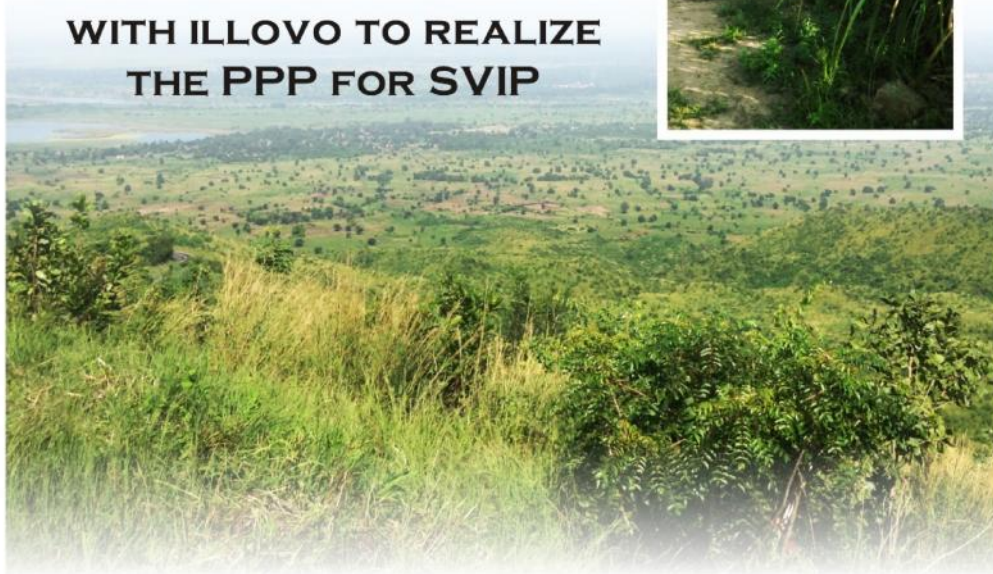




THE GOVERNEMENT OF THE REPUBLIC OF MALAWI
MINISTRY OF AGRICULTURE, IRRIGATION AND WATER DEVELOPMENT

Public Private Partnership Feasibility for the Shire Valley Irrigation Project (SVIP)

**MEMORANDUM ON A WPA
WITH ILLOVO TO REALIZE
THE PPP FOR SVIP**



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MEMORANDUM ON A WPA WITH ILLOVO TO REALIZE THE PPP FOR SVIP

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1. INTRODUCTION

In the process of defining and designing the Shire Valley Irrigation Project (SVIP), the PPP team proposed a water purchase agreement (WPA) in order to integrate the irrigation of ILLOVO estates in the project. This memorandum presents the rationale for this solution, the structure of the agreement, the negotiation procedure considered, the term sheets of the agreement and the prices to be proposed in the negotiation with ILLOVO.

2. WHY A WPA?

During the preparation of the project, the question of integrating ILLOVO estates in the area to be irrigated has been raised repeatedly. Many arguments for and against the inclusion of these estates in the project have been exchanged between the technical teams, the representative of the donors and the government. The arguments for avoiding the inclusion are:

- Is it acceptable to subsidize a multinational Company in a developing country?
- The economic return to the inclusion of these estates is limited. They are already irrigated and therefore will not contribute to the economy through increased production.
- The project is mainly justified through poverty alleviation. Including a large estate will not contribute to this goal.

The arguments against the inclusion can be summarized as a difficulty for the government to justify a big investment and the associated subsidy if the main beneficiary is a multinational. The economic argument on the reduced economic return concerns essentially the donors.

However, excluding ILLOVO estates has a cost. It will increase the cost of the project per hectare because the feeder canal will be extended in order to bypass ILLOVO estates and the resulting project will irrigate a smaller area with a higher total cost therefore increase the unit cost per hectare. Excluding ILLOVO estates will increase the risks of the PPP project. Instead of delivering water to a large estate with a high credit, the private partner will distribute water to more risky and less creditworthy customers. The demand and payment risks are increased by excluding ILLOVO. This will increase the risk premium charged by the private partner. The financing of the project will also be more difficult if ILLOVO is excluded. This Company is exporting more than half of its production and therefore realizing half of its revenues in hard currency. If it accepts to pay its irrigation service charges in dollars instead of local currency, it will permit to borrow money in dollars, at a much lower interest rate with less risks.

Regarding the question of the subsidy, and its poor justification to a multinational, it is possible to exclude ILLOVO partially or totally by discriminating its irrigation service charge. Instead of having one irrigation service charge for all the customers, it is possible to contract separately with this company and the other customers. Therefore, it is possible to obtain the benefits of including ILLOVO in the project without having to justify a subsidy to the company.

A water purchase agreement is the perfect solution to this problem. It could present to ILLOVO a set of conditions in its participation to the project. These conditions should cover the volume of water required, the price to be paid, the currency to be used, the duration of the agreement, the conditions to terminate it, etc.

A WPA is essentially a long-term commitment to buy at a specified price water from the enterprise in charge of realizing the network infrastructure. It is usually negotiated prior to the realization of the infrastructure, securing demand for water prior to financial commitment. When the credit of the counterpart is good, a WPA can be used to secure financing for realizing the network infrastructure. Usually, this agreement binds a big customer and justifies developing dedicated infrastructure in order to serve him. This is exactly the situation of ILLOVO. In order to irrigate its estates, the project will need dedicated infrastructure, either a canal or pipes from the feeder canal to serve exclusively ILLOVO.

Therefore, we can consider a WPA for solving the dilemma of including ILLOVO in the project. If accepted, it will raise the financial returns to farmers by decreasing unitary cost per hectare and the bankability of the project.

3. THE STRUCTURE OF THE WPA

The structure of the WPA will be detailed in the next section on the term sheet and in the annex presenting a provisional wording of the WPA. This section will cover the main features of this contractual arrangement. It will serve to explain how it can be used in order to finance the SVIP.

3.1 THE PARTIES TO THE WPA

As has been stated before, a WPA is a long term contract to deliver water to ILLOVO, to realize the dedicated infrastructure needed to fulfil this obligation and to define precisely the conditions to be respected by the parties. The first party is obviously ILLOVO. The second one could be either the private partner of the PPP or the government of Malawi. In the second case, the government will enter the agreement to realize the dedicated infrastructure and to deliver the agreed amount of water, either through a PPP or directly if it decides so. In the first case, the WPA will be a part of the PPP contractual arrangement and the private partner will be obliged by it. In the second case, both parties, ILLOVO and the government, will be obligated by the WPA.

3.2 THE TECHNICAL SPECIFICATIONS

We have to consider two sets of technical specifications. The first will cover the construction of the dedicated infrastructure and its operation and maintenance. The second will cover the delivery of water, in terms of quality and quantity.

The infrastructure assets should be defined by both parties. ILLOVO should be able to select whether the design should be based on a canal or on pipes. The trade-off between costs and pressure is better handled by ILLOVO. A canal is less costly but at the cost of head losses that would prevent using the pressure to operate sprinklers or pivots. Pipes reduce head losses but require a higher initial investment.

Obviously, the choice would belong to ILLOVO because it is the end user of the water supplied and will pay for the internal distribution network that could be pipes or canal based. That means that the technical specification for the infrastructure should be agreed on between the ILLOVO and the other party of the WPA.

Irrigation water is characterized by its turbidity, its acidity, and availability. Therefore, the WPA should define in details the quality of the water that is to be delivered and the adjustments in prices according to the quality. The WPA should define precisely the level of silt acceptable and the adjustment in payment terms if this level is not respected. The same with the acidity.

Usually, the private partner or the government are not in position to guarantee a level of supply, essentially because the source of the water fluctuates seasonally and year-on-year. To cope with this variability, WPA makes a difference between the capacity constructed and the amount of water effectively delivered. The private partner is paid for the capacity installed and for the water delivered differently. Usually, the capacity term of the payment covers the expenses incurred by the Company for the infrastructure, including its financing and is not indexed. The payment for the water is based on the variable costs for providing it (operations and maintenance costs). To make sure that the Company doesn't divert the flow to other customers, she will have to respect of strict and definite share of the flow at the head of the feeder canal to be allocated to ILLOVO.

In order to enforce this contractual arrangement, a measurement system has to be installed and approved by both parties. At minimum, it should provide them with reliable measures of the flow division and the amount of water derived to ILLOVO. Turbidity could be dealt with in specifying the measures to reduce it in the design or by agreeing on a sampling procedure and laboratory measurement. Usually, the measurement system is agreed on prior to the construction and its precision tested regularly in a commonly agreed manner.

3.3 THE PRICING AND PAYMENT SYSTEM

The pricing system used usually in WPA is made of two parts: (i) the payment for the capacity set aside or built specifically for the customer, and (ii) the payment for the water effectively supplied. The payments are usually secured by security bonds. They can be made on a monthly basis or any terms that agree the parties to the WPA.

In the monthly bill, the first part will be devoted to the capacity. It is usually fixed. The second part will cover the water effectively consumed, as measured by the meters agreed on in the WPA technical annex on measurement.

The first part will be calculated to cover the payment of the infrastructure dedicated. That means that it will include all the capital and interests to be paid back to the banks and the dividends that cover the equity financing of the infrastructure. As all these elements are known prior to the construction in the case of an EPC contract (the preferred contractual arrangement for constructing the infrastructure in project finance), there is no adjustment for this fixed part. The EPC contract will bind the general contractor for a fixed amount. It will be organized to pass any overrun cost to the construction Company.

The variable part will cover the operation and maintenance costs. It will be indexed to adjust to inflation in wages and equipment.

4. THE NEGOTIATION PROCEDURE

The negotiation begins by mandating the negotiator on behalf of the government. Prior to entering any discussion with ILLOVO, the negotiator should have a clear mandate on the content of the WPA and on the objectives of the government in regard of pricing, quantity of water to be allocated and a general setup for the construction of the dedicated infrastructure. The negotiator would need to refer to a decision-making authority during the negotiation to settle the terms in case the mandate has to change.

This memorandum and the calculation produced with the financial model in annex will allow the government to set the mandate in terms of prices and water quantities to be delivered to ILLOVO.

The important decision in this regard relates to the allocation of the feeder canal costs to ILLOVO. In the outset, it has been agreed that all dedicated infrastructure will be paid in full by ILLOVO but the allocation of the feeder canal costs between the different users has yet to be set. In the model, the allocation is based in proportion of the total area to be irrigated by the project in phase 1 and phase 2. ILLOVO will have to pay a share calculated by dividing his estates acreage by the total surface to be irrigated by the project multiplied by the cost of the feeder canal. As the feeder canal is designed in order to cope with the water flow needed to irrigate all the areas in phase 1 and 2, it is not possible to allocate its total cost to the area to be irrigated in phase 1. As we don't know the cost of the Bangula canal, and due to the location of the outlet for irrigating ILLOVO estates, it is not necessary to allocate the costs of the feeder canal differently.

Once agreed on the rule to allocate the costs of the feeder canal to ILLOVO, the mandate is sufficiently defined to begin formal negotiation with ILLOVO. It is proposed to begin by sending in writing a proposal to join through a WPA the project, with indications on the pricing structure, the quantity of water allocated, and the rules to allocate costs for the feeder canal and the dedicated infrastructure. The currency for the payment of the irrigation service charges should be set to be US dollars. The technical options considered for the dedicated infrastructure should be presented in detail to be decided upon by ILLOVO.

Once the government receive a formal agreement to begin negotiation, meaning that ILLOVO agrees to a WPA, it will be the proper time to begin negotiating the terms of the agreement. A delegation comprised of representatives from the government and their advisers, eventually including representatives of the donors should receive ILLOVO management to discuss, negotiate and finalize the terms of the WPA.

This negotiation procedure doesn't take into account the savings realized by ILLOVO switching from a pump based system to gravity irrigation. The available information is not precise enough to set the pricing system in the WPA in order to share these savings. What is considered as a priority for the government is to secure the payment in US dollars in order to finance the project on hard currencies and low interest rates. Obviously, if the government considers that the potential energy savings from ILLOVO should be part of the negotiation, the team of negotiators representing the government will adjust the pricing options to take that in account.

5. THE RELATION BETWEEN THE PPP FOR SVIP AND THE WPA

ILLOVO Estates account for more than 50% of the area to be irrigated in phase 1 of the Shire Valley Irrigation Project. Irrigation service charges for ILLOVO should be higher than the ones for the other customers due to the decision by the government to refuse subsidizing a multinational. Combined, these factors explain that ILLOVO would account for at least 75% of the revenue of the projected PPP for the phase 1 of the SVIP. Therefore, the WPA with ILLOVO is the cornerstone of the project.

In order to analyze the impact of a successful completion of the negotiation with ILLOVO the WPA, it is important to consider the risks to the PPP project with and without this WPA.

5.1 DEMAND RISK

Without the WPA and ILLOVO, the demand for irrigation water will be constrained by the capacity to pay of the trusts and independent farmers. The experience so far shows that some trusts have real governance problem and this has a negative impact on their solvency. From the point of view of any lender to the private partner in the PPP, this situation creates an increased risk for the demand of irrigation water from the project. Obviously, if a trust is insolvent, it will terminate its activity and stop using irrigation water. It is similar for an independent farmer.

Therefore, without ILLOVO the demand risk is increased. That means that the premium for covering this risk will be added in the irrigation service charge. With ILLOVO, this risk is reduced for more than 50% of the water demand. ILLOVO is a big firm, publicly listed, and therefore its credit standing can be monitored much more easily. It is regularly evaluated by rating agencies. Even from the point of view of the private operator, it is much easier to monitor the operations of this firm. A reduced demand risk means a reduced premium to cover it and translate to a reduced irrigation service charge for the project.

5.2 PAYMENT RISK

The situation is similar for payment risk. Without a WPA, the payments are not secured by a performance bond. Therefore, the private partner in the PPP will bear the solvency risks of its clients. This will increase irrigation service charges with the premium used to cover this risk.

On the contrary, with a WPA, the private partner to the PPP is covered from the non-payment risk by performance bonds from ILLOVO.

5.3 FINANCIAL RISKS: BANKABILITY AND EXCHANGE RATE RISKS

Two financial risks are to be considered in regard to the WPA.

The first one is on bankability, regarding the willingness of lenders to commit money to the project. As it has already been stressed, without the WPA, the demand and payments risks are quite high and could prevent lenders to commit themselves to the PPP. With the WPA, the risks are reduced. The quality of the credit of ILLOVO, the long-term commitment, the share of ILLOVO in the global revenue of the PPP are assets for the PPP in order to convince the lenders.

The second financial risk to be considered is the exchange rate risk. The financial instability in Malawi is such that interest rates, real and nominal, are very high. The exchange rate risk is in consequence very high. In order to reduce the financial cost, it is better to rely on high currency loans to benefit from low interest rates. Without the WPA, the sole option would be to rely on a public guarantee or subsidy to support the project. With the WPA, the government finance will be less exposed. Essentially, if the WPA state that irrigation service charges are to be paid in hard currency, it will create a stream of revenue for the PPP in hard currency and makes it able to borrow in the same currency.

5.4 THE WPA AND THE PPP PROJECT

To secure the commitment of ILLOVO to a WPA would improve tremendously the chances of a successful PPP for the Shire Valley Irrigation Project. As has been already stressed, ILLOVO will represent about 75% of the expected revenues for the PPP. And the basic proposition of a WPA is to secure the payment of the water delivered to ILLOVO through long-term contract and performance bonds. So the WPA will help us solve the most difficult problem for PPP which is securing a stream of revenue that allows to pay back the loans insured by the private partner in order to construct the infrastructure. Secondly, securing the WPA will open to the private partner external capital markets therefore reducing the cost of its financing, if ILLOVO agrees to pay its irrigation service charges in US dollars. ILLOVO can do it because it's an exporter with about 50% of its receipts in foreign currencies.

It is therefore of the utmost importance for the project success to negotiate successfully with ILLOVO this WPA.

6. THE TERM SHEET OF THE WPA

This section will be devoted to present the main points to be discussed and negotiated with ILLOVO. The term sheet will then be translated in a formal contractual arrangement, similar to the one presented in annex 1. It will not cover all the points that are usually discussed in detail. It is up to the lawyers to complete the contractual arrangement, once the main points are agreed on by the parties.

