



EFET

European Federation of Energy Traders

PART II (General Provisions) of the Individual Power Purchase Agreement

NOTE: USERS USING THIS INDIVIDUAL POWER PURCHASE AGREEMENT AFTER 9 MARCH 2021 ARE STRONGLY RECOMMENDED TO INCLUDE THE CLAUSE UPDATING THE IBOR INTEREST RATE DEFINITIONS PUBLISHED BY EFET ON ITS WEBSITE ON 9 MARCH 2021.

§ 1. Subject of Agreement

1. **Type of Settlement:** This power purchase agreement ("**Agreement**") governs:
 - (a) if Physical Settlement is specified as applying in Section A of Part I (*Individual Terms*), the purchase, sale, delivery and acceptance of the Contract Quantity of electricity from the Seller to the Buyer; or
 - (b) if Financial Settlement is specified as applying in Section A of Part I (*Individual Terms*), this Agreement governs the obligation of each Party to reimburse the other Party, as applicable, for the Price Differential (if any), and

both in the case of Physical Settlement or Financial Settlement, the purchase, sale, the Delivery and acceptance of the Contract Quantity of Certificates from the Seller to the Buyer.

2. **Balancing Services:** If specified as applying in Section B of Part I (*Individual Terms*), this Agreement additionally governs the provision of Balancing Services by the Buyer to the Seller.

§ 2. Definitions and Construction

1. **Definitions:** Terms used in this Agreement shall have the meanings set out in the Annex (*Defined Terms*) or the EECS Rules.
2. **Inconsistencies:** In the event of any inconsistency between the provisions of Part I (*Individual Terms*) and the provisions of Part II (*General Provisions*) of this Agreement, the provisions in Part I (*Individual Terms*) shall prevail. In the event of any inconsistency between the definitions of the EECS Rules and the definitions of this Agreement, the definitions in this Agreement shall prevail. Subject to the preceding, in the event of any inconsistency between the provisions of this Agreement and the provisions of a Support Agreement and/or a Direct Agreement concluded between the Parties or between the Parties and a third party, the provisions of the Support Agreement and the Direct Agreement shall prevail.
3. **Interpretation:** Headings and titles are for convenience only and do not affect the interpretation of this Agreement.
4. **References to Time:** Unless otherwise specified in Section B of Part I (*Individual Terms*), all references to time shall be to Central European Time.

§ 3.
Conditions Precedent

1. Seller's Conditions Precedent:

- (a) Unless otherwise specified in Section B of Part I (*Individual Terms*), the Seller shall, to the reasonable satisfaction of the Buyer:
- (i) procure and confirm that it has, in final form and without qualification, any and all relevant approvals, consents, orders, authorisations, permits and Governmental Approvals relating to the construction, operation and maintenance of the Facility, or as otherwise required to fulfil its obligations under this Agreement;
 - (ii) procure and confirm that it has all land and access rights necessary to install, operate and maintain the Facility;
 - (iii) execute with the Network Operator a Connection Agreement providing the Facility with firm export capacity rights onto the local electricity distribution system and national transmission system for an amount of such capacity at least equal to the Capacity of the Facility throughout the Total Supply Period;
 - (iv) install (or procure the installation of) a Metering Device prior to the commencement of the Commissioning, ensuring that it has received all necessary approvals, consents and Governmental Approvals;
 - (v) if § 25 is specified in Section B of Part I (*Individual Terms*), provide guarantees and credit support in favour of the Buyer in accordance with the requirements of § 25 (*Guarantees and Credit Support*); and
 - (vi) any other additional conditions precedent as specified in Section B of Part I (*Individual Terms*), together, the "**Seller Conditions**".
- (b) On the date on which the Seller becomes aware that all of the Seller Conditions have been satisfied, it shall notify the Buyer in writing.

2. Buyer's Conditions Precedent:

- (a) Unless otherwise specified in Section B of Part I (*Individual Terms*), the Buyer shall, to the reasonable satisfaction of the Seller:
- (i) procure and confirm that it has, in final form and without qualification, any and all approvals, consents, orders, authorisations, permits and Governmental Approvals required to be in the name of the Buyer (subject to the Seller providing reasonable assistance to the Buyer in this matter) for the Buyer to perform its obligations under this Agreement;
 - (ii) if § 25 (*Guarantees and Credit Support*) is specified in Section B of Part I (*Individual Terms*), provide guarantees and credit support in favour of the Seller in accordance with the requirements of § 25 (*Guarantees and Credit Support*); and
 - (iii) any other additional conditions precedent as specified in Section B of Part I (*Individual Terms*), together, the "**Buyer Conditions**".
- (b) On the date on which the Buyer becomes aware that all of the Buyer Conditions have been satisfied, it shall notify the Seller in writing.

3. Effective Date: Save for § 1 (*Subject of Agreement*), § 2 (*Definitions and Construction*), § 3 (*Conditions Precedent*), § 29 (*Confidentiality*), § 30 (*Representations and Warranties*) and § 31 (*Governing Law and Dispute Resolution*), which shall enter into force on the date of this Agreement, this Agreement shall not come into effect until both the Seller Conditions and the Buyer Conditions have been fulfilled, and the Buyer and the Seller, respectively, have been notified of their fulfilment, the later date of these two notifications being the "**Effective Date**".

4. Termination Where Conditions Precedent Not Completed: If this § 3.4 is specified in Section B of Part I (*Individual Terms*), the following shall apply:

- (a) If, by the Conditions Precedent Longstop Date, the Seller has not fulfilled all of the Seller Conditions (or the Buyer has not waived all of the Seller Conditions not fulfilled) and the Buyer has not fulfilled all of the Buyer Conditions (or the Seller has not waived all of the Buyer Conditions not fulfilled), either Party may forthwith terminate this Agreement without any liability of either Party.
- (b) If, by the Conditions Precedent Longstop Date, the Seller has fulfilled all of the Seller Conditions, but the Buyer has not fulfilled all of the Buyer Conditions, and the Seller has not waived all of the Buyer Conditions not fulfilled, then the Seller may:
 - (i) unless § 3.4(b)(ii) has been specified in Section B of Part I (*Individual Terms*), terminate this Agreement without any liability of either Party; or
 - (ii) if this § 3.4(b)(ii) has been specified in Section B of Part I (*Individual Terms*), terminate this Agreement and the Buyer shall pay the Seller the Conditions Precedent Termination Amount no later than one (1) month after receipt of the notice of termination.
- (c) If, by the Conditions Precedent Longstop Date, the Buyer has fulfilled all of the Buyer Conditions, but the Seller has not fulfilled all of the Seller Conditions, and the Buyer has not waived all of the Seller Conditions not fulfilled, then the Buyer may:
 - (i) unless § 3.4(c)(ii) has been specified in Section B of Part I (*Individual Terms*), terminate this Agreement without any liability of either Party; or
 - (ii) if this § 3.4(c)(ii) has been specified in Section B of Part I (*Individual Terms*), terminate this Agreement and the Seller shall pay the Buyer the Conditions Precedent Termination Amount no later than one (1) month after receipt of the notice of termination.

§ 4.

Construction and Commissioning of Facility

- 1. Application:** This § 4 shall apply only if specified as applying in Section B of Part I (*Individual Terms*).
- 2. Construction and Commissioning:** Subject to § 4.6 (*Termination Where Commissioning Not Completed*), the Seller shall use reasonable endeavours to construct the Facility and commence Commissioning of the Facility as soon as is reasonably practicable following the Effective Date, but no later than the Scheduled Commissioning Date.
- 3. Notification:** The Seller shall notify the Buyer in writing:
 - (a) as soon as reasonably practicable of its best estimate of the date on which it anticipates to commence Commissioning (the date contained in such notice being the "**Commencement of Commissioning Date**"), and shall subsequently provide written updates to the Buyer in the event that such estimated date changes;
 - (b) as soon as reasonably practicable of its best estimate of the date on which it anticipates occurrence of the Commercial Operation Date, and shall subsequently provide written updates to the Buyer in the event that such estimated date changes; and

- (c) immediately upon the occurrence of each of the Commencement of Commissioning Date and the Commercial Operation Date.
- 4. Late Commissioning Date:** If this § 4.4 is specified as applying in Section B of Part I (*Individual Terms*), where the Facility has not been Commissioned by the Late Commissioning Date, the Seller shall pay the Buyer the Daily Liquidated Damages Amount for every day until (and including) the date the Facility has been Commissioned, excluding any days where Commissioning is delayed by an event of Force Majeure.
- 5. Reduction of Capacity Where Commissioning Not Completed:** If this § 4.5 has been specified as applying in Section B of Part I (*Individual Terms*), where the Facility has only been Partially Commissioned by the Commissioning Longstop Date, the Buyer may by written notice elect to amend the Capacity specified in Section A of Part I (*Individual Terms*) downwards to the capacity actually commissioned, and the revised Capacity shall apply throughout the Total Supply Period.
- 6. Termination Where Commissioning Not Completed:** Notwithstanding § 4.5 (*Reduction of Capacity Where Commissioning Not Completed*), where the Facility has only been Partially Commissioned by the Commissioning Longstop Date:
- (a) unless § 4.6(b) has been specified as applying in Section B of Part I (*Individual Terms*), the Buyer may, on the provision of one (1) month's written notice, terminate this Agreement without any liability to the Seller, and furthermore the provisions of § 19 (*Calculation of the Termination Amount*) shall not apply; or
- (b) if this § 4.6(b) has been specified as applying in Section B of Part I (*Individual Terms*), the Buyer may, on the provision of one (1) month's written notice, terminate this Agreement whereby the provisions of § 19 (*Calculation of the Termination Amount*) shall apply.

§ 5. **Forecasting and Outages**

- 1. Application:** This § 5 shall apply unless Delivery Schedule Quantity is specified as applying in Section A of Part I (*Individual Terms*).
- 2. Forecasting Obligation:**
- (a) Not less than fifteen (15) Business Days prior to the start of a calendar year (starting on 1 January and ending on 31 December), the Seller shall provide to the Buyer a non-binding forecast of the anticipated Metered Output in such calendar year.
- (b) Notwithstanding § 5.2(a), where the Total Supply Period does not start on 1 January or does not finish on 31 December, the Seller shall also provide to the Buyer a non-binding forecast of the anticipated Metered Output for the period between the start of the Total Supply Period and the end of the calendar year into which it falls, and the start of the calendar year into which the end of the Total Supply Period falls and the end of the Total Supply Period.
- (c) The Seller shall ensure that all such forecasts are prepared in accordance with Good Industry Practice. Provided that such forecasts are so prepared, the Seller shall not be liable to the Buyer for any difference between such forecasts and the Metered Output.
- 3. Revision of Forecasts:** Where the Seller revises any forecast to reflect a change in the Seller's expected Metered Output, the Seller shall provide the Buyer with such revised forecast as soon as reasonably practical. A revised forecast needs to be confirmed no later than 14:00 CET the day ahead of generation and the forecast may be provided by the Balancing Responsible Party or a Licensed Supplier on behalf of the Seller.
- 4. Planned Outage Schedule:** Not less than fifteen (15) Business Days prior to the start of the Total Supply Period and to each subsequent anniversary thereof, the Seller shall provide to the Buyer a schedule setting out each of the Planned Outages in the forthcoming year ("**Planned Outage Schedule**").

5. Details of Planned Outage Schedules: The Planned Outage Schedule will contain in respect of each Planned Outage:

- (a) brief details of the reason for the Planned Outage;
- (b) the amount by which the Facility's Capacity will be reduced;
- (c) the expected date of commencement and expected duration of the Planned Outage;
- (d) any expected reduction to the Metered Output during the Planned Outage as compared to the forecast prepared pursuant to § 5.2 (*Forecasting Obligation*);
- (e) any expected reduction in generated electricity below the forecast prepared pursuant to § 5.2 (*Forecasting Obligation*) following the end of the Planned Outage and the duration of such reduction; and
- (f) amendments to any previously notified Planned Outages regarding the above.

6. Revision of Planned Outage Schedules: The Seller may amend the Planned Outage Schedule for any calendar year, either prior to or during such year, provided that it:

- (a) gives the Buyer as much advance notice as is reasonably practicable ahead the revised Planned Outage which is to be amended in the Planned Outage Schedule; and
- (b) takes into account any reasonable requests made by the Buyer, however the Seller alone shall have the right to make the final decision on when such Planned Outage is to be scheduled.

7. Unplanned Outages: Notwithstanding events of Force Majeure, the Seller shall use all reasonable endeavours to minimise the number and duration of any Outages not included on the Planned Outage Schedule ("**Unplanned Outages**") that occur during the Total Supply Period. The Seller shall, as soon as reasonably practicable following the occurrence of an Unplanned Outage during the Total Supply Period, notify the Buyer of such Unplanned Outage and remedy the Unplanned Outage. On notifying the Buyer of an Unplanned Outage, the Seller shall also inform the Buyer of its best estimate as to the likely duration of the Unplanned Outage, the reason for the Unplanned Outage and any reduction in the Facility's Capacity likely to follow the Unplanned Outage.

