

**Power Purchase Agreement Model**  
**For**  
**Electricity Generated From Renewable Energy**  
**In**  
**RCREEE Member States**

**5 January 2012**

## Renewable Energy Purchase Agreement Model

**Between**

**LEGAL NAME OF FACILITY DEVELOPER**

**(Seller)**

**And**

**(LEGAL NAME OF UTILITY BUYING GENERATED POWER)**

**(Purchaser)**

### About RCREEE

The Regional Center for Renewable Energy and Energy Efficiency (RCREEE) is an independent not-for-profit regional organization which aims to enable and increase the adoption of renewable energy and energy efficiency practices in the Arab region. RCREEE teams with regional governments and global organizations to initiate and lead clean energy policy dialogues, strategies, technologies and capacity development in order to increase Arab states' share of tomorrow's energy.

Through its solid alliance with the League of Arab States, RCREEE is committed to tackle each country's specific needs and objectives through collaborating with Arab policy makers, businesses, international organizations and academic communities in key work areas: capacity development and learning, policies and regulations, research and statistics, and technical assistance. The center is also involved in various local and regional projects and initiatives that are tailored to specific objectives.

### Author:

Adel Beshara  
Renewable Energy and Energy Efficiency Expert  
Cairo, Egypt

### Acknowledgments

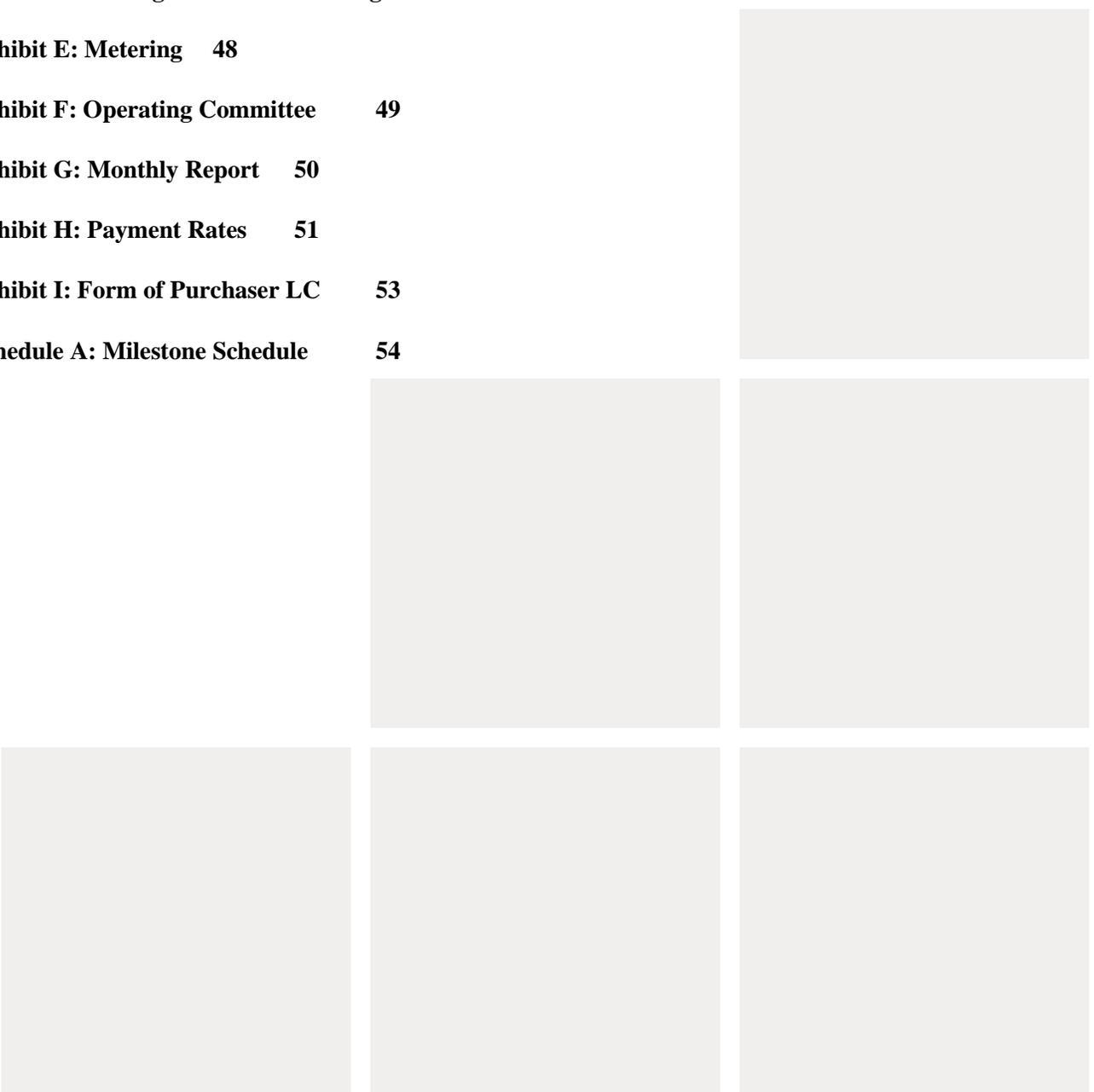
RCREEE would like to acknowledge the support of Dr. Adel Beshara and his valuable contribution to this study.

## Contents

<b>ARTICLE 1: RULES OF INTERPRETATION AND DEFINITIONS</b> .....	4
<b>ARTICLE 2: TERM</b> .....	10
<b>ARTICLE 3: FACILITY DESCRIPTION</b> .....	10
<b>ARTICLE 4: PRE-COMMERCIAL OPERATION OBLIGATIONS</b> .....	12
<b>ARTICLE 5: INTERCONNECTION</b> .....	16
<b>ARTICLE 6: COMMERCIAL OPERATION</b> .....	18
<b>ARTICLE 7: SALE AND PURCHASE OF ENERGY OUTPUT</b> .....	22
<b>ARTICLE 8: METERING</b> .....	28
<b>ARTICLE 9: MUTUAL WARRANTIES AND COVENANTS OF THE PARTIES</b> .....	29
<b>ARTICLE 10: DEFAULTS AND TERMINATION</b> .....	30
<b>ARTICLE 11: FORCE MAJEURE</b> .....	33
<b>ARTICLE 12: INDEMNIFICATION AND LIABILITY</b> .....	35
<b>ARTICLE 13: INSURANCE</b> .....	37
<b>ARTICLE 14: RESOLUTION OF DISPUTES</b> .....	38
<b>ARTICLE 15: NOTICES</b> .....	39
<b>ARTICLE 16: MISCELLANEOUS PROVISIONS</b> .....	40

## Exhibits and Schedules

<b>Exhibit A: Facility Description</b>	<b>44</b>
<b>Exhibit B: Location and Layout</b>	<b>45</b>
<b>Exhibit C: Data and Measurements</b>	<b>46</b>
<b>Exhibit D: Testing and Commissioning</b>	<b>47</b>
<b>Exhibit E: Metering</b>	<b>48</b>
<b>Exhibit F: Operating Committee</b>	<b>49</b>
<b>Exhibit G: Monthly Report</b>	<b>50</b>
<b>Exhibit H: Payment Rates</b>	<b>51</b>
<b>Exhibit I: Form of Purchaser LC</b>	<b>53</b>
<b>Schedule A: Milestone Schedule</b>	<b>54</b>



## RENEWABLE ENERGY PURCHASE AGREEMENT

This Renewable Energy Purchase Agreement ("REPA") dated as of *[day, month, year]* ("Execution Date"), by and between

- 1) *[Legal name of Facility Developer and name of mother Company if any]* having its registered office at *[complete Address of Developer entity]* represented by *[name of delegated person]* in his capacity as *[position or delegation title]* ("Seller"),  
And
- 2) *[Legal name of Utility buying the generated power]* having its registered office at *[complete Address of Utility]* ] represented by *[name of delegated person]* in his capacity as *[position or delegation title]* ("Purchaser"). Seller and Purchaser may be referred to individually as a ("Party") and collectively as ("Parties").

### WHEREAS:

- (a) Seller desires to construct, own, and operate its *[facility name, description, location, and capacity or energy output of facility]* as a renewable energy electricity generating facility ("Facility");
- (b) Seller agrees to make available and to sell the net energy output from Facility to Purchaser ("Energy Output"); and
- (c) Purchaser wishes to purchase the Energy Output generated by the Facility pursuant to the terms and conditions in this REPA;

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the representations, warranties, conditions and promises contained in this REPA, and intending to be legally bound by this REPA, the Parties agree as follows:

### ARTICLE 1: RULES OF INTERPRETATION AND DEFINITIONS

#### 1.1 Rules of construction:

The capitalized terms listed in Section 1.4 of this Article shall have the meanings set forth herein whenever the terms appear in this REPA, whether in the singular or the plural or in the present or past tense. Other terms used in this REPA but not listed in Section 1.4 of this Article shall have the meanings ascribed to them in the Oxford English dictionary or, for terms of art or where the context indicates, the meanings given the terms by common usage in the industry. In addition, the following rules of interpretation shall apply:

- (a) Except where expressly stated otherwise, the headings of the Articles, Sections and Paragraphs are primarily included for ease of reference only and in the event of a conflict between a heading and the more specific provision of its relevant Article, Section or Paragraph, the language of the Article, Section or Paragraph shall control in construing the provisions of this REPA;
- (b) A reference to any Agreement, Enactment, Ordinance or Regulation includes any Amendment thereof or any replacement in whole or in part.
- (c) References to Articles, Sections, Paragraphs, Exhibits or Schedules shall be to articles, sections, paragraphs, exhibits or schedules of this REPA.

- (d) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this REPA; provided, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of Articles 1 through 16 of this REPA, the terms of Articles 1 through 16 of this REPA shall take precedence.
- (e) This REPA was negotiated and prepared by both Parties. The Parties have agreed to the wording of this REPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this REPA or any part hereof.
- (f) Whenever this REPA refers to a number of days, such number shall refer to calendar days unless Working Days are specified.
- (g) In this REPA, the words "include", "includes", and "including" are to be construed as being at all times followed by the words "without limitation."
- (h) The word ("Term") may be used in this REPA to signify either Initial Term pursuant to Section 2.1, or Extended Term pursuant to Section 2.2 according to the context and situation.
- (i) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this REPA. Unless expressly provided otherwise in this REPA, (i) where the REPA requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the REPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

## 1.2 Interpretation with Interconnection Agreement:

The Parties recognize that Seller will enter into an Interconnection Agreement with the transmission system Utility ("Transmission Provider") whether or not the Transmission Provider is the Purchaser or an Affiliate of Purchaser.

- (a) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract.
- (b) Notwithstanding any other provision in this REPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Purchaser's rights, duties and obligations under this REPA.
- (c) Seller expressly recognizes that, for purposes of this REPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Purchaser or an Affiliate of Purchaser.

## 1.3 Interpretation of arrangements for electric supply to the Facility:

- (a) The Parties recognize that this REPA does not provide for the supply of any electric service to the Facility by Purchaser to Seller including the supply of electric services for the Generating Units start-up and shutdown.
- (b) The Parties acknowledge and agree that the arrangements for the supply of electric services to the Facility shall be separate and free-standing

arrangements and that the terms of this REPA are not binding upon the Transmission Provider.

- (c) Notwithstanding any other provision in this REPA, nothing in the arrangements for the supply of electric services to the Facility shall alter or modify Seller's or Purchaser's rights, duties and obligations under this REPA.
- (d) Seller expressly recognizes that, for purposes of this REPA, the supplier of electric services to the Facility shall be deemed to be a separate entity and separate contracting party whether or not the arrangements for the supply of electric services to the Facility is entered into with Purchaser or an Affiliate of Purchaser.

#### 1.4 Definitions:

Capitalized terms unless otherwise defined herein shall have the meaning given to such terms as set out in the following schedule.

Term	Definition
<b>Affiliate</b>	Means in relation to any party, a person that controls, is controlled by, or is under common control with such party. As used in this definition, the terms "control" means with respect to a person that is a company, the ownership, directly or indirectly, of more than 50% of the voting securities of such person or control in the management or appointment of directors in such person, and with respect to a person that is not a company, the power to direct the management or policies of such person, whether by operation of law, by contract or otherwise.
<b>Ancillary Services</b>	Means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of transmission system in accordance with Good Utility Practice.
<b>Applicable Law</b>	Means all national and municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses, permits, directives, and requirements of all regulatory and other Governmental Authorities
<b>Article</b>	A separate part of this written agreement
<b>Capacity Attributes</b>	Means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Facility is located.
<b>Commercial Operation</b>	As defined in Paragraph 6.1(a)

<p><b>Commercially Reasonable</b></p>	<p>Means, with respect to any action required to be made, attempted, or taken by any Party under this REPA, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such action, including the amount of notice of the need to take such action, the duration and type of action, the competitive environment in which such action occurs, and the risk to the Party required to take such action. With respect to price or cost, Commercially Reasonable means the price or cost obtained or reasonably expected to be obtainable given good faith efforts in a competitive business environment. Commercially Reasonable shall not include the payment of fees not otherwise contemplated under this REPA or the making of any material, financial or other concessions as a condition to accomplishing the result contemplated.</p>
<p><b>Curtailment</b></p>	<p>Means the failure or inability of the Purchaser to accept electrical energy for reasons other than Forced Outage or Force Majeure. Curtailment means also any curtailment in whole or in part of energy production at the Facility pursuant to the instruction or other directive made or issued by Purchaser, Transmission Organization in its official capacity, any other affected transmission service provider, or any governmental authority with applicable authority to direct such a curtailment of energy production.</p>
<p><b>Deemed Energy Generation</b></p>	<p>Means, during an applicable period of time, the quantity of Energy, expressed in MWh that would have been produced by the Facility, delivered to the Point of Delivery as Delivered Energy and sold to Purchaser in accordance with the terms of this REPA during such period but for Purchaser's Unexcused Failure.</p>
<p><b>Emergency</b></p>	<p>Means a physical condition or situation that, in the judgment of the Transmission Provider, affects or will affect the ability of the Grid to accept Energy Output from the Facility at the Point of Delivery.</p>
<p><b>Energy Output</b></p>	<p>Net energy delivered by Seller for sale to Purchaser at the agreed Point of Delivery as measured in accordance with Section 8.3 (Measurement of Net Energy Output) and the general terms and conditions of this REPA.</p>
<p><b>Environmental Attributes</b></p>	<p>Means any and all credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits attributable to a the generation, purchase, sale or use of electrical energy from a renewable energy resource during the Term, howsoever entitled or named, resulting from the</p>

	avoidance, reduction, displacement, or offset of the emission of any gas, chemical, or other substance, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC, or its successor.
<b>Environmental Law</b>	Means all Laws of the country for the protection of the environment for the time being in force.
<b>Environmental License</b>	Means any approvals, permits, consents and clearances granted under Environmental Law.
<b>Exhibits</b>	Mean the Exhibits attached to this Agreement and forming an integral part hereof.
<b>Forced Outage</b>	An immediate full or partial interruption of the generating capability of the Facility that is not the result of (i) a request by Utility in accordance with this REPA , (ii) a Scheduled Outage or (iii) an event or occurrence of Force Majeure.
<b>Good Utility Industry Practice(s)</b>	Means accepted international practices and standards, engineering and operational considerations, including manufacturers' recommendations generally followed in designing, constructing, testing, commissioning, operation and maintenance of facilities similar to the Facility.
<b>Governmental Authority</b>	Mean any ministry, department, political subdivision, instrumentality, agency, provincial or municipal council, authority, body or entity, corporation or commission under the control of the Government.
<b>Grid</b>	Means the electrical transmission system that is beyond the Point of Delivery and controlled by the Transmission System Provider.
<b>Interconnection Agreement</b>	Means the Generation Interconnection Agreement between Seller and Transmission System Provider, whether or not the Transmission Provider is the Purchaser or an Affiliate of Purchaser, that contains the rights and obligations of the parties with respect to the interconnection of the Facility to Purchaser transmission line and the methods and procedures for the safe operation and maintenance of the Interconnection Facilities.
<b>Interconnection Facilities</b>	The facilities that interconnect the Facility to the Utility's Grid. This includes all of the equipment that measures capacity and energy output from the Facility, as well as the associated protection equipment specified.

