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[]

- AND -

[]

POWER PURCHASE AGREEMENT

RELATING TO

THE EMERGENCY POWER GENERATION COMPLEX AT
[LOCATION]

DATED []

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SCHEDULE 18 FORM OF ADVANCE PAYMENT SECURITY

SCHEDULE 19 FORM OF UTILITY SECURITY

SAMPLE

This document has been prepared for the purposes of the **PPP IN INFRASTRUCTURE RESOURCE CENTER FOR CONTRACTS, LAWS AND REGULATIONS (PPIRC)** website. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as a "model". The inclusion of any legal materials on the PPIRC website does not mean that they are in any way approved, endorsed or recommended by the World Bank Group or its affiliates. Legal advice should be sought to determine whether a particular legal document is appropriate for any given project, and how the specific terms of the document should be adapted to fit the circumstances of that project

THIS POWER PURCHASE AGREEMENT (this "Agreement") is made at [location] on [DATE] by and between:

- (1) [] (the "Utility"), a company duly incorporated under the laws of [COUNTRY] and having its registered office at [ADDRESS]; and
- (2) [] (the "Company"), a company duly incorporated under the laws of [COUNTRY] and whose registered office is located at [ADDRESS] (the "Company").

Both the Utility and the Company are herein referred to individually as a "Party" and collectively as the "Parties".

WHEREAS:

- (A) the Company plans to deliver, install, own, operate and maintain a thermal power generation plant at []; and
- (B) the Company wishes to sell to the Utility, and the Utility wishes to purchase from the Company, the Available Capacity (as hereinafter defined) up to the Contract Capacity (as hereinafter defined) of such power generation facility and all of the Net Energy Output (as hereinafter defined) pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound hereby, the Company and the Utility hereby agree as follows:

ARTICLE I DEFINITIONS; INTERPRETATION

Section 1.1. Definitions; Interpretation

In this Agreement:

- (i) capitalized terms defined in Schedule 1 shall bear the respective meanings set out therein;
- (ii) the headings and paragraph numbering are for convenience only and shall not be considered in construing this Agreement;
- (iii) the singular includes the plural and vice versa;
- (iv) the Schedules (and any schedules or tables thereto) to this Agreement form part of this Agreement, and capitalized terms used in the Schedules (and any Annexes thereto) that are not defined therein shall have the meanings given to them in Section 1.1(i);
- (v) references to Articles, Sections and Schedules in the body of this Agreement are, unless otherwise specified, references to Articles of, Sections of, and Schedules to, this Agreement;
- (vi) references in any Schedule to Parts, Articles, Sections, and Annexes are to Parts, Articles, Sections, and Annexes of that Schedule, unless indicated otherwise. References in any Schedule to Articles and Sections of the Agreement are to Articles and Sections of the body of this Agreement;
- (vii) references to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
- (viii) references to a Party shall be construed so as to include that Party's assigns or transferees permitted in accordance with the terms of this Agreement and its successors in title;
- (ix) unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- (x) words importing any gender include the other gender; and
- (xi) the words "include," "includes" and "including" are not limiting; and shall be construed without limitation.

ARTICLE II SALE AND PURCHASE OF ENERGY AND CAPACITY

Section 2.1. Sale and Purchase of Energy and Capacity

- 2.1.1 Subject to and in accordance with the terms of this Agreement, from and after the Commercial Operations Date the Company shall make available and sell to the Utility, and the Utility shall purchase from the Company for the consideration described in Article X, the Declared Available Capacity and Net Energy Output of the Complex.
- 2.1.2 Subject to and in accordance with the terms of this Agreement, prior to the Commercial Operations Date the Company shall make available and sell to the Utility and the Utility shall purchase from the Company for the consideration described in Article X the Net Energy Output of the Complex and, if the Parties agree to Commission a portion of the Complex prior to the Commercial Operations Date, the Declared Available Capacity.
- 2.1.3 For the avoidance of doubt, in no event shall the Utility have any obligation to pay for any energy output of the Complex:
- (i) prior to the successful completion of the pre-synchronization tests pursuant to Section 3.1 of Schedule 4,
 - (ii) greater than the portion of the Complex that has been Commissioned,
 - (iii) as set forth in Section 9.1, or
 - (iv) during any testing of the Complex not provided for in this Agreement or for any energy output not delivered pursuant to the Utility's Dispatch or as otherwise specifically provided under this Agreement.

Section 2.2. Utility's Exclusive Right to Energy and Capacity

Except to the extent that electric energy is required for the operation of any part of the Complex, the Company shall not, without the prior written approval of the Utility:

- (i) sell or deliver electric energy produced at the Complex to any person or entity other than the Utility; or
- (ii) confer upon any person or entity other than the Utility any right in or to the Available Capacity.

ARTICLE III TERM

Section 3.1. Initial Term

The initial term of this Agreement shall commence on the later to occur of (i) the date that the last of this Agreement and the Government Support Agreement is executed and delivered by each of the parties thereto, and (ii) the date the conditions precedent set forth in Section 22.1 are fulfilled to the satisfaction of each of the Parties or waived thereby. This Agreement shall expire [twelve (12) months]¹ from the Commercial Operations Date unless it is earlier terminated pursuant to the provisions of this Agreement. The expiration or termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such expiration or termination.

Section 3.2. Renewal Term

The Utility may, by a notice delivered to the Company, on or before a date [nine (9) Months] after the Commercial Operations Date, extend this Agreement, on the same terms and conditions, for a specified period of time not to exceed [twelve (12)]² additional Months beyond the initial date of expiration. Thereafter, this Agreement may be extended for a further additional period on terms mutually agreeable to the Company and the Utility.

¹ agreement for emergency power provision is likely to be short term

² subject to local procurement rules – this may be limited/ not be permitted without new bid process

ARTICLE IV
LICENSE FOR THE USE OF THE SITE; RELATED RIGHTS AND OBLIGATIONS

Section 4.1. License

- 4.1.1 The Utility hereby grants to the Company, without additional payment, a license for the entry onto and use of the area described in Schedule 13 (the “Site”), which Site the Company shall have the right to enter and use only for the purposes set forth in Section 4.1.2.
- 4.1.2 The Company shall have the right to enter and use the Site for:
- (i) the undertaking of the Project;
 - (ii) the operation of the Complex;
 - (iii) the generation and delivery of electricity;
 - (iv) the removal of all or any component of the Complex in accordance with Section 4.2; and
 - (v) all other activities reasonably necessary and appropriate for the performance of this Agreement.

Section 4.2. Removal Rights and Obligations

- 4.2.1 The Company shall have the right during the term of this Agreement and during the two (2) Month period following the termination of this Agreement to remove all or any part of the Complex from the area so long as it retains title to such Complex.
- 4.2.2 The Company shall remove all of the Complex from the Site at the end of the term of this Agreement.

Section 4.3. Supervision

The Company shall be solely responsible during the term of this Agreement for the supervision of all work performed by the Company or the Company’s agents, employees, Contractors, subcontractors, licensees, invitees, or others who are present on the Site. The Company shall take all precautions, including the posting of signs and the placing of fencing and barricades as are necessary in the interest of public safety and for the safety of any persons working on or traveling upon or in any way using the Site. The Company shall also take all reasonable precautions for the protection of all persons and of real and personal property situated on the perimeter adjacent to or abutting the Site.

Section 4.4. Utilities and Services

- 4.4.1 Except to the extent provided in Section 5.4.1, the Utility shall have no obligation hereunder to provide to the Company any utilities or services in relation to the

Company's license to enter and use the Site (including electric service, telecommunication service, waste disposal, security, or water service).

Section 4.5. Tax Payment Obligations

- 4.5.1 The Utility shall pay all undisputed real estate taxes, assessments (general and special), and other related charges, assessed or charged against the Site, accruing or becoming due and payable during the term of this Agreement.
- 4.5.2 If the Utility shall fail to pay its tax obligations as specified in this Section 4.5, then ten (10) Business Days following delivery of notice by the Company to the Utility of an intention to pay such taxes and the failure of the Utility to provide evidence of its payment or its ability to pay such taxes, the Company may pay the delinquent taxes of the Utility and charge or offset said payments to the Utility.

Section 4.6. Company Obligations With Regard to Liens

- 4.6.1 The Company shall promptly pay all valid claims for labor, services and materials furnished to or for the performance of work hired or retained by or under contract with the Company upon the Site. If any person hired or retained by or under contract with the Company or its Contractors shall file or perfect a Lien against any portion of the Site or the Complex, the Company shall promptly discharge such Lien by bond or otherwise and shall indemnify, protect and defend the Utility against all losses or expenses in connection therewith, including reasonable attorneys' fees.
- 4.6.2 The Company's obligations with respect to Liens and claims covered by this Section 4.6 are subject to the conditions that:
- (i) the Company has sole control of the defense and settlement to the extent of the Company's liability for any such Lien or similar claim; provided, however, if the Company fails to satisfy its obligation to defend the Lien or claim, the Utility may deliver notice to the Company and then satisfy or defend any such Lien or claim;
 - (ii) the Utility gives the Company reasonably prompt notice of any such Liens or similar claim; and
 - (iii) the Utility cooperates in the defense of any such Lien or similar claim.

Section 4.7. Utility Obligations With Regard to Liens

- 4.7.1 If any person hired or retained by or under contract with the Utility or its Contractors shall file or perfect a Lien against any portion of the Site or the Complex, the Utility shall promptly discharge such Lien by bond or otherwise and shall indemnify, protect and defend the Company against all losses or expenses in connection therewith, including reasonable attorneys' fees.

4.7.2 The Utility's obligations with respect to Liens and claims covered by this Section 4.7 are subject to the conditions that:

- (i) the Utility has sole control of the defense and settlement to the extent of the Utility's liability for any such Lien or similar claim; provided, however, if the Utility fails to satisfy its obligation to defend the Lien or claim, the Company may deliver notice to the Utility and then satisfy or defend any such Lien or claim;
- (ii) the Company gives the Utility reasonably prompt notice of any such Liens or similar claim; and
- (iii) the Company cooperates in the defense of any such Lien or similar claim.

Section 4.8. Title to Complex

It is the intention of the Parties that at no time during the term of this Agreement shall the Complex become a fixture on the Site, but that the Complex shall remain at all times the property of the Company.

Section 4.9. Holding Over

Subject to Section 4.2.1, if the Company continues to enter or use all or any part of the Site after the expiration of the term of this Agreement, with or without the express or implied consent of the Utility, and in the absence of an agreement by the Parties to extend or renew this Agreement, then the Company shall be liable to the Utility for rent in the sum of [CURRENCY AND AMOUNT] per Month (in addition to any other remedies the Utility may have), and such continued entry onto and use of the Site shall be subject to every other term, covenant and condition contained in this Agreement.

Section 4.10. Entry and Inspection by the Utility

The Utility and the Utility's designated representatives and agents shall, during the term of this Agreement, have the right to enter the Site to inspect the same to determine if the Company is observing the covenants and agreements of the Project Agreements to be kept and performed by the Company, for the purpose of allowing the Utility to do any work required of the Utility, and for undertaking any other activity in connection with this Agreement at reasonable times and upon reasonable notice to the Company (taking into consideration the nature of the Company's business). Notwithstanding the foregoing, the Utility covenants that, in its exercise of its rights to, in and under any the Utility rights to enter the Site, it shall not, and shall not allow any of its agents, employees, Contractors, successors or assigns to cause damage to the Complex, materially interfere with the Company's ownership or operation of the Complex or materially interfere with the Company's use and occupancy of the Site and shall comply and cause its agents, employees, Contractors, successors, and assigns to comply with the Company's generally applicable safety rules and procedures.

Section 4.11. Condition of the Site

- 4.11.1 During the term of this Agreement, the Company shall maintain the Site in a clean and presentable manner.
- 4.11.2 The Company shall take such measures as are necessary to ensure that at the end of the term of this Agreement the Site is in a similar or better condition that the Site was in at the commencement of the term of the Agreement, as shown by the environmental assessment performed pursuant to Section 5.2.2(v).

Section 4.12. Environmental Obligations of Company.

- 4.12.1 During the term of this Agreement, Company shall comply with, and shall cause all Parties entering the Site to comply with all applicable Environmental Laws with respect to the Site.
- 4.12.2 During the term of this Agreement, Company shall not cause any Environmental Conditions at the Site, which results in or could reasonably be expected to result in any Environmental Claim or Environmental Losses asserted against or incurred by Utility.

Section 4.13. Notice of Environmental Conditions.

The Utility shall promptly notify Company of (i) any Environmental Conditions at the Site that could reasonably be expected to result in any Environmental Claim or Environmental Losses asserted against or incurred by Utility, and (ii) any event that may result in a breach of any representations or warranty under any of the Project Agreements.

ARTICLE V PRE-OPERATION PERIOD

Section 5.1. Permits and Licenses

- 5.1.1 The Utility hereby grants the Company, without additional payment, a License to enable the Company to undertake the generation and supply of electricity from the Complex, which Licence shall be on the terms and conditions set out in this Agreement.
- 5.1.2 Except with regard to the License referred to in Section 5.1.1, the Company, at its sole cost and expense, shall: (i) acquire and maintain in effect all Consents required by all Public Sector Entities with jurisdiction over the Company and/or the Complex in order to enable it to perform its obligations under this Agreement; (ii) give all required notices and allow all required inspections under all Consents obtained by it in connection with the Complex; and (iii) pay all prescribed fees in connection with such Consents.

Section 5.2. Submissions by the Company

- 5.2.1 The Company shall submit to the Utility the documents listed in Section 5.2.2 on or before the dates specified in Section 5.2.2 (the “PPA Original Documents”). In addition, the Company shall provide to the Utility any documents supplementing or otherwise amending a PPA Original Document in a timely manner as such information is amended, modified or superseded (all such supplements and amendments, “PPA Amended Documents”). Prior to executing (i) any PPA Original Document or (ii) any PPA Amended Document that is material to the interests of the Utility under this Agreement, the Company shall obtain the written approval of the Utility; provided, however, that any approval requested from the Utility for a PPA Amended Document which is to be executed or otherwise created after the date of Effectiveness of Agreement shall be deemed given unless refused within [thirty (30)] Days after notice of the request for such approval, or, in the case of change orders, within [forty-five (45)] Days after notice of the request for such approval.
- 5.2.2 The PPA Original Documents, and the date by which each PPA Original Document must be submitted, are as follows:
- (i) as soon as available, but no later than the date of Effectiveness of Agreement, a copy of the Government Support Agreement as executed, with any amendments thereto;
 - (ii) on or before the date of Effectiveness of Agreement, copies of all Consents and other governmental authorizations that have been issued to the Company to date for the delivery, installation, operation and maintenance of the Complex, and not later than [ten (10)] Days prior to the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then not later than [ten (10)] Days prior to the Commissioning of any part of the Complex) (a) evidence demonstrating that the Company has obtained all of the Consents then required to be obtained for the ownership, operation and maintenance of, and the supply of power from, the

Complex together with (b) a list identifying Consents not yet required to be obtained for the operation and maintenance of, and the supply of power from, the Complex, together with a plan reasonably acceptable to the Utility for obtaining such Consents and an estimate of the time within which such Consents will be obtained;

- (iii) on or before the date of Effectiveness of Agreement, a copy of the Company's proposed plan for the operations and maintenance of the Complex, together with all amendments executed as of that date;
- (iv) on or before the date of Effectiveness of Agreement, executed copies of all Fuel Supply Agreements, fuel transportation agreements, backup fuel agreements and other commitments for the supply and transportation of fuel and backup fuel;
- (v) as soon as available, but no later than [twenty (20)] Days from the date of Effectiveness of Agreement, an environmental assessment to establish the baseline conditions at the Site;
- (vi) at least five (5) Days prior to Construction Start Date, evidence demonstrating that the Company has obtained all material Consents that are necessary for the Construction Start Date;
- (vii) thirty (30) Days after the date of Effectiveness of Agreement, a Construction Report in the form set out in Schedule 9, and, thereafter, as required, supplemental Construction Reports, when and as the Company becomes aware of any new condition or event that will have a material and adverse effect on the timely completion of the Complex;
- (viii) as soon as available but not later than [thirty (30)] Days after the date of Effectiveness of this Agreement, general arrangement drawings of the Complex;
- (ix) not later than [fourteen (14)] Days prior to the scheduled commencement of testing and Commissioning, a Start-Up and test schedule for the Complex;
- (x) at the time specified in Section 5.3, a copy of draft written operating procedures to serve as the basis for the written operating procedures to be jointly developed pursuant to Section 5.3;
- (xi) as soon as available but not later than [ten (10)] Days after the performance of any Commissioning test, copies of all test results for tests performed on the Complex; and
- (xii) on the Commercial Operations Date, a certificate from the Company Engineer addressed to the Utility to the effect that, based upon the Company Engineer's monitoring and review of the Project, the construction and installation of the Complex has been carried out in all material respects in compliance with the terms of this Agreement.

- 5.2.3 Neither the receipt nor approval of any PPA Original Document or PPA Amended Document shall (i) relieve the Company of any liability, obligation or responsibility under this Agreement or the Government Support Agreement resulting from a breach by the Company of this Agreement or the Government Support Agreement, or (ii) be construed as an endorsement by the Utility of the delivery, installation, ownership, operation or maintenance of the Complex nor as a warranty by the Utility of the safety, durability or reliability thereof.

Section 5.3. Operating Procedures

- 5.3.1 The Company and the Utility shall jointly develop written operating procedures for the Complex in accordance with this Section 5.3. Such operating procedures shall

- (i) be based on the designs of the Complex (including the Company Interconnection Facilities), the Utility Interconnection Facilities and the Utility Grid System and on the draft procedures provided by the Company pursuant to Section 5.2.2(x);
- (ii) be consistent with the Minimum Functional Specifications; and
- (iii) deal with all operational interfaces between the Utility and the Company, including the method of day-to-day communication, key personnel lists, clearances and switching practices, outage scheduling, capacity and energy reporting, and operations log.

- 5.3.2 Within [ten (10)] Days of the establishment of the Operating Committee, the Parties shall cause the Operating Committee to meet and cause their respective designated members to finalize the operating procedures addressing all operational interfaces between the Utility and the Company. The operating procedures shall:

- (i) take proper account of the design of the Complex, the Metering Systems, and the Utility Grid System; and
- (ii) be consistent with Prudent Utility Practices.

- 5.3.3 The procedure for developing and finalizing the operating procedures shall be as follows:

- (i) at the time of the establishment of the Operating Committee, the Company shall deliver to the Utility in writing proposed draft operating procedures;
- (ii) the Utility shall provide comments in writing on the draft operating procedures within [five (5)] Days following the date the draft operating procedures are delivered by the Company to the Utility, and each Party shall make a representative available to meet within [two (2)] Days thereafter to review both the draft operating procedures and the comments provided by the Utility;
- (iii) any dispute between the Parties as to the contents of the operating procedures that cannot be resolved at the first meeting of the Operating Committee in

accordance with Section 5.3.2 shall ultimately be determined in accordance with Section 18.2. The determination of the expert shall be final and binding with respect to the resolution of such dispute. Until the determination of the expert has been made, the draft operating procedures proposed by the Company, as amended by mutual agreement of the Parties, shall prevail.

- 5.3.4 Following the finalization of the operating procedures pursuant to Section 5.3.3, either Party may propose changes to the operating procedures from time to time as changes in events and circumstances may require. The Parties shall meet and discuss such proposed changes in good faith and incorporate such changes as are agreed by the Parties. Any dispute between the Parties as to whether any matter should be included in or removed from or modified in the way it is then treated in the operating procedures shall be determined in accordance with Section 18.2. The determination of the expert shall be final and binding with respect to the resolution of such dispute.
- 5.3.5 The Company and the Utility shall mutually develop an inter-tripping schedule no later than [ten (10)] Days prior to the required implementation of such schedule. Such inter-tripping schedule shall be based on a proposed schedule submitted to the Utility by the Company at least [fifteen (15)] Days prior to the date implementation of such schedule is required.

Section 5.4. Energy Required From the Utility; Energy During Commissioning

- 5.4.1 Subsequent to the Company interconnecting with the Utility and establishing a metering system satisfactory to the Utility, the Utility shall provide energy for construction and installation of the Complex, testing of the Complex, Commissioning, Start-Ups, and Emergencies, subject to availability and the Utility's ability to deliver such energy to the Complex. The Company shall pay the Utility for such energy in accordance with the Utility's then prevailing tariff rate for industrial facilities. The Utility is hereby authorized to set-off the charges for such energy delivered by the Utility to the Company pursuant to this Section 5.4.1 against any Energy Payments due and owing to the Company.
- 5.4.2 Prior to the Commercial Operations Date, the Utility shall use reasonable efforts to accept all energy produced by the Complex during testing performed pursuant to the Commissioning, and the Utility shall pay the Company for such energy at the rate set forth in Section 10.3.

Section 5.5. Inspection

The Utility and/or its representatives shall have the right to observe the progress of the delivery and installation of the Complex and the testing and Commissioning of the Complex in accordance with Schedule 4. The Company shall comply with all reasonable requests of the Utility for, and assist in arranging, any such observation visits to the Complex. Such visits to the Complex shall not be construed as an endorsement by the Utility of the design thereof nor as a warranty by the Utility of the safety, durability or reliability of the Complex. All persons visiting the Complex on behalf of the Utility shall comply with the Company's reasonable and generally

applicable safety regulations and procedures made available to such persons and shall comply with the reasonable instructions and directions of the Company, and shall not unreasonably cause any interference with or disruption to the activities of the Company.

Section 5.6. General Covenants of the Company in Respect of the Complex

The Company hereby covenants as follows:

- (i) during the term of this Agreement, the Company shall undertake the Project in accordance with (a) this Agreement, (b) the Minimum Functional Specifications set forth in Schedule 3, (c) sound engineering and construction practices and Prudent Utility Practice, (d) the operating procedures developed pursuant to Section 5.3, (e) the environmental guidelines and occupational health and safety standards of [COUNTRY], (f) all applicable Consents and Laws, including any applicable [COUNTRY] grid code, and (g) such requirements as the Utility may reasonably deem necessary in order for the Utility Interconnection Facilities to be designed and constructed in accordance with sound engineering and construction practices and Prudent Utility Practice.
- (ii) the Company shall cause all equipment that is installed as part of the Complex to be in reasonable operating condition (though not necessarily in new and unused condition) at the time of such installation and to otherwise comply with the requirements of this Agreement;
- (iii) the Company shall commence and proceed with the engineering, procurement, and installation of the Complex as soon as reasonably practicable following the date of Effectiveness of Agreement, and shall ensure that the Construction Start Date occurs in sufficient time for the Commissioning of the Complex prior to the Required Commercial Operations Date; and
- (iv) the Commercial Operations Date shall occur before the Required Commercial Operations Date.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

Section 6.1. Company Representations and Warranties

The Company represents and warrants to the Utility that:

- (i) the Company is duly incorporated, and validly existing, in accordance with the laws of [COUNTRY];
- (ii) the Company has full power to carry on its business and to enter into, legally bind itself by, and perform its obligations under, this Agreement and the other agreements comprising the Project Agreements;
- (iii) this Agreement has been duly authorized, executed, and delivered by the Company and constitutes its legal, valid and binding obligation;
- (iv) the execution, delivery, and performance of this Agreement and each agreement comprising the Project Agreements does not, and will not, constitute a violation of (a) any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to the Company, its assets or its businesses, or (b) the Company's Articles of Association or other organic documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
- (v) there are no outstanding judgments against the Company, and, to the best knowledge of the Company, no action, claim, suit or proceeding is pending or threatened against the Company before any court, governmental authority or arbitrator of competent jurisdiction that could reasonably be expected to affect materially and adversely the financial condition or operations of the Company or the ability of the Company to perform its obligations under this Agreement or any other agreement comprising the Project Agreements or which purports to affect the legality, validity or enforceability of this Agreement or any other agreement comprising the Project Agreements;
- (vi) the Company is not in default under any agreement to which it is a party or by which it or its property may be bound, nor in any default of any technical or financial obligation, which could have a material adverse effect on the ability of the Company to perform its obligations under this Agreement or any other agreement comprising the Project Agreements; and
- (vii) no information given by the Company in relation to this Agreement or any agreement in the Project Agreements or in the proposal submitted by the Company to the Utility contains any misstatement of fact or omits to state a fact which would be materially adverse to the enforcement of the rights and remedies of the Utility or which would be necessary to make any statement, representation or warranty contained herein or therein true and correct in all material respects.