In the following, we will assume that the WPA is entered between ILLOVO referred as the Client and the private partner in the PPP referred as the Company. The WPA is made between ILLOVO and the Company whereas (A) the Company plans to design, finance, construct, operate and maintain a feeder canal and a dedicated connection (either pipes or canal) in the Shire Valley Irrigation Project and (B) the Company wishes to sell to Client and Client wishes to purchase from the Company the water pursuant to the terms and conditions set forth herein.

The object of the contract

This article will state that the WPA is a contract to sell and purchase irrigation water.

Term

This article will deal with the initial term of the agreement stating the date of beginning of operations and duration of the agreement. It will define the renewal term.

Pre-operation period

Will deal with permits and licenses, submissions by the Company, operating procedures, inspection, access to site, general covenants in respect of the infrastructure to be constructed.

Representations and warranties of the Company

Will deal with all the legal powers of the Company and its representatives in entering into water purchase agreement with the Client and that the Company is in position to execute, deliver and perform in accordance with the agreement dispositions.

Operation and maintenance of the infrastructure

This article will precise the minimum functional specifications in the delivery of the water. It will deal with the operations and maintenance of the irrigation infrastructure to be constructed under the agreement. Usually it contains provisions on the cessation of operation or abandonment by the Company, the employment of qualified personnel, inspections and records, periodic reports.

Interconnection

This article will deal with the interconnection between the Company infrastructure and the Client network for distributing irrigation water inside its estates. The responsibilities of the Client and the Company in the regards to a proper functioning of the interconnection are specified. The testing of the facilities are defined.

Metering

This article will define who shall own, procure, operate and maintain the metering system. It will define the testing and inspection of the system components. It will deal with repairs and replacement of meters.

Compensation, payment and billing

The most important article of the WPA. It will cover:

- capacity payment, payment for financing and realizing the infrastructure;
- volume of water delivered payment;
- liquidated damages due to delays in commissioning, shortfalls in commissioned capacity, water delivery shortfalls;
- adjustment (indexation of the payments);
- security to be put in place during the construction period and security for the operations;
- payment of liquidated damages;
- payment and billing;
- letter of credit;

This article will set prices for capacity and the actual delivery of water. It will define the damages to be paid to the Client by the Company in case of delays or in the case of underperformance in the operation.

All the payments are secured. During the construction and the operation, the Company will provide security to cover for underperformance and delays in construction. The Client will provide letter of credit to guarantee payments to the Company.

These guarantees are essential in order to finance the construction of the dedicated infrastructure. These are pre-requisites for the lenders.

Testing and capacity rating

This article will deal with the commissioning of the dedicated infrastructure to make sure that it can provide the flow agreed on.

Insurance

This article will specify the insurance coverage required from the Company. It will define the endorsements agreed on and the use of proceeds of all insurance. It will provide the Client with the ability to verify that the certificates of insurance are of available and paid for.

Indemnification and liability

This article will define the indemnities due by the Company or by the Client to the other party.

Force majeure

This article defines the events or circumstances beyond the reasonable control of a party which materially and adversely affects the performance of that party of its obligations or the enjoyment by that. Basically, it deals with the events that exonerate a party from its obligations and the remedies and consequences of this event.

Taxes

This article defines the obligations of the Company in regards to tax payments.

Defaults and termination

A very standard component of any contract, this article will define the Company events of default, the Client events of default, the notice and cure to such event and the rights and remedies upon an event of default.

It will provide the Client and option to purchase the assets of the Company dedicated to the water purchase agreement and the obligations upon termination of the parties.

Resolution of disputes

This article organizes the resolution of disputes. It begins by mutual discussions, then referral to an expert before arbitration.

It states that during the pendency of any dispute, the Company shall continue to perform its obligation to deliver water and utility shall continue to pay all amounts due in accordance with the article on compensation and payment.

Assignment

This article organizes the right to assign (transfer of rights and obligations under this agreement) of the Client and the Company.

Notices

This article organizes the communications between the Client and the Company.

Miscellaneous provisions

This article covers variations in writing, the entirety of the agreement, confidentiality et cetera.

7. THE TARIFF AND PRICING CALCULATION

In order to define the level of tariffs to be proposed to ILLOVO during the negotiations of the WPA, a financial model has been established using the costs prepared by the technical team in their feasibility study.

The annex 2 will present the structure of the financial model, its parameters and results.

In this section, we are more interested in the level of tariffs to be proposed. Two technical options were considered. The first one is to deliver water to ILLOVO estates with a canal (the one presented in the technical feasibility study as ILLOVO canal) and with pipes (equally presented in the technical feasibility study).

The table overleaf presents the results of the simulation.

Table 7-1: Simulation results

	Illovo Canal	Illovo pipe
Irrigated area (ha)	9 995	9 995
water demand (Mm3/an)	262	262
Part of inlet/feeder investissement allocated to ILLOVO + contingency (000 USD ₂₀₁₆)	10 994	10 994
Investissement branch+ tertiary and secondary +Contingency (000 USD ₂₀₁₆)	15 764	44 492
O&M cost (% of considered investment allocated) (000 USD ₂₀₁₆ /year)	279	567
Renewal fund and big repare provision (% of considered investment allocated) (000 USD ₂₀₁₆ /year)	134	277
National Water Resources Authority water abstraction fees (000 USD ₂₀₁₆ /year)	3 817	3 817
Proposed price (USD ₂₀₁₆ /m3)	0.016	0.034
NPV of the total amount paid on 25 years (000 USD)	39 063	80 854

The level of tariff in the case of the canal or pipes are acceptable when benchmarked with other irrigation projects in the region.

In other terms, we can expect to agree on the terms of the WPA with ILLOVO that would mean that we would have crossed a very important milestone in view of realizing the PPP project for the Shire Valley Irrigation Project.

ANNEXE

Annex 1: The Water Purchase Agreement

[NAME OF WATER PURCHASER]

- and -

[NAME OF WATER SUPPLIER]

WATER PURCHASE AGREEMENT

relating to
the Irrigation project of Shire Valley
at Chikwawa

DATED AS OF [DATE]

NOTES:

This water purchaser agreement is presented as an example. The WPA to be negotiated will be different and will result from the negotiations. This model draws from many examples, some from the World Bank PPP web site.

THIS WATER PURCHASE AGREEMENT (this “Agreement”) is made at [LOCATION] as of [DATE]

BETWEEN:

- (1) [NAME OF WATER PURCHASER] (“Client”), a company duly incorporated under the Laws of Host Country and having its registered office at [LOCATION]; and
- (2) [NAME OF WATER SUPPLIER] (the “Company”), a company duly incorporated under the Laws of [COUNTRY OF INCORPORATION] whose registered office is located at [LOCATION].

Both Client and the Company are herein referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS:

- (A) the Company plans to design, finance, construct, own, operate and maintain a [BRIEFLY DESCRIBE PROJECT AND LOCATION OF PROJECT]; and
- (B) the Company wishes to sell to Client, and Client wishes to purchase from the Company, the capacity of such power generation facility and all of the Net Energy Output (as hereinafter defined) pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound hereby, the Company and Client hereby agree as follows:

1. INTERPRETATION

In this Agreement:

- 1.1 expressions defined in Schedule 1 shall bear the respective meanings set out therein;
- 1.2 the headings and paragraph numbering are for convenience only and shall be ignored in construing this Agreement;
- 1.3 the singular includes the plural and vice versa;
- 1.4 terms not herein defined shall have the meanings ordinarily ascribed thereto in the Oxford English Dictionary;
- 1.5 references to Articles, Sections and Schedules are, unless the context otherwise requires, references to Articles, Sections of, and Schedules to, this Agreement;
- 1.6 references to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
- 1.7 all references herein to time are to Host Country time;
- 1.8 words importing any gender include the other gender;
- 1.9 the words “include,” “includes” and “including” are not limiting; and
- 1.10 the words “hereof,” “herein,” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

2. SALE AND PURCHASE OF WATER

Subject to and in accordance with the terms of this Agreement, the Company shall make available and sell to Client, and Client shall purchase from the Company for the consideration described in Article 9, the Volume of Water of the Complex from and after the Commercial Operations Date.

3. **TERM**

3.1 **Initial Term**

The initial term of this Agreement shall commence on the date hereof and shall end [_____] years from the Commercial Operations Date unless it is earlier terminated pursuant to the provisions of this Agreement. The termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such termination.

3.2 **Renewal Term**

This Agreement may be extended for an additional period on terms mutually agreeable to the Company and Client.

4. **PRE-OPERATION PERIOD**

4.1 **Permits and Licenses**

The Company, at its sole cost and expense, shall: (a) acquire and maintain in effect all Consents required by all Public Sector Entities with jurisdiction over the Company and/or the Complex in order to enable it to perform its obligations under this Agreement; (b) give all required notices and allow all required inspections under all Consents obtained by it in connection with the Complex; and (c) pay all prescribed fees in connection with such Consents.

4.2 **Submissions by the Company**

The Company shall submit to Client the documents listed below on or before the dates specified (“WPA Original Documents”) In addition, the Company shall provide to Client any documents supplementing or otherwise amending a WPA Original Document in a timely manner as such information is amended, modified or superseded (all such supplements and amendments, “WPA Amended Documents”). Prior to executing (a) any WPA Original Document or (b) any WPA Amended Document [that is material to the interests of Client under this Agreement], the Company shall obtain the written approval of Client[, which approval shall not be unreasonably withheld or delayed]; provided, however, that any approval requested from Client for a WPA Amended Document which is to be executed or otherwise created after Financial Closing shall be deemed given unless refused within [_____] Days after notice of the request for such approval, or, in the case of Change Orders, within [_____] Days after notice of the request for such approval.

- 4.2.1 As soon as available, but no later than Financial Closing, a copy of the Implementation Agreement as executed, with any amendments thereto;
- 4.2.2 On or before Financial Closing, a copy of the Construction Contract as executed, including all schedules, plans and specifications attached thereto, plus all amendments executed as of that date;
- 4.2.3 On or before Financial Closing, copies of all Consents and other governmental authorizations that have been issued to the Company to date for the design, financing, construction, ownership, operation and maintenance of the Complex, and not later than [_____] Days prior to the Commercial Operations Date, (a) evidence demonstrating that the Company has obtained all of the [material] Consents then required to be obtained for the ownership, operation and maintenance of, and the supply of power from, the Complex together with (b) a list identifying Consents not yet required to be obtained for the operation and maintenance of, and the supply of power from, the Complex, together with a plan reasonably acceptable to Client for obtaining such Consents and an estimate of the time within which such Consents will be obtained;
- 4.2.4 On or before Financial Closing, a copy of the Company's proposed plan for the operations and maintenance of the Complex or an O&M Contract entered into by the Company, together with all amendments executed as of that date;
- 4.2.5 As soon as available, copies of any contracts executed with Direct Contractors;
- 4.2.6 As soon as available, but no later than the Financial Closing, the Company shall provide Client with any environmental assessment or study relating to the Complex that has been provided to the Company or to its Lenders; At least [_____] Days prior to Commencement of Construction, evidence demonstrating that the Company has, or the Construction Contractor or other Contractors have, obtained all material Consents that are necessary for the Commencement of Construction;
- 4.2.9 Beginning within [_____] Days after Financial Closing and ending on the Commercial Operations Date, (a) monthly progress reports substantially in the form set forth in Schedule 7 (or such other form as may be agreed to by the

Parties), such other reports as are submitted to the Company by the Technical Agent and (c) reports, when and as the Company becomes aware, of any new condition or event which will have a material and adverse effect on the timely completion of the Complex;

- 4.2.10 As soon as available but not later than [_____]
Days after Financial Closing, general arrangement drawings for the construction of the Complex;
- 4.2.11 Not later than [_____] Days prior to the scheduled commencement of testing and Commissioning, a start-up and test schedule for the Complex;
- 4.2.12 Not later than [_____] Days prior to the Required Commercial Operations Date, a copy of draft written operating procedures to serve as the basis for the written operating procedures to be jointly developed pursuant to Section 4.3.1;
- 4.2.13 As soon as available but not later than the Commercial Operations Date, final design drawings for the construction of the Complex;
- 4.2.14 As soon as available but not later than [_____]
Days after the Commercial Operations Date, copies of all test results for tests performed on the Complex;
- 4.2.15 As soon as available but not later than the Commercial Operations Date, a certificate signed by the Technical Agent stating that he has supervised the design and construction of the Complex in accordance with Prudent Client Practice and that, to the best of his knowledge, such design and construction has been completed consistent with the terms of this Agreement (including the Minimum Functional Specifications), the Implementation Agreement, the Fuel Supply Agreement, the Construction Contract, the final design drawings and Prudent Client Practice, and that the Complex will have a useful life of at least [_____]
years;
- 4.2.16 Not later than [_____] Days following the Commercial Operations Date, (a) for the major items of plant incorporated into the Complex, copies as received by the Company under the Construction Contract of all the manufacturers' specifications and manufacturers' operation

manuals, and (b) a certificate of the Technical Agent attesting to the fact that all equipment is new and unused; and

4.2.17 As soon as available but not later than [_____] months after the Commercial Operations Date, as-built drawings and complete specifications for the Complex.

Neither the receipt nor approval of any WPA Original Document or WPA Amended Document shall (a) relieve the Company of any liability, obligation or responsibility under this Agreement or the Implementation Agreement resulting from a breach by the Company or its Contractors of this Agreement or the Implementation Agreement, or (b) be construed as an endorsement by Client of the design, financing, construction, ownership, operation or maintenance of the Complex nor as a warranty by Client of the safety, durability or reliability thereof.

4.3 Operating Procedures

The Company and Client shall jointly develop written operating procedures for the Complex no later than [_____] Days prior to the Required Commercial Operations Date. Such operating procedures shall be based on the designs of the Complex, the Interconnection Facilities and the Client irrigation network System and on the draft procedures provided by the Company pursuant to Section 4.2.12; shall be consistent with the Minimum Functional Specifications; and shall deal with all operational interfaces between Client and the Company, including method of day-to-day communication, key personnel lists, flow reporting, operations log. The written operating procedures shall be subject to the prior written consent of Client[, which consent shall not be unreasonably withheld or delayed].

4.5 Inspection

Client and/or its representatives shall have the right to observe the progress of the construction of the Complex and the testing and Commissioning of the Complex in accordance with Schedule 4. The Company shall comply with all reasonable requests of Client for, and assist in arranging, any such observation visits to the Complex. Such visits to the Complex shall not be construed as an endorsement by Client of the design thereof nor as a warranty by Client of the safety, durability or reliability of the Complex.

4.6 Access to Site

Upon reasonable prior notice from the Company and at reasonable times, Client shall grant the Company reasonable access to any lands owned by Client that are necessary for designing, financing, constructing, operating and maintaining the Complex.

4.7 General Covenants of the Company in respect of the Complex

The Company hereby covenants as follows:

- 4.7.1 during the term of this Agreement, the Company shall design, finance, construct, own, operate and maintain the Complex in accordance with (a) this Agreement, (b) the Minimum Functional Specifications set forth in Schedule 2, (c) sound engineering and construction practices and Prudent Client Practice, (d) the operating procedures developed pursuant to Section 4.3, (e) the environmental guidelines and occupational health and safety standards of [Host Country], (f) all applicable Consents and Laws and (g) such requirements as Client may reasonably deem necessary in order for the Interconnection Facilities to be designed and constructed in accordance with sound engineering and construction practices and Prudent Client Practice;
- 4.7.2 the Complex will be designed, constructed and completed (a) in a good and workmanlike manner, only with materials and equipment that are new, Client grade and suitable for their intended use; (b) in such a manner as to provide that the useful life of the Complex, with proper operation and maintenance, will be at least equal to [_____] years; and (c) in accordance in all material respects with sound engineering and construction practices and Prudent Client Practice;
- 4.7.3 the Company shall Commission the Complex on or before the Required Commercial Operations Date; and
- 4.7.4 During the term of this Agreement, the Company shall maintain the Site in a clean and presentable manner.

