

**Standardised Power Purchase Agreement
for Renewable Energy Generators greater than
10 MW**

AGREEMENT FOR POWER PURCHASE

DATED

Between

(as "the Seller")

- AND -

THE KENYA POWER AND LIGHTING COMPANY LIMITED

(as "the Buyer ")

POWER PURCHASE AGREEMENT

Standardised PPA for large renewable energy generators (greater than 10 MW)

THIS AGREEMENT is made thisday of20...

BETWEEN

.....a company incorporated in the Republic of Kenya [a limited partnership incorporated under the Limited Partnerships Act, Chapter 30 of the Laws of Kenya] with its registered office at, and of Post office Box Number.....(hereinafter referred to as “the Seller”), which expression shall, where the context so admits, include its successors in title and assigns) of the one part ;

AND

THE KENYA POWER AND LIGHTING COMPANY LIMITED, a company incorporated in the Republic of Kenya with its registered office at Stima Plaza along Kolobot Road in Nairobi and of Post Office Box Number 30099 – 00100, Nairobi,(hereinafter referred to as “the Buyer” which expression shall, where the context so admits include its successors and assigns” of the third part.

WHEREAS:

1. The Buyer is licensed to purchase, transmit, distribute and supply electricity in the Republic of Kenya;
2. The Seller intends to construct aMWpower generation plant at of whichis for captive use and the rest for sale to the Buyer and
3. The Seller and the Buyer have agreed to enter into an power purchase agreement (being this Agreement) for the sale ofMW to the Buyer pursuant to the Feed – In – Tariffs Policy.

NOW IT IS AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

1 Defined Terms

In this Agreement, unless the context requires otherwise, the following words shall have the following meanings –

“*Appendix A*”: Description of the Plant

“*Appendix B (1)*”: The standardised tariffs and escalators for purchase and sale of Net Electrical Output applicable to this Agreement.

“*Appendix B (2)*”: The computation of Deemed Generated Energy Payments.

“*Appendix C*.” Designation of the Interconnection Facilities and Requirements

“*Appendix D*.” Contents of Seller’s Invoice

“*Appendix E*.” Designated address and contact persons for each Party.

“*Appendix F*.” Transfer Amount specified in Clause 11.3

“*Appendix G*.” Particulars of the Lenders

Standardised PPA for large renewable energy generators (greater than 10 MW)

Annual dependable output:

"*Change in Law*" means any of the following events occurring after the Signature Date, and which despite the exercise of Prudent Operating Practice by the Seller or THE BUYER (i) results in a material increase in the operating costs or capital expenditure incurred by the Seller in performing its obligations under this Agreement or (ii) imposes requirements for the design, construction, operation or maintenance of the Plant or the Buyer's System that are materially more onerous than the requirements in effect as of the Signature Date, and that affect the Seller's performance under this Agreement, , or that affect the Buyer's performance under this Agreement:

- a. a change in, or in the interpretation (by a governmental authority), application or enforcement of, or the enactment or adoption of or promulgation, bringing into effect of, repeal, amendment of, any legal requirement; or
- b. any change in any authorization required in connection with this Agreement or any additional requirements or conditions imposed by any governmental authority in connection with the issuance, extension, replacement, variation or renewal of any authorization required in connection with this Agreement provided that in respect of the issuance, extension, replacement, variation or renewal of any authorization required in connection with this Agreement, the Party requiring the relevant authorization has first diligently attempted to obtain such authorization and if the processes required by such duty of diligence have not been exhausted, such processes have been and are still being diligently pursued by that Party;

"*Commissioning*:" Conduct of tests necessary to put a unit or the Plant (as the case may be) into operation and the term "*Commission*" shall be construed accordingly;

"*Deemed Generated Energy*": The electrical energy expressed in kWh that as a result of the Buyer's System Interruption is not generated and/or delivered to the Buyer at the Delivery Point;

"*Deemed Generated Energy Payments*" has the meaning given in Clause 6.16;

"*Default Rate*:" Two percentage points above LIBOR;

"*Delivery Point*:" The point of common coupling as shown in Appendix C at which the Net Electrical Output from the Plant is delivered to the Buyer;

"*Emergency*:" A condition or situation that in the reasonable opinion of either Party does materially or adversely, or is likely materially or adversely to –

- a. Affect the ability of either Party to maintain a safe, adequate or continuous supply of electrical energy to its customers; or
- b. Does or is likely to present a physical threat to persons or property or security integrity or reliability of the Buyer's System or the Plant;

"*Effective Date*:" Has the meaning subscribed to it in Clause 3.1;

"*Environmental Attributes*": Any and all Carbon Credits and any and all fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets and allowances arising out of any international, national or other laws or regulations (and whether now existing or enacted in the future), including any such laws or regulations relating to oxides of nitrogen, sulphur or carbon, particulate matter, soot or mercury, resulting from the generation of energy or the avoidance of the emission of any gas, chemical or other substance to the air, soil or water attributable to such generation;

Standardised PPA for large renewable energy generators (greater than 10 MW)

“Feed – In – Tariffs Policy:” The Feed – In – Tariffs Policy on Wind, Biomass, hydro, Geothermal, Biogas and Solar Resource Generated Electricity first issued by the Ministry of Energy on March 2008 and subsequently revised;

“First Commissioning Date:” Has the meaning subscribed to it in Clause 5.6;

“Force Majeure:” Has the meaning ascribed to it in Clause 10;

“Full Commercial Operation Date:” The date notified by the Seller in accordance with Clause 5.7;

“Generating Licence:” Has the meaning ascribed to it in the Energy Act, (or any similar licence or other authorisation pursuant to legislation replacing the Energy Act);

“Interconnection Facilities:” The point where the Seller’s Net Electrical Output line or electric system feeds into the Buyer’s electric system and facilities required to connect the plant to the buyers system;

“Interconnection Point:” the point at which the interconnection equipment and protection equipment is located as shown in Appendix C.

“the Buyer’s System:” The transmission system operated by the Buyer and the distribution systems, and ancillary plant and equipment connected to such transmission system;

“kW:” Kilowatt;

“kWh:” Kilowatt hour being three million six hundred thousand (3,600,000) Joules as defined in ISO 100.1992(E);

“Lenders:” The financial institutions specified in Appendix E, which term includes their successors and assigns;

“LIBOR:” Means in respect of any day –

- a. The rate per annum equal to the arithmetic mean (rounded upwards, if necessary, to the nearest whole multiple of one sixteenth of one percent (1/16%) of the offered rates per annum for deposits of a principal sum equivalent to the sum in question in US Dollars for a period commencing on such day and ending seven (7) days later which appear on the Dow Jones Markets Screen at or about eleven o’clock in the morning (11.00a.m) London time two (2) business days prior to such day, provided always that at least two offered rates appear on the Dow Jones Markets Screen Page; or
- b. If at least two (2) offered rates do not appear on the Dow Jones Markets Screen Page as contemplated by the proviso to paragraph (a) of this definition, the rate per annum, (rounded upwards if necessary, to the nearest whole multiple of one sixteenth of one percent (1/16%) per annum of the interest rate per annum offered at approximately eleven o’clock in the morning (11.00a.m) London time by at least three (3) reference banks (selected by the Party entitled to receive the payment due)two (2) business days prior to such day and for delivery on such day, to major banks in the London Interbank Market for deposits in US Dollars in the amount of the sum in question;

Standardised PPA for large renewable energy generators (greater than 10 MW)

“*Long Stop Full Commercial Operation Date*”: the date falling within twenty four (24) months after the Effective Date or any extension thereof falling within thirty six months (36) after the Effective Date agreed between the Parties;

“Material”.

“*Mwh*”: Megawatt hour being one thousand (1000)kWh;

“*Must Take Facility*”: A facility where the Buyer must take and purchase the Net Electrical Output, not exceeding the annual dependable output, equivalent to 75% of net electrical output, to be generated at the Plant and delivered and sold to the Buyer, subject only to such necessary directions or protocols as may be issued by the Buyer for protection of its electric system.