<b>Land Lease</b>	It is an agreement which is drawn up between a developer and a landowner. It conveys specific rights to the developer to pursue a business plan under specified terms and conditions.
<b>Liquidated Damages</b>	Sum of money (agreed-to and written into this REPA) specified as the total amount of compensation an aggrieved party should get, if the other party breaches certain part(s) of the REPA that are considered Event of Default.
<b>Maximum Delivery Obligation</b>	As defined in Paragraph 7.1(e)
<b>Minimum Delivery Obligation</b>	As defined in Paragraph 7.1(d)
<b>Paragraph</b>	Sub-section of this written agreement
<b>Point of Delivery</b>	Means the electric system point at which Seller makes the Energy Output available to Purchaser.
<b>Pre-defined Peak Months</b>	Means the months of the calendar year where the demand of electric power is the highest during the year. It varies from a country to the other and they are always critical with respect to forced or scheduled outage.
<b>Purchaser</b>	Means the utility company that purchases the electricity generated from the seller's Facility. And the REPA is established between the seller and the utility company who is regulated to buy the electricity.
<b>Relevant Consents</b>	As defined in Paragraph 4.4(a)
<b>REPA</b>	Renewable Energy Purchase Agreement
<b>Scheduled Outage</b>	A planned full or partial interruption of the Facility's generating capability that (i) is not a Forced Outage; (ii) has been scheduled and allowed by Utility in accordance with this REPA provisions; and (iii) is for inspection, testing, preventive maintenance, corrective maintenance or improvement of the Facility.
<b>Section</b>	Sub-article of this written agreement
<b>Seller</b>	Means the developer and owner of the renewable energy technology that generates electricity.
<b>Working Day</b>	Means any Day other than a weekend, public holiday or a bank holiday in the country.

## ARTICLE 2: TERM

### 2.1 Initial Term:

This REPA shall become effective as of its Execution Date, and shall remain in full force and effect during twenty (20) years starting on the day of the Facility Effective Completion Date (as defined later), subject to any early termination provisions set forth herein ("Initial Term"). Applicable provisions of this REPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for (a) final billings and adjustments related to the period prior to termination; (b) repayment of any money due and owing to either Party pursuant to this REPA; (c) repayment of principal and interest associated with Performance Bond pursuant to Section 4.7; (d) the indemnifications specified in this REPA; and (e) the resolution of disputes between the Parties.

### 2.2 Extension of Initial Term:

- (a) This REPA may be extended by either Party for a single additional period of five (5) years after the end of the Initial Term on the same terms and provisions defined by this REPA, provided that:
  - (i) The Party seeking an extension has made a prior written request to extend the REPA to the other Party, such request to be made not more than thirty six (36) months and not less than twenty four (24) months before the end of the Initial Term of this REPA;
  - (ii) The Party receiving a request to extend the REPA has not rejected the request in a written response to the Party seeking an extension, given not more than three (3) months following receipt of the request for extension; and
  - (iii) There is not an event of default of either Party, as defined in Sections 10.2 (Seller Defaults) or 10.3 (Purchaser Defaults), on the date the extension begins.
- (b) In the event of extension of the Initial Term the Extended Term becomes twenty five (25) years starting on the day of the Facility Effective Completion Date ("Extended Term").
- (c) Seller is responsible to assure the coordination of the extension of the present REPA to cope with the validity and duration of other related agreements including the Interconnection Agreement and the Land Use Agreement together with its linked easements for transmission lines and right of way for transport and mobility.

## ARTICLE 3: FACILITY DESCRIPTION

### 3.1 Summary description:

Seller shall endeavor to construct, own, operate, and maintain the Facility, which shall consist of *[number, capacity and technology of Generating Units according to the type of renewable energy source]* and associated equipment having an approximate designed Total Installed Capacity ("Installed Capacity") of *[Capacity in letters] Megawatt [(capacity in numbers MW)]* based on the aggregate nominal or "nameplate" MW rating of the modular renewable energy generating units ("Generating Units") comprising the Facility and has a primary voltage level of *[Facility local network primary voltage in letters] kilovolts [(Facility local network primary voltage in numbers kV)]*. The Facility is connected to the Transmission System at *[Facility voltage at Point of Delivery in letters] kilovolts [(Facility voltage at Point of Delivery in numbers kV)]*. The interconnection point to the Transmission System ("Point of Delivery") is located at *[location of Point of Delivery]*.

Exhibit A (Facility Description) provides a description of the Facility, including identification of the major equipment and components, which make up the Facility.

### 3.2 Site:

The Facility shall be located in *[site name and location of Facility]* and shall be identified as *[name to be given to the Facility also identifying the renewable energy resource used]* Facility. A scaled map that identifies the site, the location of the Facility at the site, the location of the Point of Delivery and the location of the important Interconnection Facilities, is included in Exhibit B (Location and Layout).

### 3.3 General considerations:

Seller shall construct the Facility in accordance with Good Utility Industry Practice(s) and with the codes, rules and manuals of the Transmission Provider. During Commercial Operation Duration, Seller shall maintain the Facility according to Good Utility Industry Practice(s) and to the Interconnection Agreement provisions. In addition to the requirements of the Interconnection Agreement, the design of the Facility shall at all times include metering accuracy, current transformers and voltage transformers located at the Point of Delivery as required to connect to the Energy Output Metering Devices. The Facility shall be:

- (a) Capable of supplying Energy Output in compliance with the requirements of Purchaser and the Interconnection Agreement;
- (b) Capable of operating at power levels as specified in the Interconnection Agreement based on the Facility Installed Capacity pursuant to Section 3.1; and
- (c) Equipped with protective devices and generator control systems designed and operating in accordance with the Interconnection Agreement and Good Utility Industry Practice(s).

### 3.4 Milestone Schedule:

- (a) Within thirty (30) days after the Execution Date, Seller shall deliver to Purchaser a schedule describing the principal milestones and dates by which the following events as detailed in Schedule A (Milestone

Schedule), are planned to occur:

- Start of construction.
  - Arrival of Generating Units, transformers etc. at site.
  - Erection start and completion of Generating Units.
  - Erection of electrical collection system, transformers, bus bar arrangement, transmission line, circuit breakers and other necessary equipment, up to the Point of Delivery.
  - Commencement and completion of commissioning of Facility Generating Units.
  - Scheduled Completion Date.
- (b) Purchaser shall have fifteen (15) days to review and comment on the Milestone Schedule. Seller shall endeavor to amend the Milestone Schedule to accommodate the reasonable comments of Purchaser within fifteen (15) days of such submission after which the Milestone Schedule shall be in full force and effect for the purpose of this REPA. The Milestone Schedule may however be amended and/or updated from time to time by mutual agreement of the Parties. Where however mutual agreement cannot be reached between Parties on any amendment or update, the existing Milestone Schedule shall be in full force and effect for the purpose of this REPA.
- (c) The dates specified in the Milestone Schedule, including the Scheduled Completion Date, shall be extended:
- (i) By a period equal to that during which Seller was affected by Force Majeure;
  - (ii) In proportion to the extent of time or delay by which the Seller is affected as a result solely due to an act or omission of either Purchaser, or any Governmental Authority of [country name].

## ARTICLE 4: PRE-COMMERCIAL OPERATION OBLIGATIONS

### 4.1 Conditions Precedent to Completion Date:

Following the signature of the statement of declaration of the achievement of the Effective Completion Date pursuant to Paragraph 6.1(c), Seller shall send a Notice to inform Purchaser on the fulfillment of the Pre-commercial operation obligations. This notification is contingent upon Seller providing evidence reasonably acceptable to Purchaser of the satisfaction or occurrence of all of the Conditions Precedent set forth in this Section 4.1 ("Conditions Precedent") and shall include a declaration by Seller to that effect. Purchaser shall respond in writing within fifteen (15) days of Seller's written notification either confirming to Seller that all of the Conditions Precedent have been satisfied or have occurred or stating with specificity those Conditions Precedent that Purchaser believes, in good faith, have not been satisfied or have not occurred. Purchaser's confirmation shall not be unreasonably withheld or delayed, and Purchaser's failure to respond within fifteen (15) days of Seller's written notification shall be deemed to constitute Purchaser's written confirmation to Seller of the satisfaction or occurrence of all Conditions Precedent. The Conditions Precedent are:

- (a) Seller has provided a list of the Facility's Generating Units, showing the make, model, serial number and designed maximum capacity output in MW (nameplate capacity) of each Generating Unit;
- (b) Seller has certified to Purchaser in writing that all of the Generating Units of the Facility have achieved Commercial Operation and stating the Commercial Operation Date of each Unit.
- (c) Seller has successfully completed testing of the Facility, which is required by the Interconnection Agreement for the commencement of Commercial Operation of the Facility;
- (d) The interconnection of the Facility to the Transmission Provider's System has been completed in accordance with the Interconnection Agreement and has operated at a generation level acceptable to the Transmission Provider in accordance with the operating requirements of the Interconnection Agreement, and initial synchronization with the Transmission Provider's System has been achieved;
- (e) Seller has made all arrangements and executed all material agreements required to deliver the Energy Output from the Facility to the Point of Delivery in accordance with the provisions of this REPA;
- (f) Seller shall have demonstrated that it can reliably submit necessary data and measurements to Purchaser in accordance with the requirements defined by Exhibit C (Data and Measurements);
- (g) the Performance Bond meeting the requirements of Section 4.7 has been established;
- (h) Seller has submitted to Purchaser a certificate stating that all permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority to construct and operate the Facility in compliance with applicable laws and this REPA have been obtained and are in full force and effect;
- (i) Seller shall have provided to Purchaser at least thirty (30) days prior to Scheduled Completion Date a non-binding, good faith 12 month x 24 hour forecast of Energy Output from the Facility;
- (j) Seller shall have provided Purchaser an environmental report confirming that no conditions involving Environmental Contamination exist at or under the site that would materially impact performance of Seller's obligations under this REPA or Seller shall provide to Purchaser prior to the Scheduled Completion Date a remediation plan for removal of such Environmental Contamination if any.
- (k) Certificates of insurance coverage or insurance policies required by Article 13 have been obtained and submitted to Purchaser; and
- (l) Seller has provided Purchaser with copies of all Land Use Agreements, Land Leases and Easement Agreements related to the Facility and its interconnection to the grid, provided that Seller may delete or remove confidential commercial terms contained therein.

## **4.2 Construction and Commissioning:**

- (a) Seller shall undertake and be obligated to complete construction of the Facility and to achieve successful completion of the required test

- operations no later than the Scheduled Completion Date.
- (b) The procedures and program for testing and commissioning of the Facility is set forth in Exhibit D (Testing and Commissioning). Seller shall provide Purchaser with the results of such tests carried out by the Seller under this REPA, duly certified by an Independent Engineer.
  - (c) Seller shall give to Purchaser not less than fifteen (15) days (or such lesser period as the Parties may agree) notice of its intention to commence any such testing. Purchaser shall have the right to attend, observe and witness such tests. Upon serving the necessary notice to Purchaser, all testing may proceed as scheduled, whether or not Purchaser attends, observes and witnesses such tests.
  - (d) In the event that the Facility does not successfully complete the required test operations prescribed in Exhibit D on or before the Scheduled Completion Date, and Purchaser is in full compliance with all its material obligations under this REPA, then Seller shall be liable to Purchaser in an amount to be determined in accordance with the Liquidated Damages provision pursuant to Section 6.1(b).

#### **4.3 Construction Progress Meetings and Reports:**

The Parties shall hold periodic progress meetings, before the Effective Completion Date to review matters relating to the construction and commissioning of the facility and other matters arising from time to time in relation to the Facility. During the Construction Period, the Seller shall submit to Purchaser:

- (a) Within the first ten (10) days of each calendar month until the Completion Date is achieved, Seller submits a Progress Report summarizing progress of the Facility construction (which report may comprise any report prepared for the Lenders, if any, by the consultants and not previously provided to Purchasers, summarizing progress of construction of the Works) and highlighting by reference to key activities and milestone dates and the critical path for the development of the Facility all actual or potential departures from the implementation Milestone Schedule or delays to execution of the works. Each such report shall also state the proposed measures to be taken by the Seller to mitigate or overcome such departures or delays to cope with the Facility Scheduled Completion Date;
- (b) Commencing upon the date that is three (3) months prior to the expected Completion Date, Seller will additionally advise Purchaser biweekly on the status of Generating Units Commissioning until the Effective Completion Date is achieved.
- (c) Such other information as Purchaser may reasonably require to be furnished by the Seller to enable Purchaser to ascertain whether the Seller is in compliance with the technical specification and such other matters relating to the co-ordination between the obligations of the Seller pursuant to this REPA and the obligations of Purchaser hereunder during the Construction Period. Purchaser shall also have the right to monitor construction progress of the Facility during normal business operating

hours, provided, that Purchaser provides Seller reasonable advance written notice. Purchaser's technical review and inspection of the Facility shall not be construed as endorsing the design thereof or as any warranty of safety, durability, or reliability of the Facility.

#### 4.4 Permits and licenses:

- (a) ("Relevant Consents") are defined as any approval, consent, authorization or other requirement that is required from the Government or any public sector entity under the applicable Laws of the Government of [Country name] for Seller with respect to the Facility.
- (b) Seller, at its sole cost and expense, shall acquire and maintain in effect all permits, licenses and approvals required by all local agencies, commissions and authorities with jurisdiction over Seller or the Facility, so that Seller may lawfully perform its obligations under this REPA.
- (c) Purchaser may, at the request of the Seller, assist the Seller to obtain:
  - (i) All environmental permits and certificates necessary for the operation of the Facility;
  - (ii) All Governmental Approvals;
  - (iii) All customs clearances and Governmental Approvals for the importation of all equipment, materials and spare parts necessary for the design, construction, operation and maintenance of the Facility;
  - (iv) All necessary visas and work permits from any Governmental Authority to enable the Seller's expatriate officers and staff to work in [Country Name] for the duration of their assignment. Where Purchaser grants such assistance, Seller shall ensure that the grantee of such visas or work permits shall work exclusively for the Facility and shall not violate any of the conditions subject to which such visas or work permits were granted.
- (d) Purchaser shall incur no liability if any certificates, consents, licenses, permits, clearances, regulations, visas or work permits or other similar Government Approvals referred to in this Section 4.4 are not granted to Seller.
- (e) Any assistance granted by Purchaser to Seller under this Section 4.4 shall be at the entire cost and expense of the Seller.

#### 4.5 Credits, Grants, and Preferences:

Seller shall be responsible for applying for and obtaining any available and applicable tax credits, grants, loans or preferences from governmental or other institutions. Purchaser shall cooperate with Seller by providing requested documentation or other confirmation relating to the execution of this REPA, subject to the confidentiality terms of Section 16.4.

#### 4.6 Facility Contracts:

Seller shall provide to Purchaser, within thirty (30) days after execution of this REPA, a certificate in a form reasonably acceptable to Purchaser, stating that Seller has sufficient Generating Units under contract to satisfy its obligations

hereunder together with copies of major engineering drawings relating to the Facility. Information that is commercially sensitive, confidential or proprietary, as reasonably determined by Seller, may be redacted from the documents provided to Purchaser pursuant to this Section 4.6. All such information shall be treated as confidential information subject to Section 16.4 hereof. Seller shall provide sufficient information for Purchaser to be reasonably assured that Seller has contracted with financially responsible vendors as part of the Facility construction process.

#### 4.7 Seller's Performance Bond Prior to Commercial Operation

- (a) The Seller shall establish a Performance Bond denominated in Dollars and shall have a stated amount equal to US \$ *[an amount to be agreed upon by both Parties and can be estimated to the equivalence in US\$ of Facility energy Output for one to two years depending on Facility technology]*. Seller must ensure that the Performance Bond shall remain valid until thirty (30) days after Effective Completion Date is achieved or the termination of this REPA, whichever occurs earlier. Purchaser shall have the right to draw upon the Performance Bond against the presentation by Purchaser of the Performance Bond Certificate to the extent that the Liquidated Damages pursuant to Section 6.1(b) are not paid by the Seller, provided that, where a dispute exists with respect to the amount of Liquidated Damages, Purchaser shall only be entitled to draw the undisputed amount of Liquidated Damages, until the resolution of such dispute.
- (b) In the event of Seller failing to achieve Facility completion by the Scheduled Completion Date and where Seller fails to extend the Performance Bond two weeks prior to the expiry of such Bond, Purchaser shall give at least ten (10) days notice in writing of its intention to draw on the full amount of the Performance Bond. In such an event, Purchaser may, upon presentation of the Performance Bond to the issuing bank of such Bond, be entitled to draw the full amount of the Performance Bond. Purchaser shall hold the amount drawn in an interest bearing account as security for the Seller's obligations until such time as a new Performance Bond is being established. In which event, Purchaser shall promptly on demand return to the Seller the amount drawn together with all accrued interest thereon.