5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Client that:

- 5.1 the Company is duly incorporated, validly existing and has complied fully with all requirements of the [LOCAL COMPANIES ACT OR CORPORATE CODE] and all other applicable Laws of Host Country;
- 5.2 the Company has full power to carry on its business and to enter into, legally bind itself by, and perform its obligations under, this Agreement and the other agreements comprising the Security Package;

- 5.3 this Agreement has been duly authorized, executed, and delivered by the Company and constitutes its legal, valid and binding obligation;
- 5.4 the execution, delivery, and performance of this Agreement and each agreement comprising the Security Package does not, and will not, constitute a violation of (a) any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to the Company, its assets or its businesses, or (b) the Company's [NAME OF PRIMARY ORGANIC DOCUMENTS, E.G., ARTICLES OF ASSOCIATION] or other organic documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
- 5.5 there are no outstanding judgments against the Company, and, to the best knowledge of the Company, no action, claim, suit or proceeding is pending or threatened against the Company before any court, governmental authority or arbitrator of competent jurisdiction that could reasonably be expected to affect materially and adversely the financial condition or operations of the Company or the ability of the Company to perform its obligations under this Agreement or any other agreement comprising the Security Package or which purports to affect the legality, validity or enforceability of this Agreement or any other agreement comprising the Security Package;
- 5.6 the Company is not in default under any agreement to which it is a party or by which it or its property may be bound, nor in any default of any technical or financial obligation, which could have a material adverse effect on the ability of the Company to perform its obligations under this Agreement or any other agreement comprising the Security Package; and
- 5.7 no information given by the Company in relation to this Agreement or any agreement in the Security Package or in the proposal submitted by the Company to Client contains any misstatement of fact or omits to state a fact which would be materially adverse to the enforcement of the rights and remedies of Client or which would be necessary to make any statement, representation or warranty contained herein or therein true and correct in all material respects.

6. OPERATION AND MAINTENANCE OF THE COMPLEX

6.1 Dispatch by Client

6.1.1 Subject to the Minimum Functional Specifications and approved Scheduled Interruptions and Maintenance Interruptions, Client shall have the right to Dispatch the Complex in accordance with the provisions of this Section 6.1. From and after the Commercial Operations Date, Client may Dispatch the Complex up to its Dependable Capacity.

6.1.2 At least [_____] Days prior to the [_____] Day of each Month commencing with the Month in which the Commercial Operations Date is expected to occur, Client shall provide to the Company a projected water flow profile indicating the anticipated operating level for the Complex for each hour of the forthcoming Month. Client shall use its reasonable endeavors to revise said monthly projected load profile, if necessary, by [TIME] each [DAY OF THE WEEK]. The Parties agree and acknowledge that the actual Dispatch schedule may be substantially different from the projected load profiles provided previously. It is expressly recognized that Client is not obligated to request any net amount of water.

6.2 Operation by the Company

6.2.1 Provided such Dispatch is in accordance with the terms of this Agreement, from and after the Commercial Operations Date, Company shall control and operate the Complex in accordance with Client's Dispatch instructions.

6.2.2 Subject to the Minimum Functional Specifications, the Company shall operate and maintain the Complex in such a manner so as not to have an adverse effect on Client's irrigation flows and distribution system.

6.3 Scheduled Interruptions

6.3.1 At least [_____] Days prior to the Scheduled Commercial Operations Date, the Company shall submit to Client its desired schedule of Scheduled Interruptions periods for the remainder of the Year in which the Scheduled Commercial Operations Date occurs. Thereafter, by [DATE] of each Year after the Year in which the Scheduled Commercial Operation Date occurs, the Company shall submit to Client its desired schedule of Scheduled Interruption periods for the following Year.

- 6.3.2 At least [_____] Days prior to the Scheduled Commercial Operations Date and [_____] Months prior to the commencement of each Year after the Year in which the Scheduled Commercial Operation Date occurs, Client shall notify the Company in writing whether the requested Scheduled Interruption periods are acceptable. If Client cannot accept any of the requested Scheduled Interruption periods, Client shall advise the Company of a period when Client determines such unacceptable Scheduled Interruption period can be rescheduled. Such rescheduled period shall be as close as reasonably practicable to the requested period, shall comply with the Minimum Functional Specifications, and shall be of equal duration as the requested period. The Company shall conduct Scheduled Interruptions only during periods agreed to in writing by Client as aforesaid.
- 6.3.3 Commencing with the Commercial Operations Date, the Company may not schedule more than a total of [_____] Complex Hours of Scheduled Interruptions during any Operating Year.
- 6.3.4 Client may, upon [_____] Days prior written notice, require the Company to reschedule a Scheduled Interruption; provided, however, that Client shall not request that such Scheduled Interruption be rescheduled in a manner or time outside the Minimum Functional Specifications.
- 6.3.5 Client shall use its reasonable endeavors to coordinate its maintenance program for the Interconnection Facilities with the approved Scheduled Interruptions so as to minimize any disruption to the operation of the Complex.

6.4 Maintenance Interruptions

When the circumstances warrant a Maintenance Interruption, the Company may advise Client of such circumstances and of the commencement and estimated duration of the Maintenance Interruption. Client shall grant the Company the right to conduct such Maintenance Interruption at a time reasonably acceptable to Client.

6.5 Emergencies

- 6.5.1 Client and the Company shall jointly establish plans for operating the Complex during an Emergency. The Company shall, within the Minimum Functional Specifications, comply with such Emergency procedures.

6.5.2 During an Emergency and if requested in Dispatch instructions from Client, the Company shall supply such water as the Complex thereafter is able to deliver within the Minimum Functional Specifications. If the Complex has a Scheduled Interruption or a Maintenance Interruption and such Scheduled Interruption or Maintenance Interruption occurs or would occur coincident with an Emergency, the Company shall use its reasonable efforts to reschedule the Scheduled Interruption or Maintenance Interruption or, if the Scheduled Interruption or Maintenance Interruption has begun, to expedite the completion of the work to restore water supply as soon as possible.

6.6 Cessation of Operation or Abandonment by the Company

Notwithstanding any other provision of this Agreement, if the Company shall have ceased to operate the Complex for [_____] consecutive hours without the prior written consent of Client, other than because of (a) an event of Force Majeure, (b) a Forced Interruption, Scheduled Interruption or Maintenance Interruption, (c) a breach by Client of this Agreement, or (d) Dispatch instructions from Client, then Client shall be entitled to enter the Site and operate the Complex using the same operating standards which it uses to until the Company demonstrates to the reasonable satisfaction of Client that it can and will resume normal operations of the Complex. During any period that Client shall operate the Complex pursuant to this Section, the Company shall be paid only the debt service element of the Capacity Payment and shall not be entitled to any other Capacity Payments or Energy Payments. Notwithstanding the provisions of Section 12.2, Client shall only indemnify and hold the Company harmless from any loss or damage to the Complex for losses, claims, damages or liabilities incurred, suffered or sustained by the Company by reason of Client's negligence or willful misconduct in the operation of the Complex during such period, and then only to the extent that such loss or damage is not covered by insurance.

6.8 Employment of Qualified Personnel

The Company shall only employ personnel (management, supervisory and otherwise) who are qualified and experienced for operating and monitoring the Complex and for coordinating operations of the Complex with the Client Irrigation System. The Company shall ensure that such personnel are on duty at the Complex at all times, twenty-four (24) hours a Day and seven (7) Days a Week commencing with the date on which water delivered by the Complex.

6.9 Operating Committee Membership and Duties

6.9.1 On or before [_____] Months prior to the Scheduled Commercial Operations Date, the Parties shall establish an

Operating Committee comprising [_____] members. Each Party shall designate [HALF] members to represent it on the Operating Committee, and either Party may remove or replace any of its Operating Committee members at any time upon notice to the other Party. The Operating Committee shall develop procedures for the holding of meetings, the keeping of minutes of meetings and the appointment and operation of sub-committees. The chairmanship of the Operating Committee shall rotate each six (6) Months between the Parties and the Parties agree that the first chairman shall be nominated by Client. Decisions of the Operating Committee shall require the approval of a majority of members of the Operating Committee.

6.9.2 The Operating Committee shall be responsible for developing the operating procedures to be developed pursuant to Section 4.3 (and any subsequent revisions thereto); for approving procedures for the Commissioning of the Complex pursuant to Article 10 and Schedule 4; for establishing other procedures relating to the interaction of the Complex, the Metering System, the Interconnection Facilities and the Client Irrigation System; and, where appropriate, for proposing solutions to other issues and attempting to resolve Disputes concerning the operation, maintenance and testing of the Complex. These matters shall include:

- (a) the coordination of the respective programs and procedures of the Parties for the construction, commissioning and operation of the Interconnection Facilities, the Metering System and the Complex, and agreement where necessary upon the respective commissioning procedures;
- (b) the discussion of the steps to be taken on the occurrence of any Force Majeure, or the shutdown or reduction in capacity for any other reason of the Interconnection Facilities or the Complex;
- (c) the coordination of Scheduled Interruptions;
- (d) safety matters affecting the Complex, the Parties or their Contractors;

- (e) clarification of Emergency plans developed pursuant to Section 6.5.1 for recovery from a local or widespread water delivery failure;
- (f) review and revision, subject to Client approval, of protection schemes; and
- (g) any other matter mutually agreed to by the Parties.

6.9.3 The Parties shall instruct their representatives on the Operating Committee to act in good faith in dealing with matters considered by the Operating Committee. The Parties shall consider and use reasonable efforts to incorporate decisions of the Operating Committee in the operation and maintenance of the Complex and the Interconnection Facilities. The Operating Committee on its own shall not (a) override or waive any provisions of this Agreement or (b) amend or modify any provisions of this Agreement.

6.10 Inspections and Records

6.10.1 Client shall have the right to visit and observe the Complex and/or the operation thereof upon reasonable advance notice to the Company. Such visits and observation shall not be construed as an endorsement by Client of the design of the Complex nor as a warranty by Client of the safety, durability or reliability thereof.

6.10.2 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. Among other records and data, the Company shall maintain an accurate and up-to-date operating log in a format reasonably acceptable to Client which log shall include records of:

- (a) Water flows and water volume distributed.
- (b) changes in operating status, Scheduled Interruptions, Maintenance Interruptions and Forced Interruptions;
- (c) any unusual conditions found during inspections; and

- (d) other matters agreed to by the Operating Committee.

Either Party shall have the right, upon reasonable prior written notice to the other Party, to examine and/or make copies of the records and data of the other Party relating to this Agreement at any time during normal office hours during the period such records and data are required to be maintained. All such records shall be maintained for a minimum of [_____] Months after the creation of such record or data and for any additional length of time required by regulatory agencies with jurisdiction over the Parties. Upon expiration of such [_____] Month period, neither Party shall dispose of or destroy any such records without [_____] Days prior written notice (generally describing the records or data to be destroyed or disposed of) to the other Party, and the Party receiving such notice may receive such records in lieu of such disposal or destruction by giving the notifying Party notice [_____] Days prior to the expiration of the [_____] Day period.

6.11 Periodic Reports

6.11.2 The Company shall, as soon as available but in any event within [_____] Days after the end of each Financial Year, furnish to Client: (a) [_____] copies of its complete financial statement for such Financial Year (which are in agreement with its books of accounts and prepared in accordance with accounting principles which are generally accepted in Host Country and consistently applied), together with an audited report thereon, all in accordance with the requirements of the [LOCAL COMPANIES ACT OR CORPORATE CODE]; (b) a copy of any management letter or other communication sent by the auditors to the Company or to its management in relation to the Company's financial, accounting and other systems, management and accounts; (c) a report by the auditors certifying that, based on its said financial statements, the Company was in compliance with its financial obligations under the Loan Documents as of the end of the relevant Financial Year or, as the case may be, detailing any non-compliance. In addition, the Company shall authorize its auditors (whose fees and expenses shall be for the account of the Company) to communicate directly with Client at any time regarding the Company's accounts and operations and shall furnish to Client a copy of such authorization.

6.11.3 The Company shall, as soon as available but in any event within [_____] Days after the end of each [_____] Month period of each Financial Year, furnish to Client: (a) [_____] copies of the Company's complete financial statements for such [_____] Month period, all in accordance with accounting principles which are generally accepted in Host Country and consistently applied, and, if requested by Client, certified by an officer of the Company; and (b) a report on any factors materially and adversely affecting or which might materially and adversely affect the Company's business and operations or its financial condition.

7. INTERCONNECTION

7.1 Client Responsibilities

- 7.1.1 Client shall design, construct, install, commission, operate and maintain the Interconnection Facilities (excluding the equipment referred to in Section 8.1.2) in accordance with the terms of this Agreement and Schedule 3, and Client shall own all such Interconnection Facilities.
- 7.1.2 Upon completion of the Interconnection Facilities described in Section 7.1.1, Client shall test such Interconnection Facilities in accordance with the procedures set forth in Schedule 4.
- 7.1.3 Client shall complete construction of the Interconnection Facilities [_____] Days prior to the Scheduled Commercial Operations Date; provided, however, that such date shall be extended day-for-day in the event that the monthly progress reports of the Company and/or the construction schedule for the Complex, as revised from time to time, projects a delay in the Scheduled Commercial Operations Date.
- 7.1.4 If Client fails to complete the Interconnection Facilities by the date specified in Section 7.1.3, the Required Commercial Operations Date shall be extended day-for-day for each Day that the Interconnection Facilities are delayed beyond that date, and the Company shall be entitled to no other damages or relief therefor except as provided in Section 7.3.

7.2 Company Responsibilities

- 7.2.1 The Company shall permit Client such access to the Complex as Client shall require for the design, construction, installation, commissioning, operation and maintenance of the Interconnection Facilities, and the Company shall cooperate with Client in the design, construction, installation, commissioning, operation and maintenance and testing thereof.
- 7.2.2 The Company shall be responsible for designing, constructing, installing, commissioning, operating and maintaining all auxiliary and interconnecting equipment on the Company's side of the Interconnection Point, and the Company shall own all such auxiliary and interconnection equipment.

7.3 Delay in Completion of Interconnection Facilities

- 7.3.2 If Client has not completed the Interconnection Facilities by the date specified in Section 7.1.3 or such later date as may be determined by the Parties in accordance with this Agreement, and the Technical Agent witnesses the [no-load] tests specified in Section [_____] of Schedule 4 and, in his reasonable judgment, certifies on the day of the [no-load] tests that the Complex has satisfied the requirements specified in Section [_____] of Schedule 4, then Client shall pay to the Company as liquidated damages [AMOUNT], [as adjusted from time to time in accordance with Schedule 6,] for each Day on which the Interconnection Facilities are not completed after the date specified in Section 7.1.3 or such later date as determined by the Parties in accordance with this Agreement. Notwithstanding any other provision of this Section 7.3.1, the cumulative amount of the liquidated damages payable to the Company under this Section 7.3.1 shall not exceed a cumulative amount equivalent to [AMOUNT].
- 7.3.3 When Client completes the Interconnection Facilities, an authorized representative of Client shall certify in writing to the Company, that the Interconnection Facilities have been completed in accordance with the requirements of this Agreement and are ready to begin receiving electricity. Client shall promptly provide to the Company copies of the results of all tests and procedures (and supporting data) conducted by or for Client in connection with the construction, completion and testing of the Interconnection

Facilities, which results shall be certified by an authorized representative of Client as complete and correct. In addition, if Client has contracted with a third party contractor for the construction, completion or testing of the Interconnection Facilities, Client shall promptly furnish to the Company copies of any of such contractor's completion certificate(s) and any of Client's acceptance certificate(s) as may be issued in respect of such construction, completion and testing. Commencing with the date on which Client provides the Company with the certificates and other documents set forth in this Section 7.3.2, Client shall bear no further liability for liquidated damages under Section 7.3.1, and the Company shall proceed promptly with testing and Commissioning in accordance with Article 10 and Schedule 4.

7.4 Testing of Interconnection Facilities

The Parties shall cooperate in testing the Interconnection Facilities in accordance with Schedule 3 and the schedule developed by the Operating Committee (but in no event later than the time provided in Section 7.1.3) and at such other times thereafter as either Party may reasonably require. Each Party shall bear its own costs in connection with any such testing.

8. METERING

8.1 Ownership of Metering Equipment

8.1.1 Client, at its expense, shall own, procure, operate and maintain the Metering System in accordance with Schedule 5.

8.1.2 The Company, at its expense shall design, finance, construct, install, own, operate and maintain meters and metering devices for backup purposes pursuant to Schedule 5 ("Backup Metering System") in addition to the Metering System.

8.2 Installation of Metering System

The Company shall install the Metering System on the Site, and Client shall reimburse the Company for all reasonable expenses incurred by the Company for the installation thereof. Client shall provide the Metering System ready to be installed and such installation instructions from Client in writing on a timely basis as may be required to allow the Company to install such equipment by the date required for the completion of the Interconnection Facilities under Section 7.3 and for Client to test the Metering System under Section 8.3. Such

installation shall be inspected by, and subject to the approval of, Client[, which approval may not be unreasonably withheld or delayed].

