



IDENTIFICATION AND ANALYSIS OF STANDARD CLAUSES OF PPA AND LEASING AGREEMENTS FOR ENERGY PROVISION IN THE HUMANITARIAN SECTOR

on behalf of

Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ)

& the Global Plan of Action for Sustainable Energy Solutions in
Situations of Displacement (GPA)



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Introduction

a. About the initiative

A record number of 70.8 million people had fled their homes worldwide at the end of 2018, with the refugee population under the UNHCR's mandate doubling since 2012 from 10.5 million to 20.4 million. Humanitarian-, peace- and development actors need to coordinate closely with each other to provide assistance, protection and to find solutions for the large numbers of displaced globally. Acknowledging this, the Global Compact on Refugees (GCR) represents the political will and ambition of the international community to strengthen cooperation and solidarity with the refugees and affected host communities and countries (see Guiding Principles of the GCR). Its four key objectives are to:

- Ease the pressure on host countries,
- Enhance refugee self-reliance,
- Expand access to third-country solutions,
- Support conditions in countries of origin for return in safety and dignity.

The energy sector is a key example of the potential for improved cooperation between the humanitarian aid and development sectors. Electricity for humanitarian infrastructure in refugee camps and settlements is usually generated through expensive and environmentally harmful fossil fuels. These fuels have to be transported to the camps, which significantly raises their costs. Given the fact that refugee camps exist for an average of 18 years, more sustainable and cost-effective long-term development-oriented solutions should be harnessed.

The global project "Energy Solutions for Displacement Settings" (ESDS) seeks to address the described problem and improve the energy supply in displacement settings in Uganda, Kenya and Ethiopia. It is part of an overarching programme "Support in the Implementation of the UN Comprehensive Refugee Response Framework", commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ). ESDS guides the project development process for renewable energy solutions to replace current fossil-fuel based infrastructure in selected project sites. The project also works to improve access to energy, energy

related services, and clean cooking solutions for households, social institutions, and SMEs through market-based approaches. In addition, the project provides advisory services to its operational partner, UNHCR, at a global, headquarters level.

The Global Plan of Action for Sustainable Energy Solutions in Situations of Displacement (GPA) is a non-binding framework that sets out concrete actions for accelerated progress towards the vision of “safe access to affordable, reliable, sustainable, and modern energy services for all displaced people by 2030”. The GPA is directed by a Steering Group of 13 international organisations: UNHCR, IOM, UNITAR, WFP, FAO, UNDP, Mercy Corps, UNEP-DTU Partnership, SEforAll, GIZ, MEI, Practical Action and the Clean Cooking Alliance. The Coordination Unit of the GPA is hosted by the United Nations Institute for Training and Research (UNITAR). Its mission is to equip all stakeholders with the capacity to mainstream sustainable energy solutions into programming and implementation, with the goal of delivering improved protection, dignity, and energy related social, environmental, and economic benefits to displaced populations, host communities and the organisations themselves.

b. Objective of the report

The objective of the report is to engage with UN agencies and commercial enterprises providing energy services to assist in their endeavour to identify key contractual clauses for energy contracts for single and multi-agency users, which can be treated as pre-approved by both parties to speed up contract negotiations and project implementation.

This report will elaborate the process and reasoning behind contractual decision-making and highlight the “adopted” contractual clauses. It will also include details on the options that each clause entails as well as the risks and opportunities they involve and the feedback received from the stakeholder meetings.

While this report was only made possible with the engagement of UN agencies and commercial enterprises, it is a work product of Becker Büttner Held. Nothing in this report amounts to or should be treated as legal advice.

c. Brief introduction to Power Purchase Agreements and Leasing Agreements

“Solutions for de-risking the technical and financial aspects of renewable energy solutions are becoming more widely available, also in humanitarian settings. Different arrangements such as leasing and power purchase agreements can enable the private sector to take ownership of the electricity supply, while enabling humanitarian organisations to maintain their financial and operational practices during the transition to renewable energy, with associated economic, financial, environmental and social benefits.”¹

New business models for energy supply are becoming increasingly available for humanitarian organisations. These models include leasing and power purchase agreements (PPAs hereafter).

A PPA can be described as a bilateral agreement between an electricity provider and a power purchaser, with the overall aim of setting up a long-term electricity supply agreement. The agreement secures the revenue generation of the project by defining the terms and conditions of the selling of electricity generated by the power plant (i.e. PV system). With a PPA, payments are made per unit of electricity delivered. In practice, either a fixed price is agreed upon for the duration of the contract or a price adjustment clause depending on the development of the energy market.

The defining features of a PPA include the purchase and sale of electricity, the pricing of electricity, the obtaining of the relevant licensing and permits, the construction, installation and operation of the Plant site and metering of the electricity.

Under a lease agreement, the lessee is capable of renting the energy system. This agreement can include the term to lease the land or the rooftop where the system will be installed. Under this type of contract the lessee agrees to pay a fixed monthly “rent” or lease payment, regardless of

¹ IRENA (2019), *Renewables for refugee settlements: Sustainable energy access in humanitarian situations*, International Renewable Energy Agency, Abu Dhabi, p 11.

how much electricity is consumed, in order to obtain the right to use the energy system.

The key features of a leasing agreement include the option to lease, remuneration which fixes the price for the lease, the length of the leasing period and warranties for the leasing equipment.

There are some similarities between PPAs and leasing agreements: under both types of contracts the owner of the energy system is responsible for the construction and maintenance of the energy system, and retains ownership throughout the contract duration. The purchaser/lessee is entitled to the benefits of the system throughout the duration of the contract. PPAs and leasing agreements can take a variety of forms, which allows for flexibility and adaptability under the circumstances. However, there are several standard features which can be found in both types of contracts, such as clauses detailing the amount of electricity expected to be supplied, the conditions of the agreement and any penalty for non-compliance.

There are some notable advantages of PPAs and leasing agreements, such as reducing risks associated with the market price of electricity. The electricity price is for the most part secured for the whole duration of the contract, allowing for greater investment security. There is a certain amount of flexibility with an open end contract design, and optional fixed or variable pricing. If the plant does not deliver as expected, the responsibility can be shifted to the producer rather than remaining with the humanitarian organisations themselves. For the most part these agreements ensure long-term price security and profitability, with the upfront payment often much lower than a traditional procurement for the necessary equipment for the energy supply.

The disadvantages of PPAs and leasing agreements in displacement settings concerns the complex nature of these agreements, which can often take a considerable amount of time to negotiate and as a result tend to discourage organisations. The overall aim of this report is to find pathways to simplify and accelerate this process.

Methodology behind the report

In order to determine which clauses could be treated as pre-approved and which would be more difficult to pre-approve, contracts provided by the GIZ, as well as other agreements that have enabled private sector investment in renewables in Sub-Saharan Africa, were reviewed. Consultations and working group discussions were held with UN agencies and a private sector audience. This was a crucial step in identifying the challenges faced by both parties and determining which clauses would require further analysis and consideration.

The clauses provided throughout the report offer examples of the type of language which can be used in PPAs and leasing agreements, but other variables such as the amount of electricity, price of electricity, date etc. will change in accordance with the business terms.

a. Initial findings

I. Clauses which can be treated as pre-approved

There are clauses found in PPAs and leasing agreements which are standard and readily transposable between different contracts, with only certain variables changing in accordance with the business terms. These clauses can be treated as pre-approved by the contracting parties. The advantage of identifying these clauses as pre-approved is to streamline the negotiating process and encourage efficient contract management. Not only will this reduce time spent drafting the contract but will also facilitate project implementation. The following standard specific clauses have been identified as clauses which can be treated as pre-approved:

Definitions	Undertakings, representations and warranties	Construction, installation, and ownership of the Plant
Interconnection with the Site	Commissioning and testing	Operation and system performance
Access to the Site and the Plant and payments for use of site	Repair and maintenance	Invoices
Metering	Liability and indemnification	Records & confidentiality

1) Explanation and reasoning

In order to better understand why these standard clauses have been categorised as pre-approved, it is also important to understand what they mean and why they are included in the energy provision contracts in the first place. Each clause clearly sets out the duties, rights and privileges of the parties under the contract. Certain clauses may assign a contractual obligation to one party in particular, while others refer to a shared obligation. For each clause there will be an example provided taken from existing agreements.

Definitions

This clause defines the terms used throughout the agreement, so as to avoid ambiguity and to ensure the correct interpretation of the agreement. Most energy provision contracts will contain very similar terms and corresponding definitions. However, there will be terms which are unique to the particular contract, and may have a distinct meaning as a result. These definitions will have to be negotiated between the parties so as to ensure a common understanding and correct interpretation of the contract.

Example of standard clause

(Portion of a definition clause)

Meter: Means verified meters and metering devices used to measure and control the electricity output under this Agreement.

MWh: Means megawatt-hour, a unit of electrical energy being one thousand (1,000) kWh.

Net Electrical Output: The total amount of electricity generated by the facility minus the kWh consumed for the facility's use.

Point of Connection: Is the location at which a solar PV generating plant is connected to the distribution network and where the Main Electricity Meter is installed.

Due Date: Thirty (30) days after the last day of each month during the term of this Agreement. (Example of a definition which may need to be negotiated beforehand)

Undertakings, representations and warranties

Under this clause each party to the agreement makes certain **representations**, (=statement of fact which is relied upon by the contracting party and induces them to enter the agreement), **warranties**, (=statement of fact which if it turns out to be **incorrect** allows the injured party to terminate for breach of contract) and **undertakings** (=promise to do something or not to do something) to the other party.

This is a standard clause which can be found in most types of contracts, regardless of their nature. It is included in the contract to induce the other party to enter into the agreement. If the statements made before or at the time of making the contract turn out to be untrue, the injured party may have the right to seek remedies against the offending party. Under Article 6.5.6 of the UNHCR General Conditions for Sale, the warranties will remain valid for a period of not less than one year following acceptance.

Example of standard clause

1. *The Parties make the following mutual representations and warranties:*
 - a. *Each Party declares that it is validly established, duly organised and in good standing under the laws of its respective formation.*
 - b. *Each Party declares that it is duly authorized and has the power to enter into this Agreement and perform its obligations hereunder, including all necessary licenses under the Laws.*
 - c. *Each Party declares that it has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent of any third party, including any mortgagee.*
 - d. *The information provided pursuant to this Agreement as of the Execution Date is true, correct and complete in all material respects.*
 - e. *This Agreement does not conflict with or violate the terms of any other agreement to which either Party is a party or by which either Party is bound.*
2. *Purchaser makes the following additional representations and warranties to Seller:*
 - a. *Purchaser is not aware of any facts or circumstances that could materially adversely affect its ability to perform its obligations hereunder, and,*
 - b. *Purchaser has complied with all Laws relating to purchase of the Net Electrical Output hereunder.*
3. *Seller makes the following additional representations and warranties to Purchaser:*
 - a. *Seller declares that it is not aware of any facts or circumstances that would materially adversely affect Seller's ability to perform its obligations here-under.*

- b. Seller will deliver to Purchaser the Net Electrical Output free and clear of all liens, security interests, claims and encumbrances, or any interest therein, or thereto, by any Person.*
- 4. The Purchaser undertakes it will ensure that the Purchaser's Site is operated and maintained in accordance with Prudent Operating Practice and the terms of this Agreement.*
- 5. The Seller undertakes it will ensure that the Plant and the Interconnection Facility are operated and maintained in accordance with Prudent Operating Practice and the terms of this Agreement.*

Construction, installation, and ownership of the Plant

This clause details the construction/installation of the plant site in accordance with applicable laws, engagement of subcontractors and rights of ownership (timescale, output guarantee, connection of equipment, capacity testing).

The energy provider/lessor will be responsible for the construction of the plant. The energy provider will make all arrangements at its own expense to transmit and deliver the electricity from the Plant to the Point of Connection. The energy provider/lessor will ensure that the construction and installation are in accordance with all applicable laws and regulations. The plant remains the property of the energy provider/lessor throughout the duration of the agreement (unless otherwise provided for in the contract).

Example of standard clause

1. Seller shall at Seller's own cost design, construct, operate, and maintain the Plant at the Site in accordance with all applicable Laws, and consistent with the technical specifications set forth in Annex -, which are hereby incorporated in this Agreement.

2. Seller may engage subcontractors to meet any obligation under this Agreement. The engagement of subcontractors does not limit Seller's liability

and its obligations arising from this Agreement. Any subcontractor engaged by Seller to perform any portion of the obligations under this Agreement shall have all licenses and registrations required to perform this kind of services and must maintain insurance as required pursuant to Section -.

3. The Plant is and remains the property of Seller during the entire term of this Agreement. The Plant is not part of the Site or the Plant Site and may be removed by Seller in compliance with the terms of this Agreement.

4. The Parties agree that the Full Commercial Operation Date is on [...].

Interconnection with the Site

This clause details the operation and maintenance of the interconnection facilities. The electricity provider usually makes all arrangements for the transmission and delivery of the electricity from the plant to the Site. This clause is only applicable for a PPA.

Example of standard clause

1. Seller shall make all arrangements at its own expense necessary to transmit and deliver the Net Electrical Output from the Plant to the Site at the Delivery Point. The Purchaser shall fully cooperate with the Seller in these arrangements at all times.

2. The Seller shall at the Seller's own cost design, construct, interconnect, operate, and maintain the facility interconnecting the Plant and the Site (Interconnection Facility). The design of the Interconnection Facility shall be compliant with the Purchaser's equipment and the relevant technical standards.

3. The cost of undertaking the design, purchase, construction, installation, operation, and maintenance of the Interconnection Facility is deemed included in the Purchase Price.

4. The Purchaser shall provide to the Seller the information about all technical details of the Site to enable Seller to design, purchase, construct, install,

operate, and maintain the Interconnection Facility. (UN agencies might in fact resist this provision or want to proceed on “best efforts” bases and with “knowledge” limitations, particularly in challenging field locations.)

5. The Seller shall accept all liability and release the Purchaser from and indemnify the Purchaser against any liability for faults or damage to the Site as a result of any usage of the Seller’s Interconnection Facility which is in any manner in-consistent with Prudent Operating Practice.

Commissioning and testing

This clause sets out the testing requirements under the contract.

The energy provider/lessor is responsible for the commissioning and testing of the plant and interconnection facility, with the cooperation of the UN. The commissioning and testing must be carried out in accordance with the agreed upon procedures.

Example of standard clause

1. The Seller shall be responsible for commissioning and testing of the Plant and the Interconnection Facility. The seller shall carry out commissioning and testing in accordance with Prudent Operating Practice and any procedure agreed on by the Parties.

2. The Plant shall be ready for regular daily operation and Seller shall have finalised commissioning and testing by the Full Commercial Operation Date.

3. The Seller shall give at least seven (7) day’s prior notice to the Purchaser of the date of commencement of commissioning and testing of the first unit. The Purchaser, in respect of the Interconnection Facility, shall have the right to be present at the Site and the Plant Site and to inspect and witness the commissioning and testing.

4. The Purchaser shall cooperate with the Seller so as to enable the Seller to commission and test the Plant in accordance with this Section and in

particular will authorize interconnection of the Site and the Plant to the extent reasonably required by the Seller for such purpose.

Operation and system performance

This clause details the operation of the plant.

Under a PPA, the energy provider will operate and maintain the plant in accordance with the technical specifications and requirements set out in the agreement. Under a leasing agreement, the lessee must operate and maintain the plant. If the system does not produce the guaranteed output, the energy provider must pay the additional costs of electricity – which could be the kWh price from the grid or estimated kWh cost using diesel generators. If the energy provider produces less electricity, the humanitarian agency will need to source its supply elsewhere, at a higher cost, also using additional funding which may not be planned for. There should be a minimum production level guaranteed per year with penalties payable related to the additional cost for the UN.