8. Scope and Modalities: Either Party may, by notice in writing to the other Party, initiate a process whereby the scope of forecasting referred to in this § 5 and/or the modalities for communicating such forecasts between the Parties are to be specified and agreed in detail and, in such circumstances, the Parties shall work together in good faith to ensure a reasonable and practicable scope of forecasting and/or modalities for communication of the same is/are agreed between them within a reasonable period.

§ 6. Metering

1. Application: This § 6 shall apply unless Delivery Schedule Quantity is specified in Section A of Part I (*Individual Terms*).

2. Measurement of Electricity Deliveries and Receipts: Each Party is responsible for ensuring that electricity deliveries and receipts made in accordance with § 8 (*Primary Obligations for Delivery and Acceptance of Electricity*) and § 9 (*Delivery, Measurement, Transmission, Risk and No Encumbrances of Electricity*) are measured or verified by means that can be reasonably evidenced in accordance with the Network Operator's procedures governing the relevant Delivery Point.

3. Metering: Subject to § 6.4 (*Meter Outage Event*), readings of the Metering Device shall be conclusive as to the amount of output delivered to the Delivery Point. The Seller shall procure that the Metering Entity is responsible for

taking measurements of the output delivered to the Delivery Point in accordance with Good Industry Practice and Applicable Law.

4. Meter Outage Event: If the Metering Device is:

- (a) out of service;
- (b) is discovered by either Party or the Metering Entity to be inaccurate pursuant to § 6.8 (*Meter Disputes and Adjustments*); or
- (c) agreed by the Parties to be registering the Metered Output inaccurately,

any such event being a "**Meter Outage Event**", then the Seller shall, at the Seller's cost, procure that the Metering Entity determine the Metered Output in a commercially reasonable manner in accordance with Good Industry Practice and Applicable Law on the basis of the Metered Output under similar conditions during the period prior to the Meter Outage Event.

5. Meter Testing: During the Total Supply Period the Seller shall, at the Seller's cost, procure that the Metering Entity, or other testing authority authorised or certified by the Metering Entity, perform tests on the Metering Device:

- (a) after the Metering Device has been brought back into service following a Meter Outage Event pursuant to § 6.4 (*Meter Outage Event*);
- (b) at such intervals as are prescribed by the Applicable Law of the jurisdiction in which the Metering Device is located, or if no such intervals are prescribed by Applicable law, as recommended by the Metering Device's manufacturer; and
- (c) as otherwise required in accordance with Good Industry Practice and Applicable Law,

to ensure its proper and accurate measurement and recording. The Seller shall, within a reasonable time after the performance of any test on the Metering Device, provide to the Buyer a copy of any documentation which confirms the proper and accurate measurement and recording by the Metering Device.

6. Verification of Meter Testing: Each Party and its Representatives shall have the right to personally witness any test performed in accordance with § 6.5 (*Meter Testing*) to verify the accuracy of the measurements and recordings of the Metering Device. The Seller shall provide prior written notice to the Buyer reasonably in advance of the date upon which any such test is to occur. The Buyer and its Representatives shall have the right to be present at and observe the testing of the Metering Device, at the Buyer's sole cost. The Seller shall bear all costs associated with the testing of the Metering Device.

7. Meter Maintenance: The Seller shall, at the Seller's cost, maintain, or procure the maintenance of, the Metering Device in accordance with the Metering Device manufacturer's specifications and requirements and Good Industry Practice and Applicable Law.

8. Meter Disputes and Adjustments: If a Party disputes the accuracy or condition of the Metering Device ("**Disputing Party**"):

- (a) the Disputing Party shall provide a written explanation to the other Party ("**Non-Disputing Party**") of the basis of the dispute;
- (b) the Non-Disputing Party shall, within twenty (20) Business Days of receipt of such explanation, advise the Disputing Party in writing as to its position concerning the accuracy of such Metering Device and an explanation for taking such position;

- (c) if the Parties are unable to agree to the accuracy or condition of the Metering Device, either Party may request additional testing of the Metering Device by the Metering Device's manufacturer or other testing authority authorised or certified by the Metering Entity;
- (d) if the Metering Device is found to be within accuracy thresholds imposed by Applicable Law, any previous recordings of the Metering Device shall be considered valid and the Party requesting the meter testing under § 6.8(c) shall bear the cost of inspection and testing of the Metering Device as described in § 6.8(c); and
- (e) if the Metering Device is found to be outside accuracy thresholds imposed by Applicable Law or if such Metering Device is for any reason out of service or fails to register then:
 - (i) the Seller shall promptly cause any Metering Device found to be inaccurate to be replaced, repaired or adjusted to correct such inaccuracy;
 - (ii) the Parties shall estimate the correct amounts of output delivered to the Delivery Point during the periods affected by such inaccuracy, service outage or failure to register in accordance with § 6.4 (*Meter Outage Event*), Good Industry Practice and Applicable Law; and
 - (iii) the Parties shall equally bear the cost of inspection and testing of the Metering Device as carried out in accordance with § 6.8(c).

9. Decreased Metered Output as a Result of Meter Adjustment: If, as a result of any adjustment pursuant to § 6.8 (*Meter Disputes and Adjustments*), the quantity of Metered Output delivered to the Delivery Point for any period is decreased, subject to § 6.11 (*Right to Contest*), the resulting amount shall be included in the subsequent invoice issued under § 22 (*Invoicing and Payment*) by way of a deduction of the product of such amount and the Electricity Contract Price for the Relevant Delivery Time from the Buyer's payment obligations for that month. The quantity of Certificates to be Delivered as a result of such adjustment shall be decreased accordingly.

10. Increased Metered Output as a Result of Meter Adjustment: If, as a result of any adjustment pursuant to § 6.8 (*Meter Disputes and Adjustments*), the quantity of Metered Output delivered to the Delivery Point for any period is increased, subject to § 6.11 (*Right to Contest*), the resulting amount shall be included in the subsequent invoice issued under § 22 (*Invoicing and Payment*) as the product of such amount and the Electricity Contract Price for the Relevant Delivery Time to the Buyer's payment obligations for that month. The quantity of Certificates to be Delivered as a result of such adjustment shall be increased accordingly.

11. Right to Contest: In case of application of § 6.9 (*Decreased Metered Output as a Result of Meter Adjustment*) and § 6.10 (*Increased Metered Output as a Result of Meter Adjustment*), where the metering data has been provided by the Network Operator to the Seller the Seller shall, promptly upon receipt of the same, notify the Buyer of such data and the Buyer shall have the right to contest the validity of such data within three (3) Business Days of its receipt thereof. In case of such contestation by the Buyer, the Seller shall notify the Network Operator of the same and use all reasonable endeavours to align the respective positions of the Network Operator and the Buyer in relation to such metering data.

§ 7.

Obligations Concerning the Facility

1. Operation and Maintenance: This § 7.1 shall apply unless otherwise specified in Section B of Part I (*Individual Terms*), the Seller shall operate and maintain the Facility in accordance with Applicable Law, Relevant Codes and Rules, and Good Industry Practice with a view to maximising the availability of the Facility and Metered Output. Subject to the Seller's obligations to comply with all Applicable Law, Relevant Codes and Rules, and Good Industry Practice, the Seller shall meet with the Buyer at least once every six (6) months to discuss relevant commercial and operational matters regarding the Facility.

2. Technical Modifications: This § 7.2 shall apply unless otherwise specified in Section B of Part I (*Individual Terms*):

- (a) Save for any like for like or equivalent replacement of any used or damaged parts, the Seller shall not repower, decrease or increase the Capacity of the Facility, without the prior written consent of the Buyer.
 - (b) The Seller shall not, and shall ensure that its Affiliates do not install or knowingly permit the installation by any person any structure not forming part of the Facility and likely to interfere with the operation of the Facility.
 - (c) The Seller shall not install or have in place any storage plant or equipment at the Facility without the prior written consent of the Buyer, such consent not to be unreasonably withheld or delayed.
- 3. Access to Information:** The Seller shall:
- (a) provide read-only access to the Facility's SCADA System to the Buyer, including necessary licences and authentication codes for the Buyer's personnel nominated by the Buyer. The Buyer shall ensure that any personnel of the Buyer accessing the Facility's SCADA System does not adversely interfere with the Facility, and complies with all Applicable Law and the Seller's reasonable instructions notified to the Buyer; and
 - (b) provide the Buyer, or a third party nominated by the Buyer, with all information reasonably requested by the Buyer or such third party.
- 4. Documentation of Actual Deliveries and Receipts:** Upon reasonable request, a Party shall:
- (a) provide to the other Party documentation in its possession or control that evidences Schedules, quantities, deliveries and receipts of Contract Quantity of electricity for the purposes of determining the cause of any deviations between the terms specified in Part I (*Individual Terms*) and actual deliveries and receipts of electricity; and
 - (b) use its reasonable and diligent efforts to request and acquire from the Network Operator, and shall share with the requesting Party, any additional documentation necessary to reconcile inconsistencies between Scheduled and actual flows of electricity.
- 5. Reimbursement of External Costs:** In the event a Party, at the request of the other Party or to resolve a dispute raised by the other Party, incurs reasonable external expenses in verifying that the other Party has failed to properly perform its obligations under this Agreement, such expenses shall be reimbursed upon demand by the Party that failed to perform, subject to such expenses being duly documented and justified by the Party seeking reimbursement.

§ 8.

Primary Obligations For Delivery and Acceptance of Electricity

- 1. Application:** This § 8 shall apply only if "*Physical Settlement*" is specified in Section A of Part I (*Individual Terms*).
- 2. Delivery and Acceptance:** The Seller shall Schedule, sell and deliver, or cause to be delivered, and subject to § 13.3 (*Right to Refuse Electricity*), the Buyer shall Schedule, purchase and accept, or cause to be accepted, the Contract Quantity of electricity at the Delivery Point; and the Buyer shall pay to the Seller the relevant Electricity Contract Price.

§ 9.

Delivery, Measurement, Transmission, Risk and No Encumbrances of Electricity

- 1. Application:** This § 9 shall apply only if "*Physical Settlement*" is specified in Section A of Part I (*Individual Terms*).
- 2. Current/Frequency/Voltages:** The Seller shall deliver electricity at the current, frequency and voltage applicable at the relevant Delivery Point specified in Section A of Part I (*Individual Terms*) and in accordance with the standards of the Network Operator on whose network the Delivery Point is located.

3. Transfer of Rights of Title to Electricity: Delivery shall be effected by making available the Contract Quantity of electricity at the Delivery Point. Delivery and receipt of the Contract Quantity of electricity, and the transfer from Seller to Buyer of all rights to title free and clear of any adverse claims thereto, shall take place at the Delivery Point.

4. No Encumbrances: If this § 9.4 is specified as applying in Section B of Part I (*Individual Terms*), the Seller shall deliver to the Buyer at the Delivery Point the Contract Quantity of electricity free and clear of any liens, security interests, encumbrances or similar adverse claims by any person ("**Electricity No Encumbrances Obligation**"). Where a Party is in breach of the Electricity No Encumbrances Obligations, the following shall apply:

- (a) this Agreement shall continue unaffected;
- (b) without prejudice to any defences available to the Seller (including, but not limited to, any defences of statutes of limitation or similar), following written notice of that breach from the Buyer to the Seller (irrespective of how long after the Relevant Delivery Time for electricity such notice is provided):
 - (i) the Buyer shall determine the Encumbrance Loss arising from that breach (the "**Electricity Encumbrance Loss Amount**"), either on the date such notice is deemed to be received or as soon as reasonably practicable thereafter; and
 - (ii) shall notify the Seller of such Electricity Encumbrance Loss Amount due, including detailed support for its calculation and a valid invoice; and
- (c) by no later than the third (3rd) Business Day after the later of:
 - (i) receipt of a valid invoice in connection with each Electricity Encumbrance Loss Amount; and
 - (ii) receipt of the above-mentioned notice of detailed support of the Buyer's calculation of the Electricity Encumbrance Loss Amount,

the Seller shall pay the Electricity Encumbrance Loss Amount to the Buyer, which amount shall bear interest in accordance with § 22.4 (*Default Interest*). Upon payment of the Electricity Encumbrance Loss Amount by the Seller, no breach of the Electricity No Encumbrance Obligation shall exist in relation to a specific event. The Buyer acknowledges that its exclusive remedies in respect of such breach are those set out in this § 9.4.

5. Seller and Buyer Risks: Subject to § 9.6 (*Balancing*), Seller shall bear all risks associated with, and shall be responsible for any costs or charges imposed on or associated with Scheduling, transmission and delivery of the Contract Quantity of electricity up to the Delivery Point. Buyer shall bear all risks associated with, and shall be responsible for any costs or charges imposed on or associated with acceptance and transmission of, the Contract Quantity of electricity at and from the Delivery Point.

6. Balancing: This § 9.6 shall apply only if "*Provisions of this Agreement on Balancing Services*" are specified as applying in Section A of Part I (*Individual Terms*):

- (a) The Buyer or the Seller, as specified in Section A of Part I (*Individual Terms*), shall provide or shall procure the provision of Balancing Services from a Balance Responsible Party on arm's length commercial market terms, in accordance with Good Industry Practice and all Applicable Law, whereby Balancing Costs shall be settled between the Parties as specified in Section A of Part I (*Individual Terms*).
- (b) The responsibility for the provision or the procurement of the provision of Balancing Services shall remain with the Party specified in Section A of Part I (*Individual Terms*), and the other Party shall not:
 - (i) submit any regulating bids to constrain or increase the Metered Output to the Network Operator, or, where the Network Operator is not a transmission system operator, the Transmission System Operator, for the purpose of Balancing;

- (ii) provide, or agree to provide, any Ancillary Services, save to the extent such other Party is compelled to do so under Applicable Law and/or Relevant Codes and Rules; or
- (iii) constrain, or agree to constrain, the Metered Output of the Facility, save to the extent such other Party is compelled to do so under Applicable Law and/or Relevant Codes and Rules or to the extent necessary in order to avoid or remedy an Emergency.

§ 10.

Primary Obligations For Delivery and Acceptance of Certificates

1. Delivery and Acceptance of Certificates: The Seller shall Schedule, sell and Deliver, or cause to be Delivered, and the Buyer shall purchase and accept cause to be accepted, the Contract Quantity of Certificates, and the Buyer shall pay to the Seller the relevant Certificate Contract Price, whereby the Seller shall do so in accordance with the provisions of the EECS Rules and the Relevant Domain Protocol (in the case of EECS Certificates), and the Seller shall do so in accordance with the Issuance and Registry Rules (in the case of National Scheme Certificates).

2. Electronic Transfer of Certificates: Unless "Transfer by Cancellation Statement" is specified as applying in Section A of Part I (Individual Terms), no later than the last day of the relevant Delivery Period, the Seller shall Schedule the Delivery of the Contract Quantity of Certificates to the Buyer's Account with the relevant Authorised Issuing Body in accordance with the EECS Rules and the relevant Domain Protocol (in the case of EECS Certificates), or to the Buyer's Account on the Registry in accordance with the Issuance and Registry Rules (in the case of National Scheme Certificates) ("**Electronic Transfer**").

3. Transfer by Cancellation Statement: If the Parties so specify in Section A of Part I (Individual Terms) and provided that there is a Cancellation Agreement in place between the cancelling Domain and the Domain of Delivery specified in Section A of Part I (Individual Terms) (in the case of EECS Certificates) or provided that "Transfer by Cancellation Statement" is specified in Section A of Part I (Individual Terms) (in the case of National Scheme Certificates), the Seller shall Schedule the initiation of the cancellation of the relevant Contract Quantity of Certificates held in the EECS Registration Database specified in Section A of Part I (Individual Terms) (in the case of EECS Certificates) or in the local registry (in the case of National Scheme Certificates). The Seller shall, for the purposes of the Cancellation Statement to be issued by the applicable Registry Operator, specify the Buyer as the named recipient of the cancelled Certificates. By no later than the last day of the relevant Delivery Period, the Seller shall notify the Buyer in writing by sending a statement in an agreed format including information on the:

- (a) quantity of Certificates cancelled;
- (b) cancelling Domain (in the case of EECS Certificates);
- (c) recipient of the cancelled Certificates; and
- (d) cancellation purpose,

and the Seller shall provide a copy of the Cancellation Statement (such process being a "**Transfer by Cancellation Statement**"). If there is no Cancellation Agreement in place between the cancelling Domain and the Domain of Delivery as specified in Section A of Part I (Individual Terms) (in the case of EECS Certificates) or provided that "Transfer by Cancellation Statement" is not specified in Section A of Part I (Individual Terms) (in the case of National Scheme Certificates), the Parties shall Deliver Certificates in accordance with § 10.2 (*Electronic Transfer of Certificates*).

4. Ineffectiveness: If a Certificate is or becomes Ineffective or ceases to be valid, the following provisions shall apply:

- (a) where a Certificate is or becomes Ineffective or ceases to be valid as a result of any act or omission by the Buyer, the Buyer shall remain liable to pay for it; and
- (b) where a Certificate is or becomes Ineffective or ceases to be valid as a result of any act or omission by the Seller, the Seller shall be obliged to either:

- (i) replace such Certificate within twenty (20) Business Days. Where the Buyer has not yet paid for such Certificate, the Buyer shall not be obliged to pay for such Certificate until ten (10) Business Days following receipt by the Buyer of the replacement Certificate; or
- (ii) pay to the Buyer an amount equal the Buyer's direct, actual, reasonable and demonstrable loss caused by the Seller's failure to deliver the effective Certificate ("**Certificate Ineffectiveness Loss**"). Where the Buyer has already paid the Seller for such Certificate, the Seller shall be obliged to pay to the Buyer an amount equal to the Certificate Ineffectiveness Loss plus all amounts paid by the Buyer to the Seller in respect of such Ineffective Certificate.

§ 11.

Delivery, Risk and No Encumbrances of Certificates

1. No Encumbrances: Any Delivery of Certificates shall be free and clear of any liens, security interests, encumbrances or similar adverse claims by any person ("**Certificate No Encumbrances Obligation**"). Where a Party is in breach of the Certificate No Encumbrances Obligation, the following shall apply:

- (a) this Agreement shall continue unaffected;
- (b) without prejudice to any defences available to the Seller (including, but not limited to, any defences of statutes of limitation or similar), following written notice of that breach from the Buyer to the Seller (irrespective of how long after the relevant Certificates Delivery date such notice is provided):
 - (i) the Buyer shall determine the Encumbrance Loss arising from that breach ("**Certificate Encumbrance Loss Amount**") either on the date such notice is deemed to be received or as soon as reasonably practicable thereafter; and
 - (ii) shall notify the Seller of such Certificate Encumbrance Loss Amount due, including detailed support for its calculation and a valid invoice; and
- (c) by no later than the third (3rd) Business Day after the later of:
 - (i) receipt of a valid invoice in connection with each Certificate Encumbrance Loss Amount; and
 - (ii) receipt of the above-mentioned notice of detailed support of the Buyer's calculation of the Certificate Encumbrance Loss Amount,

the Seller shall pay the Certificate Encumbrance Loss Amount to the Buyer, which amount shall bear interest in accordance with § 22.4 (*Default Interest*). Upon payment of the Certificate Encumbrance Loss Amount by the Seller, no breach of the EECS No Encumbrance Obligation shall exist in relation to a specific event. The Buyer acknowledges that its exclusive remedies in respect of such breach are those set out in this § 11.1.

2. Documentation of Actual Deliveries and Receipts: Upon reasonable request of the Buyer, the Seller shall provide any documentation necessary to the Buyer as may be prescribed by any Applicable Law or as requested by any Competent Authority.

§ 12.

Remedies for Failure to Deliver and Accept Electricity

1. Application: This § 12 shall apply only if "Physical Settlement" is specified in Section B of Part I (*Individual Terms*).

2. Failure to Deliver Electricity: To the extent that the Seller fails to deliver a quantity of electricity in accordance with § 8 (*Primary Obligations For Delivery and Acceptance of Electricity*) during a Delivery Period, and

such failure is not excused by an event of Force Majeure or the Buyer's non-performance, the Seller shall pay the Buyer as compensation for damages an amount for such quantity of undelivered electricity equal to the product of:

- (a) the amount, if positive, by which the price, if any, at which the Buyer acting in a commercially reasonable manner is or would be able to purchase or otherwise acquire in the market the quantity of undelivered electricity exceeds the Electricity Contract Price; and
- (b) the quantity of undelivered electricity,

and such amount shall be increased by any Use of System Costs and other reasonable and verifiable costs and expenses incurred by the Buyer as a result of the Seller's failure.

3. Right to Refuse Certificates: If "*Physical Settlement*" is specified as applying in Section A of Part I (*Individual Terms*) and if this § 12.3 is specified as applying in Section B of Part I (*Individual Terms*), to the extent the Seller fails to deliver a quantity of electricity in accordance with § 8 (*Primary Obligations For Delivery and Acceptance of Electricity*) during a Delivery Period, the Buyer shall have the right, but not the obligation, to refuse the Delivery of Certificates issued in respect of electricity generated during that Delivery Period. Should the Buyer invoke its right to refuse the Delivery of Certificates under this § 12.3, the Buyer shall promptly return to the Seller any Certificates Delivered by the Seller which relate to the quantity of electricity which has not been delivered by the Seller.

4. Failure to Accept Electricity: To the extent that the Buyer fails to accept a quantity of electricity in accordance with § 8 (*Primary Obligations For Delivery and Acceptance of Electricity*) during a Delivery Period, the Buyer shall pay the Seller as compensation for damages an amount for such quantity of non-accepted electricity equal to the product of:

- (a) the amount, if positive, by which the Electricity Contract Price exceeds the price at which the Seller acting in a commercially reasonable manner is or would be able to sell or otherwise dispose of in the market the quantity of non-accepted electricity; and
- (b) the quantity of non-accepted electricity,

and such amount shall be increased by any Use of System Costs and other reasonable and verifiable costs and expenses incurred by the Seller as a result of the Buyer's failure.

5. Amounts Payable: Amounts that are due according to this § 12 shall be invoiced and paid in accordance with § 22 (*Invoicing and Payment*).

§ 13.

Remedies for Failure to Deliver and Accept Certificates

1. Failure to Deliver Certificates: To the extent that the Seller fails to deliver a quantity of Certificates in accordance with § 10 (*Primary Obligations for Delivery and Acceptance of Certificates*) during a Delivery Period, and such failure is not remedied by the Seller within three (3) Business Days of the last day of the relevant Delivery Period and is not excused by an event of Force Majeure or the Buyer's non-performance, subject to § 13.2 (*Replacement Certificates*), the Seller shall pay the Buyer as compensation for damages an amount for such quantity of Undelivered Certificates equal to the product of:

- (a) the amount, if positive, by which the price, if any, at which the Buyer acting in a commercially reasonable manner is or would be able to purchase or otherwise acquire in the market the quantity of Undelivered Certificates exceeds the Certificate Contract Price; and
- (b) the quantity of Undelivered Certificates,

and such amount shall be increased by the Buyer's costs of a broker, but no other costs and expenses incurred by the Buyer as a result of the Seller's failure.

2. Replacement Certificates: If this § 13.2 is specified as applying in Section B of Part I (*Individual Terms*), if the Facility was not issued with a sufficient amount of Certificates to Deliver the quantity of Certificates to the Buyer in accordance with § 10 (*Primary Obligations for Delivery and Acceptance of Certificates*) during a Delivery Period, the Seller shall deliver to the Buyer replacement Certificates generated by a facility having the same or similar commissioning date as the Facility.

3. Right to Refuse Electricity: If this § 13.3 is specified as applying in Section B of Part I (*Individual Terms*), to the extent the Seller fails to Deliver a quantity of Certificates in accordance with § 10 (*Primary Obligations for Delivery and Acceptance of Certificates*) during a Delivery Period, the Buyer shall have the right, but not the obligation, to refuse the delivery of electricity in a future Delivery Period nominated by the Buyer, subject to prior written notification by the Buyer to the Seller. Should the Buyer invoke its right to refuse the electricity under this § 13.3, the Buyer shall promptly return to the Seller any Certificates which may have been Delivered by the Seller which relate to the quantity of electricity in such future delivery period.

4. Failure to Accept Certificates: To the extent that the Buyer fails to accept a quantity of Certificates in accordance with § 10 (*Primary Obligations for Delivery and Acceptance of Certificates*) during a Delivery Period, and such failure is not remedied within three (3) Business Days and is not excused by an event of Force Majeure or the Seller's non-performance, the Buyer shall pay the Seller as compensation for damages an amount for such quantity of non-accepted Certificates equal to the product of:

- (a) the amount, if positive, by which the Certificate Contract Price exceeds the price at which the Seller, acting in a commercially reasonable manner, is or would be able to sell or otherwise dispose of in the market the quantity of non-accepted Certificates; and
- (b) the quantity of non-accepted Certificates,

and such amount shall be increased by the Seller's costs of a broker, but no other costs and expenses incurred by the Seller as a result of the Buyer's failure.

5. Amounts Payable: Amounts that are due according to this § 13 shall be invoiced and paid in accordance with § 22 (*Invoicing and Payment*).

§ 14.

Special Provisions Applicable to the Financial Settlement

1. Application: This § 14 shall apply only if "*Financial Settlement*" is specified in Section A of Part I (*Individual Terms*).

2. Obligations Regarding Electricity and Certificates: For the avoidance of doubt, the Parties are not obliged to Schedule, deliver and accept the Contract Quantity of electricity under this Agreement, however the Parties shall Schedule, deliver and accept the Contract Quantity of Certificates in accordance with § 10 (*Primary Obligations For Delivery and Acceptance of Certificates*) and § 11 (*Transfer, Risk and No Encumbrances of Certificates*).

3. Price Differential:

- (a) The Seller shall pay to the Buyer an amount equal to the difference (if positive) between the Electricity Reference Price - Financial and the Electricity Contract Price, which shall be calculated by the Party specified in Section B of Part I (*Individual Terms*) on the Price Differential Calculation Date for a Calculation Period and promptly notified thereafter to the other Party.
- (b) The Buyer shall pay to the Seller the amount equal to the difference (if negative), between the Electricity Reference Price - Financial and the Electricity Contract Price, which shall be calculated by the Party specified in Section B of Part I (*Individual Terms*) on the Price Differential Calculation Date for a Calculation Period and promptly notified thereafter to the other Party.
- (c) The amount(s), if any, payable by the Seller or the Buyer as the case may be, under this § 14.3 shall be referred to as the "**Price Differential**".

4. Deemed Delivery Volume: For the purposes of invoicing in accordance with § 22.1(b) (*Invoices*), where the quantity of electricity actually generated is lower than the Contract Quantity and the cause of such shortfall includes but is not limited to non-compliance of the Seller with § 4 (*Construction and Commissioning of Facility*), § 5 (*Forecasting and Outages*) § 6 (*Metering*) and § 7 (*Obligations Concerning the Facility*), the Deemed Delivery Volume shall be used instead of the quantity of electricity actually generated to calculate the financial settlement price.

§ 15.

Non-Performance Due to Force Majeure

1. Definition of Force Majeure: Unless otherwise specified in Section B of Part I (*Individual Terms*), "**Force Majeure**" means an occurrence beyond the reasonable control of the Party claiming Force Majeure ("**Claiming Party**") which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform its delivery or acceptance obligations, including, but without limitation, due to one or more of the following:

- (a) in case of electricity, the failure of communications or computer systems of the relevant Network Operator(s) or of a Party which prevents the Claiming Party from performing its obligations of delivery or acceptance;
- (b) in case of electricity, the relevant Network Operator's suspension of delivery or acceptance or its disregard of the Claiming Party's obligations with regard to Scheduling;
- (c) in case of EECS Certificates, the suspension, failure or malfunction of EECS Transfer System, Transfer Links, the AIB Communications Hub, or an individual EECS Registration Database which prevents the Electronic Transfer or acceptance of the Certificates;
- (d) in case of National Scheme Certificates, the suspension, failure or malfunction of the Registry; or
- (e) subject to § 15.1(h), in the case of both electricity and Certificates, any full or partial curtailment in the Output from the Facility, provided that such curtailment is made as a result of a mandatory order made under Applicable Law by a Competent Authority or an Entity authorised under Applicable Law to make such an order,

however Force Majeure shall exclude:

- (f) the unavailability of labour, equipment, materials, utilities or other resources (except where the unavailability is due to an event of Force Majeure);
- (g) economic or financial hardship or lack of funds or inability to satisfy the obligation to pay money when due or inability to obtain financing;
- (h) any full or partial curtailment in the output from the Facility that is caused or contributed to by:
 - (i) a failure to maintain the Facility and keep the Facility energised in accordance with the Applicable Law, Government Approval, Connection Agreement or requests of a Competent Authority;
 - (ii) a mechanical or equipment breakdown at the Facility (except where the breakdown is due to an event of Force Majeure);
 - (iii) a defect in any design, workmanship, equipment or other component of the Facility;
 - (iv) conditions attributable to normal wear and tear; or
 - (v) intermittency or non-availability of the resource supply to generate electricity from the Facility;

- (i) failure to apply for, obtain, maintain or renew any Government Approval necessary for the operation and maintenance of the Facility (with the exception of any national support scheme necessary for the operation of the Facility);
- (j) lack of materials required to develop, construct or maintain the Facility (except where the material lacking is due to an event of Force Majeure);
- (k) strike, slow down or labour disruptions that affects the employees of the Parties, their Affiliates, or either of their respective agents or contractors; and
- (l) changes in the conditions in the relevant wholesale electricity market or, if any, in the relevant Certificates market.

2. Release from Delivery and Acceptance Obligations: If a Party is fully or partly prevented due to Force Majeure from performing its obligations of delivery or acceptance and such Party complies with the requirements of § 15.5 (*Notification and Mitigation of Force Majeure*), no breach or default on the part of the Claiming Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure prevents its performance.

3. Right to Refuse Electricity: If "*Physical Settlement*" is specified as applying in Section A of Part I (*Individual Terms*) and if this § 15.3 is specified as applying in Section B of Part I (*Individual Terms*), to the extent a Party's obligation to deliver Certificates is released in accordance with § 15.2 (*Release from Delivery and Acceptance Obligations*), the Buyer shall have the right, but not the obligation, to refuse the delivery of electricity for such period of time the Seller's obligation is released, even if the Seller's ability to deliver electricity is unaffected by Force Majeure.

4. Right to Refuse Certificates: If this § 15.4 is specified as applying in Section B of Part I (*Individual Terms*), to the extent a Party's obligation to deliver electricity is released in accordance with § 15.2 (*Release from Delivery and Acceptance Obligations*), the Buyer shall have the right, but not the obligation, to refuse the Delivery of Certificates relating to such electricity for such period of time the Seller's obligation is released, even if the Seller's ability to deliver Certificates is unaffected by Force Majeure. Should the Buyer invoke its right to refuse Certificates under this § 15.4, the Buyer shall promptly return to the Seller any Delivered Certificates which relate to electricity generated during the period of time the Seller's obligation has been released.

5. Notification and Mitigation of Force Majeure: The Claiming Party shall as soon as practicable after learning of the Force Majeure notify the other Party of the commencement of the Force Majeure and, to the extent then available, provide to it a non-binding estimate of the extent and expected duration of its inability to perform. The Claiming Party shall use all commercially reasonable efforts to mitigate the effects of the Force Majeure and shall, during the continuation of the Force Majeure, provide the other Party with reasonable updates, when and if available, of the extent and expected duration of its inability to perform.

6. Effects of Force Majeure on Other Party: In the event, and to the extent, a Seller's delivery obligations are released by Force Majeure, the Buyer's corresponding acceptance and payment obligations shall also be released. In the event and to the extent a Buyer's acceptance obligations are released by Force Majeure, the Seller's corresponding delivery obligations shall also be released.

7. Long Term Force Majeure: If the Claiming Party is unable to deliver or accept delivery for reasons of Force Majeure and this inability lasts for more than ninety (90) consecutive calendar days or one hundred and eighty (180) calendar days in total in a calendar year, the other Party may, by notice in writing to the Claiming Party, and subject to the provisions of § 15.5 (*Notification and Mitigation of Force Majeure*), extend the period of release for such longer period and on so many occasions as may be specified by the other Party.

8. No obligation to pay damages: No obligation to pay damages pursuant to this Agreement will accrue to the Claiming Party with respect to those Contract Quantities of electricity and Certificates not delivered or accepted due to the occurrence of Force Majeure under this § 15.

§ 16.
Change in Law

1. **Change in Law:** In case of any Change in Law that:
- (a) renders it impossible or unlawful to give effect to this Agreement;
 - (b) renders any material matter required to be ascertained under this Agreement impossible to ascertain;
 - (c) causes the provisions of this Agreement to become inconsistent with Applicable Law (including where any word or expression defined in this Agreement is defined by reference to its meaning in any Applicable Law);
 - (d) introduces, replaces, modifies or extinguishes any scheme which confers benefits on holders of Certificates and/or alters the transfer arrangements in respect thereof which materially and adversely affects either Party in relation to this Agreement; or
 - (e) without prejudice to § 16.1(a) to § 16.1(d) (inclusive), materially and adversely affects the benefit of this Agreement to either or both of the Parties,

then either Party may serve a notice on the other Party requesting that the Parties meet to discuss such circumstances in good faith and seek to agree the amendments which should be made to this Agreement as are necessary to:

- (f) preserve the economic benefit of this Agreement as of the Signature Date, as specified in Section C of Part I (Individual Terms); and
 - (g) to the extent possible, permit the Parties to continue to perform their obligations under this Agreement in accordance with Applicable Law.
2. **Change in Law and Price Adjustments:** If this § 16.2 is specified as applying in Section B of Part I (Individual Terms), any amendments made to this Agreement in accordance with § 16.1 (*Change in Law*) shall not include any upward or downward adjustments to the Electricity Contract Price and/or the Certificate Contract Price.
3. **Change in Law and Ineffectiveness:** If an event may be determined as both an Ineffectiveness and a Change in Law, it shall only constitute a Change in Law.
4. **Expert Determination:** If the Parties are unable to agree pursuant to § 16.1 (*Change in Law*), then either Party may refer the issue for determination by an Expert to determine the amendments which should be made to this Agreement as are necessary to achieve the economic intent of this Agreement as of the Signature Date.
5. **Electricity Market Price Fluctuations:** For the avoidance of doubt, it is neither Party's intention that fluctuations in wholesale electricity market prices in themselves (as opposed to fluctuations caused by a Change in Law) should give rise to any amendments pursuant to this § 16.

6. **Parties Agreement Following Change in Law:** Where an agreement or determination under § 16.1 (*Change in Law*) or § 16.4 (*Expert Determination*) occurs after the Change in Law, such agreement or determination should take into account any reconciliation required in order to put the Parties in the position in which they would have been if such agreement or determination had occurred immediately prior to the relevant Change in Law.

7. **Further Undertakings Following Change in Law:** Without prejudice to the other provisions of this § 16, the Parties agree that:
- (a) neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law (and such circumstance shall constitute Force Majeure for the purposes of § 15 (*Force Majeure*));

- (b) subject to § 16.7(a), the occurrence of a Change in Law will not of itself constitute an event of Force Majeure, or otherwise entitle either Party to suspend or terminate its obligations under this Agreement; and
- (c) each of them shall use its reasonable endeavours to minimise and mitigate the consequences of a Change in Law on the performance of its obligations under this Agreement.

§ 17. **Suspension**

In addition to any other rights or remedies available to a Party ("**Non-Defaulting Party**"), should a Party default on any payment that is due under this Agreement, or should it or its Credit Support Provider fail to provide, replace or increase the amount of any Performance Assurance required pursuant to this Agreement or any Credit Support Document (in both cases, such Party being the "**Defaulting Party**"), the Non-Defaulting Party shall be entitled, no earlier than three (3) Business Days after sending a written notice to the Defaulting Party to immediately cease:

- (a) if "Physical Settlement" is specified as applying in Section A of Part I (Individual Terms), further deliveries of electricity; and/or
- (b) if "Physical Settlement" or "Financial Settlement" is specified as applying in Section A of Part I (Individual Terms), further Deliveries of Certificates (and be suspended from its underlying delivery or Delivery obligations),

under this Agreement until such time as the Non-Defaulting Party has received either the required collateral or full payment (including all applicable default interest and expenses) of all outstanding amounts owed to the Non-Defaulting Party.

§ 18. **Term and Termination Rights**

1. Term: This Agreement shall come into force as of the Effective Date. It may be terminated in accordance with § 18.2 (*Expiration Date*), § 18.3 (*Termination for Material Reason*), § 18.4 (*Automatic Termination*) or § 18.5 (*Definition of Material Reason*).

2. Expiration Date: This Agreement will terminate on the Expiration Date as specified in Section B of Part I (Individual Terms), unless extended by written agreement of the Parties ("**Ordinary Termination**"). This Agreement shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing under this Agreement prior to the date of the Ordinary Termination are fully performed by both Parties.

3. Termination for Material Reason:

- (a) Subject to the provisions of a Direct Agreement (if any), if a Material Reason (as defined in § 18.5 (*Definition of Material Reason*)) with respect to a Party has occurred and is continuing, the other Party (the "**Terminating Party**") may terminate this Agreement ("**Early Termination**") by giving the other Party notice. A notice of Early Termination may be given by telephone, provided that that notice is confirmed in writing within two (2) Business Days.
- (b) A notice of Early Termination shall specify the relevant Material Reason for the Early Termination and shall designate a day as an early termination date ("**Early Termination Date**"). The Early Termination Date may not be earlier than the day the notice is deemed to have been received under this Agreement nor later than twenty (20) days after such day. With effect from the Early Termination Date all further payments and performance in respect of this Agreement shall be released (and not merely suspended) and existing duties and obligations of the Parties shall be replaced by the obligation of one Party to pay to the other Party the Termination Amount in accordance with § 19.1 (*Calculation of the Termination Amount*). If specified as applying in Section B of Part I (Individual Terms), the Termination Amount shall not be payable as a result of an event of Force Majeure which occurs in accordance with § 18.5(d) (*Long Term Force Majeure*).

- (c) If notice designating an Early Termination Date is given, the Early Termination Date shall occur on the date so designated even if the applicable Material Reason is no longer continuing. On or as soon as reasonably practicable after the Early Termination Date, the Terminating Party shall calculate in a commercially reasonable manner and shall notify the other Party of the Termination Amount (if any) to be received or paid by it.
- (d) The Termination Amount shall be payable by the relevant Party to the other Party within ten (10) Business Days of its notification by the Terminating Party.
- (e) In calculating the Termination Amount, the Terminating Party may take into account any Performance Assurance or credit support available pursuant to this Agreement or any Credit Support Document.
- (f) The right to designate an Early Termination Date under this § 18.3 is in addition to any other remedies available under this Agreement or Applicable Law.

4. Automatic Termination: If this § 18.4 is specified as applying in Section B of Part I (*Individual Terms*) to a Party, and upon the occurrence of a Material Reason described in § 18.5(b) (*Winding-up/Insolvency Attachment*), the Terminating Party need not send that Party any notice of the designation of an Early Termination Date and the Early Termination Date in such event shall be as specified in Section B of Part I (*Individual Terms*). Except as provided in this § 18.4, Early Termination by virtue of operation of Automatic Termination shall be as provided in § 18.3 (*Termination for Material Reason*).

5. Definition of Material Reason: Subject to the provisions of a Direct Agreement (if any), this Agreement may be terminated at any time for one or more of the following reasons (each, a "**Material Reason**"):

- (a) **Non Performance:** The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Performance Assurance or to perform any other material obligation (other than when such obligation is released pursuant to § 15 (*Non-Performance Due to Force Majeure*)):
 - (i) under this Agreement; provided that in the case of a failure to pay, such failure is not cured within five (5) Business Days of a written demand, or, in the case of any other failure of performance, such failure is not cured within twenty (20) Business Days of a written demand;
 - (ii) under any Credit Support Document (after giving effect to any applicable notice or grace period thereunder); or
 - (iii) under any Performance Assurance in accordance with § 26 (*Performance Assurance*).
- (b) **Winding-up/Insolvency/Attachment:** A Party or its Credit Support Provider:
 - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
 - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - (iv) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, if specified as applying in Section B of Part I (*Individual Terms*), is not withdrawn, dismissed, discharged, stayed or restrained within such period specified;
 - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

- (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
- (viii) causes or is subject to any event with respect to it, which, under the Applicable Law of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or
- (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this § 18.5(b),

provided that, in the case of a Credit Support Provider, such Credit Support Provider has not been replaced within five (5) Business Days of the occurrence of the events listed in (i) to (ix) (inclusive).

- (c) **Failure to Deliver or Accept:** If specified as applying in Section B of Part I (*Individual Terms*), the failure of a Party to comply with its obligation to deliver or accept electricity (if "*Physical Settlement*" is specified as applying in Section A of Part I (*Individual Terms*)) or Certificates, and such failure is not cured within twenty (20) Business Days of a written demand, in both cases unless such obligation is released due to an event of Force Majeure.
- (d) **Long Term Force Majeure:** An event of Force Majeure affecting one or both Parties for more than twelve (12) consecutive months.
- (e) **Representation or Warranty:** A representation or warranty when made or repeated or deemed to have been made or repeated by a Party to this Agreement or by its Credit Support Provider in a Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated, and such failure is not cured within twenty (20) Business Days of a written demand.
- (f) **Other Material Reasons:** Any other additional Material Reasons as specified in Section B of Part I (*Individual Terms*).

The above Material Reasons shall constitute the exclusive reasons for Early Termination under this § 18.

§ 19.

Calculation of the Termination Amount

1. Termination Amount: The Terminating Party shall calculate the Termination Amount to be paid by the other Party in accordance with § 18.3 (*Termination for Material Reasons*) and § 18.4 (*Automatic Termination*) by in accordance with this § 19.

2. Mark-to-Market Termination Amount: If this § 19.2 is specified as applying in Section B of Part I (*Individual Terms*) to either the Seller or the Buyer, the following shall apply:

- (a) The "**Termination Amount**" shall be the Gains less the aggregate of the Losses and Costs which the Terminating Party incurs as a result of the termination of the Agreement. For the purpose of this provision:
 - (i) "**Costs**" means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangement pursuant to which it has hedged its obligation or entering into new arrangements which replace the terminated Agreement and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its termination of the Agreement;

- (ii) **"Gains"** means an amount equal to the present value of the economic benefit to the Terminating Party, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner; and
 - (iii) **"Losses"** means an amount equal to the present value of the economic loss to the Terminating Party, if any (exclusive of Costs), resulting from its termination of the Agreement, determined in a commercially reasonable manner.
- (b) In calculating the Termination Amount, the Terminating Party shall calculate its Gains and Losses as at the Early Termination Date, without being required to enter into any replacement transactions, or, if such date is not reasonably practicable, at the earliest date after the Early Termination Date.

3. Outstanding Debt Termination Amount: If this § 19.3 is specified as applying in Section B of Part I (Individual Terms) to the Seller only, the following shall apply:

- (a) The **"Termination Amount"** means an amount that the Seller reasonably determines in good faith, subject to § 20 (*Insurance*) and § 21 (*Limitation of Liability*), to be its total losses calculated as the sum of:
- (i) all applicable debt and interest repayments to the Senior Lenders together with all relevant costs and expenses; *plus*
 - (ii) an amount (never less than zero (0)) equal to the aggregate of:
 - (I) the depreciated equity amount contributed by each shareholder of the Seller until the termination date; and
 - (II) an amount equal to the rate of return per annum on the equity amount contributed by the shareholders of the Seller, compounded annually from the calculation date until the third (3rd) anniversary of the termination date,

taking into account any dividends (or other distributions) paid by Seller to the its shareholders between the Effective Date and the termination date; *plus*
 - (iii) termination costs, if any; *minus*
 - (iv) any insurance proceeds prior to the termination date by Seller and not spent on restoration of the generation units; *minus*
 - (v) the aggregate amount of cash held by or on behalf of Seller over which the Senior Lenders do have a first ranking priority charge as of the termination date, including cash on hand and the credit balance of any such deposit, money market, reserve or securities accounts.
- (b) Upon payment of the Termination Amount, the Seller shall transfer to the Buyer full ownership of and title to the Facility, and Seller shall to do everything to give full effect to the transfer so that the Buyer may fully operate the Facility, including but not limited to supporting the Buyer with the transfer of any licences or consents, and assigning all necessary agreements in favour of the Buyer.

4. Alternative Termination Amount: If this § 19.4 is specified as applying in Section B of Part I (Individual Terms) to either the Seller or the Buyer, the **"Termination Amount"** shall be calculated as specified in Section B of Part I (Individual Terms).

5. Termination Amount Payment: The Terminating Party:

- (a) shall notify the other Party of the Termination Amount including detailed support for the Termination Amount calculation;

- (b) shall not be required to enter into a replacement agreement in order to determine the Termination Amount; and
- (c) shall pay to the other Party the Termination Amount within the period of time after the Termination Date as specified in Section B of Part I (Individual Terms),

whereby § 22.5 (*Disputed Amounts*) shall apply to the payment of the Termination Amount.

§ 20. **Insurance**

1. Maintenance of Insurance: This § 20.1 shall apply unless otherwise specified in Section B of Part I (*Individual Terms*), the Seller shall, not later than the commencement of the Total Supply Period and for the duration of this Agreement, maintain in force (or procure that these are maintained in force) with a reputable insurer such insurance policies as would be considered appropriate and adequate in accordance with Good Industry Practice. This shall be done having regard to the Seller's obligations under this Agreement and such insurance cover shall be not less than the amount specified in Section B of Part I (Individual Terms). The Seller shall, upon reasonable notice, promptly produce to the Buyer evidence (by way of cover notes) of such insurance.

2. Notification of Damages: The Seller shall, where damage is caused to the Facility as a consequence of a matter required to be insured under § 20.1 (*Maintenance of Insurance*), as soon as reasonably practicable notify the Buyer of such damage and such remedial action as the Seller proposes to take.

§ 21. **Limitation of Liability**

1. Application: This § 21 shall apply unless otherwise specified in Section B of Part I (Individual Terms).

2. Exclusion of Liability: Subject to § 21.3 (*Consequential Damage and Limitation of Liability*) and § 21.4 (*Intentional Default, Fraud and Fundamental Rights*) and except in respect of any amounts payable under § 7.5 (*Reimbursement of External Costs*), § 12 (*Remedies for Failure to Deliver and Accept Electricity*), § 13 (*Remedies for Failure to Deliver and Accept Certificates*) or § 18.3 (*Termination for Material Reason*), a Party and its employees, officers, contractors and/or agents, are not liable to the other Party for any loss, cost, expense or damages ("**Damages**") (including, without limitation, any liability due to the irregularities in the supply of electricity or Certificates under this Agreement) incurred by the other Party under or in connection with this Agreement, except where such Damages are due to gross negligence, intentional default or fraud of a Party or its employees, officers, contractors and/or agents used by such Party in performing its obligations under this Agreement.

3. Consequential Damage and Limitation of Liability: Subject to § 21.4 (*Intentional Default, Fraud and Fundamental Rights*) and save in case of application of § 12.1 (*Failure to Deliver Electricity*), § 12.4 (*Failure to Accept Electricity*), § 13.1 (*Failure to Deliver Certificates*), § 13.3 (*Failure to Accept Certificates*) and § 19.1 (*Calculation of the Termination Amount*), the liability of a Party under or in connection with this Agreement:

- (a) does not include liability for any indirect and/or consequential Damages, including, without limitation, loss of profit, goodwill, business opportunity or anticipated saving; and
- (b) is limited to an amount equal to the maximum aggregate liability of a Party to the other arising from any tort (including negligence), breach of contract, breach of statutory duty or other liability under or in connection with this Agreement (including any liability to pay the Termination Amount), but always subject to § 21.4 (*Intentional Default, Fraud and Fundamental Rights*) shall not exceed the amount specified in Section B of Part I (Individual Terms), provided that such limitation shall not apply to payments under § 12 (*Remedies for Failure to Deliver and Accept Electricity*), § 13 (*Remedies for Failure to Deliver and Accept Certificates*) and § 19 (*Calculation of the Termination Amount*).

4. Intentional Default, Fraud and Fundamental Rights: Unless otherwise specified in Section B of Part I (*Individual Terms*), nothing in this Agreement operates to exclude or limit a Party's liability for:

- (a) intentional default;
- (b) fraud;
- (c) any action which endangers the fundamental legal rights of a Party or which violates a Party's fundamental contractual obligations; or
- (d) any other matter in respect of which liability cannot be lawfully excluded.

5. Duty to Mitigate Losses: For the avoidance of doubt, and subject to Applicable Law, each Party agrees that it has a duty to mitigate its Damages and covenants that it will use all reasonable endeavours efforts to minimise any Damages it may incur under or in connection with this Agreement.

6. Indemnity: If this § 21.6 is specified as applying in Section B of Part I (*Individual Terms*), the following shall apply:

- (a) **Indemnity:** Each Party shall indemnify and hold harmless the other Party and its Affiliates together with such Party and its Affiliates' officers, agents, employees and contractors (each an "**Indemnified Person**"), from and against all liability for:
 - (i) third party claims for death or personal injury of such third party;
 - (ii) third party claims for loss of or physical damage to property belonging to such third party; or
 - (iii) third party legal, equitable, arbitral or comparable actions, claims, demands, costs, charges and expenses and awards (including third party or relevant Buyer expenses on an indemnity basis),

arising from or in connection with the construction and/or operation of the Facility.
- (b) **Exclusion:**
 - (i) The Seller shall not be responsible for or obliged to indemnify the Buyer or any Indemnified Person against any claim for injury, loss, damage, cost and expense which arises as a direct result of the breach of statutory duty, tort (including negligence) or wilful misconduct of the Buyer or by the breach by the Buyer of its obligations under this Agreement.
 - (ii) The Buyer shall not be responsible for or obliged to indemnify the Seller or any Indemnified Person against any claim for injury, loss, damage, cost and expense which arises as a direct result of the breach of statutory duty, tort (including negligence) or wilful misconduct of the Seller or by the breach by the Seller of its obligations under this Agreement.
- (c) **Conduct of Claims:**
 - (i) As soon as reasonably practicable and in any event within twenty (20) Business Days after becoming aware of circumstances giving rise or likely to give rise to any a claim made in respect of an indemnified matter under this § 21.6 ("**Claim**"), the non-defaulting Party ("**Indemnity Claiming Party**") shall give written notice of that fact to the defaulting Party ("**Indemnity Defaulting Party**") together with such particulars as are reasonably required by the Indemnity Claiming Party to enable it to understand the grounds upon which the Claim is likely to be based.
 - (ii) Notwithstanding § 21.6(c)(iv) or § 21.6(c)(v) and provided that the Indemnity Defaulting Party accepts that any liability resulting from any action or proceeding will be indemnified under § 21.6(a) (*Indemnity*) above, on the giving of a notice by the Indemnity Claiming Party pursuant

to § 21.6(c)(i), the Indemnity Defaulting Party shall, subject to providing the Indemnity Claiming Party with an indemnity against all costs and expenses that it may incur by reason of such action or proceeding, be entitled to dispute the Claim in the name of the Indemnified Person at the Indemnity Defaulting Party's own expense and take conduct of any defence, dispute, compromise, or appeal of the Claim and of any incidental negotiations. The Indemnity Claiming Party shall give the Indemnity Defaulting Party all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim, subject to the Indemnity Defaulting Party paying the Indemnity Claiming Party's reasonable costs and expenses.

- (iii) With respect to any Claim conducted by the Indemnity Defaulting Party pursuant to § 21.6(c)(ii):
 - (I) the Indemnity Defaulting Party shall keep the Indemnity Claiming Party fully informed and consult with it about material elements (including the making of any payment or settlement) of the conduct of the Claim;
 - (II) the Indemnity Defaulting Party shall not bring the name of the Indemnity Claiming Party into disrepute by reason of:
 - (a) the Indemnity Defaulting Party's conduct of such Claim being below the standard that would have been pursued by a prudent defendant to such Claim advised by skilled and experienced counsel; or
 - (b) statements made by the Indemnity Defaulting Party regarding (other than to the extent that any such statements regarding the Buyer are established as a matter of fact), or on behalf of, the Indemnity Claiming Party; and
 - (III) the Indemnity Defaulting Party shall not admit any liability in respect of a Claim without the prior consent of the Indemnity Claiming Party.
- (iv) The Indemnity Claiming Party shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
 - (I) the Indemnity Defaulting Party is not entitled to take conduct of the Claim in accordance with § 21.6(c)(ii);
 - (II) the Indemnity Defaulting Party fails to notify the Indemnity Claiming Party of its intention to take conduct of the relevant Claim within twenty (20) Business Days of the notice from the Indemnity Claiming Party under § 21.6(c)(i) above or notifies the Indemnity Claiming Party that it does not intend to take conduct of the Claim; and
 - (III) the Indemnity Defaulting Party fails to comply with any provision of this § 21.6(c) which materially:
 - (a) increases the liability or exposure of the Indemnity Claiming Party to the relevant Claim; or
 - (b) prejudices the Indemnity Claiming Party's position in defending the relevant Claim.
- (v) The Indemnity Claiming Party shall be free at any time to give notice to the Indemnity Defaulting Party that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any Claim (or of any incidental negotiations) to which § 21.6(c)(ii) applies. On receipt of such notice the Indemnity Defaulting Party shall promptly take all steps necessary to transfer the conduct of such Claim to the Indemnity Claiming Party, and shall provide to the Indemnity Claiming Party all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

- (vi) If the Indemnity Claiming Party gives any notice pursuant to § 21.6(c)(v) above, then the Indemnity Defaulting Party shall be released from any liability under any indemnity under this Agreement in respect of such Claim, subject to:
 - (I) the Indemnity Defaulting Party paying the costs or expenses of the Indemnity Claiming Party, which were incurred by the Indemnity Claiming Party in connection with the Claim prior to the date on which the Indemnity Claiming Party gives any notice pursuant to § 21.6(c)(v); and
 - (II) the Indemnity Defaulting Party remaining liable for the finally agreed or determined amount of losses, costs, charges, expenses and other liabilities arising in relation to such Claim but excluding therefrom any agreed or determined amount to the extent that it has been materially increased by reason of the Indemnity Claiming Party's conduct of such Claim being below the standard that would have been pursued by a prudent defendant to such Claim advised by skilled and experienced counsel.
- (vii) If the Indemnity Defaulting Party pays to the Indemnity Claiming Party an amount in respect of an indemnity under this Agreement and the Indemnity Claiming Party separately recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim under the indemnity, the Indemnity Claiming Party shall as soon as reasonably practicable repay to the Indemnity Defaulting Party the lesser of:
 - (I) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any reasonable out-of-pocket costs and expenses properly incurred by the Indemnity Claiming Party in recovering the same; and
 - (II) the amount paid to the Indemnity Claiming Party by the Indemnity Defaulting Party in respect of the claim under the relevant indemnity.

§ 22.

Invoicing and Payment

1. **Invoices:** The Seller shall transmit to the Buyer:
 - (a) if "Physical Settlement" is specified as applying in Section A of Part I (Individual Terms), in the course of the calendar month following a Delivery Period, an invoice setting out the product of the Electricity Contract Price and the quantity of electricity actually delivered to the Buyer during such Delivery Period, and, to the extent that Certificates have been Delivered, the product of the Certificate Contract Price and the quantity of electricity actually delivered to the Buyer; or
 - (b) if "Financial Settlement" is specified as applying in Section A of Part I (Individual Terms):
 - (i) where the quantity of electricity actually generated exceeds the Contract Quantity, in the course of the calendar month following a Delivery Period, but not before the Price Differential Calculation Date, an invoice setting out the product of the Price Differential and the quantity of electricity actually generated during such Delivery Period, and, to the extent that Certificates have been Delivered, the product of the Certificate Contract Price and the quantity of electricity actually delivered to the Buyer; or
 - (ii) where the quantity of electricity actually generated is lower than the Contract Quantity and where the cause of such shortfall:
 - (I) is an event of Force Majeure or Change in Law, an invoice setting out the product of the Price Differential and the reduced quantity of electricity actually generated during such Delivery Period, and, to the extent that Certificates have been Delivered, the product of the Certificate Contract Price and the reduced quantity of electricity actually generated; or

- (II) includes but is not limited to non-compliance of the Seller with § 4 (*Construction and Commissioning of Facility*), § 5 (*Forecasting and Outages*) § 6 (*Metering*) and § 7 (*Obligations Concerning the Facility*), an invoice setting out the product of the Price Differential and the Deemed Delivery Volume, and, to the extent that Certificates have been Delivered, the product of the Certificate Contract Price and the Deemed Delivery Volume.

In connection with such invoices the Seller may state all amounts then owed between the Parties including, without limitation, all amounts owed for the purchase and sale of electricity (if any) or Certificates, fees, charges, reimbursements, damages, interest, and other payments or credits owed between the Parties.

2. Payment: On or before the later to occur of (a) the twentieth (20th) day of the calendar month or if not a Business Day the immediately following Business Day or (b) the fifth (5th) Business Day following receipt of an invoice (the "**Due Date**"), a Party owing an invoiced amount shall pay, by wire transfer in freely available funds, the amount set forth on such invoice to the payment address or bank account provided by the other Party as specified in Section B of Part I (*Individual Terms*). Such payment shall be made, unless otherwise agreed, in EURO, and subject to § 23 (*VAT and Taxes*) and the remitter shall pay its own bank charges.

3. Payment Netting: If this § 22.3 is specified as applying in Section B of Part I (*Individual Terms*), if on any day the Parties are each required to pay one or more amounts in the same currency (for which purpose all EURO currencies shall be considered a single currency) then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their respective payment obligations through netting, in which case the Party, if any, owing the greater aggregate amount shall pay the other Party the difference between the amounts owed.

4. Default Interest: Overdue payments shall accrue interest from and including the Due Date to but excluding the date of payment at the Interest Rate as specified in Section B of Part I (*Individual Terms*).

5. Disputed Amounts: 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 ten (10) days of such determination along with interest accrued at the Interest Rate from, and including, the date such amount was due, to the other Party, but excluding the date paid or credited:

- (a) if this § 22.5(a) is specified as applying in Section B of Part I (*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, along with interest accrued at the Interest Rate from, and including, the date such amount was paid, to the other Party, but excluding, the date returned or credited; or
- (b) if this § 22.5(b) is specified as applying in Section B of Part I (*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, along with interest accrued at the Interest Rate from, and including, the date such amount was due, to the other Party, but excluding, the date paid or credited.

§ 23.

VAT and Taxes

1. VAT: All amounts referred to in this Agreement are exclusive of VAT. The VAT treatment of the supply of electricity (if "*Physical Settlement*" is specified as applying in Section A of Part I (*Individual Terms*)) and Certificates shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. If VAT is payable on any such amounts, the Buyer shall pay to the Seller an amount equal to the VAT at the rate applicable from time to time; provided that such amount shall only be required to be paid once the Seller provides the Buyer with a valid VAT invoice (applicable in the jurisdiction of supply) in relation to that amount.

Where, in accordance with EU and/or national legislation, any supplies may be Zero-Rated and/or subject to the reverse charge in accordance with Articles 38, 39 or 195 of Council Directive 2006/112/EC, the following shall apply:

- (a) the Buyer and the Seller hereby covenant that they will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing to the other Party all such proper, true and accurate documentation or assistance as may reasonably be required by the relevant taxing authority) to ensure that such supply is Zero-Rated or subject to the reverse charge for the purposes of such legislation;
- (b) in the event that the Buyer or the Seller fails to comply with such obligation, the noncomplying Party shall indemnify the other Party in respect of any and all VAT, penalties and interest incurred by the other Party as a result of the non-complying Party's failure to comply with the above covenant; and
- (c) in the absence of the Party providing any documentation as referred to in (a) above, the other Party reserves the right to charge local VAT.

2. Other Taxes: All amounts referred to in this Agreement are exclusive of Other Taxes. In the case of Other Taxes, if the cost of an Other Tax is charged or passed on by the Party to the other Party, the other Party shall pay this amount of Other Tax to the first Party; provided that such amount of Other Tax is identified separately on the invoice issued by the first Party and confirmation is received by the other Party, where applicable, that such amount of Other Tax has been duly paid or accounted for to the relevant Tax authority, as appropriate.

3. Withholding Tax: If this § 23.3 is specified as applying in Section B of Part I (*Individual Terms*), the following shall apply between the Parties:

- (a) **Payments Free and Clear:** All payments under this Agreement shall be made without any withholding or deduction for or on account of any Tax unless such withholding or deduction is required by law. If a Party is so required to withhold or deduct Tax from a payment to be made by it, then that Party ("**Paying Party**") shall notify the other Party ("**Receiving Party**") immediately of such requirement and pay to the appropriate authorities all amounts withheld or deducted by it. If a receipt or other evidence can be issued evidencing the payment to the authorities, the Paying Party shall deliver such evidence (or a certified copy thereof) to the Receiving Party.
- (b) **Grossing-Up:** The Paying Party shall increase the amount of any payment which is required to be made subject to a withholding or deduction to the extent necessary to ensure that, after the making of the required withholding or deduction, the Receiving Party receives the same amount it would have received had no such withholding or deduction been made or required to be made, except that no increase shall be made in respect of any Tax:
 - (i) which is only imposed as a result of a connection between the Receiving Party and the jurisdiction of the authority imposing the Tax (including, without limitation, a connection arising from the Receiving Party having or having had a permanent establishment or other fixed place of business in that jurisdiction, or having been present or engaged in business in that jurisdiction) other than the mere execution or delivery of this Agreement or any Credit Support Document;
 - (ii) which could have been avoided if the Receiving Party had delivered to the Paying Party or to the appropriate authority as reasonably requested by the Paying Party, any declaration, certificate, or other documents specified in Section B of Part I (*Individual Terms*) in a form reasonably satisfactory to the Paying Party; or
 - (iii) which is only imposed as a result of any Tax representation made by the Receiving Party in Section B of Part I (*Individual Terms*) for the purposes of this § 23.3 failing or ceasing to be true and accurate provided that this § 23.3(b)(iii) shall not apply (and the Paying Party shall be obliged to increase the amount of any payment pursuant to this § 23.3(b)) if such representation has failed or ceased to be true and accurate by reason of:
 - (I) any change in, or in the application or interpretation, of any relevant law, enactment, directive, or published practice of any relevant Tax authority being a change occurring on or after the Effective Date; or

- (II) any action taken by a Tax authority, or brought in a court of competent jurisdiction, on or after the Effective Date.

