

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**BELIZE ELECTRICITY LIMITED**

**AND**

**HYDRO MAYA LIMITED**

Dated as of 15/09, 2003

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This POWER PURCHASE AGREEMENT (this "Agreement") is made as of 15/09, 2003 (the "Agreement Date")

**BETWEEN:**

- (1) BELIZE ELECTRICITY LIMITED ("Purchaser"), a limited liability company having its registered office at 2-1/2 mls. Northern Highway organized and existing under the Laws of Belize; and
- (2) HYDRO MAYA LIMITED ("Seller"), a limited liability company having its registered office at 99 Albert Street, Belize City, Belize organized and existing under the Laws of Belize.

Both Purchaser and Seller are herein referred to individually as a "Party" and collectively as the "Parties".

**WHEREAS:**

- (A) Seller wishes to deliver and sell to Purchaser, and Purchaser wishes to purchase and take from Seller, Capacity and Net Energy Output associated therewith from the Facility in accordance with the terms and conditions of this Agreement; and

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

**1. Definitions**

Definitions. Unless otherwise defined herein or in any Exhibit hereto, the following terms, when used herein or in any Exhibit hereto, shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control of such Person. For purposes of this definition, "control", when used with respect to any Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership or voting securities, by contract or otherwise.

"Agreement" means this Power Purchase Agreement and the Exhibits hereto, which are hereby incorporated herein by reference.

"Agreement Date" has the meaning assigned to such term in the first paragraph of this Agreement.

"BEL" means Belize Electricity Limited.

"Billing Period" means the time period, commencing at 12:00 AM on the first Day of each Month and ending at 12:00 AM on the first Day of the following Month, that is used for billing purposes pursuant to Article 11.

"Business Day" means any Day except Saturday, Sunday or a weekday on which commercial banks in Belize City are required or authorized to be closed.

"Capacity" means Power in MW to be made available from the Facility which varies dependent on the availability of water

"Claims" means any claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages of any nature whatsoever (except workers' compensation claims) in relation to personal injury, death or property damage.

"Commercial Operation Date" means the Day following the date upon which Seller properly declares by written notice to Purchaser that the Facility is ready for commercial operation and all required tests have been carried out as per Exhibit 4 ; which shall be no earlier than July 1, 2004 and no later than December 31, 2005.

"Contract Year" means the period commencing on the Commercial Operation Date and ending (12) Months later, and each subsequent twelve (12) Month period thereafter; provided that if the Commercial Operation Date occurs after the first Day of a Month, a Contract Year shall consist of the remainder of such Month and the twelve (12) subsequent Months thereafter.

"Control Center" means the system operation center of BEL

"Day" means the period beginning 12:00 midnight and ending on the following 12:00 midnight.

"Default Interest" means the compensation for the accrual of monetary obligations under this Agreement, computed each Month and prorated daily from the time each such obligation arises, based on an annual interest rate equal to the lower of (i) Prime Rate plus two percent (2%) and (ii) the maximum applicable lawful interest rate.

"Delivery Point" means the physical point at the Site where the Facility output lines are interconnected with the electrical systems of Purchaser, which shall be the low voltage side of the Step-up Transformer at the Site.

"Demonstrated Capacity" means the contractual maximum rated Capacity of the Facility as tested as per Exhibit 4 which shall be greater than 2 MW and less than 2.8 MW.

"Design Limits" means the operating parameters of the Facility set forth under the heading "Design Limits" in Exhibit 3.

"Dispatch" means the right of Purchaser to schedule and to control the delivery of Net Energy Output in accordance with the Operating Limits and the provisions of this

Agreement. Any form of the term Dispatch (e.g., "Dispatched," "Dispatches" or "Dispatching") shall refer to the exercise of any such rights by Purchaser.

"Dollars" or "\$" means the lawful currency of the United States of America.

"Early Termination Date" has the meaning assigned to such term in Article 17.

"Emergency" means a condition or situation which exist on the power system during times when generation supply is less than load or just equal to load, or when system voltages and/or the system frequency is outside required limits.

"Energy Metering Facilities" means all meters and metering devices owned by Purchaser and used to measure the delivery of Net Energy Output at the Delivery Point.

"Event of Abandonment" Event of Abandonment means the failure of the facility to be available to produce any Net Energy Output for a period of more than thirty (30) consecutive Days, for reasons other than (a) a failure which is the result of Purchaser's fault or negligence, (b) a result of a Force Majeure Event, (c) an Emergency, (d) A Scheduled Outage, (e) Transmission restrictions and problems, (f) a Maintenance Outage, and/or (g) a Forced Outage for which Seller is diligently pursuing a remedy.

"Event of Default" has the meaning assigned to such term in Article 17.1.

"Facility" means the Rio Grande Hydroelectric Project (RGHP)

"Force Majeure Event(s)" has the meaning assigned to such term in Article 16.1.

"Forced Outage" means any partial or complete interruption of, or reduction in, the Facility's Net Energy Output production capability that is not the result of (a) a Scheduled Outage, (b) a Maintenance Outage and/or (c) a Force Majeure Event.

"Governmental Approval" means any national, district , local, territorial or municipal government department or body and any statutory or regulatory authority commission, board, bureau, agency, instrumentality, judicial or administrative body thereof of Belize.

"Government Authority" means any federal, state, local, territorial or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof of Belize.

"HML" means Hydro Maya Limited.

"Indemnified Party" has the meaning assigned to such term in Article 15.1.1.

"Indemnifying Party" has the meaning assigned to such term in Article 15.1.1.

"Information" has the meaning assigned to such term in Article 21.5.

"Interconnection Facilities" means all the facilities which are used to enable Seller to deliver Net Energy Output, Capacity, from the Delivery Point to the Interconnection Point, including the following: all metering equipment; transmission and distribution lines and associated equipment; transformers and associated equipment; relay and switching equipment; protective devices and safety equipment; and telemetering equipment, wherever located.

"Interconnection Point" means the physical point or points at which interconnection is made between the Interconnection Facilities and Purchaser's electrical grid system which shall be the 22 kV bay located at the Purchaser's substation at the Big Falls junction on the southern highway.

"kW" means kilowatt.

"kWh" means kilowatt-hour.

"Law" means any statute, law, rule or regulation imposed by a Government Authority, whether in effect now or at any time in the future.

"Lenders" mean the senior lenders that are parties to the Loan Documents and the financial institutions who, from time to time, make other credit facilities available to the Seller, together, in each case, with their respective successors and permitted assigns, excluding subordinated lenders and Affiliates of Seller.

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

"Maintenance Outage" means a partial or complete interruption of the Facility's availability that (a) has been coordinated in advance with the Purchaser, with a start date, time and duration as agreed, (b) is not a Force Majeure Event, Forced Outage or a Scheduled Outage, and (c) is for the purpose of performing work on specific components of the Facility that would limit the power output of the Facility, which should not, in the reasonable opinion of Seller, be postponed until the next Scheduled Outage.

"Minimum Load" means the minimum load required by the plant to be able to run under a stable condition

"Month" means a calendar month.

"MW" means megawatt.

"MWh" means megawatt-hour.

"Net Energy Output" or "NEO" means the Facility's electric energy output associated with the Capacity that is produced and delivered in accordance with Purchaser's Dispatch and as measured in kWh at the Delivery Point by the Energy Metering Facilities.

