and (b) to better assure, preserve, protect and confirm unto the Lender the rights granted or now or hereafter intended to be granted to the Lender under this Agreement or the Note. The assurances contemplated by this Section 8.7 shall be given under applicable non-bankruptcy law as well as the Bankruptcy Code, it being the intention of the parties that the Lender may request assurances under applicable non-bankruptcy law, and such request shall be complied with (if otherwise made in good faith by the Lender) whether or not the Interim Order or the Final Order is in force and whether or not dismissal or conversion of the Chapter 11 Case or any other action by the Bankruptcy Court is imminent, likely or threatened.

## **ARTICLE 9**

### **NEGATIVE COVENANTS**

Until the Note and all Obligations shall have been satisfied in full, the Borrower shall not:

Section 9.1     Liens. Create, incur or assume any Lien upon or with respect to any of its properties, now owned or hereafter acquired, except:

(a) Liens for taxes or assessments or other government charges or levies if not yet due and payable if they are being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained;

(b) Liens imposed by law, such as mechanic's, materialmen's, landlord's, warehousemen's and carrier's Liens, and other similar Liens, securing the obligations incurred in the ordinary course of business which are not past due for more than 30 days, or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established;

(c) Liens under workmen's compensation, unemployment insurance, social security or similar legislation;

(d) Liens, deposits or pledges or liens granted to secure the Borrower's obligations under letters of credit issued to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases (permitted under the terms of this Agreement), public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds, or other similar obligations arising in the ordinary course of business;

(e) Judgments and other similar Liens arising in connection with court proceedings; provided that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings and for which appropriate reserves have been established;

(f) Easements, rights-of-way, restrictions and other similar encumbrances which, in the aggregate, do not materially interfere with the occupation, use and enjoyment by the Borrower of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto; and

(g) Liens permitted by order of the Bankruptcy Court, including but not limited to, replacement lien for cash collateral.

Section 9.2 Bankruptcy Court Orders; Administrative Priority; and Payment of Claims.

(a) Seek, consent to or suffer to exist any modification, stay, vacation or amendment of the Interim Order, or the Final Order, as the case may be, except for modifications and amendments agreed to in writing by the Lender in its reasonable discretion.

(b) Seek, consent to or suffer to exist a priority for any non-ordinary course administrative expense or unsecured claim against the Borrower (hereafter arising of any kind or nature whatsoever, including without limitation any non-ordinary course administrative expenses, charges or claims of the kind specified in sections 503(b), 506(c) and 507(b) of the Bankruptcy Code) superior to the priority of the Lender in respect of the Obligations, except for the Carve-Out Expenses or valid secured claims.

(c) Prior to the date on which all of the Obligations shall have been satisfied

in full, pay any administrative expense claims except, so long as no Default or Event of Default has occurred and is continuing hereunder, the Borrower may pay (i) administrative expense claims incurred in the ordinary course of the business of the Borrower, and (ii) amounts payable pursuant to 28 U.S.C. § 1930(a)(6) and the allowed fees of professionals under §§ 330 and 331 of the Bankruptcy Code in each case, unless otherwise approved in writing by the Lender, strictly in accordance with the Budget.

## ARTICLE 10

### EVENTS OF DEFAULT

Section 10.1 Events of Default. Any of the following events shall be an "**Event of Default**":

(a) The failure of the Borrower to: (i) pay the principal under the Note as and when due and payable; or (ii) pay interest on the Note or other amounts due hereunder as and when due and payable; and such failure shall continue unremedied for five (5) Banking Days after actual receipt of any notice provided herein; or

(b) Any material representation or material warranty made by the Borrower in this Agreement or in the Note or which is contained in any certificate, document, opinion, financial or other statement furnished at any time under or in connection with this Agreement or the Note shall prove to have been incorrect in any material respect on or as of the date made or deemed made and shall continue unremedied for five (5) Banking Days after actual receipt of any notice provided herein; or

(c) The filing by the Borrower of an application seeking to (i) appoint a trustee in any the Chapter 11 Case or (ii) appoint an examiner with enlarged powers (beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code in the Chapter 11 Case with the authority to perform the duties of a trustee (other than the duties solely of an examiner) in respect of the estate of the Borrower or the operation of the business of the Borrower; or

(d) The entry of an order by the Bankruptcy Court dismissing the Chapter 11 Case or converting the Chapter 11 Case to a chapter 7 case which does not contain a provision for the immediate termination of the Commitment and payment in full in cash of all Obligations of the Borrower hereunder and under the Note and any related documents; or

(e) The filing of a Plan of Reorganization or the entry of an order confirming a Plan of Reorganization or liquidation under section 1129 of the Bankruptcy Code, by any party, which does not contain a provision for payment in full in cash of all Obligations of the Borrower hereunder and under the Note on or before the effective date of such Plan of Reorganization; or

(f) The entry of an order by the Bankruptcy Court after the Effective Date, with respect to the Chapter 11 Case, without the express prior written consent of the Lender, that

(i) to revoke, reverse, stay, modify, supplement or amend the Interim Order, or the Final Order, the Agreement or Note or any documents related thereto, (ii) approves the incurrence by any debt not contemplated hereunder except for the exit financing or (iii) permits any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority superior to the priority of the Lender in respect of the Obligations, except for the Carve-Out Expenses; or

(g) The entry of an order by the Bankruptcy Court after the Effective Date that is not stayed pending appeal granting relief from the automatic stay to any creditor of the Borrower with respect to any claim secured by any asset or assets of the Borrower having a book value equal to or exceeding \$100,000 in the aggregate; provided, however, that it shall not be an Event of Default if relief from the automatic stay is lifted solely for the purpose of allowing such creditor to determine the liquidated amount of its claim against the Borrower or such claim is covered by applicable insurance; or

(h) The entry of any judgment or order after the Effective Date against the Borrower or any other event shall occur or condition exist which does or could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business, operation or prospects of the Borrower and there shall be a period of ten (10) consecutive days during which a stay or enforcement of such judgment or order shall not be in effect; or

(i) The failure of the Borrower: (i) to perform or observe any other material term, material covenant or material agreement on its part to be performed or observed in this Agreement or in the Note and such failure shall continue unremedied for ten (10) Banking Days after notice thereof; or (ii) to comply with any of the terms or provisions of the Interim Order or the Final Order; or

Section 10.2 Consequences of an Event of Default. If an Event of Default shall occur and so long as it shall continue, the Lender may, by notice to the Borrower declare the Commitment terminated.

Section 10.3 Certain Remedies. Subject to Section 2.1 of this Agreement, if an Event of Default has occurred and is continuing, the Lender may, on five (5) Banking Days' prior written notice to the Borrower and the Office of the United States Trustee for the Southern District of New York, (i) declare the unpaid principal amount of the Note, interest accrued thereon, and all other amounts owing by the Borrower hereunder or under the Note and the Obligations to be immediately due and payable without further order of or application to the Bankruptcy Court, presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, an action therefor shall immediately accrue, and (ii) subject to obtaining approval from the Bankruptcy Court, the Lender may exercise all rights and remedies which the Lender may have hereunder or under any the Note, the Interim Order, the Final Order or at law (including but not limited to the Bankruptcy Code) or in equity or otherwise. No failure on the part of such Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

## **ARTICLE 11**

### **OPTION**

Section 11.1 Option to Convert to Equity. The Lender shall have the option, exercisable in Lender's sole and absolute discretion, to convert the amounts due under the Note into equity of the Borrower in accordance with the Plan of Reorganization of the Borrower in form and substance agreeable to the Lender in its sole discretion.

## **ARTICLE 12**

### **MISCELLANEOUS**

Section 12.1 Amendments and Waivers. The Borrower and the Lender may from time to time enter into agreements amending, modifying or supplementing this Agreement and the Note, and the Lender may from time to time grant waivers or consents to a departure from the due performance of the obligations of the Borrower hereunder or thereunder. Any such agreement, waiver or consent must be in writing and shall be effective only to the extent specifically set forth in such writing. In the case of any such waiver or consent relating to any provision hereof, any Event of Default so waived or consented to shall be deemed to be cured and not continuing but only for the time period set forth in such waiver or consent and, no such waiver or consent shall extend to any other or subsequent Event of Default or impair any right consequent thereto.

Section 12.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Lender, the Borrower and their respective successors and assigns (including, except for the right to request the Loans, any trustee or examiner or other person with expanded powers succeeding to the rights of the Borrower or pursuant to any conversion to a case under chapter 7 of the Bankruptcy Code).

Section 12.3 The Lender as Party-in-Interest. The Borrower hereby stipulates and agrees that the Lender is and shall remain a party-in-interest in the Chapter 11 Case and shall have the right to participate, object and be heard in any motion or proceeding in connection therewith (including but not limited to objections to use of proceeds of the Loans, to the payment of professional fees and expenses or the amount thereof, to sales or other transactions outside the ordinary course of business or to the assumption or rejection of any executory contract or lease).

Section 12.4 Assignment and Participation. This Agreement shall be binding upon, and shall inure to the benefit of, the Borrower and the Lender and their respective successors and assigns, except that the Borrower may not assign or transfer its rights or obligations hereunder. The Lender may assign, or sell participations in, all or any part of the Obligations (including all or a portion of its Commitment) owing to the Lender to another Lender or other entity, in which event (a) in the case of an assignment, upon notice thereof by the Lender to the Borrower, the assignee shall have, to the extent of such assignment (unless otherwise provided therein), the same rights, benefits and obligations as it would have if it were the Lender hereunder; and (b) in the case of a participation, the participant shall have no rights under this Agreement or the

Note as directly against the Borrower. The Lender may furnish any information concerning the Borrower in the possession of the Lender from time to time to assignees and participants (including prospective assignees and participants); provided that the Lender shall require any such prospective assignee or such participant (prospective or otherwise) to agree in writing to maintain the confidentiality of such information.

Section 12.5 Notices. Unless the party to be notified otherwise notifies the other party in writing as provided in this Section, and except as otherwise provided in this Agreement, notices shall be given to the Lender and to the Borrower by email, facsimile, and either overnight courier or by personal delivery, addressed to such party at the following addresses:

If to the Borrower:

Project Orange Associates  
Attn: [\_\_\_\_\_]

With a copy to:

DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020  
Attn: Timothy W. Walsh, Esq.

and

Golenbock Eiseman Assor Bell & Peskoe LLP  
437 Madison Avenue  
New York, NY 10022-7020  
Attn: Jonathan L. Flaxer, Esq.

If to Lender:

Gas Alternative Systems, Inc.  
Attn: [\_\_\_\_\_]

With a copy to:

Law Offices of Gabriel Del Virginia  
Attn: Gabriel Del Virginia  
641 Lexington Avenue  
18th Floor  
New York, New York 10022

Section 12.6 Table of Contents; Headings. Any table of contents and the headings and captions hereunder are for convenience only and shall not affect the interpretation or construction of this Agreement.

Section 12.7 Severability. The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 12.8 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

Section 12.9 Integration. This Agreement and the Note set forth the entire agreement between the parties hereto relating to the transactions contemplated thereby and supersede any prior oral or written statements or agreements with respect to such transactions.

Section 12.10 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the internal laws of the State of New York, except to the extent governed by the Bankruptcy Code.

Section 12.11 Waiver of Jury Trial. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION AGAINST THE LENDER, ANY PARTICIPANT, ASSIGNEE OR INDEMNIFIED PARTY, BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE NOTES OR ANY OTHER FACILITY DOCUMENT, ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE LENDER OR THE BORROWER IN CONNECTION HERewith OR THEREWITH. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER TO ENTER INTO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**PROJECT ORANGE ASSOCIATES, LLC, as  
Borrower**

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**Gas Alternative Systems, Inc., as Lender**

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