“*Net Electrical Output*”: Energy from the Plant measured in kilowatt hours (kWh) which is generated at the Plant and delivered to the Buyer at the Delivery Point;

“*Non – Default Rate*”: LIBOR;

“*Parties*”: the Buyer and the Seller;

“*Plant*”: All the Seller’s electrical prime movers and generators, together with all protective and other associated or auxiliary equipment of the Seller, and rights to own or use land associated with the electrical prime movers and generators, necessary to produce the Net Electrical Output pursuant to this Agreement;

“*Prudent Operating Practice*”: In relation to either Party, standards of practice obtained by exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled and experienced person engaged in the same type of undertaking;

“*Scheduled Outage*”: An outage at the Plant which is scheduled in advance for the purpose of performing maintenance of the Plant;

“*Signature Date*”: The date of this Agreement;

“*Large FIT Power Project*”: A project of any capacity that generates electric energy from renewable energy sources and sells pursuant to this Agreement over ten (10) MW of such output;

“*Target Effective Date*”: (*Insert actual date*);

“*Term*”: The period from the Effective Date until the expiry of this Agreement in accordance with Clause 2 or earlier termination;

“*Tariff*”: The charge rate per kilowatt hour (kWh) defined in the FITs tariff policy and specified in Appendix B: (1);

“*The Energy Regulatory Commission*”: The Energy Regulatory Commission established under section 4 of the Energy Act; and

“*The Energy Act*”: The Energy Act, No.12 of 2006, of the Laws of Kenya.

Standardised PPA for large renewable energy generators (greater than 10 MW)

In this Agreement, unless the context otherwise requires –

- 1 Reference to a business day is reference to any day which is not a Saturday, Sunday or recognised public holiday in the Republic of Kenya;
- 2 Reference to a day, week or month is reference to a calendar day, week or month;
- 3 Reference to Clauses, Appendices or paragraphs or figures are reference to clauses, paragraphs and figures of and to this Agreement;
- 4 Words in the singular shall be interpreted as referring to the plural and vice versa, and words denoting persons shall be interpreted as referring to natural and legal persons;
- 5 The term *including* shall be construed without any limitation;
- 6 A requirement that payment be made on a day which is not a business day shall be construed as a requirement that the payment be made on the next business day;
- 7 Headings are for convenience only and shall not affect the construction of this Agreement; and
- 8 Unless otherwise provided herein, where a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed.

2. EFFECTIVENESS AND TERM

1. Effectiveness

The Parties' obligations shall commence from full commercial effective date and shall unless earlier terminated in accordance with its term continue in full force and effect for a period of twenty (20) years.

2. Extension of Term

The term may be extended subject to agreement in writing by the Parties to such extension at least twelve (12) months prior to its expiry and on such terms as the Parties may agree, and prior consent from the Energy Regulatory Commission.

3. Scope

In accordance with and subject to the terms and conditions this Agreement:

1. The Seller will finance, design, procure, construct, install, test, commission, operate and maintain the Plant in accordance with Prudent Operating Practice, supply and install the Main Metering Equipment and the Back-Up Metering Equipment, supply and install Buyer's Connection Facilities, transfer to the Buyer the Buyer Connection Facilities and the Back Up Metering Equipment and sell the Net Electrical Output to the Buyer; and
2. The Buyer will take delivery of Net Electrical Output and pay Energy Charges for such Net Electrical Output.
- 3.

3. CONDITIONS PRECEDENT

1. Conditions

Standardised PPA for large renewable energy generators (greater than 10 MW)

Except for the Parties' respective obligations in Clauses 3.2, 3.3 and 3.4 or as otherwise provided herein, the Parties' obligations hereunder shall commence on the date ("the Effective Date") on which the last of the following conditions shall have been satisfied –

- 1 This Agreement is approved by the Energy Regulatory Commission.
- 2 The Generating Licence in respect of the Plant is issued to the Seller; and
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1 The Seller's Conditions

The Seller shall use all reasonable endeavours to facilitate the satisfaction of the conditions in Clause 3.1 prior to the Target Effective Date or such other date as the Parties may agree in writing.

2 The Buyer's Conditions

The Buyer shall use all reasonable endeavours to facilitate satisfaction of the conditions in Clause 3.1 on or prior to the Target Effective Date or such other date as the Parties may agree in writing.

3 Progress Review

The Parties shall jointly review progress made towards achieving satisfaction of the Conditions Precedent on a monthly basis and shall notify each other promptly of any anticipated delay in the Effective Date occurring beyond the Target Effective Date.

4 Non- Satisfaction of Condition Precedent

If any of the Conditions Precedent shall not have been satisfied within six (6) months from the Target Effective Date or such later date as the Parties may agree in writing, then this Agreement shall terminate at such date, in which event this agreement shall be deemed null and void *ab initio* and neither Party shall have any liability whatsoever to the other Party under this Agreement.

3 INTERCONNECTION WITH THE BUYER

1 Interconnection Facilities

The Seller shall make all arrangements at its own expense necessary to transmit and deliver the Net Electrical Output to the Buyer at the Delivery Point: the Buyer shall cooperate with the Seller in these arrangements.

2 The Seller's Responsibility

The Seller shall at the Seller's own cost design, purchase, construct, operate and maintain the Interconnection Facilities prior to commissioning; the Seller shall pay for the upgrading of equipment in the buyer system necessary to enable the delivery of the net electrical output into the buyers system. The design of the Interconnection Facilities shall be compliant with the Buyer's equipment, transmission and distribution requirements and standards, including interconnection guidelines.

- 1 Upon completion and commissioning of Interconnection Facilities, the Seller shall transfer to the Buyer, and the Buyer shall accept, own and maintain the interconnection facilities, as beneficial owner all rights title and interest therein free of any encumbrances together with all the applicable warranties and guarantees in respect thereof and the Seller shall not be liable to the Buyer in respect of the Interconnection Facilities from the date of such transfer, provided that –

- 2 The cost of undertaking the design, purchase, construction, installation, testing and commissioning of Interconnection Facilities is deemed included in the Tariff;

Standardised PPA for large renewable energy generators (greater than 10 MW)

- 3 The Seller shall at all times, prior to the transfer to the Buyer of the Interconnection Facilities in accordance with Clause 4.2, retain responsibility for ensuring the Interconnection Facilities meet the Buyer's specifications.
- 3 The Buyer's Responsibility
The Buyer shall provide to the Seller the details for the Interconnection Facilities to enable design, purchase, construction and commissioning of the Interconnection Facilities.
- 4 Connection to the Buyer's System
The Seller shall liaise with the Buyer for the connection of the Plant to the Buyer System at the Delivery Point.
- 5 Information
The Seller shall keep the Buyer informed of the progress of the design, financing, supply, construction and installation of the Interconnection Facilities and equipment to be installed by it pursuant to Clauses 4.1 and 4.2, and every month shall provide a progress report in respect thereof.
- 6 Monitor Progress
The Seller shall-
 - 1 Ensure that the Buyer and any representatives appointed by the Buyer, are afforded reasonable access to the Site upon giving the Seller reasonable notice provided that such access does not materially interfere with the construction works or expose any person on the Site to any danger;
 - 2 Make available for inspection at the Site copies of all plans and designs, other than any proprietary information of the Seller or any sub contractor, in relation to the construction, or any part thereof; and
 - 3 Within three (3) months of the Plant commissioning date, supply the Buyer with one(1) set of reproducible copies and two(2) sets of white print copies or equivalent of all "as built" plans and designs relating to the operation or maintenance of the Interconnection Facilities as the Buyer may reasonably require. The Seller shall also provide to the Buyer two (2) copies of the operation and maintenance manuals in respect of the Interconnection Facilities.
- 7 Disclaimer
The Seller
 - 1 Accepts that any information provided by the Seller under Clause 4.5 or any engineering review or inspection conducted by the Buyer under Clause 4.6 is solely for the Buyer's own information and accordingly, the Buyer's review or failure to review or carry out any inspection under Clause 4.6.2 shall not be construed as constituting any approval or acceptance of Interconnection Facilities or the Plant, and the Buyer makes no representation as to the engineering soundness of the Interconnection Facilities or the Plant nor shall it be treated as having accepted Interconnection Facilities or the Plant as fit to meet the terms of this Agreement.
 - 2 Shall in no way represent to any third party that the buyer is responsible for the engineering soundness of the plant as a result of any review or inspection done by the buyer.
 - 3 Shall, subject to the other provisions of this Agreement, be solely responsible for the economic and financial feasibility, operational capacity and reliability of the Plant.

