
INCORPORATED TERMS MEMORANDUM

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

5 New Street Square | London EC4A 3TW
Tel +44 (0)20 7300 7000
Fax +44 (0)20 7300 7100
DX 41 London
www.taylorwessing.com

TaylorWessing

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THIS INCORPORATED TERMS MEMORANDUM is dated 15th of March 2014

BETWEEN

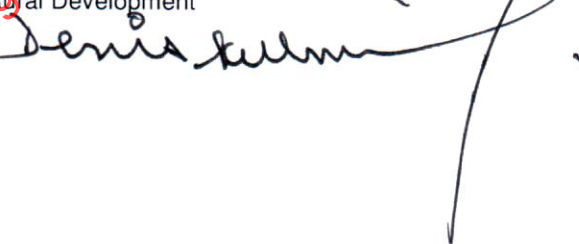
- (1) **THE GOVERNMENT OF BARBADOS;**
- (2) **CAHILL ENERGY LIMITED** a company incorporated in Guernsey (registered number 55553) and having its registered office at Tudor House, Le Bordage, St Peter Port, Guernsey GY1 1DB, Channel Islands; and
- (3) **CAHILL ENERGY (BARBADOS) LIMITED** a company incorporated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

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

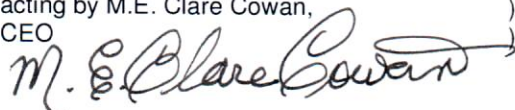


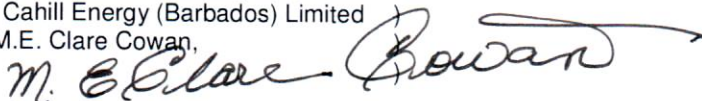
Dr. the Hon. Denis S. Lowe, M.P.
Minister of Environment and Drainage



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



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 or 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 Vauclose 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 Cary 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 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.

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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 or 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 4.

4.5 *Amount owing to Indemnified Party*

Except as otherwise provided in this Paragraph 4, in the event that a Party is obliged to indemnify and hold the other Party and its successors and assigns harmless under this Paragraph 4, 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

Offtake: 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 a 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.