

**POWER PURCHASE AGREEMENT BETWEEN**

**THE NATIONAL ELECTRIC POWER COMPANY  
(NEPCO)**

**AND**

***[Name of Project Company]***  
**(Project Company)**

**relating to**

*an approximately ([ ])* **MW Photovoltaic Power Plant Facility**  
**located on the [ ],**  
**....., Jordan**

[Date: dd/mm/2014]

## **POWER PURCHASE AGREEMENT**

**THIS AGREEMENT** is made and entered into this ● day of ●, ● between:

- (1) the National Electric Power Company, a public shareholding company, wholly-owned by the Government of Jordan, formed and incorporated under the laws of Jordan with its principal office located at Zahran Street, 7<sup>th</sup> Circle, Amman, Jordan ("**NEPCO**"); and
- (2)[●], a company, duly organised and existing under the laws of Jordan under the Companies Law No.(22) of 1997, whose principal place of business is at [insert address], Jordan ("**Project Company**").

### **WHEREAS**

- a) The Government of Jordan (as hereinafter defined), desirous to promote and attract investments from investors in projects for the generation of renewable energy in Jordan (as hereinafter defined), pursuant to a renewable energy strategy that calls for 10% contribution of renewable energy in the total energy mix by 2020, and promulgated the Renewable Energy and Energy Efficiency Law (as hereinafter defined) which, among other things, enables companies to submit proposals under a direct proposal submission scheme to develop, design, finance, construct, own, operate and maintain renewable energy facilities in Jordan and sell electricity to transmission or distribution licensees.
- b) Under Article (7) of the Renewable Energy and Energy Efficiency Law, MEMR is the Government Authority authorised to liaise with the party whose proposal has been accepted for the purposes signing project agreements, and after the project agreements have been signed, the Electricity Sector Regulatory Commission (as hereinafter defined) shall issue the relevant licence for the generation of electricity in Jordan.
- c) NEPCO is a public shareholding company wholly-owned by the Government of Jordan engaged in the procurement, transmission, dispatch and sale of electricity.
- d) Pursuant to the MOU entered into on [insert date] between MEMR and the [Developer / Consortium] , the [Developer / Consortium] [consisting of the following companies]:
  - (1) [Insert company details for the Developer and/or each consortium partner]
  - (2) [...]
- e) [Developer / Consortium] submitted a proposal dated [● ] and incorporated in Jordan with its registered office in [ ● ] for the development, design, financing, construction, ownership, operation and maintenance of the Facility (as hereinafter defined) and to sell all the electricity therefrom to NEPCO which was accepted by MEMR on [● ].
- f) The Project Company was established by [Developer / Consortium] on [● ] and incorporated in Jordan with its registered office in Amman and is among other things, authorized to construct, own, operate and maintain a solar power plant facility to be located at[ ], Jordan, and to sell all the electricity generated therefrom to NEPCO.
- g) MEMR and the Project Company are, on or about the date of this Agreement, entering into a Government Guarantee Agreement in relation to the Project (as hereinafter defined).
- h) NEPCO and the Project Company are entering into this Agreement to establish the basis for the sale and purchase of electrical energy generated by the photovoltaic power plant facility at [ ● ] and delivered to NEPCO at the Substation pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE, THIS AGREEMENT WITNESSES AS FOLLOWS:**

## **ARTICLE 1 DEFINITIONS**

The following capitalized terms shall have the meaning set forth below unless a different meaning is expressly attributed to them in this Agreement.

"**Access Protocol**" has the meaning given to it in Article 6.5.2;

"**Affected Party**" has the meaning given to it in Article 13.5;

"**Affiliate**" means, in relation to a person, a company or entity that directly or indirectly controls, or is controlled by, or is under common control with that person. For the purposes of this definition, "**control**" shall mean:

- (a) ownership or control (whether directly or otherwise) of fifty percent (50%) or more of the equity share capital or voting capital of the controlled entity; or
- (b) ownership of equity share capital or voting capital by contract or otherwise, conferring control of, power to control the composition of, or power to appoint, fifty percent (50%) or more of the members of the board of directors, board of management of the controlled entity;

"**Agent**" means the Lenders' agent appointed from time to time in accordance with the Financing Documents;

"**Agreement**" or "**PPA**" means this Power Purchase Agreement including its Schedules as amended, supplemented or replaced in accordance with the terms and conditions hereof;

"**Bank**" means the Central Bank of the Hashemite Kingdom of Jordan or any Government Authority that will substitute or supersede it at any time;

"**Billing Month**" means the Gregorian calendar month;

"**Billing System**" has the meaning given to in Schedule 7 (Description of the Facility);

"**Bulk Industry Tariff**" means the similarly named commercial tariff applicable to the import of electricity to the Project Company as published on the EMRC website from time to time.

"**Business Day**" means any day (including partial days) of a Contract Year on which banks are required to be open for business in Jordan;

"**Cause**" means in respect of any Governmental Authorisation, any breach, significant neglect or failure by the Project Company of any relevant Laws of Jordan or of any of the terms and conditions of the Governmental Authorisation which entitles the relevant Governmental Authority to terminate, revoke, withdraw or refuse to renew, the Governmental Authorisation or to amend its terms and conditions in a manner adverse to Project Company provided that such revocation, withdrawal or refusal or amendment is a proportionate response to the relevant breach;

"**Change in Law**" means any of the following events;

- (a) save as provided in (f), the adoption, imposition, promulgation, coming into effect, modification or repeal of any of the Laws of Jordan that affects the Project;
- (b) any change in the manner in which any of the Laws of Jordan that affects the Project is applied or interpreted;

- (c) any termination, revocation or withdrawal by any Government Authority of any Government Authorisation other than as a result of: (i) termination, revocation or withdrawal of such Government Authorisation in accordance with its terms upon which it was originally granted or (ii) for a Cause;
- (d) the imposition by a Government Authority (other than for Cause) of any material condition in connection with the issuance, renewal, or modification of any Government Authorisation;
- (g) the increase in any existing or imposition of any new or removal of any relief or exemption from any taxes, levies, duties, charges or imposts affecting the Project, including any increase in the annual renewal fee for the Licence and/or the introduction of or subsequent increase in any charges for the connection of the PV Facility use to or of the NEPCO Grid which establishes additional taxation beyond the Reference Tax Regime or which otherwise adversely impacts the cost to the Project Company of performing its obligations under this Agreement;
- (h) any change to the Tariff resulting from a modification or introduction of any Law of Jordan;

that, in each case:

- (1) occurs after the date of this Agreement;
- (2) other than in respect of (c) and (d) above, results in a change in or repeal of any of the requirements for the development, financing, design, engineering, procurement, manufacturing, factory testing, transportation, construction, erection, installation, completion, testing, Commissioning, insurance, ownership, operation, maintenance and decommissioning of the PV Facility;

**"Check Metering Equipment"** means the additional metering devices and data gathering and communication equipment used to monitor, record, or transmit data relating to the Energy Output of the PV Facility and having the characteristics set forth in Schedule 1 to be provided, installed and maintained by the Project Company at its own expense as provided under Article 9.1;

**"Commercial Operation Date"** means the Day following the Day upon which the PV Facility is Commissioned in accordance with Schedule 10 (Commissioning);

**"Commissioned"** means, when notifications by the Project Company have been submitted accompanied by a report of the Independent Engineer certifying that the PV Facility has successfully completed all testing and commissioning requirements as detailed in Schedule 10. **"Commissioning"** and **"Commission"** shall be construed accordingly;

**"Commissioning Protocol"** has the meaning given to it in Article 4.1.2;

**"Completion Certificate"** has the meaning given in Schedule 10;

**"Computer Monitoring System"** means the computer-based monitoring system, procured, installed and maintained by the Project Company at its cost, comprised of computer hardware, software and SCADA extending to each Unit, which system gathers, archives and reports operating data;

**"Control and Monitoring System"** has the meaning given in Schedule 7;

**"Conditions Precedent"** means any of the conditions precedent referred to in Article 3.2.3 and specified in Parts A, B and C of Schedule 2 as applicable;

**"Conditions Subsequent"** means any of the conditions subsequent referred to in Articles 5.1; 5.2 or 5.3 and specified in Parts D or E of Schedule 2, as applicable;

**"Confidential Information"** has the meaning set forth in Article 16.1;

"**Contract Year**" means each period of 365 consecutive Days (366 Days in a leap year), with the first Contract Year beginning on the Commercial Operation Date and ending as of the day preceding the next anniversary of the Commercial Operation Date, and the last Contract Year ending at the end of the Term;

"**Contractor**" means the EPC Contractor or any successor thereto that may be appointed by the Project Company subject to NEPCO approval not to be unreasonably withheld or delayed;

"**Control Centre**" means the NEPCO National Control Centre located in Amman, Jordan or such other control centre designated by NEPCO from time to time (but not more than one centre at a time) which shall issue Dispatch Instructions to the Project Company;

"**Day**" means a twenty four (24) hour period beginning and ending at 12:00 midnight, Jordan time;

"**Decommissioning Security**" has the meaning set forth in Article 21.1.1(b);

"**Deemed Energy Output**" has the meaning set forth in Schedule 9 to this PPA;

"**Delivery Point**" means the point of connection where the Energy Output is delivered to the NEPCO Grid which is the high voltage terminals of the 132kV transformer bays;

"**Dinar**" or "**JD**" means the lawful currency of Jordan;

"**Dispatch Instruction**" means an instruction issued directly by the Control Centre to the Project Company in accordance with (i) the dispatch principles and guidelines established by NEPCO in accordance with the System Grid Code;

"**Energy and Minerals Regulatory Commission**", "**EMRC**" means the regulatory commission for the energy and mineral resources of Jordan or its successor established pursuant to the General Electricity Law;

"**Electromechanical Completion**" means the time when: (a) all materials and equipment for the PV Facility have been installed in accordance with the PPA, and checked for alignment, lubrication, rotation and hydrostatic and pneumatic pressure integrity and electrical systems have been checked for correctness of polarity and continuity, (b) all applicable systems have been flushed and cleaned out as necessary, (c) all systems required for normal and dependable power production to be installed by the Project Company have been installed and that all material pre-operational testing necessary for all PV Facility's systems to be put in operation and for commencing the Commercial Operation Tests have been satisfactorily completed, (d) all equipment and systems can be operated in the manner and for the purposes intended and in a safe and prudent manner and have been installed in a manner that does not void any equipment vendor equipment or system warranties, (e) the PV Facility is ready to commence the Performance Tests, (f) the Project Company has delivered to NEPCO all documentation required to be delivered pursuant to the PPA, including all test reports and certifications, that are necessary to commence the Performance Tests and to operate the PV Facility commercially;

"**Emergency**" means a condition or situation that in the reasonable opinion of NEPCO or of the Project Company as the case may be, poses an imminent threat of (a) materially adversely affecting the ability of NEPCO to maintain safe, adequate and continuous electrical service to its customers, having due regard to the then current standard of electrical energy provided to its customers; or (b) endangering the safety of people, plant, or equipment (including the Interconnection Facilities, the Substation and the PV Facility);

"**Emission Reduction Credits**" means any credits, benefits, reductions, offsets, allowances or property rights including, without limitation, certified emissions reduction credits under the clean development mechanism of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, resulting from the avoidance, reduction or displacement in actual emissions of any gas, chemical, pollutant or other substance into the air, soil or water during a specified period, expressed in tons of emissions reduced or as may otherwise be expressed;

**"Environmental Impact Assessment"** means the environmental impact assessment conducted by the Project Company in accordance with the Jordanian Environmental Impact Assessment Regulation No. 37 of 2005;

**"Environmental Law"** means any Law of Jordan relating to the protection of the environment or harm to, or the protection of human, animal or plant life, the air, or to any water body or system, including for the avoidance of doubt, any law relating to obligations for monitoring, investigation and abatement in respect of the forgoing;

**"Environmental and Social Monitoring and Mitigation Plan"** means the Project Company's systematic program, approved by the Lenders, that is designed to prevent, mitigate and monitor anticipated environmental and related human impacts of prospective and ongoing activities related to the Project;

**"Energy Output"** means the amount of electrical energy, expressed in kWh, generated by the PV Facility and delivered to the NEPCO Grid at the Delivery Point;

**"EPC Contract"** means the engineering, procurement and construction contract to be entered into between the Project Company and its chosen EPC Contractor in respect of the PV Facility at the Project site;

**"EPC Contractor"** means the [*name of the EPC Contractor*] as submitted in the proposal;

**"Equity Documents"** means any agreements relating to the issuance, subscription, placement or underwriting of Shares or other securities convertible into Shares issued by the Project Company and any instruments constituting or evidencing Shares or other securities convertible into Shares issued by the Project Company, and any documents or agreements evidencing or relating to indebtedness for money borrowed by the Project Company from the Investors or their Affiliates which is subordinated to any indebtedness for borrowed money incurred by the Project Company under any Financing Documents;

**"Estimated Performance Ratio"** means the performance ratio for the PV Facility as set out in Schedule 9 and as used for the calculation of Deemed Energy Output.

**"Event of Loss"** means an event that causes all or a portion of the PV Facility to be damaged, destroyed or rendered unfit for normal operation;

**"Expert"** has the meaning set forth in Article 17.2;

**"Expiry"** means the date falling twenty (20) Contract Years following the Commercial Operation Date;

**"Financial Close"** means the date on which the Project Company and NEPCO each certify that all the conditions provided in Parts A, B and C of Schedule 2 have been fulfilled or waived by either the Project Company or NEPCO (as case may be), the Agent certifies in writing that as at such date all of the conditions of the Lenders under the Financing Documents to first disbursement have been met or waived (in accordance with the terms thereof);

**"Financial Close Longstop Date"** means the date falling six (6) months after the signing date of this Agreement or any extension approved by NEPCO;

**"Financial Model"** means the financial model provided by the Project Company to its lenders at Financial Close and held in escrow by a reputable accounting firm in accordance with Article 13.11.7;

**"Financing Documents"** means the loan agreements, notes, bonds, note or bond purchase agreements, participation agreements, indentures, security agreements, hedging agreements, guarantees, political risk agreements (including any guarantee agreement), indemnity agreement, shareholder support agreements, the Lenders' Direct Agreements and other documents relating to the construction and permanent financing

(including refinancing) of the PV Facility or any part thereof provided by any Lender, but excluding any Equity Documents;

**"Force Majeure"** means an event of Other Force Majeure and/or Government Force Majeure as per Article 13;

**"FM Dispute Resolution Procedure"** has the meaning given under Article 13.9.8;

**"Functional Specifications"** has the meaning given in Schedule 7;

**"General Electricity Law"** means Temporary Law No. (64) for the Year 2002 - General Electricity Law and its amendments;

**"Government of Jordan"** or **"GOJ"** means the Government of Jordan, represented by the Council of Ministers or any Ministry or Government Authority (as hereinafter defined) to which the Council of Ministers may delegate its powers;

**"Government Authority"** means the GOJ and/or any national authority, or local governmental authority of Jordan with jurisdiction over the Project Company, the Project or any part thereof, and/or any ministry, department, regulatory (including EMRC), supervisory or competent authority, or political subdivision or instrumentality, agency or judicial body of the GOJ, or any national authority, or local governmental authority of Jordan, including the Bank and/or any person under the direct or indirect control of any of the foregoing;

**"Government Authorisations"** means those formal permits, licences, authorisations, consents, decrees, waivers, privileges, approvals and filings (including the Environmental Impact Assessment) required to be obtained from or provided by any Government Authority for the execution, delivery and performance of this Agreement, any other Project Agreement or any Financing Document, including without limitation; (i) in the case of the Project Company, for the design, development, construction, financing, ownership, operation or maintenance of the PV Facility (or any other activities incidental thereto), as contemplated by this Agreement, the other Project Agreements or the Financing Documents, in particular those listed in Schedule 11; and (ii) in the case of NEPCO for the design, development, construction, financing, ownership, operation or maintenance of the Interconnection Facilities or of the NEPCO Grid;

**"Government Force Majeure"** has the meaning set forth in Article 13.2;

**"Government Guarantee Agreement"** means the Government Guarantee Agreement entered into with respect to the Project by and between MEMR on behalf of GOJ and the Project Company on or about the date of this Agreement.