Standardised PPA for large renewable energy generators (greater than 10 MW)

4 COMMISSIONING AND TESTING

1 The Seller's Obligations

The Seller shall carry out commissioning in accordance with Prudent Operating Practice and any procedure agreed on by the Parties.

2 Notifications

The Seller shall give at least seven (7) day's prior notice to the Buyer of the date commencement of commissioning and testing of the first unit.

3 The Buyer's Attendance

The Buyer shall, in respect of the Interconnection Facilities, have the right to be present at the Site on each occasion, on which the test is being conducted, and to inspect and witness the test, and to receive, within fifteen (15) days after the test, a written copy of the test reports.

4 Appointment of Independent Engineer

The Seller shall not less than fourteen(14) days prior to the commencement of the commissioning, appoint an independent suitably qualified professional engineer or firm acceptable to the Buyer(" the Independent Engineer") who shall among other things witness the commissioning and Testing of the Interconnection Facilities. All fees and costs payable to the Independent Engineer (including those incurred in making such appointment) shall be borne by the Seller.

5 The Interconnection Facilities

The Seller shall test and commission the Interconnection Facilities in accordance with the Commissioning and Testing procedures set out in Appendix C and further procedures agreed or determined pursuant to Clause 5.1 and in accordance with Prudent Operating Practice not later than one (1) month before the First Commissioning Date. The Seller shall before the First Commissioning Date ensure that the Interconnection Facilities are available for operation.

6 First Commissioning Date

The First Commissioning Date shall be the date notified to the Buyer as the target date for the start of commissioning of the first unit.

7 Plant Commercial Operation Tests

Upon satisfactory completion of the Plant Commercial Operations Test, the Seller shall procure the issue of a certificate of the Independent Engineer certifying, without any material qualification, that the Plant's Commissioning has been completed and that the Plant is available for commercial operation. The Seller shall, upon issue of the certificate, give notice to the Buyer of a date ("the Full Commercial Operation Date") being a date not later than twenty one (21) days after completion of commissioning.

8 Synchronization

1 The Seller shall ensure that the Plant has adequate protection equipment prior to synchronization with the Buyer System. The Seller and the Buyer shall inspect and verify the protection equipment of the Plant together with the setting and operation of the protection relay equipment of the Plant and switchgear prior to synchronization and commencement of delivery of the Net Electrical Output by the Seller to the Buyer.

Standardised PPA for large renewable energy generators (greater than 10 MW)

Neither Party shall be liable to the other for any damage which may be caused to their Plant or equipment during such synchronization.

- 2 The Seller shall notify the Buyer in writing at least thirty (30) days prior to synchronizing or operating the Plant for the first time in parallel with the Buyer's system, and coordinate such commencement of operation with the Buyer at this first time and in future times that the Seller resynchronizes or begins again to operate after a cessation of operation in parallel with the Buyer's grid.

9 The Buyer's Cooperation

The Buyer shall, subject to any constraints on the Buyer System, cooperate with the Seller so as to enable the Seller to commission the Plant in accordance with this Clause 5 and in particular will authorize connection to the Buyer System and dispatch the Plant to the extent reasonably required by the Seller for such purpose.

10 Interconnection Liability

The Seller shall accept all liability and release the Buyer from and indemnify the Buyer against any liability for faults or damage to the Seller's Interconnection Facility, the Buyer's electric system and the public as a result of any usage of the Seller's Interconnection Facility which is in any manner inconsistent with Prudent Operating Practice.

11 Commissioning and Testing Output

The Buyer shall pay energy charges to the Seller for all Net Electrical Output supplied from the Plant during Testing and Commissioning at the rate of the feed-in tariff as specified in Appendix B(1).

12 The Buyer's Right To Terminate

If the Full Commercial Operating Date is not achieved by the Long Stop Full Commercial Operation Date, other than in the circumstances described in Clause 11.1.1 of this Agreement, the Buyer shall be entitled to terminate the Agreement.

5 DELIVERY, SALE AND PURCHASE OF ELECTRICITY

1 Delivery of Net Electrical Output

From the full commercial operation date and thereafter, the Seller agrees to deliver and sell to the Buyer the Net Electrical Output for the term of this Agreement specified in Clause 2 and at the price specified in Clause 6.15.

2 Acceptance and Purchase of Net Electrical Output

From the full commercial operation date and thereafter, the Buyer agrees and covenants to accept into its transmission system and to purchase for the term of this Agreement as specified in Clause 2 and at the price specified in Clause 6.15, the Net Electrical Output when delivered by the Seller. The Buyer shall pay for the Net Electrical Output as ascertained and determined by the metering equipment in accordance with Clause 7.5.

3 Environmental Attributes

Any environmental attributes recognized under any international, national or other laws or regulations, associated with the ownership or generation of power from the Plant, including but not limited to carbon credits or attributes created pursuant to the Kyoto Protocol or any

Standardised PPA for large renewable energy generators (greater than 10 MW)

successor protocols or agreements, are not included in the Net Electrical Output transferred to the Buyer and shall remain the property, and under the control, of the Seller.

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4 Operation of the Plant

1 The Seller shall operate the Plant to the maximum extent feasible consistent with Prudent Operating Practice. The Buyer shall not assert the Seller's liability for, and the Seller shall not be liable to the Buyer for, any direct damages resulting from the Seller's inadvertent or accidental failure to deliver the Net Electrical Output unless the Seller is grossly negligent. Unless specifically allowed pursuant to this Agreement, where without the Buyer's prior written approval the Seller deliberately reduces the expected net electrical output for the purpose of selling or attempting to sell the Net Electrical Output to any third party, or for the purpose of producing any other form of energy capable of being produced at the Plant in lieu of the Net Electrical Output, the limitation of the Seller's liability shall not apply.

2 Where the Seller's plant is isolated from the Buyer's System or stops delivering electricity into the Buyer's System for any reason, the Seller shall prior to synchronizing with the Buyer's System obtain consent to synchronize from the controller on duty at the dispatch Centre.

5 Forecasts

Prior to the First Commissioning Date and thereafter on or before each subsequent contract year, the Seller shall furnish the Buyer with a two(2) year forecast of its anticipated operations that include anticipated monthly generation availability and Scheduled Outages for each year; provided however, that the Seller shall have no liability to the Buyer and shall be subject to no liability, reduced payment, or penalty in the event that the actual amount of Net Electrical Output delivered to the Buyer, or the times of such delivery, differ from the amounts or times shown in the said forecasts.. The Seller shall notify the Buyer of its Scheduled Outages and notify the Buyer if such plans change.

6 Scheduled Outages

The Seller shall attempt to coordinate any Scheduled Outage, subject to Prudent Operating Practice with the Buyer's reasonable request. The Seller shall notify the Buyer one month in advance of Scheduled Outages, including a non-binding estimate of each outage, and as soon as possible, of any unscheduled outages, including a non-binding estimate of each outage.

7 Transmission System Operation

The Buyer shall operate and maintain its transmission system and the Interconnecton Facilities in accordance with Prudent Operating Practice so as to permit delivery to the Buyer's system of the Net Electrical Output. The Buyer shall work with the Seller to balance load and support voltage on its transmission and distribution system so as to maximize the ability of the Buyer's system to accept and purchase the Net Electrical Output.

Standardised PPA for large renewable energy generators (greater than 10 MW)

8 Interruption of Acceptance and Purchase

1 The Buyer shall not be obligated to purchase or take delivery of the Net Electrical Output if the Plant is not operated and maintained in a manner consistent with Prudent Operating Practice in accordance with Clause 6.4.

2 The Buyer may interrupt, reduce or cease to purchase and accept delivery of all or a portion of the Net Electrical Output, to the extent that such interruption, reduction or cessation is necessary under Prudent Operating Practice, in order for the Buyer to install equipment, make repairs, replacements, investigations or inspection of the Buyer's electric system.