"Operating Limits" means, collectively, the Design Limits, Dispatch Restrictions and Permit Limits set forth in Exhibit 3.

"Operating Procedures" means the written operating procedures developed by Seller and Purchaser pursuant to Article 7.2, as such operating procedures are amended, modified or supplemented from time to time by agreement of the Parties.

"Operator" means the Seller's operator of the Facility.

"Parties" has the meaning assigned to such term in the first paragraph of this Agreement.

"Party" has the meaning assigned to such term in the first paragraph of this Agreement.

"Performance Test" means a test performed in accordance with Exhibit 4.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or Government Authority.

"Power Factor" means the ratio of electrical energy, measured in kW, divided by the total electrical energy, measured in kVA.

"Prime Rate" means, for any Day, the United States of America's "PRIME RATE" as published from time to time in "The Money Rates" Article of the *Wall Street Journal* (U.S. Edition), as such "PRIME RATE" may change from time to time. In the event the *Wall Street Journal* ceases to publish the "PRIME RATE," then the Parties shall agree as to a substitute reference which represents the base rate on corporate loans posted by major banks having one or more lending offices in New York, New York.

"Protected Persons" has the meaning assigned to such term in Article 21.5.

"Prudent Utility Practice" means the practices generally or customarily followed from time to time by the electric power industry having regard to engineering and operational considerations, including manufacturers' recommendations. Prudent Utility Practice is not limited to optimum practices, methods or acts to the exclusion of all others, but rather is a spectrum of possible practices, methods and acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability, safety and sound environmental practice.

"Purchaser" has the meaning assigned to such term in the first paragraph of this Agreement.

"RGHP" means the Rio Grande Hydroelectric Project.

"Scheduled Outage" means a planned partial or complete interruption of the Facility's availability that (a) has been coordinated in advance with the Purchaser, with a start date, time and duration as agreed between the parties, (b) is required for inspection, preventive

maintenance or corrective maintenance, and (c) is not a Force Majeure Event, Forced Outage or a Maintenance Outage.

"Security" means either (i) a Guaranty, (ii) a Letter of Credit, or (iii) a Surety Bond.

"Seller" has the meaning assigned to such term in the first paragraph of this Agreement.

"Site" has the meaning assigned to such term in Exhibit 3.

"Taxes" means any or all national and/or local, municipal, ad valorem, property, occupation, severance, generation, first use, conversion, Btu or power, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction and other taxes, governmental charges, license fees, permit fees, assessments, or increases in or interest on or penalties relating to any of the foregoing, other than taxes based on net income or net worth.

"Term" has the meaning assigned to such term in Article 3.1.

"Termination Payment" has the meaning assigned to such term in Article 17.2.

"Transmission Grid" means the transmission system owned by BEL, or any successor that acquires ownership of all or substantially all of BEL's transmission assets.

"Year" means a calendar year.

1.1 Interpretation. Unless the context otherwise requires:

1.1.1 Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

1.1.2 Any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Government Authority, any Person succeeding to its functions and capacities.

1.1.3 Unless otherwise indicated, any reference in this Agreement to any Article, Section, Exhibit or Annex means and refers to the Article or Article contained in, or Exhibit or Annex attached to, this Agreement.

1.1.4 Other grammatical forms of defined words or phrases have corresponding meanings.

Unless otherwise indicated, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as amended, supplemented or restated from time to time.



1.1.5 Unless otherwise indicated, a reference to a Law includes a reference to that Law as amended, modified, supplemented, extended or restated from time to time.

1.1.6 If any payment, act, matter or thing hereunder would occur on a Day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day.

1.1.7 The terms "include," "includes" and "including" shall be deemed to be followed by the words "without limitation."

1.1.8 The words "hereof," "herein," and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

## **2. Sale of Energy and Capacity**

2.1 Sale and Purchase. Subject to and in accordance with the terms and conditions of this Agreement, Seller shall make available and sell to Purchaser, and Purchaser shall purchase from Seller for the consideration described in Article 12, the Capacity and the associated Net Energy Output of the Facility from and after the Commercial Operation Date.

2.2 Title and Risk of Loss. Seller shall deliver the Net Energy Output described in Article 2.1 to the Delivery Point. Title to and risk of loss with respect to all such Net Energy Output shall reside and vest in Seller up to the Delivery Point at which such Net Energy Output is made available to and received by Purchaser. Title to and risk of loss with respect to all such Net Energy Output shall pass to and vest in Purchaser when such Net Energy Output is made available to Purchaser at the Delivery Point.

## **3. Term and Termination**

3.1 Term. The term of this Agreement shall commence on the Agreement Date and shall continue in effect until fifteen (15) years have passed from the Commercial Operation Date, unless it is earlier terminated pursuant to the provisions of this Agreement (the "Term"). The termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such termination.

## **4. Performance Obligations.**

4.1 Seller's performance obligations under this Agreement shall be secured as follows:

- (a) On the Agreement Date, Seller or its assignee shall deliver to Buyer a security bond in the amount of BZ\$ 66,000 as security for completion of construction. Such security bond shall be forfeited by Purchaser provided Seller does not i) Complete the construction and make the Facility as per designed in its bid submission

available for commercial operation to supply energy to Purchaser's electric grid pursuant to this Agreement.

- (b) Such security if not forfeited as described in (a) above will be returned to Seller by Purchaser on the Commercial Operation Date provided Seller has complied with all its required performance obligations.

## 5. **Interconnection Facilities**

5.1. Purchaser shall design all Interconnection Facilities required to interconnect the Facility to Purchaser's transmission grid system in the most economical manner pursuant to prudent utility practices and provide to Seller a complete design and construction cost proposal within ninety (90) days of the signing of this agreement.

5.2 Seller, one year prior to the proposed Commercial Operation Date of the Facility, shall provide to Purchaser a bond in Belize dollars in the amount of the construction cost of the Interconnection Facilities as proposed by Purchaser pursuant to 5.1 above. Such bond to remain in effect until Seller achieves Commercial Operation of the Facilities and to be cashed by Purchaser in the event that Seller fails to achieve Commercial Operation of Facility or comply with this Agreement.

5.3 Seller, upon achieving Commercial Operation of the Facility and prior to the cancellation of the bond as stipulated in 5.2 above, shall provide a bond to remain in affect for a period of two years in the amount of the actual cost of the Interconnection Facility, such cost to be provided by Purchaser but in no event to be greater than the bond stipulated in 5.2 above. Such bond to be cashed by Purchaser in the event that Seller fails to comply with this Agreement.

5.4 Purchaser shall construct, operate and maintain all Interconnection Facilities as designed by Purchaser pursuant to Article 5.1 above required to interconnect the Facility to Purchaser's transmission grid system at 22 kV. Such facilities shall include but shall not be limited to transmission and distribution lines and associated equipment; transformers and associated equipment; relay and switching equipment; protective devices and safety equipment; and telemetering equipment.

5.5 Purchaser shall cancel any claim to Interconnection Facilities bond as stipulated in 5.2 above when Seller achieves Commercial Operation of the Facility. Purchaser shall cancel any claim to Interconnection Facilities bond as stipulated in 5.3 above on the second anniversary of the Commercial Operation of the Facility and reimburse Seller for fifty (50) percent of the cost for such bond.

5.6 Purchaser, at all times will put forth its best efforts to complete the Interconnection Facilities in a manner to coincide with the Commercial Operation Date of the Facility.

