

DRAFT VERSION

STANDARD POWER PURCHASE AGREEMENT

THIS AGREEMENT is made on

BETWEEN] a company incorporated in.....] with its registered office at [.....] (hereinafter, the “Seller” which expression shall where the context so admits includes its successors in title and permitted assigns); and

[National Water and Electricity COMPANY LTD], a company incorporated in [The Gambia] with its registered office at [53 Mamady Manjang Highway, Kamifing] (hereinafter,

the “Buyer” which expression shall where the context so admits includes its successors in title and permitted assigns);

Jointly referred to as the “parties”.

WHEREAS,

(1) The Seller proposes to design, construct, install, operate, maintain and own a renewable power production facility in the Gambia, hereinafter referred to as the “Facility”;

(3) The Buyer has the right to purchase electrical energy under the applicable laws and regulations of Gambia;

(4) The Seller wishes to sell and to deliver, and the Buyer wishes to purchase and to accept delivery of, the electrical energy to be produced by the Facility; and

(5) The parties desire to set forth in writing their respective rights and obligations with respect to the purchase and sale of such electric power.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Seller and the Buyer hereby agree to the following:

ARTICLE 1. DEFINITIONS AND RULES OF INTERPRETATION

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Agreement" shall mean this Agreement, including all appendices, exhibits, schedules and amendments, as may be amended from time to time; **"Authority"**

means The Gambia Utilities Regulatory Authority established under The Gambia Public Utilities Regulatory Authority Act, 2001;

"Best Efforts" shall mean a level of effort which, in the exercise of reasonable judgment in the light of facts known at the time a decision is made, can be expected to accomplish the desired result at a reasonable cost, consistent with prudent utility practice; "Billing Period" shall mean the period defined in Schedule A, for the avoidance of doubt this may be monthly by calendar month, quarterly or annually;

"Buyer's Interconnection Facilities" shall mean all equipment and facilities on Buyer's side of the Point of Delivery for the purpose of interconnecting the Facility to Buyer's electrical transmission system;

"Connection Agreement" shall be the agreement of that name for the connection of the Facility to the Buyer's electrical system;

"Delivered Energy" shall mean the net actual amount of electric energy produced by the Facility and delivered to the Point of Delivery during the Billing Month in accordance with Buyer's dispatch instructions;

"Designated Representatives" shall mean the representatives designated by the Seller and Buyer;

"Energy Output" means the energy generated by the Facility, injected into the grid, and metered at the Point of Delivery;

"Event of Termination and Assignee" shall have the meaning specified in Article 6;

"Force Majeure" shall mean any cause beyond the reasonable control, and not due to the fault or negligence of the Party affected, and which could not have been avoided by such Party's due diligence and use of best reasonable efforts, including (to the extent they meet the foregoing requirements):

- (i) Drought, flood, earthquake, hurricane, storm or other unusual or extreme adverse weather, marine or environmental conditions or actions of the elements, meteorites or objects falling from aircraft or other aerial devices, fire, lightning, epidemic, famine, disease, pestilence or plague, and other acts of God;

- (ii) Acts of war (whether declared or undeclared), invasion, armed conflicts or acts of foreign enemy, blockade, embargo, revolution, riot, rebellion, civil disturbance, insurrection, sabotage, explosion, terrorism, or threat of any of the foregoing;
- (iii) strikes or labour disputes (except strikes or labour disputes by the employees of the Party affected which are not part of a general labour action involving others employers);
- (iv) other judgments, official actions of any governmental authority, the expropriation or nationalization of any assets, the absence, suspension, termination, interruption, denial or failure of renewal of any permit or authorization;
- (v) A total loss/breakdown of the Facility, upon which the Parties shall cease to have any obligations hereunder to each other, and shall be terminated without prejudice to any claims outstanding between them
- (vi) Any other cause, whether or not similar thereto, beyond the reasonable control of, and without the fault or negligence of, the party claiming Force Majeure.

"Forced Outage" shall mean an interruption of the Facility's generating capability that is not the result of:

- (i) A request by the Buyer;
- (ii) Scheduled Outage; or
- (iii) An event or occurrence of Force Majeure.

"Government" shall mean the Government of the Republic of The Gambia;

"IEC Standards" means the relevant standards published by International Electrotechnical Commission.

"Initial Delivery Date" shall mean the first date on which the Facility is commercially synchronized with Buyer's electrical transmission system and commences the regular delivery of electric power;

"Installed Capacity" means the maximum capacity at which the station could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption);

"Must-Run Facility" means the Seller will be permitted to generate and dispatch electrical energy from the Facility whenever the resource is available, subject only to curtailment in emergencies and such directions as may be issued by the system operator for the protection of its electrical system;

"Operating Year" shall mean:

- (i) for the first such year, the period beginning with the Initial Delivery Date and ending on the date immediately preceding the first anniversary thereof every year, and
- (ii) thereafter for the term of this Agreement, the period beginning on each succeeding anniversary of Initial Delivery Date and ending on the date immediately preceding the following anniversary of such date;

"Point of Delivery" shall mean the point where the Facility is connected to Buyer's electrical system;

“Scheduled Outage” means an outage which is scheduled in advance;

"Seller's Interconnection Facilities" shall mean all equipment and facilities on Seller's side of the Point of Delivery for the purpose of interconnecting the Facility to Seller's production system;

"System Emergency" shall mean a condition on the Buyer's electrical system or at the Facility, which is likely to result in an imminent significant disruption of service to the Buyer's customers, or is imminently likely to endanger life or property;

"Term" shall mean the duration of this Agreement as determined under Article 2, including any extension; and

"Total Loss/Breakdown" shall mean when the Facility is not able to deliver electricity to the Point of Delivery due to a breakdown or fault beyond the control of the Seller.

2. RULES OF INTERPRETATION

2.1. Unless otherwise required by the context in which any term appears:

The singular shall include the plural and the masculine shall include the feminine and neuter, as the context requires;

The titles of the Articles and Schedules herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions; The words "herein", "hereof" and "hereafter" shall refer to this Agreement as a whole and not to any particular Article or sub-Article of this Agreement, and the words, "includes" or "including" shall mean "including without limitation"; and all references herein to any

agreements shall be to such agreement as amended and supplemented or modified to the date of reference; Capitalised terms used in this Agreement shall have the meaning specified in this Article; Unless otherwise defined, all other terms shall have the meanings given to them in the Electricity Act 2005 and the Feed In Tariff Rules 2013; All references herein to any statute, law, ordinance, decree, rule or regulation of any governmental body shall include any amendment, repeal or replacement thereof.

ARTICLE 2. UNDERLYING PRINCIPLES3. CO-OPERATION AND TERM

- 3.1. The Parties acknowledge that this Agreement will require their long-term co-operation and assistance to deliver a successful outcome. Each Party agrees to co-operate with, provide information and assistance to the other in a timely manner.
- 3.2. The Term shall commence on the date hereof for a period of twenty five (25) years with effect from the Initial Delivery Date unless terminated earlier in accordance with clause 14.
- 3.3. The Installed Capacity of the Facility shall be as defined in Schedule A. No increase or decrease to the Installed Capacity is permitted without the prior written agreement of both parties.
- 3.4. In the event of a change in law or standards or rules or new procedures that affects any part of this agreement, the parties agree to negotiate in good faith any required changes to this Agreement. The objective will be to achieve the same outcome and benefits to both parties as hold under this Agreement.

4. CONDITIONS PRECEDENT

- 4.1. This Agreement is subject to the fulfilment of each of the conditions listed below. In the event that any such conditions are not fulfilled by one of the Parties, the other Party may terminate this Agreement without further obligation in accordance with Article 6.
 - (i) The Seller and the Buyer are each a Gambian company, existing, and in compliance with all requirements of the Company's Act and all other applicable laws of The Gambia.
 - (v) The Buyer and the Seller each possess all requisite power and authority to enter into and perform this Agreement and to carry out the transactions contemplated herein.
 - (vi) The Seller has secured land for the Facility and assessed the suitability of the location for the Facility.
 - (vii) The Seller has obtained all necessary permits, operating license and approvals from the relevant Government Authorities for the construction and operation of the Facility, on terms satisfactory to the Parties.
 - (viii) The seller and the Buyer have signed a grid Connection Agreement between them.

- (xv) The Seller has secured the financing necessary to undertake the project for the commencement of construction of the Facility.

5. COMPLETION OF THE WORKS AND CERTIFICATION OF SERVICE COMMENCEMENT

- 5.1. The Seller shall issue as soon as reasonably practicable and in any case at least ten (10) working days' notice to the Buyer of the date and time when it considers the work to construct the Facility will be completed and will satisfy the test(s) on completion.
- 5.2. Following the receipt of the aforementioned notice, the Parties shall use their best endeavours to undertake the final inspection in order to allow the parties to sign the certificate of completion and availability for the Facility.

ARTICLE 3. THE SERVICES

6. POINT OF DELIVERY

- 6.1. The Point of Delivery shall be located at the location specified in Schedule A.
- 6.2. For the avoidance of doubt, all losses of electricity before the Point of Delivery shall be the responsibility of the Seller, and all losses beyond the Point of Delivery shall be the responsibility of the Buyer.

7. OPERATING LIMITS

- 7.1. Electric power supplied by the Seller shall be within the operating limits specified in Schedule A and the terms of the Connection Agreement.

7.2. Should the operating limits specified in 7.1 be exceeded, the Buyer shall have the right to not pay for the electric energy delivered at the Point of Delivery.

7.3 For compensation to be considered the following is agreed.

7.3(1) A comprehensive study and proper mitigation emergency plans on the grid availability/stability to be put in place by the seller before interconnection to the grid. (Data to be provided by the Buyer.)

7.3(2) The seller also to provide data on the production facility. Buyer transmission and distribution network unavailability to be not more than 5% of the annual availability. The seller to operate at not less than 75% of total annual production capacity throughout the 25 years, where the minimum output capacity should be differentiated as follows:

- i) Minimum output capacity for the first 10 years

- ii) Minimum output capacity for the 11th to the 20th year
- iii) Minimum output capacity for 21st to 25th year

7.3(3) It shall be the responsibility of the Seller to maintain not less than 75% output capacity of the plant at all times throughout the 25 years. Any additional cost to maintain the specified output capacity of the plant shall be at the expense of the ‘seller’.

7.3(4) However both parties have agreed that compensation can be applied in case of not meeting the above criteria, item 2 and 3, such that in case of a failure to achieve Guranteed Plant Production as specified in scheduled A, liquidated damages shall be calculated as follows: $LD = (PAT - PAA) * C * 8760 * EP$ where LD is the liquidated damge in USD; PAT is the Guranteed Production Equal to 75%; PAA is the actual plant production in %; C is the installed Capacity of 10,000kw; EP is the energy price in US\$/kwh. Compensation calculation under clause 7.3(4) shall be in US dollars but payment shall be in dalasi under the Central Bank exchange rate.

7.3(5) In case of excess supply to the Grid, Seller shall reduce the rates by 20% of the extra power generated and connected.

7.3(6) The Seller shall commit to do a full Grid Impact study after signing of the final PPA Contract, and before getting the final permit to start construction.

8. METERING

- 8.1. During the term of this Agreement, appropriate representatives of the Buyer shall be given access to read meters and to perform inspections whenever reasonably requested.
- 8.2. The Seller shall install, operate and maintain metering equipment sufficient to permit an accurate determination of the quality and time of delivery of electric power delivered to Buyer. Electric power delivered by Seller to Buyer hereunder shall be measured by an electric watt-hour meter (“Master Meter”) located at the Point of Delivery. The metering devices shall be described in Schedule A to this Agreement specifying the manufacturer's serial number, counter reading and accuracy of the metering device.
- 8.3. . All meters used to determine the billing hereunder shall be sealed, and such seals shall be broken only when both Parties agree to do so and only when the meters are to be inspected, tested or adjusted.
- 8.4. Buyer may own, maintain and operate metering equipment (a “Check Meter”) at its sole expense, provided that such equipment shall be operated and maintained in a manner that does not interfere with Seller's metering equipment. Should Buyer so elect and should any metering equipment installed by Seller fail to register during

any period of time, Buyer's metering equipment shall be used to determine the amount of electric power so delivered in lieu of Seller's estimates thereof.

