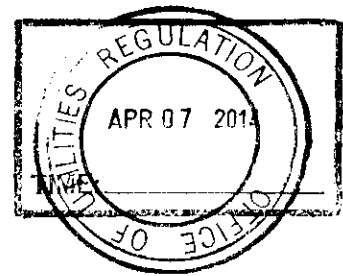


THE ELECTRIC LIGHTING ACT
ENERGY WORLD INTERNATIONAL LIMITED
SUPPLY OF ELECTRICITY LICENCE, 2014



WHEREAS:

- (a) The cost of electricity to the Jamaican consumer has stymied the growth and development of the Jamaican economy. Consequently, it has become an imperative to secure new and more efficient baseload generating capacity using less expensive fuel, to replace aged inefficient capacity, which uses expensive fuel oil;
- (b) The Office, as defined below pursuant to Instructions For Final Proposal dated May 27, 2013 invited proposals for the supply of baseload generating capacity to the National Grid, as defined below, for the replacement of approximately 292 MW of aged plants with any remainder to provide for load growth;
- (c) The Licensee, as defined below responded to the Instructions For Final Proposal and submitted a proposal which was accepted by the Office for the supply of 381 MW of net generation capacity to the National Grid using a combined cycle power plant with natural gas as fuel; and
- (d) The Licensee and the Power Purchaser, as defined below have executed a Power Purchase Agreement, and in accordance with the provisions of the ELA as defined below, the Licensee has applied for a licence to supply the said baseload generating capacity.

1. SHORT TITLE

This Licence may be cited as "Energy World International Limited Supply of Electricity Licence, 2014".

2. INTERPRETATION

2.1 In this Licence –

“**Acts**” shall have meaning set forth in Clause 2.2 hereof.

“**Block**” means each of the combined cycle generating installations consisting of two gas turbine generating units, two heat recovery steam generators, one steam turbine generating unit, and associated auxiliary equipment that form a part of the Facility.

"Commencement Date" shall have the meaning set forth in Clause 4 hereof.

"Commercial Operations Date" shall have the meaning given thereto in the Power Purchase Agreement.

"Commission" shall have the meaning given thereto in the Power Purchase Agreement.

"Construction Purchase Price" shall have the meaning set forth in Clause 15.7 hereof.

"Control" in relation to the Licensee, means the power of a person(s), and/or corporate entity to determine and implement the Licensee's policies and the day to day operations of such policies and the day to day operations of the licensed facilities or services including, inter alia, the financing, construction, development, operation and maintenance of the licensed facilities and provisioning of the licensed services.

"ELA" means the Electric Lighting Act.

"Facility" the power generation facility consisting of three Blocks (net output of 127MW each), together with the buildings and auxiliary equipment (including fuel infrastructure and storage facilities) required to provide the 381MW of electricity to the National Grid.

"Fuel" means natural gas.

"Government" means the Government of Jamaica.

"Governmental Authority" means any ministry, department, agency of Government or statutory body and shall include any acts carried out by any of the said bodies in the exercise of Government public policy.

"Governmental Requirements" means any Acts of Parliament or subsidiary legislation made thereunder and shall include inter alia, Government guidelines, policies and ministerial directives.

"Licence" means the Energy World International Limited Supply of Electricity Licence, 2014.

"Licensed Business" means the generation and supply of 381 MW net capacity of electricity to the National Grid using combined cycle gas fired generation power plant with natural gas as fuel and to be carried out in accordance with the terms and conditions of

this Licence, the Power Purchase Agreement and any other licence or permit required by Jamaican law.

“**Licensee**” is for the purposes of this Licence Energy World International Limited.

“**Minister**” means the Minister with the portfolio responsibility for electricity.

“**National Grid**” means the public electricity transmission system in Jamaica but does not include the network used for the distribution of electricity to individual members of the public.

“**Office**” means the Office of Utilities Regulation.

“**OUR Act**” means the Office of Utilities Regulation Act.

“**Performance Bond**” means five percent (5%) of the proposed total cost of construction of the Facility, that is, Thirty-Six Million Eight Hundred and Fifty Thousand United States Dollars (US\$36.85 Million) in the form of an unconditional letter of credit, a certified cheque, or a performance bond or guarantee which shall be valid until the Licensee posts a Construction Security in accordance with the Power Purchase Agreement.

“**Power Purchase Agreement**” means the agreement for the sale and purchase of power concluded between the Licensee named in this Licence and the Power Purchaser.

“**Power Purchaser**” means the Jamaica Public Service Company Limited, the licensee named under the Amended and Restated All-Island Electric Licence, 2011 or any successor or assignee operating the National Grid.

“**Purchase Price**” shall have the meaning set forth in Clause 16.7 hereof.

“**Pro Forma Transaction**” means:

- (a) an assignment from one or more individuals to a body corporate owned or controlled by the same individual or individuals without any change in their relative interests;
- (b) an assignment from a body corporate to shareholders without effecting any change in the disposition of their interests;
- (c) a reorganization of a body corporate that involves no change in the

beneficial ownership thereof;

- (d) an assignment or transfer -
 - (i) from a body corporate to its wholly owned subsidiary or *vice versa*;
 - (ii) between wholly owned subsidiaries of the same holding company;
- (e) an assignment from a body corporate to another body corporate owned or controlled by the assignor's shareholders without a substantial change in their relative interests.

“Required Commercial Operations Date” shall have the meaning given thereto in the Power Purchase Agreement.

“Tribunal” means the tribunal established pursuant to Clause 23 of this Licence, or pursuant to any relevant legislation, to hear disputes arising from a decision or failure to act by the Office.

- 2.2 This Licence shall be read and construed, subject in all respects to the provisions of the ELA, the OUR Act and any other applicable legislation, (the **“Acts”**).
- 2.3 Reference to any statute or statutory provision includes a reference to:
 - (i) that statute or statutory provision as from time to time amended, extended, replaced, or re-enacted or consolidated; and
 - (ii) all statutory instruments or orders made pursuant to it.
- 2.4 Unless the context otherwise requires, expressions in this Licence which is not defined herein shall bear the same meaning ascribed to those expressions under the Acts and the Power Purchase Agreement. In the event that there is a conflict, the meaning set forth in the Power Purchase Agreement should take precedence.

3. GRANT OF LICENCE

- 3.1 The Minister, pursuant to the powers conferred under Section 3 of the ELA as well Section 4A of the OUR Act, hereby grants the Licensee a Licence authorising the Licensee to develop the Licensed Business, and operate and maintain the Facility in order to generate, sell and supply electricity therefrom to the National Grid, subject to the provisions of this Licence and the attached Schedules as well as the relevant Acts.

3.2 This Licensee shall:

- (a) Provide the Performance Bond within ten (10) days of the date of this Licence;
- (b) Provide the information and/or documentation set forth in Schedule 1 of this Licence;
- (c) Secure the necessary financing for the completion of the Facility;
- (d) Ensure adequate fuel supply for the Facility for the term of the Power Purchase Agreement.
- (e) Commence construction of the Facility in accordance with the Construction Schedule as approved by the Office within ninety (90) days of the date of this Licence and maintain such timelines as specified in the Construction Schedule;
- (f) Complete the construction of the Facility in accordance with the Construction Schedule or such later date as otherwise prescribed by the Office;
- (g) Commission the Facility in accordance with the provisions of the Power Purchase Agreement; and
- (h) Restore any Block to its original capacity and configuration, within ninety (90) days of the date on which the outage of the Block or part thereof occurred;

3.3 The Licensee, in carrying out the Licensed Business, shall be subject to regulation by the Office pursuant to the Acts.

4. DURATION

4.1 Subject to the provisions contained herein, the Licence shall have full force and effect from the date of execution by the Minister (hereinafter called "**the Commencement Date**"). Notwithstanding, the term of the Licence shall be for a period of **twenty (20) years** from the Commercial Operations Date and shall terminate on the twentieth (20th) anniversary of the Commercial Operations Date, provided however that the Licensee shall have the right to operate the Licensed Business and sell such electricity to the National Grid arising:

- (a) as a result of the testing of the facilities prior to the Commercial Operations Date or;
- (b) as may be reasonably required by the Power Purchaser prior to the Commercial

Operations Date.

- 4.2 The Licensee may apply in writing to the Minister and copied to the Office for a renewal of the Licence no later than five (5) years prior to the expiration date.
- 4.3 The Minister on the application for renewal of the Licence grant may, on the recommendation of the Office, grant an extension of this Licence.
- 4.4 No later than one hundred and eighty (180) days prior to the expiration of the term of this Licence, the Licensee shall obtain and deliver to the Office and the Minister a fair market valuation of the Facility to be undertaken by an independent valuation expert in the electricity industry reasonably acceptable to the Minister on the recommendation of the Office. Provided that the valuation report is received and accepted by the Minister, the Licensee shall offer and the Minister shall no later than sixty (60) days prior to the expiration of the initial term of this Licence, exercise the option to acquire a fifteen percent (15%) interest in the Facility without cost or charge and a further option to acquire fifteen percent (15%) interest of the fair market value of the Facility as determined by the said valuation expert, on "a cash free debt free value", provided that this Licence shall be extended for an additional period of not less than ten (10) years from the expiry date of the Licence.
- 4.4A If the Minister elects to exercise his right to acquire such interest in the Facility, payment shall be made to the Licensee with interest calculated as specified in Clause 16.7(ii), not later than two (2) years after the notice of election to exercise such right.

5. ASSIGNMENT OR TRANSFER OF LICENCE

- 5.1 The Licensee may not assign this Licence or any rights thereunder or transfer control of its operations and any part thereof without the prior written consent of the Minister, such consent not to be unreasonably withheld.
- 5.2 An application for approval of an assignment or transfer under this Clause 5 shall be made in writing to the Minister who shall grant such approval if he is satisfied, upon the recommendation of the Office, that the assignee or transferee satisfies the requisite requirements as regards the obligations imposed on the Licensee by this Licence or relevant Acts and is in all material respects a fit and proper person to hold such Licence.
- 5.3 Clause 5.1 shall not apply to a Pro Forma Transaction and the following provisions shall apply in relation thereto -

Within thirty (30) days after the completion of the Pro Forma Transaction, the Licensee shall-

- (i) apply in writing to the Office for approval of the Pro Forma Transaction; and
- (ii) With such application, submit to the Office information pertaining to the Pro Forma Transaction including proof of the completion of the Pro Forma Transaction and certification of the transaction as a Pro Forma Transaction by the entity, or such other written information as the Office may require.

5.4 Such Pro Forma Transaction shall not be recognized and shall be deemed null and void for the purposes of the obligations under this Licence, if the provisions of Clause 5.3 hereof are not strictly adhered to and the Office does not approve.