### ARTICLE 5: INTERCONNECTION

#### 5.1 Interconnection Agreement:

- (a) Before the Execution Date of this REPA, Seller shall enter into an Interconnection Agreement with the Transmission Provider responsible for the operation of the Interconnection Facilities with which the Facility interconnects at the Point of Delivery at the Transmission System. Even though, Interconnection Agreement is a separate one from this REPA, Purchaser shall diligently cooperate with Seller, in the negotiations with Transmission Provider, in the event that the Interconnection Agreement would need to be amended from time to time during the Term of this

## REPA.

- (b) The arrangements for the design, installation, operation and maintenance of the Interconnection Facilities are governed by the Interconnection Agreement. The Interconnection Facilities include breakers, bus works, bus relays, and associated equipment installed for the direct purpose of interconnecting the Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities.
- (c) All expenses associated with the design, procurement, construction, installation, operation and maintenance of the Interconnection Facilities shall be paid by Seller in accordance with the Interconnection Agreement provisions.
- (d) Seller shall complete construction of the Interconnection Facilities and any required new transmission line and associated equipment at least thirty (30) days prior to the Scheduled Completion Date
- (e) Any future changes, relocations, additions or modifications whatsoever to the Interconnection Facilities, or any rearrangements or reinforcement of the Interconnection Facilities that may become necessary to meet the changing requirements or conditions solely required due to the operation of the Facility, shall be the Seller's responsibility and at its expense.

## 5.2 Other Provisions Related to Interconnection

- (a) Seller shall design, construct, install, commission, operate and maintain the Interconnection Facilities, and any parts thereof, in accordance with the terms of the Interconnection Agreement. Seller shall design, construct, install, commission, own, operate and maintain all auxiliary and interconnecting equipment on the Seller's side of the Point of Delivery, provided that Purchaser shall have the right to view such equipment and to object to the use of any equipment if the use of such equipment would adversely affect Purchaser's switchgear and protective devices.
- (b) Seller will be responsible for the design, construction, installation and commissioning of any new transmission lines (and associated switchgear and protective devices) needed to connect the Facility to Transmission System detailed in the Interconnection Agreement.
- (c) Seller shall permit Purchaser access to Facility as Purchaser shall require for the testing of Interconnection Facilities if needed, provided that no testing carried out by Purchaser shall impose upon Seller any liability, or relieve Seller from any liability that it would otherwise have had for its negligence or other wrongful act in the design, construction, operation or maintenance of the Interconnection Facilities.
- (d) All Metering Devices used and procured by Seller to measure the Energy Output delivered to Purchaser at the Point of Delivery under this REPA (or under the Interconnection Agreement) for billing purposes ("Billing Metering System"), are subject to approval by Purchaser. The metering point(s) shall be at the Transmission Grid (high voltage) side of Seller's transformer that connects the Facility to the Transmission Grid.

- (e) All Metering Devices (in the Billing Metering System) used to measure the Energy Output under this REPA (or under the Interconnection Agreement) shall be sealed and the seal may be broken only in the presence of both Seller's and Purchaser's representatives, when such Metering Devices are to be inspected, and tested and/or adjusted. The requirements for billing Metering Devices to be supplied, installed, tested and calibrated are detailed in Exhibit E.
- (f) Purchaser shall install, maintain, test and calibrate at its expense, back-up Metering Devices at the Point of Delivery ("Back-up Metering System"). The back-up Metering Devices shall comply with the requirements stated in Exhibit E. Purchaser may install, maintain and operate at its expense, data gathering and communication equipment used to monitor, record, or transmit data relating to the Energy Output from the Facility and delivered to Purchaser at the Point of Delivery. Seller shall arrange for a location within the Facility Substation control house accessible to Seller and Purchaser, for such Back-up Metering System and data gathering and communication equipment that may be installed.
- (g) Seller shall operate the Facility in a manner that complies with the operating requirements set forth in the Interconnection Agreement.
- (h) Each Party shall provide the other Party, in advance, written notice of any changes to be made to the Facility or to any part of the Transmission Grid that may affect the proper coordination of protective devices between the two systems. Both Parties, each one in its side of the Point of Delivery, shall not disable or otherwise change or modify any protective equipment or change or modify the operation or settings thereof without first requesting and receiving the written approval of Transmission Provider, which approval shall not be unreasonably withheld.

## ARTICLE 6: COMMERCIAL OPERATION

### 6.1 Effective Completion Date:

- (a) Commercial Operation ("Commercial Operation") means that a particular Generating Unit in the Facility is ready for regular daily operation has been connected to the Grid, and is capable of producing Energy Output in accordance with Good Utility Industry Practice. The Facility shall achieve the Effective Completion Date ("Effective Completion Date") when all of the Generating Units reach the Commercial Operation, and shall be fully capable of reliably producing the Energy Output to be provided under this REPA and delivering such Energy Output to Purchaser at the Point of Delivery.
- (b) If Seller fails to achieve Commercial Operation of all the Generating Units by the Scheduled Completion Date, Seller shall pay Purchaser Liquidated Damages in an amount of US\$ *[an amount to be agreed upon by both Parties]* (or its equivalent in Local Currency) per day or part thereof, for each day the achievement of the Completion Date is delayed beyond the

Scheduled Completion Date, commencing from the Scheduled Completion Date until the achievement of the Effective Completion Date or the termination of this REPA, whichever occurs earlier. The maximum amount of Liquidated Damages payable by the Seller for such delay shall be Liquidated Damages payable for 180 days [*i.e.* US \$ Liquidated Damages per day x 180 = US \$ .....]. The Liquidated Damages shall be deducted from the Performance Bond pursuant to Section 4.7.

- (c) Both Parties will acknowledge and sign a statement of declaration of the achievement of the Effective Completion Date in two originals stating the Effective Completion Date and this signed document will be added as an amendment to this REPA.

## 6.2 Operation and Reliability Standards

Seller shall maintain the Facility in a manner that complies with the rules for safety and reliability set forth in Good Utility Industry Practice(s) and all Transmission System operation and reliability standards and regulations presently in effect or which may be enacted during the Term of this REPA. Seller shall staff, control, and operate the Facility consistent at all times with the Operating Procedures referenced below pursuant to Section 6.3(b):

- (a) Seller shall provide a maintenance schedule for the Facility indicating the Scheduled Outage for the first year of operation at least thirty (30) days prior to the Scheduled Completion Date. Thereafter, Seller shall submit to Purchaser annual maintenance schedules no later than October 1<sup>st</sup> of each year that cover the twelve (12) months period starting January 1<sup>st</sup> and ending December 31<sup>st</sup> and a long-term maintenance schedule that will encompass the immediately ensuing four (4) years. Purchaser shall provide written notice of any reasonable objections to the proposed annual maintenance schedule within fifteen (15) days of receipt thereof, and failure to so object shall be deemed approval of the annual maintenance schedule. Seller shall furnish Purchaser with reasonable advance notice of any change in the annual maintenance schedule. Reasonable advance notice of any change in the annual maintenance schedule involving any shutdown of the entire Facility is as follows:

<i>Purchaser</i>	<i>Scheduled Outage Expected</i>	<i>Advance Notice to</i>
	<i>Duration</i>	
	(1) Less than 2 days	at least 24 hours
	(2) 2 to 5 days	at least 7 days
	(3) Major overhauls (over 5 days)	at least 90 days

- (b) Seller shall not schedule any planned maintenance outages for the entire Facility during Pre-defined Peak Months without the prior written approval of Purchaser not to be unreasonably withheld, delayed or conditioned.
- (c) Seller shall be afforded adequate Forced Outage provision to facilitate necessary emergency maintenance to the Facility, provided that the average annual Energy Output from the Facility during any Contract Year period shall not be less than ninety percent (90%) of the Minimum

Delivery Output in MWh pursuant to Section 7.1(d). Seller shall use its reasonable efforts to limit Forced Outages.

### **6.3 Operating Committee and Operating Procedures:**

- (a) The Parties shall each appoint at least three (3) delegates from each Party to act on matters relating to the operation of the Facility under this REPA. Such delegates shall constitute the Operating Committee which will be headed by a delegate from Seller's side. The Parties shall notify each other in writing of such appointments and any changes thereto. The obligations and responsibilities of the Operating Committee and the rules governing meetings of the Operating Committee shall be as set forth in Exhibit F. The Operating Committee shall have no authority to modify the terms or conditions of this REPA.
- (b) The Operating Committee shall, acting reasonably, develop mutually agreeable written operating procedures ("Operating Procedures") in draft form no later than thirty (30) days prior to the Scheduled Completion Date. Operating Procedures shall include, but not be limited to: method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; operating and maintenance scheduling and reporting; operations log; and such other matters as may be mutually agreed upon by the Parties. The agreed upon Operating Procedures shall be provided and distributed within three (3) months following the Effective Completion Date.
- (c) Three (3) months prior to the Scheduled Completion Date, The Operating Committee shall develop plans for operating the Facility during an Emergency affecting Seller or Purchaser. Such plans shall include, without limitation, recovery from a local or widespread electrical blackout and voltage reduction to effect load curtailment. The plans will also address the event if the Facility would have a Scheduled Outage or a Forced Outage and such outage occurs coincident with an Emergency.

### **6.4 Inspection, Monthly Reports and Records:**

- (a) Purchaser shall have the right to visit, observe and examine the Facility and the operation thereof, upon reasonable advance notice to Seller, for the purpose of facilitating the technical operation and administration of this REPA. Such visits and observations shall not be construed as an endorsement by Seller of the operation of the Facility nor as a warranty by Seller of the safety, durability or reliability of the Facility and shall not relieve Seller of any of its responsibilities under this REPA.
- (b) Seller shall provide to Purchaser a monthly report (together with the monthly Invoice pursuant to Section 7.4(a)), by no later than fifteen (15) days after the end of each calendar month, in such a form attached in Exhibit G (Monthly Report) as Purchaser shall reasonably request, by electronic mail and in hard copy, regarding the operations of the Facility. Each monthly report shall include: Facility Energy Output at Point of Delivery and all other reporting information maintained in the operations record; data on the renewable energy resource during the month, a comparison of hourly renewable energy available resource in the site

compared to the actual energy output generated during the month for each Generation Unit.

- (c) Each Party shall keep complete and accurate records and other data required by each of them for the purposes of proper administration of this REPA. Among other records and data, Seller shall maintain an accurate and up-to-date operating log for the Facility, which log shall include (without limitation) records of:
  - (i) Real and Reactive Power production for each clock half-hour, and electrical energy frequency and interconnection bus voltage at all times;
  - (ii) Changes in operating status, Scheduled Outages and Forced Outages;
  - (iii) Any unusual conditions found during inspections; and
  - (iv) Any other items as mutually agreed upon by the Parties.
- (d) Either Party shall have the right, upon reasonable prior written notice to the other Party, to examine or to make copies of the records and data of the other Party (with electronic or hard copies) relating to the proper administration of this REPA, at any time during normal office hours during the period such records and data are required to be maintained. All such records or data shall be maintained for a minimum of sixty (60) calendar months after their creation, and for any additional length of time required by regulatory agencies with jurisdiction over the Parties. Upon expiration of such period, neither Party shall dispose of or destroy any such records without thirty (30) days prior written notice to the other Party, and the Party receiving such notice may, at its option, elect to receive such records, in lieu of their disposal or destruction, by giving the notifying Party notice of its election prior to the expiration of the 30-day period.

## 6.5 O&M Contractor:

Seller may appoint an Operation and Maintenance ("O&M") Contractor to operate and maintain the Facility throughout the Term of this REPA. Seller shall submit such appointment and the appointment of any successor O&M Contractor to Purchaser for its prior written approval, which approval shall not be unreasonably withheld or delayed. Neither such appointment nor the approval thereof by Purchaser, however, shall relieve Seller of any liability, obligation, or responsibility resulting from a breach of this REPA.

## 6.6 Cessation of Operation:

- (a) If, after the Effective Completion Date, Seller, other than because of an event of Force Majeure, a Scheduled Outage or a Forced Outage (which Scheduled Outage or Forced Outage does not cause the Seller to exceed the maximum outage allowed under the requirements of Paragraph 6.2(c), allows Abandonment of the Facility without the prior written consent of Purchaser, then Purchaser shall be entitled to enter the site and, in consultation with the Operating Committee established pursuant to Section 6.3 and Exhibit F, appoint a manager of suitable competence to manage and operate the Facility, in accordance with Prudent Utility

Practice until Seller demonstrates to the reasonable satisfaction of Purchaser that it can and will resume normal operations of the Facility. During any period that Purchaser operates the Facility pursuant to this Paragraph, Purchaser shall be entitled to receive only such consideration as is reasonable (i) to pay the manager, at a level commensurate with industry standards; and (ii) to reimburse Purchaser for its reasonable and prudently incurred administrative, operational and other expenses, during and arising from its operation of the Facility. Purchaser shall render a full accounting to Seller at regular intervals during the period of its operation of the Facility pursuant to this Section, and at the close of its management. Purchaser shall continue to make payments for Net Energy Output in accordance with Section 7.2 and Exhibit H.

- (b) During its operation of the Facility in accordance with the provisions of Paragraph 6.6(a) above, Purchaser shall not be liable for any damage to the Facility or any part thereof or for any damage or loss suffered by the Seller or third party, except where such damage or loss is caused by the gross negligence or the deliberate action or inaction of Purchaser.

## **ARTICLE 7: SALE AND PURCHASE OF ENERGY OUTPUT**

### **7.1 Obligations to Sell and Purchase:**

- (a) This REPA covers only the Sale and Purchase of the electric energy output generated from the renewable energy Facility (“Energy Output”). Both the Facility’s electrical production Capacity Attributes and the renewable energy output associated Environmental Attributes are excluded and remains outside the subject of this REPA. Both Parties agree that such Attributes shall be the property of the Seller and Seller keeps the title and interest of these aforesaid Attributes or can decide otherwise according to its sole discretion.
- (b) The Parties further contemplate that no Ancillary Services will be initially provided to Purchaser under this REPA. With respect to any Ancillary Services, regardless of whether currently existing or created after the Execution Date of this REPA, such Ancillary Services may be sold by Seller to Purchaser at each Party’s option at such price and on such terms and conditions as may be mutually acceptable to Seller and Purchaser in their respective sole discretion.
- (c) Beginning on the Effective Completion Date, Seller shall use its reasonable endeavors to generate from the Facility, deliver to the Point of Delivery, and sell to Purchaser, and Purchaser shall purchase and pay for, at the rates and conditions provided herein, all renewable energy output (Energy Output) generated by the Facility and available at the Point of Delivery. Neither Party shall curtail or interrupt delivery, acceptance, sale and/or purchase of Energy Output for economic reasons.
- (d) Starting from and after the Effective Completion Date, the minimum

delivery obligation from the Facility is an annual net Energy Output equals *[value of Facility Energy Output calculated according to a minimum annual average availability factor]* MWh at the Point of Delivery for each Contract Year during the Term of this REPA (“Minimum Delivery Obligation”). The Contract Year means the consecutive twelve (12) months period commencing with the Effective Completion Date or its anniversary during the Term of this REPA. Seller shall be required to deliver to Purchaser Energy Output annually in each Contract Year an amount equal to at least the Minimum Delivery Obligation. In each Contract Year of the Term, if the amount of Energy Output delivered to Purchaser at the Point of Delivery from the Facility pursuant to the terms of this REPA is less than the Minimum Delivery Obligation, Seller shall pay to Purchaser an amount equal to US\$ *[agreed amount in dollars]* per MWh for the deficit amount of Energy below the Minimum Delivery Obligation. Seller shall be credited with lost Energy Output arising from Force Majeure events, or Curtailment of power generation by Purchaser or Transmission Provider, for purposes of meeting the Minimum Delivery Obligation. Liquidated Damages payable by Seller to Purchaser pursuant to the terms of this Paragraph 7.1(d) for failure to meet the Minimum Delivery Obligation shall be capped at US\$ *[agreed amount in dollars]* per year and US\$ *[agreed amount in dollars]* in the aggregate over the Term of this REPA. Purchaser shall have the right to terminate this REPA pursuant to Paragraph 10.2(c) in the event the amount of damages payable by Seller to Purchaser pursuant to this Paragraph 7.1(d) reaches the cumulative limit of US\$ *[agreed amount in dollars]* prior to the end of the Term of this REPA, which such occurrence shall be deemed a Seller’s Event of Default.