Example of standard clause

- 1. The Seller shall operate the Plant and the Interconnection Facility in line with Prudent Operating Practice. Similarly, the Purchaser shall operate the Site in line with Prudent Operating Practice.*
- 2. Prior to the Full Commercial Operation Date and thereafter on or before each subsequent year of the term of this Agreement, Seller shall furnish Purchaser with a two (2) year forecast of its anticipated operations that include anticipated monthly generation availability and planned interruption of Net Electrical Out-put pursuant to Section - for each year.*
- 3. The Contractor warrants that the Plant shall deliver the guaranteed minimum of electricity corresponding to [...] kWh per annum ("Guaranteed Production"). The Contractor also warrants that in case the Plant fails to deliver the Guaranteed Production in any year after the Plant is deemed operational and ready to deliver electricity, UN shall be entitled to deduct from the next payment, an amount equal to the difference in kWh (kilowatt-hours)*

between the Guaranteed Production and the actual production for the previous year, multiplied by [currency].

Access to the Plant and Plant site

This clause sets out who is authorised on the Plant and Plant site.

The energy provider/lessor, along with their respective subcontractors, agents and representatives will need to have access to the site and Plant at certain times. This is necessary for the purpose of constructing, maintaining and operating of the Plant, Plant site and Interconnection Facilities. Permission to access the site is dependent on the particular context of the contract. In many camps, permission to enter/operate is easily obtained through standard processes, while in others it can be more difficult, but is normally a matter of agreement with camp authorities. Even in the most strictly managed camps, there is usually a system in place for contractors to access the site. Certain camps are co-managed by the government and they can issue permits for construction/security/maintenance to approved companies.

This clause also ensures that while personnel are on site they are accorded the appropriate protection and security.

Example of standard clause

a) For the purpose of constructing, operating, and maintaining the Plant, the Plant Site, and the Interconnection Facility, Seller and its subcontractors, agents, and representatives shall have access to the Site and the Plant at all times.

b) Seller and its subcontractors, agents, and representatives shall also have access to any documents, materials, records and accounts that are necessary for the construction, operation, and maintenance of the Plant and the Interconnection Facility that are in possession of the Purchaser.

c) In the event of an emergency, immediately upon a Party's knowledge of an emergency or potential emergency, this Party shall provide telephonic notice

to the other Party of the nature of such emergency, and both Parties shall have immediate access to the Site.

d) In the event of any emergency, either Party on its own or the Parties jointly shall take such action as may be reasonable and necessary to prevent, avoid and mitigate injury, damage or loss to the Plant, and any interruption, reduction or disruption of its proper operation, and shall, as soon as practicable, report any such incident, including such Party's response thereto, to the other Party.

Repair and Maintenance

This clause establishes who is responsible for the repair and maintenance of the Plant and the Interconnection Facility.

The energy provider/lessor will be responsible for the repair and maintenance of the Plant and the Interconnection Facility. The energy provider/lessor must take every reasonable step to ensure that they are maintained in good condition and in accordance with all applicable laws, regulations and ordinances. Under this clause the energy provider/lessor is also required to give clear, reasonable notice to the UN if there is any considerable damage to the Plant and/or Interconnection Facility which may cause an interruption to supply.

Example of standard clause

Seller shall be responsible for the repair and maintenance of the Plant, the Plant Site and the Interconnection Facility. Seller shall use reasonable efforts to maintain the Plant, the Plant Site and the Interconnection Facility in good working order, ordinary wear and tear exempted, and shall operate the Plant and the Interconnection Facility in accordance with all applicable Laws.

Purchaser shall be responsible for the repair and maintenance of the Site. Purchaser shall use reasonable efforts to maintain the Site and in good working order, ordinary wear and tear exempted, and shall operate the Site in accordance with all applicable Laws.

Either Party shall notify the other Party immediately upon gaining knowledge of (a) any material malfunction of or damage to the Site, the Plant Site, the Plant, or the Interconnection Facility and (b) any interruption or alteration of Net Electrical Output.

Invoices

This clause sets out the billing period and explains what is included in the invoice as well as the modalities for payment.

Under a PPA, the invoice will include the amount of the electricity consumed or the amount of the electricity provided (Net Electrical Output) no matter if the UN consumed it or not (take or pay) during the billed month, the payment rate for the current contract year, the electricity charged for the billed month, any other sums due or payable under the contract and the total sum payable by the off-taker.

For a lease agreement, the payment is made by a monthly rental fee for the transfer of usage of the plant. It can be based on the electricity generated or a fixed fee.

Example of standard clause

a. The monthly billing period shall be the calendar month. No later than fifteen (15) calendar days after the end of each calendar month, Seller shall prepare and provide Purchaser with an invoice for the Net Electrical Output delivered in the prior month.

b. The invoice shall include:

- *The amount of Net Electrical Output during the billed month.*
- *The payment rate for the current contract year pursuant to Annex -;*
- *The energy charge for the billed month,*
- *Sales taxes if any;*
- *Reimbursable other taxes if applicable;*
- *Any other sums due and payable by Purchaser under this Agreement;*
- *The total sum payable by Purchaser.*

c. Delays in the issuance of any such invoice will not constitute any waiver of Purchaser's obligation to pay, or Seller's right to collect, any payment by Seller under any such invoice.

Metering

This clause refers to the provision, installation and maintenance of the metering system.

In order to measure the amount of Net Electrical Output, there must be a metering system in place. This is crucial in a commercial setting as the parties must be able to monitor and calculate how much electricity has been delivered. This is especially important in PPAs where payments are made per unit of electricity delivered. The metering system will have to be tested and inspected on a regular basis to ensure the equipment is in working order.

Example of standard clause

- 1. The Seller shall install a meter facility at the Delivery Point to measure the amount of Net Electrical Output delivered by Seller to Purchaser. Seller shall own, operate and maintain the meter during the entire term of this Agreement at its own expense. The meter facility shall be a standard revenue quality meter and electronic data acquisition equipment that can be used continuously to measure and record the Net Electrical Output.*
- 2. Seller shall read the meter daily and shall record the Net Electrical Output delivered to Purchaser. Upon written request, Seller will make available to Purchaser the records from the meter.*
- 3. Seller shall provide standard quality calibration testing of the meter prior to putting it into operation and at least annually thereafter to ensure the accuracy of the meter. The meter shall be sealed and locked after each calibration testing. The Purchaser shall be entitled to witness such tests.*
- 4. If, upon testing, any meter is found to be inaccurate by an amount more than plus or minus two percent (2%), then Seller shall be obliged to promptly*



repair or correctly adjust the meter. Any previous recordings by such meter shall be corrected to zero error. If no reliable information exists as to the period over which such meter registered inaccurately, it shall be assumed for purposes of correcting previously delivered invoices that such inaccuracy began at a point in time midway between the testing date and the next previous date on which such meter was tested and found to be accurate.

Liability and Indemnification

This clause sets out the provision in which one party agrees to compensate for any specified damage, losses or liabilities that the other party might incur.

The losses which are recoverable under this clause are pre-determined by the parties. They can include losses which the parties have agreed on, and/or indirect and consequential losses. The overall ceiling of the guarantee/indemnification can also be negotiated between the parties. This will vary according to the business terms of the agreement. This clause can also be extended to cover losses incurred by a third party.

This clause also specifies limitation periods for the assertion of damages.

Example of standard clause

Liability

Except as provided in the following sections and to the extent permitted under the Laws and for instances of wilful misconduct, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages.

Neither Party shall have any liability to the other Party in connection with this Agreement except pursuant to, or for breach of, this Agreement; provided that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

Indemnification

- 1. In the event that any loss results from joint or concurrent negligence, acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.*
- 2. Each Party shall promptly notify the other Party of any loss or proceeding in respect of which it is or may be entitled to indemnification under this Section. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss or proceeding.*

Records & Confidentiality

This clause ensures that the contracting parties maintain accurate records and data, and sets out what information should be kept confidential.

This clause is found in most contracts, regardless of their nature. It is standard practice to guarantee that any private information shared throughout the duration of the contract is prohibited from being disclosed or distributed to anyone who has not been specifically identified. This clause is applicable to both parties.

Example of standard clause

- 1. Each party shall keep complete and accurate records and all other data required by each of them and by the Energy Regulatory Commission for purpose of proper administration of this Agreement.*
- 2. Either Party shall have the right, upon ten (10) days prior notice to the other Party, to examine the records and data of the other Party relating to this Agreement or the operation or dispatch of the Plant at any time during normal office hours during the period such record and data are required hereunder to be maintained.*
- 3. Each Party agrees that it will, and will ensure its employees, officers and directors will hold in confidence all information, documentation and data know – how disclosed to it by the other Party and designated in writing as*

"confidential" ("Confidential Information") and will not disclose to any third party or use Confidential Information or any part thereof without the other Party's prior written approval, provided that –

a. This Clause shall not apply to Confidential Information which is in the public domain other than by breach of this Clause, or was already in the rightful possession of the recipient Party, or was obtained by the recipient Party in good faith from a third party entitled to disclose it;

b. A Party may disclose Confidential Information in accordance with any legal requirement to do so, or to consultants or contractors whose duties reasonably require such disclosure; and

c. A Party may disclose confidential Information, subject to obtaining an undertaking to keep the same confidential, to

- 1. Any prospective assignee of the Party and its advisers;*
- 2. Any banker or financial institution or investor from whom the Party is seeking finance; or*
- 3. Any expert or arbitrator under this agreement.*
- 4. The provisions of this Clause - shall survive the termination or expiry of this Agreement.*

II. Clauses which may be more difficult to pre-approve

This next section identifies the clauses which may be more difficult to pre-approve along with their associated challenges and opportunities. The resulting adopted clauses are designed based off feedback and input collected from the consultations and working groups with the private sector and UN agencies. The engagement of both parties was crucial in finalising the report; however, this is a work product of Becker Büttner Held.

During contract negotiations a conflict of interest may arise between the parties, resulting in certain contract clauses being difficult to agree on. These clauses may require more time to negotiate in order to achieve a

working contract which both parties are satisfied with. The following clauses have been categorised as clauses which may be more difficult to pre-approve, and therefore required further analysis and consideration:

Term/modalities for extension	Insurance	Purchase price modalities, payment, price escalation procedure
Disputed payments/late payments	Default and termination	Transfer of rights and obligations
Force Majeure	Third party sales of IPP/Permits and licenses	Privileges and immunities
Dispute resolution		

1) Challenges, potential opportunities and resulting adopted clauses

Term/Modality for extension

a. Identified clause and associated challenges

This clause specifies the commencement and expiry date of the agreement; the agreed upon length of the contract. It may also set out the conditions and procedure for an extension of the contract.

One of the main challenges identified in negotiating this clause relates to the particular circumstances of an energy contract in displacement settings. Re-location may need to occur or the project itself might suddenly come to an end. There may be a reduction or cessation in humanitarian operations.

Therefore the length of the contract may be difficult to agree on, with the humanitarian agency seeking a certain amount of flexibility as to the length of the contract and the energy provider/lessor requiring a level of certainty and permanency for the project to be worthwhile.

Certain UN projects only receive an annual budget, meaning the UN agency would struggle to commit to a long-term contract as it may not receive the funding to continue. This is another barrier which may deter energy providers/lessors from entering into the agreement.

b. Potential opportunities

There are several potential opportunities available to the contracting parties, which may encourage an agreement on the duration of the contract. A minimum term of three to five years can be agreed as the start-off point for negotiations, with the encouragement and possibility of aiming for a longer contract period. This would make sense as the average life span of a refugee camp is 18 years.

There is also the possibility of introducing a clause with an option to renew the term. For example the UN agency with the annual budget may renew the contract if after a year they receive the necessary funding. The length of time (annually, biannually etc.) and the reason for terminating (lack of funding or relocation of the operational buildings, etc.) could be varied depending on the specific circumstances of the contract. The renewal cannot be automatic as the UN will generally resist this for (i) good contract management reasons, e.g. to prevent unintentional renewals and (ii) to help ensure compliance with internal procurement approval rules.

c. Resulting adopted clause(s)

This Agreement shall remain in full force and effect for a minimum period of [three/four/five] years starting on the Full Commercial Operation Date (Initial Term).

This agreement may be renewed for successive period of [...] years by mutual agreement of the parties.

Insurance

a. Identified clause and associated challenge

This clause sets out the insurance policies of both parties throughout the agreement.

It is standard practise for contracting parties to be covered by an insurance policy. This is always a prudent decision as there are risks involved with most projects, albeit to a varying degree. This report focuses on energy contracts in displacement settings, often in or near war zones and under unpredictable conditions. These contracts will be high risk for both parties. It is also worth noting that if local insurance is not available at the given location, the UN reserves the right to self-insure.

The lack of certainty regarding the length of the contract might also have a knock-on effect of increasing the risk premium for the energy provider/lessor: the shorter the contract, the riskier the project. Therefore the opportunities set out above may help reduce the insurance premium.

b. Possible opportunities

While there is no avoiding high insurance policy for riskier ventures, there are some opportunities available to minimise certain risks, and hopefully lower the overall insurance premium. A recurring problem that arises in displacement settings is damage, vandalism and theft on the plant site. Based on feedback from the private sector there were several reports of stones being thrown at panels and property being stolen. The question then arises as to which party should be responsible for the protection of the equipment. If the equipment is located within the base camp of the UN agency, one proposal would be for the UN agency to provide security for the equipment as they often already have a security system in place. The UN agency will be present at or near the site on a regular basis whereas the energy provider may only be present during construction and then subsequently at random intervals for maintenance. The energy provider will only have access to the site on particular occasions; therefore the provision of security on a UN site by the energy provider may be unsuitable. Multiple security firms in the area may in fact be more of a nuisance, therefore a communal security system may be more useful. The resulting clause will set

out the legal obligations of the UN agency by listing the security services to be provided, which can include but are not limited to: providing X number of security guards around the Plant site for X hours per day, installing security cameras to monitor the Plant site, installing fencing around the Plant site (to be inserted below whereby marked *). These obligations set out and limit UN's responsibilities to only provide these services under the agreement. This clause will also establish a limit or cap of UN's liability in case of damage.

With the provision of security and protection around the site and equipment, less damage/theft/vandalism will arise. As a result of this extra measure in place, the insurance premium may be lowered as the risk of damage is also lowered.

c. Resulting adopted clause(s)

UN is responsible for the security of the Site and shall provide the security services listed in Annex A for the protection of the Plant site located within the boundaries of the Site in particular against unauthorised access, fire, theft and vandalism.

In the event of damage to the Plant or Plant site resulting from a breach of UN security services obligations listed in Annex A, UN is liable for the damage.

In no event shall UN's liability for damages to the Plant site resulting from a breach of security services obligations listed in Annex A exceed [€...].

Annex A- Security services provided by the UN for the protection of the Plant site:

*UN shall provide the following security services:**

[Note:

- Site shall mean the UN site;*
- The Contractor shall be responsible for maintaining the Plant in safe working order. The Contractor shall insure the Plant against damages and loss.*

- *Either Party shall notify the other Party immediately upon gaining knowledge of (a) any material malfunction of or damage to the Site, the Plant Site, the Plant, or the Interconnection Facility and (b) any interruption or alteration of Net Electrical Output.]*

Purchase price modalities, payment, price escalation procedure

a. Identified clause and associated challenges

This clause sets out the purchase price of the Net Electrical Output, when it is due, by what method of payment, using what currency and charges for late payment. A price escalation clause may be included in the agreement which sets out the provision for adjustments in payments as a result of any fluctuations in cost for labour or materials or new taxes imposed.

Based off feedback from the UN and private sector, it would appear that neither party oppose the inclusion of a price escalation procedure. The challenge arises in preparing this clause- setting out if and how the price would be increased.

a. Possible opportunities

In order to assist in the preparation of this clause, it may be beneficial to set out a template for a standard price escalation procedure, which can then be applied by the contracting parties according to their circumstances/needs.

b. Resulting adopted clause(s)

Term for a fixed price with price escalation clause

The Contractor is entitled to remuneration for the electricity supplied in the amount of [...] ct/kWh. The entitlement does not apply in periods when the market value is negative, whereby market value is the value of hourly contracts for the price zone of [...] on the spot market for the electricity exchange. If, after one year, the market price for the electricity supplied by the producer was more than [...] above the value of the fixed price in the previous calendar year, the producer can extend the contract by adjusting the fixed price accordingly. In this case, the fixed price increases by [...] % of the

difference between the revenue for the electricity fed in based on the market price and the revenue for the electricity fed in based on the price agreed upon according to sentence 1.