3 In an Emergency, or whenever it is necessary to aid in restoration of service on the Buyer's system, or on the systems with which it is directly or indirectly interconnected, the Buyer, may, in its sole discretion, curtail or interrupt the taking of all or a portion of the Net Electrical Output, provided such curtailment or interruption shall continue only for so long as it is reasonably or minimally necessary under Prudent Operating Practice,

9 Interruption of Delivery

The Seller may interrupt, reduce or cease to deliver the Net Electrical Output only to the extent that the Seller reasonably determines that such interruption, reduction or cessation is necessary in order to install equipment in, make repairs, replacements, investigations and inspections of, or perform maintenance on the Plant, which directly affect the delivery of the Net Electrical Output. The Seller shall, prior to initiating any interruption, reduction or cessation to deliver the Net Electrical Output, use its best efforts to provide the Buyer a minimum of twenty four(12) hours advance notice, such notice to include an explanation of the cause of the interruption, reduction or cessation, and an estimate of the start and duration.

10 Coordination

The Buyer shall use its best efforts to coordinate and minimize any periods of interruption, reduction and cessation or curtailment of acceptance of the Net Electrical Output from the Seller as provided for in this Clause with the periods of previous Scheduled Outage at the Plant. Prior to initiating any interruption, reduction or cessation of the Net Electrical Output, the Buyer shall use its best efforts to provide the Seller with a minimum of twenty four(12) hours advance notice, such notice to include an explanation of the cause of the interruption, reduction or cessation, and an estimate of the start and duration.

11 Power Factor

The Seller agrees to operate the Plant in parallel with the Buyer's system and to deliver the Net Electrical Output at the Delivery Point and at the voltage level and power factor specified in Appendix C, which the Buyer may establish on a project specific basis to parallel its system requirements to provide ancillary services. Unless otherwise requested by the Buyer, the Seller's Plant must be capable of operating at a power factor of 0.8 lagging, and the Seller shall operate the Plant at a power factor between 0.8 and 1.0 at the point of delivery to the Buyer, subject to response time of control equipment to transient conditions on the Buyer's system.

12 Back Feed Energy

If the Seller's plant includes an induction-type generator, the Seller shall provide individual power factor correction capacitors for each such generator. Such capacitors shall be switched on and off simultaneously with each of the associated induction-type generator of the Plant.

Standardised PPA for large renewable energy generators (greater than 10 MW)

The kVAR rating of such capacitors shall be the highest standard value which will not exceed such generator's no-load kVAR. The Seller shall pay the Buyer, at prevailing rates approved by the Energy Regulatory Commission; the cost for all back feed energy consumed from the Buyer.

13 Stoppage

Subject to the provisions of this Clause, the Seller shall apply and deliver the Net Electrical Output to the Buyer's System and the Net Electrical Output so delivered is deemed to be requisitioned by the Buyer. Provided that the Buyer may by service of twelve-hour prior notice require the Seller to stop delivering electricity into the Buyer's System without incurring any liability to the Seller. Any such stoppage shall, where the stoppage exceeds seven (7) days, thereafter entitle the Seller to payment by the Buyer for Deemed Generated Energy for the period in excess of seven (7) days as hereinafter provided. Notwithstanding the provisions of this Clause, the Seller may by service of twelve hour (12) prior notice inform the Buyer of its inability to deliver electricity into the Buyer's System without incurring any liability to the Buyer.

14 Electricity payments

The electrical energy payments will be in accordance with the standardized tariffs and escalations detailed in appendix B (1).

15 Under generation

In the event that Seller delivers to the Buyer Net Electrical Output which is less than the agreed energy threshold for the month by 15% ("under-generation"), the applicable tariff for the energy delivered for the month shall be 75% of the tariff.

16 Payment

The Buyer shall pay the Seller (or a trustee if so designated by the Seller) any and all amounts due for the delivered Net Electrical Output that are not in good faith disputed by the Buyer on or before the Due Date specified in sub clause 6.20 hereof at the Tariff and subject to the terms specified in Appendix B (1), determined on a per kWh delivered quantity for all Net Electrical Output delivered under this Agreement.

17 Deemed Generated Energy Payments

Commencing on the Full Commercial Operation Date, the Buyer shall pay to the Seller, in respect of each kWh of Deemed Generated Energy during a month, the amount (the "Deemed Generated Energy Payments") equal to seventy five per cent (75%) of the Tariff specified in Appendix B (1) in respect of Deemed Generated Energy had it been generated and delivered to the Buyer at the Delivery Point subject to the following:

6. 18.1. The Buyer shall have no obligation to pay for Deemed Generated Energy during periods of the Buyer's Planned Maintenance up to the maximum number of hours specified by the Buyer in accordance with Prudent Operating Practice for such Planned Maintenance which shall not exceed seven (7) days;

6. 18.2. The Buyer shall be under no obligation to pay for Deemed Generated Energy if the failure or inability of the Buyer to receive delivery of electrical energy from the Plant is caused by Force Majeure; and

6. 18.3. The Deemed Generated Energy shall be computed as set out in Appendix B (2) of this Agreement.

Standardised PPA for large renewable energy generators (greater than 10 MW)

- 18 Taxes
All payments to the Seller for Net Electrical Output delivered to the Buyer under this Agreement shall be deemed to be inclusive of all taxes, fees and levies, with the exception of Value Added Tax subject to any exemptions that may be given by Government from time to time.
- 19 Invoices
The Seller shall at the end of each month (beginning with the month in which the First Commissioning Date occurs) prepare and issue to the Buyer an invoice in respect of the electrical units delivered to the Buyer System for that month. Each invoice prepared by the Seller shall contain the information specified in Appendix D.
- 20 Payment Due Date
Payments to the Seller hereunder shall be due and payable by the Buyer on the forty fifth (45th) day after the date of receipt of the invoice. All overdue payments which are undisputed will attract a Default payment penalty at the Default Rate.
- 21 Disputed Payments
- 1 If any sum or part of any sum shown on an invoice rendered by the Seller is disputed in good faith by the Buyer then the payment of undisputed sums or parts shall not be withheld on those grounds and shall be paid to the Seller when due. Payment of the disputed amount shall be paid within seven (7) days following the resolution of the dispute.
 - 2 Either Party may in good faith dispute any claimed delivery or billing error, amount or payment by written notification to the other Party, within one year of receipt of a meter reading whether or not payment has been made.
 - 3 If the dispute is resolved in favour of the Seller, the Buyer shall pay the disputed amount plus interest at the Default Rate compounded monthly from the original Due date to the date payment is made.
 - 4 If the dispute is resolved in favour of the Buyer, the Seller shall refund any payment previously received of the disputed amount plus interest at the Default Rate, compounded monthly, from the original Due date to the date the refund is made.
- 22 Mode of Payment
Payment of any sum due to the Seller shall be effected through Electronic Funds Transfer to the account of the Seller at such bank a may be notified by the Seller to the Buyer from time to time, or other modalities of payment to the account of the Seller at such other bank as may be notified by the Seller's notarized letter to the Buyer from time to time.
- 23 Currency of Payments
All amounts falling due under this Agreement shall be payable in the currency of United States of America and the Buyer shall not be obliged to make payment in any other currency.

6 METERING

1. Metering Party's Obligations

1. The Seller shall, in accordance with Prudent Operating Practice, supply and install, test and commission the main Metering

Standardised PPA for large renewable energy generators (greater than 10 MW)

Equipment and Back –up Metering Equipment (Metering System). The Buyer shall be entitled to attend and witness the testing and commissioning of the Metering System. Thereafter, the Seller shall transfer to the Buyer as beneficial owner (and without any encumbrances) all rights, title and interest in the Back –up Metering Equipment (together with all warranties and guarantees applicable thereto) and upon such transfer the Buyer shall own and maintain the Back –up metering Equipment while Seller shall own and maintain the Main Metering Equipment. The Metering System shall have an accuracy level of $\pm 0.5\%$.

2. Metering and telemetering equipment shall comply with the Buyer's standards and guidelines, be capable of registering and recording the instantaneous and bidirectional transfer of active and reactive power, kWh and kVArh, and capable of transmitting such data to such location(s) as may be specified by the Buyer. The metering equipment shall be sealable and have mass storage and recording capability. The Seller shall provide a suitable location for the metering and telemetering equipment if the Interconnection is at the Plant.