Section 6.2. Utility Representations and Warranties

The Utility represents and warrants to the Company that:

- (i) the Utility is duly incorporated, and validly existing in accordance with the laws of [COUNTRY];
- (ii) the Utility has full power to carry on its business and to enter into, legally bind itself by, and perform its obligations under, this Agreement;
- (iii) this Agreement has been duly authorized, executed, and delivered by the Utility and constitutes its legal, valid and binding obligation;
- (iv) the execution, delivery, and performance of this Agreement does not, and will not, constitute a violation of (a) any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to the Utility, its assets or its businesses, or (b) the Utility's Articles of Association or other organic documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound.

ARTICLE VII OPERATION AND MAINTENANCE OF THE COMPLEX

Section 7.1. Declared Available Capacity

- 7.1.1 Not later than 00:00 hours on the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then no later than 00:00 hours on the Day following the Commissioning of any part of the Complex), the Company shall submit a notice in the form of Schedule 8 to notify the Utility of the Declared Available Capacity for each following hour of that Operating Day.
- 7.1.2 Not later than [sixteen (16)] hours prior to the beginning of each Operating Day (the “Declaration Deadline”) following the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then no later than sixteen (16) hours prior to the beginning of each Operating Day following the Day following the Commissioning of any part of the Complex), the Company shall submit notice in the form of Schedule 8 to notify the Utility (or revise any such information previously given) of the Declared Available Capacity for each hour of such Operating Day. If the Company fails to give such notice on or before the Declaration Deadline, the Declared Available Capacity for each hour of such Operating Day shall be deemed to be equal to the Declared Available Capacity for each hour declared by the Company for the immediately previous Operating Day.
- 7.1.3 The Company may:
- (i) subject to the payment of liquidated damages pursuant to Section 10.5, revise downwards and continue to revise downwards the Declared Available Capacity for any hour up to and until the start of the applicable Operating Day by informing the Utility of such revision; and
 - (ii) revise upwards and continue to revise upwards the Declared Available Capacity for any hour up to and until [four (4)] hours prior to the start of the applicable hour by informing the Utility of such revision,
- (such revised Declared Available Capacity described in paragraphs (i) and (ii) is referred to in this Agreement as “Revised Declared Available Capacity”).
- 7.1.4 When making notifications of Declared Available Capacity or Revised Declared Available Capacity, subject to the Technical Limits and Prudent Utility Practices, the Company shall not withhold available generating capacity.

Section 7.2. Dispatch by Utility

- 7.2.1 The Utility shall have the right to Dispatch the Complex in accordance with the provisions of this Section 7.2. From and after the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then from and after the Commissioning of any part of the

Complex), the Utility may Dispatch the Complex up to its Declared Available Capacity or Revised Declared Available Capacity, as the case may be.

- 7.2.2 It is expressly recognized that the Utility is not obligated to request any Net Energy Output.
- 7.2.3 Not later than [seven (7)] hours prior to the beginning of each Day, subject to Section 7.2.5, the Utility shall notify the Company of its requirements for Net Energy Output on an hourly basis for such Day.
- 7.2.4 If the Utility fails to give such notice on or before the required deadline, the Utility's requirements for Dispatch for each hour of such Operating Day shall be deemed to be equal to the requirements for each hour declared by the Utility for the immediately previous Operating Day.
- 7.2.5 The Utility may notify the Company of any upward or downward revision to any Dispatch instruction at any time.

Section 7.3. Operation by the Company

- 7.3.1 Provided Dispatch is in accordance with the terms of this Agreement, from and after the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then from and after the Commissioning of any part of the Complex), Company shall control and operate the Complex in accordance with the Utility's Dispatch instructions.
- 7.3.2 In case of any revision to the Dispatch instructions of the Utility, the Company shall comply with any revised Dispatch instruction not later than [five (5)] minutes before the beginning of any hour to which such revision relates (or such later time following the revised Dispatch instruction as may be demonstrated to be required by the Technical Limits).
- 7.3.3 Commencing with the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then from and after the Commissioning of any part of the Complex), the Company shall keep the Control Center informed as to the Declared Available Capacity of the Complex and will immediately advise the Control Center of any change in such Declared Available Capacity.
- 7.3.4 Subject to the Minimum Functional Specifications, the Company shall operate and maintain the Complex in such a manner so as not to have an adverse effect on the Utility's voltage level, voltage waveform or transmission and distribution system.
- 7.3.5 The Company shall, in accordance with the Minimum Functional Specifications, install protective relays within the Complex and/or the Utility Interconnection Facilities having ratings and characteristics approved by the Utility, and, subject to the Minimum Functional Specifications, shall maintain the settings of all such relays at the levels

acceptable to the Utility. The Company shall not change the settings of such relays without the prior written consent of the Utility.

Section 7.4. Scheduled Outages

The Company has not scheduled and may not schedule any outages during the term of this Agreement other than the Maintenance Outages provided under Section 7.5.

Section 7.5. Maintenance Outages

When the circumstances warrant a Maintenance Outage, the Company may advise the Utility of such circumstances and of the commencement and estimated duration of the Maintenance Outage. The Utility shall grant the Company the right to conduct such Maintenance Outage at a time reasonably acceptable to the Utility.

Section 7.6. Company's Obligation regarding Plant Capacity

The Company is obliged to provide plant capacities that will allow for any Scheduled Outage, Maintenance Outage or Forced Outage, to ensure that the Available Capacity in any given hour of any given day is equal to or greater than the Contract Capacity.

Section 7.7. Emergencies

7.7.1 The Utility and the Company shall jointly establish plans for operating the Complex during an Emergency. Such plans shall include recovery from a local or widespread electrical blackout and voltage reduction in order to effect load curtailment. The Company shall, within the Minimum Functional Specifications, comply with such Emergency procedures. Upon the Utility's request, the Company shall make technical references available to the Utility concerning Start-Up times, black-start capabilities, and minimum load-carrying ability.

7.7.2 During an Emergency and if requested in Dispatch instructions from the Utility, the Company shall supply such power as the Complex thereafter is able to generate within the Minimum Functional Specifications. If the Complex has a Maintenance Outage and such Maintenance Outage occurs or would occur coincident with an Emergency, the Company shall use its reasonable efforts to reschedule the Maintenance Outage or, if the Maintenance Outage has begun, to expedite the completion of the work to restore power supply as soon as possible.

Section 7.8. Fuel Supply

Throughout the term of this Agreement, the Company shall:

- (i) obtain and maintain a reliable supply of fuel of quality and in quantity sufficient to generate the Dependable Capacity and Net Energy Output requirements hereunder;

- (ii) on or before the Scheduled Commercial Operation Date and from time to time thereafter, provide to the Utility, for its prior written approval, all Fuel Supply Agreements, fuel transportation agreements, backup fuel agreements and other commitments for the supply and transportation of fuel and backup fuel, and any amendments to any of these documents; and
- (iii) obtain and maintain at least [five (5)] Days supply of fuel on or in close proximity to the Site at all times.

Section 7.9. Employment of Qualified Personnel

The Company shall only employ personnel (management, supervisory and otherwise) who are qualified and experienced for operating and monitoring the Complex in accordance with the terms of this Agreement. The Company shall ensure that such personnel are on duty at the Complex at all times, twenty-four (24) hours a Day and seven (7) Days a Week commencing with the date on which electrical energy is first generated by the Complex.

Section 7.10. Operating Committee Membership and Duties

- 7.10.1 On or before one (1) Month prior to the Scheduled Commercial Operations Date, the Parties shall establish an Operating Committee comprising [six (6)] members. Each Party shall designate three (3) members to represent it on the Operating Committee, and either Party may remove or replace any of its Operating Committee members at any time upon notice to the other Party. The Operating Committee shall develop procedures for the holding of meetings, the keeping of minutes of meetings and the appointment and operation of sub-committees. The Parties agree that the first chairman shall be nominated by the Utility and that, after [six (6)] Months of operation, the chairmanship will shift to an individual nominated by the Company. Decisions of the Operating Committee shall require the approval of a majority of members of the Operating Committee.
- 7.10.2 The Operating Committee shall be responsible for developing the operating procedures to be developed pursuant to Section 5.3 (and any subsequent revisions thereto); for approving procedures for the Commissioning of the Complex pursuant to Article XII and Schedule 4; for establishing other procedures relating to the interaction of the Complex, the Metering System, the Utility Interconnection Facilities and the Utility Grid System; and, where appropriate, for proposing solutions to other issues and attempting to resolve disputes concerning the operation, maintenance and testing of the Complex. These matters shall include:
- (i) the coordination of the respective programs and procedures of the Parties for the construction, installation, Commissioning and operation of the Utility Interconnection Facilities, the Metering System and the Complex, and agreement where necessary upon the respective Commissioning procedures;
 - (ii) the discussion of the steps to be taken on the occurrence of any Force Majeure, or the shutdown or reduction in capacity for any other reason of the Utility Interconnection Facilities or the Complex;

- (iii) safety matters affecting the Complex or the Parties (including their employees and Contractors);
- (iv) clarification of Emergency plans developed pursuant to Section 7.7.1 for recovery from a local or widespread electrical blackout;
- (v) review and revision, subject to the Utility's approval, of protection schemes; and
- (vi) any other matter mutually agreed to by the Parties.

7.10.3 The Parties shall instruct their representatives on the Operating Committee to act in good faith in dealing with matters considered by the Operating Committee. The Parties shall consider and use reasonable efforts to incorporate decisions of the Operating Committee in the operation and maintenance of the Complex and the Utility Interconnection Facilities. The Operating Committee on its own shall not (i) override or waive any provisions of this Agreement or (ii) amend or modify any provisions of this Agreement.

Section 7.11. Inspections and Records

- 7.11.1 The Utility shall have the right to visit and observe the Complex and- the operation thereof upon reasonable advance notice to the Company. Such visits and observation shall not be construed as an endorsement by the Utility of the design of the Complex nor as a warranty by the Utility of the safety, durability or reliability thereof. All persons visiting the Complex on behalf of the Utility shall comply with the Company's reasonable and generally applicable safety regulations and procedures made available to such persons and shall comply with the reasonable instructions and directions of the Company, and shall not unreasonably cause any interference with or disruption to the activities of the Company.
- 7.11.2 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. Among other records and data, the Company shall maintain an accurate and up-to-date operating log in a format reasonably acceptable to the Utility which log shall include records of:
- (i) real and Reactive Power production for each clock hour, frequency and 11 kV bus voltage at all times;
 - (ii) changes in operating status, Maintenance Outages and Forced Outages;
 - (iii) any unusual conditions found during inspections;
 - (iv) Declared Available Capacity and Revised Declared Available Capacity for each Day;
 - (v) Dispatch instructions and any revisions thereto for each Day; and
 - (vi) other matters agreed to by the Operating Committee.

All such records shall be maintained for [two (2)] Years.

- 7.11.3 Either Party shall have the right, upon reasonable prior written notice to the other Party, to examine and/or make copies of the records and data of the other Party relating to this Agreement at any time during normal office hours during the period such records and data are required to be maintained.

SAMPLE

ARTICLE VIII INTERCONNECTION

Section 8.1. Company Responsibilities

8.1.1 The Company shall

- (i) procure all Consents necessary to construct, install, commission, operate and maintain the Utility Interconnection Facilities;
- (ii) supply to the Utility the Busbar Extensions and all other parts of the Utility Interconnection Facilities (the Utility Interconnection Facilities shall be conveyed to and become the property of the Utility at the end of the term of this Agreement, including any extension thereto, unless the Agreement is terminated early, in which case the Utility Interconnection Facilities shall remain the property of the Company);
- (iii) cooperate with and provide any information to the Utility in connection with the Utility's installation of the Utility Interconnection Facilities;
- (iv) upon completion of the Utility Interconnection Facilities, check and test such Utility Interconnection Facilities in accordance with the procedures set forth in Schedule 4;
- (v) supply the Utility on or before the end of the term of this Agreement with copies of any "as-built" drawings and records relating to the Utility Interconnection Facilities and one set of any operation and maintenance manuals relating to the Utility Interconnection Facilities on or as soon as reasonably practicable and in any event within [ten (10)] Days of the Commercial Operations Date;
- (vi) be responsible for all costs associated with the Company's responsibilities in connection with the Utility Interconnection Facilities.

8.1.2 The Company shall undertake its obligations under this Section 8.1 in accordance with the terms of this Agreement (including Schedule 2), the Laws of [COUNTRY], the Consents, any applicable [COUNTRY] grid code, and Prudent Utility Practice, so that the Utility Interconnection Facilities can be reasonably expected to provide a useful life of not less than the term of this Agreement.

Section 8.2. Utility Responsibilities

8.2.1 The Utility shall permit the Company such access (and shall cause lessees of the Utility Grid System to permit the Company such access) to its facilities as the Company shall require to undertake its obligations pursuant to Section 8.1, and the Utility shall cooperate with the Company with regard to its undertakings pursuant to Section 8.1.

8.2.2 The Utility shall provide to the Company within [fifteen (15)] Business Days after receipt of a written request from the Company, documents and information on the

Utility Grid System and such other documents and data in the Utility's possession and control as may be reasonably necessary for the Company to undertake its obligations pursuant to Section 8.1, including details of all existing and planned facilities necessary to connect the Complex with the Utility Grid System, Dispatch and communications procedures currently in use by the Utility and any planned changes to the Dispatch and communication procedures then in effect. In connection with the provision of such documents and information, the Utility shall allow the Company during the Utility's regular business hours to make copies of such documents and information, at the Company's sole cost and expense, and to have reasonable access to and to consult with the Utility's relevant personnel engaged in the management, operation, maintenance and reinforcement of the Utility Grid System. When such documents and information are no longer required for the purposes provided herein, such documents and information shall be returned to the Utility or destroyed by the Company.

- 8.2.3 The Utility shall make the connection of the Utility Interconnection Facilities to the Utility's existing system.
- 8.2.4 The Utility shall undertake its obligations under Section 1.5 of Schedule 11 pertaining to the provision of final connections of all the Company package earthing points to the main grid.

Section 8.3. Granting of Easements and Rights-of-Way

The Utility hereby grants to the Company a license to enter onto the real property of the Utility and to access the Utility Interconnection Facilities for purposes of satisfying the Company's obligations under this Article VIII.

Section 8.4. Protective Devices

- 8.4.1 The Company shall install protective devices as required by Schedule 2. The Company shall maintain and test from time to time such protective devices in accordance with the specifications for such protective devices described in Schedule 2, or as otherwise agreed in writing by the Parties, and the Company shall not change the settings on the protective devices without the prior consent of the Utility.
- 8.4.2 Each Party shall notify the other Party in advance of any changes to either the Complex or the Utility Grid System that may affect the proper coordination of protective devices between the two systems. Neither Party may make any such changes to the Complex or the Utility Grid System without the other Party's approval.
- 8.4.3 Except for those protective devices required by Schedule 2, all protective devices to be installed by the Company shall be approved in writing by the Utility.
- 8.4.4 Subject to giving the Company reasonable notice, the Utility may require the Company to modify or expand the protective devices. Following completion of such work, the Utility shall reimburse the Company within [thirty (30)] Days for the necessary and reasonable costs of such modification or expansion on the basis of an invoice delivered to the Utility accompanied by supporting documentation.

Section 8.5. Testing of Utility Interconnection Facilities

The Parties shall cooperate in testing the Utility Interconnection Facilities as defined in Schedule 2 and in accordance with the schedule developed by the Operating Committee (but in no event later than [five (5)] Days prior to the Scheduled Commercial Operations Date) and at such other times thereafter as either Party may reasonably require. Each Party shall bear its own costs in connection with any such testing.

SAMPLE

ARTICLE IX METERING AND TELECOMMUNICATIONS

Section 9.1. Meters as Pre-Requisite to Sales

The Parties acknowledge that, for the purposes of determining Net Energy Output of the Complex, the Metering System and Check Metering System are required prior to the delivery for sale of any Net Energy Output to the Interconnection Points.

Section 9.2. Ownership of Metering Equipment

9.2.1 The Company, at its expense, shall own, procure, install, operate and maintain the Metering System in accordance with Section 1.1 of Schedule 5.

9.2.2 The Company, at its expense, shall own, procure, install, operate and maintain meters and metering devices for backup purposes pursuant to Section 1.1 of Schedule 5 (the "Check Metering System") in addition to the Metering System.

Section 9.3. Installation of Metering System

9.3.1 The Company shall install the Metering System and the Check Metering System on the Site, which Metering System and Check Metering System shall include an electronic recorder or any other state-of-the-art recording equipment, approved by the Utility, capable of making continuous recordings of the Net Energy Output of the Complex on appropriate magnetic media or equivalent, which recording shall be used to compute Energy Payments and liquidated damages under Section 10.3 and Section 10.5, which, after procurement and installation by the Company, shall constitute a part of the Metering System and the Check Metering System. Such installation shall be inspected by, and subject to the approval of, the Utility. The Company shall give to the Utility no less than [forty-eight (48)] hours notice of the installation and all testing in connection therewith of the Metering System.

9.3.2 The Company shall keep on the Site a copy of drawings clearly describing both the Metering System and the Check Metering System and shall provide a copy thereof to the Utility.

Section 9.4. Testing and Inspection of Metering System

The Utility shall inspect and test, at its own expense, the Metering System and the Check Metering System for accuracy in accordance with Article 3 of Schedule 5 no later than [five (5)] Days prior to the Commercial Operations Date, and thereafter at any time that the readings from the Metering System and the Check Metering System differ by an amount greater than [two tenths of a percent (0.2%)], or at any time that either Party reasonably believes that the Metering System or the Check Metering System is inaccurate. With respect to each testing of the Metering System or the Check Metering System, the Utility shall give the Company no less than [three (3)] hours advance notice of such testing, and the Company may have a representative present during any such testing, as well as during any inspection of the Metering System or

Check Metering System or adjustment thereof (but the test, inspection or adjustment may be taken if the Company has no representative present).

Section 9.5. Measurement of Net Energy Output and Dependable Capacity

9.5.1 Subject to the provisions of Section 9.5.2(vii) and verification of the data recording system pursuant to Section 9.5.2, the Parties agree that the information contained in or obtained from such electronic data recording systems shall be used to determine the Net Energy Output of the Complex.

9.5.2 The information contained in the electronic data recording system shall be verified by checking that the sum of the hourly readings in the electronic data recording system over a specified period are consistent with the local totalized readings for the Metering System (or, if applicable, the Check Metering System) over the same period (determined by subtracting the local totalized reading at the beginning of the period from the local totalized reading at the end of the period). In order to verify the information contained in the electronic data recording system, the following procedures shall apply:

- (i) the local totalized readings of the Metering System and the Check Metering System shall be read on the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then upon the Commissioning of any part of the Complex) and, thereafter, Monthly on the last Business Day of each Month or such other Day as may be mutually agreed upon by the Parties;
- (ii) the Utility shall take such readings during normal business hours unless otherwise mutually agreed by the Parties;
- (iii) the Utility shall give the Company at least [forty-eight (48)] hours notice of the time the Utility intends to take such readings and the Company shall have the right to witness any such reading;
- (iv) if a Company representative is present at such a reading, then such reading shall be jointly taken and recorded;
- (v) if a Company representative is not present at such a reading, then the Utility representative shall take and record such reading and make a photographic record thereof;
- (vi) the Utility shall maintain a log of all such readings; and
- (vii) the recorded measurements for each hour during the relevant period and the local totalized recorded measurements shall be delivered by the Utility to the Company within [two (2)] Business Days after the readings are taken.

9.5.3 When, as a result of any test pursuant to Section 9.4, the Metering System is found to be inaccurate by more than [two tenths of a percent (0.2%)] or is otherwise not functioning

or is functioning improperly, then the correct amount of Net Energy Output and Dependable Capacity delivered to the Utility for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:

- (i) first, the readings of the Check Metering System, if any, shall be utilized to calculate the correct amount of Net Energy Output and Dependable Capacity, unless a test of such Check Metering System, as required by either Party, reveals that the Check Metering System is inaccurate by more than [two tenths of a percent (0.2%)] or is otherwise functioning improperly;
- (ii) if the Check Metering System is not within the acceptable limits of accuracy or is otherwise functioning improperly, then the Company and the Utility shall jointly prepare an estimate of the correct reading on the basis of all available information including deliveries of Net Energy Output during periods of similar operating conditions when the Metering System was registering accurately;
- (iii) in the event that the Parties cannot agree on the actual period during which inaccurate measurements were made, the period during which measurements are to be adjusted shall be the shorter of (a) one-half of the period from the last previous test of the Metering System, or (b) [five (5) Days] immediately preceding the test which found the Metering System to be inaccurate; and
- (iv) the difference between the previous payments by the Utility for the period of inaccuracy or improper functioning and the recalculated amount shall be offset against or added to the next payment to the Company under this Agreement, as appropriate.

In the event that the Utility and the Company fail to agree upon any estimate pursuant to this Section 9.5.3, then the matter may be referred by either Party for determination by an expert pursuant to Section 18.2.

Section 9.6. Sealing, Repair and Replacement of Meters

- 9.6.1 The Metering System and the Check Metering System shall be jointly sealed. Such seals shall be broken only by the Utility personnel in the presence of personnel from the Company when the Metering System or the Check Metering System is to be inspected, tested or adjusted.
- 9.6.2 When any component of the Metering System is found to be outside acceptable limits of accuracy or otherwise not functioning properly, the Company shall forthwith repair, recalibrate or replace such component of the Metering System. Similarly, when any component of the Check Metering System is found to be outside acceptable limits of accuracy or otherwise not functioning properly, the Company shall forthwith repair, recalibrate or replace such component of the Check Metering System. Upon the completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Metering System or the Check Metering System, the relevant metering system shall be jointly sealed.

Section 9.7. Telecommunications Equipment

The Company shall provide, at its sole cost and expense, the telecommunications equipment specified in Article IV Schedule 5. The selection and installation of items to be provided by the Company in accordance with this Section 9.7 shall be subject to the prior written approval of the Utility.

SAMPLE

**ARTICLE X
COMPENSATION, PAYMENT AND BILLING**

Section 10.1. Utility Advance Payment of Mobilization/Commissioning Costs

10.1.1 Subject to the Company's satisfaction of its obligation to provide Mobilization Security pursuant to Section 11.3.1, within [fourteen (14)] Days of provision of the Advance Payment Security by the Company, the Utility shall pay to the Company [AMOUNT AND CURRENCY] for the Company's costs of mobilizing and Commissioning the Complex.

