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Office of Utilities Regulation

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**REQUEST FOR PROPOSALS**

**for**

**Supply of up to 60 MW of Generating Capacity on  
a Build, Own and Operate (BOO) Basis**

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**OFFICE OF UTILITIES REGULATION**

April 28, 2008

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# 1. INVITATION TO APPLICANTS

Jamaica Public Service Company Limited (JPS), which is a vertically integrated electric utility, is the sole retailer of electric power in Jamaica serving 570,000 customers and operating under the All-Island Electric Licence granted in 2001. The utility is currently owned by Marubeni Caribbean Holdings Inc. (80%) and the Government of Jamaica (20%). Total installed generating capacity is 870 MW of which approximately 640 MW is owned by JPS and the remaining 230 MW by Independent Power Producers (IPPs).

Under the existing Licence granted to JPS, effective 2004, new generating capacity is to be provided on a competitive basis with JPS, existing and new IPPs having the opportunity to provide such additional capacity. The amount and schedule of new generating capacity required is based on least cost generation planning analyses which are performed on a regular basis.

The Office of Utilities Regulation (OUR) is responsible for the regulation of all utilities in Jamaica. With respect to the power sector, the OUR is responsible for, among other things:

- Direct regulation of the electricity sector including establishment of tariffs and service standards;
- Overseeing the preparation of least cost generation expansion plans;
- Overseeing the procurement of additional generating capacity.

Based on the latest least cost planning analyses, the OUR has determined that approximately 600 MW of additional generating capacity will be required during the next ten years in order to compensate for load growth and plant retirements. The first block of 60 MW is the subject of this Request for Proposal (RFP) and is required to be commissioned by 2010 with a preference for at least 20 MW of this to be commissioned by 2009.

**The OUR now invites interested entities to submit proposals for the supply of up to 60 MW of new generating capacity to the Grid on a Build Own and Operate (BOO) basis in accordance with the following schedule:**

- **All 60 MW of the new generating capacity MUST be commissioned prior to November 2010;**

- **It is desirable to have approximately 20 MW of the new capacity commissioned prior to November 2009 but this is not a condition for bidding.**

Proposals should be submitted in accordance with this RFP and all submissions will be evaluated in accordance with the criteria specified herein.

Requests for additional information, including information on the existing JPS and IPP owned generating facilities and operations, and/or questions concerning the tender exercise, may be submitted in writing to:

**Office of Utilities Regulation  
Third Floor, PCJ Resource Centre  
36 Trafalgar Road  
Kingston 10  
Jamaica, W.I.  
Attention: Mr. Richard Brown**

Telephone: (876) 968 6053  
Facsimile: (876) 929 3635  
E-mail: [rbrown@our.org.jm](mailto:rbrown@our.org.jm)

Bids must be marked **“Proposal for Provision of up to 60 MW of generating capacity on a Build Own and Operate Basis”** and deposited in the Tender Box provided at the address below by **3:00 pm on Thursday July 17, 2008.**

**Office of Utilities Regulation  
Third Floor, PCJ Resource Centre  
36 Trafalgar Road  
Kingston 10  
Jamaica, W.I.**

Bids must be accompanied by a non-refundable processing fee of Two Thousand United States Dollars (US\$2,000.00), along with the required Proposal Security.

Electronic bidding will not be permitted and late bids will be rejected. A soft copy of the Proposal is to be provided.

Bidders are invited to witness the opening of the bids at the address above at 3:15 p.m. on **July 17, 2008**.

Thank you for your interest and we look forward to receiving your Proposal.

Yours sincerely,



**Richard Brown**  
**Chief, Electricity Regulation**  
OFFICE OF UTILITIES REGULATION



## 2. INFORMATION FOR APPLICANTS

### 2.1. DEFINITIONS

The following terms will have the meanings defined herein:

<b>Term</b>	<b>Definition</b>
Applicants	The qualified firms which submit Proposals to develop the Project.
Approved Generating Technology	Power generation technology that meets the local statutory and environmental standards and that has been in successful commercial operation for at least five years.
Government	Government of Jamaica
Jamaica Public Service Company (JPS)	A privately owned vertically integrated electric utility and the sole retailer of electric power in Jamaica operating under the All-Island Electric Licence granted in 2001.
Licence	Licence Granted by the Minister under the Electric Lighting Act to authorize the power provider to connect and supply electricity to the public grid.
Minister	Minister of government with responsibility for energy
Ministry	Ministry with responsibility for energy
Office of Utilities Regulation (OUR)	Jamaican statutory entity responsible for regulating utilities including entities involved in power generation, transmission and distribution on a commercial basis.
Project	The design, financing, construction, ownership, operation and maintenance of the project facilities and all activities incidental thereto.
Project Agreements	Collectively, the Power Purchase Agreement and all other related agreements necessary for development and operation of the Project.
Project	The company to be established by the Project Sponsor and duly

Company	incorporated under the laws of Jamaica which will build, own and operate the Project.
Project Sponsor	An Applicant that has been selected in accordance with the RFP evaluation criteria and that has executed the Project Agreements.
Proposal	The Applicant's written offer based on the covenants, terms and conditions as contained in the RFP for building, owning and operating the Project.
RFP	Collectively, all the covenants, terms and conditions contained in the following sections and appendices. The sections and appendices together shall form the basis for the preparation of the Applicant's Proposal and for evaluation and selection of a Project Sponsor.
Site	The land and other places to be used by the Project Company for the construction, operation and maintenance of the Project.

## 2.2. BACKGROUND

Jamaica Public Service Company Limited (JPS), which is a vertically integrated electric utility, is the sole retailer of electric power in Jamaica serving 570,000 customers and operating under the All-Island Electric Licence granted in 2001. The utility is currently owned by Marubeni Caribbean Holdings Inc. (80%) and the Government of Jamaica (20%). Total installed generating capacity is 870 MW of which approximately 640 MW is owned by JPS and the remaining 230 MW by Independent Power Producers (IPPs).

Under the existing Licence granted to JPS, effective 2004, new generating capacity is to be provided on a competitive basis with JPS, existing and new IPPs having the opportunity to provide such additional capacity. The amount and schedule of new generating capacity required is based on least cost generation planning analyses which are performed on a regular basis.

The Office of Utilities Regulation (OUR) is responsible for the regulation of all utilities in Jamaica. With respect to the power sector, the OUR is responsible for, among other things:

- Direct regulation of the electricity sector including establishment of tariffs and service standards;
- Overseeing the preparation of least cost generation expansion plans;
- Overseeing the procurement of additional generating capacity.

Based on the latest least cost planning analyses, the OUR has determined that approximately 600 MW of additional generating capacity will be required during the next ten years in order to compensate for load growth and plant retirements. The first block of 60 MW is the subject of this Request for Proposal (RFP) and is required to be commissioned by 2010 with a preference for at least 20 MW of this to be commissioned by 2009.

**The OUR now invites interested entities to submit proposals for the supply of up to 60 MW of additional generating capacity to the Grid on a Build Own and Operate (BOO) basis in accordance with the following schedule:**

- **All 60 MW of the new generating capacity MUST be commissioned prior to November 2010;**

- **It is desirable to have approximately 20 MW of the new capacity commissioned prior to November 2009 but this is not a condition for bidding.**

Sources for additional information that may be useful to Applicants are listed in Appendix C.

### ***2.3. JAMAICA ENERGY SECTOR POLICY***

The current draft of the Energy Policy of Jamaica is included on the GOJ (Ministry of Energy, Mining and Telecommunication) website.

### ***2.4. LEGAL AND REGULATORY FRAMEWORK FOR THE POWER SECTOR***

The legal and regulatory framework governing the Jamaican Power Sector is encapsulated in the following:

- The OUR Act
- The JPS Licence and any agreed amendments
- OUR's Regulatory Policy on the addition of new generating capacity

These documents are available for viewing and may be down-loaded from the OUR website.

### ***2.5. PRIVATE SECTOR PARTICIPATION IN THE POWER SECTOR***

The GOJ actively promotes private sector investment in the production and delivery of electricity. At present 80% of the shares of JPS are owned by a private firm. Other private firms selling power to JPS on a BOO basis include:

- Jamaica Private Power Company Limited (JPPC) - 60 MW low speed diesel plant
- Jamaica Energy Partners (JEP) - 124 MW medium speed diesel plant
- Wigton - 20 MW wind farm
- JAMALCO -11 MW

- Jamaica Broilers – 2 MW

## **2.6. *ELECTRICITY DEMAND***

Electricity consumption in Jamaica has two distinct characteristics. These characteristics are dictated by the pattern of daily economic and domestic activities.

The overall system demand for any one day is a combination of simultaneous demand from all customer categories. However, the consumption patterns of commercial and industrial customers and residential customers are directly responsible for the specific consumption characteristics experienced.

The first characteristic is typical of a weekday situation and has two well-defined peaks:

- A **DAY PEAK** occurs between 11:00 a.m. and 3:30 p.m. This is a result of load contribution predominantly from the commercial and industrial sector.
- An **EVENING PEAK** occurs between 6:00 p.m. and 8:30 p.m. This peak can be largely attributed to a significant increase in domestic activities around this period.

The second characteristic is typical of a weekend and differs from the first characteristic in that there is reduced commercial and industrial activity. Thus, this characteristic has only an evening peak, again determined by the residential consumption pattern. Furthermore, there is an overall drop in the total level of consumption due to the reduction in commercial and industrial energy demand.

