

STANDARDIZED POWER PURCHASE AGREEMENT
FOR PURCHASE OF ELECTRIC ENERGY FROM A GENERATION FACILITY

BETWEEN

.....
(The Buyer)

AND

.....
(The Seller)

DATED

CONTENTS

ARTICLE 1	Definitions
ARTICLE 2	Sale and Purchase of Energy
ARTICLE 3	Term, Default, Termination and Milestone
ARTICLE 4	Interconnection, Metering and Operation
ARTICLE 5	Billing and Payment
ARTICLE 6	Force Majeure and Other Risk Events
ARTICLE 7	Relationship of Parties, Limitation of Liability and Indemnification
ARTICLE 8	Dispute Resolution
ARTICLE 9	Delegation, Assignment and Restructuring
ARTICLE 10	Representations and Warranties
ARTICLE 11	Miscellaneous
APPENDIX I	Description of Seller's Facility
APPENDIX II	Grid Interconnection Requirements
APPENDIX III	Determination of Payments
APPENDIX IV	Testing and Commissioning Procedure

STANDARDIZED POWER PURCHASE AGREEMENT

This Standardized Power Purchase Agreement ("SPPA") for the Purchase of Electric Energy (hereinafter "Agreement") is entered into on the date signed below, by and betweenwith a registered office address of....., Tanzania (hereinafter referred to as "the Buyer"), andwith a registered office address of....., Tanzania, the owner of the Small Power Project identified above and described in the APPENDIX I, (hereinafter referred to as "the Seller") for a period of years (hereinafter referred to as "the Term").

WHEREAS it is the policy of the United Republic of Tanzania to encourage private sector Small Power Project development and production of power;

WHEREAS it is the responsibility of the Ministry of Energy in administering the National Energy Policy, to facilitate Small Power Project development and power sale;

WHEREAS the Buyer has requirements to obtain additional electric energy, and has available transmission capacity to accept and utilize such energy;

WHEREAS such electric energy can be supplied to the Buyer by the Seller, subject to the warranties and representations in this Agreement;

WHEREAS the Seller has submitted to the Buyer a proposal for sale of electric energy from a Small Power Producer's Facility;

WHEREAS the Small Power Producer's tender for sale to the Buyer of electric energy qualifies as eligible under the Small Power Producers program in Mainland Tanzania, and under which the Buyer is authorized by EWURA to enter binding agreements with owners or operators of Small Power Projects;

WHEREAS the Seller and the Buyer are companies duly organized and validly existing under the laws of the Government of Tanzania, each possesses all requisite corporate and legal authority to execute this Agreement, and each is permitted by applicable laws and regulations to sell or purchase independently produced power; and

WHEREAS the Seller wishes to deliver and sell, and the Buyer wishes to purchase and to accept delivery of, the offered electric energy to be produced by the Seller from the Facility described in the APPENDIX I, all pursuant to the terms and subject to the conditions as set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the sufficiency of which are stipulated by the Parties, the Seller and the Buyer hereby agree as follows;

ARTICLE 1: DEFINITIONS

1.1 When used with initial capitalizations, whether in the singular or in the plural, the following terms shall have the following meaning: -

(a) Agreement: This document, including all Appendices, as may be amended from time to time;

(b) Applicable Law: All principal laws, treaties, proclamations, regulations and rules that are customarily treated in the United Republic of Tanzania as having legally binding force;

(c) Authorisation: All such permits, approvals, consents, grants or certificates of registration, notifications, concessions, acknowledgments, agreements, licenses, decisions or similar items required to be obtained from any Government Authority or other relevant governmental entity for the Seller or for the construction, financing, ownership, operation and maintenance of the Facility;

(d) Authority: The Energy and Water Utilities Regulatory Authority (EWURA), established by Section 4 of Cap. 414 of the Laws of Tanzania. The terms “Authority” and “Regulator” may be used interchangeably;

(e) Buyer's Default Purchase Price means the total of:-

- (i) Termination cost;
- (ii) the Debt and all fees, costs, expenses, early termination or close-out payments and breakage costs in connection with any Financing Agreement outstanding at the Termination Date; provided that if any portion of the Debt was not paid by Seller to the Lenders as required under the Financing Agreements, such portion, together with all default interest, shall be deducted from the Buyer's Default Purchase Price;
- (iii) Equity Amount Outstanding;
- (iv) All amounts owed by Buyer to Seller; and
- (v) an amount equal to the revenue which would have been expected to be generated by the Seller for a period of twelve (12) months or until the end of the Term (whichever is shorter) assuming that no Buyer Event of Default had occurred and the Agreement had not terminated.

(f) Calculation Date: the actual date on which termination of the Agreement by either Party in accordance with its terms takes effect;

(g) Check Meter: The meter used to check the measurement and recording of Metered Energy and input at the Delivery Point in addition to the Main Meter;

(h) Commercial Operations Date: The earlier of: (1) the day on which the Seller notifies the Buyer that power deliveries can commence consistent with the terms of this Agreement, or (2) the day on which the Seller commences deliveries of electric energy to any buyer consistent with applicable law, including but not limited to, the Buyer, which shall, for the avoidance of doubt, exclude delivery of electric energy during any commissioning period;

(i) Contracted Capacity: The export capacity of the generating facility not exceeding the limit declared for Small Power Producers' facility at the time of signing of this Agreement;

(j) Contract Year: The twelve-month period beginning with the Commercial Operations Date and each succeeding twelve-month period;

- (k) Contract Price (Energy Charge): Price for each technology shall be as per the SPPT approved by the Authority or as agreed by the Parties provided that the agreed price shall not exceed those in SPPT;
- (l) Deemed Energy: has the meaning given in Article 2.9;
- (m) Deemed Energy Payments: has the meaning given in Article 5.3;
- (n) Default Interest Rate: shall base on the Bank of Tanzania interest rate prevailing on the date of default;
- (o) Delivery Point: The point where the Buyer's transmission or distribution system connects with the power output of the Facility, and whereto the Seller's metering of power output initially takes place including those protection, metering, electric line(s), and other facilities required, in the opinion of the Buyer, to connect the electric systems of the Buyer and the Seller. The terms "Delivery Point" and "Point of Supply" may be used interchangeably;
- (p) Due Date: Forty (40) days from the date the invoice was received by the Buyer;
- (q) Electricity Market: is a system enabling purchases, through bids to buy; and enabling sales, through offers to sale;
- (r) Emergency: A condition or situation which is likely to result in disruption of service to the Buyer's customers, is likely to cause a major fault in the Buyer's transmission system, or is likely to endanger life or property;
- (s) Energy: The electric energy produced by the Facility measured in kWh generated by the Facility and delivered by the Seller to the Buyer pursuant to the terms of this Agreement;
- (t) Energy Charge: The price which the Buyer will pay to the Seller per kWh of Energy as stated in the APPENDIX III;
- (u) Equity Amount Outstanding: means the sum equal to all Equity Contributions made in cash or in kind prior to the Calculation Date less the sum of all Equity Distributions made in cash prior to the Calculation Date; provided that, if such difference shall result in an amount that is less than zero (0), such amount shall be deemed to be zero (0);
- (v) Equity Contribution: means the quantum of any amount of cash actually paid or advanced to the Seller by any of its shareholders whether in the form of equity or a shareholder loan that constitutes Equity;
- (w) Equity Distribution: means the quantum of any amount returned by the Seller to its shareholders whether in the form of dividends, redemption of capital, and repayment of shareholder loans qualifying as Equity or otherwise;

