

THE GOVERNMENT OF BARBADOS

CAHILL ENERGY LIMITED

and

CAHILL ENERGY (BARBADOS) LIMITED

IMPLEMENTATION AGREEMENT

relating to the development, construction, ownership, operation and maintenance
of a waste-to-energy facility at Vacluse, St.Thomas, Barbados

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THIS AGREEMENT is made on 15th of March 2014

BETWEEN

- (1) **THE GOVERNMENT OF BARBADOS** ("Government");
- (2) **CAHILL ENERGY LIMITED** a company incorporated in Guernsey (registered number 55553) and having its registered office at Tudor House, Le Bordage, St Peter Port, Guernsey GY1 1DB, Channel Islands ("**CEL**"); and
- (3) **CAHILL ENERGY (BARBADOS) LIMITED** a company incorporated in Barbados with registered number 37435 and having its registered office at Lex Caribbean, Worthing Corporate Centre, Worthing, Christ Church, Barbados, BB15008 ("**CEB**")

(each hereinafter referred to individually as a "Party" and collectively as the "Parties".)

INTRODUCTION

- (A) CEL, through its subsidiary, CEB wishes to develop, finance, have designed, constructed and commissioned, and to own, operate and maintain (or have operated and maintained) a plasma gasification waste-to-energy facility at Vacluse, St.Thomas, Barbados.
- (B) Government wishes to transfer to CEB the freehold of the site at Vacluse, St.Thomas, Barbados details of which are set out in the Incorporated Terms Memorandum referred to below, at which the waste-to-energy facility is to be located, to provide certain authorisations and assistance for the development of the waste-to-energy facility and associated activities, to provide waste to CEB and to purchase or procure the purchase by a company to be established and owned by Government of the net electrical output of the waste-to-energy facility on and subject to the terms of this Agreement.

AGREED TERMS

1. Definitions and interpretation

- 1.1 The schedules form part of this Agreement as if set out in full in this Agreement and a reference to "**this Agreement**" includes a reference to the schedules.
- 1.2 Unless otherwise defined in this Agreement or the context requires otherwise, words and expressions used in this Agreement have the meanings and constructions ascribed to them in the Master Definitions Schedule set out in Schedule 1 to the Incorporated Terms Memorandum which is dated on the date of this Agreement and signed for the purpose of identification by each of the Parties.
- 1.3 The Common Terms apply to this Agreement and shall be binding on the Parties as if set out in full herein, subject to Clause 1.4.
- 1.4 If there is any conflict between the provisions of the Common Terms and the provisions of this Agreement, the provisions of this Agreement shall prevail.

2. Term

- 2.1 This Agreement shall commence on the date first written above (the "**Effective Date**") and unless extended in accordance with Clause 2.2, 2.3 or 4.5 or otherwise terminated in accordance with Clause 5.3, 18 or 19 shall terminate at midnight on the thirtieth

(30th) anniversary of the Commercial Operations Date (such period, as so extended if applicable, being the "Term").

- 2.2 The term set out in Clause 2.1 shall be extended by the aggregate of all periods (if any) after the Commercial Operations Date during which the Facility is unable to generate the Minimum Load by reason of Force Majeure, Waste Default or Offtaker Default.
- 2.3 This Agreement may be extended for an additional period on terms mutually agreeable to CEB and Government. If the Parties agree to extend the term of this Agreement Government shall, if required to do so by CEB, procure that Offtaker shall extend the term of the Power Purchase Agreement by an equivalent additional period.
- 2.4 Following the twenty eighth (28th) anniversary of the Commercial Operations Date, CEB and Government shall enter into good faith negotiations for a renewal of this Agreement for an additional term on terms and conditions mutually agreed to in writing by the Parties.

3. **Exclusivity**

Government hereby grants CEB the exclusive right:

- (a) to develop, design, engineer, procure, manufacture, construct, test, commission, own, operate and maintain the Facility itself or through contractors and suppliers appointed by CEB;
- (b) to sell all the capacity and energy and ancillary services that the Facility is capable of making available;
- (c) to all Waste arising in Barbados during the Term that falls within the Waste Specification including all waste tyres but excluding any shredded waste tyres imported by CEL or a company incorporated by CEL as provided for in Clause 9; and
- (d) to develop, design, engineer, procure, manufacture, construct, test, commission, own, operate and maintain itself or through contractors and suppliers appointed by CEB any and all waste-to-energy facilities in Barbados during the Term;

and to finance such activities in such manner as CEB may determine in its absolute discretion.

4. **General Obligations of Government**

4.1 *Environmental Impact Assessment*

No later than 31st March 2014 Government shall deliver to CEB a true copy of the final environmental impact assessment conducted by R.J. Burnside International Limited in relation to the construction, operation and maintenance of the Facility at the Site, which report shall confirm that any environmental impact of the construction, operation and maintenance of the Facility at the Site is within the range of acceptable limits for Authorisations to be granted and that no remedial or protective measures are required to be implemented in relation to the construction, operation or maintenance of the Facility.

4.2 Access to Site

Government shall grant, or procure the grant of, with effect from the Effective Date, the right for CEL and CEB (and if either of them so requires, any employee, agent, representative or contractor of any Contractor) to enter the Site and adjoining premises in order to carry out such site investigations as CEL or CEB may reasonably require, subject to:

- (a) CEL or CEB giving prior notice of its intention to exercise its rights under this Clause 4.2 to Government;
- (b) all persons entering the Site or adjoining premises complying with such reasonable requirements as Government may reasonably stipulate relating to the security and safety of such premises and such persons whilst on such premises; and
- (c) all such persons using all reasonable endeavours to minimise any interference with any commercial activities on or adjoining the Site.

The obligations under this Clause 4.2 of Government, CEL, CEB and persons entering the Site in relation to access to the Site (but not adjoining premises) shall end on Site Delivery.

4.3 Access and support

- (a) Government shall ensure that access to and from the Site suitable for construction and operation of the Facility is available to CEB, CEL and its Contractors and their respective employees, agents, representatives and contractors.
- (b) Government shall, at its own cost and in a timely manner, provide such assistance as CEB or the Contractors may reasonably request in order to permit and facilitate the delivery of large loads to the Site. Without prejudice to the generality of the foregoing, such assistance from Government shall include procuring that power lines, telecommunication lines and other obstacles along the route for delivery of the gasifier from the Port of Bridgetown to the Site are temporarily de-energised and moved out of the path of delivery.
- (c) Upon reasonable prior notice from CEB and at reasonable times, Government shall cause CEB to be granted reasonable access to any lands that are necessary for evaluating, designing, constructing, testing, commissioning, operating and maintaining the Facility.
- (d) CEB and its successors shall have unfettered use of the access road to the Site referred to in Clause 5.4(b) without charge. Government shall restrict access to such road to vehicles legitimately accessing or leaving the Site and Sustainable Barbados Recycling Centre.
- (e) CEL and/or CEB may advise Government from time to time of any difficulties encountered in relation to the activities Government is required to perform under Clause 4 and if any such difficulties create (in CEL's or CEB's opinion) a significant possibility that CEL or CEB will be prevented or materially impaired in meeting its obligations under the Project Agreements, then, upon the request of CEL or CEB, Government shall promptly take such action as is reasonable under the circumstances to enable CEL or CEB to secure the necessary services, facilities, access or other things that Government has agreed to provide or procure.

4.4 Site

No later than six (6) weeks after the Effective Date Government shall:

- (a) make a voluntary contribution of the freehold of the Site to CEB and convey the Site into the name of CEB and register CEB's title to the Site. The Site will be transferred with vacant possession on completion free and clear from any Encumbrances and without restriction on terms satisfactory to CEB;
- (b) pay or waive all stamp duty, transfer and registration taxes or levies payable in relation to the transfer of the Site to CEB and the registration of title to the Site in the name of CEB; and
- (c) grant or procure the grant to CEB and its successors in title the following rights for the benefit of the Site without cost to CEB or its successors in title:
 - (i) access rights to the nearest public highway to the Site; and
 - (ii) all necessary rights of way, wayleaves, easements and other rights, including those required to construct, commission, test, operate and maintain any fuel and power interconnections for the Facility, for the delivery of Contract Waste, for telephone and internet services, water, waste, sewage and drainage and supporting structures, conduits and the like, required for the Project and/or to enable CEB to carry out its obligations and to exercise its rights under the Project Agreements throughout the Term.

4.5 Site condition

- (a) Except as otherwise provided in this Clause 4.5 or as otherwise expressly agreed in writing between the Parties, Government shall be solely responsible (at its sole cost) for identification, abatement, clean-up, control, removal, remediation, disposal and any other cost or liability in relation to any Pre-Existing Contamination at, on, under or adjacent to or originating from the Site.
- (b) Government shall obtain any and all Authorisations necessary for it to comply with Clause 4.5(a).
- (c) Without modifying either Party's obligations under this Agreement, to the extent that CEB may be affected, Government shall provide CEB with information known by Government concerning the current use of the Site and the nature and existence of any Hazardous Substances at, on, under or adjacent to the Site, including any analytical reports of Environmental conditions provided that whether or not Government furnishes any such information to CEB, the obligations of Government to CEB with respect to Hazardous Substances as provided in this Agreement shall not be modified or abated.
- (d) If CEB encounters any Pre-Existing Contamination it shall have no liability whatsoever for any failure to perform any obligations under this Agreement that it is prevented from performing as a result of it being required to cease work in that area by applicable health and safety procedures during such periods of suspension. Any time period for performance of CEB's obligations under this Agreement and the Term shall be extended by a period corresponding to the period of suspension.

4.6 *Interconnection*

- (a) Government shall, at its sole cost, procure the design, construction, installation, commissioning, operation and maintenance of the Interconnection and Transmission Facilities (excluding Back-up Power Metering System) in accordance with the terms of this Agreement. Government or Transmission System Operator shall own all such Interconnection and Transmission Facilities.
- (b) Government shall within three (3) months of the Effective Date advise CEB of the following which once provided shall not be altered without written agreement between the Parties:
- (i) the distance that will need to be covered by the export power transmission lines, in kilometres, being the distance from the Facility's export power switch yard to the Offtaker's designated receiving switch yard;
 - (ii) the voltage at which the Facility is to provide the Net Power Output; and
 - (iii) any special requirements that CEB shall incorporate in Facility's export power switch yard to ensure it is and remains in accordance with the regulations for power transmission and compatible with the Transmission System Operator's existing switch to which the Net Power Output will be transmitted.
- (c) The Interconnection and Transmission Facilities shall be suitable for the intended export capacity of the Facility and shall not cause a constraint on the operation of the Facility. Within ten (10) Business Days of the beginning of each month commencing on the scheduled date for commencement of such works Agreed or Determined by Expert and ending on completion of the completion of the commissioning of the Interconnection and Transmission Facilities Government shall provide to CEB, (i) monthly progress reports relating to the progress of design, construction, installation and commissioning of the Interconnection and Transmission Facilities and (ii) reports, when Government becomes aware, of any new condition or event which will, or Government anticipates will, have a material and adverse effect on the timely completion of the Interconnection and Transmission Facilities.
- (d) Upon completion of the Interconnection and Transmission Facilities Government shall procure the testing of such Interconnection and Transmission Facilities in accordance with the procedures to be Agreed or Determined by Expert. CEB and its Contractors and their representatives shall have the right to observe the progress of the testing and commissioning of the Interconnection and Transmission Facilities provided that such persons shall comply with the reasonable instructions and directions of the person supervising such testing and commissioning.
- (e) Government shall complete construction and commissioning of the Interconnection and Transmission Facilities prior to the Scheduled Interconnection Date.
- (f) If Government fails to complete the Interconnection and Transmission Facilities by the Scheduled Interconnection Date, the Scheduled Commissioning Date shall be extended day-for-day for each day that completion of the Interconnection and Transmission Facilities is delayed beyond that date, and CEB shall be entitled to damages therefor as provided in Clause 14.6.

- (g) Following Site Delivery, CEB shall permit Government such access to the Site as Government and its contractors shall reasonably require for the design, construction, installation, commissioning, operation and maintenance of the Interconnection and Transmission Facilities, and CEB shall cooperate with Government and its contractor in the design, construction, installation, commissioning, operation and maintenance and testing thereof. Government shall procure that all persons entering the Site comply with such reasonable requirements as CEB or the Contractors may reasonably stipulate relating to the security and safety of such premises and such persons whilst on such premises.
- (h) CEB shall be responsible for designing, constructing, installing, commissioning, operating and maintaining all auxiliary and interconnecting equipment on CEB's side of the Interconnection Point, and CEB shall own all such auxiliary and interconnection equipment.
- (i) When the Interconnection and Transmission Facilities are completed, Government shall procure that the Chief Technical Officer shall certify in writing to CEB that the Interconnection and Transmission Facilities have been completed in accordance with the requirements of this Agreement and the Grid Code and are ready to begin receiving electricity. Government shall promptly provide to CEB copies of the results of all tests and procedures (and supporting data) conducted by or for Government in connection with the construction, completion and testing of the Interconnection and Transmission Facilities, which results shall be certified by the Chief Technical Officer as complete and correct. In addition, if Government has contracted with a third party contractor for the construction, commissioning or testing of the Interconnection and Transmission Facilities, Government shall promptly furnish to CEB copies of each of such contractor's completion certificate(s) and each of Government's acceptance certificate(s) as may be issued in respect of such construction, completion and testing. Commencing with the date on which Government provides CEB with the certificates and other documents set forth in this Clause 4.6(i), Government shall bear no further liability for liquidated damages under Clause 14.6 (save for damages accrued prior to such date), and CEB shall proceed promptly with testing and commissioning in accordance with Clause 4.7.
- (j) Each Party shall notify the other Party in advance of any changes to either the Facility or the Transmission System that may affect the proper coordination of protective devices between the two (2) systems.
- (k) All protective devices to safeguard the Transmission System to be installed by CEB shall be approved in writing by the Chief Technical Officer. Subject to giving CEB reasonable notice, the Chief Technical Officer may require CEB to modify or expand the protective devices. Government shall reimburse CEB for the reasonable costs of such modification or expansion.

4.7 *Testing of Interconnection and Transmission Facilities*

The Parties shall cooperate in testing the Interconnection and Transmission Facilities in accordance with this Agreement and the schedule developed by the operating committee established pursuant to clause 16 of the Power Purchase Agreement (but in no event later than Scheduled Interconnection Date) 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.

4.8 *Energy before Commissioning*

Upon CEB's request, Government shall procure that BL&P shall provide energy for construction, testing, Commissioning, Start-Ups and Emergencies. CEB shall pay BL&P for such energy in accordance with BL&P's then prevailing tariff rate for industrial facilities.

4.9 *Inspection*

Government, Transmission System Operator and/or its representatives shall have the right to observe the progress of the testing and Commissioning of the Facility's export power switch yard provided that such persons shall comply with the reasonable instructions and directions of CEB or its Contractors.

4.10 *Foreign Exchange and Bank Accounts*

Government shall procure that CEB, CEL and Importer and their respective shareholders, the Contractors and the Finance Parties shall each have the unconditional and unrestricted right to open any type of foreign or local bank accounts and shall have the right to freely convert an amount in Barbados dollars or any type of foreign currency into any other currency and transfer any Barbados dollars or foreign currency abroad without restriction.

4.11 *Exchange Control Authority approval*

Without prejudice to the generality of Clause 4.10, Government shall procure that no later than thirty (30) days following the date on which such person applies for such approval unconditional Exchange Control Authority approval from the Central Bank of Barbados is granted to CEL, CEB, the respective shareholders, the Contractors and each Finance Party in respect of the flow of capital, income, interest, dividends, access to foreign currency financing and the ability to hold foreign currency accounts both onshore and offshore and the holding of shares in CEB or Importer. Government shall procure that equivalent unconditional exchange control approval from the Central Bank of Barbados is granted to Importer and its shareholders within one (1) month of being requested to do so by CEL in writing.

4.12 *Authorisations*

Government shall:

- (a) ensure that in a timely manner (and in any event no later than six (6) months following the application for such Authorisations), all Relevant Authorities grant to CEL or CEB (or its agents, representatives or contractors, as may be reasonably necessary), as applied for, all Authorisations in respect of which applications in accordance with Clause 5 have been made and that the Relevant Authorities comply with all statutory or other requirements and procedures relating to the granting of such Authorisations;
- (b) ensure that no Relevant Authority attaches, at any time during the Term, any term or condition to any Authorisations which materially and adversely affects CEL, CEB or the Project;
- (c) ensure that all Authorisations are, upon their expiry, renewed on substantially similar terms or on terms no less favourable than the then existing terms imposed on any third party;
- (d) ensure that no Relevant Authority revokes any CEB Authorisation without Cause; and

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- (a) ensure that in a timely manner (and in any event no later than six (6) months following the application for such Authorisations), all Relevant Authorities grant to CEL or CEB (or its agents, representatives or contractors, as may be reasonably necessary), as applied for, all Authorisations in respect of which applications in accordance with Clause 5 have been made and that the Relevant Authorities comply with all statutory or other requirements and procedures relating to the granting of such Authorisations;
- (b) ensure that no Relevant Authority attaches, at any time during the Term, any term or condition to any Authorisations which materially and adversely affects CEL, CEB or the Project;
- (c) ensure that all Authorisations are, upon their expiry, renewed on substantially similar terms or on terms no less favourable than the then existing terms imposed on any third party;
- (d) ensure that no Relevant Authority revokes any CEB Authorisation without Cause; and

aggregate amount that Government is liable to pay pursuant to this Clause 4.14(c)(iii) shall not exceed US\$5,000,000;

- (iii) if any Critical Authorisation not required to be provided on or before the CA Longstop Date is not provided by the due date for such Critical Authorisation, as set out in Schedule 1, then Government shall pay to CEL within twenty (20) Business Days of demand for the same (such demand to be made on or after the applicable due date) the aggregate Project Costs incurred by CEL as at that time less the amount demanded and paid pursuant to Clause 4.14(c)(ii), provided that the aggregate amount that Government is liable to pay pursuant to this Clause 4.14(c)(iii) shall not exceed US\$5,000,000 less the amount demanded and paid pursuant to Clause 4.14(c)(ii);

Amounts payable pursuant to this Clause and shall be a debt due and payable from Government to CEL.

- (d) If this Agreement is terminated pursuant to Clause 18 by reason of a Government Event of Default referred to in Clause 17.1(j), then Government shall pay to CEL by way of liquidated damages the sum of eight million U.S. dollars (US\$8,000,000) less the aggregate amount paid by Government to CEL pursuant to Clause 4.14(c).
- (e) The amount payable under Clause 4.14(d) is an agreed genuine pre-estimate of CEL's loss under the relevant circumstances and shall be a debt due and payable from Government to CEL.

4.15 Grant of Third Party Authorisations

Government shall:

- (a) use best endeavours to cause each person required to obtain and hold any Third Party Authorisation to make (or cause to be made) and diligently pursue an application that complies with the necessary legal, regulatory and procedural requirements for each Third Party Authorisation;
- (b) ensure that in a timely manner (and in any event no later than six (6) months following the application for such Third Party Authorisations), all Relevant Authorities grant to each applicant referred to in Clause 4.15(a) (or its agents, representatives or contractors as may be reasonably necessary) all Third Party Authorisations in respect of which applications in accordance with Clause 4.15(a) have been made and that the Relevant Authorities comply with all statutory or other requirements and procedures relating to the granting of such Third Party Authorisations;
- (c) ensure that no Relevant Authority revokes any Third Party Authorisation without Cause; and
- (d) in the event that a Third Party Authorisation has been revoked for Cause, procure the grant by the Relevant Authority of a further Third Party Authorisation if the applicant has provided to the Relevant Authority reasonable evidence to demonstrate that the failure to comply with the Authorisation has been rectified and all fines have been paid and use reasonable efforts to procure that such applicant remedies such failure to comply and pays all fines.

4.16 Grant of Investment Incentives

Government shall ensure that the following are granted by the Relevant Authorities to CEL and CEB no later than two (2) months after the Effective Date:

- (a) exemption from the payment of all duties and taxes, levies, imposts, charges, deductions or withholdings, or other governmental charges, including corporation tax, withholding tax, value added tax, import duty, customs and excise duties, stamp duty, transfer taxes and environmental levies that would otherwise be payable to any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official in Barbados ("**Barbados Taxes**"), in respect of:
 - (i) the importation or supply or purchase of plant, equipment, machinery, and accessories, spare parts, tools, materials, components, consumables, supplies, goods, vehicles, fixtures and fittings for use exclusively in connection with the Project;
 - (ii) re-export during the period of twenty four (24) months from the expiry or termination of this Agreement of items imported for the purposes of the Project;
 - (iii) personal and household effects and one (1) vehicle per household which are imported into Barbados during the period of construction of the Facility by non-resident employees of a non-resident business enterprise, contracted to work on the Project, and dependents of those employees who are not citizens, permanent residents or immigrants of Barbados provided the effects are not sold or otherwise disposed of in Barbados within three (3) years of the date of importation;
 - (iv) the importation of shredded Waste tyres;
 - (v) the supply of Contract Waste or shredded Waste tyres; and
 - (vi) other goods or services that directly relate to Project Activities.
- (b) exemption from Barbados Taxes of profits, gains, income or capital accruing to CEL or CEB or their respective shareholders in respect of the Project;
- (c) exemptions from Barbados Taxes of:
 - (i) interest paid by CEB or CEL to shareholders of CEB or CEL;
 - (ii) interest paid by CEB or CEL to a person providing finance to CEB or CEL for the purposes of the Project;
 - (iii) dividends paid by CEB or CEL to its shareholders; and
 - (iv) fees paid to non-residents of Barbados who are contracted by CEB or CEL to provide management services or technical skills for purposes of the Project;
- (d) exemption from Barbados Taxes of transfers or dispositions of shares of CEB or its shareholders; and
- (e) exemption from Barbados Taxes relating to the acquisition, occupation, ownership of the Site or the value of the Site.

4.17 *Legislation and Administration*

Without prejudice to Clause 4.14, Government shall in a timely manner pass all legislation and take all other legislative and administrative actions necessary in order to comply with its obligations set out in this Agreement, to enable CEB and Offtaker to comply with their respective obligations under the Power Purchase Agreement, to enable Importer to import, transport and supply shredded Waste tyres as envisaged in Clause 9 and to enable CEL, CEB and their respective shareholders and Importer to benefit from the rights to be granted to them as set out in such Transaction Documents without delay.

4.18 *Financing of the Project*

Government shall at any time and from time to time execute such further agreements or documents and do all such acts and things, as CEL or CEB or the Finance Parties may reasonably require to enable CEL or CEB to arrange financing for the Project on a limited recourse basis or otherwise, including, but not limited to:

- (a) amending the provisions of this Agreement reasonably required by Finance Parties;
- (b) issuing a letter of comfort in relation with Government's obligations, the applicable legal framework and any lack of laws and regulations;
- (c) executing and delivering to the Finance Parties a consent to assignment of CEL's or CEB's rights under any Transaction Document; and
- (d) entering into a Direct Agreement, if the Direct Agreement is replaced or substituted including by reason of any refinancing to be undertaken by CEB or CEL in relation to the Facility Government undertakes to enter into a replacement or substituted direct agreement on substantially the same terms as the Direct Agreement.

4.19 *Expropriation, Nationalization and Confiscation*

Government shall not, and it shall ensure that no Relevant Authority shall expropriate, compulsorily acquire, takeover, requisition, nationalise, or confiscate:

- (a) all or any part of any shares in CEB or any Investor or any securities issued by any of them; or
- (b) any asset or right of CEB relating to the Facility or the Project; or
- (c) any other asset or right without which CEB will be unable to comply with its obligations under any Transaction Document.

4.20 *Assurance against Discriminatory Action*

Neither Government nor any other Relevant Authority shall take any discriminatory action (which shall include the imposition of obligations, conditions or standards in relation to the Project that are unduly and materially more onerous than those relating to any infrastructure or power station project) that materially and adversely affects the Project, the performance of CEB's or CEL's obligations or the enjoyment of its rights or the interests of CEB or CEL under this Agreement or the Power Purchase Agreement.

4.21 *Construction, Operation and Maintenance*

- (a) Neither Government nor any other Relevant Authorities shall intervene in the design, construction, commissioning, testing, operation or maintenance of the Project in a manner that is adverse to the Project or CEB, save as may be necessary to protect public health and safety and to perform their statutory duties. At the request of CEB, Government shall assist to prevent and to stop any illegal or unauthorised interference in the construction, commissioning, testing, operation and maintenance of the Facility or the Project by any third party.
- (b) After the PPA Novation Date Government shall keep Offtaker informed of all information relevant to the construction, testing and commissioning of the Facility received from CEB, including delivering copies of all documents referred to in Clause 5.5 (to the extent relevant to Offtaker) to Offtaker.
- (c) Government shall procure that the Chief Technical Officer shall perform the duties and obligations to be performed by him as set out in this Agreement and the Power Purchase Agreement (including the provisions of any certificates or approvals) in a timely and reasonable manner.
- (d) Government shall procure that Offtaker and the Transmission System Operator shall act reasonably in considering and agreeing or proposing revisions to each of the schedules of Scheduled Outage periods pursuant to clause 12.2 of Power Purchase Agreement and that any disruption to the operation and maintenance of the Facility resulting from Offtaker's maintenance program for the Interconnection and Transmission Facilities or Transmission System Operator's maintenance program for the Transmission System shall be minimized.

4.22 *Clearances*

Government shall provide CEB, Contractors and their subcontractors with reasonable assistance so as to ensure the timely and unimpeded clearance of plant, machinery, vehicles and supplies required for the Project through customs and unimpeded movement of such plant, machinery, vehicles and supplies in Barbados.

4.23 *Operation and dispatch*

Government acknowledges and accepts that the Facility is intended to be operated continuously except during periods of Scheduled Outage or Maintenance Outage and subject to Forced Outage and that the Facility is intended to operate as a base load facility at steady load (subject to the composition of feedstock and subject to Force Majeure, maintenance requirements, availability of Contract Waste and of the Transmission System). Government shall procure that the Facility shall be dispatched in priority to any generation equipment connected to the Transmission System, other than intermittent renewable energy generation and save as otherwise agreed in writing between the Parties.

4.24 *Change of Offtaker and Ownership of Offtaker*

Within one (1) month of the Effective Date Government shall be entitled to novate all of its rights and obligations under the Power Purchase Agreement to a company to be established by and to be wholly owned by Government. Government shall inform CEB in writing of its intention to novate such rights and obligations and provide details of the proposed transferee. CEB, Government and such transferee shall execute a deed of novation in such form as shall be agreed between them. Such novation deed shall include an affirmation by Government of the guarantee and indemnity in Clause 11

and an accession by Offtaker to the Incorporated Terms Memorandum. Government undertakes to CEL and CEB that the company to which Government's rights and obligations under the Power Purchase Agreement are novated shall at all times during the Term continue to be wholly owned by Government and Government shall throughout the Term maintain Control of such company.

4.25 *Reporting*

Government shall keep CEL and CEB informed of the progress of any action or matter for which it is responsible under this Agreement as requested by CEL or CEB.

4.26 *Waste Study*

Government shall pay the costs of a consultant to be engaged by CEB to produce a waste study verifying the composition, sources and quantities of Contract Waste available in Barbados up to US\$35,000 as and when such monies become due to such consultant, as notified in writing by CEB to Government.

5. **General Obligations of CEB**

5.1 *Application for Governmental Approvals*

CEB shall make (or cause to be made) and diligently pursue an application that complies with the necessary legal, regulatory and procedural requirements for each CEB Authorisation.

5.2 *Preparatory activities*

Subject to Government having complied with its obligations under Clauses 4.1 to 4.20 inclusive and Clauses 4.22 and 4.26 and to all CEB Authorisations that are capable of being granted prior to completion of the construction and Commissioning of the Facility having been granted on terms that are satisfactory to CEB and CEL and not appealable or subject to challenge, CEL undertakes to Government that it and/or CEB shall at their own expense:

- (a) within five (5) months following the Waste Report Delivery Date commission a suitably qualified Contractor selected by CEB to perform a front end engineering (FEED) study in relation to the Facility;
- (b) within one month of completion of the FEED study referred to in Clause 5.2(a) confirm in writing to Government the proposed Net Power Output of the Facility;
- (c) within fourteen (14) months of the date of completion of the FEED study referred to in Clause 5.2(a) develop a financial model for the Project and Project development schedule; and
- (d) enter into negotiations for the provision of the finance required to fund the development and construction of the Facility and subject to obtaining commitments for such finance:
 - (i) enter into an engineering, procurement and construction agreement with one (1) or more Contractors selected by CEB in relation to the construction and commissioning of the Facility; and
 - (ii) enter into an operation and maintenance agreement with one (1) or more Contractors selected by CEB in relation to the operation and

maintenance of the Facility following its construction and commissioning.

5.3 *Financial Close*

- (a) Subject to Clause 5.3(b), from end of the period for completion of the activities referred to in Clauses 5.2(a) and 5.2(b), CEB shall use its reasonable endeavours in good faith to achieve Financial Close within sixteen (16) months from the Waste Report Delivery Date or such other date as is agreed in writing by the Parties.
- (b) If following completion of the engineering works referred to in Clause 5.2(a), CEB determines that the capital cost of the Project would exceed CEB's budgeted capital cost for the Project by more than 5% or that the Project is not commercially viable on the terms set out in the Transaction Documents CEB may, within the period of five (5) months following completion of such engineering works, by written notice terminate this Agreement with immediate effect.
- (c) If Financial Close has not occurred within the period of eighteen (18) months commencing on (and including) the Waste Report Delivery Date (such period to be extended by one (1) day for each day that Financial Close is prevented from occurring due to Force Majeure or the failure of Government to comply with this Agreement or as provided for in Clause 4.5) or such later date as CEB and Government may agree in writing (the applicable date being "**FC Longstop Date**"), Government or CEB may by notice terminate this Agreement with immediate effect at any time within the period of three (3) months commencing on the FC Longstop Date.
- (d) Upon termination of this Agreement pursuant to Clause 5.3(c) each of the Parties shall be released from all further obligations under this Agreement and no Party shall have any liability to the other Party other than in circumstance in which the failure to achieve Financial Close is wholly or partly attributable to a breach by Government of this Agreement, in which case Government shall pay to CEL by way of liquidated damages the sum of eight million U.S. dollars (US\$8,000,000) less the aggregate amount paid by Government to CEL pursuant to Clause 4.14(c). The amounts payable under this Clause 5.3(d) are agreed genuine pre-estimates of CEL's loss under the relevant circumstances and shall be a debt due and payable from Government to CEL.
- (e) Clause 5.3 sets out all the rights and remedies of any Party against the other Party by reason of this Agreement being terminated for either of the reasons set out in this Clause 5.3.