- (e) Starting from and after the Effective Completion Date, the maximum delivery obligation is the annual aggregate maximum amount of renewable energy output (Energy Output) generated by the Facility, Purchaser is obliged to purchase and pay for during each Contract Year (“Maximum Delivery Obligation”). The Maximum Delivery Obligation from the Facility equals *[value of Facility Energy Output calculated according to a maximum annual average availability factor]* MWh of Energy Output at the Point of Delivery for each Contract Year during the Term of this REPA. For Each Contract Year, the quantity of Energy Output in excess of this ceiling shall be received by Purchaser and is calculated to be considered to redress any deficient amount of energy below the Minimum Delivery Obligation pursuant to Paragraph 7.1(d) for the same Contract Year.
- (f) Pursuant to Paragraph 7.1(e) above and starting from and after the Effective Completion Date, Purchaser has the obligation to Purchase any surplus (calculated for each single Contract Year) of the excess Energy Output beyond the quantity deemed for redressing any deficient amount

of energy (for the same Contract Year) below the Minimum Delivery Obligation, if any, at a rate of fifty percent (50%) of the Payment Rate pursuant to Section 7.2 and Exhibit H.

- (g) Starting from and after the Effective Completion Date, Purchaser shall not be obligated to purchase Deemed Energy Generation that cannot be delivered due to disruptions, breakdowns, electrical system failures and/or mechanical failures, maintenance or repair to the Facility Substation and/or the Grid, including, for reasons of Force Majeure; provided that such inability to deliver is not due, in whole or in part, to Purchaser's negligence or its breach of, or default under, this REPA. As between Purchaser and Seller, Seller shall not be entitled to recover lost revenues for events covered in this Paragraph 7.1(g) from Purchaser.

**(This Paragraph 7.1(a) is always a source of dispute and can be covered in the Interconnection Agreement as we consider here the Purchaser is different from Interconnection Provider. Hence, it should be treated on a case by case basis)**

## 7.2 Energy Price:

The amount of the payments due from Purchaser to seller for Energy Output from the Facility shall be calculated in accordance with Exhibit H (Calculation of Payments) using the Payment Rate defined in that Exhibit. The payments shall be made as follows:

- (a) Price for Energy Output Prior to the Effective Completion Date, Purchaser agrees to purchase from Seller any Energy Output produced by Seller from the Facility and delivered at the Point of Delivery at a rate of US\$ *[agreed amount in dollars]* per Megawatt hour (MWh).
- (b) For the period following the Effective Completion Date, Payment Rate by Purchaser to Seller for Energy Output from the Facility and delivered at the Point of Delivery shall be calculated in accordance with Exhibit H.

## 7.3 Payment Currency

- (a) All payments required pursuant to any provision of this REPA (including provisions applicable in the event of any breach, default, or other failure of performance) shall be calculated as per the relevant Payment Rate and currency while payment is always performed in Local Currency.
- (b) Purchaser shall make payment of the Energy Output Charge and the Deemed Energy Charge (where applicable) during the Term subject to the terms and conditions of this REPA. The Dollar component of the Payment Rate shall be paid to Seller in equivalent Local Currency. The Local Currency Component of the Payment Rate under this REPA shall be paid to Seller in Local Currency.
- (c) Parties agree that on conversion from Dollars to Local Currency, Seller should be in no less favorable position than it would have been had if Seller received payment in Dollars.

- (d) Purchaser shall not be held liable or responsible in any manner whatsoever, if upon conversion the Seller is in a less favorable position than it would have been had the conversion been immediate upon receipt of payment under this Section 7.3, and such position is due to any action or inaction on the part of the Seller, its Nominated Bank, Agent or representative.

## 7.4 Billing and Payment

- (a) The monthly billing period shall be the calendar month. No later than fifteen (15) calendar days after the end of each calendar month (commencing with the calendar month following the calendar month in which the Effective Completion Date of the Facility occurs), Seller shall prepare, and provide to Purchaser, the Monthly Report Pursuant to Section 6.4(b) showing Energy Output and an invoice for any amounts due from Purchaser to Seller under the terms of this REPA, for the previous calendar month billing period. The Report and invoice shall be sent to the address specified in Section 15.2. The invoice shall include:
- (i) The Energy sales from Seller to Purchaser during the billed month.
  - (ii) The Payment Rate for the current Contract Year pursuant to Exhibit H;
  - (iii) The Energy Charge for the billed Month;
  - (iv) Sales Taxes if any;
  - (v) Reimbursable other Taxes if applicable;
  - (vi) Any other sums then due and payable by Purchaser to Seller under this REPA;
  - (vii) Deemed Generation Charge if applicable pursuant to Exhibit H;
  - (viii) The total sum payable by Purchaser.
- (b) All billing data based on metered Energy Output delivered at the Point of Delivery to Purchaser shall be collected by the Billing Metering System in accordance with Article 8 (Metering).
- (c) Purchaser shall be entitled to submit invoices to Seller in respect of any payments due by Seller to Purchaser under this REPA. All such invoices shall show intermediate calculations in reasonable detail.
- (d) Payments due Seller or Purchaser, as the case may be, shall be due and payable by electronic funds transfer, or by wire transfer to an account that is held and specified by the other Party (or by any other specific alternative payment procedures as designated by both Parties), on or before the thirtieth (30th) calendar day following owing Party's receipt of owed Party's proper billing invoice. If the amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next invoice. Such late payment charge shall be calculated based on an annual interest rate of *[agreed escalation index in letters]* percent (*[agreed escalation index in number]* %)

calculated daily and effective from the due date until the date of actual payment. Any such charges for interest shall be calculated by the paying Party and included with payment of the following invoice without the need for an additional invoice for those amounts.

- (e) If there is an event of default, breach, or other failure to perform for which this REPA specifies payment of amounts as Liquidated Damages or otherwise, the Party to be compensated shall prepare and deliver to the other Party a special invoice that shows the calculation of any amounts due pursuant to this REPA, specifies the provisions applied, and details the periods of delay or other factors on which the claim is based.

## 7.5 Billing Disputes

- (a) If either Party, on reasonable grounds, disputes any portion of a monthly invoice or the correctness of the amount received in payment of an invoice, then that Party shall, within fifteen (15) days of the receipt of such invoice or payment, serve a notice on the other Party indicating the amount and basis of the dispute. Neither Party shall be required to pay a disputed amount pending resolution of the dispute. The dispute shall be settled by mutual discussion and, if necessary, resolved pursuant to Article 14 (Resolution of Disputes).
- (b) If it is determined that either Party owes the other an amount of money, the owing Party shall, within ten (10) days after its receipt of such determination, pay such sum together with interest at the rate set forth above pursuant to Section 7.4 (d), to the other Party.

## 7.6 Purchaser Failure to Take Energy Output (Deemed Energy Charges):

During the Pre-Commissioning period and the commissioning operation period, and subject in all respects to the provisions of this REPA, (i) if Purchaser fails to take Energy Output made available to Purchaser at the Point of Delivery that Purchaser is required to purchase under the terms of this REPA, or (ii) if Seller is unable to generate Energy that would otherwise be delivered to and be required to be purchased by Purchaser pursuant to the terms of this REPA, in each case not resulting from a Force Majeure Event, Dispatch Down Period or an Instructed Operation, and is otherwise solely due to any act or failure to act by Purchaser that is inconsistent with Purchaser's rights and obligations under this REPA, and such failure to take or inability to generate is not excused by or caused by Seller's action, inaction or default, then Purchaser shall pay to Seller, upon Seller's written request therefore on thirty (30) days prior written Notice, an amount equal to the Deemed Generated Energy for such period, multiplied by the Payment Rate for Energy Output then applicable for such period set forth in Paragraph 7.2(b) and Exhibit H.

## 7.7 Purchaser Letter of Credit

- (a) At least thirty (30) days prior to the Scheduled Completion Date, Purchaser shall establish in favor of the Seller, two unconditional, irrevocable, stand-by Letters of Credit valid for a period not less than 365 days in the form depicted in Exhibit I hereto (Purchaser Letters of Credit)

issued by the Purchaser's Bank. One to be denominated in Dollars (the Purchaser Dollar Letter of Credit) and one to be denominated in Local Currency (the Purchaser Local Currency Letter of Credit). The Purchaser Dollar Letter of Credit shall have a stated amount equal to the aggregate amount of the Dollar component of the Payment Rate payable by Purchaser on 3/12th of the Minimum Delivery Obligation, assuming the Payment Rate then in effect, and the Purchaser Local Currency Letter of Credit shall have a stated amount equal to the aggregate amount of the Local Currency component of the Payment Rate payable by Purchaser on 3/12th of the Minimum Delivery Obligation assuming the Payment Rate then in effect. The Purchaser Letters of Credit shall be in effect every Year from the Effective Completion Date and during the Term of this REPA and shall be renewed thirty (30) days prior to their expiration. The amount of the Purchaser Letters of Credit shall be adjusted every Year to reflect the variation in the components of the Payment Rate pursuant to Exhibit H. The Seller shall have the right to draw upon the Purchaser Dollar Letter of Credit in the amount of the Dollar component of any invoice and the Purchaser Local Currency Letter of Credit in the amount of the Local Currency component of any invoice respectively against presentation by the Seller of the Purchaser Letter of Credit Certificate, if any such invoice submitted by the Seller to Purchaser remains unpaid by Purchaser for fifteen (15) days after the Due Date of payment, provided that where Purchaser disputes any invoice, the Seller shall only be entitled to draw the undisputed amount payable by Purchaser in terms of Section 7.5.

- (b) Purchaser shall be discharged from payment of any amounts due under this REPA only to the extent the Seller actually receives payment under the Purchaser Letters of Credit. Within fifteen (15) days of any drawing under the Purchaser Letter of Credit, Purchaser shall reinstate the level of the Purchaser Letters of Credit to that required under Paragraph 7.7(a) above.
- (c) If the Purchaser Letters of Credit are not renewed twenty one (21) days prior to their expiration or are not replenished within fifteen (15) days of any withdrawal thereon, then the Seller shall, thereafter give at least ten (10) days notice in writing of its intention to draw on the full amount of the Purchaser Letters of Credit and upon presentation of the Purchaser LC Certificate to the Purchaser Bank be entitled to draw the full amount of Purchaser Letters of Credit.
- (d) If the Seller draws the full amount of the Purchaser Letters of Credit, the Seller shall hold the amount drawn in an interest bearing Dollar and Local Currency account as security for Purchaser's obligations until such time as new Purchaser Letters of Credit are put in place, and in which event the Seller shall promptly, on demand, return to Purchaser the amount drawn together with all accrued interest thereon less any amount recoverable by the Seller under the Purchaser Letters of Credit, had they been in force.

## ARTICLE 8: METERING

### 8.1 Ownership of Metering Devices:

- (a) Seller shall own, operate and maintain the Billing Metering System used to acquire the performance measurements from which payments to Seller pursuant to this REPA are calculated and invoiced.
- (b) Purchaser shall design, finance, construct, install, own, operate and maintain the Backup Metering System for backup purposes.
- (c) For both Metering Systems, the metering points shall be at the Purchaser's Grid (high voltage) side of Seller's transformer that connects the Facility to Purchaser's Grid at the Point of Delivery.

### 8.2 Testing and Inspection of Metering Equipment:

- (a) Testing, inspection, repair, recalibration and replacement of the Billing Metering System and of the Backup Metering system shall be performed by the Parties in accordance with the agreed operations and maintenance procedures detailed in Exhibit E (Metering).
- (b) In addition to periodic testing and calibration pursuant to Exhibit H, Purchaser may request a test of the accuracy of the Billing Metering System, at Seller's expense once a year. Seller may have the Billing Metering System tested at its own expense at any time.

### 8.3 Measurement of Net Energy Output:

- (a) At noontime of the last business day of each calendar month, Seller and Purchaser shall read the Billing Metering System for the purpose of measuring the Net Energy Output of the Facility at the point of Delivery.
- (b) In the event that the Billing Metering System is found to be inaccurate or functioning improperly, the correct amount of Net Energy Output delivered to Purchaser during the period for which inaccurate measurements were made shall be determined using the Backup Metering System.
- (c) In the event that both the Billing and Backup Metering Systems are inaccurate or functioning improperly, other procedure defined in Exhibit E (Metering) shall be used to evaluate the Energy output of the Facility.
- (d) Purchaser shall make a supplemental payment or issue a special invoice in the amount of the difference between the previous payments by Purchaser for the period of the Metering System's inaccuracy. Purchaser's payment or special invoice shall be delivered within fifteen (15) days of the determination of proper readings. Any such special invoice to Seller shall be paid within fifteen (15) days of receipt. In no event, however, shall any adjustments be made for any period prior to the date on which the Metering System was last tested and found to be accurate within plus or minus half Percent ( $\pm 0.5\%$ ) and not otherwise functioning improperly.

## ARTICLE 9: MUTUAL WARRANTIES AND COVENANTS OF THE PARTIES

### 9.1 Warranties:

Each Party warrants to the other that:

- (a) It has full power to carry on business and to enter into, legally bind itself by, and perform its obligations under this REPA;
- (b) The signatories to this REPA on its behalf are duly authorized and competent to execute and deliver this REPA as being valid and legally binding on it and does not require any further consent or approval or registration;
- (c) The execution, delivery, and performance of this REPA, subject to the granting and maintenance of the Relevant Consents pursuant to Section 4.4(a), does not, and will not, constitute a violation of any legal or contractual constraint validly applied to Seller and Purchaser.
- (d) There are, to the best of Seller's and Purchaser's knowledge, no existing or threatened legal, contractual, or financial matters of any kind that could reasonably be expected to affect materially either its ability to perform its obligations under this REPA or the enforceability of this REPA; and
- (e) No information given by one Party in this REPA contains any material misstatement of fact or omits to state a fact that would be materially adverse to the enforcement of the rights and remedies of the other Party.

### 9.2 Seller Covenants

Seller hereby covenants as follows:

- (a) It is duly formed, validly existing and in good standing under the laws of [country of Seller] and is qualified to do business in [country where Facility is located] and has complied with all applicable laws;
- (b) Unless otherwise stated in this REPA, the Seller shall design, finance, construct, own, operate and maintain the Facility or any part thereof in accordance with this REPA and its applicable Exhibits and Schedules, and all laws, rules, regulations and ordinances that are enforceable or binding upon Seller;
- (c) Seller shall successfully complete the test operations required by Exhibit D (Testing and Commissioning) for the Facility on or before the Completion Date;
- (d) In addition to the Operational Procedures pursuant to Paragraph 6.3(b), Seller shall operate and maintain the Facility in such a manner so as not to have an adverse effect on Purchaser voltage level and/or voltage waveform, power factor and frequency or produce adverse levels of voltage flicker and/or voltage harmonics;
- (e) In addition to the Operational Procedures pursuant to Paragraph 6.3(b), Seller shall at all times cause the Facility to be operated and maintained consistent with Good Utility Industry Practice(s);
- (f) Seller shall in accordance with the Technical Specifications specified in the Interconnection Agreement install protective relays within the Facility having ratings and characteristics approved by Purchaser. Such approval shall not constitute a Purchaser any warranty or representation and shall

not operate to increase the liability of Purchaser with respect to third parties. Seller shall maintain the settings of all such relays at levels reasonably acceptable to Purchaser and to Interconnection Provider. Seller shall not change the settings of such relays without prior written consent of Purchaser and Interconnection Provider, which consent shall not be unreasonably withheld or delayed.

