

POWER PURCHASE AGREEMENT

BY AND BETWEEN

JAMAICA PUBLIC SERVICE COMPANY LIMITED

- and -

[LICENSEE]

relating to

the power generation at [LOCATION OF COMPANY]

DATED AS OF [DATE OF AGREEMENT]

TABLE OF CONTENTS

	<u>Page</u>
1. INTERPRETATION	1
1.1 INTERPRETATION.....	ERROR! BOOKMARK NOT DEFINED.
2. SALE AND PURCHASE OF ENERGY AND CAPACITY	3
2.1 SALE BY THE COMPANY AND PURCHASE BY JPS	3
2.2 SALE BY JPS AND PURCHASE BY THE COMPANY	3
3. TERM	4
3.1 INITIAL TERM.....	4
3.2 RENEWAL TERM.....	4
4. PRE-OPERATION PERIOD FOR FACILITY	5
4.1 PERMITS AND LICENSES	5
4.2 SUBMISSIONS BY THE COMPANY.....	5
4.3 OPERATING PROCEDURES	8
4.4 ENERGY BEFORE COMMISSIONING OF THE FACILITY	9
4.5 DEEMED COMMISSIONING	9
4.6 INSPECTION.....	10
4.7 ACCESS TO THE SITE	11
5. WARRANTIES AND COVENANTS.....	11
5.1 REPRESENTATIONS AND WARRANTIES OF THE COMPANY	11
5.2 REPRESENTATIONS AND WARRANTIES OF JPS	12
5.3 COVENANTS OF THE COMPANY	13
6. OPERATION AND MAINTENANCE OF THE FACILITY	14
6.1 DISPATCH BY JPS	14
6.2 OPERATION BY THE COMPANY	15
6.3 SCHEDULED OUTAGES.....	15
6.4 MAINTENANCE OUTAGES	18
6.5 EMERGENCIES	18
6.6 RENEWABLE FUEL FEED STOCK SUPPLY.....	19
6.7 OPERATING COMMITTEE	20
6.8 OPERATING PERSONNEL	20
6.9 INSPECTIONS AND RECORDS	21
7. INTERCONNECTION.....	22
7.1 JPS RESPONSIBILITIES	22
7.2 COMPANY RESPONSIBILITIES.....	23
7.3 PROTECTIVE DEVICES	24
8. METERING AND TELECOMMUNICATIONS	25
8.1 OWNERSHIP OF METERING EQUIPMENT	25
8.2 TESTING AND INSPECTION OF THE METERING SYSTEM	25
8.3 MEASUREMENT OF NET ENERGY OUTPUT AND DEPENDABLE CAPACITY	25

8.4	TELECOMMUNICATIONS.....	26
9.	COMPENSATION, PAYMENT AND BILLING	26
9.1	FIXED PAYMENT.....	26
9.2	VARIABLE PAYMENT	27
9.3	RETAINED PAYMENTS.....	27
9.4	LIQUIDATED DAMAGES.....	28
9.5	PAYMENT OF LIQUIDATED DAMAGES FOR DISPATCH DEVIATION.....	33
9.6	PAYMENT AND BILLING	35
9.7	FOREIGN EXCHANGE	36
9.8	CHANGE IN RELEVANT LAW.....	36
9.9	JPS LETTER OF CREDIT	38
10.	TESTING AND CAPACITY RATINGS.....	40
10.1	TESTING	40
10.2	TEST RESULTS.....	40
10.3	DISPUTES.....	40
12.	INDEMNIFICATION AND LIABILITY	44
12.1	INDEMNITY BY THE COMPANY	44
12.2	INDEMNITY BY JPS.....	45
12.3	NOTICE OF PROCEEDINGS.....	47
12.4	BASKET LIMITATION	47
12.5	CONDUCT OF PROCEEDINGS	47
13.	FORCE MAJEURE	47
13.1	CONSEQUENCES OF FORCE MAJEURE	47
13.2	PROCEDURES UPON A FORCE MAJEURE	48
13.3	IMPACT OF FORCE MAJEURE ON JPS PAYMENTS	48
14.	DEFAULTS AND TERMINATION.....	49
14.1	COMPANY EVENTS OF DEFAULT	49
14.2	JPS EVENTS OF DEFAULT	50
14.3	NOTICE AND CURE.....	51
14.4	RIGHTS AND REMEDIES UPON AN EVENT OF DEFAULT	52
14.5	SURVIVAL.....	53
14.6	EXCLUSION OF CONSEQUENTIAL DAMAGES.....	53
15.	RESOLUTION OF DISPUTES.....	54
15.1	MUTUAL DIFFERENCES	54
15.2	REFERRAL TO AN EXPERT.....	54
15.3	ARBITRATION.....	56
15.4	CONTINUED PERFORMANCE	58
16.	ASSIGNMENT	58
16.1	ASSIGNMENT	58
16.2	GRANTING OF SECURITY.....	59
17.	NOTICES.....	60
17.1	ADDRESS FOR NOTICES	60
17.2	EFFECTIVENESS OF SERVICE.....	61

18.	ACCOUNTS AND REPORTS.....	61
18.1	APPOINTMENT OF AUDITORS.....	61
18.2	RIGHT OF INSPECTION	61
18.3	PERIODIC REPORTS	61
18.4	REPORTING OF CHANGES	62
18.5	INFORMATION RE STATUTORY NOTICE/WINDING UP PROCEEDINGS.....	62
19.	MISCELLANEOUS PROVISIONS	62
19.1	VARIATIONS IN WRITING.....	62
19.2	EXPENSES	62
19.3	SEVERABILITY.....	63
19.4	WAIVERS	63
19.5	CONFIDENTIALITY	63
19.6	SUCCESSORS AND ASSIGNS	64
19.7	NO LIABILITY FOR REVIEW	64
19.8	NO THIRD PARTY BENEFICIARIES	64
19.9	AFFIRMATION	65
19.10	GOVERNING LAW	65
19.11	RELATIONSHIP OF THE PARTIES.....	65

SCHEDULES

SCHEDULE 1.....	DEFINITIONS	Tab 1
SCHEDULE 2	MINIMUM FUNCTIONAL SPECIFICATIONS	Tab 2
SCHEDULE 3.....	INTERCONNECTION FACILITIES	Tab 3
SCHEDULE 4.....	COMMISSIONING AND TESTING	Tab 4
SCHEDULE 5.....	METERING AND TELECOMMUNICATIONS	Tab 5
SCHEDULE 6.....	INDEXATION AND ADJUSTMENT	Tab 6
SCHEDULE 7.....	OPERATING COMMITTEE	Tab 7
SCHEDULE 8.....	CONSTRUCTION REPORTS	Tab 8
SCHEDULE 9.....	FORM OF LETTER OF CREDIT	Tab 9
SCHEDULE 10.....	OPERATIONS LOG	Tab 10

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 capacity of the Facility and all of the Net Energy Output 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

1.1 In this Agreement:

- 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, 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 Clause 15;

- 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 AND CAPACITY

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, the Dependable Capacity and 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 (20th) 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 and the OUR within 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 4.2.20 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 Support 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 being 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 being one hundred eighty (180) Days prior to the Scheduled Commercial Operations Date, a copy of the Company's Renewable Fuel Feed Stock Supply Plan for the Facility;
- 4.2.4 On or before the date being 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 Scheduled Commercial Operations Date, monthly progress reports including results of any tests performed 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, Fuel 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 one hundred and eighty (180) 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 Section 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 sixty (60) Days prior to the Scheduled Commercial Operations Date, final design drawings for the construction of the Facility;
- 4.2.15 As soon as available but not later than sixty (60) Days prior to the Scheduled 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 Scheduled 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.

- 4.2.17 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;
- 4.2.18 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 the facility 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;
- 4.2.19 As soon as available but not later than [Amount (Amount)] Days after the Commercial Operations Date, copies of all test results for tests performed on the Facility;
- 4.2.20 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;
- 4.2.21 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 design 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 procedure, outage scheduling, capacity and energy reporting, Unit operations log, Spinning Reserve 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 before Commissioning of the Facility

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 Facility and JPS shall pay the Company for such energy at the rate set forth in Clause 9.2.1. For the avoidance of doubt, electrical energy and capacity from the Facility prior to the Commercial Operations Date shall not be deemed to be Dependable Capacity or Net Energy Output from Dependable Capacity, hereunder with respect to the Facility; provided, however, that such electrical energy produced by the Facility shall be considered (i) Net Energy Output for purposes of determining the payment by JPS for such energy and (ii) Dependable Capacity for purposes of completing the tests set forth in Section 3 of Schedule 4. JPS shall not be liable to make Fixed Payments prior to the Commercial Operations Date.

4.5 Deemed Commissioning

In the event that JPS does not accept energy produced by the Facility during the scheduled Commissioning of the Facility in breach of this Agreement (and, for avoidance of doubt, expressly excluding JPS' inability or refusal to

accept such energy due to the occurrence of an event of Force Majeure, an Emergency or a Company Event of Default), and as a result the Commissioning of the Facility is delayed for more than fourteen (14) Days from the scheduled date, then, pending actual testing and upon receipt of a certificate from the Independent Engineer to the effect that the Facility is ready for testing and Commissioning, the Facility shall be deemed to be providing Dependable Capacity equivalent to [input MEGAWATTS] MW for the purposes of Fixed Payments to be made by JPS pursuant to Clause 9.1 hereof provided that,

(a) the Company shall not be liable for the payment of liquidated damages in accordance with Clause 9.4.1 for the number of days equivalent to the period commencing on the Day the Facility was deemed Commissioned in accordance with this Clause 4.5 and ending on the earlier of (i) the Day after which the Commissioning Tests are carried out, or (ii) fourteen (14) Days after the Day on which JPS notifies the Company that it is ready and able to accept the energy produced by the Facility during Commissioning (“Delay Period”),

(b) the period of one (1) year stated in Clause 14.1.4 shall be extended by the number of Days equivalent to the Delay Period, and

(c) the period specified in Schedule 4 for the additional Commissioning tests shall be extended by the number of Days equivalent to the Delay Period.