5.4 *Construction and commissioning*

Subject to Financial Close, CEB shall:

- (a) procure the construction and commissioning of the Facility in accordance with (a) this Agreement, (b) sound engineering and construction practices, (c) CEB Authorisations and (d) Law;
- (b) carry out such strengthening works as are necessary to make the access road to the Site from the existing road at Mangrove Pond Road or such other access point as may be agreed in writing between the Parties suitable for delivery of heavy plant and machinery to the Site; and

- (c) use reasonable endeavours to Commission the Facility on or before the Scheduled Commissioning Date.

5.5 *Submissions by CEB*

CEB shall submit to Government (with a copy to Offtaker, if the PPA Novation Date has occurred) the documents listed below on or before the dates specified:

- (a) Within ten (10) Business Days of the beginning of each month commencing in the period starting on Financial Close and ending on the Commercial Operations Date, (i) monthly progress reports relating to the Project and (ii) reports, when CEB becomes aware, of any new condition or event which will have a material and adverse effect on the timely completion of the Facility;
- (b) Not later than fifteen (15) Business Days after Financial Close, general lay out plan for the construction of the Facility;
- (c) Not later than fifteen (15) Business Days prior to the scheduled commencement of testing and Commissioning, a start-up and performance test schedule for the Facility;
- (d) Not later than sixty (60) Business Days prior to the Scheduled Commissioning Date, a copy of first draft written operating and maintenance procedures to serve as the basis for the written operating procedures to be jointly developed pursuant to Clause 16 of the Power Purchase Agreement; and
- (e) Not later than ten (10) Business Days after the Commercial Operations Date, confirmation of the Commercial Operations Date.

5.6 *Environmental Protection, Health and Safety*

CEB shall comply with the Law regarding environmental protection, health and safety in relation to the Project.

5.7 *Waste Study*

Within ten days of the Effective Date CEB shall engage a consultant acceptable to CEB to produce a waste study verifying the composition, sources and quantities of Contract Waste available in Barbados. CEB shall deliver a copy of such Waste study within ten (10) Business Days of receipt of such report by CEB.

5.8 *Contribution to Government's costs*

If Government has complied with its obligations to ensure that all Critical Authorisations are granted or provided and are in full force and effect on the applicable due dates set out in Schedule 1 and Government has complied in all material respects with those of its other obligations under this Agreement due to be performed prior to the date falling 16 months after the Effective Date, then CEB shall reimburse to Government those third party costs and expenses reasonably incurred by the Government in relation to waste studies and the environmental impact assessment for the Project and the negotiation and documentation of the Transaction Documents (but for the avoidance of doubt, excluding the consideration paid for the acquisition of the Site) up to an aggregate cap of US\$5,000,000.

6. Representatives

6.1 Government's Representative

- (a) Government shall appoint a representative ("**Government's Representative**") to exercise the functions and powers of Government in relation to the Project other than those which are specially identified in this Agreement as functions or powers to be carried out by some other person. Government's Representative shall be the Permanent Secretary of the Ministry of the Environment or such other person appointed pursuant to this Clause.
- (b) Government's Representative shall be entitled at any time, by written notice to CEB, to authorise any other person to exercise the functions and powers of Government delegated to him or her pursuant to this Clause, either generally or specifically. Any act of Government's Representative or any such delegate shall, for the purposes of this Agreement, constitute an act of Government.
- (c) Government may by written notice to CEB change Government's Representative. Government shall (as far as practicable) consult with CEB prior to the appointment of any replacement for Government's Representative, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of an Emergency, be such date as will not cause material inconvenience to CEB in the execution of its obligations under this Agreement).
- (d) When Government's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) Government (acting by the Office of the Permanent Secretary of the Ministry of the Environment) shall carry out the functions which would otherwise be performed by Government's Representative.
- (e) Except as previously notified in writing by Government before such act or instruction (including any limit on authority notified in accordance with Clause 6.3), CEB and CEB's Representative shall be entitled to treat any act or instruction by Government's Representative which is authorised by this Agreement as being expressly authorised by Government and CEB and CEB's Representative shall not be required to determine whether authority has in fact been given.

6.2 CEB's Representative

- (a) CEB shall appoint a representative who shall have full authority to act on behalf of CEB for all purposes of this Agreement ("**CEB's Representative**"). CEB's Representative shall be Clare Cowan or such other person appointed pursuant to this Clause.
- (b) CEB's Representative shall be entitled at any time, by written notice to Government, to authorise any other person to exercise the functions and powers of CEB delegated to him or her pursuant to this Clause, either generally or specifically. Any act of CEB's Representative or any such delegate shall, for the purposes of this Agreement, constitute an act of CEB.
- (c) CEB may by written notice to Government change CEB's Representative. Where CEB wishes to do so, it shall by written notice to Government propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of an Emergency, be

such date as will not cause material inconvenience to Government in the execution of its obligations under this Agreement).

- (d) Except as previously notified in writing before such act or instruction (including any limit on authority notified in accordance with Clause 6.3), Government and Government's Representative shall be entitled to treat any act of the CEB's Representative in connection with this Agreement as being expressly authorised by CEB and Government and Government's Representative shall not be required to determine whether any express authority has in fact been given.

6.3 Appointment of Additional Representatives

At any time Government may appoint one (1) additional Government's Representative and CEB may appoint one (1) additional CEB's Representative provided in each case the appointer provides written confirmation to other Party of the extent of its additional representative's authority.

7. Supply of Contract Waste

Subject to and in accordance with the terms of this Agreement, including in particular the provisions of Schedule 2, Government shall supply to CEB and CEB shall accept from Government Contract Waste for the consideration described in Schedule 2.

8. Sale and Purchase of Net Power Output

Government shall enter into the Power Purchase Agreement on the Effective Date.

9. Import of shredded waste tyres

- 9.1 CEL or persons nominated by it propose to negotiate with the governments of other countries to acquire Waste tyres or other Waste from such countries and to import such tyres (in shredded form) and other Waste into Barbados for use as a calorific supplement feedstock for the Facility. Government grants to CEL and (if requested to do so by CEL) shall grant to CEB or a company incorporated by CEL for the purpose of importing such shredded Waste tyres and, subject to International Waste Regulation, other waste (as nominated in writing by CEL to Government, the person so nominated being "**Importer**") the right to freely import Waste tyres and other Waste into Barbados to be utilised as feedstock for the Facility. Government shall assist CEL and Importer to secure access to representatives of government of the members of Caricom and to negotiate the terms of supply and export of Waste from Caricom countries to Barbados.

- 9.2 The provisions of Clauses 4.3, 4.12, 4.13, 4.16, 4.17, 4.19, 4.20, 4.22 and 14.4 shall apply *mutatis mutandis* in relation the importation, transportation and handling of such Waste referred to in Clause 9.1 and the supply and delivery of such Waste to the Site. Without limitation for the purposes of this Clause only:

- (a) references in such other Clauses to "CEB Authorisations" shall be construed as Importer Authorisations;
- (b) references to "CEB" shall be construed as references to "Importer"; and
- (c) if CEL nominates a company other than CEB as Importer the time periods referred to in Clause 4.16 shall be disregarded and the actions to be taken

pursuant to such Clauses shall be taken as soon as reasonably practical after (and in any event within two (2) months of) CEL nominating such person pursuant to Clause 9.1.

- 9.3 Government hereby grants CEL the exclusive right to import Waste tyres into Barbados until the earlier of the end of the Term and the date on which CEL nominates another person as Importer pursuant to Clause 9.1. With effect from the date on which CEL nominates another person as Importer pursuant to Clause 9.1, Government hereby grants Importer the exclusive right to import Waste tyres into Barbados during remainder of the Term.

10. Water

- 10.1 CEB shall be entitled to create one (1) or more artesian or deep wells and/or (in CEB's absolute discretion) a rainwater lagoon at the Site or elsewhere. Government shall, at the request of CEB, assist CEB to secure any necessary land rights to drill, construct and operate such wells and/or (in CEB's absolute discretion) rainwater lagoon and for the transportation of water extracted from such wells and rainwater lagoon to the Facility, including by compulsory acquisition by Government if necessary. Any rights compulsorily acquired shall be contributed to CEB by Government voluntarily and without cost to CEB. Government shall procure that CEB and its successors shall be entitled to extract and use such water without fees or Taxes being levied in relation to such extraction or use.
- 10.2 Government shall procure the provision of water supplies required for the construction and operation of the Facility on reasonable commercial terms not exceeding the rates applicable to industrial users of water generally in Barbados, save for any water extracted by CEB as envisaged by Clause 10.1. If required to do so by CEB, Government shall procure that all supplies of treated leachate water originating from the leachate treatment plant adjacent to the Site shall be made available to CEB free of charge.
- 10.3 Government consents to CEB negotiating with Barbados Water Authority for a discounted price on supplies of water to the Site and, shall procure the grant of any requisite Approvals for Barbados Water Authority to agree to such prices.
- 10.4 Government shall, at its sole cost, procure the design, construction, installation, commissioning, operation and maintenance of the infrastructure required to connect the Facility or the Site to the existing mains water system operated by Barbados Water Authority.
- 10.5 Government shall procure that CEB and its successors shall not be required to pay or contribute to the costs of the design, construction, installation, commissioning, operation and maintenance of infrastructure required to connect the Facility or the Site to the existing mains water system operated by Barbados Water Authority (whether by recharge of such costs, contribution, adjustment to prices payable by CEB or its successors for supplies of water or otherwise) except to the extent that such costs are recouped through the applicable tariffs and services charges for water charged to industrial consumers of towns water in Barbados generally on a non-discriminatory basis. To the extent required by Barbados Water Authority, Government shall fund the costs of the design, construction, installation, commissioning, operation and maintenance of infrastructure required to connect the Facility or the Site to the existing mains water system operated by Barbados Water Authority.

11. Guarantee

The provisions of this Clause shall come into effect on the PPA Novation Date:

11.1 *Offtaker's compliance with Power Purchase Agreement*

Government shall, at the request of CEB, in a timely manner take any necessary measures to ensure Offtaker strictly complies with its obligations under the Power Purchase Agreement.

11.2 *Guarantee of Offtaker*

Government shall on demand, as primary obligor and not merely as a surety, pay to CEB and perform all liabilities and obligations of Offtaker owed to CEB under or in connection with the Power Purchase Agreement including anything which would be a liability or obligation but for the fact that it is Unenforceable ("**Liabilities**") which Liability is not paid or performed when it is due to be paid or performed.

11.3 *Indemnity*

As an obligation independent of Clause 11.2, Government shall indemnify CEB on demand against any Loss suffered by CEB as a result of the Unenforceability of any Liability as against Offtaker or any Liability not being paid or performed by Offtaker.

11.4 *Amount of Loss*

The amount of the Loss referred to in Clause 11.3 shall:

- (a) where the Liability arises from a payment obligation, be the amount payable by Offtaker or which would be so payable but for the Unenforceability of that Liability; or
- (b) in any other case, be the amount which is payable to CEB by Offtaker by way of damages for breach of that Liability or which would be so payable but for the Unenforceability of that Liability,

plus in either case, the cost to CEB of obtaining such payment or procuring or attempting to procure the performance of any such Liability.

11.5 *Continuing guarantee*

The obligation under this Clause 11 is a continuing guarantee and indemnity and extends to the balance from time to time of, and the continued performance of, the Liabilities irrespective of any intermediate payment or performance of any Liability.

11.6 *No recourse to other rights*

CEB shall not be obliged, before making demand or otherwise enforcing its rights under the guarantee in this Clause 11:

- (a) to make any demand for payment, or take any action to recover any Liability from or to take any proceedings or exhaust any claim, right or remedy against Offtaker or any other person; or
- (b) to take any action under or enforce any other Security held by it.

11.7 *No discharge of Government*

Government shall not be released or discharged from any of its obligations under this Clause 11, nor shall any of such obligations be affected by:

- (a) any Unenforceability of any Liability;
- (b) any supplement to, novation, variation, replacement or amendment of, or waiver or release of any Liability;
- (c) the giving of time or the granting of any other indulgence or concession by CEB to Offtaker or any other person or the entering into of any arrangement or compromise between CEB and Offtaker or any other person;
- (d) the taking, holding, failure to take or hold, varying, realisation, non-enforcement, non-perfection or release by CEB or any other person of any other Security for any Liability; or
- (e) anything other than a written release of this guarantee which, but for this provision, might reduce or discharge any of Government's obligations under this Clause 11.

11.8 *Suspension of subrogation and other rights*

Until the Liabilities have been paid and/or performed in full, Government shall not:

- (a) claim any set-off or assert any counterclaim against Offtaker or any surety or indemnifier for Offtaker; or
- (b) in the event of the insolvency of Offtaker or any surety or indemnifier for Offtaker, claim or prove in competition with CEB, enforce any Security or accept any direct or indirect payment or distribution.

11.9 *Amounts received by Government*

Government shall hold on trust for CEB any rights or other benefits of the kind referred to in Clause 11.8 and shall transfer them to CEB for application by CEB in or towards discharge of its obligations under this Clause 11.

11.10 *Enforcement of other Security and suspense account*

Until the Liabilities have been paid and/or performed in full:

- (a) CEB may refrain from applying or enforcing any other Security, monies or rights;
- (b) Government shall not be entitled to the benefit of such other Security; and
- (c) CEB need not apply any monies received on account of the Liabilities in or towards satisfaction of Government's liability under this Guarantee but may place them in a suspense account with its bankers.

11.11 *No appropriation by Government*

Government shall not be entitled to direct the application by CEB of any sums received by CEB from Government in connection with this Clause 11.

12. Representations and warranties

12.1 CEL represents and warrants to Government as follows:

- (a) CEL is duly organised and validly existing under the Laws of Guernsey and is qualified to conduct its business in Barbados.
- (b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorised by all necessary actions and do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material contract to which it is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, statement of claim, judgment, decree or other legal or regulatory determination applicable to it.
- (c) This Agreement constitutes legal, valid and binding obligations of CEL enforceable at law in accordance with its terms, subject to bankruptcy, insolvency, reorganisation and other laws affecting creditors' rights generally.
- (d) No Insolvency Event in relation to CEL has occurred or is being contemplated by CEB or, to its knowledge, is threatened against CEL.
- (e) There are no claims, actions, proceedings or investigations pending or, to CEL's actual knowledge, threatened against or relating to CEL before any court, governmental or regulatory authority or body acting in an adjudicative capacity, that may materially adversely affect its ability to perform this Agreement.
- (f) CEL is not subject to any outstanding judgment, rule, order, statement of claim, injunction or decree of any court, governmental or regulatory authority, that materially adversely affects its ability to perform this Agreement.
- (g) This Agreement, the execution and delivery of this Agreement and the fulfilment and compliance with the terms of this Agreement by CEL shall not conflict with any of, or require the consent of any person under, any loan or security agreement, or other material agreement to which CEL is a party.

12.2 CEB represents and warrants to Government as follows:

- (a) It is duly organised and validly existing under the Laws of Barbados and is qualified to conduct its business in Barbados.
- (b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorised by all necessary actions and do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material contract to which it is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, statement of claim, judgment, decree or other legal or regulatory determination applicable to it.
- (c) This Agreement constitutes legal, valid and binding obligations of CEB enforceable at law in accordance with its terms, subject to bankruptcy, insolvency, reorganisation and other laws affecting creditors' rights generally.
- (d) No Insolvency Event in relation to CEB has occurred or is being contemplated by CEB or, to its knowledge, is threatened against CEB.

- (e) There are no claims, actions, proceedings or investigations pending or, to CEB's actual knowledge, threatened against or relating to CEB before any court, governmental or regulatory authority or body acting in an adjudicative capacity, that may materially adversely affect its ability to perform this Agreement.
- (f) CEB is not subject to any outstanding judgment, rule, order, statement of claim, injunction or decree of any court, governmental or regulatory authority, that materially adversely affects its ability to perform this Agreement.
- (g) This Agreement, the execution and delivery of this Agreement and the fulfilment and compliance with the terms of this Agreement by CEB shall not conflict with any of, or require the consent of any person under, any loan or security agreement, or other material agreement to which CEB is a party.

12.3 Government represents and warrants to CEB as follows:

- (a) The execution, delivery and performance of this Agreement are within its powers, have been duly authorised by all necessary actions and do not violate or conflict with or require any consent or waiver under the constitution of Barbados or any material contract to which Government is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, statement of claim, judgment, decree or other legal or regulatory determination applicable to it.
- (b) This Agreement constitutes legal, valid and binding obligations of Government enforceable at law in accordance with its terms, subject to bankruptcy, insolvency, reorganisation and other laws affecting creditors' rights generally.
- (c) There are no claims, actions, proceedings or investigations pending or, to Government's actual knowledge, threatened against or relating to Government before any court, governmental or regulatory authority or body acting in an adjudicative capacity, that may materially adversely affect its ability to perform this Agreement.
- (d) Government is not subject to any outstanding judgment, rule, order, statement of claim, injunction or decree of any court, governmental or regulatory authority, that materially adversely affects its ability to perform this Agreement.
- (e) This Agreement, the execution and delivery of this Agreement and the fulfilment and compliance with the terms of this Agreement by Government shall not conflict with any of, or require the consent of any person under, any loan or security agreement, or other material agreement to which Government is a party.
- (f) There is readily available to Government Contract Waste in Barbados in sufficient quantities for Government to supply to CEB no less than five hundred (500) tonnes of Contract Waste per day for each day during the Term and Government is able to supply such Contract Waste to CEB in accordance with the provisions of this Agreement.

13. Liability

13.1 Limitation of Liability

- (a) Save for any liability under Clause 11 or 14 and subject to Clauses 13.1(b) and 13.1(c), neither Party:
 - (i) shall have any liability to the other Party for any Loss suffered by that Party with respect to the subject matter of this Agreement except pursuant to, or for breach of, this Agreement; or
 - (ii) shall be liable to the other in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages.
- (b) This Clause 13 does not constitute a waiver of any rights of any Party against any other with regard to matters unrelated to this Agreement or any activity not contemplated by the Transaction Documents.
- (c) Notwithstanding any other provision of this Agreement or any other Transaction Document, nothing in this Clause or any other provision of a Transaction Document shall restrict, limit or affect CEL or CEB's rights to compensation, liquidated damages or contribution to costs expressly provided for in this Agreement.

13.2 Double Jeopardy

- (a) Where:
 - (i) a final, non-appealable award or order has been issued by an expert or arbitrator in a proceeding initiated by Offtaker, based upon a claim for breach by CEB of any of its obligations under the Power Purchase Agreement;
 - (ii) Offtaker settles any dispute with CEB related to, or waives in writing any breach by CEB of, any of its obligations under the Power Purchase Agreement; or
 - (iii) Offtaker is pursuing a claim against CEB based upon an alleged breach by CEB of its obligations under the Power Purchase Agreement,

Government shall be precluded from pursuing, or, in the case of Clauses 13.2(a)(i) and 13.2(a)(ii), ever pursuing thereafter, any claim it would otherwise have against CEB based on the same facts and acts or omissions by CEB, for breach of substantially the same (or related) obligations which CEB owed to Government under this Agreement.

- (b) Clause 13.2(a)(i) shall not prevent Government from separately proceeding to terminate this Agreement pursuant to clause 18, and to exercise any rights in respect of such termination set forth in clause 20.
- (c) In the event that Government pursues a claim in non-compliance with clause 13.2(a), Government shall reimburse CEB for all costs and expenses that CEB incurs in defending the claim so pursued by Government.

14. Indemnification

14.1 *Indemnification for injury, death and damage*

- (a) Except and to the extent that Government is indemnified against or is reimbursed for any Losses (in each case) pursuant to any policy of insurance, CEL shall within twenty (20) Business Days of demand:
- (i) indemnify and defend Government, its officers and employees against; and
 - (ii) hold Government, its officers and employees harmless from,
- any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any of Government or its officers and employees for personal injury or death to persons (including third persons) or damage to real property or physical property (including third party property) arising out of any negligent act or omission or any intentional misconduct by CEL in connection with this Agreement.
- (b) Except and to the extent that Government is indemnified against or is reimbursed for any Losses (in each case) pursuant to any policy of insurance, CEB shall within twenty (20) Business Days of demand:
- (i) indemnify and defend Government, its officers and employees against; and
 - (ii) hold Government, its officers and employees harmless from,
- any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any of Government or its officers and employees for personal injury or death to persons (including third persons) or damage to real property or physical property (including third party property) arising out of any negligent act or omission or any intentional misconduct by CEB in connection with this Agreement.
- (c) Except and to the extent that CEL or CEB is indemnified against or is reimbursed for any Losses (in each case) pursuant to any policy of insurance, Government shall within twenty (20) Business Days of demand:
- (i) indemnify and defend each of CEB, CEL and their respective shareholders, officers, directors and employees against; and
 - (ii) hold each of CEB, CEL and their respective shareholders, officers, directors and employees harmless from,
- any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any of CEB, CEL or their respective shareholders, officers, directors and employees for personal injury or death to persons (including third persons) or damage to real property or physical property (including third party property) arising out of any negligent act or omission or any intentional misconduct by any Relevant Authority in connection with this Agreement.
- (d) Subject to the Parties otherwise agreeing, or a court of law or arbitrator appointed pursuant to this Agreement otherwise determining, in the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of CEL, CEB and Government, the Parties shall be deemed

to be equally liable for such injury or damages (and indemnify and hold harmless the other Party for its share of liability for such injury or damages).

- (e) If the Parties agree, or a court of law or arbitrator appointed pursuant to this Agreement determines, that the Parties are not equally liable for injury or damages referred to in clause 14.1(d), the Parties shall be bound to (and indemnify each other against), liability in such portions agreed or determined.

14.2 *Environmental indemnity*

Government shall within twenty (20) Business Days of demand indemnify, defend and hold harmless each of CEB, CEL and their respective shareholders, officers, directors and employees against and from any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any of CEB, CEL or their respective shareholders, officers, directors and employees that arise out of or result from:

- (a) any Pre-Existing Contamination at, on, under or adjacent to the Site;
- (b) any Environmental hazard on the Site caused by any Relevant Authority or any of their contractors, agents or employees at any time during the Term; and
- (c) any Hazardous Substance or any other type of Environmental hazard present at on under or adjacent to the Site prior to Site Delivery and which, at any time after Site Delivery, is in a condition which gives rise to liability under Environmental Law other than as a result of a negligent act or omission of CEB or the Contractors, agents or employees or a failure by any of them to act in accordance with Prudent Practice;

including the removal or disposal of any such Pre-Existing Contamination, Hazardous Substances or Environment hazards or that arise out of or result from, non-compliance by Government with Environmental Law.

14.3 *Waste Default Indemnity*

Government shall within twenty (20) Business Days of demand indemnify, defend and hold harmless each of CEB, CEL and their respective shareholders, officers, directors and employees against and from any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any of CEB, CEL or their respective shareholders, officers, directors and employees (including, physical damage, death, injury, additional operation and maintenance costs, additional finance costs, loss of profit and business interruption and costs of sorting, handling and disposal of waste) that arise out of or result directly or indirectly from:

- (a) the provision of any Waste to CEB that does not comply with the Waste Specifications; and/or
- (b) any Waste Default.

14.4 *Expropriation Indemnity*

In the event of a breach by Government of Clause 4.19 Government:

- (a) shall within twenty (20) Business Days of demand pay to each of CEL, those persons who are or were Investors immediately prior to such event and the Finance Parties by way of compensation the sum of (i) the aggregate amount invested by such person in CEB less the amount of investment repaid, (ii) the

aggregate amounts owed to such person by CEB and all accrued and unpaid interest, fees and charges thereon and (iii) the aggregate amount of costs, fees and expenses incurred by such persons in carrying out Project Activities and/or in connection with the raising of finance and financing of the Project (on an indemnity basis);

- (b) (save to the extent that such person has been compensated for such Losses pursuant to Clause 14.4(a)) pay within twenty (20) Business Days of demand to CEL and the Investors an amount equal to the value of their respective investments in CEB prior to the breach of Clause 4.19 including the loss of return on investment for the unexpired period of thirty (30) years commencing on (i) the Commercial Operations Date (if the breach by Government of Clause 4.19 occurs on or after the Commercial Operations Date) or (ii) the Scheduled Commissioning Date (if the breach by Government of Clause 4.19 occurs prior to the Commercial Operations Date); and
- (c) (save to the extent that such person has been compensated for such Losses pursuant to Clause 14.4(a) or 14.4(b)) shall within twenty (20) Business Days of demand indemnify, defend and hold harmless each of CEB, CEL, their respective shareholders and the Finance Parties against and from any and all other Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any of CEB, CEL or their respective shareholders or the Finance Parties that arise out of or result from such breach.

14.5 *Indemnity against certain acts of Government*

Government shall within twenty (20) Business Days of demand indemnify, defend and hold harmless each of CEB, CEL and their respective shareholders, officers, directors and employees against and from any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon any of CEB, CEL or their respective shareholders, officers, directors and employees (including, capital expenditure, additional construction, engineering, operation and maintenance costs, additional finance costs, loss of profit and business interruption) that arise out of or result from:

- (a) a breach of any of Clauses 4.3, 4.4, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.20 and/or 4.22;
- (b) a Discriminatory Change in Law;
- (c) any fees or charges levied by or payable to any Relevant Authority for any Authorisation in excess of US\$1,000 in aggregate; and
- (d) any other act or omission on the part of the Government that prevents or delays the completion of construction, commissioning or testing of the Facility or the Interconnection and Transmission Facilities or the connection of the Facility to the Transmission System or which interferes with the operation of the Facility, the delivery of Contract Waste, the Importation and delivery of shredded Waste tyres or delivery or sale of electricity generated by the Facility.

14.6 *Compensation for delayed Interconnection*

If the Interconnection and Transmission Facilities are not completed by the Scheduled Interconnection Date and the Facility has been Commissioned (save for any element of Commissioning that requires the testing of Interconnection and Transmission Facilities or connection of the Facility to or operation of the Interconnection and Transmission Facilities) then Government shall within twenty (20) Business Days of

demand pay to CEB as liquidated damages an amount equal the product of (i) the applicable kW Day Rate (adjusted in accordance with the formula set out in Clause 19.2 of the Power Purchase Agreement) and either (ii) the Dependable Export Power Capacity of the Facility (expressed in KW) as determined in accordance with Clause 6.1 of the Power Purchase Agreement or (ii) if such Dependable Export Power Capacity has not then been so determined, the Dependable Export Power Capacity (expressed in KW) as estimated by CEB, in either case, for each day on which the Interconnection and Transmission Facilities are not completed after the Scheduled Interconnection Date. If Government has paid amounts pursuant to this Clause 14.6 on the basis of a Dependable Export Power Capacity estimated by CEB then within fifteen (15) Business Days following the determination of the Dependable Export Power Capacity pursuant to clause 6.1 of the Power Purchase Agreement, CEB shall pay to Government (if the estimated Dependable Export Power Capacity exceeds the determined Dependable Export Power Capacity) or the Government shall pay to CEB (if the determined Dependable Export Power Capacity exceeds the estimated Dependable Export Power Capacity) the product of the KW Day Rate and the difference between the estimated Dependable Export Power Capacity and the determined Dependable Export Power Capacity. The amounts payable under this Clause are agreed genuine pre-estimates of CEB's loss under the relevant circumstances and shall be a debt due and payable from Government to CEB.

14.7 *Compensation for loss of Capacity Payment*

- (a) Without prejudice to any other rights of CEB or CEL pursuant to this Agreement Government shall pay to CEB each month the amount (if any) by which the Capacity Payment (determined on the basis of the most recently completed test of Dependable Export Power Capacity prior to any such reduction of generation) has been reduced in the previous month by reason of a reduction in the available export power capacity of the Facility caused by or attributable to any of the following causes:
- (i) Political Force Majeure; or
 - (ii) Waste Default.
- ("Compensation").
- (b) Government's liability under Clause 14.7(a)(ii) shall be reduced by US\$1 for each US\$1 of Compensation paid to CEB pursuant to clause 14.3 in relation to the same Loss.

15. **Sovereign Immunity**

Government unconditionally and irrevocably and to the maximum extent permitted by law:

- (a) agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;
- (b) irrevocably waives any right of sovereign immunity that it may have whether before the LCIA or otherwise from suit and/or jurisdiction and/or adjudication, including but in no way limited to waiving any right of sovereign immunity as to it and any of its property, regardless of the commercial or non-commercial nature of this property. Such property includes any bank account belonging to Government whether held in the name of a diplomatic mission or otherwise. The waiver extends to property, including bank accounts, belonging to the Government's central bank or other monetary authority. For the avoidance of

doubt, the irrevocable waiver in this Clause includes a waiver of any right of sovereign immunity in respect of pre-judgment interim relief and post-judgment execution of any judgment or arbitral award; and

- (c) to the maximum extent permitted by law, waives any right of sovereign immunity which it or any related entity now has or may acquire in the future.

16. CEB Events of Default

16.1 Subject to clause 16.2, each of the following events shall be an event of default by CEB (each, a "**CEB Event of Default**"), which, if not remedied within the time permitted (if any), shall give rise to a right on the part of Government to terminate this Implementation Agreement pursuant to clause 18:

- (a) the Commercial Operations Date not occurring on or before the date falling fifty nine (59) months after the Waste Report Delivery Date (such period to be extended by one (1) day for each day that the Commercial Operations Date is prevented from occurring due to Force Majeure or the failure of Government to comply with this Agreement or as provided for in Clauses 4.5 and 4.6);
- (b) except for any assignment permitted by Paragraph 7 of the Common Terms the assignment or transfer of the CEL's rights or obligations in this Agreement unless the prior consent of Government has been given; or
- (c) an Insolvency Event occurring in relation to CEB; or
- (d) any representation or warranty made by CEL or CEB in this Agreement proving to have been false or misleading in any material respect when made if such circumstance results in a material adverse impact on Government.