2. Meter Accuracy

All metering equipment measuring the output of the Plant shall be tested at least every six months, at the Buyer's expense, in accordance with Prudent Operating Practice. At any reasonable time, either Party may request a test of the accuracy of any metering equipment. Each Party shall bear the cost of a test requested by it. The results of meter calibrations or tests shall be available for examination by the Parties at all reasonable times. If, at any time, any metering equipment is found to be inaccurate by more than one-half of one percent (0.5%), the Buyer shall cause such metering equipment to be made accurate or replaced as soon as possible. Each Party shall be given reasonable advance notice of and have the right to be present at the breaking of the seals, testing, calibration and sealing of meters. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party. The Party owning the meters will then investigate and take corrective action if necessary.

3. Meter Calibration

Testing and calibration of meters, and any verification of meter accuracy, shall be performed pursuant to the Buyer metering standards. Calibration shall occur before the first commissioning date. All meters shall be caused to be sealed and locked by their owner after calibration.

4. Transfer of Title to Power

At the Delivery Point, Net Electrical Output, and legal title to the same, shall be deemed to be transferred from the Seller and delivered to the possession of the Buyer. At such point, the Buyer shall be in exclusive control and possession of the Net Electrical Output and shall be solely responsible for the same. Such electric energy transferred shall be by alternating current 3 phase, 50 Hz nominal frequency, at the voltage specified in Appendix C.

5. Meter Reading

The meters shall be read jointly by the Seller and the Buyer monthly on the last day of each month (or such other day as may be agreed upon by the Parties) for the purposes of determining the Net Electrical Output delivered into the Buyer's System since the preceding

Standardised PPA for large renewable energy generators (greater than 10 MW)

reading. The Seller shall provide the Buyer access to the Plant at all reasonable times upon prior notice for the purpose of reading or inspecting meters, examining the operation of the Plant or other purposes reasonably related to performance under the terms of this Agreement. Such access shall not interfere with the Seller's normal business operations. All the Buyer's personnel shall follow all Plant safety and procedural rules while on the Plant premises.

6. Estimation

In the event that any data required for purpose of determining amounts owed to the Seller or payment hereunder are unavailable when required, such unavailable data shall be estimated by the Buyer, subject to any required adjustment based upon actual data in the next subsequent payment month. A failure of the Buyer to read its meter pursuant to Clause 7.5 of this section shall not relieve the Buyer of the obligation to pay the Seller at the conclusion of each month for the energy delivered and accepted as provided herein.

7. Alternative Meter Data

To determine the amount of the Net Electrical Output delivered and accepted in any billing period, recordation of amounts, billing and payment will be based on the first available of the following metering or estimation options, in descending order of applicability:

1. The Main Metering Equipment measurement(s) when that meter for the period at issue satisfies the accuracy standard in Clause 7.2.
2. Back-up Metering Equipment measurement when that secondary meter is positioned to record the electrical energy delivered and accepted, and when that meter satisfies the accuracy standard in Clause 7.2.
3. Where all meters fail to accurately register Net Electrical Output delivered and accepted, the average monthly data for the Plant from the same month in the prior Contract Year, if available, as reasonably adjusted for the particular billing period by any relevant available data affecting Plant generation regarding resource availability, hours of operation, time of operation of generators, and/or native self-use of power output (collectively "Operating Variations") during the period of meter failure, shall be employed, if applicable, to estimate the amount of electric energy delivered and accepted. Where such data are not reliably available, the average monthly Plant Net Electrical Output delivered and accepted during the previous six (6) billing periods prior to meter failure (or fewer months of the Plant is less than six months from the Full Commercial Operation Date), as adjusted or normalized for outages or Operating Variations, shall be used to estimate energy delivered by the Plant for the billing period.

7. RECORDS AND CONFIDENTIALITY

1. Each party shall keep complete and accurate records and all other data required by each of them and by the Energy Regulatory Commission for purpose of proper administration of this Agreement.
2. Either Party shall have the right, upon ten (10) days prior notice to the other Party, to examine the records and data of the other Party relating to this Agreement or the

Standardised PPA for large renewable energy generators (greater than 10 MW)

operation or dispatch of the Plant at any time during normal office hours during the period such record and data are required hereunder to be maintained.

3. Each Party agrees that it will, and will ensure its employees, officers and directors will hold in confidence all information, documentation and data know –how disclosed to it by the other Party and designated in writing as “confidential” (“Confidential Information”)and will not disclose to any third party or use Confidential Information or any part thereof without the other Party’s prior written approval, provided that –
 1. This Clause shall not apply to Confidential Information which is in the public domain other than by breach of this Clause, or was already in the rightful possession of the recipient Party, or was obtained by the recipient Party in good faith from a third party entitled to disclose it;
 2. A Party may disclose Confidential Information in accordance with any legal requirement to do so, or to consultants or contractors whose duties reasonably require such disclosure; and
 3. A Party may disclose confidential Information, subject to obtaining an undertaking to keep the same confidential, to
 1. Any prospective assignee of the Party and its advisers;
 2. Any banker or financial institution or investor from whom the Party is seeking finance; or
 3. Any expert or arbitrator under this agreement
4. The provisions of this Clause 8 shall survive the termination or expiry of this Agreement.

8. UNDERTAKINGS AND WARRANTIES OF THE PARTIES

1. Undertakings of the Seller

The Seller Undertakes that it will:

1. Comply with all legal requirements, including environmental requirements;
2. Apply for and use reasonable endeavours to obtain, prior to the date that such authorizations are required if the Seller is not to be in breach of any legal requirement in performing this Agreement, and keep in force all authorizations required to be in the Seller’s name for the operation of the Plant and any other of its obligations under this Agreement; and
3. Ensure that the Plant is operated and maintained in all material respects in accordance with Prudent Operating Practice and the terms of this Agreement.

2. Representations and Warranties of the Seller

The Seller represents and warrants that:

1. The Seller is a limited liability company duly organized and existing under the laws of Kenya and has all requisite powers and authority

Standardised PPA for large renewable energy generators (greater than 10 MW)

to execute this Agreement and carry out the terms, conditions and provisions hereof;

2. This Agreement constitutes the valid, legal and binding obligation of the Seller, enforceable in accordance with the terms hereof except as enforceability may be limited by the laws affecting creditors' rights generally; and
3. As at the date of this Agreement, there are no actions, suits or proceedings pending, or to the Seller's knowledge, threatened against or affecting the Seller before any court or administrative body or arbitral tribunal that might materially and adversely affect the ability of the Seller to meet and carry out its obligations under this Agreement.

3. Undertakings of the Buyer

1. The Buyer undertakes that it will comply with all applicable legal requirements and will keep in force all authorizations required for the performance of its obligations under this Agreement.
2. Ensure that the buyers system is operated and maintained in all material respects in accordance with Prudent Operating Practice and the terms of this Agreement.

4. Representations and Warranties of the Buyer

The Buyer represents and warrants that:

1. The Buyer is a limited liability company duly organised and validly existing under the Laws of Kenya and has all requisite powers to execute this Agreement and carry out the terms, conditions and provisions hereof;
2. All legislative, administrative and other governmental action required to authorize the execution, delivery and performance by the Buyer of this Agreement and the transactions contemplated hereby have been taken and are in full force and effect;
3. This agreement constitutes the legal, valid and binding obligation of the Buyer, and enforceable in accordance with the terms hereof except as enforceability may be limited by the laws affecting creditors' rights generally;
4. As at the date of this Agreement, there are no actions, suits or proceedings pending or, to the Buyer's knowledge, threatened against or affecting the Buyer before any court or administrative body or arbitral tribunal which materially adversely affect the Buyer's ability to meet and carry out its obligations under this Agreement; and
5. The execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action, and will not contravene any provision of,, or constitute a default under any other

Standardised PPA for large renewable energy generators (greater than 10 MW)

agreement or instrument to which the Buyer is a party or by which its property may be bound.

9. FORCE MAJEURE

1. Events of Force Majeure

For the purposes of this Agreement “Force Majeure” means subject to clause 10.2 any event or circumstance which affects either Party and is not within the reasonable control (directly or indirectly) of the Party affected to the extent that such event or circumstance or its effect cannot be prevented, avoided or removed by such Party acting in accordance with Prudent Operating Practice. “Force Majeure” shall include without limitation each of the following events and circumstances to the extent that they satisfy the foregoing requirements:

1. Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, civil commotion, insurrection, act of terrorism, or sabotage, provided that any such event occurs and directly involves the Republic of Kenya;
2. An act of God including but not limited to lightning, fire, earthquake, volcanic activity, floods and storms, typhoons, cyclones or tornadoes;
3. Epidemics or plagues
4. Explosions or chemical contamination (other than resulting from an act of war);
5. Labour disputes including strikes, work to rule, go slows or lock-outs that extend beyond the Plant or are widespread or nation-wide;
6. The compulsory expropriation, acquisition or nationalisation of the material assets or equity of the Seller by the government of Kenya; and
7. Change in law.

