

**POWER PURCHASE AGREEMENT**

**BY AND BETWEEN**

**JAMAICA PUBLIC SERVICE COMPANY LIMITED**

**- and -**

**[LICENSEE]**

**relating to**

**the power generation at [LOCATION OF COMPANY]**

**DATED AS OF [DATE OF AGREEMENT]**

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This POWER PURCHASE AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2011 in Kingston, Jamaica,

B E T W E E N:

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

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

W H E R E A S:

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

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

1. INTERPRETATION

In this Agreement:

1.1 Interpretation

- 1.1.1 expressions defined in Schedule 1 shall bear the respective meanings set out therein;
- 1.1.2 the headings and paragraph numbering contained in this Agreement are for convenience only, do not constitute part of this Agreement and shall be ignored in construing this Agreement;

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

whether or not a consent, agreement or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Clause 16;

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

## 2. SALE AND PURCHASE OF ENERGY AND CAPACITY

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

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

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

Subject to, and in accordance with the terms of this Agreement and the applicable standard terms and conditions of contract governing the supply of electricity to JPS' customers, JPS shall make available and sell to the Company, and the Company may purchase from JPS, capacity and energy, on the same basis as JPS' then prevailing tariff for electricity sold to industrial customers.



### 3. TERM

#### 3.1 Initial Term

The initial term of this Agreement shall commence on the Agreement Date and shall end (unless it is earlier terminated pursuant to the provisions of this Agreement) on the twentieth (20<sup>th</sup>) anniversary date of the Commercial Operations Date. The termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such termination.

#### 3.2 Renewal Term

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

- (a) the Party seeking the extension shall give written notice to the other Party not less than five (5) nor more than six (6) years prior to the end of the initial term (as may be extended pursuant to Clause 3.1);
- (b) the Party receiving such notice shall notify the Party giving notice within ninety (90) Days after receipt of the notice described in subclause (a) above whether or not it wishes to discuss an extension of this Agreement;
- (c) the Parties shall use all reasonable efforts to agree to an extension of this Agreement within twelve (12) Months after receipt of the notice described in subclause (b) above; and
- (d) the Parties shall thereafter have no obligation with respect to each other relating to an extension of this Agreement.

### 4. PRE-OPERATION PERIOD FOR FACILITY

#### 4.1 Permits and Licenses

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

## 4.2 Submissions by the Company

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

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

- 4.2.5 As soon as available, but prior to the commencement of the relevant contract, copies of any contracts executed with Direct Contractors (but excluding the commercial terms of such contracts);
- 4.2.6 As soon as available but no later than one hundred eighty (180) Days prior to the Scheduled Commercial Operations Date, copies of all permits, licenses, approvals and other governmental authorizations that have been issued to the Company for the design, financing, construction, ownership, operation and maintenance of the Facility; provided that where the Company has failed to receive any permit, licence, approval or other governmental authorization for the design, financing, construction, ownership, operation and/or maintenance of the Facility, the Company shall as soon as such failure has arisen but no later than one hundred eighty (180) Days prior to the Scheduled Commercial Operations Date, notify JPS of its failure to receive any such permit, licence, approval or other governmental authorization;
- 4.2.7 Beginning thirty (30) Days after the Agreement Date and ending on the Commercial Operations Date, monthly progress reports substantially in the form set forth in Schedule 8;
- 4.2.8 As soon as available but not later than ninety (90) Days after the Agreement Date, general arrangement drawings for the construction of the Facility;
- 4.2.9 Not later than ninety (90) Days prior to the scheduled commencement of testing and Commissioning of the Facility, a start-up and test schedule for such Commissioning, including, without limitation, appropriate milestone dates for such start-up and testing;
- 4.2.10 As soon as available draft copies of all Fuel Supply Agreements, Fuel Transportation Agreements, and other commitments required to implement the Fuel Supply Plan for the Facility and as soon as available but not later than ninety (90) Days prior to the scheduled commencement of testing and Commissioning of the Facility executed copies of these agreements;
- 4.2.11 Not later than one hundred and twenty (120) Days prior to the Scheduled Commercial Operations Date, a copy of draft written operating procedures to serve as the basis for the written Operating Procedures to be jointly developed pursuant to Clause 4.3;
- 4.2.12 Not later than one hundred and twenty (120) Days prior to the Scheduled Commercial Operations Date, a proposed Interconnection Tripping Schedule to serve as the basis for the Interconnection Tripping Schedule to be jointly developed pursuant to Clause 4.3;

- 4.2.13 Not later than ten (10) Days after the date of purchase of the relevant insurance policy, copies of all certificates of insurance required to be obtained as of the Agreement Date pursuant to Clause 11, together with prompt submission of all amendments executed subsequent to the Agreement Date;
- 4.2.14 As soon as available but not later than thirty (30) Days prior to the Commercial Operations Date, final design drawings for the construction of the Facility;
- 4.2.15 As soon as available but not later than thirty (30) Days prior to the Commercial Operations Date, certificate(s) signed by one or more licensed professional design engineers of the Construction Contractor stating that the Facility is designed (a) in accordance with the Agreement Criteria, (b) in accordance with Prudent Utility Practice, and (c) to have a useful life of at least twenty (20) Years;
- 4.2.16 As soon as available but not later than ten (10) Days prior to the Commercial Operations Date a certificate signed by one or more licensed professional engineers of the Construction Contractor stating that the Facility has been constructed in accordance with the Agreement Criteria, the Construction Contract, the final design drawings, and Prudent Utility Practice. As soon as available but not later than forty-five (45) Days after the Commercial Operations Date a certificate signed by one or more licensed professional engineers of the Construction Contractor stating that the Facility is designed and constructed to have a useful life of at least twenty (20) Years;
- 4.2.17 As soon as available but not later than forty-five (45) Days after the Commercial Operations Date, a certificate signed by the Company's licensed professional engineer stating that he has supervised the design and construction of the Facility in accordance with Prudent Utility Practice and that such design and construction has been completed consistent with the terms of this Agreement (including the Minimum Functional Specifications), the Fuel Supply Agreements, the Construction Contract, and Prudent Utility Practice, and that the Facility is designed and constructed to have a useful life of at least twenty (20) Years;
- 4.2.18 As soon as available but not later than ten (10) Days prior to the Commercial Operations Date, copies of all test results for tests performed on the Facility; and
- 4.2.19 As soon as available but not later than sixty (60) Days after the Commercial Operations Date, as-built drawings and complete specifications for the Facility.

### 4.3 Operating Procedures

- 4.3.1 The Company and JPS shall jointly develop and agree on written operating procedures for the Facility no later than sixty (60) Days prior to the Scheduled Commercial Operations Date (the “Operating Procedures”). Such Operating Procedures shall: (i) be based on, but not limited to, the designs of the Facility, the Interconnection Facilities and the JPS Grid System and on the draft procedures provided by the Company pursuant to Clause 4.2.11; (ii) be consistent with the Minimum Functional Specifications; and (iii) deal with all operational interfaces between JPS and the Company, including, but not limited to, the method of day-to-day communication, key personnel lists, forced outage reconciliation, clearances and switching practices, outage scheduling, capacity and energy reporting, Unit operations log, Spinning Reserve and Reactive Power support. The Operating Procedures shall be subject to the prior written consent of JPS, which consent shall not be unreasonably withheld or delayed.
- 4.3.2 The Company and JPS shall jointly develop an Interconnection Tripping Schedule no later than sixty (60) Days prior to the Scheduled Commercial Operations Date. In developing such Interconnection Tripping Schedule, due consideration shall be given to the proposed Interconnection Tripping Schedule provided by the Company pursuant to Clause 4.2.12 and shall be subject to the prior written approval of JPS, which approval shall not be unreasonably withheld or delayed.

### 4.4 Energy before Commissioning of the Facility

- 4.4.1 Upon the Company’s request, JPS shall provide electricity supply for the construction, testing and Commissioning of the Facility, subject to availability and JPS’ ability to deliver such supply to the Facility. The Company shall pay JPS for such supply in accordance with JPS’ then prevailing tariff rate for industrial facilities.
- 4.4.2 Prior to the Commercial Operations Date, JPS shall use reasonable efforts to accept all energy produced by the Facility during testing and Commissioning of the Facility and JPS shall pay the Company for such energy at the rate set forth in Clause 9.2.1. For the avoidance of doubt, electrical energy produced by the Facility prior to the Commercial Operations Date shall not be deemed to be Dependable Capacity or Net Energy Output, hereunder with respect to the Facility; provided, however, that such electrical energy produced by the Facility shall be considered (i) Net Energy Output for purposes of determining the payment by JPS for such energy and (ii) Dependable

Capacity for purposes of completing the tests set forth in Section 3 of Schedule 4. JPS shall not be liable to make Fixed Payments prior to the Commercial Operations Date.

#### 4.5 Deemed Commissioning

In the event that JPS does not accept energy produced by the Facility during the scheduled Commissioning of the Facility in breach of this Agreement (and, for avoidance of doubt, expressly excluding JPS' inability or refusal to accept such energy due to the occurrence of an event of Force Majeure, an Emergency or a Company Event of Default), and as a result the Commissioning of the Facility is delayed for more than fourteen (14) Days from the scheduled date, then, pending actual testing and upon receipt of a certificate from the Independent Engineer to the effect that the Facility is ready for testing and Commissioning, the Facility shall be deemed to be providing Dependable Capacity equivalent to **[input MEGAWATTS]** MW for the purposes of Fixed Payments to be made by JPS pursuant to Clause 9.1 hereof provided that, (a) the Company shall not be liable for the payment of liquidated damages in accordance with Clause 9.4.1 for the number of days equivalent to the period commencing on the Day the Facility was deemed Commissioned in accordance with this Clause 4.5 and ending on the earlier of (i) the Day after which the next Commissioning Tests are carried out, or (ii) fourteen (14) Days after the Day on which JPS notifies the Company that it is ready and able to accept the energy produced by the Facility during Commissioning ("Delay Period"), (b) the period of one (1) year stated in Clause 15.1.4 shall be extended by the number of Days equivalent to the Delay Period, and (c) the period specified in Schedule 4 for the additional Commissioning tests shall be extended by the number of Days equivalent to the Delay Period. The Company shall be entitled to no other penalty or claim for damages as a result of such delay. If the Facility shall have been deemed Commissioned as provided in this Clause 4.5 and thereafter when tested shall have failed to satisfy the requirements of Schedule 4, then the Facility shall cease to be deemed Commissioned until such time as the Facility shall have successfully completed the tests referred to in Schedule 4, and no Fixed Payments shall be due to the Company in respect thereof for the period from the date on which the Facility shall have been tested and failed to satisfy the requirements of Schedule 4 until the date on which the Facility shall have been tested and satisfied the requirements of Schedule 4; provided that, if the Facility shall have been deemed Commissioned, the Facility shall be tested at the first available opportunity after such deemed Commissioning. The Facility shall not be deemed Commissioned to the extent that the delay in the

program or tests would have nevertheless occurred regardless of JPS' actions or inactions.

#### 4.6 Inspection

Upon reasonable prior notice from JPS to the Company, JPS and/or its representatives shall have the right to observe the progress of the construction, testing and Commissioning, operation and maintenance of the Facility. Such visits to the Site shall not be construed as an endorsement by JPS of the design of the Facility nor as a warranty by JPS of the safety, durability or reliability of the Facility.

#### 4.7 Access to the Site

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

### 5. WARRANTIES AND COVENANTS

#### 5.1 Representations and Warranties of the Company

The Company warrants to JPS that:

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

governmental authority or other person or entity, except for the consent of the Company's senior lenders;

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

## 5.2 Representations and Warranties of JPS

JPS warrants to the Company that:

- 5.2.1 JPS is duly formed, validly existing and has complied in all material respects with the applicable Laws of Jamaica;
- 5.2.2 JPS has full power to carry on its business and to enter into, legally bind itself by, and perform its obligations under, this Agreement and the other Material Agreements (to which JPS is a party);
- 5.2.3 this Agreement has been duly authorized, executed, and delivered by JPS and constitutes its legal, valid and binding obligation;
- 5.2.4 the execution, delivery, and performance of this Agreement and each Material Agreement (to which JPS is a party) does not (a) constitute a material violation of (i) the Laws of Jamaica or any other law, any statute, judgment,



- order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction enforceable against or binding upon JPS, its assets or its businesses, or (ii) the Articles of Association and Memorandum of Association or other organic documents or, to the best knowledge of JPS, any indenture, contract or agreement to which it is a party or by which it or its property may be bound, or (b) require any consent, approval, or authorization of, or filing or registration with, or notice to, any governmental authority or other person or entity;
- 5.2.5 there are no outstanding judgments against JPS, and, to the best knowledge of JPS, no action, claim, suit or proceeding is pending or threatened against JPS before any court, governmental authority or arbitrator of competent jurisdiction that could reasonably be expected to affect materially and adversely the ability of JPS to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- 5.2.6 JPS, to the best of its knowledge, is not in material breach of any agreement to which it is a party or by which it or its property may be bound, nor in any material default of any technical or financial obligation, which could have a material adverse effect on the ability of JPS to perform its obligations under this Agreement; and
- 5.2.7 no information given by JPS in relation to this Agreement (a) contains any material misstatement of fact which would be materially adverse to the enforcement of the rights and remedies of the Company or (b) omits to state a fact which would be necessary to make any statement, representation or warranty contained herein true and correct.
- 5.3 Covenants of the Company
- The Company hereby covenants as follows:
- 5.3.1 the Company shall design, finance, construct, own, operate and maintain the Facility in accordance with this Agreement, the Minimum Functional Specifications, the Operating Procedures, and, where applicable, the environmental guidelines and occupational health and safety standards of the World Bank, and all laws, rules, regulations, and ordinances that are enforceable against or binding upon the Company;
- 5.3.2 the Company shall Commission the Facility on or before the Required Commercial Operations Date;

- 5.3.3 the Company shall operate and maintain the Facility in such a manner so as not to adversely affect JPS' distribution of electricity, including but not limited to adverse effects on JPS' voltage level or voltage waveform;
- 5.3.4 the Company shall at all times operate and maintain the Facility, or cause the Facility to be operated and maintained, in accordance with the Minimum Functional Specifications and consistent with Prudent Utility Practice; and
- 5.3.5 the Company shall, in accordance with Prudent Utility Practices, the Minimum Functional Specifications and any existing Generation Code, install protective relays within the Facility and/or the Interconnection Facilities, having ratings and characteristics approved by JPS, which approval shall not be unreasonably withheld or delayed, and shall maintain the settings of all such relays at the level acceptable to JPS. The Company shall not change the settings of such relays without the prior written approval of JPS, which approval shall not be unreasonably withheld or delayed.

## 6. OPERATION AND MAINTENANCE OF THE FACILITY

### 6.1 Dispatch by JPS

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

forthcoming two (2) weeks ("Fortnightly Projected Dispatch"), by 3:00 p.m. each Friday. The actual Dispatch schedule may be substantially different from the Fortnightly Projected Dispatch. It is expressly recognized that JPS is not obligated to request any Net Energy Output.

- 6.1.3 Subject to the Minimum Functional Specifications, the Generation Code and approved Scheduled Outages and Maintenance Outages, JPS shall have the right to request, and the Company shall deliver, Reactive Power free of charge from the Facility after the Commercial Operations Date.
- 6.1.4 Commencing on the Commercial Operations Date, the Company shall make any excess capacity from the dispatched Units available for frequency controlled Spinning Reserve, upon request by the Control Center; provided that at the time of request the minimum Dispatch of the Facility is [**Minimum dispatch megawatts**] MW. In the event that the Spinning Reserve is required, the Company will not be liable for (a) forced outage hours or liquidated damages caused by deviations in attaining Dispatch or (b) failures of Units or the Facility that are directly attributable to operations; provided that in either subclause (a) or (b) above, the deviations and/or failures are directly caused by the Facility complying with the Spinning Reserve request. This request shall be complied with until the Control Center advises the Facility that the Spinning Reserve is no longer required. For the avoidance of doubt, any exemption from liability for liquidated damages to which the Company shall become entitled under subclause (a) or (b) above shall cease to apply immediately upon the Control Center advising the Facility to discontinue providing the Spinning Reserve.

## 6.2 Operation by the Company

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

## 6.3 Scheduled Outages

- 6.3.1 At least ninety (90) Days prior to the Scheduled Commercial Operations Date, JPS shall submit to the Company its Annual Projected Capacity Factor for the following Year, assuming one hundred percent (100%) availability of the Facility. Thereafter, by [**Date to be agreed**] of each Year, JPS shall submit to the Company its Annual Projected Capacity Factor for the following Year. At

least sixty (60) Days prior to the Scheduled Commercial Operations Date the Company shall submit to JPS its desired schedule of Scheduled Outage periods for the following Year. Thereafter, by **[Date to be agreed]** of each Year, the Company shall submit to JPS its desired schedule of Scheduled Outage periods for the following Year, such schedules to incorporate the corresponding Annual Projected Capacity Factor provided by JPS and details of the Unit outage start and end dates and times. The Parties agree that the failure of the Company to receive the Annual Projected Capacity Factor from JPS more than (i) ninety (90) Days prior to the Scheduled Commercial Operations Date (in respect of the Year in which the Commercial Operations Date occurs) and (ii) **[Date to be agreed]** of each Year occurring after the Commercial Operations Date (in respect of such Year), shall not prohibit the Company from delivering the Schedule Outage periods to JPS in accordance with this Clause 6.3.1.

- 6.3.2 At least fourteen (14) Days prior to the Scheduled Commercial Operations Date and at least two (2) Months prior to the commencement of each subsequent Year, JPS shall provide the Company with any proposed modifications to the schedule of Scheduled Outage periods. Any such proposed modifications shall be as close as reasonably practicable to the requested period, shall comply with the Minimum Functional Specifications, and shall be of equal duration as the requested period. The Company shall notify JPS in writing within thirty (30) Days of receiving any proposed modifications to the schedule of Scheduled Outage periods of whether it accepts or rejects such proposed modifications, providing reasons for the rejection. In the event that the Company rejects the proposed modifications, the Company and JPS shall within the subsequent thirty (30) Day period use their best efforts to devise mutually agreeable Scheduled Outage periods for the upcoming Year. If JPS does not respond at least two (2) Months prior to the commencement of each subsequent Year then it will be deemed to have accepted the proposed schedule of Scheduled Outage periods as prepared by the Company. The Company shall use reasonable efforts to reschedule such Scheduled Outages as requested by JPS so long as they do not present a material risk to the operation of the Facility.
- 6.3.3 During each Year commencing with the Year in which the Commercial Operations Date occurs, the Company may not schedule more than a total of **[Hours to be agreed]** Unit Hours of Scheduled Outages for the Facility; provided that in the event that the Commercial Operations Date does not occur at the beginning of a Year this quantity of Unit Hours of Scheduled Outages shall be pro-rated evenly over that Year. Notwithstanding the foregoing within the **[No. of years for major maintenance as per OEM]** Year

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

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

exceed [**Portion of Total Facility to be agreed**] MW, (iii) the Company provides JPS with written notification within two (2) Business Days upon the Unit reaching within [**No. of Hours to be Agreed**] Unit Running Hours of Major Maintenance, and (iv) the Scheduled Outages occur between the Unit achieving more than [**Input Range Of Major Maintenance Unit Running Hours**] Unit Running Hours. JPS shall provide the Company with five (5) Days notification prior to the actual date of the Scheduled Outages. Except as provided herein, under no circumstances shall the Company schedule Scheduled Outages for more than [**Portion of Total Facility to be agreed**] MW at any given time.

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

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

#### 6.4 Maintenance Outages

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

#### 6.5 Emergencies

6.5.1 JPS and the Company shall jointly establish plans in writing for operating the Facility during an Emergency in accordance with Schedule 10. Such plans shall include, without limitation, recovery from a local or widespread electrical blackout.

6.5.2 During an Emergency and upon the receipt of Dispatch instructions from JPS, the Company shall supply such power as the Facility is able to generate within the Minimum Functional Specifications. If any Unit has a Scheduled

Outage or a Maintenance Outage and such Scheduled Outage or Maintenance Outage occurs or would occur coincident with an Emergency, the Company shall use its best efforts to reschedule the Scheduled Outage or Maintenance Outage in accordance with the terms of this Agreement, or, if the Scheduled Outage or Maintenance Outage has begun, to expedite the completion of the work to restore the Unit as soon as possible.

## 6.6 Fuel Supply

6.6.1 Prior to the Commercial Operations Date, the Company, at its sole cost and expense, shall construct Fuel storage and handling facilities with the capability to provide sufficient Fuel storage to allow operation of the Facility at full load for eighteen (18) Days without new Fuel delivery (the "Required Fuel Storage Capacity"). In the event that the Company fails to maintain the Minimum Fuel Inventory the Company shall promptly notify JPS of such shortage in Fuel inventory. The Company shall maintain such facilities in accordance with Prudent Utility Practice throughout the term of this Agreement.

6.6.2 Throughout the term of this Agreement, the Company shall:

- (a) obtain and maintain a reliable supply of Fuel of quality and in quantity sufficient to operate the Facility at the Dependable Capacity and provide the required Net Energy Output;
- (b) provide to JPS for its prior written approval, which approval shall not be unreasonably withheld or delayed, the Fuel Supply Plan, all Fuel Supply Agreements, Fuel transportation agreements and other commitments for the supply and transportation of Fuel, and any material amendments to any of these documents; and
- (c) only enter into Fuel Supply Agreements and Fuel transportation agreements consistent with the Fuel Supply Plan most recently approved by JPS.

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

Company shall provide JPS with a revised Fuel Supply Plan within fifteen (15) Days which is reasonably satisfactory to JPS.

6.7 Operating Personnel

6.7.1 The Parties shall establish an Operating Committee comprising four (4) members. The Company and JPS shall each appoint two (2) of the four (4) members. The Company shall appoint the first chairman of the Operating Committee, JPS shall appoint the second chairman, and the Parties shall then alternate with respect to subsequent appointments. Each chairman shall serve for a term of twelve (12) Months, with the first term commencing on the Commercial Operations Date. The obligations and responsibilities of the Operating Committee and the rules governing meetings of the Operating Committee shall be as set forth in Schedule 7.

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

6.7.3 The Company shall use its reasonable efforts to train and employ local labour in both skilled and unskilled capacities. The Company shall also develop and maintain training programs to train qualified local persons for positions requiring special skills.

6.8 Inspections and Records

6.8.1 JPS shall have the right, at its sole cost and expense, to visit and observe any Unit and/or the Facility and/or the operation thereof upon prior notice to the Company. Such visits and observation shall not be construed as an endorsement by JPS of the design of any Unit or the Facility nor as a warranty by JPS of the safety, durability or reliability thereof.

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

6.8.3 The Parties shall keep complete and accurate records and all other data reasonably required by each of them for the purposes of proper administration of this Agreement. Among other records and data, the



Company shall maintain at the Facility an accurate and up-to-date operations log in accordance with Schedule 10. During the period such records and data are required to be maintained, each Party shall have the right, upon reasonable prior written notice to the other Party, at its sole cost and expense, to examine and/or make copies of the records and data of the other Party relating to this Agreement at any time during normal office hours. All such records shall be maintained for a minimum of sixty (60) Months after the creation of such records or data and for any additional length of time required by regulatory agencies with jurisdiction over the Parties. Upon expiration of such sixty (60) Month period (or additional term as required by any applicable regulatory agency where such term shall not be less than sixty (60) Months), neither Party shall dispose of or destroy any such records without thirty (30) Days' prior written notice to the other Party, and the Party receiving such notice may receive such records in lieu of such disposal or destruction by giving the notifying Party notice prior to the expiration of the thirty (30) Day period and paying for any costs and expenses associated with such transfer of records.

## 7. INTERCONNECTION

### 7.1 JPS Responsibilities

After the Commercial Operations Date, JPS shall be responsible for (a) the operation and maintenance of the Primary Metering System, (b) the operation and maintenance of the auxiliary and interconnecting equipment on the JPS side of the Interconnection Point and (c) coordination of switching operations of the Interconnection Facilities, all in accordance with the terms of this Agreement, the Operating Procedures, Prudent Utility Practice and all applicable laws, rules, regulations and ordinances.

### 7.2 Company Responsibilities

- 7.2.1 The Company shall be responsible for the design, financing, construction, installation and commissioning of the Interconnection Facilities including the Primary Metering System, Backup Metering System and all auxiliary and interconnecting equipment in accordance with the terms of this Agreement, Prudent Utility Practice and all applicable laws, rules, regulations and ordinances. The design, construction and installation of the Interconnection Facilities shall be subject to the written approval of JPS, which approval shall not be unreasonably withheld or delayed. The Company shall transfer the interconnection equipment on the JPS side of the Interconnection Point to JPS for ownership, operation and maintenance.