The Company shall be entitled to no penalty or claim for damages as a result of such delay. If the Facility shall have been deemed Commissioned as provided in this Clause 4.5 and thereafter when tested shall have failed to satisfy the requirements of Schedule 4, then the Facility shall cease to be deemed Commissioned until such time as the Facility shall have successfully completed the tests referred to in Schedule 4, and no Fixed Payments shall be due to the Company in respect thereof for the period from the date on which the Facility shall have been tested and failed to satisfy the requirements of Schedule 4 until the date on which the Facility shall have been tested and satisfied the requirements of Schedule 4; provided that, if the Facility shall have been deemed Commissioned, the Facility shall be tested at the first available opportunity after such deemed Commissioning. The Facility shall not be deemed Commissioned to the extent that the delay in the program or tests would have nevertheless occurred regardless of JPS’ actions or inactions.

4.6 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.

4.7 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, constructing the Facility.]

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 Dispatch by JPS

- 6.1.1 JPS shall have the right to Dispatch the Facility from the Commercial Operations Date up to the full Dependable Capacity thereof in accordance with the provisions of this Clause 6.1, and Scheduled Outages, Maintenance Outages and the Minimum Functional Specifications.
- 6.1.2 At least ten (10) Days prior to the Scheduled Commercial Operations Date (in respect of the Year in which the Commercial Operations Date occurs), JPS shall provide to the Company a projected System Load Profile, with one hundred percent (100%) Facility availability, indicating the anticipated dispatch level for the Facility after the Commercial Operations Date for each hour of the forthcoming [fortnight]. At least five (5) Days prior to the Scheduled Commercial Operations Date (in respect of the Year in which the Commercial Operations Date occurs), the Company shall review the projected System Load Profile from JPS and shall submit to JPS its required maintenance for the [fourteen (14)] Day period commencing on the Commercial Operations Date. The first [Thursday] after the Commercial Operations Date and each [Thursday] thereafter, the Company shall deliver to JPS the projected availability of the Facility for the forthcoming [fortnight ("Proposed Fortnightly Availability")] together with the actual accumulated Unit Running Hours (as at 12:00 a.m. on the said [Thursday]) for each Unit, by [5:00] p.m. JPS shall review the Proposed [Fortnightly] Availability and deliver to the Company a projected System Load Profile indicating the anticipated operating level for the Facility for each hour of the forthcoming [two (2) weeks ("Fortnightly Projected Dispatch"), by 3:00 p.m. each Friday].

The actual Dispatch schedule may be substantially different from the [Fortnightly] Projected Dispatch. It is expressly recognized that JPS is not obligated to request any Net Energy Output.

- 6.1.3 [Subject to the Minimum Functional Specifications, the Generation Code and approved Scheduled Outages and Maintenance Outages, JPS shall have the right to request, and the Company shall deliver, Reactive Power free of charge from the Facility after the Commercial Operations Date.]
- 6.1.4 [Commencing on the Commercial Operations Date, if Spinning Reserve is applicable, the Company will not be liable for liquidated damages caused by deviations in attaining Dispatch directly caused by the Facility satisfying the Spinning Reserve requirement.]
- 6.1.5 [Commencing on the Commercial Operations Date, in the event that the Company is requested by the Control Center to use any available capacity from the dispatched Units to satisfy frequency controlled Spinning Reserve, this request shall be complied with until the Control Center advises the Facility that the Spinning Reserve is no longer required. The Company will not be liable for liquidated damages caused by deviations in attaining Dispatch directly caused by the Facility complying with the Spinning Reserve request. For the avoidance of doubt, any exemption from liability for liquidated damages to which the Company shall become entitled as per the above, shall cease to apply immediately upon the Control Center advising the Facility to discontinue providing frequency controlled Spinning Reserve.]

6.2 Operation by the Company

- 6.2.1 The Company shall control and operate the Facility from the Commercial Operations Date in accordance with JPS' Dispatch instructions.
- 6.2.2 Commencing on the Commercial Operations Date, the Company shall keep the Control Center informed as to the current capability of the Facility and shall immediately advise the Control Center of any change in such capability.

6.3 Scheduled Outages

- 6.3.1 At least ninety (90) Days prior to the Scheduled Commercial Operations Date, JPS shall submit to the Company its Annual Projected Capacity Factor for the following Year, assuming one hundred percent (100%) availability of

the Facility. Thereafter, by **[Date to be agreed]** of each Year, JPS shall submit to the Company its Annual Projected Capacity Factor for the following Year. 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 following Year. Thereafter, by **[Date to be agreed]** of each Year, the Company shall submit to JPS its desired schedule of Scheduled Outage periods for the following Year, such schedules to incorporate the corresponding Annual Projected Capacity Factor provided by JPS and details of the Unit outage start and end dates and times. The Parties agree that the failure of the Company to receive the Annual Projected Capacity Factor from JPS more than (i) ninety (90) Days prior to the Scheduled Commercial Operations Date (in respect of the Year in which the Commercial Operations Date occurs) and (ii) **[Date to be agreed]** of each Year occurring after the Commercial Operations Date (in respect of such Year), shall not prohibit the Company from delivering the Schedule Outage periods to JPS in accordance with this Clause 6.3.1.

- 6.3.2 At least fourteen (14) Days prior to the Scheduled Commercial Operations Date and at least two (2) Months prior to the commencement of each subsequent Year, JPS shall provide the Company with any proposed modifications to the schedule of Scheduled Outage periods. Any such proposed modifications shall be as close as reasonably practicable to the requested period, shall comply with the Minimum Functional Specifications, and shall not exceed the duration of the initial requested period. The Company shall notify JPS in writing within thirty (30) Days of receiving any proposed modifications to the schedule of Scheduled Outage periods of whether it accepts or rejects such proposed modifications, providing reasons for the rejection. In the event that the Company rejects the proposed modifications, the Company and JPS shall within the subsequent thirty (30) Day period use their best efforts to devise mutually agreeable Scheduled Outage periods for the upcoming Year. If JPS does not respond at least two (2) Months prior to the commencement of each subsequent Year then it will be deemed to have accepted the proposed schedule of Scheduled Outage periods as prepared by the Company. The Company shall use reasonable efforts to reschedule such Scheduled Outages as requested by JPS so long as they do not present a material risk to the operation of the Facility.
- 6.3.3 During each Year commencing with the Year in which the Commercial Operations Date occurs, the Company may not schedule more than a total of **[Hours to be agreed]** Unit Hours of Scheduled Outages for the Facility; provided that in the event that the Commercial Operations Date does not

occur at the beginning of a Year this quantity of Unit Hours of Scheduled Outages shall be pro-rated evenly over that Year. Notwithstanding the foregoing within the [No. of years for major maintenance as per OEM] Year after the Commercial Operations Date and each [No. of years for major maintenance as per OEM] Year thereafter, the Company shall be permitted to schedule a total of [Input Number of Unit Hours of Scheduled Outages] Unit Hours of Scheduled Outages for the Facility; provided that the Company makes such requests in accordance with Clause 6.3.1, in the Year prior to the Year in which the Scheduled Outages periods will be scheduled. In the event that the twentieth anniversary date of the Commercial Operations Date does not occur at the end of a Year the applicable quantity of Unit Hours of Scheduled Outages for the Year in which the twentieth anniversary date of the Commercial Operations Date occurs shall be pro-rated evenly over that Year.

- 6.3.4 (a) [For a multi-unit generator Facility, the Company may schedule no more than one (1) Scheduled Outage for each Unit in each Peak Month; provided that there shall be no more than [No. of Units to be Agreed Based on Configuration] Unit scheduled for a Scheduled Outage at any one time. Each such Scheduled Outage may continue for a maximum of [no. of hours to be agreed] consecutive hours. JPS may designate new Peak Months by giving notice to the Company at least three (3) Months prior to the date by which the Company must submit its proposed schedule of Scheduled Outage periods pursuant to Clause 6.3.1; provided that, if JPS designates five (5) Months or more each Year as Peak Months, the Company shall be permitted to schedule Scheduled Outages for [Portion of Total Facility to be agreed] Units, such Scheduled Outages to be taken together or separately, at any given time during Months other than Peak Months, so long as (i) Scheduled Outages are in accordance with Clause 6.3.3, and (ii) the combined capacity of such Unit(s) does not exceed [Portion of Total Facility to be agreed] MW. JPS shall not designate more than two (2) consecutive Months as Peak Months without the prior written consent of the Company. Except as provided herein, under no circumstances shall the Company be permitted to schedule Scheduled Outages for more than one (1) Unit at any given time without obtaining the prior written consent of JPS.]
- (b) [Notwithstanding Clause 6.3.4(a), upon any [No. of Units to be agreed] Unit reaching a Major Maintenance, JPS with due consideration of the maintenance cycle of such Unit, may consent, such consent not to be unreasonably withheld, to Scheduled Outages for

[**No. of Units to be agreed**] Units, such Scheduled Outages to be taken together or separately, so long as (i) such Scheduled Outages are in accordance with Clause 6.3.3, (ii) the combined capacity of such Units does not exceed [**Portion of Total Facility to be agreed**] MW, (iii) the Company provides JPS with written notification within two (2) Business Days upon the Unit reaching within [**No. of Hours to be Agreed**] Unit Running Hours of Major Maintenance, and (iv) the Scheduled Outages occur between the Unit achieving more than [**Input Range Of Major Maintenance Unit Running Hours**] Unit Running Hours. JPS shall provide the Company with five (5) Days notification prior to the actual date of the Scheduled Outages. Except as provided herein, under no circumstances shall the Company schedule Scheduled Outages for more than [**Portion of Total Facility to be agreed**] MW at any given time.]

6.3.5 JPS may, upon three (3) Days' prior written notice, require the Company to reschedule a Scheduled Outage; provided that JPS shall not request that such Scheduled Outage be rescheduled in manner or time inconsistent with the Minimum Functional Specifications.

6.3.6 JPS shall use its reasonable efforts to coordinate its maintenance program with the approved Scheduled Outages so as to minimize any disruption to the operation of the Facility.

6.4 Maintenance Outages

When the circumstances warrant a Maintenance Outage, the Company may advise JPS of such circumstances and of the proposed commencement and estimated duration of the Maintenance Outage. JPS may, in its sole discretion, grant the Company the right to schedule and conduct such Maintenance Outage at a time acceptable to JPS. In the event that any such granted Maintenance Outage is required to be rescheduled then JPS shall use its reasonable effort to provide a new rescheduled time within [three (3) Days]. If the rescheduled Maintenance Outage is carried out then the outage hours shall be deducted from the allotted Scheduled Outage hours for the Year.

6.5 Emergencies

6.5.1 No less than ninety (90) Days prior to the Commercial Operations Date, JPS and the Company shall jointly establish plans in writing for operating the Facility during an Emergency in accordance with Schedule 10. Such plans shall include, without limitation, recovery from a local or widespread electrical blackout and voltage reduction in order to effect load curtailment.