2. Exclusions from Force Majeure

The following events or circumstances shall not constitute Force Majeure, unless caused directly by an event of Force Majeure:

1. Late delivery to the Seller of fuel, machinery, equipment, materials, spare parts or consumables;
2. A delay in the performance of any contractor;
3. Normal wear and tear or random flaws in materials and equipment or breakdowns in equipment; and
4. Late payment of monies due and owing or damage or disability resulting from a failure of a Party to utilise Prudent Operating Practice; and
5. Any obligations of either Party which arose before the occurrence of the Force Majeure event causing non-performance.

3. Force Majeure Protocol

No default as a result of an event of Force Majeure shall occur, provided that the adversely affected non-performing Party invoking Force Majeure shall:

Standardised PPA for large renewable energy generators (greater than 10 MW)

1. Provide prompt notice in writing to the other Party, the Energy Regulatory Commission and the Lenders of the occurrence of the Force Majeure event and the choice to invoke Force Majeure , giving an estimation of the event's expected duration and the probable impact on the performance of the Party's obligations hereunder, and submitting good and satisfactory evidence of the existence of the Force Majeure event;
2. Exercise all reasonable efforts to continue to perform its obligations hereunder;
3. Expeditiously take or initiate action to correct or cure the Force Majeure event and periodically submit good and satisfactory evidence that it is making all reasonable efforts to correct or cure the Force Majeure;
4. Exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interest; and
5. Provide prompt notice to the other Party, the Lenders and the Energy Regulatory Commission of the cessation of the Force Majeure.

4. Force Majeure Effect

1. Subject to Clause 10.4.2, if a party is rendered wholly or partly unable to perform its duties and obligations under this Agreement because of a Force Majeure event, that Party will be temporarily excused to the extent necessary from whatever performance is affected by the Force Majeure to the extent so affected.
2. Upon the occurrence of a Force Majeure event affecting the Buyer after the First Commissioning Date, then during the persistence of such Force Majeure, the Buyer shall pay the Seller for the Net Electrical Output delivered in accordance with this Agreement during such Force Majeure.

5. Force Majeure Duration

Notwithstanding the foregoing, if a Party is prevented from substantially performing its obligations under this Agreement for a period of two(2) years due to the occurrence of a Force Majeure event, the other Party may elect to terminate the Agreement by ninety(90) days written notice given anytime thereafter to the non-performing Party, unless substantial performance is resumed prior to the expiration of such ninety(90)days period; provided that the Buyer shall not elect to terminate the Agreement under this part due to a Force Majeure event described under this Clause 10.

10. DEFAULT AND TERMINATION

1. Events of Default

A Party shall be deemed to be in default under this Agreement if it experiences each or any of the Events of Default including:

1. The Seller fails to complete, abandons or cancels construction of the Plant, or does not achieve the Long Stop Full Commercial Operation

Standardised PPA for large renewable energy generators (greater than 10 MW)

Date, unless such failure is attributable primarily to the failure of the government of the Republic of Kenya or instrumentalities of the government of the Republic of Kenya to issue necessary permits to the Plant.

2. The adjudged bankruptcy, dissolution or liquidation of either Party in which case the bankrupt, dissolved, or liquidated Party shall be deemed to be the Party in default hereunder.
3. Either Party fails to perform or observe any of the covenants, terms, conditions or provisions of this Agreement and the appendices hereto, and such failure shall not be rectified or cured within sixty (60) days after written notice thereof to the non-performing Party, provided, that if such failure cannot reasonably be cured within such sixty (60) day period, such further period, not to exceed one (1) year after written notice thereof, as reasonably as shall be required to effect such cure, provided that the defaulting Party commences within such sixty (60) day period reasonably to effect such cure and at all times thereafter proceeds diligently to complete such cure as quickly as possible, subject to the provisions of Clause 10. It shall not be an Event of Default if such failure of a Party to perform is proximately caused by an action or inaction of the other Party.
4. Without reasonable excuse, the failure of any Party to make an undisputed payment when due and non-payment continues for more than ninety (90) days.
5. Either Party contests and denies the enforceability of the Agreement, in which case the Party contesting enforceability shall be deemed to be the Party in default hereunder.
6. Failure to achieve the Full Commercial Operating Date by the Long Stop Full Commercial Operating Date.
7. The dissolution or reorganization of the Buyer such that the Buyer or its successor cannot perform its obligations hereunder, either of which shall be deemed to be an event of default on the part of the Buyer.

2. Default Procedure and Cure

1. Notice

Upon the occurrence of an Event of Default, in each and every case, the non-defaulting party shall give written notice to the defaulting Party and may pursue any remedies provided for in this Agreement by giving such written notice to the other Party: provided that should the Buyer claim any Event of Default against the Seller, it shall notify and afford Lenders reasonable time, access and opportunity to remedy or cure any event giving rise to the default, and shall cooperate with Lenders to this end.

2. Step-In Rights

If an Event of Default or Emergency occurs and the Party experiencing such event of Default or Emergency is prevented temporarily from satisfying its obligations hereunder despite its best efforts, including but not limited to restoring the operation of the Plant the Lender (hereinafter called "the Person") may elect to provide notice to all parties as

Standardised PPA for large renewable energy generators (greater than 10 MW)

provided herein, of its intention to step into the rights and obligations of the Party experiencing the Event of Default and attempt during a reasonable time to remedy such event of Default or Emergency (the Step – In - Rights). The lender shall only exercise the Step – In – Rights under this Clause if it has the skills and means to carry out the work necessary to remedy the Event of Default or Emergency in accordance with the laws of Kenya and Prudent Operating Practice. Such step- in rights shall require the consent of ERC.

3. Step –In - Costs

The Indemnity provisions of this Agreement shall apply to the exercise of the Step – in – Rights, provided that the person exercising the Step – In – Rights shall be indemnified by the seller experiencing the Event of Default or Emergency for all reasonably incurred expenses that benefit the seller experiencing the Event of Default or Emergency or its assets, and shall be indemnified and held harmless by the seller experiencing the event of Default or Emergency from and against all claims of whatsoever nature lodged against such Person arising out of or associated with reasonable actions consistent with Prudent Operating Practice to cure or remedy such Event of Default or Emergency. The Person exercising the Step – In – Rights shall as soon as possible return control of operations of any facilities over which it has assumed control or operation to the seller experiencing the Event of Default. The Person exercising the Step – In – Rights shall maintain and produce records of costs incurred to attempt to cure or remedy the Event of Default or emergency, and the seller experiencing the Event of Default shall reimburse such reasonable and documented expenses incurred by such person.

4. Specific Performance

If money damages would not be a sufficient remedy in the Event of Default or breach of this Agreement, each Party acknowledges that the Party not in breach shall be entitled to specific performance, including, without limitation, injunction and specific performance, to remedy such breach or threatened breach, and that such remedy shall not be deemed the exclusive remedy for breach hereunder.

3. Termination Due to the Buyer’s Default

In the event that there is a termination of this Agreement due to a the Buyer’s Default pursuant to Clause 11.1, the Buyer shall, within ninety (90) days of the termination date, pay to the Seller by way of liquidated damages and in one lump sum in United States Dollars being the aggregate of the amounts computed as set out in Appendix F (the "Transfer Amount") and upon receipt of such Transfer Amount the Seller shall transfer the Plant to the Buyer. Notwithstanding the foregoing, the seller and the buyer may agree on alternative arrangements including selling the plant to another party or continuing to generate and selling the energy directly to a consumer.

4. Remedies

The remedies expressly provided for the Parties in this Agreement are not exclusive, they are cumulative and may be exercised concurrently or consecutively and will be in addition to other remedies under this Agreement, the law or in equity, with the exception of the payment of damages and losses that will be treated according to what is established under this Agreement. This section will remain effective after termination of this Agreement.

