

**POWER PURCHASE AGREEMENT**

---- Between ----

**THE JAMAICA PUBLIC SERVICE COMPANY LIMITED**

--- and ---

**[LICENSEE]**

relating to

the power generation at [LOCATION OF COMPANY]

DATED AS OF [DATE OF AGREEMENT]

**FORM 115MW ENERGY ONLY POWER PURCHASE AGREEMENT**

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This POWER PURCHASE AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_,  
[YEAR] in Kingston, Jamaica,

B E T W E E N:

- (1) JAMAICA PUBLIC SERVICE COMPANY LIMITED (“JPS”), a company duly incorporated under the laws of Jamaica and having its registered office at 6 Knutsford Boulevard, Kingston 5, Jamaica; and
- (2) [LICENSEE] (the “Company”), a general partnership duly organized under the laws of Jamaica and having its registered office at [Address of Company].

Both JPS and the Company are herein referred to individually as a “Party” and collectively as the “Parties”.

W H E R E A S:

- (A) The Company plans to design, finance, construct, own, operate and maintain a power generation facility with a net capacity of [megawatts] MW located in [PARISH] Jamaica (as further described in Schedule 2, the “Facility”); and
- (B) The Company wishes to sell to JPS, and JPS wishes to purchase from the Company, the Net Energy Output of the Facility pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound hereby, the Company and JPS hereby agree as follows:

1. INTERPRETATION

In this Agreement:

1.1 Interpretation

- 1.1.1 Expressions defined in Schedule 1 shall bear the respective meanings set out therein;
- 1.1.2 The headings and paragraph numbering contained in this Agreement are for convenience only, do not constitute part of this Agreement and shall be ignored in construing this Agreement;
- 1.1.3 The gender of all words used herein shall include the masculine, feminine and neuter;
- 1.1.4 The singular includes the plural and vice versa;

- 1.1.5 References to Articles, Sections, Clauses, Recitals, Preambles and Schedules are, unless the context otherwise requires, references to Sections of, and Schedules, the Preambles and Recitals to, this Agreement;
- 1.1.6 The terms “hereof”, “herein”, “hereto” and similar words refer to this entire Agreement;
- 1.1.7 References to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
- 1.1.8 Wherever the provisions of this Agreement require, provide for or permit an approval, agreement or consent by either Party of or to any action, person, document, or other matter contemplated by this Agreement, the following provisions shall apply:
- (a) such approval, agreement or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless otherwise specifically provided herein);
- (b) the Party whose consent is being sought (the “Consenting Party”) shall, within the relevant time period set forth herein or if no time period is specified within thirty (30) Days, advise the other Party by notice either that it consents, agrees or approves or that it withholds its consent, agreement or approval, in which latter case it shall set forth, in reasonable detail, its reasons for withholding its consent, agreement or approval; provided that, if the Consenting Party shall fail to give the other Party the notice contemplated in this Clause 1.1.8(b), the relevant approval, agreement and consent shall be deemed consented to, agreed to or approved by the Consenting Party with no further action;
- (c) if the responding notice mentioned in Clause 1.1.8(b) indicates that the Consenting Party does not approve, agree or consent, the other Party may take whatever steps may be necessary to satisfy the objections of the Consenting Party set out in the responding notice and, thereupon, may resubmit such request for approval, agreement or consent from time to time and the provisions of this Clause 1.1.8 shall again apply until such time as the approval or consent of the Consenting Party is finally obtained;
- (d) if the disapproval or withholding of consent, agreement or approval mentioned in Clause 1.1.8(c) is subsequently determined to have been improperly withheld, conditioned or delayed by the Consenting Party, such approval, agreement or consent shall be deemed to have been given on the date on which such approval, agreement or consent was originally required; and
- (e) for the avoidance of doubt, any dispute as to whether or not a consent, agreement or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Section 14;



- 1.1.9 References to any person shall be construed as a reference to such person's successors and permitted assigns;
- 1.1.10 References to "includes," "including" and similar phrases shall mean "including, without limitation";
- 1.1.11 In the event of any conflict between the body of this Agreement and any of the Schedules hereto the relevant provisions shall be construed as complementary rather than conflicting wherever possible, but, if a complementary construction is not possible, then the terms and provisions of the body of this Agreement shall take precedence over the Schedules; and
- 1.1.12 Wherever the provisions of this Agreement require, provide for or permit notice to be given "notice" shall mean five (5) Days written notification unless otherwise specified herein.

## 2. SALE AND PURCHASE OF ENERGY

### 2.1 Sale by the Company and Purchase by JPS

Subject to and in accordance with the terms of this Agreement, the Company shall make available and sell to JPS, and JPS, pursuant to its Licence, shall purchase from the Company for the consideration described herein, Net Energy Output of the Facility in accordance with the provisions of Schedule 6, during testing, commissioning and after the Commercial Operations Date. Title to, and risk of loss for, Net Energy Output shall pass from the Company to JPS at the Interconnection Point.

### 2.2 Sale by JPS and Purchase by the Company

Subject to, and in accordance with the terms of this Agreement and the applicable standard terms and conditions of contract governing the supply of electricity to JPS' customers, JPS shall make available and sell to the Company, and the Company may purchase from JPS, capacity and energy, in accordance with applicable rate schedules, as determined by the Office of Utilities Regulation (hereinafter referred to as "the OUR").

## 3. TERM

### 3.1 Initial Term

The initial term of this Agreement shall commence on the Agreement Date and shall end (unless it is earlier terminated pursuant to the provisions of this Agreement) on the twentieth (20<sup>th</sup>) anniversary date of the Commercial Operations Date. The termination

of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such termination.

### 3.2 Renewal Term

Subject to the evaluation and approval of the Office of Utilities Regulation (the "OUR"), this Agreement may be extended for an additional period and on terms and conditions mutually agreeable to the Company and JPS, provided that:

- (a) the Party seeking the extension shall give written notice to the other Party and the OUR not less than five (5) nor more than six (6) years prior to the end of the initial term;
- (b) the Party receiving such notice shall notify the other Party within and the OUR ninety (90) Days after receipt of the notice described in sub-clause (a) above indicating its desire to extend the Agreement;
- (c) the Parties shall use all reasonable efforts to agree to an extension of this Agreement within twelve (12) Months after receipt of the notice described in sub-clause (b) above; and
- (d) the Parties shall submit the terms and conditions of such extension as agreed to the OUR for its consideration, evaluation and approval;
- (e) the Complex shall be in compliance with the Minimum Functional Specifications at the beginning of such additional period; and
- (f) there shall be no Event of Default existing on the part of the party who requested the extension at the material time or at the beginning of the additional period.

## 4. PRE-OPERATION PERIOD FOR FACILITY

### 4.1 Permits and Licenses

The Company, at its sole cost and expense, shall acquire and maintain in effect all permits, licenses and approvals required by all governmental and local agencies, commissions and authorities with jurisdiction over the Company and/or the Facility in order to enable it to perform its obligations under this Agreement.

## 4.2 Submissions by the Company

The Company shall submit to JPS the documents listed in Clauses 4.2.1 through 4.2.19 below (“PPA Original Support Documents”) on or before the dates specified. In addition, the Company shall provide to JPS any document amending or otherwise modifying a PPA Original Support Document in a timely manner as such information is amended, modified or superseded (all such amendments and modifications, “PPA Amended Support Documents”). Prior to executing or otherwise completing a PPA Original Support Document or PPA Amended Document referred to in Clauses 4.2.2, 4.2.3, 4.2.9 and 4.2.10, the Company shall obtain the written approval of JPS, which approval shall not be unreasonably conditioned, withheld or delayed. If JPS refuses its approval of any PPA Original Support Document or PPA Amended Document, JPS shall provide the Company with a written statement explaining in reasonable detail the basis for such refusal. Neither the receipt nor approval of any PPA Original Support Document or PPA Amended Support Document shall (i) relieve the Company of any liability, obligation or responsibility under this Agreement resulting from a breach by the Company of this Agreement, or (ii) be construed as an endorsement by JPS of the design, financing, construction, ownership, operation or maintenance of the Facility nor as a warranty by JPS of the safety, durability or reliability thereof. The documents to be submitted and specified dates are as follows:

- 4.2.1 On or before the Commencement of Construction, a notice indicating the Scheduled Commercial Operations Date, as such date may be updated by the Company from time to time;
- 4.2.2 On or before the date one hundred eighty (180) Days prior to the Scheduled Commercial Operations Date, a copy of the Company’s proposed plan for the operations and maintenance of the Facility and any O&M Contract entered into by the Company, together with all amendments executed as of that date;
- 4.2.3 On or before the date one hundred eighty (180) Days prior to the Scheduled Commercial Operations Date, a copy of the Company’s Renewable Fuel Feed Stock Supply arrangement for the Facility as applicable;
- 4.2.4 On or before the date thirty (30) Days prior to the Commencement of Construction, a copy of the Construction Contract entered into by the Company for the Facility, including all schedules, plans and specifications attached thereto, plus all amendments executed as of that date (but excluding the commercial terms of the Construction Contract);
- 4.2.5 As soon as available, but prior to the commencement of the relevant contract, copies of any contracts executed with direct contractors (but excluding the commercial terms of such contracts);

- 4.2.6 As soon as available but no later than one hundred eighty (180) Days prior to the Scheduled Commercial Operations Date, copies of all permits, licenses, approvals and other governmental authorizations and relevant concessions that have been issued to the Company for the design, financing, construction, ownership, operation and maintenance of the Facility; provided that where the Company has failed to receive any permit, licence, approval or other governmental authorization for the design, financing, construction, ownership, operation and/or maintenance of the Facility, the Company shall as soon as such failure has arisen but no later than one hundred eighty (180) Days prior to the Scheduled Commercial Operations Date, notify JPS of its failure to receive any such permit, licence, approval or other governmental authorization;
- 4.2.7 Beginning thirty (30) Days after the Agreement Date and ending on the Commercial Operations Date, monthly progress reports substantially in the form set forth in Schedule 8;
- 4.2.8 As soon as available but not later than ninety (90) Days after the Agreement Date, general arrangement drawings for the construction of the Facility;
- 4.2.9 Not later than ninety (90) Days prior to the scheduled commencement of testing and Commissioning of the Facility, a start-up and test schedule for such Commissioning, including, without limitation, appropriate milestone dates for such start-up and testing. JPS shall within seven (7) days of receipt of same respond to the Company with its approval or objections, as the case may be. In the event of objections, the Parties shall thereafter make every effort to have the Commissioning Schedule agreed no later than (fourteen (14) days prior to the Scheduled Commercial Operations Date. In the event that no response is received from JPS within the seven days period, the Commissioning Schedule shall be deemed to be agreed by JPS;
- 4.2.10 As soon as available draft copies of all Renewable Fuel Feed Stock Supply Agreements, Renewable Fuel Feed Stock Transportation Agreements, and other commitments required to implement the Renewable Fuel Feed Stock Supply Plan for the Facility as applicable and as soon as available but not later than ninety (90) Days prior to the scheduled commencement of testing and Commissioning of the Facility executed copies of these agreements;
- 4.2.11 Not later than one hundred and twenty (120) Days prior to the Scheduled Commercial Operations Date, a copy of draft written operating procedures to serve as the basis for the written Operating Procedures to be jointly developed pursuant to Clause 4.3;
- 4.2.12 Not later than one hundred and twenty (120) Days prior to the Scheduled Commercial Operations Date, a proposed Interconnection Tripping Schedule to serve as the basis for the Interconnection Tripping Schedule to be jointly developed pursuant to Clause 4.3;

- 4.2.13 Not later than ten (10) Days after the date of purchase of the relevant insurance policy, copies of all certificates of insurance required to be obtained as of the Agreement Date pursuant to Clause 11, together with prompt submission of all amendments executed subsequent to the Agreement Date;
- 4.2.14 As soon as available but not later than thirty (30) Days prior to the Commercial Operations Date, final design drawings for the construction of the Facility;
- 4.2.15 As soon as available but not later than thirty (30) Days prior to the Commercial Operations Date, certificate(s) signed by one or more licensed professional design engineers of the Construction Contractor stating that the Facility is designed (a) in accordance with the Agreement Criteria, (b) in accordance with Prudent Utility Practice, and (c) to have a useful life of at least twenty (20) Years;
- 4.2.16 As soon as available but not later than ten (10) Days prior to the Commercial Operations Date a certificate signed by one or more licensed professional engineers of the Construction Contractor stating that the Facility has been constructed in accordance with the Agreement Criteria, the Construction Contract, the final design drawings, and Prudent Utility Practice. As soon as available but not later than forty-five (45) Days after the Commercial Operations Date a certificate signed by one or more licensed professional engineers of the Construction Contractor stating that the Facility is designed and constructed to have a useful life of at least twenty (20) Years;
- 4.2.17 As soon as available but not later than forty-five (45) Days after the Commercial Operations Date, a certificate signed by the Company's licensed professional engineer stating that he has supervised the design and construction of the Facility in accordance with the terms of this Agreement, plant design and construction specifications (including the Minimum Functional Specifications) and has been completed consistent with this Agreement, the applicable codes, standards, regulations, the Construction Contract, Prudent Utility Practice, and that the Facility is designed and constructed to have a useful life of at least twenty (20) Years;
- 4.2.18 As soon as available but not later than [Amount (Amount)] Days prior to the Commercial Operations Date, copies of all test results for tests performed on the Facility;
- 4.2.19 As soon as available but not later than sixty (60) Days after the Commercial Operations Date, as-built drawings and complete specifications for the Facility and
- 4.2.20 Where by this Agreement the Parties or any one of them is required to perform any act or fulfill any obligation during the Pre-Operation Period within a specified time and for any reason whatsoever that party cannot perform within the time stated, then that party may request an extension of the time for performance. Requests for extensions of time shall be given due and reasonable consideration and may be granted on such terms

and conditions as the Parties may agree.

#### 4.3 Operating Procedures

- 4.3.1 The Company and JPS shall jointly develop and agree on written operating procedures for the Facility no later than ninety (90) Days prior to the Scheduled Commercial Operations Date (the "Operating Procedures"). Such Operating Procedures shall: (i) be based on, but not limited to, the designs of the Facility, the Interconnection Facilities and the JPS Grid and on the draft procedures provided by the Company pursuant to Clause 4.2.11; (ii) be consistent with the Minimum Functional Specifications; and (iii) deal with all operational interfaces between JPS and the Company, including, but not limited to, the method of day-to-day communication, key personnel lists, forced outage reconciliation, clearances and switching practices, safety rules and procedures, outage scheduling, energy reporting, Generating Unit operations log, and Reactive Power support. The Operating Procedures shall be subject to the prior written consent of JPS, which consent shall not be unreasonably conditioned, withheld or delayed.
- 4.3.2 The Company and JPS shall jointly develop an Interconnection Tripping Schedule no later than ninety (90) Days prior to the Scheduled Commercial Operations Date. In developing such Interconnection Tripping Schedule, due consideration shall be given to the proposed Interconnection Tripping Schedule provided by the Company pursuant to Clause 4.2.12 and shall be subject to the prior written approval of JPS, which approval shall not be unreasonably conditioned, withheld or delayed.

#### 4.4 Energy Prior to the Commercial Operations Date

- 4.4.1 Upon the Company's request, JPS shall provide electricity supply for the construction, testing and Commissioning of the Facility, subject to availability and JPS' ability to deliver such supply to the Facility. The Company shall pay JPS for such supply pursuant to Clause 2.2.
- 4.4.2 Prior to the Commercial Operations Date, JPS shall use reasonable efforts to accept all energy produced by the Facility during testing and Commissioning of the Complex and JPS shall pay the Company for such energy at the rate set forth in Section 9.

#### 4.5 Inspection

Upon reasonable prior notice from JPS to the Company, JPS and/or its representatives shall have the right to observe the progress of the construction, testing and commissioning, operation and maintenance of the Facility. Such visits to the Site shall

not be construed as an endorsement by JPS of the design of the Facility nor as a warranty by JPS of the safety, durability or reliability of the Facility.

#### 4.6 Access to the Site

[Upon reasonable prior notice from the Company, and at reasonable times, JPS shall grant the Company reasonable access to any lands owned by JPS that are necessary for designing, financing, and constructing the Facility.]

#### 4.7 Delay in Commissioning

JPS shall cooperate with the Company to facilitate the testing and Commissioning in accordance with the Commissioning Schedule and each party shall make reasonable commercial efforts to avoid any undue delay in the testing and Commissioning.

### 5. WARRANTIES AND COVENANTS

#### 5.1 Representations and Warranties of the Company

The Company warrants to JPS that:

- 5.1.1 The Company is duly organized, validly existing and has complied in all material respects with the requirements of the Laws of Jamaica;
- 5.1.2 The Company has full power to carry on its business and to enter into, legally bind itself by, and perform its obligations under this Agreement and the other agreements comprising the Material Agreements;
- 5.1.3 This Agreement has been duly authorized, executed, and delivered by the Company and constitutes its legal, valid and binding obligation;
- 5.1.4 The execution, delivery, and performance of this Agreement and each Material Agreement to which the Company is a party does not (a) constitute a material violation of (i) the Laws of Jamaica or any other law, statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction enforceable against or binding upon the Company, its assets or its businesses, or (ii) the Company's organic documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound, or (b) require any consent, approval, or authorization of, or filing or registration with, or notice to, any governmental authority or other person or entity, except for the consent of the Company's senior lenders;

- 5.1.5 There are no outstanding judgments against the Company, and, to the best knowledge of the Company, no action, claim, suit or proceeding is pending or threatened against the Company before any court, governmental authority or arbitrator of competent jurisdiction that could reasonably be expected to affect materially and adversely the financial condition or operations of the Company or the ability of the Company to perform its obligations under this Agreement or any other Material Agreement or which purports to materially affect the legality, validity or enforceability of this Agreement or any other Material Agreement;
- 5.1.6 The Company, to the best of its knowledge, is not in material breach of any agreement to which it is a party or by which it or its property may be bound, nor in any material default of any technical or financial obligation, which could have a material adverse effect on the ability of the Company to perform its obligations under this Agreement or any other Material Agreement; and
- 5.1.7 No information given by the Company in relation to this Agreement, any Material Agreement, or in the Proposal submitted by the Company (a) contains any material misstatement of fact which would be materially adverse to the enforcement of the rights and remedies of JPS or (b) omits to state a fact which would be necessary to make any statement, representation or warranty contained herein or therein true and correct.

## 5.2 Representations and Warranties of JPS

JPS warrants to the Company that:

- 5.2.1 JPS is duly formed, validly existing and has complied in all material respects with the applicable Laws of Jamaica;
- 5.2.2 JPS has full power to carry on its business and to enter into, legally bind itself by, and perform its obligations under, this Agreement and the other Material Agreements (to which JPS is a party);
- 5.2.3 This Agreement has been duly authorized, executed, and delivered by JPS and constitutes its legal, valid and binding obligation;
- 5.2.4 The execution, delivery, and performance of this Agreement and each Material Agreement (to which JPS is a party) does not (a) constitute a material violation of (i) the Laws of Jamaica or any other law, any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction enforceable against or binding upon JPS, its assets or its businesses, or (ii) the Articles of Incorporation or other organic documents or, to the best knowledge of JPS, any indenture, contract or agreement to which it is a party or by which it or its property may



be bound, or (b) require any consent, approval, or authorization of, or filing or registration with, or notice to, any governmental authority or other person or entity;

- 5.2.5 There are no outstanding judgments against JPS, and, to the best knowledge of JPS, no action, claim, suit or proceeding is pending or threatened against JPS before any court, governmental authority or arbitrator of competent jurisdiction that could reasonably be expected to affect materially and adversely the ability of JPS to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- 5.2.6 JPS, to the best of its knowledge, is not in material breach of any agreement to which it is a party or by which it or its property may be bound, nor in any material default of any technical or financial obligation, which could have a material adverse effect on the ability of JPS to perform its obligations under this Agreement; and
- 5.2.7 No information given by JPS in relation to this Agreement (a) contains any material misstatement of fact which would be materially adverse to the enforcement of the rights and remedies of the Company or (b) omits to state a fact which would be necessary to make any statement, representation or warranty contained herein true and correct.

### 5.3 Covenants of the Company

The Company hereby covenants as follows:

- 5.3.1 The Company shall design, finance, construct, own, operate and maintain the Facility in accordance with this Agreement, the Minimum Functional Specifications, the Operating Procedures, and, where applicable, the relevant environmental guidelines and occupational health and safety standards of Jamaica, and all laws, rules, regulations, standards, codes, orders, directives and ordinances that are enforceable against or binding upon the Company;
- 5.3.2 The Company shall Commission the Facility on or before the Required Commercial Operations Date;
- 5.3.3 The Company shall operate and maintain the Facility in such a manner so as not to adversely affect JPS' distribution of electricity, including but not limited to adverse effects on JPS' voltage level or voltage waveform, power factor and frequency or produce adverse levels of voltage flicker and/or voltage harmonics;
- 5.3.4 The Company shall at all times operate and maintain the Facility, or cause the Facility to be operated and maintained, in accordance with the Minimum Functional Specifications and consistent with Prudent Utility Practice; and

5.3.5 The Company shall, in accordance with Prudent Utility Practices, the Minimum Functional Specifications and any existing Generation Code, install protective relays within the Facility and/or the Interconnection Facilities, having ratings and characteristics approved by JPS, which approval shall not be unreasonably conditioned, withheld or delayed, and shall maintain the settings of all such relays at the level acceptable to JPS. The Company shall not change the settings of such relays without the prior written approval of JPS, which approval shall not be unreasonably conditioned, withheld or delayed.

## 6. OPERATION AND MAINTENANCE OF THE FACILITY

### 6.1 As Available Energy Take

On and after the Commercial Operations Date, JPS shall accept energy as available up to a maximum total energy equivalent of the Contracted Output.

### 6.2 Operation by the Company

Commencing with the Commercial Operations Date, the Company shall keep the Control Centre informed as to the capacity and electrical energy available at the Complex and shall immediately advise the Control Centre of any change in this capability.

### 6.3 Outages

6.3.1 At least sixty (60) Days prior to the Scheduled Commercial Operations Date, the Company shall submit to JPS its desired schedule of Scheduled Outage periods for the first twelve (12) months. Thereafter, by [DATE] of each Year, the Company shall submit to JPS its desired schedule of Scheduled Outage periods for the following Year. Provided however that the Company shall use its best efforts to advise JPS, in writing, of its Scheduled Outages no less than one (1) month prior to each such outage.

6.3.2 JPS shall on the Commercial Operations Date and thereafter, by [DATE] of each Year submit to the Company its Transmission and/or Distribution Outage Plan as applicable for the following twelve (12) months. Provided however that JPS shall use its best efforts to advise the Company, in writing, of each Scheduled Maintenance no less than one (1) month prior to each such maintenance operation.

6.3.3 In the event of a Forced Outage the Company shall immediately notify the Control Centre and provide details of the impact of the outage on the

Complex and the projected duration of the outage.

#### 6.4 Emergencies

- 6.4.1 No less than ninety (90) days prior to the Commercial Operations Date, JPS and the Company shall jointly establish plans for operating the Complex during an Emergency affecting the Company or JPS. Such plans shall include, without limitation, procedures for recovery from a local or widespread electrical blackout and voltage reduction in order to effect load curtailment.
- 6.4.2 During an Emergency the Company shall supply such energy, as it is able to generate within the Minimum Functional Specifications and according to the provisions in 6.4.1. If the Complex has a Scheduled Outage or a Forced Outage and such Scheduled or Forced Outage occurs or would occur coincident with an Emergency, the Emergency shall be construed as part of the Scheduled Outage or Forced Outage and the Company shall use all reasonable efforts to expedite the completion of the work to restore power supply as soon as possible.
- 6.4.3 During an Emergency, JPS shall use all reasonable efforts to expedite the completion of work to restore power supply as soon as possible.
- 6.4.4 The Complex shall operate within the voltage and frequency limits as set out in the Generation Code approved by the OUR. Notwithstanding the foregoing, the Company reserves the right, without penalty, to immediately isolate itself from the JPS Grid in the event of voltage or frequency variations (“abnormal or contingency conditions”) on the JPS Grid and or the JPS Interconnection Facilities outside of the limits within which it is obligated to operate. The Company shall promptly thereafter notify JPS of its decision to isolate itself from the system and the reasons therefor. JPS shall notify the Company of the cause of the abnormal or contingency conditions promptly after such cause is known and if they are continuing, the estimated time that normality will return.

#### 6.5 Operating Committee

The Parties shall establish an Operating Committee comprising four (4) members. The Company and JPS shall each appoint two (2) of the four (4) members. The Company shall appoint the first chairman of the Operating Committee, JPS shall appoint the second chairman, and the Parties shall then alternate with respect to subsequent

appointments. Each chairman shall serve for a term of twelve (12) Months, with the first term commencing on the Commercial Operations Date. The obligations and responsibilities of the Operating Committee and the rules governing meetings of the Operating Committee shall be as set forth in Schedule 7.

## 6.6 Operating Personnel

6.6.1 The Company shall employ personnel, who are qualified and experienced for operating and monitoring the Complex and for coordinating operations of the Complex with the JPS Grid. The Company shall ensure that at all times during the operation of the Facility all skilled and unskilled labourers operate under the direct supervision of qualified and experienced personnel.

6.6.2 The Company may appoint an O&M Contractor(s) to operate and maintain the Complex throughout the term of this Agreement. No such appointment shall relieve the Company of any liability obligation or responsibility whatsoever resulting from a breach of this Agreement.

## 6.7 Inspection and Records

6.7.1 JPS shall have the right at its sole cost and expense, to visit, observe and examine any Generating Unit and/or the Facility and/or the operation thereof upon reasonable advance notice to the Company, for the purpose of facilitating the technical operation and administration of this Agreement. Such visits and observations shall not be construed as an endorsement by JPS of the design or operation of the Complex nor as a warranty by JPS of the safety, durability or reliability of the Complex and shall not give rise to any liability on the part of JPS under this Agreement, save and except where damage and/or loss is caused by the negligence of JPS or its agents.

6.7.2 In the event that any JPS representative desires to enter the Complex such persons shall be competent and duly authorized persons who are adequately equipped with the necessary personal protective equipment and safety training and shall at all times adhere to the reasonable instructions and directions of the Company's representatives.

6.7.3 The Company shall have the right, at its sole cost and expense, to visit and observe the JPS owned Interconnection Facilities or the operation thereof upon reasonable prior notice to JPS.

6.7.4 Each Party at its sole cost and expense shall keep complete and accurate records and all

other data required by each of them for the purposes of proper administration of this Agreement. Among other records and data, the Company shall maintain an accurate and up-to-date operating log as set out in Schedule [8].

- 6.7.5 During the period such records and data are required to be maintained, each Party shall have the right, upon reasonable prior written notice to the other Party, at its sole cost and expense, to examine and/or make copies of the records and data of the other Party relating to this Agreement at any time during normal office hours. All such records shall be maintained for a minimum of sixty (60) Months after the creation of such records or data and for any additional length of time required by regulatory agencies with jurisdiction over the Parties. Upon expiration of such sixty (60) Month period (or additional term as required by any applicable regulatory agency where such term shall not be less than sixty (60) Months), neither Party shall dispose of or destroy any such records without thirty (30) Days' prior written notice to the other Party, and the Party receiving such notice may receive such records in lieu of such disposal or destruction by giving the notifying Party notice prior to the expiration of the thirty (30) Day period and paying for any costs and expenses associated with such transfer of records.

## 7. INTERCONNECTION

### 7.1 JPS Responsibilities

- 7.1.1 After the Commercial Operations Date, JPS shall be responsible for (a) the operation and maintenance of the Primary Metering System, (b) the operation and maintenance of the auxiliary and interconnecting equipment on the JPS side of the Interconnection Point and (c) coordination of switching operations of the Interconnection Facilities, all in accordance with the terms of this Agreement, the Operating Procedures, Prudent Utility Practice and all applicable laws, rules, regulations, codes, standards, determinations, orders, directives and ordinances.
- 7.1.2 JPS shall permit the Company and/or its contractors and/or agents to have such access to the JPS side of the Interconnection Point as the Company and/or its contractors and/or agents shall require solely for the design, construction, installation, testing and commissioning of the JPS Interconnection Facilities and JPS shall co-operate with the Company to facilitate the timely progress of the design, construction, installation, testing and commissioning thereof. The Company shall ensure that its representatives and/or contractors and/or agents who are permitted access to the JPS side of the Interconnection Point adhere to the JPS safety rules, guidelines, procedures and reasonable instructions and directions of JPS and shall ensure that such representatives and/or contractors and/or agents are equipped with the necessary personal protective equipment provided that the safety rules, guidelines and procedures are prominently displayed or otherwise communicated to them.

7.1.3 Unless otherwise stated in this Agreement, after the Commercial Operations Date JPS shall own, operate and maintain the JPS Interconnection Facilities and shall effect and maintain its connection to the JPS Grid.

7.1.4 On or before the date of this Agreement, JPS shall provide to the Company the Interconnection Criteria, which shall include all necessary JPS interconnection criteria for the Company to design and establish settings of the Interconnection Facilities for the Complex. The Interconnection Criteria shall include [ ]kV grid operations parameters for the performance, controls, protection and fault clearing for the Complex. JPS shall within fourteen (14) Days of receiving the said design and settings of the Interconnection Facilities for the Complex, inform the Company in writing of its approval, which approval shall not be unreasonably conditioned, withheld or delayed, and such approval shall not constitute the making of any representation or warranty of whatsoever kind by JPS and shall not operate to increase the liability of JPS hereunder .

## 7.2 Company Responsibilities

7.2.1 The Company shall be responsible for the design, financing, construction, installation, testing and commissioning of the Interconnection Facilities on both sides of the Interconnection Point including the Primary Metering System, Backup Metering System and all auxiliary and interconnecting equipment in accordance with the terms of this Agreement, Prudent Utility Practice and all applicable laws, rules, regulations, codes, standards, determinations, orders, directives and ordinances. The design, construction and installation of the Interconnection Facilities shall be subject to the written approval of JPS, which approval shall not be unreasonably conditioned, withheld or delayed. The Company shall at its sole expense and cost, transfer the interconnection equipment on the JPS side of the Interconnection Point to JPS for ownership, operation and maintenance. The Company shall own the Interconnection Facilities on its side of the Interconnection Point and shall maintain and operate all such Interconnection Facilities.

7.2.2 The Company shall be responsible for operating and maintaining (a) the Backup Metering System and (b) all auxiliary and interconnecting equipment on the Company's side of the Interconnection Point in accordance with the terms of this Agreement, the Operating Procedures and the other Agreement Criteria; provided that JPS shall have overall responsibility for coordinating the switching operations of the Interconnection Facilities and such auxiliary and inter-connecting equipment, and the Company shall cooperate with JPS to assure the safe and reliable operation of such facilities and equipment.

7.2.3 Within sixty (60) Days from its receipt of the Interconnection **Criteria**, the Company shall provide to JPS, for its review and approval, the design and settings of the Interconnection Facilities.

7.2.4 Prior to initial synchronization of the Facility, the Interconnection Facilities shall be tested at the sole cost and expense of the Company, in the presence of JPS as provided in Schedule 4.

7.2.5 After the Commercial Operations Date, the Company shall permit JPS such access to the Facility as JPS shall reasonably require in order to conduct inspection and testing of the Interconnection Facilities on the Company's side of the Interconnection Point. Notwithstanding, the Company shall permit JPS and/or its contractors and/or agents to have such access to such locations under the Company's control including the Company's substation necessary to facilitate access by JPS to the JPS side of the Interconnection Point as JPS and/or its contractors and/or agents shall require solely for the purpose of maintenance and operation of the JPS Interconnection Facilities.

### 7.3 Protective Devices

7.3.1 The Company's Interconnection Facilities shall be connected to the JPS Grid or system by means of suitable switchgear and protective devices.

7.3.2 Each party shall notify the other party in advance of any changes to be made to the Complex or any of the Interconnection Facilities or the JPS Grid, as the case may be, that may affect the proper co-ordination of protective devices between the two systems. Provided that the Company shall not disable or otherwise change or modify any protective equipment in its Interconnection Facilities or change or modify the operation or settings thereof without first requesting and receiving the approval in writing of JPS, which approval shall not be unreasonably conditioned, withheld or delayed.

7.3.3 Subject to giving the Company reasonable notice, JPS may reasonably require the Company to modify or expand the protective devices in the Complex and the Company's Interconnection Facilities. The Company shall at its own cost and expense effect any reasonable change or modification to the protective devices in accordance with this Clause 7.3.2 provided that such modification or expansion is within the requirements specified in Schedules 2 and 3 hereto and the Interconnection Criteria and the Agreement Criteria otherwise the cost and expense shall be shared equally by the Parties.

7.3.4 Subject to giving the Company notice, JPS may require the Company to modify or expand the protective devices. JPS shall reimburse the Company for the reasonable costs of such modification or expansion unless such modification or expansion is a component of the Interconnection Facilities for the Facility as provided in the Interconnection Criteria or reasonably should have been included in the Interconnection Facilities pursuant thereto or in accordance with the Agreement Criteria and Prudent

Utility Practice.

## 8. METERING AND TELECOMMUNICATIONS

### 8.1 Ownership of Metering Equipment

- 8.1.1 The Company shall design, finance, construct, install and commission the Primary Metering System and transfer it to JPS who shall own, operate and maintain the Primary Metering System in accordance with Schedule 5.
- 8.1.2 The Company shall design, finance, construct, install, Commission, own, operate and maintain the Backup Metering System pursuant to Schedule 5.
- 8.1.3 The metering points for both the Primary and Backup Metering System shall be at the high voltage side of the Company's step up transformer that connects the Complex to the JPS Grid.

### 8.2 Testing and Inspection of the Metering System.

Testing, inspection, repair, recalibration and replacement of the Metering System and Backup Metering System shall be performed by the Parties in accordance with Schedule 5.

### 8.3 Measurement of Net Energy Output

- 8.3.1 On the Commercial Operations Date and each Month thereafter, JPS shall read the Primary Metering System for the purpose of measuring the Net Energy Output of the Facility in accordance with the provisions of Schedule 5. If JPS obtains readings remotely, JPS shall make copies of the reading produced by the device which initiates the reading protocol and provide a copy of such reading to the Company on the Day of such reading. JPS shall provide details of the reading protocol and/or remote reading procedures to the Company. If JPS conducts a physical reading of the Primary Metering System, it shall give reasonable prior notice to the Company of the time when such reading will be done. JPS shall permit a representative of the Company to witness and verify such reading; provided, however, that the failure of the Company to send a representative to witness any such reading shall not affect the validity of such inspection or test or reading.



8.3.2 If the Primary Metering System is found to be inaccurate or functioning improperly, JPS shall read the Back-up Metering System, in accordance with the provisions of Schedule 5 for the purpose of measuring the Net Energy Output of the Facility.

8.3.3 In the event that the Primary Metering System and the Back-up Metering System are found to be inaccurate or functioning improperly, the correct amount of Net Energy Output delivered to JPS during the period for which inaccurate measurements were made shall be determined in accordance with Schedule 5. The difference between the previous payments by JPS for the period of inaccuracy and the recalculated amount shall be offset against or added to the next payment to the Company under this Agreement, as appropriate; provided, however, that if there are no scheduled future payments, then the Company or JPS, as the case may be, shall pay the other Party the adjustment amount within thirty (30) Days. In no event, however, shall any such adjustment be made for any period prior to the date on which the Primary Metering System was last tested and found to be accurate within plus or minus [METER ACCURACY] percent ([METER ACCURACY]%) and not otherwise functioning improperly.

#### 8.4 Telecommunications

The Company shall provide, at its sole cost and expense, the telecommunications equipment specified in Schedule 5. The selection and installation of items to be provided by the Company in accordance with this Clause 8.4 shall be subject to the prior written approval of JPS, which approval shall not be unreasonably conditioned, withheld or delayed.

### 9. COMPENSATION, PAYMENT AND BILLING

#### 9.1 Energy Payment

JPS shall pay the Company the Energy Price in accordance with this Section 9.

#### 9.2 Adjustment

The amounts due from JPS to the Company pursuant to Clause 9.1 and Schedule 6 shall be determined and adjusted from time to time in accordance with Schedule 6.

#### 9.3 Payment and Billing

9.3.1 Within five (5) Days after the end of each Month, both Parties shall prepare and deliver to each other an invoice reflecting amounts payable to each Party by the other Party

pursuant to this Agreement. For the purposes of this Clause 9 the invoice prepared by JPS in Jamaican Dollars shall be reflected in Dollars by applying the Billing Exchange Rate. The Company's invoice to JPS shall include calculations, in reasonable detail, of such amounts expressed in Dollars due to the Company for the Energy Price. JPS' invoice to the Company shall include calculations in reasonable detail of such amounts owed to JPS pursuant to Clause 2.2. Subject to JPS' right to set-off any sum owing to JPS by the Company, JPS shall pay the sums owed to the Company by direct deposit in immediately available funds within twenty-five (25) Days of the fifth (5<sup>th</sup>) day after the end of the Month. In the event that a payment is to be made by the Company to JPS, it shall be made in immediately available funds within twenty-five (25) Days of the fifth (5<sup>th</sup>) day after the end of the Month.

- 9.3.2 If any Party on reasonable grounds disputes any portion of such invoice, then that Party shall, within ten (10) Days of the receipt of such invoice, serve a notice on the other Party indicating the amount and basis of the dispute. Neither Party shall be required to effect payment of the disputed amount pending resolution of the dispute. The dispute shall be settled by mutual discussion and, if necessary, resolved pursuant to Clause 14 (Resolution of Disputes). If it is determined that either Party owes the other an amount of money, the owing party shall, within ten (10) Days after the receipt of such determination, pay such sum together with interest at the Base Rate calculated from the date such sums became due and payable prior to the Dispute.
- 9.3.3 Each party shall pay interest at the Default Rate on any amount due on invoices (not including disputed amounts) which is paid after the due date for payment.

#### 9.4 Payment to the Company

JPS will make payment by transfer of Dollars or Jamaican Dollars to a Dollars or Jamaican Dollars denominated account, as the case may be that is held and specified by the Company at a bank in Jamaica. Such payments shall be made in Dollars or the equivalent in Jamaican Dollars upon applying the Conversion Rate.

#### 9.5 Adjustment for Changes in Relevant Law

- 9.5.1 If a Change in Relevant Law occurs, the Company shall use reasonable efforts to select the most economic and reasonably practicable method of compliance with such Change in Relevant Law that minimizes the cost and/or maximizes the savings incurred by the Company. The Company shall also use reasonable efforts

to implement the selected method of compliance so as to minimize the cost and/or maximize the savings incurred by the Company. The Company shall promptly give JPS written notice of any Change in Relevant Law that results in any change in costs.

Compliance with Change in Relevant Law which would either:

(1) require the Company to incur any combination of capital improvements and or operational cost increases in order to continue to meet its obligations hereunder, or

(2) otherwise materially and adversely affect the performance by the Company of its obligations or the enjoyment by the Company of its rights under or pursuant to this Agreement,

shall result in the Energy Price being adjusted in accordance with Section [ ] of Schedule 6 to offset the actual, demonstrable effect of such Change in Relevant Law on the Company. The Company shall also submit to JPS and the OUR, its calculation of the savings resulting from, or evidence of the expenses actually incurred in complying with, and mitigating the impact of, such Change in Relevant Law.

9.5.2 If Energy Price for payment to the Company is to be adjusted to comply with any Change in Relevant Law, then the following shall apply:

- (a) The Company shall submit monthly reports to JPS and copied to the OUR on the impact on its performance and on its efforts to overcome the adverse effects of the Change in Relevant Law until the earlier of:
  - i. the date on which the Company has overcome the adverse effects of the change in the Relevant Law and
  - ii. the date on which JPS agrees that such reports are no longer useful (which agreement shall not be unreasonably conditioned, withheld or delayed),
- (b) The Company shall employ all reasonable efforts to overcome the adverse effects of the Change in Relevant Law,
- (c) The compensation will only be paid to the Company for the period that is required to overcome the adverse effects of the Change in Relevant Law and increased costs and expenses of the Company which is or will be reasonably incurred (provided that the Company shall not be entitled to make any claim under this Clause 9.5 until such time as the Company's claims from such Change in Relevant Law exceed [XXX] Jamaican Dollars (J\$[XXX]) (or the Dollar equivalent) in the aggregate, at which time all such claims of the

- Company may be made), and
- (d) The Company shall promptly give JPS written notice when and if it has overcome the adverse effects of the Change in Relevant Law.
  - (e) JPS shall only reduce the payments to the Company for a decrease in the cost of complying with a Change in Relevant Law if:
    - i. JPS gives the Company written notice describing the particulars of the Change in Relevant Law or the Company gives JPS written notice describing the particulars of the Change in Relevant Law and
    - ii. The reduction in payments is only made for the period that the Company benefits from the decrease in the cost of complying with a Change in Relevant Law in accordance with Section [ ] of Schedule 6.

## 10. INDEMNIFICATION AND LIABILITY

### 10.1 Indemnity by the Company

In addition to the Company's obligations and JPS' remedies provided elsewhere in this Agreement, the Company shall be liable for the performance of the obligations herein and for loss of or damage to property, death or injury to person, and any other liabilities, damages, losses and reasonable costs and expenses (including, but not limited to, legal fees and expert witness fees or any claim against JPS in respect thereof) suffered by JPS as a direct and foreseeable consequence of the Company's conduct :-

- 10.1.1 during the design, construction, ownership, operation or maintenance of the Complex resulting from any negligent act or omission of the Company its servants or agents, and through no fault of JPS, its servants or agents;
- 10.1.2 in connection with, arising out of, or resulting from, any breach of warranty, material misrepresentation by the Company, or non-performance of any term, condition, covenant or obligation to be performed by the Company under this Agreement; or
- 10.1.3 arising out of the failure of the Company's representatives and/or agents and/or contractors to observe the health and safety procedures, guidelines and policies

of JPS while on property owned and/or controlled by JPS provided that the safety rules, guidelines and procedures were prominently displayed or otherwise communicated to them.

10.1.4 In connection with any claim, proceeding or action brought against JPS under any applicable national or local environmental laws or regulations resulting from the activities of the Company, including without limitation the discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from the Facility, the contamination of the soil, air, or water around the Site, or any pollution abatement, replacement, removal or other decontamination or monitoring obligations with respect thereto; provided that with respect to this Clause 10.1.4, the Company shall not be responsible for any liabilities, damages, losses, costs or expenses suffered by JPS unless such liabilities, damages, losses, costs or expenses resulted from the Company's violation of national or local environmental laws or regulations, as determined by a court, governmental authority or arbitrator of competent jurisdiction.

The Company will hold JPS fully indemnified in respect of the foregoing losses, damages, death, injuries, liabilities, costs and expenses. The Company's indemnities, however, shall not extend to any loss, damage, death, injury, liability, cost or expense (or any claim in respect thereof) to the extent that it was caused by any act or omission of JPS or the failure of JPS to take reasonable steps in mitigation thereof or the breach by JPS, its servants or agents of the provisions of Clause 6.7.2 hereof.

Notwithstanding anything to the contrary contained in this Clause 10.1, nothing in this Clause 10.1.4 shall apply to any loss, damage, death, injury, liability, cost or expenses (or any claim in respect thereof) to the extent that, JPS is compensated pursuant to the terms of this Agreement.

## 10.2 Indemnity by JPS

In addition to JPS' obligations and the Company's remedies provided elsewhere in this Agreement, JPS will bear responsibility for loss of or damage to property, death or injury to person, and any other liabilities, damages, losses and reasonable costs and expenses (including, but not limited to, legal fees and expert witness fees) suffered by the Company:

-  
10.2.1 during the design, financing, construction, ownership, operation or maintenance of the Complex and its Interconnection Facilities resulting from any negligent act or omission of JPS, its servants or agents and through no fault of the Company, its servants or agents, without recourse to the Company;

- 10.2.2 in connection with, arising out of, or resulting from, any breach of warranty, any material misrepresentation by JPS or non-performance of any term, condition, covenant or obligation to be performed by JPS under this Agreement; or
- 10.2.3 arising out of the failure of JPS' representatives and/or agents and/or contractors to utilise adequate and necessary equipment and/ or to observe the reasonable instructions and directions of the Company's representative while on property owned and/or controlled by the Company provided that the instructions and directions were prominently displayed or otherwise communicated to them.
- 10.2.4 In connection with any claim, proceeding or action brought against the Company under any applicable national or local environmental laws or regulations resulting from the activities of JPS, including without limitation the discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from the Facility, the contamination of the soil, air, or water around the Site, or any pollution abatement, replacement, removal or other decontamination or monitoring obligations with respect thereto; provided that with respect to this Clause 10.2.4, JPS shall not be responsible for any liabilities, damages, losses, costs or expenses suffered by the Company unless such liabilities, damages, losses, costs or expenses resulted from the JPS' violation of national or local environmental laws or regulations, as determined by a court, governmental authority or arbitrator of competent jurisdiction.

JPS will hold the Company fully indemnified in respect of the foregoing losses, damages, death, injuries, liability, costs and expenses. JPS' indemnities, however, shall not extend to any loss, damage, death, injury, liability cost or expense (or any claim in respect thereof) to the extent that it was caused by any act or omission of the Company or the failure of the Company to take reasonable steps in mitigation thereof or the breach by the Company, its representatives and/or contractors of the required conduct pursuant to Clause 7.12 while they are on JPS' side of the Interconnection Point.

Notwithstanding anything to the contrary contained in Clause 10.2, nothing in this Clause 10.2.4 shall apply to any loss, damage, death, injury, liability, cost or expense (or any claim in respect thereof) to the extent that, the Company is compensated pursuant to the terms of this Agreement.

### 10.3 Notice of Proceedings

Each Party shall promptly notify the other Party of any claim or proceeding in respect of

which, but for the provisions of Clause 10.4, it is entitled to be indemnified under Section 10. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of such claim or proceeding.

#### 10.4 Basket Limitation

Neither Party shall be entitled to make any claim under this Section 10 unless such claims by such Party exceed [AMOUNT TO BE AGREED IN DOLLARS] (\$) (or the Jamaican Dollar equivalent) in the aggregate or until such claim if not made would be barred by the relevant statute of limitations.

#### 10.5 Conditions of Proceedings

Each Party shall have the right, but not the obligation, to contest, defend and litigate (and to retain legal advisers of its choice in connection therewith) any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the said indemnity; provided that the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense and through legal advisers of its choice if it (a) gives notice of its intention to do so to the first-mentioned Party, (b) acknowledges in writing its obligation to indemnify that Party to the full extent provided by this Clause 10.5, and (c) reimburses that Party for the reasonable costs and expenses previously incurred by it prior to the assumption of such defense by the indemnifying Party. Neither Party shall settle or compromise any claim, action, suit or proceeding in respect of which it is entitled to be indemnified by the other Party without the prior written consent of that Party, which consent shall not be unreasonably conditioned, withheld or delayed.

### 11. FORCE MAJEURE

#### 11.1 Consequences of Force Majeure

Subject to the provisions of Clauses 11.2 and 11.3, neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement (other than payment obligations) due substantially to one or more events of Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) (other than that specified in Clause 12.3) shall be extended on a day-for-day basis for so long as one or more events of Force Majeure continue to materially and

adversely affect the performance by such Party of such obligation(s) under or pursuant to this Agreement; provided that no relief shall be granted to the Party claiming Force Majeure pursuant to this Clause 11.1 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred; and provided, further, that the Party not claiming Force Majeure may immediately terminate this Agreement without further obligation if Force Majeure delays a Party's performance for a period greater than eighteen (18) consecutive Months.

Other than for breaches of this Agreement by the Party not claiming Force Majeure, and without prejudice to the right of the Party claiming Force Majeure to indemnification pursuant to Clause 10, the Party claiming Force Majeure shall not have any cause of action against the other Party solely as a result of the Force Majeure. For the avoidance of doubt, the suspension of performance set forth in this Clause 11 shall be of no greater scope and of no longer duration than is required to overcome the effects of the Force Majeure.

#### 11.2 Procedures Upon a Force Majeure

The Party claiming Force Majeure shall:

- a) provide the other Party prompt written notice describing the particulars of the Force Majeure and the proposed cure,
- b) use commercially reasonable efforts to remedy its inability to perform its obligations under this Agreement and
- c) give the other Party written notice when it is able to resume performance of its obligations under this Agreement.

#### 11.3 Impact of Force Majeure on JPS Payments

During the pendency of Force Majeure, the Company shall not be entitled to receive Energy Payment from JPS except for energy already received by JPS prior to the Force Majeure event; provided that if Force Majeure affects only part of the Complex, then the Company shall be entitled to receive Energy Payments for electrical energy actually delivered to JPS.

### 12. DEFAULTS AND TERMINATION

#### 12.1 Company Events of Default



JPS may give a notice of default under this Agreement (a "JPS Notice of Default") upon the occurrence of any of the following events unless caused by a breach by JPS of this Agreement (each a "Company Event of Default"): -

- 12.1.1 The failure of the Company to begin construction after One Hundred and Eighty (180) days after signing of this Agreement.
- 12.1.2 The Abandonment by the Company of the construction of the Complex without the written consent of JPS;
- 12.1.3 The failure of the Company to achieve Commercial Operations Date within one (1) Year after the Scheduled Commercial Operations Date;
- 12.1.4 The Abandonment of the operation of the Complex by the Company without the written consent of JPS;
- 12.1.5 Willful alteration of, or tampering with the Interconnection Facilities without the prior written consent of JPS, by the Company, or its employees or agents, except in situations where such actions are taken to prevent immediate injury, death, or property damage and the Company uses its best efforts to provide JPS with advance notice of the need for such actions;
- 12.1.6 The assignment or transfer of this Agreement or an assignment, transfer or acquisition in breach of Clause 17.1 or 17.2 of this Agreement;
- 12.1.7 Any failure by the Company to make any payment or payments required to be made by it to JPS under this Agreement within ten (10) Days after the Company is given notice that the payment was not made by the due date for payment under the relevant agreement, which payment or payments exceed in the aggregate at any one time the equivalent of [AMOUNT TO BE AGREED Dollars (\$[AMOUNT])] (or the Jamaican Dollar equivalent);
- 12.1.8 Except for the purpose of amalgamation or reconstruction (Provided that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this

Agreement), the occurrence of any of the following events: (a) the passing of a resolution by the owners/shareholders of the Company for the winding up of the Company; (b) the admission in writing by the Company of its inability generally to pay its debts as they become due; (c) the appointment of a provisional manager, trustee or Liquidator in a proceeding for the winding up of the Company after notice to the Company and due hearing; or (d) the making by the Court of an order winding up the Company; provided that a dissolution of the Company shall not constitute a Company Event of Default if JPS has approved any such change in advance in accordance with the terms of this Agreement; or (e) the dissolution of any entity comprising the Company;

12.1.9 Any material breach by the Company of any representation, warranty or covenant in this Agreement save that the Parties agree that a breach of the covenant contained in Clause 5.3.2 shall not constitute a Company Event of Default unless such breach constitutes a Company Event of Default pursuant to Clause 12.1.3; or

## 12.2 JPS Events of Default

The Company may give a notice of default under this Agreement (a "Company Notice of Default") upon the occurrence of any of the following events unless caused by a breach by the Company of this Agreement (each a "JPS Event of Default"):-

12.2.1 Except for the purpose of amalgamation, reorganization or reconstruction that does not affect the ability of the amalgamated, reorganized or reconstructed entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events: (a) the passing of a resolution by the shareholders of JPS for the winding up of JPS; (b) the admission in writing by JPS of its inability generally to pay its debts as they become due; (c) the appointment of a provisional manager, trustee or Liquidator in a proceeding for the winding up of JPS, after notice to JPS and due hearing; or (d) the making by the Court of an order winding up JPS;

12.2.2 Any failure by JPS to make any payment required to be made by it under Section 9 within ten (10) Days after JPS is given notice that the payment was not made by the due date for payment under Section 9, which payment or payments exceed in the aggregate at any one time the equivalent of [AMOUNT Dollars (\$[AMOUNT])] (or the Jamaican Dollar equivalent); Provided that JPS has not disputed the said payment pursuant to Clause 9.3.2 and the dispute remains unresolved;

12.2.3 Willful alteration of, or tampering with the Interconnection Facilities, the Complex, or any of the Company's equipment or installation, by JPS or its employees or agents except in situations where such actions are taken to prevent immediate injury, death, or property damage and JPS uses its best efforts to provide the Company with advance notice of the need for such actions;

12.2.4 An assignment or transfer of this Agreement in breach of Clauses 17.1.2 and 17.1.3;

12.2.5 Any material or contractual breach by JPS of any representation, warranty or covenant in this Agreement.

### 12.3 Notice and Cure

12.3.1 A notice of default given pursuant to Clauses 12.1 or 12.2 (each a "Notice of Default") shall specify in reasonable detail the Company Event of Default or JPS Event of Default (each an "Event of Default"), as the case may be, giving rise to the Notice of Default and shall expressly state that it is a Notice of Default. In the case of a default set forth in Clauses 12.1.4, 12.1.5, 12.1.7, 12.1.9 or 12.2.2, 12.2.3 and 12.2.5 the defaulting Party shall have five (5) Business Days within which to cure the Event of Default.

12.3.2 In the case of a default set forth in any other sub-clause of Clause 12.1 or 12.2 the defaulting Party shall have thirty (30) Days to cure the Event of Default, or such longer period as shall be reasonably necessary to effect a cure, so long as such cure is being diligently pursued and such longer period beyond thirty (30) Days is agreed to in writing by the other Party, provided that all such cure periods shall immediately end and this Agreement may be terminated if the defaulting Party ceases to use all reasonable efforts to cure its Event of Default.

12.3.3 The Company shall be deemed to have cured any Event of Default set forth in Clause 12.1.8 caused by the dissolution, bankruptcy or insolvency of the Company if any Owner or any combination of Owners causes the Company to be reconstituted under the Laws of Jamaica within such thirty (30) Day period. JPS shall be deemed to have cured the Event of Default set forth in Clause 12.2.4 if JPS acquires the interest assigned or transferred in breach of Clause 17.1.3 within such five (5) Business Day period.

12.3.4 The defaulting Party shall furnish to the non-defaulting Party, during any cure period, weekly reports on its progress in curing the Event of Default.

## 12.4 Rights and Remedies Upon an Event of Default

12.4.1 If a Company Event of Default has occurred and the Company Event of Default has not been cured within the period specified in Clause 12.3, then JPS, in its sole discretion, may:

- (a) terminate this Agreement after delivering written notice to the Company and the OUR; and/or
- b) suspend performance of its obligations and duties hereunder, upon written notice to the defaulting party, until the default is cured; and/or
- (c) proceed in accordance with Section 14 to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy);
- (d) assess interest on any amounts due at the Default Rate and/or
- (e) after giving notice to the Company and the OUR, disconnect the Facility from the JPS Grid System in accordance with Prudent Utility Practice.

The rights and remedies of JPS set forth in this Clause 12.4.1 shall not be exclusive but, to the extent permitted by law, shall be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise. JPS may exercise each right and remedy afforded by this Agreement or by law from time to time and as often as may be deemed expedient by JPS. No delay by, or omission of, JPS to exercise any right or remedy arising upon any Company Event of Default shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

12.4.2 If a JPS Event of Default has occurred and the JPS Event of Default has not been cured within the period specified in Clause 12.3, then the Company, in its sole discretion, may:

- (a) terminate this Agreement by delivering written notice to JPS; and/or
- b) suspend performance of its obligations and duties hereunder, upon written notice to the defaulting party, until the default is cured; and/or
- (c) proceed in accordance with Section 14 to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy); and/or
- (d) assess interest on any amounts due at the Default Rate and/or
- (e) after giving notice to JPS and the OUR, disconnect the Facility from the JPS Grid System in accordance with Prudent Utility Practice; and/or

The rights and remedies of the Company set forth in this Clause 12.4.2 shall not be exclusive but, to the extent permitted by applicable law, shall be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise. The

Company may exercise each right and remedy afforded by this Agreement or by applicable law from time to time and as often as may be deemed expedient by the Company. No delay by, or omission of, the Company to exercise any right or remedy arising upon any JPS Event of Default shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

#### 12.5 Survival

Notwithstanding anything to the contrary contained in this Agreement, the rights and obligations set forth in Sections 10, 12 and 14 shall survive the termination of this Agreement.

#### 12.6 Exclusion of Consequential Damages

In no event shall any Party or any affiliate thereof or any of their respective directors, officers, agents, or employees be liable to any other Party or any affiliate thereof or any of their respective directors, officers, agents, or employees for any indirect, consequential, punitive, special, incidental or exemplary losses or damages (including without limitation lost profits or lost business opportunity), whether such liability arises in contract, tort or otherwise.

### 13. INSURANCE

#### 13.1 Insurance Coverage

During the periods specified, the Company shall, at no cost to JPS, obtain and maintain or, during the construction of the Facility, cause the Construction Contractor to obtain and maintain, the following types of insurance covering the Facility and the Interconnection Facilities, proof of the existence of which shall be submitted to JPS in accordance with the provisions of this Section 13:

- 13.1.1 At least twenty-four (24) hours prior to initiating any shipments of plant and equipment for the Facility and until such shipments have been delivered, marine cargo insurance (the form of which shall be provided to JPS the later of the Agreement Date or a date that is at least thirty (30) Days prior to the applicable shipment for JPS' approval) in an amount sufficient to cover the replacement cost of all plant and equipment shipped to and intended to become part of the Facility on a warehouse-to-warehouse basis and subject to deductibles of no more than [**applicable statutory minimum**] Dollars [(\$ )] (or the Jamaican Dollar equivalent);
- 13.1.2 At least thirty (30) Days prior to the Company's issuance of a Notice to Proceed, and until the Commercial Operations Date, all risks, builders risk (construction) insurance on

the Facility in an amount sufficient to cover the replacement cost of the Facility and the Interconnection Facilities, including construction equipment and transit coverage for plant purchased within Jamaica and not subject to the insurance described in Clause 13.1.1 above and subject to deductibles of no more than (a) two percent (2%) of the coverage amount in the case of wind, flood and earthquake, and (b) an amount up to **[applicable statutory minimum]** Dollars (\$ )] (or the Jamaican Dollar equivalent) for all other perils;

- 13.1.3 At least thirty (30) Days prior to the Commercial Operations Date and until the termination or expiration of this Agreement, all risks (property damage)/operational insurance in an amount sufficient to cover the replacement cost of the Facility and the Interconnection Facilities and transit coverage for plant purchased within Jamaica and not subject to the insurance described in Clause 13.1.1 above and subject to deductibles of no more than (a) two percent (2%) of the coverage amount in the case of wind, flood, earthquake, and other perils, and (b) an amount up to **[applicable statutory minimum]** Dollars (\$ )] (or the Jamaican Dollar equivalent) for all other perils; and
- 13.1.4 At least thirty (30) Days prior to the employment by the Company of any person and until the termination or expiration of this Agreement, Employer's Liability insurance complying with the Laws of Jamaica or any other applicable jurisdiction with limits of at least **[applicable statutory minimum]** Dollars (\$ )] (or the Jamaican Dollar equivalent) per occurrence and subject to deductibles of no more than the amount of **[applicable statutory minimum]** Dollars (\$ )] (or the Jamaican Dollar equivalent);
- 13.1.5 Within thirty (30) Days after the execution and until the termination or expiration of this Agreement, Comprehensive or Commercial General Liability insurance with bodily injury and property damage limits of at least **[applicable statutory minimum]** Dollars (\$ )] (or the Jamaican Dollar equivalent) per occurrence and **[applicable statutory minimum]** Dollars (\$ )] (or the Jamaican Dollar equivalent) in the aggregate and subject to deductibles of no more than **[applicable statutory minimum]** Dollars (\$ )] (or the Jamaican Dollar equivalent). Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in Section 10 (with the exception of the indemnification provisions in Clause 10.1.4), broad form property damage liability, personal injury liability, **explosion, collapse, and underground (XCU)** hazard coverage, products/completed operations liability, and where applicable, watercraft protection and indemnity liability;
- 13.1.6 Upon the Company acquiring or hiring any vehicle and until the termination or expiration of this Agreement, Comprehensive Automobile Liability insurance with bodily injury and property damage combined single limits of at least **[applicable statutory minimum]** Dollars (\$ )] (or the Jamaican Dollar equivalent) per occurrence covering vehicles owned, hired or non-owned and subject to deductibles of no more than **[applicable statutory minimum]** Dollars (\$ )] (or the Jamaican Dollar equivalent); and

13.1.7 Within thirty (30) Days after its execution and until the termination or expiration of this Agreement, Excess Umbrella Liability Insurance with a single limit of at least [**applicable statutory minimum**] Dollars (\$ )] (or the Jamaican Dollar equivalent) per occurrence in excess of the limits of insurance provided in Clauses 13.1.4, 13.1.5 and 13.1.6 above and subject to deductibles of no more than [**applicable statutory minimum**] Dollars (\$ )] (or the Jamaican Dollar equivalent).

### 13.2 Procedure

Not later than thirty (30) Days after execution of this Agreement and thereafter not later than forty-five (45) Days prior to the commencement of each Year, the Company shall provide to JPS an insurance schedule stating the coverage, the coverage level, the deductible, and the premium for each policy of insurance required pursuant to Clause 13.1.

### 13.3 Occurrence Form Coverage

The coverage requested in Clause 13.1 above and any Umbrella or Excess coverage shall be “occurrence” form policies.

### 13.4 Endorsements

The Company shall cause its insurers to amend its Comprehensive Commercial General Liability and, if applicable, Umbrella or Excess Liability policies with the endorsement items set forth in Clauses 13.4.1 through 13.4.5 below; and to amend the Company’s Employer Liability and Auto Liability policies with the endorsement item set forth in Clause 13.4.5 below:

13.4.1 JPS, its directors, officers, and employees are additional insured personnel under this policy with respect to the construction, operation and maintenance of the Facility;

13.4.2 This insurance as set out in 13.4.1 is primary with respect to the interest of JPS, its directors, officers, and employees and any other insurance maintained by them is excess and not contributory with this insurance;

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

13.4.4 Notwithstanding any provision of the policy, this policy may not be cancelled, renewed, or materially changed by the insurer without giving thirty (30) Days prior written notice

to JPS. All other terms and conditions of the policy remain unchanged.

13.4.5 For the insurance required by Clauses 13.1.1, 13.1.2 and 13.1.3 above, the Company agrees to waive, and shall cause its insurers to waive, all rights of subrogation against JPS and its affiliates.

13.5 Use of Proceeds of All Risk/Operational Insurance

The proceeds of an All Risks or Operational insurance obtained pursuant to Clauses 13.1.1 through 13.1.3 shall, at the option of JPS and subject to the Lenders' rights, be applied to the repair of the Facility.

13.6 Certificates of Insurance

The Company shall cause its insurers or agents to provide JPS with certificates of insurance evidencing the policies and endorsements as required in this Section 13. Failure of JPS to receive certificates of insurance does not relieve the Company of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Section 13 shall in no way relieve or limit the Company's obligations and liabilities under other provisions of this Agreement.

13.7 Deductibles at Commercially Reasonable Rates

In the event that the deductibles required for the insurance coverage provided in this Section 13 are not available at commercially reasonable rates, JPS shall not unreasonably condition, withhold or delay its consent to the Company's obtaining such insurance coverage with deductibles as are available at commercially reasonable rates.

13.8 Responsibility for Deductibles and Premiums

The Company shall bear responsibility for any and all premiums, whether at inception or retroactive, or deductibles incurred or required under the insurance contained by this Section 13.

14. RESOLUTION OF DISPUTES

14.1 Mutual Differences

If any dispute or difference of any kind whatsoever (a "Dispute") shall arise between the Parties in connection with, or arising out of, this Agreement, the Parties agree to use good faith efforts to resolve all such Disputes within thirty (30) days on a fair and equitable basis.

The Parties agree that the Operating Committee shall develop and follow a process for



settling Disputes on a fair and equitable basis within thirty (30) days.

The process shall include procedures for (a) the submission of a claim in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if done by the other Party would resolve the claim (b) submission of a response to the claim along with any written explanation or supporting documentation (c) A Party shall respond to a claim within seven (7) Business Days after receipt of a claim, and within two (2) Business Days after delivery of a response, the Operating Committee shall convene a meeting of the Parties' representatives with knowledge and authority to resolve the Dispute. If the Parties are unable to resolve the Dispute within thirty (30) Days after the meeting, either Party may require that the Dispute be referred, as appropriate, (a) to an expert pursuant to Clause 14.2 or (b) to an arbitration panel pursuant to Clause 14.3.

## 14.2 Referral to an Expert

14.2.1 If the Dispute is not settled within the thirty (30) Day period as provided for in Clause 14.1 and by agreement between the Parties it is deemed that a referral to an expert is necessary, then either Party may refer the Dispute to an expert for determination.

14.2.2 Either Party may give notice to the other Party of its intention ("Notice of Intention to Refer") to refer the Dispute to an expert, which shall include, among other things, (a) a description of the Dispute, (b) the grounds on which such referring Party relies in seeking to have the Dispute determined in its favour, and (c) all written material which such referring Party proposes to submit to the expert; provided that this Clause 14.2.2 shall not be construed so as to prevent such referring Party from using or producing further written material which comes into existence or comes to such referring Party's attention after the Notice of Intention to Refer is given, but in such event the other Party shall be allowed a reasonable time to respond thereto.

14.2.3 The other Party shall within seven (7) Days after service of the Notice of Intention to Refer, give to the referring Party a notice of its intention to defend ("Notice of Intention to Defend"), which shall include, among other things, (a) the grounds upon which such responding Party relies in seeking to have the Dispute determined in its favour and (b) all written material that such responding Party proposes to submit to the expert; provided that this Clause 14.2.3 shall not be construed so as to prevent such responding Party from using or producing further written material which comes into existence or comes to such responding Party's attention after the Notice of Intention to Defend is given, but in such event the referring Party shall be allowed a reasonable time to respond thereto.

14.2.4 Within fourteen (14) Days after service of a Notice of Intention to Defend, the Parties shall agree on an expert and on the terms under which the Dispute shall be referred. In the event that the Parties are unable within fourteen (14) Days after service of a Notice

of Intention to Defend to agree on the expert to be appointed or the terms of such expert's reference or both, then both Parties may request the head of [**A RELEVANT PROFESSIONAL BODY**] to appoint an expert, and the terms of reference of such expert's appointment shall be those set out in the Notice of Intention to Refer and the Notice of Intention to Defend.

14.2.5 Within seven (7) Days of the appointment of the expert, the expert shall nominate a time and place in Kingston, Jamaica for a hearing of the Parties on the Dispute, which time shall not be more than twenty one (21) Days after the expert's appointment. At the time nominated for the hearing, each Party must appear before the expert and present its case. The expert must render his decision on the Dispute within thirty (30) Days and no later than sixty (60) Days after completion of the hearing depending on the complexity of the Dispute and must forthwith advise the Parties in writing of his determination and his reasons therefor.

14.2.6 Any evidence given or statements made in the course of the hearing may not be used against a Party in any other proceedings. The proceedings shall not be regarded as arbitration and the laws relating to commercial arbitrations shall not apply; provided, that the expert shall resolve the Dispute in accordance with the Laws of Jamaica. The decision of the expert shall be final and binding upon both Parties upon the delivery to them of the expert's written determination upon mutual agreement between the parties, save in the event of fraud, misrepresentation of fact, serious mistake or miscarriage.

14.2.7 If the expert does not render a decision within a period of ninety (90) Days after his appointment or such longer or shorter period as the Parties may agree in writing or the expert has indicated that he is not able to complete the assignment, either Party may upon giving notice to the other, terminate such appointment, and the Parties may agree to appoint a new expert who shall resolve the Dispute in accordance with the provisions of this Clause 14.2. If the Dispute is not resolved by one or more experts within six (6) Months after the receipt by the responding Party of the Notice of Intention to Refer, then either party may refer the Dispute for arbitration in accordance with this Agreement.

### 14.3 Arbitration

14.3.1 If the Dispute: (a) cannot be settled within the thirty (30) Day period provided in Clause 14.1, and a referral to an expert, as provided for in this Agreement, is not deemed to be required and the right to refer the Dispute to arbitration pursuant to Clause 14.2.7 has arisen the Dispute may be settled by arbitration (regardless of the nature of the Dispute) by either Party.

14.3.2 The arbitration shall be conducted in accordance with the Laws of Jamaica including,

inter-alia, the Arbitration Act of Jamaica and the Parties hereby consent to arbitration thereunder.

- 14.3.3 Either Party wishing to institute an arbitration proceeding under this Clause 14.3.3 shall address a written notice to that effect to the other Party. Such notice shall contain a statement setting forth the nature of the Dispute to be submitted for arbitration and the nature of the relief sought by the Party instituting the arbitration proceedings. In the event that the other Party wishes to proceed to arbitration, that Party shall, within fourteen (14) Days of receipt of the said notice, reply to the first Party confirming that it agrees to proceed to arbitration. The date of such confirmation shall determine the date of institution of arbitration proceedings under this Clause 14.3.3.
- 14.3.4 All arbitration proceedings shall take place in Kingston, Jamaica and will be conducted in the English language.
- 14.3.5 The arbitration panel will consist of three arbitrators (“Arbitration Tribunal”). Each Party shall appoint one arbitrator and the two so appointed shall appoint the third, who shall be the chairman of the Arbitration Tribunal. The Arbitration Tribunal shall comprise persons of recognized standing in jurisprudence or in the discipline related to the Dispute to be arbitrated. In the event that any Party fails to appoint an arbitrator or the arbitrators appointed by the Parties fail to agree on the third arbitrator, the appointment shall be made by the President of the Jamaica Bar Association upon referral of the issue by either Party or the two appointed arbitrators. No arbitrator appointed pursuant to this Clause 14.3.5 shall be an employee or agent or former employee or agent of any Party or any of its affiliates or a person with an interest in either Party.
- 14.3.6 Each Party to the Dispute shall bear its own expenses in the arbitral proceedings subject to any award the Arbitration Tribunal may make in that regard. The cost of the arbitral proceedings and the procedure for payment of such costs shall be determined by the Arbitration Tribunal.
- 14.3.7 The Arbitration Tribunal shall determine the fees and expenses of its members. The Arbitration Tribunal shall decide how and by whom the fees and expenses of its members and the cost of the arbitral proceedings shall be paid and such decision shall form part of the award. In case any arbitrator appointed in accordance with this Clause 14 shall fail to accept his appointment, resign, die, otherwise fail or be unable to act a successor arbitrator shall be appointed in the same manner prescribed for the appointment of the arbitrator whom he succeeds, and such successor shall have all powers and duties of his predecessor.
- 14.3.8 The award of the Arbitration Tribunal shall be final and binding on the parties thereto, including any joined or intervening party.

- 14.3.9 Any person named in a notice of arbitration or counterclaim or cross-claim hereunder may join any other Party to any arbitral proceedings hereunder; provided, however, that (i) such joinder is based upon a dispute, controversy or claim substantially related to the Dispute in the relevant notice of arbitration or counterclaim or cross-claim, and (ii) such joinder is made by written notice to the Arbitration Tribunal and to the Parties within thirty (30) Days from the receipt by such respondent of the relevant notice of arbitration or the counterclaim or cross-claim or such longer time as may be determined by the Arbitration Tribunal.
- 14.3.10 Any person may intervene in any arbitral proceedings hereunder; provided, however, that (i) such intervention is based upon a dispute substantially related to the Dispute in the notice of arbitration or counterclaim or cross-claim and (ii) such intervention is made by written notice to the Arbitration Tribunal and to the Parties within thirty (30) Days after the receipt by such person of the relevant notice of arbitration or counterclaim or cross-claim or such longer time as may be determined by the Arbitration Tribunal.
- 14.3.11 Any joined or intervening party may make a counterclaim or cross-claim against any party; provided, however, that (i) such counterclaim or cross-claim is based upon a dispute, controversy or claim substantially related to the Dispute in the relevant notice of arbitration or counterclaim or cross-claim and (ii) such counterclaim or cross-claim is made by written notice to the Arbitration Tribunal and to the Parties within either thirty (30) Days from the receipt by such party of the relevant notice of arbitration or counterclaim or such longer time as may be determined by the Arbitration Tribunal.
- 14.3.12 [The Company under this Agreement, unconditionally and irrevocably agree that the execution, delivery and performance by it of this Agreement to which it is a party constitute private and commercial acts rather than public or governmental acts];

#### 14.4 Continued Performance

During the pendency of any Dispute being handled in accordance with this Section 14: (a) the Company shall continue to perform its obligations under this Agreement to deliver Net Energy Output to the grid, (b) each Party shall continue to perform its obligations under this Agreement to pay all amounts due in accordance with this Agreement that are not in dispute, and (c) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in a Dispute (d) the continuance of operations or activities under this Agreement shall not prejudice the claim of either Party to the Dispute. Notwithstanding any other provision of this Agreement, neither Party shall be obligated to pay to the other Party any amount that is the subject of a Dispute until the Dispute is finally resolved in accordance with this Section 14.



## 15. NOTICES

### 15.1 Address for Notices

All notices or other communications (together "notices") to be given or made hereunder shall be in writing, shall be addressed for the attention of the person indicated below and shall either be delivered personally or sent by prepaid post or by fax or electronic mail. All notices given by fax shall be confirmed in writing delivered or sent as aforesaid but the failure to so confirm shall not vitiate the original notice. The addresses for service of Parties and their respective fax number and electronic mailing address shall be: -

1. In the case of JPS: -

Address: Jamaica Public Service Company Limited  
6 Knutsford Blvd., Kingston 5, Jamaica

Fax No.:

Attention:

Copied to:

E-mail:

1. In the case of the Company: -

Address: [Address of Company]

Fax No.: [Fax Number]

Attention: [Senior Authority of Company]

Copied to: [As indicated]

E-mail: [Email address of Senior Authority of Company]

or such other address and fax number as either Party may previously have notified to the other Party in accordance with this Clause 15.1

## 15.2 Effectiveness of Service

Notice shall be deemed to be effective as follows:

- a. In the case of personal delivery or registered mail, on delivery;
- b. In the case of electronic mail, eight (8) hours following confirmed transmission and where sent after five (5) p.m. notice is deemed to have been given at eight thirty (8:30) a.m. the following Business Day; and
- c. In the case of facsimiles, two (2) hours following confirmed transmission and where sent after five (5) p.m. notice is deemed to have been given at eight thirty (8:30) a.m. the following Business Day,

In the event a party changes its address for notice hereunder that party must give to the other party written notice of the said change in accordance with Clause 15.

## 16. REPORTS

### 16.1 Right of Inspection

The Company shall promptly furnish to JPS such information as JPS may from time to time reasonably request and permit representatives of JPS on reasonable prior notice to visit the Site and any of the other premises where the business of the Company is conducted and to have access to its operational and maintenance records.

### 16.2 Reporting of Changes

The Company shall, within fourteen (14) Days of its becoming effective, report any (a) change in its ownership agreement; (b) change in its Financial Year; (c) change in its owners; (d) change in its management; and (e) transfer of partnership interests to any person who thereby becomes an owner of more than five (5) percent of the ownership or voting rights of the Company or of a transfer of partnership interests to or from a person who, immediately prior to such transfer, held more than five percent (5%) of the ownership or voting rights of the Company.

### 16.3 Information re Statutory Notice/Winding Up Proceedings

16.3.1 The Company shall, within seven (7) Days of receipt thereof, provide a copy of any notice that the Company may have been served by any of the Lenders or its creditors.

16.3.2 The Company shall provide to JPS all information in respect of any further actions taken by the Lenders or creditors following the notices described in Clause 16.3.1.

## 17. ASSIGNMENT

### 17.1 Assignment

17.1.1 JPS acknowledges and agrees that all obligations of the Company under this Agreement prior to the Commercial Operations Date may be performed by the Company's designee; provided that such designee is permitted to perform such obligations pursuant to the [Licensee's Supply of Electricity Licence, [YEAR]].

17.1.2 The Company may not assign or transfer its rights or obligations under this Agreement, or discharge any of the facilities necessary for the Facility to meet the Dependable Capacity without the prior written consent of JPS, which consent shall not to be unreasonably conditioned, withheld or delayed; provided that subject to the recommendation of the OUR and approval by the responsible Minister, the Company shall be entitled to assign or transfer its rights and obligations under this Agreement to any assignee or transferee to which it has assigned or transferred the [Licensee's Supply of Electricity Licence, [YEAR]]. In the event that JPS provides such consent, JPS shall execute all such acknowledgements of any assignment or any requisite documentation to effect the transfer or assignment as are reasonably requested by the Company; provided that the execution of such acknowledgements shall not prejudice any rights or interests of JPS.

17.1.3 Subject to the approval of the OUR, JPS may not assign or transfer its rights or obligations under this Agreement without the prior written consent of the Company, which consent shall not be unreasonably conditioned, withheld or delayed.

### 17.2 Granting of Security

17.2.1 Notwithstanding the provisions of Clause 17.1.2, for the purpose of financing the construction, operation and maintenance of the Project, the Company may assign or create security over its rights and interests under, pursuant to or associated with:

(a) this Agreement,

(b) any agreement included within the Material Agreements,

(c) the Facility,

(d) the Site,

(e) the movable property and intellectual property of the Company, or

(f) the revenues or any of the rights or assets of the Company, for the benefit of the Lenders.

17.2.2 In accordance with their rights and obligations with respect to the Facility, the Lenders



may enforce such security interests in the assets identified in Clause 17.2.1 (a) through (f) without the prior consent of JPS. In the event that JPS shall provide such consent, JPS shall execute all such acknowledgements of any security or any requisite documentation sentence as are reasonably requested by the Company to give effect to the security rights; provided that the execution of such acknowledgements shall not prejudice any rights or interests of JPS.

## 18. MISCELLANEOUS PROVISIONS

### 18.1 Variations in Writing

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

### 18.2 Expenses

Each Party shall bear its own costs and expenses associated with negotiating, executing, and delivering this Agreement.

### 18.3 Severability

In the event that any one or more of the provisions of this Agreement shall be rendered invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of the remaining provisions contained herein or of the same provisions in any other jurisdiction shall not in any way be affected or impaired thereby.

### 18.4 Waivers

18.4.1 No Waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall:

- (a) operate or be construed as a waiver of any obligation under this Agreement; or
- (b) be effective unless in writing duly executed by an authorized representative of such Party.

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

### 18.5 Confidentiality

18.5.1 Each of the Parties shall hold in confidence all documents and other information,

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

18.5.2 The provisions of Clause 18.5.1 above shall not apply to any information:

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

18.5.3 For the avoidance of doubt, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement and the other agreements referred to herein in any agreements prepared and issued in connection with other projects.

#### 18.6 Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the Parties.

#### 18.7 No Liability for Review

No review or approval by JPS of any agreement, document, instrument, drawing, specifications or design proposed by the Company shall relieve the Company from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with the applicable Laws of Jamaica with respect thereto, nor shall JPS be liable to the Company or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design.

#### 18.8 No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the parties hereto. Nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, any liability to, or any right of suit or action in, any person not a party to this Agreement.

#### 18.9 Affirmation

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

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

#### 18.10 Governing Law

The rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to the Laws of Jamaica.

#### 18.11 Relationship of the Parties

This Agreement does not place and shall not be construed as placing the Parties in an employment relationship, in a partnership or joint venture relationship, or in a principal/agent relationship. Nothing in this Agreement shall be construed to grant any Party the right or authority to enter into any contracts, assume or create any obligation, express or implied, or make any other commitment in the name of or on behalf of another Party. Each Party agrees to indemnify and hold harmless the other Party from any claim by a third party that the indemnifying Party has acted on behalf of the indemnified Party.

[SIGNATURE PAGE FOLLOWS]

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

Signed for and on behalf of )  
 )  
**Jamaica Public Service Company Limited**  
 )  
by ) \_\_\_\_\_  
 )  
in the presence of )  
 )  
\_\_\_\_\_)  
Witness

Signed for and on behalf of )  
 )  
**[The Project Company]** )  
 )  
by ) \_\_\_\_\_  
in the presence of )  
 )  
\_\_\_\_\_)  
Witness

## SCHEDULE I

### DEFINITIONS

**"Abandonment"** - is cessation of substantially all activities relating to the operation and maintenance of the Complex, as appropriate for a period exceeding 168 consecutive hours. This does not apply for force majeure.

**"Agreement"** – This Power Purchase Agreement, including all Schedules thereto, as amended or supplemented from time to time.

**"Agreement Criteria"** – The requirements and other obligations set forth in the Operating Procedures, the Interconnection Tripping Schedule, the Laws of Jamaica and other applicable laws and governmental approvals, applicable industry codes, the reasonable requirements of the Company's insurers, Prudent Utility Practice, and the other operating requirements set forth in this Agreement.

**"Agreement Date"** – The date this Agreement is signed by both Parties.

**"Allowable Error"** – The smaller of Meter's maximum tolerable error level as stated by its manufacturer and +/-1%.

**"Arbitration Tribunal"** - is a panel of one or more [adjudicators](#) which is convened and sits to resolve a Dispute by way of [arbitration](#).

**"Backup Metering System"** - All meters and metering devices designated as the backup used to measure the delivery and receipt of Net Energy Output and Dependable Capacity in accordance with Schedule 5..

**"Base Rate"** – A rate of interest (i) equivalent to the Government of Jamaica Treasury Bill Rate existing at the time of payment if payment is made in Jamaican Dollars or (ii) equal to the [SPECIFY] Commercial Bank in Jamaica, Prime lending rate for Dollars if payment is made in Dollars.

**"Billing Exchange Rate"** – The mean of the spot market weighted average of the "selling" rates of exchange of authorised dealers in Jamaica offering to sell Dollars for Jamaican Dollars, as published by the Bank of Jamaica for the relevant Month as detailed in the invoice prepared by JPS and delivered to the Company in accordance with Clause 9.3.1.

**"Business Day"** – A Day on which business by and between banks may be carried on in Kingston Jamaica, but in no event shall it include a Saturday or Sunday or public holidays.

**"Change in Relevant Law"** - Any law, statute, proclamation, regulation, subsidiary legislation, order or legal interpretation which amends or modifies the Relevant Law.

**"Commencement of Construction"** – The initiation of the construction of the Facility, as evidenced by the Company's (a) issuance of the Notice to Proceed, and (b) making of the initial

payment to the respective Construction Contractor, in each case under the Construction Contract.

**"Commercial Operations Date"** - The date on which the Complex is declared commissioned in accordance with Clause 2.5 of Schedule 4.

**"Commissioned"** - The facility successfully completed the Commissioning activities and met the contracted requirements.

**"Commissioning"** - Engaging in the operations and activities required for testing in accordance with Schedule 4 to determine if the facility meets the contracted requirements.

**"Commissioning Schedule"** - the time and activities schedule to be agreed between the Company and JPS to undertake the testing and commissioning set forth in Schedule 4

**"Company Event of Default"** - An event described in Clause 12.4 for which JPS may issue a JPS Notice of Default.

**"Company's Interconnection Facilities"** – The Interconnection Facilities on the Company's side of the Interconnection Point.

**"Company Notice of Default"** - A notice of default issued by the Company to JPS pursuant to Clause 12.2.

**"Company Termination Notice"** - A Notice of Termination issued by the Company to JPS pursuant to Clause 12.4.

**"Complex/Facility"** – Combination of Plants, buildings and auxiliary equipment on the Company's side of the Interconnection Point required to provide the Net Energy Output to JPS Grid and necessary for the Company to honor its obligation under the terms and conditions of this Agreement.

**"Contracted Output"** – Electrical power output of up to [Amount] kW

**"Contractors"** - The contractors employed by the Company in the design, construction, operation and maintenance of the Complex, the Interconnection Facilities, the transmission line, or any part thereof and any direct or indirect subcontractors of such contractors.

**"Construction Contract"** – One or more agreements entered into by the Company for the design, manufacture, construction and commissioning of the Facility.

**"Construction Contractor"** – The party or parties to a Construction Contract other than the Company.

**"Control Center"** - JPS' System Control Center located in Kingston, Jamaica, or such other control center designated by JPS from time to time but not more than one at any time) from which JPS shall interface with the Complex for operational purposes.

**"Conversion Rate"** – The mean of the spot market weighted average of the "selling" rates of exchange of authorized dealers in Jamaica offering to sell Dollars for Jamaican dollars and as published by the Bank of Jamaica for the relevant Month.

**"Day"** - The 24-hour period beginning and ending at 12:00 midnight Jamaican Time.

**"Default Rate"** – The Base Rate plus [Amount] percent ([Amount]%).

**"Dispute"** - The meaning ascribed thereto in Clause 14.1.

**"Dollars"** or **"\$"** shall mean the lawful currency of the United States of America.

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

**"Energy Price"** – The price JPS will pay the Company per kWh for Net energy Output delivered to the JPS Grid in accordance with Schedule 6.

**"Event of Default"** shall mean a Company Event of Default or JPS Event of Default or both subject to the context within which it is being used.

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

**"Force Majeure"** - Any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party which materially and adversely affects the performance by that Party of its obligations or the enjoyment by that Party of its rights under or pursuant to this Agreement. Without limitation to the generality of the foregoing, "Force Majeure" shall include the following events and circumstances to the extent that they satisfy the above requirements: (a) natural events including, but not limited to, (i) acts of God, or (ii) epidemic or plague; and (b) other events of Force Majeure including, but not limited to, (i) acts of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage, (ii) nationwide strikes, works to rule or go-slows, and (iii) the making of, or any change in, any Laws of Jamaica or any laws of any other jurisdiction after the Agreement Date materially and adversely preventing performance. Force Majeure shall expressly exclude the following conditions, except to the extent resulting from a Force Majeure: (w) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts, Renewable Fuel Feed Stock or consumables for the Facility; (x) a delay in the performance of any Contractor; (y) non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment; and (z) non-performance caused by the non-performing Party's (i) negligent or intentional acts, errors or omissions, (ii) failure to comply with any of the Laws of Jamaica, or (iii) breach of, or default under, this Agreement.

**"Generation Code"** – The guiding principles, operating procedures and technical standards governing operation of the Jamaican Power System Grid and all interconnected generating facilities as from time to time revised with the approval of the OUR.

**"Generating Unit"** - Individual generator including its auxiliaries within a Complex



**“Independent Engineer”** - The independent licensed professional engineer who may be jointly selected by the Parties and who shall, among other things, receive copies of all test results performed in the Complex pursuant to Schedule 4 for the purpose of certifying in writing that the Complex can be satisfactorily Commissioned.

**“Interconnection Completion Date”** –[DATE] being the date by which the Interconnection Facilities was required to be constructed and the Complex connected to the JPS Grid.

**“Interconnection Criteria”** – The set of interconnection criteria provided by JPS, in accordance with Clause 7.2.3.

**"Interconnection Facilities"** - The facilities that interconnect the Complex to the JPS Grid. This includes all of the equipment that measures capacity and energy output from the Complex as well as associated protection equipment as specified in Schedule 3.

**"Interconnection Point"** - The physical point(s) where the Complex and the JPS Grid are connected as specified in Schedules 2 and 3.

**“Interconnection Tripping Schedule”** – The inter-tripping logic to be developed to indicate protection relays and their proposed settings for electrical protection of the Facility and the interconnection of the Facility to the JPS Grid System.

**"Jamaican Dollar"** - The lawful currency of Jamaica.

**"JPS Event of Default"** - An event described in Clause 12.2 for which the Company may issue a Company Notice of Default.

**"JPS Interconnection Facilities"** – The Interconnection Facilities on the JPS side of the Interconnection Point.

**"JPS Notice of Default"** - A notice of default issued by JPS to the Company pursuant to Clause 12.1.

**"JPS Grid"** - The transmission or distribution facilities on JPS' side of the Interconnection Point through which the Net Energy Output of the Complex will be distributed by JPS to users of electricity.

**"JPS Termination Notice"** - A notice of termination issued by JPS to the Company pursuant to Clause 12.4.

**“kW”** - Kilowatts.

**"kWh"** - Kilowatt-hours.

**"Laws of Jamaica"** - The laws of Jamaica and all proclamations, rules, regulations, subsidiary legislation, notifications and policies made pursuant thereto.

**"Liquidator"** - Such person appointed by the Court, members or creditors for the purpose of winding up the Company's or JPS' operations.

**“Material Agreements”** – This Agreement, the PPA Original Documents and the PPA Amended Documents.

**"Metered Power Factor"** – The power factor of the Complex as measured at the [ ]kV bushing of the transformer of the Interconnection Facility.

**"Metering Cycle"** – The intervals at which the Metering System records the energy and power demand of the Complex.

**"Metering System"** - All meters and metering devices owned by JPS and the Company and used to measure the delivery and receipt of energy and power demand of the Complex.

**"Minimum Functional Specifications"** - The minimum functional specifications for the construction of the Complex as set forth in Schedule 2 hereof.

**"Month"** - A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last day of the preceding month and ending at 12:00 midnight on the last day of that month.

**"MVAR"** - Megavars.

**"MW"** - Megawatts.

**"MWh"** - Megawatt-hours.

**"Net Energy Output"** - Net energy delivered by the Company for sale to JPS at the Interconnection Point as measured in accordance with Clause 8.3 and the general terms and conditions of the Agreement.

**"Notice to Proceed"** – The meaning ascribed thereto under the applicable Construction Contract.

**"O&M Contract"** – The agreement, if any, between the Company and the O&M Contractor for the operation and maintenance of the Facility.

**"O&M Contractor"** – The entity which the Company may from time to time appoint to operate and maintain the Facility.

**"Operating Committee"** - Such persons as appointed by JPS and the Company for the purpose of coordination and implementation of this Agreement and the operations of the Complex as set forth in Schedule 7.

**"PPA Amended Support Documents"** – The meaning ascribed thereto in Clause 4.2.

**"PPA Original Support Documents"** – The meaning ascribed thereto in Clause 4.2.

**"Pre-Operation Period"** – The period between the signing of this Agreement and the Commercial Operations Date.

**"Primary Metering System"** – All meters and metering devices designated as the primary used to measure the delivery and receipt of Net Energy Output and Dependable Capacity in accordance with Schedule 5.

**"Project"** - The design, financing, construction, ownership, operation and maintenance of the Complex and all activities incidental thereto.

**“Proposal”** - the project proposal submitted in response to the Request for Proposals for Supply of up to 115MW of Electricity Generation Capacity from Renewable Energy based Power Generation Facilities on a Build, Own and Operate (BOO) Basis.

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

**"Reactive Power"** - The wattless component of the product of voltage and current, which the Complex shall provide to or absorb from the JPS Grid and which is measured in MVAR.

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

**“Relevant Law”** - Any tax Law and/or environmental Law, or any other Law of Jamaica applicable to the Project and the Complex.

**“Renewable Fuel Feed Stock Agreement”** - Agreement between the Company and the relevant entity(ies) supplying Renewable Fuel Feed Stock for the purpose of conversion to electricity.

**“Renewable Fuel Feed Stock”** - Any renewable materials that the plant uses in a conversion process to ultimately generate electricity.

**"Scheduled Commercial Operations Date"** - The date which the Company identifies to JPS as the date the Complex will be commissioned, as such date may be revised from time to time based on the scheduled construction program and due notification delivered to JPS.

**‘Scheduled Maintenance’** – Scheduled maintenance by JPS of its line and or transmission system which would affect the Complex;

**"Scheduled Outage"** - A planned full or partial interruption of the Complex's generating capability that (i) is not a Forced Outage; (ii) has been scheduled and allowed by JPS in accordance with Clause 6.3.2; and (iii) is for inspection, testing, preventive maintenance, corrective maintenance or improvement.

**“Site”** – The land and any rights to be utilized for the purposes of designing, financing, constructing, owning, operating and maintaining the Facility.

**“Transmission Outage Plan”** – A plan detailing the Scheduled Maintenance, specifically affecting the Complex or Interconnection Facilities, in accordance with Clause 6.3.2.

**"Week"** - A period of seven (7) consecutive Days beginning at 12:00 midnight Eastern Standard Time falling between a Friday and a Saturday.

**"Year"** - Each twelve (12) Month period commencing on 12:00 midnight on December 31 and ending on 12:00 midnight the following December 31 during the term of this Agreement.

SCHEDULE 2

MINIMUM FUNCTIONAL SPECIFICATIONS

SCHEDULE 3

INTERCONNECTION FACILITIES

SCHEDULE 4

COMMISSIONING AND TESTING

SCHEDULE 5

METERING and TELECOMMUNICATIONS

SCHEDULE 6

SCHEDULE OF INDEXATION AND ADJUSTMENTS



SCHEDULE 7

OPERATING COMMITTEE

SCHEDULE 8

OPERATIONS LOG