

THE ELECTRIC LIGHTING ACT

Jamaica Energy Partners Supply of Electricity Licence, 2010

1. SHORT TITLE

This Licence may be cited as "Jamaica Energy Partners Supply of Electricity Licence, 2010".

2. INTERPRETATION

2.1 In this Licence -

"ELA" means the Electric Lighting Act.

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

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

"General Partner" means each of Jamaica Energy, LLC, a Delaware limited liability company, and Doctor Bird Power Co., Limited, a private company formed under the laws of St. Lucia.

"Government" means the Government of Jamaica.

"Governmental Authority" means any Ministry, Agency of Government or Statutory Body and shall include any acts carried out by any of the said bodies in the exercise of government public policy

"Governmental Requirements" means any Acts of Parliament, Proclamations, Regulations and Rules made there under and shall include inter alia, Government guidelines, Policies and Ministerial Directives.

"JEP" means Jamaica Energy Partners, a limited partnership registered under the Partnerships (Limited Act) of Jamaica.

"National Grid" means public electricity supply system but does not include the network used for the distribution of electricity to individual members of the public.

"Licensed Business" means the Generation and Supply of Electricity as carried out under this Licence and any other licence required by Jamaican law.

"OUR Act" means Office of Utilities Regulation Act, 1995 as amended,

"Owner" means the General Partners and Barge Energy LLC, SLAPJAM LDC, IGC Jamaica Partnership, LLC, and Dr. Bird Investment Company, LLC, each organized and existing under the laws of the Cayman Islands.

"Owner Affiliate" means, with respect to any Owner, any entity that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Owner.

"Power Purchase Agreement" means the agreement for the purchase of power

concluded between the Licensee named in this Licence and the licensee named under the All Island Electric Licence 2001 or any successor or assign operating the Public Electricity Grid.

"Prescribed Utility Service" means the supply of electricity.

"Pro forma transaction" means

(a) an assignment from one or more individuals to a body corporate owned or controlled by the same individual or individuals without any change in their relative interests;

(b) an assignment from a body corporate to shareholders without effecting any change in the disposition of their interests;

(c) a reorganization of a body corporate that involves no change in the beneficial ownership thereof;

(d) an assignment or transfer -

(i) from a body corporate to its wholly owned subsidiary or *vice versa*;

(ii) between wholly owned subsidiaries of the same holding company;

(e) an assignment from a body corporate to another body corporate owned or controlled by the assignor's shareholders without a substantial change in their relative interests.

The **"Licensee"** is for the purposes of this Licence JEP.

The **"Minister"** means the Minister with the portfolio responsibility for electricity.

The **"Office"** means the Office of Utilities Regulation.

The **"Tribunal"** means any tribunal established by the Minister or pursuant to any relevant legislation or instrument to hear disputes arising from a decision, or failure to act by the Office.

- 2.2 This Licence shall be read and construed, subject in all respects to the provisions of the ELA, the OUR Act and any applicable legislation, statutory modification, consolidation or re-enactment thereto and all regulations or rules made pursuant thereto (the **"Acts"**). Unless the context otherwise requires, expressions in this Licence shall bear the same meanings ascribed to those expressions under the Acts.

3. GRANT OF LICENCE

- 3.1 The Minister, pursuant to the powers conferred under Section 3 of the Electric Lighting Act as well Section 4A of the OUR Act, hereby grants the Licensee a Licence authorising said Licensee to develop, operate and maintain a 60MW diesel generation power plant using heavy fuel oil in order to generate, sell and supply bulk electricity therefrom ("the Undertaking") to the National Grid subject however, to the provisions of any Schedules attached hereto as well as the relevant statute.
- 3.2 This Licence shall be null, void and of no legal effect in the event that the relevant parties fail to execute the relevant Power Purchase Agreement within

forty-five (45) days of the date of this Licence.

4. DURATION

Subject to the provisions herein contained the term of this Licence (the "**initial Licence**") shall begin to run from the date hereof (hereinafter called "**the date of the Licence**"), notwithstanding that the Licensee's power to generate, sell and supply bulk electricity from the licensed facilities to the public electricity supply system shall be for the term of **twenty (20) years** from the relevant Commercial Operations Date and shall terminate on the twentieth (20th) Anniversary of the relevant Commercial Operations Date, provided however that the Licensee shall have the right to sell such power to the National Grid arising:

- (a) As a result of the testing of the facilities prior to the Commercial Operations Date or;
- (b) As may be reasonably required by the public electricity system prior to the Commercial Operations Date

The Licensee may apply to the relevant authority for a new licence upon the expiry of the initial Licence.

5. ASSIGNMENT OF LICENCE

This Licence may not be assigned or transferred by the Licensee without the prior written consent of the Minister such consent not to be unreasonably withheld.

- 5.1 The Licensee may, contingent on the prior approval of the Minister, assign its licence or any rights thereunder or transfer control of its operations.
- 5.2 An application for approval of an assignment or transfer under this paragraph shall be made in writing to the Minister who shall grant such approval if he is satisfied that the assignee satisfies the requisite requirements as regards the obligations imposed on the Licensee by this Licence or relevant Legislation and Regulations and is in all material respects a fit and proper person to hold such Licence.
- 5.3 Paragraph 5.2 shall not apply to a pro forma transaction and the following provisions shall apply in relation thereto -

Within forty-five (45) days after the completion of the transaction the licensee shall-

- (i) submit to the Office, proof of the completion of the transaction either in the form of an application that is appropriate for the class of licence to which it relates or such other written correspondence as the Office may authorize, containing all of the information included in the application;
 - (ii) certify that the transaction is a pro forma transaction;
- 5.4 Such pro forma transaction shall not be recognized and shall be deemed null and void by the Office for the purposes of the obligations under this licence if the provisions of paragraph 5.3 are not strictly adhered to in relation to such pro forma transaction.

6. RATES/PRICES

The prices to be charged and/or rates to be applied by the Licensee in respect of the

supply of electricity pursuant to this Licence shall be determined by the Office and included in the Power Purchase Agreement.

7. REGULATION

- 7.1 The Licensee in carrying out the Licensed Business shall be subject to regulation by the Office pursuant to the OUR Act, the ELA and any statutory modification, consolidation or re-enactment thereto and any other applicable legislation and all regulations and rules made pursuant thereto.
- 7.2 The Licensee shall comply with any order and/or directive made by the Office under the OUR Act as amended with all reasonable promptitude.
- 7.3 The Licensee shall provide such information, reports, and records as may be reasonably requested by the Office from time to time.

8. REGULATORY FEES

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

Licence Fee (LF)	=	BUSP x 1PPR
Where BUSP	=	The portion of revenue attributable to the power purchaser in the audited financial statements for the financial year ending in the calendar year preceding the due date of the first payment.
1PPR	=	One Ten Thousandth (0.0001)

- 8.2 In the event that the Licensee will not be in operation for a full year following the issuance of the license, the regulatory fee applicable for such period shall be a minimum fee of Five Thousand United States Dollars (USD\$5000.00)

9. AUDITED ACCOUNTS

- 9.1 The accounts of the Licensee shall be audited at the expense of the Licensee by an independent auditor of the Licensee's choice, provided that such auditor shall be of good standing and reputation.
- 9.2 The Licensee shall send to the Office within three (3) months of the end of the Licensee's financial year a copy of the annual audited balance sheet and profit and loss account of the Licensee related to the supply of electricity pursuant to this Licence and shall send to the Office such operating and other statistics as the Office may reasonably require.

9.3 Licensee Information Reporting

The Licensee shall procure and furnish to the Office, in such manner and at such times in respect of the items set out at **SCHEDULE 1** and **SCHEDULE 2** or, as the Office may reasonably require, such other information and reports as the

Office may consider necessary concerning the performance by the Licensee of its obligations under this License.

10. APPEALS

10A. Appeals Tribunal

10A.1 Subject to the provisions of any subsequent legislation, the Minister may as required empanel the Tribunal to hear appeals by aggrieved parties and such Tribunal shall consist of three members appointed by the Minister as follows:

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

10A.2 There shall be paid to the Chairman and other members of the Tribunal in respect of any appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

10A.3 The decisions of the Tribunal shall be by a majority of votes of the members.

10A.4 The Tribunal shall regulate its own proceedings.

10A.5 Subject to any relevant Legislation or Instrument, the members of the Tribunal shall hold office for a period of two years unless sooner terminated by the Minister.

10B. Appeal of Office Decisions

10B.1 If the Licensee is aggrieved by a decision of, or failure to act, by the Office, under this Licence, the Licensee may appeal to the Tribunal:

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

10B.2 On hearing an appeal under this Licence, the Tribunal shall have regard to the legality, rationality and procedural propriety of the Office in arriving at its decision and may:

- (a) confirm, modify or reverse the decision of the Office or any part thereof; or
- (b) by a direction in writing, refer the decision back to the Office for reconsideration by it, either generally or in relation to any matter specified in the direction,

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

- 10B.3 The Tribunal may, on application by the Licensee, order that the decision of the Office to which an appeal relates shall not have effect until the appeal is determined.
- 10B.4 The Tribunal may dismiss an appeal if it is of the opinion that the appeal is frivolous or vexatious or not made in good faith;
- 10B.5 Where the Tribunal dismisses an appeal, it shall inform the Licensee and the Office in writing stating the reasons for its decision.
- 10B.6 In making a decision, the Tribunal shall observe reasonable standards of procedural fairness and the rules of natural justice and act in a timely fashion.

11. DISCHARGE OF OBLIGATIONS AND POWER OF LICENSEE

- 11.1 Save as set out in this Licence, the Licensee shall discharge its obligation and perform the duties imposed or authorized under the ELA and any other applicable legislation or standards and shall enjoy the rights and exercise all powers conferred by such legislation on undertakers authorized to supply electricity in accordance with condition 3.1.
- 11.2 The Licensee shall not be obliged to undertake extension of any transmission or distribution lines to deliver the power generated, save as provided in the Power Purchase Agreement.
- 11.3 The Licensee may exercise such rights and shall observe such conditions relating to easements, way leaves, entry of private property and the construction of any lines above, or below ground, as may be prescribed by law. In addition the Licensee shall have the right to trim trees or shrubbery which may overhang any public way and may interfere with electric lines or cables constructed by the Licensee.
- 11.4 If in the construction, maintenance and repair of its electric lines, it shall be necessary for the Licensee to disturb public ways and places or the plant of any other utility, the Licensee shall promptly restore or pay the cost of restoring such public ways and places and utility plant to at least as good condition as they were before such disturbance.

12. FORCE MAJEURE

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

- (i) occurs inside Jamaica, except as provided in clause (h) below;
- (ii) is outside the reasonable control of the Licensee;
- (iii) cannot be prevented or overcome by the exercise of reasonable diligence; and
- (iv) materially and adversely affects the performance by the Licensee of its obligations under this Licence, to the extent that such event(s) or circumstance(s) meet the foregoing requirements (i) through (iii), including:
 - (a) acts of God, fire, explosion, chemical contamination, earthquakes, flood, lightning, drought, tsunami, flood, torrential rain, storm, cyclone, typhoon, or tornado, pestilence or other natural catastrophes, epidemics or plague, or

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

13. STEP-IN RIGHTS

- 13.1 After the Commercial Operations Date, if the Licensee shall have ceased to operate all, or any substantial part of the system or equipment necessary for the performance of functions under its Licence for a period of forty-eight (48) consecutive hours (the "**Initial Period**") without the prior consent of the Minister ("**Step-in Event**"), the Minister or his designee may enter any site at which the Licensee operates and may assume operational control of that system or equipment, provided that:
- 13.1.1 The Minister shall give prompt notice to the Licensee determining that the Initial Period has concluded such notice to be given by means reasonably calculated to ensure prompt actual notice to the Licensee.
 - 13.1.2 A Step-in Event shall not have occurred and the Minister or his designee shall not be entitled to enter any of the Licensee's sites for the purpose of assumption of operational control if the cessation of operation under subparagraph (1) resulted from:
 - (i) circumstances beyond the reasonable control of the Licensee; such as an event of Force Majeure or a material breach by the power purchaser under the Power Purchase Agreement; or
 - (ii) a forced stoppage; or

- (iii) an action or failure to act by the Minister or the Office in contravention of any right or entitlement of the Licensee under applicable legislation or regulation being in force, or the Licensee's Licence; or
 - (iv) to the extent that the Licensee is proceeding with diligence and good faith to overcome or remedy such event and such event is overcome and remedied within forty-eight (48) hours immediately after the Initial Period.
- 13.2 If the Minister or his designee assumes operational control of all or part of the system or equipment upon the event of a Step-in Event in terms of clause 13.1, the Minister or his designee shall operate the system or equipment in accordance with prudent utility practice and in any event in accordance with standards no lower than those which were binding on the Licensee prior to the occurrence of the Step-in Event.
- 13.3 Upon the occurrence of a Step-in Event the Minister or his designee shall be entitled to operate all or part of the system generating facility and/or equipment until such time as the Licensee has demonstrated to the reasonable satisfaction of the Minister that it can resume normal operation of the system or equipment in accordance with the terms and conditions of this Licence and the Act and that Step-in Event will be overcome or remedied.
- 13.4 The Licensee must demonstrate to the Minister that it can and will secure or otherwise acquire and utilize:
 - (a) requisite qualified and skilled personnel;
 - (b) sufficient financial resources; and
 - (c) any other resources identified to be needed to resume proper operation of the system and any generating facility in accordance with the terms and conditions of this Licence and to overcome or remedy the Step-in Event.
- 13.5 Where the Licensee is unable to demonstrate its ability to resume normal operation of the system or equipment to the reasonable satisfaction of the Minister within ninety (90) days after the Initial Period, the Minister shall have the right to acquire, and/or to have his designee acquire all of the rights, title and interest of the Licensee in the Licensed Business Facilities for an amount equal to 50% of the "purchase price" which shall be formulated in accordance with paragraph 13.6 below. If a Licensee event of default under the Power Purchase Agreement occurs and continues, the Minister shall have the right to suspend this Licence until such event of default has been cured in accordance with the terms of the Power Purchase Agreement, provided that if the Power Purchase Agreement terminates because of a Licensee event of default, the Minister shall have the right to acquire, and/or to have his designee acquire all of the rights, title and interest of the Licensee in the Licensed Business and Facilities for an amount equal to 50% of the "purchase price" which shall be formulated in accordance with paragraph 13.6 below, If the Minister elects to exercise his right to acquire all such rights, title and interest, payments in accordance with this paragraph 13.5 shall be made to the Licensee not later than one (1) year after the notice to exercise such right.
- 13.6 The "purchase price" referred to in paragraph 13.5 above shall be calculated at the present value of the Licensed Business present value being determined by the discounted cash flow methodology. The cash flows to be used in the calculation of the "purchase price" shall be the net cash and cash equivalent of the Licensed Business and Facilities as reflected in the audited financial statements from the last financial period prior to the invoking of the "step-in rights" and the projected annual cash flow for the subsequent fifteen years at the

