2015

Standardized Power Purchase Agreement - Fiji

Draft Template

Standardized Power Purchase Agreement

Fiji

February 2015

This template provides general guidance on conditions of agreement between independent power plant proponents and operators and power offtake parties. Neither IT Power (Australia) Pty Limited nor its contractors can be held responsible for disputes, losses or damages arising in a project which has used an Agreement based on this Template.

Guidelines for Contracting Parties

Introduction

Fiji's energy economy needs significant investment over the next decade (estimated to be in the order of FJD 1.5 billion)[1], which cannot be financed by the public sector alone. In light of this, the Fiji Government and key stakeholders accept the need to attract private investment into new electricity generation capacity to capitalise on the diverse renewable energy resources available in Fiji.

The UNDP, together with its implementing partner the Fiji Department of Energy (DoE), wish to develop an investment environment that will be attractive to Independent Power Producers (IPPs). The UNDP and DoE have initiated a review of the contractual arrangements for IPPs in Fiji – specifically the existing Power Purchase Agreements (PPAs). This template will form the basis of a new standardized PPA that;

- Encourages interest and investment while appropriately mitigating risk for offtake counter parties.
- Provides an appropriate balance between risk and reward for IPPs.

Two Key Drafting Themes have guided the production of this template;

- *Respecting existing PPA Frameworks*; In drafting a standardized PPA, appropriate recognition has been given to the existing PPA approach and particularly the interests of the Fiji Electricity Authority (FEA). Based on experience with IPP projects and their mandated obligations pursuant to the Fijian Electricity Act, Cap 180, FEA has appropriately adopted a very robust and risk adverse approach to the PPA frameworks. It is prudent that any standardized PPA draw from that approach where appropriate. The PPA template is consistent with many of the key provisions in the existing FEA PPA.

- *Inducing Balance in Counterparty Risk and Reward*; In order to attract the right IPP investment interest it is essential that the underlying legal framework supports a level 'playing field' in terms of risk management and commercial reward. The objective of the PPA template attached is to communicate 'core' responsibilities and obligations for the counterparties. This core, subject to the technical and commercial nature of the project, can then be subject to further interpretation, negotiation and documentation in the supplementary Schedules.

This approach to drafting promotes two obvious benefits;

- Structurally it de-clutters the document – by introducing a core component consisting of key legal and commercial terms and conditions, and the supplementary Schedules where more detailed technical standards and commercial arrangements specific to a particular project can be defined; and
- Commercially, it introduces a more equitable starting point from which the Counterparties can develop a bankable PPA arrangement.

[1] FEA Power Development Plan, 2010 – 2020 as extracted from Draft NEP 2013.

Interpreting the Key Sections

The majority of the Sections are standard requirements designed to protect the respective party's interests and the integrity of the collective objective of diversifying and supplementing Fiji's generation capacity. The following table provides some guidance as to the objective and meaning of these key Sections.

Section	Objective & Meaning
1. Scope	This Section sets out obvious boundaries for the PPA – by identifying the parties/project and their commercial intention. It is supported by Schedule 1, which describes the physical project.
2. Definitions	This Section defines the key terms. In the interests of continuity many of the terms in the FEA Generic PPA have been adopted. The parties, as a result of negotiation and agreement, may produce additional terms, which should then be defined in Section 2.
3. Term	This Section defines the Term of the Supply arrangements and in doing so makes appropriate distinction as to the 'Commencement Date' and the 'Commercial Operations Date' of Supply, as defined in Section 2. It provides for renewal and allows a pre-emptive option for the Offtaker to purchase the project on or before termination.
4. Supply	This Section specifies the quantity of electricity that will be supplied. It offers two alternative options of measuring supply: Net Energy Output or the Deemed Monthly Quantity. Both are defined in Section 2 regarding measurement from the Commercial Operations Date. This Section also defines 'a minimum dispatchable load', and the acceptable circumstances where that minimum dispatch is not achieved.
5. Purchase	This provision defines the key price and purchasing arrangements. This should be supported by more detailed prescription in Schedule 7. It assumes that the parties will be guided on price by the periodic and published 'Authorizations' from the Fiji Commerce Commission (FCC). Alternatively, the Agreement can establish an agreed rate based on the prevailing market conditions. It is assumed that this price will either be escalated by the FCC Authorizations or be subject to an appropriate review mechanism tied to CPI or perhaps generation costs. This Section also refers to the creation of environmental credits and leaves the ownership open to negotiation.
6. Conditions Precedent to Supply	This section describes in some detail the basic Conditions Precedent (CP's) that might be fulfilled by the IPP before the Commercial Operations Date. From the Offtaker's perspective the project completion and the requisite testing are critical to maintaining security of supply. Therefore these documented CPs, on a project-by-project basis, may be supported by more detailed terms and conditions on facility testing and commissioning as proposed by Schedule 4.
7.Interconnection Arrangements	The preservation and the integrity of the grid remains a key obligation on both parties. Section 7, as complimented and qualified by Schedule 5, outlines the key requirements for the management of interconnection and transmission.
8. Metering Arrangements	As with Section 7, this Section offers a traditional approach to the responsibilities and obligations on metering arrangements. It is supported by the opportunity to provide additional arrangements according to Schedule 6.

9. Control and Operating Procedures	As with the preceding provisions, this Section places some process and responsibility into key operational arrangements.
10. Dispute Resolution	This Section provides fairly exhaustive provisions for the resolution of disputes, and these have largely been extracted from the existing generic PPA documents. This approach emphasises more cost-effective resolution rather than more litigious pathways to settlement.
11 Insurance Arrangements	This Section contains the basic insurance provisions. Parties should be able to take up adequate and relevant coverage for their project. In addition, the parties will be required to comply with any regulatory insurance cover requirement made pursuant to Fiji Law. These project-oriented provisions can be negotiated on a case-by-case basis and included in Schedule 10.
12. Liability and Indemnification	This Section offers standard and appropriate limitation on liability and indemnification arrangements. These arrangements are a guide only and should be verified by independent legal and insurance advice.
13 Force Majeure	These provisions deal with responsibilities of both parties if events occur beyond the control of either party.
14. Specific Remedies and Liquidated Damages	As with Insurance Provisions and Liability and Indemnification, parties should be able to incorporate adequate and relevant arrangements for the project and any exposure it induces. These specific arrangements can be included in Schedule 11.
15. Termination	This Section describes the most probable events that will give rise to Termination. It is probable that the Parties might wish to supplement this core or establish specific rights on termination by way of Schedule 12.
16. Agreement Execution	Subject to the legal persona of the counterparties, appropriate Agreement execution provisions can be incorporated.

Standardized Power Purchase Agreement

Fiji

CONTENTS

STANDARDIZED POWER PURCHASE AGREEMENT – FIJI

SCHEDULES

SECTION 1 - SCOPE AND PURPOSE OF THE POWER PURCHASE AGREEMENT

1.1 PURPOSE

The purpose of this Power Purchase Agreement ('Agreement') is to promote a legal and technical framework for the supply by Independent Power Producers ('IPP Project Company') to the Fiji Electrical Authority or other specified party ('Offtaker') of Net Energy Output, under the terms and conditions provided in this Agreement.

For this purpose, the [IPP Project Company] will build, operate and maintain the Facility identified and described in this Agreement. The Offtaker will facilitate the acquisition of the supply through requisite technical and economic terms and conditions as documented in the Agreement. To assist in this arrangement, technical limits and other contractual variables as specified in each of the Schedules attached as part of this Agreement.

1.2 PARTIES TO THE AGREEMENT

This Power Purchase Agreement ("Agreement") is entered into this ……..day of ……..2015 (Commencement Date) by and between the following Parties:

The *FIJI ELECTRICITY AUTHORITY* or [other party] – as the Offtaker, with its principal office located at Suva, Fiji or [other site];

and

The *[IPP PROJECT COMPANY]*, with principal offices located at ……..

The Offtaker and [IPP Project Company], which includes their successors and permitted assigns, are sometimes hereinafter referred to individually as "Party" and collectively as "Parties", where appropriate.

In consideration of the terms contained within this Agreement, the Parties agree as follows;

1.3 THE ELECTRICAL GENERATION FACILITY AND THE SPECIFIC SITE

This Agreement includes XXXX electrical generation at XXXX Fiji as described in Schedule 1.