8.3 Testing and Inspection of Metering System

Client shall inspect and test at its own expense the Metering System and the Backup Metering System for accuracy in accordance with Schedule 5 by the date required for the completion of the Interconnection Facilities under Section 7.1.3, and thereafter at intervals of not less than [_____] Days. With respect to each testing of the Metering System or the Backup Metering System, Client shall give the Company no less than [_____] hours advance notice of such testing, and the Company may have a representative present during any such testing, as well as during any inspection of the Metering System or Backup Metering System or adjustment thereof (but the test, inspection or adjustment may be taken if the Company has no representative present).

8.4 Measurement of Net Water Delivered

8.4.1 Client shall read the Metering System Monthly on the [_____] Business Day of each Month (or such other Day as may be agreed upon by the Operating Committee) for the purpose of measuring the Net Water Delivered. Client shall give the Company not less than [_____] hours notice of its intention to read the Metering System. The Company shall have the right to have a representative present during any such reading (but the reading may be taken if the Company has no representative present). Client shall take and record such reading together with a photographic record thereof, and Client shall maintain a log of all such meter readings. In the event that the Metering System is not in service as a result of maintenance, repairs or testing, then the Backup Metering System shall be used during the period that the Metering System is not in service and the foregoing provisions of this Section 8.4.1 shall apply to the reading of the Backup Metering System.

8.4.2 When, as a result of any test pursuant to Section 8.3, the Metering System is found to be inaccurate by more than [_____] percent or is otherwise functioning improperly, then the correct amount of Net Water Delivered to Client for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:

- (a) first, the readings of the Backup Metering System, if any, shall be utilized to calculate the correct amount of Net Water

Delivered, unless a test of such Backup Metering System, as required by either Party, reveals that the Backup Metering System is inaccurate by more than [_____] percent or is otherwise functioning improperly;

- (b) if the Backup Metering System is not within the acceptable limits of accuracy or is otherwise functioning improperly, then the Company and Client shall jointly prepare an estimate of the correct reading on the basis of all available information including deliveries of Net Water Delivered during periods of similar operating conditions when the Metering System was registering accurately;
- (c) in the event that the Parties cannot agree on the actual period during which inaccurate measurements were made, the period during which measurements are to be adjusted shall be the shorter of (i) one-half of the period from the last previous test of the Metering System, or (ii) [_____] Days immediately preceding the test which found the Metering System to be inaccurate; and
- (d) the difference between the previous payments by Client for the period of inaccuracy or improper functioning and the recalculated amount shall be offset against or added to the next payment to the Company under this Agreement, as appropriate.

In the event that Client and the Company fail to agree upon any estimate pursuant to this Section 8.4.2, then the matter may be referred by either Party for determination by an expert pursuant to Section 16.2.

8.5 Sealing, Repair and Replacement of Meters

- 8.5.1 The Metering System and the Backup Metering System shall comply with Schedule 5 and shall be jointly sealed. Such seals shall be broken only by Client personnel in the presence

of personnel from the Company when the Metering System or the Backup Metering System is to be inspected, tested or adjusted.

- 8.5.2 When any component of the Metering System is found to be outside acceptable limits of accuracy or otherwise not functioning properly, Client shall forthwith repair, recalibrate or replace such component of the Metering System. Similarly, when any component of the Backup Metering System is found to be outside acceptable limits of accuracy or otherwise not functioning properly, the Company shall forthwith repair, recalibrate or replace such component of the Backup Metering System. Upon the completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Metering System or the Backup Metering System, the relevant metering system shall be jointly sealed.

9. COMPENSATION, PAYMENT AND BILLING

9.1 Capacity Payment

- 9.1.1 Beginning on the Commercial Operations Date, Client shall pay to the Company each Month, in arrears on the [_____] Business Day of each Month, an amount equal to the Capacity Payment in accordance with Section 9.6.45 For each Month, the “Capacity Payment” shall be equal to the product of the Capacity Purchase Price and the Dependable Flow.
- 9.1.2 The amount of the Capacity Purchase Price shall be as set forth in Schedule 6 and shall be adjusted from time to time in accordance with Schedule 6.

9.2 Water Payment

- 9.2.1 During the Commissioning of the Complex, in accordance with Section 9.6, Client shall pay to the Company, in arrears on the [_____] Business Day of each Month, for each cubic meter of Water Delivered from the Complex to Client during the preceding Month, an amount equal to the Company's actual fuel costs for generating such output.
- 9.2.2 After the Commercial Operations Date, in accordance with Section 9.6, Client shall pay to the Company, in arrears on the [_____] Business Day of each Month, the

Water Purchase Price for each cubic meter of Net Water Delivered from the Complex to Client during the preceding Month (each Monthly payment, an “Energy Payment”).

9.2.3 The amount of the Water Purchase Price shall be as set forth in Schedule 6 and shall be adjusted from time to time in accordance with Schedule 6.

9.3 Liquidated Damages

9.3.1 Delays in Commissioning

If the Complex shall not have been Commissioned on or before the Required Commercial Operations Date, then the Company shall pay to Client [AMOUNT] for each Day by which the Complex is delayed beyond its Required Commercial Operations Date; provided, however, that the cumulative amount of such payments shall not exceed [AMOUNT]. These payments shall be liquidated damages for the detrimental impact of such delay upon Client's generation planning.

9.3.2 Shortfalls in Commissioned Dependable Capacity

If there is a Commissioned Shortfall, then the Company shall pay to Client as liquidated damages for the detrimental impact upon Client's water delivery planning [AMOUNT] per cubic meter of such Commissioned Shortfall.

9.3.3 On-Going Dependable Capacity Shortfalls

If after the Commercial Operations Date, there is an On-Going Dependable Capacity Shortfall, then the Company shall pay to Client, as liquidated damages [AMOUNT] for each cubic meter per month of such On-Going Dependable Capacity Shortfall until the next testing of Dependable Capacity which may be requested by the Company pursuant to Article 10 and Schedule 4.

9.3.4 Dispatch Levels

From and after the Commercial Operations Date, in the event that after [_____] identical Dispatch requests separated by a sufficient period of time for the Company to have complied with the first request based on ramp time schedules as provided in the Minimum Functional Specifications, the Company does not achieve the operating level requested by Client pursuant to Section 6.1 within the time allowed by the Minimum Functional Specifications, within a tolerance of plus or minus [_____]

percent, then the Company shall pay to Client, as liquidated damages [AMOUNT] per m³ for each m³ outside the tolerance; provided, however, that Client shall not be entitled to liquidated damages pursuant to this Section 9.3.4 if the requested operating level cannot be achieved within the Minimum Functional Specifications or is above the Declared Available Capacity of the Complex (as adjusted by Forced Interruptions declared subsequent to such Dispatch requests).

9.3.5 Adjustment

The amounts of all of the liquidated damages set forth in Section 9.3 shall be adjusted from time to time in accordance with Schedule 6.

9.3.6 Waiver of Defenses

The Parties agree that Client may be substantially damaged in amounts that may be difficult or impossible to determine in the event that the Complex or any part thereof (a) is not in service by the dates required, (b) is not capable of achieving and maintaining the expected Dependable Capacity, or (c) cannot achieve the designated operating levels. The Parties also agree that the Company may be substantially damaged in amounts that may be difficult or impossible to determine in the event that the Interconnection Facilities are not in service by the date required. Therefore, to the limited extent set out in this Agreement, the Parties have agreed on sums that the Parties agree are reasonable as liquidated damages. It is further understood that the payment of liquidated damages is in lieu of actual damages for the occurrences defined in the first two sentences of this Section 9.3.6, and that the payment of liquidated damages under Sections 7.3 and 9.3.1 through 9.3.4 shall be the exclusive remedy of Client or the Company, as appropriate, for such occurrences unless and until (a) the Company has committed a Company Event of Default within the meaning of Section 15.1.14 in the case of liquidated damages payable to Client and (b) Client has committed a Client Event of Default within the meaning of Section 15.2.3 in the case of liquidated damages payable to the Company. The Company and Client hereby waive any defense as to the validity of any liquidated damages in this Agreement on the grounds that such liquidated damages are void as penalties.

9.4 Security

9.4.1 Construction Security

On or before Financial Closing, the Company shall provide to Client security (the “Construction Security”) in the amount of [AMOUNT] to ensure completion of the Complex by the Required Commercial Operations Date. The Construction Security shall be an unconditional and irrevocable direct pay letter of credit issued by a bank acceptable to Client in form and substance satisfactory to Client. The Construction Security and any interest accrued thereon may be applied to the payment of liquidated damages or other Damages and accrued interest thereon as set forth in Section 9.5. There shall be no discontinuity between the expiration of the Construction Security and the effectiveness of the Operations Security, and the Construction Security shall be returned to the Company promptly following delivery to Client of the Operations Security and the occurrence of the effective date of the Operations Security.

9.4.2 Operations Security

- (a) On the Commercial Operations Date, the Company shall provide to Client security (the “Operations Security”) in the amount of [AMOUNT] to ensure the completion and proper operation and maintenance of the Complex. The Operations Security shall be an unconditional and irrevocable direct pay letter of credit issued by a bank acceptable to Client in form and substance satisfactory to Client. The amount of the Operations Security shall be adjusted from time to time in accordance with Schedule 6.
- (b) The Operations Security may be applied to (i) the payment of liquidated damages and accrued interest thereon in accordance with Section 9.5; (ii) the repayment to Client of amounts improperly drawn by the Company under the Letter of Credit, together with interest thereon as set forth in Section 9.7.4; and (iii) the payment of other Damages and interest that the Company shall be required to pay to Client.
- (c) Except as expressly provided in this Agreement, the Company shall maintain the Operations Security at the level

designated in subsection (a) at all times; provided, however, that the Company may have [_____] Days from the date Client gives notice to the Company that it has retained or collected funds from the Operations Security pursuant to this Section 9.4.2 to replenish the Operations Security so as to return it to the required level, as escalated.

- (d) Upon termination of this Agreement, Client shall be entitled to retain or collect, as the case may be, from the Operations Security any damages or moneys then due or reasonably expected to be due to Client by the Company and shall pay or return to the Company the remainder of the Operations Security and accrued interest, if any. If, upon the termination of this Agreement, there shall be any dispute between the Company and Client that has been referred to an expert for determination or is being arbitrated pursuant to the Agreement, then Client shall be entitled to retain or collect, as the case may be, from the Operations Security, an amount equal to the damages or moneys that Client, in its reasonable judgment, deems sufficient to satisfy any amount that may be due to Client by reason of such dispute. Upon settlement or resolution of the dispute, Client shall pay or return to the Company the remaining amount of Operations Security.

9.5 Payment of Liquidated Damages

Within [_____] Days after the end of each Month, Client shall compute and advise the Company by written notice (a “Liquidated Damages Notice”) of the amount of liquidated damages due to Client pursuant to this Agreement for the preceding Month. The Company shall pay to Client, or direct Client to apply the Construction Security or Operation Security (as the case may be) to, the amount of liquidated damages shown on the Liquidated Damages Notice within [_____] Days after delivery of the Liquidated Damages Notice (the “Liquidated Damages Due Date”), and interest shall accrue on any unpaid amount from the Liquidated Damages

Due Date at the Default Rate. Unless the entire amount of liquidated damages reflected on the Liquidated Damages Notice is paid to Client by the Company, the amount of such liquidated damages plus accrued interest due to Client shall be set off against amounts owed the Company by Client on the next statement(s) submitted to the Company pursuant to Section 9.6.

9.6 Payment and Billing

- 9.6.1 Within [_____] Days after the end of each Month, Client shall prepare and deliver to the Company a statement reflecting amounts payable to each Party by the other Party pursuant to this Agreement. Such statement shall include calculations, in reasonable detail, of such amounts owed to the Company for Capacity Payments, Energy Payments, [Supplemental Payments] and liquidated damages and amounts owed to Client including liquidated damages, in accordance with this Agreement and the procedures determined by the Operating Committee. The statement shall be accompanied by any payment owed to the Company. Any payment which is not paid when due shall bear interest at the Default Rate.
- 9.6.2 If the Company shall dispute any portion of such statement, then the Company shall, within [_____] Days of the receipt of such statement, serve a notice on Client indicating the amount of the dispute and the basis therefor (a "Dispute Notice"). The dispute shall be settled by mutual discussion and, if necessary, referral to an expert pursuant to Sections 16.1 and 16.2. If it is determined that Client owes an amount of money to the Company, Client shall, within [_____] Days after the receipt of such determination, pay such sum together with interest thereon at the Default Rate from the date Client should have paid such sum to the Company.
- 9.6.3 At any time prior to [_____] Days after the end of a Year, or within such other period as permitted or required by applicable law, either Party may serve a Dispute Notice on the other Party that the amount of any statement submitted by Client during the preceding Year is in dispute. Each Dispute Notice shall specify the statement concerned, the amount of the dispute and the basis therefor. The dispute shall be settled by mutual discussion and, if necessary, referral to an expert pursuant to Sections 16.1 and 16.2. Upon resolution of the dispute, the Party which is determined to

owe money to the other Party shall immediately pay such sum to the other Party together with interest thereon at the Default Rate from the date such payment should have been made.

9.7 Letter of Credit

- 9.7.1 Client shall establish irrevocable, revolving Letters of Credit substantially in the form set forth in Schedule 9 with respect to amounts payable by Client to the Company pursuant to Sections 9.1 and 9.2. Each Letter of Credit shall remain in place for twelve(12) months.
- 9.7.2 The first such Letter of Credit shall be established on or before the Commercial Operations Date. Client shall renew or replace this Letter of Credit and each succeeding Letter of Credit not less than [_____] Days prior to its expiration. Each such Letter of Credit shall be established in an amount necessary to meet [_____] Months' average projected Capacity Payments and Water Payments [and Supplemental Payments], which amount shall be determined by Client based upon (a) the estimated Dispatch requirements for the Complex notified to the Company by Client pursuant to Section 6.1 and the operating procedures developed in accordance with Section 4.3 and (b) the estimated adjustments to be made to the Capacity Purchase Price and the Energy Purchase Price pursuant to Schedule 6 using index data available for the last preceding twelve Month period. As and when new index data becomes available or Client's requirements of Net Energy Output [materially] change from its projections, either Party may request that the amount of the outstanding Letter of Credit be adjusted accordingly.
- 9.7.3 The Letter of Credit may be drawn on by the Company upon presentation to the bank of a copy of a statement delivered by Client to the Company pursuant to Section 9.6 of this Agreement at least [_____] Days prior to such presentation to the bank together with a certificate signed by a duly authorized officer of the Company attesting to the fact that Client has failed to pay all or part of the amount indicated on the statement. If Client has not delivered a statement to the Company pursuant to Section 9.6 of this Agreement within [_____] Days after the end of any Month, then the Company may, in lieu of the statement and certificate referred to in the first sentence of this Section 9.7.3, submit

to Client a statement prepared by the Company in the manner described in Section 9.6 from meter readings taken by the Company. If Client fails to pay all or part of the amount indicated on the Company's statement within [_____] Days after receipt of such statement, the Company may submit to the bank a copy of such statement, together with a certificate signed by a duly authorized officer of the Company attesting to the fact that (a) Client has failed to prepare a statement for such Month, (b) the statement prepared by the Company is a true and correct statement of amounts owed to the Company by Client for Dependable Capacity and Net Energy Output delivered to Client during the preceding Month, and (c) Client has failed to pay all or part of the amount indicated on the statement.

9.7.4 In the event that the Company shall draw against a Letter of Credit and it shall later be determined that the Company was not entitled to do so, then the Company shall repay such amount to Client, together with all costs and expenses incurred by Client in connection with such drawing, plus interest on such amount and expenses from the date of payment at the Default Rate. Client shall have the right to set-off such amounts owed to Client by the Company against Capacity Payments and Energy Payments [and Supplemental Payments].

10. TESTING AND CAPACITY RATINGS

10.1 Testing

10.1.1 The Company shall carry out Commissioning of the Complex and testing of Dependable Capacity of the Complex thereafter at Client's request in accordance with Schedule 4. Client shall be given prior written notice of any testing or Commissioning procedure in accordance with Schedule 4 and shall be entitled to have representatives present for the purpose of observing any such procedure (but such testing or Commissioning may be performed if Client has no representative present).

10.1.2 If Commissioning of the Complex indicates that there will be a Commissioned Shortfall, the Company may request one additional test of Dependable Capacity to be conducted at the Company's expense in accordance with Schedule 4 within [_____] Days after the Complex has been Commissioned. If such additional test is requested, then the Commercial Operations Date shall

be delayed until such additional test is complete, and the AIDC shall be set in accordance with the additional test.

10.1.3 If any test after the Commercial Operations Date indicates that the Dependable Capacity has fallen below the AIDC, the Company may request one additional test of Dependable Capacity to be conducted within [_____] Days at the Company's expense in accordance with Schedule 4. Capacity Payments and liquidated damages provided in Section 9.3.3 will be based at all times on the most recent completed test of Dependable Capacity.

10.2 Notice of and Compliance with Testing Procedures

The Company shall carry out Commissioning of the Complex, testing the Dependable Capacity of the Complex at the Commercial Operations Date and testing of Dependable Capacity of the Complex thereafter in accordance with this Article 10 and Schedule 4. Client shall use its reasonable efforts to comply promptly with all reasonable requests by the Company for assistance in carrying out such testing and Commissioning.

10.3 Test Results

The Company shall provide Client with copies of the results of all tests performed pursuant to Schedule 4.

10.4 Nomination of Dependable Capacity

Upon completion of testing pursuant to Section 10.1 and Schedule 4, the Company shall notify Client in writing as to the amount of Dependable Capacity available from the Complex.

10.5 Disputes

In the event that a dispute arises between the Company and Client regarding the testing of Dependable Capacity or the protection tests described in Schedule 4, such dispute shall be resolved by referral to an expert pursuant to Section 16.2.

11. INSURANCE

11.1 Insurance Coverage

At all times during the term of this Agreement, the Company shall obtain and maintain at its own cost, or cause its Contractors to obtain and maintain, the following types of insurance covering the Complex:

- 11.1.3 All Risks Marine Cargo insurance in an amount sufficient to cover the replacement cost of all plant and equipment shipped to and intended to become part of the Complex on a warehouse to warehouse basis and subject to deductibles of no more than [AMOUNT];
- 11.1.4 All Risks (Property Damage)/Operational insurance in an amount sufficient to cover the replacement cost of the Complex, including construction equipment and transit coverage for plant purchased within Host Country and not subject to the insurance described in Section 11.1.1 above and subject to deductibles of no more than [AMOUNT] for all other perils;
- 11.1.5 Employer Liability insurance complying with the Laws of Host Country or any other applicable jurisdiction and Employers' Liability Insurance with limits of at least [AMOUNT] per occurrence and subject to deductibles of no more than [AMOUNT];
- 11.1.6 Comprehensive or Commercial General Liability insurance with bodily injury and property damage limits of at least [AMOUNT] per occurrence and [AMOUNT] in the aggregate and subject to deductibles of no more than [AMOUNT]. Such insurance shall include specific coverage for contractual liability encompassing the indemnification provisions in Article 12, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, liability for pollution (both gradual and sudden and accidental) products/completed operations liability, and, where applicable, watercraft protection and indemnity liability;
- 11.1.7 Comprehensive Automobile Liability insurance with bodily injury and property damage combined single limits of at least [AMOUNT] per occurrence covering vehicles owned, hired or non-owned and subject to deductibles of no more than [AMOUNT]; and
- 11.1.8 Excess Umbrella Liability Insurance with a single limit of at least [AMOUNT] per occurrence in excess of the limits of insurance provided in Sections 11.1.3, 11.1.4 and 11.1.5 above and subject to deductibles of no more than [AMOUNT].

11.2 Endorsements

The Company shall cause its insurers to amend its Comprehensive Commercial General Liability and, if applicable, Umbrella or Excess Liability policies with the endorsement items set forth in Sections 11.2.1 through 11.2.5 below; and to amend the Company's Employer Liability and Auto Liability policies with the endorsement item set forth in Section 11.2.5 below:

11.2.1 Client, its directors, officers, and employees are additional insureds under this policy;

11.2.2 This insurance is primary with respect to the interest of Client, its directors, officers, and employees and any other insurance maintained by them is excess and not contributory with this insurance;

11.2.3 The following Cross Liability section is made a part of the policy: "In the event of claims being made by reason of (a) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (b) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance. However, the inclusion of more than one injured will not operate to increase the limit of liability of the insureds hereunder beyond the limit of liability in this policy.";

11.2.4 Insurer hereby waives all rights of subrogation against Client, its officers, directors and employees; and

11.2.5 Notwithstanding any provision of the policy, this policy may not be canceled, renewed, or materially changed by the insurer without giving [_____] Days prior written notice to Client. All other terms and conditions of the policy shall remain unchanged.

11.3 Use of Proceeds of All Risk/Operational Insurance

The proceeds of any All Risks insurance obtained pursuant to Sections 11.1.1 and 11.1.2 shall, at the option of Client and subject to the Lenders' rights, be applied to the repair of the Complex.

11.4 Certificates of Insurance

The Company shall cause its insurers or agents to provide Client with certificates of insurance evidencing the policies and endorsements listed above. Failure by the Company to obtain the insurance coverage or certificates required by this Article 11 of insurance shall not in any way relieve or limit the Company's obligations or liabilities under any provision of this Agreement.

11.5 Premia and Deductibles

The Company shall be solely responsible for the payment of all premia and deductibles under the policies of insurance maintained pursuant to this Article 11.

12. INDEMNIFICATION AND LIABILITY

12.1 Indemnity by the Company

In addition to the Company's obligations and Client's remedies provided elsewhere in this Agreement, the Company will bear responsibility for loss of or damage to property, death or injury to person, and any other liabilities, damages, losses and reasonable costs and expenses (including reasonable legal fees and expert witness fees) (or any claim against Client in respect thereof) suffered by Client:

- 12.1.1 during the design, financing, construction, ownership, operation or maintenance of the Complex resulting from any negligent act or omission of, or willful misconduct of, the Company;
- 12.1.2 in connection with, arising out of, or resulting from, any breach of warranty, misrepresentation by the Company, or non-performance of any term, condition, covenant or obligation to be performed by the Company under this Agreement or any other agreement comprising the Security Package; and
- 12.1.3 in connection with any claim, proceeding or action brought against Client under any applicable national or local environmental laws or regulations resulting from the Company's [lease/ownership] of the Site or the Company's ownership or operation of the Complex, including the discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from the Complex, the contamination of the soil, air, or water around the Site, or any pollution abatement, replacement, removal, or other decontamination or monitoring obligations with respect thereto.

The Company will hold Client fully indemnified in respect of the foregoing losses, damages, death, injuries, liabilities, costs and expenses; provided, however, that the Company's indemnities shall not extend to any loss, damage, death, injury, liability, costs or expenses (or any claim in respect thereof) to the extent that they were caused by any act or omission of Client or the failure of Client to take reasonable steps in mitigation thereof.

12.2 Indemnity by Client

In addition to Client's obligations and the Company's remedies provided elsewhere in this Agreement, Client will bear responsibility for loss of or damage to property, death or injury to person, and any other liabilities, damages, losses and reasonable costs and expenses (including reasonable legal fees and expert witness fees) (or any claim against the Company in respect thereof) suffered by the Company:

- 12.2.1 during the design, financing, construction, ownership, operation or maintenance of the Complex resulting from any negligent act or omission of, or willful misconduct of, Client;
- 12.2.2 in connection with, arising out of, or resulting from, any misrepresentation by Client or non-performance of any term, condition, covenant or obligation to be performed by Client under this Agreement; and
- 12.2.3 in connection with any claim, proceeding or action brought against the Company under any applicable national or local environmental laws or regulations resulting from Client's ownership or operation of the Interconnection Facilities or the Client Grid System, including the discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from the Interconnection Facilities or the Client Irrigation System, the contamination of the soil, air, or water around the Interconnection Facilities or the Client Irrigation System, or any pollution abatement, replacement, removal, or other decontamination or monitoring obligations with respect thereto.

Client will hold the Company fully indemnified in respect of the foregoing losses, damages, death, injuries, liabilities, costs and expenses; provided, however, that Client's indemnities shall not extend to any loss, damage, death, injury, liability, cost or expense (or any claim in respect thereof) to the extent that it was caused by any act or omission of the Company or the failure of the Company to take reasonable steps in mitigation thereof.

12.3 Joint Negligence

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

12.4 No Indemnification for Fines and Penalties

Any fines or other penalties incurred by a Party for non-compliance with Laws of Host Country shall not be reimbursed by the other Party but shall be the sole responsibility of the non-complying Party. The non-complying party shall have the right, but not the obligation, to contest or appeal any fines it believes have been imposed in violation of the Laws of Host Country.

12.5 Notice of Proceedings

Each Party shall promptly notify the other Party of any claim or proceeding in respect of which, but for the provisions of Section 12.6, it is entitled to be indemnified under this Section. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of such claim or proceeding.

12.6 Basket Limitation

Neither Party shall be entitled to make any claim under this Article 12 until such time as all such claims by such Party exceed [AMOUNT] in the aggregate or until such claim if not made would be barred by the relevant statute of limitations, at which time all such claims of that Party may be made; provided, however, that, when such claims have been made, the same rule shall apply in respect of future claims. Notwithstanding the foregoing, any claims outstanding at the termination or expiration of this Agreement may be brought at that time.

12.7 Conduct of Proceedings

Each Party shall have the right, but not the obligation, to contest, defend and litigate (and to retain legal advisers of its choice in connection therewith) any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the said indemnity; provided, however, that, the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense and through legal advisers of its choice if it (a) gives notice of its intention to do so to the other Party, (b) acknowledges in writing its obligation to indemnify that Party to the full extent provided by this Article 12, and (c) reimburses that Party for the reasonable costs and expenses previously incurred by it prior to the assumption of such defense by the indemnifying Party. Neither Party shall settle or compromise any claim, action, suit or proceeding in respect of which it is entitled to be indemnified by the other

Party without the prior written consent of that Party[, which consent shall not be unreasonably withheld or delayed]; provided, however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any such claim, action, suit or proceeding without the approval of the indemnified Party.

13. FORCE MAJEURE

13.1 Meaning of Force Majeure

In this Agreement, “Force Majeure” means any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party 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. 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:

13.1.1 natural events (“Force Majeure - Natural”) including:

- (a) acts of God; (including lightning, fire, earthquake, flood, storm, hurricane, cyclone, typhoon, tidal wave and tornado);
- (b) epidemic or plague;
- (c) explosion or chemical contamination (other than resulting from an event or circumstance described in Section 13.1.2(a)(i), in which case it shall be a Host Country Political Event); and
- (d) any event or circumstance constituting Force Majeure - Natural under the Implementation Agreement; and

13.1.2 other events of Force Majeure (“Force Majeure - Political”) including:

- (a) Force Majeure - Political which occurs inside or directly involves Host Country (“Host Country Political Events”) including:

- (i) 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;
 - (ii) nationwide strikes, works to rule or go-slows that extend beyond the Complex or are widespread or nationwide, or that are of a political nature, such as, by way of example and not limitation, labor actions associated with or directed against a Host Country political party, or those that are directed against the Company (or its Contractors) as a part of a broader pattern of labor actions against companies or facilities with foreign ownership or management;
 - (iii) any Change in Law;
 - (iv) radioactive contamination or ionizing radiation originating from a source in Host Country or resulting from another Host Country Political Event;
 - (v) any Lapse of Consent; and
 - (vi) any event or circumstance constituting a Host Country Political Event under the Implementation Agreement;⁷⁰ and
- (b) Force Majeure - Political which occurs outside Host Country and does not directly involve Host Country (“Foreign Political Events”) including:

- (i) 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;
- (ii) strikes, works to rule or go-slows that are widespread or nationwide;
- (iii) radioactive contamination or ionizing radiation originating from a source outside Host Country and not falling within Section 13.1.2(a)(iv); and
- (iv) any event or circumstance constituting a Foreign Political Event under the Implementation Agreement.

13.2 Notification and Obligation to Remedy.

In the event of the occurrence of a Force Majeure 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; (b) not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure; (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. Notwithstanding the occurrence of a Force Majeure, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure.

13.3 Consequences of Force Majeure

13.3.1 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 its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure continues to affect

materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement; provided, however, that no relief shall be granted to the Party claiming Force Majeure pursuant to this Section 13.3 to the extent that such failure or delay would have nevertheless been experienced by that Party had such Force Majeure not occurred; and provided further, that the Party not claiming Force Majeure may immediately terminate this Agreement without further obligation if Force Majeure delays a Party's performance for a period greater than (a) [_____] consecutive months prior to the Commercial Operations Date or (b) [_____] consecutive months after the Commercial Operations Date.

13.3.2 During the pendency of Force Majeure - Natural or a Foreign Political Event, the Company shall not be entitled to receive Capacity Payments or Water Payments [or Supplemental Payments] from Client; provided, however, that if such Force Majeure - affects only part of the Complex, then the Capacity Payments [and Supplemental Payments] during the pendency of such Force Majeure shall be pro-rated to reflect the portion of the Complex not affected thereby, and the Company shall be entitled to receive such pro-rated Capacity Payments [and Supplemental Payments] and Energy Payments for electrical energy actually delivered to Client.

13.3.3 During the pendency of a Host Country Political Event, the Company shall be entitled to receive Capacity Payments from Client at the same level as the Capacity Payments paid immediately prior to the Host Country Political Event for a maximum period of [_____] months commencing with the date of the occurrence of the Host Country Political Event; provided, however, that if the Host Country Political Event affects only part of the Complex, then the Capacity Payments during the pendency of such Host Country Political Event shall be the sum of (a) the payments previously described in this sentence pro-rated to reflect the portion of the Complex affected by the Host Country Political Event plus (b) Capacity Payments calculated in accordance with Article 9 pro-rated to reflect the portion of the Complex not affected by the Host Country Political Event.

14. TAXES

All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to the Company, the Complex, the Project and the Company's other assets shall be paid by the Company in a timely fashion. Nothing herein, however, shall in any way limit or override any provisions of Schedule 6 which allow or provide for certain taxes and charges to be treated as pass-through items. All present and future national, local or other lawful taxes, duties, levies, or other impositions applicable to Client arising from or in connection with its rights and obligations under this Agreement shall be paid by Client in a timely fashion.

15. DEFAULTS AND TERMINATION

15.1 Company Events of Default

Each of the following events shall be events of default by the Company (each a "Company Event of Default"), which, if not cured within the time permitted (if any) under Section 15.3, shall give rise to the right on the part of Client to terminate this Agreement pursuant to Section 15.4; provided, however, that no such event shall be a Company Event of Default hereunder if (a) it results from a breach by Client of this Agreement or (b) if it occurs as a result of a Force Majeure for the period provided pursuant to Section 13.3:

- 15.1.1 the failure of the Company to post the Construction Security in accordance with Section 9.4.1 on or before Financial Closing;
- 15.1.2 the failure of the Company to achieve the Commencement of Construction within [_____] Days after Financial Closing;
- 15.1.3 the Abandonment by the Company of the construction of the Complex after the Commencement of Construction without the written consent of Client;
- 15.1.4 the failure of the Company to achieve the Commercial Operations Date within [_____] after the Required Commercial Operations Date;
- 15.1.5 the failure of the Company to provide or replenish the Operations Security in accordance with Section 9.4.2 of this Agreement;
- 15.1.6 the Abandonment by the Company of the operation of the Complex without the written consent of Client;74

- 15.1.7 the appointment or replacement by the Company of a Construction Contractor or an O&M Contractor or any [material] amendment to or waiver of any terms of the Construction Contract or the O&M Contract without the prior consent of Client;
- 15.1.8 the assignment or transfer of this Agreement or an assignment, transfer or acquisition in breach of Section 17.1 or 17.2 of this Agreement;
- 15.1.9 any failure by the Company to make any payment or payments required to be made by it under this Agreement within
- 15.1.10[_____] Days after the Company is given notice that the payment was not made by the due date for payment; except for the purpose of amalgamation, reorganization or reconstruction (provided that such amalgamation, reorganization or reconstruction does not affect the ability of the amalgamated, reorganized or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events: (a) the passing of a resolution by the owners of the Company for the winding up of the Company; (b) the admission in writing by the Company of its inability generally to pay its debts as they become due; (c) the appointment of a provisional manager, trustee, liquidator or similar person in a winding up proceeding after notice to the Company and due hearing; or (d) the making by a court with competent jurisdiction over the Company of an order winding up the Company;
- 15.1.11 reduction of the Dependable Capacity to less than [___] m³/s for a period of at least twelve (12) consecutive Months; or
- 15.1.12any [material] breach by the Company of this Agreement, which breach has a [material and] adverse impact on Client.