Section 10.2. Capacity Payment

10.2.1 After the Commercial Operations Date, (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then after the Commissioning of any part of the Complex), the Utility shall, in accordance with Section 10.8, pay to the Company each Month an amount equal to the Capacity Payment. For each Month, the Capacity Payment shall be calculated pursuant to Schedule 7; provided, however, the total amount of the Capacity Payment shall in no Month exceed the Capacity Payment Cap calculated pursuant to Section 3.3 of Schedule 7.

10.2.2 For the purposes of calculating Capacity Payments, the "Available Capacity" shall, in any hour, be the Declared Available Capacity, unless:

- (i) the Company has informed the Utility of a Revised Declared Available Capacity in accordance with Section 7.1.3 that is less than the Declared Available Capacity of the Company prevailing at the Declaration Deadline, in which case the Available Capacity for the applicable hour shall be the Revised Declared Available Capacity,
- (ii) the Company has informed the Utility of a Revised Declared Available Capacity in accordance with Section 7.1.3 that is greater than the Declared Available Capacity of the Company prevailing at the Declaration Deadline, in which case the Available Capacity for the applicable hour shall be the greater of
 - (a) the Declared Available Capacity prevailing at the Declaration Deadline, or
 - (b) the capacity, in MW, as determined by the Dispatched amount of Net Energy Output for such hour (up to the Dispatched amount); or
- (iii) the Net Energy Output is less than the amount of energy output possible at the Declared Available Capacity (or Revised Declared Available Capacity, as the case may be) for the applicable hour due to the inability of the Company to deliver such Declared Available Capacity (or Revised Declared Available Capacity, as the case may be), in which case the Available Capacity for the applicable hour shall be the capacity, in MW, determined by the Net Energy Output for such hour.

Section 10.3. Energy Payment

After the Commercial Operations Date, (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then after the Commissioning of any part of the Complex) the Utility shall, in accordance with Section 10.8, pay to the Company each Month an amount equal to the Energy Payment. For each Month, the Energy Payment shall be calculated pursuant to Schedule 7.

Section 10.4. Net Electricity Supply to Company

To the extent the Utility supplies, in net, the Company with electricity during a Month, the Company shall pay the Utility as described in Section 5.4.

Section 10.5. Liquidated Damages

10.5.1 Delays in Commissioning. If the Commercial Operations Date shall have not occurred on or before the Required Commercial Operations Date for any reason other than a delay caused by the Utility, then the Company shall pay to the Utility an amount equivalent to [] for each Week by which the Commercial Operations Date is delayed beyond the Required Commercial Operations Date (and a pro-rated amount for each partial Week); provided, however, that the cumulative amount of such payments shall not exceed an amount equivalent to []. These payments shall be liquidated damages for the detrimental impact of such delay upon the Utility's generation planning.

10.5.2 Liquidated Damages for Availability. Beginning on the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then upon the Commissioning of any part of the Complex), in the event that during any one-hour period the Company fails to make available one hundred percent (100%) of the Contract Capacity (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, one hundred percent (100%) of the capacity of the phase or phases of the Complex Commissioned prior to the Commercial Operations Date) in a given hour, then the Company shall pay to the Utility as liquidated damages the amount calculated pursuant to Section 2 of Schedule 6. Before the Commercial Operations Date, liquidated damages shall be applied in the same manner for any phase or phases of the Complex Commissioned prior to the Commercial Operations Date; provided, however, that the cumulative amount of such payments prior to and after the Commercial Operations Date shall not exceed an amount equivalent to [CURRENCY AND AMOUNT].

10.5.3 Liquidated Damages for Energy Supply. If the Company fails to deliver the Hourly Contract Volume for any hour, then the Company shall pay to the Utility as liquidated damages the amount calculated pursuant to Section 1 of Schedule 6; provided, however, that the cumulative amount of such payments shall not exceed an amount equivalent to [CURRENCY AND AMOUNT].

10.5.4 Waiver of Defenses. The Parties agree that the Utility may be substantially damaged in amounts that may be difficult or impossible to determine in the event that the Complex

or any part thereof (i) is not in service by the dates required, (ii) is not capable of achieving and maintaining the expected Dependable Capacity, or (iii) cannot achieve the designated operating levels. Therefore, to the limited extent set out in this Agreement, the Parties have agreed on sums that the Parties agree are reasonable as liquidated damages. It is further understood that the payment of liquidated damages is in lieu of actual damages for the occurrences defined in the first sentence of this Section 10.5.4, and that the payment of liquidated damages under this Section 10.5.4 shall be the exclusive remedy of the Utility for such occurrences, unless and until the Company has committed a Company Event of Default within the meaning of Section 17.1. The Company hereby waives any defense as to the validity of any liquidated damages in this Agreement on the grounds that such liquidated damages are void as penalties.

Section 10.6. Billing of Energy Payments, Capacity Payments, Energy Supplies, Liquidated Damages

10.6.1 Subject to Section 5.3 of Schedule 7, no earlier than five (5) Days after the end of each Month the Company shall prepare and deliver an invoice to the Utility for

- (i) Capacity Payments due under Section 10.2, Energy Payments due under Section 10.3, net of amounts due by the Company for energy supplies under Section 10.4 and any liquidated damages due under Section 10.5, or any other amount due by the Company under this Agreement; and
- (ii) any interest payable under Section 10.10, showing the calculation of such claimed interest in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.

Such invoice shall be in the form of Schedule 12.

10.6.2 To the extent the Utility believes that a Company invoice delivered pursuant to Section 10.6.1 incorrectly reflects amounts due to the Utility, the Utility may prepare and deliver an invoice to the Company for (i) any amount due to the Utility under this Agreement not shown in a Company invoice, and (ii) any interest payable under Section 10.10, showing the calculation of such claimed interest in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.

10.6.3 Either Party may require clarification or substantiation of any amount included in an invoice submitted under this Section 10.6 by delivering notice of such requirement to the other Party. The Party receiving such request shall provide the requested clarification and substantiation of such invoice within [five (5)] Business Days of its receipt of such request.

Section 10.7. Dispute of Invoices

10.7.1 If the Utility shall dispute any portion of an invoice delivered under Section 10.6.1, then the Utility shall, within [ten (10)] Days of the receipt of such invoice (which [ten (10)]

Day period shall be extended to twenty (20) Business Days if the Company has requested additional information concerning the Platts pursuant to Section 5.3 of Schedule 7 or has requested clarification or substantiation pursuant to Section 10.6.3), serve a notice on Company indicating the amount of the dispute and the basis therefor (a “Dispute Notice”). The dispute shall be settled by mutual discussion and, if necessary, dispute resolution under Article XVIII. If it is determined that the Utility owes an amount of money to the Company, the Utility shall, within [ten (10)] Days after the receipt of such determination, pay such sum together with interest thereon at the Default Rate from the date the Utility should have paid such sum to the Company.

- 10.7.2 At any time prior to [sixty (60)] Days after the end of a Year, or within such other period as permitted or required by applicable law, either Party may serve a Dispute Notice on the other Party that the amount of any invoice submitted by the Utility during the preceding Year is in dispute. Each Dispute Notice shall specify the invoice concerned, the amount of the dispute and the basis therefor. The dispute shall be settled by mutual discussion and, if necessary, dispute resolution under Article XVIII. Upon resolution of the dispute, the Party which is determined to owe money to the other Party shall immediately pay such sum to the other Party together with interest thereon at the Default Rate from the date such payment should have been made.

Section 10.8. Payment of Energy Payments, Capacity Payments, Energy Supplies, and Liquidated Damages

- 10.8.1 Subject to Section 10.7.1, the Utility shall³, as the case may be, either

- (i) prior to the World Bank Financing Depletion, instruct the World Bank to pay to the Company (drawing from the World Bank Financing) the amounts shown on a Company invoice, delivered in accordance with Section 10.6.1, pertaining to the Monthly Capacity Payment and pertaining to the charge attributable to the Reference Energy Price Variable O&M Component of the Monthly Energy Payment, less deduction for any amounts due to the Utility for the Month as set out in an invoice delivered by the Utility to the Company pursuant to Section 10.6.2, within such time as necessary to cause the World Bank to make such payment within [thirty (30)] Days from the date of receipt of the Company invoice and cause the World Bank to make such payment within such time, or
- (ii) after the World Bank Financing Depletion,] pay to the Company the amount shown on a Company invoice delivered in accordance with Section 10.6.1, less deduction for any amounts due to the Utility as set out in an invoice delivered by the Utility to the Company pursuant to Section 10.6.2, within [thirty (30)] Days from the date of receipt of the Company invoice.

³ relevant where World Bank loan involved

Section 10.9. Utility Advance Payment of Demobilization Costs

Subject to the Company's satisfaction of its obligation to provide Demobilization Security pursuant to Section 11.3.2, the Utility shall pay to the Company, three Months prior to the date of expiration of this Agreement, pursuant to the Section 3.1 or, if applicable, Section 3.2, [AMOUNT AND CURRENCY] for the Company's costs of demobilizing the Complex.

Section 10.10. Unpaid Amounts

Any payment required hereunder which is not paid when due hereunder shall bear interest at the Default Rate.

Section 10.11. Discount for Early Payment⁴

In respect of sums payable by the Utility to the Company under a billing period invoice, the Utility shall obtain discounts:

- (i) of [one and two tenths percent (1.2%)] if payment is received within [fifteen (15)] Days of the date the Company delivers the invoice;
- (ii) of [eighty five hundredths of a percent (0.85%)] if payment is received between [sixteen (16)] and [thirty (30)] Days of the date the Company delivers an invoice; and
- (iii) of [zero (0%)] if payment is received [thirty one (31)] Days or more after the date the Company delivers an invoice.

Section 10.12. Payment in Dollars

Any amount hereunder calculated in Dollars shall be paid in Dollars.

Section 10.13. Payment of VAT and Sales Tax

The Company invoices for Capacity Payments and Energy Payments delivered to the Utility pursuant to Section 10.6.1 shall be exclusive of any applicable value added tax or sales tax. To the extent any value added tax or sales tax is applicable on such amount, Company shall include such value added tax or sales tax as a separate item on invoices to the Utility, and the Utility shall pay such amounts to the Company.

⁴ useful incentive mechanism for timely payment

ARTICLE XI SECURITY

Section 11.1. Delivery Performance Security to be Provided by the Company

- 11.1.1 Within seven (7) Days of the date of Effectiveness of Agreement, the Company shall provide to the Utility security in the amount of [AMOUNT AND CURRENCY] to ensure completion of the Complex by the Required Commercial Operations Date (the “Delivery Performance Security”), which Delivery Performance Security shall be an unconditional and irrevocable direct pay letter of credit issued by an international bank acceptable to the Utility and shall be substantially in the form of Schedule 14.
- 11.1.2 The Delivery Performance Security may be applied to the payment of liquidated damages or other Damages and accrued interest thereon as set forth in Section 10.10.
- 11.1.3 There shall be no discontinuity between the expiration of the Delivery Performance Security and the effectiveness of the Operations Security, and the Delivery Performance Security shall be returned to the Company promptly following delivery to the Utility of the Operations Security and the occurrence of the effective date of the Operations Security.

Section 11.2. Operations Security to be Provided by the Company

- 11.2.1 On or before the Required Commercial Operations Date, the Company shall provide to the Utility security in the amount of [AMOUNT AND CURRENCY] to ensure the completion and proper operation and maintenance of the Complex (the “Operations Security”), which Operations Security shall be an unconditional and irrevocable direct pay letter of credit, issued by an international bank acceptable to the Utility, valid for a minimum period of [twelve (12)] Months and shall be substantially in the form of Schedule 15.
- 11.2.2 The Operations Security may be applied to (i) the payment of liquidated damages and accrued interest thereon; and (ii) the payment of other Damages and interest that the Company shall be required to pay to the Utility.
- 11.2.3 Except as expressly provided in this Agreement, the Company shall maintain the Operations Security at the level designated in Section 11.2.1 at all times; provided, however, that the Company may have [fourteen (14)] Days from the date the Utility gives notice to the Company that it has retained or collected funds from the Operations Security pursuant to this Section 11.2 to replenish the Operations Security so as to return it to the required level.
- 11.2.4 Upon termination of this Agreement, the Utility shall be entitled to retain or collect, as the case may be, from the Operations Security any damages or moneys then due or reasonably expected to be due to the Utility by the Company and shall pay or return to the Company the remainder of the Operations Security and accrued interest, if any. If, upon the termination of this Agreement, there shall be any dispute between the

Company and the Utility that has been referred to an expert for determination or is being arbitrated pursuant to the Agreement, then the Utility shall be entitled to retain or collect, as the case may be, from the Operations Security, an amount equal to the damages or moneys that the Utility, in its reasonable judgment, deems sufficient to satisfy any amount that may be due to the Utility by reason of such dispute. Upon settlement or resolution of the dispute, the Utility shall pay or return to the Company the remaining amount of Operations Security.

Section 11.3. Company Security for Advance Payments

11.3.1 Within seven (7) Days of the date of Effectiveness of Agreement, the Company shall provide to the Utility

- (i) an unconditional and irrevocable direct pay standby letter of credit, issued by an international bank acceptable to the Utility, that is valid for a minimum period of at least two (2) Months after the Required Commercial Operations Date, substantially in the form of Schedule 16 and in the amount of [AMOUNT AND CURRENCY] (the “Mobilization Security”) to ensure the repayment of the advance payment made pursuant to Section 10.1 in the event that Commissioning does not occur by the Required Commercial Operations Date; and
- (ii) an unconditional and irrevocable direct pay standby letter of credit, issued by an international bank acceptable to the Utility, that is valid for a minimum period of at least three (3) Months after the date of expiration of this Agreement, substantially in the form of Schedule 17 and in the amount of [AMOUNT AND CURRENCY] (the “Advance Payment Security”) to ensure the repayment of the advance payment made pursuant to Section 11.4.1.

11.3.2 Within three Months prior to the date of expiration of this Agreement, pursuant to the Section 3.1 or, if applicable, Section 3.2, the Company shall provide to the Utility an unconditional and irrevocable direct pay standby letter of credit, issued by an international bank acceptable to the Utility, that is valid for a minimum period of at least three (3) Months after the date of expiration of this Agreement, substantially in the form of Schedule 18 and in the amount of [AMOUNT AND CURRENCY] (the “Demobilization Security”) to ensure the repayment of the advance payment made pursuant to Section 10.9 in the event that Demobilization does not occur within [two (2)] Months after the date of expiration of this Agreement.

Section 11.4. Utility Advance Payment

11.4.1 Subject to the Company’s satisfaction of its obligation to provide Advance Payment Security pursuant to Section 11.3, within [fourteen (14)] Days of receipt of the Advance Payment Security the Utility shall pay to the Company an advance payment of [AMOUNT AND CURRENCY], which represents the amount, as agreed by the Parties, of Capacity Payments and Energy Payments that would be due to the Company for a [thirty (30)] Day period if the Complex were to have an Available Capacity for each

hour of that period of 15 MW and delivered a Net Energy Output of 360 MWh for each Day of that period. The Company shall apply such advance payment to cover Capacity Payments and Energy Payments that are due but unpaid and shall return the advance payment (or any remaining part thereof) to the Utility within [sixty (60)] Days of the expiration of this Agreement pursuant to Section 3.1 or, if applicable, Section 3.2.

11.4.2 Amounts paid by Utility to the Company pursuant to Section 11.4.1 shall accrue interest, payable by the Company, at the rate of [four percent (4%)] annually.

Section 11.5. Utility Security for Payments

The Utility shall provide to the Company security in the amount of [AMOUNT AND CURRENCY] (the “Utility Security”). The security shall be an unconditional and irrevocable direct pay standby letter of credit, issued by the Bank of [COUNTRY], substantially in the form of Schedule 19.

Section 11.6. Costs of Security

For the avoidance of doubt, all fees and expenses associated with the arrangement and maintenance of the securities set forth in Section 11.1, Section 11.2, and Section 11.3 shall be for the account of the Company, and all fees and expenses associated with the arrangement and maintenance of the security set forth in Section 11.5 shall be for the account of the Utility.

ARTICLE XII COMMISSIONING; TESTING AND CAPACITY RATINGS

Section 12.1. Commissioning

12.1.1 The Company shall carry out Commissioning of the Complex (or part of the Complex, if agreed by the Parties) and testing of the initial Dependable Capacity of the Complex (or part of the Complex, if agreed by the Parties) at the Utility's request in accordance with Schedule 4.

12.1.2 The Utility shall be given prior written notice of any Commissioning procedure in accordance with Schedule 4 and shall be entitled to have representatives present for the purpose of observing any such procedure (but such testing or Commissioning may be performed if the Utility has no representative present).

Section 12.2. Notice of and Compliance with Testing Procedures

The Utility shall use its reasonable efforts to comply promptly with all reasonable requests by the Company for assistance in carrying out testing and Commissioning.

Section 12.3. Test Results

The Company shall within the period specified in Section 5.2.2(xi) provide the Utility with copies of the results of all tests performed pursuant to Schedule 4.

Section 12.4. Dependable Capacity

The Dependable Capacity shall be determined as follows:

- (i) until the Complex has been Dispatched at the Contract Capacity for three (3) hours (whether or not consecutive), the Dependable Capacity shall be the initial Dependable Capacity demonstrated during Commissioning, as certified by the Company Engineer and approved by the Utility in the Commissioning & Initial Dependable Capacity Certificate (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then the Dependable Capacity demonstrated during the most recent Commissioning of part of the Complex); and
- (ii) after the Complex has been Dispatched at the Contract Capacity for three (3) hours (whether or not consecutive), the Dependable Capacity of the Complex for each hour shall be determined based on the Net Energy Output of the Complex during the prior three (3) hours (the "Ongoing Dependable Capacity Determination"). To make such determination, the following formula shall apply:

$$DependableCap_h = \frac{NEO_{3h}}{3}$$

DependableCap_h = The Dependable Capacity for a given hour, *h*; and

NEO_{3h} = The sum of the Net Energy Output of the Complex for the prior three (3) hours (whether or not consecutive) in which the Complex was Dispatched at the Contract Capacity; provided, however, that, in performing this summation, the Net Energy Output shall be corrected for any inability of the Utility to Dispatch available power.

Section 12.5. Dispute

In the event that a dispute arises between the Company and the Utility regarding the Dependable Capacity or the tests related to the Commissioning, such dispute may be referred by either Party to an expert pursuant to Section 18.2.

ARTICLE XIII INSURANCE

Section 13.1. Insurance Coverage

- 13.1.1 At all times during the term of this Agreement, the Company shall obtain and maintain at its own cost adequate insurance cover as is customary, desirable and consistent with Prudent Utility Practice, having such limits and deductible amounts as are commonly maintained by companies engaged in business activities similar to the business of the Company and as are available on commercially reasonable terms and for commercially reasonable rates.
- 13.1.2 Notwithstanding Section 13.1.1, the Company shall at minimum obtain and maintain during the term of this Agreement the policies of insurance set forth in Schedule 10.

Section 13.2. Use of Proceeds of All Risk/Operational Insurance

The proceeds of any “all risks” insurance obtained to cover the Complex shall, unless the Utility agrees otherwise, be applied (whether directly or indirectly) to the repair of the Complex.

Section 13.3. Certificates of Insurance

- 13.3.1 On or before the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then on or before the Commissioning of any part of the Complex) and every anniversary of the Commercial Operations Date, the Company shall cause its insurers or agents to provide the Utility with certificates of insurance evidencing that the Company’s insurance coverages are consistent with the policies and endorsements required by the Laws of [COUNTRY] and Section 13.1. Failure by the Company to obtain the insurance coverage or certificates required by this Article XIII of insurance shall not in any way relieve or limit the Company’s obligations or liabilities under any provision of this Agreement.
- 13.3.2 To the extent the Utility is not satisfied with the certificates presented pursuant to Section 13.3.1, the Utility may request evidence of insurance in the form of certified copies of insurance policies or endorsements.

Section 13.4. Premium and Deductibles

The Company shall be solely responsible for the payment of all premium and deductibles under the policies of insurance maintained pursuant to this Article XIII.

ARTICLE XIV INDEMNIFICATION AND LIABILITY

Section 14.1. Indemnity by the Company

In addition to the Company's obligations and the Utility's remedies provided elsewhere in this Agreement, the Company will bear responsibility for loss of or damage to property, death or injury to person, and any other liabilities, damages, losses and reasonable costs and expenses (including reasonable legal fees and expert witness fees) arising from any claim against the Utility, that are suffered by the Utility in connection with:

- (i) the undertaking of any aspect of the Project resulting from any negligent act or omission of, or willful misconduct of, the Company;
- (ii) any breach of warranty, misrepresentation by the Company, or non-performance of any term, condition, covenant or obligation to be performed by the Company under this Agreement or any other agreement comprising the Project Agreements; and
- (iii) any claim, proceeding or action brought against the Utility under any Environmental Laws resulting from the Company's license to enter and use the Site or the Company's ownership or operation of the Complex, including the discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from the Complex, the contamination of the soil, air, or water around the Site, or any pollution abatement, replacement, removal, or other decontamination or monitoring obligations with respect thereto, or any other Environmental Loss.

The Company will ensure that the Utility is fully indemnified in respect of the foregoing losses, damages, death, injuries, liabilities, costs and expenses; provided, however, that the Company's indemnities shall not extend to any loss, damage, death, injury, liability, costs or expenses (or any claim in respect thereof) to the extent that they were caused by any act or omission of the Utility or the failure of the Utility to take reasonable steps in mitigation thereof.

Section 14.2. Indemnity by Utility

In addition to the Utility's obligations and the Company's remedies provided elsewhere in this Agreement, the Utility will bear responsibility for loss of or damage to property, death or injury to person, and any other liabilities, damages, losses and reasonable costs and expenses (including reasonable legal fees and expert witness fees) arising from any claim against the Utility, that are suffered by the Company in connection with

- (i) the undertaking of any aspect of the Project resulting from any negligent act or omission of, or willful misconduct of, the Utility;
- (ii) any misrepresentation by the Utility or non-performance of any term, condition, covenant or obligation to be performed by the Utility under this Agreement; and

- (iii) any claim, proceeding or action brought against the Company under any applicable national or local Environmental Laws resulting from the Utility's ownership or operation of the Utility Interconnection Facilities (to the extent not resulting from design or construction deficits of the Company or its agents or the Utility Grid System, including the discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from the Utility Interconnection Facilities or the Utility Grid System, the contamination of the soil, air, or water around the Utility Interconnection Facilities or the Utility Grid System, or any pollution abatement, replacement, removal, or other decontamination or monitoring obligations with respect thereto).

The Utility will ensure that the Company is fully indemnified in respect of the foregoing losses, damages, death, injuries, liabilities, costs and expenses; provided, however, that the Utility's indemnities shall not extend to any loss, damage, death, injury, liability, cost or expense (or any claim in respect thereof) to the extent that it was caused by any act or omission of the Company or the failure of the Company to take reasonable steps in mitigation thereof.

Section 14.3. Joint Negligence

In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

Section 14.4. No Indemnification for Fines and Penalties

Any fines or other penalties incurred by a Party for non-compliance with Laws of [COUNTRY] shall not be reimbursed by the other Party but shall be the sole responsibility of the non-complying Party. The non-complying Party shall have the right, but not the obligation, to contest or appeal any fines it believes have been imposed in violation of the Laws of [COUNTRY].