- (g) Seller shall notify Purchaser in writing of all apparatus that is from time to time included in Seller's Facility installations and that is likely to cause undue disturbance of Purchaser's system. Such apparatus shall be utilized only with the approval of, and as specified by, Purchaser, in writing. Such approval shall not constitute a Purchaser any warranty or representation and shall not operate to increase the liability of Purchaser with respect to third parties.
- (h) Where approval is granted pursuant to Section 9.2(g) above, Seller shall use all reasonable efforts to prevent any apparatus being utilized in such a manner as to cause any undue disturbance of Purchaser' system. If Purchaser finds that any such apparatus is being utilized in a manner that causes such disturbance, Seller shall, upon receiving notice of such finding from Purchaser, immediately cease to so utilize such apparatus until steps have been taken to the reasonable satisfaction of Purchaser to eliminate such disturbance; alternatively, Seller shall replace such apparatus by other apparatus approved by Purchaser. In cases of emergency, oral notice will suffice for the purposes of this Section, provided that such oral notice shall be confirmed in writing within two (2) Working Days of being given to Seller.

### **9.3 Purchaser Covenants.**

- (a) Purchaser covenants to make the payments for Net Energy Output as required by this REPA as they become due.
- (b) Where Purchaser must approve or Purchaser and Seller jointly must establish specifications for connections of the Facility and related apparatus, Purchaser covenants to act reasonably in so doing, with the objective of coordinating Facility and Purchaser's Grid operations so as to maximize Facility Net Energy Output.

## **ARTICLE 10: DEFAULTS AND TERMINATION**

### **10.1 Time:**

- (a) Where the Parties or a Party is required to perform any act or to fulfill an obligation under this REPA within a specified time, and for any reason that Party cannot perform within the time stated, then that Party may request an extension of the time for performance. The non-requesting Party shall give such requests for extensions of time due and reasonable consideration.
- (b) If Seller fails to complete any Critical Milestone within the specified periods under this REPA pursuant to Schedule A and such failure is not caused by a Force Majeure Event, such failure will be deemed an Event

of Default and as sole remedy for such Event of Default Purchaser shall have the right to:

- (i) Terminate the Agreement upon the delivery of thirty (30) days prior Notice thereof to Seller, without liability to Seller and
- (ii) To retain the then undrawn amount of the Seller's Performance Bond pursuant to Section 4.7 as liquidated damages.

## 10.2 Seller Defaults:

Purchaser may give a notice of default under this REPA (a "Purchaser Notice of Default") upon the occurrence of any of the following events, unless caused by a breach by Purchaser of this REPA (each a "Seller Event of Default").

- (a) Abandonment of construction of the Facility by the Seller after the commencement of Construction, without the written consent of Purchaser.
- (b) Failure of Seller to achieve the requirements for the Effective Completion Date within one (1) year after the Scheduled Completion Date. Unless, prior to the expiration of such 1-year period, Purchaser and Seller agree on the length, and terms and conditions of an extension of the Scheduled Completion Date, at the expiration of the initial 1-year period Purchaser shall either declare a default or waive its right to declare a default pursuant to this Section. Purchaser may waive its right to demand payment of the Liquidated Damages determined in accordance with the Liquidated Damages provision pursuant to Paragraph 6.1(b) and Performance Bond pursuant to Section 4.7.
- (c) The aggregated Liquidated Damages payable by Seller to Purchaser pursuant to Paragraph 7.1(d) for failure to meet the Minimum Delivery Obligation exceed the cumulative limit of US\$ *[agreed amount in dollars]* prior to the end of the Term of this REPA.
- (d) Willful alteration of or tampering by Seller or its employees or agents with the Interconnection Facilities without the prior written consent of Purchaser and/or transmission Provider, except in situations where such actions are taken to prevent immediate injury, death, or property damage and the Seller uses its best efforts to provide Purchaser and Transmission Provider with advance notice of the need for such actions.
- (e) Abandonment of operation of the Facility by the Seller after the Effective Completion Date, without the written consent of Purchaser.
- (f) Failure by Seller to make any payment required to be made by it under this REPA on the due date for the payment where the aggregate unpaid and past due amounts exceed US\$ *[agreed amount in US\$]*.
- (g) Except when taken for the purpose of merger or reorganization (provided that such merger or reorganization does not affect the ability of the merged or reorganized entity to perform its obligations under this REPA), the occurrence of any of the following events:
  - (i) Passage of a resolution by the shareholders of Seller for the winding up of Seller;
  - (ii) Admission in writing by Seller of its inability to pay its debts as they become due;

- (iii) Appointment of a Liquidator in a proceeding for the winding up of Seller after notice to Seller and due hearing; or
- (iv) A court order to wind up Seller; or
- (h) Any material breach by Seller of any representation, warranty or covenant in this REPA.

### 10.3 Purchaser Defaults:

Seller may give a notice of default under this REPA (a "Seller Notice of Default") upon the occurrence of any of the following events, unless caused by a breach by Seller of this REPA (each a "Purchaser Event of Default").

- (a) The occurrence of any of the following events, except where done for the purpose of merger or reorganization that does not affect the ability of the merged or reorganized entity, as the case may be, to perform its obligations under this REPA:
  - (i) Passage of a resolution by the shareholders of Purchaser for the winding up of Purchaser;
  - (ii) Admission in writing by Purchaser of its inability to pay its debts as they become due;
  - (iii) Appointment of a Liquidator in a proceeding for the winding up of Purchaser, after notice to Purchaser and due hearing; or
  - (iv) A court order winding up Purchaser;
- (b) Willful alteration of or tampering by Purchaser or its employees or agents with the Facility or Interconnection Facilities without the prior written consent of Seller, except in situations where such actions are taken to prevent immediate injury, death, or property damage and Purchaser uses its best efforts to provide Seller with advance notice of the need for such actions;
- (c) Purchaser's failure to make any payment when required under this REPA shall constitute an Event of Default unless:
  - (i) Purchaser shall have cured the same after receipt of written notice thereof; or
  - (ii) Purchaser has filed in good faith a Billing Dispute with respect to such unpaid amounts and complied with Section 7.5; or
- (d) Any material breach by Purchaser of any representation, warranty or covenant in this REPA.

### 10.4 Notice and Cure:

A Purchaser Notice of Default or a Seller Notice of Default shall specify in reasonable detail the Seller Event of Default or Purchaser Event of Default, respectively, giving rise to the Notice of Default. In the case of a default set forth in Paragraphs 10.2 (b), 10.2 (c), 10.2 (e) or 10.2(f), the defaulting party shall have five (5) Working Days (*i.e.*, non-holiday weekdays) within which to cure the default. In the case of a default defined in any other Section than 10.2 and 10.3, the defaulting party shall have thirty (30) calendar days to cure the default.

### 10.5 Rights and Remedies Upon an Event of Default:

- (a) If a Seller Event of Default has occurred and the Seller Event of Default

has not been cured within the period specified in Section 10.3, Purchaser, in its sole discretion, may take any or all of the following actions:

- (i) Terminate this REPA by delivering written notice to the Seller (Purchaser Termination Notice) or
  - (ii) Proceed in accordance with Article 14 (Resolution of Disputes) 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, or
  - (iii) At its election, take such steps as are reasonably necessary to cure the default before so proceeding.
- (b) If a Purchaser Event of Default has occurred and the Purchaser Event of Default has not been cured within the period specified in Section 10.3, Seller, in its sole discretion, may take any or all of the following actions:
- (i) Terminate this REPA by delivering written notice to Purchaser (Seller Termination Notice) or
  - (ii) Proceed in accordance with Article 14 (Resolution of Disputes) 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, or
  - (iii) At its election, take such steps as are reasonably necessary to cure the default before so proceeding.
- (c) 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. The Parties may seek to exercise such rights and remedies only in accordance with the procedures set forth in Article 14 (Resolution of Disputes). The Parties may exercise each right and remedy afforded by this REPA or by law from time to time and as often as reasonably deemed expedient by the Party exercising this right. No delay by, or omission of, Seller or Purchaser to exercise any right or remedy arising upon any event of default of the other Party shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.
- (d) Notwithstanding the above, the total amount of damages that Seller shall be entitled to for any breach of this REPA by Purchaser shall not exceed US\$ *[agreed amount in US\$]*.

## **10.6 Survival:**

Notwithstanding anything to the contrary contained in this REPA, where applicable the rights and obligations set forth in this Article 10 shall survive the termination of this REPA.

## **ARTICLE 11: FORCE MAJEURE**

### **11.1 Meaning of Force Majeure:**

In this REPA, "A force majeure event means any event which is (i) beyond the reasonable control of any of the Parties claiming to be affected by such event (the "Affected Party"), (ii) which could not be reasonably foreseen by the Affected

Party, and (iii) which impedes performance of any provision of this Agreement by the Affected Party.” Without limiting the generality of the foregoing, and conditioned on performance of the requirements of Paragraph 11.1 (c), Force Majeure shall expressly include the following categories of events and circumstances, to the extent that the events or circumstances satisfy the definitional requirements.

- (a) "Force Majeure - Natural" includes, but is not limited to:
  - (i) Acts of Nature;
  - (ii) Epidemic of plague;
- (b) "Force Majeure - Political" includes, but is not limited to:
  - (i) Act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
  - (ii) Strikes; and
  - (iii) Except where Section 11.2 applies, (1) any of the Relevant Consents pursuant to Section 4.4(a) not being granted or renewed (unless previously revoked for cause) upon application having been duly made, (2) any of the Relevant Consents pursuant to Section 4.4(a), having been granted, ceasing to remain in full force and effect (unless revoked for cause), or (3) the attachment to any Relevant Consents pursuant to Section 4.4(a), subsequent to its grant, of any terms or conditions preventing performance,
- (c) Upon the occurrence of a Force Majeure event or circumstances, the non-performing Party shall, within forty-eight (48) hours, give the other Party written notice describing the particulars of the occurrence. The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. The non-performing Party shall use its best efforts to remedy its inability to perform; and when the non-performing Party is able to resume performance of its obligations under this REPA, that Party shall promptly give the other Party written notice to that effect.

### **11.2 Exclusion from Force Majeure:**

Force Majeure shall expressly not include the following conditions, except to the extent they result from an event or circumstances of Force Majeure:

- (a) Unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts, or consumables for the Facility;
- (b) A delay in the performance of any Contractor;
- (c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment; and
- (d) Non-performance caused by, or connected with, the non-performing Party's (i) negligent or intentional acts, errors or omissions, (ii) failure to comply with applicable laws, or (iii) breach of, or default under, this REPA.

### **11.3 Consequences of Force Majeure:**

- (a) Neither Party shall be deemed in breach of this REPA because of any

failure or delay in complying with its obligations pursuant to this REPA due solely to Force Majeure. The periods allowed for performance by the Parties of their obligations (other than that specified in Section 10.4 (Notice and Cure) shall be extended on a day-for-day basis, provided that:

- (i) No relief shall be granted to the Party claiming Force Majeure pursuant to this Article 11 to the extent that such failure or delay would have occurred even had such Force Majeure not occurred, and
  - (ii) The Party not claiming Force Majeure may immediately terminate this REPA without further obligation, if Force Majeure delays a Party's performance for a period greater than twelve (12) months.
  - (iii) Other than for breaches of this REPA by the Party not claiming Force Majeure, and without prejudice to the right of the Party claiming Force Majeure to indemnification pursuant to Article 12, the Party not claiming shall not bear any liability for any loss or expense suffered by the Party claiming Force Majeure as a result of a Force Majeure.
- (b) During the pendency of an event of Force Majeure Seller shall not be entitled to receive Energy Payment from Purchaser except for energy already received by Purchaser prior to the Event. If Force Majeure affects only part of the Facility, then Seller shall be entitled to receive Energy Payment for electrical energy actually delivered to Purchaser.

## ARTICLE 12: INDEMNIFICATION AND LIABILITY

### 12.1 Indemnity by Seller:

In addition to Seller's obligations and Purchaser's remedies provided elsewhere in this REPA, Seller shall indemnify Purchaser for any loss of or damage to property, death or injury to person, and any other liabilities, damages, losses and reasonable costs and expenses, including, but not limited to, legal fees and expert witness fees or any claim against Purchaser in respect thereof (collectively, "Damages") suffered by Purchaser as a direct and foreseeable consequence of Seller's conduct, where Purchaser suffered Damages:

- (a) During the design, construction, ownership, operation or maintenance of the Facility, and Damages resulted from any negligent act or omission of Seller its servants or agents, and through no fault of Purchaser its servants or agents;
- (b) In connection with, arising out of, or resulting from, any breach of warranty, material misrepresentation by Seller, or non-performance of any term, condition, covenant or obligation to be performed by Seller under this REPA; and
- (c) In connection with any claim, proceeding or action brought against Purchaser under any applicable national or local environmental laws or regulations, and Damages resulted from Seller's ownership of the site or operation of the Facility;

Seller's indemnities, however, 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 Purchaser, its servants or agents, or the failure of Purchaser, its servants or agents, to take reasonable steps in mitigation thereof.

## 12.2 Indemnity by Purchaser:

In addition to Purchaser's obligations and Seller's remedies provided elsewhere in this REPA, Purchaser indemnifies Seller for Damages suffered by Seller, where Seller suffered Damages:

- (d) During the design, financing, construction, ownership, operation or maintenance of the Facility and its Interconnection Facilities and Damages resulted from any negligent act or omission of Purchaser its servants or agents and through no fault of Seller, its servants or agents; and
- (e) In connection with, arising out of, or resulting from, any breach of warranty, any material misrepresentation by Purchaser or non-performance of any term, condition, covenant or obligation to be performed by Purchaser under this REPA.

Purchaser's indemnities, however, 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 Seller or the failure of the Seller to take reasonable steps in mitigation thereof.

## 12.3 Notice of Proceedings

Each Party shall promptly notify the other Party as soon as reasonably practicable after the relevant party becomes aware of any claim or proceeding with respect to which it is entitled to be indemnified under this REPA.

## 12.4 Obligation to Defend:

Each Party on reasonable grounds shall have the right, but not the obligation, to contest, defend and litigate (and to retain legal advisers of its choice for that purpose) any claim, action, suit or proceeding by any third party brought against it, with respect to which the Party is entitled to be indemnified pursuant to this Article 12, with the Party's reasonable costs and expenses of such action subject to said indemnity. The indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through legal advisers of its choice, if it:

- (a) Gives notice of its intention to do so to the Party entitled to indemnification;
- (b) Acknowledges in writing its obligation to indemnify that Party to the full extent provided by this Article 12; and
- (c) Reimburses that Party for the reasonable costs and expenses previously incurred by it prior to the assumption of such defence by the indemnifying Party.

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 the indemnifying Party, which consent shall not be unreasonably withheld.

## ARTICLE 13: INSURANCE

### 13.1 Insurance Coverage:

At all times during the term of this REPA, each Party shall obtain and maintain at its own cost insurance coverage for its own facilities within its ownership relating to the Facility, sufficient to indemnify that party or any successful claimant against loss or damage arising with respect to that Facility. Such Insurance shall include the types of coverage usually maintained in respect of facilities of this kind. Seller's insurance shall include, but not be limited to:

- (a) *All Risks Marine Cargo Insurance* in an amount sufficient to cover the replacement cost of all plant and equipment shipped to and intended to become part of the Facility on a warehouse to warehouse basis.
- (b) *All Risks (Property Damage) Operational Insurance* in an amount sufficient to cover the replacement cost of the Facility, including construction equipment and transit coverage for plant purchased within [Country Name] and not subject to the insurance described in Paragraph 13.1(a) above and subject to deductibles of no more than three percent (3%) of the coverage amount in the case of wind, flood and earthquake and [agreed percentage in letters] percent ([agreed percentage in numbers] %) of the coverage amount in the case of all other perils;
- (c) *Excess Umbrella Liability Insurance* with a single limit of at least US\$ [agreed amount in US\$] per occurrence.
- (d) *Comprehensive or Commercial General Liability Insurance* with bodily injury and property damage limits of at least US\$ [agreed amount in US\$] per occurrence, and in the aggregate US\$ [agreed amount in US\$], and subject to deductibles of no more than US\$ [agreed amount in US\$].

Purchaser's coverage (or self-insurance with Seller's consent), which consent shall not be unreasonably withheld) shall include, but not be limited to:

- (e) [insert any other desired or negotiated coverage]

### 13.2 Endorsements:

Seller shall cause its insurers to amend such of its insurance policies as are applicable with the endorsement terms set forth immediately below:

- (a) Purchaser as an additional insured under the policies;
- (b) Insurance is primary with respect to the interest of Purchaser and any other insurance maintained by Purchaser is excess and not contributory;
- (c) The following Cross Liability Paragraph is made a part of the policy:  
"In the event of claims being made by reason of (i) personal and or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or

(ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance";

(d) Notwithstanding any provision of the policy this policy may not be canceled, renewed or materially changed by the insurer without giving thirty (30) days prior written notice to Purchaser. All other terms and conditions of the policy remain unchanged.