- 7.2.2 The Company shall be responsible for operating and maintaining (a) the Backup Metering System and (b) all auxiliary and interconnecting equipment on the Company's side of the Interconnection Point in accordance with the terms of this Agreement, the Operating Procedures and the other Agreement Criteria; provided that JPS shall have overall responsibility for coordinating the switching operations of the Interconnection Facilities and such auxiliary and interconnecting equipment, and the Company shall cooperate with JPS to assure the safe and reliable operation of such facilities and equipment.
- 7.2.3 On or before the Agreement Date, JPS shall provide to the Company a set of interconnection criteria (the "Interconnection Criteria"), which will include all necessary JPS interconnection criteria for the Company to design and set the electrical system of the Facility. The Interconnection Criteria shall include 138/69kV grid operations criteria as necessary for plant performance, controls, protection and fault clearing. Within sixty (60) Days from its receipt of the Interconnection Criteria, the Company shall provide to JPS, for its prior review and approval, the design and settings of the Interconnection Facilities.
- 7.2.4 Prior to initial synchronization of the Facility, the Interconnection Facilities shall be tested at the sole cost and expense of the Company, in the presence of JPS as provided in Schedule 4. After the Commercial Operations Date, the Company shall permit JPS such access to the Facility as JPS shall reasonably require in order to conduct inspection and testing of the Interconnection Facilities on the Company's side of the Interconnection Point.
- 7.3 Protective Devices
- 7.3.1 Each Party shall notify the other Party in advance of any changes to either (i) the Facility or (ii) the JPS Grid System that may affect the proper coordination of protective devices between the two systems.
- 7.3.2 Subject to giving the Company notice, JPS may require the Company to modify or expand the protective devices. JPS shall reimburse the Company for the reasonable costs of such modification or expansion unless such modification or expansion is a component of the Interconnection Facilities for the Facility as provided in the Interconnection Criteria or reasonably should have been included in the Interconnection Facilities pursuant thereto or in accordance with the Agreement Criteria and Prudent Utility Practice.

## 8. METERING AND TELECOMMUNICATIONS

### 8.1 Ownership of Metering Equipment

8.1.1 The Company shall design, finance, construct, install and commission the Primary Metering System and transfer it to JPS who shall own, operate and maintain the Primary Metering System in accordance with Schedule 5.

8.1.2 The Company shall design, finance, construct, install, commission, own, operate and maintain meters and metering devices for backup purposes pursuant to Schedule 5 (the "Backup Metering System").

### 8.2 Testing and Inspection of the Metering System

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

### 8.3 Measurement of Net Energy Output and Dependable Capacity

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

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

8.3.3 In the event that the Primary Metering System and the Back-up Metering System are found to be inaccurate or functioning improperly, the correct amount of Net Energy Output delivered to JPS during the period for which inaccurate measurements were made shall be determined in accordance with Schedule 5. The difference between the previous payments by JPS for the

period of inaccuracy and the recalculated amount shall be offset against or added to the next payment to the Company under this Agreement, as appropriate; provided, however, that if there are no scheduled future payments, then the Company or JPS, as the case may be, shall pay the other Party the adjustment amount within thirty (30) Days. In no event, however, shall any such adjustment be made for any period prior to the date on which the Primary Metering System was last tested and found to be accurate within plus or minus one-half percent (0.5%) and not otherwise functioning improperly.

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

#### 8.4 Telecommunications

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

### 9. COMPENSATION, PAYMENT AND BILLING

#### 9.1 Fixed Payment

- 9.1.1 Beginning with the Day immediately following the Commercial Operations Date, JPS shall pay to the Company Monthly, in arrears, an amount, as calculated and adjusted in accordance with this Clause 9.1 and Schedule 6, equal to the Fixed Payment.
- 9.1.2 If the Commercial Operations Date shall occur on a Day other than the first (1<sup>st</sup>) Day of a Month or if the Dependable Capacity shall be tested on a Day other than the first (1<sup>st</sup>) Day of a Month, then the Fixed Payment payable for the Month in which either of such Days occurs shall be equal to the sum of (a) the Fixed Payment payable for such Month based on the Dependable Capacity prior to such Day multiplied by a fraction, the numerator of which is the number of Days in such Month prior to and including the Commercial Operations Date or the Dependable Capacity test date, as appropriate, and the denominator of which is the total number of Days in such Month, and (b) the Fixed Payment payable for such Month based on the Dependable

Capacity after such Day multiplied by a fraction, the numerator of which is the number of Days after the Commercial Operations Date or the Dependable Capacity test date, as appropriate, and the denominator of which is the total number of Days in such Month.

9.1.3 Beginning on the Day immediately following the Commercial Operations Date, JPS shall pay to the Company Monthly, in arrears, the actual amount of any common external tariff or any other levy, duty or tax levied by the Government of Jamaica or any Public Sector Entity in relation to Fuel transactions for the Facility; provided that JPS shall not be obliged to pay the incremental amount of any such common external tariff, or any other levy, duty or tax levied in relation to Fuel transactions for the Facility to the extent such amount is payable because the heat rate for the Facility exceeds (i) **[Operating Plant Heat Rate With Spinning Reserve]** Btu/kWh while the Company is providing the Spinning Reserve at the request of the Control Center and (ii) **[Guaranteed Plant Heat Rate]** Btu/kWh at any other time; provided, further, that JPS shall not be obligated to pay any common external tariff until and unless the Company shall have provided JPS with a copy of the invoice from the Fuel supplier specifying the amount payable by the Company for such common external tariff and a due date for the payment thereof prior to the date of submission of such invoice to JPS which shall be marked by the Company as having been paid.

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

## 9.2 Variable Payment

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

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

## 9.3 Retained Construction Security Deposit

Notwithstanding anything in this Agreement to the contrary, the Company shall not be permitted to reduce the Construction Security Deposit to an amount less than one million Dollars (\$1,000,000.00) (or the Jamaican Dollar equivalent) until such time as the Company has satisfied all of its obligations with respect to the Facility under Clause 4.2; provided that if on the Commercial Operations Date the Construction Security Deposit shall be less than one million Dollars (\$1,000,000.00) (or the Jamaican Dollar equivalent),

then the Company shall increase the Construction Security Deposit to one million Dollars (\$1,000,000.00) (or the Jamaican Dollar equivalent) within three (3) Business Days.

#### 9.4 Liquidated Damages

##### 9.4.1 Delays in Commissioning the Facility

- (a) If the Facility shall not have been Commissioned on or before the Required Commercial Operations Date, then, the Company shall pay to JPS Two Hundred and Fifty Dollars (\$250.00) (or the Jamaican Dollar equivalent) per MW for each Day or part thereof by which the Commissioning of the Facility is delayed beyond [COMMERCIAL OPERATION DATE]; provided that the cumulative amount of such payments shall not exceed ten million Dollars (\$10,000,000.00) (or the Jamaican Dollar equivalent). These payments shall be liquidated damages for the detrimental impact of such delay.

##### 9.4.2 Shortfalls in Commissioned Dependable Capacity of the Facility

If there is a Commissioned Shortfall with respect to the Facility, then the Company shall pay to JPS as liquidated damages for the detrimental impact one thousand Dollars (\$1,000.00) (or the Jamaican Dollar equivalent) per kW of such Commissioned Shortfall.

##### 9.4.3 Shortfalls in On-Going Capacity

If, after the Commercial Operations Date, the Dependable Capacity of the Facility shall be less than the Initial Declared Dependable Capacity, then the Company shall pay to JPS ten Dollars (\$10.00) (or the Jamaican Dollar equivalent) per kW per Month (prorated for partial Months in the Month in which the Commercial Operations Date occurs) of such On-Going Dependable Capacity Shortfall until the next testing of Dependable Capacity, as liquidated damages for the detrimental impact of such lower Dependable Capacity.

##### 9.4.4 Dispatch Levels

- (a) If the Company does not achieve the Dispatch level requested by JPS pursuant to the Operating Procedures within a tolerance of plus or minus (+/-) one (1) MW of the requested Dispatch level within the time allowed by the load ramping rates and minimum dispatch set forth in the Minimum Functional Specifications after the receipt of a

Dispatch request, then, subject to Clauses 9.4.4(b) through (d) below, the Company shall pay to JPS for each kWh outside the tolerance an amount in Dollars (or the Jamaican Dollar equivalent) equal to the product of one one-hundredth (0.01), the Fixed Payment Price and the applicable percentage set forth in Clause 9.4.4(d) until the Company advises JPS that it is able to comply with said Dispatch request and complies with said Dispatch request should JPS choose not to change the request; provided that after the Company has advised JPS that it is able to comply with the aforesaid Dispatch request, JPS may make a new Dispatch request, and the Company's failure to comply with such new request shall be subject to the liquidated damages set forth in this subclause (a). If the requested Dispatch level cannot be achieved due to temperature conditions outside of the Minimum Functional Specifications, JPS shall continue to calculate liquidated damages pursuant to this subclause (a); provided that, upon the Company providing evidence reasonably satisfactory to JPS that temperature conditions outside of the Minimum Functional Specifications led to the failure to comply with the applicable Dispatch request, in each instance the due date for any such liquidated damages shall be deferred to one (1) year after the applicable requested Dispatch level was not achieved (notwithstanding Clause 9.5.3 to the contrary, if applicable), and where the Company is diligently pursuing a resolution to mitigate the temperature effects and achieves such mitigation prior to the end of such one (1) year, any such liquidated damages shall be waived by JPS, so as to not become due and payable by the Company. The payments under this Clause 9.4.4(a) shall be liquidated damages for the detrimental impact of such deviations from the requested Dispatch level.

- (b) During each Year commencing with the Year in which the applicable Commercial Operations Date occurs, the Company shall not be liable for liquidated damages under Clause 9.4.4(a) for the first kWh of Forced Outage experienced by the Company in such Year up to a quantity equal to **[Number of Hours to be Agreed]** hours multiplied by the Dependable Capacity ("Allowable Forced Outage"); provided that this quantity of kWh of Forced Outage shall be prorated evenly over any part Year.
- (c) Payments under this Clause 9.4.4 shall not exceed in any twelve (12) Month period the amount of Fixed Payments payable to the Company under Clause 9.1 for the same twelve (12) Month period.

- (d) The applicable percentage for purposes of subclause (a) above shall be sixty five percent (65%) for Peak Hours and forty five percent (45%) for Off-Peak Hours. JPS may designate new Peak Hours for the purposes of this Clause 9.4.4 by giving notice to the Company at least three (3) Months prior to the first (1<sup>st</sup>) Day of any Year; provided that the total number of Peak Hours in a Day may not exceed twelve (12).

#### 9.4.5 Adjustments; Procedures for Payment

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

#### 9.4.6 Exceptions; Waiver of Defences

- (a) Notwithstanding the provisions of Clauses 9.4.1 through 9.4.4 above, the Company shall not be liable to JPS for liquidated damages if the Company has previously declared a JPS Event of Default, in accordance with Clause 15.2 of this Agreement, that caused the Company to incur such liquidated damages; provided that the Company shall promptly pay to JPS all such liquidated damages if it is subsequently determined under Clause 16 that there was no JPS Event of Default.
- (b) The Parties agree that damages may be difficult or impossible to determine in the event that (i) the Facility is not in service by the dates required, (ii) the Facility is not capable of achieving and maintaining the expected Dependable Capacity, or (iii) the Facility cannot achieve the designated Dispatch levels. Therefore, to the limited extent set out in this Agreement, the Parties have agreed (i) on sums that the Parties agree are reasonable as liquidated damages, (ii) that actual damages would be difficult or impossible to determine and that such liquidated damages are a reasonable approximation of such actual damages and (iii) that the payment of liquidated damages is in lieu of actual damages for such occurrences and that the payment of liquidated damages is JPS' exclusive remedy for the occurrences described in Clauses 9.4.1 through 9.4.4 above (except as provided in Article 15



below). For the avoidance of doubt, the Parties agree that the liquidated damages payable under Clauses 9.4.1 through 9.4.4 constitute the sole and exclusive remedy of JPS for the occurrences described therein; provided that nothing herein shall impair the rights or remedies of JPS under Clause 15.4.1 if those occurrences constitute Company Events of Default under any of Clauses 15.1.1 through 15.1.11. The Company hereby waives any defence as to the validity of any liquidated damages in this Agreement on the grounds that such liquidated damages are void as penalties.

#### 9.4.7 Security Deposits

- (a) Within thirty (30) Days prior to the Commencement of Construction, the Company shall provide, or cause to be provided on its behalf, to JPS a security deposit (the "Construction Security Deposit") of **One Hundred Thousand Dollars (\$100,000.00) per MW**. The Construction Security Deposit shall consist of one of the following: (i) a cash payment which shall be held in a segregated, interest-bearing account; or (ii) an unconditional and irrevocable direct pay letter of credit issued by a financial institution acceptable to JPS in a form and with substance acceptable to JPS. The Construction Security Deposit and any interest accrued thereon may be applied to the payment of liquidated damages or other Damages and accrued interest thereon. Notwithstanding anything in this Agreement to the contrary, drawing on the Construction Security Deposit shall be the sole and exclusive remedy of JPS for any liability, obligation or responsibility of the Company under this Agreement occurring or arising prior to the Commercial Operations Date.
- (b) Subject to Clause 9.3, if the Construction Security Deposit is in the form of cash or a letter of credit and any amount remains after all such damages and interest have been paid, then such amounts and accrued interest may at the election of the Company be applied to the Operations Security Deposit; provided that there shall be no discontinuity between the expiration of the Construction Security Deposit and the effectiveness of the Operations Security Deposit. Within fourteen (14) Days after the Commercial Operations Date and provided the Operations Security Deposit remains posted pursuant to Clause 9.4.7(c), JPS shall pay or return to the Company any excess of the Construction Security Deposit and accrued interest remaining thereon. If the Company terminates this Agreement on or before JPS has so returned the Construction Security Deposit, JPS shall return to

the Company any amount of the Construction Security Deposit and accrued interest thereon which remains after all liquidated damages or other Damages and accrued interest due and owing to JPS pursuant to this Clause 9.4.7(a) have been paid.

- (c) On the Commercial Operations Date, the Company shall provide to JPS a security deposit (the "Operations Security Deposit"), of **One Hundred Thousand Dollars (\$100,000.00) per MW** to ensure the proper operation and maintenance of the Facility. The amount of the Operations Security Deposit shall be adjusted from time to time in accordance with Schedule 6. The Company shall maintain the Operations Security Deposit at the designated level at all times; provided that the Company shall have ten (10) Days from the date JPS gives notice to the Company that it has retained or collected funds from the Operations Security Deposit pursuant to this Clause 9.4.7(c) to replenish the Operations Security Deposit so as to return it to the original level, as adjusted. The Operations Security Deposit shall be in any form permitted in Clause 9.4.7(a) for the Construction Security Deposit. The Operations Security Deposit may be applied to (i) the payment of liquidated damages payable by the Company under this Agreement and accrued interest thereon, (ii) the repayment to JPS of amounts improperly drawn by the Company under the Letter of Credit and interest thereon both to the extent permitted by Clause 9.7.6, and (iii) the payment of other Damages and interest that the Company shall be required to pay to JPS; provided that, in the case of the amounts described in subclauses (i), (ii) and (iii) above, if the Operations Security Deposit is insufficient to satisfy such amounts, then the Company shall immediately pay to JPS on demand the unsatisfied amounts. Upon termination of this Agreement, JPS shall be entitled to retain or collect, as the case may be, from the Operations Security Deposit and any interest accrued thereon, any damages or monies then due or reasonably expected to be due to JPS by the Company, and the remainder of the Operations Security Deposit and accrued interest thereon, if any, shall be paid or returned to the Company. If, upon the termination of this Agreement, there shall be any Dispute between the Company and JPS that has been referred to an expert for determination or is being arbitrated pursuant to the Agreement, then JPS shall deposit into an escrow account an amount from the Operations Security Deposit equal to the damages or monies that JPS, in its reasonable judgment, deems sufficient to satisfy any amount that may be due to JPS by reason of such Dispute. Upon settlement or resolution of the Dispute, the funds in such escrow

account and accrued interest thereon shall be distributed in accordance with such settlement or resolution; provided that such distribution will not be considered full satisfaction of such Dispute unless the Parties so agree.

- (d) In the event that JPS shall retain, draw or withdraw funds from the Construction Security Deposit or the Operations Security Deposit and it shall later be determined by mutual agreement of the Parties or, if the Parties cannot reach agreement, in accordance with the dispute resolution procedures of Clause 16, that JPS was not entitled to do so, then JPS shall promptly repay such amount to the Company, together with all costs and expenses incurred by the Company in connection with such retaining, drawing, or withdrawing plus interest on such amount and expenses from the date of retaining, drawing or withdrawing at the Default Rate.
- (e) To make a draw under a letter of credit established pursuant to Clause 9.4.7(a), 9.4.7(c) or 9.4.7(d) during the pendency of a Dispute as to the amount owed to JPS by the Company, JPS shall certify that such a Dispute is pending and that JPS believes in good faith that it is owed the drawing amount requested.

#### 9.5 Payment of Liquidated Damages for Dispatch Deviation

- 9.5.1 Within twenty-one (21) Days after the last Day of each Month, JPS shall compute and advise the Company by written statement (a "Dispatch Deviation Statement") indicating the amount of Dispatch deviations determined in accordance with Clause 9.4.4(a) of this Agreement that has accrued to date in the applicable Year. The Company shall be given twenty one (21) Days after receipt of the Dispatch Deviation Statement to provide a written acceptance or to dispute any amount on the Dispatch Deviation Statement.
- 9.5.2 If the accrued Year to date Dispatch deviation on the Dispatch Deviation Statement exceeds the Allowable Forced Outage, then JPS shall deliver simultaneously with such Dispatch Deviation Statement an invoice (a "Provisional Liquidated Damages Invoice") setting forth the amount of liquidated damages due to JPS pursuant to this Agreement. The Company shall be given fourteen (14) Days after receipt of the Provisional Liquidated Damages Invoice to dispute any amounts contained in the Provisional Liquidated Damages Invoice, provide JPS with written notification of the reasons for the dispute and pay to JPS the undisputed amounts contained in

the Provisional Liquidated Damages Invoice. Seven (7) Days after the receipt of the response from the Company or the end of the fourteen (14) Days provided for the Company to respond to the Provisional Liquidated Damages Invoice, whichever is earlier, (a) the Provisional Liquidated Damages Invoice shall be deemed the final invoice where the Company accepts the contents of same, or (b) JPS shall issue an amended written invoice setting forth the final computed amount of liquidated damages, subtracting any amounts disputed by the Company from the amount contained in the Provisional Liquidated Damages Invoice (a "Final Liquidated Damages Invoice"). On the date that is fourteen (14) Days after delivery of the Final Liquidated Damages Invoice (the "Liquidated Damages Due Date"), the Company shall pay to JPS the amount of liquidated damages shown on the Final Liquidated Damages Invoice plus accrued interest on such amount at the Base Rate from the date that is twenty one (21) Days after the date of delivery of the Provisional Liquidated Damages Invoice until the Liquidated Damages Due Date or the date such amount is paid in full, whichever is earlier. If the Company does not pay to JPS the entire amount of liquidated damages shown on the Final Liquidated Damages Invoice plus accrued interest on the Liquidated Damages Due Date, (a) JPS may immediately deduct any unpaid amount from the Construction Security Deposit or the Operations Security Deposit, as appropriate, and (b) the Company shall pay JPS interest on any unpaid amount at the Default Rate from the Liquidated Damages Due Date until the date such amount is paid in full.

- 9.5.3 Notwithstanding the first sentence of Clause 9.5.2, JPS may submit a Provisional Liquidated Damages Invoice to the Company at any time **prior to** one hundred and eighty (180) Days after the end of any Year in which JPS determines that the Company owed liquidated damages to JPS (each such date, a "Liquidated Damages Claim Deadline"). If JPS has not submitted a Provisional Liquidated Damages Invoice to the Company prior to a Liquidated Damages Claim Deadline, JPS shall have no further right to claim liquidated damages from the Company for the prior Year, and the Company shall be released from any obligation to pay liquidated damages for such Year.
- 9.5.4 In the event of JPS submitting a Provisional Liquidated Damages Invoice as per Clause 9.5.3, the provisions of Clause 9.5.2 shall apply *mutatis mutandi* in relation to such Provisional Liquidated Damages Invoice, except that sixty (60) Days shall be substituted for the period which the Company shall have in which to Dispute any amounts contained in the Provisional Liquidated Damages Invoice, provide JPS with written notification of the reasons for the

Dispute and pay to JPS the undisputed amounts contained in the Provisional Liquidated Damages Invoice.

9.6 Payment and Billing

- 9.6.1 Within fourteen (14) Days after the last Day of each Month, JPS shall prepare and deliver to the Company a statement reflecting all amounts payable to each Party by the other Party in Dollars pursuant to this Agreement (each, a "Statement"). The Statement shall include calculations, in reasonable detail, of such amounts owed to the Company for Fixed Payments and Variable Payments (if any) and amounts owed to JPS, including for liquidated damages, in accordance with this Agreement and the procedures determined by the Operating Committee. The Statement shall be accompanied by any payment owed to the Company.
- 9.6.2 If JPS fails to pay any amount of a payment owed to the Company (a) on or before the Day such payment is due under Clause 9.6.1 or (b) if the Company prepares the Statement in accordance with Clause 9.7.4, on or before the Day such payment is due under Clause 9.7.4, JPS shall pay accrued interest on such amount at the Base Rate commencing on (y) the fifteenth (15<sup>th</sup>) Day after the last Day of the Month for which payment is due under Clause 9.6.1 in the case of subclause (a) or (z) the sixth (6<sup>th</sup>) Day after JPS receives the Statement in the case of subclause (b) and continuing, in either case, for a period of fourteen (14) Days, and thereafter JPS shall pay interest on such amount at the Default Rate until the date such amount is paid in full.
- 9.6.3 Amounts shown on any Statement as owed to JPS by the Company shall be due for payment fourteen (14) Days after delivery of the Statement. If the Company fails to pay any amount of a payment owed to JPS on the Day such payment is due, the Company shall pay accrued interest on such amount at the Base Rate commencing on the fifteenth (15<sup>th</sup>) Day after delivery of the Statement and continuing for a period of six (6) Days, and thereafter the Company shall pay interest on such amount at the Default Rate until the date such amount is paid in full. This Clause 9.6.3 shall not apply to payments due pursuant to clause 9.5.2.
- 9.6.4 At any time prior to one hundred and eighty (180) Days after the end of any Year in which a Statement is delivered (or within such other period as permitted or required by applicable law), either Party may dispute the amount of such Statement by serving a notice on the other Party indicating the Statement concerned, the amount of the Dispute and the basis therefor (a "Dispute Notice"). The Dispute shall be settled by mutual discussion and, if

necessary, by arbitration pursuant to Clause 16. Within fourteen (14) Days after the resolution of the Dispute, the Party which is determined to owe money to the other Party shall pay such sum to the other Party together with accrued interest thereon (i) at the Base Rate from the date such payment should have been made and continuing for a period of fourteen (14) Days, and (ii) thereafter at the Default Rate until the date such amount is paid in full.

- 9.6.5 If a payment under this Agreement is due on a day which is not a Business Day, the due date for such payment shall instead be the next Business Day.

9.7 Foreign Exchange

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

9.8 Change in Relevant Law

- 9.8.1 If a Change in Relevant Law occurs, the Company shall use reasonable efforts to select a method of compliance with such Change in Relevant Law that minimizes the cost and/or maximizes the savings incurred by the Company. The Company shall also use reasonable efforts to implement the selected method of compliance so as to minimize the cost and/or maximize the savings derived by the Company. The Company shall promptly give JPS written notice of any Change in Relevant Law that results in any savings. In the event that compliance with a Change in Relevant Law results in either an increase in costs of the Company or a savings by the Company, JPS shall increase or decrease, as applicable, its payments to the Company in accordance with Schedule 6; provided that the respective requirements of Clauses 9.9.2 and 9.9.3 have been satisfied. The Parties agree that any payments due to the Company as a result of a Change in Relevant Law shall accrue interest at the Default Rate for the period commencing fourteen (14) Days after the date that the Company has submitted a statement for the payment due to it as a result of the Change in Relevant Law until the date that such payment is made to the Company in full.
- 9.8.2 JPS shall only increase the payments to the Company for an increase in the cost of complying with a Change in Relevant Law, which increased payments shall be effective from the effective date of the Change in Relevant Law, if: (a) the Change in Relevant Law was beyond the reasonable control of the Company, (b) the Change in Relevant Law materially and adversely affects the performance by the Company of its obligations or the enjoyment by the Company of its rights under or pursuant to this Agreement, or otherwise

results in increased costs and expenses of the Company, (c) the Company gives JPS written notice describing the particulars of the Change in Relevant Law, (d) the Company furnishes monthly reports on the impact on its performance and on its efforts to overcome the adverse effects of the Change in Relevant Law until the earlier of (i) the date on which the Company has overcome the adverse effects of the Change in Relevant Law and (ii) the date on which JPS agrees that such reports are no longer useful (which agreement shall not be unreasonably withheld), (e) the Company uses its reasonable efforts to overcome the adverse effects of the Change in Relevant Law, (f) the compensation is only paid to the Company for the period that is required to overcome the adverse effects of the Change in Relevant Law and increased costs and expenses of the Company (provided that the Company shall not be entitled to make any claim under this Clause 9.9.2 until such time as the Company's claims from such Change in Relevant Law exceed one hundred and fifty thousand Dollars (\$150,000.00) (or the Jamaican Dollar equivalent) in the aggregate, in respect of all the Changes in Relevant Law arising under this Agreement, at which time all such claims of the Company may be made), and (g) the Company promptly gives JPS written notice when and if it has overcome the adverse effects of the Change in Relevant Law.

- 9.8.3 JPS shall only reduce the payments to the Company for a decrease in the cost of complying with a Change in Relevant Law if: (a) JPS gives the Company written notice describing the particulars of the Change in Relevant Law or the Company gives JPS written notice describing the particulars of the Change in Relevant Law and (b) the reduction in payments is only made for the period that the Company benefits from the decrease in the cost of complying with a Change in Relevant Law; provided that, if the Company Disputes such reduction in payment in accordance with Clause 16, JPS shall not reduce the payments to the Company pursuant to this Clause 9.9.3 until and unless the Dispute is finally resolved in favour of JPS. If the Dispute is finally resolved in favour of JPS, then the Company shall within fourteen (14) Days after such final resolution of the Dispute pay to JPS an amount equivalent to the reduction in payments which it has been resolved that JPS was entitled to make, together with interest on such amount at the Default Rate for the period commencing fourteen (14) Days after the date of delivery of the notice given pursuant to Clause 9.9.3(a) until the date that such payment is made to JPS in full. The Parties agree that any reduction in the payments to the Company as a result of any Change in Relevant Law shall be effective from the effective date of the Change in Relevant Law.

## 10. TESTING AND CAPACITY RATINGS

### 10.1 Testing

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

### 10.2 Test Results

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

### 10.3 Disputes

In the event that a Dispute arises between the Company and JPS regarding the testing of Dependable Capacity or the protection tests described in Schedule 4, such Dispute shall be resolved by referral to an expert pursuant to Clause 16.

## 11. INSURANCE

### 11.1 Insurance Coverage

During the periods specified, the Company shall, at no cost to JPS, obtain and maintain or, during the construction of the Facility, cause the Construction Contractor to obtain and maintain, the following types of insurance covering the Facility and the Interconnection Facilities, proof of the existence of which shall be submitted to JPS in accordance with the terms of this Clause 11:

- 11.1.1 At least twenty-four (24) hours prior to initiating any shipments of plant and equipment for the Facility and until such shipments have been delivered, marine cargo insurance (the form of which shall be provided to JPS the later of the Agreement Date or a date that is at least thirty (30) Days prior to the applicable shipment for JPS' approval) in an amount sufficient to cover the replacement cost of all plant and equipment shipped to and intended to become part of the Facility on a warehouse-to-warehouse basis and subject to deductibles of no more than [two hundred fifty thousand Dollars (\$250,000.00)] (or the Jamaican Dollar equivalent);



- 11.1.2 At least thirty (30) Days prior to the Company's issuance of a Notice to Proceed, and until the Commercial Operations Date, all risks builders risk (construction) insurance on the Facility in an amount sufficient to cover the replacement cost of the Facility and the Interconnection Facilities, including construction equipment and transit coverage for plant purchased within Jamaica and not subject to the insurance described in Clause 11.1.1 above and subject to deductibles of no more than (a) two percent (2%) of the coverage amount in the case of wind, flood and earthquake, and (b) an amount up to [two hundred fifty thousand Dollars (\$250,000.00)] (or the Jamaican Dollar equivalent) for all other perils;
- 11.1.3 At least thirty (30) Days prior to the Commercial Operations Date and until the termination or expiration of this Agreement, all risks (property damage)/operational insurance in an amount sufficient to cover the replacement cost of the Facility and the Interconnection Facilities and transit coverage for plant purchased within Jamaica and not subject to the insurance described in Clause 11.1.1 above and subject to deductibles of no more than (a) two percent (2%) of the coverage amount in the case of wind, flood, earthquake, and other perils, and (b) an amount up to [five hundred thousand Dollars (\$500,000.00)] (or the Jamaican Dollar equivalent) for all other perils; and
- 11.1.4 At least thirty (30) Days prior to the employment by the Company of any person and until the termination or expiration of this Agreement, Employer's Liability insurance complying with the Laws of Jamaica or any other applicable jurisdiction with limits of at least [seven hundred fifty thousand Dollars (\$750,000.00)] (or the Jamaican Dollar equivalent) per occurrence and subject to deductibles of no more than the amount of [fifty thousand Dollars (\$50,000.00)] (or the Jamaican Dollar equivalent);
- 11.1.5 Within thirty (30) Days after the execution and until the termination or expiration of this Agreement, Comprehensive or Commercial General Liability insurance with bodily injury and property damage limits of at least [two million Dollars (\$2,000,000.00)] (or the Jamaican Dollar equivalent) per occurrence and [three million Dollars (\$3,000,000.00)] (or the Jamaican Dollar equivalent) in the aggregate and subject to deductibles of no more than [fifty thousand Dollars (\$50,000.00)] (or the Jamaican Dollar equivalent). Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in Clause 12 (with the exception of the indemnification provisions in Clause 12.1.3), broad form property damage liability, personal injury liability, explosion, collapse, and underground (XCU) hazard coverage, products/completed

operations liability, and where applicable, watercraft protection and indemnity liability;

11.1.6 Upon the Company acquiring or hiring any vehicle and until the termination or expiration of this Agreement, Comprehensive Automobile Liability insurance with bodily injury and property damage combined single limits of at least [five hundred thousand Dollars (\$500,000.00)] (or the Jamaican Dollar equivalent) per occurrence covering vehicles owned, hired or non-owned and subject to deductibles of no more than [five hundred Dollars (\$500.00)] (or the Jamaican Dollar equivalent); and

11.1.7 Within thirty (30) Days after its execution and until the termination or expiration of this Agreement, Excess Umbrella Liability Insurance with a single limit of at least [fifteen million Dollars (\$15,000,000.00)] (or the Jamaican Dollar equivalent) per occurrence in excess of the limits of insurance provided in Clauses 11.1.4, 11.1.5 and 11.1.6 above and subject to deductibles of no more than [five thousand Dollars (\$5,000.00)] (or the Jamaican Dollar equivalent).

## 11.2 Procedure

Not later than thirty (30) Days after execution of this Agreement and thereafter not later than forty-five (45) Days prior to the commencement of each Year, the Company shall provide to JPS an insurance schedule stating the coverage, the coverage level, the deductible, and the premium for each policy of insurance required pursuant to Clause 11.1.

## 11.3 Occurrence Form Coverage

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

## 11.4 Endorsements

The Company shall cause its insurers to amend its Comprehensive Commercial General Liability and, if applicable, Umbrella or Excess Liability policies with the endorsement items set forth in Clauses 11.4.1 through 11.4.5 below; and to amend the Company’s Employer Liability and Auto Liability policies with the endorsement item set forth in Clause 11.4.5 below:

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

11.4.2 This insurance is primary with respect to the interest of JPS, its directors, officers, and employees and any other insurance maintained by them is excess and not contributory with this insurance;

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

11.4.4 Insurer hereby waives all rights of subrogation against JPS, its officers, directors and employees; and

11.4.5 Notwithstanding any provision of the policy, this policy may not be cancelled, renewed, or materially changed by the insurer without giving thirty (30) Days prior written notice to JPS. All other terms and conditions of the policy remain unchanged.

11.4.6 For the insurance required by Clauses 11.1.1, 11.1.2 and 11.1.3 above, the Company agrees to waive, and shall cause its insurers to waive, all rights of subrogation against JPS and its affiliates.

11.5 Use of Proceeds of All Risk/Operational Insurance

The proceeds of any all risks insurance obtained pursuant to Clauses 11.1.1 through 11.1.3 shall, at the option of JPS and subject to the Lenders’ rights, be applied to the repair of the Facility.

11.6 Certificates of Insurance

The Company shall cause its insurers or agents to provide JPS with certificates of insurance evidencing the policies and endorsements listed above. Failure of JPS to receive certificates of insurance does not relieve the Company of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Clause 11 shall in no way relieve or limit the Company’s obligations and liabilities under other provisions of this Agreement.

#### 11.7 Deductibles at Commercially Reasonable Rates

In the event that the deductibles required for the insurance coverage provided in this Clause 11 are not available at commercially reasonable rates, JPS shall not unreasonably withhold its consent to the Company's obtaining such insurance coverage with deductibles as are available at commercially reasonable rates.

#### 11.8 Responsibility for Deductibles and Premiums

The Company shall bear responsibility for any and all premiums, whether at inception or retroactive, or deductibles incurred or required under the insurance contained by this Clause 11.

### 12. INDEMNIFICATION AND LIABILITY

#### 12.1 Indemnity by the Company

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

- 12.1.1 During the design, financing, construction, ownership, operation or maintenance of the Facility resulting from any negligent act or omission of the Company, without recourse to JPS;
- 12.1.2 In connection with, arising out of, or resulting from, any breach of warranty, material misrepresentation by the Company, or non-performance of any term, condition, covenant or obligation to be performed by the Company under this Agreement or any other agreement comprising Material Agreements; and
- 12.1.3 In connection with any claim, proceeding or action brought against JPS under any applicable national or local Environmental Laws or regulations resulting from the activities of the Company, including without limitation the discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from the Facility, the contamination of the soil, air, or water around the Site, or any pollution abatement, replacement, removal or other decontamination or monitoring obligations with respect thereto; provided that with respect to this Clause

12.1.3, the Company shall not be responsible for any liabilities, damages, losses, costs or expenses suffered by JPS unless such liabilities, damages, losses, costs or expenses resulted from the Company's violation of national or local Environmental Laws or regulations, as determined by a court, governmental authority or arbitrator of competent jurisdiction.

The Company will hold JPS fully indemnified in respect of the foregoing losses, damages, death, injuries, liabilities, costs and expenses. The Company's indemnities, however, shall not extend to any loss, damage, death, injury, liability, cost or expense (or any claim in respect thereof) to the extent that it was caused by any act or omission of JPS or the failure of JPS to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in this Clause 12.1, nothing in this Clause 12.1 shall apply to any loss, damage, death, injury, liability, cost or expenses (or any claim in respect thereof) to the extent that, JPS is compensated pursuant to the terms of any agreement comprising the Material Agreements.

## 12.2 Indemnity by JPS

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

12.2.1 During the design, financing, construction, ownership, operation or maintenance of the Facility resulting from any negligent act or omission of JPS, without recourse to the Company; and

12.2.2 In connection with, arising out of, or resulting from, any material misrepresentation by JPS or non-performance of any term, condition, covenant or obligation to be performed by JPS under this Agreement.

JPS will hold the Company fully indemnified in respect of the foregoing losses, damages, death, injuries, liability, costs and expenses. JPS' indemnities, however, shall not extend to any loss, damage, death, injury, liability cost or expense (or any claim in respect thereof) to the extent that it was caused by any act or omission of the Company or the failure of the Company to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in this Clause 12.2, nothing in this Clause 12.2 shall apply to any loss, damage, death, injury, liability, cost or expense (or any claim in respect thereof) to the extent that, the Company is

compensated pursuant to the terms of any agreement comprising the Material Agreements.

12.3 Notice of Proceedings

Each Party shall promptly notify the other Party of any claim or proceeding in respect of which, but for the provisions of Clause 12.4, it is entitled to be indemnified under this Clause 12. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of such claim or proceeding.

12.4 Basket Limitation

Neither Party shall be entitled to make any claim under this Clause 12 until such time as all such claims by such Party exceed [**Amount to be Agreed Dollars**] (\$) (or the Jamaican Dollar equivalent) in the aggregate or until such claim if not made would be barred by the relevant statute of limitations, at which time all such claims of that Party may be made; provided that when such claims have been made, the same rule shall apply in respect of future claims.

12.5 Conduct of Proceedings

Each Party shall have the right, but not the obligation, to contest, defend and litigate (and to retain legal advisers of its choice in connection therewith) any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the said indemnity; provided that the indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through legal advisers of its choice if it (a) gives notice of its intention to do so to the first-mentioned Party, (b) acknowledges in writing its obligation to indemnify that Party to the full extent provided by this Clause 12.5, and (c) reimburses that Party for the reasonable costs and expenses previously incurred by it prior to the assumption of such defence by the indemnifying Party. Neither Party shall settle or compromise any claim, action, suit or proceeding in respect of which it is entitled to be indemnified by the other Party without the prior written consent of that Party, which consent shall not be unreasonably withheld.

### 13. FORCE MAJEURE

#### 13.1 Consequences of Force Majeure

Subject to the provisions of Clauses 13.2 and 13.3, neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement (other than payment obligations) due substantially to one or more events of Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) (other than that specified in Clause 15.3) shall be extended on a day-for-day basis for so long as one or more events of Force Majeure continue to materially and adversely affect the performance by such Party of such obligation(s) under or pursuant to this Agreement; provided that no relief shall be granted to the Party claiming Force Majeure pursuant to this Clause 13.1 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred; and provided, further, that the Party not claiming Force Majeure may immediately terminate this Agreement without further obligation if Force Majeure delays a Party's performance for a period greater than eighteen (18) consecutive Months. Other than for breaches of this Agreement by the Party not claiming Force Majeure, and without prejudice to the right of the Party claiming Force Majeure to indemnification pursuant to Clause 12, the Party claiming Force Majeure shall not have any cause of action against the other Party solely as a result of the Force Majeure. For the avoidance of doubt, the suspension of performance set forth in this Clause 13 shall be of no greater scope and of no longer duration than is required to overcome the effects of the Force Majeure.

#### 13.2 Procedures Upon a Force Majeure

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

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

During the pendency of Force Majeure the Company shall not be entitled to receive Fixed Payments or Variable Payments from JPS; provided that if the Force Majeure affects only part of the Facility, then the Fixed Payment during

the pendency of such Force Majeure shall be pro-rated to reflect the portion of the Facility, not affected thereby, and the Company shall be entitled to receive such pro-rated Fixed Payments and Variable Payments for electrical energy actually delivered to JPS notwithstanding any unavailability of the Dependable Capacity.

#### 14. TAXES

All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to (i) the Company, (ii) the Facility, and (iii) the Company's other assets shall be paid by the Company in a timely fashion.

#### 15. DEFAULTS AND TERMINATION

##### 15.1 Company Events of Default

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

- 15.1.1 the failure of the Company to post the Construction Security Deposit in accordance with Clause 9.4.7;
- 15.1.2 the failure of the Company to achieve the Commencement of Construction within [sixty (60)] Days after the Agreement Date;
- 15.1.3 an Abandonment by the Company of the construction of the Facility after its Commencement of Construction without the written consent of JPS;
- 15.1.4 the failure of the Company to achieve the Commercial Operations Date within one (1) year after the Required Commercial Operations Date;
- 15.1.5 the failure of the Company to provide or replenish the Operations Security Deposit in accordance with Clause 9.4.7(c) of this Agreement;
- 15.1.6 the Abandonment by the Company of the operation of the Facility;
- 15.1.7 wilful tampering by the Company, or its employees or agents acting within the scope of their employment, with the Interconnection Facilities without the prior written consent of JPS, except in situations where such actions are taken to prevent immediate injury, death, or property damage and the Company uses all reasonable efforts to provide JPS with advance notice of the need for such actions;



- 15.1.8 the assignment or transfer of this Agreement or an assignment, transfer or acquisition in breach of Clause 17.1 or 17.2 of this Agreement;
- 15.1.9 any failure by the Company to make any payment or payments required to be made by it to JPS under this Agreement within ten (10) Days after the Company is given notice that the payment was not made by the due date for payment under the relevant agreement, which payment or payments exceed in the aggregate at any one time the equivalent of [five hundred thousand Dollars (\$500,000.00)] (or the Jamaican Dollar equivalent);
- 15.1.10 except for the purpose of amalgamation, or reconstruction (provided that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events: (a) the passing of a resolution by the owners of the Company for the winding up of the Company; (b) the admission in writing by the Company of its inability generally to pay its debts as they become due; (c) the appointment of a provisional manager, trustee or liquidator in a winding up proceeding after notice to the Company and due hearing; or (d) the making by the Court of an order winding up the Company; provided that a dissolution of the Company shall not constitute a Company Event of Default if JPS has approved any such change in advance in accordance with the terms of this Agreement; or (e) the dissolution of any entity comprising the Company;
- 15.1.11 any material breach by the Company of any representation, warranty or covenant in this Agreement save that the Parties agree that a breach of the covenant contained in Clause 5.3.2 shall not constitute a Company Event of Default unless such breach constitutes a Company Event of Default pursuant to Clause 15.1.4; or
- 15.1.12 the failure of the Company to make the payment required to be made by it under Clause 9.7.7(c).

## 15.2 JPS Events of Default

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

- 15.2.1 except for the purpose of amalgamation, reorganization or reconstruction that does not affect the ability of the amalgamated, reorganized or reconstructed

- entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events: (a) the passing of a resolution by the shareholders of JPS for the winding up of JPS; (b) the admission in writing by JPS of its inability generally to pay its debts as they become due; (c) the appointment of a provisional manager, trustee or liquidator in a winding up proceeding after notice to JPS and due hearing; or (d) the making by the Court of an order winding up JPS;
- 15.2.2 any failure by JPS to make any payment required to be made by it under Article 9 within ten (10) Days after JPS is given notice that the payment was not made by the due date for payment under Article 9, which payment or payments exceed in the aggregate at any one time the equivalent of **[two million Dollars (\$2,000,000.00)]** (or the Jamaican Dollar equivalent); provided that the Company shall have attempted to obtain payment from such other sources as provided for in accordance with Clause 9.7 and failed to obtain payment thereunder in full before this event shall be considered to be a JPS Event of Default;
- 15.2.3 wilful tampering by JPS, or its employees or agents acting within the scope of their employment, with the Facility without the prior written consent of the Company, except in situations where such actions are taken to prevent immediate injury, death, or property damage and JPS uses all reasonable efforts to provide the Company with advance notice of the need for such actions;
- 15.2.4 an assignment or transfer of this Agreement in breach of Clause 17.1.3;
- 15.2.5 the failure of JPS to provide, replenish or replace any Letter of Credit in accordance with Clause 9.7; or
- 15.2.6 any material breach by JPS of any representation, warranty or covenant in this Agreement.
- 15.3 Notice and Cure
- 15.3.1 A notice of default given pursuant to Clauses 15.1 or 15.2 (each a “Notice of Default”) shall specify in reasonable detail the Company Event of Default or JPS Event of Default (each an “Event of Default”), as the case may be, giving rise to the Notice of Default and shall expressly state that it is a Notice of Default. In the case of a default set forth in Clauses 15.1.1, 15.1.4, 15.1.6, 15.1.7, 15.1.12 or 15.2.3, the defaulting Party shall have five (5) Business Days within which to cure the Event of Default.

15.3.2 In the case of a default set forth in any other subclause of Clause 15.1 or 15.2 the defaulting Party shall have thirty (30) Days to cure the Event of Default, or such longer period as shall be reasonably necessary to effect a cure, so long as such cure is being diligently pursued and such longer period beyond thirty (30) Days is agreed to in writing by the other Party, provided that all such cure periods shall immediately end and this Agreement may be terminated if the defaulting Party ceases to use all reasonable efforts to cure its Event of Default.

15.3.3 The Company shall be deemed to have cured any Event of Default set forth in Clause 15.1.10 caused by the dissolution, bankruptcy or insolvency of the Company if any Owner or any combination of Owners causes the Company to be reconstituted under the Laws of Jamaica within such thirty (30) Day period. JPS shall be deemed to have cured the Event of Default set forth in Clause 15.2.4 if JPS acquires the interest assigned or transferred in breach of Clause 17.1.3 within such five (5) Business Day period.

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

#### 15.4 Rights and Remedies Upon an Event of Default

15.4.1 If a Company Event of Default has occurred and the Company Event of Default has not been cured within the period specified in Clause 15.3, then JPS, in its sole discretion, may:

- (a) terminate this Agreement after delivering written notice to the Company and the OUR; and/or
- (b) proceed in accordance with Clause 16 to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy); and/or
- (c) retain all or part of the Construction Security Deposit and/or Operations Security Deposit provided by the Company pursuant to Clause 9.4.7 in full or partial satisfaction of the damages to which it may be entitled under subclause (b) above; and/or
- (d) assess interest on any amounts due at the Default Rate plus six (6) percentage points.

The rights and remedies of JPS set forth in this Clause 15.4.1 shall not be exclusive but, to the extent permitted by law, shall be cumulative and in

addition to all other rights and remedies existing at law, in equity or otherwise. JPS may exercise each right and remedy afforded by this Agreement or by law from time to time and as often as may be deemed expedient by JPS. No delay by, or omission of, JPS to exercise any right or remedy arising upon any Company Event of Default shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

15.4.2 If a JPS Event of Default has occurred and the JPS Event of Default has not been cured within the period specified in Clause 15.3, then the Company, in its sole discretion, may:

- (a) terminate this Agreement by delivering written notice to JPS; and/or
- (b) proceed in accordance with Clause 16 to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy); and/or
- (c) assess interest on any amounts due at the Default Rate plus six (6) percentage points; and/or
- (d) after giving notice to JPS and the OUR, disconnect the Facility from the JPS Grid System **in accordance with** Prudent Utility Practice; and/or
- (e) draw on all or part of the Letter of Credit provided by JPS pursuant to Clause 9.7 in full or partial satisfaction of the damages to which it may be entitled under subclause (b) above.

The rights and remedies of the Company set forth in this Clause 15.4.2 shall not be exclusive but, to the extent permitted by applicable law, shall be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise. The Company may exercise each right and remedy afforded by this Agreement or by applicable law from time to time and as often as may be deemed expedient by the Company. No delay by, or omission of, the Company to exercise any right or remedy arising upon any JPS Event of Default shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto. Notwithstanding the foregoing provisions of this Clause 15.4.2, the total amount of damages that the Company shall be entitled to for any breach of this Agreement by JPS shall not exceed, in the aggregate, the Facility's Fair Market Value.

### 15.5 Survival

Notwithstanding anything to the contrary contained in this Agreement, the rights and obligations set forth in Clauses 9.3, 9.4.6, 9.4.7, 9.5, 12, 15 and 16 shall survive the termination of this Agreement.

### 15.6 Exclusion of Consequential Damages

In no event shall any Party or any affiliate thereof or any of their respective directors, officers, agents, or employees be liable to any other Party or any affiliate thereof or any of their respective directors, officers, agents, or employees for any indirect, consequential, punitive, special, incidental or exemplary losses or damages (including without limitation lost profits or lost investment opportunity), whether such liability arises in contract, tort or otherwise; provided that this Clause 15.6 shall not be deemed to limit the Company's liability for liquidated damages hereunder.

## 16. RESOLUTION OF DISPUTES

### 16.1 Mutual Differences

If any dispute or difference of any kind whatsoever (a "Dispute") shall arise between the Parties in connection with, or arising out of, this Agreement, the Parties agree to use good faith efforts to resolve all such Disputes as rapidly as possible on a fair and equitable basis. Toward such end both Parties agree that the Operating Committee shall strive to develop and follow a process of presenting, rapidly assessing and settling any Disputes on a fair and equitable basis. Such process shall include (a) presentation of a claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim, (b) a response by the other Party to the claiming Party's written presentation of its claim, along with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered within seven (7) Business Days after receipt of the claiming Party's presentation of its claim, and (c) within two (2) Business Days after delivery of the other Party's response, a meeting of the Parties' representatives with knowledge and authority to resolve the Dispute. If the Parties are unable to resolve the Dispute within sixty (60) Days after the meeting, either Party may require that the Dispute be referred, as appropriate, (a) to an expert pursuant to Clause 16.2 or (b) to an arbitration panel pursuant to Clause 16.3.

## 16.2 Referral to an Expert

16.2.1 If the Dispute cannot be settled within the sixty (60) Day period provided in Clause 16.1 and:

- (a) referral to an expert is expressly required by this Agreement; or
- (b) the Parties otherwise agree in writing to referral to an expert;

then the Dispute shall be referred to an expert for determination.

16.2.2 Either Party may give notice ("Notice of Intention to Refer") to the other Party of its intention to refer the Dispute to an expert, which shall include, among other things, (a) a description of the Dispute, (b) the grounds on which such referring Party relies in seeking to have the Dispute determined in its favour, and (c) all written material which such referring Party proposes to submit to the expert; provided that this Clause 16.2.2 shall not be construed so as to prevent such referring Party from using or producing further written material which comes into existence or comes to such referring Party's attention after the Notice of Intention to Refer is given, but in such event the other Party shall be allowed a reasonable time to respond thereto.

16.2.3 The other Party shall within twenty one (21) Days after service of the Notice of Intention to Refer, give to the referring Party a notice ("Notice of Intention to Defend") of its intention to defend, which shall include, among other things, (a) the grounds upon which such responding Party relies in seeking to have the Dispute determined in its favour and (b) all written material that such responding Party proposes to submit to the expert; provided that this Clause 16.2.3 shall not be construed so as to prevent such responding Party from using or producing further written material which comes into existence or comes to such responding Party's attention after the Notice of Intention to Defend is given, but in such event the referring Party shall be allowed a reasonable time to respond thereto.

16.2.4 If within fourteen (14) Days after service of a Notice of Intention to Defend, the Parties have agreed on an expert and on the terms under which the Dispute shall be referred, the Dispute shall be so referred. In the event that the Parties are unable within fourteen (14) Days after service of a Notice of Intention to Defend to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the then presiding president of the Jamaica Institution of Engineers to appoint an expert, and the terms of reference of such expert's appointment shall be those set out in the Notice of Intention to Refer and the Notice of

Intention to Defend; provided that the expert shall not be a national of the jurisdiction of either Party or of the jurisdiction of any of the Owners.

16.2.5 Within seven (7) Days of the appointment of the expert, the expert shall nominate a time and place in Kingston, Jamaica for a hearing of the Parties on the Dispute, which time shall not be more than twenty one (21) Days after the expert's appointment. At the time nominated for the hearing, each Party must appear before the expert and present its case. The expert must render his decision on the Dispute as soon as possible after completion of the hearing and must forthwith advise the Parties in writing of his determination and his reasons therefor. Any evidence given or statements made in the course of the hearing may not be used against a Party in any other proceedings. The proceedings shall not be regarded as an arbitration and the laws relating to commercial arbitrations shall not apply; provided, that the expert shall resolve the Dispute in accordance with the Laws of Jamaica. The decision of the expert shall be final and binding upon both Parties upon the delivery to them of the expert's written determination, save in the event of fraud, serious mistake or miscarriage.

16.2.6 If the expert does not render a decision within a period of ninety (90) Days after his appointment or such longer or shorter period as the Parties may agree in writing, either Party may upon giving notice to the other, terminate such appointment, and a new expert shall be appointed who shall resolve the Dispute in accordance with the provisions of this Clause 16.2. If the Dispute is not resolved by one or more experts within twelve (12) Months after the receipt by the responding Party of the Notice of Intention to Refer, then either Party may refer the Dispute for arbitration in accordance with this Agreement.

### 16.3 Arbitration

16.3.1 If the Dispute: (a) cannot be settled within the sixty (60) Day period provided in Clause 16.1, and referral to an expert is not expressly required by this Agreement or agreed to in writing by the Parties, or (b) is referred to an expert pursuant to Clause 16.2 and the right to refer the Dispute to arbitration pursuant to Clause 16.2.6 has arisen then, in either case, the Dispute shall be referred to and finally settled by arbitration under and in accordance with the Rules of Arbitration of the International Chamber of Commerce, as amended (the "ICC Rules"), and in effect on the date that demand for arbitration is filed as set forth in Clause 16.3.2.

- 16.3.2 To initiate arbitration, any Party shall submit its notice of arbitration to the International Court of Arbitration and to the other Party simultaneously. All arbitration proceedings shall take place in Kingston, Jamaica and will be conducted in the English language. The arbitration panel will consist of three arbitrators, all of whom (including the chairperson) shall be appointed by the International Court of Arbitration pursuant to the ICC Rules. No arbitrator appointed pursuant to this Clause 16.3.2 shall be an employee or agent or former employee or agent of any Party or any of its affiliates or a person with an interest in either Party. The expenses of the arbitration shall be borne as determined by the arbitral tribunal. The award of the arbitral tribunal shall be final and binding on the parties thereto, including any joined or intervening party, who hereby agree to undertake it without recourse to any judicial proceedings in any jurisdiction whatsoever seeking annulment, setting aside, modification or any diminution or impairment of its terms or effect. Judgment upon any arbitral award rendered may be entered and a confirmation order sought in any court having jurisdiction thereof.
- 16.3.3 Any respondent named in a notice of arbitration or counterclaim or cross-claim hereunder may join any other Party to any arbitral proceedings hereunder; provided, however, that (i) such joinder is based upon a dispute, controversy or claim substantially related to the Dispute in the relevant notice of arbitration or counterclaim or cross-claim, and (ii) such joinder is made by written notice to the International Court of Arbitration and to the Parties within either thirty (30) Days from the receipt by such respondent of the relevant notice of arbitration or counterclaim or cross-claim or such longer time as may be determined by the International Court of Arbitration or the arbitrators.
- 16.3.4 Any party may intervene in any arbitral proceedings hereunder; provided, however, that (i) such intervention is based upon a dispute substantially related to the Dispute in the relevant notice of arbitration or counterclaim or cross-claim and (ii) such intervention is made by written notice to the International Court of Arbitration and to the Parties within either thirty (30) Days after the receipt by such party of the relevant notice of arbitration or counterclaim or cross-claim or such longer time as may be determined by the International Court of Arbitration or the arbitrators.
- 16.3.5 Any joined or intervening party may make a counterclaim or cross-claim against any party; provided, however, that (i) such counterclaim or cross-claim is based upon a dispute, controversy or claim substantially related to the Dispute in the relevant notice of arbitration or counterclaim or cross-claim and (ii) such counterclaim or cross-claim is made by written notice to the



International Court of Arbitration and to the Parties within either thirty (30) Days from the receipt by such party of the relevant notice of arbitration or counterclaim or such longer time as may be determined by the International Court of Arbitration or the arbitrators.

16.3.6 As to all Disputes between the Parties under this Agreement, the Parties unconditionally and irrevocably:

- (a) agree that the execution, delivery and performance by it of this Agreement and any agreement included in the Material Agreements to which it is a party constitute private and commercial acts rather than public or governmental acts;
- (b) agree that, should any proceedings be brought against it or its assets in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets;
- (c) waive any right of immunity which it or any of its assets now has or may acquire in the future in any jurisdiction; and
- (d) consent generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever irrespective of its use or intended use).

#### 16.4 Continued Performance

During the pendency of any Dispute being handled in accordance with this Clause 16, (a) the Company shall continue to perform its obligations under this Agreement to deliver Dependable Capacity and Net Energy Output, (b) each Party shall continue to perform its obligations under this Agreement to pay all amounts due in accordance with this Agreement that are not in dispute, and (c) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in a Dispute. Notwithstanding any other provision of this Agreement, neither Party shall be obligated to pay to the other Party any amount that is the subject of a Dispute until the Dispute is finally resolved in accordance with this Clause 16; provided that (i) JPS may draw on the Construction Security Deposit and/or the Operations Security Deposit in accordance with Clause 9.4.7, and (ii) the Company may draw on the Letter of Credit established pursuant to Clause 9.7, in either case (i) or (ii),

despite a Dispute between the Parties as to the amount of payment owed to the drawing Party.

## 17. ASSIGNMENT

### 17.1 Assignment

17.1.1 JPS acknowledges and agrees that all obligations of the Company under this Agreement prior to the Commercial Operations Date may be performed by the Company's designee; provided that such designee is permitted to perform such obligations pursuant to the [Licensee's Supply of Electricity Licence, 2011].

17.1.2 The Company may not assign or transfer its rights or obligations under, pursuant to or associated with this Agreement, or discharge any of the facilities necessary for the Facility to meet the Dependable Capacity without the prior written consent of JPS, which consent shall not to be unreasonably withheld or delayed; provided that the Company shall be entitled to assign or transfer its rights and obligations under, pursuant to and associated with this Agreement to any assignee or transferee to which it has assigned or transferred the [Licensee's Supply of Electricity Licence, 2011]. In the event that JPS shall provide such consent, JPS shall execute all such acknowledgements of any assignment or transfer created in accordance with the foregoing sentence as are reasonably requested by the Company to give effect to the foregoing sentence; provided that the execution of such acknowledgements shall not prejudice any rights or interests of JPS.

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

### 17.2 Granting of Security

17.2.1 Notwithstanding the provisions of Clause 17.1.2, for the purpose of financing the construction, operation and maintenance of the Project, the Company may assign or create security over its rights and interests under, pursuant to or associated with the (a) this Agreement, (b) any agreement included within the Material Agreements, (c) the Facility, (d) the Site, (e) the movable property and intellectual property of the Company, or (f) the revenues or any of the rights or assets of the Company, for the benefit of the Lenders.

17.2.2 In accordance with their rights and obligations with respect to the Facility, the Lenders may enforce such security interests in the assets identified in Clause

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

## 18. NOTICES

### 18.1 Address for Notices

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

#### 18.1.1 In the case of JPS:

Address:	Jamaica Public Service Company Ltd. 6 Knutsford Blvd., Kingston 5, Jamaica
Fax No.:	(876) 511-2000
Attention:	President and Chief Executive Officer
Copied to:	Director, System Planning & Control
E-mail:	dobiglio@jpsco.com/ddacosta@jpsco.com

#### 18.1.2 In the case of the Company:

Address:	[ADDRESS OF COMPANY]
Fax No.:	[FAX NUMBER]
Attention:	[SENIOR AUTHORITY OF COMPANY]
E-mail:	[EMAIL ADDRESS OF SENIOR AUTHORITY OF COMPANY]

or such other address and/or fax number as either Party may previously have notified to the other Party in accordance with this Clause 18.1.

## 18.2 Effectiveness of Service

Notice shall be deemed to be effective as follows:

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

## 19. ACCOUNTS AND REPORTS

### 19.1 Appointment of Auditors

The Company shall make arrangements reasonably satisfactory to JPS with respect to the installation and operation of an accounting and cost control system and for the appointment as auditors of a firm of independent chartered accountants with offices in no fewer than fifty (50) countries including Jamaica. On notice and for reasonable cause given to the Company, JPS shall have the right to have a firm of independent chartered accountants conduct additional audits of the Company at JPS' expense.

### 19.2 Right of Inspection

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

### 19.3 Periodic Reports

- 19.3.1 The Company shall, as soon as available but in any event within one hundred and eighty (180) Days after the end of each Financial Year, furnish to JPS: (a) two (2) copies of its complete financial statement for such Financial Year (which are in agreement with its books of accounts and prepared in accordance with accounting principles which are generally accepted in

Jamaica and consistently applied), together with an audited report thereon; (b) a copy of any management letter or other communication sent by the auditors to the Company or to its management in relation to the Company's financial, accounting and other systems, management and accounts; (c) a report by the auditors certifying that, based on its said financial statements, the Company was in compliance with its financial obligations under the Loan Agreements as of the end of the relevant Financial Year or, as the case may be, detailing any non-compliance. In addition, the Company shall authorize its auditors (whose fees and expenses shall be for the account of the Company) to communicate directly with JPS at any time regarding the Company's accounts and operations and shall furnish to JPS a copy of such authorization.

- 19.3.2 The Company shall, as soon as available but in any event within sixty (60) Days after the end of each six (6) Month period of each Financial Year, furnish to JPS: (a) two (2) copies of the Company's complete financial statements for such six (6) Month period, all in accordance with accounting principles which are generally accepted in Jamaica and consistently applied, and, if requested by JPS, certified by an officer of the Company; and (b) a report on any factors materially and adversely affecting or which might materially and adversely affect the Company's business and operations or its financial condition.

19.4 Reporting of Changes

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

19.5 Providing of Lists of Lenders and Creditors

Within ninety (90) Days of the end of each Financial Year, the Company shall provide to JPS a list of each of its Lenders and creditors to which the Company owes a sum in excess of one million Dollars (\$1,000,000.00) (or the Jamaican Dollar equivalent), including the details as to the amounts due to each of them. This list shall also indicate any changes, as compared to the list submitted in the previous Financial Year, that might have occurred.

19.6 Information re Statutory Notice/Winding Up Proceedings

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

19.6.2 The Company shall provide to JPS all information in respect of any further actions taken by the Lenders or creditors following the notices described in Clause 19.6.1.

20. MISCELLANEOUS PROVISIONS

20.1 Variations in Writing

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

20.2 Expenses

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

20.3 Severability

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

20.4 Waivers

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

- (a) shall operate or be construed as a waiver of any other or further default whether of a like or different character; or
- (b) shall be effective unless in writing duly executed by an authorized representative of such Party.

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

granted by one Party to the other shall not thereby act as a waiver of any such breach or acceptance of any such variation.

## 20.5 Confidentiality

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

20.5.2 The provisions of Clause 20.5.1 above shall not apply to any information:

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

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

## 20.6 Successors and Assigns

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

20.7 No Liability for Review

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

20.8 No Third Party Beneficiaries

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Lenders and the indemnified persons, and shall not imply or create any rights on the part of, or obligations to, any other person.

20.9 Affirmation

The Company declares and affirms that neither it nor its General Partners, directors, employees or any of its agents has paid or has undertaken to pay any bribe, payoff, kick-back or unlawful commission or has in any other unlawful way or manner paid any sums, whether in Jamaican currency or foreign currency and whether in Jamaica or abroad, or in any other unlawful manner given or offered to give any gifts and presents in Jamaica or abroad, to any person or company to procure lawfully or unlawfully this Agreement or any agreement comprising the Material Agreements. The Company undertakes not to engage in any of the said or similar acts during the term of, and relative to, this Agreement.

20.10 Governing Law

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

20.11 Relationship of the Parties

This Agreement does not place and shall not be construed as placing the Parties in an employment relationship, in a partnership or joint venture relationship, or in a principal/agent relationship. Nothing in this Agreement shall be construed to grant any Party the right or authority to enter into any contracts, assume or create any obligation, express or implied, or make any



other commitment in the name of or on behalf of another Party. Each Party agrees to indemnify and hold harmless the other Party from any claim by a third party that the indemnifying Party has acted on behalf of the indemnified Party.

#### 20.12 Further Assurances

JPS shall use all reasonable efforts to execute, acknowledge and deliver any and all further documents and instruments, and to take any other actions, which may be necessary to satisfy the reasonable requests of any Lenders or prospective Lenders in connection with the financing of the Project pursuant to the Loan Agreements, and to use all reasonable efforts to deliver any further documents and instruments, or to take any other actions, which are consistent with the reasonable and customary requests of lenders in connection with the financing of similar projects; provided that the foregoing shall not be construed to require JPS to execute, acknowledge and deliver any further documents and instruments, or to take any other actions, which are inconsistent with its rights under this Agreement or which are expressly subject to its consent or approval under this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS whereof the Parties have entered into this Agreement as of the date first above written.

JAMAICA PUBLIC SERVICE COMPANY LIMITED

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By:

Title: President and Chief Executive Officer

[LICENSEE]

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By:

Title: [Authorised Officer of Licensee]

## **SCHEDULE 1**

### **DEFINITIONS**

“Abandonment” – Either (a) the cessation of substantially all activities relating to the construction or operation and maintenance of the Facility for a period greater than forty eight (48) Hours, as appropriate, or (b) the physical absence of substantially all employees of the Company and its Contractors from the Site after the commencement of excavation for the foundations of the Facility for at least One Hundred Sixty-Eight (168) consecutive hours.

“Actual Initial Dependable Capacity” or “AIDC” – The Dependable Capacity of the Facility as actually tested in accordance with Schedule 4 on or before the Commercial Operations Date, or as subsequently re-declared in accordance with Clause 3.1.3 of Schedule 4.

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

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

“Agreement Date” – The date this Agreement is signed by both Parties.

“Allowable Forced Outage” – The meaning ascribed thereto in Clause 9.4.4(b).

“Annual Projected Capacity Factor” – The expected energy production from the Facility for the upcoming Year (calculated based on the parameters specified in Clause 6.3.1 of the Agreement), divided by the product of the Dependable Capacity and 8,760 Hours.

“Backup Metering System” – The meaning ascribed thereto in Clause 8.1.2.

“Base Rate” – A fluctuating rate of interest per annum equal to the Dollar rate of interest announced from time to time by Bank of Nova Scotia Jamaica Limited at its Kingston office as its prime rate, whether or not such rate is charged. The Base Rate hereunder shall change on the Day such bank announces a change in such prime rate. Whenever the Base Rate is applied, the interest shall be compounded semi-annually, computed for the actual number of Days elapsed on the basis of a 365-Day Year.

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

“Change in Environmental Law” – Any new Environmental Law or change in an existing Environmental Law after [BID REFERENCE DATE].

“Change in Relevant Law” – Any Change in Environmental Law or Change in Tax Law after [BID REFERENCE DATE].

“Change in Tax Law” – Any new Tax Law or change in existing Tax Law after [BID REFERENCE DATE].

“Cold Start” - The start-up of a Unit is considered a “Cold Start” if the Facility output to the JPS Grid System has been zero (0) MW for more than eight (8) consecutive hours prior to this start up.

“Commencement of Construction” – The initiation of the construction of the Facility, as evidenced by the Company’s (a) issuance of the Notice to Proceed, and (b) making of the initial payment to the respective Construction Contractor, in each case under the Construction Contract.

“Commercial Operations Date” – The date determined as the Commercial Operations Date in accordance with Schedule 4.

“Commissioned” – The state or act of successful completion of Commissioning the Facility in accordance with Schedule 4.

“Commissioned Shortfall” – The difference between (i) the Initial Declared Dependable Capacity of the Facility as set on the Commercial Operations Date or as re-declared in accordance with Schedule 4, if less than the Required Dependable Capacity, and (ii) the Required Dependable Capacity.

“Commissioning” – Engaging in the operations required for testing of the Facility, in accordance with Schedule 4.

“Company Event of Default” – An event described in Clause 15.1 for which JPS may issue a JPS Notice of Default.

“Company Notice of Default” – A notice of default issued by the Company to JPS pursuant to Clause 15.2 and which notice shall state that it is a “Notice of Default”.

“Facility” – The meaning ascribed thereto in the Recitals.

“Facility’s Fair Market Value” – The fair market price of the Facility, established as the price that a willing seller and willing purchaser would transact and calculated on the assumption that this Agreement shall continue in effect until its stated expiration, expressed in Dollars.

“Consenting Party” – The meaning ascribed thereto in Clause 1.1.8.

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

“Construction Contractor” – The party or parties to a Construction Contract other than the Company.

“Construction Security Deposit” – The meaning ascribed thereto in Clause 9.4.7(a).

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

“Control Center” – JPS’ System Control Center located in Kingston, Jamaica, or such other control center designated by JPS from time to time (but not more than one at any time) from which JPS shall Dispatch the Facility.

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

“Damages” – Any actual damages agreed upon by the Parties or established pursuant to any dispute resolution procedure described in Clause 16.

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

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

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

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

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

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

“Dispute” – The meaning ascribed thereto in Clause 16.1.

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

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

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

“Event of Default” – The meaning ascribed thereto in Clause 15.3.1

“Final Liquidated Damages Invoice” – The meaning ascribed thereto in Clause 9.5.2.

“Financial Closing” – The signing of the Loan Agreements for financing of the Facility.

“Financial Year” – The period from January 1<sup>st</sup> to December 31<sup>st</sup> or such other period as may be selected by the Company in respect of which the audited accounts of the Company shall be made up.

“Fixed Payment” – The amount which JPS will pay the Company each Month for Dependable Capacity in accordance with Article 9 as determined in accordance with Schedule 6 hereto.

“Fixed Payment Price” – The price equal to the Fixed Payment for a given Month divided by the Average Dependable Capacity (as defined in Schedule 6) for that Month.

“Forced Outage” – Any partial or complete Interruption of the generating capability of the Facility that is not the result of (i) a request by JPS in accordance with this Agreement; (ii) a Scheduled Outage or a Maintenance Outage; or (iii) an event or occurrence of Force Majeure.

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

“Fortnightly Projected Dispatch” – The meaning ascribed thereto in Clause 6.1.2.

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

“Fuel Supply Agreement” – Any agreement entered into by the Company for the purchase of Fuel.

“Fuel Supply Plan” – The Company’s plan for providing Fuel to the Facility to ensure the operation of the Facility in accordance with the terms and provisions of this Agreement. The Fuel Supply Plan shall include, but not be limited to, the Company’s proposed Fuel supply and transportation arrangements and the Company’s plans to obtain Fuel on the most economic basis at any given time and shall be reasonably satisfactory to JPS if such plan is in accordance with Prudent Utility Practice.

“General Partner” – [LICENCEE’S PARTNERS]

“Generation Code” – The generation code required to be drawn up and approved by the OUR and as revised and amended from time to time.

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

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

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

“Interconnection Criteria” - The meaning ascribed thereto in Clause 7.2.3.

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

“Interconnection Point” - The physical point where the Facility and the JPS Grid System are connected as specified in Schedule 3.

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

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

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

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

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



“JPS Event of Default” – An event described in Clause 15.2 for which the Company may issue a Company Notice of Default.

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

“JPS Licence” – The All Island Electric Licence 2001 together with any extensions, variations or amendments or other licence(s) granted to JPS under the Electric Lighting Act.

“JPS Notice of Default” – A notice of default issued by JPS to the Company pursuant to Clause 15.1 and which notice shall state that it is a “Notice of Default”.

“kW” – Kilowatt(s).

“kWh” – Kilowatt-hour(s).

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

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

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

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

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

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

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

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

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

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

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

“Month” – A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last Day of the preceding month and ending at 12:00 midnight on the last Day of that month.

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

“MVAR” – Megavar(s).

“MW” – Megawatt(s).

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

“Notice of Default” – The meaning ascribed thereto in Clause 15.3.1.

“Notice of Intention to Defend” – The meaning ascribed thereto in Clause 16.2.3.

“Notice of Intention to Refer” – The meaning ascribed thereto in Clause 16.2.2.

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

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

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

“O&M Contractor” – The company which the Company may from time to time appoint to operate and maintain the Facility.

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

“Operating Committee” – The committee established pursuant to Clause 6.8 for the purpose of determining operating standards and procedures for the Facility.

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

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

“Owner” – [LICENCEE’S OWNERS]

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

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

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

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

“Primary Metering System” – All meters and metering devices owned by JPS and used to measure the delivery and receipt of Net Energy Output and Dependable Capacity.

“Project” – The design, financing, construction, ownership, operation and maintenance of the Facility and all activities incidental thereto.

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

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

“Prudent Utility Practice” – The practices generally followed by the electric utility industry with respect to the design, construction, operation, and maintenance of electric generating, transmission, and distribution facilities, including, but not limited to, the engineering, operating, and safety practices generally followed by such utility industries.

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

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

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

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

“Required Dependable Capacity” – A net capacity of [PLANT CAPACITY IN MEGAWATTS] MW delivered at the Interconnection Point.

“Required Fuel Storage Capacity” – The meaning ascribed thereto in Clause 6.7.1.

“SCADA” – Supervisory Control and Data Acquisition system.

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

“Scheduled Outage” – A planned partial or complete Interruption of the generating capability of a Unit or of the Facility that (i) is not a Maintenance Outage; (ii) has been scheduled and allowed by JPS in accordance with Clause 6.3; and (iii) is for inspection, testing, preventive maintenance, corrective maintenance or improvement.

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

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

“Statement” – The meaning ascribed thereto in Clause 9.6.1.

“Tax Law” – Any Law of Jamaica which impacts or affects present or future national, local or other lawful taxes, duties or levies applicable to the Company, the Project or the Company’s other assets.

“Unit” – Each of the generating units that form a part of the Facility.

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

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

“Variable Payment” – The price which JPS will pay to the Company per kWh for Net Energy Output delivered from the Facility to JPS, in accordance with JPS Dispatch instructions, each Month as measured in accordance with Clause 8.3 and Schedule 5 and as calculated in accordance with Article 9 and Schedule 6.

“Warm Start” – The start-up of a Unit is considered a “Warm Start” if the Facility output to the JPS Grid System has been zero (0) MW for not more than eight (8) consecutive hours prior to this start up.

“World Bank” – The International Bank for Reconstruction and Development and its affiliates.

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