16.2 No such event referred to in clause 16.1 shall become a CEB Event of Default if it substantially results from:

- (a) a breach by Government of this Agreement including a Waste Default or failure to procure the grant of any Authorisation properly applied for or to pass any legislation or take any other action required by the Agreement or a failure to install, connect and commission Interconnection and Transmission Facilities in a timely manner or a payment default;
- (b) a breach by Offtaker of the Power Purchase Agreement including an Offtaker Default; or
- (c) the occurrence of Force Majeure (but only to the extent that Force Majeure affects the ability of CEB to perform its obligations under this Agreement).

17. Government Events of Default

17.1 Subject to clause 17.2, each of the following events shall be an event of default by Government (each, a "**Government Event of Default**"), which if not remedied within the time period permitted (if any), shall give rise to the right of CEL and CEB to terminate this Agreement pursuant to clause 18:

- (a) any default or defaults by Government in making any payment required to be made by it under this Agreement within thirty (30) days of the date on which that payment is due;

- (b) any Waste Default is not remedied within thirty (30) days after receipt of notice from CEB demanding remedy thereof;
- (c) any material breach by Government of this Agreement (other than a Waste Default) that is not remedied where the breach is remediable within sixty (60) days after receipt of notice from CEB identifying the breach in question in reasonable detail, and demanding remedy thereof;
- (d) any representation or warranty made by Government in this Agreement proving to have been false or misleading in any material respect when made if such cessation results in a material adverse impact on CEL or CEB;
- (e) the expropriation, management takeover, compulsory acquisition, requisition or nationalisation by any Relevant Authority of:
 - (i) any shares in CEB or any Investor; or
 - (ii) any material asset or right of CEB relating to the Project; or
 - (iii) any other asset or right without which CEB will be unable to comply with its obligations under any Transaction Document;
- (f) where, at any time, as a result of any Change in Law:
 - (i) the making, or receipt by CEB, of any payment in the currency and in the manner contemplated by CEB under any Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Authorisation;
 - (ii) the distribution of profits of CEB or payment of interest, repayments or redemption payments by CEB to any Investor becomes illegal, invalid or materially restricted;
 - (iii) the performance of any obligation by any party to a Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Law or Authorisations or any Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Authorisation;
 - (iv) the enforcement of rights of CEB, any Investor or the Finance Parties in connection with the Project against assets of Offtaker or Government (or, in the case of the Finance Parties, CEB) situated in Barbados becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Authorisation; or
 - (v) the settling of Disputes by an arbitrator becomes illegal or materially restricted under the Law or any Authorisation;
- (g) cancellation or amendment of the Power Purchase Agreement without the consent of CEB;
- (h) if:
 - (i) there is an imposition of a requirement for Authorisations not required as at the Effective Date;

- (ii) after the grant of any Authorisation, there is a change in the terms and conditions attaching to such Authorisation or the attachment of any terms or conditions;
- (iii) any Authorisation is not granted on a timely basis where application for such Authorisation has been duly made;
- (iv) any such Authorisation that has been granted ceases to remain in full force and effect or, if granted for a limited period, that Authorisation is not being renewed on a timely basis on application for renewal being duly made, or is renewed on terms or subject to conditions which are materially less favourable to CEB, any Contractor or Finance Party than those attached to the original Authorisation;

which results in the inability of CEB, the Finance Parties, the Investors or the Contractors (the "**Relevant Applicant**") to exercise their rights or perform their obligations under this Agreement, any Project Agreement or Finance Document unless such refusal to grant or the revocation or amendment of such Authorisation is due to:

- (A) the default or neglect of the Relevant Applicant; or
- (B) a failure by the Relevant Applicant to abide by:
 - (a) any rules or requirements for the application for, or the renewal of, Authorisation; or
 - (b) without limiting clause 17.1(f), any applicable Law;

which, in each case, legally entitles the issuing Relevant Authority to not issue, revoke, or make the relevant amendment in the terms and conditions of the Authorisation;

- (i) termination by CEB of the Power Purchase Agreement in accordance with its terms as a consequence of Offtaker's default under the Power Purchase Agreement; or
- (j) if any Critical Authorisation is not in full force and effect on the due date applicable to such Critical Authorisation as stated in Schedule 1.

17.2 No such event referred to in clause 17.1 shall become a Government Event of Default if it substantially results from:

- (i) a breach by CEB of this Agreement or the Power Purchase Agreement; or
- (ii) the occurrence of Other Force Majeure (but only to the extent that Other Force Majeure affects the ability of Government to perform its obligations under this Agreement).

18. Termination due to Event of Default

Upon the occurrence of an Event of Default which has not been remedied within the applicable remedy period, the non-defaulting Party shall have the right (but not an obligation) to declare a date, which shall be between thirty (30) and forty five (45) days after the notice thereof to the defaulting Party, upon which this Agreement shall

terminate. If Government is the non-defaulting Party, it shall (if applicable) copy its termination notice to the Finance Parties representative in accordance with the Direct Agreement (if any).

19. Termination due to Force Majeure

Where CEB is prevented from complying with its obligations or exercising its rights under this Agreement as a result of one (1) or more events of Force Majeure or its or their effects or by any combination thereof for a continuous period of three hundred and sixty five (365) days, then CEB shall have the right to terminate this Agreement by notice to Government, effective immediately.

20. Consequences of Termination and other remedies

- 20.1 Neither Party shall have the right to terminate this Agreement except as explicitly provided for in this Agreement.
- 20.2 The exercise of the right of a Party to terminate this Agreement does not preclude such Party from exercising other remedies that are available to such Party under this Agreement or, subject to this Agreement, otherwise available at law.
- 20.3 In addition to the other remedies specified in Clause 18, in the event that any Event of Default is not remedied within the applicable remedy period set forth in this Agreement, the non-defaulting Party may elect to treat this Agreement as being in full force and effect and shall have the right to seek specific performance of this Agreement by the defaulting Party.
- 20.4 If this Agreement terminates early (for any reason) and/or following termination or expiry of the Power Purchase Agreement:
- (a) CEB shall have the right to enter into agreements to sell any part of the capacity or Net Power Output and provide ancillary services to any person to the extent permitted by Law; and
 - (b) Government shall procure that Transmission System Operator shall provide CEB with access to and use of the Transmission System on reasonable and non-discriminatory terms and conditions.
- 20.5 If this Agreement is terminated by reason of Government Default CEB shall have the right (but not the obligation) to require the Government to purchase Site and the Facility (or such part of it (if any) that has been constructed) and to assume any or all outstanding obligations or liabilities of CEB in relation to the Project (other than any rights arising under this Agreement) by giving written notice to the Government within six (6) months following the date of termination. Such sale and assumption shall be completed on the date specified by CEB, being no less than two (2) months following the date of notice of the exercise of the option set out in this Clause 20.5. The consideration payable by the Government to CEB shall be paid in US\$ on completion of such sale and shall be equal to the sum of:
- (a) (i) the aggregate amount invested by Investors and Finance Parties in CEB less the amount of investment repaid, (ii) the aggregate amounts owed to Investors and Finance Parties by CEB and all accrued and unpaid interest, fees and charges thereon and (iii) the aggregate amount of costs, fees and expenses incurred by CEB, CEL, other Investors and Finance Parties person in carrying out Project Activities and/or in connection with the raising of finance and financing of the Project (on an indemnity basis);

- (b) (save to the extent included in the amounts referred to in Clause 20.5(a)) an amount equal to the value of CEL's and the Investors' investment in CEB prior to termination of this Agreement including the loss of return on investment for the unexpired period of thirty (30) years commencing on (i) the Commercial Operations Date (if termination of this Agreement occurs on or after the Commercial Operations Date) or (ii) the Scheduled Commissioning Date (if termination of this Agreement occurs prior to the Commercial Operations Date); and
- (c) (save to the extent included in the amounts referred to in Clause 20.5(a) or 20.5(b)) the aggregate amount of Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, CEB, CEL, their respective shareholders and the Finance Parties that arise out of or result from termination of this Agreement,

less (in circumstance where this Agreement is terminated pursuant to clause 17.1(e)) the amount paid by Government pursuant to Clause 14.4 in relation to the matter giving rise to the termination (if any).

- 20.6 If this Agreement terminated pursuant to clause 5.3 (Financial Close) CEB shall transfer to Government the freehold to the Site within one month following the date of such termination for no consideration.
- 20.7 The obligations of the Parties under this Agreement which by their nature would continue beyond the expiration or termination of this Agreement, including those in Clauses 1, 4.14(b), 5.3(d), 11, 13, 14, 15, 20 and 22 and the Common Terms shall survive the expiration or termination of this Agreement (however arising). Upon the expiration or termination of this Agreement (however arising), any monies, penalties or other charges due and owing either Party shall be paid by the other Party within thirty (30) Business Days.
- 20.8 The termination of this Agreement shall be without prejudice to any rights and obligations of the Parties accrued under this Agreement prior to such termination.

21. Further Assurances

If it shall be necessary and proper after the execution of this Agreement to execute any additional documents or take further action to carry out the intent of this Agreement, the Parties agree to take such action as may be reasonably required.

22. Governing Law

This Agreement and all matters arising from or connected with it shall be governed by English law in accordance with Paragraph 13 (Governing Law) of the Common Terms.

This Agreement has been entered into on the date shown at the beginning of page 1 of this Agreement.

SCHEDULE 1 – CRITICAL AUTHORISATIONS

1. The execution of the Power Purchase Agreement by CEB and Government on or before the Effective Date.
2. The granting of the approval of the Central Bank of Barbados referred to in Clause 4.11 within thirty (30) days of the date of application therefor.
3. No later than the date falling two (2) months after the Effective Date the granting of the exemptions referred to in Clause 4.16.
4. No later than the date falling six (6) months after the Effective Date the passing into law of The Electric Light & Power Bill 2013 in the form set out in Annex C and coming into full force and effect.
5. No later than the date falling six (6) months after the Effective Date the making of necessary regulations required to obtain, secure and supply all Contract Waste arising on Barbados for the exclusive use as feedstock for the Facility.
6. No later than the date falling six (6) months after the Effective Date, the granting of the exemption of CEB and the Project from the application of all or any of the provisions of the Utilities Regulation Act, Cap. 282.
7. No later than the date falling six (6) months after the Effective Date the adoption of all legislative acts required to implement the Project (other than those referred to in paragraphs 4, 5 and 6 above).
8. No later than the date falling six (6) months after the Effective Date the granting of each licence required by CEB to generate and export power onto the Transmission System.
9. No later than the date falling six (6) months after the Effective Date the granting of each licence required by Offtaker to purchase the Net Power Output and to transport the Net Power Output on the Transmission System and supply such power in Barbados no later than the date falling six (6) months after the Effective Date.
10. No later than the date falling six (6) weeks after the Effective Date the conveyance of the freehold of the Site to CEB free from Encumbrances and the grant of the rights of way and easements as required under Clause 4.4(c)(ii), including all necessary registrations, approvals or licenses to ensure the full validity of the conveyance, and relevant rights of ways and easements.
11. The grant of planning permission for the construction, development, operation and maintenance of the Facility at the Site, as provided for in the Barbados Town and Country Planning Act, Cap. 240, within six (6) months from the date of application therefor by CEB.
12. The grant of water extraction licences for wells and/or (as applied for by CEB) unconditional authorisation for the construction, operation and extraction of water from a rainwater lagoon (as referred to in Clause 10) within two (2) months of application therefor by CEB.

SCHEDULE 2 – CONTRACT WASTE

1. Government obligation to deliver

- 1.1 Subject to Paragraphs 1.5 and 3.2, commencing on the Waste Delivery Commencement Date Government shall deliver all Waste that has arisen in Barbados and falls within the Waste Specification (or procure that such Waste is delivered) to CEB.
- 1.2 Subject to Paragraphs 1.5 and 3.2, commencing on the Waste Delivery Commencement Date, Government shall deliver to CEB a minimum quantity of five hundred (500) tonnes of Contract Waste per day and a maximum quantity of six hundred and fifty (650) tonnes of Contract Waste per day. Government shall use reasonable endeavours to spread deliveries of Contract Waste evenly each day commencing on or after the Waste Delivery Commencement Date.
- 1.3 Without prejudice to any other right or remedy of either Party, the tonnage of Contract Waste that Government is obliged to deliver shall be reduced tonne per tonne for any Contract Waste not accepted by CEB at the Facility save where such non-acceptance arises as a result of:
- (a) Force Majeure;
 - (b) a breach by Government of its obligations under this Agreement; or
 - (c) a breach of Offtaker of its obligations under the Power Purchase Agreement.
- 1.4 Prior to the Waste Delivery Commencement Date, Government shall deliver such quantities of Waste that has arisen in Barbados and falls within the Waste Specification (or procure that such Waste is delivered) to CEB as CEB may require for the testing and Commissioning of the Facility. CEB shall notify Government no less than two (2) Business Days in advance of the required date for delivery each consignment of Contract Waste that CEB requires pursuant to this Paragraph of the quantities of Contract Waste so required.
- 1.5 The provisions of Paragraphs 1.1 to 1.4 shall not apply to the extent that CEB does not accept deliveries of Contract Waste or to Contract Waste which is handled, processed or landfilled outside this Agreement due to Force Majeure affecting CEB or default of CEB.
- 1.6 Government shall be responsible for and shall pay all costs of collection, transportation, sorting, removing ferrous and non-ferrous metal, earth and stones and other Waste outside the Contract Waste Specifications, crushing and shredding and thereafter delivery of Contract Waste to the Facility.

2. Obligation to Accept

CEB shall accept all Contract Waste that is delivered to it by or under the direction of Government, subject at all times to Paragraphs 3.2 and 6.1.

3. Available storage

- 3.1 The Site shall include a storage area for Contract Waste sufficient to store no less than the quantity of Contract Waste that would under normal conditions and average composition be processed in the Facility over a period of seven (7) days not to exceed 4550 tonnes ("**Storage Capacity**"). CEB shall utilise Contract Waste stored in such storage area on a rolling basis as feedstock for the Facility and Contract Waste delivered by Government shall replenish stocks of stored Contract Waste. CEB shall be entitled to utilise the Contract Waste in any order or combination of types of Waste as it shall determine in its absolute discretion.
- 3.2 CEB shall notify Government when ninety five (95) per cent of the Storage Capacity has been utilised for the storage of Contract Waste. At any time when (and for so long as) ninety five (95) per cent or more of the Storage Capacity has been utilised for the storage of Contract Waste CEB shall be entitled to require Government to suspend deliveries of Contract Waste to the Site fully or partially.

4. Waste Receiving Facility

Uniform sized Contract Waste shall be delivered to the Waste Receiving Facility. The Waste Receiving Facility shall be capable of accepting Contract Waste delivered by means of conveyor from the adjoining premises to a delivery point nominated by CEB.

5. Procedures

- 5.1 CEB shall provide health and safety, environmental and operating procedures to be implemented at the Facility so as to ensure compliance with its duties and obligations under applicable Law and to be observed by persons delivering Contract Waste to the Site ("**CEB HSEO Procedures**") in each case, no later than the date on which CEB first gives notice to Government pursuant to Paragraph 1.2 requiring delivery of Contract Waste. CEB may modify the CEB HSEO Procedures at any time and shall deliver any revisions or substitution of the CEB HSEO Procedures to Government no later than ten (10) Business Days prior to such procedures coming in effect provided that CEB may require each person delivering Contract Waste to CEB pursuant to this Agreement to comply with modified procedures notified to such persons at the Site if it is necessary to introduce modified procedures as a result of any emergency, Force Majeure or operational constraint or incident at the Facility.
- 5.2 Government shall procure that each person delivering Contract Waste to CEB pursuant to this Agreement is made aware of and shall comply with the CEB HSEO Procedures in force from time to time and any other directions given by CEB or its Contractor pursuant to Paragraph 5.1.

6. Delivery

- 6.1 All Contract Waste shall be delivered in bulk to CEB at the Waste Receiving Facility at the Site. Prior to delivery of any consignment of Waste to CEB Government shall procure that such Waste shall be sorted to separate (i) Hazardous Waste and (ii) tyres (in any form) from (iii) Municipal Solid Waste, Commercial Waste and Industrial Waste and to remove ferrous and non-ferrous metal, earth and stones and other Waste that is not within the Waste Specification. Each consignment of Contract Waste shall be of a single Waste Category.

- 6.2 Subject at all times to any restrictions contained in any Authorisation, CEB shall allow access to the Waste Receiving Facility for delivery of Contract Waste between the hours of 7am and 7pm each day of each year with effect from the Commercial Operations Date.
- 6.3 All consignments of Contract Waste shall be weighed by CEB or its Contractor at the weighbridge at the Waste Receiving Facility. CEB shall maintain a computerised record of deliveries of consignments of Contract Waste, which Government shall be entitled to inspect on reasonable notice. Prior to delivery of any consignment of Contract Waste pursuant to this Agreement Government shall provide to CEB or its Contractor at the Waste Receiving Facility an accurate description of the composition of such consignment of Contract Waste and its Waste Category. CEB shall provide to each person delivering a consignment of Contract Waste a transfer note confirming the tonnage of Waste delivered and, so far as it is ascertainable by CEB or its Contractor, its Waste Category. The transfer notes provided by CEB or its Contractor pursuant to this Paragraph shall be deemed to be an accurate measurement of the tonnages of Contract Waste delivered save in the event of manifest error or manifest fraud.
- 6.4 CEB shall provide to Government a printed statement of all deliveries made during each month including tonnage, Waste Category and average Calorific Values (as tested by CEB in accordance with Paragraph 10.2) within seven (7) days following the end of the month of delivery. In the event that Government does not agree with the data in such monthly statement, Government's Representative and CEB's Representative shall meet to resolve any discrepancies. In the event that the Parties are unable to resolve any discrepancies, the matter shall be referred to Expert Determination.
- 6.5 As soon as reasonably practicable after becoming aware that any Waste or other substance or materials delivered or proposed to be delivered does not comply with the Waste Specifications Government shall collect (if previously delivered to CEB) or procure that such Waste is not delivered to CEB (if not previously delivered) and shall process and dispose of any such Waste or other substances or materials in accordance with applicable Law. Any Waste or other substance or material that is ejected or removed from any feedstock delivery process at the Facility by any automatic monitoring equipment or system at the Facility ("**Rejected Waste**") shall be deemed not to comply with the Waste Specification and shall be collected, processed and disposed of by Government in accordance with applicable Law. CEB shall be entitled to require Government to collect any Waste or other goods or materials delivered to CEB pursuant to this Agreement that are outside of the Waste Specification or are Rejected Waste at any time and Government shall remove the same from the Site promptly (and in any event within five (5) Business Days) following receipt of such notice from CEB.
- 6.6 If CEB becomes aware that the Waste or other substance or materials delivered or proposed to be delivered to CEB does not comply with the Waste Specifications it shall notify Government promptly after becoming aware of that fact.
- 6.7 CEB shall procure that the weigh bridge and associated measurement equipment at the Site are independently inspected for accuracy and calibrated by the Scheduled Commissioning Date and thereafter at intervals of not less than annually. CEB shall provide Government with a copy of each certificate of such inspection and calibration within five (5) Business Days of being requested to do so in writing by Government.

7. Outages and disruption to delivery

- 7.1 No later than thirty (30) Business Days prior to Commercial Operations Date and thirty (30) Business Days prior to the commencement of each year thereafter during the Term CEB shall notify Government in writing of any Scheduled Outages of any part of the Facility that will or are likely to affect deliveries of Contract Waste at the Waste Receiving Facility during the course of such year.
- 7.2 Commencing on the Commercial Operations Date, CEB may not schedule more than a total of eight hundred and forty (840) hours of Scheduled Outages during any year.
- 7.3 CEB shall notify Government promptly of any Maintenance Outages, Forced Outages or Force Majeure that will or are likely to affect deliveries of Contract Waste at the Waste Receiving Facility as soon as reasonably practicable after becoming aware of the same.
- 7.4 Provided that CEB has given written notice to Government in accordance with Paragraph 7.1 and 7.3 CEB shall have no obligation to accept any Contract Waste during:
- (a) any Scheduled Outage;
 - (b) Force Majeure in relation to which CEB or its Contractor is the Affected Party; or
 - (c) any period in which operation of the Facility is affected as a result of any default by Government of its obligations under this Agreement (including a Waste Default) or any default by Offtaker of its obligations under the Power Purchase Agreement (including an Offtaker Default).
- 7.5 Government shall notify CEB promptly of any events or circumstances that will or are likely to affect deliveries of Contract Waste at the Waste Receiving Facility after becoming aware of the same and extent and the anticipated duration of any such interruption or disruption to deliveries. Government shall use best endeavours to resume the supply of Contract Waste in accordance with this Agreement following any disruption to deliveries.

8. Title and Risk

- 8.1 Ownership of and risk in all Contract Waste delivered to CEB or its Contractor by or on behalf of Government pursuant to this Schedule and accepted by CEB or its Contractor at the Waste Receiving Facility shall pass to CEB upon acceptance at the Waste Receiving Facility and CEB shall take full responsibility for such Contract Waste and shall process such Contract Waste in accordance with the terms of this Agreement.
- 8.2 Unless CEB notifies Government in writing that it is willing to accept such Waste or other substances and materials after full disclosure of the nature and composition of such Waste, substance and materials has been made to CEB (in which case title and risk in the same shall pass in accordance with Paragraph 8.1) ownership of and risk in Waste or other substances or materials that is not Contract Waste and is delivered to CEB or its Contractor by or on behalf of Government pursuant to this Schedule whether or not such Waste or other substances or materials are accepted by CEB or its Contractor at the Waste Receiving Facility shall remain with Government and Government shall have responsibility for such Waste or other substances or materials.

9. Health, safety and environment

- 9.1 CEB reserves the right to reject any consignment of Contract Waste or part thereof that includes Hazardous Materials if CEB believes that the handling or processing of such Waste in the Facility is a risk to health or safety or may result in damage to the Facility.
- 9.2 Where any consignment of Contract Waste includes Hazardous Materials Government shall provide to CEB at the Waste Receiving Facility prior to the delivery of such Hazardous Materials a safety data sheet setting out a clear and accurate description of the Hazardous Materials contained within the consignment and health, safety and environmental data relating to the handling of such Hazardous Materials. Following review of such Hazardous Materials safety data sheet CEB shall at its own discretion decide whether or not to accept such Hazardous Materials and shall notify Government accordingly prior to the Hazardous Materials being accepted at the the Facility.
- 9.3 Each of the Parties shall provide its employees and contractors with appropriate information and training to enable them to handle Contract Waste delivered pursuant to this Agreement in a manner which does not endanger their health or safety. Each of the Parties shall be responsible for ensuring that any obligations, requirements or recommendations under applicable Law in respect of health, safety and the environment relating to its handling of Contract Waste delivered pursuant to this Agreement are complied with.

10. Fees and charges

10.1 Fees

Government shall pay the following fees for Contract Waste delivered to the Site:

- (a) USD 30 per tonne for Contract Waste comprising Municipal Solid Waste or Commercial Waste or Industrial Waste;
- (b) USD 50 per tonne for Contract Waste comprising tyres (in any form); and
- (c) USD 250 per tonne for Contract Waste comprising Hazardous Waste or such other amount as CEB and Government may agree in writing in relation to any consignment of Hazardous Waste,

("Fees") subject to adjustment in accordance with Paragraph 10.2. All amounts payable by Government to CEB or CEL shall be invoiced in and be paid in USD.

10.2 Adjustment

- (a) CEB shall be compensated for Contract Waste of a lesser Calorific Value than an average Calorific Value of waste of eleven (11) to thirteen (13) Mj/kg (measured over a period of one calendar month ((being a "Test Period") (the "Average Calorific Value" or "ACV")). CEB shall monitor and record in writing and electronically the Calorific Value of Contract Waste delivered to the Facility by conducting random samples of consignments of Contract Waste. If the results of such sample testing show the ACV of such Contract Waste is less than eleven (11) Mj/kg then the applicable Fees for Contract Waste delivered to the Facility during the Test Period shall be adjusted upwards in accordance with the following table:

ACV	Adjustment
< 11 ≥ 10 Mj/kg	+5%
< 10 ≥ 9 Mj/kg	+8%
< 9 ≥ 8 Mj/kg	+11%
<8 Mj/kg	+14%

- (b) The Fees (as amended from time to time) shall be increased on the third (3rd) anniversary of the Effective Date and every third (3rd) anniversary of such date by X% calculated as follows:

$$X\% = (A\% \times (A_1 / A_0)) + (B\% \times (B_1 / B_0)) + (C\% \times (C_1 / C_0)) + (D\% \times (D_1 / D_0))$$

where

A% is the percentage of CEB's cost of operation and maintenance of the Facility during Calculation Period represented by the costs of raw materials, spare parts and consumables (excluding Contract Waste, water and electric power supplied to CEB other than by generation from the Facility);

A₁ is the greater of (i) A₀ and (ii) the actual costs of raw materials, spare parts and consumables (excluding Contract Waste, water and electric power supplied to CEB other than by generation from the Facility) utilised in the operation and maintenance of the Facility during the Calculation Period;

A₀ is the costs of raw materials, spare parts and consumables (excluding Contract Waste, water and electric power supplied to CEB other than by generation from the Facility) utilised in the operation and maintenance of the Facility either (i) as estimated by CEB and set out in the Approved Costs Model (in the case of the first Calculation Period) or (ii) during the previous Calculation Period (in the case of any subsequent Calculation Period);

B% is the percentage of CEB's cost of operation and maintenance of the Facility during the Calculation Period represented by the costs of water;

B₁ is the greater of (i) B₀ and (ii) the actual costs water incurred by CEB in the operation and maintenance of the Facility during the Calculation Period;

B₀ is the estimated costs of water utilised in the operation and maintenance of the Facility either (i) as estimated by CEB and set out in the Approved Costs Model (in the case of the first Calculation Period) or (ii) during the previous Calculation Period (in the case of any subsequent Calculation Period);

C% is the percentage of CEB's cost of operation and maintenance of the Facility during the Calculation Period represented by the costs of electric power supplied to CEB other than by generation from the Facility;

C₁ is the greater of (i) C₀ and (ii) the actual costs of electric power supplied to CEB other than by generation from the Facility incurred by CEB in the operation and maintenance of the Facility during the Calculation Period;

C₀ is the estimated costs of electric power supplied to CEB other than by generation from the Facility utilised in the operation and maintenance of the Facility either (i) as estimated by CEB and set out in the Approved Costs Model (in the case of the first Calculation Period) or (ii) during the previous Calculation Period (in the case of any subsequent Calculation Period);

D% is the percentage of CEB's cost of operation and maintenance of the Facility during the Calculation Period represented by labour costs and other costs not falling within the previously mentioned costs (together "Labour and Other Costs");

D₁ is the greater of (i) D₀ and (ii) the actual Labour and Other Costs incurred in the operation and maintenance of the Facility during the Calculation Period;

D₀ is the anticipated Labour and Other Costs incurred in the operation and maintenance of the Facility either (i) as estimated by CEB and set out in the Approved Costs Model (in the case of the first Calculation Period) or (ii) during the previous Calculation Period (in the case of any subsequent Calculation Period);

"**Calculation Period**" means (in the case of the first Review Date) the period commencing on the Effective Date and ending on the first Review Date or (in the case of any subsequent Review Date) the period commencing on day after the preceding Review Date and ending on such subsequent Review Date.

10.3 Monthly Invoice

- (a) Commencing with the month following the month in which Government commences delivery of Contract Waste to the Site, CEB shall submit to Government a monthly invoice on or before the fifth (5th) day of that month for the aggregate of:
- (i) Fees payable in relation to Contract Waste estimated by CEB in good faith to be delivered to CEB in the current month based (in the case of the third and subsequent invoices) on the averages of waste types delivered in the previous two (2) months;
 - (ii) plus in the case of the first invoice only Fees payable in relation to Contract Waste actually delivered in the previous month;
 - (iii) plus the amount (if any) by which the Fees estimated by CEB pursuant to Paragraph 10.3(a)(i) to be payable in relation to the previous month (if any) are less than the Fees payable by Government in relation the actual quantities and types of Contract Waste delivered to CEB in the previous month;
 - (iv) plus the aggregate amount of Compensation and indemnity payments payable by Government pursuant to Clause 14 in relation to the previous month (if any);
 - (v) less the amount (if any) by which the Fees estimated by CEB pursuant to Paragraph 10.3(a)(i) to be payable in relation to the previous month (if any) are more than the Fees payable by Government in relation the actual quantities and types of Contract Waste delivered to CEB in the previous month
- (the "**Monthly Payment**").
- (b) In the event that (for whatever reason) accurate data necessary to calculate the actual quantities and types of Contract Waste delivered to CEB in the previous month is not available, CEB may prepare such monthly invoice on the basis of its best estimate of the relevant deliveries taking into consideration historical data and the production during that month. CEB shall clearly identify any item in a monthly invoice calculated on an estimated basis as having been

estimated. As soon as accurate data becomes available, (and save to the extent taken into account in computing any subsequent Monthly Payment) such payments shall be made between the Parties as may be necessary to correct any differences between the estimated charges made pursuant to this Clause 10.3(b) in the relevant monthly invoice and the actual amounts due.

- (c) Save to the extent already accounted for in the monthly invoice, each Party shall invoice the other for any other amounts which may be payable by the other Party in accordance with this Agreement.

10.4 Payment terms

- (a) Commencing on the Commercial Operations Date, the Monthly Payment shall be paid to such bank account of CEB as CEB shall notify to Government from time to time in freely available cleared funds no later than the tenth (10th) day of each month. Payments may be made by electronic funds transfer from the account referred to in Paragraph 10.4(b) or from such other bank account of Government as Government shall determine. Any bank charges relating to such payment shall be for the account of Government.
- (b) Government shall establish and maintain a dedicated reserve account solely for funding payments to CEB into which Government shall transfer the equivalent of CEB's best estimate of six (6) months' Monthly Payments (as notified by CEB to Government in writing from time to time and excluding any indemnification payments pursuant to Clauses 14.1 to 14.6 inclusive) shall be credited (the "**Waste Reserve Account**")
 - (i) Government shall pay into to the Waste Reserve Account the following amounts on or before set out opposite such amount such that the Waste Reserve Account shall be fully funded prior to the Commercial Operations Date.