Disputed payments/late payments

a. Identified clause and associated challenges

This first clause sets out the subsequent steps if a dispute has arisen over payment. The second clause sets out the remedy for overdue payments.

Disputed payments occur when there is a disagreement as to the sum or sums presented on an invoice. A subsequent dispute over billing arises, which can be time-consuming and disruptive. Once the dispute has been resolved, the offending party will have to pay the owed sums to the injured party, with interest. However, based off feedback received from the UN, it does not pay interest on late or disputed payments. This is partly due to the strict funding allocation for UN projects but also due to the fact that a UN entity cannot take out a loan or borrow money.

This will also create difficulties for the energy provider in the event of late payment. Usually, if a contracting party fails to pay the agreed sum on time, they will be required to pay interest upon next payment. This is an important tool to encourage timely payments, and to ensure there is a constant working capital. However, if the UN does not pay interest on late payments, this can place a heavy burden on the energy provider, with the risk of bankruptcy.

b. Possible opportunities

In the event of a disputed payment, if the dispute is resolved in favour of the energy provider, the UN will pay the disputed amount, but will not pay any interest. This provision should therefore be extended to the energy provider, in order to ensure a fair agreement. If the dispute is resolved in favour of the UN, the energy provider will refund any payment previously received, without interest. This ensures that the parties are on equal footing, and not unduly prejudiced.

In order to offset any potential loss which can arise as a result of late payment, a security deposit can be set up to provide financial assistance to the energy provider. This clause will set out the conditions which must be met in order for the security deposit to become available to the energy provider, as well as the amount due. This will allow for a continued working capital and provide a guarantee in the event of late payment(s).

Certain clauses, concerning late payments, would allow the energy provider to suspend or terminate the contract if the UN fails to pay a material undisputed payment. This type of clause also sets out the conditions which must be met for this to arise.

c. Resulting adopted clause(s)

Disputed payments clause (without interest)

If a Party, in good faith, disputes the accuracy of an invoice, it shall on or before the Due Date provide a written explanation of the basis for the dispute and shall pay the undisputed amount invoiced no later than the Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed party, be credited or returned to it within days of such determination, and no interest shall accrue or be paid:

(a) if this paragraph is specified as applying in Section [...] (Individual Terms), the full amount invoiced no later than the Due Date. If any amount paid under dispute is finally determined to have not been due, such overpayment shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, and no interest shall accrue or be paid; or

(b) if this paragraph is specified as applying in [...] (Individual Terms), the undisputed amount invoiced no later than the Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, and no interest shall accrue or be paid.

Security deposit clause

The UN provides the Contractor a security deposit in the form of [a guarantee/bank guarantee/..] in the amount of [...].

The Contractor can satisfy himself from the security as soon as the UN is in arrears with his payment obligations. The Contractor will only use the security to the extent that is necessary to meet the outstanding payment obligations.

The Contractor has to announce the planned utilisation of the security to the UN [...] in advance in written form, unless there is reason to believe that the utilisation of the security would be too late otherwise.

The security is to be returned if its requirements no longer apply.

Suspension or termination clause

In the event UN fails to pay a material undisputed payment under this Agreement, the Contractor can suspend and then terminate this Agreement for cause by giving notice to UN to that effect, provided that such suspension and termination rights shall arise only as follows:

(i) if after the Contractor has given notice to UN of the failure to pay a material undisputed payment (with applicable details) and such notice permits UN 60 days in which to pay the undisputed sum; and

(ii) if, after the expiration of such 60-day period, UN has still failed to pay, and the Contractor serves another notice on UN of such failure to pay (with applicable details), which notice permits UN a further 30 days in which to pay the undisputed sum (thus giving at least 30 addition days and 90 days in total to remedy), provided that during this additional 30-day period, the Contractor may suspend provision of the Services until payment is made

Defaults and termination

a. Identified clause and associated challenges

This clause describes the procedures and remedies available when a contracting party defaults or otherwise ends the contract. This includes, but is not necessarily limited to, the payment of damages to the injured party.

It may become necessary for the UN to terminate the contract before the agreed upon date if there is a reduction or cessation of operations. A reduction in operations may lead to a reduction in electricity needed by the UN agency and the cessation of operations all together might eliminate the need for any electricity supply. There are a number of reasons why the humanitarian operations may be reduced or ceased all together, such as the refugee camp closing down, the displaced people returning home/relocating elsewhere, unacceptable levels of security, the unplanned hand-over/taking over of operations by government or other entities, etc...In order for the termination clause to take effect the UN would have to demonstrate the reduction or cessation of operations, explaining the reduced or eliminated need for electricity.

The energy provider/lessor will be seeking a contract that is profitable and ensures worthwhile investment. As mentioned above, the energy provider/lessor will be insisting on a long term contract. If the project were to be terminated before the agreed upon date, the energy provider will lose out on agreed upon payments.

The energy provider/lessor can also be the party who terminates the agreement before the agreed upon date. This will also cause considerable difficulties for the UN as they are reliant on the energy provided and located in vulnerable settings. In order to encourage the contracting parties to honour the contract for its full duration, certain procedures and remedies can be included in the termination clause.

b. Possible opportunities

i. Guarantee funding and risk management by third parties

Parties to the contract may look to a third party to support and protect the contractual obligations by offering guarantees. These guarantees ensure

financial assistance to the project, and can take effect under certain termination events. The guarantor will ensure there is a working capital available, allowing the project to continue without any restricting financial pressure. The funds released by the guarantor would ensure that the energy provider does not lose any capital it has invested in the project, but only if other options are not available, such as a new tenant to the property served by the energy provider takes on the PPA.

The guarantee mechanism provides an incentive for the private sector actors to enter into an energy provision contract with the UN, even when such an agreement would permit the UN to terminate at any point during the life of the contract. The energy provider could lose a significant amount of invested capital if the contract duration hasn't been long enough to cover the initial value of the investment costs. These circumstances would trigger the release of funds from the guarantee mechanism.

There is a second stream of work being undertaken with the GPA on a potential Global Guarantee Mechanism (GGM).

ii. Early termination fee

An early termination fee compels the offending party to pay a penalty charge for terminating the contract before the agreed upon date. This penalty charge can be agreed during contract negotiation, and can be paid all at once or as monthly/yearly fee. The penalty charge can vary and will be dependent on the conditions of the specific contract. The use of a guarantee mechanism by a third party does not exclude the injured party from seeking an early termination fee to cover the contractual obligations.

c. Resulting adopted clause(s)

Guarantee funding and risk management by third parties clause

The UN commits, within its responsibilities, to have subscribed to a bank guarantee with [insert name of bank] acting as guarantor, and that the UN has the right to address the guarantor in the event of an early termination, with written notice, seeking payment under the guarantee of any amount up to and not exceeding euros.... [Insert the amount of the bank guarantee], for the periods defined as a result of the termination.

N.B: The agreement with the guarantor will have to be in annex to the contract between the UN and the Contractor. The terms of payment under the guarantee (conditions for payment, amount, forms of notice etc.) will be covered in the actual guarantee document issued to the beneficiary.

(This clause may be incorporated with the security deposit clause referred to above for disputed payments).

Early termination fee clause

In case of an early termination not caused by fault of the other contracting party, the party terminating has to pay an early termination fee in the amount of [i.e. % of the value of the remaining duration value of the previously agreed upon contract duration] unless further continuation of the contract is made impossible by force majeure.

Standard UN clause terminating contract due to force majeure²

If the Contractor is rendered unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under the Contract, UN shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article-, "Termination," except that the period of notice shall be [...] days instead of [...] days. In any case, UN shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of force majeure for any period in excess of ninety (90) days.

Transfer of rights and obligations

- a. Identified clause and associated challenges

This clause allows for the transfer of rights and obligations to a third party.

² UNHCR-General Conditions of contract for contracts for the provision of services

While this may not be the original intention of the contracting parties, throughout the duration of the contract it may become necessary or advantageous to transfer the rights and obligations under the contract to a third party. There are several reasons why either party may wish to transfer their rights and obligations to a third party. For example the UN agency may no longer have the funding to continue the project and so transfers their rights and obligations to another humanitarian agency, government entity, etc. The energy provider may have the specific expertise required to set up the energy system but upon completion may wish to transfer the rights and obligations to another energy provider with expertise in developing the project. The reason for transferring will be particular to the circumstances of each contract. Therefore, it is advisable to include a clause which allows for this transfer and sets out the requisite conditions for this to occur. The parties may have certain conditions which must be met before a transfer can take place.

b. Possible opportunities

Under the UN General Conditions, there is the possibility for the transfer of rights and obligations, subject to certain requirements. However, this clause only sets out the requirement of the UN's consent. Therefore, it may be beneficial to design a contractual clause which allows for the mutual transfer of rights and obligations of either party, with the prior consent of the other contracting party.

c. Resulting adopted clause(s)

UN standard transfer of rights and obligations clause³

Except as provided in Article-, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorisation of UN. Any such unauthorised assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on UN. Except as permitted with respect to any approved

³ UNHCR-General Conditions of contract for contracts for the provision of services

subcontractors, the Contractor shall not delegate any of its obligations under the Contract, except with the prior written consent of UN. Any such unauthorised delegation, or attempt to do so, shall not be binding on UN.

The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganisation of the Contractor's operations, provided that:

such reorganisation is not the result of any bankruptcy, receivership or other similar proceedings; and,

such reorganisation arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; and,

the Contractor promptly notifies UN about such assignment or transfer at the earliest opportunity; and,

the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to UN following the assignment or transfer.

Transfer of rights and obligations

This Agreement shall inure for the benefit of and bind the respective successors, assignees, and delegates of the Parties. No assignment or delegation by either Party of any of its rights, duties, and obligations hereunder shall be made or become effective without the prior written consent of the other Party not to be unreasonably withheld or delayed. It being specified that the UN cannot withhold its consent if the Contractor assignee complies with all the obligations of a qualified vendor of goods or services to UN.

Force Majeure

- a. Identified clause and associated challenges

This clause relieves the parties from performing their contractual obligations when certain circumstances beyond their control arise, making

performance inadvisable, commercially impracticable, illegal, or impossible.
Ex: Natural disasters, epidemics, acts of war and terrorism.

This clause may be problematic as the location of the UN operational buildings, refugee camp(s) and possibly even the plant itself may be near or in a conflict zone and more vulnerable to natural disasters, acts of war and terrorism and epidemics. This may increase the probability of this clause coming into effect, and the parties being relieved from performing their contractual obligations.

b. Possible opportunities

Based on the feedback from the UN and private sector, this clause has not caused much difficulty in the negotiation process, even under the particular conditions of supplying energy in conflict zones. There are always risks associated with these projects which cannot be transferred to another party. However, if this clause is likely to be put into effect, it may be beneficial to provide a more precise force majeure clause, with greater detail on the duration of the force majeure, the protocol to follow if it occurs and which events do not fall under this category.

c. Resulting adopted clause(s)

Detailed force majeure clause

(a) Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean any event, including but not limited to the following events, not within the reasonable control and not due to the failure, negligence or persistent disregard, of the Party whose performance is adversely affected or becomes impracticable, and who chooses to invoke Force Majeure:

(1) Any Act of God, fire, explosion, excessive rains, flood, tidal wave, epidemic, or earthquake;

(2) Any other cause, whether or not similar thereto, beyond the reasonable control of, and without the fault or negligence of, the Party claiming Force Majeure;

(3) Civil disturbance, insurrection, rebellion, hostilities, public disorder or public disobedience, sabotage, riot, embargo, blockade, quarantine, strikes which are documented, acts of war or the public enemy whether or not war is declared;

(4) Confiscation of the assets or authority of the Buyer by any authority of the Government of X.

(b) Not Force Majeure Events. Any obligations of either Party which arose before the occurrence of the Force Majeure event causing non-performance shall not be excused as a result of the occurrence of a Force Majeure event. The late payment of money owed or the damage or disability resulting from a failure of a Party to utilise Good Utility Practice is not excused by Force Majeure.

(c) Force Majeure Protocol. No default as a result of an event of Force Majeure shall occur, provided that the adversely affected non-performing Party invoking Force Majeure shall:

(1) Provide prompt notice in writing to the other Party, Lenders, and the Authority of the occurrence of the Force Majeure event and the choice to invoke Force Majeure, giving an estimation of the event's expected duration and the probable impact on the performance of its obligations hereunder, and submitting good and satisfactory evidence of the existence of the Force Majeure event;

(2) Exercise all reasonable efforts to continue to perform its obligations hereunder;

(3) Expeditiously take or initiate action to correct or cure the Force Majeure and periodically submit good and satisfactory evidence that it is making all reasonable efforts to correct or cure the Force Majeure;

(4) Exercise all reasonable efforts to mitigate or limit damages to the other Party, to the extent such action will not adversely affect its own interests; and

(5) Provide prompt notice to the other Party, Lenders, and the Authority of the cessation of the Force Majeure.

(d) Force Majeure Effect. If a Party is rendered wholly or partly unable to perform its duties and obligations under this Agreement because of a Force Majeure event, that Party shall be temporarily excused to the extent necessary from whatever performance is affected by the Force Majeure event to the extent so affected.

(e) Force Majeure Duration. Notwithstanding the foregoing, if a Party is prevented from substantially performing its obligations under this Agreement for a period of two (2) years due to the occurrence of a Force Majeure event, the other Party may elect to terminate the Agreement by ninety (90) days written notice given any time thereafter to the nonperforming Party, unless substantial performance is resumed prior to the expiration of such ninety (90) day period; provided that the Buyer shall not elect to terminate the Agreement under this part due to a Force Majeure event described in Article-.

Third party sales of IPP/ Permits and licenses

a. Identified clause and associated challenges

The first clause sets out whether the Independent Power Producer (rather than utility) can sell the electricity produced to a third party under the bilateral agreement. The second clause ensures that the contractual parties are aware of and have taken the appropriate steps to comply with relevant laws, policies, and regulations, and have obtained the relevant permits and licenses.

The most straight forward contractual relationship is between the energy provider and the UN directly. The energy provider supplies electricity to the UN agency, which can then distribute this electricity in whatever manner is necessary. A contract clause allowing for third party sales may be included in the agreement. However, it may not be at the risk of interrupting or disrupting the supply to the UN.

In order to supply electricity to a third party, the energy provider may need to obtain the relevant permits and licenses from the government. Certain countries will only provide permits and licenses to IPPs, while other countries only provide to utilities.

b. Possible opportunities

Based on feedback from the UN, the inclusion of a third party sales clause should be encouraged as this will allow for the supply of electricity to others in the region, including the displaced or local host community, and may allow for more competitive prices as a result. The UN could act as the anchor client in the region, meaning there is a steady, on-going contractual relationship between the UN and the energy provider, whereas the provision of electricity to a third party may be on a more irregular basis. Where the UN agency operates in an area together with partners (NGOs or other UN entities), it might be possible for each entity to enter into a separate contract with a service provider that is based on a single model contract negotiated with a lead agency. One of the contract clauses could be for the energy provider to agree to volume discounts and to aggregate the volumes under all such contracts.

The constant and uninterrupted supply to the UN must not be endangered as a result. Therefore, a guaranteed production clause could be useful to ensure there is a minimum electricity supply throughout the duration of the contract.

Based on feedback from the private sector, depending on the country in which the site is located, there may be an obligation to supply any nearby community. This must be taken into account by the contracting parties during negotiation. However, the parties will still be at liberty to decide whether to include third party sales as a clause in their bilateral agreement or whether the energy provider sets up a separate contract with the third party.

With regards to the permits and licenses, these are particular to every country; therefore, the parties must take care to ensure they obtain the relevant documentation. Most countries oblige the energy provider to obtain the relevant permits and licenses.

c. Resulting adopted clause(s)

Volume discounts

For each new PPA entered into by the Seller with a third party introduced by the UN, the UN shall obtain from the Seller a volume discount. The Seller agrees to a reduction of the electricity price of [€...]per kWh of electricity purchased, on condition that the aggregated amount of electricity purchased by UN and the third party introduced by the UN amounts to at least [€...].

Guaranteed production

The Contractor warrants that the Plant shall deliver the guaranteed minimum of electricity corresponding to [...] kWh per annum ("Guaranteed Production"). The Contractor also warrants that in case the Plant fails to deliver the Guaranteed Production in any year after the Plant is deemed operational and ready to deliver electricity, UN shall be entitled to deduct from the next payment, an amount equal to the difference in kWh (kilowatt-hours) between the Guaranteed Production and the actual production for the previous year, multiplied by [currency].

Standard permits and licenses clause

It shall be the Contractor's obligation to take all necessary actions to satisfy all applicable legal requirements regarding the Facility. The UN shall cooperate with the Contractor to obtain all necessary consents, permits, licenses and approvals from government authorities to site, obtain fuel(s), control necessary resources or rights, invest in, transmit and sell capacity and associated electric energy, and own and operate the Facility, including but not limited to executing and delivering any additional documents or instruments in recordable form, and any other reasonably necessary acts, to carry out the intent of the Parties hereto.

Dispute & dispute resolution

a. Identified clause and associated challenges

This clause sets out the mechanism for the resolution of disputes between the contractual parties. A dispute may arise when one party to the contract

has a disagreement concerning its terms or definitions, and no longer wishes to perform their contractual obligations. Under these circumstances, this clause will take effect and compel both parties to continue with their contractual obligations while the dispute is resolved. The parties may need to engage in alternative dispute resolution, such as mediation or arbitration, in which case a third party investigates and decides the matter.

In the event of a dispute, the parties will seek to ensure that the performance of their contractual duties continues. This means that the UN will continue to pay for the electricity and the energy provider will continue to supply the electricity. If the energy provider defaults and fails to supply electricity, the reliant UN buildings and refugee camps are in a particularly vulnerable situation and may struggle to find alternative solutions. Similarly, if the UN stops making timely payments, this will put the energy provider under financial pressure and possibly lead to bankruptcy. What steps can be taken to ensure these outcomes do not occur?

b. Possible opportunities

With the inclusion of a minimum service requirement in the contract, the parties will be obliged to continue performing their contractual obligations. Under a PPA the energy provider will be obliged to continue supplying electricity, in the event of a dispute. The energy provider is responsible for ensuring the UN agency continues to receive the electricity, and may need to take additional steps, such as buying electricity from the grid or an alternative source. Under a leasing agreement the lessor would be obliged to continue renting the plant.

It must also be specified that if the UN holds back on payment while the energy provider is ensuring there is a constant supply of electricity, then the minimum service requirement is waived and the energy provider is no longer required to supply the electricity.

Due to the exceptional conditions involved with providing electricity in a displacement setting, it is advisable for the UN to have a backup source of electricity, as a last resort. This usually takes the form of a diesel generator. As a precaution, it is prudent to ensure there is a guarantee source of

electricity if all else fails, in particular when dealing with hospitals and the provision of other essential basic services.

With regards to dispute resolution, the UN will not agree to subject itself to national jurisdiction. Under the 1946 Convention, alternative resolutions methods should be pursued. The parties must first attempt to resolve the dispute through amicable settlement, which can be achieved through conciliation in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (“UNCITRAL”), or according to such other procedure as may be agreed between the Parties in writing.

If the dispute is not resolved through amicable settlement the parties must turn to an alternative resolution method. This is accomplished by committing to binding arbitration in accordance with the UNCITRAL Arbitration Rules. In arbitration there is a third party who is responsible for resolving the dispute. The third party will serve as a judge and act impartially throughout the process. The arbitrator will investigate the matter by listening to the arguments of both parties, examining the evidence and finally will hand down a legally binding decision.

c. Resulting adopted clauses

Minimum service requirement clause

During the arbitration of a dispute, both parties remain bound by their main contractual obligations (delivery of electricity and payment of electricity). If the dispute regards a main obligation, the service and payments performed during the period of the dispute become subject of the settlement.

(This clause may be incorporated with the guaranteed production clause mentioned above under the third party sales clause, and also under the operation and system performance clause).

Standard UN dispute resolution clause⁴

⁴ UNHCR- General Conditions of contract for contracts for the provision of services

Amicable Settlement: The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Lease or the breach, termination or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the Parties.

Arbitration: Any dispute, controversy, or claim between the Parties arising out of the Lease or the breach, termination, or invalidity thereof, unless settled amicably under Article - above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Lease, order the termination of the Lease, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Lease, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article - ("Interim Measures") and Article - ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim."

Privileges and immunities

a. Identified clause and associated challenges

The UN enjoys certain privileges, immunities and exemptions under international law, pursuant to Article 105 of the Charter and in accordance with the 1946 Convention on the Privileges and Immunities of the United Nations.

Under this clause the UN ensures they are safeguarded throughout the contract by the inclusion of a strong privileges and immunities clause. This allows the UN to contend that nothing in the contract constitutes a waiver. The UN can when necessary agree to comply with “applicable laws” of the relevant country, but always subject to and without waiver to the privileges and immunities clause. The UN is also exempt from paying any tax.

b. Possible opportunities

While this clause may not cause any particular difficulties between the parties, it is worth taking into consideration as it is non-negotiable when contracting with the UN.

c. Resulting adopted clause(s)

Standard UN privileges and immunities clause⁵

Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs or of UNX (as a subsidiary organ of the United Nations).

Standard UN tax exemption clause⁶

Article II, Section 7, of the Convention on the Privileges and Immunities of the United Nations provides, inter alia, that the United Nations, including UNX as

⁵ UNHCR- General Conditions of contract for contracts for the provision of services

⁶ UNHCR- General conditions of contract for contracts for the provision of goods

one of its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the exemptions of UN from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with UN to determine a mutually acceptable procedure.

Conclusion

This report provides an overview of the challenges faced by UN agencies and energy providers/lessors during contractual negotiations for energy contracts in displacement settings. The challenges are related to the particular circumstances of setting up an energy system in what can be a volatile and unpredictable environment. Through the consultations and working group discussions with the interested parties, it became apparent which clauses would be most difficult to pre-approve. The lack of certainty regarding the duration of the contract was instantly identified as a concern for the private sector. There were also the particular challenges associated with contracting with UN agencies, as they have several non-negotiable terms, such as paying no interest for late or disputed payments and the extensive privileges, immunities and exemptions they enjoy.

However, through the cooperation of humanitarian agencies and commercial enterprises, several opportunities and possibilities have been identified which could address these challenges. The adopted term and termination clauses were designed to encourage long-term contract duration and facilitate the renewal of the agreement, while also providing remedies for the injured party in the event of early termination. While the non-negotiable terms remain rigidly in place, there are opportunities, such as setting up a security deposit and ensuring the UN agency provides protection and security around the Plant, which help alleviate some of the pressure on the energy provider/lessor and ensure a fair and reasonable contract. The co-designed resulting clauses should contribute to reducing contractual disagreements and facilitating project implementation.



BECKER BÜTTNER HELD

This report is based on information provided by the client, through consultations and working group discussions with actors from the humanitarian and private sector and information from public sources. This report does not reflect individual circumstances or individual cases related to the client. Legal advice on individual matters will only be carried out on the basis of an individual assignment.

ANNEX I-Contract Clauses Template

- I. Term
- II. Undertakings, representations & warranties
- III. Insurance
- IV. Construction, installation & ownership of plant
- V. Interconnection with the site
- VI. Commissioning & testing
- VII. Operation & forecast
- VIII. Access to the site & the plant
- IX. Repair & maintenance
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- XI. Purchase and sale of Net Electrical Output & purchase price and payment
- XII. Invoices
- XIII. Metering
- XIV. Termination clause
- XV. Force Majeure/Government Force Majeure
- XVI. Liabilities
- XVII. Indemnification
- XVIII. Records & confidentiality
- XIX. Dispute resolution
- XX. Privileges & immunities



I. Term/extensions of time

Option 1

Term

This Agreement shall become effective and fully in force by signatures and stamps by duly authorized representatives of the Parties (Execution Date).

This Agreement shall remain in full force and effect for a period of [-/-/- years – length of term] years starting on the Full Commercial Operation Date unless terminated or extended according to this Agreement.

The Parties may mutually agree to extend the term for two (2) consecutive periods of [...] years each. No fewer than 12 months before the end of the term, as may be extended pursuant to this Section -, either Party shall provide notice to the other Party of its desire to extend the term for additional [...] years. If no agreement is reached until the end of the term or either Party notifies the other Party that it does not agree to extend the term, the term shall expire in accordance with Section-.

Option 2

Term

1. Term

The Parties' obligations shall commence from Full Commercial Effective Date and shall, unless earlier terminated in accordance with its term, continue in full force and effect for a period of (...) years.

2. Extension of Term

1. The term may be extended subject to agreement in writing by the Parties to such extension at least (...) months prior to its expiry and on such terms as the Parties may agree, and prior consent from the Energy Regulatory Commission.

2. The Sponsor has established the Seller to undertake all the obligations comprised in this Agreement. The Sponsor will provide assistance to the Seller from the Signature Date to the Effective Date to enable the Seller to procure financing for the Small Power Project and to meet its obligations hereunder prior to the Effective Date. No liability in any form shall be attached to the Sponsor by execution of this Agreement and the recourse available to the Buyer for any default by the Seller shall be through the Seller as detailed in this Agreement.

Option 3

Term

1.1 This Agreement commences on the Commencement Date and ends on the Expiry Date unless terminated sooner in accordance with this Agreement.

1.2 Not later than [-Months] before the initial Expiry Date, the Owner may issue a written notice to the Buyer stating that the Owner intends to exercise the First Option.

1.3 Provided that the First Option has been exercised, not later than [-Months] before the Expiry Date as extended under the First Option, the Owner may issue a written notice to the Buyer stating that the Owner intends to exercise the Second Option.

1.4 When the Owner issues a written notice under X or Y, and the Buyer is of the view (formed in good faith) that an extension of the term of this Agreement is not in its financial interest:

(a) The Buyer may respond to the notice by advising in writing that it objects to the extension of the term and of the principal grounds for its objection; and

(b) Unless those objections are able to be resolved to the mutual satisfaction of the Parties within a period of 6 months following the notice, the notice provided under X or Y, as the case may be, will be



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of no force or effect and the term of this Agreement will remain as if that notice had not been served.

II. Undertakings, representation & warranties

Option 1

Undertakings, Representation and Warranties

1. The Parties make the following mutual representations and warranties:

a. Each Party declares that it is validly established, duly organized and in good standing under the laws of its respective formation.

b. Each Party declares that it is duly authorized and has the power to enter into this Agreement and perform its obligations hereunder, including all necessary licenses under the Laws.

c. Each Party declares that it has all the rights required to enter into this Agreement and perform its obligations hereunder without the consent of any third party, including any mortgagee.

d. The information provided pursuant to this Agreement as of the Execution Date is true, correct and complete in all material respects.

e. This Agreement does not conflict with or violate the terms of any other agreement to which either Party is a party or by which either Party is bound.

2. Purchaser makes the following additional representations and warranties to Seller:

a. Purchaser is not aware of any facts or circumstances that could materially adversely affect its ability to perform its obligations hereunder, and,

b. Purchaser has complied with all Laws relating to purchase of the Net Electrical Output hereunder.

3. Seller makes the following additional representations and warranties to Purchaser:
 - a. Seller declares that it is not aware of any facts or circumstances that would materially adversely affect Seller's ability to perform its obligations hereunder.
 - b. Seller will deliver to Purchaser the Net Electrical Output free and clear of all liens, security interests, claims and encumbrances, or any interest therein, or thereto, by any Person.
4. The Purchaser will ensure that the Purchaser's Site is operated and maintained in accordance with Prudent Operating Practice and the terms of this Agreement.
5. The Seller will ensure that the Plant and the Interconnection Facility are operated and maintained in accordance with Prudent Operating Practice and the terms of this Agreement.

Option 2

Representations and warranties

1. In addition to the provisions of Article -, each Party represents and warrants to the other that:
 - (a) It is legally established to do business in X;
 - (b) The execution and performance of this Agreement is duly authorized as required by its enabling authority or its by-laws, and does not conflict with any law, rules, regulations or requirements affecting or binding that Party;
 - (c) There is no legal or administrative action pending that prohibits or impairs the Party from performing under the Agreement or might materially and adversely affect the Party's ability to perform its obligations under this Agreement;

(d) This Agreement constitutes a valid, legal and binding obligation of the Party in accordance with the terms hereof;

(e) The execution, delivery and performance by the Party of this Agreement will not contravene any provision of, or constitute a material default under, any other agreement or instrument to which it is a party or by which it is bound

Option 3

Undertakings and warranties of the parties

1. Undertakings of the Seller

The Seller undertakes that it will:

- a. Comply with all legal requirements, including environmental requirements;
- b. Apply for and use reasonable endeavours to obtain, prior to the date that such authorizations are required if the Seller is not to be in breach of any legal requirement in performing this Agreement, and keep in force all authorizations required to be in the Seller's name for the operation of the Plant and any other of its obligations under this Agreement; and
- c. Ensure that the Plant is operated and maintained in all material respects in accordance with Prudent Operating Practice and the terms of this Agreement.

2. Representations and Warranties of the Seller

The Seller represents and warrants that:

- a. The Seller is a limited liability company duly organized and existing under the laws of X and has all requisite powers and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;



b. This Agreement constitutes the valid, legal and binding obligation of the Seller, enforceable in accordance with the terms hereof except as enforceability may be limited by the laws affecting creditors' rights generally; and

c. As at the date of this Agreement, there are no actions, suits or proceedings pending, or to the Seller's knowledge, threatened against or affecting the Seller before any court or administrative body or arbitral tribunal that might materially and adversely affect the ability of the Seller to meet and carry out its obligations under this Agreement.

3. Undertakings of the Buyer

The Buyer undertakes that it will:

a. Comply with all applicable legal requirements for the performance of this Agreement and will keep in force all authorizations required from the performance of its obligations under this Agreement.

b. Ensure that the Buyer's System is operated and maintained in all material respects in accordance with Prudent Operating Practice and the terms of this Agreement

4. Representations and Warranties of the Buyer

The Buyer represents and warrants that:

a. The Buyer is a limited liability company duly organised and validly existing under the Laws of X and has all requisite powers to execute this Agreement and carry out the terms, conditions and provisions hereof;

b. All legislative, administrative and other governmental action required to authorize the execution, delivery and performance by the Buyer of this Agreement and the transactions contemplated hereby have been taken and are in full force and effect;



c. This agreement constitutes the legal, valid and binding obligation of the Buyer, and enforceable in accordance with the terms hereof except as enforceability may be limited by the laws affecting creditors' rights generally;

d. As at the date of this Agreement, there are no actions, suits or proceedings pending or, to the Buyer's knowledge, threatened against or affecting the Buyer before any court or administrative body or arbitral tribunal which materially adversely affect the Buyer's ability to meet and carry out its obligations under this Agreement; and

e. The execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under any other agreement or instrument to which the Buyer is a party or by which its property may be bound.

Option 4

Warranties: Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of X stated in or arising under the Contract, the Contractor warrants and represents that:

1 The goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;

2 If the Contractor is not the original manufacturer of the goods, the Contractor shall provide X with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;



3 The goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;

4 The goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;

5 The goods are new and unused;

6 All warranties will remain fully valid following any delivery of the goods and for a period of not less than one (1) year following acceptance of the goods by X in accordance with the Contract;

7 During any period in which the Contractor's warranties are effective, upon notice by X that the goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective goods with goods of the same or better quality or, at its own cost, remove the defective goods and fully reimburse X for the purchase price paid for the defective goods; and,

8 The Contractor shall remain responsive to the needs of X for any services that may be required in connection with any of the Contractor's warranties under the Contract.

III. Insurances

Option 1

Insurances

1. Both Parties shall obtain and maintain the following insurance policies for the entire duration of this Agreement with reasonably acceptable insurance companies and with limits and coverage provisions not less than the limits and coverage provisions set forth below:
2. General Liability Insurance: Liability insurance which covers properties' damages and personal injury (including bodily injury and death) caused by a Party, for a maximum sum equal to [...] and, in addition not inferior to [...] annually;
3. Insurance policy which covers the civil liability towards third parties for a maximum sum not lower than [...] per accident.
4. All policies of liability insurance to be maintained by either Party shall provide for waivers of subrogation in favour of the other Party.
5. On or before the Effective Date, either Party shall furnish certificates of insurance to the other Party evidencing the insurance required pursuant to this Agreement.

Option 2

Insurance

The Seller shall insure the Facility for comprehensive general liability and property damage, and "all-risk" peril, from a recognized insurance provider lawfully permitted to provide insurance in X, with primary limits of liability at all times during the duration of the Agreement equal to not less than the replacement value of the Facility.



Option 3

Insurance

The Seller shall:

1. Insure the Plant for comprehensive general liability, public liability, property damage, and "all risks" peril, from a recognized insurance provider lawfully permitted to provide insurance in X, with primary limits of liability during the duration of this Agreement being at all times equal to not less than the replacement value of the Plant.
2. Apply the proceeds of claims against such policies relating to damage to the Plant in repairing or restoring the Plant

Option 4

Insurance and liability

- 1 The Contractor shall pay X promptly for all loss, destruction, or damage to the property of X caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.
- 2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:
 - 2.1 Insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
 - 2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the



Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;

2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; and,

2.4 such other insurance as may be agreed upon in writing between X and the Contractor.

3 The Contractor's liability policies shall also cover subcontractors and all defence costs and shall contain a standard "cross liability" clause.

4 The Contractor acknowledges and agrees that X accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.

5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by X, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:

5.1 name X as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;

5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against X;

5.3 provide that X shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; and,

5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to X.

6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.

7 Except for any self-insurance program maintained by the Contractor and approved by X for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to X. Prior to the commencement of any obligations under the Contract, the Contractor shall provide X with evidence, in the form of certificate of insurance or such other form as X may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. X reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article -, above, the Contractor shall promptly notify X concerning any cancellation or material change of insurance coverage required under the Contract.

8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

IV. Construction, installation & ownership of the plant

Option 1

Construction, installation, and ownership of the Plant

1. Seller shall at Seller's own cost design, construct, operate, and maintain the Plant at the Site in accordance with all applicable Laws, and consistent with the technical specifications set forth in Annex -, which are hereby incorporated in this Agreement.
2. Seller may engage subcontractors to meet any obligation under this Agreement. The engagement of subcontractors does not limit Seller's liability and its obligations arising from this Agreement. Any subcontractor engaged by Seller to perform any portion of the obligations under this Agreement shall have all licenses and registrations required to perform this kind of services and must maintain insurance as required pursuant to Section -.
3. The Plant is and remains the property of Seller during the entire term of this Agreement. The Plant is not part of the Site or the Plant Site and may be removed by Seller in compliance with the terms of this Agreement.
4. Seller shall have the right to file in the central and county records in which the Site is located financing statements evidencing Seller's title to the Plant.
5. Unless as otherwise determined by an order of a court of competent jurisdiction, neither the Plant nor any of its components may be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Purchaser. Purchaser shall not cause or permit the Plant or any part thereof to become subject to any lien, encumbrance, pledge, or levy. Purchaser shall indemnify Seller against all losses, claims, costs and expenses (including attorneys' fees) incurred by Seller in discharging and releasing any such lien, encumbrance, pledge, or levy.
6. The Parties agree that the Full Commercial Operation Date is on [...].

V. Interconnection with the Site

Option 1

Interconnection with the Site

1. Seller shall make all arrangements at its own expense necessary to transmit and deliver the Net Electrical Output from the Plant to the Site at the Delivery Point. The Purchaser shall fully cooperate with the Seller in these arrangements at all times.
2. The Seller shall at the Seller's own cost design, construct, interconnect, operate, and maintain the facility interconnecting the Plant and the Site (Interconnection Facility). The design of the Interconnection Facility shall be compliant with the Purchaser's equipment and the relevant technical standards.
3. The cost of undertaking the design, purchase, construction, installation, operation, and maintenance of the Interconnection Facility is deemed included in the Purchase Price.
4. The Purchaser shall provide to the Seller the information about all technical details of the Site to enable Seller to design, purchase, construct, install, operate, and maintain the Interconnection Facility.
5. The Seller shall accept all liability and release the Purchaser from and indemnify the Purchaser against any liability for faults or damage to the Site as a result of any usage of the Seller's Interconnection Facility which is in any manner inconsistent with Prudent Operating Practice.

Option 2

Interconnection; metering; operation

(a) Delivery Point Responsibility. The Seller shall make all arrangements at its own expense necessary to transmit and deliver the Buyer's Entitlement



to the Buyer at the Delivery Point. The Buyer shall cooperate with the Seller in these arrangements.

(b) Interconnection. The Seller at its sole expense shall design, purchase, construct, operate and maintain the Seller-owned interconnection facilities, and where metering is located at the Buyer's substation shall pay for upgrading of metering at the grid substation to monitor bidirectional real and reactive power on the transmission line to which the Facility interconnects. If the Buyer operates the transmission system into which the Facility is interconnected: The Buyer shall have the right to review the design as to the adequacy of the protective apparatus provided; the Seller shall be notified of the results of any such review by the Buyer in writing within thirty (30) days of the Buyer's receipt of all specifications related to the proposed design; any flaws perceived by the Buyer in the proposed design shall be described in the written notice; any additions or modifications required by the Buyer shall be incorporated by the Seller.

(c) Interconnection Standards. The Buyer equipment, transmission, and distribution requirements and standards, including the Interconnection Guidelines, shall apply to the installation and to the operation of all of the Seller's equipment and to the interconnection.

(d) Interconnection Compliance. If the Buyer operates the transmission system into which the Facility is interconnected: Upon reasonable prior notice, the Buyer has the right to inspect the Seller's interconnection equipment to ensure compliance with Good Utility Practice and the Interconnection Guidelines; Such access shall not interfere with the Seller's normal business operations; If, in the opinion of the Buyer, the Seller's interconnection equipment is not being so operated and maintained, the Buyer shall notify the Seller of any such discrepancies which the Seller shall correct promptly; Until such correction, the Buyer is not required to accept and pay for the Buyer's Entitlement.

(e) Induction Generators. If the Seller's Facility includes an induction-type generator(s), the Seller shall provide individual power factor correction capacitors for each such generator. Such capacitors shall be switched on and off simultaneously with each of the associated induction-type generator(s) of the Facility. The kVAr rating of such capacitors shall be the

highest standard value which will not exceed such generators' no-load kVAR requirement. If the Buyer operates the transmission system into which the Facility is interconnected, the Seller shall pay the Buyer, at prevailing rates approved by the Regulator, the cost for all energy consumed from the Buyer to excite the induction generators, unless such energy is netted from that sold hereunder. Such payment shall be made as provided in Article -.

(f) Metering. The Seller shall own and maintain the primary metering equipment employed for purposes of measurement and billing under this Agreement. Metering and telemetering equipment shall comply with all Regulator standards and guidelines, be capable of registering and recording the instantaneous and bidirectional transfer of active and reactive power, kWh and kVARh, and capable of transmitting such data to such location(s) as may be specified by the Buyer. The metering equipment shall be sealable and have mass storage and recording capability. The Seller shall provide a suitable location for the metering and telemetering equipment if the Interconnection Point is at the Facility.

(g) Meter Reading. The Seller shall read the meters at the end of each month. The Seller shall provide the Buyer access to the Facility at all reasonable times upon reasonable prior notice for the purpose of reading or inspecting meters, examining the operation of the Facility or other purposes reasonably related to performance under the terms of this Agreement. Such access shall not interfere with the Seller's normal business operations. All the Buyer personnel shall follow all Facility safety and procedural rules while on the Facility premises.

(h) Meter Accuracy. All metering equipment measuring the output of the Facility shall be tested at least annually, at the Seller's expense, in accordance with Good Utility Practice. At any reasonable time, either Party may request a test of the accuracy of any metering equipment. Each Party shall bear the cost of a test requested by it. The results of meter calibrations or tests shall be available for examination by the Parties at all reasonable times. If, at any time, any metering equipment is found to be inaccurate by more than one-half of one percent (0.5%), the Seller shall cause such metering equipment to be made accurate or replaced as soon as possible. Each Party shall be given reasonable advance notice of and have the right to be present at the breaking of the seals, testing, calibration and sealing of



meters. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party. The Party owning the meters will then investigate and take corrective action if necessary.

(i) Meter Calibration. Testing and calibration of meters, and any verification of meter accuracy, shall be performed pursuant to metering standards set by the Regulator. Calibration shall occur before use of the meters to first record the output of the Facility. All meters shall be caused to be sealed and locked by their owner after calibration.

(j) Transfer of Title to Power. At the Delivery Point, capacity and associated electric energy, and legal title to same, shall be deemed to be transferred from the Seller and delivered to possession of the Buyer. At such point, the Buyer shall be in exclusive control and possession of such capacity and associated electric energy and shall be solely responsible for same. Such electric energy transferred shall be by alternating current 3 phase, 50 Hz nominal frequency, at the voltage specified in Appendix C.

(k) Operation. The Facility shall be operated by the Seller in a manner consistent with Good Utility Practice and proper safety considerations.

(l) Interconnection Liability. The Seller shall accept all liability and release the Buyer from and indemnify the Buyer against, any liability for faults or damage to the Seller's interconnection facilities, the Buyer system and the public, as a result of the operation of the Seller's interconnection equipment.

(m) Data. Each Party shall annually report to the Authority a summary of power sale, operating and outage data by month for the calendar year, to allow the Authority to monitor Facility performance.

VI. Commissioning & testing

Option 1

Commissioning and Testing

1. The Seller shall be responsible for commissioning and testing of the Plant and the Interconnection Facility. The seller shall carry out commissioning and testing in accordance with Prudent Operating Practice and any procedure agreed on by the Parties.
2. The Plant shall be ready for regular daily operation and Seller shall have finalised commissioning and testing by the Full Commercial Operation Date.
3. The Seller shall give at least seven (7) days' prior notice to the Purchaser of the date of commencement of commissioning and testing of the first unit. The Purchaser, in respect of the Interconnection Facility, shall have the right to be present at the Site and the Plant Site and to inspect and witness the commissioning and testing.
4. The Purchaser shall cooperate with the Seller so as to enable the Seller to commission and test the Plant in accordance with this Section and in particular will authorize interconnection of the Site and the Plant to the extent reasonably required by the Seller for such purpose.

Option 2

Commissioning and testing

1 The Seller's Obligations

The Seller shall carry out commissioning in accordance with Prudent Operating Practice and any procedure agreed on by the Parties.

2 Notifications

The Seller shall give at least seven (7) days' prior notice to the Buyer of the date commencement of commissioning and testing of the first unit.

3 The Buyer's Attendance

The Buyer shall, in respect of the Interconnection Facilities, have the right to be present at the Site on each occasion, on which the test is being conducted, and to inspect and witness the test, and to receive, within fifteen (15) days after the test, a written copy of the test reports.

4 Appointment of Independent Engineer

The Seller shall, not less than fourteen(14) days prior to the commencement of the commissioning, appoint an independent suitably qualified professional engineer or firm acceptable to the Buyer(" the Independent Engineer") who shall among other things witness the commissioning and Testing of the Interconnection Facilities. All fees and costs payable to the Independent Engineer (including those incurred in making such appointment) shall be borne by the Seller.

5 The Interconnection Facilities

The Seller shall test and commission the Interconnection Facilities in accordance with the Commissioning and Testing procedures set out in Appendix C and further procedures agreed or determined pursuant to Clause 5.1 and in accordance with Prudent Operating Practice not later than one (1) month before the First Commissioning Date. The Seller shall, before the First Commissioning Date, ensure that the Interconnection Facilities are available for operation.

6 First Commissioning Date

The First Commissioning Date shall be the date notified to the Buyer as the target date for the start of commissioning of the first unit.

7 Plant Commercial Operation Tests

Upon satisfactory completion of the Plant Commercial Operations Test, the Seller shall procure the issue of a certificate of the Independent Engineer

certifying, without any material qualification, that the Plant's Commissioning has been completed and that the Plant is available for commercial operation. The Seller shall, upon issue of the certificate, give notice to the Buyer of a date ("the Full Commercial Operation Date") being a date not later than twenty one (21) days after completion of commissioning.

8 Synchronization

The Seller shall ensure that the Plant has adequate protection equipment prior to synchronization with the Buyer System. The Seller and the Buyer shall inspect and verify the protection equipment of the Plant together with the setting and operation of the protection relay equipment of the Plant and switchgear prior to synchronization and commencement of delivery of the Net Electrical Output by the Seller to the Buyer. Neither Party shall be liable to the other for any damage which may be caused to their Plant or equipment during such synchronization.

The Seller shall notify the Buyer in writing at least thirty (30) days prior to synchronizing or operating the Plant for the first time in parallel with the Buyer's System, and coordinate such commencement of operation with the Buyer at this first time and in future times that the Seller resynchronizes or begins again to operate after a cessation of operation in parallel with the Buyer's grid.

9 The Buyer's Cooperation

The Buyer shall, subject to any constraints on the Buyer System, cooperate with the Seller so as to enable the Seller to commission the Plant in accordance with this Clause 5 and in particular will authorize connection to the Buyer System and dispatch the Plant to the extent reasonably required by the Seller for such purpose.

10 Interconnection Liability

The Seller shall accept all liability and release the Buyer from and indemnify the Buyer against any liability for faults or damage to the Seller's Interconnection Facility, the Buyer's electric system and the public as a



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result of any usage of the Seller's Interconnection Facility which is in any manner inconsistent with Prudent Operating Practice.

11 Commissioning and Testing Output

The Buyer shall pay energy charges to the Seller for all Net Electrical Output supplied from the Plant during Testing and Commissioning at the feed-in tariff specified in Appendix -.

12 The Buyer's Right To Terminate

If the Full Commercial Operating Date is not achieved by the Long Stop Full Commercial Operation Date, other than in the circumstances described in Clause - of this Agreement, the Buyer shall be entitled to terminate the Agreement.

VII. Operation & forecast

Option 1

Operation and Forecast

1. The Seller shall operate the Plant and the Interconnection Facility in line with Prudent Operating Practice. Similarly, the Purchaser shall operate the Site in line with Prudent Operating Practice.
2. Prior to the Full Commercial Operation Date and thereafter on or before each subsequent year of the term of this Agreement, Seller shall furnish Purchaser with a two (2) year forecast of its anticipated operations that include anticipated monthly generation availability and planned interruption of Net Electrical Output pursuant to Section - for each year.
3. The Seller shall have no liability to the Purchaser and shall be subject to no liability, reduced payment, or penalty in the event that the actual amount of Net Electrical Output delivered to the Purchaser, or the times of such delivery, differ from the amounts or times shown in the forecast.

Option 2

Operation of the Plant

- 1 The Seller shall operate the Plant to the maximum extent feasible consistent with Prudent Operating Practice. The Buyer shall not assert the Seller's liability for, and the Seller shall not be liable to the Buyer for, any direct damages resulting from the Seller's inadvertent or accidental failure to deliver the Net Electrical Output unless the Seller is grossly negligent. Unless specifically allowed pursuant to this Agreement, where without the Buyer's prior written approval the Seller deliberately reduces the expected Net Electrical Output to any third party for the purpose of selling or attempting to sell, or for the purpose of producing any other form of energy capable of being produced at the Plant in lieu of the Net Electrical Output, the limitation of the Seller's liability shall not apply.

2 Where the Seller's plant is isolated from the Buyer's System or stops delivering electricity into the Buyer's System for any reason, the Seller shall prior to synchronizing with the Buyer's System obtain consent to synchronize from the controller on duty at the dispatch centre.

Forecasts

Prior to the First Commissioning Date and thereafter on or before each subsequent contract year, the Seller shall furnish the Buyer with a two(2) year forecast of its anticipated operations that include anticipated monthly generation availability and Scheduled Outages for each year; provided however, that the Seller shall have no liability to the Buyer and shall be subject to no liability, reduced payment, or penalty in the event that the actual amount of Net Electrical Output delivered to the Buyer, or the times of such delivery, differ from the amounts or times shown in the said forecasts. The Seller shall notify the Buyer of its Scheduled Outages and notify the Buyer if such plans change.

Option 3

1. Operation of Facility. The Seller agrees to operate the Facility to the maximum extent feasible consistent with the recommendations of equipment manufactures and Good Utility Practice. The Buyer shall not assert the Seller's liability for, and the Seller shall not be liable to the Buyer for, any direct damages resulting from the Seller's inadvertent or accidental failure to deliver the Buyer's Entitlement, unless the Seller is grossly negligent. Unless specifically allowed pursuant to this Agreement, where without the Buyer's prior written approval the Seller deliberately reduces the Buyer's Entitlement for the purpose of selling or attempting to sell capacity and associated electric energy to any third party, or for the purpose of producing any other form of energy capable of being produced at the Facility in lieu of the Seller's Entitlement, said limitation of the Seller's liability shall not apply.



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2. Forecasts. Prior to the Commencement Date of Operation and thereafter on or before each subsequent Contract Year, the Seller shall furnish to the Buyer, and to the separate operator of the transmission system(s) into which the Facility is interconnected, if any, a two (2) year forecast of its anticipated operations that includes the following: (1) anticipated monthly generation availability, and (2) Scheduled Outages for each year; provided, however, the Seller shall have no liability to the Buyer and shall be subject to no liability, reduced payment, or penalty in the event that the actual amount of capacity and associated electric energy delivered to the Buyer, or the times of said delivery, differ from the amounts or times shown in said forecasts. Notwithstanding this provision, the Seller may not divert the Buyer's Entitlement without the prior written consent of the Buyer. The Seller shall revise its Scheduled Outages and notify the Buyer if such plans change.

VIII. Access to the Site & the Plant

Option 1

1. Access to Site and Plant

a) For the purpose of constructing, operating, and maintaining the Plant, the Plant Site, and the Interconnection Facility, Seller and its subcontractors, agents, and representatives shall have access to the Site and the Plant at all times.

b) Seller and its subcontractors, agents, and representatives shall also have access to any documents, materials, records and accounts that are necessary for the construction, operation, and maintenance of the Plant and the Interconnection Facility that are in possession of the Purchaser.

c) In the event of an emergency, immediately upon a Party's knowledge of an emergency or potential emergency, this Party shall provide telephonic notice to the other Party of the nature of such emergency, and both Parties shall have immediate access to the Site.

d) In the event of any emergency, either Party on its own or the Parties jointly shall take such action as may be reasonable and necessary to prevent, avoid and mitigate injury, damage or loss to the Plant, and any interruption, reduction or disruption of its proper operation, and shall, as soon as practicable, report any such incident, including such Party's response thereto, to the other Party.

e) The Purchaser shall ensure that the Plant, the Interconnection Facility, all property and equipment of Seller that is located within the Site, and all personnel of the Seller while staying at the Site are accorded constant protection and security within the Site during the entire term of this Agreement.



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Option 2

The Seller shall-

1. Ensure that the Buyer and any representative appointed by the Buyer, are afforded reasonable access to the Site upon giving the Seller reasonable notice provided that such access does not materially interfere with the construction works or expose any person on the Site to any danger

IX. Repair & maintenance

Option 1

Repair and Maintenance

Seller shall be responsible for the repair and maintenance of the Plant, the Plant Site and the Interconnection Facility. Seller shall use reasonable efforts to maintain the Plant, the Plant Site and the Interconnection Facility in good working order, ordinary wear and tear exempted, and shall operate the Plant and the Interconnection Facility in accordance with all applicable Laws.

Purchaser shall be responsible for the repair and maintenance of the Site. Purchaser shall use reasonable efforts to maintain the Site and in good working order, ordinary wear and tear exempted, and shall operate the Site in accordance with all applicable Laws.

Either Party shall notify the other Party immediately upon gaining knowledge of (a) any material malfunction of or damage to the Site, the Plant Site, the Plant, or the Interconnection Facility and (b) any interruption or alteration of Net Electrical Output.

Option 2

Repairs and Maintenance

1 The Lessor undertakes to maintain the exterior and public parts of the Demised Premises [and of the building], including, without limitation, its foundations, pillars, beams, floors, roofs, terraces, walls and other structural parts, its entrances, its common areas (including, without limitation, halls, corridors, elevators and stairways), its main sewers, drains, gutters, window and door casings, and the like, its heating and air conditioning equipment, and toilets, and all building systems (including, without limitation, plumbing and electrical systems) in good repair and tenantable condition, including, without limitation, repainting and repairing [at intervals of two years OR specify frequency of maintenance service] and, when their condition

warrants, earlier attention. For this purpose, and subject to X's agreement, the Lessor shall have the right, upon reasonable prior notice to X, and at reasonable times, to enter, inspect and make any necessary repairs to the Demised Premises, and may enter the Demised Premises forthwith whenever reasonably necessary to make emergency repairs. All such work shall be carried out with minimal disruption to X. Any such maintenance or repair work shall be of a quality no less than the original work or construction.

2 In addition to the Lessor's responsibility to maintain and repair all elevators in accordance with Article - hereof, the Lessor, upon request from X, shall provide X with the certificate(s) of maintenance and certificate(s) of inspection for any or all of the elevators serving the areas and floors occupied by X.

3 X shall take reasonable care of the Demised Premises and the fixtures and appurtenances therein. X shall be responsible for minor repairs to, and routine maintenance of, the Demised Premises arising from its occupation and use of the Demised Premises during the term of this Lease, [NOTE: it may be useful to insert a financial cap for X's obligation under this Article to maintain the Demised Premises.] Such minor repairs include the routine repair of locks, windows, doors, floors, fittings, lightings, appurtenances and sanitary ware. X shall not be responsible for (i) reasonable wear and tear; (ii) obsolescence; (iii) damage by the elements or circumstances over which X has no control; (iv) damage caused by, or resulting from, any acts or omissions of the Lessor, its employees, officers, agents, or subcontractors; or (v) damages or defects set out in the Vacancy Inspection Letter described in Article -.

4 The Lessor undertakes and agrees to maintain the sidewalks of [the Demised Premises] OR [of the building] in good repair and free of [ice, snow and] any obstruction and to accept all liability in connection therewith.

5 [DELETE this clause unless the building is to be shared with other occupants:] The Lessor undertakes that no part of the building in which the Demised Premises are located shall be let or used for any illegal purpose or for gambling and, in considering potential tenants or any activities to take



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place in such building, the Lessor shall take into account that X is a tenant in the Demised Premises.

X. Interruption of Net Electrical Output

Option 1

1. Interruption of Net Electrical Output

- a. Seller shall have the right to interrupt, reduce or discontinue the delivery of Net Electrical Output for purposes of inspecting, maintaining, repairing, replacing, constructing, installing, removing, or altering the equipment used for the production or delivery of Net Electrical Output, or at the direction of authorized governmental authorities or electric utilities.
- b. Other than unexpected interruptions or emergencies, Seller shall give Purchaser notice at least five (5) Business Days before an interruption of Net Electrical Output deliveries and an estimate of the expected duration of the interruption.
- c. Both Parties shall use commercially reasonable efforts to minimize any such interruption or disruption in delivery.
- d. Both Parties can agree in writing on regular time periods of interruption of Net Electrical Output (e.g. on Sundays).
- e. During periods of interruption pursuant to this Section, Purchaser shall not be obligated to accept or pay for electricity from the Plant

Option 2

1. Interruption of Acceptance and Purchase

- a. The Buyer shall not be obligated to purchase or take delivery of the Net Electrical Output if the Plant is not operated and maintained in a manner consistent with Prudent Operating Practice in accordance with Clause -.
- b. The Buyer may interrupt, reduce or cease to purchase and accept delivery of all or a portion of the Net Electrical Output, to the extent



that such interruption, reduction or cessation is necessary under Prudent Operating Practice, in order for the Buyer to install equipment, make repairs, replacements, investigations or inspection of the Buyer's electric system.

c. In an Emergency, or whenever it is necessary to aid in restoration of service on the Buyer's system, or on the systems with which it is directly or indirectly interconnected, the Buyer, may, in its sole discretion, curtail or interrupt the taking of all or a portion of the Net Electrical Output, provided such curtailment or interruption shall continue only for so long as it is reasonably or minimally necessary under Prudent Operating Practice,

2. Interruption of Delivery

The Seller may interrupt, reduce or cease to deliver the Net Electrical Output only to the extent that the Seller reasonably determines that such interruption, reduction or cessation is necessary in order to install equipment in, make repairs, replacements, investigations and inspections of, or perform maintenance on the Plant, which directly affect the delivery of the Net Electrical Output. The Seller shall, prior to initiating any interruption, reduction or cessation to deliver the Net Electrical Output, use its best efforts to provide the Buyer a minimum of twenty four(24) hours advance notice, such notice to include an explanation of the cause of the interruption, reduction or cessation, and an estimate of the start and duration.

Option 3

Interruption of Acceptance and Purchase.

Notwithstanding that the Seller's Facility is a Must Take Facility, the Buyer shall not be obligated to purchase or take delivery of the Buyer's Entitlement if the Facility is not operated and maintained in a manner consistent with Good Utility Practice in accordance with Article -. The Buyer may interrupt, reduce or cease to purchase and accept delivery of all or a portion of the Buyer's Entitlement, to the extent that such interruption,



reduction or cessation is necessary, under Good Utility Practice, in order for the Buyer to install equipment, make repairs, replacements, investigations or inspections of the Buyer's system. Notwithstanding that the Seller's Facility is a Must Take Facility, whenever the Buyer's system or the systems with which it is directly interconnected experience an Emergency, or whenever it is necessary to aid in the restoration of service on the Buyer's system or on the systems with which it is directly or indirectly interconnected, the Buyer may, in its sole discretion, curtail or interrupt the taking of all or a portion of the Buyer's Entitlement or any electric energy hereunder, provided such curtailment or interruption shall continue only for so long as it is reasonably and minimally necessary under Good Utility Practice.

Interruption of Delivery.

The Seller may interrupt, reduce or cease to deliver the Buyer's Entitlement only to the extent that the Seller reasonably determines that such interruption, reduction, or cessation is necessary in order to install equipment in, make repairs, replacements, investigations and inspections of, or perform maintenance on the Facility which directly affect, the delivery of the Buyer's Entitlement. The Seller shall, prior to initiating any interruption, reduction or refusal to deliver the Buyer's Entitlement, use its best efforts to provide the Buyer, and the transmission system operator if different than the Buyer, a minimum of twenty-four (24) hours advance notice, such notice to include an explanation of the cause of the interruption, and an estimate of the start and duration of the interruption.

XI. Purchase and sale of Net Electrical Output & purchase price and payment

Option 1

Purchase and Sale of Net Electrical Output

1. From the Full Commercial Operation Date, the Seller will provide Purchaser with all of the Net Electrical Output produced by the Plant and Purchaser will accept and take over all of the Net Electrical Output produced by the Plant at the Delivery Point. Each Party agrees that, during the term of this Agreement, it will not seek to change any of the rates or terms of this Agreement or exercise any rights a Party may have, to seek changes to such rates or terms.
2. Ownership, risk of loss, custody and control of the Net Electrical Output pass from Seller to Purchaser at the Delivery Point.
3. In no event shall Purchaser sell or deliver the Net Electrical Output to any (other) person.

Purchase Price and Payment

1. The price for the Net Electrical Output is calculated on a per kilowatt hour basis. The calculation of the Purchase Price starts with the base contract price, which is adjusted on each anniversary of the commercial operation. The base contract price and the adjustments are set out in Annex -.
2. The Purchaser shall pay the Seller any and all amounts due for the delivered Net Electrical Output. In the case that the Purchaser is not capable of accepting and taking over all of the Net Electrical Output pursuant to Section -, Purchaser shall be obliged to pay the Seller at least a minimum amount of [...] kWh per year.
3. Payments hereunder shall be due and payable by the Purchaser on the fifteenth (15th) day after the date of receipt of the invoice (Due Date). If the amount due is not paid on or before the Due Date, a late payment charge shall be applied to the unpaid balance and shall be added to the next invoice. Such late payment charge shall be calculated based on an annual



interest rate of [agreed escalation index] percent calculated daily and effective from the Due Date until the date of actual payment.

4. All payments made by Purchaser under this Agreement shall be due and payable by electronic funds transfer to an account that is held and specified by Seller (or by any other specific alternative payment procedures as designated by both Parties) as described in Annex -.

5. All amounts due under this Agreement shall be payable in US\$ and the Purchaser shall not be entitled to make payment in any other currency.

Option 2

Delivery, sale and purchase of electricity

1 Delivery of Net Electrical Output

From the Full Commercial Operation Date and thereafter, the Seller agrees to deliver and sell to the Buyer the Net Electrical Output for the term of this Agreement specified in Clause - and at the price specified in Clause -.

2 Acceptance and Purchase of Net Electrical Output

From the date of commissioning and thereafter, the Buyer agrees and covenants to accept into its transmission system and to purchase for the term of this Agreement as specified in Clause - and at the price specified in Clause -, the Net Electrical Output when delivered by the Seller. The Buyer shall pay for the Net Electrical Output as ascertained and determined by the metering equipment in accordance with Clause.

3. Payment

The Buyer shall pay the Seller (or a trustee if so designated by the Seller) any and all amounts due for the delivered Net Electrical Output that are not in good faith disputed by the Buyer on or before the Due Date specified in sub clause - hereof at the Tariff and subject to the terms specified in Appendix -, determined on a per kWh delivered quantity for all Net Electrical Output delivered under this Agreement.

Option 3

Delivery, sale, and purchase of the buyer's entitlement

(a) Delivery of Entitlement. Upon the Commencement Date of Operation and thereafter the Seller agrees to deliver and sell to the Buyer for the term of this Agreement as specified in Article - and at the price as specified in Article - , the Buyer's Entitlement.

(b) Acceptance and Purchase of Entitlement. Upon the Commencement Date of Operation and thereafter, the Buyer agrees and covenants to purchase for the term of this Agreement as specified in Article - and at the price as specified in Article - , the Buyer's Entitlement when delivered by the Seller.

Option 4

Purchase and Sale of Electricity

1. The Buyer must purchase any and all electricity delivered to the Buyer at the Interconnection Point in accordance with clause - at the rates set out in Schedule - (Rates and Prices), subject to the terms of this Agreement.

2. The Owner retains the rights to any Environmental Credits generated as a result of the operation of the Facility and may deal with those Environmental Credits as it sees fit.

Billing and Payment

The Buyer must pay the Owner for the quantity of electricity (in kWh) delivered by the Owner to the Buyer at the Interconnection Point in each Billing Period multiplied by the Price.



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Option 5

Payment instructions: X shall, on the fulfilment of the delivery terms, unless otherwise provided in the Contract or purchase order, make payment by bank transfer within thirty days of receipt of the Contractor's invoice for the goods and copies of any other documentation specified in the Contract. Payment against the invoice referred to above will reflect any discount shown under the payment terms agreed among the parties, provided payment is made within the period required by such payment terms. The prices shown in the Contract or the purchase order may not be increased except by express written agreement of X. Documents are to be sent to the address indicated in the Contract or purchase order



XII. Invoices

Option 1

Invoices

a. The monthly billing period shall be the calendar month. No later than fifteen (15) calendar days after the end of each calendar month, Seller shall prepare and provide Purchaser with an invoice for the Net Electrical Output delivered in the prior month.

b. The invoice shall include:

- The amount of Net Electrical Output during the billed month.
- The payment rate for the current contract year pursuant to Annex C;
- The energy charge for the billed month,
- Sales taxes if any;
- Reimbursable other taxes if applicable;
- Any other sums due and payable by Purchaser under this Agreement;
- The total sum payable by Purchaser.

c. Delays in the issuance of any such invoice will not constitute any waiver of Purchaser's obligation to pay, or Seller's right to collect, any payment by Seller under any such invoice.

Option 2

The Seller shall at the end of each month (beginning with the month in which the First Commissioning Date occurs) prepare and issue to the Buyer an invoice in respect of the electrical units delivered to the Buyer System for that month. Each invoice prepared by the Seller shall contain the information specified in Appendix D.

XIII. Metering

Option 1

Metering

1. The Seller shall install a meter facility at the Delivery Point to measure the amount of Net Electrical Output delivered by Seller to Purchaser. Seller shall own, operate and maintain the meter during the entire term of this Agreement at its own expense. The meter facility shall be a standard revenue quality meter and electronic data acquisition equipment that can be used continuously to measure and record the Net Electrical Output.

2. Seller shall read the meter daily and shall record the Net Electrical Output delivered to Purchaser. Upon written request, Seller will make available to Purchaser the records from the meter.

3. Seller shall provide standard quality calibration testing of the meter prior to putting it into operation and at least annually thereafter to ensure the accuracy of the meter. The meter shall be sealed and locked after each calibration testing. The Purchaser shall be entitled to witness such tests.

4. If, upon testing, any meter is found to be inaccurate by an amount more than plus or minus two percent (2%), then Seller shall be obliged to promptly repair or correctly adjust the meter. Any previous recordings by such meter shall be corrected to zero error. If no reliable information exists as to the period over which such meter registered inaccurately, it shall be assumed for purposes of correcting previously delivered invoices that such inaccuracy began at a point in time midway between the testing date and the next previous date on which such meter was tested and found to be accurate.

Option 2

Metering

1. Metering Party's Obligations

a. The Seller shall, in accordance with Prudent Operating Practice, supply and install, test and commission the main Metering Equipment and Back –up Metering Equipment (Metering System). The Buyer shall be entitled to attend and witness the testing and commissioning of the Metering System. Thereafter, the Seller shall transfer to the Buyer as beneficial owner (and without any encumbrances) all rights, title and interest in the Back –up Metering Equipment (together with all warranties and guarantees applicable thereto) and upon such transfer the Buyer shall own and maintain the Back –up metering Equipment while Seller shall own and maintain the Main Metering Equipment. The Metering System shall have an accuracy level of $\pm 0.5\%$.

b. Metering and telemetering equipment shall comply with the Buyer's standards and guidelines, be capable of registering and recording the instantaneous and bidirectional transfer of active and reactive power, kWh and kVARh, and capable of transmitting such data to such location(s) as may be specified by the Buyer. The metering equipment shall be sealable and have mass storage and recording capability. The Seller shall provide a suitable location for the metering and telemetering equipment if the Interconnection is at the Plant.

2. Meter Accuracy

All metering equipment measuring the output of the Plant shall be tested at least annually, in accordance with Prudent Operating Practice. At any reasonable time, either Party may request a test of the accuracy of any metering equipment. Each Party shall bear the cost of a test requested by it. The results of meter calibrations or tests shall be available for examination by the Parties at all reasonable times. If, at any time, any metering equipment is found to be inaccurate by more than one-half of one percent



(0.5%), the Buyer shall cause such metering equipment to be made accurate or replaced as soon as possible. Each Party shall be given reasonable advance notice of and have the right to be present at the breaking of the seals, testing, calibration and sealing of meters. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party. The Party owning the meters will then investigate and take corrective action if necessary.

3. Meter Calibration

Testing and calibration of meters, and any verification of meter accuracy, shall be performed pursuant to the Buyer metering standards. Calibration shall occur before the First Commissioning Date of the Plant. All meters shall be caused to be sealed and locked by their owner after calibration.

4. Transfer of Title to Power

At the Delivery Point, Net Electrical Output, and legal title to the same, shall be deemed to be transferred from the Seller and delivered to the possession of the Buyer. At such point, the Buyer shall be in exclusive control and possession of the Net Electrical Output and shall be solely responsible for the same. Such electric energy transferred shall be by alternating current 3 phase, 50 Hz nominal frequency, at the voltage specified in Appendix C.

5. Meter Reading

The meters shall be read jointly by the Seller and the Buyer monthly on the last day of each month (or such other day as may be agreed upon by the Parties) for the purposes of determining the Net Electrical Output delivered into the Buyer's System since the preceding reading. The Seller shall provide the Buyer access to the Plant at all reasonable times upon prior notice for the purpose of reading or inspecting meters, examining the operation of the Plant or other purposes reasonably related to performance under the terms of this Agreement. Such access shall not interfere with the Seller's normal business operations. All the Buyer's personnel shall follow all Plant safety and procedural rules while on the Plant premises.



6. Estimation

In the event that any data required for purpose of determining amounts owed to the Seller or payment hereunder are unavailable when required, such unavailable data shall be estimated by the Buyer, subject to any required adjustment based upon actual data in the next subsequent payment month. A failure of the Buyer to read its meter pursuant to Clause - of this section shall not relieve the Buyer of the obligation to pay the Seller at the conclusion of each month for the energy delivered and accepted as provided herein.

7. Alternative Meter Data

To determine the amount of the Net Electrical Output delivered and accepted in any billing period, recordation of amounts, billing and payment will be based on the first available of the following metering or estimation options, in descending order of applicability:

- a. The Main Metering Equipment measurement(s) when that meter for the period at issue satisfies the accuracy standard in Clause -.
- b. Back-up Metering Equipment measurement when that secondary meter is positioned to record the electrical energy delivered and accepted, and when that meter satisfies the accuracy standard in Clause -.
- c. Where all meters fail to accurately register Net Electrical Output delivered and accepted, the average monthly data for the Plant from the same month in the prior Contract Year, if available, as reasonably adjusted for the particular billing period by any relevant available data affecting Plant generation regarding resource availability, hours of operation, time of operation of generators, and/or native self-use of power output (collectively "Operating Variations") during the period of meter failure, shall be employed, if applicable, to estimate the amount of electric energy delivered and accepted. Where such data are not reliably available, the average monthly Plant Net Electrical Output delivered and accepted during the previous six (6) billing periods prior to meter failure (or fewer months of the Plant is



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less than six months from the Full Commercial Operation Date), as adjusted or normalized for outages or Operating Variations, shall be used to estimate energy delivered by the Plant for the billing period.

Option 3

Metering

The Owner must at its cost procure the installation, operation and maintenance of the Metering Equipment to measure the quantity of electricity supplied and the rate at which electricity is supplied to the Buyer at the Interconnection Point under this Agreement.

The quantity of electricity supplied to the Buyer under this Agreement may be determined by the Owner

XIV. Termination clause

Option 1

Defaults and Termination

A default of Seller means the occurrence of any of the following:

The failure to deliver or cessation by Seller of delivery of Net Electrical Output to Purchaser for a continuous period of fifteen (15) days;

Continuous abandonment of construction or operation of the Plant by Seller without the written consent of Purchaser;

Passage of a resolution by the shareholders of Seller for the winding up of Seller except when taken for the purpose of merger or reorganization (provided that such reorganization does not affect the ability of the merged or reorganized entity to perform its obligations under this Agreement); appointment of a liquidator in a procedure for the winding up of Seller, after notice to Seller and due hearing; or a court order wind up Seller;

Any substantial and continuous material breach by Seller of any representation, warranty, undertaking, or obligation under this Agreement.

A default of Purchaser means the occurrence of any of the following:

Failure to pay an invoice following the Due Date (see Section -), and such failure continues for a period of fifteen (15) Business Days upon delivery of a written notice on such non-payment to Purchaser by Seller.

Wilful alteration of or tampering by Purchaser or its employees or agents with the Plant or the Interconnection Facility without the prior written consent of Seller, except in situations where such actions are taken to prevent immediate injury, death, or property damage and Purchaser uses its best efforts to provide Seller with advance notice of the need for such actions;

Passage of a resolution by the shareholders of Purchaser for the winding up of Purchaser except when taken for the purpose of merger or reorganization (provided that such reorganization does not affect the ability of the merged



or reorganized entity to perform its obligations under this Agreement); appointment of a liquidator in a procedure for the winding up of Purchaser, after notice to Purchaser and due hearing; or a court order wind up Purchaser;

Any substantial and continuous material breach by Purchaser of any representation, warranty, undertaking, or obligation under this Agreement.

The non-defaulting Party is entitled to give a notice of default in which the default shall be specified in reasonable detail. The defaulting Party shall have ten (10) working days within which to cure the default.

If an event of default has occurred and has not been cured within the period specified in Section -, the non-defaulting Party is entitled to take any or all of the following actions:

Terminate this Agreement with immediate effect by delivering written notice to the defaulting Party or

Proceed in accordance with Part - of this Agreement to protect and enforce its rights and to recover any damages to which it may be entitled, including all costs and expenses reasonably incurred in the exercise of its remedy, or

At its election, take such steps as are reasonably necessary to cure the default before proceeding.

The right to take the actions set out in this Section shall not be exclusive but, to the extent permitted by law, be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise. No delay by, or omission of, one Party to exercise any right or remedy arising upon any event of default of the other Party shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

If Seller is the non-defaulting Party and Seller terminates this Agreement pursuant to this Section, then Seller shall be entitled, without limiting Seller's rights or remedies available under this Agreement, to receive a fee as described in Annex - that is intended to reflect Seller's direct damage from Purchaser's default and is not intended to be a penalty. In such event,

Seller shall be entitled to remove the Plant at Purchaser's sole cost and expense.

Option 2

Termination:

1 Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) days' notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article - "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.

2 X may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of X applicable to the performance of the Contract or the funding of X applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) days' advance written notice to the Contractor, X may terminate the Contract without having to provide any justification therefor.

3 In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by X, the Contractor shall, except as may be directed by X in the notice of termination or otherwise in writing:

3.1 take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;

3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;

3.3 place no further subcontracts or orders for materials, services, or facilities, except as X and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;



3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;

3.5 transfer title and deliver to X the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;

3.6 deliver all completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to X thereunder;

3.7 complete performance of the work not terminated; and,

3.8 take any other action that may be necessary, or that X may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which X has or may be reasonably expected to acquire an interest.

4 In the event of any termination of the Contract, X shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, X shall not be liable to pay the Contractor except for those goods delivered and services provided to X in accordance with the requirements of the Contract, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from X or prior to the Contractor's tendering of notice of termination to X.

5 X may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:

5.1 The Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;

5.2 The Contractor is granted a moratorium or a stay, or is declared insolvent;

5.3 The Contractor makes an assignment for the benefit of one or more of its creditors;

5.4 A receiver is appointed on account of the insolvency of the Contractor;

5.5 The Contractor offers a settlement in lieu of bankruptcy or receivership; or,

5.6 X reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

6 Except as prohibited by law, the Contractor shall be bound to compensate X for all damages and costs, including, but not limited to, all costs incurred by X in any legal or non-legal proceedings, as a result of any of the events specified in Article -, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform X of the occurrence of any of the events specified in Article -, and shall provide X with any information pertinent thereto.

7 The provisions of this Article - are without prejudice to any other rights or remedies of X under the Contract or otherwise.

Option 3

Default and termination

1. Events of Default

A Party shall be deemed to be in default under this Agreement if it experiences each or any of the Events of Default including:

The Seller fails to complete, abandons or cancels construction of the Plant, or does not achieve the Long Stop Full Commercial Operation Date, unless such failure is attributable primarily to the failure of the government of the



Republic of X or instrumentalities of the government of the Republic of X to issue necessary permits to the Plant.

The adjudged bankruptcy, dissolution or liquidation of either Party in which case the bankrupt, dissolved, or liquidated Party shall be deemed to be the Party in default hereunder.

Either Party fails to perform or observe any of the covenants, terms, conditions or provisions of this Agreement and the appendices hereto, and such failure shall not be rectified or cured within sixty (60) days after written notice thereof to the non-performing Party, provided, however, that if such failure cannot reasonably be cured within such sixty (60) day period, such further period, not to exceed {one (1) year} after written notice thereof, as reasonably as shall be required to effect such cure, provided that the defaulting Party commences within such sixty (60) day period reasonably to effect such cure and at all times thereafter proceeds diligently to complete such cure as quickly as possible, subject to the provisions of Clause 10. It shall not be an Event of Default if such failure of a Party to perform is proximately caused by an action or inaction of the other Party.

Without reasonable excuse, the failure of any Party to make an undisputed payment when due and non-payment continues for more than ninety (90) days.

Either Party contests and denies the enforceability of the Agreement, in which case the Party contesting enforceability shall be deemed to be the Party in default hereunder.

Failure to achieve the Full Commercial Operating Date by the Long Stop Full Commercial Operating Date.

The dissolution or reorganization of the Buyer such that the Buyer or its successor cannot perform its obligations hereunder, either of which shall be deemed to be an event of default on the part of the Buyer.

2. Default Procedure and Cure

a. Notice

Upon the occurrence of an Event of Default, in each and every case, the non-defaulting party shall give written notice to the defaulting Party and may pursue any remedies provided for in this Agreement by giving such written notice to the other Party: provided that should the Buyer claim any Event of Default against the Seller, it shall notify and afford Lenders reasonable time, access and opportunity to remedy or cure any event giving rise to the default, and shall cooperate with Lenders to this end.

b. Step-In rights

If an Event of Default or Emergency occurs and the Seller is experiencing such event of Default or Emergency and therefore is prevented temporarily from satisfying its obligations hereunder despite its best efforts, including but not limited to restoring the operation of the Plant, the Sponsor or Lender (hereinafter called "the Person") may elect to provide notice to all parties as provided herein, of its intention to step into the rights and obligations of the Seller experiencing the Event of Default and attempt during a reasonable time to remedy such event of Default or Emergency (the Step- In rights). The Sponsor or Lender shall only exercise the Step- In rights under this Clause if it has the skills and means to carry out the work necessary to remedy the Event of Default or Emergency in accordance with the laws of X and Prudent Operating Practice. Such Step-in rights shall require the consent of The Energy Regulatory Commission.

c. Step-In- Costs

The Indemnity provisions of this Agreement shall apply to the exercise of the Step – in – Rights, provided that the person exercising the Step – In – Rights shall be indemnified by the Seller experiencing the Event of Default or Emergency for all reasonably incurred expenses that benefit the Seller experiencing the Event of Default or Emergency or its assets, and shall be indemnified and held harmless by the Seller experiencing the event of Default or Emergency from and against all claims of whatsoever nature lodged against such Person arising out of or associated with reasonable actions

consistent with Prudent Operating Practice to cure or remedy such Event of Default or Emergency.

The Person exercising the Step – In – Rights shall as soon as possible return control of operations of any facilities over which it has assumed control or operation to the Seller experiencing the Event of Default. The Person exercising the Step – In – Rights shall maintain and produce records of costs incurred to attempt to cure or remedy the Event of Default or emergency, and the Seller experiencing the Event of Default shall reimburse such reasonable and documented expenses incurred by such person.

d. Specific Performance

If money damages would not be a sufficient remedy in the Event of Default or breach of this Agreement, each Party acknowledges that the Party not in breach shall be entitled to specific performance, including, without limitation, injunction and specific performance, to remedy such breach or threatened breach, and that such remedy shall not be deemed the exclusive remedy for breach hereunder.

3. Termination Due to the Buyer's Default

In the event that there is a termination of this Agreement due to the Buyer's Default pursuant to Clause -, the Buyer shall, within ninety (90) days of the termination date, pay to the Seller by way of liquidated damages and in one lump sum in United States Dollars being the aggregate of the amounts computed as set out in Appendix - (the "Transfer Amount") and upon receipt of such Transfer Amount the Seller shall transfer the Plant to the Buyer. Notwithstanding the foregoing, the Seller and the Buyer may agree on alternative arrangements to sell the plant to another party as part of the compensation due to the Buyer's Default.

4. Remedies

The remedies expressly provided for the Parties in this Agreement are not exclusive, they are cumulative and may be exercised concurrently or consecutively and will be in addition to other remedies under this Agreement, the law or in equity, with the exception of the payment of

damages and losses that will be treated according to what is established under this Agreement. This section will remain effective after termination of this Agreement.

5. Sole Remedies

The Parties agree that their rights and remedies expressly provided in their favour in this Agreement constitute their sole remedies against each other in respect of any breach by a Party of its obligations hereunder and neither Party shall have any additional liability to the other for any loss or damage or other liability, whether arising in contract, tort or otherwise, in connection with this Agreement.____

Option 4

Termination

1. Notwithstanding and in addition to the termination rights provided in Annex -, and without prejudice to and in addition to any of its other rights and remedies under this Contract or otherwise, X may, in its sole discretion and without giving any reasons therefore, terminate this Contract without cause, in whole or in part, upon 30 days' written notice to the CONTRACTOR. In the event of termination pursuant to this Article -, X shall only be responsible for payment for Services satisfactorily performed by the Contractor in accordance with this Contract prior to the date of the termination notice. In addition, the CONTRACTOR shall be entitled only to costs and expenses reasonably incurred prior to the date of termination.

2. Upon expiration or any notice of termination of this Contract, the CONTRACTOR shall take immediate steps to terminate its activities in a prompt and orderly manner. In addition, the CONTRACTOR shall provide such information and take such actions as may be reasonably requested by X for the preservation and protection of: (i) the work and services already performed by the CONTRACTOR and the results thereof and (ii) any and all property of X provided to the CONTRACTOR.

XV. Force Majeure/Government Force Majeure

Option 1

Force Majeure

1. Neither Party shall be considered to be in default or breach of the performance of its obligations under this Agreement to the extent that the non-performance is caused by a Force Majeure Event. In such a case, the non-performing Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible.
2. The Party affected by a Force Majeure Event shall resume performance of its obligations as soon as reasonably practicable.
3. During the pendency of a Force Majeure Event, the Parties shall be released from their mutual obligations of this Agreement and neither Party shall bear any liability for any loss or expense suffered by the other Party due to the Force Majeure Event.
4. Force Majeure Events include but are not limited to the following events:
 - a. Natural disasters, epidemics or plagues;
 - b. Acts of war, armed conflict, invasion, blockade, embargo, revolution, insurrection, nationwide strikes of a political matter, act of terrorism, or sabotage;
 - c. Accident, explosion, or chemical contamination (other than resulting from the foregoing incidences).
5. Either Party shall be entitled to terminate this Agreement upon thirty (30) days' prior written notice to the other Party if any Force Majeure Event affecting such other Party has been in existence for a period of one hundred eighty (180) or more consecutive days, unless such Force Majeure Event ceases prior to the expiration of such thirty (30) day period.

Government Force Majeure

1. Except of Sections - and -, the provisions of Section - shall apply similarly to the occurrence of a Government Force Majeure Event.
2. Government Force Majeure Events include but are not limited to the following events:
 - a. Any nationalisation, expropriation that substantially affects the Plant or the Site or any other measure having equivalent effect that is initiated or pursued directly by the Government of X or any other State Entity.
 - b. Any Change of Law that substantially prevents either of the Parties from fulfilling its obligations under this Agreement.
3. The Seller shall be entitled to terminate this Agreement upon thirty (30) days' prior written notice to the other Party if any Government Force Majeure Event has been in existence for a period of one hundred eighty (180) or more consecutive days, unless such Government Force Majeure Event ceases prior to the expiration of such thirty (30) day period. Seller is entitled to proceed in accordance with Section 22 (6).

Option 2

Force majeure

1. Events of Force Majeure

For the purposes of this Agreement "Force Majeure" means subject to clause - any event or circumstance which affects either Party and is not within the reasonable control (directly or indirectly) of the Party affected to the extent that such event or circumstance or its effect cannot be prevented, avoided or removed by such Party acting in accordance with Prudent Operating Practice. "Force Majeure" shall include without limitation each of the following events and circumstances to the extent that they satisfy the foregoing requirements:

- a. Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, civil commotion, insurrection, act of terrorism, or sabotage, provided that any such event occurs and directly involves the Republic of X;
- b. An act of God including but not limited to lightning, fire, earthquake, volcanic activity, floods and storms, typhoons, cyclones or tornadoes;
- c. Epidemics or plagues
- d. Explosions or chemical contamination (other than resulting from an act of war);
- e. Labour disputes including strikes, work to rule, go slows or lock-outs that extend beyond the Plant or are widespread or nation-wide;
- f. The compulsory expropriation, acquisition or nationalisation of the material assets or equity of the Seller by the government of X; and
- g. Change in law.

Option 3

Force majeure; other changes in conditions:

1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following

the provision of such notice of force majeure or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of force majeure. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting force majeure shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.

2 If the Contractor is rendered unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under the Contract, X shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article -, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, X shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of force majeure for any period in excess of ninety (90) days.

3 Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, provided that such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which X is engaged in, preparing to engage in, or disengaging from any humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute force majeure under the Contract.



XVI. Liability

Option 1

Liability

Except as provided in the following sections and to the extent permitted under the Laws and for instances of wilful misconduct, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages.

Neither Party shall have any liability to the other Party in connection with this Agreement except pursuant to, or for breach of, this Agreement; provided that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

Option 2

Limitation of Liability

Notwithstanding the provisions of Clause - hereof, or any other provision of this Agreement to the contrary neither the Buyer nor the Seller, nor their respective officers, directors, agents, employees, parent entity, Lenders, subsidiaries, or affiliates shall be liable or responsible to the other Party or its parent entities, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insurers, for incidental, exemplary, punitive, indirect or consequential damages of any nature, connected with or resulting from performance or non-performance of obligations pursuant to this Agreement, including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement).

XVII. Indemnification

Option 1

Indemnification

1. Each Party shall indemnify the other Party, its directors, officers, agents, and employees against, and hold the other Party, directors, officers, agents, and employees harmless from, at all times after the date hereof, any and all losses incurred, suffered, sustained, or required to be paid, directly, by, or sought to be imposed upon, the other Party, its directors, officers, agents, and employees for personal injury or death to persons, or damage to property or arising out of any breach of this Agreement by or any negligent act or omission of the Party.
2. In the event that any loss results from joint or concurrent negligence, acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.
3. Each Party shall promptly notify the other Party of any loss or proceeding in respect of which it is or may be entitled to indemnification under this Section. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss or proceeding.

Option 2

1. Each Party shall defend, indemnify and save the other Party, its officers, directors, agents and employees harmless from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including reasonable attorney's fees), suits, actions, or damages arising by reason of bodily injury, death, or damage to property sustained by any person or entity (whether or not a party to this Agreement):

- 1.1. Caused by or sustained on property or at facilities owned or controlled by the Party, except to the extent caused by an act of negligence or willful misconduct by an officer, director,



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subcontractor, agent, employee, parent entity, subsidiary or affiliate of the other Party; or

1.2. Caused by an act of negligence or wilful misconduct of the Party, or by an officer, director, subcontractor, agent, employee, parent entity, subsidiary or affiliate, of the Party. If either Party receives notice of the assertion of any claim with respect to which indemnification is to be sought from the other Party, that Party shall give prompt notice thereof to the other Party. The Parties shall cooperate in the mutual defence of any such claim.



XVIII. Records & confidentiality

Option 1

Records

1. Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement.
2. Among other records and data required hereby or elsewhere in this Agreement, the Seller shall maintain an accurate and up-to-date operating log in a reasonable format.
3. All such records and data shall be maintained for the minimum period of the term of the Agreement and a period of ninety (90) days after the expiration of the term.
4. Either Party shall have the right, upon ten (10) days' prior written notice to the other Party, to access and examine the records and data of the other Party relating to this Agreement at any time during normal office hours during the period such records and data are required hereunder to be maintained.

Confidentiality

1. Each Party agrees that it shall and will ensure that its directors, officers, agents, and employees, will hold in confidence this Agreement and all information, documentation, data and know-how disclosed to it by the other Party and reasonably designated in writing as "confidential" (Confidential Information), and will not disclose to any third party or use this information or any part thereof with the other Party's prior written approval.
2. This shall not apply

To Confidential Information which is in the public domain other than by reason a breach of this Agreement;

To Confidential Information the disclosure of which is required by any Laws or by order of a court, tribunal or governmental authority in any country with appropriate jurisdiction over a Party.

3. A Party may disclose Confidential Information, subject to obtaining an undertaking to the same confidential, to any assignee of the Party; to any bank or financial institution or investor from whom the Party is seeking finance; or to any consultant or contractor whose duties reasonably require such disclosure in connection with this Agreement.

Option 2

Records and confidentiality

1. Each party shall keep complete and accurate records and all other data required by each of them and by the Energy Regulatory Commission for purpose of proper administration of this Agreement.

2. Either Party shall have the right, upon ten (10) days' prior notice to the other Party, to examine the records and data of the other Party relating to this Agreement or the operation or dispatch of the Plant at any time during normal office hours during the period such record and data are required hereunder to be maintained.

3. Each Party agrees that it will, and will ensure its employees, officers and directors will hold in confidence all information, documentation and data know –how disclosed to it by the other Party and designated in writing as “confidential” (“Confidential Information”) and will not disclose to any third party or use Confidential Information or any part thereof without the other Party’s prior written approval, provided that –

a. This Clause shall not apply to Confidential Information which is in the public domain other than by breach of this Clause, or was already in the rightful possession of the recipient Party, or was obtained by the recipient Party in good faith from a third party entitled to disclose it;



b. A Party may disclose Confidential Information in accordance with any legal requirement to do so, or to consultants or contractors whose duties reasonably require such disclosure; and

c. A Party may disclose confidential Information, subject to obtaining an undertaking to keep the same confidential, to

1. Any prospective assignee of the Party and its advisers;
2. Any banker or financial institution or investor from whom the Party is seeking finance; or
3. Any expert or arbitrator under this agreement
4. The provisions of this Clause - shall survive the termination or expiry of this Agreement

XIX. Dispute resolution

Option 1

Dispute resolution

1. Amicable Settlement

Any dispute or difference arising out of or in connection with this Agreement shall be settled amicably by the Parties.

If no amicable settlement is reached within a period of two (2) months from the date on which either Party notifies the other Party of the existence of a dispute or a difference, the dispute or difference shall be settled by reference to binding arbitration to be conducted pursuant to the International Chamber of Commerce- ICC Rules as sole and exclusive recourse available to the Parties regarding any and all disputes and differences under this Agreement.

2. Arbitration

Unless both Parties agree on a sole arbitrator, to be appointed in accordance with the ICC rules, an arbitral panel, consisting of three (3) arbitrators shall be appointed in accordance with the ICC rules.

The arbitrator shall, unless otherwise agreed by the Parties, be conducted in English and the seat of arbitration shall be in X.

The award of the arbitrators shall be final and binding on the Parties.

The costs of the arbitration shall be borne by the Parties as determined by the arbitrators in their award.

With the exception of disputes relating to the non-payment of sums due under this Agreement, during the conduct of the dispute resolution procedure under this Part of the Agreement, the Parties shall continue to perform their respective obligations under this Agreement.

Option 2

Dispute resolution

1. Arbitration

1.1 Any dispute or difference of any kind between the Parties in connection with or arising out of this Agreement, or the breach, termination or validity hereof shall be settled by reference to a single arbitrator to be agreed within seven (7) days of service of notice of such dispute, difference or question by the one Party on the other; failing which agreement arbitrator(s) shall be appointed at the request of any of the Parties by the chairman of the Institute of Chartered Arbitrators of X and such arbitration shall be conducted in accordance with the latest revision of the Arbitration Act No. 4 of 2005 or according the Rules of Conciliation and Arbitration of the International Chamber of Commerce in accordance, as the Parties may mutually agree;

1.2 The award shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the arbitrator's decision;

1.3 The award in such arbitration shall be final and binding upon the Parties and judgment thereon may be entered in any court having jurisdiction for its enforcement; the Parties renounce any right of appeal from the decision of the arbitrator insofar as such renunciation can validly be made; and

1.4 The arbitrator shall not have the authority to order the termination or amendment of this Agreement.

Option 3

Dispute resolution

1. The parties acknowledge that a dispute may arise between the Parties regarding the applicability, interpretation, payment, or enforcement of this Agreement. If any dispute arises among the Parties related to this Agreement, the Party claiming the dispute shall notify the other Party and the Authority in writing of the dispute, and the Parties shall attempt informally to settle such dispute in good faith within a period of sixty (60) days thereafter. After such sixty (60) day informal effort, the Parties may engage in the dispute resolution procedures provided in part (a) and (b) of this section, or seek any other remedy at law or equity. This dispute resolution mechanism is not applicable to disputes of a Party with third parties not directly arising under this Agreement.

(a) Appeal to the Authority. If within sixty (60) days of notification a dispute is not resolved to the mutual satisfaction of the Parties, subject to an election being made pursuant to Article -, any Party may appeal in writing after such sixty (60) day period but before eighty (80) days from such initial notification of a dispute, to the Authority to mediate and resolve the dispute. The Parties shall abide by and act in accordance with the Authority's written decision resolving such dispute pending a final legal appeal of such resolution.

(b) Binding External Arbitration. In lieu of the option in Article -, if within sixty (60) days of the initial notification, after such sixty (60) day period but before eighty (80) days from such initial notification of a dispute, the Seller (only) may elect to refer such dispute under this Agreement to a proceeding for binding arbitration to be conducted at an agreed location, or if the Parties cannot agree on a mutually agreeable location, in X. Any such arbitration proceeding shall be conducted by a neutral arbitrator selected by the Parties. If the Parties cannot mutually agree on a neutral arbitrator, each Party shall appoint a single arbitrator trained in arbitration and not related to any Parties, to the financial interests of either Party, nor to the dispute, and these two arbitrators shall mutually agree on a third neutral arbitrator. The Seller, in electing to select binding external

arbitration under this provision in lieu of the dispute resolution provision under Article -, shall be responsible to reimburse the reasonable travel and per diem expenses of the Buyer to participate in this arbitration if it is held outside of X. Once the Seller elects in writing as provided herein, with notice to the other Party and the Authority, to refer any dispute to binding arbitration, the decision of the arbitrator(s) shall be final and binding on the Parties without further resort for any Party to judicial or other remedies, provided however, that if binding arbitration has not reached a final decision within three-hundred sixty (360) days of the mutual referral of the dispute to binding arbitration, and such failure is not due to the lack of cooperation of a given Party, that Party may without penalty or forfeiture of any legal or equitable rights hereunder withdraw from such arbitration and seek other remedies at law or at equity consistent with this Agreement, including within twenty (20) days of such withdrawal either Party may invoke the dispute resolution provisions of Article -.

Option 4

Settlement of disputes:

1 AMICABLE SETTLEMENT: The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the Parties in writing.

2 ARBITRATION: Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article-, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance



with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article - ("Interim Measures of Protection") and Article - ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.



XX. Privileges & immunities

Option 1

Privileges and Immunities

1 Nothing contained in, or relating to, this Lease shall be deemed a waiver, express or implied, of any immunity from suit or legal process, or of any privilege, exemption or other immunity enjoyed by X, whether pursuant to the Convention on the Privileges and Immunities of the United Nations of 1946, [insert reference to the host country agreement, if any], or other Convention, law or decree of an international or national character or otherwise.