

COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

POWER PURCHASE AGREEMENT GUIDELINES

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POWER PURCHASE AGREEMENT GUIDELINES

1 Objective of the PPA Guideline

The main objective of the COMESA Power Purchase Agreement Framework is to provide the COMESA member States with harmonized guidelines that would facilitate PPA harmonization in the COMESA region in efforts to ensure that private sector investor are more-or-less faced with similar PPA structures in the COMESA region.

The specific objective of the PPA framework is to provide outline contents expected in a standard PPA, which countries can then adopt and/or customize, therefore, harmonizing PPAs in the spirit of regional integration.

A power purchase agreement (PPA) is a contract to buy the electricity generated by a power plant. These agreements are a critical part of planning a successful renewable energy project because they secure a long-term stream of revenue for the project through the sale of the electricity generated by the project. Securing a good PPA is often one of the most challenging elements of any RET project development. The basics of a PPA and things to consider as when negotiating with a power purchaser are listed below.

2 Length of the Agreement

PPAs are long-term agreements. The stated term of most PPAs is 20 years, although a term ranging anywhere from 15 to 25 years is not unusual. The PPA is usually legally binding once it has been executed by representatives of both the seller and the purchaser, subject to early termination rights. The end date of the PPA is usually measured in the number of years from the commercial operation date. The commercial operation date is the date the seller has met all the conditions necessary to deliver energy to the purchaser.
The PPA may also provide the purchaser an opportunity to extend the PPA to include a renewal term beyond the initial stated term of 15 to 25 years, such as an additional 5 years. This option may state that the price and terms included in the initial stated term will apply during the renewal term, or may provide for an indexed price.
PPAs will include several provisions that will allow one or both parties to terminate the PPA early if certain events occur. For example, the PPA may allow one or both parties to terminate PPA prior to the commercial operation date if:

i. the seller's or purchaser's internal approvals, or any required regulatory or third party approvals, are not received;
ii. permits necessary for the construction and operation of the project are not obtained;
iii. the seller has not entered into an acceptable interconnection agreement;
iv. in some cases, financing is not available;
v. transmission access has not been secured; or,
vi. site control is not secured.

Typically supplier shortages or actual costs being greater than anticipated, are not conditions allowing the seller to terminate early.
The PPA early termination provisions will usually require the terminating party to give notice to the other party and often the parties endeavour to address the underlying issue before the termination is effective.

3 Commissioning Process

There are a number of steps involved in the commissioning process of a RE project that must be completed before the facility can reach commercial operation. While some of these

steps may be included in the milestone section of the PPA, other PPAs include them elsewhere as conditions to commercial operation. Each of these steps is aimed at ensuring that the facility will be able to reliably deliver energy to the purchaser. These conditions for commercial operation may require the seller to demonstrate to the purchaser that:

i. the seller has completed all testing required by the financing documents, government permits, interconnection agreement, seller's operating agreement, seller's engineering, procurement and construction agreement and any manufacturers' warranties;
ii. an officer of the seller has certified that the equipment installed at the facility has a maximum designed output equal to the agreed megawatts;
iii. the facility has achieved initial synchronization with the interconnection provider's system;
iv. the communications systems reliably communicates with the purchaser's systems;
v. an independent professional engineer has certified that the facility has been completed in all material respects in accordance with the PPA;
vi. the facility is performing under the interconnection agreement at a generation level acceptable to the interconnection provider without causing any abnormal or unsafe operating conditions on any interconnected system;
vii. a separate agreement is in effect to deliver energy to the facility to allow for RE facility start-up and shut down and maintenance;
viii. security arrangements have been made;
ix. certificates of insurance have been obtained; and
x. all permits, consents licenses, approvals and authorizations required by any government authority have been obtained.

PPAs also address when the seller must have 100% of the project capacity up and running, or if less than 100% is acceptable and for how long.

4 Sale and Purchase

Price terms vary depending on the structure of the project financing, available transmission resources; RET performance characteristics, and many other issues such as the REFIT regime. Price terms are very important to project development, as the PPA allows investors to estimate the total revenue available over the life of the project. If the price is too low, the project may not have a positive cash flow or the investors may be unable to earn a reasonable rate of return. If so, it is unlikely the project will be financed. Conversely, purchasers have a keen interest in keeping the price low to ensure the utility can deliver low-cost electricity to its customers.

In addition, the PPA typically provide for a lower initial rate, or trial price, that is applied to energy delivered to the purchaser before the date of commercial operation, or in some cases, excess energy after commercial operation if too much energy is delivered.
PPAs also address invoice and billing procedures. It is common for the seller to provide a monthly invoice detailing energy delivered or available capacity. Timelines for payment, and billing dispute procedures, are often included as well.

5 PPA Pricing

A key advantage of power purchase agreements is the predictable price of electricity over the life of a 15 to 25 year contract. This avoids unpredictable price fluctuations from utility rates, which are typically dependent on fossil fuel prices. In a PPA, the electricity rates are predetermined, explicitly spelled out in the contract, and legally binding with no dependency on fossil fuel or climate change legislation.

The most common PPA pricing scheme is the fixed escalator where the electricity produced by the generator is sold to the transmission system operator or national utility at a price that increases at a predetermined rate, usually linked to the Consumer Price Index or inflation.
In a fixed-price scheme, the electricity produced is sold to the national utility at a fixed rate over the life of the contract. The PPA price will most likely be higher than the utility rate at the beginning; however, over time, the utility rate is expected to overtake the PPA price such that the PPA generates savings over the life of the contract.

A less common PPA pricing model involves the PPA price based on the utility rate with a predetermined variation. While this ensures that the PPA price is always lower than utility rates, it is complicated to structure and it undermines the price-predictability advantage of a PPA.

The parties may agree for a periodic [say 5 years] pricing formulae review. The review should be limited to ensuring that the profit margins or return on investment remains at the level that the parties intended at the time of contracting. An open-ended review, where effect on the facility's profitability is not predictable, will not be accepted by investors and lenders.

6 Operational Curtailment

Most PPAs require that the seller deliver and sell to the purchaser all the energy generated by the facility. However, most PPAs recognize that there will be times when either the purchaser, transmission owner or transmission authority may mandatorily curtail the production of energy at the facility because of constraints on the system, emergency or other reasons. Curtailment can also be for the convenience of the purchaser for it to best manage its available energy supply sources.

During negotiation of a PPA, the parties must decide who will bear the financial risk for losses that arise when the purchaser, transmission owner or transmission authority exercises its curtailment right. Many PPAs are structured as "take-or-pay" agreements, which mean that the purchaser will pay the seller not only for energy actually delivered to the point of delivery but also for "available capacity," or energy that would have been delivered but for the curtailment. Curtailment provisions are very important because they can directly impact the required pricing or profitability of the project.

Various PPAs differ regarding the conditions under which the purchaser must pay for available capacity that was not actually delivered. For example, in some PPAs, the purchaser pays regardless of the reason for the curtailment. In other PPAs, the purchaser pays for available capacity only if the purchaser exercised its discretionary curtailment right, not if the energy was curtailed because of an emergency, force majeure event or another event that would have damaged the transmission system.

7 Transmission Issues

Transmission provisions are becoming an increasingly important part of PPAs. These provisions include allocating both responsibility for securing adequate transmission access and the costs for any required transmission upgrades, and other key transmission concerns.
The seller is often responsible for the costs of all transmission upgrades necessary to deliver the energy from the generation facility to the point of delivery, but sometimes sellers negotiate for the right to pass some or all of these costs on to the purchaser. The point of delivery is a specific point in the transmission system where the energy is deemed to be delivered to the purchaser, and the purchaser assumes the risk of loss beyond that point. Costs for transmission upgrades that are necessary to reliably deliver the energy from the point of delivery to the ultimate customer are called "network upgrades," and costs for theses

network upgrades are allocated following applicable transmission authority laws and/or regulations for renewable energy generator projects.

At the time a PPA is negotiated and executed, it is common that the analysis and studies conducted by transmission authority are not complete. Thus, there is no final determination as to the allocation of costs for network upgrades. The seller or the purchaser may insist that they have the option to terminate the PPA if they determine that the costs for needed transmission upgrades are unreasonable or exceed estimates.

8 Creditworthiness

Both sellers and purchasers face risks associated with the credit of the other party. Many purchasers require sellers to provide some form of credit enhancement to cover expected damages to the purchaser if the project does not meet construction milestones or is not commercially operational by the agreed date. Since sellers are often special purpose entities whose only assets are the project assets, purchasers may be concerned about their ability to recover damages to which they are entitled if the project is not completed in a timely manner. This credit enhancement may take several forms, including guaranties by credit worthy affiliates, cash collateral or escrow accounts, irrevocable standby letters of credit or performance bonds. Meeting the credit enhancement requirements can be a key challenge for project developers who will often have to rely on financial partners to provide the required credit or capital. Further, the costs of meeting these requirements can significantly increase the overall project costs or alter the arrangements between the developer and the financial partners.

Sellers may also require purchasers to provide a security fund or letter of credit to assure payment for electricity produced by the project. The requirement for the purchaser to provide a letter of credit is usually triggered if the purchaser's credit rating is downgraded by a major credit rating source (such as Standard & Poor Rating Group or Moody's Investor Services, Inc.) to a level determined in the PPA.

9 Risk Structure

Risk is one of the main considerations when negotiating agreements and power purchase agreements are no exception to this. Risk are generally allocated according to the negotiating power of each party but most of all based on the rule that the burden of risk is undertaken by the party more akin to bear it, and must also take into consideration the interests and concerns of the project lenders. The table below list the risks and their typical allocation in PPAs.

RISK	EXPLAINATION	ALLOCATION
Completion risk	The possibility that a project's construction or installation will be delayed, with additional cost or other implications.	Mainly by the construction contractor - it will be liable for liquidated damages for late completion.
Cost overrun risk	The possibility that during the design and construction phase, the actual project costs will exceed projected costs.	Shared by Project owners and the Project company. The Project Company must lock certain costs such major plant equipment and commodity costs as early as possible.
Design risk	The possibility that the private party's design may not achieve the required specifications.	Project company & main plant / equipment supplies. Performance tests must be before full hand over.

RISK	EXPLAINATION	ALLOCATION
Construction risk	Probability of loss associated with the physical (construction) phase of a project.	The EPCM or EPC company.
Exchange rate/forex risk	The possibility that exchange rate fluctuations will impact on the costs of imported inputs or the project's debt or equity. . Including: - Forex availability. - Currency interchangeability.	The lenders will want to see appropriately robust hedging arrangements or some other mechanism to manage currency exchange risk such as price increase that is link to foreign exchange variations.
Force majeure and change in law.	The occurrence of certain unexpected events that are beyond the control of the parties, whether natural or man-made, that affects the project.	The lenders will want to review the force majeure and change in law provisions in the project documents and ensure that they are back to back (as far as possible) with the concession agreement.
Interest rate	Fluctuations in the rate at which the project borrows money.	Project finance debt tends to be fixed rate. This helps provide a foreseeable, or at least somewhat stable, repayment profile over time to reduce fluctuations in the cost of infrastructure services. If lenders are unable to provide fixed rate debt and no project participant is willing to bear the risk, hedging or some other arrangements may need to be implemented to manage the risk that interest rates increase to a point that debt service becomes unaffordable to the project.
Market / demand risk	The demand for the services generated may be less than projected.	This market risk is usually assigned to the off taker in PPAs. The rationale of the off taker taking this risk is that the off taker is a government utility and it is the government that is charged with the responsibility of ensuring it meets its projected development levels and a failure on the government's side implies paying for the predetermined volumes even with non-existent demand for it. The tool in the PPA that is used to allocate this risk is the take or pay clause. Take or pay clauses simply contract to guarantee a market for the product through pricing arrangements which cover operating expenses, debt service and retirement.
Price Risk	The risk to the generator is that the purchase price of electricity would go too low, such that the	In regulated economies, price management is done through price regulation by government which is a

RISK	EXPLAINATION	ALLOCATION
	generators cash flows are not enough to meet the operational and management as well as equity and debt payments.	way of making the consumers bear the economic costs of price risk management. In deregulation economies, the free market forces of demand and supply come into play causing volatility hence the need to manage price volatility through hedging in options and future contracts. With the exception of Uganda, COMESA markets are regulated and the price and escalation factor is stipulated in the contact and the risk is borne by the off-taker, which passes on to the consumer.
Volume risk	It is the risk that the generator is not able to produce the contracted volumes or that the off taker is not able to take up all the contracted volumes for one reason or another.	The operational aspect of volume risk is on the plant operator and is usually allocated thus because the operator has to ensure that the plant is always available so as to generate a continuous stream of revenue. In the PPA, It is reflected in capacity recovery charge and a fixed operation and maintenance charge, which are all indexed to the inflation and exchange rates.
Operating risk	Factors other than Force Majeure such as projected operating expenditure, skills requirements, labour disputes, and employee fraud.	Operating costs can be locked in, to some extent, through hedging and futures contract and through input agreements but there are likely to be some costs that are not hedged and the lenders will want to be sure that these are limited.
Political risk	Unforeseeable conduct by a government institution that materially and adversely affects the expected return on equity, debt service or costs of the project. This includes expropriation and nationalisation.	Political risk should be managed in the project agreements with the government taking some of the risk in terms of compensation to be paid in the case of unilateral termination or expropriation, but not all political risks are likely to be borne by the government. Many project sponsors have turned to multilateral agencies or export credit agencies to shoulder some or all of this burden.
Regulatory risk	Consents required from government authorities or an independent regulatory agency are not obtained or result in additional costs.	Government – particular in the case where prices are not adjusted as per agreement.
Resource risk (including climate change)	The resource (water, steam, gas, etc) for the project are not available.	Resource risk must be shared or borne by the host utility or government, depending on the Agreement. It could also be borne

RISK	EXPLAINATION	ALLOCATION
		by the project developers / owners.

Source: South African National Treasury's PPP Manual, pp. 63-66 – Risk & Explanation Only.

10 Insurance

The PPA will usually require that the parties [seller and off-taker] that the risk is allocated to maintain, at their expense, specific insurance policies. Policies typically required include: commercial general liability insurance; worker's compensation insurance for seller's employees; automobile liability insurance; builder's risk insurance; all-risk property insurance; and business interruption and extra expense insurance. The business interruption and extra expense insurance covers lost revenues or increased expenses needed to resume operations after a claim under the property insurance policy. Some of the risk is not insured by commercial insurance companies and some measures taken to ensure bankability of the project are listed below.

Sovereign Guarantee and Indemnity

In almost all COMESA Member States, the transmission system operators is the State Owned electricity generation, transmission and generation company. Thus, for IPP generation projects, the off-taker is commonly the State Owned electricity company. Traditionally, government are reluctant to effect large increases in electricity tariffs. This has led in some countries to tariffs that are not cost reflective and under investment by the public utility resulting in lower generation than actual or forecast electricity demand.

The underfunding of the electricity company results in poor creditworthiness and low credit rating. In order to attract private investment, it is necessary for the investors and credit financiers to get some guarantee that the off-taker will honour its take-or-pay obligations. The guarantee often comes in the form of sovereign guarantee and indemnity where the Government commits to pay the seller in the event the electricity company is unable to pay the seller under terms agreed in the PPA.

Bilateral Investment Treaties / Guarantees

Bilateral investment treaties are international agreements establishing the terms and conditions for private investment by nationals and companies of one state in another state. The distinctive feature of many BITs is that they allow for an alternative dispute resolution mechanism, whereby an investor whose rights under the BIT have been violated could have recourse to International arbitration, often under the auspices of the International Center for the Settlement of Investment Disputes, rather than suing the host State in its own courts.

BIT act as guarantees that are offered by the country that will make the investment. China is currently using bilateral investment guarantee approach in some of their investments in Africa. They consider their overall investment in the country and the risks are off-set against one another – i.e., high risk projects are undertaken on the understanding that the risk is mitigated by low risk investment.

Political Risk Insurance – Providers

Political risk is a major impediment for large infrastructure project investments in Africa. There are, however, institutions that offer political risk insurance and these are:

MULTILATERAL	REGIONAL/BILATERAL
Multilateral Investment Guarantee Agency, which covers: ▪ Breach of Contract ▪ Currency Inconvertibility and Transfer Restriction ▪ Expropriation ▪ War, Terrorism, and Civil Disturbance ▪ Non-Honouring of Sovereign Financial obligations	The *African Trade Insurance Agency* is a multilateral financial institution providing financial products to help reduce the business risks and costs of doing business in Africa. ▪ export credit insurance ▪ political risk insurance ▪ investment insurance ▪ Expropriation ▪ Transfer Restriction ▪ War, Civil Disturbance or Civil Commotion ▪ Embargo; Arbitral Award Default
World Bank Partial Risk Guarantees Partial risk guarantees cover commercial lenders for a private sector project against default arising from a government-owned entity failing to perform its obligations. The types of risks covered may vary, including: ▪ currency risk (inconvertibility) ▪ political force majeure risks ▪ material adverse government action ▪ government contractual payment obligations (e.g., termination payments) ▪ regulatory risk; change of law and regulations. ▪ contractual performance of public counterparties ▪ frustration of arbitration; and ▪ certain uninsurable force majeure events. PRGs can be provided in both IBRD (middle income) and IDA (low income) countries and require a government counter-guarantee.	*Export Credit Agencies ,* cover: ▪ Buyer Credit ▪ Supplier Credit ▪ Pre-Shipment ▪ Bond ▪ Investment ▪ Tender Guarantee ▪ Letter of Credit ▪ credit Insurance Most export credit agencies are based in the key equipment manufacturer country and often supported by the Government to promote exports.

11 Milestones and Defaults

PPAs often address milestones to be met to reach commercial operation. Construction or development milestones are intended to allow the purchaser and seller to track the project's development progress. The PPA may identify a variety of milestones, including: acquisition of all permits needed for construction; execution of a construction contract; commencement of construction; evidence of the seller's purchase of the RET key equipment [for example turbines for wind energy]; and, ultimately, commercial operation.

If the PPA addresses milestones, typically the seller must meet the dates established in the PPA for each of the milestones or risk paying delay damages. Delay damages are often calculated by multiplying a purchasing amount by the number of MWs of contracted capacity for each day the seller fails to meet a milestone. The PPA may also include a provision that allows the seller to recover any delay damages paid to the purchaser for earlier missed

milestones if the seller is able to deliver the project by the milestone for commercial operation.

PPAs include detailed sections related to events of default. Events of default are situations where the action or inaction of one of the parties significantly jeopardizes the overall project. Many events of default are curable, which means there is an opportunity to resolve the issue. However, when one party is responsible for an event of default, the other party is typically entitled to damages if the default cannot be cured. Some events of default may be considered incurable and allow for immediate termination rights.

When negotiating a PPA, the parties acknowledge that there may be circumstances beyond the parties' control that could prevent them from performing under the PPA, that is, for events of "force majeure". If a force majeure event occurs, the agreement will excuse both parties from responsibility and liability related to any delay or failure to perform. Most agreements will require that the party asserting force majeure to provide the other party with notice. Often, sellers and purchasers negotiate over how broadly or narrowly to define what constitutes force majeure.

When an event of default occurs and remains uncured, the non-defaulting party may be entitled to actual damages and/or the right to terminate the PPA. If the seller defaults, this will usually mean the purchaser can recover costs for purchasing replacement energy in addition to any other costs incurred. Liability for damages due to a delay or event of default are often capped, and sellers and purchasers negotiate over what the appropriate caps should be in different situations. The liability cap for delay damages may be substantially less than the cap for overall damages following an event of default.

12 Environmental Attributes or Credits

Most PPAs include provisions that assign ownership of the environmental attributes or renewable energy credits [e.g., Clean Development Mechanism, CDM] to the purchaser who typically is keenly interested in meeting applicable green energy requirements. Sellers usually are fine with allocating these credits and attributes so long as they are compensated for the sale of the credits along with the sale of the electrons.

13 Resolution of Disputes

Mutual Discussions (amicable resolution) - if any dispute or difference of any kind whatsoever arises between the parties, the PPA should provide for the parties to attempt to settle such dispute in the first instance by mutual discussions within a specified period - 30 days is recommended for PPAs.

Mediation - If amicable resolution fails, the PPA may provide for either Party to elect to proceed with the mediation through the mediators (providers of dispute resolution service) prescribed in the PPA or acceptable to both parties. Mediators use various techniques to open, or improve, dialogue and empathy between disputants, aiming to help the parties reach an agreement. Some PPAs do not provide for mediation.

Arbitration - if the dispute cannot be settled within the specified period by mutual discussions then the dispute (regardless of its nature) may be submitted by either party to arbitration and finally settled in accordance with agreed Arbitration Rules. Ideally the PPA should specify the ICC Rules of Arbitration which are used worldwide to resolve business disputes through arbitration. In choosing to follow these rules, the parties involved in PPA are assured of a neutral framework for the resolution of cross-border disputes.

14 End of PPA Contract Arrangements

PPAs are long-term agreements. The stated term of most PPAs is 20 years, although a term ranging anywhere from 15 to 25 years is not unusual. The PPA may also provide the purchaser an opportunity to extend the PPA to include a renewal term beyond the initial stated term of 15 to 25 years, such as an additional 5 years. This option may state that the price and terms included in the initial stated term will apply during the renewal term, or may provide for an indexed price.

At the end of the contract, the investors are expected to have fully recovered their investment. If the asset is still operational, the main costs are operation costs and limited capital investment on some of the equipment. A new PPA would be required to continue supplying the off-taker. The ownership of the asset at the end of the PPA depends on the PPP structure.

APPENDIX A – Standard Power Purchase Agreement

AGREEMENT FOR POWER PURCHASE

DATED

-- Between --

[LEGAL NAME OF UTILITY/BUYER]

- and -

[LEGAL NAME OF PROJECT DEVELOPER/SELLER]

POWER PURCHASE AGREEMENT

_____

1. INTERPRETATION AND DEFINED TERMS
2. SALE AND PURCHASE OF ENERGY
3. TERM
4. CURRENCY, PAYMENTS AND BILLING
5. PRE-OPERATION OBLIGATIONS
6. INTERCONNECTION
7. METERING
8. OPERATIONS AND MAINTENANCE
9. MUTUAL WARRANTIES AND COVENANTS OF THE PARTIES
10. DEFAULTS AND TERMINATION
11. FORCE MAJEURE
12. INDEMNIFICATION AND LIABILITY
13. INSURANCE
14. RESOLUTION OF DISPUTES
15. NOTICES
16. MISCELLANEOUS PROVISIONS

STANDARDISED PPA FOR LARGE RENEWABLE ENERGY GENERATORS

BETWEEN:

*[**Legal name, form and country of Developer/Seller entity**]*) having its registered office at *[complete Address of Developer entity]* ("Developer") **and**

*[**Legal name, form and country of utility/Buyer entity**]*) having its registered office at *[complete Address of Utility entity]* ("Utility"). Developer and Utility may be referred to individually as a "Party" and collectively as "Parties" made this date, *[date of agreement execution]* .

WHEREAS:

1. The Buyer is licensed to purchase, transmit, distribute and supply electricity [Name of Member State];
2. Developer agrees to complete construction and Commissioning of its *[name, description, location, and capacity or energy output of project]* ("Project")
3. Developer agrees to make available and to sell the Net Energy Output from Project to Utility; and,
4. Utility wishes to purchase the electrical energy generated by the Project pursuant to the terms and conditions in this Agreement;

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

1. INTERPRETATION AND DEFINED TERMS

1.1 Defined Terms

"Abandonment" - Either (a) the cessation of substantially all activities relating to the construction or operation and maintenance of the Project, as appropriate, or (b) the physical absence, during a period when the Project is not generating despite adequate renewable energy resources, of substantially all technical employees of Developer and its contractors from the site of the Project in either case (a) or (b) for at least 168 consecutive hours. This definition does not apply in cases of force majeure.

"Commercial Operations Date" - The date on which the Project actually and successfully completes the test operations required by Schedule B (Commissioning Requirements).
"Project" - All facilities on the Developer's side of the Interconnection Point at the facility described in the first Whereas clause of this Agreement that are required to provide the Net Energy Output to the Utility's Grid and necessary for the Developer to honor its obligation under the terms and conditions of this Agreement.

"Emergency" - A condition or situation that, in the reasonable opinion of Utility, does materially and adversely, or is likely materially and adversely to (i) affect the ability of Utility to maintain safe, adequate and continuous electrical service to its customers, or (ii) endanger the security of person, plant or equipment.

"Energy Price" - The price Utility will pay Developer per kWh for Net Energy Output delivered to the Utility's Grid, as determined in accordance with Schedule A.

"Forced Outage" - An immediate full or partial interruption of the generating capability of the Project that is not the result of (i) a request by Utility in accordance with this Agreement , (ii) a Scheduled Outage or (iii) an event or occurrence of Force Majeure:

"Force Majeure" - An event or occurrence specified in Paragraph 11 (Force Majeure).

"Government" - The lawful government of the country in which the Project is located.

"Interconnection Facilities" - The facilities that interconnect the Project to the Utility's Grid. This includes all of the equipment that measures capacity and energy output from the Project, as well as the associated protection equipment specified in Schedule C (Interconnection).
"Interconnection Point" - The physical point(s) where the Project and the Utility's Grid are connected as specified in Schedules C (Interconnection) and D (Technical Specifications).

"Utility's Grid" - Utility's system of transmission or distribution facilities on Utility's side of the Interconnection Point, through which Net Energy Output of the Project will be distributed by Utility to users of electricity.

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

"Liquidator" - Person duly appointed by a Court, members or shareholders of Developer or Utility, or creditors of Developer of Utility for the purpose of winding up, respectively, Developer's or Utility's operations.

"Metering System" - All meters and metering devices or equipment owned by Utility and used to measure the delivery and receipt of dependable capacity and Net Energy Output from the Project.

"Net Energy Output" - Net energy delivered by Developer for sale to Utility at the agreed Interconnection Point as measured in accordance with Paragraph 7.3 (Measurement of Net Energy Output) and the general terms and conditions of the agreement.
"Operating Committee" - Such persons as appointed by Utility and Developer for the purpose of coordination and implementation of this Agreement and the operations of the Project as set forth in Schedule F.

"Prudent Utility Practice" - The practices generally followed by the electric Utility industry in North America with respect to the design, construction, operation, and maintenance of electric generating, transmission, and distribution facilities, including, but not limited to, the engineering, operating, and safety practices generally followed by such Utility industries; provided that such practices must be relevant and applicable to the management and operation of a Wind Farm.

"Relevant Consents" - Any approval, consent, authorization or other requirement that is required from the Government or any public sector entity under the applicable Laws of the Government for Developer with respect to the Project.

"Required Commercial Operations Date" - The date by which the Project must successfully complete the required test operations prescribed in Schedule B (Testing and Commissioning). That date is agreed to be *[commercial operations deadline for Project]* .

"Scheduled Outage" - A planned full or partial interruption of the Project's generating capability that (i) is not a Forced Outage; (ii) has been scheduled and allowed by Utility in accordance with Paragraph 8.3.2; and (iii) is for inspection, testing, preventive maintenance, corrective maintenance or improvement of the Project.

1.1 In interpreting this Agreement, terms not defined above (Defined Terms) shall have the meanings ascribed to them in the Oxford English dictionary or, for terms of art or where the context indicates, the meanings given the terms by common usage in the industry.

1.2 Further, in interpreting this Agreement:

1.2.1 Except where expressly stated otherwise, the headings of the Paragraphs are primarily for convenience and in the event of a conflict between a heading and the more specific provision of a Paragraph, the language of the Paragraph shall control in construing the provisions of this Agreement;

1.2.2 The singular includes the plural and vice versa;

1.2.3 References to Sections, Paragraphs, Schedules and similar designations are, unless the context otherwise requires, references to designations in this Agreement; and

1.2.4 References to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part.

1.2.5 Reference to a business day is reference to any day which is not a Saturday, Sunday or recognised public holiday in [name of Member State].

1.2.6 Reference to a day, week or month is reference to a calendar day, week or month.

1.2.7 A requirement that payment be made on a day which is not a business day shall be construed as a requirement that the payment be made on the next business day.

1.2.8 Unless otherwise provided herein, where a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed.

2. SALE AND PURCHASE OF ENERGY

2.1 *Sale to Utility* - Subject to, and in accordance with, the terms of this Agreement, the Developer shall make available and sell to Utility, and Utility shall purchase from Developer (on a “take or pay” basis), the Net Energy Output of the Project, up to a maximum of *[maximum output capacity or lesser contracted amount]* plus or minus *[variance allowance, based on manufacturer specifications]* percent, beginning on the Commercial Operations Date.

2.2 *As Available Energy Take* - Upon and after the Commercial Operations Date, Utility shall accept energy as available up to a maximum total energy equivalent of [*Project or contracted maximum*] kW per hour plus or minus five percent, provided that Utility may accept energy above this level at its sole discretion.

2.3 *Sale to Developer* - Subject to, and in accordance with, the terms of this Agreement, Utility shall make available and sell to the Developer, and the Developer may purchase from Utility, capacity and energy, on the same basis as Utility's then prevailing tariff for electricity sold to industrial customers.

2.4 *Energy Price* - The amount of the payments due from Utility to Developer for Net Energy Output from the Project shall be calculated in accordance with Schedule A (Calculation of Payments) using the Energy Price defined in that schedule.

The payments shall be made at the times specified in Paragraph 4.2 (Billing and Payment).

3. EFFECTIVENESS AND TERM

3.1 *Initial Term* - The initial term of this Agreement shall commence on the date of this Agreement and shall end *[length of agreement term]* from the Commercial Operations Date, unless this Agreement is terminated earlier pursuant to the provisions of this Agreement allowing for termination in the event of a breach or default by either of the Parties ("Early Termination"). Any Early Termination of this Agreement shall be without prejudice to all rights and obligations of the parties accrued under this Agreement prior to such termination.

3.2 *Renewal Term* - This Agreement may be extended by either Party for a single additional period of *[agreed renewal term]* years, on the terms defined by this Agreement, provided that:

a) The Party seeking an extension has made a prior written request to extend the agreement to the other Party, such request to be made not more than 36 months and not less than 24 months before the end of the initial term of this Agreement;

b) The Party receiving a request to extend the agreement has not rejected the request in a written response to the Party seeking an extension, given not more than 3 months following receipt of the request for extension; and

c) There is not an event of default of either Party, as defined in Paragraphs 10.2 (Developer Defaults) and 10.3 (Utility Defaults), on the date the extension begins.

3.3 *Conditions Precedent* **-** Except for the Parties' respective provided herein, the parties' obligations hereunder shall commence on the date ("the Effective date") on which the last of the following conditions shall have been satisfied:

i This Agreement is approved by the [*Member State approving Authority*].

ii The Generating Licence in respect of the Plant is issued to the Seller.

a) The Seller's Conditions

The Seller shall use all reasonable endeavors to facilitate the satisfaction of the conditions in Clause 3(i) prior to the Target Effective Date or such other date as the Parties may agree in writing.

b) The Buyer's Conditions

The Buyer shall use all reasonable endeavors to facilitate satisfaction of the conditions in Clause 3(i) on or prior to the Target Effective Date or such other date as the Parties may agree in writing.

c) Progress Review

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

d) Non- Satisfaction of Condition Precedent

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

4. CURRENCY, PAYMENTS AND BILLING

4.1 *Currency* - all payments required pursuant to any provision of this Agreement (including provisions applicable in the event of any breach, default, or other failure of performance) shall be calculated and paid in *[agreed currency]*.

4.2 *Billing and Payment.*

4.2.1 *Monthly Invoices* - within 25 days after the end of each month, each Party shall prepare and deliver to the other Party an invoice reflecting amounts payable by the other Party pursuant to this Agreement. Developer's invoice to Utility shall include calculations, in reasonable detail, of the amounts due pursuant to Schedule A (Calculation of Payments). Utility's invoice to Developer shall include calculations in reasonable detail of the amounts owed to Utility with specific reference to applicable tariffs.

4.2.2 *Special Invoices* - if there is an event of default, breach, or other failure to perform for which this Agreement specifies payment of amounts as liquidated damages or otherwise, the Party to be compensated shall prepare and deliver to the other Party a special invoice that shows the calculation of any amounts due pursuant to this Agreement, specifies the provisions applied, and details the periods of delay or other factors on which the claim is based.

4.2.2 *Electronic Funds Transfer* - each party shall pay the sums owed by wire transfer in immediately available funds within 21 days of receipt of each monthly invoice from the other Party. Payments for electrical energy provided by either Party to the other Party shall not be subject to any set-off. Each Party shall make payment by electronic transfer of funds to an account that is held and specified by the other Party. If electronic transfer of funds is not practicable or is not desired by the receiving Party, the Parties shall agree on specific alternative payment procedures.

4.2.3 *Late Payments* - payments not made by the due date shall accrue daily interest at the greater of *[specific daily interest rate or identified daily interest rate proxy]* or the maximum lawful rate. Any such charges for interest shall be calculated by the paying Party and included with payment of the invoice without the need for an additional invoice for those amounts.

4.3 *Disputed Invoices* - If either Party, on reasonable grounds, disputes any portion of a monthly invoice or the correctness of the amount received in payment of an invoice, then that Party shall, within 14 days of the receipt of such invoice or payment, serve a notice on the other Party indicating the amount and basis of the dispute. Neither Party shall be required to pay a disputed amount pending resolution of the dispute. The dispute shall be settled by mutual discussion and, if necessary, resolved pursuant to Paragraph 14 (Resolution of Disputes). If it is determined that either Party owes the other an amount of money, the owing Party shall, within 7 days after its receipt of such determination, pay such sum together with interest at a rate equal to *[specific interest rate or identified interest rate proxy]* to the other Party in the manner specified for payment of the disputed invoice.

5. PRE-OPERATION OBLIGATIONS

5.1 *Construction and Commissioning* - Developer shall undertake and be obligated (a) to complete construction of the Project and (b) to achieve successful completion of the required test operations prescribed in Schedule B (Testing and Commissioning) no later than the Required Commercial Operations Date. In the

event that the Project does not successfully complete the required test operations prescribed in Schedule B (Testing and Commissioning) on or before the Required Commercial Operations Date, and Utility is in full compliance with all its material obligations under this Agreement, then Developer shall be liable to Utility in an amount to be determined in accordance with the liquidated damages provisions of Schedule A (Calculation of Payments).

5.2 *Permits and Licenses* - Developer, at its sole cost and expense, shall acquire and maintain in effect all permits, licenses and approvals required by all local agencies, commissions and authorities with jurisdiction over Developer or the Project, so that Developer may lawfully perform its obligations under this Agreement.

5.3 *Credits, Grants, and Preferences* - Developer shall be responsible for applying for and obtaining any available and applicable tax credits, grants, loans or preferences from governmental or other institutions. Utility shall cooperate with Developer by providing requested documentation or other confirmation relating to the Project or to this Agreement, subject to the confidentiality terms of Paragraph 16.4 (Confidentiality).

6. INTERCONNECTION

6.1 *Developer's Responsibilities* - In accordance with the requirements of Schedule 4 (Interconnection), Developer shall design, construct, install, commission, operate and maintain the Interconnection Facilities, and any parts thereof, in accordance with the terms of this Agreement. Developer shall design, construct, install, commission, own, operate and maintain all auxiliary and interconnecting equipment on the Developer's side of the Interconnection Point, provided that Utility shall have the right to view such equipment and to object to the use of any equipment if, in the reasonable opinion of Utility, the use of such equipment would adversely affect Utility's grid or system. Developer's Interconnection Facilities shall be connected to Utility's Grid by means of suitable switchgear and protective devices.

6.2 *Utility's Responsibilities* - Utility will use its best endeavor to assist the Developer in obtaining, in a timely manner and at a reasonable cost, all permits, permissions and way leaves necessary for the construction of any new transmission lines and associated equipment. Such assistance should not to be unreasonably withheld. The reasonable expenses of Utility's assistance shall be the responsibility of Developer.

6.3 *Required Transmission Lines* - The Developer will be responsible for the design, construction, installation and commissioning of any new transmission lines (and associated switchgear and protective devices) needed to connect the Project to Utility's Grid. Upon completion and commissioning of any such transmission line and associated equipment, Utility shall own, operate and maintain the line and associated equipment. However, Utility shall reimburse Developer a fair portion of Developer's capital contribution to construction of the new transmission line and associated equipment, if there is subsequently additional use of the line by others. Utility shall obtain permission for such use by others from Developer, which permission shall not be unreasonably withheld.

6.4 *Access to Project* - Developer shall permit Utility such access to the Project as Utility shall require for the testing of Interconnection Facilities and Developer shall cooperate with Utility in such testing, provided that no testing carried out by Utility shall impose upon Utility any liability, or relieve Developer from any liability

that it would otherwise have had for its negligence or other wrongful act in the design, construction, operation or maintenance of the Interconnection Facilities.

6.5 *Lead Time* - Developer shall complete construction of the Interconnection Facilities and any required new transmission line and associated equipment at least 30 days prior to the Required Commercial Operations Date.

6.6 *Protective Devices* - Each Party shall provide the other Party, in advance, written notice of any changes to be made to the Project or to any facility on Utility's grid that may affect the proper coordination of protective devices between the two systems. Developer shall not disable or otherwise change or modify any protective equipment in its Interconnection Facilities or change or modify the operation or settings thereof without first requesting and receiving the written approval of Utility, which approval shall not be unreasonably withheld. With reasonable notice to Developer, Utility may require Developer to modify or to expand the protective devices by means of which the Project is connected to Utility's grid. In such event, Utility shall reimburse the Developer for the reasonable costs of such modification or expansion.

7. METERING

7.1 *Ownership of Metering System* - Utility shall own, operate and maintain the Metering System used to acquire the performance measurements from which payments to Developer pursuant to this Agreement are calculated. Developer shall design, finance, construct, install, own, operate and maintain metering devices for backup purposes (the "Backup Metering System"). In both cases, the metering points shall be at the Utility's Grid (high voltage) side of Developer's transformer that connects the Project to Utility's Grid.

7.2 *Testing and Inspection of Metering Equipment* - Testing, inspection, repair, recalibration and replacement of the Metering System and of the backup metering equipment shall be performed by the Parties in accordance with THE agreed operations and maintenance procedures detailed in Schedule 5 (Metering).

7.3 *Measurement of Net Energy Output*

7.3.1 *Notice of Reading* - Utility shall read the Metering System for the purpose of measuring the Net Energy Output of the Project after giving reasonable notice to the Developer. At its option, Developer may be present when the meter is read. Developer may request a test of the accuracy of the Metering System, at Utility's expense, *[number]* times per year. Developer may have the Metering System tested at its own expense at any time.

7.3.2 *Inaccurate Meters* - In the event that the Metering System is found to be inaccurate or functioning improperly, the correct amount of Net Energy Output delivered to Utility during the period for which inaccurate measurements were made shall be determined using in the Backup Metering System or other procedures defined in Schedule 5 (Metering), as appropriate.

7.3.3 *Payment Adjustments* - Utility shall make a supplemental payment or issue a special invoice in the amount of the difference between the previous payments by Utility for the period of the Metering System's inaccuracy. Utility's payment or special invoice shall be delivered within 10 days of the determination of proper readings. Any such special invoice to Developer shall be paid within 10 days of receipt. In no event, however, shall any adjustments be made for any period prior to the date on which the Metering System was last tested and found to be

accurate within plus or minus 0.5 per cent and not otherwise functioning improperly.

8.0 OPERATIONS AND MAINTENANCE

8.1 *Operating Standards* - During the term of this Agreement, Developer shall operate and maintain the Project in accordance with the technical specifications and requirements set out in Schedule 6 (Technical Specifications).

8.2 *Operation by the Developer* - During the term of this Agreement, beginning on the Commercial Operations Date, Developer shall keep Utility's designated control center, from which Utility will interface with the Project for operational purposes, informed as to the capacity of electrical energy available at the Project and shall immediately advise the designated control center of any change in this capacity.

8.3 *Outages*

8.3.1 *Project Performance* - Developer shall be afforded adequate Scheduled and Forced Outage provisions to facilitate necessary maintenance to the Project, provided that the average annual Net Energy Output from the facility during any five (5) year period shall not be less than *[amount that takes account of planned maintenance]* MWh.

8.3.2 *Scheduled Outages* - Developer shall use its best efforts to advise Utility, in writing, of its Scheduled Outages no less than 7 months prior to each such outage. At least 60 days prior to the Required Commercial Operations Date, Developer shall submit to Utility its desired Scheduled Outage periods for the first twelve months. Thereafter, by July 1 of each calendar year, the Developer shall submit to Utility its desired schedule of Scheduled Outage periods for the following calendar year.

8.3.3 *Forced Outages* - Developer shall use its reasonable efforts to limit Forced Outages. Developer shall be afforded Forced Outage provisions (including in the average annual Net Energy Output requirement of Paragraph 8.3.1) to facilitate emergency maintenance of the Project when the circumstances warrant.

8.4 *Emergencies*

8.4.1 *Emergency Plans* - Three months prior to the Commercial Operations Date, Utility and Developer shall jointly establish plans for operating the Project during an Emergency affecting Developer or Utility. Such plans shall include, without limitation, recovery from a local or widespread electrical blackout and voltage reduction to effect load curtailment.

8.4.2 *Outage During Emergency* - During an Emergency, Developer shall supply such energy as it is able to generate within the Technical Specifications of Schedule 6. If the Project has a Scheduled Outage or a Forced Outage and such outage occurs or would occur coincident with an Emergency, for purposes of this Agreement the Emergency shall be considered part of the Scheduled Outage or Forced Outage and Developer shall use all reasonable efforts to expedite completion of the work to restore power supply as soon as possible.

8.5 *Cessation of Operation*

8.5.1 *Abandonment* - If, after the Commercial Operations Date, Developer, other than because of an event of Force Majeure, a Scheduled Outage or a Forced Outage (which Scheduled Outage or Forced Outage does not cause the Developer to exceed the maximum outage allowed under the requirements of Paragraph

8.3.1 *Project Performance* above), allows Abandonment of the Project without the prior written consent of Utility, then Utility shall be entitled to enter the site and, in consultation with the Operating Committee established pursuant to Paragraph 8.6 (Operating Personnel) and Schedule 7 (Operating Committee), appoint a manager of suitable competence to manage and operate the Project, subject to the Technical Specifications of Schedule 6, and in accordance with Prudent Utility Practice until Developer demonstrates to the reasonable satisfaction of Utility that it can and will resume normal operations of the Project. During any period that Utility operates the Project pursuant to this Paragraph, Utility shall be entitled to receive only such consideration as is reasonable (a) to pay the manager, at a level commensurate with industry standards; and (b) to reimburse Utility for its reasonable and prudently incurred administrative, operational and other expenses, during and arising from its operation of the Project. Utility shall render a full accounting to Developer at regular intervals during the period of its operation of the Project pursuant to this Paragraph, and at the close of its management. Utility shall continue to make payments for Net Energy Output in accordance with Paragraph 2 (Sale and Purchase of Energy) and Schedule 2 (Calculation of Payments).

8.5.2 *Liability During Operations.* During its operation of the Project in accordance with the provisions of Paragraph 8.5.1 above, Utility shall not be liable for any damage to the Project or any part thereof or for any damage or loss suffered by the Developer or third party, except where such damage or loss is caused by the gross negligence or the deliberate action or inaction of Utility.

8.6 *Operating Personnel*

8.6.1 *Operating Committee* - The Parties shall establish an Operating Committee composed of *[odd number]* members. Developer and Utility shall each appoint an equal number of the members, and the members shall choose the Utility shall appoint the Chairman of the Operating Committee. The obligations and responsibilities of the Operating Committee and the rules governing meetings of the Operating Committee shall be as set forth in Schedule G.

8.6.2 *Qualifications and Coverage.* For the purposes of (a) operating and monitoring the Project and (b) coordinating operations of the Project with the Utility grid, Developer shall employ, directly or indirectly, only personnel who are qualified and experienced. Developer shall ensure that the Project is being monitored by such personnel, remotely or otherwise, at all times, 24 hours each day and 7 days each week commencing 14 days prior to the Commercial Operations Date.

8.6.3 *O&M Contractor* - Developer may appoint an Operation and Maintenance ("O&M") Contractor to operate and maintain the Project throughout the term of this Agreement. Developer shall submit such appointment and the appointment of any successor O&M Contractor to Utility for its prior written approval, which approval shall not be unreasonably withheld or delayed. No such appointment nor the approval thereof by Utility, however, shall relieve Developer of any liability, obligation, or responsibility resulting from a breach of this Agreement.

8.7 *Inspection and Records*

8.7.1 *Utility Inspections* - Utility shall have the right to visit, observe and examine the Project and the operation thereof, upon reasonable advance notice to Developer, for the purpose of facilitating the technical operation and administration of this Agreement. Such visits and observations shall not be construed as an endorsement by Utility of the design or operation of the Project nor as a warranty by Utility of the safety, durability or reliability of the Project and shall not relieve Developer of any of its responsibilities under this Agreement.

8.7.2 *Developer and Utility Records* - Each Party shall keep complete and accurate records and other data required by each of them for the purposes of proper administration of this Agreement. Among other records and data, Developer shall maintain an accurate and up-to-date operating log for the Project, which log shall include (without limitation) records of:

a) Real and Reactive Power production for each clock half-hour, and electrical energy frequency and interconnection bus voltage at all times;
b) Changes in operating status, Scheduled Outages, and Forced Outages;
c) Any unusual conditions found during inspections; and
d) Any other items as mutually agreed upon by the Parties.

8.5.3 *Copies of Records* - Either Party shall have the right, upon reasonable prior written notice to the other Party, to examine or to make copies of the records and data of the other Party relating to the proper administration of this Agreement, at any time during normal office hours during the period such records and data are required to be maintained. All such records or data shall be maintained for a minimum of 60 calendar months after their creation, and for any additional length of time required by regulatory agencies with jurisdiction over the Parties. Upon expiration of such period, neither Party shall dispose of or destroy any such records without 30 days prior written notice to the other Party, and the Party receiving such notice may, at its option, elect to receive such records, in lieu of their disposal or destruction, by giving the notifying Party notice of its election at least 10 days prior to the expiration of the 30-day period.

9. MUTUAL WARRANTIES AND COVENANTS OF THE PARTIES

9.1 *Warranties* - Each Party warrants to the other that:

9.1.1 It is duly formed, validly existing and in good standing under the laws of *[name of Member State]* and is qualified to do business in *[name of Member State]* and has complied with all applicable laws;

9.1.2 It has full power to carry on business and to enter into, legally bind itself by, and perform its obligations under this Agreement;

9.1.3 The signatories to this Agreement on its behalf are duly authorised and competent to execute and deliver this Agreement as being valid and legally binding on it;

9.1.4 The execution, delivery, and performance of this Agreement, subject to the granting and maintenance of the Relevant Consents, does not, and will not, constitute a violation of any legal or contractual constraint validly applied to Developer.

9.1.5 There are, to the best of its knowledge, no existing or threatened legal, contractual, or financial matters of any kind that could reasonably be expected to affect materially either its ability to perform its obligations under this Agreement or the enforceability of this Agreement; and

9.1.6 No information given by it in relation to this Agreement contains any material misstatement of fact or omits to state a fact that would be materially adverse to the enforcement of the rights and remedies of the other Party.

9.2 *Developer Covenants* - Developer hereby covenants as follows:

9.2.1 Unless otherwise stated in this Agreement, the Developer shall design, finance, construct, own, operate and maintain the Project or any part thereof in accordance with this Agreement and its applicable Schedules, and all laws, rules, regulations and ordinances that are enforceable or binding upon Developer;

9.2.2 Developer shall successfully complete the test operations required by Schedule 4 (Commissioning Requirements) for the Project on or before the Required Commercial Operations Date;

9.2.3 In addition to the Technical Specifications of Schedule G, Developer shall operate and maintain the Project in such a manner so as not to have an adverse effect on Utility

voltage level and/or voltage waveform, power factor and frequency or produce adverse levels of voltage flicker and/or voltage harmonics;

9.2.4 In addition to the Technical Specifications of Schedule G, Developer shall at all times cause the Project to be operated and maintained consistent with Prudent Utility Practice;

9.2.5 Developer shall in accordance with the Technical Specifications of Schedule G, install protective relays within the Project having ratings and characteristics approved by Utility. Such approval shall not constitute a Utility any warranty or representation and shall not operate to increase the liability of Utility with respect to third parties. In addition to the the Technical Specifications of Schedule G, Developer shall maintain the settings of all such relays at levels reasonably acceptable to Utility. Developer shall not change the settings of such relays without prior written consent of Utility, which consent shall not be unreasonably withheld or delayed.

9.2.6 Developer shall notify Utility in writing of all apparatus that is from time to time included in Developer's Project installations and that is likely to cause undue disturbance of Utility's system. Such apparatus shall be utilised only with the approval of, and as specified by, Utility, in writing. Such approval shall not constitute a Utility any warranty or representation and shall not operate to increase the liability of Utility with respect to third parties.

9.2.7 Where approval is granted pursuant to Paragraph 9.2.6 above, Developer shall use all reasonable efforts to prevent any apparatus being utilised in such a manner as to cause any undue disturbance of Utility' system. If Utility finds that any such apparatus is being utilised in a manner that causes such disturbance, Developer shall, upon receiving notice of such finding from Utility, immediately cease to so utilise such apparatus until steps have been taken to the reasonable satisfaction of Utility to eliminate such disturbance; alternatively, Developer shall replace such apparatus by other apparatus approved by Utility. In cases of emergency, oral notice will suffice for the purposes of this Paragraph, provided that such oral notice shall be confirmed in writing within 48 hours of being given to Developer.

9.3 *Utility Covenants*

9.3.1 Utility covenants to make the payments for Net Energy Output as required by this Agreement as they become due without setoff against the amounts pursuant to Schedule B for delivered electrical energy.

9.3.2 Where Utility must approve or Utility and Developer jointly must establish specifications for connections of the Project and related apparatus, Utility covenants to act reasonably in so doing, with the objective of coordinating Project and Utility's Grid operations so as to maximize Project Net Energy Output.

10. DEFAULTS AND TERMINATION

10.1 *Time* - Where the Parties or a Party is required to perform any act or to fulfill an obligation under this Agreement within a specified time, and for any reason that Party cannot perform within the time stated, then that Party may request an extension of the time for performance. The non-requesting Party shall give such requests for extensions of time due and reasonable consideration and shall not unreasonably deny a request, but the non-requesting Party may grant such a request on terms and conditions as to future performance.

10.2 *Developer Defaults* - Utility may give a notice of default under this Agreement (a "Utility Notice of Default") upon the occurrence of any of the following events, unless caused by a breach by Utility of this Agreement (each a "Developer Event of Default").

10.2.1 Abandonment of construction of the Project by the Developer after the commencement of Construction, without the written consent of Utility.

10.2.2 Failure of Developer to achieve the requirements for the Commercial Operations Date within 1 calendar year after the Required Commercial Operations Date. Unless, prior to the expiration of such 1-year period, Utility and Developer agree on the length, and terms and conditions of an extension of the Required Commercial Operations Date, at the expiration of the initial 1 year period Utility shall either declare a default or waive its right to declare a default pursuant to this Paragraph. Utility may waive its right to demand payment of the liquidated damages determined in accordance with the liquidated damages provisions of Schedule B (Calculation of Payments).

10.2.3 Willful alteration of or tampering by Developer or its employees or agents with the Interconnection Facilities without the prior written consent of Utility, except in situations where such actions are taken to prevent immediate injury, death, or property damage and the Developer uses its best efforts to provide Utility with advance notice of the need for such actions.

10.2.4 Abandonment of operation of the Project by the Developer after the Commercial Operations Date, without the written consent of Utility.

10.2.5 Failure by Developer to make any payment required to be made by it under this Agreement on the due date for the payment where the aggregate unpaid and past due amounts exceed *[agreed amount]* .

10.2.6 Except when taken for the purpose of merger or reorganization (provided that such merger or reorganization does not affect the ability of the merged or reorganized entity to perform its obligations under this Agreement), the occurrence of any of the following events:

a) passage of a resolution by the shareholders of Developer for the winding up of Developer;

b) admission in writing by Developer of its inability generally to pay its debts as they become due;

c) appointment of a Liquidator in a proceeding for the winding up of Developer after notice to Developer and due hearing; or

d) a court order to wind up Developer; or

10.2.7 Any material breach by Developer of any representation, warranty or covenant in this Agreement.

10.3 *Utility Defaults* - Developer may give a notice of default under this Agreement (a "Developer Notice of Default") upon the occurrence of any of the following events, unless caused by a breach by Developer of this Agreement (each a "Utility Event of Default").

10.3.1 The occurrence of any of the following events, except where done for the purpose of merger or reorganization that does not affect the ability of the merged or reorganized entity, as the case may be, to perform its obligations under this Agreement:

a) passage of a resolution by the shareholders of Utility for the winding up of Utility;

b) admission in writing by Utility of its inability generally to pay its debts as they become due;

c) appointment of a Liquidator in a proceeding for the winding up of Utility, after notice to Utility and due hearing; or

d) a court order winding up Utility;

10.3.2 Willful alteration of or tampering by Utility or its employees or agents with the Project or Interconnection Facilities without the prior written consent of Developer, except in situations where such actions are taken to prevent immediate injury, death, or property damage and Utility uses its best efforts to provide Developer with advance notice of the need for such actions; or

10.3.3 Any material breach by Utility of any representation, warranty or covenant in this Agreement.

10.4 *Notice and Cure* - a Utility Notice of Default or a Developer Notice of Default shall specify in reasonable detail the Developer Event of Default or Utility Event of Default, respectively, giving rise to the Notice of Default. In the case of a default set forth in Paragraphs 10.2.2, 10.2.4, or 10.2.5, the defaulting party shall have 5 working days (*i.e.*, non-holiday weekdays) within which to cure the default. In the case of a default defined in any other sub-Paragraph of Paragraphs 10.2 and 10.3, the defaulting party shall have 30 calendar days to cure the default.

10.5 *Rights and Remedies Upon an Event of Default*

10.5.1 *Developer Default* - If a Developer Event of Default has occurred and the Developer Event of Default has not been cured within the period specified in Paragraph 10.3, Utility, in its sole discretion, may take any or all of the following actions:

a) terminate this Agreement by delivering written notice to the Developer (Utility Termination Notice) or

b) proceed in accordance with Paragraph 14 (Resolution of Disputes) to protect and enforce its rights and to recover any damages to which it may be entitled, including all costs and expenses reasonably incurred in the exercise of its remedy, or

c) at its election, take such steps as are reasonably necessary to cure the default before so proceeding.

10.5.2 *Utility Default.* If a Utility Event of Default has occurred and the Utility Event of Default has not been cured within the period specified in Paragraph 10.3, Developer, in its sole discretion, may take any or all of the following actions:

a) terminate this Agreement by delivering written notice to Utility (Developer Termination Notice) or

b) proceed in accordance with Paragraph 14 (Resolution of Disputes) to protect and enforce its rights and to recover any damages to which it may be entitled, including all costs and expenses reasonably incurred in the exercise of its remedy, or

c) at its election, take such steps as are reasonably necessary to cure the default before so proceeding.

10.5.3 *Nature of Rights on Default* - These rights and remedies shall not be exclusive but, to the extent permitted by law, shall be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise. The Parties may seek to exercise such rights and remedies only in accordance with the procedures set forth in Paragraph 14 (Resolution of Disputes). The Parties may exercise each right and remedy afforded by this agreement or by law from time to time and as often as reasonably deemed expedient by the Party exercising this right. No delay by, or omission of, Developer or Utility to exercise any right or remedy arising upon any event of default of the other Party shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

10.5.4 Notwithstanding the above, the total amount of damages that Developer shall be entitled to for any breach of this Agreement by Utility shall not exceed, in the aggregate, the greater of the actual value of the remaining term of the agreement and the fair market value of the payments for Net Energy Output required over the remaining term of this Agreement.

10.6 *Survival* - notwithstanding anything to the contrary contained in this Agreement, where applicable the rights and obligations set forth in this Paragraph 10 shall survive the termination of this Agreement.

11. FORCE MAJEURE

11.1 *Meaning of Force Majeure* - In this Agreement, "Force Majeure" means any event, circumstances, or combination of events or circumstances beyond the reasonable control of a Party that materially and adversely affects the performance by that Party of its obligations or the enjoyment by that Party of its rights under or pursuant to this Agreement, provided that such material and adverse effect has not occurred due to the failure of Developer or Utility to design, finance, construct, own, operate or maintain the Project, Interconnection Facilities or the Utility's Grid as required by this Agreement and in accordance with Good Utility Practice. Without limiting the generality of the foregoing, and conditioned on performance of the requirements of Paragraph 11.1.3, "Force Majeure" shall expressly include the following categories of events and circumstances, to the extent that the events or circumstances satisfy the definitional requirements.

11.1.1 *Natural Events.* "Force Majeure - Natural" includes, but is not limited to:

a) Acts of Nature;

b) Epidemic or plague;

11.1.2 *Other Events of Force Majeure* - "Force Majeure - Political" includes, but is not limited to:

a) Act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;

b) Strikes, work to rule, or go slows; and

c) Except where Paragraph 11.2 applies, (1) any of the Relevant Consents not being granted or renewed (unless previously revoked for cause)upon application having been duly made, (2) any of the Relevant Consents, having been granted, ceasing to remain in full force and effect (unless revoked for cause), or (3) the attachment to any Relevant Consents, subsequent to its grant, of any terms or conditions preventing performance,

11.1.3 Upon the occurrence of a Force Majeure event or circumstances, the non-performing Party shall, within forty-eight (48) hours, give the other Party written notice describing the particulars of the occurrence. The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. The non-performing Party shall use its best efforts to remedy its inability to perform; and when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall promptly give the other Party written notice to that effect.

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

11.2.1 unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts, or consumables for the Project;

11.2.2 a delay in the performance of any Contractor;

11.2.3 non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment; and

11.2.4 non-performance caused by, or connected with, the non-performing Party's (a) negligent or intentional acts, errors or omissions, (b) failure to comply with applicable laws, or (c) breach of, or default under, this Agreement.

11.3 *Consequences of Force Majeure*

11.3.1 Neither Party shall be deemed in breach of this Agreement because of any failure or delay in complying with its obligations pursuant to this Agreement due solely to Force Majeure. The periods allowed for performance by the Parties of their obligations (other than that specified in Paragraph 10.4 (Notice and Cure) shall be extended on a day-for-

day basis, provided that (1) no relief shall be granted to the Party claiming Force Majeure pursuant to this Paragraph 11 to the extent that such failure or delay would have occurred even had such Force Majeure not occurred, and (2) the Party not claiming Force Majeure may immediately terminate this Agreement without further obligation, if Force Majeure delays a Party's performance for a period greater than fifteen (15) months. Other than for breaches of this Agreement by the Party not claiming Force Majeure, and without prejudice to the right of the Party claiming Force Majeure to indemnification pursuant to Paragraph 12, the Party not claiming shall not bear any liability for any loss or expense suffered by the Party claiming Force Majeure as a result of a Force Majeure.

11.3.2 During the pendency of an event of Force Majeure Developer shall not be entitled to receive Energy Payment from Utility except for energy already received by Utility prior to the Event. If Force Majeure affects only part of the Project, then Developer shall be entitled to receive Energy Payment for electrical energy actually delivered to Utility.

12. INDEMNIFICATION AND LIABILITY

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

12.1.1 During the design, construction, ownership, operation or maintenance of the Project, and Damages resulted from any negligent act or omission of Developer its servants or agents, and through no fault of Utility its servants or agents;

12.1.2 In connection with, arising out of, or resulting from, any breach of warranty, material misrepresentation by Developer, or non-performance of any term, condition, covenant or obligation to be performed by Developer under this Agreement; and

12.1.3 In connection with any claim, proceeding or action brought against Utility under any applicable national or local environmental laws or regulations, and Damages resulted from Developer's ownership of the site or operation of the Project;

12.1.4 Developer's indemnities, however, shall not extend to any loss, damage, death, injury, liability, costs or expenses (or any claim in respect thereof) to the extent that they were caused by any act or omission of Utility, its servants or agents, or the failure of Utility, its servants or agents, to take reasonable steps in mitigation thereof.

12.2 *Indemnity by Utility* - In addition to Utility' obligations and Developer's remedies provided elsewhere in this Agreement, Utility indemnify Developer for Damages suffered by Developer, where Developer suffered Damages:

12.2.1 During the design, financing, construction, ownership, operation or maintenance of the Project and its Interconnection Facilities and Damages resulted from any negligent act or omission of Utility its servants or agents and through no fault of Developer, its servants or agents; and

12.2.2 In connection with, arising out of, or resulting from, any breach of warranty, any material misrepresentation by Utility or non-performance of any term, condition, covenant or obligation to be performed by Utility under this Agreement.

Utility' indemnities, however, shall not extend to any loss, damage, death, injury, liability, cost or expense (or any claim in respect thereof) to the extent that it was caused by any act or omission of the Developer or the failure of the Developer to take reasonable steps in mitigation thereof.

12.3 *Notice of Proceedings* - Each Party shall promptly notify the other Party as soon as reasonably practicable after the relevant party becomes aware of any claim or proceeding with respect to which, but for the provisions of Paragraph 12.4, it is entitled to be indemnified under this Paragraph.

12.4 *Basket Limitation* - Neither Party shall be entitled to make any claim under this Paragraph until such time as all such claims by the Party exceed *[agreed amount]* in the aggregate, or until such claim, if not made, would be barred by the statute of limitation, at which time all such claims of that party may be made. When aggregated claims in excess of *[agreed amount]* have been made, the same rule shall apply with respect to future claims.

12.5 *Obligation to Defend* - Each Party on reasonable grounds shall have the right, but not the obligation, to contest, defend and litigate (and to retain legal advisers of its choice for that purpose) any claim, action, suit or proceeding by any third party brought against it, with respect to which the Party is entitled to be indemnified pursuant to this Paragraph 12, with the Party's reasonable costs and expenses of such action subject to said indemnity. The indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through legal advisers of its choice, if it (a) gives notice of its intention to do so to the Party entitled to indemnification, b) acknowledges in writing its obligation to indemnify that Party to the full extent provided by this Paragraph 12, and (c) reimburses that Party for the reasonable costs and expenses previously incurred by it prior to the assumption of such defence by the indemnifying Party. Neither Party shall settle or compromise any claim, action, suit or proceeding in respect of which it is entitled to be indemnified by the other Party without the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld.

13. INSURANCE

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

13.1.1 *All Risks Marine Cargo Insurance* in an amount sufficient to cover the replacement cost of all plant and equipment shipped to and intended to become part of the Project on a warehouse to warehouse basis.

13.1.2 *All Risks (Property Damage) Operational Insurance* in an amount sufficient to cover the replacement cost of the complex, including construction equipment and transit coverage for plant purchased within Jamaica and not subject to the insurance described in Paragraph 13.1.1 above and subject to deductibles of no more than three percent (3%) of the coverage amount in the case of wind, flood and earthquake and *[agreed amount]* of the coverage amount in the case of all other perils;

13.1.3 *Excess Umbrella Liability Insurance* with a single limit of at least *[agreed amount]* per occurrence.

13.1.4 *Comprehensive or Commercial General Liability Insurance* with bodily injury and property damage limits of at least One Million United States Dollars *[agreed amount]* per occurrence, and in the aggregate, and subject to deductibles of no more than *[agreed amount]*.

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

13.1.5 *[insert desired or negotiated coverages]*

13.2 *Endorsements* - Developer shall cause its insurers to amend such of its insurance policies as are applicable with the endorsement terms set forth immediately below:

13.2.1 Utility as an additional insured under the policies;

13.2.2 Insurance is primary with respect to the interest of Utility and any other insurance maintained by Utility is excess and not contributory;

13.2.3 The following Cross Liability Paragraph is made a part of the policy:
In the event of claims being made by reason of (a) personal and or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (b) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance".

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

13.3 *Use of Proceeds of All Risks/Operational Insurance* - The proceeds of any All Risks insurance obtained pursuant to Paragraphs 13.1.1 and 13.1.2 shall, be applied to the repair of the Project.

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

13.5 *Utility Option to Purchase* - If Developer fails to obtain or maintain the policies of insurance as required in Paragraph 13.1, Utility may obtain equivalent policies of insurance. Developer shall reimburse Utility for the cost of such policies within 30 days after notification by Utility and interest shall accrue at the Default Rate if Developer fails to make payment within such 30 days. Failure of Utility to obtain the insurance coverage required by this Paragraph 13 shall in no way relieve or limit Developer's obligations and liabilities under other provisions of this Agreement, provided that Developer's failure to purchase insurance shall not constitute a default under this Agreement if Utility purchases insurance pursuant to this Paragraph.

14. RESOLUTION OF DISPUTES

14.1 *Mutual Discussions* - If any dispute or difference of any kind whatsoever (a "Dispute") arises between the Parties in connection with, or arising out of, this Agreement, the Parties within 30 days shall attempt to settle such Dispute in the first instance by mutual discussions between Developer and Utility.

14.2 *Arbitration*

14.2.1 If the Dispute cannot be settled within 30 days by mutual discussions, then the Dispute shall be finally settled under the provisions of this Paragraph 14.2.

14.2.2 Subject as hereinafter provided, any Dispute arising out of or in connection with, this Agreement and not settled by Paragraph 14.1 may (regardless of the nature of the Dispute) be submitted by either Party to arbitration and finally settled by reference to arbitrator(s) to be agreed within seven (7) days of service of notice of such dispute, difference or question by the one Party on the other; failing which agreement the

arbitrator(s) shall be appointed at the request of any of the Parties by the *[Chairman of an agreed institution that deals with arbitration matters, e.g., Law Society in the Member State]* and such arbitration shall be conducted in accordance with the latest revision of the Arbitration Act, *[if Member State has such an Act in the statutes]* or according to the Rules of Conciliation and Arbitration of the International Chamber of Commerce as the parties may mutually agree;

14.3 *Continued Performance* - During the pendency of any arbitration (a) Developer shall continue to perform its obligations under this Agreement to, among other things, provide Net Energy Output; (b) Utility shall continue to pay all amounts when due, in accordance with Paragraph 4 (Currency, Payments and Billing); and (c) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute.

15. NOTICES

15.1 *Procedure for Giving Notice* - All notices or other communications (together "notices") to be given or made hereunder (including, but not limited to, account information for payments) shall be in writing, shall be addressed for the attention of the person indicated in Paragraph 15.2 below and shall either be delivered personally or sent by prepaid post (with receipt acknowledgment required) or by telex or by fax. Notices given by telex or fax shall be confirmed by a written copy of the notice delivered or sent as prescribed in this Paragraph. The failure to so confirm shall not vitiate actual notice.

15.2 *Addresses for Notices* - The addresses for service of Parties and their respective telex and fax number shall be:

1. **For Utility:**
   Attention:
   Address:
   Telex:
   Fax No.:
   Copied to:

2. **For Developer:**
   Attention:
   Address:
   Telex:
   Fax No.:
   Copied to:

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

15.2 *Effectiveness of Notice* - Notices under this Agreement shall be effective only upon actual delivery or receipt thereof.

16. MISCELLANEOUS PROVISIONS

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

16.2 *Entire Agreement* - This Agreement and its accompanying Schedules together represent the entire understanding between the Parties with respect to the subject

matter of this Agreement and supersede any or all previous agreements or arrangements (whether oral or written) between the Parties with respect to the Project.

16.3 *Waivers*

16.3.1 *Limited Effect* - No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall: (a) operate or be construed as a waiver of any other or further default whether of a like or different character; or (b) be effective unless in writing duly executed by an authorized representative of the non-defaulting Party.

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

16.4 *Confidentiality*

16.4.1 *Treatment of Confidential Information.*

a) Each Party shall hold in confidence all documents and other information, whether technical or commercial, relating to the design, financing, construction, ownership, operation or maintenance of the Project supplied to it by or on behalf of the other Party that is of a confidential nature and is designated as such. The Party receiving such documents or information shall not publish or otherwise disclose them or use them for its own purposes (otherwise than as may be required by the Party, its professional advisers, potential lenders or investors to perform its obligations under this Agreement).

b) The provisions of Paragraph 16.4.1(a) above shall not apply to any information:

- that is or becomes available to the public other than by breach of this agreement;
- that is in or comes into the possession of the receiving Party prior to the aforesaid publication or disclosure by the other Party and was or is not obtained under any obligation of confidentiality;
- that was or is obtained from a third Party who is free to divulge the same and was or is not obtained under any obligation of confidentiality; or
- that is required by law or appropriate regulatory authorities to be disclosed, provided that the Party supplying the information is notified of any such requirement at least 5 business days prior to such disclosure and the disclosure is limited to the maximum extent possible.

16.4.2 *Similar Provisions* - *For* the avoidance of doubt, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement or other referenced agreements in any agreements prepared and issued in connection with other projects.

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

16.6 *No Liability for Review* - No review or approval by a Party of any agreement, document, instrument, drawing, specification or design proposed by the other Party shall relieve the

proposing Party from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification or design or from the failure to comply with applicable laws with respect thereto, nor shall a Party be liable to the other Party or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification or design of the other Party.

16.7 *No Third Party Beneficiaries* - This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, any liability to, or any right of suit or action in, any person not a Party to this Agreement.

16.8 *Affirmation* - Developer declares and affirms that it has not paid nor has it undertaken to pay any commission, bribe, pay-off or kick-back and that it has not in any other way or manner paid any sums, whether in Jamaican currency or foreign currency and whether in Jamaica or abroad, or in any other manner given or offered to give any gifts and presents in Jamaica or abroad, to any person or Developer and, generally, has not made any payment or accepted any gift or in any way whatsoever acted in breach of any obligation, prohibition or requirement of the Corruption Prevention Act, to procure this Agreement. Developer undertakes not to engage in any of the said or similar acts during the term of, and relative to, this Agreement.

Utility declares and affirms that it has not paid nor has it undertaken to pay any commission, bribe, pay-off or kick-back and that it has not in any other way or manner paid any sums, whether in Jamaican currency or foreign currency and whether in Jamaica or abroad, or in any other manner given or offered to give any gifts and presents in Jamaica or abroad, to any person or Developer and generally, has not made any payment or accepted any gift or in any way whatsoever acted in breach of any obligation, prohibition or requirement of the Corruption Prevention Act, to procure this Agreement.

Utility undertakes not to engage in any of the said or similar acts during the term of, and relative to, this Agreement.

16.9 *Governing Law* - The rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to the laws of *[name of Member State]*.

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

Witness)

Signed for and on behalf of)
)

[*Insert Legal Name of Developer*]

Witness)
Signed for and on behalf of)
)

[Insert Legal Name of Utility]

SCHEDULE A
CALCULATION OF PAYMENTS

This schedule defines the calculation of the specified payments and other monetary values that may be required by the provisions of this Agreement. In particular, it defines: the calculation of the payments by Utility to Developer for Net Energy Output of the Project, including adjustments to the base price during the term of this Agreement; and the calculation of liquidated damages payments. This Schedule A is divided into three sections:

A1: Base Prices and Adjustments
A2: Liquidated Damages Calculations
A3: Currency Risk and Other Conditions

The table headings indicate the particular payments and periods to which the calculations and adjustments apply.

A1. Base Price and Adjustments

B1.1 Payments for Net Energy Output. The base price per kilowatt-hour for Net Energy Output of the Project shall be as shown in the following table. Adjustments to the base price for Utility's payments for Net Energy Output, if any, shall be made when and on the basis shown in the following table. The base unit price, as adjusted (the "Energy Price"), shall be multiplied by the Net Energy Output amount to determine the payments due Developer from Utility for Net Energy Output of the Project.

Table A1.1.1 Payments for Net Energy Output
For Years 1 Through X (Illustrative Values)

COMPONENT	BASE PRICE (?/kWH)	ADJUSTMENT BASIS	ADJUSTMENT FREQUENCY	ADJUSTMENT BASE MONTH
Base Price (?/kWh)	*7 cents?*			
Base O&M Charge (BOMC)	*$3,000 annum*	*per 5% per annum*		
Fixed Energy Charge (FEC)				
Capacity				

Table A1.1.2 Payments for Net Energy Output
For Remainder of Initial Term (Illustrative Values)

COMPONENT	BASE PRICE	ADJUSTMENT BASIS	ADJUSTMENT FREQUENCY	ADJUSTMENT BASE MONTH
Base Price (?/kWh)	*9.5 cents?*			
Base O&M Charge (BOMC)	*$3,000 annum*	*per 5% per annum*		
Fixed Energy Charge (FEC)				
Capacity				

A2. Liquidated Damages Calculations

B2.1 *Commercial Operation Delays* - Liquidated damages for each calendar month are determined as follows:

B2.1.1 Liquidated damages for any failure to meet the Required Commercial Operations Date shall be payable *[agreed currency]* and shall be *[Insert agreed daily liquidated damages amount]* for each day or part thereof by which the Commercial Operations Date is delayed beyond the Required Commercial Operations Date, for the first 45 days after the Required Commercial Operations Date. For delays in excess of 45 days, liquidated damages shall be *[Insert agreed daily liquidated damages amount]* plus *[Insert adder]* for each day or part thereof by which the Commercial Operations Date is delayed beyond 45 days after the Required Commercial Operations Date. The cumulative amount of liquidated damages for failure to meet the Required Operations Date shall not exceed *[Insert maximum liquidated damages amount]* .

B2.1.2 If portions of the Project have successfully completed the required test operations prescribed in Schedule 4 (Commissioning Requirements) and partial generation is available, then the liquidated damages payments shall be reduced by the percentage of the total number of generating units in the Project that are have successfully completed the required test operations prescribed in Schedule 4 (Commissioning Requirements).

A3. Currency Risk and Other Conditions

A3.1 Currency Risk Adjustment

[Insert provision detailing the negotiated allocation of the risks of changes in the relative values of the currencies used by the Parties in the regular course of business or by suppliers of significant Project inputs] .

A3.2 Discontinuation of Index. If any index used in this Schedule is no longer published or otherwise becomes unavailable, either Party may serve notice on the other Party and the Parties shall use their best efforts to agree upon a new index within 30 days of the notice being served. No adjustment shall be made until the new index is agreed upon, and once agreement is reached adjustments shall be made back to the time the previous index became unavailable and the amounts owing to either party included on the next statement due for payment.

SCHEDULE B

TESTING AND COMMISSIONING

This schedule is a technical document that necessarily varies from project to project. It must take account not only of the characteristics of the renewable energy technology being utilised, but also the capabilities and limitations of the project's design and equipment. The specific testing steps, and the test criteria must be negotiated by the Developer and Utility with the specific design, equipment, and operational characteristics of the Project and the Utility's Grid taken into account.

Developer shall, at its own expense, carry out the testing and commissioning of the Project and the connecting transmission infrastructure in accordance with the provisions of this Schedule B, the specifications set out in Schedule D (Technical Specifications), and Prudent Utility Practice. Utility shall be given 5 days prior written notice of any testing or commissioning procedure and Utility shall be entitled to have representatives present for purposes of observing any such procedures. If Utility representatives are unable to attend for any reason, the testing may proceed without them.

B1. TESTS PRIOR TO INITIAL COMMERCIAL OPERATION
(details to be agreed)

B2. TESTING & GUARANTEES
(details to be agreed)

B3. TESTING OF INTERCONNECTION FACILITIES
(details to be agreed)

SCHEDULE C

INTERCONNECTION FACILITIES

This schedule is a technical document that necessarily varies from project to project and from utility to utility. The technical specifications that would be set out in this document must take account of the characteristics of the specific project being connected to the grid and of the technical and operating characteristics of the connecting utility's grid.

The specifications set out below are merely illustrative. They are provided to illustrate the nature and scope of matters that would be covered in the technical specifications.

C1. Developer's Interconnection Facilities

C1.1. The Interconnection Point shall be the Developer side terminals of the 69 kV disconnect switch located on the Transformer side of the 69 kV breaker at the Interconnection Facility at the wind farm site.

C1.2 Developer will design, procure and construct the Interconnection Facilities including all equipment foundations, steel work, manual disconnect switch, grounding system, current and potential transformers in accordance with general requirements for 69 kV substations as approved by Utility.

C1.3 All overhead lines, towers and foundations and other facilities required between the Interconnection Point and Utility's Sample Name Substation shall be designed, procured, constructed and commissioned by Developer at its expense. Each Party shall own, operate and maintain all the facilities on its side of the Interconnection Point.

C1.4 Utility will, at Developer's expense, use its best endeavours to assist the Developer in obtaining all permits, permissions and way leaves necessary in a timely manner (and at a reasonable cost) for the construction of the 69kV transmission line and all associated switchgear and protective devices, such assistance not to be unreasonably withheld.

C2. Installation of Facilities

C2.1. Developer shall be responsible for installing, at its own expense, all auxiliary and interconnecting equipment on Developer's side of the Interconnection Point, including but not limited to, the equipment required for the Interconnection Facilities and transmission line connections to the Utility's Sample Name Substation. These shall include but not be limited to: Power transformer; current & potential transformers; Circuit breaker (to be resolved with completion of design); disconnect switches and grounding system, Busbars and/or cable bus and/or interconnecting wiring, all as necessary.

C2 .1.1Power Line and Shield Wires Maximum tension that shall be applied to Utility structure shall be 1,400 kg/phase and 350 kg/shield wire.

C2.1.2. Operation & Maintenance. Developer shall, at its own expense, operate and maintain, interconnecting equipment (as described in 2.1) on the Developer's side of the interconnect point. Developer may not modify or replace the interconnection equipment described in C2.1 above without the prior written consent of Utility.

C3. Interconnection Protection

C3 .1 Developer shall coordinate its protection scheme and protective relay settings with Utility, and the protective relay settings shall be subject to Utility approval. The protection system shall include the following items, all to be provided by Developer:

C3.1.1 Pilot wire differential relay, GEC AIsthom type MBCI or approved equal, operating over pilot wires. Pilot wire supervisory shall provide tripping of the 69 kV breakers from the Developer's switchyard relaying;

C3.1.2 Three phase and ground over-current relay, GEC AIsthom type KCGG 140 or approved equal;
C3.1.3 400:5 ampere current transformers for metering and multi-ratio current transformers for relaying shall be installed in the high voltage bushings of the 69kV transformer.
C3.1.4 DC Intertrip receive relays (2), operating over cable circuits and responding to trip signals from the switchyard relaying.
C3.1.5 Over/under voltage relay; and
C3.1.6 Over/under frequency relay.

Utility' System Protection and Control Department shall approve the final design of Developer's interconnection protection scheme for the Project and the transmission facilities connecting the Project to Utility's Sample Name Substation.

SCHEDULE D

METERING

D1. **Metering Equipment and Accuracies**

D1.1 The Metering System shall be owned, operated and maintained by Utility. The Developer shall design, finance, construct and install the Metering System and shall design, finance, construct, install, own, operate and maintain the Backup Metering System.

D1.2 The Metering System and the Backup Metering System (each, a "meter" and together, the "meters") shall each meet the following specifications at all times during the term of this Agreement.

D1.2.1 The Metering System owned by Utility shall be constructed to accumulate the outputs and/or inputs as measured at the *[agreed measurement point]* of the Interconnection Facility connecting the Project to the Utility's Grid.

D1.2.2 Each meter shall each consist of its own current and potential transformers, the necessary metering and accumulating devices and the related interconnecting wiring.

a) Instrument transformers shall conform to ANSI Standards C. 12.10 and C.55. 14 Class 0.3 and shall have sufficient capacity to supply the burden produced by the wiring and metering equipment.

b) The current transformers' secondary winding used for metering purposes shall supply only the metering equipment and its associated wiring. Notwithstanding the foregoing, each current transformer may have other secondary windings that may be used for purposes other than metering.

c) The potential transformers' secondary winding output may be used for metering and other purposes; provided that the total connected burden does not exceed one half of the rated burden capacity of such potential transformer.

D1.3. All metering and accumulating equipment shall have sufficient accuracy so that any error resulting from such equipment shall not exceed the lesser of + 0.5% of full-scale rating or the equipment manufacturer's stated maximum tolerable error level (the "Allowable Error").

D1.4. Both meters shall be constructed with a capability to be read remotely through a communication line. Both Parties shall have the right to read either meter. Both meters shall have provisions to record the accumulated kilowatt-hours and other parameters as indicated in this Schedule 5 for each demand interval with identification of time and date.

D1.5. All instrument transformers, meters and accumulating devices shall be tested by the manufacturers with equipment calibrated against primary standards kept in the country of origin of the equipment. Each party shall provide copies of the certified test results and applicable correction factors to the other Party prior to installation of such equipment.

D2. Sealing Field Testing and Inspection

D2.1. Both meters and associated instrument transformer boxes shall be sealed by the individual owners at the respective meter. For wiring used only for metering purposes, solid metallic conduit runs shall be used to enclose the wiring connecting the instrument transformers and related accumulating and metering equipment. Any boxes or other devices used to join two or more sections of said conduit shall be securely covered, fastened and sealed with seals approved by Utility. If the wiring used for metering must

pass through a panel, panel-board or switchgear structure, it shall be fastened together and cabled as a unit separate and apart from the rest of the wiring.

D2.2. At its own expense, Developer shall provide any terminal blocks that may be used along the length of the metering conductors within a panel, panelboard or switchgear with covers or strips that limit access to the respective connections, and said covers or strips shall be affixed with a seal approved by Utility. When boxes or enclosures/are used to contain metering and accumulating equipment and their associated wiring, said boxes or enclosures shall be sealed with pre-numbered seals approved by Utility.

D2.3. Seals shall not be broken by anyone except Utility personnel when either meter is to be inspected, tested or adjusted. Utility shall notify Developer in advance of such inspection, testing or adjustment, and Developer shall be allowed to have a representative present.

D2.4. Before the date that Developer identifies to Utility as the date the Project will be commissioned pursuant to Schedule 3 (Testing and Commissioning), as such date may be revised from time to time based on the scheduled construction program, Utility shall test the Metering System for correct wiring and accuracy, using equipment whose accuracy is equal to or better than that of the individual meters. Individual meter components found to be inaccurate shall be returned by the individual owner to the manufacturers for repair or replacement.

D2.5. Utility shall test both meters within 10 days after (a) the detection of a difference larger than the Allowable Error in the readings of the meters, (b) the repair of all or part of a meter caused by the failure of one or more parts to operate in accordance with the specifications; and (c) each anniversary of the Commercial Operations Date. If any errors in the readings of the meters are discovered by such testing, the party owing that meter shall repair, recalibrate or replace the meter and shall give the other Party reasonable advance notice so that the Party receiving notice may have a representative present during any such corrective activity.

D3. Measurement Of Net Energy Output

D3.1. If the Metering System is found to be inaccurate by more than the Allowable Error or to otherwise have functioned improperly during the previous Month, then the correct amount of Net Energy Output for the actual period during which inaccurate measurements, if any, were made shall be determined as follows:

D3.1.1. First, the reading of the Backup Metering System shall be utilized to calculate the correct amount of dependable capacity and Net Energy Output, unless a test of such Backup Metering System, as defined in Paragraph 7.1, which may be required by either Party, reveals that the Backup Metering System is inaccurate by more than the Allowable Error or is otherwise functioning improperly.

D3.1.2. If the Backup Metering System is not within the acceptable limits of accuracy or is otherwise functioning improperly, then Developer and Utility shall jointly prepare an estimate of the correct reading on the basis of all available information and such guidelines as may have been agreed to between Developer and Utility at the time the reading is taken.

D3.1.3. If Utility and Developer fail to agree upon an estimate for the correct reading, then the matter may be referred by either Party for determination by arbitration pursuant to Paragraph 14 (Resolution of Disputes) of this Agreement.

D3.2. Developer shall provide and install appropriate equipment and shall make a continuous recording on appropriate magnetic media or equivalent of the Net Energy Output of the Project prior to the Commercial Operations Date and thereafter. A copy of this recording shall be provided to Developer each time the meters are read.

D4. Parameters and Procedures For Meter Reading

D4.1. The following parameters shall be read and recorded each month for each demand interval.
- D4.1.1. Active energy (MWh) OUT
- D4.1.2. Active energy (MWh) IN
- D4.1.3. Reactive energy (MVARh) OUT
- D4.1.4. Reactive energy (MVARh) IN
- D4.1.5. Active power demand (MW) OUT
- D4.1.6. Active power demand (MW) IN
- D4.1.5. Reactive power demand (MVAR) OUT
- D4.1.8. Reactive power demand (MVAR) IN

D4.2. The demand interval shall be thirty (30) minutes and shall be set to start at the beginning of the hour. Demands shall be calculated by averaging the respective parameters over the stated demand interval.

D4.3. Utility shall read the appropriate meter and the demand register shall be reset on the last day of each month at a time to be agreed by the Operating Committee established pursuant to Paragraph 8.6 (Operating Personnel).

D4.4. As a backup to the manual records of the demands actually experienced throughout the month, both meters shall be equipped with a memory module of sufficient size which will record the WH and MVARH produced during each demand interval.

SCHEDULE E

TECHNICAL SPECIFICATIONS

This schedule is a technical document that necessarily varies from project to project. It must take account not only of the characteristics of the renewable energy technology being utilised, but also the capabilities and limitations of the project's design and equipment. Specific equipment specifications (and associated electrical characteristics) and applicable performance standards for that equipment must be agreed upon by Developer and Utility with the design, equipment, and operational characteristics of the Project taken into account.
The specifications set out below are merely illustrative. They are provided to illustrate the nature and scope of matters that would be covered in the technical specifications.

E1. Description Of Supply

E1.1. The Project shall be nominally 20 MW plus or minus five percent at 69 kV, 50 Hz from *[name and location of project]* and shall be comprised of the following equipment:

E1.1.1. One (1) main 25 MVA, OA step-up transformer, wye 13.8/69 kV delta vector grouping, with provisions for grounding. Specification to meet standard ANSI BIL rating, with on-load tap changing capability of plus 5 to minus 10 percent. The on-load tap changer should be 1.25% for each step.

E1.1.2. If used, two (2) 69 kV SF6 interrupting device (circuit breaker). The circuit breaker shall be rated for 52 kV, 3 cycle interrupt time, minimum 30 kA interrupting rating 1200 A continuous current rating, 350 kV BIL.

E1.1.3. Metering equipment to include PT's, CT's, stands, and KWH/KVAR, KVA/KW meter type as required by Utility.

E1.1.4. Two (2) group-operated line disconnect switches with grounding switch accessory rated 1200 A with insulators and manual operator.

E1.1.5. Two (2) structures to use a cross bus to tie to Utility' Grid adjacent 69 kV line.

E1.1.6 One (1) set of bushing with required stands for perpendicular transition to an overhead strain bus. Aluminum cable bus may be used.

E1.1.5. All required material to include stranded bare aluminum or AAAC, aluminum bus (materials for the bus may be stranded bare aluminum), post and strain insulators, connectors, terminations, above and underground copper conductors for grounding, raceways and cabling.

E1.1.8. CT's and PT's for line protective relaying with all required steel stands. Line protective relaying includes pilot line differential as primary protection, phase ground overcurrent for back-up protection or as required by Utility. Additional relaying, such as voltage and frequency, shall be included.

E1.1.9 Installation and coordination with Utility to implement the interconnection.

E1.1.10 All civil works shall be designed to meet all local and governing codes.

E1.1.10 Fencing to surround the switchyard to protect bystanders. The fence will have all applicable grounding to meet local and governing codes.

E1.1.12. Substation grounding grid.

E1.1.13. One (1) set of station class. Type MOV, lightening arresters.

E1.2 All the equipment in the Project shall be constructed of new material and shall be designed to last at least twenty (20) years.

E2. Station Capacity

The Project shall be designed to deliver up to 20 MW plus or minus five percent at the Interconnection Point.

E3. Power Supply Characteristics

F3.1 Developer shall furnish the Project design details to Utility when the design is complete.

F3.2 The circuit breaker (if used) and transformer shall be provided with no load break isolation switches with grounding provisions.

F3.3 Developer shall provide 125V DC batteries, battery chargers and distribution panels.

E4. Fault Levels

F4.1 The electrical system at the Project substation shall be designed to meet a fault level of 555 MVA (4.83 kA) on the 69 kV system for both three phase and single line to ground conditions.

E5. Reliability

A high standard of reliability and availability is required from the Project and the individual components.

E6. *Codes* And *Standards*

All individual components of the Project shall be constructed, installed and tested in accordance with the current edition at the time of construction of the following codes and standards (or their international equivalents) and Prudent Utility Practice.

[applicable codes and standards used in the member state – preferable standard internationally recognized codes and standards]

E7. Operation Requirements

F7.1 The Project shall be designed so that construction, operation and maintenance should be possible without adversely affecting the operations of Utility.

F7.2 The Project shall be capable of operating in parallel with the Utility's Grid.

E8. Design Limits

E8.1 Developer shall have equipment that will allow it to supply its reactive power (MVARS) requirements and simultaneously supply capacity and energy to the Utility's Grid with a power factor of 0.9 lagging.

E8.2 The supply shall be able to operate at frequencies between 48 and 51 hertz, provided that Developer has the right to separate from the Utility's Grid, without any liability to Utility, if a) Developer is required to furnish power to the Utility's Grid operating at 48 hertz for one second, or b) When Developer is receiving power from Utility, the frequency falls to 49 hertz.

E8.3 The voltage at the Interconnection Point shall be maintained at 69 kV, +/- 5%

E8.4 Developer shall advise Utility of any operating constraints and limits, which may from time to time, apply to the Project.

E9. Environmental Requirements

[The design, construction and operation of the Project shall comply with all applicable national and local laws and regulations of the relevant Government authorities. Developer shall provide proof of compliance with these laws and regulations.]

E10. Security

[Developer shall, at its own expense, equip the Project with appropriate lighting and security systems.]

E11. Safety

Developer shall comply with all ordinances and regulations regarding safety on the Project including, but not limited to, Prudent Utility Practice. The Parties agree that Utility personnel entering the plant will adhere to all safety, drug and alcohol constraints that the Developer requires. Developer will provide safety training and guidelines for Utility personnel with respect to this requirement.

SCHEDULE F
OPERATING COMMITTEE

F1. *Appointment of Committee* - within 7 days of the date of this Agreement, the Parties shall form an Operating Committee for day-to-day management of the Interchange Agreement. Each Party shall appoint *[even number] representatives* and an alternate for the Operating Committee. Within 14 days of the date of this Agreement, each Party shall provide to the other Party notice of the appointment of its Operating Committee representatives and their particulars. The first meeting of the committee shall be convened no later than 2 weeks after the final appointment. The committee shall maintain and adopt an appropriate record of its deliberations, which record shall in the event of a dispute constitute conclusive evidence of the decisions taken in respect of the subject matter therein.

F2. *Responsibilities* - the Operating Committee shall be responsible for (a) coordinating the construction schedules of each Parties' portion of the Project, the Interconnection Facilities and any required modifications to the Utility Grid, and (b) ongoing coordination of areas of mutual interest and concern involving the Project and the Interconnection Facilities. Without limiting the generality of the foregoing duties, the Committee shall:

F2.1 Coordinate the respective programs of the Parties for the construction, commissioning and testing of facilities and equipment, and the respective commissioning procedures;

F2.2 Develop steps to be taken on the occurrence of any event of Force Majeure, or the shutdown or reduction in capacity for any other reason of the Project or the Interconnection Facilities;

F2.3 Coordinate the scheduling of maintenance affecting the operations of the Project;

F2.4 Coordination of changes in either the Project or the Interconnection Facilities to effect the operational requirements of Utility's control of Utility's Grid;

F2.5 Develop operating procedures, including plans for operating the Project during anticipated types of Emergencies (Paragraph 8.4).

F2.6 Address safety matters affecting the Parties, their contractors and their respective employees as related to the Project and the Interconnection between the Project and the Utility Grid;

F2.7 Recommend to the Parties changes regarding the responsibilities of the Operating Committee.

F3. *Procedures* - the Operating Committee shall only act by unanimous agreement. The Committee shall develop and implement written policies regarding the frequency of meetings and minutes of meetings. The Operating Committee shall not have authority to modify or alter the rights and obligations of the Parties under this Agreement.

F4. *Reporting Relationships* - The Operating Committee shall report their activities and recommendations to the Parties or others designated by the Parties.