

DATED: _____

THE BARBADOS LIGHT & POWER COMPANY LIMITED

as the Buyer and

[INSERT NAME OF PROJECT COMPANY]

as the Project Company

FEED-IN TARIFF POWER PURCHASE AGREEMENT (Solar)

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This Feed-in Tariff POWER PURCHASE AGREEMENT (Solar) (this "Agreement") is dated the [●] day of [●] 20[●]

BETWEEN:

The Barbados Light & Power Company Limited a company incorporated pursuant to the provisions of the Companies Act Chapter 308 of the Laws of Barbados with the number 14636, whose registered address is situate at Garrison Hill, in the parish of Saint Michael in this Island (the "**Buyer**"); and

[●] [a [limited liability company]] (Registration No. [●]) incorporated under the Laws of Barbados with the number [], whose registered address is at [●], in [insert name of parish] (the "**Project Company**"),

together the **Parties** and each a **Party**.

WHEREAS:

- (A) The Buyer is licensed under the Electric Light and Power Act Chapter 278 of the Laws of Barbados to *inter alia* distribute and sell electricity for light and power to the public in Barbados;
- (B) The Project Company has been issued a Generation Licence (as hereinafter defined) by the Government
- (C) The Buyer has accepted the Project Company's proposal for the sale of energy from the Facility and the Market Monitor has authorized the Parties to enter into a binding power purchase agreement to buy and sell energy generated by the Facility subject to the terms and conditions as set forth in this Agreement;
- (E) the Regulator has approved the form of this Agreement for the sale of energy from the Facility of total installed capacity of _____;

NOW IT IS HEREBY AGREED as follows:

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	[●] ¹
Delay Liquidated Damages Rate	4.1	[●][BDS\$]/MWp/day ²
Required Credit Rating	4.2(b)(iii)	[●]
Contracted Capacity³	4.4	[●]
Deemed Overpayment Monthly Limit	4.7(d)	[●]
Buyer Curtailment Allowance	4.6	[●] ⁴
Energy Charge	8.1	[●]
Nominated Currency	8.2 (c)	Barbados dollars
Liquidity Support Instrument Delivery Date	9.19.1	[●]
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]

¹ **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.

² **User Note:** For projects with a capacity less than [●], insert zero.

³ **User Note:** Insert a figure which is above 1 MW/AC and up to 10 MW/AC.

⁴ **User Note:** For all solar projects, insert zero.

Technical Dispute Determination Option	21.4	<i>[By agreement between the Parties/ At the election of either Party]</i>
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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: [●]

PART 2 GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement including in the Schedules attached to it, capitalised terms used but not otherwise defined have the meanings set forth below:

"**Abandonment**" means:

- (a) in relation to any period before the Commercial Operation Date, the Project Company has for the Abandonment Period of Time ceased the engineering, procurement and construction activities in respect of the Facility (except where such cessation is attributable to a Force Majeure Event or a delay or default by Buyer) and following notice from the Buyer, fails to establish to the Buyer's satisfaction (acting reasonably) its ability to perform its obligations under this Agreement such as to demonstrate that the Commercial Operation Date will be achieved on or before the Commercial Operation Longstop Date; and
- (b) in relation to any period on and from the Commercial Operation Date, other than due to a Force Majeure Event or a delay or default by Buyer: (i) a failure of the Project Company to perform its obligations hereunder for the Abandonment Period of Time; or (ii) a failure by the Project Company to resume and continue the performance of all or substantially all of its obligations under this Agreement within a reasonable period following the cessation of a Force Majeure Event or Buyer delay or default, in each case, which prevented, hindered or delayed such performance; and "**Abandons**" shall be construed accordingly.

"**Abandonment Period of Time**" is the period of time identified in the Key Information Table.

"**Actual Capacity**" has the meaning given to it in Clause 4.44.5(a) (*Commissioning at or Above Minimum Capacity*).

"**Affected Party**" is defined in the definition of Force Majeure Event.

"**Affiliate**" has the meaning given to it in *the Companies Act*, namely, any company or body corporate that is a subsidiary of another company or body corporate (or both are subsidiaries of the same company or body corporate, or each of them is controlled by the same person); or if two companies or bodies corporate are affiliated with the same company or body corporate at the same time.

"**Agreement**" means this agreement together with all its recitals and Schedules.

"**AMCC**" has the meaning given to it in Clause 21 (Arbitration).

"**Arbitration Language**" means the language specified in the Key Information Table.

"**Arbitration Rules**" means the rules for mediation identified in the Key Information Table.

"**Arbitration Seat**" means the seat of arbitration identified in the Key Information Table.

"**Associate**" when used to indicate a relationship with any person, has the meaning given to it in *the Companies Act*, namely: a) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20 percent of the voting rights either under all circumstances, by reason of the occurrence of an event that has occurred and is continuing, or by reason of a currently exercisable option or right to purchase those shares or those convertible debentures; b) a partner of that person acting on behalf of the partnership of which they are partners; or c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity.

"Authorisations" means any consent, authorisation, grant, acknowledgements, registration, filing, no objection certificates, agreement, permission, licence, approval, permit, authority or exemption required by Law to be obtained by the Project Company and/or any of its Contractors from any Authority for the purposes of the Project.

"Authorised Person" means in the case of the Project Company or the Buyer, a person nominated in writing from time to time to represent the Project Company or the Buyer respectively, provided that the other Party has been notified of such nomination.

"Authority" means any ministry or department, any minister, any organ of state, any official in the public administration or any other Government or regulatory department, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, or any court, each having jurisdiction over the matter in question).

"Available Capacity" means the available capacity of the Facility in any given period, as declared by the Project Company to the Buyer pursuant to Clause 5.3 (*Sale and Purchase Energy*).

"Business Day" means the days specified as a business day in the Key Information Table.

"Buyer Curtailment Allowance" means the amount of Energy set out in the Key Information Period in respect of which the Buyer is not required to make Deemed Energy Payments in accordance with Clause 5.6 (*Curtailment Allowance*).

"Buyer Event of Default" has the meaning given to it in Clause 15.1(b).

"Check Meter" means the meter used to check the measurement and recording of Metered Energy and input at the Delivery Point and all associated equipment. The Check Meter is more particularly described in Schedule 5 (*Meter Specifications*).⁵

"Chief Electrical Officer" means the person identified in the Key Information Table, or any of the Chief Electrical Officer's permitted successors and assigns.

"Codes" means, as applicable, means any code(s) of practice, rules, plans or procedures approved by the relevant Authority, the Regulator, the Market Monitor or the Chief Electrical Officer (as the case may be) that describes the standards of performance and requirements relating to the generation, distribution or transmission of electricity including, but not limited to, Interconnection Codes, Transmission and Distribution Codes, Customer Codes of Practice, Dispatch Codes, Affiliate Transaction Rules, Grid Modernisation Plan and Compliance Reporting Procedures.

"Commercial Operation Date" means the date on which the Engineer certifies that the Facility has been Commissioned and is operational, capable of delivering Energy and has a capacity of above the Minimum Capacity in accordance with this Agreement and the Project Company has accepted the Facility from its equipment supplier(s) and installer(s) and the Facility has been interconnected with the Grid in full compliance with the Interconnection Codes and applicable Law.

"Commercial Operation Longstop Date" means the date of expiry of the period identified in the Key Information Table commencing on the Effective Date, as may be extended by Clause 14.2(b) (*Effect of a Force Majeure Event*).

"Commission" and **"Commissioned"** means the completion of Commissioning of the Facility.

"Commissioning" means the activities required for undertaking the Commissioning Tests in accordance with Schedule 6 (*Testing Programme*).

"Commissioning Failure" means that the Commercial Operation Date or Deemed Commercial Operation Date does not occur on or prior to the Commercial Operation Longstop Date or the results of the Initial Tests as certified by the Engineer show that the Installed Capacity of the Facility

⁵ **User Note:** The accuracy, location and procurement responsibilities in relation to the Check Meter will be considered on a Project Specific basis.

having passed the Initial Tests, is below the Minimum Capacity and the Project Company does not remedy such shortfall and re-test the Facility prior to the Commercial Operation Longstop Date.

"Commissioning Tests" means one or more tests designed to determine among other things, whether the Facility is able to Operate at the Installed Capacity and is capable of Operating as appropriately required under the Codes and in accordance with Good Industry Practice.

"Confidential Information" means information of a non-public nature (regardless of whether or not such information is oral or recorded in any physical, electronic or other media), including technical data, know-how, designs, plans, specifications, methods, processes, controls, systems, trade secrets, recipes, formulae, research and development data, product complaint and testing information, lists of customers and suppliers, information relating to development, engineering, manufacturing, marketing, distribution, sale or purchase of goods and/or services, accounts, financial statements, financial forecasts, business plans, budgets, estimates, sales information, other financial information and any other information which is marked as being confidential or would reasonably be expected to be kept confidential, given the nature of the information and the circumstances of disclosure.

"Construct" means to investigate, survey, design, engineer, procure, construct, install, test, commission the Facility and do any and all other related things in accordance with Good Industry Practice, and the term Construction shall have a corresponding meaning.

"Contractor" means any contractor engaged by the Project Company to undertake the whole or any part of the Construction, Operation and Maintenance and/or decommissioning of the Facility.

"Contracted Capacity" means the anticipated Installed Capacity of the Facility as stated in the Key Information Table as may be amended upon the Commercial Operation Date in accordance with Clause 4.4 (*Commissioning at or Above Minimum Capacity*).

"Contract Year" means the period from 1st January in any year until and including 31st December in the same year, provided:

- (a) the first Contract Year shall be for a period from the earlier of the Commercial Operation Date or the Deemed Commercial Operation Date (if applicable) until and including 31 December in the same year; and
- (b) the last Contract Year shall be the period from 1st January of the year this Agreement is terminated or expires until and including the date on which this Agreement is terminated or expires.

"Control" (including the terms "Controlling", "Controlled by" or "under common Control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership, by contract or otherwise, or, in relation to any body corporate, the possession by or on behalf of a person, directly or indirectly, of any shares of that body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate, except by way of security only, held, directly or indirectly behalf of that person.

"Corrupt Practice" means any act or omission prohibited by any laws of Barbados intended to prevent bribery or other forms of corruption and any act or omission prohibited by any policies and guidelines referred to in Clause 11.1 (*Anti-Corruption Provisions*) in connection with the Project.

"Curtailed Events" has the meaning given to it in Clause 5.2 (*Deemed Energy*).

"Deemed Commercial Operation Date" has the meaning given to it in Clause 4.5 (*Deemed Commissioning*).

"Deemed Energy" has the meaning given to it in Clause 5.2(iii)(A) (*Deemed Energy*).

"**Deemed Energy Payment**" has the meaning given to it in Schedule 4 (*Determination of Payments*).

"**Deemed Operation Period**" has the meaning given to it in Clause 4.6 (*Deemed Commissioning Payments*).

"**Deemed Overpayment**" has the meaning given to it in Clause 4.7(c) (*Deemed Energy Overpayment*).

"**Deemed Overpayment Monthly Limit**" means the amount identified in the Key Information Table.

"**Default Rate**" means the interest rate identified in the Key Information Table.

"**Delay Liquidated Damages Cap**" means the amount defined in the Key Information Table.

"**Delay Liquidated Damages Rate**" means the amount defined in the Key Information Table.

"**Delegates**" means in respect of any undertaking, the officers, employees, consultants, auditors, insurers, members, finance providers and professional advisers of such undertaking.

"**Delivery Point**" means the physical point at which the Buyer accepts Energy from the Project Company as shown in the line diagram in Schedule 2 (*Site*).

"**Direct Agreement**" means the direct agreement entered into (or to be entered into) between the Project Company, the Buyer and the Lender (or its agent) in relation to this Agreement substantially in the form set out in Schedule 10 (*Form of Direct Agreement*), in accordance with market practice in international project finance transactions, as may be amended from time to time by agreement of the parties thereto.

"**Direct Loss**" means in respect of either Party, any Losses arising directly as a result of the other Party's failure to perform its obligations under this Agreement.

"**Disclosing Group**" has the meaning given to it in Clause 17.1 (*Non-disclosure of Confidential Information*).

"**Disclosing Party**" has the meaning given to it in Clause 17.1 (*Non-disclosure of Confidential Information*).

"**Dispatch Instruction**" means an instruction given by the System Operator to the Project Company in accordance with Clause 5.3 (*Sale and Purchase of Energy*) and Schedule 7 (*Requirements for Operating and Dispatch Procedures*) to dispatch the Facility.

"**Dispute**" means any dispute arising out of or in connection with or relating to this Agreement, including any question relating to the performance, existence, validity, interpretation or termination of this Agreement or to any contractual or non-contractual obligation related to the Agreement and any dispute relating to the enforcement of the Agreement.

"**Due Date**" means twenty (20) Business Days after the date an Invoice is delivered to the Buyer.

"**Effective Date**" has the meaning given to it in Clause 2.

"**Emergency**" means any abnormal system condition that requires automatic or immediate manual action in order to prevent (or limit) the loss of generation supply, or transmission facilities that could:

- (i) adversely affect the reliability of the Grid; or
- (ii) affect the ability of the Project Company to maintain safe, adequate and continuous operation of the Facility; or

(iii) present a material physical threat to persons, plant, equipment, or the environment.

"**Energy**" means electrical energy produced by the Facility measured in kWh delivered by the Project Company to the Buyer at the Delivery Point pursuant to this Agreement.

"**Energy Charge**" means the feed-in-tariff for Energy as identified in the Key Information Table per kWh of Metered Energy and more particularly described and adjusted in accordance with Schedule 4 (*Determination of Payments*).

"**Engineer**" means an independent consulting engineer or engineering firm or engineering company appointed by the Project Company pursuant to Clause 3.5 (*Independent Engineer*).

"**Environmental Attributes**" means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants; and (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

"**Excess Capacity**" has the meaning given to it in Clause 4.4 (b) (*Commissioning at or Above Minimum Capacity*).

"**Expert Appointing Authority**" means the authority or authorities identified in the Key Information Table.

"**Expert Determination**" has the meaning given to it in Clause 21 (*Expert Determination*).

"**Expiry Date**" means the date on which the Term of this Agreement expires as identified in the Key Information Table.

"**Facility**" means the electricity generating plant with Installed Capacity of no greater than the Contracted Capacity located at the Site and including the Main Meter and related facilities on the Project Company's side of the Delivery Point, all as more particularly described in Schedule 1 (*Functional Specification of Facility*).

"**Finance Agreements**" means loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security documents and agreements, hedging agreements, credit support and other documents entered into by the Project Company relating to the financing (including refinancing) of the Project, including any direct agreements between any Contractors, the Project Company and the Lender.

"**Force Majeure Event**" means any event or circumstance or combination of such events or circumstances that:

- (i) occurs within Barbados, except as provided in clauses (g) and (h) below;
- (ii) is outside the reasonable control of the Party affected ("**Affected Party**");
- (iii) cannot be prevented or overcome by the exercise of reasonable diligence and effort; and
- (iv) to the extent that such event(s) or circumstance(s) meet the foregoing requirements (i) through (iii), materially and adversely affects the performance by the Affected Party of its obligations under this Agreement,

including:

- (a) acts of God, fire, explosion, chemical contamination, earthquakes, flood, lightning, drought, tsunami, torrential rain, storm, cyclone, typhoon or hurricane, tornado, pestilence or other natural catastrophes, pandemics, epidemics or plague;
- (b) any failure or inability by the Affected Party to obtain or renew any licences, concessions or permits or other approvals that are necessary for the Affected Party to conduct its business on terms and conditions at least as favourable as those contained in the original licence, concession or permit after the submission of an application that fulfils all the applicable requirements of the relevant Authority and Laws, and the exercise of due diligence to obtain such licence, concession or permit;
- (c) any strikes, work to rule, go-slows or other labour disturbances that extend beyond the Assets of the Affected Party, are widespread or nationwide or are of a political nature, including labour actions associated with or directed against a ruling political party, or those that are directed against the Affected Party (or its contractors or suppliers) as part of a broader pattern of labour actions against companies or facilities;
- (d) expropriation, requisition, confiscation, nationalization or compulsory acquisition by an Authority of the Affected Party or any substantial portion of its Assets, but does not include any action taken by the Government in the proper exercise of step-in rights under the Generation Licence;
- (e) acts of war (whether or not declared), invasion, blockade or embargo;
- (f) acts or threats of terrorism, widespread riot, widespread violent demonstrations, widespread armed insurrection, widespread rebellion or revolution;
- (g) to the extent that they result in the disruption of the Affected Party's ability to receive shipments of fuel, major equipment or critical spare parts, embargoes, the closing or drastic reduction in capacity of public harbours, ports, docks, canals, roads, airports or other infrastructure, the rationing thereof or any import or export restrictions within or outside of Barbados; or
- (h) to the extent that they result in the disruption of the Affected Party's ability to receive shipments of fuel, major equipment or critical spare parts, any strikes, work to rule, go-slows or other labour disturbances that occur outside of Barbados.

"**Force Majeure Notice**" has the meaning given to it in Clause 14.1(a) (*Responsibilities of the Parties during a Force Majeure Event*).

"**Functional Specification**" means the functional specification of the Facility set out in Schedule 1 (*Functional Specification of Facility*).

"**Generation Licence**" means the Generation Licence granted by the Government under the *Electric Light and Power Act, 2013-21*, to the Project Company.

"**Good Industry Practice**" means at any particular time, any of the practices, methods and acts engaged in or approved by the Government Electrical Engineering Department (GEED) or any successor agency and generally follows power industry standards, at such time with respect to energy generation projects of similar scope and nature as the Facility that, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would reasonably have been expected to accomplish the desired result consistent with good business practices and in a manner consistent with Laws, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition.

"**Governing Law**" means the governing law of this Agreement as identified in the Key Information Table.

"**Government**" means the entity identified in the Key Information Table.

"**Grid**" means the electric transmission and distribution system including (a) all transmission and distribution lines and equipment, transformers and associated equipment, relay and switching equipment and protective devices and safety and communications equipment owned and/or operated by the Buyer; and (b) the Interconnection Facilities.

"**Grid Availability Date**" means the date specified in the Key Information Table.

"**Grid Event**" means (i) any constraint, unavailability, interruption, breakdown, inoperability, failure or disconnection of the Facility from the whole or part of the Grid; or (ii) any failure or delay in the connection or reconnection of the Facility to the Grid, in each case other than where such event or circumstance, despite the exercise of Good Industry Practice cannot be prevented, avoided or removed by the Project Company, Contractor or sub-contractor thereof.

"**Group**" means in respect of any company, that company and all its Affiliates.

"**Guaranteed Performance Ratio**" means the guaranteed performance ratio of the photovoltaic modules as specified in the relevant supply agreement with the equipment supply Contractor.

"**Health and Safety Legislation**" means any Law relating to health and safety matters that are applicable to the Project.

"**Indemnified Parties**" has the meaning given to it in Clause 13 (*Indemnities*).

"**Indemnifying Party**" has the meaning given to it in Clause 13 (*Indemnities*).

"**Independent Expert**" means:

- (a) a chartered accountant of not less than ten (10) years' professional experience nominated at the request of any Party by the Expert Appointing Authority, if the matter relates primarily to a financial or financial management matter; or
- (b) an attorney or advocate of not less than ten (10) years' professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the Expert Appointing Authority, if the matter relates primarily to a legal matter; or
- (c) an electrical or power engineer of not less than ten (10) years' professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the Expert Appointing Authority, if the matter relates primarily to an engineering matter.

"**Initial Tests**" means the tests to be undertaken with respect to the Installed Capacity of the Facility in order to achieve the Commercial Operation Date.

"**Insolvency Event**" means the occurrence of any one or more of the following events in respect of any Party:

- (a) it is or is deemed for the purposes of any applicable law to be unable to pay its debts as they fall due or insolvent;
- (b) it admits its inability to pay its debts as they fall due;
- (c) a moratorium is declared in respect of any of its indebtedness;
- (d) any step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors;
- (e) any person presents a petition or files documents with a court or any registrar for its winding-up, administration or dissolution, unless it is a petition for winding-up presented by

a creditor which is being contested in good faith and with due diligence and is discharged or struck out within the number of days specified in the Key Information Table;

- (f) an order for its winding-up, administration or dissolution is made (other than in connection with a solvent reorganisation);
- (g) any liquidator, business rescue practitioner, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
- (h) its directors, shareholders or other competent officers request the appointment of or give notice of their intention to appoint a liquidator, business rescue practitioner, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
- (i) any other analogous step or procedure is taken in any jurisdiction.

"Installed Capacity" means the installed capacity of the Facility as certified by the Engineer in accordance with the procedures and calculations set out in Schedule 6 (*Testing Programme*).

"Interconnection Agreement" means the agreement entered into between the Project Company and the Buyer with respect to the connection of the Facility to the Grid or any replacement thereof.

"Interconnection Facilities" means the connection equipment and transmission and distribution facilities, including any substation and transmission and distribution line(s), easements and wayleaves which connect the Facility to the Grid and any required reinforcement works to the same.

"Invoice" means a monthly invoice from the Project Company to the Buyer setting forth payments due for Metered Energy and, where applicable, Deemed Energy in accordance with Clause 8.2 (*Billing and Payment*).

"Invoice Dispute Notice" has the meaning given to it in Clause 8.3(a)(i) (*Disputed Payments*).

"Key Information Table" means the table setting out the key information relating to the Project in Part 1 (*Key Information Table*) of this Agreement.

"kW" means a kilowatt or 1,000 watts.

"kWh" means one kilowatt hour.

"Land Agreement" means the land agreement(s) entered into between the Project Company and the Landowner with respect to the Site in connection with the Project.

"Landowner" means the entity identified in the Key Information Table and its permitted successors and assigns.

"Lapse of Authorisation" means any Authorisation (a) ceasing to remain in full force and effect; (b) not being issued or renewed or having lapsed and not being reissued upon application having been properly and timely made and diligently pursued; (c) being revoked or otherwise terminated; (d) being made subject, subsequent to its grant, upon renewal or otherwise to any terms or conditions that materially and adversely affect the Project Company's and/or the Contractors' ability to perform its or their obligations; or (e) not being capable of being issued due to the absence or inadequacy of any formal applications procedure and/or lack of an appropriate Authority or other relevant authority properly authorised to issue the Authorisation, provided however that in no event shall any Lapse of Authorisation occur as a result of any Authority exercising any power pursuant to the Laws to take any of the actions referred to in sub-sections (a) to (e) above in a non-discriminatory manner solely as a result of the Project Company or any other party to whom an Authorisation is granted, failing to abide by any term or condition of any Authorisation.

"**Law**" means all laws, statutes, regulations, rules of common law, judgments, decrees or orders of any Authority and other measures or decisions having the force of law in any jurisdiction from time to time, whether before or after the date of this Agreement including, without limitation, the Codes.

"**Lender**" means one or more banks, financial institutions or other lender and their designated successors and assigns who are a party to any of the Finance Agreements and provide financing to the Project Company thereunder, provided that a Lender who holds equity in the Project Company will not be considered to be acting as a "**Lender**" to the extent it provides the Project Company with any financing, credit support or credit enhancement in its capacity as a shareholder in the Project Company.

"**Liquidity Support Factor 1**" means the amount defined in the Key Information Table.

"**Liquidity Support Factor 2**" means the amount defined in the Key Information Table.

"**Liquidity Support Instrument**" means a bank guarantee, letter of credit or other similar instrument acceptable to the Project Company (acting reasonably) issued by a bank licensed by the relevant authority in the jurisdiction in which it is licensed

"**Liquidity Support Instrument Delivery Date**" means the date identified in the Key Information Table for delivery of the Liquidity Support Instrument in accordance with Clause 9.1 (*Obligation to Provide Liquidity Support*).

"**Losses**" means actions, proceedings, losses, damages, liabilities, claims, costs and expenses including fines, penalties, legal and other professional fees and expenses (including reasonable expenses of investigation, defence and prosecution of actions, enforcement and attempted enforcement of relevant rights or remedies) and whether pursuant to a claim for contribution or under statute, contract, tort or otherwise.

"**Main Meter**" means the main meter used to measure and record Metered Energy at the Delivery Point and all associated equipment. The Main Meter is more particularly described in Schedule 5 (*Meter Specifications*).

"**Maintain**" means to maintain in good working order and condition and as necessary, to inspect, refurbish, repair, replace, modify, reinstate, overhaul and test so that the plant, machinery, equipment or facility concerned may be Operated at all material times as required, and the term Maintenance shall be construed accordingly.

"**Management Committee**" has the meaning given to it in Clause 21 (*Senior Manager Discussions*).

"**Market Monitor**" has the meaning set out in the Key Information Table.

"**Metered Energy**" means all Energy (expressed in kWh), as recorded by the Main Meter or the Check Meter or estimated and computed in accordance with Schedule 3 (*Determination of Metered Quantities*).

"**Metering System**" means the Main Meter and the Check Meter.

"**Minimum Capacity**" means the minimum Installed Capacity of the Facility required to achieve the Commercial Operation Date as identified in the Key Information Table.

"**MW**" means a megawatt AC or 1,000 kWAC or 1,000,000 watts AC.

"**MWh**" means one megawatt hour or 1,000 kilowatt hours.

"**Nominated Account**" means the nominated account identified in the Key Information Table or any replacement account as may be agreed between the Parties.

"**Nominated Currency**" means the currency set out in the Key Information Table.

"**Non-Affected Party**" is defined in the definition of Force Majeure.

"**Notice of Intent to Terminate**" has the meaning given to it in Clause 15.3(a) (*Termination Notices*).

"**O&M Agreement**" means the agreement(s) entered into by the Project Company in respect of the Operation and Maintenance of the Facility or any replacement thereof.

"**Operate**" means to operate the Facility and the term Operation shall be construed accordingly.

"**Operating and Dispatch Procedures**" means the operating and dispatch procedures agreed or otherwise determined in accordance with Clause 5.4 (*Operating and Dispatch Procedures*) and Schedule 7 (*Requirements for Operating and Dispatch Procedures*).

"**Permitted Purpose**" means the *bona fide* implementation, pursuance and enforcement of this Agreement and the undertaking of such other ancillary matters which are reasonably or necessarily undertaken in connection with them.

"**Project**" means:

- (a) the development, financing, design, procurement, Construction, commissioning, installation, testing, Operation, Maintenance, insurance, and decommissioning of the Facility in accordance with this Agreement and the Generation Licence;
- (b) the use by the Project Company of the Site and related easement facilities for any Permitted Purpose;
- (c) the selling of Energy generated or deemed to be generated by the Facility in accordance with this Agreement; and
- (d) all activities incidental to any of the foregoing in accordance with this Agreement and the Generation Licence.

"**Project Company Event of Default**" has the meaning given to it in Clause 14.1(a) (*Event of Default*).

"**Prolonged Force Majeure Event**" means where one or more Force Majeure Events continues for a period of more than one hundred and eighty (180) continuous days or three hundred and sixty-five (365) days in aggregate in any period of five hundred (500) days.

"**REC Reporting Rights**" means the exclusive right of a holder of Environmental Attributes to report ownership of Environmental Attributes in compliance with applicable Laws at such holder's discretion, and include reporting under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

"**Receiving Group**" has the meaning given to it in Clause 17.1 (*Non-disclosure of Confidential Information*).

"**Receiving Party**" has the meaning given to it in Clause 17.1 (*Non-disclosure of Confidential Information*).

"**Regulator**" means the entity identified in the Key Information Table, or any of its permitted successors or assigns.

"**Renewable Energy Credit**" or "**REC**" means (a) the Environmental Attributes associated with the Facility during the Term, together with (b) the REC Reporting Rights associated with such

Environmental Attributes, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits", "Green-e Certified", or otherwise.

"**Required Credit Rating**" means the required credit rating of the bank providing the Liquidity Support Instrument in accordance with Clause 9.19.1 (*Obligation to Provide Liquidity Support*) as identified in the Key Information Table.

"**Required Insurances**" has the meaning given to it in Clause 12.1(a)(a) (*Insurance*).

"**SCADA System**"⁶ means a supervisory control and data acquisition system, in the context of this Agreement being a system capable of monitoring the Facility and remotely retrieving data recorded by the Metering System.

"**Schedule**" means any of the schedules attached to this Agreement and forming an integral part of this Agreement.

"**Scheduled COD**" means the date identified in the Key Information Table, as such date may be extended pursuant to Clause 14.2(b) (*Effect of a Force Majeure Event*).

"**Scheduled Outage**" means a full or partial interruption of the generating capability of the Facility which is included in the applicable maintenance profile under the O&M Agreement and is scheduled and taken in accordance with Clause 7.1 (*Annual Planned Maintenance Schedule*) and Clause 7.2 (*Monthly Planned Maintenance Schedule*).

"**Site**" means an area as identified in the Key Information Table on which the Facility is to be located and any lay-down or working areas required by the Project Company or any Contractor for the purposes of the Project, as more particularly described in Schedule 2 (*Site*).

"**Special Loss**" means in relation to either Party, any Losses suffered or incurred by it which does not constitute a Direct Loss.

"**System Operator**" means the entity responsible for the dispatch of generation systems, energy storage systems, transmission and distribution systems and other sources of supply of electricity to the public grid in Barbados as identified in the Key Information Table and any of its permitted successors or assigns.

"**Technical Dispute**" means a Dispute that relates to a technical, engineering, operational or accounting issue or matter arising out of or in connection with this Agreement that in any case is the type of issue or matter that is reasonably susceptible to consideration by an expert in the relevant field or fields and is reasonably susceptible to resolution by such expert. For the avoidance of doubt, the definition of Technical Dispute is conclusive, meaning exclusively limited to Disputes that relate to technical, engineering, operational, or accounting issue or matter related to this Agreement.

"**Technical Dispute Determination Option**" means the method for determining whether a Dispute is a Technical Dispute as identified in the Key Information Table.

"**Technical Limits**" means the technical limits of the Facility as set out in Schedule 1 (*Functional Specification of Facility*).

"**Term**" means the period from the Effective Date until the earlier of the Expiry Date and the Termination Date.

"**Termination Date**" means the date of the termination of this Agreement in accordance with Clause 15 (*Termination*), as the case may be.

⁶ **User Note:** Use of SCADA System/Monitoring System to be considered on a project specific basis and a consistent approach to be adopted across the agreements.

"**Termination Notice**" has the meaning given to it in Clause 15.3(c) (*Termination Notices*).

"**Transmission, Distribution and Sales Licence**" means the Transmission, Distribution and Sales Licence granted by the Government under the *Electric Light and Power Act, 2013-21*, to the Buyer.

"**Unscheduled Outage**" means, from the Commercial Operation Date, any full or partial interruption of the generating capability of the Facility which is not a Scheduled Outage.

1.2 Interpretation

- (a) Unless the context otherwise requires, the following rules of interpretation shall apply to this Agreement:
- (i) words in the singular include the plural and in the plural include the singular;
 - (ii) use of any gender includes the other genders and neuter;
 - (iii) references to a particular statute or statutory provision or other Law shall:
 - (A) include all subordinate legislation made from time to time under that statute, statutory provision or other Law; and
 - (B) be construed as a reference to such Law as amended, re-enacted, consolidated, supplemented, replaced or renumbered (or as its application or interpretation is changed or affected by other Laws) from time to time and as was, is, or will be (as the case may be) applicable at the time in question;
 - (iv) references to this Agreement or any other agreement, deed or instrument is a reference to this Agreement or as the case may be, the relevant agreement, deed or instrument as amended, supplemented, replaced or novated from time to time;
 - (v) references to Clauses and Schedules are to clauses of and schedules to this Agreement;
 - (vi) references to a paragraph or a Part are to a paragraph or part of the Schedule in which such reference appears;
 - (vii) references to a day or Day shall mean a period of twenty-four (24) hours running from midnight to midnight and reference to any time or date shall save where otherwise expressly stated to the contrary, be a reference to the time or date (as the case may be) in Barbados;
 - (viii) references to a person shall be construed so as to include:
 - (A) any individual, firm, body corporate, Authority, joint venture, association, undertaking, partnership or limited partnership (whether or not having separate legal personality); and
 - (B) a reference to the successors, permitted transferees and permitted assigns of the same;
 - (ix) the words "include", "including" or "in particular" must not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible;
 - (x) references to "written" or "writing" shall include all data in written form whether represented in hand-written facsimile, printed or e-mail form (but excluding short-message-service ("SMS") and other electronic forms of communication); and

- (xi) any express obligation or liability of a Party to ensure or procure the performance of any obligation by any other person must not be reduced, discharged or otherwise adversely affected by any act, omission, matter or thing which would have discharged or affected the liability of that Party had it been a principal obligor or by anything done or omitted by any person which but for this provision, might operate or exonerate or discharge that Party or otherwise reduce or extinguish its liability under this Agreement.
- (b) The Table of Contents, headings and titles are for convenience only and do not affect the interpretation of this Agreement.
- (c) The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Schedules.

1.3 Order of Precedence

The documents forming this Agreement are intended to be mutually explanatory of one another. If any inconsistencies or conflicts arise between the documents forming this Agreement, the order of precedence governing matters of interpretation shall be as follows:

- (a) the Key Information Table;
- (b) the main body of this Agreement; and
- (c) the Schedules attached to this Agreement.

2. TERM OF AGREEMENT

This Agreement shall become effective on the _____ day of _____ 20____ (the “**Effective Date**”) and shall unless extended or terminated earlier in accordance with this Agreement, continue in full force and effect for the duration of the Term.

3. COMMITMENTS OF THE PARTIES

3.1 Sale and Purchase of Energy

On and from the Commercial Operation Date (or if earlier, the Deemed Commercial Operation Date) and subject to and in accordance with this Agreement, the Project Company shall sell exclusively to the Buyer and the Buyer shall purchase all Energy produced by the Facility up to the Contracted Capacity, save that nothing in this Agreement shall oblige the Project Company to Operate or Maintain the Facility outside of the Technical Limits.

3.2 Utilities and Consumables

- (a) At all times during the Term, the Project Company shall be responsible at its sole cost and expense for securing all supplies of electricity, water, sanitation, telecommunications, waste disposal services and all other utilities required for the Construction, Operation and Maintenance of the Facility.
- (b) The Project Company shall be responsible at its sole cost and expense for obtaining, stockpiling (if applicable) and transporting all supplies of consumables necessary to comply with its obligations under this Agreement.

3.3 Contracting

- (a) The Project Company may engage Contractors to Construct, Operate and Maintain the Facility.

- (b) Notwithstanding the engagement of any Contractor pursuant to Clause 3.3(a), the Project Company shall at all times remain liable for the performance of its obligations under this Agreement and for any acts, omissions, defaults or negligence of each Contractor (including such Contractor's sub-contractors, agents or employees) as if such acts, omissions, defaults or negligence were those of the Project Company or its agents or employees.

3.4 Connecting to the Grid

- (a) The Buyer shall be responsible for the design, construction, installation, commissioning, operation and maintenance of the Grid in accordance with the applicable Codes. The Project Company shall cause the Facility to be electrically connected with the Grid and shall be responsible for complying with all applicable Codes and requirements of the Buyer, including applicable interconnection and metering requirements, and entering into the Interconnection Agreement with the Buyer.
- (b) The Buyer shall ensure that the Grid will be made available to the Project Company by the Grid Availability Date for the interconnection, Commissioning, testing (including the Initial Tests) and future Operation and Maintenance of the Facility.
- (c) Prior to the Commercial Operation Date, the Project Company shall take all actions required to ensure that the Facility can participate in the energy market administered by the System Operator.

3.5 Independent Engineer

On or prior to the commencement of Construction of the Facility, the Project Company shall appoint one of three (3) companies agreed by the Parties and identified in the Key Information Table to act as an independent consulting engineer for the purposes of monitoring the Construction and Commissioning of the Facility in accordance with this Agreement. If the Parties are unable to agree on the three (3) companies who may act as such independent consulting engineer, then the Market Monitor in its sole discretion may determine the slate of the three (3) companies from which the Project Company can appoint such independent consulting engineer.

3.6 Direct Agreement

The Buyer shall use all reasonable efforts to execute, acknowledge and deliver the Direct Agreement substantially in the form attached hereto at Schedule 10 (*Form of Direct Agreement*) and any and all further documents and instruments at the Project Company's reasonable cost (such costs to be agreed by the Project Company prior to the issuance of any such legal opinions) , and to take any other actions, which may be necessary to satisfy the reasonable requests of any Lender or prospective Lender in connection with the financing or refinancing of the Facility, including executing and delivering to the Lenders a consent to assignment (or other form of direct agreement) concerning the Facility between the Buyer and the Lenders in form and substance satisfactory to the Lenders.⁷

4. CHALLENGES TO COMMENCEMENT OF COMMERCIAL OPERATIONS

4.1 Liquidated Damages

- (a) If the Commercial Operation Date (or Deemed Commercial Operation Date (if applicable))

⁷ **User Note:** Schedule 10 (*Form of Direct Agreement*), shall be developed in conjunction with the Barbados Bankers Association and shall reflect standard market norms for the financing of a plant or facility similar to the Project, examples of such market norms are: (a) the Buyer agrees to notify the Lenders' agent of any default by the Project Company under this Agreement, which entitles the Buyer to terminate this Agreement; and (b) the Buyer agrees that it may not take any action to terminate this Agreement for a specified period if the Lenders request a suspension period.

does not occur on or prior to the Scheduled Commercial Operation Date through no fault of the Buyer, liquidated damages shall be payable by the Project Company to the Buyer (to be only utilised as directed by the Market Monitor) at the Delay Liquidated Damages Rate for each day that the Commercial Operation Date is delayed beyond such date; provided however that the total amount of liquidated damages payable under this Clause 4.1(a) shall not exceed the Delay Liquidated Damages Cap.

- (b) The payment of liquidated damages calculated in accordance with Clause 4.1(a) shall be the Buyer's exclusive remedy for the Project Company's failure to achieve the Commercial Operation Date on or before the Scheduled Commercial Operation Date, but shall not preclude the Buyer from pursuing such other remedies as may be available to the Buyer for any other breach of this Agreement by the Project Company.
- (c) The Parties have agreed that the payment of liquidated damages calculated in accordance with Clause 4.1(a) are reasonable as a genuine pre-estimate of the loss that the Buyer would suffer. The Project Company hereby waives any defence as to the validity of any liquidated damages in this Agreement on the grounds that such liquidated damages are void as penalties.

4.2 Construction Security

- (a) Within seven (7) days of the Effective Date, the Project Company shall provide to the Buyer security (the "**Construction Security**") to ensure that the Commercial Operation Date (or Deemed Commercial Operation Date (if applicable)) is achieved by the Commercial Operation Longstop Date.
- (b) The Construction Security shall be:
 - (i) maintained and/or renewed by the Project Company until the Commercial Operation Date (or Deemed Commercial Operation Date (if applicable)) is achieved or this Agreement is terminated in accordance with its terms;
 - (ii) in a form and substance satisfactory to the Buyer (acting reasonably);
 - (iii) issued by a financial institution which has a credit rating equal to or better than the Required Credit Rating;
 - (iv) in an amount equal to the Delay Liquidated Damages Cap;
 - (v) constitute an on-demand, unconditional and irrevocable commitment to pay by the bank by which it is issued; and
 - (vi) enforceable by the Buyer immediately upon any failure by the Project Company to pay liquidated damages under Clause 4.1(a) (and the proceeds of such Construction Security shall be only utilised as directed by the Market Monitor).
- (c) There shall be no discontinuity between the expiration of the Construction Security and the effectiveness of the Operations Security (defined below), and the Construction Security shall be returned to the Project Company promptly following delivery to the Buyer of the Operations Security and the occurrence of the effective date of the Operations Security.

4.3 Operations Security

- (a) On the Commercial Operation Date, the Project Company shall provide to the Buyer security (the "**Operations Security**") to ensure the completion and proper operation and maintenance of the Facility.
- (b) The Operations Security shall be:

- (i) an unconditional and irrevocable direct pay letter of credit issued by a financial institution which has a credit rating equal to or better than the Required Credit Rating;
 - (ii) in a form and substance satisfactory to the Buyer (acting reasonably); and
 - (iii) adjusted in terms of amount from time to time in accordance with Schedule 11 (*Operations Security*).
- (c) The Operations Security may be applied to:
- (iv) the payment of liquidated damages and accrued interest thereon in accordance with this Agreement;
 - (v) the payment of other Damages and interest that the Project Company shall be required to pay to the Buyer.
- (d) Except as expressly provided in this Agreement, the Project Company shall maintain the Operations Security at the level designated in Clause 4.3(b) at all times; except that the Project Company may have [] Days from the date the Buyer gives notice to the Project Company that it has retained or collected funds from the Operations Security pursuant to this Clause 4.3 (d), to replenish the Operations Security so as to return it to the required level, as escalated.
- (e) Upon termination of this Agreement:
- (i) the Buyer shall be entitled to retain or collect, as the case may be, from the Operations Security any Damages or moneys then due or reasonably expected to be due to the Buyer by the Project Company and shall pay or return to the Project Company the remainder of the Operations Security and accrued interest, if any; and
 - (ii) if there is any Dispute between the Project Company and the Buyer has been referred to Dispute Resolution pursuant to this Agreement, then the Buyer shall be entitled to retain or collect, as the case may be, from the Operations Security, an amount equal to the Damages or moneys that the Buyer, in its reasonable judgment, deems sufficient to satisfy any amount that may be due to the Buyer by reason of such Dispute. Upon settlement or resolution of the Dispute, the Buyer shall pay or return to the Project Company the remaining amount of Operations Security.

4.4 Failure to Commission at or Above Minimum Capacity

If a Commissioning Failure occurs:

- (a) Clause 15.1(a)(iv) (*Event of Default*) shall apply,
provided that
- (b) if the Buyer does not issue a Notice of Intent to Terminate in respect of the Commissioning Failure within twenty (20) Business Days of the Commercial Operation Longstop Date, the Buyer will be deemed to have (i) waived the Project Company Event of Default resulting from the Commissioning Failure and (ii) accepted the Facility, in which case the Contracted Capacity shall be reduced to the Installed Capacity of the Facility certified by the Engineer on or prior to the Commercial Operation Longstop Date.

4.5 Commissioning at or Above Minimum Capacity

- (a) If the Commercial Operation Date has occurred on or prior to the Commercial Operation Longstop Date and the results of the Initial Tests as certified by the Engineer demonstrate that the Installed Capacity of the Facility, having passed the Initial Tests, reaches or exceeds the Minimum Capacity but is less than the Contracted Capacity, the Contracted Capacity shall be reduced to the Installed Capacity of the Facility as applicable as at the Commercial Operation Date (the "**Actual Capacity**").
- (b) Where the Contracted Capacity has been amended and reduced to the Actual Capacity in accordance with Clause 4.5(a), neither Party shall have any obligation to purchase or supply and must not be held liable for failing to purchase or supply Energy or other attributes associated with or attributable to Energy generated by the Facility in excess of the Actual Capacity (the "**Excess Capacity**").
- (c) From the Commercial Operation Date, if the Facility is able to generate any Excess Capacity, the Project Company may not sell the Energy or other attributes associated with or attributable to the Excess Capacity to any third parties, including the Buyer.

4.6 Deemed Commissioning

If the Commercial Operation Date is delayed or prevented beyond the Commercial Operation Longstop Date by any of the following events:

- (a) failure by the Buyer to perform any of its obligations under this Agreement;
- (b) failure by the Buyer to make the Grid available and/or to evacuate Energy generated (or to be generated) during Initial Tests carried out (or to be carried out) in accordance with this Agreement; or
- (c) failure by the System Operator to take any actions to ensure that the Facility can participate in the energy market administered by the System Operator,

the Project Company shall be entitled to apply in writing to the Engineer (with a copy provided to the Buyer) for a certification of the date on which, in the Engineer's professional opinion, the Commercial Operation Date would have occurred but for the occurrence of the event(s) listed above (such date the "**Deemed Commercial Operation Date**").

4.7 Deemed Commissioning Payments

If a Deemed Commercial Operation Date occurs, then subject to Clause 5.6 (*Curtailment Allowance*), the Buyer shall make Deemed Energy Payments to the Project Company in respect of the period on and from the Deemed Commercial Operation Date until the actual Commercial Operation Date (the "**Deemed Operation Period**") based on (i) the Contracted Capacity; (ii) the Guaranteed Performance Ratio of the Facility; and (iii) the actual solar irradiation during the Deemed Operation Period and otherwise in accordance with Clause 8 (*Compensation, Payment and Billing*).

4.8 Deemed Energy Overpayment

If:

- (a) Deemed Energy Payments in respect of a Deemed Operation Period have been paid in accordance with Clause 4.7 (*Deemed Commissioning Payments*); and
- (b) (A) the Actual Capacity is below the Contracted Capacity upon achieving the actual Commercial Operation Date and/or (B) the actual performance ratio of the Facility at the end of the Performance Testing Period as certified by the Engineer is below the Guaranteed Performance Ratio;

then

- (c) the Buyer shall calculate the difference between (i) the aggregate of all Deemed Energy Payments actually paid by the Buyer to the Project Company in respect of the Deemed Operation Period and (ii) the aggregate of all Deemed Energy Payments that would have been payable if the Actual Capacity and performance ratio of the Facility certified by the Engineer had been used to calculate those Deemed Energy Payments (the amount of such difference being expressed in the Nominated Currency and being the "**Deemed Overpayment**");
- (d) deductions for the Deemed Overpayment shall be made from any amount payable by the Buyer pursuant to Schedule 4 (*Determination of Payments*) until the value of all such deductions is equal to the amount of the Deemed Overpayment and the amount of any deduction in a month must not exceed the Deemed Overpayment Monthly Limit;
- (e) if the Parties do not agree on whether or not Deemed Energy Payments are payable, or the amount of such Deemed Energy Payments, this shall be treated as a Technical Dispute. The Independent Expert (if appointed) shall be instructed to establish whether Deemed Energy Payments are payable and where the amount is in Dispute, establish the amount of Deemed Energy Payments payable.

5 OPERATION OF THE FACILITY AND DELIVERY OF ENERGY

5.1 Construction, Operation and Maintenance of the Facility

The Project Company undertakes:

- (a) to Construct, Operate and Maintain the Facility in accordance with:
 - (i) applicable Law;
 - (ii) all applicable Authorisations, including the Generation Licence;
 - (iii) the Codes as they apply to the Project Company and/or to the Facility; and
 - (iv) Good Industry Practice (including where they relate to synchronising, voltage and reactive power control);
- (b) to not generate Energy in excess of the Actual Capacity;
- (c) to deliver all Energy generated by the Facility to the Delivery Point, except to the extent such Energy is used for the Operation and Maintenance of the Facility;
- (d) to at all times co-operate in good faith with the Buyer, provided that such co-operation does not result in the Project Company being in breach of any Law, Authorisations or Codes; and
- (e) to maintain the settings of all protective relays installed in the Facility at levels agreed in writing between the Project Company and the Buyer from time to time and not to change such settings without the prior written consent of the Buyer in the Interconnection Agreement.

5.2 Deemed Energy

From the earlier of the Commercial Operation Date or Deemed Commercial Operation Date (if applicable), if the ability of the Facility to generate and deliver Energy to the Delivery Point is reduced by:

- (a) failure by the Buyer to perform any of its obligations under this Agreement;
- (b) dispatch or back down instructions issued by the Buyer or the System Operator (or the

failure of the Buyer or the System Operator to issue dispatch instructions);

- (c) failure by the Buyer to evacuate Energy which the Facility could have otherwise generated and delivered to the Delivery Point in accordance with this Agreement;
- (d) events which cause a Deemed Commercial Operation Date to occur; or
- (e) an instruction from the Buyer to change the agreed settings of the protective relays installed at the Facility,

(together, "**Curtailed Events**"), then:

- (i) the period during which the ability of the Facility to generate and deliver Energy to the Delivery Point is so reduced shall be a "**Buyer Curtailment Period**";
- (ii) the Buyer shall pay the Energy Charge to the Project Company for all Energy actually received by the Buyer during the Buyer Curtailment Period;
- (iii) subject to Clauses 4.6 (*Deemed Commissioning Payments*) and 4.7 (*Deemed Energy Overpayment*),
 - (A) Energy that otherwise could have been generated and delivered by the Facility to the Delivery Point during the Buyer Curtailment Period as calculated in accordance with Schedule 4 (*Determination of Payments*) shall constitute "**Deemed Energy**"; and
 - (B) subject to Clause 5.6 (*Curtailed Allowance*), the Buyer shall make Deemed Energy Payments to the Project Company in respect of such Deemed Energy in accordance with Schedule 4 (*Determination of Payments*).

5.3 Sale and Purchase of Energy

- (a) On and from the Commercial Operation Date or if earlier, the Deemed Commercial Operation Date:
 - (i) the Project Company shall in good faith provide declarations of the Available Capacity to the Buyer and the System Operator each day, in accordance with the Codes and Operating and Dispatch Procedures; and
 - (ii) the System Operator shall respond with Dispatch Instructions, in each case in accordance with the Codes and Operating and Dispatch Procedures.
- (b) Energy sold and purchased under this Agreement shall be delivered by the Project Company to the Buyer at the Delivery Point and title in and risk of loss of all such Energy shall pass to the Buyer at the Delivery Point.
- (c) The Parties agree that the Project Company may not without the prior written consent of the Buyer, sell or deliver Energy produced by the Facility to any person other than the Buyer, except to the extent that Energy is required by the Project Company or any Contractor for the Operation or Maintenance of the Facility.

5.4 Operating and Dispatch Procedures

- (a) Until such time as the Market Monitor has approved a new Dispatch Code or developed and implemented an interim Dispatch Code, the Parties shall use reasonable endeavours prior to the Commercial Operation Date to agree upon a suite of operating and dispatch procedures including at a minimum, procedures in respect of those matters set out in Schedule 7 (*Requirements for Operating and Dispatch Procedures*), which procedures shall be the "**Operating and Dispatch Procedures**" and each Party shall comply with

them. The Parties acknowledge and agree that the Operating and Dispatch Procedures shall give priority to solar generation over fossil fuel generation.

- (b) If notwithstanding Clause 5.4(a) above, the Parties do not agree the operating and dispatch procedures sixty (60) days prior the Scheduled COD, (a) this shall be treated as a Technical Dispute and (b) the Expert (if appointed in accordance with Clause 21 (*Expert Determination*)) shall be instructed to establish the "**Operating and Dispatch Procedures**" in accordance with such procedures as may have been agreed between the Parties and otherwise in accordance with Schedule 7 (*Requirements for Operating and Dispatch Procedures*).

5.5 Observance of Technical Limits

Nothing contained in this Agreement shall be construed to require the Project Company to Operate the Facility at any time, in any manner inconsistent with the Interconnection Agreement, the Codes, Technical Limits or applicable Law.

5.6 Curtailment Allowance

The Project Company is not entitled to any Deemed Energy Payments in respect of any Buyer Curtailment Allowance in each Contract Year.

6 METERING

6.1 Metering System Installation and Sealing

- (a) Prior to the Commercial Operation Date or if earlier, the Deemed Commercial Operation Date, the Project Company shall at its sole cost and expense install, test and calibrate the Main Meter and the Check Meter at the Delivery Point.
- (b) On and from the Commercial Operation Date or if earlier the Deemed Commercial Operation Date:
 - (i) the Project Company shall own, Maintain, replace, test and calibrate the Main Meter; and
 - (ii) the Buyer shall own, Maintain, replace, test and calibrate the Check Meter.
- (c) The Metering System shall have the functional capability to determine the Metered Energy quantities as set out in Schedule 3 (*Determination of Metered Quantities*).
- (d) The Project Company undertakes to provide to the Buyer access to the Main Meter for the installation of and collection of data from any SCADA System.
- (e) The Metering System shall be jointly sealed, by the Project Company and Buyer, immediately after the Commercial Operation Date. The Project Company will own the seals on the Main Meter and the Buyer will own the seals on the Check Meter. These seals shall only be broken for the purposes of inspection, testing, maintenance or adjustment of the relevant meter and shall be immediately re-sealed, jointly by the Project Company and Buyer, after that purpose is completed. A Party who wishes to break a seal on the Main Meter or the Check Meter shall give at least forty-eight (48) hours' advance notice to the other Party. If the other Party does not attend the breaking of the seal in person, having been served with such notice, the Party wishing to break the seals may proceed, but shall provide a signed explanation to the other Party, within forty-eight (48) hours of such breaking of the seals.
- (f) Subject to Clause 6.1(e), the seals must not be broken by any Party without the prior written consent of the other Party, such consent must not be unreasonably withheld, conditioned or delayed. Both Parties undertake not to and shall procure that none of its agents, employees and Affiliates tamper or otherwise interfere with any part of the Metering System

in any way.

6.2 Meter Reading

- (a) The Main Meter and the Check Meter shall be read monthly by the Project Company and the Buyer in accordance with Schedule 3 (*Determination of Metered Quantities*).
- (b) The monthly meter readings shall be used to determine the monthly Metered Energy quantities in accordance with Schedule 3 (*Determination of Metered Quantities*).

6.3 Meter Testing

- (a) The Project Company shall initially test the Main Meter and the Buyer shall initially test the Check Meter for accuracy in accordance with Schedule 5 (*Meter Specifications*), at least ten (10) Business Days prior to either delivering or receiving Energy through the Delivery Point.
- (b) The Project Company shall have the Main Meter and the Buyer shall have the Check Meter tested in accordance with the requirements of Schedule 5 (*Meter Specifications*) and if necessary, recalibrated at least once every twenty-four (24) months or whenever either Party has reason to believe that the equipment is no longer performing within the standards of accuracy prescribed in Schedule 5 (*Meter Specifications*) and has given notice to the other Party of such concern. Testing or re-calibration of the Main Meter or the Check Meter shall be arranged on a mutually acceptable date agreed between the Parties and shall be carried out in the presence of both Parties' duly Authorised Person(s).
- (c) After completion of any testing in accordance with Clause 6.3(b), the Project Company shall prepare and promptly submit to the Buyer a statement which shall be a record of the results of the testing and if applicable, the extent to which the Main Meter or Check Meter performed outside the limits of accuracy prescribed under Schedule 5 (*Meter Specifications*).
- (d) The Metered Energy supplied by the Project Company to the Buyer shall be measured using readings of the Main Meter, unless such meter is found to be malfunctioning and/or performing outside the limits of accuracy specified in Schedule 5 (*Meter Specifications*). In such event, the procedure specified in Schedule 3 (*Determination of Metered Quantities*) shall be used to determine the Metered Energy.
- (e) If, at any time it is determined by the Parties as a consequence of a test, or as is otherwise manifestly evident, that the Main Meter or Check Meter should be replaced, then the Project Company shall replace the Main Meter or the Buyer shall replace the Check Meter as the case may be, at its own expense.
- (f) If either Party breaches its obligations under this Clause 6 (*Metering*), the meter readings supplied by the other Party shall be binding, save for any manifest error.

7 OUTAGES AND MAINTENANCE

7.1 Annual Planned Maintenance Schedule

- (a) Not later than sixty (60) Business Days prior to the commencement of each Contract Year (save for the first Contract Year for which the corresponding period shall be thirty (30) Business Days prior to the Commercial Operation Date), the Project Company shall submit its planned Scheduled Outages for that year following consultation with the Buyer and the System Operator regarding the Buyer's anticipated Buyer Curtailment Periods in that year (each such planned full or partial interruption being a "**Scheduled Outage**").
- (b) The Buyer may on not less than thirty (30) Business Days notice to the Project Company, request the Project Company to reschedule a Scheduled Outage to an alternative month and the Project Company shall use all reasonable endeavours to accommodate such

rescheduling provided it is consistent with Good Industry Practice and the O&M Agreement.

- (c) The Project Company may on giving not less than fifteen (15) Business Days notice to the Buyer, reschedule a Scheduled Outage to an alternative month provided that such rescheduling is agreed to in writing by the Buyer, such consent may not be unreasonably withheld or delayed.

7.2 Monthly Planned Maintenance Schedule

- (a) Not later than five (5) Business Days prior to the commencement of each month and following consultation with the Buyer regarding the Buyer's anticipated Buyer Curtailment Periods during that month, the Project Company shall submit to the Buyer its planned Scheduled Outages for the month.
- (b) The Buyer may on not less than five (5) Business Days notice to the Project Company, request the Project Company to reschedule a Scheduled Outage to an agreed time period and the Project Company shall use all reasonable endeavours to accommodate such rescheduling if it is consistent with Good Industry Practice and the O&M Agreement.
- (c) The Project Company may on not less than five (5) Business Days notice to the Buyer, reschedule a Scheduled Outage to another time period provided that such rescheduling is agreed to in writing by the Buyer, such consent may not be unreasonably withheld or delayed by more than five (5) Business Days from receipt of notice by the Buyer.

7.3 Unscheduled Outages

If an Unscheduled Outage occurs, the Project Company shall inform the Buyer as soon as possible (and in any event within four (4) hours from the commencement of the Unscheduled Outage) of the cause and the expected (or as the case may be, the actual) duration of the Unscheduled Outage.

8 COMPENSATION, PAYMENT AND BILLING

8.1 Invoices for Energy Delivered and Deemed Generated Energy

The Buyer shall pay the Project Company:

- (a) the Energy Charge for Metered Energy delivered to the Buyer at the Delivery Point on or after the Commercial Operation Date; and
- (b) any Deemed Energy Payments payable in accordance with this Agreement.

8.2 Billing and Payment

- (a) On or before the fifth (5th) day of each month following the month in which the Commercial Operation Date or Deemed Commercial Operation Date occurs, the Project Company shall prepare and deliver to the Buyer an Invoice showing the Energy Charges and any Deemed Energy Payments (in the Nominated Currency) payable to the Project Company for the preceding month. Each such Invoice shall show information and calculations with sufficient detail to permit the Buyer to confirm the compliance of the Invoice with Schedule 4 (*Determination of Payments*).
- (b) The Buyer shall subject to Clause 8.3 (*Disputed Payments*), pay all Invoices on or before the Due Date for the relevant Invoice. If in accordance with Clause 9.3 (*Disputed Payments*), the Buyer disputes any aspect of an Invoice, it shall nonetheless pay all amounts not in dispute by the applicable Due Date
- (c) All payments shall be made in the Nominated Currency in cleared funds and into the relevant Party's Nominated Account.

- (d) Without prejudice to any other rights or remedies, any amount not paid when due (unless disputed in good faith in accordance with Clause 8.3 (*Disputed Payments*)) shall bear interest at the Default Rate, compounded monthly and based on the actual number of days elapsed from the applicable Due Date until payment is made, based on a three hundred and sixty-five (365)-day year.

8.3 Disputed Payments

- (a) If any sum or part of any sum stated in an Invoice is disputed in good faith by the Buyer, then:
 - (i) the Buyer shall promptly issue to the Project Company a notice ("**Invoice Dispute Notice**") specifying in detail the subject matter of the dispute; and
 - (A) if the Project Company accepts the Buyer's Invoice Dispute Notice, the Project Company shall issue a revised Invoice not later than five (5) Business Days of receipt of the Invoice Dispute Notice and Clause 8.2 (*Billing and Payment*) shall apply to such revised Invoice; or
 - (B) if the Project Company does not accept the Buyer's Invoice Dispute Notice, the Project Company must notify the Buyer to this effect not later than five (5) Business Days of receipt of such Invoice Dispute Notice and this shall be treated as a Technical Dispute, provided that the Buyer shall in any event pay any undisputed sum in accordance with Clause 8.2 (*Billing and Payment*); and
 - (ii) the Buyer shall pay such amount as is agreed or determined payable in respect of the disputed sum on the Due Date for the original Invoice or if later, not later than twenty (20) Business Days of:
 - (A) the date on which the Parties resolve the disputed sum; or
 - (B) the date of final determination, if the Parties fail to reach an agreement and the matter has been referred to Dispute Resolution in accordance with Clause 21 of this Agreement (*Dispute Resolution*).
- (b) If the Buyer disputes any amount specified in any Invoice presented by the Project Company more than three (3) times in any period of nine (9) consecutive months and to the extent that the disputes are found to be valid (in whole or in part) by the Project Company or otherwise determined to be valid (in whole or in part) by an Independent Expert or arbitral tribunal appointed in accordance with Clause 21 (*Dispute Resolution*), then the Parties shall meet at the request of either Party to discuss and resolve the causes of the persistent billing errors.

8.4 Renewable Energy Credits

The Parties acknowledge that all Renewable Energy Credits relating to the Project shall be owned by and be the property of the Government as stipulated in the conditions of the Generation Licence.

9 LIQUIDITY SUPPORT

9.1 Obligation to Provide Liquidity Support

The Buyer shall provide the Project Company with the first Liquidity Support Instrument on or before the Liquidity Support Instrument Delivery Date.

9.2 Liquidity Support Instrument Amount

Each Liquidity Support Instrument shall be for an amount equal to:

- (a) for the first Contract Year, Liquidity Support Factor 1 times the estimated average monthly billing for that Contract Year; and
- (b) for each subsequent Contract Year, Liquidity Support Factor 2 times the average of the monthly Invoice amount of the previous Contract Year.

9.3 Maintenance of Liquidity Support

The Buyer shall ensure that:

- (a) each Liquidity Support Instrument shall be valid for a term of at least twelve (12) months;
- (b) the initial Liquidity Support Instrument or a replacement Liquidity Support Instrument in the Liquidity Support Required Amount shall be in effect at all times after the initial obligation to procure the initial Liquidity Support Instrument arises under Clause 9.19.1 (*Obligation to Provide Liquidity Support*); **provided that** in respect of any replacement Liquidity Support Instrument, the Project Company has given Buyer at least forty-five (45) days notice of the requirement to procure such replacement Liquidity Support Instrument; and
- (c) each Liquidity Support Instrument will provide *inter alia* that if the Liquidity Support Instrument is not replaced by a further Liquidity Support Instrument in the Liquidity Support Required Amount within thirty (30) days prior to the expiry of such Liquidity Support Instrument, the issuing bank will be instructed to draw the full amount under the Liquidity Support Instrument and apply such moneys as security in issuing a replacement Liquidity Support Instrument in the Liquidity Support Required Amount.

9.4 Draw on Liquidity Support

- (a) The Project Company shall be entitled to draw upon the Liquidity Support Instrument with prior written notice to the Buyer for any payment due from the Buyer to the Project Company under an Invoice that is overdue for at least thirty (30) days.
- (b) Within thirty (30) days of any drawing of funds by the Project Company under the Liquidity Support Instrument, the Buyer shall provide to the Project Company either:
 - (i) a replacement Liquidity Support Instrument in the Liquidity Support Required Amount (which shall replace and not be in addition to the Liquidity Support Instrument upon which the relevant drawing of funds was made); or
 - (ii) confirmation from the issuing bank addressed to the Project Company that the guaranteed amount under the Liquidity Support Instrument has been replenished up to, or continues to be equal to the Liquidity Support Required Amount.
- (c) If the Project Company draws against the Liquidity Support Instrument and later the Parties agree or if the Parties cannot reach agreement, it is determined in accordance with Clause 21 (*Dispute Resolution*) that the Project Company was not entitled to do so with respect to all or a portion of such drawn amount, then the Project Company shall promptly repay to the Buyer an amount equal to the drawn amount that the Project Company was not entitled to draw, together with all actual, reasonable and documented expenses incurred by the Buyer in connection with such drawing plus interest at the Default Rate on such amount and expenses from the date of drawing until the date such amount is repaid.

10 UNDERTAKINGS AND WARRANTIES OF THE PARTIES

10.1 Mutual Access

The Project Company shall provide the Buyer with access to the Site and the Buyer shall procure that the Project Company is provided with access to the Interconnection Facilities (and each case including other property to which a Party has rights of access by way of lease or licence in connection with the Project) at reasonable hours, subject to compliance with applicable Health and

Safety Legislation and security requirements and upon reasonable notice for any reasonable purpose in connection with the performance of the obligations imposed on a Party by this Agreement or the Codes.

10.2 Compliance with Law

Each Party undertakes that it shall comply with all applicable Laws and Codes.

10.3 Representations and Warranties

- (a) Each Party represents and warrants that:
- (i) it is a [company] duly organised and validly existing under the Law and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
 - (ii) all Authorisations required for the execution, delivery and performance by it of this Agreement and the transactions contemplated in this Agreement have been obtained and are in full force and effect or if not required prior to the Commercial Operation Date, have been applied for or will at the relevant time be applied for through the due process required by the relevant Authority (including the Regulator) and the receipt of such Authorisations shall be received on or prior to the Commercial Operation Date;
 - (iii) this Agreement constitutes its valid, legal and binding obligations enforceable in accordance with the terms hereof.
 - (iv) there are no written actions, suits or proceedings pending or to its knowledge, threatened, against or affecting it before any court or administrative body or arbitral tribunal that might materially or adversely affect its ability to meet and carry out its obligations under this Agreement;
 - (v) the execution, delivery and performance of this Agreement has been duly authorised by all requisite corporate action and will not contravene any provision of or constitute a default of its by-laws, constitutional documents or under any other agreement or instrument to which it is a party or by which its property may be bound; and
 - (vi) in entering into this Agreement, it has not committed any Corrupt Practice.
- (b) The Project Company represents and warrants that any land, wayleave, right of way, easement or other interest in land which it may require for carrying out the Project has been acquired or secured or will be acquired or secured within such time period as is necessary in order for it to carry out its obligations in accordance with this Agreement.

11 ANTI-CORRUPTION PROVISIONS

11.1 Anti-Corruption

Each Party undertakes to the other Party that it will:

- (a) not and it will procure that its officers, employees, agents, Contractors, sub-contractors and any other persons who perform services for or on its behalf in connection with the Project will not breach or could cause the other Party to breach in connection with the Project any applicable Laws intended to prevent bribery or other forms of corruption;
- (b) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with the Project and the steps it takes or has taken to comply with Clause 11.1(a) (*Anti-Corruption*);

- (c) permit the other Party to inspect the records referred to above as reasonably required; and
- (d) to the extent permitted by applicable Laws, promptly notify the other Party of any Government investigation of which it becomes aware and/or any internal investigation, relating to actual or alleged breaches of applicable Laws intended to prevent bribery or other forms of corruption in connection with the Project.

11.2 Anti-Corruption Warranties

- (a) Each Party warrants that as at the date of this Agreement and to the best of its knowledge, neither itself nor any of its officers, employees, agents, Contractors, sub-contractors or any other persons who perform services for or on behalf of it in connection with the Project:
 - (i) has engaged in any Corrupt Practice;
 - (ii) has been convicted of any Corrupt Practice; or
 - (iii) is under any Government or internal investigation for any alleged Corrupt Practice.
- (b) The Project Company will include in any contract which it enters into in connection with this Agreement:
 - (i) a clause equivalent to this Clause 11 (*Anti-Corruption Provisions*); and
 - (ii) a right for the Buyer to exercise equivalent rights over the Contractor to those which the Buyer is entitled to exercise over the Project Company in Clause 11.1(c) (*Anti-Corruption*) above.
- (c) The Project Company and the Buyer will indemnify each other against all Losses (including all Direct Losses and Special Losses), liabilities, costs, damages and expenses that the other Party will incur or suffer in connection with:
 - (i) any breach by it or its Affiliates of Clause 11.1 (*Anti-Corruption*) or paragraphs (a) or (b) of this Clause 11.2 (*Anti-Corruption Warranties*); and
 - (ii) in the case of the Project Company, any breach by any Contractor of any equivalent provisions contained in the relevant contract with such Contractor.

12 INSURANCE AND TAXES⁸

12.1 Insurance

- (a) The Project Company shall (and the Project Company shall procure that each Contractor shall) at its sole cost and expense take out and maintain such insurance cover as is customary, desirable and consistent with Good Industry Practice, including at a minimum the insurances set out in Schedule 8 (*Insurance Requirements*) ("**Required Insurances**"); and
- (b) The Project Company shall furnish to the Buyer copies of insurance policies effecting the Required Insurances and the Buyer may request the Project Company from time to time to provide proof that all relevant premiums have been paid and that the relevant policy or policies remain in existence.
- (c) Subject to Clause 12.1(d) and unless the Buyer otherwise agrees in writing, the Project Company shall apply the proceeds of any claim made under the Required Insurances (other than claims under business interruption insurance, delay in start-up insurance, any other loss of revenue insurance or third party liability insurance) towards reinstatement,

⁸ **User Note:** This clause should be reviewed by specialist insurance advisors.

reconstruction, replacement, repair and/or renewal of any loss of or damage to the Facility in the first instance.

- (d) It is acknowledged and agreed that the Lenders may have:
- (i) security over and rights under the Required Insurances; and
 - (ii) the right to apply and/or require the application of all or some of the proceeds of any claim(s) on the Required Insurances towards payment or repayment (as the case may be) of amounts owing to the Lenders under the Finance Agreements (and in priority to Clause 12.1(c)).
- (e) If:
- (i) the Project Company receives proceeds from any claim made under the Required Insurances;
 - (ii) such claim is made in respect of one or more Curtailment Events or one or more events which caused or otherwise gave rise to one or more Curtailment Events; and
 - (iii) such proceeds are not applied towards (A) reinstatement, reconstruction, replacement, repair and/or renewal of any loss of or damage to the Facility in accordance with Clause 12.1(c) or (B) payment or repayment (as the case may be) of amounts owing to the Lenders under the Finance Agreements in accordance with Clause 12.1 (d),

then Buyer's obligation to pay for the Deemed Energy which arose as a result of the applicable Curtailment Events shall be reduced by the amount of such proceeds.

- (f) Each Party shall require its insurers to waive the insurers' rights of subrogation in favour of the other Party and the Lenders.

12.2 Taxes

The Project Company shall be responsible for payment of any and all royalties, taxes, fees, or assessments levied against its property, leasehold rights or other assets or profits by any Authority as may be provided for by any applicable Law and shall settle such levies without attempting to recover them from the other Party except through the Energy Charge or the Deemed Energy Payments.

13 INDEMNITIES

Each Party (the "**Indemnifying Party**") shall indemnify and hold harmless the other Party, its Affiliates and their respective officers, employees, consultants, agents and representatives (the "**Indemnified Parties**") against any and all Losses which may be asserted against or suffered by any of the Indemnified Parties arising in respect or as a consequence of:

- (a) any death, injury, loss or damage to property suffered by a third party, to the extent resulting from any negligent act or omission of the Indemnifying Party and its respective officers, employees, consultants, agents and representatives, provided that the death, injury, loss or damage to property suffered by the relevant third party is not attributable to any act or omission of any one or more of the Indemnified Parties or to the failure of one or more of the Indemnified Parties to use reasonable endeavours to mitigate or avoid the death, injury, loss or damage to property in question; and
- (b) access to the Indemnified Party's property made by the Indemnifying Party (or its personnel or contractors) in accordance with Clause 10.1 (*Mutual Access*), except to the extent that such costs, claims, liabilities, expenses, suits, actions or proceedings are incurred as a result of an act, omission, negligence or breach by the Indemnified Party (or its personnel

or Contractors).

14 FORCE MAJEURE

14.1 Responsibilities of the Parties during a Force Majeure Event

- (a) If a Force Majeure Event occurs, the Affected Party shall deliver a written notice to the Non-Affected Party ("**Force Majeure Notice**") as soon as reasonably practicable of:
 - (i) the date of commencement of the Force Majeure Event;
 - (ii) the nature and expected duration of the Force Majeure Event; and
 - (iii) the actual and anticipated effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement.
- (b) If the Affected Party does not deliver the Force Majeure Notice in accordance with Clause 14.1(a), the Affected Party is not entitled to any relief pursuant to Clause 14.2 (*Effect of a Force Majeure Event*) until such time as a Force Majeure Notice is delivered by the Affected Party.
- (c) The Affected Party shall:
 - (i) make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay caused by any Force Majeure Event;
 - (ii) take any action in accordance with Good Industry Practice to ensure resumption of normal performance of this Agreement after the cessation of any Force Majeure Event as promptly as possible and otherwise perform its obligations in accordance with this Agreement; and
 - (iii) for the duration of any Force Majeure Event, regularly (and in any event upon the Non-Affected Party's reasonable request) provide the Non-Affected Party with updates in relation to the Force Majeure Event, including the information required under Clauses 14.1(a)(ii) and 14.1(a)(iii) above.
- (d) Not later than seven (7) Business Days following the cessation of any Force Majeure Event, the Affected Party must notify the Non-Affected Party of the cessation of the Force Majeure Event and shall submit to the Non-Affected Party reasonable proof of the nature of the Force Majeure Event and its effect on the performance by the Affected Party of its obligations under this Agreement.
- (e) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set forth in Clause 21 (*Dispute Resolution*), provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief or excuse of performance of its obligations on account of such Force Majeure Event.

14.2 Effect of a Force Majeure Event

- (a) The Affected Party will be excused from performance of its obligations under this Agreement to the extent that performance is impeded or prevented due to a Force Majeure Event and will not be liable for the non-performance of such obligation during the period of a Force Majeure Event.
- (b) If the Affected Party's ability to perform an obligation under this Agreement by a contractual milestone set out in this Agreement (including but not limited to the Scheduled COD and the Commercial Operation Longstop Date) is affected by a Force Majeure Event, the

relevant contractual milestone shall be extended by one day for each day that the Affected Party is unable to comply with the relevant obligation as a result of such Force Majeure Event or is delayed as a result of such Force Majeure Event in complying with the relevant obligation under this Agreement.

- (c) Notwithstanding the existence of any Force Majeure Event, the Affected Party shall however continue to perform all of its obligations under this Agreement, which are not affected by such Force Majeure Event in accordance with this Agreement.

14.3 No Liability for Other Losses

Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Party in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Clause 14 (*Force Majeure*) above.

15 TERMINATION

15.1 Event of Default

- (a) Each of the following events shall (to the extent not caused by a Buyer Event of Default, an Emergency or a Force Majeure Event) be a "**Project Company Event of Default**" which if not cured within the time permitted in this Clause (if any), shall give rise to the right on the part of the Buyer to terminate this Agreement in accordance with Clause 15.3 (*Termination Notices*):
- (i) any assignment or transfer by the Project Company of all or any of its rights, benefits or obligations hereunder to a third party in breach of Clause 19.4 (*Assignment and Other Dealings*);
 - (ii) the Project Company fails to achieve the Commercial Operation Date on or before the Commercial Operation Longstop Date;
 - (iii) Abandonment;
 - (iv) subject to Clause 4.3(b) (*Failure to Commission at or Above Minimum Capacity*), a Commissioning Failure;
 - (v) the Project Company is subject to an Insolvency Event;
 - (vi) the Project Company is in breach of Clause 11.1 (*Anti-Corruption*) or 11.2 (*Anti-Corruption Warranties*);
 - (vii) any Lapse of Authorisation arising from a breach by the Project Company of such Authorisation which prevents the Project Company's ability to lawfully (A) perform its obligations under this Agreement; (B) (prior to the Commercial Operation Date) Construct the Facility; and/or (C) (on and from the Commercial Operation Date) Operate and/or Maintain the Facility and/or generate Energy and deliver such Energy to the Delivery Point;
 - (viii) the Generation Licence is revoked or the Interconnection Agreement is terminated as a result of any default of the Project Company thereunder;
 - (ix) the cessation of the Project Company's legal interest in the Site; or
 - (x) any material breach by the Project Company of this Agreement (other than breaches expressly provided for in this Clause 15.1(a)), which is not remedied within fifteen (15) Business Days following notice by the Buyer stating that a breach of this Agreement has occurred and identifying the breach in question.

- (b) Each of the following shall (to the extent not caused by a Project Company Event of Default or a Force Majeure Event) be a "**Buyer Event of Default**" which if not cured within the time permitted, shall give rise to the right on the part of the Project Company to terminate this Agreement in accordance with Clause 15.3 (*Termination Notices*):
- (i) the Project Company fails to achieve the Commercial Operation Date on or before the Commercial Operation Longstop Date as a result of the Buyer's breach of this Agreement;
 - (ii) subject to Clause 8.2 (*Billing and Payment*), the Buyer fails to make a payment in full of any undisputed amount due to the Project Company under this Agreement not later than twenty (20) Business Days of its Due Date or fails to pay a disputed amount not later than twenty (20) Business Days of the resolution of the Dispute in accordance with Clause 8.3(a)(ii) (*Disputed Payments*);
 - (iii) the Buyer is subject to an Insolvency Event;
 - (iv) the Buyer is in breach of Clauses 11.1 (*Anti-Corruption*) or 11.2 (*Anti-Corruption Warranties*);
 - (v) any assignment or transfer by the Buyer of all or any of its rights, benefits or obligations hereunder to a third party in breach of Clause 19.4 (*Assignment and Other Dealings*);
 - (vi) any Lapse of Authorisation arising from any breach by the Buyer of such Authorisation (including any failure by the Buyer to perform or observe any of the conditions to which such Authorisation may be subject);
 - (vii) any other material breach by the Buyer of this Agreement (other than the breaches expressly provided for in this Clause 15.1(b)), which is not remedied within fifteen (15) Business Days following notice by the Project Company stating that a material breach of this Agreement has occurred and identifying the breach in question;
 - (viii) the Interconnection Agreement is terminated as a result of any default by the Buyer thereunder; or
 - (ix) the Buyer's Transmission, Distribution and Sales Licence is revoked as a result of any default of the Buyer thereunder.

15.2 Prolonged Force Majeure Events

If a Prolonged Force Majeure Event occurs, provided that such Prolonged Force Majeure Event is continuing, either Party may terminate this Agreement upon twenty (20) Business Days notice to the other Party.

15.3 Termination Notices

- (a) Upon occurrence of a Buyer Event of Default or a Project Company Event of Default as the case may be, that is not cured within the applicable cure period (if any), the non-defaulting Party may at its option initiate termination of this Agreement by notifying the defaulting Party of its intention to terminate this Agreement ("**Notice of Intent to Terminate**"). The Notice of Intent to Terminate shall specify in reasonable detail the Buyer Event of Default or the Project Company Event of Default as the case may be.
- (b) Following the giving of a Notice of Intent to Terminate, the Parties shall consult for a period of twenty (20) Business Days (or such longer period as the Parties may agree) as to what steps shall be taken with a view to mitigating the consequences of the relevant event taking into account all prevailing circumstances. During such consultation period following delivery of the Notice of Intent to Terminate, the defaulting Party may continue to seek to cure the default.

- (c) Upon expiration of such consultation period described in Clause 15.3(b), unless the Parties have otherwise agreed or unless the Buyer Event of Default or the Project Company Event of Default which is the subject of the Notice of Intent to Terminate has been remedied, the non-defaulting Party may terminate this Agreement by delivering a further notice to the defaulting Party in writing (the "**Termination Notice**"), whereupon this Agreement shall immediately terminate (the "**Termination Date**").

15.4

15.5 Limitations of Liability

- (a) Except pursuant to Clause[s] 13 (*Indemnities*), neither the Buyer nor the Project Company shall be liable to the other for the other's Special Loss.
- (b) Nothing in this Clause 15.5 (*Limitations of Liability*) shall relieve either Party from any express obligation under this Agreement to make a payment to the other Party when due.

16 RETENTION OF THE FACILITY

Subject to the terms and conditions of the Generation Licence, from the earlier of the Expiry Date and the date on which this Agreement is terminated in accordance with its terms, the Project Company shall subject to the rights of the Lenders pursuant to the Direct Agreement, have the right to continue to Operate and Maintain the Facility until the end of the operational life of the Facility provided that the Facility can continue to be operated by the Project Company in accordance with all applicable Laws, Authorisations and applicable Codes. The Buyer shall refrain from doing anything that may prevent, impede or delay such arrangements.

17 CONFIDENTIAL INFORMATION

17.1 Non-disclosure of Confidential Information

Each Party (a "**Receiving Party**") shall (and shall procure that its Affiliates (the "**Receiving Group**") shall) keep confidential and not disclose to any third party nor use other than for a Permitted Purpose any Confidential Information of the other Party (a "**Disclosing Party**") (or such other Party's Affiliates (the "**Disclosing Group**")).

17.2 Exceptions

- (a) Clause 17.1 (*Non-disclosure of Confidential Information*) shall not apply if and to the extent that:
- (i) such Confidential Information is in the public domain (other than by reason of a breach of any obligation of confidentiality applicable to the Receiving Group);
 - (ii) such Confidential Information was known by the Receiving Group (without any obligation of confidentiality in respect of it) prior to the first disclosure of such information to the Receiving Group by (or on behalf of) the Disclosing Group;
 - (iii) such Confidential Information is disclosed to the Receiving Group on a non-confidential basis by person(s) other than by the Disclosing Group (or person(s) acting on its behalf) in circumstances where the Receiving Group reasonably believed that such disclosure was lawfully made without breach of any obligation of confidentiality by such person(s);
 - (iv) the Disclosing Party has consented in writing to such disclosure or use of such Confidential Information or has otherwise confirmed in writing that such Confidential Information is not confidential;

- (v) disclosure is made to Contractors, outside consultants or advisors engaged by or on behalf of the Receiving Party and acting in that capacity in connection with the Project (including insurance, tax and legal advisors);
 - (vi) disclosure is made to the Lenders and to any Affiliate, advisor, agent, trustee or representative of the Lender;
 - (vii) such disclosure or use is required by applicable Laws or the Government pursuant to the Generation Licence or the Transmission, Distribution and Sales Licence, the rules of any investment exchange to which the Receiving Group may be subject or by any competent Authority having jurisdiction over the Receiving Group.
- (b) If disclosure or use is to be made pursuant to Clause 17.2(a), then if permitted by Law, the Receiving Party shall consult with the Disclosing Party reasonably in advance of such disclosure or use so as to permit the Disclosing Party reasonable opportunity to review and comment on such disclosure or intended use and if so desired by the Disclosing Party, for the Disclosing Party to take any reasonable action to prevent or restrict such disclosure or use.

17.3 Disclosure Between Members of the Recipient Party's Group and/or Delegates

Notwithstanding Clause 17.1 (*Non-disclosure of Confidential Information*), the disclosure of Confidential Information between members of the Receiving Group and/or Delegates of the Receiving Group shall be permitted, provided that:

- (a) such disclosure is restricted to those persons who reasonably need to know such information in connection with the Permitted Purpose or by the nature of their role as a Delegate of the Receiving Group; and
- (b) the Receiving Party shall procure that any person to whom Confidential Information is disclosed under this Clause 17.3 (*Disclosure Between Members of the Recipient Party's Group and/or Delegates*) and all other Delegates of the Receiving Group shall comply with the obligations of confidentiality and restrictions on use applicable under this Clause 17 (*Confidential Information*) in the same manner as such restrictions and obligations apply to the Receiving Party.

17.4 Return of Confidential Information

The Receiving Party shall upon written request of the Disclosing Party, procure that all Confidential Information provided by (or on behalf of) the Disclosing Group to the Receiving Group (or derived from Confidential Information disclosed to the Receiving Party by (or on behalf of) the Disclosing Party) shall to the extent within the possession or control of the Receiving Group (or any Delegate of it), be promptly returned to the Disclosing Party (or if so authorised by the Disclosing Party, destroyed or deleted) provided that in respect of any information stored electronically or in other non-physical media, it shall be sufficient for the Receiving Party to procure that access to such information is restricted to non-commercial archiving purposes only.

17.5 Obligations Survive Termination

The obligations of each Party contained in this Clause 17 (*Confidential Information*) shall survive the termination of this Agreement and shall continue for a period of two (2) years after the Expiry Date or the Termination Date, if earlier.

17.6 Injunctive Relief

Each Party acknowledges that monetary damages alone may not be a sufficient remedy for any actual or threatened breach of this Clause 17 (*Confidential Information*), that injunctive relief and specific performance or any other equitable relief may be available to the non-defaulting Party in respect of any such breach and that no proof of special damages shall be necessary for the enforcement of this Clause 17 (*Confidential Information*). Such remedies shall be in addition to

and not in lieu or limitation of any other remedy available to the non-defaulting Party under this Agreement or otherwise at Law or in equity.

18 NOTICES

18.1 Method of Service

A notice or other communication given under this Agreement by any Party to the other Party shall be in writing (which shall include e-mail), signed in manuscript by or on behalf of the Party giving it (which includes a faxed or scanned manuscript signature) or in the case of e-mail, that the message was sent from an e-mail address of the Party giving it (and which sender's e-mail address is one to which notices and other communications may also be validly delivered to that Party under this Clause 18.1 (*Method of Service*)), in the English language and may be either:

- (a) delivered personally by hand; or
- (b) if sent from within the same jurisdiction in which the recipient's address is located, then sent by courier (or if sent from outside the jurisdiction in which the recipient's address is located, then sent by international courier); or
- (c) sent by facsimile; or
- (d) sent by e-mail,

in each case addressed to each Party in accordance with the notice details contained in the Key Information Table.

18.2 Deemed Service

Without prejudice to any earlier time at which a notice or other communication may be actually given and received, a properly addressed notice will in any event:

- (a) if personally delivered, be deemed to have been given and received upon delivery at the relevant address;
- (b) if posted to an address in the same jurisdiction as that from which it was sent by courier (which courier advises of delivery within two (2) Business Days), be deemed to have been given and received two (2) Business Days after the date of posting;
- (c) if sent to an address in a different jurisdiction as that from which it was sent by international courier (which courier advises of delivery within seven (7) Business Days), be deemed to have been given and received seven (7) Business Days after the date of posting;
- (d) if sent by facsimile and a confirmatory successful transmission report is given by the transmitting device, be deemed to have been given and received on the date of transmission (or if such day is not a Business Day, then the next Business Day); and
- (e) if sent by e-mail and no delivery failure is reported to or by the sender's e-mail server, be deemed to have been given and received on the date such e-mail was sent (or if such day is not a Business Day, then the next Business Day).

18.3 Proof of Service

In proving service, it shall be sufficient to prove that:

- (a) the envelope containing the notice or other communication was addressed to the address of the relevant Party as set out in Clause 18.1 (*Method of service*) (or as otherwise notified by that Party pursuant to Clause 18.5 (*Change of address*)) and delivered to either custody of the courier or international courier firm (as applicable); or

- (b) the notice or other communication was transmitted in full by facsimile to the facsimile number of the relevant Party set out in Clause 18.1 (*Method of service*) (or as otherwise notified by that Party pursuant to Clause 18.5 (*Change of address*)) (as evidenced by a confirmatory transmission report); or
- (c) that the e-mail was correctly addressed and that no delivery failure was reported to or by the sender's e-mail server.

18.4 Receipt Outside Business Hours

If receipt or deemed receipt of a notice or other communication occurs before 9.30 a.m. in the country of receipt on a Business Day, the notice or other communication shall be deemed to have been received at 9.30 a.m. (in the country of receipt) on that day. If deemed receipt occurs after 5.30 p.m. (in the country of receipt) on a Business Day or on a day which is not a Business Day, the notice or other communication shall be deemed to have been received at 9.30 a.m. (in the country of receipt) on the next Business Day.

18.5 Change of Address

Any Party to this Agreement may give at least five (5) Business Days notice to the other Party to change its address or other details specified in Clause 18.1 (*Method of service*).

18.6 Service of Proceedings

This Clause 18 (*Notices*) does not apply to the service of any documents relating to any proceedings in any court or where applicable, any arbitration or other method of dispute resolution.

19 MISCELLANEOUS

19.1 No Partnership

This Agreement must not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have nor represented that it has any authority to make any commitment on the other Party's behalf.

19.2 Further Assurance

Each Party shall insofar as it is reasonably able to do so and at its own expense execute and deliver all such documents and do all such things as may be reasonably required from time to time to give full effect to this Agreement and to secure to the other Party the full benefit of the rights, powers, privileges and remedies conferred upon the other Party in this Agreement.

19.3 Costs

Save as expressly provided in this Agreement to the contrary, each Party shall be responsible for its own costs incurred in connection with the negotiation, preparation, execution and implementation by it of this Agreement, provided that this Clause 19.3 (*Costs*) must not prejudice the right of either Party to seek to recover its costs in any litigation or dispute resolution procedure which may arise out of this Agreement. Each Party shall bear its own costs in relation to the negotiation and preparation of this Agreement.

19.4 Assignment and Other Dealings

- (a) Neither Party may assign or otherwise transfer all or any of its rights, benefits or obligations hereunder without the other Party's prior written consent.
- (b) If the Project Company intends to obtain financing for the Project, the Project Company may assign to or grant a security interest of all of its rights and interests under or pursuant

to this Agreement for such purposes. The Project Company must notify the Buyer of the creation of such security over its rights and interests under this Agreement at least thirty (30) Business Days prior to the execution of any such assignment or security interest.

- (c) The Buyer agrees to enter into a direct agreement with the Lenders upon the Project Company's reasonable request in connection with the financing or refinancing of the Project.

19.5 Entire Agreement

- (a) This Agreement, together with the exhibits and schedules thereto, contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, which the Parties acknowledge have been merged into such documents, exhibits and schedules.
- (b) Each Party acknowledges and agrees that:
 - (i) it has not relied on or been induced to enter into this Agreement by any representation, warranty, statement, assurance, promise or undertaking of any kind except as expressly included in this Agreement; and
 - (ii) it must not be liable to the other (whether in equity, contract, tort or under statute or otherwise) for any representation, warranty, promise, statement, assurance or undertaking which is not set out in this Agreement and neither Party shall be entitled to claim damages or terminate or rescind this Agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether a Party or not) at any time and upon which it has relied before entering into this Agreement.
- (c) Nothing in this Clause 19.5 (*Entire Agreement*) shall limit or exclude any liability or remedy for fraud or wilful misconduct.

19.6 Variation

This Agreement may only be varied in writing signed by each Party.

19.7 Severance

- (a) If any provision of this Agreement (or part of a provision) is held by any court of competent jurisdiction to be invalid, unenforceable or illegal, such provision (or part) shall to that extent be deemed not to form part of this Agreement and the other provisions of this Agreement shall remain in force.
- (b) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the intention of the Parties.
- (c) If any provision of this Agreement (or part of a provision) is held by any court of competent jurisdiction to be invalid, unenforceable or illegal and Clause 19.7(a) does not apply, the Parties will agree a replacement provision which is legal and enforceable and achieves to the greatest extent possible the same effect as would have been achieved by the invalid, unenforceable or illegal provision.

19.8 Counterparts

- (a) This Agreement may be executed in any number of counterparts, each of which is deemed to be an original and which together have the same effect as if each Party had signed the same document.

- (b) This Agreement may be executed through the use of electronic signatures and a counterpart of this Agreement that contains the electronic signature of a Party, which counterpart has been transmitted by e-mail transmission to the other Party at such e-mail address as such other Party shall request, shall constitute an executed counterpart of this Agreement.

19.9 Language of the Agreement

- (a) The language of this Agreement is English and all documents, notices, waivers and all other written communications or otherwise between the Parties in connection with this Agreement shall be in English.
- (b) If this Agreement is translated into any other language, the English language text shall prevail unless the relevant document is a constitutional, statutory or other official document.

19.10 Waiver

- (a) No failure to exercise, nor any delay in exercising any right, power, privilege or remedy under this Agreement shall in any way impair or affect the exercise of such right, power or privilege or remedy; or operate as a waiver of such right, power or privilege or remedy in whole or in part.
- (b) The waiver by any Party of any of its rights or remedies arising under this Agreement or by Law must not constitute a continuation of that or any other right or remedy.
- (c) No single or partial exercise of any right, power, privilege or remedy under this Agreement shall preclude or restrict the further exercise of that or any other right, power, privilege or remedy.

19.11 Rights and Remedies are Cumulative

The rights, powers, privileges and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided by Law or otherwise.

19.12 Third party rights

A person who is not a party to this Agreement must not have any rights to enforce any term of this Agreement.

19.13 Mitigation

The Parties shall mitigate any Losses they may incur pursuant to this Agreement to the extent specified hereunder and where not specified, to the extent required by Law.

20 GOVERNING LAW

This Agreement and any related non-contractual obligations connected with it shall be governed by the Governing Law.

21 DISPUTE RESOLUTION

If a Dispute arises out of or in connection with this Agreement, then, except as expressly provided in this Agreement, the Parties shall follow the procedure set out in this Clause 21.

21.1 Senior Manager Discussions

- (a) The Parties shall resolve any Dispute arising between them, in the first instance, by mutual consultation, to be commenced by the delivery of a notice by a Party to the other Party that a Dispute has arisen specifying particulars of the Dispute.

- (b) If the Parties are unable to settle the Dispute through mutual consultation within fourteen (14) days of delivery of the notice of dispute, then either Party shall refer the Dispute in writing to a committee comprising one (1) senior manager of each of the Parties, such senior managers shall not be involved in the day to day running and/or management of the Agreement ("**Management Committee**"), with a copy of the notice of referral to the other Party.
- (c) The Management Committee shall convene at a mutually agreed venue within fourteen (14) days of the notice of referral to consider the information available in order to provide a written opinion on the Dispute within twenty-eight (28) days of the notice of referral. The Parties may agree to longer periods for convening the Management Committee and for it to form an opinion.
- (d) If a written decision is reached by the Management Committee, signed by all members of the Management Committee and expressly stating that the decision resolves the Dispute, such decision shall be final and binding on the Parties. No other kind of decision, opinion, award or findings by the Management Committee or any of its members shall be binding on the Parties.

21.2 Expert Determination

- (a) If the Parties are unable to resolve the Dispute by Senior Management Discussions, or referral to an Independent Expert is expressly required by this Agreement, the Dispute shall be subject to determination by an Independent Expert under this Clause 21.2 ("**Expert Determination**").
- (b) The Expert Determination process will be commenced by a Party delivering a written notice to the other Party requesting an Expert Determination in respect of the Dispute.
- (c) Within ten (10) Business Days of the delivery of the written notice under Clause 21.2(b), the Parties shall appoint an Independent Expert to determine the Dispute. If the Parties fail to agree the identity of the Independent Expert within such period, the requesting Party shall thereafter request the Expert Appointing Authority to appoint the Independent Expert to determine the Dispute. The request shall indicate the nature of the Dispute and the requesting Party shall make payment of any such fees that may be required. The other Party shall have the opportunity to provide its comments on the request to the Expert Appointing Authority.
- (d) The Independent Expert shall in consultation with the Parties decide upon the procedure to be followed in order to arrive at the Independent Expert's determination. The Independent Expert may decide to conduct the procedure in a summary or informal manner or may decide to dispense with specific formalities, procedures, pleadings, discovery or strict rules of evidence, provided however that the Parties are afforded equal treatment and a reasonable right to be heard.
- (e) The Independent Expert shall issue its Expert Determination not later than forty-five (45) Business Days from the date of the Independent Expert's instruction and shall include the reasons for the decision.
- (f) If the Expert Determination is manifestly incorrect, reached negligently, fraudulently or in bad faith, either Party may by notice provided to the other Party not later than twenty (20) Business Days after the date of issue of the determination, regard the Expert Determination as a Dispute and refer the Dispute for arbitration under Clause 21.3 (*Arbitration*).
- (g) Subject to Clause 21.2(f), the Expert Determination shall be final and binding on the Parties and shall be complied with promptly by the Parties, unless challenged in an arbitration under Clause 21.3 (*Arbitration*) within thirty (30) Days of the date the Expert's final decision is received by the parties to the Dispute. In such arbitration, the Expert shall not (without the written consent of the parties to the Dispute) be appointed to act as an arbitrator or as adviser to the Parties.

21.3 Arbitration

- (a) If the Parties are unable to resolve the Dispute by Expert Determination, the Dispute shall be finally settled by arbitration administered by the Arbitration and Mediation Court of the Caribbean (“**AMCC**”) in accordance with the Arbitration Rules by [one (1) / three (3)] arbitrator(s) appointed in accordance with the said Arbitration Rules.
- (b) The arbitration shall be conducted in the Arbitration Language.
- (c) The seat or legal place of the arbitration shall be the Arbitration Seat.
- (d) The Governing Law shall also apply to this Clause 21.3 (*Arbitration*).
- (e) The Parties agree that the AMCC and/or the arbitral tribunal (as applicable) may on request from either Party, consolidate an arbitration commenced hereunder with an arbitration or arbitrations commenced under the Generation Licence, the Transmission, Distribution and Sales Licence, the Interconnection Agreement or any Finance Agreements, if the arbitration proceedings raise common questions of law or fact. If two (2) or more arbitral tribunals issue orders under these consolidation orders, the order issued first shall prevail. Likewise, each Party agrees that it may be joined to any arbitration proceedings between the other Party and its counterparty under any of the aforementioned agreements or licences to allow for the resolution in a single arbitration of a related Dispute raising common questions of law or fact under this Agreement.

21.4 Confidentiality of Disputes

Notwithstanding Clause (*Confidential Information*), this Clause 21.4 (*Confidentiality of Disputes*) applies with respect to any Dispute unless the Parties expressly agree in writing to the contrary. The Parties undertake to keep confidential the outcome of all senior manager discussions and mediations, all Expert Determinations and all awards in arbitration, together with all materials created for the purpose of senior manager discussions, mediations, Expert Determinations and arbitration proceedings and all other documents produced by another Party in those processes, to the extent not otherwise in the public domain. This confidentiality undertaking does not apply where disclosure is:

- (a) required by applicable Law, regulation, court order, the Government or any appropriate Authority;
- (b) to protect or pursue a legal right or to enforce or challenge a settlement agreement, expert determination or arbitral award in *bona fide* legal proceedings before a state court or other judicial authority; and

to their professional advisers, consultants, technical experts, project managers, Lenders, insurers and Affiliates

SIGNATURE PAGE TO THE FIT POWER PURCHASE AGREEMENT (SOLAR)

THIS AGREEMENT has been entered into on the date first above written.

Schedule 1 – Functional Specification of Facility

Schedule 2 – Site

Schedule 3 – Determination of Metered Quantities

Schedule 4 – Determination of Payments

Schedule 5 – Meter Specifications

Schedule 6 – Testing Programme

Schedule 7 – Requirements for Operating and Dispatch Procedures

Schedule 8 – Insurance Requirements

Schedule 9 – Liquidity Support Instrument

Schedule 10 – Form of Direct Agreement

Schedule 11 – Operation