## **6. Commissioning, Testing and Capacity Ratings**

### **6.1 Testing Requirements**

6.1.1 Seller shall perform, a set of performance tests as per Exhibit 4 to demonstrate the capability of the Facility.

6.1.2 Such test procedures as referred to in 6.1.1 above shall be reviewed and approved by Purchaser prior to being conducted and the Purchaser shall have a representative present to witness such tests. Seller and Purchaser shall mutually agree on the Capacity to be used as the Facility's Demonstrated Capacity. The Demonstrated Capacity shall be greater than 2 MW and less than 2.8 MW.

## **7. Maintenance and Operation of the Facility**

### **7.1 Permits; Compliance with Laws.**

7.1.1 Seller shall, at its expense, acquire and maintain in effect, from any and all Government Authorities with jurisdiction over Seller and/or the operation of the Facility, all Governmental Approvals, in each case necessary at that time (i) for the operation and maintenance of the Facility in accordance with this Agreement and (ii) for Seller to perform its obligations under this Agreement. Seller shall provide Purchaser with copies of the Governmental Approvals described in Exhibit 1 attached hereto.

7.1.2 Seller shall, at all times, comply in all material respects with all Laws and Governmental Approvals applicable to it and/or to the Facility, including all environmental Laws in effect at any time during the Term, and all such Laws otherwise concerning the generation of electric power.

7.1.3 Purchaser shall, at all times, comply in all material respects with all Laws and, at its expense, acquire and maintain in effect any and all Governmental Approvals necessary for Purchaser to perform its obligations under this Agreement.

**7.2 Operating Procedures.** Purchaser and Seller shall develop written Operating Procedures at least forty-five (45) Days before the Commercial Operation Date. The Operating Procedures shall be based on the design of the Facility, the requirements of the electric grid and the requirements of the Governmental Authorities. Topics covered in the Operating Procedures shall include the method of day-to-day communications; key personnel lists for both Seller and Purchaser; outage reporting and scheduling; monthly and/or daily capacity and energy reports and; unit operations logs to be maintained. The Parties agree to implement in good faith any changes to the Operating Procedures which may be required from time to time.

**7.3 Transmission Grid Code** Seller shall operate the Facility in accordance with Purchaser's Transmission Grid Code which is attached as Exhibit 2. The Purchaser reserves the right to revise to Grid code from time to time, in order to comply with Prudent Utility Practice.

7.4 General Covenants of Seller in respect of the Facility. Seller hereby covenants as follows:

7.4.1 During the term of this Agreement, Seller shall operate and maintain the Facility in accordance with (a) this Agreement, (b) the Design Limits and the Operating Limits set forth in Exhibit 3, (c) Prudent Utility Practice, (d) the Operating Procedures, (e) Purchaser's Transmission Grid Code, (f) applicable environmental guidelines and occupational health and safety standards and (g) all applicable Governmental Approvals and Laws.

7.5 Operation by the Operator

7.5.1 Provided such Dispatch is in accordance with the terms of this Agreement, from and after the Commercial Operation Date, Seller shall cause Operator to control and operate the Facility in accordance with BEL Control Center Dispatch instructions.

7.5.2 Upon the occurrence of a Forced Outage, Seller shall immediately notify Control Center and, within forty-eight (48) hours after such Forced Outage, provide Purchaser with written notice describing (i) the nature and cause of the Forced Outage and (ii) the expected restoration date.

7.6 Net Energy Output. The Net Energy Output to be delivered by Seller under this Agreement shall be three-phase, 60 Hertz, alternating current, delivered at a nominal voltage and within the Operating Limits at the Delivery Point. Seller's synchronous generation system shall be designed, operated and controlled within the Operating Limits to provide reactive power requirements as dispatched by the Control Center. Net Energy Output shall be deemed to be the metered output at the Delivery Point.

7.7 Personnel. Seller shall arrange to have only personnel (management, supervisory and otherwise) who are qualified and experienced for operating and monitoring the Facility and for coordinating operations of the Facility with the Control Center. Seller shall ensure that such personnel are available at all times, twenty-four (24) hours a Day and seven (7) Days a week commencing with the date on which electrical energy is first generated by the Facility.

7.8 Scheduled Outages.

7.8.1 On or before 3 months prior to Commercial Operation Date and on or before each 12 months thereafter, Seller shall provide to Purchaser, in writing, its Scheduled Outage periods for the next Contract Year and the reason for such Scheduled Outages. Subject to the limits described in this Article 7.8, such schedule shall be based on Prudent Utility Practice and manufacturers' recommendations. During each Scheduled Outage, Seller shall keep Purchaser apprised of the status of the Facility and the expected duration of the Scheduled Outage. Seller and Purchaser shall coordinate and agree on the scheduling of all Scheduled Outages. .

7.8.2 Purchaser shall use its reasonable endeavors to coordinate its maintenance programs for its Interconnection Facilities with the approved Scheduled Outages so as to minimize any disruption to the operation of the Facility.

7.9 Maintenance Outages. Following the Commercial Operation Date, in addition to Scheduled Outages, Seller may schedule additional hours of Maintenance Outages; provided, however, that Seller must provide prior written notice of the commencement and duration of any Maintenance Outage as soon as reasonably practicable, but in no event less than twenty-four (24) hours prior to such Maintenance Outage.

7.10 Emergencies.

7.10.1 Purchaser shall provide written procedures to Seller for operating the Facility during an Emergency. Such procedures shall include recovery from a local or widespread electrical blackout and voltage reduction in order to effect load curtailment. Seller shall, to the extent consistent with the Design Limits and Permit Limits, comply with such Emergency procedures.

7.11 Damage to Facility or Persons. Notwithstanding anything to the contrary in Articles 7.10 or 8.1, Seller shall never be required to control and/or operate the Facility in a manner inconsistent with the Permit Limits or Design Limits or if such control and/or operation of the Facility will, or is reasonably likely to, cause damage to the Facility or physical injury to any individual.

7.12 Books and Records; Information

7.12.1 Each of Purchaser and Seller shall keep proper books of record and account, in which full and correct entries shall be made of all dealings or transactions of, or in relation to, its business and affairs in accordance with generally accepted accounting principles consistently applied.

7.12.2 All such records shall be maintained for a minimum of seven (7) Years after the creation of such records and for any additional length of time required by regulatory agencies with jurisdiction over the relevant Party provided that in the event of a dispute arising within the period of seven years after the creation of any records then such records as may be relevant to the dispute shall be maintained for such additional period as may be necessary until final determination of the dispute .

7.12.3 Seller shall maintain accurate and up-to-date operating logs and work order history, as appropriate, at the Facility with records of real and reactive power production for each clock hour, changes in operating status, Scheduled Outages, Maintenance Outages, Forced Outages, and any unusual conditions found during inspections. Seller shall require that all major equipment inspections be recorded with a reasonable amount of detail consistent with Prudent Utility Practice. Operating logs for the plant shall be maintained throughout the life of the plant.

7.12.4 Either Party shall have the right, upon reasonable prior written notice to the other Party, to examine and/or make copies of the records and data of the other

Party relating to this Agreement at any time during normal office hours during the period such records and data are required to be maintained.

## **8. Dispatch of the Facility**

### **8.1 Dispatch by Purchaser.**

8.1.1 From and after the Commercial Operation Date, subject to the Operating Limits and approved Scheduled Outages and Maintenance Outages, Purchaser shall accept all energy made available by seller except during Force Majeure Events or scheduled outages of the Purchaser's Transmission and Distribution system which affect the ability of the Purchaser to accept the energy from the Facility.