### **13.3 Use of Proceeds of All Risks/Operational Insurance:**

The proceeds of any All Risks insurance obtained pursuant to Paragraphs 13.1(a) and 13.1(b) shall, be applied to the repair of the Facility.

### **13.4 Certificates of Insurance:**

Each Party shall on request, cause its insurers or agents to provide the other Party with certificates of insurance evidencing the insurance policies and endorsements required by this Article 13. Failure to deliver certificates of insurance does not relieve the Party in default of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Article 13 shall in no way relieve or limit the Party's obligations and liabilities under other provisions of this REPA.

### **13.5 Purchaser Option to Purchase:**

If Seller fails to obtain or maintain the policies of insurance as required in Section 13.1, Purchaser may obtain equivalent policies of insurance. Seller shall reimburse Purchaser for the cost of such policies within thirty (30) days after notification by Purchaser and interest shall accrue at the Default Rate if Seller fails to make payment within such 30 days. Failure of Purchaser to obtain the insurance coverage required by this Article 13 shall in no way relieve or limit Seller's obligations and liabilities under other provisions of this REPA.

## **ARTICLE 14: RESOLUTION OF DISPUTES**

### **14.1 Mutual Discussions:**

If any dispute or difference of any kind whatsoever (a "Dispute") arises between the Parties in connection with, or arising out of, this REPA, the Parties within thirty (30) days shall attempt to settle such Dispute in the first instance by mutual discussions between Seller and Purchaser. Neither Party may initiate any arbitration procedure before the amicable settlement procedure described above has been completed, except where any Party has good cause to do so to avoid damage to its business or to protect or preserve any right(s) of action it may have

### **14.2 Arbitration:**

(a) The Parties shall use their respective reasonable endeavors to settle amicably any dispute or difference arising between them regarding the

meaning or construction of the obligations of the Parties under this REPA. Neither Party may initiate any arbitration procedure before the amicable settlement procedure described above has been completed, except where any Party has good cause to do so to avoid damage to its business or to protect or preserve any right(s) of action it may have. Whilst the amicable settlement procedure described above is in progress, the Parties shall be obligated to continue performance of their respective obligations under this Agreement. If a dispute is not resolved within sixty (60) days after written notice of a dispute by one Party to the other Party then the provisions of Paragraph 14.2(b) shall apply.

- (b) Where the attempt for amicable settlement of a dispute failed, the dispute shall be finally settled under the national arbitration of the state of *[specify the RCREEE member State name]* or in the case of the absence of such rules the dispute shall be settled under *[specify an international reference entity for the arbitration rules such as the International Chamber of Commerce – ICC]* arbitration rules, by sole arbitrator who should be professionally qualified for not less than 10 years and who is experienced in drafting, negotiating and advising upon agreements similar to this REPA. The arbitrator shall be selected upon a mutual agreement between Parties or in the absence of such an agreement appointed by the *[national or international arbitration rules' reference entity]* in accordance with the said rules. The seat of arbitration shall be *[the RCREEE member state Capital]*. The arbitration shall be conducted in *[specify a language]*. The arbitration award shall be final and binding. The cost for the arbitration shall be paid at equal charge of each Party.

**[this Paragraph 14.2(b) shall be adapted according to the rules in each Country].**

### **14.3 Continued Performance:**

During the pendency of any arbitration:

- (a) Seller shall continue to perform its obligations under this REPA to, among other things, provide Net Energy Output;
- (b) Purchaser shall continue to pay all amounts when due, in accordance with Sections 7.2, 7.3 and 7.4 (Payments, Currency and Billing); and
- (c) Neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute.

## **ARTICLE 15: NOTICES**

### **15.1 Procedure for Giving Notice:**

All notices or other communications (together "Notices") to be given or made hereunder (including, but not limited to, account information for payments) shall be in writing, shall be addressed for the attention of the person indicated in Section 15.2 below and shall either be delivered personally or sent by prepaid post (with receipt acknowledgment required) or by fax. Notices given by fax shall be confirmed by a written copy of the notice delivered or sent as prescribed in this Section. Electronic delivery of Notices (except Invoices) shall be only

considered if it shall be confirmed by a written copy of the notice delivered or sent as prescribed in this Section

## 15.2 Addresses for Notices:

The addresses for service of Parties and their respective fax number shall be:

### 1. For Purchaser:

Attention:  
Address:  
Fax No.:  
Copied to:

### 2. For Seller:

Attention:  
Address:  
Fax No.:  
Copied to:

A Party may modify its address information by notice provided as prescribed in this Paragraph. The information shown above shall be deemed correct unless and until modified as provided herein.

## 15.3 Effectiveness of Notice:

Notices under this REPA shall be effective only upon actual delivery or receipt thereof of written Notices.

## ARTICLE 16: MISCELLANEOUS PROVISIONS

### 16.1 Variations in Writing:

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

### 16.2 Entire REPA:

This REPA and its accompanying Exhibits and Schedules together represent the entire understanding between the Parties with respect to the subject matter of this REPA and supersede any or all previous Agreements or arrangements (whether oral or written) between the Parties with respect to the Facility.

### 16.3 Waivers:

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

- non-defaulting Party.
- (b) The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this REPA 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.

## 16.4 Confidentiality:

- (a) Treatment of Confidential Information.
- (i) Each Party (including its employees, agents and subcontractors) shall hold in confidence all documents and other information, whether technical or commercial, relating to the design, financing, construction, ownership, operation or maintenance of the Facility supplied to it by or on behalf of the other Party that is of a confidential nature and/or is designated as such. 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 the Party, its professional advisers, potential lenders or investors to perform its obligations under this REPA).
- (ii) The provisions of Paragraph 16.4(a) above shall not apply to any information:
- That is or becomes available to the public other than by breach of this REPA; That is in or comes into the possession of the receiving Party prior to the aforesaid publication or disclosure by the other Party and was or is not obtained under any obligation of confidentiality;
  - That was or is obtained from a third Party who is free to divulge the same and was or is not obtained under any obligation of confidentiality; or
  - That is required by law or appropriate regulatory authorities to be disclosed, provided that the Party supplying the information is notified of any such requirement at least five (5) Working Days prior to such disclosure and the disclosure is limited to the maximum extent possible; or
  - That was already known to the Recipient prior to receipt and which the Recipient can prove by written documentation; or
  - That is independently developed by the Recipient who did not have access to such information and without breaching this Agreement and which the Recipient can prove by written documentation
- (b) For the avoidance of doubt, nothing herein contained shall preclude the use of provisions similar to those contained in this REPA or other referenced Agreements in any Agreements prepared and issued in connection with other Projects.

**16.5 Successors and Assigns:**

Except where Seller assigns any of its rights to a principal lender whose existence has been disclosed to Purchaser prior to the Effective Completion Date, Seller may not assign or transfer its rights or obligations under, pursuant to or associated with this REPA without the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed. If Purchaser, on reasonable grounds, objects to the assignment of any of Seller's rights to a principal lender, Purchaser shall (a) promptly notify Seller of its objection, specifying the reasons for the objection and (b) provide Seller a reasonable opportunity to affect a commercially reasonable cure to the objections. If Seller is unable to cure the objections, Purchaser may immediately terminate this REPA. This REPA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the Parties.

**16.6 No Liability for Review:**

No review or approval by a Party of any agreement, document, instrument, drawing, specification or design proposed by the other Party shall relieve the proposing Party from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification or design or from the failure to comply with applicable laws with respect thereto, nor shall a Party be liable to the other Party or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification or design of the other Party.

**16.7 No Third Party Beneficiaries:**

This REPA is intended solely for the benefit of the Parties. Nothing in this REPA 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 REPA.

**16.8 Affirmation:**

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 Local Currency or Foreign Currency and whether in *[Country Name]* or abroad, or in any other manner given or offered to give any gifts and presents in *[Country Name]* 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 corruption prevention, to procure this REPA. Seller undertakes not to engage in any of the said or similar acts during the Term of, and relative to, this REPA.

Purchaser 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 Local Currency or

Foreign Currency and whether in [Country Name] or abroad, or in any other manner given or offered to give any gifts and presents in [Country Name] 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 corruption prevention, to procure this REPA. Purchaser undertakes not to engage in any of the said or similar acts during the term of, and relative to, this REPA.

### 16.9 Governing Law:

The rights and obligations of the Parties under or pursuant to this REPA shall be governed by and construed according to the laws of [Country Name].

### 16.10 No Partnership

Nothing in this Agreement will be deemed to constitute a partnership between the Parties, nor constitute either Party being the agent of the other Party for any purpose.

### 16.11 Severability:

If any term of this Agreement is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity or enforceability of any other term of this Agreement.

**IN WITNESS WHEREOF**, the undersigned have executed this REPA as of the day, month and year first mentioned above.

#### Witness

Signed for and on behalf of

[Insert Legal Name of Seller]

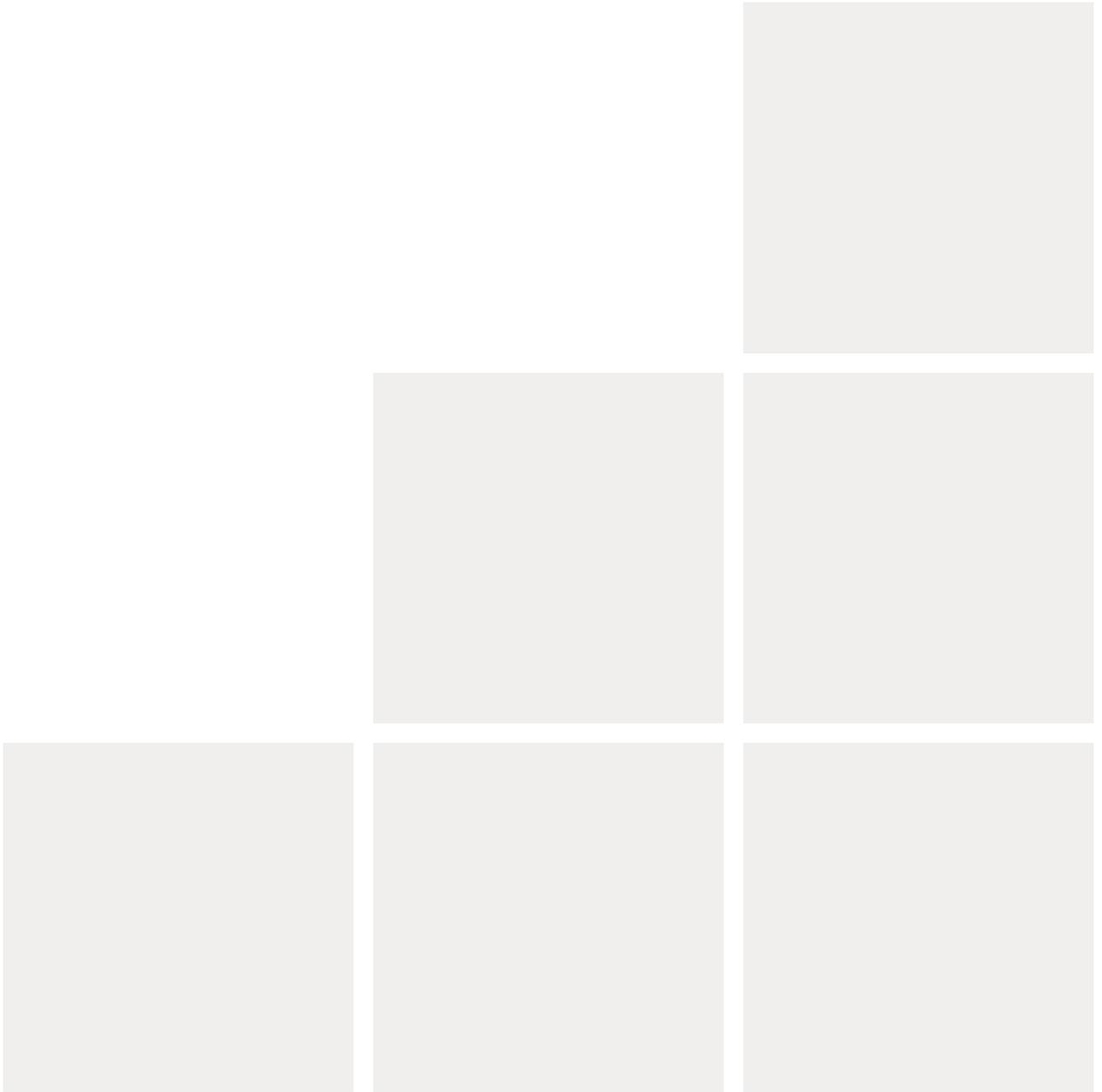
#### Witness

Signed for and on behalf of

[Insert Legal Name of Purchaser]

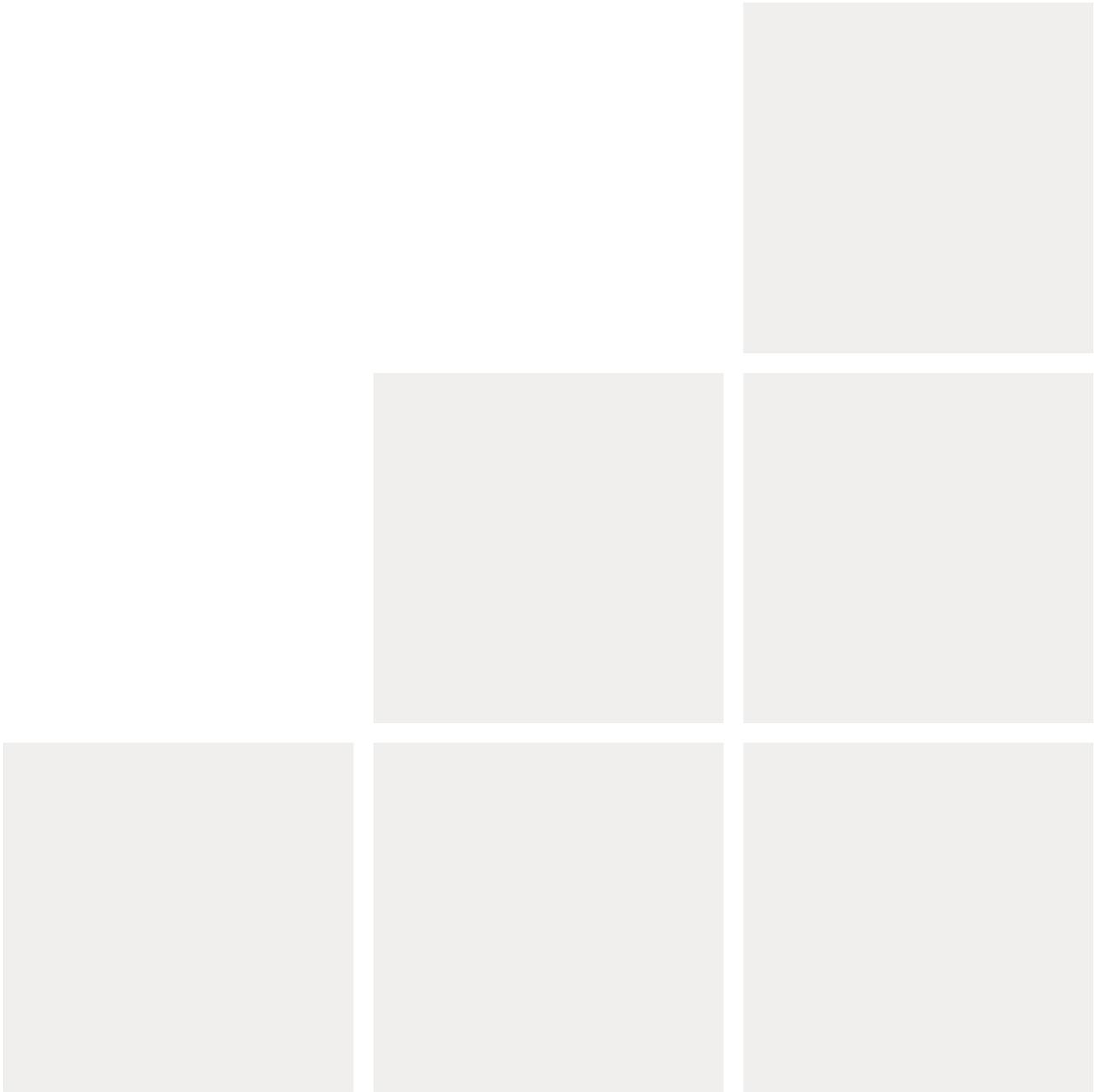
## Exhibit A: Facility Description

This Exhibit provides a description of the Facility, including identification of the major equipment and components, which make up the Facility.



## Exhibit B: Location and Layout

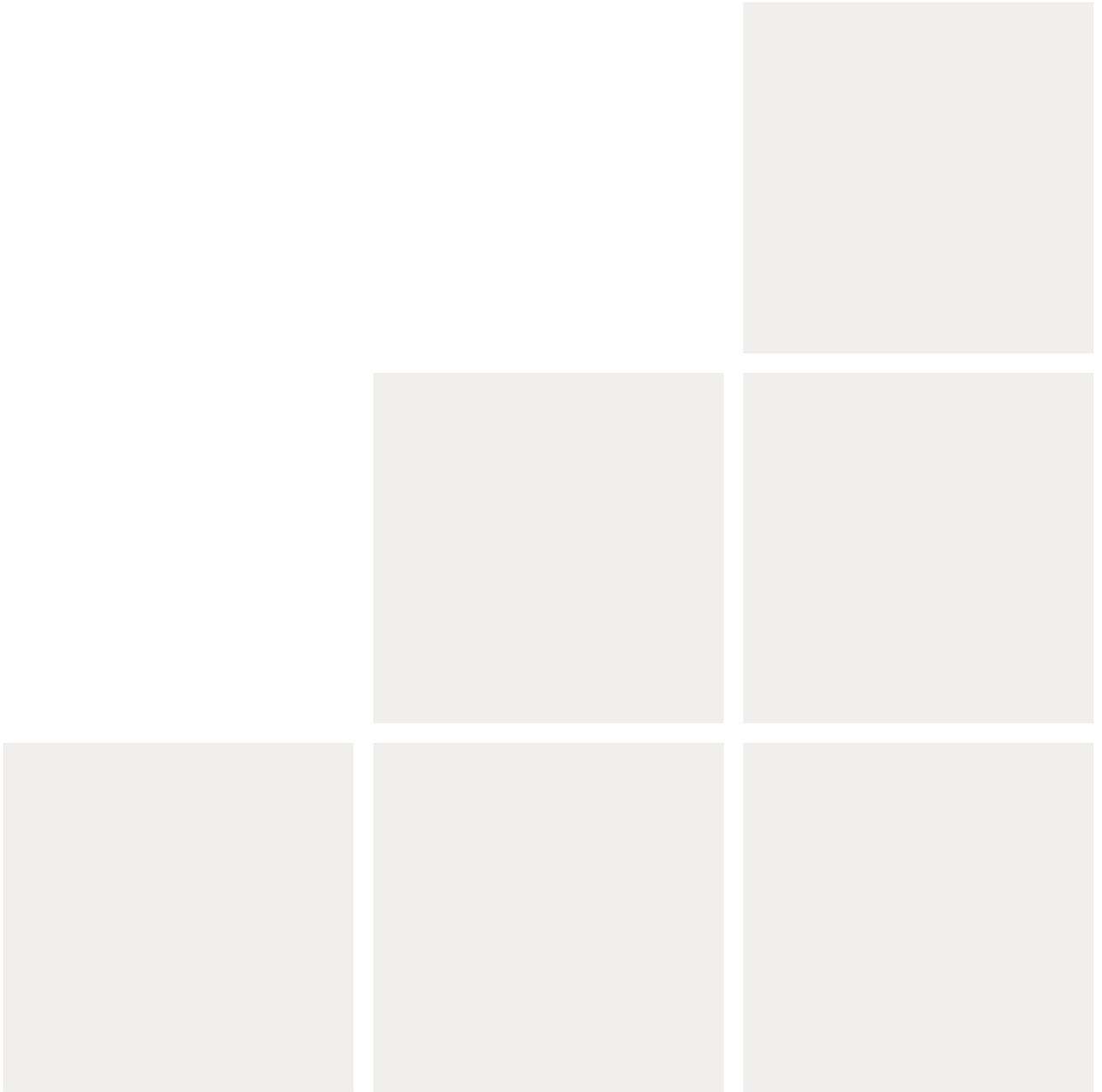
This Exhibit includes a scaled map that identifies the site, the location and the layout of the Facility. It indicates also the location of the Point of Delivery and the location of the important Interconnection Facilities and the Metering Devices.



## Exhibit C: Data and Measurements

Exhibit C includes requirements for data and measurement to be submitted from Seller to Purchaser including:

- Operating parameters (Ramp up/down time, starts/stops per day, and run/down time etc.)
- Active and reactive Energy Output from each Generating unit and the aggregated output from Facility.
- Metrological detailed data pertinent to the renewable energy conversion technology used for the Generating Units.



## Exhibit D: Testing and Commissioning

*[This Exhibit D is a technical document that necessarily varies from Facility to Facility. It must take account not only of the characteristics of the renewable energy technology being utilized, but also the capabilities and limitations of the Facility's design and equipment. The specific testing steps and the test criteria must be negotiated by the Seller and Purchaser with the specific design, equipment, and operational characteristics of the Facility and the Transmission Grid taken into account.]*

Exhibit D includes:

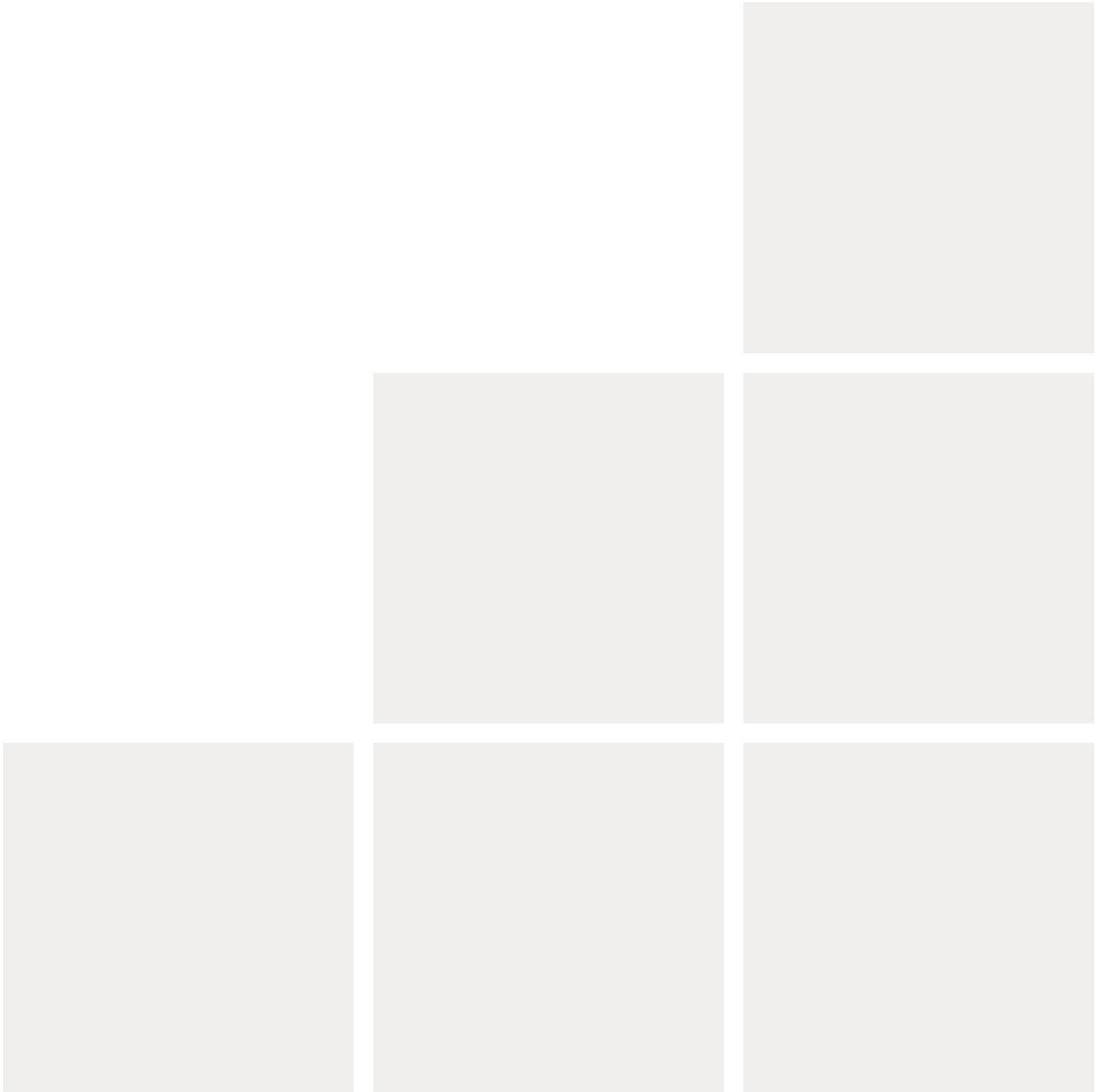
- D1. Testing Prior to Initial Commercial Operation  
(details to be agreed)
- D2. Testing Procedures & Gurantees  
(details to be agreed)
- D3. Testing of Interconnection Facilities (in Presence of Interconnection Provider)  
(details to be agreed)

Seller shall, at its own expense, carry out the testing and commissioning of the Facility and the interconnecting transmission infrastructure in accordance with the provisions of this Exhibit D and Good Utility Industry Practice(s). Purchaser shall be given a prior written notice of any testing or commissioning procedure and Purchaser shall be entitled to have representatives present for purposes of observing any such procedures. If Purchaser representatives are unable to attend for any reason, the testing may proceed without them.

## Exhibit E: Metering

Exhibit E includes:

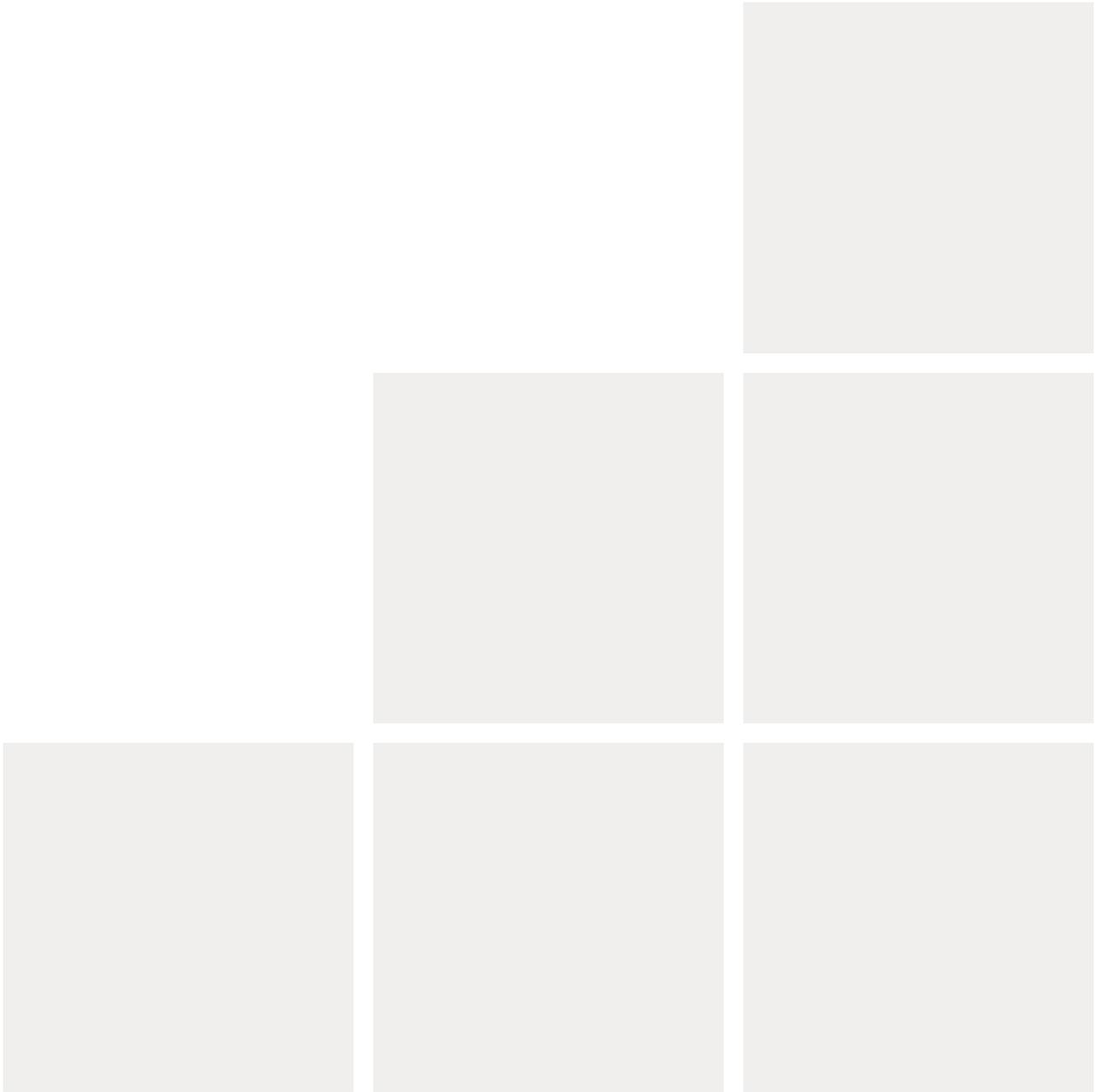
- E1. Metering Equipment and Accuracies (Billing and Back-up Metering Systems)
- E2. Sealing, Field Testing, Inspection and Calibration
- E3. Measurement of Net Energy Output
- E4. Parameters and Procedures for Meter Reading
- E5. Procedure of evaluating Facility Energy Output in Case of Failure of both Billing and Backup Metering Systems



## Exhibit F: Operating Committee

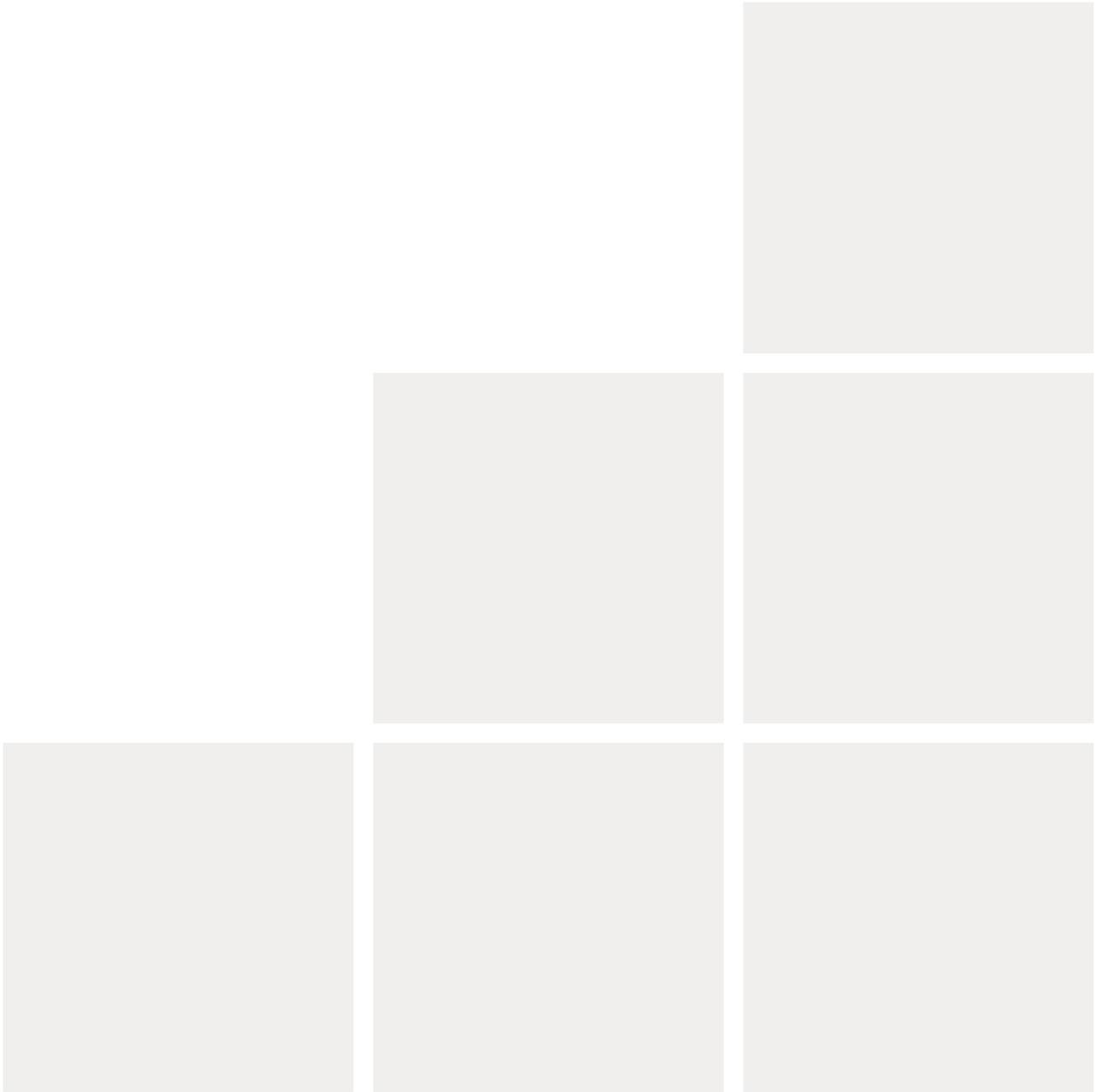
Exhibit F includes:

- E1. Procedure for Appointment of Committee
- E2. Committee Responsibilities
- E3. Frequency of Meetings, Voting Rules and Reporting Form
- E4. Reports Distribution List



## Exhibit G: Monthly Report

Exhibits G indicates the form of the Monthly Report as developed by Purchaser and agreed upon by Seller



## Exhibit H: Payment Rates

### H1. The Payment Rate calculations principals are as follows:

- The Payment Rate (P) comprises of a Local Currency Component ( $P_{LC}$ ) and a United States Dollar Component ( $P_D$ ).

$$P = P_{LC} + P_D$$

- United States Dollar Component ( $P_D$ ) is not escalable during the Term.
- Local Currency Component ( $P_{LC}$ ) comprises of two subcomponents namely; Escalable ( $P_{LCE}$ ) and Non-Escalable ( $P_{LCNE}$ ).

$$P_{LC} = P_{LCE} + P_{LCNE}$$

- The escalation of the Escalable Local Currency Component ( $P_{LCE}$ ) will be calculated on an annual basis according to an indexation to be agreed between the two Parties.
- Non-Escalable ( $P_{LCNE}$ ) is constant during the term.

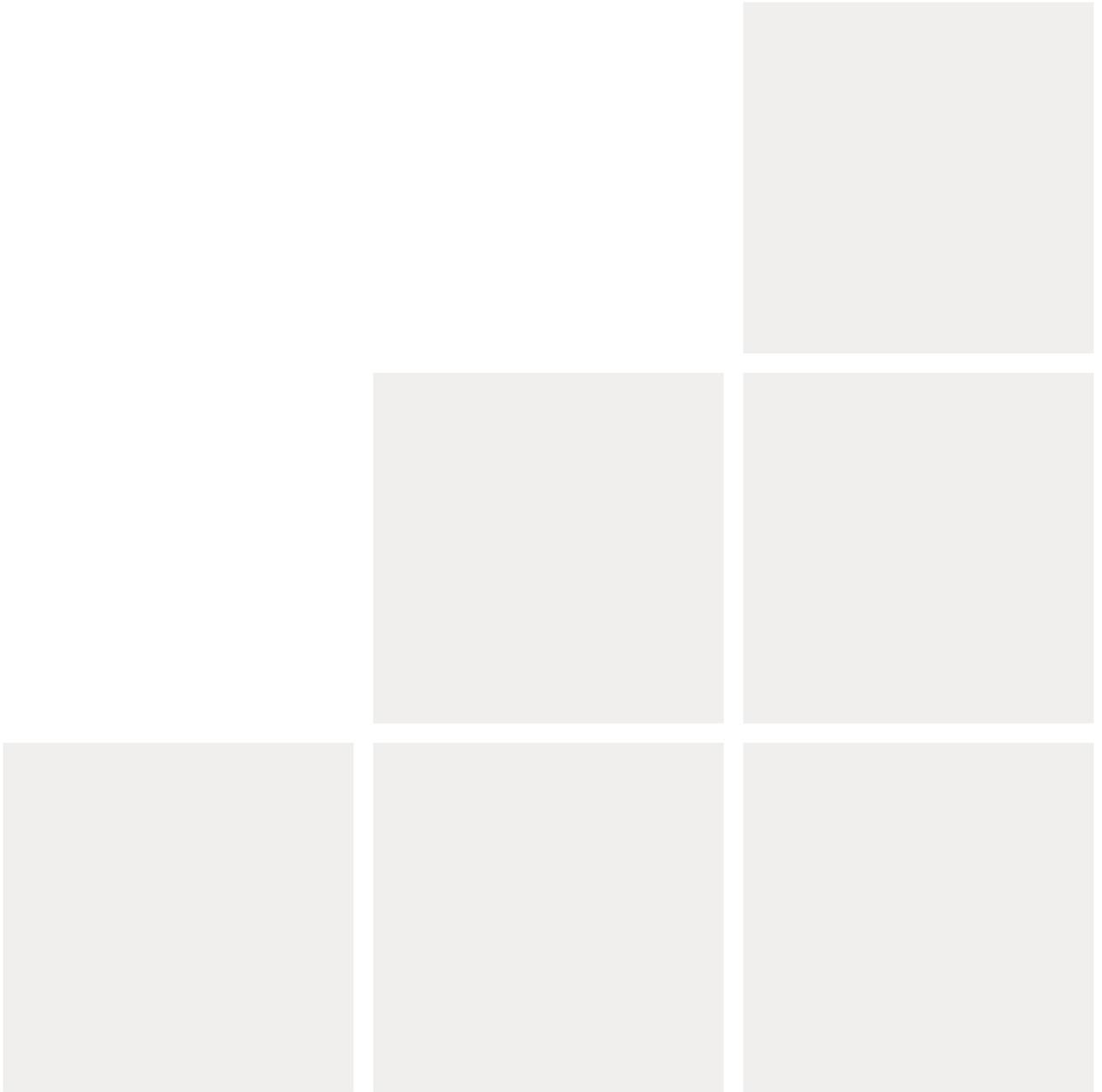
### H2. The Energy Charge is calculated as follows:

- The Energy Charge value in Dollars is the product of the United States Dollar Component ( $P_D$ ) by the Metered Energy Output in MWh at the point of Delivery.
- The Energy Charge value in Local Currency is the product of the Local Currency Component ( $P_{LC}$ ) by the Metered Energy Output in MWh at the point of Delivery.

### H3. The Procedure for calculation of the Deemed Generation Charge

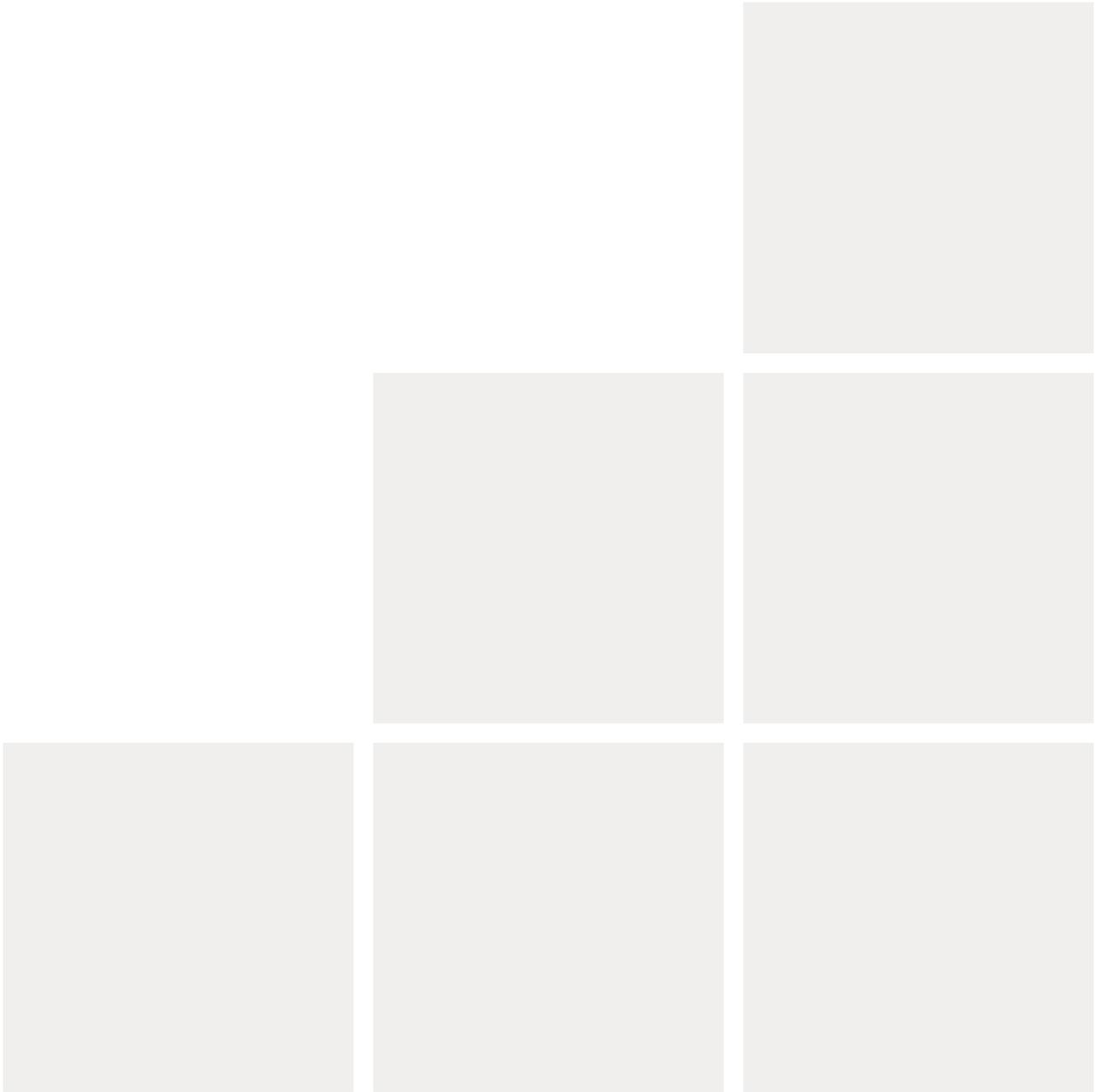
- Deemed generation arises where Seller is unable to deliver electrical Energy Output due Force Majeure affecting either party or where Purchaser is unable to accept electrical Energy Output due to Force Majeure or Curtailment.
- Deemed Generation Charge will be calculated on the following basis:
  1. Where renewable energy resource data is available and undisputed by Purchaser, such data shall be utilized for the purpose of calculating the summation of the deemed energy to be generated from each affected Generating Unit based on an agreed upon formula in function of renewable energy resource data during the relevant outage and the duration of such outage during each calendar month.
  2. Where renewable energy resource data is not available or disputed by Purchaser, Seller and Purchaser shall use available national data of the nearest METEO station, the typical year data used for the design of the Facility, metrological satellites or any other agreed reference data source. The summation of the deemed energy to be generated from each affected Generating

- Unit is calculated based on the formula above.
3. The Deemed Generation Charge shall be the product of Deemed Generation in MWh and the Payment Rate as previously indicated for the Energy Charge.



**Exhibit I: Form of Purchaser LC**

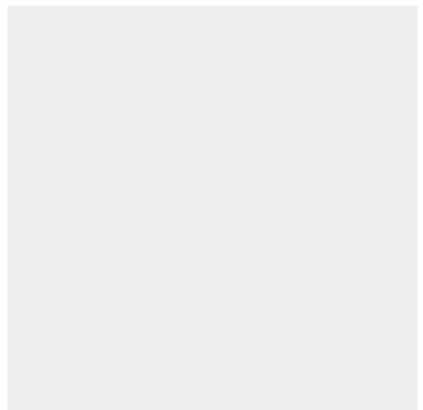
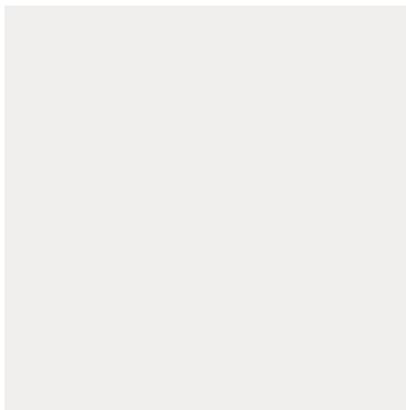
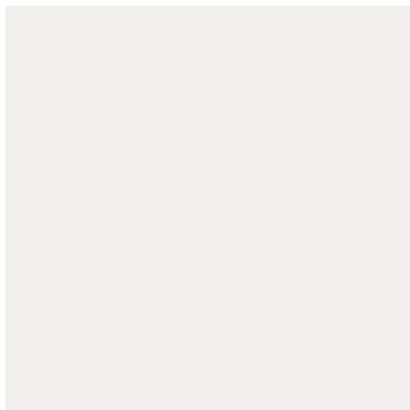
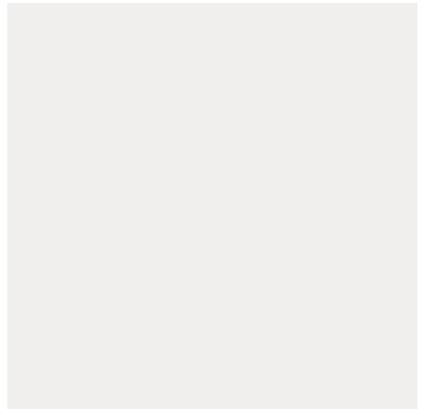
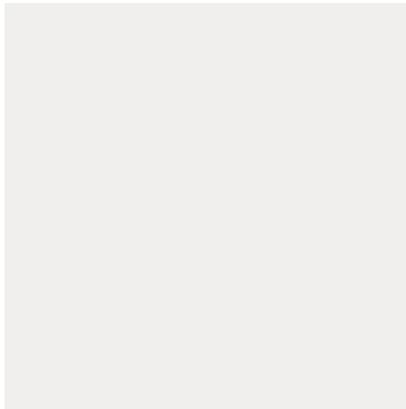
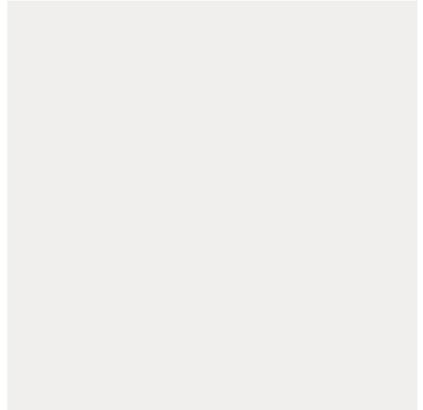
Exhibit I includes the form of Purchaser Letter of Credit.



## Schedule A: Milestone Schedule

The Schedule indicates the following Milestone dates among others:

- Start of construction.
- Arrival of Generating Units, transformers etc. at site.
- Erection start and completion of Generating Units.
- Erection of electrical collection system, transformers, bus bar arrangement, transmission line, circuit breakers and other necessary equipment, up to the Point of Delivery.
- Commencement and completion of commissioning of Facility Generating Units.
- Scheduled Completion Date.



مبنى المحطات المائية (الدور ٧)  
بلوك ١١ - قطعة ١٥، عمارات ملسا  
أرض الجولف، مدينة نصر، القاهرة، مصر  
الهاتف: +٢٠ ٢ ٢٤١٥ ٤٧٥٥  
الفاكس: +٢٠ ٢ ٢٤١٥ ٤٦٦١

Hydro Power Building (7<sup>th</sup> Floor)  
Block 11 - Piece 15, Melsa District  
Ard El Golf, Nasr City, Cairo, Egypt  
Telephone: +20 2 2415 4755  
Fax: +20 2 2415 4661