15.2 Client Events of Default

Each of the following events shall be events of default by Client (each a “Client Event of Default”), which, if not cured within the time permitted (if any) under Section 15.3, shall give rise to the right on the part of the Company to terminate this Agreement pursuant to Section 15.4; provided, however, that no such event shall be a Client Event of Default hereunder if (a) it results from a breach by the Company

of this Agreement or (b) if it occurs as a result of a Force Majeure for the period provided pursuant to Section 13.3:

- 15.2.1 the expropriation, compulsory acquisition or nationalization by Government or any Public Sector Entity of (a) any shares in the Company, or (b) all or any substantial assets or rights of the Company;
- 15.2.2 except for the purpose of amalgamation, reorganization or reconstruction (provided that such amalgamation, reorganization or reconstruction does not affect the ability of the amalgamated, reorganized or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events: (a) the passing of a resolution by the shareholders of Client for the winding up of Client; (b) the admission in writing by Client of its inability generally to pay its debts as they become due; (c) the appointment of a provisional manager, trustee, liquidator or similar person in a winding up proceeding after notice to Client and due hearing; or (d) the making by any court with competent jurisdiction over Client of an order winding up Client;
- 15.2.3 any failure by Client to make any payment or payments required to be made by it under this Agreement within [_____] Days after Client is given notice that the payment was not made by the due date for payment;
- 15.2.4 the assignment or transfer of this Agreement or an assignment, transfer or acquisition in breach of Section 17.1 of this Agreement; or
- 15.2.5 any [material] breach by Client of this Agreement, which breach has a [material and] adverse impact on the Company.

15.3 Notice and Cure

- 15.3.1 In the case of a Client Event of Default or a Company Event of Default (each, an “Event of Default”), as the case may be, set forth in Section 15.1 or Section 15.2, the defaulting Party shall have [_____] Days to cure the Event of Default. If such Event of Default is incapable of being cured within that period, the defaulting Party may request from the non-defaulting Party an additional period of [_____] Days to cure the Event of Default, and approval by the non-defaulting Party of such request shall not be unreasonably withheld or delayed. The defaulting Party shall furnish to the

non-defaulting Party during any cure period weekly reports on its progress in curing the Event of Default.

15.3.2 Upon occurrence of an Event of Default that is not cured within the applicable period (if any) for cure, the non-defaulting Party may, at its option, initiate termination of this Agreement by delivering a written notice (“Notice of Default”) of its intent to terminate this Agreement to the defaulting Party. A Notice of Default shall specify in reasonable detail the Event of Default giving rise to the Notice of Default.

15.4 Rights and Remedies Upon an Event of Default

15.4.1 If a Company Event of Default has occurred and the Company Event of Default has not been cured within the period specified in Section 15.3, Client, in its sole discretion, may:

(a) terminate this Agreement by delivering written notice to the Company; and/or

(b) proceed in accordance with Article 16 to protect and enforce its rights, to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy); and/or

(c) retain all or part of the Construction Security and/or the Operations Security provided by the Company pursuant to Section 9.4 in full or partial satisfaction of the damages to which it may be entitled under subsection (b) above; and/or

(d) purchase the Complex pursuant to Section 15.5.

These rights and remedies shall not be exclusive but, to the extent permitted by law, shall be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise; provided, however, that Client may seek to exercise such rights and remedies only in accordance with the procedures set forth in Article 16. Client may exercise each right and remedy afforded by this Agreement or by law from time to time and as often as may be deemed expedient by Client. No delay by, or omission of, Client to exercise any right or remedy arising upon any Company

Event of Default shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

15.4.2 If a Client Event of Default has occurred and the Client Event of Default has not been cured within the period specified in Section 15.3, the Company, in its sole discretion, may:

- (a) terminate this Agreement by delivering written notice to Client; and/or
- (b) proceed in accordance with Article 16 to protect and enforce its rights and to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy); and/or
- (c) retain all or part of any Letter of Credit issued pursuant to Section 9.7 or make a demand under the Guarantee, in either case, in full or partial satisfaction of the damages to which it may be entitled under subsection (b) above.

These rights and remedies shall not be exclusive but, to the extent permitted by law, shall be cumulative and in addition to all other rights and remedies existing at law, in equity or otherwise; provided, however, that the Company may seek to exercise such rights and remedies only in accordance with the procedures set forth in Article 16. The Company may exercise each right and remedy afforded by this Agreement or by law from time to time and as often as may be deemed expedient by the Company. No delay by, or omission of, the Company to exercise any right or remedy arising upon any Client Event of Default shall impair any such right or remedy or constitute a waiver of such event or an acquiescence thereto.

15.5 Option to Purchase

15.5.1 If this Agreement terminates because of a Company Event of Default pursuant to Section 15.4.2, then Client shall have an option to purchase the Complex (including materials, records, drawings and spare parts) at a purchase price equal to the value of the Complex which shall be the greater of (a) the fully depreciated value of the Complex or (b) the remaining debt service under the Loan Documents minus, in either case

(a) or (b), any liquidated damages or other Damages and accrued interest thereon to which Client is entitled (the "Termination Purchase Price"). Said option may be exercised by Client at any time within [_____] Days after the termination of this Agreement by written notice to the Company. If the Company and Client do not agree on the Termination Purchase Price within [_____] Days following Client's exercise of the above option, then either Party may submit the determination of the Termination Purchase Price for expert determination in accordance with Section 16.2. As soon as practicable following the receipt of said notice by the Company, but in no event later than [_____] Days after the Termination Purchase Price has been fixed, the Company shall transfer and assign to Client all of its right, title and interest in the Complex, free and clear of all liens, charges and encumbrances except the liens, charges and encumbrances created under the Loan Documents, and Client shall simultaneously pay to the Company the Termination Purchase Price and assume the outstanding debt under the Loan Documents.

15.5.2 Upon the written request of Client, the Company shall sign, execute and deliver, or cause to be signed, executed and delivered, and do or make, or cause to be done or made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be required by Client for the purpose of or in connection with the option set forth in Section 15.5.1, including transferring to Client, for the major items of plant incorporated into the Complex, copies of all manufacturers' specifications, manufacturers' operation and maintenance manuals, schedules of protection schemes and protective relay settings, and signed and sealed copies of all as-built drawings for the Complex, including the civil and architectural works.

15.6 Obligations Upon Termination

Upon expiration or termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for those obligations and liabilities that (a) arose prior to such termination, or (b) expressly survive such termination pursuant to Section 19.13.

16. RESOLUTION OF DISPUTES

16.1 Mutual Discussions

If any dispute or difference of any kind whatsoever (the “Dispute”) shall arise between the Client and the Company in connection with, or arising out of, this Agreement, the Parties shall attempt in good faith to settle such Dispute in the first instance within [_____] Days by mutual discussions between the Company and Client, which may include referring the Dispute to the Operating Committee for resolution within such [_____] Day period.

16.2 Referral to an Expert

16.2.1 If the Dispute cannot be settled within the period allowed in Section 16.1 and

- (a) referral to an expert is required by this Agreement;
- or
- (b) the Parties otherwise agree in writing,

in each case, the Dispute shall be referred to an expert for determination.

16.2.2 The Party specified in the relevant provision as having the right (or either Party if no single Party is so specified) may give notice (“Notice of Intention to Refer”) to the other Party of its intention to so refer the Dispute. The Party giving that notice is referred to herein as the “Applicant”, and the Party to whom such notice is given is referred to herein as the “Respondent”.

16.2.3 A Notice of Intention to Refer shall include, inter alia:

- (a) a description of the Dispute;
- (b) the grounds on which the Applicant relies in seeking to have the Dispute determined in its favor; and
- (c) all written material which the Applicant proposes to submit to the expert;

provided however, that this Section 16.2.3 shall not be construed so as to prevent the Applicant from using or producing further written material

which comes into existence or comes to the Applicant's attention after the Notice of Intention to Refer is given, but in such event the Respondent shall be allowed a reasonable time to respond thereto.

16.2.4 The Respondent shall within [_____] Days after service of the Notice of Intention to Refer, give to the Applicant a notice (“Notice of Intention to Defend”) of intention to defend which shall include, inter alia:

(a) the grounds upon which the Respondent relies in seeking to have the question determined in its favor; and

(b) all written material that the Respondent proposes to submit to the expert;

provided, however, that this Section 16.2.4 shall not be construed so as to prevent the Respondent from using or producing further written material which comes into existence or comes to the Respondent's attention after the Notice of Intention to Defend is given but in such event the Applicant shall be allowed a reasonable time to respond thereto.

16.2.5 If within [_____] Days after service of a Notice of Intention to Defend, the Parties have agreed on an expert and on the terms under which the Dispute shall be referred, the Dispute shall be so referred. In the event that the Parties are unable within [_____] Days after service of a Notice of Intention to Defend to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request (a) for all Disputes involving invoices or amounts owed by one Party to the other, the [INSTITUTE OF CHARTERED ACCOUNTANTS OF HOST COUNTRY] and (b) for all Disputes other than Disputes involving invoices or amounts owed by one Party to the other, the then presiding president of the [ASSOCIATION OF ENGINEERS OF HOST COUNTRY], in either case, to appoint an expert, and the terms of reference of such expert's appointment shall be those set out in the Notice of Intention to Refer and the Notice of Intention to Defend; provided, however, that no expert appointed pursuant to this Section 16.2 shall be a national of the jurisdiction of either Party to this Agreement⁸⁵ or of the jurisdiction of any of the Initial Shareholders (nor shall such expert be a former employee or agent of any such person).

- 16.2.6 Within [_____] Days of the appointment of the expert, the expert shall nominate a time and place in the Host Country for a hearing of the Parties on the Dispute, which time shall not be more than [_____] Days after the expert's appointment.
- 16.2.7 The Parties shall not be entitled to apply for discovery of documents but shall be entitled to have access to the other Party's records and data in accordance with Section 6.10.
- 16.2.8 At the time nominated for the hearing, each Party must appear before the expert and present its case.
- 16.2.9 The expert must render his decision on the Dispute as soon as possible after completion of the hearing and must forthwith advise the Parties in writing of his determination and his reasons therefor.
- 16.2.10 The proceedings shall be without prejudice and any evidence given or statements made in the course of the hearing may not be used against a Party in any other proceedings.
- 16.2.11 The proceedings shall not be regarded as an arbitration and the laws relating to commercial arbitrations shall not apply; provided, however, that the expert shall resolve the Dispute in accordance with the Laws of Host Country.
- 16.2.12 Once a Dispute is referred to an expert, the expert may shorten any of the time periods required by this Section 16.2 if, in the expert's best judgment, the Dispute requires expeditious resolution.
- 16.2.13 The decision of the expert shall be final and binding upon both Parties upon the delivery to them of the expert's written determination, save in the event of fraud, serious mistake or miscarriage.
- 16.2.14 If the expert does not render a decision within a period of [_____] Days of his appointment or such longer or shorter period as the Parties may agree in writing, either Party may, upon giving notice to the other, terminate such appointment, and a new expert shall be appointed who shall resolve the Dispute in accordance with the provisions of this Section 16.2. If the Dispute is not resolved by one or more experts within [_____] months after the receipt by the Respondent of the Notice of Intention to Refer, then either

Party may refer the Dispute for arbitration in accordance with this Agreement.

16.2.15 The costs of engaging an expert shall be borne equally by the Parties and each Party shall bear its own costs in preparing materials for, and making presentations to, the expert.

16.3 Arbitration

16.3.1 Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Sections 16.1 and 16.2 shall (regardless of the nature of the Dispute but without prejudice to the provisions of this Agreement requiring any matter to be referred to an expert for final determination) be referred to arbitration and finally settled in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "Convention") and the Rules of Procedure for Arbitration Proceedings of the International Centre for Settlement of Investment Disputes (the "Centre") established by the Convention (the "ICSID Rules") and the Parties hereby consent to arbitration thereunder.⁸⁶ The Parties agree and acknowledge that the Company shall be deemed a foreign controlled company for the purposes of consenting to the jurisdiction of the Convention so long as not less than thirty-five percent (35%) of the shares of the Company are held by Foreign Investors. Arbitration proceedings conducted pursuant to this Section 16.3.1 shall be held at [LOCATION] in Host Country.

16.3.2 As from the date on which the shareholding of the Foreign Investors falls below [_____] % of the [shares of the Company], then the dispute shall be finally settled by arbitration under the [ARBITRATION ACT OF HOST COUNTRY]. Arbitration proceedings conducted pursuant to this Section 16.3.2 shall be held at [LOCATION] in Host Country.

16.3.3 No arbitrator appointed pursuant to Section 16.3 shall be a national of the jurisdiction of either Party to this Agreement or of the jurisdiction of any of the Initial Shareholders (nor shall any such arbitrator be an employee or agent or former employee or agent of any such person).

16.3.4 The language of any arbitration under Section 16.3.1 or Section 16.3.2 shall be [_____].

16.3.5 Each Party hereby agrees to be bound by any final decision or award of any arbitrator(s) duly appointed under this Agreement.

16.3.6 Except as awarded by the arbitrator(s), each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder.

16.4 Waiver of Sovereign Immunity

Client unconditionally and irrevocably:

16.4.1 agrees that the execution, delivery and performance by it of this Agreement and those agreements included in the Security Package to which it is a Party constitute private and commercial acts rather than public or governmental acts;

16.4.2 agrees that, should any proceedings be brought against it or its assets other than assets protected by the diplomatic and consular privileges under the [RELEVANT SOVEREIGN IMMUNITY ACTS] (“Excepted Assets”) in any jurisdiction in relation to this

16.4.3 Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets (other than Excepted Assets);

16.4.4 consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any property whatsoever irrespective of its use or intended use).

16.5 Service of Process

With respect to any proceedings for enforcement of an award pursuant to this Article 16 against assets of either Party brought in the courts of [_____]:

16.5.1 the Company appoints [_____], whose address is presently [_____], to

receive for and on its behalf service of process in such jurisdiction in any such enforcement proceedings;

16.5.2 the Company agrees to maintain in [_____] duly appointed process agents, notified to Client for the purposes of Section 16.5.1 above;

16.5.3 Client appoints [_____] whose address is presently [_____], to receive for and on its behalf service of process in such jurisdiction in any such enforcement proceedings;

16.5.4 Client agrees to maintain in [_____] duly appointed process agents, notified to the Company for the purposes of Section 16.5.3 above; and

16.5.5 each Party agrees that failure by any such process agent to give notice of any process to it shall not impair the validity of such service or of any judgment based thereon.

16.6 Continued Performance

During the pendency of any Dispute being handled in accordance with this Article 16, (a) the Company shall continue to perform its obligations under this Agreement to deliver Dependable Capacity and Net Water Delivery, (b) Client shall continue to pay all amounts due in accordance with Article 9 that are not in dispute, and (c) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute.

17. ASSIGNMENT

17.1 Right to Assignment

17.1.1 The Company may not assign or transfer its rights or obligations under, pursuant to or associated with (a) this Agreement, (b) the Complex,⁸⁸ (c) the Site, (d) the movable property and intellectual property of the Company, or (e) the revenues or any of the rights or assets of the Company, in each of subsections (a) through (e) without the prior written consent of [Client/Government].⁸⁹ Notwithstanding the foregoing sentence, the Company may assign or transfer (i) assets that, during any Financial Year, do not have an aggregate net book value of an amount equivalent to [AMOUNT]; provided, however, that such assets are sold, transferred or otherwise disposed of on an arm's length basis at full market price and that such sale, transfer or disposal shall

not impair the operation of the Project and (ii) obsolete or worn out assets no longer used or useful in its business or assets that are promptly replaced by assets of a similar nature and approximately equal value.

17.1.2 Client shall not assign its rights or obligations under this Agreement without the prior written consent of the Company [, which consent shall not be unreasonably withheld or delayed]; provided, however, that any such assignee of Client shall have the ability to perform all of Client's obligations and duties under this Agreement.

17.2 Creation of Security

17.2.1 Notwithstanding the provisions of Section 17.1.1, for the purpose of financing the construction, operation and maintenance of the Complex, the Company may assign or create security over its rights and interests under, pursuant to or associated with the assets identified in Section 17.1.1(a) through (f); provided, however, that the Company shall not create any such security without the prior written consent of [Client/Government][, which consent shall not be unreasonably withheld or delayed]. Client shall execute all such acknowledgments of any security created in accordance with the foregoing sentence as are reasonably requested by the Company to give effect to the foregoing sentence.

