

DSRN:FIT-PV-TS-IW-NLB-PF

[Final DRAFT]

Renewable Energy Power Purchase Agreement (Solar) (Benban Site)

Egyptian Electricity Transmission Company, S.A.E

[insert name of Seller]

FINAL DRAFT

This final draft is subject to a local law review, translation into Arabic and approval by State Council. The EETC reserves all of its rights, including the right to add to, delete or change this draft as a consequence of any of these things.

Developers should note that the State Council may require further changes to the Principal Project Agreements (including this Agreement) and, if it does, the Egyptian Electricity Transmission Company, S.A.E. will be obliged to reflect those changes in the Principal Project Agreements. All Developers wishing to develop a PV solar facility at Benban will be obliged to sign the Principal Project Agreements as amended to incorporate the changes required by the State Council.

This draft Agreement is to be used for documenting renewable energy projects participating in the first round of the Renewable Energy FiT Program which meet the criteria set out in the light blue box below. However, this draft Agreement will, subject to amendments necessary to reflect the differences in generation type and other project specific information, form the basis of the relevant 'Principal Project Agreement' used to document other renewable projects participating in the Renewable Energy FiT Program – for example, wind projects.

Document Reference Suite - DSRN:FIT-PV-TS-IW-NLB-PF

This Agreement is suitable for documenting renewable energy projects participating in the first round of the Renewable Energy FiT Scheme which meet the following criteria:

- **the 'Facility' is a PV solar facility of between 20MW and 50MW;**
- **the 'Facility' will connect to the 'Infrastructure Works' constructed by the Network Operator and NREA at Benban under the Cost Sharing Agreement;**
- **the 'Facility' will be constructed in the Benban area on land provided by NREA; and**
- **the 'Facility' will be project financed (as opposed to balance sheet funded).**

This Agreement MUST be used with each other 'Principal Project Agreement' prepared for renewable energy projects satisfying the above criteria, being each Principal Project Agreement with:

- **light blue 'Assembly Instructions' boxes; and**
- **the document suite reference number 'DSRN:FiT-PV-TS-IW-NLB-PF'.**

DO NOT use this Agreement with any Principal Project Agreement with a different 'DSRN'.

ASSEMBLY INSTRUCTIONS:

ALL CLAUSES WHICH CONTAIN A DIRECTION IN BOLD AND SQUARE BRACKETS (AND HIGHLIGHTED IN YELLOW) TO INSERT INFORMATION (FOR EXAMPLE, **[INSERT DATE]) MUST BE COMPLETED BY THE EETC BY INSERTING THE APPROPRIATE INFORMATION.**

ALL LIGHT BLUE BOXES MUST BE DELETED. DO NOT SEND A DRAFT TO THE SELLER UNTIL ALL INFORMATION HAS BEEN INSERTED AND ALL LIGHT BLUE BOXES DELETED.

THE EETC MUST ENSURE THAT ALL REQUIRED INFORMATION HAS BEEN INSERTED INTO THE SCHEDULES AND ATTACHMENTS.

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Renewable Energy Power Purchase Agreement

Date ▶

Between the parties

Buyer

Egyptian Electricity Transmission Company, S.A.E

a joint stock company wholly owned by the Arab Republic of Egypt, independent from any other electricity company or utility and registered under the Laws of the Arab Republic of Egypt, having its principal office at Emtedad Ramsis Street, Ministry of Electricity Building, Abbasia, Cairo, Arab Republic of Egypt

(Buyer)

Seller

[insert name of Seller] with the Commercial Registry of [insert] under No.([insert company registration number])on [insert date]

an Egyptian joint stock company incorporated, organized and registered under the Laws of the Arab Republic of Egypt, having its principal office at [insert address]

(Seller)

Background

1. The Seller is the developer of the Project.
2. The Buyer is authorised by Law to purchase and sell electricity to customers in the Arab Republic of Egypt.
3. The Seller has agreed to sell, and the Buyer has agreed to buy, all Electricity generated by the Facility at the FiT Rate on the terms and conditions set out in this Agreement.

The Parties agree as follows:

1 Definitions and Interpretation

1.1 Definitions

The meanings of the terms used in this Agreement are set out below.

Term	Meaning
Abandon	<p>1 in respect of the period from the Conditions Satisfaction Date until the Commercial Operation Date, where the Seller fails to:</p> <p>(a) commence continuous construction activity at the Site within 90 Days of the date set out in the Implementation Schedule except by reason of a delay or default by a Principal Party under a Principal Project Agreement during any period that the relevant Principal Party remains under the Control of the Arab Republic of Egypt that causes that failure, or by reason of a Force Majeure Event;</p> <p>(b) undertake construction activity for a period in excess of 30 consecutive Days except by reason of a delay or default by a Principal Party under a Principal Project Agreement during any period that the relevant Principal Party remains under the Control of the Arab Republic of Egypt that causes that failure, or by reason of a Force Majeure Event; or</p> <p>(c) resume work within 30 Days after a "Default" (however that term is defined in the relevant Principal Project Agreement) by a Principal Party under a Principal Project Agreement during any period that the relevant Principal Party remains under the Control of the Arab Republic of Egypt has been remedied, or following termination or cessation of a Force Majeure Event; and</p> <p>2 in respect of the Supply Term, the Seller fails to operate the Facility for 10 consecutive Days, or any longer period of time, except by reason of a breach by a Principal Party under a Principal Project Agreement during any period that the relevant Principal Party remains under the Control of the Arab Republic of Egypt that causes that failure, or by reason of a Force Majeure Event, and except when otherwise relieved of the obligation to do so by the express provisions of this Agreement.</p>
Actual Delivered Output	the quantity of Electricity delivered to the Delivery Point from the Facility as measured by the Site Meter or otherwise calculated or determined by the Operating Committee or the Network Operator pursuant to the procedures under the Network Connection Contract.
Affected Party	is defined in clause 21.1.

Term	Meaning
Affiliate	with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, Controls or is Controlled by or is under common Control with that person.
Agreement	this agreement, including any schedule, annexure, attachment or exhibit to this agreement.
Agreement Term	the term of this Agreement commencing on the Signing Date and ending on the last Day of the Supply Term.
Anticipated Date for Provisional Completion	<ol style="list-style-type: none"> 1 in respect of the Network Operator's Assets, the anticipated date of Provisional Completion of the Network Operator's Assets set out in Schedule 1; and 2 in respect of the Road Works, the anticipated date of Provisional Completion of the Road Works set out in Schedule 1, <p>as adjusted from time to time in accordance with this Agreement.</p>
Artefacts	fossils, coins, articles of value or antiquity, structures and other remains or items of archaeological significance.
Authorisation	any consent, authorisation, registration, agreement, notarisation, certificate, permission, licence, approval, permit, authority or exemption.
Billing Period	<ol style="list-style-type: none"> 1 each Initial Electricity Invoice Period; 2 the period from and including the Commercial Operation Date, to the last Day of the Month in which the Commercial Operation Date occurred; 3 each successive Month following the end of the previous Billing Period (other than on the Initial Electricity Invoice Period); and 4 the period from and including the first Day of the last Month of the Supply Term, to and including the last Day of the Supply Term, or, if this Agreement is terminated earlier in accordance with its terms, from and including the first Day of the Month in which this Agreement is terminated, to and including the date of termination of this Agreement.
Business Day	a Gregorian calendar Day except Fridays, Saturdays and official holidays in the Arab Republic of Egypt.
Buyer Transfer	is defined in clause 33.3(a).
Buyer's Bank Account	an Egyptian bank account with an Egyptian bank belonging to the Buyer or the Buyer's nominee, as Notified to the Seller at least 15 Business Days prior to the due date of any relevant payment to the Buyer.

Term	Meaning
Buyer's Conditions	the Conditions Precedent which the Buyer must satisfy as set out in clause 1 of Schedule 4.
Center	is defined in clause 30.3(b)(1).
Change Effect	<p>a change in:</p> <ol style="list-style-type: none"> 1 the Seller's costs of performance (including due to additional capital expenditure) of: <ol style="list-style-type: none"> (a) the Seller's Obligations; or (b) the Seller's obligations under any other Principal Project Agreement; or 2 the Seller's after Tax revenue from the operation of the Facility, arising as a direct result of a Change in Law or Governmental Force Majeure Event (or both) after any reduction in any cost or adverse revenue effects after the Seller's mitigation in accordance with clause 20.1(c), or such reduction as would have been achieved had the Seller complied with its obligations under clause 20.1(c), and after taking into account: 3 any amounts payable to or recoverable by the Seller under any Principal Project Agreement (other than under clause 20); 4 any compensation payable to the Seller by any Government Agency; and 5 the proceeds of any insurance policy taken out under clause 26 or recoverable under any of those insurance policies or which would have been recoverable had the Seller complied with its obligations under clause 26.
Change in Control	<p>in relation to any person, a change in the person or persons who, directly or indirectly, ultimately Controls that person, provided that the following changes will not, of themselves, be considered a Change in Control for the purposes of this definition:</p> <ol style="list-style-type: none"> 1 a change in the shareholders of a company publicly listed on a stock exchange (other than where such change occurs as a result of a de-listing); and 2 a change in shareholding in the Seller or a holding company of the Seller pursuant to the grant or exercise of security granted to a financial institution for the purposes of financing the construction of the Facility.
Change in Law	<p>a new Law (including a new Tax Law), or a new Authorisation, representing an addition to, or amendment of, existing Laws (including existing Tax Laws) or existing Authorisations or a change in the manner in which a Law (including a Tax Law) or an Authorisation is applied or interpreted which, in each case:</p> <ol style="list-style-type: none"> 1 occurs after the Signing Date; and 2 has not been applied or interpreted by regulations issued by any Government Agency or parliament, or in the case of legislation, published in the official gazette, prior to the Signing

Term	Meaning
	Date.
Charge Rate	the charge rate as calculated in Schedule 9.
Claim	any and all suits, sanctions, legal proceedings, claims, actions, assessments, judgments, penalties, demands or fines brought or enforced against a Party (including any claim for payment of money, whether based on contract, tort or Law).
Claimant Party	is defined in clause 25.6.
Commercial Operation Date	the Day following the date on which the Operating Committee has confirmed in writing that all of the Commercial Operation Date Criteria have been achieved in accordance with clause 11.4(d).
Commercial Operation Date Criteria	each of the following: <ol style="list-style-type: none"> 1 the Facility has been designed and constructed in accordance with the Design and Technical Specifications; 2 the Facility has successfully completed each Commercial Operation Test; 3 the Seller has provided the Test Verification Certificate to the Buyer in accordance with clause 11.4(a); and 4 the Seller has provided the Buyer with receipts or statements from insurers evidencing payment of the first annual premium of all insurances which the Seller is required to obtain and maintain under Schedule 11 for the period from the Commercial Operation Date to the end of the Supply Term.
Commercial Operation Test	each of the Tests (culminating in the Reliability Facility Test) to be conducted in accordance with the test procedures and testing program set out in Schedule 6.
Conditions Precedent	the conditions precedent to this Agreement, being the Buyer's Conditions and the Seller's Conditions, as set out in Schedule 4.
Conditions Satisfaction Date	the date that the last of the Conditions Precedent is satisfied or waived in accordance with clause 3.1.
Confidential Information	any information: <ol style="list-style-type: none"> 1 regarding the business or affairs (including financial position, internal management policies and strategies) of a Party or its Affiliates; 2 regarding clients, customers, employees, contractors of, or other persons doing business with, a Party or its Affiliates; or 3 regarding the terms and conditions of this Agreement, or the commercial arrangements between the Parties, which:

Term	Meaning
	<p>4 is, by its nature, confidential;</p> <p>5 is designated as confidential by such Party; or</p> <p>6 the other Party, as a prudent person, knows, or ought to know, is confidential.</p>
Connection Date	the date that the Facility is connected to the Transmission System, under, and in accordance with, the Network Connection Contract.
Connection Facilities	the equipment set out in Schedule 3 of the Network Connection Contract, which will be designed, procured, constructed, installed, erected, tested, commissioned, financed, operated and maintained by the Seller (as "Power Producer" under the Network Connection Contract) as part of the Facility in accordance with the Network Connection Contract, as modified from time to time. For convenience, details of the Connection Facilities are also set out in Schedule 5.
Contract Year	a period of 365 Days (or 366 Days in a leap year) commencing on the Commercial Operation Date and each subsequent period of the same length from each anniversary of the Commercial Operation Date under this Agreement.
Control	<p>as applied to any person, means:</p> <ol style="list-style-type: none"> 1 direct or indirect ownership of more than 50% of the issued and outstanding capital stock or other equity interests having ordinary voting power; or 2 possession of the power to direct or cause the direction of the management of that person, <p>and "Controlled" has a corresponding meaning.</p>
Cost Sharing Agreement	the cost sharing agreement entered into between the Seller (as "Developer"), the Network Operator and NREA on or about [insert date].
Day	a Gregorian calendar day, consisting of 24 hours from midnight to midnight.
Deemed Delivered Electricity	has the meaning given in Schedule 9.
Deemed Delivery Event	<p>any of the following events or circumstances which occur on or after the Commercial Operation Date:</p> <ol style="list-style-type: none"> 1 a failure by the Buyer to take delivery of Electricity at the Delivery Point (when Electricity would otherwise have been available for delivery at the Delivery Point), other than where the failure to take delivery arises due to: <ol style="list-style-type: none"> (a) the Default or wrongful or unlawful act of the Seller, its officers, employees, Subcontractors, agents or Affiliates,

Term	Meaning
	<p>including any failure to comply with the terms of any Authorisation, this Agreement, the Network Connection Contract (including any failure to comply with Power Quality Standards), or any other Project Agreement; or</p> <p>(b) an Other Force Majeure Event affecting the Seller, provided that, for clarity, Electricity will not be considered to be unavailable for delivery at the Delivery Point due only to constraints on the Transmission System other than constraints arising from the matters described in item 1(a) above;</p> <p>2 a failure by the Seller to deliver Electricity to the Delivery Point which is a direct consequence of:</p> <p>(a) a breach of this Agreement by the Buyer;</p> <p>(b) a Governmental Force Majeure Event;</p> <p>(c) a Change in Law; or</p> <p>(d) a breach by a Principal Party of any Principal Project Agreement other than this Agreement (that is not caused or contributed to by the Seller, the security agent on behalf of the Financing Parties or any Financing Party) during any period that the relevant Principal Party remains under the Control of the Arab Republic of Egypt; and</p> <p>3 any other circumstance described in this Agreement in which the Buyer is expressly required to pay for Deemed Delivered Electricity.</p>
Default	<p>1 in respect of the default of the Seller, the events set out in clause 22.1; and</p> <p>2 in respect of the default of the Buyer, the events set out in clause 22.2.</p>
Default Cure Period	is defined in clause 22.3(a).
Default Notice	is defined in clause 22.3(a).
Delay Amount	the delay amount set out in Schedule 1.
Delay Costs	is defined in clause 12.3(a).
Delivery Point	<p>the point or points for:</p> <p>1 the delivery of Electricity generated by the Facility and provided to the Transmission System; and</p> <p>2 the import of Electricity from the Transmission System, as described in the Design and Technical Specifications, and which, for clarity, forms part of the Facility.</p>
Design and Technical	the design and technical specifications for the Facility that the

Term	Meaning
Specifications	Seller must comply with when designing and constructing the Facility, as set out in Schedule 5.
Development Bond	<p>an irrevocable and unconditional bank guarantee provided as security in accordance with clause 5 which is:</p> <ol style="list-style-type: none"> 1 issued by an Egyptian bank registered with the Central Bank of Egypt; or 2 a branch of an international bank registered with the Central Bank of Egypt with a credit rating of A- or better from Standard & Poor's (or an equivalent rating from Moody's) (or which is otherwise acceptable to the Buyer), <p>and:</p> <ol style="list-style-type: none"> 3 substantially in the form set out in Schedule 12 (or otherwise in a form acceptable to the Buyer); and 4 for the Development Bond Amount.
Development Bond Amount	the development bond amount specified in Schedule 1.
Dispatch Centre	the "National Control Centre" owned by the Network Operator and responsible for dispatch of generating units and operational control of the ultra-high and high voltage Transmission System.
Dispose	includes sell, transfer, create a trust (under any law other than Egyptian Law) or option over, or alienate the right to exercise the vote attached to, or decrease any economic interest in, any Equity.
Dispute	a dispute or difference of whatever nature between the Parties as to the construction or implementation (or both) of this Agreement or as to any matter of whatsoever nature arising under or in connection with this Agreement, including any Claim and any dispute relating to this Agreement's validity.
Disputed Invoice	is defined in clause 18.2(a).
EGP	Egyptian Pounds.
EgyptERA	the Egyptian Electric Utility and Consumer Protection Regulatory Agency.
Electricity	electrical energy generated by the Facility or imported at the Delivery Point.
Emergency	a condition or situation that, in the sole but reasonable opinion of the Buyer affects or is reasonably likely to affect the ability of the Buyer or the Network Operator to maintain safe, adequate and continuous service to its customers or present a physical threat to persons or property or the security, integrity or reliability of the

Term	Meaning
	Transmission System.
Encumbrance	<p>an interest or lien:</p> <ol style="list-style-type: none"> 1 reserved in or over an interest in any asset, including any retention of title; or 2 created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust (under any law other than Egyptian Law) or power, <p>by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation and includes any agreement to grant or create any of the above and Encumber has the corresponding meaning.</p>
Energy Measurement Equipment	the solar irradiation equipment for measuring the renewable energy resource at the Site to be designed, procured, constructed, erected, installed, tested, commissioned, financed, owned, operated and maintained by the Seller, as specified in the Design and Technical Specifications.
Environmental Attributes	<p>any:</p> <ol style="list-style-type: none"> 1 labelling or other promotional rights in respect of the Facility; 2 any credit or revenue in return for the reduction of the emissions of the Project, including the approved reduction of emissions according to the clean development as per the Kyoto Protocol on climate change or any subsequent international or regional agreements or arrangements; and 3 future right, instrument, credit, mechanism, off-set or benefit in respect of or in connection with a generating plant using similar technology to the Facility that is related to emissions (including abatement or avoidance of emissions) or other matters affecting the environment, except to the extent that the Facility, if operating in accordance with Good Utility Practice, would not be eligible for such rights, instruments, credits, mechanisms, off-sets or benefits.
EPC Contract	the engineering, procurement and construction contract to be entered into between the Seller and the EPC Contractor in respect of the design, procurement, construction, erection, installation, testing and commissioning of the Facility, as amended or replaced.
EPC Contractor	the Subcontractor that enters into the EPC Contract with the Seller.
Equity	the capital of the Seller attributable to the Shareholders in respect of their investment in the Seller (including indebtedness for money borrowed by the Seller from the Shareholders or any Affiliate of the Shareholders which by its terms is subordinated to any indebtedness of the Seller under any Financing Document).

Term	Meaning
Facility	the renewable energy facility of the Installed Capacity which is to be designed, procured, constructed, erected, installed, tested, commissioned, financed, owned, operated and maintained by the Seller at the Site as part of the Project (including all the Interfaces, the Connection Facilities and the Energy Measurement Equipment) which is further described in the Design and Technical Specifications.
Financial Closure	is defined in Schedule 1.
Financial Model	the Seller's financial model for the Project, a copy of which is set out in Schedule 15, as updated by the Seller from time to time as part of the Seller's Conditions as at the Conditions Satisfaction Date and as otherwise amended from time to time in accordance with clause 34.
Financing Documents	any and all other loan agreements, notes, bonds, indentures, security agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust (under any law other than Egyptian Law), credit agreements, note, bond, subscription or purchase agreements, participation agreements, direct agreements, hedging agreements and other documents entered into by the Seller relating to the financing of the Project, including any modifications, supplements, extensions, renewals and replacements of that financing (including the Initial Financing Documents), but does not include any of the documents pertaining to Equity.
Financing Party	any person or persons providing debt financing or Refinancing (including debt financing or Refinancing by way of the deferral of the purchase price for a debt instrument) or hedging under the Financing Documents to the Seller for the Project and their permitted successors and assigns, including any agent or trustee (under any law other than Egyptian Law) (or both) for them, but not including a Shareholder or any Affiliate of a Shareholder with respect to indebtedness constituting Equity.
FiT Program	the Egyptian Government's 4.3GW renewable energy photovoltaic and wind generation feed in tariff program, to achieve financial closure before the end of the first regulatory period October 2014-2016.
FiT Rate	the FiT Rate specified in clause 2.2(a) of Schedule 9 or as otherwise set out in the FiT Rate Notice or Subsequent FiT Rate Notice.
FiT Rate Notice	is defined in clause 3.1(e), a form of which is set out in Attachment 3 of Schedule 9.
Force Majeure Event	is defined in clause 21.1.

Term	Meaning
Force Majeure Notice	is defined in clause 21.1.
Free Zone Status	the classification of the Site as having "Free Zone" status by the General Authority for Investment.
Generating Unit	a separate photovoltaic electricity generation unit or section (comprising multiple units) forming part of the Facility, which is capable of generating and delivering Electricity to the Buyer at the Delivery Point and having the characteristics described in the Design and Technical Specifications.
Generation Licence	a permanent licence issued by the EgyptERA to the Seller permitting the Seller to, among other things, generate Electricity from the Facility.
Good Utility Practice	those practices, methods and acts as are in accordance with good standards of prudence applicable to the international electricity generation industry and the solar energy industry which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with compliance with Laws and Authorisations, reliability, safety and expedition.
Government Agency	any government or governmental, administrative or judicial body, ministry, commission, authority, tribunal, agency, statutory company or entity in the Arab Republic of Egypt but, for clarity, does not include the Buyer acting in its private commercial capacity as counterparty to this Agreement, the Network Operator acting in its private commercial capacity as a counterparty to the Network Connection Contract or NREA acting in its private commercial capacity as counterparty to the Usufruct Agreement.
Governmental Force Majeure Event	is defined in clause 21.2.
Grid Code	the rules approved by EgyptERA from time to time, which define the bases, procedures and criteria to control the connection to the Transmission System as well as the planning, operation, maintenance, and development of the Transmission System, and which include the PV Solar Grid Connection Code.
Guarantee	the guarantee of the Buyer's payment obligations under this Agreement given by the Egyptian Ministry of Finance under the PPA Direct Agreement.
Implementation Schedule	the program and schedule for the design, procurement, construction, erection, installation, testing and commissioning of the Facility and the implementation of the Project generally, which identifies the key milestones and their respective milestone dates, as set out in Schedule 8, as may be revised from time to time pursuant to this Agreement.

Term	Meaning
Independent Expert	is defined in clause 31.1(a).
Initial Charge Rate	is defined in Schedule 9.
Initial Delivered Electricity	is defined in clause 14.3(a).
Initial Electricity Invoice Period	is defined in clause 17.1(d).
Initial Financing Documents	is defined in clause 33.7(a).
Insolvency Event	<p>in relation to a Party:</p> <ol style="list-style-type: none"> 1 a judgment in an amount exceeding the Insolvency Threshold is obtained against the Party and is not set aside or satisfied within 60 Business Days; 2 any distress, attachment, execution or other process of a Government Agency in an amount exceeding the Insolvency Threshold is issued against, levied or enforced upon any of the assets of the Party and is not set aside or satisfied within 60 Business Days; 3 a receiver, receiver and manager, official manager, administrator or similar official is appointed over any of the assets or undertaking of the Party; 4 the Party suspends payment of its debts generally without the prior consent of the other Party; 5 the Party is or becomes unable to pay its debts when they are due; 6 the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them; 7 the Party ceases or threatens to cease to carry on business; 8 an order is made to place the Party under official management or custody or a resolution is passed to place the Party under official management or custody; 9 an order is made for the winding up or dissolution of the Party or a resolution is passed for the winding up or dissolution of the Party otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of the other Party (which consent must not be unreasonably withheld); or 10 anything analogous or with a substantially similar effect to any of the events specified in paragraphs 1 to 9 (inclusive) of this definition happens under the law of any applicable jurisdiction.
Insolvency Threshold	the insolvency threshold set out in Schedule 1.

Term	Meaning
Installed Capacity	in respect of the Facility, the maximum aggregate rated capacity, in MWac, of all inverters installed in the Facility, being the amount set out in Schedule 1.
Intellectual Property	all intellectual and industrial property rights existing worldwide including any patent, design (whether registered or not), copyright, trade mark, moral rights, protected circuit layout (or similar right), trade secret, Proprietary Information or other right), including any application or right to apply for registration of any of these rights.
Interconnection Loss Factor	the loss factor applicable to the Facility's output as set out in Schedule 1.
Interfaces	<p>the construction connections, physical tie-ins, operating systems and electrical connections, if any, between the Facility and:</p> <ol style="list-style-type: none"> 1 the Network Operator's Assets; 2 the Dispatch Centre; 3 the public road adjacent to the Site; and 4 the telecommunication facilities adjacent to the Site, <p>respectively, described in Schedule 4 of the Network Connection Contract, which connections, tie-ins, operating systems and electrical connections will be designed, procured, constructed, installed, erected, tested, commissioned, financed, operated and maintained by the Seller as part of the Facility in accordance with the Network Connection Contract.</p>
Invoice	an invoice prepared by a Party in accordance with clause 18.1.
Key Shareholder	the key Shareholder of the Seller, as set out in Schedule 2.
kWh	kilowatt hour of Electricity.
Land Allocation Letter	the memorandum of understanding between NREA and the Seller dated [insert date] allocating the Site to the Seller for the purposes of undertaking site investigations for the Project, subject to the conditions contained therein.
Land Availing Procedures	'Rules and Procedures to Avail Land for renewable Energy Projects', issued by NREA pursuant to the Prime Ministerial Decree No. (37/4/15/15), as updated or amended from time to time.
Late Payment Rate	a rate of interest per annum equal to 2% above the Overnight Interbank Rate as announced by the Central Bank of Egypt and published on the website www.cbe.org.eg on the relevant due date or required date of payment.
Law	any law, statute, decree, decision, rule, directive (to the extent having the force of law in the Arab Republic of Egypt), order, treaty,

Term	Meaning
	code or regulation (including any relating to health or safety matters or any environmental matters) or any official interpretation of the foregoing, as enacted, issued or determined by any court or tribunal and includes the Grid Code.
LD Amount	the LD Amount set out in Schedule 1.
LD Cap	the LD Cap set out in Schedule 1.
Loss	<p>any direct damage, loss, liability, cost, charge or expense that any Party pays, suffers or incurs or is liable for, including:</p> <ol style="list-style-type: none"> 1 all interest and other amounts payable to third parties; and 2 all legal and other expenses incurred in connection with investigating or defending any Claim, <p>which arises as a result of the other Party's breach of its obligations under this Agreement, negligence, unlawful acts or Wilful Misconduct.</p>
Major Equipment	each of the modules, panels, inverters and step-up transformers.
Major Equipment Subcontract	each Major Equipment supply contract to be entered into between the Seller and a Major Equipment Subcontractor in respect of the supply of Major Equipment to the Facility, as amended or replaced.
Major Equipment Subcontractor	each Subcontractor that enters into a Major Equipment Subcontract with the Seller.
Major Subcontract	the EPC Contract, Operation and Maintenance Contract and Major Equipment Subcontracts.
Month	a calendar month according to the Gregorian calendar.
MW	mega-watts.
MWac	mega-watts output in alternating current.
MWh	megawatt hours of Electricity.
NCC and CSA Direct Agreement	the direct agreement to be entered into by the Network Operator, the Seller (as "Power Producer") and the security agent for the Financing Parties which sets out each party's rights and obligations in relation to the Network Connection Contract and the Cost Sharing Agreement.

Term	Meaning
Network Connection Contract	the contract entered into on or about the Signing Date between the Network Operator and the Seller (as "Power Producer") under which the Network Operator grants the Seller the right to connect the Facility to the Transmission System and to deliver Electricity to the Transmission System.
Network Operator	the Network Operator under the Network Connection Contract. As at the Signing Date, the Network Operator is the Buyer.
Network Operator's Assets	the assets required for the interconnection of the Connection Facilities to the high voltage parts of the Transmission System which are to be designed, constructed, tested and commissioned by the Network Operator in accordance with the Network Connection Contract as described in Schedule 7.
Non-Affected Party	is defined in clause 21.1(a)(11).
Notice	is defined in clause 36.1 and Notify has a corresponding meaning.
NREA	New and Renewable Energy Authority.
O&M Contractor	the Subcontractor that enters into the Operation and Maintenance Contract with the Seller.
Operating Capabilities	the operating capabilities for the Facility set out in Schedule 8 of the Network Connection Contract.
Operating Committee	the Operating Committee established by the Network Operator and the Seller in accordance with the Network Connection Contract.
Operating Procedures	the operating procedures for the Facility set out in Schedule 7 of the Network Connection Contract.
Operation and Maintenance Contract	the operation and maintenance contract to be entered into between the Seller and the O&M Contractor in respect of the operation and maintenance of the Facility during the Supply Term.
Other Force Majeure Event	is defined in clause 21.3.
Party	each of the Buyer or the Seller (as the case may be), and Parties means the Buyer and the Seller.
Payment	the amount payable by the Buyer to the Seller under this Agreement, including the amounts calculated in accordance with Schedule 9.
Payor	is defined in clause 18.1(b).

Term	Meaning
Performance Factor	the performance factor calculated in accordance with Schedule 9.
Power Quality Standards	the specifications and requirements for the interconnection of the Facility with the Transmission System and for the form of Electricity delivered to the Transmission System, as set out in the Network Connection Contract and the Grid Code.
PPA Direct Agreement	the direct agreement entered into on or after the Signing Date between the Egyptian Ministry of Finance, the Buyer, the Seller and the security agent for the Financing Parties which sets out each party's rights and obligations in relation to this Agreement, being that which is substantially in the form set out in Schedule 13.
Principal Party	<ol style="list-style-type: none"> 1 in respect of this Agreement, and the PPA Direct Agreement, the Buyer; 2 in respect of the Cost Sharing Agreement, each of the Network Operator and NREA; 3 in respect of the Network Connection Contract and the NCC and CSA Direct Agreement, the Network Operator; and 4 in respect of the Usufruct Agreement and the UA and CSA Direct Agreement, NREA.
Principal Project Agreements	<ol style="list-style-type: none"> 1 this Agreement; 2 the Cost Sharing Agreement; 3 the Network Connection Contract; 4 the Usufruct Agreement; 5 the PPA Direct Agreement; 6 the NCC and CSA Direct Agreement; and 7 the UA and CSA Direct Agreement.
Project	the development of the Facility and its connection to the Transmission System.
Project Agreements	<ol style="list-style-type: none"> 1 this Agreement; 2 the Cost Sharing Agreement; 3 the Network Connection Contract; 4 the Usufruct Agreement; 5 the PPA Direct Agreement; 6 the NCC and CSA Direct Agreement; 7 the UA and CSA Direct Agreement; 8 the Financing Documents; 9 the EPC Contract; 10 the Operation and Maintenance Contract;

Term	Meaning
	<p>11 the Major Equipment Subcontracts; and</p> <p>12 any other agreement that the Parties may agree are Project Agreements from time to time.</p>
Proposed Purchaser	is defined in clause 24.4(a).
Proprietary Information	in respect of a person, information rightfully in the possession of that person, including a document, idea, policy, procedure, method, process, materials or other tangible or intangible thing, which information derives economic value from not being generally known to, and not being readily ascertainable by proper means by, another person who can obtain economic value from its disclosure and use, and which is the subject of reasonable efforts to maintain its secrecy.
Provisional Completion	<p>1 in respect of the Network Operator's Assets, "Provisional Completion" (as that term is defined in the Cost Sharing Agreement) of the "Interconnection Works" (as that term is defined in the Cost Sharing Agreement), as determined by the "Engineer" (as that term is defined under the Cost Sharing Agreement) in accordance with the Cost Sharing Agreement; and</p> <p>2 in respect of the Road Works, "Provisional Completion" (as that term is defined in the Cost Sharing Agreement) of the "Road Works" (as that term is defined in the Cost Sharing Agreement), as determined by the "Engineer" (as that term is defined under the Cost Sharing Agreement) in accordance with the Cost Sharing Agreement.</p>
Pt	Egyptian Piastre.
Public Property Crime	any crime stipulated under the Third and Fourth Chapters of the Second Book of Law No. 58 of 1937 promulgating the Egyptian Penal Code and its amendments, and Law 80 of 2002 as amended regarding money laundering crimes, all as in force from time to time.
Public Statement	is defined in clause 28.3(a).
Purchase Price	is defined in section 1 of Schedule 14.
Purchase Price A	is defined in section 1 of Schedule 14.
Purchase Price B(a)	is defined in section 1 of Schedule 14.
Purchase Price B(b)	is defined in section 1 of Schedule 14.
Purchase Right	is defined in clause 24.3(a).

Term	Meaning
PV Solar Grid Connection Code	the photovoltaic grid connection code annexed to the Grid Code.
Reasonable Endeavours	the taking by the person subject to the obligation of all the reasonable steps which a prudent person having willingly undertaken the obligation would take to achieve the object of the obligation (which, in the case of the Seller, includes acting in accordance with Good Utility Practice in all respects).
Recipient	is defined in 28.1.
Refinancing	<ol style="list-style-type: none"> 1 any amendment to or novation, supplement or replacement of any Financing Document; 2 the exercise of any right, or the request for a grant of any waiver or consent, under any Financing Document; 3 the disposition of any rights or interests in, or the creation of any rights of participation in connection with the Financing Documents or the creation or granting of any other form of benefit or interest in either the Financing Documents or the contracts, revenues or assets of the Seller whether by way of security or otherwise; 4 the entry into of any new financing arrangements by the Seller or an Affiliate of the Seller which has the effect of restructuring the financing arrangements from those as at the Conditions Satisfaction Date; or 5 any other arrangement that has an effect which is similar to any of the actions referred to in paragraphs 1 to 4 of this definition which has the effect of restructuring the financing arrangements from those as at the Conditions Satisfaction Date (including gearing), <p>in each case which has the effect of:</p> <ol style="list-style-type: none"> 6 increasing Senior Debt; 7 decreasing the level of or reducing any requirement in respect of a reserve account; 8 increasing any Termination Payment potentially payable by the Buyer under clause 23 and Schedule 14; or 9 resulting in the financier representative which is the counterparty to the PPA Direct Agreement ceasing to represent all financiers providing Senior Debt.
Regulatory Delay Event	<p>a delay by a Government Agency in granting an Authorisation to the Seller where such grant is a condition precedent to Financial Closure under the Financing Documents but provided that any delay will only be a Regulatory Delay Event under this Agreement to the extent:</p> <ol style="list-style-type: none"> 1 the delay comprises a failure by the Government Agency to take action within a timeframe that is legally binding on the Government Agency or to which it has publically committed; and

Term	Meaning
	<p>2 the delay is not caused or contributed to by a failure or delay by the Seller or its agents or Affiliates to:</p> <p>(a) take any action; or</p> <p>(b) provide the Government Agency with any required information,</p> <p>provided that in each case the Seller was aware, or ought to have been aware had it made due enquiry, that the relevant action was required to be performed, or the relevant information was required to be provided, within the relevant timeframe.</p>
Relevant Quantity	the quantity of Electricity in respect of which the Charge Rate will be paid as calculated in accordance with Schedule 9.
Reliability Facility Test	the Test set out in Schedule 6.
Representative	in respect of each Party, the representative appointed by the Party in accordance with clause 7.1 as Notified to the other Party.
Road Works	the works NREA is required to design and construct under the Cost Sharing Agreement.
Scheduled Commercial Operation Date	the date by which the Facility must satisfy the Commercial Operation Date Criteria, as set out in Schedule 1, as extended in accordance with this Agreement.
Scheduled Conditions Satisfaction Date	the date by which the Conditions Precedent must be satisfied, as set out in Schedule 1 and as may be extended in accordance with this Agreement.
Seller's Bank Account	an Egyptian bank account with an Egyptian bank belonging to the Seller or the Seller's nominee, as Notified to the Buyer at least 15 Business Days prior to the due date of any relevant payment to the Seller.
Seller's Conditions	the Conditions Precedent which the Seller must satisfy as set out in clause 2 of Schedule 4.
Seller's Obligations	the whole of the obligations to be carried out by or on behalf of the Seller under this Agreement necessary to undertake the Project in accordance with the terms of this Agreement (whether or not the particular works or services are subcontracted).
Senior Debt	is defined in Schedule 14.
Sensor	the measurement sensors comprising part of the Energy Measurement Equipment, as further described in the Design and Technical Specifications.

Term	Meaning
Shareholders	the immediate holders of the shares or other equity capital in the Seller from time to time being, as at the Signing Date, those persons set out in Schedule 2.
Signing Date	the date of this Agreement.
Site	the land the subject of the Usufruct Agreement on which the Project will be undertaken by the Seller in accordance with the Principal Project Agreements.
Site Backup Meter	the Electricity measuring devices to be installed, owned and operated by the Seller in accordance with the Network Connection Contract, used to measure the Electricity delivered to the Delivery Point as back-up for the Site Primary Meter.
Site Meters	<ol style="list-style-type: none"> 1 the Site Primary Meter; and 2 the Site Backup Meter.
Site Primary Meter	the primary Electricity measuring devices to be installed and operated by the Seller in accordance with the Network Connection Contract, used to measure the Electricity delivered to the Delivery Point.
Subcontractor	any subcontractor appointed by the Seller in respect of the Seller's Obligations.
Subcontracts	any contract or agreement entered into by the Seller or any Subcontractor (or both) in connection with the performance of the Seller's Obligations.
Subsequent FiT Rate Notice	is defined in clause 3.1(g).
Supply Term	is defined in clause 4.2.
Tampering Party	is defined in clause 15.6(c).
Tax Law	any Law relating to, or in connection with, any Tax.
Taxes	any tax, levy, impost, deduction or withholding, charge, rate (other than utility or local council rates), duty (including duty levied or imposed by a Government Agency), including any such amount imposed on an equivalence basis and withholding, income, stamp, transaction or capital gains tax, land tax, payroll tax, fringe benefits tax, duty or charge together with any related additional tax, further additional tax, interest, penalty, fine, charge, fee or like amount.
Technical	is defined in clause 31.2(a).

Term	Meaning
Determination	
Technical Dispute	<p>a Dispute of a technical nature arising under or in relation to this Agreement, including Disputes in relation to:</p> <ol style="list-style-type: none"> 1 the passing of the Tests in accordance with Schedule 6 by the Facility or Generating Unit; 2 measurements as to quantity made by the Site Meters for the purposes of clause 15; or 3 any other Dispute which, under this Agreement, is to be referred to the Independent Expert for determination under clause 31.
Termination Costs	is defined in section 1 of Schedule 14.
Termination Notice	is defined in clause 23.1(a)(1)(B).
Termination Payment	any Purchase Price plus or minus any applicable Termination Costs payable under clause 23 and determined in accordance with Schedule 14.
Test Verification Certificate	a certificate from a Testing Expert that the Commercial Operation Tests have been successfully passed in accordance with the requirements of Schedule 6.
Testing Expert	the expert that is as approved by the Buyer in accordance with clause 11.5(b).
Tests	the tests for each Generating Unit and the Facility set out in Schedule 6 that must be passed by the Facility in order for the Commercial Operation Date to occur.
Third Party Sale Period	is defined in clause 24.4(a).
Transfer	is defined in clause 33.1.
Transferee	is defined in clause 33.1.
UA and CSA Direct Agreement	the direct agreement to be entered into by NREA, the Seller (as "User") and the security agent for the Financing Parties which sets out each party's rights and obligations in relation to the Usufruct Agreement and the Cost Sharing Agreement.
Uninsurable Risk	<ol style="list-style-type: none"> 1 insurance required pursuant to clause 26 is not available from an insurer with a current Standard & Poors rating of not less than A- or a similar rating from another recognised insurance rating agency (or such other rating as is agreed with the Buyer from time to time) in the Arab Republic of Egypt or international insurance market in respect of that type of risk; or

Term	Meaning
	2 the insurance premium payable for insuring that risk is at such a level or the terms and conditions (including excesses or deductibles and premiums) are such that the risk is not generally being insured against by providers of facilities similar to the Facility.
US\$	United States Dollars.
Usufruct Agreement	the usufruct agreement between NREA and the Seller (as "User"), where NREA allows the Seller to construct the Facility on the Site and sell Electricity to the Buyer.
Week	7 Days starting from 00:00 Friday and ending at 24:00 the following Thursday.
Wilful Misconduct	any wilful, intentional or reckless act or omission, which constitutes gross negligence or deliberate default, carried out or omitted to be done with a reckless disregard for the consequences of the act or omission.
Year	a Gregorian calendar year.

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this Agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to a clause, recital, Party, schedule, annexure, attachment or exhibit is a reference to a clause or recital of, and a Party, schedule, annexure, attachment or exhibit to, this Agreement, unless expressly stated otherwise.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.

- (j) A reference to an agreement other than this Agreement includes any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (k) No provision of this Agreement will be construed adversely to a Party because that Party was responsible for the preparation of this Agreement or that provision.
- (l) A reference to a body, other than a Party to this Agreement (including an institute, association or authority), whether statutory or not:
- (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (m) Specifying anything in this Agreement after the words “include” or “for example” or similar expressions does not limit what else is included.
- (n) A reference to time is to local time in Cairo, Arab Republic of Egypt.
- (o) The applicable currencies under this Agreement are US\$ and EGP. All amounts payable under this Agreement must be paid in US\$ or EGP, as indicated by this Agreement.

1.3 Language

- (a) The language of preparation and negotiation of this Agreement was both Modern Standard Arabic and English.
- (b) The Parties agree that:
- (1) subject to clause 1.3(b)(2), the English version may be used by the Parties in the day to day management of this Agreement; and
 - (2) the Modern Standard Arabic version of this Agreement (executed by the Parties) prevails over the English version of this Agreement for the purposes of interpreting this Agreement and any construction of it.

1.4 Business Day

Where the Day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Ambiguities and inconsistencies

- (a) Subject to clause 1.5(d), the documents comprising this Agreement will comprise one instrument and must be read as such so as to avoid ambiguity, inconsistency and conflict. In particular, no general obligation set out in this Agreement will be read down on account of a more specific obligation being set out elsewhere in this Agreement.
- (b) If a Party discovers any ambiguity, discrepancy or inconsistency between any of the provisions of this Agreement (including any schedule, annexure, attachment or exhibit to this Agreement) or any other document or standard expressly incorporated into this Agreement, the Party which makes the discovery must promptly Notify the other Party of this and the interpretation and construction that the relevant Party proposes to follow (in compliance with this clause 1.5).

- (c) Where any inconsistency, ambiguity or discrepancy cannot be otherwise resolved in accordance with clause 1.5(a), the terms of the documents comprising this Agreement will be constructed by applying the following order of precedence (from highest to lowest):
- (1) this Agreement (excluding any schedule, annexure, attachment or exhibit to this Agreement and any other document or standard expressly incorporated into this Agreement);
 - (2) any schedule, annexure, attachment or exhibit to this Agreement; and
 - (3) any other document or standard expressly incorporated into this Agreement.
- (d) If any ambiguity, inconsistency or conflict of obligations exists or arises between this Agreement and the PPA Direct Agreement, as between the “Security Agent” (as that term is defined in the PPA Direct Agreement) and the Buyer, then the terms of PPA Direct Agreement will take precedence over this Agreement and will apply to resolve that ambiguity, inconsistency or conflict.
- (e) The Seller is not entitled to any additional costs by reason of complying with this clause 1.5.

2 Overview of obligations

2.1 Seller’s Obligations

Subject to the other provisions of this Agreement:

- (a) the Seller will design, procure, construct, erect, install, test, commission, finance, own, operate and maintain the Facility in accordance with this Agreement;
- (b) the Seller will undertake the Project in the manner contemplated by this Agreement;
- (c) the Facility will be located on the Site;
- (d) the Seller will sell all Electricity generated by the Facility to the Buyer (other than Electricity necessary for the Seller to operate the Facility);
- (e) at the expiration of the Agreement Term, the Seller will decommission and remove the Facility from the Site in accordance with the Usufruct Agreement; and
- (f) without limiting clauses 2.1(a) to 2.1(e) (inclusive), the Seller must perform the Seller’s Obligations.

2.2 Buyer’s obligations

Without limiting the other provisions of this Agreement, the Buyer must:

- (a) (or must use its Reasonable Endeavours to procure that the Network Operator does) design, procure, construct, erect, install, test, commission, own, operate and maintain the Network Operator’s Assets in accordance with the Network Connection Contract;
- (b) subject to the limits set out in this Agreement, purchase Electricity generated by the Facility and delivered to the Delivery Point;

- (c) make the payments to the Seller described in this Agreement; and
- (d) provide reasonable assistance to the Seller to obtain Authorisations required in accordance with this Agreement, including those Authorisations required under clause 6(b), provided that nothing in this 2.2(d) obliges the Buyer to incur any costs in assisting the Seller, or to intervene with any Government Agency, in connection with any Authorisation.

2.3 Project risk

Except as otherwise expressly provided in this Agreement (but without limiting the terms of any other Project Agreement), the Seller accepts all risks associated with the undertaking of the Project including:

- (a) all risks associated with the costs of designing, procuring, constructing, erecting, installing, testing, commissioning and financing the Facility;
- (b) the operation and maintenance of the Facility and the generation of Electricity by the Facility; and
- (c) the decommissioning and removal of the Facility from the Site in accordance with the Usufruct Agreement.

3 Conditions Precedent

3.1 Conditions Precedent

- (a) Subject to clause 3.1(j), this Agreement is subject to and conditional upon the satisfaction or waiver of all of the Conditions Precedent in accordance with this clause 3.
- (b) The Seller must use Reasonable Endeavours to procure the satisfaction of the Seller's Conditions by the Scheduled Conditions Satisfaction Date.
- (c) The Buyer must use all Reasonable Endeavours to procure the satisfaction of the Buyer's Conditions by the Scheduled Conditions Satisfaction Date.
- (d) Each Party must provide reasonable assistance to the other Party in connection with the satisfaction of the Conditions Precedent, provided that nothing in this clause 3.1 obliges either Party to incur any significant out of pocket expenses.
- (e) Once the Conditions Precedent have been satisfied or waived in accordance with this clause 3 (other than the Seller's Conditions in clause 2(h) of Schedule 4 that the Development Bond has been provided to the Buyer and clause 2(i) of Schedule 4 that Financial Closure has occurred under the Financing Documents), the Buyer must issue a Notice to the Seller:
 - (1) confirming that the Conditions Precedent have been satisfied or waived in accordance with this clause 3.1 (other than the Seller's Conditions referred to in clause 2(h) of Schedule 4 that the Development Bond has been provided to the Buyer and clause 2(i) of Schedule 4 that Financial Closure has occurred under the Financing Documents); and
 - (2) advising the Seller of the FiT Rate that will apply to this Agreement from the Conditions Satisfaction Date,

(FIT Rate Notice). The Buyer must ensure that the FIT Rate Notice issued by it complies in all material respects with the form of the FIT Rate Notice set out in Attachment 3 of Schedule 9.

- (f) Without limiting clause 3.6, if the FIT Rate stated in the FIT Rate Notice is the same as the FIT Rate set out in clause 2.2(a) of Schedule 9, then provided that the Seller issues the Notice under clause 3.1(i) within 5 Business Days of the date of the FIT Rate Notice, the FIT Rate for the purposes of this Agreement will be as set out in clause 2.2(a) of Schedule 9.
- (g) If the Seller fails to issue the Notice to the Buyer under clauses 3.1(i) in the time permitted under clause 3.1(f), the Seller must not issue the Notice under clause 3.1(i) until the Buyer has issued a further Notice to the Seller advising of the FIT Rate (**Subsequent FIT Rate Notice**), in which case clause 3.1(f) will apply again (and references to "FIT Rate Notice" in clause 3.1(f) will be deemed to be references to the "Subsequent FIT Rate Notice"). For clarity, the Buyer must ensure that any Subsequent FIT Rate Notice issued by it complies in all material respects with the form of the FIT Rate Notice set out in Attachment 3 of Schedule 9.
- (h) Without limiting clause 3.6, if the FIT Rate stated in the FIT Rate Notice or Subsequent FIT Rate Notice, as applicable, is less than the FIT Rate set out in clause 2.2(a) of Schedule 9 (which will only be permitted where such a change is prescribed by Law), the Seller must, within 20 Business Days of the date of the FIT Rate Notice or Subsequent FIT Rate Notice, as applicable:
- (1) satisfy the Seller's Conditions referred to in clause 2(h) of Schedule 4 relating to the provision of the Development Bond to the Buyer and clause 2(i) of Schedule 4 relating to undertaking of Financial Closure under the Financing Documents, and issue the Notice under clause 3.1(i) (and if it does, the FIT Rate will be as set out in the FIT Rate Notice); or
 - (2) terminate this Agreement by Notice to the Buyer without the need for any other legal or judicial procedure, in which case clause 3.7 will apply.

If the Seller fails to do either of the things required of it under clauses 3.1(h)(1) or 3.1(h)(2), the Buyer may terminate this Agreement by Notice to the Seller without the need for any other legal or judicial procedure, in which case clause 3.7 will apply.

- (i) The Seller must, promptly following the occurrence of the satisfaction of the Seller's Conditions under clauses 2(h) and 2(i) of Schedule 4, provide the Buyer with a copy of the notice that it receives from the Financing Parties (or their agent under the Financing Documents) under the Financing Documents confirming that Financial Closure has occurred. The date on which the Seller provides the notice from the Financing Parties (or their agent under the Financing Documents) is the "**Conditions Satisfaction Date**".
- (j) The following clauses of this Agreement are not conditional on the satisfaction or waiver of all of the Conditions Precedent and are effective on and from the Signing Date:
- (1) this clause 3 (Conditions Precedent);
 - (2) clause 4.1 (Agreement Term);
 - (3) clause 5 (Development Bond);
 - (4) clause 6 (Laws and Authorisations);

- (5) clause 25.5 (Indirect loss);
- (6) clause 26 (Insurance);
- (7) clause 27 (Intellectual Property);
- (8) clause 28 (Confidentiality);
- (9) clause 29 (Representation and warranties);
- (10) clause 30 (Dispute resolution);
- (11) clause 32 (Statutory powers);
- (12) clause 33 (Assignment, Change in Control and other restrictions);
- (13) clause 35 (Sovereign immunity);
- (14) clause 36 (Notices); and
- (15) clause 37 (General).

3.2 Notification of satisfaction of Condition Precedent

- (a) Each Party must promptly Notify the other if it becomes aware that any Conditions Precedent have been satisfied or have become incapable of being satisfied.
- (b) Without limiting clause 3.2(a), the Seller must provide the Buyer with an update at least every 2 Months from the Signing Date to the Conditions Satisfaction Date that describes the Seller's progress in satisfying the Seller's Conditions and the activities scheduled to be taken by the Seller in the satisfaction of the Seller's Conditions during the forthcoming 2 Months.

3.3 Status of competing development in the FiT Program

The Buyer will, at the beginning of each Month prior to the Conditions Satisfaction Date provide the Seller with an update of the status of all other photovoltaic developments participating in the FiT Program, including the number of developers and related plant capacities:

- (a) having obtained land at the Benban site under the Land Availing Procedures;
- (b) having signed the "Principal Project Agreements" (as defined in the relevant power purchase agreements); or
- (c) having achieved the "Conditions Satisfaction Date" (as defined in the relevant power purchase agreements).

3.4 Waiver of Seller's Conditions

At any time prior to the Scheduled Conditions Satisfaction Date, the Buyer may waive any of the Seller's Conditions set out in clause 2(a), 2(e), 2(f), 2(g) and 2(h) of Schedule 4 by Notice to the Seller.

3.5 Delay events

- (a) If the Seller is delayed in achieving any of the Seller's Conditions due to a Regulatory Delay Event, then the Buyer, acting reasonably, must adjust the Scheduled Conditions Satisfaction Date by the length of time the Seller is

delayed in achieving the relevant Seller's Conditions due to the Regulatory Delay Event.

- (b) If the Buyer is delayed in achieving any of the Buyer's Conditions by the Scheduled Conditions Satisfaction Date, then the Buyer, acting reasonably, must adjust the Scheduled Conditions Satisfaction Date by the length of time the Buyer is delayed in achieving the Buyer's Conditions, provided that the Buyer must not extend the Scheduled Conditions Satisfaction Date by more than 20 Business Days in the aggregate for all delays in achieving the Buyer's Conditions.
- (c) If clause 3.1(h) applies, the Scheduled Conditions Satisfaction Date will be automatically extended by 20 Business Days.

3.6 Extension of Scheduled Conditions Satisfaction Date

- (a) Subject to clause 3.5, if the Conditions Precedent have not been satisfied or waived by the Scheduled Conditions Satisfaction Date, then within 10 Business Days of the Scheduled Conditions Satisfaction Date:
 - (1) the Parties may agree in writing to extend the Scheduled Conditions Satisfaction Date by a reasonable period of time to satisfy any outstanding Conditions Precedent; or
 - (2) either Party may terminate this Agreement by Notice to the other Party without the need for any other legal or judicial procedure, in which case clause 3.7 will apply.
- (b) A Party's right to terminate this Agreement under clause 3.6(a)(2) is subject to that Party having complied with its obligation in clauses 3.1(b), 3.1(c) and 3.1(d) (as applicable).
- (c) If the Scheduled Conditions Satisfaction Date is extended in accordance with clause 3.5 or clause 3.6(a)(1), the Scheduled Commercial Operation Date and each Anticipated Date for Provisional Completion will be extended by the period of the extension of the Scheduled Conditions Satisfaction Date.

3.7 Termination of Agreement

If this Agreement is terminated by a Party in accordance with clause 3.6(a)(2), and subject to clause 3.6(b), then:

- (a) if provided prior to satisfaction or waiver of the Conditions Precedent, the Buyer must return the Development Bond to the Seller;
- (b) each Party is released from its obligations to further perform its obligations under this Agreement, except those expressed to survive termination; and
- (c) each Party retains the rights it has against the other in respect of any breach of this Agreement occurring before termination.

4 Agreement Term and Supply Term

4.1 Agreement Term

Subject to clause 3, this Agreement commences and becomes effective on the Signing Date and continues for the Agreement Term, unless terminated earlier in accordance with its terms.

4.2 Supply Term

The supply term commences on the Commercial Operation Date and continues for 25 years (**Supply Term**), unless this Agreement is terminated earlier in accordance with its terms.

5 Development Bond

5.1 Provision of Development Bond

On or prior to the Conditions Satisfaction Date the Seller must provide the Development Bond to the Buyer as security for the performance of the Seller's Obligations from the Conditions Satisfaction Date to the Commercial Operation Date.

5.2 Access to Development Bond

(a) The Buyer may have full recourse to the whole or part of the Development Bond when:

- (1) the Seller has committed a Default and has not rectified the Default within the Default Cure Period;
- (2) the Seller breaches any of the warranties, representations or covenants given under this Agreement and does not rectify that breach within 20 Business Days (or such longer time specified by the Buyer) after receipt of a Notice from the Buyer specifying, in reasonable detail, that breach;
- (3) the Buyer is otherwise expressly authorised to do so under this Agreement; or
- (4) the Buyer:
 - (A) makes a bona fide claim that it is owed any amount by the Seller under this Agreement; and
 - (B) has not been paid that amount by the Seller within the relevant time (if any) required under this Agreement,

provided that such payment is not the subject of a bona fide Dispute by the Seller. The Buyer must not make a demand on the Development Bond for such non-payment until the amount owed by the Seller has not been paid within 10 Business Days after a further Notice from the Buyer to the Seller that the amount is overdue.

- (b) The amount called under the Development Bond by the Buyer in any of the circumstances described in clause 5.2(a) will be an amount necessary to cover the amount due to the Buyer.

5.3 Maintenance of Development Bond

- (a) The Seller must ensure that the Development Bond is maintained in full force and effect from the date on which it is required to be provided under clause 5.1 to the date it is required to be returned in accordance with the terms of this Agreement.
- (b) Without limiting clause 5.3(a), the Seller must replace or extend the Development Bond, as the case may be:
- (1) no less than 15 Business Days prior to its expiry; and
 - (2) within 20 Business Days if the issuer of the Development Bond ceases to meet the rating or other requirements set out in the definition of "Development Bond",

with another Development Bond that complies with the requirements of this Agreement, and in either case, if it fails to do so, the Buyer will be entitled to immediately draw down the full amount of the Development Bond and hold those funds as a cash security in lieu of the Development Bond. The Buyer may access any cash security held by it in accordance with this clause 5.3(b) in the same way the Buyer may access the Development Bond under clause 5.2.

5.4 No benefit

The Buyer does not hold the Development Bond or the proceeds of the Development Bond as agent for, or for the benefit of, the Seller.

5.5 Fees

All costs, fees, expenses or other disbursements incidental to the provision, maintenance and release of the Development Bond must be borne by the Seller.

5.6 Return of Development Bond

The Buyer must return the Development Bond or any cash security if the Buyer holds cash security in accordance with clause 5.3(b) to the Seller within the later of:

- (a) 30 Business Days after the Commercial Operation Date; and
- (b) the date on which there are:
 - (1) no outstanding calls under the Development Bond or cash security (as applicable) by the Buyer;
 - (2) no amounts that are due and payable by the Seller to the Buyer in respect of conduct occurring on or prior to the Commercial Operation Date remain unpaid; and
 - (3) no Disputes between the Parties in respect of conduct occurring on or prior to the Commercial Operation Date that could reasonably be expected to result in a payment obligation arising for the Seller.

5.7 No prejudice

Any agreement between the provider of a Development Bond and the Buyer in respect of any demands made by the Buyer and amounts paid by the provider to the Buyer under a Development Bond is without prejudice to the Buyer's rights to make continuing Claims against the Seller for matters for which a Development Bond is provided, except that any amounts received by the Buyer under the Development Bond will be applied towards satisfaction of the amounts unpaid by the Seller.

6 Laws and Authorisations

- (a) The Seller must comply with the requirements of all Laws and Authorisations and with the lawful requirements of any Government Agency in any way affecting or applicable to the performance of the Seller's Obligations and its obligations under the other Project Agreements.
- (b) The Seller must obtain, maintain and renew all Authorisations necessary and in sufficient time for it to undertake the Project and to otherwise perform the Seller's Obligations and its obligations under the other Project Agreements, including all Authorisations required to:
 - (1) enter into this Agreement and the other Project Agreements;
 - (2) design, procure, construct, erect, install, test and commission and finance the Facility;
 - (3) own, operate and maintain the Facility and sell Electricity generated by the Facility to the Buyer under this Agreement; and
 - (4) upon expiration of the Agreement Term, decommission and remove the Facility from the Site in accordance with the Usufruct Agreement.
- (c) The Seller must, at the Buyer's request and in addition to any obligation to provide copies of any Authorisation in satisfaction of a Seller's Conditions, promptly provide the Buyer with a certified copy of all Authorisations referred to in clause 6(b).
- (d) Without limiting any other provision in this Agreement, if any Authorisation is revoked or withdrawn, the Seller must:
 - (1) immediately inform the Buyer in writing of that revocation or withdrawal, and the impact of that revocation or withdrawal on the Seller's ability to perform the Seller's Obligations and its obligations under the other Project Agreements; and
 - (2) promptly take all necessary procedures to regain or renew that Authorisation.
- (e) Nothing in this clause 6 affects the Seller's Obligations under clause 3 to satisfy the Seller's Conditions by the Scheduled Conditions Satisfaction Date.

7 Project management

7.1 Representatives

- (a) Each Party must appoint a Representative to act on that Party's behalf for the purpose of this Agreement and exercise any of that Party's rights or perform any of its obligations under this Agreement, subject to the delegation limits in clause 7.1(c).
- (b) Each Party must Notify the other Party of its Representative and any changes to its Representative from time to time.
- (c) The Buyer may assume (subject to any express statement to the contrary by the Seller's Representative) that the Seller's Representative is duly authorised to make decisions on behalf of the Seller. The Buyer's Representative is authorised in respect of those matters delegated to it by the Buyer. The Buyer will Notify the Seller of the powers delegated to the Buyer's Representative upon reasonable request from the Seller.

7.2 Establishment of Operating Committee

The Parties acknowledge and agree that, in accordance with the Network Connection Contract, the Network Operator and the Seller will establish the Operating Committee to perform roles under the Network Connection Contract and, with the consent of the Parties and subject to clause 7.3, this Agreement.

7.3 Role of Operating Committee

- (a) The Parties acknowledge and agree that the Operating Committee's sole role and authority in connection with this Agreement is to make the certifications required under clauses 8, 9, 11 and 12, and to take responsibility for meter reading under the Network Connection Contract. Decisions of the Operating Committee will be by simple majority of all members of the Operating Committee, after giving those members a reasonable opportunity (but in any event at least one Week) to consider the relevant matter.
- (b) The Operating Committee will be required to reach a decision within 2 Weeks of submission of a request for certification or such longer period as the Parties may agree.
- (c) All decisions of the Operating Committee will be final and binding on both Parties and are not subject to appeal.

8 Network Operator's Assets

- (a) Subject to clause 8(c), the Buyer must procure that the Network Operator uses its Reasonable Endeavours to achieve Provisional Completion of the Network Operator's Assets by the relevant Anticipated Date for Provisional Completion.
- (b) If the Buyer becomes aware that the Network Operator will be delayed or disrupted in completing the Network Operator's Assets by the Anticipated Date for Provisional Completion of the Network Operator's Assets, the Buyer must, by no later than 5 Business Days after becoming aware, or when it ought to have become aware, give the Seller Notice stating:

- (1) the details of the delay or disruption and the revised Anticipated Date of Provisional Completion of the Network Operator's Assets; and
- (2) the steps, if any, the Network Operator proposes to take to eliminate or minimise the delay or disruption.
- (c) If, and to the extent that, the construction and testing processes for the Network Operator's Assets are delayed due to:
- (1) an Other Force Majeure Event;
- (2) an Emergency;
- (3) a failure by the Seller to provide the information it is required to provide under the Network Connection Contract within the timeframe required under that agreement; or
- (4) any failure by the Seller to perform its obligations under this Agreement or any Project Agreement,

the Buyer will be allowed an extension of the time to complete Provisional Completion of the Network Operator's Assets equal to the length of time the Network Operator was delayed in achieving Provisional Completion of the Network Operator's Assets.

- (d) The Buyer is not liable to pay the Seller, and the Seller must not Claim, Delay Costs as a result of a delay in the completion of the Network Operator's Assets (including any delay in achieving Provisional Completion of the Network Operator's Assets) to the extent the reason for that delay was any of the matters listed in clause 8(c).
- (e) The Buyer warrants that the Network Operator's Assets will be:
- (1) designed, constructed, installed, tested and commissioned in accordance with:
- (A) 'Good Utility Practice' (as that term is defined in the Cost Sharing Agreement); and
- (B) applicable Laws, Authorisations and international standards applicable to the relevant Network Operator's Assets, as set out in Part A of Schedule 2 of the Cost Sharing Agreement; and
- (2) substantially constructed in accordance with the specifications and design set out in Part A of Schedule 2 of the Cost Sharing Agreement.

9 Road Works

- (a) Subject to clause 9(c), the Buyer must procure that NREA uses its Reasonable Endeavours to achieve Provisional Completion of the Road Works by the relevant Anticipated Date for Provisional Completion.
- (b) If the Buyer becomes aware that NREA will be delayed or disrupted in completing the Road Works by Anticipated Date for Provisional Completion of the Road Works, the Buyer must, by no later than 5 Business Days after becoming aware, or when it ought to have become aware, give the Seller Notice stating:
- (1) the details of the delay or disruption and the revised Anticipated Date for Provisional Completion of the Road Works; and

- (2) the steps, if any, NREA proposes to take to eliminate or minimise the delay or disruption.
- (c) If, and to the extent that, the construction of the Road Works is delayed due to:
- (1) an Other Force Majeure Event; or
 - (2) any failure by the Seller to perform its obligations under this Agreement or any Project Agreement,

the Buyer will be allowed an extension of the time allowed to complete Provisional Completion of the Road Works equal to the length of time NREA was delayed in achieving Provisional Completion of the Road Works.

- (d) The Buyer is not liable to pay the Seller, and the Seller must not Claim, Delay Costs as a result of a delay in the completion of the Road Works (including any delay in achieving Provisional Completion of the Road Works) to the extent the reason for that delay was any of the matters listed in clause 9(c).

10 Facility

10.1 Design and construction of Facility

- (a) The Seller must design, procure, construct, erect, install, test and commission the Facility:
- (1) in all material respects in accordance with the design and equipment parameters set out in the Design and Technical Specifications and so that it:
 - (A) will be fit for the purposes identified in the Design and Technical Specifications; and
 - (B) will have the minimum design life specified in the Design and Technical Specifications; and
 - (2) otherwise in accordance with:
 - (A) Good Utility Practice;
 - (B) the Network Connection Contract;
 - (C) the Generation Licence;
 - (D) the requirements of all relevant Laws;
 - (E) the requirements of any industry codes with which the Seller is legally obliged to comply, including any Grid Code; and
 - (F) the terms of all relevant Authorisations.
- (b) Without limiting the Seller's obligations under clause 12.4, the Seller must use its Reasonable Endeavours to achieve the timely completion of the Facility in accordance with the Implementation Schedule.
- (c) For the purposes of this clause 10.1, all references to "the Seller" are deemed to include the EPC Contractor (where applicable).

10.2 Interfaces

- (a) The Seller must design, procure, construct, erect, install, test, commission, finance, operate and maintain the Interfaces in accordance with all relevant Laws, Authorisations, Good Utility Practice, the Network Connection Contract, the requirements of the third party provider of the relevant service and otherwise in accordance with this Agreement.
- (b) The basic design and design criteria for the Interfaces are specified in Schedule 3 of the Network Connection Contract.

10.3 Safety, security, noise and other disturbances

The Seller must, in designing and constructing the Facility under this clause 10:

- (a) keep the Site tidy and free of refuse;
- (b) keep the Site and the Facility secure and safe and free from all unauthorised access;
- (c) prevent nuisance, noise, dust, air and other pollution, odour, vibration and any disturbance to the areas adjacent to the Site from exceeding any levels stipulated in any Law or Authorisation, and otherwise comply in all respects with all relevant Laws relating to environmental standards and pollution control;
- (d) not (except to the extent required to design and construct the Facility in accordance with this Agreement) cause any damage to:
 - (1) the Site or any adjacent sites; and
 - (2) any other appurtenances, services, fittings, fixtures or other items on the Site;
- (e) take all measures necessary to protect and ensure the safety of people and property in accordance with Good Utility Practice; and
- (f) avoid or minimise unreasonable interference with:
 - (1) the passage of people and vehicles around the Site and to or from the Facility; and
 - (2) the operations or activities carried out in the vicinity of the Site.

10.4 Electricity, water and other inputs for construction

The Seller is solely responsible for the provision or procurement, at its sole cost, of any electricity, water or other inputs required for use as part of the construction of the Facility in accordance with this Agreement.

10.5 Implementation Schedule

- (a) Nothing in this clause 10.5 affects the Seller's obligation to achieve the Commercial Operation Date Criteria by the Scheduled Commercial Operation Date.
- (b) The Implementation Schedule is to be prepared and communicated using a commercially available project scheduling software as agreed between the Parties, acting reasonably.
- (c) The Seller must provide to the Buyer a copy of the Implementation Schedule and any updated Implementation Schedule in "PDF" and "native" format.

(d) The Implementation Schedule must:

- (1) be drawn as a critical path network in the form of a time scaled bar chart:
 - (A) showing key dates, working and non-working days, float, logic links and constraints; and
 - (B) on a Weekly basis with each Week ending on the Saturday evening,

which network consists of appropriate activities or tasks numbered in a sequential logical order and of sufficiently small duration to represent accurately the Seller's proposed method of completing the Facility;
- (2) have the critical path clearly marked;
- (3) take into account the requirements and the program constraints set out in this Agreement; and
- (4) include, for all activities, such sufficient detail to enable the Buyer to reasonably assess any Claim for an extension of time in accordance with this Agreement,

and in relation to any updated Implementation Schedule, must incorporate:

- (5) the physical achieved progress of all relevant activities, shown as a heavily marked bar line, from which it will be possible to readily determine progress against the schedule;
- (6) the current critical path, distinguished by suitable markings;
- (7) the estimated time to completion of all started but not completed activities;
- (8) provide a 4 Week look ahead bar chart indicating resources and progress for the ensuing 4 Week period;
- (9) any changes in activities, methods, times or sequence of activities by clearly illustrating all changes in activities, methods, times or sequence of activities against each of the original Implementation Schedule and the most recently provided updated Implementation Schedule; and
- (10) the Seller's planned progress towards satisfying the Commercial Operation Date Criteria.

(e) Any updated Implementation Schedule must not adjust any Anticipated Date for Provisional Completion or the Scheduled Commercial Operation Date.

(f) The Seller agrees that, whether or not there is a proposed or likely departure from the Implementation Schedule, an updated Implementation Schedule will be provided to the Buyer within 5 Business Days of the end of each Month occurring before the Commercial Operation Date (or at such other time as reasonably requested by the Buyer).

(g) The Buyer may review any updated Implementation Schedule and may provide comment to the Seller arising from that review. The Seller must consult with the Buyer in good faith on any comment made or matter identified by the Buyer as a result of the Buyer's review of the updated Implementation Schedule (which may result in the Seller amending the updated Implementation Schedule to address any comment or matter).

- (h) The Seller acknowledges and agrees that:
- (1) the Buyer does not assume or owe any duty of care to the Seller to review or comment on any Implementation Schedule;
 - (2) any review or comment on any Implementation Schedule by the Buyer (or failure by the Buyer to provide review or comment) will not:
 - (A) limit, or relieve the Seller of, any obligation or liability under this Agreement;
 - (B) evidence or constitute the granting of an extension of time or an instruction by the Buyer to accelerate, re-sequence, disrupt, prolong or vary any or all of the design and construction of the Facility;
 - (C) limit any right of the Buyer under this Agreement;
 - (D) constitute acceptance by the Buyer of the performance of the Seller's obligations under this Agreement;
 - (E) be considered as a representation or an acknowledgment by the Buyer that the relevant Implementation Schedule complies with this Agreement; or
 - (F) give rise to any Claim on the part of the Seller;
 - (3) the Seller has not in any way relied (and will not rely) upon any review or comment on any Implementation Schedule by the Buyer (or any failure by the Buyer to provide review or comment); and
 - (4) the Buyer is not liable for, or in connection with, any Claim by the Seller (and the Seller is not entitled to make, and is absolutely barred from making, any Claim) against the Buyer arising out of or in connection with:
 - (A) any Implementation Schedule; or
 - (B) any review or comment on, any Implementation Schedule by the Buyer (or any failure by the Buyer to provide review or comment).

10.6 The Buyer to be kept informed

- (a) At the end of every second Month during the design and construction of the Facility, the Seller must provide the Buyer with a report in respect of the status of the design and construction of the Facility which sets out:
- (1) the design, construction and testing and commissioning activities undertaken by the Seller and its Subcontractors including any Tests during the preceding period;
 - (2) the Seller's progress against the Implementation Schedule (with reference to each date and task specified in that document) as at the date of the report and any estimated delays in the completion of any of the key milestones by the respective milestone dates and the Seller's proposed measures to eliminate or minimise those estimated delays; and
 - (3) any other information in respect of the design and construction of the Facility reasonably requested by the Buyer from time to time,

regardless of whether or not such information has already been provided to the Buyer by way of the Implementation Schedule.

- (b) The Buyer may, at its own cost and risk, inspect any part of the Facility at all times prior to the Commercial Operation Date provided that the Seller is given reasonable prior Notice of such inspection.
- (c) In inspecting any part of the Facility under clause 10.6(b), the Buyer must:
 - (1) comply with the Seller's occupational health and safety requirements applicable to the Site, as are advised to the Buyer in advance in writing; and
 - (2) not unduly interfere with the Seller's operations at the Site or the Facility.

10.7 Personnel

- (a) The Seller must ensure that any officer, employee, adviser, consultant or Subcontractor employed or engaged by the Seller or any individual employed or engaged by a Subcontractor in respect of any activities connected with the Project possess the appropriate skill, expertise, authority and qualifications.
- (b) The Buyer must ensure that any officer, employee, adviser or consultant employed or engaged by the Buyer in respect of any activities connected with the Project possess the appropriate skill, expertise, authority and qualifications.

11 Testing and commissioning of Facility

11.1 Electricity and other inputs for testing and commissioning

- (a) Subject to clause 11.2(d), the Seller is solely responsible for the provision or procurement, at its sole cost, of all electricity, water and other inputs required for the Testing, commissioning and start-up of the Facility prior to the Commercial Operation Date in accordance with this Agreement.
- (b) The Buyer must not, during any Tests of the Facility by the Seller prior to the Commercial Operation Date, energize or back-feed high voltage power (close breaker to the Transmission System) into the Facility without the prior written approval of the Seller (which approval must not be unreasonably withheld).

11.2 Initial synchronization with Transmission System

- (a) The Seller must not initiate the synchronization of any Generating Units of the Facility with the Transmission System without the prior written approval of the Network Operator under the Network Connection Contract.
- (b) If the approval of the Network Operator referred to under clause 11.2(a) is unreasonably withheld or delayed and the failure or delay in granting approval causes a delay in the occurrence of the Commercial Operation Date until after the Scheduled Commercial Operation Date, the Seller will be entitled to an extension of time to the Scheduled Commercial Operation Date in accordance with clause 12.2 and payment of Delay Costs in accordance with clause 12.3.
- (c) By no later than:
 - (1) 45 Days prior to any proposed synchronization date; and

(2) thereafter, 7 Business Days prior to the actual synchronization date, the Seller must Notify the Buyer, by Notice, of the initial synchronization of any Generating Units of the Facility with the Transmission System.

(d) The Buyer must, at the Seller's cost, supply such quantities of back feed electricity to the Facility as is necessary for the initial energisation of the Facility and any of its individual Generating Units, and at such times as the Seller may Notify to the Buyer to enable the Seller to achieve the Commercial Operation Date on or before the Scheduled Commercial Operation Date in accordance with the Implementation Schedule. For clarity, the Implementation Schedule must not oblige the Buyer to supply any back feed electricity in accordance with this clause 11.2(d) before the Anticipated Date for Provisional Completion of the Network Operator's Assets.

11.3 Performance and reliability testing

- (a) The Seller is solely responsible for the development and implementation of the test procedures, testing program (including the Tests to be passed by the Facility) and estimated loading requirements during the construction, start-up and commissioning of the Facility and must provide reasonable prior Notice to the Buyer of all Testing of the Facility.
- (b) The Buyer must on request provide the Seller with its forecast (on a non-reliance basis) of the demand supply position of the Transmission System from time to time. The test procedures and testing program developed by the Seller must take into account the Buyer's forecast of the demand supply position of the Transmission System as provided to it under this clause.
- (c) Any member of the Operating Committee is entitled to be present at any Testing of the Facility (together with any nominated representative of the Buyer).
- (d) The Seller must provide the Buyer with a copy of its final program for testing the Facility, including the expected duration of its start-up testing program, not less than 10 Business Days prior to the commencement of such test program. The Seller must Notify the Buyer, at least 5 Business Days in advance, of the required load in connection with any Test and the nature and duration of the required load.
- (e) In relation to any Test that is required to be rescheduled by the Seller, the Seller must Notify the Buyer at least 48 hours in advance of the commencement of the rescheduled Test.
- (f) On each Day beginning with the Day on which Testing commences, the Seller must give final confirmation of the Tests to be conducted on the following Day or Days (if such Test will continue for more than one Day).
- (g) If the Buyer is unable to accommodate a proposed schedule for Testing it must give Notice to the Seller within 48 hours of its receipt of the final schedule for Testing of its requirements regarding deferral or any Tests (including commissioning tests) for the Facility and the Parties will agree on a date for any deferred Test or program. Any failure to agree may be referred for determination by the Independent Expert under clause 31.
- (h) During the Testing of the Facility or any of its individual Generation Units provided for in Schedule 6, and in accordance with the test procedures and testing program developed and implemented by the Seller, the Buyer must accept and take delivery of the Electricity from the Facility to allow the Seller to perform the relevant Tests of the Facility or individual Generating Units, subject

always to the Network Operator's operational procedures for the Transmission System and the terms of the Network Connection Contract.

(i) If:

- (1) a duly scheduled Test fails due solely to conditions in the Transmission System (including the Network Operator's Assets); or
- (2) the Buyer fails to receive and take delivery of Electricity from the Facility in accordance with Schedule 6 and the testing procedures and testing program developed and implemented by the Seller,

and such failure or delay causes a delay in the occurrence of the Commercial Operation Date until after the Scheduled Commercial Operation Date, then the Seller will be entitled to an extension of time to the Scheduled Commercial Operation Date in accordance with clause 12.2 and payment of Delay Costs in accordance with clause 12.3, subject in each case, to the Operating Committee's certification as to the cause of any relevant Test failure and the readiness of the Facility to undertake any Test at the original proposed time.

11.4 Completion of Tests – Commercial Operation Date

- (a) Once the Seller is of the opinion that the Facility has passed all of the Tests in accordance with the requirements of Schedule 6 it will give Notice to the Operating Committee and provide the Operating Committee with a report setting out the basis for its opinion with reference to the Test results for the Facility. The report must attach a copy of the Test Verification Certificate.
- (b) The Operating Committee will determine whether or not the Facility has passed the Tests and the Seller has otherwise complied with the requirements of Schedule 6 and will Notify the Seller of its conclusion.
- (c) If the Operating Committee determines that the Facility has not passed the Tests or the Seller (or both) has not complied with the requirements of Schedule 6, the Operating Committee must advise the Seller in writing of the reason or reasons and the Seller must remedy those reasons before the Tests can be carried out again.
- (d) Once the Operating Committee determines that the Facility has passed the Tests and the Commercial Operation Date Criteria have otherwise been achieved, the Operating Committee must sign and issue to the Seller a certificate confirming this determination. The Day following the date of the certificate issued by the Operating Committee is the "**Commercial Operation Date**".

11.5 Testing Expert

- (a) The Seller must, no later than 3 Months prior to the commencement of Testing and commissioning of the Facility, provide the Operating Committee with the names of 3 testing institutions that:
 - (1) have suitable international experienced in field of constructing and operating electrical facilities similar to the Facility; and
 - (2) are willing and able to perform the necessary services to certify that the Commercial Operation Tests have been successfully passed in accordance with the requirements of Schedule 6.
- (b) The nominated expert that is approved by the Operating Committee will be the "**Testing Expert**".

- (c) The Testing Expert must be engaged by the Seller. The Seller will be responsible for paying the Testing Experts costs and expenses associated with the performance of the Testing Experts duties referred to in this Agreement, including the provision of the Test Verification Certificate.

11.6 No acceptance, waiver or release

The Seller's liability for the performance of the Seller's Obligations or any warranties or covenants given in respect of the Project is not diminished or affected in any way by:

- (a) the occurrence of the Commercial Operation Date;
- (b) the Buyer's or the Operating Committee's acceptance of the Facility or any Tests carried out by the Seller;
- (c) the presence of the Buyer, a representative of the Buyer (including the Buyer's Representative) or the Operating Committee at any Tests carried out in respect of the Facility;
- (d) the provision of the Design and Technical Specifications or other information by the Buyer to the Seller;
- (e) any review or approval of the design or construction or inspection of the Facility undertaken by the Buyer or the Operating Committee;
- (f) any recommendations that the Operating Committee or the Buyer has made, or has failed to make, in respect of the Project; or
- (g) any consent provided or withheld by the Buyer or the Operating Committee.

11.7 As-built drawings

From the Commercial Operation Date and throughout the Supply Term, the Seller must retain at the Site and must provide to the Buyer:

- (a) for all items of equipment incorporated into the Facility, copies of the specifications and operation manuals for such equipment;
- (b) copies of all Test results for Tests performed in accordance with this Agreement and all items of equipment incorporated into the Facility;
- (c) as-built drawings for the Facility (including showing the Interfaces), after the Commercial Operation Date;
- (d) all drawings approved by Government Agencies; and
- (e) all detailed technical documents related to the design, engineering and construction of the Facility, to the extent that such items are normally retained in accordance with Good Utility Practice or are otherwise required to be retained under this Agreement for the purposes of the Network Operator commissioning the Network Operator's Assets under the Network Connection Contract.

12 Extensions of time and consequences of delay

12.1 Notice of delay or disruption

If the Seller becomes aware that it will be delayed or disrupted in achieving Commercial Operation Date by the Scheduled Commercial Operation Date, the Seller must, by no

later than 5 Business Days after becoming aware, or when the Seller ought to have become aware, give the Buyer Notice stating:

- (a) the details of the delay or disruption and the anticipated date of completion of Commercial Operation Date; and
- (b) the steps, if any, the Seller proposes to take to eliminate or minimise the delay or disruption.

12.2 Extensions of time

If there is:

- (a) a delay or disruption in completing the Network Operator's Assets by the Anticipated Date for Provisional Completion of the Network Operator's Assets (that is not caused or contributed to by the Seller or any of its Subcontractors);
- (b) a delay or disruption in completing the Road Works by the Anticipated Date for Provisional Completion of the Road Works (that is not caused or contributed to by the Seller or any of its Subcontractors);
- (c) a change to the Network Operator's Assets in accordance with clause 19.1;
- (d) any unreasonable withholding or delay of approval by the Network Operator of the synchronization of any Generating Units of the Facility with the Transmission System, and clause 11.2(b) provides that the Seller will be entitled to an extension of time in accordance with this clause 12.2;
- (e) a failure by the Buyer to receive and take delivery of Electricity from the Facility in accordance with clause 11.3(i) or any Test of the Facility is delayed under clause 11.3(i), and, in both instances, clause 11.3(i) provides that the Seller will be entitled to an extension of time in accordance with this clause 12.2;
- (f) a failure by the Operating Committee to reach a decision within the timeframe required under clause 7.3(b) (that is not caused or contributed to by the Seller or any Seller representative on the Operating Committee);
- (g) a breach by the Buyer of this Agreement (that is not caused or contributed to by the Seller, the security agent on behalf of the Financing Parties or any Financing Party);
- (h) a breach by a Principal Party (other than the Buyer) of any Principal Project Agreement (other than this Agreement) (that is not caused or contributed to by the Seller, the security agent on behalf of the Financing Parties or any Financing Party) during any period that the relevant Principal Party remains under the Control of the Arab Republic of Egypt;
- (i) a Change in Law;
- (j) a Governmental Force Majeure Event; or
- (k) an Other Force Majeure Event,

which causes a delay in the critical path schedule for the Facility as set out in the Implementation Schedule that will have the effect of delaying the occurrence of the Commercial Operation Date until after the Scheduled Commercial Operation Date, the Buyer, acting reasonably, must adjust the Scheduled Commercial Operation Date by a reasonable period of time to take into account the delay on the occurrence of the Commercial Operation Date by giving Notice of that adjustment to the Seller provided, however, that:

- (l) the Seller gives a Notice in respect of the delay in accordance with the timeframe required by clause 12.1;

- (m) the Scheduled Commercial Operation Date will not be extended to the extent that the delay would have nevertheless been experienced had the event in clause 12.2(a) to 12.2(k) not occurred; and
- (n) the Seller has made all reasonable efforts to prevent or reduce to a minimum, and mitigate the effect of, any delay.

12.3 Delay Costs

- (a) Subject to clauses 8(d), 9(d) and 12.3(b), where the Buyer grants the Seller an extension of time to the Scheduled Commercial Operation Date under clause 12.2 for any of the delay events set out in clauses 12.2(a) to 12.2(j), the Seller may claim from the Buyer, and the Buyer will be liable to pay to the Seller, delay damages at a rate of the Delay Amount for each Day of the extension (**Delay Costs**).
- (b) The Buyer is not liable to pay the Seller, and the Seller must not Claim, Delay Costs for any of the first 30 Days of extension granted to the Seller under clause 12.2 for delay events set out in clauses 12.2(a) to 12.2(j).
- (c) The Buyer must pay the Seller the Delay Costs within 20 Business Days following the receipt of the Seller's claim under clause 12.3(a) which may be made progressively each Month prior to the occurrence of the Commercial Operation Date.

12.4 Liquidated damages

- (a) Subject to clauses 12.4(b) and 12.4(c), if the Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date, the Seller must pay the Buyer the LD Amount for each Day until the earlier of:
 - (1) the occurrence of the Commercial Operation Date; or
 - (2) the date this Agreement is terminated by either Party in accordance with this Agreement.
- (b) The Seller is not liable to pay the Buyer, and the Buyer must not Claim, the LD Amount for any of the first 30 Days that the Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- (c) The Seller's liability to pay the LD Amount under clause 12.4(a) is limited to the LD Cap.

12.5 Payment of LD Amounts

- (a) The LD Amounts set out in clause 12.4 must be paid by the Seller to the Buyer within 20 Business Days after the Seller's receipt of a Notice from the Buyer demanding payment and demands may be made each Month prior to the occurrence of the Commercial Operation Date.
- (b) If the Seller fails to pay any LD Amounts when due, the Buyer may make a call on the Development Bond in accordance with clause 5.2.

12.6 General

- (a) The Parties acknowledge and agree that:
 - (1) the basis of determining the amounts set out in clauses 12.3 and 12.4:

- (A) has been determined by the Parties in good faith; and
 - (B) is a genuine pre-estimate of the anticipated or actual Loss the relevant Party will or may suffer if the Commercial Operation Date is delayed;
- (2) each Party wishes to avoid the difficulties of proof of damages in connection with a delay in the Commercial Operation Date; and
- (3) the liquidated damages payable in accordance with clauses 12.3 and 12.4 are reasonable and not intended as a penalty.
- (b) Except for the Parties' respective rights that are otherwise explicitly set out in this Agreement, payment of the Delay Costs and LD Amounts (as the case may be) are each their exclusive remedy for a delay in the Commercial Operation Date.

13 Operation and maintenance of Facility

13.1 Operation, maintenance and repair

- (a) The Seller must, at its own cost, operate, maintain and repair the Facility to ensure it meets the Operating Capabilities throughout the Supply Term.
- (b) Without limiting clause 13.1(a), the Seller is solely responsible for the operation, maintenance and repair of the Facility until the end of the Supply Term in a manner consistent with:
- (1) Good Utility Practice;
 - (2) the requirements of any third party utility providers to the Facility;
 - (3) the Network Connection Contract;
 - (4) the Generation Licence;
 - (5) the terms of all relevant Authorisations;
 - (6) the requirements of all relevant Laws and Government Agencies which the Seller is legally obliged to comply;
 - (7) the requirements of all relevant codes which the Seller is legally obliged to comply, including any Grid Code; and
 - (8) any other requirements of this Agreement.
- (c) The Seller must, at its own cost, procure all inputs and resources (including all electricity and water) required for the operation, maintenance and repair of the Facility in accordance with this Agreement.
- (d) The Seller must keep accurate records of any accident or other occurrence at the Facility that results in injury to persons or damage to property. The Seller must provide the Buyer with reasonable access to these records on request by the Buyer.
- (e) The Seller must ensure that its personnel are on duty at the Facility for 24 hours per Day, 7 Days per Week commencing from the date of first delivery of Initial Delivered Electricity to the Delivery Point under this Agreement.

- (f) In the event of any damage to the Facility, the Seller must promptly rectify such damage and restore the Facility to the condition it would have been if such damage had not occurred.
- (g) For the purposes of this clause 13.1, all references to the Seller are deemed to include the O&M Contractor (where applicable).

13.2 Pollution control

The Seller must operate, maintain and repair the Facility in accordance with all Laws and Authorisations relating to pollution control and environmental standards applicable in the Arab Republic of Egypt.

13.3 Coordination

The Seller must maintain (and the Buyer must procure that the Network Operator, as applicable, maintains) operating communications between the Facility, the Transmission System and the Dispatch Centre in accordance with the Operating Procedures. The Seller must keep (and the Buyer must procure that the Network Operator, as applicable, keeps) operation records for the Facility in accordance with the provisions in the Network Connection Contract.

13.4 No modification

The Seller must not modify the capacity of the Facility (including any Connection Facilities or Interfaces) from the characteristics described in this Agreement or the Generation Licence without the Buyer's prior written consent.

14 Delivery and acceptance of Electricity

14.1 Output of Facility

- (a) The Buyer acknowledges and agrees that:
 - (1) the Buyer must accept and take delivery at the Delivery Point of all Electricity generated and delivered from the Facility during the Supply Term up to the Installed Capacity, except when relieved of the obligation to do so by the express provisions of this Agreement;
 - (2) for each Deemed Delivery Event that results in Deemed Delivered Electricity, the Seller will be entitled to be paid for the associated Deemed Delivered Electricity, in accordance with the provisions set out in Schedule 9; and
 - (3) the Seller does not operate or control the Transmission System, and that supply of Electricity through the Transmission System beyond the Delivery Point and the quality, frequency or continuity of that Electricity through the Transmission System after the Delivery Point is outside of the Seller's control.
- (b) Nothing in this clause 14.1 limits the Seller's obligations under clause 14.5.
- (c) The Seller must provide to the Buyer or any expert appointed pursuant to clause 31, promptly following a request by the Buyer or the expert, any energy measurement data produced or recorded by the Energy Measurement

Equipment that the Buyer or expert requires for the purposes of determining the impact of other facilities on the Actual Delivered Output of the Facility.

14.2 Delivery of Electricity to Delivery Point

- (a) The Seller must deliver all of the Electricity generated by the Facility to the Buyer at the Delivery Point, other than Electricity consumed at the Site by the Seller for the purposes of operating and maintaining the Facility.
- (b) For clarity, the Seller is not entitled to deliver any Electricity generated by the Facility during the Agreement Term to an off-taker of Electricity other than the Buyer.

14.3 Initial Delivered Electricity

- (a) During the period prior to the Commercial Operation Date but not earlier than the date on which the Facility and the Network Operator's Assets are installed and tested and the Seller has provided evidence to the satisfaction of the Buyer (acting reasonably) that a Generating Unit (or Generating Units) are ready for reliable operation, the Buyer must take delivery of and purchase Electricity delivered to the Delivery Point (such Electricity being **Initial Delivered Electricity**).
- (b) Initial Delivered Electricity will be purchased at the price determined in accordance with clause 17.1(a) and Schedule 9.

14.4 Entitlement and risk

The entitlement to and risk in all Electricity delivered by the Seller, and accepted by the Buyer, passes from the Seller to the Buyer at the Delivery Point.

14.5 Failure to comply with Power Quality Standards

The Seller must use Reasonable Endeavours ensure that at all times the Electricity generated by the Facility at the Delivery Point complies with the Power Quality Standards as set out in the Network Connection Contract.

15 Site Meters

15.1 Responsibility for Site Meters

The Seller must provide, install, operate and maintain the Site Meters as part of the Facility which must meet the specifications set out in the Design and Technical Specifications.

15.2 Site Meter testing and calibration

The Seller must test and seal the Site Meters as required by, and in accordance with, the Network Connection Contract.

15.3 Seller to provide information

The Seller must promptly provide the Buyer with:

- (a) all information available to it (as reasonably requested by the Buyer) in relation to any calibration and testing of the Site Meters conducted by the Seller; and
- (b) the results of any tests conducted by the Seller measuring:
 - (1) the quantity of Electricity delivered to the Buyer at the Delivery Point; and
 - (2) the quantity of electricity delivered to the Seller at the Delivery Point.

15.4 Meter data and measurement

- (a) The Seller must ensure that each Site Meter maintains the functional capability to provide meter data to the Buyer and the Network Operator using a remote reading system on an hourly basis in accordance with the specification for that meter in the Design and Technical Specifications.
- (b) The Site Meters must be read by the Operating Committee Monthly in accordance with the procedure set out in the Network Connection Contract, and subject to clause 15.5, the readings from the Site Primary Meter determined by the Operating Committee or, in the event that the Operating Committee is unable to make a determination, by the Network Operator, or, if relevant, the reading determined following the determination of a dispute under the Network Connection Contract, must be used to determine the Payment required each Billing Period in accordance with Schedule 9.

15.5 Inaccuracies in Site Meters

- (a) When, as a result of any Test carried out in accordance with this Agreement or the Network Connection Contract, Site Primary Meter is found to be inaccurate within plus or minus two tenths of a percent (0.2%) or is otherwise functioning improperly, then the correct amount of electrical energy delivered to the Delivery Point for the actual period during which inaccurate measurements were made, if any, must be determined as follows:
 - (1) unless the Site Backup Meter is found to be inaccurate, the readings of the Site Backup Meter determined by the Operating Committee or, in the event that the Operating Committee is unable to make a determination, by the Network Operator, or, if relevant, the reading determined following the determination of a dispute under the Network Connection Contract must be utilised in place of the relevant readings from the Site Primary Meter;
 - (2) if the Site Backup Meter is found to be inaccurate by more than two tenths of a percent (0.2%) or is otherwise functioning improperly, then the Parties must jointly prepare an estimate of the correct reading on the basis of all available information and such guidelines as may have been agreed to between them;
 - (3) if the period of inaccuracy or improper operation cannot be accurately determined, it will be deemed to have begun on the date which is midway between the date the relevant issue was identified and the date of the last meter reading accepted by the Parties as accurate. In no event, however, will any such adjustment be made for any period prior to the date on which the relevant Site Meter was last found to be

- accurate within plus or minus two tenths of a percent (0.2%) by a properly executed test; or
- (4) in the event that the Buyer and the Seller fail to agree upon an estimate for the correct reading, the Buyer must make any payments to the Seller required as a result of the Buyer's estimate of the correct reading, and the matter may be referred by either Party for determination by an Independent Expert in accordance with clause 31.
- (b) Where the inaccuracy or improper operation of a Site Meter is found to have impacted past Payments made by the Buyer to the Seller in accordance with clause 15.5(a), the relevant Payment (or Payments) must be recalculated and the difference between the previous Payment by the Buyer for the period of inaccuracy and the recalculated amount determined by the Buyer or the Independent Expert in accordance with this Agreement must be offset against or added to the next payment to the Seller under this Agreement, as appropriate.

15.6 Repair, replacement or recalibration of Site Meters

- (a) When any component of a Site Meter is found to be outside acceptable limits of accuracy or otherwise not functioning properly, the Seller must promptly repair, recalibrate or replace (or must promptly procure the repair, recalibration or replacement of) that Site Meter at its expense. Upon the completion of any examination, maintenance, repair, recalibration, or replacement of any component of a Site Meter the Seller must re-test the relevant meter for compliance and accuracy, and seal the relevant meter in accordance with the process set out in the Network Connection Contract.
- (b) Each Party must not tamper, and must ensure that its employees or contractors (and in the case of the Buyer, the Network Operator while it remains under the Control of the Arab Republic of Egypt) do not tamper, with any Site Meter other than in accordance with its rights and obligations under this Agreement.
- (c) If a Party breaches clause 15.6(b), that Party (the **Tampering Party**) must:
- (1) take all remediable action reasonably acceptable to the other Party to ensure that such tampering does not re-occur, including the development or enhancement of its security systems; and
 - (2) compensate the other Party for 4 times the amount of any overpayment by that other Party resulting from such tampering, which for the purposes of such determination must be assumed to have occurred immediately after the last known accurate test of the relevant Site Meter (unless the Tampering Party demonstrates to the reasonable satisfaction of the other Party, or the Independent Expert determines, that the tampering did not occur until a later date, in which case such later date must be used as the reference date for the determination of such amount).

15.7 Access

The Seller must ensure that the Buyer and its representatives are permitted sufficient access to the Site and the Delivery Point to allow it to confirm the Seller's compliance with its obligations under this clause 15.

16 Environmental Attributes

- (a) The Parties acknowledge and agree that the economic benefits of any Environmental Attributes that are created or capable of creation in respect of or in connection with the Facility or its operation in accordance with this Agreement will, to the extent possible, be shared equally between them.
- (b) If the Seller or the Buyer is aware that any Environmental Attributes may be created in respect of or in connection with the Facility or its operation in accordance with this Agreement, the Seller or the Buyer (as the case may be) will Notify the other Party of those potential Environmental Attributes.
- (c) The Seller must at all times during the Agreement Term take all reasonable steps to maximise the number, or amounts, of, or benefit yielded from, Environmental Attributes of which the Seller is aware or has been Notified by the Buyer, that are created in respect of the Facility (subject to operating the Facility in accordance with Good Utility Practice and complying with the Principal Project Agreements, Authorisations and Law) and, where permitted by Law, to transfer 50% of those rights or 50% of the benefit of the number, or amounts, of, or benefit yielded from, 50% of those rights to the Buyer within 10 Business Days after the end of each Month during the Agreement Term including by:
- (1) taking out and maintaining any necessary accreditations and registrations;
 - (2) complying with any necessary Laws and Authorisations; and
 - (3) providing any necessary notices.
- (d) Without limiting clause 16(c), the Buyer must promptly execute any documents, provide any information and otherwise co-operate with the Seller to the extent necessary to transfer to, or vest in the Buyer, the benefit of any Environmental Attributes attributable to the Facility or any generation therefrom.

17 Payment

17.1 Entitlement to Payment

- (a) Prior to the Commercial Operation Date, the Buyer must pay the Seller the Initial Charge Rate for each kWh of Initial Delivered Electricity delivered to the Delivery Point in accordance with clause 14.
- (b) On and from the Commercial Operation Date and throughout the Supply Term, the Buyer must pay the Seller the Charge Rate for each kWh of the Relevant Quantity, as calculated under this Agreement.
- (c) The Payment is calculated in accordance with Schedule 9 and is payable in accordance with clause 18.
- (d) That part of the Payment comprising payment for Initial Delivered Electricity under clause 17.1(a) will be included in Invoices issued by the Seller in respect of each Month occurring after the date on which Initial Delivered Electricity is first supplied under this Agreement (each such Month being an **Initial Electricity Invoice Period**).

17.2 Payment is total remuneration

The Seller agrees that, except as expressly stated otherwise in this Agreement, the Payment is the Seller's only entitlement to payment for performing the Seller's Obligations.

17.3 Taxes

Without limiting the Seller's right to claim relief for Change in Law under clause 20, the Seller is solely responsible for the payment of any and all Taxes that become payable from time to time in respect of the undertaking of the Project and the performance of the Seller's Obligations in accordance with this Agreement and the other Project Agreements.

18 Invoicing and payment

18.1 Preparation of Invoice

- (a) Promptly after the end of each Billing Period the Seller must deliver to the Buyer an Invoice for the Payment amount for the relevant Billing Period including all the information set out in Schedule 10.
- (b) Each Invoice is due and payable by the Party owing money under it (**Payor**) (and, subject to clause 18.2, must be paid by the Payor) no later than 20 Business Days after the date of receipt of that Invoice by the Payor.
- (c) The Buyer will make payments in EGP to the Seller by direct credit to the Seller's Bank Account and the Seller will make payments in EGP to the Buyer by direct credit to the Buyer's Bank Account.
- (d) If any Invoice prepared by the Seller under clause 18.1(a) is for a negative amount, that amount will be payable by the Seller to the Buyer in accordance with clauses 18.1(b) and 18.1(c).

18.2 Disputes

- (a) Without limiting clause 15.5(a)(4), if the Buyer in good faith disputes any portion of an Invoice (**Disputed Invoice**), it may withhold payment of the disputed amount and refer such Dispute for resolution under clause 30. No previously undisputed Invoice or other payment may be disputed more than 180 Days after the date the relevant Invoice was received.
- (b) If a Dispute is referred for resolution under clause 18.2(a) and it is determined that the Buyer:
 - (1) is not required to pay the disputed amount, the Seller must withdraw that portion of the Disputed Invoice which is the subject of the Dispute and issue a corrected Invoice to the Buyer;
 - (2) is required to pay any of the disputed amount, the Buyer must, within 10 Business Days after written demand, pay the disputed amount to the Seller and interest on the disputed amount at the Late Payment Rate from the date on which the disputed payment was originally due until the date that the disputed amount was paid; or
 - (3) is only required to pay part of the disputed amount, the Seller must follow the procedure described in clause 18.2(b)(1) with respect to the

amount that the Buyer is not required to pay, and the Buyer must follow the procedure described in clause 18.2(b)(2) with respect to the amount that the Buyer must pay.

- (c) The Buyer is not in Default if it withholds payment in accordance with this clause 18.2.

18.3 Overpayments

- (a) If there is any overpayment by a Party to the other Party under this Agreement, then the Party discovering the overpayment must immediately Notify the other Party of the overpayment.
- (b) The Party which received the overpayment must repay the other Party the full amount of the overpayment within 30 Business Days after the Notice being given. If a Default Notice is given to a Party in respect of an overpayment made under this clause 18.3, then the Default Cure Period under clause 22.3 is 20 Business Days.
- (c) Nothing in this clause 18.3 will entitle a Party to any repayment unless the relevant overpayment is Notified to the other Party under clause 18.3(a) within 180 Days of the date of the Invoice for the Billing Period in respect of which the overpayment was made.

18.4 Late payment

- (a) Late payments by either Party (including interest under this clause 18.4) bear interest at the Late Payment Rate accruing Daily from and including the date on which such payment was originally due until (but excluding) the date that such payment was made.
- (b) A delay in payment or failure to pay by reason of a Dispute in respect of all or a portion of an Invoice in accordance with clause 18.2(a) is not a late payment for the purposes of this clause 18.4.
- (c) The Party owed the interest must include the amount of interest owing:
- (1) in the case of the Seller, in an Invoice; and
 - (2) in the case of the Buyer, in a demand for payment,

together with evidence of the calculation of the interest owing and the rate used. The Party receiving the Invoice or demand for payment must pay the amount of the Invoice or demand for payment in accordance with clause 18.1(b). Interest is not due and payable until the Party owing the interest has received an Invoice or demand for payment for the amount of interest. The interest included in the Invoice or demand for payment is due and payable in accordance with clause 18.1(b).

18.5 Set off

Without prejudice to any other rights, if a Party does not pay amounts owing by it to the other Party under this Agreement in the time required by this Agreement, the other Party may, to the extent permitted by Law, deduct those amounts by way of set off from any Invoice received by the other Party after the date for payment of the relevant amount in accordance with this Agreement has passed.

19 Changes to Facility and Transmission System

19.1 Changes requested by Network Operator to Facility or Transmission System

(a) If, at any time, the Network Operator changes the technical requirements applicable to the Connection Facilities or the Interfaces (other than where such change comprises or is required due to a Change in Law), or proposes any expansion, upgrade or modification of the Transmission System (including the Network Operator's Assets) that may require the Seller to change:

- (1) the design and construction of the Facility (including the Connection Facilities and Interfaces) to facilitate the required connections and ties between the Facility and the Transmission System; or
- (2) the manner of operation and maintenance of the Facility to ensure compliance with the requirements of this Agreement or the Network Connection Contract,

the Buyer must give, or must procure that the Network Operator gives, Notice to the Seller of the proposed changes.

(b) Following receipt of a Notice under clause 19.1(a), the Parties must meet and begin (or, if they already have begun, continue) negotiating in good faith, with a view to reaching agreement on:

- (1) if occurring prior to the Commercial Operation Date, the estimated time effect of the change described in clause 19.1(a) on the occurrence of the Commercial Operation Date;
- (2) the estimated reasonable direct increased costs or cost savings to the Seller of the change described in clause 19.1(a) and the estimated effect of those increased costs or cost savings on the Charge Rate; and
- (3) the changes or adjustments to be made to the terms of this Agreement, the Scheduled Commercial Operation Date (as applicable) or the Charge Rate (or any combination of them) to fully provide or allow for, as applicable, the time and cost effect agreed under clauses 19.1(b)(1) and 19.1(b)(2).

(c) If the Parties fail to agree upon all the changes referred to in clause 19.1(b), as applicable, within 30 Business Days after the date of receipt of the Notice delivered under clause 19.1(a), then the provisions of clause 30 will apply to the Dispute.

(d) Following any failure by the Parties to agree changes to this Agreement under clause 19.1(b), or following any determination that imposes a change to the terms of this Agreement on the Parties (including any change to the Charge Rate) the Buyer may elect by giving Notice within a further 30 Business Days to terminate this Agreement without the need for any other legal or judicial procedure.

(e) If the Buyer elects to terminate this Agreement under clause 19.1(d), the Buyer will be obliged to purchase the Facility in accordance with the relevant provisions of clause 23.5(d).

19.2 Changes requested by Seller to Facility

- (a) If, at any time, the Seller proposes to make any material change to the Facility, then it must give Notice to the Buyer of the proposed change to the Facility.
- (b) Following receipt of a Notice under clause 19.2(a), the Parties must meet and begin (or, if they already have begun, continue) negotiating, with a view to reaching agreement on the manner in which the change to the Facility is to be implemented by the Seller so that the impact on the Buyer's operations is minimised and whether the change is otherwise acceptable to the Buyer.
- (c) Nothing in this clause 19.2 entitles the Seller to make any change to the Facility which has the effect that the Facility will not in all respects comply with the design and equipment parameters set out in the Design and Technical Specifications or which would increase the Installed Capacity.

20 Change in Law or Governmental Force Majeure Event

20.1 Change Effects

- (a) If either Party believes that a Change in Law or Governmental Force Majeure Event (or both) has occurred which will have a Change Effect, it must, by the date that is the earlier of 6 Months after the occurrence of that Change in Law or Governmental Force Majeure Event (as the case may be), and the date that is 3 Months after the Party became aware that occurrence had occurred, deliver to the other Party a Notice identifying:
 - (1) the Change in Law or Governmental Force Majeure Event (or both) (as applicable); and
 - (2) its estimate of the likely Change Effect resulting from the Change in Law or Governmental Force Majeure Event (or both) (as applicable).
- (b) In the case of a Change in Law that is likely to have a beneficial Change Effect on the Seller, the Seller must provide all information reasonably requested by the Buyer to enable the Buyer to calculate the likely Change Effect for the purpose of giving a Notice under clause 20.1(a).
- (c) The Seller must, in accordance with Good Utility Practice, use all Reasonable Endeavours to:
 - (1) prevent, minimise and mitigate the adverse impact of any Change in Law or Governmental Force Majeure Event identified under clause 20.1(a) on its ability to perform the Seller's Obligations or the Seller's obligations under any other Principal Project Agreement (or any combination of them) (as the case may be); and
 - (2) to the extent not inconsistent with its obligations under clause 20.1(c)(1), use all Reasonable Endeavours to minimise any adverse Change Effect from that Change in Law or Governmental Force Majeure Event (as the case may be).
- (d) If after the Seller's compliance with clause 20.1(c) a Change in Law or Governmental Force Majeure Event (or both) (as applicable) identified under clause 20.1(a) results in a Change Effect that is adverse to the Seller, that in combination with all previous Change Effects for which the Seller has not already been compensated under clause 20.2:

- (1) requires the Seller to incur additional capital expenditure in excess of EGP 600,000 per MW of Installed Capacity; or
- (2) will have an ongoing adverse revenue or operating cost impact on the Seller of more than EGP 28,600 per MW of Installed Capacity per Contract Year,

the Seller may, within 1 Month after the incurrence or realisation of the most recent Change Effect, deliver the Buyer a further Notice identifying the Change in Law or Governmental Force Majeure Event (or both) (as applicable) and the Change Effect, accompanied by full details and supporting evidence.

- (e) If a Change in Law identified under clause 20.1(a) results in a Change Effect, that in combination with all previous beneficial Change Effects will have an ongoing beneficial revenue effect or operating cost impact on the Seller of more than EGP 28,600 per MW of Installed Capacity per Contract Year, the Buyer may, within 1 Month after the incurrence or realisation of the most recent Change Effect, deliver the Seller a further Notice identifying the Change in Law and the Change Effect, accompanied by full details and supporting evidence.

20.2 Procedure

- (a) Within 15 Business Days after the receipt of a Notice under clause 20.1(d) or 20.1(e), the Parties must meet and begin (or, if they already have begun, continue) negotiating in good faith, with a view to reaching agreement on what changes should be made to the terms of this Agreement so as to ensure as far as possible that the Seller is in the same economic position under this Agreement as if the Change in Law or Governmental Force Majeure Event (or both) (as applicable) had not occurred.
- (b) If the Parties fail to agree upon all those changes within 30 Business Days after the date of receipt of the Notice delivered under clause 20.1(d) or 20.1(e), then the provisions of clause 30 will apply to the Dispute.
- (c) Following any failure by the Parties to agree changes to this Agreement under clause 20.2(b), or following any determination that imposes a change to the terms of this Agreement on the Parties (including any change to the Charge Rate), the Buyer may elect by giving Notice within a further 30 Business Days to terminate this Agreement without the need for any other legal or judicial procedure.
- (d) If the Buyer elects to terminate this Agreement under clause 20.2(c), the Buyer will be obliged to purchase the Facility in accordance with the relevant provisions of clause 23.5(d).

20.3 Free Zone Status

- (a) The Seller must use Reasonable Endeavours to obtain Free Zone Status for the Project.
- (b) If, after the Signing Date, the Seller obtains Free Zone Status for the Project (or any part thereof), the Seller must promptly, and in any event within 20 Business Days of Free Zone Status being granted, Notify the Buyer of the net cost savings available to the Seller as a result of Free Zone Status being granted by reference to the costs (including Taxes) assumed in the Financial Model as at the Signing Date (the **Net Free Zone Savings**).
- (c) The Charge Rate will be adjusted so as to ensure that 75% of the Net Free Zone Savings are passed through to the Buyer.

- (d) If, for any reason, the Charge Rate cannot be adjusted as contemplated by clause 20.3(c), then, on the first day of each Month, the Seller must pay to the Buyer, by way of indemnity, 75% of the Net Free Zone Savings which have accrued during the previous Month.
- (e) The Buyer may set off any amounts payable by the Seller to the Buyer pursuant to clause 20.3(d) against its obligation to pay the Purchase Price.

21 Force Majeure Events

21.1 Definition of Force Majeure Event

- (a) Subject to clause 21.1(b), for the purposes of this Agreement, “**Force Majeure Event**” is any event which is not within the reasonable control, directly or indirectly, of the Party affected (**Affected Party**) including:
- (1) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution;
 - (2) any riot, insurrection, civil commotion, act or campaign of terrorism or sabotage;
 - (3) any strike, lock-out or other industrial disturbance or restraint of labour;
 - (4) lightning, fire, earthquake, tsunami, unusual flood, storm, cyclone, typhoon, tornado or other natural calamity or act of God;
 - (5) closure of shipping or other transportation routes including ports; or
 - (6) epidemic or plague,
- resulting in or causing a total or partial failure or delay of the Affected Party in the fulfilment of any of its obligations under this Agreement (except the payment of money), but only if and to the extent that:
- (7) that event cannot be or could not have been prevented, avoided or removed by the Affected Party, exercising reasonable diligence;
 - (8) the Affected Party took, or has taken, all reasonable precautions, due care and reasonable alternative measures to avoid the effect of such event on the Affected Party’s ability to perform its obligations under this Agreement and to mitigate the consequences of that event;
 - (9) the event is not, or was not, the direct or indirect result of the breach by the Affected Party of any of its obligations under this Agreement or any of the Project Agreements;
 - (10) the event is not one of the events set out in clause 21.6; and
 - (11) the Affected Party has given the other Party (**Non-Affected Party**) Notice under clause 21.4(a).
- (b) A Force Majeure Event will be classified as one of the following 2 types:
- (1) a “Governmental Force Majeure Event” which has the meaning given to it in clause 21.2; or
 - (2) an “Other Force Majeure Event” which has the meaning given to it in clause 21.3.

21.2 Definition of Governmental Force Majeure Event

For the purposes of this Agreement, “**Governmental Force Majeure Event**” means, subject to clause 21.6, an event which, in addition to the criteria for a Force Majeure Event set out in clause 21.1(a), consists of the following events:

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution, in each case, occurring within or involving the Arab Republic of Egypt;
- (b) any riot, insurrection, civil commotion, act or campaign of terrorism or sabotage of a political nature in each case, occurring within or involving the Arab Republic of Egypt;
- (c) action or failure to act by a Government Agency that results in an Authorisation:
 - (1) ceasing to remain in full force and effect otherwise than through a breach of the Authorisation or other unlawful or wrongful act or omission of the Affected Party; or
 - (2) not being issued or renewed upon application having been timely and properly made and the Seller having complied with its obligations under clause 6;
- (d) a Change in Law which prevents the performance of the Seller’s Obligations or the Seller’s obligations under the other Principal Project Agreement (or both), or which makes the performance of the Seller’s obligations under any Principal Project Agreement illegal;
- (e) any expropriation or compulsory acquisition by a Government Agency of all or any material part of the Seller’s assets or land or any share or interest of the Shareholders; or
- (f) between the Signing Date and the Commercial Operation Date only, the discovery on the Site of Artefacts.

21.3 Definition of Other Force Majeure Event

For the purposes of this Agreement, “**Other Force Majeure Event**” means, subject to clause 21.6, to the extent they satisfy the criteria for a Force Majeure Event set out in clause 21.1(a), any Force Majeure Events which do not meet the criteria for a Governmental Force Majeure Event.

21.4 Responsibilities of the Parties during a Force Majeure Event

- (a) An Affected Party must advise the Non-Affected Party in writing (**Force Majeure Notice**) of:
 - (1) the date of commencement of the Force Majeure Event;
 - (2) the nature and expected duration of the Force Majeure Event;
 - (3) the anticipated effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement; and
 - (4) the actions to be taken to comply with requirements of this clause 21.
- (b) The Affected Party must send the Force Majeure Notice no later than 10 Business Days after the date on which the Affected Party first had knowledge, or ought reasonably to have had knowledge, of the Force Majeure Event. If the Affected Party does not deliver the Force Majeure Notice in accordance with

this clause 21.4(b), the Affected Party is not entitled to the benefits of this clause 21.

- (c) The Affected Party must:
- (1) make all reasonable efforts to prevent, minimise and mitigate the effect of any delay occasioned by any Force Majeure Event and to have recourse to alternate sources of services, equipment and materials and construction equipment; and
 - (2) use its best efforts to ensure resumption of normal performance of this Agreement as promptly as possible (including, in the case of the Seller, by repairing or reinstating the Facility in accordance with its obligations under this Agreement) and otherwise perform its obligations in accordance with this Agreement.
- (d) Within 10 Business Days following the cessation of any Force Majeure Event, the Affected Party must submit to the Non-Affected Party reasonable proof of the nature of the delay and its effect upon the performance by the Affected Party of its obligations under this Agreement.

21.5 Effect of a Force Majeure Event on performance

Subject always to the provisions of clause 21.4(c)(1), the Affected Party is excused from performance and will not be construed to be in Default for so long as, and to the extent that, the failure to perform the obligation is due to a Force Majeure Event. The Affected Party must, however, continue to perform all of its obligations under this Agreement which are not affected by a Force Majeure Event in accordance with the terms of this Agreement.

21.6 Certain events do not constitute Force Majeure Event

For clarity, the following events do not, of themselves, constitute a Force Majeure Event under this Agreement:

- (a) any order of a Government Agency issued for health or safety reasons by reason of any act or omission of the Seller requiring any act on the part of the Seller which limits the ability of the Seller to deliver Electricity to the Buyer at the Delivery Point in accordance with this Agreement other than where such an order is issued pursuant to a Change in Law;
- (b) the attachment of any conditions to an Authorisation in connection with a default or wrongful act of the Seller or the exercise of rights by a Government Agency pursuant to the terms of an Authorisation;
- (c) any action, inaction, intended action or intended inaction by a Government Agency of which the Seller was or should have been aware prior to the Signing Date;
- (d) any failure by a Party to reach agreement with a third party;
- (e) lack of funds for any reason or inability to use available funds for any reason;
- (f) failure of either Party to make any payment of money in accordance with its obligations under this Agreement;
- (g) any strikes, lock-outs or other industrial disturbances or restraints of labour (whether or not involving employees of the Affected Party) that are specific to the Seller, the Project or the Site;

- (h) late or non-delivery of equipment, machinery, plant or materials caused by the breach or negligent acts or omissions on the part of the Seller or any Subcontractor;
- (i) late performance by the Seller caused by the Seller's failure to engage qualified Subcontractors or to hire an adequate number of personnel or labour;
- (j) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained;
- (k) failure of either Party to perform any of its obligations under this Agreement in accordance with the requirements of this Agreement which contributed to the occurrence of a Force Majeure Event;
- (l) reasonably foreseeable unfavourable weather or adverse meteorological conditions (having regard to historical weather and meteorological conditions), not being any of the following to the extent it is a Force Majeure Event and only to the extent not otherwise reasonably foreseeable by the Affected Party: lightning, fire, earthquake, tsunami, unusual flood, cyclone or typhoon or tornado; and
- (m) reasonably foreseeable unfavourable or unsuitable ground conditions, or other similar reasonably foreseeable adverse conditions.

22 Default

22.1 Default by Seller

It is a Default by the Seller if:

- (a) the Commercial Operation Date of the Facility does not occur within 180 Days following the Scheduled Commercial Operation Date;
- (b) the Seller Abandons the Project;
- (c) in 2 consecutive Contract Years, the average Performance Factor for that Contract Year is less than 0.90;
- (d) the Seller materially fails to comply with any of the requirements relating to the Development Bond;
- (e) the Seller materially fails to comply with any of the insurance requirements under clause 26;
- (f) the Seller fails to make any payment or part payment owed by the Seller to the Buyer under this Agreement that remains unpaid 20 Business Days after the due date for payment;
- (g) the Seller commits any other material breach or contravention of the terms of this Agreement that is not set out in another sub-paragraph of this clause 22.1;
- (h) any of the Principal Project Agreements (other than this Agreement) are terminated at any time (except as a result of a breach by a Principal Party during any period that the relevant Principal Party remains under the Control of the Arab Republic of Egypt);
- (i) the Seller suffers an Insolvency Event; or

- (j) a Public Property Crime is committed by the Seller or any of its officers, employees, agents or Subcontractors (or any officers or employees employed or engaged by any Seller agent or Subcontractor), as confirmed by virtue of a final executable court judgment, but only if committed with the Seller's acceptance, supervision or knowledge.

22.2 Default by the Buyer

It is a Default by the Buyer if:

- (a) the Buyer fails to make any payment or part payment owed by the Buyer to the Seller under this Agreement that remains unpaid:
- (1) 20 Business Days after the due date for payment; and
 - (2) 20 Business Days after the Egyptian Ministry of Finance's receipt of the 'Outstanding Amount Notice' (as defined in the PPA Direct Agreement) in respect of that amount under the PPA Direct Agreement;
- (b) the Buyer commits any material breach or contravention of the terms of this Agreement other than a breach for which the Seller is entitled to an extension of time under clause 12.2 or the payment of Delay Costs under clause 12.3 or a breach which results in Deemed Delivered Electricity;
- (c) any of the Principal Project Agreements (other than this Agreement) are terminated at any time due to a breach by a Principal Party that remains under the Control of the Arab Republic of Egypt;
- (d) the Buyer suffers an Insolvency Event and the PPA Direct Agreement does not continue to apply to its payment obligations under this Agreement;
- (e) Provisional Completion of the Network Operator's Assets does not occur by the date which is 180 Days after the relevant Anticipated Date for Provisional Completion; or
- (f) Provisional Completion of the Road Works does not occur by the date which is 180 Days after the relevant Anticipated Date for Provisional Completion.

22.3 Procedure upon Default

Upon the occurrence of a Default by the Seller or the Buyer, the following procedures apply:

- (a) the Party not in Default (**Non-Defaulting Party**) may give a default Notice (**Default Notice**) to the other Party (**Defaulting Party**) in accordance with the notice provisions of clause 36, specifying:
- (1) in reasonable detail the Default giving rise to the Default Notice;
 - (2) except in the case of a Default which is not capable of being remedied or a Default under clause 22.1(a) or clause 22.1(c), the period within which the Defaulting Party must remedy the Default (**Default Cure Period**), being:
 - (A) where the Default relates to a failure to pay money but is not an Insolvency Event, a period of 20 Business Days after receipt of the Default Notice;
 - (B) where the Default is an Insolvency Event, a period of 10 Business Days after receipt of the Default Notice; or

- (C) where the Default does not relate to a failure to pay money, and is not an Insolvency Event, a period of 40 Business Days after receipt of the Default Notice; and
- (3) where the Default is a Default which is not capable of being remedied or a Default under clause 22.1(a) or clause 22.1(c), a period of 10 Days in which to remedy or overcome the effects of the relevant Default to the Non-Defaulting Party's satisfaction (**Default Mitigation Period**); and
- (b) during the Default Cure Period or the Default Mitigation Period, the Parties must consult with each other as to what steps must be taken with a view to mitigating the consequences of, and curing (if applicable), the Default.

23 Termination

23.1 Termination for Default

- (a) If a Default was committed by or occurs in respect of the Seller and that Default remains unremedied at the end of the Default Cure Period or has not been remedied or overcome to the Buyer's satisfaction at the end of the Default Mitigation Period (as the case may be):
- (1) the Buyer may do one or both of the following:
- (A) have full recourse to the whole or any part of the Development Bond; or
- (B) terminate this Agreement by giving a Notice (**Termination Notice**) of not less than 10 Business Days to the Seller (without the need for any other legal or judicial procedure) and exercise its right to purchase the Facility under clause 23.5(a); and
- (2) to the extent not otherwise recovered by the Buyer by recourse to the Development Bond under clause 23.1(a)(1)(A) and without limiting Schedule 14, the Seller must, on written demand, reimburse the Buyer for any reasonable costs, Losses, charges or expenses, including legal costs on an indemnity basis, incurred by the Buyer as a consequence of or in connection with the Default and in connection with the termination of this Agreement.
- (b) Subject to the relevant provisions of the PPA Direct Agreement, if a Default was committed by or in respect of the Buyer and that Default remains unremedied at the end of the Default Cure Period or has not been remedied or overcome to the Seller's satisfaction at the end of the Default Mitigation Period (as the case may be):
- (1) the Seller may:
- (A) terminate this Agreement by giving a Termination Notice of not less than 10 Business Days to the Buyer without the need for any other legal or judicial procedure; and
- (B) exercise its right to require the Buyer to purchase the Facility under clause 23.5(b); and

- (2) the Buyer must, upon written demand, reimburse the Seller for the Termination Costs in accordance with clause 6 of Schedule 14.

23.2 Termination upon prolonged Governmental Force Majeure Event

- (a) If a Governmental Force Majeure Event prevents:
- (1) the Buyer from wholly or materially performing its obligations or exercising its rights under this Agreement for a continuous period of 180 Days; or
 - (2) the Seller from wholly or materially constructing or operating the Facility or delivering Electricity to the Delivery Point for a continuous period of 180 Days,
- then the Buyer must promptly elect, by Notice to the Seller, to:
- (3) terminate this Agreement without the need for any other legal or judicial procedure; or
 - (4) not terminate this Agreement and:
 - (A) continue to pay any Delay Costs or any Payment associated with Deemed Delivered Electricity (as applicable) arising from the Governmental Force Majeure Event; or
 - (B) not continue to pay any Delay Costs or any Payment associated with Deemed Delivered Electricity (as applicable) arising from the Governmental Force Majeure Event.
- (b) If the Buyer elects to terminate this Agreement under clause 23.2(a)(3), the Buyer will be obliged to purchase the Facility in accordance with the relevant provisions of clause 23.5(c).
- (c) If the Buyer makes the election set out in clause 23.2(a)(4)(A), subject to clause 23.2(d), this Agreement will continue on its terms.
- (d) If the Buyer makes the election set out in clause 23.2(a)(4)(A) prior to the Commercial Operation Date and 365 Days after the date of this election (**Delay Cost Trigger Date**), the relevant Governmental Force Majeure Event continues to have the relevant effect referred to in clause 23.2(a), then subject to the remainder of this clause 23.2(d), the Seller may, within 20 Business Days after the Delay Cost Trigger Date, terminate this Agreement without the need for any other legal or judicial procedure. The Seller may not terminate this Agreement under this clause 23.2(d) if the Commercial Operation Date has occurred.
- (e) If the Buyer makes the election set out in clause 23.2(a)(4)(B), then the Seller may elect to terminate this Agreement without the need for any other legal or judicial procedure.
- (f) If the Seller elects to terminate this Agreement under clauses 23.2(d) or 23.2(e), the Seller will have the right to require the Buyer to purchase the Facility in accordance with clause 23.5(c)(1).
- (g) If either Party elects to terminate this Agreement under this clause 23.2, it must give a Termination Notice to the other Party specifying the date on which it proposes to terminate this Agreement, which date must not be less than 30 Business Days after the date of the Termination Notice.

23.3 Termination upon prolonged Other Force Majeure Event

- (a) If an Other Force Majeure Event prevents:
- (1) the Buyer from wholly or materially performing its obligations (including the acceptance of Electricity at the Delivery Point) or exercising its rights under this Agreement on a substantially continuous basis for 180 Days; or
 - (2) the Seller from wholly or materially performing its obligations under this Agreement, or generating and delivering to Electricity to the Delivery Point, on a substantially continuous basis for 180 Days,
- then, subject to clause 23.3(b), the other Party (provided that Party is, at the relevant time, in compliance with its obligations under this Agreement other than (if applicable) those excused by the Other Force Majeure Event) may terminate this Agreement by Notice to the Affected Party and without the need for any other legal or judicial procedure.
- (b) If due to the destruction of, or damage to, the Facility the Seller cannot recommence generating and delivering Electricity to the Delivery Point within 180 Days of an Other Force Majeure Event despite its exercise of reasonable diligence, then such 180 Day period will be extended for an additional period of time (not to exceed 180 Days) reasonably necessary to repair and reinstate the Facility so long as the Seller is exercising reasonable and diligent efforts to do so.
- (c) If a Party elects to terminate this Agreement under this clause 23.3, it must give a Termination Notice to the Affected Party specifying the date on which it proposes to terminate this Agreement, which date must not be less than 30 Business Days after the date of the Termination Notice.
- (d) If a Party elects to terminate this Agreement under clause 23.3(a), the Buyer will have the right, but not an obligation, to purchase the Facility in accordance with the relevant provisions of clause 23.5(c)(3) by giving Notice to the Seller within 30 Business Days of such termination.

23.4 Termination upon expiration of Supply Term

- (a) Unless terminated earlier in accordance with the provisions of this Agreement, this Agreement terminates on the last Business Day of the Supply Term.
- (b) If this Agreement terminates under clause 23.4(a), the Seller must comply with the relevant provisions of the Usufruct Agreement in decommissioning and removing the Facility from the Site.

23.5 Consequences of termination

- (a) In the event of termination of this Agreement by the Buyer due to a Default by the Seller under clause 23.1(a), the Buyer will have the right, but not the obligation, to purchase the Facility by paying to the Seller Purchase Price A in accordance with the provisions of Schedule 14.
- (b) In the event of termination of this Agreement by the Seller due to a Default by the Buyer under clause 23.1(b), the Seller will have the right, but not the obligation, to require the Buyer or its nominee to purchase the Facility:
- (1) if the Termination Notice delivered by the Seller to the Buyer before the Commercial Operation Date, by paying to the Seller a price equal

- to Purchase Price B(a) in accordance with the provisions of Schedule 14; or
- (2) if the Termination Notice delivered by the Seller to the Buyer on or after the Commercial Operation Date, by paying to the Seller a price equal to Purchase Price B(b) in accordance with the provisions of Schedule 14.
- (c) In the event of termination of this Agreement due to the occurrence of a prolonged Governmental Force Majeure Event under clause 23.2, the following will apply:
- (1) if the Seller terminates this Agreement for prolonged Governmental Force Majeure Event under clauses 23.2(d) or 23.2(e), then the Seller will have the right to require the Buyer or its nominee to purchase the Facility:
- (A) if the Termination Notice is delivered by the Seller to the Buyer before the Commercial Operation Date, by paying to the Seller a price equal to Purchase Price B(a) in accordance with the provisions of Schedule 14; or
- (B) if the Termination Notice is delivered by the Seller to the Buyer on or after the Commercial Operation Date, by paying to the Seller a price equal to Purchase Price B(b) in accordance with the provisions of Schedule 14;
- (2) if the Buyer terminates this Agreement under clause 23.2(a)(3) for prolonged Governmental Force Majeure Event, then the Buyer or its nominee must purchase the Facility:
- (A) if the Termination Notice is delivered by the Buyer to the Seller before the Commercial Operation Date, by paying to the Seller a price equal to Purchase Price B(a) in accordance with the provisions of Schedule 14; or
- (B) if the Termination Notice is delivered by the Buyer to the Seller on or after the Commercial Operation Date, by paying to the Seller a price equal to Purchase Price B(b) in accordance with the provisions of Schedule 14; and
- (3) if a Party terminates this Agreement under clause 23.3 for prolonged Other Force Majeure Event, or the Buyer terminates this Agreement under clause 26.6(d)(2) following an event which is an Uninsurable Risk, then the Buyer will have the right, but not the obligation, to purchase the Facility:
- (A) if the Termination Notice is delivered before the Commercial Operation Date, by paying the Seller a price equal to Purchase Price B(a) in accordance with the provisions of Schedule 14; and
- (B) if the Termination Notice is delivered on or after the Commercial Operation Date, by paying the Seller a price equal to Purchase Price B(b) in accordance with the provisions of Schedule 14.
- (d) If the Buyer terminates this Agreement under clauses 19.1(d) following a failure to agree amendments to this Agreement for proposed changes to the Connection Facilities, Interfaces or Transmission System by the Network Operator, or under clause 20.2(c) as a result of a Change in Law or

Governmental Force Majeure Event (or both), then the Buyer or its nominee must purchase the Facility:

- (1) if the Termination Notice is delivered by the Buyer to the Seller before the Commercial Operation Date, by paying to the Seller a price equal to Purchase Price B(a) in accordance with the provisions of Schedule 14; or
 - (2) if the Termination Notice is delivered by the Buyer to the Seller on or after the Commercial Operation Date, by paying to the Seller a price equal to Purchase Price B(b) in accordance with the provisions of Schedule 14.
- (e) The Parties must use Reasonable Endeavours to complete any sale and transfer of the Facility by the Seller to the Buyer or its nominee under this clause 23.5 within 60 Business Days after the date of the relevant Termination Notice (unless otherwise agreed by the Parties) and otherwise in accordance with Schedule 14.

23.6 Cooperation

From the giving of the Termination Notice until the termination of this Agreement, the Parties must continue to perform their obligations in accordance with this Agreement, except to the extent that they are prevented from doing so by a Force Majeure Event.

23.7 Decommissioning

- (a) The Parties acknowledge the Seller's obligation under the Usufruct Agreement to decommission and remove the Facility from the Site is subject to the provisions of this Agreement.
- (b) The Parties agree that the Seller will not be required to decommission and remove the Facility from the Site under the Usufruct Agreement if the Buyer has elected to purchase the Facility under clause 23.5(a) or clause 24.3, or is obliged, to purchase the Facility pursuant to this clause 23 or during any Third Party Sale Period.

23.8 Other agreements, approvals and authorisations

- (a) Without limiting Schedule 14, if the Buyer purchases the Facility, the Seller must (where so required by the Buyer) exercise Reasonable Endeavours to procure to the extent possible, an effective assignment or transfer, free from any Encumbrances and on the same terms and conditions, of any agreements and Authorisations which the Seller has in place for the purpose of performing the Seller's Obligations, including the following interests:
 - (1) any of the Project Agreements that the Buyer, in its absolute discretion, decides that it requires; and
 - (2) all other Authorisations required by Law in order for the Buyer to operate and maintain the Facility.
- (b) The Seller must procure, when negotiating and finalising the terms of the Project Agreements, the inclusion of terms providing for such assignment or transfer and release of Encumbrances.

23.9 Other rights and remedies

- (a) The payments made under this clause 23 are without prejudice to a Party's other rights arising from a breach by the other Party of any covenant or warranty, or under any indemnity, that was not a cause of, or a ground relied upon for, termination of this Agreement.
- (b) Upon the breach by a Party of any covenant or warranty under this Agreement, the Party damaged by any such breach may, in its absolute discretion, in addition to exercising any other remedies provided for in this Agreement, proceed in accordance with clause 30 to:
 - (1) protect and enforce its rights;
 - (2) recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy); or
 - (3) seek specific performance by the other Party of that other Party's obligations under this Agreement.
- (c) For clarity, payments made under this clause 23 are the exclusive remedy for a Party arising from a breach by the other Party of any covenant or warranty, or under any indemnity that was the cause of, or ground relied upon for, termination of this Agreement.

23.10 Rights preserved

The expiry or termination of this Agreement does not affect any rights of the Parties against one another in respect of any act, omission, or other event occurring or matter under this Agreement before that expiry or termination.

23.11 Interface with PPA Direct Agreement

The Buyer's right to terminate this Agreement is, while the PPA Direct Agreement is in force, subject to the provisions of the PPA Direct Agreement.

24 Extension of the Supply Term or Sale/Purchase of Facility

24.1 General

The Parties must, not less than 36 Months prior to the expiry of the Supply Term, meet to discuss the future of the Facility and whether:

- (a) to extend the Supply Term; or
- (b) the Buyer intends to exercise its Purchase Right under clause 24.3.

24.2 Extension of the Supply Term

- (a) If the Parties agree to extend the Supply Term and the terms and conditions upon which extension will take place, and the Seller and the relevant Principal Parties are able to agree an appropriate extension of the Usufruct Agreement and the Network Connection Contract, the Supply Term will be extended by the period of time, and on the terms and conditions, agreed in writing by the Parties.

- (b) Notwithstanding any extension of the Supply Term agreed by the Parties pursuant to clause 24.2(a), the provisions of clause 24.3 will apply.

24.3 Purchase of the Facility by Buyer

- (a) Subject to remainder of this clause 24.3, the Buyer has the right, but not the obligation, to purchase the Facility (or require its transfer to a nominee of the Buyer) on expiry of the Supply Term (**Purchase Right**).
- (b) The Buyer may exercise its Purchase Right by giving the Seller Notice of its intention not less than 6 Months before the expiry of the Supply Term.
- (c) If the Buyer exercises its Purchase Right, the Parties must, unless otherwise agreed between the Parties, promptly appoint an independent expert (selected by them jointly) who must be charged with the valuation of the Facility, taking into account, by way of demonstration and not exclusion, the capital investment for the Facility, the book value of the Facility, the duration of the Agreement Term, deemed decommissioning costs and other relevant factors. The cost of the independent expert will be shared by the Parties equally.
- (d) If the Parties agree on the valuation of the Facility, and the Buyer still wishes to purchase the Facility, the Parties must use Reasonable Endeavours to complete any sale and transfer of the Facility by the Seller to the Buyer or its nominee within 40 Business Days after the expiry of the Supply Term (unless otherwise agreed by the Parties) and otherwise in accordance with Schedule 14 (as applicable).
- (e) If the Parties do not agree on the valuation of the Facility, or if the Buyer no longer wishes to purchase the Facility, the Buyer is not obliged to proceed with the purchase of the Facility.

24.4 Purchase of Facility by third party

- (a) If this Agreement terminates or expires for any reason and:
- (1) the Buyer does not exercise its Purchase Right; or
 - (2) the Buyer is not otherwise obliged to purchase the Facility under this Agreement,
- the Seller is not required to commence decommissioning and removal of the Facility from the Site under the Usufruct Agreement for such time as the Seller continues to use Reasonable Endeavours to negotiate the sale of the Facility to a third party (**Proposed Purchaser**) up to a maximum period of 3 Months after expiry of the Supply Term (**Third Party Sale Period**).
- (b) If the Seller successfully negotiates the sale of the Facility to a Proposed Purchaser (and each of the Buyer, NREA and the Network Operator agree to enter into a replacement power purchase agreement, usufruct agreement and network connection contract (respectively) with the Proposed Purchaser), the Seller:
- (1) will not be obliged to decommission and remove the Facility; and
 - (2) may sell or transfer the Facility to the Proposed Purchaser,
- upon expiry of the Supply Term.
- (c) Nothing in this clause 24.4 obliges the Buyer to enter into a replacement power purchase agreement with any Proposed Purchaser, or procure that NREA or

the Network Operator enters into a replacement usufruct agreement or network connection contract (respectively) with the Proposed Purchaser.

25 Indemnities and liabilities

25.1 Indemnities by Seller

The Seller indemnifies the Buyer against any Claim or Loss which the Buyer pays, suffers, incurs or is liable for, arising out of or in connection with any of the following:

- (a) death, disease or illness (including mental illness) of, or personal injury to, persons; or
- (b) loss of, or destruction or damage to, any real or personal property (including property belonging to the Seller or its Subcontractors or for which any of them are responsible),

to the extent the Claim or Loss or damage referred to in clause 25.1(a) or 25.1(b) is caused or contributed to by:

- (c) the breach by the Seller of its obligations under this Agreement or any other Project Agreement; or
- (d) the negligent or unlawful acts or omissions or Wilful Misconduct of the Seller or its Subcontractors,

except to the extent that any such Claim or Loss is a direct consequence of:

- (e) a breach by the Buyer of its obligations under this Agreement or any other Principal Project Agreement;
- (f) a negligent or unlawful act or omission or any Wilful Misconduct of the Buyer; or
- (g) the Buyer failing to take all reasonably necessary steps to mitigate any Losses or the effect of any Claim.

25.2 Seller's risk

- (a) Subject to the provisions of this Agreement, from the Conditions Satisfaction Date until the end of the Agreement Term, as between the Buyer and the Seller, the Seller will:
 - (1) bear the risk of; and
 - (2) not have any Claim against the Buyer as a result of, loss or damage to or destruction of the Facility or the Site.
- (b) Clause 25.2(a) does not apply to the extent that any loss or damage or destruction is a direct consequence of:
 - (1) a breach by the Buyer of its obligations under this Agreement or any other Principal Project Agreement; or
 - (2) a negligent or unlawful act or omission or any Wilful Misconduct of the Buyer.

25.3 Indemnification for fines and penalties

Any fines or other penalties incurred by the Seller for non-compliance with Laws or any Authorisation will not be reimbursed by Buyer but are the sole responsibility of the Seller.

25.4 Reinstatement

- (a) Subject to clauses 25.4(b), 25.4(c) and 25.4(d), if the Facility is destroyed or any loss or damage occurs to any part of the Facility or the Site and such loss or damage is not contemplated in the scope of the Seller's Obligations, then, without limiting the Seller's other obligations under this Agreement, and except as otherwise provided for in this Agreement, the Seller must:
- (1) at its own cost, and in a timely and efficient manner, remedy any damage to, defect in, or matter requiring repair or reinstatement at the Facility or the Site;
 - (2) promptly Notify the Buyer of any damage to, defect in, or serious matters requiring reinstatement or repair and provide a detailed report of any such damage, defect or required reinstatement or repair which is likely to cause any danger, risk or hazard to the Facility or the Site or any person or property;
 - (3) as soon as practicable, provide the Buyer with a further detailed report of all action being taken or to be taken to effect reinstatement or remedy the damage, defect or matter requiring repair, including the estimated time such remedy will require;
 - (4) consult with the Buyer as to the programming of the work needed to effect reinstatement or remedy the defect or make required repairs; and
 - (5) subject to clause 25.4(b), apply all insurance proceeds received in respect of such damage or destruction towards the cost of reinstatement or repair of and making good the damage or destruction.
- (b) The Seller acknowledges and agrees that the Buyer may, in its absolute discretion, direct the Seller by Notice not to carry out its obligations under clause 25.4(a). If such Notice is given, then the Seller:
- (1) assigns to (to the extent permitted by the applicable policy), or holds for the benefit of, the Buyer, the Seller's right to give a notice of claim to the insurer under an insurance policy required under clause 26;
 - (2) must pay to the Buyer all proceeds it receives from the insurance policies required under clause 26;
 - (3) will be relieved of its obligations to perform the Seller's Obligations, to the extent reasonably determined by the Buyer in the context of the damage or destruction; and
 - (4) will be entitled to receive payment for Deemed Delivered Electricity for the remaining Supply Term calculated by reference to that part of the Facility that was damaged or destroyed as contemplated by clause 25.4(b)(3) less an amount the Buyer reasonably determines to be the amount of costs not incurred by the Seller by reason of the damage or destruction pursuant to clause 25.4(b)(3) including any operating costs which will not be incurred by the Seller.
- (c) If the Seller does not comply with clause 25.4(a), the Buyer may elect to remedy, repair or reinstate any damage, destruction or matter requiring remedy

or to have such work done by a person nominated by the Buyer. The costs and expenses incurred in doing such work or having such work done by another person will be a debt due and payable by the Seller to the Buyer.

- (d) If the Facility is destroyed, or substantially destroyed, by a Force Majeure Event, and:
- (1) the insurance proceeds (including insurance proceeds payable by the Buyer under clause 26.6(d)(1)) received (or which the Seller would have received had it complied with its obligations under this Agreement) are or would be insufficient to reinstate the Facility; or
 - (2) it is, in the reasonable opinion of the Seller, not economic to reinstate the Facility under clause 25.4(a), taking into account the remaining Supply Term and the cost to reinstate,
- and the Seller gives the Buyer Notice to this effect within 2 Months of the occurrence of the relevant event, then the Seller is not required to reinstate the Facility under clause 25.4(a). If the Seller elects not to reinstate the Facility under this clause 25.4(d):
- (3) the Seller may retain any insurance proceeds received in respect of the relevant Force Majeure Event; and
 - (4) the Buyer may elect to terminate this Agreement with immediate effect by giving Notice to the Seller without the need for any other legal or judicial procedure.

25.5 Indirect loss

- (a) Notwithstanding any other provision of this Agreement, neither Party will be liable to the other Party under this Agreement, nor will a Party be entitled to make any Claim in respect of any indirect, consequential, incidental, punitive or exemplary damages or loss, including loss of revenue, loss of profit and loss of business opportunity suffered or incurred by a Party as a result of any act or omission of the other Party or as a result of a breach of this Agreement by the other Party. The foregoing limitations will not apply to claims from third parties in respect of property damage, personal injury, nervous shock, death or to tort liability in general.
- (b) Neither Party will have any liability to the other Party except pursuant to, or for breach of, this Agreement, provided, however, that this clause 25.5(b) is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement.

25.6 Limitation on Claims

The following provisions apply where either Party (**Claimant Party**) has a Claim against the other Party under this Agreement:

- (a) the Claimant Party must commence legal proceedings, or any deduction must be made, in respect of any Claim, within 7 Years from the date on which the Claim first arose; and
- (b) the other Party's liability, and that of its employees and agents, for any Claim in respect of which legal proceedings have not been instituted, or any deduction or set off has not been made, within the period provided in clause 25.6(a) will, except where clause 25.6(a) is not enforceable as a matter of Law in respect of a particular Claim, cease and be extinguished.

25.7 Reduced amount of Claim

If the Claimant Party makes any Claim against the other Party and its servants and agents or any of them, that Claim will be reduced by an amount equal to the following:

- (a) any compensation or reimbursement received by the Claimant Party from any third party, or any benefit received by the Claimant Party as a result of, or consequent on, the matters giving rise to the Claim (including under any Project Agreement);
- (b) any reduction or extinguishment in the Claimant Party's taxation or other liabilities, as a result of the Claim, or the payment giving rise to the Claim; and
- (c) any amount received by the Claimant Party under any policy of insurance taken out by the Claimant Party or to which the Claimant Party is an insured.

25.8 Dispute resolution

Nothing in this clause 25 affects the Parties' obligations to comply with the dispute resolution procedures set out in clause 30.

25.9 Liability of employees and agents

Every exemption from, and limitation of, liability, defence and immunity of whatever nature that applies to a Party, or to which a Party is entitled, including those set out in this Agreement, will, to the maximum extent permitted under the Law, also be available and extend to protect every one of its employees or agents acting under this Agreement or in any way connected with or relating to it, or making or giving statements, representations, information, or advice relating to this Agreement, and the benefit of this clause 25.9 is held by each Party on its own behalf and as agent on behalf of or for the benefit of all persons who are its employees or agents from time to time as well as on its behalf, and all those persons are to this extent Parties or deemed to be Parties to this Agreement.

26 Insurance

26.1 Insurance requirements

- (a) The Seller must, at its sole cost and expense, obtain and maintain in effect the policies of insurance described in Schedule 11:
 - (1) from insurers that are licensed to operate in the Arab Republic of Egypt and approved by the Buyer (which approval must not be unreasonably withheld);
 - (2) for the period of time set out in Schedule 11; and
 - (3) on the terms and conditions set out in this clause 26 and Schedule 11.
- (b) All insurance policies required by this clause 26 and Schedule 11 must be subject to Egyptian jurisdiction (Egyptian laws and Egyptian competent courts).
- (c) The amounts and terms referred to in clause 26.1(a) may be changed from time to time with the prior written consent of the Buyer.
- (d) If a claim is made under an insurance policy required by this clause 26 and Schedule 11, the Seller will be responsible for the payment of any excess or

deductible in respect of a claim made by the Seller or by a Subcontractor under that insurance policy.

- (e) The taking out of insurance by the Seller (or by the Buyer on behalf of the Seller) does not, in any way, affect or limit the Seller's obligation to perform any other Seller's Obligations.

26.2 Endorsements

- (a) The Seller must cause its insurers to provide the following endorsements:
- (1) the insurance must be primary with respect to the interest of the Buyer and its directors, officers, employees and agents, and any other insurance maintained by them is excess and not contributory with such policies; and
 - (2) where applicable and only in respect of liability policies where the insured comprises more than one party, the policies (excluding policies required by Law) must include a cross liability clause.
- (b) Where appropriate, the Seller must cause its insurers to waive all rights of subrogation against the Buyer in respect of a claim arising under its insurance policies.
- (c) In respect of those insurance policies where the insured comprises more than one party, the insurance policies obtained must provide that the interests of any insured will not be invalidated by any action or inaction of any other insured and that the insurance will cover the insured notwithstanding the breach of any warranties or any policy terms and conditions by any other insured.
- (d) The Seller will ensure that:
- (1) at the time that any Subcontract is entered into, all of its Subcontractors have appropriate insurance cover including having regard to the insurance required to be maintained under this Agreement;
 - (2) the contracts with its Subcontractors (whether or not the Seller is a Party to that contract) each contain a requirement that the relevant counterparty complies with the obligations in clause 26.2(d)(1); and
 - (3) it informs the Buyer of any material change to the insurance policies of the Subcontractors of which it becomes aware.

26.3 Insurance policies

- (a) At least 10 Business Days prior to the date from which the insurance must be maintained and thereafter at least 20 Business Days prior to the date set for each annual renewal or otherwise in accordance with the terms of the relevant insurance policies or as requested by the Buyer, the Seller must, or must cause its insurers or agents to, provide to the Buyer for the Buyer's review and approval certificates of currency or brokers letter in respect of the policies and terms required by this clause 26.
- (b) The Seller must:
- (1) in respect of the insurances described in Schedule 11 which the Seller is required to obtain and maintain in the period from the Conditions Satisfaction Date to the Commercial Operation Date, pay the first premiums due in respect of those insurances on the date of Financial Closure and provide receipts or statements from insurers evidencing

- payment of the first annual premium of those insurances within 5 Business Days after the Conditions Satisfaction Date; and
- (2) in respect of the insurances described in Schedule 11 which the Seller is required to obtain and maintain in the period from the Commercial Operation Date to the end of the Supply Term, pay the first premiums due in respect of those insurances prior to the Commercial Operation Date and provide receipts or statements from insurers evidencing payment of the first annual premium for those insurances by the Commercial Operation Date.
- (c) Failure by the Seller to obtain the insurance coverage or to provide the policies of insurance required by this clause 26 does not relieve the Seller of its obligations to obtain the required insurance coverage and policies set out in this Agreement or in any way relieve or limit the Seller's Obligations and liabilities under any provision of this Agreement.
- (d) If the Seller fails to procure or maintain, or to provide in accordance with clause 26.3(a) a policy of insurance evidencing any insurance required under this clause 26, then the Buyer has the right to immediately procure that insurance at the Seller's cost.
- (e) The Seller must reimburse the Buyer for the premiums for insurances taken out by the Buyer under clause 26.3(d) within 5 Business Days after being Notified to do so.
- (f) Subject to clause 26.3(g), the Seller must give the Buyer at least 20 Business Days prior Notice of cancellation, non-renewal or a material alteration of any of the policies of insurance listed in Schedule 11.
- (g) The Seller must give the Buyer a copy of any notice of cancellation, non-renewal or material alteration given by the insurer to the Seller within 24 hours of its receipt.

26.4 Application of proceeds

The Seller must apply all insurance proceeds towards the repair, reconstruction or replacement of the Facility or the Site or otherwise (as the case may be) subject to, and in accordance with, clause 25.4.

26.5 Insurance claim

- (a) If and to the extent that the Seller is insured against Loss that it suffers in respect of an event or circumstance, the Seller must (unless the Buyer assumes joint or sole responsibility under clause 26.5(b)) promptly make and pursue a claim against the relevant insurer in respect of that event or circumstance. The insurance claim must be properly prepared by the Seller in the manner and time required by the relevant insurer and insurance policy.
- (b) Without limiting the Buyer's entitlement to make a claim under any of the Project insurance policies to which it is a named party or an additional insured, if:
- (1) the Seller makes a Claim against the Buyer in respect of an event or circumstance; and
 - (2) both the Seller and the Buyer are insured parties (or additional insureds) under insurances covering such an event or circumstance,
- then, unless and until the Buyer accepts liability, or it is finally determined that the Buyer is liable, for the Claim, the Buyer may, on and from the date that the

Claim is made against the Buyer, assume joint responsibility with the Seller in making the claim against the relevant insurer in respect of that event or circumstance. The Seller will assume sole responsibility for the carriage of the claim against the relevant insurer if the Buyer accepts liability for the Claim, or it is finally determined that the Buyer is liable for the Claim. Where the Parties are jointly responsible for making and prosecuting the claim against the insurer under this clause 26.5(b), both Parties must promptly pursue the claim and consult with each other and have due consideration and regard to any comments and recommendations made by the other Party.

(c) If:

- (1) an event or circumstance occurs; and
- (2) the Seller makes a Claim against the Buyer in respect of that event or circumstance,

then, unless and until the Buyer accepts liability for that Claim, or it has been finally determined that the Buyer is liable for that Claim, neither Party may agree to settle, compromise or withdraw a claim in respect of that event or circumstance with a third party (including an insurer) without the prior written consent of the other Party to the full terms and conditions of the settlement or compromise.

(d) If:

- (1) an event or circumstance occurs;
- (2) a third party makes a claim against the Seller in respect of that event or circumstance; and
- (3) the Seller settles or compromises that claim with the third party or any insurer prior to making a claim against the Buyer in respect of that event or circumstance without the Buyer's consent to that settlement or compromise,

then the Seller may not make a Claim against the Buyer in respect of that event or circumstance.

(e)

Each Party will do all things reasonably necessary to assist in any insurance claim made by the other Party or made by them jointly including providing any information in respect of the relevant event or circumstance which is reasonably requested by the insurers from time to time. Each Party will provide reasonable assistance to the other Party to the extent that assistance is necessary to progress the insurance claim and that Party is the only Party that can reasonably provide the assistance. The obligation to provide assistance arises upon the giving of reasonable Notice by the Party making the insurance claim to the other Party.

(f)

The Parties agree to keep each other reasonably informed with respect to the progress of any insurance claim to which this clause applies, including providing (on reasonable request):

- (1) copies of correspondence between the Party and the insurer;
- (2) copies of any report obtained by the Party from any loss adjuster with respect to the claim (whether that report was commissioned by or on behalf of the Party or the insurer); and
- (3) such other relevant documents as may reasonably be requested but not including:

- (A) documents the disclosure of which is prohibited by operation of obligations of confidentiality; or
 - (B) documents which are the subject of legal professional privilege or are confidential lawyer/client communication.
- (g) The Parties agree to cooperate with respect to settling any claim under an insurance policy.

26.6 Uninsurable Risks

- (a) Nothing in this clause 26 will oblige the Seller or the Buyer to take out or maintain the insurances required to be effected under clause 26 in respect of a risk which is, or becomes after the Signing Date, an Uninsurable Risk. The Seller must Notify the Buyer as soon as it becomes aware of any event, fact, matter or thing which causes it to believe that a risk will or may become an Uninsurable Risk.
- (b) If any risk required to be insured against pursuant to clause 26 is, or becomes after the Signing Date, an Uninsurable Risk, then:
 - (1) the Seller must Notify the Buyer within 10 Business Days after the earlier of becoming aware the risk has become an Uninsurable Risk or of ceasing to have insurance in respect of the risk; and
 - (2) if both Parties agree (or it is determined pursuant to clause 30) that the risk is an Uninsurable Risk and that:
 - (A) the risk being an Uninsurable Risk is not caused by the actions or insurance history (but excluding any events caused or contributed to by the Buyer) of the Seller or any of its Subcontractors either in respect of the Project or otherwise; and
 - (B) the Seller has demonstrated to the reasonable satisfaction of the Buyer that other prudent contractors or service providers undertaking the same or substantially similar businesses are faced with the same Uninsurable Risk,
 the Parties must meet to discuss the means by which the risk should be managed (including by self-insurance by either Party).
- (c) If a risk is an Uninsurable Risk and the requirements of clause 26.6(b)(2) are satisfied, but the Parties cannot agree as to how to manage the risk, then this Agreement will continue but the Payment calculated in accordance with Schedule 9 will be adjusted each Month to deduct an amount equal to 1/12 of the premium that was payable by the Seller for the annual insurance of such a risk immediately prior to such risk becoming an Uninsurable Risk.
- (d) On the occurrence of an event which is an Uninsurable Risk which has been Notified to the Buyer under clause 26.6(b)(1) and is subsequently agreed or determined pursuant to clause 30 to be an Uninsurable Risk, the Buyer must (at the Buyer's option) either:
 - (1) pay to the Seller an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available, in which case this Agreement will continue and the Seller must apply the amount received from the Buyer to overcoming the consequences of the event; or

- (2) where the Facility has been substantially damaged or destroyed, terminate this Agreement by Notice to the Seller without the need for any other legal or judicial procedure, in which case clause 23.5 will apply as if this Agreement was terminated under clause 23.3.

27 Intellectual Property

27.1 Ownership of Intellectual Property

- (a) Subject to clause 27.2, this Agreement does not operate to assign ownership of any Intellectual Property and neither Party may assert ownership of all or any part of the other Party's Intellectual Property, except to the extent that it jointly owns that Intellectual Property.
- (b) If either Party has any Intellectual Property at the Signing Date or as at the date of termination of this Agreement that is applied in, or is required for, the performance of obligations under this Agreement, that Party grants the other Party an irrevocable, perpetual, royalty-free, non-exclusive, worldwide licence (with the right to grant sub-licences on the same terms) of that Intellectual Property solely for use in relation to:
- (1) the Project;
 - (2) the Facility; and
 - (3) any other project, provided that the Buyer and the Seller undertake that project together.
- (c) If Intellectual Property applied or required for the performance of obligations under this Agreement is owned by a Subcontractor, the Seller must procure the grant of an irrevocable, perpetual, royalty free, non-exclusive, worldwide licence (with the right to grant sub-licences on the same terms) of the Intellectual Property by the owner of the Intellectual Property to the Buyer for the purpose of the Buyer exercising its rights and performing its obligations under this Agreement.

27.2 New developments

- (a) The Intellectual Property in all documents prepared by or on behalf of the Seller for the design, construction, testing and commissioning of the Facility belongs to the Seller.
- (b) At all times:
- (1) any Intellectual Property developed solely by the Buyer is owned by the Buyer;
 - (2) any Intellectual Property developed solely by the Seller including in the course of performing the Seller's Obligations, is owned by the Seller; and
 - (3) any Intellectual Property which is jointly developed by the Parties is owned by the Seller.
- (c) The Intellectual Property the subject of this clause 27.2 is licensed by the Party that owns that Intellectual Property to the other Party on the terms specified in clause 27.1(b).

27.3 Use of Intellectual Property

- (a) Each Party represents and warrants to the other Party that:
- (1) it owns, or has a licence to use, any Intellectual Property as referred to in clause 27.1(b);
 - (2) any Intellectual Property referred to in clause 27.1(b) which is owned or licensed by the Party does not infringe the Intellectual Property of any third party; and
 - (3) the performance of its obligations under this Agreement will not infringe any other person's Intellectual Property,
- and these representations and warranties survive the expiry or termination of this Agreement.
- (b) The Seller must obtain a warranty as is set out in clause 27.3(a) from its Subcontractors for the benefit of the Buyer in respect of Intellectual Property used by the Subcontractors in connection with the Project.
- (c) If the Seller is in any way prevented from performing the Seller's Obligations as a direct or indirect consequence of any Claim for the alleged breach of any Intellectual Property right, the Seller must:
- (1) inform the Buyer of that fact as soon as reasonably practicable; and
 - (2) at its sole cost, take all steps necessary to defend the Claim and secure the right to perform its obligations or exercise its rights in the manner intended.
- (d) If the Seller is unsuccessful in the proceedings referred to in clause 27.3(c), or is otherwise unable to secure the right to perform the Seller's Obligations within the time required by the Buyer, the Seller will take such steps or carry out such modifications, at no cost to the Buyer and to the full satisfaction of the Buyer, to ensure that the Seller can perform the Seller's Obligations.

27.4 Protection of Intellectual Property

A Party must:

- (a) Notify the other Party immediately if it becomes aware of any infringement or potential infringement by a third party of that Party's Intellectual Property; and
- (b) take all timely steps necessary to ensure that its agents, employees or subcontractors who have access to the Intellectual Property, or any part of it, do not use the Intellectual Property, except in accordance with this clause 27.

28 Confidentiality

28.1 Confidentiality

Subject to clause 28.4, each Party (**Recipient**) must keep the Confidential Information of the other Party confidential.

28.2 Permitted disclosure

- (a) A Recipient may disclose the Confidential Information of the other Party:

- (1) with the prior written consent of the other Party;
 - (2) if the Recipient is required by Law to disclose the Confidential Information to a person who is authorised by Law to receive it;
 - (3) if the Confidential Information is or becomes public information other than as a direct or indirect result of any breach by the Recipient of the conditions set out in this clause 28;
 - (4) if the Confidential Information is required to be disclosed to any Government Agency whether in connection with the granting of any Authorisation or otherwise;
 - (5) if the Confidential Information is disclosed to a court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings;
 - (6) if the Confidential Information is required to be disclosed to, or by the rules of, any stock exchange; or
 - (7) if the Confidential Information is disclosed to an officer, employee, agent, adviser, consultant, contractor, insurer, Shareholder or Affiliate of the Recipient, where that disclosure is reasonably necessary for the conduct of this Agreement, or, where the Seller is the Recipient, the Confidential Information is disclosed to a financier, investor, bona fide potential financier or bona fide potential investor of the Seller.
- (b) The Recipient must use its best efforts to ensure that:
- (1) its officers, employees, agents, advisers, consultants, contractors, Shareholder and Affiliates; and
 - (2) where the Seller is the Recipient, each financier, investor, bona fide potential financier and bona fide potential investor of the Seller who receives Confidential Information of the other Party,

complies in all respects with the Recipient's obligations in this clause 28.

28.3 Publicity

- (a) Subject to clause 28.3(b), the Seller will not issue any press release or make any other public announcement (**Public Statement**) relating to the transactions contemplated by this Agreement without the prior written approval of the Buyer (not to be unreasonably withheld) regarding the contents and the manner of presentation and publication of that Public Statement.
- (b) The Seller must issue a Public Statement and is permitted to do so without seeking approval from the Buyer:
 - (1) if ordered or required by Law;
 - (2) in the course of administrative or judicial proceedings; or
 - (3) in accordance with the requirements of any applicable stock exchange.

28.4 Publication of certain information

Nothing in clause 28.1 limits or restricts Buyer's ability to publish renewable energy data and Facility generation data from or in connection with the Project, including data from the Energy Measurement Equipment.

29 Representations and warranties

29.1 Representations and warranties

Each Party represents and warrants that:

- (a) **authority:** it has full power and authority to enter into and perform its obligations under this Agreement;
- (b) **corporate authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (c) **binding obligations:** this Agreement constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (d) **no litigation:** no litigation, arbitration, dispute or administrative proceedings is current or pending or to its knowledge, threatened which may, if adversely determined, adversely affect the performance of its obligations under this Agreement; and
- (e) **financial and technical capability:** in relation to the Seller only, it has the financial and technical capability to enter into, deliver and implement this Agreement.

29.2 Legal and binding transaction

Each Party represents and warrants that the execution, delivery and performance by it of this Agreement does not and will not violate:

- (a) any Law or Authorisation;
- (b) its constitution or other constituent documents; or
- (c) any Encumbrance or document that is binding upon it or any of its assets, and does not and will not result in:
 - (d) the creation or imposition of any Encumbrance, or restriction of any nature, on any of its assets; or
 - (e) the acceleration of the date of payment of any obligation existing under any Encumbrance, or document, that is binding upon it.

29.3 Exclusion

Except for:

- (a) the express terms and warranties set out in this Agreement; and
- (b) those implied terms or warranties that are imposed by any Laws or Authorisations that are mandatory and cannot be excluded,

the Seller gives no warranties regarding the Electricity or any other goods or services, supplied or to be supplied by the Seller, whether relating to defects in quality or characteristics or otherwise and all other conditions, warranties, stipulations or other statements, whether express or implied, by Laws, at common law or otherwise, are expressly excluded to the maximum extent permitted by Law.

29.4 Survival of representations and warranties

The representations and warranties made by the Parties under this Agreement survive the execution, termination or expiry of this Agreement.

29.5 Independent warranties

Each warranty made by a Party under this Agreement is independent and is not limited by reference to any other warranty in the relevant clause.

30 Dispute resolution

30.1 No proceedings

The Parties agree that all Disputes under this Agreement will be resolved by the Parties in accordance with clauses 30 and 31, where applicable. Without prejudice to clause 30.3, either Party may exceptionally seek interim, conservatory or injunctive measures from the competent Egyptian court, if so required.

30.2 Resolution by Parties and by industry adjudication body

- (a) In the event that a Dispute arises under this Agreement, the Parties must confer and use Reasonable Endeavours to resolve the Dispute within 30 Days after the date that a Party gives Notice of the Dispute to the other Party.
- (b) Any resolution of the Dispute must be reduced to writing signed by both of the Parties, and will not be binding until so reduced to writing and signed by both of the Parties.
- (c) If the Dispute has not been resolved within the timeframe set out in clause 30.2(a) and the Dispute falls within the ambit of disputes to be determined by EgyptERA, then the Dispute will be referred to EgyptERA or the body it has established for determining disputes relating to the electricity industry in accordance with the Law. If after such determination either Party is unhappy with the determination, that Party may refer the Dispute to arbitration in accordance with clause 30.3.
- (d) If the Dispute has not been resolved within the timeframe set out in clause 30.2(a), or by EgyptERA (or the body it has established) to the satisfaction of both Parties, then either Party may refer the Dispute to arbitration in accordance with clause 30.3.
- (e) Regardless of whether or not the timeframe set out in clause 30.2(a) has elapsed, as an alternative to continuing to confer in respect of the Dispute under clause 30.2(a) or referring the Dispute to determination under clause 30.2(c) or to arbitration under clause 30.3, if the Dispute is a Technical Dispute, either Party may refer the Technical Dispute to a Technical Determination in accordance with clause 31.

30.3 Arbitration

- (a) A Dispute may only be referred to arbitration in accordance with clause 30.2 or otherwise upon agreement by both Parties.

- (b) The arbitration will be:
- (1) in accordance with the rules (the **Rules**) of the Cairo Regional Center for International Commercial Arbitration (**Center**);
 - (2) conducted in English;
 - (3) governed by Egyptian law;
 - (4) held in Cairo, Arab Republic of Egypt at the Center or any other place as agreed by the Parties; and
 - (5) conducted by 3 arbitrators, unless the Parties otherwise agree.
- (c) Each Party will appoint one arbitrator and the 2 arbitrators so appointed will choose a presiding arbitrator in accordance with the Rules.
- (d) If within 30 Days after the appointment of the second arbitrator, the 2 arbitrators have not agreed upon the choice of the presiding arbitrator, then the Center will appoint the presiding arbitrator in accordance with the Rules.
- (e) The presiding arbitrator must be independent from both Parties and in particular must not be an employee, former employee or agent of either Party.
- (f) A decision of a majority of the arbitrators under this clause 30.3 is final and binding on the Parties.
- (g) The arbitral award rendered will be final and conclusive and enforcement of the arbitral award in Egypt will be subject to the procedures set forth in Law 27 of 1994.

30.4 Continuing obligations

Despite the provisions of this clause 30 (and clause 31 where applicable), both of the Parties must (unless otherwise provided for in this Agreement) continue performing their obligations under this Agreement.

30.5 Buyer's rights

For the avoidance of doubt, the existence of a Dispute does not prevent the Buyer from exercising any of its rights under this Agreement, including its right to terminate.

31 Technical Determination

31.1 Appointment of Independent Expert

- (a) Within 10 Business Days after the referral of a Dispute to Technical Determination, the Parties will agree on a person to act as an independent expert (an **Independent Expert**) in relation to a Technical Determination under this clause 31.
- (b) The Independent Expert must be an independent engineer with at least 10 Years of broad technical experience in the international field of constructing and operating electrical facilities similar to the Facility and must not be a current or former official, employee or agent of either Party or a Shareholder.
- (c) If the Parties are unable to agree a person to act as the Independent Expert, the Parties will ask the Chairman of the ICC International Centre for Expertise (or

such other body agreed by the Parties) to nominate a person to act the Independent Expert.

31.2 General

- (a) Any Technical Dispute between the Parties may, unless resolved amongst the Parties by conferral and agreement or arbitration under clause 30, be referred by a Party for determination by the Independent Expert under the terms of this clause 31 (**Technical Determination**).
- (b) A Technical Determination will be commenced by a Party delivering a Notice to the other Party requesting the Technical Determination in respect of the Technical Dispute.
- (c) The Parties agree that it is their intention that any Technical Determination will be held and completed promptly and expeditiously.

31.3 Technical Determination proceedings

- (a) Any Technical Determination will take place at Cairo, Arab Republic of Egypt with only the legal and other representatives of the Parties to the Technical Dispute being required to be present.
- (b) Any Technical Determination may be held in an informal and summary manner and, specifically, it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence.

31.4 Independent Expert decisions

- (a) Subject to clause 31.4(e), the decision of the Independent Expert will be final and binding on the Parties. Written reasons for that decision must be provided to the Parties at the time the decision is delivered.
- (b) Subject to:
 - (1) the limitations of liability set out in clause 25.5; and
 - (2) the Independent Expert not derogating from the Buyer's statutory powers as set out in clause 32,

the Independent Expert will be entitled to impose such decision (including as to the specific performance, an interdict, damages or penalty or otherwise) as the Independent Expert in its sole and absolute discretion may deem fit and appropriate.

- (c) For clarity, clause 31.4(b) will also apply to any determination by the Independent Expert regarding costs (including the Independent Expert's fees), unless this Agreement otherwise provides for the manner in which costs are to be dealt with.
- (d) Subject to clause 31.4(e), each decision of an Independent Expert will be enforced through the courts of the Arab Republic of Egypt.
- (e) If a Party is able to demonstrate that the Independent Expert has reached a Technical Determination which is manifestly incorrect or reached negligently or in bad faith, that Party is entitled to regard such a situation as a Dispute and submit such Dispute for determination under clause 30.

32 Statutory powers

32.1 Statutory powers add to express powers

The powers conferred on the Buyer by or under any Law or Authorisation are in addition to the powers conferred on the Buyer by this Agreement, except to the extent inconsistent with the provisions of this Agreement.

32.2 Laws that alter agreement of Parties

If at any time and for so long as:

- (a) any Law or Authorisation applies to this Agreement;
- (b) a provision of that Law or Authorisation conflicts with a provision of this Agreement; and
- (c) under that Law or Authorisation the conflicting provision of that Law or Authorisation prevails,

each conflicting provision of this Agreement is, without limiting the operation of clause 20, deemed to be amended to the extent necessary to resolve the conflict with that Law or Authorisation.

32.3 Statutory functions

Nothing contained in or implied by this Agreement has the effect of constraining the Buyer or placing any fetter on its statutory rights, duties, powers and functions, including those contained or referred to in any Law or Authorisation.

33 Assignment, Change in Control and other restrictions

33.1 Transfer, assignment and Change in Control

- (a) Without limiting clause 33.3 but subject to clause 33.5, the Seller must:
 - (1) not sell, assign, transfer or novate its interest under this Agreement other than pursuant to an assignment or novation granted under any Security Document (as defined in the PPA Direct Agreement) given in favour of a financial institution for the purposes of financing the construction of the Facility; and
 - (2) ensure there is no Change in Control in respect of the Seller, (each a **Transfer**) to any other person (**Transferee**) without the Buyer's prior written consent (not to be unreasonably withheld).
- (b) The Seller acknowledges and agrees that it would be reasonable for the Buyer to withhold consent to a Transfer under clause 33.1(a) if:
 - (1) at the time of the Transfer, the Seller is not also permitted to "Transfer" (as defined under each Principal Project Agreement) each other Principal Project Agreement; or

- (2) the Seller's interest under each other Principal Project Agreement is not, at the same time as the Transfer, being "Transferred" (as defined in the relevant Principal Project Agreement) to the Transferee.
- (c) The Seller acknowledges and agrees that it will not seek to "Transfer" (as defined under each Principal Project Agreement) its interest under any other Principal Project Agreement unless it will also "Transfer" (as defined under each Principal Project Agreement) its interest under each other Principle Project Agreement to the same "Transferee" (as defined under each Principal Project Agreement).

33.2 Transferee's details to be provided

The Seller must provide the Buyer with reasonable details of the Transferee at a reasonable time prior to the proposed date of Transfer.

33.3 Buyer transfer, restructuring, reorganisation or divestment

- (a) The Seller acknowledges and agrees that the Buyer may:
- (1) assign or novate this Agreement to any person, including a State owned company or Affiliate or Government Agency; or
 - (2) effect or undertake any restructuring, reorganisation or divestment of its assets,
- (each, a **Buyer Transfer**) at any time by Notice to the Seller and without Seller's consent.
- (b) Without limiting clause 33.3(a), if a Buyer Transfer will, once complete, result in the Buyer no longer being majority owned by the Arab Republic of Egypt, then, reasonably in advance of such Buyer Transfer (but only effective as of the implementation of the relevant Buyer Transfer), the Buyer must:
- (1) put into place, for the benefit, and to satisfaction of, the Seller (acting reasonably), arrangements for the period from the date the relevant Buyer Transfer takes effect until expiry of the Agreement Term, as necessary, for ensuring the continued performance by the Buyer of its payment and other obligations under this Agreement; and
 - (2) if the relevant Buyer Transfer will result in the PPA Direct Agreement ceasing to remain valid, in effect and enforceable by the Financing Parties or the security agent appointed by them, as applicable, ensure the replacement Buyer executes with the Seller and the Financing Parties or the security agent appointed by them, as applicable, a new direct agreement in substantially the same form and content as the PPA Direct Agreement (other than those provisions of the PPA Direct Agreement which relate to the Guarantee),
- (as applicable).
- (c) If:
- (1) the Buyer is unable to put into place, for the benefit, and to the satisfaction of, the Seller (acting reasonably), arrangements for the remainder of the Agreement Term, as necessary, for ensuring the continued performance by the Buyer of its payment and other obligations under this Agreement; and
 - (2) the Buyer is unable to ensure the replacement Buyer executes with the Seller and the Financing Parties or the security agent appointed

by them, as applicable, a new direct agreement in substantially the same form and content as the PPA Direct Agreement (other than those provisions of the PPA Direct Agreement which relate to the Guarantee),

(as applicable) and the Buyer intends to proceed with the relevant Buyer Transfer, then:

- (3) the Seller may deliver a Termination Notice to the Buyer and this Agreement will terminate without the need for any other legal or judicial procedure immediately on the date the Termination Notice is received by the Buyer; and
 - (4) the Buyer's inability to ensure the arrangements contemplated by clause 33.3(b)(1) or clause 33.3(b)(2) (or both, as applicable) will constitute a Default by the Buyer.
- (d) If the Buyer assigns or novates this Agreement in accordance with clause 33.3(a), the Seller must, not less than 10 Business Days prior to the date the Buyer is to give effect to the assignment or novation of this Agreement, as applicable, procure for the benefit of the person (**Buyer Transferee**) to whom the Buyer is to assign or novate this Agreement a replacement Development Bond.
- (e) If the Seller has not procured a replacement Development Bond for the benefit of the Buyer Transferee by the date required under clause 33.3(d), the Buyer will be entitled to immediately draw down the full amount of the Development Bond and transfer those funds to the Buyer Transferee who may hold those funds as a cash security in lieu of the Development Bond. The Buyer Transferee may access any cash security held by it in accordance with this clause 33.3(e) in the same way the Buyer Transferee may have accessed the Development Bond under clause 5.2(a).

33.4 Seller equity arrangements following Signing Date

- (a) The Seller represents and warrants that, as at the Signing Date, the Equity is as set out in Schedule 2.
- (b) Subject to clause 33.4(c), the Seller must ensure that:
 - (1) no Shareholder Disposes of any Equity; and
 - (2) there is no Change in Control of a Shareholder,
 during the period commencing on the Signing Date and ending on the date which is 2 Years following the Commercial Operation Date (the **Standstill Period**).
- (c) The Seller may permit a Shareholder to Dispose of all of its Equity at any time during the Standstill Period to a wholly owned subsidiary of that Shareholder's parent for the purposes of undertaking a bona fide company reorganisation.
- (d) The Seller must ensure that, at any point during the Standstill Period:
 - (1) the Equity held by the Key Shareholder is not less than 25% of all Equity; and
 - (2) there is no Change in Control in respect of the Key Shareholder.
- (e) The Seller must ensure that any transfer of Equity by the Key Shareholder that is not prohibited by clause 33.4(d) is otherwise made in compliance with clauses 33.1 and 33.4(f).

- (f) The Seller must ensure that the Key Shareholder only sells, assigns, transfers or otherwise disposes of Equity held by it:
- (1) to a person who, in the reasonable opinion of the Buyer:
 - (A) is solvent and reputable;
 - (B) would not cause a conflict in a material way with the interests of the Buyer; and
 - (C) has a sufficient level of financial, managerial and technical capacity to deliver the Project;
 - (2) where to do so would not increase the liabilities of the Buyer;
 - (3) where the Seller has provided the Buyer with full details for the proposed sale, assignment, transfer or other disposal of Equity and any further information requested by the Buyer;
 - (4) where to do so, in the reasonable opinion of the Buyer, would not negatively affect the ability of the Seller to perform the Seller's Obligations; and
 - (5) where there would not be any change to the Day to Day operational management of the Seller.

33.5 Encumbrances

Subject to clause 33.7, the Seller may not Encumber its interest in this Agreement or the Facility without the Buyer's prior written consent (which consent is not to be unreasonably withheld).

33.6 Subcontracting

- (a) The Seller must obtain the Buyer's prior written consent (which consent must not to be unreasonably withheld), to subcontract any Major Subcontract under this Agreement.
- (b) The Seller is not required to obtain the Buyer's consent to subcontract any other of its obligations under this Agreement (other than Major Subcontracts), subject to such Subcontractors being an experienced, creditworthy, reputable and competent party that holds any necessary registrations or licences and has sufficient resources to perform the work the subject of the proposed Subcontract.
- (c) Consent must not be withheld by the Buyer under clause 33.6(a) if the Seller demonstrates that the proposed Subcontractor is an experienced, creditworthy, reputable and competent party that holds any necessary registrations or licences and has sufficient resources to perform the work the subject of the proposed Subcontract.
- (d) The Seller:
 - (1) remains solely responsible for the performance of the Seller's Obligations regardless of whether or not the Seller enters into Subcontracts with Subcontractors in respect of any of those obligations; and
 - (2) is liable to the Buyer for the acts or omissions of each Subcontractor (including its officers, employees, agents and sub-contractors) as if they were the acts and omissions of the Seller.

33.7 Financing Documents and PPA Direct Agreement

The Buyer acknowledges that, as part of the satisfaction of the Conditions Precedent to this Agreement:

- (a) the Seller will enter into certain Financing Documents with Financing Parties for the Project (**Initial Financing Documents**); and
- (b) the Seller will execute the PPA Direct Agreement with the Financing Parties, the Buyer and the Egyptian Ministry of Finance.

33.8 Project Agreements

Subject to clause 34 (which applies to any Refinancing of the Project) and clause 37.6 (which applies to this Agreement), the Seller must not amend, modify, rescind, terminate, replace or supplement the Project Agreements without the Buyer's prior written consent (which consent is not to be unreasonably withheld).

34 Refinancing

34.1 Consent to Refinancing

- (a) Subject to the other provisions of this clause 34, the Seller must not enter into a Refinancing (whether by way of a single transaction or a series of transactions, whether related or not and whether voluntary or involuntary) within the first 2 Years following the Commercial Operation Date, and thereafter without the prior written consent of the Buyer, which will be given or withheld within 60 Business Days of receipt of the information provided by the Seller under clause 34.2(a).
- (b) For clarity, any reference in this Agreement to a "Refinancing" does not include:
 - (1) the entry into of derivative transactions contemplated to be entered into on or before the Conditions Satisfaction Date by the Financing Documents;
 - (2) to the extent that any derivative transaction confers on a hedge counterparty a right to break a swap consequent on the hedge counterparty ceasing to be a Financing Party under the Financing Documents, the exercise of any such right;
 - (3) the syndication or subscription of any debt under the Financing Documents that is contemplated at the Conditions Satisfaction Date;
 - (4) the change in control or sell down of any debt in an arm's length transaction at market value; or
 - (5) secondary disposals of investments or commitments of financial indebtedness in the ordinary course of a Financing Party's business which change the identity of a Financing Party but not the commercial terms of the Financing Documents.
- (c) Without limitation, it will be reasonable for the Buyer to withhold such consent to a proposed Refinancing if:
 - (1) the effect of the proposed Refinancing would be an increase or adverse change in the profile of the risks or liabilities of the Buyer

under any Principal Project Agreements without adequate compensation to the Buyer;

- (2) the financial indebtedness assumed under the proposed Refinancing will not be used solely for the Project; or
- (3) the Seller has failed to comply with this clause 34.

34.2 Details of Refinancing

- (a) The Seller must promptly (and at least 90 Business Days prior to a proposed Refinancing) provide the Buyer with full details of any proposed Refinancing, including:
 - (1) a copy of the proposed financial model relating to it;
 - (2) the basis for the assumptions used in the proposed financial model (which must be consistent with the Financial Model, except directly arising from the proposed Refinancing);
 - (3) a comparison with any refinancing assumed within the Financial Model; and
 - (4) a certificate in terms acceptable to the Buyer from the auditors of the proposed financial model referred to in clause 34.2(a)(1).
- (b) The proposed financial model referred to in clause 34.2(a)(1):
 - (1) must show, amongst other things, the material changes to the Seller's obligations to the Financing Parties; and
 - (2) may only propose changes to the Financial Model to the extent directly arising from the transactions contemplated by clause 34.1.
- (c) The Seller agrees that the Buyer will have unrestricted rights of audit of any proposed financial model referred to in clause 34.2(a)(1) and documentation, including formulae and calculations used in connection with a proposed Refinancing.

34.3 Documents

- (a) The Seller must not execute or amend any document in connection with a Refinancing (including by amending a Financing Document) without the prior written consent of the Buyer.
- (b) The Seller must, within 5 Business Days of the execution of any Financing Document in connection with a Refinancing, deliver to the Buyer a certified true copy of each amended and amending Financing Document.
- (c) The Seller must not execute any Refinancing until the new Financing Parties have, or the security agent appointed by them has, as applicable, executed an agreement with the Buyer substantially in the form of the then current PPA Direct Agreement and the existing Financing Parties have, or the security agent appointed by them has, as applicable, executed any document reasonably requested by the Buyer to terminate their rights under the then current PPA Direct Agreement.

34.4 Costs of new financing transactions

The Seller must pay the Buyer its costs (including any legal or financial advisers fees incurred by the Buyer) reasonably incurred in connection with a proposed Refinancing.

35 Sovereign immunity

The Buyer irrevocably and unconditionally agrees that:

- (a) it has the legal capacity to sue and to be sued in the Arab Republic of Egypt with respect to its obligations under this Agreement; and
- (b) should any proceeding be brought against it or its assets (other than any of its assets devoted to public service pursuant to Law 129 of 1947 or the Electricity Law 87 of 2015, such as the grid system, electric generation assets and equipment, electric distribution assets or other assets necessary for the fulfilment of its duties and responsibilities under the Laws of the Arab Republic of Egypt or assets protected by the diplomatic and consular privileges under the State Immunity Act of England or the Foreign Sovereign Immunities Act of the United States or any analogous legislation (the **Protected Assets**)) in any jurisdiction in connection with this Agreement (including any transaction contemplated by this Agreement):
 - (1) no claim of immunity from such proceedings will be claimed by or on behalf of it, on behalf of itself or any of its assets (other than the Protected Assets);
 - (2) it waives any right of immunity which it or any of its assets (other than the Protected Assets) now have or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (3) it consents generally in respect of the enforcement of any judgment or award against it in any such proceedings (including any interim judgment or award) in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings, including against or in respect of any of its assets (other than the Protected Assets).

36 Notices

36.1 Form of Notice

A notice or other communication to a Party under this Agreement (**Notice**) must be:

- (a) in writing and in both Arabic and English and signed by or on behalf of the sending Party; and
- (b) addressed to that Party in accordance with the details nominated in Schedule 3 (or any alternative details nominated to the sending Party by Notice).

36.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 4.30pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice**When Notice is regarded as given and received**

By hand or by courier to the nominated address

When delivered to the nominated address against signature for receipt.

By registered post to the nominated address

At 9.00am (addressee's time) on the fifth Business Day after the date of posting.

By fax to the nominated fax number

At the time indicated by the sending Party's transmission equipment as the time that the fax was sent in its entirety.

However, if the recipient Party informs the sending Party within 4 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time within a business hours period is to be included.

36.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than fax as permitted in clause 36.2).

37 General**37.1 Survival**

This clause 37.1 and clauses 5.2, 5.4, 5.6, 5.7, 23.5, 23.7, 25, 27, 28, 29, 32, 35 and 37 survive the expiry or termination of this Agreement.

37.2 Governing law and jurisdiction

This Agreement is governed by the Law in force in the Arab Republic of Egypt.

37.3 Relationship of the Parties

- (a) Nothing in this Agreement gives a Party authority to bind any other Party in any way.
- (b) Nothing in this Agreement imposes any fiduciary duties on a Party in relation to any other Party.

37.4 Entire agreement

This Agreement states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

37.5 Waiver

- (a) No Party may rely on the words or conduct of any other Party as a waiver of any right unless the waiver is in writing and signed by the Party granting the waiver.
- (b) The meanings of the terms used in this clause 37.5 are set out below.

Term**Meaning****conduct**

includes delay in the exercise of a right.

right

any right arising under or in connection with this Agreement and includes the right to rely on this clause.

waiver

includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

37.6 Amendment

An amendment of any term of this Agreement must be in writing and signed by the Parties.

37.7 Further action to be taken at each Party's own expense

Each Party must, at its own expense, do all things and execute all documents necessary to give full effect to this Agreement and the transactions contemplated by it.

37.8 Invalidity and enforceability

- (a) Without limiting clause 32.2, if any provision of this Agreement is invalid under the law of any jurisdiction, the other provisions of this Agreement will continue to be enforceable in that jurisdiction to the extent that such provisions are valid, lawful and enforceable.
- (b) Clause 37.8(a) does not apply where enforcement of the provision of this Agreement in accordance with clause 37.8(a) would materially affect the nature or effect of the Parties' obligations under this Agreement.

37.9 Cumulative rights

Subject to any express provision in this Agreement to the contrary, the rights of a Party under this Agreement are cumulative, and are in addition to any other rights of that Party.

37.10 Legal costs

Subject to any express provision in this Agreement to the contrary, each Party will bear its own legal and other costs and expenses relating directly or indirectly to the preparation of this Agreement and performance of its obligations under this Agreement.

37.11 No merger

The Parties' rights and obligations will not merge on the completion of any transaction contemplated by this Agreement and will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

37.12 No third party beneficiary

The terms of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns and it is not the intention of the Parties to confer third-party beneficiary rights on any other person.

37.13 Effect of signing

This Agreement is not binding on any Party unless it has been signed by, or on behalf of, each person named as a Party to it.

37.14 No reliance

Neither Party has relied on any statement by the other Party not expressly included in this Agreement.

37.15 Exercise of rights

- (a) A Party is required to act reasonably and fairly in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement.
- (b) A Party may impose reasonable conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Agreement. Any such conditions must be complied with by the Party relying on the consent, approval or waiver.

Schedules

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Agreement particulars

ASSEMBLY INSTRUCTIONS:

All information in square brackets to be inserted by Parties prior to Signing Date.

Item	Particular
Anticipated Date for Provisional Completion of the Road Works	[insert]
Anticipated Date for Provisional Completion of the Network Operator's Assets	[insert]
Delay Amount	an amount equal to EGP 4,000 per MW of Installed Capacity per Day.
Development Bond Amount	an amount equal to 180 times the LD Amount.
Financial Closure	the date on which the Financing Parties (or their agent under the Financing Documents) has received or waived all documents and other evidence which are required as satisfaction of all of the conditions precedent to draw down by the Seller of amounts under the principal construction funding facility under the Financing Documents and the payment of such amounts to the Seller by the Financing Parties.
Insolvency Threshold	[to be set at an amount equal to 5% of project value.]
Installed Capacity	[insert installed capacity] MWac.
Interconnection Loss Factor	2.5%.

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 Item Particular

LD Amount an amount equal to EGP 4,000 per MW of Installed Capacity per Day.

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 LD Cap an amount equal to the 180 times the LD Amount.

Scheduled Conditions Satisfaction Date the date which is 12 Months from the Signing Date.

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 Scheduled Commercial Operation Date [insert date]

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Schedule 2

Shareholders

ASSEMBLY INSTRUCTIONS:

Details of the Seller's Shareholders to be included in this Schedule before the Signing Date. This Schedule must also specify the identity of the "Key Shareholder", as well as the Key Shareholder's share of Equity (which, for clarity, must not be less than 35% of the Equity).

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Schedule 3

Notice details

Buyer	Egyptian Electricity Transmission Company, S.A.E
Address	Emtedad Ramsis Street, Ministry of Electricity Building, Abbasia, Cairo, Arab Republic of Egypt
Attention	[insert]
Fax	[insert]
Seller	[insert]
Address	[insert]
Attention	[insert]
Fax	[insert]



Conditions Precedent

ASSEMBLY INSTRUCTIONS:

Conditions Precedent be inserted during contract finalisation. The Conditions Precedent will include, as a minimum, those set out below.

1 Buyer's Conditions

- (a) The Network Operator executes the Cost Sharing Agreement, the Network Connection Contract and the NCC and CSA Direct Agreement.
- (b) NREA executes the Cost Sharing Agreement, the Usufruct Agreement, the UA and CSA Direct Agreement and the Land Allocation Letter.
- (c) The Buyer executes the PPA Direct Agreement.
- (d) The Egyptian Ministry of Finance executes the PPA Direct Agreement.

2 Seller's Conditions

- (a) Delivery to the Buyer of true and complete copies of the memorandum and articles of association of the Seller and the commercial registration certificate, certified by an authorized representative of the Seller and identifying the Shareholders and their respective shareholdings in the Seller.
- (b) The Seller executes the Cost Sharing Agreement (and the Cost Sharing Agreement has not expired or terminated), the Network Connection Contract, the Usufruct Agreement, the Land Allocation Letter, the PPA Direct Agreement, the NCC and CSA Direct Agreement and the UA and CSA Direct Agreement, and all conditions precedent under those agreements are satisfied or waived in accordance with the terms of the relevant agreement (other than a condition precedent that the Conditions Satisfaction Date has occurred under this Agreement).
- (c) The security agent appointed by the Financing Parties executes the PPA Direct Agreement, the NCC and CSA Direct Agreement and the UA and CSA Direct Agreement and all conditions precedent to those agreements that are required to be satisfied before those agreements are unconditional are satisfied or waived in accordance with the terms of the relevant agreements (other than a condition precedent that the Conditions Satisfaction Date has occurred under this Agreement).
- (d) The Seller provides the Financial Model to the Buyer.
- (e) The Generation Licence has been obtained.

- (f) Copies of certificates of insurance evidencing to the satisfaction of the Buyer that the insurance policies and coverage as specified in clause 1 of Schedule 11 have been obtained.
- (g) Delivery to the Buyer of a legal opinion (for the benefit of the Buyer and each other Principal Party) in a form satisfactory to the Buyer (acting reasonably) in respect of the Seller's due execution of each Principal Project Agreement and the binding nature of each Principal Project Agreement with regard to the Seller.
- (h) Delivery to the Buyer of the Development Bond in accordance with clause 5.1.
- (i) The occurrence of Financial Closure under the Financing Documents.



Schedule 5

Facility Description and Design and Technical Specifications

ASSEMBLY INSTRUCTIONS:

To be inserted based on information provided by the Seller. This Schedule should include, as a minimum, details of:

- *the Facility;*
- *the Connection Facilities to be constructed by the Seller in accordance with the Network Connection Contract;*
- *the Site Primary Meter and Site Backup Meter to be installed and maintained by the Seller in accordance with the Network Connection Contract;*
- *the Energy Measurement Equipment to be installed on the Site, including a description of the Sensors;*
- *the Generating Units;*
- *the plane of array;*
- *the Delivery Points;*
- *the design life of the Facility;*
- *the purpose of the Facility for the “Fit for Purpose” requirements;*
- *any other information which this Agreement provides is to be set out in this Schedule 5.*

Schedule 6

Testing and Commissioning

ASSEMBLY INSTRUCTIONS:

Information concerning the testing and commission requirements for the Facility must be inserted prior to the Signing Date.

Without limiting the foregoing, this Schedule 6 must set out the "Tests" (as defined) and the "Reliability Facility Test".

Schedule 7

Network Operator's Assets

ASSEMBLY INSTRUCTIONS:

This Schedule will specify all assets and infrastructure to be delivered by the Network Operator (or its contractors or other Government entities) including the "Interconnection Works" under the Cost Sharing Agreement for which the Buyer/Network Operator is responsible.

This Schedule must be completed prior to the Signing Date.

Schedule 8

Implementation Schedule

ASSEMBLY INSTRUCTIONS:

To be inserted prior to the Signing Date. The Implementation Schedule is the program and schedule for the design, procurement, construction, erection, installation, testing and commissioning of the Facility and the implementation of the Project generally, and must:

- *be drawn as a critical path network in the form of a time scaled bar chart;*
- *contain the key milestones and their respective milestone dates;*
- *contain working and non-working days, float, logic links and constraints;*
- *be on a weekly basis with each week ending on the Saturday evening;*
- *have activities or tasks numbered in a sequential logical order and of sufficiently small duration to represent accurately the Seller's proposed method of completing the Facility; and*
- *include, for all activities, such sufficient detail to enable the Buyer to reasonably assess any Claim for an extension of time in accordance with this Agreement.*

Calculation of Payment

1 Payment prior to Commercial Operation Date

1.1 Calculation of Payment

- (a) Prior to the Commercial Operation Date, the Buyer will pay the Initial Charge Rate (**ICR**) for the Initial Delivered Electricity during each Billing Period (being Billing Period m) in accordance with clause 14.3 and this clause 1.1 of this Schedule 9.
- (b) The ICR payable for the Initial Delivered Electricity delivered during each Billing Period (being Billing Period m) will be an amount equal to 10% of the FIT Rate.
- (c) The Initial Delivered Electricity for each Billing Period (being Billing Period m) will be the Relevant Quantity for Billing Period m, as calculated in accordance with clause 1.2 of this Schedule 9.

1.2 Calculation of Relevant Quantity

The Relevant Quantity of Electricity for which the Initial Charge Rate will be paid in a Billing Period, being Billing Period m, will be calculated as follows:

$$RQ_m = AQ_m \times ILF$$

where:

RQ_m = Relevant Quantity from the Facility (kWh) in Billing Period m

AQ_m = Actual Delivered Output from the Facility (kWh) in Billing Period m

ILF = the Interconnection Loss Factor

2 Payment on and after the Commercial Operation Date

2.1 Calculation of Payment

On and after the Commercial Operation Date, the payment for the Actual Delivered Output and the Deemed Delivered Electricity will be determined for each Billing Period (being Billing Period m) as follows:

$$TP_m = RQ_m \times CR_m - OMP_m - IPS_m$$

where:

TP_m = the Total Payment (in EGP) in Billing Period m

RQ_m = the Relevant Quantity in Billing Period m as determined in clause 2.3 of this Schedule 9

CR_m = the Charge Rate applicable in Billing Period m where the Charge Rate will be determined as follows:

$$CR_m = TR_m + CRA_m$$

where:

TR_m = the FiT Rate (Pt/kWh) in Billing Period m, as determined in clause 2.2 of this Schedule 9

CRA_m = the Charge Rate Adjustment due to a Change Effect in accordance with clause 20 (Pt/kWh)

OMP_m = the Operation and Maintenance Payment (EGP) in Billing Period m as determined in clause 3 of this Schedule 9

IPS_m = the insurance premium saving for Billing Period m as determined in accordance with clause 26.6(c), being the proportion of the annual insurance premium not incurred by the Seller as a result of a risk being classified as an Uninsurable Risk

2.2 FiT Rate

(a) The FiT Rate is a flat rate payable in Pt/kWh starting on and from the Commercial Operation Date until the end of the Supply Term. Subject to any adjustment Notified to the Seller under clause 3.1(h)(1), the FiT Rate is:

ASSEMBLY INSTRUCTIONS:

FiT rate to be inserted before the Signing Date.

$$TR = \text{US\$ [insert] per kWh}$$

(b) For each Billing Period during the Supply Term (being Billing Period m), the FiT Rate will be adjusted in accordance with the following formula:

$$TR_m = TR \times (0.15 \times 7.15 + 0.85 \times EXR_m)$$

where:

TR_m = the FiT Rate (Pt/kWh) in Billing Period m

TR = the unadjusted FiT Rate set out in clause 2.2(a) of this Schedule 9 or as otherwise Notified to the Seller in the FiT Rate Notice under clause 3.1(h)(1)

EXR_m = the mid-point between the buy and sell currency exchange rates for the EGP / US\$ currency pair published on the website of the Central Bank of Egypt on the date on which the Invoice has been prepared by the Buyer for the Billing Period m

2.3 Calculation of Relevant Quantity

On and after the Commercial Operation Date, the Relevant Quantity of Electricity will be determined for each Billing Period (being Billing Period m) as follows:

$$RQ_m = (AQ_m + DQ_m) \times ILF$$

where:

RQ_m = Relevant Quantity from the Facility (kWh) in Billing Period m

AQ_m = Actual Delivered Output from the Facility (kWh) in Billing Period m

DQ_m = Deemed Delivered Electricity from the Facility (kWh) in Billing Period m, as calculated in accordance with clause 5.1(d) of this Schedule 9

ILF = is the Interconnection Loss Factor

3 Operation and Maintenance Payment

(a) Each Billing Period the Buyer will levy to the Seller the Operation and Maintenance Payment for the operation and maintenance of the Network Operator's Assets.

(b) For each Billing Period during the Supply Term (being Billing Period m), the Operation and Maintenance Payment (OMP_m) will be determined as follows:

$$OMP_m = OMC \times IC \times CPI_m / CPI_{ref}$$

where:

OMP_m = the Operation and Maintenance Payment in EGP in Billing Period m

OMC = the Operation and Maintenance Charge of EGP 700 (per MW of Installed Capacity)

IC = Installed Capacity

CPI_m = CPI applicable at Billing Period m

CPI_{ref} = the reference CPI, being the CPI effective on 31 December 2015

(c) If the CPI is not available or if the Parties agree otherwise, the adjustments to the OMC in clause 3(b) of this Schedule 9 will be made with another mutually agreed index. If the Parties fail to agree on a substitute index, then the index or method of calculation will be resolved by an Independent Expert in accordance with the provisions of clause 31.

(d) In this clause 3 of this Schedule 9, "CPI" means the Core Consumer Price Index as published by the Central Agency for Public Mobilization and Statistics and as currently posted on the World Wide Web at <http://www.capmas.gov.eg>.

4 Calculated Electricity Output

4.1 General

- (a) The Calculated Electricity Output is the Electricity output that the Facility could have achieved based on the actual solar irradiation on the plane of array recorded by the Energy Measurement Equipment established by the Seller, the PV module temperature measured and either:
- (1) the Estimated Facility Performance Ratio set out in Table 1 of clause 4.2 of this Schedule 9; or
 - (2) the Revised Facility Performance Ratio as determined in accordance with Attachment 2 of this Schedule 9.
- (b) The Calculated Electricity Output is used for the purposes of determining the Deemed Delivered Electricity as per clause 5.1 of this Schedule 9 and the Performance Factor of the Facility as per clause 5.2 of this Schedule 9.

4.2 Determination of Calculated Electricity Output

- (a) The Calculated Electricity Output (CEO) applicable to Billing Period m is determined as follows:

$$CEO_m = \sum_m CEO_{j,m} \times MI / 60 \times 1000$$

where:

$$CEO_m = \text{sum of the Calculated Electricity Output for the Billing Period m (in kWh)}$$

$$CEO_{j,m} = \text{Calculated Electricity Output in Metering Intervals (j) in Billing Period m based on Estimated Facility Performance Ratio set out in Table 1 of this clause 4.2 of this Schedule 9 or the Revised Facility Performance Ratio as determined in accordance with Table 4 in Attachment 2 of this Schedule 9 for the solar irradiance measured by the Energy Measurement Equipment during each Metering Interval j (in kWh)}$$

$$j = \text{Metering Intervals}$$

$$MI = \text{duration of Metering Interval (10 minutes)}$$

- (b) The Calculated Electricity Output in each Metering Interval j is calculated as follows:

$$CEO_{j,m} = \sum_j E\text{-module}_{j,m} \times PR_m / 100 \times (1 - DF_m / 100)$$

where:

$$CEO_{j,m} = \text{Calculated Electricity Output in Metering Intervals (j) during the Billing Period m and determined based on this Schedule 9 for the solar irradiance measured by the Energy Measurement Equipment during each Metering Interval j (in kWh)}$$

$E_{\text{module},j,m}$ = calculated energy at the module level as determined based on the formula set out in clause 4.2(c) of this Schedule 9

PR_m = Estimated Facility Performance Ratio in Billing Period m as set out in Table 1 to this clause 4.2(b) of this Schedule 9, or Revised Facility Performance Ratio in Billing Period m in accordance with Table 4 in Attachment 2 to this Schedule 9

DF_m = Degradation Factor as applicable in Billing Period m as set out in Table 2 to this clause 4.2(b) of this Schedule 9

j = Metering Intervals

MI = duration of Metering Interval (10 minutes)

ASSEMBLY INSTRUCTIONS:

The Estimated Facility Performance Ratio is to be provided by the Seller and inserted into Table 1 above prior to the Signing Date.

Month	$PR_{\text{est},n}$
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Table 1: Estimated Facility Performance Ratio (PR_{est})

ASSEMBLY INSTRUCTIONS:

The Degradation Factor as provided by the Seller is to be inserted into Table 2 above prior to the Signing Date.

Billing Period (period after COD)	%	Billing Period (period after COD)	%
1 - 12		157 – 168	
13 - 24		169 – 180	
25 - 36		181 – 192	
37 - 48		193 – 204	
49 - 60		205 – 216	
61 - 72		217 – 228	
73 - 84		229 – 240	
85 - 96		241 - 252	
97 - 108		253 - 264	
109 - 120		265 - 276	
121 – 132		277 – 288	
133 – 144		289 – 300	
145 – 156			

Table 2: Degradation Factor

- (c) The Calculated Energy Output at the module level in each Metering Interval j during each Deemed Delivery Event in Billing Period m , will be determined as follows:

$$E\text{-module}_j = PA \times (G_j / 1000 \times MI / 60 \times \eta_{STC} / 100 \times (1 - \beta / 100 \times (T_{mod_n} - T_{Meas})))$$

where:

$E\text{-module}_j$ = calculated energy at the module in each Metering Interval j (in kWh)

PA = plane of array of the Facility as set out in the Design and Technical Specifications (in m²)

η_{STC} = module efficiency at standard test conditions as per module data sheet (in %)

G_j = solar irradiance (in W/m²) is the average irradiance measured during the Metering Interval j by the Energy Measurement Equipment, as specified in Attachment 1 to this Schedule 9 placed in the plane of array

β = the temperature coefficient from the module's data sheet (in %/°C)

MI = the Metering Interval of 10 minutes

T_{Meas_j} = the Monthly average module temperature measured during each Metering Interval j by the temperature Sensors placed on the reverse side of the modules (in °C)

T_{Mod_j} = the average Monthly module temperature expected as determined in Table 3 of this clause 4.2(c) of this Schedule 9 (in °C)

Month	TMod
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Table 3: Average Monthly Module Temperature Assumed

ASSEMBLY INSTRUCTIONS:

The Average Monthly Module Temperature Assumed as provided by the Seller is to be inserted into Table 3 above prior to the Signing Date.

5 Calculation of Deemed Delieverd Electriciry

5.1 Deemed Delivered Electricity

- (a) Subject to this Schedule 9, if a Deemed Delivery Event occurs during a Billing Period, being Billing Period m , the Deemed Delivered Electricity for that Billing Period must be calculated by the Seller.
- (b) Payments will only be made for Deemed Delivery Electricity which is referable to failure by the Buyer to take delivery of Electricity at the Delivery Point (where Electricity would otherwise have been available for delivery at the Delivery Point) because of an Other Force Majeure Event affecting the Buyer (**Relevant**

Deemed Delivery Event) if and to the extent that the total duration of all Relevant Deemed Delivery Events in any Year exceeds 72 hours (and then only for Deemed Delivered Electricity attributable for any supply interval after 72 hours).

- (c) Deemed Delivered Electricity (**DQ**) means the difference between the Actual Delivered Output (**AQ**) for the relevant period and what the delivered quantity would have been for the relevant period (**LO**) but for the occurrence of the relevant Deemed Delivery Event.
- (d) For each Billing Period, being Billing Period m, the Seller must calculate the Deemed Delivered Electricity quantity for that Billing Period as follows

$$DQ_m = \sum_{Lo,j} (CEO_{Lo,j,m} \times PF_m) - AQ_{Lo,j,m}$$

where:

DQ_m = Deemed Delivered Electricity in Billing Period m (in kWh)

$CEO_{Lo,j,m}$ = Calculated Electricity Output during each Metering Interval j in Billing Period m, where the operation of the Facility is limited as a result of a Deemed Delivery Event

PF_m = Performance Factor in Billing Period m

$AQ_{Lo,j,m}$ = Actual Delivered Output for each Metering Interval j in Billing Period m, where the operation of the Facility is limited as a result of a Deemed Delivery Event

j = Metering Interval

m = Billing Period m

5.2 Calculation of the Performance Factor

- (a) The Performance Factor (**PF**) is based on the historic performance of the Facility. It represents the ratio between the Actual Electricity Output (**AEO**) and the Calculated Electricity Output (**CEO**) as determined in accordance with clause 4 of this Schedule 9 considering only the Metering Intervals falling within those periods (**UO**) during which the operation of the Facility is not restricted by a Deemed Delivery Event or by an Other Force Majeure Event.

- (b) The Performance Factor will be determined as follows:

- (1) for the period until the Revised Facility Performance Ratio has been assessed in accordance with the principles set out in the remainder of this clause 5.2 of Schedule 9, the Performance Factor will be determined using the Estimated Facility Performance Ratio as set out in Table 1 of this Schedule 9 and the actual performance of the Facility;

for the period after the Revised Facility Performance Ratio has been established, the calculation of the Performance Factor will be determined using the Revised Facility Performance Ratio and on the actual performance of the Facility.

(c) The Performance Factor applicable in Billing Period m will be calculated with reference to the following:

(1) If: $AEO_m < CEO_m$ then:

$$PF_m = AEO_m / CEO_m$$

(2) If: $AEO_m > CEO_m$ then:

$$PF_m = 1$$

where:

PF_m = Performance Factor applicable to Billing Period m

CEO_m = Calculated Electricity Output (in kWh) during Billing Period m for the calculation of the PF_m

AEO_m = Actual Electricity Output applicable to Billing Period m

m = Billing Period

5.3 Calculated Electricity Output for Determination of the Performance Factor

The Calculated Electricity Output (**CEO**) applicable to Billing Period m is determined as follows:

$$CEO_m = \sum_n CEO_{UO,j,n} \times MI / 60 \times 1000$$

where:

CEO_m = sum of the Calculated Electricity Output for the preceding Months (n) that are applicable to the calculation of the Performance Factor for the Billing Period m (in kWh)

$CEO_{UO,j,n}$ = Calculated Electricity Output in Metering Intervals (j) during the preceding Billing Periods (n) that are applicable to the calculation of the Performance Factor for the Billing Period m where the operation of the Facility is not restricted by an Other Force Majeure Event or during a Deemed Delivery Event and determined based on the Estimated Facility Performance Ratio (%) as set out in Table 1 in clause 4.2 of this Schedule 9 or the Revised Facility Performance Ratio (%) set out in Table 4 in Attachment 2 to this Schedule 9 for the solar irradiance measured by the Energy Measurement Equipment during each Metering Interval j (in kWh)

UO = periods during the Billing Periods n where the operation of the Facility is not restricted by an event of Other Force Majeure Event or during which the Facility has been not been curtailed due to a Deemed Delivery Event

j = Metering Intervals

MI = duration of Metering Interval (10 minutes)

- n =
- (i) in the case of clause 5.2(b)(1) of this Schedule 9, all the Billing Periods (n) directly prior to the Billing Period m and the post Commercial Operation Date; and
 - (ii) in the case of clause 5.2(b)(2) of this Schedule 9, 12 Billing Periods directly prior to the Billing Period m (or where the period up to the determination of the Revised Facility Performance Ratio is less than 12 Months, the period between the Commercial Operation Date and the Billing Period m).

5.4 Actual Electricity Output for the Determination of the Performance Factor

The Actual Electricity Output (AEO) applicable to Billing Period m is determined as follows:

$$AEO_m = \sum_n AEO_{UO,j,m} \times MI / 60 \times 1000$$

where:

AEO_m = sum of the Actual Electricity Output for the preceding Months that are applicable to the calculation of the Performance Factor for the Billing Period m (in kWh)

$AEO_{UO,j,m}$ = Actual Electricity Output in Metering Intervals (j) during the preceding Billing Periods (n) that are applicable to the Performance Factor for the Billing Period m where the operation of the Facility is not restricted by an Other Force Majeure Event or during a Deemed Delivery Event and metered at the Delivery Point (in kWh)

UO = periods during the Billing Periods n where the operation of the Facility is not restricted by an Other Force Majeure Event or during which the Facility has been not been curtailed due to a Deemed Delivery Event

j = Metering Intervals

MI = duration of Metering Interval (10 minutes)

- n =
- (i) in the case of clause 5.2(b)(1) of this Schedule 9, all the Billing Periods (n) directly prior to the Billing Period m and the post Commercial Operation Date; and
 - (ii) in the case of clause 5.2(b)(2) of this Schedule 9, 12 Billing Periods directly prior to the Billing Period m (or where the period up to the determination of the Revised Facility Performance Ratio is less than 12 Months, the period between the Commercial Operation Date and the Billing Period m).

Attachment 1

Specification of Pyranometers

Measured value	Principle	Unit	Accuracy	Range
Global Horizontal Irradiance (GHI)	Thermopile pyranometer. Classification to ISO 9060:1990: Secondary Standard	W/m ²	<0,2% non-linearity (100-1000W/m ²)	0-1400 W/m ²
Ambient temperature	Thermistor integrated in ventilated radiation shield according to World Meteorological Organization's (WMO) guidelines	°C	±0,2°C (-20°C ... +50°C), else ±0,5°C	-15 ... +60°C
Module temperature	Thermistor integrated in self-sticking heat conductive housing	°C	±1°C	-15 ... +80°C

Attachment 2

Revised Facility Performance Ratio

The Revised Facility Performance Ratio will be determined by measurements during the first Contract Year following Commercial Operation Date and will replace the Estimated Facility Performance Ratio from the second Contract Year after Commercial Operation Date onwards for the remaining duration of the Agreement Term. The Revised Facility Performance Ratio will be determined based on the following principles:

For every 10 minute interval during each Billing Month the Energy Measurement Equipment will record:

- the average irradiance level for each installed irradiation Sensor in the plane of array;
- the average module temperature recorded by all the Sensors in the plane array; and
- the Actual Energy Output as metered at the Delivery Point.

In case the average measured irradiance in the plane of array is lower than 50 W/m² such 10 minute interval will not be considered for calculating the Revised Facility Performance Ratio. Where one or more Sensors are not available due to a:

- sensor failure; or
- communication failure,

the average will be calculated from the data coming from the remaining functioning Sensors and where no data is available for a period of time, such time periods will not be eligible periods to be considered in the evaluation. In the case of Sensor or solar data unavailability the Parties can mutually agree to apply appropriate satellite data for the calculations.

$$PR_n = \sum_j AEO_{j,m} / E\text{-module}_{j,m}$$

where:

PR_m = Revised Facility Performance Ratio as determined for each calendar month m

$E\text{-module}_{j,m}$ = Calculated Energy Output at the module level in each metering interval j in each calendar month m based on the formula set out in clause 4.2(c) of Schedule 9 (in kWh)

$AEO_{j,m}$ = Actual Energy Output as metered at the Delivery Point (in kWh)

m = calendar month

j = number of metering intervals

Calendar Month	Revised Facility Performance Ratio _m
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Table 4: Revised Facility Performance Ratio

Drafting Note: to be filled in based on the values as determined during Contract Year 1.

Attachment 3

Form of FiT Rate Notice

[insert date]

[Insert Seller name]
[Insert Seller address]
(Seller)

Attention: [insert name of Seller's representative]

Dear [insert name]

FiT Rate Notice

This FiT Rate Notice is issued by the Buyer to the Seller pursuant to clause 3.1(e) of the Power Purchase Agreement between the Seller and the Egyptian Electricity Transmission Company, S.A.E (Buyer) dated on or about [insert Signing Date of the PPA] (PPA).

Defined terms used in this FiT Rate Notice have the meaning given in the PPA.

The Buyer confirms that:

- (a) the Conditions Precedent have been satisfied or waived in accordance with clause 3.1 of the PPA (other than the Seller's Condition in clause 2(h) of Schedule 4 that the Development Bond has been provided to the Buyer and clause 2(i) of Schedule 4 that Financial Closure has occurred under the Financing Documents); and

Drafting Note (Alternative 1): If the FiT Rate set out above is the same as the FiT Rate set out in clause 2.2(a) of Schedule 9, retain the following paragraph (b) and delete this drafting note and Alternative 2 below (including the Alternative 2 drafting note).

- (b) provided the Seller issues the Notice required under clause 3.1(i) of the PPA within 5 Business Days of the date of this FiT Rate Notice, the FiT Rate for the purposes of the PPA will be as set out in clause 2.2(a) of Schedule 9 of the PPA.

Drafting Note (Alternative 2): If the FiT Rate set out above is less than the FiT Rate set out in clause 2.2(a) of Schedule 9, retain the following paragraphs (b) and (c) and delete this drafting note and Alternative 1 above (including the Alternative 1 drafting note).

- (b) the FiT Rate is US\$[insert] per kWh (which is less than the FiT Rate set out in clause 2.2(a) of Schedule 9 of the PPA at the Signing Date); and
- (c) provided that the Seller proceeds to Financial Closure and issues the Notice under clause 3.1(i) of the PPA within the time period required under clause 3.1(h) of the PPA, the FiT Rate set out in paragraph (b) above will apply to the

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PPA in place of the FIT Rate set out in clause 2.2(a) of Schedule 9 of the PPA at the Signing Date.

Buyer

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Executed for and on behalf of
Egyptian Electricity Transmission Company, S.A.E

sign here ▶

print name ▶

print title ▶

date ▶

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Requirements for Invoices

ASSEMBLY INSTRUCTIONS:

The requirements for invoices are to be specified by the EETC and included in this Schedule prior to the Signing Date.

Schedule 11

Insurances

1 Insurances required for the period prior to the Commercial Operate Date

1.1 Marine and aviation

- (a) Coverage must insure all materials, equipment machinery, spares and other items for incorporation into the Facility against all risks of physical loss or damage while in transit by sea or air from country of origin anywhere in the world to the Site, or vice versa, from the time of the insured items leaving warehouse or factory for shipment to the Site.
- (b) Coverage must be for an amount equal to the cost and freight of any shipments to the Site.
- (c) The Seller, its officers and directors must be named insureds.
- (d) The insurance required by this clause 1.1 of this Schedule 11 must be in place from the Conditions Satisfaction Date or as required by Law, if later, until the Commercial Operation Date unless otherwise agreed in writing by the Parties.

1.2 Loss of revenue (following marine or aviation incident)

- (a) Coverage must insure against loss of revenue following delay in reaching the Commercial Operation Date as a direct result of physical loss or damage to the materials, equipment, machinery and other items in transit by sea or air to the Site to the extent covered under the marine cargo insurance required under clause 1.1 of this Schedule 11.
- (b) Coverage must be in amount equal to not less 18 months' estimated costs of debt service under the Financing Documents and any mandatory payments due under this Agreement to be received following delay to the Commercial Operation Date by the Scheduled Commercial Operation Date.
- (c) The Seller, its officers and directors must be named insureds.
- (d) The insurance required by this clause 1.2 of this Schedule 11 must be in place from the Conditions Satisfaction Date or as required by Law, if later, until the Commercial Operation Date unless otherwise agreed in writing by the Parties.

1.3 Builders' all risk

- (a) Coverage must include physical loss of or damage to materials and both the permanent and temporary works on the Site while under construction by the Seller, Subcontractors and their sub-contractors on an "all-risks" basis, subject to standard exclusions and sub-limits.
- (b) Coverage must be on a full replacement cost basis of the Facility.

- (c) The Seller, its officers and directors must be named insureds and the Buyer, its officers and directors must be named as additional insureds.
- (d) The insurance required by this clause 1.3 of this Schedule 11 must be in place from the Conditions Satisfaction Date or as required by Law, if later, until the Commercial Operation Date unless otherwise agreed in writing by the Parties.

1.4 Loss of revenue (following builders' all risk)

- (a) Coverage must insure against loss of revenue following delay in reaching the Scheduled Commercial Operation Date as a direct result of physical loss of or damage to the works to the extent that such loss or damage is covered under the insurance required by clause 1.3 of this Schedule 11.
- (b) Coverage must be in an amount equal to not less than 12 months' estimated costs of debt service under the Financing Documents and any mandatory payments due under this Agreement to be received following delay to the Commercial Operations Date by the Scheduled Commercial Operation Date.
- (c) The Seller, its officers and directors must be named insureds.
- (d) The insurance required by this clause 1.4 of this Schedule 11 must be in place from the Conditions Satisfaction Date or as required by Law, if later, until the Commercial Operation Date unless otherwise agreed in writing by the Parties.

1.5 General liability

- (a) Coverage must insure against legal liability to third parties for bodily injury or damage to property arising out of the construction, testing and the commissioning of the Facility.
- (b) Coverage must be for an amount not less than US\$30,000,000 for any one occurrence and unlimited in the aggregate per annum.
- (c) The Seller, its officers and directors must be named insureds and the Buyer, its officers and directors must be named as additional insureds.
- (d) The insurance required by this clause 1.5 of this Schedule 11 must be in place from the Conditions Satisfaction Date or as required by Law, if later, until the Commercial Operation Date unless otherwise agreed in writing by the Parties.

1.6 Miscellaneous

Other insurance as is customary, desirable or necessary to comply with local or other requirements, such as contractual insuring responsibility, workers' compensation and employers' liability insurance in relation to all personnel employed in the construction of the Project, and motor vehicle liability insurance for all vehicles owned, hired, leased, used or borrowed for use in Egypt in connection with the Project.

2 Insurances required from the Commercial Operation Date

2.1 All risks

- (a) Coverage must include all building, contents, machinery, stock fixtures, fittings and all other personal property forming part of the Facility against "All Risks" of physical loss or damage, including those resulting from fire, lightning, explosion,

spontaneous combustion, storm, wind, tempest, flood, hurricane, water damage, riot, strikes, malicious damage, earthquake, tsunami, collapse or loss of contents of tanks (or any combination of them).

- (b) Coverage must be in an amount not less than the maximum probable loss amount of the Facility (subject to appropriate peril sub-limits) based on an independent insurance broker's report, from an insurance broker of international repute and approved by the Buyer.
- (c) The Seller, its officers and directors must be named insureds and the Buyer, its officers and directors must be named as additional insureds.
- (d) The insurance required by this clause 2.1 of this Schedule 11 must be in place from the Commercial Operation Date for the Supply Term, renewable on an annual basis unless otherwise agreed in writing by the Parties.

2.2 Loss of revenue following all risks

- (a) Coverage must insure against loss of revenue due to loss of capacity or loss of output (or both) as a direct consequence of loss of or damage to the Facility and caused by a peril insured under the insurance required by clause 2.1 of this Schedule 11.
- (b) Coverage must be in an amount equal to not less than 18 months' estimated costs of debt service under the Financing Documents and any mandatory payments due under the Project Agreements.
- (c) The Seller, its officers and directors must be named insureds.
- (d) The insurance required by this clause 2.2 of this Schedule 11 must be in place from the Commercial Operation Date for the Supply Term, renewable on an annual basis unless otherwise agreed in writing by the Parties.

2.3 Machinery breakdown

- (a) To the extent not provided as part of the under the insurance required by clause 2.1 of this Schedule 11, coverage must insure against all critical machinery, plant, and critical ancillary equipment forming part of the Facility against sudden and unforeseen physical loss or damage resulting from mechanical and electrical breakdown or derangement, explosion or collapse of boilers and pressure vessels, electrical short circuits, vibration, misalignment, excessive current or voltage, abnormal stresses, centrifugal forces, failure of protective or regulating devices, overheating, entry of foreign bodies, impact, collision and other similar causes.
- (b) Coverage must be in an amount equal to the full replacement value of all critical machinery, plant, and critical ancillary equipment forming part of the Facility.
- (c) The Seller, its officers and directors must be named insureds and the Buyer, its officers and directors must be named as additional insureds.
- (d) The insurance required by this clause 2.3 of this Schedule 11 must be in place from the Commercial Operation Date for the Supply Term, renewable on an annual basis unless otherwise agreed in writing by the Parties.

2.4 Consequential loss following machinery breakdown

- (a) Coverage must insure against loss of revenue due to loss of capacity or loss of output as a direct consequence of loss or damage to the Facility (or both) caused by a peril insured under clause 2.3 of this Schedule 11.

- (b) Coverage must be in an amount equal to not less than 18 months' estimated costs of debt service under the Financing Documents and any mandatory payments due under the Project Agreements.
- (c) The Seller, its officers and directors must be named insureds.
- (d) The insurance required by this clause 2.4 of this Schedule 11 must be in place from the Commercial Operation Date for the Supply Term, renewable on an annual basis unless otherwise agreed in writing by the Parties.

2.5 General liability

- (a) Coverage must insure against legal liability to third parties for bodily injury or damage to property arising out of the operation of the Facility.
- (b) Coverage must be for an amount not less than US\$30,000,000 for any one occurrence and unlimited in the aggregate per annum.
- (c) The Seller, its officers and directors must be named insureds and the Buyer, its officers and directors must be named as additional insureds.
- (d) The insurance required by this clause 2.5 of this Schedule 11 must be in place from the Commercial Operation Date for the Supply Term, renewable on an annual basis unless otherwise agreed in writing by the Parties.

2.6 Workers' compensation and employers liability

- (a) This coverage will include workers' compensation, temporary disability and other similar insurance required by the Laws of the Arab Republic of Egypt.
- (b) In addition, this coverage must include a voluntary compensation and employers' liability endorsement for employees not subject to the workers compensation laws.
- (c) The Seller, its officers and directors must be named insureds.
- (d) The insurance required by this clause 2.6 of this Schedule 11 must be in place from the Commercial Operation Date for the Supply Term, renewable on an annual basis unless otherwise agreed in writing by the Parties.

2.7 Miscellaneous

Other insurance policies which are required by the Laws of the Arab Republic of Egypt.

Schedule 12

Form of Development Bond

Egyptian Electricity Transmission Company, S.A.E
Emtedad Ramsis Street
Ministry of Electricity Complex
Abbassia
Cairo, Egypt
(Buyer)

Letter of Guarantee No. _____

Place: _____

Date: _____

The Buyer has awarded our client [*insert name*] (**Seller**) a power purchase agreement to develop [*insert description of the Project*] on a build, own and operate basis and to sell electricity on terms and conditions agreed to between the Buyer and the Seller (**Power Purchase Agreement**).

We [*insert name*] (the **Issuing Bank**) hereby unconditionally and irrevocably guarantee to pay on demand to the Buyer the sum or sums which, when aggregated with any other sums paid to the Buyer under this Letter of Guarantee, does not exceed EGP [*insert amount*] (**Maximum Amount**) as follows:

1. Immediately upon receipt of the Buyer's written claim for recourse under this Letter of Guarantee (**Claim**) stating that:
 - (a) "the Seller has failed to pay an amount due under the Power Purchase Agreement"; or
 - (b) "the Seller has failed to extend or replace the Letter of Guarantee as required under clauses 5.3 or 33.3(e) of the Power Purchase Agreement",and that:
 - (c) "the Buyer is entitled to call on this Letter of Guarantee in accordance with the terms of the Power Purchase Agreement".
2. Notwithstanding any objection of the Seller or of any other party, we, the Issuing Bank will pay to the Buyer the amounts set out in that Claim by transfer to the Buyer's account with any bank or financial institution in the Arab Republic of Egypt, or by any other method which is acceptable to the Buyer provided that such amount(s) will not exceed, when aggregated with any other sums paid to the Buyer under this Letter of Guarantee, an amount equal to the Maximum Amount.
3. For the avoidance of any doubt, any Claim made from time to time in relation to this Letter of Guarantee and the amount(s) stated in such Claim will be final and

conclusive between the Issuing Bank and the Buyer of all or any amounts with respect to each Claim made by the Buyer as may be owing to the Buyer by the Seller with respect to that Claim only.

4. Any payments made under this Letter of Guarantee must be made without any deductions or withholding for or on account of any Taxes, expenses, fees, charges, deductions or retentions of any kind.
5. This Letter of Guarantee is a continuing guarantee and remains valid and in full force and effect until [**insert date**] (**Expiry Date**). For the avoidance of any doubt:
 - (a) any Claim made by the Buyer must be received on or before the Expiry Date; and
 - (b) with effect from the date immediately following the Expiry Date this Letter of Guarantee will be null and void (except for any outstanding Claims submitted on or before the Expiry Date) whether or not returned to the Issuing Bank for cancellation.
6. This Letter of Guarantee continues to be binding on the Issuing Bank and the Issuing Bank will not be exonerated from all or any part of such obligations for any reason or cause whatsoever, due to:
 - (a) any amendment, variation or replacement of the Power Purchase Agreement; or
 - (b) any assignment of the Power Purchase Agreement.
7. This Letter of Guarantee is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation of the Seller.
8. The Issuing Bank must promptly reissue or amend this Letter of Guarantee to change the beneficiary thereof, upon receipt of a written request from the Buyer stating that "the Buyer has [**assigned/novated**] the Power Purchase Agreement in favor of the new beneficiary in accordance with the terms of the Power Purchase Agreement."
9. (a) The Issuing Bank's address for presentation of any notice or other communication (including a Claim) in relation to this Letter of Guarantee is:

Address: [**insert**]
 Attention: [**insert**]
 Facsimile: [**insert**]
- (b) The Buyer's address for presentation of any notice or other communication in relation to this Letter of Guarantee is:

Address: [**insert**]
 Attention: [**insert**]
 Facsimile: [**insert**]
- (c) Any notice or other communication (including a Claim) to be delivered under this Letter of Guarantee will be deemed to be given:
 - (1) if delivered, upon receipt;
 - (2) if by post, upon delivery to the addressee; and

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(3) if by facsimile, upon receipt by the sender of a confirmation from the intended recipient that the facsimile transmission was sent in its entirety,

but if the delivery or receipt is on a Day that is not a Business Day or is after 16:00 (addressee's time) it is regarded as received at 09:00 on the following Business Day.

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10. This Letter of Guarantee is governed by, and must be construed in accordance with, the laws of the Arab Republic of Egypt.

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Authorized signatory
[insert name of Issuing Bank]

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Schedule 13

PPA Direct Agreement

ASSEMBLY INSTRUCTIONS:

The form of PPA Direct Agreement to inserted in this schedule at the Signing Date.

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Schedule 14

Consequences of termination

1 Definition

Capitalised terms used in this Schedule 14 have the meaning given in clause 1.1 and in addition:

Term	Meaning
Account Balance	<p>as at the Calculation Date, the aggregate of:</p> <ol style="list-style-type: none">1 cash held by the Seller, including:<ul style="list-style-type: none">• cash at hand;• net cash proceeds on liquidation of any authorized investments made pursuant to the Financing Documents;• the credit balance of any accounts with a bank or financial institution whether inside or outside of the Arab Republic of Egypt; and• any reserve accounts held by the Seller; and2 without double-counting any amounts already included under paragraph 1 of this definition, any amounts paid or payable to the Seller or any of its Affiliates in connection with the termination of this Agreement or the events leading to its termination including:<ul style="list-style-type: none">• compensation or damages payable by the Buyer or any third party including in connection with any Project Agreement (other than the relevant Purchase Price under this Agreement); and• any insurance proceeds other than insurance proceeds which have been expended in compliance with the Seller's obligations under clause 26.4 or the rights to which are duly transferred to the Buyer in accordance with clause 7(1)(J) of this Schedule 14,provided that for the purposes of the second bullet point in paragraph 2 of this definition, the Seller will be deemed to have received (and not expended or transferred to the Buyer) any insurance proceeds that would be (or which would have become) payable to the Seller had it fully complied with its obligations under clause 26 of this Agreement.
Initial Senior Debt	<p>the items described in paragraphs 1 and 2 forming part of the definition of "Senior Debt".</p>

Term	Meaning
Calculation Date	<p>the date specified for termination in the relevant Termination Notice, provided that if:</p> <ol style="list-style-type: none"> 1 termination pursuant to the relevant Termination Notice is deferred to a date other than such specified date pursuant to the provisions of clause 23; and 2 during such deferred period, the Parties continue to honour their obligations of payment and performance under this Agreement, <p>the Calculation Date means the date of termination of this Agreement.</p>
Purchase Price	any of Purchase Price A or Purchase Price B, as the case may be.
Purchase Price A	<p>an amount equal to:</p> <ol style="list-style-type: none"> 1 the amount required to repay the Senior Debt outstanding at the Calculation Date, provided that, for purposes of determination of this component of Purchase Price A, the amount will in no event be greater than the amount shown for the corresponding date on Attachment 1 (Initial Senior Debt Schedule) to this Schedule 14; plus 2 interest due and payable pursuant to the applicable Financing Documents as in effect at the Conditions Satisfaction Date on the amount determined pursuant to paragraph 1 of this definition as of the Calculation Date; minus 3 the Account Balance.
Purchase Price B	Purchase Price B(a) or Purchase Price B(b), as applicable.
Purchase Price B(a)	<p>an amount equal to the sum of:</p> <ol style="list-style-type: none"> 1 the amount required to repay the Senior Debt outstanding at the Calculation Date, provided that, for the purposes of determination of this component of Purchase Price B(a), the amount will in no event be greater than the amount shown for the corresponding date on Attachment 1 (Initial Senior Debt Schedule) to this Schedule 14; plus 2 interest due and payable pursuant to the applicable Financing Documents as in effect at the Conditions Satisfaction Date on the amount determined pursuant to paragraph 1 of this definition as of the Calculation Date; plus 3 the lesser of the: <ul style="list-style-type: none"> • Shareholders' Actual Equity Contributions; and • Shareholders' Equity Commitment; minus 4 the Account Balance.

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Term	Meaning
Purchase Price B(b)	<p>an amount equal to the sum of:</p> <ol style="list-style-type: none"> <li data-bbox="582 436 1359 616">1 the amount required to repay the Senior Debt outstanding at the Calculation Date, provided that, for purposes of determination of this component of Purchase Price B(b), the amount will in no event be greater than the amount shown for the corresponding date on Attachment 1 (Initial Senior Debt Schedule) to this Schedule 14; plus <li data-bbox="582 616 1359 750">2 interest due and payable pursuant to the applicable Financing Documents as in effect at the Conditions Satisfaction Date on the amount determined pursuant to paragraph 1 of this definition as of the Calculation Date; plus <li data-bbox="582 750 1359 974">3 the lesser of the: <ul style="list-style-type: none"> <li data-bbox="622 784 1359 817">• Shareholders' Actual Equity Contributions; and <li data-bbox="622 828 1359 974">• Shareholders' Equity Commitment, divided by 25 years and multiplied by the number of Contract Years from the Calculation Date that are remaining in the Supply Term; minus <li data-bbox="582 974 1359 1019">4 the Account Balance.
Senior Debt	<p>all amounts required to be paid or repaid by the Seller:</p> <ol style="list-style-type: none"> <li data-bbox="582 1108 1359 1243">1 pursuant to the Financing Documents as in effect at the Conditions Satisfaction Date (including fees, commissions, costs and expenses payable by the Seller) in connection with the funding of the Facility; and <li data-bbox="582 1243 1359 1512">2 under any Financing Documents relating to any rescheduling or scheme of refinancing for the Facility, provided that, for the purposes of calculation of amounts payable by the Buyer under this Schedule for Senior Debt other than the Initial Senior Debt, the amount payable by the Buyer in respect of principal under any term loan facility under such rescheduling or scheme of refinancing on any Calculation Date will in no event be greater than the amount referred to in Attachment 1 (Initial Senior Debt Schedule) to this Schedule.
Shareholders' Actual Equity Contributions	<p>the aggregate amounts of Equity actually contributed or caused to be contributed by the Shareholders as of the Calculation Date, actually expended by the Seller in the construction of the Facility.</p>
Shareholders' Equity Commitment	<p>the maximum Equity amount as set forth in the relevant Financial Model to be paid by or on behalf of the Shareholders as at the Calculation Date, prior to the inclusion of cost overrun amount, for shares of the Seller, provided there will be no double-counting of Equity to be provided by a Shareholder or any Affiliate of a Shareholder.</p>

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Term	Meaning
Termination Costs	all income, receipts, sales, value added, transfer, property or other Taxes and any other costs imposed on the Seller by any Government Agency as a result of termination of this Agreement, transfer of right, title and interest in the Facility to the Buyer and payment of the purchase price for the Facility.

2 Purchase Price of Facility upon Termination by Seller

2.1 Purchase Price upon clause 23.1(b)(1)(A) - Termination by Seller for the Buyer Default

- (a) If, prior to the Commercial Operation Date, the Seller terminates this Agreement pursuant to clause 23.1(b)(1)(A) due to a Default by the Buyer, and if Seller exercises its right under clause 23.5(b) to require the Buyer to purchase the Facility, then the Buyer will purchase all of Seller's right, title and interest in the Facility for a price equal to Purchase Price B(a).
- (b) If, on or after the Commercial Operation Date, the Seller terminates this Agreement pursuant to clause 23.1(b)(1)(A) due to a Default by the Buyer, and if the Seller exercises its right under clause 23.5(b) to require the Buyer to purchase the Facility, then the Buyer will purchase all of the Seller's right, title and interest in the Facility for a price equal to Purchase Price B(b).

2.2 Purchase Price upon clause 23.2(d) or 23.2(e) - Termination by Seller for prolonged Governmental Force Majeure

- (a) If, before the Commercial Operation Date, the Seller terminates this Agreement pursuant to clause 23.2(d) or 23.2(e) due to a prolonged Governmental Force Majeure and if the Seller exercises its right under clause 23.5(c)(1) to require the Buyer to purchase the Facility in such event, then subject to this Agreement, the Buyer will purchase all of the Seller's right, title and interest in the Facility for a price equal to Purchase Price B(a).
- (b) If, on or after the Commercial Operation Date, the Seller terminates this Agreement pursuant to clause 23.2(e) due to a prolonged Governmental Force Majeure and if the Seller exercises its right under clause 23.5(c)(1) to require the Buyer to purchase the Facility in such event, then subject to this Agreement, the Buyer will purchase all of the Seller's right, title and interest in the Facility for a price equal to Purchase Price B(b).

3 Purchase Price of Facility upon Termination by the Buyer, Other Force Majeure or Uninsurable Risk

3.1 Purchase Price upon clause 23.1(a)(1) - Termination by the Buyer for Seller Default

If the Buyer terminates this Agreement pursuant to clause 23.1(a)(1) due to a Default by the Seller and if the Buyer exercises its right under clause 23.5(a) to purchase the Facility, the Buyer will purchase all of the Seller's right, title and interest in the Facility for a price equal to Purchase Price A.

3.2 Purchase Price upon clause 23.3 - Termination for prolonged Other Force Majeure or Uninsurable Risk

If a Party terminates this Agreement pursuant to clause 23.3 due to prolonged Other Force Majeure, or the Buyer terminates this Agreement under clause 26.6(d)(2) following an event which is an Uninsurable Risk, and if the Buyer exercises its right under clause 23.5(c)(3) to purchase the Facility, the Buyer will purchase all of Seller's right, title and interest in the Facility for:

- (a) if termination occurs prior to the Commercial Operation Date, a price equal to Purchase Price B(a); or
- (b) if termination occurs on or after the Commercial Operation Date, a price equal to Purchase Price B(b).

3.3 Purchase Price upon clause 23.2(a)(3), 20.2(c) or 19.1(d) - Termination by the Buyer for prolonged Governmental Force Majeure or following a failure to agree amendments to this Agreement for proposed changes to the Connection Facilities, Interfaces or Transmission System by the Network Operator

If the Buyer terminates this Agreement pursuant to clause 19.1(d) due to a failure to agree amendments to this Agreement for proposed changes to the Connection Facilities, Interfaces or Transmission System by the Network Operator, pursuant to clause 23.2(a)(3) due to a prolonged Governmental Force Majeure affecting the Buyer or the Seller or pursuant to clause 20.2(c) following a Change in Law, in each case with the result that the Buyer becomes obligated to purchase the Facility, the Buyer will purchase all of the Seller's right, title and interest in the Facility for:

- (a) if termination occurs prior to the Commercial Operation Date, a price equal to Purchase Price B(a); or
- (b) if termination occurs on or after the Commercial Operation Date, a price equal to Purchase Price B(b).

4 Computation

In the event that Purchase Price A, determined in accordance with the definition thereof, is a negative number, the Seller will pay such amount to the Buyer concurrently with transfer of the Seller's right, title and interest in the Facility to the Buyer.

5 Payment of Purchase Price

All amounts payable pursuant to this Schedule 14, including Termination Costs payable under clause 6 of this Schedule 14, will be paid in US\$ if the relevant debt or financing costs were incurred by the Seller in US\$, and in EGP if the relevant debt or financing costs were incurred by the Seller in EGP, in immediately available funds on the date of termination of this Agreement, provided that all of the Seller's right, title and interest in the Facility is transferred to the Buyer, free and clear of all Encumbrances, as provided in clause 7 of this Schedule 14, concurrently with payment of the relevant Purchase Price.

6 Termination Costs

- (a) All Termination Costs will be borne by the Seller in the event this Agreement is terminated by the Buyer pursuant to clause 23.1(a).
- (b) All Termination Costs will be borne by the Buyer in the event that this Agreement is terminated by the Seller pursuant to clause 23.1(b), clause 23.2(d) or clause 23.2(e) or by the Buyer under clause 19.1(d), clause 20.2(c), clause 23.2(a)(3) or clause 23.2(g).
- (c) The Seller and the Buyer agree to effect the transfer of the Seller's right, title and interest in the Facility and payment of the relevant Purchase Price so as to minimize Termination Costs, including, as appropriate and if lawful, by means of transfer of Equity of the Seller or, subject to financier consent, the transfer of debt.

7 Transfer of Facility

- (a) If the Seller's right, title and interest in the Facility is required to be transferred to the Buyer pursuant to this Agreement, upon payment by the Buyer of the Purchase Price, if any, determined in accordance with clause 2 or clause 3 of this Schedule 14 and, as applicable, the Termination Costs in accordance with clause 6 of this Schedule 14, or, if no payment is required to be made by the Buyer pursuant to clauses 2, 3, or 6 of this Schedule 14, prior to the effective termination of this Agreement, then:

- (1) the Seller will assign, novate and transfer to the Buyer, free and clear of all Encumbrances, all of the Project Agreements, contracts and interests identified in clause 23.8 and will exercise Reasonable Endeavours to transfer, assign or novate, in addition, to the extent so required by the Buyer, without limitation, insofar as they are part of or used in the Facility, all of the Seller's right, title and interest in:

- (A) all raw materials, consumables and spare parts;
- (B) all tangible personal property;
- (C) all intangible personal property, including patents, patent licences, patent applications, trade names, trade marks, trademark registrations and applications therefore, trade secrets, copyrights, know-how, secret formulae and any other Intellectual Property rights;
- (D) all buildings and fixtures;

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(E) computerized and non-computerized records, reports, data, files, and information;

(F) all drawings, test results, and other relevant documents relating to the Facility;

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(G) all warranties of equipment, materials and work;

(H) all contract rights and insurance policies;

(I) all work in progress under contracts with vendors, suppliers, contractors and Subcontractors; and

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(J) all rights with respect to any insurance proceeds payable to or for the account of the Seller, but unpaid at the date of termination of this Agreement, in respect of the Seller's right, title and interest in the Facility;

(2) the Seller will pay to the Buyer amounts, if any, required to be paid by the Seller to the Buyer under this Schedule 14; and

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(3) in the event the Seller has failed to procure the transfer, assignment or novation of any Project Agreements or other contracts or interests required under this clause 7 of this Schedule 14, then the Buyer will be entitled to deduct from the amount of the Purchase Price falling due, an amount equal to the cost to the Buyer of procuring relevant items and services that is in excess of the cost that the Buyer would have incurred in procuring the same if the Seller had properly complied with its obligations under clause 23.8.

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(b) If after the Calculation Date an amount is paid or becomes payable which, if it has been paid or payable as at the Calculation Date would have met the definition of an "Account Balance", then the Seller must pay an amount equal to such amounts to the Buyer within 5 Business Days. If any amounts become payable to the Buyer under this clause 7(b) prior to payment of the Purchase Price under clause 5 of this Schedule 14 then the Buyer may set off such amounts against its obligation to pay the Purchase Price.

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Attachment 1

Initial Senior Debt Schedule

The amounts set out in the table below represent the maximum amount payable by the Buyer to the Seller on the Calculation Date in respect to the aggregate principal outstanding under any loan facility and/or capital market instruments as described in the definition of Senior Debt and as set out in the relevant Financing Documents or equity agreements.

ASSEMBLY INSTRUCTIONS:

The below table will be completed before the Signing Date based on:

- *the total amount of term Senior Debt assumed drawn in the proposed financing structure; and*
- *an amortization profile starting on the date in the table falling not more than 12 months following the Scheduled Commercial Operation Date and ending on the last date in the table falling prior to the scheduled end of the Agreement Term.*

Date	Balance Outstanding for Period Ending (US\$)	Date	Balance Outstanding for Period Ending (EGP)

At any time, the above maximum amounts of principal will be increased by an amount equal to:

- (a) the total remaining principal amount outstanding under any cost overrun facility provided under the Financing Documents (but in no event greater than the aggregate amount of such advances permitted under the Financing Documents in effect on the Conditions Satisfaction Date);
- (b) the aggregate amount of the revolving credit facility entered into in accordance with the Seller's general working capital requirements (but in no event greater than the aggregate amount of such revolving credit facility provided for under the Financing Documents in effect on the Conditions Satisfaction Date); and
- (c) the maximum aggregate liabilities under letters of credit issued and in effect at the relevant Calculation Date in respect of the debt service reserve obligations of the Seller.

A Calculation Date not corresponding to a date set out in the table above should be interpreted as falling on the last Day of the relevant period in which the Calculation Date occurs.

Financial Model

ASSEMBLY INSTRUCTIONS:

A copy of the Financial Model (as at the Signing Date) must be inserted into this Schedule before the Signing Date.

Executed as an agreement

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Buyer
Executed for and on behalf of
Egyptian Electricity Transmission Company, S.A.E

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sign here ▶ _____

print name▶ _____

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print title ▶ _____
date▶ _____

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Seller
Executed for and on behalf of
[insert name of Seller]

البورصة البورصة البورصة البورصة
sign here ▶ _____

print name▶ _____

البورصة البورصة البورصة البورصة
print title ▶ _____

date▶ _____

البورصة البورصة البورصة البورصة

البورصة البورصة البورصة البورصة