## **2.7. *GENERATION EXPANSION PLAN***

The OUR has prepared a document entitled “Evaluation of Generation Expansion Options and Tariff Impact Assessment Study” – dated July 2007, which is available on the OUR Website. The document provides details of the following:

- Forecast of demand for the next 20 years;
- Description of existing generation facilities on the grid including plants owned by JPS and plants owned by Independent Power Producers;

- An evaluation of options for new base load plant over the medium to long term;
- Recommended generation expansion plan for different scenarios relating to fuel price, capital costs and other key input variables.

It should be noted that fuel costs and plant installation costs have increased since the study. However, much of the information remains relevant.

## ***2.8. NON-GUARANTTEE OF DATA ACCURACY***

All information and data provided by the OUR with this RFP are furnished solely for the convenience of the Applicant and are not intended as representations or warranties. Neither the OUR or its consultants shall be responsible for the accuracy or completeness of such information, investigations, records or interpretations. The Applicant shall be responsible for its own investigation to establish sufficient and accurate information in support of its Proposal. The Applicant assumes all risks associated with the project, and no adjustments will be provided or made based on the Applicant's interpretation of the information provided.

## ***2.9. PROCUREMENT PROCESS***

The process for procurement of the additional generating capacity including selection of investors for negotiations will proceed as follows:

1. The OUR will select Applicants on the basis of the procedures set forth herein. Those Applicants who submit completed Proposals will be evaluated in accordance with the Evaluation Criteria outlined in this document.
2. An evaluation of responses to this RFP will be carried out, and the potential investors submitting the best proposals (the Highest Ranked Applicants) will be selected.
3. Based on the rankings, OUR may also select standby investors.

4. The Highest Ranked Applicant(s) will be invited to negotiate agreements for the provision of the new facilities.
5. Single or multiple awards may be made, up to an aggregate of 60 MW of generating capacity by 2010.

The OUR shall not be bound to grant an exclusive right to negotiate to any potential investor. Negotiations will be opened with the Highest Ranked Applicant, but in the event that the OUR, acting in its sole discretion, determines that it will not be possible to conclude negotiations with an Applicant, the OUR reserves the right to terminate negotiations with that Applicant at any time and to begin negotiations with a standby Applicant.

### ***2.10. PROPOSALS SUBMITTED BY JPS***

Applicants should note that Jamaica Public Service Company Limited (JPS) under provisions contained in its Licence, may submit Proposals in response to this RFP in competition with other Applicants. Any such Proposal will be evaluated in like manner to all other Proposals in accordance with the criteria set out in this document.

### ***2.11. PROJECT SCHEDULE***

The proposed timetable is as follows:

	<u>ACTIVITY</u>	<u>COMPLETION DATE</u>
1.	Submission of Proposals by Applicants	- Jul 17, 2008
2.	Evaluation of Proposals	- Aug 14, 2008
3.	Commencement of negotiation of Project Agreements	- Sep 01, 2008

## **3. INSTRUCTIONS TO APPLICANTS**

### **3.1. GENERAL**

#### **3.1.1. Description of Application Process**

- (a) All information requested of the Applicant shall be provided.
- (b) Answers must be provided to all Annexes. If necessary, additional sheets may be attached.
- (c) Each sheet should be signed by a person or persons duly authorized to sign on behalf of the Applicant and any associated individuals or companies. Such authorization shall be indicated by one or more written powers-of-attorney.
- (d) The OUR will not enter into any communications with Applicants except to provide clarification, when necessary. At its sole discretion, OUR will respond in writing to any reasonable requests for clarification which are submitted in writing. All clarifications will be posted on the OUR's website and also communicated directly to those Applicants who have confirmed their intention to bid in accordance with Appendix B.
- (e) All documents submitted by the Applicants will be treated as confidential and will not be returned.

#### **3.1.2. Cost of Preparing Proposal**

The Applicant shall bear all costs associated with the preparation and submission of its Proposals and the finalization and execution of the agreements comprising the Security Package. The OUR will in no instance be responsible or liable for these costs, regardless of the conduct or outcome of the RFP process.

#### **3.1.3. Sites and Site Visits**

The Applicant shall be responsible for all matters relating to siting for their proposed facilities. The Applicant is advised to thoroughly investigate the proposed sites and surrounding areas, and obtain or verify all information necessary for the preparation of its Proposal.



The Applicant should consult with the relevant government agencies and owners of the proposed sites in order to get all necessary approvals and agreements required for implementation of the proposed project.

Failure to fully investigate the site shall not be grounds for the Applicant to subsequently alter its bid or the agreements comprising the Security Package, nor shall it be the basis for any claim of Force Majeure.

## **3.2. REQUEST FOR PROPOSAL**

### **3.2.1. Clarifications**

The OUR will respond in writing to any request for clarification which it receives not later than four (4) weeks before the deadline for submission of Proposals. Any Applicant requiring clarification of the RFP may notify the OUR in writing at the address listed below:

**Office of Utilities Regulation  
3<sup>rd</sup> Floor, PCJ Resource Centre  
36 Trafalgar Road  
Kingston 10  
Jamaica, W.I.  
Attention: Mr. Richard Brown**

Telephone: (876) 968 6053  
Facsimile: (876) 929 3635  
E-mail: [rbrown@our.org.jm](mailto:rbrown@our.org.jm)

A reply in the form of a circular letter or Addendum will be distributed to all Applicants who have confirmed their intention to bid and also posted on the OUR's website.

### **3.2.2. Amendments**

At any time prior to the date of opening of Proposals, OUR may issue an Addendum which may delete, modify, or extend any part of the RFP. The receipt

of an Addendum by the Applicant shall be acknowledged promptly in writing and so noted in the Applicant's Proposal. The Applicant's late receipt of any Addendum or failure to acknowledge the receipt of any Addendum shall not relieve the Applicant of being bound by such Addendum.

Unless the clarification or amendment to the RFP is in the formal manner described above, no representation or explanation to Applicants shall be considered valid or binding on the OUR as to the meaning of the RFP or as to the Project. Applicants are cautioned that no employee of the OUR or consultant to the OUR is authorized to explain or interpret the RFP, and that any interpretation or explanation, if not given in writing by the OUR, must not be relied upon.

In order to afford Applicants reasonable time in which to take a clarification or amendment into account in preparing their Proposals, the OUR may, at its discretion, extend the deadline for the submission of Proposals.

### **3.3. PREPARATION OF PROPOSAL**

#### **3.3.1. Language of Proposal**

The Proposal and all related correspondence and documents shall be written in the English language. Supporting documents and printed literature furnished by the Applicant with the Proposal may be in any other language provided they are accompanied by an appropriate translation of pertinent passages in the English language. Supporting materials which are not translated may not be considered. For the purpose of interpretation and evaluation of the Proposal, the English language translation shall prevail.

#### **3.3.2. Proposal Structure and Contents**

Applicants are required to use the prescribed forms as contained in Appendix A. Applicants are also required to return the Receipt at Appendix B to confirm their intention to submit a Proposal and are encouraged to do this promptly in order to be included on the OUR's mailing list of prospective Applicants who will receive responses to queries, any Addenda to the RFP and other instructions directly from the OUR.

The information required in the Proposal includes the following:

- Exhibit 1 Proposal Letter (Attachment – Proposal Security)
- Exhibit 2 Affidavit
- Exhibit 3 Applicant's Organization
- Exhibit 4 Information to be furnished by Corporations
- Exhibit 5 Information to be furnished by Unincorporated Association
- Exhibit 6 Detailed Information to be furnished by Applicant:
  - Annex A Articles of Incorporation, etc.
  - Annex B Certificates of Registration
  - Annex C Curriculum Vitae of Key Personnel
  - Annex D Technical Capabilities
  - Annex E Experience
  - Annex F Audited Financial Statements
- Exhibit 7 Project Description, Data and Feasibility Report
- Exhibit 8 Special Requirements
- Exhibit 9 Proposed Tariff
- Exhibit 10 Cost Data in Support of Tariff
- Exhibit 11 Financial Data in Support of Tariff
- Exhibit 12 Breakdown of Construction Costs
- Exhibit 13 Additional Supporting Data
- Exhibit 14 Performance Specifications and Drawings
- Exhibit 15 Proposed Project Schedule

For the purpose of determining the experience and technical capability of an unincorporated association, the experience and technical capability of each member shall be combined for evaluation.

For determining the combined financial capability of an unincorporated association, each member shall complete and submit “Annex F of Exhibit 5 – Audited Financial Statements” for evaluation.

The Applicant must submit a substantially responsive Proposal i.e. one which conforms to all terms, conditions and specifications of the RFP without material deviation or reservation. Failure to comply with this instruction will result in disqualification of the Applicant.

Where applicable, the Applicant must prepare the Proposal by filling in the blank spaces and submitting the documents specified above.

A proposal may be rejected if it is illegible or contains omissions, erasures, alterations, additions, or irregularities; except for those alterations necessary to correct errors made by the Applicant, in which case such corrections shall be initialed by the person or persons signing the Proposal.

### **3.3.3. Proposal Letter and Proposal Security**

The Applicant shall complete the Proposal Letter and provide the necessary Power of Attorney as required. The Applicant shall also provide the Proposal Security in the form indicated.

### **3.3.4. Description of Project and Technical Feasibility Report**

Applicant shall provide a Project Feasibility Report which includes as applicable, the following:

- Technology to be used;
- Expected plant output capacity;
- Output voltage and transformer specifications;
- Site civil works;
- Mechanical / Electrical equipment;

- SCADA interface facilities;
- Telecommunication and control systems;
- Site location and access;
- Results of any site subsurface investigations confirming suitability;
- Expected site conditions / meteorological data to support project feasibility;
- Expected plant output profile.

### **3.3.5. Special Requirements**

#### Logistics

The Project Sponsor shall be responsible for all material and equipment shipments into Jamaica for the Project. The Applicant shall identify and verify the sufficiency of port facilities, transportation networks, customs requirements, taxes, duties, fees and visas required to implement the Project.

#### Labor

The Project Sponsor shall be responsible for all matters relating to use of local labor and shall recognize the rights of local labor including the right to form or belong to trade unions.

#### Site Utilities

The Project Sponsor shall, at its own expense, arrange for, develop and maintain utilities at the site to execute the Project, including but not limited to:

- Potable Water;
- Sanitary and Sewer Facilities;
- Telephone;
- Construction Power.

#### Inputs

The Project Company shall make its own arrangements for the procurement of all inputs required for completion and operation of the Project. This includes access to fuel supply.

#### Environmental and Statutory Requirements

Applicants are required to submit an initial environmental impact report indicating expected impacts on the physical, ecological and socioeconomic environments.

The selected Project Sponsor shall ensure that the Project satisfies all applicable environmental and statutory requirements and will be required to provide a full Environmental Impact Assessment Report prior to commencement of construction.

#### Project Milestone Schedule

The Project Company shall commence construction of the Project promptly on the date agreed with the OUR and shall complete construction in accordance with the specified deadline.

#### **3.3.6. Proposed Tariff**

The Applicant shall submit its proposed Tariff in accordance with Exhibit 9. Additional backup sheets and calculations may be submitted as necessary to explain the Applicant's Tariff.

Unless stated otherwise in the RFP, the Proposal shall be for the whole Project as proposed, based on the Tariff and Cost Data submitted by Applicant.

The Tariff and Cost Data shall be for the execution and completion of the Project as defined in the Proposal. All items to be entered in the Tariff and Cost Data shall be typed or written in ink.

For calculating the Fixed and Variable Charges the Applicant shall follow the instructions herein along with Exhibit 9.

The Applicant shall calculate its Tariff on the following parameters and data contained herein:

- Interest during construction should be included in accordance with the construction schedule.

- Energy sold to be based on plant capacity and expected availability. For Proposal tariff calculation purposes only, it should be assumed that the plant will be dispatched at available capacity at all times. It should be noted, however, that the plant will be subject to economic dispatch by JPS.
- All of the Project Company's fixed costs will be compensated through the Fixed Charge which will take into account plant availability and Dependable Capacity. To the extent that firm capacity is proposed and not available when required, appropriate liquidated damages will apply.
- The Variable Charge should be broken down into the following components:
  - Fuel Cost
  - Variable O&M Cost
- The components of the Tariff that may be indexed after commencement of operation are listed in Exhibit 9. The base for these will be the cost data to be provided by the Applicant in the Proposal and should be as of 30 days prior to the deadline for submission of Proposals. The Tariff should therefore be based on cost data as of 30 days prior to the bid submission deadline.
- All assumptions regarding the costs of variables which will impact the Tariff are to be clearly stated.
- Expected costs associated with accessing the Site should be included.
- The Applicant shall comply with the customs duties, import controls and tax requirements and include these in the cost estimates.
- The Tariff and all associated costs shall be quoted by Applicants in United States Dollars. However, all payments will be made in equivalent Jamaican Dollars.

### **3.3.7. Supporting Cost Data**

The Applicant is required to provide the Cost Data requested as per Exhibit 10 in support of its Tariff calculations.

### **3.3.8. Financial Data**

Applicant is required to provide the financial information as per Exhibit 11 in support of its Tariff calculations.

### **3.3.9. Breakdown of Construction Costs**

Applicant is required to submit a detailed breakdown of capital costs as per Exhibit 12.

### **3.3.10. Technical Specifications and Data**

Applicant shall submit its proposed technical design which would allow the facilities to meet the proposed Minimum Functional Specifications to be included in the PPA. The critical elements to be addressed in the proposed Minimum Functional Specifications include the following:

- Expected Net Plant Output Profile with details of expected variations on a daily, weekly, monthly and annual basis as appropriate;
- Design for proposed generating units, other proposed facilities and associated equipment;
- Compliance with relevant environmental and statutory requirements;
- Plant must be able to operate on the JPS network in parallel with other generating units;
- Plant must be able to startup and operate independently;
- Plant rated output must be 50 Hz, 3 Phase and 0.80 power factor but plant may be required to operate at power factors greater than 1.0 for short periods;
- High voltage is expected to be based on an acceptable entry point on the existing JPS Grid and required interconnection facilities must be included in the proposal;
- Vibrations, noise and emissions shall be at acceptable levels and comply with existing regulatory requirements;
- Fault levels and protection systems must be acceptable based on JPS Grid requirements;



- All utility requirements for interconnection with JPS Grid must be complied with, including those relating to supply of reactive power.

### **3.3.11. Additional Supporting Data**

The Proposal shall address the specific items requested in Exhibit 13, entitled "Additional Supporting Data".

### **3.3.12. Performance Specifications and Drawings**

Detailed specifications and necessary drawings must be provided as per Exhibit 14.

### **3.3.13. Construction Schedule**

The Proposal shall contain the Applicant's detailed schedule for the implementation of the project as per Exhibit 15.

### **3.3.14. Proposal Validity**

All Proposals shall remain valid for a period of one (1) year from the due date for submission of Proposals. Any Proposal offering less than the stipulated Proposal validity of one (1) year may be rejected.

Prior to expiry of the original Proposal validity period, the OUR may request one or more of the Applicants for a specified extension in the period of validity. The request and the responses thereto shall be made in writing. An Applicant may refuse the request without forfeiting its Proposal Security. An Applicant agreeing to the request will not be required nor permitted to modify its Proposal, but will be required to extend the validity of its Proposal accordingly. The provisions of Instructions to Applicants, regarding discharge and forfeiture of Proposal Security shall continue to apply during the extended period of Proposal validity.

### **3.3.15. Proposal Security**

Each Applicant shall furnish, as part of its Proposal, a Proposal Security in the amount of 1% of the expected total capital cost of the proposed project.

The Proposal Security shall, at Applicant's option, be in the form of a certified check, or an unconditional letter of credit from a reputable bank.

The letter of credit shall be in the form contained in Exhibit 1, Attachment 1, entitled "Form of Proposal Security" or another form acceptable to the OUR.

The Proposal Security shall be valid for one (1) year from the deadline for submission of Proposals.

Any Proposal not accompanied by a Proposal Security acceptable to the OUR may be rejected.

The Proposal Security shall be forfeited without any notice, demand, or other legal process:

- If an Applicant withdraws its Proposal during the period of Proposal validity; or
- If an Applicant's proposal contains any false statements or material misrepresentations; or
- In the case of a successful Applicant, if it fails within the specified time limits to:
  - Execute the Project Agreements, or
  - Furnish the required Performance Security.

The Proposal Security shall be returned to unsuccessful Applicants prior to the expiration of the Proposal validity or if they withdraw their Proposals before the deadline for submission of proposals. If any Applicant's Proposal is determined to be non-responsive to the RFP requirements, the Proposal Security will also be returned.

After the highest ranked Applicants have been selected and have extended the validity of their Proposals, if necessary, the Proposal Security of all other unsuccessful Applicants will be returned. The Proposal Security of the remaining unsuccessful Applicants will be returned upon the expiration date of their Proposals or the execution of the Project Agreements by the successful Applicant and furnishing of the Performance Security by that Applicant, whichever is earlier. The Proposal Security of the successful Applicant will be returned when that Applicant has executed the Project Agreements and has furnished the required performance security.

### **3.3.16. Variations in Proposal Conditions**

Each Applicant shall submit a Base Proposal which complies fully with the requirements of the RFP.

Applicants wishing to qualify their Proposals or otherwise deviate from the requirements of the RFP on items of a technical, financial or administrative nature shall present such qualifications or deviations in the form of an Alternative Proposal to the basic RFP requirements.

The attention of Applicants is drawn to the provisions regarding the rejection of Proposals which are not substantially responsive to the requirements of the RFP. The Alternative Proposal must meet the critical technical requirements identified in Instructions to Applicants, but it may otherwise include deviations from any of the other requirements of the RFP, except for the deadlines and the security provisions. The Applicants Alternative Proposal shall be accompanied by tariff, cost data and all other information required in the RFP, indicating the cost implications as required in the RFP.

The Applicant shall be deemed to have concurred with and accepted all information provided herein as being sufficient for completion of the Project and to ensure reliable and safe operation of the executed works.

### **3.3.17. Pre-Bid Meeting**

If the OUR determines that a Pre-Bid Meeting is necessary, it will notify the Applicants by a separate letter of the time, date and location.

The purpose of the Pre-Bid Meeting will be to answer any questions Applicants may have submitted concerning the RFP and the selection process. Applicants are therefore requested to submit any questions in writing to the OUR not later than four (4) weeks before the Bid Submission Date. Based on the questions submitted, the OUR will, in its sole discretion, determine if it will hold a Pre-Bid Meeting.

Any additional Project information or modifications of the RFP will be made available by the OUR exclusively through the issuance of an Addendum to the RFP.

Notice of the Pre-Bid Meeting will be issued directly to Applicants who have confirmed their intention to Bid in accordance with Appendix B and will also be published on the OUR's website.

Applicants are therefore **strongly encouraged** to submit their intention to bid and their questions to the OUR as soon as possible.

### **3.3.18. Signature of Proposal**

Applicant shall prepare one original and five (5) copies of the documents comprising the Proposal and any Alternative Proposal as described in Instructions to Applicants. One original of the completed Proposal is to be clearly marked "ORIGINAL OF PROPOSAL," and all other completed copies are to be clearly marked "COPY OF PROPOSAL." An Applicant submitting an Alternative Proposal must also clearly identify the proposals as "Base" and "Alternative." In the event of any discrepancy between the original and any copy, the original shall prevail.

If the Proposal consists of more than one volume, Applicant must clearly number the volumes constituting the Proposal and provide an indexed table of contents for each volume.

The Proposal shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to bind Applicant to the Proposal. Proof of authorization shall be furnished in the form of a written Power-of-Attorney which shall be attached to the Proposal Letter. All pages of the Proposal where entries or amendments have been made shall be initialed by the person or persons signing the Proposal.

The complete Proposal shall be without alterations except as necessary to accord with instructions issued by OUR or to correct errors made by Applicant. All such corrections shall be initialed by the person or persons signing the Proposal.

Applicants may form a joint venture for the purpose of submitting a Proposal and shall then also comply with the following requirements:

- One of the partners shall be nominated as the managing partner and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
- The managing partner shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture, and he shall be authorized to execute the Project Agreements on behalf of the Project Company;

- All partners of the joint venture shall be liable jointly and severally for the actions of the Project Company and the managing partner, and a relevant statement to this effect shall be included in the authorization mentioned under (2) above as well as in the Proposal Letter; and
- A copy of the agreement entered into by the joint venture partners shall be submitted with the Proposal.

No partner may participate in the submission of more than one Proposal except an Alternate Proposal.

### **3.4. SUBMISSION OF PROPOSAL**

#### **3.4.1. Sealing and Marking**

The Applicant shall submit one (1) Original and five (5) Copies of the Applicant's Proposal in sealed envelopes or boxes pursuant to the deadline specified below. The envelopes containing the Proposals must be addressed to the OUR as follows:

**Office of Utilities Regulation  
Third Floor, PCJ Resource Centre  
36 Trafalgar Road  
Kingston 10  
Jamaica, W.I.**

Below the above address the following must be written in bold letters:

**“PROPOSAL TO BUILD, OWN AND OPERATE UP TO 60 MW POWER GENERATION PROJECT IN JAMAICA”**

**“SEALED BID - DO NOT OPEN PRIOR TO 3:00 P.M. ON JULY 17, 2008”**

If the cover envelope or box is not sealed and marked as instructed, the OUR will assume no responsibility for the misplacement or premature opening of the Proposal submitted.

### **3.4.2. Deadline for Submission of Proposal**

Bids marked as specified above shall be deposited in the Tender Box provided at the address below by **3:00 p.m. on July 17, 2008**.

Office of Utilities Regulation  
Third Floor, PCJ Resource Centre  
36 Trafalgar Road  
Kingston 10  
Jamaica, W.I.

**Bids must be accompanied by a non-refundable processing fee of Two Thousand United States Dollars (US\$2,000.00) and the required Proposal Security.**

Electronic bidding will not be permitted and late bids will be rejected. A soft copy of the Proposal is to be provided.

Bidders are invited to witness the opening of the bids at the address above at 3:15 p.m. on July 17, 2008.

The OUR may, at its sole discretion, extend the deadline for submission of Proposals by issuing an Addendum in accordance with Instructions to Applicants, after which all rights and obligations of the OUR and Applicant shall be subject to the new deadline.

### **3.4.3. Treatment of Late Proposals**

It is the sole responsibility of the Applicant to ensure that the OUR receives its Proposal by the date and time specified above. Any Proposal received after the deadline will not be considered, the Applicant will be so notified and the Proposal will be returned unopened.

### **3.4.4. Modifications and Withdrawals**

Applicant may modify or withdraw its Proposal after submission, provided that the modification or notice of withdrawal is received in writing by the OUR prior to the prescribed deadline for submission of Proposals.

Applicant's modification or notice of withdrawal shall be prepared, sealed, marked and delivered in accordance with the provisions of Instructions to Applicants for the submission of Proposals, with envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.

Subject to Instructions to Applicants, no Proposal may be modified subsequent to the deadline for submission of Proposals.

Withdrawal of a Proposal during the interval between the deadline for submission of Proposals and the expiration of the period of Proposal validity specified by Applicant in the Proposal Letter will result in the forfeiture of the Proposal Security.

## **3.5. PROPOSAL OPENING AND EVALUATION**

### **3.5.1. Proposal Opening**

The OUR will open the Proposals in respect of submissions made pursuant to Instructions to Applicants, in open session at 3.15 p.m. on July 17, 2008. The Applicant's representatives who are present shall sign a register evidencing their attendance.

Proposals for which a notice of withdrawal has been submitted, pursuant to Instructions to Applicants, will not be opened. Otherwise, the OUR will examine Proposals to determine whether they are complete, whether the requisite Proposal Securities have been furnished, whether the documents have been properly signed, and whether the Proposals are generally in order.

At Proposal opening, the OUR will announce such details of the Proposals as the OUR may consider appropriate.

### **3.5.2. Confidentiality**

After opening of Proposals, information relating to the examination, clarification, evaluation and comparison of Proposals and recommendations concerning the award of the Project shall not be disclosed to Applicants or other persons not officially concerned with such process.

Any effort by an Applicant to influence the OUR or any of its officials in the process of examination, clarification, evaluation and comparison of Proposals, and in decisions concerning the award of the Project, may result in the rejection of the Applicant's Proposal and forfeiture of the Proposal Security.

The OUR will return neither the original nor the copies of any Proposal submitted by an Applicant, once it has been opened.

### **3.5.3. Clarification of Proposals**

During the examination, evaluation and comparison of Proposals, the OUR may, at its discretion, ask the Applicants for clarification of their Proposals. Request for clarifications and responses shall be in writing and no change in the Tariff or substance of the Proposal shall be sought, offered or permitted.



#### **3.5.4. Determination of Responsiveness**

Prior to the detailed evaluation of the Proposals, the OUR will determine whether each Proposal is substantially responsive to the requirements of the RFP based on a review and evaluation of information provided by Applicant.

For the purpose of this clause, a substantially responsive Proposal is one which conforms to all the terms, conditions and specifications of the RFP without material deviation or reservation. A material deviation or reservation is one which affects in a substantial way the scope, quality or performance of the Project, or which limits in a substantial way, inconsistent with the RFP documents, the OUR's rights or the Applicant's obligations and the rectification of which deviation or reservation would affect unfairly the competitive position of other Applicants presenting substantially responsive Proposals.

If a Proposal is not substantially responsive to the requirements of the RFP, it will be rejected.

#### **3.5.5. Correction of Errors**

Proposals determined to be substantially responsive will be checked for any arithmetic errors in computation and summation. Where there is a discrepancy between amounts in figures and in words, the amounts in words will govern.

The amount stated in the Proposal will be adjusted in accordance with the above procedure for the correction of errors. The Applicant will be informed in writing of any arithmetical adjustments made should the OUR wish to further consider that Proposal.

#### **3.5.6. Evaluation of Proposals**

The OUR will evaluate and rank only Proposals determined to be substantially responsive to the requirements of the RFP.

In evaluating the Tariff calculations, the OUR will make any corrections for errors. The Tariff calculations shall be based on the structure of financing defined in Exhibit 11, which allows the Applicant to prepare a Financing Structure with different levels of equity based on the proposed level of borrowing.

Each Proposal shall specify the Tariff in accordance with the requirements of this RFP.

### **3.5.7. Disposition of Proposals**

The OUR will inform each Applicant of the disposition of its proposal. Acting in its sole discretion, the OUR reserves the right to accept or reject any Applicant's Proposal and to reject all Proposals, without thereby incurring any liability to the affected Applicants or any obligation to inform the Applicants of the grounds for the action of the OUR. The OUR reserves the right not to award or enter into any contract or agreements with any Applicant, and may terminate the selection process at any time without thereby incurring any liability to any Applicant.

The selection process to be used by the OUR will involve the following stages:

- Stage 1: Evaluation of Applicants Ability to Implement Project
- Stage 2: Technical Evaluation of Project
- Stage 3: Economic Evaluation of Project

Only Proposals which pass Stage 1 will be considered for Stage 2 and only proposals which pass Stage 2 will be considered for Stage 3.

## ***3.6. STAGE 1 EVALUATION - APPLICANT'S ABILITY TO IMPLEMENT PROJECT***

### **3.6.1. Evaluation Criteria - Stage 1**

During Stage 1, a detailed evaluation of the Applicant's ability to implement the project will be carried out. Applicants will be evaluated based on:

- Track record
- Ability to raise financing
- Technical capability and qualifications
- Ability to implement project in a timely manner

The OUR wishes to attract Applicants which have a strong track record in the development of power generation projects.

If an Applicant has insufficient experience in any specific area, it may associate itself with other individuals or companies, whose experience may be demonstrated in the Proposal.

Applicants must satisfactorily demonstrate their capabilities in respect of the following:

### **3.6.2. Track Record**

Applicant must demonstrate experience in the development of power generation facilities with emphasis on the technology being considered. This includes demonstration of adequate knowledge of related construction, operation and maintenance practices.

### **3.6.3. Ability to Raise Financing for the Venture**

Applicant must demonstrate its ability to provide equity and raise loan capital such as would be required to finance the implementation of the proposed project. The Applicant must provide audited financial statements for the past three (3) years. If an Applicant associates with other individuals or companies, then the names, background information and financial statements for these individuals or companies must be provided.

### **3.6.4. Technical Capability and Qualification**

Applicant must provide evidence of having within its organization the technical capability to manage the anticipated needs for implementation of the proposed project, as well as the operating and maintenance of the various systems.

Curriculum Vitae of key personnel in the areas of project finance, engineering, plant construction, operations and maintenance, which the Applicant proposes to employ for technical support as well as those to be employed during the negotiation and implementation phases of the venture, shall be submitted.

### **3.6.5. Ability to Implement the Project in a Timely Manner**

Applicant should provide evidence of its ability to implement the project within the desired time frame. Applicant should provide any available evidence of

relevant engineering and design work as well as evidence of previous involvement in similar projects.

### **3.6.6. Stage 1 Evaluation Scores**

Each acceptable Applicant's Proposal will be evaluated in accordance with the following criteria (with allotted scores as shown):

#### **A. Experience [30%]**

- a. Scale of operations in power generation projects.
- b. Scope of activities in the development of power generation projects.
- c. Track record of successfully developing and operating power generation projects.
- d. Period of involvement in Scale (a) and Scope (b) above

#### **B. Ability to Finance Project [40%]**

- a. Audited financial statements and other supporting data and information for the last three (3) years will be analyzed to determine the financial condition, performance and capability of each Applicant and its associated entities.
- b. Capacity to borrow funds.
- c. Ability to provide equity:
  - i. From own sources
  - ii. From other sources

#### **C. Technical Capability and Qualifications of Key Persons Employed or to be Contracted by Applicant [10%]**

- a. Competence of key personnel (as evidenced by CVs)
  - b. Existing systems for management of engineering, construction and operations & maintenance of proposed facilities
  - c. Experience with existing technologies in power generation
- D. Ability to Implement the Project in a Timely Manner [10%]
- a. Evidence of existing and workable plans and designs for the proposed or similar facilities using the technology on which the proposal is based.
- E. Current Ownership of similar installations and/or related technologies and equipment [10%]

Each Applicant will be evaluated based on the above criteria and scores and must achieve a minimum of 60% of the total score for its Proposal to be selected for Stage 2 Evaluation. The OUR reserves the right to solely determine the acceptability of an Applicant and is not bound to take into account any subsequent representation or further information provided to the OUR regarding the status of any particular Applicant.

### ***3.7. STAGE 2 EVALUATION - TECHNICAL EVALUATION***

Proposals of Applicants who achieve or exceed the minimum required score at Stage 1 will be subject to a detailed technical evaluation at Stage 2.

#### **3.7.1. Evaluation Criteria - Stage 2**

Proposals will be evaluated based on the following:

- Availability of proposed fuel to be utilized [20]
- Proposed Technology to be Utilized [20]
- Availability and Suitability of Proposed Site [20]
- Design of Project Facilities [10]

- Proposed Arrangements for Construction of Project Facilities [10]
- Proposed Arrangements for Operation & Maintenance of Facilities [10]
- Compliance with Environmental and Statutory Requirements [10]

A minimum of 50% of the allotted maximum score must be obtained for each category and the overall score for Stage 2 must exceed 60.

### **3.7.2. Availability of Fuel to be Used**

- Extent to which Applicant demonstrates the availability of the proposed fuel.
- Extent to which the Applicant demonstrates its ability to access the fuel required including commitments for fuel supply from a suitable supplier.

### **3.7.3. Proposed Technology**

- Years of successful commercial use of proposed technology
- Applicable current developments which would enhance feasibility of technology

### **3.7.4. Availability and Suitability of Site**

- Suitability of Proposed Site
- Demonstrated ability to secure proposed Site

### **3.7.5. Design of Project Facilities**

- Suitability of proposed design
- Commercial experience of similar designs

### **3.7.6. Arrangements for Construction**

- Proposed arrangements for construction of facilities
- Experience of proposed supply/construction /installation Contractor(s)

### 3.7.7. Arrangements for Operation and Maintenance

- Proposed arrangements for operation and maintenance of facilities
- Experience of proposed O&M Contractor/personnel

## 3.8. STAGE 3 EVALUATION - ECONOMIC EVALUATION

Proposals which are deemed to be technically feasible and acceptable will be subject to a detailed economic evaluation at Stage 3.

### 3.8.1. Evaluation Criteria - Stage 3

Economic evaluation will be based on the expected plant output parameters and associated costs. The general objective will be to select a project or projects that will contribute to the overall power sector objective of providing a reliable supply of electricity at least cost to consumers.

The proposals will be evaluated based on:

- Expected dependable capacity and ability to dispatch the plant
- Expected plant availability
- Plant Operating Efficiency
- Proposed Tariff
  - Proposed Fixed Charge component of Tariff
  - Proposed Variable Charge component of Tariff
  - Expected Price Escalations and effects on the Tariff

Projects which result in the best expected value to consumers will be ranked highest. Expected value to consumers will be based on the OUR's determination of the expected impact of the project on the generation system Least Cost Expansion Plan and consumer tariffs. **Proposals which, when integrated into the generation least cost expansion plan, result in the lowest costs to consumers in the long term, will be ranked highest.**

This approach to the economic evaluation is necessary in order to take into consideration not just the proposed tariffs but also the expected plant performance and related performance guarantees in order to arrive at the best value to

consumers. Where expected plant performances are similar, the ranking methodology will effectively reduce the evaluation to a comparison based on the level of the proposed tariffs.

Further details on the areas to be evaluated are as follows:



### **3.8.2. Dependable Capacity**

- Maximum capacity
- Expected capacity variations based on plant availability
- Expected capacity constraints due to other factors
- Ability to dispatch plant

### **3.8.3. Plant Availability**

- Expected Scheduled Maintenance Requirements
- Expected Forced Outage Rates

### **3.8.4. Expected Operating Efficiency**

- Energy conversion efficiencies
- Expected O&M costs

### **3.8.5. Proposed Tariff**

- Base Fixed Charge – capacity charge and fixed O&M charge
- Base Variable Charge – fuel charge and variable O&M charge
- Indexation of Costs – indexation for exchange rate, inflation, resource cost movements, as appropriate.

## **3.9. *SELECTION CYCLE***

Applicants are advised that the following cycle of events has been established by the OUR for the selection of the successful Applicant(s) and implementation of the Project:

- (a) Receive Proposals;
- (b) Preliminary clarifications to address inconsistencies and correct arithmetic errors only;

- (c) Evaluation by OUR and identification of the highest ranked Applicants;
- (d) Clarification meetings with the highest ranked Applicants;
- (e) OUR issues Notification of Selection to successful Applicant(s) and informs all others of their ranking;
- (f) OUR invites highest ranked Applicant(s) to negotiate and finalize Project Agreements;
- (g) Formation of Project Company;
- (h) Project Company provides Performance Security;
- (i) Unsuccessful Applicants are informed of Selection and Proposal Security is returned.

Notwithstanding the above, the OUR reserves the right to accept or reject any Proposal, to waive minor informalities in Proposals received, and to annul the RFP process and reject all Proposals at any time prior to award of the Project without thereby incurring any liability to the affected Applicants or any obligation to inform the affected Applicants of the grounds for the OUR's action.

Any or all Applicant may be disqualified from the selection process and excluded from further consideration for, *inter-alia*, any one of the following reasons:

- Submission of a Proposal to the OUR after the required deadline.
- Failure to submit required supporting documentation within the required timeframe.
- Failure to submit a Proposal with all forms completed and information and data provided as required by the OUR.
- Material inconsistencies in the information submitted.
- Misrepresentations in the completed Proposal and supporting documentation.

### **3.9.1. Clarifications and Finalization**

Within sixty (60) days of the date fixed for submission of Proposals, the OUR will notify a successful Applicant that its Proposal has been accepted for clarification

and finalization. The successful Applicant will also be advised of the date, time and place for detailed clarification meetings between the OUR and such Applicant.

The OUR will request that the highest ranking Applicants to extend their Proposal validity in accordance with Instructions to Applicants. Lower ranked Applicants will remain on standby, ready to begin clarifications should the highest ranked Applicant not meet the RFP obligations, execute the Project Agreements and post the Performance Security.

At the first clarification meeting, the OUR will confirm the terms of the first ranked Applicant's Proposal and the overall scope of work for the Project. OUR may also seek clarification of any terms which are unclear, and additional clarification meetings may be held as necessary. The OUR may proceed to a lower ranked Applicant if:

- (a) it decides that the negotiations of the Project Agreements will not be completed within an acceptable time frame,
- (b) it discovers that the highest ranked Applicant has made a material misrepresentation,
- (c) the highest ranked Applicant deviates from the terms of its Proposal, or
- (d) the highest ranked Applicant fails to provide or maintain security as required.

At the conclusion of the clarification meeting(s), the OUR will invite the successful Applicant to finalize the Project Agreements. The Project Agreements should be executed within approximately sixty (60) days. If finalization and execution of the Project Agreements is not completed within this time period, the OUR may commence clarifications and finalization with the next highest ranked Applicant.

Upon execution and ratification of the Project Agreements and the furnishing by the first ranked Applicant of Performance Security in accordance with the provisions of Instructions to Applicants, the OUR will promptly inform the remaining Applicants that their Proposals have been unsuccessful and discharge or return their Proposal Securities.

### **3.9.2. Performance Security Requirements**

Within ten (10) days after the later of the dates on which the Licence and PPA are signed, the Project Company shall furnish a Performance Security Deposit in the amount of 10% of the expected total capital cost of the project. All costs of obtaining and maintaining the Performance Security Deposit shall be borne by the Project Company.

The Performance Security shall be valid until the Project Company posts a Construction Security Deposit. If the OUR determines that the successful Applicant has made any false representation, has failed to comply with the requirements of Instructions to Applicants, or has breached the provisions of any Project Agreement before the Construction Security Deposit is posted, the OUR shall be entitled to annul the award and to retain or draw upon the Performance Security Deposit and any interest accumulated thereon.

### **3.9.3. Applicant's Responsibilities**

Applicant is expected to examine carefully all instructions, conditions, forms and terms in the RFP and all Addenda and is also responsible for informing itself with respect to all conditions which might in any way affect the cost or the performance of the Project. Failure to do so, and failure to comply with the requirements of Proposal submission, will be at Applicant's own risk, and no relief will be given for errors or omissions by Applicant. Pursuant to Instructions to Applicants, Proposals which are not substantially responsive to the requirements of the RFP will be rejected.

## **4. SECURITY PACKAGE AND FINANCING STRUCTURE**

### **4.1. SECURITY PACKAGE**

#### **4.1.1. Granting of Licence**

The Project Company will require a Licence from the Government of Jamaica (GOJ), which will be based on the recommendation of the OUR. Pursuant to the Licence, the GOJ will grant the Project Company the right to design, build, own, operate the Complex and sell electrical energy to the national grid under powers of the Electric Lighting Act. The Format of the Licence is attached as Appendix D.

#### **4.1.2. Principles of Power Purchase Agreement**

The Project Company will enter into a Power Purchase Agreement (PPA) on or before financial closing. Pursuant to the PPA, the Project Company will build, own and operate the Complex and will sell power to the JPS Grid.

The key Features of the PPA are as follows:

- The initial term will be for up to twenty (20) years from the date of commissioning of the Complex and may be extended for an additional period.
- The Complex will be dispatchable, subject to approved scheduled outages.
- The capacity of the Complex will be tested at regular intervals and the Project Company will be paid a fixed amount per kW of tested capacity up to the maximum agreed capacity.
- Payment will include a Fixed Payment and a Variable Payment:
  - The Fixed Payment will be based on agreed fixed costs including cost of construction, fixed O&M costs and capital recovery costs (debt service and return on equity).
  - The Variable Payment will be based on the Net Energy Output and the agreed Variable Price, which will be based on agreed variable costs.

- Liquidated damages will be assessed against the Project Company for:
  - Delays in commissioning
  - Shortfalls in capacity
  - Failure to meet dispatch requirements
- The Project Company will be required to provide performance security deposits
- Either Party may terminate the PPA under certain specified conditions.
- Upon termination of the PPA, OUR will determine appropriate measures to be taken to protect the interest of electricity consumers.
- Certain tariff components may be indexed to reflect changes in costs faced by the Project Company that are due to factors outside its reasonable control.
- Appropriate changes will be made to reflect commitments made by the Applicant in its Proposal.

#### **4.1.3. Fuel Supply**

The Project Company shall enter into an agreement with an appropriate party for supply of fuel to be used by the Complex. The Project Company will not be obligated to procure fuel from any particular supplier.

#### **4.1.4. Required Insurance Coverage**

Unless otherwise expressly provided in the Project Agreements, the Project Company shall, at its sole expense, take out and maintain, in effect, at all times during the terms of the Project Agreements the required insurance coverage such as:

- All Risks Marine Cargo Insurance,
- All Risks Property Damage/Operational Insurance,
- Workmen's Compensation Insurance,
- Comprehensive Third Party Liability Insurance,

- Comprehensive Automobile Liability Insurance,
- Excess Umbrella Liability Insurance.

#### **4.1.5. Government Approvals**

The Project Company shall be solely responsible for securing all requisite approvals and permits such as environmental and developmental approvals from the relevant Government and statutory organizations.

#### **4.1.6. Principles of Engineering Procurement & Construction Agreement**

The Project Company may enter into an Engineering, Procurement & Construction (EPC) Agreement with a reputable construction contractor to complete the design and construction of the Project at a fixed price, in accordance with the Project Milestone Schedule and to the specifications agreed in the PPA.

The following are some of the terms and conditions that shall be included in the Construction Contract:

- The Contractor shall abide by all applicable laws in Jamaica.
- The Contract shall reflect the applicable provisions from the Project Agreements for which the Company is responsible.
- The Contract shall contain Plant performance guarantees by the Contractor.
- If construction is completed but the Plant fails to meet performance guarantees, the Contractor will be required to pay damages in an amount sufficient to cover at a minimum the liquidated damages that will be assessed under the PPA.
- The Contractor shall undertake to complete the Project in accordance with an agreed schedule consistent with the Project Milestone Schedule. In the event of failure to complete construction by the scheduled date, the Contractor shall be required to pay damages in an amount at a minimum sufficient to cover the liquidated damages that will be assessed under the PPA.
- The performance of the Contractor shall be assured by a Performance Bond. The amount of the Performance Bond should not be less than 10% of the

total contract price. The Performance Bond shall cover the warranty period for the facilities.

- If the Contractor were to abandon construction or to fail to pursue construction with due diligence, the Project Company shall have the right to replace the Contractor and require the Contractor to pay any additional costs resulting from its default.
- The Contractor shall provide an unlimited completion guarantee for the Project facilities which is assignable without the Contractor's consent.

#### **4.1.7. Arrangement for Use Site**

The Project Company shall be solely responsible for all matters relating to the Project Site including access and costs.

#### **4.1.8. Principles of Operation and Maintenance Agreement**

The Project Company may enter into an Operations and Maintenance Agreement ("O&M Agreement") with a reputable Operations and Maintenance Contractor ("O&M Contractor"), if the Company intends to perform via a contractor.

The following are some of the terms and conditions that would be required in the O&M Agreement:

- The O&M Agreement shall reflect the applicable obligations of the Company under the Licence and PPA.
- The O&M Agreement shall specify various price components directly tied to the Tariff under the PPA and provide the explanation and adequate information for future adjustments.
- The O&M Agreement shall be specific in regards to the spare parts and consumables included in the base price.
- The O&M Agreement shall address any improvements or additions to be made to the plant in the future.
- The O&M Agreement shall provide for plant operations during emergency conditions.



- The O&M Contractor shall undertake to operate and maintain the Project consistent with the standards set forth in the PPA. In the event of failure to do so, the O&M Contractor will be required to pay damages in an amount at a minimum sufficient to cover the liquidated damages that will be assessed under the PPA.
- The performance of the O&M Contractor shall be assured by a Performance Bond.

## **4.2. FINANCING STRUCTURE**

The Project Company will be responsible for mobilizing the financing for the Project. Agreements required to secure financing for the Project will be entered into between the Project Company and the institutions providing the financing for the Project and shall be based on the financial plan presented by the Applicant in its Proposal. Any subsequent changes to the financial plan after finalization of the Project Agreements will require the approval of the OUR.

The financial plan provided by the Project Company will describe the sources of funds and the terms of financing for both debt and equity as applicable. The terms of the proposed financing shall be outlined in the proposal. The Project Sponsor shall also provide details on the different financing sources. The funds shall be in amounts sufficient to cover the all applicable costs.

Financing will be in the form of equity and debt. Repayment and returns on equity will not be guaranteed. At least 20% of the financing for the Project shall be in the form of equity.

**5. APPENDIX A: APPLICANTS PROPOSAL AND SUPPORTING DATA**

**APPLICANT'S PROPOSAL**

SUBMITTED BY: .....

ADDRESS: .....  
.....  
.....

TELEPHONE :.....

FACSIMILE: .....

E-MAIL: .....

## 5.1. EXHIBIT 1: PROPOSAL LETTER

Date:

Office of Utilities Regulation  
3<sup>rd</sup> Floor, PCJ Resource Centre  
36 Trafalgar Road  
Kingston 10  
Jamaica, W. I.

Attn: Mr. Richard Brown

**Re: Development of up to 60 of Generating Capacity**

Dear Sir:

Having examined the RFP for the execution of the above named Project; we, the undersigned, offer to design, finance, procure, construct, operate and maintain the Power Generation Project specified in this proposal and supply electric power to the JPS Grid in conformity with the RFP and all Addenda thereto.

We agree to abide by this Proposal for the period of one (1) year from the deadline for submittal of Proposals as prescribed in the RFP and this proposal shall remain binding upon us and may be accepted by the OUR at any time before the expiration of that period. Until this Proposal expires or an agreement is executed which supersedes this Proposal, this Proposal shall constitute a binding offer.

We have provided and attached hereto a Proposal Security in an amount equal to 1% of the estimated project cost (US\$.....). We also enclose the non-refundable processing fee of Two Thousand United States Dollars (US\$2,000.00).

We certify that (i) the information submitted as part of this Proposal to the OUR is complete and accurate, (ii) the Proposal has been submitted in the legal name of the entity which would be bound by any resulting agreements and (iii) the offer submitted is firm and will remain open for a period of one (1) year from the deadline for submittal of Proposal.

We understand that you are not bound to accept any Proposal you may receive.  
Yours sincerely,

Authorized Signature [*In full and initials*]: .....

Name and Title of Signatory: .....

Name of Firm: .....

Address:

Attachments - Proposal Security  
- Power of Attorney

Signature  
*(Applicant shall submit a Power of Attorney for its Duly Authorized Representatives)*

**5.2. EXHIBIT 2: AFFIDAVIT**

**Affidavit**

The undersigned, ....., of legal age, and residing  
(Name of Applicant)

at ..... after having been  
(Address)

duly sworn, deposes and states:

1. That he is the ..... of the  
(Official Capacity)  
....., corporation/association/individual,  
(Name of Firm)  
duly organized under the laws of .....  
(Name of Country)
2. That personally, and as ..... for and  
(Official Capacity)

on behalf of the corporation/association/individual, hereby certifies that:

- a. All statements made in this Applicant's Proposal and in the required attachments are true and correct,
- b. This Proposal is made for the express purpose of developing the proposed power generation project,
- c. The Applicant will make available to the Office of Utilities Regulation (OUR) or any authorized agency of the OUR any information they may find necessary to verify any item in this Proposal or regarding the competence and general reputation of the Applicant,

d. That the undersigned is duly authorized by the corporation/association/individual to make these representations and to sign this Proposal.

.....  
(Secretary/General Partner/ Individual Contractor/Applicant)

WITNESS:

1. .... 2. ....

SUBSCRIBED AND SWORN TO before me this ..... day of ..... 200.....

at .....

**Notary Public:** .....

**5.3. EXHIBIT 3: APPLICANT'S ORGANISATION**

Date: .....

1. Firm's Name and Country Incorporated: .....

2. Firm's Address: .....

Telephone No: ..... Fax No: .....

3. Address of Registered Office: .....

4. Local Contact and Address (if any): .....

.....

5. Year Organized: .....

6. Type of Association: .....

7. Name and Address of local associated firms:

.....

.....

8. Corporate Record:

Names, Nationality, Experience and Associated Firms:

NAME OF CORPORATION/ ASSOCIATION *	NATIONALITY	OFFICE ADDRESS	YEARS OF EXPERIENCE **	TYPE & SCALE OF OPERATIONS

\* If applicable, this item should include experience record of each member in the organization to implement the project.

\*\* If applicable, this may refer to the main activity or business of each member of the organization, i.e. construction, design, project management, operations and finance.

**Note:** Submit one form for each associate, affiliated firm or joint venture partner.



**5.4. EXHIBIT 4: INFORMATION TO BE FURNISHED BY CORPORATIONS \*\***

List below all stockholders and other persons owning 5% or more of stock or other interest.

	NAME	TYPES OF INTEREST OR NUMBER OF SHARES OWNED	VALUE	EXTENT OF CONTROL (%)*
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

\* Equity holdings

\*\* For each corporation

Disclosure

The Applicant is required to make full and frank disclosure of any liabilities, lawsuits, debts etc. that could reasonably be expected to adversely affect the Applicant's ability to arrange the necessary financing for the successful implementation of the proposed project.

**OFFICIALS OF THE CORPORATION**

**MEMBERS OF THE BOARD OF DIRECTORS**

	<b>NAME</b>	<b>DESIGNATION</b>
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....

State below the name of the individual who is actively managing the affairs of the Corporation.

NAME: .....

ADDRESS: .....

DESIGNATION: .....

Herewith attached is a certified copy of Resolution authorizing corporation's representative to file the Proposal and sign subsequent agreements.

**5.5. EXHIBIT 5: INFORMATION TO BE FURNISHED BY UNINCORPORATED ASSOCIATIONS \***

Date of Registration: .....

Securities and Exchange Commission Registration No: .....

State whether the Unincorporated Association is:

- General Partnership .....
- Limited Partnership .....
- Other .....

	NAME OF MEMBER OF UNINCORPORATED ASSOCIATION	ADDRESS	AGE	OCCUPATION	VALUE OF CONTRIBUTION
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
				<b>TOTAL</b>	

State below the name of the individual who is actively managing the affairs of the Corporation.

NAME: .....

ADDRESS: .....

.....

DESIGNATION: .....

Herewith attached is a certified copy of Appointment of business manager and his Authority.

\* For each associated firm or partner.

## **5.6. EXHIBIT 6: DETAILED INFORMATION ABOUT APPLICANT\***

### **1. ORGANISATION DOCUMENTATION, CLEARANCES AND EXPERIENCES**

We/I hereby submit for your examination and consideration certified true/photocopies of the following:

**ANNEX A -** Articles of Incorporation and by-laws, or other organizational documents, in English.

**ANNEX B -** Certificate of registration with the relevant Securities and Exchange Commission or equivalent (if applicable).

**ANNEX C -** Curriculum Vitae of key personnel who will be responsible for developing, managing and operating the project.

### **2. TECHNICAL CAPABILITY AND MANAGEMENT ABILITY**

**ANNEX D -** For technical capability, literature/brochures describing Applicant's facilities and accomplishments and information on technical personnel resources.

**ANNEX E -** For experience, the Applicant shall list similar projects pursued or established within the last ten (10) years.

For each venture listed, the Applicant shall furnish the following detailed information:

- (a) Nature and location of venture
- (b) Financing and equity structure for the venture
- (c) Technical data/information on major developments implemented
- (d) Description of role performed by the Applicant in the venture
- (e) Names of any engineering consultants
- (f) Names of any legal or financial advisors

### **3. FINANCIAL CAPABILITY**

We hereby submit as "ANNEX F" our audited "Financial Statements" for the last three (3) years.

#### **4. ADDITIONAL INFORMATION**

We hereby submit additional information generally describing related projects and operations that we are currently implementing.

\*For each firm or partner

### ***5.7. EXHIBIT 7: PROJECT DESCRIPTION AND DATA***

Applicant shall provide details regarding the project under specific headings including the following:

#### **5.7.1. Plant Performance Guarantees**

- Net output to the JPS Grid after transformer losses
- Plant Availability
- Conversion efficiencies
- Environmental impact

#### **5.7.2. Description of Facilities**

- Description and explanation of technology to be used
- General plant specifications
- Major systems and equipment description

#### **5.7.3. Location and Access to Site**

- Location of site
- Description of access route to site
- Evidence of ability to secure use of site

#### **5.7.4. Site Investigations**

- Evidence that the necessary investigations have been done to demonstrate suitability of site including site sub-surface investigations and fuel availability.

### **5.7.5. Site Ambient Conditions**

- Expected site ambient conditions and impact on plant output

### **5.7.6. Technical Feasibility Study**

Applicant shall include a Project Feasibility Report with their bid which includes the following:

- Technology to be used;
- Expected plant output capacity;
- Output voltage and transformer specifications;
- Site civil works;
- Mechanical / Electrical equipment;
- SCADA interface facilities;
- Telecommunication and control systems;
- Site location and access;
- Results of any site subsurface investigations confirming suitability;
- Expected site conditions / meteorological data to support project feasibility;

## ***5.8. EXHIBIT 8: SPECIAL REQUIREMENTS***

### **5.8.1. Project Logistics**

- Details of proposed arrangements for supply and installation of facilities.
- Evidence that local conditions have been duly considered and that there are no impediments to successful delivery and installation of the facilities.

### **5.8.2. Use of Local Labour**

- Plan for use of local labor
- Evidence that local considerations have been adequately considered

### **5.8.3. Site Utilities**

- Evidence that adequate arrangements have been made to secure the necessary site utilities including:

- Potable Water;
- Sanitary and Sewer Facilities;
- Telephone;
- Construction Power.

#### **5.8.4. Accessing of Inputs**

- Evidence that adequate arrangements have been made to ensure the necessary inputs, including fuel, will be available.
- Evidence to indicate adequacy of the expected inputs.

#### **5.8.5. Regulatory and Statutory Compliance**

- Environmental impact report explaining expected impacts of project on the physical, ecological and socioeconomic environments.
- Evidence that the standards of all relevant regulatory and statutory agencies will be met.

#### **5.8.6. Proposed Project Implementation Schedule**

- Applicant shall provide a detailed schedule which supports and confirms completion of the project within the Proposal timeframe.
- Applicant's schedule shall be submitted in Microsoft Project format and shall include all milestones for financing, engineering, procurement, shipping, construction, startup, testing, etc. as necessary for successful completion and operation of the project.



## 5.9. EXHIBIT 9: PROPOSED TARIFF

Applicant shall submit its proposed Tariff along with supporting calculations, including a financial model. The Tariff shall be quoted in US Dollars only, but payments will be in Jamaican Dollars.

The Tariff shall be presented by filling in the blank spaces in the following Table 5.1.

The Base Date for indexation of all prices shall be 30 days prior to the Deadline for Bid Submission.

**Table 5-1: Proposed Tariff**

<b>Tariff Component</b>	<b>Unit</b>	<b>Base Price</b>	<b>Basis for Adjustment</b>	<b>Frequency of Adjustment</b>
Capacity Price	US\$/kW/Month		- US\$/J\$ Exchange Rate	Monthly
Fixed O&M Price	US\$/kW/Month		- US CPI - US\$/J\$ Exchange Rate	Annually
Variable O&M Price	US\$/kWh		- US CPI - US\$/J\$ Exchange Rate	Annually
Fuel Price	US\$/kWh		To be based on fuel type	Monthly

### 5.10. EXHIBIT 10: COST DATA IN SUPPORT OF TARIFF

Applicant shall submit details of its cost data in support of the Tariff. Costs shall be quoted in US Dollars.

**Table 5-2: Proposed Capital Costs**

CAPITAL COST ITEM	DESCRIPTION	PROPOSED COST (US \$)
Development Costs	Project development costs incurred prior to start of construction, including financial closing costs.	
Construction Costs	All costs related to supply and installation of the facilities for delivering power to the JPS Grid including all applicable foreign and local taxes. See breakdown in Exhibit 12.	
Project Company Costs During Construction	Management and Insurance Costs Capitalized interest during construction Other costs including fees, etc.	
Working Capital	Working capital for initial operation and management.	
Capitalized O&M costs	Costs associated with operation and maintenance activities prior to commissioning.	
Other capitalized costs (if any)	Please give description	
<b>TOTAL FUNDS REQUIRED FOR PROJECT</b>		

**Table 5-3: Proposed Annual Operating Costs**

<b>COST ITEM</b>	<b>DESCRIPTION</b>	<b>PROPOSED ANNUAL COST (US \$)</b>
Plant fixed operating and maintenance costs	Plant operating and maintenance costs which do not vary with plant output including equipment and personnel costs, etc.	
Insurance costs	Cost of insurance during the operating period	
Fuel costs	Any direct costs related to accessing and/or obtaining the fuel to be used.	
Plant variable operating and maintenance costs	Plant operating and maintenance costs which vary with plant output.	
Other operating costs	Please state, if any.	

### 5.11. EXHIBIT 11: FINANCIAL DATA IN SUPPORT OF TARIFF

The Tariff shall be based on a financing plan for the project and supporting financial data relating debt and equity. The Applicant shall submit details of the financing including the following:

**Table 5-4: Project Financing**

<b>Financing Type</b>	<b>Source</b>	<b>Amount in USD</b>	<b>% of Total</b>
EQUITY FINANCING	Project Sponsor		
	Contractor/Supplier		
	Other Sources (Applicant shall list)		
	TOTAL EQUITY		
DEBT FINANCING	Export Credits		
	Commercial Sources		
	Multilateral Sources		
	Other Sources		
	TOTAL DEBT		
TOTAL FINANCING			

In support of the financing plan, Applicant is required to submit financial data, including the following:

- Interest rates
- Grace periods
- Fees
- Conditionalities

Applicant shall submit commitment letters from the sources of financing. Supporting letters from the financing sources shall be accompanied by supporting documentation to verify that the sources are capable of meeting the commitments.

The amount of total financing shall be the total financing required for the Project, inclusive of contingency funds.

Applicant shall submit a financial model for the project which demonstrates its financial feasibility and sustainability.

### **5.12. EXHIBIT 12: BREAKDOWN OF CONSTRUCTION COST**

Applicant shall submit a detailed breakdown of the construction cost by major components of the project.

### **5.13. EXHIBIT 13: ADDITIONAL SUPPORTING DATA**

Applicant shall provide the following Project information:

- Applicant's organization chart and key personnel for the management of the Project Company during pre-construction, construction and the operation stages of the Project, including resumes of key personnel showing past experience in performing their designated management position.
- Applicant's proposed organization during the operation stage of the Project to include manpower requirements for operations and maintenance.
- Listing of proposed subcontracts for the major elements of the Project to include subcontractors' name, address, scope of supply or services and amount of subcontract.
- Applicant's proposed training program for Jamaican Nationals
- Applicant's proposed Project insurance plan to meet the insurance coverages required under the Project Agreements.

The Applicant shall provide equipment experience including past performance data for three (3) continuous years of reliable commercial operation to include:

- Name, address, telephone and facsimile number of owner.
- Description and location of Project.
- Operating history.

#### **5.14. EXHIBIT 14: PERFORMANCE SPECIFICATIONS AND DRAWINGS**

Applicant shall provide the specifications for the facilities, including detailed specifications for the major systems and equipment including:

- Manufacturer
- Model
- Codes/ standards
- Ratings

Applicant shall also provide available designs and drawings relating to the facilities.

### ***5.15. EXHIBIT 15: PROPOSED PROJECT SCHEDULE***

Applicant shall provide a detailed project implementation schedule in Microsoft Project format.

## 6. APPENDIX B: NOTICE OF RECEIPT OF REQUEST FOR PROPOSAL

The undersigned received (or accessed) the "Request for Proposal for Supply of up to 60 MW of Generating Capacity on a Build, Own and Operate (BOO) Basis" on ..... [INSERT DATE]

We have reviewed the package and we do [ ] do not [ ] (please check one), intend to submit a Proposal.

Further, we understand that our duly completed Proposal Document will be due on **July 17, 2008**.

At the present time, we anticipate our Proposal Document will be based upon the following corporate or joint venture arrangements:

Lead Firm : .....

Address : .....

Contact Details : .....

.....

Other Firm/Partner\* : .....

Address : .....

Contact Details : .....

Applicant's Representative : .....  
(Name & Designation)

.....  
(Signature)

Date : .....

\* Details should be provided for each Other Firm/Partner.



## **7. APPENDIX C: SOURCES FOR ADDITIONAL INFORMATION**

Applicants are required to perform their own due diligence in relation to the project. The OUR does not guarantee the accuracy of information provided by any of the various sources.

Applicants are advised to consult with the relevant agencies as deemed appropriate by them. These may include:

- 1) The Ministry with responsibility for Energy
- 2) The Petroleum Corporation of Jamaica
- 3) Jamaica Public Service Company Limited
- 4) Petrojam

Applicants may also refer to relevant documents on the electricity sector that are posted on the OUR's website.

## 8. APPENDIX D: FORM OF LICENSE

### THE ELECTRIC LIGHTING ACT Supply of Electricity Licence, 2007

#### 1. SHORT TITLE

This Licence may be cited as “[Licensee] Supply of Electricity Licence, 2008”.

#### 2. INTERPRETATION

2.1 In this Licence –

“**ELA**” means Electric Lighting Act

“**Government**” means the Government of Jamaica

“**Licensed Business**” means the Generation and Supply of Electricity as carried out under this Licence and any other licence required by Jamaican Law

“**XXX**” means [Licensee]

“**OUR Act**” means Office of Utilities Regulation Act, 1995 as amended

“**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

“**The Appeals Tribunal**” means any tribunal established by “*the Minister*” or pursuant to any applicable legislation

“**The Licensee**” means [Licensee],.....xxxxxxxxxxxx

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

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

2.2 This Licence shall be read and construed, subject in all respects to the provisions of the Electric Lighting Act (“ELA”), The Office of Utilities Regulation Act, (“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

“*The Minister*”, pursuant to the powers conferred under Section 3 of the Electric Lighting Act as well Section 4A of the OUR Act, as amended, hereby grants the Licensee a Licence authorizing said “*Licensee*” to develop, operate and maintain a wind turbine generator unit and related facilities in order to generate, sell and supply bulk electricity therefrom (“the Undertaking”) to the public electricity supply system subject however, to the provisions of the relevant statute.

### 4. DURATION

Subject to the provisions herein contained the term of this Licence (“the initial Licence”) shall be ..... **(X) years** from the date hereof (hereinafter called “the date of the Licence”). “*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*”.

### 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 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 such Regulatory Fee shall become due and payable upon issuance of this Licence and each subsequent Fee shall become due and payable upon the anniversary date of the issuance of this Licence. This fee shall be paid out of the revenues as may be derived from the sale of energy to the Power Purchaser under the terms of the agreement and shall be calculated as follows:

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

Where BUSP = The portion of net 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.

$$1\text{PPR} = 0.0001$$

## 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.

## 10. Appeals

### 10A. Appeals Tribunal

10A.1 Subject to the provisions of any subsequent legislation, “*the Minister*” may as required empanel as Appeals Tribunal (*hereinafter called “the Tribunal”*) to hear appeals by aggrieved parties and such a 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*”;
- (b) one member shall be appointed on the recommendation of the Consumer Affairs Commission; 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.

### 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.

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 and/or the Interconnection 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 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. For the purpose of this Licence, Force Majeure 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 (iv), 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) licences (other than this Licence), concessions or permits or other *Governmental Requirements* that are necessary for the Licensee to conduct its business on terms and conditions at least as favourable as those contained in the original licence (and not this Licence), concession or permit after the submission of an application that fulfils all the applicable requirements of the relevant *Government Requirements* and the exercise of due diligence to obtain such licence (other than this Licence), concession or permit;
- 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 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 sub-paragraph (1) resulted from –

(i) circumstances beyond the reasonable control of “*the Licensee*”, such as an event of Force Majeure;

(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 sub-paragraph (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 his Licence and this 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*” and Facilities for 50% of a “purchase price” which shall be an amount equal to 50% of the fair market value as defined and formulated in accordance with 13.5 (i) and (ii) below. If “*the Minister*” elects to exercise his right to acquire all such rights, title and interest, payments in accordance with this paragraph shall be made to “*the Licensee*” not later than one (1) year after the notice to exercise such right.

- (i) The “purchase price” referred to at 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*” 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.

- (ii) The applicable interest rate to be used in the calculation of a “purchase price” shall be the Bank of Jamaica one-year Treasury Bill rates for the relevant financial period.

- 13.6 “*The Minister*” shall only indemnify and hold “*the Licensee*” harmless from any loss or damage to the system and/or generation facility and for any injury to persons incurred as a direct result of “*the Minister’s*” or designee’s gross negligence or willful 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.
- 13.7 “*The Minister*” may designate any other qualified person as his designee for the purpose of exercising any of the powers conferred in this paragraph.
- 13.8 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.
- 13.9 A licensee who exercises step-in rights in terms of paragraph 13.7 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 30 days notice in writing (the “Notice of Revocation”) to “*the Licensee*”:

- (a) if upon charges being proffered with proper particulars, it shall have been determined that “*the Licensee*” has, without just cause or excuse, failed to comply with any term of this Licence or to carry out in good faith and with reasonable diligence the activities referred to in this License, 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;
- (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 30-day notification period be given an opportunity to be heard, including making written submissions to “*the Office*” as to why this Licence should not be revoked.

## **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. NOTICES**

18.1 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 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.

18.2 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..... day of..... 200

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M.P.

Minister of Energy, Mining and Telecommunications