§ 24.

Fallback Prices and Fallback Procedure for Market Disruption

1. Calculation of Indexed Contract Prices: In the event either the Electricity Contract Price or the Electricity Reference Price - Financial is based on an index, exchange or any other kind of variable reference price (such price being a "**Relevant Reference Price**"):

- (a) the Electricity Contract Price shall be determined on the Relevant Delivery Time at the Electricity Reference Price - Physical; and
- (b) the Electricity Reference Price - Financial shall be determined on the Relevant Delivery Time at the Electricity Reference Price - Financial.

The Buyer shall provide prompt notice of the Electricity Reference Price - Physical or the Electricity Reference Price - Financial as well as the amount to be paid on the Due Date. Payment shall be made pursuant to § 22 (*Invoicing and Payment*).

2. Market Disruption: If at any time, either Party reasonably believes that a Market Disruption Event has occurred, that Party shall promptly notify the other Party and the Parties shall promptly meet and endeavour to agree upon an appropriate amendment to or replacement of the applicable Reference Price necessary to ensure that the amended or replacement index reflects, as closely as possible, the methodology, basis of calculation and liquidity of such Reference Price in accordance with Section B of Part I (*Individual Terms*) (a "**Replacement Index**"). If at the expiry of three (3) months following the date of notice under this § 24.2, no agreement has been reached in relation to the necessary amendments to the Reference Price or the Replacement Index, either Party shall be entitled to refer the matter for Expert determination in accordance with § 31.3 (*Expert Determination*).

3. Replacement Index: Unless otherwise agreed by the Parties in Section B of Part I (*Individual Terms*), any Replacement Index must satisfy the following criteria:

- (a) in case of electricity, it must publish price information for the Bidding Area to which the Facility belongs and have due regard to the extent to which the physical location of the Facility and constraints on the delivery of electricity into the market thereby imposed may have on the price for the sale of electricity delivered in that Bidding Area;
- (b) in case of Certificates, if applicable, it must publish price information for the same generation type as the Facility, and if such information is not available, the same country as the Facility;
- (c) the underlying data used to compile or prepare such index:
 - (i) must be subject to reasonable procedures to ensure its accuracy and completeness;
 - (ii) must be retained by the administrator of such index for a minimum period of two (2) years following its publication such that it is capable of audit; and
 - (iii) consist only of verifiable transaction data and exclude data which is the product of subjective judgement;
- (d) the methodology used by the administrator to prepare such an index is appropriately documented;
- (e) it must reflect a sufficient volume of trades from a sufficient number and diverse range of market participants; and
- (f) it must be available to the Buyer on commercially reasonable terms.

§ 25.
Guarantees and Credit Support

1. **Application:** This § 25 shall apply only if specified as applying in Section B of Part I (*Individual Terms*).
2. **Provision and Maintenance of Credit Support:** To address each Party's risk relating to the creditworthiness of the other Party and to secure the prompt fulfilment of all obligations resulting from this Agreement, the Parties shall provide and maintain the Credit Support Document(s) from the Credit Support Provider(s) as specified in Section B of Part I (*Individual Terms*) throughout the Term for the benefit of the other Party.
3. **Replacement of Credit Support:** If a Credit Support Document for a Party expires during the Term, the Party which provided such Credit Support Document shall provide a replacement Credit Support Document which is to the satisfaction of the other Party before the expiry of such Credit Support Document. If the Credit Rating of a Party's Credit Support Provider is withdrawn or downgraded below the Credit Rating specified in Section B of Part I (*Individual Terms*), such Party shall provide the other Party within five (5) Business Days a Credit Support Document which is to the satisfaction of the other Party from another Credit Support Provider with such Credit Rating or a higher Credit Rating.

§ 26.
Performance Assurance

1. **Application:** This § 26 shall apply unless otherwise specified in Section B of Part I (*Individual Terms*).
2. **Right to Require Performance Assurance:** At any time and from time to time, when a Party (the "**Requesting Party**") believes in good faith that a Material Adverse Change has occurred in respect of the other Party, the Requesting Party shall be entitled to require, by written notice, that the other Party provide to it or increase in amount: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form and amount reasonably acceptable to the Requesting Party (each a "**Performance Assurance**"). Upon receipt of such written notice, the other Party shall within three (3) Business Days provide to the Requesting Party the Performance Assurance required.
3. **Material Adverse Change:** A Material Adverse Change shall have occurred if any one or more of following events has occurred and is continuing insofar as such event is specified as applying to a Party in Section B of Part I (*Individual Terms*):
 - (a) **Credit Rating:** If the Credit Rating of an Entity listed in § 26.3(a)(i) to § 26.3(a)(iii), each such Entity being a "**Relevant Entity**" of such Party, is withdrawn or downgraded below the rating set out for such Party in Section B of Part I (*Individual Terms*):
 - (i) the other Party (unless all of that other Party's financial obligations under this Agreement are fully guaranteed or assured under a Credit Support Document);
 - (ii) except where replaced in accordance with § 25.3 (*Replacement of Credit Support*), the other Party's Credit Support Provider (other than a bank); or
 - (iii) if specified as applying in Section B of Part I (*Individual Terms*), any Entity who is a party to a control and/or profit transfer agreement ("**Control and Profit Transfer Agreement**") with the other Party and such other Party is in relation to such Entity, its subsidiary over which such Entity has control ("**Controlling Party**");
 - (b) **Credit Rating of a Credit Support Provider that is a Bank:** Except where replaced in accordance with § 25.3 (*Replacement of Credit Support*), if the Credit Rating of a bank serving as the other Party's Credit Support Provider is withdrawn or downgraded below the Credit Rating specified in Section B of Part I (*Individual Terms*);
 - (c) **Financial Covenants:** Insofar as a Relevant Entity does not have a Credit Rating, if such Relevant Entity does not fulfil any of the following financial requirements as determined by reference to its most recent financial statement:

- (i) **EBIT to Interest:** The ratio of EBIT to the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions) for such Relevant Entity in any fiscal year is greater than the ratio specified in Section B of Part I (*Individual Terms*);
- (ii) **Funds from Operations:** The ratio of Funds from Operations to Total Debt for such Relevant Entity in any fiscal year is greater than the ratio specified in Section B of Part I (*Individual Terms*);
or
- (iii) **Total Debt to Total Capitalisation:** The ratio of Total Debt to Total Capitalisation for such Relevant Entity in any fiscal year is less than the ratio specified in Section B of Part I (*Individual Terms*);
- (d) **Decline in Tangible Net Worth:** If the Tangible Net Worth of a Relevant Entity falls below the amount specified in Section B of Part I (*Individual Terms*);
- (e) **Expiry of Performance Assurance or Credit Support Document:** Subject to § 25.3 (*Replacement of Credit Support*), if any Performance Assurance or any Credit Support Document expires or terminates with respect to any outstanding obligations of the other Party under this Agreement, or, if a Performance Assurance or Credit Support Document is due to expire or terminate within the period of time, if any, specified in Section B of Part I (*Individual Terms*) or the failing or ceasing of such Credit Support Document to be in full force or effect for the purpose of this Agreement (in each case other than in accordance with the its terms or the terms of this Agreement) before the satisfaction of all outstanding obligations of such other Party under this Agreement to which such Credit Support Document relates, without the written consent of the Requesting Party;
- (f) **Failure of Performance Assurance or Credit Support Document:** Subject to § 25.3 (*Replacement of Credit Support*), if any Credit Support Provider or Performance Assurance provider of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Credit Support Document or Performance Assurance provided by it or otherwise fails to comply with or perform its obligations under or in respect of such Credit Support Document or Performance Assurance and such failure is continuing after any applicable grace or cure period;
- (g) **Failure of Control and Profit Transfer Agreement:** If any Controlling Party of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Control and Profit Transfer Agreement entered into by it or otherwise fails to comply with or perform its obligations under such Control and Profit Transfer Agreement;
- (h) **Impaired Ability to Perform:** If in the reasonable and good faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under this Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired; or
- (i) **Amalgamation/Merger:** If the other Party or its Credit Support Provider undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, another Entity, or another Entity transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, such other Party or its Credit Support Provider and:
 - (i) the creditworthiness of such Party, its Credit Support Provider or the resulting, surviving, transferee or successor Entity is materially weaker than that of the other Party or such Credit Support Provider, as the case may be, immediately prior to such action;
 - (ii) the resulting, surviving, transferee or successor Entity fails to assume all the obligations of that other Party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by either operation of law or pursuant to an agreement reasonably satisfactory to the Requesting Party; or

- (iii) the benefits of any Credit Support Document cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting, surviving, transferee or successor Entity of its obligations under this Agreement.

§ 27.

Provision of Financial Statements and Tangible Net Worth

1. **Provision of Financial Statements:** Unless otherwise specified in Section B of Part I (Individual Terms), if requested by a party, the other Party shall deliver
 - (a) within one hundred and twenty (120) days following the end of each fiscal year, a copy of such other Party's, or for such period the other Party's obligation are supported by a Credit Support Provider or if it is a party to a Control and Profit Transfer Agreement, its Credit Support Provider's or its Controlling Party's, as the case may be, annual report containing audited consolidated financial statements for such fiscal year; and
 - (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements.
2. **Decline in Tangible Net Worth:** If this § 27.2 is specified as applying in Section B of Part I (Individual Terms), as soon as it becomes aware of such decline, each Party shall promptly notify the other Party of the occurrence of a decline in its Tangible Net Worth or the Tangible Net Worth of its Credit Support Provider or Controlling Party, to a level below the amount specified in Section B of Part I (Individual Terms).
3. **Accounting Principles:** In all cases the financial statements referred to in this § 27 shall be prepared in accordance with generally accepted accounting principles in the relevant jurisdiction.

§ 28.

Assignment

1. **Prohibition:** Neither Party shall be entitled to assign its rights and obligations under this Agreement to a third party without the prior written consent of the other Party. Such consent shall not be unreasonably delayed, refused or withheld.
2. **Assignment to Affiliates:** If this § 28.2 is specified as applying in Section B of Part I (Individual Terms), each Party shall be entitled to assign its rights and obligations under this Agreement without the prior written consent of the other Party to an Affiliate of an equivalent or greater creditworthiness, provided that such Affiliate is incorporated in the same jurisdiction as the assigning and transferring Party. Such assignment shall only become effective upon notice being received by the other Party and provided that any Credit Support Document issued or agreed on behalf of the assigning Party has first been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.

§ 29.

Confidentiality

1. **Confidentiality Obligation:** Unless this § 29 is specified as not applying in Section B of Part I (Individual Terms), and subject to § 29.2 (*Exclusions from Confidential Information*), neither Party shall disclose the terms of this Agreement ("**Confidential Information**") to a third party.
2. **Exclusions from Confidential Information:** Confidential Information shall not include information which:
 - (a) is disclosed with the other Party's prior written consent;
 - (b) is disclosed by a Party to the Network Operator (or, as applicable, to the relevant issuing body), its directors, employees, Affiliates, agents, professional advisers, bank or other financing institution, rating agency or intended assignee;

- (c) is disclosed to comply with any applicable law, regulation, or rule of any exchange, system operator or regulatory body, or in connection with any court or regulatory proceeding, provided that each Party shall, to the extent practicable and permissible under such law, regulation, or rule, use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;
- (d) is in or lawfully comes into the public domain other than by a breach of this § 29; or
- (e) is disclosed to price reporting agencies or for the calculation of an index provided that such disclosure shall not include the identity of the other Party.

3. Expiration: A Party's obligation in respect of this Agreement under this § 29 shall expire one (1) year after being terminated in accordance with § 18.1 (*Term*).

4. Marketing: The Parties may jointly agree to incorporate into their respective marketing and publicity materials any reference to, or make any public announcement or press release about, the existence of this Agreement, details of the Facility, details of the Contract Quantity or the role of it and/or the other Party. Where required by an Applicable Law to make any of the above declarations, the obliged Party may make such declarations unilaterally subject to informing the other Party in writing.

§ 30.

Representations and Warranties

1. General Representations and Warranties: Unless otherwise specified in Section B of Part I (*Individual Terms*), each Party hereby represents and warrants to the other Party upon entering into this Agreement and throughout the Term as follows:

- (a) it is an Entity duly organised, validly existing and in good standing under the laws of its jurisdiction of incorporation or organisation;
- (b) the signing and the entering by it into of this Agreement, and any Credit Support Document to which it is a party, shall not violate any provision of its constitutional documents;
- (c) it has the power and is authorised to execute, deliver and perform its obligations under this Agreement and any Credit Support Document to which it is a party and has taken all necessary action to authorise that execution, delivery, performance and its entry into this Agreement and its execution, delivery and the performance of this Agreement and any Credit Support Document do not violate or conflict with any other term or condition of any contract to which it is a party or any constitutional document, rule, law or regulation applicable to it;
- (d) no Material Reason for termination as outlined in § 18.5 (*Definition of Material Reason*), with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (e) it has all Governmental Approvals necessary for it to legally perform its obligations under this Agreement and any Credit Support Document to which it is party;
- (f) it has negotiated, entered into and executed this Agreement and any Credit Support Document to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (g) it regularly enters into agreements for the trading of electricity and Certificates as contemplated by this Agreement, and does so on a professional basis in connection with its principal line of business, and may be reasonably characterised as a professional market party;
- (h) it is acting for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgement, is not relying upon the advice

or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement;

- (i) the other Party is not acting as its fiduciary or adviser;
- (j) it is not relying upon any representation made by the other Party other than those expressly set forth in this Agreement or any Credit Support Document to which it is a party;
- (k) with respect to a Party that is a governmental Entity or public power system, such governmental Entity or public power system represents and warrants to the other Party as follows:
 - (i) all acts necessary for the valid execution, delivery and performance of this Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures have or shall be taken and performed;
 - (ii) entry into and performance of this Agreement by a governmental Entity or public power system are for a proper public purpose within the meaning of relevant constitutional or other governing documents and applicable law; and
 - (iii) the Term of this Agreement does not extend beyond any applicable limitation imposed by any relevant constitutional or other governing documents and applicable law; and
- (l) with respect to a Party, it is not insolvent, and there are no pending or threatened legal or administrative proceedings to which it is a party which to the best of its knowledge would materially adversely affect its ability to perform its obligations under this Agreement or any Credit Support Document to which it is party, such that it could become insolvent.

2. Specific Representations and Warranties: Unless otherwise specified in Section B of Part I (*Individual Terms*), each Party undertakes that throughout the Term it will:

- (a) have, maintain and comply with the requirements of all authorisations and consents that Party is responsible for procuring and maintaining;
- (b) comply with all Applicable Law, and not by its acts or omissions knowingly or recklessly cause the other Party to breach any Applicable Law or this Agreement;
- (c) provide the other Party with all documents, data, certificates or other information relating to the subject matter of this Agreement as the other Party may reasonably request (including any of the same that the other Party may have been requested to provide to a Competent Authority), and shall provide any Competent Authority with all documents, data, certificates or other information relating to the subject matter of this Agreement which such Competent Authority may request from time to time;
- (d) any other specific additional representations and warranties as specified in Section B of Part I (*Individual Terms*).

3. Additional Representations and Warranties of the Seller: The Seller undertakes that throughout the Term:

- (a) on each date that Certificates are Delivered, the Seller is entitled to dispose of the Certificates;
- (b) the Certificates are capable of being Delivered in accordance with § 10.2 (*Electronic Transfer of Certificates*);
- (c) on each date that Certificates are Delivered, the Certificates fulfil and correspond to the specifications agreed by the Parties as applicable and set out in this Agreement;

- (d) after the last day of the relevant Delivery Period and successful discharge of its Delivery obligation, the Seller shall not request a Cancellation Statement in respect of the cancelled Certificates where Transfer by Cancellation Statement has been specified, to any other person or to any third party;
 - (e) it has not entered into, and will not enter into without the Buyer's prior written consent (not to be unreasonably withheld, delayed or made subject to conditions) any agreement or arrangement for the granting of naming rights, branding, advertising or any other marketing or public relations activities in respect of the Facility or the Metered Output with any person. It shall be reasonable for the Buyer to withhold its consent to such an agreement or arrangement where the Buyer determines, acting reasonably and in good faith that the person concerned or any of its Affiliates or officers has committed an offence or is engaged in any other activity damaging to the reputation of the Buyer and/or the subject nature of this Agreement;
 - (f) it will comply with the Seller Conditions with the exception of § 3.1(a)(v) (*Seller's Conditions Precedent*); and
 - (g) if "Physical Settlement" is specified as applying in Section A of Part I (*Individual Terms*), throughout the Total Supply Period, if the quantity of electricity generated by the Facility is insufficient to meet the Contract Quantity of electricity, it will procure the remainder of such electricity from the Licensed Supplier and cause this to be delivered to the Buyer during the relevant Delivery Period(s).
4. **Additional Representations and Warranties of the Buyer:** The Buyer undertakes that it will comply with the Buyer Conditions throughout the Term with the exception of § 3.2(a)(iii) (*Buyer's Conditions Precedent*).

§ 31. **Governing Law and Dispute Resolution**

1. **Governing Law:** This Agreement shall be construed in accordance with and governed by the law specified in Section B of Part I (*Individual Terms*).
2. **Dispute Resolution:** Notwithstanding § 31.3 (*Expert Determination*), any disputes (whether such disputes are contractual or non-contractual in nature such as claims in tort, for breach of statute or regulation or otherwise) which arise under or in respect of this Agreement, including any question regarding its existence, validity or termination, shall be subject to determination as specified in Section B of Part I (*Individual Terms*).
3. **Expert Determination:**
- (a) **General:**
 - (i) Whenever any matter is to be referred to Expert determination in accordance with this Agreement or the Parties otherwise agree in writing that a dispute in connection with this Agreement will be determined by an Expert, such matter or dispute shall be submitted to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce ("**ICC Expertise Rules**"), which, save as modified by this § 31.3, shall apply to the selection and appointment of any Expert and the administration of any expertise proceedings.
 - (ii) Any valid reference by a Party to an Expert for determination in accordance with this § 31.3 may only be withdrawn by the written agreement of the Parties.
 - (b) **Commencement:** The procedure for commencing Expert determination is as follows:
 - (i) The Party wishing to appoint an Expert in accordance with a right granted by this Agreement ("**Applicant**") shall give notice to the other Party ("**Expert Notice**") along with full details of the matter for which it is seeking Expert determination.
 - (ii) Within ten (10) Business Days of delivery of an Expert Notice, each Party shall nominate one (1) Expert meeting the criteria set out in § 31.3(b)(iii) below, following which the two (2) nominated

Experts shall meet to discuss the selection of a third (3rd) Expert, with a view to reaching agreement on such selection within thirty (30) calendar days following delivery of the Expert Notice.

- (iii) The criteria for selection of each Expert are that he or she is:
 - (I) available and willing to act upon the terms of this § 31.3 within twenty (20) Business Days of appointment;
 - (II) an independent natural person possessing expert knowledge applicable to the matters to be resolved by an Expert as set out in the Expert Notice;
 - (III) sufficiently fluent in English to conduct the Expert determination and deliver the decision in the English language; and
 - (IV) independent of the Parties and has no conflict of interest in acting as an Expert.
- (iv) Following agreement on the selection of the Experts or if the Parties do not agree on the selection of any Expert pursuant to § 31.3(c)(i) (*Appointment of an Expert*), the Parties may apply in writing to the ICC to select and appoint one or more Experts (as may be applicable) to resolve the matter or dispute ("**Application**"), enclosing a copy of this Agreement, a statement describing the nature and circumstances of the matter or dispute and, if the Parties do not agree on the selection of an Expert pursuant to § 31.3(c)(i) (*Appointment of an Expert*), any matters that the Applicant wishes to bring to the attention of the ICC for the purpose of selecting the Expert (including the required criteria for selecting an Expert as set out in § 31.3(c)(i) (*Appointment of an Expert*)). The Application shall be simultaneously copied to the other Party.
- (v) Within thirty (30) calendar days of service of the Application, the other Party to this Agreement shall send to the ICC, with simultaneous copy sent to the Applicant, a reply to any matters raised by the Applicant in the Application ("**Reply**").

(c) **Appointment of an Expert:**

- (i) The Parties shall use reasonable endeavours to procure that the ICC appoints the Experts within ten (10) Business Days of service of the Reply or as soon as reasonably practicable thereafter.
 - (ii) Without prejudice to a Party's entitlement to challenge the appointment of an Expert pursuant to § 31.3(b)(iii) and except where selected by the Parties, the decision of the ICC as to the identity of any Expert shall be final.
 - (iii) Prior to their appointment, each Expert shall provide the Parties and the ICC with a written resume of his or her past and present professional positions, shall agree in writing a fee rate conforming to the ICC Expertise Rules and shall sign a declaration to the effect that there are no circumstances known to him or her likely to give rise to justifiable doubts as to his or her independence and impartiality. The Experts shall each assume a continuing duty to disclose any such circumstances to the ICC and to the Parties, if such circumstances should arise after the date of such declaration and before the Expert determination is concluded.
 - (iv) An Expert shall act as an expert to determine a point of fact and not as an arbitrator.
- (d) **Further written submissions:** The filing of written submissions in addition to the Application and the Reply shall be upon the application of a Party and at the discretion of the Experts.
- (e) **Hearing:** Unless otherwise agreed by the Parties, the Experts shall fix a date, time and venue for a hearing which, unless such time limit is extended in accordance with § 31.3(h) (*Challenges*), shall be no later than sixty (60) calendar days after the latest date on which any written submission may be served pursuant to § 31.3(b)(iv) (*Commencement*) or no later than sixty (60) calendar days of the appointment

of the Experts if no further written submissions are to be filed. Otherwise, the Experts may adopt such procedures and may conduct their determination in such manner as they consider appropriate.

(f) **The Decision:**

- (i) Where the Experts fail to agree on any issue, the Experts shall decide that issue by a majority.
- (ii) The Experts shall endeavour to issue their decision in writing ("**Decision**") with written reasons for the Decision to the Parties within thirty (30) calendar days of the hearing, or as soon as reasonably practicable thereafter.
- (iii) The Decision shall (unless fraud or manifest error is shown) be final and binding on the Parties.
- (iv) All matters under this § 31.3 must be conducted, and the Decision and the written reasons for the Decision shall be written, in the English language.

(g) **Communications and Time Limits:**

- (i) All communications between the Parties concerning the Expert determination shall be:
 - (I) copied to the ICC and, once appointed, to each of the Experts; and
 - (II) be by fax or email, with a hard copy following by post.
- (ii) The time limits set out in this § 31.3 may be extended only by written agreement by the Parties or by the Experts.

- (h) **Challenges:** The Experts may be challenged by either Party if circumstances exist that give rise to justifiable doubts as to any of their impartiality or independence. In such circumstances the challenge shall be brought by written notice to the ICC copied to the other Party within fourteen (14) calendar days of the appointment of the relevant Expert or within fourteen (14) calendar days of the challenging Party becoming aware of the circumstances giving rise to the challenge. Unless the challenged Expert withdraws, or whichever of the Parties that has not brought the challenge agrees to the challenge, within fourteen (14) calendar days of the challenge, the ICC shall decide the challenge and, if appropriate, shall appoint a replacement Expert in accordance with the criteria set out herein.

(i) **Costs:**

- (i) The costs of the Expert determination shall be in accordance with the ICC Expertise Rules and shall be borne in such proportions as the Expert shall determine, in his or her absolute discretion.
- (ii) The Parties shall bear their own legal and other costs incurred in connection with the Expert determination.

§ 32.
Miscellaneous

- 1. Recording Telephone Conversations:** Each Party is entitled to record telephone conversations held in connection with this Agreement and to use the same as evidence. Each Party waives any further notice of such recording and acknowledges that it has obtained all necessary consents of its officers and employees to such recording.
- 2. Notices and Communications:** All notices or invoices sent by one Party to the other shall be in writing and shall be delivered by letter, E-mail or facsimile to the address, E-mail address and facsimile number specified in Section B of Part I (Individual Terms), which shall be updated by the Parties from time to time. If no such address is provided by a Party, such Party's address shall be deemed to be that of its registered office. Written notices and invoices shall be deemed to be received and effective:

 - (a) if delivered by hand or courier on the Business Day delivered or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
 - (b) if sent by first class post, on the second Business Day after the date of posting, or if sent from one country to another, on the fifth (5th) Business Day after the date of posting;
 - (c) if sent by E-mail, on the day of transmission, provided such occurred before 17:00 hours (recipient's time) on a Business Day or otherwise at 09:00 hours (recipient's time) on the first Business Day after transmission; and
 - (d) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission is transmitted before 17:00 hours (recipient's time) on a Business Day or otherwise at 09:00 hours (recipient's time) on the first Business Day after transmission.
- 3. Amendments:** Except as otherwise expressly provided herein to the contrary, any amendments or additions to this Agreement shall be made only in writing signed by both Parties.
- 4. Partial Invalidity:** If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this Agreement, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.
- 5. Entire Agreement:** This Agreement contains the whole agreement between the Parties in respect of its subject matter and the Parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated into this Agreement.
- 6. Third Party Rights:** The Parties do not intend that any third party shall have any rights under or be able to enforce this Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.