level of the last audited statement. The applicable interest rate to be used in the calculation of a "purchase price" shall be the United States Department of the Treasury one year Treasury Bill rates for the relevant financial period.

- 13.7 The Minister shall only indemnify and hold the Licensee harmless from any loss or damage to the system and/or generation facility and for any injury to persons incurred as a direct result of the Minister's or designee's negligence or wilful misconduct in the operation of the system and/or generating facility during the take-over period and then only to the extent that such loss, damage or injury is not covered by insurance
- 13.8 The Minister may designate any other qualified person as his designee for the purpose of exercising any of the powers conferred in this paragraph.
- 13.9 Where a licensee who is a purchaser of a generator's electrical output under a power purchase agreement decides to exercise any step-in rights under terms of such agreement he shall notify the Minister prior to exercising such rights.
- 13.10 A licensee who exercises step-in rights in terms of paragraph 13.8 shall be deemed to be a designee of the Minister in terms of this Section and shall be bound by the provisions of this Section.

14. AMENDMENT TO LICENCE

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

15. REVOCATION

15.1 *The Minister* may, on the recommendation of the Office at any time revoke this Licence by not less than thirty (30) days' notice in writing (the "**Notice of Revocation**") to the Licensee:

- (a) if it shall have been determined that the Licensee has failed to comply with any term of this Licence or to carry out in good faith and with reasonable diligence the activities referred to in this Licence, including compliance with directives, orders, memorandum, or determinations issued by the Office which determination shall specify in exact detail the respects in which the Licensee so failed, provided that such failure shall have continued for a period of thirty (30) days and shall have impaired the Licensed Business;
- (b) if the Licensee has gone into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction;
- (c) if any fee or financial obligation payable under this Licence or in relation to any related statute or any fine imposed by a court of law is unpaid thirty (30) days after it has become due and after the expiration of this thirty (30) day period it remains unpaid for a further period of thirty (30) days after the Office has given the Licensee notice that the payment is overdue; or
- (d) if any principal officer of the Licensee is convicted of a criminal offence by a court of law, which offence has impaired the Licensee's obligations under this Licence.

15.2 Prior to the recommendation for the revocation of this Licence pursuant to clause

15.1, the Licensee shall within a thirty (30)-day notification period be given an opportunity to be heard, including making written submissions to the Office as to why this License should not be revoked.

16. RIGHTS OF ACTION RESERVED

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

17. ARBITRATION

In the event of any difference whatever arising under this Licence between the Government and the Licensee or between the Minister and the Licensee the matter in dispute shall be referred to arbitration in accordance with the applicable arbitration provisions of the Arbitration Act and the decision thereon shall be final and conclusive.

18. TRANSFERS OF OWNERSHIP

No General Partner may assign or otherwise transfer, other than to an Owner, the International Finance Corporation or an Owner Affiliate, any of its partnership interest in the Licensee without the prior written consent of the Minister, which consent shall not be unreasonably withheld or delayed. If the Minister fails to respond to any request for consent under this paragraph 18 within ninety (90) days after notice of any assignment or transfer is given, the Minister shall be deemed to have consented to such assignment or transfer.

19. NOTICES

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

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

19.2 Any person may change its address for the purposes of this clause by giving notice of such change by hand delivery, or registered mail, which change, however, shall not become effective until it is actually received by the person to whom the notice is addressed.

Dated this 27th day of January, 2010.



The Honourable James Robertson M.P.
Minister of Energy and Mining