8.1.2 Seller shall notify Purchaser as to the estimated amount of Capacity available from the Facility based on available water flow.

8.1.3 The Purchaser shall follow Standard Utility Practice to schedule outages of the Transmission and Distribution System. Furthermore should an outage occur to the Transmission and Distribution System which affects the ability of the Purchaser to accept energy from the Facility, whether scheduled or unscheduled, the Purchaser shall work diligently to repair the Transmission and Distribution System.

8.1.4 The scheduling for Capacity shall in no event exceed the Demonstrated Capacity as contracted by the Purchaser in accordance with this agreement.

8.1.5 Priority. Notwithstanding any other provisions in this Agreement, after the Commercial Operation Date, the Purchaser shall Dispatch all available Capacity from the Facility except during Force Majeure Events or scheduled outages of the Utility's Transmission and Distribution system which affect the ability of the Purchaser to accept energy from the Facility.

## **9. Electric Metering**

9.1 Ownership of Meters. Seller shall own and maintain all meters and metering devices used to measure the Net Energy Output according to the Existing Contract.

9.2 Meters Seals. All meters and metering equipment used to determine the Net Energy Output delivered to Purchaser shall be those revenue meters installed under this Agreement. Seller will notify Purchaser when the meters are to be inspected, tested or adjusted. Seller shall give Purchaser seven (7) Days prior written notice thereof, and Purchaser shall have the opportunity to have a representative present.

9.3 Meter Accuracy. Seller shall calibrate the meters on an annual basis according to this Agreement. Seller shall give the Purchaser a minimum of 5 days notice of the calibration and the Purchaser shall have the opportunity to have a representative present during any metering inspection, test, or adjustment and shall be entitled to receive copies of all test reports.

9.4 Meter Reading Corrections. Whenever it is found that, for any reason other than incorrect calibration or tampering, the metering apparatus has not registered the true amount of Net Energy Output which has been delivered by Seller to Purchaser, the NEO delivered during the entire period of incorrect registration shall be estimated by Purchaser, and the amount of Net Energy Output so estimated shall be used in calculating the corrected amounts to be paid to Seller or Purchaser, as appropriate. The adjusted amount shall be for the actual period during which inaccurate measurements were made or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half (1/2) of the time elapsed since the most recent test of the metering apparatus, but in no case for a period in excess of twelve (12) Months. Any overpayments or underpayments by Purchaser for Net Energy Output delivered by Seller to Purchaser shall be corrected in the manner agreed by the Parties.

9.5 Meter Repair. When any component of the Metering System is found to be outside acceptable limits of accuracy or otherwise not functioning properly, Seller shall forthwith repair, recalibrate or replace such component of the Metering System. Upon the completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Metering System, Seller will notify Purchaser that the repair has been completed.

## **10. Access and Noninterference**

10.1 To the extent necessary to verify Seller's compliance with the Agreement and to the extent Seller owns the Facility in which Purchaser has placed its equipment pursuant to this Agreement, Seller grants to Purchaser (including Purchaser's duly authorized agents and representatives) for the Term of this Agreement a license, at reasonable hours, and, in an emergency immediately upon request, to access the Facility, or to construct, install, operate, maintain, repair, replace, inspect and remove Purchaser's equipment and facilities consistent with Purchaser's obligations and rights under this Agreement and Seller shall execute such documents as may be required to enable Purchaser to record such right of access. In no event shall such access unreasonably interfere with Seller's ownership or operation of the Facility. In connection with Purchaser's exercise of rights under this Article 10.1, while on Seller's premises, Purchaser's personnel and agents shall comply with all applicable health and safety rules or regulations of Seller.

## **11. Payment and Billing**

### 11.1 Billing and Payment.

11.1.1 On or after the 10<sup>th</sup> day after each Billing Period, Seller shall provide to Purchaser a detailed written invoice, on paper and by electronic media (in the original software file format with all formulas and calculations intact) of the amounts owed by Purchaser pursuant to this Agreement (and, if applicable, the amounts owed by Seller pursuant to this Agreement). Purchaser shall pay such invoice within thirty (30) Calendar Days of Purchaser's receipt of the invoice. Such invoice shall detail the amount and calculation of the following: ; (a) the payments for the Net Energy Output associated with the Capacity payable by Purchaser for the preceding Month calculated as described in Article 12.1.1; (b) any adjustments for any

correction in meter measurements, payments, or any charges, provided that Seller will only make those adjustments that are submitted to Seller within twelve (12) Months after the event to be adjusted; (c) any other amounts owed by Purchaser to Seller as reflected in the invoiced amount; and (d) any amounts owed by Seller to Purchaser to be offset against the amount due from Purchaser for the applicable Billing Period.

11.1.2 If any amounts are due and payable by Seller to Purchaser under this Agreement, and such amounts are not set forth on Seller's invoice, Purchaser shall submit to Seller an appropriate invoice. Except as otherwise set forth herein, Seller shall pay such invoice within thirty (30) Calendar Days of Seller's receipt of the invoice.

11.1.3 If either Party disputes the accuracy of an invoice, the Parties shall use their best efforts to resolve the dispute in accordance with Article 18.1. Any adjustments which the Parties may subsequently agree to make with respect to any such dispute shall be made by a credit or an additional charge on the next invoice rendered. If the Parties are unable to resolve the dispute in this manner, the dispute shall be resolved in accordance with Article 18.2; provided, however, that any undisputed amount shall be promptly paid; and provided, further, that disputed amounts paid as a result of a dispute resolution shall be paid within ten (10) Days after the dispute is resolved with Default Interest from the date the payment should originally have been made until paid in full.

11.1.4 All payments by either Party under this Agreement shall be made in the Belize dollar equivalent to the U.S. Dollar prices set forth herein for Capacity, Net Energy Output and any other applicable charges at the rate of exchange prescribed in respect of the Belize Dollar under the Central Bank Act (as amended or substituted by any subsequent law) at the time of such payment.

11.2 Timing of Payment. Notwithstanding anything contained in this Agreement to the contrary, all payments to be made by either Party under this Agreement shall be made by wire transfer of funds immediately available to an account of the Party receiving such payment. If the applicable payment due date is not a Business Day, the payment shall be due on the immediately preceding Business Day. Any amount not subject to dispute due from either Party hereunder not paid in full on or before the applicable payment due date will incur a delayed payment charge on the unpaid amount from the payment due date until the date paid at an annual rate equal to the Default Interest in effect from time to time, prorated by Days, but not to exceed the maximum lawful rate.

11.3 Set-off Rights. Each Party shall have the right to set off and net against any and all amounts which may be due and owing hereunder to the other Party any amounts due and owing hereunder from such other Party.