17.2.2 Client shall use all reasonable efforts to execute, acknowledge and deliver any and all further documents and instruments, and to take any other actions, which may be necessary to satisfy the reasonable requests of any Lenders or prospective Lenders in connection with the financing or refinancing of the Project, including executing and delivering to the Lenders a consent to assignment (or other form of direct agreement) concerning the Project between Client and the Lenders in form and substance satisfactory to the Lenders. The foregoing sentence shall not be construed to require Client to execute, acknowledge and deliver any further documents and instruments, or to take any other actions, which are inconsistent with its rights under this Agreement or which are expressly subject to its consent or approval under this Agreement.

18. NOTICES

18.1 Address for Notices

Any notice, communication, request or correspondence (each a “notice”) required or permitted under the terms and conditions of this Agreement shall be in writing, in the English language (it being understood that any such communication or paper in a language other than English shall be of no force or effect), and shall be (a) delivered personally, (b) transmitted by telefacsimile and either (i) recipient acknowledges receipt to sender or (ii) sender delivers to recipient a transmission confirmation; or (c) sent by an internationally-recognized overnight mail or courier service, with delivery receipt requested, to the following addresses:

If to Client:

Address: _____

Telefax No.: _____
Attention: _____

If to the Company:

Address:

Telefax No.:
Attention:

or such other address and/or telefacsimile number as either Party may previously have notified to the other Party in accordance with this Section 18.1.

18.2 Effectiveness of Service

Notices shall be effective: (a) in the case of personal delivery, when received by the recipient; (b) in the case of transmission by telefacsimile, if receipt of the transmission occurs before [TIME] recipient’s time and recipient receives a transmission confirmation or otherwise acknowledges transmission, upon receipt of transmission, or if receipt of the facsimile transmission occurs after [TIME] recipient’s time and recipient receives a transmission confirmation or otherwise acknowledges transmission, the next succeeding Business Day, or (c) in the case of an internationally-recognized and reputable priority courier, [four (4)] days after dispatch.

19. MISCELLANEOUS PROVISIONS

19.1 Variations in Writing

All additions, amendments or variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of both Parties.

19.2 Entire Agreement

This Agreement and all Schedules thereto together represent the entire understanding between the Parties in relation to the subject matter thereof and supersede any or all previous agreements or arrangements between the Parties in respect of the Complex (whether oral or written).

19.3 Severability

In the event that any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or of the same provisions in any other jurisdiction shall not in any way be affected or impaired thereby.

19.3 Waivers

19.4.1 No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall (a) operate or be construed as a waiver of any other or further default whether of a like or different character (b) be effective unless in writing duly executed by an authorized representative of such Party.

19.4.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

19.4 Confidentiality

19.5.1 Each of the Parties shall hold in confidence all documents and other information, whether technical or commercial, relating to the Project or the design, financing, construction, ownership, operation or maintenance of the Complex that is of a confidential nature and that is supplied to it by or on behalf of the other Party. The Party receiving such documents or information shall not publish or otherwise disclose them or use them for its own purposes (otherwise than as may be

required by it, its professional advisers, or potential or actual lenders or investors to perform its obligations under this Agreement).

19.5.2 The provisions of Section 19.5.1 above shall not apply to any information: (a) which is or becomes available to the public other than by breach of this Agreement; (b) which is in or comes into the possession of the receiving Party prior to the aforesaid publication or disclosure and which was not or is not obtained under any obligation of confidentiality; (c) which was or is obtained from a third party who is free to divulge the same and which was or is not obtained under any obligation of confidentiality; or (d) which is required by law or appropriate regulatory authorities to be disclosed; provided, however, that the Party supplying the information is notified of the requirement set forth in subclause (d) at least [_____] Business Days prior to such disclosure and the disclosure is limited to the maximum extent possible.

19.5.3 For the avoidance of doubt, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement and the other agreements referred to herein in any agreements prepared and issued in connection with other projects.

19.6 Successors and Assigns

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

19.7 No Liability for Review

No review or approval by Client of any agreement, document, instrument, drawing, specifications or design proposed by the Company shall relieve the Company from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with the applicable Laws of Host Country with respect thereto, nor shall Client be liable to the Company or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design. Furthermore, Client shall not be liable to the Company or any other person by reason of its observation or inspection of, or any suggestions relating to, the construction, testing, operation or maintenance of the Complex.

19.8 Consequential Damages

Neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for indirect, consequential, punitive or exemplary damages resulting from the performance of obligations or the exercise of rights under or pursuant to this Agreement.

19.9 No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties hereto and, except for rights expressly granted to the Lenders or other persons, nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, any liability to, or any right of suit or action in, any person not a Party to this Agreement.

19.10 Affirmation

The Company and Client declare and affirm that neither Party has paid nor has it undertaken to pay and that it shall in the future not pay any bribe, pay-offs, kick-backs or unlawful commission and that it has not in any other way or manner paid any sums, whether in Local Currency or Foreign Currency and whether in Host Country or abroad, or in any other manner given or offered to give any gifts and presents in Host Country or abroad to any person or company to procure this Agreement, and the Company and Client undertake not to engage in any of the said or similar acts during the term of and relative to this Agreement.

19.11 Governing Law

This Agreement and the rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to the laws of Host Country.

19.12 Relationship of the Parties

This Agreement shall not make either of the Parties partners or joint venturers one with the other, nor make either the agent of the other. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or the otherwise bind, the other Party.

19.13 Survival

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including the rights and obligations, warranties, remedies, promises of indemnity and confidentiality set forth in Sections 9.3.6, 9.4, and 19.5 and Articles 12, 15 and 16.

19.14 Language

The language for the purpose of administering this Agreement, including any expert proceeding or arbitration hereunder, shall be [_____].

19.15 Good Faith

In carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith.

IN WITNESS whereof the Parties have entered into this Agreement the date first above written.

[NAME OF POWER
PURCHASER]

By: _____

Name: _____

Title: _____

WITNESSED BY:

By: _____

Name: _____

[NAME OF POWER SUPPLIER]

By: _____

Name: _____

Title: _____

WITNESSED BY:

By: _____

Name: _____

SCHEDULE 1

DEFINITIONS

Whenever the following terms appear in this Agreement or the Schedules hereto, whether in the singular or in the plural, present, future or past tense, they shall have the meanings stated below unless the context otherwise requires:

“Abandonment” - Either (a) the cessation of substantially all activities relating to the construction or operation and maintenance of the Complex, as appropriate (except a cessation that is the direct result of a local strike which occurred and continued despite the reasonable actions or inactions of the Company or its Contractors), or (b) the physical absence of substantially all employees of the Company and its Contractors from the Site after the commencement of excavation for the foundations of the Complex, in either case (a) or (b) for at least [_____] consecutive hours.

“Agreement” - This Power Purchase Agreement, including all Schedules thereto, as amended or supplemented from time to time.

“AIDC” - The Dependable Capacity of the Complex as established at the Commercial Operations Date in accordance with Article 10 and Schedule 4.

“Applicant” - The Party that served a Notice of Intention to Refer pursuant to Section 16.2.2.

“Base Rate” - [DESCRIBE BASE INTEREST RATE]. Whenever the Base Rate is applied, the interest shall be compounded [_____], computed for the actual number of Days elapsed on the basis of a 365-Day year.

“Backup Metering System” - The meaning ascribed thereto in Section 8.1.2.

“Business Day” - A day on which business by and between banks may be carried on in [LOCATION] in Host Country.

“Capacity Payment” - The meaning ascribed thereto in Section 9.1.1.

“Capacity Purchase Price” - The price which Client will pay to the Company per m³/s for Dependable Capacity as determined in accordance with Schedule 6 hereto.

“Centre” - The meaning ascribed thereto in Section 16.3.1.

“Change in Law” - The (a) the adoption, promulgation, modification or re-interpretation after [DATE] by any Public Sector Entity of any Law of Host Country (including a decision of a Public Sector Entity after [DATE], which amends or conflicts with the Laws of Host Country established or in effect as of [DATE] or (b) the imposition after [DATE] by a Public Sector Entity of any term or condition in connection with the issuance, renewal, extension, replacement or modification of any Consent, that in either case establishes requirements for the construction, operation or maintenance of the Complex that are more restrictive or more onerous than the most restrictive or most onerous requirements in effect as of [DATE].

“Change Order” - Any change order to be given to the Construction Contractor under the Construction Contract which relates to a component of the physical work-in-progress at the Site and which is an WPA Amended Document.

“Commencement of Construction” - The initiation of the construction of the Complex as evidenced by the Company's (a) issuance of the Notice to Proceed under the Construction Contract and (b) making of the Initiation Payment.

“Commercial Operations Date” - The date on which the entire Complex is Commissioned in accordance with Section [____] of Schedule 4.

“Commissioned” - The state or act of successful completion of Commissioning of the Complex.

“Commissioned Shortfall” - The difference between (a) the Dependable Capacity of the Complex on the Commercial Operations Date if less than [____] m³/s and (b) [____] m³.

“Commissioning” - Engaging in the operations required for testing of the Complex in accordance with Section [__] of Schedule 4.

“Company Event of Default” - An event described in Section 15.1 for which Client may issue a Notice of Default to the Company.

“Complex” - The canal or the pipes connected to the feeder canal of SVIP to deliver water to the irrigation system of the Client.

]

“Complex Hour” - Each hour of partial or complete interruption of the operation of the Complex.

“Consents” - All such approvals, consents, authorizations, grants or certificates of registration, notifications, concessions, acknowledgments, agreements, licenses, permits, decisions or similar items required to be obtained from any Public Sector Entity or other relevant governmental entity for the Company or for the construction, financing, ownership, operation and maintenance of the Complex.

“Construction Contract” - The agreement to be entered into by the Company for the design, manufacture, construction and Commissioning of the Complex.

“Construction Contractor” - The party or parties to the Construction Contract other than the Company.

“Construction Security” - The meaning ascribed thereto in Section 9.4.1.

“Contract Price” - The price for the design, manufacture, construction and Commissioning of the Complex specified under the Construction Contract.

“Contractor” - Any contractor employed by the Company in the design, manufacture, construction, operation or maintenance of the Complex or any part thereof.

“Convention” - The meaning ascribed thereto in Section 16.3.1.

“Damages” - Any actual damages agreed upon by the Parties or established pursuant to any dispute resolution procedure described in Article 16.

“Day” - The 24-hour period beginning and ending at 12:00 midnight in [HOST COUNTRY TIME].

“Declared Available Capacity” - The estimated net capacity in m³/s of the Complex announced daily by the Company pursuant to Section 6.2.2 which shall equal the Dependable Capacity, less any reductions due to Scheduled Interruptions, Forced Interruptions and Maintenance Interruptions.

“Default Rate” - The Base Rate plus [_____] percent per annum. Whenever the Default Rate is applied, the interest shall be compounded [_____] , computed for the actual number of Days elapsed on the basis of a 365-Day year.

“Dependable Capacity” - The sustained capacity in m³/s from the Complex as declared by the Company in writing to Client according to Section 10.3.

“Dispatch” - The instructions issued by Client in accordance with this Agreement for the Company to schedule and control the operation of the Complex in order to increase or decrease the water delivered to the Client Irrigation System.

“Dispute” - The meaning ascribed thereto in Section 16.1.

“Dispute Notice” - The meaning ascribed thereto in Section 9.6.2.

“Emergency” - A condition or situation that, in the reasonable opinion of either Party, does materially and adversely, or is likely materially and adversely to (a) affect the ability of Client to maintain safe electrical service to its customers, having regard to the then-current standard of electrical service provided to its customers, or (b) present a physical threat to persons or property.

“Water Payment” - The meaning ascribed thereto in Section 9.2.2.

“Water Purchase Price” - The price which Client will pay to the Company per m³ for Net Water Delivery in accordance with Article 9 as determined in accordance with Schedule 6 hereto.

“Excepted Assets” - The meaning ascribed thereto in Section 16.4.2.

“Financial Closing” - The signing of the Loan Documents and the fulfillment of all conditions precedent to the initial availability of funds thereunder.

“Financial Year” - The period from January 1st to December 31st or such other period as may be selected by the Company.

“Forced Interruption” - Any partial or complete interruption of a Unit's generating capability that is not the result of (a) a request by Client in accordance with this Agreement; (b) a Scheduled Interruption or a Maintenance Interruption; or (c) an event or occurrence of Force Majeure.

“Force Majeure” - An event or occurrence specified in Article 13.

“Force Majeure - Natural” - The meaning ascribed thereto in Section 13.1.1.

“Force Majeure - Political” - The meaning ascribed thereto in Section 13.1.2.

“Foreign Currency” or - The lawful currency of [_____].

“Foreign Investor” - Any Initial Shareholder of the Company who is a non-resident of Host Country.

“Foreign Political Events” - The meaning ascribed thereto in Section 13.1.2(b).

“Government” – Government of the Republic of Malawi.

“Guarantee” - The guarantee provided by the Government under the Implementation Agreement, pursuant to which the Government guarantees the payment obligations arising out of the breach, default or non-performance of Client under this Agreement.

“Host Country” - Malawi.

“Host Country Political Events” - The meaning ascribed thereto in Section 13.1.2(a).

“ICC Rules” - The meaning ascribed thereto in Section [_____].

“ICSID Rules” - The meaning ascribed thereto in Section 16.3.1.

“Implementation Agreement” - The [DESCRIBE FULL NAME AND DATE OF IMPLEMENTATION AGREEMENT] entered into between Government and the Company.

“Improved Loan Conditions” - The meaning ascribed thereto in Section [_____].

“Initiation Payment” - The Company's first payment to the Construction Contractor under the Construction Contract which shall be at least [_____] percent of the original Contract Price.

“Initial Shareholders” - The shareholders of the Company identified as follows:[INSERT NAMES OF INITIAL SHAREHOLDERS OF THE COMPANY].

“Insurance Event” - The meaning ascribed thereto in Section [_____].

“Interconnection Facilities” - All the facilities on the high side of the Complex described in Schedule 3 to be constructed by or for Client to enable it to receive and deliver capacity and water in accordance with this Agreement plus the Metering System.

“Interconnection Point” - The physical point(s) where the Complex and the Client Irrigation System are connected as specified in Schedule 3.

“m³” – Cubic meters.

“Lapse of Consent” - Any Consent (a) ceasing to remain in full force and effect, or (b) at any time prior to [DATE], not being issued or renewed upon application having been properly and timely made and diligently pursued, or (c) from and after [DATE], not being issued or renewed within the period of time prescribed by applicable Laws of Host Country as applied in a non-discriminatory manner and, in any event, within [_____] months after the date of proper and complete application therefor, or (d) being made subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Company's and/or the Contractors' ability to perform its or their obligations (including the making available by the Company of Dependable Capacity and Net Energy Output as described in Article 2) under any document included in the Security Package; provided, however, that in no event shall any Lapse of Consent occur as a result of the Government or any Public Sector Entity exercising any power pursuant to the Laws of Host Country to take any of the actions referred to in sub-sections (a) to (d) above as a result of the Company or any other party to whom a Consent is granted failing to abide by any term or condition of any Consent.

“Law” - Any law, act, requirement (including license and permit requirements), ordinance, code, order, rule, resolution or regulation of any governmental authority or agency (federal, national, provincial, municipal, local or other) that is at any time applicable to the Company, the Complex, the Project, the Site, or any part thereof, and shall include the Laws of Host Country and all applicable environmental standards and hazardous waste laws, as any such law, act, requirement, ordinance, rule, resolution or regulation or standard may be amended from time to time.

“Laws of Host Country” - The national, provincial and local laws of Host Country all orders, rules, regulations, executive orders, decrees, policies, judicial decisions, notifications or other similar directives made pursuant thereto, as such laws, orders, rules, regulations, decrees, policies, judicial decisions and notifications or other similar directives may be amended from time to time.

“Lenders” - The lenders party to the Loan Documents and the persons who, from time to time, make other credit facilities available to the Company, together, in each case, with their respective successors and permitted assigns.

“Letter of Credit” - A letter of credit provided by Client pursuant to Section 9.7.

“Liquidated Damages Due Date” - The meaning ascribed thereto in Section 9.5.

“Liquidated Damages Notice” - The meaning ascribed thereto in Section 9.5.

“Loan Documents” - The loan agreements, notes, indentures, security agreements, interest rate hedging agreements, guarantees and other documents entered or to be entered into relating to the construction and permanent financing (including financing of working capital requirements and refinancing and provision of letters of credit for construction and permanent financing) of the Complex or any part thereof.

“Local Currency” - The lawful currency of Host Country.

“Maintenance Interruption” - An interruption or reduction of a Unit's or the Complex's generating capability that (a) is not a Scheduled Interruption; (b) has been scheduled and allowed by Client in accordance with Section 6.4; and (c) is for the purpose of performing work on specific components, which work could be postponed by at least [_____] Days but should not be postponed until the next Scheduled Interruption.

“Maintenance Reserve” - The meaning ascribed thereto in Section [_____].

“Major Overhaul Year” - The meaning ascribed thereto in Section [_____].

“Major Owner” - Any Initial Shareholder or any person or other legal entity that (a) owns or otherwise holds or acquires control of, or (b) by virtue of a contemplated

purchase or other transfer will own, in either case, [_____] percent or more of the shares of, or voting rights in, the Company.

“Metering System” - All meters and metering devices owned by Client and used to measure the delivery and receipt of Net Energy Output and Dependable Capacity.

“Minimum Functional Specifications” - The minimum functional specifications (including the technical limits of the Complex) for the construction and operation of the Complex as set forth in Schedule 2 hereof.

“Month” - A calendar month according to the Gregorian calendar beginning at 12:00 midnight on the last day of the preceding month and ending at 12:00 midnight on the last day of that month.

“Net Water Output” - Net water delivered by the Company for sale to Client at the Interconnection Point in accordance with Client Dispatch as measured in accordance with Section 8.4.

“Notice of Default” - The meaning ascribed thereto in Section 15.3.2.

“Notice of Intention to Defend” - The meaning ascribed thereto in Section 16.2.4.

“Notice of Intention to Refer” - The meaning ascribed thereto in Section 16.2.2.

“Notice to Proceed” - The meaning ascribed thereto under the Construction Contract.

“O&M Contract” - The agreement between the Company and the O&M Contractor for the operation and maintenance of the Complex.

“O&M Contractor” - The company which the Company may from time to time appoint to operate and maintain the Complex.

“On-Going Dependable Capacity Shortfall” - The amount, if any, by which the Dependable Capacity is below the AIDC.

“Operating Committee” - The committee established pursuant to Section 6.9 for the purpose of determining operating standards and procedures for the Complex.

“Operations Security” - The meaning ascribed thereto in Section 9.4.2.

“Operating Year”- That period of time (i) with respect to the first Operating Year of the Project, beginning on the Commercial Operations Date and ending at 11:59 p.m. on December 31st of the same Year; (ii) with respect to succeeding Operating Years until the last Operating Year, a full Year; and (iii) with respect to the last Operating Year, that period of time from the end of the preceding Operating Year through the termination date of this Agreement.

“Parties” - Both Client and the Company

“Party” - Either Client or the Company.

“Peak Months” - The Months of [_____].

“Premium Date” - The meaning ascribed thereto in Section [_____].

“Project” - The development, design, engineering, manufacture, financing, acquisition of the Site, construction, permitting, completion, testing, Commissioning, insurance, ownership, operation and maintenance of the Complex and all activities incidental thereto.

“Prudent Client Practice” - The practices generally followed from time to time by the electric Client industry (including practices generally followed by independent water producers) in Host Country, having regard to engineering and operational considerations, including manufacturers' recommendations. Prudent Client Practice is not limited to optimum practices, methods or acts to the exclusion of all others, but rather is a spectrum of possible practices, methods and acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety.

“Public Sector Entity” - The Government and any subdivision thereof, any provincial or local governmental authority with jurisdiction or authority over the Company, the Contractors, the Lenders or the Project or any part thereof, any department, authority, instrumentality, agency or judicial body of the Government or any such provincial or local governmental authority, and any court, tribunal or independent regulatory agency or body in Host Country having jurisdiction over the Company, the Contractors, the Lenders or the Project or any part thereof.

“Required Commercial Operations Date” - The date on which the Complex is required to be Commissioned which shall be [_____].

“Respondent” - The Party on whom a Notice of Intention to Refer has been served in accordance with Section 16.2.2.

“Savings” - The meaning ascribed thereto in Section [_____].

“Scheduled Commercial Operations Date” - The date which the Company identifies to Client as the date the Complex will be Commissioned, as such date may be revised from time to time based on the scheduled construction program.

“Scheduled Interruption” - A planned partial or complete interruption of the Complex's generating capability that (a) is not a Maintenance Interruption; (b) has been scheduled and allowed by Client in accordance with Section 6.3; and (c) is for inspection, testing, preventive maintenance, corrective maintenance or improvement.

“Security Package” - All of the agreements identified in Schedule 9 that are entered into in furtherance of the design, financing, construction, ownership, operation and maintenance of the Complex and that form part of the security granted to the Lenders.

“Site” - The land, spaces, waterways, roads, water wells and any rights acquired or to be acquired by the Company for the purposes of the Complex on, through, above or below the ground on which all or on any part of the Complex is to be built, (including any working areas required by the Company and the Contractors, villages, townships and camps for the accommodation of the employees of the Company and the Contractors, and all rights of way and access from public highways and, where applicable, railway and seaward access).

“Supplemental Payments” - The amount which Client will pay to the Company per Month for [_____] in accordance with Article 9 as determined in accordance with Schedule 6 hereto.

“Technical Agent” -The independent consulting engineer, or engineering company, of international repute acceptable to Client, the Company and the Lenders for the purposes of monitoring the construction and certifying the results of Commissioning.

“Termination Purchase Price” - The meaning ascribed thereto in Section 15.5.1.

“Unit” - Each of the generating units that forms a part of the Complex.

“Client Event of Default” - An event described in Section 15.2 for which the Company may issue a Notice of Default to Client.

“Client Irrigation System” - The Interconnection Facilities and any other distribution facilities on Client's side of the Interconnection Point(s) through which the Net Water Output of the Complex will be distributed by Client to its irrigated parcels.

“Upstream Owner” - Any person or other legal entity that (a) directly or indirectly holds an interest in, or acquires control of, any Major Owner, or (b) by virtue of a contemplated purchase or other transfer will hold an interest in, or acquire control of, any Major Owner, and, in either case (a) or (b), such person or other legal entity derives or will derive more than [_____] percent of its gross revenue from the Project.

“Week” - Each period of seven (7) consecutive Days beginning at 12:00 midnight Host Country time falling between a Saturday and a Sunday.

“World Bank” - The International Bank for Reconstruction and Development.

“Year” - Each twelve (12) Month period commencing on 12:00 midnight on December 31 and ending on 12:00 midnight the following December 31 during the term of this Agreement.

THE FOLLOWING SCHEDULES NOT PROVIDED:

Schedule 2 -- Minimum Functional Specifications

Schedule 3 -- Interconnection Facilities

Schedule 4 -- Commissioning and Testing

Schedule 5 -- Metering and Telecommunications

Schedule 6 -- Indexation and Adjustment

Schedule 7 -- Construction Reports

Schedule 8 -- Form of Letter of Credit

Schedule 9 -- Security Package

Annex 2: WPA model

An excel model has been developed to estimate the water price that has to be taken in account in the framework of the WPA for Illovo and according to the various technical option proposed.

The model, made of various excel sheet based the calculation on the price data provided by the TFS team of the SVIP.

The assumptions used in the model are the followings.

General assumptions:

- The assessment is made in courant price
- Duration of the WPA: 25 years
- International inflation rate: 2%
- National inflation rate: 7%
- Net Present Value rate: 10%
- Estimation of National Water Resource Authority water abstraction fees: 2.50 MKW / 250m3 (source: Establishment of the national water resource authority)

CAPEX and loan assumption

- Contingency represent 26% of the direct investment cost (20% of direct cost for contingency and 6% of direct cost for consultant).
- The investment cost for the intake and feeder canal is planned over a 2 years period
- The investment cost for the branch is planned over a 1 year period
- The direct costs used are those defined by the TFS teams.

Table 7-2: Direct investment cost for the canal option

Constant price USD			Contingency on direct invest cost					
			26%	Total	imputé beneficiaire	2016	2017	2018
Phase 1 and 2								
	Intake	USD	2	5 040 000	1 185 289		592 645	592 645
	Feeder canal only phase 1	USD	2	41 706 000	9 808 270		4 904 135	4 904 135
Phase 1								
	Branch I7	USD	1		895 588		0	895 588
	Illovo canal	USD	1		7 434 000		0	7 434 000
	Secondary + Tertiary canals	USD	1		7 434 000		0	7 434 000
Total		USD			26 757 148	0	5 496 780	21 260 368
Courant price USD								
Phase 1 and 2								
	Intake	USD	2		1 245 507	0	616 588	628 919
	Feeder canal only phase 1	USD	2		10 306 569	0	5 102 262	5 204 307
Phase 1								
	Branch I7	USD	1		950 405	0	0	950 405
	Illovo canal	USD	1		7 889 020	0	0	7 889 020
	Secondary + Tertiary canals	USD	1		7 889 020	0	0	7 889 020
Total		USD	0		28 280 522	0	5 718 850	22 561 672

Table 7-3: Direct investment cost for the pipe option

Constant price USD			Contingency on direct invest cost					
			26%	Total	imputé beneficiaire	2016	2017	2018
Phase 1 and 2								
	Intake	USD	2	5 040 000	1 185 289		592 645	592 645
	Feeder canal only phase 1	USD	2	41 706 000	9 808 270		4 904 135	4 904 135
Phase 1								
	Branch I7	USD	1		895 588		0	895 588
	Illovo canal	USD	1		43 596 000		0	43 596 000
	Secondary + Tertiary canals	USD	1		0		0	0
Total		USD			55 485 148	0	5 496 780	49 988 368
Courant price USD								
Phase 1 and 2								
	Intake	USD	2		1 245 507	0	616 588	628 919
	Feeder canal only phase 1	USD	2		10 306 569	0	5 102 262	5 204 307
Phase 1								
	Branch I7	USD	1		950 405	0	0	950 405
	Illovo canal	USD	1		46 264 424	0	0	46 264 424
	Secondary + Tertiary canals	USD	1		0	0	0	0
Total		USD	0		58 766 905	0	5 718 850	53 048 056

- It is supposed that 100% of the direct investment costs are paid through an international loan in USD
- Duration of the loan: 15 years
- Interest rate: 2%
- Grace period considered: 2 years

O&M cost assumption and renewal fund

The O&M cost per year is considered as per the proposition of the TFS:

- O&M of the intake: 2% of the direct intake cost
- O&M of feeder canal: 1% of the direct feeder cost
- O&M of the branch/ secondary and tertiary: 1%
- It is then proposed that an annual additional charge of 0.5% of the CAPEX is added as a provision for the renewal fund and big repair.

The following table summarized the annual O&M costs and the provisions made for renewal fund and big repair.

Table 7-4: O&M cost and provision for renewal fund and big repair

O&M cost USD		Option Canal			Option Pipe		
		invest	% for O&M	O&M/year	invest	% for O&M	O&M/year
Phase 1 and 2							
	Intake	1 185 289	2.00%	23706	1 185 289	2.00%	23706
	Feeder canal only phase 1	9 808 270	1.00%	98083	9 808 270	1.00%	98083
Phase 1							
	Branch I7	895 588	1.00%	8956	895 588	1.00%	8956
	Illovo canal	7 434 000	1.00%	74340	43 596 000	1.00%	435960
	Secondary + Tertiary canals	7 434 000	1.00%	74340	0	1.00%	
Total		26 757 148		279 424	55 485 148		566 704
Renewal fund and big repair (USD)							
Phase 1 and 2							
	Intake	1 185 289	0.50%	5926	1185289	0	5926
	Feeder canal only phase 1	9 808 270	0.50%	49041	9808270	0	49041
Phase 1							
	Branch I7	895 588	0.50%	4478	895 588	0.50%	4478
	Illovo canal	7 434 000	0.50%	37170	43 596 000	0.50%	217980
	Secondary + Tertiary canals	7 434 000	0.50%	37170	0	0.50%	
Total		26 757 148		133 786	55 485 148		277 426

Annual water demand assumption:

The assumption for Illovo annual water demand is estimated to 262 340 763 m³/year, as proposed by the TFS team

Results tables for the canal option

The value of the sustainable ISC has been obtained by dividing the total Net Present Value of the charges (NPV rate for CAPEX/OPEX/renewal fund/Water right: 10%; NPV rate for financial cost: 2%) and by the Present estimation of the water demand (NPV rate: 10%).

Investment programme and financial cost for the pipe option

surface totale projet		42 500	ha	OK																		
surface beneficiaire		9995	ha	OK	Benjamin Vennat: 20% contingency et 6% consultant																	
Investment program		Scenario : Illovo																				
Constant price USD		26%	Total	Imputé beneficiaire	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Phase 1 and 2																						
	Intake	USD	2	5 040 000	1 185 289		592 645	592 645														
	Feeder canal only phase 1	USD	2	41 706 000	9 808 270		4 904 135	4 904 135														
Phase 1																						
	Branch I7	USD	1		895 588			895 588														
	Illovo canal	USD	1		43 596 000			43 596 000														
	Secondary + Tertiary canals	USD	1		0			0														
Total		USD			55 485 148	0	5 496 780	49 988 368	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Courant price USD																						
Phase 1 and 2																						
	Intake	USD	2		1 245 507	0	616 588	628 919	0	0												
	Feeder canal only phase 1	USD	2		10 306 569	0	5 102 262	5 204 307	0	0												
	Feeder canal additional coast phase 2	USD	0		0	0	0	0	0	0												
Phase 1																						
	Branch I7	USD	1		950 405	0	0	950 405	0	0												
	Illovo canal	USD	1		46 264 424	0	0	46 264 424	0	0												
	Secondary + Tertiary canals	USD	1		0	0	0	0	0	0												
Total		USD	0		58 766 905	0	5 718 850	53 048 056	0	0	0	0	0	0	0	0	0	0	0	0	0	0
beneficiary participation USD																						
Phase 1 and 2																						
	Intake	USD	2	0.0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Feeder canal only phase 1	USD	2	0.0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Feeder canal additional coast phase 2	USD	0	0.0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Phase 1																						
	Branch I7	USD	1	0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Illovo canal	USD	1	0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Secondary + Tertiary canals	USD	1	0%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total		USD			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Public participation USD																						
Phase 1 and 2																						
	Intake	USD	2	100%	1 245 507	0	616 588	628 919	0	0												
	Feeder canal only phase 1	USD	2	100%	10 306 569	0	5 102 262	5 204 307	0	0												
	Feeder canal additional coast phase 2	USD	0	100%	0	0	0	0	0	0												
Phase 1																						
	Branch I7	USD	1	100%	950 405	0	0	950 405	0	0												
	Illovo canal	USD	1	100%	46 264 424	0	0	46 264 424	0	0												
	Secondary + Tertiary canals	USD	1	100%	0	0	0	0	0	0												
Total		USD			58 766 905	0	5 718 850	53 048 056	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL beneficiary (USD)																						
TOTAL public authority (USD)																						
Financial cost for private USD																						
	Duration		0	years																		
	Interest rate		0%																			
	grace periode		0	years																		
	Equity		0%		0.00																	
	Private Loan		100%		0.00																	
	cumulated interest (grace period)				0.00	0	0	0														
	Capital repayment (Total loan/maturity)				0.00				0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Financial interest				0.00				0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total debt service for private loan in USD				0.00	0.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	NPV (M. USD)				0.00																	
Financial cost for public USD																						
	Duration		15	years																		
	Interest rate		2%																			
	grace periode		2	years																		
	Equity		0%		0																	
	Private Loan		100%		58 766 905																	
	cumulated interest (grace period)				3 528 014																	
	Capital repayment (Total loan/maturity)				61 117 582		1 175 338	2 350 676	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505	4 074 505
	Financial interest				9 778 813				1 222 352	1 140 862	1 059 371	977 881	896 391	814 901	733 411	651 921	570 431	488 941	407 451	325 960	244 470	162 980
	Total debt service for public loan in USD				70 896 395	0.00	0	0	5 296 857	5 215 367	5 133 877	5 052 387	4 970 897	4 889 407	4 807 916	4 726 426	4 644 936	4 563 446	4 481 956	4 400 466	4 318 976	4 237 486
	NPV (M. USD)				27.81																	