5. Sole Remedies

The Parties agree that their rights and remedies expressly provided in their favour in this Agreement constitute their sole remedies against each other in respect of any breach by a Party of its obligations hereunder and neither Party shall have any additional liability to the

Standardised PPA for large renewable energy generators (greater than 10 MW)

other for any loss or damage or other liability, whether arising in contract, tort or otherwise, in connection with this Agreement.

11. RELATIONSHIP OF THE PARTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION

1. Immunity

Each party waives all immunity, sovereign or otherwise, and represents warrants and covenants that it will not assert such immunity at law or equity, or urge or allow others on its behalf to assert such immunity, which it may now or in the future enjoy or could claim, to the extent permitted by law.

2. Third Party Beneficiaries

With the exception of the Lenders, the Parties do not intend to create any rights in, or grant any remedies to, any third party beneficiary that may claim under this agreement.

3. No Other Relationship

Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Net Electrical Output generated at the Plant. No agency relationship of any kind is created by this Agreement.

4. Limitation of Liability

Notwithstanding the provisions of Clause 12.5 hereof, or any other provision of this Agreement to the contrary neither the Buyer nor the Seller, nor their respective officers, directors, agents, employees, parent entity, Lenders, subsidiaries, or affiliates shall be liable or responsible to the other Party or its parent entities, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insurers, for incidental, exemplary, punitive, indirect or consequential damages of any nature, connected with or resulting from performance or non-performance of obligations pursuant to this Agreement, including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement).

5. Indemnity

Each Party shall defend, indemnify and save the other Party, its officers, directors, agents and employees harmless from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including reasonable attorney's fees), suits, actions, or damages arising by reason of bodily injury, death, or damage to property sustained by any person or entity (whether or not a party to this Agreement):

1. Caused by or sustained on property or at facilities owned or controlled by the Party, except to the extent caused by an act of negligence or willful misconduct by an officer, director, subcontractor, agent, employee, parent entity, subsidiary or affiliate of the other Party; or
2. Caused by an act of negligence or willful misconduct of the Party, or by an officer, director, subcontractor, agent, employee, parent entity, subsidiary or affiliate, of the Party. If either Party receives notice of the assertion of any claim with respect to which indemnification is to be sought from the other Party, that Party shall give prompt notice thereof to the other Party. The Parties shall cooperate in the mutual defense of any such claim.

6. Adjusted Indemnity

Standardised PPA for large renewable energy generators (greater than 10 MW)

If the Buyer and the Seller are both determined to have been negligent parties or to have engaged in willful misconduct in a manner addressed by Clause 12.5 hereof, the obligations to indemnify of the Seller and the Buyer shall be appropriately adjusted based on the percentage of the responsibility of each Party for such loss or indemnification event.

7. Insurance

The Seller shall:

1. Insure the Plant for comprehensive general liability, public liability property damage, and “all risks” peril, from a recognized insurance provider lawfully permitted to provide insurance in Kenya, with primary limits of liability during the duration of this Agreement being at all times equal to not less than the replacement value of the Plant.
2. Apply the proceeds of claims against such policies relating to damage to the Plant in repairing or restoring the Plant.

8. Affirmation

1. The Seller declares and affirms that it has not paid nor has it undertaken to pay any commission, bribe, pay-off or kick – back and that it has not in any other way or manner paid any sums, whether in Kenya shillings or in any other currency, and whether in Kenya or abroad, or in any other manner given or offered to give any gifts and presents in Kenya or abroad, to any person and generally has not made any payment or accepted any gift or in any way whatsoever acted in breach of any obligation, prohibition or requirement of the Anti-Corruption and Economic Crimes Act, 2003, to procure this Agreement, and the Seller undertakes not to engage in any such or similar acts during the term of, and relative to this Agreement.
2. The Buyer declares and affirms that it has not paid nor has it undertaken to pay any commission, bribe, pay – off or kick – back and that it has not in any other way or manner paid any sums whether in Kenya shillings or foreign currency and whether in Kenya or abroad, or in any other manner given or offered to give any gifts and presents in Kenya or abroad to any to any person, and generally has not made any payment or accepted any gift or in any other way acted in breach of any obligation, prohibition or requirement of the Anti-Corruption and Economic Crimes Act, 2003, to procure this Agreement,, and the Buyer undertakes not o engage in any such or similar acts during the term of, and relative to this Agreement.

12. DISPUTE RESOLUTION

1. Arbitration

1. Any dispute or difference of any kind between the Parties in connection with or arising out of this Agreement, or the breach,

Standardised PPA for large renewable energy generators (greater than 10 MW)

termination or validity hereof shall be settled by reference to arbitrator(s) to be agreed within seven (7) days of service of notice of such dispute, difference or question by the one Party on the other; failing which agreement the arbitrator(s) shall be appointed at the request of any of the Parties by the chairman of the Institute of Chartered Arbitrators of Kenya and such arbitration shall be conducted in accordance with the latest revision of the Arbitration Act, No 4 of 2005 of the Laws of Kenya or according to the Rules of Conciliation and Arbitration of the International Chamber of Commerce as the parties may mutually agree;

2. The award shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the arbitrator's decision;
3. The award in such arbitration shall be final and binding upon the Parties and judgment thereon may be entered in any court having jurisdiction for its enforcement; the Parties renounce any right of appeal from the decision of the arbitrator insofar as such renunciation can validly be made; and
4. The arbitrator shall not have the authority to order the termination or amendment of this Agreement.

2. Exclusivity

Neither Party shall have any right to commence or maintain any legal proceeding concerning a Dispute until the Dispute has been resolved in accordance with Clause 13.1, and then only to enforce or execute the award under such procedure.

3. Confidentiality

The Parties shall each secure that the arbitrator shall be bound by the provisions of clause 8 of this Agreement as a condition of appointment.

4. Continuance of Obligations

Both Parties shall continue to perform their obligations under this Agreement during any arbitration proceedings, provided that the right to terminate under Clause 11 on grounds different to those referred to the Arbitrator is not restricted by this Clause 13.4.

13. MISCELLANEOUS PROVISIONS

1. Assignment

This Agreement shall inure for the benefit of and bind the respective successors, assigns and delegates of the Parties. No assignment or delegation by the Seller of any of its rights, duties and obligations hereunder shall be made or become effective without the prior written consent of the Buyer and the Energy Regulatory Commission in each case being obtained, which consent shall not be unreasonably withheld by the Buyer or its successors in interest, except that without the Buyer's consent the Seller may—

1. Assign and/or delegate some of its duties to an affiliate whose principal functions are to operate the Plant; or
2. Assign to Lenders for purposes of financing, obtaining equipment, or construction of the Plant.

Standardised PPA for large renewable energy generators (greater than 10 MW)

A Party shall promptly notify the other Party in writing of any assignment or delegation it makes.

2. Variation

This Agreement may not be varied or any of its provisions waived except by agreement in writing signed by the Parties and with the consent of ERC.

3. Restructuring of the Power Market

The Buyer represents and warrants that in the event of any restructuring of the power market in Kenya under which any of the Buyer's rights and obligations under this Agreement may be transferred to a successor entity, it will cause any successor assuming any or all of its transmission and distribution functions to fully assume in writing the Buyer's power transmission obligations under this Agreement, and cause any successor assuming any of its power supply or power purchase obligations to fully assume in writing the Buyer's power supply or purchase obligations under this Agreement.

4. Waivers of Rights

No delay or forbearance by either Party in exercising its right, power, privilege or remedy under this Agreement shall operate to impair or be construed as a waiver of such right, power, privilege or remedy.

5. Severability

If any clause of this Agreement is ruled invalid or unenforceable by a court of competent jurisdiction, it shall not affect the remainder of the Agreement if it can be construed to effect its essential purpose without the invalid clause.

6. Effect of Illegality

If for any reason whatsoever any provision of this Agreement is or becomes or is declared by any court to be invalid, illegal or unenforceable, then in any such case the Parties will negotiate in good faith with a view to agreeing one or more provisions to be substituted therefore which are not invalid, illegal or unenforceable and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

7. No Interpretation of Headings

The headings in this Agreement are descriptive only, and are not intended to affect the interpretation or meaning of the Agreement, and accordingly are not meant to be construed as part of obligations of any Party hereunder.