1.4 THE RECITALS

A. The Offtaker is a corporate statutory body duly established under the Electricity Act, Cap 180, Laws of Fiji (amend if the Offtaker is not FEA) and is engaged in the generation, transmission, distribution and sale of electrical energy in Fiji.

B. The purpose of the [IPP Project Company] will be to build, own and operate this electrical generation facility as described in Schedule 1.

C. The [IPP Project Company] wishes to sell the energy output of the Facility to the Offtaker in accordance with the terms and conditions set forth in this Agreement; and

D The Offtaker is agreeable to purchasing such energy output from [IPP Project Company] in accordance with the terms and conditions set forth in this agreement.

1.5 GOVERNING LAW OF THIS AGREEMENT

This Agreement shall be governed by the Laws of Fiji.

1.6 ENTIRE AGREEMENT

This Agreement and the Schedules attached are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement. All prior written or oral understandings, offers or other communications of every kind pertaining to the sale or purchase of energy hereunder to the Offtaker by [IPP Project Company] or to [IPP Project Company] by the Offtaker are hereby abrogated and withdrawn.

1.7 ASSIGNMENT

(a) Neither party shall directly or indirectly assign, transfer or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under, or in connection with, the Agreement except with the prior written consent of the other party, this consent shall not be unreasonably or arbitrarily withheld or delayed.

(b) A party must consent to an assignment of the Agreement by the other party (in this Section, referred to as the "assigning party") if the proposed assignee:

(i) is a parent company or subsidiary of the assigning party or is directly or indirectly owned by the same company as the assigning party; and

(ii) has the financial resources and skills required to perform the obligations of the assigning party under the Agreement.

(c) without prejudice to the parties' rights under Section 1.7(a) and 1.7(b) or a divesting party's (as defined in Section 2) liability under the Agreement, in the event that either party (in this Section, referred to as the "divesting party") sells or otherwise transfers all or substantially all of its business or operations to one or more third parties, the divesting party shall, at the request of the other party, procure that the incoming purchaser or transferee assumes all of the obligations of the divesting party under the Agreement and the Connection Agreement, and will sign any documentation (including a deed of novation) to effect such assumption of the divesting party's obligations.

(d) Any Change of Control of a party shall be deemed to be an Assignment for the purposes of this Section.

1.8 CONFIDENTIALITY

Each party (for the purposes of this Section the 'disclosing party') must treat the existence of this Agreement and all information made available by the other party in connection with this Agreement as strictly private and confidential except to the extent that:

(i) the information becomes public knowledge otherwise than by disclosure by the disclosing party.

(ii) the disclosing party is required by law to make the disclosure.

(iii) the information is disclosed to a third party that has entered into a "due diligence" process in connection with the possible acquisition of the disclosing party or its assets, and the disclosing party has obtained confidentiality undertakings from the third party in respect of the information.

(iv) the information is disclosed to the disclosing party's financiers, and the disclosing party has obtained confidentiality undertakings from their financiers in respect of the information.

(v) the other party has consented in writing to the disclosure, such consent not to be withheld or delayed unreasonably.

SECTION 2 - DEFINITIONS

Whenever the following terms appear in this Agreement or the Schedules, they shall have the meanings stated below, unless the context otherwise requires:

Agreement means this Power Purchase Agreement between the Offtaker and [IPP Project Company], together with all schedules attached hereto, executed on the date first above written and also includes any amendment of it made from time to time;

Back-Up Metering System means any meters and metering devices installed, owned and maintained by [IPP Project Company] for backup purposes;

Business Day means any Day on which banks in Fiji Islands are legally permitted to be open for business, except for official holidays declared by the Government;

Certification Date means the date at which it is certified that the Facility is ready for the commencement of either the Initial Operations Test (for the purposes of Commissioning the Facility) or the Commercial Operations Test.

Change in Law means:

(a) the adoption, promulgation, amendment, modification, repeal or reinterpretation after the date of this Agreement by any Government Authority of any Law of Fiji, or

(b) the imposition by a Government Authority of any material condition in connection with the issuance, renewal, extension, replacement or modification of any Government Authorisation after the date of this Agreement;

Commencement Date means the date on which the Agreement is signed and executed by all the parties to the Agreement;

Commercial Operations Date means the date following the Day on which the Facility is commissioned to operate or as specified in Section 4.1;

Commercial Operations Test bears the meaning ascribed thereto in Schedule 4;

Commissioned means the completion of testing for the Commissioning of the Facility in accordance with, and meeting the minimum requirements stated in, Schedule 4 and for the purposes of this Agreement, the Facility shall be commissioned as of the date specified and a certificate issued by the Engineer at the date that such testing was completed and such minimum requirements were met;

Commissioning means testing of the Facility which leads to the Facility being commissioned;

Completion Notice means the notice provided by the [IPP Project Company] to the Offtaker in accordance with Section 6.

Connection Facilities means that part of the Facilities that connect the Facility to the Offtaker's Network and any associated protection equipment.

Construction Contract means the agreement(s) entered into between [IPP Project Company] and the Construction Contractor(s) for the design, engineering, procurement, construction, completion, start-up, testing, and commissioning of the Facility and also includes any amendment to such agreement(s) made from time to time;

Construction Contractor(s) means the power generation facility construction company or companies and any successor or successors thereto, appointed by the [IPP Project Company];

Construction Start Date means the date on which the "notice to proceed" is issued by the [IPP Project Company] to the Construction Contractor in accordance with the provisions of the Construction Contract;

Contracted Operating Characteristics means the minimum functional specifications (adjusted to Reference Site Conditions) for the construction of the Facility as set forth in Schedule 1 of this Agreement;

Contractor(s) means the Construction Contractor(s) and the O&M Contractor(s) and any of their direct sub-contractor(s) integrally involved in the Project;

Contract Year means a period of three hundred sixty five (365) (or 366 if a leap year) consecutive Days commencing on each consecutive anniversary of the Commercial Operations Date and ending as of the end of the Day preceding the next anniversary of the Commercial Operations Date, except for the first Contract Year which shall commence on the Commercial Operations Date;

Control Centre means Offtaker's National Control Centre or such other Control Centre designated by the Offtaker from time to time (but not more than one at any time) from which the Offtaker shall Dispatch the Facility;

Day means the 24-hour period beginning and ending at 12:00 midnight Fiji Standard Time;

Default Event means an [IPP Project Company] event of default or an Offtaker event of default as proscribed in Schedule 9.

Deemed Energy Output means the net electrical output of the [IPP Project Company] in one year in terms of megawatt hours which as provided in Section 4.

Deemed Forced Outage means the inability of [IPP Project Company] to achieve the Dispatch level, within the time allowed by the Technical Limits set out in the schedules to this Agreement;

Deemed Monthly Quantity means the net electrical output of the [IPP Project Company] in one month in terms of megawatt hours as provided in Section 4.1

Delivery Point means the [IPP Project Company] interconnection point as illustrated in Schedule 1 at which the Net Energy Output is measured and transferred from [IPP Project Company] to the Offtaker;

Dispatch means an instruction issued directly by the Control Centre to [IPP Project Company] in accordance with the terms of this Agreement,

Dispute means any dispute, difference or disagreement of any kind whatsoever between the Offtaker and [IPP Project Company] in connection with or arising out of this Agreement, including, without limitation, any dispute or difference concerning the existence, validity or enforceability of this Agreement or any provision hereof;

Dollars means the lawful currency of the Republic of Fiji;

Electrical Interconnection Facilities means that portion of the Facility containing all facilities and equipment described in Schedules 1 and 5;

Emergency means a condition or situation that, in the reasonable opinion of the Offtaker, does materially and adversely:

(a) Affect the ability of offtaker to maintain safe, adequate and continuous electrical service to its customers, having regard to the then current standard of electrical service provided to its customers, or

(b) Present a physical threat to persons or property or the security, integrity or reliability of the Facility.

Engineer means the independent consulting engineer, or engineering company, of international repute acceptable to the Offtaker, the [IPP Project Company] and the Lenders for the purposes of monitoring the construction, certifying the results of Commissioning, which engineer shall be selected and notified to the [IPP Project Company] in writing by the Offtaker (to be appointed on commercial terms reasonably acceptable to the [IPP Project Company]), following the occurrence of the Financial Closing Date.

Energy Output means the electrical output delivered by the [IPP Project Company] for sale to the Offtaker at the Delivery Point.

Event of Default means an [IPP Project Company] Event of Default or an Offtaker Event of Default;

Facility means the power station owned and constructed by the [IPP Project Company], including without limitation or regard to level of development, land, engineering and design documents and Construction Contract, all energy producing equipment and its auxiliary equipment, water intakes and discharge, water treatment facilities, solid waste disposal facilities, fuel receiving and handling facilities and equipment on the [IPP Project Company]'s side of the Delivery Point;

Financial Closing means the date on which the Financing Documents have been executed between the [IPP Project Company] and Lenders and a copy of the same has been delivered to the Offtaker

Financing Documents means the loan agreements, notes, indentures, security agreements, guarantees and other documents relating to the construction and permanent financing (including refinancing) of the Facility or any part thereof;

Force Majeure Event means an event beyond the control of one or other party. Responsibilities under a Force Majeure Event are ascribed in Section 13 of this Agreement;

Forced Outage means an interruption or a reduction in the generating capability of the Facility, on or after the Commercial Operations Date that is not the result of:

(a) A request by the Offtaker in accordance with this Agreement;

(b) A Scheduled Outage or a Maintenance Outage;

(c) A Force Majeure Event;

(d) a condition caused by the Offtaker or by the Interconnection and Transmission Facilities or by the remainder of the Grid System and shall include a Deemed Forced Outage occurring on or after the Commercial Operations Date that is not the result of any of the matters referred to in (a) to (c) above;

Government means the Government of Fiji;

Government Authorizations means all such approvals, consents, authorizations, acknowledgements, licenses or permits required to be issued by any Government Authority to the [IPP Project Company] for the establishment of the [IPP Project Company] or to the [IPP Project Company] or the Contractor(s) for the construction, financing, ownership, operation and maintenance of the Facility by the [IPP Project Company] or the Contractors;

Government Authority means:

(a) The Government or any entity subject to the overall control or direction as to matters of policy of the Government.

(b) Any local governmental authority or any subdivision of any of the foregoing,

(c) any court including a Fiji court or tribunal with jurisdiction over the [IPP Project Company], the Facility, the Contractor(s), the Lenders or the Project or any part thereof, and

(d) Any department, authority, regulatory agency, instrumentality, agency, body, corporation, or other entity controlled by any of the foregoing;

Grid System means the transmission or distribution facilities owned by the Offtaker, through which the Net Energy Output of the Facility will be received and distributed by the Offtaker;

Imported Energy means energy purchased by the [IPP Project Company] from the Offtaker;

Import Meter means the meter ascribed to measure energy provided by the Offtaker to the [IPP Project Company];

Initial Operation Test bears the meaning ascribed thereto in Schedule 4;

IPP means Independent Power Producer;

IPP Project Company is the Independent Power Producer company, defined in the Recitals;

kW means Kilowatt;

kWh means Kilowatt-hour;

Lapse of Consent means any Government Authorisation: ceasing to remain in full force and effect, or not being issued or renewed upon application having been properly and timely made and diligently pursued, or being made subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the IPP Project Company's ability to perform its obligations under any document included within the Security Package. In each of the above instances despite the [IPP Project Company]'s compliance with the applicable procedural and substantive requirements as applied in a "non-discriminatory" manner;

Laws of Fiji means, in relation to this Agreement, all laws in force in Fiji, and includes all rules, regulations, orders, directives, notifications made or issued by any competent authority pursuant to or under any such law, and any decree or judicial decision given or pronounced by any court of competent jurisdiction;

Lenders means the lenders party to the Financing Documents, together with their respective successors and assignees;

Loss means any loss, damage, liability, payment, claim, action, cost, penalty or obligation (excluding any profit or any indirect or consequential loss, damage, liability, payment, obligation, claim, action, cost or penalty), and all expenses (including without limitation reasonable legal fees) related thereto;

Maintenance is not limited to, but includes to test, clean, change, repair, replace, adjust or recalibrate the Facility or associated Metering System.

Maintenance Outage means an interruption or reduction of the Facility's generating capability, on or after the Commercial Operations Date, that is not a Scheduled Outage and has been scheduled for the purpose of performing work on specific components, which should not, in the reasonable opinion of the [IPP Project Company], be postponed until the next Scheduled Outage;

Maintenance Outages Energy means the summation of the products of (i) the reduction in the Facility's generating capability as a result of a Maintenance Outage during the period that such Maintenance Outage was in effect, expressed in MW; multiplied by (ii) the time in hours that such Maintenance Outage was in effect during a given Contract Year;

Maximum Energy Output has the same meaning as given to it in Section 4.3

Metering System means all meters and metering devices (including current transformers and potential transformers) installed in accordance with Schedule 6 by the [IPP Project Company] or the Offtaker under this Agreement and used to measure the delivery by the [IPP Project Company] and receipt by the Offtaker of Net Energy Output or to measure the delivery by the Offtaker and receipt by the [IPP Project Company] of Imported Energy;

Minimum Annual Energy Output has the same meaning as given to it in Section 4.3 and 4.4;

Month means a calendar month according to the Gregorian calendar;

MW means Megawatt;

MWh means Megawatt-hour;

Net Energy Output means all the net electrical energy delivered by the Facility during a given period measured in kWh at the Delivery Point in accordance with the terms of this Agreement;

Network means the electricity network used for transmission and distribution of Energy Output from the Offtaker's side of the Delivery Point to users of the Energy Output.

O&M Agreement means the agreement, if any, between the [IPP Project Company] and the O&M Contractor for the operation and maintenance of the Facility to be entered into between [IPP Project Company] and the O&M Contractor, as may be amended or superseded from time to time;

O&M Contractor means the power generation facility operation and maintenance company, and any successor thereto appointed or to be appointed by the [IPP Project Company];

Offtaker means Fiji Electricity Authority or other party ascribed in the Recitals as the purchaser of the Energy Output and its successors and permitted assignees;

Offtaker Events of Default" has the meaning set forth in Section 4.

Offtaker Notice of Default has the meaning set forth in Section 4.2;

Operating Procedures shall bear the meaning ascribed in Section 9 and Schedule 8 of this Agreement;

Parties means both the Offtaker and the [IPP Project Company];

Party means either the Offtaker or the [IPP Project Company], as the case may be;

Project means the development, design, engineering, manufacture, financing, construction, permitting, start-up, testing, completion, insurance, commissioning, ownership, operation and maintenance of the Facility, and all activities incidental;

Prudent Utility Practices means the prudent utility practices applicable from time to time to the international electric utility industry, having regard to engineering and operational considerations, including manufacturers' recommendations and, as relates to the [IPP Project Company], having regard to the fact that the [IPP Project Company] is a private power producer selling electric energy to an integrated public utility (or other party as defined in the Recitals) but these are not limited to optimum practices, methods or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods and acts employed by electric utilities and private power producers which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety;

Scheduled Commercial Operations Date means the date advised to the Offtaker by [IPP Project Company] on or prior to the Financial Closing Date, as such Scheduled Commercial Operations Date

may be revised from time to time based on the [IPP Project Company]'s scheduled construction program for the completion of Commissioning of the Facility;

Scheduled Outage means a planned interruption of the Facility's generating capability on or after the Commercial Operations Date that has been scheduled and is for the purpose of inspection, testing, major overhauls, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the Facility;

Site means the land, spaces, waterways, roads, wells and any rights acquired or to be acquired by the [IPP Project Company] for the purposes of the Facility on, or through, above or below the ground on which the Facility or any part thereof is to be built (including, without limitation, any working areas required by the [IPP Project Company] and the Contractors, villages, townships, and camps for the accommodation of the employees of the [IPP Project Company] and the Contractors and any subcontractors, all rights-of-way and access from public highways, and seaward access if applicable);

Supply Term means the term of this Agreement as specified in Section 3.1 of this Agreement;

Taxes means any and all taxes, duties, imposts and fees (other than fees of a commercial nature or for the provision of services), whenever imposed and applicable under the Laws of Fiji;

Technical Limits means the limits and constraints described in Schedules 3 and 8 relating to the operation, maintenance and Dispatch of the Facility;

Termination Notice means a written notice issued by the Offtaker or the [IPP Project Company], as the case may be, terminating this Agreement, under Section 4.4(c) of this Agreement;

SECTION 3 - TERM OF AGREEMENT

3.1 This Agreement shall become effective upon execution and delivery by the Parties of the agreement (Commencement Date) and shall terminate XXXX years after the (Commercial Operations Date) unless extended or earlier terminated pursuant to the provisions of this Agreement.

3.2 The expiration or termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such expiration or termination.

3.3 Notwithstanding Sections 3.1 and 3.2, the Parties may renew this Agreement on the same terms and conditions at the expiry of the term under Section 3.1 for a further XXXX years commencing at the expiry of the term under Section 3.1 if:

(i) The Offtaker gives notice in writing to the [IPP Project Company] not less than six months before the expiry of the term under Section 3.1; and

(ii) The [IPP Project Company] is not at the expiry of the term under Section 3.1 in breach of any essential term of this Agreement.

SECTION 4 - SUPPLY OF ENERGY

4.1 During the Term of this Agreement, the [IPP Project Company] shall deliver the agreed Net Energy Output to the Offtaker by making available at the Delivery Point from the Commercial Operations Dates defined in this Agreement or the Supply Term all the Net Energy Output or the Deemed Monthly Quantity of XXXX Kilowatt /Megawatt hours, subject to the terms of this Agreement.

4.2 Subject to the interconnection arrangements of Section 7, the Offtaker shall purchase all the Net Energy Output or the Deemed Monthly Quantity supplied to the Network in accordance with, and subject to, the terms of this Agreement.

4.3 During the Term, the [IPP Project Company] shall use reasonable endeavours to ensure that the Net Energy Output or the Deemed Energy Output supplied to the Network in accordance with this Agreement in any twelve month period during the Term shall be between XXXX Kilowatt/Megawatt hours (the "Minimum Annual Energy Output") and XXXX Kilowatt/Megawatt hours (the "Maximum Annual Energy Output").

4.4 Without limiting the previous section, the [IPP Project Company] shall use reasonable endeavours to ensure that the Energy Output or Deemed Energy Output supplied to the Network in accordance with this Agreement in any consecutive twelve-month period during the Term shall be no less than the Minimum Annual Energy Output.

4.5 Notwithstanding Section 4.2, and Section 4.9 in any consecutive twelve-month period the Offtaker shall not be obliged to purchase any Energy Output in excess of the agreed Net Energy Output or Deemed Energy Output specified in Section 4.3. Nevertheless, any Energy Output in excess of the amount agreed in Section 4.3 may be purchased by the Offtaker on terms mutually agreed between the Parties.

4.6 Subject to Section 4.4 above and the Offtaker's rights in a Default Event, the Offtaker otherwise acknowledges that the supply of Energy Output to it may be intermittent and conditional upon factors outside the control of the [IPP Project Company] and may not be continuous or uninterrupted.

4.7 The parties shall each use reasonable endeavours to co-ordinate any planned interruption to the supply of Energy Output with any planned interruption on the Network and vice versa, including consulting with each other as to the expected timing and duration of each planned interruption prior to such interruption.

4.8 The [IPP Project Company] and the Offtaker shall jointly establish and agree plans prior to the Commercial Operations Date for operating the facility during an Emergency affecting either Party. Such plans shall include, without limitation, recovery from an electrical blackout and/or voltage reduction.

4.9 Notwithstanding anything to the contrary in this agreement, *the Deemed Monthly Quantity* in respect of any Month maybe reduced by the Reduction Amount calculated by:

(a) the Deemed Monthly Quantity divided by the number of hours in that month (prorated for any part thereof) in such Month during which electrical energy was not made available at the Delivery Point for reasons solely attributable to a default by the [IPP Project Company] (including, without limitation, a [IPP Project Company] Default Event) and where, for the avoidance of doubt, such default and corresponding failure to make electrical energy available is not the result of:

(i) A Scheduled Outage;

(ii) A Grid System failure;

(iii) Any instruction to the [IPP Project Company] to reduce or suspend generation of electrical energy made by the Offtaker or the Joint Coordinating Committee;

(iv) A failure by the Offtaker to comply with an obligation under this agreement.

(v) In the event of a Force Majeure Event, by an amount calculated in accordance with the provisions of Section 4.9(a) (Reduction of Deemed Monthly Quantity).

SECTION 5 - PURCHASE OF ENERGY

5.1 In addition to their respective obligations under this Agreement the Parties shall comply with their respective Tariff and Billing obligations set out in Schedule 7.

5.2 The Offtaker agrees to purchase all Net Energy Output or the Deemed Monthly Quantity injected into the Offtaker's Network by the [IPP Project Company] in accordance with this Agreement and measured in accordance with Section 4.3, according to the Tariff structure detailed in Schedule 7. This Purchase Price is applicable from the Commercial Operations Date until the expiry of the Supply Term.

5.3 Unless otherwise specified in Schedule 7 the Purchase Price for the Energy Output shall be adjusted in accordance with publicised tariff reviews from the Fiji Commerce Commission.

5.4 The Offtaker must, at the request of the [IPP Project Company], provide Electrical Energy at the Delivery Point for the purpose of testing and commissioning of the Facility. The [IPP Project Company] shall give the Offtaker reasonable written notice of its electrical energy requirements for testing and commissioning of the Facility.

5.5 After the Commercial Operations Date, the Offtaker must, at the request of the [IPP Project Company], provide Electrical Energy at the Delivery Point during any period where the Facility is unable to generate Electrical Energy.

5.6 Imported Energy by the [IPP Project Company] will be measured in accordance with Schedule 6 at the Import Meter. The [IPP Project Company] shall pay the Offtaker for all Imported Energy at the prevailing retail tariff published by the Offtaker under the commercial and industrial tariff, or at the rates agreed in Schedule 7.

5.7 All carbon and other environmental credits and benefits in connection with the generation, supply and/or distribution of the Energy Output from the Facility that constitute personal property shall benefit and be to the account of XXXX, subject to agreement between the Offtaker and [IPP Project Company].

5.8 Subject to ownership decision in Section 5.7, the [IPP Project Company] agrees to provide such further evidence of the right, title and interest of the Offtaker in such credits or benefits, and such information with respect to such credits or benefits, and do such other things in relation to such credits, as the Offtaker may reasonably request.

SECTION 6 - CONDITIONS PRECEDENT TO ENERGY SUPPLY

6.1 Permits, Licenses and Approvals

(a) The [IPP Project Company], at its sole cost and expense, shall use reasonable efforts to acquire and maintain in effect all permits, licenses and approvals required by all federal, provincial and local agencies, commissions and authorities with jurisdiction over [IPP Project Company], the Site, the Facility and the Electrical Interconnection Facilities in order to enable it to perform its obligations under this Agreement.

(b) The Offtaker, shall use all reasonable efforts to acquire and maintain in effect all permits, licenses and approvals required by all federal, provincial and local agencies, commissions and authorities with jurisdiction over the Offtaker, the Grid System (including the Interconnection and Transmission Facilities) and the Metering System in order to enable it to perform its obligations under this Agreement.

6.2 The [IPP Project Company] will provide the Offtaker with copies of all relevant documentation as set out in Schedule 2.

6.3 The [IPP Project Company] shall initiate operational testing in accordance with this Agreement and the standards and specifications in Schedules 3 and 4.

6.4 The [IPP Project Company] may only commence supply if:

(i) The [IPP Project Company] has first given the Completion Notice in accordance with this Section and the Offtaker has accepted that Completion Notice in accordance with this Section and

(ii) The [IPP Project Company] has complied with all requirements specified in relation to interconnection arrangements as specified within Sections 3 and 5.

6.5 The [IPP Project Company] may only give a Completion Notice if it considers the following Conditions Precedent have been met:

(i) The Installed Capacity of the Facilities is equal to or no greater than the agreed generational capacity.

(ii) The [IPP Project Company] has obtained all relevant permits, licences, consents and approvals as required by the legislation of the Jurisdiction in order to operate the Facilities and supply electric power to the Offtaker under this Agreement;

(iii) The [IPP Project Company] has applied for and obtained any necessary tax credits, grants, loans, import duty concessions or preferences from the relevant Fiji institutions in order to operate the facilities and supply electric power to the Offtaker under this agreement;

(iv) The Facility is ready for regular daily operation and has been connected to the Network at the Delivery Point;

(v) The Facility is capable of producing the Energy Output as required by this Agreement and in accordance with the standards specified in the Schedules;

(vi) Certificates of insurance coverage or insurance policies required by this Agreement have been obtained by the [IPP Project Company] and submitted to the Offtaker.

(vii) Testing of the Connection Facilities has been completed in accordance with this Agreement and Schedule 4; and

(viii) The [IPP Project Company] is in compliance with the terms and conditions of the Agreement.

6.6 On giving Completion Notice the [IPP Project Company] being satisfied that the Conditions Precedent have been met, it shall give notice to the Offtaker (the "Completion Notice"):

(i) stating the date on which the [IPP Project Company] considers that the construction and commissioning of the Facility will be entirely completed, but for minor and inconsequential works (the "Practical Completion Date");

(ii) certifying to the Offtaker that each of the Conditions Precedent has been, or is being, satisfied as at the date of the Completion Notice; and

(iii) the date on which the [IPP Project Company] shall commence supply of Energy Output to the Offtaker in accordance with the terms of this Agreement;

6.7 On giving a Completion Notice, the [IPP Project Company] shall grant the Offtaker and its employees, agents and representative, reasonable access to inspect the Facility and the Site between

the hours of 8am and 5pm on Business Days (or such other times as may be agreed by the parties) so that the Offtaker may verify whether the Conditions Precedent have been, or continue to be, satisfied.

6.8 The Offtaker shall, at its own expense, carry out testing and commissioning of the Facility between the practicable completion date and before the Commercial Operations Date to ensure that the Facility meets the requirements of the Agreement and the specifications set out in this Agreement.

6.9 The Offtaker shall respond to the [IPP Project Company] in writing within XXXX Business Days of receipt of the Completion Notice stating either:

(i) it considers that a Condition Precedent has not been met, and the Completion Notice is rejected (a "Completion Notice Rejection"); or

(ii) it accepts that all the Conditions Precedent have been met, and the Completion Notice is accepted.

6.10 As soon as is practicable after a Completion Notice Rejection is issued, the Parties shall meet to discuss a course of action under which they may both be satisfied that the Conditions Precedents have been met. Subsequent to such actions being taken, the [IPP Project Company] shall then issue a new Completion Notice for consideration.

6.11 In the event that a Completion Notice is not accepted in accordance with Section 6.9 within XXXX days of the Commencement Date, the Offtaker may terminate this Agreement by written notice to the [IPP Project Company].

SECTION 7 - INTERCONNECTION ARRANGEMENTS.

7.1 In addition to their respective obligations under this Agreement the Parties shall comply with their respective interconnection and grid management obligations as set out in Schedule 5.

7.2 In respect to the Interconnection and Transmission Facilities;

(a) The [IPP Project Company] shall be responsible for the design, construction, installation, commissioning, operation and maintenance of the Connection Facilities in accordance with the terms of this Agreement, and [IPP Project Company] shall own all such Connection Facilities and shall allow the Offtaker such access as the Offtaker may require in order to comply with its obligations under this Agreement.

(b) The Offtaker shall, upon request by [IPP Project Company], grant to [IPP Project Company] permanent easements and rights-of-way across any relevant land owned by the Offtaker or over which the Offtaker has requisite control necessary to install, operate, maintain, replace and/or remove the Connection Facilities. All easements, rights-of-way, licences and other rights under this Agreement shall survive termination on expiration of this Agreement.

(c) The [IPP Project Company], at its expense, shall be responsible for obtaining all rights-of way, easements and other real or personal property interests necessary to construct, operate and maintain the Connection Facilities.

(d) The [IPP Project Company] shall, at its expense construct, test and commission the Connection Facilities on or before Commercial Operations Date:

(e)The [IPP Project Company] shall provide to the Offtaker monthly reports on the progress of the design and construction of the Connection Facilities.

(f) The [IPP Project Company] shall design, construct and own the Connection Facilities substantially in accordance with Schedule 5.

(g) The [IPP Project Company] shall operate and maintain the Connection Facilities in accordance with this Agreement and Schedule 5 in such a manner so as not to have a material adverse effect on the Facility or the ability of the Facility to operate. The [IPP Project Company] shall not be liable for any adverse effect on the Facility resulting from Offtaker's operation and maintenance of the remainder of the Grid System.

SECTION 8 - METERING ARRANGEMENTS

8.1 In addition to their respective obligations under this Agreement, the Parties shall comply with their respective obligations, standards, specifications and measurement systems set out in Schedule 6.

8.2 The [IPP Project Company] will purchase and install a Metering System that meets the obligations set out in this Section and any specifications set out in Schedule 6. Specifically the [IPP Project Company] will;

(i) Retain ownership of the Metering System;

(ii) Install the Metering System as close as possible to the Delivery Point;

(iii) Not take or allow any Energy Output to be taken from any point after the Delivery Point or between the Metering System and the Delivery Point;

(iv) Not allow any interference with or alteration to the Delivery Point or Metering System, without the Offtaker's prior written consent;

(v) Notify the Offtaker immediately if the [IPP Project Company] identifies any defects or evidence of tampering, or is aware of any incident of any kind that could affect the accuracy or integrity of any Metering System and shall, where requested by the Offtaker, co-operate with the Offtaker to prepare a statement of the situation; and

(vi) Install, at its own expense, communication equipment that allows the Offtaker to read the Metering System from a remote location at any point in time.

8.3 The Offtaker will inspect, test and calibrate the Metering System upon installation. The Offtaker will provide the [IPP Project Company] with reasonable advance notice of, and allow a representative of the [IPP Project Company] to witness and verify such inspections, tests, and calibrations.

8.4 The [IPP Project Company] may elect to install and maintain, at its own expense, a back-metering system at the delivery point in addition to those installed by the [IPP Project Company] and maintained by Offtaker, which installation and maintenance by [IPP Project Company] shall be in accordance with Prudent Utility Practices.

8.5 The Offtaker will test the Metering System at intervals of not less than ninety (90) days, unless otherwise agreed between the [IPP Project Company] and the Offtaker. The Offtaker will allow a representative of the [IPP Project Company] to witness and verify all inspections and tests carried out by Offtaker.

(a) The Offtaker will provide to the [IPP Project Company] copies of all inspection records upon tests or calibration of the Metering System within fourteen (14) Days following the date of a written request.

(b) The Metering System will continuously read the Net Energy Output of the Facility. Measurements of the Net Energy Output will be electronically recorded. In the event the Metering System is not in service due to repair, testing or maintenance by the Offtaker, then the electronic record of the Net Energy Output from the Back-Up Metering System shall be used and the [IPP Project Company] will deliver a copy of the Back-Up Metering System record to the Offtaker with the relevant Monthly invoice(s).

8.6 The Offtaker will be responsible for the Maintenance of the Metering System at its own cost. Maintenance of the Metering System should occur at the time of testing or as soon as possible thereafter.

(a) If Maintenance or repair is required at other times, the Offtaker will give the [IPP Project Company] reasonable notice when intending to test, clean, change, repair, adjust or recalibrate the Metering System so that the [IPP Project Company] may arrange for Access to the Metering System.

(b) Access for the purposes of maintenance must not be unreasonably refused.

(c) A representative of the [IPP Project Company] is allowed to be present to witness and verify all inspections, tests, cleaning, changing, repairing or recalibration carried out by the Offtaker.

(d) When any component of the Metering System or the Back-up System is found to be outside acceptable limits of accuracy or otherwise not functioning properly (whether or not within the accuracy and repeatability tolerances set forth in Schedule 6), the Offtaker will be responsible for repair, recalibration or replacement of a component of the Metering system at its expense.

(e) Upon the completion of any examination, maintenance, repair, recalibration of, or replacement of any component, in either the Metering System or the Back-Up Metering System, the Metering System will be jointly sealed.

8.7 The Metering System will be deemed to be accurate and all measurements taken from the Metering Installation shall be binding on the [IPP Project Company] and the Offtaker unless there has been manifest error or unless either the [IPP Project Company] or the Offtaker disputes the accuracy of the Metering System in which case:

(i) The [IPP Project Company] shall procure testing by a qualified, independent technician acceptable to both parties of the Metering System to assess the accuracy of the Metering System;

(ii) The Parties shall, acting reasonably and in good faith, agree on the reasonably correct amounts of any invoices that have been rendered to the Offtaker and are found to be incorrect for the period or periods until the Metering System is working to both parties' satisfaction. For the avoidance of doubt, if the parties cannot agree to such amounts the matter will be referred for dispute resolution in accordance with this Agreement.

SECTION 9 - CONTROL AND OPERATIONS ARRANGEMENTS

9.1 In addition to their respective obligations under this Agreement the Parties shall comply with their respective control obligations and operating procedures and Dispatch, scheduling and maintenance arrangements set out in Schedule 8.

9.2 Not later than XXXX Days before the Scheduled Commercial Operations Date, [IPP Project Company] shall provide the Offtaker with draft operating procedures dealing with all operation interfaces between the Offtaker and [IPP Project Company] including :

(i) Method of day-to-day communication;

(ii) Key personnel list;

(iii) Clearances and switching practices;

(iv) Outage scheduling;

(v) Energy reporting;

(vi) Operating log; and

(vii) Reactive power support,

9.3 Within ninety (90) Days after the Offtaker's receipt of the draft Operating Procedure, the Offtaker shall notify [IPP Project Company] of any requested deletions, amendments or additions. [IPP Project Company] shall make any deletions, amendments or additions that the Offtaker reasonably requests unless they would be inconsistent with this Agreement.

9.4 The Offtaker subject to the terms of this Agreement and Schedule 8 shall have the right to schedule Dispatch from the Facility after the agreed Commercial Operations Date.

9.5 The Parties shall co-operate in establishing, as set out in Schedule 8, appropriate Scheduling arrangements.

9.6 The [IPP Project Company] shall submit, in accordance with the obligations set out in Schedule 8, it's forward maintenance arrangements including scheduled outages.

9.7 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. All such records shall be maintained for a minimum of sixty (60) months after the creation of such record or data or for any additional length of time required by the Government

SECTION 10 - RESOLUTION OF DISPUTES

10.1 This Agreement and the rights and obligations hereunder shall in any dispute situation be interpreted, construed and governed by Fiji Law.

10.2 In the event that a Dispute arises, the Parties shall attempt in good faith to settle such Dispute by mutual discussions within thirty (30) Days after the date that the disputing Party gives written notice of the Dispute to the other Party, identifying the Dispute in reasonable detail and requesting consultations between the Parties to resolve the Dispute.

10.3 If the Dispute involves the amount of an invoice and after ten (10) Business Days of mutual discussion either Party believes in good faith that further discussion will not resolve the Dispute to its satisfaction, such Party may immediately refer the matter to the Expert for consideration pursuant to this Section.

10.4 In the event that the Dispute is not resolved in accordance with Section 10.2(a),either Party may refer the Dispute to the chief executive officer or chief operating officer of the [IPP Project Company] and the designated representative for system operations for the Offtaker (or such other official authorised by the Offtaker) for further consideration.

10.5 In the event that such individuals referenced in Section 10.4 are unable to reach agreement within fifteen (15) Days, or such longer period as they may agree, then either Party may refer the matter to an Expert in accordance with Section 10.6 hereof:

10.6 In the event that the Parties are unable to resolve a Dispute in accordance with Section 10.2, then either Party, in accordance with this Section 10.3, may refer the Dispute to an Expert for consideration of the Dispute and to obtain a recommendation from the Expert as to the resolution of the Dispute;

(a) The Party initiating submission of the Dispute to the Expert shall provide the other Party with a notice stating that it is submitting the Dispute to an Expert and nominating the person it proposes to be the Expert. The other Party shall, within fifteen (15) Days of receiving such notice, notify the initiating Party whether such person is acceptable.

(b) If the Party receiving such notice fails to respond or notifies the initiating Party that the person is not acceptable, the Parties shall meet and discuss in good faith for a period of ten (10) Days to agree upon a person to be the Expert. If the Parties are unable to agree, the Expert shall be selected by the International Chamber of Commerce upon the request of either Party.

(c) Consideration of the Dispute by an Expert shall be initiated by the Party who is seeking consideration of the Dispute by the Expert submitting to both the Expert and the other Party written materials setting forth:

(i) a description of the Dispute

(ii) a statement of the Party's position; and

(iii) copies of records supporting the Party's position.

(d) Within ten (10) Business Days of the date that a Party has submitted the materials described in 10.3 (c), the other Party may submit to the Expert:

(i) a description of the Dispute;

(ii) a statement of the Party's position; and

(iii) copies of any records supporting the Party's position.

(e) The Expert shall consider any such information submitted by the responding Party within the period provided in Section 10.3(d) and, at the Expert's discretion, may consider any additional information submitted by either Party at a later date.

(f) The Parties shall not be entitled to apply for discovery of documents, but shall be entitled to have access to the other Party's relevant records and to receive copies of the records submitted by the other Party.

(g) Each Party shall designate one person knowledgeable about the issues in Dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Expert or make any particular individuals available to the Expert.

(h) Except as provided in this Section the proceedings shall be without prejudice to any Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as arbitration and the laws relating to commercial arbitration shall not apply. Except as

expressly provided in this Section or elsewhere in this Agreement or unless the Parties agree in writing signed by both Parties at the time the Expert is selected, stating that the decision of the Expert will be binding (in which case the determination of the Expert shall be binding), the determination of the Expert shall not be binding.

(i) When consideration of the Dispute by an Expert is initiated, the Expert shall be requested to provide a recommendation within fifteen (15) Days after the ten (10) Business Day response period provided in this Section has run. If the Expert's recommendation is given within such fifteen (15) Day period, or if the Expert's recommendation is given at a later time and neither Party has at such time initiated any other proceeding concerning the Dispute, except for such Disputes where the Expert's determination is final and binding on the Parties, the Parties shall review and discuss the recommendation with each other in good faith for a period of ten (10) Days following delivery of the recommendation before proceeding with any other actions.

(j) If a Party does not accept the recommendation of the Expert with respect to the Dispute, except for such Disputes where the Expert's determination is final and binding on the Parties, it may initiate arbitration proceedings in accordance with this Section, provided that, prior to initiating the arbitration proceedings, it shall have paid all costs of the Expert (including the reimbursement of any costs paid to the Expert by the other Party) and all out-of-pocket costs of the other Party. Similarly, if the Expert has not submitted its recommendation within the time period provided in Section 10.3(i), a Party may initiate arbitration proceedings in accordance with Section 10.4, provided that prior to initiating the arbitration proceedings it shall have paid all costs of the Expert (including the reimbursement of any costs paid to the Expert by the other Party). Notwithstanding the foregoing provisions of this Section 10.3(j), the Parties shall be bound by the decision of the Expert, pending resolution of the Dispute by arbitration and shall not be excused from performance or be entitled to additional time for performance by reason of the Expert's decision and any discrepancy in respect thereof or the instigation of such arbitration.

(k) Except as provided in this Section, the costs of engaging an Expert shall be borne equally by the Parties and each Party shall bear its own costs in preparing materials for, and making presentations to, the Expert.

10.7 The Parties irrevocably agree that any Dispute, not resolved following the procedures described in this Section, be finally settled by means of arbitration, which, shall be in accordance with the Rules of Singapore International Arbitration Centre (the "Centre") being then in force, which Rules are deemed incorporated by reference to this Section. Where the Parties agree, the arbitral tribunal shall consist of one (1) arbitrator agreed to by the Parties. Where the Parties cannot agree, the arbitral tribunal shall consist of Three (3) arbitrators with the Offtaker and the [IPP Project Company] appointing One (1) arbitrator each and the Two (2) arbitrators so appointed shall appoint a Third (3rd) arbitrator, who would be the Chairman of the arbitral tribunal . The Parties accordingly irrevocably and unconditionally agree to submit themselves and any such Dispute to the jurisdiction of the Centre.

(a) Any arbitral proceeding under this Section 10.7 shall be conducted in Fiji.

(b) Each Party hereby irrevocably undertakes

(i) to treat any arbitral award or procedural order made by the arbitral tribunal constituted pursuant to this Section 10.7 as final and binding and

(ii) undertakes to comply with and to carry out any such arbitral award or procedural order, fully and without delay.

(d) The Parties agree that the arbitral tribunal may, upon the application of either Party, order a Party or the Parties to take such interim measure or measures of protection as the arbitral tribunal may consider necessary with respect to the subject matter of the Dispute or any ancillary claim referred to it, the maintenance or efficient conduct of the arbitration or the preservation of the rights and interests of any Party under or with respect to this Agreement and the arbitration agreements set forth in this Section, including, without limitation, the making of an order requiring any Party to refrain from filing or pursuing or to terminate or withdraw any action, suit or proceeding in any court of competent jurisdiction or, to the extent not prohibited by law, other authority which has (directly or indirectly) a connection with the subject matter of the arbitral proceeding or jurisdiction relating to such subject matter, and the Parties agree to abide by and comply with such order(s).

(e) Until such time as any arbitral proceedings begun in pursuance of Section 10.7 have been finally concluded (and, for this purpose, all rights of appeal, if any, shall have been exhausted), each Party irrevocably agrees not to initiate any proceedings, file any action or suit in any court of competent jurisdiction or before any judicial or other authority arising under, out of, in connection with or relating to this Agreement, the arbitration agreements set forth in this Section 10.7, any Dispute (whether or not any such Dispute shall have been referred to arbitration in pursuance of Section 10.7, the subject matter of any Dispute or any arbitral proceeding begun in pursuance of Section 10.7 , including without limitation:

(i) proceedings brought with a view to recourse or appeal against or revision or the annulment of any arbitral award or procedural order made by the arbitral tribunal or proceedings or

(ii) proceedings in which relief or remedy is sought by way of injunction or other judicial order (interlocutory or final) which would have the effect (directly or indirectly) of restraining or impeding the maintenance or prosecution by either Party of any arbitral proceeding initiated in pursuance of Section 10.7, except proceedings brought exclusively for the purpose of recognition and enforcement of any arbitral award or procedural order made by the arbitral tribunal.

(f) The language of the arbitration shall be English.

SECTION 11 - INSURANCE ARRANGEMENTS

11.1 The [IPP Project Company] shall obtain and maintain for the term of this Agreement the policies of insurance and the amounts of coverage as set out in Schedule 10.

11.2 The amounts of coverage may be reduced from time to time with the written consent of the Offtaker, which consent may not be unreasonably withheld. The [IPP Project Company] shall obtain any additional coverages as required by the Lenders and/or the Laws of Fiji and/or deemed necessary by the [IPP Project Company].

11. 3 The [IPP Project Company] shall not be in breach of its obligations if and to the extent that any particular insurance is unavailable to it on commercially reasonable terms and conditions.

SECTION 12 - LIABILITY AND INDEMNIFICATION

12.1 Except as required by Section 12.5, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages.

12.2 Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

12.3 The Offtaker shall bear responsibility for loss of or damage to property, death or injury to person (or any claim against [IPP Project Company] or its Contractors or their respective officers, directors and employees in respect) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by [IPP Project Company] or its Contractors or its respective officers, directors and employees in connection with the Facility resulting from any negligent or intentional act or omission of Offtaker (or its officers, directors, members (of the board) and employees), without recourse to [IPP Project Company] or its Contractors. The Offtaker will hold [IPP Project Company] or it's Contractors fully indemnified in respect thereof. The indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused by any act or omission of [IPP Project Company] or its Contractors or the failure of [IPP Project Company] or its Contractors to take reasonable steps in mitigation thereof. Notwithstanding anything to the contrary contained in the preceding sentences, nothing in this Section shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, [IPP Project Company] or its Contractors are compensated pursuant to the terms of any policy of insurance, agreement or through any other means.

12.4 The [IPP Project Company] shall bear responsibility for loss of or damage to property, death or injury to person (or any claim against the Offtaker or its respective officers, directors, members (of the board) and employees in respect thereof) and all expenses relating thereto (including without limitation reasonable legal fees) suffered by the Offtaker or its respective officers, directors, members (of the board) and employees in connection with the Facility resulting from any negligent or intentional act or omission of [IPP Project Company] or its Contractors (or its respective officers, directors and employees), without recourse to the Offtaker. The [IPP Project Company] will hold the Offtaker fully indemnified in respect thereof.

(a) The indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) or any expenses relating thereto to the extent that it was caused by any act or omission of the Offtaker or the failure of the Offtaker to take reasonable steps in mitigation.

(b) In the event that such injury or damage results from the joint or concurrent negligent or intentional acts of the Parties each shall be liable under this indemnification in proportion to its relative degree of fault.

(c) The provisions of this Section 12.5 shall survive for a period of XXXX years following the termination of this Agreement.

12.5 Neither Party shall be entitled to assert any claim for indemnification until such time as all claims of such Party for indemnification under this Agreement exceed an amount equal to XXXX in the aggregate, at which time all claims of such Party for indemnification under this Agreement may be asserted; provided, however, that when such claims have been asserted the same rule shall apply in respect of future claims.

12.6 Each Party shall promptly notify the other Party of any loss of, or damage to property, death or injury to person (or any claim or proceeding in respect thereof) in respect of which it is or may be entitled to indemnification under this Section. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss, damage, death or injury (or any claim or proceeding in respect thereof).

(a) The indemnified Party shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying party hereunder; provided, however, that if the indemnifying party acknowledges in writing its obligations to indemnify the indemnified party in respect of loss to the full extent provided by this Section, the indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through counsel of its choice, if it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying party of such defence.

(b) Neither Party shall settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Provided that after agreeing in writing to indemnify the Indemnified Party, the Indemnifying Party may settle or compromise any claim without the prior approval of the Indemnified Party.

(d) Notwithstanding the foregoing, the indemnified party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred.

SECTION 13 - FORCE MAJEURE

13.1 If by reason of a Force Majeure Event as defined by Section 2 of this Agreement, a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:

(i) Give the other Party notice of the Force Majeure Event(s) as soon as practicable, but in any event, not later than forty eight (48) hours after the occurrence of the Force Majeure Event(s) or six (6) hours after the resumption of any means of providing notice between the [IPP Project Company] and the Offtaker, whichever is later; and

(ii) When appropriate, give the other Party a second notice, describing the Force Majeure Event(s) in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations.

13.2 The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event, including but not limited to, the payment of all reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures.

13.3 In terms of delay caused by Forced Majeure and the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 13.2 and continues to so comply, then:

(i) the affected Party 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 this Agreement during the existence of a Force Majeure Event; and

(ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended.

13.4 Upon the occurrence of any Force Majeure Event after the Commercial Operations Date, then during the Force Majeure Event, the Offtaker shall pay to the [IPP Project Company] Energy Payments for Net Energy Output delivered during such Force Majeure Event.

13.5 [IPP Project Company] must give prior notice to the Offtaker of its intention to supply Net Energy Output.

13.6 Except as provided in this Section the [IPP Project Company] shall not be entitled to any additional Energy Payments pursuant to this Agreement from the Offtaker arising during any Force Majeure Event.

SECTION 14 - SPECIFIC REMEDIES AND LIQUIDATED DAMAGES

14.1 Except as specifically prescribed in this Agreement, nothing limits either Party's ability to initiate proceedings against the other for a breach of this Agreement and in so doing seek orders for damages or specific performance in relation to such a breach.

14.2 In the event that the Agreement is terminated at any time prior to the end of the Term under this Agreement then the [IPP Project Company]'s sole remedy shall be the payment by the Offtaker to the [IPP Project Company] in accordance with the arrangements in Schedule 11 of a lump sum liquidated damages amount.

14.3 In the event of a breach of Section 4.3 in respect of any consecutive twelve month period, the [IPP Project Company] shall pay the Offtaker within XXXX Business Days of written demand by the Offtaker an amount of liquidated damages as specified in Schedule 11.

SECTION 15 - TERMINATION

15.1 In addition to their respective obligations under this Agreement the Parties shall comply with the Termination provisions set out in Schedule 12.