- 6.5.2 During an Emergency and upon the receipt of Dispatch instructions from JPS, the Company shall supply such power as the Facility is able to generate within the Minimum Functional Specifications. If any Unit has a Scheduled Outage or a Maintenance Outage and such Scheduled Outage or Maintenance Outage occurs or would occur coincident with an Emergency, the Company shall use its best efforts to reschedule the Scheduled Outage or Maintenance Outage in accordance with the terms of this Agreement, or, if the Scheduled Outage or Maintenance Outage has begun, to expedite the completion of the work to restore the Unit as soon as possible.
- 6.5.3 During an Emergency, JPS shall use all reasonable efforts to expedite the completion of work to restore power supply as soon as possible.
- 6.5.4 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 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.

6.6 Renewable Fuel Feed Stock Supply

- 6.6.1 Prior to the Commercial Operations Date, the Company, at its sole cost and expense, shall construct adequate Renewable Fuel Feed Stock handling facilities with the capability to allow operation of the Facility at full load. The Company shall put in place storage and delivery arrangements for Renewable Fuel Feed Stock to allow for [Amount (Number)] Days operation of the facility at full load without delivery (the “Required Fuel Storage Capacity”). In the event that the Company fails to maintain the Minimum Renewable Fuel Feed Stock Inventory the Company shall promptly notify JPS of such shortage in Renewable Fuel Feed Stock Inventory. The Company shall maintain such facilities in accordance with Prudent Utility Practice throughout the term of this Agreement.
- 6.6.2 Throughout the term of this Agreement, the Company shall:
- (a) obtain and maintain a reliable supply of Renewable Fuel Feed Stock sufficient to operate the Facility at the Dependable Capacity and

provide the required Net Energy Output;

- (b) provide to JPS the Renewable Fuel Feed Stock Supply Plan: all Renewable Fuel Feed Stock Supply Agreements, Renewable Fuel Feed Stock transportation agreements, storage and other commitments for the supply and transportation of Renewable Fuel Feed Stock, and any material amendments to any of these documents; and
- (c) only enter into Renewable Fuel Feed Stock Supply Agreements and Fuel transportation agreements consistent with the Renewable Fuel Feed Stock Supply Plan.

6.6.3 [At least forty five (45) Days prior to the expiration or termination of a Renewable Fuel Feed Stock Supply Agreement, the Company shall present JPS with a new Renewable Fuel Feed Stock Supply Plan which demonstrates to the reasonable satisfaction of JPS that the Company shall have a supply of Renewable Fuel Feed Stock in quantities and of the quality required to enable the Company to meet its obligations under this Agreement. If such Renewable Fuel Feed Stock Supply Plan is not reasonably satisfactory to JPS, JPS shall provide the Company with a written statement of its reasonable objections and the Company shall provide JPS with a revised Renewable Fuel Feed Stock Supply Plan within fifteen (15) Days which is reasonably satisfactory to JPS.]

6.7 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.

6.8 Operating Personnel

6.8.1 The Company shall ensure that qualified personnel operate and monitor the Units and the Facility and coordinate operations of the Units and the Facility with the JPS Grid System and are on duty at the Facility at all times, seven (7) Days a Week commencing on the date fourteen (14) Days prior to the Commercial Operations Date. 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.

6.8.2 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.

6.9 Inspections and Records

6.9.1 JPS shall have the right at its sole cost and expense, to visit, observe and examine any 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.

6.9.2 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.

6.9.3 The Company shall have the right, at its sole cost and expense, to visit and observe the components of the Interconnection Facilities that are controlled by JPS, or the operation thereof upon reasonable prior notice to JPS.

6.9.4 Each Party, at its sole cost and expense shall keep complete and accurate records and all other data reasonably required by each of them for the purposes of proper administration of this Agreement. Among other records and data, the Company shall maintain at the Facility an accurate and up-to-date operations log in accordance with Schedule [10].

6.9.5 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 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, standards, codes, 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 [Voltage Level] 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 and commissioning of the Interconnection Facilities 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, standards, codes, 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 transfer the interconnection equipment on the JPS side of the Interconnection Point to JPS for ownership, operation and maintenance.
- 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 interconnecting 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 either (i) the Facility or (ii) the JPS Grid that may affect the proper coordination of protective devices between the two systems.

7.3.3 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.

7.3.4 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 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.

7.3.5 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 and Dependable Capacity

- 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 and Dependable Capacity 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 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 and Dependable Capacity 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.
- 8.3.4 Within fourteen (14) Days after (a) the first (1st) anniversary of the Commercial Operations Date and (b) the end of each six (6) Month interval thereafter, the Company shall perform, at its sole cost and expense, a test of the Dependable Capacity in accordance with the provisions of Schedule 4 for the purpose of measuring the Dependable Capacity.

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 Fixed Payment

- 9.1.1 Beginning with the Day immediately following the Commercial Operations Date, JPS shall pay to the Company Monthly, in arrears, an amount, as calculated and adjusted in accordance with this Clause 9.1 and Schedule 6, equal to the Fixed Payment.
- 9.1.2 If the Commercial Operations Date shall occur on a Day other than the first (1st) Day of a Month or if the Dependable Capacity shall be tested on a Day

other than the first (1st) Day of a Month, then the Fixed Payment payable for the Month in which either of such Days occurs shall be equal to the sum of (a) the Fixed Payment payable for such Month based on the Dependable Capacity prior to such Day multiplied by a fraction, the numerator of which is the number of Days in such Month prior to and including the Commercial Operations Date or the Dependable Capacity test date, as appropriate, and the denominator of which is the total number of Days in such Month, and (b) the Fixed Payment payable for such Month based on the Dependable Capacity after such Day multiplied by a fraction, the numerator of which is the number of Days after the Commercial Operations Date or the Dependable Capacity test date, as appropriate, and the denominator of which is the total number of Days in such Month.

9.1.3 Beginning on the Day immediately following the Commercial Operations Date, JPS shall pay to the Company Monthly, in arrears, the actual amount of any levy, duty, fee or tax as applied from time to time by the Government of Jamaica or any Public Sector Entity in relation to Renewable Fuel Feed Stock transactions for the Facility; provided that JPS shall not be obliged to pay the incremental amount of any such levy, duty, fee or tax applied from time to time in relation to Renewable Fuel Feed Stock transactions for the Facility to the extent such amount is payable because the heat rate for the Facility exceeds [**Guaranteed Plant Heat Rate**] Btu/kWh.

9.1.4 The amount of the Fixed Payment shall be adjusted from time to time in accordance with Schedule 6.

9.2 Variable Payment

9.2.1 JPS shall pay to the Company each Month, in arrears, an amount equal to the Variable Payment calculated in accordance with Schedule 6.

9.2.2 The amount of the Variable Payment shall be adjusted from time to time in accordance with Schedule 6.

9.3 Retained Payments

9.3.1 Notwithstanding anything to the contrary contained in Clause 9.1, [five percent (5%)] of the amount of Fixed Payments payable to the Company for Dependable Capacity ("Retained Amount") shall be withheld by JPS to ensure the complete satisfaction by the Company of all of its obligations with respect to the Complex under Clause 4.2; provided that the Retained Amount shall never be greater than [ten percent (10%)] of the amount of Fixed Payments payable to the Company for Dependable Capacity or the

Jamaican Dollar equivalent.

- 9.3.2 The Company may apply to JPS for payment of the Retained Amount, and JPS shall pay to the Company an amount equal to the Retained Amount if in the reasonable opinion of JPS the Company has fully satisfied all of its obligations under Clause 4.2 with respect to (i) the PPA Original Support Documents and (ii) the PPA Amended Support Documents (as of the date of the Company's application for payment in the case of this Clause 9.3.2). If this Agreement terminates as a result of a breach hereof by the Company prior to the later of the Commercial Operations Date or the fulfilment by the Company of its obligations under Clause 4.2, then the Retained Amount shall be forfeited to JPS. If this Agreement terminates during such period as a result of a breach by JPS under this Agreement, then JPS shall pay to the Company an amount equal to the Retained Amount in accordance with this Clause 9.3.

9.4 Liquidated Damages

9.4.1 Delays in Commissioning the Facility

- (a) Subject to the provisions of this Agreement if the Facility is not Commissioned on or before the Required Commercial Operations Date, then, the Company shall pay to JPS [AMOUNT IN WORDS to be determined by the OUR] Dollars (\$[AMOUNT IN FIGURES]) (or the Jamaican Dollar equivalent) per MW for each Day or part thereof by which the Commissioning of the Facility is delayed beyond [COMMERCIAL OPERATION DATE]; provided that the cumulative amount of such payments shall not exceed [AMOUNT IN WORDS to be determined by the OUR] Dollars (\$[AMOUNT IN FIGURES]) (or the Jamaican Dollar equivalent). These payments shall be liquidated damages for the detrimental impact of such delay.

9.4.2 Shortfalls in Commissioned Dependable Capacity of the Facility

If there is a Commissioned Shortfall with respect to the Facility, then the Company shall pay to JPS as liquidated damages for the detrimental impact [AMOUNT IN WORDS to be determined by the OUR]Dollars (\$[AMOUNT IN FIGURES]) (or the Jamaican Dollar equivalent) per kW of such Commissioned Shortfall as per Schedule 4.

9.4.3 Shortfalls in On-Going Capacity

If, after the Commercial Operations Date, the Dependable Capacity of the Facility shall be less than the Contracted Dependable Capacity, then the Company shall pay to JPS [AMOUNT IN WORDS to be determined by the OUR]Dollars (\$[AMOUNT IN FIGURES]) (or the Jamaican Dollar equivalent) per kW per Month (prorated for partial Months in the Month in which the Commercial Operations Date occurs) of such On-Going Dependable Capacity Shortfall until the next testing of Dependable Capacity, as liquidated damages for the detrimental impact of such lower Dependable Capacity.

