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Fuel Supply Agreement

Dated _____

[FUEL SUPPLIER]

and

[IPP COMPANY]

FUEL SUPPLY AGREEMENT
RELATING TO [IPP COMPANY] POWER STATIONS

Version [] / [Date]

Table of Contents

1.	Definitions Interpretation and Language.....	4
2.	Effectiveness and Term.....	5
3.	Provision of Fuel	5
4.	Delivery Facilities.....	5
5.	Fuel Title, Warranty and Indemnity.....	5
6.	Passing of Title and Risk in Fuel.....	5
7.	Nominations.....	5
8.	[IPP Company’s] On Site Storage.....	7
9.	[Fuel Supplier’s] Rights to Interrupt Supplies of Fuel.....	7
10.	Fuel Quality and [IPP Company’s] right to reject Fuel.....	8
11.	[Fuel Supplier] delays and default.....	8
12.	[Fuel Supplier] liability for Shortfall.....	8
13.	Price, Invoices, and Taxes	8
14.	Force Majeure	9
15.	Liabilities and Indemnities.....	11
16.	Termination	12
17.	Dispute Resolution.....	15
18.	Governing Law	17
19.	Enforcement.....	17
20.	Representation and Warranties.....	17
21.	Notices	18
22.	Confidentiality and Publicity.....	19
23.	Amendments	19
24.	Waiver.....	19
25.	Successors	19
26.	Assignment and Transfers of Interest.....	19
27.	Severability.....	20
28.	Relationship of Parties	20
29.	Good Faith	20
30.	Further Assurance	20
31.	Entirety of Agreement.....	20
32.	Costs	20
33.	Counterparts.....	20
SCHEDULE 1 Definitions.....		22
SCHEDULE 2 Fuel Specification, Testing and Measurement		26
SCHEDULE 3 Fuel Delivery.....		27
SCHEDULE 4 Form of Monthly Nominations		28

THIS AGREEMENT is made on [] of [] at []
].

BETWEEN:

- (1) **[FUEL SUPPLIER]**, a [] company incorporated under [] and registered with [] under registration number [●] and having its principal office at [] in [] (“**[Fuel Supplier]**”); and
- (2) **[IPP COMPANY]**, a [] company incorporated under [] and registered with [], under number [●] (“**[IPP Company]**”).

RECITALS:

- (A) [IPP Company] is engaged in the generation of electricity from the Facility[ies]. [IPP Company] has entered on the date of this Agreement into power purchase agreements with [], a [] company incorporated under [], and registered with [] with number [●] (“[]”) in relation to the Facilities.
- (B) [IPP Company] wishes to purchase, and [Fuel Supplier] has agreed to sell to [IPP Company], Fuel to the Facilities, subject to and in accordance with the terms and conditions of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions Interpretation and Language

1.1 Definitions and Interpretation

In this Agreement (including the Recitals), unless the context otherwise requires:

- 1.1.1 capitalised words used in this Agreement shall have the meanings assigned to them in Schedule 1;
- 1.1.2 words, importing persons or parties shall include firms and corporations and all references to persons shall include their permitted successors and assigns;
- 1.1.3 words importing the singular only also include the plural and vice versa where the context requires;
- 1.1.4 words importing the masculine shall include the feminine and neuter and vice versa;
- 1.1.5 the headings 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; and

1.1.6 the Recitals and the Schedules shall be deemed to be part of this Agreement and all references to Recitals, Articles, clauses and Schedules, shall be construed as references to recitals of, articles of, clauses of and schedules to this Agreement, and references to paragraphs in a clause or Schedule shall be construed as reference to paragraphs of that clause or Schedule, unless indicated otherwise.

1.2 Language

The language of negotiation of this Agreement has been [English], this Agreement is executed in [English], and the [English] text shall prevail for all purposes of determining the intention of the Parties and in any construction of this Agreement.

2. Effectiveness and Term

Save for Article 22, which shall be effective from the date of signing of this Agreement, this Agreement shall become effective on the [Completion Date] and shall continue to have effect thereafter until terminated in accordance with Article 16.

3. Provision of Fuel

[Fuel Supplier] shall provide Fuel to the Delivery Point at [each/the] Facility in accordance with Article 7.

4. Delivery Facilities

This provision will deal with the method of delivery of fuel to the site, and any access requirements of the Fuel Supplier. Schedule 3 will specify the Fuel type and manner of delivery for [each/ the] Facility.

5. Fuel Title, Warranty and Indemnity

5.1 [Fuel Supplier] warrants that it shall have title to all Fuel supplied under this Agreement immediately prior to passing title in Fuel to [IPP Company] at each Delivery Point and shall otherwise supply Fuel to each Delivery Point free and clear of all liens, encumbrances and claims whatsoever.

5.2 [Fuel Supplier] shall fully indemnify, defend and hold [IPP Company] harmless against all third party claims for damages, costs, losses and expenses arising from or out of a breach of the warranty in clause 5.1, including claims by any third party or parties for any royalties, taxes, licence fees or charges applicable to Fuel supplied.

6. Passing of Title and Risk in Fuel

Title and, subject to the passing of good title, risk in the Fuel supplied by [Fuel Supplier] shall pass from [Fuel Supplier] to [IPP Company] at the relevant Delivery Point.

7. Nominations

7.1 Yearly Estimates

In respect of:

7.1.1 the current Year, within [] Business Days of the date of this Agreement;
and

7.1.2 each subsequent Year, no later than [] Months prior to the start of the first Quarter of that Year,

[IPP Company] shall advise [Fuel Supplier] by notice in writing of [IPP Company's] good faith best estimate of its requirement for Fuel for

- (a) in respect of the current Year, the Quarter in which this Agreement is signed and the remaining Quarters in and each Month of the current Year; and
- (b) in respect of each subsequent Year, for the first Quarter and in the next three Quarters of that Year and in each Month of that Year.

[IPP Company] shall identify the quantity and type of Fuel [*insert types of Fuel*] required in relation to each of the Facilities individually.

7.2 Monthly Nominations

7.2.1 [IPP Company] shall provide [Fuel Supplier] with [] Months prior written notice in the form set out in Schedule 4 of its requirements for Fuel to be supplied in a particular Month and in each Week of that Month; provided that [IPP Company] may not provide notice [Fuel Supplier] in pursuant to this clause 7.2.1 in respect of first two Months of the current Year.

7.2.2 Nominations by [IPP Company] of its requirements for Fuel in any Month under clause 7.2.1 shall identify the type of Fuel [*insert types of fuel*] and total quantity of Fuel in metric tonnes required in that Month and in each Week of that Month in relation to each of the Facilities individually.

7.3 Revising Nominations in respect of any Week

[IPP Company] may revise its nomination in respect of any quantity of Fuel to be supplied in any Week in any Month once and no later than [] Days prior to the commencement of the relevant Week.

7.4 Interruption

[IPP Company] shall use its reasonable efforts to give [Fuel Supplier] prompt notice of any interruption to its requirements for Fuel under this Agreement in relation to [any/the] Facility.

7.5 Obligation to supply on Monthly Nominations

In respect of [each/the] Facility, [Fuel Supplier] shall supply the quantity of Fuel, plus or minus [] per cent (•%), nominated in respect of any Week in [IPP Company's] Monthly nomination pursuant to clause 7.2 (as may be revised under clause 7.3). Fuel shall be delivered at [each/the] Delivery Point on such Day in that Week:

- 7.5.1 as is agreed between the Parties [in relation to that Facility]; or
- 7.5.2 failing agreement, as determined by [Fuel Supplier] having regard to [IPP Company's] reasonable capacity to receive such a supply.

7.6 Obligations to take delivery on Monthly Nominations

7.6.1 [IPP Company] shall be obliged (subject to its rights to reject Fuel under Article 10), to take delivery of Fuel made by [Fuel Supplier] in accordance with clause 7.5.

7.6.2 If [IPP Company] fails to take delivery of Fuel nominated by it in respect of any Week on the date determined pursuant to clause 7.5, and does not take delivery of the Fuel at a mutually agreed date within [] Days of the original date for delivery:

- (a) [Fuel Supplier] shall have no further obligation to supply the quantity of Fuel not received by [IPP Company]; and
- (b) except where [IPP Company's] failure to take delivery arises as a result of an Event of Force Majeure, [IPP Company] shall pay liquidated damages to [Fuel Supplier] equal to [ten (10)] percent of the cost of Fuel not taken.

7.7 Duty to notify

Without prejudice to the other obligations in this Agreement:

7.7.1 [Fuel Supplier] shall, as soon as reasonably practicable after it becomes aware of the same, inform [IPP Company] of any circumstances which affect, or will affect, its ability to supply Fuel under this Agreement; and

7.7.2 [IPP Company] shall, as soon as reasonably practicable after it becomes aware of the same, inform [Fuel Supplier] of any circumstances which affect, or will affect, its ability to receive Fuel into its storage facilities.

7.8 Quantities

Quantities of Fuel supplied shall be finally determined in accordance with the measurement provisions of Schedule 2, Part 2.

8. [IPP Company's] On Site Storage

8.1.1 For the purposes of receiving Fuel under this Agreement [IPP Company] shall maintain Fuel storage facilities at [each/the] Site of not less than the amount specified for the relevant Facility in Schedule 3. [IPP Company] shall maintain a minimum quantity of Fuel at each Site sufficient for not less than [fifteen (15)] Days continuous generation by the relevant Facility at full load.

8.1.2 [IPP Company] shall not be in breach of the requirement in clause 8.1.1 where it is unable to comply as a direct consequence of non-delivery of quantities of Fuel which are treated as Shortfall.

9. [Fuel Supplier's] Rights to Interrupt Supplies of Fuel

[Fuel Supplier] shall be entitled to interrupt the supply of Fuel in respect of any Week for the duration of the following circumstances:

- 9.1.1 where undisputed payments are due and owing to [Fuel Supplier] by [IPP Company] under this Agreement; or
- 9.1.2 subject to clause 14.2.3, where and to the extent there is an Event of Force Majeure affecting the supply by [Fuel Supplier] or receipt by [IPP Company] of the Fuel.

10. Fuel Quality and [IPP Company's] right to reject Fuel

Fuel supplied by [Fuel Supplier] under this Agreement shall conform to the specification set out in Schedule 2 Part 1 (Fuel Specification), and in the event that a quantity of Fuel tested in accordance with Schedule 2 Part 2 (Testing) to be supplied under this Agreement is found not to conform to specification for any reason (other than Force Majeure), then:

- 10.1 the IPP Company shall use all reasonable endeavours that do not cause it to incur cost to accept that quantity of Fuel, but shall otherwise be entitled to reject such Fuel in accordance with Schedule 2 Part 2 (Testing); and
- 10.2 if the IPP Company rejects that quantity of Fuel in accordance with clause 10.1, then if [Fuel Supplier] is unable (other than by reason of Force Majeure) to replace the quantity of Fuel to be supplied with an equivalent quantity Fuel which conforms to specification within seven Days of the date it was agreed or determined such Fuel was to be supplied, then such quantity shall constitute Shortfall.

11. [Fuel Supplier] delays and default

Where [Fuel Supplier] is delayed in the supply of Fuel for more than [] Days from the original date for delivery under clause 7.5 for any reason (other than an Event of Force Majeure) then [IPP Company] shall be entitled on notice to [Fuel Supplier] either to accept the delay in the supply or cancel the supply and the quantity cancelled shall constitute Shortfall.

12. [Fuel Supplier] liability for Shortfall

If [IPP Company] is forced to reduce its Declared Availability for any of the Facilities or otherwise suffers any penalty or charge under the relevant PPA by reason of a Shortfall, then [Fuel Supplier] shall pay to [IPP Company] by way of [liquidated damages] an amount equal to:

- 12.1 *This clause will outline how damages are to be calculated*

13. Price, Invoices, and Taxes

- 13.1 During the term of this Agreement [IPP Company] shall pay [Fuel Supplier] in [*insert currency*] for Fuel supplied by [Fuel Supplier] at the price published by []
- 13.2 Invoices
- 13.2.1 *This sub clause will cover invoices sent to the IPP Company from the Fuel Supplier.*
- 13.2.2 *This sub clause will cover invoices sent to the Fuel Supplier from the IPP Company.*

13.2.3 All Invoices shall be accompanied by supporting calculations of the amounts claimed, which shall be based on the data and documents maintained by the sending Party and such data and documents shall be made available for inspection by the receiving Party on reasonable prior notice.

13.2.4 *This clause will deal with interest payable for late payments.*

13.2.5 *This clause will deal with disputed invoices, and the review of billing procedures if there are numerous disputes.*

13.2.6 In the event that any Party bona fide disputes payment of, or fails to pay, to the other Party, any amount due to be paid by it under this Agreement, such Party shall pay to the other Party interest:

- (a) at the Reference Interest Rate, where the non-payment is determined or agreed to have been the subject of a bona fide dispute; or
- (b) at the Default Rate, where non-payment is for any reason other than a bona fide dispute,

from the date on which it was due under this Agreement until payment is made, both days inclusive.

13.2.7 *This clause will deal with set off.*

13.3 Taxes

This provision deals with liability for taxes.

13.4 Records

[Fuel Supplier] and [IPP Company] shall each maintain and shall make available, on reasonable notice, for inspection and examination of the other Party, at all reasonable times, all records relating to this Agreement and of transactions performed pursuant to this Agreement for a minimum period of [] years from the date of the record. If any Dispute arises between the Parties, all records relating to matters involved in such Dispute shall be preserved until the resolution of such Dispute. Certified copies of such records as are required to be maintained by this Agreement shall be made available at the requesting Party's cost and expense.

14. Force Majeure

14.1 Events of Force Majeure

For the purpose of this Agreement, an "Event of Force Majeure" means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence and observing [Good Utility Practice], cannot be, or be caused to be, prevented, avoided or removed by such Party, and (ii) such circumstance materially and adversely affects the ability of the Party to perform its obligations under this Agreement, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof.

14.2 Instances of Force Majeure

14.2.1 Subject to the provisions of clause 14.1 Events of Force Majeure shall include, but not be limited to:

- (a) fire, chemical or radioactive contamination or ionising radiation, earthquakes, lightning, cyclones, hurricanes, floods, droughts or such other extreme weather or environmental conditions, unanticipated geological or ground conditions, epidemic, famine, plague or other natural calamities and acts of God;
- (b) explosion, accident, breakage of Facilities, plant or equipment, structural collapse, or chemical contamination caused by a person not being the affected Party or one of its contractors or subcontractors or any of their respective employees or agents;
- (c) acts of war (whether declared or undeclared), invasion, acts of terrorists, blockade, embargo, riot, public disorder, violent demonstrations, insurrection, rebellion, civil commotion and sabotage;
- (d) strikes, lockouts, work stoppage, labour disputes, and such other industrial action by workers related to or in response to the terms and conditions of employment of those workers or others with whom they are affiliated save when such event is directly related to, or in direct response to any employment policy or practice (with respect to wages or otherwise) of the Party whose workers resort to such action;
- (e) failure or inability of [IPP Company] to obtain or renew any licence, consent or permit on terms and conditions as favourable in all material respects as those contained in the original licence, consent or permit relating to [IPP Company's] Business (other than due to a breach by [IPP Company] of any of such terms and conditions);
- (f) any action or failure to act without justifiable cause by any Competent Authority (including any action or failure to act without justifiable cause by any duly authorised agent of any Competent Authority);
- (g) expropriation or compulsory acquisition of a Facility or a Site;
- (h) any legal prohibition on either Party's ability to perform its obligations under this Agreement, including passing of a statute, decree, regulation or order by a Competent Authority prohibiting that Party from performing its obligations under this Agreement;
- (i) in relation to either Party, non-performance by a counter-party under a contract relating to a Facility by reason of an event or circumstance that would constitute an Event of Force Majeure under this Agreement,

provided that breakdown of any plant, equipment or vehicles (unless due to an Event of Force Majeure) or unavailability of funds shall not constitute an Event of Force Majeure.

14.2.2 Consequences of Force Majeure

Either Party shall be excused from performance and shall not be in default in respect of any obligation hereunder to the extent that the failure to perform such obligation is due to an Event of Force Majeure.

14.2.3 Notice of Force Majeure

If a Party wishes to claim protection in respect of an Event of Force Majeure, it shall as soon as possible following the occurrence or date of commencement of such Event of Force Majeure, notify the other Party of the nature and expected duration of such Event of Force Majeure and shall thereafter keep the other Party informed until such time as it is able to perform its obligations. The Parties shall use their reasonable endeavours to:

- (a) overcome the effects of the Event of Force Majeure as soon as practicable;
- (b) mitigate the effect of any delay occasioned by any Event of Force Majeure; including by recourse to acceptable alternative sources of Fuel (which acceptance shall not be unreasonably withheld by either Party); and
- (c) to ensure resumption of normal performance of this Agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable,

provided that neither Party shall be obliged to settle any strike, lock out, work stoppage, labour dispute or such other industrial action by its employees.

15. Liabilities and Indemnities

15.1 [Fuel Supplier] Indemnity

15.1.1 [Fuel Supplier] shall be responsible for any third party claim for any injury to or loss or damage to property of any person (including reasonable legal fees) arising out of the transport, delivery and transfer of Fuel up to the Delivery Point (each referred to as a “[Fuel Supplier] Third Party Claim”).

15.1.2 Subject to clause 15.5, [Fuel Supplier] shall fully indemnify and hold [IPP Company], its Affiliates, officers, employees, contractors and agents harmless in respect of [Fuel Supplier] Third Party Claims provided that the indemnity shall not extend to, and [IPP Company] hereby waives any claim against [Fuel Supplier] in respect of [Fuel Supplier] Third Party Claims to the extent caused by any negligent act or omission of [IPP Company], its Affiliates, officers, employees, contractors and agents.

15.2 [IPP Company] Indemnity

15.2.1 [IPP Company] shall be responsible for any third party claim for any injury to or loss or damage to property of any person (including reasonable legal fees)

arising out of the transfer, storage or use of Fuel at and from the Delivery Point (each referred to as a “[IPP Company] Third Party Claim”).

15.2.2 Subject to clause 15.5, [IPP Company] shall fully indemnify and hold [Fuel Supplier], its Affiliates, officers, employees, contractors and agents harmless in respect of [IPP Company] Third Party Claims provided that the indemnity shall not extend to, and [Fuel Supplier] hereby waives any claim against [IPP Company] in respect of Third Party Claims to the extent caused by any negligent act or omission of [Fuel Supplier], its Affiliates, officers, employees, contractors and agents.

15.3 Right to Defend Actions

The indemnifying Party shall have the right, but not the duty, to assume the defence of any third party claim indemnified in clause 15.1 or 15.2, as the case may be. Any Party shall, as soon as practicable after receiving notice of any claim brought against it, deliver to the other indemnifying Party full particulars thereof and shall render all reasonable assistance requested by such Party in the defence of such claim.

15.4 Indemnified Party not to Compromise

15.4.1 Where any Party has an obligation under clause 15.1 or 15.2, as the case may be, to indemnify the other Party, such other Party shall not compromise or in any way settle any claim, lawsuit, action or cause of action without the express written consent of the other Party who has the obligation of indemnifying under clause 15.1 or 15.2, as the case may be. Where such consent is not obtained prior to such compromise in settlement, the Party who had the obligation of indemnifying shall be released and discharged from all obligations under clause 15.1 or 15.2, as the case may be.

15.4.2 Any payment payable by the indemnifying Party to the indemnified Party pursuant to this Article 15 shall be paid within [] days from the date on which a claim for such payment accrues to the indemnified Party under this Agreement.

15.5 Limitation of Liability

15.5.1 This clause will set out limitations to liability.

16. Termination

16.1 Events of Default

16.1.1 [IPP Company] Event of Default

Each of the events described below shall constitute a [IPP Company] Event of Default:

- (a) a material breach by [IPP Company] of any obligation under this Agreement, which (where capable of remedy) has not been remedied within [] days following a notice from [Fuel Supplier] stating that such a breach has occurred, identifying the breach and demanding it to be remedied, provided that if [IPP Company] has diligently and as

quickly as possible commenced the remedial action necessary but is unable to complete it within [] days, it shall be allowed such further period as may be reasonable to complete the remedial action not exceeding another [] days;

- (b) [IPP Company] has made any material misrepresentation in the representations and warranties set out in clause 20 or has not disclosed any material fact which renders any such representation or warranty materially misleading;
- (c) the dissolution, merger, consolidation, amalgamation, reorganisation or reconstruction of [IPP Company], except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
- (d) except for the purposes permitted under paragraph (c), the occurrence of any of the following events (other than as a direct result of a [Fuel Supplier] Event of Default):
 - (i) passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to [IPP Company];
 - (ii) the appointment of a trustee, liquidator, custodian or a similar person in a proceeding referred to in paragraph (d)(i), which appointment has not been set aside or stayed within [] days of such appointment; or
 - (iii) the making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of [IPP Company], which order has not been set aside or stayed within [] days; and
- (e) [IPP Company] ceasing to hold a licence, permit or consent, as a result of breach by [IPP Company] of the terms and conditions of such licence, permit or consent, making it unlawful for [IPP Company] to generate electricity from all of the Facilities.

16.1.2 [Fuel Supplier] Event of Default

Each of the events described below shall constitute a [Fuel Supplier] Event of Default:

- (a) a material breach by [Fuel Supplier] of any obligation under this Agreement, which (where capable of remedy) has not been remedied within [] days following notice from [IPP Company], identifying the breach and demanding it to be remedied, provided that, if [Fuel Supplier] has diligently and as quickly as possible, commenced the necessary remedial action necessary but is unable to complete it within [] days, it shall be allowed such further period of up to another [] days as may be reasonable to complete the remedial action;

- (b) the dissolution, merger, consolidation, amalgamation, reorganisation or reconstruction of [Fuel Supplier], except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
- (c) except for the purposes permitted under paragraph (b), the occurrence of any of the following events (other than as a direct result of a [IPP Company] Event of Default):
 - (i) passing of a resolution or initiation of any proceeding for the bankruptcy insolvency, winding-up, liquidation of or other similar proceedings relating to [Fuel Supplier];
 - (ii) the appointment of a trustee, liquidator, custodian or a similar person in a proceeding referred to in paragraph (c)(i), which appointment has not been set aside or stayed within [] days of such appointment; or
 - (iii) the making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of [Fuel Supplier], which order has not been set aside or stayed within [] days; and
- (d) [Fuel Supplier] ceasing to hold the [Fuel Supplier] Concession or a permit or consent as a result of breach by [Fuel Supplier] of the terms and conditions of such licence, permit or consent, making it unlawful for [Fuel Supplier] to engage in the supply of fuel; and
- (e) any material misrepresentation by [Fuel Supplier] in the representations and warranties set out in clause 20 or failure to disclose any material fact which renders any such representation and warranty misleading.

16.2 Consequences of Events of Default

In the case of a [Fuel Supplier] Event of Default, [IPP Company] may terminate this Agreement and in the case of a [IPP Company] Event of Default, [Fuel Supplier] may terminate this Agreement, in either case by giving a notice (“Termination Notice”) to the other whereupon this Agreement shall terminate upon the date specified in such Termination Notice or such later date as the Parties may have agreed.

16.3 Termination for other events

This clause will set out the events causing this Agreement to terminate automatically, without the need for either Party to take any action.

16.4 Sole Grounds for Termination

The provisions of this Article 16 shall be the sole and exclusive grounds on which the Parties may terminate this Agreement.

16.5 Consequences

On termination of this Agreement for whatever reason neither Party shall have any liability to the other for any damages or loss, whether under this Agreement, at law or otherwise, save for claims relating to accrued rights under this Agreement prior to its termination.

17. Dispute Resolution

17.1 If any dispute arises between the Parties in connection with or relating to this Agreement (a “Dispute”) the Parties through their respective chief executive officers shall attempt to resolve the Dispute through discussion.

17.2 If a Dispute is not resolved within [twenty (20)] Business Days by discussion pursuant to clause 17.1, and such Dispute is required by this Agreement to be referred to an Expert, either Party may by notice to the other require the Dispute to be referred to an Expert in accordance with the procedure specified in clause 17.3.

17.3 The Parties shall jointly appoint an Expert within [twenty (20)] Business Days or such longer period as may be agreed by the Parties, after the date of receipt of the notice by the addressee of the notice. If the Parties fail to agree on an appointee, either Party may apply to the International Chamber of Commerce Centre for Expertise to appoint an Expert requesting that the appointment be made within [twenty (20)] Business Days of the date of receipt of the application. 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 reference:

17.3.1 The Expert shall:

- (a) give each of the Parties the opportunity of making oral and/or written representations to him on the Dispute within [fifteen (15)] Business Days after the date of his appointment;
- (b) give his decision within [thirty (30)] Business Days (or such longer period as may be decided by the Expert but not exceeding [forty five (45)] Business Days after the date of his appointment;
- (c) determine the amount of his fees and expenses and the responsibilities of the Parties for such fees and expenses; and
- (d) give copies of his decision and the reasons therefore in writing to each of the Parties.

17.3.2 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.

17.3.3 If the Expert shall fail to give his decision pursuant to clause 17.3.1 within the period specified in paragraph (b) of clause 17.3.1, either Party may by notice in writing to the other require that the Dispute is decided by reference to arbitration, whereupon the Expert shall be instructed not to consider the matter further.

- 17.3.4 The Expert shall not act as arbitrator but shall decide the Dispute 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 clause 17.3 shall (subject to clause 17.3.3) be final and binding on the Parties save in respect of fraud or manifest error.
- 17.3.5 Unless the Expert's decision is set aside for reasons specified in clause 17.3.4, the Parties hereby agree to be bound by, perform the Agreement in accordance with, and undertake to implement the determination of the Expert. Failure by one Party to so act shall constitute a breach of the Agreement. Any Dispute concerning the Expert's determination may be submitted to arbitration in accordance with clause 17.4. The Tribunal shall be bound by the determination of the Expert and the only issue for the Tribunal to determine shall be whether the Parties have complied with the determination of the Expert.
- 17.3.6 In the event that the Expert becomes unwilling or unable to act in relation to the Dispute or (being a firm or partnership) is 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 shall be selected in accordance with the procedure specified in this clause 17.3.
- 17.4 If a Dispute cannot be settled within twenty (20) Business Days by discussion pursuant to clause 17.1, and is not required to be referred by this Agreement to an Expert, the Dispute shall be finally settled by an arbitral tribunal (the "Tribunal") under UNCITRAL Rules for International Arbitration as in force at the time such arbitration is commenced (the "UNCITRAL Rules"), or if the Parties agree, by the EAC.
- 17.5 Each Party must appoint an arbitrator within twenty (20) Business Days after the date of a request to initiate arbitration, on the basis that their appointees will then jointly appoint a third arbitrator within twenty (20) Business Days after the date of appointment of the second arbitrator, to act as chairman of the Tribunal. If any arbitrator is not appointed within the time limits set forth in this clause 17.5 either Party may apply to the Permanent Secretary to the International Court of Justice in accordance with rules established for this purpose to appoint an arbitrator requesting that the appointment be made within twenty (20) Business Days after the date of receipt of the application. Subject only to UNCITRAL Rules, both Parties undertake to implement the arbitration award. The seat of the arbitration shall be [Geneva]. The language of the arbitration shall be English.
- 17.6 The award rendered in any arbitration shall apportion the costs of the arbitration between the Parties as the arbitrators see 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 Tribunal's decision.
- 17.7 The award rendered in any arbitration commenced hereunder or any order passed by a competent court pursuant to applicable law in relation to an interlocutory matter concerning the Dispute pending the conclusion of arbitration proceedings may be entered in any court having jurisdiction for its enforcement.

- 17.8 Neither Party shall have any right to commence or maintain any suit or legal proceeding concerning a Dispute hereunder, other than a proceeding permitted by applicable law in relation to any interlocutory matter referred to in clause 17.7, in any court, whether in [] or outside, until the Dispute has been determined in accordance with the arbitration procedure provided for herein and then only to enforce or facilitate the execution of the award rendered in such arbitration or any interlocutory order pursuant to clause 17.7.
- 17.9 During the course of any arbitration hereunder:
- 17.9.1 [Fuel Supplier] and [IPP Company] shall continue to perform their respective obligations hereunder; and
- 17.9.2 neither [IPP Company] nor [Fuel Supplier] shall exercise any other remedies hereunder arising by virtue of the matters in Dispute.
- 17.10 The Party against whom an arbitration award for payment of an amount is made shall pay interest at the rate determined in accordance with clause 13.2.6 to the Party in receipt of such arbitration award.
- 17.11 Any 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 Enforcement of Foreign Judgments Law No. 8 of 1953.

18. Governing Law

This Agreement shall be governed by, and construed under, the laws of [].

19. Enforcement

Subject to any right of appeal, second appeal, revision or any other legal proceeding or remedy available to either Party under the law, each Party consents with respect to the enforcement of any final judgment against it in any such proceedings, whether in [] or outside and to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever, irrespective of its use or intended use, and whether situate in or outside []).

20. Representation and Warranties

20.1 [Fuel Supplier] represents and warrants to [IPP Company] that:

- 20.1.1 it has the full legal ability and authority to enter into and carry out its obligations under this Agreement and this Agreement constitutes a valid, legally binding and enforceable obligation of [Fuel Supplier] and does not conflict with the terms of any agreement by which it may be bound;
- 20.1.2 all approvals necessary to allow [Fuel Supplier] to enter into this Agreement and to carry out the obligations contemplated herein have been given or received and shall remain in full force and effect;
- 20.1.3 there are no applicable constitutional provisions, laws, regulations, decrees or rules of the Competent Authorities of [] in force on the date of execution of this Agreement, which restrict or prohibit the ability of [Fuel Supplier] to

enter into and perform the terms of this Agreement. [Fuel Supplier] is not entitled to immunity from legal process or jurisdiction on grounds of sovereignty or otherwise; and

20.1.4 this Agreement does not conflict with any provisions of any law, including any regulation, of [] as in effect on the date of execution of this Agreement.

20.2 [IPP Company] represents and warrants to [Fuel Supplier] that:

20.2.1 it is a validly existing legal entity under the laws of [];

20.2.2 it has the full legal ability and authority to enter into and carry out its obligations under this Agreement. This Agreement constitutes a valid, legally binding and enforceable obligation of [IPP Company] and does not conflict with the terms of any agreement by which it may be bound; and

20.2.3 there are no provisions of any organisational document of [IPP Company] which restrict or prohibit the ability of [IPP Company] to enter into and perform the terms of this Agreement.

21. Notices

21.1 All notices given under this Agreement are to be in writing in [English] and shall be:

21.1.1 sent to:

(a) for [IPP Company], to [] and marked for the attention of;

(b) for [Fuel Supplier's], to [];

or another postal address or facsimile number notified for the purposes of this Article 21; and

21.1.2 in writing and delivered by hand or sent by first class prepaid post (airmail if overseas), or facsimile transmission and deemed to have been received:

(a) in case of delivery by hand when delivered; or

(b) in the case of first class prepaid post, on the second (2nd) day following the day of posting, or if sent by airmail outside [], on the fifth (5th) day following the day of posting; or

(c) in the case of facsimile transmission, at the time of actual receipt,

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours, such notice or other communication shall be deemed to be given or made at the start of working hours on the next Business Day.

21.2 Either Party may notify the other Parties of a change to its name, relevant addressee, address or facsimile number for the purposes of clause 21.1, provided that such notification shall only be effective on:

- 21.2.1 the date specified in the notification as the date on which the change is to take place; or
- 21.2.2 if no date is specified or the date specified is less than [] Business Days after the date on which notice is given, the date falling [] Business Days after notice of any such change has been given.

22. Confidentiality and Publicity

- 22.1 Each Party shall take all proper steps to keep confidential the contents of this Agreement and any information provided by the other Party relating to the negotiation or performance of this Agreement except with prior written consent or to the extent that any such information:
- 22.1.1 becomes public through no fault of the disclosing Party or is required to be disclosed by law or any Competent Authority or pursuant to a licence issued under the Electricity Law;
- 22.1.2 is disclosed to an employee, servant, agent, consultant or adviser of a Party and which is reasonably necessary to enable the disclosing Party to give effect to this Agreement provided that any such person agrees to be bound by the provisions of this Article 22.
- 22.2 The obligations contained in this Article 22 shall survive termination of this Agreement for a period of [] years.

23. Amendments

This Agreement may only be amended or varied by the written agreement of both Parties.

24. Waiver

No waiver or failure by a Party to insist on the strict performance of this Agreement or to act in respect of the defaults of the other Party, and no acceptance of payment or performance during the continuance of any such default precludes any right, relief or remedy available to the non-defaulting Party, and may not be relied on by the other Party as a consent to those defaults.

25. Successors

This Agreement binds and ensures to the benefit of the Parties and their respective successors and permitted assigns.

26. Assignment and Transfers of Interest

- 26.1 [Fuel Supplier] shall not assign or transfer all or part of its rights, benefits or obligations under this Agreement except with [IPP Company's] prior written consent.
- 26.2 [IPP Company] shall not assign or transfer all or any part of its rights, benefits or obligations under this Agreement except with [Fuel Supplier's] prior written consent, which consent shall not be unreasonably withheld or delayed, provided that [IPP

Company] may, without the [Fuel Supplier's] consent, assign or create a security interest over its rights and interests under this Agreement to the Lenders.

27. Severability

If any provision of this Agreement is or becomes invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

28. Relationship of Parties

28.1 This Agreement does not create an association, joint venture, or partnership between the Parties.

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

29. Good Faith

The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realisation of its objectives.

30. Further Assurance

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary for the carrying out of the provisions of this Agreement.

31. Entirety of Agreement

This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and, except in case of fraud, all prior representations, negotiations and undertakings of any nature whatsoever between the Parties with any bearing on the subject matter of this Agreement are superseded and extinguished, and all rights and liabilities arising by reason of them, whether accrued or not at the date of this Agreement, are cancelled, to the extent they have such bearing.

32. Costs

Each Party shall bear all costs and expenses incurred by it in connection with entering into this Agreement.

33. Counterparts

This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

[IPP Company]

By: _____

Name: []

Designation: []

For and on behalf of [IPP Company] in the presence of:

Name: []

Designation: []

[Fuel Supplier]

By: _____

Name: []

Designation: []

For and on behalf of [Fuel Supplier] in the presence of:

Name: []

Designation: []

SCHEDULE 1

DEFINITIONS

Except as otherwise provided in this Agreement, the following terms in this Agreement have the meanings set out below.

“Agreement”	this fuel supply agreement between [Fuel Supplier] and [IPP Company];
“Business Day”	means any day, other than a Friday, Saturday or public holiday, when banks are open for business in [] and New York, if payments are in US Dollars;
“Capacity Charge”	in relation to a Facility, has the meaning assigned to the term in the PPA relating to that Facility;
“[IPP Company’s] Business”:	means [];
“[IPP Company] Event of Default”	has the meaning assigned to the term in clause 16.1.1;
“[IPP Company] Invoice”	has the meaning assigned to the term in Article 13;
“[IPP Company] Third Party Claim”	has the meaning assigned to the term in clause 15.2;
“Companies Law”	means [];
“Competent Authority”	means the Government or any Governmental agency or any local or national agency, authority, department, inspectorate, minister, court, tribunal or public or statutory body (whether autonomous or not) of [] exercising a statutory authority (including any licensing, regulatory or taxing authority);
“Completion Date”	means [];
“Consequential Loss”	means all losses, costs and financial harm in respect of loss of contract, loss of use of machinery or property, loss of production, profit or revenue or any other economic loss, cost or claim of whatever kind and nature suffered by a Party under or in connection with this Agreement however caused (including the default of the other Party or a breach of any duty owed in law by the other Party), and whether or not foreseeable at the date of this Agreement;

“Day”	a period of twenty four hours beginning at 0000 hours on a day and ending at 2400 hours on that day;
“Declared Availability”	has the meaning assigned to the term in the PPAs;
“Default Rate”	means a rate of interest equal to the lesser of: <ul style="list-style-type: none"> (i) five per cent (5%) above the [Reference rate] from time to time; and (ii) the maximum rate permitted under []n law from time to time;
“Delivery Point”	in relation to a Facility the point described for that Facility in Schedule 3;
“Dispatch”	has the meaning assigned to the term in the PPAs;
“Dispute”	has the meaning assigned to the term in clause 17.1;
“Effective Date”	means the date on which this Agreement becomes fully effective in accordance with Article 2;
“Electricity Law”	means the [] as may be ratified by the Parliament and as amended from time to time;
“Energy Charge”	has the meaning assigned to the term in the PPAs;
“EAC”	[means the Electricity Authority of []]
“Event of Default”	means a [IPP Company] Event of Default or a [Fuel Supplier] Event of Default;
“Event of Force Majeure”	has the meaning assigned to the term in Article 14;
“Expert”	an independent consulting firm, company or association of persons, with specialised skills in the interpretation of power engineering and supply contracts and financial and economic analysis, appointed pursuant to clause 17.3;
“Facilities”	the electricity generating facility[ies] of [IPP Company] specified in Schedule 3;

“Fuel”	means [] as further detailed in Schedule 2;
“Generating Unit”	in relation to a Facility means a turbine and associated plant and equipment within that Facility;
“Good Utility Practice”	means [];
[“Government”]	
“Implementation Agreement”	the agreement of that title and of the same date as this Agreement between the [Government of []] and [IPP Company];
“Investor”	means [];
“Invoice”	means either a [Fuel Supplier] Invoice or [IPP Company] Invoice, as the case may be;
“[Fuel Supplier] Concession”	a concession dated [] granted by [] to [Fuel Supplier] for [];
“[Fuel Supplier] Event of Default”	has the meaning assigned to the term in clause 16.1.2;
“[Fuel Supplier] Invoice	has the meaning assigned to the term in Article 13;
“[Fuel Supplier] Third Party Claim”	has the meaning assigned to the term in clause 15.1;
“Month”	a period beginning at 0000 hours on the first Day of a calendar month and ending at 2400 hours on the last Day of that calendar month;
“Party”	[IPP Company] or [Fuel Supplier] or their respective successors or assigns;
“PPA”	means a power purchase agreement between [IPP Company] and [], of the same date as this Agreement pursuant to which [IPP Company] has agreed to sell to [], and [] has agreed to purchase from [IPP Company], electrical energy generated by a Facility;
“Quarter”	shall mean any period of three calendar months commencing on 1st January, 1st April, 1st July or 1st September;
“Reference Interest Rate”	means a rate of interest equal to the lesser of:

- (i) two and one half per cent (2½ %) above the [Reference rate for []] from time to time; and
- (ii) the maximum rate permitted under []n law from time to time;
- “Share Acquisition Agreement”** means the agreement executed between the [Government], [IPP Company], Investors and [SPV] as of the date of this Agreement, as amended from time to time, for purchase by [SPV] of [Government] shares in [IPP Company] to the extent specified in that agreement;
- “Shareholders Agreement”** the agreement entered into between the [Government], [IPP Company] and [SPV], as amended from time to time, for purchase by [SPV] of [Government] shares in [IPP Company] to the extent specified in that agreement;
- “Shortfall”** a quantity of Fuel expressed in metric tonnes arising under Article 10 and Article 11;
- “Site”** in relation to a Facility the site for that Facility as described in the relevant PPA;
- “[SPV]”** [special purpose vehicle];
- “Tribunal”** has the meaning assigned to the term in clause 17.4;
- “Week”** a period of seven Days beginning at 0000 hours on a Saturday and ending at 2400 hours on the following Friday; and
- “Year”** any calendar year.

SCHEDULE 2

FUEL SPECIFICATION, TESTING AND MEASUREMENT

Part 1. Fuel Specification

This part of the Schedule will set out the Fuel specifications stating:

- *That the Fuel must be of merchantable quality and free of waxes and contaminant*
- *The limits on mineral content for Fuel chemical characteristics (e.g. sulphur)*
- *The minimum Fuel energy value (gigajoule per cubic metre)*
- *The testing standards and procedures that will be used to verify that the Fuel complies with the specification*

Part 2. Fuel Testing

This part of the Schedule will set out the standards and procedures that will be used to verify and ensure that Fuel complies with the specification

Part 3. Fuel Measurement

This part of the Schedule will set out the rules for measuring the quantity and energy value of the supplied Fuel:

- *Specifying the values that will be used for converting quantity into energy values*
- *Considering the possible effect of blending Fuels with different energy values (and rules to be used in that event)*
- *Specifying a standard tank dipping process for determining the quantity of Fuel supplied*

SCHEDULE 3

FUEL DELIVERY

Facility	Fuel	Delivery Method	Delivery Point	Min Storage Capacity (t)

This Schedule will set out the Fuel supplied, delivery method and delivery point for [the/ each] Facility.

SAMPLE

SCHEDULE 4
FORM OF MONTHLY NOMINATIONS

SAMPLE