



UGANDA ELECTRICITY TRANSMISSION COMPANY LIMITED

- AND -

.....

POWER PURCHASE AGREEMENT

RELATING TO

THE POWER GENERATION COMPLEX

AT VILLAGE..... SUB COUNTY DISTRICT

DATED [____],



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THIS POWER PURCHASE AGREEMENT is made on the day of 2014 between of P.O. Box(hereinafter referred to as "**GENCO**" which expression shall where the context so admits include its successors in title and assignees) of the one part; and the **UGANDA ELECTRICITY TRANSMISSION COMPANY LIMITED**, of P.O. Box 7625, Kampala, Uganda (hereinafter referred to as "**UETCL**" which expression shall where the context so admits include its successors in title and assignees) of the other part;

WHEREAS

- a) GENCO plans to install, own, operate and maintain a MW power generation plant in and around the village of in District;
- b) GENCO is empowered under a license issued by the Electricity Regulatory Authority ("ERA") to engage in the business of generation and sale of electricity;
- c) GENCO has entered or will enter into an Implementation Agreement with GOU in respect to the Project;
- d) UETCL is empowered under a license issued by the Electricity Regulatory Authority (ERA) to engage in the business of bulk purchase of electricity and system operation; and
- e) GENCO wishes to sell to UETCL, and UETCL wishes to purchase from the GENCO, the energy generated from the facility pursuant to the terms and conditions set forth herein.

NOW THEREFORE THIS CONTRACT WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the capitalised terms used in this Agreement shall have the meanings given to them below:

"Abandonment" means:

- (a) prior to the Commercial Operations Date, (i) cessation of the development, design, financing, procurement, construction or installation of the Generation Facility by or on behalf of GENCO, or (ii) the failure to attend the Site by all or substantially all personnel of GENCO and/or its Contractors who are required to be in attendance at the Site in order to ensure that the Commercial Operations Date will be achieved by the Required Commercial Operations Date; and
- (b) following the Commercial Operations Date, (i) the cessation of the operation or maintenance of the Generation Facility by or on behalf of GENCO, or (ii) the failure to attend the Site by all or substantially all personnel of GENCO

and/or its Contractors who are required to be in attendance at the Site in order to operate and maintain the Generation Facility in accordance with the provisions of this Agreement, the Grid Code and Prudent Utility Practice;

provided that, the situations referred to in paragraphs (a)(ii) and (b)(ii) above shall not constitute an “**Abandonment**” if and for so long as, notwithstanding that all or substantially all personnel of GENCO and/or its Contractors are not in attendance at the Site, GENCO and/or its Contractors are actively carrying out the development, design, financing, procurement, construction, operation and/or maintenance of the Generation Facility at one or more off-Site locations in a manner consistent with Prudent Utility Practice.

“**Acceptable Bank**” has the meaning given in Schedule 10 (*Acceptable Banks*).

“**Act**” means the Electricity Act Chapter 145 of the Laws of Uganda, as may be amended from time to time.

“**Affected Party**” has the meaning assigned to that term in Clause 9.2.1.

“**Agreement**” means this Power Purchase Agreement as it may be amended from time to time.

“**Ancillary Services**” means services provided by GENCO from the Generation Facility other than the provision of Energy, being the provision of reactive power, voltage control, frequency regulation and black start capability.

“**Arbitrator**” means an arbitrator appointed in accordance with the dispute resolution procedure set out in Clause 12.

“**Authorisation**” means any approval, consent, licence, permit, authorisation or other permission granted or to be granted by a Governmental Authority required for the enforcement of rights or performance of obligations under this Agreement by a Party.

“**Authorised Person**” means, in the case of GENCO or UETCL, the person nominated in writing from time to time to represent GENCO or UETCL, respectively, provided that a copy of such nomination is delivered to the other Party.

“**Available Capacity**” means the available capacity of the Generation Facility as declared by GENCO to UETCL pursuant to Clause 4.1.2.

“**Bank Guarantee**” means the bank guarantee, letter of credit or similar instrument (together “**Instrument**”) to be issued to GENCO pursuant to Clause 8.6 (including any replacement Instrument issued pursuant to Clause 8.6.3 and any new Instrument issued pursuant to Clause 8.6.6), ***provided that***:

- (a) if and for so long as a partial risk guarantee or similar credit support is not provided by any member of the World Bank Group in relation to the Bank Guarantee, the Instrument shall be substantially in the form of Schedule 9 (or in such other form as may be agreed between UETCL, GENCO and the relevant Acceptable Bank) and issued by an Acceptable Bank chosen by UETCL; and

- (b) if and for so long as a partial risk guarantee or similar credit support is provided by any member of the World Bank Group in relation to the Bank Guarantee, the Instrument shall be in form and substance satisfactory to the issuing bank, UETCL, GENCO and the relevant member of the World Bank Group and issued by an Acceptable Bank.

“**Bank Guarantee Continuance Notice**” has the meaning given in Clause 8.6.3.

“**Bank Guarantee Required Amount**” means the sum of US\$(to be inserted).

“**Business Day**” means any Day of the week other than a Saturday or Sunday, or public holiday in Uganda.

“**Buy Rate**” means, in respect of any payment, the average number of Shillings required to buy one US Dollar on the date of payment as notified by the Bank of Uganda, Kampala.

“**Change in Law**” means the occurrence of any of the following after the execution of this Agreement:

- (a) the enactment of new Laws of Uganda;
- (b) the repeal or modification or re-enactment of any Laws of Uganda in effect as of the date of this Agreement;
- (c) the commencement of any Laws of Uganda which have not yet been brought into force as of the date hereof but have been published as a prospective Laws of Uganda and such is available for the GENCO to review;
- (d) an interpretation or application of any Laws of Uganda by any Governmental Authority having direct authority for its interpretation or application which did not exist at the date of this agreement;
- (e) the imposition or modification by a Governmental Authority of a requirement for any Authorisation which did not exist at the date of this Agreement;
- (f) the enactment or interpretation of any provision of Laws of Uganda dealing with currency exchange whether it be a change in the way the exchange rate is allowed to be computed or determined or a change in the ability of GENCO to freely convert Ugandan Shillings to US Dollars or vice versa or the ability of GENCO to freely repatriate its profits, earnings and or its capital in each case which did not exist at the date of this agreement;

where (A) any of the above establishes either a material increase or decrease in cost or a material reduction or increase in revenue as a consequence of any requirement for the design, construction, financing, ownership, operation or maintenance of the Project that is materially more restrictive than the most restrictive requirements specified in any Authorisation in effect as of the date of this Agreement or (B) any impact of (a) to (f) above leads to any of the consequences detailed in Clause 17.2.5 of the Implementation Agreement.

“Change in Tax” means the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application against the provisions of the relevant legislation, change in interpretation or modification after the date hereof of any Laws of Uganda, by any Governmental Authority, relating to any tax, duty, licence fee or other revenue producing measure, including any application of any tax, duty, licence fee or other revenue-producing measure which differs from the assumptions in Schedule 8.

“Check Meter” means the meter used to check the measurement and recording of Metered Energy and input at the Delivery Point. The Check Meter is more particularly identified and described in Schedules 2 and 4.

“Commercial Operations Date” except as provided in Clause 6.3 means the date on which the last Unit in time to be installed as part of the Generation Facility has been Commissioned.

“Commissioned” with respect to any Unit, the completion of Commissioning thereof.

“Commissioning” with respect to any Unit, the operations required for testing thereof in accordance with Schedule 5.

“Commissioning Tests” means one or more tests designed to determine, among other things, whether the Units of the Generation Facility are able to operate at installed capacity and are capable of operating as appropriately required under the Grid Code and in accordance with Prudent Utility Practice.

“Consequential Loss” means all losses, costs and financial harm not directly (whether or not foreseeable) resulting from any breach by a Party of its obligations hereunder.

“Construction Start Date” means the date on which (i) Financial Close has occurred, and (ii) GENCO has provided a notice to proceed under the EPC Contract.

“Contract Year” means the period from 1st January in any year until and including 31st December in the same year, provided:

- (a) the first Contract Year shall be for a period from the Commercial Operation Date until and including the immediately following 31 December; and
- (b) the last Contract Year shall be the period from 1st January of the year this Agreement is terminated or expires and including the date on which this Agreement is terminated or expires.

“Contracted Capacity” means MW which it is assumed, at the date of execution of this Agreement, will be available from the Generation Facility.

“Contractors” means the entity or entities designated by GENCO, pursuant to Clause 3.2, to design, construct, operate and maintain the Project.

“Coordinating Committee” has the meaning assigned to that term in Clause 13.1.

“Day” or **“day”** means a period of twenty-four (24) Hours beginning at 00:00 Hours on a day and ending at 24:00 Hours on that day.

“Deemed Energy” has the meaning set out under Clause 0.

“Delivery Point” means the point at which the UETCL accepts Energy from GENCO being that point detailed in the line diagram in Schedule 1.

“Despatch Instruction” means an instruction given by UETCL to despatch the Generation Facility.

“Despatch Schedule” means a schedule to be delivered by UETCL to GENCO showing the periods when the Generation Facility is expected to be despatched in the form of Schedule 7.

“Due Date” with respect to any Invoice delivered by GENCO pursuant to Clause 7.2, the 60th day thereafter, or if such day is not a Business Day, the next succeeding Business Day.

“Effective Date” means the date on which each of the conditions precedent set out under Clause 2.1 has been satisfied or waived.

“Emergency Conditions” mean conditions giving rise to an emergency as defined in the Grid Code.

“Energy” means electrical energy produced by the Generation Facility measured in kWh delivered by GENCO to UETCL at the Delivery Point pursuant to the terms of this Agreement.

“Energy Charge” means US cts..... for each kWh of Metered Energy and more particularly described in Schedule 3.

“Engineer” means an independent consulting engineer or engineering firm or engineering company of international repute appointed by the Lenders (or, in the absence of such appointment, by GENCO) and acceptable to UETCL for the purposes of monitoring the construction, testing and commissioning of the Project.

“EPC Contract” means the contract entered into by GENCO for the engineering, procurement and construction of the Generation Facility.

“EPC Contractor” means the contractor appointed as such pursuant to the EPC Contract.

“ERA” means the Electricity Regulatory Authority of Uganda established under the Act.

“Expert” has the meaning ascribed thereto in Clause 12.2.1.

“Event of Default” means an event constituting grounds on which a Party may terminate this Agreement, as set out in Clause 10.1.

“Financial Close” means the date on which the Lenders confirm that all conditions precedent to first drawdown under the Financing Agreements have been satisfied or waived.

“Financing Agreements” means the loan agreements, notes, indentures, security agreements, guarantees and other agreements, documents and instruments, including any hedging transactions entered into by GENCO in connection with the financing of the Project, relating to the permanent financing (including refinancing) of the Project, as the same may be amended from time to time.

“First Unit Commissioning Date” has the meaning given to it in Clause 6.2.1.

“Force Majeure Event” means an event constituting Force Majeure as defined under Clause 9.

“Functional Specification” means the function specification of the Generation Facility set out in Schedule 1.

“GENCO” has the meaning assigned to that term in the preamble of this Agreement.

“GENCO Default Purchase Price” as defined in the Implementation Agreement.

“GENCO Event of Default” has the meaning assigned to that term in Clause 10.1.1.

“GENCO License” means the generation and sale licence issued by ERA to GENCO to enable GENCO to execute its obligations under this Agreement.

“GENCO System” means the electric power network, the lines, equipment and associated protective devices, safety and communication equipment owned by GENCO.

“Generation Facility” means the electricity generating plant with the generation capacity of MW, located at and more particularly described in Schedule 1.

“GOU” means the Government of the Republic of Uganda.

“GOU Default Purchase Price” as defined in the Implementation Agreement.

“Governmental Authority” means any department, authority, instrumentality, agency or other relevant entity from which an Authorisation is to be obtained from time to time and any authority, body or other person having jurisdiction under Laws of Uganda with respect to GENCO or the Project.

“Grid” means the ‘Grid System’ referred to in the Grid Code.

“Grid Code” means the Electricity (Primary Grid Code) Regulations of 2003, as may be amended from time to time.

“Hour” means each continuous period of sixty (60) minutes commencing with the first minute of each of the twenty-four (24) denominated hours in any Day.

“IEC Standards” means the relevant standards published by the International Electro Technical Commission of No. 3, Rue de Varembe, P.O. Box 131, CH-1211 Geneva, Switzerland.

“Implementation Agreement” means the agreement executed between GENCO and the GOU represented by the Ministry of Energy and Mineral Development in relation to the development of the Project.

“Interconnection Facilities” means the interconnection to the Delivery Point as more particularly detailed under Schedule 1.

“Interest Rate” means the rate of LIBOR plus one and a half per cent (1.5%) per annum.

“Interim Net Electrical Output” means the net electrical energy expressed in kWh delivered by GENCO during testing and commissioning of a Unit and, after any Unit has been Commissioned, when despatched by UETCL before the Commercial Operation Date.

“Interruption Event” has the meaning ascribed thereto in Clause 4.6.1.

“Invoice” means a Monthly Invoice from GENCO to UETCL setting forth payments due for Metered Energy and, where applicable, Deemed Generated Energy, in accordance with Clause 7.2.

“Invoice Dispute Notice” shall have the meaning ascribed thereto in Clause 7.3.1.

“kV” means kilovolts or 1,000 volts.

“kVarh” means KILOVOLTS Ampere reactive hours or 1,000 VAr hours.

“kW” means a kilowatt or 1,000 watts.

“kWh” means one (1) kilowatt hour or one unit.

“Lapse of Consent” means any Authorisation:

- (a) not being issued (or, having lapsed, not being renewed or replaced) within one hundred eighty (180) Days of properly and timely made and diligently pursued application by GENCO for that Authorisation to be issued, renewed, or replaced, as the case may be, and as a result GENCO’s ability to perform its obligations under this Agreements is materially and adversely affected;
- (b) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect GENCO’s ability to perform its obligations under this Agreement; or
- (c) being withdrawn, cancelled, or suspended other than as provided under Laws of Uganda and as a result the GENCO’s ability to perform its obligations under this Agreement is materially and adversely affected,

in each of the above instances despite GENCO's compliance with the applicable procedural and substantive requirements as applied in a non-discriminatory manner.

"Laws of Uganda" means any requirements established under any statute, law, regulation or other legislation, or any decree, order or directive emanating from any Governmental Authority of the Republic of Uganda, in respect to GENCO and UETCL.