9.4.4 Dispatch Levels

- (a) If the Company does not achieve the Dispatch level requested by JPS pursuant to the Operating Procedures within a tolerance of plus or minus (+/-) one (1) percent of the requested Dispatch level within the time allowed by the load ramping rates and minimum dispatch set forth in the Minimum Functional Specifications after the receipt of a Dispatch request, then, subject to Clauses 9.4.4(c) through (e) below, the Company shall pay to JPS for each kWh outside the tolerance an amount in Dollars (or the Jamaican Dollar equivalent) equal to the product of one one-hundredth (0.01), the Fixed Payment Price and the applicable percentage set forth in Clause 9.4.4(e) until the Company advises JPS that it is able to comply with said Dispatch request and complies with said Dispatch request should JPS choose not to change the request; provided that after the Company has advised JPS that it is able to comply with the aforesaid Dispatch request, JPS may make a new Dispatch request, and the Company's failure to comply with such new request shall be subject to the liquidated damages set forth in this sub-clause (a). If the requested Dispatch level cannot be achieved due to site temperature conditions outside of the Minimum Functional Specifications, JPS shall not continue to calculate and apply liquidated damages pursuant to this sub-clause (a); provided that the Company provides evidence reasonably satisfactory to JPS that temperature conditions outside of the Minimum Functional Specifications led to the failure to comply with the applicable Dispatch request.
- (b) In each instance wherein liquidated damages are applicable the due date for any such liquidated damages shall be deferred to [TIME PERIOD TO BE DETERMINED] after the applicable requested Dispatch level was not achieved (notwithstanding Clause 9.5.3 to the contrary, if applicable). The payments under this Clause 9.4.4(b) shall be liquidated damages for the detrimental impact of such deviations from the requested Dispatch level.

Where the Company is diligently pursuing a resolution to mitigate against adverse temperature effects on dispatch levels within the Minimum Functional Specifications and such mitigation measures prove successful prior to the end of such [TIME PERIOD TO BE DETERMINED], liquidated damages as applicable pursuant Clause 9.4.4(a) may be waived by JPS, so as to not become due and payable by the Company and such waiver shall not be unreasonably conditioned, withheld or delayed.

- (c) During each Year commencing with the Year in which the applicable Commercial Operations Date occurs, the Company shall not be liable for liquidated damages under Clause 9.4.4(a) for the first kWh of Forced Outage experienced by the Company in such Year up to a quantity equal to [**Number of Hours to be Agreed**] hours multiplied by the Dependable Capacity (“Allowable Forced Outage Energy”); provided that this quantity of kWh of Forced Outage shall be prorated evenly over any part Year.
- (d) Payments under this Clause 9.4.4 shall not exceed in any twelve (12) Month period the amount of Fixed Payments payable to the Company under Clause 9.1 for the same twelve (12) Month period.
- (e) The applicable percentage for purposes of sub-clause (a) above shall be [sixty five percent (65%)] for Peak Hours and [forty five percent (45%)] for Off-Peak Hours. JPS may designate new Peak Hours for the purposes of this Clause 9.4.4 and in the event of such new Peak Hours designation, shall give notice to the Company at least [three (3)] Months prior to the first (1st) Day of any Year; provided that the total number of Peak Hours in a Day may not exceed twelve (12).

9.4.5 Adjustments; Procedures for Payment

The amounts of all of the liquidated damages set forth in Clauses 9.4.1 through 9.4.4 shall be adjusted from time to time in accordance with Schedule 6 and shall be payable in Dollars (or the equivalent Jamaican Dollars) using the Invoice Exchange Rate for Liquidated Damages. Liquidated damages arising under Clause 9.4.4 shall be billed and paid in accordance with the provisions of Clause 9.5. Liquidated damages arising under Clauses 9.4.1 through 9.4.3 shall be billed and paid in accordance with the provisions of Clause 9.6.

9.4.6 Exceptions; Waiver of Defences

- (a) Notwithstanding the provisions of Clauses 9.4.1 through 9.4.4 above, the Company shall not be liable to JPS for liquidated damages if the Company has previously declared a JPS Event of Default, in accordance with Clause 14.2 of this Agreement, that caused the Company to incur such liquidated damages; provided that the Company shall promptly pay to JPS all such liquidated damages if it is subsequently determined under Clause 15 that there was no JPS Event of Default.

- (b) The Parties agree that actual damages may be difficult or impossible to determine in the event that (i) the Facility is not in service by the dates required, (ii) the Facility is not capable of achieving and maintaining the contracted Dependable Capacity, or (iii) the Facility cannot achieve the designated Dispatch levels. Therefore, pursuant to the terms of this Agreement, the Parties have agreed (i) on sums as set out in Schedule 6 as liquidated damages, (ii) that actual damages would be difficult or impossible to determine and that such liquidated damages are a reasonable approximation of such actual damages and (iii) that the payment of liquidated damages is in lieu of actual damages for such occurrences and that the payment of liquidated damages is JPS' exclusive remedy for the occurrences described in Clauses 9.4.1 through 9.4.4 above (except as provided in Section 14). For the avoidance of doubt, the Parties agree that the liquidated damages payable under Clauses 9.4.1 through 9.4.4 constitute the sole and exclusive remedy of JPS for the occurrences described therein; provided that nothing herein shall impair the rights or remedies of JPS under Clause 14.4.1 if those occurrences constitute Company Events of Default under any of Clauses 14.1.1 through 14.1.11. The Company hereby waives any defence as to the validity of any liquidated damages in this Agreement on the grounds that such liquidated damages are void as penalties.

9.4.7 Security Deposits

- (a) Within thirty (30) Days prior to the Commencement of Construction, the Company shall provide, or cause to be provided on its behalf, to JPS a security deposit (the "Construction Security Deposit") of five percent (5%) of Capital Cost of the Project [**Amount**] **Dollars** (**[\$Figures]**). The Construction Security Deposit shall consist of one of the following: (i) a cash payment which shall be held in a segregated, interest-bearing account; or (ii) an unconditional and irrevocable direct

pay letter of credit issued by a financial institution acceptable to JPS in a form and with substance acceptable to JPS. The Construction Security Deposit and any interest accrued thereon may be applied to the payment of liquidated damages or other Damages and accrued interest thereon. Notwithstanding anything in this Agreement to the contrary, drawing on the Construction Security Deposit shall be the sole and exclusive remedy of JPS for any liability, obligation or responsibility of the Company under this Agreement occurring or arising prior to the Commercial Operations Date.

- (b) Within [fourteen (14) Days] after the Commercial Operations Date and pursuant to Clause 9.4.7(c), JPS shall pay or return to the Company any excess of the Construction Security Deposit and accrued interest remaining thereon. If the Company terminates this Agreement on or before JPS has so returned the Construction Security Deposit, JPS shall return to the Company any amount of the Construction Security Deposit and accrued interest thereon which remains after all liquidated damages or other Damages and accrued interest due and owing to JPS pursuant to Clause 9.4.7(a) have been paid.
- (c) On the Commercial Operations Date, the Company shall provide to JPS a security deposit (the "Operations Security Deposit"), of five percent (5%) of Capital Cost of the Project [**Amount**] **Dollars** (**[\$[Figures]**) to ensure the proper operation and maintenance of the Facility. The Company shall ensure that there shall be no discontinuity between the expiration of the Construction Security Deposit and the effectiveness of the Operations Security Deposit. The amount of the Operations Security Deposit shall be adjusted from time to time in accordance with Schedule 6. The Company shall maintain the Operations Security Deposit at the designated level at all times; provided that the Company shall have ten (10) Days from the date JPS gives notice to the Company that it has retained or collected funds from the Operations Security Deposit pursuant to this Clause 9.4.7(c) to replenish the Operations Security Deposit so as to return it to the original level, as adjusted. The Operations Security Deposit shall be in a similar form to those permitted in Clause 9.4.7(a) for the Construction Security Deposit. The Operations Security Deposit may be applied to (i) the payment of liquidated damages payable by the Company under this Agreement and accrued interest thereon, and (ii) the payment of other Damages and interest that the Company shall be required to pay to JPS; provided that, in the case of the amounts described in sub-clauses (i), and (ii) above, if the Operations Security

Deposit is insufficient to satisfy such amounts, then the Company shall immediately pay to JPS on demand the unsatisfied amounts. Upon termination of this Agreement, JPS shall be entitled to retain or collect, as the case may be, from the Operations Security Deposit and any interest accrued thereon, any damages or monies then due or reasonably expected to be due to JPS by the Company, and the remainder of the Operations Security Deposit and accrued interest thereon, if any, shall be paid or returned to the Company. If, upon the termination of this Agreement, there shall be any Dispute between the Company and JPS that has been referred to an expert for determination or is being arbitrated pursuant to the Agreement, then JPS shall deposit into an escrow account an amount from the Operations Security Deposit equal to the damages or monies that JPS, in its reasonable judgment, deems sufficient to satisfy any amount that may be due to JPS by reason of such Dispute. Upon settlement or resolution of the Dispute, the funds in such escrow account and accrued interest thereon shall be distributed in accordance with such settlement or resolution; provided that such distribution will not be considered full satisfaction of such Dispute unless the Parties so agree.

- (d) In the event that JPS has retained, drawn or withdrawn funds from the Construction Security Deposit or the Operations Security Deposit and it shall later be determined by mutual agreement of the Parties or, if the Parties cannot reach agreement, it is determined in accordance with the dispute resolution provisions of Section 15, that JPS was not entitled to do so, then JPS shall promptly repay such amount to the Company, together with all costs and expenses incurred by the Company in connection with such retaining, drawing, or withdrawing plus interest on such amount and expenses from the date of retaining, drawing or withdrawing at the Default Rate.
- (e) To make a draw against a letter of credit established pursuant to Clause 9.4.7(a), 9.4.7(c) or 9.4.7(d) during the pendency of a Dispute as to the amount owed to JPS by the Company, JPS shall certify that such a Dispute is pending and that JPS believes in good faith that it is owed the drawing amount requested.

9.5 Payment of Liquidated Damages for Dispatch Deviation

- 9.5.1 Within twenty-one (21) Days after the last Day of each Month, JPS shall compute and advise the Company by written statement (a “Dispatch Deviation Statement”) indicating the amount of Dispatch deviations determined in accordance with Clause 9.4.4(a) of this Agreement that has

accrued to date in the applicable Year. The Company shall be given twenty one (21) Days after receipt of the Dispatch Deviation Statement to provide a written acceptance or to dispute any amount on the Dispatch Deviation Statement.