- (x) Event of Default: An event as defined in Article 3.2;
- (y) Facility: All of the Seller's electrical prime movers and generators, together with all protective and other associated or auxiliary equipment of the Seller, and rights to own or use land associated with the electrical prime movers and generators, necessary to produce electric energy pursuant to this Agreement;
- (z) Financing Agreement: a contract entered between the Seller and the Lender(s) outlining the terms of financing development of the Small Power Project;
- (aa) Financing Costs: means all principal amounts and all costs associated with financing the development, ownership, operation and transfer of the Facility incurred pursuant to the financial agreements;
- (bb) Good Utility Practice: Those practices, methods and acts with regard to adequate materials, resources, supplies, fuel, personnel, maintenance, repairs, monitoring, testing, and operation in the international utility industry at a particular time, in the exercise of reasonable judgment based on the facts known or that should have been known at the time of a decision, that would have been expected to accomplish the desired result in a manner consistent with the law, regulations, codes, equipment manufacturers' recommendations, safety, environmental protection and economy;
- (cc) Interconnection Guidelines: The Buyer's interconnection standards and requirements on grid connection relevant to a Small Power Producer's facility interconnection to the Buyer's transmission or distribution grid, as stated in the APPENDIX II;
- (dd) Interconnection Point: The point where the Seller's electric output line or electric system feeds into the electric system of the Buyer. The terms "Interconnection Point" and "Point of Common Coupling" may be used interchangeably;
- (ee) Interconnection Facilities: All the facilities to be constructed by or for the Buyer to a specified distance to the grid substation, as stated in the Electricity (Development of Small Power Projects) Rules enable it to receive energy in accordance with this Agreement. The metering system as specified in the Guidelines for Grid Interconnection of Small Power Projects in Tanzania;
- (ff) Lenders: the financial institutions or project financer whose particulars shall be disclosed by the Seller to the Buyer upon reaching the financial closure;
- (gg) Main Meter: The meter used to measure and record Metered Energy and input at the Delivery Point;
- (hh) Metered Energy: All Energy expressed in kWh as recorded by the Main Meter or the Check Meter;
- (ii) Metering System: The Main Meter and the Check Meter and all associated equipment;

- (jj) Must Take Facility: A facility where the Buyer must take and purchase all of the Metered Energy, not exceeding the contracted capacity, to be generated by the Facility and delivered and sold to the Buyer, subject only to such necessary directions or protocols as may be issued by the Buyer for the protection of its electric system;
- (kk) Net Electrical Output: Energy from the Plant measured in kilowatt hours (kWh) which is generated at the Plant and delivered to the Buyer at the Delivery Point;
- (ll) Party or Parties: The Seller or the Buyer, or both, and their successors in interest to any or all of the rights and obligations hereunder;
- (mm) Plant Availability: means in respect of any Contract Year, the percentage of the total time within the Contract Year during which the Facility is Available. For this purpose, the Facility shall be considered to be “Available” at any time if it is capable of generating Energy and is connected to the Delivery Point by facilities which are themselves capable of delivering the Energy generated by the Facility to the Delivery Point;
- (nn) Prudent Operating Practice: In relation to either Party, standards of practice obtained by exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled and experienced person engaged in either electricity generation, transmission or distribution under the same or similar circumstances and conditions;
- (oo) Reasonable and Prudent Operator: a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its business exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaging in the electricity generation and/or transmission business in the same or similar circumstances and conditions;
- (pp) Required Plant Availability: has the meaning given in Article 2.12;
- (qq) Restructuring: unbundling of Tanzania Electric Supply Company Limited as outlined in the Tanzania Electricity Supply Industry (ESI) Reform Strategy and Roadmap;
- (rr) Scheduled Outage: An outage at the Facility which is scheduled in advance for the purpose of performing maintenance on the Facility;
- (ss) Seller’s Interconnection Facilities: *[Insert project description of the Facilities]*;
- (tt) Seller’s Default Purchase Price means the total of:
 - (i) the Debt and all fees, costs, expenses, early termination or close-out payments and breakage costs in connection with the Financing Agreements; and
 - (ii) Termination Costs;

- (uu) Small Power Producer: A producer of electric energy that sells pursuant to this Agreement up to ten (10) MW of such output, or is otherwise deemed eligible for executing this Agreement;
- (vv) Small Power Project: A project of any capacity that generates electric energy and provides pursuant to this AGREEMENT up to ten (10) MW of the installed capacity at any given time, or is otherwise deemed eligible for executing this Agreement;
- (ww) Term: The period commencing on the Commercial Operation Date and ending at 23:59 hours on the last date of the Month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs unless this Agreement is terminated prior to such date pursuant to the terms of this Agreement;
- (xx) Termination Costs: Reasonable costs incurred by Seller (including employee severance costs and contract breakage costs such as EPC contract) as a direct consequence of termination of this Agreement;
- (yy) Termination Date: means the actual date on which termination of the Agreement by either party in accordance with its terms takes effect; and
- (zz) Unscheduled Outage: An outage at the Facility which is not a Scheduled Outage.

ARTICLE 2: DELIVERY, SALE AND PURCHASE OF THE BUYER'S ENTITLEMENT

- 2.1 Delivery of Entitlement. Upon the Commercial Operations Date and thereafter the Seller agrees to deliver and sell to the Buyer at the Delivery Point, all Metered Energy for the term of this Agreement as specified in Article 3 and at the price as specified in Article 5.
- 2.2 Acceptance and Purchase of Entitlement. Upon the Commercial Operations Date and thereafter, the Buyer agrees and covenants to accept into its transmission system and to purchase for the term of this Agreement as specified in Article 3 and at the price as specified in Article 5, the Energy when delivered by Seller at the Delivery Point.
- 2.3 Environmental Attributes. Any environmental attributes recognized under any international, national or other laws or regulations, associated with the ownership or generation of power from the Facility, including but not limited to carbon credits or attributes created pursuant to the Kyoto Protocol or any successor laws, are not included in the Energy transferred to the Buyer and shall remain the property, and under the control, of the Seller.
- 2.4 Operation of Facility. The Seller agrees to operate the Facility in accordance with Good Utility Practice. Unless specifically allowed pursuant to this Agreement, the Seller shall not sell or deliver Energy to any third party, except to the extent that Energy is required by the Facility for its operation or with the Buyer's prior written approval.

2.5 Forecasts. Prior to the Commercial Operations Date and thereafter on or before each subsequent Contract Year, the Seller shall furnish to the Buyer an annual forecast of its anticipated operations that includes the following:-

- (a) Scheduled Outages for the year; and
- (b) anticipated monthly energy generation plan which has taken into consideration the Scheduled Outages.

2.6 Scheduled Outages. The Seller shall attempt to coordinate any Scheduled Outage, subject to Good Utility Practice, with the Buyer's reasonable written request. The Seller shall notify the Buyer one month in advance of Scheduled Outages, including a non-binding estimate of expected length of each outage, and as soon as possible, of any Unscheduled Outages, including a non-binding estimate of expected length of each outage.

2.7 Transmission System Operation. The Buyer shall operate and maintain its transmission system and the Facility interconnection in accordance with Good Utility Practice so as to permit the delivery of the Energy to the Buyer's system. The Buyer shall work with the Seller to balance load and support voltage on its transmission and distribution system so as to maximize the ability of the Buyer's transmission system to accept the Energy.

2.8 Interruption of Acceptance and Purchase. Subject to Article 2.9 below, the Buyer may interrupt, reduce or cease to purchase and accept delivery of all or a portion of the Energy, to the extent that such interruption, reduction or cessation is necessary, under Good Utility Practice, in order for the Buyer to install equipment, make repairs, replacements, investigations or inspections of the Buyer's electric system. Subject to Article 2.9 below, whenever the Buyer's system or the systems with which it is directly interconnected experience an Emergency, or whenever it is necessary to aid in the restoration of service on the Buyer's system or on the systems with which it is directly or indirectly interconnected, the Buyer may, in its sole discretion, curtail or interrupt the taking of all or a portion of the buyer's entitlement or any electric energy hereunder, provided such curtailment or interruption shall continue only for so long as it is reasonably and minimally necessary under Good Utility Practice.

2.9 Deemed Energy. at any time after two years from the Commercial Operation Date, in the event that the Buyer's Facilities are not available to the Seller through either a fault, or a back down instruction (given by the Buyer in accordance with Good Utility Practice, intended to ensure the safety and integrity of the interconnected Facilities) that has lasted for more than eight (8) hours, or a combination thereof ("Interruption Event") the Buyer shall be liable for the energy that would otherwise have been produced by the Seller. ("Deemed Energy").

The Interruption Event shall not include the period of Planned Maintenance, which shall be communicated by the Buyer at the beginning of each year during the term of this Agreement subject to provisions of Article 5.3.

"Subject to Articles 2.10 and 2.11, the Buyer shall make payments to the Seller for such Deemed Energy in accordance with the provisions of Article 5.3, provided that the Buyer shall be relieved of its obligation to make such payments in respect of an aggregate maximum of four hundred thirty two (432) hours of Interruption Events in each Contract Year, which shall be exclusive of the 7 days of Buyers Planned Maintenance as specified in 5.3.1

- 2.9.1 Under no circumstance will the deemed energy calculated be less than zero or more than energy that could have been delivered to the Buyer based on the annual energy production.
- 2.9.2 The Seller will send a daily report to the Buyer on the day following any event of Deemed Energy that has happened the previous day, if any.
- 2.9.3 In order for the Buyer to verify the results of the Deemed Energy calculation, the Buyer can at any moment demand an independent audit of instrument calibration, calculations, procedures and software and will have unlimited access to the database of the interconnection point meters, as well as the Seller's SCADA system. The Buyer will receive back-ups of the Seller's database at any time the Buyer may demand such a back-up.
- 2.9.4 Storage of data: All data related to the calculation of Deemed Energy will be stored safely by both parties for at least two years or until such time as both Parties have agreed on the amount of Deemed Energy for a certain year.
- 2.9.5 Deemed Energy payments shall only be permitted if the Buyer's Facilities are under the Buyers control.

2.10 **Island mode.** The Buyer shall ensure that its network system allows the Seller to operate up to 85% of the contracted capacity in an island mode in case of any fault in the grid system. In case the Buyer's system cannot enable the Seller's facility to operate at 85% of the contracted capacity in an island mode, the Buyer shall be liable for deemed energy proportionally to the Buyer's capacity not supplied.

2.11 Notwithstanding Articles 2.9, 2.10 and 5.3, the Buyer shall be liable for Deemed Energy Payment only if the Seller's facility has the self-capability to black start and operate in an island mode.

2.12 **Plant Performance:** From the Commercial Operations Date, the Seller shall deliver to the Buyer, energy of not less than 70% of the annual forecasted energy generation. After the end of the second year after the COD, the seller shall be liable to compensate the Buyer for performance below 70%. The energy not delivered for the year will be calculated as provided in section 4 of APPENDIX III.

2.13 **Interruption of Delivery.** The Seller may interrupt, reduce or cease to deliver Energy to the Buyer only in accordance with Good Utility Practice or to the extent that the Seller reasonably determines that such interruption, reduction, or cessation is necessary in order to install equipment in, make repairs, replacements, investigations and inspections of, or perform maintenance on the Facility which directly affect, the delivery of the Energy to the Buyer. The Seller shall, prior to initiating any interruption, reduction or refusal to deliver the Energy to the Buyer, use its best efforts to provide the Buyer a minimum of twenty-four (24) hours advance notice, such notice to include an explanation of the cause of the interruption, and an estimate of the start and duration of the interruption.

2.14 **Coordination.** Because the Seller's Facility is a Must Take Facility, the Buyer shall use its best efforts to coordinate and to minimize any periods of interruption, reduction, cessation, or curtailment of acceptance of electric energy from Seller as provided for in this Article with the periods of previous Scheduled Outage at the Facility. Prior to initiating any interruption, reduction or cessation of the acceptance of Energy from Seller, the Buyer shall use its best efforts to provide the Seller with a minimum of twenty-four (24) hours advance notice, such notice to include an explanation of the cause of the interruption, and an estimate of the start and duration of the interruption.

2.15 **Power Factor.** The Seller agrees to operate the Facility in parallel with the Buyer's system and to deliver the Buyer's Entitlement at the Delivery Point and at the voltage level and power factor specified in APPENDIX III, which the Buyer may establish on a project specific basis to parallel its system requirements to provide ancillary services. Unless otherwise requested by the Buyer, the Seller's Facility must be capable of operating at a power factor of 0.8 lagging, and the Seller shall operate the Facility at a power factor between 0.8 and 1.0 at the point of delivery to the Buyer, subject to the response time of control equipment to transient conditions on the Buyer's system.

2.16 **Synchronization.** The Seller shall notify in writing the Buyer at least 30 days prior to synchronizing or operating the Seller's generators at the Facility for the first time in parallel with the Buyer grid system, and coordinate such commencement of operation with the Buyer at this first time and at future times that it resynchronizes or begins again to operate after a cessation of operation in parallel with the Buyer grid.

2.17 **Standards.** The Seller shall comply with all applicable Standards relevant to the design, construction, financing, ownership, operation or maintenance of the Facility as issued or approved by the relevant body

ARTICLE 3: TERM, DEFAULT, TERMINATION AND MILESTONE

3.1 **Term.** As of the date and when signed below by all Parties, the Seller has elected, and the Buyer agrees, that this Agreement shall commence and, subject to the termination provisions set forth in this Agreement, shall continue for the entire Term specified. Notwithstanding the foregoing, the applicable provisions of this Agreement shall remain in effect after termination hereof to the extent necessary to provide for final billings, billing adjustments, payments, and effectuation of all rights hereunder. At the end of this Agreement, the Seller shall opt to sale the facility to the Buyer at a price of Ten Thousand shillings or enter and participate in the Electricity Market.

3.2 **Default.** A Party shall be deemed to be in default under this Agreement if it experiences each or any of the Events of Default, including:-

- (a) the adjudged bankruptcy, dissolution, or liquidation of either Party, in which case the bankrupt, dissolved, or liquidated Party shall be deemed to be the Party in default hereunder;
- (b) either Party fails to perform or observe any of the material obligations of this Agreement, and such failure shall not be rectified or cured within ninety (90) days after written notice thereof to the nonperforming Party, provided that the defaulting Party commences within the applicable period reasonably to effect such cure and at all times thereafter proceeds diligently to complete such cure as quickly as possible, subject to the provisions of Article 6. It shall not be an Event of Default if such failure of a Party to perform is caused by an action or inaction of the other Party;
- (c) failure of any Party to make an undisputed payment when due and nonpayment continues for more than ninety (90) days ;
- (d) the dissolution or reorganization of the Buyer such that he or his successor cannot perform his obligations hereunder, either of which shall be deemed to be an Event of Default by the Buyer;

- (e) either Party contests and denies the enforceability of this Agreement, in which case the Party contesting enforceability shall be deemed to be the Party in default hereunder.

3.3 Default Procedure and Cure

- 3.3.1 Notice. Upon the occurrence of an Event of Default, in each and every case, the non-defaulting Party shall give written notice to the defaulting Party and, subject to any cure period herein, may pursue any remedies provided for in this Agreement or under law, and may terminate this Agreement by giving such written notice to the other Party upon the expiry of any applicable cure period specified herein; provided that should the Buyer claim any Event of Default against the Seller, it shall notify and afford Lenders reasonable time, access and opportunity to remedy or cure any event giving rise to the default, and shall cooperate with Lenders to this end.
- 3.3.2 Step-in Rights. If an Event of Default or Emergency occurs and the Seller is prevented from satisfying its obligations hereunder despite its best efforts, including restoring the operation of the Facility, the Sponsor or Lender (hereinafter called “the Person”) may elect to provide notice to all Parties as provided herein, of their intention to step into the rights and obligations of the Seller and attempt to remedy such Event of Default or Emergency (hereinafter “Step in Rights”). The Person shall only exercise such Step-in Rights under this Article if it has the skills and means to carry out the work necessary to remedy the Event of Default or Emergency in accordance with the laws of the United Republic of Tanzania and Good Utility Practice.
- 3.3.3 Return of Facility following Step-in. The Person exercising the Step in Rights shall as soon as possible return control of operations of any facilities over which it has assumed control or operation to the Seller and in the event that the seller has disappeared, the Person will proceed or appoint another operator to operate the facility.
- 3.4 Specific Performance. If money damages would not be a sufficient remedy in the event of default or breach of this Agreement, each Party acknowledges that the Party not in breach shall be entitled to specific performance, including, without limitation, injunction and specific performance, to remedy such breach or threatened breach, and that such remedy shall not be deemed the exclusive remedy for breach hereunder.
- 3.5 Termination Due to Buyer’s Default. In the event that the Seller elects to terminate this Agreement after the power plant has been successfully commissioned due to a default by the Buyer, then either Party may require that within one hundred and twenty (120) days of the Termination Date the Buyer shall pay the Buyer’s Default Purchase Price to the Seller and the Seller shall sell the Facility to the Buyer (or its nominee) at the Buyer’s Default Purchase Price. Notwithstanding the foregoing, the Seller and the Buyer may agree on alternative arrangements to sell the Facility to another party as part of the compensation due to the default of the Buyer.
- 3.6 Milestone. The Commercial Operation Date shall be within three (3) years, for hydropower and two (2) years for other resources, all counted from the date of signing the Agreement. The Seller is required to submit quarterly progress reports to the Buyer indicating progress towards Commercial Operation Dates. If the Seller does not achieve Commercial Operation

Date stated above, he shall be liable to pay Liquidated Damages prescribed in Paragraph 3.6.1, unless both Parties agree to an extension for the explicit purpose of completing the construction, testing and commissioning the Facility.

- 3.6.1 If the Plant has not been commissioned on or before the Commercial Operations Date, the Seller shall pay to the Purchaser [.....] Shillings (Tzs) per kilowatt of the Contracted Capacity (prorated daily) per month for each day by which the plant is delayed beyond its Commercial Operations Date.
- 3.6.2 Notwithstanding the contents of Paragraph 3.6.1, above, the cumulative amount of such payment shall not exceed [.....].
- 3.6.3 Payments made in accordance with Paragraph 3.6.1 above, shall be liquidated damages for the detrimental impact of such delay upon the Purchaser's generation planning.

3.7 Facility Price at the Expiry of the Agreement. At the end of this Agreement, the Seller shall opt to sale the facility to the Buyer at a price of One United States Dollar or enter and participate in the Electricity Market

ARTICLE 4: INTERCONNECTION, METERING AND OPERATION

- 4.1 **Delivery Point Responsibility.** The Seller shall make all reasonable arrangements at its own expense necessary to transmit and deliver the Energy not exceeding the Contracted Capacity to the Buyer at the Delivery Point. The Buyer shall cooperate with the Seller in these arrangements.
- 4.2 **Interconnection**
 - 4.2.1 The Seller at its sole expense shall design, purchase, construct, operate and maintain the Seller's Interconnection Facilities.
 - 4.2.2 Where metering is located at the Buyer substation, the Seller shall pay for upgrading of metering at the grid substation to monitor bidirectional real and reactive power on the transmission line to which the Facility interconnects.
 - 4.2.3 The Buyer shall have the right to review the design as to the adequacy of the protective apparatus provided. The Seller shall be notified of the results of such review by the Buyer in writing within thirty (30) days of the Buyer's receipt of all specifications related to the proposed design. Any flaws perceived by the Buyer in the proposed design shall be described in the written notice. Any additions or modifications required by the Buyer shall be incorporated by the Seller.
- 4.3 **Interconnection Standards.** The Buyer equipment, transmission, and distribution requirements and standards, including the Interconnection Guidelines, shall apply to the installation and to the operation of all of the Seller's Interconnection Facilities.
- 4.4 **Interconnection Compliance.** Upon reasonable prior notice, the Buyer has the right to inspect the Seller's Interconnection Facilities to ensure compliance with Good Utility Practice and the Interconnection Guidelines. Such access shall not interfere with the Seller's normal business operations. If, in the opinion of the Buyer, the Seller's Interconnection Facilities are not being so operated and maintained, the Buyer shall notify the Seller in writing of any such discrepancies in a sufficient level of technical detail which the Seller shall correct promptly. Until such correction, the Buyer is not required to accept and pay for the buyer's entitlement.

4.5 Induction Generators. If the Seller's Facility includes an induction-type generator(s), the Seller shall provide individual power factor correction capacitors for each such generator. Such capacitors shall be switched on and off simultaneously with each of the associated induction-type generator(s) of the Facility. The kVAr rating of such capacitors shall be the highest standard value which will not exceed such generators' no-load kVAr requirement. The Seller shall pay the Buyer, at prevailing rates approved by the Authority, the cost for all energy consumed from the Buyer to excite the induction generators, unless such energy is netted from that sold hereunder. Such payment shall be made as provided in Article 5.

4.6 Metering. The Seller shall, in accordance with Prudent Operating Practice, supply and install, test and commission the Main Metering System employed for purposes of measurement and billing under this Agreement. Metering and telemetering equipment shall comply with Good Utility Practice, be capable of registering and recording the instantaneous and bidirectional transfer of active and reactive power, kWh and kVArh, and capable of transmitting such data to such location(s) as may be specified by the Buyer. The Metering System shall be sealable and have mass storage and recording capability. The Seller shall provide a suitable location for the Metering System if the Interconnection Point is at the Facility. The Buyer shall verify the correctness of meter before installation and be present during commissioning of the meter.

4.7 Check Meter: The Buyer, at its own expense shall design, finance, construct, install, own, operate and maintain a Check Meter (also known as backup meter) of same accuracy as the Main Meter. In case the Main Meter is required to be taken out of the circuit, the Check Meter shall be used for readings taken for the purpose of billing during the period until the primary meter is put back into the circuit.

4.8 Meter Reading. The Main Meter shall be read jointly by the Seller and the Buyer on the first day of each month (or such day as may be agreed upon by the Parties) for the purpose of determining the Net Electrical Output delivered into the Buyer's system since the preceding meter reading. The Seller shall provide the Buyer access to the Facility at all reasonable times upon reasonable prior notice for the purpose of reading or inspecting the Main Meter and the Check Meter, examining the operation of the Facility or other purposes reasonably related to performance under the terms of this Agreement. Such access shall not interfere with the Seller's normal business operations. All the Buyer's personnel shall follow all Facility safety and procedural rules while on the Facility premises.

4.9 Meter Accuracy. All Metering Systems measuring the output of the Facility shall be tested at least annually, at the Buyer's expense, in accordance with Good Utility Practice. At any reasonable time, either Party may request a test of the accuracy of any Metering System. Each Party shall bear the cost of a test requested by it. The results of meter calibrations or tests shall be available for examination by the Parties at all reasonable times. If, at any time, any Metering System is found to be inaccurate by more than one-half of one percent (0.5%), The Buyer shall cause such Metering System to be made accurate or replaced as soon as possible. Each Party shall be given reasonable advance notice of and have the right to be present at the breaking of the seals, testing, calibration and sealing of the Metering System. If either Party believes that there has been a Metering System failure or stoppage, it shall immediately notify the other Party. The Party owning the Metering System will then investigate and take corrective action if necessary.

4.10 Meter Calibration. Testing and calibration of the Metering System, and any verification of meter accuracy, shall be performed pursuant to the Buyer metering standards. Calibration

shall occur before use of the meters to first record the output of the Facility. The Metering System shall be caused to be sealed and locked by their owner after calibration.

- 4.11 Transfer of Title to Power. At the Delivery Point, the contracted capacity and associated electric energy, and legal title to same, shall be deemed to be transferred from the Seller and delivered to possession of the Buyer. At such point, the Buyer shall be in exclusive control and possession of such capacity and associated electric energy and shall be solely responsible for same. Such electric energy transferred shall be by alternating current 3 phase, 50 Hz nominal frequency, at the voltage specified in the APPENDIX II.
- 4.12 Operation. The Facility shall be operated by the Seller in a manner consistent with Good Utility Practice and proper safety.
- 4.13 Interconnection Facilities. Once the Seller has procured that the interconnection facilities have constructed and commissioned as per Appendix IV. the Buyer shall provide an Interconnection Certificate to the Seller, and title to the Interconnection Facilities shall pass to the Buyer and the Interconnection Facilities shall form part of the Buyer's System.
- 4.14 Interconnection Liability. The Seller shall accept all liability and release the Buyer from and indemnify the Buyer against, any liability for faults or damage to the Seller's Interconnection Facilities, the Buyer electric system and the public, as a result of the operation of the Seller's Interconnection Facilities.
- 4.15 Data. Each Party shall annually report to the Authority and the Working Group on Small Power Development, a summary of power sale, operating and outage data by month for the calendar year, to allow the Authority to monitor Facility performance.