(A)	US\$837,500	no later than Financial Close;
(B)	US\$ 837,500	no later than the end of period of nine (9) months commencing on Financial Close; and
(C)	US\$ 837,500	no later than the start of Commissioning.
 - (ii) Commencing on the Commercial Operations Date, within fifteen (15) days of the beginning of each month Government shall pay into the Waste Reserve Account an amount equal to the amount withdrawn and paid to CEB in that month. No withdrawal shall be made from the Waste Reserve Account other than to pay to CEB amounts payable pursuant to this Agreement. Government shall establish a direct debit mandate in favour of CEB enabling CEB to debit amounts payable pursuant to this Agreement from the Waste Reserve Account. Government shall provide true and accurate copies of monthly bank statements to CEB showing all credits and debits from the Waste Reserve Account monthly (whether or not demanded) and on demand by CEB.
- (c) Government undertakes to grant to CEB such Security over the Waste Reserve Account as CEB or the Finance Parties may require upon demand by any of them.

- (d) Without prejudice to Clause 4.16, if VAT is chargeable on a supply made under this Agreement the recipient shall pay to the supplier an amount equal to that VAT on the production of a valid VAT invoice.

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SCHEDULE 3 – CONTRACT WASTE SPECIFICATIONS

Part A - Waste Specification

1. Contract Waste will be:

- (a) Municipal Solid Waste;
- (b) Commercial Waste;
- (c) Industrial Waste;
- (d) Tyres;
- (e) Hazardous Waste generated only from domestic sources (and specifically excluding Hazardous Waste from (i) premises used wholly or mainly for the purposes of a trade or business or the purposes of sport, recreation or entertainment, (ii) any factory, (iii) any premises used for the purposes of, or in connection with, the provision to the public of transport services by land, water or air, (iv) any premises used for the purposes of, or in connection with, the supply to the public of gas, water or electricity or the provision of sewerage services, (v) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services, (vi) any mine or quarry or (vii) any premises used for agriculture) which have or are likely to have characteristics that are known or tested to exhibit one or more of the following five hazardous properties listed below (whether gaseous, liquid or solids):
 - (i) "Flammable", "Highly flammable", "Corrosive" or "Toxic" (as such terms are defined in the definition of "Hazardous Materials" in the Master Definitions Schedule); or
 - (ii) "chemically reactive" - being any substance that is likely to undergo a transformation resulting in a change of composition, constitution and/or configuration as a result of coming into contact with another substance;(such domestic Hazardous Waste being "DHW"),

in each case, (and notwithstanding the above) excluding any Waste identified in Part B of this schedule.

2. Subject to Part B of this schedule, DHW may include:

- (a) Paints and solvents (e.g. oil/water based paints, thinners, methylated sprits etc.)
- (b) Automotive wastes (e.g. motor oil, used oil filters etc.)
- (c) Pesticides (e.g. insecticides, herbicides, fungicides etc.)
- (d) Mercury containing wastes (e.g. thermometers, switches, fluorescent lighting etc.) Electronics (computers, televisions, cell phones)
- (e) Caustics / Cleaning agents (bleach, kitchen/bathroom cleaners, stain removers etc.)

- (f) Some specialty Batteries (e.g. lithium, nickel cadmium, or button cell batteries)
 - (g) smoke detectors;
3. Contract Waste shall be size reduced such that the dimensions of each constituent part of the Contract Waste shall not exceed 150mm in any one dimension.
 4. With the exception of tyres, Contract Waste shall not be taken from landfill sites;

Part B – Prohibited Materials

1. Untreated Sewage
2. Mining or quarrying residues
3. Construction debris (other than wood)
4. Radioactive, oxidising or ionising materials
5. Asbestos (White, Brown or Blue)
6. Clinical and/or medical Waste (other than domestic Waste)
7. LPG Cylinders
8. Ammunition
9. End-of-life vehicle waste
10. Refrigerants or refrigerant-containing appliances
11. "Flammable", "Highly flammable" or "Explosive" (as such terms are defined in the definition of "Hazardous Materials" in the Master Definitions Schedule) solids and/or liquids;
12. Any container without a recognisable identification label having a capacity of five (5) litres or more

ANNEX A
INCORPORATED TERMS MEMORANDUM

INCORPORATED TERMS MEMORANDUM

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THIS INCORPORATED TERMS MEMORANDUM is dated

March 2014

BETWEEN

- (1) **THE GOVERNMENT OF BARBADOS;**
- (2) **CAHILL ENERGY LIMITED** a company incorporated in Guernsey (registered number 55553) and having its registered office at Tudor House, Le Bordage, St Peter Port, Guernsey GY1 1DB, Channel Islands; and
- (3) **CAHILL ENERGY (BARBADOS) LIMITED** a company incorporated in Barbados with registered number 37435 and having its registered office at Lex Caribbean, Worthing Corporate Centre, Worthing, Christ Church, Barbados, BB15008;

Signed by:

The Government of Barbados)
acting by The Hon. Freundel Stuart, Q.C. M.P.,)
Prime Minister)

Cahill Energy Limited)
acting by M.E. Clare Cowan,)
CEO)

Cahill Energy (Barbados) Limited)
acting by M.E. Clare Cowan,)
Director)

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SCHEDULE 1 - MASTER DEFINITIONS SCHEDULE

1. Definitions

Except where the context otherwise requires, the following defined terms used in the Transaction Documents have the meaning set out below, as the same may be amended and supplemented from time to time:

"**Advisers**" in relation to a person means professional advisers advising that person, including (unless the context requires otherwise) partners or members in or directors of (as the case may be) such advisers and employees of such advisers;

"**Affected Party**" means a Party affected by Force Majeure;

"**Affiliate**" means, in relation to any person, another person that Controls, is Controlled by, or is under common Control with, such person;

"**Agreed or Determined by Expert**" means either (i) agreed between the Parties or (ii) in the absence of agreement within ten (10) Business Days of the date on which either Party notifies the other that it proposes to refer the matter to Expert Determination, determined by Expert Determination;

"**Agreement Subject**" in relation to a Transaction Document means the products, good, services and facilities to be provided by one (1) Party to the other Party pursuant to such Transaction Document;

"**Approved Costs Model**" means the financial model for the anticipated costs of operation and maintenance of the Facility approved by Finance Parties at Financial Close;

"**Authorisations**" includes:

- (a) any consent, authorisation, certificate, permission, licence, approval, authority or exemption from, or any registration, filing or agreement with, a Competent Authority) and
- (b) in relation to anything which will be fully or partly prohibited or restricted by Law if a Competent Authority intervenes or acts in any way within a specified period after registration, filing or notification, the expiry of that period without intervention or action,

required for or in relation to the Project;

"**Back-up Power Metering System**" means the back-up metering system for the measurement of delivery of Net Power Output to be installed at the Site;

"**BL&P**" means Barbados Light & Power Company Limited, a company incorporated in Barbados;

"**Business Day**" means a day other than a day which is a Saturday, Sunday or public holiday in Barbados;

"**Calorific Value**" means the total energy (j/kg) of the waste received at the Facility;

"Capacity Payment" means the monthly amount payable to CEB pursuant to the Power Purchase Agreement in relation to the Dependable Export Power Capacity of the Facility;

"Cause" means with respect to the revocation of any Authorisation, a revocation on account of any wilful default or gross negligence on the part of (i) CEB or its Contractors (in the case of a CEB Authorisation) or (ii) the holder of the relevant Authorisation or its contractors (in the case of any person other than CEB or its Contractors), in each case, in complying with the material terms of a Authorisation or any Law consistently applied in a non-discriminatory manner and in accordance with the spirit of the Implementation Agreement;

"CEB" means Cahill Energy (Barbados) Limited a company incorporated in Barbados (registered number 37435) and having its registered office at Lex Caribbean, Worthing Corporate Centre, Worthing, Christ Church, Barbados, BB15008;

"CEB Authorisations" means those Authorisations required by all or any of CEL, CEB, the Contractors and their respective employees, agents, representatives or contractors for Project Activities including the construction, testing, commissioning, operation and maintenance and ownership of the Facility and Back-up Power Metering System, the extraction of or supply of water required for the construction, testing, commissioning, operation and maintenance of the Facility, the handling and processing of Waste at or by the Facility and the generation and supply of electricity by the Facility and supply of electricity to the Site;

"CEL" means Cahill Energy Limited a company incorporated in Guernsey (registered number 55553) and having its registered office at Tudor House, Le Bordage, St Peter Port, Guernsey GY1 1DB, Channel Islands;

"CEL's Internal Costs" means US\$16,438.83 per week representing a genuine pre-estimate of the operating costs of CEL including overhead and remuneration (whether accrued or paid) but excluding third party costs and out-of-pocket expenses;

"Change in Law" means the occurrence of any of the following after the Commencement Date:

- (a) the enactment of any new Law or modification or repeal of any existing Law;
- (b) a change in the interpretation or application by any Competent Authority of any Law of Barbados;
- (c) the imposition of a requirement for Authorisations not required as at the Commencement Date;
- (d) after the grant of any Authorisation, a change in the terms and conditions attaching to such Authorisation or the attachment of any terms or conditions;
- (e) any Authorisation not being granted on a timely basis where application for such Authorisation has been duly made; and
- (f) any such Authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, that Authorisation not being renewed on a timely basis on application for renewal being duly made, or being renewed on terms or subject to conditions which are materially less favourable to CEB and/or any other person excluding a Competent Authority (as the case may be) than those attached to the original Authorisation;

"**Chief Technical Officer**" has the meaning set out in the Electric Light and Power Act, 2013;

"**Commencement Date**" means the date stated at the head of the first page of the Incorporated Terms Memorandum;

"**Commercial Waste**" mean means Waste from premises used wholly or mainly for the purposes of a trade or business or the purposes of sport, recreation or entertainment excluding:

- (a) Household waste;
- (b) Industrial Waste;
- (c) Hazardous Waste; and
- (d) Tyres;

"**Commercial Operations Date**" means the date on which Commissioning of the Facility is completed;

"**Commissioned**" means the satisfactory completion of such commissioning procedures, equipment performance tests and other tests as from time to time constitute usual industry standards and practices to demonstrate that the Facility is capable of commercial operation for the purposes of the Power Purchase Agreement;

"**Common Terms**" means the provisions set out in Schedule 2 (Common Terms) of this Incorporated Terms Memorandum.

"**Competent Authority**" means Government and any other national, state, provincial or local governmental authority, any governmental, quasi-governmental, judicial, public or administrative agency, authority or body, any court of competent jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) acting within their powers and having jurisdiction over any of the Parties, the Project, the Facility, the Contractors or the Finance Parties, Investors, the importation of Waste tyres, the supply of Waste or other services to the Facility, the purchase or distribution or supply of Net Power Output or any part thereof;

"**Competitor**" means any person (other than CEB, CEL and their Affiliates) carrying on business as a developer, owner or operator of any Waste-to-energy electricity generation plant or any Waste-to-fuel plant using or proposing to use gasification technology employing plasma technology;

"**Confidential Information**" means:

- (a) information relating to the negotiation of any Transaction Document or any document referred to in any Transaction Document;
- (b) the provisions of any Transaction Document and information relating to or the subject matter of any Transaction Document or of any document referred to in any Transaction Document;
- (c) information that is disclosed by any Party to another Party pursuant to any Transaction Document in relation to its business, operations, finances or strategic or business plans;

- (d) information relating to CEB or any of its Affiliates including information relating to CEB's and/or any of its Affiliate's business activities, finances, investors, methods of business and future plans ("**CEB Confidential Information**");

"**Contract Waste**" means Waste complying with the Waste Specification supplied or to be supplied to CEB by Government in accordance with the provisions of the Implementation Agreement;

"**Contract Year**" means the period of twelve (12) months commencing on the Commercial Operations Date and each subsequent period of twelve (12) months commencing on an anniversary of the Commercial Operations Date, save that the last Contract Year in relation to a Transaction Document shall be the period commencing on the last anniversary of the Commercial Operations Date falling prior to the Termination Date of that Transaction Document and ending on such Termination Date;

"**Contractor**" means any contractor engaged by CEB or CEL in Project Activities;

"**Control**" of a person by another means that the other (whether alone or acting in concert with others, whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which controls that person or otherwise controls or has the power to control the affairs and policies of that person or of any other person which controls that person (and "**Controlled**" and "**Controlling**" shall be construed accordingly);

"**Counterparty**" means a party to a Transaction Document that is not CEB or CEL;

"**Default Rate**" means the rate of interest seven per cent. (7%) above London Interbank Offered Rate (LIBOR) administered by ICE Benchmark Administration Limited (or any other person that takes over administration of that rate) for USD for three (3) months in effect on the due date as displayed on Reuters screen page LIBOR01 or LIBOR02 (or any replacement of such page) (fixed at 11.00 am) for the period from the date payment is due to the date of receipt of payment provided that if no rate is available for the due date as a result of such date not being a Business Day then such rate quoted for the immediately preceding day (for which the rate was last reported by Reuters) shall be used for calculation of interest;

"**Dependable Export Power Capacity**" means the maximum daily generation capacity that the Facility can sustain over a specified test period using a consistent composition of Contract Waste, as modified for seasonal limitations and reduced by capacity required for station service or auxiliaries (parasitic load);

"**Determined Amount**" means the amount which the Parties agree or is determined to be payable in respect of a Disputed Amount;

"**Direct Agreement**" means a direct agreement relating to a Transaction Document between, inter alia, any Counterparty and any Finance Parties in such form and substance as may reasonably be required by the Finance Parties which may provide (inter alia) that:

- (a) the Finance Parties shall be entitled to exercise in the place of CEL or CEB all rights and to cure any defaults of CEL or CEB (as the case may be) under such Transaction Document (in the period provided for in such Transaction Document) and such Counterparty shall accept such exercise or cure as though it had been done by CEB or CEL (as the case may be);

- (b) such Counterparty shall not, without the prior written consent of the Finance Parties, consent to or accept any cancellation or termination of such Transaction Document by CEB or CEL;
- (c) such Counterparty shall not make any demands under such Transaction Document by reason of any default by CEB or CEL (as the case may be) without giving the same prior written notice to the Finance Parties as to CEB or CEL and providing to the Finance Parties the same opportunity to cure such default as given to CEB or CEL (as the case may be); and
- (d) such Counterparty shall consent to the assignment of the CEB's or CEL's rights under such Transaction Document to the Finance Parties and provide any acknowledgement required for purposes of perfecting the security granted by CEB or CEL to the Finance Parties (as the case may be);

"Discriminatory Change in Law" means a change in Law, the terms of which apply expressly to the Project, CEL, CEB, Importer and/or their respective shareholders or successors, but not to other persons or apply to persons developing, constructing, owning or operating Waste-to-energy facilities or which specifically refers to generation of power from Waste or to the holding of shares or other investments in companies or other entities whose main business is generation of power from Waste or the development, construction, owning or operation of such Waste-to-energy plant or facilities;

"Dispute" means any dispute between the Parties whether resulting from a claim in contract, in tort or based on any other legal doctrine which may arise out of, or in connection with, (whether, in each case, wholly or partially, directly or indirectly) any Transaction Document or the interpretation, application, implementation, validity, breach or termination of any Transaction Document or any related instrument, agreement or document, or any other provision hereof or thereof;

"Disputed Amount" means an amount in respect of an item in an invoice issued pursuant to a Transaction Document disputed by a Party in accordance with Paragraph 2.1 of the Common Terms or any other amount deemed to be a disputed amount pursuant to the express terms of a Transaction Document;

"Disputing Party" means a Party disputing a Disputed Amount in accordance with Paragraph 2.1 of the Common Terms;

"Emergency" means 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 Transmission System Operator to maintain safe electrical distribution service on the Transmission System, having regard to the then-current standard of electrical service provided to end customers, or (b) present a physical threat to persons or property;

"Encumbrance" includes a mortgage, charge, lien, pledge, right of pre-emption, option, covenant, restriction, lease, trust, order, decree, title defect or any other security interest or conflicting claim of ownership or right to use or any other third party right;

"Environment" means all, or any, of the following media, namely the air (including the air within buildings and the air within any other natural or man-made structures above or below ground), water (including water under or within land or in a pipe or sewage system), soil and land and any living organism supported by those media;

"Expert Determination" means determination in accordance with Paragraphs 14.2 and 14.3 of the Common Terms;

"Export Power Metering System" means all meters and metering devices owned by Offtaker and used to measure the delivery and receipt of Net Power Output and Dependable Export Power Capacity which shall be of a requisite standard for fiscal metering and shall be in accordance with specifications Agreed or Determined by Expert;

"Facility" means the plasma gasification Waste-to-energy facility to be constructed by or on behalf of CEB at the Site;

"Finance Documents" means any and all loan agreements, notes, bonds, letters of credit, indentures, mortgages, security agreements, hedging agreements, registration statements, disclosure statements, subordination agreements, partnership agreements, lease agreements, participation agreements, investment agreements and other documents relating to the interim or long-term financing of the Facility (and any refinancing of the foregoing), including any modifications, extensions, renewals or replacements thereof;

"Finance Parties" means banks, other financial institutions or investors from time to time directly or indirectly providing any finance, hedging, collateral support or investment funds in relation to any aspect of the construction, maintenance and/or operation of the Facility including any trustee or agent for any of the same and any trustee or agent for the holders of any bonds issued or security created in connection with the Facility or such credit facilities;

"Financial Close" means the initial release of funds under the Finance Documents for the purpose of construction of the Facility;

"Force Majeure" means, in relation to a Party to a Transaction Document, 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 such Transaction Document. "Force Majeure" shall, to the extent that they satisfy the above requirements be either:

- (a) Political Force Majeure; or
- (b) Other Force Majeure,

provided that Force Majeure shall not include:

- (i) lack of funds due to any commercial, economic or financial reason, including CEB's inability to make a profit or achieve a satisfactory rate of return other than (i) (in the case of CEB only) a lack of funds due to non-availability of facilities to convert currency or (ii) any event, circumstance or combination of circumstances which constitutes Force Majeure;
- (ii) changes in market conditions that affect the cost of supply of feedstock or alternative supplies of feedstock, or that affect demand or price for such Party's products;
- (iii) (in the case of Offtaker or Government only) the inability at any time or from time to time of the Transmission System to accept electricity generated by Facility, unless caused by an unlawful act or omission of CEB, a breach by CEB of the relevant Transaction Document in relation to which Force Majeure is claimed, or any event, circumstance or combination of events or circumstances which constitutes Other Force Majeure; or

- (iv) (in the case of Offtaker or Government only) any full or partial curtailment in the electric output of the Facility that is caused by, or arises from, the acts or omissions of a Relevant Authority, Offtaker or Transmission System Operator except (and to the extent) such acts or omissions are themselves caused by any event, circumstance or combination of events or circumstances which constitutes Other Force Majeure;

"Forced Outage" means any partial or complete interruption of the Facility's generating capability that is not the result of a Scheduled Outage or a Maintenance Outage;

"Government" means the Government of Barbados;

"Grid Code" means the grid code issued in accordance with section 31 of the Electric Light & Power Act, 2013;

"Grid Control Centre" means the Transmission System Operator's system control centre for the Transmission System located in Barbados, or such other control centre in Barbados designated by Offtaker from time to time (but not more than one (1) at any time);

"Harm" means harm to the health of living organisms or other interference with the ecological systems of which they form part and in the case of man includes any offence caused to any of his senses or health or harm to his property;

"Hazardous Substance" means any natural or artificial substance of any nature whatsoever (whether in the form of a solid, liquid, gas or vapour, along or in combination with any other substance) capable of causing Harm;

"Hazardous Waste" means any Waste that has one (1) or more of the fifteen (15) specified hazardous properties listed below:

- (a) 'Explosive': substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene;
- (b) 'Oxidizing': substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances;
- (c) 'Highly flammable': (i) liquid substances and preparations having a flash point below 21°C (including extremely flammable liquids) or (ii) substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or (iii) solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or to be consumed after removal of the source of ignition, or (iv) gaseous substances and preparations which are flammable in air at normal pressure, or (v) substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities;
- (d) 'Flammable': liquid substances and preparations having a flash point equal to or greater than 21 °C and less than or equal to 55 °C;
- (e) 'Irritant': non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, can cause inflammation;

- (f) 'Harmful': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks;
- (g) 'Toxic': substances and preparations (including very toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may involve serious, acute or chronic health risks and even death;
- (h) 'Carcinogenic': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence;
- (i) 'Corrosive': substances and preparations which may destroy living tissue on contact;
- (j) 'Infectious': substances and preparations containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms;
- (k) 'Toxic for reproduction': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital malformations or increase their incidence;
- (l) 'Mutagenic': substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence;
- (m) Waste which releases toxic or very toxic gases in contact with water, air or an acid;
- (n) 'Sensitizing': substances and preparations which, if they are inhaled or if they penetrate the skin, are capable of eliciting a reaction of hypersensitization such that on further exposure to the substance or preparation, characteristic adverse effects are produced;
- (o) 'Ecotoxic': waste which presents or may present immediate or delayed risks for one (1) or more sectors of the environment; and/or
- (p) Waste capable by any means, after disposal by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above;

"Implementation Agreement" means the implementation agreement dated on the date of this Incorporated Terms Memorandum between Government, CEL and CEB relating to the Project;

"Importer" means CEL or whichever of CEB or a company incorporated by CEL is nominated by CEL to exercise the rights set out in Clause 9 of the Implementation Agreement in accordance with that agreement;

"Importer Authorisations" means those Authorisations required by Importer or its employees, agents, representatives or contractors for the import of Waste into Barbados, the handling and processing of Waste or the supply and transportation of Waste to the Site;

"Incorporated Terms Memorandum" means this Incorporated Terms Memorandum incorporating the definitions and common terms of construction applicable to each of the Transaction Documents (where not otherwise defined therein);

"Industrial Waste" means Waste from any of the following premises:

- (a) any factory;
- (b) any premises used for the purposes of, or in connection with, the provision to the public of transport services by land, water or air;
- (c) any premises used for the purposes of, or in connection with, the supply to the public of gas, water or electricity or the provision of sewerage services;
- (d) any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services; or
- (e) any mine or quarry or any premises used for agriculture;

excluding, in each case:

- (f) Hazardous Waste; and
- (g) tyres;

"Insolvency Event" means, in relation to a person

- (a) other than in circumstances where of the following events occurs as part of or in connection with a solvent winding-up of that person for the purpose of and followed by a solvent reconstruction, amalgamation, reorganisation, merger or consolidation in any such case on terms approved in writing by the Parties prior to the occurrence of such event:
 - (i) a resolution is passed for its winding-up or for its judicial management or administration; or
 - (ii) an order for the winding-up or administration or judicial management of that person is made; or
- (c) any liquidator, trustee in bankruptcy, judicial or compulsory manager, receiver, administrative receiver, administrator or the like is appointed in respect of that person or any material part of its assets; or
- (d) that person or its directors requests the appointment of a liquidator, trustee in bankruptcy, judicial custodian, judicial or compulsory manager, receiver, administrative receiver, administrator or the like; or
- (e) any attachment, sequestration, distress, execution or the like affecting any material part of the assets of that person that materially affects its ability to perform its obligations under a Transaction Document occurs and is not discharged within sixty (60) days; or
- (f) any analogous event anywhere in the world subject to corresponding or equivalent qualifications or grace periods as specified therein;

"Interconnection and Transmission Facilities" means all the facilities on the high side of the step-up transformer to be constructed to enable Offtaker or Transmission System Operator to receive and deliver capacity and all electrical energy to be

delivered to Offtaker in accordance with the Power Purchase Agreement including all power lines, supporting structures, relays, switches, protective devices and other plant, equipment, infrastructure and facilities necessary to connect the Facility to the existing Transmission System, to energise the Facility and to accept and distribute the Net Power Output on the Transmission System together with the Export Power Metering System;

"Interconnection Point" means the physical points located at the Site's boundary where the Facility and the Transmission System are connected;

"International Waste Regulation" means The Basel Convention on Control of the Transboundary Movements of Hazardous Wastes and their disposal 1989 and all other treaties relating to the movement of Hazardous Wastes across national territorial boundaries and enabling legislation and inter-governmental agreements giving effect to the same that are, in each case, legally binding on Government;

"Investors" means the holders of shares in CEB from time to time;

"Invoice" means an invoice issued pursuant to the Implementation Agreement or Power Purchase Agreement;

"kW" and **"kWh"** mean Kilowatt and Kilowatt hour respectively;

"kW Day Rate" means the kW Hour Rate multiplied by 24;

"kW Hour Rate" means USD \$0.225 per kWh;

"Law" means any law (including common law or other binding law), statute, regulation, code, ordinance, rule, judgment, order, decree or directive or any determination by or requirement of a Competent Authority of interpretation or administration of any of the foregoing by a Competent Authority;

"LCIA" means the London Court of International Arbitration;

"Loss" means any loss, damage, liability, demand, claim, recovery, judgment, execution, fine, penalty, charge and any other cost and expense of any nature or kind whatsoever, including any costs of recovery on a full indemnity basis;

"Master Definitions Schedule" means Schedule 1 (Master Definitions Schedule) of this Incorporated Terms Memorandum;

"Maintenance Outage" means an interruption or reduction of Facility's generating capability that (a) is not a Scheduled Outage; (b) has been scheduled and allowed by Offtaker in accordance with the Power Purchase Agreement; and (c) is for the purpose of performing work on specific components, which work could be postponed by at least seven (7) days but should not be postponed until the next Scheduled Outage;

"Minimum Load" means generation capacity of the Facility in excess of the capacity required for station service or auxiliaries (parasitic load);

"Municipal Solid Waste" means Waste from:

- (a) a domestic property, that is to say, a building or self-contained part of a building which is used wholly for the purposes of living accommodation;
- (b) a caravan which usually and for the time being is situated on a caravan site (within the meaning of that Act);

- (c) a residential home;
- (d) premises forming part of a university or school or other educational establishment;
- (e) premises forming part of a hospital or nursing home,

as well as other Waste which, because of its nature or composition, is similar to such waste excluding, in each case:

- (f) Hazardous Waste; and
- (g) tyres;

"**MW**" and "**MWh**" mean megawatts and megawatt hour respectively;

"**Net Power Output**" means the electrical energy generated by the Facility other than any such electrical energy consumed by the Facility in connection with its operation and maintenance;

"**Offtaker**" means Government, or following the novation of the rights and obligations of Government under the Power Purchase Agreement to a company wholly owned by Government in accordance with Clause 4.24 of the Implementation Agreement, the company to which such rights and obligations and obligations are novated;

"**Offtake Default**" means a default by Offtaker in performing its obligations under the Power Purchase Agreement that causes, results in or necessitates, directly or indirectly, a reduction or cessation of generation by the Facility or otherwise prevents, restricts, reduces or impairs the generation of electrical power or the transmission of electrical power that the Facility would otherwise be capable of generating at that time from being generated and transmitted to the Transmission System;

"**Other Force Majeure**" includes any Force Majeure that is an event, circumstance or combination of events or circumstances of the following types, except to the extent that it or they constitute(s) or is or are caused by, a Political Force Majeure including:

- (a) earthquake, flood, storm, cyclone, lightning or other sudden acts of the elements on a level that exceeds the design criteria of the Facility;
- (b) fire, explosion, or chemical contamination;
- (c) epidemic or plague;
- (d) any strike, work-to-rule or go-slow (even if such difficulties could be resolved by conceding to the demands of a labour group);
- (e) any event, circumstance or combination of events or circumstances of the following types that occurs outside Barbados and does not directly involve Barbados:
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism;
 - (ii) radioactive contamination or ionising radiation originating from a source outside Barbados;

- (iii) strikes, works to rule, or go-slows (even if such difficulties could be resolved by conceding to the demands of a labour group) which are not primarily motivated by a desire to influence the action of a single employer so as to preserve or improve conditions of employment; and
- (f) vandalism, sabotage or acts of terrorism that are not of a political nature

A delay in the performance of CEB or any Contractor that results directly from any Other Force Majeure shall itself constitute an Other Force Majeure Event, to the extent only that it satisfies the requirements for a Force Majeure Event specified in the first paragraph of the definition of Force Majeure and is not excluded by the proviso to such definition;

"Parties" means in relation to any Transaction Document, the parties to such Transaction Document;

"Permitted Purpose" means for the purpose of fulfilling the obligations of any Party under the Transaction Documents and/or for the purpose of either Party receiving the benefit of its rights under the Transaction Documents, but for no other purpose whatsoever;

"Political Force Majeure" means any Force Majeure that is any event, circumstance or combination of events or circumstances of any of the following types that occur(s) inside or directly involve(s) Barbados (which shall include events outside Barbados):

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution;
- (b) radioactive contamination or ionising radiation originating from a source in Barbados or resulting from another Political Force Majeure;
- (c) any riot, insurrection, civil commotion, act or campaign of terrorism that is of a political nature, including actions associated with or directed against CEB (or Contractors) as part of a broader pattern of actions against companies or facilities with foreign ownership or management;
- (d) any strike, work-to-rule or go-slow (even if such differences could be resolved by conceding to the demands of a labour group) which is not primarily motivated by a desire to influence the actions of CEB so as to preserve or improve conditions of employment, and:
 - (i) is part of an industry wide strike, work-to-rule or go-slow, in response to the coming into force, modification, repeal, or change in the interpretation of application of any Law after the date of this Agreement;
 - (ii) is by the employees of any Relevant Authority in response to a Change in Law; or
 - (iii) is caused by Political Force Majeure;
- (e) a Change in Law; and
- (f) the discovery of mines or munitions on or adjacent to the Site rendering operation of the Facility impossible without imposing risk on any persons or property at or on the Site.

A delay in the performance of CEB or any Contractor that results directly from any Political Force Majeure shall itself constitute a Political Other Force Majeure Event, to the extent only that it satisfies the requirements for a Force Majeure Event specified in the first paragraph of the definition of Force Majeure and is not excluded by the proviso to such definition;

"Power Purchase Agreement" means the power purchase agreement dated on the date of this Incorporated Terms Memorandum between CEB and Offtaker relating to the Net Power Output and Dependable Export Power Capacity;

"PPA Novation Date" means the date of the novation deed novating the rights and obligations of Government under the Power Purchase Agreement to a company wholly owned by Government in accordance with Clause 4.24 of the Implementation Agreement;

"Pre-Contractual Statement" means, in relation to a Transaction Document, a draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of that Transaction Document, made or given by any person at any time prior to the date of such Transaction Document (other than any of the foregoing contained in any other Transaction Document);

"Pre-Existing Contamination" means, in each case, at or originating from the Site and at any time prior to Site Delivery the creation or existence of any Hazardous Substance or any other type of Environmental hazard, contamination or pollution, whether latent or patent, whether or not it is visible or exposed which at Site Delivery is causing significant Harm or in respect of which there is a significant possibility of such Harm being caused at any time during the Term, or the release of any Hazardous Substance or the violation of any Law relating to the Environment prior to Site Delivery but excluding the creation or existence of any Hazardous Substance or other type of Environmental hazard, contamination or pollution which is created or brought onto the Site by CEB or the violation of any Law relating to the Environment by CEB;

"Project" means the financing, development & related studies, planning, design, engineering, procurement, manufacture, construction, pre-commissioning, commissioning, ownership, operation and maintenance of the Facility and the acquisition, processing, import, transportation, delivery and supply of tyres and other Waste for use as a feedstock for the Facility;

"Project Activities" means investigations, due diligence and other development activities in relation to the Project, the negotiation, documentation and execution of the Project or any part thereof, the development & related studies, planning, design, engineering, procurement, manufacturing, construction, pre-commissioning & testing, commissioning, performance testing, ownership, operation and maintenance of the Facility and ancillary plant and equipment;

"Project Agreements" means the Transaction Documents and the agreements, other than the Finance Documents, that are entered into by CEB in relation to the Project from time to time;

"Project Costs" means costs and expenses incurred in carrying out Project Activities and/or in connection with the raising of finance for and financing of the Project including CEL's Internal Costs, legal, financial, accountancy, tax and other advisory fees and expenses, Contractors' fees and expenses and any out-of-pocket expenses;

"Prudent Practice" means practices, methods and procedures which are or should be adopted at the relevant time by a person exercising in the general conduct of its undertaking that degree of judgment, skill, diligence, prudence and foresight which

would ordinarily and reasonably be expected from a skilled and experienced operator engaged in the electric utility industry in Barbados, in accordance with all applicable safety and environmental regulations under the same or similar circumstances and conditions having regard to engineering and operational considerations, including manufacturers' recommendations. Prudent 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;

"Relevant Authority" means a Competent Authority having jurisdiction under the Laws of Barbados;

"Scheduled Commissioning Date" means the date falling fifty (50) months after the Waste Report Delivery Date or such earlier date as CEB notifies to Government in writing, such date to be deferred by one (1) day for each day during which construction, commissioning or testing of the Facility is prevented or impaired due to Force Majeure or the failure of Government to comply with the Implementation Agreement or CEB's failure to perform any obligations under the Implementation Agreement as a result of it being required to cease work by applicable health and safety procedures due to Pre-Existing Contamination;

"Scheduled Interconnection Date" means the date falling six (6) months prior to the Scheduled Commissioning Date provided, however, that such date shall be deferred day-for-day in the event that the monthly progress reports of CEB and/or the construction schedule for the Facility, as revised from time to time, projects a delay in the Scheduled Commissioning Date;

"Scheduled Outage" means a planned partial or complete interruption of the Facility's generating capability that (a) is not a Maintenance Outage; (b) has been scheduled and allowed by Offtaker in accordance with the Power Purchase Agreement; and (c) is for inspection, testing, preventive maintenance, corrective maintenance or improvement of the Facility or any of its components;

"Security" includes any mortgage, charge, lien, pledge, guarantee, bond or indemnity;

"Site" means an area of 15 acres forming part of larger area of 11,790 hectares bounding on the North on the lands of the Barbados Government (Solid Waste Management Center), on the West on the lands of the Sanitation Service Authority (Cell 4), on the South on "other lands of Vaucluse Plantation (Eastern Land Developments Limited)" and on the East on other lands of the larger area certified on a plan date 16 January 2014 by Mark Gary Field Land Surveyor;

"Site Delivery" means the delivery of the vacant possession of the Site to CEB;

"Start-Up" after the Commercial Operations Date, means any start-up of the Facility that that results in synchronization with the Transmission System;

"Tax" or **"Taxation"** means any tax (including VAT, excise tax, real property tax and Utility Tax), assessment, levy, impost, deduction, charge, duty or withholding of any kind or nature whatsoever and howsoever described which is levied or imposed by a Competent Authority and any related interest, penalty, charge, fine or other amount except any tax imposed on net income, profits or gains;

"Term" means, in relation to a Transaction Document, the term of the relevant Transaction Document, as defined therein;

"Termination Date" means, in relation to a Transaction Document, the date on which this such Transaction Document expires or terminates;

"Third Party Authorisations" means those Authorisations (excluding any CEB Authorisation or Authorisation required to be issued to Importer) required for (i) the construction, testing, commissioning, operation and maintenance or ownership of the Interconnection Facility or the Export Power Metering System; (ii) the expansion and strengthening of the existing Transmission System to connect the Facility to the existing Transmission System and to accept the Net Power Output; (iii) the collection, handling, delivery and supply of Waste to the Facility; (iv) the export of Net Power Output to, and distribution of Net Power Output on, the Transmission System; and (v) the supply of Net Power Output to consumers of such electricity;

"Transaction Documents" means the Implementation Agreement, the Power Purchase Agreement and the Incorporated Terms Memorandum;

"Transmission System Operator" means the person for the time being responsible for the operation and balancing of the Transmission System, being on the Commencement Date, BL&P;

"Transmission System" means the Interconnection Facilities and any other transmission or distribution (of any voltage) facilities (other than those on CEB's side of the Interconnection Point) through which the Net Power Output of the Facility will be received and distributed by Transmission System Operator to users of electricity;

"Unenforceable" means void, voidable, invalid, unenforceable or otherwise irrecoverable and **"Unenforceability"** will be construed accordingly;

"Waste" means any substance or object which the producer thereof or the person who is in possession of it discards or intends or is required to discard;

"Waste Category" means each of the following separate types of waste:

- (a) Hazardous Waste;
- (b) Tyres; and
- (c) Municipal Solid Waste, Commercial Waste and Industrial Waste;

"Waste Delivery Commencement Date" means the date falling fourteen days prior to the Commercial Operations Date such date to be notified in writing by CEB to Government;

"Waste Default" means a default by Government in performing its obligations under the Implementation Agreement in relation to the provision of Contract Waste to CEB in the quantities and in accordance with the specifications set out in the Implementation Agreement that causes, results in or necessitates, directly or indirectly, a reduction or cessation of generation by the Facility or otherwise prevents, restricts or impairs the generation of electrical power or the transmission of electrical power that the Facility would otherwise be capable of generating at that time from being generated and transmitted to the Transmission System;

"Waste Receiving Facility" means the facility for receiving Contract Waste at the Site;

"Waste Report Delivery Date" means the date on which the waste study verifying to CEB's satisfaction the composition, sources and quantities of Contract Waste available in Barbados as referred to in clause 5.7 of the Implementation Agreement is delivered to CEB; and

"Waste Specification" means the specifications set out in Part A Schedule 3 to the Implementation Agreement but specifically excluding the materials and substances listed in Part B of Schedule 3 to the Implementation Agreement.

2. Interpretation

In the Transaction Documents:

- (a) reference to the singular includes the plural and vice versa and reference to any gender includes other genders;
- (b) except as otherwise specified in a Transaction Document, reference in a Transaction Document to:
 - (i) a **"Clause"** shall be construed as a reference to a Clause of such Transaction Document;
 - (ii) a **"Schedule"** shall be construed as a reference to a schedule to such Transaction Document;
 - (iii) an **"Annex"** shall be construed as a reference to an annex to such Transaction Document;
 - (iv) a **"Paragraph"** shall be construed as a reference to a paragraph of a Schedule of such Transaction Document; and
 - (v) **"this Agreement"** shall be construed as a reference to such Transaction Document together with any Schedules thereto;
- (c) reference to a **"person"** includes all forms of legal entity including an individual, company, body corporate (wherever incorporated or carrying on business), unincorporated association, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) reference to a Party or the Parties in a Transaction Document means a party or the parties to such Transaction Document and includes permitted assigns and successors and for this purpose **"permitted assigns"** includes:
 - (i) in relation to a right of a party - any person to whom that right may have been assigned except to the extent that the assignment of that right would be in breach of the provisions of this or any other agreement or deed or prohibited by law; and
 - (ii) in relation to an obligation of a party - any person to whom that obligation may have been transferred with the written agreement of the party to whom the obligation is owed,

provided that notwithstanding any assignment or transfer, no party shall be relieved from any obligation arising under such Transaction Document except by operation of law; as expressly provided in such Transaction Document; or with the written agreement of the party to whom the obligation is owed;

- (f) reference to a "**successor**" of any Party shall be construed so as to include an assignee or successor in title of such Party and any person who under the laws of the jurisdiction of incorporation or domicile of such Party has assumed the rights and obligations of such Party under any Transaction Document or to which, under such laws, such rights and obligations have been transferred;
- (g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) reference to "**writing**" and "**written**" includes typing, printing, lithography, photography and other modes of representing or reproducing words in a legible and non-transitory form but excludes electronic mail;
- (i) reference to the Incorporated Terms Memorandum or any other document defined as a Transaction Document or any other agreement or document shall be construed as a reference to this Incorporated Terms Memorandum, such other Transaction Document or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated, supplemented or replaced, provided that the obligations and liabilities of any Party shall not be increased by any such amendment, variation, novation, supplement or replacement made without the written consent of such Party;
- (j) reference to the words "**include**", "**including**" and "**in particular**" are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them;
- (k) reference to the words "**other**" and "**otherwise**" are not to be construed as being limited by any words preceding them;
- (l) the word "**property**" includes choses in action and other intangible property;
- (m) the table of contents and the headings to Clauses and Paragraphs and Schedules are to be ignored in construing such Transaction Document;
- (n) if a period of time is specified and dates from a given day or the day of an act or event, it shall (unless otherwise stated in Paragraph 10 (*Notices and other communications*)) be calculated excluding that day and a reference to a time of day is unless otherwise specifically stated a reference to the time in Barbados;
- (o) reference to a "**month**" is a reference to a period starting on one (1) day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month except that
- (i) if any such numerically corresponding day is not Business Day, such period shall end on the immediately succeeding Business Day to occur in that next succeeding calendar month or, if none, it shall end on the immediately preceding Business Day; and
 - (ii) if there is no numerically corresponding day in that next succeeding calendar month, that period shall end on the last Business Day in that next succeeding calendar month;
- and references to "months" shall be construed accordingly;
- (p) a reference to any English legal term for any action, remedy, procedure, judicial proceeding, legal document, legal status, or legal concept is, in respect

of any jurisdiction other than England and Wales, deemed to include what most nearly approximates in that jurisdiction to the English legal term; and

- (q) "USD" and "US\$" denote the lawful currency for the time being of the United States of America.

3. Consent

Where any consent or approval of any Party is required, such consent or approval is not to be unreasonably withheld or delayed provided that it shall not be unreasonable for CEB or CEL to withhold or delay its consent or approval if any of the Finance Parties whose consent CEL or CEB is required to obtain in relation to such matter withholds its consent or approval under the Finance Documents in relation to such matter.

4. Change in indices

If any index referred to in a Transaction Document by reference to which any amount payable by any Party is expressed to be determined, adjusted, indexed or escalated is no longer published or the basis for calculating such index is materially altered, then the Parties shall meet and negotiate in good faith with a view to agreeing on a substitute index or indices which most closely approximate(s) the unavailable index or indices, as the case may be. If the Parties cannot agree on a substitute index or indices, then the Parties shall nominate an independent expert to determine the index or indices which, in his opinion, most nearly reflect(s) the changes in the prevailing levels of prices in such reference area as was used to compile the index referred to in any Transaction Document in accordance with the provisions of Paragraphs 14.2 and 14.3 of the Common Terms. If the reference base of any of the indices is updated, or if any of the constituents thereof is altered in a material way, due conversion shall be made to preserve the intended continuity of calculations by using the appropriate arithmetical factor determined by the person publishing the relevant index or if the relevant index is no longer published, by an independent expert appointed in accordance with the provisions of Paragraphs 14.2 and 14.3 of the Common Terms.

SCHEDULE 2 – COMMON TERMS

1. Inconsistency

If a provision of any Transaction Document is inconsistent with any provision of the Common Terms or the Master Definitions Schedule, the provision of such Transaction Document shall prevail.

2. Invoicing and payment

2.1 All amounts payable pursuant to the Transaction Documents shall be invoiced and paid in USD.

2.2 If the Party to whom an Invoice is addressed in good faith disputes an amount in respect of an item in such Invoice, it shall provide the other Party with a notice of dispute within ten (10) Business Days from receipt of the relevant Invoice. The notice shall specify the issue date of the Invoice, the Disputed Amount, the reasons for the dispute and (where the Party has the necessary information) the correction which that Party believes needs to be made, which notice shall be accompanied with all available evidence reasonably required to support the claim.

2.3 In respect of the Disputed Amount, the Disputing Party shall have the option to either pay:

- (a) the Disputed Amount in its entirety; or
- (b) the amount (if any) which the Disputing Party considers to be due in place of the Disputed Amount

in both cases specifying in its notice of dispute to the other Party which option it has chosen.

2.4 The amount payable (if any) pursuant to Paragraph 2.3(b) shall be paid by the Disputing Party on the due date for payment of the relevant Invoice.

2.5 Nothing in this Paragraph shall relieve any Party from the obligation to pay any items specified in an Invoice which are not in dispute.

2.6 If the Parties fail to agree what adjustment, if any, shall be required in respect of the Disputed Amounts within ten (10) Business Days of a notice of dispute having been issued pursuant to Paragraph 2.1, the matter shall be referred at the request of either Party for Expert Determination.

2.7 Within five (5) Business Days after the date on which Determined Amount is ascertained:

- (a) if the Determined Amount is less than the amount paid by the Disputing Party pursuant to Paragraph 2.3(b), the Party who issued the Invoice which was disputed shall issue a credit note to the Disputing Party for the excess amount paid by the Disputing Party together with interest on that amount from the due date up to the date of actual payment, after as well as before judgment, at the Default Rate of and (unless the Disputing Party agrees that such amount may be set off against any other sum due from the Disputing Party) repay the Disputing Party such amount within fifteen (15) Business Days after the Determined Amount is ascertained; or

- (b) if the Determined Amount is more than the amount paid by the Disputing Party pursuant to Paragraph 2.3(b), the Party who issued the Invoice which was disputed shall issue a reconciliation Invoice for the shortfall between amount paid by the Disputing Party and the Determined Amount together with interest on that amount as provided for in Paragraph 2.7(a).
- 2.8 Except as required by Law all amounts due under any Transaction Document shall be paid in full without any set-off, restriction, condition, withholding or deduction ("**Deduction**").
- 2.9 If a Deduction from any payment to be made under any Transaction Document is required by Law, the Party making the payment (the "**Paying Party**") shall increase the payment to an amount such that the net amount received by the other Party (the "**Recipient**") (after the Deduction and after any Deduction from the increased payment) is equal to the amount which the Recipient would have been entitled to receive had no such deduction been required.
- 2.10 If any order, judgment or award given or made in relation to a sum due under any Transaction Document (a "**Relevant Amount**"), is to be converted from the currency (the "**First Currency**") in which that Relevant Amount is payable into another currency (the "**Second Currency**") for the purpose of making or filing a claim or proof against a Party or obtaining or enforcing an order, judgment or award in any litigation or arbitration proceedings, the Party liable to pay the Relevant Amount shall on demand indemnify the Party entitled to the Relevant Amount against any Losses arising out of or as a result of the conversion including any discrepancy between:
- (a) the rate of exchange used to convert the Relevant Amount from the First Currency to the Second Currency for the purpose of making or filing a claim or proof or obtaining the order, judgment or award; and
 - (b) the rate or rates of exchange available to the Party entitled to the Relevant Amount for conversion into the First Currency of the amount payable in respect of the claim, proof order, judgment or award or at the time of its receipt in the Second Currency.
- 2.11 Each Party waives any right it may have in any jurisdiction to pay any amount under any Transaction Document in a currency or currency unit other than that in which it is expressed to be payable.
- 2.12 If any Party fails to pay any amount payable by it under any Transaction Document on the due date, without prejudice to any other rights or remedy available to it, the Party to whom such amount is payable may charge the defaulting Party interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgment, at the Default Rate. Such interest shall accrue on a daily basis, be compounded monthly and shall be payable on demand.
- 2.13 If Government or Offtaker fails to pay to when due any amount payable by it under any Transaction Document on the due date, CEB shall be entitled, following written notification of such suspension, to suspend performance of any or all of its obligations under any or all Transaction Documents.
- 2.14 If any Transaction Document does not specify a time for payment of any amount or period in which a payment is to be made then the amount shall be payable on demand.

3. Force Majeure

Notice of Force Majeure

- 3.1 If the occurrence of Force Majeure prevents a Party from performing its obligations under any Transaction Document (other than an obligation to pay money), the Affected Party or Parties shall give written notice and details of the Force Majeure to the other Party as soon as practicable after the occurrence of the Force Majeure. The Affected Party shall use its reasonable endeavours to estimate the likely duration of the Force Majeure and shall keep the other Party or Parties regularly updated (no less than weekly) throughout the duration of the Force Majeure. The Affected Party shall notify the other Party or Parties as soon as the consequences of the Force Majeure have ceased and when performance of its affected obligations can be resumed.

Consequences

- 3.2 Subject to Paragraph 3.4, for so long as, and to the extent that, the Affected Party is prevented or hindered from or delayed in the performance of its obligations under any Transaction Document because of Force Majeure, the obligations of the Affected Party under such Transaction Document which the Affected Party has been prevented or hindered from or delayed in the performance of shall be suspended and the Affected Party shall not (subject to Paragraph 3.6) be liable for any claims, damages or other liabilities, to the extent that the Affected Party is prevented, hindered or delayed from the performance of its obligation as a result of that Force Majeure 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 (1) or more events of Force Majeure continues to affect materially and adversely the performance of the Affected Party of such obligation(s) under or pursuant to such Transaction Document.
- 3.3 The Term of each Transaction Document shall be extended for a period equal to the duration of any Force Majeure occurring in relation to any Transaction Document.
- 3.4 CEL and CEB shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to any Transaction Document to the extent that such failure or delay in performance has been caused or contributed to by one (1) or more events of Political Force Majeure or its or their effects or by any combination thereof. Government shall not be entitled to any suspension or relief of any of its obligations or liabilities under any Transaction Document by reason of the occurrence of any event or circumstance or combination thereof that constitutes Political Force Majeure.

Obligation to Mitigate

- 3.5 The Affected Party shall use its reasonable endeavours to minimise, mitigate and remedy the Force Majeure, to minimise and mitigate the effects of the Force Majeure and resume performance of its obligations under the Transaction Documents (or otherwise mitigate the effects thereof on the other Party or Parties). Notwithstanding the occurrence of a Force Majeure, the Parties shall perform their obligations under the any Transaction Documents to the extent the performance of such obligations is not impeded by the Force Majeure.

Provisions Unaffected by Force Majeure Event

- 3.6 Notwithstanding anything to the contrary, the provisions of this Paragraph 3 shall not constitute any limitation or modification of the obligations of:
- (a) either Party to pay money to the other as provided in any Transaction Document; or

- (b) Government to pass any legislation or to procure the granting of any Authorisation required to be procure by it pursuant to the terms of any Transaction Document.

4. Indemnification

4.1 *Indemnification for fines and penalties*

Subject to the other provisions of any Transaction Document, any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of another Party) for non-compliance with the Law, shall not be reimbursed by the other Party but shall be the sole responsibility of the Party not complying with the relevant Laws.

4.2 *Notice of Third Party Proceedings*

- (a) Each Party (the "**Indemnified Party**") shall promptly notify the other Party (the "**Indemnifying Party**") of any claim, suit, action or proceeding made against it or its shareholders, officer or employees in respect of which such Indemnified Party is or may be entitled to indemnification by the Indemnifying Party pursuant to the provisions of a Transaction Document as soon as reasonably practicable after the Indemnified Party becomes aware of the claim, suit, action or proceeding and that such claim, suit, action or proceeding may give rise to an indemnification claim, but in any event no later than twenty one (21) days after the receipt by the Indemnified Party of notice of the commencement of any action or proceedings for which indemnification may be sought.
- (b) The delay or failure of the Indemnified Party to provide the notice required pursuant to Paragraph 4.2(a) shall not release the Indemnifying Party from any indemnification obligation that it may have to the Indemnified Party except:
 - (i) to the extent that such failure or delay materially and adversely affected the Indemnifying Party's ability to defend such action or proceedings or increased the amount of the Loss; and
 - (ii) that the Indemnifying Party shall not be liable for any costs or expenses of the Indemnified Party in the defence of the claim, suit, action or proceeding during such period of failure or delay.

4.3 *Assumption of Defence*

The Indemnifying Party may assume the defence of any proceeding of which it has received notice pursuant to Paragraph 4.2 ("**Third Party Proceedings**") with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that the Indemnified Party shall render all reasonable assistance requested by the Indemnifying Party in relation to the defence and that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. The Indemnifying Party shall not consent to the terms of any compromise or settlement of any Third Party Proceedings defended by the Indemnifying Party in accordance with the foregoing (i) if it imposes non-monetary obligations on the Indemnified Party or includes an admission of fault, culpability or a failure to act, by or on behalf of the Indemnified Party, unless the

Indemnified Party gives its written consent to the same, or (ii) unless such compromise or settlement includes an unconditional release of the Indemnified Party.

4.4 *Indemnifying Party's failure to assume Defence*

If the Indemnifying Party fails to assume the defence of a claim meriting indemnification, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim, provided that compromise, settlement or full payment of any such claim may be made only following confirmation by independent counsel that such claim is meritorious or warrants settlement. Where such consent is not obtained prior to such compromise, settlement or payment, the Indemnifying Party shall be released and discharged from all obligations in respect of that claim under Paragraph 13.

4.5 *Amount owing to Indemnified Party*

Except as otherwise provided in this Paragraph 13, in the event that a Party is obliged to indemnify and hold the other Party and its successors and assigns harmless under this Paragraph 13, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual Loss net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

4.6 *Subrogation*

- (a) Upon payment of any indemnification provided by a Party pursuant to the provisions of a Transaction Document, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the Indemnified Party may have relating thereto.
- (b) The Indemnified Party shall, at the request and expense of the Indemnifying Party, cooperate with the Indemnifying Party and give at the request (and expense) of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

5. **Announcements**

5.1 Subject to Paragraph 5.2, no Party shall make, or procure or permit the making of, any announcement which relates to any Transaction Document or the matters contained in it, without the written approval of the other Parties.

5.2 Any Party may make an announcement concerning any Transaction Document or the transactions contemplated by it:

- (a) in the form agreed between such Parties following signing of such Transaction Document; or
- (b) if required by Law or any Competent Authority (save in relation to an announcement by Government itself) except that, to the extent practicable, such announcement shall only be made subject to Paragraph 6.3.

6. **Confidentiality**

6.1 Subject to Paragraph 6.2, each Party undertakes that it shall and shall procure that each of its Affiliates shall:

- (a) receive and keep the Confidential Information secret and confidential and (subject to 6.1(d)) not disclose such Confidential Information to any third party;
- (b) take all necessary precautions to ensure that such undertaking is enforced and is enforceable;
- (c) use the Confidential Information only for the Permitted Purpose;
- (d) only disclose the Confidential Information under binding obligations of confidence (which are the same as those to which the Parties are subject under this Paragraph 6 and which each Party undertakes to enforce and for which it is legally responsible) to those of its Affiliates, advisers, employees, suppliers, contractors, seconded staff, officers, agents and consultants as need to have access thereto wholly necessarily and exclusively for the Permitted Purpose and who are not Competitors; and
- (e) other than in respect of the Permitted Purpose, not make any commercial use of or make any commercial gain from the Confidential Information.

6.2 Paragraph 6.1 shall not apply to Confidential Information which:

- (a) a Party is required to disclose by any Law or to a Competent Authority;
- (b) enters the public domain other than as a result of the unauthorised disclosure by a Party or any of its Affiliates; or
- (c) is in the possession of a Party or of any of its Affiliates free from any restriction as to its use or disclosure and having been obtained otherwise than from the other Party for the Permitted Purpose;

nor shall Paragraph 6.1 restrict any disclosure of CEB Confidential Information by CEB or CEL.

6.3 Subject to Paragraph 6.4, any information disclosed pursuant to Paragraph 5.2(b) or 6.2(a) shall be disclosed only after the disclosing Party or Parties has:

- (a) given, where practicable, at least ten (10) Business Days, written notice to the non-disclosing Party or Parties of such proposed disclosure;
- (b) consulted with the non-disclosing Party or Parties; and
- (c) agreed with the non-disclosing Party or Parties the content of the disclosure.

6.4 The non-disclosing Party or Parties may not request amendments under Paragraph 6.3 or otherwise limit disclosure under Paragraph 6.3 in a manner which would prevent the disclosing Party from complying with the requirements referred to in Paragraph 6.2(a).

6.5 Each Party shall be entitled to all remedies available at Law or in equity to enforce or seek relief in connection with this Paragraph 6.

7. Assignment

7.1 Except as provided in Paragraph 7.2 or 7.4, none of the Parties may at any time assign, transfer or novate all or any part of, or its rights or benefits or obligations under, any Transaction Document.

- 7.2 For the purpose of financing the Project, CEL and CEB may charge or assign by way of security, in favour of any Finance Party, its interests in:
- (a) any Transaction Document;
 - (b) any other agreement or document related to the Project;
 - (c) the Site;
 - (d) the immovable property situated on the Site; or
 - (e) the moveable property and intellectual property of CEB.
- 7.3 Each of Government and Offtaker agrees to execute and give all acknowledgements of any security or assignments created pursuant to Paragraph 7.2 as are reasonably requested by CEL or CEB to give effect to Paragraph 7.2.
- 7.4 CEB and CEL may assign their respective all or any of their rights under any Transaction Document in whole or part to an Affiliate.

8. Entire agreement

- 8.1 The Transaction Documents constitutes the whole and only agreement between the Parties relating to the subject matter of such Transaction Documents.
- 8.2 Except to the extent repeated in any Transaction Document, the Transaction Documents supersede and extinguish any Pre-Contractual Statement. Each Party acknowledges that in entering into any Transaction Document it is not relying upon any Pre-Contractual Statement that is not set out in a Transaction Document.
- 8.3 If a Party or any of the other Party's officers, employees, consultants, contractors or Advisers has made or given any Pre-Contractual Statement or otherwise made any innocent or negligent misrepresentation then, (except to the extent that it has been expressly set out in any Transaction Document) the Party to whom it is given or made waives any rights or remedies which it may have in respect of it and agrees that the other Party and such other Party's officers, employees, consultants, contractors or Advisers shall have no liability in respect of it. No Party shall have any claim for innocent or negligent misrepresentation based upon any statement in any Transaction Document.
- 8.4 Notwithstanding any other provision of the Incorporated Terms Memorandum, nothing in any Transaction Document shall, or purports to, exclude liability for fraud or fraudulent misrepresentation.

9. Acknowledgement

- 9.1 Each Party acknowledges, represents and warrants that in connection with the Transaction Documents:
- (a) it is acting as principal;
 - (b) it is not relying upon any representations (whether written or oral) made by the other Party other than the representations expressly set out in the Transaction Documents;

- (c) it has not been given by the other Party (directly or indirectly through any other person) any advice, counsel or (save as set out in the Transaction Documents) assurance, guarantee or representation as to the expected or projected success, profitability, return, performance, result, effect, consequence or benefit (either legal, regulatory, tax, financial, accounting or otherwise) of this Agreement;
- (d) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisers to the extent it has deemed necessary, and it has made its own decisions based upon its own judgement and upon any advice from such advisers as it has deemed necessary, and not upon any view expressed by any other Party or its Affiliates; and
- (e) its decisions have been the result of arm's length negotiations between the Parties.

10. Notices and other communications

- 10.1 Any notice or communication to be given or made under or in connection with any Transaction Document shall be in writing and may be personally delivered or sent by courier to a Party to such Transaction Document at its address stated on below or such other address as a Party may notify to the other Parties in writing, provided that such change shall only become effective on the second (2nd) Business Day after notification thereof is received by the recipients.

Government: The Permanent Secretary of the Ministry of the Environment and Drainage, Warrens Towers II, Warrens, St. Michael, Barbados

CEB: Lex Caribbean, Worthing Corporate Centre, Worthing, Christ Church, Barbados, BB15008

CEL: Tudor House, Le Bordage, St Peter Port, Guernsey GY1 1DB, Channel Islands

Offtaker: The Permanent Secretary of the Ministry of the Environment and Drainage, Warrens Towers II, Warrens, St. Michael, Barbados

- 10.2 Any notice or other communication so delivered or sent shall be deemed to have been served at the time when it arrives at the address to which it is delivered or sent except that if that time is not on a business day in the place of delivery or is after 5.30 p.m. on a business day in the place of delivery it shall be deemed to have been served at 9.00 a.m. on the next business day in the place of delivery.

11. General

11.1 *The Contracts (Rights of Third Parties) Act 1999*

- (a) Except as provided in Paragraph 11.1(b) a person who is not a party has no right to enforce any term of this agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- (b) Subject to Paragraph 11.1(c) any of the persons in whose favour an indemnity is given as set out in any Clause in a Transaction Document headed "Indemnification" may enforce the provisions of such Clause notwithstanding

that they are not a Party. Any person referred to in Paragraph 8.3 shall be entitled to rely upon and enforce the waivers contained in that Paragraph. If Importer is not a Party to the Implementation Agreement Importer may enforce the rights set out or referred to in Clause 9 of the Implementation Agreement.

- (c) Notwithstanding Paragraph 11.1(b), any Transaction Document may be varied, in accordance with Paragraph 11.4, and may be rescinded by written agreement between the Parties without the consent of, and without reference to, any person entitled to enforce any term of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 or Paragraph 11.1(b).

11.2 *No partnership*

Nothing in the Transaction Documents is intended to and does not operate to create a partnership between the Parties or any of them, or to authorise any Party to act as agent for any other, and no Party shall have authority to act in the name or on behalf of or otherwise to bind any other Party.

11.3 *Costs*

Unless otherwise provided in the Transaction Documents, each Party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of the Transaction Documents and of each document referred to in it.

11.4 *Variation*

Any Transaction Document may only be varied in writing signed by or on behalf of each of the parties to such Transaction Document.

11.5 *Waiver and remedies*

- (a) A waiver of any term, provision or condition of, and any consent or approval granted under, any Transaction Document will be valid only if it is in writing, signed by the Party giving the waiver or granting the consent or approval. Any such waiver, consent or approval will be valid only in the particular instance and for the particular purpose for which it is given and will not constitute a waiver of any other right or remedy.
- (b) Any failure (in whole or in part) to exercise or delay in exercising any right, power or remedy available under any Transaction Document or in law will not constitute a waiver of that or any other power or remedy nor will any single or partial exercise of any power or remedy preclude any other or further exercise of that or any other power or remedy.
- (c) Except as expressly provided to the contrary in any Transaction Document, each right or remedy of any Party provided for in any Transaction Document shall be cumulative of and shall be in addition to every other right or remedy of such Party provided for in any Transaction Document or by Law and the exercise or the beginning of the exercise by a Party of any one (1) or more of the rights or remedies provided for in any Transaction Document shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in any Transaction Document or hereafter existing at Law, by statute or otherwise.

11.6 *Counterparts*

Any Transaction Document may be executed in any number of counterparts, each of which, when executed and delivered, is an original, but all the counterparts taken

together shall constitute one (1) document. None of the Transaction Document shall take effect until it has been executed by all the parties to it.

11.7 *Severability*

- (a) Subject to Paragraph 11.7(b), if any provision of a Transaction Document is held by a court or other authority of competent jurisdiction to be illegal, invalid, void or unenforceable, the rest of such Transaction Document will remain in full force and effect and will in no way be adversely affected.
- (b) Severance will not be permitted under Paragraph 11.7(a) where severance of such provision would render the performance of a Party's material obligations impracticable or impossible.
- (c) The Parties will negotiate in good faith with a view to agreeing one (1) or more provisions which may be substituted for any provision held to be illegal, invalid, void or unenforceable, and produce as nearly as is practicable the original intent and effect of the Transaction Document.

12. **Bribery and Anti-money Laundering**

Each of the Parties agrees and undertakes to the other Party that in connection with each Transaction Document, it will comply with all applicable Laws relating to anti-bribery and anti-money laundering.

13. **Governing Law**

Each of the Transaction Documents (and any dispute or claim relating to it or its subject matter, its enforceability or its termination (including non-contractual claims)) is governed by and is to be construed in accordance with English law.

14. **Dispute resolution**

Escalation

- 14.1 If any Dispute shall arise between the Parties in connection with, or arising out of, any Transaction Document, the Parties shall attempt in good faith to settle such Dispute in the first instance within (ten) 10 Business Days by mutual discussion.

Expert Determination

- 14.2 If the Dispute cannot be settled within the period allowed in Paragraph 14.1 and

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

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

- 14.3 In the event of any reference of a Dispute pursuant to any Transaction Document to an expert for determination:

- (a) the Parties shall use reasonable endeavours to agree upon the identity of a suitably qualified independent expert within fourteen (14) days of the date on which any Party notifies the others of its intention to refer the matter to an

expert. In the event that the Parties are unable to agree the appointment of such expert within such fourteen (14) day period such appointment shall be made (at the request of any Party) by:

- (i) in the case of an technical matter, the President for the time being of the Chartered Institute of Mechanical Engineers of England; or
 - (ii) in the case of a financial or tax matter, the President for the time being of the Institute of Chartered Accountants in England and Wales;
- (b) the Parties shall give all reasonable assistance to the expert to enable him to reach a decision on the Dispute;
 - (c) each Party shall be entitled to submit reasonable recommendations and requests to the expert;
 - (d) the expert shall in reaching his decision act as expert and not an arbitrator and his decision shall (in the absence of manifest error) be final and binding upon the Parties;
 - (e) the expert shall be requested to use all reasonable endeavours to reach his decision within thirty (30) days of the matter being referred to him;
 - (f) the expert may appoint advisers with appropriate qualifications and experience whose services are desirable to assist in considering the matter in Dispute; and
 - (g) the costs of the independent third party or expert and any advisers shall be borne by the Parties equally (or in such proportions the expert may determine).

Arbitration

- 14.4 Any Dispute that is not referred to Expert Determination in accordance with Paragraphs 14.2 and 14.3 shall be referred to and finally resolved by arbitration under the rules of the LCIA, which rules are deemed to be incorporated by reference into this Paragraph. The number of arbitrators shall be three (3). The place and seat of arbitration shall be London, England. The language to be used in the arbitration proceedings shall be English.
- 14.5 A reference under Paragraph 14.4 shall be made by notice in writing given by any Party to the other Parties to the Dispute proposing the appointment of arbitrators.
- 14.6 Any Party may bring proceedings in the courts of any state for the purpose of seeking an injunction, order or other non-monetary relief (or its equivalent in such other state).
- 14.7 Each of the Parties hereby irrevocably submits to the jurisdiction of the LCIA, and any other courts in which any award rendered by an arbitral tribunal constituted pursuant to the Transaction Documents may be enforced and for the purposes thereof irrevocably waives any right of sovereign immunity that it may have whether before the LCIA or otherwise from suit and/or jurisdiction and/or adjudication, including but in no way limited to waiving any right of sovereign immunity as to it and any of its property, regardless of the commercial or non-commercial nature of this property. Such property includes any bank account belonging to such Party whether held in the name of a diplomatic mission or otherwise. The waiver extends to property, including bank accounts, belonging to such Party's central bank or other monetary authority. For the avoidance of doubt, the irrevocable waiver in this clause includes a waiver of any right of sovereign immunity in respect of pre-judgment interim relief and post-judgment execution of any judgment or arbitral award.

ANNEX B
FORM OF POWER PURCHASE AGREEMENT

THE GOVERNMENT OF BARBADOS
and
CAHILL ENERGY (BARBADOS) LIMITED

POWER PURCHASE AGREEMENT

*Barbados Underground blog
<https://barbadosunderground.wordpress.com/>*

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BETWEEN

- (1) **THE GOVERNMENT OF BARBADOS** ("Offtaker" or "Government"); and
- (2) **CAHILL ENERGY (BARBADOS) LIMITED** a company incorporated in Barbados with registered number 37435 and having its registered office at Lex Caribbean, Worthing Corporate Centre, Worthing, Christ Church, Barbados, BB15008 ("**CEB**")

(each hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".)

INTRODUCTION

- (A) Government, Cahill Energy Limited ("**CEL**") and CEB are entering into an Implementation Agreement on the date of this Agreement.
- (B) CEB proposes to develop, finance, design, construct, commission, own, operate and maintain (or have designed, constructed, commissioned, operated and maintained) a plasma gasification waste-to-energy facility at Vaucluse, St. Thomas, Barbados, the net electrical output capacity of which is to be confirmed by CEB following completion of waste studies and engineering but which is currently anticipated to be between 30MW and 40MW.
- (C) CEB wishes to sell and Offtaker wishes to purchase all of the Net Power Output of such facility on and subject to the terms of this Agreement.

AGREED TERMS

1. Definitions and interpretation

- 1.1 The schedules form part of this Agreement as if set out in full in this Agreement and a reference to "**this Agreement**" includes a reference to the schedules.
- 1.2 Unless otherwise defined in this Agreement or the context requires otherwise, words and expressions used in this Agreement have the meanings and constructions ascribed to them in the Master Definitions Schedule set out in Schedule 1 (Master Definitions Schedule) of the Incorporated Terms Memorandum which is dated on or about the date of this Agreement and signed for the purpose of identification by each of the Parties, Government and CEL.
- 1.3 The Common Terms apply to this Agreement and shall be binding on the parties to this Agreement as if set out in full herein, subject to Clause 1.4.
- 1.4 If there is any conflict between the provisions of the Common Terms and the provisions of this Agreement, the provisions of this Agreement shall prevail.

2. Term

- 2.1 This Agreement shall commence on the date first written above (the "**Effective Date**") and unless extended in accordance with Clause 2.2 or 2.3 or otherwise terminated in accordance with Clauses 18 or 19 shall terminate at midnight on the thirtieth (30th) anniversary of the Commercial Operations Date (such period, as so extended if applicable, being the "**Term**").

- 2.2 The term set out in Clause 2.1 shall be extended by the aggregate of all periods (if any) after the Commercial Operations Date during which the Facility is unable to generate the Minimum Load by reason of Force Majeure, Waste Default or Offtake Default.
- 2.3 This Agreement may be extended for an additional period on terms mutually agreeable to the CEB and Offtaker.
- 2.4 Following the twenty eighth (28th) anniversary of Commercial Operations Date, CEB and Offtaker shall enter into good faith negotiations for a renewal of this Agreement for an additional term on terms and conditions mutually agreed to by the Parties.
- 2.5 If CEB and Offtaker cannot agree to terms and conditions for the renewal of this Agreement, CEB will be permitted to contract with any other party for the sale of Net Power Output from the Facility.

3. Sale and Purchase

- 3.1 Subject to and in accordance with the terms of this Agreement, CEB shall make available and sell to Offtaker, and Offtaker shall accept and purchase from CEB for the consideration described in Clause 19, all Net Power Output of the Facility from and after the Commercial Operations Date.
- 3.2 Prior to the Commercial Operations Date, Offtaker shall use its best efforts to accept all net electrical power produced by the Facility during testing performed pursuant to the construction contract relating to the Facility and during Commissioning, and Offtaker shall pay CEB for exported electrical power at the rate set forth in Clause 19.
- 3.3 Delivery of Net Power Output at the Interconnection Point shall be treated as delivery for all purposes of this Agreement and shall constitute satisfaction of CEB's obligation to deliver Net Power Output generated by the Facility to Offtaker.

4. Operating Procedures

CEB and Offtaker shall jointly develop written operating procedures for the Facility's power export switch yard to be completed no later than thirty (30) Business Days prior to the Scheduled Commissioning Date. Such operating procedures shall be based on the designs of the Facility's power export switch yard, the Interconnection and Transmission Facilities and other parts of the Transmission System and on the draft procedures provided by CEB to Government and Offtaker prior to such date and shall deal with all operational interfaces between Offtaker, Transmission System Operator and CEB.

5. Metering and Telecommunications

- 5.1 Offtaker, at its expense, shall procure and supply the Export Power Metering System to CEB.
- 5.2 CEB, at its expense, shall procure, finance, construct and install power meters and power metering system devices for backup purposes ("**Back-up Power Metering System**") in addition to the Export Power Metering System.
- 5.3 CEB shall install the Export Power Metering System on the Site, and Offtaker shall reimburse CEB for all reasonable expenses incurred by CEB for the installation thereof. Offtaker shall provide the Export Power Metering System ready to be installed

and such installation instructions from Offtaker in writing on a timely basis as may be required to allow CEB to install such equipment by the Scheduled Interconnection Date and for Offtaker to test the Export Power Metering System pursuant to Clause 6.7. Such installation shall be inspected by, and subject to the approval of, the Chief Technical Officer.

6. Export Power Testing and Capacity Ratings

- 6.1 CEB or its Contractors shall carry out Commissioning of the Facility's power export switch yard and testing of Dependable Export Power Capacity thereafter in accordance with such procedures as shall be Agreed or Determined by Expert. Offtaker shall be given no less than forty eight (48) hours prior written notice of any testing or Commissioning procedure of the Facility's power export power switch yard 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 Offtaker has no representative present provided that such notice has been given).
- 6.2 The Parties acknowledge that it may be necessary to adjust the Contract Waste composition and operation of the Facility in order to seek to maximise the Dependable Export Power Capacity. CEB may request additional tests of Dependable Export Power Capacity to be conducted at CEB's expense at any time after the Facility has been Commissioned. If any such additional test is carried out then the Dependable Export Power Capacity for the time being shall be that determined in accordance with the latest test.
- 6.3 CEB shall carry out testing of the Dependable Export Power Capacity of the Facility at the Commercial Operations Date and thereafter in accordance with this Clause 6. CEB shall carry out testing and Commissioning of the Facility's power export power switch yard in accordance with Prudent Practice. Offtaker shall use its reasonable efforts to comply promptly with all reasonable requests by CEB for assistance in carrying out testing and Commissioning of the Facility's power export power switch yard.
- 6.4 CEB shall provide Offtaker with copies of the results of all tests performed on the Facility's export power switch yard pursuant to this Clause 6.
- 6.5 Upon completion of testing pursuant to this Clause 6, CEB shall notify Offtaker in writing as to the amount of Dependable Export Power Capacity.
- 6.6 In the event that a dispute arises between CEB and Offtaker regarding the testing of Dependable Export Power Capacity or the protection tests performed on the export power switch yard, such dispute shall be resolved by Expert Determination.

7. Testing of Interconnection and Transmission Facilities

- 7.1 After the Commercial Operations Date, the Parties shall cooperate in testing the Interconnection and Transmission Facilities at such other times as either Party may reasonably require. Each Party shall bear its own costs in connection with any such testing.
- 7.2 Testing of the Interconnection and Transmission Facilities shall be carried out in accordance with Prudent Practice and such procedures as shall be Agreed or Determined by Expert.

8. Covenants in respect of the Facility

8.1 CEB hereby undertakes to Offtaker as follows:

- (a) during the term of this Agreement, CEB shall operate and maintain (or procure the operation and maintenance of) the Facility in accordance with (i) this Agreement, (ii) Prudent Practice (iii) the operating procedures for the Facility's equipment developed by CEB, (iv) the operating procedures for the Facility's power export switch yard and power metering system developed between the Parties and (v) applicable Authorisations and Law;
- (b) CEB shall (a) apply for and use all reasonable efforts to maintain in effect all CEB Authorisations; (b) give all required notices and allow all required inspections under all CEB Authorisations obtained by it in connection with the Facility; and (c) pay all prescribed fees in connection with the CEB Authorisations.

8.2 Offtaker hereby covenants to CEB that Offtaker shall, at its own expense:

- (a) use all reasonable efforts to obtain and maintain in effect all Authorisations required by all Competent Authorities with jurisdiction over Offtaker, the Transmission System, the Interconnection and Transmission Facilities in order to enable it to perform its obligations under this Agreement;
- (b) give all required notices and allow all required inspections under all such Authorisations obtained by it; and
- (c) pay all prescribed fees in connection with such Authorisations.

8.3 Offtaker shall have no rights or powers or liabilities regarding the operation, maintenance or repair of the Facility other than as expressly provided by this Agreement. Nothing in this Agreement is intended to create, or shall create in favour of Offtaker any legal or beneficial interest in the Facility or in any property of CEB of any nature whatsoever.

8.4 CEB shall have no rights or powers or liabilities regarding the operation, maintenance or repair of the Interconnection and Transmission Facilities other than as expressly provided by this Agreement. Nothing in this Agreement is intended to create, or shall create in favour of CEB any legal or beneficial interest in the Interconnection and Transmission Facilities or in any property of Offtaker of any nature whatsoever.

9. Metering and Telecommunications

9.1 Offtaker, at its expense, shall own, operate and maintain the Export Power Metering System.

9.2 CEB, at its expense shall own, operate and maintain the Back-up Power Metering System.

9.3 Offtaker shall inspect and test at its own expense the Export Power Metering System and the Back-up Power Metering System for accuracy no later than the Scheduled Interconnection Date and thereafter at no less than annual intervals. With respect to calibration and testing of the Export Power Metering System or the Back-up Power Metering System, Offtaker shall give CEB no less than forty eight (48) hours advance notice of such testing, and CEB shall have a representative of it present during any such testing, as well as during any inspection of the Export Power Metering System or Back-up Power Metering System or adjustment thereof.

- 9.4 Offtaker shall read the Export Power Metering System monthly on the last day of each month (or such other day as may be agreed upon by CEB) for the purpose of measuring the Net Power Output. Offtaker shall give CEB not less than forty eight (48) hours' notice of its intention to read the Export Power Metering System. CEB shall have the right to have a representative present during any such reading (but the reading may be taken if CEB has no representative present provided that such notice has been given). Offtaker shall take and record such reading together with a photographic record thereof, and Offtaker shall maintain a log of all such meter readings. In the event that the Export Power Metering System is not in service as a result of maintenance, repairs or testing, then the Back-up Power Metering System shall be used during the period that the Export Power Metering System is not in service and the foregoing provisions of this Clause 9.4 shall apply to the reading of the Back-up Power Metering System.
- 9.5 When, as a result of any test pursuant to Clause 6.7, the Export Power Metering System is found to be inaccurate by more than 0.2 per. cent or is otherwise functioning improperly, then the correct amount of Net Power Output delivered to Offtaker for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:
- (a) first, the readings of the Back-up Power Metering System, if any, shall be utilized to calculate the correct amount of Net Power Output, unless a test of such Back-up Power Metering System, as required by either Party, reveals that the Back-up Power Metering System is inaccurate by more than 0.2 per. cent or is otherwise functioning improperly;
 - (b) if the Back-up Power Metering System is not within the acceptable limits of accuracy as stated in Clause 9.5(a) or is otherwise functioning improperly, then CEB and Offtaker shall jointly prepare an estimate of the correct reading on the basis of all available information including deliveries of Net Power Output during periods of similar operating conditions when the Export Power 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 one-half of the period from the last previous test of the Export Power Metering System; and
 - (d) the difference between the previous payments by Offtaker for the period of inaccuracy or improper functioning and the recalculated amount shall be offset against or added to the next payment to CEB under this Agreement, as appropriate.

In the event that Offtaker and CEB fail to agree upon any estimate pursuant to this Clause 9.5 then the matter may be referred by either Party for Expert Determination.

- 9.6 The Export Power Metering System and the Back-up Power Metering System shall comply with good industry standards for the measurement of electricity for billing purposes as Agreed or Determined by Expert and shall be jointly sealed. Such seals shall be broken only by Offtaker personnel in the presence of authorised personnel from CEB when the Export Power Metering System or the Back-up Power Metering System is to be inspected, tested or adjusted.
- 9.7 When any component of the Export Power Metering System is found to be outside permissible limits of accuracy or otherwise not functioning properly, Offtaker shall forthwith repair, recalibrate or replace such component of the Export Power Metering System at its own expense. Similarly, when any component of the Back-up Power Metering System is found to be outside permissible limits of accuracy or otherwise not

functioning properly, CEB shall forthwith repair, recalibrate or replace such component of the Back-up Power Metering System at its own expense. Upon the completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Export Power Metering System or the Back-up Power Metering System, the relevant metering system shall be jointly sealed.

10. Telecommunications Equipment

CEB shall provide at its sole cost and expense the telecommunications equipment necessary to communicate with the Offtaker and Transmission System Operator.

11. Dispatch

11.1 The Parties acknowledge that the Facility is intended to operate as a base load facility at steady load (subject to the composition of feedstock and subject to Force Majeure, maintenance requirements, availability of Contract Waste and the Transmission System) and accordingly shall be dispatched in priority to any generation equipment connected to the Transmission System, other than intermittent renewable energy generation, save as otherwise agreed in writing between the Parties.

11.2 Provided such dispatch is in accordance with the terms of this Agreement, from and after the Commercial Operations Date, CEB shall control and operate the Facility. CEB shall notify the Grid Control Centre daily in advance of the anticipated Net Power Output of the Facility for the following day. CEB shall immediately advise the Grid Control Centre of changes to the anticipated Net Power Output after becoming aware of the same.

11.3 CEB shall install all necessary MV/HV isolators, full fault breakers, isolators, current and capacitor voltage transformers and earth switches within the Facility's export power switch yard and/or the Interconnection and Transmission Facilities having ratings and characteristics approved by the Chief Technical Officer, and shall maintain the settings of all such relays at the levels acceptable to the Chief Technical Officer. CEB shall not change the settings of such equipment without the prior written consent of the Chief Technical Officer.

12. Scheduled Outages

12.1 At least thirty (30) Business Days prior to the Commercial Operations Date, CEB shall submit to Offtaker its desired schedule of Scheduled Outage periods for the remainder of the year in which the Commercial Operations Date occurs. At least thirty (30) Business Days prior to the commencement of each year commencing after the Scheduled Commissioning Date, CEB shall submit to Offtaker its desired schedule of Scheduled Outage periods for the following year.

12.2 Within ten (10) Business Days after receipt of each of CEB's desired schedules of Scheduled Outage delivered pursuant to Clause 12.1, Offtaker shall notify CEB in writing whether the requested Scheduled Outage periods are acceptable or request changes and if Offtaker requests changes to the requested Scheduled Outage periods, Offtaker shall within such period advise CEB of a period when Offtaker determines (in consultation with the Transmission System Operator) such unacceptable Scheduled Outage period can reasonably be rescheduled. Any rescheduled period shall be as close as reasonably practicable to the requested period and shall be of equal duration as the requested period. CEB shall conduct Scheduled Outages only during periods agreed to in writing by Offtaker as aforesaid. Offtaker shall only be entitled to request changes to the requested Scheduled Outage to the extent that such changes are

necessary and required by the Transmission System Operator by reason of other scheduled maintenance of other generation plant or the Transmission System that it is not practicable to reschedule. If Offtaker does not notify CEB in writing of requested changes to CEB's desired Scheduled Outage periods within the period of fifteen (15) Business Days commencing on receipt of details of such desired Scheduled Outage periods Offtaker shall be deemed to have agreed Scheduled Outage periods.

- 12.3 Commencing on the Commercial Operations Date, CEB may not schedule more than a total of eight hundred and forty (840) hours of Scheduled Outages during any year.
- 12.4 Offtaker shall use its reasonable endeavours to coordinate its maintenance program for the Interconnection and Transmission Facilities and Transmission System Operator's maintenance program for the Transmission System with the approved Scheduled Outages so as to minimize any disruption to the operation and maintenance of the Facility.

13. Maintenance Outages

When the circumstances warrant a Maintenance Outage, CEB may advise Offtaker of such circumstances and of the commencement and estimated duration of the Maintenance Outage. Offtaker shall grant CEB the right to conduct such Maintenance Outage at a time reasonably acceptable to Offtaker, Offtaker having consulted with the Transmission System Operator, such time be within the period of seven (7) days commencing on the date of notification.

14. Forced Outages

CEB shall advise Offtaker and Transmission System Operator of any Forced Outage immediately.

15. Emergencies

- 15.1 No later than sixty (60) days prior to the Scheduled Commissioning Date Offtaker and CEB shall jointly establish plans for operating the Facility during an Emergency. Such plans shall include recovery from a local or widespread electrical blackout and voltage reduction in order to effect load curtailment. CEB shall comply with such agreed Emergency procedures. Upon Offtaker's request, CEB shall make technical references available to Offtaker concerning Start-Up times, black-start capabilities, and minimum load-carrying ability.
- 15.2 During an Emergency and if requested in dispatch instructions from Transmission System Operator, CEB shall use reasonable endeavours to supply such power as the Facility thereafter is able to generate within the technical and operating limits of the Facility. If the Facility has a Scheduled Outage or a Maintenance Outage and such Scheduled Outage or Maintenance Outage occurs or would occur coincident with an Emergency, CEB shall use its reasonable efforts to reschedule the Scheduled Outage or Maintenance Outage or, if the Scheduled Outage or Maintenance Outage has begun, to expedite the completion of the work to restore power supply as soon as possible.

16. Operating Committee Membership and Duties

- 16.1 On or before nine (9) months prior to the Scheduled Commissioning Date, the Parties shall establish an operating committee ("**Operating Committee**") comprising four (4)

members. Each Party shall designate one half (1/2) of the members to represent it on the Operating Committee, and either Party may remove or replace any Operating Committee member designated by it at any time upon notice to the other Party. Prior to the Commercial Operations Date, Offtaker shall appoint the Chief Technical Officer as one (1) of its members. 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 CEB. Decisions of the Operating Committee shall require the approval of a majority of members of the Operating Committee.

16.2 The Operating Committee shall be responsible for developing the operating procedures for the dispatch of the Facility (and any subsequent revisions thereto); for approving procedures for the Commissioning of the Facility; for establishing other procedures relating to the interaction of the Facility, the Interconnection and Transmission Facilities and the Transmission System; and, where appropriate, for proposing solutions to other issues and attempting to resolve Disputes concerning the operation, maintenance and testing of the Facility. These matters shall include:

- (a) the coordination of the respective programs and procedures of the Parties, Government and Transmission System Operator for the construction, commissioning and operation of the Interconnection and Transmission Facilities and the Facility's export power switch yard and connection to the Transmission System, 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 Transmission System or the Facility's export power switch yard;
- (c) the coordination of Scheduled Outages;
- (d) safety matters affecting the Parties or their Contractors at the Site;
- (e) clarification of Emergency plans developed pursuant to this Agreement for recovery from a local or widespread electrical blackout;
- (f) review and revision, subject to Chief Technical Officer approval, of protection schemes; and
- (g) any other matter mutually agreed to by the Parties.

16.3 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 Facility (in particular the Facility's export power switch yard) and the Interconnection and Transmission Facilities. The Operating Committee shall not (a) override or waive any provisions of this Agreement or (b) amend or modify any provisions of this Agreement.

16.4 Without prejudice to its right to observe testing and Commissioning of the Facility's export power switch yard set out in clause 6, Offtaker shall not intervene in the design, construction, procurement, testing, Commissioning, operation or maintenance of the Facility.

17. Force Majeure

- 17.1 If CEB is prevented or hindered from or delayed in the performance of its obligations under any this Agreement because of any event or circumstance or combination thereof that constitutes Political Force Majeure or Other Force Majeure under the Implementation Agreement, such event or circumstance or combination thereof shall be deemed to constitute Political Force Majeure or Other Force Majeure under this Agreement only insofar as CEB is the Affected Party.
- 17.2 For the purposes of this Agreement each of the following events shall be deemed to constitute Force Majeure affecting CEB (and in respect of which CEB is the Affected Party):
- (a) the expropriation, management takeover, compulsory acquisition, requisition or nationalisation by any Relevant Authority of:
 - (i) any shares in CEB or any Investor; or
 - (ii) any material asset or right of CEB relating to the Project; or
 - (iii) any other asset or right without which CEB will be unable to comply with its obligations under any Transaction Document;
 - (b) where, at any time, as a result of any Change in Law:
 - (i) the making, or receipt by CEB, of any payment in the currency and in the manner contemplated by CEB under any Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Authorisation;
 - (ii) the distribution of profits of CEB, interest, repayments or redemption payments by CEB to any Investor becomes illegal, invalid or materially restricted;
 - (iii) the performance of any obligation by any party to a Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Law or Authorisations or any Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Authorisation;
 - (iv) the enforcement of rights of CEB, any Investor or the Finance Parties in connection with the Project against assets of Offtaker or Government (or, in the case of the Finance Parties, CEB) situated in Barbados becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Authorisation; or
 - (v) the settling of Disputes by an arbitrator becomes illegal or materially restricted under the Law or any Authorisation;
 - (c) if:
 - (i) there is an imposition of a requirement for Authorisations not required as at the Effective Date;
 - (ii) after the grant of any Authorisation, there is a change in the terms and conditions attaching to such Authorisation or the attachment of any terms or conditions;

- (iii) any Authorisation is not granted on a timely basis where application for such Authorisation has been duly made;
- (iv) any such Authorisation that has been granted ceases to remain in full force and effect or, if granted for a limited period, that Authorisation is not being renewed on a timely basis on application for renewal being duly made, or is renewed on terms or subject to conditions which are materially less favourable to CEB, any Contractor or Finance Party than those attached to the original Authorisation;

which results in the inability of CEB, the Finance Parties, the Investors or the Contractors (the "**Relevant Applicant**") to exercise their rights or perform their obligations under this Agreement, any Project Agreement or Finance Document unless such refusal to grant or the revocation or amendment of such Authorisation is due to:

- (A) the default or neglect of the Relevant Applicant; or
- (B) a failure by the Relevant Applicant to abide by:
 - (a) any rules or requirements for the application for, or the renewal of, Authorisation; or
 - (b) without limiting clause 17.2(b), any applicable Law;

which, in each case, legally entitles the issuing Relevant Authority to not issue, to revoke, or to make the relevant amendment in the terms and conditions of the Authorisation.

- 17.3 Offtaker shall not be entitled to any suspension or relief of any of its obligations or liabilities under this Agreement by reason of the occurrence of any event or circumstance or combination thereof that is deemed to constitute Force Majeure pursuant to Clauses 17.1 or 17.2 but which would not otherwise constitute an event or circumstance or combination thereof in respect of which Offtaker would be entitled to such relief by reason of Force Majeure.

18. Records

- 18.1 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, CEB shall maintain an accurate and up-to-date operating log which shall include records of:
- (a) real and reactive power production for each clock (hour or half-hour), frequency and bus voltage at all times;
 - (b) changes in operating status, Scheduled Outages, Maintenance Outages and Forced Outages;
 - (c) the matters agreed to by the Operating Committee.
- 18.2 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 eighteen (18) months after the creation of such record or data and for any additional length of time required by Relevant Authorities. Upon

expiration of such eighteen (18) month period, neither Party shall dispose of or destroy any such records without giving thirty (30) Business 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 ten (10) Business Days prior to the expiration of the thirty (30) Business Day period.