Section 14.5. Notice of Proceedings

Each Party shall promptly notify the other Party of any claim or proceeding in respect of which, but for the provisions of Section 14.6, it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of such claim or proceeding.

Section 14.6. Basket Limitation⁵

Neither Party shall be entitled to make any claim under this Article XIV until such time as all such claims by such Party exceed [AMOUNT AND CURRENCY] in the aggregate, at which time all such claims of that Party may be made; provided, however, that, when such claims have been made, the same rule shall apply in respect of future claims. Notwithstanding the foregoing,

⁵ useful to have a threshold amount that needs to be reached before a claim can be made or a minimum value of claim – or a combination of both – to avoid multiplicity of claims

any claims outstanding at the termination or expiration of this Agreement may be brought at that time.

Section 14.7. Conduct of Proceedings

- 14.7.1 Each Party shall have the right, but not the obligation, to contest, defend and litigate (and to retain legal advisers of its choice in connection therewith) any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the said indemnity; provided, however, that, the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense and through legal advisers of its choice if it (i) gives notice of its intention to do so to the other Party, (ii) acknowledges in writing its obligation to indemnify that Party to the full extent provided by this Article XIV, and (iii) reimburses that Party for the reasonable costs and expenses previously incurred by it prior to the assumption of such defense by the indemnifying Party.
- 14.7.2 Following acknowledgment of the indemnification and assumption of the defense by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless (i) the employment of counsel by such indemnified Party has been authorized in writing by the indemnifying Party, (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defense of such action, or (iii) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defenses available to it that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. If clause (ii), (iii) or (iii) of the preceding sentence shall be applicable, then counsel for the indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.
- 14.7.3 Neither Party shall settle or compromise any claim, action, suit or proceeding in respect of which it is entitled to be indemnified by the other Party without the prior written consent of that Party; provided, however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any such claim, action, suit or proceeding without the approval of the indemnified Party.

ARTICLE XV FORCE MAJEURE

Section 15.1. Meaning of Force Majeure

In this Agreement, “Force Majeure” means any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party which renders impossible the performance by that Party of its obligations or the enjoyment by that Party of its rights under or pursuant to this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Complex from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Without limitation to the generality of the foregoing, “Force Majeure” shall include the following events and circumstances to the extent that they satisfy the above requirements:

15.1.1 natural events (“Force Majeure - Natural”), including:

- (i) acts of God; (including lightning, fire, earthquake, flood, storm, hurricane, cyclone, typhoon, tidal wave and tornado);
- (ii) epidemic or plague;
- (iii) explosion or chemical contamination (other than resulting from an event or circumstance described in Section 15.1.2(i)(a), in which case it shall be a [COUNTRY] Political Event);

15.1.2 the following political events or circumstances (“Force Majeure - Political”):

- (i) any of the following events or circumstances that occurs inside or directly involves [COUNTRY] (“Local Political Events”), including:
 - (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
 - (b) nationwide strikes, works to rule or go-slows that extend beyond the Complex or are widespread or nationwide, or that are of a political nature, such as, by way of example and not limitation, labor actions associated with or directed against a [COUNTRY] political party, or those that are directed against the Company as a part of a broader pattern of labor actions against companies or facilities with foreign ownership or management;
 - (c) radioactive contamination or ionizing radiation originating from a source in [COUNTRY] or resulting from another Local Political Event;

- (d) any Lapse of Consent that shall have existed for thirty (30) or more consecutive Days.
 - (ii) any of the following events or circumstances that occurs outside [COUNTRY] and does not directly involve [COUNTRY] (“Foreign Political Events”) including:
 - (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
 - (b) strikes, works to rule or go-slows that are widespread or nationwide;
 - (c) radioactive contamination or ionizing radiation originating from a source outside [COUNTRY] and not falling within Section 15.1.2(i)(c); and
- 15.1.3 other events beyond the reasonable control of the affected Party (“Force Majeure - Other”), including:
- (i) any Lapse of Consent that shall have existed for less than thirty (30) consecutive Days; and
 - (ii) any strike, work-to-rule, go-slow, or analogous labor action that is not politically motivated and is not widespread or nationwide.
- 15.1.4 Force Majeure shall not include:
- (i) lack of funds due to any commercial, economic or financial reason such as, but not limited to, a Party’s inability to make a profit or achieve a satisfactory rate of return due to the provisions of this Agreement or changes in market conditions (although the inability to use available funds, due to any reason set out above, shall be regarded as Force Majeure);
 - (ii) late delivery of machinery or other materials or a delay in the performance by any supplier, including a supplier of the fuel to be used by the Complex, except where such late delivery or delay is itself attributable to Force Majeure;
 - (iii) normal wear and tear or random flaws in materials and equipment or breakdowns in equipment; or
 - (iv) hazards, including but not limited to the growth of trees, which can be reasonably anticipated in normal utility operations and planned for as part of prudent utility design, operations and maintenance activities.

Section 15.2. Notification and Obligation to Remedy.

- 15.2.1 In the event of the occurrence of Force Majeure that prevents a Party from performing its obligations hereunder (other than an obligation to pay money), such Party shall: (i)

notify as soon as reasonably practicable (but in any event with forty-eight (48) hours) the other Party in writing of such Force Majeure; (ii) not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure; (iii) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable; (iv) give the other Party a second notice, describing the Force Majeure(s) in reasonable detail and, to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the initial notice of the occurrence of the Force Majeure(s) is given by the affected Party; (v) keep such other Party apprised of such efforts on a reasonably continuous basis; and (vi) provide written notice of the resumption of performance hereunder. Notwithstanding the occurrence of Force Majeure, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure.

- 15.2.2 Failure by the affected Party to have given written notice of Force Majeure to the other Party within the forty-eight (48) hour period required by Section 15.2.1 shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case the affected Party shall not be excused pursuant to Section 15.3.1 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If such notice is given within the forty-eight (48) hour period required by Section 15.2.1, the affected Party shall be excused for such failure or delay pursuant to Section 15.3.1 from the date of commencement of the relevant Force Majeure.

Section 15.3. Consequences of Force Majeure

- 15.3.1 Subject to Section 15.3.2 and 15.3.3, neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement which it cannot perform due solely to one or more Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure events continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement; provided, however, that no relief shall be granted to the Party claiming Force Majeure pursuant to this Section 15.3 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred; and provided further, that either Party may immediately terminate this Agreement without further obligation if Force Majeure delays a Party's performance for a period greater than (i) fifteen (15) Days prior to the Commercial Operations Date or (ii) two (2) consecutive Months after the Commercial Operations Date.
- 15.3.2 If the Company is unable to deliver electrical energy to the Utility during a Force Majeure – Natural, a Force Majeure - Other, or a Foreign Political Event, the Company

shall not be liable for liquidated damages pursuant to Section 10.5 and the Utility shall not be obligated to make Capacity Payments or Energy Payments; provided, however, that if such Force Majeure affects only part of the Complex such that some electrical energy is delivered, then the Capacity Payments during the duration of such Force Majeure shall be pro-rated to reflect the portion of the Complex not affected thereby, and the Company shall be entitled to receive such pro-rated Capacity Payments and Energy Payments for electrical energy actually delivered to the Utility.

- 15.3.3 If the Company is unable to deliver electrical energy to the Utility during a [COUNTRY] Political Event, the Company shall not be liable for liquidated damages pursuant to Section 10.5 and the Utility shall be obligated to make Capacity Payments as if the full Contract Capacity was available; provided, however, that if such Force Majeure affects only part of the Complex such that some electrical energy is delivered, then the Company shall be entitled to receive, in addition to such Capacity Payments, a pro-rated Energy Payment for electrical energy actually delivered to the Utility.

ARTICLE XVI TAXES

Section 16.1. Taxes

Subject to the provisions of the Government Support Agreement, all present and future national, local or other lawful [COUNTRY] taxes, duties, levies, or other impositions applicable to the Company, the Complex, the Project and the Company's other assets shall be paid by the Company as and when required under the Laws of [COUNTRY]. All present and future national, local or other lawful [COUNTRY] taxes, duties, levies, or other impositions applicable to the Utility arising from or in connection with its rights and obligations under this Agreement shall be paid by the Utility as and when required under the Laws of [COUNTRY].

SAMPLE

ARTICLE XVII DEFAULTS AND TERMINATION

Section 17.1. Company Events of Default

Each of the following events shall be events of default by the Company (each a “Company Event of Default”), which, if not cured within the time permitted (if any) under Section 17.3, shall give rise to the right on the part of the Utility to terminate this Agreement pursuant to Section 17.4; provided, however, that no such event shall be a Company Event of Default hereunder if it results from a breach by the Utility of this Agreement or if it occurs as a result of an event of Force Majeure for the period provided pursuant to Section 15.3:

- (i) the failure of the Company to post the Delivery Performance Security in accordance with Section 11.1 on or before the date of Effectiveness of Agreement;
- (ii) the failure of the Company to achieve the Construction Start Date within twenty (20) Days following the date of Effectiveness of Agreement;
- (iii) the failure of the Company to achieve the Commercial Operations Date within fifteen (15) Days after the Required Commercial Operations Date;
- (iv) the failure of the Company to provide or replenish the Operations Security in accordance with Section 11.2;
- (v) prior to the achievement of the Commercial Operations Date, the failure of the Company to prosecute the Project in a diligent manner or, following the Commercial Operations Date, the Abandonment by the Company of the operation of the Complex without the written consent of the Utility;
- (vi) the assignment or transfer of this Agreement or an assignment, transfer or acquisition in breach of Section 19.1;
- (vii) any failure by the Company to make any payment or payments required to be made by it under this Agreement on or by the due date for payment;
- (viii) except for the purpose of amalgamation, reorganization or reconstruction (provided that such amalgamation, reorganization or reconstruction does not affect the ability of the amalgamated, reorganized or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events: (a) the passing of a resolution by the owners of the Company for the winding up of the Company; (b) the admission in writing by the Company of its inability generally to pay its debts as they become due; (c) the appointment of a provisional manager, trustee, liquidator or similar person in a winding up proceeding after notice to the Company and due hearing; or (d) the making by a court with competent jurisdiction over the Company of an order winding up the Company;

- (ix) reduction of the Dependable Capacity to less than [ninety percent (90%)] of the Contract Capacity for a period of at least [three (3)] consecutive Months;
- (x) any statement, representation or warranty by the Company in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Company's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Utility under this Agreement;
- (xi) tampering in violation of Section 9.6 by the Company or their employees acting in the course of their employment with the Metering System or the Check Metering System;
- (xii) any material breach by the Company of the Government Support Agreement that is not remedied within thirty (30) Days after notice from the Utility or the Government to the Company, which notice states that a material breach of such agreement has occurred and is continuing that could result in the termination of such agreement, and identifies the material breach in question in reasonable detail; or
- (xiii) any material breach by the Company of this Agreement, which breach has a material and adverse impact on the Utility.

Section 17.2. Utility Events of Default

Each of the following events shall be events of default by the Utility (each a "Utility Event of Default"), which, if not cured within the time permitted (if any) under Section 17.3, shall give rise to the right on the part of the Company to terminate this Agreement pursuant to Section 17.4; provided, however, that no such event shall be a Utility Event of Default hereunder if it results from a breach by the Company of this Agreement or if it occurs as a result of an event of Force Majeure, other than a [COUNTRY] Political Event, for the period provided pursuant to Section 15.3:

- (i) except for the purpose of amalgamation, reorganization or reconstruction (provided that such amalgamation, reorganization or reconstruction does not affect the ability of the amalgamated, reorganized or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events: (a) the passing of a resolution by the Shareholders of the Utility for the winding up of the Utility; (b) the admission in writing by the Utility of its inability generally to pay its debts as they become due; (c) the appointment of a provisional manager, trustee, liquidator or similar person in a winding up proceeding after notice to the Utility and due hearing; or (d) the making by any court with competent jurisdiction over the Utility of an order winding up the Utility;
- (ii) any failure by the Utility to make any payment or payments required to be made by it under this Agreement on or by the due date for payment or to give

instructions to the World Bank regarding such a payment or payments and to cause the World Bank to make such payment;

- (iii) the assignment or transfer of this Agreement by the Utility or an assignment, transfer or acquisition by the Utility in breach of Section 19.1;
- (iv) tampering by the Utility or its Contractors or their employees acting in the course of their employment with the Metering System or the Check Metering System;
- (v) any statement, representation or warranty made by the Utility in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Utility's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Company hereunder;
- (vi) failure by the Utility to establish and maintain such security as is required under Section 11.5;
- (vii) any material default by the Government under the Government Support Agreement, which default has not been remedied by the Government within thirty (30) Days after delivery by the Company to the Utility of a copy of the notice sent by the Company to the Government, which notice shall state that a material default has occurred under the Government Support Agreement and is continuing, and identify the breach or default in question in reasonable detail; or
- (viii) any material breach by the Utility of this Agreement, which breach has a material and adverse impact on the Company.

Section 17.3. Notice and Cure

- 17.3.1 In the case of a Utility Event of Default or a Company Event of Default (each, an "Event of Default"), as the case may be, set forth in Section 17.1 or Section 17.2, the non-defaulting Party may deliver a notice ("Notice of Default") to the defaulting Party.
- 17.3.2 Following a Notice of Default, the defaulting Party shall have, in the case of a Company Event of Default arising under Section 17.1 and a Utility Event of Default arising under Section 17.2, ten (10) Days to cure the Event of Default; provided, however, if such Event of Default is incapable of being cured within that period, the defaulting Party may request from the non-defaulting Party an additional period of ten (10) Days to cure the Event of Default.
- 17.3.3 Following a Notice of Default, the defaulting Party shall furnish to the non-defaulting Party, during any cure period, Weekly reports on its progress in curing the Event of Default.

- 17.3.4 Upon occurrence of an Event of Default that is not cured within the applicable period (if any) for cure, the non-defaulting Party may, at its option, terminate this Agreement by delivering to the defaulting Party a written notice (“Notice of Intent to Terminate”) of its intent to terminate this Agreement and specifying in reasonable detail the Event of Default giving rise to the Notice of Intent to Terminate, and this Agreement shall terminate.
- 17.3.5 The Parties shall continue to perform their respective obligations under this Agreement pending the final resolution of any dispute raised by the receiving Party of a Notice of Default or a Notice of Intent to Terminate, provided that the notice of dispute has been delivered to the Party claiming the occurrence of Utility Event of Default or the Company Event of Default, as the case may be, before the end of the relevant cure period.

Section 17.4. Rights and Remedies Upon an Event of Default

- 17.4.1 If a Company Event of Default has occurred and the Company Event of Default has not been cured within the period specified in Section 17.3, the Utility, in its sole discretion, may take any or all of the following actions:
- (i) terminate this Agreement by delivering written notice to the Company pursuant to Section 17.3.4;
 - (ii) proceed in accordance with Article XVIII to protect and enforce its rights, to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy);
 - (iii) draw on security provided by the Company; and
 - (iv) retain all or part of the Delivery Performance Security and/or the Operations Security provided by the Company pursuant to Section 11.1 and Section 11.2 in full or partial satisfaction of the Damages to which it may be entitled under Section 17.4.1(ii).

These rights and remedies shall not be exclusive but, to the extent permitted by law, shall be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise; provided, however, that the Utility may seek to exercise such rights and remedies only in accordance with the procedures set forth in Article XVIII. The Utility may exercise each right and remedy afforded by this Agreement or by law from time to time and as often as may be deemed expedient by the Utility. No delay by, or omission of, the Utility to exercise any right or remedy arising upon any Company Event of Default shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

- 17.4.2 If a Utility Event of Default has occurred and the Utility Event of Default has not been cured within the period specified in Section 17.3, the Company, in its sole discretion, may take any or all of the following actions:

- (i) terminate this Agreement by delivering written notice to the Utility;
- (ii) suspend delivery of electrical energy from the Complex;
- (iii) draw on the Utility Security; and
- (iv) proceed in accordance with Article XVIII to protect and enforce its rights and to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy).

These rights and remedies shall not be exclusive but, to the extent permitted by law, shall be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise; provided, however, that the Company may seek to exercise such rights and remedies only in accordance with the procedures set forth in Article XVIII. The Company may exercise each right and remedy afforded by this Agreement or by law from time to time and as often as may be deemed expedient by the Company. No delay by, or omission of, the Company to exercise any right or remedy arising upon any Utility Event of Default shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

Section 17.5. Remedies in the Event of Certain Defaults

- 17.5.1 Notwithstanding any of the provisions in Section 17.3 and 17.4, in the event of a Company Event of Default as described in Section 17.1(iii), the Utility shall have the right, immediately, to draw upon the Delivery Payment Security letter of credit provided under Section 11.1.
- 17.5.2 Notwithstanding any of the provisions in Section 17.3 and 17.4, in the event of a Utility Event of Default as described in Section 17.2(ii), the Company shall have the right, immediately, to suspend the delivery of electrical energy from the Complex and to draw upon the Utility Security letter of credit provided under Section 11.5.

Section 17.6. Obligations Upon Expiration or Termination

Upon expiration or termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for those obligations and liabilities that (i) arose prior to such termination, or (ii) expressly survive such expiration or termination pursuant to Section 21.18.

ARTICLE XVIII RESOLUTION OF DISPUTES

Section 18.1. Mutual Discussions

If any dispute or difference of any kind whatsoever shall arise between the Utility and the Company in connection with, or arising out of, this Agreement, the Parties shall attempt in good faith to settle such dispute in the first instance within [fifteen (15)] Days by mutual discussions between the Company and the Utility, which may include referring the dispute to the Operating Committee for resolution within such [fifteen (15)] Day period.

Section 18.2. Referral to an Expert

18.2.1 If the dispute cannot be settled within the period allowed in Section 18.1 and:

- (i) referral to an expert is required by Section 9.5 and Section 12.5, or
- (ii) the Parties otherwise agree in writing

then, in each case, the dispute shall be referred to an expert for determination.

18.2.2 Either Party may give notice ("Notice of Intention to Refer") to the other Party of its intention to so refer the dispute. The Party giving that notice is referred to herein as the "Applicant", and the Party to whom such notice is given is referred to herein as the "Respondent".

18.2.3 A Notice of Intention to Refer shall include, inter alia:

- (i) a description of the dispute;
- (ii) the grounds on which the Applicant relies in seeking to have the dispute determined in its favor; and
- (iii) all written material which the Applicant proposes to submit to the expert;

provided however, that this Section 18.2.3 shall not be construed so as to prevent the Applicant from using or producing further written material which comes into existence or comes to the Applicant's attention after the Notice of Intention to Refer is given but, in such event, the Respondent shall be allowed a reasonable time to respond thereto.

18.2.4 The Respondent shall within five (5) Days after service of the Notice of Intention to Refer, give to the Applicant a notice ("Notice of Intention to Defend") of intention to defend which shall include, inter alia:

- (i) the grounds upon which the Respondent relies in seeking to have the question determined in its favor; and
- (ii) all written material that the Respondent proposes to submit to the expert;

provided, however, that this Section 18.2.4 shall not be construed so as to prevent the Respondent from using or producing further written material which comes into existence or comes to the Respondent's attention after the Notice of Intention to Defend is given but, in such event, the Applicant shall be allowed a reasonable time to respond thereto.

- 18.2.5 If within five (5) Days after service of a Notice of Intention to Defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred, the dispute shall be so referred. In the event that the Parties are unable within ten (10) Days after service of a Notice of Intention to Defend to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request (i) for all disputes involving invoices or amounts owed by one Party to the other, the president of Institute of Chartered Accountants of [COUNTRY] and (ii) for all disputes other than disputes involving invoices or amounts owed by one Party to the other, the president of the [COUNTRY] Institute of Engineers, as the case may be, to appoint an expert, and the terms of reference of such expert's appointment shall be those set out in the Notice of Intention to Refer and the Notice of Intention to Defend; provided, however, that no expert appointed pursuant to this Section 18.2 shall be a national of the jurisdiction of either Party to this Agreement or of the jurisdiction of any of the Shareholders (nor shall such expert be a former employee or agent of any such person).
- 18.2.6 Within three (3) Days of the appointment of the expert, the expert shall nominate a time and place in the [COUNTRY] for a hearing of the Parties regarding the dispute, which time shall not be more than five (5) Days after the expert's appointment.
- 18.2.7 The Parties shall not be entitled to apply for discovery of documents but shall be entitled to have access to the other Party's records and data in accordance with Section 7.11.
- 18.2.8 At the time nominated for the hearing, each Party must appear before the expert and present its case.
- 18.2.9 The expert must render his decision on the dispute as soon as possible after completion of the hearing and must forthwith advise the Parties in writing of his determination and his reasons therefor.
- 18.2.10 The proceedings shall be without prejudice and any evidence given or statements made in the course of the hearing may not be used against a Party in any other proceedings.
- 18.2.11 The proceedings shall not be regarded as an arbitration and the laws relating to commercial arbitrations shall not apply; provided, however, that the expert shall resolve the dispute in accordance with the Laws of [COUNTRY].
- 18.2.12 Once a dispute is referred to an expert, the expert may shorten any of the time periods required by this Section 18.2 if, in the expert's best judgment, the dispute requires expeditious resolution.

- 18.2.13 The decision of the expert shall be final and binding upon both Parties upon the delivery to them of the expert's written determination, save in the event of fraud, serious mistake or miscarriage.
- 18.2.14 If the expert does not render a decision within a period of thirty (30) Days of his appointment or such longer or shorter period as the Parties may agree in writing, either Party may, upon giving notice to the other, terminate such appointment, and a new expert shall be appointed who shall resolve the dispute in accordance with the provisions of this Section 18.2. If the dispute is not resolved by one or more experts within three (3) Months after the receipt by the Respondent of the Notice of Intention to Refer, then either Party may refer the dispute for arbitration in accordance with this Agreement.
- 18.2.15 The costs of engaging an expert shall be borne equally by the Parties and each Party shall bear its own costs in preparing materials for, and making presentations to, the expert.
- 18.2.16 The failure of any Party to comply with the provisions and time periods set out in this Section 18.2 shall not prevent (i) the expert from proceeding; and/or (ii) any Party from requesting that the expert proceedings be terminated and the matter referred immediately to arbitration in accordance with Section 18.3, except for matters specified herein as only eligible for referral to an expert.

Section 18.3. Arbitration

- 18.3.1 Any dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Sections 18.1 and 18.2 shall (regardless of the nature of the dispute but without prejudice to the provisions of this Agreement requiring any matter to be referred to an expert for final determination) be referred to arbitration and finally settled in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "Convention") and the Rules of Procedure for Arbitration Proceedings of the International Centre for Settlement of Investment Disputes (the "Centre") established by the Convention (the "ICSID Rules") and the Parties hereby consent to arbitration thereunder. The Parties agree and acknowledge that the Company shall be deemed a foreign controlled company for the purposes of consenting to the jurisdiction of the Convention so long as not less than thirty-five percent (35%) of the shares of the Company are held by Foreign Investors. Arbitration proceedings conducted pursuant to this Section 18.3.1 shall be held in [LOCATION].
- 18.3.2 As from the date on which the shareholding of the Foreign Investors falls below thirty-five (35%) of the shares of the Company, then the dispute shall be finally settled by arbitration under the Arbitration Act of [COUNTRY]. Arbitration proceedings conducted pursuant to this Section 18.3.2 shall be held in [LOCATION].
- 18.3.3 No arbitrator appointed pursuant to this Section 18.3 shall be a national of the jurisdiction of either Party to this Agreement or of the jurisdiction of any of the

Shareholders (nor shall any such arbitrator be an employee or agent or former employee or agent of any such person).