## 12. Compensation

12.1 Payment for Net Energy Output. From and after the Commercial Operation Date, in accordance with Article 11.1.1, Purchaser shall pay to Seller each Month, in arrears, payment for each kWh of Net Energy Output associated to the Capacity as delivered



from the Facility to Purchaser during the preceding Month (each Monthly payment, a "Variable Energy Payment"). The Variable Payment shall be in accordance with the following formula:

12.1.1 Variable Energy Payment

$$VEP_m = VER * NEO_m$$

Where:

VEP<sub>m</sub> = Variable Energy Payment for the month (\$)

VER = Fixed Per Unit Energy Rate = \$ 0.0675/kWh for the term of the Contract

\$ = United States of America Dollars

HM = Last hour of the month

NEO<sub>m</sub> = ? (NEO<sub>h</sub>) = Net Energy Output of the Facility associated to the Capacity for the month (kwh)

HM = the first hour of the month

NEO<sub>h</sub> = Net Energy Output of the Facility associated to the Capacity for the hour of the corresponding month (kWh)

13. **Representations and Warranties**

13.1 Representations and Warranties of Seller. Seller represents and warrants to Purchaser as of the Agreement Date as follows:

13.1.1 Seller is a corporation duly organized, validly existing and in good standing under the Laws of Belize and is qualified and in good standing in any other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller or the Facility, and Seller has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

13.1.2 The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary corporate action, and do not and shall not:

- (a) require any consent or approval of Seller's shareholders which has not been obtained and each such consent and approval that has been obtained is in full force and effect;
- (b) violate any provision of any Law, rule, regulation, order, writ, judgment, injunction, decree, determination, Governmental Approval, or award having applicability to Seller or any provision of the articles of incorporation of Seller, the violation of which could reasonably be expected to have a material adverse effect on

the ability of Seller to perform its obligations under this Agreement;

- (c) result in a breach of, or constitute a default under, any provision of the bylaws of Seller;
- (d) result in a breach of, or constitute a default under, any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or
- (e) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

13.1.3 This Agreement constitutes a legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms, except as may be limited by liquidation by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the rights of creditors generally and except as the enforceability of this Agreement is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including (i) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

13.1.4 There is no pending or, to the best of Seller's knowledge, threatened action or proceeding affecting Seller before any court, Government Authority or arbitrator that could reasonably be expected to materially and adversely affect the financial condition or operations of Seller or the ability of Seller to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

13.2 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller as of the Agreement Date as follows:

13.2.1 Purchaser is a corporation, duly organized and validly existing under the Laws of Belize and has the full legal right, power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

13.2.2 The execution, delivery, and performance of its obligations under this Agreement by Purchaser have been duly authorized by all necessary corporate action, and do not and shall not:

- (a) require any consent or approval of Purchaser's board of directors or any Purchaser member which has not been obtained and each such consent and approval that has been obtained is in full force and effect;
- (b) violate any provision of any Law, rule, regulation, order, writ, judgment, injunction, decree, determination, Governmental Approval, or award having applicability to Purchaser, the violation of which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement;
- (c) result in a breach of, or constitute a default under, any provision of the articles of incorporation or by-laws of Purchaser;
- (d) result in a breach of, or constitute a default under, any agreement relating to the management or affairs of Purchaser or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Purchaser is a party or by which Purchaser or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement; or
- (e) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Purchaser now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement.

13.2.3 This Agreement constitutes a legal, valid and binding obligation of Purchaser and is enforceable against Purchaser in accordance with its terms, except as may be limited by liquidation bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the rights of creditors generally and except as the enforceability of this

Agreement is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including (i) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

13.2.4 There is no pending or, to the best of Purchaser's knowledge, threatened action or proceeding affecting Purchaser before any court, Government Authority or arbitrator that could reasonably be expected to materially and adversely affect the financial condition or operations of Purchaser or the ability of Purchaser to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

#### 14. **Insurance**

14.1 At Seller's own cost and expense, Seller shall purchase and maintain a policy or policies of liability insurance in amounts that are reasonable given the size of the Facility and the availability of insurance covering Seller's ownership, occupation, and running of the Facility, which policy or policies shall name Purchaser as an additional insured.

14.2 The Seller hereby undertakes at its own cost and expense to take out and maintain with a reputable insurer approved by the Purchaser a policy or policies of insurance covering the Seller's liability in the event of any accident, act or omission causing injury to persons or property including the person or property of servants, officers agents of the Seller and the Purchaser and of any third party.

#### 15. **Indemnification and Liability**

##### 15.1 Indemnification

15.1.1 Each Party (the "Indemnifying Party") shall indemnify, defend and hold the other Party (the "Indemnified Party") and its officers, directors, partners, Affiliates, agents, employees, contractors and subcontractors harmless from and against any and all Claims, to the extent caused by any negligent act or omission or willful misconduct of the Indemnifying Party or the Indemnifying Party's own officers, directors, partners, Affiliates, agents, employees, contractors or subcontractors or to the extent such Claims arise out of, or are in any manner connected with, the breach of this Agreement by such Indemnifying Party.

15.1.2 The Indemnified Party shall promptly notify the Indemnifying Party as soon as reasonably practicable of any such Claims in respect of which it is or may be entitled to indemnification. The Indemnifying Party shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defense of any such Claims in respect of, resulting from, relating to, or arising out of, any matter for which it is obligated to indemnify the Indemnified Party hereunder; provided, however, that if the defendants in respect of any such Claim include both the Indemnifying Party and the Indemnified Party, and the Indemnified Party reasonably concludes that there may be defenses available to it and/or other indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Party or other indemnified Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party or other indemnified Persons. The Indemnified Party shall be entitled to

settle or compromise any such Claim without the prior written consent of the Indemnifying Party; provided, however, that if the Indemnifying Party agrees in writing to indemnify the Indemnified Party in respect of any particular claim, the Indemnified Party may not settle or compromise any such Claim without the consent of the Indemnifying Party. If an Indemnified Party settles or compromises any such Claim in respect of which it would otherwise be entitled to be indemnified by the Indemnifying Party without the prior written consent of the Indemnifying Party when such consent is required by this Agreement, the Indemnifying Party shall be excused from any obligation to indemnify the Indemnified Party making such settlement or compromise.

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

**15.3 Limitations of Liability, Remedies and Damages.** Except to the extent of the Security provided by Seller pursuant to Article 4, each Party acknowledges and agrees that in no event shall any partner, shareholder, owner, officer, director, employee, or affiliate of either Party be personally liable to the other Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party, and, except to the extent of the Security provided by Seller pursuant to Article 4, the sole recourse for payment or performance of the obligations under this Agreement shall be against Seller or Purchaser and each of their respective assets and not against any other Person (except for such liability as is expressly assumed by an assignee pursuant to an assignment of this Agreement in accordance with the terms hereof).

## **16. Force Majeure**

**16.1 Force Majeure Event Defined.** Neither Party shall be responsible or liable, or deemed in breach hereof, to the extent that such Party's performance of its respective obligations hereunder is delayed or prevented due solely to a Force Majeure Event and during the pendency of such Force Majeure Event (but for no longer period), excluding the obligation of either Party to make payments then due or becoming due hereunder. A "Force Majeure Event" shall be defined as an event or circumstance beyond the reasonable control of the Party experiencing such delay or impediment to performance, examples of which include flood, earthquake, tornado, storm, fire, civil disobedience, labor disputes (other than between the affected Party and its employees), sabotage, war, drought, failure of the Interconnection Facilities or failure of Purchaser's Transmission and/or Distribution Grid, If such failure is not the result of the negligence of Purchaser, equipment failure and equipment and supplies delivery delays, restraint by court order or public authority (whether valid or invalid) not resulting from any improper or illegal action or inaction of the affected Party, action or failures to act on the part of a Government Authority not resulting from any improper or illegal action or inaction of the affected Party, or inability to obtain or renew required Governmental Approvals (not resulting from any failure by the affected Party to comply with the terms of such Governmental Approvals, pay the prescribed fee therefor or fill out the prescribed application therefor), which, in each case, by the exercise of due diligence, such Party could not reasonably have been expected to avoid and which, by exercise of due diligence, it has been unable to overcome; provided, however, that:

16.1.1 Within forty-eight (48) hours after the occurrence, the non-performing Party shall provide the other Party with a written notice describing (i) the nature and cause of the Force Majeure Event, and (ii) the expected restoration date;

16.1.2 The delay in, or prevention of, performance is of no greater scope and of no longer duration than is required by the Force Majeure Event;

16.1.3 The non-performing Party uses its best efforts to overcome the events or circumstances delaying or preventing performance, provided that nothing herein shall be construed to require Seller to procure and/or provide Replacement Energy to Purchaser at any time during the Term, including during a Force Majeure Event;

16.1.4 When the performance of the Party claiming the Force Majeure Event is no longer being delayed or prevented, that Party shall give the other Party written notice to that effect; and

16.1.5 The Force Majeure Event was not caused by, or the result of (i) any negligent acts or willful misconduct; (ii) any failure to comply with any Law; or (iii) any breach or default of this Agreement, in each case, on the part of the Party claiming the Force Majeure Event.

## 16.2 Other Effects of Force Majeure Events.

16.2.1 In no event shall the existence of a Force Majeure Event extend this Agreement beyond its stated term. If any Force Majeure Event delays or prevents a Party's performance for a time period greater than twelve (12) Months, the Party not delayed or prevented by such Force Majeure Event may terminate this Agreement by written notice to the other Party, without further obligation.

## **17. Defaults and Termination**

### 17.1 Event of Default.

17.1.1 The occurrence of any one of the following shall constitute an Event of Default by Purchaser, unless it results from a breach by Seller of this Agreement or a Force Majeure Event affecting Purchaser:

- (a) Purchaser shall fail to make payments for undisputed amounts due under this Agreement to Seller within thirty (30) Business Days after written notice from Seller that such payment was due;
- (b) Purchaser shall fail to comply with any material provision of this Agreement (other than the obligation to pay money when due), and such failure shall continue uncured for one hundred twenty (120) Days after written notice thereof by Seller;
- (c) Purchaser shall: (i) admit in writing its inability to pay its debts as such debts become due; (ii) make a general assignment or an

arrangement or composition with or for the benefit of its creditors; or (iii) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar Law;

- (d) A proceeding or case shall be commenced, without the application or consent of Purchaser, in any court of competent jurisdiction, seeking: (i) Purchaser's liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a receiver, custodian, liquidator or the like of Purchaser or of all or any substantial part of its assets; or (iii) similar relief in respect of Purchaser under any Law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt, and such proceeding or case shall remain in effect for a period of ninety (90) Days;
- (e) Purchaser shall make an assignment in violation of Article 19;
- (f) Any representation made by Purchaser under Article 13.2 shall be false in any material respect when made; or

17.1.2 The occurrence of any one of the following shall constitute an Event of Default by Seller, unless it results from a breach by Purchaser of this Agreement or a Force Majeure Event affecting Seller:

- (a) Seller shall fail to make payments for undisputed amounts due under this Agreement to Purchaser within thirty (30) Business Days after written notice from Purchaser that such payment was due;
- (b) Seller shall fail to comply with any material provision of this Agreement (other than the obligation to pay money when due and those specific breaches for which damages are otherwise specified herein), and such failure shall continue uncured for one hundred twenty (120) Days after notice thereof by Purchaser;
- (c) Seller shall: (i) admit in writing its inability to pay its debts as such debts become due; (ii) make a general assignment or an arrangement or composition with or for the benefit of its creditors; or (iii) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar Law;
- (d) A proceeding or case shall be commenced, without the application or consent of Seller, in any court of competent jurisdiction, seeking: (i) Seller's liquidation, reorganization of its debt, dissolution or winding up, or composition or readjustment of its debt; (ii) the appointment of a receiver, custodian, liquidator or the

like of Seller or of all or any substantial part of its assets; or (iii) similar relief in respect of Seller under any Law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debts, and such proceeding or case shall remain in effect for a period of sixty (60) Days;

- (e) Seller shall make an assignment in violation of Article 19;
- (f) Any representation made by Seller under Article 13.1 shall be false in any material respect when made.

17.2 Remedies for Default. Upon the occurrence and during the continuation of an Event of Default, the non-defaulting Party, at its election and in addition to such other rights or remedies as the non-defaulting Party may have hereunder or at law or in equity, may (i) establish a date (the "Early Termination Date") (which date shall be no earlier than thirty (30) Business Days after the non-defaulting Party delivers a notice of termination to the defaulting Party) on which this Agreement shall be terminated if the Event of Default has not been cured and (ii) immediately withhold any payments, or suspend any service, due by such non-defaulting Party pursuant to this Agreement. Upon establishing the Early Termination Date, the non-defaulting Party shall, in good faith, calculate its damages and direct termination costs resulting from the termination of this Agreement and aggregate these damages and direct termination costs into a single amount (the "Termination Payment"). The non-defaulting Party shall notify the defaulting Party of the Termination Payment amount, and the defaulting Party shall pay such Termination Payment, with Default Interest that shall accrue from the Early Termination Date until the date of payment of the Termination Payment, within five (5) Business Days after receipt of such notice. If the defaulting Party shall dispute the non-defaulting Party's calculation of the Termination Payment, the issue shall be decided according to Article 18 hereof, and any Termination Payment determined thereby shall be due and payable within three (3) Business Days after such determination.

17.3 Obligations Upon Termination. Upon expiration or termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for those obligations and liabilities that (a) arose prior to such termination, or (b) expressly survive such termination pursuant to Article 21.11.

17.4 Notwithstanding Article 22.8 below or any provision of this Agreement where an event of default occurs and the non-defaulting party elects not to terminate the Agreement on the ground of such default the non-defaulting party shall nonetheless be entitled to reasonably foreseeable damages (including loss of sales) caused by the default of the defaulting party.

## **18. Resolution of Disputes**

18.1 Mutual Discussion. All disputes shall, to the extent possible, be settled in the first instance by discussions between designated senior officers of each of the Parties. If a dispute cannot be settled by discussions between designated representatives of the Parties within thirty (30) Days from the commencement of such discussions (which commencement shall be



deemed to occur upon notice from one Party to the other of the dispute), the dispute resolution procedure set forth in Article 18.2 of this Agreement shall be used to settle the matter.

18.2 Arbitration Generally. If a dispute cannot be settled in accordance with Article 18.1, then either Party may refer the dispute to arbitration under the Arbitration Laws of Belize as in effect on the date of such referral.

18.3 Selection of Arbitrators and Arbitral Award. All disputes arising under this Agreement shall be exclusively and finally settled under the Arbitration Laws of Belize

18.4 Enforcement of Award. By execution and delivery of this Agreement, each Party hereby (a) accepts and consents to the jurisdiction of the Arbitration Laws of Belize and, solely for purposes of the enforcement of an arbitral award under this Article 18.4, to the jurisdiction of any court of competent jurisdiction, for itself and in respect of its property, and (b) waives, solely for purposes of the enforcement of an arbitral award under this Article 20.4, in respect of both itself and its property, all defenses it may have as to or based on jurisdiction, improper venue or *forum non conveniens*. Each Party hereby irrevocably consents to the service of process or other papers by the use of any of the methods and to the addresses set out for the giving of notices in Article 22 hereof. Nothing herein shall affect the right of each Party to serve such process or papers in any other manner permitted by Law.

18.5 Performance during Arbitration. During the pendency of an arbitration, each Party shall continue to perform its obligations hereunder (unless such Party is otherwise entitled to suspend its performance hereunder or terminate this Agreement in accordance with the terms hereof), and no Party shall refer or attempt to refer the matter in dispute to a court or other tribunal in any jurisdiction, except as provided in this Article 18.

18.6 Final and Binding. Awards made by the arbitral tribunal shall be final and binding on the Parties. To the extent applicable, the Parties expressly agree to waive the applicability of all Laws which would otherwise give the right to appeal a decision of the arbitral tribunal so that there shall be no appeal to a court in relation to the award of the arbitral tribunal (except that the Parties shall not challenge or resist the enforcement action taken by a Party in whose favor the award of the arbitral tribunal was given). The cost of an arbitration shall be borne by the Party that loses the arbitration. The costs of an arbitration shall be in the discretion of the arbitral tribunal which may take into account the degree of success of each party's claim or defence as the case may be. The Laws of Belize shall govern the validity, interpretation, construction, performance and enforcement of the arbitration agreement contained in this Article 18.

18.7 Alternative Resolution. In the event that the provisions of Article 18 are unenforceable and a judicial proceeding is necessary under applicable Law to resolve a dispute, the Parties hereby submit to the jurisdiction of the courts of Belize.

## **19. Assignment**

### 19.1 Right to Assignment.

19.1.1 Save and except where the Seller sells the Facility and subject to the other provisions of this Agreement the Seller may not assign or transfer its rights or obligations under, pursuant to, or associated with this Agreement without the prior written consent of Purchaser which consent shall not be unreasonably withheld.

19.1.2 Purchaser shall not assign its rights or obligations under this Agreement without the prior written consent of Seller which consent shall not be unreasonably withheld.

19.1.3 Notwithstanding the foregoing, this Agreement may be assigned by either Party without the prior consent of the other Party (but with advance notice to the other Party in writing) to an Affiliate or in the event of an acquisition, merger, change of business form or other business combination of such Party or any of its Affiliates or to a Lender as provided in Article 19.2 below. Any such transferee, assignee or purchaser shall confirm its willingness to accept all of the assignor's obligations under this Agreement by writing reasonably acceptable to the non-assigning Party. Any such assignee, transferee or purchaser must be sufficiently creditworthy (or have its obligations guaranteed or otherwise supported by a creditworthy entity to the same degree as the assigning Party) and otherwise capable (or contracted with parties capable) of performing all of the assignor's obligations under this Agreement. No assignment or transfer of this Agreement shall be permitted during any period in which an Event of Default by the assigning Party shall have occurred and be continuing and not cured, unless the Party not in default shall agree. Any assignment of this Agreement shall not relieve the assigning Party of any of its obligations under this Agreement, except those assignments expressly consented to by the non-assigning Party, in which case the assignor shall be released from its obligations under this Agreement at such time that all obligations of the assignor hereunder shall have been assumed by the assignee in a written agreement delivered to, and reasonably acceptable to, the other Party. Any assignment that does not comply with the provisions of this Article 19.1 shall be null and void.

## 19.2 Creation of Security.

19.2.1 Notwithstanding the provisions of Article 19.1.1, for the purpose of financing the construction, operation and maintenance of the Facility, Seller may assign to its Lenders (as collateral security) or create security in favor of its Lenders over its rights and interests under, pursuant to or associated with the agreement identified in Article 19.1.1.

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

## 20. Notices

Except as otherwise specified in this Agreement, any notice required or authorized by this Agreement to be given to a Party shall be given in writing and shall be sufficiently given if delivered by overnight mail, overnight courier, hand delivered against written receipt or if transmitted by facsimile transmission, in each case to the address set forth below or to such other address as such Party may designate for itself by prior notice given in accordance with this Article 20. Any such notice shall be effective only upon actual delivery or receipt thereof. All notices given by facsimile shall be confirmed in writing, delivered or sent as aforesaid, but the failure to so confirm shall not vitiate the original notice. The address for the delivery of notices and bills to each Party and the respective telephone and facsimile numbers are as follows:

(a) For Purchaser:

All Notices Except Invoices:

ATTN:-CORPORATE SECRETARY  
2 ½ Mile Northern Highway  
Belize City Belize, C.A.

Invoices Only:

ATTN:-Manger Finance & Accounting  
2 ½ Mile Northern Highway  
Belize City Belize, C.A.

(b) For Seller:

Hydro maya Limited  
P.O. Box 89  
Punta Gorda, Belize

With CC to

Sorenson Engineering  
5203 South 11<sup>th</sup> East  
Idaho Falls, Idaho 83404

## 21. Miscellaneous Provisions

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

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

21.3 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstance is held in a final, non-appealable judgment to be illegal, invalid or unenforceable under any present or future Law, (a) such term or provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

21.4 Waivers.

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

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

21.5 Confidentiality. All information (whether written, oral or from visual inspection), hereinafter referred to as the "Information," furnished (whether before or after the Agreement Date) by the directors, officers, partners, employees, affiliates, controlling persons, representatives (including financial advisors, attorneys and accountants) or agents of either Party, hereinafter referred to as "Protected Persons," to the directors, officers, partners, employees, affiliates, controlling persons, representatives (including financial advisors, attorneys and accountants) or agents of the other Party, pursuant to this Agreement, shall not be disclosed in any manner, by the receiving Party, to any third party without prior written consent of the other Party and shall be utilized by the receiving Party solely in connection with the purposes of this Agreement. The term "Information" shall not, however, include information which (i) is or becomes publicly available other than as a result of disclosure by the receiving Party, (ii) is or becomes available to the receiving Party from another source which is not prohibited from disclosing such information to the receiving Party by a legal, contractual, or fiduciary obligation to a Protected Person and becomes available to the receiving Party on a nonconfidential basis, (iii) is currently in the possession of the receiving Party and is not subject to a confidentiality obligation, or (iv) is required by applicable Law or Governmental Approvals to be publicly disclosed by the receiving Party; provided, however, that, if feasible, the disclosing Party shall give prior notice to the other Party of such disclosure and, if so requested by such other Party, shall have used all reasonable efforts to oppose or resist the required disclosure, as appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality. Notwithstanding the above, either Party may reveal the Information to actual and prospective financing parties, actual and prospective equity

investors, suppliers and potential suppliers of major equipment to the Facility, advisers and other third parties as may be necessary for Purchaser and Seller to perform their obligations under this Agreement and the financing documents so long as such Persons (x) need to know the Information for purposes of evaluating the Agreement, (y) are informed of the confidential nature of the Information and (z) agree to act in accordance with the terms of this Article 21.5. If the Information provided to the receiving Party is no longer necessary for purposes of the Agreement, the receiving Party will, upon request from the other Party, promptly destroy all copies of written Information in the receiving Party's possession and confirm such destruction in writing to the other Party, or return, at the receiving Party's expense, all copies of the written Information in the receiving Party's possession to the other Party. The Parties acknowledge that if they mutually agree in accordance with the terms of this Article 21.5 to disclose hereunder Information, all such Information shall be subject to public disclosure.

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

21.7 No Liability for Review. No review or approval by Purchaser of any agreement, document, instrument, drawing, specifications or design proposed by Seller shall relieve Seller from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with the applicable Laws with respect thereto. Furthermore, Purchaser shall not be liable to Seller by reason of its observation or inspection of, or any suggestions relating to, the construction, testing, operation or maintenance of the Facility.

21.8 Limitation of Liability by a Party. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR REMEDIES OR MEASURE OF DAMAGE IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGE SHALL BE THE SOLE AND EXCLUSIVE REMEDY OR REMEDIES OF THE NON-BREACHING PARTY. THE BREACHING PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES AND DAMAGES AT LAW OR IN EQUITY ARE HEREBY WAIVED BY THE NON-BREACHING PARTY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE BREACHING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE NON-BREACHING PARTY AND ALL OTHER REMEDIES AND DAMAGES AT LAW OR IN EQUITY ARE HEREBY WAIVED BY THE NON-BREACHING PARTY. UNLESS EXPRESSLY PROVIDED OTHERWISE HEREIN, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY IS OBLIGATED TO INDEMNIFY AGAINST THIRD PARTY CLAIMS NOT ARISING OUT OF CONTRACTS WITH THE INDEMNIFIED PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES). IT IS THE PARTIES' INTENT THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND

THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. IN CASES WHERE LIQUIDATED DAMAGES ARE PROVIDED FOR HEREUNDER, THE PARTIES ACKNOWLEDGE THAT ACTUAL DAMAGES ARE IN SUCH CASES DIFFICULT, INCONVENIENT OR IMPOSSIBLE TO DETERMINE. .

21.9 Third Parties. This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty or liability to, or standard of care with reference to, any other Person.

21.10 Headings. The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

21.11 Survival. The expiration or termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to the date of such expiration or termination. For the avoidance of doubt and notwithstanding any other provision of this Agreement, the rights and obligations set forth in Articles 4, 11, 13, 15, 18, 21.5, 21.8, 21.11, and 21.12 shall survive the termination of this Agreement.

21.12 Governing Law. This Agreement and the rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to the Laws of Belize.

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

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


21.15 Taxes and Change in Law Each party shall each be exclusively responsible for the payment of any taxes imposed on it by virtue of their respective business or operations and the introduction of any law, order or regulation creating any new or increased tax or any change in the tax occurring by virtue of any interpretation or application of the relevant law shall not except by mutual written consent cause any change in the prices payable hereunder.

21.16 Announcements. Except as otherwise required by law, for so long as this Agreement is in effect, neither Seller nor Purchaser shall, nor shall they permit any of their Affiliates to, issue or cause the publication of any press release or other public announcement with respect to the transactions contemplated by this Agreement without the consent of the other Party, which consent may be withheld in such Party's sole discretion.

IN WITNESS WHEREOF, the Purchaser has caused its Common Seal to be hereto affixed and the seller has set his hand and seal the day and year first above-mentioned.

THE COMMON SEAL of  
**BELIZE ELECTRICITY LIMITED**

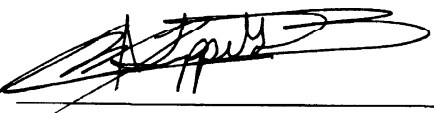
was hereunto affixed and this  
instrument was delivered  
in the presence of

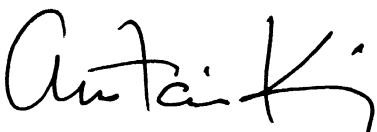
  
\_\_\_\_\_  
OFFICER

  
\_\_\_\_\_  
OFFICER

THE COMMON SEAL of  
**HYDRO MAYA LIMITED**

was hereunto affixed and this  
instrument was delivered  
in the presence of

  
\_\_\_\_\_  
Mark J Tippetts, President

  
\_\_\_\_\_  
Witness-Mr. Alistair King

# **EXHIBIT 1**



## **EXHIBIT 1**

1. CONCESSION AGREEMENT
2. LICENCE AGREEMENT
3. LAND LEASE
4. ENVIRONMENTAL IMPACT STUDY
5. ENVIRONMENTAL CLEARANCE
6. ENVIRONMENTAL COMPLIANCE PLAN

# **EXHIBIT 2**

# **EXHIBIT 3**

### EXHIBIT 3

The Rio Grande Hydroelectric Project (RGHP) is located on the Rio Grande River approximately three kilometers north of the village of San Miguel, in the Toledo District of Southern Belize. The RGHP is a run of the river 2 to 2.6 MW hydroelectric plant, developed and designed especially for the Belize power system.

The project consists of: 1) a nine (9) meter high diversion dam built downstream of the mouth of a natural cave; 2) an 835 meter long rectangular shaped canal; 3) a 320 meter long 70 - 76 inch diameter penstock feeding two turbines attached to two generators. The gross head is 36.7 meters. The small turbine will be capable of producing 600 - 800 kilowatts and the large turbine 1600 - 1800 kilowatts. The total operating range is 180 to 2,200 – 2,600 kilowatts.

#### DESIGN LIMITS

1.	Project Operation:	Run-of-the-River
2.	Static Head:	36.7 meters
3.	Diversion:	6.5 Meters Height Rock Rubble Dam Geomembrane Lined
4.	Canal:	Trapezoidal Lined Open Channel
	Width	6 meters
	Depth	7 meters min
	Length	835 meters
5.	Penstock Intake:	Trash Rack with Isolation Gate
6.	Penstock:	Steel
	Diameter	1.78 meters
	Length	320 meters
7.	Number of Turbines:	Frances - Two
8.	Total Turbine Flow Capacity:	8.25 cubic meters per second *
	Small Turbine Flow Range	.63 CMS to 2.25 CMS *
	Large Turbine Flow range	2.1 CMS to 6.0 CMS *
9.	Generators:	Synchronous
	Capacity	2200 to 2600 KW *
	Frequency	60 Hertz
10.	Generator Output at Min Flow:	300 KW

11.	Overvoltage:	10%
12.	Undervoltage:	10%
13.	Over Frequency:	1.5 Hertz
14.	Under Frequency:	1.5 Hertz
15.	Power Factor	0.8 to 1.0

### OPERATING LIMITS

1.	Project Operation:	Run-of-the-River
2.	Total Turbine Flow Capacity:	8.25 cubic meters per second *
	Small Turbine Flow Range	.63 CMS to 2.25 CMS *
	Large Turbine Flow range	2.1 CMS to 6.0 CMS *
3.	Generators:	Synchronous
	Capacity	2200 to 2600 KW *
	Frequency	60 Hertz
4.	Generator Output at Min Flow:	300 KW
5.	Overvoltage:	**
6.	Undervoltage:	**
7.	Over Frequency:	** Hertz
8.	Under Frequency:	** Hertz
9.	Power Factor**	

\* To be determined during final design.

\*\* BEL to specify.

# **EXHIBIT 4**

## **EXHIBIT 4**

### **Testing Requirements of the RGHP.**

#### Demonstrated Capacity:

1. Maximum Generator(s) output shall be established by field run of the generator during commissioning to maximum as soon as river flow conditions allow.

#### Protective relays:

1. All protective relays and metering devices shall be factory tested for accuracy and field tested for function in accordance with prudent electrical practices.

#### Commissioning:

1. Commissioning shall be verified by qualified Hydroelectric Engineer.