ARTICLE 5: BILLING AND PAYMENT

- 5.1 Billing. The Seller shall issue the Buyer an invoice for payment of electric energy delivered to and accepted by the Buyer under the terms of this AGREEMENT during such month, based on the results of the meter reading done jointly in accordance to Article 4.8.
- 5.2 Payment. The Buyer shall pay the Seller (or a trustee if so designated by the Seller) all amounts due for Metered Energy and not disputed by the Buyer and Deemed Energy Payments, on or before the Due Date, pursuant to the rates and subject to the terms set forth in the APPENDIX III. Any undisputed amounts unpaid after the Due Date shall bear interest payable to the Seller by the Buyer at the Default Interest Rate compounded on a monthly basis for each month or part thereof after the Due Date that any such amount remains unpaid. Either party in good faith may dispute any claimed delivery or billing error, amount, or payment by written notification to the other Party within one (1) year of receipt of a meter reading or other alternative billing information pursuant to Article 5.6, whether or not payment has been made by the Buyer. If dispute resolution pursuant to Article 5.6 is in favor of the Seller, the Buyer shall promptly thereafter pay the disputed amount plus interest computed at the Default Interest Rate to the Seller, compounded monthly, from the Due Date to the date payment is made. If resolution is in favor of the Buyer, the Seller shall refund any payment previously received of the disputed amount plus interest at the Default Interest Rate, compounded monthly, from the original Due Date to the date the refund is made. All such payments pursuant to this section shall be due within fifteen (15) days of the date of the final decision of such dispute resolution pursuant to Article 5.6.

5.3 **Deemed Energy Payments:** Commencing on the 1st day of the month that follows the end of the second year after the Commercial Operation Date, the Buyer shall pay to the Seller, in respect of each kWh of Deemed Energy during that month, the amount equal to the Tariff specified in the APPENDIX III in respect of Deemed Generated Energy had it been generated and delivered to the Buyer at the Delivery Point subject to the following:-

- 5.3.1 The Buyer shall have no obligation to pay for Deemed Energy during periods of the Buyer's Planned Maintenance up to the maximum number of hours specified by the Buyer in accordance with Prudent Operating Practice for such Planned Maintenance, which shall not exceed seven (7) days annually;
- 5.3.2 The Buyer shall be under no obligation to pay for Deemed Energy if the failure or inability of the Buyer to receive delivery of electrical energy from the Plant is caused by Force Majeure, other risk events or the Seller's facility failure to black start and operate in an island mode; and
- 5.3.3 The Deemed Energy shall be computed as set out in the APPENDIX III of this Agreement.
- 5.3.4 The invoice for Deemed Energy payments shall be separate from the monthly energy invoice.

5.4 **Currency:** All invoices and payments under this Agreement shall be issued and made in Tanzanian shillings (TZS).

5.5 **Estimation.** In the event that any data required for the purpose of determining amounts owed to the Seller or payment hereunder are unavailable when required, such unavailable data shall be estimated by the Buyer, subject to any required adjustment based upon actual data in the next subsequent payment month. A failure of the Buyer to read its Main Meter shall not relieve the Buyer of the obligation to pay the Seller at the conclusion of each month for the power delivered at the Delivery Point.

5.6 **Alternative Meter Data.** To determine the amount of Energy delivered and accepted in any billing period, recordation of amounts, billing, and payment will be based on the first available of the following metering or estimation options, in descending order of applicability:-

- (a) the primary Facility meter measurement (s) when that meter for the period at issue satisfies the accuracy standard in Article 4.9;
- (b) the Facility's Check Meter measurement when that Check Meter is positioned to record the electric energy delivered and accepted and when that meter satisfies the accuracy standard in Article 4.9;
- (c) Where all meters fail to accurately register electric energy delivered and accepted, the average monthly data for the Facility from the same month in the prior Contract Year, if available, as reasonably adjusted for the particular billing period by any relevant available data affecting Facility generation regarding rainfall, stream flow, actual Facility fuel consumption, average heat rate, hours of operation, time of operation of generators, and/or native self-use of power output (collectively "Operating Variations") during the period of meter failure, shall be employed, if applicable, to estimate the amount of electric energy delivered and accepted. Where such data are not reliably available, the average monthly energy delivered and accepted during the previous six (6) billing periods prior to meter failure (or fewer months if the Facility is less than six months from the Commercial Operations Date), as adjusted or normalized for outages or Operating

Variations, shall be used to estimate energy delivered by the Facility for the billing period.

5.7 **Set Off of Amounts Owed.** Either Party may set off undisputed amounts owed by it to the other Party regarding the Facility against undisputed amounts owed by the other Party to it regarding the Facility under this Agreement.

ARTICLE 6: FORCE MAJEURE AND OTHER RISK EVENTS

6.1 **Meaning of Force Majeure**

6.1.1 In this Agreement, "Force Majeure" means: any event or circumstance or combination of events or circumstances:-

- (a) beyond the reasonable control of the Party affected by such event, circumstance of combination of events or circumstances (the "**Affected Party**");
- (b) which could not have been prevented or avoided or overcome by the Party acting as a Reasonable and Prudent Operator;
- (c) which materially and adversely affects the performance by that Party of its obligations or the enjoyment by that Party of its rights under or pursuant to this Agreement; and
- (d) is not the direct result of a breach by the Affected Party of any other Project Document to which it is a party.

6.1.2 Without limitation to the generality of the foregoing, "Force Majeure" shall include the following events and circumstances to the extent that they satisfy the above requirements:

- (a) natural events ("**Force Majeure - Natural**") including:-
 - (i) acts of God (including lightning, fire, earthquake, volcano eruption, flood, storm, hurricane, cyclone, typhoon, tidal wave and tornado); epidemic or plague;
 - (ii) explosion or chemical contamination (other than resulting from an event or circumstance described in Clause 6.1.2.(b)(i)(C), in which case it shall be a Tanzania Political Event); and
- (b) other events of Force Majeure ("**Force Majeure - Political**") including:-
 - (i) Force Majeure - Political which occurs inside or directly involves Tanzania ("**Tanzania Political Events**") including:-
 - A. any act of war, whether declared or undeclared, or invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism or sabotage;
 - B. nationwide strikes, works to rule or go-slows that extend beyond the Plant or are widespread or nationwide, or that are of a political nature, such as, by way of example and not limitation, labour actions associated with or directed against a Tanzania political party, or those that are directed against the Seller, or its Contractors as a part of a broader pattern of labour actions against companies or facilities with foreign ownership or management;

C. radioactive contamination or ionizing radiation originating from a source in Tanzania or resulting from another Tanzania Political Event;

(ii) Force Majeure - Political which occurs outside Tanzania and does not directly involve Tanzania ("Foreign Political Events") including:-

- A. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism or sabotage;
- B. strikes, works to rule or go-slows that are widespread or nationwide;
- C. radioactive contamination or ionizing radiation originating from a source outside Tanzania and not falling within Clause 17.1.2.1(c);

6.1.3 "Force Majeure" shall expressly not include the following conditions:-

- (a) normal wear and tear or inherent flaws in materials and equipment or breakdowns of equipment;
- (b) the economic hardship of an Affected Party or changes in market conditions;
- (c) any event caused by, or connected with, the Affected Party's
 - (i) negligent or intentional acts, errors or omissions;
 - (ii) failure to comply with any laws; or
 - (iii) breach of, or default under, this Agreement;
- (d) unavailability of:-
 - (i) fuel supply, reserves or transportation,
 - (ii) water service; or
 - (iii) electric transmission or distribution service sufficient to export the output of the Plant in whole or part, except to the extent such unavailability is itself due to Force Majeure;
- (e) failure to make a payment of money in accordance with the Seller's obligations under this Agreement;
- (f) any failure to take into account prevailing Site conditions;
- (g) inability to obtain or maintain adequate funding; and
- (h) delays resulting from reasonably foreseeable unfavourable weather conditions or other similar reasonably foreseeable adverse conditions.

6.2 Other Risk Events shall mean any expropriation (including any series of events which collectively constitute creeping expropriation), confiscation or compulsory acquisition of all or a portion of the facility.

6.3 Notification and Obligation to Remedy

6.3.1 In the event of the occurrence of a Force Majeure or other risk events that prevents a Party from performing its obligations hereunder (other than an obligation to pay money), such Party shall:-

- (a) notify as soon as reasonably practicable the other Party in writing of such Force Majeure or other risk events;

- (b) not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure or other risk events;
- (c) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable;
- (d) keep such other Party apprised of such efforts on a continuous basis; and
- (e) provide written notice of the resumption of performance hereunder.

6.3.2 Notwithstanding the occurrence of a Force Majeure or other risk events, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure or other risk events.

6.4 Consequences of Force Majeure or other risk events

- 6.4.1 During the pendency of a Force Majeure or other risk events, the Seller shall not be entitled to receive any payments from the Buyer; except that if such Force Majeure or other risk events affects only part of the Plant, then the Seller shall be entitled to receive Energy Payments for electrical energy actually delivered to the Buyer.
- 6.4.2 Neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement which it cannot perform due solely to one or more Force Majeure or other risk events or its or their effects or by any combination thereof.
- 6.4.3 The periods allowed for the performance by the Parties of the obligation(s) referred to in Clause 6.4.1 shall be extended on a day-for-day basis for so long as one or more Force Majeure or other risk events continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement.
- 6.4.4 Notwithstanding Clauses 6.4.1 and 6.4.3 above, no relief shall be granted to the Party claiming Force Majeure or other risk events pursuant to this Clause 6.4 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure or other risk events not occurred.
- 6.4.5 The Party not claiming Force Majeure or other risk events may immediately terminate this Agreement without further obligation, by delivering a Termination Notice on the other Party if an event of Force Majeure or other risk events delays the other Party's performance for a period greater than (a) six (6) consecutive Months prior to the Commercial Operations Date or (b) three (3) consecutive Months after the Commercial Operations Date.
- 6.4.6 In case the Agreement is terminated due to a Force Majeure, the Buyer may elect buy and the Seller shall sell the Facility at a price equivalent to Financing Costs Outstanding at the Calculation Date and Termination Costs.
- 6.4.7 In case the Agreement is terminated due to other risks events declared by the Government, the Buyer shall buy and the Seller shall sell the Facility at a price

equivalent to Financing Costs Outstanding at the Calculation Date and Termination Costs.

ARTICLE 7: RELATIONSHIP OF PARTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION

- 7.1 **Immunity:** Each Party waives all immunity, sovereign or otherwise and represents and covenants that it will not assert such immunity at law or at equity or urge or allow others on its behalf to assert such immunity, which it may now or in the future enjoy or could claim to the extent permitted by law.
- 7.2 **Third Party Beneficiaries:** With the exception of Lenders, the Parties do not intend to create any rights in, or grant any remedies to, any third party beneficiary that may claim under this Agreement.
- 7.3 **No Other Relationship:** Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of electric energy generated at the Facility. No agency relationship of any kind is created by this Agreement.
- 7.4 **Limitation of Liability:** Notwithstanding Article 7.5 or any other provision of this Agreement to the contrary, neither the Buyer nor the Seller, nor their respective officers, directors, agents, employees, parent entity, Lenders, subsidiaries, or affiliates shall be liable or responsible to the other Party or its parent entities, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insurers, for incidental, exemplary, punitive, indirect or consequential damages of any nature, connected with or resulting from performance or non-performance of obligations pursuant to this Agreement, including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement).
- 7.5 **Indemnity:** Each Party shall defend, indemnify and save the other Party, its officers, directors, agents, employees, harmless from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including reasonable attorney's fee), suits, actions, or damages arising by reason of bodily injury, death, or damage to property sustained by any person or entity (whether or not a Party to this Agreement): (i) caused by or sustained on property or at facilities owned or controlled by the Party, except to the extent caused by an act of negligence or willful misconduct by an officer, director, subcontractor, agent, employee, parent entity, subsidiary, or affiliate of the other Party; or (ii) caused by an act of negligence or willful misconduct of the Party or by an officer, director, subcontractor, agent, employee, parent entity, subsidiary, or affiliate of the Party. If either Party receives notice of the assertion of any claim with respect to which indemnification is to be sought from the other Party, that Party shall give prompt notice thereof to the other Party. The Parties shall cooperate in the mutual defense of any such claim.
- 7.6 **Adjusted Indemnity:** If the Buyer and the Seller are both determined to have been negligent Parties or to have engaged in willful misconduct, the obligations to indemnify of the Seller and the Buyer shall be appropriately adjusted based on the percentage of the responsibility of each Party for such loss or indemnification event.
- 7.7 **Insurance:** The Seller shall insure the Facility for comprehensive general liability and property damage, and "all-risk" peril, from a recognized insurance provider lawfully

permitted to provide insurance in The United Republic of Tanzania, with primary limits of liability at all times during the duration of this Agreement equal to not less than the replacement value of the Facility.

ARTICLE 8: DISPUTE RESOLUTION

- 8.1 **Mutual Discussion.** The Parties acknowledge that a dispute may arise between the Parties regarding the applicability, interpretation, payment, or enforcement of this Agreement. If any dispute arises among the Parties in connection with or arising out of this Agreement, the Party claiming the dispute shall notify the other Party and the Authority in writing of the dispute, and the Parties shall attempt informally to settle such dispute in good faith within a period of sixty (60) days thereafter.
- 8.2 **Appeal to the Authority.** If within sixty (60) days of notification a dispute is not resolved to the mutual satisfaction of the Parties, subject to an election being made pursuant to Article 8.3, any Party may appeal in writing after such sixty (60) day period but before eighty (80) days from such initial notification of a dispute, to the Authority to mediate and resolve the dispute. The Parties shall abide by and act in accordance with the Authority's written decision resolving such dispute pending a final legal appeal of such resolution.
- 8.3 **Binding External Arbitration.** In lieu of the option in Article 8.2, if after sixty (60) days of the initial notification but before eighty (80) days of such initial notification, such dispute is not resolved to the mutual satisfaction of the Parties in accordance with Article 8.2, such dispute (including the validity of this Agreement) shall be finally settled by arbitration in accordance with the Arbitration Act, Cap. 15 of the Laws of Tanzania. Unless the parties agree differently, the following shall apply: (a) the number of arbitrators shall be three (3); (b) the appointing authority shall be the Tanzania Institute of Arbitrators ; (c) the Arbitration shall be conducted and an award shall be rendered in the English language; (d) the seat of arbitration shall be Dar es Salaam and (e) the venue for arbitration shall be Dar es Salaam, unless Dar es Salaam becomes inaccessible due to a Force Majeure Event or any action of the Government of Tanzania makes it impossible to conduct arbitration in Dar es Salaam, in which case the venue for arbitration shall be determined by the arbitrators. The decision of the arbitrators shall be final and binding upon the Parties and shall not be subject to appeal.

ARTICLE 9: DELEGATION, ASSIGNMENT AND RESTRUCTURING

- 9.1 **Assignment Delegation.** This AGREEMENT shall inure to the benefit of and bind the respective successors, assigns, and delegates of the Parties. No assignment or delegation by the Seller of any of its rights, duties, or obligations hereunder shall be made or become effective without the prior written consent of the Buyer and the Authority in each case being obtained, which consent shall not be unreasonably withheld by the Buyer or its successors in interest, except that without the Buyer consent the Seller may (1) assign and/or delegate some or all of its rights and duties to an affiliate whose principal functions are to hold the ownership interest in or to operate the Facility, or (2) assign by way of security or otherwise and/or delegate some or all of its rights and duties to Lenders for purposes of financing, obtaining equipment, or construction of the Facility. A Party shall notify promptly the other Party in writing of any assignment or delegation that it makes.
- 9.2 **Restructuring.** The Buyer represents and warrants that as part of any restructuring in the electricity industry, it will cause any successor(s) assuming any or all of its transmission and distribution functions to fully assume in writing the power transmission obligations of the Buyer under this Agreement, and cause any successor(s) assuming any or all of its power supply or power purchase obligations to fully assume in writing such power supply or purchase obligations of the Buyer under this Agreement.

9.3 Opt-Out Election. If and after Restructuring is implemented during the term of this Agreement, and if allowed by the law, the Seller shall have the election, but not the obligation, by notice as provided herein to the Buyer and the Authority, at any time up until five (5) years prior to the Termination Date of this Agreement as specified herein, to unilaterally opt-out of and avoid this Agreement, but only for the purpose of participating in the Restructured power market.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES

10.1 In addition to the provisions of Article 9, each Party represents and warrants to the other that:-

- (a) it is legally established to do business in the United Republic of Tanzania;
- (b) the execution and performance of this Agreement is duly authorized as required by its enabling authority or its by-laws, and does not conflict with any law, rules, regulations or requirements affecting or binding that Party;
- (c) this Agreement constitutes a valid, legal and binding obligation of the Party in accordance with the terms hereof;
- (d) the execution, delivery and performance by the Party of this Agreement will not contravene any provision of, or constitute a material default under, any other agreement or instrument to which it is a Party or by which it is bound; and
- (e) there is no legal or administrative action pending that prohibits or impairs the Party from performing under this Agreement or might materially and adversely affect the Party's ability to perform its obligations under this Agreement.

ARTICLE 11: MISCELLANEOUS

11.1 Modification. This Agreement may not be modified or amended except in writing signed on behalf of both Parties by their duly authorized officers and approved by the Authority.

11.2 Compliance. It shall be the Seller's obligation to take all necessary actions to satisfy all applicable legal requirements regarding the Facility.

11.3 Entire and Complete Agreement. This Agreement constitutes the entire and complete final agreement between the Parties relating to the subject matter hereof, and all previous agreements, discussions, communications and correspondences with respect to the subject matter hereof are superseded by the execution of this Agreement. This contract shall comply with all relevant laws, regulations, Rules codes and policies of the Government of Tanzania and the Authority from time to time.

11.4 Choice of Law. The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of The United Republic of Tanzania.

11.5 Waivers. There shall be no implied waivers under this Agreement. The failure of either Party to require compliance with any provision of this Agreement at any time shall not affect that Party's right to later enforce same. It is agreed that the express waiver by either Party of performance of any of the covenants or conditions of this Agreement, or any breach thereof, shall not be held or deemed to be an implied waiver by that Party of any subsequent failure to perform the same or any other term or condition of this Agreement, or any breach thereof.

11.6 **Severability.** If any clause of this Agreement is ruled invalid or unenforceable by a court of competent jurisdiction, it shall not affect the remainder of the Agreement if it can be construed to effect its essential purpose without the invalid clause.

11.7 **No Interpretation of Headings.** The headings in this Agreement are descriptive only, and are not intended to affect the interpretation or meaning of the Agreement, and accordingly are not meant to be construed as part of obligations of any Party hereunder.

11.8 **Notice**

11.8.1 Any notice, invoice, or other communication which is required or permitted by this Agreement, except as otherwise provided herein, shall clearly specify that it relates to this Agreement, bearing the date of its creation, be in writing and delivered by personal service, electronic transmission with proof of receipt and reading, or telecopy, with a subsequent copy mailed postage prepaid, properly addressed, as follows:-

- (a) in the case of the Seller to the person, company, and address as indicated on the signature execution line below;
- (b) in the case of the Buyer to: Chief Executive Officer, Tanzania;
- (c) another address or addressee for notice, including designation of Lenders, may be specified or substituted by a Party in the manner provided herein;
- (d) each notice, invoice or other communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given and received for all purposes at such time as it is delivered to the addressee or at such time as delivery is refused by the addressee upon presentation.

11.8.2 Whenever a notice or other communication is required hereunder to be provided by the Buyer to the Seller, a copy of each such notice shall be provided to Lenders, if any, by similar mode of transmission at the address provided in writing to the Buyer by the Seller.

IN WITHNESS WHEREOF the Parties have executed this Agreement as of the ____ day of the month of _____, 20____ each signatory duly authorized by its respective entity to enter freely this Agreement and to be bound by the terms and conditions contained herein.

SIGNED BY:

NAME OF BUYER: _____

Name: _____

Title: _____

SIGNED BY:

NAME OF SELLER: _____

Name: _____

Title: _____

WITNESSED BY:

Signature: _____

Name: _____

Title: _____

WITNESSED BY:

Signature: _____

Name: _____

Title: _____

APPENDIX I
DESCRIPTION OF SELLER'S FACILITY

NAME OF FACILITY: []

LOCATION OF FACILITY: []

RIVER/HOST FACILITY (if applicable): []

EXACT DELIVERY POINT (feeder, pole or switch number): []

LOCATION OF METERING (meter number): []

NOMINAL CONNECTION VOLTAGE: []

RANGE OF VOLTAGE REGULATION: [] ONLINE; [] OFFLINE

TYPE OF FUEL: []; TYPICAL HEATING VALUE OF FUEL: []

TYPE OF POWER GENERATION TECHNOLOGY: []

NAMEPLATE CAPACITY RATING: [] kW

CONTRACTED CAPACITY: [] kW

CAPACITY FACTOR: []

EXPECTED ANNUAL PRODUCTION: [] kWh

RAMP RATE: [] MW/MINUTE UP; [] MW/MINUTE DOWN

MINIMUM RUN TIME: [] HOURS;

MINIMUM SHUT-DOWN TIME: [] HOURS

START-UP TIME: [] HOURS

DATE OF PLANNED COMPLETED CONSTRUCTION OF FACILITY: []

VOLTAGE DELIVERED TO THE BUYER: [] VOLTS

APPENDIX II
GRID INTERCONNECTION REQUIREMENTS

1. The relevant requirements stated in “Guidelines for Grid Interconnection of Small Power Projects in Tanzania (Parts A, B and C)” shall be applicable.
2. The delivery voltage at the Point of Supply shall be [____ kV ± 5%]
3. Special Requirements and Conditions: [TO BE PROVIDED INDIVIDUALLY FOR EACH FACILITY DEPENDING ON PROJECT CHARACTERISTICS AND TECHNOLOGIES]
4. The operating Power Factor of the Facility at the Delivery Point (Point of Supply) shall be [____].
5. Interconnection Arrangement
[This will be a single-line diagram of the Interconnection similar to Figure A2 of the “Guidelines for Grid Interconnection of Small Power Projects in Tanzania: Part A”. The diagram shall show the generators, switchgear, transformers, protection systems and transmission lines, their capacity, rating, voltage levels, and identify the Point of Supply (POS) and Point of Common Coupling (PCC). A sample diagram is given on the next page.]

APPENDIX III
DETERMINATION OF PAYMENTS

1. Energy Charges

The Energy Charge (Contract Price) is expressed in TZS per kWh, exclusive of VAT, and is shown below.

Energy Charge (TZS/kWh) = [●]

2. Payment Amounts

(a) Payment for Metered Energy: The Buyer shall pay the Seller an amount in respect of Metered Energy delivered by the Seller to the Buyer at the Delivery Point in any Month calculated as the product of:-

- (i) the prevailing Energy Charge in TZS per kWh (being the amount set out in Part 1 above); and
- (ii) Metered Energy (determined in accordance with the provisions of Article 4.8) for the Month expressed in kWh.

(b) Deemed Energy Payment: Subject to the provisions of Article 5.3, The Buyer shall pay the Seller an amount (a “**Deemed Energy Payment**”) in respect of Deemed Energy (if any) arising in any Month calculated as the product of:-

- (i) the prevailing Energy Charge in TZS per kWh (being the amount set out in Part 1 above); and
- (ii) Deemed Energy (if any, calculated on an hourly basis) for the Month expressed in kWh.

3. Computation of Deemed Energy

Within 14 days from the completion of two (2) years from Commercial Operations Date (COD), the Seller shall prepare a report showing Energy delivered on both a daily and monthly basis and submit to the Buyer. This shall be repeated at the end of each subsequent Operational year to reflect the previous two (2) years operating records.

- a) In each subsequent month, the Seller shall calculate and prepare qualified deemed hours (if any) and submit to the Buyer.
- b) the Seller shall indicate the date and time of beginning and ending of each interruption event to determined deemed hours
- c) Qualified deemed hour is the total number of deemed hours during the month, less any periods of Buyers Planned Maintenance as specified in 5.3.1.
- d) The deemed hours report shall form part of the monthly meter reading documentation, and shall be countersigned by the Buyer as confirmation.
- e) Within ten (10) days after the end of each annual financial period, the Seller shall prepare a Deemed Energy claim by:

- i. Aggregating the monthly qualified deemed hours for the particular financial period less four hundred thirty two (432) hours to get the yearly deemed hours
- ii. Calculating the energy delivered per hour using the average annual performance established in the latest two (2) year operating period then dividing by eight thousand seven hundred sixty (8,760) hours per year.
- iii. Deemed Energy:
= Yearly deemed hours x energy delivered per hour
- iv. Deemed Energy Payment
= Deemed Energy (kWh) x Applicable tariff during events

4. Calculation of Plant Production

Each subsequent year post the two (2) years from Commercial Operations Date (COD), the Seller shall prepare annual generation plan showing monthly energy to be generated and submit to the Buyer on the month before the beginning of each contract year.

- a) In each month, the Buyer shall record the actual energy delivered by the Seller's generation facility.
- b) At the end of each contract year, the Buyer shall compare the actual energy delivered and the annual generation plan submitted by the Seller. If the actual energy delivered is less than 70% of the energy specified in the annual generation plan, then the energy compensation payment shall be computed as follows:

Energy Compensation Payment = ((70%*Energy Planned for the year) – Energy Delivered during the year)* [●]

APPENDIX IV TESTING AND COMMISSIONING PROCEDURE

Commissioning of Plant

Prior to the Commercial Operation Date in respect of the Facility, testing of the Facility shall be conducted in accordance with the testing procedures mutually agreed upon between the Parties, which shall be designed to test the ability of the Facility to meet the requirements of this Agreement on a sustainable basis with respect to the Contracted Capacity and operating characteristics of the Facility.

Testing Objective

The objectives of the tests are to demonstrate the performance and operational characteristics of the Facility in accordance with this Agreement.

The following tests shall be performed:

1. Start-up test;
2. Load rejection test;
3. Performance test at 100% rating; and
4. Functional verification test i.e., electrical metering and relaying.

The Buyer shall maintain the stability of the frequency, voltage, and other electrical properties of the Facility, including the Interconnection Facilities throughout the duration of the tests.

The Buyer shall accept into the Buyer's System all the electric energy generated during the tests.

Coordination of Testing between the Buyer and Seller

The Parties shall cooperate to facilitate the performance of each Party's obligations as set out in this Appendix.

Each Party shall nominate a person to be the point of contact for the other Party and shall notify the other Party in writing of its nomination at least 180 (one hundred and eighty) days prior to the scheduled COD.

The Seller and Buyer shall keep each other informed on a regular basis of the progress being made with respect to meeting the scheduled COD.

The testing schedule, including the type, duration, and date of the specific tests, is to be agreed (the "**Testing Regime**") upon between the Parties not less than one hundred and twenty (120) days prior to the scheduled COD.

Notwithstanding the Testing Regime being agreed between the Parties, the Seller shall be required to give the Buyer seven (7) days written notice of the test(s) to be performed at the Facility for purposes of the Buyer witnessing the tests. Should the Buyer not attend or witness the test as notified, the Buyer shall be entitled to proceed with the test(s) and the Buyer will be considered to have been present at the performance of the test.

Independent Engineer

For purposes of verifying and certifying the tests and reports emanating therefrom, the Seller shall provide the Buyer with a list of three (3) independent consulting engineers, at least one hundred and

eighty (180) days prior to the scheduled COD, each one of which has at least seven (7) years professional experience as an engineer in the renewable energy industry.

The Buyer shall within fourteen (14) days of receiving the list, from the Seller, select one (1) such independent consulting engineer to be appointed as the independent engineer (the “**Independent Engineer**”) and notify the Seller in writing of the selection it has made.

The Seller shall attend to the appointment of the Independent Engineer, at the cost of the Seller, and the Independent Engineer shall be required to attend and witness the tests on behalf of the Parties.

Tests

1. Start-Up Test

The Buyer shall permit the Seller to conduct plant start-up tests at part and full loads including, but not limited to, load rejection tests, performance guarantee tests, reliability tests and capacity tests.

2. Load Rejection Test

Buyer shall allow Seller to conduct load rejection testing. The objective of the load rejection test is to verify that:

- i. The Facility does not trip when shedding 40%, 75% and 100% of the rated load;
- ii. The Facility is capable of continuing operation with its auxiliaries; and
- iii. The Facility is capable of being reloaded at the times specified by its manufacturer.

The unavailability of adequate flow to perform the tests at higher loading shall not prevent the achievement of commercial operations. The Seller shall conduct the remaining tests in the presence of the Buyer's representative when flows are adequate.

3. Performance Guarantee Test

The objective of the performance guarantee test is to verify the performance figures of the Facility and the auxiliary equipment. Such test shall be carried out after completion and shall not be a condition for achieving the Commercial Operations Date. The test shall be carried out in accordance with the applicable International Electrotechnical Commission (“**IEC**”) standards.

The performance guarantee test shall be composed of a predetermined run at 100% of maximum continuous rating to verify the Facility's net output.

4. Functional Verification Test i.e., Electrical Metering and Relaying

The Seller shall perform functional verification tests of the protection, control, and metering system of the Facility as well as the switchyard and transmission facilities. The purpose of the functional verification tests is to ensure that power equipment, protection and control system will perform as designed to protect the electrical power system in a reliable manner and not jeopardize the Buyer's System.

The tests shall be conducted to satisfy the Buyer's requirements and be certified by the Independent Engineer. Periodic verification in accordance with an agreed maintenance schedule shall be performed by the Seller as well as the Buyer in a coordinated manner to ensure the integrity of the protection and control system of both Parties.

The design of the protection, control and metering system shall include adequate test facilities so that functional tests can be properly performed. Tests on relay, meters and control equipment shall be in accordance with the manufacturer's recommendations.

Data Recording and Measurement

The Seller will provide the necessary labour, material, instrumentation, and controls to record observe and evaluate the test data and maintain the logs of all data taken. Practical the data will be recorded in both hard copy and electronic form.

The Seller shall specify the variables that will be recorded, the form of recording and the frequency of recording each variable during each test.

All instruments and meters will be calibrated in accordance with the standards and guidelines associated with those instruments and meters prior to the tests.

Test Reports and Interconnection Certificate

Upon attending and witnessing the test(s), the Independent Engineer shall ascertain whether the test(s) has/have been successfully completed and the Independent Engineer shall compile its test reports and provide both Parties with these reports confirming the Testing and Commissioning Procedure has been successfully completed and that the Buyer may issue the Interconnecting Certificate to the Seller.

Upon receipt of the Independent Engineer's test report, the Buyer shall issue an Interconnection Certificate to the Seller to confirm the successful completion of the Testing and Commissioning Procedure and the Facility will commence with commercial operations.

The commissioning procedures, format and contents of the test reports may be modified by mutual agreement between the Seller, the Independent Engineer, and the Buyer in order to meet the test objectives and a successful commission.