

DATED ___ [Month] 2016

POWER PURCHASE AGREEMENT

In relation to a 10MWac Solar Power Generation Facility at Kandahar, Afghanistan

Between:

DA AFGHANISTAN BRESHNA SHERKAT, AS PURCHASER

and

[IPP PROJECT COMPANY], AS SELLER

TABLE OF CONTENTS

POWER PURCHASE AGREEMENT 1

RECITALS:..... 7

1. DEFINITIONS; INTERPRETATION 9

 1.1 DEFINITIONS..... 8

 1.2 RULES OF INTERPRETATION..... 20

 1.3 ABBREVIATIONS..... 21

2. EFFECTIVE DATE; TERM AND AGREEMENTS OF THE PARTIES 21

 2.1 EFFECTIVE DATE..... 21

 2.2 TERM; POST-TERM ARRANGEMENTS..... 22

 2.3 MAINTENANCE OF CONSENTS..... 22

 2.4 APPOINTMENT OF OPERATING REPRESENTATIVES 23

 2.5 APPOINTMENT OF THE ENGINEER 23

 2.6 SELLER LETTER OF CREDIT..... 24

3. SALE AND PURCHASE OF NET DELIVERED ENERGY 25

3.1 25

4. CONSTRUCTION OF THE FACILITY; REPORTING REQUIREMENTS 26

 4.1 CONSTRUCTION OF THE FACILITY..... 26

 4.2 SUBMISSION OF REPORTS AND INFORMATION 26

 4.3 DELIVERY OF ELECTRIC POWER TO THE FACILITY 28

 4.4 PURCHASER OBSERVATION VISITS 28

5. CONTROL AND OPERATION OF FACILITY..... 28

 5.1 OPERATION AND MAINTENANCE OF THE FACILITY 28

 5.2 SELLER TO MAINTAIN FACILITY AVAILABILITY 29

 5.3 FORECASTING OF NET DELIVERED ENERGY 29

 5.4 DISPATCH INSTRUCTIONS 30

 5.5 SCHEDULED OUTAGES AND MAINTENANCE OUTAGES 30

 5.6 EMERGENCY PROCEDURES 31

5.7	EMPLOYMENT OF QUALIFIED PERSONNEL.....	31
5.8	MAINTENANCE OF OPERATING RECORDS.....	31
5.9	TAMPERING WITH THE METERING SYSTEM AND THE FACILITY MONITORING SYSTEM	32
5.10	CESSATION OF OPERATION OF THE FACILITY	33
5.11	FORCED OUTAGES.....	34
6.	INTERCONNECTION FACILITIES	34
6.1	SELLER INTERCONNECTION FACILITIES.....	34
6.2	PURCHASER INTERCONNECTION FACILITIES	34
6.3	GRANTING OF RIGHTS-OF-WAY FOR PURCHASER INTERCONNECTION FACILITIES.....	34
6.4	CONSTRUCTION AND COMPLETION OF PURCHASER INTERCONNECTION FACILITIES.....	34
6.5	PROTECTIVE DEVICES	35
6.6	TESTING	36
7.	METERING	36
7.1	METERING SYSTEM.....	36
7.2	INSTALLATION OF METERING SYSTEM	36
7.3	TESTING OF METERING SYSTEM	37
7.4	READING METERS	38
7.5	SEALING OF METERING SYSTEM.....	40
7.6	REPAIR, REPLACEMENT OR RECALIBRATION OF METERING SYSTEM	41
7.7	PROVISION FOR TELEMETERING	41
8.	TESTING OF THE FACILITY	42
8.1	TESTING PROGRAM.....	42
8.2	TESTING OF THE SELLER INTERCONNECTION FACILITIES.....	42
8.3	COMMISSIONING TESTS; RELIABILITY RUN TEST.....	43
8.4	COPIES OF TEST RESULTS AND CERTIFICATES	43
8.5	SCHEDULING AND ACCOMMODATION OF ADDITIONAL TESTS.....	44
8.6	PAYMENT FOR NET DELIVERED ENERGY DURING TESTING	44
9.	COMPENSATION; PAYMENT AND BILLING	44
9.1	ENERGY PAYMENT	44
9.2	PASS-THROUGH ITEMS; SUPPLEMENTAL TARIFFS.....	44

9.3	LIQUIDATED DAMAGES.....	45
9.4	BILLING.....	46
9.5	PAYMENT.....	47
9.6	PURCHASER PAYMENT SECURITY.....	48
9.7	PAYMENT DISPUTES.....	49
9.8	SUPPORTING DATA.....	49
10.	LIABILITY	50
11.	INDEMNIFICATION	50
11.1	INDEMNIFICATION.....	50
11.2	ASSERTION OF CLAIMS TO EXCEED MINIMUM INDEMNIFICATION AMOUNT	51
11.3	INDEMNIFICATION FOR FINES AND PENALTIES	51
11.4	DEFENCE OF CLAIMS.....	51
11.5	NOTICE OF CLAIMS	52
12.	INSURANCE.....	53
12.1	MAINTENANCE OF INSURANCE POLICIES.....	53
12.2	MAINTENANCE OF “OCCURRENCE” FORM POLICIES	53
12.3	POLICY ENDORSEMENTS	53
12.4	CERTIFICATES OF INSURANCE.....	54
12.5	INSURANCE REPORTS	54
13.	REPRESENTATIONS, WARRANTIES AND COVENANTS	55
13.1	REPRESENTATIONS AND WARRANTIES OF THE SELLER.....	55
13.2	CERTIFICATES	56
13.3	REPRESENTATIONS AND WARRANTIES OF PURCHASER.....	56
14.	TAXES	57
14.1	TAXES APPLICABLE TO THE SELLER.....	57
14.2	TAXES APPLICABLE TO PURCHASER.....	57
14.3	NOTICE OF CHANGES IN TAX	58
14.4	CONSEQUENCES FOR TAX COSTS OR TAX SAVINGS	58
14.5	DISPUTED TAXES	59
15.	FORCE MAJEURE.....	59

15.1	DEFINITION OF FORCE MAJEURE	59
15.2	NOTIFICATION OBLIGATIONS.....	61
15.3	DUTY TO MITIGATE.....	62
15.4	DELAY CAUSED BY FORCE MAJEURE.....	62
15.5	PAYMENT DURING FORCE MAJEURE EVENT	63
15.6	RESTORATION FOLLOWING AFGHANISTAN POLITICAL EVENT.....	63
15.7	SUPPLEMENTAL TARIFFS	64
16.	DEFAULT AND TERMINATION	65
16.1	SELLER EVENTS OF DEFAULT	65
16.2	PURCHASER EVENTS OF DEFAULT	67
16.3	TERMINATION NOTICE	68
16.4	OBLIGATIONS UPON TERMINATION	69
16.5	OTHER REMEDIES	69
17.	COMPENSATION UPON CERTAIN TERMINATION EVENTS	69
17.1	69
18.	RESOLUTION OF DISPUTES.....	70
18.1	RESOLUTION BY PARTIES.....	70
18.2	DETERMINATION BY EXPERT	71
18.3	ARBITRATION.....	73
18.4	SOVEREIGN IMMUNITY; JURISDICTION	74
19.	MISCELLANEOUS PROVISIONS.....	75
19.1	NOTICES	75
19.2	AMENDMENT.....	76
19.3	THIRD PARTIES.....	77
19.4	NO WAIVER.....	77
19.5	RELATIONSHIP OF THE PARTIES	77
19.6	LANGUAGE.....	77
19.7	GOVERNING LAW	77
19.8	ENTIRETY	77
19.9	NO ASSIGNMENT; NO LIENS	77

19.10	CONFIDENTIALITY	78
19.11	SUCCESSORS AND ASSIGNS	79
19.12	NO LIABILITY FOR REVIEW	79
19.13	COUNTERPARTS	79
19.14	SEVERABILITY	79
19.15	PARTIAL INVALIDITY	80
	SCHEDULE 1 - TARIFF	82
	SCHEDULE 2 - DESCRIPTION OF THE FACILITY	83
	SCHEDULE 3 - SELLER AND PURCHASER INTERCONNECTION FACILITIES AND METERING	86
	SCHEDULE 4 - FORM OF CONSTRUCTION REPORTS; PROJECT PROGRESS REPORTING	90
	SCHEDULE 5 - TECHNICAL LIMITS AND MINIMUM FUNCTIONAL REQUIREMENTS..	91
	SCHEDULE 6 - COMMISSIONING AND RELIABILITY RUN TESTS.....	92
	SCHEDULE 7 - INSURANCE	94
	SCHEDULE 8 - FORM OF SELLER LETTER OF CREDIT	99
	SCHEDULE 9 - PROTOCOL FOR CALCULATION OF NON-PROJECT MISSED VOLUME	100
	SCHEDULE 10 - COMPENSATION AMOUNTS.....	101
	SCHEDULE 11 - FORM OF SITE LEASE	102

This **POWER PURCHASE AGREEMENT** is made at [] on _____ 2015 (the “**Agreement**”) between:

- (1) **DA AFGHANISTAN BRESHNA SHERKAT (“DABS”)**, a company incorporated in Afghanistan (registered number []) whose registered office is at [] (the “**Purchaser**”); and
- (2) [] [of [country] [incorporation details], licensed to do business in Afghanistan under [license details]] [OR] [a company incorporated in Afghanistan (registered number [])], whose registered office is at [] (the “**Seller**”).

The Purchaser and the Seller are referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS:

- (A) **WHEREAS** the Seller, by its offer dated [xxx] has proposed to design, build, finance, commission, operate, and maintain an approximately ten (10) MW_{AC} solar powered electric generation facility (the “**Facility**”, as hereinafter defined) to be located at the Site (as hereinafter defined) near Kandahar City, Province of Kandahar, Afghanistan, and sell all Net Delivered Energy (as hereinafter defined) to the Purchaser;
- (B) **WHEREAS** the Purchaser, has accepted the Seller’s offer pursuant to a Letter of Award, and desires to purchase all of the Net Delivered Energy (as hereinafter defined) generated by the Facility and delivered to the Interconnection Point (as hereinafter defined) on and pursuant to the terms and conditions contained herein; and
- (C) **WHEREAS**, the United States Agency for International Development Mission in Afghanistan (“**USAID**”) has committed to make certain funds available to facilitate the construction of the Facility, which funds are to be made available under an agreement (the “**USAID Contract**” between USAID and Seller, and the terms of the USAID Contract are a key inducement to the Seller’s willingness to enter into this Agreement.

NOW, THEREFORE, in view of the foregoing premises and in consideration of the mutual benefits contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS; INTERPRETATION

1.1 Definitions

“Abandonment” — The Seller’s voluntary cessation of operation of the Facility, and the withdrawal of all, or substantially all, personnel from the Site for reasons other than (i) a breach or default by the Purchaser under this Agreement; (ii) a breach or default by the Purchaser under the Site Lease; (iii) a Force Majeure Event; or (iv) an Emergency where the Purchaser requests or approves Seller’s cessation of operation of the Facility or Seller’s withdrawal of its personnel from the Site in accordance with any Emergency procedures in effect.

“Affiliate” — Any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with another Person.

“Afghanistan Political Event” – The meaning ascribed thereto in Section 15.1(a).

“Afghanistan Political Event Compensation Period” shall mean a period following the Commercial Operations Date beginning with the onset of an Afghanistan Political Event (unless a timely notice was not given under Section 15.1(a) in which case from the time such notice was given) and ending on the last Day of a Restoration Period.

“Agreement Year” — A period of twelve (12) consecutive months commencing on the Commercial Operations Date and each consecutive anniversary of the Commercial Operations Date and ending as of the end of the Day preceding the next anniversary of the Commercial Operations Date; provided, however, that each Agreement Year shall automatically be extended day for day by the occurrence of a Force Majeure Event declared by the Seller within such Agreement Year for the period for which it was unable to generate Net Delivered Energy due to such Force Majeure Event and the number of days such Force Majeure Event subsisted; provided further that in the event of such extension, the immediately following Agreement Year shall commence on the Day following the last Day of such extended Agreement Year and end after a period of twelve (12) consecutive months, and each Agreement Year thereafter shall have a period of twelve (12) consecutive months, in each case subject to any extension for Force Majeure Event(s) declared by the Seller.

“Agreement” — This Power Purchase Agreement, together with all of the Schedules attached hereto, dated as of the date first written above, between the Purchaser and the Seller, as may be amended by the Parties from time to time.

“Ambient Site Conditions” — The climatic conditions at the Site that have an impact on the Net Electrical Output of the Facility, including solar irradiation, temperature, and rainfall, as measured by the Meteorological Station.

“Array” — Each group of photo-voltaic panels constituting a part of the Facility, and the inverter associated therewith.

“Back-Up Metering System”— All meters and metering devices (including any remote terminal units and an electronic data recording system) installed by the Seller and thereafter owned and maintained by the Seller as back-up to the Metering System.

“Business Day”— Any Day on which banks are legally permitted to be open for business in Kabul and Kandahar, Afghanistan.

“Certificate of Facility Commissioning” — The certificate to be issued by the Engineer to the Seller and the Purchaser under Section 8.3 stating that, in the professional opinion of the Engineer, the Facility has successfully completed the Commissioning Tests.

“Certificate of Readiness for Synchronization” – The certificate to be issued by the Engineer to the Seller and the Purchaser under Sections 8.3 stating that the Facility is ready for and capable of synchronization with the Grid System.

“Change in Law” — Means:

- (a) the adoption, promulgation, repeal, modification or re-interpretation after the date of this Agreement by any Public Sector Entity of any Law of Afghanistan (including a final, binding and non-appealable decision of any Public Sector Entity);
- (b) the imposition by a Relevant Authority of any material term or condition in connection with the issuance, renewal, extension, replacement or modification of any Seller Consent after the date of this Agreement; or
- (c) the imposition by a Relevant Authority of any additional Seller Consent,

that in the case of each of clause (a), (b), or (c) hereinabove establishes either a material change in cost (other than a Change in Tax) or in revenue, or any requirement for the design, construction, financing, ownership, operation, maintenance, or transfer of the Facility that is more restrictive than the most restrictive requirements (i) in effect as of the date of this Agreement, and (ii) specified in any applications, or other documents filed in connection with such applications, for any Seller Consents filed by the Seller on or before the Commercial Operations Date.

“Change in Tax Assessment” — The meaning ascribed thereto in Section 14.3.

“Change in Tax Notice” — The meaning ascribed thereto in Section 14.3.

“Change in Tax” — After the date hereof, the adoption, enactment, promulgation, coming into effect, repeal, amendment, re-interpretation, change in application, change in interpretation or modification by any Public Sector Entity of any Law of Afghanistan relating to any Tax or Taxes.

“Commercial Operations Date” — The Day on which Seller delivers the Certificate of Facility Commissioning to Purchaser.

“Commissioning Tests” — The tests (including the Reliability Run Test) and successful completion criteria for such tests, specified in Schedule 6, that Seller is to carry out on the Facility pursuant to Sections 8.1 and Schedule 6 to achieve the Commercial Operations Date.

“Consents”— The Seller Consents and the Purchaser Consents.

“Construction Contract” – The contract between the Seller and the construction contractor pursuant to which the Facility will be designed, constructed, and commissioned.

“Construction Report”— The reports to be submitted by the Seller pursuant to Section 4.2, which shall address the matters identified in, and shall be substantially in the form set forth in Schedule 4.

“Construction Start” — The date the ‘notice to proceed’ is issued by the Seller under the Construction Contract, which date shall be within three (3) Business Days of Financial Closing.

“Contract Capacity”— The peak instantaneous capacity of the Facility, at maximum daily Ambient Site Conditions, that the Seller will demonstrate for the Facility as part of the Commissioning Tests, which shall be at least ten (10) MW_{AC}, but not to exceed twelve (12) MW_{ac}.

“Customs Duties” — All duties and taxes applicable on or relating to the import into or export from Afghanistan of plant, machinery and equipment, and levied by any Public Sector Entity.

“DABS” — Da Afghanistan Breshna Sherkat a company incorporated in Afghanistan; the Purchaser.

“Day” — A period of twenty-four (24) hours, commencing at 12:00 midnight of each day, and **“Daily”** shall be construed accordingly.

“Degraded Output Threshold” – For each Agreement Year the minimum amount of the sum of Net Electrical Output and NPMV that the Facility is expected to produce, which shall be nineteen thousand five hundred megawatt hours, (19,500MWh).

“Delayed Payment Rate” — LIBOR plus (7%) per annum, calculated for the actual number of Days that the relevant amount remains unpaid on the basis of a three hundred and sixty-five (365) Day year.

“Despatch Instructions” – The original, successive, or revised instructions of the System Operator for Despatch (including but not limited to revision on the basis of information provided by the Seller).

“Despatch” - The actions of the Seller to decrease, increase, or cease the generation and delivery of Net Delivered Energy to the Interconnection Point in accordance with the Technical Limits and the then prevailing Ambient Site Conditions, in response to Despatch Instructions, and **“Despatched”** shall be construed accordingly.

“Dispute” — Any dispute or disagreement or difference arising under, out of, in connection with or relating to this Agreement, including any dispute or difference concerning the existence, legality, validity

or enforceability of this Agreement or any provisions hereof, or the obligations or performance of a Party in accordance with any provision hereof.

“Dollar” or **“\$”** or **“US\$”**— The lawful currency of the United States of America.

“Due and Payable Date” — The meaning ascribed thereto in Section 9.5.

“Effective Date”— The meaning ascribed thereto in Section 2.1(a).

“Emergency” — An event or circumstance affecting the Grid System which:

- (i) is described as an emergency and contingency event in the Grid Operations Practices; or
- (ii) materially and adversely affects (as determined solely by the Purchaser) the availability of the Grid System, or the ability of the Purchaser to maintain safe, adequate and continuous electrical service to its customers, having regard to the then-current standard of electrical service provided to its customers; or
- (iii) presents a physical threat to persons or property or the security, integrity or reliability of the Grid System; or
- (iv) which the Purchaser reasonably expects to have the effects specified in clauses (i), (ii) or (iii) hereinabove.

“Engineer” — The firm of engineering consultants to be appointed and hired by the Seller with the approval of the Purchaser prior to the Effective Date, as provided in Section 2.1(a)(iv), to monitor the construction of the Facility and Commissioning and to deliver the related certificates to the Seller and the Purchaser and to carry out all of the Engineer’s responsibilities specified in this Agreement, including certifying to the Purchaser and the Seller the results of the Commissioning Tests.

“Environmental Standards” —All environmental requirements and occupational health and safety standards established by a relevant Public Sector Entity.

“Escrow” — the escrow arrangement provided in Article 9.6.

“Escrow Account” - The revolving stand-by letter of credit or similar facility established by the Purchaser for the benefit of the Seller, pursuant to Article 9.6, for the payment of amounts owed to the Seller under this Agreement.

“Escrow Agreement” - The agreement between the Purchaser, the Seller, and the Escrow Agent controlling the automatic replenishment of the Escrow Account by the Purchaser.

“Escrow Agent” - A bank acceptable to the Seller in Afghanistan with which the Purchaser establishes the Escrow Account.

“Expert” — The meaning ascribed thereto in Section 18.2.

“Facility”— The electric power generation facility including Arrays of solar photo-voltaic modules and associated equipment, together comprising the Contract Capacity to be located at the Site, and the Seller Interconnection Facilities and other equipment, that will be designed, engineered, constructed, owned, operated, maintained and insured by the Seller during the Term, whether completed or at any stage in its construction, which Facility is further described in Schedule 2.

“Facility Monitoring System”- The system comprising the cloud-based monitoring system which shall be installed and operated by the Seller in accordance with the minimum technical and functional specifications (including agreed parameters for the data) prescribed in Schedules 2 and 5.

“Financial Closing” — The execution and delivery of the Financing Documents that (together with equity commitments) evidence sufficient financing for the construction, testing, completion of the Facility and Commissioning and evidence of commitments for such equity as is required by the Seller to satisfy the requirements of the Lenders.

“Financing Documents” — The financial arrangements, [including the USAID Contract,] entered into by Seller for the initial and long-term financing of the Facility, including all related notes, indentures, security agreements, guarantees, notices, and schedules of disbursements as amended from time to time, but excluding any loan, financing, and security agreements and related instruments entered into by the Seller with any Lenders for working capital following the Commercial Operations Date or similar short-term credit facilities.

“Force Majeure Event” — The meaning ascribed thereto in Section 15.

“Forced Outage” — From and after the Commercial Operations Date, a total or partial interruption of the Facility’s generating capability that is not the result of:

- (i) a request by the Purchaser in accordance with this Agreement,
- (ii) a Scheduled Outage or a Maintenance Outage,
- (iii) a Force Majeure Event,
- (iv) a Non-Project Event,
- (v) a condition caused solely by the Purchaser or the Grid System, or
- (vi) an Afghanistan Political Event.

“Generation License” — Generation license No. [____], dated __ _____ 2016, issued (or to be issued before the Effective Date) by MEW to the Seller allowing for the generation, delivery, and sale of electricity by the Seller from the Facility in accordance with its terms.

“GOA” — The Government of the Islamic Republic of Afghanistan.

“Grid Operations Practices” – The standards, codes, and practices that Purchaser uses to construct and operate the Grid System, and which establish, inter alia, requirements for interconnection with the Grid System, as may be revised from time to time.

“Grid System” – The transmission facilities owned or operated by Purchaser on Purchaser’s side of the Interconnection Point.

“Interconnection Point” — The physical point that the Facility and the Grid System are to be connected, as agreed between the Parties and specified in Schedule 3, at which point the Purchaser shall receive the Net Delivered Energy.

“Interconnection Works Schedule” — The schedule for carrying out the Seller Interconnection Works and the Purchaser Interconnection Works as described in Schedule 3, and as may be adjusted in accordance with Article 6.

“International Electrotechnical Commission” or “IEC” — The International Electrotechnical Commission (*Commission Électrotechnique Internationale*), a non-profit, non-governmental international standards organization with its headquarters in Geneva, that prepares and publishes international standards for all electrical, electronic and related technologies, collectively known as "electrotechnology".

“Lapse of Consent” — Any Seller Consent (a) ceasing to remain in full force and effect and not being renewed or replaced within the time-period prescribed by the applicable Laws of Afghanistan for renewal or replacement of such Seller Consent or, where a time-period is not prescribed by the applicable Laws of Afghanistan, within sixty (60) Days of such Seller Consent ceasing to be in full force and effect; or (b) not being issued upon application having been properly and timely made and diligently pursued within the time-period prescribed by the applicable Laws of Afghanistan or, where a time-period is not prescribed by the applicable Laws of Afghanistan, within sixty (60) Days of proper application being made for such Seller Consent; or (c) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Seller’s ability to perform its obligations under any document included within the Project Agreements in each of the above instances, despite such party’s compliance with the applicable procedural and substantive requirements as applied in a “non-discriminatory” manner.

“Laws of Afghanistan” — The laws of Afghanistan, and all orders, rules, regulations, statutory regulatory orders, decrees, judicial decisions, notifications, executive orders, or other similar directives pursuant thereto issued by any Public Sector Entity that in each case have the effect of law and are enforceable under law, including the Environmental Standards, as any of them may be amended, re-promulgated, substituted or replaced from time to time.

“Lenders” — The financial institutions party to the Financing Documents, or subsequent financial institutions that become parties to the Financing Documents, together with their respective successors and assigns.

“Letter of Award” — The Letter of Award, dated __, 2016, issued by the Purchaser to the Seller regarding the Project.

“Lien” — Any mortgage, pledge, lien, security interest, conditional and instalment sale agreement, encumbrance, claim or charge of any kind.

“Loss” — Any loss, damage, cost, liability, payment and obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation), and all expenses (including, without limitation, reasonable legal fees).

“Maintenance Outage” — An interruption or reduction of the generation capability of the Facility scheduled by the Seller in consultation with the Purchaser in accordance with Section 5.5 for the purpose of performing work on specific components, which, considering the Technical Limits and Prudent Utility Practices, should not, in the reasonable opinion of the Seller, be postponed until the next Scheduled Outage.

“Meteorological Station” — One or more stations in the Facility that will monitor and measure the Ambient Site Conditions, the design, components, installation, performance capabilities, and testing of which shall be in accordance with the requirements of Schedule 6.

“Metering System” — All meters and metering devices (including, if applicable, any remote terminal units and electronic data-recording and telemetry system) to be procured, installed and tested by the Seller and transferred to the Purchaser, and thereafter owned and maintained by the Purchaser and used to measure the Net Delivered Energy.

“MEW” — The Ministry of Energy and Water of Government of Afghanistan, or its successor entity.

“Minimum Indemnification Amount” — The amount, equal to ten thousand Dollars (\$10,000), that a Party's claims for indemnification pursuant to Article 11 must exceed in the aggregate during an Agreement Year before that Party will be entitled to indemnification.

“Month” — A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last Day of the preceding month, and ending at 12:00 midnight on the last Day of that month, and **“Monthly”** shall be construed accordingly.

“Net Delivered Energy” — The net electric energy expressed in kWh generated by the Facility and delivered at the Interconnection Point, as measured by the Metering System and/or the Back-Up Metering System (as the case may be).

“Non-Project Event”— Each of the following events or circumstances:

- (i) constraints on or the unavailability of the Grid System,
- (ii) variations in Grid System frequency outside the Technical Limits,

- (iii) Grid System voltage outside the Technical Limits,
- (iv) an Emergency, or
- (v) a Despatch Instruction,

in each case:

- (i) as announced or confirmed by the System Operator, or as otherwise identified by the Facility Monitoring System and thereafter confirmed by the System Operator;
- (ii) being the proximate and direct cause of cessation or reduction of the generation of Net Delivered Energy, and
- (iii) not caused by:
 - (A) a Forced Outage, a Scheduled Outage, a Maintenance Outage or the operating conditions (including the Ambient Site Conditions) at the Facility; or
 - (B) a fault or failure of any equipment or safety device comprised in the Facility.

“Non-Project Missed Volume” or **“NPMV”** — The volume of electric energy expressed in kWh, not delivered by the Facility at the Interconnection Point due solely to a Non-Project Event, calculated and recorded pursuant to the NPMV Protocol.

“NPMV Protocol” – The protocol for calculating and recording NPMV set out in Schedule 9.

“Operating Representative” — The representatives (and alternates, if any) appointed by each Party to serve as a “point of contact” for coordination of activities under this Agreement, as provided in Section 2.4.

“Operating Procedures” — The procedures for the operational interfaces between the Facility and the Grid System to be delivered by Seller to the Purchaser in accordance with Section 5.1.

“Party” — Each of the Purchaser and the Seller, and the **“Parties”** means both of them.

“Pass-Through Items” — Certain costs or charges identified as Pass-Through Items under this Agreement which shall be payable by the Purchaser to the Seller on the basis of actual necessary cost reasonably incurred as agreed between the Parties, or failing agreement, as determined by the Expert.

“Person” — Any person, including without limitation any firm, company, corporation, society, government, state or agency of a state (including any Public Sector Entity), or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.

“Project” - Each of the following activities:

- (a) the ownership and possession of the Facility;
- (b) the design, construction, financing, ownership, operation, and maintenance (including any Restoration), and insurance of the Facility;
- (c) the procurement, importation, temporary exportation (for remedying defects, repair, maintenance, or refurbishing) and contracting for goods, equipment, and services for the Facility;
- (d) the generation and sale of Net Delivered Energy;
- (e) the recruitment, employment, and training of staff for the Facility; and
- (f) any other activities reasonably incidental or related to any of the above.

“Provincial Authorities” — The Government authorities of the Province of Kandahar.

“Prudent Utility Practices” — Those practices, methods and procedures conforming to safety and legal requirements which are attained by exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced generator of electricity or operator of an electricity transmission and distribution system, engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in Afghanistan, and satisfying the health, safety and environmental standards of reputable international electric generation, transmission, or distribution companies. Prudent Utility Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather, where not expressly catered for in the Grid Operations Practices, are a spectrum of possible practices, methods and acts that could be expected to accomplish the desired result at reasonable cost consistent with reliability and safety applicable with reference to the relevant activity.

“Public Sector Entity” — (a) The GOA, the Provincial Authorities, any sub-division of either, or any local governmental authority with jurisdiction over the Seller, the Project, or any part thereof; (b) any department, authority, instrumentality or agency of the GOA, or any such Provincial Authority; (c) courts and tribunals in Afghanistan; or (d) any commission or independent regulatory authority, agency or body having jurisdiction over the Seller, the Project or any part thereof.

“Purchaser Consents” — All approvals, consents, authorizations, notifications, concessions, acknowledgements, licences, permits, decisions or similar items issued by a Relevant Authority, and which the Purchaser or any of its contractors is required to obtain from any Relevant Authority and thereafter to maintain to fulfil its obligations under this Agreement.

“Purchaser Event of Default” — The meaning ascribed thereto in Section 16.2.

“Purchaser Interconnection Facilities” — The facilities and equipment to be designed, constructed or installed by or on behalf of the Purchaser on the Purchaser’s side of the Interconnection Point, as

described in Schedule 3.

“Purchaser Interconnection Works” — Those works and activities described in Schedule 3 to be undertaken by or on behalf of the Purchaser for the design, engineering, construction, installation and commissioning of the Purchaser Interconnection Facilities in accordance with this Agreement.

“Purchaser”- DABS, a [public] limited company incorporated under the laws of Afghanistan, with its principal office located at [.] , Afghanistan, and its successors and permitted assigns.

“Relevant Authority” — The department, authority, instrumentality, agency or other relevant entity from which a Seller Consent is to be obtained and any authority, body or other Person having jurisdiction under the Laws of Afghanistan with respect to the Project, the Purchaser and this Agreement, as the case may be.

“Reliability Run Test” — The part of the Commissioning Tests carried out on the Facility in accordance with Section 8.3 and Schedule 6 to demonstrate the reliable operation of the Facility.

“Required Commercial Operations Date”— The date that is [ten (10) months] following [the Effective Date], as such date may be extended by reason of a Force Majeure Event, any breach or default by the Purchaser of or under this Agreement or under the Site Lease, or any Non-Project Event.

“Restoration Cost Estimate” —The meaning ascribed thereto in Section 15.6.

“Restoration Period” —The period of restoration established in the Restoration Schedule and as defined in Section 15.6.

“Restoration Schedule” —The meaning ascribed thereto in Section 15.6.

“Restoration” — The meaning ascribed thereto in Section 15.6.

“SCADA System” — A supervisory control and data acquisition system.

“Scheduled Commercial Operations Date” — The date reasonably estimated by the Seller as the Commercial Operations Date based on the then-existing construction schedule, as notified to the Purchaser as of the Effective Date, as such date may be modified by the Seller from time to time in the Construction Reports or in other written notices from the Seller to the Purchaser.

“Scheduled Outage” — A planned interruption of the Facility’s generating capability or any material part thereof that has been scheduled by the Seller in consultation with the System Operator in accordance with Section 5.5 for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Facility or any material part thereof.

“Seller” — [Name of Company], a [public/private limited] company incorporated under the laws of [Afghanistan,] with its registered office at _____, _____, Afghanistan, and its permitted

successors and permitted assigns and any permitted transferee and includes its contractors and sub-contractors integrally involved in the Project.

“Seller Consents” — All approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses (including the Generation License), permits, decisions or similar items issued by a Relevant Authority or a Public Sector Entity and which the Seller are required to obtain from any Relevant Authority or Public Sector Entity and, thereafter, to maintain for fulfilling its obligations under this Agreement; provided, however, that in no event shall the Seller Consents include any concessions or exemptions from the Laws of Afghanistan unless they are expressly granted.

“Seller Event of Default” — The meaning ascribed thereto in Section 16.1.

“Seller Interconnection Facilities” — The facilities and equipment designed or to be designed, constructed, and installed by or on behalf of the Seller on the Seller’s side of the Interconnection Point, as described in Schedule 3, including any telemetering equipment, transmission lines, and associated equipment, transformers and associated equipment, relay and switching equipment, telecommunications devices, data interface for the SCADA System and the Facility Monitoring System, protective devices, and safety equipment.

“Seller Interconnection Works” — Those works and activities described in Schedule 3 to be undertaken by or on behalf of the Seller to design, build, finance, own, Commission, and operate the Seller Interconnection Facilities in accordance with this Agreement.

“Seller Letter of Credit” — An unconditional, irrevocable, direct-pay, divisible, and transferable on demand bank guarantee in favour of the Purchaser in the form of bank guarantee or letter of credit set out in Schedule 8, issued or to be issued by a bank or other financial institution reasonably acceptable to the Purchaser, that provides for draws by the Purchaser in immediately available funds on a Monthly basis upon presentation at a bank in Kabul, Afghanistan, which shall be delivered by the Seller to the Purchaser in the amount of US Dollars Six Hundred Thousand Dollars, only (US\$ 600,000).

“Shortfall Energy” – For any Agreement Year, shortfall of Net Electrical Output and NPMV against the Degraded Output Threshold, for which liquidated damages are due, as calculated pursuant to Section 9.3.

“Site” — The land subject to the Site Lease, on which the Facility is to be located.

“Site Lease” — The Land Lease Agreement for the Site, entered or to be entered into by and between the Purchaser as the lessor and the Seller as the lessee, as may be amended by the Parties from time to time, substantially in the form attached as Schedule 12.

“Specifications” — The technical specifications of the Facility, including any warranties and performance guarantees, and the simulation report and other technical and functional specifications of the PV modules, inverters, protection devices and balance of system comprising the Facility, as set forth in Schedule 2 and in the respective manufacturers’ product data sheets that are attachments to Schedule 2.

“Supplemental Tariff” — Additional compensation payable by the Purchaser to the Seller as provided in Section 9.2, Section 15.7 and Schedule 1.

“System Operator” — Purchaser, acting in its capacity as the owner and operator of the Grid System in accordance with the provisions of the Grid Operations Practices, or any substitute or successor entity with the legal competence to assume the responsibilities with respect to the issuance of Despatch Instructions hereunder and which entity has generally the responsibility for despatch of the electric generation facilities delivering electric energy into the Grid System, and its successors and assigns.

“Tariff”— The Tariff payable for Net Delivered Energy under this Agreement, appended herewith as Schedule 1.

“Tax Costs” — An amount equal to the amount of any new or additional Tax or an increase in an existing Tax payable by the Seller in relation to the Project, as a result of a Change in Tax.

“Tax Savings” — An amount equal to the amount of any decrease or reduction in or elimination of a Tax payable by the Seller in relation to the Project as a result of a Change in Tax.

“Tax” or “Taxes” — Any tax, charge, cess, impost, tariff, duty, basis for assessing taxes (including the rates of or periods for depreciation of assets for tax assessment purposes), fiscal concession or allowance imposed by or payable to a Public Sector Entity, including any value added tax, water or environmental or energy tax, import or Customs Duties, withholding tax, excise tax, tax on foreign currency or foreign exchange transactions or property tax. The term “Tax” shall not include any fee or charge payable to a Public Sector Entity as consideration for goods or services provided by such Public Sector Entity in relation to a commercial activity carried out by such Public Sector Entity.

“Technical Limits” — The limits and constraints in Schedule 5 (including the manufacturer’s product data sheets annexed to Schedule 5) relating to the operation of the Facility.

“Term” — The meaning ascribed thereto in Section 2.2.

“Termination Date” — The meaning ascribed thereto in Section 16.3.

“Termination Notice” — The meaning ascribed thereto in Section 16.3.

“Threshold Amount” — For any Afghanistan Political Event, the amount of United States Dollars Two Million only (US\$ 2,000,000/) any time during the first ten (10) Agreement Years or United States Dollars One Million only (US\$ 1,000,000/) after the first ten (10) Agreement Years, until the end of the Term.

“USAID Contract” - The contract between USAID and Seller identified as XXX-360-16-C-000XXX, pursuant to which USAID will reimburse Seller for a portion of the capital costs of the Facility.

“Week” — Each period of seven (7) consecutive Days beginning at 12:00 midnight falling between a

Saturday and a Sunday.

“Year” — Each twelve (12) Month period commencing on 12:00 midnight on the 31st of December and ending on 12:00 midnight the following 31st of December during the Term.

1.2 Rules of Interpretation

In this Agreement:

- (a) headings are for convenience only and shall be ignored in construing this Agreement;
- (b) other than where the context determines otherwise, the singular includes the plural and vice versa;
- (c) references to Sections, Articles, Recitals and Schedules are, unless otherwise specified, references to Sections and Articles of, and Schedules and Recitals to, this Agreement;
- (d) unless otherwise expressly provided herein, whenever a consent or approval is required by one Party from the other Party, or where a Party has a right to raise an objection, such consent or approval shall not be unreasonably withheld or delayed, and such objection shall be raised on reasonable grounds. Whenever under this Agreement a Party is required to exercise discretion by: (a) giving a decision, opinion or consent; (b) expressing a satisfaction or approval; or (c) otherwise taking actions which may affect the rights or obligations of the other Party, the Party exercising such discretion shall exercise such discretion fairly and reasonably;
- (e) the words “include”, “including, and “in particular” shall not be construed as, nor shall they have the effect of limiting the generality of the preceding words to which they are related;
- (f) references to a Party are references to a party to this Agreement, including that Party’s assigns or transferees permitted in accordance with the terms of this Agreement and its successors in title;
- (g) in carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith. Notwithstanding anything contained herein otherwise, the Parties acknowledge that any and all usage of the words “liquidated damages” in this Agreement shall be construed as representing the Parties good faith reasonable estimate of the actual damages and/or losses for that particular event or occurrence;
- (h) reference to any Laws of Afghanistan shall include reference to such Laws of Afghanistan, as amended, re-promulgated, substituted or replaced from time to time;
- (i) the Schedules (and if any schedules or tables thereto) to this Agreement form part of this Agreement, and capitalized terms and abbreviations used in the Schedules (and if any schedules or tables thereto) which are not defined therein shall have the meanings given to them in Definitions of this Agreement; and

- (j) except as otherwise indicated in this Agreement, references to time are references to time and dates are, and shall be construed to be, references to Afghanistan standard time.

1.3 Abbreviations

In this Agreement, the following abbreviations shall have the following meanings:

- AC means alternating current of electrical energy;
- °C means degrees Celsius;
- GWh means gigawatt hour or 1,000,000 kWh.
- kV means kilovolt or 1,000 Volts;
- kW_{AC} means kilowatt or 1,000 Watts (alternating current);
- kWh means kilowatt hour;
- MW_{AC} means megawatt or 1,000,000 Watts (alternating current);
- Mvar means megavar or 1,000,000 vars;
- MWh means megawatt hour or 1,000 kWh; and
- PV means photo-voltaic production of electrical energy through light.

2. EFFECTIVE DATE; TERM AND AGREEMENTS OF THE PARTIES

2.1 Effective Date

- (a) This Agreement shall become effective upon completion of the following Conditions Precedent as evidenced by notice from Seller to Purchaser (the "**Effective Date**"):
- (i) Seller has achieved Financial Closing.
 - (ii) The USAID Contract has been executed by Seller and USAID and has become effective.
 - (iii) Seller has delivered to Purchaser the Seller Letter of Credit.
 - (iv) The Engineer has been appointed.
- (b) If the Seller does not give notice to Purchaser of the Effective Date within ninety (90) days of the date of execution of this Agreement, then the Purchaser may deliver written notice to the

Seller terminating this Agreement, which termination shall be effective immediately on delivery of such notice. From the date of such termination under this paragraph, the Letter of Award shall be void and the Parties shall have no further rights against each other and shall be released from all further obligations under this Agreement and the Letter of Award, subject to any rights and obligations that may have accrued before the date of such termination.

2.2 Term; Post-Term Arrangements

- (a) Unless terminated earlier in accordance with its terms, this Agreement shall continue in full force and effect for fifteen (15) Agreement Years (such period, the “Term”).
- (b) At or about the end of the twelfth (12th) Agreement Year the Parties shall meet to discuss in good faith whether it is in the mutual interest of the Parties to extend this Agreement, or to enter into any new or replacement power purchase agreement, site lease, and/or other contract(s) related to the Facility and the potential further operation of the Facility by the Seller for delivery of electricity to Purchaser. The Parties acknowledge that the Tariff may be above or below the market value of electricity at the end of the Term, and that the condition of the Facility may or may not be conducive to further operations past the end of the Term.
- (c) The Parties agree that should the Parties not achieve a further, mutually agreeable commercial arrangement for the period after the Term, then at the end of the Term and upon the expiration of the Site Lease the Seller shall transfer the Facility to the Purchaser at no cost to Purchaser. As part of any such transfer the Seller agrees that it shall, at Purchaser’s request, provide training to Purchaser’s employees regarding the operations and maintenance of the Facility, and Purchaser shall reimburse Seller for any additional costs of providing such training to Purchaser’s employees. Purchaser shall also reimburse all Seller’s reasonable out of pocket costs related to preparing the Facility for transfer to the Purchaser and effecting the transfer. Seller shall cooperate with Purchaser in good faith, in the event of any such transfer of the Facility under this Section 2.2(c), to ensure the Facility is in good condition, with all records, parts, and tools that should be available for a power station of its age, consistent with Prudent Utility Practices.

2.3 Maintenance of Consents

- (a) From the date of execution of this Agreement, the Seller shall, at its own cost and expense, apply for, procure, diligently pursue and, following receipt, maintain all Seller Consents.
- (b) Upon receiving a written request from the Seller, the Purchaser shall take such actions as are reasonable and appropriate under the circumstances to assist the Seller in its efforts to procure

or renew any Seller Consent not received despite proper application therefor; provided, however, that where the Seller makes any such request to the Purchaser, the Seller shall:

- (i) provide the Purchaser with such assistance and information as the Purchaser may reasonably request in connection with the Seller's request; and
 - (ii) be responsible for all reasonable out-of-pocket costs and expenses reasonably incurred by the Purchaser in relation to such request from the Seller.
- (c) The Purchaser shall, in a timely fashion, at its own cost and expense, procure, diligently pursue, and thereafter maintain all Purchaser Consents.

2.4 Appointment of Operating Representatives

- (a) Within three (3) Business Days of the Effective Date each Party shall nominate its Operating Representative (and an alternate, if desired) to be the lead point of contact for that Party.
- (b) Each Operating Representative (and alternate) shall have reasonable experience of working for undertaking the Operating Representative's scope of work. Each Party may remove or replace its Operating Representative (or alternate) at any time upon notice to the other Party.
- (c) The Operating Representatives shall coordinate as necessary and shall make themselves reasonably available by telephone, email, or in-person meetings promptly upon request of the other Operating Representative; the Operating Representatives may schedule regular meetings at the Site or elsewhere, and shall make themselves known to the Engineer, the any Lenders' representative, and to USAID.
- (d) For the avoidance of the doubt, the Operating Representatives shall have authority to coordinate activities on behalf of their respective Parties, but in no event shall be considered to have authority to amend this Agreement, to incur any obligation on behalf of, or to waive any right of, either Party under this Agreement.

2.5 Appointment of the Engineer

- (a) No later than fifteen (15) days following the execution date of this Agreement the Seller shall nominate to the Purchaser its slate of candidates to be the Engineer. Purchaser, following consultations with USAID, shall promptly give any comments on the Seller's slate of candidates, which Purchaser shall duly consider. Seller shall then appoint the person or firm to carry out the duties of the Engineer specified in this Agreement in accordance with the highest professional standards and duty of care, both to the Seller and to the Purchaser. The Seller shall not replace any Person appointed as the Engineer without the prior written consent of the Purchaser.

- (b) The terms and conditions of appointment of the Engineer shall oblige the Engineer to act independently and impartially, on the basis of his expertise, experience and knowledge in relation to all matters referred to him pursuant to this Agreement, and in carrying out the other duties described under this Agreement. The costs and remuneration to which the Engineer is entitled under its terms and conditions of appointment shall be borne by the Seller.

2.6 Seller Letter of Credit

- (a) The Seller shall deliver the Seller Letter of Credit to the Purchaser within three (3) Business Days following Financial Closing. The Seller shall maintain in full force and effect the Seller Letter of Credit in the then-required amount, from the date of issuance of the Seller Letter of Credit until the date that is fifteen (15) Business Days following whichever shall first occur of:

- (i) Completion of 3rd Agreement Year after the Commercial Operations Date, or
- (ii) if this Agreement is terminated before the completion of 3rd Agreement year after Commercial Operations Date has occurred, the date which is thirty (30) Days following the date on which the termination of this Agreement is effective;

provided that if the Seller is or is claimed to be liable to pay liquidated damages under Section 9.3, then the Seller shall maintain the Seller Letter of Credit in an amount not less than the amount in dispute plus the Purchaser's reasonable estimate of the Delayed Payment Rate that will be payable thereon until any dispute in relation thereto has been finally resolved in accordance with this Agreement and all liabilities in relation thereto have been discharged in full.

- (b) The Seller Letter of Credit shall be expressed to continue until the end of the period referred to in Section 2.1. The Purchaser shall return the Seller Letter of Credit to the Seller within fifteen (15) Business Days following the end of the period stipulated in Section 2.1. If the Seller provides a replacement or substitute Seller Letter of Credit satisfactory to the Purchaser, the Purchaser shall return the original Seller Letter of Credit within five (5) Business Days after receipt by the Purchaser of such replacement.
- (c) In the event that the Seller is required to pay liquidated damages to the Purchaser pursuant to Section 9.3, and the Seller fails to make any such payment of damages when due, then the Purchaser shall be entitled to draw or collect such amounts, less any amounts disputed by the Seller, from the Seller Letter of Credit upon presentation of a certificate of an authorized officer of the Purchaser stating that (A) amounts shown in the invoice accompanying the certificate are due and payable by the Seller to the Purchaser under this Agreement; and that (B) an invoice for such amount has been delivered to the Seller at least thirty (30) Days prior

to presentation of the certificate and, either (i) no amounts shown in such invoice have been disputed by the Seller, or (ii) a portion of the amount shown in the invoice has been disputed by the Seller, identifying such disputed amount. The certificate shall be accompanied by the relevant invoice delivered to the Seller and any dispute notice delivered to the Purchaser by the Seller. The Purchaser shall not be entitled to draw from the Seller Letter of Credit any amounts shown in an invoice or demand delivered to the Seller that have been disputed by the Seller until such disputes are resolved in accordance with Article 17.

- (d) In the event that the Purchaser draws against any Seller Letter of Credit and it is subsequently determined that the Purchaser was not entitled so to do, then the Purchaser shall repay such amount to the Seller, together with interest thereon from the date of the draw through the date of repayment at the Delayed Payment Rate.
- (e) If at any time while the Seller is required to maintain the Seller Letter of Credit pursuant to Section 2.6 and the Seller Letter of Credit would be due to expire within ten (10) Days unless the effective period of the Seller Letter of Credit has been extended for a period of not less than ninety (90) Days or a replacement Seller Letter of Credit on the same terms has not been delivered to the Purchaser with an effective period of not less than ninety (90) Days following the date of expiration of the existing Seller Letter of Credit, the Purchaser shall be entitled to immediately encash in full the Seller Letter of Credit; provided that the Purchaser shall return to the Seller the amount encashed (less any amount properly retained pursuant to Section 2.6 upon delivery of a valid amendment extending the term of the Seller Letter of Credit or a replacement for the expired Seller Letter of Credit on the same terms.

3. SALE AND PURCHASE OF NET DELIVERED ENERGY

3.1

- (a) Subject to the terms of this Agreement, the Seller shall sell and deliver and the Purchaser shall purchase and accept all Net Delivered Energy generated by the Facility and delivered at the Interconnection Point for the payments described in Article 9 and determined in accordance with the provisions described in Schedule 1.
- (b) The Seller shall not, without the prior written consent of the Purchaser, sell or deliver the electrical output of the Facility to any Person other than the Purchaser.
- (c) Except as permitted expressly under this Agreement, the Seller shall take no action which would encumber, impair, or diminish the Seller's ability to generate, sell, and deliver Net Delivered Energy in accordance with this Agreement.

4. CONSTRUCTION OF THE FACILITY; REPORTING REQUIREMENTS

4.1 Construction of the Facility

- (a) The Seller shall ensure that the design of the construction works shall be carried out with all proper skill, diligence and care and in all material respects in accordance with this Agreement and the USAID Contract so that the Facility is reasonably expected to provide a useful life of not less than the Term plus ten (10) years. Further, The Seller shall carry out and complete the construction works such that the Seller is able to achieve the Commercial Operations Date on or about the Scheduled Commercial Operations Date and in in any case no later than the Required Commercial Operations Date.
- (b) The Seller shall ensure and shall procure that the Engineer certifies to the Purchaser before the Commissioning Tests that all equipment permanently as part of the Facility is new and unused at the time of such installation, and complies with the requirements of Schedule 2.
- (c) The PV modules and the installation thereof must comply with all applicable quality standards, including the standards of the International Electrotechnical Commission, as set forth in Schedule 2.
- (d) The Seller shall ensure that the Facility has adequate security and surveillance equipment and facilities, including a satisfactory security fence around the Facility, so as to minimize the risk of vandalism and theft on the Site, with adequate, trained and experienced personnel available to operate such equipment and to take reasonable action to protect the Facility in the event of any breach or attempted breach of such security equipment and facilities and unauthorized trespass onto the Site. Further, the Seller shall, at its own cost, take appropriate actions in order provided for its own security and that of its employees, to include the development of a Security Plan, which shall be reviewed and accepted by the Purchaser.

4.2 Submission of Reports and Information

- (a) The Seller shall submit, or cause to be submitted, to the Purchaser from the Effective Date and through the Commercial Operations Date:
 - (i) Each month, a Construction Report, and copies of all other reports Seller submits to USAID under the USAID Contract and to any Lender under any Financing Document regarding the Project;
 - (ii) Copies of reports submitted to the Seller by the Engineer;
 - (iii) Information, when and as the Seller becomes aware, regarding any condition or event and/or any change in such condition or event that will have a material and adverse effect on timely completion of the construction of the Facility;

- (iv) At least thirty (30) Days prior to the scheduled commencement of testing of the Facility or any Array, a preliminary test schedule for the Facility;
 - (v) On or before the Commercial Operations Date, a copy of Seller's Operating Procedures for the Facility, which incorporate the technical limits of the Facility, together with a certificate from the Engineer addressed to the Seller and the Purchaser to the effect that, based upon its monitoring and review of construction, the construction of the Facility has been carried out in all material respects in compliance with the terms of this Agreement and the Seller's Operating Procedures are appropriate and consistent with Prudent Utility Practices for the Facility;
 - (vi) On, or as soon as practicable following, the Effective Date but, in any event, within ten (10) Business Days thereafter, a copy of the certificate of insurance for the All Risk Insurance Policy and, as soon as available, a copy of such policy; and, as soon as available but, in any event on or before the Commercial Operations Date and, as and when updated, copies of all insurance policies and certificates of insurance or other certificates of insurance for the policies detailed in Schedule 7;
 - (vii) As soon as available, but no later than thirty (30) Days following the Commissioning Operations Date, two copies of all results of the Commissioning Tests, including tests of major equipment included in the Facility, tests of related electricity metering equipment and a certificate from the Engineer confirming each successful Commissioning Test shall be provided to the Purchaser;
 - (viii) No later than thirty (30) Days following each successful Commissioning Test for the major items of plant incorporated into the Facility, one copy, as received by the Seller, of all the manufacturers' specifications and manufacturers' operation manuals; and
 - (ix) As soon as available, but no later than thirty (30) Days following the Commercial Operations Date, two copies of the Commissioning Tests results, and a certificate from the Engineer confirming the results.
- (b) The Seller shall ensure that the Facility has adequate security and surveillance equipment and facilities, including a satisfactory security fence around the Facility, so as to minimize the risk of vandalism and theft on the Site, with adequate, trained and experienced personnel available to operate such equipment and to take reasonable action to protect the Facility in the event of any breach or attempted breach of such security equipment and facilities and unauthorized trespass onto the Site. Further, the Seller shall, at its own cost, take appropriate

actions in order provided for its own security and that of its employees, to include the development of a Security Plan, which shall be reviewed and accepted by the Purchaser.

- (c) The Seller shall invite the Purchaser to all meetings it has with USAID during the construction of the Facility in accordance with the terms of the USAID Contract. At the meetings the Seller shall present (i) the accomplishments of the previous month, (ii) the cumulative status of the project, (iii) the plans for the coming month, (iv) identify upcoming challenges, and (v) identify areas where and how the USAID and the Purchaser may be of assistance to the Seller in overcoming the Seller's challenges.
- (d) Seller shall notify the Purchaser in a timely manner upon becoming aware of any changes to the information provided to the Purchaser pursuant to this Section 4.2, or to USAID under the USAID Contract.

4.3 Delivery of Electric Power to the Facility

From and after completion and commissioning of the Seller Interconnection Facilities, the Purchaser shall, upon Seller's request and to the extent necessary or convenient for Seller to complete construction of the Facility and carry out testing of the Facility, including the Commissioning Tests, use reasonable efforts to deliver electrical energy to the Facility. From and after the Commercial Operations Date, the Purchaser shall (to the extent reasonably possible, and if required) deliver to the Interconnection Point sufficient electrical power to operate the Facility during any period that the Facility is unable to generate sufficient electrical power for such purpose. For the avoidance of doubt, the Seller shall pay for the electricity delivered under this Section 4.3 at Seller's prevailing tariffs for such service, in accordance with Section 9.

4.4 Purchaser Observation Visits

The Purchaser shall, at its sole cost and expense, have access to the Site to monitor the progress of the Facility including the Seller Interconnection Works and the operation of the Facility. During such visits, all persons visiting on behalf of the Purchaser shall comply with the Seller's generally applicable safety regulations, procedures, and directions, and shall not unreasonably cause any interference with or disruption to the activities of the Seller on Site.

5. CONTROL AND OPERATION OF FACILITY

5.1 Operation and Maintenance of the Facility

- (a) The Seller shall operate and maintain the Facility in accordance with this Agreement, any Operating Procedures developed in accordance with Section 5, the Technical Limits, Laws of Afghanistan, the Grid Operations Practices, the Seller Consents, and Prudent Utility

Practices; provided, however, that the Seller may contract with an operations and maintenance contractor to operate and maintain the Facility; provided, further, that the appointment of an operations and maintenance contractor by the Seller shall not relieve the Seller of any of its obligations or potential liability regarding the insuring, operation or maintenance of the Facility or any liability whatsoever resulting from a breach of any term or condition of this Agreement.

- (b) The Seller shall use its reasonable efforts to maintain and repair or replace the Facility and the components thereof and equipment therein so that the reduction or degradation of the capability of the Facility to generate Net Delivered Energy during the Term does not fall below the Degraded Output Threshold.

5.2 Seller to Maintain Facility Availability

- (a) The Seller shall be responsible for the availability of the Facility for generation and delivery of Net Delivered Energy. The Seller shall, at all times that the Ambient Site Conditions enable the generation and delivery of Net Delivered Energy, generate and deliver Net Delivered Energy at the Interconnection Point, except when and to the extent that generation and delivery of Net Delivered Energy is prevented partially or completely during the continuance of a:
 - (i) Force Majeure Event,
 - (ii) Afghanistan Political Event,
 - (iii) Scheduled Outage,
 - (iv) Maintenance Outage,
 - (v) Forced Outage, or
 - (vi) Non-Project Event.
- (b) At any time that Ambient Site Conditions at Site enable generation and delivery of Net Delivered Energy (as determined on the basis of the Specifications), which, however, the Facility is partially or wholly unable to generate and deliver for reasons attributable solely to the Seller (including non-availability of the Facility or any component thereof), such partial or complete non-availability of the Facility shall not constitute a Non-Project Event and the Net Delivered Energy not generated as a consequence shall be excluded in the computation of Non-Project Missed Volume.

5.3 Forecasting of Net Delivered Energy

The Seller shall use reasonable efforts to forecast the Net Delivered Energy based on available historical data of Ambient Site Conditions at Site and, on that basis, no later than noon prior to the beginning of each Day following the Commercial Operations Date the Seller shall notify the Purchaser (or revise any such information previously provided) of the estimated net energy of the Facility, in MWh, that the Facility is likely to generate in each hour of such Day; provided, that the forecast of Net Delivered Energy provided by the Seller to the Purchaser shall not result in the Seller incurring or accruing any liability of any nature towards the Purchaser in relation to any discrepancy or deviation between the non-binding estimates and the actual Net Delivered Energy.

5.4 Dispatch Instructions

- (a) The Purchaser shall accept all Net Delivered Energy generated by the Facility and delivered at the Interconnection Point. Subject to this Section 5.4, the Seller shall comply with Dispatch Instructions issued by the System Operator, provided, that:
- (i) the Dispatch Instructions are consistent with the Technical Limits;
 - (ii) the Facility can be operated consistent with the Dispatch Instructions in view of the then prevailing Ambient Site Conditions; and
 - (iii) Seller shall be required to comply only to the extent there is no Scheduled Outage, Maintenance Outage, or Forced Outage in effect or scheduled to occur and which would prevent compliance with such Dispatch Instructions.
- (b) The Seller shall not be in breach of Section 5.2 for failure to execute a Dispatch Instruction due to a Non-Project Event, an Afghanistan Political Event, or a Force Majeure Event.

5.5 Scheduled Outages and Maintenance Outages

- (a) The Seller shall give a thirty (30) days advanced written notice of the date on which it intends to undertake Scheduled Outages except that the Seller may undertake Scheduled Outages for individual Arrays in a manner so that no more than one Array is undergoing a Scheduled Outage at any one time in such Month. The Seller shall consult the System Operator before developing the Scheduled Outage programme and shall carry out Scheduled Outages in accordance with the Scheduled Outage programme approved by the System Operator. To the extent possible, the Scheduled Outages of individual Arrays shall be phased for minimizing the reduction in the total available generation capacity of the Facility and, to the extent practicable, be conducted at night.
- (b) The Seller shall advise the Purchaser of the need for any Maintenance Outages, together with the proposed commencement date and estimated duration of the work to be undertaken. The Purchaser shall advise the Seller of the periods during which such Maintenance Outage may be undertaken, such periods to be reasonable in light of the Purchaser's requirements for Net

Delivered Energy and the necessity for the Maintenance Outage. The Seller shall, subject to the Technical Limits, and Prudent Utility Practices, use reasonable endeavours to carry out the Maintenance Outage at night or during the times provided by the Purchaser in accordance with this Section 5.5(b).

5.6 Emergency Procedures

- (a) The Seller shall co-operate with the Purchaser in developing Emergency procedures for the Facility, and shall, to the extent consistent with the Technical Limits, comply with such Emergency procedures.
- (b) The Emergency procedures shall provide that, in case of an Emergency and upon request of the Purchaser, the Seller shall use reasonable endeavours to reschedule any Scheduled Outage or Maintenance Outage not yet begun, or if the Scheduled Outage or Maintenance Outage has already begun, expedite the completion of the relevant works and/or reschedule some or all of the remaining works so as to restore electric generation as soon as possible.

5.7 Employment of Qualified Personnel

From and after the first date that Net Delivered Energy is delivered from the Facility to the Interconnection Point, the Seller shall ensure that all on-duty personnel at the Facility are adequately qualified and trained, and have experience as necessary and appropriate to undertake the duties for which they are engaged at the Facility.

5.8 Maintenance of Operating Records

- (a) Each Party shall maintain complete and accurate records and all other data reasonably required for the proper administration of this Agreement. Without prejudice to the generality of the foregoing, the Seller shall maintain (where applicable, through automated data generation, processing and archiving capabilities of the Facility Monitoring System and the Meteorological Station) at the Facility, an accurate and up-to-date operating log in a format mutually agreed upon by the Parties, with records and data of:
 - (i) Despatch Instructions;
 - (ii) Net Delivered Energy for each fifteen (15) minute period of each operating hour;
 - (iii) Array availability data for each hour;
 - (iv) Grid System frequency;
 - (v) kV bus voltage 20 kV or as otherwise applicable) at all times;

- (vi) changes in operating status, including Scheduled Outages, Maintenance Outages, and Forced Outages;
 - (vii) Ambient Site Conditions for each fifteen (15) minute period of each operating hour;
 - (viii) the cause and duration of each Non-Project Event; and
 - (ix) other matters agreed upon by the Parties.
- (b) All such records and data shall be maintained for a minimum of sixty (60) Months after the creation of such record or data, and for any additional length of time required by any Public Sector Entity with jurisdiction over either Party; neither Party shall dispose of or destroy any such records or data after such sixty (60) month period unless the Party desiring disposal or destruction of such records or data has first given thirty (30) Days prior written notice to the other Party, generally describing the records or data to be destroyed or disposed of, and the Party receiving such notice has not objected thereto in writing within such ten (10) Days of receiving such notice.
- (c) Either Party shall have the right, upon ten (10) Days prior written notice to the other Party, to examine the records and data kept by the other Party pursuant to this Section 5.8 at normal office hours during the period such records and data are hereunder required to be maintained. For avoidance of doubt, it is agreed that references to records and data in this Section 5.8 includes records and data created, recorded, maintained and retrieved in electronic form.
- (d) From and after the installation of an appropriate communications circuit as provided in Section 7.7, Seller shall make the data available in real-time through the installed communication system. The Facility Monitoring System shall be enabled to create and archive automated access logs with fields that include, at a minimum (i) the identity of the person accessing the Facility Monitoring System, (ii) the activity performed for the relevant access session, and (iii) time and date stamping.

5.9 Tampering with the Metering System and the Facility Monitoring System

- (a) The Seller shall not tamper, and shall ensure that its employees and contractors do not tamper, with the Metering System, the Facility Monitoring System, and the Meteorological Station. Should the Seller breach the foregoing covenant, the Seller shall:
- (i) take all remedial action reasonably acceptable to the Purchaser to ensure that tampering does not reoccur, including the development of addition of security systems, and

- (ii) compensate the Purchaser for two (2) times the amount or reasonably estimated amount of any overpayment by the Purchaser resulting from such tampering, which for purposes of such determination shall be assumed to have occurred immediately after the last known accurate test of the Metering System, the Facility Monitoring System, and the Meteorological Station (unless the Seller demonstrates to the reasonable satisfaction of the Purchaser, or it is resolved under Article 18, that the tampering did not occur until a later date, in which case such later date shall be used as the reference date for determination of such amount). The Parties agree that the amount of such compensation constitutes liquidated damages to the Purchaser for any such breach an, shall be the sole remedy of the Purchaser therefor. The Seller waives, to the fullest extent permitted by law, any and all defences to its liability to make such payments.

5.10 Cessation of Operation of the Facility

- (a) If, after the Commercial Operations Date, without the prior written consent of the Purchaser, the Seller shall have ceased to operate the Facility for a period of thirty (30) consecutive Days other than because of:

- (i) a Force Majeure Event,
- (ii) a Scheduled Outage or a Maintenance Outage,
- (iii) a Forced Outage,
- (iv) a Non-Project Event,
- (v) an Afghanistan Political Event, or
- (vi) any act or omission of the Purchaser and/or the Grid System Operator that effectively prevents the Seller from operating the Facility,

then the Purchaser shall be entitled to enter the Facility and operate it until the Seller demonstrates, to the reasonable satisfaction of the Purchaser, that the Seller can and will resume normal operation of the Facility.

During any period that the Purchaser operates the Facility pursuant to this Section 5.10(a), the Purchaser shall (i) operate the Facility within the Technical Limits and in accordance with Prudent Utility Practices, and (ii) bear the costs of operation.

- (b) Notwithstanding any other provision of this Agreement to the contrary, the Purchaser shall indemnify, defend, and hold the Seller harmless from any loss or damage to the Facility

incurred or sustained by the Seller by reason of the Purchaser's negligence or wilful misconduct in the operation of the Facility during any period contemplated by Section 5, but only to the extent that such loss or damage is not covered by the Seller's insurance.

5.11 Forced Outages

The Seller shall notify the Purchaser as soon as practicable after the occurrence of a Forced Outage, which notice shall set forth the likely cause thereof (if known at the time), together with an estimated time-frame within which such Forced Outage is likely to end, on the basis of information available to the Seller at that time. The Seller shall, periodically, update any notice provided under this Section 5.11 on the basis of further information that may, from time to time, become available to the Seller.

6. INTERCONNECTION FACILITIES

6.1 Seller Interconnection Facilities

The Seller, at its cost, shall carry out or cause to be carried out the Seller Interconnection Works with all proper skill, diligence and care, and in all material respects in accordance with Schedule 3, the Grid Operations Practices, the Generation License, and Prudent Utility Practices, such that the Seller Interconnection Facilities can reasonably be expected to provide a useful life of not less than the Term [plus ten (10) years].

6.2 Purchaser Interconnection Facilities

The Purchaser, at its cost, shall design, construct (excluding installation of the Metering System, as provided in Section 7.2, and commission the Purchaser Interconnection Facilities in accordance with Schedule 3, the Grid Operations Practices, and Prudent Utility Practices such that the Purchaser Interconnection Facilities can reasonably be expected to have a useful life of not less than the Term plus ten (10) years.

6.3 Granting of Rights-of-Way for Purchaser Interconnection Facilities

The Seller shall grant to the Purchaser rights of way across the Site necessary to carry out and complete the Purchaser Interconnection Works and to operate, maintain, replace and/or remove the Purchaser Interconnection Facilities during the Term.

6.4 Construction and Completion of Purchaser Interconnection Facilities

(a) On or after the Effective Date, the Purchaser shall commence the final design of the Purchaser Interconnection Facilities. Thereafter, the Purchaser shall provide to the Seller

reports on the progress of the Purchaser Interconnection Works until their completion. The Purchaser shall complete the Purchaser Interconnection Works so as to be able to accept Net Delivered Energy at the Interconnection Point no later than ninety (90) Days prior to the Scheduled Commercial Operations Date, provided, that the completion date shall be extended to the extent necessary due solely to any failure by the Seller to provide the Purchaser, on a timely basis, with any technical data relating to the Facility and available to the Seller but not included in Schedule 3, requested by the Purchaser and reasonably necessary for the Purchaser to undertake the design, construction, installation, commissioning, maintenance, and operation of the Purchaser Interconnection Facilities.

- (b) If the Purchaser has not completed, commissioned and energized the Purchaser Interconnection Facilities by the date required in Section 6.4(a), and such delay causes a delay in the performing the Commissioning Tests, the Required Commercial Operations Date shall be extended Day-for-Day until the date on which the Purchaser Interconnection Works are completed.

6.5 Protective Devices

- (a) As part of the Seller Interconnection Works, the Seller shall install protective relays and battery backup in accordance with Schedule 3. The Seller shall maintain the settings of all relays in the Facility at the levels agreed by the Seller and the Purchaser, and the Seller shall not change such settings without the Purchaser's prior consent.
- (b) The Seller and the Purchaser shall verify the operation of the protection devices in accordance with the testing programme set forth in Schedule 3.
- (c) Subject to providing the Seller reasonable notice, the Purchaser may require the Seller to modify the protective devices of the Facility at any time following the Commercial Operations Date. Seller shall provide an estimate of the costs of the required modification. Following the Purchaser's approval of the costs of such modification, the Seller shall perform the works within a reasonable time. The Purchaser shall be notified in advance of, and shall have the right to observe, all work on the protective devices.
- (d) Upon completion of any modification work to the protective devices as provided in this Section 6.5, the Seller shall provide the Purchaser with an invoice for the reasonable and necessary costs therefor, together with supporting documentation with respect thereto; the invoiced amount shall not exceed the amount approved by the Purchaser under this Section 6.5. The Purchaser shall pay the Seller the invoice within thirty (30) Days after delivery of the invoice by the Seller.
- (e) Each Party shall notify the other Party in advance of any changes to either the Facility or the Grid System that may affect the proper co-ordination of protective devices between the two

systems, and neither Party shall make any such changes to either the Facility or the Grid System, as the case may be, without the other Party's approval.

6.6 Testing

The Parties shall cooperate in testing the Purchaser Interconnection Facilities and the Seller Interconnection Facilities at such times as either Party may reasonably require during the Term.

7. METERING

7.1 Metering System

(a) Net Delivered Energy shall be metered by the Metering System and Back-Up Metering System in all of the following time intervals. Metering information shall accompany Seller's monthly invoices in a format mutually agreed by Seller and Purchaser prior to the Commercial Operations Date.

- (i) Fifteen (15) minutes.
- (ii) Daily (24 hours).
- (iii) Weekly (7 days).
- (iv) Monthly (calendar months).

(b) The Metering System and the Back-Up Metering System shall be (i) fully compatible with the characteristics of industry standard automatic meter reading (AMR) systems; and (ii) compliant with the Grid Operations Practices.

7.2 Installation of Metering System

(a) The Seller, at its expense, shall procure and install the Metering System and the Back-up Metering System in accordance with Schedule 3 and consistent with the requirements set forth in Schedule 3 and shall:

- (i) prior to the delivery of any Net Delivered Energy from the Facility to the Interconnection Point for which payment is required to be made hereunder by the Purchaser, install, test and commission, and calibrate or recalibrate as necessary, the Metering System and the Back-Up Metering System at the high voltage side of the Interconnection Point;

- (ii) secure the Metering System and Back-Up Metering System in a locked, sealed and walled enclosure; and
 - (iii) ensure that it or its contractors, employees, agents, and invitees (other than the Purchaser), and others for whom the Seller is responsible, shall not tamper with the Metering System or the Back-Up Metering System.
- (b) When, by testing in accordance with Section 7.3, the Metering System has been demonstrated to satisfy the required level of accuracy, the Seller shall transfer ownership and control of the Metering System to the Purchaser, and the Purchaser shall thereafter be responsible for the ownership and maintenance of the Metering System. For avoidance of doubt, the Purchaser shall not test, adjust, repair, or replace the Metering System without providing at least forty-eight (48) hours prior written notice to the Seller. The Purchaser and Seller shall have the right to be present at and observe the installation and all testing of the Metering System. The Seller shall grant to the Purchaser all necessary easements and rights-of-way for the location of the Metering System on Site and for ingress and egress thereto and therefrom.

7.3 Testing of Metering System

- (a) The Seller shall test the accuracy of each of the Metering System and the Back-Up Metering System, and if necessary calibrate or recalibrate them, in accordance with Schedule 3 not later than the Day before the date of first delivery to the Interconnection Point of any Net Delivered Energy from the Facility that is to be paid for by the Purchaser pursuant to this Agreement. Thereafter, the Purchaser and the Seller shall test the accuracy of each of the Metering System and the Back-Up Metering System at any time that the readings of Net Delivered Energy from the Metering System and the Back-Up Metering System differ by an amount greater than two-tenths of one percent (0.2%). In such eventuality, the Purchaser and the Seller together shall test the accuracy of the Metering System and the Back-Up Metering System and recalibrate the Metering System and/or Back-Up Metering System, if necessary. The Purchaser shall provide the Seller no less than forty-eight (48) hours advance notice of such tests, and the Seller shall have the right to witness such tests as well as any inspection of, or adjustment to, the Metering System or the Back-Up Metering System; provided that if the Seller's representative fails to attend such test, inspection, or adjustment, Seller shall be deemed to have waived its right to attend and observe that test, inspection, and/or adjustment.
- (b) In addition to the tests to be carried out pursuant to this Section 7.3, if the either Party believes that the Metering System is inaccurate it shall inform the other Party, requesting that the Metering System and Back-Up Metering System accuracy be tested, and the Purchaser and the Seller shall test the Metering System and Back-Up Metering System within a reasonable time. The Purchaser shall provide the Seller no less than forty-eight (48) hours advance notice of such tests, and the Seller shall have the right to witness such tests as well as any inspection of or adjustment to the Metering System or Back-Up Metering System;

provided that if the Seller fails to attend such tests, inspection or adjustment, Seller shall have waived its right to attend and observe that test, inspection, and/or adjustment. The Seller shall bear the cost of such tests requested by it, unless the test indicates that the Metering System is inaccurate by more than two-tenths of one percent (0.2%) in which case, the Purchaser shall bear the cost of the tests.

7.4 Reading Meters

- (a) The Seller, at its own cost and expense, shall procure and install electronic data recording systems capable of recording the Net Delivered Energy measured by the Metering System, and shall procure and install such systems for the Back-Up Metering System on a continuous basis with the capacity of storing such recordings for not less than ninety (90) Days. All metering data recorded by the Metering System and the Back-up Metering System shall also be capable of telemetering from and after the date Purchaser connects wirelessly or through a communication circuit to the Facility as provided in Section 7.2. Subject to the provisions of Section 7.1 and verification of the data recording system pursuant to Section 7.3, the Parties agree that the information contained in or obtained from such electronic data recording system and, when available, the telemetry system, shall be used to determine the Net Delivered Energy. The electronic data recording system and any telemetry system related to the Metering System and the Back-Up Metering System shall constitute a part of the Metering System and the Back-Up Metering System, respectively, for all purposes under this Agreement.
- (b) The information contained in the electronic data recording system shall be verified by checking that the sum of the hourly readings in the electronic data recording system over a specified period are consistent with the local totalized readings for the Metering System (or, if applicable, the Back-Up Metering System) over the same period (determined by subtracting the local totalized reading at the beginning of the period from the local totalized reading at the end of the period). In order to verify the information contained in the electronic data recording system, the following procedure shall apply:
 - (i) the local totalized readings of the Metering System and the Back-Up Metering System shall be read on issuance of the Certificate of Readiness for Synchronization and, thereafter, Monthly on the last Business Day of each Month or such other Day as may mutually be agreed upon by the Parties;
 - (ii) the Purchaser shall take such readings during normal business hours unless otherwise mutually agreed by the Parties;
 - (iii) the Purchaser shall provide the Seller at least forty-eight (48) hours notice of the time the Purchaser intends to take such readings, and the Seller shall have the right to witness any such readings;

- (iv) if a Seller's representative is present at such readings, then such readings shall be jointly taken and recorded;
 - (v) if a Seller's representative is not present at such readings, then the Purchaser representative shall take and record such readings) and make a photographic record thereof;
 - (vi) each Party shall maintain a log of all such meter readings; and
 - (vii) the recorded measurements for each fifteen (15) minute period and each hour during the relevant period and the local totalized recorded measurements shall be delivered by the Purchaser to the Seller within two (2) Business Days after the readings are taken.
- (c) The Metering System shall be used to measure the Net Delivered Energy, provided that during any period when the Metering System is out of service as a result of maintenance, repairs, or testing, then the best available information, which may include the electronic data recording system of the Back-Up Metering System, shall be used to measure the Net Delivered Energy, and the provisions of Section 7.4(b) shall apply to the reading of the Back-Up Metering System.
- (d) If, in any test carried out pursuant to Section 7.4(a), the Metering System is found to be inaccurate by more than two-tenths of one percent (0.2%), or is otherwise unavailable or functioning improperly, then the correct amount of Net Delivered Energy delivered to the Purchaser for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:
- (i) the readings of the Back-Up Metering System shall be used to calculate the correct amount of Net Delivered Energy, unless a test of such Back-Up Metering System, as required by either Party, reveals that the Back-Up Metering System is inaccurate by more than two-tenths of one percent (0.2%) or is otherwise functioning improperly;
 - (ii) if the Back-Up Metering System is found to be inaccurate by more than two-tenths of one percent (0.2%) or is otherwise unavailable or functioning improperly, then the Seller and Purchaser shall jointly prepare an estimate of the correct reading on the basis of all available information, including any telemetered data, and such guidelines as may have been agreed upon between the Seller and the Purchaser as part of the Operating Procedures;
 - (iii) if the Purchaser and the Seller fail to agree upon an estimate for the correct reading, the Seller will estimate the Net Electrical Output during the period

based on any other available evidence, and either Party may refer such Dispute for resolution in accordance with Article 18; and

- (iv) the difference between the previous payments by the Purchaser for the period of inaccuracy, if any, and the recalculated amount shall, as appropriate, be offset against or added to the next payment due to the Seller, with interest at the Delayed Payment Rate. If the period of inaccuracy cannot be accurately determined, it shall be deemed to have begun on the date midway between the date the meter was found to be inaccurate and the date of the last meter reading accepted by the Parties as accurate. In no event, however, shall any such adjustment be made for any period prior to the date on which the Metering System was last tested and found to be accurate within plus or minus two-tenths of one percent (0.2%) and not otherwise functioning improperly.

7.5 Sealing of Metering System

- (a) The Metering System and the Back-Up Metering System shall be jointly sealed by the Parties.
- (b) Both Seller and Purchaser are to install their own meter seals on the metering equipment, which may include the meters, test switches, terminal blocks, marshalling boxes, terminal boxes for current transformers, high side bypasses for current transformers, terminal boxes for voltage transformers, high side disconnects for voltage transformers, telecommunications equipment in support of the metering system, and any other equipment that may be appropriate for sealing
- (c) All meter seals used by the Seller and the Purchaser are to have unique, non-repeating serial numbers.
- (d) The serial numbers of all the meter seals used on the equipment are to be recorded by both Seller and Purchaser.
- (e) Seals on the Metering System shall be broken only by the Purchaser acting in accordance with the terms of this Agreement. The Purchaser shall provide the Seller at least forty-eight (48) hours advance written notice of the breaking of seals on any part of the Metering System. Each notice shall specify the time at which a meter seal shall be broken by the Purchaser's personnel, and the Seller shall be provided the opportunity of being present when such seals are broken.
- (f) Seals on the Back-Up Metering System shall be broken only by the Seller's personnel acting in accordance with the terms of this Agreement. The Seller shall provide the Purchaser at least forty-eight (48) hours advance written notice of the breaking of seals on any part of the Back-Up Metering System. Each notice shall specify the time at which a meter seal shall be

broken by the Seller's personnel, and the Purchaser shall be provided the opportunity to be present when such seals are broken.

- (g) If any seal securing the Metering System or the Back-Up Metering System is found to be broken, or if the Metering System or the Back-Up Metering System has been found to have been tampered with, and, in either case, the Metering System is found to be inaccurate by more than two-tenths of one percent (0.2%) or otherwise unavailable or functioning improperly, then the provisions of Section 7.4(d) shall apply to determine the correct amount of Net Delivered Energy.

7.6 Repair, Replacement or Recalibration of Metering System

- (a) If any component of the Metering System is found to be outside acceptable limits of accuracy, or otherwise not functioning properly, the Purchaser shall promptly repair, recalibrate, or replace such component of the Metering System at its own cost and expense.
- (b) If any component of the Back-Up Metering System is found to be outside acceptable limits of accuracy, or otherwise not functioning properly, the Seller shall forthwith repair, recalibrate, or replace such component of the Back-Up Metering System at its own cost and expense.
- (c) Upon completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Metering System or the Back-Up Metering System, as the case may be, such Metering System and Back-Up Metering System shall be jointly sealed in accordance with Section 7.5.

7.7 Provision for Telemetry

- (a) Purchaser acknowledges that as of the execution date of this Agreement, the Grid System does not have telemetry facilities, nor optical or other electronic data communication capacities. Purchaser intends, however, that the Grid System shall be equipped with such facilities during the Term. Therefore Seller shall provision the Facility with space for future installation of communication equipment, and to the extent feasible include the Facility equipment that can readily be converted or upgraded to remote communication capabilities.
- (b) If during the Term Purchaser embarks on a communications upgrade program for the Grid System, Seller shall coordinate with Purchaser on purchasing and installing such capabilities at the Facility. The reasonably incurred cost of any such communications equipment and installation, together with all of the related in-door and out-door equipment and works at the Facility, procured and installed by the Seller, shall promptly be reimbursed by the Purchaser as a Pass-Through Item.

- (c) The selection and installation of any items to be purchased and installed by the Seller in accordance with this Section 7.7 shall be subject to the prior written approval of the Purchaser.

8. TESTING OF THE FACILITY

8.1 Testing Program

- (a) The Seller shall provide to the Purchaser promptly following the Effective Date, and on an on-going basis for any changes, all relevant information regarding its testing program and schedule for the Facility. Not less than thirty (30) Days prior to the commencement of the test program, the Seller shall deliver to the Purchaser in writing the final testing program for the Facility, including a tentative schedule for conducting all tests required under and in relation to this Article 8. If the schedule for any tests is adjusted after the Seller has provided the Purchaser with the final testing program schedule, then the Seller shall advise the Purchaser not less than forty-eight (48) hours prior to the commencement of any such tests. On each Day beginning with the Day on which testing commences, the Seller shall provide the Purchaser with a schedule of the tests to be conducted on the following Day or Days (if such tests will continue for more than one (1) Day). All testing of the Facility shall satisfy the Commissioning Tests and Reliability Run Test provided in this Article 8 and Schedule 6. Representatives from the Purchaser shall have the right to be present at and observe the Commissioning Tests (including the Reliability Run Test) and any retests thereof. Seller shall make reasonable efforts to accommodate Purchaser's attendance at all tests.
- (b) The Facility tests shall be performed in the following sequence:
 - (i) Testing of the Seller Interconnection Facilities;
 - (ii) Commissioning Tests; and
 - (iii) Reliability Run Test.

8.2 Testing of the Seller Interconnection Facilities

- (a) Prior to establishing interconnection of the Seller Interconnection Facilities with the Purchaser Interconnection Facilities so as to enable the Seller Interconnection Facilities to be energized, the Seller shall carry out the tests listed in Schedule 6 in relation to the Seller Interconnection Facilities in accordance with applicable IEC standards. The Engineer is to be present at these tests.
- (b) Upon successful completion of the tests set forth in Schedule 6 in relation to the Seller Interconnection Facilities, the Engineer shall issue the Certificate of Readiness for

Synchronization. After receiving the Certificate of Readiness for Synchronization, the Purchaser shall energize the Purchaser Interconnection Facilities, whereafter the Seller shall energize the Seller Interconnection Facilities and perform the following additional tests:

- (i) operation and interlocking checks; and
 - (ii) MV panel tests.
- (c) Upon successful completion of the tests specified in Section 8.2(b), the Engineer will issue a certificate stating that the commissioning of the Seller Interconnection Facilities has been completed.

8.3 Commissioning Tests; Reliability Run Test

- (a) Upon successful completion of the Commissioning Tests performed by the Seller, the Seller shall certify to the Engineer, with copy to the Purchaser, that:
- (i) the Commissioning Tests have been successfully completed;
 - (ii) the results of the Commissioning Tests are adequate to demonstrate that the design, installation, and performance (including energy production and the reliability thereof) of the Facility, and all of the components thereof, meet or exceed the manufacturers' requirements for construction and installation of all equipment and facilities, the Specifications set forth in the USAID Contract, and the applicable IEC standards; and
 - (iii) the design, construction, and installation of the Facility and each component thereof does not restrict or void any manufacturer warranty.
- (b) Following delivery of the Seller's certification specified in Section 8.3(a), and acceptance by the Purchaser (and USAID under the USAID Contract, pursuant to which a copy of the Seller's certifications shall be provided to USAID), the Seller shall carry out the Reliability Run Test. The Purchaser shall be given not less than seventy-two (72) hours prior notice by the Seller of the Reliability Run Test and any retest. Representatives from the Purchaser shall be allowed to be present at and observe the Reliability Run Test (and any retest). After the successful completion of the Reliability Run Test for the Facility, the Engineer shall issue the Certificate of Facility Commissioning to the Purchaser and the Seller.
- (c) The Commercial Operations Date shall occur as of the Day the Certificate of Facility Commissioning is issued by the Engineer pursuant to Section 8.3(b).

8.4 Copies of Test Results and Certificates

The Seller shall provide the Purchaser and USAID with copies of the test results of all tests performed. The Parties shall direct the Engineer to provide the Purchaser, the Seller, and USAID with copies of all certificates issued by the Engineer pursuant to Sections 8.2 and 8.3.

8.5 Scheduling and Accommodation of Additional Tests

- (a) The Seller may repeat the Commissioning Tests and Reliability Run Test as many times as required by the Seller to meet the test criteria set forth in this Article 8 and Schedule 6.
- (b) If, during or following a Scheduled Outage, a Maintenance Outage, a Forced Outage, or a Force Majeure Event, the Seller is required to undertake additional tests of the Facility (or any significant component thereof) that are not required under this Article 8 and which require that electric energy is delivered to the Grid System, the Purchaser shall accommodate such tests as soon as reasonably practicable following a request therefor from the Seller.

8.6 Payment for Net Delivered Energy During Testing

The Purchaser shall pay the Seller the Tariff in accordance with the procedures specified in Section 9.4 and 9.5 for Net Delivered Energy delivered prior to the Commercial Operations Date, including during Commissioning Tests and the Reliability Run Test. Seller may invoice for Net Delivered Energy delivered to the Purchaser before the Commercial Operations Date Net as part of the first invoice for raised by the Seller after the Commercial Operations Date pursuant to Section 9.1.

9. COMPENSATION; PAYMENT AND BILLING

9.1 Energy Payment

Subject to Section 9.5 and the other terms of this Agreement, and in accordance with the procedures specified in Section 9.4, from and after the Commercial Operations Date the Seller shall sell and deliver and the Purchaser shall accept all of the Net Delivered Energy generated by the Facility and delivered to the Purchaser at the Interconnection Point, and the Purchaser shall pay, Monthly in arrears, the Tariff for all Net Delivered Energy generated by the Facility and delivered at the Interconnection Point and for Non-Project Missed Volume.

9.2 Pass-Through Items; Supplemental Tariffs

- (a) The Purchaser shall pay the Seller, in accordance with the procedures specified in Section 9.4, any amount for the Pass-Through Items evidenced in accordance with this Agreement. Each invoice for the Pass-Through Items in accordance with Section 9.4 delivered to the Purchaser shall be accompanied by the original invoices or payment receipts for which the Seller seeks recovery from the Purchaser.

- (b) The Purchaser shall pay the Seller, in accordance with the procedures specified in Section 9.4, the Supplemental Tariffs calculated in accordance with Schedule 1. Supplemental Tariffs shall be determined as provided in Schedule 1, and invoiced in the same manner and on the same schedule as invoices for energy payments, as provided in Section 9.4.

9.3 Liquidated Damages

- (a) Without prejudice to the Purchaser's rights under Article 16, the Parties agree that any liquidated damages payable under this Section 9 shall be the Purchaser's sole and exclusive remedy against the Seller in respect of the matters to which such liquidated damages relate.
- (b) If the Seller is in breach of its obligation under Section 4.1 to achieve the Commercial Operations Date by the Required Commercial Operations Date (unless such breach is attributable to breach or default by the Purchaser of its obligations hereunder, or due to an Afghanistan Political Event or a Force Majeure Event, or due to termination for convenience by USAID under the USAID Award), then for each Month (prorated Daily) thereafter until the Commercial Operations Date is achieved, the Seller shall pay the Purchaser as liquidated damages an amount of US Dollars Ten Thousand (US\$ 10,000/), per Day for each Day of delay up to the maximum liquidated damages of US Dollars Six Hundred Thousand Dollars (US\$ 600,000/). The Parties acknowledge and agree that time is of the essence for achieving the Commercial Operations Date, and that it would be difficult or impossible as of the execution date of this Agreement to determine the amount of damages that would or might be incurred by the Purchaser as a result of the Seller's failure to perform those matters for which liquidated damages are provided under this Section 9.3.
- (c) From and after the Commercial Operations Date, if for any Agreement Year the sum of the Net Electrical Output and NPMV (in MWh) was less than the Degraded Output Threshold (in MWh), then for each kWh of shortfall that the sum was below the Degraded Output Threshold, up to one thousand megawatt hours (1000MWh) ("Shortfall Energy"), Seller shall pay to Purchaser as liquidated damages an amount equal to 50% of the Tariff per kWh of Shortfall Energy. The Seller shall pay the Shortfall Energy liquidated damages to the Purchaser within thirty (30) Days of an invoice being raised by the Purchaser showing the calculations for the Shortfall Energy liquidated damages.
- (d) The Parties agree that the amounts of liquidated damages provided under this Section 9.3 are in lieu of actual damages and are the Parties' reasonable and genuine estimates of the losses and damages that may reasonably be anticipated from such failure, and do not constitute a penalty.

- (e) If in any Agreement Year the sum of the Net Electrical Output and NPMV (in kWh) is less than ninety percent (90%) of the Degraded Output Threshold for that Agreement Year, then Seller shall be in Default of this Agreement under Section 16.1.

9.4 Billing

- (a) On or after the first (1st) Business Day of each Month following the Commercial Operations Date, the Seller shall submit to the Purchaser an invoice, complete in all respects, stated in Dollars, for the following:
 - (i) The payments due for Net Delivered Energy and Non-Project Missed Volume for the previous Month and specifying for the Month:
 - (A) the Tariff,
 - (B) the Net Delivered Energy (supported with relevant metering information in electronic form with summary information in hard copy),
 - (C) the Non-Project Missed Volume, if any (supported with relevant data and records, including data and records generated by the Facility Monitoring System and the Meteorological Station), and
 - (D) such other information and calculations, in reasonable detail, so as to enable the Purchaser to confirm that the calculation of the amount shown in the invoice complies with the provisions of this Agreement and Schedule 1;

The first invoice for energy payment after the Commercial Operations Date may include the invoice for the Net Delivered Energy delivered to Purchaser prior to the Commercial Operations Date;

- (ii) any Pass-Through Item amount due in respect of the previous Month in accordance with Schedule 1 (supported with relevant supporting information to confirm the amount due);
- (iii) any interest payable hereunder on an amount not paid by the Due and Payable Date, showing the calculation of such claimed interest in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice;
- (iv) Any Tax payable by the Seller on the generation, delivery, or sale of electricity from the Facility, or payable by either Party as withholding tax on any invoiced

amounts Seller is due for Net Delivered Energy, Non-Project Missed Volume, Pass-Through Items, and as a Supplemental Tariff; and

- (v) any Supplemental Tariff due in the previous Month (or part Month) in accordance with Schedule 1.
- (b) At any time after the first (1st) Business Day of each Month the Purchaser may submit to the Seller an invoice for:
- (i) Delivery of energy by the Purchaser to the Facility in the preceding Month at Purchaser's then-prevailing applicable tariff;
 - (ii) Any liquidated damages due to the Purchaser under Section 9.3 for the previous Month;
 - (iii) Any other liquidated damages due to the Purchaser under this Agreement; and
 - (iv) Any interest payable hereunder on an amount not paid by the Due and Payable Date, showing the calculation of such claimed interest in reasonable detail, together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.
- (c) Either Party may request clarification or substantiation of any amount included in an invoice submitted under Section 9.4(a) or 9.4(b) by delivering notice of such a request to the other Party. The Party receiving such request shall provide the requested clarification and substantiation of the invoice within five (5) Business Days of its receipt of the request.

9.5 Payment

- (a) Subject to Section 9.6:
- (i) the Purchaser shall pay the Seller the amount shown on an invoice delivered in accordance with Section 9.4(a), less a deduction for any Disputed amounts, on or before the thirtieth (30th) Day following the Day the invoice is received by the Purchaser; and
 - (ii) the Seller shall pay the Purchaser the amount shown on an invoice delivered in accordance with Section 9.4(b), less deductions for any Disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by the Seller

(in each case, the “**Due and Payable Date**”); provided, that if such Day is not a Business Day, the Due and Payable Date shall be the next following Business Day.

- (b) Each invoice delivered pursuant to this Article 9. shall be paid in immediately available Dollars
- (c) Each Party shall have the right to set off any amounts due and payable by it to the other Party under this Agreement against any and all amounts then due and payable to it by the other Party under this Agreement. Such rights of set-off shall relate only to undisputed amounts that are then due and payable to and by a Party, or amounts determined by an Expert or through arbitration under Article 18. to be payable.
- (d) Late payments by either Party of amounts due and payable under this Agreement shall bear interest at a rate per annum equal to the Delayed Payment Rate, prorated Daily.
- (e) Payments received by either Party shall be applied first against accrued interest, and then against undisputed outstanding invoices on the 'first in, first out' principle, so that the undisputed invoices outstanding the longest (in whole or in part) shall be paid first (after accrued interest).

9.6 Purchaser Payment Security

- (a) The Purchaser shall, within thirty (30) days of the execution of this Agreement, establish and maintain in effect for the remainder of the Term an Escrow Account, in the form of an irrevocable, revolving, stand-by letter of credit or similar facility reasonably acceptable to Seller, in the amount of One Million US Dollars (US\$1,000,000), which amount shall be maintained at all times except for the allowed period for replenishment following any valid Seller draw. The Escrow Account shall provide payment security for amounts due to Seller, and shall have an associated Escrow Agreement with an Escrow Agent, by which Purchaser shall maintain in effect an automatic replenishment mechanism for the Escrow Account from customer payments that are paid directly to the Escrow Agent by Purchaser's customers in the normal course of business. The Escrow Agent shall be a licensed bank in Afghanistan that is authorized to receive payments due for electricity services from Purchaser, and that each month for the then-prior six (6) months has received on average at least the equivalent of [redacted] US Dollars (US\$ [figures]) for electricity services on behalf of Purchaser. [Note: Figure to be inserted before execution to equal three (3) times the amount Purchaser would owe to Seller each month for Net Electrical Output and NPMV, on average, during an Agreement Year, calculated as the product of the Tariff multiplied by the Degraded Output Threshold (in kWh), or $3/12 * \text{Tariff} * 19,500,000\text{kWh}$.]
- (b) If any invoice raised by the Seller is not paid in full for the undisputed amount by the Due and Payable Date for that invoice, then no earlier than the second (2d) Business Day after that Due and Payable Date, provided the amount is still not paid in full by that Day, the Seller shall have the right to claim the unpaid amount from the Escrow Account and Purchaser acknowledges that the full unpaid amount shall be payable to Seller upon presentation of the

- claim to the Escrow Agent in a prescribed format by an officer of the Seller as may be authorized by the Seller. Seller shall give notice to Purchaser of any draw made on the Escrow Account, providing the particulars of the draw as to date and time, and amount, and including a copy of the claim presented to the Escrow Agent.
- (c) For any draw under the Escrow Account by the Seller on account of non-payment of an invoice by the Purchaser, the Purchaser must promptly, and in any case within ten (10) Business Days of receipt of the notice from Seller that it has made the draw, replenish the Escrow Account to the full required amount.
 - (d) All costs relating to opening and annual management fees in respect of the Escrow Account, including commitment and issuance, shall be borne by the Purchaser.
 - (e) In the event that the Seller draws against the Escrow Account provided by the Purchaser and it is subsequently determined that the Seller was not entitled to do so, then the Seller shall repay such amount to the Purchaser, together with all costs and expenses incurred by the Purchaser in connection with such drawing.

9.7 Payment Disputes

- (a) At any time within one hundred and eighty (180) Days after receipt of an invoice, a Party may serve notice on the other Party that the amount of such invoice (or part thereof) is in Dispute. Any notice of an invoice Dispute shall specify the invoice concerned and the amount in dispute, providing reasons as complete and detailed as reasonably possible. A Party shall be entitled to submit any Dispute relating to an invoice to dispute resolution in accordance with Article 18.
- (b) Upon resolution of the Dispute under Article 18 any amounts disputed and not paid but determined to be owed by a Party, or any amounts paid and determined not to be owed, shall be paid or repaid to the other Party (or offset as provided in Section 9.5 against any other outstanding invoice at that time), as the case may be, within seven (7) Business Days after such resolution.

9.8 Supporting Data

- (a) The Seller shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of all invoiced amounts to Purchaser, and any other claims for payment or recovery of costs or expenses paid by the Seller, under this Agreement. All such records and data shall be maintained for a period of not less than thirty-six (36) Months following the date on which Seller submitted the relevant invoice or claim for payment to the Purchaser.

- (b) The Purchaser shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of all invoiced amounts to Seller, and any other claims for payment or recovery of costs or expenses paid by the Purchaser, under this Agreement. All such records and data shall be maintained for a period of not less than thirty-six (36) Months following the date on which Purchaser submitted the relevant invoice or claim for payment to the Seller.

10. LIABILITY

Except as required by Section 11.1, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages. The Parties agree that any liquidated damages expressly required to be payable by either Party under this Agreement are not indirect, consequential, incidental, punitive or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other under the Laws of Afghanistan, with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement.

11. INDEMNIFICATION

11.1 Indemnification

- (a) The Purchaser. Except if specifically otherwise provided elsewhere in this Agreement, the Purchaser shall, at all times after the date hereof, indemnify and defend the Seller, for itself and as trustee for its officers, directors and employees against, and hold the Seller, its officers, directors and employees harmless from, any and all Loss incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Seller, its officers, directors and employees, for personal injury or death to persons or damage to property arising out of the Purchaser's negligent or intentional act or omission in connection with this Agreement. Notwithstanding anything to the contrary in the preceding sentence, nothing in this Section 11.1 shall apply to any Loss in respect of and to the extent to which the Seller receives proceeds from insurance policies or indemnification from another party.
- (b) The Seller. Except if specifically otherwise provided elsewhere in this Agreement, the Seller shall, at all times after the date hereof, indemnify and defend the Purchaser, for itself and as trustee for its officers, directors and employees against, and hold the Purchaser, its officers, directors and employees harmless from, any and all Loss, incurred, suffered, sustained or

required to be paid, directly or indirectly, by, or sought to be imposed upon, the Purchaser, its officers, directors and employees, for personal injury or death to persons or damage to property arising out of the Seller's negligent or intentional act or omission in connection with this Agreement. Notwithstanding anything to the contrary in the preceding sentence, nothing in this Section 11.1(b) shall apply to any Loss in respect of and to the extent to which the Purchaser receives proceeds from insurance policies or indemnification from another party.

(c) Joint Negligence. In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

(d) Survival. The provisions of this Section 11.1 shall survive for a period of five (5) years following termination of this Agreement.

11.2 Assertion of Claims to Exceed Minimum Indemnification Amount

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement, until all Losses of such Party, in the aggregate, during the then-current Agreement Year, exceed the Minimum Indemnification Amount. For purposes of this Section 11.2, a Loss (or claim for indemnification) shall be deemed to arise in the Agreement Year in which the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one Agreement Year, in the Agreement Year such event ends.

11.3 Indemnification for Fines and Penalties

Any fines or other penalties incurred by a Party for non-compliance with the applicable Laws of Afghanistan, unless they result directly from an act or omission of the other Party (in which case, they shall be reimbursed by the other Party), shall not be reimbursed by the other Party but shall be the sole responsibility of the non-complying Party.

11.4 Defence of Claims

(a) The indemnifying Party, at its option and expense and with counsel of its selection, shall be entitled to assume and control the defence of any claim, action, suit or proceeding within the ambit of Section 11.1, subject to the indemnified Party's prior written approval; provided, however, it gives prompt notice to the indemnified Party of its intention so, to do, and reimburses the indemnified Party for reasonable costs and expenses incurred by the indemnified Party prior to assumption by the indemnifying Party of such defence.

(b) Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with Section 11.4(a), the indemnified Party shall have the right, but

- not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party, alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and the reasonable costs and expense thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.
- (c) Upon assumption by the indemnifying Party of the control of the defence of a claim, suit, action or proceeding in accordance with this Section 11.4(a), the indemnifying Party shall reimburse the indemnified Party for reasonable costs and expenses of the indemnified Party in the defence of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgment of the indemnification and assumption of the defence.
 - (d) Neither Party shall be entitled to settle or compromise any such claim, action, suit, or proceeding without the other Party's prior written consent; provided, however, that after agreeing in writing to indemnify the indemnified Party as per Section 11.4(a) and Section 11.4(b), the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party.
 - (e) Following acknowledgment of the indemnification and assumption of defence by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless (i) the employment of counsel by such indemnified Party has been authorized in writing by the indemnifying Party, (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action, (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party, or (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. In the event that clauses (ii), (iii) or (iv) of the preceding sentence are applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees of and disbursements to such counsel shall constitute legal or other expenses hereunder chargeable to and payable by the indemnifying Party.

11.5 Notice of Claims

Each Party shall promptly notify the other Party of any Loss, claim, proceeding or other matter in respect of which it is or may be entitled to indemnification under this Article 11. Such notice shall

be provided as soon as reasonably practicable after the relevant Party becomes aware of such Loss, claim, proceeding or other matter.

12. INSURANCE

12.1 Maintenance of Insurance Policies

(a) Subject to the provisions of this Article 12 and subject to the provisions of Section 9.2 and Schedule 1 and the recovery of “Pass-Through Items” therein, the Seller, at its sole cost and expense, shall obtain and maintain, or cause to be obtained and maintained, during the Term the policies of insurance set forth in Schedule 7 in amounts not less than the amounts set forth therein and during the periods mentioned therein, with a financially sound insurer or insurers; provided, however, that the amounts of such insurance may be less than amounts specified in Schedule 7 from time to time with the prior written consent of the Purchaser; provided, further, that the Seller shall not be in breach of its obligations hereunder if and to the extent that:

- (i) any particular insurance is not available to it under commercially reasonable terms and for commercially reasonable rates for reasons other than any negligence or default by, or condition (financial or otherwise) of, the Seller; or
- (ii) the Seller is unable to obtain (having exercised all reasonable efforts) any endorsements or written acknowledgements required under this Agreement.

(b) Following a Afghanistan Political Event to the extent that the insurance required by Section 12.1(a) is not available to the Seller at commercially reasonable rates due to the occurrence of a Afghanistan Political Event, upon notice to the Purchaser by the Seller, the additional cost of such insurance attributable to the occurrence of the Afghanistan Political Event (that, in case of a Dispute, may be determined by an Expert in accordance with Section 18.2, shall be recoverable by the Seller from the Purchaser and shall be treated as a Pass-Through Item.

12.2 Maintenance of “Occurrence” Form Policies

Coverage required under Section 12.1 and any “umbrella” or excess coverage shall be “occurrence” form policies. In the event the Seller intends to purchase “claims-made” form coverage, the Seller must obtain prior approval of all “claims-made” policies from the Purchaser.

12.3 Policy Endorsements

(a) The Seller shall cause the insurers to provide the following endorsement items in the commercial general liability, fire and perils, and machinery breakdown policies and, if

applicable, umbrella or excess liability policies relating to the ownership, construction, operation and maintenance of the Facility provided pursuant to Section 12.1:

- (i) The Purchaser, its directors, officers and employees shall be additional insureds under such policies with respect to claims arising out of or in connection with this Agreement;
- (ii) The insurance shall be primary with respect to the interest of the Purchaser, its directors, officers and employees, and any other insurance maintained by them is excess and not contributory with such policies;
- (iii) The following separation of interests clause shall be made an integral clause of the policy:

“In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance.”;
- (iv) The insurer shall waive all rights of subrogation against the Purchaser, its officers, directors and employees; and
- (v) Notwithstanding any provision of the policy, the policy may not be cancelled or allowed to lapse without the insurer endeavouring to give thirty (30) Days prior written notice to the Purchaser except in the case of non-payment, in which case the prior written notice to the Purchaser shall be ten (10) Days. All other terms and conditions of the policy shall remain unchanged.

12.4 Certificates of Insurance

The Seller shall cause its insurers or agents to provide the Purchaser with certificates of insurance evidencing the policies and endorsements listed in Section 12.3. Failure by the Seller to obtain the insurance coverage or certificates of insurance required by this Article 12 shall not in any way relieve or limit the Seller’s obligations and liabilities under any provision of this Agreement.

12.5 Insurance Reports

The Seller shall provide the Purchaser with copies of any underwriters’ reports or other reports received by the Seller from any insurer; provided that the Purchaser shall not disclose such reports to any other person except as necessary in implementation of this Agreement, or as may

be required by any Public Sector Entity having jurisdiction over the Purchaser and shall use and internally distribute such reports only as necessary in implementation of this Agreement.

13. REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1 Representations and Warranties of the Seller

The Seller hereby represents and warrants to the Purchaser that:

- (a) The Seller is a [public/private] limited company, duly organized, validly existing, and in good standing under the Laws of Afghanistan, and has complied fully with all requirements of the applicable Laws of Afghanistan.
- (b) The Seller has full corporate power and authority to execute and deliver this Agreement, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement. Execution, delivery, and performance of this Agreement by the Seller:
 - (i) has been duly authorized by all requisite corporate action on the part of the Seller, and no other proceedings on the part of the Seller or any other Person are necessary for such authorization; and
 - (ii) will not:
 - (A) violate either the Laws of Afghanistan or any applicable order of any Public Sector Entity; or any provision of the Memorandum and Articles of Association of the Seller; or
 - (B) violate, be in conflict with, result in a breach of, or constitute a default under, any indenture, agreement for borrowed money, bond, note, instrument, or other agreement to which the Seller is a Party or by which the Seller or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition, or results of operation of the Seller or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid, and binding obligation of the Purchaser, this Agreement constitutes a legal, valid, and binding obligation of the Seller, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights.

- (d) To the best of its knowledge after reasonable inquiry, except for the Seller Consents, no filing or registration with, no notice to, and no permit, authorization, Consent, or approval of, any Person is required for the execution, delivery, or performance of this Agreement by the Seller.
- (e) The Seller is not in default under any agreement or instrument of any nature whatsoever to which it is a Party or by which it is bound, in any manner that would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.
- (f) There is no action, suit, proceeding, or investigation pending or, to the Seller's knowledge, threatened (i) for dissolution of the Seller; or (ii) against the Seller, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.

13.2 Certificates

Upon request by the Purchaser from time to time, the Seller shall, deliver or cause to be delivered to the Purchaser, certifications of its officers, accountants, engineers, and agents as to the performance of its obligations under this Agreement, including a certificate by the Engineer regarding compliance of the Facility with the provisions of this Agreement and the Environmental Standards, and as to such other matters as the Purchaser may reasonably request.

13.3 Representations and Warranties of Purchaser

The Purchaser hereby represents and warrants that:

- (a) It is duly incorporated under the Laws of Afghanistan, and has, so far as it is material to the Seller, complied fully with all applicable Laws of Afghanistan.
- (b) The Purchaser has full corporate power and authority to execute and deliver this Agreement, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement. Execution, delivery and performance of this Agreement by the Purchaser:
 - (i) has been duly authorized by all requisite corporate action on the part of the Purchaser, and no other proceedings on the part of the Purchaser or any other Person are necessary for such authorization, and
 - (ii) will not:
 - (A) violate either the Laws of Afghanistan or any applicable order of any Public Sector Entity or any provision of its incorporating documents, or

- (B) violate, be in conflict with, result in a breach of, or constitute a default under any indenture, agreement for borrowed money, bond, note, instrument, or other agreement to which the Purchaser is a Party or by which the Purchaser or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition, or results of operation of the Purchaser or on its ability to perform its obligations hereunder.
- (c) Assuming it constitutes a legal, valid, and binding obligation of the Seller, this Agreement constitutes a legal, valid, and binding obligation of the Purchaser, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights.
- (d) To the best of its knowledge after reasonable inquiry, except for approvals already obtained, no filing or registration with, no notice to, and no permit, authorization, Consent, or approval of, any Person is required for the execution, delivery, or performance of this Agreement by the Purchaser.
- (e) The Purchaser is not in default under any agreement or instrument of any nature whatsoever to which it is a Party or by which it is bound, in any manner that would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.
- (f) There is no action, suit, proceeding or investigation pending or, to the Purchaser's knowledge, threatened (i) for dissolution of the Purchaser; or (ii) against the Purchaser, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.

14. TAXES

14.1 Taxes Applicable to the Seller

Subject to Section 14.3 and Section 14.4, all present and future central, provincial, municipal or other lawful Taxes applicable to the Seller, the Facility, the Project and the Seller's other assets, shall be paid by the Seller as and when required under the Laws of Afghanistan. Nothing herein shall limit or restrict the provisions of Section 14.4 or Schedule 1, which allow the Seller to recover from the Purchaser, certain Taxes paid by it as provided therein.

14.2 Taxes Applicable to Purchaser

All present and future central, provincial, municipal, or other lawful Taxes applicable to the

Purchaser arising from or in connection with its rights and obligations under this Agreement, shall be paid by the Purchaser as and when required under the Laws of Afghanistan.

14.3 Notice of Changes in Tax

(a) If a Change in Tax occurs or if the Purchaser or the Seller demonstrates that a Change in Tax has occurred that

- (i) applies to the Facility or to the Purchaser's payments to the Seller, of amounts due and payable under this Agreement; and
- (ii) causes the Seller to (A) incur any Tax Costs, (B) realize any Tax Savings, or (C) become subject to any variation in the rate of withholding Tax payable by the Seller, in each case in respect of the Project,

then, either Party may provide the other Party written notice of such Change in Tax (a "**Change in Tax Notice**"), with reasonable details of the circumstances specified in clause (i) and clause (ii) above. The Seller or the Purchaser shall give the other Party notice within thirty (30) Days of becoming aware of a Change in Tax resulting in a Tax Saving or a Tax Cost.

(b) No later than forty-five (45) Days from the date of delivery of a Change in Tax Notice, the Seller shall provide the Purchaser with a detailed written calculation of the relevant Tax Costs or Tax Savings or effects of the withholding Taxes resulting from the Change in Tax, accompanied by a statement from an international accounting firm or other reputable and qualified professional consultant certifying that the Seller will incur, realize, or become subject to such additional Tax Costs or Tax Savings or variation in withholding Tax in relation to the Project (a "Change in Tax Assessment").

(c) Either Party may from time to time deliver to the other Party further Change in Tax Notices, and within forty-five (45) Days of delivery of a Change in Tax Notice, the Seller shall provide the Purchaser with a detailed written calculation of any additional Tax Cost or Tax Saving in relation to the Project that has resulted, or can reasonably be expected to result, from any such Change in Tax.

(d) Neither Party may request reimbursement for any Tax Cost or Tax Saving that arises due to a Change in Tax unless it delivers a Change in Tax Notice on or before the fifth (5th) anniversary of the Day on which the Change in Tax occurs.

14.4 Consequences for Tax Costs or Tax Savings

(a) With effect from the date on which the Change in Tax occurs:

- (i) The Purchaser shall reimburse the Seller for any Tax Costs or any increase in withholding Tax incurred or suffered by the Seller, as Pass-Through Items, calculated in accordance with Section 9.2; or
 - (ii) The Seller shall reimburse the Purchaser for any Tax Savings or any decrease in withholding Tax realized by the Seller.
- (b) Any Dispute as to the amount of the Tax Costs or Tax Savings resulting from a Change in Tax or the amount of the Pass-Through Items or set-off against the energy payment as per Schedule 1 shall be resolved in accordance with Article 17.

14.5 Disputed Taxes

In the event that the Seller or the Purchaser intends to dispute any Change in Tax, it shall provide to the other Party notice of its intention to pursue such dispute. Following delivery of such notice of intention to dispute a Change in Tax, the Party raising the dispute shall, within forty-five (45) Days of the delivery of such notice, prepare and deliver to the other Party a written report in reasonable detail describing the Change in Tax, its likely effects on the energy price and the merits and probability of success in the proposed dispute. Within thirty (30) Days of receipt of such report, the Parties shall meet and determine whether the dispute of the relevant Change in Tax should be pursued by the Party raising the dispute. If so agreed, the Party raising the dispute shall diligently prosecute such dispute. Any costs and expenses reasonably incurred by the Seller in disputing any Change in Tax that the Parties have agreed to dispute in accordance with this Section 14.5, shall be reimbursed by the Purchaser. Nothing in this Section 14.5 shall preclude the Seller from disputing, at its sole cost and expense, any Tax or Change in Tax applicable to it or from delivering a Change in Tax Notice to the Purchaser.

15. FORCE MAJEURE

15.1 Definition of Force Majeure

A force majeure event shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the Effective Date, materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Agreement (including a Party's ability to deliver or receive energy from the Facility); provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes such acts and activities to protect the Facility from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Force

majeure events in this Agreement shall comprise two classes of events (including the effects thereof) as provided below, but only to the extent that each satisfies the above requirements:

(a) Each of the following events shall be deemed an “**Afghanistan Political Event**”) to the extent that it occurs inside or directly involves Afghanistan:

- (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
- (ii) any Lapse of Consent that shall have existed for thirty (30) consecutive Days or more;
- (iii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide; or
- (iv) a Change in Law.

(b) Other events beyond the reasonable control of the affected Party (each a “Force Majeure Event”), including, but not limited to:

- (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado;
- (ii) any Lapse of Consent that shall have existed for less than thirty (30) consecutive Days;
- (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated and is not widespread or nationwide;
- (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a Afghanistan Political Event, in which case such event or circumstance shall constitute a Afghanistan Political Event); or
- (v) epidemic or plague.

(c) Force Majeure Events shall not include the following events or circumstances:

- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables;
- (ii) breakdown in machinery or equipment; or
- (iii) normal wear and tear or random flaws in materials, machinery or equipment;

provided, that each of the events described in clauses (c)(i), (ii) and (iii) shall constitute a Force Majeure Event to the extent that such events or circumstances are the direct result of an event or circumstance that is itself a Force Majeure Event experienced directly by the Seller.

15.2 Notification Obligations

- (a) If by reason of a Force Majeure Event a Party is wholly or partially unable to perform its obligations under this Agreement, the affected Party shall:
- (i) provide the other Party notice of the Force Majeure Event as soon as practicable but, in any event, no later than the later of, forty-eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event or six (6) hours after the resumption of any means of providing notice between the Seller and the Purchaser, and
 - (ii) provide the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, an estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable but, in any event, no later than seven (7) Days after initial notice of the occurrence of the Force Majeure Event is given by the affected Party pursuant to Section 15.2(a)(i).
- (b) When appropriate, or when reasonably requested by the other Party so to do, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event and its cause and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effects thereof, as well as estimates, to the extent practicable, of the time that the affected Party reasonably expects to be unable to perform any of its affected obligations due to the Force Majeure Event.
- (c) The affected Party shall provide notices to the other Party of (i) the cessation of the Force Majeure Event notified under Section 15.2(a) together with an estimate of the date on which it will be able to recommence performance of its obligations under this Agreement; and (ii) the date it recommenced or will recommence performance of its obligations under this Agreement, including, following the occurrence of the Commercial Operations Date, the date on which the delivery of Net Delivered Energy will resume (if such delivery had been curtailed) as soon as possible and, in any event, no later than forty-eight (48) hours after the occurrence of each of the events mentioned in clause (i) and clause (ii), above.

- (d) Failure by the affected Party to have provided written notice of a Force Majeure Event to the other Party within the six (6) hour period or forty eight (48) hour period stipulated in Section 15.2(a), shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case, the affected Party shall not be excused pursuant to Section 15.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If the aforesaid notice is provided within the forty-eight (48) hour period or six (6) hour period stipulated in Section 15.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 15.4 from the date of commencement of the relevant Force Majeure Event.

15.3 Duty to Mitigate

The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event, including, but not limited to, the payment of reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures.

15.4 Delay Caused by Force Majeure

- (a) So long as the affected Party has, at all times since the occurrence of the Force Majeure Event, complied with the obligations of Section 15.3 and continues so to comply, then:

- (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make payment) under or pursuant to this Agreement during the existence of a Force Majeure event; and
- (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended;

provided, however, that no relief, including the extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 15.4 to the extent that such failure or delay would, nevertheless, have been experienced by the affected Party had the Force Majeure Event not occurred;

provided, further, that, in the case of a Force Majeure Event which damages the Facility, in no event shall the date by which performance obligations of the affected Party in effecting the Restoration are to be satisfied, as provided under this Agreement be extended beyond the end of the Restoration Period.

- (b) Other than for breaches of this Agreement by the other Party, and without prejudice to the affected Party's rights to indemnification pursuant to Article 11 or for payment pursuant to Article 9, Section 15.5, Section 15.6, and Section 15.7, the other Party shall not bear any liability for any Loss suffered by the affected Party as a result of a Force Majeure Event.

15.5 Payment During Force Majeure Event

Upon occurrence of any Force Majeure Event after the Commercial Operations Date, then during pendency of such Force Majeure Event, the Purchaser shall pay to the Seller energy payments for Net Delivered Energy that the Seller provides during the pendency of such Force Majeure Event.

15.6 Restoration following Afghanistan Political Event

- (a) In the event that following the Commercial Operations Date an Afghanistan Political Event results in material damage to the Facility, or that the Seller's compliance with a Change in Law requires material modification or material capital addition to the Facility (each such event referred to herein as a "**Restoration**"), the Seller shall promptly following, and in any event within thirty (30) Days after onset of the Afghanistan Political Event, develop and deliver to the Purchaser a written estimate of:
- (i) the cost to effect a Restoration, less any insurance proceeds available or likely to become available to the Seller (the "Restoration Cost Estimate"); and
 - (ii) a schedule for the activities required to complete Restoration, including, if the Restoration Cost Estimate is greater than the Threshold Amount, a reasonable period to arrange financing of the Restoration (the "Restoration Schedule"), which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration (the "Restoration Period").
- (b) If the Restoration Cost Estimate is less than the Threshold Amount and the Purchaser, within fifteen (15) Days of its receipt of the Restoration Cost Estimate, agrees with the Restoration Cost Estimate and with the Restoration Schedule, then the Seller shall proceed with the Restoration in accordance with the Restoration Schedule.
- (c) If the Purchaser disagrees with the Restoration Cost Estimate and/or disagrees with the Restoration Schedule, then the Restoration Cost Estimate and the Restoration Schedule shall be referred to an Expert (chosen pursuant to the procedures set forth in Section 15.6(a) for review, and the Expert shall provide an opinions on whether restoration is feasible or economically justified, the Restoration Cost Estimate, and the Restoration Schedule (a "Report") within twenty (20) Days of appointment, or as soon thereafter as reasonably possible.
- (d) Within fifteen (15) Days of the Expert's delivery of the Report to both Parties, the Parties shall meet to discuss the Report and any action(s) to be taken. At the conclusion of the meeting to discuss the Report the Parties shall either agree or disagree with respect to the matters addressed therein.
- (i) If the Parties reach agreement on a Restoration Cost Estimate and Restoration

Schedule, then the Seller shall proceed with the Restoration.

- (ii) If the Parties do not reach agreement on a Restoration Cost Estimate and Restoration Schedule, then the Seller may terminate this Agreement and deliver the Facility to the Purchaser, and Seller shall pay the compensation provided for such event in Schedule 11.
- (e) Following agreement by the Parties on any Restoration Cost Estimate that is in excess of the Threshold Amount the Seller shall proceed in good faith to try to secure financing, as debt and/or equity, for the cost of Restoration on terms satisfactory to the Purchaser.
- (i) If Seller secures financing reasonably acceptable to Purchaser, then the Seller shall proceed with the Restoration in accordance with the agreed Restoration Schedule.
 - (ii) If the Seller is unable to obtain binding commitments for financing the Restoration within ninety (90) Days of agreement on the Restoration Cost Estimate, then unless the Purchaser commits to provide financing for the Restoration within the next thirty (30) Days and provides such funds to the Seller within sixty (60) Days thereafter, the failure to secure financing shall be treated as a failure to agree on a Restoration Cost Estimate under Section 15.6(a).
- (f) During any Afghanistan Political Event Compensation Period, the Purchaser shall pay to the Seller for each Month (pro-rated for a partial Month) compensation equal to the Tariff multiplied by the Monthly proportion (i.e., 1/12th) of the Degraded Output Threshold applicable to the Agreement Year in effect at the start of the Afghanistan Political Event.

15.7 Supplemental Tariffs

Upon the successful completion of a Restoration following an Afghanistan Political Event Seller shall deliver to the Purchaser a summary of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work. Seller shall then be entitled to receive Supplemental Tariffs in accordance with the Schedule 1. The Supplemental Tariffs may be in fixed Monthly amounts or as an adjustment to the Tariff, but shall be calculated to allow Seller a reasonable opportunity to recover, over the remainder of the Term (unless a shorter period for recovery of such costs is agreed by the Parties), Seller's demonstrated costs incurred in effecting the Restoration (in excess of any insurance proceeds), including a reasonable return on investment for any equity financing approved by Purchaser, and the actual costs of any debt financing approved by Purchaser; provided, however, that each such item of cost shall have been reasonable and appropriate to effect the Restoration consistent with the standards for the original construction and Prudent Utility Practices.

16. DEFAULT AND TERMINATION

16.1 Seller Events of Default

The following events shall be events of default by the Seller (each a “**Seller Event of Default**”); provided, however, that no such event shall be a Seller Event of Default if it is caused in whole or material part by (i) a breach of or default under this Agreement by the Purchaser, (ii) a breach of or default under the Site Lease by the Purchaser or (iv) a Force Majeure Event (except for a failure to pay an amount owed, in the case of Section 16(c):

(a) The Seller’s failure:

- (i) to achieve the Construction Start within five (5) Business Days following Financial Closing;
- (ii) to achieve the Commercial Operations Date not later than sixty (60) Days after the Required Commercial Operations Date; or
- (iii) following the Commercial Operations Date, to deliver in any Agreement Year Net Delivered Energy and NPMV in an amount less than eighteen thousand five hundred megawatt hours (18,500MWh).

(b) Following the Commercial Operations Date, an Abandonment without the Purchaser’s prior written consent that continues for thirty (30) consecutive Days; provided, however, the an Abandonment shall not be deemed to be in effect so long as Seller is using all reasonable efforts to regain control of the Facility or reinstate its commercial operations.

(c) The Seller’s failure:

- (i) to pay any undisputed (or following the resolution of a Dispute in favour of the Purchaser) amount due from it under the provisions of Section 9.4 by the Due and Payable Date for the relevant amount, or to make any other payment when required to be made, in each case, that is not remedied within five (5) Business Days following the Purchaser’s notice to the Seller, stating that a payment default has occurred and is continuing and describing the payment default in reasonable detail; or
- (ii) to post and, thereafter, to maintain security in the amount required under Section 2.6 as required to be maintained by the Seller under this Agreement.

(d) A breach by the Seller of its obligations under Section 19.9.

- (e) Except for the purpose of an amalgamation or reconstruction that does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events:
- (i) any proceeding being validly instituted under the Laws of Afghanistan for the dissolution of the Seller that is not stayed or suspended within ninety (90) Days, _or unless, within seven (7) days of the Seller becoming aware of such proceedings being filed, the Seller:
 - (A) confirms to the Purchaser that such proceedings relate to the recovery of a claim against the Seller that is disputed *bona fide* by the Seller as payable, and
 - (B) furnishes a certificate by its external auditors to the effect that the Seller is and will remain solvent despite the payment of the claim (if required) that is the subject of the insolvency proceedings;
 - (ii) any voluntary filing by the Seller of a winding-up petition, or a request for a moratorium on debt payments, or other similar relief; or
 - (iii) the making, by a court with jurisdiction over the Seller, of an order for dissolution or winding-up the Seller, which order is not stayed or reversed by a court of competent jurisdiction within ninety (90) Days.
- (f) Any material statement, representation, or warranty made by the Seller in this Agreement proving to have been incorrect in any material respect when made or when reaffirmed, and such incorrect statement, representation, or warranty having a material adverse effect on the Seller's ability to perform its obligations under this Agreement or having a material adverse effect on the Purchaser's rights or obligations under this Agreement.
- (g) The Seller's material breach or material default under or of this Agreement (other than any breach or default referred to in other sub-sections of this Section 16.1), including any material breach or default in the performance of its obligation to act in accordance with Prudent Utility Practices, which is not remedied within thirty (30) Days after the Purchaser's notice to the Seller stating that a material breach or default under or of this Agreement has occurred and is continuing, and identifying the material breach or default in reasonable detail.
- (h) Any irrevocable, un-appealable, and final order for revocation or termination of the Generation License (other than as a result of a Lapse of Consent).
- (i) The exercise by the Lenders of their remedies under the Financing Documents with respect to either the Facility assets or any pledged share capital such that either the Seller or its management are removed by the Lenders from control of the Facility.

- (j) Termination of the Site Lease or the USAID Contract resulting from the Seller's material breach thereof or default thereunder.
- (k) The transfer, conveyance, loss, or relinquishment of the Seller's right to own or operate the Facility or any material part thereof, to any Person (other than to the Purchaser pursuant to this Agreement or to the Lenders exercising their rights under the Financing Documents), or failure to retain possession of the Site, without the prior written approval of the Purchaser.

16.2 Purchaser Events of Default

The following events shall be events of default by the Purchaser (each a "**Purchaser Event of Default**"); provided, however, that no such event shall be a Purchaser Event of Default if it is caused by (i) the Seller's breach or default under or of this Agreement or the Site Lease or (ii) a Force Majeure Event:

- (a) A breach by the Purchaser of its obligations under Section 19.9:
- (b) Failure to pay any undisputed (or following the resolution of such dispute in favour of the Seller) amount due from it under the provisions of Section 9.4 of this Agreement by the Due and Payable Date for the relevant amount, or to make any other payment when required to be made, that, in each case, is not remedied within five (5) Business Days following the Seller's notice to the Purchaser stating that a payment default has occurred and is continuing, and describing such payment default in reasonable detail; provided, however, that Purchaser's failure to pay any undisputed amount shall not become a Purchaser Event of Default so long as the Escrow facility is in place, and the Escrow Account has sufficient available funds to pay the undisputed amount.
- (c) Failure to maintain the Escrow facility in place, or, following any draw on the Escrow Account by Seller for an undisputed amount not paid by the Due and Payable Date for the relevant amount, failure to reinstate the Escrow Account balance to the required amount, in either case within ten (10) Business Days of Seller's notice to the Purchaser that the Escrow was either not in place or that Seller made a draw on the Escrow. Except for the purpose of an amalgamation or restructuring that does not affect the ability of the amalgamated or restructured entity, as the case may be, to perform its obligations under this Agreement, the occurrence of any of the following events:
 - (i) any proceeding being validly instituted under the Laws of Afghanistan for the dissolution of the Purchaser that is not stayed or suspended within ninety (90) Days; unless within seven (7) days of the Purchaser becoming aware of such proceedings being filed, the Purchaser:
 - (A) confirms to the Seller that such proceedings relate to the recovery of a claim against the Purchaser that is disputed *bona fide* by the Purchaser as payable, and

- (B) furnishes a certificate by its external auditors to the effect that the Purchaser is and will remain solvent despite any payment of the claim (if required) that is the subject of the insolvency proceedings;
 - (ii) any voluntary filing by the Purchaser of a winding-up petition; or
 - (iii) the making by a court with jurisdiction over the Purchaser of an order winding-up the Purchaser that is not stayed or reversed by a court of competent jurisdiction within ninety (90) Days.
- (d) Any material statement, representation, or warranty made by the Purchaser in this Agreement proving to have been incorrect in any material respect when made or when reaffirmed, and such incorrect statement, representation, or warranty having a material adverse effect on the Purchaser's ability to perform its obligations under this Agreement or having a material adverse effect on the Seller's rights or obligations hereunder.
- (e) Any material breach or material default by the Purchaser of this Agreement (other than any breach or default referred to in the other sub-sections of this Section 16.2) that is not remedied within thirty (30) Days after notice from the Seller to the Purchaser stating that a material breach or default has occurred under this Agreement and is continuing, and identifying the material breach or default in reasonable detail.
- (f) Any Change in Law rendering:
- (i) any material undertaking or obligation of the Purchaser under this Agreement unenforceable, invalid, or void; or
 - (ii) it unlawful for the Seller to make or receive any payment, to perform any obligation or to enjoy or to enforce any material right or material benefit under this Agreement,

where in the case of clause (i) or clause (ii) above, the effect continues for more than ninety (90) Days.

16.3 Termination Notice

If any Seller Event of Default or Purchaser Event of Default, as the case may be, occurs and is continuing, the non-defaulting Party may deliver a notice ("**Termination Notice**") to the defaulting Party which notice shall specify in reasonable detail the Seller Event of Default or the Purchaser Event of Default, as the case may be, giving rise to the Notice of Termination. This Agreement shall terminate on the date specified in the Termination Notice, which date shall not be earlier than the date on which the Termination Notice is delivered to the other Party or later

than thirty (30) Days following the date of such delivery. Upon any termination of this Agreement pursuant to this Section 16.3 the provisions of Article 17 shall apply.

16.4 Obligations upon Termination

- (a) Upon expiration or termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for those obligations and liabilities that:
 - (i) Arose prior to such expiration or termination, and
 - (ii) Expressly survive such termination, including without limitation, the obligation to pay amounts due; and
 - (iii) Arise under the provisions of Section 5.8 (Maintenance of Operating Records), Section 9.7 (Payment Disputes), this Article 16, Article 1 (Definitions; Interpretation), Section 2.2 (Term; Post Term Arrangements), Article 10 (Liability), Article 11 (Indemnification), Section 15.6, Article 17 (Compensation Upon Certain Termination Events), Article 18 (Resolution of Disputes), and Article 19 (Miscellaneous Provisions).

16.5 Other Remedies

- (a) The exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or are available at law; provided, however, that no Party shall have a right to terminate or treat this Agreement as repudiated except in accordance with the provisions of this Agreement.
- (b) Notwithstanding any other provision of this Agreement, the Parties agree that, in the event the Seller terminates this Agreement as a result of a Purchaser Event of Default under this Agreement and the Seller receives from the GOA or from any insurance provider compensation for such default, then, upon receipt of such payment and termination of this Agreement, any claims by the Seller against or liability of the Purchaser under this Agreement (except as provided in this Section 16.5) shall be fully extinguished and the Seller shall have no further claim or recourse against the Purchaser under this Agreement.

17. COMPENSATION UPON CERTAIN TERMINATION EVENTS

17.1

- (a) Seller Event of Default. In the event the Purchaser terminates this Agreement at any time prior to the expiry of the Term, pursuant to Section 16.1 as a result of a Seller Event of Default, the Purchaser or its designee shall have the right, but shall not be required, to acquire

all of the Seller's rights, title and interests in and to the Facility; provided, however, that if the Purchaser elects to acquire the Facility, the Purchaser or its designee will acquire the Facility and simultaneously pay the Seller the Compensation Amount set forth in Schedule 10 (Compensation Amounts).

- (b) Purchaser Event of Default. In the event the Seller terminates this Agreement at any time prior to the expiry of the Term, pursuant to Section 16.2 as a result of a Purchaser Event of Default, the Seller may elect to transfer the Facility to the Purchaser or its designee and, in such event, the Facility shall be transferred to the Purchaser or its designee and the Purchaser or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Schedule 10 (Compensation Amounts).
- (c) Termination Following Afghanistan Political Event: If, following an Afghanistan Political Event affecting the Seller, the Purchaser terminates this Agreement at any time prior to the expiry of the Term, the Purchaser shall acquire all of the Seller's rights, title, and interests in and to the Facility; provided that upon Seller's transfer of the Facility to the Purchaser or its designee the Purchaser or its designee shall simultaneously pay the Seller the Compensation Amount set forth in Schedule 10 (Compensation Amounts)
- (d) Termination Following Force Majeure Event: If, following a Force Majeure Event affecting the Seller, the Seller does not restore the Facility and either Party terminates this Agreement at any time prior to the expiry of the Term, neither Party shall have the right, but shall not be prohibited, from transferring the Facility from the Seller to the Purchaser at such terms as the Parties may then agree.

18. RESOLUTION OF DISPUTES

18.1 Resolution by Parties

- (a) In the event that a Dispute arises, the Parties shall attempt in good faith to settle such Dispute by mutual discussions within thirty (30) Days after the date that the disputing Party delivers written notice of the Dispute to the other Party.
- (b) The Party alleging the existence of a Dispute shall give to the other Party written notice setting out the material particulars of the Dispute in the written notice delivered pursuant to Section 18.1(a). Representatives from each of the Purchaser and the Seller shall meet in Kabul to attempt in good faith to resolve the Dispute.
- (c) If the Dispute is not resolved within thirty (30) Days after the date of receipt of notice described in Section 18.1(a) by the relevant Party (or within such longer period of time as the

Parties may agree), then the provisions of Section 18.2 and Section 18.3 shall apply, as appropriate.

18.2 Determination by Expert

- (a) In the event that the Parties are unable to resolve a Dispute in accordance with Section 18.1 within the time periods set forth therein, then either Party, in accordance with this Section 18.2, may refer the Dispute to an expert (the “**Expert**”) for consideration of the Dispute and to obtain a determination from the Expert as to the resolution thereof. Notwithstanding the foregoing, either Party may require that any Dispute be referred for resolution to arbitration pursuant to Section 18.3 without first referring it to an Expert.
- (b) Subject to (a) above, the Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the person it proposes to be the Expert. The Expert may be an individual, partnership, association, or body corporate and shall be generally recognized as an expert in the field of expertise relevant to the Dispute, which is the subject matter of the determination. The Party shall nominate an Expert who does not have any conflicts-of-interest in the matter, provided, that any current or former employees of either Party shall be deemed to have a conflict-of-interest. Within fifteen (15) Days of receiving such notice, the other Party shall notify the initiating Party whether such person is acceptable, and if such nominated Expert is not acceptable to the responding Party, the responding Party shall propose a person to be the Expert. If the Party receiving such notice fails to respond or notifies the initiating Party that the person is not acceptable or nominates an Expert that is not acceptable to the initiating Party, the Parties shall meet within five (5) Business Days and discuss in good faith for a period of up to five (5) Days to agree upon a person to be the Expert. Failing nomination by the responding Party of an Expert within the period provided or failing such agreement by the Parties of the Expert, at the end of the meeting either Party may submit a request to the [International Chamber of Commerce in London] to nominate an Expert, and the nomination of the Expert by the [ICC] shall be binding on the Parties; provided, however, that unless the selecting entity be informed by consent of the Parties that the Expert may be a Afghanistan national, the Expert shall not be a national of the jurisdiction of either Party or of the jurisdiction of any investor or group of investors holding directly or beneficially more than five percent (5%) of a Party’s share capital, nor shall any such Expert be an employee or agent or former employee or agent or have a material interest in the business of any such Person.
- (c) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by concurrently submitting to both the Expert and the other Party, written materials setting forth:
 - (i) a description of the Dispute;

- (ii) a statement of the initiating Party's position, and whether a hearing is requested by such Party; and
 - (iii) copies of records supporting the initiating Party's position.
- (d) Within ten (10) Days of the date that a Party has submitted the materials described in Section 18.2(c), the other Party may submit to the Expert, with copies to the first Party:
 - (i) a description of the Dispute;
 - (ii) a statement of the responding Party's position and, if not already requested, whether a hearing is requested by the responding Party; and
 - (iii) copies of any records supporting the responding Party's position.

The Expert shall consider any such information submitted by the responding Party and may consider any additional information submitted by either Party at a later date but, in such event, the other Party shall be concurrently provided with such information and shall be allowed reasonable opportunity to respond thereto.

- (e) Each Party shall have access to the other Party's relevant records and be entitled to receive copies of the records submitted by the other Party.
- (f) Each Party shall designate one person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert. If a hearing is requested by either Party pursuant to Section 18.2(c)(ii) or (d)(ii), the Expert shall nominate a time and place for a hearing of the Parties on the Dispute.
- (g) The Expert shall provide a determination within fifteen (15) Business Days after the ten (10) Day response period provided in Section 18.2(d) has expired, or within such further time as is agreed in writing by the Parties. If the Expert's determination is given within such fifteen (15) Business Day period, as may be extended by the Parties, the Parties may review and discuss the determination with each other in good faith for a period of ten (10) Days following receipt of the Expert's determination before proceeding with any other actions.
- (h) The proceedings shall be without prejudice to either Party, and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.

- (i) Unless the Parties agree in writing at the time the Dispute is referred to the Expert stating that the decision of the Expert shall be binding, the determination of the Expert shall not be binding; provided, however, that if arbitration proceedings in accordance with Section 18.3 have not been commenced within seventy-five (75) Days from the date the Expert's determination was received by the Parties in accordance with Section 18.2(g) the Expert's determination shall be final and binding on the Parties, and any right of such Parties to resort to arbitral, judicial, or other proceedings in relation to the subject matter of the determination shall stand waived to the fullest extent permitted by law.
- (j) Subject to Section 18.2(i), if a Party does not accept the determination of the Expert with respect to the Dispute or if the Expert has not provided a determination within the time period specified in Section 18.2(g), either Party may initiate arbitration proceedings in accordance with Section 18.3.
- (k) The costs of engaging an Expert shall be borne equally by the Parties and each Party shall bear its costs in preparing materials for, and making presentations to, the Expert.
- (l) The failure of either Party to comply with the provisions and time periods set out in this Section 18.2 shall not prevent (i) the Expert from proceeding; and/or (ii) any Party from requesting that the Expert proceedings be terminated and the matter referred immediately to arbitration in accordance with Section 18.3.
- (m) Subject to Section 18.2(i) either Party may serve a written notice on the other Party within thirty (30) Days of the Expert's determination having been notified to it, stating its intention to refer the matter in Dispute to arbitration, provided that the notifying Party implements fully the determination of the Expert before commencing the procedure to refer the Dispute to arbitration and commences the procedure to refer the Dispute to arbitration within a further forty-five (45) Day period after serving such notice. Notwithstanding anything to the contrary expressed in this Article 18, either Party may require arbitration of a Dispute pursuant to Section 18.3 without reference to an Expert under this Section 18.2.

18.3 Arbitration

- (a) Any Dispute that has not been resolved following the procedures set forth in Section 18.1 (*Resolution by Parties*) and Section 18.2 (*Determination by Expert*), or has been required by a Party to be referred to arbitration without reference to an Expert, shall be settled under the Arbitration Rules of Dubai International Arbitration Center (DIAC) by three (3) arbitrators appointed in accordance with those Rules. The award of the arbitration duly constituted under this Section 18.3 shall be final and binding on the Parties, and any Party may apply to a court of competent jurisdiction for the enforcement of the award.

- (b) The arbitration shall be conducted in Dubai. Except as otherwise determined in arbitration, and except as hereinafter provided, each Party shall be responsible for its own costs incurred by it in connection with such arbitration.
- (c) No arbitrator appointed pursuant to this Section 18.3 shall be a national of the jurisdiction of either Party or of the jurisdiction of any investor that directly or beneficially owns five percent (5%) or more of the Party's share capital, nor shall any such arbitrator be an employee or agent or former employee or agent of the Purchaser, the Seller, the Lenders or any investor that directly or beneficially owns five percent (5%) or more of the Party's share capital.
- (d) [In relation to the Parties, or any parties claiming through the Parties, the provisions of Sections 18.3(a) and 18.3(b) hereinabove shall override and have effect, notwithstanding any arbitration clause or provision to the contrary or otherwise in any Bilateral Investment Treaty to which Afghanistan is or may become a party.]

18.4 Sovereign Immunity; Jurisdiction

- (a) The Purchaser unconditionally and irrevocably:
 - (i) waives any right of immunity that it or any of its assets now has or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (ii) generally consents to the jurisdiction of any court of competent jurisdiction for any action filed by the Seller to enforce any award or decision of any arbitrator duly appointed under this Agreement to resolve any Dispute between the Parties, including the making, enforcement, or execution against or in respect of any of its assets whatsoever, and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum, and agrees not to plead or claim the same. The Purchaser agrees that service of process in any such action or proceeding may be affected in any manner permitted by the law applicable to such court.
- (b) The Seller hereby unconditionally and irrevocably consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may hereafter acquire, of any court of competent jurisdiction for any action filed by the Purchaser to enforce any arbitral award or decision pursuant to arbitration conducted in accordance with Section 18.3. The Seller waives any objection it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 18.4(b), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and commits itself not to plead or claim the same. The Seller agrees that service of

process in any such action or proceeding may be affected in any manner permitted by the law applicable to the aforementioned court.

- (c) For avoidance of doubt, any dispute or difference between the Parties as to whether either Party has complied with the affirmations set out in this Section 18.4 shall be referred to for determination under Section 18.3 and shall fall within the definition of Dispute.

19. MISCELLANEOUS PROVISIONS

19.1 Notices

- (a) Except for any Despatch Instructions and communications between the Seller and Purchaser relating to Despatch of the Facility, all notices and other communications required or permitted to be given by a Party shall be in writing and either delivered personally or by courier or sent by facsimile or email to the address or number of the other Party specified below:

- (i) If to the Purchaser:

Attention:

Address:

Fax:

Email:

with a copy to:

Attention:

Address:

Fax:

Email:

and with a further copy to:

Attention:

Address:

Fax:

Email:

- (ii) If to the Seller:

Attention:

Address:

Fax:

Email:

provided, that a Party may change the address to which notices are to be sent to it by giving not less than thirty (30) Days prior written notice to the other Party in accordance with this Section 19.1(a).

(b) No notice or other communication shall be effective until received or deemed received. Notices or other communications shall be deemed to have been received by the receiving Party:

- (i) when delivered, if personally delivered;
- (ii) two (2) Business Days after sending, if sent by courier;
- (iii) five (5) Business Days after sending, if sent by registered post; or
- (iv) upon sending if sent by fax or Email during working hours on a Business Day, subject to confirmation of an uninterrupted transmission report or acknowledgment by return Email, and provided that a hard copy is despatched not later than the following Business Day to the recipient by courier or personal delivery. If a fax transmission report confirms delivery outside of working hours on a Business Day, or an email is acknowledged outside of working hours on a Business Day, the fax or email shall be deemed delivered at the next opening of working hours on a Business Day.

(c) Despatch Instructions and communications between the Seller and Purchaser relating to Despatch of the Facility may be given by telephone communication or any other form of communication that the Parties agree to use. All such telephonic notices shall be made to the following telephone numbers:

(i) If to the Purchaser: [●]

(ii) If to the Seller: [●];

provided, that a Party may change the telephone number, or any other details necessary for such communication (including adding an alternative number), by giving not less than thirty (30) Days prior written notice to the other Party in accordance with Section 19.1(a).

19.2 Amendment

An amendment or modification of this Agreement shall be effective or binding on a Party only if made in writing and signed by a duly authorized representative of each of the Parties.

19.3 Third Parties

Except for the rights expressly granted to the Lenders or USAID herein, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any rights in, duty to, standard of care to, or any liability to, any Person not a Party.

19.4 No Waiver

No default by either Party in the performance of or compliance with any provision of this Agreement, shall be waived or discharged except with the express written consent of the other Party. No waiver by either Party of any default by the other in the performance of or compliance with any of the provisions of this Agreement, shall operate or be construed as a waiver of any other or further default whether of a like or different character.

19.5 Relationship of the Parties

- (a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon either Party.
- (b) Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, to be an agent or representative of, or to otherwise bind the other Party, and neither Party shall hold itself out to any third-party as having any such right, power, or authority.

19.6 Language

This Agreement has been drafted in English and the English version shall prevail over any translations. All notices, certificates and other documents and communications (including copies) given or made under or in connection with this Agreement, shall be in English.

19.7 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of [Afghanistan].

19.8 Entirety

Upon execution, this Agreement shall be the full and final expression of the agreement between the Parties on the matters contained herein.

19.9 No Assignment; No Liens

- (a) Except as provided in this Section 19.9, no assignment or transfer by a Party of this Agreement or such Party's rights or obligations hereunder, either directly or through a change in control of either of the Parties, shall be effective without the prior written consent of the other Party. The Seller shall at all times keep the Facility free and clear of all Liens.
- (b) Notwithstanding Section 19.9(a), for the purpose of financing the Project, the Seller may, pursuant to the Financing Documents, assign to or create a security interest in favour of the Lenders in the Seller's rights and interests under or pursuant to (i) this Agreement; (ii) the Facility; (iii) the Seller's present and future movable, immovable, and intellectual property; (iv) the Seller's present and future revenues or actionable claims, debts, or any of the rights or assets of the Seller, including but not limited to all of the Seller's receivables and claims therefor under this Agreement; (v) any other of the Seller's present and future rights, interest, property or assets of any kind and wherever situated; and (vi) the Site Lease.

19.10 Confidentiality

- (a) This Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and (except as provided in Sub-Section (c) below) such information shall not be disclosed in whole or in part by either Party without the prior consent of the other Party.
- (b) This obligation does not apply to information that (when used or disclosed) has been made public other than through a breach of this Agreement or has been, or could have been, lawfully acquired by the Party.
- (c) Notwithstanding the provisions of Sub-Section (a) above, neither Party shall be required to obtain the prior consent of the other in respect of disclosure of information:
 - (i) to directors and employees and Affiliates of such Party, provided that such Party shall use reasonable endeavours to ensure that such Affiliates keep the disclosed information confidential on the same terms as are provided in this Section 19.10;
 - (ii) to persons professionally engaged by or on behalf of such Party; provided that such Persons shall be required by such Party to undertake to keep such information confidential and that such Party shall use reasonable endeavours to secure compliance with such undertaking;
 - (iii) to any government department or any governmental or regulatory agency having jurisdiction over such Party but only to the extent that such Party is required by law to make such disclosure;

- (iv) to (A) any lending or other financial institution in connection with the financing of such Party's operations or (B) any bona fide intended assignee or transferee of the whole or any part of the rights and interests of the disclosing Party under this Agreement, but in either case only to the extent required in connection with obtaining such finance or in respect of such proposed assignment and subject to such institution or intended assignee or transferee first agreeing with such Party to be bound by confidentiality provisions substantially the same as those contained in this Section 19.10;
- (v) to any expert (including any Expert) or arbitrator appointed pursuant to and under the terms of this Agreement.

(d) This Section 19.10 shall survive termination or expiry of this Agreement for a period of thirty six (36) months from the date of such termination or expiry.

19.11 Successors and Assigns

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

19.12 No Liability for Review

No review and approval by the Purchaser of any agreement, document, instrument, drawing, specifications, or design proposed by the Seller, nor any inspection of the Facility construction works or the Seller Interconnection Facilities carried out by the Purchaser pursuant to this Agreement, shall relieve the Seller from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification, or design, the carrying out of such works, any failure to comply with the applicable Laws of Afghanistan with respect thereto or to satisfy the Seller's obligations under this Agreement. Nor shall the Purchaser be liable to the Seller or any other Person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design or such inspection.

19.13 Counterparts

This Agreement may be executed in two (2) or more original copies, and each copy may be executed by each of the Parties in separate counterparts, each of which copies when executed and delivered by the Parties shall be an original, but all of which shall together constitute one and the same instrument.

19.14 Severability

If any term or provision of this Agreement is determined by a court or other authority of competent jurisdiction to be invalid, void, illegal, unenforceable, or against public policy, the

remaining provisions of this Agreement shall remain in full force and effect and will not be affected by such determination.

19.15 Partial Invalidity

The illegality, invalidity or unenforceability of any provision of this Agreement in whole or in part under the law of any jurisdiction shall neither affect its (i) legality, validity or enforceability under the law of any other jurisdiction, nor (ii) the legality of any other provision or part thereof.

IN WITNESS whereof, **THIS AGREEMENT** is hereby executed and delivered on the date first above written.

EXECUTED by)
[])
acting by)
[its duly appointed attorney/a director,]) [Duly Appointed Attorney/Director]
in the presence of:)
Witness:
Name:
Address:
.....
.....
Occupation:

EXECUTED by)
[])
acting by)
[its duly appointed attorney/a director,]) [Duly Appointed Attorney/Director]

in the presence of: _____)

Witness:

Name:

Address:

.....

.....

Occupation:

SCHEDULE 1 - TARIFF

1. Tariff

US\$ [figures] (words)/kWh of Net Delivered Energy and NPMV. No escalation or indexation for the Term.

Tariff will be paid on the first 23,400MWh of Net Delivered Energy and NPMV in each Agreement Year. Any Net Delivered Energy and NPMV beyond 23,400MWh in an Agreement Year will not be compensated.

2. Supplemental Tariff

To be payable by the Purchaser to the Seller on the basis of actual necessary cost reasonably incurred by the Seller, and as agreed between the Parties following completion of a Restoration Plan pursuant to Section 15.7.

SCHEDULE 2 - DESCRIPTION OF THE FACILITY

FACILITY DESCRIPTION TO BE ADDED BY SELLER FOLLOWING SELECTION AND UPON REVIEW OF TECHNICAL PROPOSAL BY DABS AND USAID ENGINEER. EXAMPLE OF FACILITY DESCRIPTION OUTLINE BELOW:

INTRODUCTION

The Facility consists of [***] (“**Panel**”) Units with the following design parameters:

Make / Model:

Name Plate Capacity of each Panel:

Name-Plate Capacity of the Facility

Wake Losses:

Auxiliary Consumption:

EBOP losses

Capacity (Net):

1. SITE EVALUATION

[***]

2. PANEL SYSTEM SPECIFICATIONS

[***]

3. FACILITY DESCRIPTION

[***]

4. METERING ROOM

[***]

5. WORKSHOP BUILDING

[***]

6. ENVIRONMENTAL STANDARDS

[***]

7. OPERATING PARAMETERS

[***]

8. COLLECTION SYSTEM

[***]

9. CABLING NETWORK

[***]

10. SUBSTATION

[***]

11. CONTROL BUILDING

[***]

12. EQUIPMENT DETAILS

[***]

13. GROUNDING SYSTEM

[***]

14. LIGHTNING PROTECTION

[***]

15. Digital Power Line Carrier (DPLC)

16. Digital Signals

17. Analogue Signals

[***]

18. SCADA Signals

[***]

19. Purchaser's Monitoring System Requirements

[***]

20. PANEL TOWER FOUNDATIONS

[***]

21. PROTECTION RELAY AND ANNUNCIATION SYSTEM

[***]

22. SCADA (INTEGRITY SYSTEM CHECKS, DATA PROCESSING, DATA PARAMETERS)

SCHEDULE 3 - SELLER AND PURCHASER INTERCONNECTION FACILITIES AND METERING

1. Interconnection Point

1.1. Seller shall connect to a DABS dedicated double-circuit 20 kV line (ACSR 185 mm square conductor) that has been constructed to the solar plant site from the Shorindam Industrial Park (SIP) 20 kV bus bar. Seller's site design will inform DABS where the Seller's step-up transformer is located and hence where to terminate its 20 kV distribution line. (See Diagram A & B below.)

2. Interconnection and Transmission Facilities

2.1. The Seller must satisfy the following DABS interconnection requirements:

2.1.1. Point of connection: High side of the Seller's step-up transformer to the DABS 20 kV dedicated distribution line from SIP.

2.1.2. Connection voltage and frequency: 20 kV AC nominal at 50 HZ. The DABS grid and the Seller's solar plant must have matching voltage, frequency and phase sequence required for safe operation of the solar installation.

2.1.3. Step-up transformer: The Seller shall install at its expense, a 16 MVA AC step-up transformer with a vector group of Yyn0d11 and all requisite disconnects, load breaker switches, and surge protectors.

2.1.4. Plant protection: The Seller shall be able to isolate its solar plant in the event of grid failure, grid voltage and frequency fluctuation beyond the acceptable range of the inverters. The necessary technical measures, including smart inverter technology, should be considered in the design.

2.1.5. The maintenance of the solar plant up to the interconnection point is the responsibility of the Seller at its own cost.

2.1.6. The Seller must provide USAID and DABS with the required drawings along with as-built drawings or diagrams, manuals, required O&M product information, estimated energy production data estimates, standard operating procedures, testing and commissioning procedures, and other specifications and data with respect to the solar generating systems.

2.1.7. The Seller is responsible for ensuring that the solar photovoltaic plant complies with all applicable regulations and practices of Afghanistan and/or international regulatory agencies and all applicable electrical and utility safety codes.

3. Metering

- 3.1. The Seller shall install at its expense, a meter panel with two ANSI C12.20 or IEC/AS Standard 62053-22 compliant 3-phase, 4-wire 100V/5AMP Class 0.2s energy meters (using DLMS communication protocol) with SIM enabled capability (one main and one check) with requisite CTs and PTs, on the high-side of the Seller's step-up transformer. DABS must review the design and construction of the metering panel. Both DABS and the Seller are to agree on a testing procedure and then test and seal the metering system (CTs, VTs, meters, test switches, metering enclosure, etc.). All system losses on the Seller's side of the meter panel are the sole responsibility of the Seller.
- 3.2. Testing – periodic testing of meters as appropriate for class of meter, Purchaser's metering code in effect, and prudent utility practices.

Diagram A

20 kV Circuit from Shorindam Industrial Park to Solar Site

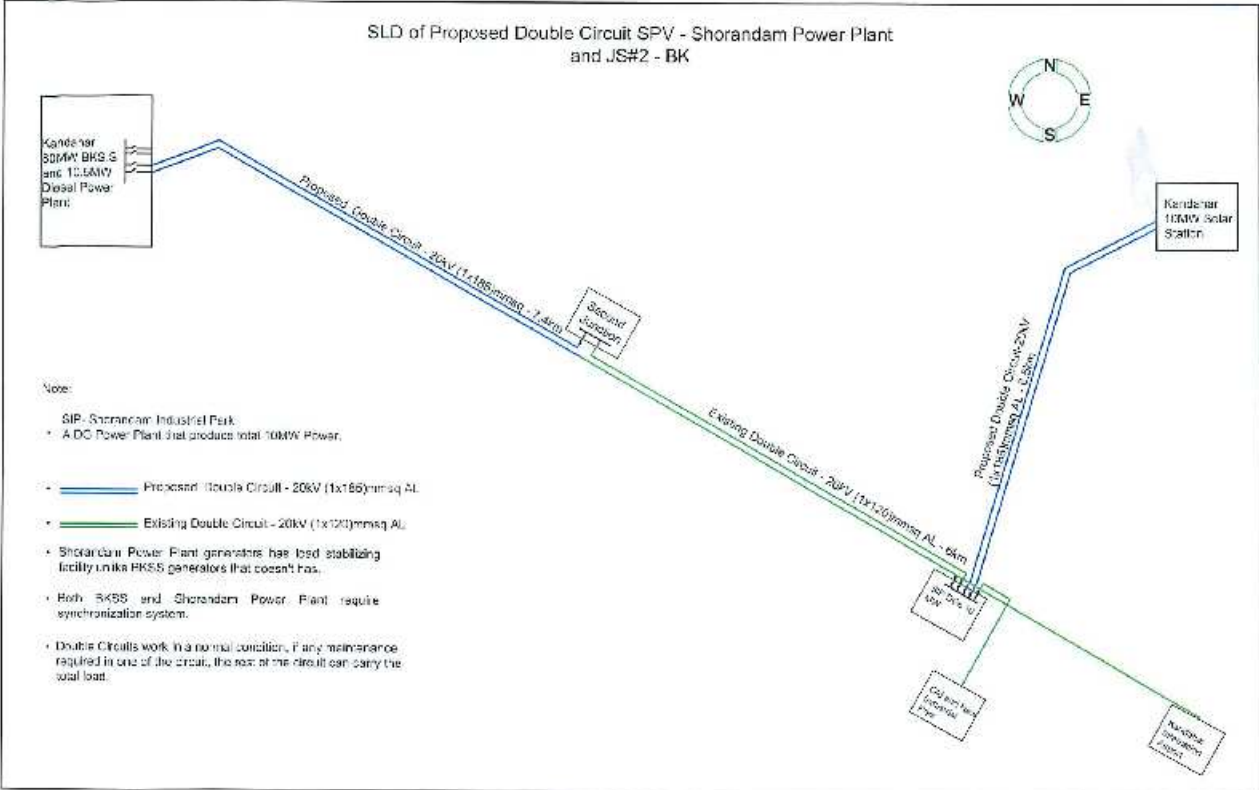
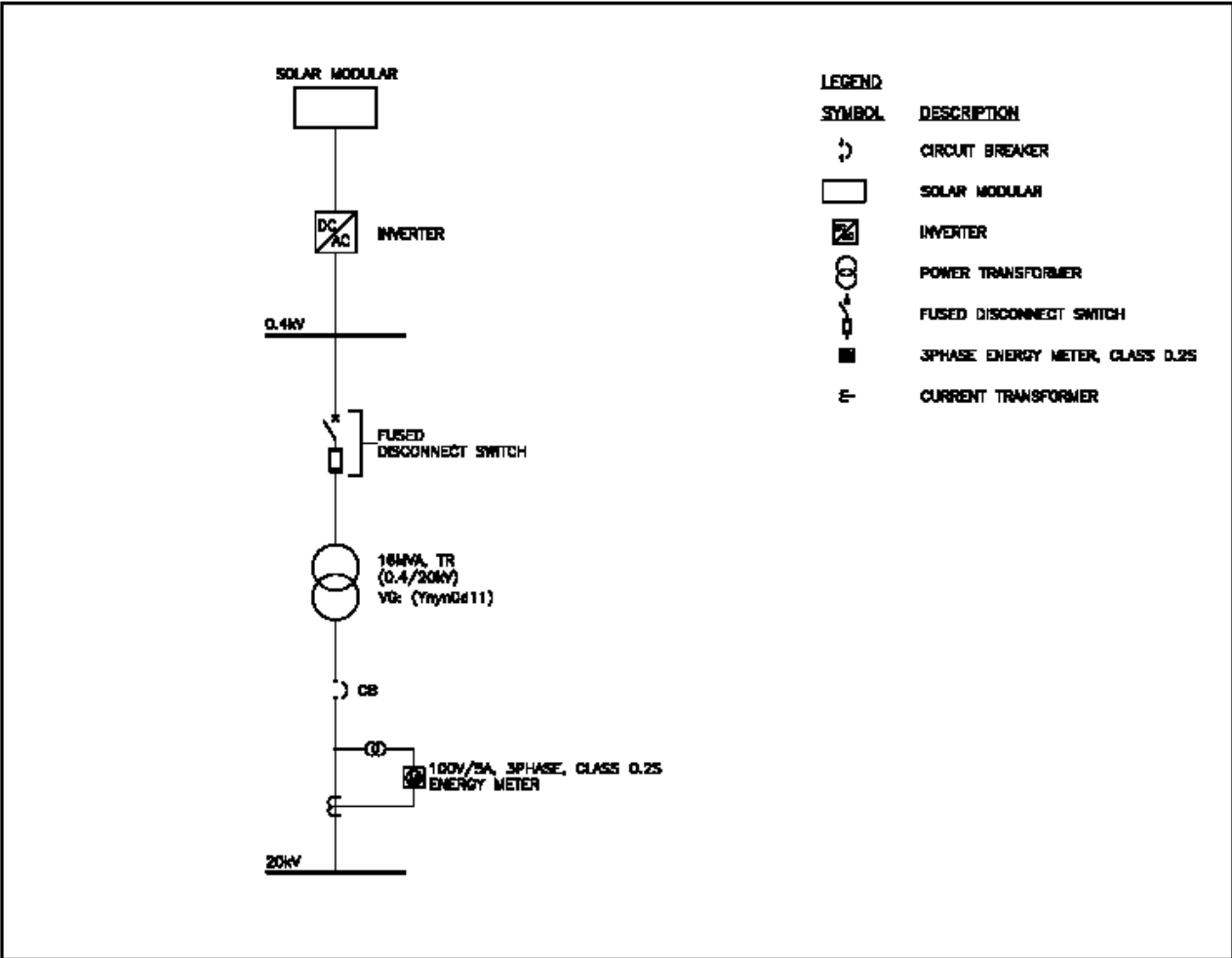


Diagram B

Kandahar Solar Grid Interconnection Single Line Diagram



SCHEDULE 4 - FORM OF CONSTRUCTION REPORTS; PROJECT PROGRESS REPORTING

Monthly progress reports shall be prepared consistent with the following general format and delivered to the Purchaser.

1. Narrative

1.1 Information

- i. Project Information including Project Name, Location, Project Company, Capacity, and Expected COD etc.
- ii. Delays if any
- iii. Issues if any
- iv. Any other information

1.2 Engineering

1.3 Civil / Structural (For each item below, identify when started, if continuing and when completed)

- i. Mechanical
- ii. Electrical/Control
- iii. Substation

1.4 Construction (For each item below, identify when started, if continuing and when completed)

- i. Civil / Building
- ii. Electrical/control
- iii. Grid connection / substation
- iv. Production of Panel Components
- v. Transport of Panel components
- vi. Erection & commissioning of Panel components
- vii. HSE
- viii. QA/QC
- ix. Site Services

2. Schedules

- i. Monthly Completion vs. Targeted:
- ii. Project Schedule Update:
- iii. Engineering:
- iv. Construction:
- v. Start-Up:

3. Consents and Permits:

Applied for:

Received:

Outstanding:

SCHEDULE 5 - TECHNICAL LIMITS AND MINIMUM FUNCTIONAL REQUIREMENTS

Technical limits and Minimum Functional Requirements to be based on winning bidder's technical proposal as approved by DABS and USAID Engineer

1. TECHNICAL LIMITS

1.1.1. Operating Limits

1.1.2. Start-up of the Facility

1.1.3. Facility Loading

1.1.4. Power Factor, Voltage and Frequency Limits

1.1.4.1. Voltage: +/- 10% of 20 kV base (18 – 22 kV)

1.1.4.2. Frequency: 49.15 to 50.00 Hz

1.1.5. General

2. MINIMUM FUNCTIONAL REQUIREMENTS

2.1. General:

2.2. Panels:

2.3. Transformer:

2.4. Sub-station:

2.5. Reactive Power Compensation:

2.6. Control, Protection and Supervision:

2.7. Metering System:

2.8. Facility Monitoring System Functional Requirements

2.9. Environmental Requirements:

2.10. Harmonics:

SCHEDULE 6 - COMMISSIONING AND RELIABILITY RUN TESTS

Specific test requirements to be agreed between winning bidder, DABS, and USAID Engineer based on equipment proposed by winning bidder and manufacturers' recommendations. Examples of tests to be performed include the following:

1. Facility Reliability Run Test

- 1.1 A reliability run test of the Facility will be carried out as part of the Commissioning Tests and must be satisfied prior to the Engineer's issuance of the Certificate of Facility Commissioning.
- 1.2 This test is to run the Facility continuously for a period of total 300 hours.
- 1.3 The purpose is to confirm that all individual equipment can operate continuously, within its Technical Limits, without exceeding any of its safe limits without being damaged.
- 1.4 The test shall have been satisfactorily completed only if it continues, without any interruption, faults or trips, for not less than 300 hours on cumulative basis.
- 1.5 Any interruption due to Grid System conditions outside Technical Limits will be ignored.
- 1.6 If a Solar plant goes "off line" due to Grid System faults and ambient conditions being outside Technical Limits this time is included in the reliability period since the unit is "off line", but available for operation.
- 1.7 The reliability test of the Facility shall be considered completed upon the successful commissioning of the Complete Project as a Total system (even if part commissioning and part reliability tests are carried out).
- 1.8 Upon successful completion of Facility Reliability Run Test, a Certificate of Facility Commissioning will be issued by the Engineer.

2. Meteorological Station in solar power plant

Minimum one (1), complete meteorological monitoring and measurement station shall be installed at solar Plant site. The Meteorological Station shall measure and record solar radiation, wind speed, wind direction, PV temperature, ambient temperature, humidity, and rainfall along with inverter and energy meter data. Weather monitoring station communicates with SCADA systems on RS485 MODBUS, Ethernet and to cloud on GSM/GPRS as per the SCADA system supplied and shall be fully compatible with [state relevant specifications source].

The Meteorological Station shall have following sensors

- Solar radiation- secondary standard Pyranometer
- Wind speed sensor
- Wind direction sensor
- PV Temperature sensor
- Ambient Temperature & Humidity sensor
- Rain bucket
- Irradiance Sensor

The Meteorological Station shall be capable of recording and storing environmental data without AC power for at-least 2 days, and shall have at least 45 days of memory capacity

SCHEDULE 7 - INSURANCE

Insurance Limits and Deductibles may be discussed with winning bidder following its receipt of an insurance report

A.	Liability and workers Compensation Insurance Requirements				
Seller and any subcontractor thereof, shall have in place prior to commencement of any work, and at all times maintain, the below liability and worker's compensation insurance					
	Coverage Type	Minimum Limit		Maximum Deductible or Retentions	
1.	Commercial General Liability	*\$200,000/MW	Combined single limit per occurrence and in the aggregate where applicable	\$20,000/per MW	Per occurrence
2.	Employers Liability	*\$200,000/ MW	Each accident for bodily injury by accident Each employee and policy limit for bodily injury by disease	\$20,000/per MW	Each accident or employee (for disease)
3.	Workers Compensation	Statutory requirements	Per occurrence	N.A.	N.A.
4.	Professional Liability**	*\$200,000/ MW	Per occurrence and in the aggregate	\$20,000/per MW	Per occurrence

* Any combination of primary and excess limits is acceptable if the total equals or exceeds the specified amount			
** Applicable to architects, engineers and other parties that provide professional services in Conjunction with the Seller's responsibilities hereunder.			
Liability Insurance Terms and Conditions			
	a.	Completed Operations	The Seller and any subcontractors' General Liability coverage in place during construction shall include Completed Operations coverage, which coverage is to continue for a minimum of one year following completion of the work.
B.	Requirements Applicable to All Liability and Worker's Compensation Insurance Policies		
	1.	Insurance Company Rating	All insurance companies shall be rated [A-] or better by A.M. Best Company. Should an insurance company's rating fall below [A-], Seller shall replace that insurance company with a qualifying insurance company within sixty (60) Days.
	2.	Notice of Cancellation	Each insurance company shall provide written notification to the DABS sixty (60) Days prior to the effective date of any cancellation.
	3.	Evidence of compliance with insurance requirements at insurance date	Seller shall provide DABS with an original certificate of insurance signed by an approved officer of the insurance company or its authorized representative. The certificate shall show: <ul style="list-style-type: none"> • the insurance company; • the policy period; • the policy number; • the description of the property; • the name of the contractor/ policyholder; and • the 60 Days cancellation notice
	4.	Evidence of Renewal or Replacement Policies	Seller shall advise the DABS of any renewals or replacements of the required insurances by providing the same documentation required in B.3 above. Such evidence shall be provided prior to the expiration date of the policy that is being renewed or replaced.
C.	Property Insurance Requirements		
Seller shall provide property insurance on the Sites and Facilities. Property insurance shall be on an "all risk" basis, including coverage for PV module and machinery (machinery breakdown) perils to			

the extent those perils are present. The property insurance must be in place prior to the Commercial Operation Date and shall remain in force during the Contract Term.

1.	Builder's Risk Property Insurance				
	Coverage Type	Minimum Limit		Maximum Deductible or Retentions	
	Earth Movement including earthquake, volcanic activity, and subsidence.	Replacement/ reinstatement value of insurable real and personal property	Annual Aggregate	5% of replacement value	Per occurrence
	Hurricane/ windstorm		Annual Aggregate	5% of replacement value	Per occurrence
	Flood including tsunamis		Annual Aggregate	5% of replacement value	Per occurrence
	Debris removal	20% of replacement/ reinstatement value of insurable real and personal property	Per occurrence	Included	
	Ordinance or Law	10% of replacement/ reinstatement value of insurable real and personal property	Per occurrence	Included	
	Expediting expense	20% of replacement value of insurable real and personal property	Per occurrence	Included	
	All other perils (including PV module and machinery perils where applicable)	Replacement value of insurable real and personal property	Per occurrence	\$20,000/MW	Per occurrence

	Soft costs	100% of costs which would be incurred again following a total loss at the end of construction.		45 Days	Per occurrence
2.	Property Insurance (Permanent program to be in place simultaneously with the expiration or cancellation of the Builders' Risk coverage (see C. 1.))				
	Coverage Type	Minimum Limit		Maximum Deductible or Retentions	
	Earth Movement including earthquake, volcanic activity, and subsidence.	To be determined from time to time based on values, exposure to loss and insurance market conditions.	Annual Aggregate	5% of replacement/reinstatement value	Per occurrence
	Hurricane/windstorm		Annual Aggregate	5% of replacement/reinstatement value	Per occurrence
	Flood including tsunamis		Annual Aggregate	5% of replacement/reinstatement value	Per occurrence
	Debris removal	\$ 40,000/MW	Per occurrence	Included	
	Ordinance or law	\$ 40,000/ MW	Per occurrence	Included	
	All other perils (including boiler and machinery perils where applicable)	Replacement value of insurable real and personal property	Per occurrence	\$ 10,000/ MW	Per occurrence
	Extra Expense/Expediting Expense Combined	\$	Per occurrence	Included	
	Terrorism	Higher of the outstanding project loan and residual value of the project	NA	NA	
D	Requirements Applicable to All Property Insurance Policies				

1.	Waiver of Subrogation	Each property policy must contain a standard waiver of subrogation clause waiving the insurance company's right of subrogation against any insured party.
2.	Coinsurance	No property policy may contain a coinsurance clause.
3.	Insurance Company Rating	All insurance companies shall be rated [A-] or better by A.M. Best's. Should an insurance company's rating fall below [A-], Seller shall replace that insurance company with a qualifying insurance company within 60 days.
4.	Notice of Cancellation	Each insurance company shall provide written notification to DABS 60 days prior to the effective date of any cancellation or non-renewal.
5.	Evidence of compliance with insurance requirements at insurance date	Evidence of coverage is to be on in the form of a certificate signed by an approved officer of the insurance company or its authorized representative. The certificate shall show: <ul style="list-style-type: none"> • The name of the insurance company • The policy period • The policy number • The description of the property • The Named Insured • DABS as an additional insured and loss payee • The 60 days cancellation notice
6.	Evidence of renewal or replacement policies	Seller shall advise DABS of any renewals or replacements of the required insurances by providing the same documentation required in D.5 above. Such evidence shall be provided prior to the expiration date of the policy that is being renewed or replaced.

SCHEDULE 8 - FORM OF SELLER LETTER OF CREDIT

Form of Seller letter of credit or bank guarantee to be proposed by winning bidder, and is subject to approval by DABS and USAID.

SCHEDULE 9 - PROTOCOL FOR CALCULATION OF NON-PROJECT MISSED VOLUME

“Non-Project Missed Volume” or “NPMV” - The volume of Net Delivered Energy not delivered by the Facility which non delivery is due to a Non-Project Event(s) calculated as follows:

The period of outage/interruption on account of Non-Project Event(s) shall be reconciled on monthly basis and the loss of generation at the Station counting towards Non-Project Event(s) after accounting for the events as above, shall be computed by taking into consideration the site, monthly report, average generation during the relevant period and weather conditions during the time of day/year for which Non-Project Event(s) is to be worked out.

Purchaser to provide compensation for the NPMV at the Tariff

[Also to be witnessed by two adult witnesses, specifying in each case, the full name, National Identity Card/Passport No., if any, and address]

SCHEDULE 10 - COMPENSATION AMOUNTS

The calculations with respect to each compensation element and the amounts payable under this Schedule shall be verified and certified by an international accounting firm operating in Afghanistan (directly or through an affiliate) approved by the Parties.

	TERMINATION EVENT	COMPENSATION PAYABLE
1.	Termination for a Seller Event of Default where the Purchaser elects to purchase the Facility	Outstanding Principal under Financing Documents, plus any contract breakage costs
2.	Termination for a Purchaser Event of Default where Seller elects to sell Facility to Purchaser	[80% of Net Present Value (discounted at 12%) of sum of Tariff multiplied by Degraded Output Threshold (in kWh) for remaining Agreement Years of Term at time of Termination.]
3.	Termination following Afghanistan Political Event where Seller terminates the Agreement after the Parties do not agree on a Restoration Cost Estimate and Restoration Schedule, or agree that Restoration is not economically or technically feasible.	[80% of Net Present Value (discounted at 12%) of sum of Tariff multiplied by Degraded Output Threshold (in kWh) for remaining Agreement Years of Term at time of Termination, less any insurance proceeds received by Seller.]
4.	Termination following a Seller Force Majeure Event	If the Seller is affected by the Force Majeure Event, then its only recourse is to insurance proceeds under all circumstances

SCHEDULE 11 - FORM OF SITE LEASE

LAND LEASE AGREEMENT

This Land Lease Agreement (“**Lease Agreement**”) is executed this ____ day of ____, 2016, by and between:

Lessor: Da Afghanistan Breshna Sherkat, with principal place of business at [LOCATION], (“**Lessor**”); and

Lessee: _____, a [company] incorporated under the laws of [country] and having its principal place of business at [LOCATION] (“**Lessee**”).

WHEREAS Lessor has entered into a Power Purchase Agreement on _____ (the “**PPA**”) with Lessee whereby Lessor grants to Lessee the right to build and operate an approximately 10MW solar power generation facility, for sale of electricity to Lessor, a copy of which PPA is attached hereto as Annex A;

WHEREAS Lessor and Lessee agree that the power plant shall be built on land owned by the Lessor, which land is identified as the “**Site**” in the PPA, and a Certificate of Title for the land covered by this Lease is attached as Annex B; and

WHEREAS Lessor and Lessee now agree to enter into this Lease Agreement for the lease of the Site for use by Lessee to build and operate the solar power plant and related activities pursuant to the PPA.

NOW THEREFORE, Lessor and Lessee hereby agree as follows:

1. **Site.** Lessor hereby warrants that it owns the Site, that the Certificate of Title attached as Annex B is a valid proof of Lessor’s ownership of the Site, and that the map attached as Annex B is an accurate description of the Site. Lessor agrees to lease to Lessee the Site upon the terms and conditions set forth in this Lease Agreement and the PPA.

2. **Defined Terms.** All capitalized terms used in this Lease Agreement and not otherwise defined have the meanings given in the PPA.
3. **Purpose and Use.** Lessee is permitted to build operate and maintain on the Site a power plant and related facilities in accordance with the PPA. Lessee is not permitted to use the Site for any unrelated purpose.
4. **Term of Lease.** This Lease Agreement shall be effective as of the Effective Date of the PPA, and shall extend for the same term as the PPA (the "**Initial Term**"), as the PPA term may be extended from time to time (or earlier terminated), and for any renewal or further extension of the PPA (an "**Additional Term**") as may be agreed between the Parties. This Lease Agreement shall terminate on the day the PPA expires or is earlier terminated.
5. **No Rent Payment During Initial Term.** Lessor and Lessee agree that there is no rent to be paid under this Lease Agreement for the Initial Term, and Lessor confirms that it shall receive sufficient and adequate compensation for Lessee's use of the Site during the Initial Term through the electricity price Lessor will pay Lessee under the PPA; Lessee acknowledges that it took into account the rent-free use of the Site in establishing its bid that resulted in the price of electricity under the PPA. Rent for any Additional Term, if any, shall unless otherwise agreed be the same amount as during the Initial Term.
6. **Delivery of Exclusive Possession.**
 - 6.1 Lessor shall deliver exclusive and lawful possession of the Site to Lessee on or before the effective date of the PPA ("**Delivery Date**").
 - 6.2 Lessor's delivery of the Site shall constitute confirmation to the Lessee that the Site has been cleared of any occupants.
 - 6.3 Lessor shall, at its expenses, register this Lease Agreement with the relevant Government of Afghanistan (or any local government) office as required under applicable Afghanistan or provincial law.
7. **Lessor's Warranties and Representations.**
 - 7.1 Lessor undertakes that Lessee shall lawfully, peacefully, and freely hold, occupy, use, operate, and enjoy the Site to fulfill its obligations and exercise its rights under the PPA during the Initial Term and any Additional Term

without disturbance, nuisance, or interference by Lessor, successors, assigns, agents, or creditors.

- 7.2 Lessor undertakes that no third party shall have a right or claim to the Site during the Initial Term and any Additional Term of the Lease Agreement, and shall take all necessary steps to defend Lessee's rights to use the Site as against third parties; provided, that Lessor shall have no obligation to defend Lessee's rights as against any exercise of rights Lessee may grant to its lenders or other financing parties as part of a security package for the financing of the solar power station.
- 7.3 Lessor warrants and represents that it has obtained all approvals from the Government of Afghanistan, the provincial/municipal authorities, and any other government agencies or bodies with authority over the Site, needed for the Parties to lawfully enter into this Lease Agreement and for the Lessee to use the Site for the purposes described in Article 3 at all times during the Initial Term and any Additional Term.
- 7.4 Lessor represents that it is the lawful and sole owner of the Site, and warrants that it shall remain the lawful and sole owner of the Site during the Initial Term and any Additional Term, and that there are no encumbrances, mortgages, liens, or security interests on the Site other than those created pursuant to this Agreement or the PPA.
- 7.5 Lessor warrants and represents that the Site is free from pollution, unexploded ordinances, and environmental damage.
8. **Authorization to Build.** Lessee is hereby authorized by Lessor to carry out all construction works on the Site, in accordance with the PPA and Afghanistan law. Lessee may demolish or renovate any buildings existing on the Site as of the Delivery Date, and reconstruct others in order to carry out its obligations and exercise its rights under the PPA.
9. **Signs.** Lessee shall have the right to erect any sign related to its business on the condition that such signs comply with Afghanistan law.
10. **Lessee Compliance with Afghanistan Laws.** Without limiting the Lessee's general obligation to comply at all times with the requirements of Afghanistan law, Lessee while using the Site shall ensure, during the Initial Term and any Additional Term, that it is in compliance with:

- 10.1 All laws and regulations on worker safety, labor, and hygiene;
- 10.2 All laws and regulations on environmental protection and security; and
- 10.3 All laws on insurance (employee, general liability, vehicle, and other), tax, and business registration and operations.

11. **Lessee Undertakings.**

- 11.1 Lessee undertakes to maintain the Site in good condition at Lessee's own risks and expense and to keep all Lessee's belongings inside the Site at all times during the Initial Term and any Additional Term.
- 11.2 Lessee undertakes to procure and maintain insurance covering any damages occurring within the Site to third parties and its personal property from fire and other risks, as required under applicable law or the PPA.
- 11.3 Lessee undertakes that there will be no illegal or prohibited matters, objects, substances, materials, products, and/or the like allowed to operate, be manufactured or used, or held inside the Site.
- 11.4 Lessee agrees that the rights Lessor grants to Lessee under this Lease Agreement shall not be transferred to any third party by any means without written approval from Lessor except for financing purposes as permitted under the PPA.
- 11.5 Lessee shall return the Site to Lessor upon termination of the Agreement in good condition, which means that Lessee shall, upon agreement in good faith after discussions between the Parties in the last year of the term of the PPA (where the Parties do not agree to a further Additional Term) either (i) remove all installed facilities and equipment, and all debris, and return the Site substantially to the condition existing on the Delivery Date, or (ii) return the Site to Lessor together with the solar power generation facility, and all related stores and equipment, in good working order (normal wear and tear excepted).
- 11.6 Lessee shall have 30 (thirty) days following the termination or expiration of this Lease Agreement to either remove its installed facilities and equipment,

or to turn over the Site with the solar power generation facility, as may be determined following the discussions between the Parties provided in Section 9.5.

12. **Taxes.** Lessor agrees to be responsible for payment of any and all taxes or fees levied by applicable Afghanistan laws, arising from the lease of the Site, including any lease or invoice tax. Should Lessor fail to pay any such tax, or should the Government hold Lessee responsible for paying any tax (including any tax imputed on the value of the lease despite there being no rent payment due under the Lease Agreement in any period), Lessee shall have the right to invoice the amount of the tax to Lessor. Lessee shall provide written notice to Lessor that it will be making such an invoice, and provide the method of calculation, or proof of payment of the tax, together with the invoice. Lessee shall remain liable for all taxes on its operation of, and profits from, the solar power generation facility, as provided in and subject to the terms of the PPA.
13. **Lessor's Access to Site.** Lessor, and Lessor's agents and employees, shall have no right of entry onto the Site, except as provided by applicable laws or pursuant to the provision of the PPA, during the Initial Term and any Additional Term of the Lease Agreement, without prior written consent of Lessee.
14. **Property of Buildings Erected by Lessee.** Subject to the terms of the PPA, the erected buildings, solar panels, and all works and developments carried out by Lessee or its legal successors will remain the property of Lessee, and not be deemed "fixtures" that are part of the Site, to the extent permitted by law.
15. **Assignment.** Lessee shall have the right to conditionally assign or transfer the Site in whole or in part in accordance with the PPA without Lessor's further consent. Lessee may inform Lessor of any assignment or transfer of the Site it enters into and may request from the Lessor an acknowledgement of such assignment or transfer. Lessor may not assign or transfer ownership of the Site or of this Lease Agreement without Lessee's consent.
16. **Termination by Lessee.** Lessee may terminate this Lease Agreement, upon written notice to Lessor, without penalty, if Lessor has exercised any right to terminate the PPA, or if Lessor has breached any material term of this Lease Agreement and fails to correct or cure the breach within sixty (60) days.
17. **Termination by Lessor.** Lessor may terminate this Lease Agreement, upon written notice to the Lessee, if Lessee has exercised any right to terminate the PPA, if Lessee fails to pay rent when due, and fails to rectify this breach within ten (10) Business Days after receiving written notice the failure from Lessor, or if Lessee has

breached any material term of this Lease Agreement and fails to correct or cure the breach within sixty (60) days.

18. **Registration of the Lease.** The Lessor shall, to the extent required by law and practice, promptly and properly register (or re-register) this Lease Agreement with any relevant land registry office, and any other relevant government office that may from time to time serve as a place for registering or recording leases. Lessor shall provide Lessee certified copies (or duplicate originals, if available) of all such registration documentation promptly upon making each such registration or re-registration.
19. **Force Majeure.** An Event of Force Majeure, as defined in the PPA, shall have the same effect in relation to each Party's obligations under this Lease Agreement as provided in the PPA.
20. **Partial Invalidity.** If any term of this Lease Agreement shall be invalid or unenforceable, the remainder shall be valid as written to the fullest extent permitted by law.
21. **Governing Law.** This Lease Agreement shall be interpreted and governed by the laws of Afghanistan.
22. **Entire Agreement.** This document contains the entire agreement of the Parties, and supersedes all previous communications, representations, and agreements, whether oral or written, with respect to the Site. This Lease Agreement may not be modified except in writing signed and acknowledged by both parties.
23. **Heirs and Assignees.** This Lease Agreement shall be binding on the heirs, assignees, and the successors in interest of the Lessor and Lessee.
24. **Language.** This Lease Agreement and any amendments to it may be executed in multiple originals in the English language. All notices required or permitted under this Lease Agreement shall be written in the English language.
25. **Arbitration.** Any dispute arising out of or in connection with this Lease Agreement shall be resolved as provided in the dispute resolution provisions of the PPA, as if set forth in full in this Lease Agreement.

IN WITNESS WHEREOF, Lessor and Lessee hereby execute and agree to the terms and conditions of this Lease Agreement on the date first set out above.

Lessor:

Lessee:

Name:

Title:

Name:

Title:

Witness:

Witness:

Name:

Name:

Annex A

Power Purchase Agreement

(Attached after signature of the PPA)

Annex B

Certificate of Title for the Site
and
Map of the Site