8. Notices

Except for operational and dispatch communications, any notice or other communication to be given by one Party to the other under or in connection with this Agreement shall be in writing and may be delivered by hand or sent by pre-paid airmail or facsimile to the address, or email and marked for the attention of the person specified in Appendix E or such other address or person designated by notice to the other in accordance with this Clause, and any such notice or communication shall be deemed to be received upon delivery, or five (5) days after posting, emailing or when sent by facsimile upon confirmation of uninterrupted transmission by a transmission report provided that any notice given by facsimile shall be confirmed by letter sent by hand or post, but without prejudice to the original facsimile notice if received in accordance with this clause.

Standardised PPA for large renewable energy generators (greater than 10 MW)

1.

9. Entire Agreement

This Agreement contains or refers to the entire agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied in law or by custom and supersedes all previous agreements and understandings between the Parties with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance of any representation, warranty or other undertaking by the other Party not fully reflected in the terms of this Agreement.

10. Governing Law

This agreement shall be governed by and construed in all respects in accordance with the laws of Kenya.

AS WITNESSED BY the hands of the duly authorized representatives of the Parties the day and year first above written.

Standardised PPA for large renewable energy generators (greater than 10 MW)

SIGNED AND SEALED with the Common Seal of KENYA POWER AND LIGHTING COMPANY LIMITED)))))	r
MANAGING DIRECTOR AND CEO)))))	r
COMPANY SECRETARY)))))	r
SIGNED AND SEALED with the Common Seal of COMPANY LIMITED (SELLER))))))))	r
DIRECTOR)))))))	r
DIRECTOR/COMPANY SECRETARY)))))	r
SIGNED AND SEALED with the Common Seal of COMPANY LIMITED (SPONSOR))))))))	r
DIRECTOR)))))	r
DIRECTOR/COMPANY SECRETARY)))))	r

APPENDIX A - DESCRIPTION OF THE PLANT

NAME OF THE PLANT:

LOCATION:

RIVER/HOST (if applicable):

EXACT DELIVERY POINT (feeder, pole or switch number):

LOCATION OF METERING (meter number):

NOMINAL CONNECTION VOLTAGE:

RANGE OF VOLTAGE REGULATION:.....ONLINE.....OFFLINE

TYPE OF FUEL:

TYPICAL HEATING VALUE OF FUEL:

TYPE OF POWER GENERATION TECHNOLOGY:

NAMEPLATE CAPACITY RATING:

DEPENDABLE CAPACITY TO SELL: MIN.....kW; MAX.....kW

CAPACITY CONSUMED BY SELLER: MIN.....kW; MAX.....kW

CAPACITY FACTOR:

EXPECTED ANNUAL PRODUCTION.....kWh

NET ELECTRICAL OUTPUT :(kWh or % of output)

RAMP RATEMW/MINUTE UP;.....MW/PER MINUTE DOWN

MINIMUM RUN TIME:.....HOURS

MINIMUM SHUT DOWN TIME:.....HOURS

START -UP TIME:.....HOURS

DATE OF PLANNED COMPLETED CONSTRUCTION OF PLANT:

VOLTAGE DELIVERED TO THE BUYER:.....VOLTS

Standardised PPA for large renewable energy generators (greater than 10 MW)

APPENDIX B (1) - THE STANDARDISED TARIFFS AND ESCALATORS

APPENDIX B (2) - DEEMED GENERATED ENERGY PAYMENT COMPUTATION

The amount of Deemed Generated Energy Payments shall be calculated based on the following assumed full load operating hours (regardless of generator-specific circumstances):

RES Technology	Negotiated Full Load Operating Hours
Wind	Biomass - Grown
Biomass - Grown	
Biomass - Waste	
Biomass - Waste	
Geothermal	
Biogas	
Biogas	
Solar	
Hydro	
Hydro	

APPENDIX C - DESIGNATION OF THE INTERCONNECTION FACILITIES AND REQUIREMENTS

1. The relevant requirements stated in the Kenya Grid Code shall be applicable
2. The delivery voltage at the Point of Supply shall bekV±.....%
3. Special Requirements and Conditions (TO BE PROVIDED INDIVIDUALLY FOR EACH PLANT DEPENDING ON PROJECT CHARACTERISTICS AND TECHNOLOGIES)
4. The operating Power Factor of the Plant at the Delivery Point (Point of Supply) shall be.....
5. Interconnection Arrangement (THIS WILL BE A SINGLE LINE DIAGRAM OF THE INTERCONNECTION. THE DIAGRAM SHALL SHOW THE GENERATORS, THE SWITCHGEAR, TRANSFORMERS, PROTECTION SYSTEMS AND TRANSMISSION LINES, THEIR CAPACITY, RATING, VOLTAGE LEVELS, AND IDENTIFY THE PONT OF SUPPLY (POS), POINT OF COMMON COUPLING (PCC). .

Standardised PPA for large renewable energy generators (greater than 10 MW)

APPENDIX D - CONTENTS OF SELLER'S INVOICE

Format and Content of Normal Monthly Invoice

[Invoice to be typed on the letterhead of the Seller]

The Kenya Power and Lighting Company Limited

Stima Plaza, PO Box 30099 - 00100

Nairobi, Kenya

For the attention of: []

Invoice Date []

Invoice Number []

VAT Number []

PIN Number []

Invoice for [Insert Month and Year]

1) Tariff Rate [€] [\$][KES][] kWh

2) Net Electrical Output [] kWh

3) Deemed Generated Energy [] kWh

4) Monthly Sub-Total (1 x 2 x 3 above)
[] [€] [\$][KES][]

5) VAT thereof at [x]%
[] [€] [\$][KES][]

6) Total Amount Payable: [€] [\$][KES][]

Total Amount in words:

Standardised PPA for large renewable energy generators (greater than 10 MW)

Total Net Electrical Output plus Deemed Generation for this year accumulated until this month:

[] kWh

Payment of this amount is due on [insert date by which payment should be made] and should be made to the following account:

Account Name:

Bank Name:

Bank Address:

Account Number:

Swift Code:

Words and expressions defined in the Power Purchase Agreement dated [] between the Buyer and the Seller have the same meaning used in this Invoice.

For Seller

.....

[Signature, Name and Title of signing officer]

APPENDIX E - DESIGNATED ADDRESS AND CONTACT PERSONS FOR EACH PARTY.

1. SELLERS DESIGNATED ADDRESS:

2. THE BUYER'S DESIGNATED ADDRESS

APPENDIX F - TRANSFER AMOUNT SPECIFIED IN CLAUSE 11.3

Such amount which after deducting any Tax which the Seller must pay on the lump sum received or which is withheld from such lump sum leaves a net amount equal to the Total Project Cost (as hereafter defined) where service of the Termination Notice takes place after the Full Commercial Operations Date, or such portion of the Total Project Cost as will have been incurred by the Seller up to the date of the Termination Notice, where the Termination Notice is served before the Full Commercial Operations Date.

For the purposes of this Agreement, the "Total Project Cost" shall mean the total cost (whether direct, indirect or incidental) of completing the development, design, financing, construction, installation, testing, commissioning, operation and maintenance (other than operation and maintenance costs incurred in relation to a Unit after such Unit has been Commissioned) of the Plant (as more particularly set out in the final audited financial model for the Project approved by the Lenders (the "Audited Financial Model") immediately prior to disbursement of funds to the Seller, including (without limitation) development, construction and commissioning costs, financing costs and fees, interest during construction, insurance costs, development fees, construction management costs, start -up costs and contingencies.

Where service of the Termination Notice takes place after the Full Commercial Operations Date, the Total Project Cost shall be reduced from the Full Commercial Operation Date by deducting there from an assumed depreciation rate equivalent to five per cent (5%) per annum (or pro rata for any part of a year) for each year (or part thereof) from the Full Commercial Operation Date to the date of the Termination Notice. Where service of the Termination Notice takes place before the Full Commercial Operations Date no such reduction in the Total Project Cost (by way of depreciation) shall be made and Total Project Costs shall only be in relation to those costs which have been incurred as at the date of service of the Termination Notice (whether or not such costs have become due and payable).

APPENDIX G - PARTICULARS OF THE LENDERS