"Lender Guidelines" means:

- (a) if and for so long as a partial risk guarantee or other type of support is not provided by any member of the World Bank Group to the Project, such guidelines as to environmental, health and social matters as are (i) applicable to the Project as of the date hereof, and (ii) notified in writing (and identified as such) by the Lenders to GENCO and to UETCL; or
- (b) if and for so long as a partial risk guarantee or other type of support is provided by any member of the World Bank Group to the Project, such guidelines as to environmental, health and social matters as are applicable to the Project as of the date hereof.

"Lenders" means the banks and other financial institutions party to the Financing Agreements including any security agent or trustee.

"LIBOR" means the London Inter-Bank Offered Rate of interest for three-Month deposits of Euro-Dollars displayed on page "LIBOR01" of the Reuters Money Rates Service (or any other page that replaces "LIBOR01" for the purpose of displaying the British Bankers Association ("BBA") interest settlement rates for such deposits of Euro-Dollars in the London Inter-Bank market) on the date of determination, or in the event that the Reuters Money Rates Service, or any successor thereto, no longer provides such information, such other service as may be agreed by the Parties that provides the BBA interest settlement rates for such deposits of Euro-Dollars in the London Inter-Bank market and any other information previously provided on the page "LIBOR01".

"Longstop Effective Date" means the first anniversary of the execution of this Agreement (as may be extended in accordance with the provisions of Clause 9.4).

"Main Meter" means the main meter used to measure and record Metered Energy and input at the Delivery Point. The Main Meter is more particularly identified and described in Schedules 2 and 4.

"Metered Energy" means all Energy (expressed in KWh), as recorded by the Main Meter or the Check Meter or estimated and computed in accordance with Schedule 2.

"Metering System" means the Main Meter and the Check Meter and all associated equipment.

"Month" means a period of one calendar month, each such period commencing at 00:00 hours on the first day of such calendar month and ending at 24:00 hours midnight on the last day of that calendar month provided that:

- (a) the first Month shall be for a period from the Commercial Operation Date until and including the last day of that Month; and
- (b) the last Month shall be the period from the first day of the Month in which this Agreement is terminated or expires and including the date on which this Agreement is terminated or expires;

and “**Monthly**” shall be construed accordingly.

“**MW**” means a megawatt or 1,000 kilowatts or 1,000,000 watts.

“**MWh**” means one (1) megawatt hour.

“**Notice of Intent to Terminate**” shall have the meaning ascribed thereto in Sub Clause 10.2.1.

“**Operating and Despatch Procedures**” means the operating and despatch procedures agreed or otherwise determined in accordance with the provisions of Clause 4.3 and Schedule 11 (*Requirements for Operating and Despatch Procedures*).

“**Other Force Majeure Events**” shall have the meaning ascribed thereto in Clause 9.1.2.

“**Other Force Majeure Purchase Price**” as defined in the Implementation Agreement.

“**Party**” means any of the signatories to this Agreement and “**Parties**” shall mean all of them.

“**Performance Bond**” means the bond issued on behalf of GENCO in favour of ERA pursuant to Clause 2.1.1(c).

“**Plant Availability**” means in respect of any Contract Year, the percentage of the total time within the Contract Year during which the Generation Facility is Available. For this purpose, the Generation Facility shall be considered to be “**Available**” at any time if it is capable of generating Energy and is connected to the Delivery Point by facilities which are themselves capable of delivering the Energy generated by the Generation Facility to the Delivery Point.

“**Political Force Majeure Events**” shall have the meaning ascribed thereto in Clause 9.1.1.

“**PRG Support Agreement**” means a partial risk guarantee support agreement [to be] entered into by UETCL and GENCO on or about the date of this Agreement and governing the procedures for accessing a Bank Guarantee backstopped by a member of the World Bank Group.

“**Project**” means the development, design, financing, procurement, construction, installation, ownership, operation, maintenance and insurance of the Generation Facility, the Interconnection Facilities, and the Metering System.

“Prudent Utility Practice” means, in relation to either Party, generally accepted industry operating and maintenance practices with respect to the electric power generation, transmission and distribution industry. This covers standards of practice obtained by exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled and experienced person engaged in the same type of undertaking.

“Required Commercial Operations Date” means Months after the Effective Date.

“Required Plant Availability” has the meaning ascribed thereto in Clause 8.7.2.

“SCADA” means Supervisory Control and Data Acquisition, in the context of this Agreement being a system capable of monitoring the Generation Facility and remotely retrieving data recorded by the Metering System.

“Scheduled Commercial Operations Date” means 24 Months after the Effective Date (as may be extended in accordance with the provisions of Clause 9.4).

“Scheduled Construction Start Date” means no later than 30 days after the Effective Date (as may be extended in accordance with the provisions of Clause 9.4).

“Schedules” means the schedules attached to this Agreement and forming an integral part of this Agreement.

“Site” means an area located at..... on which the Generation Facility is to be located and any lay-down or working areas required by GENCO, the EPC Contractor, and any subcontractors of any such persons for the purposes of Project.

“Technical Dispute” means a dispute that relates to a technical, engineering, operational, or accounting issue or matter related to this Agreement that, in any case, is the type of issue or matter that is reasonably susceptible to consideration by an expert in the relevant field or fields and is reasonably susceptible to resolution by such expert.

“Technical Limits” means the technical limits of the Generation Facility and of the Interconnection Facilities set out in Schedule 1.

“Term” means the stated term of this Agreement in accordance with Clause 2.2.1.

“Termination Notice” has the meaning ascribed thereto in Clause 10.2.

“Tribunal” means the panel of arbitrators as established in accordance with clause 12.

“UETCL” has the meaning assigned to that term in the preamble of this Agreement.

“UETCL DGE Payment” has the meaning ascribed thereto in Part B of Schedule 3.

“UETCL Event of Default” has the meaning assigned to that term in Clause 10.1.2.

“UETCL System” means the electric high voltage transmission system, including but not limited to all transmission lines and equipment, transformers and associated equipment, relay and switching equipment and protective devices and safety and communications equipment owned and/or operated by UETCL and required for the performance by UETCL of its obligations under this Agreement.

“UETCL System Interruption” means any failure or inability of UETCL to receive delivery of electrical energy from the Generation Facility however arising other than as a result of an event which is primarily caused by GENCO.

“Uganda Shilling” means the currency that is the legal tender of the Republic of Uganda.

“UNCITRAL Rules” has the meaning assigned to that term in Clause 12.

“Unit” means any of the hydroelectric turbine generator units forming part of the Generation Facility.

“US Dollars” (or **“USD”** or **“US\$”**) means the lawful currency of the United States of America.

1.2 Interpretation

In this Agreement:

- 1.2.1 References in the singular shall include references in the plural and vice versa, and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- 1.2.2 References to the words “include”, “includes” and “including” are to be construed without limitation;
- 1.2.3 Except to the extent that the context requires reference to a particular Clause, Clause or Schedule shall be references to that Clause, Clause or Schedule in or to this Agreement;
- 1.2.4 Except to the extent that the context requires any reference to “this Agreement” or any other agreement or document is a reference to such document or agreement as amended, supplemented or notated from time to time and includes a reference to any document which amends, is supplemental to, notates, or is entered into, made or given pursuant to or in accordance with any terms to it;
- 1.2.5 The headings and paragraph numbers are inserted for convenience only and are to be ignored for the purposes of construction;
- 1.2.6 Calculations carried out pursuant to this Agreement will be rounded [up] to two (2) decimal places;
- 1.2.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; and

1.2.8 The language of negotiation of this Agreement has been English, this Agreement is executed in English, and this English text shall prevail for the purposes of determining the intention of the Parties and in any construction of this Agreement.

2 CONDITIONS PRECEDENT AND TERM OF AGREEMENT

2.1 Conditions Precedent

2.1.1 This Agreement shall come into full force and effect on the date on which the following are completed (such date being the “**Effective Date**”):

- (a) this Agreement being approved by ERA;
- (b) the issuance of the GENCO License;
- (c) the Performance Bond, in form and substance satisfactory to ERA and UETCL, has been issued in favour of ERA in accordance with the requirements of Section 33(4) of the Electricity Act 1999 and to secure the performance of GENCO of its obligations to achieve:
 - (i) Construction Start Date by the Scheduled Construction Start Date (in respect of which, the value of the Performance Bond shall be the equivalent of USD 5,000 per MW of Contracted Capacity); and
 - (ii) the Commercial Operations Date by the Scheduled Commercial Operations Date (in respect of which, the value of the Performance Bond shall be the equivalent of USD 2,500 per MW of Contracted Capacity);
- (d) the execution and coming into force of the Implementation Agreement; and
- (e) Financial Close.

2.1.2 Each Party shall use reasonable efforts to satisfy or obtain satisfaction of each condition precedent for which such Party is primarily responsible. Where a Party fails to meet the conditions precedent and has not obtained a waiver from the other Party by the Longstop Effective Date this Agreement shall automatically terminate and the Parties shall be discharged from any further obligations and liabilities under this Agreement.

2.2 Term of Agreement

2.2.1 This Agreement shall continue in full force and effect from the Effective Date and shall, unless extended or terminated earlier in accordance with the provisions of this Agreement, continue in full force and effect for 20 years from the Commercial Operation Date.

- 2.2.2 The Term shall be extended automatically by the aggregate number of Days that all Force Majeure Events, where declared by either Party, were in existence during the Term.
- 2.2.3 If the Generation Facility is greater than 10MW, upon the expiration of the Term the Generation Facility shall revert to GOU as provided for in the Implementation Agreement. If the Generation Facility is less than 10MW, the Company shall not be required to transfer the Generation Facility to GOU as a result of the expiration of the Term.

3 CONSTRUCTION OF THE GENERATION FACILITY

3.1 Construction of the Generation Facility

- 3.1.1 GENCO shall procure the design, engineering, financing, insurance, construction, completion, and (save in respect of the Related Infrastructure) the operation and maintenance of:
 - (a) the Generation Facility;
 - (b) the Interconnection Facilities; and
 - (c) the Metering System;in each case, in accordance with Laws of Uganda, all the Authorisations, sound engineering and construction practices and Prudent Utility Practices.
- 3.1.2 UETCL shall promptly provide GENCO with all the relevant information relating to the technical specifications of the UETCL System as GENCO shall require for designing, installation and operation of the Generation Facility, interconnection to the Delivery Point and Main Meter and designing and installation of the Related Infrastructure in compliance with the Grid Code. GENCO shall bear all risks relating or arising out of the feasibility studies and designs it has carried out for the Generation Facility.
- 3.1.3 In the event of any changes or modification to the design, bills of quantities, exchange rate or any other items antecedent or related to the construction of the Generating Facility, the said risk shall be borne by GENCO.

3.2 Interconnection Facilities

- 3.2.1 As between GENCO and UETCL, GENCO shall be responsible at its sole expense for the design, construction, installation, commissioning, insurance, operation and maintenance of all auxiliary and interconnecting equipment on GENCO's side of the Boundary in accordance with the terms of this Agreement, and GENCO shall own and maintain at its sole expense all of such auxiliary and interconnecting equipment on GENCO's side of the Boundary.

3.3 Contracting

- 3.3.1 GENCO may delegate its responsibility to design, construct, operate and maintain the Project to one or more Contractors.
- 3.3.2 Subject to the terms of any agreement entered into between the Lenders and UETCL (including a direct agreement), GENCO shall at all times remain liable for the performance of its obligations under this Agreement and the Financing Agreements, notwithstanding the assignment of such obligations to any Contractor.

3.4 Construction Start

The provisions of the Performance Bond shall provide that, in the event that GENCO has not achieved the Construction Start Date prior to the Scheduled Construction Start Date, ERA shall have the right to draw the Performance Bond in full.

3.5 Information

- 3.5.1 GENCO shall provide UETCL a copy of the EPC Contract and any agreement entered into in respect of the operations and maintenance of the Project. GENCO shall consult with UETCL in respect of any queries it may have in respect of such documents.
- 3.5.2 If at any time the EPC Contract or any operations and maintenance agreement is terminated, or a material amendment or variation is made to any such agreement or GENCO is granted a waiver or release of any of the material obligations under any such agreement then GENCO shall deliver to UETCL a certified copy of each such document within 21 days of the date of its execution or creation.

4 DELIVERY OF ENERGY

4.1 Provision of Energy

- 4.1.1 Subject to and in accordance with the terms of this Agreement and the Grid Code, from and after the Commercial Operation Date and until the expiration or earlier termination of this Agreement, GENCO shall sell exclusively to UETCL, and UETCL shall purchase, all Energy produced by the Generation Facility and GENCO shall provide to UETCL the Ancillary Services.
- 4.1.2 Subject to and in accordance with the terms of this Agreement, during testing and after Commissioning of the first Unit and after the Commercial Operations Date, (a) GENCO shall provide declarations of Available Capacity and energy forecasts to UETCL each day, and (b) UETCL shall respond with despatch instructions, in each case in accordance with Schedule 7 (*Form of Daily Declared Capacity Declaration*), provided that UETCL shall accept all of the Interim Net Electrical Output, as well as any Energy produced during testing.

- 4.1.3 Energy sold and purchased under this Agreement shall be delivered by GENCO to UETCL at the Delivery Point.
- 4.1.4 The Parties agree that GENCO shall not, without the prior written consent of UETCL, sell or deliver Energy produced by the Generation Facility to any Person other than UETCL except to the extent that Energy is required by the Generation Facility for its operation.

4.2 Despatch Instructions

Without prejudice to GENCO's rights to receive UETCL DGE Payments in accordance with this Agreement, UETCL shall issue Despatch Instructions to GENCO consistent with and within the Functional Specification, the prevailing declaration of Available Capacity and twenty-four hour ahead forecast energy notified including any constraints, in accordance with the Operating and Despatch Procedures.

4.3 Operating and Despatch Procedures

- 4.3.1 Each Party shall use reasonable efforts to agree the contents of the Operating and Despatch Procedures with the other Party in accordance with the provisions of Schedule 11 (*Requirements for Operating and Despatch Procedures*) by the date which falls ninety (90) days prior to the First Unit Commissioning Date (the “**Relevant Date**”).
- 4.3.2 Without prejudice to the forgoing, if the Parties do not agree on any specific procedure(s) which would fall within the scope of the Operating and Despatch Procedures by the Relevant Date, the Parties shall then work together in good faith for a period of at least thirty (30) days to establish such procedure(s).
- 4.3.3 If the Parties are unable to agree on any part of the Operating and Despatch Procedures sixty (60) days prior to the First Unit Commissioning Date (a) this shall be treated as a Technical Dispute, and (b) the Expert (if appointed) shall be instructed to establish the Operating and Despatch Procedures in accordance with such procedures as may have been agreed between the Parties and otherwise in accordance with the provisions of Schedule 11 (*Requirements for Operating and Despatch Procedures*).

4.4 Observance of Technical Limits

Subject to Schedule 1, nothing contained in this Agreement shall be construed to require GENCO to operate the Generation Facility, at any time including during Emergency Conditions, in any manner inconsistent with the Grid Code, Technical Limits or Laws of Uganda.

4.5 Delivery of Energy from UETCL to the Generation Facility

GENCO shall use all reasonable efforts to procure at its sole cost and expense energy for testing and emergencies at the relevant tariff charged by the local distribution company to customers for the provision of such class of energy service.

4.6 Deemed Energy

4.6.1 Subject to Clause 4.6.2, if at any time after the Commercial Operation Date, GENCO is prevented from delivering energy to UETCL as a result of:

- (a) breach by UETCL pursuant to this Agreement (or a failure of GOU to fulfil its obligation under Clause 4.6.3 of the Implementation Agreement);
- (b) non-despatch by UETCL of the Generation Facility whether or not in the exercise of its statutory obligation as the system operator;
- (c) receipt of back down instructions from UETCL, whether or not in the exercise of its statutory obligation as the system operator, save where such instructions are, in accordance with Prudent Utility Practice, intended to ensure the safety and integrity of the Generation Facility; or
- (d) a deemed commissioning of the Generation Facility pursuant to Clause 6.3,

(each an “**Interruption Event**”), the energy that otherwise could have been generated at the Generation Facility and sold to UETCL calculated in accordance with the provisions of Part D.3 of Schedule 3 (*Determination of Payments*) [or, where applicable the provisions of Clauses 6.3.2 to 6.3.5 inclusive] shall constitute “**Deemed Energy**” and notwithstanding any provisions to the contrary in this Agreement, including the provisions of Clause 9.1.3(f), UETCL shall make payments to GENCO for such Deemed Energy in accordance with the provisions of Schedule 3 (*Determination of Payments*).

- 4.6.2 UETCL shall be excused from the obligation to pay for Deemed Energy where GENCO has been prevented from delivering Energy to UETCL by any number of Interruption Events that cumulatively do not exceed 176 hours in the relevant Contract Year.
- 4.6.3 Deemed Energy shall be measured, and any UETCL DGE Payments shall be calculated, in accordance with Schedule 3.
- 4.6.4 If and to the extent that an Interruption Event is caused by a Political Force Majeure Event (a) UETCL shall have no obligation to pay for the Deemed Energy which arises as a result of such Interruption Event, however (b) the duration of such Interruption Event shall count towards the 176 hour threshold referred to in Clause 4.6.2 above.

5 METERING

5.1 Meter Installation and Sealing

- 5.1.1 GENCO shall at its own cost and expense install, own, maintain, replace, test and calibrate the Metering System (including the Main Meter and the Check Meter) at the Delivery Point save that at Commercial Operations Date, GENCO shall handover the Check Meter to UETCL, subsequent maintenance, testing and calibration of the Check Meter shall be the responsibility of UETCL
- 5.1.2 The Metering System shall have the functional capability to determine the Metered Energy quantities as set out in Schedule 2 to this Agreement.
- 5.1.3 GENCO undertakes to provide to UETCL access to the Metering System for the installation of any SCADA monitoring equipment that UETCL may at its own expense install.
- 5.1.4 The Metering System shall be jointly sealed. Each party shall own its seals. These seals shall be broken only jointly by GENCO and UETCL. A Party shall give at least twenty-four (24) hours advance notice to the other Party of the breaking of seals on any part of the Metering System. If the other Party when served with the notice does not appear, the Party wishing to break the seals may proceed but shall provide signed explanation to the other Party within forty-eight (48) hours of such breaking of the seals.
- 5.1.5 The seals shall not be removed by any of the Parties without consent of the other Party, which consent shall not be unreasonably withheld by a Party. Both Parties undertake not to tamper or otherwise interfere with any part of the Metering System in any way.

5.2 Meter Reading

- 5.2.1 The Main Meter and Check Meter shall be read Monthly by GENCO and UETCL in accordance with Schedule 2.
- 5.2.2 The Monthly meter readings shall be used to determine the Monthly Metered Energy quantities in accordance with Schedule 2.

5.3 Meter Testing

- 5.3.1 GENCO shall initially test the Metering System at the Delivery Point for accuracy in accordance with Schedule 4 at least fifteen (15) days prior to either delivering or receiving Energy through such Delivery Point.
- 5.3.2 GENCO shall have the Metering System tested in accordance with the requirements of Schedule 4 and, if necessary, re-calibrated at least once every twenty-four (24) Months or whenever either Party has reason to believe that the equipment is no longer performing within the standards of accuracy prescribed and has given notice to the other Party of such concern. GENCO shall on reasonable notice to UETCL arrange a suitable date for the Main Meter or Check Meter to be tested. Testing and re-calibration shall be carried

out in the presence of both Parties' duly Authorised Person or Persons appointed in writing.

- 5.3.3 After completion of any testing in accordance with Clause 5.3.2, GENCO shall prepare and promptly submit to UETCL a statement which shall be a record of the results of the testing, and the extent to which the Main Meter or Check Meter, as applicable, were performing outside the limits of accuracy prescribed under Schedule 4.
- 5.3.4 The Metered Energy supplied by GENCO to UETCL shall be measured using readings of the Main Meter unless such meter is found to be malfunctioning or performing outside the limits of accuracy specified in Schedule 4. In such event, the procedure specified in Schedule 2 shall be used to determine the Metered Energy.
- 5.3.5 If, at any time, it is determined by the Parties, as a consequence of a test or as is otherwise manifest, that the Main Meter or Check Meter should be replaced, then GENCO shall replace the Main Meter or Check Meter as the case may be, at its own expense.

6 TESTING AND COMMISSIONING

6.1 Testing

- 6.1.1 GENCO shall use its best efforts to provide UETCL on an ongoing basis with relevant information regarding its programme for testing the Generation Facility prior to the Commercial Operation Date.
- 6.1.2 Not less than forty five (45) days prior to the commencement of such test programme, GENCO shall deliver to UETCL in writing the final draft programme for testing the Generation Facility.
- 6.1.3 UETCL shall within fourteen (14) days of delivery of the final draft programme give comments to GENCO on the final draft programme where after GENCO shall prepare and deliver to UETCL in writing the final programme for testing the Generation Facility.

6.2 Commissioning

- 6.2.1 GENCO shall give to UETCL at least sixty (60) days advance written notice of the date on which it intends to synchronise the first Unit (the "**First Unit Commissioning Date**") to the UETCL System and each other Unit thereafter.
- 6.2.2 GENCO shall declare a Unit to be ready for synchronisation with the UETCL System when:
 - (a) it has been installed in accordance with the required technical specifications and Prudent Utility Practices;
 - (b) it meets all requirements prescribed in the Grid Code or any other Laws of Uganda for such synchronisation to the UETCL system; and

- (c) it is capable of being operated safely and GENCO has obtained a certification of the Engineer for energising.
- 6.2.3 GENCO shall notify UETCL as soon as the requirements of Clause 6.2.2 have been met and the Unit is ready to be synchronised to the UETCL System in accordance with this Agreement.
- 6.2.4 UETCL shall inspect any Unit which GENCO intends to synchronise to the UETCL System within five (5) days after being notified in writing by GENCO to determine whether the requirements of Clause 6.2.2 have been met.
- 6.2.5 GENCO shall provide UETCL with such access to the Generation Facility as is reasonably required to make the determinations required under this Clause 6.2.
- 6.2.6 If UETCL is satisfied that the Unit is ready for synchronisation in accordance with the requirements of the Project, it shall within three (3) days of the completion of the inspection of the Unit notify GENCO to that effect and provide GENCO with all reasonable assistance in synchronising the Unit and also for conducting the Commissioning Test.
- 6.2.7 GENCO shall conduct the Commissioning Tests within fifteen (15) days from the date of the synchronisation of each Unit and in the presence of the Engineer and one or more representatives of UETCL. The Engineer shall submit a certificate of the tested capacity and necessary performance tests of the Generation Facility carried out, to each of the Parties. All the Commissioning Tests shall be carried out in accordance with Schedule 5 at the expense of GENCO.

6.3 Deemed Commissioning

- 6.3.1 If any Unit has been synchronised (or the Engineer has certified that any Unit is ready to be synchronised) and in either case the Commissioning Test thereof is delayed because of:
- (a) UETCL's failure to complete, operate, maintain or upgrade the UETCL System in accordance with Prudent Utility Practices;
 - (b) GOU's failure to comply with its obligation under Clause 4.6.3 of the Implementation Agreement prior to the latter of (i) 180 days prior to the Scheduled Commercial Operation Date, and (ii) the date on which the Engineer has certified that any Unit is ready to be synchronised;
 - (c) UETCL's failure to accept energy produced as a result of the Commissioning Test; or
 - (d) a requirement by UETCL that any part of the Commissioning Test be postponed by more than 10 days from the scheduled commencement date;

except to the extent that the failure is caused or the postponement is required by (A) an Other Force Majeure Event, (B) Emergency Conditions whose

aggregate duration does not exceed seven days or (C) any failure of GENCO to perform any duty under this Agreement, and such deferral causes the then-anticipated Scheduled Commercial Operations Date to be delayed or deferred (as certified by the Engineer), the Commercial Operations Date shall be deemed to occur on the first day of the Month following the Month in which the Engineer has certified that all Units have been or are ready to be synchronised with the consequence that such date shall be the Commercial Operations Date for all purposes of this Agreement.

- 6.3.2 During the period commencing on and from a deemed Commercial Operations Date (if any) until the actual (i.e. non-deemed) Commercial Operations Date (the "**Deemed Operation Period**"), Deemed Energy shall be calculated on the basis of the Contracted Capacity.
- 6.3.3 Subject to the provisions of Clauses 6.3.4 and 6.3.5, UETCL shall pay for Deemed Energy arising during any Deemed Operation Period on the basis set out in Clause 6.3.2 and otherwise in accordance with the provisions of this Agreement.
- 6.3.4 If, upon achievement of the actual (i.e. non-deemed) Commercial Operation Date the Generating Facility has been Commissioned at less than 100% of Contracted Capacity, then the amount payable by UETCL in respect of Deemed Energy arising during the Deemed Operation Period shall be adjusted to the amount it would have had to pay if the Generation Facility had been deemed Commissioned at the actual Capacity so Commissioned.
- 6.3.5 The excess (if any) between what UETCL has paid for Deemed Energy arising during the Deemed Operation Period pursuant to Clause 6.3.3 and the adjusted amount payable by UETCL pursuant to Clause 6.3.4 shall be credited against future payments to be made by UETCL to GENCO pursuant to Clause 7.

6.4 Liquidated Damages

- 6.4.1 In the event that the Commercial Operation Date does not occur prior to the Scheduled Commercial Operation Date, liquidated damages shall be payable by GENCO to UETCL at the rate of 1,500 per day for each day that the Commercial Operation Date is delayed beyond such date subject to a cap of USD 112,000 and, subject to the provisions of Clauses 6.4.2 to 6.4.3 (inclusive) below.
- 6.4.2 If ERA draws on the Performance Bond in relation to a failure by GENCO to perform and observe the conditions to which the GENCO Licence may be subject (other than where the relevant failure by GENCO is a failure to ensure that the Commercial Operations Date is met by the Scheduled Commercial Operations Date), then the full amount of liquidated damages referred to in Clause 6.4.1 above shall continue to be payable by GENCO.
- 6.4.3 If ERA draws on the Performance Bond in relation to a failure by GENCO to perform and observe the conditions to which the GENCO Licence may be subject (where the relevant failure by GENCO is a failure to ensure that the Commercial Operations Date is met by the Scheduled Commercial Operations

Date), then the amount of liquidated damages referred to in Clause 6.4.1 above shall be reduced by the amount of the relevant draw on the Performance Bond by ERA.

7 COMPENSATION, PAYMENT AND BILLING

7.1 Invoices for Energy Delivered and Deemed Generated Energy

7.1.1 UETCL shall pay GENCO:

- (a) the Energy Charge for Metered Energy (including Interim Net Electrical Output) delivered to UETCL at the Delivery Point;
- (b) any UETCL DGE Payments which become payable in accordance with the provisions of this Agreement; and
- (c) an amount equal to the value added tax as legally imposed upon GENCO by any Governmental Authority in Uganda and which are due and payable by UETCL on purchases of Energy.

7.2 Billing and Payment

- 7.2.1 On or before the 5th day of each Month following the Month in which the First Unit Commissioning Date occurs, GENCO shall prepare an Invoice showing the Energy Charges and UETCL DGE Payments (in US Dollars) payable to GENCO for the preceding Month. Each such Invoice shall show information and calculations, with sufficient detail, to permit UETCL to confirm the consistency of the Invoice with the provisions of Schedule 3.
- 7.2.2 UETCL shall, subject to Clause 7.3, pay all such Invoices on or before the Due Date therefor. If, in accordance with Clause 7.3, it disputes a portion of the charges on an Invoice, it shall nonetheless pay all amounts not in dispute by the applicable Due Date.
- 7.2.3 Without prejudice to any other rights or remedies, any amount not paid when due (unless disputed in good faith in accordance with Clause 7.3) shall bear interest at a rate equal to the Interest Rate, compounded Monthly, based on the actual number of days elapsed from the Due Date therefor until payment is made, based on a 365-day year.
- 7.2.4 All payments made by UETCL to GENCO under this Agreement shall be made in the Uganda Shilling equivalent of the amount payable in US Dollars (based on the Buy Rate), except that UETCL may pay in US Dollars at its option.

7.3 Disputed Payments

- 7.3.1 If any sum or part of any sum stated in an Invoice, is in good faith disputed by UETCL, then:

- (a) UETCL shall promptly issue to the GENCO a written notice (“**Invoice Dispute Notice**”) specifying exactly what it is disputing within the Invoice and thereafter pay any undisputed sum in accordance with Clause 7.2;
 - (b) this shall be treated as a Technical Dispute;
 - (c) UETCL shall pay such amount as is agreed or determined payable in respect of the disputed sum on the due date, or if the determination is made beyond the due date, within thirty (30) days of:
 - (i) the date on which the Parties resolve the disputed sum; or
 - (ii) the date of determination by an Expert or Arbitrator (as the case may be), if the Parties fail to reach agreement, and the matter has been referred for expert determination or arbitration in accordance with Clause 12.
- 7.3.2 Unless it is so determined that payment should be made in accordance with Clause 12, when making payment of the amount agreed or determined, UETCL shall pay interest on that amount at the Interest Rate divided by twelve compounded Monthly, from and including the Due Date of the Invoice or any other Invoice (as the case may be) up to but excluding the date of payment.
- 7.3.3 If UETCL disputes any amount specified in any Invoice presented by GENCO more than three (3) times in any period of nine (9) consecutive Months, and to the extent that the disputes are found to be valid by GENCO or by an Arbitrator, then the Parties shall meet at the request of either Party to discuss and resolve the causes of the persistent billing errors.
- 7.3.4 If UETCL disputes any amount specified in any Invoice presented by the GENCO more than three (3) times in any period of nine (9) Months and such disputes are found to be invalid by GENCO or by an Arbitrator, then UETCL shall be liable to pay all the direct costs incurred by GENCO which may accrue as a result of such disputed Invoices. If such number of disputes are made by UETCL within such period and each one found by GENCO or by an Arbitrator to have merit, then GENCO shall be liable to pay all the direct costs, incurred by UETCL which may arise as a result of such disputed Invoices.

7.4 No Set-off

All payment by UETCL to GENCO under this Agreement shall be made without deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise, unless deductible under the express provisions of this Agreement or pursuant to a valid court order on a matter arising from this Agreement, provided that nothing in this Clause 7.4 shall prevent GENCO from bringing an action in respect of any contractual dispute.

8 UNDERTAKINGS AND WARRANTIES OF THE PARTIES

8.1 Operation of the Generation Facility

GENCO undertakes:

8.1.1 to operate and maintain the Generation Facility in accordance with:

- (a) applicable Laws of Uganda and any Authorisations which have been issued to GENCO and which remain in effect; and
- (b) the Grid Code as it applies to GENCO and/or to the Generation Facility and Prudent Utility Practice (including as these may relate to synchronising, voltage and reactive power control);

8.1.2 subject to the Technical Limits:

- (a) to operate and maintain the Generation Facility in a manner which does not cause the voltage level or voltage waveform on the Grid to fall outside of any parameters prescribed in the Grid Code as to voltage level or voltage waveform which are applicable to UETCL and/or to the Grid, ***provided that*** this undertaking shall not apply to any variations in voltage level or waveform emanating from the Generation Facility and which:
 - (i) are transferred to the Grid; but
 - (ii) would not have been transferred to the Grid had UETCL:
 - (I) acted in accordance with Prudent Utility Practice; and
 - (II) complied with all its obligations under the Laws of Uganda, any Authorisation issued to UETCL, and/or the Grid Code, including any obligation to install, operate and maintain protective equipment on the Grid (including at or adjacent to the Delivery Point); and
 - (b) maintain the settings of all protective relays installed in the Generation Facility at levels agreed in writing between GENCO and UETCL from time to time, and not to change such settings without the prior written consent of UETCL; and
- 8.1.3 to comply with the applicable Lender Guidelines; ***save that***, where by operation of the definition of “Lender Guidelines” the Lender Guidelines change from guidelines issued by the Lenders to guidelines issued by one or more members of the World Bank Group, or *vice versa*, GENCO shall be permitted a reasonable period of time to implement the applicable Lender Guidelines).

8.2 Mutual Access

- 8.2.1 Each Party shall provide the other Party with access to the other Party's property:
- (a) at reasonable hours, and upon reasonable notice for any reasonable purpose in connection with the performance of the obligations imposed on the requesting Party by this Agreement or the Grid Code; and
 - (b) at any time without notice for the purpose of preventing or mitigating Emergency Conditions.
- 8.2.2 Each Party ("**Indemnitor**") shall indemnify the other Party ("**Indemnified Party**") against all costs and liabilities incurred as a result of access to the Indemnified Party's property made by the Indemnitor (or its personnel or contractors), except to the extent that such costs and liabilities are incurred also as result of the negligence of the Indemnified Party (or its personnel or contractors).

8.3 Undertakings of Each Party

Each Party undertakes that it:

- (a) shall comply with all applicable Laws of Uganda; and
- (b) will hold and maintain in good order and validity, and renew and comply with, all Authorisations required for the performance of their obligations under this Agreement.

8.4 Warranties of Each Party

Each Party represents and warrants that:

- (a) it is a limited liability company duly organized and validly existing under Laws of Uganda and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions herein contained;
- (b) all Authorisations required for the execution, delivery and performance by it of this Agreement and the transactions contemplated herein have been obtained and are in full force and effect, or have been applied for through the due process required by the relevant Governmental Authority and the receipt of such Authorisations shall be received on or prior to the Commercial Operations Date;
- (c) this Agreement constitutes its valid, legal and binding obligations, enforceable in accordance with the terms hereof except where the enforceability may be limited by applicable laws affecting creditors' rights generally;
- (d) there are no actions, suits or proceedings pending or, to its knowledge, threatened, against or affecting it before any court or administrative

body or arbitral tribunal that might materially adversely affect its ability to meet and carry out its obligations under this Agreement;

- (e) the execution, delivery and performance of this Agreement have been duly authorised by all requisite corporate action, and will not contravene any provision of, or constitute a default under any other agreement or instrument to which it is a party or by which its property may be bound; and
- (f) it has all necessary legal power and authority to perform its obligations under this Agreement.

8.5 Insurance and Taxes

- 8.5.1 Each Party shall at its own cost and expense take out and maintain adequate insurance cover as are customary, desirable and consistent with Prudent Utility Practice and Laws of Uganda.
- 8.5.2 GENCO shall furnish to UETCL copies of insurance policies effecting the insurance required to be taken out and maintained by GENCO under Clause 8.5.1 and from time to time, any UETCL may request GENCO to provide proof that all relevant premiums have been paid and that the relevant policy or policies remain in existence.
- 8.5.3 Without prejudice to the provisions of the Implementation Agreement, each Party shall be responsible for payment of royalties, taxes, fees, or assessments levied against its property, leasehold rights or other assets or profits by any Governmental Authority as may be provided for by any Laws of Uganda, and shall settle such levies without attempting to recover them from the other Party except through the Energy Charge or UETCL DGE Payments.

8.6 Payment Guarantees

- 8.6.1 Provided that GENCO has provided the notice of First Commissioning Date to UETCL as contemplated by Clause 6.2.1, then on or before the earlier of the actual Commercial Operations Date or the deemed Commercial Operations Date (determined in accordance with the provisions of Clause 6.3.1), UETCL shall procure the issuance of the Bank Guarantee in the Bank Guarantee Required Amount issued by an Acceptable Bank.
- 8.6.2 UETCL shall procure that the Bank Guarantee or a replacement Bank Guarantee (in case of its expiration) shall be in effect from the Term. GENCO shall be entitled to draw upon the Bank Guarantee with prior written notice to UETCL for any payment due to GENCO from UETCL under an Invoice (a) that is overdue for at least thirty (30) days, or (b) upon termination pursuant to Clause 10.3.
- 8.6.3 UETCL further covenants and agrees that within 30 days of any drawing of funds by GENCO under the Bank Guarantee, UETCL shall provide to GENCO either (a) a replacement Bank Guarantee in the Bank Guarantee Required Amount (which shall replace and not be in addition to the Bank

Guarantee upon which the relevant drawing of funds was made), or (b) confirmation from the issuing bank addressed to GENCO that the guaranteed amount under the Bank Guarantee has been replenished up to, or continues to be equal to, the Bank Guaranteed Required Amount (a “**Bank Guarantee Continuance Notice**”).

8.6.4 If UETCL fails to:

- (a) arrange issuance of the first Bank Guarantee in accordance with the provisions of Clause 8.6.1; or
- (b) provide a replacement Bank Guarantee or Bank Guarantee Continuance Notice in accordance with the provisions of Clause 8.6.3;

then (i) the provisions of Clause 10.1.2(b) shall apply and, (ii) GENCO may suspend deliveries of electricity hereunder until the UETCL has cured the breach of its obligations under Clause 8.6.1 (by the provision of the original Bank Guarantee) or Clause 8.6.3 (by the provision of a replacement Bank Guarantee or Bank Guarantee Continuance Notice) as the case may be.

8.6.5 Each Bank Guarantee shall, save as otherwise agreed by the Parties, be valid for a twelve (12) Month period.

8.6.6 UETCL shall be required to procure the issuance of a new Bank Guarantee for the Bank Guarantee Required Amount no later than thirty (30) days prior to the expiry of the current Bank Guarantee, provided that GENCO has reminded UETCL of the requirement to procure such new Bank Guarantee at least forty-five (45) days before its expiry. The Bank Guarantee will provide that if the Bank Guarantee is not replaced by a further Bank Guarantee in the Bank Guarantee Required Amount within thirty (30) days prior to the expiry of the current Bank Guarantee, the issuing bank will be instructed to draw the full amount under the Bank Guarantee and apply such moneys as security in issuing a further Bank Guarantee in the Bank Guarantee Required Amount.

8.6.7 GENCO shall meet two-thirds of the cost of the Bank Guarantee directly with the issuing banks or banks. UETCL shall be responsible for paying the remaining one-third of the cost of the Bank Guarantee.

8.6.8 In the case of a Bank Guarantee supported by a member of the World Bank Group: (a) the provisions and requirements governing the Bank Guarantee will be included in the PRG Support Agreement; and (b) the terms under the PRG Support Agreement governing the Bank Guarantee supersede the terms under this Agreement and in the event of any inconsistencies between the PRG Support Agreement and this Agreement, the PRG Support Agreement shall prevail. In those cases where the Bank Guarantee is not supported by, or ceases to be supported by, a member of the World Bank Group, the provisions of this Agreement (other than this Clause 8.6.8) shall apply in relation to the Bank Guarantee.

8.7 Operation of the Generation Facility

- 8.7.1 GENCO shall undertake the operation and maintenance of the Generation Facility in accordance with Prudent Utility Practice.
- 8.7.2 Subject to the provisions of Clause 8.7.3, if following the actual or deemed Commercial Operations Date GENCO fails to achieve Plant Availability of 90% during the first twelve months of operation and 96%¹ (the “**Required Plant Availability**”) within any subsequent Contract Year then GENCO shall pay to UETCL liquidated damages calculated in accordance with the relevant formula set out in Clause 8.7.4 below, provided however that the total amount of Liquidated Damages shall not exceed an amount equivalent to USD 112,000² in any one calendar year.
- 8.7.3 The following circumstances causing unavailability of the Generation Facility or a unit of the Generation Facility shall not be included when calculating the annual Plant Availability:
- (a) where the unavailability of the Generation Facility is caused by an action of UETCL or a breach by GOU of any of GOU’s obligations under the Implementation Agreement;
 - (b) where the unavailability of the Generation Facility is a result of a major scheduled maintenance agreed to by the Coordination Committee and required for the maintenance of the Generation Facility in accordance with Prudent Utility Practice and declared at the beginning of the calendar year;
 - (c) in case of a Force Majeure Event.
- 8.7.4 In the case of a failure to achieve the Required Plant Availability, liquidated damages shall be calculated as follows:

$$LD = (PA_T - PA_A) * C * EP * PF * 8760 * 10$$

Where LD is the Liquidated Damage in USD

PA_T is the target annual plant availability equal to 96 %

PA_A is the actual annual plant availability in

C is the installed capacity of 5.0 MW

EP is the energy price in US\$/kWh

PF is the estimated plant factor for the plant of 57 %.

8760 is the total numbers of hours in a calendar year.

¹ Relevant percentage to be confirmed.

² Amount to be considered for each project.

9 FORCE MAJEURE

9.1 Definition of Force Majeure

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party occurring on or after the date hereof that materially and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole by the affected Party through the exercise of diligence and reasonable care and Prudent Utility Practice. The Parties agree that reasonable care includes acts or activities to protect the Project from a casualty event, which are reasonable in light of the likelihood of such event, the effect of such event if it should occur, and the likely efficacy, cost and cost-effectiveness of protective measures. Subject to the exclusions in Clause 9.1.3, “Force Majeure Events” shall include the following events and circumstances, but only to the extent that they satisfy the above requirements:

9.1.1 events or circumstances or any combination of events and/or circumstances of the following types that occur inside or directly involve Uganda (“Political Force Majeure Events**”):**

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution;
- (b) radioactive contamination or ionising radiation originating from a source in Uganda or resulting from another Political Force Majeure Event;
- (c) any riot, insurrection, civil commotion, act or campaign of terrorism that is of a political nature, such as, by way of example and not limitation, actions associated with or directed against GENCO and/or its Contractors as part of a broader pattern of actions against companies or facilities with foreign ownership or management;
- (d) a Lapse of Consent that (A) shall have existed for 26 days or more, (B) together with any and all Lapses of Consent that have occurred in the same calendar year, shall have existed in the aggregate for 45 days or more in such year, or (C) together with any and all Lapses of Consent that have occurred in the same or preceding two calendar years, shall have existed in the aggregate for 60 days or more;
- (e) any strike, work-to-rule or go-slow which is not primarily motivated by a desire to influence the actions of GENCO so as to preserve or improve conditions of employment, and
 - (i) is part of an industry wide strike, work-to-rule or go-slow, in response to the coming into force, modification, repeal or change in the interpretation of application of or any Law of Uganda after the date of this Agreement; or

(ii) is by the employees of any Governmental Authority in response to the coming into force, modification, repeal or change in the interpretation of any Law of Uganda after the date of this Agreement; or

(iii) is caused by a Political Force Majeure Event;

For the avoidance of doubt, events included within Clause 9.1.1(e) shall not constitute Other Force Majeure Events notwithstanding Clause 9.1.2(e).

- (f) any Change in Law having the effect of preventing or delaying the construction, commissioning or testing of the Generation Facility or which prohibit (by rendering unlawful) the operation of the Generation Facility or which imposes material limitations on the operation of the Generation Facility, unless the GOU remedies in whole the financial effects on GENCO and does so in a way that does not have an adverse effect, whether permanent or temporary, on GENCO or the Lenders; or
- (g) either any (i) order or injunction issued by any Governmental Authority or (ii) declaration pursuant to a statutory instrument, in either case in respect of archaeological or paleontological remains discovered on or under the Site, or the Route that would not have been revealed by a soils investigation of the Site or the Route carried out at the date of such Agreement; or

9.1.2 events or circumstances or any combination of events and/or circumstances of the following types, except to the extent that they constitute or are caused by Political Force Majeure Event (“**Other Force Majeure Events**”):

- (a) earthquake, flood, storm, cyclone or lightning, provided that where such event occurs after the Commercial Operations Date, only where it is on a level that exceeds the design criteria of the Generation Facility, except for the maximum credible seismic design event as specified in Schedule 1 hereto;
- (b) fire, explosion, mudslide or chemical contamination;
- (c) epidemic or plague that extend beyond the affected Party’s organisation and are widespread or nationwide;
- (d) a Lapse of Consent (other than a Lapse of Consent that constitutes a Political Force Majeure Event);
- (e) any strike, work-to-rule or go-slow which is not primarily motivated by a desire to influence the actions of GENCO so as to preserve or improve the conditions of employment.

9.1.3 Events or circumstances which shall not constitute Force Majeure include:

- (a) lack of funds due to any commercial, economic or financial reason such as, but not limited to, a Party’s inability to make a profit or

- achieve a satisfactory rate of return due to the provisions of this Agreement or changes in market conditions (including due to any Change In Law);
- (b) Any unexpected changes in the cost and quantities of plant or materials during the construction stage arising out of or relating to lack of proper planning, due diligence or the necessary feasibility studies;
 - (c) late delivery of machinery or other materials or a delay in the performance by any contractor or supplier (except where such late delivery or delay is itself attributable to a Force Majeure Event);
 - (d) normal wear and tear or random flaws in materials and equipment or breakdown in equipment;
 - (e) hazards, including but not limited to lightning or the growth of trees, which can be reasonably anticipated in normal utility operations and planned for as part of Prudent Utility Practice; and
 - (f) in the case of UETCL, the inability at any time or from time to time of the UETCL System to accept electricity except where caused by a Political Force Majeure Event.

9.2 In Case of an Event of Force Majeure

- 9.2.1 If a Party is prevented from or delayed in performing an obligation hereunder by reason of a Force Majeure Event (the “**Affected Party**”), the Affected Party shall:
- (a) be relieved from the requirement to perform that obligation during the continuance of the Force Majeure Event;
 - (b) promptly notify the other Party of the occurrences of the event within ninety six (96) hours giving full particulars and satisfactory evidence in support of its claim; and in the event of a breakdown of communication rendering it not reasonably practicable to give notice of Force Majeure within the period specified above, the Affected Party may give such notice as soon as possible, but not later than twenty four (24) hours after reinstatement of communication; and
 - (c) use all reasonable endeavours to overcome the consequences of the event and where the Force Majeure Event has been eliminated or no longer affects a Party, the obligations in this Agreement shall recommence forthwith, and the applicable period for the performance of the obligation shall be extended by a period equal to the duration of the Force Majeure Event.

- 9.2.2 The declaration of Force Majeure shall not relieve any Party from the requirement to make any payment when due.
- 9.2.3 If either Party is prevented, hindered or delayed in the performance of material obligations under this Agreement by reason of Force Majeure occurring after

the Commercial Operation Date, then provided the Affected Party has complied with its obligations under this Clause 9, the Term shall be extended by a period in time equal to the period during which the Affected Party was so prevented, hindered or delayed, in accordance with Clause 2.2.

9.3 Political Force Majeure Events

The provisions of Section 15 of the Implementation Agreement shall govern this Agreement with respect to the consequences of a Political Force Majeure Event.

9.4 Extension of Longstop Dates

If:

- (a) a Force Majeure Event, a breach by UETCL of its obligations under or pursuant to this Agreement and/or a breach by GOU of its obligations under or pursuant to the Implementation Agreement (each a “**Delaying Event**”) occurs; and
- (b) such Delaying Event materially impedes GENCO from achieving (i) the Effective Date prior to the Longstop Effective Date, (ii) the Construction Start Date prior to the Scheduled Construction Start Date, and/or (iii) the Commercial Operation Date prior to the Scheduled Commercial Operation Date; and
- (c) (i) in the case of a Force Majeure Event, the Company has notified UETCL of the Force Majeure Event in accordance with the provisions of Clause 9.2.1(b) and complied with the provisions of Clause 9.2.1(c), or (ii) in the case of a breach by UETCL of its obligations under or pursuant to this Agreement and/or a breach by GOU of its obligations under or pursuant to the Implementation Agreement, the Company has promptly notified UETCL of the relevant breach and used all reasonable endeavours to overcome the relevant consequences of the breach;

then such of the Longstop Effective Date, the Scheduled Construction Start Date and/or the Scheduled Commercial Operation Date which have not then occurred shall be extended on a day for day basis (for a maximum of one hundred and eighty (180) days) to new dates which reflect the resultant period of delay in achieving the Effective Date, the Scheduled Construction Start Date and/or the Scheduled Commercial Operation Date (as the case may be) caused by the Delaying Event(s).

10 TERMINATION

10.1 Event of Default

- 10.1.1 Each of the following events shall be a “**GENCO Event of Default**” which, if not cured within the time permitted in this Clause shall give rise to the right on the part of UETCL to terminate this Agreement:

- (a) assignment by GENCO of this Agreement to a third party in violation of the approval requirements of Clause 14.5;
- (b) any material breach by GENCO of any provision of this Agreement (other than breaches expressly provided for in paragraphs (a), (c), (d), (e), (f) and/or (g) of this Clause 10.1.1 which is not remedied within one hundred and ninety (190) days following notice by UETCL stating that a breach of this Agreement has occurred and identifying the breach in question and the effect of which has had or is reasonably expected to have a material or adverse effect on UETCL;
- (c) failure by GENCO to achieve the Construction Start Date by the Required Construction Start Date or as otherwise agreed between the Parties;
- (d) failure by GENCO to achieve the Commercial Operation Date by the Required Commercial Operation Date or as otherwise agreed between the Parties;
- (e) Abandonment occurs for a continuous period of 1 Month or for non-continuous periods of greater than 7 Days which together subsist for a cumulative period of 1 Month over the course of any 12 Month period where such Abandonment is not caused by a Force Majeure Event, a UETCL Event of Default or a GOU Event of Default under the Implementation Agreement;
- (f) The occurrence of any of the following events:
 - (i) the passing of a resolution by the shareholders for winding up, except in the case of a solvent restructuring
 - (ii) the voluntary filing of a petition of bankruptcy, moratorium or other similar relief;
 - (iii) the appointment of a liquidator in proceedings for winding up, after notice thereto and due hearing, which appointment has not been set aside or stayed within 90 days of the appointment; or
 - (iv) the making by a court with competent jurisdiction of an order of winding up, that is not stayed or reversed by a court of competent jurisdiction within 60 days.; and
- (g) revocation or lapse of the GENCO Licence arising from any breach by GENCO of the GENCO Licence (including any failure by GENCO to perform or observe any of the conditions to which the GENCO Licence may be subject).

10.1.2 Each of the following shall be “**UETCL Event of Default**” which, if not cured within the time permitted shall give rise to the right on the part of GENCO to terminate this Agreement:

- (a) failure by UETCL to make a payment in full of any amount due to GENCO under this Agreement within forty-five (45) days of its Due Date, or failure to pay a disputed amount within forty-five (45) days of resolution of the dispute, unless such payment is made by GOU pursuant to the Implementation Agreement or by drawing on the Bank Guarantee;
- (b) in the case of a Bank Guarantee supported by a member of the World Bank Group, a failure by UETCL to issue or maintain a Bank Guarantee in accordance with the provisions of the PRG Support Agreement;
- (c) in those cases where the Bank Guarantee is not supported by, or ceases to be supported by, a member of the World Bank Group, failure by UETCL to issue (i) the first Bank Guarantee within thirty (30) days of the due date therefor determined in accordance with the provisions of Clause 8.6.1, or (ii) a replacement Bank Guarantee or Bank Guarantee Continuance Notice within thirty (30) days of the due date therefor determined in accordance with the provisions of Clause 8.6.3;
- (d) assignment by UETCL of this Agreement to a third party in violation of the approval requirements of Clause 14.5;
- (e) any other material breach by UETCL of this Agreement, (other than the breaches expressly provided for in paragraphs (a), (b), (c), (d), (f) and (g) of this Clause 10.1.2 which is not remedied within sixty (60) days following notice by GENCO stating that a material breach of this Agreement has occurred and identifying the breach in question;
- (f) The occurrence of any of the following events:
 - (i) the passing of a resolution by the shareholders for winding up, except in the case of a solvent restructuring;
 - (ii) the voluntary filing of a petition of bankruptcy, moratorium or other similar relief;
 - (iii) the appointment of a liquidator in proceedings for winding up, after notice thereto and due hearing, which appointment has not been set aside or stayed within 90 days of the appointment; or
 - (iv) the making by a court with competent jurisdiction of an order of winding up, that is not stayed or reversed by a court of competent jurisdiction within 60 days.;

- (g) the termination by GENCO of the Implementation Agreement as a consequence of a GOU Event of Default under that Agreement.
- 10.1.3 If a circumstance of Force Majeure Event has occurred and continued for a period of one hundred and eighty (180) days from the date of its occurrence, then, the GENCO shall be entitled to serve upon UETCL twenty-eight (28) days' notice to terminate this Agreement. If at expiry of such period of twenty-eight (28) days, such Force Majeure Event shall still continue, then this Agreement shall terminate.
- 10.1.4 The provisions of this Clause 10 shall be the sole and exclusive grounds on which the Parties may terminate this Agreement save for Clause 2.2.

10.2 Termination Notices

- 10.2.1 Upon occurrence of a UETCL Event of Default or a GENCO Event of Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting party may, at its option, initiate termination of this Agreement by delivering a written notice ("Notice of Intent to Terminate") of its intent to terminate this Agreement to the defaulting party. The Notice of Intent to Terminate shall specify in reasonable detail the UETCL Event of Default or the GENCO Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate.
- 10.2.2 Notwithstanding anything to the contrary in this Agreement:
 - (a) UETCL shall not seek to terminate this Agreement as a result of any default of GENCO without first giving a copy of any notices required to be given to GENCO under Clause 10.2.1 to the Lenders; and
 - (b) GENCO shall not seek to terminate this Agreement as a result of any default of UETCL without first giving a copy of any notices required to be given to UETCL under Clause 10.2.1 to GOU pursuant to the Implementation Agreement.
- 10.2.3 Following the giving of a Notice of Intent to Terminate, the Parties shall consult for a period of forty five (45) days in case of a failure by either Party to make payments or provide security when due, and ninety (90) days with respect to any other Event of Default (or such longer period as the Parties mutually may agree), as to what steps shall be taken with a view to mitigating the consequences of the relevant event taking into account all prevailing circumstances. During the period following delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default, and if the default is cured at any time prior to the delivery of a termination notice in accordance with Clause 10.2.4, then the non-defaulting Party shall have no right terminate this Agreement in respect of such cured default.
- 10.2.4 Upon expiration of the consultation period described in Clause 10.2.3, if any, and unless the Parties shall have otherwise agreed or unless the UETCL Event of Default or GENCO Event of Default giving rise to the Notice of Intent to

Terminate shall have been remedied the Party having given the Notice of Intent to Terminate may terminate this Agreement by delivering a termination notice to the other Party, whereupon this Agreement shall immediately terminate

10.3 Obligations Upon Termination

- 10.3.1 In the event that UETCL terminates this Agreement pursuant to Clause 10.2 as a result of a GENCO Event of Default, at UETCL's option, GENCO shall sell the Generation Facility to GOU or its designee for the GENCO Default Purchase Price in accordance with the procedures set out in Annex D to the Implementation Agreement.
- 10.3.2 In the event GENCO terminates this Agreement pursuant to Clause 10.2 as a result of a UETCL Event of Default, then the terms of the Implementation Agreement shall prevail.
- 10.3.3 If following an Other Force Majeure Event, this Agreement is terminated as provided in Clause 10.1.3 then GENCO shall, at UETCL's option, sell the Generation Facility to GOU or its designee for the Other Force Majeure Purchase Price in accordance with the procedures set out in Annex D to the Implementation Agreement.
- 10.3.4 If following a Political Force Majeure Event, this Agreement is terminated as provided in Clause 9.3, then the terms of the Implementation Agreement shall prevail.
- 10.3.5 UETCL may exercise any option it has under this Clause 10.3 to require a sale to, or, as the case may be, a purchase by, GOU or its designee of the Generation Facility by giving a Transfer Notice to GENCO at any time within 60 days after the day on which this Agreement is terminated or (in the case of Clause 10.3.1 or Clause 10.3.2 where this Agreement expires upon the termination of the Implementation Agreement as a result of a GENCO Event of Default under that Agreement) the day on which this Agreement expires. If UETCL does not exercise the option it has by issuing a Transfer Notice within that 60-day period, then it shall be conclusively presumed to have waived and renounced its rights to require UETCL to sell or, as the case may be, purchase the Generation Facility pursuant to this Clause 10.3. If UETCL shall fail to issue a Transfer Notice within that 60-day period, GENCO shall continue to own the Generation Facility and shall be free to sell or transfer it to any third party.
- 10.3.6 Except as provided in Clauses 10.3.1 to 10.3.5 above, upon the expiration or earlier termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for those obligations or liabilities that arose prior to or arise upon expiration or termination and those obligations or liabilities that expressly survive such expiration or termination pursuant to this Agreement.

10.4 Antecedent Rights

The termination of this Agreement shall be without limitation of or prejudice to any other relief, remedy or antecedent right of either Party under or in connection with this Agreement.

10.5 Survival

In the event of the termination of this Agreement then for a period of two (2) years following termination the provisions of this Agreement:

- (a) as they relate to the payment of any sum due or any sum which may become payable by one Party to the other, including indemnity payments;
- (b) as they relate to confidentiality; and
- (c) as they relate to the disputes resolution procedure under Clause 12,

shall survive termination and continue to have effect in the terms of this Agreement (save in respect of any continuing arbitration commenced prior to the lapse of such two (2) year period this Agreement shall survive solely in respect of the matter in arbitration).

10.6 Limitation of Liability

Subject to Clause 10.3 neither UETCL nor GENCO shall be liable to the other for the other's Consequential Loss. Nothing in this Clause 10.6 shall relieve either Party from any express obligation under this Agreement to make a payment to the other Party when due.

11 CONFIDENTIALITY

11.1 General Restriction

Subject to the exceptions provided in Clause 11.2, neither of the Parties to this Agreement shall, at any time, whether before or after the termination of this Agreement, without the prior consent of the other Party, divulge or suffer or permit its officers, employees, agents or contractors to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them properly to carry out their duties or to its or their respective banks or financiers of the Parties) any of the contents of this Agreement or any commercially confidential information relating to the negotiations concerning the same which may come to a Party's knowledge in the course of such negotiations concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party.

11.2 Exceptions

11.2.1 The restrictions imposed by Clause 11.1 shall not apply to the disclosure of any information:

- (a) which now or hereafter comes into the public domain otherwise than as a result of a breach of this Agreement or the undertaking of confidentiality;
- (b) which is obtainable with no more than reasonable diligence from sources other than the Parties hereto;
- (c) which is required by law or appropriate regulatory/constitutional authority to be disclosed to any person who is authorized by law to receive the same;
- (d) which is on 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; and
- (e) 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.

11.2.2 A Party may disclose the confidential information subject to obtaining confidential undertakings to keep the same confidential in terms not less strict than those imposed under this Agreement to:

- (a) a court, Arbitrator or administrative tribunal in the course of proceedings before the court, Arbitrator or tribunal to which the disclosing Party is a Party;
- (b) appropriate agencies or Ministries of the Government of Uganda;
- (c) the Lenders or to any consultants, banks, financiers, guarantors or advisers to the disclosing Party (including their respective managements and Board of Directors);
- (d) any recognized exchange upon which the share capital of the Party making the disclosure is proposed to be from time to time listed or dealt in; and
- (e) any insurers of either Party.

12 DISPUTE RESOLUTION

12.1 Mutual Discussion

If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with or arising out of this Agreement, the Parties shall attempt to amicably settle such dispute in the first instance within thirty (30) days or within an agreed time frame by mutual discussion.

Upon completion of such thirty (30) day period, or such additional period as may be agreed, either Party may request that the dispute be settled in accordance with Clause 12.2.

12.2 Technical Disputes

- 12.2.1 Where this Agreement provides or the Parties otherwise agree that a dispute shall be treated as a Technical Dispute, such Technical Dispute may be referred to an expert agreed upon by the Parties for determination (such person, an “**Expert**”).
- 12.2.2 The Expert shall have demonstrated expertise in the area to which such technical dispute relates and shall not be an agent, employee or contractor of either Party involved in the technical dispute.
- 12.2.3 If the identity of the Expert is not agreed between the Parties within fifteen days (15) days of a request in writing by the Party initiating the Technical Dispute, the Expert shall be appointed by the International Centre of Expertise in accordance with the provisions for appointment of experts under the Rules for Expertise of the International Chamber of Commerce.
- 12.2.4 Consideration of the Technical Dispute by an Expert shall be initiated by the Party seeking consideration of the Technical Dispute by the Expert submitting within 10 days of the appointment of the Expert to both the Expert and the other Party written materials setting forth:
 - (a) a description of the Technical Dispute;
 - (b) a statement of the initiating Party’s position; and
 - (c) copies of records supporting the initiating Party’s position.
- 12.2.5 Within 10 days of the date upon which a Party has submitted the materials described in Clause 12.2.4, the responding Party may submit to the Expert (and, if such Party does so, shall also submit to the other Party) written materials setting forth:
 - (a) a description of the Technical Dispute;
 - (b) a statement of the responding Party’s position; and
 - (c) copies of any records supporting the responding Party’s position.
- 12.2.6 The Expert shall consider the information submitted by the initiating Party in accordance with the provisions of Clause 12.2.4, the information submitted by the responding Party in accordance with the provisions of Clause 12.2.5 and, in the Expert’s discretion, any additional written materials submitted by either Party.
- 12.2.7 Any additional written materials submitted by a Party to the Expert shall be simultaneously submitted by such Party to the other Party.
- 12.2.8 The Expert’s final decision should be rendered within thirty (30) days of the date of the Expert’s appointment or as soon as practicable thereafter.
- 12.2.9 The Expert shall act as an expert and not as an arbitrator.

- 12.2.10 The costs of the Expert shall be borne as determined by the Expert or, in default of such determination, equally by the Parties.
- 12.2.11 The Expert's determination shall (in the absence of alleged fraud or manifest error) be final and binding on the Parties and not subject to appeal.
- 12.2.12 If any Party wishes to challenge a decision of the Expert, it may do so only (a) by initiating arbitration in accordance with Clause 12.3 within thirty (30) days of its receipt of the decision of the Arbitrator, and (b) on the alleged grounds of fraud and/or manifest error.
- 12.2.13 If no challenge to a decision of the Expert is made in accordance with Clause 12.2.12, the decision shall be final and binding on the Parties and not subject to appeal.

12.3 Arbitration

- 12.3.1 All and any disputes or differences arising out of or in connection with this Agreement, including any dispute relating to any non-contractual obligations arising out of or in connection with it, which are not first resolved amicably between the Parties in accordance with Clauses 12.1 and 12.2, shall be finally settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (the "**UNCITRAL Rules**") as at present in force.
- 12.3.2 Unless the parties agree differently, the following shall apply. The number of arbitrators comprising the Tribunal shall be three. The appointing authority according to article 6 in the UNCITRAL rules shall be the President for the time being of the London Court of International Arbitration. The Arbitration shall be conducted and any award shall be rendered in the English language. The seat of the arbitration shall be Mauritius.
- 12.3.3 The decision of the Tribunal shall be final and binding upon the Parties and shall not be subject to appeal.
- 12.3.4 If any Dispute arising out of or in connection with this Agreement ("**PPA Dispute**") raises issues which are substantially the same as issues arising out of or in connection with any dispute in connection with the Implementation Agreement (an "**Implementation Agreement Dispute**") either Party may, by written notice to the other Party and to any arbitrators who have already been agreed or appointed pursuant hereto, require the PPA Dispute to be referred to and finally settled by the arbitral tribunal appointed and subsisting in relation to the Implementation Agreement Dispute provided that:
 - (a) the arbitral tribunal appointed under the Implementation Agreement Dispute has the necessary expertise and is otherwise qualified to arbitrate the PPA Dispute;
 - (b) the Implementation Agreement Dispute proceedings have not been closed; and

- (c) the Parties are given the opportunity to be heard, including (to the extent necessary) by way of amendment to the procedural timetable applicable to the Implementation Agreement Dispute.
- 12.3.5 The Parties hereby waive all of their rights as regards the appointment of the arbitral tribunal appointed to arbitrate the Implementation Agreement Dispute. The appointment of an arbitral tribunal pursuant to this Agreement in connection with the PPA Dispute and its jurisdiction to resolve the PPA Dispute shall terminate immediately upon the giving of such notice and the arbitral tribunal shall be deemed to be *functus officio* in connection with the PPA Dispute. The Parties hereby agree that an Implementation Agreement Dispute may be referred to and finally settled by the arbitral tribunal appointed and subsisting in relation to the PPA Dispute. The Parties hereby waive, to the maximum extent permitted by applicable law, any objections that they may have as to the validity and/or enforcement of any arbitral awards made by the tribunal following the joinder of disputes or arbitral proceedings in accordance with this Clause 12.3 to the extent that such objections are based on the fact that joinder of the same has occurred.

13 COORDINATING COMMITTEE

13.1 Establishment of the Coordinating Committee

Within ninety (90) days of anticipated Commercial Operation Date the parties shall establish a committee (the “**Coordinating Committee**”) composed of six (6) members. Each Party shall designate three members to represent it on the Coordinating Committee and shall advise the other Party of such designation in writing.

13.2 Secretariat

GENCO shall be responsible for the secretarial function of the Coordinating Committee. The chairperson of the Coordinating Committee shall rotate each six (6) Months between the Parties, and the Parties hereby agree that shall GENCO designate the first chairperson. Each Party shall be responsible for any costs or expenses associate with their designated members serving on the Coordinating Committee.

13.3 Decisions of the Committee

Decisions of the Coordinating Committee shall be by unanimous vote and the quorum of the Coordinating Committee shall be five (5) members present in person, via teleconference or videoconference at any meeting duly convened provided that at no time shall any decision of the Coordinating Committee amount to or be interpreted to be an amendment of this Agreement. A meeting shall be duly convened upon services of notice of the meeting by either Party on the other Party at least five (5) Business Days prior to the date of such meeting.

13.4 Roles of the Committee

The roles of the Coordinating Committee are:

- (a) the development and coordination of the operating procedures relating to the day to day operations including the methods of communication, metering, telecommunications, scheduling, maintenance, data acquisition and despatch procedures;
- (b) developing the procedures for the holding of meetings, the keeping of minutes of its meetings and the appointment of sub-committees;
- (c) the coordination of outages whether such outages shall be planned or unplanned;
- (d) the development, review and revision of the safety codes relating to the Generation Facility and the UETCL System; and
- (e) any other matter mutually agreed to by the Parties.

In the execution of its roles the Coordinating Committee shall conform with the provisions of this Agreement and Laws of Uganda.

13.5 Removal of Committee Members

A Party may remove or replace any of its designate members to the Coordinating Committee at any time, provided that upon any removal a replacement for such member is immediately designated by the relevant Party.

14 MISCELLANEOUS PROVISIONS

14.1 Notices

14.1.1 Except for communication in accordance with Operating and Despatch Procedures any certificates, notices or written instructions to be given under this Agreement shall be served by sending the same by post, courier, facsimile, email or leaving the same at the following addresses and marked for the attention of the persons specified in this Clause 14.1:

If to GENCO³

For the Attention of:

Postal address:

Physical address:

Telephone:

Facsimile No.

Email:

³ Insert relevant details.

If to UETCL

For the Attention of: The Managing Director/ CEO
Uganda Electricity Transmission Company Limited

Postal address: P.O. Box 7625, Kampala, Uganda

Physical address: Plot 10 Hannington Road

Telephone: 0414 233433

Facsimile No. 0414 341 789

Email: Transco@uetcl.com

- 14.1.2 Any Party may change its nominated address/addresses or facsimile number by prior notice to the other Parties.
- 14.1.3 Notices given by registered post shall be effective upon the earlier of (i) actual receipt, and (ii) seven (7) Days after mailing. Notices given by leaving them with the addressee shall only be valid if the addressee or a responsible officer of the addressee acknowledges receipt in writing.
- 14.1.4 Notices given by email shall be confirmed by sending a copy of the message by another means of delivery permitted by this Clause 14.1 and shall be deemed to have been received upon the earlier of (a) receipt by the sender of a return email confirming receipt of the notice, or (b) the effectiveness or deemed receipt in accordance with the other provisions of this Clause 14.1 of the copy of the notice sent in accordance with the provisions of this Clause 14.1.4.
- 14.1.5 Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has not been received in legible form:
 - (a) by 1500 Hours on the Day of sending if sent on a Business Day between 0900 Hours and 1500 Hours; and
 - (b) by 1000 Hours on the next following Business Day if sent after 1500 Hours on a Business Day but before 0900 Hours on the next Business Day.

14.2 Amendments

This Agreement may only be amended or varied by the written agreement of each Party. Any such amendment shall be approved by the ERA prior to such amendment coming into force.

14.3 Waiver

No waiver or failure by a Party to insist on the strict performance of this Agreement or to act in respect of the default or defaults of the other party and no acceptance of payment or performance during the continuance of any such default or defaults shall preclude any right, relief or remedy under or in connection with this Agreement available to the non-defaulting Party and may not be relied on by the defaulting Party as a consent to that default or those defaults or its or their repetition.

14.4 Successors

This Agreement shall bind and endure to the benefit of the Parties and their respective successors and permitted assigns.

14.5 Assignment, Transfer of Interest and Changes in Ownership

14.5.1 Subject to the terms of any agreement entered into between the Lenders and UETCL (including a direct agreement), neither Party may assign or otherwise transfer all or any of its rights, benefits or obligations hereunder without the other Party's prior written consent, provided such consent is not to be unreasonably withheld or delayed, if the Party seeking assignment can satisfy the other Party of such proposed assignee's financial, technical and legal status and ability to observe and perform this Agreement, Provided however that the Party wishing to assign has given notice to that effect to the other Party and such notice shall have given sufficient information to show the status and ability of the proposed assignee to carry out the terms of this Agreement.

14.5.2 No assignment pursuant to this Clause 14.5 shall have effect unless and until the assigning Party has:

- (a) procured the proposed assignee to covenant directly with the other Party in a form reasonably satisfactory to such Party to observe and perform all the terms and conditions of this Agreement; and
- (b) has provided to the other Party a certified copy of the assignment (excluding consideration paid or payable for such assignment).

14.5.3 Notwithstanding the foregoing provisions, for the purpose of financing the Project, it is expressly acknowledged that GENCO intends to obtain such financing for the Project from Lenders, GENCO may assign to, or grant a security interest in favour of, the Lenders of all of its rights and interests under or pursuant to this Agreement. GENCO shall notify UETCL of the creation of such security over its rights and interests under this Agreement at least thirty (30) days prior to the execution of any such assignment or security interest.

14.6 Severability

14.6.1 If any provision or part of a provision of this Agreement or its application to any party is invalid or cannot be enforced, then all other provisions of this Agreement will be construed, insofar as possible, to be valid and enforceable or in manner which enables them to continue to have full force and effect, and the invalid or unenforceable part shall be severed from this Agreement with a

view to maintaining, to the fullest extent possible, the validity and enforceability of all other provisions of this Agreement.

14.6.2 If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable, or is declared by any court of competent jurisdiction or any Governmental Authority to be invalid, illegal or unenforceable or if such Governmental Authority:

- (a) refuses or formally indicates an intention to refuse authorization of, or exemption to, any of the provisions of or arrangements contained in this Agreement (in the case of a refusal either by way of outright refusal or by way of requirement that this Agreement be amended or any of its provisions be deleted or that a party give an undertaking or accept a condition as to future conduct); or
- (b) formally indicates that to continue to operate any provisions of this Agreement may expose the Parties to sanctions under any law, order, enactment or regulation, or requests any Party to give undertakings or to accept conditions as to future conduct in order that such Party may not be subject to such sanctions;

then in all cases, whether initially or at the end of any earlier period or periods of exemption, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions which substitute provisions are satisfactory to all relevant Governmental Authorities and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

14.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship or partnership between the Parties or to impose any partnership or agency obligation or liability upon either Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

14.8 Further Assurance

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary for the carrying out of the provisions of this Agreement.

14.9 Entirety of Agreement

This Agreement constitutes the entire agreement between the Parties and all prior representations, negotiations and undertakings shall be excluded from any construction of this Agreement.

For the avoidance of doubt, any agreements relating to the construction, operation or maintenance of any interconnection facilities or evacuation facilities shall be in writing and shall be approved by the Authority.

14.10 Counterparts

This Agreement shall be executed in three counterparts by the Parties hereto and when executed and delivered all the counterparts shall together constitute one and the same instrument.

14.11 Sovereign Immunity

14.11.1 Subject to Clause 14.11.2, UETCL unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitutes a private and commercial act. In addition to the foregoing, UETCL unconditionally and irrevocably agrees that: (i) should any proceeding (including any arbitration proceeding) be brought against it or its assets 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; (ii) it waives any right of immunity that it or any of its assets now has or may acquire in the future in any jurisdiction in connection with any such proceedings; and (iii) it consents generally in respect of the enforcement of any judgment against it in any such proceedings (including any arbitration proceedings) in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any assets whatsoever irrespective of their use or intended use).

14.11.2 Without prejudice to any provision in any jurisdiction which provides immunity (notwithstanding the provisions of Clause 14.11.1) over any assets, property or other thing (whether physical or intangible) or in each case over any class thereof, Clause 14.11.1 shall not apply to any assets, property or other thing (whether physical or intangible) which are of strategic importance to the operation of the national grid including transmission lines substation infrastructure and the national control centre infrastructure.

14.12 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of Uganda.

14.13 GENCO Licence

In the event of any inconsistency between this Agreement and the GENCO Licence, the GENCO Licence shall prevail.

IN WITNESS whereof the Parties or their duly authorized representative have executed this Agreement on the day, Month and year first above mentioned.

The Common Seal of GENCO

is hereto affixed
in the presence of:

DIRECTOR

COMPANY SECRETARY

The Common Seal of **THE UGANDA
ELECTRICITY TRANSMISSION
COMPANY LIMITED** is hereunto affixed in
the presence of:

MANAGING DIRECTOR

COMPANY SECRETARY

SCHEDULE 1
DETAILS OF GENERATION FACILITY AND INTERCONNECTION FACILITIES

Description and Map showing location of generation facilities, description of generation facilities, and location of Delivery Point.

Single line diagrams of the Delivery Point including the location of the Main Meter and Check Meter.

Functional Specification and Technical Limits of the Generation Facility

Technical Limits of the Interconnection Facilities

SCHEDULE 2
DETERMINATION OF METERED QUANTITIES

A. Reading of Meters

1. For the purpose of each Billing Period Invoice, the Main Meter and the Check Meter at the Delivery Point, shall be read at 12:00 noon on the first Day of each successive Month (or such other Day as may be mutually agreed upon by the Parties). GENCO shall read the Main Meter and the Check Meter during normal business hours and shall notify UETCL at least forty-eight (48) hours in advance of the time of reading in order to afford UETCL the opportunity to be present during the reading. GENCO shall provide a copy of the readings to UETCL either by fax, courier or other appropriate means, and shall keep a log of the readings at the Delivery Point and in the GENCO offices.
2. The readings of the Main Meter shall be used in the preparation of all Invoices unless the Main Meter was not in service for a portion of the Month in question as a result of maintenance, repairs or testing, or is otherwise known to be inaccurate or functioning improperly. In such event, the following procedures will be followed in the stated order:
 - 2.1 The readings of the Check Meter shall be utilised to calculate the correct Metered Energy quantities, unless a test of such Check Meter as required by either Party, reveals that the Check Meter is inaccurate by more than two-tenths of a percent ($\pm 0.2\%$), or is otherwise functioning improperly.
 - 2.2 If the Check Meter is found to be inaccurate by more than two-tenths of a percent ($\pm 0.2\%$) or is otherwise functioning improperly, then GENCO and UETCL shall jointly prepare an estimate of the correct reading on the basis of all available information and such guidelines as may have been agreed to for the handling of such matters.
3. In the event that the readings of either the Main Meter or the Check Meter have been relied upon for the preparation of Invoices and such meter is subsequently found to have been inaccurate or otherwise functioning improperly, the Invoices which relied upon the erroneous meter shall be corrected for the inaccurate readings by reference to a meter whose readings were known to be accurate within plus or minus two-tenths of one percent ($\pm 0.2\%$) for the period during which the meter was inaccurate, if such period can be determined. In the event there is no alternative meter whose reading can be relied upon, the erroneous readings shall be corrected by the error in excess of two-tenths of one percent ($\pm 0.2\%$) determined by testing of the erroneous meter. If the period of inaccuracy cannot be accurately determined, it shall be deemed to be half the period between the date the meter was found to be inaccurate and the date of the last meter reading accepted by the Parties as accurate, or three (3) Months, whichever is the shorter period. In no event, however, shall any such adjustment be made for any period prior to the date on which the subject meter was last tested and found to be accurate within plus

or minus two-tenths of one percent ($\pm 0.2\%$) and not otherwise functioning improperly.

SCHEDULE 3 **DETERMINATION OF PAYMENTS**

A. Energy Charges

The Energy Charge is expressed in US cents per kWh, exclusive of VAT, and is shown below.

Energy Charge (US c/kWh)	xxxxxx
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All Interim Net Electrical Output shall be paid at the Energy Charge applicable.

B. Payment Amounts

In accordance with the provisions of Clause 7:

1. **Payment for Metered Energy:** UETCL shall pay to GENCO an amount in respect of Metered Energy delivered by GENCO to UETCL at the Delivery Point in any Month calculated as the product of:
 - (A) the prevailing Energy Charge in US cents per kWh (being the amount set out in Part A above for the relevant period adjusted pursuant to the provisions of Part C below); and
 - (B) Metered Energy (determined in accordance with the provisions of Clause 5 and Schedule 2) for the Month expressed in kWh.
2. **Payment for Deemed Energy:** Subject to the provisions of Clause 4.6.2, UETCL shall pay to GENCO an amount (a “**UETCL DGE Payment**”) in respect of Deemed Energy (if any) arising in any Month calculated as the product of:
 - (A) the prevailing Energy Charge in US cents per kWh (being the amount set out in Part A above for the relevant period adjusted pursuant to the provisions of Part C below); and
 - (B) Deemed Energy (if any, determined in accordance with the provisions of Part D below) for the Month expressed in kWh.

C. Annual Inflation Adjustment

The Energy Charge shall be adjusted annually for inflation in accordance with the following formula:

$$[FIT_{y-1}(1 - w)] + \left[FIT_{y-1} \times \frac{CPI_y}{CPI_{y-1}} \times w \right]$$

Where

FIT_y is the applicable feed-in tariff in year y;

FIT_{y-1} is the applicable feed-in tariff in the previous year;

CPI is core producer price index for the United States as published by the Bureau of Labour Statistics;

w is the share of O&M in the initial feed-in tariff (i.e. the weight of O&M in the feed-in tariff) in a given year ‘y’ as approved by ERA.

D. Calculation of Deemed Energy

Determination of Deemed Generated Energy

1. Notification

The dispatch centre of UETCL can at any moment in time issue a despatch order to the GENCO control room of the Generation Facility to curtail the power output. Notification will always be given by a telephone call from the dispatch centre to the control room of the Generation Facility to verify reception of the order, and may immediately thereafter followed by an email to confirm the verbal order. In case of a technical emergency situation (e.g. direct active (MW) and reactive (MVAr) power commands) in which there is insufficient time for the UETCL dispatch centre to inform GENCO of a curtailment, the UETCL control room shall be provided with the facility for emergency stop ability and will follow up the emergency curtailment action on its part with a notification by telephone and electronic mail immediately.

Once curtailment of power is no longer required, including in an event of a technical emergency during which UETCL shall have stopped the delivery itself, the dispatch centre will issue a release order to the control room of the Generation Facility. After receipt of the release order, the Generation Facility will start running unrestrained at the time mentioned in the order.

All electronic mails containing despatch orders will be printed and filed, both at the despatch centre as well as at the Generation Facility, for at least two years or until such a moment both parties have agreed on the amount of lost production for a certain year.

Each Party hereby authorises the other Party to record all telephoned voice communications relating to declared availability and despatch of the Generation Facility received from the other Party pursuant to this Agreement and shall supply, at the request of the Party, a copy or transcript of any such recording.

2. Determination of Deemed Energy

Deemed Energy is Energy which could have been delivered by GENCO to the Delivery Point if an Interruption Event had not occurred.

Deemed Energy shall be calculated on an hourly basis from Water Spillage according to the following formula:

$$E = (V * \eta * g * H_n * 0.995) / 3600$$

where

E = Deemed Energy expressed in kWh

V = Water Spillage in m³ as calculated below

η = the efficiency of the Generation Facility taken as the average from seven (7) days prior to the situation giving rise to the Water Spillage as calculated below

g = the gravity constant equal to 9.81m/s²

H_n = net head in meters at 80% of maximum turbine discharge, determined by the parties during Commissioning Test.

The factor 0.995 takes account of energy used by the Generation Facility.

Water Spillage shall be calculated on an hourly basis from water level measurements on the spillway according to the formula described below where Volume - V - is calculated using the time - T – for the period deemed energy is to be calculated multiplied with the water flow q – for the same period.

Formula:

$$V = q * T \text{ where } q = C * L * H^{1.5}$$

where

q = water flow in m³/s

T = duration of the period of water spillage in seconds

L = length of spillway in m

H = Water depth over the spillway in m

C = a capacity factor determined from the specific design of the spillway

The measuring system shall be described clearly and provided to both Parties by the Engineer. The constant C shall be determined for each spillway by the Engineer during the Commissioning Test based on as-built documentation of the spillway facilities.

The efficiency shall be calculated as an average from seven (7) days generation according to the following formula:

$$\eta = E_m * 3600 / (V_t * g * H_n * 0.995)$$

where

η = the efficiency of the Generation Facility taken as the average from seven (7) days prior to the situation giving rise to the Water Spillage.

E_m = the total metered energy over the same seven (7) days period, in kWh

V_t = Water Volume that has passed the turbines of the Generation Facility during the same seven (7) days period as calculated below

g = the gravity constant equal to 9.81 m/s^2

H_n = net head in meters at 80% of maximum turbine discharge as determined by the Engineer during the Commissioning Test

The Water Volume that has passed the turbines of the Generation Facility shall be calculated on an hourly basis from the actual generation for the actual period using the efficiency of the Generation Facility taken as the average from seven (7) days prior to the situation giving rise to the Water Spillage. If the efficiency from the last seven (7) days is not available, the efficiency of the efficiency curve for the generators corresponding to the generation immediately prior to the incidence causing the deemed energy calculation shall be used. The efficiency curve for the Generation Facility based on the data sheet from the Contractor will be included in this Agreement after Commissioning Test.

If the Water Volume passing the turbines and the Water Spillage over the spillway corresponds to a generation higher than the installed capacity, the deemed energy is limited to the maximum capacity for the Generation Facility less the auxiliary consumption of the Generation Facility. Under no circumstance will the deemed energy calculated be less than zero or more than the installed capacity of the Generation Facility.

GENCO will send the reports on any event of Deemed Energy every day for the events that have happened the previous day, if any.

The Deemed Energy per Month is the sum of all Deemed Energy for all periods in respect of which an Interruption Event detailed in Clause 0 is applicable.

In order for UETCL to verify the results of the Deemed Energy calculation, UETCL can at any moment demand an independent audit of instrument calibration, calculations, procedures and software and will have unlimited access to the database of the SCADA system. UETCL will receive back-ups of that database at any time UETCL may demand such a back-up.

3. Storage of data

All data related to the calculation of Deemed Energy will be stored safely by both parties for at least two years or until such time as both Parties have agreed on the amount of Deemed Energy for a certain year.

E. Change in Tax

The provisions of Section 16 of the Implementation Agreement shall apply in the event of a Change in Tax and/or a Change in Law.

SCHEDULE 4
METER SPECIFICATIONS AND TELECOMMUNICATIONS

Part 1. Main Metering System and Check Metering System Requirements

- 1.1 The Main Metering System and Check Metering System shall consist of a single set of three current transformers and potential transformers feeding both a primary and a backup three phase four wire metering instrument.
- 1.2 The Main Metering System and the Check Metering System shall be designed such that the overall error of the installation, (including instrument transformers, wiring, and metering instruments) shall be no less or greater than two tenth of a percent ($\pm 0.2\%$ for power flows through the metering installation).
- 1.3 The Main Metering System and Check Metering System shall be selected to have rated error no less or greater than two tenth of a percentage ($\pm 0.2\%$) over the equivalent load range.
- 1.4 The Main Metering System and Check Metering System shall be electronic time of use meters which accumulate data separately for at least three time blocks with programmable beginning and ending times and holiday / weekend discrimination.
- 1.5 The energy meters supplied shall be equipped with modems necessary to enable remote energy meter reading.
- 1.6 The Main Metering System and Check Metering System shall be capable of separately accumulating and presenting on the register display the following data:
 - i. kWh into the UETCL System;
 - ii. kWh into the Generation Facility;
 - iii. kVArh into the UETCL System;
 - iv. kVArh into the Generation Facility;
 - v. kW into the UETCL System; and
 - vi. kW into the Generation Facility.
- 1.7 The Main Metering System and Check Metering System current and voltage transformers will measure current and voltage as near as practicable to the Inter Connection Points, as shown in Schedule 2. The Main Metering System and Check Metering System shall consist of the following meters:

Main Metering System

Description	Meter Tag or Identifying Information
-------------	--------------------------------------

Specification for Energy Meter	Voltage:	110V
	Current:	5A
	Accuracy Class:	0.2
	Configuration:	CT connected, programmable, Poly Phase, 4 Wire
	Tariff Category:	Time of day tariff programmable for 3 time slots
	Make:	Bluestar A2000, China
	Options:	GSM/GPRS compatible
Specification for CTs and VTs	Voltage Ratio:	33kV/110V
	Current Ratio:	400A/5A
	Accuracy Class:	0.2
	Winding:	4 wire Y Connected
	Make:	AMMPower-India/M001- OutDoor
33 kV feeder electrical output from Company - TAG	To be determined	

Check Metering System

Description	Meter Tag or Identifying Information
Specification for Energy Meter	Voltage: 110V Current: 5A Accuracy Class: 0.2 Configuration: CT connected, programmable, Poly Phase, 4 Wire Tariff Category: Time of day tariff programmable for 3 time slots

	Make:	Bluestar A2000, China
	Options:	GSM/GPRS compatible
Specification for CTs and VTs	Voltage Ratio:	33kV/110V
	Current Ratio:	400A/5A
	Accuracy Class:	0.2
	Winding:	4 wire Y Connected
	Make:	AMMPower-India/M001- OutDoor
33 kV feeder electrical output from Company - TAG	To be determined	

- 1.8 Both the Main Metering System and Check Metering System shall be installed in weatherproof enclosures, which shall include test switches and shorting blocks to allow removal of either meter instrument without taking the other out of service. The Main Metering System and Check Metering System may be installed in a single enclosure or in separate enclosures, but the enclosure shall be so arranged that both the Main Metering System and the Check Metering System can be read without disturbing the seals on the enclosure(s).

Part 2. Interpretation of Metering System Readings

- 2.1 The Main Metering System and the Check Metering System at the Delivery Points register imports and exports on two separate cumulative registers – one for export from GENCO and the other for import to GENCO, if any. The import register reading only changes with a flow from the Utility to GENCO and the reading will decrease (and so will give a negative reading) and the export register only changes with a flow from GENCO to the Utility and the meter reading will increase (and so will give a positive reading). All the meters at the Delivery Points are programmed with a positive direction reflecting power flow from GENCO to UETCL, and the negative direction reflecting power flow from UETCL to GENCO.
- 2.2 In general, the Net Energy Output shall be calculated as the sum of all metered energy, expressed mathematically as:

$$\text{NEO} = M1$$

Where,

- (a) NEO is the Net Energy Output where:

$$M1 = \text{Delivery Point 33 kVfeeder , net energy deliveries}$$

In the event that the Net Energy Output is positive, the interpretation is that electrical energy has, in net, been supplied by Company to the Utility. In the event that the Net Energy Output is negative, the interpretation is that electrical energy has, in net, been supplied by the Utility to Company. In the event that the Net Energy Output is zero, the interpretation is that, in net, no energy exchange between GENCO and UETCL has taken place and GENCO has exactly supplied the energy needs of its own auxiliaries.

Part 3. Testing

- 3.1 All testing and calibration of the Main Metering System and Check Metering System instruments shall be carried out by qualified personnel using test equipment with a rated error of 0.1% or better, and which has been calibrated according to a procedure and against instruments traceable to a Ugandan standard within the preceding forty-eight (48) Months. The Main Metering System and Check Metering System shall be tested at full rated test current, and at 10% and 120% of full rated test current at power factors of 50% lag, 50% lead and 100%. (For this purpose, “power factor” means the cosine of an angle whose tangent is a ratio of reactive power to active power.) A written test report shall be prepared for all tests showing the calibration history of the test instruments, the as-found, and as-left conditions of the Main Metering System and Check Metering System, which shall be supplied to both Parties.
- 3.2 Current and voltage transformers shall be tested for ratio and phase angle errors following manufacture at an accredited testing station. Test certificates issued by the testing station will be issued independently to both Parties.

Part 4. Telecommunication and Automation Equipment

- 4.1 GENCO shall at its own cost and in close cooperation with UETCL, provide the necessary infrastructure to link the Complex to the Control Center at Lugogo including a remote terminal unit and communication media.
- 4.2 GENCO shall prior to the Commercial Operations Date establish and maintain a telephone hotline between GENCO’s control room and the Control Center at Lugogo.

SCHEDULE 5 TESTING PROGRAMME

F. Testing Objective

1. The objectives of the tests are to demonstrate the performance and operational characteristics of each Unit in the Generation Facility in accordance with this Agreement.
2. The following tests shall be performed:
 - 2.1 Start up test;
 - 2.2 Load rejection test;
 - 2.3 Performance test at 100% Rating; and
 - 2.4 Functional verification test i.e. electrical metering and relaying.
3. UETCL shall maintain the stability of the frequency, voltage and other electrical properties of the UETCL System throughout the duration of the tests. In the event of any instability of voltage, frequency or other electrical properties of the UETCL System during the test, which has an adverse effect on the ability of the Generation Facility to operate at its nameplate capacity, the test results shall be corrected for such variations in an agreed manner. Alternatively GENCO shall have the option to reschedule a new test.
4. GENCO will determine and prepare the testing procedures to be carried out under Paragraph 1 and 2 above.
5. GENCO shall give seven (7) days notice to the UETCL of any tests to be performed at the Generation Facility for purposes of witnessing the tests only.
6. UETCL shall accept into the UETCL System all the electric energy generated during the tests and shall pay to GENCO the amounts specified under this Agreement.
7. These tests will be coordinated between GENCO ,UETCL and ERA. The tests schedule will be agreed not less than one hundred and twenty (120) Days prior to the synchronisation of each Unit.

G. Tests

1. Start-Up Test:

UETCL shall permit GENCO to conduct plant start-up tests at part and full loads including, but not limited to, load rejection tests, performance guarantee tests, reliability tests and capacity tests.

2. Load Rejection Test:

UETCL shall allow GENCO to conduct load rejection testing.

The objective of the load rejection test is to verify that (1) a Unit does not trip when shedding 40%, 75% and 100% of rated load, (2) is capable of continuing operation with its auxiliaries, and (3) is capable of being reloaded in the times specified by its manufacturer. UETCL shall be responsible for any black out(s) that may occur as a result of the conduct of any tests by.

3. Performance Guarantee Tests:

The objective of the performance guarantee tests is to verify the performance figures of each Unit and the auxiliary equipment.

The test shall be carried out generally in accordance with the IEC standards

The performance guarantee test shall compose:

- 3.1 A predetermined run at 100% of maximum continuous rating to verify the Unit net output.
- 3.2 Functional tests to demonstrate the performance of all auxiliary equipment in accordance with the manufacturers guarantees.

H. Functional Verification Test i.e. Electrical Metering and Relaying

1. GENCO shall perform functional verification tests of the protection, control and metering system of the Generation Facility as well as the switchyard and transmission facilities. The purpose of the functional verification tests is to ensure that power equipment, protection and control system will perform as designed to protect the electrical power system in a reliable manner and not jeopardise UETCL's facilities.
2. The tests shall be conducted to satisfy the UETCL's requirements. Periodic verification in accordance with an agreed maintenance schedule shall be performed by GENCO as well as the UETCL in a coordinated manner to ensure the integrity of the protection and control system of both facilities.
3. The design of the protection, control and metering system shall include adequate test facilities so that functional tests can be properly performed. Tests on relay, meters and control equipment shall be in accordance with manufacturer's recommendations.

I. Data Recording and Measurement

1. GENCO will provide the necessary labour, material, instrumentation and controls to record observe and evaluate the test data and maintain the logs of all data taken. Where practical the data will be recorded in both hard copy and electronic form.
2. GENCO shall specify the variables that will be recorded, the form of recording and the frequency of recording each variable during each test.

All instruments and meters will be calibrated in accordance with Prudent Utility Practices prior to the tests.

J. Test Reports

GENCO will provide to UETCL a test report of the test results and other.

The format and contents of the test reports may be modified by mutual agreement between GENCO and UETCL in order to meet the test objectives.

SCHEDULE 6
TIME OF USE BLOCKS

Time Period	
00:00 – 06:00	Off peak
06:00 -18:00	Shoulder
18:00 – 24:00	Peak

SCHEDULE 7
FORM OF DAILY DECLARED CAPACITY DECLARATION
UTILITY DAILY DESPATCH INSTRUCTION

GENCO shall email/fax its daily Declared Capacity Declaration to UETCL by 09:00 hours the day before the due date. GENCO shall be entitled to send a revised declaration on up to and until 13:00 hours on the same date of declaration by sending a Revised Declared Capacity Declaration.

UETCL shall email/fax its Daily Despatch Instructions to Company by 1700 hours the day before the anticipated delivery date specified below. [In accordance with the provisions of Clause 4.2, UETCL may modify its Daily Despatch Instructions at any time up to one hour ahead of the scheduled time of Despatch.]

UETCL fax no: (Attn; Pr. Control Engineer)

GENCO fax no..... (Attn: Authorized Representative)

UETCL email:

GENCO email:

Due Date:

HOUR	GENCO DECLARED CAPACITY (MWh)	GENCO DECLARED CAPACITY (MVAr)	UETCL DESPATCH INSTRUCTION (MWh)	UETCL DESPATCH INSTRUCTION (MVAr)	ACTUAL DESPATCH (MVAr)	ACTUAL DESPATCH (MWh)	REMARKS
00-01							
01-02							
02-03							
03-04							
04-05							
05-06							
06-07							
07-08							
08-09							

HOUR	GENCO DECLARED CAPACITY (MWh)	GENCO DECLARED CAPACITY (MVAr)	UETCL DESPATCH INSTRUCTION (MWh)	UETCL DESPATCH INSTRUCTION (MVAr)	ACTUAL DESPATCH (MVAr)	ACTUAL DESPATCH (MWh)	REMARKS
09-10							
10-11							
11-12							
12-13							
13-14							
14-15							
15-16							
16-17							
17-18							
18-19							
19-20							
20-21							
21-22							
22-23							
23-24							
Day total							
00-24							

Endorsements:

For GENCO:

Name:

Sign:

Date:

For UETCL:

Name:

Sign:

Date:

SCHEDULE 8
TAX ASSUMPTIONS

TAX ASSUMPTIONS ARE BASED ON THE TAX LAWS IN FORCE UPON
EXECUTION OF THIS AGREEMENT

SCHEDULE 9
FORM OF BANK GUARANTEE

(*insert date*).

(*to be addressed to generator*)

**RE: BANK GUARANTEE FOR USD(amount in words) OUR
REFERENCE NO. (*insert reference*)**

In consideration of Uganda Electricity Transmission Company Ltd, of Plot 10 Hannington Road, P. O. Box 7625, Kampala Uganda, having entered into a Power Purchase Agreement (hereinafter called "the Contract") with ----- P.O.Box....., We (*the bank name*) having our registered offices at (*bank address*) (hereinafter called "the Guarantor") agree to guarantee to you payment on behalf of Uganda Electricity Transmission Company Ltd up to a maximum of **USD** (*amount in words*).

NOW THEREFORE we hereby affirm that we are the Guarantors and irrevocably responsible to you, on behalf of Uganda Electricity Transmission Company Ltd , up to a total of **USD** (*amount in words*), and we undertake to pay you upon receipt of your first written demand, declaring Uganda Electricity Transmission Company Ltd to be in default under the contract and without cavil or argument, any sum or sums within the limits of **USD** (*amount in words*), as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

This Guarantee shall be valid for a minimum period of twelve (12) months and renewable every twelve (12) months during the term of the Contract. The sum of the Guarantee shall also automatically be replenished up to an amount of **USD** (*amount in words*), if claims are made under the Guarantee before expiry. Upon expiry this Guarantee automatically becomes **NULL** and **VOID** whether original is returned to us for cancellation or not, and any claim or statement received after expiry shall be ineffective.

This Guarantee is transferable and assignable.

This guarantee shall be governed and construed in accordance with the laws of The Republic of Uganda.

Stamped with the rubber Stamp of the said bank this (*date*).

Yours faithfully,

XXXXXXXXXXXX
Authorized Signatory

XXXXXXXXXXXX
Authorized Signatory

]

SCHEDULE 10 LIST OF ACCEPTABLE BANKS

Pre-Approved Banks

For so long as a partial risk guarantee or similar credit support is not provided by any member of the World Bank Group in relation to the Bank Guarantee, a bank shall be an “**Acceptable Bank**” for the purpose of the Bank Guarantee to be issued to GENCO pursuant to Clause 8.6 if it is one of the following banks:

[UETCL to propose a list of [4] Acceptable Banks. See the definition of “Bank Guarantee and Clause 8.6.]

- Barclays Bank
- Standard Chartered Bank
- Stanbic (Standard Bank)
- Citi Bank

World Bank Group Criteria

If and for so long as a partial risk guarantee or similar credit support is provided by any member of the World Bank Group in relation to the Bank Guarantee, a bank shall be an “**Acceptable Bank**” for the purpose of the Bank Guarantee to be issued to GENCO pursuant to Clause 8.6 if:

- (a) it is approved in writing by Lenders, GENCO, UETCL and the relevant member of the World Bank Group from time to time; and
- (b) it:
 - (A) is a financial institution (other than an export credit agency or other governmental, quasi-governmental or multilateral agency) that is commercially operated;
 - (B) has not been declared ineligible to be awarded an IDA or International Bank for Reconstruction and Development financed contract in accordance with the World Bank Sanctions Procedures; and
 - (C) has not been blacklisted for receiving payments from a member State of the United Nations pursuant to a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, including under United Nations Security Council Resolution 1373 and resolutions related to counter terrorism.

SCHEDULE 11
REQUIREMENTS FOR OPERATING AND DESPATCH PROCEDURES

1. Contents of Operating and Despatch Procedures

The Operating and Despatch Procedures shall include, but not be limited to, the following:

- (a) methods of day-to-day communication between Seller and the UETCL;
- (b) safety and maintenance co-ordination in respect of the Generation Facility and the Grid;
- (c) clearances and switching practices;
- (d) contingency planning in the event of a partial or total Grid system shut-down; and
- (e) incident reporting.

2. Requirements

The Operating and Despatch Procedures shall give due consideration to issues of safety and any economic effect on the Parties which might result from such procedures and otherwise be consistent with:

- (a) the provisions of this Agreement;
- (b) any operating manuals related to the Generation Facility and supplied in accordance with the provisions of the EPC Contract;
- (c) the Environmental and Social Impact Assessment for the Generation Facility;
- (d) Prudent Utility Practice;
- (e) the Grid Code;
- (f) applicable Laws of Uganda; and
- (g) market practice in relation to hydro generation facilities of 1-20MW capacity in Uganda.