19. Charges and invoicing

19.1 Charges

- (a) Offtaker shall pay to CEB for each kWh of Net Power Output delivered by CEB to the Interconnection Point the kW Hour Rate, as adjusted from time to time in accordance with paragraph 10.2 ("**Export Power Charge**").
- (b) Beginning on the Commercial Operations Date, Offtaker shall pay to CEB each month, an amount equal to the Capacity Payment.
 - (i) Subject to Clauses 19.1(b)(ii) and 19.1(b)(iii) and 19.1(c) for each month, the "**Capacity Payment**" shall be equal to:
 - (A) the product of USD the kW Hour Rate (as adjusted from time to time in accordance with paragraph 10.2) and the Dependable Export Power Capacity and the number of days in that month
 - less
 - (B) the lesser of (i) the sum calculated in accordance with Clause 19.1(b)(i)(A) for such month and (ii) the Export Power Charge (if any) payable in relation to that month.
 - (ii) If the Commercial Operations Date occurs on a date which is not the first day of a month, the Capacity Payment for the period from (and including) the Commercial Operations Date until (and including) the last day of the month in which the Commercial Operations Date occurs shall be the number determined in accordance with Clause 19.1(b)(i) multiplied by a fraction the numerator of which is the number of days remaining in the month from and including the Commercial Operations Date and the denominator of which is the number of days in such month.
 - (iii) If this Agreement terminates or expires on a date other than the last day of a month, the Capacity Payment for the period commencing at the beginning of the month in which this Agreement terminates or expires and ending on the date on which this Agreement terminates or expires (the "**Termination Payment Period**"), shall be the number determined in accordance with Clause 19.1(b)(i) multiplied by a fraction the numerator of which is the number of days in the Termination Payment Period and the denominator of which is the number of days in such month.

(Each of the Export Power Charge and the Capacity Payment being "**Charges**").

- (c) The Capacity Payment for any month shall be reduced by kWh, as adjusted from time to time in accordance with paragraph 10.2, for each kWh reduction in the available electrical power export capacity of the Facility during such

month that is substantially caused by or attributable to any of the following causes (to the extent so attributable):

- (i) breach by CEB of its obligations under this Agreement;
 - (ii) Waste Default; or
 - (iii) Force Majeure.
- (d) All amounts payable by Offtaker to CEB shall be invoiced in and be paid in USD.

19.2 Adjustment

The Charges (as increased from time to time) shall be increased with effect from the third (3rd) anniversary of the Effective Date and every third (3rd) anniversary of such date (each a "Review Date") by the greater of Y% and X% where:

Y% = the percentage increase in electricity tariffs (and if more than one (1) tariff applies, by the weighted average increase in such tariffs based upon the total amount of electricity in KWh supplied on each tariff) in Barbados since the Effective Date; and

$$X\% = (A\% \times (A_1 / A_0)) + (B\% \times (B_1 / B_0)) + (C\% \times (C_1 / C_0)) + (D\% \times (D_1 / D_0))$$

where

A% is the percentage of CEB's cost of operation and maintenance of the Facility during Calculation Period represented by the costs of raw materials, spare parts and consumables (excluding Contract Waste, water and electric power supplied to CEB other than by generation from the Facility);

A₁ is the greater of (i) A₀ and (ii) the actual costs of raw materials, spare parts and consumables (excluding Contract Waste, water and electric power supplied to CEB other than by generation from the Facility) utilised in the operation and maintenance of the Facility during the Calculation Period;

A₀ is the costs of raw materials, spare parts and consumables (excluding Contract Waste, water and electric power supplied to CEB other than by generation from the Facility) utilised in the operation and maintenance of the Facility either (i) as estimated by CEB and set out in the Approved Costs Model (in the case of the first Calculation Period) or (ii) during the previous Calculation Period (in the case of any subsequent Calculation Period);

B% is the percentage of CEB's cost of operation and maintenance of the Facility during the Calculation Period represented by the costs of water;

B₁ is the greater of (i) B₀ and (ii) the actual costs water incurred by CEB in the operation and maintenance of the Facility during the Calculation Period;

B₀ is the estimated costs of water utilised in the operation and maintenance of the Facility either (i) as estimated by CEB and set out in the Approved Costs Model (in the case of the first Calculation Period) or (ii) during the previous Calculation Period (in the case of any subsequent Calculation Period);

C% is the percentage of CEB's cost of operation and maintenance of the Facility during the Calculation Period represented by the costs of electric power supplied to CEB other than by generation from the Facility;

C_1 is the greater of (i) C_0 and (ii) the actual costs of electric power supplied to CEB other than by generation from the Facility incurred by CEB in the operation and maintenance of the Facility during the Calculation Period;

C_0 is the estimated costs of electric power supplied to CEB other than by generation from the Facility utilised in the operation and maintenance of the Facility either (i) as estimated by CEB and set out in the Approved Costs Model (in the case of the first Calculation Period) or (ii) during the previous Calculation Period (in the case of any subsequent Calculation Period);

$D\%$ is the percentage of CEB's cost of operation and maintenance of the Facility during the Calculation Period represented by labour costs and other costs not falling within the previously mentioned costs (together "**Labour and Other Costs**");

D_1 is the greater of (i) D_0 and (ii) the actual Labour and Other Costs incurred in the operation and maintenance of the Facility during the Calculation Period;

D_0 is the anticipated Labour and Other Costs incurred in the operation and maintenance of the Facility either (i) as estimated by CEB and set out in the Approved Costs Model (in the case of the first Calculation Period) or (ii) during the previous Calculation Period (in the case of any subsequent Calculation Period); and

"**Calculation Period**" means (in the case of the first Review Date) the period commencing on the Effective Date and ending on the first Review Date or (in the case of any subsequent Review Date) the period commencing on day after the preceding Review Date and ending on such subsequent Review Date.

19.3 *Monthly Invoice*

- (a) Commencing with the month following the month in which CEB commences delivery of Net Power Output, CEB shall submit to Offtaker a monthly invoice on or before the fifth (5th) day of that month for the aggregate of:
- (i) the Capacity Payment estimated by CEB in good faith to be payable in relation to the current month;
 - (ii) plus Export Power Charges payable in relation to Net Power Output delivered in the previous month (if any);
 - (iii) plus the amount (if any) by which the Capacity Payment estimated by CEB pursuant to Clause 10.3(a)(i) to be payable in relation to the previous month (if any) is less than the actual Capacity Payment payable by Offtaker in relation the previous month taking account of any adjustment to be made pursuant to Clause 10.3(b);
 - (iv) less the amount (if any) by which the Capacity Payment estimated by CEB pursuant to Clause 10.3(a)(i) to be payable in relation to the previous month (if any) is more than the actual Capacity Payment payable by Offtaker in relation the previous month taking account of any adjustment to be made pursuant to Clause 10.3(b);

(the "**Monthly Payment**").

- (b) In the event that (for whatever reason) accurate data necessary to calculate the actual Net Power Output in the previous month is not available, CEB may prepare such monthly invoice on the basis of its best estimate of the Net Power Output taking into consideration historical data and the production during that month. CEB shall clearly identify any item in a monthly invoice calculated on

an estimated basis as having been estimated. As soon as accurate data becomes available, the next monthly invoice shall be adjusted as may be necessary to correct any differences between the estimated charges made pursuant to this Clause 10.3(b) in the relevant monthly invoice and the actual amounts due.

- (c) Save to the extent already accounted for in the monthly invoice, each Party shall invoice the other for any other amounts which may be payable by the other Party in accordance with this Agreement.

19.4 *Payment terms*

- (a) Commencing on the Commercial Operations Date, the Monthly Payment shall be paid to such bank account of CEB as CEB shall notify to Offtaker from time to time in freely available cleared funds no later than the tenth (10th) day of each month. Payments may be made by electronic funds transfer from the account referred to in Clause 10.4(b) or from such other bank account of Offtaker as Offtaker shall determine. Any bank charges relating to such payment shall be for the account of Offtaker.
- (b) Offtaker shall establish and maintain a dedicated reserve account solely for funding payments to CEB into which Offtaker shall transfer the equivalent of CEB's best estimate of six (6) months' monthly payments (as notified by CEB to Offtaker in writing from time to time), such account to be fully funded no later than the Commercial Operations Date (the "**Reserve Account**").
 - (i) Offtaker shall pay into the Reserve Account the following amounts on or before set out opposite such amount such that the Reserve Account shall be fully funded prior to the Commercial Operations Date:
 - (A) US\$8,910,000 no later than Financial Close;
 - (B) US\$8,910,000 no later than the end of period of nine (9) months commencing on Financial Close; and
 - (C) US\$8,910,000 no later than the start of Commissioning.
 - (ii) Commencing on the Commercial Operations Date, within fifteen (15) days of the beginning of each month Offtaker shall pay into the Reserve Account an amount equal to the amount withdrawn and paid to CEB in that month. No withdrawal shall be made from the Reserve Account other than to pay to CEB amounts payable pursuant to this Agreement. Offtaker shall establish a direct debit mandate in favour of CEB enabling CEB to debit amounts payable pursuant to this Agreement from the Reserve Account. Offtaker shall provide copies of banks statements to CEB showing all credits and debits from the Reserve Account monthly (whether or not demanded) and on demand by CEB.
- (c) Offtaker undertakes to grant to CEB such Security over the Reserve Account as CEB or the Finance Parties may require upon demand by any of them.
- (d) If VAT is chargeable on a supply made under this Agreement the recipient shall pay to the supplier an amount equal to that VAT on the production of a valid VAT invoice.

19.5 *Transmission System Charges*

Offtaker shall be responsible for all charges, fees, costs or expenses in relation to any use of the Transmission System or associated arrangements required of either Party to enable transmission of Net Power Output beyond the Interconnection Point ("**Transmission System Charges**").

20. **Representations and warranties**

20.1 CEB represents and warrants to Offtaker as follows:

- (a) CEB is duly organised and validly existing under the Laws of Barbados and is qualified to conduct its business in Barbados.
- (b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorised by all necessary actions and do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material contract to which it is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, statement of claim, judgment, decree or other legal or regulatory determination applicable to it.
- (c) This Agreement constitutes legal, valid and binding obligations of CEB enforceable at law in accordance with its terms, subject to bankruptcy, insolvency, reorganisation and other laws affecting creditors' rights generally.
- (d) No Insolvency Event in relation to CEB has occurred or is being contemplated by CEB or, to its knowledge, is threatened against CEB.
- (e) There are no claims, actions, proceedings or investigations pending or, to CEB's actual knowledge, threatened against or relating to CEB before any court, governmental or regulatory authority or body acting in an adjudicative capacity, that may materially adversely affect its ability to perform this Agreement.
- (f) CEB is not subject to any outstanding judgment, rule, order, statement of claim, injunction or decree of any court, governmental or regulatory authority, that materially adversely affects its ability to perform this Agreement.
- (g) This Agreement, the execution and delivery of this Agreement and the fulfilment and compliance with the terms of this Agreement by CEB shall not conflict with any of, or require the consent of any person under, any loan or security agreement, or other material agreement to which CEB is a party.

20.2 Offtaker represents and warrants to CEB as follows:

- (a) Offtaker is duly organised and validly existing under the Laws of Barbados and is qualified to conduct its business in Barbados.
- (b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorised by all necessary actions and do not violate or conflict with or require any consent or waiver under the constitution of Barbados or any material contract to which Offtaker is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, statement of claim, judgment, decree or other legal or regulatory determination applicable to it.

- (c) This Agreement constitutes legal, valid and binding obligations of Offtaker enforceable at law in accordance with its terms, subject to bankruptcy, insolvency, reorganisation and other laws affecting creditors' rights generally.
- (d) There are no claims, actions, proceedings or investigations pending or, to Offtaker actual knowledge, threatened against or relating to Offtaker before any court, governmental or regulatory authority or body acting in an adjudicative capacity, that may materially adversely affect its ability to perform this Agreement.
- (e) Offtaker is not subject to any outstanding judgment, rule, order, statement of claim, injunction or decree of any court, governmental or regulatory authority, that materially adversely affects its ability to perform this Agreement.
- (f) This Agreement, the execution and delivery of this Agreement and the fulfilment and compliance with the terms of this Agreement by Offtaker shall not conflict with any of, or require the consent of any person under, any loan or security agreement, or other material agreement to which Offtaker is a party.

21. Liability

21.1 Limitation of Liability

- (a) Save for any liability under Clause 19.1 or 22, neither Party:
 - (i) shall have any liability to the other Party for any Loss suffered by that Party with respect to the subject matter of this Agreement except pursuant to, or for breach of, this Agreement; and
 - (ii) shall be liable to the other in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages.
- (b) This Clause 13 does not constitute a waiver of any rights of either Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by the Transaction Documents.

21.2 Double Jeopardy

- (a) Where:
 - (i) a final, non-appealable award or order has been issued by an expert or arbitrator in a proceeding initiated by Government, based upon a claim for breach by CEB of any of its obligations under the Implementation Agreement;
 - (ii) Government settles any dispute with CEB related to, or waives in writing any breach by CEB of, any of its obligations under the Implementation Agreement; or
 - (iii) Government is pursuing a claim against CEB based upon an alleged breach by CEB of its obligations under the Implementation Agreement,

Offtaker shall be precluded from pursuing, or, in the case of clauses 13.2(a)(i) and 13.2(a)(ii), ever pursuing thereafter, any claim it would otherwise have against CEB based on the same facts and acts or omissions by CEB, for

breach of substantially the same (or related) obligations which CEB owed to Offtaker under this Agreement.

- (b) Clause 13.2(a)(i) shall not prevent Offtaker from separately proceeding to terminate this Agreement pursuant to clause 18, and to exercise any rights in respect of such termination set forth in clause 20.
- (c) In the event that Offtaker pursues a claim in non-compliance with Clause 13.2(a), Offtaker shall reimburse CEB for all costs and expenses that CEB incurs in defending the claim so pursued by Offtaker.

22. Indemnification

22.1 *Indemnification for injury, death and damage*

- (a) Except and to the extent that Offtaker is indemnified against or reimbursed for any Losses (in each case) pursuant to any policy of insurance, CEB shall:

- (i) indemnify and defend Offtaker, its officers and employees against; and
- (ii) hold Offtaker, its officers and employees harmless from,

any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, Offtaker, its officers and employees for personal injury or death to persons (including third persons) or damage to property (including third party property) arising out of any negligent act or omission or any intentional misconduct by CEB in connection with this Agreement.

- (b) Except and to the extent that CEL or CEB is indemnified against or reimbursed for any Losses (in each case) pursuant to any policy of insurance, Offtaker shall:

- (i) indemnify and defend each of CEB, CEL and their respective shareholders, officers, directors and employees against; and
- (ii) hold each of CEB, CEL and their respective shareholders, officers, directors and employees harmless from,

any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, CEB, CEL and their respective shareholders, officers, directors and employees for personal injury or death to persons (including third persons) or damage to property (including third party property) arising out of any negligent act or omission or any intentional misconduct by Offtaker in connection with this Agreement.

- (c) Subject to the Parties otherwise agreeing, or a court of law or arbitrator appointed pursuant to this Agreement otherwise determining, in the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of CEB and Offtaker, the Parties shall be deemed to be equally liable for such injury or damages (and indemnify and hold harmless the other Party for its share of liability for such injury or damages).
- (d) If the Parties agree, or a court of law or arbitrator appointed pursuant to this Agreement determines, that the Parties are not equally liable for injury or damages referred to in clause 14.1(d), the Parties will be bound to (and indemnify each other against), liability in such portions agreed or determined.

22.2 Offtaker indemnities

- (a) Offtaker agrees to indemnify, defend and hold harmless CEB against and from any and all Transmission System Charges incurred, suffered or required to be paid, directly or indirectly, by, or sought to be imposed upon CEB during the Term and any costs and expenses incurred by CEB in connection therewith.
- (b) Offtaker agrees to indemnify, defend and hold harmless CEB, its shareholders, officers, directors and employees against and from any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, CEB, its shareholders or their respective officers, directors and employees that arise out of or result from any Environmental hazard on the Site caused by Offtaker or any of their contractors, agents or employees at any time during the Term.

23. Sovereign Immunity

Offtaker unconditionally and irrevocably and to the maximum extent permitted by law:

- (a) agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;
- (b) irrevocably waives any right of sovereign immunity that it may have whether before the LCIA or otherwise from suit and/or jurisdiction and/or adjudication, including but in no way limited to waiving any right of sovereign immunity as to it and any of its property, regardless of the commercial or non-commercial nature of this property. Such property includes any bank account belonging to Government or Offtaker whether held in the name of a diplomatic mission or otherwise. The waiver extends to property, including bank accounts, belonging to Government central bank or other monetary authority. For the avoidance of doubt, the irrevocable waiver in this Clause includes a waiver of any right of sovereign immunity in respect of pre-judgment interim relief and post-judgment execution of any judgment or arbitral award; and
- (c) to the maximum extent permitted by law, waives any right of sovereign immunity which it or any related entity now has or may acquire in the future.

24. CEB Events of Default

24.1 Subject to clause 16.2, each of the following events shall be an event of default by CEB (each, a "**CEB Event of Default**"), which shall give rise to a right on the part of Offtaker to terminate this Agreement pursuant to clause 18:

- (a) the Commercial Operations Date not occurring on or before the date falling fifty nine (59) months after the Waste Report Delivery Date (such period to be extended by one (1) day for each day that the Commercial Operations Date is prevented from occurring due to Force Majeure or the failure of Government to comply with the Implementation Agreement and by the period that CEB's time for performance of its obligations under the Implementation Agreement is extended due to CEB being prevented from performing such obligations as a result of the presence of any Pre-Existing Contamination);
- (b) except for any assignment permitted by Paragraph 7 of the Common Terms the assignment or transfer of the CEL's rights or obligations in this Agreement unless the prior consent of Offtaker has been given; or

- (c) an Insolvency Event occurring in relation to CEB; or
- (d) any representation or warranty made by CEB in this Agreement proving to have been false or misleading in any material respect when made if such circumstance results in a material adverse impact on Offtaker.

24.2 No such event referred to in clause 16.1 shall become a CEB Event of Default if it substantially results from:

- (a) a breach by Offtaker of this Agreement;
- (b) a breach by Government of the Implementation Agreement including a Waste Default or failure to install, connect and commission Interconnection and Transmission Facilities in a timely manner;
- (c) any suspension or disruption to the Project occurring as a result of the presence of Pre-Existing Contamination at the Site; or
- (d) the occurrence of Force Majeure (but only to the extent that Force Majeure affects the ability of CEB to perform its obligations under this Agreement).

25. Offtaker Events of Default

25.1 Subject to clause 17.2, each of the following events shall be an event of default by Offtaker (each, an "**Offtaker Event of Default**"), which if not remedied within the time period permitted (if any), shall give rise to the right of CEB to terminate this Agreement pursuant to clause 18:

- (a) any default or defaults by Offtaker in making any payment required to be made by it under this Agreement within thirty (30) days of the date on which that payment is due;
- (b) any Offtake Default that continues for more than five (5) days is not remedied within fifteen (15) days after receipt of notice from CEB demanding remedy thereof;
- (c) any material breach by Offtaker of this Agreement (other than an Offtake Default) that is not remedied where the breach is remediable within sixty (60) days after receipt of notice from CEB identifying the breach in question in reasonable detail, and demanding remedy thereof;
- (d) an Insolvency Event occurring in relation to Offtaker;
- (e) any representation or warranty made by Offtaker in this Agreement proving to have been false or misleading in any material respect when made if such cessation results in a material adverse impact on CEB;
- (f) cancellation or amendment of the Implementation Agreement without the consent of CEB; or
- (g) termination by CEB of the Implementation Agreement in accordance with its terms as a consequence of Government's default under the Implementation Agreement.

25.2 No such event referred to in clause 17.1 shall become a Offtaker Event of Default if it substantially results from:

- (i) a breach by CEB of this Agreement or the Implementation Agreement; or
- (ii) the occurrence of Other Force Majeure (but only to the extent that Other Force Majeure affects the ability of Offtaker to perform its obligations under this Agreement).

26. Termination due to Event of Default

Upon the occurrence of an Event of Default which has not been remedied within the applicable remedy period, the non-defaulting Party shall have the right (but not an obligation) to declare a date, which shall be between thirty (30) and forty five (45) days after the notice thereof to the defaulting Party, upon which this Agreement shall terminate. If Offtaker is the non-defaulting Party, it shall (if applicable) copy its termination notice to the Finance Parties representative in accordance with the Direct Agreement (if any).

27. Termination due to Force Majeure

Where CEB is prevented from complying with its obligations or exercising its rights under this Agreement as a result of one (1) or more events of Force Majeure (as modified by Clause 17) or its or their effects or by any combination thereof for a continuous period of three hundred and sixty five (365) days, then CEB shall have the right to terminate this Agreement by notice to Offtaker effective immediately.

28. Consequences of Termination and other remedies

- 28.1 Neither Party shall have the right to terminate this Agreement except as explicitly provided for in this Agreement.
- 28.2 The exercise of the right of a Party to terminate this Agreement does not preclude such Party from exercising other remedies that are available to such Party under this Agreement or, subject to this Agreement, otherwise available at law.
- 28.3 In addition to the other remedies specified in this Clause 20, in the event that any Event of Default is not remedied within the applicable remedy period set forth in this Agreement, the non-defaulting Party may elect to treat this Agreement as being in full force and effect and shall have the right to seek specific performance of this Implementation Agreement by the defaulting Party.
- 28.4 If this Agreement terminates early (for any reason) and/or following termination or expiry of the this Agreement:
 - (a) CEB shall have the right to enter into agreements to sell any part of the Facility's generated capacity or Net Power Output and provide ancillary services to any person to the extent permitted by Law; and
 - (b) Offtaker shall procure that Transmission System Operator shall provide CEB with access to and use of the Transmission System on reasonable and non-discriminatory terms and conditions.
- 28.5 The obligations of the Parties under this Agreement which by their nature would continue beyond the expiration or termination of this Agreement, including those in Clauses 1, 17, 18, 21 22, 15, 20 and 31 and the Common Terms shall survive the expiration or termination of this Agreement (however arising). Upon the expiration or termination of this Agreement (however arising), any monies, penalties or other

charges due and owing either Party shall be paid by the other Party within thirty (30) Business Days.

28.6 The termination of this Agreement shall be without prejudice to any rights and obligations of the Parties accrued under this Agreement prior to such termination.

29. Financing of the Project

Offtaker shall at any time and from time to time execute such further agreements or documents and do all such acts and things, as CEB or the Finance Parties may reasonably require to enable CEB to arrange financing for the Project on a limited recourse basis or otherwise, including, but not limited to:

- (a) amending the provisions of this Agreement reasonably required by Finance Parties;
- (b) executing and delivering to the Finance Parties a consent to assignment of CEB's rights under this Agreement; and
- (c) entering into a Direct Agreement. If the Direct Agreement is replaced or substituted including by reason of any refinancing to be undertaken by CEB in relation to the Facility Offtaker undertakes to enter into a replacement or substituted direct agreement on substantially the same terms as the Direct Agreement.

30. Further Assurances

If it shall be necessary and proper after the execution of this Agreement to execute any additional documents or take further action to carry out the intent of this Agreement, the Parties agree to take such action as may be reasonably required.

31. Governing Law

This Agreement and all matters arising from or connected with it shall be governed by English law in accordance with Paragraph 13 (Governing Law) of the Common Terms.

This Agreement has been entered into on the date shown at the beginning of page 1 of this agreement.

SIGNATURE PAGE

Signed by The Government of Barbados)
acting by The Hon. Freundel Stuart, Q.C. M.P.,)
Prime Minister)

Signed by Cahill Energy (Barbados) Limited)
acting by M.E. Clare Cowan,)
Director)

Barbados Underground blog
<https://barbadosunderground.wordpress.com/>

ANNEX C

ELECTRIC LIGHT & POWER ACT 2013

Barbados Underground blog
<https://barbadosunderground.wordpress.com/>

2013-12-05

OBJECTS AND REASONS

This Bill would revise the law relating to the supply and use of electricity, promote the generation of electricity from sources of renewable energy, enhance the security and reliability of the supply of electricity and provide for related matters.

Barbados Underground blog
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<http://barbadosunderground.wordpress.com/>

FIRST SCHEDULE
INSTALLED CAPACITY

SECOND SCHEDULE
ELECTRIC LIGHT AND POWER ADVISORY COMMITTEE

THIRD SCHEDULE
CONSEQUENTIAL AMENDMENTS

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BARBADOS

A Bill entitled

An Act to revise the law relating to the supply and use of electricity, to promote the generation of electricity from sources of renewable energy, to enhance the security and reliability of the supply of electricity and to provide for related matters.

ENACTED by the Parliament of Barbados as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Electric Light and Power Act, 2013*.

Interpretation

2. In this Act,

“affiliate”, in relation to a body corporate, has the meaning assigned to it by section 440 of the *Companies Act*, Cap. 308;

“business day” means a day other than a Saturday, Sunday or public holiday;

“Chief Technical Officer” means the Chief Technical Officer in the Ministry responsible for Works;

“Commission” means the Fair Trading Commission established by section 3 of the *Fair Trading Commission Act*, Cap. 326B;

“Committee” means the Electric Light and Power Advisory Committee established by section 4;

“connected”, in relation to a grid, means having a point of delivery in respect of the grid;

“control” has the meaning assigned to it by section 441 of the *Companies Act*, Cap. 308;

“cumulative installed capacity”, in relation to more than one generation system, means the sum of the installed capacity of the systems;

“electricity” means electric voltage, electric current, electric energy or any like agency;

“electric line” means a wire, conductor or other apparatus used for the purpose of conveying, transmitting or distributing electricity, with any casing,

coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same, or any part thereof, or any apparatus connected therewith, for the purpose of conveying, transmitting or distributing electricity;

“generation system” means a system for the generation of electricity;

“grid” means a system for the generation, transmission, distribution and supply of electricity;

“grid code” means the minimum technical and commercial requirements to be satisfied by a person who owns, controls or operates a grid or supplies electricity to, or receives electricity from, a grid;

“installed capacity” means the sum of the maximum rated electric output of each generator in a generation system, as determined by the manufacturer of the generator;

“licence” means a licence issued pursuant to section 6;

“licensee” means a person who holds a licence;

“Minister” means the Minister to whom responsibility for Energy is assigned;

“point of delivery” means the physical point at which a generation system is attached to a grid for the purpose of metering;

“public grid” means the grid to which the public has access for the supply of electricity;

“public utility” means the person who owns, controls or operates the public grid;

“renewable energy” means any form of energy that is replenished by natural processes at a rate that equals or exceeds its rate of use and includes solar energy, wind energy and energy from geophysical and biological sources;

“service provider” has the meaning assigned to it by section 2 of the *Fair Trading Commission Act*, Cap. 326B;

“telecommunications” has the meaning assigned to it by section 2 of the *Telecommunications Act*, Cap. 282B;

“telecommunications network” has the meaning assigned to it by section 2 of the *Telecommunications Act*, Cap. 282B;

“telecommunications service” has the meaning assigned to it by section 2 of the *Telecommunications Act*, Cap. 282B;

“works” includes electric lines and any buildings, machinery, engines, equipment or other things required to supply electricity.

PART II LICENSING

Licence required for supply of electricity in certain cases

3.(1) No person shall supply electricity to another except in accordance with a licence issued to the person.

(2) Subsection (1) does not apply to a person who supplies electricity to the public grid where the cumulative installed capacity of the generation systems owned, controlled or operated by the person for the supply of electricity does not exceed the amount set out in paragraph 1 of the *First Schedule*.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for 2 years or to both and where the offence is a continuing one, to a further fine of \$10 000 for every day or part of a day during which the offence continues after a conviction is first obtained.

Advisory Committee

4.(1) There is hereby established a committee to be called the Electric Light and Power Advisory Committee.

- (2) The *Second Schedule* applies to the constitution of the Committee and otherwise in relation thereto.
- (3) The functions of the Committee are to
- (a) consider and make recommendations to the Minister in respect of applications for the issue or renewal of licences or for approval of assignments of licences or of rights thereunder; and
 - (b) advise the Minister on any other matter relevant to the administration of this Act.
- (4) A member of the Committee shall be paid such remuneration as the Minister determines.

Application for licence

- 5.(1) A person may, in such form as may be approved by the Minister, apply to the Minister for a licence to supply electricity.
- (2) An applicant shall submit with his application
- (a) such information and documents as the Minister may require to determine whether a licence should be issued to the applicant; and
 - (b) such fee as may be prescribed.
- (3) Where the applicant is the public utility or proposes to operate a generation system the installed capacity of which equals or exceeds the amount set out in paragraph 2 of the *First Schedule*, the applicant shall publish, in at least 2 daily newspapers, at least twice at intervals of 2 weeks, notice of his application in such form and manner and with such particulars as the Minister may direct or approve.
- (4) An applicant to whom subsection (3) applies shall not be issued a licence until
- (a) a period of 3 months from the date of the first publication of notice of his application pursuant to subsection (3) has expired; and

- (b) an opportunity has been given to all interested parties, during the period specified in paragraph (a), to make representations or objections to the Minister in relation to the application.

Issue of licence

6.(1) The Minister may, upon payment of such fee as may be prescribed, issue to a person who satisfies the requirements of subsection (3), a licence granting a non-exclusive right to supply electricity for any purpose within any area and for such period as the Minister considers appropriate in the circumstances.

(2) In determining whether to issue a licence to an applicant, the Minister shall

- (a) consider the recommendation of the Committee in relation to the applicant; and
- (b) take into account, where relevant
- (i) the current and projected demand for electricity;
 - (ii) the cumulative installed capacity of
 - (A) the generation systems that are a part of, or are connected to, the public grid;
 - (B) the generation systems of licensees; and
 - (C) the renewable energy generation systems that are a part of, or are connected to, the public grid, and of each type of renewable energy generation system, classified according to the source of renewable energy utilised; and
 - (iii) the purposes of this Act, being, among other things, to promote the generation of electricity from sources of renewable energy and to enhance the security and reliability of the supply of electricity.

(3) The Minister shall not issue a licence pursuant to subsection (1) unless he is satisfied that

- (a) the facility and location intended to be used pursuant to the licence is safe and adequate for the purpose;
- (b) the applicant possesses
 - (i) the financial capacity to build and maintain the facility;
 - (ii) the technical capability to operate the facility safely, reliably and efficiently; and
 - (iii) the capacity to prevent or minimise any damage to the environment that may arise out of the operations to be conducted under the licence;
- (c) any planning permission required under the *Town and Country Planning Act*, Cap. 240 has been obtained; and
- (d) the issue of a licence to the applicant would not result in the cumulative installed capacity of the renewable energy generation systems of all licensees being in excess of such amount as may be prescribed by the Minister, by Order, after consultation with the Chief Electrical Officer and the Commission.

Terms and conditions of licence

7.(1) The Minister may provide in a licence

- (a) the limits within which, and the conditions under which, electricity may be supplied including whether
 - (i) any of the provisions of Part III apply to the licensee;
 - (ii) electricity is to be generated only from sources of renewable energy;
- (b) measures for securing
 - (i) a safe, regular and efficient supply of electricity; and

- (ii) the safety of the public from personal injury and from fire or other danger;
 - (c) for the prevention and mitigation of damage to property in connection with the supply and use of electricity;
 - (d) for inspection of the business of a licensee;
 - (e) for the enforcement of the performance by the licensee, of his obligations, by the imposition of penalties or otherwise; and
 - (f) such other conditions as the Minister considers appropriate in the circumstances.
- (2) A licence is subject to the following terms and conditions where applicable:
- (a) electric lines placed above or under the ground for the supply of electricity shall be adequately protected to the satisfaction of the Chief Electrical Officer and, where such insulation is found to be inadequate, defective or worn, shall be immediately repaired or replaced;
 - (b) poles and other structures to be used for the support of electric lines and that are in close proximity to a road shall be placed only in such positions as are in accordance with the standards approved by the Chief Technical Officer;
 - (c) a licensee shall not permit any part of a circuit to be connected with earth except so far as may be necessary for carrying out the obligations under his licence or this Act, unless the connection is
 - (i) approved by the Chief Electrical Officer; and
 - (ii) made in accordance with the conditions, if any, of the approval.
- (3) The Chief Electrical Officer shall, in imposing conditions pursuant to subsection (2)(c), have due regard to any existing use of earth connections for the purpose of telecommunications.

Amendment of licence

8.(1) The Minister may amend a licence

- (a) with the agreement of the licensee; or
- (b) where the licensee breaches a condition of the licence or of this Act.

(2) Notwithstanding subsection (1)(b), the Minister shall not amend a licence without giving the licensee written notice of the intended action and the reason for it, and an opportunity to make representations in relation thereto.

Renewal of licence and notification of changes

9.(1) A licence may be renewed, upon payment of such fee as may be prescribed, for such period as the Minister considers appropriate in the circumstances.

(2) A licensee shall notify the Minister where

- (a) control of the licensee is transferred; or
- (b) there is a material change in the circumstances of the licensee that impacts upon the ability of the licensee to conduct operations under his licence.

Assignment of licence etc

10.(1) A licensee may, subject to subsection (4), assign his licence or any rights thereunder where the prior written approval of the Minister is first obtained; and the assignment shall be deemed to be a licence issued pursuant to this Act.

(2) The Minister shall, within 60 days of receipt of an application for approval under subsection (1), determine the application and notify the licensee in writing of his decision.

- (3) For the purpose of determining an application referred to in subsection (2), the Minister
- (a) may require such information and documents as may be necessary to enable him to determine whether the proposed assignee is a suitable person to hold a licence; and
 - (b) shall take into account whether the proposed assignee satisfies the requirements of this Act for the issue of a licence.
- (4) Where it is proposed to assign a licence or any rights thereunder to a person other than an affiliate of the licensee, the Crown shall have the right of first refusal.
- (5) Where a dispute arises under this section, the dispute shall be determined by a judge in Chambers.
- (6) A licensee shall not, by virtue of an assignment referred to in subsection (1), be relieved of any obligations and liabilities which the licensee incurred prior to the assignment.
- (7) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment
- (a) in the case of the public utility, to a fine of \$10 000 000; and
 - (b) in any other case, to a fine of \$100 000.

Revocation of licence

11.(1) The Minister may revoke a licence where

- (a) the licensee
 - (i) made false statements of material facts or committed fraud in the application for the licence; or
 - (ii) wilfully or negligently failed to conduct, in accordance with this Act and the terms and conditions of the licence, the operations in respect of which the licence was issued; or

(b) the Minister is satisfied that there is other just and reasonable cause for revoking the licence.

(2) Notwithstanding subsection (1), the Minister shall not revoke a licence without giving the licensee written notice of the intended action and the reason for it, and an opportunity to make representations in relation thereto.

Register of licences and renewable energy generation systems

12.(1) The Minister shall cause to be maintained a register that contains

- (a) a duplicate of each licence issued;
- (b) a list of the renewable energy generation systems installed in Barbados, whether pursuant to a licence or otherwise, that includes the source of renewable energy utilised by, and the installed capacity of, each system; and
- (c) such other information as the Minister considers appropriate for the purposes of this Act.

(2) The register shall be open to public inspection.

PART III

INTERCONNECTION AND TARGETS FOR ELECTRICITY SUPPLY
FROM SOURCES OF RENEWABLE ENERGY

Interconnection

13.(1) The public utility shall, in accordance with subsection (2), make interconnection services available to

- (a) another licensee; or
- (b) another person who owns, controls or operates a renewable energy generation system,

at the request of the other licensee or person.

- (2) Interconnection services referred to in subsection (1) shall be
- (a) offered at points along the public grid subject to
 - (i) the approval of the Chief Electrical Officer;
 - (ii) such agreement between the parties as may be approved by the Commission for the purpose; and
 - (iii) the payment of such fee as may be specified by the public utility and approved by the Commission in respect of interconnection;
 - (b) made available
 - (i) on terms and conditions that are reasonable, transparent and non-discriminatory; and
 - (ii) within a reasonable time.
- (3) The public utility shall purchase electricity from a licensee or other person referred to in subsection (1) at such rate as may be agreed by the parties and approved by the Commission.
- (4) Where parties fail to agree on the terms and conditions of an agreement referred to in this section or a dispute arises in respect of such an agreement, any party may, in writing, refer the matter to the Commission for determination.
- (5) Subsections (1), (2) and (3) are conditions of any licence issued for the operation of the public grid.

Targets for supply of electricity from sources of renewable energy

- 14.(1) The Minister may, by Order, after consultation with
- (a) the public utility;
 - (b) the Committee;
 - (c) the Commission; and
 - (d) such other persons as the Minister may deem appropriate,

prescribe the minimum and maximum amounts of electricity to be permitted by the public utility to be supplied to the public grid.

(2) Without prejudice to the generality of subsection (1), minimum and maximum amounts may be prescribed for electricity generated

- (a) from different sources of renewable energy; and
- (b) on different types of premises, whether domestic, commercial or otherwise.

PART IV

POWERS, OBLIGATIONS AND RESTRICTIONS IN RESPECT OF ELECTRICITY SUPPLY

Power to break up streets etc.

15.(1) Subsections (2) to (9) apply to

- (a) the public utility; and
- (b) any other licensee, where the Minister so provides in his licence.

(2) Subject to subsections (3) and (4) and to the terms and conditions of his licence, a licensee may, for the purpose of supplying electricity or for any matter related to such purpose

- (a) open and break up any street, road, bridge or pavement;
- (b) open and break up any sewer, drain or tunnel within, under or along any street, road, bridge or pavement;
- (c) lay down pipes, conduits, machinery and other apparatus; and
- (d) do such other things as he considers necessary or expedient in connection with paragraphs (a) to (c).

(3) A licensee shall not undertake an activity referred to in subsection (2) unless he

(a) gives to the Chief Technical Officer, 21 days' written notice of his intention to undertake the activity; and

(b) obtains the consent of the Chief Technical Officer for the activity.

(4) Where a licensee intends to undertake an activity referred to in subsection (2), the licensee shall give to the owners or occupiers of the premises that are likely to be affected by the activity, 7 days' written notice of his intention to undertake the activity.

(5) Notwithstanding subsections (3) and (4), where an emergency arises, the licensee may commence an activity referred to in subsection (2) without complying with subsections (3) and (4) but shall as soon as possible after

(a) the necessity for the activity has arisen; or

(b) the activity is begun,

notify the persons referred to in subsections (3) and (4) of the activity.

(6) Where the owners or occupiers referred to in subsection (4) cannot be identified or located after the licensee made reasonable efforts so to do, the licensee shall publish notice of the activity referred to in subsection (2) in at least 2 daily newspapers and the owners or occupiers shall be taken to have been thereby notified.

(7) A licensee shall

(a) fence any portion of any street, road, bridge or pavement that is broken up; and

(b) provide adequate warning devices to indicate the fact of disrepair.

(8) A licensee shall, without unnecessary delay, restore to the satisfaction of the Chief Technical Officer, any streets, roads, bridges, pavements, sewers and like structures that he disturbs pursuant to subsection (2).

(9) Where a licensee

- (a) fails to fence or provide adequate warning devices; or
- (b) delays in making restoration,

as required by subsection (7) or (8), as the case may be, the Chief Technical Officer may carry out the necessary work and recover from the licensee, all reasonable expenses incurred in carrying out the work.

(10) A person who, without reasonable excuse, hinders or obstructs an employee or agent of a licensee in the conduct of an activity pursuant to this section is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 12 months or to both.

(11) Nothing in this Act authorises a licensee to carry out an activity referred to in subsection (2) in respect of a street, road, bridge or pavement or a sewer, drain or tunnel within, under or along any street, road, bridge or pavement, that is not repairable by the Chief Technical Officer, without the consent of the person by whom it is repairable.

Power to alter positions of pipes and wires

16.(1) Subsections (2) and (3) apply to

- (a) the public utility; and
- (b) any other licensee, where the Minister so provides in his licence.

(2) Subject to this Act, the *Utilities Regulation Act*, Cap. 282 and his licence, a licensee may alter the position of any pipes or wires that

- (a) are under or upon any street or place that the licensee is authorised to break up; and
- (b) may interfere with the exercise of the powers of the licensee under this Act.

- (3) A licensee shall
- (a) prior to altering the position of any pipes or wires, make or secure such compensation to the owner of the pipes or wires; and
 - (b) comply with such conditions as to the mode of making the alterations referred to in paragraph (a),

as may, prior to the commencement of the alterations, be agreed upon by the licensee and the owner of the pipes or wires.

(4) Any dispute with respect to the compensation or conditions referred to in subsection (3) shall be referred to the Commission for determination.

(5) Any other person may, in the same manner as that provided for a licensee in subsections (2) and (3), alter the position of any pipes or wires of a licensee that

- (a) are under or upon any street or place that the person is authorised to break up; and
- (b) may interfere with the lawful exercise of any power vested in the person.

Restrictions on works above ground

17.(1) Notwithstanding anything in this Act, a licensee shall not, without the consent of the Chief Technical Officer, place an electric line above ground and along, over or across a street.

(2) Where a licensee contravenes subsection (1), the Chief Technical Officer may

- (a) require the licensee forthwith to remove the electric line placed contrary to that subsection; or
- (b) remove the electric line and recover from the licensee, the expense of such removal.

(3) Where a licensee places an electric line above ground in any position, a magistrate may, on the application of the Chief Technical Officer, if the magistrate is satisfied that the line is, or is likely to become, dangerous to the public, order the removal of the line by such person and upon such terms as he thinks fit.

Restrictions on placement of electric lines etc.

18.(1) Where

- (a) an electric line or other work is laid down or erected in, over, along, across or under a street for the purpose of supplying electricity, or in any other position for such purpose, in such a manner as not to be entirely enclosed within a building or buildings; or
- (b) an electric line or other work laid down or erected as described in paragraph (a) is used for the purpose of supplying electricity otherwise than in pursuance of a licence,

the Minister may, if he thinks fit, by written notice to be served upon the person who owns, uses or is entitled to use the electric line or other work, require that the line or other work be continued and used only in accordance with such conditions and subject to such measures for the protection of the public and the telecommunications network as the Minister may, by or in pursuance of the notice, determine.

- (2) Where a person fails to comply with the conditions or measures referred to in subsection (1), the Minister may require the person to remove the electric line or work.
- (3) Subsection (1) does not apply to an electric line or other work laid down or erected by an owner or occupier of premises in order for electricity generated upon the premises to be supplied to another part of the premises.

Restrictions on use of electric lines

19.(1) Where an electric line or other work is used for the supply of electricity in such a manner as adversely to affect the telecommunications network or telecommunications service, the Minister may, by written notice to be served upon the person who owns, uses or is entitled to use the electric line or work, require that the supply be continued only in accordance with such conditions and measures for the protection of the network and service, as the Minister may, by or in pursuance of the notice, determine.

(2) Where a person fails to comply with the conditions or measures referred to in subsection (1), the Minister may require the supply of electricity through the electric line or other work forthwith to be discontinued.

(3) Subsection (1) does not apply to an electric line or other work laid down or erected and used for the supply of electricity in accordance with a licence.

Service of section 18 or 19 notice

20.(1) A notice authorised to be served upon a person pursuant to section 18 or 19 may be served

- (a) personally; or
- (b) by
 - (i) courier service;
 - (ii) post;
 - (iii) facsimile;
 - (iv) electronic mail; or
 - (v) such other method as may be prescribed by the Minister by Order.

(2) A notice served by post shall be deemed to have been served at the time when the letter containing the notice would be delivered in the usual course of

post, and in proving such notice, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

Penalty for failure to comply with section 18 or 19 notice

21.(1) A person who, without reasonable excuse, fails to comply with the requirements of a notice served upon him pursuant to section 18 or 19 is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both.

(2) A magistrate may, in addition to any fine imposed pursuant to subsection (1), order the removal of any electric line or other work specified in the notice, by such person and upon such terms as the magistrate thinks fit.

Protection of property of government, licensees and service providers

22.(1) A licensee shall not lay down an electric line or do any other work for the supply or use of electricity whereby the telecommunications network or the pipes or other works of the Crown or of other licensees or service providers are or may be adversely affected.

(2) Before an electric line is laid down or any work is done within 9 feet of any part of the telecommunications network or of the pipes or other works of the Crown or of other licensees or service providers (other than the repairs or the laying of connections with mains where the direction of the electric lines so laid down crosses the lines of the telecommunications network or the pipes or other works of other service providers, at right angles at the point of shortest distance and continues the same for a distance of 6 feet on each side of such point), the licensee shall, not more than 28 nor less than 7 business days before commencing such work, give written notice to the Minister or the other licensees or service providers affected, as the case may be, specifying the course and nature of the work including the gauge of any electric lines.

(3) The licensee shall comply with any reasonable requirements, whether general or specific, as may be made by the Minister or the other licensees or service providers, as the case may be, for the purpose of preventing the

telecommunications network or the pipes or works of the Crown or of the other licensees or service providers from being adversely affected by the work.

(4) Any dispute with respect to a requirement referred to in subsection (3), between the licensee and the Minister or the other licensees or service providers, shall be referred to a judge in Chambers for determination.

(5) A licensee who contravenes subsection (1), (2) or (3) is guilty of an offence and is liable on summary conviction to a fine of \$1 000 for every day during which such contravention continues or, if telecommunications or the supply of water or gas is wilfully interrupted, \$5 000 for every day on which such interruption continues.

(6) It is a defence to a charge under subsection (5) for a person to prove that

- (a) the immediate execution of the works was required to avoid an accident or was otherwise a work of emergency; and
- (b) he forthwith served on the Minister or on the other licensees or service providers affected, as the case may be, written notice of the execution thereof, stating the reason for executing the same without previous notice.

(7) For the purposes of this section the telecommunications network or the pipes or works of the Crown or of other licensees or service providers shall be deemed to be adversely affected by a work if telecommunications or the supply of water or gas by means of such pipes or works is, whether by induction or otherwise, in any manner affected by the work or by any use made of the work.

Use of electricity

23.(1) Subject to section 25, a licensee shall not control or interfere with the manner in which the electricity he supplies is used.

(2) No person shall

- (a) use the electricity supplied to him for any purpose; or
- (b) deal with the electricity in any manner,

so as unduly or improperly to interfere with the electricity supplied to another.

(3) Any dispute arising out of subsection (1) or (2) between a licensee and a person entitled to be supplied with electricity under this Act shall be referred to the Commission for determination.

Power of entry, inspection etc.

24.(1) A licensee may, at any reasonable time, enter any premises to which he supplies or has supplied electricity, to

- (a) inspect the electric lines, meters, capacitors, fittings, works and apparatus for the supply of electricity, belonging to the licensee;
- (b) ascertain the quantity of electricity consumed or supplied; or
- (c) remove any electric lines, meters, capacitors, fittings, works or apparatus belonging to the licensee, where a supply of electricity is no longer required or the licensee is authorised to discontinue the supply of electricity to the premises.

(2) A licensee shall repair any damage caused by an entry or inspection or the removal of anything pursuant to subsection (1).

Discontinuation of electricity supply

25. Notwithstanding anything contained in the *Utilities Regulation Act*, Cap. 282, where a person fails or refuses to pay a charge for electricity or any other sum payable by him to a licensee in respect of the supply of electricity to him, or engages in an act capable of affecting the safety, reliability, security or correct recording of the supply of electricity, the licensee may discontinue the supply of electricity and for the purpose, cut or disconnect any electric line or other work through which the electricity may be supplied until

- (a) the charge or other sum, together with any expenses incurred by the licensee in so cutting off the supply of electricity, is fully paid; and

- (b) all requirements for the safe restoration of an accurately metered supply of electricity are met.

Electric lines not subject to distress in certain cases

26. Electric lines, meters, capacitors, fittings, works or apparatus belonging to a licensee and placed on premises not in the possession of the licensee for the purpose of supplying electricity shall not be subject to removal or disconnection by a landlord or to distress or any other remedy of a landlord for rent of the premises against any person in whose possession the premises may be.

Damaging work with intent to cut off supply

27. A person who, without lawful excuse
- (a) damages an electric line or other work with intent to cut off a supply of electricity; or
- (b) tampers with an electric line or other work and the tampering results in the disruption of service or the incorrect measurement or recording of the amount of electricity used or impacts on safety,

is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for 2 years or to both.

PART V
MISCELLANEOUS

Saving of certain privileges

- 28.(1) Subject to subsection (2), nothing in this Act or in a licence shall
- (a) affect the exclusive right of the Crown in respect of telecommunications services;

- (b) authorise or enable any person to
 - (i) transmit any message;
 - (ii) perform any of the incidental services of receiving, collecting or delivering messages; or
 - (iii) give to any other person any power, authority or facility of any kind whatever in connection with the transmission of messages or the performance of any of the incidental services of receiving, collecting or delivering messages.

(2) Subsection (1) shall not apply in respect of communications that are directly transmitted along electric lines solely for the purpose of the management of the grid.

Fees

29. A licensee shall pay to the Accountant-General in respect of a licence issued under this Act, such annual fee as may be prescribed.

Recovery of penalties, fees and expenses

30. Any

- (a) penalty imposed pursuant to this Act;
- (b) fee payable pursuant to section 29 that remains unpaid for a period of 3 months after the date on which it becomes payable; or
- (c) expense incurred by the Chief Technical Officer pursuant to section 15(9) or 17(2),

is recoverable as a debt due to the Crown in civil proceedings before a magistrate for District "A" notwithstanding that the amount sought to be recovered exceeds the normal monetary limit on the jurisdiction of the magistrates' courts.

Grid Code

31. The public utility shall, subject to the approval of the Commission and the Chief Electrical Officer, issue a grid code.

Review of decisions

32.(1) A person who is aggrieved by a decision of the Minister under this Act may, within 14 days of being notified of the decision, apply for a review of the decision.

(2) The filing of an application pursuant to subsection (1) does not operate as stay of the decision unless the Minister so provides.

(3) The Minister may, on a review of a decision, confirm, modify or reverse the decision or any part of the decision; and, where such a decision may not be made without a hearing, the decision shall not be reviewed without a further hearing.

Minister may make Regulations etc

33.(1) The Minister may make Regulations for

- (a) the form and manner in which an application for the issue or renewal of a licence or for approval of an assignment of a licence or of a right thereunder is to be made;
- (b) the information and documents to be submitted with an application;
- (c) the publication of such notices and advertisements as may be required in respect of an application;
- (d) the manner in which and the time within which representations or objections in relation to an application are to be made;
- (e) the holding, in such cases as the Minister thinks fit, of enquiries in relation to applications;

- (f) the fees to be paid in respect of applications for and licences issued under this Act including different fees for different classes of licence and different annual fees in respect of different classes of licence;
 - (g) the limits within which and the conditions under which electricity is to be provided;
 - (h) securing
 - (i) a safe, regular and efficient supply of electricity;
 - (ii) the protection of the public from personal injury, nuisance, fire and other danger;
 - (i) for the prevention and mitigation of damage to property in connection with the supply of electricity;
 - (j) for the inspection of the business and facilities of a licensee;
 - (k) for enforcement of the performance by the licensee, of his obligations by the imposition of penalties or otherwise; and
 - (l) any other matter necessary or convenient to give effect to this Act.
- (2) The Minister may, by Order, amend the *First* and *Second Schedules*.

Application of certain Acts

34.(1) This Act shall be read together with the *Fair Trading Commission Act*, Cap. 326B and the *Utilities Regulation Act*, Cap. 282.

(2) The *Fair Trading Commission Act* shall apply in respect of any dispute referred to the Commission under this Act.

Repeal of Cap. 278

35.(1) [*The Electric Light and Power Act is repealed.*]

(2) Notwithstanding subsection (1), the Orders set out in the First, Second and Third Schedules to the *Electric Light and Power Act*, Cap. 278 and the *Electric Light and Power Order, 1981* (S.I. 1981 No. 216)

- (a) shall continue in force to the extent that they were in force prior to the commencement of this Act; and
- (b) may be amended or revoked by the Minister, by Order, as if they were Orders made under this Act.

(3) Notwithstanding section 3, for as long as the Orders set out in the First, Second and Third Schedules to the *Electric Light and Power Act*, Cap. 278 continue in force, the public utility shall not be held to be in breach of that section and shall be treated for the purposes of this Act as if it were a licensee under this Act.

(4) Nothing in subsection (1) or (2) shall restrict any right given to, or remove any obligation imposed on, the public utility under this Act, and where there is a conflict between the Orders set out in the First, Second and Third Schedules to the *Electric Light and Power Act*, Cap. 278 and this Act, this Act shall prevail.

Consequential amendments

36. The enactment set out in the first column to the *Third Schedule* is amended in the manner set out opposite thereto in the second column.

Commencement

37. This Act shall come into operation on a day to be fixed by Proclamation.

FIRST SCHEDULE

(Section 3)

INSTALLED CAPACITY

1. The installed capacity is, for the purpose of section 3(2)
 - (a) 5 kilowatts for systems used for the generation of electricity for domestic purposes only; and
 - (b) 100 kilowatts for systems used for the generation of electricity for any other purpose.
2. For the purpose of section 5(3), the installed capacity is 1 megawatt.

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SECOND SCHEDULE*(Section 4)***ELECTRIC LIGHT AND POWER ADVISORY COMMITTEE**

1. The Committee shall comprise
 - (a) *ex officio*
 - (i) the Permanent Secretary in the Ministry with responsibility for Energy;
 - (ii) the Chief Energy Conservation Officer;
 - (iii) the Chief Electrical Officer;
 - (iv) the Chief Town Planner; and
 - (b) 5 persons appointed by the Minister by instrument in writing from among persons qualified and experienced in accounts, engineering or law or such other area as, in the opinion of the Minister, is relevant to the discharge of the functions of the Committee.
2. The Minister shall appoint a person to be Chairman and another to be Deputy Chairman, of the Committee.
3. A member of the Committee, other than an *ex officio* member
 - (a) shall, subject to this *Schedule*, hold office for a term of 3 years and is eligible for reappointment; and
 - (b) may resign his office by instrument in writing addressed to the Minister, transmitted through the Chairman; and from the date of the receipt of the instrument by the Minister, unless some other date is mentioned in the instrument, shall cease to be a member.

4. The Minister may by instrument in writing
 - (a) appoint a person to act temporarily in the place of a member appointed by him where the member is temporarily absent or unable to act;
 - (b) revoke the appointment of a member appointed by him where he is satisfied that the member is
 - (i) incapacitated physically or mentally to such an extent as to impair his ability to perform his duties or is otherwise unable or unfit to perform his duties; or
 - (ii) is guilty of serious misconduct in relation to his duties.
5. A person who is appointed to fill a vacancy created by the death, resignation or removal from office of a member holds office only for the unexpired term of the member.
6. The appointment, resignation, death or removal from office of a member shall be notified in the *Official Gazette*.
7. The Committee shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Committee determines.
8. Five members of the Committee shall constitute a quorum.
9. The Chairman, or in his absence, the Deputy Chairman, shall preside at meetings of the Committee.
10. Where the Chairman and the Deputy Chairman are absent from a meeting, the members present shall elect a member from among their number to preside at the meeting.

11. Decisions of the Committee shall be by a majority of votes, and where the voting is equal, the Chairman or other person presiding at the meeting shall, in addition to an original vote, have a casting vote.
12. The Minister may by instrument in writing appoint a person to perform the functions of secretary to the Committee.
13. All documents made by, and all decisions of, the Committee may be signified under the hand of the Chairman or any member of the Committee authorised to act in that behalf or by the secretary of the Committee.
14. Subject to this *Schedule*, the Committee may regulate its own procedure.

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THIRD SCHEDULE

(Section 36)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
Enactment	Amendments
<p><i>Fair Trading Commission Act, Cap. 326B</i></p>	<p>1. In section 4</p> <p>(a) delete subsection (1) and substitute the following:</p> <p style="padding-left: 40px;">"(1) The functions of the Commission are to</p> <p style="padding-left: 80px;">(a) enforce the <i>Utilities Regulation Act</i>;</p> <p style="padding-left: 80px;">(b) enforce any laws relating to consumer protection and fair competition which the Commission has jurisdiction to administer; and</p> <p style="padding-left: 80px;">(c) discharge the functions with which it is charged under the <i>Electric Light and Power Act, 2013</i>.";</p> <p>Act 2013-</p> <p>(b) in subsection (3)</p> <p style="padding-left: 40px;">(i) in paragraph (j), delete the word "and" in the second place where it appears;</p>

THIRD SCHEDULE - (Cont'd)

Column 1	Column 2
Enactment	Amendments
<i>Fair Trading Commission Act, Cap. 326B - (Cont'd)</i>	<p>(ii) in paragraph (k), delete the fullstop and substitute the words "; and"; and</p> <p>(iii) insert after paragraph (k), the following:</p> <p style="padding-left: 40px;">"(l) hear and determine disputes referred to it pursuant to the <i>Electric Light and Power Act, 2013</i>.";</p> <p>(c) in subsection (5)</p> <p>(i) in paragraph (b), delete the word "and";</p> <p>(ii) in paragraph (c), delete the fullstop and substitute the words "; and"; and</p> <p>(iii) insert after paragraph (c), the following:</p> <p style="padding-left: 40px;">Act 2013- "(d) in the <i>Electric Light and Power Act, 2013</i>."; and</p> <p>(d) in subsection (6), insert after the word "Act" in the second place where it appears, the words ", the <i>Electric Light and Power Act, 2013</i>".</p>

THIRD SCHEDULE - (Concl'd)

Column 1	Column 2
Enactment	Amendments
<i>Fair Trading Commission Act</i> , Cap. 326B - (Concl'd)	<p data-bbox="721 754 805 778">Cap. 282.</p> <p data-bbox="721 814 776 860">Act 2013-</p> <p data-bbox="829 716 1175 898">2. In section 5(1), delete the words "and the <i>Utilities Regulation Act</i>" and substitute the words ", the <i>Utilities Regulation Act</i> and the <i>Electric Light and Power Act, 2013</i>".</p> <p data-bbox="862 931 1062 955">3. In section 6(3)</p> <p data-bbox="862 990 1175 1048">(a) in sub-paragraph (ii), delete the word "and";</p> <p data-bbox="862 1079 1175 1163">(b) insert after sub-paragraph (ii), the following:</p> <p data-bbox="862 1196 1175 1402">(iii) such provisions of the <i>Electric Light and Power Act, 2013</i> as relate to the functions of the Commission; and"; and</p> <p data-bbox="862 1433 1175 1519">(c) renumber sub-paragraph (iii) as sub-paragraph (iv).</p>

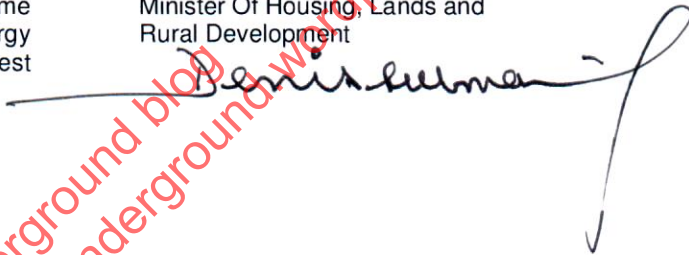
SIGNATURE PAGE

Unanimously and unconditionally approved by Cabinet and)
Signed by The Government of Barbados acting by)

Senator the Hon. Darcy W. Boyce
Minister in the Office of the Prime
Minister with responsibility for Energy
and Telecommunications, Invest
Barbados and Immigration



Hon. Denis St.E. Kellman, M.P.
Minister Of Housing, Lands and
Rural Development



Dr. the Hon. Denis S. Lowe, M.P.
Minister of Environment and Drainage



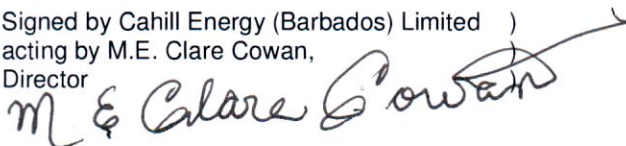
Hon. Christopher P. Sinckler, M.P.
Minister of Finance and Economic Affairs



Signed by Cahill Energy Limited)
acting by M.E. Clare Cowan,)
CEO)



Signed by Cahill Energy (Barbados) Limited)
acting by M.E. Clare Cowan,)
Director)



Margot Agnes Harvey
Chairman, Sanitation Service Authority