- 18.3.4 The language of any arbitration under Section 18.3.1 or Section 18.3.2 shall be English.
- 18.3.5 Each Party hereby agrees to be bound by any final decision or award of any arbitrator(s) duly appointed under this Agreement.
- 18.3.6 Except as awarded by the arbitrator(s), each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder.

Section 18.4. Related Disputes

If any dispute has been referred to an expert pursuant to Section 18.2 or to arbitration pursuant to Section 18.3 and such dispute raises issues of fact or law that, in whole or in material part are, in the opinion of the arbitrators, substantially the same as issues of fact or law already pending in arbitration proceedings in connection with any related dispute, such issues shall, to the extent permitted under the Laws of [COUNTRY], be consolidated with such related dispute, unless such consolidation would, in the opinion of the arbitrators, produce manifest injustice, substantial hardship to the Utility or the Company or cause significant delay in the determination of the dispute between the Utility and the Company or in the determination of any related dispute in which the Utility is involved.

Section 18.5. Waiver of Sovereign Immunity

18.5.1 The Utility unconditionally and irrevocably:

- (i) agrees that the execution, delivery and performance by it of this Agreement and those agreements included in the Project Agreements to which it is a Party constitute private and commercial acts rather than public or governmental acts;
- (ii) agrees that, should any proceedings be brought against it or its assets other than assets protected by the diplomatic and consular privileges in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets (other than Excepted Assets); and
- (iii) consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any property other than Excepted Assets whatsoever irrespective of its use or intended use).

18.5.2 The Company hereby unconditionally and irrevocably consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may hereafter acquire, of any court of competent jurisdiction for any action filed by the Utility to enforce any arbitral award or decision made pursuant to arbitration conducted in accordance with Section 18.3. The Company waives any objection that it

may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 18.5.2 and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same. The Company agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court, or in the manner specified in Section 18.6. The Company irrevocably waives any and all rights it may have to enforce any judgment or claim against the Excepted Assets in the courts of any jurisdiction.

18.5.3 For the avoidance of doubt, any dispute or difference between the Parties as to whether either Party has complied with this Section 18.5 shall be referred to for determination under Section 18.3.

Section 18.6. Service of Process

With respect to any proceedings for enforcement of an award pursuant to this Article XVIII against assets of either Party brought in the courts of [COUNTRY], the Parties agree that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.

Section 18.7. Continued Performance

During the course of any dispute being handled in accordance with this Article XVIII, (i) the Company shall continue to perform its obligations under this Agreement to deliver Dependable Capacity and Net Energy Output, (ii) the Utility shall continue to pay all amounts due in accordance with Article X that are not in dispute, and (iii) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute.

ARTICLE XIX ASSIGNMENT

Section 19.1. Right to Assignment

- 19.1.1 The Company may not assign or transfer, as security or otherwise, its rights or obligations under, pursuant to or associated with (i) this Agreement, (ii) the Complex, (iii) the Site, (iv) the movable property and intellectual property of the Company related to the Project, or (v) the revenues or any of the rights or assets of the Company related to the Project in each of Sections 19.1.1(i) through 19.1.1(v), without the prior written consent of the Utility and any consents required from the Government under the Government Support Agreement. Notwithstanding the foregoing provisions, it is expressly acknowledged that the Company may assign as security to, or grant a security interest in favor of, the Company's fuel supplier to the Project of all or part of its rights and interests under or pursuant to this Agreement. The Company hereby notifies the Utility of the creation of such security over its rights and interests under this Agreement and the Utility hereby acknowledges receipt of such a notice.
- 19.1.2 The Utility shall not assign its rights or obligations under this Agreement without the prior written consent of the Company; provided, however, that any such assignee of the Utility shall have the ability to perform all of the Utility's obligations and duties under this Agreement.

ARTICLE XX NOTICES

Section 20.1. Address for Notices

Any notice, communication, request or correspondence required or permitted under the terms and conditions of this Agreement shall be in writing, in the English language (it being understood that any such communication or paper in a language other than English shall be of no force or effect), and shall be (i) delivered personally; (ii) transmitted by facsimile and either the recipient acknowledges receipt to sender or the sender delivers to recipient a transmission confirmation; or (iii) sent by an internationally-recognized overnight mail or courier service, with delivery receipt requested, to the following addresses:

If to the Utility:

[ADDRESS, FAX NUMBER]

If to the Company:

[ADDRESS, FAX NUMBER]

or such other address and/or facsimile number as either Party give [ten (10)] Days prior written notice to the other Party in accordance with this Section 20.1.

Section 20.2. Effectiveness of Notice

Notices shall be effective: (i) in the case of personal delivery, when received by the recipient; (ii) in the case of transmission by facsimile, if receipt of the transmission occurs before 17:00 recipient's time on a Business Day and recipient receives a transmission confirmation or otherwise acknowledges transmission, upon receipt of transmission, or if receipt of the facsimile transmission occurs after 17:00 recipient's time and recipient receives a transmission confirmation or otherwise acknowledges transmission, the next succeeding Business Day, or (iii) in the case of an internationally-recognized and reputable priority courier, four (4) Days after dispatch.

ARTICLE XXI MISCELLANEOUS PROVISIONS

Section 21.1. Variations in Writing

All additions, amendments or variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of both Parties.

Section 21.2. Entire Agreement

This Agreement and all Schedules thereto together represent the entire understanding between the Parties in relation to the subject matter thereof and supersede any or all previous agreements or arrangements between the Parties (whether oral or written).

Section 21.3. Severability

In the event that any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or of the same provisions in any other jurisdiction shall not in any way be affected or impaired thereby.

Section 21.4. Waivers

21.4.1 No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall (i) operate or be construed as a waiver of any other or further default whether of a like or different character (ii) be effective unless in writing duly executed by an authorized representative of such Party.

21.4.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

Section 21.5. Confidentiality

21.5.1 Each of the Parties shall hold in confidence all documents and other information, whether technical or commercial, relating to the Project or the Complex that is of a confidential nature and that is supplied to it by or on behalf of the other Party. The Party receiving such documents or information shall not publish or otherwise disclose them or use them for its own purposes (otherwise than as may be required by it, its professional advisers, or potential or actual lenders or investors to perform its obligations under this Agreement or to any expert or arbitrator appointed pursuant to the terms of this Agreement).

21.5.2 The provisions of Section 21.5.1 shall not apply to any information: (i) which is or becomes available to the public other than by breach of this Agreement; (ii) which is in or comes into the possession of the receiving Party prior to the aforesaid publication or disclosure and which was not or is not obtained under any obligation of confidentiality;

(iii) which was or is obtained from a third party who is free to divulge the same and which was or is not obtained under any obligation of confidentiality; or (iv) which is required by law or appropriate regulatory authorities to be disclosed; provided, however, that the Party supplying the information is notified of the requirement set forth in sub clause (iv) at least five (5) Business Days prior to such disclosure and the disclosure is limited to the maximum extent possible.

21.5.3 For the avoidance of doubt, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement and the other agreements referred to herein in any agreements prepared and issued in connection with other projects.

Section 21.6. Successors and Assigns

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

Section 21.7. No Liability for Review

No review or approval by the Utility of any agreement, document, instrument, drawing, specifications or design proposed by the Company shall relieve the Company from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with the applicable Laws of [COUNTRY] with respect thereto, nor shall the Utility be liable to the Company or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design. Furthermore, the Utility shall not be liable to the Company or any other person by reason of its observation or inspection of, or any suggestions relating to, the Project.

Section 21.8. Consequential Damages; Liability Beyond Contract

Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for indirect, consequential, punitive or exemplary damages resulting from the performance of obligations or the exercise of rights under or pursuant to this Agreement. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement.

Section 21.9. No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties hereto and, except for rights expressly granted to other persons, nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, any liability to, or any right of suit or action in, any person not a Party to this Agreement.

Section 21.10. No Use of Contractors

The Company shall not engage a Contractor to undertake any part of the Project except upon receipt of the written approval of the Utility, which engagement of such a Contractor by the Company shall not relieve the Company of any of its obligations or potential liability regarding any term or condition of this Agreement.

Section 21.11. Affirmation

21.11.1 The Company and the Utility each declares and affirms, each on its own behalf, that it has not, directly or through an agent, engaged in Corrupt Practices, Fraudulent Practices, Collusive Practices, Coercive Practices, or Obstructive Practices in competing for this Agreement or during the procurement or execution of this Agreement, and that it will not in the future engage in such practices relative to this Agreement.

21.11.2 The Company and the Utility each declares and affirms, each on its own behalf, that it shall in the future not pay any bribe, pay-off, kick-back or unlawful commission during the term of and relative to this Agreement.

Section 21.12. Inspection and Auditing by the World Bank

The Company shall permit the World Bank to inspect its accounts and records and other documents relating to the submission of proposals and contract performance pertaining to this Agreement and to have them audited by auditors appointed by the World Bank. The Company's attention is drawn to Section 21.11.1 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Section 21.12 may constitute a prohibited practice for purposes of Section 21.11.1 of this Agreement.

Section 21.13. Governing Law

This Agreement and the rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to the laws of [COUNTRY].

Section 21.14. Relationship of the Parties

This Agreement shall not make either of the Parties partners or joint ventures one with the other, nor make either the agent of the other. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or the otherwise bind, the other Party.

Section 21.15. Counterparts

This Agreement may be executed in two (2) or more original copies and each such copy may be executed by each of the Parties in separate counterparts, each of which copies when executed and delivered by the Parties shall be an original, but all of which shall together constitute one and the same instrument.

Section 21.16. Double Jeopardy

A final, non-appealable order issued in a proceeding initiated by the Government and based upon a claim of breach of the Government Support Agreement shall be with prejudice to any proceedings against the Company based upon the same claim that the Utility could otherwise bring for breach by the Company of its obligations under this Agreement. Nothing in this Section 21.16 shall prevent the Utility and the Government from separately initiating proceedings to terminate this Agreement and the Government Support Agreement, respectively, pursuant to Sections 17.2 and 17.3 of this Agreement and Article XI of the Government Support Agreement.

Section 21.17. Partial Invalidity

The illegality, invalidity or unenforceability of any provision of this Agreement in whole or in part under the law of any jurisdiction shall neither affect its (i) legality, validity or enforceability under the law of any other jurisdiction, nor (ii) the legality of any other provision or part thereof.

Section 21.18. Survival

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including the rights and obligations, warranties, remedies, promises of indemnity and confidentiality set forth in Sections 1 (including the existence of a license to enter the Site for the purposes of removal of the Complex pursuant to Section 4.1.2(iv)), 7.11, 10.5.4, 21.5 and 12 and Articles XI, XIV, XVII and XVIII.

Section 21.19. Language

The language for the purpose of administering this Agreement, including any expert proceeding or arbitration hereunder, shall be English.

Section 21.20. Good Faith

In carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith.

ARTICLE XXII
CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

Section 22.1. Conditions Precedent

22.1.1 This Agreement shall come into full force and effect upon the occurrence (or waiver by the Parties) of the following conditions precedent:

- (i) this Agreement being approved without modification by the [COUNTRY] National Commission for Privatisation;
- (ii) agreement by the Utility on the details related to the issuance of the Delivery Performance Security, the Operations Security, the Mobilization Security, the Advance Payment Security, and the Demobilization Security, as set out, respectively, in Schedules 14 through 18; and
- (iii) agreement by the Company on the details related to the issuance of the Utility Security as set out in Schedule 19.

22.1.2 If the date of Effectiveness of Agreement does not occur by the date that is ten (10) Days following the date of execution of this Agreement, the Utility or the Company may deliver written notice to the other Party terminating this Agreement, which termination shall be effective on the date of delivery of such notice. From the date of such termination, the Parties shall have no further rights against each other and shall be released from all further obligations under this Agreement, subject to any rights and obligations that may have accrued before the date of such termination.

IN WITNESS whereof the Parties have entered into this Agreement the date first above written.

[UTILITY]

By: _____
Name: _____
Title: _____

WITNESSED BY:

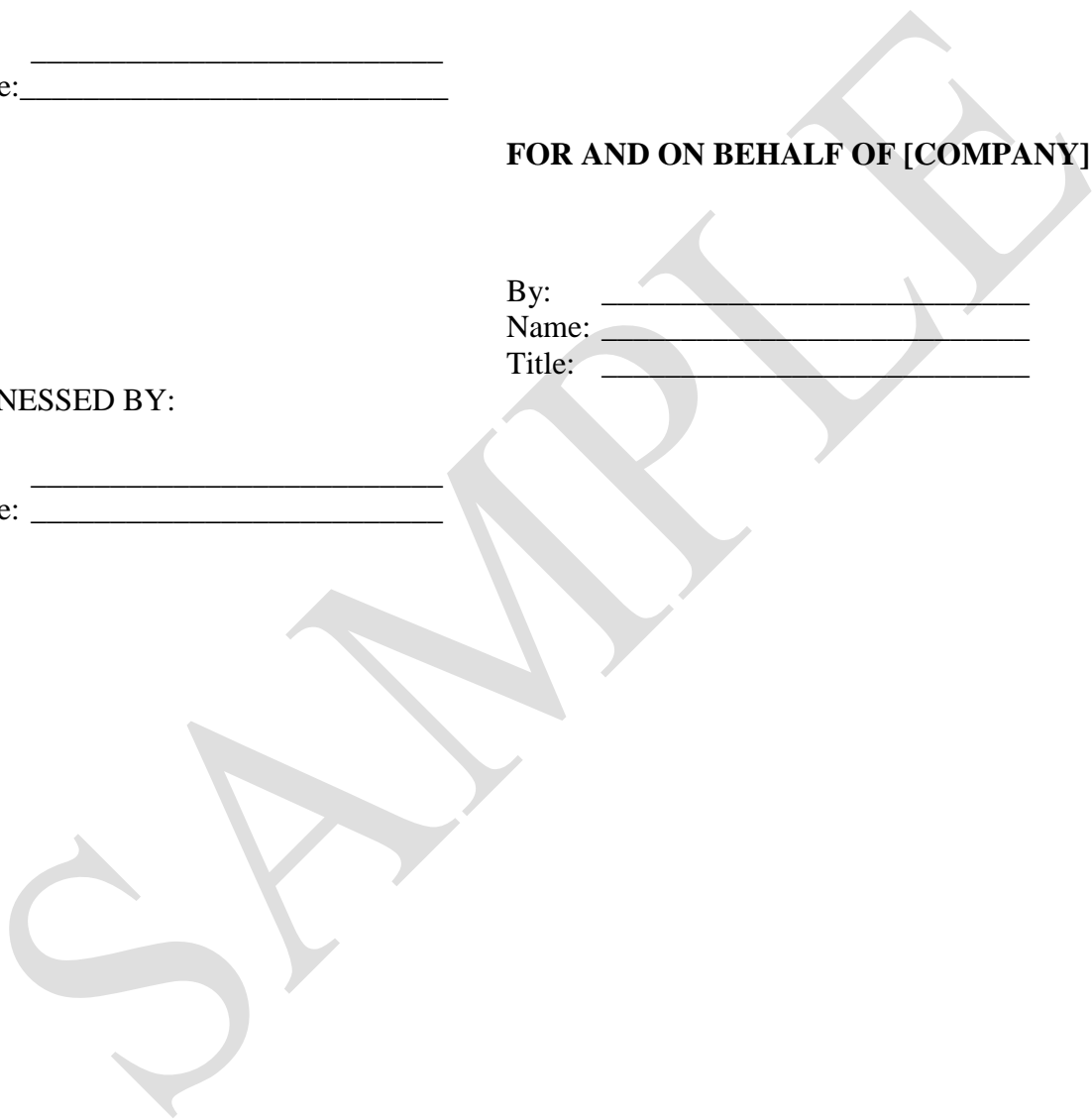
By: _____
Name: _____

FOR AND ON BEHALF OF [COMPANY]

By: _____
Name: _____
Title: _____

WITNESSED BY:

By: _____
Name: _____



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SCHEDULE 1

DEFINITIONS

Whenever the following terms appear in this Agreement or the Schedules hereto, whether in the singular or in the plural, present, future or past tense, they shall have the meanings stated below unless the context otherwise requires:

“Abandonment” means either (i) the voluntary cessation of substantially all activities relating to the construction, installation, or operation and maintenance of the Complex, as appropriate (except a cessation that is the direct result of a local strike which occurred and continued despite the reasonable actions or inactions of the Company or a Force Majeure), or (ii) the physical absence of substantially all employees of the Company from the Site after the Construction Start Date, in either case (i) or (ii) for at least forty-eight (48) consecutive hours.

“Advance Payment Security” has the meaning ascribed thereto in Section 11.3.1(ii).

“Agreement” means this Power Purchase Agreement, including all Schedules thereto, as amended or supplemented from time to time.

“Applicant” means the Party that served a Notice of Intention to Refer pursuant to Section 18.2.2.

“Available Capacity” has the meaning ascribed thereto in Section 10.2.2.

“Busbar Extensions” means the equipment to be added to each of the existing 11 kV Interconnection Points to which the Company Interconnection Facilities will attach.

“Business Day” means a Day on which business by and between banks is legally permitted to be carried on in [COUNTRY].

“Capacity Payment” has the meaning ascribed thereto in Section 10.2.

“Capacity Payment Cap” means the maximum amount of Capacity Payments that the Company shall be entitled to earn in a given Month, as calculated pursuant to Section 3.3 of Schedule 7.

“Centre” has the meaning ascribed thereto in Section 18.3.1.

“Check Metering System” has the meaning ascribed thereto in Section 9.2.2.

“Coercive Practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of this Agreement.

“Collusive Practice” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Utility or the Government, designed to establish bid prices at artificial, noncompetitive levels.

“Commercial Operations Date” means the date on which the entire Complex is Commissioned, which date shall occur as specified in Schedule 4.

“Commission” means engaging in Commissioning.

“Commissioned” means the state or act of successful completion of Commissioning of the Complex and the certification of such successful completion of Commissioning to the Utility by the Company Engineer following approval thereof by the Utility.

“Commissioning” means engaging in the operations required for testing of the Complex in accordance with Schedule 4.

“Commissioning & Initial Dependable Capacity Certificate” means a certificate in the form of Annex A of Schedule 4.

“Company” has the meaning ascribed thereto in the preamble.

“Company Engineer” means the qualified engineer employed by the Company that shall observe the construction and installation of the Complex and the Commissioning and certify to the Utility on behalf of the Company the results of the Commissioning and the other matters specified herein.

“Company Event of Default” means an event described in Section 17.1 for which the Utility may issue a Notice of Default to the Company.

“Company Interconnection Facilities” means the facilities and equipment to be designed, constructed or installed by or on behalf of the Company on the Company’s side of the Interconnection Points.

“Complex” means the electric power generation station to be located on the Site at [LOCATION], including the Company Interconnection Facilities (but excluding the Utility Interconnection Facilities), having a design capacity of approximately the Contract Capacity, to be developed, designed, engineered, manufactured, financed, supplied, constructed, installed, completed, tested, Commissioned, insured, owned, operated and maintained by the Company during the term of the Agreement, whether completed or at any stage in its construction and installation, including without limitation or regard to level of development, engineering and design documents, all energy producing equipment and its auxiliary equipment, fuel handling facilities and equipment, water transportation and treatment systems, all spare parts stored at the Site, and all other equipment or facilities necessary for delivery of electricity to the Utility at the Interconnection Points (including any working areas required by the Company, villages, townships

Schedule 1-2

and camps for the accommodation of the employees of the Company, and all rights of way and access from public highways and, where applicable, railway and seaward access), as further described in Schedule 11.

“Consents” means all such approvals, consents, authorizations, grants or certificates of registration, notifications, concessions, acknowledgments, agreements, licenses (including the license permitting the generation and transmission of electricity), permits, decisions or similar items required to be obtained from any Public Sector Entity or other relevant governmental entity for the Company for the undertaking of the Project; provided, however, that in no event shall the Consents include any concessions or exemptions from the Laws of [COUNTRY] unless they are expressly granted pursuant to the terms of the Government Support Agreement.

“Construction Report” means a report to be submitted by the Company pursuant to Section 5.2.2(vii), which report shall address the matters identified in, and shall be substantially in the form set out in Schedule 9.

“Construction Start Date” means the date on which the Company materially commences construction or installation of the Complex.

“Contractor” means any direct contractors and any of their direct sub-contractors integrally involved in the Project.

“Contract Capacity” means Fifteen (15) MW.

“Control Center” means the Utility’s system control centre located in [LOCATION], or such other control centre designated by the Utility from time to time (but not more than one at any time) from which the Utility shall Dispatch the Complex.

“Constrained” means the inability to deliver electricity to the Interconnection Points for some reason other than an action or inaction of the Company.

“Convention” has the meaning ascribed thereto in Section 18.3.1.

“Corrupt Practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in execution of this Agreement.

“Damages” means any actual damages agreed upon by the Parties or established pursuant to any dispute resolution procedure described in Article XVIII.

“Day” means the 24-hour period beginning and ending at 12:00 midnight.

“Declaration Deadline” has the meaning ascribed thereto in Section 7.1.2.

“Declared Available Capacity” means the estimated net capacity of the Complex announced daily by the Company pursuant to Section 7.1.

Schedule 1-3

“Default Rate” means LIBOR plus [one and one-half percent (1.5%)] per annum. Whenever the Default Rate is applied, the interest shall be computed for the actual number of Days elapsed on the basis of a 365-Day Year.

“Delivery Performance Security” has the meaning ascribed thereto in Section 11.1.

“Dependable Capacity” means the sustained capacity in MW from the Complex as determined pursuant to Section 12.4.

“Dispatch” means the instructions issued by the Utility from the Control Center in accordance with this Agreement for the Company to schedule and control the generation of the Complex in order to increase or decrease the electricity delivered to the Utility Grid System (or the Utility’s act of giving of such instructions).

“Dispute Notice” has the meaning ascribed thereto in Section 10.7.1.

[“Dollar” or “US\$” means such currency of the United States of America which, as the time of payment or determination, is legal tender therein for the payment of public or private debts.]

“Effectiveness of Agreement” means the occurrence of all steps necessary for the commencement of the term of this Agreement pursuant to Section 3.1, including execution of this Agreement and the Government Support Agreement, the fulfillment or waiver of all conditions precedent set forth in Section 22.1, and the fulfillment or waiver of all conditions precedent set forth in the Government Support Agreement.

“Emergency” means a condition or situation that, in the reasonable opinion of either Party, does materially and adversely, or is likely materially and adversely to (i) affect the ability of the Utility to maintain safe electrical service to its customers, having regard to the then-current standard of electrical service provided to its customers, or (ii) present a physical threat to persons or property.

“Energy Payment” has the meaning ascribed thereto in Section 10.3.

“Environmental Claims” means all claims, demands, assessments, fines, penalties, suits, proceedings, or causes of action arising under any Environmental Law, including but not limited to: (i) actions to enforce obligations arising under or to require compliance with Environmental Laws, (ii) claims for cost recovery or contribution, and (iii) claims for personal injury or property damage.

“Environmental Conditions” means any conditions, circumstances or other matters of fact relating to or otherwise affecting health, safety or the environment, including any natural resources (including flora and fauna), soil, surface water, ground water, any present or potential drinking water supply, subsurface strata or the ambient air.

“Environmental Laws” means any of the Laws of [COUNTRY] now or hereafter in effect relating to health, safety or the environment

“Environmental Losses” means all liabilities, losses, costs and expenses arising out of Environmental Conditions.

“Event of Default” has the meaning ascribed thereto in Section 17.3.1.

“Excepted Assets” means the Utility Grid System, electric generation assets and equipment, electric transmission or distribution assets, or other assets, necessary for the fulfillment by the Utility of its duties and responsibilities under the Laws of [COUNTRY].

“Force Majeure” means an event or occurrence specified in Article XV.

“Force Majeure - Natural” has the meaning ascribed thereto in Section 15.1.1.

“Force Majeure - Other” has the meaning ascribed thereto in Section 15.1.3.

“Force Majeure - Political” has the meaning ascribed thereto in Section 15.1.2.

“Forced Outage” means any partial or complete interruption of a Unit’s generating capability that is not the result of (i) a request by the Utility in accordance with this Agreement; (ii) a Maintenance Outage; or (iii) an event or occurrence of Force Majeure.

“Foreign Investor” means any initial Shareholder of the Company who is a non-resident of [COUNTRY].

“Foreign Political Events” has the meaning ascribed thereto in Section 15.1.2(ii).

“Fraudulent Practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of this Agreement.

“Fuel Supply Agreement” means any agreement entered into by the Company for the purchase and sale of fuel to be used by the Complex.

“Government” means the Government of [COUNTRY].

“Government Support Agreement” means the Government Support Agreement dated [], entered into between the Government and the Company in relation to the Project.

“Hourly Contract Volume” means the amount of electrical energy the Company is Dispatched for in a given hour.

[“ICSID Rules” has the meaning ascribed thereto in Section 18.3.1.]

“Interconnection Points” means the physical points where the Company Interconnection Facilities that form part of the Complex interconnect with the Busbar Extensions (and any other parts of the Utility Interconnection Facilities) that form part of the Utility Grid System, as such points are more specifically described in Schedule 2.

“kW” means Kilowatts.

“kWh” means Kilowatt-hours.

Schedule 1-5

“Lapse of Consent” means any Consent (i) ceasing to remain in full force and effect and not being renewed or replaced within the time period prescribed by the applicable Laws of [COUNTRY] or (ii) not being issued upon application having been properly and timely made and diligently pursued or (iii) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Party’s ability to perform its obligations under this Agreement or the Government Support Agreement, in each of the above instances despite such Party’s compliance with the applicable procedural and substantive requirements as applied in a non-discriminatory manner.

“Law” means any law, act, requirement (including license and permit requirements), ordinance, code, order, rule, resolution or regulation of any governmental authority or agency (federal, national, provincial, municipal, local or other) that is at any time applicable to the Company, the Complex, the Project, the Site, or any part thereof, and shall include the Laws of [COUNTRY] and all applicable environmental standards and hazardous waste laws, as any such law, act, requirement, ordinance, rule, resolution or regulation or standard may be amended from time to time.

“Laws of [COUNTRY]” means the national, provincial and local laws of [COUNTRY] and all orders, rules, regulations, executive orders, decrees, policies, judicial decisions, notifications or other similar directives made pursuant thereto, as such laws, orders, rules, regulations, decrees, policies, judicial decisions and notifications or other similar directives may be amended from time to time.

“LIBOR” means the British Bankers Association Interest Settlement Rate for Dollar deposits for a period equal to three (3) Months that appears on the appropriate page of the Reuters service at or about 11:00 a.m. in London on the last available Day on which banks are legally permitted to be open in London, or in the event that the Reuter’s service, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides the British Bankers Association Interest Settlement Rate for Dollar deposits in the London inter-bank market.

“License” means the license issued by the Utility to the Company for the generation and supply of electricity from the Complex in accordance with Section 5.1.1.

“Liens” means any mortgage, pledge, security interest, lien, levy, charge or other encumbrance or restriction of any kind whatsoever, or any conditional sale contract, title retention contract or other contract giving effect to any of the foregoing.

“[LOCAL CURRENCY]” means the currency that is the legal tender of [COUNTRY].

“Local Political Events” has the meaning ascribed thereto in Section 15.1.2(ii)

“Maintenance Outage” means an interruption or reduction of a Unit’s or the Complex’s generating capability that (i) has been scheduled and allowed by the Utility in accordance with Section 7.5; and (ii) is for the purpose of performing work on specific components, which work could be postponed by at least thirty (30) Days but should not be postponed.

“Metering System” means all meters and metering devices owned by the Utility and used to measure the delivery and receipt of Net Energy Output.

“Minimum Functional Specifications” means the minimum functional specifications (including the Technical Limits) of the Complex as set forth in Schedule 3.

“Mobilization Security” has the meaning ascribed thereto in Section 11.3.1(i).

“Month” means a calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last Day of the preceding month and ending at 12:00 midnight on the last Day of that month.

“MVAR” means Megavars.

“MW” means Megawatts.

“Net Energy Output” means the net energy delivered by the Company for sale to the Utility at the Interconnection Points in accordance with the Utility Dispatch as measured in accordance with Section 9.5.

“Notice of Default” has the meaning ascribed thereto in Section 17.3.1.

“Notice of Intent to Terminate” has the meaning ascribed thereto in Section 17.3.4.

“Notice of Intention to Defend” has the meaning ascribed thereto in Section 18.2.4.

“Notice of Intention to Refer” has the meaning ascribed thereto in Section 18.2.2.

“Obstructive Practice” means any of (i) the act of deliberately destroying, falsifying, altering or concealing evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation, into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice, or Collusive Practice; (ii) the act of threatening, harassing, or intimidating any Party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation, or (iii) an act intended to materially impede the exercise of the inspection and audit rights provided for in Section 21.12 of this Agreement.

“Ongoing Dependable Capacity Determination” has the meaning ascribed thereto in Section 12.4(ii).

“Operating Committee” means the committee established pursuant to Section 7.10 for the purpose of determining operating standards and procedures for the Complex.

“Operating Day” means that period of time (i) with respect to the first Operating Day of the Complex, beginning on the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then beginning on the date on which the initial Commissioning of any part of the Complex occurs) and ending at 11:59 p.m. on the same Day; (ii) with respect to succeeding Operating Days until

the last Operating Day, a full Day; and (iii) with respect to the last Operating Day, that period of time from the end of the preceding Operating Day through the termination of this Agreement.

“Operations Security” has the meaning ascribed thereto in Section 11.2.1.

“PPA Amended Documents” has the meaning ascribed thereto in Section 5.2.1.

“PPA Original Documents” has the meaning ascribed thereto in Section 5.2.1.

“Platts” means a factor equal to an arithmetic mean for a Month of the price (expressed in US\$ per metric ton) of Diesel Fuel acc.to No1-D, No.2-D in ASTM D975, as calculated based on the price published from time to time (generally, five Days per Week) by Platts in its APAG Marketscan publication.

“Project” means the development, design, engineering, manufacture, financing, supply, construction, installation, permitting, completion, testing, Commissioning, insurance, ownership, operation and maintenance of the Complex and all activities incidental thereto or required under this Agreement.

“Project Agreements” means this Agreement, the Government Support Agreement, the Fuel Supply Agreement, and any other agreements that may be integral to the undertaking of the Project.

“Prudent Utility Practice” means the practices generally followed from time to time by the electric utility industry (including practices generally followed by independent power producers), having regard to engineering and operational considerations, including manufacturers’ recommendations. Prudent Utility Practice is not limited to optimum practices, methods or acts to the exclusion of all others, but rather is a spectrum of possible practices, methods and acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety.

“Public Sector Entity” means the Government and any subdivision thereof, any provincial or local governmental authority with jurisdiction or authority over the Company or the Project or any part thereof, any department, authority, instrumentality, agency or judicial body of the Government or any such provincial or local governmental authority, and any court, tribunal or independent regulatory agency or body in [COUNTRY] having jurisdiction over the Company or the Project or any part thereof.

“Reactive Power” means the wattless component of the product of voltage and current, which the Complex shall provide to or absorb from the Utility Grid System and which is measured in MVAR.

“Required Commercial Operations Date” means the date on which the Complex is required to be Commissioned, which shall be [], subject to extension by reason of a Force Majeure event.

“Respondent” means the Party on whom a Notice of Intention to Refer has been served in accordance with Section 18.2.2.

“Revised Declared Available Capacity” has the meaning ascribed thereto in Section 7.1.3.

“Scheduled Commercial Operations Date” means the date that the Company identifies to the Utility (as set forth in the initial Construction Report) as the date the Complex will be Commissioned, as such date may be revised from time to time in a supplemental Construction Reports based on the scheduled construction program.

“Shareholder” means the holder, from time to time of any shares of the Company with voting or other rights of management and control and any securities of the Company that are convertible into such shares at the option of the holder, as well as the holders of any securities or instruments that are convertible at the option of the holder into either of such shares.

“Site” means the land, spaces, waterways, roads, water wells and any rights acquired or to be acquired over which the Utility grants to the Company a license for the entry onto and use by the Company and on which (or through, above or below which) all or any part of the Complex is to be built (including any working areas required by the Company, villages, townships and camps for the accommodation of the employees of the Company, and all rights of way and access from public highways and, where applicable, railway and seaward access), as ascribed thereto in Section 4.1.1.

“Start-Up” means, after the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then from and after the Commissioning of any part of the Complex), any start up of a Unit or the Complex that is requested by the Utility and that results in synchronization with the Utility Grid System. Any such Start-Up shall include one shut-down.

“Technical Limits” means the limits of operation of the Complex described in Schedule 3 and Schedule 11.

“Unit” means each of the generating units that form a part of the Complex.

“Utility” has the meaning ascribed thereto in the preamble.

“Utility Event of Default” means an event described in Section 17.2 for which the Company may issue a Notice of Intent to Terminate to the Utility.

“Utility Grid System” means the Utility Interconnection Facilities and any other transmission or distribution facilities on the Utility’s side of the Interconnection Points(s) through which the Net Energy Output of the Complex will be distributed by the Utility to users of electricity.

“Utility Interconnection Facilities” means the Busbar Extensions and all other facilities on the Utility side of the Interconnection Points described in Schedule 2 to be provided by or for Company to enable it to receive and deliver capacity and energy in accordance with this Agreement.

“Utility Security” has the meaning ascribed thereto in Section 11.5.

“Week” means each period of seven (7) consecutive Days beginning at 12:00 midnight [COUNTRY] time falling between a [Saturday][Sunday] and a [Sunday][Monday].

[⁶“World Bank” means the International Development Association, which is located at 1818 H Street, NW, Washington, DC 20433.]

[⁷“World Bank Financing” means the funding available to the Utility to make payments due to the Company under Section 10.8, which funding is provided by the World Bank in accordance with the terms of an agreement between the World Bank and the Utility, as such agreement may be amended.]

[⁸“World Bank Financing Depletion” means the occurrence of either of the following events: (i) the World Bank Financing is fully consumed through the Utility’s use of the World Bank Financing to make payments due to the Company under Section 10.8; or (ii) the World Bank Financing ceases to be available to the Utility in accordance with the terms under which such financing is provided.]

“Year” means each twelve (12) Month period commencing on 12:00 midnight on December 20 and ending on 12:00 midnight the following December 20 during the term of this Agreement.

⁶ where World Bank loan involved

⁷ where World Bank loan involved

⁸ where World Bank loan involved

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SCHEDULE 2

INTERCONNECTION FACILITIES

Annex A provides a schematic of the Company Interconnection Facilities interfacing with the Utility Interconnection Facilities at the 11 kV Interconnection Point.

Schedule 2-1

ANNEX A

11 KV INTERCONNECTION POINT

[to be supplied by the Company]

SAMPLE

Schedule 2-2

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SCHEDULE 3

MINIMUM FUNCTIONAL SPECIFICATIONS

This specification sets out the quality of power that the Company shall avail to the Utility at the Company Interconnection Points.

Section 1. Voltage level

The Company shall deliver energy at the Interconnection Points within a voltage range of 11 kV \pm 10%.

Section 2. Power Factor

The Utility shall take power at a power factor between 0.85 lagging and unity. Both the Utility and the Company shall endeavour to contribute towards maintaining system voltage stability.

Section 3. Computation of Power Factor

The power factor for each Interconnection Point shall be separately determined and shall be computed as the cosine of the arctangent of the ratio of the algebraic value of the increment in the register reading for reactive energy (kVArh) to the increment in the register reading for real energy (kWh). The algebraic sign of the arctangent will determine whether the resulting power factor is leading or lagging. If the arctangent has a positive sign, then the power factor is lagging, and if the sign of the arctangent is negative, then the power factor is leading.

Section 4. Frequency

The Utility shall maintain the system frequency within a range of 50 Hz \pm 1%.

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SCHEDULE 4

COMMISSIONING, COMMERCIAL OPERATIONS DATE

PART I: TESTING PRIOR TO THE COMMERCIAL OPERATIONS DATE

ARTICLE 1. DEFINITIONS

Section 1.1. Definitions

Wherever the following terms appear in this Schedule 4, they shall have the meanings stated below:

“Commissioning Tests” - The meaning ascribed thereto in Section 4.1 of this Schedule 4.

“Commissioned Shortfall” - A circumstance where the Dependable Capacity proven in a Commissioning Test administered pursuant to Section 4.4 of this Schedule 4 is less than was reasonably expected.

ARTICLE 2. SCHEDULING OF TESTING OF THE COMPLEX PRIOR TO COMMERCIAL OPERATIONS DATE

Section 2.1. Scheduling by the Company

The Company shall provide the Utility, on an on-going basis, with relevant information regarding its program for testing the Complex and the schedule therefor. Not less than twenty (20) Days prior to the commencement of such test program, the Company will deliver to the Utility in writing the final program for testing the Complex, including the expected duration of the Company's Start-Up testing program and a tentative schedule for conducting all tests required for Commissioning. The Company shall advise the Utility in writing of any changes in its final schedule for the testing program not less than seven (7) Days prior to the commencement of the tests required for Commissioning. Such final schedule shall not materially increase or advance the timing of the Utility's obligations under this Agreement without the prior written consent of the Utility. If the schedule for any test required for Commissioning is adjusted after the Company has

Schedule 4-1

provided the Utility with the final testing program schedule, then the Company shall advise the Utility not less than forty-eight (48) hours prior to the commencement of any such test. On each Day beginning with the Day on which testing commences, the Company shall provide the Utility with a schedule of the tests to be conducted on the following Day or Days (if such test will continue for more than one (1) Day).

Section 2.2. Deferral by Utility

If the Utility is reasonably unable to accommodate the schedule for such test or tests as provided by the Company in the final schedule for the program of tests, the Utility will give the Company notice within forty-eight (48) hours of its receipt of the final schedule for testing of its requirements regarding deferral or delay of any Commissioning Tests for the Complex, and the Parties will mutually agree on a date for any deferral test or program of tests. The Utility shall notify the Company at the end of any such delay or deferral.

**ARTICLE 3.
TESTING PRIOR TO COMMISSIONING TESTS**

Section 3.1. Pre-Synchronization Tests

Prior to synchronization of the Complex or any part thereof with the Utility Grid System to perform the Commissioning Tests, the Company shall successfully carry out, in the presence of the Utility, the following:

- (i) verification that the protection level settings prepared by the Company are as agreed by the Operating Committee.
- (ii) proving of all inter-tripping circuits between the Complex and the Utility Grid System and the Utility Interconnection Facilities.

Section 3.2. Observation by Utility

The Utility shall be given not less than twenty-four (24) hours notice of such tests (and any retests thereof) and shall have an opportunity to be present at and observe all such tests.

**ARTICLE 4.
COMMISSIONING TESTS (INCLUDING INITIAL DEPENDABLE
CAPACITY TEST)**

Section 4.1. Process

- (a) The Company shall carry out the Commissioning of the Complex or, if the Company and the Utility agree, any part of the Complex pursuant to this Article 4.

- (b) The Complex (or, if the Parties agree that only a portion of the Complex shall be Commissioned, a portion of the Complex) shall be deemed Commissioned following the successful completion (by satisfying the minimum performance criteria specified herein) of the tests described in Section 4.3 of this Schedule 4 and then the tests described in Section 4.4 of this Schedule 4 (collectively, the “Commissioning Tests”).

Section 4.2. Notification

The Company shall give reasonable notice to the Utility before carrying out the tests described in Section 4.3 and Section 4.4 of this Schedule 4.

Section 4.3. Commissioning Tests Prerequisite to Dependable Capacity Test

- (a) The Company shall carry out pre-commissioning and commissioning tests in accordance with Annex A.
- (b) Minimum criteria for the successful completion of the Commissioning Tests are described in Annex B.

Section 4.4. Reliability Run Test and Initial Dependable Capacity Test

- (a) Upon successful completion of the testing prerequisites described in Section 4.3 of this Schedule 4, the Company shall declare to the Utility the commencement of the reliability run test and the initial Dependable Capacity test, which will be administered simultaneously. During the administration of the reliability run test and initial Dependable Capacity test, the Dependable Capacity of the Complex will, subject to Section 4.5 of this Schedule 4, be determined in the following manner:
- (i) the Complex (or, if applicable, the part of the Complex being Commissioned) shall be in operation at full output with normal auxiliaries;
 - (ii) the Company will declare to the Utility the commencement of the test and will record the reading of the Metering System;
 - (iii) the test duration will be one (1) hour continuous operation and at the end of this period the Company will record the new reading of the Metering System;
 - (iv) the initial Dependable Capacity as determined by such test shall be the difference between the reading taken at the end of the one (1) hour period and the reading taken at the beginning of such period.
- (b) Minimum performance criteria for the reliability run test and the Dependable Capacity test required for the Complex to be commissioned are described in Annex B.

Section 4.5. Additional Initial Dependable Capacity Test (AIDC)

If the Dependable Capacity test administered pursuant to Section 4.4 of this Schedule 4 indicates that there will be a Commissioned Shortfall, the Company may request one (1) additional test of Dependable Capacity to be conducted at the Company's expense in accordance with the same procedures described in Section 4.4 of this Schedule 4 within two (2) Days after the initial Dependable Capacity test conducted pursuant to that Section 4.4. If such additional test is requested, then the Commissioning shall be delayed until such additional test is complete, and the Dependable Capacity shall be set in accordance with the additional test.

Section 4.6. Complex Commissioned; Commercial Operations Date

- (a) When both:
- (i) the Complex has satisfied the minimum performance standards as set forth in Annex B for all Commissioning Tests described in Sections 4.3 and 4.4 of this Schedule 4; and
 - (ii) either (a) there was no Commissioned Shortfall on the first reliability run test administered pursuant to Section 4.4 of this Schedule 4 or the Company did not timely request an additional Dependable Capacity test pursuant to Section 4.5 of this Schedule 4, such that the initial Dependable Capacity test administered shall establish the Dependable Capacity; or (b) the Company timely requested an additional Dependable Capacity test pursuant to Section 4.5 of this Schedule 4, such that the additional Dependable Capacity test administered shall establish the Dependable Capacity,

then the Complex (or, if applicable, the part of the Complex being Commissioned) shall be Commissioned.

- (b) The Commercial Operations Date shall occur as of the start of the first Day after the Day the entire Complex (at the full Contract Capacity) is Commissioned and the Company has delivered the Commissioning & Initial Dependable Capacity Certificate (or, if the Complex was Commissioned in phases, the Commissioning & Initial Dependable Capacity Certificate from each Commissioning) to the Utility.

ANNEX A.

**FORM OF COMMISSIONING & INITIAL DEPENDABLE CAPACITY
CERTIFICATE**

Project:	Location:	Date:
Customer:	Voltage :	Frequency:

1	Final Site Commissioning Checks	Checked
1.1	Check that all equipment is correctly earthed	
1.2	Check that all transformers and switchgear are not in circuit earth position	
1.3	Check that all circuit breakers are in the open position	
1.4	Clear all unnecessary personnel of Site to a safe area	
1.5	Ensure that all Company personnel are verbally addressed and aware of energization	
1.6	Ensure that the Utility is fully aware of your intention to energize the system	
2	Final Site Commissioning Tests	
2.1	Close circuit breaker for earthing transformer or neutral earthing resistor (Only applicable when system is in island mode)	
2.2	Energize system either by back feed from customers HV or by closing generator circuit breaker in island mode	
2.3	Check phase rotation	
2.4	Check system voltage	
2.5	Check system frequency	
2.6	Check inter tripping and inter locks	
2.7	Check Site ESD shutdown	
2.8	Additional testing required pursuant to the PPA	

Date and Time first machine online:	Date and Time last machine on line:	Total KW Output: Date and Time:
System voltage:	System frequency:	Power factor:

On behalf of the Company, I hereby certify that the Complex has satisfied the minimal performance standards sufficient to be Commissioned, and that the initial Dependable Capacity of the Complex as determined pursuant to the Power Purchase Agreement between Utility and Company is __ MW. Capitalized terms used herein have the meaning given to them in the Power Purchase Agreement.

By: [printed name of Company Engineer] _____

Company Engineer's signature: /s/ _____

Date: [date] _____

Schedule 4-5

On behalf of the Utility, I hereby approve the issuance of this certificate.

By: [printed name of Utility]

Company Engineer's signature: /s/

Date: [date]

SAMPLE

Schedule 4-6



ANNEX B.

STANDARDS FOR SUCCESSFUL COMPLETION OF COMMISSIONING TESTS

Successful completion of Commissioning for each phase of the Complex and for the Complex in its entirety shall occur when all of the final site commissioning checks and tests described in Annex A have been completed to the satisfaction of the Utility and the Company and Annex A has been signed by authorized representatives of the Utility and the Company as evidence of this.

SAMPLE

Schedule 4-7

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SCHEDULE 5

METERING AND TELECOMMUNICATIONS

ARTICLE I.

METERING SYSTEM AND CHECK METERING SYSTEM REQUIREMENTS

Section 1.1

The Metering System and Check Metering System shall consist of a single set of three current transformers and potential transformers feeding both a primary and a backup three phase four wire metering instrument.

Section 1.2

The Metering System and the Check Metering System shall be designed such that the overall error of the installation, (including instrument transformers, wiring, and metering instruments) shall be no greater than [two tenths of a percent (0.2%)] for power flows through the metering installation.

Section 1.3

The Metering System and Check Metering System shall be selected to have rated error no greater than [two tenths of a percent (0.2%)] over the equivalent load range.

Section 1.4

The Metering System and Check Metering System shall be electronic time-of-use meters which accumulate data separately for at least three time blocks with programmable beginning and ending times and holiday/weekend discrimination.

Section 1.5

The Metering System and Check Metering System shall be capable of separately accumulating and presenting on the register display the following data for peak hours, shoulder and off peak hours, each of which shall occupy one time-of-use block:

- (i) Net kWh into the Utility Grid System
- (ii) Net kVArh into the Utility Grid System
- (iii) kW into the Utility Grid System.

Section 1.6

The Metering System and Check Metering System current and voltage transformers will measure current and voltage as near as practicable to point at which the Utility Interconnection Facility connects with the 11kV Busbar Extensions, as shown in Schedule 2. The Metering System and Check Metering System shall consist of the following meters:

Metering System

Description
11 kV feeder bay - electrical output from Company
11 kV feeder bay - electrical input to Company

Check Metering System

Description
11 kV feeder bay - electrical output from Company
11 kV feeder bay - electrical input to Company

Section 1.7

Both the Metering System and Check Metering System shall be installed in weatherproof enclosures, which shall include test switches and shorting blocks to allow removal of either meter instrument without taking the other out of service. The Metering System and Check Metering System may be installed in a single enclosure or in separate enclosures, but the enclosure shall be so arranged that both the Metering System and the Check Metering System can be read without disturbing the seals on the enclosure(s).

ARTICLE II

INTERPRETATION OF METERING SYSTEM READINGS

Section 2.1

The Metering System and the Check Metering System at the Interconnection Points register imports and exports on two separate cumulative registers – one for export from the Company and the other for import to the Company, if any. The import register reading only changes with a flow from the Utility to the Company and the reading will decrease (and so will give a negative reading) and the export register only changes with a flow from the Company to the Utility and the meter reading will increase (and so will give a positive reading). All the meters at the Interconnection Points are programmed with a positive direction reflecting power flow from the Company to the Utility, and the negative direction reflecting power flow from the Utility to the Company.

Section 2.2

In general, the Net Energy Output shall be calculated as the sum of all metered energy. In the event that the Net Energy Output is positive, the interpretation is that electrical energy has, in net, been supplied by Company to the Utility. In the event that the Net Energy Output is negative, the interpretation is that electrical energy has, in net, been supplied by the Utility to Company. In the event that the Net Energy Output is zero, the interpretation is that, in net, no energy exchange between Company and the Utility has taken place and that Company has exactly supplied the energy needs of its own auxiliaries.

ARTICLE III

TESTING

Section 3.1

All testing and calibration of the Metering System and Check Metering System instruments shall be carried out by qualified personnel using test equipment with a rated error of [one tenth of a percent (0.1%)] or better, and which has been calibrated according to a procedure and against instruments traceable to a [COUNTRY]an standard within the preceding [forty-eight (48)] Months. The Metering System and Check Metering System shall be tested at full rated test current, and at ten percent (10%) of full rated test current at power factors of fifty percent (50%) lag, fifty percent (50%) lead and one hundred (100%). A written test report shall be prepared for all tests showing the calibration history of the test instruments, the as-found, and as-left conditions of the Metering System and Check Metering System, which shall be supplied to both Parties.

Section 3.2

Current and voltage transformers shall be tested for ratio and phase angle errors following manufacture at an accredited testing station. Test certificates issued by the testing station will be issued independently to both Parties.

Schedule 5-3

ARTICLE IV
TELECOMMUNICATION EQUIPMENT

Section 4.1

The Company shall, prior to the Commercial Operations Date (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, then prior to the Commissioning of any part of the Complex), establish and maintain a telephone hotline between the Company's control room and the Control Center.

SAMPLE

Schedule 5-4

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SCHEDULE 6

DETERMINATION OF LIQUIDATED DAMAGES

Section 1 Liquidated Damages for Energy Supply

Liquidated damages for energy supply for any hour of a Month as detailed in Section 10.5.3 shall be calculated in the following manner:

If the Company supplies Net Energy Output less than the Hourly Contract Volume and is not Constrained by the Utility and this has not arisen as a consequence of an event that constitutes Force Majeure, then the liquidated damages shall be calculated as below:

$$LDES_h = (HCV - TME_h) * [AMOUNT AND CURRENCY]$$

Where,

- (i) $LDES_h$ is the liquidated damage for energy supply, as described in Section 10.5.3.
- (ii) HCV is the Hourly Contract Volume for that hour h in MWh.
- (iii) TME_h is the Net Energy Output for that hour h in MWh.

Section 2 Liquidated Damages for Availability

Liquidated damages for availability for any hour as detailed in Section 10.5.2 shall be calculated in the following manner:

$$LDA_h = [kCapacity - AvailCapacity_h] * [AMOUNT AND CURRENCY]$$

Where,

- (iv) LDA_h is the liquidated damages for availability, as described in Section 10.5.2.
- (v) $kCapacity$ is the Contract Capacity (or, if the Parties have agreed to Commission a part of the Complex in advance of the Commercial Operations Date, the capacity of the phase or phases of the Complex Commissioned prior to the Commercial Operations Date), in MW.
- (vi) $AvailCapacity_h$ is the Available Capacity for hour h in MW.

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SCHEDULE 7

DETERMINATION OF CAPACITY AND ENERGY PAYMENTS

ARTICLE I. INTRODUCTION

Section 1.1 Applicability

This Schedule 7 specifies the methods for calculating the payments to be made to the Company by the Utility under or as referred to in Sections 10.2 (Capacity Payments) or 10.3 (Energy Payments) of the Agreement.

Section 1.2 Billing and Payment Pursuant to Agreement

The billing and payment procedures set forth in Article X of the Agreement shall apply to all payment obligations referred to in this Schedule 7, unless otherwise specified in this Schedule 7.

ARTICLE II. DEFINITIONS; INTERPRETATION

Section 2.1 Definitions

Wherever the following terms appear in this Schedule 7, they shall have the meanings stated below:

“Ambient Site Condition” – Ambient temperature, as such condition exists from time to time at the Complex.

“Ambient Specific Fuel Consumption Factor” means the specific fuel consumption of the Complex at Ambient Site Conditions, which factor shall (whether or not such factor actually compensates the Company for its fuel costs) be as set forth in Annex A to this Schedule.

“Energy Price” - has the meaning given to it in Section 4.2 of this Schedule.

“Energy Price Fuel Component” has the meaning given to it in Section 4.2 of this Schedule.

Schedule 7-1

“Fuel Price Adjuster” means a factor set out in or otherwise determined in accordance with Section 5.2 of this Schedule, which factor is intended to adjust the cost of fuel based on variation in the Platts, (whether or not such factor actually compensates the Company for variation in the cost of fuel).

“Reference Capacity Price” means the rate, in US\$/MWh, payable to the Company for providing generating capacity, which rate shall (whether or not such rate actually compensates the Company for providing such capacity) be as set forth in Annex A to this Schedule. The Reference Capacity Price shall remain constant over the term of this Agreement unless amended by the Parties.

“Reference Energy Price Fuel Component” means the rate, in US\$/MWh, payable to the Company for the of Diesel Fuel acc.to No1-D, No.2-D in ASTM D975 consumed by the Complex in the generation of Net Energy Output, which rate shall (whether or not such rate actually compensates the Company for such of Diesel Fuel acc.to No1-D, No.2-D in ASTM D975 be as set forth in Annex A to this Schedule. The Reference Energy Price Fuel Component shall remain constant over the term of this Agreement unless amended by the Parties.

“Reference Energy Price Variable O&M Component” means the rate, in US\$/MWh, payable to the Company for the variable costs of operation and maintenance that are attributable to the generation of Net Energy Output, which rate shall (whether or not such rate actually compensates the Company for such variable costs) be as set forth in Annex A to this Schedule. The Reference Energy Price Variable O&M Component shall remain constant over the term of this Agreement unless amended by the Parties.

“Reference Fuel Logistics Price” means the rate, in US\$/MWh, payable to the Company for the non-commodity costs associated with the fuel consumed by the Complex in the generation of Net Energy Output, which rate shall (whether or not such rate actually compensates the Company for such fuel) be as set forth in Annex A to this Schedule. The Reference Fuel Logistics Price shall remain constant over the term of this Agreement unless amended by the Parties.

Section 2.2 Interpretation

To the extent that any provision of this Schedule 7 is inconsistent with Article X of the Agreement, the provisions of Article X of the Agreement shall prevail.

ARTICLE III. MONTHLY CAPACITY PAYMENT

Section 3.1 Capacity Payments Accrued Hourly

The Capacity Payment for a given Month shall be equal to the aggregate sum (for all of the hours in such Month) of the portion of the Monthly Capacity Payment earned for each hour of the Month.

Schedule 7-2

Section 3.2 Calculation of Hourly Capacity Payment

The portion of the Monthly Capacity Payment earned for each hour of a Month shall be calculated as follows:

$$\text{CapacityPay}_h = \text{Cprice}_{\text{Ref}} * \text{AvailCap}_h$$

where:

CapacityPay_h = the portion of a Monthly Capacity Payment, in Dollars, earned for hour h of the Month;

$\text{CPrice}_{\text{Ref}}$ = the Reference Capacity Price;

AvailCap_h = the Available Capacity, in MW, for hour h of the Month, as determined pursuant to Section 10.2.2 of the Agreement; and

h = an hour in the Month for which a Capacity Payment is being calculated.

Section 3.3 Calculation of Capacity Payment Cap.

The Capacity Payment Cap for each Month shall be calculated as follows:

$$\text{CapacityCap}_M = 15 \text{ MW} * \text{TotalHours}_M * \text{Cprice}_{\text{Ref}}$$

where:

CapacityCap_M = the Capacity Payment Cap, in Dollars, applicable to a given Month, M ;

TotalHours_M = the total number of hours in Month M ; and

the definition of $\text{CPrice}_{\text{Ref}}$ is as defined in Section 3.2 of this Schedule.

ARTICLE IV. MONTHLY ENERGY PAYMENT

Section 4.1 Energy Payments Accrued Hourly

The Energy Payment for a given Month shall be equal to the aggregate sum (for all of the hours in such Month) of the portion of the Monthly Energy Payment earned for each hour of the Month.

Section 4.2 Calculation of Hourly Energy Payment

The portion of the Monthly Energy Payment earned for each hour of a Month shall be calculated as follows:

$$\text{EnPay}_h = (\text{FuelComp}_h * \text{NEO}_h) + (\text{VO\&MComp}_h * \text{NEO}_h)$$

where:

EnPay_h = the portion of a Monthly Energy Payment, in US\$, earned for hour h ;

FuelComp_h = the “Energy Price Fuel Component,” in US\$/MWh, for hour h of the Month, which Energy Price Fuel Component for any hour h shall be equal to:

$$\text{FuelCons}_{\text{Amb}} * [(\text{FPrice}_{\text{Ref}} * \text{FuelAdjust}_M) + \text{Logistics}_{\text{Ref}} + \text{Duties}]$$

where:

$\text{FuelCons}_{\text{Amb}}$ = the Ambient Specific Fuel Consumption Factor;

$\text{FPrice}_{\text{Ref}}$ = the Reference Energy Price Fuel Component;

FuelAdjust_M = the Fuel Price Adjuster applicable for the Month that includes hour h ;

$\text{Logistics}_{\text{Ref}}$ = the Reference Fuel Logistics Price; and

Duties = all applicable [COUNTRY] duties for the importation of the fuel purchased for hour h ; and

VO\&MComp_h = the “Reference Energy Price Variable O&M Component”;

NEO_h = the Net Energy Output of the Complex, in MWh; provided, however, NEO_h shall not be higher than the amount of MWh requested from the Complex for hour h in the Dispatch instructions delivered by the Utility to the Company pursuant to Section 7.2 of the Agreement; and

h = an hour in the Month for which an Energy Payment is being calculated.

ARTICLE V. FUEL PRICE ADJUSTER

Section 5.1 Applicability

The Energy Price Fuel Component is calculated using the Fuel Price Adjuster calculated pursuant to this Article V.

Section 5.2 Calculation of Fuel Price Adjuster

Subject to the provisions of Section 5.3 through Section 5.4 of this Schedule, the Fuel Price Adjuster shall be calculated according to the following formula:

$$\text{FuelAdjust}_M = \text{Platts}_M / \text{Platts}_{\text{Ref}}$$

where:

FuelAdjust_M = the Fuel Price Adjuster for the Month that includes hour h ;

Platts_M = the Platts for the Month that includes hour h ; provided, however, that if the value of the Platts for such Month is not available, then the value that is available for the most recent preceding Month shall be used; and

$\text{Platts}_{\text{Ref}}$ = the Platts for the reference Month, which shall be equal to [AMOUNT AND CURRENCY] per Metric Ton at Platts European Marketscan, FOB Med (Italy)

Section 5.3 Company Obligation to Calculate

In each Month beginning the Month following the date of Effectiveness of Agreement, the Company shall within ten (10) Days of the end of the Month deliver to the Utility a notice stating the Platts for the prior Month; provided, however, the Company shall not deliver any invoice pursuant to Section 10.6 of the Agreement until such time as the Company has delivered the Platts for the relevant Month. The Utility may request the Company to provide to the Utility reasonable supporting information, and the Company shall do so within ten (10) Business Days of such request.

Section 5.4 Alternative Index

If the Platts ceases to be published or is materially changed, the Parties shall mutually agree on an alternative index, with any dispute regarding such determination to be resolved by an expert in accordance with the Agreement with the objective of replacing the Platts with the index most similar to the Platts.

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ANNEX A REFERENCE PRICES

1. Reference Capacity Price [AMOUNT AND CURRENCY]/MW/hour
2. Reference Energy Price Fuel Component [AMOUNT AND CURRENCY]/litre
3. Reference Fuel Logistics Price [AMOUNT AND CURRENCY]/litre
4. Reference Energy Price Variable O&M Component [AMOUNT AND CURRENCY]/MWh
5. Ambient Specific Fuel Consumption Factor [AMOUNT AND CURRENCY]/MWh

Schedule 7-6

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SCHEDULE 8

FORM OF COMPANY DECLARATION OF DECLARED AVAILABLE CAPACITY

HOUR	DECLARED AVAILABLE CAPACITY (MW)	REMARKS
00-01		
01-02		
02-03		
03-04		
04-05		
05-06		
06-07		
07-08		
08-09		
09-10		
10-11		
11-12		
12-13		
13-14		
14-15		
15-16		
16-17		
17-18		
18-19		
19-20		
20-21		
21-22		
22-23		
23-24		
Day total		
00-24		

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Endorsements:

For Company:		
Name:		
Sign:		
Date:		

SAMPLE

Schedule 8-2



PPIAF

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SCHEDULE 9

FORM OF CONSTRUCTION REPORTS

Construction Reports shall take the form of a narrative identifying progress on all key activities *e.g.* civil works, fuel depot construction, equipment delivery and installation together with timelines for completion against plan to achieve the Required Commercial Operations Date.

Should any key activity be in delay, the Construction Report shall describe the mitigating measures put in place to achieve the Required Commercial Operations Date. Construction Reports will identify dates when phases of the Complex will be ready for Commissioning.

Schedule 9-1

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SCHEDULE 10

INSURANCE

A. Insurance Coverages

In respect of its obligations under Article XIII, the Company will maintain or cause to be maintained in full force and effect during the term of this Agreement the following insurances:

- 1.1.1 **Comprehensive or Commercial General Liability Insurance** with combined primary coverage limits of not less than the [LOCAL CURRENCY] equivalent of [] million Dollars (US\$ [],000,000) per Year for death or bodily injury (including personal injury) to one or more persons and for loss or damage to property resulting from any one occurrence in the aggregate during the period commencing on the date of Effectiveness of Agreement and ending on the Commercial Operations Date and in the aggregate annually thereafter. In addition, the insurance shall also provide coverage for (i) products and completed operations, (ii) sudden/accidental pollution liability, (iii) contractual liability, (iv) personal injury, and (v) independent contractors. There shall be no deductible or co-pay associated with this insurance cover. Such policy shall include a cross-liability and severability of interest clause.
- 1.1.2 **Automobile Liability Insurance**, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no fault insurance provisions or other endorsements as are required under applicable law, with a combined single limit of not less than [] million Dollars (US\$ [],000,000) per accident with respect to body injury or property damage.
- 1.1.3 **Umbrella and/or Excess Liability Insurance** of not less than the [LOCAL CURRENCY] equivalent of [] million Dollars (US\$ [],000,000) in the aggregate during construction and in the aggregate for the Year thereafter. Such coverage shall be over and above coverages provided by the policies described in Section 1.1.1 and Section 1.1.2 of this Schedule. The deductibles or co-pay associated with this insurance cover shall not exceed [] million Dollars (US\$ [],000,000). The minimum amounts of coverage shall be adjusted annually commencing on the first anniversary of the Commercial Operations Date to reflect changes in the value of the [CURRENCY] relative to its value on the prior anniversary. The Utility shall be named as an additional named insured. The amounts of insurance required in Section 1.1.1, Section 1.1.2,

Schedule 10-1

Section 1.1.4, Section 1.1.5, Section 1.1.6 and Section 1.1.7 of this Schedule, and the amount of excess insurance required in this Section 1.1.3, may be satisfied by the Company purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified in the specified Sections.

- 1.1.4 **Worker's Compensation Insurance**, and any other form of insurance which is required by the Laws of [COUNTRY].
- 1.1.5 **Employers Liability and/or Contingent Employers Liability** coverage, with a [] million Dollars (US\$ [],000,000) minimum limit per accident per disease and per person per disease.
- 1.1.6 **"All Risks" Insurance** during the period commencing on the date of Effectiveness of Agreement and ending on the Commercial Operations Date and **"All Risks" Insurance** thereafter, both on a full replacement cost basis. The physical damage insurance shall also include coverage for flood and earthquake. The deductibles or co-pay associated with this insurance cover shall be commercially reasonable and shall not exceed in any event the equivalent of [] million Dollars (US\$ [],000,000) per event or [] million Dollars (US\$ [],000,000) for all events in the aggregate in any one Year.
- 1.1.7 **Ocean Marine Cargo Insurance** with a coverage limit not less than the greater of (i) the value of the largest single cargo shipment and (ii) the equivalent of [] million Dollars (US\$ [],000,000). This insurance coverage shall be maintained during the period commencing on the date of Effectiveness of Agreement and ending on the Commercial Operations Date and shall provide coverage for loss of or damage to materials, machinery or equipment of all contractors, and all subcontractors to be used at or installed into the Complex while in transit to the Site by wet marine conveyances or by air transportation and/or connecting conveyances. The deductibles or co-pay associated with this insurance cover shall be commercially reasonable and shall not exceed, in any event, the equivalent of [] million Dollars (US\$ [],000,000) per event or [] million Dollars (US\$ [],000,000) for all events in the aggregate in any one Year. The Utility shall be named as an additional named insured.

B. General Conditions

- 1.2.1 If any policy must be written on a claims-made basis and such policy is not renewed or the retroactive date of such policy is to be changed, such policy shall contain the broadest basis and supplemental extended reporting period coverage or tail reasonably available in the commercial insurance market for each such policy, and the Company shall provide proof that such basic and supplemental extended reporting period coverage or tail has been obtained.
- 1.2.2 The insurance policies required to be maintained under this Agreement and this Schedule 10 shall be issued by financially strong insurers and reinsurers.
- 1.2.3 If any insurance (including the limits or deductibles thereof) hereby required to be maintained, other than insurance required by law, shall not be available at commercially

Schedule 10-2

reasonably rates and/or on commercially reasonable terms in the commercial insurance market, the Utility shall not unreasonably withhold its agreement to waive such requirement to the extent that maintenance thereof is not so available; provided, however that the Company shall first request any such waiver in writing from the Utility, which request shall be accompanied by written reports prepared by two (2) independent insurance consultants of recognized international standing certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market and explaining in detail the basis for such conclusions. Any such waiver shall be effective only so long as such insurance shall not be available and commercially feasible in the commercial insurance market.

- 1.2.4 The terms, conditions and limits of any insurances required to be provided pursuant to this Schedule 10, and those like insurances which may be required to be provided by any other agreement into which the Company enters, may be satisfied by the purchase of a single insurance program, without any accumulation of the limits required to be obtained pursuant to this Agreement with the limits of similar policies to be obtained under other contracts.

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SCHEDULE 11

DESCRIPTION OF THE COMPLEX

Section 1.1 Power Package Description

[to be supplied by the Company]

Section 1.2 Reference Drawings

The final layout of the Complex will be agreed between the Parties prior to the Effectiveness of the Agreement.

Section 1.3 Equipment Package Details

Below is the list of the equipment that the Company intends to install and operate to satisfy its obligations under this Agreement. The Parties recognize that the listing of the intended equipment does not limit or modify the obligations of the Company under this Agreement and does not constitute approval by the Utility of the equipment chosen by the Company for purposes of this Project.

Equipment	Remarks

Schedule 11-1

Section 1.4 Point of Connection

[to be supplied by the Company]

Section 1.5 Earthing

[to be supplied by the Company]

Section 1.6 Protection & Control

[to be supplied by the Company]

Section 1.7 Auxiliary Power

[to be supplied by the Company]

Section 1.8 Cabling

[to be supplied by the Company]

Section 1.9 Fuel System

[to be supplied by the Company]

SCHEDULE 12

FORM OF BILLING PERIOD INVOICE⁹

To be developed by the Operating Committee to be established
under Section 5.3 of this Agreement

⁹ **Drafting Note: This form, to be developed by the Parties, should separately account for: (i) the Capacity Payment; (ii) the Energy Payment (separating the charge attributable to the Energy Price Fuel Component of the Monthly Energy Payment from the charge attributable to the Reference Energy Price Variable O&M Component of the Monthly Energy Payment; (iii) energy supply to the Company; (iv) liquidated damages; and (v) any other allowable charges or offsets.**

Schedule 12-1



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SCHEDULE 13

DESCRIPTION OF SITE

The area at [LOCATION], which Site the Company shall have the right to enter and use only for the purposes set forth in Section 4.1.2.

SAMPLE

Schedule 13-1

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SCHEDULE 14

FORM OF DELIVERY PERFORMANCE SECURITY

To: [UTILITY] (the "**Beneficiary**")

[Date]

Dear Sirs,

Irrevocable Standby Letter of Credit no. [number]

Whereas an agreement (the "**Agreement**") dated [] has been entered into between [*Name of the Supplier*] (the "**Applicant**") and the Beneficiary.

At the request of the Applicant, the [*Name of Issuing Bank*] of [*address*] (the "**Issuing Bank**") issues this irrevocable standby letter of credit number [number] ("**Letter of Credit**") in your favor, on the following terms and conditions:

1. DEFINITIONS

In this Letter of Credit:

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for general business in [COUNTRY]

"**Demand**" means a demand for a payment under this Letter of Credit in the form prescribed in Clause 5 of this Letter of Credit.

"**Expiry Date**" means [DATE].

"**Total L/C Amount**" means [AMOUNT AND CURRENCY].

2. ISSUING BANK'S AGREEMENT

2.1 The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by 3:00 p.m. ([COUNTRY] time) on the Expiry Date.

2.2 Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within twenty Business Days of the receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand to the bank account nominated in such Demand.

Schedule 14-1

- 2.3 The Issuing Bank will not be obliged to make a payment under this Letter of Credit except for any amount payable under Clause 8 hereof if and to the extent that the aggregate of all payments made by it under this Letter of Credit (ignoring any payment made under Clause 8 as aforesaid) would exceed the Total L/C Amount.

3. EXPIRY

- 3.1 The Issuing Bank will be released from its obligations under this Letter of Credit on the date, if any, notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.
- 3.2 Unless previously released under Clause 3.1 above, at 3:00 p.m. ([COUNTRY] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease, with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.
- 3.3 When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

4. PAYMENTS

All payments under this Letter of Credit shall be made in [CURRENCY] and for value on the due date to the account of the Beneficiary specified in the Demand.

5. DELIVERY OF DEMAND

- 5.1 Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or e-mail and must be received in legible form by the Issuing Bank at its address and by the particular department or officer as follows:

[Name of department, name of officer]

- 5.2 Each Demand shall be accompanied by a signed statement certifying that:
- (i) the Applicant is in breach of its obligations under the Agreement and the respect in which the Applicant is in breach; and that
 - (ii) such claim is not as a result of the Beneficiary's failure to perform its obligations under the Agreement; and that
 - (iii) at the date of the Demand the Beneficiary has made full and proper payment of all invoices raised by the Applicant to the Beneficiary.

6. CHARGES

All charges imposed by the Issuing Bank in connection with this Letter of Credit are for the account of the Applicant.

7. GROSS-UP

All payments due under this Letter of Credit to the Beneficiary shall be calculated and made without any set-off or counterclaim whatsoever and free and clear of all deductions or withholdings whatsoever unless such deduction or withholding is required by applicable law. If any such deduction or withholding is required by applicable law in respect of any payment due to the Beneficiary, the Issuing Bank shall increase that payment to the Beneficiary so that the net amount received by the Beneficiary after the deduction or withholding (and after taking account of any further deduction or withholding which arises as a consequence of the increase) shall be equal to the full amount which the Beneficiary would have been entitled to receive in the absence of any requirement to make a deduction or withholding.

8. DEFAULT INTEREST

If the Issuing Bank fails to pay any sum payable by it under this Letter of Credit on the due date for payment, the Issuing Bank shall pay interest on such sum for the period from and including the due date up to the date of actual payment, both before and after any judgment, at the rate of two per cent per annum above the Issuing Bank's base rate from time to time. Such default interest shall accrue from day to day, shall be compounded at quarterly intervals and shall be paid by the Issuing Bank on demand.

9. ASSIGNMENT

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred. For the avoidance of doubt, nothing in this Letter of Credit shall confer on any third party any benefit or the right to enforce any term of this Letter of Credit.

10. GOVERNING LAW

This Letter of Credit shall be governed and construed in accordance with the laws of [COUNTRY].

11. JURISDICTION

In the event of a dispute between the Applicant and the Beneficiary arising out of or in connection with this Letter of Credit, such matter or matters in dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by three arbitrators, one appointed by each Party, and the third, who shall be the chairman, selected by the two appointed arbitrators and failing agreement by the Chairman of the International Chamber of Commerce. The language of the arbitration shall be English and the place of the arbitration shall be [COUNTRY].

Yours faithfully,

[*Issuing Bank*]

By:

SAMPLE

Schedule 14-4



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SCHEDULE 15

FORM OF OPERATIONS SECURITY

To: [UTILITY] (the "**Beneficiary**")

[Date]

Dear Sirs,

Irrevocable Standby Letter of Credit no. [number]

Whereas an agreement (the "**Agreement**") dated [DATE] has been entered into between [Name of the Supplier] (the "**Applicant**") and the Beneficiary.

At the request of the Applicant, the [Name of Issuing Bank] of [address] (the "**Issuing Bank**") issues this irrevocable standby letter of credit number [number] ("**Letter of Credit**") in your favor, on the following terms and conditions:

1. DEFINITIONS

In this Letter of Credit:

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for general business in [COUNTRY]

"**Demand**" means a demand for a payment under this Letter of Credit in the form prescribed in Clause 5 of this Letter of Credit.

"**Expiry Date**" means [DATE].

"**Total L/C Amount**" means [AMOUNT AND CURRENCY].

2. ISSUING BANK'S AGREEMENT

2.1 The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by 3:00 p.m. ([COUNTRY] time) on the Expiry Date.

2.2 Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within twenty Business Days of the receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand to the bank account nominated in such Demand.

Schedule 15-1

2.3 The Issuing Bank will not be obliged to make a payment under this Letter of Credit except for any amount payable under Clause 8 hereof if and to the extent that the aggregate of all payments made by it under this Letter of Credit (ignoring any payment made under Clause 8 as aforesaid) would exceed the Total L/C Amount.

3. EXPIRY

3.1 The Issuing Bank will be released from its obligations under this Letter of Credit on the date, if any, notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.

3.2 Unless previously released under Clause 3.1 above, at 3:00 p.m. ([COUNTRY] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease, with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.

3.3 When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

4. PAYMENTS

All payments under this Letter of Credit shall be made in [CURRENCY] and for value on the due date to the account of the Beneficiary specified in the Demand.

5. DELIVERY OF DEMAND

5.1 Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or e-mail and must be received in legible form by the Issuing Bank at its address and by the particular department or officer as follows:

[Name of department, name of officer]

5.2 Each Demand shall be accompanied by a signed statement certifying that:

- (i) the Applicant is in breach of its obligations under the Agreement and the respect in which the Applicant is in breach; and that
- (ii) such claim is not as a result of the Beneficiary's failure to perform its obligations under the Agreement; and that
- (iii) at the date of the Demand the Beneficiary has made full and proper payment of all invoices raised by the Applicant to the Beneficiary.

6. CHARGES

All charges imposed by the Issuing Bank in connection with this Letter of Credit are for the account of the Applicant.

7. GROSS-UP

All payments due under this Letter of Credit to the Beneficiary shall be calculated and made without any set-off or counterclaim whatsoever and free and clear of all deductions or withholdings whatsoever unless such deduction or withholding is required by applicable law. If any such deduction or withholding is required by applicable law in respect of any payment due to the Beneficiary, the Issuing Bank shall increase that payment to the Beneficiary so that the net amount received by the Beneficiary after the deduction or withholding (and after taking account of any further deduction or withholding which arises as a consequence of the increase) shall be equal to the full amount which the Beneficiary would have been entitled to receive in the absence of any requirement to make a deduction or withholding.

8. DEFAULT INTEREST

If the Issuing Bank fails to pay any sum payable by it under this Letter of Credit on the due date for payment, the Issuing Bank shall pay interest on such sum for the period from and including the due date up to the date of actual payment, both before and after any judgment, at the rate of two per cent per annum above the Issuing Bank's base rate from time to time. Such default interest shall accrue from day to day, shall be compounded at quarterly intervals and shall be paid by the Issuing Bank on demand.

9. ASSIGNMENT

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred. For the avoidance of doubt, nothing in this Letter of Credit shall confer on any third party any benefit or the right to enforce any term of this Letter of Credit.

10. GOVERNING LAW

This Letter of Credit shall be governed and construed in accordance with the laws of [COUNTRY].

11. JURISDICTION

In the event of a dispute between the Applicant and the Beneficiary arising out of or in connection with this Letter of Credit, such matter or matters in dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by three arbitrators, one appointed by each Party, and the third, who shall be the chairman, selected by the two appointed arbitrators and failing agreement by the Chairman of the International Chamber of Commerce. The language of the arbitration shall be English and the place of the arbitration shall be [COUNTRY].

Yours faithfully,
[Issuing Bank]
By:

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SCHEDULE 16

FORM OF MOBILIZATION SECURITY

To: [UTILITY] (the "**Beneficiary**")

[Date]

Dear Sirs,

Irrevocable Standby Letter of Credit no. [number]

Whereas an agreement (the "**Agreement**") dated [DATE] has been entered into between [Name of the Supplier] (the "**Applicant**") and the Beneficiary.

At the request of the Applicant, the [Name of Issuing Bank] of [address] (the "**Issuing Bank**") issues this irrevocable standby letter of credit number [number] ("**Letter of Credit**") in your favor, on the following terms and conditions:

1. DEFINITIONS

In this Letter of Credit:

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for general business in [COUNTRY]

"**Demand**" means a demand for a payment under this Letter of Credit in the form prescribed in Clause 5 of this Letter of Credit.

"**Expiry Date**" means [DATE].

"**Total L/C Amount**" means [AMOUNT AND CURRENCY].

2. ISSUING BANK'S AGREEMENT

2.1 The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by 3:00 p.m. ([COUNTRY] time) on the Expiry Date.

2.2 Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within twenty Business Days of the receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand to the bank account nominated in such Demand.

Schedule 16-1

2.3 The Issuing Bank will not be obliged to make a payment under this Letter of Credit except for any amount payable under Clause 8 hereof if and to the extent that the aggregate of all payments made by it under this Letter of Credit (ignoring any payment made under Clause 8 as aforesaid) would exceed the Total L/C Amount.

3. EXPIRY

3.1 The Issuing Bank will be released from its obligations under this Letter of Credit on the date, if any, notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.

3.2 Unless previously released under Clause 3.1 above, at 3:00 p.m. ([COUNTRY] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease, with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.

3.3 When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

4. PAYMENTS

All payments under this Letter of Credit shall be made in [CURRENCY] and for value on the due date to the account of the Beneficiary specified in the Demand.

5. DELIVERY OF DEMAND

5.1 Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or e-mail and must be received in legible form by the Issuing Bank at its address and by the particular department or officer as follows:

[Name of department, name of officer]

5.2 Each Demand shall be accompanied by a signed statement certifying that:

- (i) the Applicant is in breach of its obligations under the Agreement and the respect in which the Applicant is in breach; and that
- (ii) such claim is not as a result of the Beneficiary's failure to perform its obligations under the Agreement; and that
- (iii) at the date of the Demand the Beneficiary has made full and proper payment of all invoices raised by the Applicant to the Beneficiary.

6. CHARGES

All charges imposed by the Issuing Bank in connection with this Letter of Credit are for the account of the Applicant.

7. GROSS-UP

All payments due under this Letter of Credit to the Beneficiary shall be calculated and made without any set-off or counterclaim whatsoever and free and clear of all deductions or withholdings whatsoever unless such deduction or withholding is required by applicable law. If any such deduction or withholding is required by applicable law in respect of any payment due to the Beneficiary, the Issuing Bank shall increase that payment to the Beneficiary so that the net amount received by the Beneficiary after the deduction or withholding (and after taking account of any further deduction or withholding which arises as a consequence of the increase) shall be equal to the full amount which the Beneficiary would have been entitled to receive in the absence of any requirement to make a deduction or withholding.

8. DEFAULT INTEREST

If the Issuing Bank fails to pay any sum payable by it under this Letter of Credit on the due date for payment, the Issuing Bank shall pay interest on such sum for the period from and including the due date up to the date of actual payment, both before and after any judgment, at the rate of two per cent per annum above the Issuing Bank's base rate from time to time. Such default interest shall accrue from day to day, shall be compounded at quarterly intervals and shall be paid by the Issuing Bank on demand.

9. ASSIGNMENT

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred. For the avoidance of doubt, nothing in this Letter of Credit shall confer on any third party any benefit or the right to enforce any term of this Letter of Credit.

10. GOVERNING LAW

This Letter of Credit shall be governed and construed in accordance with the laws of [COUNTRY].

11. JURISDICTION

In the event of a dispute between the Applicant and the Beneficiary arising out of or in connection with this Letter of Credit, such matter or matters in dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by three arbitrators, one appointed by each Party, and the third, who shall be the chairman, selected by the two appointed arbitrators and failing agreement by the Chairman of the International Chamber of Commerce. The language of the arbitration shall be English and the place of the arbitration shall be [COUNTRY].

Yours faithfully,
[Issuing Bank]
By:

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SCHEDULE 17

FORM OF ADVANCE PAYMENT SECURITY

To: [UTILITY] (the "**Beneficiary**")

[Date]

Dear Sirs,

Irrevocable Standby Letter of Credit no. [number]

Whereas an agreement (the "**Agreement**") dated [DATE] has been entered into between [Name of the Supplier] (the "**Applicant**") and the Beneficiary.

At the request of the Applicant, the [Name of Issuing Bank] of [address] (the "**Issuing Bank**") issues this irrevocable standby letter of credit number [number] ("**Letter of Credit**") in your favor, on the following terms and conditions:

1. DEFINITIONS

In this Letter of Credit:

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for general business in [COUNTRY]

"**Demand**" means a demand for a payment under this Letter of Credit in the form prescribed in Clause 5 of this Letter of Credit.

"**Expiry Date**" means [DATE].

2. ISSUING BANK'S AGREEMENT

2.1 The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by 3:00 p.m. ([COUNTRY] time) on the Expiry Date.

2.2 Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within twenty Business Days of the receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand to the bank account nominated in such Demand.

2.3 The Issuing Bank will not be obliged to make a payment under this Letter of Credit except for any amount payable under Clause 8 hereof if and to the extent that the aggregate of all payments made by it under this Letter of Credit (ignoring any payment made under Clause 8 as aforesaid) would exceed the Total L/C Amount.

3. EXPIRY

3.1 The Issuing Bank will be released from its obligations under this Letter of Credit on the date, if any, notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.

3.2 Unless previously released under Clause 3.1 above, at 3:00 p.m. ([COUNTRY] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease, with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.

3.3 When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

4. PAYMENTS

All payments under this Letter of Credit shall be made in [CURRENCY] and for value on the due date to the account of the Beneficiary specified in the Demand.

5. DELIVERY OF DEMAND

5.1 Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or e-mail and must be received in legible form by the Issuing Bank at its address and by the particular department or officer as follows:

[Name of department, name of officer]

5.2 Each Demand shall be accompanied by a signed statement certifying that:

- (i) the Applicant is in breach of its obligations under the Agreement and the respect in which the Applicant is in breach; and that
- (ii) such claim is not as a result of the Beneficiary's failure to perform its obligations under the Agreement; and that
- (iii) at the date of the Demand the Beneficiary has made full and proper payment of all invoices raised by the Applicant to the Beneficiary.

6. CHARGES

All charges imposed by the Issuing Bank in connection with this Letter of Credit are for the account of the Applicant.

7. GROSS-UP

All payments due under this Letter of Credit to the Beneficiary shall be calculated and made without any set-off or counterclaim whatsoever and free and clear of all deductions or withholdings whatsoever unless such deduction or withholding is required by applicable law. If any such deduction or withholding is required by applicable law in respect of any payment due to the Beneficiary, the Issuing Bank shall increase that payment to the Beneficiary so that the net amount received by the Beneficiary after the deduction or withholding (and after taking account of any further deduction or withholding which arises as a consequence of the increase) shall be equal to the full amount which the Beneficiary would have been entitled to receive in the absence of any requirement to make a deduction or withholding.

8. DEFAULT INTEREST

If the Issuing Bank fails to pay any sum payable by it under this Letter of Credit on the due date for payment, the Issuing Bank shall pay interest on such sum for the period from and including the due date up to the date of actual payment, both before and after any judgment, at the rate of two per cent per annum above the Issuing Bank's base rate from time to time. Such default interest shall accrue from day to day, shall be compounded at quarterly intervals and shall be paid by the Issuing Bank on demand.

9. ASSIGNMENT

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred. For the avoidance of doubt, nothing in this Letter of Credit shall confer on any third party any benefit or the right to enforce any term of this Letter of Credit.

10. GOVERNING LAW

This Letter of Credit shall be governed and construed in accordance with the laws of [COUNTRY].

11. JURISDICTION

In the event of a dispute between the Applicant and the Beneficiary arising out of or in connection with this Letter of Credit, such matter or matters in dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by three arbitrators, one appointed by each Party, and the third, who shall be the chairman, selected by the two appointed arbitrators and failing agreement by the Chairman of the International Chamber of Commerce. The language of the arbitration shall be English and the place of the arbitration shall be [COUNTRY].

Yours faithfully,
[Issuing Bank]
By:

SCHEDULE 18

FORM OF DEMOBILIZATION SECURITY

To: [UTILITY] (the "Beneficiary")

[Date]

Dear Sirs,

Irrevocable Standby Letter of Credit no. [number]

Whereas an agreement (the "Agreement") dated [DATE] has been entered into between [Name of the Supplier] (the "Applicant") and the Beneficiary.

At the request of the Applicant, the [Name of Issuing Bank] of [address] (the "Issuing Bank") issues this irrevocable standby letter of credit number [number] ("Letter of Credit") in your favor, on the following terms and conditions:

1. DEFINITIONS

In this Letter of Credit:

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for general business in [COUNTRY]

"Demand" means a demand for a payment under this Letter of Credit in the form prescribed in Clause 5 of this Letter of Credit.

"Expiry Date" means [DATE].

"Total L/C Amount" means [AMOUNT AND CURRENCY].

2. ISSUING BANK'S AGREEMENT

- 2.1 The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by 3:00 p.m. ([COUNTRY] time) on the Expiry Date.
- 2.2 Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within twenty Business Days of the receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand to the bank account nominated in such Demand.
- 2.3 The Issuing Bank will not be obliged to make a payment under this Letter of Credit except for any amount payable under Clause 8 hereof if and to the extent that the aggregate of all payments made by it under this Letter of Credit (ignoring any payment made under Clause 8 as aforesaid) would exceed the Total L/C Amount.

3. EXPIRY

- 3.1 The Issuing Bank will be released from its obligations under this Letter of Credit on the date, if any, notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.
- 3.2 Unless previously released under Clause 3.1 above, at 3:00 p.m. ([COUNTRY] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease, with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.
- 3.3 When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

4. PAYMENTS

All payments under this Letter of Credit shall be made in [CURRENCY] and for value on the due date to the account of the Beneficiary specified in the Demand.

5. DELIVERY OF DEMAND

- 5.1 Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or e-mail and must be received in legible form by the Issuing Bank at its address and by the particular department or officer as follows:

[Name of department, name of officer]

- 5.2 Each Demand shall be accompanied by a signed statement certifying that:
- (i) the Applicant is in breach of its obligations under the Agreement and the respect in which the Applicant is in breach; and that
 - (ii) such claim is not as a result of the Beneficiary's failure to perform its obligations under the Agreement; and that
 - (iii) at the date of the Demand the Beneficiary has made full and proper payment of all invoices raised by the Applicant to the Beneficiary.

6. CHARGES

All charges imposed by the Issuing Bank in connection with this Letter of Credit are for the account of the Applicant.

7. GROSS-UP

All payments due under this Letter of Credit to the Beneficiary shall be calculated and made without any set-off or counterclaim whatsoever and free and clear of all deductions or withholdings whatsoever unless such deduction or withholding is required by applicable law. If any such deduction or withholding is required by applicable law in

respect of any payment due to the Beneficiary, the Issuing Bank shall increase that payment to the Beneficiary so that the net amount received by the Beneficiary after the deduction or withholding (and after taking account of any further deduction or withholding which arises as a consequence of the increase) shall be equal to the full amount which the Beneficiary would have been entitled to receive in the absence of any requirement to make a deduction or withholding.

8. DEFAULT INTEREST

If the Issuing Bank fails to pay any sum payable by it under this Letter of Credit on the due date for payment, the Issuing Bank shall pay interest on such sum for the period from and including the due date up to the date of actual payment, both before and after any judgment, at the rate of two per cent per annum above the Issuing Bank's base rate from time to time. Such default interest shall accrue from day to day, shall be compounded at quarterly intervals and shall be paid by the Issuing Bank on demand.

9. ASSIGNMENT

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred. For the avoidance of doubt, nothing in this Letter of Credit shall confer on any third party any benefit or the right to enforce any term of this Letter of Credit.

10. GOVERNING LAW

This Letter of Credit shall be governed and construed in accordance with the laws of [COUNTRY].

11. JURISDICTION

In the event of a dispute between the Applicant and the Beneficiary arising out of or in connection with this Letter of Credit, such matter or matters in dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by three arbitrators, one appointed by each Party, and the third, who shall be the chairman, selected by the two appointed arbitrators and failing agreement by the Chairman of the International Chamber of Commerce. The language of the arbitration shall be English and the place of the arbitration shall be [COUNTRY].

Yours faithfully,

[Issuing Bank]

By:

This document has been prepared for the purposes of the
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should be adapted to fit the circumstances of that project

SCHEDULE 19

FORM OF UTILITY SECURITY

To: [Name and address of the Supplier] (the "**Beneficiary**") [Date]

Dear Sirs,

Irrevocable Standby Letter of Credit no. [number]

Whereas an agreement (the "**Agreement**") dated [DATE] has been entered into between [UTILITY] (the "**Applicant**") and the Beneficiary.

At the request of the Applicant, the Bank of [COUNTRY] of [ADDRESS] (the "**Issuing Bank**") issues this irrevocable standby letter of credit number [number] ("**Letter of Credit**") in your favor on the following terms and conditions:

1. DEFINITIONS

In this Letter of Credit:

"**Business Day**" means a day (other than a Saturday or a Sunday) on which banks are open for general business in [COUNTRY]

"**Demand**" means a demand for a payment under this Letter of Credit in the form prescribed in Clause 5 of this Letter of Credit.

"**Expiry Date**" means [DATE].

"**Total L/C Amount**" means [AMOUNT AND CURRENCY].

2. ISSUING BANK'S AGREEMENT

2.1 The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by 3:00 p.m. ([COUNTRY] time) on the Expiry Date.

2.2 Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within twenty Business Days of the receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand to the bank account nominated in such Demand.

2.3 The Issuing Bank will not be obliged to make a payment under this Letter of Credit except for any amount payable under Clause 8 hereof if and to the extent that the aggregate of all

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payments made by it under this Letter of Credit (ignoring any payment made under Clause 8 as aforesaid) would exceed the Total L/C Amount.

3. EXPIRY

- 3.1 The Issuing Bank will be released from its obligations under this Letter of Credit on the date, if any, notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.
- 3.2 Unless previously released under Clause 3.1 above, at 3:00 p.m. ([COUNTRY] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease, with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.
- 3.3 When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

4. PAYMENTS

All payments under this Letter of Credit shall be made in [CURRENCY] and for value on the due date to the account of the Beneficiary specified in the Demand.

5. DELIVERY OF DEMAND

- 5.1 Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or e-mail and must be received in legible form by the Issuing Bank at its address and by the particular department or officer as follows:

[Name of department, name of officer]

- 5.2 Each Demand shall be accompanied by a signed statement certifying that:
 - (i) the Applicant is in breach of its obligations under the Agreement and the respect in which the Applicant is in breach; and that
 - (ii) such claim is not as a result of the Beneficiary's failure to perform its obligations under the Agreement; and that
 - (iii) at the date of the Demand the Beneficiary has made full and proper payment of all invoices raised by the Applicant to the Beneficiary.

6. CHARGES

All charges imposed by the Issuing Bank in connection with this Letter of Credit are for the account of the Applicant.

7. GROSS-UP

All payments due under this Letter of Credit to the Beneficiary shall be calculated and made without any set-off or counterclaim whatsoever and free and clear of all deductions or withholdings whatsoever unless such deduction or withholding is required by applicable law. If any such deduction or withholding is required by applicable law in respect of any payment due to the Beneficiary, the Issuing Bank shall increase that payment to the Beneficiary so that the net amount received by the Beneficiary after the deduction or withholding (and after taking account of any further deduction or withholding which arises as a consequence of the increase) shall be equal to the full amount which the Beneficiary would have been entitled to receive in the absence of any requirement to make a deduction or withholding.

8. DEFAULT INTEREST

If the Issuing Bank fails to pay any sum payable by it under this Letter of Credit on the due date for payment, the Issuing Bank shall pay interest on such sum for the period from and including the due date up to the date of actual payment, both before and after any judgment, at the rate of two per cent per annum above the Issuing Bank's base rate from time to time. Such default interest shall accrue from day to day, shall be compounded at quarterly intervals and shall be paid by the Issuing Bank on demand.

9. ASSIGNMENT

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred. For the avoidance of doubt, nothing in this Letter of Credit shall confer on any third party any benefit or the right to enforce any term of this Letter of Credit.

10. GOVERNING LAW

This Letter of Credit shall be governed and construed in accordance with the laws of [COUNTRY].

11. JURISDICTION

In the event of a dispute between the Applicant and the Beneficiary arising out of or in connection with this Letter of Credit, such matter or matters in dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by three arbitrators, one appointed by each Party, and the third, who shall be the chairman, selected by the two appointed arbitrators and failing agreement by the Chairman of the International Chamber of Commerce. The language of the arbitration shall be English and the place of the arbitration shall be [COUNTRY].

Yours faithfully,
[Issuing Bank]
By: