



FAIR TRADING COMMISSION

CONSULTATION PAPER

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DOCUMENT TITLE: POWER PURCHASE AGREEMENT APPLICABLE TO THE FEED IN TARIFF FOR SOLAR PV: CAPACITIES ABOVE 1MW AND UP TO 10MW

ANTECEDENT DOCUMENTS

Document Number	Description	Issue Date
FTC/URD/CONFIT -2019-03	Consultation Paper on Feed-in-Tariffs for Renewable Energy Sources	29 May, 2019
FTC/UR/DECFIT/2019-04	Decision on Feed in Tariffs for Renewable Energy Technologies up to and Including 1MW.	24 September, 2019
FTCUR/DECFIT/2020-01	Decision on Feed-in-Tariffs for Renewable Energy Technologies above 1 MW and up to 10 MW	30 September, 2020

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The Consultation Process

1. The Fair Trading Commission (the “Commission”) is charged under the Fair Trading Commission Act, CAP 326B of the Laws of Barbados (the “FTCA”) with the duty to consult with interested persons when it is discharging certain functions pursuant to the legislation which it administers. Section 4 (4) of the FTCA states:

“The Commission shall, in performing its functions under subsection (3) (a), (b), (d) and (f), consult with the service providers, representatives of consumer interest groups and other parties that have an interest in the matter before it.”

2. For reference, the Commission’s functions under subsection (3) (a), (b), (d) and (f) of section 4 of the FTCA are to, respectively:
 - establish principles for arriving at the rates to be charged by service providers;
 - set the maximum rates to be charged by service providers;
 - determine the standards of service applicable to service providers; and
 - carry out periodic reviews of the rates and principles for setting rates and standards of service supplied by service providers.
3. The Commission’s abovementioned duty to consult, in accordance with section 4 of the FTCA, may require the Commission to issue a consultative document, which is intended to:
 - a) bring to public attention important issues relating to utility regulation in order to promote public understanding and debate;
 - b) put forward options and/or proposals to be adopted in resolving issues identified, in the best interests of the consumer, the service provider and the society at large; and
 - c) invite comments from interested parties, such as consumers, service providers, businesses, professionals and academics.
4. The views and analyses set out by the Commission in a consultative document are therefore intended to invite comments from interested parties, for the Commission’s consideration. Such comments may persuade the Commission to revise its position on a particular issue.

Purpose of the FIT Agreement Consultation Paper

5. The Commission is seeking the input of stakeholders and interested parties on a proposed power purchase agreement (often referred to in practice as a PPA) to be used by independent power producers (“IPPs”) who participate in the Commission’s Feed-in-Tariff (“FIT”) programme for projects sized above 1MW and up to 10MW. Throughout this document, and thereafter, this particular PPA shall be referred to as the “proposed FIT PPA”. The Commission is therefore issuing this Consultation Paper in respect of the proposed FIT PPA.

Structure of the Consultation Paper

6. The Consultation Paper consists of four (4) sections:
 - Section 1 discusses the importance of the proposed FIT PPA and also provides an update on the domestic RE sector;
 - Section 2 presents the legal framework and functions of the Commission relating to the FIT programme;
 - Section 3 summarises the content of the proposed FIT PPA; and
 - Section 4 presents a list of consultation questions.

Responding to the Consultation Paper

7. The Commission invites and encourages written responses, in the form of views or comments on the matters discussed in this Consultation Paper, from all interested parties including the Barbados Light & Power Company Limited (the “BL&P”), other utilities (regulated or otherwise), other licensed operators, government ministries, non-governmental organisations, customer representatives, financial institutions, residential customers, businesses and academics. For the avoidance of doubt, such written responses are not required to be restricted to the questions posed herein, but may relate to any matter raised in the Consultation Paper.

8. This Consultation Paper may be downloaded from the Commission's website, <http://www.ftc.gov.bb>. Alternatively, physical copies can be collected from the from the Commission's office. The Commission would also prefer that emailed responses be prepared as electronic documents, attached to an email cover letter and forwarded to: info@ftc.gov.bb.
9. Responses may also be faxed to the Commission at (246) 424-0300. Mailed or hand delivered responses should be avoided. If absolutely necessary, these responses should be addressed to the Chief Executive Officer Ag. – Dr. Marsha Atherley-Ikechi, at the address below.

Fair Trading Commission
Good Hope
Green Hill
St. Michael
BARBADOS

10. The consultation period will begin on December **13, 2021** and end on **January 17, 2021** at **4:00 p.m.** All written submissions should therefore be submitted by this deadline. The Commission is under no obligation to consider comments received after **4:00 p.m.** on January **14, 2021**.

Confidentiality

11. The Commission is of the view that this consultation on the proposed FIT PPA is largely of a general nature. The Commission expects to receive views from a wide cross-section of stakeholders and believes that views and comments received should be shared as widely as possible with all respondents. **Respondents should therefore ensure to indicate clearly to the Commission whether they consider that any response or part thereof contains confidential or proprietary information.**

Analysis of responses

12. The Commission expects, as in most consultations, to receive a range of views. Due consideration will be given to all comments received as part of the consultation process. Sometimes, the analysis of new evidence presented to the Commission may persuade the Commission to modify its view on a particular issue or matter. In the interest of transparency and accountability, the reasons for such modifications will be set out and, where the Commission disagrees with major responses or commonly-made points, it will, in most circumstances, provide an explanation for such. Through its ultimate Decision, the Commission will seek to explain the basis for its judgments and, where it deems appropriate, give the reasons why it agrees with certain opinions and disagrees with others.

Section 1: Background

Introduction

13. A FIT programme may be defined as a structured framework that establishes a rate(s), which is paid to producers of RE by an electric utility or government for energy produced, usually over a guaranteed period. FIT programmes are generally formulated to incentivize a greater use of renewable energy (RE) sources.
14. The Commission, via public consultation, seeks to obtain from stakeholders and interested parties, feedback on the proposed FIT agreement to be used by IPPs who participate in the Commission's FIT programme for projects above 1MW and up to 10MW. Under the Commission's FIT Programme, PPAs will be issued for a period of twenty (20) years¹.
15. The Commission's FIT programme seeks to achieve a number of the objectives outlined in the Barbados National Energy Policy 2019-2030 (the "BNEP")², including, among other things, encouraging a level of RE deployment commensurate with the attainment of the 100% RE goal and a carbon-neutral island state by 2030, technology and size differentiation, and facilitating effective competition in the market.
16. In light of the Government of Barbados' keen commitment to achieving the targets set out in the BNEP, and the Commission's acknowledgement of RE as a priority sector, the Commission has determined that for systems above 1 MW and up to and including 10 MW, a FIT mechanism is to be employed, to establish stable prices, until otherwise determined. The FIT programme is expected to provide a level of price certainty for investors with projects within the aforementioned size category. It is further anticipated that this programme will greatly assist in reducing the country's dependence on fossil

¹ Fair Trading Commission, Barbados, "Decision on Feed-in-Tariffs for Renewable Energy Technologies above 1MW and up to 10 MW," accessed November 24, 2021, https://www.ftc.gov.bb/library/2020-09-29_commission_decision_blandp_feed-in-tariff_1-10MW.pdf.

² The Barbados National Energy Policy (BNEP) 2019-2030, [Barbados National Energy Policy \(BNEP\) 2019 – 2030 – Energy.gov.bb](https://www.energy.gov.bb).

fuel. Critical to achieving these objectives, therefore, is the formulation of a standardized PPA for the FIT programme.

17. A PPA is a contract between an energy generator (or seller/vendor) and a party who is buying the energy (sometimes referred to as the offtaker/buyer/purchaser). The PPA incorporates the commercial terms for the sale and purchase of the energy generated. PPAs are vital market instruments that also protect both parties from the fluctuations of the energy market and promote the construction of new facilities. FIT PPAs are also essential for assessing long-term price predictability.
18. Further to the aforementioned benefits, a FIT PPA is advantageous for both parties in several other ways. An approved and implemented FIT PPA:
 - enables project developers to access financing for renewable projects from financial institutions and lenders;
 - efficiently allocates risks among the contracting parties;
 - assures fixed long-term costs for energy buyers;
 - offers revenue certainty for both the RE developer and their financier; and
 - reduces uncertainty, as the roles and responsibilities of both parties are clearly defined.
19. One of the main characteristics of the proposed FIT PPA discussed in this Consultation Paper is the agreement to sell a specified amount of MWh from an RE project, to an exclusive buyer of energy at a fixed price. While this allows for a secure future stream of revenue for the seller, the buyer also secures a certain amount of energy at a fixed cost, allowing for prudent planning towards system reliability.
20. The Commission intends, via the formulation of the proposed FIT PPA, to arrive at a standardized agreement that encapsulates the terms and conditions needed to facilitate the fair purchase and sale of RE between the buyer and the seller. Additionally, the Commission seeks to enable the bankability³ (level of willingness of prospective lenders

³ Bankability is a term used in the renewable energy sector to describe the likelihood that any particular technology or manufacturer will be funded by financiers.

<https://guidehouseinsights.com/news-and-views/determining-bankability-of-renewable-projects>

to finance a project) of RE projects that are of utility scale capacities (1-10MW), and by extension support the rapid growth of RE deployment.

NB: In the proposed FIT PPA, the offtaker/buyer is the BL&P and the energy generator/seller is referred to as the “Project Company”.

Status of domestic renewable energy (RE) sector

21. Against the background of the BNEP, movement has been detected in terms of achieving the 100% RE and carbon neutrality target set therein. In August 2016, the BL&P commissioned its 10MW alternating current (AC) solar photovoltaic (PV) Plant in Trens, St. Lucy⁴. This solar PV plant also contains a two (2) battery 5MW/20MWh Tesla Powerpack energy storage system to store excess solar energy. The plant represents the first of the BL&P’s RE projects as outlined in its 2013 Integrated Resource Plan (IRP).

22. Similarly, the BL&P’s Clean Energy Bridge (“CEB”) is a 33 MW Medium Speed Diesel Plant that is expected to be fully commissioned by the end of 2021⁵. The CEB is intended to allow the BL&P to secure reliable base load generation while the transition is made from the current generation mix, to a cleaner solution, reducing fuel costs in the process by an estimated 10% per annum. The CEB which is currently in the final testing stages is expected to remain as a backup, for grid resilience and reliability beyond the achievement of the BNEP targets. The BL&P further describes the CEB as a ‘stop gap’ between old and new generation units, which is forecasted to be more efficient than those being replaced. BL&P has asserted that through its implementation, immediate fuel savings are expected to be enjoyed and passed on to the customer. This newer more reliable plant is also expected to improve the reliability of service provided to customers⁶.

⁴ The Barbados Light & Power Company Limited, *“How We Generate Electricity,”*.

⁵ The Barbados Light & Power Company Limited, *“The Clean Energy Bridge (CEB) Project”* accessed November 24, 2021, <https://www.blpc.com.bb/index.php/company/our-projects/the-clean-energy-bridge-ceb-project>

⁶ Ibid.

23. During the 2018 - 2020 period, the electricity sector took even further steps towards sector-wide reform, positioning itself appropriately, for the transformation to RE technologies. Participants in the BL&P's Renewable Energy Rider ("RER") first introduced as a pilot project in 2010, were 'grandfathered'⁷ into the national FIT programme for wind, solar PV, biomass & anaerobic digestion systems up to and including 1 MW⁸. Primarily through the FIT programmes, the framework continues to be laid for the achievement of the BNEP's 2030 targets.
24. The introduction of a utility scale FIT programme⁹, which followed the Commission's initial FIT Decision¹⁰, seeks to further liberalize the domestic electricity generation landscape, through wind/solar PV projects of up to 10MW, further adjusting the role of the BL&P within the sector. Currently, 2441 distributed generators utilising solar PV technology across Barbados account for a total 50.52 MW of generated capacity¹¹. The deployment of projects utilising other RE technologies onto the grid has been lethargic.
25. Under the national FIT programme, the current rate structure, as set by the Commission, is delinked from fossil fuel prices, with electricity generation from solar PV, anaerobic digestion, solid biomass and land-based wind systems up to 1MW attracting rates of between BDS \$0.3625/kWh and \$0.5225/kWh. This new rate structure took effect from October 1, 2019¹². Customers with systems 3KW and below are facilitated through the 'sale of excess', while systems above 3 KW, up to 1 MW utilize the 'buy all/sell all' mechanism.
26. Similarly, attractive rates for the utility scale FIT programme were established to facilitate further investment within the sector, while also seeking to catalyse the achievement of the 2030 targets, through the establishment of wind & solar PV projects

⁷ "Grandfathering" is allowing an existing operation or conduct to continue legally when a new operation or conduct would be illegal.

⁸ Fair Trading Commission, Barbados, "Decision and Order on Feed-in-Tariffs for Renewable Energy Technologies up to and Including 1 MW," accessed November 24, 2021, <https://www.ftc.gov.bb/library/2019-09-16-commission-decision-final-FIT.pdf>.

⁹ Fair Trading Commission, Barbados, "Decision on Feed-in-Tariffs for Renewable Energy Technologies above 1MW and up to 10 MW,".

¹⁰ Fair Trading Commission, Barbados, "Decision and Order on Feed-in-Tariffs for Renewable Energy Technologies up to and Including 1 MW,".

¹¹ Based on Information provided through BL&P's Q3 2021 regulatory reporting to the Commission.

¹² Fair Trading Commission, Barbados, "Decision and Order on Feed-in-Tariffs for Renewable Energy Technologies up to and Including 1 MW,".

of up to 10 MW¹³. These systems which also feature a rate structure delinked from fossil fuel prices, offer rates to RE producers of between BDS \$0.2025/kWh and \$0.2325/kWh¹⁴. FIT rates under the Commission's Decision up to 1 MW released in September 2019¹⁵, and the Commission's Decision for system above 1MW up to 10 MW, released in September 2020¹⁶, are to be reviewed by December 31, 2021 and March 31, 2021 respectively. Thereafter the rates shall be reviewed annually. New rates shall be announced three (3) months prior to the end of each review period.

27. The Commission anticipates that the proposed FIT PPA will be utilised by participants in the national FIT programme, leading to a further increase in the deployment of distributed energy resources contributing to the total generation capacity target of 635 MW¹⁷, by assisting potential developers in accessing finance, based on the relative certainty such a document provides financial institutions and lenders.

¹³ Fair Trading Commission, Barbados, *"Decision on Feed-in-Tariffs for Renewable Energy Technologies above 1MW and up to 10 MW"*.

¹⁴ Ibid.

¹⁵ Fair Trading Commission, Barbados, *"Decision and Order on Feed-in-Tariffs for Renewable Energy Technologies up to and Including 1 MW,"*.

¹⁶ Fair Trading Commission, Barbados, *"Decision on Feed-in-Tariffs for Renewable Energy Technologies above 1MW and up to 10 MW,"*.

¹⁷ *The Barbados National Energy Policy (BNEP) 2019-2030*.

Section 2: Legislative framework

28. By virtue of section 2 of the FTCA and the Utilities Regulation Act Cap. 282 of the Laws of Barbados (the “URA”), “principles” means the formula, methodology or framework for determining a rate for a utility service, and stipulates that “rates” include
- (a) every rate, fare, toll, charge, rental or other compensation of a service provider or renewable energy producer;
 - (b) a rule, practice, measurement, classification or contract of a service provider or renewable energy producer relating to a rate; and
 - (c) a schedule or tariff respecting a rate.
29. Under section 3(2A) of the URA, “the Commission may request a service provider to provide the Commission with information relating to its operations, finances or such other information as the Commission may consider necessary to perform its functions.”
30. Pursuant to section 4(3) of the FTCA, the Commission has responsibility to:
- (a) establish principles for arriving at rates to be charged by service providers and renewable energy producers;
 - (b) set the maximum rates to be charged by service providers and renewable energy producers;
 - (c) monitor the rates charged by service providers and renewable energy providers to ensure compliance; “

The Commission also has this duty under Section 3(1) of the URA, which states:

“The functions of the Commission under this Act are, in relation to service providers, to

- (a) establish principles for arriving at the rates to be charged;*
- (b) set the maximum rates to be charged;*
- (c) monitor the rates charged to ensure compliance;*
- (d) determine the standards of service applicable;*
- (e) monitor the standards of service supplied to ensure compliance; and*
- (f) carry out periodic reviews of the rates and principles for setting rates and standards of service. “*

31. Section 24B (1) of the URA (which is contained in a recent amendment to the URA - the *Utilities Regulation (Amendment) Act, 2020*).

“The functions of the Commission, in relation to a renewable energy producer entering into an interconnection agreement or other agreement to supply electricity to the public grid, are to

- (a) establish principles for arriving at the rates to be charged;*
- (b) set the terms and conditions of the agreements;*
- (c) set the maximum rates to be charged under the agreements; and*
- (d) direct renewable energy producers to submit the proposals for the rates and terms and conditions relating to their agreements.”*

32. Section 24B (2) of the URA, as amended, states:

“the Commission shall consult with renewable energy producers, representatives of consumer interest groups and other interested parties and shall have regard to

- (a) the national energy policy;*
- (b) the national environmental policy;*
- (c) the requirement to promote renewable energy and to enhance the security, affordability, safety and reliability of the supply of electricity.”*

33. Additionally, Section 24B (3) of the URA, as amended, outlines what the Commission must consider in carrying out the functions under Section 24B (1). It provides that the Commission shall have regard to:

- (a) the promotion of efficiency on the part of renewable energy producers;*
- (b) ensuring that an efficient renewable energy producer will be able to finance its functions by earning a reasonable return on capital;*
- (c) such other matters as the Commission may consider appropriate.*

34. In relation to the energy stored from renewable energy plants, subsection (4) stipulates that the Commission is required to:

- (a) set the maximum rates to be charged; and*
- (b) establish guidelines for interconnection.*

35. Section 24B (5) stipulates that “the Commission shall request a renewable energy producer to provide the Commission with information relating to its operations,

finances or such other information as the Commission may consider necessary to perform its functions.”

36. Section 13(2) (a) (ii) and (iii) of the Electric Light and Power Act CAP 278 of the Laws of Barbados (the “ELPA”) stipulates that:

“Interconnection services referred to in subsection (1) shall be (a) offered at points along the public grid subject to

(ii) such agreement between the parties as may be approved by the Commission for the purpose; and

(iii) the payment of such fee as may be specified by the public utility and approved by the Commission in respect of interconnection; “

37. Additionally, Section 13(3) of the ELPA states that “The public utility shall purchase electricity from a licensee or other person referred to in subsection (1) at such rate as may be agreed by the parties and approved by the Commission.”

38. Further, Section 13(4) states that:

“Where parties fail to agree on the terms and conditions of an agreement referred to in this section or a dispute arises in respect of such an agreement, any party may, in writing, refer the matter to the Commission for determination.”

39. The Commission considers that the provisions of the ELPA, URA and FTCA, when read together, empower the Commission to set rates for the supply and distribution of electricity in the RE sector of Barbados as set out in this Decision.

Section 3: Discussion of the proposed FIT PPA

40. This section of the Consultation Paper provides interested parties with an opportunity to review and comment on the summarised content of the proposed FIT PPA for Solar projects above 1MW and up to 10MW. A full draft version of the proposed FIT PPA is also attached hereto for further consideration.
41. It must be noted that the schedules which form part of the proposed FIT PPA are yet to be populated, as they require the input of information which may vary on a project-by-project basis, or information to be provided by the BL&P, which is not yet available, such as Interconnection & Dispatch codes.
42. Respondents are specifically requested to give consideration during their review and analysis, to all timelines provided throughout the proposed FIT PPA, as well as provide recommendations for the content of the schedules to the proposed FIT PPA, providing the Commission with feedback on their appropriateness. Please be reminded that responses to this Consultation Paper may refer to any aspect of the proposed FIT PPA, and need not be limited to the highlighted questions which focus on the salient issues identified by the Commission to date.
43. This proposed FIT PPA is based on a standard form FIT PPA derived from Open Solar Contracts v1.0. © 2019 by IRENA and Terrawatt Initiative. The standard form PPA has been modified to reflect the characteristics and requirements of the energy market in Barbados. The Open Solar Contracts and this standard form FIT PPA (Solar) are made available under Creative Commons Attribution-ShareAlike 3.0 IGO license.
44. The Commission has noted through its interactions with stakeholders the significance of the proposed FIT PPA, as potential sellers (project companies) attempt to access affordable debt financing from financial institutions and other potential lenders/financiers. In these interactions, the Commission has also received requests for smaller systems below 1 MW to be allowed to electively opt in to this agreement, to provide a greater level of surety to their financiers. In this regard, the Commission

wishes to solicit views from the wider stakeholder body before arriving at a final decision.

Summary of FIT PPA provisions:

45. This section features a summary of the terms contained in the proposed FIT PPA which has been made available as an annex to this document. The Commission has sought, as far as possible (and where necessary) to include with each summary, an explanation of certain technical or legal terms used within the proposed FIT PPA.

46. This approach was adopted to facilitate the use of this Consultation Paper as a user-guide which seeks to highlight the key areas of the proposed FIT PPA document, which contains somewhat complex legal and technical principles.

47. Respondents are asked to refer to the annexed proposed FIT PPA for an understanding of the defined terms referred to in the Commission's summaries below (these terms are in bold font and in quotations), which are consistent with those used in the proposed FIT PPA. For further reference, these defined terms are contained at page 5 of the proposed FIT PPA under Part 2, "General Conditions".

Summary

The Commission has included the following extract from the proposed FIT PPA for ease of reference:

PART 1 - KEY INFORMATION TABLE

Commercial Information

Subject	Clause	Key Information
Abandonment Period of Time	1.1	[•]
Commercial Operation Longstop Date	1.1	[180] Business Days from the Scheduled COD
Expiry Date	1.1	[•]
Minimum Capacity	1.1	[•]
Scheduled COD	1.1	[•]
Grid Availability Date	3.4(b)	[•]
Delay Liquidated Damages Cap	4.1	[•] ¹⁸
Delay Liquidated Damages Rate	4.1	[•][BDS\$]/MWp/day ¹⁹
Required Credit Rating	4.2(b)(iii)	[•]
Contracted Capacity²⁰	4.4	[•]
Deemed Overpayment Monthly Limit	4.7(d)	[•]
Buyer Curtailment Allowance	4.6	[•] ²¹
Energy Charge	8.1	[•]

¹⁸ **User Note:** Insert a figure which is the product of a number of days, being the difference between the Scheduled Commercial Operation Date and the Commercial Operation Longstop Date x Delay Liquidated Damages Rate x MW Contracted Capacity.

¹⁹ **User Note:** For projects with a capacity less than [•], insert zero.

²⁰ **User Note:** Insert a figure which is above 1 MW/AC and up to 10 MW/AC.

²¹ **User Note:** For all solar projects, insert zero.

Nominated Currency	8.2 (c)	Barbados dollars
Liquidity Support Instrument Delivery Date	9.1Error! Reference source not found.	[•]
Liquidity Support Factor 1	9.2(a)	[•]
Liquidity Support Factor 2	9.2(b)	[•]
Default Rate	8.2(d)	[•]
Governing Law	20	Laws of Barbados
Expert Appointing Authority	22.4(c)	AMCC
Arbitration Language	22.5(b)	English
Arbitration Seat	22.5(c)	Barbados
Arbitration Rules	22.3	AMCC Non-International Arbitration Rules

Options

Subject	Clause	Key Information
Engineer	3.5	[insert name of proposed Engineer 1] [insert name of proposed Engineer 2] [insert name of proposed Engineer 3]
Technical Dispute Determination Option	21.4	[By agreement between the Parties/ At the election of either Party]

Project Information

Subject	Clause	Key Information
Business Day	1.1	A day other than a Saturday, Sunday or a national holiday, on which banks are open for business in Barbados
Chief Electrical Officer		Holder of the office of Chief Electrical Officer in Barbados.
Government	1.1	The Government of Barbados

Insolvency Event paragraph (e)	1.1	[•]
Landowner	1.1	[•]
Market Monitor	1.1	The Ministry of Energy, Small Business and Entrepreneurship
Nominated Account	1.1	[•]
Regulator	1.1	The Fair Trading Commission.
Site	1.1	[•]
System Operator	1.1	The Barbados Light & Power Company Limited
Buyer Notice Details	18.1	For the attention of: [•] Address: [•] Tel. No: [•] Fax No. [•] Email: [•]
Project Company Notice Details	18.1	For the attention of: [•] Address: [•] Tel. No: [•] Fax No. [•] Email: [•]

Clause 1: INTERPRETATION

The Interpretation clause in the proposed FIT PPA outlines rules to be applied when interpreting the Agreement. The Interpretation clause in the Agreement also contains an “Order of Precedence” sub-clause which identifies the order in which the various documents which form the proposed FIT PPA are prioritized when resolving a conflict or ambiguity within the said documents.

Clause 2: TERM OF AGREEMENT

The “term” of an agreement is the duration/amount of time that the proposed FIT PPA will remain in force. Clause 2 of the Agreement establishes the start date for the proposed FIT PPA; that is, the date on which parties agree to be legally bound by the provisions, i.e., the “Effective Date”.

Clause 3: COMMITMENTS OF THE PARTIES

This clause outlines the major responsibilities of each party under the proposed FIT PPA.

They are in relation to:

- Sale and Purchase of Energy;
- Utilities and Consumables;
- Contracting
- Connecting to the Grid;
- Independent Engineer;
- Direct Agreement.

More particularly, in the proposed FIT PPA, the Project Company commits to sell exclusively to the Buyer, who shall purchase all energy produced up to the contracted capacity.

Clause 4: CHALLENGES TO COMMENCEMENT OF COMMERCIAL OPERATIONS

This clause makes provision for the following:

- 1) Liquidated Damages
- 2) Construction Security
- 3) Operations Security
- 4) Failure to Commission at or above minimum capacity
- 5) Commissioning at or Above Minimum Capacity
- 6) Deemed Commissioning
- 7) Deemed Commissioning Payments
- 8) Deemed Energy Overpayment

Clause 5: OPERATION OF THE FACILITY AND DELIVERY OF ENERGY

Clause 5 of the proposed FIT PPA sets out provisions governing the operation of the Facility and the delivery of energy by the Project Company. The opening provisions of this clause see the Project Company undertaking to operate in accordance with: the applicable Law, **Authorisations** (including the Generation License), applicable Codes to the Facility and **Good Industry Practice** (in relation to synchronising, voltage and reactive power control). The clause further stipulates the terms and conditions a project company shall comply with during the generating and delivery of energy to the Buyer.

Clause 6: METERING

Clause 6 of the proposed FIT PPA provides for the Meter System Installation and Sealing, Meter Reading, and Meter Testing.

Clause 7: OUTAGES AND MAINTENANCE

The Outages and Maintenance section of the proposed FIT PPA provides both the Annual and Monthly Planned Maintenance Schedule provisions and also makes provision for Unscheduled Outages.

Clause 8: COMPENSATION, PAYMENT AND BILLING

The compensation, payment and billing section is divided into four clauses:

- *Invoices for Energy Delivered and Deemed Generated Energy;*
- *Billing and Payment;*
- *Disputed Payments; and*
- *Renewable Energy Credits.*

Clause 9: LIQUIDITY SUPPORT

The liquidity or credit support provisions in the proposed FIT PPA enable the Project Company to access short-term liquidity support in the event the Buyer fails to meet its

ongoing payment obligation. This section requires the Buyer to provide the Project Company with the first Liquidity Support Instrument on or before the Liquidity Support Instrument Delivery Date.

Clause 10: UNDERTAKINGS AND WARRANTIES OF THE PARTIES

For the purposes of this clause in the proposed FIT PPA, the term:

- “undertaking” means a commitment or a promise to do or perform something.
- “representation” means a statement of fact.
- “warranty” is a promise that a present fact or a circumstance is true.

In the proposed FIT PPA, both parties undertake to perform certain acts and have made certain representations and warranties. For example, the Parties both represent and warrant that they validly exist and have the requisite legal power and authority, and have obtained the required Authorisations on or prior to the Commercial Operation Date, to execute and perform the FIT PPA.

Clause 11: ANTI-CORRUPTION WARRANTIES

Through Clause 11 in the proposed FIT PPA, the Parties undertake to each other that they each will comply with bribery and corruption Laws. Each party also warrants that it has NOT:

- engaged in any Corrupt Practice;
- been convicted of any Corrupt Practice;
- under any Government or internal investigation for any alleged Corrupt Practice.

In the event of a breach of Clause 11, the parties agree to indemnify each other against all losses, liabilities, costs and expenses that the other party will suffer.

Clause 12: INSURANCE AND TAXES

Through Clause 12 of the proposed FIT PPA, the Project Company agrees that it will effect and maintain insurance cover consistent with Good Industry Practice and agrees to furnish the Buyer with copies of such policies. This clause also enables the Buyer to request from the Project Company proof that such policies are valid. Clause 13 provides that the Lenders may have security over and rights in the Required Insurances.

Clause 13: INDEMNITIES

By this clause each party agrees to indemnify and hold harmless the other against losses in certain specified circumstances, for example:

- injury or property damages a result of negligence, provided that such injury or damage is not attributable to an act or omission of one of the indemnified parties; and
- losses as a consequence of access to the Indemnified Party's property in accordance with Clause 10 of the proposed FIT PPA (Mutual Access), except to the extent that such costs are incurred as a result of an act or omission or breach by the Indemnified Party or its personnel or Contractors.

Clause 14: FORCE MAJEURE

In the proposed FIT PPA, the Force Majeure clause provides the way in which risks and consequential losses are to be attributed in circumstances where a party is affected by a Force Majeure Event. In the proposed FIT PPA, there is a list of **Force Majeure Events** including acts of God (a natural hazard outside of human control), pandemics, strikes and labour disturbances that extend beyond the Assets of the **Affected Party**. Clause 14 of the proposed FIT PPA also imposes certain obligations on an Affected Party to provide written notice to the **Non-Affected Party** of certain circumstances surrounding the Force Majeure Event.

Clause 15: TERMINATION

Clause 17 of the proposed FIT PPA confers upon each party a right to terminate the proposed FIT PPA in the event of a default (a failure to perform or meet obligations) on the part of the other party that is not cured within a specified time frame.

The proposed FIT PPA outlines a procedure to terminate the FIT PPA which involves the issuance of a Notice of Intent to Terminate specifying in reasonable detail the default of the other party. Once such a notice is issued, the Parties are required to consult for a specified time period as to what steps may be taken to mitigate the consequences of the default. Upon the expiration of the consultation period, and unless the parties have agreed otherwise or

the default had been remedied, the terminating party must issue a Termination Notice in writing. In this case, the FIT PPA will immediately terminate.

Clause 16: RETENTION OF THE FACILITY

Clause 16 of the proposed FIT PPA confers a right on the Project Company to continue to Operate and Maintain the Facility until the end of the operational life of the Facility, provided that the Facility can be continued to be operated by the Project Company in accordance with all Laws, Authorisations and Codes. The Buyer is expressly prohibited from preventing, impeding or delaying such arrangements.

CLAUSE 17: CONFIDENTIAL INFORMATION

Clause 17 of the proposed FIT PPA outlines the rights, duties and obligations of the Parties in the treatment of Confidential Information, and the duration of such rights, duties and obligations. The Parties agree not to disclose to any third party, or use other than for a Permitted Purpose, any Confidential Information. Certain exceptions to this agreement to this obligation include:

- the Disclosing Party has consented in writing to the disclosure or use of such Confidential Information;
- disclosure or use is required by applicable Laws or the Government;
- disclosure or use is required by the Generation Licence or the Transmission, Distribution and Sales Licence.

Clause 18: NOTICES

Clause 18 outlines the substantive and procedural requirements for any notices to be provided by one Party to the other under the proposed FIT PPA. For example, notices must be in the English language and delivered by hand, sent by courier, facsimile or email. Clause 18 further outlines the rules which govern when service (delivery) of a notice will be deemed to have taken place and the methods for proving such service.

Clause 19: MISCELLANEOUS

Clause 19 contains several provisions critical to the operation of the proposed FIT PPA including and makes provisions in respect of the following items:

- Further Assurance;
- Costs;
- Assignment and Other Dealings;
- Variation; and
- Counterparty.

Clause 20: GOVERNING LAW

Clause 20 of the proposed FIT PPA states the law by which the parties agree to be bound by in the performance of the proposed FIT PPA, namely, the Laws of Barbados.

Clause 21:DISPUTE RESOLUTION

Clause 21 of the proposed FIT PPA contains a multi-tiered Dispute Resolution clause outlining the process by which the Parties to the proposed FIT PPA intend to resolve any disputes which may arise in connection with the proposed FIT PPA. In the proposed FIT PPA, the dispute resolution process is progressive. The parties may seek to resolve a dispute by way of specified methods, subject to certain requirements. These methods are sequential and therefore, when the Parties are unable to resolve the dispute by way of one method, they are bound to move to the following method.

Section 4: Consultation Questions

Respondents may, and are encouraged to, respond to the following targeted questions in relation to the proposed FIT PPA. It is strongly suggested that Respondents refer directly to the proposed FIT PPA annexed hereto, before responding to the below questions, and where necessary, refer to the guidance notes provided in Section 3 herein.

- 1) **Are you satisfied with the proposed content of the Key Information Table in Part 1 of the proposed FIT PPA? If not, what specific changes or additions do you think would be appropriate?**
- 2) **Are there any specific changes that you believe are required to the definitions listed in Clause 1 of the proposed FIT PPA, *"Definitions and Interpretation"*? Are there any additional definitions that you think must be included in this Agreement?**
- 3) **Are you satisfied with the proposed method of selection for an independent consulting engineer as outlined in Clause 3.5 *"Independent Engineer"* of the proposed FIT PPA? If not, please provide a reason for your answer and a suitable alternative approach.**
- 4) **What are your views on the proposed FIT PPA provisions related to the payment of liquidated damages per Clause 4 *"Challenges to Commercial Operation"* of the proposed FIT PPA? Should additional remedies be available to the Buyer? If so, what would you suggest?**
- 5) **Do you agree with the proposed approach in Clause 4.3 *"Failure to Commission at or Above Minimum Capacity"* of the proposed FIT PPA to addressing Commissioning Failure? If yes, what are your thoughts in relation to the time period provided for the Buyer to issue a Notice of Intent to Terminate in respect of Commissioning failure?**
- 6) **What are your views on Deemed Commissioning Payments in Clause 4.7? Are you satisfied with the method outlined for their calculation? Where applicable, please indicate any additional pertinent issues/concerns.**
- 7) **Do you agree with making deductions for Deemed Energy Overpayments as provided for in Clause 4.7 of the proposed FIT PPA? Please provide reasons for your answer.**
- 8) **What are your thoughts on the Buyer Curtailment Allowance in each contract year, as provided in Clause 5 of the proposed FIT PPA? Do you have any additional recommendations?**

- 9) What are your views on the proposed approach to 'metering' as outlined in Clause 6? Please be detailed in your response.
- 10) What are your thoughts on the proposed timeframes for each party providing notice to reschedule scheduled outages as outlined in clause 7 "*Outages & maintenance*"? Do you think that the notice period should be the same length for both parties? If yes, how long should the appropriate notice period be? Please provide reasons for your answer.
- 11) What are your thoughts on the four (4) hour window provided for a Project Company to notify the Buyer of the specifics (the cause and expected/actual duration) as discussed in clause 7.3 "*Unscheduled Outages*"?
- 12) Do you agree with the proposed method for the processing of payments under Clause 8.1 and 8.2 of the proposed FIT PPA? Please highlight any specific thoughts you may have on this matter to improve the process.
- 13) What are your thoughts on the requirement for the Buyer to provide Liquidity Support as outlined in clause 9 of the proposed FIT PPA? Are you satisfied with the timelines included within this clause? Please explain your answer.
- 14) What are your thoughts on the Commission mandating the Buyer to provide omnibus Liquidity Support Instruments, simultaneously accessible to all Project Companies, instead of individual Liquidity Support Instruments available to each Project Company?
- 15) Please provide your feedback on the adequacy of the Anti-Corruption provisions outlined in Clause 11 of the proposed FIT PPA? Where applicable, please make specific suggestions for changes.
- 16) What are your views on the Force Majeure procedures outlined in Clause 14 of the proposed FIT PPA? Do you consider the timelines included to be reasonable?
- 17) Do you agree with the Termination procedures outlined in Clause 15 of the proposed FIT PPA? Are there any additional conditions not included above that you think should be captured within this clause?
- 18) Do you think that the Dispute Resolution mechanisms as outlined in clause 21 are adequate? Do you think that the Management Committee is an appropriate mechanism to resolve disputes or should the Commission immediately recommend more stringent and traditional approaches to dispute resolution? Please indicate where applicable any additional or alternative measures you wish to have included.

- 19) What are the major concerns that you believe the Commission should consider in developing an Interconnection framework and agreement? Further, what are your views on cost-allocation in this regard?**
- 20) Do you believe that systems below 1MW should be allowed to electively opt in to the above 1MW up to 10MW proposed FIT PPA? Please provide reasons for your answer.**