15.2 Either party (in this Section, referred to as the "first party") may, by written notice to the other party, terminate the Agreement if:

(i) the other party ceases to carry on all or substantially all of its business or operations;

(ii) the other party is, becomes, or is deemed to be, insolvent or bankrupt; the other party makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors generally;

(iii) the other party goes into liquidation or receivership or has a liquidator or receiver, trustee and manager (or either of them, including a statutory manager) appointed in respect of all or any of its property; or

(iv) in respect of the other party, any resolution is passed, or any proceeding is commenced (unless stayed within 10 Business Days), for the dissolution of that other party.

15.3 The [IPP Project Company] may, by written notice to the Offtaker, terminate the Agreement if:

(i) the Offtaker ceases to be authorised by law to purchase Energy Output from the [IPP Project Company];

(ii) on XXXX separate occasions in any six month period, the Offtaker fails to make payment of any amount that is due under the Agreement to the IPP Project Company (other than any amount that is the subject of a current dispute in good faith by the Offtaker) within XXXX

Business Days after receiving written notice from the IPP Project Company requiring such payment

15.4 The Offtaker may, by written notice to the [IPP Project Company], terminate the Agreement if:

(i) the [IPP Project Company] ceases to be authorised by law to perform its obligations under the Agreement; or

(ii) the [IPP Project Company] abandons the construction and / or operation of the Facility.

15.5 Subject to the terms of this Agreement and subject to an express provision in Schedule 12, the Offtaker may on [IPP Project Company] default 'step-in' and enforce supply performance.

Agreement Execution

IN WITNESS WHEREOF, the Parties have executed and this Agreement on XXXX the Commencement Date.

Name and title of Parties and Respective Witnesses

Schedules to Agreement

Note – These Schedules nor their respective content are designed to be exhaustive of the commercial legal and technical issues the Counter Parties may wish to contemplate in finalising any PPA.

SCHEDULE 1: DESCRIPTION OF THE ELECTRICAL GENERATION FACILITY AND THE SITE

Guidance - An objective of the Standardized PPA is to offer flexibility for the counterparties to use different technologies and IPP business models. The contents of this Schedule are self-explanatory. It promotes the opportunity for the parties to;

- Provide adequate description of the nature of the generation contemplated.
- Describe the proposed technology to be deployed.
- Describe the location and the geographic features of the site – including proposed buildings.
- Identify the interconnection pathway – including any easements
- Etc

This guidance provides greater definition to the Project – thereby assisting in assessing inherent risks from an operational management, insurance and financing perspective.

SCHEDULE 2: DOCUMENTATION TO BE SUBMITTED BY THE IPP PROJECT COMPANY

Guidance - In keeping with the objective of 'de-cluttering the core agreement', any requirement by the Parties for document sighting or exchange of documents should be identified in one Schedule. This induces clarity of purpose, particularly in giving effect to requisite 'conditions precedent' to the formal agreement. It also presents a more consolidated list for any funding bodies or insurers who wish to give effect to their 'due diligence' obligations.

Examples of the documents which might be identified by the Schedule include;

- Insurance arrangements.
- Permits and authorisations.
- Engineering, Procurement & Construction arrangements.
- Operation & Maintenance arrangements.
- Etc

SCHEDULE 3: FUNCTIONAL SPECIFICATIONS AND STANDARDS

Guidance - This Schedule is designed to give the Parties the opportunity to set out their operational specifications for the Project. This Schedule should describe the functional specifications and Standards that will underpin the Project.

This is particularly important for the Offtaker as they seek to mitigate risk regarding dispatch requests.

It is anticipated that this Schedule could include negotiated arrangements for example on;

- Design Specification on start –up
- Electrical standards on frequency, power factor and voltage
- Proposed maintenance intervals
- Requisite civil requirements
- Environmental standards
- Etc

SCHEDULE 4: COMMISSIONING AND TESTING ARRANGEMENTS

Guidance - Subject to the type of technology used in the Facility, it is anticipated that the Offtaker will require the IPP Project Company to comply with testing and reporting regimes as described in the Agreement. It is prudent that these commissioning and testing requirements be more appropriately agreed on a case by case basis and accommodated in the Schedule format.

It is anticipated this Schedule will include requirements for;

- Testing Procedures
- Notification of compliance
- Responsibilities of each party
- Etc

SCHEDULE 5: INTERCONNECTION AND TRANSMISSION ARRANGEMENTS

Guidance - Section 7 of the PPA describes the obligations and responsibilities regarding the management of the interconnection point and transmission arrangements. These provisions might be supplemented through further negotiated arrangements.

These may include;

- Provision for description of the design of the interconnection facilities.
- Additional detail on construction and testing regimes.
- The establishment of Joint Venture interconnection arrangements.
- Potential remedies for breach of interconnection arrangements.
- Etc

SCHEDULE 6: METERING STANDARDS AND SPECIFICATIONS

Guidance - This Schedule provides the Parties with the opportunity to supplement Sections 5 and 8 of the PPA with additional clarification of the proposed metering arrangements.

The schedule might be enhanced by further referencing to;

- Specifications for both energy Import and Export meters
- Meter accuracy as to tolerances
- Remote monitoring capabilities
- Installation arrangements
- Additional testing and inspection arrangements
- Etc

SCHEDULE 7: TARIFF AND BILLING ARRANGEMENTS

Guidance - Subject to the Facility's technology and the commercial terms and conditions negotiated, the Parties may need to develop more detailed calculations and payment arrangements for dispatch from the IPP Project Contractor to the Offtaker.

This may include;

- Tariff structure and payment amounts to be specified in $/MWh, at different times of day and season, if relevant.
- More specific calculation/payment formulae as to the definition of Net Energy Output or the Deemed Monthly Quantity as referenced in Section 5.2 of the Agreement.
- Any further arrangements as to where the respective output is reduced from the negotiation quantum
- Any specific remedies applicable in the event of a shortfall, such as liquidated damages as provided in the Agreement and Schedule 11.
- Etc

SCHEDULE 8: CONTROL AND OPERATING PROCEDURES

Guidance - In addition to Section 9 of the PPA, the Parties may wish to be more prescriptive in outlining the specific operating procedures for managing dispatch and interconnection.

This may supplement Section 9 and the other relevant sections with more detail on;

- Dispatch and scheduling production
- Maintenance
- Any Joint Management initiatives
- Etc

SCHEDULE 9: DEFAULT PROVISIONS RIGHTS AND REMEDIES

Guidance - It is prudent that the Parties remain unrestricted in their endeavours to cater for specific default events and specific remedies.

The Agreement and respective Schedules already cater for liquidated damages and termination provisions to arise on certain default events. It is probable that the Parties may wish for more prescription on what might constitute a 'default event' – for example;

- Failure to achieve construction timetables.
- Failure to meet commercial operations date
- Failure to achieve financial close
- Failure to meet O&M standards.
- Etc

The Schedule may wish to invoke additional remedies on default events, including financial penalties.

SCHEDULE 10: INSURANCE ARRANGEMENTS

Guidance - Section 11 appropriately leaves it to the commercial judgment of the Parties as to what risks and exposures need to be addressed by particular insurance arrangements.

Negotiated arrangements might result in;

- More specialised insurance cover addressing the nature of the technology deployed.
- Insurance arrangements during construction phases.
- Any regulatory insurance requirements as to employment law in Fiji
- Any regulatory insurance requirements as to environment law in Fiji
- Etc

SCHEDULE 11: LIQUIDATED DAMAGES.

Guidance - As established by Section 14 of the Agreement, except as specifically catered for in the Agreement, the Parties in the event of a breach may pursue a claim seeking remedies outside the Agreement. However, in the interest of transparency and certainty, this Schedule seeks to offer the Parties the opportunity to document the nature of specific liquidated damages.

These may relate to;

- Delays on Commercial Operations Dates
- Failure to achieve dispatchable outputs as prescribed by Section 4
- Etc

SCHEDULE 12: TERMINATION

Guidance - Section 15 of the Agreement addresses the main obligations and responsibilities associated with Termination. It may be commercially prudent for the Parties to define more specific arrangements.

These arrangements may include;

- Notice provisions
- 'Cure' provisions in relation to defects or default events
- 'Step-In rights ' by the Offtaker
- Pre-emptive purchase rights for the Offtaker
- Compensation rights
- Etc