

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

Power Purchase Agreement

Dated _____

PURCHASER

- and -

SELLER

POWER PURCHASE AGREEMENT
Relating to the [•] Generating Station

This document has been prepared for the purposes of the **PPP IN INFRASTRUCTURE RESOURCE CENTER FOR CONTRACTS, LAWS AND REGULATIONS (PPIRC)** website. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as a "model".

The inclusion of any legal materials on the PPIRC website does not mean that they are in any way approved, endorsed or recommended by the World Bank Group or its affiliates. Legal advice should be sought to determine whether a particular legal document is appropriate for any given project, and how the specific terms of the document should be adapted to fit the circumstances of that project

Table of Contents

1.	DEFINITIONS AND INTERPRETATION	4
2.	TERM OF AGREEMENT	6
3.	FACILITY DESCRIPTION	6
4.	COMMERCIAL OPERATION	7
5.	DELIVERY, AVAILABILITY REPORTING, METERING & FUEL SUPPLY	16
6.	SALE AND PURCHASE OF CONTRACTED CAPACITY, CONTRACT ENERGY	20
7.	OPERATION BY PURCHASER	22
8.	PURCHASER'S STEP-IN RIGHTS	23
9.	FAILURE IN RESPECT OF ANCILLARY SERVICES AND OPERATING CHARACTERISTICS	25
10.	FLEXIBILITY PROVISIONS	26
11.	CHARGES, PAYMENT AND BILLING	37
12.	ESTABLISHMENT AND FUNCTIONIONING OF CO-ORDINATING COMMITTEE	42
13.	REPRESENTATIONS AND WARRANTIES	43
14.	INSURANCE	44
15.	TAXES	46
16.	FORCE MAJEURE EVENT	46
17.	TERMINATION	51
18.	LIABILITY AND INDEMNIFICATION	58
19.	DISPUTE RESOLUTION	60
20.	MISCELLANEOUS PROVISIONS	60
	Schedule 1 Definitions and Interpretation	68
	Schedule 2 Facility	86
	Part 1 Operating Characteristics	86
	Part 2 Description of Facility	87
	Part 3 Site	87
	Part 4 Point of Delivery	87
	[Part 5] [Import Energy Delivery Point]	87
	Schedule 3 Special Provisions	88
	Schedule 4 Tariff, Tariff Adjustments and Default Prices	89

Schedule 5 Operating Procedures.....	93
Part 1 Reported Availability and Dispatch.....	93
Part 2 Maintenance.....	95
Part 3 Testing.....	97
Part 4 Monitoring and Access.....	97
Part 5 Protective Devices.....	98
Part 6 Communications Equipment.....	98
Schedule 6 Construction Milestones.....	99
Schedule 7 Insurance.....	100
Part 1 Details of Insurances.....	100
Part 2 Policy Endorsements.....	100
Schedule 8 Change in Law.....	101
Schedule 9 Dispute Resolution.....	104
Part 1 Notice of Dispute.....	104
Part 2 Resolution by Parties.....	104
Part 3 Technical Disputes.....	104
Part 4 Arbitration.....	106
Schedule 10 Representations and Warranties.....	108
Part 1 Seller Representations and Warranties.....	108
Part 2 Purchaser Representations and Warranties.....	109
Schedule 11 Fair Market Value and Discounted Amount.....	111
Part 1 Fair Market Value.....	111
Part 2 Discounted Amount.....	112

This document has been prepared for the purposes of the **PPP IN INFRASTRUCTURE RESOURCE CENTER FOR CONTRACTS, LAWS AND REGULATIONS (PPPIRC)** website. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as a "model".

The inclusion of any legal materials on the PPPIRC website does not mean that they are in any way approved, endorsed or recommended by the World Bank Group or its affiliates. Legal advice should be sought to determine whether a particular legal document is appropriate for any given project, and how the specific terms of the document should be adapted to fit the circumstances of that project

This Agreement is made as of this [●] day of [●], by:

- (1) [●], a [corporation] established under the Laws of [] (“Purchaser”); and
- (2) [●], a [limited liability company] established under the Law, with its principal office located in [●] (“Seller”).

WHEREAS

- (A) Seller desires to develop, design, construct, finance, insure, own, operate, and maintain a [*state type of facility*] electric generating station with a capacity equal to the Rated Capacity, and which is further defined below as the “Facility” (the “Project”).
- (B) Seller intends to locate the Facility at [●], [], and to interconnect the Facility with the Transmission System.
- (C) Seller desires and intends to make available and sell to Purchaser, and Purchaser desires and intends to purchase from Purchaser, the Contracted Capacity and the associated Net Electrical Output of, and Ancillary Services with respect to, the Facility, pursuant to the terms and conditions of this Agreement.
- (D) Seller has responded to Purchaser’s solicitation of bids for the provision of electricity and Purchaser has accepted Seller’s offer in accordance with the terms and conditions set forth in this Agreement.
- (E) Seller is entering into an agreement with the Government concerning certain incentives and assistance to be provided by Government in relation to the Project (“the Implementation Agreement”) with respect to the Project.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.1.1 words importing persons or Parties shall include corporations, partnerships, joint ventures, trusts, unincorporated organizations, a Relevant Authority or any other legal entity and all references to persons shall include their permitted successors and assigns;
- 1.1.2 words importing the singular only shall also include the plural and vice versa where the context requires;

- 1.1.3 words importing the masculine shall include the feminine and neuter and vice versa;
- 1.1.4 headings, captions and marginal notes in this Agreement shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement and are included for ease of reference only;
- 1.1.5 all references to Clauses, Schedules (and Parts and Paragraphs), shall be construed as references to clauses of and schedules to (and parts of and paragraphs to Schedules of) this Agreement;
- 1.1.6 the Schedules attached hereto are incorporated in and are intended to be a part of this Agreement; provided that, in the event of a conflict between the terms of any Schedule and the terms of the remainder of this Agreement, the terms of the remainder of this Agreement shall take precedence;
- 1.1.7 the words “include” and “including” are to be construed without limitation;
- 1.1.8 references to proceedings includes litigation, arbitration, and investigation;
- 1.1.9 references to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
- 1.1.10 for the purposes of this Agreement and its Schedules, the term “day”: shall mean a 24-Hour period starting and ending at midnight []n time; the term “week”: shall mean a seven-day period beginning on Sunday at midnight []n time; the term “month”: shall mean a calendar month; and the term “year”: shall mean an agreement year commencing on the first day of the month following the month in which the Final Commercial Operation Date occurs, and ending on the day preceding each anniversary thereof; and
- 1.1.11 where provision is made for the giving of any notice, certificate, determination, consent or approval by any person that notice, certificate, determination, consent or approval shall be in writing, and the words “notifies”, “certifies”, “determined”, “consent” or “approved” shall be construed accordingly.
- 1.2 This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party. The Parties have agreed to the wording of this Agreement and none of the provisions of this Agreement shall be construed against one Party on the ground that such Party is the author of this Agreement or any part of it.
- 1.3 Language
- The language of negotiation of this Agreement has been English, this Agreement is executed in English, and this English text shall prevail for the purposes of determining the intention of the Parties and in any construction of this Agreement.
- 1.4 Definitions
- The terms defined in Schedule 1 shall have the meanings set forth therein.
- 1.5 Technical Meanings

Words not otherwise defined herein shall have meanings as commonly used in the English language. Words that have well-known and generally accepted technical or trade meanings in Prudent Utility Practice are used in this Agreement in accordance with such recognised meanings.

2. TERM OF AGREEMENT

2.1 This Agreement:

2.1.1 shall commence on the date on which Seller produces written evidence certified by the Lenders' agent that is reasonably satisfactory to Purchaser that Seller has obtained unconditional financial commitments that enable it to design, construct, operate and maintain the Facility; and

2.1.2 unless extended or terminated earlier, shall continue in full force and effect until the date that is [15] years after the Final Commercial Operation Date.

2.2 [Purchaser may extend the term of this Agreement by [●] years, provided Purchaser notifies Seller of its intention to do so at least [●] months before expiration of the term referred to in Clause 2.1.2.]

2.3 Applicable provisions of this Agreement 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, without limitation, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Agreement, and the indemnifications specified in this Agreement.

3. FACILITY DESCRIPTION

3.1 Summary Description

Seller shall develop, design, construct, finance, insure, own, operate, and maintain the Facility, which shall be a [*state type of facility*] electric generating station with a capacity equal to the Rated Capacity. The Facility must meet and comply with the functional requirements referred to in this Agreement and the Operating Characteristics.

3.2 Location

The Facility shall be located on the Site and shall be identified as [●] Generating Station. The address of the Facility is [●]. A scale map that identifies the Site, the location of the Facility at the Site, the location of the Point of Delivery, the location of the Fuel Delivery Point and the location of important ancillary facilities, the Interconnection Point and the Interconnection Facilities, is included in Schedule 2.

3.3 General Design of the Facility

Seller shall design, construct, operate and maintain the Facility to meet the requirements and description of the Facility contained in Schedule 2 and in accordance with Prudent Utility Practice, this Agreement, [and the Interconnection Agreement]. Following the Commercial Operation Date for the first Unit in time to be Commissioned, Seller shall operate and maintain the Facility and each Unit comprised in it in accordance with Prudent Utility Practice, this Agreement, and the Interconnection Agreement.

3.4 Rated Capacity

- 3.4.1 The expected Facility capacity available to Purchaser under this Agreement at the Point of Delivery is the Rated Capacity. Seller shall provide Ancillary Services, Cold Starts and Warm Starts as instructed by Purchaser in accordance with the Operating Procedures.
- 3.4.2 If, following the undertaking of the Performance Tests prior to the Commercial Operation Date, the Net Dependable Capacity at the Point of Delivery is less than the Rated Capacity, Seller shall pay to CEB an amount of liquidated damages (“Performance Liquidated Damages”) of US\$[•] per kW (or part thereof) multiplied by the difference (expressed in kW) between the Rated Capacity and the Net Dependable Capacity of the Facility as proven by the Performance Tests. The Parties acknowledge and agree that the Performance Liquidated Damages:
- (a) are payable only once at the Commercial Operation Date and, upon payment, the Facility will be deemed to have passed the Performance Tests (provided that it has passed all requirements of the Performance Tests other than the ability of the Facility to achieve a Net Dependable Capacity equal to the Rated Capacity); and
 - (b) should any issue as to the enforceability of this Section arise under the Laws, it is agreed that Performance Liquidated Damages are deemed to constitute a genuine pre-estimate of loss on the part of Purchaser arising from detrimental impact upon Purchaser’s generation planning as a result of the Facility being unable to deliver a Net Dependable Capacity equal to the Rated Capacity.

3.5 Interconnection

Seller and Purchaser shall comply with the requirements of Schedule 2 and the Interconnection Agreement in relation to interconnection of the Facility with the Transmission System.

4. COMMERCIAL OPERATION

4.1 Commercial Operation

- 4.1.1 Subject to Clause 4.1.2, Seller shall procure that the Facility achieves the Final Commercial Operation Date no later than the Required Commercial Operation Date. ***[Note: The reference here and elsewhere to the Final Commercial Operation Date assumes that the Facility consists of more than one Unit.]***
- 4.1.2 The date for achievement of the Required Commercial Operation Date shall be extended for any delay attributable to any Force Majeure Event.
- 4.1.3 The Commercial Operation Date shall occur upon the satisfaction or occurrence, or, pursuant to Clause 4.1.4, deemed satisfaction, of all of the following conditions:
- (a) Seller has successfully completed the Performance Tests in accordance with Schedule 5 or, in respect of the Performance Tests, has paid the

relevant Performance Liquidated Damages (if any) to Purchaser pursuant to Clause 3.4.2;

- (b) the Facility has met the requirements for initial synchronisation with and interconnection of the Facility to the Transmission System, and has demonstrated the reliability of its communications systems and communications with Seller in accordance with the requirements of Schedule 5 and the Interconnection Agreement; and
- (c) certificates of insurance evidencing the coverages required by Clause 14 have been obtained and provided to Seller.

4.1.4 Each condition specified in Clauses 4.1.3(a) and 4.1.3(b) shall be satisfied by the receipt by each Party of a declaration from the Independent Engineer that such condition has been satisfied. If the Facility is unable to satisfy any condition referred to in Clause 4.1.3 due to a Deemed Commissioning Event the Facility shall be deemed to have satisfied that condition and, provided that all the other conditions referred to in Clause 4.1.3 have been satisfied or deemed to have been satisfied, to be providing Available Capacity at [92]% of the Rated Capacity (or, if the Net Dependable Capacity has been determined, the Contracted Capacity) for the purposes of payments to be made by Purchaser pursuant to Clause 11.1 until such time as that condition shall have been satisfied or the Facility is no longer unable to satisfy that condition due to the Deemed Commissioning Event.

4.2 Construction Milestones

- 4.2.1 Seller agrees to notify Purchaser promptly of any failure to meet a Construction Milestone.
- 4.2.2 The time permitted to meet each Construction Milestone shall be extended by any period during which Seller is unable to proceed with the construction of the Facility because of a Force Majeure Event.

4.3 EIA Report

Seller shall:

- 4.3.1 procure that an Environmental Impact Assessment is conducted for the Site by an independent environmental engineer selected by Seller; and
- 4.3.2 provide Purchaser, on or before the issue of full notice to proceed under the agreement relating to the procurement and construction of the Facility, with a copy of the EIA Report. The EIA Report shall either include:
 - (a) a confirmation from the independent environmental engineer that the Site has been inspected for Environmental Contamination and that no conditions involving Environmental Contamination exist at, or under, the Site and that the Site materially complies with all applicable Environmental Laws; or
 - (b) if the independent environmental engineer is unable to provide such a confirmation, details of any Environmental Contamination existing at, or under, the Site and/or material breaches of applicable

Environmental Laws together with a rectification plan produced by Seller for ensuring that such Environmental Contamination and/or material breaches of applicable Environmental Laws can be rectified so that the Project will, as at the Final Commercial Operation Date, be in material compliance with all applicable Environmental Laws.

4.4 Initial Notifications

- 4.4.1 Seller shall promptly notify Purchaser of the issue of a full notice to proceed under the EPC Agreement. The issue of a full notice to proceed under the EPC Agreement constitutes the commencement of the Construction Period for the purposes of this Agreement.
- 4.4.2 Seller shall provide Purchaser as soon as possible with a copy of the notice from the Lenders that Seller has satisfied each initial condition precedent to draw on the credit and other facilities made available under the Financing Agreements.

4.5 Progress Reports and Meetings

- 4.5.1 Seller shall submit to Purchaser, on or before the [15th] day of each month occurring during the Construction Period, a progress report (which report may be any report Seller receives from the EPC Contractors under the EPC Agreement) for the previous month in a form reasonably satisfactory to Purchaser.
- 4.5.2 Each progress report shall accurately inform Purchaser of the current status of the development, design, procurement and construction of the Facility, the progress achieved and the likelihood that each Construction Milestone will be achieved.
- 4.5.3 The Parties shall hold periodic progress meetings during the Construction Period at such times and locations to be agreed between the Parties to review matters relating to the development, design, procurement and construction of the Facility and Seller shall provide such information as may reasonably be requested by Purchaser in relation to Seller's obligations to develop, design, procure and construct the Facility in accordance with this Agreement.

4.6 Purchaser's Rights During Construction Period

- 4.6.1 Purchaser may monitor the construction, start-up, and testing of the Facility during the Construction Period, and Seller shall comply with all reasonable requests of Purchaser with respect to start-up and testing in accordance with the Testing Procedures and the other provisions of this Agreement.
- 4.6.2 Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by Purchaser during the Construction Period. All persons visiting the Facility on behalf of Purchaser shall comply with all of Seller's applicable health and safety rules and requirements.
- 4.6.3 Purchaser's monitoring and inspection of the Facility shall not be construed as endorsing the design or construction of the Facility by Purchaser nor as any warranty of safety, durability or reliability of the Facility.

4.7 Test Energy

- 4.7.1 Seller shall coordinate the production and delivery of Test Energy with Purchaser in accordance with Schedule 5 and the Testing Procedures and Purchaser shall cooperate with Seller to schedule and facilitate Seller's testing of the Facility.
- 4.7.2 In the event Seller requests Purchaser to dispatch Test Energy pursuant to this Clause 4.7 which relates to testing undertaken at Seller's option, Purchaser shall purchase such Test Energy in accordance with Clause 11.1 and Schedule 4.
- 4.7.3 After the Commercial Operation Date for any Unit or the Final Commercial Operation Date for the Facility, Purchaser shall dispatch that Unit or the Facility respectively and accept delivery of all Test Energy when reasonably requested to do so by Seller to accommodate Seller's testing of any Unit or the Facility, including that testing of any Unit or the Facility which Seller is required or permitted to perform, or cause to be performed, pursuant to this Agreement.
- 4.7.4 Purchaser shall not be required to purchase such Test Energy in amounts greater than the amount of energy associated with the Contracted Capacity or, in the case where the Test Energy is produced during a test of the level of Net Dependable Capacity, the Net Dependable Capacity.

4.8 Facility Operator

- 4.8.1 Seller has submitted to Purchaser the identity of the proposed Operator together with a statement of its credentials. If at any time, Seller wishes to change the entity performing the role of the Operator, it shall submit details of the proposed replacement Operator at least [6] months prior to the effective date of the change giving its identity and a statement of its credentials. Purchaser shall not withhold or delay its approval to such change, provided that the proposed replacement Operator shall have the necessary skills, qualifications, experience and reputation to perform the role of the Operator.
- 4.8.2 The appointment of the Operator by Seller pursuant to Clause 4.8.1 shall not relieve Seller of:
- (a) performance of any of its obligations under this Agreement; or
 - (b) any liability resulting from any act or omission of Seller under this Agreement that, had that act or omission been an act or omission of Seller, would have constituted a breach of this Agreement.

4.9 Operating Committee and Operating Procedures

- 4.9.1 Each Party shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance of their obligations under this Agreement and to develop arrangements for the generation, delivery, and receipt of power and energy under this Agreement. Such representatives shall constitute the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes to the Operating Committee. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement in writing, orally, by conduct or otherwise.

- 4.9.2 The Parties shall comply with the Operating Procedures. The scope of the Operating Procedures is limited to rules relating to planning in operational or longer term timescales for the Transmission System, the day-to-day operation of the Transmission System, and the scheduling, dispatch and operation of the Facility as it relates to the operation of the Transmission System. The Parties shall comply with the Grid Code and any relevant Distribution Code when they are brought into force by EAC through licences or any other means.
- 4.9.3 Subject to Clauses 4.9.4 and 10.5(e), the Parties may from time to time agree changes to the Operating Procedures.
- 4.9.4 Seller may not withhold its consent to a change to the Operating Procedures proposed by Purchaser if each of the following criteria are satisfied:
- (a) the changes are consistent with Good Utility Practice, the Grid Code, any relevant Distribution Code, the Operating Characteristics and this Clause 4.9;
 - (b) the changes will apply equally to the operating procedures for all other independent generating plant in [] of similar size and technology;
 - (c) if the changes relate to the manner in which Dispatch Instructions are issued, such changes will provide an objective means of recording Dispatch Instructions given by Purchaser that provides at least as much certainty as to the nature of each Dispatch Instruction given by Purchaser as that provided for by the current means by which Dispatch Instructions are given by Purchaser pursuant to the Operating Procedures as at the date of this Agreement;
 - (d) the changes are notified to Seller in writing, such notice to specify a date, being not earlier than 3 months after the date of the notice, on which they are, subject to Clause 4.9.4(g), to be implemented;
 - (e) the changes are discussed with Seller by Purchaser prior to implementation and any reasonable objections, comments or changes requested by Seller are incorporated into the changes;
 - (f) the changes relate to the operation of a Unit or the Facility as it relates to the operation of the Purchaser System and do not:
 - (i) relate to any aspect of the operation and maintenance of a Unit or the Facility which is, as at the date of this Agreement, dealt with in this Agreement (other than by means of the Operating Procedures as at the date of this Agreement);
 - (ii) modify any existing:
 - (A) financial penalty or payment provision of this Agreement; or
 - (B) termination right of Purchaser granted pursuant to this Agreement (other than to the extent that Purchaser is granted as at the date of this Agreement termination rights in respect of a failure by Seller to comply with the Operating Procedures); or

- (iii) introduce any:
 - (A) additional financial penalty or payment provision into this Agreement; or
 - (B) termination right for Purchaser (other than to the extent that such termination right relates to a right granted to Purchaser as at the date of this Agreement to terminate this Agreement for a failure by Seller to comply with the Operating Procedures); and
- (g) if the changes will increase or decrease the cost or expense to Seller of operating or maintaining a Unit or the Facility or otherwise complying with its obligations under this Agreement or will require Seller to install new or modify existing plant or equipment:
 - (i) the appropriate elements of the charges referred to in Clause 11 shall be adjusted so that Seller will be in no better or worse financial position than it would have been in had the changes not been implemented; and
 - (ii) if such changes require the installation of new or the modification of existing plant or equipment, such changes shall not become operative until such installation or modification shall have been completed.
- (h) Purchaser may not withhold its consent to a change to the Operating Procedures proposed by Seller if such change is necessary for Seller to comply with the Laws or a Governmental Approval.
- (i) If the Parties are unable to agree upon the adjustment to the appropriate elements of the charges referred to in Clause 11 under Clause 4.9.4(g), either Party may by notice to the other require the matter to be referred for determination by an expert in accordance with Schedule 9.

4.10 Employment of Qualified Personnel

4.10.1 Seller shall employ only personnel (management, supervisory and otherwise), directly or indirectly through the Operator, that are adequately qualified and trained for the tasks they are to perform.

4.10.2 At least 1 employee in the Control Room on each shift shall have experience as necessary and appropriate for the operation of each Unit that has been Commissioned and, following the Final Commercial Operation Date, the Facility, and for responding to Dispatch Instructions.

4.11 Facility Operation and Certification of Maintenance

4.11.1 Seller shall staff, control, operate, repair and maintain the Facility and each Unit comprised within it consistent at all times with Prudent Utility Practice and the Operating Procedures in order to ensure that the Available Capacity is maximised, Operating Characteristics are maintained and the Facility and each Unit comprised within it is capable of performing in accordance with the requirements of this Agreement.

- 4.11.2 Qualified and experienced personnel as required by Clause 4.10 shall be continuously:
- (a) available at the Facility; and
 - (b) contactable by telephone, pager or other personal communication system.
- 4.11.3 Each Party shall use all reasonable efforts to resolve any Dispute between them as to whether any maintenance or plant performance deficiency exists or whether a particular remedy is reasonably necessary to correct a purported deficiency. If the existence of a deficiency or need for a remedy cannot be agreed, either Party may refer the matter to an expert for determination in accordance with Schedule 9.
- 4.11.4 Seller agrees to undertake the work necessary to remedy promptly, and at its sole expense, undisputed deficiencies identified pursuant to the obligations referred to in Clause 4.11.1 and any deficiencies in Dispute as ultimately determined by an expert in accordance with Schedule 9.
- 4.12 Access to Facility during Commercial Operation
- 4.12.1 Following the Commercial Operation Date for the first Unit in time to be Commissioned, representatives of Purchaser shall, at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to the Facility to review the Operating Log and to perform all inspections, maintenance, service, and operational reviews as may be reasonably appropriate to facilitate the performance of this Agreement (provided that this Clause 4.12.1 shall not limit the ability of Purchaser to exercise the step-in rights contained in this Agreement).
- 4.12.2 While at the Facility, such representatives shall observe such safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility.
- 4.12.3 Any visits to the Facility by Purchaser or its representatives shall not be construed as an endorsement by Purchaser of the operation, maintenance, modification and repair procedures employed by Seller at the Facility.
- 4.13 Safety
- 4.13.1 Seller shall comply with all applicable safety Law.
- 4.13.2 Seller shall at all times ensure that reasonable safety precautions are taken to ensure the safety of persons and property of the Parties and of third parties when operating, maintaining or repairing the Facility or any of the Units comprised within it.
- 4.13.3 Each Party agrees that all work performed by that Party that may reasonably affect the other Party's property shall be performed in accordance with Prudent Utility Practice and all applicable Law, Governmental Approvals, and other requirements pertaining to the safety of persons or property. The Parties shall confer regularly to coordinate the safety aspects of the operations, maintenance, inspection, and testing of the Facility and Interconnection Facilities. Each Party

shall provide the other Party's representatives with such access rights as may be necessary for either Party's performance of its respective operational obligations under this Agreement provided that, notwithstanding anything stated in this Agreement, a Party's representatives performing operational work within the boundaries of the other Party's facilities must abide by the prevailing safety rules applicable to that site.

- 4.13.4 Each Party shall issue reasonable numbers of copies of their respective applicable safety rules to each other, and each person receiving them must sign an official receipt form.

4.14 Prevention of Third Party Damage

Seller shall take all reasonable precautions to ensure the safety of persons and property on the Site (including the Facility) and property of third parties from the risk of damage by third parties, including damage by riot, civil commotion, sabotage, act of vandalism or criminal damage.

4.15 Operation of Facility in Emergencies

- 4.15.1 Subject to Clauses 4.15.2 and 4.15.3, Seller shall operate the Facility in excess of Seller's prevailing Reported Availability for the Facility or outside the Operating Characteristics or in a manner that would, in normal circumstances, be contrary to Prudent Utility Practice:

- (a) if so instructed by Purchaser in an Emergency; and
- (b) where Purchaser reasonably believes that such action is necessary to help preserve the security, reliability or integrity of the Transmission System.

- 4.15.2 Seller may refuse to comply with instructions issued under Clause 4.15.1 if, in Seller's reasonable opinion, complying with them would impose an imminent risk of serious injury to persons or material damage to property (including any material deterioration in any plant or apparatus comprised in the Facility) or if such compliance is not possible because of the Operating Characteristics of the Facility or, before the Final Commercial Operation Date, any Unit notified by Seller to Purchaser.

- 4.15.3 Seller shall:

- (a) be paid the Energy Payment based on the Net Electrical Output of the Facility during any period of operation under this Clause 4.15; and
- (b) be entitled to determine a reasonable increase in the Capacity Payment to reflect any capacity associated with the energy produced during any period of operation under this Clause 4.15 in excess of the Net Dependable Capacity,

in response to an instruction issued under Clause 4.15.1. The provisions of Clause 5.2.3 shall not apply in the event that the Facility trips or the availability or output of the Facility is otherwise decreased as a result of its operation pursuant to an instruction issued by Purchaser under Clause 4.15.1.

4.16 Development Security *[Note: The Model Implementation Agreement also requires Seller to provide security, which may be drawn by Government in relation to non-achievement of Financial Closing. The imposition of both these security requirements upon Seller should be reviewed in the context of the type and scale of project.]*

4.16.1 Seller shall:

- (a) provide the Development Security within 30 days of the Effective Date; and
- (b) thereafter, maintain the Development Security in accordance with this Clause 4.16 until the Development Security Return Date.

4.16.2 Purchaser shall return the Development Security promptly, and in any event within 14 days, of the Development Security Return Date.

4.16.3 The Development Security shall be:

- (a) US\$[●] for the period from the date of provision of the Development Security until, and excluding, the date 12 months from the Effective Date (the “First Increase Date”); and
- (b) US\$[●] for the period from, and including, the First Increase Date, until, and including, the Development Security Return Date.

4.16.4 Subject to Clauses 4.16.5 to 4.16.8, the Development Security may be drawn by Purchaser on or before the Development Security Return Date for any amount due and payable (but unpaid) by Seller under this Agreement with respect to events or circumstances occurring up to and including the Commercial Operation Date.

4.16.5 The Development Security shall be an irrevocable standby letter of credit:

- (a) in a form reasonably acceptable to Purchaser;
- (b) with a term of at least 364 days; and
- (c) issued by a financial institution reasonably acceptable to Purchaser.

4.16.6 Seller shall:

- (a) maintain each Security at its required levels pursuant to this Clause 4.16 and, where the long-term credit rating of that financial institution falls below A (Standard & Poor’s) or its equivalent, replace any letter of credit under Clause 4.16.5 with a letter of credit at the required level issued by a financial institution reasonably acceptable to Purchaser; and
- (b) replenish the Development Security to its required levels within 15 Business Days of any draw on that Development Security by Purchaser permitted under this Clause 4.16.

4.16.7 If Seller does not provide a replacement Development Security that satisfies this Clause 4.16 at least 21 days prior to the expiry of a Development Security,

Purchaser may, at any time thereafter, draw upon the expiring security and place the amount so drawn in an escrow account. Purchaser may only draw amounts from that escrow account in circumstances where it would otherwise be permitted to draw on a Development Security under this Clause 4.16 and Seller shall deposit funds into the escrow account in an amount equal to such permitted drawing within 15 Business Days of such drawing. At such time as Seller's obligation to provide a Development Security ceases pursuant to this Clause 4.16 or Seller provides a Development Security that complies with this Clause 4.16 that replaces the expiring Development Security, the amount standing to the credit of the escrow account shall be immediately released to Seller.

- 4.16.8 Where Purchaser may draw upon a Security due to a failure of Seller to make a payment pursuant to a Purchaser invoice, Purchaser may only draw on the Security on or after the 10th Business Day following the Due Date for that Purchaser invoice.

5. DELIVERY, AVAILABILITY REPORTING, METERING & FUEL SUPPLY

5.1 Delivery Arrangements

Seller shall be responsible for all interconnection, Electrical Energy Losses, transmission and Ancillary Services arrangements and costs required to deliver, on a firm service basis, the Contracted Capacity, Contract Energy, Test Energy and Ancillary Services from the Facility to Purchaser at the Point of Delivery. Purchaser shall be responsible for all Electrical Energy Losses, transmission, distribution and Ancillary Services arrangements and costs, and for delivery of such power and energy to points beyond the Point of Delivery.

5.2 Availability Reporting and Availability Failure

- 5.2.1 Seller shall be responsible for providing accurate updates as to the Available Capacity to Purchaser ("Reported Availability") in accordance with Schedule 5, Part 1.

5.2.2

- (a) In the event that, following the undertaking of the Performance Tests for each Unit of the Facility prior to the Final Commercial Operation Date, the Net Dependable Capacity of the Facility at the Point of Delivery is less than the Rated Capacity of the Facility, Seller shall pay to Purchaser US\$[●] per kW multiplied by the difference (expressed in kW) between the Rated Capacity of the Facility and the Net Dependable Capacity of the Facility (as established by the Performance Tests) as liquidated damages for the resultant detrimental impact upon Purchaser's generation planning.
- (b) The liquidated damages referred to in Clause 5.2.2(a) are payable within 10 Business Days of the Final Commercial Operation Date and, upon payment, the Facility will be deemed to have passed the Performance Tests.

- (c) The liquidated damages are deemed to constitute a genuine pre-estimate of loss on the part of Purchaser arising from the detrimental impact upon its generation planning as a result of the Facility being unable to deliver a Net Dependable Capacity equal to the Rated Capacity for the Facility.

5.2.3

- (a) An “Availability Failure” will occur if:
 - (i) there is a failure (except by reason of a Force Majeure Event, a Planned Outage or an event of Purchaser Risk) on the part of Seller to comply with a Dispatch Instruction issued in accordance with the Operating Procedures that duly reflects and is consistent with any revisions, special factors or other circumstances notified by Seller to Purchaser with respect to a Unit or the Facility, the Reported Availability or the Operating Characteristics [to within the Dispatch Tolerance] and to maintain that output throughout the period during which the Dispatch Instruction applies or throughout the period until a further Dispatch Instruction becomes effective; or
 - (ii) any Unit or, following the Final Commercial Operation Date, the Facility fails an Availability Verification Test [by more than the Dispatch Tolerance].
- (b) In respect of an Availability Failure during normal operating conditions or during an Availability Verification Test, the “Capacity Difference” shall be equal to the difference between the level of the Dispatch Instruction and the actual Net Electrical Output of the Units that have been Commissioned, or, following the Final Commercial Operation Date, the Facility achieved throughout the period to which the Dispatch Instruction relates or throughout the period until a further Dispatch Instruction becomes effective. If the Net Electrical Output is greater than the level of the Dispatch Instruction, the difference shall be treated as a positive value.
- (c) Following an Availability Failure, Seller may, in accordance with Paragraph 12.1 of Schedule 5, Part 3, require Purchaser to undertake an Availability Verification Test by Dispatching the relevant Units, or, as the case may be, the Facility to the level of its Reported Availability at a time convenient to Purchaser but in any event within 24 Hours of the issue of the notice specified in Paragraph 12.1 of Schedule 5, Part 3 to Purchaser.
- (d) The existence of the Dispatch Tolerance shall not be interpreted as permitting Seller not to follow strictly a Dispatch Instruction issued in accordance with this Agreement and the Operating Procedures.

5.3 Electric Metering Devices

- 5.3.1 All Electric Metering Devices used to measure the net capacity and energy made available to Purchaser by Seller under this Agreement at the Point of Delivery and to monitor and coordinate operation of the Facility shall be owned, installed, and maintained by [Purchaser]. All Electric Metering Devices used to provide data for the computation of payments shall be sealed and only Purchaser shall break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Clause 5.3. Purchaser shall specify the number, type and location of such Electric Metering Devices.
- 5.3.2 Purchaser, at its own expense, shall inspect and test all Electric Metering Devices upon installation and at least once every [6 months] thereafter. Purchaser shall provide Seller with reasonable advance notice of, and permit a representative of Seller to witness and verify, such inspections and tests, provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Purchaser and shall comply with all of Purchaser's safety standards.
- 5.3.3 Upon request by Seller on reasonable notice and not more frequently than once a month, Purchaser shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Seller to inspect or witness the testing of any Electric Metering Device, provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Purchaser and shall comply with all of Purchaser's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Seller, unless upon such inspection or testing an Electric Metering Device is found to register inaccurately by more than the allowable limits established in Clause 5.4.1, in which event the expense of the requested additional inspection or testing shall be borne by Purchaser.
- 5.3.4 If requested by Seller in writing, Purchaser shall provide copies of any inspection or testing reports to Seller.
- 5.3.5 Seller may elect to install and maintain, at its own expense, backup metering devices ("Seller's Back-Up Metering") in addition to those installed and maintained by Purchaser, which installation and maintenance shall be performed in a manner reasonably acceptable to Purchaser. Seller, at its own expense, shall inspect and test Seller's Back-Up Metering upon installation and at least once every [6 months] thereafter. Seller shall provide Purchaser with reasonable advance notice of, and permit a representative of Purchaser to witness and verify, such inspections and tests, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards.
- 5.3.6 Upon request by Purchaser on reasonable notice and not more frequently than once a month, Seller shall perform additional inspections or tests of Seller's Back-Up Metering and shall permit a qualified representative of Purchaser to inspect or witness the testing of Seller's Back-Up Metering, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Purchaser, unless, upon such inspection or testing, Seller's Back-Up Metering is

found to register inaccurately by more than the allowable limits established in Clause 5.4.1, in which event the expense of the requested additional inspection or testing shall be borne by Seller.

- 5.3.7 If requested by Purchaser in writing, Seller shall provide copies of any inspection or testing reports to Purchaser.
- 5.3.8 If any Electric Metering Devices, or Seller's Back-Up Metering, are found to be defective or inaccurate, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters

5.4.1 If an Electric Metering Device, or Seller's Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device or Seller's Back-Up Metering is found upon testing to be inaccurate by more than [1]%, an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device or Seller's Back-Up Metering for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

- (a) in the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Seller's Back-up Metering, if installed, to determine the amount of such inaccuracy, provided, however, that Seller's Back-Up Metering has been tested and maintained in accordance with the provisions of Clause 5.3. If Seller's Back-Up Metering is installed on the low side of Seller's step-up transformer, Seller's Back-up Metering data shall be adjusted for Electrical Energy Losses. In the event that Seller did not install back-up metering, or Seller's Back-Up Metering is also found to be inaccurate by more than [1]%, the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of net capacity and energy from the Facility or the Units comprised in it during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made;
- (b) in the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of:
 - (i) the last [one half] of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate; and
 - (ii) the [180 day] period immediately preceding the test that found the Electric Metering Device to be defective or inaccurate; and
- (c) to the extent that the adjustment period covers a period of deliveries for which payment has already been made by Purchaser, Purchaser shall use the corrected measurements as determined in accordance with

this Clause 5.4 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Purchaser for this period from such recomputed amount. If the difference between the recomputed payment and the amount paid is a positive number, the difference shall be paid by Purchaser to Seller; if the difference is a negative number, the difference shall be paid by Seller to Purchaser, or, at the discretion of Purchaser, may take the form of an offset to payments due to Seller by Purchaser. Payment of such difference by the owing Party shall be made not later than 10 Business Days after the owing Party receives notice of the amount due, unless Purchaser elects payment via an offset.

5.5 Fuel Delivery

Unless otherwise provided for under separate agreement between the Parties, Seller shall be the operator of the Fuel Delivery Point. As the operator of the Fuel Delivery Point, Seller shall be responsible for all volume confirmations, allocations, and balancing functions with the applicable supplier, as well as maintenance of all fuel stocks.

5.6 Fuel Supply

5.6.1 Seller shall purchase fuel for delivery at the Site necessary to meet its obligations under this Agreement and shall maintain at the Site stocks of fuel sufficient to enable the Facility to be operated continuously at full Net Dependable Capacity, for a minimum period of [•] days.

5.6.2 Subject to Clause 5.6.3, Seller undertakes to purchase fuel on the most economic basis possible including:

- (a) utilising a competitive tender process;
- (b) seeking to minimise freight cost including by purchasing in quantities which equate to the largest shipments which can be accommodated by the available fuel handling and transportation facilities; and
- (c) sourcing fuel from competitive and well established markets.

5.6.3 In procuring fuel on behalf of Seller on the most economic basis possible, the Parties acknowledge and agree that the Seller may have regard to any other reasonable considerations including the quality of fuel, creditworthiness of suppliers, reliability of supply concerns (including the performance history of suppliers), transportation and other handling costs, protection of the environment, human health as well as the cost of fuel.

5.6.4 Upon the written request of Purchaser, Seller shall provide Purchaser with copies of all tender documents and fuel supply agreements in connection with the procurement of fuel by Seller.

6. SALE AND PURCHASE OF CONTRACTED CAPACITY, CONTRACT ENERGY

6.1 Contracted Capacity

The Contracted Capacity provided and sold by Seller and purchased by Purchaser under this Agreement shall be all of the capacity available at any time from the Facility at the

Point of Delivery, including any and all uncommitted and undispached capacity available from the Facility, provided that Purchaser shall not be required to pay for Contracted Capacity that exceeds the Net Dependable Capacity.

6.2 Contract Energy

Subject to Clause 4.7, the contract energy provided by Seller and received by Purchaser under this Agreement (the “Contract Energy”) shall be the metered Net Electrical Output generated by the Contracted Capacity, less any such energy [(other than energy falling within the Dispatch Tolerance)] that has not been Dispatched by Purchaser.

6.3 Exclusive Right

Purchaser has a fully exclusive right to:

- 6.3.1 all Contracted Capacity available at any time from the Facility at the Point of Delivery;
- 6.3.2 the Contract Energy; and
- 6.3.3 any associated rights arising from the availability of the Contracted Capacity or the Contract Energy (including rights to credits or benefits pursuant to Clause 6.8).

6.4 Dispatch

- 6.4.1 Subject to the provisions of Paragraph 3 of Schedule 5, Part 1, Purchaser shall have the right to determine the Dispatch control for all of the output of the Facility or the Units comprised in it, including Starts, Shut-downs, generation loading levels, Operating Reserve levels, the provision of other Ancillary Services and Power Factor levels.
- 6.4.2 Purchaser shall not issue any Dispatch Instruction that exceeds Seller’s Reported Availability in respect of any Hour.
- 6.4.3 Seller shall comply with Dispatch Instructions given by Purchaser in accordance with Paragraph 3 of Schedule 5, Part 1 and the Operating Characteristics.

6.5 Restriction of Contract Energy

- 6.5.1 Each Party shall not, and shall procure that its Affiliates shall not (including any person acting, in each case, on their behalf), take or omit to take any action that would result in or materially contribute to a restriction, under the Facility’s Governmental Approvals, in the amount of Contract Energy available for dispatch and receipt by Purchaser following the Commercial Operation Date for the first Unit in time that is Commissioned.
- 6.5.2 Nothing in this Agreement shall be construed to create an obligation of Seller to operate the Facility or any of the Units comprised in it, or permission for Purchaser to Dispatch Contract Energy, in violation of the Facility’s Governmental Approvals or applicable Law (including Environmental Laws).

6.6 To the extent electric energy is required by the Facility or any of the Units comprised in it for operation of the Facility or any of the Units that has been Commissioned, Seller may use electric energy produced by the Facility or any of the Units comprised in it.

6.7 Title and Risk of Loss

6.7.1 As between the Parties, Seller shall be deemed to be in control of the Contracted Capacity, Contract Energy and Test Energy output from the Facility and any of the Units comprised in it up to and until delivery and receipt at the Point of Delivery and Purchaser shall be deemed to be in control of such capacity and energy from and after delivery and receipt at the Point of Delivery.

6.7.2 Title and risk of loss related to the Contracted Capacity, Contract Energy and Test Energy shall transfer from Seller to Purchaser at the Point of Delivery.

6.7.3 As between the Parties, Seller shall be deemed to be in control of fuel procured for the Facility and the Units comprised in it and supplied to the Site to produce Contract Energy and Test Energy.

6.8 Rights to Environmental Credits

6.8.1 The Parties acknowledge that some generation technologies and fuels have the potential to produce substantial carbon dioxide and other environmental air quality credits and related emissions reduction credits or benefits (economic and otherwise) in relation to the generation of energy after the Commercial Operation Date for the first Unit in time that is Commissioned. The Parties agree that Purchaser shall own or be entitled to claim any and all such credits or benefits to the extent that such credits or benefits may be available in relation to the Facility or the Units comprised in it during the term of this Agreement.

6.8.2 In furtherance of Clause 6.8.1, Seller transfers to Purchaser all right, title and interest Seller has or will have in, to, and under such credits or benefits.

6.8.3 Seller agrees to provide such further evidence of the right, title and interest of Purchaser in such credits or benefits, and such information with respect to such credits or benefits, as Purchaser shall reasonably request and to take such action as Purchaser may reasonably request after the Commercial Operation Date for the first Unit in time that is Commissioned to perfect the transfer of such title, right, and interest to Purchaser. Purchaser undertakes to reimburse Seller for Seller's reasonable costs and expenses in complying with this Clause 6.8.3.

7. OPERATION BY PURCHASER

7.1 Pre-Operation of Transmission System

Purchaser shall:

7.1.1 make the arrangements required to be made by it for any necessary upgrade to the Transmission System, so that it is capable of evacuating power from the Facility, after the first synchronisation in accordance with the Interconnection Agreement;

7.1.2 provide such assistance and support as Seller may reasonably require in identifying and preparing applications for Governmental Approvals and in

interfacing with any Relevant Authority in connection with obtaining Governmental Approvals; and

- 7.1.3 provide all reasonable cooperation and assistance to Seller in connection with Seller's negotiation and execution of the Financing Agreements and the Security Package and any replacement funding.

7.2 Operation of Transmission System

From the time Seller commences operation and maintenance of the Facility or any Unit comprised in it and until the expiry or termination of this Agreement, Purchaser shall operate and maintain the Transmission System:

- 7.2.1 in such a manner so as not to cause damage to the Facility or any Unit comprised in it, but Purchaser shall not be liable for any adverse effect on the Facility or any Unit comprised in it resulting from normal operation and maintenance of the Transmission System; and
- 7.2.2 in all material respects in accordance with the Law, the Purchaser Licence, Prudent Utility Practice and this Agreement.

7.3 Interconnection Facilities

The Parties shall enter into an Interconnection Agreement governing the construction, maintenance and operation of the Interconnection Facilities at the Interconnection Point to the extent not provided for under this Agreement.

8. PURCHASER'S STEP-IN RIGHTS

- 8.1 Subject to the Direct Agreement and Clause 8.2, if after the Final Commercial Operation Date:

- 8.1.1 Seller shall have Abandoned the Facility;
- 8.1.2 Purchaser becomes entitled to terminate this Agreement due to an Event of Default and operation of the Facility is not assumed by the Lenders;
- 8.1.3 in the circumstances specified in Clause 10.7; or
- 8.1.4 following receipt of a Dispatch Instruction from Purchaser, Seller refused to operate the Facility for a period in excess of [●] Hours,

Purchaser shall be entitled, but not obliged, to enter the Facility and operate it until Seller demonstrates to the reasonable satisfaction of Purchaser that it can and will resume normal operation of the Facility.

- 8.2 Purchaser is not permitted to exercise step-in rights contained in Clause 8.1 where the circumstances referred to in Clause 8.1 are caused by or as a consequence of:

- 8.2.1 a Purchaser Event of Default;
- 8.2.2 an event of Purchaser Risk;

- 8.2.3 a material breach by the Government of its obligations under the Implementation Agreement;
- 8.2.4 a Force Majeure Event.
- 8.3 Seller shall not grant any person, other than the Lenders pursuant to the Direct Agreement, a right to possess, assume control of, and operate the Facility that is equal to or superior to Purchaser's right under this Clause 8.
- 8.4 Purchaser shall give Seller and the Lenders 14 Business Days' notice in advance of the contemplated exercise of Purchaser's rights under this Clause 8 ("Step-In Notice"). Upon receipt of such Step-in Notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Utility Practice, and agrees to fully cooperate with Purchaser in providing access to the Facility, and permitting Purchaser to operate the Facility as provided in this Clause 8 using its own staff or contractors or those of Seller.
- 8.5 Purchaser, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Site and the Facility for the purpose of constructing and/or operating the Facility as from the date of exercise of Purchaser's rights under this Clause 8 set out in the Step-In Notice. Seller hereby irrevocably appoints Purchaser as Seller's attorney-in-fact for the exclusive purpose of executing such documents, directing its staff and taking such other actions as Purchaser may reasonably deem necessary or appropriate to exercise Purchaser's step-in-rights under this Clause 8.
- 8.6 During any period that Purchaser is in possession of and constructing and/or operating the Facility pursuant to this Clause 8, Purchaser shall:
- 8.6.1 perform and comply with all of the obligations of Seller under this Agreement; and
- 8.6.2 use the proceeds from the sale of Contracted Capacity and Contract Energy under this Agreement to, first, reimburse Purchaser for any and all expenses reasonably incurred by Purchaser to which Purchaser is entitled under this Agreement in taking possession of and operating the Facility, and to, second, remit any remaining proceeds to Seller.
- The provisions of Clauses 5 and 9 shall not apply during any period of operation of the Facility by Purchaser under this Clause 8.
- 8.7 During any period that Purchaser is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and Purchaser shall assume possession, operation, and control solely as agent for Seller until and unless surrender and transfer of the Site and the Facility are completed in accordance with Clause 10. In the event that Purchaser is in possession and control of the Facility and this Agreement has not been terminated:
- 8.7.1 Seller may resume operation and Purchaser shall relinquish its right to operate when Seller demonstrates to Purchaser's reasonable satisfaction that it has cured any circumstances which allowed Purchaser to exercise its rights under this Clause 8; and

- 8.7.2 the Lenders, or any nominee or transferee thereof, may take possession of and operate the Facility and Purchaser shall relinquish its right to operate the Facility when the Lenders or any nominee or contractor thereof, requests such relinquishment and Purchaser is reasonably satisfied that such third party is mobilized to and intends to operate the Facility in accordance with the obligations of Seller under this Agreement.
- 8.8 Purchaser's exercise of its rights under this Clause 8 to possess and operate the Facility shall not be deemed an assumption by Purchaser of any liability attributable to Seller. If, at any time after exercising its rights to take possession of and operate the Facility as a result of its rights under this Clause 8, Purchaser elects to return such possession and operation to Seller, Purchaser shall provide Seller and the Lenders with at least 15 days' advance notice of the date Purchaser intends to return such possession and operation, and upon receipt of such notice, Seller shall take all measures necessary to resume possession and operation of the Facility on such date.
- 8.9 If Seller has not provided satisfactory assurances to Purchaser of its willingness and ability to operate the Facility in accordance with this Agreement within [2] months following a refusal to operate the Facility, Purchaser may terminate this Agreement and exercise its remedies (including purchase of the Facility) pursuant to Clause 10.
- 8.10 Purchaser shall be entitled at its cost to have an independent engineer inspect and record the condition of the Facility prior to Purchaser's entry into and operation of the Facility, which inspection shall be considered evidence of the condition of the Facility at the time of Purchaser's entry.
- 8.11 Notwithstanding any other provision in this Agreement to the contrary, during such period Purchaser operates the Facility pursuant to Clause 8.1, Purchaser shall:
- 8.11.1 operate the Facility in accordance with the Operating Characteristics, Prudent Utility Practice, the Law and this Agreement; and
 - 8.11.2 indemnify and hold Seller harmless from any loss or damage to the Facility incurred, suffered or sustained by Seller by reason of Purchaser's gross negligence or wilful misconduct in the operation of the Facility.
- 8.12 During any period that Purchaser shall operate the Facility pursuant to Clause 8.1 Seller shall licence (and shall procure that sub-contractors shall licence to Seller on terms permitting Seller to sub-licence to Purchaser), all Intellectual Property Rights of Seller (and the sub-contractors) necessary for Purchaser to operate the plant.

9. FAILURE IN RESPECT OF ANCILLARY SERVICES AND OPERATING CHARACTERISTICS

- 9.1 If a Unit fails (for reasons other than any Planned Outage, Forced Outage, Force Majeure Event or any event of Purchaser Risk:
- 9.1.1 to provide Ancillary Services in accordance with a Dispatch Instruction; or
 - 9.1.2 to respond to a Dispatch Instruction with respect to active energy within the Operating Characteristics then applicable to it,

(to within 5% of the values or capability which Seller is required to maintain under this Agreement), Seller shall be required to carry out all necessary repairs and maintenance

and to provide evidence to Purchaser within 30 days of such failure (or such longer period as Purchaser may reasonably allow, provided that Seller is diligently and expeditiously carrying out all such repairs and maintenance) that, in the case of Clause 9.1.1, such Unit is capable of providing Ancillary Services in accordance with and to the extent of its Operating Characteristics and, in the case of Clause 9.1.2, that such Unit is capable of responding to a Dispatch Instruction with respect to active energy within the Unit's Operating Characteristics.

- 9.2 Purchaser shall allow the necessary repairs and maintenance referred to in Clause 9.1 to be deferred to the next Planned Outage where to do so would be in accordance with Prudent Utility Practice and the failure of the Unit to provide Ancillary Services or to respond to a Dispatch Instruction with respect to active energy within its Operating Characteristics has no material effect on the operation of the Transmission System.
- 9.3 A failure on the part of Seller to provide evidence to Purchaser within the 30 day period referred to in Clause 9.1 (or such longer period as is referred to in Clause 9.1) that the Unit is capable of providing Ancillary Services in accordance with and to the extent of its Operating Characteristics or that the Unit is capable of responding to a Dispatch Instruction with respect to active energy within the Unit's Operating Characteristics (to within 5% of the values or capability which Seller is required to maintain under this Agreement) will result in a reduction in the Capacity Payment in accordance with Clause 9.4 for the period from such failure to provide evidence until the time that such capability is restored.
- 9.4 The reduction in the Capacity Payment in respect of the relevant Unit referred to in Clause 9.3 shall be 10% in the first month after the failure to provide such evidence, 20% in the second consecutive month and shall increase by 10% in each month during which such failure continues up to 100% in the 10th and each subsequent month during which such failure continues.
- 9.5 If, in any period of 12 consecutive months, a Unit fails on more than 3 occasions to provide Ancillary Services in accordance with and to the extent of its Operating Characteristics or to respond to a Dispatch Instruction with respect to active energy within its Operating Characteristics (to within 5% of the values or capability which Seller is required to maintain under this Agreement) by reason of wilful default on the part of Seller then on the 4th such failure the Capacity Payment in respect of the relevant Unit shall be reduced to zero for a period of 15 days, without prejudice to any other right, relief or remedy of Purchaser under this Agreement.

10. FLEXIBILITY PROVISIONS

10.1 Withdrawal from Service

10.1.1 Purchaser may at any time after the [9th] anniversary of the Final Commercial Operation Date and following the occurrence of any of the events referred to in Clause 10.1.2 give not less than [3] years' prior notice requiring Seller to withdraw the Facility from service (this notice to state the date of withdrawal and the expected date of the Facility's return to service) whereupon:

- (a) Seller shall:
- (i) take the Facility out of service with effect from the date specified by Purchaser until the date specified in the notice; and

- (ii) take the steps agreed between the Parties with respect to the operation and maintenance of the Facility and the saving of costs of operation and maintenance as shall be appropriate having regard to the duration of the period during which the Facility is expected to be withdrawn from service;
- (b) the operation and maintenance obligations under this Agreement shall be deemed to have been modified accordingly and the provisions of Clauses 5 and 9 shall not apply whilst the Facility is withdrawn from service and during its recommissioning;
- (c) Purchaser shall continue to make the Capacity Payment in respect of the Facility (adjusted in accordance with Clause 10.1.1(d) until the expiry of the term of this Agreement or the date on which the Facility is returned to service (whichever is the earlier), on the basis that the Facility is assumed constantly to be available at the Net Dependable Capacity;
- (d) the Capacity Payment, to the extent that it is calculated by reference to the availability of the Contracted Capacity, shall be adjusted to reflect:
 - (i) Seller's expected savings in fixed costs of operation and maintenance as shall be agreed by the Parties having regard to the steps agreed pursuant to Clause 10.1.1(a)(ii);
 - (ii) any costs (such as severance and redundancy pay) incurred for the purpose of achieving these savings;
 - (iii) all costs incurred by Seller in taking the Facility out of service in accordance with this Clause 10.1.1. Seller may elect to receive these costs as and when incurred by way of a lump sum payment or by way of an adjustment to the Capacity Payment; and
 - (iv) any out-of-pocket or other costs reasonably incurred by Seller and any liabilities incurred by Seller (provided that Seller has taken reasonable steps to mitigate these liabilities) in the performance of its obligations under this Clause 10.1 or under any Project Agreement as a result of the withdrawal of the Facility from service to the intent that Seller shall be placed in the same financial position as it would have been in had the Facility not been withdrawn from service, which Seller may elect to receive as and when incurred by way of a lump sum payment or by way of an adjustment to the Capacity Payment, and

in making this adjustment, any costs of recommissioning the Facility and any other costs which (but for the withdrawal from service) would have been incurred after the expiry of the term of this Agreement or any earlier date of termination of this Agreement (as the case may be) shall be disregarded;

- (e) the Facility must be returned to service on the earlier of not less than [3] months' notice to Seller from Purchaser and the expected date of the Facility's return to service as initially notified to Seller by Purchaser, in which case:
 - (i) the Parties shall also agree upon procedures for recommissioning the Facility; and
 - (ii) upon the return to service of the Facility the Parties will agree upon any consequential amendments to this Agreement and/or any lump sum payment by Purchaser to Seller (as Seller may elect) to take account of the costs incurred by Seller (before the expiry of the term of this Agreement) in bringing the Facility back into service, entering into any replacement Project Agreement and any degradation in the Facility, it being the intention of the Parties to place Seller in the same financial position in which it would have been had the Facility not been withdrawn from service; and
- (f) the completion of any recommissioning will be completed not later than [●] years after the return of the Facility to service and pending the adjustments being made pursuant to Clause 10.1.1(e)(ii), Purchaser shall continue to pay the Capacity Payment during the recommissioning.

10.1.2 The events referred to in Clause 10.1.1 are:

- (a) a decision of the system planning department of Purchaser or the Government (acting in its capacity as system planner for []) that the Facility should be withdrawn from service for a period, taken solely on environmental and/or economic grounds, notified to Seller in writing;
- (b) a Relevant Change in Law.

10.2 Permanent Retirement

10.2.1 Purchaser may, at any time on or after the [9th] anniversary of the Final Commercial Operation Date following the occurrence of any of the events referred to in Clause 10.2.3, give not less than [3] years' prior notice to Seller to:

- (a) terminate this Agreement and on the date of expiry of the notice this Agreement will terminate; or
- (b) require the Facility to be withdrawn permanently from service and on the date of expiry of the notice the provisions of Clause 10.1.1 (other than Clause 10.1.1(e)) shall apply.

10.2.2 During the [12] months prior to the expiry of a notice given pursuant to Clause 10.2.1, the Parties will agree a progressive run-down of the maintenance of the Facility and the Site, and the maintenance obligations under this Agreement shall be deemed to have been modified accordingly provided that the effects of the run-down shall not:

- (a) be included in the calculation of the Discounted Amount or, until the date on which this Agreement is terminated, the calculation of the Capacity Payment and the Energy Payment; or
- (b) affect Purchaser's obligations to pay the Capacity Payment and the Energy Payment until the date on which this Agreement is terminated.

Upon termination of this Agreement, Clauses 10.4 to 10.11 inclusive shall apply.

10.2.3 The events referred to in Clause 10.2.1 are:

- (a) a decision of the system planning department of Purchaser or the Government (acting in its capacity as system planner for []) that the Facility should be retired, taken solely on economic and/or environmental grounds, notified to Seller in writing;
- (b) a Relevant Change in Law.

10.3 Put Option

10.3.1 Notwithstanding the provisions of Clauses 10.1.1 and 10.2.1, Seller may, by not less than 6 months' notice to Purchaser (a "Put Option Notice"), following the issue of a notice under Clause 10.2.1 or at any time after the [2nd] anniversary of the withdrawal of the Facility from service following the issue of a notice under Clause 10.1.1 require Purchaser to:

- (a) terminate this Agreement on the expiry of the Put Option Notice; or
- (b) return the Facility to service on the expiry of the Put Option Notice.

10.3.2 Purchaser shall notify Seller of its decision on or before the expiry of the Put Option Notice.

10.3.3 If, upon receipt of a Put Option Notice, Purchaser elects:

- (a) to return the Facility to service, the provisions of Clause 10.1.1(e) shall apply; or
- (b) to terminate this Agreement or does not issue a notice electing to return the Facility to service, this Agreement shall automatically terminate upon the earlier of receipt of notice from Purchaser that it elects to terminate this Agreement or the expiry of the notice period specified in the Put Option Notice. Upon termination of this Agreement pursuant to this Clause 10.3.3(b), the provisions of Clauses 10.4 to 10.11 inclusive shall apply.

10.4 Transfer of Facility on Termination

10.4.1 If this Agreement is terminated:

- (a) by Purchaser under Clauses 8.9, 14.6, or 17.3.1, or by either Party under Clause 17.3.2, Purchaser may elect by 60 days' notice to Seller; or

- (b) by Seller under Clause 17.3.1, by either Party under Clause 17.3.2, by Purchaser issuing a notice under Clause 10.2.1(a) or as a result of a Put Option Notice issued under Clause 10.3, Seller may elect by 60 days' notice to Purchaser,

within 60 days of the date of termination, to require the Facility and the Site to be transferred to Purchaser. If a notice is issued by either Party under this Clause 10.4.1, Clauses 10.4.2 to 10.11 inclusive shall apply.

- 10.4.2 Where the Facility and the Site are to be transferred to Purchaser, Purchaser shall pay to Seller an amount equal to the amount set forth in the following table (each a "Termination Amount"):

Termination Event	Termination Amount Payable To Seller by Purchaser
Purchaser terminates this Agreement under Clause 10.2.1(a) or the Agreement terminates as a result of a Put Option Notice issued under Clause 10.3	DA+T
Seller terminates this Agreement under Clause 17.3.1 before the Final Commercial Operation Date	D+E+R+T
Seller terminates this Agreement under Clause 17.3.1 on or after the Final Commercial Operation Date	DA+T
Purchaser terminates this Agreement under Clause 14.6	FMV
Either Party terminates this Agreement under Clause 17.3.2 before the Final Commercial Operation Date for an Other Force Majeure Event declared by, or affecting, Purchaser	(1) 100% of D+E+R+T where Purchaser terminates this Agreement; or (2) the greater of (i) 95% of D+E+R+T and (ii) D, where Seller terminates this Agreement
Either Party terminates this Agreement under Clause 17.3.2 on or after the Final Commercial Operation Date for an Other Force Majeure Event declared by, or affecting, Purchaser	(1) 100% of DA+T where Purchaser terminates this Agreement; or (2) the greater of (i) 95% of DA+T and (ii) D, where Seller terminates this Agreement

Termination Event	Termination Amount Payable To Seller by Purchaser
Either Party terminates this Agreement under Clause 17.3.2 before the Final Commercial Operation Date for an Other Force Majeure Event declared by, or affecting, Seller	(1) 100% of $(D+E+R+T) - IP$ where Purchaser terminates this Agreement; or (2) the greater of (i) 95% of $(D+E+R+T) - IP$ and (ii) D , where Seller terminates this Agreement
Either Party terminates this Agreement under Clause 17.3.2 on or after the Final Commercial Operation Date for an Other Force Majeure Event declared by, or affecting, Seller	(1) 100% of $(DA + T) - IP$ where Purchaser terminates this Agreement; or (2) the greater of (i) 95% of $(DA + T) - IP$ and (ii) D , where Seller terminates this Agreement
Either Party terminates this Agreement under Clause 17.3.2 before the Final Commercial Operation Date due to a Political Force Majeure Event	$D+E+R+T$
Either Party terminates this Agreement under Clause 17.3.2 on or after the Final Commercial Operation Date due to a Political Force Majeure Event	$DA+T$
Purchaser terminates this Agreement under Clauses 8.9 or 17.3.1 before the Final Commercial Operation Date	90% of D
Purchaser terminates this Agreement under Clauses 8.9 or 17.3.1 on or after the Final Commercial Operation Date	90% of D

where:

D is the total amount outstanding at the Termination Date to the Lenders under the Financing Agreements (including principal and interest, breakage costs and costs and expenses) less the aggregate amount of any cash balances held in the name of the Seller and secured to the Lenders as at the Termination Date;

- E is the aggregate amount of any equity investment or contribution (whether by way of capital contribution, shareholder loans) made by the Investors (or their Affiliates) at or by the Termination Date to, or in, Seller;
- DA is the net present value of [Financial Charges] that would have been earned under this Agreement from the Termination Date until the [th] anniversary of the Final Commercial Operation Date calculated in accordance with Schedule 11, Part 2;
- R is an amount equal to the total value of interest at a rate of [th] % compounded annually which the Investors would have received had an amount equal to E been deposited in a bank account between the date on which this Agreement enters into full force and effect pursuant to Clause 2.1 and the Termination Date;
- T is the reasonable termination costs incurred by Seller (including employee severance costs and contract breakage costs) incurred by Seller as a direct consequence of the termination of this Agreement;
- FMV is the fair market value of the Facility as determined in accordance with Schedule 11, Part 1; and
- IP is the sum of the proceeds of insurance received by Seller pursuant to the policies of insurance set forth in Schedule 7 in respect of the relevant Force Majeure Event and any amount recovered from any Contractor as a result of the termination of this Agreement.

10.4.3 To the extent such expenses are not recovered prior to the termination of this Agreement through revenue generated by the Facility and used to reimburse Purchaser pursuant to Clause 8.6.2, Purchaser may deduct from the payment of the Termination Amount any reasonable expenses incurred by Purchaser in exercising its rights under Clause 8 where such right arises pursuant to Clause 8.1.

10.4.4 Payment of the Termination Amount (as each such amount is adjusted) shall be made in accordance with the provisions of Clause 10.9.

10.5 Transfer Documents and Agreements with Third Parties

10.5.1 The Parties acknowledge and agree that, subject to Clauses 10.5.3 and 10.7, it is the intention of the Parties that the payment by Purchaser of the relevant Termination Amount to Seller and the formalities pertaining to the transfer of the Facility and the Site occur contemporaneously.

10.5.2 Subject to Clauses 10.5.3 and 10.7, on the date on which Purchaser pays the relevant Termination Amount in accordance with Clause 10.9.6, the Parties will enter into any notarial deeds, transfers, releases and documents as are necessary to give effect to the requirements of Clause 10.6.

10.5.3 If, on the date of payment by Purchaser of the relevant Termination Amount, any of the assets referred to in Clause 10.6 is the subject of any Encumbrance or Permitted Encumbrance, Seller shall (save in respect of any easements,

wayleaves, licences or other real property rights attached to the Site that cannot reasonably be removed) as soon as practicable after receipt of this amount, apply the same in discharge of the Encumbrance or Permitted Encumbrance and will use reasonable endeavours to obtain and provide to Purchaser a written release of the same as soon as practicable.

- 10.5.4 The Parties agree to take all reasonable steps that are necessary or expedient in order to give full effect to this Clause 10.5.
- 10.5.5 The Parties will use all reasonable endeavours to assign to Purchaser or to assist in the renewal or novation in favour of Purchaser in place of Seller all agreements with third parties which are necessary for the continued operation or maintenance of the Facility and the Site where the assignment or novation is permitted by applicable law or by the terms of the particular agreement.

10.6 Termination with Transfer of Facility

Subject to Clause 10.7, upon:

- 10.6.1 the election of either Party pursuant to Clause 10.4.1 to require the transfer of the Facility and the Site to Purchaser; and
- 10.6.2 the payment by Purchaser pursuant to Clause 10.4.2 of the relevant Termination Amount and any other amounts owing by Purchaser to Seller under this Agreement (subject to set off by Purchaser of any sums due and owing to Purchaser by Seller),

Seller agrees to surrender or transfer to Purchaser its rights in the Site and to transfer its rights in the immovable property and assets thereon and all moveable property and assets (whether tangible or intangible) necessary for the continued operation or maintenance of the Facility and the Site to Purchaser in accordance with Clause 10.5 and in every case without any additional payment (other than as expressly provided for herein) and, subject to the provisions of Clause 10.5.1, clear of any Encumbrance (subject to any easements, wayleaves, licences or other real property rights attached to the Site that cannot reasonably be removed). In the event of the election by Seller to require transfer of the Facility to Purchaser, any Tax related to such transfer shall be paid by Purchaser.

10.7 Operation Pending Transfer

- 10.7.1 Subject to Clause 10.7.2, if it is not possible, having determined the quantum of the Termination Amount, for the Parties to achieve contemporaneous payment of that Termination Amount and transfer of the Facility and the Site to Purchaser in the manner contemplated by Clause 10.5, Purchaser may issue a Step-In Notice to operate and maintain the Facility subject to and in accordance with the relevant provisions of Clause 8.
- 10.7.2 Purchaser may only exercise its right to issue a Step-In Notice pursuant to Clause 10.7.1 if:
 - (a) Purchaser first pays the Termination Amount into an escrow account (the “Termination Amount Escrow Account”) established with an Acceptable Financial Institution nominated by Seller (acting reasonably and which, for the avoidance of doubt, may be a Lender) (the “Escrow Agent”); and

- (b) such Termination Amount is held in the Termination Amount Escrow Account on terms (including terms of release from escrow) which fully comply with Clause 10.7.3 and which do not require any act or consent of either Party (other than as contemplated by Clause 10.7.3).

10.7.3 The terms upon which any Termination Amount is held on escrow in the Termination Amount Escrow Account shall be as follows:

- (a) the Termination Amount (or part thereof as specified below) shall be automatically released from the Termination Amount Escrow Account into an account nominated by Seller upon the earlier of:
 - (i) in respect of all of the Termination Amount, the date specified in a notice issued by both Parties to the Escrow Agent as the date upon which the surrender and transfer of the Site and the Facility to Purchaser in accordance with Clause 10.5 shall be completed (such date to be a business day both in the location of the Termination Amount Escrow Account and the account nominated by Seller pursuant to this Clause 10.7.3(a) (a “Relevant Business Day”));
 - (ii) in respect of an amount equal to D (as defined in Clause 10.4), 2 months (or the next Relevant Business Day thereafter) after the date on which the Termination Amount is deposited into the Termination Amount Escrow Account (the “Deposit Date”); and
 - (iii) in respect of any remaining portion of the Termination Amount 3 months (or the next Relevant Business Day thereafter) after the Deposit Date.

10.7.4 If the remaining portion of the Termination Amount is, or is to be released, pursuant to Clause 10.7.3(a)(iii), Seller shall, at Purchaser’s option, provide Purchaser with an irrevocable power of attorney in such form as the Parties shall reasonably agree that is effective under the Law to enable Purchaser to execute all necessary deeds and documents and to take all necessary steps in order to complete the surrender and transfer of the Site and the Facility to Purchaser.

10.7.5 All costs, liabilities and expenses of operating and maintaining the Termination Amount Escrow Account (including any fees payable to the Escrow Agent) and relating to any acts or steps taken by Purchaser under the power of attorney referred to in Clause 10.7.4 shall be borne by Purchaser.

10.7.6 The Parties agree to take all reasonable steps that are necessary or expedient to establish the Termination Amount Escrow Account, to give instructions to the Escrow Agent (including the issuing of any notice to the Escrow Agent pursuant to Clause 10.7.3(a)(i)) and to give effect to this Clause 10.7.

10.8 Condition of Property on Termination

Without prejudice to Seller’s operation and maintenance obligations under this Agreement, no warranties (express or implied) as to the condition of the property and assets referred to in Clause 10.6 shall be given at the Termination Date.

10.9 Apportionment of Liabilities and Prepayments

- 10.9.1 Save as otherwise provided in this Agreement, Seller will be responsible for all liabilities and obligations (including contingent liabilities) in connection with the ownership, operation, maintenance or repair of the Facility and the Site prior to the termination of this Agreement. Purchaser shall be responsible for all liabilities and obligations (including contingent liabilities) in respect of the same arising after the termination of this Agreement save to the extent that these liabilities and obligations were caused by or attributable to a breach of Seller's obligations under this Agreement prior to the date of termination of this Agreement. Seller shall use its reasonable endeavours to mitigate the amount of the costs and expenses relating to liabilities and obligations (including contingent liabilities) in connection with the ownership, operation, maintenance or repair of the Facility and the Site and incurred between the Termination Date and the date on which transfer of the Facility and the Site to Purchaser occurs. In the event that Purchaser is required to settle any of these liabilities or perform obligations with respect to the period prior to termination of this Agreement which are necessary in order to comply with Prudent Utility Practice in order to continue to operate the Facility and in connection with the Site, any cost or expense reasonably incurred in connection therewith shall be subtracted from the Termination Amount.
- 10.9.2 Any prepayments made by Seller in respect of the Facility or the Site prior to the operation of Clause 10.6 shall be apportioned between Seller and Purchaser on a time basis with effect from the Termination Date and shall be added to or subtracted from the Termination Amount as appropriate.
- 10.9.3 Seller will prepare a statement of the liabilities and obligations referred to in Clause 10.9.1 and the prepayments referred to in Clause 10.9.2 and the apportionment thereof between Seller and Purchaser reflecting the provisions of Clauses 10.9.1 and 10.9.2 and submit it to Purchaser for its approval as soon as reasonably practicable and in any event not later than 3 months after the termination of this Agreement. Seller will afford Purchaser reasonable access to the Facility and the accounts, books and records of Seller to the extent that Purchaser may reasonably require to check the accuracy of the statement of liabilities and obligations. Subject to Clause 10.9.4, each Party shall use reasonable endeavours to agree the statement of liabilities and obligations within 28 days after receipt by Purchaser.
- 10.9.4 Either Party may, by notice to the other, require an audit to be carried out by an expert (to be appointed, in default of agreement between the Parties, pursuant to Schedule 9, Part 3):
- (a) at any time within 28 days after the receipt of the statement prepared by the other Party pursuant to Clause 10.9.3; and/or
 - (b) at any time within 3 months before the termination of this Agreement or 3 months thereafter of the environmental liabilities (both actual and contingent) relating to the period of occupation of the Facility and the Site by Seller.

The findings of the expert shall be set out in a written report which shall be supplied to both Parties as soon as practicable who will be given 21 days to

comment on the report before it is submitted in final form. The final form of the report shall be conclusive and binding on the Parties for the purposes of this Clause 10, and Clauses 17.4, 18 and 20.2 inclusive. For the purposes of carrying out any audit and preparing any report referred to in this Clause 10.9.4, each Party shall (subject to obtaining confidentiality undertakings in forms reasonably satisfactory to that Party) permit the expert access during normal working hours to its books, accounts, records and vouchers. The expert shall be entitled to require from each Party's officers and/or staff information and explanations and to request copies to the extent necessary for the carrying out of the audit and the preparation of the report (but, for the avoidance of doubt, the expert shall not have access to any data used, information held or records kept which are not strictly relevant to the carrying out of that particular audit). The costs of the audit shall be borne by the Party requesting it.

- 10.9.5 The amount of the liabilities and obligations referred to in Clause 10.9.1 which are agreed pursuant to Clause 10.9.3 or determined pursuant to Clause 10.9.4 shall be added to or subtracted from (as appropriate) the payment of the relevant Termination Amount.
- 10.9.6 Subject to Clauses 10.5 and 10.6, Purchaser shall pay the relevant Termination Amount (as adjusted in accordance with Clause 10.9.1) in immediately available, freely transferable, cleared funds to Seller within 21 days after the statement referred to in Clause 10.9.3 has been agreed, or, if later, 14 days after the report of the expert has been received by Purchaser and the Parties have agreed the calculation of the amount payable (as the case may be) consequent upon the findings of the report. The provisions of Clauses 11.4.4 to 11.4.6 shall apply to any amount not in Dispute and the amounts that are not agreed shall be determined by an expert appointed pursuant to Schedule 9, Part 3. Each Party will pay to the other any amounts which are subsequently agreed or determined to be payable by it to the other or which may have been overpaid or underpaid.

10.10 Nature of Moveable and Immoveable Property

The moveable and immoveable property and assets referred to in Clause 10.6 shall include the Facility, the Site, all buildings, plant, equipment, stocks and spare parts, fuel, all other consumables and assets (other than personal belongings of the staff of Seller, the operator of the Facility or their contractors or agents) necessary for the operation of the Facility acquired on or after the date of this Agreement, where possible, any Intellectual Property Rights, existing agreements or orders (but excluding any debts, liabilities or cash) relating to the Facility, its operation, maintenance and repair and all records and assets relating to the Facility and the Site.

10.11 Spare Parts, Fuel and Other Consumables

Immediately upon termination of this Agreement, the Parties will conduct a stock take or audit of the spare parts, coal and other fuels and consumables at the Site or (save as aforesaid) on order, for which Purchaser will pay Seller at cost. Purchaser shall be entitled, to the extent that the performance by Seller of its obligations and the exercise of its rights under this Agreement, are not thereby impaired, at any time during the period of 3 months prior to the Termination Date to direct Seller to order, purchase or store in good condition as Purchaser's agent those stocks of spare parts, coal, fuel and other consumables as Purchaser may require at the expense of Purchaser. This Clause 10.11 shall not affect the obligation of Seller to purchase and maintain stocks at its own

expense to the extent necessary to enable it to perform its obligations under this Agreement to the Termination Date. Purchaser shall pay Seller the costs that Seller incurs under this Clause 10.11 as and when they are incurred within 21 days of receipt of an invoice from Seller in respect thereof.

10.12 Expert Determination

Any Dispute arising under this Clause 10 shall be referred for determination to an expert appointed pursuant to Schedule 9, Part 3.

11. CHARGES, PAYMENT AND BILLING

11.1 Payments for Capacity, Energy and Test Energy

11.1.1 The Capacity Payment for each Unit shall be determined and adjusted in accordance with Schedule 4, Part [●].

11.1.2 The Energy Payments for energy delivered by each Unit to Purchaser at the Point of Delivery shall be calculated in accordance with Schedule 4, Part [●].

11.1.3 Purchaser will pay the Energy Payment for Test Energy purchased by it under Clause 4.7.2 prior to the Commercial Operation Date of the relevant Unit (but not a Capacity Payment). After the Commercial Operation Date of the relevant Unit, Purchaser will pay both a Capacity Payment and an Energy Payment in the event that the relevant Unit passes the test and only the Energy Payment in the event that it fails the test.

11.1.4 Purchaser shall pay to Seller, monthly in arrears and in accordance with this Clause 11 and Schedule 4 from and after the Commercial Operation Date of any Unit, Capacity Payments in respect of the Contracted Capacity of that Unit and Energy Payments in respect of the Net Electrical Output and Test Energy of that Unit during the relevant month.

[Provisions will need to be inserted to allow for annual adjustment if target availability is set on an annual rather than a monthly basis.]

11.2 Payments for Ancillary Services, Cold Starts and Warm Starts

If Seller provides Ancillary Services, a Cold Start or a Warm Start requested by Purchaser in accordance with Clause 6, Purchaser shall pay to Seller the relevant Ancillary Services Charge, Cold Start Charge or Warm Start Charge calculated in accordance with Schedule 4.

11.3 Refinancing

11.3.1 Seller shall deliver an Initial Financing Costs Report to Purchaser within 12 months after the Final Commercial Operation Date.

11.3.2

- (a) Seller shall use its reasonable endeavours to determine from time to time if a Refinancing would result in lower Financing Costs than the Financing Costs of the Initial Financing or any existing Refinancing. If Seller wishes to enter into a Refinancing, Seller shall

contemporaneously or prior to entering into that Refinancing, deliver a Refinancing Costs Report to Purchaser.

- (b)
- (i) Where Purchaser reasonably determines that a Refinancing Gain may exist, Purchaser may give Seller notice in writing that it requires Seller to determine if a Refinancing would result in lower Financing Costs than the Financing Costs of the Initial Financing or any existing Refinancing.
 - (ii) Upon receipt of notice under Clause 11.3.2(b)(i), Seller shall deliver a Refinancing Costs Report to Purchaser as soon as reasonably practicable.
 - (iii) If the Refinancing Costs Report delivered to Purchaser under Clause 11.3.2(b)(ii) finds that a Refinancing at that time would provide a material Refinancing Gain, Seller shall bear the costs of preparation of the Refinancing Costs Report.
 - (iv) If the Refinancing Costs Report delivered to Purchaser under Clause 11.3.2(b)(ii) finds that a Refinancing at that time would not provide a material Refinancing Gain, Purchaser shall reimburse to Seller Seller's reasonable costs incurred in preparation of the Refinancing Costs Report.

11.3.3 If the Refinancing results in a Refinancing Gain, Purchaser shall share in 50% of such Refinancing Gain by a reduction in the Financial Charge over the remainder of the term of this Agreement from the Refinancing Date.

11.3.4 The Parties shall negotiate in good faith on the basis and method of calculation of determining the appropriate reduction of the Financial Charge to reflect Purchaser's 50% share of the Refinancing Gain.

11.3.5 If the Parties are unable to agree upon the appropriate reduction of the Financial Charge pursuant to Clause 11.3.4 within 60 days after receipt by Purchaser of the Refinancing Costs Report, either Party may refer the Dispute, which shall be deemed to be a Technical Dispute, to an expert for determination. Upon the agreement, or determination, of the reduction in the Financial Charge:

- (a) the Financial Charge for each month shall be reduced to reflect such determination or agreement with effect from the month after the month in which the Refinancing Date occurs until the month after the end of the Financing Term; and
- (b) Schedule 4 shall be deemed to be amended to reflect the amended Reference Tariff for the Financial Charge element of the Capacity Payment for the remainder of the term of this Agreement.

For the avoidance of doubt, the failure to determine or agree upon the reduction of the Financial Charge shall, subject to Clause 11.3.6, not prevent Seller from entering into, or incurring financial indebtedness pursuant to, the Refinancing which is the subject of the Refinancing Costs Report.

11.3.6 If Seller enters into, or incurs financial indebtedness pursuant to, any Refinancing prior to the agreement or determination of the reduction of the Financial Charge pursuant to Clause 8.3.5:

- (a) the Financial Charge shall be reduced as from the month after the month in which the Refinancing Date occurs by an amount agreed between the Parties or, in the absence of agreement, by the Interim Amount; and
- (b) upon the reduction in the Financial Charge being agreed or determined, an adjustment (“Adjustment”) shall be made, for the period between the date on which the Financial Charge was reduced pursuant to Clause 11.3.6(a) to the date on which the reduction to the Financial Charge is agreed or determined (the “Adjustment Period”) calculated as follows:

$$DA - EA = A;$$

where:

DA = the amount of the reduction in the Financial Charge for the Adjustment Period based on the agreed or determined reduced Financial Charge;

EA = the amount of the reduction in the Financial Charge for the Adjustment Period; and

A = the Adjustment which:
(i) if a positive figure shall be paid by Seller to Purchaser; and
(ii) if a negative figure shall be paid by Purchaser to Seller, in each case with interest at the Interest Rate for the Adjustment Period compounded monthly in accordance with Clause 11.4.6.

11.3.7 In this Clause 11.3, the following methodology shall be used:

- (a) the average Monthly Financing Costs shall be determined as follows:

$$TFC \div M;$$

where:

TFC = the total Financing Costs for the Financing Term as set out in the relevant Report; and

M = the months for the Financing Term as set out in the relevant Report;

- (b) each Report shall be:

- (i) prepared in accordance with the Accounting Standards; and

- (ii) accompanied by a certificate of Seller's auditors that the calculation is correct and the Accounting Standards have been properly applied; and
- (c) the Refinancing Gain shall be calculated after taking into account any costs and expenses reasonably and properly incurred by Seller in relation to the Refinancing including:
 - (i) any prepayment, cancellation, break or termination costs and expenses (however described) incurred pursuant to the Financing Agreements entered into in relation to the Existing Financing;
 - (ii) pursuant to the Financing Agreements entered into in relation to the Refinancing (including arrangement, underwriting, agency and co-ordination fees, costs and expenses (however described)); and
 - (iii) any professional and management costs and expenses reasonably incurred in respect of the Refinancing or the prepayment, repayment, cancellation or termination of the Existing Financing,

with the intent that the Refinancing Gain shall be net of any costs or expenses reasonably and properly incurred by Seller in entering into, and incurring financial indebtedness pursuant to, the Refinancing and prepaying, repaying, cancelling or terminating the Existing Financing.

11.3.8 For the purposes of calculating the Capacity Payment in a year in which a Refinancing occurs, the Financial Charge shall be calculated on the basis of:

- (a) the Financial Charge that was applicable up to the Refinancing Date for the period from the commencement of that year until, and including, the Refinancing Date; and
- (b) the Financial Charge that is applicable after the Refinancing Date for the period from, and excluding, the Refinancing Date until the end of that year.

11.4 Billing and Payment

11.4.1 From the first month following the month in which the first Unit has been first synchronised, Seller shall prepare an invoice showing the Energy Payment for generated Net Electrical Output of each Unit that has been Commissioned payable by Purchaser to Seller pursuant to Clause 11.1 for the preceding month.

11.4.2 On or before the [●th] day of each month following the month in which the Commercial Operation Date for the first Unit in time occurs, but prior to the Final Commercial Operation Date, Seller shall prepare an invoice showing the Capacity Payment and any applicable Cold Start Charges, Warm Start Charges and Ancillary Services Charges payable to Seller for the preceding month in respect of each Unit that has been Commissioned, and each such invoice shall show information and calculations, in reasonable detail, to permit Purchaser to confirm the consistency of the invoice with the provisions of Schedule 4.

- 11.4.3 On or before the [5th] day of each month following the month in which the Final Commercial Operation Date occurs and until the expiry or termination of this Agreement, Seller shall prepare an invoice showing the Capacity Payment and any applicable Cold Start Charges, Warm Start Charges and Ancillary Services Charges payable to Seller for the preceding month in respect of the Facility, and each such invoice shall show information and calculations, in reasonable detail, to permit Purchaser to confirm the consistency of the invoice with the provisions of Schedule 4.
- 11.4.4 Subject to Clause 11.5, Purchaser shall pay all such invoices on or before the Due Date.
- 11.4.5 Payment shall be made in [*currency denominations will follow financial proposals*].
- 11.4.6 Any amounts not paid when due (unless disputed in good faith) shall bear interest at a rate equal to the Interest Rate plus [2]% per annum, compounded monthly based on the actual number of days elapsed from the Due Date therefor until payment is made (based upon a 365-day year).
- 11.5 Payment Disputes
- 11.5.1 At any time prior to 180 days following its receipt of any invoice issued pursuant to Clause 11.4, Purchaser may notify Seller that it disputes one or more charges or underlying calculations relating to such invoice.
- 11.5.2 Each notice provided by Purchaser pursuant to Clause 11.5.1 shall specify the relevant invoice, the amount disputed and the basis of the dispute, and shall be accompanied by supporting documentation.
- 11.5.3 If Purchaser disputes a portion of the charges on an invoice prepared pursuant to Clause 11.4, whichever is applicable, it shall nonetheless pay by the applicable Due Date all amounts not in dispute.
- 11.5.4 Where Purchaser notifies Seller pursuant to Clause 11.5.1, a Dispute will exist for the purposes of Clause 19.
- 11.5.5 Where a Dispute in relation to an invoice is finally determined pursuant to Schedule 9, subject to any other agreement of the Parties or arbitration award:
- (a) for amounts in Dispute that have not been paid but are due to be paid, such amounts actually determined to be due shall accrue interest at the Interest Rate, compounded monthly based upon the actual number of days elapsed from the Due Date therefor until payment is made, (based upon a 365-day year); and
- (b) for amounts in Dispute that have been paid but are determined to not have been required to be paid, such amounts actually determined to be refunded shall accrue interest at the Interest Rate, compounded monthly based upon the actual number of days elapsed from the date paid until refunded or offset (based upon a 365-day year).
- 11.5.6 When any Dispute regarding payment is resolved, payment of amounts due, together with interest thereon, shall be made or refunded within 10 Business Days thereafter.

12. ESTABLISHMENT AND FUNCTIONIONING OF CO-ORDINATING COMMITTEE

12.1 Coordinating Committee Membership and Duties

- 12.1.1 Prior to Financial Closing, the Parties shall establish a Coordinating Committee, charged with responsibility for coordinating communications between the Parties with respect to the interface and coordination required between Purchaser and Seller under this Agreement. The Coordinating Committee shall have no authority to modify the terms or conditions of this Agreement in writing, orally, by conduct or otherwise.
- 12.1.2 Costs of the Coordinating Committee shall be borne equally by the Parties.
- 12.1.3 Each Party shall designate 3 members to represent it on the Coordinating Committee, and either Party may remove or replace any of its Coordinating Committee members at any time upon notice to the other Party.
- 12.1.4 The nomination of chairmanship of the Coordinating Committee shall rotate each 6 months between the Parties, and the Parties agree that the first chairman shall be nominated by Purchaser.
- 12.1.5 Decisions of the Coordinating Committee shall require the approval of a majority of members of the Coordinating Committee.
- 12.1.6 The Coordinating Committee shall develop procedures for the holding of meetings, the keeping of minutes of meetings and the appointment and operation of sub-committees.
- 12.1.7 The Parties shall:
- (a) instruct their representatives on the Coordinating Committee to act in good faith in dealing with matters considered by the Coordinating Committee; and
 - (b) where the Coordinating Committee decides it appropriate, use reasonable efforts to give effect to decisions of the Coordinating Committee.

12.2 Maintenance of Operating Records

- 12.2.1 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration, including in relation to billing and payments, of this Agreement.
- 12.2.2 Without limiting Clause 12.2.1, Seller shall maintain the Operating Records at the Facility.
- 12.2.3 All such records and data retained by a Party pursuant to Clauses 12.2.1 or 12.2.2 shall:
- (a) be maintained for a minimum of [7] years after the creation of such records or data and for any additional length of time required by any Relevant Authority with jurisdiction over either Party; and

- (b) not be disposed or destroyed after such [7] year period, unless the Party desiring to dispose of or destroy any such records gives [30] days' prior notice to the other Party, generally describing the records to be destroyed or disposed of, and the Party receiving such notice does not object to such disposal or destruction within [10] days.

12.2.4 Either Party shall have the right, upon [10] days' prior notice to the other Party, to obtain at its own cost a copy of the records and data (electronically, as appropriate) of the other Party, retained by a Party pursuant to Clauses 12.2.1 or 12.2.2, and relating to this Agreement or the operation or Dispatch of the Facility.

12.2.5 If a Party objects to the disposal or destruction of information pursuant to Clause 12.2.3(b) and the Parties are unable to resolve the matter, a Dispute shall be deemed to exist and shall be determined in accordance with Schedule 9.

12.3 Accounts and Reports

12.3.1 Seller shall maintain complete and accurate records in Dollars and, to the extent required by the Law, in [local currency], accounting for all transactions relating to the design, construction, operation and maintenance of the Facility.

12.3.2 After the close of each fiscal year, Seller shall, as soon as available but in any event within 5 Business Days after the maximum period permitted by the Law for preparing audited accounts, furnish to Purchaser:

- (a) 2 copies of the audited accounts of Seller as of the close of the fiscal year, denominated in Dollars and, to the extent required by the Law, in [local currency]; and
- (b) an opinion of its auditors, to the effect that the financial statements have been prepared in accordance with the Accounting Standards and that the examination of the accounts in connection with the financial statements has been made by them in accordance with generally accepted auditing standards in [] and included such tests of the accounting records and other auditing procedures as were considered necessary in the circumstances, all in accordance with the requirements of the Law, as amended from time to time.

12.4 Failure to Submit Reports

Any failure of either Party to submit any reports, information or certifications required by (and in accordance with) this Agreement shall, in addition to any rights and remedies available to the receiving Party under law, give the receiving Party the right to delay reciprocal action for which such information is provided, or the date or event in connection with which the information is provided, for a period equal to any such delay by the delivering Party.

13. REPRESENTATIONS AND WARRANTIES

Seller and Purchaser make the representations and warranties contained in Schedule 10, Parts 1 and 2, respectively.

14. INSURANCE

14.1 Maintenance of Insurance Policies

- 14.1.1 Seller, at its sole cost and expense, shall obtain and maintain, or cause to be obtained and maintained, from commencement until the Termination Date, the policies of insurance set forth in Schedule 7, Part 1 in the amounts and during the periods set forth therein, and endorsed in accordance with Schedule 7, Part 2.
- 14.1.2 Seller shall not be in breach of its obligations under Clause 14.1.1 if and to the extent that any particular insurance ceases to be reasonably available and commercially feasible in the commercial insurance market, and in such circumstances the provisions of Clause 14.4 shall apply.
- 14.1.3 Insurance amounts required by this Clause 14 may be changed from time to time with the prior consent of Purchaser.
- 14.1.4 Unless otherwise agreed by Purchaser (such agreement not to be unreasonably withheld or delayed), each insurance policy shall be written with insurers, or reinsured with reinsurers, having a long-term credit rating of BB (Standard & Poors) or equivalent.
- 14.1.5 The coverage required by Clause 14.1.1 and any “umbrella” or excess coverage shall be “occurrence” form policies and, in the event either Party has “claims-made” form coverage, it must obtain prior approval of all “claims-made” policies from the other Party.
- 14.1.6 Seller’s liability under this Agreement is not limited to the amount of insurance coverage required in this Agreement.

14.2 Certificates of Insurance

- 14.2.1 Seller shall cause its insurers or agents to provide Purchaser with certificates of insurance evidencing the policies and endorsements required by Clause 14.1.1.
- 14.2.2 If Seller is unable to obtain the insurance coverage required by Clause 14.1.1, it shall promptly notify Purchaser.
- 14.2.3 Failure by Seller to obtain the insurance coverage or certificates of insurance required by Clause 14.1.1 shall not in any way relieve or limit Seller's respective obligations and liabilities under any provision of this Agreement.
- 14.2.4 If Seller fails to procure or maintain any insurance required pursuant to Clause 14.1.1, then Purchaser:
- (a) shall have the right to procure such insurance in accordance with the requirements of Schedule 7, Part 1; and
 - (b) shall be entitled to recover the premiums paid for such insurance as if the same were a debt due and payable against any amounts owed to the non-procuring Party pursuant to the terms of this Agreement.

14.3 Insurance Reports

14.3.1 Seller shall provide Purchaser with copies of any technical underwriters' reports or other technical reports received by Seller from any insurer.

14.3.2 Any reports provided under Clause 14.3.1 shall:

- (a) be deemed to be confidential for the purposes of Clause 20.8; and
- (b) notwithstanding Clause 20.8, shall only be used, and internally distributed, by Purchaser as necessary for the administration and enforcement of this Agreement.

14.4 Modification of Insurance

14.4.1 If any insurance required by Clause 14.1.1 ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide notice to Purchaser, accompanied by a certificate from an independent insurance adviser of recognised international standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location, and capacity.

14.4.2 Upon providing a notice under Clause 14.4.1, Seller shall use commercially reasonable efforts to obtain other insurance, which would provide comparable protection against the risk to be insured ("Comparable Insurance"). Seller shall notify Purchaser:

- (a) whether or not it is able to obtain a Comparable Insurance; and
- (b) if it is able to obtain a Comparable Insurance, the terms of that Comparable Insurance.

14.4.3 Upon receipt by Purchaser of a notice from Seller pursuant to Clause 14.4.2 that it is able to obtain a Comparable Insurance, Purchaser may notify Seller that:

- (a) the Comparable Insurance is not acceptable to it; and/or
- (b) dispute whether the insurance in question is not reasonably available and commercially feasible,

in which case, the Dispute shall be referred to an expert for determination in accordance with Schedule 9. The existence of such Dispute shall not prevent Seller taking out the Comparable Insurance pending the expert's determination.

14.5 Application of Proceeds of Insurance

14.5.1 Except in cases of a Total Loss, proceeds of insurance with respect to breakdown, damage or destruction of structures, plant and equipment comprised in the Facility shall be promptly applied to the repair and replacement (temporary and permanent) of such structures, plant and equipment or shall otherwise be deductible from any amount payable pursuant to Clause 10.4.2 (in which case they shall be deductible whether or not payment of these proceeds has yet been made).

- 14.5.2 In cases of a Total Loss, with regard to proceeds of insurance with respect to breakdown, damage or destruction of structures, plant and equipment comprised in the Facility, Seller shall procure that the Lenders' representative notifies Purchaser as soon as reasonably practicable of its election either:
- (a) for the proceeds of such insurance to be applied to the repair and replacement (temporary and permanent) of such structures, plant and equipment, in which case they shall be promptly applied or shall otherwise be deductible from any amount payable pursuant to Clause 10.4.2 (in which case they shall be deductible whether or not payment of these proceeds has yet been made); or
 - (b) for the proceeds of such insurance not to be applied to the repair and replacement (temporary and permanent) of such structures, plant and equipment.

14.6 Termination for Non-Application of Proceeds of Insurance

In the event that the Lenders' representative elects pursuant to Clause 14.5 that proceeds of insurance with respect to breakdown, damage or destruction of structures, plant and equipment comprised in the Facility shall not be applied to the repair and replacement (temporary and permanent) of such structures, plant and equipment, Purchaser may, at any time following receipt of notice of the Lenders' representative's election pursuant to Clause 14.5, terminate this Agreement upon notice to Seller, without further obligation by either Party except as provided for in Clauses 10.4 to 10.11 and as to costs, Losses and damages incurred prior to the effective date of such termination.

15. TAXES

15.1 Taxes Applicable to Seller

Seller shall pay all present and future Taxes applicable to Seller, the Facility, the Project and Seller's other assets, by the date such amounts are due.

15.2 Taxes Applicable to Purchaser

Purchaser shall pay all present and future Taxes applicable to Purchaser arising from or in connection with its rights and obligations under this Agreement, by the date such amounts are due.

15.3 Change in Law

The provisions of Schedule 8 shall apply to any Change in Law applicable to Seller, the Facility or the Project.

15.4 Minimisation of Tax Exposure

The Parties shall cooperate to minimise Tax exposure; however, neither Party shall be obliged to incur any financial burden to reduce Taxes for which the other Party is responsible under this Agreement.

16. FORCE MAJEURE EVENT

16.1 Definition of Force Majeure Event

- 16.1.1 The term “Force Majeure Event”, as used in this Agreement, shall, subject to Clause 16.2, mean any event, circumstance or combination of events or circumstances beyond the reasonable control of, and without the fault or negligence of, a Party occurring on or after the date of this Agreement that materially and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement, provided that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and Reasonable Care.
- 16.1.2 A Force Majeure Event shall be a Political Force Majeure Event or an Other Force Majeure Event but only to the extent that such event, circumstance or combination of events or circumstances satisfies the requirements of Clause 16.1.1.
- 16.1.3 A Political Force Majeure Event is any event, circumstance or combination of events or circumstances of the following types that occur(s) inside or directly involve(s) [] (which shall include events outside []):
- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution;
 - (b) radioactive contamination or ionising radiation originating from a source in [] or resulting from another Political Force Majeure Event;
 - (c) any riot, insurrection, civil commotion, act or campaign of terrorism that is of a political nature, including actions associated with or directed against Seller (or Contractors) as part of a broader pattern of actions against companies or facilities with foreign ownership or management;
 - (d) any of the Governmental Approvals not being granted upon application having been duly made by Seller pursuant to clause 6.1 of the Implementation Agreement and diligent efforts having been made by Seller to obtain such Governmental Approval;
 - (e) any strike, work-to-rule or go-slow (even if such differences could be resolved by conceding to the demands of a labour group) which is not primarily motivated by a desire to influence the actions of Seller so as to preserve or improve conditions of employment, and:
 - (i) is part of an industry wide strike, work-to-rule or go-slow, in response to the coming into force, modification, repeal, or change in the interpretation of application of any Law of [] after the date of this Agreement;
 - (ii) is by the employees of any Relevant Authority in response to the coming into force, modification, repeal or change in the interpretation of any Law of [] after the date of this Agreement; or
 - (iii) is caused by a Political Force Majeure Event;
 - (f) a Change in Law; and

- (g) the discovery of mines or munitions on the Site rendering operation of the Facility impossible without imposing risk on any persons or property at or on the Site.

16.1.4 Other Force Majeure Events include any event, circumstance or combination of events or circumstances of the following types, except to the extent that it or they constitute(s) or is or are caused by, a Political Force Majeure Event:

- (a) earthquake, flood, storm, cyclone, lightning or other sudden acts of the elements on a level that exceeds the design criteria of the Facility;
- (b) fire, explosion, or chemical contamination;
- (c) epidemic or plague;
- (d) any strike, work-to-rule or go-slow (even if such difficulties could be resolved by conceding to the demands of a labour group);
- (e) any event, circumstance or combination of events or circumstances of the following types that occurs outside [] and does not directly involve []:
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or terrorism;
 - (ii) radioactive contamination or ionising radiation originating from a source outside [];
 - (iii) strikes, works to rule, or go-slows (even if such difficulties could be resolved by conceding to the demands of a labour group) which are not primarily motivated by a desire to influence the action of a single employer so as to preserve or improve conditions of employment, and,
- (f) vandalism.

16.1.5 A delay in the performance of any Contractor which results directly from any Political Force Majeure Event or Other Force Majeure Event shall itself constitute a Political Force Majeure Event or an Other Force Majeure Event, as the case may be, to the extent that it satisfies the requirements for a Force Majeure Event specified in Clause 16.1.1.

16.2 Exclusions from Force Majeure Event

Notwithstanding anything in Clause 16.1, a Force Majeure Event in relation to either Party shall not include:

- 16.2.1 normal wear and tear or random flaws in materials and equipment or breakdowns in equipment;
- 16.2.2 the inability at any time or from time to time of the Transmission System to accept electricity generated by Seller, unless caused by an unlawful act or

omission of the Non-Affected Party or an act or omission of the Non-Affected Party in breach of this Agreement;

16.2.3 [the lack of flow of water to the Facility, except (and to the extent) caused by an event, circumstance or combination of events or circumstances which does constitute a Force Majeure Event;] *[Note: For hydro-facilities only.]*

16.2.4 any full or partial curtailment in the electric output of the Facility that is caused by, or arises from, the acts or omissions of any third party (other than a Public Sector Entity) including any vendor, materials supplier, customer, or supplier of Seller, except (and to the extent) such acts or omissions are themselves caused by any event, circumstance or combination of events or circumstances which does constitute a Force Majeure Event; or

16.2.5 lack of funds due to any commercial, economic or financial reason including either Party's inability to make a profit or achieve a satisfactory rate of return due to the provisions of this Agreement or changes in market conditions that affect the cost of Purchaser's or Seller's supply of fuel or alternative supplies of fuel, or that affect demand or price for any of Purchaser's or Seller's products.

16.3 Failure or Delay Caused by Force Majeure

16.3.1 Subject to Clauses 16.3.2 and 16.3.3, upon the occurrence and during the continuance of a Force Majeure Event:

(a) the Affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Agreement to the extent that such failure or delay in performance has been caused or contributed to by one or more Force Majeure Events or its or their effects or by any combination thereof, subject to:

(i) Clause 16.4 if the Force Majeure Event is a Political Force Majeure Event; or

(ii) Clause 16.5 if the Force Majeure Event is an Other Force Majeure Event; and

(b) any time limits and deadlines for the performance by the Affected Party of its obligations under this Agreement which are affected by such Force Majeure Event shall be extended for as long as the Affected Party is unable to comply, or is delayed in complying, with its obligations under this Agreement because of the occurrence of a Force Majeure Event, or the effects of that Force Majeure Event.

16.3.2

(a) The provisions of Clause 16.3.1 shall apply provided that:

(i) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event;

- (ii) the Affected Party proceeds with reasonable diligence to remedy its inability to perform its obligations under this Agreement and provides weekly progress reports to the Non-Affected Party describing actions taken to end the Force Majeure Event or overcome and mitigate its effects;
 - (iii) the Affected Party shall have the burden of proving that the circumstance, event or combination of circumstances or events constitutes a valid Force Majeure Event and that it has exercised reasonable diligence and efforts to avoid the effects of any alleged Force Majeure Event;
 - (iv) the Affected Party provides the Non-Affected Party (at the sole cost and risk of the Non-Affected Party) reasonable facilities for obtaining further information about the Force Majeure Event, including the inspection of any relevant facility; and
 - (v) when the Affected Party anticipates that it is able to resume performance of its obligations under this Agreement, that Party shall give the Non-Affected Party notice to that effect as soon as possible.
- (b) The Affected Party shall give the Non-Affected Party notice, as soon as is reasonably practicable after it has occurred (but in any event no later than 5 Business Days after it has occurred), of the Force Majeure Event and as soon as is reasonably practicable give further notice containing information adequate to justify the claim and advise the steps and time necessary to overcome such Force Majeure Event.
- (c) The Affected Party shall use its reasonable endeavours to:
- (i) mitigate and/or overcome the effects of any of Force Majeure Event, including by recourse to mutually acceptable (which acceptance shall not be unreasonably withheld or delayed by either Party) alternative sources of services, equipment and material, and construction equipment; and
 - (ii) ensure resumption of normal performance of this Agreement as soon as reasonably practicable.

16.3.3 No relief, including the extension of performance deadlines and the term of this Agreement, shall be granted to the Affected Party pursuant to Clause 16.3.1:

- (a) unless and until the Affected Party has given the Non-Affected Party notice of the occurrence of the Force Majeure Event in accordance with Clause 16.3.2(b); and
- (b) to the extent that such failure or delay in performance arises as a result of a failure by the Affected Party to comply with its obligations under Clause 16.3.2(c) or would have nevertheless been experienced by the Affected Party had the Force Majeure Event not occurred.

16.3.4 Other than for breaches of this Agreement by the Non-Affected Party, and subject to Clause 18, the Non-Affected Party shall not bear any liability for any Loss or expense suffered by the Affected Party as a result of a Force Majeure Event or its effects.

16.4 Political Force Majeure Event

If the occurrence or effects of a Political Force Majeure Event affect the operation of all or part of the Facility and as a result the Reported Availability is at a level below the latest Reported Availability of the Facility, Reported Availability shall nonetheless be deemed for such period to be the latest Reported Availability for the purposes of calculation and payment of the Capacity Payment.

16.5 Other Force Majeure Event

The term of this Agreement shall be extended for a period equal to the duration of any Other Force Majeure Event.

17. TERMINATION

17.1 Seller Events of Default

17.1.1 Subject to Clause 17.1.2, each of the following events shall be an event of default by Seller (each, a “Seller Event of Default”), which, if not remedied within the time permitted (if any), shall give rise to a right on the part of Purchaser to terminate this Agreement pursuant to Clause 17.3:

- (a) except for the assignment to the Lenders contemplated under Clause 20.12.2 the assignment or transfer of Seller's rights or obligations in this Agreement or interest in the Facility to any person or any direct or indirect Change of Control of Seller without the prior approval of Purchaser unless the prior consent of the Government has been given;
- (b) the merger, consolidation, amalgamation or reconstruction of Seller without the prior consent of Purchaser (such consent not to be unreasonably withheld where Seller can reasonably demonstrate that Seller (or any successor entity) shall continue to be able to meet Seller's obligations under this Agreement);
- (c) the sale by Seller to a third party, or diversion by Seller for any use (other than unavoidable Electrical Energy Losses and on-Site use) of Contracted Capacity or Contract Energy;
- (d) Seller having been wound up, been placed into receivership, had a liquidator appointed to it or been struck off the register of companies held by the [Registrar of Companies];
- (e) Seller's filing of a winding-up petition in respect of itself;
- (f) the filing of a winding up petition against Seller as debtor that could materially impact upon Seller's ability to perform its obligations under this Agreement provided, however, that Seller does not obtain a stay or dismissal of the filing within [60] days after the date of notice from

Purchaser to Seller and (if applicable) the Lenders' representative as provided for in the Direct Agreement;

- (g) Seller's failure to make any payment required to be made by it under this Agreement within [30] days of the relevant Due Date;
- (h) any material breach by Seller of this Agreement, in each case that is not remedied where the breach is remediable within [60] days after receipt of notice from Purchaser identifying the breach in question in reasonable detail, and demanding remedy thereof. This [60] day period shall be extended for any such default that can be remedied only in more than [60] days and Seller may have such additional time to remedy that breach as it reasonably estimates may be necessary if, prior to the end of the [60] day period, Seller provides evidence to Purchaser's reasonable satisfaction that it has commenced and is diligently pursuing a remedy and that more than [60] days will be required in order to effect such remedy and provides a good-faith estimate of when the breach will be remedied;
- (i) Seller's failure, after the 12th full month following the Final Commercial Operation Date, to maintain the Available Capacity of the Facility at a level greater than 60% of the Contracted Capacity on a 12-month rolling average basis; provided that, to the extent such failure of performance is attributable to any Force Majeure Event, the contribution of such Force Majeure Event to such failure of performance shall be ignored in determining whether a Seller Event of Default has occurred pursuant to this Clause 17.1.1(i), and provided further that the 12-month rolling period used in determining whether a Seller Event of Default has occurred pursuant to this Clause 17.1.1(i) shall be extended for a period equal to the duration of the Force Majeure Event contributing, in whole or in part, to such failure of performance;
- (j) Seller's persistent failure to operate, maintain, modify or repair the Facility in accordance with Prudent Utility Practice, such that the safety of persons and property, the Facility or Purchaser's service to its customers is adversely affected;
- (k) any representation or warranty made by Seller in this Agreement proving to have been false or misleading in any material respect when made or ceasing to remain true during the term of this Agreement if such cessation results in a material adverse impact on Purchaser;
- (l) Seller's fraudulent tampering with any Electric Metering Device used to measure the net capacity and energy made available to Purchaser by Seller under this Agreement;
- (m) Abandonment or failure to issue a notice to proceed to the construction Contractor within 90 days after the entry into full force and effect of this Agreement;

- (n) termination by the Government of the Implementation Agreement as a consequence of Seller's default under the Implementation Agreement; or
- (o) termination of a Project Agreement, other than due to the expiry of its term, that has a material adverse impact on Seller's ability to perform its obligations under this Agreement in the event that Seller fails to procure a substitute agreement that will enable Seller properly to fulfil its obligations under this Agreement within 60 days (or such longer period as Purchaser may in its discretion (acting reasonably) allow) after the date of notice from Purchaser to Seller and (if applicable) to the Lenders' representative as provided for in the Direct Agreement.

17.1.2 No such event referred to in Clause 17.1.1 shall become a Seller Event of Default if it substantially results from:

- (a) a breach by Purchaser of this Agreement;
- (b) a Government Event of Default; or
- (c) the occurrence of a Force Majeure Event where Seller has complied with Clause 16.3 (but only to the extent that the Force Majeure Event affects the ability of Seller to perform its obligations under this Agreement).

17.2 Purchaser Events of Default

17.2.1 Subject to Clause 17.2.2, each of the following events shall be an event of default by Purchaser (each, a "Purchaser Event of Default"), which if not remedied within the time period permitted (if any), shall give rise to the right of Seller to terminate this Agreement pursuant to Clause 17.3:

- (a) the dissolution of Purchaser, the assignment of Purchaser's rights under this Agreement, or the transfer by operation of law, or otherwise, or assignment of the whole or substantially the whole of Purchaser's assets other than to a successor entity [in public ownership] of similar creditworthiness to Purchaser;
- (b) Purchaser having been wound up, placed into receivership, had a liquidator appointed to it or been struck off the register of companies held by the [Registrar of Companies];
- (c) any default or defaults by Purchaser in paying any or all of the Capacity Payment, Energy Payment, Cold Start Charge, Warm Start Charge and Ancillary Service Charge required to be made by it within [30] days of the relevant Due Date, unless such payment is made by the Government;
- (d) any material breach by Purchaser of this Agreement that is not remedied where the breach is remediable within [60] days after receipt of notice from Seller identifying the breach in question in reasonable detail, and demanding remedy thereof. This [60] day period shall be extended for any such default that can be remedied only in more than [60] days and Purchaser may have such additional time to remedy that

breach as it reasonably estimates may be necessary if, prior to the end of the [60] day period, Purchaser provides evidence to Seller's reasonable satisfaction that it has commenced and is diligently pursuing a remedy and that more than [60] days will be required in order to effect such remedy and provides a good-faith estimate of when the breach will be remedied, and that the Capacity Payment, Energy Payment, Cold Start Charge, Warm Start Charge and Ancillary Service Charge will continue to be paid in accordance with the terms of this Agreement;

- (e) any representation or warranty made by Purchaser in this Agreement proving to have been false or misleading in any material respect when made or ceasing to remain true during the term of this Agreement if such cessation results in a material adverse impact on Seller;
- (f) the expropriation, management takeover, compulsory acquisition, requisition or nationalisation by any Public Sector Entity of:
 - (i) any shares in Seller or any Investor if the result would be for such Public Sector Entity (whether alone or with any other Public Sector Entities) to acquire ownership or control of a majority of the shares in Seller or any Investor or the right to control or direct the composition or decisions of the board of directors or the management of Seller; or
 - (ii) all or substantially all of the assets or rights of Seller relating to the Project or of any asset or right without which Seller will be unable to comply with its obligations under this Agreement;
- (g) where, at any time, as a result of any Change in Law:
 - (i) the making, or receipt by Seller, of any payment in the currency and in the manner contemplated by Seller under any Project Agreement or Financing Agreement becomes illegal, invalid, void or unenforceable under the Law;
 - (ii) the distribution of profits of Seller to any Investor becomes illegal, invalid or materially restricted;
 - (iii) the performance of any obligation by any party to a Project Agreement or Financing Agreement becomes illegal, invalid, void or unenforceable under the Law or any Project Agreement or Financing Agreement becomes illegal, invalid, void or unenforceable under the Law;
 - (iv) the enforcement of rights of Seller, any Investor or the Lenders in connection with the Project against assets of Purchaser or the Government (or, in the case of the Lenders, Seller) situated in [] becomes illegal, invalid, void or unenforceable under the Law; or
 - (v) the settling of Disputes by an arbitrator or an expert becomes illegal under the Law;

- (h) if:
 - (i) any Governmental Approval, including the Critical Consents before Financial Closing, is not granted upon application having been duly made pursuant to clause 6.1 of the Implementation Agreement;
 - (ii) any Governmental Approval, including the Critical Consents, having been granted, ceases to remain in full force and effect or, if granted for a limited period, is not renewed upon application having been duly made pursuant to clause 6.1 of the Implementation Agreement or is renewed upon terms and conditions which result in the inability of Seller, the Lenders, the Investor or the Contractors (“Relevant Applicant”) to exercise their rights or perform their obligations under this Agreement, any Project Agreement or Financing Agreement,

unless such refusal to grant or the revocation or amendment of such Governmental Approval is due to:

- (iii) the default or neglect of the Relevant Applicant; or
- (iv) a failure by the Relevant Applicant to abide by:
 - (A) any rules or requirements for the application for, or the renewal of, the Governmental Approval; or
 - (B) without limiting Clauses 15.3 or 17.2.1(g), any applicable Law;

which, in each case, legally entitles the issuing authority to not issue, revoke, or make the relevant amendment in the terms and conditions of the Governmental Approval; or

- (i) termination by Seller of the Implementation Agreement as a consequence of a Government Event of Default under the Implementation Agreement.

17.2.2 No such event referred to in Clause 17.2.1 shall become a Purchaser Event of Default if it substantially results from:

- (a) a breach by Seller of this Agreement or the Implementation Agreement; or
- (b) the occurrence of a Force Majeure Event where Purchaser has complied with Clause 16.3 (but only to the extent that the Force Majeure Event affects the ability of Purchaser to perform its obligations under this Agreement).

17.3 Termination Due to Event of Default

17.3.1 Upon the occurrence of an Event of Default which has not been remedied within the applicable remedy period, the non-defaulting Party shall have the right to declare a date, which shall be between 30 and 45 days after the notice thereof to the defaulting Party, upon which this Agreement shall terminate. If

Purchaser is the non-defaulting Party, it shall (if applicable) copy its termination notice to the Lenders' representative. Neither Party shall have the right to terminate this Agreement except as provided for upon the occurrence of an Event of Default as described in this Clause 17 or as otherwise may be explicitly provided for in this Agreement.

17.3.2 Where Seller or Purchaser is prevented from complying with its obligations or exercising its rights under this Agreement as a result of one or more Force Majeure Events or its or their effects or by any combination thereof for a continuous period of [365] days, then either Party shall have the right to terminate this Agreement by notice to the other, effective immediately.

17.4 Other Remedies

17.4.1 The exercise of the right of a Party to terminate this Agreement does not preclude such Party from exercising other remedies that are available to such Party under this Agreement or, subject to this Agreement, otherwise available at law.

17.4.2 Remedies available to a Party under this Agreement or at law are cumulative, save where this Agreement otherwise provides an exhaustive remedy, penalty or right in respect of a particular breach, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, the simultaneous or later exercise of other remedies by such Party.

17.4.3

(a) Subject to Clause 17.4.3(b), in addition to the other remedies specified in this Clause 17, in the event that any Event of Default is not remedied within the applicable remedy period set forth in this Agreement, the non-defaulting Party may elect to treat this Agreement as being in full force and effect and shall have the right to seek specific performance of this Agreement by the defaulting Party in accordance with Clause 20.2.

(b) Without otherwise limiting Seller's rights, Seller may not seek specific performance against Purchaser for a payment default pursuant to Clause 17.2.1(c).

17.4.4 Any revenue derived from sales referred to in Clause 17.5.1(a) (after deduction of reasonable administrative costs, wheeling charges, tax payable in relation to such revenue incurred by Seller and relating to such sales) shall be set off against amounts due to Seller from Purchaser under this Agreement or from the Government under the Implementation Agreement.

17.5 Rights and Obligations Upon Termination

17.5.1 If this Agreement terminates early (for any reason) and (notwithstanding the termination) Seller continues to operate the Facility:

(a) Seller shall have the right to enter into agreements to sell any part of the Contracted Capacity and Net Electrical Output of the Facility and

provide Ancillary Services to any person to the extent permitted by law; and

- (b) Purchaser shall provide Seller with access to and use of the Transmission System on reasonable terms and conditions.

17.5.2 Clause 17.5.1 and this Clause 17.5.2 shall survive termination of this Agreement by any period necessary to give effect to these provisions.

17.5.3 Until the date of termination of this Agreement, as notified under Clause 17.3.1 or otherwise occurring, Seller shall be obliged to deliver Net Electrical Output in response to Purchaser's Dispatch Instructions, notwithstanding the existence of a default, event or notice that would, with the passage of time, become an Event of Default or result in termination.

17.6 Double Jeopardy

17.6.1 Where:

- (a) a final, non-appealable award or order has been issued by an expert or arbitrator in a proceeding initiated by the Government, based upon a claim for breach by Seller of any of its obligations under the Implementation Agreement;
- (b) the Government settles any dispute with Seller related to, or waives in writing any breach by Seller of, any of its obligations under the Implementation Agreement; or
- (c) the Government is pursuing a claim against Seller based upon an alleged breach by Seller of its obligations under the Implementation Agreement,

Purchaser shall be precluded from pursuing, or, in the case of Clauses 17.6.1(a) and 17.6.1(b), ever pursuing thereafter, any claim it would otherwise have against Seller based on the same facts and acts or omissions by Seller, for breach of substantially the same (or related) obligations which Seller owed Purchaser under this Agreement.

17.6.2 Clause 17.6.1(a) shall not prevent Purchaser from separately proceeding to terminate this Agreement pursuant to Clause 17.3, and to exercise any rights in respect of such termination set forth in Clauses 10.4 to 10.11 and 17.5.

17.6.3 In the event that Purchaser pursues a claim in non-compliance with Clause 17.6.1, Purchaser shall reimburse Seller for the reasonable costs and expenses that Seller incurs in defending the claim so pursued by Purchaser.

17.7 Duty to Mitigate

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimise any cost, expense, damage or loss it may incur as a result of the other Party's performance or non-performance of this Agreement.

18. LIABILITY AND INDEMNIFICATION

18.1 Limitation of Liability

18.1.1 Neither Party:

- (a) shall have any liability to the other Party for any Loss suffered by that Party except pursuant to, or for breach of, this Agreement; and
- (b) shall be liable to the other in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages.

18.1.2 Seller shall not be liable to Purchaser for any Losses for interruptions to the provision of Contracted Capacity, Net Electrical Output or Ancillary Services except where expressly stated in this Agreement.

18.1.3 This Clause 18 does not constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by the Project Agreements or Financing Agreements.

18.2 Indemnification

18.2.1 Except and to the extent that Purchaser is indemnified pursuant to the terms of any of the Project Agreements or Financing Agreements, or is reimbursed for any Losses pursuant to any policy of insurance, Seller shall:

- (a) indemnify and defend Purchaser, its officers, directors and employees against; and
- (b) hold Purchaser, its officers, directors and employees harmless from, at all times after the date on which this Agreement enters into full force and effect, any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, Purchaser, its officers, directors and employees for personal injury or death to persons (including third persons) or damage to property (including third party property) arising out of any negligent act or omission or any intentional misconduct by Seller in connection with this Agreement.

18.2.2 Except and to the extent that Seller is indemnified pursuant to the terms of any of the Project Agreements or Financing Agreements or is reimbursed for any Losses pursuant to any policy of insurance, Purchaser shall:

- (a) indemnify and defend Seller, its officers, directors and employees against; and
- (b) hold Seller and its officers, directors and employees harmless from, at all times after the date on which this Agreement enters into full force and effect, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, Seller, its officers, directors and employees for personal injury or death to persons (including third persons) or damage to property (including third party property) arising out of

any negligent act or omission or any intentional misconduct by Purchaser in connection with this Agreement.

- 18.2.3 Subject to the Parties otherwise agreeing, or a court of law or arbitrator appointed pursuant to this Agreement otherwise determining, in the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of both Seller and Purchaser (or the Government), the Parties shall be deemed to be equally liable for such injury or damages (and indemnify and hold harmless the other Party for its share of liability for such injury or damages).
- 18.2.4 If the Parties agree, or a court of law or arbitrator appointed pursuant to this Agreement determines, that the Parties are not equally liable for injury or damages referred to in Clause 18.2.3, the Parties will be bound to (and indemnify each other against), liability in such portions agreed or determined.
- 18.2.5 The provisions of this Clause 18 shall survive for a period of 5 years following the termination or expiry of this Agreement with respect to any acts or omissions or claims for indemnification that occurred or arose prior to such termination or expiry.

18.3 Indemnification for Fines and Penalties

Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of another Party) for non-compliance with the Law, shall not be reimbursed by the other Party but shall be the sole responsibility of the Party not complying with the relevant Law.

18.4 Notice of Proceedings

18.4.1 Each Party (the “Indemnified Party”) shall promptly notify the other Party (the “Indemnifying Party”) of any Loss or proceeding in respect of which such Indemnified Party is or may be entitled to indemnification pursuant to Clause 18.2, as soon as reasonably practicable after the Indemnified Party becomes aware of the Loss or proceeding and that such Loss or proceeding may give rise to an indemnification, but in any event no later than [14] days after the receipt by the Indemnified Party of notice of the commencement of any action for which indemnity may be sought.

18.4.2 The delay or failure of the Indemnified Party to provide the notice required pursuant to Clause 18.4.1 shall not release the Indemnifying Party from any indemnification obligation that it may have to the Indemnified Party except:

- (a) to the extent that such failure or delay materially and adversely affected the Indemnifying Party's ability to defend such action or increased the amount of the Loss; and
- (b) that the Indemnifying Party shall not be liable for any costs or expenses of the Indemnified Party in the defence of the claim, suit, action or proceeding during such period of failure or delay.

18.5 Assumption of Defence

The Indemnifying Party may assume the defence of any proceeding of which it has received notice pursuant to Clause 18.4 with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that the Indemnified Party shall render all reasonable assistance requested by the Indemnifying Party in relation to the defence and that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

18.6 Indemnifying Party's Failure to Assume Defence

If the Indemnifying Party fails to assume the defence of a claim meriting indemnification, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim, provided that compromise, settlement or full payment of any such claim may be made only following confirmation by independent counsel that such claim is meritorious or warrants settlement. Where such consent is not obtained prior to such compromise, settlement or payment, the Indemnifying Party shall be released and discharged from all obligations in respect of that claim under Clause 18.

18.7 Amount Owing to Indemnified Party

Except as otherwise provided in this Clause 18, in the event that a Party is obliged to indemnify and hold the other Party and its successors and assigns harmless under this Clause 18, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

18.8 Subrogation

18.8.1 Upon payment of any indemnification provided by a Party pursuant to Clause 18.2, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the Indemnified Party may have relating thereto.

18.8.2 The Indemnified Party shall, at the request and expense of the Indemnifying Party, cooperate with the Indemnifying Party and give at the request (and expense) of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

19. DISPUTE RESOLUTION

In the event that any Dispute arises between the Parties, the dispute resolution provisions contained in Schedule 9 shall apply.

20. MISCELLANEOUS PROVISIONS

20.1 Expenses of the Parties

Each Party shall bear all costs and expenses, including all fees and expenses of agents, representatives, counsel and accountants employed by the Parties, incurred by it in

connection with entering into this Agreement, and the other Party shall have no liability in respect thereof.

20.2 Right to Specific Performance

In the event either Party fails to perform its obligations under this Agreement, the other Party shall have the right to require specific performance of the obligation not performed.

20.3 Further Assurances

If it shall be necessary and proper after the execution of this Agreement to execute any additional documents or take further action to carry out the intent of this Agreement, the Parties agree to take such action.

20.4 Governing Law

This Agreement shall in all respects be governed by and construed in accordance with the Law.

20.5 Entire Agreement

This Agreement, together with the other Project Agreements and the Financing Agreements, is intended by the Parties to be the final expression of their agreement with respect to the sale and purchase of electric capacity and energy from the Facility and is intended also to be a complete and exhaustive statement of their agreement with respect to the subject matter contained herein. As such, the terms and provisions contained in this Agreement supersede all previous communications, representations or agreements, oral or written, between the Parties with respect to the sale of electric capacity and energy from the Facility.

20.6 Amendments

This Agreement can be amended only by written agreement among the Parties.

20.7 Waiver

20.7.1 No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement:

- (a) shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or
- (b) shall be effective unless in writing duly executed by a duly authorized representative of such Party.

20.7.2 Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other shall act as a waiver of such breach nor as an acceptance of any variation, or as the relinquishment of any such right or any other right under this Agreement.

20.8 Confidentiality

20.8.1 Each Party and its employees, contractors, consultants and agents shall use its reasonable endeavours to keep confidential the contents of this Agreement and

any documents or other form of information provided under it, including electronic communications, marked as confidential by or on behalf of the Party providing it.

20.8.2 Each Party shall use its reasonable endeavours to ensure that all information obtained by it under this Agreement shall only be made available to and used by its employees or staff having a need for such information in order to permit the Party to perform its obligations and exercise its rights under this Agreement and, except as may be required by any Law or Relevant Authority, shall not publish or otherwise disclose the same to third parties.

20.8.3 Either Party shall be entitled to disclose the terms and conditions of this Agreement and any data acquired by it under or pursuant to this Agreement without the prior consent of the other Party if such disclosure is made in good faith:

- (a) to any Affiliate of such Party upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in Clauses 20.8.1 and 20.8.2;
- (b) to any outside professional consultants or advisers engaged by or on behalf of such Party and acting in that capacity upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in Clauses 20.8.1 and 20.8.2;
- (c) to the Lenders, any security agent or trustee, any bank or other financial institution and its advisers from which such Party is seeking or obtaining finance upon obtaining from the Lenders, any security agent or trustee, such bank or other institution and its advisers an undertaking or confidentiality equivalent to that contained in Clauses 20.8.1 and 20.8.2;
- (d) to the extent required by a Governmental Approval or binding requirement of a Public Sector Entity or the rules of a recognised stock exchange;
- (e) to the extent required by law or pursuant to any order of any court of competent jurisdiction;
- (f) to any insurer referred to in Clause 14 upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in Clauses 20.8.1 and 20.8.2; or
- (g) to directors, employees and officers of such Party,

and is reasonably necessary to enable such Party to perform this Agreement or to protect or enforce its rights under this Agreement.

20.8.4 Clauses 20.8.1 and 20.8.2 shall not apply to:

- (a) any information in the public domain otherwise than by a breach of Clauses 20.8.1 or 20.8.2 by the same Party;

- (b) information in the possession of a Party before divulgence that was not obtained under an obligation of confidentiality;
- (c) information obtained from a third party that was free to divulge such information to other third parties and that was not obtained by either Party under an obligation of confidentiality; or
- (d) information contained in a document that has been reviewed and cleared for public disclosure by the Party claiming confidentiality in the information.

20.8.5 Neither Party shall issue or cause the publication of any press release or other public announcement in relation to the Facility or this Agreement without the prior approval of the other Party.

20.8.6 This Clause 20.8 shall survive for a period of [5] years from the Termination Date.

20.9 Antiquities

Any naturally occurring materials on the Site of any commercial value which have to be removed and any fossils or artefacts or archaeological remains discovered on the Site shall, as between the Parties, belong to the Government.

20.10 Counterparts

This Agreement may be executed in any number of counterparts, all executed counterparts shall be considered one and the same Agreement and each of them shall be deemed an original.

20.11 Severability

20.11.1 Subject to Clause 20.11.2, if any provision of this Agreement is held by a court or other authority of competent jurisdiction to be illegal, invalid, void, unenforceable or against the public interest, the rest of this Agreement will remain in full force and effect and will in no way be adversely affected.

20.11.2 Severance will not be permitted under Clause 20.11.1 where severance of such provision would render the performance of a Party's material obligations impracticable or impossible.

20.11.3 The Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any provision held to be illegal, invalid, void, unenforceable or against the public interest, which substitute provisions are satisfactory to all relevant Public Sector Entities and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

20.12 Assignment and Novation

20.12.1 Subject to Clause 20.12.2, the Parties are not permitted to assign or novate their interests in this Agreement without the consent of the other Party.

20.12.2 Notwithstanding Clause 20.12.1, Seller may charge or assign by way of security its interests in this Agreement in favour of the Lenders to secure its obligations under the Financing Agreements without the consent of Purchaser.

20.12.3 This Agreement, as it may be amended from time to time, shall be binding upon and inure to the benefit of the Parties to it and their respective successors, legal representatives, and assigns permitted under this Agreement.

20.12.4 Any sale, transfer, novation, or assignment of any interest in the Facility or in this Agreement made without fulfilling the requirements of this Clause 20.12 or Clause 20.20 shall be null and void and shall constitute an Event of Default. For the purposes of this Clause 20.12.4, a sale, transfer, or assignment shall include a sale of all or a majority interest in the stock or voting control of Seller or the interests of Seller in this Agreement.

20.13 Relationship of the Parties

20.13.1 This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

20.13.2 Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.

20.13.3 Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of persons to perform its obligations under this Agreement, including all local and national income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Purchaser for any purpose; nor shall Seller represent to any person that he or she is or shall become a Purchaser employee.

20.14 No Third Parties

Other than as specified in Clause 20.12, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, or confer any right of suit or action on any person not a Party.

20.15 Language

The language for the purpose of administering and interpreting this Agreement shall be English.

20.16 Consents and Approvals

Unless otherwise provided in this Agreement, whenever a consent or approval is required by either Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed.

20.17 Notices

20.17.1 All notices or other communications to be given or made under this Agreement shall be in English and in writing, shall be addressed for the attention of the persons indicated below and shall be delivered personally or sent by courier or facsimile. The addresses of the Parties and their respective facsimile numbers shall be:

If to Purchaser:

[•]

Attn: [•]

If to Seller:

[•]

Attn: [•]

20.17.2 Except as otherwise expressly provided in this Agreement, all notices shall be deemed to be delivered:

- (a) when the notice is delivered by hand or by overnight courier; or
- (b) if received during business hours on a Business Day for the receiving Party, when the notice is transmitted by facsimile to the receiving Party's facsimile number; and
- (c) if received after business hours or on a day that is not a Business Day for the receiving Party, on the receiving Party's first Business Day following the date the notice is transmitted by facsimile to the receiving Party's facsimile number.

Any notice given by facsimile shall be confirmed in writing, delivered by hand or sent by courier, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

20.17.3 Any Party may by notice change the addresses, addressees and/or facsimile number to which such notices and communications to it are to be delivered or mailed.

20.17.4 Any notices required or permitted to be given under this Agreement to the Government shall be delivered as provided in the Implementation Agreement.

20.18 Subcontracting

Seller may subcontract its duties or obligations under this Agreement, provided that no such subcontract shall relieve Seller of any of its duties or obligations under this Agreement.

20.19 Payment of Fines

Subject to Clause 18.3, Seller shall pay when due all fees, fines, penalties, or costs incurred by Seller or its agents, employees, or contractors for non-compliance by Seller, its employees, or subcontractors with any provision of this Agreement, or any contractual obligation, Governmental Approval, or requirement of the Law except for such fines, penalties, and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties, or costs in the event of an adverse determination.

20.20 Change of Control of Seller

Any direct or indirect Change of Control of Seller, whether voluntary or by operation of law, shall require the prior consent of Purchaser.

20.21 Accommodation of Lenders

20.21.1 Subject to Clause 21.21.2, to facilitate Seller's obtaining of financing to construct, operate, and maintain the Facility, Purchaser shall make reasonable efforts to provide such consents to assignments, certifications, representations, information, or other documents required under this Agreement as may be reasonably requested by Seller or the Lenders in connection with the financing of the Facility.

20.21.2 In responding to any request pursuant to Clause 21.21.1, Purchaser shall have no obligation to provide any consent, or enter into any agreement, that materially adversely affects any of Purchaser's rights, benefits, risks, or obligations under this Agreement.

20.21.3 Seller shall reimburse, or shall cause the Lenders to reimburse, Purchaser for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by Purchaser in the preparation, negotiation, execution or delivery of any documents requested by Seller or the Lenders, and provided by Purchaser, pursuant to this Clause 21.21.

20.22 Notice of Lenders' Action

Within 10 days following Seller's receipt of each notice from the Lenders' representative of Seller's default, or the Lenders' intent to exercise any remedies under the Financing Agreements, Seller shall deliver a copy of such notice to Purchaser.

20.23 Compliance with Law

20.23.1 Subject to Schedule 8, each Party shall at all times comply with all Law applicable to it, except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfil its commitments under this Agreement. As applicable, each Party shall give all required notices, shall procure and maintain all Governmental Approvals necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

20.23.2 Each Party, at its own cost, shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers, or agents as to matters

as may be reasonably requested, and shall make available, upon reasonable request, personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfil any regulatory reporting requirements, including administrative proceedings before regulators.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

SIGNED by)
duly authorised for and on behalf)
of Purchaser)
in the presence of:)

SIGNED by)
duly authorised for and on behalf)
of Seller)
in the presence of:)

SAMPLE

Schedule 1 Definitions and Interpretation

“Abandonment”	<p>means, to the extent not a Force Majeure Event:</p> <ol style="list-style-type: none">(1) the performance of Seller in discharging its duties and/or obligations under this Agreement has been so inadequate; or(2) the level and/or quality of resources applied by Seller has been so deficient; or(3) Seller has disregarded its duties and/or obligations under this Agreement to such an extent, <p>in each case to reasonably demonstrate:</p> <ol style="list-style-type: none">(4) an intention of Seller no longer properly and diligently to carry out and fulfil substantially Seller’s duties and obligations as set forth in this Agreement; and(5) a declaration by Seller’s conduct that Seller will not properly and diligently perform substantially its duties and obligations as set forth in this Agreement, <p>and “Abandoned” shall be construed accordingly.</p>
“Acceptable Financial Institution”	<p>means [•] or any other financial institution having a long-term credit rating of at least [A] (Standard & Poors) or its equivalent.</p>
“Accounting Standards”	<p>means the accounting standards generally applicable in [] consistently applied from time to time.</p>
“Adjustment”	<p>means the adjustment calculated in accordance with Clause 11.3.6(b).</p>
“Adjustment Period”	<p>means the period set out in Clause 11.3.6(b).</p>
“Affected Party”	<p>means the Party affected by a Force Majeure Event and seeking to avoid liability for any failure or delay in performing its obligations pursuant to or under this Agreement by reliance on the provisions of Clause 16.3.</p>
“Affiliate”	<p>means any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.</p>
“Ancillary Services Charges”	<p>means the charges for the provision of Ancillary Services as determined in accordance with Schedule 4.</p>

“Ancillary Services”	means the provision of Reactive Power, voltage control, Operating Reserve, frequency regulation and black start by Seller from the Facility, and excludes the provision of Net Electrical Output.
“Appraiser”	means the person that is to conduct a valuation in accordance with Paragraph 1.4 of Schedule 11, Part 1 for the purpose of determining the fair market value of the Facility and the Site.
“Availability Failure”	means a failure on the part of the Seller or of the Facility or, prior to the Final Commercial Operation Date, any Unit comprised in it, as referred to in Clause 5.2.3(a).
“Availability Verification Test”	means the process of verification of the Reported Availability of the Units that have been Commissioned or, following the Final Commercial Operation Date, the Facility, as set out in Clause 5.2.3(c).
“Available Capacity”	means, in any quarter-Hour of a day, the amount of capacity available from a Unit or from the Final Commercial Operation Date, the Facility [at Nominal Hydraulic Conditions]. <i>[Note: The words in square brackets are for hydro facilities.]</i>
“Business Day”	means any day of the week other than a Saturday or Sunday that is not a [] national holiday or a day on which banks are authorized by law or executive order to be closed in []; provided, however, that in the event that such a law or executive order results in banks in [] being closed for more than 3 weekdays or non holidays in succession, the next weekday following such 3 days shall be deemed to be a Business Day.
“Capacity Difference”	means the number (expressed in MW) calculated in accordance with Clause 5.2.3(b).
“Capacity Payment”	means for any month the amount to be paid by Purchaser to Seller for capacity, determined pursuant to Schedule 4.
“Change in Law”	shall have the meaning set forth in Schedule 8.
“Change of Control”	means, in relation to a person, company or entity, a change of the person, company or entity, that possesses, directly or indirectly, the power to direct or cause the direction of the management or the policies of that person, company or entity, whether through ownership, by contract or otherwise.
“Cold Start”	means a successful start up of the Facility as Dispatched after a Shut-down of more than [•] Hours.
“Cold Start Charge”	means the charge for a Cold Start calculated in accordance with Schedule 4.
“Commercial Operation	means in respect of any Unit the date on which that Unit has

“Date”	been Commissioned.
“Commissioned”	means with respect to any Unit, the completion of Commissioning of that Unit.
“Commissioning”	means the operations required under the Testing Procedures for testing any Unit.
“Comparable Insurance”	means the insurance referred to in Clause 14.4.2.
“Construction Milestone”	means the date(s) by which Seller intends to achieve the corresponding result(s) specified in such date(s) (including the Required Commercial Operation Date) set forth in Schedule 6, as such date(s) may be extended pursuant to Clause 4.2.2.
“Construction Period”	means the period: <ul style="list-style-type: none"> (1) commencing on, and from, the date notified by Seller to Purchaser pursuant to Clause 4.4.1 as the date upon which a full notice to proceed under the EPC Agreement has been issued; and (2) ending on, and excluding, the Final Commercial Operation Date.
“Contracted Capacity”	means the capacity of a Unit or the Facility that Seller is able to provide [at Nominal Hydraulic Conditions] <i>[Note: The words in square brackets are for hydro facilities.]</i> being the lesser of the Rated Capacity and the Net Dependable Capacity of the Unit or the Facility, in MW, that can be delivered to the Point of Delivery (after deducting plant auxiliary loads and other Electrical Energy Losses).
“Contract Energy”	means the electric energy referred to in Clause 6.2.
“Contractor”	means any person with whom Seller contracts for the provision of goods or services relating to the design, construction, operation or maintenance of the Project.
“Control Centre”	means Purchaser’s national control centre located in [], or such other control centre designated by Purchaser from time to time (but not more than one at any time) from which Purchaser shall Dispatch the Facility.
“Control Room”	means the control room for the Facility from which Seller shall operate the Facility or any Unit comprised in it.
“Coordinating Committee”	means the committee established pursuant to Clause 12.1.1 of this Agreement.
“Critical Consents”	means the Governmental Approvals listed in schedule 2 to the Implementation Agreement.

“Deemed Commissioning Event”	<p>means any of the following events:</p> <ul style="list-style-type: none"> (a) any part of the Interconnection Facilities for the construction and testing of which Purchaser is responsible is not completed by [●]; (b) any reduced or lack of availability in the Transmission System which results in Purchaser being unable to provide import energy for a Start or prevents Seller from submitting electrical output to the Transmission System during testing of the performance of the Facility, its Operating Characteristics and its ability to comply with the provisions of this Agreement; or (c) a Force Majeure Event declared by, or affecting, Purchaser or an event of Purchaser Risk that prevents Seller from satisfying a condition in Clause 4.1.3.
“Deposit Date”	means the date referred to in Clause 10.7.3(a)(ii).
“Development Plan”	means the plan prepared by Seller and approved by the Government specifying the project scope, the design parameters, standards and minimum functional specifications for the Facility and its construction, the Operating Characteristics of the Facility and the required Interconnection Facilities for the operation and maintenance of the Project as contained in schedule [●] of the Interconnection Agreement.
“Development Security”	shall have the meaning set forth in Clause 4.16.
“Development Security Return Date”	shall have the meaning set forth in Clause 4.16.
“Direct Agreement”	means the agreement entered into, or to be entered into, between Purchaser, Seller and a security agent or trustee on behalf of the Lenders that allows the Lenders to step in to remedy a Seller Event of Default or to assign the rights and obligations of Seller under this agreement to a third party capable of performing such obligations.
“Discounted Amount” or “DA”	means the amount set forth in Paragraph 2.1 of Schedule 11, Part 2.
“Dispatch”	means the issue of instructions by Purchaser from the Control Centre (in accordance with the Schedule 5 of this Agreement) for the provision of active energy and Ancillary Services from the Facility.
“Dispatch Instruction”	means any instruction issued by Purchaser relating to the Dispatch of a Unit or the Facility with respect to active energy or Ancillary Services in accordance with Schedule 5 and the Operating Procedures.

["Dispatch Tolerance"]	means where the Facility is operating under: <ul style="list-style-type: none"> (1) Frequency Control, +/- the sum of the Frequency Allowance and [●] MW; and (2) Load Control, +/- [●]% of the level of electrical output associated with the prevailing Dispatch Instruction.]
“Dispute”	means any dispute between the Parties whether resulting from a claim in contract, in tort or based on any other legal doctrine which may arise out of, or in connection with, (whether, in each case, wholly or partially, directly or indirectly) this Agreement or the interpretation, application, implementation, validity, breach or termination of this Agreement or any related instrument, agreement or document, or any other provision hereof or thereof.
“Distribution Code”	means that set of conditions issued by Purchaser with which Purchaser and every other user connected to its distribution system is required to comply by law, licence or contract.
“Dollars” or “US\$”	means the currency that is the legal tender of the United States of America.
“Due Date”	for any invoice delivered by Seller pursuant to Clause 11.4, means the 15th day of the month following the month in which the invoice was sent, or if such 15th day is not a Business Day, then the next succeeding Business Day.
“Economically Dispatched”	means the dispatch by Purchaser of generating plant in an economic or merit order that is designed to minimize the overall cost to Purchaser.
“Effective Date”	means the date referred to in Clause 2.1.1.
“EIA Report”	means the report produced by the independent environmental engineer appointed by Seller for the purposes of conducting the Environmental Impact Assessment pursuant to Clause 4.3.
“Electrical Energy Losses”	means total electrical energy losses in the transmission, transformation and distribution of electrical energy between generator sources and delivery points.
“Electricity Authority of []” or “EAC”	means the electricity regulator established under the Electricity Law.
Electricity Law	means the Electricity Law of [] adopted on 2 February, 2001.

“Electric Metering Devices”	means the metering devices on the high voltage side of the step-up transformer for the Facility used to measure kW and MVA _r and kWh and MVA _{rh} .
“Emergency”	means: <ul style="list-style-type: none"> (1) with respect to Purchaser, a condition or situation that, in the sole option of Purchaser, does (or is likely to) materially and adversely: <ul style="list-style-type: none"> (1.1) affect the ability of Purchaser to maintain safe, adequate and continuous electrical service to its customers, having regard to the then current standard of electrical service provided to its customers; or (1.2) present a physical threat to persons or property or the security, integrity or reliability of the Transmission System; or (2) with respect to both Purchaser and Seller, any emergency or threat to the security, safety, integrity or reliability of the Facility or the Transmission System, or similar event, that is deemed to be an emergency, threat or similar event under any Law of [].
“Encumbrance”	means any mortgage, lien, pledge, assignment by way of security, charge, hypothecation, security interest, title retention or any other security agreement or arrangement having the effect of conferring security and “encumber” shall be construed accordingly.
“Energy Payment”	means for any month the amount to be paid by Purchaser to Seller for active energy, determined pursuant to Schedule 4.
“Environmental Contamination”	means the presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of national or local laws or regulations, and present a material risk under national or local laws and regulations that the Site will not be available or usable for the purposes contemplated by this Agreement.
“Environmental Impact Assessment”	means an environmental impact assessment of the Site undertaken to identify any Environmental Contamination of the Site and any non-compliance with any material Environmental Laws.
“Environmental Laws”	means all applicable Law pertaining to environmental or occupational health and safety matters and Hazardous Materials.
“EPC Agreement”	means the agreement relating to the erection, procurement and construction of the Facility entered into, or to be entered into, between Seller and the EPC Contractors.

“EPC Contractors”	means those contractors engaged by Seller for the execution of engineering procurement and construction works.
“Escrow Agent”	means the person with whom the Termination Amount Escrow Account is established.
“Event of Default”	means a Purchaser Event of Default or a Seller Event of Default.
[“Exchange Risk Insurance Agreement”	means the agreement between [<i>insert parties</i>] entered into, or to be entered into, in relation to [•].]
“Exempted Financing”	means any financial indebtedness incurred by Seller for the purposes of working capital (including guarantee and letter of credit) requirements.
“Existing Financing”	means the financing that is the subject of the Refinancing.
“Facility”	means: <ul style="list-style-type: none"> [•] Generating Station as more particularly described in Schedule 2, and including: <ol style="list-style-type: none"> (1) [the dam;] (2) [the powerhouse; and] (3) the Seller Interconnection Facilities; and (4) the Seller’s Back-Up Metering, to be constructed as part of the Project, and whether completed or at any phase in its construction.
“Final Commercial Operation Date”	means the achievement of the Commercial Operation Date for the last Unit in time.
“Financial Charge”	means the costs of financing the Project identified as financial charges in Schedule 4.
“Financial Closing”	means the date on which the conditions precedent to first draw down under the Financing Agreements for the financing of the Project are satisfied in full.
“Financing Agreements”	means the loan agreements, notes, indentures, security agreements, guarantees and other agreements, documents and instruments relating to the permanent financing (including Refinancing) of the Project, as the same may be amended from time to time.

“Financing Costs”	means the costs and expenses (however defined) to be reasonably and properly incurred by Seller pursuant to any Financing Agreements entered into for the Initial Financing or a Refinancing respectively.
“Financing Term”	means the term of the credit facilities made available under the Financing Agreements.
“First Increase Date”	shall have the meaning set forth in Clause 4.16.
“Force Majeure Event”	means an event, circumstance or combination of events or circumstances as set forth in Clause 16.1.1.
“Forced Outage”	except where caused by a Scheduled Outage, Major Maintenance Outage, Opportunity Maintenance Outage or Force Majeure Event, means the inability of the Facility to make available its full Contracted Capacity in accordance with this Agreement or an outage or reduction in capacity of which Seller has given less than 6 Hours’ notice to Purchaser.
[“Frequency Allowance”	means [●] kW per [●] Hz of frequency deviation from [●] Hz.]
[“Frequency Control”	means the manner of operating the Facility in which it responds automatically (by increasing or decreasing its electrical output) to deviations in frequency on the Transmission System.]
“Fuel Delivery Point”	means the point at which fuel is delivered to the Facility as identified on the drawing forming part of Schedule 2, Part 3.
“Governmental Approval”	means any acknowledgement, approval, authorization, consent, concession, exemption, licence, permit, privilege and waiver from, or filing with, or notice to or from, any Relevant Authority required for all or any of Seller, the Contractors or the Lenders, and their respective employees, agents, representatives or contractors, in relation to the Project, including those specified in schedule 2 of the Implementation Agreement.
“Grid Code”	means that set of conditions issued by Purchaser with which Purchaser and every other user connected to the Transmission System is required to comply by law, licence or contract.
“Hazardous Material”	means any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance, waste or emission or any flammable, explosive or radioactive materials regulated under, or subject to, the Law.
“Hour”	means a period of one (1) hour starting at the beginning of each hour, and “Hourly” shall be construed accordingly.

["Hydraulic Adjusted Contracted Capacity"]	with respect to each quarter-Hourly period, means Contracted Capacity as modified by the Hydraulic Conditions pertaining during that quarter-Hourly period, but not in excess of Contracted Capacity.] [Note: Hydro only.]
["Hydraulic Conditions"]	means the adjustment to be made to take into account that the difference between the Head Pond and the Tail Water are not the same as those assumed for Nominal Hydraulic Conditions.] [Note: Hydro only.]
“Implementation Agreement”	means the agreement of that name, entered into, or to be entered into, with the Government, as referred to in recital E to this Agreement.
“Independent Engineer”	means an independent professional engineer appointed by Seller who is acceptable to the Lenders and under whose terms of appointment a contractual duty of care is owed directly to Purchaser.
“Indemnified Party”	means the Party referred to as such in Clause 18.4.1.
“Indemnifying Party”	means the Party referred to as such in Clause 18.4.1.
“Initial Financing”	means the financing of the Project as at the Final Commercial Operation Date (other than any financing constituting an Exempted Financing).
“Initial Financing Costs Report”	means a written report prepared in accordance with Clause 11.3.7(b) by Seller setting out the average Monthly Financing Costs to be paid by Seller pursuant to the Initial Financing.
“Intellectual Property Rights”	means all rights and trade marks, patents, copyrights, designs and other similar legally enforceable rights anywhere in the world owned, used or intended to be used, by the Parties when performing under this Agreement.
“Interconnection Agreement”	means the agreement between the Parties relating to the Interconnection Facilities at the Interconnection Point.
“Interconnection Facilities”	means the Purchaser Interconnection Facilities and the Seller Interconnection Facilities.
“Interconnection Point”	means the interface at [•] between the Seller Interconnection Facilities and the existing Purchaser Facilities, as further detailed in schedule [•] of the Interconnection Agreement.
“Interest Rate”	means <i>[to be defined after financing proposal is firm]</i> .
“Interim Amount”	means the average of the amounts proposed by the Parties by which the Financial Charge should be reduced to reflect a Refinancing Gain.
“Investors”	means the holders from time to time of Ordinary Share Capital.

“kW”	means KiloWatt.
“kWh”	means KiloWatt-hour.
“Law”	means any law of [] and all orders, rules, regulations and decrees thereunder, judgments and notifications, as such laws, orders, rules, regulations, decrees, judgments and notifications may be modified, vacated or amended from time to time.
“Lenders”	means the banks and other financial institutions and agencies party to the Financing Agreements, including any security agent or trustee.
“Load Control”	means the manner of operating the Facility in which it does not respond automatically to deviations in frequency on the Transmission System.
“Loss”	means any and all loss, damage, liability, payment or obligation (including any indirect or consequential loss, damage, liability, payment or obligation, and all expenses (including reasonable legal fees)).
“Maintenance Programme”	means the programme for maintenance referred to in Schedule 5, Part 2.
“Major Maintenance Outage”	means an annual outage of the Facility for the purposes of major inspection, maintenance and repairs.
“Material Modification”	means any one or more capital improvements or other modifications costing in aggregate in excess of [US\$100,000] for any calendar year [or US\$250,000 in any period of 5 calendar years].
“Minimum Load Acceptance Rate”	means the time, expressed in seconds, for a generating unit or group of generating units to increase the capacity output by an amount corresponding to 10% of the nominal rating, should such an increase be required by Purchaser for the Transmission System’s stability and security of supply, and as specified for the Facility in Schedule 2, Part 1, verified by Performance Tests conducted prior to the Final Commercial Operation Date and amended, if relevant, in accordance with the results of the Performance Tests.
“Minimum Operating Level”	means the required minimum continuous loading level of the Facility, as specified for the Facility in Schedule 2, Part 1, verified by Performance Tests conducted prior to the Final Commercial Operation Date and amended, if relevant, in accordance with the results of the Performance Tests.
“Minimum Run Time”	means the minimum time the Facility is required to operate at or above the Minimum Operating Level once Dispatched, as specified for the Facility in Schedule 2, Part 1, verified by Performance Tests conducted prior to the Final Commercial Operation Date and amended, if relevant, in accordance with the results of the Performance Tests.

“Minimum Water Level”	means [●]. <i>[Note: Hydro only - details should be inserted of the minimum head required for the operation of the Facility.]</i>
“Monthly Financing Costs”	means the costs determined in accordance with Clause 11.3.7(a).
“MVar”	means Megavar.
“MVarh”	means Megavar-hour.
“MW”	means MegaWatt.
“MWh”	means MegaWatt-hour.
“Net Dependable Capacity”	means the maximum sustainable Net Electrical Output of a Unit or the Facility, in MW, that can be delivered to the Point of Delivery (after deducting plant auxiliary loads and other Electrical Energy Losses), based on the Performance Tests.
“Net Electrical Output”	means the net electrical energy expressed in kWh delivered at the Electric Metering Devices: <ul style="list-style-type: none"> (1) during testing and Commissioning of a Unit, by Seller; and, (2) after any Unit has been Commissioned, when Dispatched by Purchaser.
“Non-Affected Party”	means the Party that is not the Affected Party.
“Operating Characteristics”	means the characteristics of a Unit or the Facility referred to in Schedule 2.
“Operating Log”	means an accurate and up-to-date operating log containing records of: <ul style="list-style-type: none"> (1) Net Electrical Output, Reactive Power production and kV bus voltage, at all times; (2) changes in operating status, Major Maintenance Outages, Scheduled Outages, Opportunity Maintenance Outages and Forced Outages; (3) any unusual conditions found during inspections; and (4) other matters agreed by the Coordinating Committee.
“Operating Procedures”	means that set of conditions issued by Purchaser to which Purchaser and every other user connected to the Transmission System is required to comply by law, licence or contract.

“Operating Procedures”	means the procedures for the operation of the Facility prepared by Seller in accordance with Clause 4.9.
“Operating Records”	means the Operating Log, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation and maintenance of the Facility.
“Operating Reserve”	means the undispatched portion of the Contracted Capacity, which is maintained by Purchaser to respond to the sudden loss of generating resources or Emergencies.
“Operator”	means the person engaged by Seller to operate any Unit that has been Commissioned or, following the Final Commercial Operation Date, the Facility.
“Opportunity Maintenance Outage”	means an outage or total or partial shutdown of a Unit or the Facility that is not a Scheduled Outage, a Major Maintenance Outage or a Forced Outage.
“Ordinary Share Capital”	means shares of Seller with voting or other rights of management and control and securities of Seller that are convertible into such shares at the option of the holder.
“Other Force Majeure Event”	means a Force Majeure Event that is not a Political Force Majeure Event.
“Party”	means either Purchaser or Seller, or both, whichever is appropriate.
“Performance Test”	means 1 or more tests designed to determine, among other things, whether a Unit or the Facility (as the case may be) is able to meet its Operating Characteristics and/or to operate at the Contracted Capacity for that Unit or the Facility, conducted in accordance with Schedule 5 and the Testing Procedures.
“Performance Liquidated Damages”	shall have the meaning set forth in Clause 3.4.
“Permitted Encumbrance”	means any of the following Encumbrance(s) arising with respect to individual items of equipment (other than the Facility or the Site as a whole): <ul style="list-style-type: none"> (1) any hire purchase agreement; (2) any security granted to the Lenders; (3) any sale and leaseback or finance or operating leasing arrangement; (4) any deferred purchase or deferred payment arrangement;

- (5) any normal commercial retention of title arrangement;
- (6) any supplier's lien,

and any other Encumbrance arising by operation of law with respect to individual items of equipment (other than the Facility or the Site as a whole).

“Planned Outage”

means a Major Maintenance Outage, Scheduled Outage or Opportunity Maintenance Outage.

“Point of Delivery”

means the physical point or points *[Note: The location of this point or points may coincide with the Interconnection Point.]* specified in the Development Plan at which the transfer of Net Electrical Output occurs between Seller and Purchaser.

“Political Force Majeure Event”

means a Force Majeure Event for which the event, circumstance or combinations of events or circumstances is or are of the types set forth in Clause 16.1.3.

“Power Factor”

Is defined by the following formulae:

$$\text{Power Factor} = \text{Watt output} / \text{Volt-Amps output} \times 100\%; \text{ and}$$

$$(\text{Volt-Amps})^2 = (\text{Watt})^2 + (\text{Var})^2$$

“Project”

means the undertaking referred to in recital A to this Agreement.

“Project Agreements”

means the Implementation Agreement, this Agreement, the Interconnection Agreement and the agreements, other than the Financing Agreements, that are required to be executed on or before the Financial Closing in connection with the construction, operation, or maintenance of the Project, as the same may be amended from time to time.

“Proposed Appraiser Notice”

means the notice referred to in Paragraph 1.2 of Schedule 11, Part 1.

“Prudent Utility Practice”

means those standard practices, methods and procedures conforming to safety and legal requirements which are attained by exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced international operator of a *[state type of facility]* facility engaged in the same type of undertaking under the same or similar circumstances to those pertaining in [].

“Public Sector Entity”

means:

- (1) the Government;

- (2) any political subdivision of the Government;
- (3) any ministry, department, political sub-division, instrumentality or agency under the direct control of the Government;
- (4) any company, corporation, government undertaking or commission under the direct control of the Government; or
- (5) any other entity under the direct control of the Government.

“Purchaser Event of Default”	means an event referred to in Clause 17.2.
“Purchaser Facilities”	means the electric generating assets owned by Purchaser, the Transmission System, electric distribution assets, and any other assets necessary for Purchaser (and owned by Purchaser) to fulfil its duties, including the Purchaser Interconnection Facilities.
“Purchaser Interconnection Facilities”	means the interconnection facilities specified in clause [●] of the Interconnection Agreement.
“Purchaser Licence”	means the licence issued by the EAC to Purchaser.
“Purchaser Risk”	means an outage or constraint on the Transmission System, a disturbance affecting the Transmission System or an Emergency (unless such Emergency was caused by Seller or the Facility).
“Put Option Notice”	means the notice referred to in Clause 10.3.
“Ramp Rate”	means the minimum rate change in Net Electrical Output per minute over the period beginning at the time when Seller is instructed to change the Facility’s Net Electrical Output and ending at the time that such Net Electrical Output is achieved, as specified for the Facility in Schedule 2, Part 1, verified by Performance Tests conducted prior to the Final Commercial Operation Date and amended, if relevant, in accordance with the results of the Performance Tests.
“Rated Capacity”	means the full load design capacity of a Unit or the Facility of [●] MW.
“Reactive Power”	means the wattless component of the product of voltage and current, which the Facility shall provide to or absorb from the Transmission System within the Operating Characteristics and which is measured in MVAR, as specified for the Facility in Schedule 2, Part 1, verified by Performance Tests conducted prior to the Final Commercial Operation Date and amended, if relevant, in accordance with the results of the Performance Tests.

“Reasonable Care”	includes all acts or activities performed to protect the Project from an adverse event, which are reasonable in light of the likelihood of such event, the likely effect of such event if it should occur, and the likely efficacy, cost and cost-effectiveness of protective measures.
“Reference Tariff”	means the components of the charges payable by Purchaser under this agreement identified as such in Schedule 4.
“Refinancing”	means, at any time, any refinancing of all or part of any existing financial indebtedness of Seller at that time (other than to the extent any such financial indebtedness constitutes an Exempted Financing).
“Refinancing Costs Report”	means, in respect of any Refinancing, a written report prepared by Seller in accordance with Clause 11.3.7(b) setting out: <ul style="list-style-type: none"> (1) the average Monthly Financing Costs to be paid by Seller pursuant to the Refinancing; (2) for each month following the proposed Refinancing Date until the earlier of the month in which no amounts are scheduled to be remain payable pursuant to the Refinancing and the end of the term of this Agreement, the difference between the average Monthly Financing Costs that will be payable pursuant to: <ul style="list-style-type: none"> (2.1) the Initial Financing (as set out in the Initial Financing Costs Report or an existing Refinancing); and (2.2) the Refinancing; and (3) the Refinancing Gain.
“Refinancing Date”	means that date on which Seller starts to incur financial indebtedness pursuant to a Refinancing.
“Refinancing Gain”	means the amount (if any) by which the average Monthly Financing Costs of Seller over the term of the credit facilities made available under the relevant Financing Agreements are reduced as a result of any Refinancing in comparison to the average Monthly Financing Costs that are, or would be incurred, by Seller pursuant to the financing that is being refinanced by the Refinancing.
“Relevant Applicant”	means an applicant for a Governmental Approval as referred to in Clause 17.2.1(h)(ii).
“Relevant Authority”	means the Government, any ministry, department, political subdivision, instrumentality, agency, authority, commune, provincial authority or other relevant entity from which a Governmental Approval is to be obtained from time to time

and any authority, body or other person having jurisdiction under the Law with respect to Seller, the Facility, or the Project, including, for the avoidance of doubt, the EAC.

“Relevant Business Day”	means a day as referred to in Clause 10.7.3(a)(i).
“Report”	means the Initial Financing Costs Report or a Refinancing Costs Report.
“Reported Availability”	means the updates as to the Available Capacity provided to Purchaser by Seller in accordance with Clause 5.2.1 and Schedule 5, Part 1.
“Required Commercial Operation Date”	means the date that is [●] days after Financial Closing, as this may be extended in accordance with the terms of this Agreement.
“Government”	Government of [].
“Government Event of Default”	means as defined in Clause 13 of the Implementation Agreement.
“[]” or “[]”	means the currency that is the legal tender of [].
“Risk-Free Rate”	means the yield on [] Government bonds having a maturity equivalent, in so far as possible, to the remaining term of this Agreement.
“Scheduled Outage”	means a planned interruption of the Facility's generating capability that: <ol style="list-style-type: none">(1) has been scheduled and allowed by Purchaser in accordance with Schedule 5; and(2) is for inspection, testing, preventive maintenance, corrective maintenance, repair, replacement or improvement of the Facility.
“Security Package”	<ol style="list-style-type: none">(1) the Implementation Agreement;(2) the other Project Agreements;(3) the Shareholder Agreement among Seller and the Investors, and the agreements relating to [the issue, subscription, placing or underwriting of the shares and other securities convertible into shares, which are to be issued or committed at Financial Closing];(4) Seller’s memorandum and clauses of association and any instrument constituting or evidencing shares or other securities convertible into shares which are to be issued or committed at Financial Closing;

	(5) the documents creating or evidencing the security for the Lenders, including any trust arrangements]; and
	(6) the Exchange Risk Insurance Agreement.]
“Seller Event of Default”	means an event referred to in Clause 17.1.
“Seller Interconnection Facilities”	means the interconnection facilities specified in clause [●] of the Interconnection Agreement.
“Seller’s Back-Up Metering”	means the metering devices referred to as such in Clause 5.3.5.
[“Shareholder Agreement”	means the agreement between [<i>insert parties</i>] entered into, or to be entered into, in relation to [●].]
“Shut-down”	means the operation of the Facility at a level of output of 0 MW.
“SIAC”	means the Singapore International Arbitration Centre.
“Site”	means the site of the Facility, as further detailed in Schedule 2, Part 3.
“Start”	means a Warm Start or a Cold Start.
“Start Time”	means the maximum time required to synchronize the Facility with the Transmission System and achieve the Minimum Operating Level beginning when Purchaser instructs Seller to start the Facility from a cold or a normal shut-down condition, as specified in Schedule 2, Part 1, verified by Performance Tests conducted prior to the Final Commercial Operation Date and amended, if relevant, in accordance with the results of the Performance Tests.
“Step-In Notice”	means the notice referred to in Clause 8.4.
“Tax”	means any central, local district, administrative, municipal or other lawful tax, levy, impost, duty or other charge of a similar nature (including any penalty or interest payable in connection with any failure to pay or delay in paying the same).
“Technical Dispute”	means a Dispute that relates to a technical, engineering, operational or accounting matter and is of a type susceptible to resolution by an expert in the relevant field, provided that any matter that this Agreement provides is to be determined by an expert shall be deemed to be a Dispute of this kind.
“Termination Amount”	means the amount in respect of each termination event set out in the table in Clause 10.4.2.
“Termination Amount Escrow Account”	means the account referred to in Clause 10.7.2(a).
“Termination Date”	means the date on which this Agreement terminates or otherwise expires.

“Test Energy”	means the metered energy which is produced by a Unit or the Facility, delivered to Purchaser at the Point of Delivery, and purchased by Purchaser, in order to perform testing of a Unit or the Facility.
“Testing Procedures”	means the provisions related to testing of a Unit, the Facility, the Operating Characteristics or Available Capacity set out in Schedule 5, Part 3, and such other reasonable tests, procedures and requirements as the Parties shall agree.
“Total Loss”	means damage to the Facility to the extent that it is uneconomic to reinstate or repair the Facility to a state where Seller is able to continue to perform its obligations under this Agreement.
“Transmission System”	means the transmission and distribution (of any voltage) facilities owned and constructed by Purchaser through which the Net Electrical Output of the Facility will be received and distributed by Purchaser to users of electricity.
“Unit”	means any of the [<i>state type</i>] turbine generator units forming a part of the Facility.
“Valuation”	means the valuation to be conducted in accordance with Schedule 11, Part 1.
“Warm Start”	means a successful start up of the Facility as Dispatched after a Shut-down of greater than [•] Hours but less than or equal to [•] Hours.
“Warm Start Charge”	means the charge payable by Purchaser for a Warm Start calculated in accordance with Schedule 4.

Schedule 2 Facility

Index

- A. Operating Characteristics
- B. Description of Facility
- C. Site
- D. Point of Delivery
- [E. Import Energy Delivery Point]

Part 1 Operating Characteristics

- 1.1 [Maximum annual operating hours: [•].]
- 1.2 [Minimum Run Time where the Facility has been dispatched on line: [•].]
- 1.3 [Maximum Start Time to bring the Facility from Cold Start to minimum load: [•].]
- 1.4 [Maximum Start Time to bring the Facility to minimum load when the Facility has not been stopped for more than [•] hours: [•].]
- 1.5 [Maximum Ramp Rate from minimum loading, subject to Paragraph 1.7: [•].]
- 1.6 [Minimum Load Acceptance Rate: [•].]
- 1.7 [Voltage support at [•] lagging Power Factor at the Point of Delivery.]
- 1.8 [Response time from starting output.]
- 1.9 [Frequency Control: Governors fully responsive to frequency deviations from [•] Hz by +/- [•] Hz.]
- 1.10 [Automatic disconnection from the Transmission System.]
- 1.11 [Minimum Operating Level.]
- 1.12 [Reactive Power.]
- 1.13 [Restrictions on Warm Starts/Cold Starts in any year.]

[Note: The key Operating Characteristics will be verified by Performance Tests conducted prior to the Final Commercial Operation Date and amended, if relevant, in accordance with the results of the Performance Tests.]

Part 2
Description of Facility

[•]

Part 3
Site

[•]

Part 4
Point of Delivery

[•]

[Part 5]
[Import Energy Delivery Point]

[Note: Appropriate provisions can be inserted where it is relevant and possible for Purchaser to supply import energy to the Facility from the Transmission System.]

SAMPLE

**Schedule 3
Special Provisions**

SAMPLE

Schedule 4

Tariff, Tariff Adjustments and Default Prices

The tariff payable by Purchaser to Seller under this Agreement will be a Capacity Payment and an Energy Payment. Separate charges may be payable for Ancillary Services, Warm Starts and Cold Starts. Section 14 (PPA Pricing System) of the Guidelines on Power Procurement For Large Scale Generation Projects states (note that cross-references in the following excerpt are to other Sections in the Guidelines, and that “Seller” is referred to as the “IPP” in the Guidelines):

- 14.1 The PPA tariff design will promote availability of generating capacity, centralized dispatch and coordination and integration with the Transmission System and other generation resources.
- 14.2 The PPA will differentiate the pricing systems for energy and for generation capacity as a two-part tariff with respect to each generating unit or the plant as a whole. The PPA conditions shall establish the indexes that will be used for those elements of each price that may be affected by inflation or change over the term of the PPA. These indexes may include fuel market reference price indexing, local inflation and inflation in the countries in which the relevant plant, equipment or services are sourced.
- 14.3 The capacity payment establishes a mechanism for the recovery of investment, financing and fixed costs plus a profit that is reasonable for the risks assumed and the performance obligations established in the PPA, provided that the capacity of the plant to produce energy is efficiently maintained.
- 14.4 The annual generation capacity charge will be equal to the fixed costs comprised in the capacity charge offered by the selected bidder in its proposal that corresponds to its financing and fixed costs plus a reasonable rate of return.
- 14.5 Generation capacity will be paid for on a monthly basis, after the plant’s commissioning tests have been performed and its commercial operation has started. Prior to the commencement date of commercial operation, the Generator will not receive any generation capacity payment but will be paid the energy charge for the energy it produces.
- 14.6 The generation capacity pricing system will contain availability incentives to create economic signals to the IPP, to maximise generation availability and to increase Transmission System reliability and continuity of supply. This will be done by a generation capacity payment based on actual availability measured in response to dispatch instructions, and planned and forced outages, as described in Section 12.3.
- 14.7 If the PPA design establishes an annual target availability for a generating unit or the plant as a whole, the monthly generation capacity prices and charges will be calculated using the following methodology:
 - 14.7.1 The expected annual availability in kW will be equal to the Net Dependable Capacity of the plant determined in performance tests prior to the start of commercial operation (in kW) multiplied by the target annual availability (the latter being expressed as a percentage).
 - 14.7.2 The monthly generation capacity charge will be calculated by dividing the annual capacity charge by 12.

- 14.7.3 The monthly generation capacity price (US\$, [local currency] or the relevant currency per kW month) will be calculated by dividing the monthly capacity charge by the expected annual availability in kW.
- 14.7.4 At the end of each month, the IPP will be paid a generation capacity payment equal to the monthly generation capacity charge except where the average monthly availability, measured as described in Section 12.3.6, is below the level of the annual target availability, in which case it will be paid the average monthly maximum output of the plant, measured as described in Section 12.3.5 by availability declarations, maintenance and forced outages, or in response to dispatch instructions or tests, (in kW month) times the monthly capacity charge in the relevant currency per kW month.
- 14.7.5 At the end of each contract year, the final calculation will be carried out as follows:
- (a) The annual capacity payment will be calculated as the annual generation capacity charge except where the average annual availability is below the annual target availability, in which case it will be equal to the average annual maximum output of the plant (in kW year), measured as described in Section 12.3.5 by availability declarations, maintenance and forced outages, or in response to dispatch instructions or tests, times the monthly capacity charge (US\$, [local currency] or the relevant currency per kW month) times 12.
 - (b) The annual compensation will be calculated as the difference between the annual capacity payment calculated in Section 14.7.5(a) minus the total of the monthly generation capacity payments actually made to the IPP during the year.
- 14.8 If the PPA design establishes monthly target availabilities for a unit or the generating plant as a whole, the monthly generation capacity prices and charges will be calculated using the following methodology:
- 14.8.1 The expected availability of the plant in each month in kW will be equal to the Net Dependable Capacity (in kW) multiplied by the target monthly availability (the latter being expressed as a percentage).
 - 14.8.2 The monthly generation capacity charge will be calculated as the annual capacity charge times the expected availability in that month divided by the sum of the expected availability in all the months in the year. In this way, the generation capacity monthly charge will be higher in months with a higher availability target.
 - 14.8.3 The monthly capacity price (a price per kW month) will be calculated dividing the monthly capacity charge by the expected monthly availability in kW.
 - 14.8.4 At the end of each month, the IPP will be paid a capacity payment equal to the monthly capacity charge except if the average monthly availability is below the monthly target availability, in which case it will be paid the average monthly maximum output of the plant (in kW month), measured as described in Section 12.3.5 by availability declarations, maintenance and forced outages, or in response to dispatch instructions or tests, times the monthly generation capacity

price (US\$, [local currency] or the relevant currency per kW month) as calculated in Section 14.8.3.

A similar mechanism will be designed if availability is differentiated for peak and off-peak periods.

- 14.9 As a result of the methodology referred to in Sections 14.7 and 14.8, if actual generation availability is equal or greater than the target(s) established in the PPA, the IPP will recover through the generation capacity payments the fixed costs included in the annual generation capacity charge. However, availability lower than the target will impose loss of revenue to the IPP and it will recover less than the fixed costs included in the annual generation capacity payment.
- 14.10 The energy pricing system for thermal generation will be designed to reflect the variable costs of energy production to the extent possible. The thermal energy price formula and the proposals of bidders will differentiate the following components:
- 14.10.1 The generation fuel costs (price per MWh): the PPA may establish the fuel index that will apply to the fuel variable cost and the methodology to calculate the monthly index to adjust this component of the energy price. The bidder must present its energy price bid as heat rate performance, initial fuel price, and a price per MWh generated at minimum output and maximum output.
- 14.10.2 The variable operation and maintenance costs (price per MWh): the PPA may establish an index for this component of the energy price in circumstances where it can be justified. The bidder must present a bid price for this component as a price per MWh.
- 14.10.3 Start up cost (price per cold start and per warm start). These costs may also use an index for fuel costs.
- The PPA will identify the index that corresponds to each price component and all bidders must present their proposals as to the appropriate indexes.
- 14.11 The energy pricing system for renewable generation will be designed to cover variable costs, if any. Optionally, to promote efficient availability and generation in periods of higher load, the PPA tariff could establish an energy price for peak periods and another energy price for off-peak periods.
- 14.12 The IPP will be paid the energy charge for all test energy that it produces and after the start of commercial operation it will be paid the associated capacity charge if the Facility passes the test (but not if it fails), calculated in accordance with the methodologies set out in Section 14 of these Guidelines and the PPA.
- 14.13 At the end of each month, the IPP will receive an energy payment equal to:
- 14.13.1 the net electrical output of the plant during the month in accordance with all dispatch instructions, measured at the delivery point, associated with dispatch instructions given during the month within the permitted tolerance multiplied by the corresponding energy price;
- 14.13.2 plus, in the case of thermal plant, the number of cold starts performed at the cold start price and the number of warm starts performed at the corresponding warm start price;

14.13.3 plus charges, if any, for Ancillary Services supplied.

SAMPLE

Schedule 5 Operating Procedures

[The following is for illustrative purposes only. The final version will need to reflect current procedures actually adopted by Purchaser. This Schedule should be consistent with and incorporate the provisions of the Grid Code and any relevant Distribution Code when introduced.]

Index

- A. Reported Availability and Dispatch
- B. Maintenance
- C. Testing
- D. Monitoring and Access
- E. Protective Devices
- F. Communications Equipment

Part 1 Reported Availability and Dispatch

- 1. Reported Availability
 - 1.1 Prior to the Final Commercial Operation Date, Seller shall provide to Purchaser the following declarations of Available Capacity:
 - 1.1.1 on the day that the first Unit in time has been Commissioned, (a) Available Capacity for the following day, (b) estimated Available Capacity for the remainder of that week, and (c) estimated Available Capacity for the following week;
 - 1.1.2 on or before [*state day*] of each week, estimated capacity available for the following week; and
 - 1.1.3 at or before [*state time of day*] on each day after the day that the first Unit in time has been Commissioned, Available Capacity for the following day,and shall separately advise Purchaser of the testing schedule with respect to any Unit to be Commissioned.
 - 1.2 For each Unit for which the Commercial Operation Date has been achieved, Seller shall provide to Purchaser the declarations of Available Capacity as provided in Paragraph 1.1 with respect to the Units that have been Commissioned. When the Final Commercial Operation Date has been achieved, Seller shall provide to Purchaser a declaration of Available Capacity for the Facility.
 - 1.3 The testing schedule provided by Purchaser pursuant to Paragraph 1.1 shall not take into account, or otherwise be affected in any manner by, any other generation released into the Transmission System.

- 1.4 [A declaration of Available Capacity pursuant to Paragraphs 1.1 and 1.2 shall not be affected in any manner by the level of water in the Head Pond being below the Minimum Water Level [unless the same shall be due to some defect in the relevant [dam or reservoir]].] **[Note: Applies only to hydro facilities.]**
- 1.5 Seller shall notify Purchaser without delay if there are changes to the Available Capacity of a Unit or, after the Final Commercial Operation Date, the Available Capacity of the Facility.
- 1.6 After 1 or more Units have been Commissioned, Seller shall provide to Purchaser declarations of available Ancillary Services [*specify timing*] in respect of the Units that have been Commissioned.
- 1.7 [A declaration of available Ancillary Services pursuant to Paragraph 1.6 shall not be affected in any manner by the failure to release water from the Head Pond where such water shall not be released due to any declaration, direction, instruction, act or omission of Purchaser, and Seller shall ignore any such declaration, direction, instruction, act or omission of Purchaser when making a declaration of the Available Capacity of the Unit or the Facility or the Ancillary Services.] **[Note: Applies only to hydro facilities]**
- 1.8 The period of a declaration of Available Capacity shall be [15 minutes] (counted from the beginning of each Hour).
2. Non-Declaration
- 2.1 In the absence of a declaration of estimated Available Capacity available under Paragraph 1.1, Seller's declaration of estimated Available Capacity for the previous week shall be deemed to be Seller's declaration of Available Capacity for the following week [except where such instruction would result in the level of the water in the Head Pond either falling or remaining below the Minimum Water Level.] **[Note: Hydro only.]**
- 2.2 In the absence of a declaration of Available Capacity under Paragraphs 1.1 or 1.2, Seller's last declaration of Available Capacity shall be deemed to be Seller's declaration of Available Capacity for the following day.
3. Dispatch
- 3.1 Purchaser shall issue Dispatch Instructions to Seller at the Control Room for the Dispatch of the Facility to the extent that Seller has declared Available Capacity pursuant to Paragraph 1 for the times at which and periods over which the Dispatch Instruction is to be implemented.
- 3.2 A Dispatch Instruction shall not require the Facility to exceed the Operating Characteristics.
- 3.3 Except in the case of an Emergency, Purchaser shall Dispatch the Facility by submitting quarter-Hourly instructions to Seller (counted from the beginning of each Hour). In addition to the capacity to be supplied by the Facility, the Dispatch Instructions may include:
- 3.3.1 a request for Reactive Power to be supplied to or absorbed from the Transmission System;
- 3.3.2 a request for other Ancillary Services;

- 3.3.3 information relating to any implications for future Dispatch requirements and the security of the Transmission System, including arrangements for change to meet post-fault security requirements;
 - 3.3.4 advice relating to abnormal conditions, including, for example, high and low voltage or unusual departures from nominal frequency;
 - 3.3.5 a request relating to the tap positions on a step-up transformer or transformers (for security assessment);
 - 3.3.6 a request for a Unit or Units to be switched in or out of service in an intertripping scheme, as appropriate;
 - 3.3.7 notice and changes in notice to synchronise and desynchronise the operation of a Unit or Units of the Facility and other generation facilities and the Transmission System; and
 - 3.3.8 a request for a Unit or Units to operate in synchronous condenser mode.
[Note: Consideration needs to be given to whether Units can be operated independently, as suggested above.]
- 3.4 Seller shall comply with all Dispatch Instructions given in accordance with this Schedule 5.
- 3.5 Subject to the Operating Characteristics, Seller shall operate and maintain the Facility in such a manner so as not to have an adverse effect on the Transmission System's voltage level or voltage waveform as notified to Seller.
4. Communications
- 4.1 Seller's declarations of estimated Available Capacity and Available Capacity pursuant to Paragraph 1 and Purchaser's Dispatch Instructions pursuant to Paragraph 3 shall be communicated to the other Party by *[insert process]*; provided that, if such interface is not available, then such declaration or instruction shall be communicated to the other Party by either telephone or hard paper telecopy (fax), in both cases confirmed by *[insert process]* or, if such interface is not available, then confirmed by hard paper telecopy (fax).
- 4.2 Each Party hereby authorizes the other Party to tape record all telephoned voice communications relating to Available Capacity or Dispatch of the Facility received from the other Party and, where recording equipment of a Party has failed, the other Party shall supply on request, a copy or transcript of any recording by it of the telephoned voice communications.

Part 2 Maintenance

5. Development of Maintenance Programme
- 5.1 At least [18] months prior to the Required Commercial Operation Date, Seller shall advise Purchaser of the manufacturers' recommended maintenance programmes with respect to the Units.

- 5.2 At least [12] months prior to the Required Commercial Operation Date and on the first day of [*insert month*] in each year, Purchaser shall submit to Seller a proposed programme for maintenance of the Transmission System, to apply on a [3-year] rolling basis.
- 5.3 Within 3 months after receipt of Purchaser's proposed maintenance programme, Seller shall submit to Purchaser Seller's programme for Scheduled Outages and Major Maintenance Outages for the Facility, to apply on a [3-year] rolling basis. Major Maintenance Outages with respect to any Unit shall not exceed [●] days in any Year.
- 5.4 Within [2] months after receipt of Seller's [3-year] maintenance programme, Purchaser may require the rescheduling of a Scheduled Outage or a Major Maintenance Outage by giving notice thereof to Seller, and shall indicate its preferred alternative dates (which shall be of equal duration to those initially proposed by Seller). In such event, Seller shall advise Purchaser within 10 Business Days of receipt of such notice whether it has executed contracts for the maintenance, and if so, what the estimated cost of rescheduling would be. Within 10 Business Days after receipt of such advice, Purchaser shall advise Seller whether it will require that the Scheduled Outage or the Major Maintenance Outage be rescheduled, in which event it shall pay any reasonable costs associated with such rescheduling where contracts for the maintenance have been executed. Seller shall undertake Scheduled Outages and Major Maintenance Outages only as agreed between the Parties.
- 5.5 Notwithstanding the provisions of Paragraph 5.4, Seller shall advise Purchaser if the alternative dates for a Scheduled Outage or a Major Maintenance Outage requested by Purchaser would be inconsistent with Prudent Utility Practice, in which event Seller shall propose a revised maintenance schedule that reflects Purchaser's preferred schedule as closely as possible and that would, nevertheless, be consistent with Prudent Utility Practice.

6. Opportunity Maintenance Outages

In addition to Scheduled Outages and Major Maintenance Outages, Seller may undertake Opportunity Maintenance Outages during non-peak periods of Purchaser's operations subject to Purchaser's approval, provided that such Opportunity Maintenance Outages shall not exceed [●] Hours per year for the Facility on a cumulative basis. Seller shall notify Purchaser of Seller's intent to undertake an Opportunity Maintenance Outage and the duration of that outage not less than 6 Hours before Seller intends to undertake that Opportunity Maintenance Outage. If Purchaser approves the proposed Opportunity Maintenance Outage, then Seller shall submit a revised declaration of Available Capacity. If Purchaser objects to the proposed Opportunity Maintenance Outage, Seller may submit a revised proposal for the Opportunity Maintenance Outage, provided that Purchaser shall withdraw its objection if rescheduling of the Opportunity Maintenance Outage would not be consistent with Prudent Utility Practice or the provisions of this Paragraph 6.

7. Forced Outages

If any Unit of the Facility reduces its electrical output or Seller communicates a decrease in Available Capacity to Purchaser without providing at least 6 Hours' notice, that reduction or outage shall, in either case, be a Forced Outage for the purposes of this Agreement.

8. Notice of Changes in Operating Status

Seller shall notify Purchaser as soon as practical of any changes to Seller's expected return to operation after a Scheduled Outage, Major Maintenance Outage, Forced Outage or an Opportunity Maintenance Outage.

Part 3 Testing

9. Testing Procedures

Prior to the Commercial Operation Date for each Unit, and the Final Commercial Operation Date in respect of the Facility, testing of each of the Units and the Facility shall be conducted in accordance with the Testing Procedures agreed between the Parties, which shall be designed to test the ability of each Unit and the Facility to meet the requirements of this Agreement on a sustainable basis with respect to the Rated Capacity and Operating Characteristics of each Unit and the Facility.

10. First Synchronisation

In order to carry out testing, Seller shall notify Purchaser of its intention to achieve first synchronization of the first Unit in time not later than [90] days before the expected date for this to occur. Within [30] days of such notice, Purchaser shall submit to Seller the information listed in the Testing Procedures.

11. Compliance with this Schedule

In carrying out the Testing Procedures, the Parties shall comply with the provisions contained in this Agreement and, in particular, this Schedule 5.

12. Periodic Testing

12.1 From and after the Commercial Operation Date for the first Unit in time to be Commissioned, testing of the Available Capacity of a Unit or the Facility or an Operating Characteristic or the availability of Ancillary Services may be undertaken:

12.1.1 by Purchaser, at the expense of Purchaser unless a Unit or the Facility fails the test, if Purchaser gives reasonable notice to Seller of its intention to carry out a test, specifying the date, time and duration of the testing; or

12.1.2 by Seller, at the expense of Seller, if Seller gives reasonable notice to Purchaser of its intention to carry out a test, specifying the date, time and duration of the testing.

13. Avoidance of Additional Outages

If either Party wishes to conduct a test pursuant to this Part 3, such test shall be carried out at such time as the Parties shall reasonably agree and shall not, without the consent of the other Party, involve an outage on the Transmission System or of other Units (whichever is applicable), unless such outage is scheduled in the Maintenance Programme or is otherwise a Scheduled Outage.

Part 4 Monitoring and Access

14. Seller Obligations With Respect to Monitoring and Access

- 14.1 Seller shall at all times monitor the functioning and operation of the Facility and shall keep Purchaser informed of any events or circumstances that constitute, or may give rise to, an Emergency or irregularity.

Part 5 Protective Devices

15. Obligation to Install Protective Devices
- 15.1 Protective devices and relays shall be installed in accordance with the requirements of the [Interconnection Agreement].
16. Protective Settings Prior to Final Commercial Operation Date
- 16.1 Prior to the Final Commercial Operation Date, Purchaser shall maintain the settings of all such relays at the levels agreed by Seller and Purchaser, and Purchaser shall not change such settings without the prior consent of Seller.
17. Protective Settings After Final Commercial Operation Date
- 17.1 On and from the Final Commercial Operation Date, Seller shall maintain the settings of all such relays at the levels agreed by Seller and Purchaser, and Seller shall not change such settings without the prior consent of Purchaser.

Part 6 Communications Equipment

[Note: Insert details of any telecommunications equipment to be constructed or installed by Seller and not dealt with in the Interconnection Agreement.]

**Schedule 6
Construction Milestones**

[•]

SAMPLE

Schedule 7 Insurance

Index

- A. Details of Insurances
- B. Policy Endorsements

Part 1 Details of Insurances

- 1. *[Insert details of insurances required by Seller, including business interruption, employee, third party.]*

Part 2 Policy Endorsements

- 2. Seller shall cause the insurers to provide the following endorsement items in all comprehensive or commercial general liability and, if applicable, umbrella or excess liability policies relating to the ownership, construction, operation and maintenance of the Facility, required by Part 1 of this Schedule 7:
 - 2.1 that Purchaser, its officers, directors, agents, sub-contractors and employees shall be additional insured persons under such policies;
 - 2.2 that the insurance shall be primary with respect to the interests of the other Party, its officers, directors, agents, sub-contractors and employees, and any other insurance maintained by them is excess and not contributory with such policies;
 - 2.3 contain a cross liability clause substantially to the effect set forth below, which shall be 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 under this Agreement for which another insured under this Agreement is or may be liable, or (ii) damage to property belonging to any insured under this Agreement 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 under this Agreement, except with respect to the limits of insurance”;
 - 2.4 that the insurer shall waive all rights of subrogation against Purchaser, its Affiliates and their officers, directors, agents, sub-contractors and employees]; and]
 - 2.5 that notwithstanding any provision of the policy, the policy may not be cancelled, non-renewed or materially changed by the insurer without giving 30 days’ prior notice to Purchaser, provided that the notice period for non-payment of premiums shall be 10 days]; and
 - 2.6 Seller shall cause the insurers to provide the endorsements referred to in Paragraph 2.1, 2.2, 2.4 and 2.5 in the fire and perils and machinery breakdown policies covering the Facility].

Schedule 8 Change in Law

1. Meaning of Change in Law.

A change in Law (“Change in Law”) means any of the following events occurring on or after the date of this Agreement as a result of, or in connection with, any action or inaction by any Public Sector Entity:

- (a) repeal, in whole or in part, or a modification, of an existing Law, or binding non-voluntary regulation or code, of [];
- (b) enactment or making of a new Governmental Approval or Law, or binding non-voluntary regulation or code, of [];
- (c) modification of any existing Governmental Approval after it is granted to Seller in relation to Seller’s business or Facility (other than due to a breach by Seller of its conditions);
- (d) cancellation or non-renewal of, or a material adverse change in, the conditions applicable to any Governmental Approval granted to Seller in relation to Seller’s business or the Facility (other than due to a breach by Seller of its conditions);
- (e) commencement of any Law, or binding non-voluntary regulation or code, of [] that has not become effective as of the date of this Agreement;
- (f) imposition of a requirement for Governmental Approvals or regulatory instruments not required as of the date of this Agreement; or
- (g) change in the manner in which Governmental Approvals or Laws, or binding non-voluntary regulations or codes, of [] are applied or in the application or interpretation thereof by any Competent Authority having authority for the interpretation, application or enforcement of such Governmental Approvals or Laws, or binding non-voluntary regulations or codes, of [].

2. Change in Law – Increases in Capital Costs

- (a) If there is a Change in Law which requires Seller to make any Material Modification to the Facility in order to comply with any Law, Seller shall submit to Purchaser a certificate setting forth in detail reasonably satisfactory to Purchaser the actual costs of such capital improvement or other modification, including financing costs, if any, related thereto.
- (b) The Parties shall promptly determine, in good faith, any necessary adjustments to the Capacity Payment for each Unit to equitably compensate Seller for such costs, with the intent that the financial position of Seller shall not be affected by such Change in Law. Each Party shall cooperate in good faith with the other Party in connection with any such determination.

3. Change in Law – Decreases in Revenue

- (a) If there is a Change in Law which Seller believes in good faith will materially:

- (i) increase costs to be incurred by Seller which are not recoverable from Purchaser under any provision of this Agreement; or
- (ii) decrease the revenues of Seller,

in connection with the financing operation or maintenance of the Facility, then Seller shall submit to Purchaser a certificate in respect of such Change in Law:

- (A) where Seller is able to determine in advance the full amount of such increased costs or reduced revenues, after such determination; and
- (B) where Seller is unable to determine in advance the full amount of such increased costs or reduced revenues (including cases where such increases/decreases only become apparent to Seller after it has submitted a certificate to Purchaser under Paragraph 3(a)(A)), at quarterly intervals (or such other intervals as the Parties may agree) after such Change in Law.

- (b) The certificate shall set forth in detail reasonably satisfactory to Purchaser the basis of and the calculations for the amount of such increase in costs or decrease in revenues (which certificate, in the case of Paragraph 3(a)(B), shall be in respect of the preceding quarter, or such other interval as may have been agreed).
- (c) Upon Purchaser's receipt of each such certificate, the Parties shall (subject to Paragraph 3(d) promptly determine, in good faith, any necessary adjustments to the Capacity Payments and/or the Energy Payments or other compensation to equitably reflect such increase in costs or decrease in revenues, with the intent that the financial position of Seller shall not be affected by such Change in Law. Each Party shall co-operate in good faith with the other Party in connection with any such determination.
- (d) There shall be no such adjustment:
 - (i) if the Change in Law results in an increase in costs/decrease in revenues due to the default of Seller or Seller's contractors; and
 - (ii) unless and until any one or more Change in Law events results in any calendar year, in an increase in costs and/or decrease in revenues in excess of [US\$100,000] for such calendar year [or aggregating US\$250,000 in any period of 5 calendar years].

4. Change in Law – Increase in Revenues

- (a) If there is a Change in Law which Purchaser believes in good faith will materially:
 - (i) decrease the costs to be incurred by Seller which are not recoverable from Purchaser under any other provision of this Agreement; or
 - (ii) increase the revenues of Seller,

in connection with the financing operation or maintenance of the Facility, then Purchaser shall submit to Seller a certificate in respect of such Change in Law:

- (A) where Purchaser is able to determine in advance the full amount of such increased costs or reduced revenues, after such determination, and
 - (B) where Purchaser is unable to determine in advance the full amount of such increased costs or reduced revenues (including cases where such increases/decreases only become apparent to Purchaser after it has submitted a certificate to Seller under Paragraph 4(a)(A)), at quarterly intervals (or such other intervals as the Parties may agree) after such Change in Law.
- (b) The certificate shall set forth in detail reasonably satisfactory to Seller the basis of and the calculations for the amount of such decrease in costs or increase in revenues (which certificate, in the case of Paragraph 4(a)(B), shall be in respect of the preceding quarter, or such other interval as may have been agreed).
 - (c) Upon Seller's receipt of each such certificate, the Parties shall (subject to Paragraph 4(d)) promptly determine, in good faith, any necessary adjustments to the Capacity Payments and/or the Energy Payments to equitably reflect such decrease in costs or increase in revenues, with the intent that the financial position of Seller shall not be affected by such Change in Law. Each Party shall co-operate in good faith with the other Party in connection with any such determination.
 - (d) There shall be no such adjustment unless and until any one or more Change in Law events results, in any calendar year, in a decrease in costs and/or increase in revenues aggregating in excess of [US\$100,000] for such calendar year [or US\$250,000 in any period of 5 calendar years].

5. Change in Law – Notification

As soon as practicable after Seller becomes aware of any Change in Law which could reasonably be expected to give rise to an adjustment pursuant to Paragraph 3, Seller shall notify Purchaser of the Change in Law and, to the extent possible, the expected effect on the costs and revenues of Seller. After Seller determines that it will be required to make any additional operating or capital expenditures for which Seller may be entitled to an adjustment to the Capacity Payments and/or the Energy Payments pursuant to Paragraphs 2 or 3, Seller shall consult with Purchaser regarding such expenditures and Seller shall use all reasonable efforts to implement Purchaser's recommendations, if any, to minimise such expenditures consistent with Prudent Utility Practice and Seller's obligations under this Agreement.

6. Disputes

If the Parties fail to agree upon any necessary adjustments referred to in this Schedule 8, such adjustments shall be determined by an expert in accordance with Schedule 9, Part 3.

Schedule 9 Dispute Resolution

Index

- A. Notice of Dispute
- B. Resolution by Parties
- C. Technical Disputes
- D. Arbitration

Part 1 Notice of Dispute

- 1.1 In the event that any Dispute arises between the Parties, or this Agreement deems there to be a Dispute, the Party wishing to declare a Dispute shall deliver to the other Party a notice identifying the issue in Dispute.

Part 2 Resolution by Parties

- 1.1 Within 30 days of delivery of a notice of a Dispute, the Parties shall attempt in good faith to settle such Dispute by discussions among those representatives of each Party with the appropriate decision-making authority to resolve it.
- 1.2 In the event that the representatives referred to in Paragraph 2.1 are unable to reach agreement within 30 days, or such longer period as they may agree, then either Party may refer the matter to an expert in accordance with Part 3 or, if the Dispute is not a Technical Dispute, commence arbitration of the Dispute in accordance with Part 4.
- 1.3 The right to have Disputes determined by an expert or an arbitrator shall survive termination of this Agreement.

Part 3 Technical Disputes

- 1.4 In the event that the Parties are unable to resolve a Technical Dispute in accordance with Part 2, then any Party may refer the Technical Dispute to an expert for determination, in which case the provisions of Paragraphs 3.2 to 3.3 shall apply. In the event of any conflict between the terms of this Part 3 and the terms of the remainder of this Agreement other than Parts 1, 2 and 4, the terms of the remainder of this Agreement other than Parts 1, 2 and 4 shall take precedence.
- 1.5 The expert shall have demonstrated expertise in the area to which the Technical Dispute relates and shall not directly or indirectly be associated with either Party as agent, employee, consultant, contractor or otherwise. In the event that the Parties cannot agree within 10 days as to whether a Dispute falls within the definition of a Technical Dispute, this Part 3 shall not be used to resolve the Dispute and the Parties shall proceed directly to arbitration under Part 4 to resolve the Dispute.
- 1.6 The Party initiating submission of a Technical Dispute to an expert shall provide the other Party with a notice stating that it is submitting the Technical Dispute to an expert

and nominating the person it proposes to be the expert. The other Party shall, within 15 days of receiving such notice, notify the initiating Party as to whether the proposed expert is acceptable. If the non-initiating Party fails to respond or notifies the initiating Party that the proposed expert is not acceptable, either Party may request the [SIAC] to nominate an expert as quickly as possible. If the [SIAC] is unwilling or unable to appoint an expert, the Dispute shall not be referred to an expert and either Party may, by notice to the other Party, refer the Dispute to arbitration in accordance with Part 4. The expert shall be engaged on such reasonable terms as the expert shall accept. The following procedure shall apply to determination of a Dispute by an expert and the Parties shall procure that it is reflected in the expert's terms of engagement:

1.6.1 The expert shall:

- (a) give each of the Parties the opportunity of making oral and/or written representations to him on the matter in Dispute within 45 days of the referral of the Dispute to him;
- (b) give his decision within 30 days (or such longer period as may be decided by the expert but not exceeding 45 days) from the earlier of the cessation of the period specified in Paragraph 3.3.1(a) or the date that the expert is satisfied that it has received adequate representations from both Parties;
- (c) give written reasons for his decision;
- (d) determine the amount of his fees and the costs of referral to him in accordance with the terms of his engagement and which Party shall be responsible for such fees and costs; and
- (e) give copies of his decision and the reasons for his decision in writing to each of the Parties.

1.6.2 The Parties shall promptly provide the expert and each other with all such evidence and information within their respective possession or control as the expert may consider necessary for determining the Dispute or which is relevant to and bears upon the Dispute.

1.6.3 If the expert shall fail to give his decision pursuant to Paragraph 3.3.1 within the period specified in Paragraph 3.3.1(b), either Party may by notice to the other require that the Dispute is decided by reference to arbitration pursuant to Part 4, whereupon the expert shall be instructed not to consider the matter further.

1.6.4 The expert shall not act as arbitrator and shall decide the Dispute referred to him using his skill, experience and knowledge and with regard to such matters as are expressly specified in this Agreement to be considered by him and as the expert in his sole discretion considers appropriate. The decision of the expert pursuant to this Part 3 shall (subject to Paragraph 3.3.3) be final and binding on the Parties, save in respect of fraud or manifest error.

1.6.5 Unless the expert's decision is set aside for reasons specified in Paragraph 3.3.4, the Parties agree to be bound by, perform this Agreement in accordance with, and undertake to implement, as the case may be, the determination of the expert. If a Dispute concerning the expert's determination is submitted to arbitration in accordance with Part 4, the arbitrator shall be bound by the

determination of the expert and the only issue for the arbitrator to determine shall be whether the Parties have complied with the determination of the expert.

- 1.6.6 In the event that the Parties do not agree to be bound by, perform this Agreement in accordance with, and undertake to implement, as the case may be, the determination of the expert in accordance with Paragraph 3.3.5, such non-compliance with the determination of the expert shall be referred to an arbitrator, in accordance with Part 4. The arbitrator shall be bound by the determination of the expert given in accordance with Paragraph 3.3.1, and the only issue for the arbitrator to determine shall be the Parties' compliance with the determination of the Expert.
- 1.6.7 In the event that the expert fails or is unable to act in relation to the Dispute for a continuous period of 1 month or (being a firm or partnership) is dissolved or discontinued or (being a company) goes into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or commences carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors, then the Parties shall agree on a substitute expert. The substitute expert shall be selected in accordance with the procedure specified in this Paragraph 3.3.

Part 4 Arbitration

- 1.7 Either Party may refer, by notice to the other Party, any Dispute that is not resolved pursuant to Part 2 or is not required by this Agreement to be determined by an expert under Part 3 to be finally and bindingly determined by an arbitrator in accordance with the [SIAC Rules], as amended from time to time. The arbitrator shall possess skills in the interpretation, negotiation or implementation of power purchase and supply contracts or financial and economic analysis (as appropriate) and shall not, directly or indirectly, be associated with either Party as officer, employee, consultant, contractor or otherwise. The Parties will jointly appoint an arbitrator within 20 days of the referral of the Dispute to arbitration. If an arbitrator is not appointed within 20 days of such referral, either Party may request the [SIAC] to appoint an arbitrator as quickly as possible (and the [SIAC] shall be the appointing authority under the [SIAC Rules]). The arbitrator shall be engaged on such reasonable terms as the arbitrator shall accept. The Parties undertake to implement the arbitration award. The arbitration shall be conducted in Singapore (or in such other nearby location as may be agreed by the Parties which is a contracting state under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the language of the arbitration shall be English.
- 1.8 In the event that the arbitrator fails or is unable to act in relation to the Dispute for a continuous period of 1 month or (being a firm or partnership) is dissolved or discontinued or (being a company) goes into liquidation other than for the purpose of a scheme of reconstruction or amalgamation, or commences carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors, then the Parties shall agree on a substitute arbitrator. The substitute arbitrator shall be selected in accordance with the procedure specified in Paragraph 4.1.
- 1.9 The arbitrator shall apportion the costs of the arbitration including incidental expenses between the Parties as he shall think fit. The award rendered shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the arbitrator's decision.

- 1.10 The award rendered pursuant to arbitration hereunder shall constitute a “foreign award” within the meaning of the New York convention on the Recognition and Enforcement of Foreign Arbitral Awards and may be entered in any court in [] or in any other applicable jurisdiction having jurisdiction for its enforcement. Neither Party shall have any right to commence or maintain any suit or legal proceeding concerning a Dispute in any court, whether in [] or elsewhere, until the Dispute has been determined in accordance with the arbitration procedure provided for in this Part 4 and then only to enforce or facilitate the execution of the award rendered in such arbitration.
- 1.11 During the course of any arbitration hereunder:
- 1.11.1 the Parties shall to the maximum extent possible continue to perform their respective obligations under this Agreement; and
- 1.11.2 neither Party shall exercise any other remedies arising under this Agreement with respect to the matters in Dispute.
- 1.12 The arbitrator may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to one or more of the Project Agreements or Financing Agreements that provides for arbitration in accordance with the [SIAC Rules], as amended from time to time, if the subject matter of the disputes arises out of or relates to essentially the same facts or transactions. Such consolidated arbitration shall be determined by the arbitrator appointed for the arbitration proceeding that was commenced first in time.
- 1.13 Except as otherwise provided in this Part 4, the rights of the Parties to proceed with dispute resolution under this Part 4 shall be independent of their rights or the rights of related entities to proceed with dispute resolution under any of the other Project Agreements or Financing Agreements.

Schedule 10 Representations and Warranties

Index

- A. Seller Representations and Warranties
- B. Purchaser Representations and Warranties

Part 1 Seller Representations and Warranties

- 1. Seller represents and warrants to Purchaser that:
 - 1.1 Seller is a company limited by shares, duly organized, validly existing and in good standing under the Law, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted;
 - 1.2 Seller has full corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
 - 1.3 the execution, delivery and performance of this Agreement by Seller:
 - 1.3.1 has been duly authorized by all requisite corporate action on the part of Seller, and no other proceedings on the part of Seller or any other person are necessary for such authorization; and
 - 1.3.2 will not:
 - (a) violate the Law or any applicable order of any Public Sector Entity, or any provision of the [memorandum and clauses of association] of Seller; or
 - (b) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which Seller is a party or by which Seller or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of Seller or on its ability to perform its obligations under this Agreement;
 - 1.4 Seller has duly executed and delivered this Agreement;
 - 1.5 assuming it constitutes a legal, valid and binding obligation of Purchaser, this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, subject to:
 - 1.5.1 bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights; and
 - 1.5.2 general principles of equity;

- 1.6 to the best of its knowledge after reasonable inquiry, no filing or registration with, no notice to and no permit, authorization, consent or approval of any person is required for the execution, delivery or performance of this Agreement by Seller, except for the Governmental Approvals required as of the date of execution of this Agreement;
- 1.7 Seller is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement; and
- 1.8 there is no action, suit, proceeding or investigation pending or, to Seller's knowledge, threatened:
- 1.8.1 for the dissolution of Seller; or
- 1.8.2 against Seller,
- which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

Part 2

Purchaser Representations and Warranties

2. Purchaser hereby represents and warrants to Seller that:
- 1.9 Purchaser is a statutory corporation established under the Law and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as now being conducted and as proposed to be conducted;
- 1.10 Purchaser has full corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
- 1.11 the execution, delivery and performance of this Agreement by Purchaser:
- 1.11.1 has been duly authorized by all requisite corporate action on the part of Purchaser, and no other proceedings on the part of Purchaser or any other person are necessary for such authorization; and
- 1.11.2 will not:
- (a) violate the Law or any applicable order of any Public Sector Entity; or
- (b) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which Purchaser is a party or by which Purchaser or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of Purchaser or on its ability to perform its obligations under this Agreement;
- 1.12 Purchaser has duly executed and delivered this Agreement;

- 1.13 assuming it constitutes a legal, valid and binding obligation of Seller, this Agreement constitutes a legal, valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, subject to:
- 1.13.1 bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights; and
 - 1.13.2 general principles of equity;
- 1.14 to the best of its knowledge after reasonable inquiry, no filing or registration with, no notice to and no permit, authorization, consent or approval of any person is required for Purchaser to execute, deliver or perform this Agreement, except for:
- 1.14.1 the filings, registrations and notices that have been made or given, and permits, authorizations, consents and approvals that have been obtained and are in full force and effect; and
 - 1.14.2 such filings, registrations, notices, permits, authorizations, consents and approvals as may be required in the future, which will be made, given or applied for (as the case may be) in due course and diligently pursued;
- 1.15 Purchaser is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations under this Agreement, the validity or enforceability of this Agreement or on the financial condition or operation of Purchaser; and
- 1.16 there is no action, suit, proceeding or investigation pending or, to Purchaser's knowledge, threatened:
- 1.16.1 for the dissolution of Purchaser; or
 - 1.16.2 against Purchaser,
- which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement, the validity or enforceability of this Agreement or on the financial condition or operation of Purchaser.

Schedule 11 Fair Market Value and Discounted Amount

Index

- A. Fair Market Value
- B. Discounted Amount

Part 1 Fair Market Value

- 1.1 The purpose of Part 1 of this Schedule 11 is to set out the procedure to be followed to determine the fair market value where Clause 10.4.2 provides that the amount payable by Purchaser to Seller for the transfer of the Facility and the Site to Purchaser is the fair market value.
- 1.2 Within 30 days of the issue of a relevant notice under Clause 10.4.1, Seller shall propose in writing (a “Proposed Appraiser Notice”) an independent firm of chartered accountants of international standing with offices in [] (the “Appraiser”) to conduct a valuation in accordance with Paragraph 1.5 for the purpose of determining the fair market value (the “Valuation”). If the Parties are unable to agree on an Appraiser within 5 days after the receipt by Purchaser of a Proposed Appraiser Notice, then the Appraiser shall be an independent firm of chartered accountants of international standing with offices in [] selected by the President of the Institute of Chartered Accountants of [England and Wales].
- 1.3 The Appraiser shall commence work within 14 days after the appointment of the Appraiser pursuant to Paragraph 1.2.
- 1.4 The Appraiser shall be retained on the basis that it shall:
 - 1.4.1 complete the Valuation within 45 days after its appointment;
 - 1.4.2 deliver a copy of the Valuation to both Parties; and
 - 1.4.3 undertake the Valuation in accordance with the Accounting Standards.
- 1.5 The Appraiser shall apply the following guidelines in conducting the Valuation:
 - 1.5.1 the Appraiser shall conduct the Valuation for the purpose of determining the fair market value as of the date of the relevant notice issued under Clause 10.4.1;
 - 1.5.2 the Appraiser shall in conducting the Valuation determine the fair value of the Project on a historical cost basis unless it determines, in the exercise of its professional judgment based on generally accepted valuation principles, that historical cost basis is not an appropriate valuation methodology under the circumstances. If the Appraiser decides not to utilise a historical cost basis methodology, the Appraiser may employ another generally accepted valuation methodology which the Appraiser determines, in the exercise of its professional judgment based on generally accepted valuation principles, is more appropriate under the circumstances. Notwithstanding the foregoing, the Appraiser shall not base the Valuation on the future revenues under this Agreement.

- 1.5.3 each Party shall provide the Appraiser from time to time with all data and information that the Appraiser deems necessary for the Valuation;
- 1.5.4 in the course of the Valuation, the Appraiser shall from time to time consult with both Parties, keep both Parties informed about the progress of the Valuation and consider both Parties' comments regarding the Valuation;
- 1.5.5 the fair market value shall be equal to the fair value of the Project as determined by the Appraiser taking account of the condition of the Facility; and
- 1.5.6 the Valuation and the fair market value will be calculated and stated in Dollars.

Part 2

Discounted Amount

- 1.6 The Discounted Amount ("DA") shall be an amount equal to the net present value of the [Financial Charges] calculated on the basis of the assumptions set out in Paragraph 2.2. The DA is intended to compensate Seller for revenues which would have been paid to Seller in respect of the Facility over the expected duration of this Agreement.
- 1.7 The DA shall be calculated on the basis of the following assumptions:
 - 1.7.1 the term of this Agreement is [20] years;
 - 1.7.2 for the purposes of this Schedule 11 only, the Financial Charge shall be deemed to be equal to [•] Dollars for each year up until the [•th] anniversary of the Final Commercial Operation Date and equal to [•] Dollars for each year thereafter;
 - 1.7.3 each Financial Charge in Paragraph 2.2.2 shall be adjusted pro-rata for any variation to the Financial Charge which has been agreed by the Parties and implemented during the term of this Agreement, or otherwise determined pursuant to Clause 11.3.6;
 - 1.7.4 the discount rate to be used for the purposes of determining the DA (which is a net present value) shall be the sum of the Risk-Free Rate and [•] basis points; and
 - 1.7.5 [the DA shall be converted into [*currency in which Purchaser is to make payments under this Agreement*] at the exchange rate prevailing at the date of calculation of the DA.]