DATED THIS DAY OF 2025

[][]

THE KENYA POWER AND LIGHTING COMPANY PLC

POWER PURCHASE AGREEMENT

FOR

[][]

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SCHEDULES

Schedule 1:	Exploration, Confirmation and Construction Programmes
Schedule 2:	Facilities to be Installed by KPLC and the Seller
Schedule 3:	Maintenance Allowances for the Plant
Schedule 4:	Procedures for Commissioning, Metering and Operating
Schedule 5:	Tariff and Payment
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THIS AGREEMENT is made the _____ day of _____2025

BETWEEN

(1) **[][]**, a limited liability company incorporated under the laws of Kenya, with its registered office in the Republic of Kenya at Plot L.R. No. P.O. Box ……. Nairobi, Kenya ("**Seller**");

and

(2) **The Kenya Power and Lighting Company Plc**, a company incorporated in Kenya with its registered office at Stima Plaza, P.O. Box 30099-00100 Nairobi, Kenya ("**KPLC**").

WHEREAS

(A) KPLC is licensed to purchase electricity and to transmit and distribute electricity in the Republic of Kenya;

(B) The Seller has been granted the Geothermal Resources License referred to herein; and

(C) The Parties agree to enter into this Power Purchase Agreement to provide for development and construction by the Seller of a geothermal power plant and related facilities and the sale by the Seller to KPLC of capacity and energy produced by such geothermal power plant.

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IT IS HEREBY AGREED as follows:

Clause 1. Definitions and Interpretation

1.1 Defined terms. In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"**Actual Monthly Availability**": (i) with respect to any calendar month occurring during the Interim Commercial Operation Period, the AMA_p calculated for such calendar month in accordance with paragraph 2.4 of Part A of Schedule 5 and (ii) with respect to any calendar month during the Operating Period, the AMA_p calculated for such calendar month in accordance with paragraph 3.4 of Part A of Schedule 5;

"**Agreement**" or "**PPA**": this power purchase agreement together with all schedules hereto;

"**ANSI**": American National Standards Institute;

"**API**": American Petroleum Institute;

"**Appraisal Period**": the period that commences upon commencement of the Reservoir Exploration Period and ends upon the expiration of the Reservoir Confirmation Period.

"**Appraisal Period Agreements**": all agreements that the Seller determines are necessary in order to enable the Seller to perform the Appraisal Works including agreements for the procurement of drilling rigs, drilling-related services, drilling-related supplies, water supply, and transportation and the construction of access and Licence Area roads;

"**Appraisal Programme**": as applicable, individually and collectively: (a) the Reservoir Exploration Works Programme and (b) the Reservoir Confirmation Works Programme.

"**Appraisal Works**": as applicable, individually and collectively: (a) the Reservoir Exploration Works and (b) the Reservoir Confirmation Works.

"**ASHRAE**": American Society of Heating, Refrigerating and Air-Conditioning Engineers;

"**ASME**": American Society of Mechanical Engineers;

"**Audited Financial Model**" has the meaning ascribed thereto in Clause 16.6(a)(i);

"**Authorisation**": any approval, consent, licence, permit, authorisation or other permission granted by a Governmental Authority required for the purpose of enforcement of rights or the performance of obligations (i) under this Agreement by a Party or (ii) under any Project Agreement or Financing Agreement that is entered into by a Party in furtherance of the performance of its obligations under this Agreement;

"**Availability**": the ability of the Plant or any Unit of the Plant (as appropriate) at a particular instant or over a particular period of time, to deliver electricity to the Transmission

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System at the respective Delivery Point(s) and the terms "**Available**" and "**Unavailable**" shall be construed accordingly;

"**Availability Failure**": in respect of the Plant in any Settlement Period, a failure to deliver electrical energy in accordance with a valid Despatch Instruction other than as a result of a System Interruption;

"**Available Capacity**": measured in MW is, with respect to any Settlement Period, the Declared Capacity applicable to such Settlement Period unless there has been an Availability Failure in that Settlement Period in which event the Available Capacity shall be determined by dividing the Net Electrical Output for that Settlement Period by the Settlement Period time interval expressed in hours;

"**Average Availability**": with respect to any measurement period, the result obtained by dividing (i) the sum of the Available Capacity for each Settlement Period during such measurement period by (ii) the number of Settlement Periods occurring during such measurement period**;**

"**Back-Up Metering Equipment**": the equipment for check metering and monitoring the output of the Plant to be provided by and installed by the Seller and transferred to KPLC pursuant to Part D of Schedule 2;

"**Bankruptcy Event**": in respect of a Party ("**Affected Party**"), unless such event is capable of being set aside and requisite proceedings to have it set aside are filed with the appropriate court within thirty (30) Business Days: there is entered against the Affected Party a decree or order by a court adjudging the Affected Party bankrupt or insolvent, or approving, as properly filed by or on behalf of the Affected Party, a petition seeking reorganisation, arrangement, or reconstruction, or appointing a receiver, liquidator, trustee, sequestrator (or other similar official) of the Affected Party over a substantial part of its property or assets, or ordering the winding up or liquidation of its affairs; or the institution by the Affected Party of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of any such petition or consent seeking relief from its creditors generally under any applicable law, or the consent by it to the filing of any such petition or for the appointment of a receiver, liquidator, trustee, sequestrator (or other similar official) of the Affected Party or of any substantial part of its property, or the admission by it in writing of its inability to pay its debts generally as they become due; or any other event shall have occurred which under any applicable law would have an effect analogous to any of the events referred to above.

"Carbon Credits": the amount of carbon dioxide (CO_2) and other greenhouse gases not produced as a result of generation of energy by the Plant and other environmental air quality credits and related emissions reduction credits or benefits (economic or otherwise), related to the generation of energy by the Plant, which are available or can be obtained by [][], or similar attributes created pursuant to the Kyoto Protocol;

"**Capacity**": the capacity of the Plant or any Unit, as the case may be, expressed in MW to generate and deliver electricity to the Delivery Point;

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"**Capacity Charge Rate**": the rate (expressed in US$/kW/year) determined pursuant to Schedule 5, to be used in the calculation of Capacity Payments and Interim Capacity Payments as applicable;

"**Capacity Payments**": the amounts payable by KPLC to the Seller in accordance with Clause 9 with respect to the Contracted Capacity made Available by the Seller;

"**Change in Law**": one or more of the events referred to in sub-clause (a) or (b) below of this definition occurring after the Signature Date and which despite the exercise of Prudent Operating Practice by the Seller or by KPLC (as the case may be) (i) results in (x) an aggregate increase (or decrease) of more than $100,000 in the expenditures (capital, pre-operating expenses or otherwise) incurred by the Seller prior to the Full Commercial Operation Date in financing, designing, developing, exploring, drilling, constructing and commissioning the Plant, the KPLC Connection Facilities and the Transmission Interconnector and performing its obligations under this Agreement, the Project Agreements and all other agreements the Seller enters into in furtherance of the foregoing or (y) an aggregate increase (or decrease) of more than $100,000 per Operating Year in the expenditures (operating, capital, or otherwise) incurred by the Seller in operating and maintaining the Plant and performing its obligations under this Agreement, the Project Agreements and all other agreements the Seller enters into in furtherance of the foregoing; (ii) imposes requirements for the financing, design, development, exploration, drilling, construction, operation or maintenance of the Plant, the KPLC Connection Facilities and the Transmission Interconnector that are more onerous than the requirements in effect as of the Signature Date that adversely affect (including by reason of delay) the Seller's ability to perform under this Agreement, the Project Agreements and the other agreements Seller enters into in furtherance of the foregoing; (iii) results in a reduction in the Capacity which the Seller may make available in compliance with all Legal Requirements; (iv) imposes requirements for the design, construction, operation or maintenance of the Transmission System that are more onerous than the requirements in effect as of the Signature Date that adversely affect KPLC's ability to perform under this Agreement; or (v) imposes requirements more onerous than the requirements in effect as of the date of the Signature Date that adversely affect (including by reason of delay) KPLC's ability to perform under this Agreement: (a) the enactment, promulgation, or adoption of any Legal Requirement, or any change in, or in the interpretation, application or enforcement of, any Legal Requirement; or (b) a change in any required Authorisation or the imposition by any Governmental Authority of any additional or modified requirements or conditions in connection with the issuance, extension, replacement, variation or renewal of any required Authorisation;

"**Change in Tax**": the adoption, promulgation, bringing into effect, repeal, expiration, revocation, amendment, reinterpretation by a Governmental Authority, change in application from the provisions of the relevant legislation, change in interpretation or modification of any Legal Requirement, relating to any Taxes which differs from any Legal Requirement relating to any Taxes in effect on the Signature Date excluding any Taxes, imposts, levies or duties imposed in respect of the income of employees of the Seller;

"**Chronic Low Availability**" has the meaning ascribed thereto in Clause 8.14(d);

"**Commissioning**": conducting the tests specified in Part A of Schedule 4 to put a Unit or the Plant (as the case may be) into operation;

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"**Conditions Precedent**" has the meaning ascribed thereto in Clause 3.1;

"**Confidential Information**" has the meaning ascribed thereto in Clause 18.1;

"**Construction Period**": the period commencing on the day following the Reservoir Capacity Confirmation Date and expiring on the Full Commercial Operation Date;

"**Construction Period Agreements**": collectively, the Station Construction Contract, the Steam Field Construction Contract, the KPLC Connection Facilities Construction Contract, the Drilling Contract, and any other agreements providing for the provision of goods and services necessary or desirable for the completion of the Construction Period Works;

"**Construction Period Works**": all design, construction, testing and other works to be undertaken by the Seller in connection with the design, construction, installation and testing of the Station, the KPLC Connection Facilities, the Transmission Interconnector, the Steam Field Facilities, the drilling and construction of wells prior to the Full Commercial Operation Date, and the development and construction of facilities ancillary to any of the foregoing (including access and Licence Area roads) over the Licence Area;

"**Construction Programme**": the programme for the design, construction, installation and testing of the Plant set out in Part C of Schedule 1, as may from time to time be adjusted by agreement of the Parties;

"**Consumer Prices Index**" or "**CPI**": the index known as "The Consumer Prices Index for All Urban Consumers (CPI-U) for the US City Average for All Items 1982-84 = 100" as published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree pursuant to Part C of Schedule 5 or such replacement index as may be determined by an Expert which replacement index shall take effect from such date as the Expert shall determine;

"**Contracted Capacity**": the following, as applicable: (i) at the Signature Date, 140 MW (hereafter referred to as "**Contracted Capacity at the Signature Date**"); (ii) at the Reservoir Capacity Confirmation Date, the lower of the Contracted Capacity at the Signature Date and the Contracted Capacity determined on the Reservoir Capacity Confirmation Date; (iii) for the period commencing on the Interim Commercial Operation Date and ending on the Full Commercial Operation Date, the Contracted Capacity certified by the Independent Engineer pursuant to Clause 6.10; (iv) at the Full Commercial Operation Date, the lower of the Contracted Capacity determined on the Reservoir Capacity Confirmation Date and the Contracted Capacity certified by the Independent Engineer pursuant to Clause 6.11; and (v) from and after the Full Commercial Operation Date such revised amount as may apply following a Contracted Capacity Test or as may otherwise be determined pursuant to Clause 8.8 or Clause 8.10;

"**Contracted Capacity Test**": the test of the normal full load Capacity of the Plant carried out pursuant to and in accordance with Clause 8 and the requirements of Paragraph 4(b)(i) of Part A of Schedule 4;

"**Correct Payment**": has the meaning ascribed thereto in Clause 8.13;

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"**Daily Liquidated Damages Limit**": the amount of Ten million US Dollars ();

"Daily Liquidated Damages Sum": an amount equal to [per day;

"**Declared Capacity**": in respect of a Settlement Period, the Capacity declared, in accordance with the Operating and Despatch Procedures, by the Seller to be available for that Settlement Period which shall not be higher than the Contracted Capacity;

"**Deemed Payment**": has the meaning ascribed thereto in Clause 8.13;

"**Default**": any one or more of the events specified in Clauses 16.1 and 16.2;

"**Defaulting Party**": the Party designated as such pursuant to Clause 16.3;

"**Default Rate**": two (2) percentage points above SOFR;

"**Delivery Point**": in respect of each Unit of which the Plant is comprised, the applicable delivery point for such Unit as shown in the diagram attached as Part E of Schedule 2;

"**Despatch**": the giving of a Despatch Instruction with respect to (as applicable as provided in this Agreement) a Unit or the Plant;

"**Despatch Instruction**": an instruction given by KPLC to the Seller in relation to the operation of either (as applicable as provided in this Agreement) a Unit or the Plant in accordance with Clauses 7.3 and 7.4 and with Part C of Schedule 4;

"**Direct Agreement**": one or more agreements to be entered into between the Seller, KPLC and the Financing Parties (or any agent or other representative thereof) relating to the financing of the Plant;

"**Dispute**" has the meaning ascribed thereto in Clause 19;

"**Drilling Contract**": the agreement or agreements providing for the drilling and construction of wells during the period prior to the Full Commercial Operation Date to be entered into by the Seller with contractors experienced in the drilling of wells selected by the Seller exercising Prudent Operating Practice;

"**Effective Date**" has the meaning ascribed thereto in Clause 3.1;

"**Emergency**": a condition or situation that, in the sole but reasonable opinion of KPLC, (i) does materially and adversely, or is likely to materially and adversely, affect the ability of KPLC to maintain a safe, adequate and continuous electrical service to its customers, having regard to the then current standard of electrical service provided to its customers, or (ii) does or is likely to present a physical threat to persons or property or the security, integrity or reliability of the Transmission System;

"**End Period**": has meaning ascribed to it in Clause 6.13(d);

"**Energy Act20192019**": The Energy Act,20192019 in force at the Signature Date;

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"**Energy Charge Rate**": the rate (expressed in US$/kWh) determined pursuant to Schedule 5 to be used in the calculation of Energy Charges;

"**Energy Charges**": the amounts payable by KPLC in respect of the Net Electrical Output in accordance with Clauses 9, 15.6 and Paragraph 1 of Part A of Schedule 5 (without double counting under those Clauses);

"**Energy Regulatory Commission**": the Commission established pursuant to section 4 of the Energy Act2019 or such successor body created under Legal Requirements to regulate the electricity sector in Kenya;

"**Environmental Attributes**": any and all Carbon Credits and any and all fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets and allowances arising out of any international, national or other laws or regulations (and whether now existing or enacted in the future), including any such laws or regulations relating to oxides of nitrogen, sulfur or carbon, particulate matter, soot or mercury, resulting from the generation of energy or the avoidance of the emission of any gas, chemical or other substance to the air, soil or water attributable to such generation;

"**Environmental Attributes Payments**": the payments received by [] in cleared funds from the sale of Carbon Credits or other Environmental Attributes;

"**Environmental and Social Impact Assessment** ": all environmental reports prepared by the Seller with respect to its activities at the Site approved by the National Environmental Management Authority pursuant to the Environmental (Impact Assessment and Audit) Regulations of 2003;

"**Event of Default**": has the meaning ascribed thereto in Clause 16.4;

"**Expert**": a person appointed in accordance with the provisions of Clause 19.2;

"**Financial Closing**": the satisfaction (or waiver) of all conditions precedent to the effectiveness of the Financing Agreements governing the loans to be provided by the Financing Parties to the Seller and the making of the initial loan(s) thereunder to the Seller;

"**Financing Agreements**": all credit or loan agreements, security agreements, hedging agreements, and other agreements and documents executed by the Seller and its shareholders with the Financing Parties to finance (or refinance) the development, construction and/or operation of the Plant, the Transmission Interconnector and the KPLC Connection Facilities;

"**Financing Parties**": any banks, development finance institutions, financial institutions or other persons that provide loans, credit or credit support, or hedging facilities to the Seller for the purposes of enabling the Seller to perform its obligations under this Agreement along with their agents, trustees, transferees and assigns;

"**Force Majeure**" has the meaning ascribed thereto in Clause 15.1;

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"**Full Commercial Operation Date**": the date notified by the Seller to KPLC in accordance with Clause 6.11;

"**Functional Specification**": the functional specifications for the Station and each Unit as set out in Part A of Schedule 2;

"**Geothermal Board of Consultants**": the Board of Consultants referred to in and created in accordance with the terms of the Geothermal Resources Licence;

"**Geothermal Resources Licence**": Geothermal Resources Licence No. 2 / 2009, dated July 9, 2009, issued by the Minister for Energy of the Republic of Kenya to the Seller, as such licence has been amended on **[actual date of amendment to be specified prior to date this Agreement is initialed]** so as to be in the name of the Seller;

"**Geothermal Resources Licence Designated Recipients**": each person designated in the Geothermal Resources Licence as the recipient of the results of the Appraisal Programme and other written reports required under the Geothermal Resources Act of 1992 and the related regulations including, without limitation, the Chief Geologist of the Ministry of Energy, the Geothermal Development Company Limited and the Geothermal Board of Consultants;

"**GOK**": The Government of the Republic of Kenya;

"**GOK Event**" has the meaning ascribed thereto in Clause 16.5(b);

"**GOK Letter**": a letter of undertaking to be executed and issued by the GOK to the Seller on or prior to the Effective Date and to be in form and substance satisfactory to the Seller;

"**Governmental Authority**": the Government of the Republic of Kenya, any ministry, authority (including any regional and local authorities of Kenya) or division thereof, any agencies owned or controlled by the Government of the Republic of Kenya, any legislative organ, any court, tribunal, parastatal, and any agencies owned or controlled by the Government of the Republic of Kenya and any other body in Kenya having statutory competence to promulgate rules and regulations governing or touching and concerning matters, transactions and issues contained in or relating to this Agreement or any of the Project Agreements or Financing Agreements;

"**Independent Engineer**": the person appointed pursuant to Clause 6.14;

"**Insured Event**": any event or circumstance giving rise to a claim by the Seller for insurance proceeds which proceeds the Seller is required to apply in accordance with Clause 12.

"**Interim Capacity Payment**": the amounts payable by KPLC to the Seller in accordance with Clause 9.6.1 in respect of the Interim Contracted Capacity made Available by the Seller;

"**Interim Commercial Operation Date**": has the meaning ascribed to it in Clause 6.10;

"**Interim Commercial Operation Period**": the period commencing on the Interim Commercial Operation Date and ending on the earlier to occur of the Full Commercial Operation Date or the Long Stop Full Commercial Operation Date;

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"**Interim Commercial Operation Tests**": the tests to be conducted on a Unit prior to the Interim Commercial Operation Date and designated as the Interim Commercial Operation Tests in Part A of Schedule 4, provided that where a single Unit is to provide the Interim Contracted Capacity, the Interim Commercial Operation Tests and Unit Commercial Operation Tests shall be conducted so as to minimize duplication of testing;

"**Interim Contracted Capacity**": fifty percent (50%) of the Contracted Capacity determined on the Reservoir Capacity Confirmation Date;

"**Internationally Applicable Engineering Standards**": the relevant internationally recognised European, North American, Japanese or New Zealand codes, practices and standards and the World Bank Environmental Guidelines that are more specifically referred to in Part A of Schedule 2, in each case as in effect on the Signature Date (and without giving effect to any amendments, supplements or other modifications thereto occurring after the Signature Date) with respect to the Plant;

"**ISO**": the International Organization for Standardization;

"**KPLC Connection Facilities**": means the connection facilities located at the Suswa Substation and referred to in Paragraph 1 of Part B of Schedule 2 as being installed by the Seller and transferred to KPLC at the time provided herein;

"**KPLC Connection Facilities Construction Contract**": the agreement or agreements for the design, supply, construction and commissioning of the KPLC Connection Facilities and Transmission Interconnector to be entered into between the Seller and contractors experienced in the construction of such facilities selected by the Seller exercising Prudent Operating Practice;

"KPLC Funding FM Event": means the unavailability of funds to KPLC and consequent failure of KPLC to make any payment contemplated by this Agreement due to Force Majeure affecting KPLC;

"kW": kilowatt where one (1) kW is equal to one thousand (1,000) Watts:

"kWh": kilowatt-hour where one (1) kWh is equal to one thousand (1,000) Watt-hours;

"**Land Agreements**": the agreements entered or to be entered into by the Seller with the GOK or any private owner of a freehold or leasehold, in each case, pursuant to which the Seller has the right to access or use land on the terms provided therein for the purposes of performing its obligations under this Agreement;

"**Legal Requirement**": any statute, law, regulation or other legislation, or any order or directive of any Governmental Authority having jurisdiction in respect of the GOK Letter, any Project Agreement or any Financing Agreement or any party thereto;

"**SOFR**": means

"**Licence Area**": that area marked on Figure 2 of Schedule 2 for indicative purposes only being that area of land in the Universal Transverse Mercator (UTM) Grid Zone 37, located on Map

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Series Y731 (D.O.S423) Sheets 133/3 Sakutiek, 133/4 Longonot, 134/3 Kijabe, 147/1 Nairagie Ngare, 147/2 Ol Doinyo Onyoke and 148/1 Limuru published for the GOK in 1973 and 1976, closed by straight lines joining adjacent points having the following co-ordinates:

Point	East (metres)	North (metres)
A	190000	9896000
B	210000	9896000
C	210000	9890000
D	221000	9890000
E	221000	9897000
F	235000	9897000
G	235000	9884000
H	190000	9884000

"**Long Stop Dates**": any of the Long Stop Effective Date and the Long Stop Full Commercial Operation Date;

"**Long Stop Effective Date**": the date that is …… .. months after the Target Effective Date, as such date may be extended pursuant to Clause 3.4 or as otherwise agreed by the Parties;

"**Long Stop Full Commercial Operation Date**": the date that is … months after the Effective Date, as such date may be extended (a) pursuant to Clause 5.2.8 or Clause 15.4, (b) on a day for day basis to the extent to which a breach by KPLC of any of its obligations under this Agreement or a breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence delays the Seller from achieving the Full Commercial Operation Date, (c) for each day (not exceeding sixty (60) days) after the thirtieth (30th) day after the date on which the Seller delivers the Reservoir Exploration Period Notice or the Reservoir Confirmation Period Notice, as the case may be, to the Geothermal Board of Consultants until the day that the Seller receives a written decision from the Geothermal Board of Consultants regarding such notice, (d) during the pendency of an appeal or arbitral process relating to the issuance of a written decision by the Geothermal Board of Consultants, (e) subject to the Seller having performed its obligations under Clause 13.1(c)(i) within the time periods provided in such Clause, if the PRG LC has not been issued as of the first day of the Construction Period, on a day for day basis for each day thereafter until the date that the PRG LC is issued, (f) as contemplated in Clauses 6.13(a)(B) and 6.13(b)(B), or (g) as otherwise agreed by the Parties;

"**Low Availability**": has the meaning ascribed to it in Clause 8.14(a);

"**Main Metering Equipment**": equipment for metering and monitoring the operation and output of the Plant which equipment is owned, operated and maintained by the Seller in accordance with Part D of Schedule 2;

"**Metering System**": the Main Metering Equipment and the Back-Up Metering Equipment;

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"MW": megawatts where one (1) MW is equal to one thousand (1,000) kW;

"MWh": megawatt-hours where one (1) MWh is equal to one thousand (1,000) kWh;

"**Net Electrical Output**": electrical energy measured in kWh at the Delivery Point that is generated by a Unit or the Plant, as applicable, and delivered to the Delivery Point;

"**Non-Default Rate**": LIBOR;

"**Operating Characteristics**": the performance and operating characteristics of the Station and each Unit for which values are specified in the Functional Specification;

"**Operating and Despatch Procedures**": the procedures set out in Part C of Schedule 4;

"**Operating and Maintenance Agreement**": each agreement for the operation and maintenance of the Plant to be entered into between the Seller and a Qualified Operator;

"**Operating Period**": the period from the Full Commercial Operation Date until the end of the Term;

"**Operating Period Agreements**": collectively: (i) the Operating and Maintenance Agreement, (ii) all agreements providing for drilling, well construction works, and well maintenance entered into by the Seller for the purpose of complying with its obligations under Clause 6.17, and (iii) any other agreements providing for the provision of goods and services necessary or desirable for the operation and maintenance of the Plant;

"**Operating Year**": (i) in the year in which Full Commercial Operation Date occurs, the period beginning on that date until and including the last day of the twelfth (12th) month after the Full Commercial Operation Date; and thereafter (ii) successive periods of one (1) year beginning on the next day following the end of the previous Operating Year;

"**Parties**": KPLC and the Seller, and "Party" means either KPLC or the Seller;

"**Plant**": the Station, the Appraisal Works (to the extent then applicable), the Steam Field Facilities, the Main Metering Equipment, and the Back-Up Metering Equipment (prior to its transfer to KPLC);

"**Plant Commercial Operation Tests**": the tests to be carried out on the Plant and designated as the Plant Commercial Operation Tests in Part A of Schedule 4;

"**Political Event**": any event or circumstance whether arising from an action or inaction of GOK or any Governmental Authority or otherwise howsoever arising which adversely affects the Seller, any party under a Project Agreement, any contractor, sub-contractor or supplier to the Seller, any Financing Party, KPLC or the shareholders in the Seller, including each of the following events and circumstances:

(a) any blockade, embargo, riot, insurrection, civil commotion, or any act of sabotage where such event has occurred in the Republic of Kenya;

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(b) any Change in Law;

(c) any expropriation (including any series of events collectively constituting creeping expropriation), confiscation, or compulsory acquisition, of all or a portion of the properties or assets of the Seller or all or any part of its share capital;

(d) war or act of foreign enemy,

(e) the imposition of any onerous or restrictive conditions in any Authorisation;

(f) any failure by a Governmental Authority to issue or renew any Authorisation required in connection with the GOK Letter, the Plant, or any Project Agreement or any Financing Agreement on a timely basis (including, without limitation, where any Authorisation has been revoked, suspended or terminated as a result of any change in the direct or indirect ownership of shares in or control of the Seller and/or the Plant whether pursuant to an enforcement of the security constituting the security package of the Financing Parties or otherwise or where new Authorisations are required by any transferee of the Seller to whom this Agreement and the other Project Agreements are being transferred pursuant to the Direct Agreement), provided that in respect of any such failure it shall first be necessary for the affected Party to demonstrate that it is not prohibited by law (other than as a consequence of a Change in Law) from obtaining such Authorisation and that it has first used reasonable endeavours to obtain such Authorisation (which endeavours shall include full and timely compliance with all procedural requirements relating to the issue of such Authorisations, and with all the laws of the Republic of Kenya which relate to the Seller's (or such other Party's, as appropriate) activities within the Republic of Kenya) and solely as the result of lack of the Authorisation, the Seller cannot make its capacity available, generate electricity and/or perform its obligations under this Agreement or any of the other Project Agreements, any Financing Agreement, and/or the Plant, or, in each case, cannot do so without increased cost or a material loss of revenue;

(g) a Change in Tax;

(h) an event of Force Majeure affecting KPLC, including a KPLC Funding FM Event as declared by KPLC; or

(i) any failure by GOK to make any payment or perform any other obligations under the GOK Letter or the Geothermal Resources Licence;

provided that from and after the date that GOK executes and issues the GOK Letter (and such letter is acknowledged by the Seller), the definition of "Political Event" shall be deemed to be the definition of "Political Event" as set forth in the GOK Letter;

"**PPA**": this Power Purchase Agreement;

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"**Project Agreements**": collectively, the PPA, the GOK Letter, the Land Agreements, the Appraisal Period Agreements, the Construction Period Agreements, and the Operating Period Agreements;

"**Prudent Operating Practice**": in relation to either Party, standards of practice obtained by exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances including in respect of the construction, operation and maintenance of the Plant those expected from a contractor constructing, operating and/or maintaining a project or facility similar in size and Operating Characteristics;

"**Qualified Operator**": any person chosen by the Seller to be the operator of the Plant that (i) has at least five years aggregate experience as the operator of two or more power production facilities (including, but not limited to, geothermal plants) or (ii) is approved by KPLC (which approval shall not be unreasonably withheld or delayed);

"**Qualified Station Contractor**": any person chosen by the Seller as a contractor to design, supply, construct and commission the Station that (i) has been involved as an engineering, procurement and construction contractor or as a turnkey contractor for the design, supply construction and commissioning of at least two 50 MW (or greater) power production facilities (including at least one geothermal plant) or (ii) is otherwise approved by KPLC (which approval shall not be unreasonably withheld or delayed);

"**Related Project Dispute**" has the meaning ascribed to it in Clause 19.1(h);

"**Relevant Period**": has meaning ascribed to it in Clause 6.13(d);

"**Remedial Programme**" has the meaning ascribed to it in Clause 16.4(c);

"**Required Full Commercial Operation Date**": the date that is sixty (60) months after the Effective Date, as such date may be extended (a) pursuant to Clause 5.2.8 or Clause 15.4, (b) on a day for day basis to the extent to which a breach by KPLC of any of its obligations under this Agreement or a breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence delays the Seller from achieving the Full Commercial Operation Date, (c) for each day (not exceeding sixty (60) days) after the thirtieth (30th) day after the date on which the Seller delivers the Reservoir Exploration Period Notice or the Reservoir Confirmation Period Notice, as the case may be, to the Geothermal Board of Consultants until the day that the Seller receives a written decision from the Geothermal Board of Consultants regarding such notice, (d) during the pendency of an appeal or arbitral process relating to the issuance of a written decision by the Geothermal Board of Consultants, (e) as contemplated in Clauses 6.13(a)(B) and 6.13(b)(B), or (f) as otherwise agreed by the Parties;

"**Reservoir**": the subsurface body of hot water and steam located under the Licence Area;

"**Reservoir Capacity Confirmation Date**": the date on which the Contracted Capacity for the Plant is determined pursuant to Clause 5.2.6 and 5.2.7;

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"**Reservoir Confirmation Period**": the period commencing as of the day following the expiration of the Reservoir Exploration Period and expiring upon the earlier of: (i) the date that the Geothermal Board of Consultants delivers to the Seller its decision referred to in the first sentence of Clause 5.2.6 and (ii) the date that is …..months after the Effective Date, as such date in this item (ii) may be extended (a) pursuant to Clause 15.4, (b) on a day for day basis to the extent to which a breach by KPLC of any of its obligations under this Agreement or a breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence delays the Seller from performing the Reservoir Confirmation Works, (c) for each day (not exceeding sixty (60) days) after the thirtieth (30th) day after the date on which the Seller delivers the Reservoir Confirmation Period Notice to the Geothermal Board of Consultants until the day that the Seller receives a written decision from the Geothermal Board of Consultants regarding such notice, (d) during the pendency of an appeal or arbitral process relating to the issuance of a written decision by the Geothermal Board of Consultants, or (e) as otherwise agreed by the Parties.

"**Reservoir Confirmation Period Notice**" has the meaning ascribed to it in Clause 5.2.2;

"**Reservoir Confirmation Works**": the drilling, well construction and other works to be undertaken by the Seller to confirm the existence, quantity, quality, and productivity of the Reservoir;

"**Reservoir Confirmation Works Programme**": the programme specifying the Reservoir Confirmation Works and the schedule for the performance of such works set forth in Part B of Schedule 1, as such programme may be modified from time to time by Seller in light of information acquired during the conduct of such programme;

"**Reservoir Exploration Period**": the period commencing on the Effective Date and expiring upon the earlier of: (i) the date that the Geothermal Board of Consultants delivers to the Seller its decision referred to in the first sentence of Clause 5.1.5 and (ii) the date that is ….. months after the Effective Date, as such date in this item (ii) may be extended (a) pursuant to Clause 15.4, (b) on a day for day basis to the extent to which a breach by KPLC of any of its obligations under this Agreement or a breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence delays the Seller from performing the Reservoir Exploration Works, (c) for each day (not exceeding sixty (60) days) after the thirtieth (30th) day after the date on which the Seller delivers the Reservoir Exploration Period Notice to the Geothermal Board of Consultants until the day that the Seller receives a written decision from the Geothermal Board of Consultants regarding such notice, (d) during the pendency of an appeal or arbitral process relating to the issuance of a written decision by the Geothermal Board of Consultants, or (e) as otherwise agreed by the Parties;

"**Reservoir Exploration Period Notice**" has the meaning ascribed to it in Clause 5.1.2;

"**Reservoir Exploration Works**": the drilling, well construction and other works to be undertaken by the Seller to appraise the existence, quantity, quality, and productivity of the Reservoir;

"**Reservoir Exploration Works Programme**": the programme specifying the Reservoir Exploration Works and the schedule for the performance of such works set forth in Part A of

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Schedule 1, as such programme may be modified from time to time by Seller in light of information acquired during the conduct of such programme;

"**Scheduled First Unit Commissioning Date**": has the meaning ascribed to it in Clause 6.2;

"**Scheduled Maintenance**": maintenance which has been planned in accordance with Clause 8.3, or where the context admits, the period allowed or the dates planned for such maintenance;

"**Seller Performance Security**": the on-demand bond or irrevocable letter of credit issued by an internationally recognised bank acceptable to KPLC in the form attached hereto as Schedule 10 in the amount of Ten million US Dollars ();

"**Settlement Period**": a period of thirty (30) minutes beginning on the hour or the half-hour, as the case may be;

"**Signature Date**": the date of this Agreement;

"**Site**": the land on which the Plant shall be erected and installed;

"**Specified Project Agreements**": collectively, the Station Construction Contract, the Steam Field Construction Contract, the KPLC Connection Facilities Construction Contract, and each individual Drilling Contract for the provision of drilling rigs, pipe or valves providing for aggregate payments in excess of [];

"**Station**": the plant (comprising the Units and other equipment) described in Part A of Schedule 2 (in particular Paragraph 4), the Main Metering Equipment, and the Back-Up Metering Equipment (prior to its transfer to KPLC). For the avoidance of doubt the Parties agree that (i) during the Interim Commercial Operation Period, the Unit(s) providing the Interim Contracted Capacity shall constitute the Station and (ii) the term "Station" does not include the Appraisal Works or the Steam Field Facilities;

"**Station Construction Contract**": the agreement or agreements for the construction of the Station to be entered into between the Seller and a Qualified Station Contractor;

"**Steam Field Construction Contract**": the agreement or agreements providing for the design, construction and testing of the Steam Field Facilities (other than the drilling and construction of wells and make-up wells) to be entered into by the Seller with contractors experienced in the construction of facilities of such type selected by the Seller exercising Prudent Operating Practice;

"**Steam Field Facilities**": all equipment, plant and facilities above ground and underground, including wells, make-up wells and piping, all as constructed in accordance with Schedule 2 (in particular Paragraph 3) that are used or intended to be used during the Construction Period and the Operating Period in connection with the operation, maintenance and ongoing development of the Reservoir for the purpose of electricity generation, but excluding all equipment, plant and facilities comprising the Station;

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"**Suswa Substation**": the 220 kV electric substation to be located at Suswa, Kaijado County, Kenya on the parcel identified as "Title No. Kaijado / EWUASO – KEDONG 3349";

"**System Characteristics**": the characteristics of the Transmission System specified in paragraph 4.3 of Part A of Schedule 2;

"**System Interruption**": any failure or inability of the Transmission System to receive delivery of electrical energy from the Plant or any Unit, as applicable, however arising other than as a result of an event which is caused by the Seller;

"**Target Availability**": the lesser of (i) ninety-four percent (94%) of the Contracted Capacity at the Signature Date or (ii) ninety-four percent (94%) of the Contracted Capacity determined pursuant to Clause 6.11;

"**Target Effective Date**": …… months after the Signature Date as such date may be extended as agreed by the Parties;

"**Target Interim Commercial Operation Date**" the date that is …… months after the Effective Date, as such date may be extended (a) pursuant to Clause 5.2.8 or Clause 15.4, (b) on a day for day basis to the extent to which a breach by KPLC of any of its obligations under this Agreement or a breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence delays the Seller from achieving the Interim Commercial Operation Date, (c) for each day (not exceeding sixty (60) days) after the thirtieth (30th) day after the date on which the Seller delivers the Reservoir Exploration Period Notice or the Reservoir Confirmation Period Notice, as the case may be, to the Geothermal Board of Consultants until the day that the Seller receives a written decision from the Geothermal Board of Consultants regarding such notice, (d) during the pendency of an appeal or arbitral process relating to the issuance of a written decision by the Geothermal Board of Consultants, (e) subject to the Seller having performed its obligations under Clause 13.1(c)(i) within the time periods provided in such Clause, if the PRG LC has not been issued as of the first day of the Construction Period, on a day for day basis for each day thereafter until the date that the PRG LC is issued, or (f) as otherwise agreed by the Parties;

"**Taxes**": all forms of taxation, duties, imposts, levies and rates whenever imposed and applicable pursuant to any Legal Requirement;

"**Term**": the period from the Signature Date until expiry of this Agreement as determined in accordance with Clause 2.2 and Clause 2.3 or earlier termination pursuant to the terms of this Agreement;

"**Termination Notice**" has the meaning ascribed to it in Clause 16.6;

"Threshold Availability": with respect to any period, eighty four percent (84%) of the Contracted Capacity as at the Signature Date or, if less, eighty four percent (84%) of the Contracted Capacity determined pursuant to Clause 6.11;

"**Total Project Cost**" has the meaning ascribed to it in Clause 16.6(a)(i);

"**Transfer Amount**": has the meaning ascribed to it in Clause 16.6;

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"**Transmission Interconnector**": the 220 kV transmission line from the Delivery Point to the Suswa Substation and related facilities described in Parts B and C of Schedule 2 that is to be constructed by the Seller and transferred to KPLC pursuant to Clause 6.6;

"**Transmission System**": the high voltage transmission system in Kenya together with all the distribution system(s) and ancillary electrical plant and equipment connected to such transmission and distribution systems, in each case, owned, operated, or controlled by KPLC or any other person;

"**Unit**": a generating unit and related facilities as described in Part A of Schedule 2;

"**Unit Commercial Operation Tests**": the tests to be carried out on a Unit and designated as the Unit Commercial Operation Tests in Part A of Schedule 4, provided that where a single Unit is to provide the Interim Contracted Capacity, the Interim Commercial Operation Tests and Unit Commercial Operation Tests shall be conducted so as to minimize duplication of testing;

"**Unit Rated Capacity**": with respect to a Unit, the electrical capacity rating in MW for such Unit as specified by the manufacturer of such Unit;

"**US Dollar**" or "**US$**": the lawful currency of the United States of America for the time being and from time to time.

"**Volt**": the unit of electrical potential as defined in the International Organization for Standardization standard (ISO 80000) Specification for SI Units and Recommendations for Use of Their Multiples and of Certain Other Units;

"**Watt**": (W) the unit of electrical power defined as one (1) Joule per second as defined in the International Organization for Standardization standard (ISO 80000) Specification for SI Units and Recommendations for Use of Their Multiples and of Certain Other Units;

"**Watt-hour**": (Wh) three thousand six hundred (3600) joules as defined in the International Organization for Standardization standard (ISO 80000) Specification for SI Units and Recommendations for Use of Their Multiples and of Certain Other Units;

"**Week**": a period of seven (7) days beginning on a Monday;

1.2 Interpretation: In this Agreement, unless the context otherwise requires:

(a) reference to a business day is a reference to any day which is not a Saturday, Sunday or recognised public holiday in Kenya and is a day on which commercial banks are open for business in Kenya;

(b) reference to a day, month or year is a reference to a calendar day, month or year;

(c) references to Clauses, Schedules, Sections and Figures are references to clauses, schedules, sections and figures of, to or contained in this Agreement;

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(d) words in the singular shall be interpreted as including the plural and vice versa, and words denoting natural persons shall be interpreted as referring to legal and natural persons, including Governmental Authorities;

(e) the term "including" shall be construed without limitation;

(f) in the event of any conflict between the Clauses and the Schedules, the Clauses shall prevail;

(g) headings are for convenience only and shall not affect the construction of this Agreement;

(h) save as provided to the contrary in this Agreement, where an obligation is required to be performed by a specified time and is not so performed, such obligation shall continue (until performed) notwithstanding that the time specified for its performance has elapsed;

(i) a requirement that a payment to be made on a day which is not a business day shall be construed as a requirement that the payment be made on the next business day; and

(j) the recitals are for information purposes only and are not intended to create binding legal obligations.

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Clause 2. Scope and Duration

2.1 Scope:

In accordance with, at the times provided in, and subject to the terms and conditions of this Agreement

(a) the Seller shall:

(i) perform its obligations contained in the Appraisal Programme and conduct the Appraisal Works;

(ii) design, procure, construct, finance, test, commission, operate and maintain the Station and the Steam Field Facilities;

(iii) design, procure, construct, finance, test, commission, and transfer to KPLC the Transmission Interconnector and the KPLC Connection Facilities;

(iv) supply and install the Metering System and transfer to KPLC the Back-Up Metering Equipment;

(v) make available the Contracted Capacity in compliance with the Operating Characteristics; and

(vi) sell the Net Electrical Output to KPLC in accordance with and subject to the terms and conditions of this Agreement; and

(b) KPLC will take delivery of Net Electrical Output and pay Energy Charges for such Net Electrical Output and make Capacity Payments for the Contracted Capacity (adjusted for Availability as provided herein), in each case, in accordance with and subject to the terms and conditions of this Agreement.

2.2 Term of Agreement: This Agreement shall come into force on the Signature Date and, except as provided in the next sentence and as otherwise provided in this Agreement, shall continue in force until the twenty-fifth (25th) anniversary of the Full Commercial Operation Date. If the Interim Commercial Operation Date occurs and the Full Commercial Operation Date does not occur by the date that is six (6) months after the Interim Commercial Operation Date then the twenty-five year period referred to in the previous sentence shall be deemed to commence on the date that is six (6) months after the Interim Commercial Operation Date.

2.3 Extension: The Term may be extended, subject to agreement in writing by the Parties to such extension no less than twelve (12) months prior to its expiry, and on such terms as the Parties shall agree.

2.4 Receipt of Energy Regulatory Approval. Prior to the Signature Date, this Agreement was approved by the Energy Regulatory Commission.

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Clause 3. Conditions Precedent to Effective Date

3.1 Effective Date; Conditions Precedent: This Agreement shall be binding on the Parties as of the Signature Date; provided, however, the Parties shall not be obligated to perform their respective obligations hereunder except those obligations described in Clauses 3.2, 3.3, 18, 19 and 22, until the date that all of the following conditions (collectively, the "**Conditions Precedent**") have been satisfied (such date, the "**Effective Date**"):

3.1.1 each Authorisation listed in Part A of Schedule 7, shall have been obtained and be in full force and effect and the Seller shall have submitted the Environmental and Social Impact Assessment to NEMA**;**

3.1.2 the Seller and the applicable counterparties thereto have entered into Land Agreements giving the Seller the right to access and use all land the Seller requires in order to perform the Appraisal Works;

3.1.3 the Seller shall have delivered to KPLC certified true copies of resolutions of its board of directors approving the PPA Agreements to which it is a party;

3.1.4 KPLC shall have delivered to the Seller certified true copies of resolutions of its board of directors approving the PPA Agreements to which it is a party;

3.1.5 GOK shall have issued the GOK Letter to the Seller;

3.1.6 the Seller shall have delivered the Seller Performance Security to KPLC;

3.1.7 this Agreement and the development and construction of the Plant contemplated hereby shall have been approved by GOK in accordance with the requirements of the then applicable Public Private Partnership Regulations; and

3.2 Obligation to Use Reasonable Endeavours to Satisfy Conditions Precedent: The Seller shall in good faith use all reasonable endeavours to satisfy the aspects that are within its control and required to be satisfied by the Seller with respect to the Conditions Precedent described in Clauses 3.1.1, 3.1.2, 3.1.3, 3.1.5 and 3.1.6 prior to the Target Effective Date. KPLC shall in good faith use all reasonable endeavours to satisfy the aspects that are within its control and required to be satisfied by KPLC with respect to the Conditions Precedent described in Clauses 3.1.4, 3.1.5, and 3.1.7 prior to the Target Effective Date. Each of the Parties shall use all reasonable endeavours to coordinate with the other Party to facilitate such other Party's efforts to satisfy the applicable Conditions Precedent no later than the Target Effective Date. If the Effective Date does not occur on or prior to the Target Effective Date the Parties shall continue to perform their respective obligations under this Clause 3.2 through the Long Stop Effective Date.

3.3 Progress review: Within fifteen (15) days after the end of each calendar month occurring during the period beginning with the first full calendar quarter after the Signature Date and ending on the Effective Date, the Parties shall, via face-to-face meeting or conference call, jointly review the progress towards achieving satisfaction of all of the Conditions Precedent to the achievement of the Effective Date.

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3.4 Delay Extending Long Stop Effective Date: If the Effective Date does not occur on or before the Long Stop Effective Date due to the occurrence of any of the following then, in each case, the Long Stop Effective Date shall be extended to account for such delay: (a) the failure by any Governmental Authority to issue one or more Authorisations, the lack of which is the sole reason for the failure of the Conditions Precedent to be satisfied, provided that the Seller has first diligently attempted to obtain such Authorisations (which diligence shall include (i) timely compliance in all material respects with all procedural requirements relating to the issue of such Authorisations, and with all Legal Requirements which relate to the activities of the Seller within the Republic of Kenya and (ii) pursuing all reasonably available procedures, if applicable, for appealing against or challenging the grounds upon which such Authorisation is not issued); (b) Force Majeure affecting the ability of a Party to satisfy the applicable Conditions Precedent; (c) failure by KPLC to use all reasonable endeavours to satisfy the aspects that are within its control and required to be satisfied by KPLC with respect to the Conditions Precedent described in Clause 3.2; (d) breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence affecting the ability of KPLC or the Seller to satisfy conditions to the occurrence of the Effective Date; or (e) delay by any Governmental Authority in entering into any Land Agreement giving the Seller the right to access and use land it requires in order to perform the Appraisal Works, the lack of which Land Agreement is the sole reason for the failure of the Conditions Precedent to be satisfied; provided that the Seller has first diligently attempted to obtain such Land Agreements from the applicable Governmental Authority (which diligence shall include (i) timely compliance in all material respects with all procedural requirements relating to the issue of such Land Agreement, and with all Legal Requirements which relate to the activities of the Seller within the Republic of Kenya and (ii) pursuing all reasonably available procedures, if applicable, for appealing against or challenging the grounds upon which such Land Agreement is not issued); provided, further, any extension of the Long Stop Effective Date resulting from the operation of this subclause (e) shall not exceed a period of one year.

3.5 Termination: Each of the Parties acknowledges and agrees that if the Effective Date has not occurred on or prior to the Long Stop Effective Date, then either Party shall have the right to terminate this Agreement by delivering thirty (30) days' prior written notice thereof to the other Party. Upon termination of this Agreement pursuant to this Clause 3.5, neither Party will be obligated to continue performing its respective obligations under this Agreement other than its respective obligations pursuant to Clause 18 regarding Confidential Information disclosed to such Party as of the date of such termination.

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Clause 4. Site; Land Agreements

4.1 Land Agreements:

4.1.1 The Seller shall enter into Land Agreements at the times and to the extent ownership or access to the land that is the subject of such Land Agreements is then required in order for the Seller to perform its obligations under this Agreement.

4.1.2 Any Land Agreement for the purchase, lease, or use by Seller of land that is privately owned or leased shall provide that the Seller shall make payments to the owner or lessee of such land for the purchase, lease or use of such land, with the amount and timing of such payments to be as agreed between the Seller and such owner or lessee in the applicable Land Agreement.

4.2 Seller's Obligations regarding Land Agreements:

4.2.1 The Seller hereby confirms that it intends to perform fully its obligations under and observe the terms of each Land Agreement (including its obligations to make the payments referred to in Clause 4.1.2 above), provided that the Seller shall be deemed to be in breach of this Clause 4.2.1 only if the Seller fails to comply with or perform the terms of any Land Agreement, such failure would result in the early termination of such Land Agreement prior to the end of its stated term, and such Land Agreement then is required to be in effect in order for the Seller to perform its obligations under this Agreement.

4.2.2 In addition, the Seller shall not:

(a) terminate or permit the termination of any Land Agreement then required to be in effect in order for the Seller to perform its obligations under this Agreement;

(b) in any material respect, depart from, or waive or fail to enforce any rights it may have under any Land Agreement where such rights are required by the Seller in order to perform its obligations under this Agreement; and

(c) enter into any agreement, document or arrangement which would affect the interpretation or application of any Land Agreement in a manner that would have a material adverse affect upon the ability of the Seller to perform its obligations under this Agreement;

in each case, unless the relevant document or proposed course of action has been notified in writing to KPLC and there has been no objection by KPLC within ten (10) days after receipt of Seller's notice.

4.3 Access: The Seller shall, at its own expense, procure such rights of passage as the Seller may require for access to the Site. The Seller shall construct and maintain during the Term all access roads (other than public highways and public roads) within the Site. For the purpose of the prior sentence, the term "public roads" shall not include any access road that is constructed by

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the Seller and that, solely by operation of any Legal Requirement, is nominally classified as a "public road".

4.4 Information and Co-ordination re Site: The Seller shall provide KPLC with a description of its activities at the Site in the quarterly progress reports the Seller is required to provide to KPLC pursuant to Clause 5.6.

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Clause 5. Appraisal Works and Construction

5.1 Reservoir Exploration Works:

5.1.1 The Seller shall diligently undertake the Reservoir Exploration Works during the Reservoir Exploration Period. In addition, the Seller shall achieve each milestone for the Reservoir Exploration Period specified in Part A of Schedule 6 on or prior to the date specified for the achievement of such milestone in such Part A (subject to extension of such dates (a) pursuant to Clause 15.4, (b) to the extent that a breach by KPLC of any of its obligations under this Agreement or a breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence prevents the Seller from performing the Reservoir Exploration Works, or (c) as otherwise agreed by the Parties).

5.1.2 At any time before the end of the Reservoir Exploration Period, the Seller shall deliver a written notice (the "**Reservoir Exploration Period Notice**") to the Geothermal Resources Licence Designated Recipients (with a copy to KPLC) stating the Seller's determination, based on the results of the tests conducted by the Seller as part of the Reservoir Exploration Works and other information available to the Seller at such time, that: (i) the Seller wishes to proceed with performance of the Reservoir Confirmation Works because the Seller reasonably believes that the Reservoir is a viable resource that can be developed further and confirmed in accordance with the terms of this Agreement or (ii) the Seller does not wish to proceed with performance of the Reservoir Confirmation Works because the Seller reasonably believes that the Reservoir is not a viable resource. If the Seller fails to deliver a Reservoir Exploration Period Notice prior to the expiration of the Reservoir Exploration Period, then the Seller shall be deemed to have delivered a Reservoir Exploration Period Notice to the Geothermal Resources Licence Designated Recipients on the last day of the Reservoir Exploration Period that the Seller does not wish to proceed with performance of the Reservoir Confirmation Works.

5.1.3 In accordance with the Geothermal Resources Licence, and subject to any appeal mechanisms contained therein, the Geothermal Board of Consultants shall have the responsibility of, and powers to, decide whether to accept the determination of the Seller contained in the Reservoir Exploration Period Notice, to approve the proposed Steam Field Facilities development and Station design, and to notify the Seller of its decision in writing. Any such determination by the Geothermal Board of Consultants shall, after giving effect to the operation of any dispute resolution and appeal mechanisms contained in the Geothermal Resources Licence, be binding upon the Seller and KPLC. Promptly after receipt thereof, the Seller shall provide to KPLC a copy of any written decision that the Seller receives from the Geothermal Board of Consultants.

5.1.4 To facilitate the decision-making of the Geothermal Board of Consultants, the Seller shall from time to time during the Reservoir Exploration Period and during the period beginning with the delivery (or deemed delivery) of a Reservoir

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Exploration Period Notice and ending on the date the Geothermal Board of Consultants delivers its written decision referred to in Clause 5.1.5 below, (i) provide to the Geothermal Resources Licence Designated Recipients and KPLC any information that any Geothermal Resources Licence Designated Recipient or KPLC reasonably requests regarding the Reservoir and the results of the tests conducted by the Seller as part of the Reservoir Exploration Works that Seller may have in its possession and (ii) at the reasonable request of any Geothermal Resources Licence Designated Recipient permit the Geothermal Resources Licence Designated Recipients or their designees to visit the locations of the Reservoir Exploration Works.

5.1.5 If the Seller states in the Reservoir Exploration Period Notice that the Seller wishes to proceed with performance of the Reservoir Confirmation Works and either the Geothermal Board of Consultants specifies in its final written decision to the Seller (which shall be issued after giving effect to the operation of any dispute resolution and appeal mechanisms contained in the Geothermal Resources Licence), that such determination is accepted or the Geothermal Board of Consultants fails to provide its decision within ninety (90) days after the date of the delivery of the Reservoir Exploration Period Notice, the Seller shall be obligated to proceed to perform the Reservoir Confirmation Works in accordance with Clause 5.2. In all other cases, and subject to KPLC's right to draw on the Seller Performance Security if the conditions set forth in Clause 13.3(a)(i) are satisfied, (i) the Seller shall have no further obligation to perform the Reservoir Confirmation Works or undertake the Construction Programme and (ii) the Seller and KPLC each shall be entitled to terminate this Agreement upon not less than thirty (30) days prior written notice to the other Party.

5.2 Reservoir Confirmation Works.

5.2.1 Provided that the conditions specified in the first sentence of Clause 5.1.5 have been satisfied, the Seller shall diligently undertake the Reservoir Confirmation Works during the Reservoir Confirmation Period. In addition, the Seller shall perform its obligations under Clause 13.2 and also shall achieve each milestone for the Reservoir Confirmation Period specified in Part B of Schedule 6 on or prior to the date specified for the achievement of such milestone in such Part B (subject to extension of such dates (a) pursuant to Clause 15.4, (b) on a day for day basis to the extent to which a breach by KPLC of any of its obligations under this Agreement or a breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence delays the Seller from achieving such milestone, (c) for each day (not exceeding sixty (60) days) after the thirtieth (30th) day after the date on which the Seller delivers the Reservoir Exploration Period Notice to the Geothermal Board of Consultants until the day that the Seller receives a written decision from the Geothermal Board of Consultants regarding such notice or (d) as otherwise agreed by the Parties).

5.2.2 At any time before the end of the Reservoir Confirmation Period, the Seller shall deliver a written notice (the "**Reservoir Confirmation Period Notice**") to the

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Geothermal Resources Licence Designated Recipients (with a copy to KPLC) stating the Seller's determination, based on the results of the tests conducted by the Seller as part of the Reservoir Confirmation Works and other information available to the Seller at such time, that: (i) the Seller wishes to proceed with performance of the Construction Period Works because the Seller reasonably believes that the quantity, quality, and expected longevity of the Reservoir confirmed as of such date of determination are adequate for the operation of the Plant on an economically viable basis at the Contracted Capacity at the Signature Date, (ii) although the quantity, quality, and expected longevity of the Reservoir confirmed as of such date of determination are not adequate for the operation of the Plant on an economically viable basis at the Contracted Capacity at the Signature Date, the Seller wishes to proceed with performance of the Construction Period Works because the Seller reasonably believes that the quantity, quality, and expected longevity of the Reservoir confirmed as of such date of determination are adequate for the operation of the Plant at a Contracted Capacity that is less than that in effect as of the Signature Date, or (iii) the Seller does not wish to proceed with performance of the Construction Period Works because the Seller reasonably believes that the quantity, quality, and expected longevity of the Reservoir confirmed as of such date of determination are not adequate for the operation of the Plant on an economically viable basis. If the Seller fails to deliver a Reservoir Confirmation Period Notice prior to the expiration of the Reservoir Confirmation Period, then the Seller shall be deemed to have delivered a Reservoir Confirmation Period Notice to the Geothermal Resources Licence Designated Recipients on the last day of the Reservoir Confirmation Period that the Seller does not wish to proceed with performance of the Construction Period Works.

5.2.3 If the Seller delivers a Reservoir Confirmation Period Notice containing the statement referred to in subclause (i) or (ii) of Clause 5.2.2 above, the Seller also shall provide to the Geothermal Resources Licence Designated Recipients and KPLC at the time of the delivery of such notice the following additional information: (i) the proposed Contracted Capacity for the Plant (if different than the Contracted Capacity as of the Signature Date) and the proposed revised ratings for the Units; (ii) the proposed Station design (including proposed Station layout and proposed number of Units comprising the Station) and the proposed Steam Field Facilities development plan (including the proposed number of wells); (iii) the anticipated location of the Station; (iv) the proposed design of the KPLC Connection Facilities and the Transmission Interconnector based on the design criteria set out in Part C of Schedule 2; (v) a revised version of Part C of Schedule 6 specifying updated Construction Period milestones and dates for the achievement of such milestones; and (vi) the date occurring during the Construction Period by which the Seller reasonably anticipates that Financial Closing will be achieved.

5.2.4 As contemplated by the Geothermal Resources Licence, and subject to any appeal mechanisms contained therein, the Geothermal Board of Consultants has the responsibility of deciding whether to accept the determination of the Seller contained in the Reservoir Confirmation Period Notice and to notify the Seller in writing of its decision. Any such determination by the Geothermal Board of

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Consultants shall, after giving effect to the operation of any dispute resolution and appeal mechanisms contained in the Geothermal Resources Licence, be binding upon the Seller and KPLC. Promptly after receipt thereof, the Seller shall provide to KPLC a copy of any written decision that the Seller receives from the Geothermal Board of Consultants.

5.2.5 To facilitate the decision-making of the Geothermal Board of Consultants, the Seller shall from time to time during the Reservoir Confirmation Period and during the period beginning with the delivery (or deemed delivery) of a Reservoir Confirmation Period Notice and ending on the date the Geothermal Board of Consultants delivers its written decision referred to in Clause 5.2.6 below, (i) provide to the Geothermal Resources Licence Designated Recipients and KPLC the results of the tests conducted by the Seller as part of the Reservoir Confirmation Works and any information that any Geothermal Resources Licence Designated Recipient or KPLC reasonably requests regarding the Reservoir that the Seller may have in its possession and (ii) at the reasonable request of any Geothermal Resources Licence Designated Recipient permit the Geothermal Resources Licence Designated Recipients or their designees to visit the locations of the Reservoir Confirmation Works.

5.2.6 If

(i) the Seller states in the Reservoir Confirmation Period Notice that the Seller wishes to proceed with performance of the Construction Period Works for a Plant having a Contracted Capacity equal to the Contracted Capacity at the Signature Date and the Geothermal Board of Consultants specifies in its final written decision to the Seller (which shall be issued after giving effect to the operation of any dispute resolution and appeal mechanisms contained in the Geothermal Resources Licence) that such determination is accepted or the Geothermal Board of Consultants fails to provide its decision within ninety (90) days after the date on which the Seller delivers the Reservoir Confirmation Period Notice,

(ii) the Seller states in the Reservoir Confirmation Period Notice that the Seller wishes to proceed with performance of the Construction Period Works for a Plant having a Contracted Capacity less than that specified on the Signature Date and the Geothermal Board of Consultants specifies in its final written decision to the Seller (which shall be issued after giving effect to the operation of any dispute resolution and appeal mechanisms contained in the Geothermal Resources Licence) that such determination is accepted or the Geothermal Board of Consultants fails to provide its decision within ninety (90) days after the date on which the Seller delivers the Reservoir Confirmation Period Notice, or

(iii) the Seller states in the Reservoir Confirmation Period Notice that the Seller does not wish to proceed with performance of the Construction Period Works because the quantity, quality, and expected longevity of the

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Reservoir resource confirmed as of such date of determination are not acceptable but the Geothermal Board of Consultants specifies in its final written decision to the Seller (which shall be issued after giving effect to the operation of any dispute resolution and appeal mechanisms contained in the Geothermal Resources Licence) that such determination is not accepted,

then the Seller shall be obligated to proceed to perform the Construction Period Works in accordance with Clauses 5.3, 5.4 and 5.5. In all other cases, and subject to KPLC's right to draw on the Seller Performance Security if the conditions set forth in Clause 13.3(a)(ii) are satisfied, (i) the Seller shall have no further obligation to perform the Construction Period Works and (ii) the Seller and KPLC each shall be entitled to terminate this Agreement upon not less than thirty (30) days prior written notice to the other Party.

5.2.7 If the Seller states in the Reservoir Confirmation Period Notice that the Seller wishes to proceed with performance of the Construction Period Works for a Plant having a Contracted Capacity less than that specified on the Signature Date and the Geothermal Board of Consultants specifies in its written decision to the Seller that such determination has been accepted or the Geothermal Board of Consultants fails to provide its decision within ninety (90) days after the date on which the Seller delivers the Reservoir Confirmation Period Notice, the Contracted Capacity shall be deemed to be the Contracted Capacity as accepted by the Geothermal Board of Consultants or as proposed by the Seller in the Reservoir Confirmation Period Notice, as the case may be. If the Seller states in the Reservoir Confirmation Period Notice that the Seller does not wish to proceed with performance of the Construction Period Works because the quantity, quality, and expected longevity of the Reservoir resource confirmed as of such date of determination are not acceptable but the Geothermal Board of Consultants specifies in its final written decision to the Seller (which shall be issued after giving effect to the operation of any dispute resolution and appeal mechanisms contained in the Geothermal Resources Licence) that such determination is not accepted, the Contracted Capacity shall be deemed to be the Contracted Capacity as specified by the Geothermal Board of Consultants in its final written decision.

5.2.8 During the Reservoir Confirmation Period and in anticipation of the commencement of performance of the Construction Period Works during the Construction Period, the Seller shall diligently undertake to obtain the Authorisations listed in Part B of Schedule 7. If the Seller is unable to obtain any such Authorisation on or prior to the commencement of the Construction Period due to the failure by any Governmental Authority to issue such Authorisations despite diligent attempts by the Seller to obtain such Authorisations (which diligence shall include (i) timely compliance in all material respects with all procedural requirements relating to the issue of such Authorisations, and with all Legal Requirements which relate to the activities of the Seller within the Republic of Kenya and (ii) pursuing all reasonably available procedures, if applicable, for appealing against or challenging the grounds upon which such Authorisation is not issued) then the Target Interim Commercial Operation Date, the Required Full

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Commercial Operation Date and the Long Stop Full Commercial Operation Date shall be extended to account for such delay.

5.3 Agreement re Specifications, Etc. If the conditions specified in the first sentence of Clause 5.2.6 have been satisfied, then the Seller shall promptly seek to obtain approval from KPLC (which shall not be unreasonably withheld) and the Geothermal Board of Consultants of (i) the proposed Station design (including proposed Station layout and proposed number of Units comprising the Station and the proposed ratings for the Units), (ii) the proposed Steam Field Facilities development plan (including the proposed number of wells); (iii) the anticipated location of the Station, and (iv) the proposed design of the KPLC Connection Facilities and the Transmission Interconnector, all as provided to KPLC and the Geothermal Resources Licence Designated Recipients pursuant to Clause 5.2.3 above. To facilitate the decision-making of KPLC and the Geothermal Board of Consultants, the Seller shall provide such additional information to KPLC and the Geothermal Resources Licence Designated Recipients from time to time as either of them shall reasonably request. KPLC and the Geothermal Resources Licence Designated Recipients shall provide their decision regarding such approval no later than thirty (30) days after the Reservoir Capacity Confirmation Date. If the Geothermal Board of Consultants and KPLC fail to provide their respective decisions within thirty (30) days after the Reservoir Capacity Confirmation Date such approval shall be deemed granted.

5.4 Construction of the Station and Steam Field Facilities: If the conditions specified in the first sentence of Clause 5.2.6 have been satisfied (i) the Seller shall within seven (7) days thereafter deliver to KPLC additional or amended Seller Performance Security so that the aggregate amount of all Seller Performance Security is equal to the Daily Liquidated Damages Limit and (ii) the Seller, acting in accordance with Prudent Operating Practice, shall diligently undertake prior to the end of the Construction Period the design, drilling, construction and installation of the Station and the Steam Field Facilities such that the Station and the Steam Field Facilities are consistent and compatible with the System Characteristics and otherwise in accordance with the Seller's obligations under this Agreement. In addition, the Seller shall achieve each milestone for the Construction Period specified in Part C of Schedule 6 on or prior to the date specified for the achievement of such milestone in such Part C (subject to extension of such dates (a) pursuant to Clause 15.4, (b) on a day for day basis to the extent to which a breach by KPLC of any of its obligations under this Agreement or a breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence delays the Seller from achieving such milestones, (c) for each day (not exceeding sixty (60) days) after the thirtieth (30th) day after the date on which the Seller delivers the Reservoir Exploration Period Notice or the Reservoir Confirmation Period Notice, as the case may be, to the Geothermal Board of Consultants until the day that the Seller receives a written decision from the Geothermal Board of Consultants regarding such noticeand /or (d) as otherwise agreed by the Parties).

5.5 Construction of the KPLC Connection Facilities and the Transmission Interconnector: If (i) the conditions specified in the first sentence of Clause 5.2.6 have been satisfied, and (ii) KPLC shall have performed its obligations under Clause 14.3(e), the Seller, acting in accordance with Prudent Operating Practice, shall diligently undertake during the Construction Period the design, construction and installation of the Transmission Interconnector and the KPLC Connection Facilities in accordance with the specifications for such interconnector and such facilities contained in this Agreement or agreed by the Parties. Prior to the transfer of the

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Transmission Interconnector and the KPLC Connection Facilities in accordance with Clause 6.6, the Seller shall be responsible for ensuring that the Transmission Interconnector and the KPLC Connection Facilities meet such specifications.

5.6 Information: Within fifteen (15) days after the end of each calendar quarter occurring during the period beginning on the second full calendar quarter after the Effective Date and ending on the Full Commercial Operation Date, the Seller shall provide to KPLC a quarterly progress report addressing the matters described on Schedule 9.

5.7 Monitor Progress: From and after the Effective Date, the Seller shall:

(a) ensure that KPLC and any representatives appointed by KPLC, are afforded reasonable access to the Site during business hours upon giving the Seller reasonable notice, provided that such access does not materially interfere with the construction works or expose any person on the Site to any danger;

(b) make available for inspection at the Site copies of all plans, copies of geo-scientific and well log data and designs, other than any proprietary information of the Seller or any sub-contractor, in relation to the construction, or any part thereof; and

(c) within six (6) months after the Full Commercial Operation Date, supply KPLC with one (1) set of reproducible copies and five (5) sets of white print copies (or equivalent) of all "as built" plans and designs relating to the operation or maintenance of the Plant as KPLC may reasonably require. The Seller shall also provide to KPLC two copies of the operations and maintenance manuals.

5.8 Disclaimer: The Seller:

(a) accepts that any information provided by the Seller under Clause 5.5, or any engineering review or inspection conducted by KPLC pursuant to Clause 5.6, is solely for KPLC's own information and accordingly, KPLC's review or failure to review or carry out any inspection under this Clause 5 shall not be construed as constituting any approval or acceptance of the Plant or the KPLC Connection Facilities or the Transmission Interconnector (except as otherwise provided in Clause 6.6) and KPLC makes no representation as to the engineering soundness of the Plant or the KPLC Connection Facilities or the Transmission Interconnector (except as otherwise provided in Clause 6.6) nor shall it be treated as having accepted the Plant as fit to meet the terms of this Agreement;

(b) shall in no way represent to any third party that, as a result of any review or inspection by KPLC, that KPLC is responsible for the engineering soundness of the Plant; and

(c) shall, subject to the other provisions of this Agreement, be solely responsible for the economic and technical feasibility, operational capacity and reliability of the Plant.

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Clause 6. Commissioning and Testing

6.1 The Seller's Obligations: The Seller shall carry out Commissioning in accordance with Prudent Operating Practice and the procedures agreed or determined in writing pursuant to Clause 6.5.

6.2 Scheduled First Unit Commissioning Date: The "**Scheduled First Unit Commissioning Date**" shall be the proposed date for the commencement of the Commissioning of the first Unit specified by the Seller in a written notice delivered to KPLC not less than ninety (90) days before such proposed date, provided that the Seller may postpone the Scheduled First Unit Commissioning Date by giving KPLC notice of the postponed date in accordance with such detailed procedures agreed or determined in accordance with Clause 6.5.

6.3 Notifications: Subject to the Seller's obligations under Clause 6.2, the Seller shall give KPLC not less than thirty (30) days' prior notice of the date of commencement of Commissioning of each Unit (other than the first Unit), except that the Seller may postpone any such date by giving KPLC notice of the postponed date in accordance with such detailed procedures agreed or determined in accordance with Clause 6.5.

6.4 KPLC Attendance: KPLC shall have the right to be present at the Site on each occasion on which a test is being conducted with respect to a Unit or the Plant, and to inspect and witness the test, and to receive, within fifteen (15) days after completion of the respective Commissioning of such Unit or the Plant, a written copy of the applicable test reports.

6.5 Detailed Procedures for Commissioning and Testing: The Seller shall, not later than ninety (90) days prior to the Scheduled First Unit Commissioning Date provide to KPLC draft detailed procedures for the Commissioning and testing of the Units and the Plant which shall be procedures consistent with Prudent Operating Practice and with Part A of Schedule 4. The Parties shall meet in good faith to discuss and reach agreement on the said procedures no later than sixty (60) days prior to the Scheduled First Unit Commissioning Date. If the Parties fail to so meet or agree on the procedures within fifty (50) days prior to the Scheduled First Unit Commissioning Date, then the matter shall be referred immediately by the Seller to an Expert for determination and, notwithstanding the provisions of Clause 19.2, the Expert be required to render its determination no later than thirty (30) days prior to the Scheduled First Unit Commissioning Date and such determination shall be consistent with Part A of Schedule 4.

6.6 KPLC Connection Facilities and Transmission Interconnector:

6.6.1 The Seller shall, not later than one hundred twenty (120) days prior to the Scheduled First Unit Commissioning Date provide to KPLC draft detailed procedures for the Commissioning and testing of the Transmission Interconnector and the KPLC Connection Facilities. The Parties shall meet in good faith to discuss and reach agreement on the said procedures no later than ninety (90) days prior to the Scheduled First Unit Commissioning Date. If the Parties fail to so meet or agree on the procedures within eighty (80) days prior to the Scheduled First Unit Commissioning Date, then the matter shall be referred immediately by the Seller to an Expert for determination and, notwithstanding the provisions of Clause 19.2, the

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Expert be required to render its determination no later than sixty (60) days prior to the Scheduled First Unit Commissioning Date.

6.6.2 The Seller shall complete the installation of the KPLC Connection Facilities and Transmission Interconnector not later than thirty (30) days prior to the Scheduled First Unit Commissioning Date. The Seller shall give KPLC no less than thirty (30) days' prior notice of the date of commencement of testing and commissioning of the KPLC Connection Facilities and Transmission Interconnector and KPLC shall have the right to be present to witness the tests. KPLC shall cooperate with the Seller so as to enable the Seller to commission the KPLC Connection Facilities and Transmission Interconnector as provided in this Clause 6.6. Upon successful commissioning of the KPLC Connection Facilities and Transmission Interconnector in accordance with Prudent Operating Practice, the Seller shall procure the issuance of a certificate of the Independent Engineer addressed to KPLC and the Seller, certifying, without any material qualification that (i) the Seller has completed the installation of the KPLC Connection Facilities and Transmission Interconnector in accordance with the specifications for such interconnector and such facilities contained in this Agreement and/or agreed by the Parties and (ii) the KPLC Connection Facilities and Transmission Interconnector have been successfully commissioned. The Seller shall thereafter promptly transfer to KPLC, and KPLC shall accept and become the owner of, all right, title and interest in the KPLC Connection Facilities and Transmission Interconnector (free of any encumbrances) together with (to the extent transferable) all applicable warranties and guarantees in respect thereof. After such transfer (i) the KPLC Connection Facilities and Transmission Interconnector shall be deemed to form part of and be included within the Transmission System, (ii) KPLC shall be obligated to operate and maintain the KPLC Connection Facilities and Transmission Interconnector in accordance with Prudent Operating Practice so as to ensure that the KPLC Connection Facilities and Transmission Interconnector are available to the Seller in its performance of its obligations under this Agreement, and (iii) the Seller shall have no further responsibility for the KPLC Connection Facilities and Transmission Interconnector or for their operation or maintenance.

6.6.3 For the avoidance of doubt, the Parties agree that the Seller shall deal only with KPLC (or a person designated by KPLC to deal with such matters) in connection with all matters regarding the testing and commissioning of the KPLC Connection Facilities and Transmission Interconnector.

6.7 KPLC Cooperation: Subject to any constraints imposed by the Transmission System and provided that the KPLC Connection Facilities and Transmission Interconnector shall have been transferred to KPLC pursuant to Clause 6.6, KPLC shall: (i) permit the Seller to Commission each Unit and the Plant in each case, in accordance with this Clause 6; (ii) authorise connection to the Transmission System; (iii) Despatch the Unit or Units, in each case, on and after the Scheduled First Unit Commissioning Date to the extent reasonably required by the Seller for such purpose in accordance with the procedures contained in Part A of Schedule 4 and agreed or determined under Clause 6.5; and (iv) to the extent reasonably required by the Seller for the purpose of Commissioning and provided that the Seller has delivered to KPLC all necessary

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applications reasonably required by KPLC and the Seller is otherwise in compliance with all requirements of KPLC applicable to the category of customers which includes the Seller, sell and deliver electrical energy to the Seller at the tariff set forth for such customers.

6.8 Re-testing: If, with respect to a Unit, the Unit Commercial Operation Tests are not completed or such Unit fails to satisfy the requirements specified therein, the Seller shall arrange an applicable further test by giving KPLC not less than seven (7) days' notice in accordance with the foregoing provisions of this Clause 6.

6.9 Completion of Commissioning for a Unit: Following the completion of the Commissioning of a Unit, the Seller shall procure the issue of a certificate of the Independent Engineer addressed to KPLC and the Seller, certifying, without any material qualification, that (i) such Unit's Commissioning has been so completed, (ii) the Unit Commercial Operation Tests for such Unit have been successfully completed, and (iii) the Contracted Capacity achieved by such Unit during the Unit Commercial Operation Tests for such Unit is not less than ninety-five percent (95)% of the result obtained by dividing (x) the Contracted Capacity as of the Reservoir Capacity Confirmation Date by (y) the number of Units that will comprise the Plant. Nothing in Clause 6 shall require that the Seller commission each Unit sequentially or simultaneously.

6.10 Interim Commercial Operation Tests: Following satisfactory completion of the Unit Commercial Operation Tests for one or more Units with a total Capacity not less than the Interim Contracted Capacity, the Seller shall conduct the Interim Commercial Operation Tests. Upon satisfactory completion of the Interim Commercial Operation Tests, the Seller shall procure the issuance of a certificate of the Independent Engineer addressed to KPLC and the Seller, certifying, without any material qualification, that the Contracted Capacity achieved by the Unit or Units during the Interim Commercial Operation Tests is not less than ninety-five per cent (95%) of the Interim Contracted Capacity. The Seller shall, upon issue of the certificate, give notice to KPLC of a date being a date not later than twenty-one (21) days after the date of the notice which date shall be the "**Interim Commercial Operation Date**".

6.11 Plant Commercial Operation Tests: Following the completion of the Unit Commercial Operation Tests for each Unit comprising the Plant and the satisfaction by each such Unit of the requirements of such tests, the Seller shall conduct the Plant Commercial Operation Tests. Upon completion of the Plant Commercial Operation Tests, the Seller shall procure the issue of a certificate of the Independent Engineer addressed to KPLC and the Seller, certifying, without any material qualification, that (i) the Seller has installed all plant and equipment specified in the Functional Specification, (ii) the Plant's Commissioning has been completed, (iii) the Plant is available for commercial operation and (iv) the Contracted Capacity achieved by the Plant during the Contracted Capacity Test conducted as part of the Plant Commercial Operation Tests is not less than ninety-five percent (95)% of the Contracted Capacity at the Signature Date, except that if the Contracted Capacity has been modified as of the Reservoir Capacity Confirmation Date, then it shall be ninety-five percent (95)% of the Contracted Capacity as of the Reservoir Capacity Confirmation Date. The Seller shall upon the issue of the certificate of the Independent Engineer pursuant to this Clause 6.11 give notice to KPLC of a date being a date not later than twenty-one (21) days after the date of such notice which date shall be the "**Full Commercial Operation Date**".

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6.12 Payment for Commissioning and Test Energy; Interim Capacity Payments:

(a) For all Net Electrical Output supplied by the Seller to KPLC after the commencement of Commissioning of the first Unit and prior to the Full Commercial Operation Date KPLC shall pay to the Seller the Energy Charge for such Net Electrical Output.

(b) Commencing from the Interim Commercial Operation Date, KPLC shall pay to the Seller monthly in arrears the Interim Capacity Payment determined for such month as provided in Clause 9.6.1.

(c) The Parties acknowledge and agree that the availability or unavailability of any Unit prior to such Unit successfully completing the Interim Commercial Operation Tests or the Full Commercial Operation Tests (as the case may be) shall not be considered in the calculations regarding Actual Monthly Availability set forth in Schedule 4 and Schedule 5

6.13 KPLC failure to take electricity from the First Commissioning Date:

(a) Subject to the KPLC Connection Facilities and the Transmission Interconnector having been transferred to KPLC pursuant to Clause 6.6, if and to the extent that the Seller is delayed in achieving the Interim Commercial Operation Date by the Target Interim Commercial Operation Date by reason of a System Interruption or by reason of KPLC's failure to perform or comply with its obligations under this Agreement (including, without limitation, its failure, when reasonably requested by the Seller, (i) to authorise connection to the Transmission System; (ii) to issue Despatch Instructions (both (i) and (ii) pursuant to Clause 6.7 but without giving effect to the language therein relieving KPLC of its obligations thereunder due to the effects of any constraints on the Transmission System); or (iii) to provide the requisite load (within the System Characteristics) for the purposes of conducting the Unit Commercial Operation Tests or the Interim Commercial Operation Tests), then (A) KPLC shall pay to the Seller, from the Target Interim Commercial Operation Date and until such time as such KPLC failure or the System Interruption (and in each case the resulting impairment of the Seller's ability to achieve the Interim Commercial Operation Date) is removed, monthly (and pro-rated for any proportion of the month), in arrears, an amount equal to the escalable and non-escalable component of the Capacity Charge Rate based on the Interim Contracted Capacity (but, for the avoidance of doubt, payments under this Clause 6.13(a) shall not be required during such period that payments of the Capacity Payment based on the Contracted Capacity determined on the Reservoir Capacity Confirmation Date are required under Clause 6.13(b)), and (B) the Required Full Commercial Operation Date and the Long Stop Full Commercial Operation Date shall be extended day for day by the amount of such delay.

(b) Subject to the KPLC Connection Facilities and the Transmission Interconnector having been transferred to KPLC pursuant to Clause 6.6, if and to the extent that the Seller is delayed in achieving the Full Commercial Operation Date by the

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Required Full Commercial Operation Date (determined without giving effect to the extension thereof contemplated by subclause (B) of Clause 6.13(a) or subclause (B) below) by reason of a System Interruption or by reason of KPLC's failure to perform or comply with its obligations under this Agreement (including, without limitation, its failure, when reasonably requested by the Seller, (i) to authorise connection to the Transmission System; (ii) to issue Despatch Instructions (both (i) and (ii) pursuant to Clause 6.7 but without giving effect to the language therein relieving KPLC of its obligations thereunder due to the effects of any constraints on the Transmission System); or (iii) to provide the requisite load (within the System Characteristics) for the purposes of conducting the Unit Commercial Operation Tests, the Interim Commercial Operation Tests and the Plant Commercial Operation Tests), then (A) KPLC shall pay to the Seller, from the Required Full Commercial Operation Date and until such time as such KPLC failure, or the System Interruption (and in each case the resulting impairment of the Seller's ability to achieve the Full Commercial Operation Date) is removed, monthly (and pro-rated for any proportion of the month), in arrears, an amount equal to the escalable and non-escalable component of the Capacity Charge Rate based on the Contracted Capacity determined on the Reservoir Capacity Confirmation Date and (B) the Required Full Commercial Operation Date and the Long Stop Full Commercial Operation Date shall be extended day for day by the amount of such delay.

(c) If the Capacity determined during the Interim Commercial Operation Tests or the Plant Commercial Operation Tests, as the case may be, is demonstrated to be different from the Interim Contracted Capacity or the Contracted Capacity determined as of the Reservoir Capacity Confirmation Date, then the Seller shall, using the Capacity determined during the Interim Commercial Operation Tests or Plant Commercial Operation Tests, as the case may be, calculate the non-escalable and the escalable component of the Capacity Charge Rate for the Relevant Period and appropriate adjustments shall be made to the next following invoice so as to pay to KPLC the difference, including interest at the Default Rate.

(d) The period during which KPLC makes payment to the Seller pursuant to Clause 6.13(a) or Clause 6.13(b) shall be the "**Relevant Period**". For a period occurring immediately prior to the expiration of the Term equal in duration to the duration of the Relevant Period (the "**End Period**") (but not in any other circumstance of termination) and notwithstanding any other provisions of this Agreement, KPLC shall be under no obligation to pay to the Seller (i) if Clause 6.13(a) applies, a sum equal to the product of the non-escalable component of the Capacity Charge Rate and the Interim Contracted Capacity or (ii) if Clause 6.13(b) applies, a sum equal to the product of the non-escalable component of the Capacity Charge Rate and the Contracted Capacity determined during the Plant Commercial Operation Tests.

(e) If the Seller fails to achieve the Full Commercial Operation Date by the Required Full Commercial Operation Date (as such date shall be extended pursuant to Clause 6.13(a)(B) or Clause 6.13(b)(B)), then the Seller shall repay to KPLC all amounts

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paid by KPLC to the Seller under Clause 6.13(a)(A) or Clause 6.13(b)(A), together with interest thereon at the Default Rate.

6.14 Appointment of Independent Engineer: The Seller shall, not less than three (3) months prior to the Scheduled First Unit Commissioning Date, appoint an independent, qualified professional engineer approved by KPLC (such approval not to be unreasonably withheld or delayed) (the "**Independent Engineer**"). The Independent Engineer shall be an entity which: (i) has personnel that have training and experience in the power industry reasonably specific to the technology of the Plant, (ii) has no ongoing and material economic relationship, association, or nexus with the Seller other than to meet the obligations of the Seller pursuant to this Agreement, (iii) is not an Affiliate of the Seller, KPLC or GOK, (iv) is not a representative of a consultant, engineer, contractor, designer or other person involved in the development, construction or operation of the Plant or of a manufacturer or supplier of any equipment installed at the Plant and (v) has personnel licensed in the various engineering disciplines applicable to the required certifications being made. If KPLC fails to approve such appointment, the Seller shall have the right to request the International Chamber of Commerce (ICC) International Centre for Expertise to make such appointment and such appointment shall be binding on the Seller and KPLC. All fees and costs payable in respect of the Independent Engineer (including those incurred in making such appointment) shall be borne by the Seller. The Seller shall use reasonable endeavours to cause the Financing Parties to utilize the Independent Engineer appointed in accordance with this Clause 6.14 to perform the functions specified for an independent engineer under the Financing Agreements. Once appointed, the Independent Engineer shall, among other things, and pursuant to Clause 6 witness the Commissioning and testing of each Unit and the Plant and the commissioning and testing of the KPLC Connection Facilities and the Transmission Interconnector and, provided the necessary prerequisites have been satisfied, issue the certificates referred to in Clauses 6.6, 6.9, 6.10 and 6.11.

6.15 Liquidated Damages for Delay: If the Full Commercial Operation Date has not occurred on or before the Required Full Commercial Operation Date, then with respect to each day occurring after the Required Full Commercial Operation Date until the date that the Full Commercial Operation Date occurs, KPLC shall be entitled to draw on the Seller Performance Security in one or more drawings, an amount equal to the Daily Liquidated Damages Sum. The Seller shall not have any liability for the Daily Liquidated Damages Sum to the extent that the sum of such amounts exceeds the Daily Liquidated Damages Limit. Such drawings on the Seller Performance Security for the Daily Liquidated Damages Sum shall be KPLC's sole and exclusive remedy against the Seller for any direct or indirect loss, cost, damage or expense that KPLC incurs as a result of the Full Commercial Operation Date failing to occur on or before the Required Full Commercial Operation Date.

6.16 Failure to Achieve Full Commercial Operation Date by the Long Stop Full Commercial Operation Date: If the Full Commercial Operation Date has not occurred on or before the Long Stop Full Commercial Operation Date, then KPLC may do either or both of the following:

(a) demand payment in full of any amount then remaining under the Seller Performance Security; and

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(b) serve notice of termination of this Agreement on the Seller, such notice to take effect not less than seven (7) days after the date such notice is received by the Seller.

The foregoing remedies shall be KPLC's sole and exclusive remedies against the Seller for any direct or indirect loss, cost, damage or expense that KPLC incurs as a result of the Full Commercial Operation Date failing to occur on or before the Required Full Commercial Operation Date or the Long Stop Full Commercial Operation Date.

6.17 Geothermal Reservoir Development: During the Operating Period and subject to the next sentence, the Seller shall develop, install, operate and maintain those Steam Field Facilities that the Seller, acting in accordance with Prudent Operating Practice, reasonably determines are necessary in order to ensure that throughout the Term the Reservoir can sustain a continuous flow of geothermal fluid required for the Plant to operated continuously, subject to any permitted maintenance allowances, at one hundred ten per cent (110%) of the Contracted Capacity at the Signature Date or, if less, one hundred ten per cent (110%) of the Contracted Capacity determined pursuant to Clause 6.11. Notwithstanding the foregoing, this Clause shall not obligate the Seller to drill additional make-up wells during the Operating Period where Prudent Operating Practice and the Seller's determination (based on the data regarding the Reservoir then available to it and its experience and the experience of the Qualified Operator in operating geothermal power plants) lead the Seller reasonably to conclude either that such wells are likely not to result in the production of additional geothermal fluid sufficient to justify the costs of such additional drilling or that the drilling of such additional wells poses material risks to the geothermal fluid production of any then existing wells. Any dispute under this Clause 6.17 may be referred to by any Party to an Expert for determination.

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Clause 7. Operating and Despatch Procedures

7.1 Operation:

(a) The Seller shall, during the Operating Period, operate the Plant in a manner consistent with Prudent Operating Practice and in compliance with Despatch Instructions with a view to making the Contracted Capacity available to KPLC and the Seller shall operate the Plant in accordance with the Operating Characteristics.

(b) During the Operating Period, KPLC shall, to the extent reasonably required by the Seller for the purpose of starting the Plant following a total Plant shutdown and provided that the Seller has delivered to KPLC all necessary applications reasonably required by KPLC and the Seller is otherwise in compliance with all requirements of KPLC applicable to the category of customers that includes the Seller, sell and deliver electrical energy to the Seller at the tariff set forth for such customers.

7.2 Notification: In accordance with the Operating and Despatch Procedures and any procedures agreed or determined under Clause 7.4, the Seller shall keep KPLC informed by regular daily declarations, together with prompt notifications of any changes (including notifications made during any Settlement Period reflecting Station impairment occurring during such Settlement Period), of the Declared Capacity and any impairment of the Operating Characteristics, provided that during Scheduled Maintenance of a Unit that Unit shall be deemed to be declared to be unavailable unless the Seller makes a contrary declaration. If the Seller fails to give a notification in respect of Declared Capacity when required to do so by the terms of the Operating and Despatch Procedures and any procedures agreed or determined under Clause 7.4, then the Declared Capacity shall be deemed to be equal to zero until such time as a notification of Declared Capacity subsequently is made in accordance with the Operating and Despatch Procedures and any such procedures agreed or determined under Clause 7.4.

7.3 Despatch Instructions: KPLC shall issue Despatch Instructions (with respect to a Unit or the Plant, as may be applicable) consistent with and within (i) the Functional Specification, (ii) the Declared Capacity prevailing at the relevant time, (iii) any declared impairment of the Operating Characteristics, and (iv) any Despatch constraints, and in accordance with the Operating and Despatch Procedures and any procedures agreed under Clause 7.4. KPLC shall seek to ensure that the Transmission System maintains and complies with and does not deviate from the System Characteristics.

7.4 Further Procedures:

(a) The Parties shall, not later than sixty (60) days prior to the Scheduled First Unit Commissioning Date, agree (in accordance with and consistent with the Operating and Despatch Procedures, all other terms of this Agreement, and any applicable Legal Requirements) such further procedures as shall be necessary in accordance with Prudent Operating Practice for the Despatch of the Plant and operational communications between the Parties. If the Parties are unable to agree on any specific procedures by date that is sixty (60) days prior to the Scheduled First

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Commissioning Date, these shall be referred to the Expert and, notwithstanding the provisions of Clause 19.2, the Expert shall be required to render its determination no later than thirty (30) days prior to the Scheduled First Unit Commissioning Date. While the Expert is adjudicating the matter, the Parties shall abide by KPLC procedures existing at the time.

(b) If circumstances subsequently arise which either Party deems to require changes in procedures, the Parties shall work together in good faith to establish procedures satisfactory to both Parties, giving due consideration to issues of safety and any economic effect on the Parties which might result from such revised procedures. If the Parties are unable to agree on any such procedures relating to matters of safety, these shall be referred to the Expert. While the Expert is adjudicating the matter, the Parties shall abide by the existing procedures, or if there are none applicable, applicable KPLC procedures existing at the time.

7.5 Over-generation: If, after the Full Commercial Operation Date, the Seller, during a period of four (4) or more consecutive Settlement Periods, delivers to KPLC energy in excess of the quantity specified in the Despatch Instructions (taking into account the despatch tolerance band specified in the Operating and Despatch Procedures), KPLC may, by notice to the Seller, require the Seller to comply with Despatch Instructions and if such excess delivery continues after such notice, the Seller shall not be entitled to receive the Energy Charges in respect of any excess delivery during the period after such notice notwithstanding any other provision in this Agreement to the contrary.

7.6 Under-generation: In the event that the Seller, having failed to notify KPLC of a reduction in Declared Capacity, delivers to KPLC over a period of two (2) or more consecutive Settlement Periods electricity which is less than the quantity required by a valid Despatch Instruction ("**under-generation**"), the Declared Capacity for each Settlement Period that is subsequent to, and consecutive with, such two (2) Settlement Periods (and that occurs prior to the Seller's notification to KPLC of such reduction in Declared Capacity) shall be deemed to be equal to the Net Electrical Output divided by half-an-hour. For the avoidance of doubt, under-generation will arise only when the quantity required by the Despatch Instruction is lower than the Declared Capacity.

7.7 Notice: Any notice given by KPLC under Clauses 7.5 and 7.6 shall be given through recorded telephone conversation or in writing and delivered to the Seller or by facsimile to the Seller at the address, and marked for the attention of the person, specified in Schedule 12 or such other address or person from time to time designated by the Seller and such notice shall be deemed to be received upon confirmation of uninterrupted transmission by a transmission report, provided that such notice shall be confirmed by letter sent by hand or post, but without prejudice to the original facsimile notice.

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Clause 8. Maintenance and Repair

8.1 The Seller's Obligation: The Seller shall maintain and repair the Plant in accordance with Prudent Operating Practice and the relevant Internationally Applicable Engineering Standards during the Operating Period. Notwithstanding any other provisions of this Agreement, any changes to the Internationally Applicable Engineering Standards after the Signature Date shall not require the Seller to alter or amend the Plant, unless expressly requested to do so by KPLC and consented to by the Seller, or required pursuant to a Legal Requirement.

8.2 Scheduled Maintenance Allowances: The Seller shall be entitled to withdraw each Unit from operation for scheduled maintenance and inspection in each Operating Year for periods not exceeding those specified in Schedule 3 or as may otherwise be agreed in accordance with Clause 8.3.

8.3 Scheduled Maintenance Programme: The programme of Scheduled Maintenance for each Operating Year shall be established as follows:

(a) the Seller shall not later than seventy (70) days before the start of each Operating Year submit to KPLC proposed dates for Scheduled Maintenance in that Operating Year;

(b) KPLC may within twenty (20) days after receiving the Seller's proposed dates notify the Seller of alternative dates which KPLC prefers, in which case the Parties shall consult and the Seller shall use reasonable endeavors to accommodate KPLC's proposal;

(c) not less than thirty (30) days before the start of the relevant Operating Year the Seller shall issue a final programme for Scheduled Maintenance in accordance with the agreement reached by consultation under Clause 8.3(b), provided that where no agreement was reached then KPLC's last notified alternative dates shall prevail.

8.4 Changes to Programme: The Parties shall cooperate and use their reasonable endeavors to accommodate any reasonable request by either Party to reschedule any Scheduled Maintenance in any Operating Year.

8.5 Maintenance Outages: Without prejudice to Clause 8.1 and subject to applicable notification requirements under the Operating and Despatch Procedures, nothing in this Agreement shall oblige the Seller to take a Unit out of operation at the start of the relevant period specified in the programme for Scheduled Maintenance nor prevent the Seller from returning a Unit to operation before the end of such period.

8.6 Other Outages: Nothing in this Agreement shall prevent the Seller from carrying out maintenance or repair of the Plant (and taking a Unit out of operation for this purpose) at times other than during Scheduled Maintenance where such maintenance or repair cannot, in accordance with Prudent Operating Practice, be deferred to the next date for Scheduled Maintenance or upon the occurrence of any outage. The Seller shall keep KPLC informed of the progress of the maintenance and the anticipated completion date and re-commissioning of the Unit(s) or Plant.

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8.7 KPLC Maintenance: KPLC shall, in accordance with Prudent Operating Practice, maintain and repair the KPLC Connection Facilities and the Transmission Interconnector, and shall use reasonable endeavors to coordinate the timing of such maintenance and repair with the Seller's Scheduled Maintenance. For the avoidance of doubt, nothing in this Clause shall limit KPLC's obligation to pay to the Seller Capacity Payments based on the full Capacity Charge Rate during any such KPLC maintenance periods.

8.8 Revision to Contracted Capacity: Not less than once during any Operating Year, the Seller, shall, subject to the provision of not less than three (3) business days advance written notice to KPLC, conduct a Contracted Capacity Test. Following a Contracted Capacity Test the Contracted Capacity shall be revised in accordance with the results of such test, provided that the Contracted Capacity as so revised may not be greater than one hundred per cent (100%) of the Contracted Capacity at the Signature Date or, if less, 100% of the Contracted Capacity determined pursuant to Clause 6.11.

8.9 Attendance at Contracted Capacity Test: KPLC shall be entitled to attend or send representatives to witness any Contracted Capacity Test conducted pursuant to Clause 8.8, Clause 8.10 or Clause 8.11 or, if it so elects, witness the results of such tests through the use of real-time remote access links showing the meter readings at the Station.

8.10 Additional Contracted Capacity Tests:

(a) In addition to the Contracted Capacity Tests provided for in Clause 8.8 and 8.10(b), KPLC also shall have the right to call for a Contracted Capacity Test as provided in Clause 8.11. The provisions of Clauses 8.8 and 8.9 shall apply to such Contracted Capacity Tests, *mutatis mutandis*.

(b) In addition to the Contracted Capacity Tests provided for in Clause 8.8 and Clause 8.10(a), any Party may, subject to the provision of not less than three (3) business days advance written notice to the other Party, at any time and from time to time call for additional Contracted Capacity Tests. The provisions of Clauses 8.8 and 8.9 shall apply to such Contracted Capacity Tests, *mutatis mutandis*.

(c) Notwithstanding the provisions of Clauses 8.8, 8.9 and 8.10, the Seller may repeat, as soon as practicable at a time to be agreed between the Parties, any test when such test was unsuccessful due to mechanical or electrical failure of the equipment, provided that the Seller gives notice to KPLC of the repetition of a Contracted Capacity Test no later than thirty (30) minutes after the conclusion of such unsuccessful test.

8.11 Availability Failure: If, within seventy-two (72) hours of an Availability Failure, KPLC calls for an additional Contracted Capacity Test pursuant to Clause 8.10(a) (which Contracted Capacity Test shall be carried out no later than three (3) business days after the Seller receives the notice in which KPLC calls for such test) then (i) for the period beginning from the Settlement Period within which such Availability Failure occurred and ending when the Contracted Capacity has been agreed or determined pursuant to the results of the Contracted Capacity Test, the Contracted Capacity shall be equal to the Net Electrical Output (in MWh)

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delivered by the Seller during the Settlement Period in which the Availability Failure occurred divided by half hour and (ii) for each Settlement Period thereafter the Contracted Capacity shall be deemed revised in accordance with Clause 8.8. .

8.12 Failure to Conduct Test: If the Seller fails to conduct a Contracted Capacity Test called by KPLC pursuant to Clause 8.10(a), Clause 8.10(b) or Clause 8.11 (other than, in each case, due to Force Majeure affecting either the Seller or KPLC or a default by KPLC which prevents the Seller from undertaking such Contracted Capacity Test), then the value of the Contracted Capacity (in MW) shall from the time the notice calling for such test was issued until a Contracted Capacity Test is conducted, be deemed to be equal to fifty per cent (50%) of the Net Electrical Output (in MWh) delivered by the Seller in the twenty-four (24) hours preceding KPLC's notice calling for such test divided by the number of hours during such twenty-four (24) hour period in which the Seller actually delivered energy to KPLC. Where the Seller fails to conduct a Contracted Capacity Test due to Force Majeure affecting the Seller, the Seller shall within four (4) Settlement Periods occurring after the Settlement Period during which the Force Majeure occurs notify KPLC of a reduction in the Declared Capacity and if the Seller fails to provide such notice then the value of the Contracted Capacity (in MW) shall, from the time the notice calling for such Contracted Capacity Test was issued until a Contracted Capacity Test is conducted, be deemed to be equal to fifty per cent (50%) of the Net Electrical Output (in MWh) delivered by the Seller in the twenty-four (24) hours preceding KPLC's notice calling for such test divided by the number of hours during such twenty-four (24) hour period in which the Seller actually delivered energy to KPLC. Where the Seller fails to conduct a Contracted Capacity Test due to Force Majeure affecting KPLC or a default by KPLC which prevents the Seller from undertaking such Contracted Capacity Test, the Seller shall accordingly notify KPLC and the Contracted Capacity (in MW) shall, from the time the notice calling for such Contracted Capacity Test was issued and until the Force Majeure or the default by KPLC (as the case may be) is removed, be deemed to be equal to the Contracted Capacity prevailing immediately before such notice calling for a Contracted Capacity Test was issued.

8.13 Disputes: Any Dispute as to the results of a Contracted Capacity Test shall be referred to an Expert. During the period that such Dispute exists, (i) the Contracted Capacity shall be that which KPLC reasonably deems as prevailing immediately prior to the notice calling for such test and (ii) Capacity Payments for such period shall be calculated using such Contracted Capacity ("**Deemed Payment**"). If the Contracted Capacity determined by the Expert is different from that used during the period the Dispute existed, then the Seller shall, using the Contracted Capacity determined by the Expert, calculate the Capacity Payment for such period ("**Correct Payment**") and appropriate adjustments shall be made to the next following invoice to enable Seller to recover from KPLC or to pay to KPLC (as the case may be) moneys equal to the difference between the Correct Payment and the Deemed Payment, including interest at the Default Rate on such difference.

8.14 Low Availability; Low Threshold Availability:

(a) Capacity Restoration: During the Operating Period, and subject to Clause 8.14(e) below, if the Average Availability calculated for any period of three (3) consecutive calendar months is less than eighty per cent (84%) of the lesser of the Contracted Capacity at the Signature Date and the Contracted Capacity determined pursuant to

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Clause 6.11 ("**Low Availability**"), then KPLC shall be entitled to provide notice to the Seller (without prejudice to the other rights of KPLC under Clause 8.14(d)). Within one month after it receives such notice the Seller shall (i) provide to KPLC a written programme setting forth the various steps (and the timing of such steps) that the Seller will undertake to restore Availability to within 90% of the Contracted Capacity as at the Signature Date or, if less, the Contracted Capacity determined pursuant to Clause 6.11 and (ii) commence the implementation of such programme.

(b) Threshold Availability: During the Operating Period, and subject to Clause 8.14(e) below, if the Average Availability for any period of four (4) consecutive calendar months occurring immediately after the last day of any period of three (3) consecutive calendar months during which Low Availability was established is less than the Threshold Availability, KPLC shall have the right by notice to the Seller to require the Seller to promptly give a notice of termination of the Operating and Maintenance Agreement to the operator thereunder and require the Seller as soon as practicable to enter into a new Operating and Maintenance Agreement with a different Qualified Operator.

(c) Replacement of O&M Agreement: The Seller shall provide to KPLC a copy of each Operating and Maintenance Agreement entered into as a result of KPLC's exercise of its rights under Clause 8.14(b) above.

(d) Capacity Payment Reduction for Chronic Low Availability: Notwithstanding the implementation by the Seller of the remedial programme pursuant to Clause 8.14.(a) and subject to Clause 8.14(e) below, if during the Operating Period, the Average Availability in any period of five (5) consecutive months is less than eighty-nine per cent (89%) (such condition, "**Chronic Low Availability**") of the lesser of the Contracted Capacity at the Signature Date and the Contracted Capacity determined pursuant to Clause 6.11, then the Capacity Payments for each month during such five (5) month period and each consecutive month subsequent to such five (5) month period during which Average Availability is less than eighty-four per cent (89%) shall be adjusted in accordance with paragraph 4 of Part A of Schedule 5.

(e) Calculations: For purposes of this Clause 8.14 and the calculations of Average Availability used herein, Average Availability shall be calculated for any period as if any Availability Failure that occurred during such period as a result of any of the following did not occur: (i) the inability or failure of the Steam Field Facilities to provide sufficient geothermal fluid flow to enable the Plant to deliver energy to KPLC in the quantity specified in a valid Despatch Instruction delivered by KPLC in accordance with the terms of this Agreement which geothermal fluid flow insufficiency is not due to a failure by the Seller to perform its obligations under Clause 6.17 or (ii) Force Majeure.

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Clause 9. Sale and Purchase of Electricity.

9.1 Purchases prior to the Full Commercial Operation Date: Prior to the Full Commercial Operation Date, the Seller shall sell and KPLC shall purchase the Net Electrical Output in accordance with Clause 6.12(a).

9.2 Sale and Purchase on and after the Full Commercial Operation Date: On and after the Full Commercial Operation Date, the Seller shall sell and KPLC shall purchase in accordance with this Clause 9 all the Net Electrical Output delivered in accordance with Despatch Instructions.

9.3 Energy Charges: KPLC shall pay the Seller Energy Charges ascertained in accordance with Paragraph 1 of Part A of Schedule 5 in respect of all Net Electrical Output delivered in accordance with Despatch Instructions.

9.4 Delivery: Electrical energy sold and purchased under this Agreement shall be delivered by the Seller at the Delivery Point.

9.5 Metered Quantities: The quantities of Net Electrical Output delivered to KPLC shall be metered and determined in accordance with the provisions of Clause 11.

9.6 Capacity Payments:

9.6.1 KPLC shall, in respect of the month in which the Interim Commercial Operation Date occurs and for each month (or part thereof) occurring thereafter and prior to the Full Commercial Operation Date, pay the Seller for the Interim Contracted Capacity (with adjustments reflecting Actual Monthly Availability) in accordance with paragraph 2 of Part A of Schedule 5, provided that (i) if the Interim Commercial Operation Date occurs other than on the first (1st) day of the month then the Interim Capacity Payment for that month shall be pro-rated for the number of days from the Interim Commercial Operation Date until the last day of that month and (ii) in the month in which the Full Commercial Operation Date occurs, the Interim Capacity Payment for that month shall be pro-rated for the number of days from beginning of that month until the Full Commercial Operation Date.

9.6.2 KPLC shall, in respect of the month in which the Full Commercial Operation Date occurs and for each month thereafter during the Term, pay the Seller for the Contracted Capacity (with adjustments reflecting Actual Monthly Availability) in accordance with paragraph 3 of Part A of Schedule 5, provided that if the Full Commercial Operation Date occurs other than on the first (1st) day of the month then the Capacity Payment for that month shall be pro-rated for the number of days from the Full Commercial Operation Date until the last day of that month.

9.7 Further Provisions: The further provisions of Schedule 5 shall take effect for the purposes of determining the amounts from time to time payable by KPLC by way of Energy Charges and Capacity Payments.

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9.8 Despatch: KPLC intends to Despatch the Plant according to economic merit order provided that it shall have no liability under this Agreement or otherwise if it fails to do so.

9.9 Change in Tax Increasing Seller Costs:

(a) Schedule 11 lists all Taxes in effect at the Signature Date that are then applicable or thereafter would become applicable to the Seller in respect of the Seller's activities under this Agreement.

(b) If after the Signature Date there is a Change in Tax which gives rise to an increase or decrease in the level of costs incurred or to be incurred by the Seller in the design, development, exploration, drilling, construction, operation, maintenance or financing of the Plant either Party may by notice to the other Party delivered within six (6) months of the Change in Tax occurring seek an adjustment to the Energy Charges and/or Capacity Payments which will have the effect of placing the Seller in the same financial position as it would have been in had the Change in Tax not occurred.

(c) If a Party provides the notice referred to in Clause 9.9(b), the Parties shall meet promptly and use reasonable good faith efforts to come to an agreement upon an adjustment. If the Parties shall fail within thirty (30) days after such notice to agree upon an adjustment either Party may refer the matter to an Expert for determination in accordance with Clause 19.2. Where pursuant to this Clause 9.9(c) an adjustment has been agreed by the Parties or determined by an Expert the Parties shall use their best endeavours to obtain approval of such adjustment from the Energy Regulatory Commission. If the Energy Regulatory Commission does not approve the adjustment within ninety (90) days of such adjustments being agreed by the Parties or determined by the Expert then KPLC shall not be liable to the Seller to pay such adjusted amounts and the Seller shall be entitled to pursue its rights under the GOK Letter to obtain payment of such amounts. Alternatively, if the Energy Regulatory Commission approves the adjustment of the Energy Charges or Capacity Payments and such adjustment results in KPLC having to make payments to the Seller in relation to additional Energy Charges or Capacity Payments that result in the amounts that KPLC is not able to pass through to its customers with respect to such adjustment exceeding US$100,000 in a single year or US$200,000 cumulatively over a period of three (3) consecutive years, then KPLC shall not be liable to the Seller to pay such excess amounts and the Seller shall be entitled to pursue its rights under the GOK Letter to obtain payment of such excess amounts.

(d) In the event that the Seller elects to pursue its rights under the GOK Letter and is not compensated by GOK under the terms of the GOK Letter for the amounts referred to in Clause 9.9(c) within the time period contemplated in the GOK Letter, the Seller, by written notice of thirty (30) days to KPLC, may terminate this Agreement or determine to continue to perform its obligations under this Agreement and in such case shall confirm that such Change in Tax is no longer a Force Majeure event pursuant to Clause 15.1 subject to the Term being extended by such period to allow for the full recovery by the Seller for additional costs

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incurred by the Seller or projected to be incurred by the Seller over the remainder of the original Term. In the event of a dispute between the Parties as to the required period of extension of the Term the matter will be referred to an Expert pursuant to Clause 19.2

9.10 Change in Law Affecting Seller's Costs:

(a) If there is a Change in Law (other than a Change in Tax) of the type referred to in subclause (i) of the definition of the term "Change in Law" (other than those previously compensated for pursuant to the operation of this Clause 9.10) then either Party may by notice to the other Party delivered no later than six (6) months after the date the change occurs seek to have the Parties determine a course of action for the purpose of mitigating the financial impact of such Change in Law.

(b) If a Party provides the notice referred to in Clause 9.10(a), the Parties shall meet promptly for the purpose of agreeing a course of action that will mitigate fully the financial impact of such Change in Law. Such course of action may include, but shall not be limited to, (i) the Parties agreeing to an adjustment to the Energy Charges and/or Capacity Payments that will have the effect of placing the Seller in the same financial position as it would have been in had such Change in Law not occurred, (ii) KPLC providing reasonable assistance in discussions with GOK and other relevant parties, and (iii) the Parties making all applications for modifications to the law, exemptions, or the like as may be required to mitigate the impact of such Change in Law. Once a course of action is agreed by the Parties, the Parties shall use their respective best endeavours to obtain the approval of the Energy Regulatory Commission (where such approval is required) to the agreed course of action, including the approval of the Energy Regulatory Commission of (x) any adjustments to the Capacity Payments or Energy Charges or one off payments as may be agreed by the Parties and (y) the pass through of such costs by KPLC to its customers.

(c) If within forty-five (45) days of notification of the Change in Law, the Parties have not agreed an appropriate course of action or having agreed have failed to obtain the approval of the Energy Regulatory Commission (where such approval is required) to the agreed course of action, the Seller will be entitled to pursue its rights under the GOK Letter.

(d) In the event that the Seller elects to pursue its rights under the GOK Letter and the Seller has not been fully compensated by GOK under the terms of the GOK Letter for the impact of such Change in Law within the time period contemplated by the GOK Letter, the Seller, by written notice to KPLC, either may terminate this Agreement or determine to continue to perform its obligations under this Agreement and in such case shall confirm that such Change in Law is no longer a Force Majeure event pursuant to Clause 15.1, subject to the Term being extended by such period to allow for the full recovery by the Seller for additional costs incurred by the Seller or projected to be incurred by the Seller over the remainder of the original Term. In the event of a dispute between the Parties as to the required

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period of extension of the Term the matter will be referred to an Expert pursuant to Clause 19.2.

9.11 Environmental Attributes: Any Environmental Attributes recognized under any international, national or other laws or regulations, associated with the ownership or generation of power from the Plant shall be shared between KPLC and [].

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Clause 10. Invoicing and Payment.

10.1 Invoices: The Seller shall prepare and issue to KPLC at the end of each month starting from the month in which: (a) the Commissioning for the First Unit commences, an invoice in respect of Energy Charges; (b) the Interim Commercial Operation Date occurs, an invoice in respect of Capacity Payments and Energy Charges; and (c) the Full Commercial Operation Date occurs, an invoice in respect of Capacity Payments and Energy Charges due for such month and any value added tax with respect thereto.

10.2 Content of invoice: Each invoice prepared by the Seller shall contain the information specified in Part B of Schedule 5. If such invoice does not contain in all material respects the information so specified or does not contain in all material respects the supporting documentation specified in Part B of Schedule 5, KPLC shall be entitled, no later than five (5) days after receipt, to notify the Seller that such invoice is not in the form of invoice attached to Part B of Schedule 5 or is not accompanied by all the supporting documentation specified in Part B of Schedule 5 and shall specify in such notice the nature of the non-conformity and/or what supporting documentation is missing. The Seller shall provide any missing supporting documents or information in response to this notice at least five (5) business days before the payment due date of the invoice. To the extent the Seller does not take such action, non-payment by KPLC of the portion of the invoice that is affected by the deficiency in the invoice or the supporting documentation shall be deemed to be the subject of a bona fide dispute for the purposes of Clause 10.5 until such time as the Seller issues an invoice which contains all material information specified in Part B of Schedule 5 and is accompanied by all material supporting documentation required thereby. Any dispute under this Clause 10.2 shall be referred to an Expert for determination and, notwithstanding the provisions of Clause 19.2, the Expert shall be required to render its determination no later than twenty-one (21) days of the Expert's appointment.

10.3 Payment due date: Energy Charges, Capacity Payments and any other amounts payable by KPLC hereunder shall be due and payable on the thirtieth (30th) day after the date of delivery of the invoice except where such thirtieth (30th) day is not a business day in which event the due date shall be the next following business day.

10.4 Late payment interest: Subject to the provisions of Clause 10.5, any amount properly due from KPLC to the Seller under this Agreement and remaining unpaid after the due date for payment shall bear interest at the Default Rate from and including the date when the amount in question was due until but excluding the date when it is received by the Seller, accruing from day to day and compounded quarterly.

10.5 Disputed payments: If any sum or part of any sum shown on an invoice rendered by the Seller is disputed in good faith by KPLC by notice to the Seller then payment of any undisputed sums or parts shall not be withheld and shall be paid to the Seller when due. KPLC shall be entitled to withhold payment of any disputed sums (as long as it has provided notice of such dispute to the Seller), provided that if any disputed sum is subsequently agreed or determined by an Expert to be due to the Seller then interest at the Non-Default Rate shall be payable on such disputed sum to the Seller, from and including the date when the sum in question was due until, but excluding, the date when it is received by the Seller accruing from day to day and compounded quarterly.

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10.6 Set-offs: All payments under this Agreement shall be made free and clear from, and without set-off, deduction or withholding of any kind (including on account of any form of taxes) except that (a) KPLC shall be entitled to deduct and withhold any sum, to the extent that KPLC is duly appointed as an agent for the Seller in accordance with any Legal Requirements to pay any monies due and payable by the Seller and (b) KPLC shall be entitled from time to time, to the extent unpaid, to set-off, deduct and withhold from the payment of any invoice, amounts agreed to be due or determined to be due and payable to KPLC from the Seller in accordance with Clause 6.13(c), Clause 8.13, or Clause 8.14.

10.7 The Seller's account: Payment of any sum payable under Clause 10 shall be made to the account of the Seller at such bank as may be notified by the Seller to KPLC from time to time provided that if such bank is located outside the Republic of Kenya, the Seller shall reimburse KPLC for all banking charges payable by KPLC in effecting such payment.

10.8 Currency for payments: Unless otherwise agreed by the Parties in writing, all Energy Charges, Capacity Payments, and other amounts payable by KPLC hereunder shall be invoiced and payable solely in United States Dollars.

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Clause 11. Metering

11.1 Obligations: The Seller shall, in accordance with Prudent Operating Practice, supply and install, test and commission the Metering System. Upon satisfactory completion of the commissioning and testing of the Metering System, the Seller shall procure the issue of a certificate of the Independent Engineer addressed to KPLC and the Seller, certifying, without any qualification, that the Metering System has been supplied, installed, tested and commissioned in accordance with Part D of Schedule 2. KPLC shall be entitled to attend and witness the testing and commissioning of the Main Metering Equipment; provided, however, that if KPLC does not attend and witness such test (after having been given forty eight (48) hours notice by the Seller thereof) then KPLC shall be deemed to have attended and witnessed such test and KPLC shall not be entitled to raise any objection to such test or its results). Thereafter, the Seller shall transfer to KPLC as beneficial owner (and without any encumbrances) all rights, title and interest in the Back-Up Metering Equipment (together with all warranties and guarantees applicable thereto) and upon such transfer KPLC shall own the Back-Up Metering Equipment and in accordance with Prudent Operating Practice shall maintain and operate the same in accordance with the procedures contained in Part B of Schedule 4. The Seller shall own the Main Metering Equipment and in accordance with Prudent Operating Practice shall maintain and operate the same in accordance with the procedures contained in Part B of Schedule 4.

11.2 Defective Metering Equipment: Where it is agreed or determined that any part of the Metering System is defective (including operating outside the relevant limits of accuracy in Part D of Schedule 2), then such part shall be repaired, adjusted or replaced at the cost of the person responsible for maintaining the same.

11.3 Meter Sealing: The Seller shall ensure that the Metering System shall comply with the specifications set out in Part D of Schedule 2 and shall be jointly sealed. Only KPLC personnel shall break the seals on the Main Metering Equipment and the Back-Up Metering Equipment. KPLC shall give the Seller at least twenty-four (24) hours advance notice of the breaking of seals on any part of the Main Metering Equipment and the Back-Up Metering Equipment; provided, however that no such notice will be necessary when the breaking of a seal is necessitated by the occurrence of an Emergency.

11.4 Meter Tampering: Subject to Clause 11.3, KPLC and the Seller undertake not to tamper or otherwise interfere with any part of the Metering System in any way and shall use all reasonable endeavors to ensure that the Metering System is not tampered with by any other person. Where it is established that the Main Metering Equipment has been tampered or interfered with, or is defective:

(a) the quantity measured or recorded shall be that measured or recorded by the Back-Up Metering Equipment or failing that, by any secondary metering installed by either Party; and

(b) if there is no Back-Up Metering Equipment or secondary metering, or it is also established to have been tampered with, interfered with or is defective, the quantity shall be determined by agreement between the Parties, or failing such agreement, as determined by an Expert.

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11.5 Metering Procedures: The Parties shall adopt and implement the procedures and arrangements set out in Part B of Schedule 4 for reading, testing, adjusting and re-calibrating the Metering System.

11.6 Disputes: Any Dispute arising under this Clause 11, Part D of Schedule 2 or Part B of Schedule 4 shall be referred to an Expert. During the period that such a Dispute exists, the procedures that existed immediately prior to such Dispute coming into existence shall prevail.

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Clause 12. Insurance

12.1 Seller's Insurance Requirements: The Seller shall:

(a) at its sole cost and expense, obtain and maintain, in full force and effect, for the periods specified in Schedule 8 the insurance policies set forth in Schedule 8, in the amounts stipulated (provided that, having regard to the level of cover generally taken out by international independent geothermal power producers acting in accordance with Prudent Operating Practice, such insurances are available on commercially reasonable terms), with reputable insurance companies. Notwithstanding the foregoing, the Parties agree that Schedule 8 sets forth minimum requirements and that the foregoing, therefore, shall not preclude the Seller from increasing the amount of coverage obtained under any type of insurance coverage referred to in Schedule 8 above the levels set forth in Schedule 8, adding insureds to such policies in addition to the insureds specifically referred to in Schedule 8 for such policies, effecting additional types of insurance coverage in addition to those specifically referred to in Schedule 8, or otherwise taking any other steps in connection with the insurance that is not in contravention of the requirements of Schedule 8; provided, however, the costs, expenses, charges and fees of such insurance (whether incurred directly or indirectly) shall not be borne by or be payable by KPLC;

(b) as soon as practicable after request by KPLC, provide to KPLC copies of all policies effected by it and evidence that the premiums then due and payable thereunder have been paid;

(c) as soon as practicable after request by KPLC, provide access to KPLC or its representatives to its offices during office hours to inspect the original policies;

(d) unless KPLC otherwise agrees, apply the proceeds (excluding any proceeds relating to business interruption and delay in start-up insurance) of all insurance claims relating to damage to the Plant incurred prior to the commencement of the twentieth (20th) Operating Year, in repairing and restoring the Plant. The Seller at its option may, but shall not be obligated to, apply the proceeds of all insurance claims relating to damage to the Plant incurred after the commencement of the twentieth (20th) Operating Year, in repairing and restoring the Plant; and

(e) obtain waivers of rights of subrogation against KPLC in a form and manner satisfactory to KPLC.

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Clause 13. Seller Performance Security

(a) KPLC shall be entitled to take all steps necessary to obtain payment of the full amount of the Seller Performance Security upon the occurrence of any of the following events:

(i) (x) the Seller fails to deliver the Reservoir Exploration Period Notice prior to the end of the Reservoir Exploration Period as required by Clause 5.1.2 or (y) prior to the end of the Reservoir Exploration Period the Seller delivers the Reservoir Exploration Period Notice required by Clause 5.1.2, such notice states that the Seller does not wish to proceed with performance of the Confirmation Period Works because the Reservoir is not a viable resource, and KPLC has reasonably determined, in consultation with the Geothermal Board of Consultants, that the Seller's determination is solely due to Seller's failure to diligently perform the Reservoir Exploration Works during the Reservoir Exploration Period; or

(ii) (x) the Seller fails to deliver the Reservoir Confirmation Period Notice prior to the end of the Reservoir Confirmation Period as required by Clause 5.2.2 or (y) prior to the end of the Reservoir Confirmation Period the Seller delivers the Reservoir Confirmation Period Notice stating that the Seller does not wish to proceed with performance of the Construction Period Works and such determination is accepted by the Geothermal Board of Consultants.

KPLC acknowledges and agrees that its receipt of payment under the Seller Performance Security upon the occurrence of the events described in Clause 13(a)(i) or Clause 13(a)(ii) shall be KPLC's sole and exclusive remedy against the Seller for all direct and indirect losses, costs, expenses and liabilities incurred or suffered by KPLC in connection therewith or under this Agreement.

(b) In addition to the foregoing, KPLC also shall be permitted to draw on the Seller Performance Security as provided in Clause 6.15 and Clause 6.16.

(c) KPLC shall promptly, and in no event later than five (5) business days, return the Seller Performance Security to the Seller, and KPLC shall not have any right to make demand thereon, upon the earliest to occur of:

(i) the date the Seller or KPLC terminates this Agreement pursuant to the last sentence of Clause 5.1.5 after the Seller has delivered the Reservoir Exploration Period Notice stating that the Seller does not wish to proceed with performance of the Confirmation Period Works because the Reservoir is not a viable resource and that decision either has been accepted by the Geothermal Board of Consultants or the Geothermal Board of Consultants has failed to provide its decision within the required period specified in Clause 5.1.5;

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(ii) the date the Seller or KPLC terminates this Agreement pursuant to the last sentence of Clause 5.2.6 after the Seller has delivered the Reservoir Confirmation Period Notice stating that the Seller does not wish to proceed with performance of the Construction Period Works because the Reservoir is not a viable resource and that decision either has been accepted by the Geothermal Board of Consultants or the Geothermal Board of Consultants has failed to provide its decision within the required period specified in Clause 5.2.6; and

(iii) the Full Commercial Operation Date, except that if the Seller has incurred Daily Liquidated Damages Sums, KPLC shall be entitled to retain the Seller Performance Security until the date that KPLC draws under the Seller Performance Security pursuant to Clause 6.15 for payment of such Daily Liquidated Damages Sums.

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Clause 14. Undertakings and Warranties of the Parties

14.1 Undertakings of the Seller: The Seller undertakes:

(a) to comply in all material respects with all Legal Requirements applicable to its performance of its obligations under the PPA Agreements to which it is a party;

(b) to apply for and use reasonable endeavours to obtain (prior to the date required if the Seller is not to be in breach of any material Legal Requirement) and to keep in full force and effect, all Authorisations that are material to the development, construction, operation, and maintenance of the Plant;

(c) to indemnify KPLC against all reasonable costs incurred by KPLC in the discharge of its obligations under Clause 14.3(b);

(d) to secure that the Station is constructed in accordance with the Functional Specification in all material respects, and to operate and maintain the Plant in all material respects in accordance with the terms of this Agreement and Prudent Operating Practice, provided that, and without prejudice to KPLC's rights under Clause 8.14 and Clause 16.1(b), the existence of the Capacity-related issues addressed in Clause 8.14 shall be deemed not to be a breach of the Seller's obligations under this Clause 14.1(d);

(e) at the times required by the Financing Agreements issue such number of fully paid shares or other securities constituting shareholders funds on its balance sheet as shall in aggregate at the Full Commercial Operation Date amount to not less than twenty five per cent (25%) of the total investment made by the Seller for the purposes of this Agreement as at such date;

(f) on the Signature Date, to provide to KPLC certified true copies of resolutions of its board of directors approving the PPA Agreements to which it is a party and thereafter as soon as practicable after any amendments thereto are entered into and if requested by the Seller, provide to KPLC certified true copies of resolutions of its board of directors approving such amendments;

(g) the audited accounts of the Seller: (i) shall be prepared in accordance with Applicable Accounting Standards (as defined below) consistently applied and (ii) shall fairly present in all material respects in accordance with Applicable Accounting Standards the financial condition and results of operation of the Seller as at the dates on which they were drawn up and for the relevant period then ended. For the purposes of the foregoing, "**Applicable Accounting Standards**" means the International Financial Reporting Standards applicable to the accounts to be drawn up by the Seller. Within thirty (30) days of annual audited accounts of the Seller being completed, the Seller shall provide to KPLC a copy thereof; and

(h) to make available to KPLC a copy of the Operating and Maintenance Agreement within sixty (60) days after the Full Commercial Operation Date.

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14.2 Representations and Warranties of the Seller: The Seller represents and warrants on the date hereof that:

(a) the Seller is a limited liability company duly organised and validly existing under the laws of Kenya and has all requisite legal power and authority to execute the PPA Agreements to which it is a party and to carry out the terms, conditions and provisions hereof;

(b) the PPA Agreements to which it is a party constitute valid, legal and binding obligations of the Seller, enforceable against the Seller in accordance with their terms except as the enforceability may be limited by applicable laws affecting creditors' rights generally or general principles of equity;

(c) there are no actions, suits or proceedings pending or, to the Seller's knowledge, threatened, against the Seller before any court or administrative body or arbitral tribunal that would materially adversely affect the ability of the Seller to meet and carry out its obligations under the PPA Agreements to which it is a party;

(d) the execution, delivery and performance by the Seller of the PPA Agreements to which it is a party have been duly authorised by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other material agreement or material instrument to which it is a party or by which it or its property may be bound; and

(e) all action required to authorise the execution, delivery and performance by the Seller of the PPA Agreements to which it is a party and the transactions contemplated hereby have been taken and are in full force and effect.

14.3 Undertakings of KPLC: KPLC undertakes:

(a) to comply in all material respects with all Legal Requirements applicable to its performance of its obligations under the PPA Agreements to which it is a party;

(b) to use reasonable endeavours to assist the Seller in obtaining on a timely basis and renewing (as required under the Appraisal Programme and the Construction Programme, as applicable) and to use reasonable endeavours to assist the Seller in renewing (to the extent that KPLC can so do) all Authorisations required in connection with the Project, the PPA Agreements, the Project Agreements, and the Financing Agreements, provided that it shall first be necessary for the Seller to demonstrate that it has first diligently attempted to obtain such Authorisation and if the processes required by such duty of diligence have not been exhausted, such processes have been and are still being diligently pursued by the Seller;

(c) to the extent there is a Change in Law affecting the Seller, to use reasonable endeavors to assist the Seller in obtaining all Authorisations necessary for the construction, continued operation or maintenance of the Plant; and

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(d) on the Signature Date, provide to the Seller certified true copies of resolutions of its board of directors approving this Agreement and all related agreements to which KPLC is a party, and thereafter as soon as practicable after any amendments thereto are entered into and if requested by the Seller, provide to the Seller certified true copies of resolutions of its board of directors approving such amendments;

14.4 Representations and Warranties of KPLC: KPLC represents and warrants as of the date hereof that:

(a) KPLC is a limited liability company duly organised and validly existing under the laws of Kenya and it has all requisite legal power and authority to execute the PPA Agreements to which it is a party and to carry out the terms, conditions and provisions hereof;

(b) all action required to authorise the execution, delivery and performance by KPLC of the PPA Agreements to which it is a party and the transactions contemplated hereby have been taken and are in full force and effect;

(c) the PPA Agreements to which it is a party constitute valid, legal and binding obligations of KPLC, enforceable in accordance with the terms hereof except as the enforceability may be limited by applicable laws affecting creditors' rights generally or general principles of equity;

(d) other than those actions, suits or proceedings disclosed to the Seller in a formal disclosure letter delivered to the Seller on the Signature Date there are no actions, suits or proceedings pending or, to KPLC's knowledge, threatened, against or affecting KPLC before any court or administrative body or arbitral tribunal which might materially adversely affect the ability of KPLC to meet and carry out its obligations under the PPA Agreements to which it is a party;

(e) the execution, delivery and performance by KPLC of the PPA Agreements to which it is a party have been duly authorised by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound; and

(f) the audited accounts of KPLC delivered to the Seller on or prior to the Signature Date for the two (2) annual financial periods of KPLC most recently ended (i) have been prepared in accordance with Applicable Accounting Standards (as defined below) consistently applied and (ii) fairly present in accordance with Applicable Accounting Standards the financial condition and results of operation of KPLC as at the dates on which they were drawn up and for the relevant period then ended. For the purposes of the foregoing, "**Applicable Accounting Standards**" means the International Financial Reporting Standards applicable to the accounts to be drawn up by KPLC. Within thirty (30) days of annual accounts of KPLC being published, KPLC shall provide to the Seller a copy thereof.

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Clause 15. Force Majeure

15.1 Events of Force Majeure: For the purposes of this Agreement "**Force Majeure**" means, except as provided in Clause 15.2, any event or circumstance which affects either Party (or any of its contractors or subcontractors) in a manner that prevents or delays that Party from performing or fulfilling any or all of its obligations under this Agreement or relating to the Plant and is not within the reasonable control (directly or indirectly) of the Party affected (or any such contractor or subcontractor), and such event or circumstance or its effects cannot be prevented, avoided or removed by such Party (or any such contractor or subcontractor) acting in accordance with Prudent Operating Practice. "Force Majeure" shall include (i) each of the following events and circumstances to the extent that they satisfy the foregoing requirements and (ii) without limitation of such events and circumstances, an Insured Event to the extent provided in Clause 15.7:

(a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, piracy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;

(b) an act of God (including lightning, fire, earthquakes, volcanic activity, floods, storms, cyclones, typhoons, or tornadoes);

(c) epidemics or plagues;

(d) explosions or chemical contamination (other than resulting from an act of war);

(e) labour disputes including strikes, works to rule, go-slows or lockouts that extend beyond the Plant or are widespread or nationwide; and

(f) any Political Event.

15.2 Exclusions from Force Majeure: The following events or circumstances shall not constitute Force Majeure:

(a) late delivery to the Seller of machinery, equipment, materials, spare parts or consumables (except: (i) where such late delivery is due to the action or inaction of any Governmental Authority after the Seller has acted prudently and allowed a reasonable time for all required processes or (ii) where the late delivery itself is due to Force Majeure);

(b) a delay in the performance of any contractor or subcontractor (other than, in the case of the Seller, KPLC and GOK) (except where such delay is itself due to Force Majeure affecting any contractor or subcontractor);

(c) normal wear and tear of materials and equipment;

(d) breakdowns of equipment (except where such breakdown is due to Force Majeure);

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(e) System Interruption (except where such System Interruption is due to Force Majeure);

(f) subject to Clause 15.6(b), unavailability of funds, unless such unavailability of funds is due to a KPLC Funding FM Event; and

(g) any failure to perform obligations under this Agreement to the extent that such failure results from or is caused by insufficient Steam Field Facilities or by adverse Reservoir conditions, including insufficiency of reserves, prevailing within the Reservoir (including insufficient capacity in the Steam Field Facilities) that would have been discovered by a commercially reasonably and prudent investigation of such lands and the Reservoir conducted prior to the completion of the Reservoir Confirmation Period.

15.3 Effect of Force Majeure:

15.3.1 Subject to Clause 15.6, if a Party is prevented from or delayed in performing an obligation hereunder by reason of Force Majeure such Party shall:

(i) be excused from performance of such obligation and the consequences of its failure to perform such obligation, and such Party shall not be construed to be in default of such obligation hereunder for so long as the failure to perform such obligation shall be due to Force Majeure;

(ii) notify the other Party promptly after becoming aware of the occurrence of such event; and

(iii) use all reasonable endeavors to overcome the consequences of the event.

15.3.2 In the case of a KPLC Funding FM Event, KPLC shall promptly notify the Seller of its inability to make a payment due to the occurrence of the KPLC Funding FM Event and in any event, no later than the fifth (5th) business day after the payment due date of any unpaid invoice pursuant to Clause 10.3, such notification to be made substantially in the form attached as Schedule 13.

15.4 Extensions for Force Majeure:

(a) Where the Seller (or any contractor or sub-contractor of the Seller of any tier) is as a result of Force Majeure delayed in, or prevented from, performing any of its obligations prior to the occurrence of the Full Commercial Operation Date, all Long Stop Dates, the Required Full Commercial Operation Date, the Target Interim Commercial Operation Date, the ending dates for the Reservoir Exploration Period and the Reservoir Confirmation Period, and the milestone dates specified in Part A of Schedule 6, in each case, that have not occurred prior to the occurrence of the Force Majeure shall be extended to new dates which reflect the delay in achieving such Long Stop Dates, Required Full Commercial Operation Date, the Target Interim Commercial Operation Date, ending dates, or milestone dates, respectively, that results from such Force Majeure.

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(b) If Force Majeure affecting the Seller (other than a Political Event affecting the Seller) occurs after the Full Commercial Operation Date, the Term shall be extended by a period equal to the lesser of (x) the period the Seller is affected by such Force Majeure and (y) a period of three hundred and sixty (360) days, provided that to the extent that the Seller receives Capacity Payments during the period the Seller is affected by such Force Majeure the amount of such Capacity Payments (if any) paid or payable to the Seller during the extended Period shall be reduced by the amount of such partial Capacity Payments.

15.5 Force Majeure Termination:

(a) If Force Majeure continues for more than two-hundred seventy (270) consecutive days, the Parties shall meet promptly in good faith after such two-hundred seventy (270) day period to discuss the nature of the Force Majeure and the steps being taken by the affected Party to remedy such Force Majeure and with a view to determining mutually acceptable terms for continuing this Agreement notwithstanding the effects of the Force Majeure.

(b) If the Parties are unable to agree upon mutually acceptable terms for continuing this Agreement notwithstanding the effects of the Force Majeure within ninety (90) days after the date of the Parties' first meeting pursuant to Clause 15.5(a), then either Party shall be entitled to terminate this Agreement by giving written notice of not less than sixty (60) days to the other Party; provided that in the case of Force Majeure affecting the Seller after the Full Commercial Operation Date, KPLC shall be entitled to terminate this Agreement only if the Contracted Capacity that is not Available as a result of such Force Majeure is, for a period of at least three-hundred sixty (360) consecutive days, more than fifty per cent (50%) of the Contracted Capacity determined pursuant to Clause 6.11.

(c) In addition to meeting its obligations and exercising its rights under Clauses 15.5(a) and 15.5(b), the Seller at any time may, if the Force Majeure is a Political Event, notify GOK pursuant to the GOK Letter of such Political Event and pursue its rights under the GOK Letter for such Political Event for the purpose of (i) obtaining payment from GOK for the Capacity Payments which the Seller would have received had the Political Event not occurred and obtaining reimbursement for any costs incurred as a result of the occurrence of such Political Event, (ii) having GOK otherwise remedy the Political Event and its effects, or (iii) having GOK purchase the Plant, in each case in accordance with the principles set out in the GOK Letter. In such case, this Agreement may be terminated in accordance with the terms of the GOK Letter.

(d) If KPLC sends a notice of termination, the termination of this Agreement shall not become effective until the date that the Seller receives all payments that it is entitled to receive pursuant to the GOK Letter.

15.6 Payments During Force Majeure:

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(a) If any Force Majeure affecting the Seller occurs on or after the Interim Commercial Operation Date or the Full Commercial Operation Date, as the case may be, then during the pendency of such Force Majeure, KPLC shall pay to the Seller: (x) Energy Charges for the Net Electrical Output delivered during such Force Majeure Event all ascertained and computed in accordance with Paragraph 1 of Part A of Schedule 5, (y) if the Interim Commercial Operation Date has occurred but the Full Commercial Operation Date has not yet occurred, Interim Capacity Payments for the Capacity of the Plant that is Available all ascertained and computed in accordance with Paragraph 5(i) of Part A of Schedule 5 and (z) if the Full Commercial Operation Date has occurred, Capacity Payments for the Capacity of the Plant that is Available all ascertained and computed in accordance with Paragraph 5(i) of Part A of Schedule 5.

(b) If any Force Majeure affecting KPLC occurs on or after the Interim Commercial Operation Date or the Full Commercial Operation Date, as the case may be, then during the pendency of such Force Majeure, KPLC shall pay to the Seller: (x) Energy Charges for the Net Electrical Output delivered during such Force Majeure Event all ascertained and computed in accordance with Paragraph 1 of Part A of Schedule 5, (y) if the Interim Commercial Operation Date has occurred but the Full Commercial Operation Date has not yet occurred, Interim Capacity Payments for the part of the Interim Contracted Capacity that KPLC is able to take all ascertained and computed in accordance with Paragraph 5(ii) of Part A of Schedule 5, and (z) if the Full Commercial Operation Date has occurred, Capacity Payments for the part of the Contracted Capacity that KPLC is able to take all ascertained and computed in accordance with Paragraph 5(ii) of Part A of Schedule 5.

(c) If any Force Majeure affecting the Seller or KPLC occurs prior to the occurrence the Interim Commercial Operation Date, then during the pendency of such Force Majeure, KPLC shall pay to the Seller Energy Charges for the Net Electrical Output delivered during such Force Majeure Event.

(d) In addition to the foregoing, the Seller at any time may, if the Force Majeure is a Political Event (whether affecting the Seller or affecting KPLC), notify GOK pursuant to the GOK Letter of such Political Event and pursue its rights under the GOK Letter as more specifically provided in Clause 15.5(c).

15.7 Insured Event: If the Seller is prevented from or delayed in performing an obligation hereunder by reason of an Insured Event which has required it to repair, replace or reinstate any part of the Plant, the Seller shall be relieved from the consequences of its failure to perform that obligation and the terms of Clause 15.4 shall apply on the basis that such Insured Event is deemed to be Force Majeure.

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Clause 16. Termination and Default

16.1 The Seller's Default: For the purposes of this Agreement, a Default by the Seller shall be:

(a) the continuing breach by the Seller of its material obligations under this Agreement (other than as provided in Clause 16.1(b) or Clause 16.1(e)), provided that the existence of the Capacity-related issues addressed in Clause 8.14 shall be deemed not to be Default under this Clause 16.1(a);

(b) after the Full Commercial Operation Date, the Declared Capacity being less than fifty per cent (50%) of the Contracted Capacity at the Full Commercial Operation Date for a period of more than six (6) consecutive months (other than due to (i) the inability or failure of the Steam Field Facilities to provide sufficient geothermal fluid to provide the Contracted Capacity save where such geothermal fluid insufficiency is due to the failure by the Seller to perform its obligations under Clause 6.17 or (ii) Force Majeure);

(c) the occurrence of a Bankruptcy Event affecting the Seller;

(d) any representation or warranty made by the Seller herein which is incorrect in any material respect when made or when deemed to have been made;

(e) any failure by the Seller to pay to KPLC any undisputed amount of money which is due and owing under this Agreement for more than thirty (30) business days from the date any such amount becomes due (unless such failure to pay is due to Force Majeure affecting international banking systems);

(f) abandonment by the Seller of the construction, operation and maintenance of the Plant for more than ninety (90) consecutive days without the prior written consent of KPLC;

(g) except for an assignment by way of security to the Financing Parties and the realization upon such security by the Financing Parties, (i) the assignment or transfer of the Seller's rights or obligations under any PPA Agreement to which it is a party or (ii) the transfer, conveyance, loss or relinquishment to any person of the Seller's right to own and/or operate and/or maintain the Plant or to occupy the Site, in both cases without the prior written consent of KPLC; and

(h) any PPA Agreement to which it is a party or any material provision thereof is repudiated by the Seller or any material provision thereof becomes unenforceable against the Seller;

provided, however, no event described above in Clause 16.1(a) through (h) will be a Default by the Seller if and to the extent it results from: (i) a breach by KPLC of any of its obligations under any PPA Agreement to which it is a party, (ii) a breach by GOK of any of its obligations under the GOK Letter or the Geothermal Resources Licence, or (iii) the occurrence of Force Majeure.

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16.2 KPLC's Default: For the purposes of this Agreement a Default by KPLC shall be:

(a) the continuing breach by KPLC of any of its material obligations under any PPA Agreement to which it is a party other than the failure to make any payment under this Agreement when due and payable in which case Clause 16.2(c) below shall apply;

(b) the occurrence of a Bankruptcy Event affecting KPLC;

(c) any failure by KPLC to pay any sum of money due and owing under any PPA Agreement to which it is a party for thirty (30) business days or more from the date when such sum was first due and owing where such sum is not subject to a bona fide Dispute (unless such failure to pay is due to Force Majeure affecting international banking systems);

(d) any PPA Agreement to which KPLC is a party or any material provision thereof is repudiated by KPLC or any material provision thereof becomes unenforceable against KPLC; and

(e) any statement, representation or warranty made by KPLC in any PPA Agreement to which it is a party is incorrect in any material respect when made or when deemed to have been made;

provided, however, no event described above in Clause 16.2(a) through (e) will be a Default by KPLC if and to the extent it results from: (i) a breach by the Seller of any of its obligations under any PPA Agreement to which it is a party, or (ii) the occurrence of Force Majeure.

16.3 Defaulting Party: For the purposes of this Agreement the Seller is the defaulting Party in relation to the Defaults specified in Clause 16.1 and KPLC is the defaulting Party in relation to the Defaults specified in Clause 16.2, and (in each case) the other Party is the non-defaulting Party.

16.4 Default Notice: Upon the occurrence of a Default, the non-defaulting Party may give notice to the defaulting Party of the occurrence of such Default. If:

(a) the Default is not capable of remedy; or

(b) the Default is capable of remedy and the defaulting Party does not, where such Default is capable of remedy within thirty (30) days after the defaulting party receives notice from the non-defaulting party, remedy the Default on or prior to the end of such thirty (30) day period; or

(c) the Default is capable of remedy but not within thirty (30) days after the defaulting party receives notice from the non-defaulting party, the defaulting Party does not furnish to the non-defaulting Party, within thirty (30) days after receipt of such notice, a detailed programme ("**Remedial Programme**") for the remedy of such

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Default and the defaulting Party fails to remedy the Default in accordance with the time periods specified in such Remedial Programme;

then the non-defaulting Party may give notice to the defaulting Party, and upon receipt by the defaulting party of such notice, such Default shall be deemed to have become an "**Event of Default**". Any Remedial Programme delivered pursuant to Clause 16.4(c) shall be agreed between the Parties (such agreement not to be unreasonably withheld or delayed) and in the event of a Dispute (including any Dispute in relation to the Remedial Programme) may be referred to an Expert. For the purposes of this Clause 16.4, any Default under Clause 16.1(e) or Clause 16.2(c) shall be deemed to be Defaults which are capable of remedy within thirty (30) days.

16.5 Termination upon Event of Default or GOK Event:

(a) Upon an Event of Default the non-defaulting Party may upon not less than thirty (30) days prior notice to the defaulting Party terminate this Agreement, and upon receipt by the defaulting party of such notice after the running of such thirty (30) day period, this Agreement shall be deemed terminated.

(b) If any of the following occur (each, a "**GOK Event**") then the Seller may upon not less than thirty (30) days prior notice to KPLC (with a copy to GOK) terminate this Agreement, and upon receipt by KPLC of such notice after the running of such thirty (30) day period, this Agreement shall be deemed terminated: (i) the GOK Letter, the Geothermal Resources Licence or any Land Agreement to which GOK is a party, is repudiated as a whole by any party thereto (other than the Seller) or becomes unenforceable as a whole against any party thereto (other than the Seller), (ii) any of the following is repudiated by any party obligated thereunder (other than the Seller), becomes unenforceable against any party obligated thereunder (other than the Seller), or is breached by any party obligated thereunder (other than the Seller): (A) any provision of the GOK Letter addressing Political Events and the rights and remedies of the Seller with respect thereto, (B) any provision of the GOK Letter regarding the Transmission Interconnector, (C) any provision of the GOK Letter providing for dispute resolution by an Expert or by means of arbitration, or (D) any material provision of the Geothermal Resources Licence.

16.6 Effects of Termination by the Seller Due to KPLC Event of Default:

(a) In the event of termination of this Agreement by the Seller by delivery of a termination notice (a "**Termination Notice**") pursuant to Clause 16.5(a) as a result of an Event of Default of KPLC, KPLC shall pay to the Seller by way of liquidated damages a lump sum in US Dollars (the "**Transfer Amount**") being the aggregate of the amounts set out under Clauses 16.6(a)(i) and 16.6(a)(ii) below:

(i) Such amount which after deducting any Tax which the Seller must pay on the lump sum received or which is withheld from such lump sum leaves a net amount equal to the Total Project Cost (as hereafter defined) where service of the Transfer Notice takes place after the Full Commercial

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Operation Date, or such portion of the Total Project Cost as will have been incurred by the Seller up to the date of the Transfer Notice, where the Transfer Notice is served before the Full Commercial Operation Date.

For purposes of this Agreement the term "**Total Project Cost**" shall mean the total cost (whether direct, indirect or incidental) of completing the development, design, financing, construction, installation, testing, commissioning, operation and maintenance of the Plant (if the Financial Closing has occurred, as more particularly set out in the final audited financial model for the Plant approved by the Financing Parties as of the time immediately prior to the first disbursement of funds to the Seller under the Financing Agreements ("**Audited Financial Model**")), including (without limitation) development, construction and commissioning costs, financing costs and fees, interest during construction, insurance costs, development fees, construction management costs, start up costs and contingencies.

The Seller shall provide KPLC, GOK and the Energy Regulatory Commission with the Audited Financial Model immediately upon the said model being approved by the Financing Parties.

Where service of the Termination Notice takes place after the Full Commercial Operation Date, the Total Project Cost shall be reduced from the Full Commercial Operation Date by deducting there from an assumed depreciation rate equivalent to 5% per annum (or pro rata for any part of a year) for each year (or part thereof) from the Full Commercial Operation Date to the date of the Termination Notice. Where service of the Termination Notice takes place before the Full Commercial Operation Date no such reduction in the Total Project Cost (by way of depreciation) shall be made.

The Transfer Amount in this sub-paragraph 16.6(a)(i) shall be agreed by KPLC and the Seller within sixty (60) days of service of the Termination Notice by the Seller. Where the Transfer Amount is not agreed as aforesaid it shall be determined by an Expert (appointed in accordance with Clause 19.2 below) on the basis of the Audited Financial Model, the Expert assuming in such a valuation that no Political Event has occurred or is continuing.

(ii) Such sum as is agreed by the Parties or, if agreement is not reached within 60 days of the date of delivery of the Termination Notice, as determined by an Expert appointed in accordance with Clause 19.2 below to be a reasonable assessment of the losses incurred by the Seller as a result of the occurrence of the Event of Default of KPLC and subsequent termination of this Agreement.

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It is acknowledged and agreed by the Seller (on behalf of itself and its shareholders), that any return on equity component in respect of the quantification of the loss arising in relation to the Event of Default of KPLC shall be calculated on the assumption that distributions to shareholders of the Seller shall be limited in aggregate to an amount equal to the net present value calculated at a 10% discount rate of audited profits of the Seller for the last complete five (5) year period prior to the date of the Termination Notice, provided that if the Plant has not been in operation for at least five Operating Years from the Full Commercial Operation Date on the date of the Termination Notice, then such sum shall be limited to an amount not exceeding the projected profit of the Seller for the third, fourth, fifth, sixth and seventh years following the scheduled Full Commercial Operation Date of the Plant (which, if the Financial Closing has occurred, shall be as reflected in the Audited Financial Model).

Any amount agreed or determined pursuant to sub-paragraph 16.6(a)(i) or sub-paragraph 16.6(a)(ii) above shall be paid by KPLC to the Seller by payment to such account of the Seller as the Seller may notify KPLC (or such other account as the Financing Parties may at any time direct to KPLC on not less than 7 days' notice) within 120 days of determination or agreement of each such amount. Interest at the Default Rate shall accrue on the unpaid balance of the Transfer Amount determined or agreed under sub-paragraph 16.6(a)(i) or sub-paragraph 16.6(a)(ii) for each day after 90 (ninety) days after determination or agreement of the Transfer Amount under sub-paragraph 16.6(a)(i) or sub-paragraph 16.6(a)(ii) above, as the case may be.

Payment by KPLC of the Transfer Amount to the Financing Parties shall discharge KPLC's obligation vis-à-vis the Seller to pay that amount.

(b) Upon payment of the Transfer Amount, this Agreement will terminate and the Seller shall promptly provide KPLC or any other transferee nominated by KPLC with all necessary documents (excluding the Financing Documents) to effect the transfer of legal title, free and clear of any liens (except those arising by operation of law and which have either directly or indirectly been imposed as a result of any breach by KPLC of this Agreement or by GOK of the GOK Letter) and without any warranties as to the Plant.

At the request of KPLC or any other transferee, the Seller will additionally give KPLC or such transferee reasonable assistance in ensuring the transfer or re-execution on substantially similar terms, of any material contract relating to the Plant (excluding the Financing Documents) to which it is party.

(c) KPLC acknowledges and agrees that the GOK Letter contains provisions providing for the transfer of the Plant by the Seller to GOK under certain circumstances described therein after payment by GOK to the Seller of a transfer amount determined pursuant to the GOK Letter. KPLC agrees that in the event of any

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conflicts between such provisions of the GOK Letter and the provisions of this Clause 16.5, the provisions of the GOK Letter shall govern and the rights of GOK thereunder shall be superior to the rights of KPLC hereunder.

(d) The Parties hereby agree that, from and after the date that GOK executes and issues the GOK Letter (and such letter is acknowledged by the Seller), the procedures and definitions set forth in this Clause 16.6 shall be deemed conformed, to the extent they differ (except for references to "KPLC" rather than "GOK"), to the procedures and definitions set forth in the GOK Letter dealing with the calculation and payment of the Transfer Amount.

16.7 Termination by KPLC Due to Seller Event of Default: In the event of termination of this Agreement by KPLC pursuant to Clause 16.5 as a result of an Event of Default of the Seller, the Seller shall pay to KPLC within sixty (60) days the sum in US Dollars equal to:

(a) the additional direct costs (if any) to KPLC of procuring capacity for the remainder of the Term equivalent to the Contracted Capacity at the date of such termination, but taking into account the benefit of any costs savings to KPLC as a result of such early termination and recognizing the obligation of KPLC to mitigate such additional cost (if any); and

(b) all sums due and owing from KPLC to KPLC's customers for failure to deliver electricity directly resulting from the Seller Default giving rise to such termination, pursuant to KPLC's standard terms and conditions of supply or under such customer's statutory rights.

16.8 Dispute: If the Parties are unable to agree on an amount payable pursuant to Clause 16.6 or 16.7, the matter shall be determined by an Expert in accordance with Clause 19.2.

16.9 Survival of Rights: The expiry or termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such expiry or termination and shall not affect obligations of each of the Parties under this Agreement which are expressed to continue after such expiry or termination.

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Clause 17. Indemnification and Liability

17.1 Liability: Subject to Clauses 17.2, 17.3 and 17.4, each Party shall be liable to the other Party for the loss directly and foreseeably resulting from any breach by the first Party of its obligations hereunder.

17.2 Own loss: Notwithstanding Clause 17.1, (i) the Seller shall be responsible for, and shall indemnify KPLC against claims in respect of, loss of or damage to property or death or injury to persons incurred by KPLC and its contractors, employees and agents resulting from the act, omission, negligence, or intentional act of the Seller in the performance of or otherwise in connection with this Agreement and (ii) KPLC shall be responsible for, and shall indemnify the Seller against claims in respect of, loss of or damage to property or death or injury to persons incurred by the Seller and its contractors, employees and agents resulting from the act, omission, negligence, or intentional act of KPLC in the performance of or otherwise in connection with this Agreement.

17.3 Excluded liability: Except as provided in Clause 17.1, neither Party shall have any liability to the other for any loss or damage or other liability, whether arising in contract, tort or otherwise, in connection with this Agreement.

17.4 Consequential Losses: In no case shall either Party be liable to the other for any indirect, consequential, punitive, exemplary or special losses or damages. This Clause 17.4 shall not operate to limit the operation of Clauses 16.6 and 16.7.

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Clause 18. Confidentiality

18.1 Confidential Information: Each Party agrees that it shall, and shall ensure that its employees, officers and directors shall, hold in confidence this Agreement and all information, documentation, data and know-how disclosed to it by the other Party and designated in writing as 'confidential' both before and after the Signature Date ("**Confidential Information"**), and shall not disclose to any third party or use Confidential Information other than in connection with the performance of this Agreement or any part thereof without the other Party's prior written approval, provided that:

(a) this Clause shall not apply to Confidential Information which is in the public domain other than by reason of a breach of this Clause 18.1, or was already in the rightful possession of the recipient Party, or was obtained by the recipient Party in good faith from a third party entitled to disclose it;

(b) a Party may disclose Confidential Information in accordance with any Legal Requirement to do so, or to consultants and contractors (subject to obtaining undertakings of confidentiality except where professional duties already impose an obligation of confidentiality) whose duties reasonably require such disclosure save that KPLC shall be entitled to disclose, such Confidential Information as it reasonably considers necessary, to its customers in connection with inquiries raised by customers in relation to KPLC tariffs or in circumstances where KPLC is obliged to disclose Confidential Information in connection with the determination of tariff values or establishment of KPLC tariffs applicable to its customers; and

(c) a Party may disclose Confidential Information, subject to obtaining an undertaking to keep the same confidential, to:

(i) any prospective assignee of the Party and its advisers;

(ii) to any bank or financial institution or investor from whom the Party is seeking finance;

(iii) to any Expert or Arbitrator under this Agreement;

(iv) if any Governmental Authority or governmental authority outside of Kenya makes a request or demand for such information; and

(v) to any court having jurisdiction or authority with regard to this Agreement or any Dispute arising therefrom or related thereto.

(d) all Financing Agreements shall be deemed "Confidential Information".

18.2 Survival: The provisions of this Clause 18 shall survive the termination or expiry of this Agreement.

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Clause 19. Dispute resolution

19.1 Arbitration:

Subject to Clause 19.2, any dispute or difference of any kind between the Parties arising out of or relating in any way to the Plant or this Agreement, including any dispute concerning the interpretation of this Agreement, its validity, its enforceability, any purported breach or termination, or any dispute arising out of common law or statutory law (a "**Dispute**") shall be finally resolved by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce (the "**Rules**"). It is hereby agreed that:

(a) The seat of the arbitration shall be London, England;

(b) There shall be three neutral arbitrators;

(c) The language of the arbitration shall be English;

(d) The award shall be in writing and shall set forth the reasons for the tribunal's decision. The award rendered shall apportion the costs of the arbitration, including the Parties' attorneys' fees and expenses. The arbitration tribunal is authorized to award pre-award interest at a rate to be determined by them from the date of the injury to the date of the award. The award shall bear interest at a rate to be determined by the arbitration tribunal from the date of the award until the date of the payment. The arbitration tribunal is not authorized to award punitive, double, treble, multiple or consequential damages. The arbitral tribunal shall not be empowered to decide any dispute ex aequo et bono or amiable compositeur;

(e) The petitioner shall nominate an arbitrator in its Request for Arbitration, the respondent shall nominate an arbitrator in its Answer to the Request, and the two Party-appointed arbitrators shall within 15 days of the confirmation of their appointment nominate a third arbitrator to chair the tribunal. The chairman shall not be a citizen of the Republic of Kenya, or the country of the majority shareholder of the Seller and no arbitrator shall have any existing or prior relationship with either Party. In the event that a Party does not nominate an arbitrator or that the two Party-appointed arbitrators are unable to agree upon a third arbitrator to chair the arbitration, then that arbitrator shall be appointed pursuant to the Rules;

(f) The award shall be final and binding upon the Parties, and judgment thereon may be entered in any Court having subject matter jurisdiction for its enforcement. The Parties agree that the award may be enforced by the courts of any jurisdiction in which the Party against whom the award is to be enforced has assets, and the Parties waive any objections they may have to the personal jurisdiction, subject matter jurisdiction, venue or forums non-conveniens they may have to the enforcement of the award by the courts in such jurisdictions;

(g) The Parties renounce any right they may have to appeal or challenge the decision of the tribunal insofar as such renunciation can be validly made; and

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(h) If any Dispute arising out of or in connection with this Agreement raises issues which has common issues of law or fact with any dispute or difference arising out of or in connection with, the other Project Agreements other than a dispute referred to an Expert (a "**Related Project Dispute**") then the two disputes shall be consolidated and heard by the same arbitration tribunal, and the Parties agree that the tribunal shall be authorized to establish such procedures in its discretion to resolve the disputes, including bifurcating or issuing interim awards;

(i) The arbitration tribunal shall be authorized to award interim measures and to order security for interim measures in an amount and form determined by them to be appropriate. The arbitration tribunal shall be authorized to award specific performance;

19.2 Expert: Where this Agreement provides that any Dispute or other matter shall be referred to an Expert or the Parties otherwise so agree, the following provisions shall apply:

(a) A Party seeking the appointment of an Expert under this provision shall serve on the other Party a notice describing the dispute to be resolved by the Expert. The Expert shall be an independent person with relevant experience. The Expert shall be appointed by agreement of the Parties, but if the Parties are unable to agree within fourteen (14) days of the notice described above, then the Expert shall be appointed by the International Centre for Expertise of the International Chamber of Commerce. The same Expert may be appointed to resolve more than one dispute.

(b) The expertise proceeding shall be conducted according to such procedures and timetables as the Parties may agree or as the Expert may establish as he deems appropriate to resolve the dispute in an expeditious manner. Once the Expert is appointed, the Expert shall not have ex parte communications with either Party. It is the intention of the Parties that each Party shall have an opportunity to (i) submit a written statement of its position together with such evidence as it wishes the Expert to consider, (ii) submit a written statement responding to the other Party's statement of position, together with such additional evidence as it wishes the Expert to consider, and (iii) make oral presentations to the Expert.

(c) The Expert shall render a decision within 60 days of its appointment, unless another provision of this Agreement requires a decision within a shorter time period, in which case the shorter time period shall apply.

(d) The decision of the Expert shall be final and binding on the Parties. In the event that a Party does not comply with the Expert's decision, then the other Party may commence an arbitration pursuant to this Agreement to enforce the Expert's decision and to recover such damages as it may prove were caused by the failure to comply with the Expert's decision.

(e) The Expert shall act as an expert and not as an arbitrator.

(f) The costs of the Expert shall be borne as determined by the Expert or, in default of such determination, equally by the Parties.

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19.3 Confidentiality: Any arbitration or expertise under this Agreement (including a settlement resulting from an award, documents exchanged or produced during an arbitration proceeding, and memorials, briefs, witness statements or other documents prepared for the arbitration) shall be confidential and may not be disclosed by the parties, their employees, officers, directors, counsel, consultants, and expert witnesses, except (a) in a legal proceeding to enforce rights under this arbitration clause, (b) in response to a subpoena or legal process, but only after giving the other parties to the arbitration reasonable notice in advance for them to take steps to preserve the confidentiality of the material, (c) by agreement of all the parties to the arbitration, or (d) as required by law. A breach of this confidentiality provision shall not void any settlement or award.

19.4 Continuance of Obligations: The Parties shall continue to perform their respective obligations under this Agreement during any arbitration or expertise proceeding, provided that the right to terminate pursuant to Clause 16 on grounds different to those referred to the Expert or arbitrator shall not be restricted by this Clause 19.4.

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Clause 20. Maintenance of Operating Records

(a) Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement. Among other records and data required hereby or elsewhere in this Agreement, the Seller shall maintain an accurate and up-to-date operating log, in a format reasonably acceptable to KPLC, at the Plant with records of:

(i) real and reactive power production for each clock hour at the Delivery Point at all times;

(ii) changes in operating status, scheduled outages, forced outages and partial forced outages, noting times and causes;

(iii) any unusual conditions found during inspections; and

all such records and data shall be maintained for a minimum of sixty (60) months after the creation of such records or data, provided that each Party shall not dispose of or destroy any such records or data after such sixty (60) month period unless the Party desiring to dispose of or destroy such records or data gives thirty (30) days prior notice to the other Party, generally describing the records or data to be destroyed or disposed of, and the Party receiving such notice does not object thereto in writing within ten (10) days. If a written objection is received within such ten (10) day period, the objecting Party shall have a period of sixty (60) days after the date of such written objection within which to inspect and copy the records or data proposed to be disposed of or destroyed, which records and data shall be made available within such sixty (60) day period by KPLC or the Seller as the case may be, at such Party's registered office. After the expiration of such sixty (60) day period, the Party desiring to dispose of or destroy such records or data shall be permitted to do so.

(b) Either Party shall have the right, upon ten (10) days prior notice to the other Party, to examine the records and data of the other Party relating to this Agreement or the operation and Despatch of the Plant at any time during normal office hours during the period such records and data are required hereunder to be maintained.

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Clause 21. Project Agreements

21.1 Project Agreements:

(a) Prior to the Signature Date the Seller has provided to KPLC a copy of the articles of association of the Seller, which copy has been initialed by the Seller for the purposes of identification.

(b) No less than ten (10) days prior to the date that the Seller executes a Specified Project Agreement (or any material amendment to a Specified Project Agreement), the Seller shall provide the then current draft of such Project Agreement (or such material amendment to a Specified Project Agreement) to KPLC. KPLC shall be entitled to provide written comments on the draft of such Specified Project Agreement (or such material amendment to a Specified Project Agreement) during the ten (10) day period immediately following the receipt of such notice, provided that such comments shall be limited to those provisions in the draft Specified Project Agreement or such amendment to a Specified Project Agreement, that KPLC reasonably believes (i) are incompatible with or conflict with the provisions of this Agreement or materially impair its performance or implementation or (ii) will increase any costs which are passed through to or borne by KPLC under the terms of this Agreement. The Seller agrees to consider in good faith all written comments that are provided by KPLC to the Seller during such ten (10) day period; provided, however, that as long as the Seller considers such comments in good faith the Seller shall have no further obligation to consult with KPLC regarding such comments or to reflect such comments in such Specified Project Agreement (or material amendment). Notwithstanding anything in this clause (b) to the contrary, the Parties acknowledge and agree that if the Seller reasonably determines that, due to urgent or emergency circumstances, a material amendment to a Specified Project Agreement is required to be executed by the Seller upon less than ten (10) days prior notice, the Seller may execute such amendment without providing prior notice, or an opportunity to comment thereon, to KPLC.

(c) At the time of the delivery of each of each quarterly progress report required to be provided pursuant to Clause 5.6 the Seller shall provide to KPLC a copy of each Project Agreement (and each material amendment thereto) executed and delivered by the Seller during the calendar quarter to which such quarterly progress report relates.

(d) Promptly after the date Financial Closing occurs, the Seller shall provide to KPLC copies of all material Financing Agreements then in effect.

(e) KPLC agrees that (i) all agreements and documents provided by the Seller to KPLC pursuant to this Clause 21 shall be "Confidential Information" for purposes of Clause 18.1 and (ii) prior to providing to KPLC a copy of any such agreement or document, the Seller shall be entitled to redact from such agreement or document any provision or information that it may not lawfully disclose under applicable law.

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Clause 22. Miscellaneous

22.1 Assignment:

(a) Any assignment by a Party of all (but not part only) of its rights and obligations under this Agreement is permitted but only with the prior written consent of the other Party, provided that:

(i) such consent shall not be unreasonably withheld or delayed if the Party wishing to assign can satisfy the other Party of such proposed assignee's financial, technical and legal status and ability to observe and perform this Agreement; and

(ii) the Party wishing to assign shall have given notice to that effect to the other Party and such notice shall have given sufficient information to show the status and ability of the proposed assignee to carry out the terms of this Agreement.

(b) No assignment pursuant to Clause 22.1(a) shall be effective unless and until the assigning Party has:

(i) procured the proposed assignee to covenant directly with the other Party (in a form reasonably satisfactory to such Party) to observe and perform all the terms and conditions of this Agreement and if reasonably required by the other Party arrange for a guarantee or other equivalent security in favour of such other Party in respect of all obligations or liabilities to be assigned; and

(ii) provided to the other Party a certified copy of the assignment (excluding the consideration paid or payable for such assignment).

(c) At the request of Seller, KPLC promptly will negotiate in good faith and enter into direct agreements (including the Direct Agreement) that are equivalent in form and substance to such direct agreements customarily utilized in international project finance transactions and reasonable satisfactory in form and substance to KPLC, the execution of such direct agreements being a prerequisite for achievement of financing of the Plant by a third party investor or a Financing Party.

22.2 Sub-Contractors: As contemplated throughout this Agreement, the Seller shall be entitled to engage third parties as contractors for the performance of its obligations hereunder, provided that no such engagement shall relieve the Seller of its obligations under this Agreement.

22.3 Variation: This Agreement may not be varied nor any of its provisions waived except by an agreement in writing signed by the Parties.

22.4 Waivers of Rights: No delay or forbearance by either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair or be construed as a waiver of such right, power, privilege or remedy.

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22.5 Notices: Except for communications in accordance with the Operating and Despatch Procedures, any notice or other communication to be given by one Party to the other under or in connection with this Agreement shall be given in writing and may be delivered or sent by prepaid mail or facsimile to the recipient at the address, and marked for the attention of the person, specified in Schedule 12 or such other address or person from time to time designated by notice to the other in accordance with this Clause; and any such notice or communication shall be deemed to be received upon delivery, or five (5) days after posting, or when sent by facsimile upon confirmation of uninterrupted transmission by a transmission report, provided that any notice given by facsimile shall be confirmed by letter sent by hand or post, but without prejudice to the original facsimile notice if received in accordance with this Clause 22.5.

22.6 Effect of Illegality, etc: If for any reason whatever any provision of this Agreement is or becomes or is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, then in any such case the Parties will negotiate in good faith with a view to agreeing one or more provisions to be substituted therefore which are not invalid, illegal or unenforceable and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

22.7 Entire Agreement: The PPA Agreements contain and expressly refer to the entire agreement between the Parties with respect to their subject matter and expressly exclude any warranty, condition or other undertaking implied at law or by custom and supersede all previous agreements and understandings between the Parties with respect to its subject matter and each of the Parties acknowledges and confirms that it does not enter into the PPA Agreements in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the terms of the PPA Agreements.

22.8 Counterparts: This Agreement may be executed in two counterparts and by each Party on a separate counterpart, each of which when executed and delivered shall constitute an original, but both counterparts shall together constitute but one and the same instrument.

22.9 Sovereign Immunity: To the extent that KPLC may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets or revenues such immunity (whether or not claimed) KPLC agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction. KPLC acknowledges that it is contracting in this Agreement and each other PPA Agreement in its commercial capacity and not as a sovereign or quasi sovereign agency.

22.10 Seller's Finance Arrangements: KPLC shall, in addition to its other obligations under this Agreement, upon the Seller's reasonable request, discuss details of the Project with any potential lender interested in providing financing to the Seller in relation to the Project.

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Clause 23. Governing Law

23.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of Kenya.

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AS WITNESS the hands of the duly authorised representatives of the Parties as of the Signature Date.

Signed and sealed	)
for and on behalf of	)
The Kenya Power and	)
Lighting Company Limited	)
	)
	)
Managing Director & CEO	)
	)
	)
	)
Company Secretary	)

Signed and sealed	)
for and on behalf of	)
The Seller	)
	)
	)
	)
Director	)
	)
	)
Secretary	)

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