6. RATES/PRICES

6.1 The prices to be charged and/or rates to be applied by the Licensee in respect of the supply of electricity pursuant to this Licence shall be in accordance with the Power Purchase Agreement.

6.2 The Office may, on its own accord, initiate a price review of the Base Fuel Price set forth in Schedule 6 of the Power Purchase Agreement should the Licensee procure or is reasonably able to procure the Fuel at a price lower than that specified in the Power Purchase Agreement.

7 REGULATORY FEES

7.1 The Licensee shall pay to the Office an annual regulatory fee, the first of which shall become due and payable upon the issuance of this Licence and thereafter, each subsequent fee shall become due and payable upon the anniversary date of the issuance of this Licence. This fee shall be calculated based on the revenues as may be derived from the sale of energy to the Power Purchaser under the terms of the Power Purchase Agreement and shall be calculated as follows:

$$\text{Licence Fee (LF)} = \text{BUSP} \times \text{1PPR}$$

Where BUSP = The revenue attributable to the Power Purchaser in the audited financial statements for the financial year ending in the calendar year preceding the due date of the first payment.

$$\text{1PPR} = \text{One Ten Thousandth (0.0001)}$$

8. OBLIGATIONS OF THE LICENSEE

- 8.1 The Licensee shall:
- 8.1.1 Discharge its obligations and perform the duties imposed or authorized as set out in this Licence, the Power Purchase Agreement, the Acts, and any other applicable legislation, codes or standards.
 - 8.1.2 Comply with any order made by the Minister pursuant to this Licence or to powers vested in him by any other relevant legislation applicable hereto with all reasonable promptitude.
 - 8.1.3 Comply with any memorandum, determination order or directive made by the Office pursuant to this Licence or any applicable legislation with all reasonable promptitude.
 - 8.1.4 Maintain and keep in good repair all equipment used in carrying out the Licensed Business.
- 8.2 The accounts and records of the Licensee shall be maintained in such manner as may be prescribed by the Office from time to time after consultation with the Licensee.
- 8.3 The accounts and records kept by the Licensee should be sufficient to separate the activities of the Licensed Business from any other business of this Licensee.
- 8.4 The Licensee shall provide such information, reports, and records as may be reasonably requested by the Office from time to time.
- 8.5 Where the Minister has exercised step-in rights pursuant to Clauses 16 through to 18 of this Licence, the Licensee shall be obliged to cooperate with the Minister and shall take all necessary steps, including the assignment of any relevant contracts, to facilitate the completion and/or operation of the Facility.

9. INFORMATION REPORTING AND AUDITED ACCOUNTS

- 9.1 The Licensee shall procure and furnish to the Office, in such manner and at such times in respect of the items set out at **SCHEDULE 2** or such information and reports as the Office may reasonably require or consider necessary concerning the performance by the Licensee of its obligations under this Licence.
- 9.2 The Licensee shall make arrangements reasonably satisfactory to the Office with respect to the installation and operation of an accounting and cost control system and for the appointment as auditors of a firm of reputable independent chartered accountants with offices in no fewer than fifty (50) countries including Jamaica.
- 9.3 The accounts of the Licensee shall be audited annually at the expense of the Licensee by an independent auditor of the Licensee's choice and who is authorized to provide such services in Jamaica.
- 9.4 The Licensee shall send to the Office within three (3) months of the end of the Licensee's financial year a copy of the annual audited accounts including the balance sheet, profit and loss account and cash flow statements related to the Licensed Business and shall send to the Office such operating and other statistics as the Office may reasonably require.
- 9.5 The Licensee shall furnish to the Office such other annual regulatory reports as the Office may prescribe, within forty-five (45) days after the end of each financial year in such form as prescribed by the Office.

10. INFORMATION ACCESS AND AUDIT RIGHTS

- 10.1 The Office, and any person duly authorized by the Office, shall be entitled during normal business hours and without notice, to enter any premises owned or occupied by or in the possession of the Licensee from time to time for the purpose of inspecting any books, records and accounts of the Licensee in regards to the Licensed Business and the Licensee shall be obliged to fully cooperate and assist the Office for such purpose.
- 10.2 On notice and for reasonable cause given to the Licensee, the Office shall have the right to have a firm of independent chartered accountants conduct audits of the Licensee at the Licensee's expense.
- 10.3 The Office, its agent or any person duly authorized by the Office, shall at any reasonable time (except in the case of emergencies, in which case the agent or authorized officer shall be permitted to enter at any time) be allowed to carry out the following duties:

- (a) inspect and investigate the operation of the Facility; and
- (b) monitor the performance of Facility.

11. POWERS OF LICENSEE

- 11.1 Save as set out in this Licence, the Licensee shall discharge its obligations and perform the duties imposed or authorized under the Acts, and shall enjoy the rights and exercise all powers conferred by such legislation on undertakers authorized to supply electricity.
- 11.2 The Licensee shall not be obliged to undertake extension of any transmission or distribution lines to deliver the power generated, save as provided in the Power Purchase Agreement. For the avoidance of doubt, the Licensee shall also bear the incremental costs of installing or upgrading the transmission system to safely deliver the power generated consequential to a change of siting of the Facility, such that the effective performance of the power system with the Facility at the new location would be the same as if the Facility was located at the original site.
- 11.3 The Licensee may exercise such rights and shall observe such conditions relating to easements, way leaves, entry of private property and the construction of any lines above, or below ground, as may be prescribed by law. In addition, the Licensee shall have the right to trim trees or shrubbery which may overhang any public way and may interfere with electric lines or cables constructed by the Licensee and for which the Licensee has a duty to maintain.
- 11.4 If in the construction, maintenance and repair of its electric lines, it shall be necessary for the Licensee to disturb public ways and places or the plant of any other utility, the Licensee shall promptly restore or pay the cost of restoring such public ways and places and utility plant to at least as good a condition as they were before such disturbance.

12. FORCE MAJEURE

The Licensee shall be excused for any non-compliance with this Licence caused by "**Force Majeure**", which, for the purpose of this Licence, means any event or circumstance or combination of such events or circumstances that:

- (i) occurs inside Jamaica, except as provided in paragraph (h) below;
- (ii) is outside the reasonable control of the Licensee;
- (iii) cannot be prevented or overcome by the exercise of reasonable diligence; and
- (iv) materially and adversely affects the performance by the Licensee of its obligations under this Licence, to the extent that such event(s) or circumstance(s) meet the

foregoing requirements (i) through (iii), including:

- (a) acts of God, fire, explosion, chemical contamination, earthquakes, lightning, drought, tsunami, flood, torrential rain, storm, cyclone, typhoon, or tornado, pestilence or other natural catastrophes, epidemics or plague, that directly affect the Facility;
- (b) obligations under licences (other than this Licence), concessions or permits or other governmental requirements that are necessary for the Licensee to conduct its business and which will adversely impact performance under this Licence;
- (c) any strikes, work to rule, go-slows or other labour disturbances that extend beyond the Facility, are widespread, nation-wide or are of a political nature, including labour actions associated with or directed against a ruling political party, or those that are directed against the Licensee (or its contractors or suppliers) as part of a broader pattern of labour actions against companies or facilities with foreign ownership or management that directly affects the Facility;
- (d) expropriation, requisition, confiscation, nationalization or compulsory acquisition by a governmental authority of the Licensee or any substantial portion of the Facility;
- (e) acts of war (whether or not declared), invasion, blockade or embargo;
- (f) acts of terrorism or threat from terrorists, widespread riot, widespread violent demonstrations, widespread armed insurrection, widespread rebellion or revolution;
- (g) the closing or drastic reduction in capacity of public harbours, ports, docks, canals, roads, airports or other infrastructure, the rationing thereof or any import or export restrictions; or
- (h) to the extent that they result in disruption of the Licensee's ability to receive shipments of Fuel, major equipment or critical spare parts, any strikes, work to rule, go-slows or other labour disturbances that occur outside of Jamaica.

13. Warranties and Representations

13.1 The Licensee represents and warrants to the Minister that -

- (a) it is a limited liability company duly organized and validly existing under the laws of the British Virgin Islands with the power to own its assets and duly authorized to carry on the Licensed Business;

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- (b) it has the power to perform the obligations imposed on it herein and that it will take and has taken all necessary action to enable it to perform its obligations under this Licence;
- (c) it will take and has taken due care and attention in the establishment of the Facility and will comply with all relevant legislation which affect the operation and maintenance of the Licensed Business and the Facility;
- (d) it has received all the necessary corporate approvals and has the authority to accept the terms and conditions stated herein.

14. REVOCATION

- 14.1 The Licence shall become null and void and the Performance Bond shall be subject to forfeiture in the event that the Licensee:
- (a) Fails to comply with any of the obligations specified in paragraphs (a) through (h) of Clause 3.2 of this Licence;
 - (b) Fails to comply with the provisions of the Power Purchase Agreement and all other related agreements necessary for the development and operation of the Facility, except as provided for otherwise in this Licence; or
 - (c) Makes any false representation.
- 14.2 With the exception of the event referred to in paragraph (a) of Clause 3.2 above, on the occurrence of any of the events in Clause 14.1, the Minister shall give not less than thirty (30) days' written notice of termination to the Licensee if it shall have been determined by the Office that the Licensee has, failed to comply with its obligations under Clause 3.2 or to carry out in good faith and with reasonable diligence the obligations thereunder, including compliance with directives, orders or determinations issued by the Office which shall specify in exact detail the respects in which the Licensee so failed, and that such failure has continued for a period of thirty (30) days.
- 14.3 Subject to Clauses 14.1 and 14.2, the Minister may, on the recommendation of the Office, at any time revoke this Licence by not less than thirty (30) days' notice in writing (the "**Notice of Revocation**") to the Licensee:
- (a) if it shall have been determined that the Licensee has without just cause or excuse, failed to comply with any term of this Licence or to carry out in the obligations under this Licence, including compliance with directives, orders, memorandum, or determinations issued by the Office which shall

specify in exact detail the respects in which the Licensee so failed, and that such failure has continued for a period of thirty (30) days and shall have affected the completion of the Facility or the Licensed Business;

- (b) if the Licensee has gone into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction;
- (c) if any fee or financial obligation payable under this Licence or in relation to any related statute or any fine imposed by a court of law is unpaid thirty (30) days after it has become due and after the expiration of this thirty (30) day period it remains unpaid for a further period of thirty (30) days after the Office has given the Licensee notice that the payment is overdue;
- (d) if any principal officer of the Licensee is convicted of a criminal offence by a court of law, which offence has impaired the Licensee's obligations under this Licence; or
- (e) On termination of the Power Purchase Agreement for whatever reason.

14.4 Prior to the recommendation for the revocation of this Licence pursuant to Clause 14.3, the Licensee shall, within a thirty (30) day notification period, be given an opportunity to be heard, including making written submissions to the Office as to why this Licence should not be revoked.

14.5 The Minister upon receipt of the recommendation for suspension or revocation pursuant to Clause 14.3 may request the Office in writing to reconsider its recommendation for the revocation or suspension of the Licence, giving his reasons in support of such request.

15. STEP- IN RIGHTS AFTER COMMENCEMENT OF CONSTRUCTION

15.1 After the commencement of construction of the Facility, if the Licensee:

- (a) shall have ceased substantially all activities relating to construction in accordance with the approved Construction Schedule set forth in the approved Implementation Schedule for a period greater than forty-eight (48) hours, or the physical absence of substantially all employees of the Licensee and its Contractors from the Site after excavation for the foundations of the Facility for at least one hundred and sixty-eight (168) consecutive hours; or
- (b) fails to meet any milestone which in the reasonable judgment of the Office is a critical milestone within sixty (60) days after the scheduled date set forth in the approved Implementation Schedule;

(the "*Construction Initial Period*") without the prior consent of the Office ("*Construction Step-in Event*"), the Minister or his designee may enter the construction site of the Facility ("*Site*") and may assume control and complete the construction of the Facility, provided that:

- (i) The Minister shall give prompt notice to the Licensee indicating that the Construction Initial Period has concluded, such notice to be given by means reasonably calculated to ensure prompt actual notice to the Licensee.

15.2 Notwithstanding the provisions of Clause 15.1, the Minister or his designee shall not be entitled to enter the Licensee's Site for the purpose of assumption of control if the cessation of construction under Clause 15.1 resulted from:

- (i) circumstances beyond the reasonable control of the Licensee; such as an event of Force Majeure;
- (ii) an action or failure to act by the Government, the Minister or the Office in contravention of any right or entitlement of the Licensee under applicable legislation or regulation being in force, or the Licensee's Licence;
- (iii) to the extent that the Licensee is proceeding with reasonable diligence and good faith to overcome or remedy such event and such event is overcome and remedied within seven (7) days immediately after the Construction Initial Period.

15.3 Where the Licensee, on the recommendation of the Office, provides evidence to the satisfaction of the Minister that the Licensee is proceeding with reasonable diligence and good faith in order to overcome or remedy a Construction Step-in Event, the Minister may decide not to enter the Site for the purpose of assuming operational control thereof as provided for in Clause 15.1. In the event that the Licensee does not effect a satisfactory remedy within seven (7) days immediately after the Construction Initial Period, the Minister may, subject to Clause 15.1 (a) above, exercise the aforementioned right to enter the Site and assume operational control.

15.4 If the Minister or his designee assumes control of the Site upon the event of a Construction Step-in Event, the Minister or his designee shall be entitled to complete the construction of the Facility in accordance with the design and prudent utility practice, and in any event, in accordance with standards no lower than those which were binding on

the Licensee prior to the occurrence of the Construction Step-in Event. The Licensee shall be obliged to cooperate with the Minister and shall take all necessary steps, including the assignment of any relevant contracts, to facilitate the completion and operation of the Facility.

15.5 The Minister or his designee shall be entitled to control the Licensee's Site until such time as the Licensee has demonstrated to the reasonable satisfaction of the Minister that it can resume normal construction of the Facility in accordance with the terms and conditions of this Licence and relevant legislation and that the Construction Step-in Event will be overcome or remedied.

15.6 In demonstrating its ability to resume normal operations, the Minister shall require the Licensee to reimburse the monies expended by the Government on the construction of the Facility plus interest calculated at the United States Treasury Bill rate for the relevant financial period, and demonstrate that it will secure or otherwise acquire and utilize:

(a) requisite qualified and skilled personnel;

(b) sufficient financial resources; and

(c) any other resources identified to be needed to resume construction of the Facility in accordance with the terms and conditions of this Licence and to overcome or remedy the Construction Step-in Event.

15.7 Where the Licensee, on the recommendation of the Office, is unable to demonstrate its ability to resume normal construction of the Facility to the reasonable satisfaction of the Minister within ninety (90) days after the Construction Initial Period, the Minister shall have the right to acquire, and/or to have his designee acquire all of the rights, title and interest of the Licensee in the unfinished Facility for an amount equal to fifty percent (50%) of the purchase price as defined and formulated in accordance with this paragraph 15.7 (i), (ii) and (iii) below ("**Construction Purchase Price**") or cost of the unfinished Facility whichever is less.

(i) The Construction Purchase Price shall be fifty percent (50%) of the remainder of the fair market value or the book value, whichever is less after the interest of the financiers of the debt portion of the Facility has been taken into account.

(ii) The fair market value and the book value are to be determined as calculated by a professional independent valuation expert in the electricity industry and auditor

respectively, reasonably acceptable to the Minister on the recommendation of the Office and the Licensee.

- (iii) The applicable interest rate to be used regarding the payment of the Construction Purchase Price shall be the United States Treasury Bill rate for the relevant financial period. Interest shall begin to accrue after six (6) months of the exercise of the step-in rights.

15.8 Where the Minister or his designee elects to exercise the option to acquire all such rights, title and interest in the unfinished Facility, as provided for in this Clause 15, payment shall be made to the Licensee not later than two (2) years after notice of election to exercise such right.

15.9 The Minister shall only indemnify and hold the Licensee harmless from any loss or damage to the system and/or generation facility and for any injury to persons incurred as a direct result of the Minister's or designee's gross negligence or wilful misconduct during the construction period but only to the extent that such loss, damage or injury is not covered by insurance.

15.10 The Minister may designate any other qualified person solely or in conjunction with other duly designated qualified persons as his designee for the purpose of exercising any of the powers conferred in this Clause 15.

16. STEP- IN RIGHTS AFTER COMMERCIAL OPERATIONS DATE

16.1 After the Commercial Operations Date, if the Licensee shall have ceased to operate all, or any substantial part of the system or equipment necessary for the performance of functions under its Licence for a period of forty-eight (48) consecutive hours or failed to repair or replace any equipment which results in the Facility or Block to operate below capacity or substantially less efficient than set forth in the final design, (the "**COD Initial Period**") without the prior consent of the Minister ("**COD Step-in Event**"), the Minister or his designee may enter any site at which the Licensee operates and may assume operational control of the Facility, provided that:

- (a) The Minister shall give prompt notice to the Licensee determining that the COD Initial Period has concluded, such notice to be given by means reasonably calculated to ensure prompt actual notice to the Licensee.

16.2 Notwithstanding the provisions of Clause 16.1, the Minister or his designee shall not be entitled to enter any of the Licensee's sites for the purpose of assumption of operational

control of the Facility if the cessation of operation resulted from:

- (i) circumstances beyond the reasonable control of the Licensee; such as an event of Force Majeure or a material breach by the Power Purchaser under the Power Purchase Agreement;
- (ii) an allowed forced outage as defined under the Power Purchase Agreement;
- (iii) an allowed scheduled or maintenance outage as defined under the Power Purchase Agreement;
- (iv) an action or failure to act by the Government, Minister or the Office in contravention of any right or entitlement of the Licensee under applicable legislation or regulation being in force, or the Licensee's Licence;
- (v) to the extent that the Licensee is proceeding with reasonable diligence and good faith to overcome or remedy such event and such event is overcome and remedied within forty-eight (48) hours immediately after the COD Initial Period.

16.3 Where the Licensee provides evidence to the satisfaction of the Minister that the Licensee is proceeding with reasonable diligence and good faith in order to overcome or remedy a COD Step-in Event, the Minister may decide not to enter the site operated by the Licensee for the purpose of assuming operational control thereof as provided for in Clause 16.1. In the event that the Licensee does not effect a satisfactory remedy within forty-eight (48) hours immediately after the COD Initial Period, the Minister may, subject to Clause 16.1 (a) above, exercise the aforementioned right to enter the site operated by the Licensee for the purpose of assuming operational control of Facility.

16.4 If the Minister or his designee assumes operational control of all or part of the Facility upon the event of a COD Step-in Event in terms of Clause 16.1, the Minister or his designee shall operate the Facility in accordance with prudent utility practice, and in any event, in accordance with standards no lower than those which were binding on the Licensee prior to the occurrence of the COD Step-in Event.

16.5 The Minister or his designee shall be entitled to operate all or part of the Facility until such time as the Licensee has demonstrated to the reasonable satisfaction of the Minister that it can resume normal operation of the Facility in accordance with the terms and conditions of this Licence and the Acts and that COD Step-in Event will be overcome or remedied.

- 16.6 In demonstrating its ability to resume normal operations, the Minister shall require the Licensee to reimburse the monies expended by the Government on the construction of the Facility and demonstrate that it will secure or otherwise acquire and utilize:
- (a) requisite qualified and skilled personnel;
 - (b) sufficient financial resources; and
 - (c) any other resources identified to be needed to resume proper operation of the all or part of the Facility in accordance with the terms and conditions of this Licence and to overcome or remedy the COD Step-in Event.
- 16.7 Where the Licensee is unable to demonstrate its ability to resume normal operation of the Facility to the reasonable satisfaction of the Minister within ninety (90) days after the COD Initial Period, the Minister shall have the right to acquire, and/or to have his designee acquire all of the rights, title and interest of the Licensee in the Licensed Business for an amount equal to fifty percent (50%) of the purchase price as defined and formulated in accordance with paragraphs 16.7 (i), (ii) and (iii) below ("Purchase Price") or cost, whichever is less, after the interest of the financiers of the debt portion of the Facility has been taken into account.
- (i) The Purchase Price shall be calculated at the fair market value of the Licensed Business. The fair market value is to be determined as calculated by a professional independent valuation expert in the electricity industry reasonably acceptable to the Minister on the recommendation of the Office and the Licensee.
 - (ii) The applicable interest rate to be used regarding the payment of the Purchase Price shall be the United States Treasury Bill rate for the relevant financial period. Interest shall begin to accrue after six (6) months of the exercise to the step-in rights.
 - (iii) In the calculation of the Purchase Price, consideration must be given to the customers' contribution to the value of the assets in the Facility.
- 16.8 Where the Minister or his designee elects to exercise the option to acquire all such rights, title and interest in the Licensed Business, as provided for in this Clause 16, payment shall be made to the Licensee not later than two (2) years after notice of election to exercise such right.
- 16.9 The Minister shall only indemnify and hold the Licensee harmless from any loss or

damage to the Facility and for any injury to persons incurred as a direct result of the Minister's or designee's gross negligence or wilful misconduct in the operation of the system and/or generating facility during the period the Minister or his designee operates the Facility but only to the extent that such loss, damage or injury is not covered by insurance.

16.10 The Minister may designate any other qualified person solely or in conjunction with duly designated qualified persons as his designee for the purpose of exercising any of the powers conferred in this Clause 16.

17. STEP-IN RIGHTS AS A CONSEQUENCE OF REVOCATION OF LICENCE

If the Licensee shall have ceased construction, or to operate all, or any substantial part of the Facility necessary for the performance of the obligations under this Licence, due to the revocation of its Licence and the Licensee is unable to demonstrate its ability to resume construction, or normal operation of the system or equipment to the reasonable satisfaction of the Minister within (a) thirty days of the revocation of the Licence pursuant to Clause 14.1 and 14.2, or (b) ninety (90) days after the revocation of the Licence pursuant to Clauses 14.3 to 14.5, the Minister or his designee may acquire all of the rights, title and interest of the Licensee in the Licensed Business for fifty percent (50%) of the Construction Purchase Price or cost whichever is less, or the Purchase Price or cost of whichever is less respectively, after the interest of the financiers of the debt portion of the Facility has been taken into account. If the Minister elects to exercise his right to acquire all such rights, title and interest, payment including interest calculated in accordance with Clauses 15.7(ii) and 16.7(ii) respectively shall be made to the Licensee not later than two (2) years after notice of election to exercise such right.

18. STEP-IN RIGHTS AS A CONSEQUENCE OF NON-RENEWAL OF LICENCE

If the Licensee shall have ceased to operate all, or any substantial part of the system or equipment necessary for the performance of the functions under its Licence, due to non-renewal, the Minister or his designee may acquire all of the rights, title and interest of the Licensee in the Licensed Business for the Purchase Price, after the interest of the financiers of the debt portion of the Facility has been taken into account. If the Minister elects to exercise his right to acquire all such rights, title and interest, payment including interest calculated in accordance with Clause 16.7(ii) shall be made to the Licensee not later than one (1) year after notice of election to exercise such right.

19. AMENDMENT TO LICENCE

This Licence may be modified at any time during the term of its continuance by agreement between the Licensee and the Minister, upon the advice of the Office.

20. RIGHTS OF ACTION RESERVED

Nothing specified or contained in this Licence shall be construed as depriving the Licensee or the Minister of its ordinary rights to appeal to Her Majesty's Courts to redress any wrongs it may suffer or to enforce any rights to which it may be entitled under the Licence or otherwise after it has exhausted the remedies contained herein.

21. NOTICES

21.1 Any notice, document or other instrument required or permitted to be given or delivered to any person under any provisions of this Licence may be delivered or given by registered mail addressed to the person to whom the notice is to be given, or delivery is to be made, at the address below or any such other address as may be specified from time to time by the relevant party and if so given by mail shall be deemed to have been given or delivered five (5) days after the date on which it is deposited in the mail as registered mail.

THE MINISTER

Address: Ministry of Science, Technology, Energy and Mining
PCJ Building
36 Trafalgar Road
Kingston 10

Attention: The Honourable Minister

THE LICENSEE

Address: 3438, 34th Floor
Sun Hung Kai Centre
30 Harbour Road
Hong Kong

Attention: Mr. Stewart Elliott

Email: ewi188@netvigator.com

21.2 If notice is given or any document delivered other than by registered mail, as provided in the preceding sentence, such notice shall not be deemed to have been given or document delivered until it is actually received by the person to whom the notice is given or delivery is made, and if by email receipt is acknowledged.

21.3 Any person may change its address for the purposes of this Clause 21 by giving notice of such change by hand delivery, registered mail, or email (provided receipt is acknowledged) which change, however, shall not become effective until it is actually received by the person to whom the notice is addressed.

22. APPEALS TRIBUNAL

22.1 Subject to the provisions of any subsequent legislation, the Minister may empanel a Tribunal to hear appeals by the Licensee and such Tribunal shall consist of three members appointed by the Minister as follows:

- (a) one member shall be a former Judge of the Supreme Court or the Court of Appeal and shall be the chairman of the Tribunal (the "**Chairman**");
- (b) one member shall be appointed on the recommendation of the Licensee; and
- (c) one member shall be appointed on the recommendation of the Office.

22.2 There shall be paid to the Chairman and other members of the Tribunal in respect of any appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

22.3 The decisions of the Tribunal shall be by a majority of votes of the members.

22.4 The Tribunal shall regulate its own proceedings.

22.5 Subject to any relevant legislation or instrument, the members of the Tribunal shall hold office for a period of two years unless sooner terminated by the Minister.

23. APPEALS OF OFFICE DECISIONS

23.1 If the Licensee is aggrieved by a decision of, or failure to act, by the Office under this Licence, the Licensee may appeal to the Tribunal:

- (a) in the case of a decision of the Office, within thirty (30) days after notification to the Licensee of that decision;
- (b) in the case of a failure of the Office to act, within twenty-one (21) days after the date on which the Office was required to act.

23.2 On hearing an appeal under this Licence, the Tribunal shall have regard to the legality, rationality and procedural propriety of the Office in arriving at its decision and may:

- (a) confirm, modify or reverse the decision of the Office or any part thereof; or

(b) by a direction in writing, refer the decision back to the Office for reconsideration by it, either generally or in relation to any matter specified in the direction,

and the Tribunal shall, at the same time, state the reasons for its decision.

- 23.3 The Tribunal may, on application by the Licensee, order that the decision of the Office to which an appeal relates shall not have effect until the appeal is determined.
- 23.4 The Tribunal may dismiss an appeal if it is of the opinion that the appeal is frivolous or vexatious or not made in good faith.
- 23.5 Where the Tribunal dismisses an appeal, it shall inform the Licensee and the Office in writing stating the reasons for its decision.
- 23.6 In making a decision, the Tribunal shall observe reasonable standards of procedural fairness and the rules of natural justice and act in a timely fashion.

24. GOVERNING LAW

This Licence shall be governed and construed in accordance with the laws of Jamaica.

25. WAIVER

No failure or delay by any of the Parties to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

26. SEVERABILITY

If any term or provision in this Licence all in whole or in part to be illegal or unenforceable under any Acts, that term or provision or part thereof, shall to that extent be deemed not to form part of this Licence and the enforceability of the remainder of this Licence shall not be affected.

Dated this 4th day of APRIL 2014.



Honourable Phillip Paulwell, M.P.
Minister of Science, Technology Energy and Mining

SCHEDULE I

(Clause 3.2)

1. Submissions by the Licensee

The Licensee shall, subject to the satisfaction of the Office, submit to the Office the undermentioned documents on or before the date specified or such other date as prescribed in writing by the Office in respect of each:

- 1.1 An Implementation Plan and schedules thereto including but not limited to proposed contractual arrangements with the original equipment manufacturers (OEM), EPC contractors, project management company and all the critical activities and milestones relating to the financing, design, construction (Construction Schedule) and operation of the Facility in accordance with the Power Purchase Agreement within thirty (30) days of the date of this Licence;
- 1.2 The Licensee's 2013 Audited Financial Statements within ninety (90) days of the date of this Licence;
- 1.3 A financing plan detailing credible sources of equity and debt financing along with the letters of intent/interest from reputable institutions within forty-five(45) days of the date of this Licence;
- 1.4 A Fuel Supply Plan detailing the source and supply of Fuel and such information as required by the Office within thirty (30) days of the date of this Licence.
- 1.5 Copies of all permits, licenses, approvals and other governmental authorizations that have been issued to the Licensee for the design, financing, construction, ownership, operation and maintenance of the Facility in accordance with the Power Purchase Agreement;
- 1.6 All relevant documentation relating to the total equity financing of the Facility including copies of commitments or agreements within three (3) months of the date of this Licence;
- 1.7 All relevant documentation relating to the bridge financing of the Facility (to suffice up to Commercial Operations Date, where long term debt would not be immediately available) including copies of commitments, or agreements for the provision of debt within six (6) months of the date of this Licence;
- 1.8 All relevant documentation relating to the financing of the Facility including copies of agreements for the provision of long term debt.

- 1.9 All relevant documentation relating to the source and supply of Fuel including copy of the Fuel Supply Agreement within forty-five (45) days of the date of this Licence.
- 1.10 Copies of the contracts for the supply of equipment and construction of the Facility, including agreements with the original equipment manufacturers (OEM), EPC contractors, project management company, including all schedules, plans and specifications attached thereto, within sixty (60) days of the date of this Licence;
- 1.11 Beginning thirty (30) days after the date of the Licence and ending on the Commercial Operations Date of the Facility, monthly progress reports including whether the timelines as specified in the Licence and/or the Power Purchase Agreement will be met and any change in status of all major contracts that comprise the project.

Neither the receipt nor approval of any documentation submitted hereunder shall (i) relieve the Licensee of any obligation or responsibility under this Licence resulting from a breach by the Licensee of this Licence, or (ii) be construed as an endorsement by the Office of the design, financing, construction, ownership, operation or maintenance of the Facility nor as a warranty by the Office of the safety, durability or reliability thereof.

SCHEDULE 2

(Clause 9.1)

2. Submissions by the Licensee

The Licensee shall submit to the Office the under mentioned documents on or before the date specified or such other date as prescribed in writing by the Office in respect of each.

- 2.1 A copy of the Licensee's proposed plan for the operations and maintenance of the Facility (the "O&M Plan") and any O&M Contract entered into by the Licensee, in accordance with the time specified in the Power Purchase Agreement;
- 2.2 A start-up and test schedule for such Commissioning, including, without limitation, appropriate milestone dates for such start-up and testing in accordance with the time specified in the Power Purchase Agreement;
- 2.3 Copies of all insurance policies and certificates of insurance required to be obtained together with all amendments in accordance with the time specified in the Power Purchase Agreement;

- 2.4 The final design drawings for the construction of the Facility in accordance with the time specified in the Power Purchase Agreement;
- 2.5 Certificate(s) signed by the Licensee's licensed professional engineers of the Construction Contractor stating that the Facility (a) has been constructed in accordance with the Construction Contract, the final design drawings, and Prudent Utility Practice, and (b) is designed and constructed to have a useful life of at least twenty (20) years in accordance with the time specified in the Power Purchase Agreement.
- 2.6 All relevant documentation relating to the transportation of Fuel to the Site pursuant to the Fuel Supply Plan including copies of all Fuel Transportation Agreements in accordance with the time specified in the Power Purchase Agreement.

Neither the receipt nor approval of any documentation submitted hereunder shall (i) relieve the Licensee of any obligation or responsibility under this Licence resulting from a breach by the Licensee of this Licence, or (ii) be construed as an endorsement by the Office of the design, financing, construction, ownership, operation or maintenance of the Facility nor as a warranty by the Office of the safety, durability or reliability thereof.

SCHEDULE 3

DESCRIPTION OF FACILITY

The Description of the Facility including the Site shall be in accordance with Schedule 2 and any other applicable provisions of the Power Purchase Agreement.