9.5.2 If the accrued Year to date Dispatch deviation on the Dispatch Deviation Statement exceeds the Allowable Forced Outage Energy, then JPS shall deliver simultaneously with such Dispatch Deviation Statement an invoice (a "Provisional Liquidated Damages Invoice") setting forth the amount of liquidated damages due to JPS pursuant to this Agreement. The Company shall be given fourteen (14) Days after receipt of the Provisional Liquidated Damages Invoice to dispute any amounts contained in the Provisional Liquidated Damages Invoice, provide JPS with written notification of the reasons for the dispute and pay to JPS the undisputed amounts contained in the Provisional Liquidated Damages Invoice. After the receipt of the response from the Company or at the end of the fourteen (14) Days provided for the Company to respond to the Provisional Liquidated Damages Invoice, whichever is earlier, seven (7) Days later (a) the Provisional Liquidated Damages Invoice shall be deemed the final invoice where the Company accepts the contents of same, or (b) JPS shall issue an amended written invoice setting forth the final computed amount of liquidated damages, subtracting any amounts disputed by the Company from the amount contained in the Provisional Liquidated Damages Invoice (a "Final Liquidated Damages Invoice"). On the date that is fourteen (14) Days after delivery of the Final Liquidated Damages Invoice (the "Liquidated Damages Due Date"), the Company shall pay to JPS the amount of liquidated damages shown on the Final Liquidated Damages Invoice **plus accrued interest on such amount at the Base Rate from the date** that is twenty one (21) Days after the date **of delivery of the Provisional Liquidated Damages Invoice until the Liquidated Damages Due Date or the date such amount is paid in full**, whichever is earlier. If the Company does not pay to JPS the entire amount of liquidated damages shown on the Final Liquidated Damages Invoice plus accrued interest on the Liquidated Damages Due Date, (a) JPS may immediately deduct any unpaid amount from the Operations Security Deposit, as appropriate, and (b) the Company shall pay JPS interest on any unpaid amount at the Default Rate from the Liquidated Damages Due Date until the date such amount is paid in full.

9.5.3 Notwithstanding the first sentence of Clause 9.5.2, JPS may submit a Provisional Liquidated Damages Invoice to the Company at any time **prior to** one hundred and eighty (180) Days after the end of any Year in which JPS

determines that the Company owed liquidated damages to JPS (each such date, a "Liquidated Damages Claim Deadline"). If JPS has not submitted a Provisional Liquidated Damages Invoice to the Company prior to a Liquidated Damages Claim Deadline, JPS shall have no further right to claim liquidated damages from the Company for the prior Year, and the Company shall be released from any obligation to pay liquidated damages for such Year.

- 9.5.4 In the event of JPS submits a Provisional Liquidated Damages Invoice pursuant to Clause 9.5.3, the provisions of Clause 9.5.2 shall apply *mutatis mutandi* in relation to such Provisional Liquidated Damages Invoice, except that sixty (60) Days shall be substituted for the period which the Company shall have in which to Dispute any amounts contained in the Provisional Liquidated Damages Invoice, to provide JPS with written notification of the reasons for the Dispute and pay to JPS the undisputed amounts contained in the Provisional Liquidated Damages Invoice.

9.6 Payment and Billing

- 9.6.1 Within fourteen (14) Days after the last Day of each Month, JPS shall prepare and deliver to the Company a statement reflecting all amounts payable to each Party by the other Party in Dollars pursuant to this Agreement (each, a "Statement"). The Statement shall include calculations, in reasonable detail, of such amounts owed to the Company for Fixed Payments and Variable Payments (if any) and amounts owed to JPS, including for liquidated damages, in accordance with this Agreement and the procedures determined by the Operating Committee. The Statement shall be accompanied by any payment owed to the Company.
- 9.6.2 If JPS fails to pay any amount of a payment owed to the Company (a) on or before the Day such payment is due under Clause 9.6.1 or (b) if the Company prepares the Statement in accordance with Clause 9.7.4, on or before the Day such payment is due under Clause 9.7.4, JPS shall pay accrued interest on such amount at the Base Rate commencing on (i) the [Amount] ([Figures]) Day after the last Day of the Month for which payment is due under Clause 9.6.1 in the case of sub-clause (a) or (ii) the [Amount] ([Figures]) Day after JPS receives the Statement in the case of sub-clause (b) and continuing, in either case, for a period of [Amount ([Figures])] Days, and thereafter JPS shall pay interest on such amount at the Default Rate until the date such amount is paid in full.
- 9.6.3 Amounts shown on any Statement as owed to JPS by the Company shall be due for payment [Amount] ([Figures]) Days after delivery of the Statement.

If the Company fails to pay any amount of a payment owed to JPS on the Day such payment is due, the Company shall pay accrued interest on such amount at the Base Rate commencing on the [Amount] ([Figures]th) Day after delivery of the Statement and continuing for a period of [Amount] ([Figures]) Days, and thereafter the Company shall pay interest on such amount at the Default Rate until the date such amount is paid in full. This Clause 9.6.3 shall not apply to payments due pursuant to clause 9.5.2.

- 9.6.4 At any time prior to one hundred and eighty (180) Days after the end of any Year in which a Statement is delivered (or within such other period as permitted or required by applicable law), either Party may dispute the amount of such Statement by serving a notice on the other Party indicating the Statement concerned, the amount of the Dispute and the basis therefor (a "Dispute Notice"). The Dispute shall be settled by mutual discussion and, if necessary, pursuant to the provisions of Section 15. Within fourteen (14) Days after the resolution of the Dispute, the Party which is determined to owe money to the other Party shall pay such sum to the other Party together with accrued interest thereon (i) at the Base Rate from the date such payment should have been made and continuing for a period of fourteen (14) Days, and (ii) thereafter at the Default Rate until the date such amount is paid in full.
- 9.6.5 If a payment under this Agreement is due on a day which is not a Business Day, the due date for such payment shall instead be the next Business Day.

9.7 Foreign Exchange

The Company shall make its own suitable arrangements to obtain any foreign exchange necessary for it to own, operate and maintain the Facility.

9.8 Change in Relevant Law

- 9.8.1 If a Change in Relevant Law occurs, the Company shall use reasonable efforts to select a 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 derived by the Company. The Company shall promptly give JPS written notice of any Change in Relevant Law that result in any change in costs or savings.
- 9.8.2 In the event that compliance with a Change in Relevant Law results in either an increase in costs of the Company or a savings by the Company, JPS shall

increase or decrease, as applicable, its payments to the Company in accordance with Schedule 6; provided that the respective requirements of Clauses 9.8.3 and 9.8.4 have been satisfied. The Parties agree that any payments due to the Company as a result of a Change in Relevant Law shall accrue interest at the Default Rate for the period commencing [fourteen (14)] Days after the date that the Company has submitted a statement for the payment due to it as a result of the Change in Relevant Law until the date that such payment is made to the Company in full.

9.8.3 JPS shall only increase the payments to the Company for an increase in the cost of complying with a Change in Relevant Law, which increased payments shall be effective from the effective date of the Change in Relevant Law, if: (a) it requires the Company to incur any combination of capital improvements and or operational cost increases in order to continue to meet its obligations hereunder, or, (b) the Change in Relevant Law materially and adversely affects the performance by the Company of its obligations or the enjoyment by the Company of its rights under or pursuant to this Agreement, or otherwise results in increased costs and expenses of the Company, (c) the Company gives JPS written notice describing the particulars of the Change in Relevant Law, (d) the Company furnishes monthly reports 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 Relevant Law and (ii) the date on which JPS agrees that such reports are no longer useful (which agreement shall not be unreasonably withheld), (e) the Company uses its reasonable efforts to overcome the adverse effects of the Change in Relevant Law, (f) the compensation is only 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 9.8.3 until such time as the Company's claims from such Change in Relevant Law exceed [Amount to be determined by OUR] Dollars (\$[Figures]) (or the Jamaican Dollar equivalent) in the aggregate, in respect of all the Changes in Relevant Law arising under this Agreement, at which time all such claims of the Company may be made), and (g) the Company promptly gives JPS written notice when and if it has overcome the adverse effects of the Change in Relevant Law.

9.8.4 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 Schedule 6.

9.9 JPS Letter of Credit

- 9.9.1 JPS shall establish irrevocable, revolving Letters of Credit with a commercial bank approved by the Company (which approval shall not be unreasonably conditioned, withheld or delayed) with respect to amounts payable by JPS to the Company pursuant to Clause 9.1. Each Letter of Credit shall be established for a fixed sum of Dollars and shall remain in place for twelve (12) Months.
- 9.9.2 The first such Letter of Credit shall be delivered to the Company thirty (30) Days prior to the Scheduled Commercial Operations Date and shall be effective upon the Commercial Operations Date. This Letter of Credit shall be established in the amount of Dollars equivalent to the amount necessary to meet one (1) Months' average projected Fixed Payments.
- 9.9.3 JPS shall deliver a replacement Letter of Credit to the Company not less than thirty (30) Days prior to each anniversary of the Commercial Operations Date, and the replacement Letter of Credit shall be effective upon the anniversary of the Commercial Operations Date. The amount of each replacement Letter of Credit established prior to the third anniversary of the Commercial Operations Date shall be the amount of Dollars equivalent to the amount necessary to meet one (1) Months' average projected Fixed Payments.
- 9.9.4 The Letter of Credit may be drawn on by the Company upon presentation to the bank of (a) a copy of a Statement delivered by JPS to the Company pursuant to Clause 9.6 of this Agreement at least five (5) Days prior to such presentation to the bank together with a certificate signed by a duly authorized officer of the Company attesting to the fact that JPS has failed to pay all or part of the amount indicated on the Statement, or (b) a copy of a decision requiring the payment of money by JPS to the Company, which decision was rendered pursuant to the provisions in Section 15 with respect to a Dispute and requires payment by JPS on a date at least five (5) Days prior to such presentation to the bank, together with a certificate signed by a duly authorized officer of the Company attesting to the fact that JPS has failed to pay all or part of the amount indicated in such decision. If JPS has not delivered a Statement to the Company pursuant to Clause 9.6 of this

Agreement within fourteen (14) Days after the end of any Month, then the Company may, in lieu of the Statement and certificate referred to in Clause 9.9.4(a), submit to JPS a Statement prepared by the Company in the manner described in Clause 9.6.1 from meter readings taken by the Company. If JPS fails to pay all or part of the amount indicated on the Company's Statement within five (5) Days after receipt of such Statement, the Company may submit to the bank a copy of such Statement, together with a certificate signed by a duly authorized officer of the Company attesting to the fact that (i) JPS has failed to prepare a Statement for such Month, (ii) the Statement prepared by the Company is a true and correct statement of amounts owed to the Company by JPS for Dependable Capacity (iii) JPS has failed to pay all or part of the amount indicated on the Statement prepared by the Company. Notwithstanding the foregoing, to make a draw against the Letter of Credit during the pendency of a Dispute as to the amount owed to the Company by JPS, the Company shall certify that such a Dispute is pending and that the Company believes in good faith that it is owed the drawing amount requested.

- 9.9.5 The Letter of Credit may also be drawn on by the Company upon presentation to the bank of a certificate signed by a duly authorized officer of the Company attesting to the fact that JPS has failed to deliver a replacement Letter of Credit to the Company by the date specified in Clause 9.9.3.
- 9.9.6 In the event that the Company shall draw against a Letter of Credit and it shall later be determined by mutual agreement of the Parties or, if the Parties cannot reach agreement, it is determined in accordance with the dispute resolution provisions of Schedule 15 that the Company was not entitled to do so, then the Company shall promptly repay such amounts to JPS in Dollars, together with all costs and expenses incurred by JPS in connection with such drawing, plus interest at the Default Rate on such amount and expenses from the date of drawing.
- 9.9.7 If, upon the termination of this Agreement, there shall be any Dispute between the Company and JPS that has been referred to an expert for determination or is being arbitrated pursuant to the Agreement, then the Company shall deposit into an escrow account an amount from the Letter of Credit equal to the damages or monies that the Company, in its reasonable judgment, deems sufficient to satisfy any amount that may be due to the Company by reason of such Dispute. Upon settlement or resolution of the Dispute, the funds in such escrow account and accrued interest thereon shall be distributed in accordance with such settlement or resolution; provided

that such distribution will not be considered full satisfaction of such Dispute unless the Parties so agree.

10. TESTING AND CAPACITY RATINGS

10.1 Testing

The Company shall carry out testing of the Dependable Capacity of the Facility before and after the Commercial Operations Date in accordance with Schedule 4. JPS shall be given prior written notice of any testing or Commissioning procedure in accordance with Schedule 4 and shall be entitled to have representatives present for the purpose of observing any such procedure.

10.2 Test Results

The Company shall promptly provide JPS with copies of the results of all tests performed pursuant to Schedule 4. In addition, the Company shall provide the Independent Engineer with copies of all such test results.

10.3 Disputes

In the event that a Dispute arises between the Company and JPS regarding the testing of Dependable Capacity or the protection tests described in Schedule 4, such Dispute shall be resolved pursuant to the provisions of Section 15.

11. INSURANCE

11.1 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 11:

- 11.1.1 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);
- 11.1.2 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 11.1.1 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;
- 11.1.3 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 11.1.1 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
- 11.1.4 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);
- 11.1.5 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 (\$[Figure])] (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 12 (with the exception of the indemnification provisions in Clause 12.1.4), 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;

- 11.1.6 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 (\$ [Figure]) (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 (\$[Figure]) (or the Jamaican Dollar equivalent); and
- 11.1.7 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 (\$[Figure]) (or the Jamaican Dollar equivalent) per occurrence in excess of the limits of insurance provided in Clauses 11.1.4, 11.1.5 and 11.1.6 above and subject to deductibles of no more than [**applicable statutory minimum**] Dollars (\$[Figure]) (or the Jamaican Dollar equivalent).

11.2 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 11.1.

11.3 Occurrence Form Coverage

The coverage requested in Clause 11.1 above and any Umbrella or Excess coverage shall be “occurrence” form policies.

11.4 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 11.4.1 through 11.4.5 below; and to amend the Company’s Employer Liability and Auto Liability policies with the

endorsement item set forth in Clause 11.4.5 below:

- 11.4.1 JPS, its directors, officers, and employees are additional insured personnel under this policy with respect to the construction, operation and maintenance of the Facility;
- 11.4.2 This insurance as set out in 11.4.1 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;
- 11.4.3 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”;
- 11.4.4 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.
- 11.4.5 For the insurance required by Clauses 11.1.1, 11.1.2 and 11.1.3 above, the Company agrees to waive, and shall cause its insurers to waive, all rights of subrogation against JPS and its affiliates.

11.5 Use of Proceeds of All Risk/Operational Insurance

The proceeds of an All Risks or Operational insurance obtained pursuant to Clauses 11.1.1 through 11.1.3 shall, at the option of JPS and subject to the Lenders’ rights, be applied to the repair of the Facility.

11.6 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.

11.7 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.

11.8 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 11.

12. INDEMNIFICATION AND LIABILITY

12.1 Indemnity by the Company

In addition to the Company's obligations and JPS' remedies provided elsewhere in this Agreement, the Company 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) (or any claim against JPS in respect thereof) suffered by JPS as a direct and foreseeable consequence of the Company's conduct:

- 12.1.1 During the design, financing, construction, ownership, operation or maintenance of the Facility resulting from any negligent act or omission of the Company its servants or agents, and through no fault of JPS, its servants or agents;
- 12.1.2 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 any other agreement comprising Material Agreements; or
- 12.1.3 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;

- 12.1.4 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 12.1.3, 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 6.9.2 hereof. Notwithstanding anything to the contrary contained in this Clause 12.1, nothing in this Clause 12.1 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 any agreement comprising the Material Agreements.

12.2 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 and 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 the Company in respect thereof) suffered by the Company:

- 12.2.1 During the design, financing, construction, ownership, operation or maintenance of the Facility 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;

- 12.2.2 In connection with, arising out of, or resulting from, any material misrepresentation by JPS or non-performance of any term, condition, covenant or obligation to be performed by JPS under this Agreement; or
- 12.2.3 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.
- 12.2.4 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 12.2.4, 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 7.1.2 while they are on JPS' side of the Interconnection Point.

Notwithstanding anything to the contrary contained in this Clause 12.2, nothing in this Clause 12.2 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 any agreement comprising the Material Agreements.

12.3 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 12.4, it is entitled to be indemnified under this Clause 12. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of such claim or proceeding.

12.4 Basket Limitation

Neither Party shall be entitled to make any claim under this Clause 12 unless such claims by such Party exceed [**Amount to Be Agreed 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.

12.5 Conduct 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 12.5, 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.

13. FORCE MAJEURE

13.1 Consequences of Force Majeure

Subject to the provisions of Clauses 13.2 and 13.3, 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 14.3) 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 13.1 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 12, 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 13 shall be of no greater scope and of no longer duration than is required to overcome the effects of the Force Majeure.

13.2 Procedures Upon a Force Majeure

The Party claiming Force Majeure shall (i) provide the other Party prompt written notice describing the particulars of the Force Majeure and the proposed cure, (ii) use commercially reasonable efforts to remedy its inability to perform its obligations under this Agreement and (iii) give the other Party written notice when it is able to resume performance of its obligations under this Agreement.

13.3 Impact of Force Majeure on JPS Payments

During the pendency of Force Majeure the Company shall not be entitled to receive Fixed Payments or Variable Payments from JPS; provided that if the Force Majeure affects only part of the Facility, then the Fixed Payment during the pendency of such Force Majeure shall be pro-rated to reflect the portion of the Facility, not affected thereby, and the Company shall be entitled to receive such pro-rated Fixed Payments and Variable Payments for electrical energy actually delivered to JPS notwithstanding any unavailability of the Dependable Capacity.

14. DEFAULTS AND TERMINATION

14.1 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”):

- 14.1.1 The failure of the Company to post the Construction Security Deposit in accordance with Clause 9.4.7;
- 14.1.2 The failure of the Company to achieve the Commencement of Construction within [ninety (90)] Days after the Agreement Date;
- 14.1.3 The Abandonment by the Company of the construction of the Facility after its Commencement of Construction without the written consent of JPS;
- 14.1.4 The failure of the Company to achieve the Commercial Operations Date within one (1) year after the Required Commercial Operations Date;
- 14.1.5 The failure of the Company to provide or replenish the Operations Security Deposit in accordance with Clause 9.4.7(c) of this Agreement;
- 14.1.6 The Abandonment by the Company of the operation of the Facility;
- 14.1.7 Wilful alteration of, or tampering by the Company, or its employees or agents acting within the scope of their employment, with the Interconnection Facilities without the prior written consent of JPS, except in situations where such actions are taken to prevent immediate injury, death, or property damage and the Company uses all reasonable efforts to provide JPS with advance notice of the need for such actions;
- 14.1.8 The assignment or transfer of this Agreement or an assignment, transfer or acquisition in breach of Clause 16.1 or 16.2 of this Agreement;
- 14.1.9 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 (\$[FIGURES])] (or the Jamaican Dollar equivalent);
- 14.1.10 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 winding up proceeding 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;

14.1.11 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 14.1.4; or

14.1.12 The failure of the Company to make the payment required to be made by it under Clause 9.4.7(c).

14.2 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"):

14.2.1 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 winding up proceeding after notice to JPS and due hearing; or (d) the making by the Court of an order winding up JPS;

14.2.2 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 TO BE AGREED Dollars (\$[FIGURES])] (or the Jamaican Dollar equivalent); provided that the Company shall have attempted to obtain payment from such other-sources as provided for in accordance with Clause 9.7 and failed to obtain payment thereunder in full before this event shall be considered to be a JPS Event of Default;

- 14.2.3 Wilful tampering by JPS, or its employees or agents acting within the scope of their employment, with the Facility without the prior written consent of the Company, except in situations where such actions are taken to prevent immediate injury, death, or property damage and JPS uses all reasonable efforts to provide the Company with advance notice of the need for such actions;
- 14.2.4 An assignment or transfer of this Agreement in breach of Clause 16.1.2 and 16.1.3;
- 14.2.5 The failure of JPS to provide, replenish or replace any Letter of Credit in accordance with Clause 9.9; or
- 14.2.6 Any material breach by JPS of any representation, warranty or covenant in this Agreement.

14.3 Notice and Cure

- 14.3.1 A notice of default given pursuant to Clauses 14.1 or 14.2 (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 14.1.1, 14.1.5, 14.1.6, 14.1.7, 14.1.12 or 14.2.3 the defaulting Party shall have five (5) Business Days within which to cure the Event of Default.
- 14.3.2 Except as specifically provided for in Clauses 4.1.9 and 4.2.2, in the case of a default set forth in any other sub-clause of Clause 14.1 or 14.2 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.

14.3.3 The Company shall be deemed to have cured any Event of Default set forth in Clause 14.1.10 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 14.2.4 if JPS acquires the interest assigned or transferred in breach of Clause 16.1.3 within such five (5) Business Day period.

14.3.4 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.

14.4 Rights and Remedies Upon an Event of Default

14.4.1 If a Company Event of Default has occurred and the Company Event of Default has not been cured within the period specified in Clause 14.3, then JPS, in its sole discretion, may:

- (a) terminate this Agreement after delivering written notice to the Company and the OUR; and/or
- (b) proceed in accordance with Clause 15 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
- (c) retain all or part of the Construction Security Deposit and/or Operations Security Deposit provided by the Company pursuant to Clause 9.4.7 in full or partial satisfaction of the damages to which it may be entitled under sub-clause (b) above; and/or
- (d) calculate interest on any amounts due at the Default Rate .
- (e) after giving notice to the Company and the OUR, disconnect the Facility from the JPS Grid in accordance with Prudent Utility Practice.

The rights and remedies of JPS set forth in this Clause 14.4.1 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.

14.4.2 If a JPS Event of Default has occurred and the JPS Event of Default has not been cured within the period specified in Clause 14.3, 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 Clause 15 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) calculate 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 14.4.2 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.

14.5 Survival

Notwithstanding anything to the contrary contained in this Agreement, the rights and obligations set forth in Clauses 9.3, 9.4.6, 9.4.7, 9.5, 9.9.4, 9.9.7 and Sections 12, 14 and 15 shall survive the termination of this Agreement.

14.6 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.

15. RESOLUTION OF DISPUTES

15.1 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 15.2 or (b) to an arbitration panel pursuant to Clause 15.3.

15.2 Referral to an Expert

15.2.1 If the Dispute is not settled within the thirty (30) Day period as provided for in Clause 15.1 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.

15.2.2 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 15.2.2 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.

- 15.2.3 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 15.2.3 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.
- 15.2.4 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.
- 15.2.5 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.
- 15.2.6 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.
- 15.2.7 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 15.2. 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.

15.3 Arbitration

- 15.3.1 If the Dispute: (a) cannot be settled within the thirty (30) Day period provided in Clause 15.1, 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 15.2.7 has arisen the Dispute may be settled by arbitration (regardless of the nature of the Dispute) by either Party.
- 15.3.2 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.
- 15.3.3 Either Party wishing to institute an arbitration proceeding under this Clause 15.3.3 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 15.3.3.
- 15.3.4 All arbitration proceedings shall take place in Kingston, Jamaica and will be conducted in the English language.
- 15.3.5 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 15.3.5 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.

- 15.3.6 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.
- 15.3.7 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.
- 15.3.8 The award of the Arbitration Tribunal shall be final and binding on the parties thereto, including any joined or intervening party.
- 15.3.9 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.
- 15.3.10 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.
- 15.3.11 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.

15.3.12 [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];

15.4 Continued Performance

During the pendency of any Dispute being handled in accordance with this Clause 15, (a) the Company shall continue to perform its obligations under this Agreement to deliver Dependable Capacity and Net Energy Output, (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. 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 Clause 15; provided that (i) JPS may draw on the Construction Security Deposit and/or the Operations Security Deposit in accordance with Clause 9.4.7 (ii) the Company may draw on the Letter of Credit established pursuant to Clause 9.9, in either case (i) or (ii), despite a Dispute between the Parties as to the amount of payment owed to the drawing Party.

16. ASSIGNMENT

16.1 Assignment

16.1.1 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]].

16.1.2 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.

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

16.2 Granting of Security

- 16.2.1 Notwithstanding the provisions of Clause 16.1.2, 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.
- 16.2.2 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 16.2.1(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.

17. NOTICES

17.1 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 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 the Parties and their respective fax numbers and electronic mailing address shall be:

17.1.1 In the case of JPS:

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

Fax No.:

Attention:

Copied to:

E-mail:

17.1.2 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/or fax number as either Party may previously have notified to the other Party in accordance with this Clause 17.1.

17.2 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 when sent after five (5) p.m. notice is deemed to have been given at eight (8) 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 (8) a.m. the following Business Day.

18. ACCOUNTS AND REPORTS

18.1 Appointment of Auditors

The Company shall make arrangements 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.

18.2 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 shall have access to its operational and maintenance records.

18.3 Periodic Reports

- 18.3.1 The Company shall, as soon as available but in any event within one hundred and eighty (180) Days after the end of each Financial Year, furnish to JPS (a) two (2) copies of its complete financial statement for such Financial Year (which are in agreement with its books of accounts and prepared in accordance with accounting principles which are generally accepted in Jamaica and consistently applied), together with an audited report thereon; (b) a report by the auditors certifying that, based on its said financial statements, the Company was in compliance with its financial obligations under the Loan Agreements as of the end of the relevant Financial Year or, as the case may be, detailing any non-compliance.

18.3.2 In the event that the Company shall become aware of any factors materially and adversely affecting or which might materially and adversely affect the Company's business and operations or its financial condition, the Company shall within [thirty (30)] Days after becoming so aware, furnish to JPS and the OUR a report certified by an officer of the Company setting out the details on the material issues.

18.4 Reporting of Changes

The Company shall, within fourteen (14) Days of any of the following 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.

18.5 Information re Statutory Notice/Winding Up Proceedings

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

18.5.2 The Company shall provide to JPS to OUR all information in respect of any further actions taken by the Lenders or creditors following the notices described in Clause 18.5.1.

19. MISCELLANEOUS PROVISIONS

19.1 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.

19.2 Expenses

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

19.3 Severability

In the event that any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, 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.

19.4 Waivers

19.4.1 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.

19.4.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or 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.

19.5 Confidentiality

19.5.1 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 Project 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).

19.5.2 The provisions of Clause 19.5.1 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 relevant legal requirements.

19.5.3 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.

19.6 Successors and Assigns

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

19.7 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.

19.8 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.

19.9 Affirmation

The Company declares and affirms that it has not paid nor has it undertaken to pay any unlawful 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 unlawful 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.

19.10 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.

19.11 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 Parties have entered into this Agreement as of the date first above written.

JAMAICA PUBLIC SERVICE COMPANY LIMITED

By:

Title: President and Chief Executive Officer

[LICENSEE]

By:

Title: [Authorised Officer of Licensee]

SCHEDULE 1

DEFINITIONS

- “Abandonment” - Either (a) the cessation of substantially all activities relating to the construction or operation and maintenance of the Facility for a period greater than forty eight (48) Hours, as appropriate, or (b) the physical absence of substantially all employees of the Company and its Contractors from the Site after the commencement of excavation for the foundations of the Facility for at least One Hundred Sixty-Eight (168) consecutive hours.
- “Actual Initial Dependable Capacity” or “AIDC” - The Dependable Capacity of the Facility as actually tested in accordance with Schedule 4 on or before the Commercial Operations Date, or as subsequently re-declared in accordance with Schedule 4.
- “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 the Primary or Backup Metering System’s meter’s maximum tolerable error level as stated by its manufacturer and +/- 1%.
- “Allowable Forced Outage Energy” - The product of the number of the agreed Forced Outage hours and the Dependable Capacity in kWh.
- “Annual Projected Capacity Factor” - The expected energy production from the Facility for the upcoming Year (calculated based on the parameters specified in Clause 6.3.1 of the Agreement), divided by the product of the Dependable Capacity and 8,760 Hours.
- “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” - The meter and metering devices used for backup purposes pursuant to 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.
- “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 Environmental Law” - Any new Environmental Law or change in an existing Environmental Law after [BID REFERENCE DATE].
- “Change in Relevant Law” - Any Change in Environmental Law or Change in Tax Law after [BID REFERENCE DATE].
- “Change in Tax Law” - Any new Tax Law or change in existing Tax Law after [Bid Reference Date].
- “Cold Start” - The start-up of a Unit is considered a “Cold Start” if the Facility output to the JPS Grid has been zero (0) MW for more than eight (8) consecutive hours prior to this start up.
- “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 Independent Engineer certifies in writing that the Complex has been commissioned subject to the conditions of Schedule 4
- "Commissioned" - The Facility successfully completed the Commissioning activities within the contracted requirements.
- “Commissioned Shortfall” - The difference between (i) the Initial Declared Dependable Capacity of the Facility as set on the Commercial Operations Date or as re-declared in accordance with Schedule 4, if less than the Contracted Dependable Capacity, and (ii) the Contracted Dependable Capacity.

"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" means 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 14.1 for which JPS may issue a JPS Notice of Default.

"Company Notice of Default" - A notice of default issued by the Company to JPS pursuant to Clause 14.2 and which notice shall state that it is a "Notice of Default".

"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.

"Consenting Party" - The Party whose consent is being sought.

"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.

"Construction Security Deposit" - A commercial instrument provided by the Company pursuant to Clause 9.4.7(a) for remedying any liability, obligation or responsibility arising during construction and Commissioning of the Facility.

"Contracted Dependable Capacity" - The net capacity of [PLANT CAPACITY IN MEGAWATTS] MW to be delivered at the Interconnection Point as per this Agreement.

"Contractor" - Any contractor employed by the Company in the design, manufacture, construction, operation or maintenance of the Facility or any part thereof, and any direct or indirect subcontractor of such contractors.

“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 Dispatch the Facility.

“Control Room” – The Company’s operation center located on the Facility, or such other location designated by the Company from time to time, from which the operation of the Facility is monitored and controlled by the Company.

“Damages” – Any actual damages agreed upon by the Parties or established pursuant to any dispute resolution procedure described in Clause 15.

“Day” – The twenty four (24)-hour period beginning and ending at 12:00 midnight Jamaican Time.

“Default Rate” – The Base Rate plus two (2) percentage points.

“Dependable Capacity” – The amount of sustained capacity in kW from the Facility after the Commercial Operations Date as determined by testing from time to time in accordance with Schedule 4.

“Dispatch” – The instructions issued by JPS from the Control Center in accordance with this Agreement for the Company to schedule and control the generation of the Facility in order to increase or decrease the electricity delivered to the JPS Grid.

“Dispatch Deviation Statement” – The meaning ascribed thereto in Clause 9.5.1.

“Direct Contractor” – Any contractor other than the Construction Contractor or O&M Contractor employed directly by the Company in the design, manufacturer, construction, operation or maintenance of the Facility or any part thereof.

“Dispute” – The meaning ascribed thereto in Clause 15.1.

“Dollars” or “\$” – The lawful currency of the United States of America.

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

“Environmental Law” – Any Law of Jamaica which impacts or affects present or future national, local or other lawful environmental requirements applicable to the Company or the Facility and the environmental guidelines of the

- World Bank applicable to, or otherwise binding upon, the Company or the Facility.
- “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.
- “Final Liquidated Damages Invoice” – The meaning ascribed thereto in Clause 9.5.2.
- “Financial Closing” – The signing of the Loan Agreements for financing of the Facility.
- “Financial Year” – The period from January 1st to December 31st or such other period as may be selected by the Company in respect of which the audited accounts of the Company shall be made up.
- “Fixed Payment” – The amount which JPS will pay the Company each Month for Dependable Capacity in accordance with Section 9 as determined in accordance with Schedule 6 hereto.
- “Fixed Payment Price” – The price equal to the Fixed Payment for a given Month divided by the Average Dependable Capacity (as defined in Schedule 6) for that Month.
- “Forced Outage” – Any partial or complete Interruption of the generating capacity of the Facility that is not the result of (i) a request by JPS in accordance with this Agreement; (ii) a Scheduled Outage or a Maintenance 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.

"Fortnightly Projected Dispatch" - The meaning ascribed thereto in Clause 6.1.2.

"General Partner" - [Licencee's Partners]

"Generation Code" - The generation code as approved by the OUR and revised from time to time.

"Heat Rate"- The number of British Thermal Units (BTU) required to produce one kilowatt hour of energy at the Facility.

"Independent Engineer" - The independent licensed professional jointly selected by the Parties who, among other things, shall receive copies of all test results performed pursuant to Schedule 4 on the Facility for the purpose of certifying in writing that the Facility can be satisfactorily Commissioned. The fees charged by the Independent Engineer shall be borne by the Company.

"Initial Declared Dependable Capacity" - The Dependable Capacity of the Facility as declared by the Company on the Commercial Operations Date or as re-declared in accordance with Schedule 4, and shall not be greater than the lower of the Actual Initial Dependable Capacity and the Required Dependable Capacity of the Facility.

"Interconnection Criteria" - The meaning ascribed thereto in Clause 7.1.4

"Interconnection Facilities" - All the facilities to be constructed by or for the Company at the Company's sole cost, to enable JPS to receive power from the Facility in accordance with this Agreement.

"Interconnection Point" - The physical point where the Facility and the JPS Grid System are connected as specified in Schedule 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.

“Interruption” - Any deviation of the Facility from Dispatch.

“Invoice Exchange Rate” - The spot market weighted average of the “selling” rates of exchange of authorized dealers in Jamaica offering to sell Dollars for Jamaican Dollars as expressed in Jamaican Dollars per Dollar and as issued by the Bank of Jamaica on the Day that is three (3) Business Days preceding the Statement and payment due date in accordance with clause 9.6.1.

“Invoice Exchange Rate for Liquidated Damages” - The spot market weighted average of the “selling” rates of exchange of authorized dealers in Jamaica offering to sell Dollars for Jamaican Dollars as expressed in Jamaican Dollars per Dollar and as issued by the Bank of Jamaica the last Day of the period for which damages are being billed.

“Jamaican Dollars” or “J\$” - The lawful currency in Jamaica.

“JPS Event of Default” - An event described in Clause 14.2 for which the Company may issue a Company Notice of Default.

“JPS Grid” - The transmission and distribution facilities on JPS’ side of the Interconnection Point through which the output of the Facility will be distributed by JPS to users of electricity.

“JPS Licence” - The Amended and Restated All-Island Electric Licence, 2011 together with any extensions, variations or amendments or other licence(s) granted to JPS under the Electric Lighting Act.

“JPS Notice of Default” - A notice of default issued by JPS to the Company pursuant to Clause 14.1 and which notice shall state that it is a “Notice of Default”.

“kW” - Kilowatt(s).

“kWh” - Kilowatt-hour(s).

“Laws of Jamaica” - The laws of Jamaica and all proclamations, rules, regulations, subsidiary legislation, notifications, orders, directives and policies made pursuant thereto.

“Lenders” - The lenders party to the Loan Agreements and the persons who from time to time make other credit facilities available to the Company.

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

“Liquidated Damages Claim Deadline” - The meaning ascribed thereto in Clause 9.5.3.

“Liquidated Damages Due Date” - The meaning ascribed thereto in Clause 9.5.2.

“Loan Agreements” - The agreements executed between the Company and the Lenders pursuant to which the credit facilities are made available by the Lenders to the Company for the implementation of the Project.

“Maintenance Outage” - An Interruption or reduction of the generating capability of a Unit or the Facility that (a) is not a Scheduled Outage; (b) has been scheduled and allowed by JPS in accordance with Clause 6.4; and (c) is for the purpose of performing work on specific components, which work could be postponed by at least six (6) Days but could not be postponed until the next Scheduled Outage.

“Major Maintenance” - A planned outage due in 12,000 Unit Running Hour cycles and can occur on a Unit (maintenance typically lasting 15 to 21 Days) or on a Turbocharger (maintenance typically lasting 3 Days).

“Material Agreements” - This Agreement, the PPA Original Support Documents, the PPA Amended Support Documents and the Loan Agreements.

“Metering System” - All meters and metering devices used to measure the delivery and receipt of Net Energy Output and Dependable Capacity in accordance with this Agreement.

“Minimum Renewable Fuel Feed Stock Inventory” - The minimum Fuel quantity required to allow operation of the Facility at full load for ten (10) Days without new Fuel delivery.

“Minimum Functional Specifications” - The minimum functional specifications for the construction of the Facility as set forth in Schedule 2.

“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.

“Monthly” - Anything calculated or occurring according to a Month Period.

“MVAR” - Megavar(s).

“MW” - Megawatt(s).

“Net Energy Output” – Net energy delivered by the Company for sale to JPS at the Interconnection Point in accordance with JPS Dispatch.

“Notice of Default” – The meaning ascribed thereto in Clause 14.3.1.

“Notice of Intention to Defend” – The meaning ascribed thereto in Clause 15.2.3.

“Notice of Intention to Refer” – The meaning ascribed thereto in Clause 15.2.2.

“Notice to Proceed” – The meaning ascribed thereto under the applicable Construction Contract.

“Off-Peak Hours” – The hours between 00:01a.m. and 8:59a.m., 9:01p.m. and 12:00a.m. on Monday to Friday; 00:01a.m. and 12:00a.m. on Saturdays, Sundays and public holidays.

“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 company which the Company may from time to time appoint to operate and maintain the Facility.

“On-Going Dependable Capacity Shortfall” – The amount, if any, by which the Dependable Capacity of the Facility is below the Initial Declared Dependable Capacity of the Facility as determined by testing in accordance with Schedule 4.

“Operating Committee” – The committee established pursuant to Clause 6.7 for the purpose of determining operating standards and procedures for the Facility.

“Operating Procedures” – The meaning ascribed thereto in Clause 4.3.1.

“Operations Security Deposit” – The meaning ascribed thereto in Clause 9.4.7(c)

“OUR” – The meaning ascribed thereto in Clause 3.2.

“Owner” – [Licencee’s Owners]

“Peak Hours” – The hours between 9:00 a.m. and 9:00 p.m. Monday to Friday.

“Peak Months” – The Months of July, August, November and December, or as designated in accordance with Clause 6.3.4 from time to time.

“PPA Amended Support Documents” – The meaning ascribed thereto in Clause 4.2.

“PPA Original Support Documents” - The meaning ascribed thereto in Clause 4.2.

“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 Facility and all activities incidental thereto.

“Proposed Fortnightly Availability” - The meaning ascribed thereto in Clause 6.1.2.

“Provisional Liquidated Damages Invoice” - The meaning ascribed thereto in Clause 9.5.2.

“Prudent Utility Practices” - 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.

“Public Sector Entity” - Any department, authority, instrumentality or agency of the Government of Jamaica which is owned or controlled by the Government of Jamaica.

“Quarter” - A calendar quarter according to the Gregorian calendar beginning on the first (1st) Day of January, April, July or October and ending on the last Day of March, June, September or December, respectively.

“Reactive Power” - The wattless component of the product of voltage and current, which the Facility shall provide to or absorb from the JPS Grid System and which is measured in MVAR.

“Renewable Fuel Feed Stock” - [Specify fuel type] with the specifications as provided in Clause [X] of Schedule [Y] which shall be used for the operation of the Facility.

“Renewable Fuel Feed Stock Supply Agreement” - Any agreement entered into by the Company for the purchase of Fuel.

“Renewable Fuel Feed Stock Supply Plan” - The Company’s plan for providing Fuel to the Facility to ensure the operation of the Facility in accordance with the terms and provisions of this Agreement. The Renewable Fuel Feed Stock Supply Plan shall include, but not be limited to, the Company’s proposed Renewable Fuel Feed Stock Supply, storage and transportation arrangements

and the Company's plans to obtain Fuel on the most economic basis at any given time and shall be reasonably satisfactory to JPS if such plan is in accordance with Prudent Utility Practice.

"Required Commercial Operations Date" - [JANUARY 2, 2013] or such date as may be equitably extended pursuant to: (a) Clause 13 upon one or more events of Force Majeure or (b) Clause 9.4.1.

"Required Renewable Fuel Feed Stock Storage Capacity" - The meaning ascribed thereto in Clause 6.6.1.

"Retained Amount" - The meaning ascribed thereto in Clause 9.3.

"SCADA" - Supervisory Control and Data Acquisition System.

"Scheduled Commercial Operations Date" - The date on which the Company anticipates that the Commercial Operations Date shall occur, as notified to JPS pursuant to Clause 4.2.1.

"Scheduled Outage" - A planned partial or complete Interruption of the generating capability of a Unit or of the Facility that (i) is not a Maintenance Outage; (ii) has been scheduled and allowed by JPS in accordance with Clause 6.3; 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.

"Spinning Reserve" - The difference between the synchronized capacity and the actual MW loading of the Facility, and is activated by placing the Units on automatic governor control.

"Statement" - The meaning ascribed thereto in Clause 9.6.1.

"System Load Profile" - Variation in the system load over a 24 hour cycle for a given period.

"Tax Law" - Any Law of Jamaica which impacts or affects present or future national, local or other lawful taxes, duties or levies applicable to the Company, the Project or the Company's other assets.

"Unit" - Each of the generating units that form a part of the Facility.

“Unit Hour” - Each hour of partial or complete Interruption of the operation of a Unit.

“Unit Running Hours” - The operating hours accumulated on each unit since the Commercial Operations Date.

“Variable Payment” - The price which JPS will pay to the Company per kWh for Net Energy Output delivered from the Facility to JPS, in accordance with JPS Dispatch instructions, each Month as measured in accordance with Clause 9.2 and Schedule 5 and as calculated in accordance with Article 9 and Schedule 6.

“World Bank” - Is an international financial institution that provides loans to developing countries for capital programs.

“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.