**"Grid Compliance Test Procedures"** means those test procedures carried out in relation to the Grid Compliance Tests and provided to NEPCO for approval in accordance with Schedule 10;

**"ICC Rules"** means the Rules of Arbitration of the International Chamber of Commerce;

**"IEC"** means the International Electrotechnical Commission being the international standards and conformity assessment body for all fields of electrotechnology;

**"Implementation Schedule"** means the Project implementation schedule set forth in Schedule 13, as may be revised from time to time pursuant to this Agreement;

**"Independent Engineer"** an engineer with extensive experience in the construction and operation of renewable energy facilities similar to the PV Facility appointed by the Parties, the cost of which shall be shared equally between the Parties, to verify Commissioning as set forth in Schedule 10 and to issue the certificates referred to in Schedule 2;

**"Independent Engineer Agreement"** means the agreement entered into pursuant to Article 4.1.2 by the Independent Engineer, the Project Company and NEPCO for the purposes of verifying Commissioning as set forth in Schedule 10 and additional tasks as set out in Schedule 21;

**"Initial Shareholders"** means those shareholders of the Project Company on the signing date of this Agreement as per the details provided under Schedule 2;

**"Interconnection Facilities"** means the interconnection facilities (including, for clarity, transmission facilities to the NEPCO Grid and NEPCO's control and communications equipment), to be installed and maintained by NEPCO for the delivery of the Energy Output to the NEPCO Grid, as more fully described in Schedule 8;

**"Interconnection Facilities Construction Date"** means the date described as such, as set out in Schedule 13 (Implementation Schedule);

**"Interest Rate"** means the average over the preceding three (3) months of the prime interest rate collected by the Reference Banks for credit facilities or the prime interest rate announced by the Bank from time to time whichever is greater;

**"Jordan"** means the Hashemite Kingdom of Jordan;

**"Jordanian Dinar or JD"** means the lawful currency of Jordan.

**"Laws of Jordan"** means the laws of Jordan and all orders, rules, regulations, instructions and decrees made pursuant thereto, as such laws, rules, regulations, instructions and decrees may be amended from time to time and that are published in the Official Gazette of GoJ;

**"Lenders"** means the lenders, guarantors, credit providers, multilateral agencies, export credit agencies and any financial institution, entity or person providing or supporting the financing to the Project Company pursuant to the Financing Documents for the purposes of developing, designing, constructing, completing, operating and maintaining the PV Facility;

**"Lenders' Direct Agreements"** means one or several direct agreements with the Lenders or their Agent covering each of this Agreement, the Transmission Connection Agreement, and the Government Guarantee Agreement, substantially in the forms included in Schedule 16, which shall be entered into prior to Financial Close;

**"Licence"** means the licence for the generation of electrical energy granted to the Project Company by the EMRC;

**"Longstop Date"** means the date falling three (3) months after the Required Commercial Operation Date as identified as such in the Implementation Schedule as adjusted from time to time in accordance with this Agreement;

**"Main Metering Equipment"** means the equipment for metering and monitoring the operation and Energy Output of the PV Facility and having the characteristics set forth in Schedule 1 to be provided, installed and maintained by the Project Company at its own expense as provided under Article 9.1;

**"Major Maintenance Activities"** means any major maintenance, overhauls and repairs required from time to time in relation to the PV Facility that would require a reduction of fifty percent (50%) or more of the Energy Output generated by the PV Facility;

**"Maximum Export Capacity"** has the meaning set forth in Schedule 7;

**"MEMR"** means the Ministry of Energy and Mineral Resources of Jordan, or any Ministry or Government Authority substituting for it in the future (wholly or in part) or any Government Authority that replaces or supersedes it from time to time and assumes functions and competencies relevant to this Agreement;



"**Meteorological Measurement Equipment**" has the meaning set forth in Schedule 7;

"**Metering System**" means the Main Metering Equipment and the Check Metering Equipment;

"**Ministry of Environment**" means the Ministry of Environment of Jordan, or any Ministry or Government Authority that replaces or supersedes it from time to time and assumes functions and competencies relevant to this Agreement;

"**NEPCO Event of Default**" has the meaning set forth in Article 14.1.2;

"**NEPCO Grid**" means the high voltage transmission grid operated by NEPCO or any replacement System Operator and ancillary electrical equipment forming part of such a grid, including the Interconnection Facilities;

"**NEPCO Grid Failure**" means any inability or partial failure of the NEPCO Grid or Interconnection Facilities to receive and take delivery of the Energy Output at the NEPCO side of the relevant Delivery Point, including as a result of any connections authorised or enabled by NEPCO but only if and to the extent that such inability or partial failure is not the direct or indirect result of a breach by the Project Company (or its Contractors) of its obligations under this Agreement;

"**Notices**" and "**Notice**" have the meaning set forth in Schedule 4;

"**Notice of Intent to Terminate**" has the meaning set forth in Article 14.2.1;

"**Operating Characteristics**" means the performance and operating characteristics according to the manufacturer's design specifications for each Unit, as set out in Schedule 7;

"**Operating Protocol**" means the operating protocol developed by the Project Company and approved by NEPCO in accordance with Article 6.5;

"**O&M Contract**" means the operation and maintenance contract (if any) between the Project Company and the O&M Contractor for the operation and maintenance of the PV Facility;

"**Other Force Majeure**" has the meaning set forth in Article 13.3;

"**O&M Contractor**" means the operating company that may be appointed by the Project Company to implement the O&M Contract;

"**Parties**" means the Project Company and NEPCO, and "**Party**" means either one of them;

"**Performance Bank Gurantee**" has the meaning set forth in Article 4.5 and Schedule 12;

"**Performance Tests**" means those tests set out in Schedule 10;

"**Permitted Transferee**" has the meaning set forth in Article 19.2.5;

"**Project**" means the development, design, engineering, financing, construction, start-up, testing, Commissioning, completion, ownership, insurance, operation and maintenance of the PV Facility and all activities incidental thereto;

"**Project Agreement(s)**" means collectively, the Power Purchase Agreement, Government Guarantee Agreement, Land Lease Agreement, Transmission Connection Agreement, EPC Contract, O&M Contract, Independent Engineer Agreement and any other document, contract or agreement executed subsequent to the date hereof that is mutually agreed in writing by the Parties to constitute a "**Project Agreement**";

"**Project Company Bank Account**" means [ • ] or such alternative Jordanian bank account as the Project Company may notify in writing to NEPCO from time to time;

**"Project Company Event of Default"** has the meaning set forth in Article 14.1.1;

**"Prudent Utility Practice(s)"** means those practices, methods, techniques and standards, as changed from time to time, that are generally accepted internationally for electric generation from renewable energy (taking into account operating conditions in Jordan), and commonly used in prudent electric engineering and operation to design, engineer, construct, test, operate, maintain and insure equipment lawfully, safely and economically as applicable to photovoltaic power installations of size, service, and type of this PV Facility;

**"PV Facility"** means the photovoltaic power generation plant including the Substation as more fully described in Schedule 7 for the generation of electrical energy and delivery to the NEPCO Grid whether (including, without limitation or regard to level of development, land, buildings, engineering and design documents, all power producing equipment and auxiliary equipment, transformers and interconnection of switchgear, the Substation and all other installations as described in this Agreement);

**"PV Facility Design Capacity"** has the meaning given in Schedule 7;

**"PV Facility Performance Test"** has the meaning given to it in Schedule 10;

**"Rate"** means the re-discount rate, then in effect, by which the Bank will lend to commercial banks;

**"Reference Banks"** means initially Arab Bank Plc., Housing Bank for Trade and Finance, Citibank and Standard Chartered Bank. If one or more of the foregoing cease doing business in Jordan or no longer are significant participants in the Jordanian interbank foreign currency exchange market, NEPCO and the Project Company shall select one or more, as the case may be, replacement bank that is then a significant and active participant in the Jordanian interbank foreign currency exchange market;

**"Reference Tax Regime"** means the tax regime described in Schedule 18 (Reference Tax Regime);

**"Required Commercial Operation Date"** means the date as set out in Schedule 13 (Implementation), as such date may be extended in accordance with this Agreement between the Parties;

**"Renewable Energy and Energy Efficiency Law"** means Law No. (13) for the Year 2012;

**"Restoration Account"** shall have the meaning given under Article 13.9.2,

**"Revised Performance Ratio"** means the Performance Ratio for the PV Facility as determined in accordance with Schedule 9 and used for the assessment of the Deemed Energy Output.

**"SCADA"** means the remote communication system for supervisory control and data acquisition to be procured, installed and maintained by the Project Company at its cost as part of the Computer Monitoring System at the PV Facility as detailed in Schedule 7;

**"Site"** means the parcel of land at [ • ], Jordan as defined in the LLA on which the Project will be undertaken;

**"Substation"** means the building that located at the PV Facility's and including electrical switchgear, control and communications equipment, metering, workshop and welfare facilities, 33kV/132kV transformers up to the 132kV bushings, disconnecters and all associated external facilities and equipment as more fully described in Schedule 7;

**"Supplemental Charge"** means any additional charges determined in accordance with the provisions of this Agreement which are payable by NEPCO to the Project Company and shall become due and payable in accordance with the provisions set out in the Articles 13.11.1 and 13.11.2;

**"System Grid Code"** means the transmission grid code approved by EMRC to facilitate the safe, economic, equitable and efficient planning, development, operation and maintenance of the interconnected transmission system of Jordan;

"**System Operator**" has the meaning given to it in the Transmission Connection Agreement;

"**Tariff**" means the price of electricity charged by the Project Company to NEPCO, as adjusted and calculated in accordance with Article 8.2 and the formula in Schedule 9;

"**Technical Limits**" has the meaning given in Schedule 7;

"**Term**" has the meaning set forth in Article 3.2;

"**Termination Costs**" means all reasonable costs, and liabilities associated with the early termination of contracts for the design, build, operation or maintenance of the PV Facility, per the Project Agreements, save to the extent recovered under Total Debt Outstanding;

"**Total Debt Outstanding**" means (i) outstanding principal and unpaid interest, at termination date as certified by Lenders which may in no way exceed the outstanding principal and unpaid interest as per Initial Financial Model at Financial Closing Date, and interest accruing until the date of payment; and (ii) finance breakage costs, including all break-funding and hedge breakage costs as certified by Lenders; to the extent that such outstanding principal and interest does not result from a default of the Project Company;

"**Transmission Connection Agreement**" means the Transmission Connection Agreement dated on or about the date of this agreement between NEPCO and the Project Company providing for the connection of the PV Facility with the NEPCO Grid;

"**Unit**" means a separate photovoltaic electricity generation unit or section (comprising multiple units)

"**US Dollars**" or "**US\$**" means the lawful currency of the United States of America; and

## **ARTICLE 2 INTERPRETATION**

In this Agreement (including its Schedules), unless otherwise stated:

### **2.1** Any references to:

- 2.1.1** any agreement (including this Agreement) shall be construed, at any particular time, as including a reference to the relevant agreement as it may have been amended, novated, assigned, modified or supplemented;
- 2.1.2** the preamble, recitals or a particular Article or Schedule, shall be a reference to the preamble, recitals or relevant Article or Schedule in or to this Agreement;
- 2.1.3** a particular paragraph or sub-paragraph, if contained in an Article or Schedule, shall be a reference to the relevant paragraph or sub-paragraph of that Article or Schedule; and
- 2.1.4** any legal instrument of Jordan shall be construed, at any particular time, as being a reference to such legal instrument as it may have been amended, modified or supplemented.

### **2.2** Words in the singular may be interpreted as referring to the plural and vice versa.

### **2.3** A requirement that a payment 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 following Business Day.

- 2.4 The word "including" is to be construed as being at all times followed by the words "without limitation", unless the context otherwise requires.
- 2.5 For the purpose of any calculation under this Agreement, references to any period or periods of an hour or hours shall be rounded up to the nearest 1/10th of an hour.
- 2.6 The Schedules contained herein form an integral part of this Agreement. In the event of an inconsistency between the body of this Agreement and the Schedules, the principal provisions of the body of the Agreement shall govern, unless the relevant provisions of the Schedules further define the provision/s of the body of the Agreement.
- 2.7 Where reference is made in this Agreement to a period or periods of time, the periods in questions shall be deemed to end at midnight on the last Day of such period unless otherwise stated.
- 2.8 Unless otherwise stated, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed.
- 2.9 Any reference to NEPCO's successors and permitted assigns shall be a reference to such successors and permitted assigns in all of NEPCO's capacities, including Bulk Supply Licensee, System Operator Licensee and Transmission Licensee (all as defined in the Licence).
- 2.10 Any reference to any law, enactment, order, regulation, or other similar instrument shall be construed, subject to Article 13.11, as a reference to the law, enactment, order, regulation or other similar instrument as amended, replaced, consolidated or re-enacted.
- 2.11 Any reference to NEPCO in the context of giving an instruction or request to curtail or cease production or delivery of Energy Output or otherwise relating to the de-energisation of the PV Facility, shall include, to the extent applicable, any such instruction or request by a replacement System Operator holding a system operation license as defined in the General Electricity Law.

## **ARTICLE 3 SCOPE AND TERM**

### **3.1 Scope**

The Project Company shall implement the Project and deliver and sell the Energy Output exclusively to NEPCO at the Delivery Point, and NEPCO shall take delivery of and pay for all such Energy Output, in accordance with and subject to Article 8.1 and the other terms and conditions of this Agreement.

### **3.2 Term**

- 3.2.1 Subject to Articles 3.2.2 and 3.2.3, this Agreement shall commence on the date herein and, subject to the occurrence of the Financial Closing, and shall remain in force for a period of twenty (20) Contract Years following the Commercial Operation Date ("**Term**"), subject to any early termination or extension in accordance with this Agreement.
- 3.2.2 Only the rights and obligations of the Parties under this Article 3.2, Article 1, Article 2, Article 5, Articles 12.2, 12.4, Article 13.11, Article 15, Article 16, Article 17, Article 19, Article 21, Article 22, Article 23 and Schedule 2, Parts A, B and C shall take effect on and from the date of signing of this Agreement.
- 3.2.3 Save as provided in Articles 3.2.1 and 3.2.2, the rights and obligations of the Parties under all other provisions of this Agreement shall be conditional upon the fulfilment of the Conditions Precedent set out in Parts A, B and C of Schedule 2. NEPCO and the Project

Company shall each certify in writing the occurrence of the Financial Closing within five (5) Business Days after the fulfilment of such Conditions Precedent.

- 3.2.4 If the project company did not reach Financial Close by the Financial Close Longstop Date this Agreement will be cancelled and the Parties release and discharge each other.

## **ARTICLE 4 PV FACILITY DESCRIPTION**

### **4.1 PV Facility Characteristics and Commissioning Protocol**

4.1.1 The PV Facility shall have the characteristics and the certifications described in Schedule 7. The Project Company shall not materially modify the characteristics of the PV Facility at any time during the Term, such that the characteristics vary from those described in the electricity generation Licence issued by EMRC, without the prior written consent of NEPCO, such consent not to be unreasonably withheld.

4.1.2 Within ninety (90) days of the date of Financial Close or other period agreed by both Parties, the Parties shall jointly appoint an Independent Engineer in accordance with Schedule 21 and instruct the Independent Engineer within thirty (30) days thereafter to devise an appropriate protocol, sequence and tests for the Commissioning of the: (i) Substation and Interconnection Facilities; and (ii) Units; and (iii) the PV Facility (the "**Commissioning Protocol**") in accordance with Schedule 10.

### **4.2 Construction of the Substation and Interconnection Facilities**

4.2.1 The Project Company shall design, construct, install, own, maintain and operate, at its expense, the Substation by the Substation Construction Date and shall notify NEPCO of any anticipated delay in meeting any relevant milestones set out in Schedule 13 (Implementation Schedule). The Project Company shall provide a notification of the completion of the construction of the Substation, such completion as certified by the Independent Engineer.

4.2.2 NEPCO shall design, construct, install, own, maintain and operate, at its expense, the Interconnection Facilities by the Interconnection Facilities Construction Date, as required to receive Energy Output in accordance with Schedule 8, and shall notify Project Company of any anticipated delay in meeting any relevant milestones set out in Schedule 13 (Implementation Schedule). NEPCO shall provide a notification of the completion of the construction of the Interconnection Facilities such completion as certified by the Independent Engineer.

### **4.3 Commissioning of the Substation and Interconnection Facilities**

4.3.1 The Parties shall jointly instruct the Independent Engineer to commence the Commissioning Protocol in respect of the connection of the Interconnection Facilities with the Substation within fourteen (14) days prior to the Scheduled Interconnection Date and each Party shall be responsible for undertaking the tasks assigned to them under the Commissioning Protocol and to give access to the other and to the Independent Engineer in accordance with, and in order to carry out, the Commissioning Protocol.

4.3.2 The Project Company install Units and notify NEPCO and the Independent Engineer of the completion of each Unit in accordance with the Commissioning Protocol.

**4.3.3** The Parties shall require the Independent Engineer to undertake Commissioning of each Unit and of the whole PV Facility in accordance with the Commissioning Protocol and Schedule 10 and Schedule 21.

#### **4.4 Delay in construction and Commissioning**

**4.4.1** In the event that the Project Company is delayed in the construction, installation, completion and Commissioning of the Substation, the solar modules, Units or the whole PV Facility leading to a delay of the milestone dates in the Implementation Schedule (as may be adjusted in accordance with this Agreement)

4.4.1.1 due to Government Force Majeure, then the provisions of Articles 5.8 and 13.7 shall apply;

4.4.1.2 due to failure by NEPCO to perform its obligations in accordance with this Agreement that materially affects the Project Company's ability to achieve the milestone dates, then the provisions of Article 5.8 shall apply and the Longstop Date shall be adjusted by an equitable amount in accordance with Article 5.8.3(b);

4.4.1.3 due to Other Force Majeure, then the provisions of Article 13.7 shall apply;

4.4.1.4 otherwise, the provisions of Article 5.8.3(d) shall apply.

**4.4.2** In the event that NEPCO is delayed in the construction of, and making available to the Project Company, the Interconnection Facilities, leading to a delay in Project Company achieving the milestone dates in the Implementation Schedule (as may be adjusted in accordance with this Agreement):

4.4.2.1 due to failure by the Project Company to perform its obligations in accordance with this Agreement that materially affects NEPCO's ability to complete the Interconnection Facilities in accordance with the date set forth in the Implementation Schedule (as may be adjusted in accordance with this Agreement) or to perform its tasks under the Commissioning Protocol), then the provisions of Article 5.8.3(d) shall apply;

4.4.2.2 due to Other Force Majeure then the provisions of Article 13.7 shall apply;

4.4.2.3 due to Government Force Majeure, then the provisions of Articles 5.8 and 13.7 shall apply;

4.4.2.4 otherwise the provisions of Article 5.8 shall apply and the Longstop Date shall be adjusted by an equitable amount in accordance with Article 5.8.3(b).

#### **4.5 Performance Bank Guarantee**

**4.5.1** On or prior to Financial Close, the Project Company shall furnish to NEPCO performance bank guarantee (the "Performance Bank Guarantee") in the amount of six million US Dollars (US \$6,000,000). The Performance Bank Guarantee shall be irrevocable and unconditional guarantee from local bank reasonably acceptable to NEPCO and substantially in the form set out in Schedule 12. The quantum of the Performance Bank Guarantee shall remain at six million US Dollars (US \$6,000,000) until the earlier of the Commercial Operation Date or early Termination in accordance with Articles 5.7, 14.1.1 and 14.1.2. Subject to payment of any outstanding amounts owing to NEPCO, the Performance Bank Guarantee shall be reduced to three million US Dollars (US \$3,000,000)

on the Commercial Operation Date and shall thereafter be maintained at such value until the expiry of the Term when such Performance Bank Guarantee shall be released to the Project Company, subject to any claims NEPCO may have against such Performance Bank Guarantee in accordance with Article 14.5 of this Agreement.

- 4.5.2** All costs, fees, expenses or other disbursements relating to obtaining the Performance Bank Guarantee shall be borne by the Project Company.

## **ARTICLE 5 COMMERCIAL OPERATION DATE**

### **5.1 Conditions to Commercial Operation Date**

Save as provided to the contrary under Articles 5.6, 5.7, and 5.8, the obligation of NEPCO to receive delivery of and purchase all the Energy Output hereunder shall commence on the date on which the Conditions Subsequent in Part D of Schedule 2 have been satisfied by the Project Company and the Commercial Operation Date has been achieved.

### **5.2 Project Company Conditions**

The Project Company shall use all reasonable endeavours to satisfy each of the Conditions Subsequent in Part D of Schedule 2 and achieve the Commercial Operation Date by the Required Commercial Operation Date as may be extended in accordance with Articles 4.4.1, 4.4.2, 5.8.3 and 13.7 only or such later date as the Parties may agree in writing.

### **5.3 NEPCO Conditions**

NEPCO shall satisfy each of the Conditions Subsequent in Part E of Schedule 2 by the Interconnection Facilities Construction Date in accordance with Article 4.3, or such later date as the Parties may agree in writing.

### **5.4 Progress Review**

- 5.4.1** The Parties shall jointly review progress towards achieving satisfaction of the Conditions Subsequent on a Monthly basis and shall notify each other promptly of any anticipated delay in meeting the Required Commercial Operation Date or other relevant milestones in accordance with the Implementation Schedule.
- 5.4.2** The Parties shall provide the Independent Engineer with all required information, data, access and reports to perform the tasks set out in Schedule 10 and Schedule 21.

### **5.5 Obligations of the Parties**

- 5.5.1** Prior to the Commercial Operation Date, each Party shall in good faith disclose to the other Party all relevant material information of which such Party holds from time to time that could reasonably be expected to be material to the PV Facility or NEPCO Grid, or could reasonably be expected to have an adverse effect on the ability of NEPCO or of the Project Company to perform any of their obligations under this Agreement.
- 5.5.2** At the reasonable request of either Party, the Project Company and NEPCO shall meet in Amman, Jordan or such other mutually acceptable location to review and discuss the outstanding issues and status of the construction and development of the Interconnection Facilities and the PV Facility.

## **5.6 Energy Output and Testing Prior to the Commercial Operation Date**

- 5.6.1** NEPCO shall receive at the Delivery Point all the Energy Output generated during Commissioning, provided that such Commissioning tests are carried out after completion of the Commissioning of the Substation and Interconnection Facilities in accordance with Article 4.
- 5.6.2** NEPCO shall pay to Project Company for Energy Output actually delivered during Commissioning based on the tariff 0.020 Dinar per kWh. The pre-Commercial Operation Date tariff under this Article 5.6.2 shall not be subject to adjustment in accordance with Schedule 9.
- 5.6.3** NEPCO shall be entitled, acting reasonably, to request that Project Company ceases delivery of Energy Output prior to Commercial Operation Date (NEPCO making reasonable efforts to keep any such periods as short as possible).

## **5.7 Delay in achieving Commercial Operation Date**

If the Commercial Operation Date does not occur by the Longstop Date as extended from time to time in accordance with the Articles 4.4.1, 4.4.2, 5.8.3 and 13.7, NEPCO may terminate this Agreement, in which event the provisions of Article 14.1.1 shall apply.

## **5.8 Delay and Deemed Commissioning**

- 5.8.1** In the event that the Project Company is delayed in achieving Commercial Operation Date by the Required Commercial Operation Date (as adjusted in accordance with Articles 4.4.1, 4.4.2, 5.8.3 and 13.7) due to any of the circumstances set out in Articles 4.4.1.1, 4.4.1.2, 4.4.2.3 or 4.4.2.4 then, on and from the date on which the Project Company would have been able to achieve Commercial Operation Date (which date shall be specified in a certificate of deemed Commissioning of the PV Facility issued by the Independent Engineer), the PV Facility shall be deemed Commissioned, and NEPCO shall make payments to the Project Company in accordance with Schedule 9 until the actual date the PV Facility has been Commissioned in accordance with Schedule 10
- 5.8.2** If the PV Facility has been deemed Commissioned in accordance with the provisions of Article 5.8.1, subject to the Independent Engineer certification, the Project Company shall ensure that the Commissioning tests are completed as soon as reasonably practicable following rectification of any circumstance under Article 5.8.1.
- 5.8.3** Subject to Articles 4.4.1, 4.4.2 and 13.7, if the Project Company is experiencing a delay in achieving the Commercial Operation Date by the Required Commercial Operation Date :
- (a) the Project Company shall deliver a notice to NEPCO requesting an extension to the relevant milestone dates in the Implementation Schedule, including the Required Commercial Operation Date, within 30 Days of the date the Project Company should have reasonably become aware of that cause of delay occurring;
  - (b) After receipt by NEPCO of the notice referred to in Article 5.8.3 (a), the Parties shall agree an equitable adjustment to the relevant milestone dates in the Implementation Schedule to take into account the effect of that delay, provided that:
    - (1) the milestones dates and Commercial Operation Date shall not be extended to the extent that the delay would have nevertheless been experienced had the event not occurred; and



- (2) the Project Company shall have made all reasonable efforts to prevent or reduce to a minimum and mitigate the effect of any delay including having recourse to alternative sources of services, equipment and materials and construction equipment.
- (c) If the Parties are unable to agree as to an equitable adjustment to the Implementation Schedule within a period of 30 Days after the notice referred to in Article 5.8.3 (a) is received by NEPCO, this shall be referred to the Expert for determination in accordance with Article 17.2.
- (d) Unless determined in accordance with Article 5.8.3(c) or agreed to by the Parties in writing, neither the Required Commercial Operation Date nor the Longstop Date will be extended by reason of a default by the Project Company of any of its obligations under this Agreement.
- 5.8.4** If the PV Facility has been deemed Commissioned and the Project Company subsequently fails to achieve the Commercial Operation Date by the Required Commercial Operation Date (as adjusted pursuant Article 4.4.1, 4.4.2, 5.8.3 and 13.7) then the PV Facility shall cease to be deemed Commissioned and NEPCO will have no further obligation to make payments under this Article 5.8.1.
- 5.8.5** If upon achievement of the Commercial Operation Date, the Plant is Commissioned in accordance with Schedule 10 and Schedule 21, where the actual Performance Ratio as determined during Commissioning tests of the PV Facility represents a performance inferior to the Estimated Performance Ratio and the Actual Capacity is below the PV Facility Design Capacity, then the amount by which the payments paid by NEPCO under Article 5.8.1 exceeds the amounts that NEPCO would have had to pay if the PV Facility had been deemed Commissioned at performance and capacity corresponding to the Estimated Performance Ratio and PV Facility Design Capacity, such amount shall be repaid by the Project Company to NEPCO together with interest accrued on such amount at the Interest Rate, where such amount shall be credited against future payments to be made under Article 10 in the immediately following Billing Month or, if needed, Billing Months.
- 5.8.6** Subject to Article 5.8.7, the Project Company may achieve Commercial Operation Date prior to the Required Commercial Operation Date provided that any such acceleration of the programme shall not:
- (a) oblige NEPCO to complete the Interconnection Facilities prior to the Interconnection Facilities Construction Date; or
- (b) require deemed Commissioning to take place prior to the Required Commercial Operation Date.
- 5.8.7** The Parties may by written agreement, accelerate the dates set out in Schedule 13 (Implementation).
- 5.8.8** For the avoidance of doubt, in accordance with Articles 4.4.1, 4.4.2, 5.8.3 and 13.7:
- (a) should the Project Company be unable to achieve the Commercial Operation Date prior to or on the Required Commercial Date due to a Project Company default, neither the Required Commercial Operation Date nor the Longstop Date shall be adjusted and the provisions of Article 5.8.1 shall not apply; and
- (b) should the Project Company be unable to achieve the Commercial Operation Date prior to or on the Required Commercial Date due to the occurrence of an Other

Force Majeure Event affecting either Party, the Implementation Schedule may be adjusted in accordance with Article 13.7 and the Project Company shall not be entitled to deemed Commissioning in accordance with this Article 5.8 or to any other forms of compensation.

- 5.9** As soon as reasonably practicable (and, in any event, within 1 month) before achieving Commercial Operation Date, Project Company shall provide NEPCO with a plan showing the extent of the land held under LLA's comprising the Site upon which the Commissioned PV Facility has been built.

## **ARTICLE 6 TECHNICAL SPECIFICATIONS**

### **6.1 Notification of the technical specifications**

- 6.1.1** NEPCO shall notify Project Company of any updates to the indicative design technical specification of the Interconnection Facilities as set out in the TCA as soon as reasonably practicable when such updates become available.
- 6.1.2** The Project Company shall notify NEPCO of any updates to the indicative design technical specification of the PV Facility Substation as set out in the TCA as soon as reasonably practicable when such updates become available
- 6.1.3** The Parties shall liaise on the finalisation of technical specifications of the Interconnection Facilities and the Substation and deliver final technical specifications as soon as reasonably practicable thereafter and in any event within [...] weeks from Financial Close.

### **6.2 Operation**

The Project Company and NEPCO shall during the Term operate the PV Facility and the NEPCO Grid respectively in a manner that complies with (i) the Laws of Jordan; (ii) the System Grid Code; (iii) all Government Authorisations; and (iv) Prudent Utility Practice. In the event of a discrepancy of any of the herein in this Article listed, the earlier ranked principles shall enjoy priority over the following.

### **6.3 Notification**

The Project Company shall keep NEPCO informed by prompt notification of any event that could reasonably be expected to materially and adversely affect the availability of Energy Output, and of any material change to the Operating Characteristics of the Substation or the PV Facility.

### **6.4 Monthly Report**

The Project Company shall provide NEPCO with a monthly report containing such information and in a form that is reasonably acceptable to NEPCO regarding the operation of the PV Facility by no later than seven (7) Days from the end of a Billing Month. Each monthly report shall include a summary of all reporting information relating to abnormal conditions or events and data concerning solar irradiation and module temperature during the Billing Month and detailed information from the Computer Monitoring System relating to Units in operation, daily solar irradiation and module temperature and power generation, as stipulated in Schedule 14 of this Agreement or otherwise agreed in the Operating Protocol. For the avoidance of doubt, NEPCO shall not be excused from its payment obligations under this Agreement in the event that the Project Company fails to provide a monthly report.

## **6.5 Operating Protocol and Access Protocols**

- 6.5.1** Within one hundred and twenty (120) Days from Financial Closing, the Project Company shall deliver to NEPCO:
- (a) a first draft of the protocol of the operational conduct to be followed by the Project Company and NEPCO, with such protocol being based on the System Grid Code, applicable Laws of Jordan. Prudent Utility Practice and the agreed terms of this Agreement, (the "Operating Protocol"); and
  - (b) a first draft of the protocol governing site access and safety (the "Access Protocol").
- 6.5.2** Within [forty five (45)] Days after NEPCO's receipt of the first draft of the Operating Protocol or Access Protocol (as applicable), NEPCO shall notify the Project Company of any deletions, amendments or additions which, in the exercise of NEPCO's reasonable judgment, it considers to be necessary or desirable. The Project Company shall make any deletions, amendments or additions that NEPCO reasonably requests and Project Company accepts, acting reasonably, and deliver to NEPCO a revised draft of the Operating Protocol or Access Protocol (as applicable).
- 6.5.3** In the event that the Parties are unable to agree such Operating Protocol or Access Protocol (as applicable) within thirty (30) Days of the from the date of the Project Company delivering the revised draft to NEPCO, any disputed issues shall be referred to the Expert for final determination and then incorporated into the final form Operating Protocol or Access Protocol (as applicable).

## **ARTICLE 7 MAINTENANCE AND REPAIR**

### **7.1 Obligations of the Project Company**

The Project Company shall, throughout the Term, maintain and repair the PV Facility in order to maintain, throughout the Term, the initial performance specifications as described in the Operating Characteristics (as adjusted to reflect adjustments resulting from specific site climatic conditions), as well as in accordance with Prudent Utility Practice and with the other terms of this Agreement.

### **7.2 Major Maintenance Activities**

The Project Company shall be entitled to withdraw the Units from operation for Major Maintenance Activities as follows:

- 7.2.1** in circumstances where the Major Maintenance Activities are planned in advance by the Project Company, the Project Company shall, at least ninety (90) Days prior to the proposed commencement date of such work, submit to NEPCO the proposed program and schedule of activities. No such notification by the Project Company shall be required in the event that an Emergency occurs affecting the Project Company, which requires the project Company to carry out Major Maintenance Activities to specifically address such an Emergency. Upon the occurrence of such an Emergency, the Project Company shall forthwith notify NEPCO thereof and provide reasonable details of the event along with appropriate measures to be taken.
- 7.2.2** NEPCO may within thirty (30) Days after receiving the Project Company's proposed dates, program and schedule of activities, notify the Project Company of reasonable alternative dates (if any), in which case the Parties shall consult and the Project Company shall use reasonable endeavours to accommodate NEPCO's proposal, but under no circumstances shall the Project Company be liable in any manner whatsoever for its inability to make such

accommodation. In the event NEPCO remains inactive or silent the Project Company's proposed dates, program and schedule of activities shall be deemed approved following the above mentioned thirty (30) Days.

### **7.3 Maintenance Outages**

Without prejudice to Article 7.1 and 7.2 and subject to applicable notification requirements under the System Grid Code and the Operating Protocol (except in an Emergency), the Project Company may take the PV Facility or any part thereof out of operation at a later or earlier time than the start of the relevant period specified in the program for Major Maintenance Activities. The Project Company may return the PV Facility or any part thereof to operation before the end of such period, as long as (i) it does not result in an adverse condition such as unacceptable frequency fluctuation or voltage deviations for the NEPCO Grid or an Emergency, and (ii) provided that the PV Facility is being operated in compliance with the System Grid Code. NEPCO shall coordinate all maintenance required under the Transmission Connection Agreement with maintenance undertaken pursuant to this agreement. If the Project Company is prevented by NEPCO from returning the PV Facility or any part thereof to operation by the time specified in the programme for Major Maintenance Activities, for reasons other than those specified in paragraphs (i) and (ii) above, NEPCO shall pay Project Company compensation in accordance with Article 8.1.2 for any loss in delivered Energy Output. In all cases, Project Company shall keep NEPCO informed of such maintenance activities.

### **7.4 Substation**

Any planned maintenance that the Project Company wishes to undertake relating to the Substation connected to the Interconnection Facilities shall be notified to NEPCO at least ninety (90) Days in advance, unless in an Emergency. NEPCO may within thirty (30) Days after receiving the Project Company's proposed dates, program and schedule of activities, notify the Project Company of reasonable alternative dates (if any), in which case the Parties shall consult and the Project Company shall use reasonable endeavours to accommodate NEPCO's proposal, but under no circumstances shall NEPCO be liable in any manner whatsoever for its inability to make such accommodation. In the event that NEPCO remains inactive or silent, NEPCO's consent shall be deemed to have been given.

## **ARTICLE 8 PURCHASE TERMS**

### **8.1 Sale and Purchase**

**8.1.1** On and from the Commercial Operation Date, the Project Company shall supply from the PV Facility and sell to NEPCO, and NEPCO shall receive at the Delivery Point and pay for Energy Output in accordance with the terms of this Agreement, and subject, to Article 8.1.2, neither Party shall curtail or interrupt delivery or acceptance of Energy Output made available at the Delivery Point, including for economic reasons, other than as specifically provided in this Article 8.1, Article 6.2, Article 7.1 or Article 13.1.1.

**8.1.2** Notwithstanding the foregoing, NEPCO shall be entitled to (for any reason) curtail or request Project Company to cease the delivery of Energy Output on the NEPCO Grid:

- (a) in the case of an Emergency affecting NEPCO, upon giving such notice as is technically and practically possible;
- (b) upon an unplanned interruption in the transmission network, upon giving such notice as is technically and practically possible but not less than thirty (30) minutes notice;

- (c) upon a planned interruption in the transmission network, upon giving such notice as is reasonable in the circumstance but not less than five (5) days notice;
- (d) in the circumstances provided in Clause 8.3 of the TCA; or
- (e) any other reason not excused under this Agreement, upon giving such notice as is technically and practically possible and is reasonable in the circumstances;

provided that: (i) the Project Company shall not be in breach of this Agreement for any failure to cease delivery of Energy Output on the NEPCO Grid where the notice period given is too short for it to be able to cease such delivery; and (ii) that at the end of the relevant Billing Month, NEPCO will make a payment to the Project Company in relation to the loss in Energy Output during that Billing Month resulting from such NEPCO curtailment, on the basis that (a) the Project Company is able to demonstrate (through maintenance records, meter readings and/or solar irradiation and module temperature data, as appropriate) that it was capable of producing such levels of Energy Output during such periods of curtailment and (b) the loss in Energy Output shall be paid for in accordance with Schedule 9. NEPCO shall not be obliged to pay for any loss of Energy Output arising out of a curtailment due to an Emergency affecting the Project Company unless such Emergency arises out of an event of Government Force Majeure or default by NEPCO in accordance with Article 8.1.3.

**8.1.3** In the event that:

- (a) NEPCO curtails or requests the Project Company to cease the delivery of Energy Output on the NEPCO Grid under Article 8.1.2;
- (b) NEPCO or the System Operator instructs the Project Company to de-energise the Project Company's equipment in accordance with Clause 8.3 (Emergency De-energisation) of the Transmission Connection Agreement or if the Project Company has de-energised the Project Company's equipment in accordance with Clause 8.3.2 of the Transmission Connection Agreement;
- (c) NEPCO's breach of this Agreement or the Transmission Connection Agreement or Government Force Majeure or any other NEPCO Grid Failure directly causes the Project Company to be unable to deliver Energy Output to the Delivery Point, or causes NEPCO to be unable to receive Energy Output delivered to the Delivery Point,

NEPCO shall pay the Project Company in accordance with Article 10.1 (Invoices) and Schedule 9 for each kWh of Energy Output not received by NEPCO, during the period during which NEPCO is unable to receive, or the Project Company is unable to deliver Energy Output due to such events.

**8.1.4** Subject to Article 13.2 (Government Force Majeure), the Project Company's exclusive remedy for any failure by NEPCO to receive at the Delivery Point and purchase any Energy Output in accordance with this Agreement is a claim for the amount payable by NEPCO for such Energy Output in accordance with Articles 5.8.1 or 8.1.3.

**8.1.5** The Project Company shall not be entitled to any claim, under this Article 8.1, (for compensation or otherwise) in respect of any curtailment, interruption, or reduction of the generation or delivery of Energy Output by the PV Facility (whether partial or total) which arises as a consequence of the Project Company materially failing to operate the PV Facility in accordance with this Agreement and NEPCO's exclusive remedy in respect of such failure shall be the right of termination pursuant to Article 14.1.1.

**8.1.6** The payment by NEPCO to the Project Company for loss of Energy Output due to curtailing or requesting the Project Company cease the delivery of Energy Output shall apply for curtailment due to an Emergency:

- (a) affecting NEPCO; or
- (b) affecting the Project Company only where such Emergency arises out of an event of Government Force Majeure or default by NEPCO.

## **8.2 Tariff**

On and from the Commercial Operation Date, the Tariff in Dinars for each kWh of Energy Output supplied to NEPCO at the Delivery Point shall be in accordance with Schedule 9. The Tariff is fixed for the term of this Agreement and, save as to fluctuation of the exchange rate of the legal currency of the United States of America and the Jordanian Dinar, in accordance with Schedule 9, shall not be adjusted for inflation. Payment by NEPCO for Energy Output following Commercial Operation Date shall be calculated in accordance with Schedule 9

## **8.3 Metered Quantities**

The Energy Output delivered to NEPCO shall be metered and determined in accordance with the provisions of Article 9 and Schedule 1 of this Agreement..

## **8.4 Emission Reduction Credits**

**8.4.1** Any Emission Reduction Credits arising out of the generation and sale of solar energy by the PV Facility shall be the property, and any costs related thereto shall be to the account of NEPCO (which may assign such Emission Reduction Credits to GOJ) and the Project Company undertakes to ensure that such Emission Reduction Credits are vested in GOJ and/or NEPCO and shall at NEPCO's cost execute all documents which may be required including, but not limited to, documents transferring such Emission Reduction Credits to NEPCO and/or GOJ, without further compensation or indemnity. The Project Company shall fully cooperate and provide to NEPCO all the required data, report, access and any other required documents needed to generate such Emission Reduction Credits.

**8.4.2** NEPCO acknowledges that the Project Company:

- (a) does not represent or warrant that the Project and/or the PV Facility will, or may be, entitled to any Emission Reduction Credits at any time;
- (b) has no payment obligations to NEPCO in connection with any Emission Reduction Credits; and
- (c) shall not be liable to NEPCO and/or the GOJ (as the case may be) should the Project or the PV Facility not be entitled to be issued any Emission Reduction Credits, or should NEPCO, or the GOJ (as the case may be), fail to be awarded any Emission Reduction Credits in respect of the Project or the PV Facility, for any reason beyond the Project Company's control.

## **ARTICLE 9 METERING**

### **9.1 Metering Equipment**

**9.1.1** The Main Metering Equipment and Check Metering Equipment used to measure the Energy Output under this Agreement shall be installed and maintained by the Project

Company in accordance with the provisions of this Article 9.1. The Project Company shall, at the Project Company's expense, install communication equipment that allows NEPCO to read the Main Metering Equipment and Check Metering Equipment from a remote location (such as NEPCO Control Centre) at any time in relation to all Units at the Site, in accordance with Schedule 7. The Main Metering Equipment and Check Metering Equipment shall be maintained directly by the Project Company or by agents or subcontractors directly under the Project Company's control.

All Main Metering Equipment and Check Metering Equipment used to measure the Energy Output under this Agreement shall be sealed and the seal may be broken only when such Main Metering Equipment and Check Metering Equipment are to be inspected, tested or adjusted with the consent of the Parties or in the event of an Emergency, by the Project Company. NEPCO and the Project Company undertake not to tamper or otherwise interfere with any part of the Main Metering Equipment and Check Metering Equipment in any way.

Should the Main Metering Equipment not be available for any reason whatsoever, including, without limitation, if the Main Metering Equipment has been tampered or interfered with in any way, or if the measurement made is found upon testing to be inaccurate:

- (a) the Energy Output measured or recorded shall be during the period of inaccuracy of the Main Metering Equipment that measured or recorded by the Check Metering Equipment or, failing that, any secondary metering devices existing in the PV Facility; or
- (b) if there is no Check Metering Equipment or secondary metering available, or it is also established to have been tampered or interfered with, the quantity shall be determined by agreement between the Parties pursuant to the mechanism set forth in Schedule 1 or failing such agreement, shall be considered a dispute and shall be resolved in accordance with Article 9.4 of this Agreement.

**9.1.2** The Project Company shall notify NEPCO within forty-eight (48) hours after becoming aware of any inaccuracy or defect in any Main Metering Equipment or Check Metering Equipment. The Project Company shall cause the Main Metering Equipment and Check Metering Equipment to be adjusted, repaired, replaced or re-calibrated as near as practicable to a condition of zero error at the expense of the Project Company and in such circumstances, the procedure set forth in Article 2.2 of Schedule 1 shall apply to any adjustment resulting from inaccuracy or defect in any Main Metering Equipment and/or Check Metering Equipment.

## **9.2 Technical Characteristics**

The basic technical characteristics of the metering equipment comprising the Metering System shall be in accordance with the provisions for active electric energy meters and reactive electric energy meters as more specifically described in Article 4 of Schedule 1.

## **9.3 Metering procedures**

All Main Metering Equipment and Check Metering Equipment shall be maintained, calibrated and tested at the expense of the Project Company and shall conform to the provisions of Schedule 1. The Project Company shall provide NEPCO with copies of any periodic or special inspection or testing reports relating to the Main Metering Equipment and Check Metering Equipment. The Parties undertake to implement the procedures and arrangements set out in Schedule 1 for reading, testing, adjusting and calibrating the metering equipment comprising the Metering System.

#### **9.4 Disputes in respect of metering**

Any dispute arising regarding metering matters under this Article 9 which cannot be resolved by the Parties shall be considered a dispute and shall be resolved by the Expert in accordance with Article 17.2 of this Agreement.

### **ARTICLE 10 INVOICING AND PAYMENT**

#### **10.1 Invoices**

The Project Company shall prepare and issue to NEPCO an invoice for the Energy Output or any other amounts due from NEPCO pursuant to Articles 5.6, 5.8, 8.1.1, 8.1.3, 13.8, 13.5.4 13.7.2, 13.9.2 or 13.11 within ten (10) Days after the end of each Billing Month in all other cases the Project Company shall prepare and issue to NEPCO an invoice as soon as reasonably practicable.

#### **10.2 Content of Invoice**

The invoice shall be prepared by the Project Company and presented to NEPCO in the form set forth in Schedule 3. Should the Project Company claim Deemed Energy in any Billing Month, the Project Company shall together with the invoice provide sufficient data and information associated with its claimed entitlement to allow NEPCO to evaluate such data and information in sufficient detail and, acting reasonably, to determine whether such claim by the Project Company is justified.

#### **10.3 Payment Due Date**

Subject to Article 13.11.1 in relation to the Supplemental Charge, the Energy Output and any other amounts payable by NEPCO hereunder shall be due and payable on the thirtieth (30<sup>th</sup>) Day after the date of delivery of the invoice for any Billing Month.

#### **10.4 Late Payment and Advance Payment Interest**

Any amount properly due from NEPCO to the Project Company under this Agreement and remaining unpaid after the due date for payment shall bear interest at an annual rate equal to the lesser of the Rate plus two percent (2%) and the maximum interest rate authorized under the Laws of Jordan, paid by NEPCO from the due date until but excluding such date the amount is paid in full.

Any overpayment by NEPCO to the Project Company, which is not returned by the Project Company to NEPCO within thirty (30) Days after the date on which such overpayment is requested to be returned by NEPCO, shall bear interest at an annual rate equal to the lesser of the Rate plus two percent (2%) and the maximum interest rate authorized under the Laws of Jordan, from and including the date the amount in question is advanced until but excluding the date payment is received or recovered by NEPCO from payments which become due by NEPCO to the Project Company.

#### **10.5 Disputed Payments**

If any amount shown on an invoice rendered by the Project Company or any overpayment by NEPCO is disputed in good faith by the other Party, in whole or in part, then the payment of the undisputed amount shall not be withheld on those grounds and shall be paid to the other Party when due, and any disputed amount subsequently agreed to by the Parties or adjudicated to be due by one Party to the other party shall be paid by such Party within fourteen (14) Days of determination that such payment is due, and shall bear interest for such payment at an annual rate equal to the lesser of the Rate plus one percent (1%) and the maximum interest rate authorized under the Laws of Jordan, paid from the original due date until but excluding such date the amount is paid in full. Nothing in this Article 10.5 may be interpreted to result in duplication in interest calculation pursuant to this



Article and Article 10.4.

## **10.6 Taxes and Currency Risk**

**10.6.1** All payments made by NEPCO to the Project Company 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 taxes or other similar withholdings.

**10.6.2** All Payments of a recurring nature due from NEPCO under this Agreement, to the extent that they do not relate to costs incurred by Project Company in Jordanian Dinar and to the extent that they are not subject to adjustment in accordance with paragraph 2 of Schedule 9, shall be adjusted as if that paragraph applied to them.

**10.6.3** Any Payment due or security required, in either case expressed to be required in US dollars shall be paid or provided in the specified US dollars amount.

## **10.7 Payment to the Project Company's Account**

Payment of any sum payable under this Article 10.1 shall be made to the Project Company Bank Account.

## **10.8 Currency for Payments**

Unless otherwise agreed by both Parties in writing, all amounts falling due under this Agreement shall be payable in Jordanian Dinar and NEPCO shall not be obliged to make payment in any other currency.

## **ARTICLE 11 INSURANCE**

### **11.1 Covenants of the Project Company**

The Project Company shall:

**11.1.1** at the Project Company's sole cost and expense obtain and maintain in full force and effect the insurance policies in the amounts and for the period set forth in Schedule 5, with NEPCO being named as an additional insured party, provided that the Project Company shall not be in breach of its obligations hereunder if and to the extent that any particular insurance policy or amount of coverage ceases to be available on commercially reasonable terms for reasons other than any gross negligence or wilful default by, or the substantial deterioration of the financial condition of the Project Company;

**11.1.2** provide to NEPCO, at least ten (10) Days prior to the date set for commencement of construction and thereafter at least ten (10) Days prior to the date set for each annual renewal thereof or otherwise in accordance with the terms of the relevant insurance policies, evidence of the notes of all policies required by Schedule 5 as at Financial Close and upon the commencement of such policies evidence that any premium due thereunder have been paid in full;

**11.1.3** provide access to NEPCO or its representatives to its offices at reasonable times during office hours by prior arrangement to inspect the original policies;

**11.1.4** and subject to the rights of the Lenders which shall take precedence, apply insurance proceeds payable in relation to any loss or damage to the PV Facility; if any claim is made by the Project Company under the insurance policies obtained and maintained as stipulated herein, any proceeds of the claim received by the Project Company shall be paid into an

account to be established in accordance with the Financing Documents, if and to the extent so-required by the Financing Documents. Disbursements from such account shall be controlled by the terms of the Financing Documents;

- 11.1.5** subscribe for insurance policies with a reputable insurance company or companies that are permitted to carry on business in Jordan to the extent it is commercially reasonable to do so.

## **11.2 No effect on liability**

The subscription by the Project Company for insurance policies required hereby shall not affect the liability of the Project Company under any indemnity provisions of this Agreement, however, NEPCO undertakes (subject to the rights of the Lenders which shall in all cases take precedence) to seek, if and to the extent so applicable, satisfaction from the relevant insurance policy first and may only if and to the extent such insurance provides no or not sufficient coverage, hold, to the extent applicable and as contemplated in this Agreement or by law, the Project Company liable.

## **11.3 Notice to NEPCO**

Any insurance policies maintained by the Project Company shall not affect the Project Company's liability under the indemnity provisions of this Agreement and shall not affect the Project Company's liability under Article 15.2.2 and shall not be terminated, expire or be materially altered except on thirty (30) Days prior written notice to NEPCO except where any such policy is to expire or be terminated in accordance with its terms and will immediately on expiry or termination be replaced with a new policy on substantially similar terms, provided that the Project Company shall not be in breach of its obligations hereunder if and to the extent that any particular insurance policy or amount of coverage ceases to be available on commercially reasonable terms for reasons other than any gross negligence or wilful default by the Project Company.

## **ARTICLE 12**

### **UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

#### **12.1 Undertakings of the Project Company**

**12.1.1** The Project Company undertakes that it will, at all times throughout the Term:

- (a) develop, design, engineer, construct and commission, test and complete the PV Facility in a good and workmanlike manner, only with materials and equipment that are new or, from Commercial Operation Date, at Project Company's discretion renovated spare parts (provided that such renovated equipment are (i) renovated pursuant to standards of good workmanship and Prudent Utility Practice, and (ii) are of the type being replaced or of another type insofar as same does not invalidate any applicable Type Certification of the Units or other equipment) and are of international utility-grade quality, and in all material respects in accordance with:
- (i) all applicable Laws of Jordan and the Government Authorisations;
  - (ii) the Functional Specifications set forth in Schedule 7;
  - (iii) the plans and specifications prepared in accordance with this Agreement;
  - (iv) the Technical Limits set forth in Schedule 7;
  - (v) Prudent Utility Practices; and

(vi) the System Grid Code and Transmission Connection Agreement,

provided that in no event shall the Project Company be required to develop, design, engineer, construct or complete the PV Facility in a manner that is inconsistent with the Functional Specifications or the Technical Limits, provided, however, that this shall not release the Project Company from its obligations to carry out rebuilding, repair and/or restoration in accordance with Article 13.9. In the event that there is any inconsistency or contradiction between two or more standards set forth above, the Project Company shall comply with them in the order in which they are listed;

- (b) design, engineer, construct and complete the PV Facility with specifications that provide for, with proper maintenance and operation, the useful life of the PV Facility to be at least equal to the Term;
- (c) after the Commercial Operation Date, operate and maintain the PV Facility in all material respects, in accordance with:
  - (i) all applicable Laws of Jordan and the Government Authorisations;
  - (ii) the Operating Protocol and the Dispatch Instructions;
  - (iii) the Technical Limits set forth in Schedule 7;
  - (iv) Prudent Utility Practices; and
  - (v) the System Grid Code and Transmission Connection Agreement,

provided that in no event shall the Project Company be required to operate or maintain the PV Facility in a manner that is inconsistent with the Functional Specifications or the Technical Limits provided, however, that this shall not release the Project Company from its obligations to carry out rebuilding, repair and/or restoration in accordance with Article 13.9. In the event that there is any inconsistency or contradiction between two or more standards set forth above, the Project Company shall comply with them in the order in which they are listed;

- (d) provide at its own risk and expense the necessary facilities and services for the safety, comfort and protection of its personnel and other personnel that are lawfully present at the Site; and
- (e) work and cooperate in good faith with NEPCO with respect to all of NEPCO's obligations and rights hereunder, including providing such access to the Site as NEPCO reasonably requires in order to perform its obligations and exercise its rights under this Agreement, provided that NEPCO shall provide reasonable notice of such access and act in accordance with Schedule 10 (Commissioning) and the Operating Protocol.

**12.1.2** Within ten (10) Business Days before the Commercial Operation Date, and subject to Article 16, the Project Company shall provide to NEPCO with computerized access that includes all of the data measured at the PV Facility as set out in Schedule 14 and shall inform NEPCO thereof, , From this computerized access point, NEPCO shall provide, install and maintain on the Project Company's premises the telecommunications equipment required for the transmission of the PV Facility data. The Project Company shall make available an adequate and secure space for the installation of NEPCO's telecommunications equipment. NEPCO shall be responsible for retrieving the data. The Project Company shall irrevocably grant a perpetual, non-exclusive licence to NEPCO at no charge so that, subject

to Article 16, NEPCO may use the said data at NEPCO's discretion. For the avoidance of doubt, all data and information provided by the Project Company to NEPCO under Articles 12.1.2 and 12.1.3 shall be subject to the confidentiality obligations set out in Article 16 of this Agreement.

- 12.1.3** Within ten (10) days of receiving a written request by NEPCO, the Project Company shall submit to NEPCO, in electronic form, all of the data measured by the Meteorological Measurement Equipment at the Project Company's disposal at the Site, using the transmission format and procedure specified by NEPCO, until access to the said data is provided in accordance with the above Article 12.1.2. The Project Company shall irrevocably grant a perpetual, non-exclusive licence to NEPCO at no charge so that, subject to Article 16, NEPCO may use the said data at NEPCO's discretion.
- 12.1.4** The Project Company undertakes to procure the Licence from EMRC prior to the Commercial Operation Date. Under by-law number 76 of 2001 (the electricity companies licensing bylaw issued in pursuant to Articles 7.1 and 18 of the General Electricity Law) the Project Company shall be exempt from the one time licensing fee payable for issuance of the Licence by EMRC.
- 12.1.5** The Project Company shall hold and maintain the Licence from the Commercial Operation Date for the Term and shall under the provisions of by-law number 76 of 2001 (the electricity companies licensing bylaw issued in pursuant to Articles 7.1 and 18 of the General Electricity Law) the Project Company, pay an annual renewal fee for the Licence. Subject to Article 13.11 (Change in Law), the annual renewal fee for the Licence shall be calculated on the basis of 0.0006 fils/kWh of Energy Output sold by the Project Company to NEPCO in accordance with Article 8.1 during the relevant Contract Year.

## **12.2 Representations and Warranties of the Project Company**

The Project Company represents and warrants that:

- 12.2.1** the Project Company is a private shareholding company duly organised, validly existing in good standing under the Laws of Jordan and has all requisite legal power and authority to conduct its business, to own its property and to execute this Agreement and to carry out its obligations hereunder;
- 12.2.2** this Agreement constitutes valid, legal and binding obligations of the Project Company, enforceable in accordance with the terms hereof except as the enforceability may be limited by applicable laws affecting creditors' rights generally;
- 12.2.3** there are no actions, suits or proceedings pending or, to the Project Company's knowledge, threatened, against or affecting the Project Company before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of the Project Company to meet and carry out its obligations under this Agreement; and
- 12.2.4** the execution, delivery and performance by the Project Company of this Agreement have been duly authorized by all requisite corporate action, do not and will not:
- (a) require any consent or approval by the Project Company other than that which have been obtained and are in full force and effect;
  - (b) violate any provision of the Laws of Jordan applicable to the Project Company or the Project;
  - (c) result in a breach or constitute a default under the incorporating documents of the Project Company, or under any agreement relating to the management or affairs of

the Project Company, or any indenture, loan, credit agreement or any other agreement, lease or instrument to which the Project Company is a party or by which the Project Company 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 the Project Company to perform its obligations under this Agreement;

- (d) result in, or require the creation or composition of, any mortgage, deed of trust, pledge, lien, hypothec, security interest, or other charge or encumbrances of any nature (other than as may be contemplated by this Agreement) upon or with respect to any assets or properties of the Project Company 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 the Project Company to perform its obligations under this Agreement;

**12.2.5** the execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Project Company is a party or any judgment, order, statute or regulation that is applicable to the Project Company or the PV Facility;

**12.2.6** the Project Company is solely responsible for making its own independent appraisal of and investigations regarding the Project and hereby warrants that it has not relied on and will not hereafter rely on NEPCO to assess or keep under review on its behalf the condition, affairs, status or nature of the Project (including but not limited to the solar radiation or meteorological data in relation to the Site);

**12.2.7** in respect of the land comprising the Site, Project Company is solely responsible to acquire or get otherwise legally sufficient title and access to and use of the land comprising the Site and warrants, in addition to the LLA, that it has, in good faith, negotiated with the rightful owners or those otherwise entitled to act on behalf of the owners, and therefore sufficient title that provides the right to uninterrupted use and access to the Site.

### **12.3 Undertakings of NEPCO**

**12.3.1** NEPCO undertakes that it will:

- (a) design, finance, construct, own, operate and maintain the Interconnection Facilities and the NEPCO Grid in all material respects in accordance with Schedule 8, Operating Protocol the System Grid Code, the Transmission Connection Agreement and all applicable Laws of Jordan;
- (b) operate and maintain the Interconnection Facilities and the NEPCO Grid in a manner consistent with the System Grid Code, the Transmission Connection Agreement, and Prudent Utility Practices and within the Technical Limits of the Project so as not to have a material adverse effect on the Project; and
- (c) work and cooperate in good faith with the Project Company with respect to all of the Project Company's obligations and rights hereunder

**12.3.2** Prior to the Commercial Operation Date, the Project Company shall be responsible for arranging for the supply of all electrical energy and capacity required for construction of the PV Facility through (i) self-generation, or (ii) to the extent available, through making arrangements to purchase construction power from the distribution company (Electricity Distribution Company or EDCO) or other available providers of electricity at the general tariff applicable to industrial users in Jordan, all in accordance with the General Electricity Law No. (64) of 2002. After Commercial Operation Date, NEPCO shall sell electricity to

the Project Company at the Bulk Industry Tariff as set and amended from time to time by the EMRC if the Project Company requires electricity from NEPCO, including for the following:

- (a) for purposes of maintenance; or
- (b) when the PV Facility is unavailable for any reason whatsoever.

#### **12.4 Representations and Warranties of NEPCO**

NEPCO represents and warrants that:

- 12.4.1** NEPCO is a public shareholding company duly organised and validly existing in good standing under the Laws of Jordan and has all requisite legal power and authority to conduct its business to purchase Electrical Output and to execute this Agreement and to carry out its obligations hereunder;
- 12.4.2** NEPCO has full approval and authority from the Government Authority to execute this Agreement and to carry out its obligations hereunder;
- 12.4.3** all legislative, administrative or other governmental action required to authorize the execution, delivery and performance by NEPCO of this Agreement and the transactions contemplated hereby have been taken and are in full force and effect;
- 12.4.4** this Agreement constitutes the valid, legal and binding obligation of NEPCO, enforceable in accordance with the terms hereof except as the enforceability may be limited by applicable laws affecting creditors' rights generally;
- 12.4.5** there are no actions, suits or proceedings pending or, to NEPCO's knowledge, threatened against or affecting NEPCO before any court, administrative body or arbitral tribunal which might materially adversely affect the ability of NEPCO to meet and carry out its obligations under this Agreement;
- 12.4.6** the execution, delivery and performance by NEPCO of this Agreement have been duly authorised by all requisite corporate action, and do not and will not:
  - (a) require any consent or approval by NEPCO other than that which have been obtained and are in full force and effect;
  - (b) violate any provision of the Laws of Jordan applicable to NEPCO;
  - (c) result in a breach or constitute a default under the incorporating documents of NEPCO, or under any agreement relating to the management or affairs of NEPCO, or any indenture, loan, credit agreement, or any other agreement, lease or instrument to which NEPCO is a party or by which NEPCO 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 NEPCO to perform its obligations under this Agreement; or
  - (d) result in, or require the creation or composition of any mortgage, deed of trust, pledge, lien, hypothec, security interest, or other charge or encumbrances of any nature (other than as may be contemplated by the Agreement) upon or with respect to any assets or properties of NEPCO 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 NEPCO to perform its obligations under this Agreement.

**ARTICLE 13**  
**FORCE MAJEURE**

**13.1** "Force Majeure" means any circumstance, event or condition (or combination thereof) beyond the reasonable control, directly or indirectly, of the Affected Party but only to the extent that:

**13.1.1** such circumstance, event or condition, despite the exercise of diligence, cannot be prevented, avoided or overcome by the Affected Party, save as to for unreasonable costs and / or efforts;

**13.1.2** such circumstance, event or condition prevents the performance by the Affected Party of its obligations under or pursuant to this Agreement (save for payment obligations);

**13.1.3** the Affected Party has taken all reasonable precautions, due care and measures to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences;

**13.1.4** such circumstance, event or condition is not the direct or indirect result of a breach or failure by the Affected Party to perform any of its obligations under this Agreement or any other Project Agreement;

**13.1.5** such circumstance, event or condition is without fault or negligence of the Affected Party; and

**13.1.6** the Affected Party has given the other Party notice in accordance with Article 13.5.1.

provided that a reduction in solar irradiation or the occurrence of other meteorological conditions shall not be considered a Force Majeure.

**13.2** "Government Force Majeure" means Force Majeure which consists of any or any number of the following events:

**13.2.1** acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade in each case involving, occurring within Jordan;

**13.2.2** acts of rebellion, riot, civil commotion, nationwide strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature, or industrial disturbances, lock outs, or any prolonged civil action that blocks access to GOJ or Government Authority;

**13.2.3** any boycott, sanction, embargo penalty or other restriction imposed directly on Jordan by the government of [*insert country(ies) of incorporation of EPC Contractor one country*] during the period up to and including the Commercial Operation Date;

**13.2.4** any action or failure to act by a Government Authority that results in any Government Authorisation:

(a) ceasing to remain in full force and effect; or

(b) not being issued or renewed in a timely manner upon due application having been made,

provided that the reasonable exercise of any rights of a Government Authority pursuant to any Government Authorisation shall not constitute Government Force Majeure;

- 13.2.5 NEPCO Grid Failure to the extent such failure is caused as a result of Government Force Majeure;
  - 13.2.6 nationalisation, expropriation initiated or pursued directly by the GOJ of the PV Facility; and
  - 13.2.7 a Change in Law that prevents the Project Company from building or operating the PV Facility or which otherwise can not be cured under Article 13.11.
- 13.3 "Other Force Majeure"** means Force Majeure (which is not Government Force Majeure), which consists of any or any number of the following events::
- 13.3.1 Natural disaster, such as lightning, fire, earthquake, flood, cyclone, tornado or other natural disaster, extreme adverse weather condition or act of God;
  - 13.3.2 epidemic or plague;
  - 13.3.3 accident, explosion or chemical contamination (other than resulting from an act of war or an act of terrorism or sabotage);
  - 13.3.4 acts of war (whether declared or not), invasion, armed conflict, act of foreign energy or blockade not involving, or occurring within Jordan;
  - 13.3.5 acts of, rebellion, riot, civil commotion, nationwide strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature, or industrial disturbances, lock outs, etc, not involving or occurring within Jordan;
  - 13.3.6 radioactive contamination or ionising radiation originating from a source outside Jordan to the extent it exceeds applicable standards;

**13.4 Certain Events not Force Majeure**

Notwithstanding that a Force Majeure occurrence may otherwise exist, the provisions of this Article 13 shall not excuse:

- 13.4.1 failure to make a payment of money in accordance with the Party's obligations under this Agreement other than in circumstances where NEPCO is prevented from making payments due to an event of Other Force Majeure affecting the banking system within Jordan;
- 13.4.2 any failure by the Project Company or its Contractors to obtain or maintain any Government Authorisation due to omissions, negligence or default by the Project Company or one or more Contractor;
- 13.4.3 any failure to take into account information and dates in the Environmental and Social Monitoring and Mitigation Plan if and to the extent applicable;
- 13.4.4 any failure by a Contractor which results in the failure or inability of the Project Company to perform its obligations under this Agreement where the cause of such failure by the Contractor would not otherwise constitute Force Majeure pursuant to this Agreement;
- 13.4.5 late performance by the Project Company or any Contractor caused by the failure of the Project Company or such Contractor to engage qualified subcontractors and suppliers or to hire an adequate number of personnel or labour;
- 13.4.6 late delivery of equipment, machinery, plant or materials caused by negligent acts or omissions on the part of the Project Company or any Contractor;



**13.4.7** inability to obtain or maintain adequate funding for the Project;

**13.4.8** subject to Article 13.2.5, any mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party caused by the failure of the Affected Party to operate or maintain the equipment, machinery or plant in accordance with Prudent Utility Practice due to the manner in which the equipment, machinery or plant has been operated or maintained.

## **13.5 Obligations**

**13.5.1** If a Party that considers itself affected (the "**Affected Party**") desires to invoke Force Majeure as a cause for delay or failure in performance of any of its obligations under this Agreement (other than payment of money), it shall:

- (a) as soon as reasonably practicable and, in any event, no later than seven (7) Days following the start of the Force Majeure and immediately if and to the extent the Force Majeure causing event is apparent, give notice to the other Party of the circumstance, event or condition which it alleges constitutes Force Majeure and an estimate of its likely duration. If the Affected Party does not deliver such notice in accordance with the terms hereof, such Affected Party shall not be entitled to invoke the benefits of this Article 13.5 until such notice is given in accordance with this article 13.5.1 ;
- (b) within a reasonable period but no later than fourteen (14) Days of the date of a notice issued pursuant to Article 13.5.1(a) provide a report concerning Force Majeure and its effects, including particulars of the circumstance, event or condition, a general description of the obligations likely to be affected, an estimate of its likely duration and a statement of the actions to be taken in order to comply with its obligations under this Article 13.5; and
- (c) at weekly intervals, or such intervals as deemed reasonable, in the first month and fortnightly intervals thereafter for the duration of the Force Majeure, provide updates as to the matters set out in Article 13.5.1 (b).

**13.5.2** The Affected Party shall:

- (a) make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by Force Majeure, including recourse to alternate sources of services, equipment and materials;
- (b) as soon as reasonably possible, and in accordance with Prudent Utility Practices, ensure the resumption of normal performance of this Agreement after the cessation of Force Majeure or its effects and shall otherwise perform its obligations under this Agreement to the extent not excused under this Article 13.5.2; and
- (c) within seven (7) Days following the cessation of Force Majeure, submit to the other Party reasonable proof of the nature of such delay and its effect upon the performance of its obligations under this Agreement.

**13.5.3** With respect to the Project Company only, if Force Majeure occurs that affects one or more Units but without affecting other parts of the PV Facility, such event may be invoked only with respect to the Unit(s) that are affected by such event and not with respect to any other Unit or other part of the PV Facility not so affected, provided that, with respect to the operation of any Units not so affected, such Units are capable of independent or partial operation in accordance with Prudent Utility Practices.

**13.5.4** For the avoidance of doubt, if Force Majeure affects one or more Units (but without affecting other parts of the PV Facility in the manner described in Article 13.5.3), NEPCO shall be obliged to make payments:

- (a) in respect of the Energy Output of the unaffected Units, in accordance with Article 8 and Schedule 9;
- (b) in relation to the affected Units during an event of Government Force Majeure, in accordance with Article 13.8.2.

### **13.6 Effects of a Force Majeure Generally**

**13.6.1** The Affected Party shall not be liable for any delay or failure in performing its obligations under this Agreement due to Force Majeure, provided that no relief shall be granted to the Affected Party pursuant to Article 13.1.1 to the extent that such failure or delay:

- (a) would have nevertheless been experienced by the Affected Party had Force Majeure not occurred; or
- (b) was caused by the failure of the Affected Party to comply with its obligations under Article 13.6.2.

**13.6.2** Save as provided in Articles 5.7, 5.8 and Article 13.1.1, other than for breaches of this Agreement by the Party not claiming Force Majeure, and without prejudice to the rights of the Affected Party to indemnification pursuant to Article 15.2 or to the express entitlement of the Affected Party to compensation from Insurance, the Party not claiming Force Majeure shall not bear any liability for any loss or expense suffered by the Affected Party as a result of a Force Majeure.

**13.6.3** If an event of Other Force Majeure affects the Project Company, substantially preventing performance of this Agreement for a period of greater than twelve (12) months, the Project Company may terminate this Agreement giving 30 Days notice and the provision of Article 14.9 shall apply.

**13.6.4** If an event of Government Force Majeure affects NEPCO, substantially preventing performance of this Agreement for a period of greater than twelve (12) months, NEPCO may terminate this Agreement giving 30 Days notice and the provisions of Article 14.8 shall apply.

### **13.7 Effects of Force Majeure Prior to Commercial Operation Date**

**13.7.1** If, prior to the Commercial Operation Date, a Force Majeure (whether Government Force Majeure or Other Force Majeure) occurs, affecting the Project Company, NEPCO or both Parties, which results in material damage to or loss of the PV Facility or a delay in achieving the Commercial Operation Date by the Required Commercial Operation (as may have been extended pursuant to Articles 4.4.1, 4.4.2 or 5.8.3), in addition to any remedies the Project Company may have the Parties shall consult with one another as soon as practicable after the giving of a notice as provided in Article 13.5.1(a) concerning the effect of such Force Majeure on the Implementation Schedule and, subject to Articles

4.4.1, 4.4.2 and 5.8.3, the Implementation Schedule shall be adjusted as appropriate taking into account the effect which the Affected Party reasonably demonstrates is properly attributable to such Force Majeure and the ability of such Party to reschedule its activities to minimise the overall delays to the Commercial Operation Date resulting from such event.

**13.7.2** The provisions of Article 5.8.3 shall apply to the agreement or determination of appropriate adjustment to the Implementation Schedule due to events of Force Majeure.

**13.7.3** If the Parties are unable to reach an agreement adjustment of the Implementation Schedule within a period of thirty (30) Days from the date the notice referred to in Article 13.5 is received the Dispute shall be referred to the Expert pursuant to Article 17.2 for determination of the Required Commercial Operation Date and Long Stop Date and/or any payments due under Article 5.8.

### **13.8 Effects of a Force Majeure After Commercial Operation Date**

On and from the Commercial Operation Date:

**13.8.1** during any Other Force Majeure NEPCO shall pay the Tariff to Project Company for all Energy Output actually received by NEPCO; and

**13.8.2** if a Government Force Majeure prevents the Project Company from making available to NEPCO the full Energy Output, or prevents NEPCO from taking delivery of all or part of the Energy Output from the Project Company, in respect of any Energy Output thereby not received by NEPCO, NEPCO shall be deemed to have received such Energy Output calculated based on the Estimated or Actual Performance Ratio as set out in Schedule 9 of this Agreement at the time before the occurrence of the Government Force Majeure Event, and the PV Facility operating data and the PV Facility's actual capacity at such time and the provisions of Article 8 and Schedule 9 shall apply to the calculation of payment for Deemed Energy Output. Such payments will be payable by NEPCO for the period commencing on the next Day following the start of the Government Force Majeure and ending upon the earlier to occur of (i) termination of this Agreement under Article 14.1 and (ii) the cessation of the effects of the Government Force Majeure; or

**13.8.3** if an Other Force Majeure Event prevents the Project Company from making available to NEPCO the full Energy Output, or prevents NEPCO from taking delivery of all or part of the Energy Output from the Project Company, then NEPCO shall grant the Project Company an extension of the Term. An extension of the Term hereunder shall be proposed by the Project Company acting reasonably for consideration by NEPCO. If the Parties are unable to reach an agreement about the extension of the Term within a period of thirty (30) Days from the date the notice referred to in Article 13.6.1(a) is received the Dispute shall be referred to the Expert pursuant to Article 17.2 for determination of a reasonable extension of the Term.

### **13.9 Restoration**

**13.9.1** If Force Majeure causes an Event of Loss, the Project Company shall, when the relevant Force Majeure event ceases, rebuild, repair and/or restore the PV Facility, using all insurance proceeds, any insurance proceeds being subject to the relevant Financing Documents, or other amounts actually received on account of the Event of Loss, except proceeds from delay in start-up or business interruption insurance (collectively, "**Casualty Proceeds**"), together with any other amounts that are reasonably available to the Project

Company for such rebuilding, repair and/or restoration, in accordance with this Article 13.9.

**13.9.2** All Casualty Proceeds received by the Project Company shall be deposited by the Project Company into a restoration account segregated from all other funds of the Project Company (the "**Restoration Account**") to be applied as provided hereunder. The Project Company shall:

- (a) diligently pursue all of its rights to compensation against any person with respect to such Event of Loss;
- (b) in the reasonable judgment of the Project Company, compromise or settle any claim against any person with respect to such Event of Loss; and
- (c) hold all amounts of Casualty Proceeds (including financial instruments) received by the Project Company in respect of any Event of Loss (after deducting all reasonable expenses incurred by the Project Company in litigating, arbitrating, compromising or settling any claims) in the Restoration Account.

**13.9.3** As soon as reasonably practicable but no later than the date of receipt by the Project Company of any Casualty Proceeds, the Project Company shall make a good faith determination as to whether:

13.9.3.1 the PV Facility or such portion thereof that has been affected by the Event of Loss can be rebuilt, repaired or restored to permit operation of the PV Facility or such portion thereof on a commercially feasible basis; and

13.9.3.2 the Casualty Proceeds, together with any other amounts that are available to the Project Company for such rebuilding, repair and/or restoration, are sufficient to permit such rebuilding, repair and/or restoration of the PV Facility or such portion thereof.

The determination of the Project Company shall be evidenced by a certificate of a responsible officer of the Project Company to be delivered to NEPCO which, in the event the Project Company determines that the PV Facility or such portion thereof can be rebuilt, repaired and/or restored to permit operation thereof on a commercially feasible basis, shall also set forth a reasonable good faith estimate by the Project Company of the total cost of such rebuilding, repair and/or restoration.

**13.9.4** Provided that the Project Company is not thereby in breach of the Financing Documents and subject to the rights of the Lenders which shall take precedence as required by the Financing Documents if the Parties agree or, if NEPCO disputes the Project Company's determination above, a determination is made pursuant to Article 13.9.7 that:

13.9.4.1 the PV Facility cannot be rebuilt, repaired and/or restored to permit operation on a commercially feasible basis or that the Casualty Proceeds, together with any other amounts that are available to the Project Company for such rebuilding, repair and/or restoration, are not sufficient to permit such rebuilding, repair and/or restoration, then all of the Casualty Proceeds shall be distributed in the following order of priority and either Party may elect to terminate this Agreement in accordance with Article 14.9

- (1) first, to the payment of costs and expenses actually incurred and duly evidenced by the Project Company in the performance of its obligations under this Article; and

- (2) second, to the Project Company or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds;

13.9.4.2 only a portion of the PV Facility can be rebuilt, repaired and/or restored to permit operation on a commercially feasible basis and that the Casualty Proceeds, together with any other amounts that are available to the Project Company for such rebuilding, repair and/or restoration, are sufficient to permit such rebuilding, repair and/or restoration, then:

- (1) the amount equal to the estimate of the total cost of such rebuilding, repair and/or restoration agreed by the Parties or determined pursuant to Article 13.9 shall be deposited in the Restoration Account to be applied towards the costs of rebuilding, repairing and/or restoring such portion of the PV Facility; and
- (2) the amount, if any, by which all of the Casualty Proceeds exceed the estimate of the total cost shall be distributed in the following order of priority: first, to the Project Company; and second, to the payment of any amount due to NEPCO under the Project Agreements or to whomever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds; or

13.9.4.3 if the PV Facility can be rebuilt, repaired and/or restored to permit operation on a commercially feasible basis and the Casualty Proceeds, together with any other amounts that are available to the Project Company for such rebuilding, repair and/or restoration are sufficient to permit such rebuilding, repair and/or restoration, then all of the Casualty Proceeds, together with such other amounts as are available to the Project Company for such rebuilding, repair and/or restoration, shall be deposited in the Restoration Account to be applied toward the costs of rebuilding, repairing and/or restoring the PV Facility.

**13.9.5** Upon the occurrence of an Event of Loss, the Project Company shall immediately take all necessary action, consistent with applicable Law, to secure and make safe the PV Facility, the Land/s and the Site.

**13.9.6** If the Project Company is required to restore the PV Facility, the Project Company shall promptly commence any restoration work and shall diligently pursue the same to completion, subject to a reasonable allowance for the time needed to adjust any insurance claims. Before the Project Company shall commence any such restoration, and at all times during the course of such restoration, the Project Company shall pay NEPCO all amounts due to NEPCO under the Project Agreements. In addition, at all times the Project Company shall continue to perform and observe all of the terms, covenants, conditions, agreements and obligations of the Project Company to be performed under this Agreement and the other Project Agreements notwithstanding any Event of Loss.

**13.9.7** If, at any time during restoration pursuant to Article 13.9, NEPCO believes that the Project Company is not diligently pursuing the same, NEPCO may refer the Dispute to the Expert pursuant to Article 17.2. The Expert will be required to specify a reasonable restoration timetable and the Project Company shall adhere to such timetable. Any other Dispute regarding a Party's compliance with its obligations under this Article 13.9 shall be referred to the Expert for resolution pursuant to Article 17.2.

## **13.10 Payment Obligations Not Excused by Force Majeure**

Subject to Article 13.4.1, no event, whether or not such event constitutes Force Majeure, shall excuse NEPCO from its payment due in accordance with this Agreement.

### **13.11 Change in Law Affecting Financial Return**

**13.11.1** In the event of a Change in Law:

- (a) from which the Project Company is not exempt; and
- (b) which adversely reduces the expected revenue of the Project Company and/or increases the costs relating to the Project; and
- (c) the effect of such Change in Law is not of an ongoing nature and affects the expected revenue and cost of the Project Company only once,

NEPCO shall pay to the Project Company a Supplemental Charge under this Agreement in such amount as is necessary to compensate the Project Company for, and make the Project Company whole with respect to, costs (including deductions in revenue) in excess of the threshold set out in Article 13.11.4. The Supplemental Charge referred to in this Article 13.11.1 shall be paid within ninety (90) days of receipt by NEPCO of the original invoice detailing such additional costs or reduced revenues. NEPCO may dispute the amount payable within thirty (30) days of receipt of the original invoice. In the event that NEPCO disputes the amount payable, Article 10.5 shall apply, provided that NEPCO shall have until the expiry of 90 days from the date of the invoice to pay any amount resolved as payable pursuant to Article 10.5.

**13.11.2** Subject to Article 13.11.6, in the event of a Change in Law as set forth in Articles 13.11.1 and 13.11.2, the Project Company shall assume the cost of the Change in Law up to a cumulative total of two thousand US Dollars (US\$2000) for each MW installed capacity per year.. In the event the Change in Law exceeds two Thousand US Dollars (US\$2000) for each MW installed capacity per year, in cost to the Project Company then, in relation to sums exceeding this One Thousand Eight Hundred US Dollars (US\$1,800) for each MW installed capacity per year for each MW installed capacity threshold (as appropriate), NEPCO shall pay to the Project Company the Supplemental Charge as set forth herein.

**13.11.3** Subject to Article 13.11.6, in the event of a Change in Law as set forth in Article 13.11.3, the Project Company shall assume the benefit of the Change in Law up to a cumulative total of two Thousand US Dollars (US\$2000) for each MW installed capacity per year. In the event the Change in Law exceeds two Thousand US Dollars (US\$2000) for each MW installed capacity per year in benefit to the Project Company then, in relation to sums exceeding this One Thousand Eight Hundred US Dollars (US\$2000) for each MW installed capacity per year, the Project Company shall credit to NEPCO the respective amount as set forth herein.

**13.11.4** Articles 13.11.4 and 13.11.5 shall not apply in relation to limb (h) of the definition of Change in Law or to any change in law that allows the Project Company to increase the generation capacity and Energy Output of the PV Facility.

**13.11.5** Within 90 Days of Financial Close the Project Company and NEPCO shall designate an accounting firm of international reputation and qualification to hold in escrow the Project Company's Financial Model submitted to its Lenders at that time. In the event that NEPCO and the Project Company are unable to agree the quantum of the Supplemental Charge within thirty (30) Days of the Project Company notifying NEPCO of the occurrence of a Change in Law, the Parties shall jointly instruct the designated accounting firm to determine the precise amount of the Supplemental Charge or the credit amount due to

NEPCO under this Agreement and communicate the results to NEPCO and the Project Company, provided that in no event shall NEPCO, MEMR or any other Government Authority be entitled to have access to the Financial Model. The agreement with the accounting firm shall specify that the accounting firm include in its report a reference to the items from the Financial Model that were relevant to its determination. The related cost shall be shared equally between the Parties.

## **ARTICLE 14 DEFAULT AND TERMINATION**

### **14.1 Termination for Default**

#### **14.1.1 Termination by NEPCO**

Each of the following events shall be an event of default by the Project Company (each a "**Project Company Event of Default**") which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of NEPCO to terminate this Agreement pursuant to Article 14.2; provided, however, that no such event shall be a Project Company Event of Default if it: (i) results from a breach or default by NEPCO of the PPA or the Transmission Connection Agreement or (ii) occurs as a result of or during a Force Majeure.

- (a) the failure of the Project Company to achieve the Commercial Operation Date by the Longstop Date provided that at the time of reaching the Longstop Date, NEPCO has fulfilled the Conditions set forth in Schedule 2 Part E, and unless the Longstop Date is extended with the consent of NEPCO or otherwise in accordance with this Agreement;
- (b) the failure of the Project Company, subject to Article 13.2.4 following thirty (30) days notice from NEPCO notifying Project Company of any absence of any materially required Government Authorisation, to subsequently obtain and maintain in effect throughout the Term all required Government Authorisations through no fault or delay of NEPCO, GOJ, or any other Government Authority, to the extent such failure adversely and materially affects the Project Company's ability to undertake the Project and sell Energy Output to NEPCO;
- (c) the failure of the Project Company to: (i) maintain the Performance Bank Guarantee in effect until the date such security is no longer required in accordance with Article 4.5, or (ii) obtain and maintain the Decommissioning Security required pursuant accordance with Article 21.1.1 (if applicable);
- (d) the failure of the Project Company in the event of any unexcused absence of a required insurance policy for a period of thirty (30) days, to subsequently subscribe for, maintain in effect, renew, or provide notice to NEPCO in respect of, any insurance policy required in accordance with the provisions of Article 11.1;
- (e) the assignment or transfer of the Project Company's rights or obligations under this Agreement or in the assets comprising the PV Facility, or of its shares (other than as permitted in the Financing Documents and/or under this Agreement without obtaining the prior written consent of NEPCO;
- (f) except for the purpose of amalgamation or reconstruction (provided, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events and the continuance of the same without remedy or revocation for a term of thirty (30) Days thereafter: (i) the passing of a resolution by the shareholders, directors or equivalent body of the Project Company for voluntary liquidation of the Project Company; (ii) the appointment of a liquidator by the Project Company or by the Controller of Companies for liquidation of the Project Company; (iii)

the issuance of a final and conclusive order by a competent court of jurisdiction for liquidation of the Project Company; or (iv) the transfer, conveyance, loss, or relinquishment (except to the Lenders or to a Permitted Transferee) of the Project Company's right to own and/or operate the PV Facility or any material part thereof or to occupy the Site to any person without the prior written approval of NEPCO;

- (g) any statement, representation or warranty by the Project Company in this Agreement proving to have been incorrect in any material respect when made or when deemed to have been made, and such failure or incorrect statement, representation or warranty having a material and adverse effect on the Project Company's ability to perform its obligations under this Agreement and, if capable of remedy, has not been remedied within thirty (30) days of notice served by NEPCO specifying the relevant breach or such other period as specified under this Agreement;
- (h) any material breach by the Project Company preventing the Project Company delivering Energy Output to the Delivery Point in accordance with this Agreement that is not remedied within thirty (30) Days after Notice from NEPCO, stating that a material breach of such agreement has occurred that could result in the termination of the Agreement, identifying the material breach in question in reasonable detail, and demanding remedy thereof.

#### **14.1.2 Termination by the Project Company**

Each of the following events shall be an event of default by NEPCO (each a "**NEPCO Event of Default**") which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Project Company to terminate this Agreement pursuant to Article 14.2; provided, however, that no such event shall be a NEPCO Event of Default (i) if it results from a breach or default by the Project Company of this Agreement, (ii) if it occurs as a result of or during a Force Majeure or (iii) if the Project Company is unaffected by, protected from or compensated pursuant to specific remedies afforded under this Agreement for the effects of any such NEPCO Event of Default:

- (a) the dissolution, pursuant to law, of NEPCO, except for (i) the privatization, in whole or in part, of NEPCO or any of its subsidiaries, or (ii) an amalgamation, reorganization or reconstruction of NEPCO and, in either case, no payment guarantee in a form and substance and from an entity that is reasonably acceptable to Project Company is provided in respect of such new entity at the time of privatisation, amalgamation, re-organisation or reconstruction;
- (b) any material breach by NEPCO of this Agreement, including any failure to make payments when due, that is not remedied within fifteen (15) Days after Notice from the Project Company to NEPCO, whereupon the Project Company states that a material breach of such Agreement has occurred that could result in the termination of the Agreement, identifying the material breach in question in reasonable detail, and demanding remedy thereof;
- (c) termination of the Transmission Connection Agreement due to an event of default of NEPCO under such agreement;
- (d) save as otherwise already regulated under this Article 14.1.2 any material breach of the relevant obligations as contemplated in this Agreement;
- (e) termination or revocation of the Government Guarantee or a court determination that such agreement or any material part of it is unenforceable;



- (f) the occurrence of any of the following events and the continuance of the same without remedy or revocation for a term of sixty (60) Days thereafter:
  - A. the passing of a resolution by shareholders, directors or equivalent body of NEPCO for voluntary liquidation of NEPCO;
  - B. the appointment of a liquidator by NEPCO by GoJ or by the Controller of Companies for liquidation of NEPCO; or
  - C. the issuance of a final and conclusive order by a competent court of jurisdiction for liquidation of NEPCO.

## **14.2 Termination Notices**

- 14.2.1** Upon the occurrence of an NEPCO Event of Default (other than a failure by NEPCO to make payments when due) or a Project Company Event of Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting Party may, at its option, initiate termination of this Agreement by delivering a notice (a "Notice of Intent to Terminate") of its intent to terminate this Agreement to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the Project Company Event of Default or NEPCO Event of Default, as the case may be, giving rise to such Notice.
- 14.2.2** Following the delivery of a Notice of Intent to Terminate, the Parties shall consult for a period of up to forty-five (45) Days in case of a failure by either Party to make payments when due, and up to sixty (60) Days with respect to any other Event of Default (or such longer period as the Parties may mutually agree), as to what steps shall be taken with a view to mitigating the consequences of the relevant Event of Default taking into account all the circumstances. During the period following the delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default, and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with Article 14.2.3 then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.
- 14.2.3** Upon: (i) the occurrence of an NEPCO Event of Default as a result of a failure by NEPCO to make payments when due; or (ii) expiration of the consultation period described in Article 14.2.2, and unless the Parties shall have otherwise agreed or unless the Event of Default giving rise to the Notice of Intent to Terminate shall have been remedied, then: (i) the Project Company, in respect of a NEPCO Event of Default as a result of a failure by NEPCO to make payments when due; or (ii) the Party having given the Notice of Intent to Terminate, as the case may be, may terminate this Agreement by delivery of a Termination Notice to the other Party, whereupon this Agreement shall immediately terminate.

## **14.3 Notice to Lenders of Project Company Default**

- 14.3.1** The provisions of Article 14.1 are subject to this Article 14.3.
- 14.3.2** NEPCO's right to terminate this Agreement is subject to, and shall be suspended as provided under, the Lenders' Direct Agreement in respect of its obligations under this Agreement and the Transmission Connection Agreement.
- 14.3.3** NEPCO shall deliver any of the Notice of Intent to Terminate and the Termination Notice to the Agent in accordance with the Lenders' Direct Agreements at the same time they are delivered to the Project Company and, within the relevant period specified in the Lenders' Direct Agreement, the Lenders may at their discretion exercise their step-in rights, as provided in the Lender's Direct Agreement.

#### **14.4 Notice to MEMR of NEPCO Default**

Notwithstanding anything in this Agreement, the Project Company shall not seek to terminate this Agreement, without first giving to MEMR, acting on behalf of the GOJ, a copy of its Notice of Intention to Terminate that the Project Company delivers to NEPCO pursuant to Articles 14.2.1 together with a request to MEMR to cure any such default within the same cure period as provided to NEPCO herein, as the case may be, and such cure period to commence upon delivery of each such notice to MEMR. MEMR may perform, but shall be under no obligation to perform, any act required of NEPCO hereunder. Any payment made by or act performed by MEMR shall have the same effect as if the payment or act had been made or performed by NEPCO. If MEMR fails to cure or is unable or unwilling to cure a default of NEPCO, as the case may be, within the cure periods provided for above, the Project Company shall have all of its rights and remedies with respect to such default as set forth in this Agreement, provided however, that if MEMR confirms that it is diligently attempting to cure such default of NEPCO and demonstrates reasonable progress toward effecting such cure is being made and the default by NEPCO is not a failure by NEPCO to make payments when due, MEMR shall be granted an additional period not exceeding sixty (60) Days to affect such cure before the Project Company may exercise its rights and remedies with respect to such default set forth in this Agreement. Nothing in this Article may be interpreted to limit and/or release the GoJ of any of its obligations and undertakings under the Government Guarantee Agreement.

#### **14.5 NEPCO's right to claim on the Performance Bank Guarantee upon termination of PPA**

In the event NEPCO terminates this Agreement pursuant to a Project Company Event of Default, then NEPCO shall be entitled to draw upon the Performance Bank Guarantee.

#### **14.6 Compensation for Termination due to Project Company Default**

In the event of termination due to a Project Company Event of Default, then :

- 14.6.1** NEPCO shall have the right to claim the full amount of the Performance Bank Guarantee and NEPCO shall be entitled but not obliged to purchase the PV Facility. The purchase price shall be the Total Debt Outstanding.

The project company shall insure allowing assignment of right of land in the LLA to NEPCO on early termination events and if the land is owned by the Project Company NEPCO shall have the right, at its option, either purchase or lease the Site for the remainder of the Term (as extended pursuant to this Agreement). The purchase price of the Site shall be actual price paid by the Project Company but not more than 10% more than the price determined by the relevant land registry department as the date of signing this Agreement. The annual lease of the Site shall be as determined by the relevant land registry department as the date of signing this Agreement.

#### **14.7 Compensation for Termination due to NEPCO default**

- 14.7.1** In the event of termination due to a NEPCO Event of Default, the Project Company has the right to transfer and NEPCO shall have the obligation to (i) accept a transfer of and pay for the PV Facility. (ii) at its option to either purchase or lease the Site for the remaining period of the of the Term ( as extended pursuant to this Agreement). The purchase price for the PV Facility shall be calculated as per Schedule 20. The purchase price of the Site shall be actual price paid by the Project Company but not more than 10% more than the price determined by the relevant land registry department as the date of signing this Agreement. The annual lease of the Site shall be as determined by the relevant land registry department as the date of signing this Agreement.

#### **14.8 Compensation for Termination due to prolonged Government Force Majeure**

In the event of termination by NEPCO in accordance with Article 13.6.4 due to a prolonged event of Government Force Majeure, the provisions of Article 14.7 above shall apply.

#### **14.9 Compensation for Termination due to Prolonged Other Force Majeure**

In the event of termination by Project Company in accordance with Article 13.6.3, the Project Company shall have the right to sell and NEPCO shall have the right to purchase the PV Facility in the manner specified in Article 14.6.2 above. In the event that NEPCO does not exercise its rights to purchase the PV Facility pursuant to this Article 14.9, the Project Company shall have the right to sell the PV Facility to a third party and NEPCO shall provide such reasonable assistance as is necessary to enable such a sale.

#### **14.10 Conditions for Termination**

Subject to the rights to terminate under Articles 14.1 and 14.2, if and to the extent NEPCO honours its payment obligations and the Project Company delivers Energy Output as defined and specified by this Agreement, neither Party shall have the right to terminate this Agreement.

#### **14.11 Project Company assistance on Termination**

**14.11.1** Where NEPCO has purchased the PV Facility (or such part of the PV Facility as has been Commissioned) in accordance with Article 14.6-14.9, for a period of 6 months following Termination, the Project Company shall provide all reasonable assistance to NEPCO to:

- (a) secure the transfer of any associated agreements, contracts, IP rights or other relevant assets to NEPCO or GOJ (as applicable);
- (b) secure the transfer of any relevant rights in land pursuant to the Land Lease Agreements, including any extension of term of any Land Lease Agreements and/or the entry into new Land Lease Agreements;

**14.11.2** provided that to the extent that NEPCO enters into any Land Lease Agreement, NEPCO shall hold the Project Company harmless in respect of any rights, obligations or restrictions under the relevant Land Lease Agreement.

**14.11.3** Any assistance provided by the Project Company pursuant to Article 14.11.1 shall be commercially reasonable and shall:

- (a) be at the cost of Project Company where NEPCO has purchased the PV Facility in accordance with Article 14.6; or
- (b) be at the cost of NEPCO where NEPCO has purchased the PV Facility in accordance with Articles 14.7 and 14.8; or
- (c) be at the cost of both NEPCO and Project Company on an equal basis where NEPCO has purchased the PV Facility in accordance with Article 14.9

provided that the Project Company's right to claim costs pursuant to Article 14.11.2(b) and 14.11.2(c) shall be limited to legal and other costs reasonably incurred in documenting, registering, filing or notarising the transfer of any of the rights referred to

in Article 14.11.1 and, in each case, must be supported by reasonable evidence (and shall not include any Termination Costs).

**14.11.4** For the avoidance of doubt, nothing in this Article 14.11 shall require the Project Company to assist NEPCO in respect of the transfer or the grant of a Generation Licence or any other approval, consent, licence or other authorisation from any Government Authority.

## **14.12 Other Remedies**

The exercise of the right of a Party to terminate this Agreement, as provided herein, shall not preclude the Party from exercising other remedies that are provided herein or are available at law. Remedies are cumulative, and the exercise of, or failure to exercise, one or more remedy by a Party shall neither limit, preclude the exercise of, nor constitute a waiver of, other remedies by that Party.

## **ARTICLE 15 LIABILITY**

### **15.1 Limitation of Liability**

**15.1.1** Except as provided in Article 15.2 and to the extent permitted under the Laws of Jordan and for instances of wilful misconduct, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages.

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

### **15.2 Indemnification**

#### **15.2.1 By NEPCO**

NEPCO shall indemnify the Project Company, its directors, officers and employees against, and hold the Project Company, its directors, officers and employees harmless from, at all times after the date hereof, any and all losses incurred, suffered, sustained, or required to be paid, directly, by, or sought to be imposed upon, the Project Company, its directors, officers and employees (i) for personal injury or death to persons, or damage to property or arising out of any breach of this Agreement by or any negligent act or omission of NEPCO, and (ii) for any penalties or fines paid, or required to be paid, by Project Company to any third party due to any event of Government Force Majeure or a failure by NEPCO to operate the NEPCO Grid in accordance with Prudent Utility Practice, Government Authorisations and the Laws of Jordan.

#### **15.2.2 By the Project Company**

The Project Company shall indemnify NEPCO, its directors, officers and employees against, and hold NEPCO, its directors, officers and employees harmless from, at all times after the date hereof, any and all losses incurred, suffered, sustained, or required to be paid, directly by, or sought to be imposed upon NEPCO, its directors, officers and employees (i) for personal injury or death to persons, or damage to property arising out of any breach of this Agreement by, or any negligent act or negligent omission of the Project Company, and (ii) subject to Article 13.1.1, for any penalties or fines paid, or required to be paid, by NEPCO to any third party due to a failure by the Project Company to operate the PV Facility in accordance with Prudent Utility Practice, Government Authorisations and the Laws of Jordan.

### **15.2.3 Joint Negligence**

In the event that any Loss results from the joint or concurrent negligence, acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

### **15.2.4 Indemnification to Survive**

Except to the extent prohibited by the Laws of Jordan of mandatory application or public policy in Jordan, the provisions of this Article 15 shall survive for a period of one (1) Year following the termination of this Agreement.

## **15.3 Fines and Penalties**

Any fines or other penalties incurred by the Project Company for non-compliance with the Laws of Jordan or other governmental actions or Government Authorisations shall, to the extent not caused by NEPCO's default under this Agreement, not be reimbursed by NEPCO but shall be the sole responsibility of the Project Company.

## **15.4 Notice of Proceedings**

Each Party shall promptly notify the other Party of any loss or proceeding in respect of which it is or may be entitled to indemnification under this Article 15. Such Notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss or proceeding.

## **15.5 Defence of Claims**

**15.5.1** The indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense with counsel of its selection, provided it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying Party of such defence.

**15.5.2** Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with this Article 15, the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against the indemnified Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.

**15.5.3** Upon assumption by the indemnifying Party of the control of the defence of a claim, suit, action or proceeding, the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defence of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgment of the indemnification and assumption of the defence.

**15.5.4** Following the acknowledgment of the indemnification and the assumption of the defence by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless (i) the employment of counsel by such indemnified Party and payment of such counsel by the indemnifying Party has been authorized in writing by the indemnifying Party, (ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of

such action, (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party, or (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it which is beyond the scope of this Agreement. If sub-articles (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

## **ARTICLE 16 CONFIDENTIALITY**

### **16.1 Confidential Information**

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

- 16.1.1** this Article shall not apply to Confidential Information which is in the public domain other than by reason of a breach of this Article 16.1, 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;
- 16.1.2** a Party may disclose Confidential Information if required by any Laws of Jordan to do so or by order of a court, tribunal or governmental authority in any other country with appropriate jurisdiction over a Party or its Lenders; and
- 16.1.3** a Party may disclose Confidential Information, subject to obtaining an undertaking to keep the same confidential, to:
  - (a) any prospective assignee of the Party and its advisers or consultants;
  - (b) to any bank or financial institution or investor from whom the Party is seeking finance; and
  - (c) to any consultant or contractor whose duties reasonably require such disclosure in connection with this Project.
- 16.1.4** there shall be a presumption that any designs, drawings or models in relation to the Project are Confidential Information.

### **16.2 Survival**

The provisions of Articles 6.1,22 shall survive the termination, for any reason, or expiry of this Agreement for a period of two (2) years following termination.

## **ARTICLE 17 DISPUTE RESOLUTION**

### **17.1 Governing Law and Arbitration**

- 17.1.1** This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the Laws of Jordan.
- 17.1.2** Except for a determination by the Expert in respect of disputes of a technical nature pursuant to Article 17.2, any dispute or difference arising out of or in connection with this Agreement shall, except as hereinafter provided, be settled amicably by the Parties. If no amicable settlement is reached within a period not to exceed two (2) months from the date on which a Party notifies the other Party of the existence of a dispute, the dispute shall be first referred to senior executives of the Parties for mediation. If no resolution is reached in respect of such dispute after a period of fourteen (14) Days, the dispute shall then be referred to binding arbitration to be conducted pursuant to the ICC Rules.
- 17.1.3** Upon the expiration of the two (2) month period referred to in Article 17.1.2, either Party may make a demand for arbitration in writing to the other Party, setting out the nature of the dispute, the amount involved, if any, the remedies sought, and its intent to refer the disputed matter to arbitration.
- 17.1.4** Unless both Parties agree on a sole arbitrator, to be appointed in accordance with the ICC rules, an arbitral panel, consisting of 3 (three) arbitrators shall be appointed, in accordance with the ICC rules.
- 17.1.5** The arbitration shall, unless otherwise agreed by the Parties, be conducted in English and the seat of arbitration shall be in Jordan.
- 17.1.6** The award of the arbitrators shall be final and binding on the Parties.
- 17.1.7** The costs of the arbitration shall be borne by the Parties as determined by the arbitrators in their award.
- 17.1.8** Unless otherwise specified elsewhere in this Agreement, the arbitration process held pursuant to this Article 17.1 will be the sole and exclusive recourse available to the Parties regarding any and all disputes referred to arbitration under this Agreement.
- 17.1.9** With the exception of disputes relating to the non-payment of sums due under this Agreement, during the conduct of the dispute resolution procedures pursuant to this Article 17.1, the Parties shall continue to perform their respective obligations under this Agreement.
- 17.1.10** The arbitration tribunal may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to any of the Government Guarantee Agreement, the Transmission Connection Agreement or other directly related hereto agreement/s or contract/s, if the subject matter of the Disputes arises out of or relates to essentially the same facts or transactions.

### **17.2 Expert Determination**

- 17.2.1** Disputes which are relevant to metering matters pursuant to Article 9.4 and Article 13.9.7 and disputes of a technical nature in respect of the operation of the PV Facility, and where and whenever "Expert" or "independent Expert" are mentioned in this Agreement, may be submitted to the Expert for resolution as set forth below.

- 17.2.2** The Expert shall be an engineer with minimum ten(10) years experience in the construction and operation of renewable energy facilities similar to the PV Facility (the "**Expert**"). The Expert shall be chosen by the Parties or, failing agreement between the Parties, by the ICC Rules. The Expert shall not be a national of Jordan or of the jurisdiction of incorporation of the parent of the Project Company, or of equity holders holding fifty percent (50%) or more of the voting securities (or their nearest equivalent if there are no such equity securities) of the Project Company or its parent.
- 17.2.3** Consideration of a dispute by the Expert shall be initiated by the Party seeking consideration of the dispute by submitting to the Expert (with copy to the other Party) written materials (which shall be the same for both the Expert and the other Party) setting forth (i) a description of the dispute; (ii) a statement of the Party's position and whether a hearing is requested by such Party; and (iii) copies of records supporting the Party's position.
- 17.2.4** Within ten (10) Days of the date that a Party has submitted the materials described in Article 17.2.3, the other Party may submit to the Expert (and if submitted to the Expert, such materials shall be concurrently submitted to the other Party) (i) a description of the dispute; (ii) a statement of the Party's position and whether a hearing is requested by such Party; and (iii) copies of records supporting the Party's position.
- 17.2.5** The Expert shall consider any such information submitted by the responding Party and may consider any additional information submitted by either Party at a later date, but in such event the other Party shall be concurrently provided with such information and shall be allowed a reasonable time to respond thereto.
- 17.2.6** The Parties shall not be entitled to apply for discovery of documents but shall be entitled to have access to the other Party's relevant records to this Agreement and to receive copies of the records submitted by the other Party.
- 17.2.7** Each Party shall designate one person knowledgeable about the issues in the dispute who shall be available to the Expert to answer questions and provide any additional information requested by the Expert. Except for such person, a Party shall not be required to, but may provide oral statements or presentations to the Expert or make any particular individuals available to the Expert.
- 17.2.8** Except as provided in Article 17.2.10, with respect to payment of costs, the proceedings shall be without prejudice to any Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration and the laws and rules relating to commercial arbitration shall not apply. The determination of the Expert may be relied upon for guidance but shall not be binding on any arbitration panel established under Article 17.1. The Parties agree that the Agent may also provide oral statements or representations to the Expert. No oral statements or presentations shall be made by a Party or its representatives without the other Party having received seven (7) Days' prior notice and be allowed to be present when such oral statements or presentations are made.
- 17.2.9** When consideration of the dispute by the Expert is initiated, the Expert shall be requested to provide a recommendation within fifteen (15) Days after the ten (10) Day response period provided in Article 17.2.4 above has expired. If the Expert's recommendation is given within the fifteen (15) Day period, or if the Expert's recommendation is given at a later time and neither Party has at such time initiated any other proceeding concerning the dispute, the Parties shall review and discuss the recommendation with each other in good faith for a period of ten (10) Days following delivery of the recommendation before proceeding with any other actions.



- 17.2.10** If a Party does not accept the recommendation of the Expert with respect to the dispute, it may initiate arbitration proceedings in accordance with Article 17.1; provided, however, that prior to initiating arbitration proceedings it shall have paid all costs of the Expert (including the reimbursement of any costs paid to the Expert by the other Party) and all out-of-pocket costs, including reasonable attorney's fees, of the other Party. Similarly if the Expert has not submitted its recommendation within the time period provided in Article 17.2.9, a Party may initiate arbitration proceedings in accordance with Article 17.1, provided that prior to initiating the arbitration proceedings it shall have paid all costs of the Expert (including the reimbursement of any costs paid to the Expert by the other Party).
- 17.2.11** Except as provided in Article 17.2.10, the initial costs (if any) of engaging the Expert shall be borne equally by the Parties and each Party shall bear its own costs in preparing materials for, and making presentations to, the Expert. If, however, the Expert finds that one Party has acted unreasonably, the Expert may allocate costs accordingly.

### **17.3 Continuance of Obligations**

Subject to the provisions of Article 17.1.10 both Parties shall continue to perform their obligations under this Agreement during any proceeding under this Article 17 provided that the right to terminate pursuant to Article 14.1 on grounds different to those referred to arbitration is not restricted by this Article 17 .

## **ARTICLE 18 MAINTENANCE OF OPERATING RECORDS**

### **18.1 Maintenance of Records**

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 Project Company shall maintain an accurate and up-to-date operating log, in a format reasonably acceptable to NEPCO, at the PV Facility or at another place with the consent of NEPCO, with records of all data provided in accordance with Schedule 14 hereunder.

### **18.2 Duration**

All such records and data shall be maintained for the minimum period of time as required by the Laws of Jordan 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 period unless the Party desiring to dispose of or destroy any such records or data gives thirty (30) Days prior written 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 fifteen (15) Days. If a written objection is received within such fifteen (15) 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) Days period by NEPCO or the Project Company as the case may be, at such Party's offices in Amman. After the expiration of such sixty (60) Days period, the Party desiring to dispose of or destroy such records or data shall be permitted to do so.

### **18.3 Access to Records**

Either Party shall have the right, upon ten (10) Days prior written 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 PV Facility at any time during normal office hours during the period such records and data are required hereunder to be maintained.

## ARTICLE 19 ASSIGNMENT

### 19.1 Assignment

- 19.1.1** Without the prior written consent of NEPCO not to be unreasonably withheld or delayed, the Project Company may not assign or transfer (i) this Agreement, or (ii) any of its rights or obligations hereunder or thereunder, or (iii) any of its assets (other than cash, deposits or receivables or assets (the disposal of which assets, is made in the ordinary course of business and will not have a material adverse effect on the Project Company's ability to carry out the Project in accordance with the terms of this Agreement and Prudent Utility Practice) required by it for the implementation of the Project, save as, in each case, expressly permitted pursuant to Article 19.2.1.
- 19.1.2** Without the prior written consent of the Project Company, NEPCO may not assign or transfer this Agreement or any of its rights or obligations hereunder, except to a successor ministry or agency of GOJ, provided GOJ guarantees the performance of the assignee on substantially the same terms and conditions as contemplated herein and / or under the Government Guarantee Agreement.

### 19.2 Creation of Security and Step-In Rights

- 19.2.1** Notwithstanding the provisions of Article 19.1.1, for the purpose of financing the construction and operation of the PV Facility, the Project Company may, without the need to procure NEPCO's approval, assign to or create a security interest for, the Lenders in its rights and interests under or pursuant to this Agreement or transfer (i) this Agreement, (ii) any of its rights or obligations hereunder or thereunder, or (iii) any of its assets in favour of the Lenders. NEPCO shall, however, be entitled to review the respective agreements with the relevant Lenders and may object if and to the extent NEPCO's rights, as contemplated hereunder, would be materially impeded.
- 19.2.2** The Lenders (or the designee thereof) shall have no obligation to NEPCO under this Agreement until such time as the Agent, after satisfying all relevant conditions in the Financing Documents, has notified NEPCO in writing of the Lenders' election to exercise their rights granted hereunder and to assume (or have a designee assume) the Project Company's obligations under this Agreement.
- 19.2.3** Upon notification by the Lenders or the Agent to NEPCO of the occurrence and continuance of an event of default under the Financing Documents, which is not cured within the applicable time period, the Lenders (directly or through a designee thereof) shall have the right, subject to and in accordance with the Lenders' Direct Agreements, among others, to (i) take possession of the PV Facility and, prior to commercial operation of the PV Facility, complete construction of the PV Facility and operate the same and, after commercial operation of the PV Facility, operate the same, (ii) cure any continuing Project Company Event of Default under this Agreement and (iii), sell the PV Facility to a Permitted Transferee provided that such Permitted Transferee shall succeed to the Project Company's rights and obligations hereunder as well as under the Government Guarantee Agreement and the LLA.
- 19.2.4** If the Agent notifies NEPCO of a default under the Financing Documents, NEPCO shall, at the request (and expense) of the Agent or the Project Company, cooperate with the Lenders in the Lenders' exercise of such rights.
- 19.2.5** As used herein, a "**Permitted Transferee**" shall be a natural or legal person who (i) either is an experienced operator of renewable energy facilities similar to the PV Facility or who shall have agreed to engage the services of a person who is an experienced operator of

renewable energy facilities similar to the PV Facility, (ii) shall have agreed to pay all amounts, if any, then due and payable to NEPCO under this Agreement, (iii) shall have expressly assumed in writing for the benefit of NEPCO the obligations of the Project Company under this Agreement (including the obligation of the Project Company to maintain and operate the PV Facility in accordance with the requirements of this Agreement), (iv) shall have agreed to diligently work to cure any non-monetary defaults under this Agreement that are capable of cure, and (v) shall demonstrably have financial ability sufficient to perform the Project Company's obligations under this Agreement.

**19.2.6** The Project Company shall forthwith provide to NEPCO copies of any notice of intention to realise security by the Lender or any third party creditor, or of any similar proceedings taken by any creditor of the Project Company which could result in the seizure of any of the Project Company's assets, or which might materially adversely affect its operation of the PV Facility.

## **ARTICLE 20**

### **RESTRICTIONS ON ACQUISITIONS AND TRANSFERS OF SHARES AND ASSETS**

#### **20.1 Restriction on Transfer of Shares**

With respect to the transfer of the registered ownership of any Shares, the Project Company shall (i) make appropriate provisions in its articles of association to ensure compliance with the following provisions of this Article 20.1, (ii) shall include appropriate legends on all share certificates evidencing Shares of the Project Company to put prospective purchasers of such Shares on notice of the restrictions in the following provisions and, (iii) to the extent permitted by the Laws of Jordan, shall not register or give effect to any purported transfer of Shares that is not in compliance with such restrictions or do not bear such legend.

#### **20.2 Exceptions on Transfer of Shares**

None of the Initial Shareholders shall transfer any Shares owned by them at any time prior to the Commercial Operation Date or for a period of two Years after Commercial Operation Date, except for:

- 20.2.1** a transfer to another of the Initial Shareholders; or
- 20.2.2** a transfer to an Affiliate of any of the Initial Shareholders; or
- 20.2.3** a transfer required by any Laws of Jordan or by the operation of the Laws of Jordan or by order of a court, tribunal, or Governmental Authority with appropriate jurisdiction; or
- 20.2.4** a transfer resulting from the enforcement of a pledge or security interest in or over any Shares in accordance with the documents creating such pledge or security interest in or over such Shares in favour of the Lenders;
- 20.2.5** a transfer to which NEPCO has given its prior written approval;
- 20.2.6** a transfer through a public offering, with prior approval of NEPCO;
- 20.2.7** a transfer of Shares in accordance with the Lenders' Direct Agreement; or

#### **20.3 Presumption**

None of the Initial Shareholders shall transfer any Shares after the expiry of a period of two (2) Years from the Commercial Operation Date except with the prior written approval of NEPCO.

## **ARTICLE 21**

### **EXTENSION OF THE TERM OR SALE/PURCHASE OF THE PV FACILITY**

**21.1** At least thirty six (36) months prior to the end of the Term, the Parties shall meet to agree the future of the PV Facility and whether:

**21.1.1** to extend the term of the Agreement in accordance with Article 21.3;

**21.1.2** NEPCO intends to exercise its right to purchase the PV Facility pursuant to Article 21.3; or

**21.1.3** The PPA will expire at the end of the Term.

#### **21.2 Extension of the Term**

**21.2.1** If the Parties reach agreement as to the period of extension and the terms of such extension and the Project Company is able to agree an appropriate extension of term in respect of each Land Lease Agreement:

(a) the Term shall be extended by such agreed extension and on such agreed terms; and

(b) The provisions of Article 22.1 shall be suspended (and, for avoidance of doubt, any Decommissioning Security already put in place pursuant to Article 22 shall be released to the Project Company and shall be reinstated twenty four (24) months prior to the end of the extended term).

#### **21.3 Purchase of the PV Facility by NEPCO**

**21.3.1** Subject to the provisions of this Article 20.3, NEPCO may purchase the PV Facility in its sole discretion on Expiry.

**21.3.2** In case of an intended purchase of the PV Facility by NEPCO on Expiry both Parties shall, unless otherwise agreed between the Parties, appoint an independent expert (selected by them jointly) who shall be charged with the valuation of the PV Facility, taking into account, by way of demonstration and not exclusion, the capital investment for the PV Facility, the book value of the PV Facility, the duration of the Term, deemed decommissioning costs and other relevant factors.

**21.3.3** If and to the extent the Parties agree on the valuation of the PV Facility, the Project Company shall:

(a) sell the PV Facility, together with all associated agreements, contracts, IP rights, or other relevant assets to NEPCO;

(b) reasonably assist NEPCO in respect of the extension of term of any Land Lease Agreement and/or the entry into new Land Lease Agreements,

and upon conclusion of the sale of the PV Facility by the Project Company to NEPCO the Decommissioning Security already put in place pursuant to Article 22 shall be released to Project Company.

**21.3.4** To the extent that NEPCO requires the transfer to it of any Land Lease Agreement, NEPCO shall hold the Project Company harmless in respect of any breach by either of them of any obligations or restrictions under the relevant Land Lease Agreement.

**21.3.5** If the Parties cannot accept, for whichever reason, the valuation of the Expert, then the Project Company shall proceed with decommissioning in accordance with and subject to clause 22.

## **ARTICLE 22**

### **DECOMMISSIONING OR PURCHASE OF THE PV FACILITY**

#### **22.1 Decommissioning of the PV Facility on Expiry**

**22.1.1** Subject to Article 21, the Project Company shall:

- (a) at least twenty four (24) months prior to the end of the Term submit to NEPCO a decommissioning plan in respect of the PV Facility for approval by NEPCO, including an estimate by the Independent Engineer of the decommissioning costs;
- (b) furnish a decommissioning security (the "**Decommissioning Security**") in the amount of the costs of decommissioning estimated by the Independent Engineer; and
- (c) decommission the PV Facility at the end of the Term and return the land upon which the PV Facility is constructed in accordance with the Land Lease Agreements to its original condition as evidenced by the environmental survey carried out pursuant to the Environmental Impact Assessment by removing the foundations of the PV Facility to a depth of one (1) meter below the surface and restore the surface or such other parameters as are agreed by the Independent Engineer in accordance with the decommissioning plan.

**22.1.2** The Decommissioning Security furnished in accordance with Article 22.1.1(b) shall remain valid until the date which is one (1) Year after the end of the Term. All costs, fees, expenses or other disbursements relating to the Decommissioning Security shall be borne by the Project Company.

**22.1.3** The Decommissioning Security shall be released to the Project Company:

- (a) upon notification to NEPCO by an Independent Engineer that the PV Facility has been satisfactory decommissioned in accordance with Article 22.1.1(c);
- (b) upon purchase of the PV Facility and ,if applicable, the Site by NEPCO or GoJ, in accordance with Article 21.3;
- (c) following early Termination in accordance with Articles 14.7 and 14.8.

**22.1.4** In the event that the Project Company fails to decommission the PV Facility in accordance with the relevant Land Lease Agreements, NEPCO may draw upon the Decommissioning Security and shall use such funds to decommission the PV Facility in accordance with the relevant Land Lease Agreements and the Laws of Jordan.

## **ARTICLE 23**

### **SOVEREIGN IMMUNITY**

NEPCO irrevocably and unconditionally agrees that it has the legal capacity to sue and to be sued in Jordan with respect to its respective obligations hereunder, and that the execution, delivery, and performance by it of this Agreement constitute private and commercial acts. NEPCO irrevocably and unconditionally agrees that: (i) should any proceedings be brought against it or its assets in any jurisdiction in connection with this Agreement or any of the transactions contemplated by this Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of NEPCO, on behalf of itself or any of its assets ; (ii) it waives any right of immunity which it or any of its assets now has or may in the future have in any jurisdiction in connection with any such proceedings; and (iii) it consents generally in respect of the enforcement of any judgment or award against it in any such proceedings (including any interim judgement or award) in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement, or execution against or in respect of any of its assets whatsoever regardless of the use or intended use of the asset.

## **ARTICLE 24**

### **MISCELLANEOUS PROVISIONS**

#### **24.1 Variation**

This Agreement may not be varied nor any of its provisions waived except by an agreement in writing signed by the Parties. Copies of such changes shall be given to EMRC by NEPCO.

#### **24.2 Waivers**

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

Upon the failure by either Party to insist on any occasion upon the performance of the terms, conditions, and provisions of this Agreement, any time or other indulgence granted by one Party to the other shall not thereby act as a waiver of the breach, as acceptance of any variation, or as the relinquishment of any such right hereunder, which shall remain in full force and effect.

#### **24.3 Notices**

Any notice or other communication to be given by one Party to the other as provided in Schedule 4.

#### **24.4 Effect of Invalidity**

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 to the 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. In such case all other provisions of the Agreement remain valid and in full force and effect.

#### **24.5 Entire Agreement**

This Agreement contains and expressly refers to the entire agreement between the Parties with respect to its subject matter and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the

Parties with respect to its subject matter and each of the Parties acknowledges and confirms that, except for the representations, warranties and any other obligations and undertaking of its counterparty under any of the Government Guarantee Agreement, the LLA or the Transmission Connection Agreement, it does not enter into this Agreement in reliance on any representation, warranty or other undertaking by the other Party not fully reflected in the terms of this Agreement.

#### **24.6 Execution**

This Agreement may be executed in two sets each of which when executed shall constitute an original.

#### **24.7 Survival**

Except as otherwise stipulated in this Agreement, the provisions of Article 22.1, shall survive until the return or cancellation of the Decommissioning Security. Notwithstanding anything herein to the contrary, any representation, warranty, covenant and agreement which is the subject of a claim which is asserted in writing prior to Expiry shall survive with respect to such claim or any dispute with respect thereto until the final resolution thereof.

#### **24.8 Further Assurances**

The Parties agree to execute and deliver any further documents or assurances that in law or otherwise are necessary, desirable or proper to consummate the transactions contemplated by this Agreement.

#### **24.9 Headings**

The headings and captions in this Agreement are for convenience only and are not part of this Agreement.

#### **24.10 Interpretation**

Neither this Agreement nor any provision contained herein shall be interpreted for or against either Party solely because that Party or that Party's legal representative drafted the provision.

#### **24.11 Expenses**

All costs and expenses incurred by the Parties in respect of concluding this Agreement including, but not limited to attorneys' fees and the fees of other third party service providers, shall be paid by the party incurring them, except as otherwise expressly provided herein.

#### **24.12 Counterparts**

This Agreement may be executed in one or more counterparts (including counterparts by facsimile), each of which shall be deemed an original and all of which shall constitute the same agreement.

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement as of the date first written above.

**NATIONAL ELECTRIC POWER COMPANY**

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Name:

Title:

Witnessed by:

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Name:

Title:

[Name of Company]

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Name:

Title:

Witnessed by:

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Name:

Title: