

POWER PURCHASE AGREEMENT  
FOR  
SALE AND PURCHASE OF POWER  
BETWEEN  
INSERT NAME OF THE PROJECT  
("SELLER")  
AND  
ELECTRICITE DU LAOS  
("PROCURER")

Vientiane Capital, Lao People's Democratic Republic

..... 2018

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## Section 1

This Power Purchase Agreement (hereinafter referred to as the "PPA") is made on [ ] 20[ ] in Vientiane Capital, Lao People's Democratic Republic (the "Lao PDR") by and between:

[ Insert Seller Name ] (hereinafter referred to as "Seller") a limited company incorporated under the laws of the Lao People's Democratic Republic, whose registered office is situated at [ Insert Address ] Vientiane Capital, Lao PDR of the ONE PART, which expression, unless repugnant to the context or meaning thereof shall be deemed to include its legal successors and permitted assigns;

AND

**ELECTRICITÉ DU LAOS (EDL)**, a public enterprise organised and existing under the laws of the Lao People's Democratic Republic, whose registered office is at [Friendship Lao-Thai Road, Thongkang Village, P.O. Box 309, Sisattanak District], Vientiane, Lao PDR (hereinafter referred to as "Procurer"), which expression shall unless repugnant to the context or meaning thereof shall be deemed to include its legal successors and permitted assigns) of the OTHER PART.

(Seller and Procurer are individually referred to as the "Party" and collectively referred to as the "Parties")

WHEREAS

- A. The Seller is constructing a [ Insert Type of Project ] Hydro Power Project with an installed capacity of [ Insert Capacity ] on the river [ Insert River Name ] at [ Insert Location ] (hereinafter referred to as the "Project").
- B. The GOL and the Seller have entered into the Concession Agreement relating to the [ Insert Project Name ] in Lao PDR dated [ Insert Date ] under which the Seller is authorised to Build, Operate and Transfer the [ Insert Project Name ] and associated facilities.
- C. The Seller agrees to make available [ Enter amount of energy which shall be referred as "Contracted Energy" ] from the Energy Facility to the Procurer at Delivery Point; and the Procurer wishes to purchase the Contracted Energy from the Seller pursuant to the terms and conditions in this Agreement.
- D. The Seller agrees to complete construction and Commissioning of the Project as per the timeline/schedule agreed in the Concession Agreement signed between the GOL and the Seller.
- E. The Seller has provided to the Procurer, Contract Performance Guarantee as per format specified in Schedule 13 of this Agreement.
- F. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sell and purchase of Contracted Energy by the Seller from the Energy Facility to the Procurer respectively.
- G. The Seller has signed a Tariff MoU [ Insert Date ] with EDL for off-take of electricity from the Seller, for Contracted Energy from its Project, at an agreed tariff in accordance with the terms and conditions of the Tariff MoU.
- H. The Procurer agrees, on the terms and subject to the conditions of this Agreement, to procure up to Contracted Energy, and pay the Seller the tariff as determined in accordance with the terms of this Agreement.

**1. DEFINITIONS**

Unless otherwise defined herein, capitalised terms used herein (including in the Recitals) shall have the following meanings.

<b>Affiliate</b>	“Affiliate” as defined in the Concession Agreement
<b>Agreed Test Procedures</b>	The testing procedures set forth in Clause 11.4 (Testing and Commissioning of the Transmission Equipment) or Clause 12.2 (Testing and Commissioning of the Energy Facility) , as applicable
<b>Agreement</b>	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms and conditions hereof
<b>Applicable Energy Tariff</b>	The energy tariff for that period as prescribed under Schedule 4 of this Agreement
<b>Arbitral Tribunal</b>	Has the meaning set forth in Clause 29.2 (Arbitration) of this Agreement
<b>Available Energy</b>	Shall mean the energy in MU declared available by the Seller for delivery to the Procurer at the Delivery Point
<b>Business Day</b>	Any day other than a Saturday, Sunday or a public holiday in Lao PDR,

provided that:

- (a) for the purposes of making a payment by the Procurer to the Seller , a Business Day shall be a day on which banks in the Lao PDR and any bank that is located outside of the Lao PDR that is designated by the Seller to receive the fund transfer are open for business; and
- (b) for the purposes of making a payment by the Seller to the Procurer, a Business Day shall be a day on which banks in Lao PDR and such other city as designated in writing from time to time by the Seller, and the bank designated by the Procurer to receive the fund transfer, are open for business.

**Breach of Contract** means a failure by a Party to perform any of its obligations under this Agreement, including late or defective performance, unless such non-performance was caused by an act or omission of the other Party, by Force Majeure or by another event as to which the other Party bears the risk;

**CA Effective Date** The date on which all conditions precedent under the Concession Agreement have been satisfied (or waived) and the Concession Agreement comes into full force and effect

**Change in Law** As defined in the Concession Agreement

**COD or Commercial Operation Date** The later of:  

- (a) the Commissioning Date; and
- (b) “COD” as defined in the Concession Agreement

**Commissioned** The successful completion of the Commissioning Tests for the Energy Facility, as determined in accordance with Clause 12.2 or the Transmission Equipment, as determined in accordance with Clause 11.4 of this Agreement

**Commissioning Date** The date which is the earlier of:  

- (a) the day on which the Energy Facility is regarded as being Commissioned as referred to in Clause 12.2; and
- (b) the Deemed Commissioning Date as prescribed under Clause 15 of this Agreement

**Commissioning Period** The period ofwhen commissioning of the Transmission Equipment and Energy Facility takes place ending on (but excluding) Commercial Operation Date or Revised Commercial Operation Date, as applicable

**Commissioning Tests** The tests as described in Schedule 3and performed on the Transmission EquipmentunderClause 11.4 and on the Energy Facility under Clause 12.2of this Agreement

**Concession Agreement** The agreement dated [Insert Date] between the GOL and the Seller in relation to the financing, building, owning, operating and transferring of

the Project

<b>Contract Performance Guarantee</b>	Shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the Seller to the Procurer from a bank in the form attached as mentioned in Schedule 13 of this Agreement
<b>Concession Period</b>	“Concession Period” as defined in the Concession Agreement
<b>Contracted Capacity</b>	Shall mean (Insert Capacity) MW from the Energy Facility of the (Insert project Name) contracted with Procurer by the Seller at Delivery Point
<b>Contracted Energy</b>	shall mean (Please insert Value/Number) MU/Mwh/Gwh power from the Energy Facility of the (Insert project name) based on the Contracted Capacity and any other factor deemed necessary, contracted with Procurer for sale of such power by the Seller at Delivery Point for a particular Year with Month wise allocation as mentioned in Schedule 4 of this Agreement.
<b>Contracted Operating Characteristics</b>	The required performance and operating characteristics and limits of the Energy Facility and of the EDL Grid as set out in Schedule 2, as amended or modified from time to time in accordance with this Agreement
<b>Daily Declaration</b>	Declaration of the Available Energy on daily basis by the Seller in accordance with Clause 22.1 of this Agreement
<b>Daily Programme</b>	Daily Dispatch Instruction provided by the Procurer in accordance with Clause 22.1 of this Agreement
<b>Deemed Commissioning Date</b>	Has the meaning set forth in Clause 15 of this Agreement
<b>Default Rate</b>	In respect of any USD amount, the rate equal to two percent (2 %) above LIBOR at the time of consideration
<b>Delivered Energy</b>	The actual electrical energy (expressed in kWh), with respect to any period, delivered by the Energy Facility at the Delivery Point
<b>Delivery Point</b>	The incoming feeder of the (Insert Specification) switchyard at the Energy Facility, acceptable to both the Seller and the Procurer at which energy shall be delivered by the Seller to the Procurer and as described in more detail in Schedule 1 of this Agreement
<b>Dispatch Instructions</b>	The daily instructions issued for dispatch of energy from the Energy Facility issued directly by the EDL Control Centre to the Seller in accordance with:  (a) the EDL Grid Operating Procedures and Practice;  (b) the operating procedures developed by the Parties to operate the Energy Facility in accordance with the terms of this Agreement; and  (c) Prudent Utility Practice

<b>Dispute</b>	Any dispute, controversy or claim of any kind between the Parties in respect of or in connection with this Agreement, including any dispute, controversy or claim relating to any Breach of Contract or the interpretation, validity or termination of this Agreement.
<b>EDL Control Centre</b>	The EDL Control Centre, located in Vientiane or such other control centre designated by EDL from time to time, which shall issue Dispatch Instructions to the Seller with regard to the Energy Facility
<b>Emergency</b>	A condition or situation that in the reasonable opinion of the Procurer poses an imminent threat of materially adversely affecting the EDL Grid
<b>EDL Grid</b>	The EDL transmission and distribution facilities beyond the Delivery Point controlled or used by EDL, including, without limitation, the Transmission Equipment from the date of the transfer of such Transmission Equipment by the Seller to EDL in accordance with Clause 11 of this Agreement
<b>EDL Grid Operating Procedures and Practices</b>	The operating procedures and practices for connection of the Energy Facility to the EDL Grid and for operation of the Energy Facility when connected to the EDL Grid, as prescribed under Schedule 6 of this Agreement
<b>EDL Grid Outage</b>	A loss of or reduction in the capability of the EDL Grid due to which EDL is unable to receive or deliver electrical energy at the Delivery Point.
<b>Energy Facility</b>	That part of the Project being used for the generation and delivery of electrical energy by the Seller to the EDL Grid at the Delivery Point, as described in Schedule 1 of this Agreement
<b>Energy Facility Operating Procedures</b>	The Energy Facility operating procedure established pursuant to Clause 10 of this Agreement
<b>Environmental Contamination</b>	As defined in the Concession Agreement
<b>Event of Default</b>	A Seller Event of Default or a Procurer Event of Default under this Agreement
<b>Event of Insolvency</b>	Any bankruptcy, winding-up or rehabilitation proceedings or any other insolvency, administration, restructuring or dissolution procedure or proceedings of any kind
<b>Excess Energy</b>	Has the meaning set forth in Clause 20.4 of this Agreement
<b>Execution Date</b>	The date of signing of this Power Purchase Agreement
<b>Expiry Date</b>	Shall mean the date which is the (Please insert the PPA term like 25 <sup>th</sup> /30 <sup>th</sup> ) anniversary of the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be or such extended period as mutually agreed upon by both Parties

<b>Financial Closure</b>	“Financial Closure” as defined in the Concession Agreement
<b>Financing Documents</b>	“Financing Documents” as defined in the Concession Agreement
<b>Force Majeure</b>	Has the set forth in Clause 26 of this Agreement
<b>Forced Outage</b>	Has the meaning set forth in Clause 21.3 of this Agreement
<b>GOL/ Government</b>	“GOL” as defined in the Concession Agreement
<b>Government Authorisation</b>	Any approval, consent, permit, licence, concession waiver, exemption and similar authorisation of any Government Authority including, without limitation, any Authorisations (as defined in the Concession Agreement)
<b>Government Authority</b>	Any particular entity or entities that comprise the GOL including the National Assembly, the National Assembly Standing Committee, the GOL and any government department or ministry, body, state enterprise, board, commission, bureau, agency, instrumentality or public authority, whether state, provincial or otherwise, governor, mayor, a judicial, legislative or administrative body or any other person in the Lao PDR having or claiming to have authority to issue a Government Authorisation, to impose requirements in relation to or otherwise having jurisdiction over any aspect of the Project or any matter in this Agreement
<b>GWh</b>	Gigawatt-hour of electricity
<b>Initial Registered Capacity</b>	The capacity established or deemed to be established for the first time of the Energy Facility during the Commissioning Tests in accordance with Clause 14 of this Agreement
<b>Interconnection Point</b>	shall mean the point where the power from the Energy Facility of the Seller is injected into the EDL Grid
<b>Kip</b>	The lawful currency of the Lao PDR
<b>Lao Grid Code</b>	The code setting forth the planning procedures, connection conditions, operating procedures scheduling and dispatch procedures and general conditions regulating the supply of electrical energy to the Procurer’s System by independent power producers as published by the Ministry of Industry and Handicrafts (MIH), as amended, modified, supplemented or replaced from time to time
<b>Lao PDR</b>	The Lao People’s Democratic Republic
<b>Lao Political Force Majeure</b>	“Lao Political Force Majeure” as defined in the Concession Agreement, <i>mutatis mutandis</i>
<b>Laws</b>	“Laws” as defined in the Concession Agreement (excluding the Lao Grid Code)
<b>Lenders</b>	“Lenders” as defined in the Concession Agreement

<b>LEPTS</b>	Lao Electrical Power Technical Standards
<b>LIBOR</b>	The London interbank offered rate administered by IBC Benchmark Administration Limited (or any other person which takes over the administration of that rate) on the basis of the offered rates for deposits in US Dollars for the applicable period (and if no period is mentioned, six (6) months), which shall appear on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters, as of 11:00 a.m., London time, on the day that is immediately prior to the date the relevant payment is to be made. If at least two rates appear on the LIBOR01 page of the Thomson Reuters screen (or any such replacement page as may be applicable), the rate for that period will be the arithmetic mean of such rates
<b>Metering Point</b>	The location of the Meters, as described in Schedule 5 of this Agreement
<b>Meters</b>	The meters provided at the Metering Point for metering the Delivered Energy and the Start-up Energy
<b>Monthly Declaration</b>	A notification made by the Seller in accordance with Clause 22.1 of this Agreement
<b>Monthly Programme</b>	A notification made by the Procurer in accordance with Clause 23.1 of this Agreement
<b>Non-Political Force Majeure</b>	"Force Majeure" as defined in Clause <b>(Insert CA Clause Number)</b> of the Concession Agreement, mutatis mutandis (excluding Lao Political Force Majeure).
<b>Operating Characteristics</b>	The performance and operating characteristics and limits of the Energy Facility, for any period, for which values are specified as Contracted Operating Characteristics and which can be modified from time to time pursuant to the terms of this Agreement.
<b>Operating Period</b>	shall mean the period commencing from the Scheduled Delivery Date or Revised Scheduled Delivery Date as applicable, until the Expiry Date or date of earlier termination of this Agreement in accordance with the terms and conditions of this Agreement;
<b>Operating Year</b>	shall mean the period beginning on the COD and ending on the following thirty first (31 <sup>st</sup> ) day of December; and each successive twelve (12) Month period beginning on the first (1 <sup>st</sup> ) day of January thereafter till the Expiry Date;
<b>Planned Outage</b>	An Energy Facility Outage or EDL Grid outage, as applicable, including any maintenance outage, that has been scheduled and co-ordinated between the Seller and the Procurer, with a specified duration, in accordance with Clause 21.2 of this Agreement
<b>Procurer Event of Default</b>	Has the meaning set forth in Clause 30.2

<b>Project</b>	means the hydroelectric generating facilities of the (Insert project name) including without limitation, all land, buildings, dams, gates, spillways, hoists, weirs, canals, penstocks, tunnels, surge tanks, electrical energy generating facility and associated auxiliary equipment's, switchyard, the tie line, along with Transmission Equipment designed, built, owned, operated and maintained by the Seller/ the Procurer and including any residential colony / unit welfare facilities and offices
<b>Project Agreements</b>	All material agreements (excluding, for the avoidance of doubt, any Financing Document and this Power Purchase Agreement) entered into in relation to the Project including, without limitation: (a) the Concession Agreement; (b) Sellers s principal contracts with the contractors for civil and hydro mechanical work, electric-mechanical work and transmission line work; and (c) any operation and maintenance agreement
<b>Prudent Utility Practice</b>	<p>In relation to the Seller or the Procurer or any other person and at any particular time, the standards of practice attained by exercising that degree of skill, diligence, prudence, judgment and foresight which could reasonably be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and location (including climatic and geologic conditions) and in light of the facts known or which reasonably should have been known at the time a decision was made to achieve a desired result:</p> <p>(a) in the case of the Procurer, applying those practices, designs, methods, means, techniques, equipment and acts that are generally followed by international public electricity industries and commonly used in engineering and operations for electricity generation and transmission facilities of a type similar to the Procurer system; and</p> <p>(b) in the case of the Seller, applying those practices, designs, methods, means, techniques, equipment and acts that are generally followed by the international independent electric power producers commonly used in engineering and operations for electricity generation and transmission facilities of a type similar to the Project.</p>
<b>Registered Capacity</b>	The capacity established or deemed to be established of the Energy Facility during the Commissioning Tests or during any subsequent testing during the term of this Agreement, pursuant to Clause 14
<b>Revised Scheduled Deliver Date</b>	Has the meaning set forth in Clause 9.3 of this Agreement
<b>Revised Scheduled Commercial Operation Date</b>	Has the meaning set forth in the Concession Agreement
<b>Scheduled Commercial Operation Date</b>	Has the meaning set forth in the Concession Agreement

<b>Scheduled Delivery Date</b>	Has the meaning set forth in Clause 9.1 of this Agreement
<b>Scheduled Synchronization Date</b>	means the date by which the Seller schedules to synchronize the Energy Facility with EDL Grid as per the terms and conditions of this Agreement
<b>Season</b>	Has the meaning set forth in Part 1 of Schedule 4 of this Agreement
<b>Seller Event of Default</b>	Has the meaning set forth in Clause 30.1
<b>Start-up Energy</b>	The electrical energy drawl, with respect to any period, by the Seller from the EDL Grid at the Delivery Point during that period.
<b>Tariff MoU</b>	The memorandum of understanding (Please insert reference number) signed between the Seller and the Procurer dated (Please insert date)
<b>Tariff Year</b>	Has the meaning described in Clauses 1.2 and 1.3 in Part 2 of Schedule 4 of this Agreement
<b>Taxes</b>	Any taxes, including withholding taxes, levies, costs, imposts, import duties, documentation duties, registration fees, royalties or other fees and charges payable in connection with this Agreement
<b>Term</b>	The period of this Agreement as specified in Clause 4.1 (Term of Agreement)
<b>Termination Date</b>	The date on which this Agreement is terminated in accordance with Clause 30 of this Agreement
<b>Termination Payment</b>	A payment payable by the Procurer to the Seller on termination of this Agreement due to a Procurer Event of Default or due to Lao Political Force Majeure under this Agreement, an amount determined in accordance with Clause 30.7 and Schedule 8 of this Agreement
<b>Test Energy</b>	means the energy generated during the Commissioning Period of the Project, which can be scheduled and is generated prior to the Commercial Operation Date or Revised Commercial Operation Date, as applicable
<b>Transmission Equipment</b>	The transmission equipment's and associated facilities beyond the Delivery Point up to Interconnection Point, including the dedicated transmission line connecting the Energy Facility to the EDL Grid as described in more detail in Schedule 1 of this Agreement
<b>UNCITRAL Arbitration Rules</b>	Has the meaning set forth in Clause 29.2 of this Agreement
<b>US Dollars or US\$</b>	The lawful currency of the United States of America.
<b>VAT</b>	The value added tax imposed by the Law on Value Added Tax (No. 52/NA, 23 July 2014) as such law may be amended from time to time.

<b>Yearly Declaration</b>	A notification made by the Seller in accordance with Clause 22.1 of this Agreement
<b>Yearly Programme</b>	A notification made by the Procurerin accordance with Clause 22.1 of this Agreement

## **2. INTERPRETATION**

### **2.1 Interpretation**

In this Agreement, unless otherwise stated:

- a) any reference to:
  - (i) a law or any other enactment or any section of, or schedule to, or other provision of, any such enactment shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment thereof in force and to all instruments, orders or regulations then in force and made under or deriving validity from the relevant enactment or provision (as the same may have been so modified, extended or re-enacted from time to time);
  - (ii) any agreement (including this Agreement) shall be construed, at any particular time, as including a reference to the relevant agreement as it may have been amended, modified, supplemented or novated;
  - (iii) a day shall be construed as a twenty-four (24) hour period beginning at 00:00 local time at the Energy Facility, a week shall be construed as a seven (7) day period running from Monday through to and including Sunday, a month shall be construed as a calendar month, a year shall be construed as a calendar year and a number of days shall refer to a number of calendar days;
  - (iv) Either Party or any other person shall include its legal successors and permitted assignees;
  - (v) A Clause or a Schedule shall be a reference to the relevant Clause or Schedule in or to this Agreement; and
  - (vi) a particular paragraph or sub-paragraph, if contained in a Clause or Schedule, shall be a reference to the relevant paragraph or sub-paragraph of that Clause or Schedule.
- b) words in the singular may be interpreted as referring to the plural and vice versa, and words denoting natural persons may be interpreted as referring to any person and references to a "person" shall be construed as to include any individual, juristic person, firm, company, corporation, government, state or agency of a government or state or any joint venture, association or partnership (whether or not having separate legal personality);
- c) where any obligation of the Seller expressed to exist under any provision of this Agreement is such that it refers to another agreement, then the reference to that other agreement in that provision shall not, unless expressly stated in that provision, prevent that obligation from being owed and being enforceable against the Seller under this Agreement;
- d) "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

- e) Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part; Furthermore, in the event of any inconsistency between the operative provisions of this Agreement and the schedules to this Agreement, the operative provisions shall prevail.

## **2.2 Calculation of amounts and values**

- a) For the purposes of this Agreement amounts and values shall be calculated to not more than three (3) decimal places unless otherwise specified herein and provided that the third decimal place shall be rounded up to the next whole integral if the value of the fourth decimal place is greater than or equal to five (5).

## **2.3 Sections**

This Agreement is set out in two sections as follows:

- a) Section 1 is the Operative Provisions of this Agreement from Clause 1 to 32; and
- b) Section 2 is Schedules of this Agreement, consisting of Schedules 1 to 13.

## **3. EFFECTIVE DATE**

- a) The rights and obligations of the Parties under this Agreement shall be effective from the CA Effective Date.
- b) The provisions of Clause 3(a) shall not apply to the rights and obligations of the Parties under or in respect of:
  - (i) this Clause 3;
  - (ii) Clause 29, relating to the dispute resolution procedures;
  - (iii) Clause 31, relating to governing law; and
  - (iv) Clause 32, relating to miscellaneous provisions,

all of which shall be effective from the Execution Date of this Agreement.

- c) In case the CA is not effective and the Concession Agreement is terminated by the Seller or the GOL then this Agreement shall thereupon automatically be terminated on the same date as the date of termination of the Concession Agreement without the requirement for either Party to give prior notice to the other, provided however that the Seller shall promptly following that termination of the Concession Agreement notify the Procurer of such termination of the Concession Agreement. Subject to Clause 4.3 of this Agreement, upon the termination of this Agreement in accordance with the terms of this sub-clause (c), the Parties shall cease to have any rights or obligations to each other under this Agreement and accordingly neither of them shall have any right to bring any action or claims against the other arising out of or in connection with this Agreement.

## **4. TERM**

### **4.1 Term of Agreement**

- a) The Term of this Agreement shall begin on the Execution Date and shall continue till the Expiry Date or Termination Date, whichever is earlier.

### **4.2 Early Termination**

This Agreement shall terminate before the Expiry Date:

- a) if either the Seller or the Procurer terminates this Agreement, pursuant to Clause 30 of this Agreement or any other provision of this Agreement; or
- b) in such other circumstances as the Seller or the Procurer may agree, in writing.

### **4.3 Survival of Rights after Termination**

- a) The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or Termination Date, as the case may be, including those under Clause 26 (Force Majeure), Clause 27 (Liability and Indemnification), Clause 29 (Dispute Resolution), Clause 30 (Default and Termination), Clause 31 (Governing Law), Clause 32 (Miscellaneous Provisions), and other Clauses and Schedules of this Agreement which expressly or by their nature shall continue and survive any expiry or termination of this Agreement.

## **5. REPRESENTATION AND WARRANTIES**

- a) The Seller is a company duly incorporated and validly existing under the laws of the Lao PDR, which has all of the requisite legal capacity and the full legal right, power and authority to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance by or on behalf of the Seller has been duly authorised by all necessary corporate action and does not and will not result in a breach, or constitute a default under, any provisions of the Seller's constitutional documents.
- b) The Procurer has all of the requisite legal capacity and the full legal right, power and authority to conduct its business and to own its property, as it is presently being conducted and owned or is proposed to be conducted and owned, as contemplated in this Agreement, and to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance by the Procurer of this Agreement has been duly authorised by all necessary action and does not and will not:
  - (i) require any consent or approval of Procurer's board of directors or any other third party other than those that have been obtained;
  - (ii) result in a breach of, or constitute a default under, any provisions of the Procurer's constitutive or enabling documents or any indenture, contract or agreement to which it is a party or by which it or its assets may be bound or subject or will otherwise be ultra vires; or
  - (iii) violate any Laws (including rules, regulations, orders, writs, judgments, injunctions, decrees, determinations or awards) presently in effect and applicable to the Procurer.
- c) This Agreement constitutes a legal, valid and binding obligation and is enforceable against both the Parties in accordance with terms and conditions prescribed.

## 6. CONDITIONS PRECEDENT

- a) The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk within [Insert Number of days] from the Execution Date, unless such completion is affected by any Force Majeure event as prescribed under Clause 26 or due to the Procurers' failure to comply with obligations under Clause 9.2 or any other Clause or Schedule of this Agreement, or if any of the activities is specifically waived in writing by the Procurer: The Conditions Precedent for enforcement of this Agreement are that:
- (i) the Seller shall have received all valid, enforceable and unencumbered consent/approval to use the Site for the Operating Period and such other tangible and intangible property rights as may be required or necessary to construct, commission and operate the Project from the Government;
  - (ii) the Seller shall have awarded the major contracts under civil, electro-mechanical and hydro-mechanical component for the construction of the Project for commencement of supply of power to the Procurer up to Delivery Point;

## 7. CONSEQUENCES OF NON-FULFILLMENT OF CONDITIONS PRECEDENT

- a) If any one or more of the conditions specified in Clause 6 is not duly satisfied by the Seller, even within [Insert Number of Days] after the time specified under Clause 6, otherwise due to the Procurer's failure to comply with obligations under Clause 9.2 or any other Clause or Schedule of this Agreement or any Force Majeure event as prescribed under Clause 26 or if any of the activities is specifically waived in writing by the Procurer, shall be construed as Seller Event of Default under this Agreement and the provisions of Clause 30 shall apply.
- b) In case of inability of the Seller to fulfil any one or more of the conditions specified in Clause 6 due to any Force Majeure event, the time period for fulfilment of the Conditions Precedent as mentioned in Clause 6, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of [Insert Number of Days], continuous or non-continuous in aggregate and thereafter, the Clause 6.a of this Agreement shall apply.
- c) No tariff adjustment shall be allowed on account of any extension of time arising under any of the provisions of this Clause 7. Provided that due to the provisions of Clause 7(b), any increase in the time period for completion of Conditions Precedent mentioned under Clause 6, may also lead to an extension in the Scheduled Commercial Operation Date or Revised Scheduled Commercial Operation Date or Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

## 8. CONTRACT PERFORMANCE GUARANTEE

### 8.1 Contract Performance Guarantee

- a) Within [Insert Number of Days] of the execution of this Agreement, the Seller shall submit to the Procurer a Contract Performance Guarantee which shall be kept by the Procurer and shall be invoked in case of termination of this Agreement by the Procurer due to Seller Event of Default or it will be partly invoked as liquidated damage, in case of delay in commencement of supply of power by Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, as per Clause 19 of this Agreement.

- b) The Seller shall furnish a Contract Performance Guarantee of amount [\_\_\_\_ Insert USD/MW\_\_\_\_] and which shall be valid till the effectiveness of this Agreement.
- c) The Contract Performance Guarantee furnished under this Agreement shall be for guaranteeing compliance of the Seller with the terms and conditions of this Agreement.
- d) Subject to Clause 8.1 f below, the failure on part of the Seller to furnish and maintain the full value of Contract Performance Guarantee as per Clause 8.1 b of this Agreement shall be a material Breach of Contract by the Seller of the terms and conditions of this Agreement.
- e) If the Seller fails to commence supply of power on the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case maybe, subject to conditions mentioned in Clause 18 of this Agreement, the Procurer shall have the right to liquidate the Contract Performance Guarantee and appropriate in their favour as liquidated damages an amount specified in Clause 19 of this Agreement, without prejudice to the other rights of the Procurer under this Agreement.
- f) In case the liquidate damage amount is recovered by invoking the Contract Performance Guarantee, the Seller shall replenish the Contract Performance Guarantee to its original value within [\_\_\_\_ Insert Number of Days\_\_\_\_].

## **8.2 Renewal of Contract Performance Guarantee**

- a) The Seller shall renew the Contract Performance Guarantee [\_\_\_\_ Insert Number of Days\_\_\_\_] prior to the expiry of the existing validity of the Contract Performance Guarantee.
- b) If such Contract Performance Guarantee is not renewed on or before the time specified under Clause 8.2.a, shall be considered as Seller Event of Default under this Agreement and this Agreement can be terminated by the Procurer.

## **8.3 Release of Contract Performance Guarantee**

- a) The Procurer shall return/release the Contract Performance Guarantee in the event of Procurer Event of Default as per the terms and conditions of this Agreement.
- b) Subject to the provisions of Clause 8.3.a, the Procurer shall return / release the Contract Performance Guarantee to the Seller at the end of the Term of this Agreement.
- c) The return / release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurer under this Agreement.

## **9. OBLIGATIONS OF PARTIES**

### **9.1 Obligations of the Seller**

The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk, unless such completion is affected by any Force Majeure event under this Agreement or due to the Procurers' failure to comply with their obligations under Clause 9.2 of this Agreement, or if any of the activities is specifically waived in writing by the Procurer:

- a) design, construct, commission, and test the Energy Facility and Transmission Equipment in accordance with the following:
  - (i) applicable Laws of Lao PDR; system
  - (ii) the Lao Grid Code;

- (iii) the terms and conditions of the Concession Agreement
  - (iv) the terms and conditions of this Agreement;
  - (v) the Functional Specifications; and
  - (vi) Prudent Utility Practices.
- b) subject to Clause 9.2.f and any provisions in the Concession Agreement regarding the issuance of Government Authorisations, the Seller, at its sole cost and expense, shall obtain and maintain in effect at all times during the Term all Government Authorisations required to be obtained and maintained by the Seller to exercise its rights and to perform its obligations under this Agreement;
  - c) commence supply of Contracted Energy by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is [Insert date of commencement of supply of power]. However, the Seller and the Procurer may mutually agree for commencement of supply of power in a phased manner from the Revised Scheduled Delivery Date as specified under Clause 9.3 of this Agreement;
  - d) supply the Contracted Energy through the use of Prudent Utility Practices to meet the Procurers' scheduling and dispatch requirements throughout the Term of this Agreement;
  - e) maintain insurance coverage in accordance with the requirements of the Project as per the terms and conditions of the Concession Agreement;
  - f) shall be responsible at its cost and expense for the delivery of Power at the Delivery Point. All transmission charges, transmission losses and operation charges applicable up to the Delivery Point shall be borne by the Seller.
  - g) shall coordinate with relevant Government agencies to ensure that the facilities up to Interconnection Point are tested and commissioned prior to the Scheduled Synchronization Date and such facilities are maintained and operated in accordance with Prudent Utility Practices during the Term of Agreement by the Seller;
  - h) provide all relevant information on a timely basis to the Procurer which may be required for receiving power at the Delivery Point;
  - i) shall follow the procedure as set out in Clause 22 for scheduling and dispatch of power from the Energy Facility;
  - j) shall prepare and deliver monthly progress reports to the Procurer during the period from Financial Closure until the Commissioning Date. The Seller shall summarise the progress in the construction of the Energy Facility & Transmission Equipment and information for preparing the report shall be extracted from the copy of the relevant progress report issued under (Insert Relevant Clause No)(Periodic Progress Reports) of the Concession Agreement; and
  - k) shall be responsible for fulfilling all obligations undertaken by the Seller under this Agreement.

## **9.2 Obligations of the Procurer**

The Procurer agrees and undertakes to duly perform and complete the following activities at the Procurer's own cost and risk, unless such completion is affected by any Force Majeure event under this Agreement or due to the Seller's failure to comply with their obligations under Clause 9.1 of this Agreement or if any of the activities are specifically waived in writing by the Seller:

- a) obtain and maintain at its own cost and expense at all times during the Term all Government Authorisations required to be obtained and maintained by Procurer to exercise its rights and to perform its obligations under this Agreement.
- b) offtake all Delivered Energy made available by the Seller maximum up to Dispatch Instruction issued by the Procurer at the Delivery Point and pay Monthly Bills in accordance with this Agreement;

- c) coordinate and cooperate, on best endeavour basis, with the Seller and any other concerned Government Authority with regards to the Transmission Equipment to enable the Seller to design, install or operate or otherwise arrange for the evacuation of the energy at the Delivery Point;
- d) shall be responsible for bearing all transmission charges, transmission losses and operation charges applicable beyond the Delivery Point;
- e) subject to EDL Grid, the Procurer shall be responsible for supplying Start-up Energy to the Seller during start-up, preliminary testing or other operations for achieving the commercial operation, and during the Commissioning Tests and for any start-up activity during the term of this Agreement;
- f) reasonably co-operate and assist the Seller in obtaining and maintaining all the Government Authorisations; and
- g) shall be responsible for fulfilling obligations undertaken by the Procurer under this Agreement.

### **9.3 Joint responsibility of Seller and Procurer**

- a) The Procurer and the Seller shall jointly agree on the specific date for commencement of supply of power and quantum of the Contracted Energy to be supplied to the Procurer from such date, in case the Seller commence the supply of power from any other date from the Scheduled Delivery Date. This date shall be mutually agreed between the Parties and shall be the Revised Scheduled Delivery Date for the respective quantum of power which shall be purchased at tariff as prescribed under [Insert schedule number] of this Agreement.

## **10. ENERGY FACILITY OPERATING PROCEDURE**

- a) Not later than two hundred and ten (210) days before the Commissioning Date, the Seller shall provide the Procurer with a draft of the Energy Facility Operating Procedures dealing with all operation interfaces between the Procurer and the Seller for the purposes of this Agreement including, but not limited to, the method of day-to-day communication, key personnel lists, clearances and switching practices, outage scheduling, capacity and energy reporting, operating log and reactive power support, which shall be consistent with this Agreement and Prudent Utility Practice.
- b) Within sixty (60) days after the Procurer's receipt of the draft Energy Facility Operating Procedures, the Procurer shall notify the Seller of any deletions, amendments or additions that it requires in that draft.
- c) The Seller shall make such deletions, amendments or additions proposed by the Procurer in the draft Energy Facility Operating Procedures unless any such deletion, amendment or addition is inconsistent with this Agreement, the Concession Agreement, or Prudent Utility Practice and may have adverse economic impact of substantial nature on the Seller. The Seller shall issue final Energy Facility Operating Procedures not later than fourteen (14) days before the Commissioning Date.
- d) In consultation with and as agreed with the Procurer, the Seller may, from time to time, revise the Energy Facility Operating Procedures, provided that those revisions are not inconsistent with this Agreement, the Concession Agreement, or Prudent Utility Practice.

- e) the Procurer may, from time to time, request the Seller to revise the Energy Facility Operating Procedures in order to conform to the EDL Grid Operating Procedures and Practices provided that those revisions are not inconsistent with the terms of this Agreement, the Concession Agreement, or Prudent Utility Practice. Further, the Seller shall not refuse such modifications or amendments, if found reasonable, and do not have major financial impact on the Seller.

## **11. TRANSMISSION EQUIPMENT**

### **11.1 Provision for Transmission Equipment**

- a) The Seller shall be responsible for the design, construction, installation, commissioning and, operation & maintenance of the Transmission Equipment up to the Interconnection Point. Provided further that, the Seller shall take into account technical specifications, instructions or consulting advice provided by or on behalf of the Procurer for the design of the Transmission Equipment.
- b) The Seller may request the Procurer to provide all necessary support in design, construction, commissioning, operation and maintenance of the Transmission Equipment. However, the Procurer shall not be liable for any compensation to the Seller in case of failure of the Transmission Equipment as a result of complying with the design, technical specifications, instructions or consulting advice provided by or on behalf of the Procurer.
- c) The Seller shall be responsible for providing on a timely basis all relevant information on Project specifications which may be required for interconnecting the Project with the EDL Grid.
- d) After successful commissioning of the Project, all of the rights, title and interest of the Seller in and to the Transmission Equipment shall be transferred to the Procurer and the Procurer shall be responsible for operating and maintaining the Transmission Equipment. In such case, the Procurer shall be the sole owner of and be fully responsible to operate, maintain and repair the Transmission Equipment. Provided further that, the Seller shall contribute to the Procurer's cost of operation and maintenance of the Transmission Equipment as mentioned below:
  - (i) During the Commissioning Period, the Seller shall contribute to the Procurer's cost of operation and maintenance for the Transmission Equipment by paying to the Procurer a fixed lump sum of [Insert Value] per month which shall be included in the monthly statement and invoice issued by the Procurer in accordance with Clause 25.1(Monthly Statement) and Clause 25.2(Monthly Invoice) of this Agreement.
  - (ii) During Operation, the Seller shall contribute to the Procurer's cost of operation and maintenance for the Transmission Equipment by paying to the Procurer an annual fixed lump sum of [Insert Value] as arrears which shall be included in the statement and invoice issued by the Procurer in December of the relevant Operating Year in accordance with Clause 25.1(Monthly Statement) and Clause 25.2 (Monthly Invoice) of this Agreement. In the event when Operating Year is less than 365 days, the annual contribution by the Seller shall be adjusted on pro rata basis(i.e.by multiplying the actual number of days with the daily rate calculated on the basis of annual fixed lump sum value).
- e) The modalities for operating and maintaining the Transmission Equipment by the Procurer shall be mutually agreed between the Parties.

## **11.2 Procedures for testing of Transmission Equipment**

- a) The Parties shall co-operate and co-ordinate for testing of the Transmission Equipment prior to the Scheduled Synchronisation Date of the Project and connecting the Energy Facility to the EDL Grid. All such testing shall be carried out on a timely basis in accordance with the Agreed Test Procedures.
- b) No later than one hundred and fifty (150) days prior to the commencement of the Commissioning Test of the Transmission Equipment, the Seller shall submit to the Procurer, the testing procedures for such Commissioning Test. Within thirty (30) days of receipt of such testing procedure, the Procurer shall either:
  - (i) Confirm in writing on acceptance of the proposed procedures
  - (ii) Notify the Seller of any reasonable variations to such proposed procedures or any further information required by the Procurer with respect to the proposed procedures.
- c) The accepted test procedures by both the Parties for Commissioning of the Transmission Equipment shall be termed as Agreed Test Procedure.
- d) In the event the Procurer neither confirms nor notifies the Seller within the prescribed time frame under sub clause (b) of this Article, the proposed testing procedures shall be deemed to have agreed and treated as the Agreed Test Procedures for the Commissioning Tests of the Transmission Equipment.
- e) The Seller shall, within thirty (30) days of its receipt of notification pursuant to Sub Clause 11.2.b.(ii), revise and submit to the Procurer the revised procedures. The Parties shall discuss the revisions and reach to an agreement on such revised procedures, which shall then become the Agreed Test Procedures for the Commissioning Tests of the Transmission Equipment.

## **11.3 Preliminary Inspection of the Transmission Equipment**

- a) The Seller shall issue a notice to the Procurer when the Transmission Equipment is ready in all respects to be energised. Within three (3) days of receipt of such notice, the Procurer shall mutually agree with the Seller for an initial inspection date on which inspection of the readiness of the Transmission Equipment shall be carried out. Provided further that, the initial inspection date shall be within five (5) days of receipt of such notice by the Procurer.
- b) At a date agreed upon in accordance with Clause 11.3.a above, the Procurer shall carry out an initial inspection in order to certify that the Commissioning Tests of the Transmission Equipment have been completed and energising of such Transmission Equipment will not jeopardise the safe and secure operation of the EDL Grid.
- c) After completion of the initial inspection of the Transmission Equipment, the Procurer shall issue to the Seller a certificate confirming that the Transmission Equipment is ready to be energised.
- d) In case the Procurer reports and demonstrates that the Transmission Equipment is not ready to be energised, the Seller shall undertake necessary changes to the Transmission Equipment as per Prudent Utility Practice and shall notify the Procurer when it's ready for further inspection. The Seller and the Procurer shall agree on a date for this inspection and the processes of this Clause 11 shall be repeated in respect of any subsequent inspection.

- e) In the event of a dispute regarding the Procurer's report on readiness of the Transmission Equipment, the matter shall be resolved pursuant to Clause 30 of this Agreement.

#### **11.4 Testing and Commissioning of the Transmission Equipment**

- a) Not less than thirty (30) days prior to the commencement of the Commissioning Tests of the Transmission Equipment, the Seller shall submit to the Procurer in writing the draft detailed programme for such Commissioning Tests, including the expected duration.
- b) The Seller shall submit to the Procurer in writing of its final detailed programme for the Commissioning Tests of the Transmission Equipment not less than seven (7) days prior to the commencement of such Commissioning Tests. After submission to the Procurer, in case of any change in the detailed programme for the above mentioned Commissioning Tests by the Seller, the Seller shall inform the Procurer not less than forty-eight (48) hours prior to the commencement of any such Commissioning Tests of the Transmission Equipment. On each day, beginning with the day on which such Commissioning Tests will commence, the Seller shall provide a programme which shall be conducted on the following day or days in case such Commissioning Test will continue for more than one (1) day.
- c) In case the Procurer is unable to accommodate the final detailed programme for the Commissioning Tests of the Transmission Equipment pursuant to clause 1 of this Article, the Procurer shall notify the Seller in writing, within forty-eight (48) hours of its receipt of the programme for such Commissioning Tests, of its requirements regarding deferral of any Commissioning Tests of the Transmission Equipment. In such circumstances, the Parties shall mutually agree on a date for conducting any deferred Commissioning Tests of the Transmission Equipment and such date, in any event, shall not be later than five (5) days after the date proposed in the final detailed programme for such Commissioning Tests.
- d) Pursuant to Clause 11.3, following the issuance of the certificate, the Transmission Equipment can be energized when the Seller is ready to perform the related Commissioning Tests of the Transmission Equipment in accordance with the Agreed Test Procedures.
- e) The Seller shall carry out, at its own cost and expense, the Commissioning Tests of the Transmission Equipment in accordance with the Agreed Test Procedures.
- f) After completion of the Commissioning Test of the Transmission Equipment, the Seller shall submit to the Procurer test reports demonstrating that such Commissioning Tests have been completed. Upon receiving such reports, if satisfied, the Procurer shall issue to the Seller a certificate of successful commissioning of the Transmission Equipment.

### **12. SYNCHRONIZATION, TESTING AND COMMISSIONING OF THE ENERGY FACILITY AND SUPPLY OF POWER**

#### **12.1 Synchronization**

- a) The Seller shall, at least 30 days in advance, inform the Procurer in writing, the date on which the Seller intends to synchronize the Energy Facility with the EDL Grid. This date shall not be earlier than the Scheduled Synchronization Date, unless the Procurer agrees to an earlier synchronization date in writing.
- b) The Project may be synchronized to the EDL Grid when:
  - (i) the construction of the Project has been completed in accordance with [Insert Article/Schedule No/Reference to CA];

- (ii) Test and operating procedure have been duly undertaken and finalized;
- (iii) the Project meets all prevailing technical connection conditions prescribed in the Lao Grid Code, LEPTS and fulfil other requirements provided by Concession Agreement; and both parties should be able to provide necessary support to one another to ensure that the other party's compliance requirement;
- (iv) the Project is capable of being operated safely in accordance with Prudent Utility Practices.

## **12.2 Testing and Commissioning of the Energy Facility**

- a) Prior to the commencement of the Commissioning Test of the Energy Facility, the Seller shall give the Procurer at least one hundred and fifty (150) days written notice of the date on which the Seller intends to conduct such Commissioning Test. Furthermore, the Seller shall also provide testing procedures to the Procurer for the Commissioning Tests of the Energy Facility. Within thirty (30) days of receipt of such proposed procedures the Procurer shall, either:
  - (i) confirm by notice in writing its agreement with the proposed procedures (the Agreed Test Procedures); or
  - (ii) notify the Seller of any reasonable variations to such proposed procedures or of any further information required by the Procurer in respect of the proposed procedures.
- b) In the event the Procurer neither so confirms nor so notifies the Seller within the said thirty (30) day period, the Procurer shall be deemed to have agreed to such proposed procedures, which become the Agreed Test Procedures for the Commissioning Tests of the Energy Facility. The Seller shall within thirty (30) days of its receipt of notification pursuant to Clause 12.2.a.(ii) above, revise and submit to the Procurer the revised procedures. The Parties shall discuss the revisions and reach an agreement on such revised procedures, which shall then become the Agreed Test Procedures for the Commissioning Tests of the Energy Facility.
- c) Not less than thirty (30) days prior to the commencement of the Commissioning Tests of the Energy Facility, the Seller shall submit to the Procurer the draft detailed programme for such Commissioning Tests, including the expected duration, capacity and energy expected to be delivered.
- d) The Seller shall submit to the Procurer the final detailed programme for the Commissioning Tests of the Energy Facility not later than Fifteen (15) days prior to the commencement of such Commissioning Tests. After submission to the Procurer, in case of any change in the detailed programme for the Commissioning Tests of the Energy Facility by the Seller, the Seller shall inform the Procurer not less than forty-eight (48) hours prior to the commencement of any such Commissioning Tests. On each day, beginning with the day on which the above Commissioning Tests will commence, the Seller shall provide a programme of the Commissioning Tests of the Energy Facility to be conducted on the following day or days in case such Commissioning Test will continue for more than one (1) day. Provided further that, date for such the detailed programme for the Commissioning Test of the Energy Facility shall not be later than Scheduled Commercial Operation Date or Revised Scheduled Commercial Operation Date as defined under this Agreement.
- e) In addition to the final detailed programme for the Commissioning Tests of the Energy Facility, the Seller shall provide to the Procurer, on an on-going basis, with a schedule of the capacity and the energy that shall be delivered by the Energy Facility to the EDL Grid.