- 8.5. The meter installations shall be completed before the Facility Initial Delivery Date.
- 8.6. Prior to the installation of any metering system, if required by any Party, the Seller shall deliver to the Buyer and the Buyer shall deliver to the Seller, the manufacturer's original accuracy certificates and the scheme of the metering systems to be installed, including the specifications of the equipment for mutual acceptance and approval of both Parties.
- 8.7. All metering equipment shall be arranged so that none of the electric output of the Facility that is consumed on site shall be registered as having been supplied by the Seller to the Buyer.
- 8.8. The accuracy of any metering equipment may be tested and verified annually or at an interval which has been agreed upon between the Parties. If the meter proves to be accurate within one percent (1%), such test shall be at the requesting Party's expense. If errors greater than one percent (1%) are discovered, the test shall be at the expense of the Party responsible for maintaining the metering equipment.
- 8.9. If upon testing, any metering equipment is found to be in error by not more than one percent (1%), previous recordings of such equipment shall be considered accurate, but such equipment shall be promptly adjusted in a common exercise attended by both Parties. If, upon testing, any metering equipment shall be found to be inaccurate by more than one percent (1%), such equipment shall be promptly adjusted in a common shall be made for (i) the actual period during which inaccurate measurements were made, if the period can be reasonably determined, or (ii) if the period cannot be reasonably determined, one half of the period from the date of the last previous test of the meter, but not to exceed six (6) months.
- 8.10. Each Party has the right to have a representative present at any time that the meters are to be read, tested or corrected.
- 8.11. All tests and calibration of meters, and any verification of meter accuracy, shall be performed pursuant to IEC Standards, by the Buyer or by a mutually agreed upon a qualified independent third party. Calibration shall occur before use of the meters. All meters shall be sealed and locked after calibration.

ARTICLE 4. RIGHTS AND OBLIGATIONS

9. SELLER'S OBLIGATIONS

- 9.1. The Seller shall notify the Buyer in writing at least 30 days prior to synchronising or operating the Seller's facility in parallel with the grid system, and co-ordinate such commencement of operation with the Buyer.

- 9.2. The Seller shall operate the Facility and all plant and equipment in a proper and skilful manner and in accordance with the manufacturer's instructions and recommendations.
- 9.3. The Seller shall provide the Buyer with access to the Facility at all reasonable times upon reasonable prior notice for the purpose of reading or inspecting meters, examining the operation of the Facility or other purposes reasonably related to its performance under the terms of this Agreement. Such access shall not interfere with the Seller's normal business operations.
- 9.4. The Seller shall allow the Buyer to conduct periodic tests of the Seller's facilities, with reasonable advanced notice, provided that the inspections do not disturb the normal operation of the Facility. The costs of such tests shall be borne by the Buyer.
- 9.5. The Seller shall maintain an operation log, which shall include all relevant information on the operation of the Facility. Monthly reports shall be established and submitted to the Buyer not later than fifteen (15) working days after the end of each calendar month.
- 9.6. Prior to the Initial Delivery Date and thereafter on at least thirty (30) days prior to the start of the subsequent year, the Seller shall furnish to the Buyer an annual forecast including the following aspects: estimated monthly generation availability, and Scheduled Outages for each year. 9.7. Any expected change to the notified Scheduled Outages given in the annual forecast specified in point 9.6 above should be notified by the Seller to the Buyer as as the interruption becomes apparent, including estimate of expected length, and as far as reasonably possible co-ordinated for the mutual convenience of both parties. The Seller shall use its Best Efforts to avoid any unnecessary interruptions of the delivery or quality of the electric power delivered.
- 9.8. The Seller shall report any changes in the power of the Facility, which may have impacts in any of the clauses of this agreement.
- 9.9. The Seller is responsible for conducting periodic tests of the Facility and taking reasonable steps to protect the system from possible contingencies.
- 9.10. The Seller shall obtain all approval, authorities, Authorizations, licenses, leases, easements, rights-of-way, permits and franchises whether corporate, governmental or otherwise, necessary of the operation of the Facility .
- 9.11. The Seller shall obtain and comply with all Governmental provisions applicable to renewable facilities. This includes the required environmental approvals, regulatory licenses, certificates and permits for the operation of the facilities. All certificates and permissions shall be in force during the operation of the agreement.

9.12. The Seller, and all subcontractors performing any services in connection with the construction, operation or maintenance of the Facility, shall obtain and maintain in force comprehensive general liability insurance, public liability insurance, insurance for injuries to persons and property, automobile liability insurance and workman's compensation insurance, all in amounts and under terms which are generally carried by owners and operators of projects similar to the Facility. In the event that any insured Party reasonably determines that such policy of insurance is no longer available at commercially reasonable rates, such insured Party shall not be obligated to continue to carry such insurance, and shall use its Best Efforts to obtain substitute insurance which is a nearly identical as possible to the policy of insurance which it is intended to replace. Such insured Party shall notify Buyer of any such substitution at least fifteen (15) days before it takes effect. Details of such insurance shall be made available to the Buyer on request.

9.13. The Seller shall designate one or more representatives (each a "Designated Representative") to maintain communications with Buyer's Designated Representatives, and to facilitate coordination between Buyer and Seller during the term of this Agreement.

9.14 The Seller to be held responsible for adjusting, repairing, replacing or re-calibrating the metering equipment at its own expense, in accordance with a procedure set out in the PPA

9.15 Seller should not be able to claim a reduction of its obligations, including its obligation to pay liquidated damages, due to insufficient or lack of solar radiation.

10. BUYER'S OBLIGATIONS

10.1. The Buyer shall accept and pay for the energy delivered according to the terms set out in Article 5, except that the Buyer may reject such Energy Output where any of the following apply:

- (i) the specification of electric power operating limits in Schedule A are not substantially satisfied,
- (ii) the Facility is not operated and maintained in a manner consistent with prudent operation practices, or
- (iii) whenever the wider distribution or transmission system or the systems with which it is directly interconnected experience a System Emergency, or whenever it is necessary to aid in the restoration of service on the Buyer's system or on the systems with which it is directly or indirectly interconnected, the Buyer may, in its sole discretion, curtail or interrupt the taking of all or a portion of Energy Output, provided such curtailment or interruption shall continue only for so long as it is reasonably necessary under reasonable and prudent operating practices.

10.2. Because the Seller's Facility is a Must-Run Facility, the Buyer shall use its best efforts minimize any periods of interruption, reduction, refusal, or curtailment as

provided for in this Article and as far as reasonably possible to coordinate such periods of interruption with the periods of previously Scheduled Outage at the Facility. The Buyer shall use its best efforts to provide information to the Seller about the interruption or refusal at least 12 hours in advance or as soon as the interruption becomes apparent, including the cause

of the interruption and the estimated duration of the unexpected event.

10.3. The Buyer shall build, own, operate and maintain Buyer's Interconnection Facilities up to the Delivery Point at its own cost in compliance with all applicable governmental requirements and in accordance with prudent utility practice. The Buyer shall ensure that Buyer's Interconnection Facilities are complete and capable of accepting electric power from the Facility before the Initial Delivery Date.

10.4. The Buyer shall cooperate with and assist Seller in obtaining any approvals, authorities, authorizations, licenses, leases, easements, rights-of-way, permits and franchises, whether corporate, governmental or otherwise, necessary for the operation of the Facility.

10.5. The Buyer shall designate one or more representatives (each a "Designated Representative") to maintain communications with Seller's Designated Representative and to facilitate coordination between Buyer and Seller during the term of this Agreement.

11. SYSTEM EMERGENCY

11.1. Notwithstanding the obligation of the Buyer to accept the electric power produced by the Facility, the Buyer may, without penalty, temporarily curtail acceptance of electric power from the Facility whenever a System Emergency exists, and the acceptance of such output at such time would contribute to the System Emergency. As promptly as possible following such a discontinuance of acceptance of electric power, Buyer shall inform Seller that such a System Emergency has occurred.

11.2. Notwithstanding the obligation of the Seller to deliver electric power produced by the Facility to the Buyer, the Seller may, without penalty, temporarily curtail production or delivery of electric power from the Facility whenever there is no renewable resource or whenever a System Emergency exists, and the continued production or delivery of electric power at such time would contribute to the System Emergency or damage or otherwise threaten the Facility. As promptly as possible following such a temporary curtailment of electric power, the Seller shall inform the Buyer that such a System Emergency has occurred.

11.3. In the event of the curtailment of acceptance or delivery of electric power pursuant to this Article, the Parties shall use their Best Efforts to promptly correct the

System Emergency, and to resume the delivery and acceptance of electric power from the Facility.

ARTICLE 5. SALE AND PURCHASE

12. PRICE, BILLING AND PAYMENT

- 12.1. Subject to the terms, conditions and exceptions set forth in this Agreement, from the Initial Delivery Date, Seller agrees to supply and Buyer agrees to purchase the entire output of the Facility measured at the Point of Delivery at the applicable price(s) of US\$ cents /Kwh, payable in *Dalasi* according to average commercial rate of exchange of five major bank in The Gambia at the date of payment of the invoice
- 12.2. Seller shall read its meters on at the start of the first day of the calendar month of each Billing Period at 00:00 hours (midnight). buyer shall be present at meter readings. The amount of electric power delivered to Buyer during the preceding Billing Period shall be determined from such readings.
- 12.3. Invoices shall be issued by Seller on or before the tenth (10th) day following a Billing Period and shall incorporate such information as may reasonably be necessary or desirable to determine the payments for electric power delivered during the Billing Period.
- 12.4. If Buyer disputes a portion of any invoice, Buyer shall render payment for the undisputed portion of such invoice.
- 12.5. All invoices shall be due and payable not later than thirty (30) days after receipt of the invoice. In case of any delay after three (3) months 1.5% interest rate will apply
- 12.6. Invoicing *shall be in foreign currency* and payment shall be in *Dalasi* according to the Central Bank Rate of The Gambia at the date of payment of the invoice
- 12.7. The Seller shall not be liable to the Buyer for any direct damages resulting from the Seller's inadvertent or accidental and non-negligent failure in delivering expected energy production. Without the Buyer's prior written approval, the said limitation of the Seller's liability shall not apply where the Seller deliberately reduces Energy Output for the purpose of selling or attempting to sell electrical energy to any third party, or for the purpose of producing any other form of energy capable of being produced at the Facility.

ARTICLE 6. DISPUTE, TERMINATION AND ASSIGNMENT

13. DISPUTE

13.1. In the event of dispute, the Parties shall make efforts in good faith to negotiate a resolution of any disputes before initiating arbitration.

13.2. The parties accept that the Authority may adjudicate on matters set out in this Agreement and in the event of a dispute.

13.3. In the event that the dispute cannot be settled in the manner prescribed in clauses 13.1 and 13.2, the parties shall submit the dispute to arbitration in accordance with the rules of the Alternative Dispute Resolution Secretariat of The Gambia.

14. CONDITIONS OF TERMINATION

14.1. Events of Default include each or any of the following events:

FOR BUYER:

- 1) if the Seller fails to adequately obtain financing for the project by a "specified date",
- 2) if the Seller fails to achieve commercial operation of the Facility by a "specified deadline",
- 3) if the Seller abandons the operation of the Facility,
- 4) if the Seller breaches its obligations under the PPA,
- 5) if the Seller fails to subscribe for, maintain in effect, renew or provide notice to NAWEC in respect of any insurance policy required under the PPA,
- 6) where events occur relating to the voluntary liquidation, mandatory liquidation of the Seller or the transfer of the Seller's right to own or operate the Facility,
- 7) where the Seller is dissolved or declared bankrupt, or

if any statement, representation or warranty by the Seller in the PPA proves to be incorrect in any material respect and which may have a adverse effect on the Seller's ability to perform its obligations under the PPA

FOR THE SELLER:

- 1) the dissolution, pursuant to the law, of NAWEC occurs, except for instances of privatization, amalgamation, unbundling or reorganisation,
- 2) any material breach by NAWEC, including any failure to make payments when due, that is not remedied within a specific time period (for example, thirty days) after notice from the Seller, or
- 3) repudiation by NAWEC of the PPA.

(i) In the event that either party shall be in material default of its obligations under this contract for a period in excess of ninety (90) days, and such failure shall not be rectified or treated within sixty (60) days after written notice thereof from the non-defaulting Party;

- (ii) Undue delay in the completion of the Facility for reasons solely imputable to the Seller shall entitle the Buyer to terminate this Agreement without prejudice to any outstanding payments and other rights, , and such failure shall not be rectified or treated within ninety (90) days after written notice thereof;
- (iii) The Seller fails to install and operate all the plant and equipment specified in Schedule A;
- (iv) The occurrence of a Bankruptcy Event affecting either party
- (v) If Force Majeure shall subsist for a period of three (3) months or more;
- (viii) Either Party contests and denies the enforceability of this Agreement, in which case the Party contesting enforceability shall be deemed to be the Party in default hereunder.

14.2. Upon occurrence of an Event of Default, the non-defaulting Party may terminate the Agreement without liability upon giving 30 days written notice to the other Party but without prejudice to any right of action or remedy that either Party may have against the other in respect of any breaches prior to the termination.

14.3. On the insolvency, or bankruptcy of either Party being declared, this Agreement shall automatically be terminated but without prejudice to any right of action or remedy that either Party may have.

15. ASSIGNMENT

15.1. Except as provided, this Agreement shall not be assigned by either Party without the written consent of the other Party, which consent shall not be unreasonably withheld, and the written agreement of the assignee whereby such assignee expressly assumes and agrees to perform each and every obligation of this Agreement, and any assignment in violation hereof shall be null and void; provided, however, that either Party may assign this Agreement to an Affiliate or to any purchaser or all or a substantial portion of its properties without such consent or such assumption and agreement, provided that the assigning Party remains obligated for the full performance of the assignor's obligation under this Agreement.

15.2. The Seller shall notify the Buyer at least sixty (60) days prior to any change of ownership or assignment of the Plant.

15.3. In the event of the termination of this Agreement as a result of an Event of Default by the Seller, the Buyer shall, in addition to providing the notice of default as required above, provide each assignee with written notice that this Agreement has been terminated, together with a statement of all sums which would at that time be due under this Agreement but for such termination or foreclosure, and of all other defaults, if any, then known to Buyer.

15.4. Provided that mutual discussions are successful, the Buyer agrees to enter into a new Agreement (the "New Agreement") with any such assignee or its designee for the remainder of the term of this Agreement effective as of the date of termination on the same terms and conditions as this Agreement.

16. BURDEN OF PROOF ON FORCE MAJEURE

16.1. The burden of proof as to whether a Force Majeure event has occurred shall be upon the Party claiming the Force Majeure.

16.2. Notwithstanding anything in this Article to the contrary, no payment obligation arising under this Agreement shall be excused by any event of Force Majeure

ARTICLE 7. MISCELLANEOUS

17. RISK OF LOSS

17.1. The Seller shall be responsible for and shall bear the full risk of loss -

(i) with respect to any loss of or damage to Facility, Seller's Interconnection Equipment, or any other property on Seller's side of Point of Delivery; and

(ii) with respect to any personal injury or loss of or damage to any other property arising out of the use of the Facility, Seller's Interconnection Equipment, or any other property on Seller's side of the Point of Delivery;

(iii) except for any loss, damage, or injury arising out of the negligence or wilful misconduct of Buyer or Buyer's employees or agents.

17.2. The Buyer shall be responsible for and shall bear the full risk of loss -

(i) with respect to any loss of or damage to Buyer's Interconnection Equipment, or any other property located on Buyer's side of the Point of Delivery; and

(ii) with respect to any personal injury or loss of or damage arising out of the use the Facility, of Buyer's interconnection facility or any other property on Buyer's side of the Point of Delivery;

(iii) except for any loss damage, or injury arising out of the negligence or wilful misconduct of Seller or Seller's employees or agent.

18. INDEMNIFICATION

18.1. Seller shall protect, indemnify and hold harmless Buyer and directors, officers, employees, agents, affiliates and representative against and from any and all cost, expenses, damage, liability or loss, including costs and attorney's fees, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of

property belonging to Buyer, Seller, or others, resulting from or attributable to the fault or the negligence of Seller.

18.2. Buyer shall protect, indemnify and hold harmless Seller and its directors, officers,

employees, agents, affiliates and representative against and from any and all costs, expense, damage, liability or loss, including costs and attorneys' fees, for or on account of injury, bodily or otherwise, to or death of persons, or for damage to, or destruction of property belonging to Seller, Buyer or others, resulting from or attributable to the fault or the negligence of Buyer.

18.3. Notice and Participation: If any Party entitled to indemnification hereunder (the "Indemnified Party") intends to seek indemnification under this Article from any other Party (the "Indemnifying Party") with respect to any action or claim the Indemnified Party shall give the Indemnifying Party notice of such claim or action upon the receipt of actual knowledge or information by the Indemnified Party of any possible claim or of the commencement of such claim or action, which period shall in no event be later than the lesser of - fifteen (15) business days prior to the last day for responding to such claim or action or; one half of the period allowed for responding to such claim or action.

19. LIMITATION OF LIABILITY

19.1. Notwithstanding anything in this Agreement to the contrary, neither Seller nor its employees or agents shall be liable, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action whatsoever, for any indirect, incidental or consequential cost, expense or damage, including loss of revenue or profits, resulting from an interruption in Seller's delivery of electric power, however caused. The liability of Seller prior to the Initial Delivery Date shall be limited to using its Best Efforts to develop, license, construct, own and operate the Facility.

20. APPLICABLE LAW

20.1. This Agreement is executed and is intended to be construed in accordance with the laws of The Gambia. In case of not reaching an agreement within the confines of the Laws of the Gambia can be referred to the international court of arbitration by either party.

20.2. For the avoidance of doubt this agreement was signed subject to the provisions of any law, including provisions of relevant legislation in the electricity sector, including and not limited to the Electricity Act 2005 and Renewable Energy Act 2013.

21. NOTICE AND SERVICE

21.1. Any notice, demand, request, consent, approval, confirmation, communication, or statement which is required or permitted under this Agreement, shall be in writing, except as otherwise provided, and shall be given or delivered by personal service, email, fax, telecopy, telegram, overnight mail service, or by deposit in any post office, postage prepaid, by registered or certified mail, addressed to the Party at

the address set forth in Schedule A. Changes in such address shall be made by notice similarly given.

21.2. Notices shall be deemed to have been received within ten (10) days of dispatch.

22. AMENDMENT

22.1. No amendment or modification of the terms of this Agreement shall be binding on either Buyer or Seller unless such amendment is in writing and signed by both Parties.

22.2 Seller may not undergo any transaction, which results in a change in all or substantially all the assets of the Seller, or more than fifty percent (50%) of its voting stock or equity, without the prior written consent of NAWEC

23. INFORMATION

23.1. Both Seller and Buyer shall keep a record of all invoices, receipts, charts, computer

printouts, punch cards or magnetic tapes related to the volume or price of electric power sales made under this Agreement. Such records shall be made available for inspection by

either Party upon reasonable notice at the principal place of business of the non requesting Party during regular business hours. All such materials shall be kept on record for a minimum of five (5) years from the date of their preparation.

23.2. Any Proprietary Information of a Party or details of the Facility shall be considered as confidential information and shall not be disclosed, unless prior consent is given, to any Party outside of this Agreement.

23.3. Each Party shall make available to the other such other information relative to the Facility as may be reasonably required to carry out the terms of this Agreement.

23.4. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24. SEVERABILITY AND ASSURANCES

24.1. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to law, such condition shall in no manner operate to render any other provision of this Agreement unenforceable, void or contrary to law, and this Agreement shall continue in force in accordance with the remaining terms and provisions hereof, unless such condition invalidates the purpose or intent of this Agreement.

24.2. In the event that any of the provisions, or portions or applications thereof, of this

Agreement is held unenforceable or invalid by any Court of competent jurisdiction, the Seller and Buyer shall negotiate in good faith to attempt to implement an adjustment in the provisions of this Agreement with a view to maintain the same outcome and benefits to both parties as hold under this Agreement.

24.3. At the request of either Party, the other Party shall negotiate in good faith and execute such other definitive documents as may be necessary from time to time to reflect the matters set forth herein.

24.4. Except to the extent otherwise indicated herein, all the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

24.5. No waiver or failure to act during the length of this contract is permitted, except in writing signed on behalf of both parties by their duly authorised officers. **IN WITNESS WHEREOF**, the Parties have caused the signatures of their authorised officers and their seals to be affixed as of the day and year first above written. This agreement has been established two (2) originals.

25. REPRESENTATION AND WARRANTIES

(i) The Seller's execution, delivery and performance of this Agreement will not result in a breach or violation of, or constitute a default under, any agreement, lease, or instrument to which it is a party as of the date hereof, or by which it or its properties may be bound or affected as of the date hereof.

(ii) As of the date hereof, and except as disclosed before the execution of this Agreement, no suit, action or arbitration, or legal, administrative or other proceeding is pending or has been threatened against Seller that would affect the validity or enforceability of this Agreement or the ability of Seller to fulfil its commitments hereunder, or that could result in a material adverse change in the business or financial condition of the Seller.

(iii) The Seller is not in breach of, in default under, or in violation of, any applicable statute, law, ordinance, decree, rule, or regulation of any governmental body, or the provisions of any franchise or license, or in breach of, in default under, or in violation of, any provision of any promissory note, indenture or any evidence of indebtedness or security but not limited to, lease, contract, license or other agreement by which it is bound, if such breach, default or violation may result in a material adverse effect on the business or financial condition of Seller; and the execution and delivery of this Agreement and the performance of its obligation

hereunder will not constitute or result in any such breach, default or violation.

For and on behalf of [NATIONAL WATER AND ELECTRICITY CO. LTD]

Represented by [THE MANAGING DIRECTOR]

Witness [.....(NAWEC)]

For and on behalf of [.....]

Represented by [MANAGING DIRECTOR]

Witness [name]