- f) In case the Procurer is unable to accommodate the final detailed programme for the Commissioning Tests of the Energy Facility, the Procurer shall notify the Seller in writing, within forty-eight (48) hours of its receipt of the programme for such Commissioning Tests, of its requirements regarding deferral of any Commissioning Tests of the Energy Facility. In such circumstances, the Parties shall mutually agree on a date for conducting any deferred Commissioning Tests of the Energy Facility and such date, in any event, shall not be later than five (5) days after the date proposed in the final detailed programme for such Commissioning Tests.
- g) Subject to Clause 15 of this Agreement, the Seller shall carry out, at its own cost and expense and in accordance with the Agreed Test Procedures, the Commissioning Tests of the Energy Facility and the testing of the capacity in accordance with Clause 14 of this Agreement.
- h) After completion of the Commissioning Test of the Energy Facility, the Seller shall submit to the Procurer test reports demonstrating that such Commissioning Tests have been completed. Upon receiving such reports, if satisfied, the Procurer shall issue to the Seller a certificate of successful commissioning of the Energy Facility. For the avoidance of doubt, all the pending issues shall be completed irrespective of any material affect before the commencement of commercial operation of the Project.
- i) Subject to Clause 15 of this Agreement, the Energy Facility shall be regarded as having been Commissioned on the day following the day upon which the Commissioning Tests of the Energy Facility have successfully been performed, in satisfaction to the Procurer, in accordance with the Agreed Test Procedures, and capacity of the Energy Facility has been measured in accordance with Clause 14 of this Agreement.
- j) If the Commissioning Test of the Energy Facility fails, the Seller may retake the test, within a reasonable period after the end of the previous test, with three (3) day's prior written notice to the Procurer. Provided however, the Procurer shall have a right to require deferment of any such re-tests for a period not exceeding fifteen (15) days, without incurring any liability for such deferment, the Procurer is unable to provide evacuation of power to be generated, due to reasons outside the reasonable control of the Procurer or due to inadequate demand in the EDL Grid.
- k) In the event the Procurer does not attend:
  - (i) Any test of which it has been provided notice and does not request at least twenty-four (24) hours prior to the start of such test that such test be rescheduled; or
  - (ii) Any test that has been rescheduled upon request from the Procurer.

the Seller may complete the said test without the Procurer being present and the Seller's report of the results of that test shall be considered as valid and complete, notwithstanding the Procurer not being present.

### **13. COD AND COMMENCEMENT OF POWER SUPPLY**

- a) Subject to Clause 14 of this Agreement, the Commercial Operation Date (COD) of the Project shall take place after successful completion of the Commissioning Test of the Transmission Equipment and Energy Facility.
- b) Supply of power from the Energy Facility shall commence from the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be. Any envisaged delay in commencement of supply of power due to delay in commissioning of the Project shall be communicated in advance by the Seller.

- c) In the event that the commencement of supply of power from the Energy Facility takes place before the Scheduled Delivery Date, provisions of Clause 9.3 of this Agreement shall apply.

#### **14. CAPACITY TEST OF THE ENERGY FACILITY**

- a) The capacity of the Energy Facility shall be tested during the Commissioning Test in order to determine the Initial Registered Capacity and thereafter at times mutually agreed upon by the Seller and the Procurer to validate the Registered Capacity.
- b) The Procurer may request the Seller to arrange the testing of the Registered Capacity if it reasonably believes that the Registered Capacity is no longer accurate and the test shall be conducted within six (6) days of such request from the Procurer. The Procurer shall bear the cost of such test if the test confirms that the Registered Capacity is accurate within  $\pm 0.2\%$ , otherwise the cost of such test shall be borne by the Seller. Provided further that, the Seller may also request the Procurer, at its own cost, to witness testing of the Registered Capacity if it reasonably believes that the Registered Capacity does not properly reflect the present condition of the Energy Facility and such test shall also be conducted within six (6) days of such request from the Seller.
- c) The Seller shall carry out testing of the Registered Capacity in accordance with the Agreed Test Procedures for the Energy Facility. The Procurer shall use its reasonable efforts to comply promptly with all reasonable requests by the Seller for assistance in carrying out such testing. Provided further that, the Procurer shall be given prior written notice of the carrying out of such testing by the Seller and shall be entitled to be present and observe any such capacity testing.
- d) The Seller and the Procurer shall designate qualified and authorized representatives to witness and monitor capacity test of the Energy Facility during commissioning.
- e) In the event the Procurer does not attend:
  - (i) any test of which it has been provided notice and does not request at least twenty-four (24) hours prior to the start of such test that such test be rescheduled; or
  - (ii) any test rescheduled pursuant to paragraph (i) above of which it has been given notice,

the Seller may complete the said test without the Procurer being present and the Seller's report of the results of that test shall be considered as valid and complete, notwithstanding the Procurer not being present.

- f) If the Registered Capacity of the Energy Facility after the most recent capacity test mentioned in this Clause 14 of this Agreement has been conducted is less than its Contracted Capacity, the Procurer shall provide the Seller [Insert number of days ] to take remedial action in order to restore the Energy Facility to its Contracted Capacity.
- g) The modalities for re-testing of the Energy Facility shall be same and in accordance with the Agreed Test Procedures.
- h) In case, the Seller fails to restore the Energy Facility to its Contracted Capacity, the capacity of the Energy Facility shall be de-rated with the following consequences:
  - (i) the Energy Facilities Contracted Capacity shall be reduced to its Registered Capacity, as existing at the most recent capacity test as mentioned in this Clause 14;

- (ii) the Seller shall not be permitted to declare availability of the Energy Facility at a level greater than its Registered Capacity, as existing at the most recent capacity test as mentioned in this Clause 14;
- i) If the Seller is unable to conduct or complete any test for the purpose of measuring the Registered Capacity due to:
  - (i) any action or inaction of the Procurer;
  - (ii) the EDL Grid not having the characteristics set out in Schedule 2 of this Agreement;
  - (iii) the EDL Grid not being sufficiently loaded to test the capacity of the Energy Facility or otherwise not being able to allow or accommodate such test; or

then the Registered Capacity shall be deemed to be equal to the Contracted Capacity or to the last measured Registered Capacity, if any.

- j) The Seller shall provide the Procurer with copies of the test results of the Registered Capacity. The Procurer shall not use or disclose such results other than to the GOL in connection with the Concession Agreement and otherwise in connection with the administration and enforcement of this Agreement.

#### **15. DEEMED COMMISSIONING OF THE ENERGY FACILITY**

- a) If the Seller is unable to conduct or complete any Commissioning Test on the Energy Facility in respect thereof within a period of fifteen (15) days after the date nominated in the final detailed programme, pursuant to Clause 12.2 (Testing and Commissioning of the Energy Facility), for such Commissioning Test, including any Commissioning Test to determine the Initial Registered Capacity, due to:
  - (i) non-fulfilment of obligations of the Procurer under this Agreement;
  - (ii) the EDL Grid not having the characteristics set out in Schedule 2 of this Agreement;
  - (iii) the EDL Grid not being sufficiently loaded for a test or otherwise not being able to allow or accommodate a test; or

then the Seller, by sending to the Procurer a notice, may deem the relevant part of the Energy Facility to be Commissioned and the Commissioning to have occurred as of the date (the Deemed Commissioning Date) on which the testing would have been completed according to the Seller's final detailed programme for the Commissioning Tests for the Energy Facility if no such impediments to testing had occurred. The relevant part of the Energy Facility shall be deemed to be commissioned on the Deemed Commissioning Date and shall be deemed to have achieved the relevant Contracted Operating Characteristics for the Contracted Capacity.

- b) Despite the occurrence of a deemed commissioning, the Energy Facility shall nonetheless be tested once the impediments referred to in paragraph (a) above which prevented that testing have ceased to exist so as to allow its comprehensive test according to the Agreed Test Procedures and the Commissioning Tests, including full load tests and the tests to verify the Initial Registered Capacity. For the avoidance of doubt, such test shall not constitute the accuracy test which may be requested under Clause 14 of this Agreement.

#### **16. TEST ENERGY**

At all times during start-up, preliminary testing or other operations for achieving the COD, and during the Commissioning Tests, the Procurer, upon prior written intimation from the Seller, shall purchase the Test Energy generated and delivered to the Delivery Point as per rates agreed mutually between the Parties.

**17. START-UP ENERGY**

- a) Subject to EDL Grid Outage, the Procurer shall provide Start-up Energy to the Seller up to (Insert MW Limit) during start-up, preliminary testing or other operations for achieving the COD, and during the Commissioning Tests and for any start-up activity during the term of this Agreement. The Seller shall be liable to pay for such Start-up Power as per tariff agreed under Schedule 4 of this Agreement.

**18. EXTENSIONS OF TIME**

- a) In the event that the Seller is prevented from performing its obligations under Clause 9.1 of this Agreement by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, due to Force Majeure Events affecting the Procurer or Seller, the Revised Scheduled Delivery Date, Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in this Clause 18, for a reasonable period but not less than 'day for day' basis, to permit the Seller or the Procurer through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or the Procurer.
- b) In case of extension due to reasons specified in this Clause 18, and if such Force Majeure Event continues even after the maximum period of more than fifteen (15) months (in the case of Lao Political Force Majeure) or twenty four (24) months (in the case of Non-Political Force Majeure), any of the Parties may choose to terminate the Agreement as per the provisions of Clause 30 of this Agreement.
- c) If the Parties have not agreed, within thirty (30) days after the affected party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Delivery Date, Revised Scheduled Delivery Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Clause 29 of this Agreement.
- d) As a result of such extension, the Scheduled Delivery Date, Scheduled Commercial Operation Date and the Expiry Date shall be termed as Revised Scheduled Delivery Date, Revised Commercial Operation Date and Revised Expiry Date respectively for the purposes of this Agreement.

**19. CONSEQUENCES FOR DELAY IN COMMENCEMENT OF SUPPLY OF POWER TO PROCURER**

- a) If the Seller is unable to commence supply of power to the Procurer by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, provided the procurer is ready to offtake power, subject to Clause 18, the Seller shall pay to Procurer liquidated damages as per this Clause 19, for the delay in such commencement of supply of power and making the Contracted Energy available for dispatch by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.
- b) The sum total of the liquidated damages payable by the Seller to the Procurer for such delay shall be calculated as follows:

$$\begin{aligned} \text{SLD} &= [\text{CC} \times d \times \text{Insert Value 1}], \text{ if } d \leq 120 \\ \text{SLD} &= [\text{CC} \times 120 \times \text{Insert Value 1}] + [\text{CC} \times (d - 120) \times \text{Insert Value 2}], \\ &\text{if } d > 120 \end{aligned}$$

Where:

- (i) "SLD" are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Delivery Date or Revised Scheduled Delivery Date, as

- the case may be, of the Energy Facility up to and including the day on which the Energy Facility is actually commences power supply;
- (ii) “CC” is the Contracted Capacity of the Energy Facility;
  - (iii) “d” is the number of days in the period beginning with the day after the Scheduled Delivery Date up to and including the day on which the Energy Facility actually commences power supply;
  - (iv) Insert Value 1 of damages per MW per day of delay in case “d” is less than 120 days and
  - (v) Insert Value 2 of damages per MW per day of delay in case “d” is equal to or more than 120 days
- c) The Seller’s maximum liability shall be limited to the amount of liquidated damages calculated in accordance with Clause 19 for and up to one (1)Year of delay for the Project. Provided that in case of failure of the Seller to Commission and commence supply of power from the Energy Facility even after expiry of one (1) year from its Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case maybe, the provisions of Clause 30 of this Agreement shall apply.
- d) The Procurer shall initiate the process to recover the amount calculated pursuant to Clause 19 within ten (10) days of:
- (i) the date on which Energy Facility commences power supply; or
  - (ii) expiry of the one (1) year period mentioned in Clause 19.c.
- whichever is earlier.
- e) The liquidated damage amount shall be recovered from the Monthly Invoice submitted by the Seller for sale of power to the Procurer or by invoking the Contract Performance Guarantee as mentioned in Clause 8 of this Agreement, as mutually agreed between the Parties.
- f) In case the liquidate damage amount is recovered by invoking the Contract Performance Guarantee, the Seller shall replenish the Contract Performance Guarantee to its original value or submit a new guarantee for the amount deducted as liquidated damage under this Clause, pursuant to Clause 8.1 of this Agreement.
- g) The Parties agree that the formula specified in Clause 19 for calculation of liquidated damages payable by the Seller to the Procurer, read with Clause 30 of this Agreement is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurer in the event of Seller’s delay in commencement of supply of power by its Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be.

## **20. OBLIGATION TO PURCHASE ENERGY**

### **20.1 Energy Purchase**

- a) Subject to other provisions of this Agreement, the Procurer shall have the exclusive right to purchase the entire Contracted Energy from the Seller.
- b) the Procurer shall have the first right to buy power from the Energy Facility up to Contracted Energy in accordance with the terms and conditions of Schedule 4 of this Agreement in the following manner:
  - (i) prior to the Commissioning Date, the Procurer shall have a commitment to purchase all of the Available Energy delivered during the Commissioning Tests of the Energy Facility to the extent such Available Energy is declared in the capacity and energy schedule provided to the Procurer by the Seller pursuant to Clause 12.2.e.

- (ii) for each month following the Commissioning Date until the end of the Concession Period, the Procurer shall have a commitment to purchase minimum or equal to 50% of the Contracted Energy (“Minimum Offtake”) for that particular month on take or pay basis provided the Available Energy from the Seller is greater than 50% of the Contracted Energy for that month. In case the Available Energy from the Seller is less than 50% of the Contracted Energy for that month, provisions of Clause 20.2 of this Agreement shall apply.
- c) In the event the Procurer avails more than 50% of the Contracted for a particular month, the Procurer shall make payment to the Seller for the energy availed on the basis of daily dispatch instruction at the agreed tariff as per Schedule 4 of this Agreement.
- d) In case the Procurer is not availing the full Contracted Energy, the Procurer shall intimate to the Seller of its intention and willingness to avail part of the Contracted Energy through Daily/Monthly Programme. Provided further, in case the Procurer requires part of the capacity not availed, the Seller shall commence supply of such capacity (maximum up to Available Energy declared by the Seller in accordance with the provisions of Clause 22 of this Agreement) to the Procurer within [Insert no of hours] from receipt of notice in this regard from the Procurer/ the time for commencement of supply specified in such notice.

## **20.2 Shortfall Energy**

- a) In the event of the Available Energy being less than the Minimum Offtake quantum for a month, the difference between the Minimum Offtake and the Available Energy for that month i.e. “Shortfall Energy” shall be recorded.
- b) The Seller shall have option to make up the supply of, and the Procurer shall dispatch, the Shortfall Energy, by including all or any part of the Shortfall Energy Amount for a month in the Monthly Declaration(s) subject to fulfilment of any of the conditions mentioned below:
  - (i) In case the shortfall recorded in a Dry Month, the Shortfall Energy can be supplied by the Seller and the Procurer shall dispatch such Shortfall Energy only in another Dry Month in that Operating Year. For avoidance of doubt, the Procurer shall not be obliged to dispatch any Shortfall Energy recorded during a Dry Month in any Wet Month during that Operating Year.
  - (ii) In case the shortfall recorded in a Wet Month, the Shortfall Energy can be supplied by the Seller and the Procurer shall dispatch such Shortfall Energy only in a Dry Month in that Operating Year. For avoidance of doubt, the Procurer shall not be obliged to dispatch any Shortfall Energy recorded during a Wet Month in any other Wet Month during that Operating Year. Tariff for any supplied Shortfall Energy shall be same as the applicable tariff during the month when such shortfall has been recorded.
- c) The Seller in Monthly Declaration shall mention to supply any Shortfall Energy, if any, from any previous month pursuant to Clause 20.2 b) of this Agreement.

## **20.3 Penalty for Shortfall Energy**

- a) A penalty equal to one hundred and ten percent (110%) of the energy tariff specified in Schedule 4 of this Agreement for the month in that Tariff Year in which the Shortfall Energy Amount is recorded, multiplied by the Shortfall Energy volume shall be imposed by the Procurer to the Seller.
- b) The penalty shall be calculated and aggregated for the entire Operating Year starting from the first billing month till the last month of any Operating Year. The Procurer shall adjust the total penalty of the preceding Operating Year as per Clause 20.3.a in the invoice for the first month of next Operating Year, except for the last Operating Year. The accumulated penalty for the last Operating Year shall be adjusted in the last Monthly Invoice of that year.

#### **20.4 Excess Energy**

- a) The Procurer may request the Seller to supply Excess Energy over and above Contracted Energy and Shortfall Energy from previous month, if any, pursuant to Clause 20.2 of this Agreement by including such request for Excess Energy in its Daily/Monthly Programme.
- b) Excess Energy for a particular month to be calculated as difference between the summation of Dispatch Instruction over the month and the Contracted Energy for the concerned month and Shortfall Energy from previous month, if any, pursuant to Clause 20.2 of this Agreement, where summation of Dispatch Instruction over the month is higher sum of the Contracted Energy for the concerned month and Shortfall Energy from previous month, if any, pursuant to Clause 20.2 of this Agreement.
- c) The Seller shall at all times maintain generating capacity with some reserve margin that is synchronized to the EDL Grid and is ready to provide increased generation at short notice pursuant to Daily/Monthly Programme or instantaneously in response to notice by the Procurer.

#### **20.5 Delay in offtake of Power by the Procurer**

- a) If the Seller is otherwise ready to commence supply of power on the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, but is not able to commence supply of power by the said date due to a Procurer Event of Default, the Procurer shall be liable to pay to the Seller the entire amount based on agreed tariff corresponding to Minimum Offtake quantum, provided that the Seller has been able to make the plant available and ready for generation, till the period the Procurer starts to offtake the Contracted Energy or part of Contracted Energy as per Dispatch Instruction from the Seller.

### **21. OPERATION & MAINTENANCE**

#### **21.1 Seller's Operation & Maintenance Responsibilities**

- a) The Seller shall be responsible, at its own expense, for ensuring that the Energy Facility is operated and maintained in accordance with the Lao Grid Code, LEPTS, terms and conditions of all Consents & approvals and Prudent Utility Practices so as to meet the Seller's obligations under this Agreement and not to have an adverse effect on the EDL Grid.

#### **21.2 Planned And Maintenance Outages**

- a) The Seller shall submit to the Procurer its proposed schedule of Planned Outage periods for the Energy Facility, including the duration of each such period, at least ninety (90) days before the beginning of each Operating Year. Within thirty (30) days of its receipt of such schedule, the Procurer shall notify the Seller in writing about the acceptability of such schedule.
- b) The Procurer shall submit to the Seller its proposed schedule of Planned Outage periods for the EDL Grid, including the duration of each such period, at least ninety (90) days before the beginning of each Operating Year. Within thirty (30) days of its receipt of such schedule, the Seller shall notify the Procurer in writing about the acceptability of such schedule.
- c) If a Party does not accept any Planned Outage period proposed by the other Party in its proposed schedule of Planned Outages then the Party not so accepting shall advise the other Party within thirty (30) days of its receipt of that proposed schedule of the period for that Planned Outage that would be acceptable to it, which shall be as close as reasonably practicable to the time, and shall be of the same duration as the period for that Planned Outage proposed by the other Party.

- d) The Parties shall use their best endeavor's to schedule and co-ordinate the Planned Outages for the Energy Facility and the EDL Grid to occur at times which are determined and agreed by the Parties to be relatively low demand periods for the supply of electrical energy to customers connected to the EDL Grid .
- e) Whenever the Seller requires a Maintenance Outage, it shall advise the Procurer of the nature of the work to be carried out, the estimated time required to complete such work and the latest time by which (in the Seller's opinion) the work should commence consistent with Prudent Utility Practices (which shall not be later than forty eight (48) hours after the time when the Seller advised the Procurer of the need for the Maintenance Outage).
- f) The Procurer shall advise the Seller of the time for commencement of the requested Maintenance Outage (which shall not be later than the latest time indicated by the Seller). The Seller shall use its reasonable endeavors consistent with Prudent Utility Practices to take the Energy Facility out of service at the scheduled time.

### **21.3 Forced Outages**

- a) A Forced Outage shall mean any partial or complete interruption in the generating capability of the Energy Facility 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; or
  - (iii) an event or occurrence of Force Majeure.

### **21.4 Annual Generation Plan**

- a) Not later than ninety (90) days before the beginning of each Operating Year, the Seller shall, along with the proposal for Scheduled Outages for the following Operating Year, submit to the Procurer, the Seller's proposed generation plan, ("Tentative Generation Plan").
- b) Not later than the fifteenth (15th) day before the beginning of each Operating Year, the Seller shall confirm the proposal for Scheduled Outages for the following Operating Year and submit to the Procurer "Annual Generation Plan".
- c) The Annual Generation Plan shall include:
  - (i) the availability of equipment taking into account:
    1. the Scheduled Outages;
    2. the expected Maintenance Outages; and
    3. any other relevant factors;
  - (ii) the expected generation based on latest information on the water flow and to avoid spillage of water as far as possible.
- d) The Annual Generation Plan referred to in this Article shall be subject, wherever found necessary, to quarterly and monthly review and modification by the Seller in consultation with the Procurer.

### **21.5 Annual Operation Report**

The Seller submit to the Procurer annual operation report for each Operating Year within three (3) months following the end of that Operating Year.

### **21.6 Maintenance of Operating Records**

- a) Each Party shall maintain complete and accurate records and all data required for effective administration of this Agreement.
- b) The Seller agrees to maintain an accurate and up-to-date operating log at the Energy Facility with records of:
  - (i) Delivered Energy for each Settlement Period;
  - (ii) Start-up Energy
  - (iii) line or bus bar voltage and frequency;
  - (iv) head, discharge and inflow of water;
  - (v) changes in operating characteristics, scheduled, maintenance and forced outages;
  - (vi) details and times of EDL Grid failure and operation of EDL Grid outside the technical limits;
  - (vii) any emergency conditions and unexpected occurrences discovered during inspections.
- c) The Procurer shall have the right, upon reasonable prior written notice to the Seller, to examine the records mentioned in this Clause 21.6.
- d) All records required to be maintained as mentioned in this Clause 21.6 shall be maintained for at least sixty (60) months by the Seller. Provided further that, the Seller shall not dispose of or destroy any such records kept even after such sixty (60) month period without giving thirty (30) days prior written notice to the Procurer.

### **21.7 Emergency**

- a) The Seller shall co-operate with the Procurer in establishing agreed emergency plans during operation and maintenance for the Energy Facility at least ninety (90) days before the Commissioning Date.
- b) During an Emergency condition the Procurer may request to the Seller to increase the generation from the Energy Facility and the Seller shall increase the generation to stabilize the EDL Grid. However, the Seller shall not be obligated to operate the Energy Facility beyond the Operating Characteristics or in a manner that is inconsistent with Prudent Utility Practices.
- c) During an Emergency condition, the Procurer may request to the Seller to reduce the generation from the Energy Facility or disconnect the Energy Facility and the Seller shall reduce the generation or disconnect the Energy Facility to allow the Procurer to construct, install, maintain, repair, replace, remove, investigate, inspect or test any part of the Transmission Equipment or the EDL Grid.

## 22. SCHEDULING AND DISPATCH

### 22.1 Capacity and Energy Declaration and Scheduling of Capacity and Energy

- a) **Yearly Declarations:** Not less than ninety (90) days before the Commissioning Date and thereafter no later than ninety (90) days before the beginning of each Operating Year, the Seller shall provide to the Procurer the Yearly Declaration which shall notify the EDL Control Centre of the Available Energy including Excess Energy beyond Contracted Energy, if any which the Seller plans to make available at the Delivery Point for each month during Commissioning Period or post Commissioning, as applicable. This Yearly Declaration shall only be used for planning purpose only and the Procurer shall not rely on, and the Seller shall not be bound by the Yearly Declaration.
- b) **Monthly Declarations:** Not later than fourteen (14) days before the end of each month, the Seller shall provide to the Procurer the Monthly Declaration for the next month which shall notify the EDL Control Centre of: (i) any proposed changes to the Operating Characteristics from the Contracted Operating Characteristics; and (ii) the Available Energy including Shortfall Energy, if any, from previous months and (iii) Excess Energy, if any, beyond Contracted Energy for that month and Shortfall Energy, if any, from previous months, for the hours in each day in that month. In addition, the Seller shall provide an estimate of the capacity and energy requirements, if any, for the Start-up Power from the EDL Grid for the hours in each day of that month. Subject to Clause 20.2 of this Agreement, the Procurer shall not be entitled to make any claim nor receive any compensation from the Seller for a failure to make available the Monthly Declaration.
- c) **Daily Declarations:** Before twelve noon on each day, the Seller shall provide to the Procurer the Daily Declaration for the following day which shall notify the EDL Control Centre of: (i) any proposed changes to the Operating Characteristics from the Contracted Operating Characteristics; and (ii) the Available Energy for each hour for the following day and provisionally for the day after. In addition, the Seller shall provide an estimate of the capacity and energy requirements, if any, for Start-up Power from the EDL Grid, for the hours in that day and, to the extent that the requirements can be anticipated at that time, provisionally for the day after. Changes to the Operating Characteristics shall not be made unless first consented to in writing by the Procurer in the related Daily Programme, such consent not to be unreasonably withheld.
- d) **Yearly Programmes:** No later than sixty (60) days before the Commissioning Date and thereafter no later than sixty (60) days before the beginning of each Operating Year, the Procurer shall provide the Seller, through the EDL Control Centre, with its Yearly Programme for energy dispatch ("Dispatch Instructions") from the Delivery Point during that Operating Year. This Yearly Programme shall include an assessment of the total energy that the Procurer intends to dispatch in that Operating Year and the maximum capacity anticipated as being required to be available during each month in that Operating Year. The Yearly Programme is for reference purposes only. This Yearly Declaration shall only be used for planning purpose only and Seller shall not rely on, and the Procurer shall not be bound by the Yearly Declaration.
- e) **Monthly Programmes:** No later than three (3) days before the beginning of each month, the Procurer shall provide the Seller, through the EDL Control Centre, with its Monthly Programme for energy dispatch for that month. In each Monthly Programme, the Procurer may request Excess Energy from the Seller for that month. The Seller shall use best effort to accommodate such requirement of Excess Energy however, it shall be under no obligation to supply the Excess Energy. The Monthly Programme shall include an assessment of the total energy that the Procurer intends to dispatch in that month (including any Excess Energy) and

the maximum capacity anticipated as being required to be available during the hours in each day of that month. Subject to Clause 20.1 of this Agreement, neither the Procurer nor the Seller shall be bound by the Monthly Programme.

- f) **Daily Programmes:** Before 3 p.m. of each day the Procurer shall provide the Seller through the EDL Control Centre with its programme for energy dispatch (“Dispatch Instructions”) for the following day, prepared on an hourly basis, of the required capacity during the hours for that following day and also, provisionally, for the hours during the next following day. Subject to the Procurer Emergencies, this Daily Programme must be compatible with the Daily Declaration and with the Operating Characteristics. The Daily Programme shall confirm the Procurer consent, or the reasons for refusing to provide such consent, to the proposed Operating Characteristics.
- g) The methods for scheduling and dispatch may be modified from time to time and must be approved by both Parties in order to be effective.

## **22.2 Communication**

- a) Yearly Declarations, Monthly Declarations and Daily Declarations of energy made in accordance with Clause 22.1 of this Agreement shall be submitted to the Procurer by the Seller by e-mail, fax or letter. In the case of an email communication, a confirmation shall be issued by the Seller to the Procurer by fax within the following two (2) hours of the e-mail being sent.
- b) Monthly Programmes and Daily Programmes of energy dispatch made in accordance with Clause 22 shall be submitted to the Seller by the Procurer by e-mail, fax or letter. In the case of an email communication, a confirmation shall be issued by the Procurer to the Seller by fax within the following two (2) hours of the e-mail being sent.
- c) Dispatch Instructions and any other communications between the Seller and the Procurer under this Agreement may, unless otherwise required, be given by e-mail/fax/telephone and the confirmation of the same should be kept in writing.

## **22.3 Seller’s obligations with respect to Scheduling and Dispatch**

- a) The Seller shall operate the Energy Facility in accordance with this Agreement, the Energy Facility Operating Procedures, the EDL Grid Operating Procedures and Practices, the Daily Programmes and the Dispatch Instructions; provided that, in the event of any inconsistency between any of the foregoing, this Agreement shall prevail.
- b) Subject to paragraph (c) below, the Seller shall comply with each Daily Programme as the same may be varied or supplemented from time to time by the issue of Dispatch Instructions and the control of the Energy Facility frequency and voltage within the normal and exceptional operating ranges defined in Schedule 2 of this Agreement.
- c) Notwithstanding any other provision of this Agreement, the Seller shall not be obliged to comply with any Daily Programme or Dispatch Instruction if:
  - (i) it would breach the Operating Characteristics as agreed to by the Parties in the Daily Declaration and Daily Programme;
  - (ii) an event of Force Majeure occurs which prevents Seller’s compliance to the Dispatch Instruction;

- (iii) it would breach restrictions (including, without limitation, any Environmental Requirements) on release of water from the dam);
  - (iv) any other special occurrence for which specific waiver is accorded by the Procurer in writing
- d) The Seller shall not take any action to override any automatic response in relation to the voltage of the EDL Grid unless instructed otherwise by the Procurer in case of a Procurer Emergency or unless immediate action is necessary to comply with the Operating Characteristics, provided that the Seller may take such action as is reasonably necessary to maintain the integrity of the Energy Facility or to avoid injury to personnel or damage to the Energy Facility.
- e) The Seller shall synchronise the Energy Facility to, or de-synchronise the Energy Facility from, the EDL Grid in direct response to a Daily Programme or Dispatch Instruction, and shall only otherwise de-synchronise the Energy Facility from the EDL Grid in the following circumstances:
- (i) as a result of the operation of the EDL Grid outside the Contracted Operating Characteristics of the Energy Facility; or
  - (ii) for the preservation of the safety of personnel, the Energy Facility or apparatus or otherwise as required by Prudent Utility Practices.

## **23. TARIFF**

### **23.1 Energy Tariff**

The tariff for Delivered Energy based on the Dispatch Instructions from the Procurer excluding Shortfall Energy from previous months, if any, but including Excess Energy shall be the energy tariff for that Season and Tariff Year as specified in Schedule 4 of this Agreement. Tariff for Shortfall Energy, if any, shall be in pursuant to the Clause 20.2.

### **23.2 Start-up Energy Tariff**

For any period, the tariff for Start-up Energy shall be as specified in Schedule 4 of this Agreement.

### **23.3 Test Energy Tariff**

For any period, the tariff for Test Energy shall be as specified in Schedule 4 of this Agreement.

### **23.4 Deviation Settlement Charges**

The charges for deviation in generation between the Dispatch Instruction and Delivered Energy shall be as per Schedule 11 of this Agreement.

## **24. ENERGY ACCOUNTING**

### **24.1 Installation of Meters**

- a) The Seller shall install one set of main and one set of back-up energy meters for accurate recording of energy supplied by Seller. For these meters, the Seller shall provide the required connection from current transformers/ bushing CTs/ voltage transformers/ CVTs on HV side

of all generator-transformers, station transformers and outgoing lines, of meter accuracy of 0.2S or better. The Seller may install any further meters for its own comfort at its own cost. Each set of Meters shall measure the following at the Delivery Point:

- (i) the Delivered Energy; and
  - (ii) the Start-up Power.
- b) For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurer shall follow and be bound by Lao Grid Code. The technical characteristics, description, accuracy and calibration of the Meters shall comply fully with the requirements of IEC 62053.
  - c) The Seller shall give at least two (2) weeks' notice to the Procurer for inspection, testing, calibration, or maintenance of the Meters. The Parties shall agree on a mutually convenient time for carrying out inspection, testing, calibration, or maintenance of the Meters. Provided further that, if the Seller carries out inspection, testing, calibration, or maintenance of the Meters during any period when the Energy Facility is operational, the Seller shall install an additional Meter for measuring the Delivered Energy and/or Start-up Power (as applicable) during such period.

#### **24.2 Inspection and Testing of Meters**

- a) The Seller shall be responsible for maintenance, replacement and calibration of the Meters at its own cost.
- b) The Seller shall inspect, calibrate and test the Meters upon their installation and thereafter at least once every year, and the Procurer shall have the right to be present, for such inspection, calibration or testing of the Meters.
- c) The Procurer may request for additional inspection, calibration and testing of the Meters to check that the inaccuracy level of Meters are not more than  $\pm 0.2$  %. The Seller shall carry out such additional test as per the Procurer's request and the Procurer shall have the right to be present, for such inspection, calibration or testing of the Meters. If during such testing, any Meters are found not to comply with the requirement of IEC 62053, those Meters shall be repaired or replaced as soon as reasonably practicable by the Seller.
- d) The Meters shall be sealed (and resealed after opening) with a seal owned by the Procurer and shall not be opened, calibrated, tested or resealed except in the presence of representatives of the Procurer.

#### **24.3 Energy Accounting**

- a) All electrical energy quantities shall be measured, accounted and invoiced in KWh.
- b) Representatives of both the Procurer and the Seller shall take readings of the Meters at 10a.m. on the first day of each month. If one of the Party fails to be present during such reading, it shall be deferred until midday to allow a representative of both Parties to be present. However, in case a Party's representative is not present by midday on such day, the present Party shall take the Meter readings and use such reading for the purposes of this Agreement.
- c) Energy Accounts shall be binding on both the Parties for billing and payment purposes. The Accounting of the energy shall be done at the Delivery Point.

- d) In case the main Meters fail to register or, upon test, be found not to be within  $\pm 0.2$  % accuracy level, the Delivered Energy or, as the case may be, the Start-up Power, shall be measured based on the readings of the back-up Meters. Provided further that, if the back-up Meters also fails to register or, upon test, be found not to be within  $\pm 0.2$  % accuracy level, the Delivered Energy or, as the case may be, the Start-up Power, shall be finalized mutually by the Procurer and the Seller. In case of absence of mutual agreement between the Seller and the Procurer, the matter shall be resolved pursuant to the provisions of Clause 29 (Dispute Resolution) of this Agreement.

## **25. BILLING AND PAYMENT**

### **25.1 Monthly Statements**

- a) No later than seven (7) days after the end of the period to which it relates, the Seller shall issue a monthly statement in respect of the relevant information that is to be used for the preparation of the invoice to be prepared and issued by the Seller in respect of that period pursuant to this Clause 25.1.
- b) The Procurer shall review the statement and notify the Seller within three (3) days after receipt of a monthly statement issued by the Seller pursuant to Clause 25.1.a above in order to correct any errors or omissions which the Procurer considers should be corrected. If the Procurer does not notify the Seller of any item to be corrected within the period pursuant to this Clause 25.1.b, such monthly statement shall be deemed to be approved by the Procurer.
- c) In the event that the Procurer notifies the Seller of any error or omission, the Parties shall use their best efforts to agree on the correction of such errors or omissions and to resolve this within seven (7) days after the statement has been received by the Seller.
- d) No later than seven (7) days after the end of the period to which it relates, the Procurer shall issue a monthly statement in respect of the relevant information that is to be used for the preparation of the invoice to be prepared and issued by the Procurer in respect of that period pursuant to this Clause 25.1.
- e) The Seller shall review the statement and notify the Procurer within three (3) days after receipt of the monthly statement issued by the Procurer pursuant to Clause 25.1.d above in order to correct any errors or omissions which the Seller considers should be corrected. If the Seller does not notify the Procurer of any item to be corrected within the period pursuant to this Clause 25.1.e, such monthly statement shall be deemed to be approved by the Seller.
- f) In the event that the Seller notifies the Procurer of any error or omission, the Parties shall use their best efforts to agree on the correction of such errors or omissions and to resolve this within seven (7) days after the statement has been received by the Procurer.
- g) If the Parties fail to agree regarding any error or omission, then the matter shall be referred for resolution in accordance with the procedures set out in Clause 29(Dispute Resolution). The remaining information contained in the statement that has not been disputed shall be deemed to have been approved by both Parties on the seventh (7th) day after such statement has been received and shall be used to prepare the relevant invoice.
- h) Any amount that is in dispute pursuant to Clause 25.1.g above shall be excluded from the invoice for the relevant period until the matter is resolved in accordance with the procedures set out in Clause 29(Dispute Resolution) of this Agreement. If the resolution of the disputed amount in accordance with the procedures set out in Clause 29(Dispute Resolution) results in

a determination that an amount is due to either Party, then that amount shall be calculated and paid with interest from the date on which it was due until the date of that determination at the Default Rate less two (2) per cent and thereafter from the date of that determination until the date on which it is paid in full at the Default Rate. Such interest shall accrue on a daily basis for the actual days elapsed and on the basis of a three hundred and sixty (360) day year and shall be compounded monthly.

## **25.2 Monthly Invoice**

- a) Within fourteen (14) days after the end of each month during the Term in which the Seller delivered energy to the Procurer, the Seller shall prepare and issue to the Procurer an invoice in respect of the amount due for payment by the Procurer for that month.
- b) The amount due for payment by the Procurer for any month, shall be:
  - (i) During Commissioning Period,

Delivered Energy multiplied by the tariff for Test Energy, in accordance with Clause 23.3 and Schedule 4 of this Agreement;
  - (ii) During the Operating Period,

Energy confirmed by the Procurer in Dispatch Instructions subject to Clause 20.1 of this Agreement multiplied by the tariff for that Season and Tariff Year in accordance with Clause 23.1 and Schedule 4 of this Agreement.
- c) Within fourteen (14) days after the end of each month during the Term in which the Seller uses Start-up Energy from the EDL Grid, the Procurer shall issue an invoice, of the amount due by the Seller for that month based on the Start-up Energy measured by the Energy Accounting Meters in accordance with Clause 24, multiplied by the Start-up Energy Tariff in accordance with Clause 23.2 and Schedule 4 of this Agreement.
- d) All the invoices mentioned above shall specify the amounts due in accordance to the relevant energy tariff as described in Clause 23 and Schedule 4 of this Agreement. However, the payment by the Procurer in any other currency than Kip shall be as per Schedule 12 of this Agreement.
- e) The invoice of a particular month shall consider the Deviation Settlement Statement for the corresponding month as prepared and agreed between the Parties as per Schedule 11 of this Agreement.
- f) Statement with calculation of Shortfall Energy, if any, for a particular Operating Year along with penalty calculation for Shortfall Energy shall be prepared as described in Clause 20.2 and the penalty amount shall be adjusted for payment of invoice for first month of next Operating Year or invoice for the last month of the last Operating Year of the term of this Agreement. In case the penalty for Shortfall Energy is more than the invoice value of the month as discussed above, the balance amount shall be adjusted with invoices of subsequent months for any Operating Year other than the last Operating Year under this Agreement. For last Operating Year the Seller shall pay the Procurer balance amount separately.

## **25.3 Deviation Settlement**

Any deviation in the supplied Delivered Energy at Delivery Point and Dispatch Instruction provided by the Procurer shall be settled as per Schedule 11 of this Agreement.

#### **25.4 Disputed Amounts and Billing Errors**

- a) If a Party disputes the amount specified in any invoice, it shall so inform the other Party within fifteen (15) days of receipt of such invoice and pay the total of the undisputed amount on or before due date. If it is subsequently determined in accordance with the dispute resolution provisions set forth in Clause 29 (Dispute Resolution) that any amount withheld by a Party should have been paid, such Party shall pay to the other Party the amount withheld along with interest at the Default Rate as specified in Clause 25.7 (Interest) in respect of such amount.
- b) Any claim regarding an error in invoices previously paid shall be made within fifteen (15) days from the date of discovery of such error, but in any event within six (6) months from the issuance of such invoice, after which time an invoice and the calculations therein shall be binding upon the Parties. Adjustment for payment shall then be made within (15) days after the notification of the billing error.

#### **25.5 Payment Procedure**

All payments to be made pursuant to this Agreement shall be made by telegraphic transfer into a US Dollar denominated bank account or a Kip denominated bank account in accordance with Schedule 12 of this Agreement. The Parties shall provide their respective bank details for receiving payment which shall include but not limited to details of the bank name and address, the bank sort code number, the bank account number and bank account title in each case. Each payment shall be made within forty (40) days after the receipt of the invoice. Any payment that becomes due and payable on a day that is other than a Business Day shall be paid on the next succeeding Business Day. Any bank charges incurred in connection with a transfer of funds shall be to the account of the receiving Party.

#### **25.6 Interest**

Except for the provisions of Clause 25.1 (Monthly Statements) in respect of amounts in dispute, any amount due from one Party to the other pursuant to this Agreement and remaining unpaid after the due date for payment shall be calculated including interest (before and after judgment) at the Default Rate from and including the date when the amount in question was due until (but excluding) the date of payment in full. Interest at the Default Rate shall accrue on a daily basis for the actual days elapsed, on the basis of a three hundred and sixty (360) day year and shall be compounded monthly.

#### **25.7 Taxes**

- a) The Procurer and the Seller shall pay all Taxes imposed on it by any Government Authority in connection with the execution, delivery and performance of this Agreement.
- b) The sale of electricity by the Seller to the Procurer and by Procurer to the Seller shall, during the term of this Agreement, be subject to VAT and such VAT shall be duly charged (by adding an applicable amount in the invoices), collected, and paid to the relevant Government Authority in accordance with applicable tax laws and regulations. For avoidance of doubt, the unit price which applies to the the Procurer's and the Seller's purchase of energy shall be:  $\text{Applicable Energy Tariff} \times (1 + \text{applicable VAT rate (\%)/100})$ .

### **26. FORCE MAJEURE**

#### **26.1 Definition of Force Majeure**

- a) Force Majeure shall mean any event or circumstance or combination of events or circumstances that wholly or partly prevents or unavoidably delays either Party in the

performance of its obligations under this Agreement, but only to the extent that such events and circumstances are not within the reasonable control, directly or indirectly, of the affected party (the **Affected Party**) and could not have been avoided if the affected party had taken reasonable care and shall include the following events and circumstances:

- (i) events comprising any Non-Political Force Majeure; and
  - (ii) events comprising any Lao Political Force Majeure.
- b) the following events and circumstances which do not otherwise comprise events of Lao Political Force Majeure (a “Non-Political Force Majeure” event):
- (i) acts of war (declared or undeclared), invasion, armed conflict or other hostile act of a foreign nation;
  - (ii) revolution, riot, mutiny, rebellion, insurrection, military or usurped power, state of siege, civil commotion (except as arising specific to the Project or the Seller) or the declaration or maintenance of martial law or state of siege;
  - (iii) acts of terrorism or sabotage;
  - (iv) strikes, go-slows or lockouts or other labor disturbances or industrial action which are widespread or nationwide (but excluding any such actions occurring solely within the workforce or employ of the Affected Party or its respective Affiliates);
  - (v) nuclear or radioactive explosion or contamination;
  - (vi) fire, explosion, lightning, earthquake, landslide, storms, severe weather conditions or other natural disasters (excluding drought and climate change) or acts of God;
  - (vii) epidemic or plague;
  - (viii) a national emergency relevant to or involving the Project which has been declared as such by the President of the Lao PDR in accordance with Laws;
  - (ix) blockade, embargo, any closing of borders, roads, rail links, airports, harbors, docks or other adjuncts of transport, shipping or navigation of, to or within any place:
    - a. not resulting from any action on the part of any relevant Government Authority; or
    - b. resulting from any action on the part of any relevant Government Authority attributable to any event, condition or circumstance referred in Clause 26.1.b.(ii) to 26.1.b.(viii), inclusive of this Clause; and
  - (x) the occurrence of Non-Political Force Majeure referred in Clause 26.1.b.(i) to 26.1.b.(ix), inclusive of this Clause, which adversely affects:
    - a. the performance of any contractor or subcontractor; or
    - b. the performance of the Seller’s obligations under this Agreement or the CA.
- c) the following events and circumstances occurring within or directly involving the Lao PDR (each a “Lao Political Force Majeure” event):
- (i) when and to the extent wholly initiated by the Government (not in response to any provocation, instigation or initiating or triggering event or circumstance which itself would be deemed to be an event of Force Majeure under this Agreement), acts of war (declared or undeclared), invasion, armed conflict and other hostile acts of the Lao PDR or other nations or that directly affect the performance of this Agreement;

- (ii) the expropriation, requisition, confiscation or nationalization by the Government of the Project or Project assets or any material part thereof;
- (iii) the imposition of any export or import restrictions, rationing or allocation wholly initiated by any relevant Government Authority (not in response to any provocation, instigation or initiating or triggering event or circumstance which itself would be deemed to be an event of Force Majeure under this Agreement);
- (iv) when wholly initiated by the Government (not in response to any provocation, instigation or initiating or triggering event or circumstance which itself would be deemed to be an event of Force Majeure under this Agreement), any blockade, embargo, closing of borders, roads, rail links, airports, harbors, docks or other adjuncts of transport, shipping or navigation by any relevant Government Authority;
- (v) when wholly initiated by the Government (not in response to any provocation, instigation or initiating or triggering event or circumstance which itself would be deemed to be an event of Force Majeure under this Agreement), any exercise of military power by the Government;
- (vi) declaration of martial law by the Government if done in connection with Lao Political Force Majeure of the type described above;
- (vii) any act or omission of any relevant Government Authority (excepting lawful actions taken by relevant Government Authority relating to acts or omissions of the Seller, contractors, servants or agents) not in accordance with this Agreement which is directly applicable to the Seller and which materially and adversely affects the performance by the Seller of its obligations hereunder, but excepting any action by any relevant Government Authority attributable to any events, conditions and circumstances (or any combination thereof) referred in 26.1.b.(i) to 26.1.b.(viii) of Clause 26.1.b;
- (viii) an occurrence of Lao Political Force Majeure referred to in Clause 26.1.c(i) to (vii) inclusive of this Clause which adversely affects:

c. performance of any contractor or subcontractor; or

d. the performance of the Sellers's obligations under this Agreement or the CA; and

- (ix) any failure of the Government, to issue or renew any required Government Authorisation relating to the performance of any of the Seller's obligations under this Agreement where such failure could materially and adversely affect the Seller or the Project (such as a failure to achieve Financial Closure, a failure to be able to operate the Project or which would otherwise result in a Breach of Contract by the Seller), unless such failure is attributable to an act by or omission of the Seller or its contractors or subcontractors, servants or agents.

d) Force Majeure shall not include the following conditions, except to the extent resulting from a Force Majeure:

- (i) a shortage of water;
- (ii) unavailability, late delivery, or changes in cost of plant, machinery, equipment, materials, spare parts or consumables for the Energy Facility or the Transmission Equipment ;
- (iii) a delay in the performance of any contractor or subcontractor;
- (iv) any patent or latent defects in any equipment and materials or any other items for the Project;
- (v) non-performance resulting from normal wear and tear typically experienced in power generation material or equipment;
- (vi) strikes, go-slows or industrial disputes by or affecting employees of the Seller or employees of contractors or subcontractors, except where such events are national or industry wide in scope; and

- (vii) non-performance caused by, or connected with, the non-performing Party's Breach of Contract of this Agreement.

## **26.2 Notification and Claims of Force Majeure**

If a Party claims that Force Majeure applies to it, that Party shall give the other Party written notice of the Force Majeure event promptly upon becoming aware of that event and the obligations affected. The Party claiming Force Majeure shall inform the other Party as to all relevant matters including details of the Force Majeure event, the obligations affected and the action it has taken or proposes to take to remedy the situation.

## **26.3 Notification Obligations – Duty to Mitigate**

- a) The Party affected by a Force Majeure shall give notice to the other Party of any event constituting a Force Majeure as soon as reasonably practicable. Notwithstanding the above, if the event constituting a Force Majeure results in a breakdown of communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, then the Party affected by the Force Majeure shall give such notice as soon as reasonably practicable after the reinstatement of communications, but not later than two (2) days after such reinstatement. Any notice shall include full particulars of the event constituting a Force Majeure, of its effects on the Party claiming relief, the remedial measures proposed and estimate of time during which it be unable to carry out its obligations due to the Force Majeure event. The Party affected by a Force Majeure shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party reasonably requests.
- b) The Party affected by a Force Majeure shall give notice to the other Party of:
  - (i) the cessation of the relevant event constituting a Force Majeure, and
  - (ii) the cessation of the effects of such event constituting a Force Majeure,as soon as practicable after becoming aware of each of (i) and (ii) above.
- c) The Party affected by the Force Majeure shall use its reasonable efforts to mitigate the duration and severity of the effects of any event constituting the Force Majeure as soon as practicable, provided, however, that no Party shall be required under this provision to settle any strike or other labour dispute it considers to be unfavourable to it.
- d) The obligations of the Party giving the notice under Clause 26.3.a above shall be suspended from the time it gives that notice, provided that:
  - (i) those obligations shall only be suspended:
    1. to the extent that; and
    2. for so long as,they are affected by the Force Majeure or by the consequences of the Force Majeure;
  - (ii) the suspension shall not apply to any obligation to make any payment of any amount due under this Agreement, including the Procurer's obligation to pay for Available Energy; and
  - (iii) if the obligation of the Party to give such notice is itself affected by a Force Majeure, the time for the commencement of such suspension shall be deemed to have commenced

on the date which, but for such Force Majeure, the obligation of the Party to give such notice would have arisen.

- e) The Party affected by the Force Majeure shall promptly notify the other Party when it is able to recommence the performance of its affected obligations under this Agreement and the period of Force Majeure shall then end and that Party shall then recommence the performance of all of those affected obligations.
- f) Where the Seller gives notice of Force Majeure under Clause 26.3.a above, and the Force Majeure has resulted in damage to or destruction of any part of the Energy Facility, the Seller shall reconstruct, rectify or replace those parts of the Energy Facility which were damaged or destroyed only if required to do so in accordance with the Concession Agreement.

#### **26.4 Suspension of Performance Obligations**

- (a) Either Party shall be entitled to suspend performance of any of its obligations under this Agreement (other than any obligation to pay money as and when due) if it is unable to perform such obligation due to an event of Force Majeure the consequences of which cannot be avoided or overcome by the Party claiming Force Majeure;
- (b) Subject to proper notice of the Force Majeure having been given to the other Party, the obligations of the Affected Party shall be suspended from the time the performance of such obligations is first affected by Force Majeure and shall remain suspended, and the failure of the Affected Party to perform such obligations shall not constitute a Breach of Contract, for as long as such affected obligations cannot be performed by the Affected Party solely as a result of such Force Majeure.
- (c) The period of time during which the Affected Party is entitled to suspend performance and the relief afforded to the Affected Party due to the occurrence of Force Majeure shall not exceed that period of time which would have been required for the Affected Party to remedy the occurrence and mitigate the effects of such Force Majeure (and to resume performance of its affected obligations) had the Affected Party properly acted to remedy and mitigate the effects of such Force Majeure as herein provided.
- (d) The Affected Party must promptly notify in writing the other Party when it is able to recommence the performance of its affected obligations under this Agreement. The period of Force Majeure shall then end and the Affected Party must then immediately recommence the performance of those previously affected obligations.

#### **26.5 No Compensation for Force Majeure**

Subject to Clause 26.3.d.ii, neither Party shall be liable to the other Party for payment of any amount in respect of any occurrence of Force Majeure or any impact or effect thereof, except as otherwise provided in this Agreement. For the avoidance of doubt, the Seller shall be entitled to partial payment if it is partially available during a Force Majeure.

#### **26.6 Termination for Force Majeure**

- a) If a Force Majeure event impedes a Party's performance of its obligations for longer than one hundred and eighty (180) days from the date that affected party gives written notice to the other Party in accordance with Clause 26.3.a, then the Parties shall decide, through consultation, the terms upon which to continue their respective performance of this Agreement.

- b) If the Parties are unable to agree on such terms or to terminate this Agreement by mutual consent within twelve (12) months after the date of the written notice provided to the other Party in accordance with Clause 26.3.a, and the adverse effects of such Force Majeure on the performance of the affected party continue un-remedied for more than fifteen (15) months (in the case of Lao Political Force Majeure) or twenty four (24) months (in the case of Non-Political Force Majeure) after the date of the aforementioned notice, either Party may, at any time thereafter during the continuance of such Force Majeure, deliver a written notice of termination to the other Party and, subject to Clause 26.6.c, without incurring any liability to the other Party.
- c) If termination of this Agreement as per Clause 26.6.b above is a result of a Lao Political Force Majeure, the Procurer shall pay to the Seller, the Termination Payment in accordance with Clause 30.7 of this Agreement.

**27. LIABILITY, INDEMNIFICATION, ENVIRONMENTAL CONTAMINATION AND DEFENSE OF CLAIMS**

- a) The Seller shall be responsible for any loss of or damage to property, death or injury to any person (or any claim against the Procurer in respect thereof) and all expenses relating thereto (including, without limitation, reasonable legal fees) suffered by the Procurer in connection with the Energy Facility resulting from a Breach of Contract or any wilful misconduct or negligent act or omission of the Seller or its Contractors, without recourse to the Procurer. The Seller shall hold the Procurer fully indemnified in respect thereof. This indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused by any act or omission by or on behalf of the Procurer or the failure of the Procurer to take reasonable steps in mitigation thereof nor shall it extend so as to make the Seller liable for any indirect consequential, incidental, punitive or exemplary damages to the Procurer or its Contractors.
- b) the Procurer shall not be responsible for any loss of or damage to property, death or injury to any person (or any claim against the Seller or its Contractors in respect thereof) and all expenses relating thereto (including, without limitation, reasonable legal fees) suffered by the Seller or its Contractors in connection with the Energy Facility, except in cases resulting from a Breach of Contract or any wilful misconduct or negligent act or omission by or on behalf of the Procurer, without recourse to the Seller or its Contractors. In cases of wilful misconduct or negligent act or omission by or on behalf of the Procurer, the Procurer shall hold the Seller and its Contractors fully indemnified in respect thereof. This indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused by any act or omission of the Seller or its Contractors or the failure of the Seller or its Contractors to take reasonable steps in mitigation thereof, nor shall it extend so as to make the Procurer liable for any indirect, consequential, incidental, punitive or exemplary damages to the Seller or its Contractors.
- c) The Seller shall be liable for, and shall defend, indemnify and hold the Procurer, its personnel and agents, harmless from and against, all liabilities, damages, loss, expenses and claims from Environmental Contamination caused by the construction, operation and maintenance of the Project, except when such liabilities, damages, loss, expenses or claims are solely attributable to a Breach of Contract of the Procurer or for Environmental Contamination which is not attributable to the Seller, its contractors or subcontractors. The obligation to indemnify under this Clause shall survive the expiration or early termination of this Agreement.
- d) The Party entitled to indemnification in respect of any claims brought against it shall promptly give notice to the other Party that such claim has been brought. The indemnifying

Party may give notice to the other Party accepting liability to indemnify and giving reasonable instructions as to how and by which Party the claim is to be defended. Until receipt of such notice the indemnified Party shall take all prudent and reasonable steps in defence of the claim. Upon receipt of such notice, if any, the indemnified Party shall follow the instructions given by the indemnifying Party.

## **28. INSURANCES**

The Seller shall effect and maintain the insurances in connection with the Project which it is required to maintain in accordance with the Concession Agreement upon the terms and subject to the conditions set out in the Concession Agreement.

## **29. DISPUTE RESOLUTION**

### **29.1 Amicable Settlement**

- a) The Parties shall amicably discuss, and use their best efforts to resolve, any dispute, controversy or claim (a "Dispute") between the Parties arising under or in connection with this PPA, including without limitation any question regarding its existence, validity, implementation, interpretation, or termination.
- b) Either Party is entitled to raise any matter, claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice to the other Party, which shall contain:
  - (i) a description of the Dispute;
  - (ii) the grounds for such Dispute; and
  - (iii) all written material in support of its claim.
- c) The other Party shall, within thirty (30) days of issue of dispute notice, furnish:
  - (i) its counter-claim and defences if any regarding the Dispute; and
  - (ii) all written material in support of its defences and counter-claim.
- d) Within sixty (60) days of issue of notice by other Party pursuant to Clause 29.1.b, both the Parties shall meet to settle such Dispute amicably, failing which the Dispute shall be referred to Arbitration in accordance with Clause 29.2 of this Agreement.

### **29.2 Arbitration**

- a) If any dispute arising under or in connection with this Agreement cannot be settled within thirty (30) days or longer period through the means of amicable settlement as mentioned in Clause 29.1, the disputing party may submit such dispute to the arbitration panel for consideration and resolution in accordance with the laws and regulations.
- b) All arbitration with respect to this Agreement shall be conducted in accordance with the arbitration rules issued by the United Nations Commission on International Trade Law as in

force upon commencement of such arbitration (the UNCITRAL Arbitration Rules), which rules are deemed to be incorporated by reference to this Clause 29.2 or as otherwise agreed in writing by the Parties and specified in this Clause 29.2.

- c) The arbitral tribunal (Arbitral Tribunal) shall consist of three (3) arbitrators (each an Arbitrator). Each Party shall appoint one (1) Arbitrator who is suitably qualified, having regard to the nature of the dispute. These two (2) Arbitrators so appointed shall appoint the third (3rd) Arbitrator who shall serve as the chairman of the Arbitral Tribunal. If a Party fails to appoint its Arbitrator within a period of ten (10) days after the date of the notice of the arbitration, or if the two (2) Arbitrators appointed cannot agree upon the third (3rd) Arbitrator within a period of ten (10) days after appointment of the second (2nd) Arbitrator, then such Arbitrator shall be appointed by the Singapore International Arbitration Centre or as otherwise agreed in writing by the Parties.
- d) An Arbitrator to be appointed shall be experienced in international commercial agreements and, in particular, in the implementation and interpretation of contracts for the purchase of power from electrical power generating facilities in circumstances similar to those outlined in this Agreement. No Arbitrator shall be a present or former employee or agent of, or consultant or counsel to, either Party or any Affiliate thereof or any Government Authority.
- e) The Arbitral Tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of this Clause 29. For such purpose, this Clause 29 shall be treated as an agreement independent of the other provisions of this Agreement and any decision by the Arbitral Tribunal that all or any part of this Agreement is invalid, illegal or unenforceable shall not entail the invalidity, illegality or unenforceability of this Clause 29.
- f) The seat of arbitration shall be in Singapore, provided, however, that the Arbitral Tribunal may meet for consultation among its members, hearing witnesses, experts or the Parties or for inspection of goods, other property or documents in such other places as the Arbitrators shall determine (including the Lao PDR).
- g) The arbitration shall be conducted using the English language. All documents or evidence presented at such arbitration in a language other than in English shall be accompanied by a certified English translation thereof. The Arbitrators shall decide the dispute by simple majority of the Arbitral Tribunal and shall state in writing the reasons for its decision.
- h) In the absence of fraud, manifest error, negligence, willful misconduct, bad faith on the part of the Arbitral Tribunal and such other similar grounds for judicial appeal or challenge as are permitted under the UNCITRAL Arbitration Rules, the written decision of the Arbitral Tribunal shall be final and binding upon both of the Parties and the Parties hereby waive any rights to appeal, review or challenge such award before any court or tribunal on any grounds whatsoever. The Parties further undertake to carry out without delay the provisions of any arbitration award or decision, and a judgment upon any arbitration award may only be entered by any court or tribunal having jurisdiction in respect of the same.
- i) The cost and fee payable on such arbitrations shall be as per directions given by the arbitrators or, can be shared equally if there are no directions from the arbitrators.
- j) If there is a dispute under this Agreement which relates to an unresolved dispute under the Concession Agreement, each Party shall, upon the written request of the other Party, meet with representatives of the other Party in good faith in order to determine, at the sole discretion of each Party, whether or not there are advantages warranting and there is a basis for approaching the GOL with a proposal to join such disputes in order for such issues to be resolved at the same time by a single arbitration proceeding before the same Arbitral Tribunal under common arbitration rules.

- k) The award of the arbitrators shall be final and binding on both the Parties and shall be effective from the date such award is made or the date, if any, specified in the award as the effective date for such award.

### **29.3 Exclusivity of Settlement Process**

In the absence of an agreement between the Parties to the contrary, the Parties agree that they will not resolve any Dispute otherwise than in accordance with the provisions of this Clause 29 and each Party hereby waives, in so far as permitted by law, any right to resort to any other means of resolving such disputes, provided that the provisions of this Clause 29 shall not be deemed to:

- a) preclude either Party from seeking injunctive relief in the courts of the jurisdiction within which action to be enjoined is to be taken as required to protect its rights under this Agreement until such time as the relevant disputed matter is resolved in accordance with this Clause 29 and applicable law; and
- b) preclude either Party from bringing any claim in a court having jurisdiction to enforce any award by an Arbitral Tribunal rendered in accordance with this Clause 29.

### **29.4 Parties to Perform Obligations**

Notwithstanding the existence of any Dispute and difference referred for arbitration and save as the arbitration tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

## **30. DEFAULT AND TERMINATION**

### **30.1 Seller Event of Default**

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a Breach of Contract by Procurer of its obligations under this Agreement or a Procurer Event of Default, shall constitute a Seller Event of Default and the Procurer may give a Notice of Intention to Terminate upon the occurrence of any of the following events:

- a) Non-fulfilment of the Conditions Precedent as per Clause 6.a of this Agreement shall be treated as Seller Event of Default; or
- b) Failure to commence supply of power to the Procurer up to the Contracted Capacity, relevant to the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, by the end of twelve (12) Months from the Scheduled Delivery Date or Revised Scheduled Delivery Date, or
- c) After the Delivery Date, interruption of power supply by the Seller for a continuous period of sixty (60) days and such default is not rectified within fifteen (15) Days from the receipt of first notice from the Procurer in this regard, or
- d) Any of the representations, warranties, undertakings, consents and approvals made by the Seller under this Agreement found to be untrue or inaccurate including but not limited to submission of the Contract Performance Guarantee by the Seller; Provided however, prior to considering any event specified under this sub-clause to be an Event of Default, the Procurer shall give a notice to the Seller in writing of at least thirty (30) days, or
- e) the Seller repudiates this Agreement and does not rectify such action within a period of thirty (30) days from a notice from the Procurer in this regard; or

- f) any direct or indirect change in the shareholding of the Seller in contravention of the terms of this Agreement; or
- g) failure to maintain the Contract Performance Guarantee, as per the terms of this Agreement; or
- h) an Event of Insolvency occurs in respect of the Seller, other than for the purposes of reconstruction or amalgamation of the Seller (provided that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity to perform its obligations under this Agreement), and the Event of Insolvency is not cured within sixty (60) days of the Seller receiving notice from the Procurer requiring that it be cured; or
- i) the Seller fails to implement and/or comply with the Arbitral Tribunal's decision in accordance with Clause 29.2 (Arbitration) within the time allowed by the terms of the relevant decision or determination or, if no time was so allowed, within sixty (60) days after it is issued; or
- j) any other material Breach of Contract by the Seller of this Agreement that is not remedied within sixty (60) days after notice from the Procurer stating that a material Breach of Contract of this Agreement has occurred and is continuing that could result in the termination of this Agreement, identifying the material Breach of Contract in question in reasonable detail and demanding remedy thereof.

### **30.2 Procurer Event of Default**

The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a Breach of Contract by the Seller of its obligations under this Agreement or a Seller Event of Default, shall constitute the Event of Default on the part of defaulting Procurer and The Seller may give a Notice of Intention to Terminate upon the occurrence of any of the following events:

- a) any default by the Procurer in the making of any payment required to be made by it under this Agreement within sixty (60) days after receipt of a notice from the Seller that the payment is overdue;
- b) Any of the representations, warranties, undertakings, consents and approvals made by the Procurer under this Agreement found to be untrue or inaccurate; Provided however, prior to considering any event specified under this sub-clause to be an Event of Default, the Seller shall give a notice to the Procurer in writing of at least thirty (30) days, or
- c) the Procurer repudiates this Agreement and does not rectify such action within a period of thirty (30) days from a notice from the Procurer in this regard; or
- d) an Event of Insolvency occurs in respect of the Procurer (other than any voluntary dissolution or liquidation as part of a reorganisation, privatisation or reincorporation permitted under paragraph (c) below);
- e) The Procurer is reorganised, restructured, corporatized, privatised, reincorporated or is abolished by law or any other action of any Government Authority and such reorganisation, restructuring, corporatisation, privatisation, reincorporation or abolishment (i) results in no other person succeeding the Procurer as a Party to this Agreement, (ii) adversely affects the revenue or risk position of the Seller or (iii) results in another person succeeding the Procurer as a Party to this Agreement which satisfies none of the following requirements, namely:
  - (i) such person is owned or controlled by the GOL; or
  - (ii) such person has the legal status and the technical and financial capability to perform the obligations of the Procurer under this Agreement;

- f) The Procurer fails to implement and comply with the Arbitral Tribunal's decision in accordance with Clause 29.2 (Arbitration) within the time allowed by the terms of the relevant decision or determination or, if no time was so allowed, within sixty (60) days after it is issued; or
- g) any material Breach of Contract by the Procurer of this Agreement that is not remedied within sixty (60) days after notice from the Seller stating that a material Breach of Contract of this Agreement has occurred and is continuing that could result in the termination of this Agreement, identifying the material Breach of Contract in question in reasonable detail, and demanding remedy thereof.

### **30.3 Notice of Intention to Terminate – Cure Period**

- a) Any notice of Intention to Terminate shall specify, in reasonable detail, the Seller Event of Default or the Procurer Event of Default, as the case may be, for giving explanation to the other Party along with a copy to the GOL. Following the issuing of a Notice of Intention to Terminate the Parties shall consult with each other for a period of one (1) month, or such longer period as the Parties may agree in writing, as to what steps shall be taken in order to prevent termination of this Agreement during any additional time period agreed between the Parties commencing from the date of the Notice of Intention to Terminate (the Cure Period).
- b) If the Seller remedies the Seller Event of Default or the Procurer remedies the Procurer Event of Default within the relevant Cure Period allowed to the defaulting Party, then the Notice of Intention to terminate shall immediately and automatically cease to have any effect during such period or upon such remedy being achieved.
- c) Following a Seller Event of Default and upon notification by the Lenders to the Procurer pursuant to the Financing Documents, the Procurer shall permit the Lenders to remedy a SellerEvent of Default in accordance with [Relevant Article in Concession Agreement on "Breach of Contract and Termination"] of the Concession Agreement. Where the Lenders exercise such step-in rights, the Procurer shall consult with the Lenders and agree steps to be taken in accordance with Clause 30.3.a & 30.3.b above.

### **30.4 Notice of Termination**

Upon expiration of the Cure Period as mentioned under Clause 30.3, and unless:

- a) the Parties shall have agreed otherwise; or
- b) the Seller Event of Default or Procurer Event of Default giving rise to the Notice of Intention to Terminate has been remedied,

the Party having given the Notice of Intention to Terminate may terminate this Agreement by delivering a notice to this effect to the other Party and the GOL, whereupon this Agreement shall immediately terminate.

### **30.5 Termination due to termination of Concession Agreement**

This Agreement shall be automatically terminated when the Concession Agreement is terminated for any reason whatsoever.

### **30.6 Consequences of Termination**

- a) Upon the termination of this Agreement, the Parties shall have no further obligations hereunder except for those that expressly survive such termination pursuant to this Agreement including, without limitation, any requirement by the Procurer to pay the Termination Payment, provided, however, that the Parties' obligations with regard to any

unsatisfied liabilities that have arisen prior to the termination shall continue notwithstanding termination.

- b) For the avoidance of doubt, in the event of termination of this Agreement prior to the end of the Concession Period, the Seller shall be entitled to use all available water for generating electrical energy and, subject to [Relevant Article on “Company/Sellers Rights” in the Concession Agreement] of the Concession Agreement, sell the available generating capacity and electrical energy to third party purchasers, unless right, title and interest in the Energy Facility is transferred to the Procurer pursuant to Clause 30.7 (Termination Payment) due to the Procurer Event of Default.
- c) No Seller Event of Default or Procurer Event of Default shall be a "default" under any Project Agreement, and no termination of this Agreement shall cause a termination of any Project Agreement.
- d) In case of termination of this Agreement due to Seller Event of Default, the Contract Performance Guarantee submitted by the Seller as per Clause 8 of this Agreement shall be kept by the Procurer.

### **30.7 Termination Payment**

- a) Subject to Clause 30.7.b below, if this Agreement is terminated due to an Procurer Event of Default or due to Lao Political Force Majeure, then on or prior to the date falling one hundred and eighty (180) days after the date of the Notice of Termination:
  - (i) the Procurer must pay the Termination Payment set out under Schedule 8 of this Agreement to the Seller; and
  - (ii) within two (2) Business Days of the date of receipt of the Termination Payment, the Seller must transfer to the Procurer (as the Procurer's sole cost and expense) all of the Seller's right, title and interest in the Energy Facility, provided that the Procurer shall provide an undertaking to the Seller on the transfer of the Energy Facility stating that the Procurer shall not interfere with the rights and obligations of the Seller under the Concession Agreement.
- b) Clauses 30.7.a above shall not apply if termination of this Agreement occurs simultaneously with the termination of the Concession Agreement to the extent that as a result of such termination of the Concession Agreement, the GOL is unconditionally required to pay a termination payment to the Seller, but only to the extent that payment to the Seller of the Termination Payment by the Procurer would result in the Seller not receiving duplicate compensation for a particular component covered by the payment for termination to the Seller by the GOL.

### **31. GOVERNING LAW**

This Agreement shall be governed by and construed and interpreted in accordance with the Laws of the Lao PDR. If such Laws are found to be wholly silent on any issue in question, or so inadequate as to preclude the making of any reasonable finding on any issue in question, then solely to the extent of such silence or inadequacy, as the case may be, for the purposes of the interpretation of such issue, English law shall apply.

### **32. MISCELLANEOUS**

#### **32.1 Amendments**

This Agreement may not be amended except by an agreement in writing signed by authorised representatives of both Parties.

#### **32.2 No Waiver**

- a) No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement:
  - (i) shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or
  - (ii) shall be effective unless in writing duly executed by a duly authorized representative of such Party.
- b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement, nor time or other indulgence granted by one Party to the other shall act as a waiver of such Breach of Contract or acceptance of any variation or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

#### **32.3 Notice**

- a) Save as otherwise expressly provided in this Agreement, all notices or other communications which are required or permitted hereunder shall be in writing and shall be delivered personally or sent by email or fax or prepaid ordinary post addressed as follows:

If to the Procurer:

Attention : Managing Director  
Address: : Electricité du Laos  
[Friendship Lao-Thai Road, Thongkang Village. P.O. Box  
309, Sisattanak District]  
Vientiane Capital  
Lao PDR  
Email : [REDACTED]  
Fax No. : [REDACTED]

If to the Seller:

Attention :  
Address: :  
Email : [REDACTED]  
Fax No. :

- b) All notices or communications given by email shall however be confirmed by delivering a copy of the same personally or sending it by prepaid ordinary post in an envelope properly addressed to the above-mentioned address and to the appropriate Party for delivery. All notices shall be deemed delivered upon receipt.

- c) Any Party may, by notice of at least fifteen (15) days to the other Party, change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

#### **32.4 Sale and Security Interests**

- a) This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors, permitted transferees and permitted assigns.
- b) the Procurer shall not be permitted to assign, transfer or grant a security interest in this Agreement to or for the benefit of any person.
- c) The Seller may assign, transfer or grant a security interest in this Agreement to:
  - (i) The Lenders or any agent of the Lenders;
  - (ii) The GOL; or
  - (iii) Any other party acceptable to the Procurer.
- d) The Procurer agrees that if the Seller is permitted to assign, transfer or grant a security interest in this Agreement in accordance with paragraph (c) above, then the Procurer shall in that case promptly upon the Seller's request in that regard execute any documents in connection therewith as the Seller may request.
- e) The Procurer agrees to enter into a direct agreement with the Lenders on terms that are standard for internationally financed power projects.

#### **32.5 Entire Agreement**

- a) This Agreement is intended by the Parties as the final expression of their agreement and is considered by them as the complete and exclusive statement of the terms of their agreement.
- b) The Schedules form an integral part of this Agreement.
- c) All prior written or oral understandings are hereby abrogated and withdrawn.

#### **32.6 Counterparts**

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

#### **32.7 Language**

- a) This Agreement is being executed and delivered in the English language and all modifications, amendments and waivers of any provision of this Agreement shall be in the English language.
- b) All notices, communications, correspondence, documents, statements, invoices, programmes, procedures and reports prepared in accordance with this Agreement shall be in the English Language.

#### **32.8 Confidentiality**

- a) Each of the Parties shall hold in confidence this Agreement, the agreements relating to the Energy Facility and the Transmission Equipment and all documents and other information, whether technical or commercial, which is of a confidential nature supplied to it by or on behalf of the other Party relating to the design, construction, insurance, operation, maintenance, management and financing of these facilities and shall not publish, disclose or use the same for its own purposes other than as may be required:

- (i) for the entry into and performance of this Agreement, the Concession Agreement, any Project Agreement and any Financing Document to which the Seller or the Procurer is a party; or
  - (ii) by law.
- b) No disclosure shall be made by a Party under this Clause 32.8 unless written notice thereof shall have been given to the other Party either prior to such disclosure or otherwise shall be given as soon as reasonably practicable thereafter.

### **32.9 Waiver of Sovereign Immunity**

Each Party unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitutes private and commercial acts rather than public or governmental acts;
- b) to the maximum extent permitted by law, agrees that should any legal proceedings be brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (sovereign or otherwise) from such legal proceedings shall be claimed by or on behalf of itself or with respect to its assets;
- c) to the maximum extent permitted by law, waives any such right of immunity (sovereign or otherwise) which it or its assets now has or may acquire in the future; and
- d) consents generally, in respect of the enforcement of any judgment against it in any proceedings, to the giving of any relief or the issue of any process in connection with such proceedings including, to the maximum extent permitted by law, the making, enforcement or execution against or in respect of any property whatsoever (irrespective of its use or intended use).

### **32.10 Damages**

- a) Subject to Clause 32.10.b below and Clause 32.11 and the other provisions of this Agreement, if a Party is in Breach of Contract of any of its representations, warranties and/or obligations under this Agreement and has failed to remedy that Breach of Contract within any grace or notice period allowed by this Agreement in respect of that particular obligation, the other non-defaulting Party shall be entitled to claim compensation for and to be indemnified against all loss and damages which such Party suffered or incurred or will or is likely to suffer or incur as a result of such Breach of Contract of this Agreement, including lost cash flow and the costs of rectifying the effects of such Breach of Contract.
- b) Notwithstanding Clause 32.10.a above, in the case of termination of this Agreement due to a Procurer Event of Default, the obligation of the Procurer to compensate the Seller in respect of that termination shall be deemed to be wholly satisfied by the payment of the applicable Termination Payment.

### **32.11 No Liability for Consequential Loss Arising from Breach of Contract**

Unless otherwise agreed herein, no Party shall have any liability for any Breach of Contract of this Agreement for any indirect, consequential, incidental, punitive or exemplary damages, including loss of use or loss of profit occurring as a result of such Breach of Contract, and each Party hereby releases the other from any such liability.

### **32.12 Change in Law**

- a) The Seller shall notify the Procurer within thirty (30) days of becoming aware of the occurrence of a Change in Law and its adverse impact, and provide a detailed report on such Change in Law and explain how it has impacted performance of the Seller's obligations under

this Agreement. The Seller shall also provide the Procurer with supporting evidence detailing and quantifying the economic and financial consequences of such Change in Law for the Seller.

- b) Upon receipt of such notification and supporting evidence from the Seller, the Procurer will, either: (i) grant or obtain and provide a waiver, exemption or other relief in respect of that Change in Law sufficient to eliminate such adverse effect; or (ii) provide compensation sufficient to put the Seller into substantially the same economic position as it would have been in had such Change in Law not occurred; or (iii) reject such claims.
- c) In the event the Procurer rejects the claim made by the Seller for Change in Law, the Seller can raise a dispute in accordance with Clause 29 of this Agreement.
- d) If Procurer decides to grant or provide a waiver, exemption or other relief or provide compensation with respect to any Change in Law to the Seller, such relief or compensation shall only be to the extent that relief or compensation would not result in the Seller receiving duplicate compensation for a particular component covered by the provisions of Change in Law in the Concession Agreement by GOL.

### **32.13 Severability of Provisions**

Any provision of this Agreement which is illegal, void or unenforceable shall, without prejudice to any other provisions of this Agreement, be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions of this Agreement.

### **32.14 Third Parties**

This Agreement is intended solely for the benefit of the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees. Nothing in this Agreement should be construed to create any duty or liability to, or standard of care with reference to, any other person. A person who is not a Party to this Agreement has no right to enforce any term or condition of this Agreement.

### **32.15 Set-Off**

Each Party shall be entitled to set off, as against any undisputed amount or amounts that are directed to be paid pursuant to any dispute resolution process owed by it to the other Party under this Agreement, amounts which the other Party owes to it under this Agreement.

**IN WITNESS WHEREOF** this Agreement has been executed on behalf of the Parties by their duly authorised representatives on the date stated at the beginning of this Agreement.

**The Procurer**

as **Procurer**

Represented by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature)

**[NAME OF SELLER]**

as the **Seller**

Represented by:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature)

Both Parties having signed in the presence of:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature)