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SHEBERGHAN GAS GENERATION ACTIVITY (SGGA)

Contract No. EPP-I-00-03-00004-00, Task Order No. AID-306-TO-12-00002

Model Power Purchase Agreement

(Deliverable 2-2)

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Prepared by:

Advanced Engineering Associates International, Inc. (AEAI)/SGGA Project Team
1707 L Street, NW, Suite 1030, Washington, DC (USA) 20036
Telephone: 1-202-263-0601

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Acronyms and Abbreviations

AEAI	Advanced Engineering Associates International, Inc.
AFMIS	Afghanistan Financial Management Information System
COR	Contracting Officer's Representative
DABS	Da Afghanistan Breshna Sherkat
DM	Deputy Minister (of MoM)
E&Y	Ernst and Young
GBU	Gas Business Unit (of MoM)
GIRoA	Government of the Islamic Republic of Afghanistan
Grantee	Ministry of Mines
GSA	Gas Supply Agreement
HR	Human Resources
IL	Implementation Letter
IPP	Independent Power Producer
MGQ	Minimum Generation Quantity
MEW	Ministry of Energy and Water
MGSA	Model Gas Supply Agreement
MoE	Ministry of Economy
MoF	Ministry of Finance
MoM	Ministry of Mines
MPPA	Model Power Purchase Agreement
MW	Megawatt
NWBU	Northwest Business Unit (of DABS' Northwest Provinces)
NEPA	National Environmental Protection Agency
OFM	Office of Financial Management (USAID)
PPA	Power Purchase Agreement
SGDP	Sheberghan Gas Development Project
SGGA	Sheberghan Gas Generation Activity
TA	Technical Assistance
USAID	United States Agency for International Development
USD	United States Dollar

1 Executive Summary

The Sheberghan Gas Generation Activity (SGGA), supported by the Task Order No. AID-306-TO-12-00002 awarded December 16th, 2011, provides Off-budget Technical Assistance through Advanced Engineering Associates International, Inc. (AEAI) to serve as a technical and financial advisor to the Ministry of Mines (MoM), Ministry of Energy and Water (MEW), Da Afghanistan Breshna Sherkat (DABS) as the relevant GI/RoA stakeholders of the Sheberghan Gas Development Project (SGDP). The SGDP also includes quality assurance/quality control for the \$ (financial information omitted) On-budget funding for SGGA: Phase I. Gas Field Development for the rehabilitation of two existing gas wells and the drilling of up to two additional gas wells and Phase II, Construction of a Gas Processing Plant.

The main goal of the SGDP is to restart the gas field development in Afghanistan using a gas fired power plant as an anchor customer and attract private investors to construct and operate a 200 MW gas-fired power plant in the form of an Independent Power Producer (IPP). The IPP will be supplied with the gas to by a new Gas Business Unit (GBU) under the Ministry of Mines (MoM) or by another gas supply entity designed by MoM. In order to attract private investors, several agreements/contracts are vital to establishing a robust legal and commercial framework particularly, since Afghanistan lacks key legislation, such as a national electricity law. Two of the cornerstone agreements/contracts for the commercial success of the SGDP are the Gas Supply Agreement and the Power Purchase Agreement. The first one is to address the transaction provisions of the required fuel to the new 200-MW gas-fired power plant in Sheberghan, Afghanistan while the second one specifies the terms and conditions for the selling and purchase of wholesale power and energy.

Accordingly, the Contract Modification 2 between USAID and AEA I signed on 14 November 2012, includes the preparation of models for the two cornerstone agreements/contracts mentioned above. These models are to be submitted to USAID as Deliverable 2-1 Model Gas Supply Agreement (MGSA) and Deliverable 2-2 Model Power Purchase Agreement (MPPA). Both models are viewed as baseline documents, since the final contracts, resulted from the negotiations, will contain more specific details as per the pricing, the payment guaranties and other terms and conditions that will depend on the design of the gas processing plant, on the type of power generation units to be installed, on the financial conditions for the investment, among others.

The herein report is Deliverable 2-2 MPPA that was prepared by business, finance and legal experts after reviewing agreements/contracts from the region in countries with conditions similar to Afghanistan. However, in the case of Afghanistan, the law does not contain the legal and regulatory structures present in other countries in the region, therefore, many of the laws and regulations that in other countries are incorporated by reference in their Power Purchase Agreements (PPA) have to be specifically negotiated and included in the provisions of the final PPA. The MPPA included in this report includes some of these provisions, but the development program is still taking shape. Again, the MPPA should be considered as a basic framework from which to begin the capacity building program to the different MoM, MEW and DABS entities and not as a final proposal or final version of the contracts.

During capacity building sessions, the SGGA legal, technical and project finance specialists intend to discuss the key business provisions of this MPPA and work with the representatives of the MoM, MEW and DABS entities that will have a role in the transactions to prepare them for the next stages of the

gas field development and the IPP transaction. These discussions will be extensive, and will be designed to assist and facilitate MoM, MEW and DABS effective participation in the GSA and PPA negotiations.

During the capacity building sessions, it is also intended to discuss in detail the risks to be managed by each entity as a party to the transactions, such as the allocation of the liability risks, between a conventional contract/agreement as the MPPA herein and a tolling agreement, which in recent years has become a frequently used contractual structure in countries where the government is supporting the introduction of private investment in the power sector or where the fuel supplier and the power purchaser are state owned entities not yet, commercially viable.

1.1 Structure of the MPPA

The MPPA is structured as an agreement between the owner-operator of the Sheberghan Independent Power Producer, as the Seller, and the Northwest Provinces (NWBU) or special purpose vehicle of DABS, as the Purchaser; under a long-term contract, 25 years, and applicable credit support to assure payment by NWBU. The selling price of electricity has been set at an amount that will ensure the recovery of capital and operation and maintenance costs along with providing a return on investment that is commensurate with the risks managed by the IPP.

As a first approach, the MPPA is drafted considering that the Sheberghan IPP would be composed of modular engine/generator sets totaling about 200 MWs to be develop in phases , this modular set up allows flexibility for the operating the power plant by building out capacity in phases to match load growth of the NWBU. It is noted that the MPPA uses DABS as the electricity buyer not NWBU, as the "model" agreement does not need to specific.

1.2 On Grid Tariff

The MPPA defines the selling price of electricity as the "On-Grid Tariff". This On-Grid Tariff is divided it into three components, the Capacity Charge, the Energy Charge due to fuel and the Energy Charge due to variable O&M. The calculation method of each of the On-Grid Tariff component is contained in MPPA using the capital structure of the project, allocation of Approved Costs between the Capacity Charge and the Energy Charges and selection of a rate for return on equity.

For Capacity Building purposes an "indicative" calculation of the On-Grid Tariff would be prepare for inclusion in MPPA prior to discussions with prospective investors. One of the main considerations is whether the indicative tariff will be competitive with the forecast long term price NWBU of DABS would pay for imported power.

In relation to the On-Grid tariff component Energy Charge due to fuel, this MPPA considers the IPP as the purchaser party in a Gas Supply Agreement. Nevertheless, the Capacity Building courses will include the adjustment of this calculation for a tolling agreement model where DABS will be the purchaser party in the Gas Supply Agreement and therefore the party assuming the liability risk associated with contractual defaults as the GBU inability to provide the quantity or quality of fuel required by the power plant or NWBU of DABS potential inability to pay for it.

In the absence of an Electricity Law, the Approved Costs for the calculation of the On-Grid Tariff are deemed to be approved by the relevant authority, as are the annual adjustments.

An alternative methodology to the three components structure of the On-Grid Tariff is to require the Power Purchaser to pay for a Minimum Purchase Quantity (MPQ) of energy delivered, a minimum to allow the Generator to recover costs plus a rate of return. Under this methodology, the energy deliveries exceeding that MPQ are normally priced to cover the incremental cost of operating the power plant.

Nevertheless, methodology of the three components structure was preferred to the MPQ option due to the transparency in making the financial calculations using capital structure of the power plant and categorization of Approved Costs. This transparent tariff methodology has been used internationally.

1.3 Credit Support and Payment Guaranties

NWBU of DABS, as the purchaser of the power will likely require credit support to ensure that it meets its payment obligations. Such a credit support is provided by DABS and further support by DABS owners or Board of Director(s) support undertaken by pertinent ministry(s), such as Ministry of Economy, Ministry of Finance and Ministry of Commerce and Industries.

Beyond the terms of the MPPA, it may be necessary to consult with: (a) international development banks to determine whether commitments are available to back-stop the obligations by pertinent ministry(s) under the credit support arrangements and (b) international underwriters to determine whether insurance can be arranged.

Besides the credit support, the Seller could request to NWBU of DABS the implementation of payment guarantees in the form of escrow accounts, stand by letter of credit and scroll accounts to reduce the risk of nonpayment.

1.4 Other Significant Provisions

Either party has the right to terminate the contract. The IPP can terminate if the Power Purchaser does not cure a default within 90 days of notice, in the most severe situations, such as failure to make payment. A termination demanded by the IPP, includes the repayment of an outstanding project financing in which case, the credit support facilities would become activated.

The choice of law for interpreting and enforcing the contracts, the manner, forum, applicable rules for formal dispute resolution proceedings are very important matters, especially when foreign investors are involved. Foreign investors will strongly advocate for the laws of the United States or the United Kingdom and if agreed could be more flexible as to the location of the forum. As drafted, the contract is to be governed by the laws of Afghanistan and disputes are to be determined according to international arbitration in Paris, France, under the rules of the International Chamber of Commerce. This will likely be an area of controversy requiring much negotiation since the laws of Afghanistan are not well established with resulting uncertainty and associated risk for any foreign investor.

The parties have two key minimum obligations under Article 2. The Generator has the obligation to provide a Minimum Generation Quantity (MGQ) and the Power Purchaser to pay for the Capacity Charge and Energy Charges, the three components of the On-Grid Tariff. The Power Purchaser's minimum obligation to pay for the Capacity Charge is reduced proportionally in the event that the Generator is at fault for failing to produce the MGQ. This reduction does not apply if the failure to generate is due to Power Plant Force Majeure under Article 12, or in the case of a tolling agreement, if the Power Purchaser failures in providing fuel to the Generator.

In addition to the obligation to produce and pay for power generation, the parties have specific responsibilities under Article 4 that include the Generator's to supply the MGQ and the Power Purchaser's responsibility in connecting the Power Plant to the NWBU's substation at Sheberghan.

It is foreseen that the Generator will be connected to an electrical island in which case the Generator will be responsible to provide frequency control and voltage support services.

2 Model Power Purchase Agreement

This contract has been entered into on the ___ day of ____, 20___ by and between [SHEBERGHAN POWER DEVELOPMENT COMPANY] (referred to as the "Generator"), and DA AFGHANISTAN BRESHNA SHERKAT (referred to as the "Power Purchaser").

IT IS AGREED as follows:

2.1 Article 1: Definitions

With respect to this Contract the following expressions shall have the meanings set forth below:

- 1.1 "**Actual Completion Date**" shall mean, as defined in the EPC Contract, in respect of any Unit, the date on which such Unit has successfully completed its 72-hour and 24- hour trial operation and other tests, if any, required by the Relevant Authority and such completion has been certified by the engineering consultant approved by the Creditor(s).
- 1.2 "**Annual Generation Plan**" shall mean the annual generation plan compiled in accordance with Article 4.7.
- 1.3 "**Approved Costs**" shall mean the cost of constructing, operating and supplying fuel for the Power Plant under EXHIBIT B deemed to have been approved by the Relevant Authority to be included in the On-Grid Tariff.
- 1.4 "**Available Capacity**" shall mean at any given time the net amount of generation capacity of the Power Plant (expressed in kW) that is actually made available by the Generator for dispatch, which shall equal the Minimum Generation Quantity for the Power Plant as defined in this Contract.
- 1.5 "**Capacity Charge**" shall mean the component of the On-Grid Tariff designated as the Capacity Charge in accordance with EXHIBIT B.
- 1.6 "**Commission**" or "**Commissioning**" shall mean the time at which a piece of equipment, Unit, auxiliary service or other component of the Power Plant will have been deemed ready to begin operation and certified by an independent engineering consultant approved by Creditor(s) and Da Afghanistan Breshna Sherkat.
- 1.7 "**Commissioning of Operations Date**" or "**COD**" shall mean the date on which the Power Plant begins to generate and deliver electricity to the Delivery Point.
- 1.8 "**Contract Completion Date**" shall mean in respect of any Unit the date as defined in the EPC Contract in respect of such Unit.
- 1.9 "**Creditor**" shall mean any creditor or legal entity providing financing to the Generator for the construction of a Unit pursuant to a Financing Agreement.
- 1.10 "**Credit Support and Undertaking of Contract Stability**" shall mean the undertaking provided by the government of the Islamic Republic of Afghanistan to support the obligations of the Power Purchaser under this Contract incorporated by reference as EXHIBIT E.
- 1.11 "**Delivery Point**" shall mean the measuring point on the electrical system where the title to the electricity produced by the Generator shall pass to the Power Purchaser as shown in EXHIBIT C. [This is assumed to be the measuring point at the high voltage side of the step-up transformer connecting the Power Plant to the NEPS Power Grid, but will be subject to the final engineering design specifications for both the power plant and electrical transmission infrastructure].
- 1.12 "**Effective Date**" shall mean the date on which the parties execute this contract.
- 1.13 "**EPC Contract**" shall mean the engineering, construction and procurement contract for the construction and commissioning of a Unit.
- 1.14 "**Economic Restoration Criteria**" shall mean the reasonable, estimated cost to the Generator of carrying out the repair or restoration to the Power Plant, less the proceeds (if any) of insurance payable to the Generator, will provide to the Generator an after-tax real rate of return

of []% or more compounding annually on the cost or repair that is above the amount of any insurance proceeds.

- 1.15 **"Electricity Sales Tax" or "EST"** shall mean all taxes or surcharges charged against the Generator on the amount of electricity sold by the Generator or on the amount of any payments received by the Generator.
- 1.16 **"Energy Charge"** shall mean the component of the On-Grid Tariff designated as the Energy Charge in EXHIBIT B.
- 1.17 **"Financing Agreement"** shall mean any contract entered into by and between the Generator and one or more Creditors by which the Generator is to obtain, construction funds for the Power Plant, including the US\$ or other currency.
- 1.18 **"Financing Agreement Agent"** the party designated in the Financing Agreement for purposes of notification to the Generator.
- 1.19 **"International Best Practices"** shall mean such practices and procedures utilized worldwide by prudent operators under conditions and circumstances for the generation of electricity from gas-fired power plants, which is intended to:
- (a) Promote the safe construction and operation;
 - (b) Maintain steady operation and dispatch of base load generation;
 - (c) Protect the environment by minimizing the impact of emissions and discharges.
- 1.20 **"IRR"** means the rate of interest which discounts the flow of revenue received by an investment so that the net present value of the cash flow is equal to the capital sum initially invested.
- 1.21 **"KWh"** shall mean Kilowatt Hour.
- 1.22 **"Minimum Generation Quantity" or "MGQ"** shall mean the minimum amount of Net Energy Output by the Power Plant contracted for under this Contract.
- 1.23 **"Month"** shall mean calendar month according to the Gregorian calendar.
- 1.24 **"MW"** shall mean Megawatt.
- 1.25 **"NEPS"** shall mean the North East Power System.
- 1.26 **"NEPS Connection Point"** means the location where the Power Plant is interconnected with the NEPS as shown in EXHIBIT C.
- 1.27 **"NEPS Power Grid"** shall mean the electricity transmission grid for the North East Power System in Afghanistan.
- 1.28 **"Net Energy Output"** shall mean the net electrical energy expressed in kWh that is generated by the Power Plant and delivered to the Delivery Point, as measured by the metering system or the back-up metering system, as the case may be, in accordance with the terms of this Contract;
- 1.29 **"On-Grid Tariff"** shall mean the charge per KWH of electricity purchased by the Power Purchaser and approved by the Relevant Authority as adjusted in accordance with Article 7.
- 1.30 **"Operation Services"** shall mean the services in respect of the management, operation and maintenance of the Power Plant to be performed pursuant to Article 4.
- 1.31 **"Power Plant"** shall mean the Power Plant which will be designed, constructed, commissioned and operated in Jowzjan Province, Islamic Republic of Afghanistan, consisting of [up to four (4) Units of 50 MW combined cycle.] gas-fired generators and all buildings, equipment and facilities necessary for the generation of electricity and transmission of that electricity to the delivery point.
- 1.32 **"Power Plant Force Majeure"** shall have the meaning as defined in Article 12.1.
- 1.33 **"Pre-Commercial Operation Period"** shall mean in respect of each Unit the first 185 days after the Actual Completion Date of that Unit.
- 1.34 **"Prudent Electrical Practices"** shall mean the use of equipment, practices or methods, as required to comply with applicable industry codes, standards, and regulations in Afghanistan (or International Best Practices in the absence of specific practices in Afghanistan):
- a. to protect the Power Purchaser's system, employees, agents, and customers from malfunctions occurring at the Power Plant; and
 - b. To protect the Power Plant and the Generator's employees and agents at the Power

Plant, from malfunctions occurring on the Grid System.

- 1.35 **"Prudent Utility Practices"** shall mean the prudent utility practices applicable from time to time to the international electric utility industry, having regard to engineering and operational considerations, including manufacturers' recommendations and, as relates to the Company, having regard to the fact that the Company is a private power producer selling electric energy to an integrated public utility, but these practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods and acts employed by electric utilities and private power producers which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety;
- 1.36 **"Relevant Authority"** shall mean the entity of the Islamic Republic of Afghanistan with primary authority to regulate electricity and electrical systems.
- 1.37 **"Tariff Commencement Date"** for a Unit shall mean the Actual Completion Date of the Unit.
- 1.38 **"Technical Limits"** means the limits and constraints described in EXHIBIT F relating to the operation and maintenance of the Power Plant;
- 1.39 **"Termination Payment"** shall mean an amount, net of any associated costs payable by the Generator, which, when received by the Generator and (where relevant) converted into US\$ shall be the greater of:
- the expected revenue of the Power Plant, net of operating and fuel costs over the period from the date of termination to the original scheduled expiry date of this Contract, discounted for early receipt using a discount rate of ten percent per annum, and
 - an amount sufficient to discharge in full all obligations and liabilities (actual and contingent) of the Generator in respect of
 - (a) Approved Costs,
 - (b) Payments due under a Financing Agreement and
 - (c) Any other debt or liability of the Generator which has been effectively subordinated to the Financing Agreement.
- 1.40 **"Termination Event"** shall have the meaning as defined in Article 15.
- 1.41 **"Unit"** shall mean [50] MW of generation capacity to be installed as Unit I, Unit II, Unit III or Unit IV.
- 1.42 **"Unit I"** shall mean the first [] MW Unit of the Power Plant to be completed, together with the common facilities and all essential auxiliary and service facilities.
- 1.43 **"Unit II"** shall mean the second [] MW Unit of the Power Plant to be completed, together with the common facilities and all essential auxiliary and service facilities.
- 1.44 **"Unit III"** shall mean the third [] MW Unit of the Power Plant to be completed, together with the common facilities and all essential auxiliary and service facilities.
- 1.45 **"Unit IV"** shall mean the fourth [] MW Unit of the Power Plant to be completed, together with the common facilities and all essential auxiliary and service facilities.
- 1.46 **"Unit commissioning"** shall mean, in respect of any Unit, the Commissioning and bringing into operation and service of such Unit.
- 1.47 **"US Dollars"** and **"US\$"** shall mean the lawful currency of the United States of America.
- 1.48 **"Year"** shall mean a calendar year using the Gregorian calendar, beginning January 1st and ending December 31st.

2.2 Article 2: Sale and Purchase of Electricity

Article 2.1 Energy and Capacity

Subject to, and in accordance with the terms and conditions of this Contract, the Generator agrees to maintain the Power Plant in accordance with the Technical Limits, Prudent Utility Practices and Prudent Electrical Practices and to make available and deliver exclusively to the Power Purchaser, and the Power Purchaser agrees to accept and purchase from the Generator the Available Capacity,

and, to the extent dispatched, the Net Energy Output.

Article 2.2 No Sales to Third Parties

Except to the extent that electric energy is required for the operation of any part of the Power Plant, the Parties agree that, for the duration of this Contract, the Generator shall not, without the prior written consent of the Power Purchaser:

- a. sell or deliver electric energy produced by the Power Plant to any other person or entity than the Power Purchaser; or
- b. confer upon any entity other than the Power Purchaser any right in or to available capacity.

Article 2.3 Minimum Generation Quantity

Each Unit of the Power Plant, following the Pre-Commercial Operation Period, shall be operated to provide at least the minimum kWh per year described in EXHIBIT F, such that the Power Plant shall have available for dispatch the minimum Net Energy Output described in EXHIBIT F.

Article 2.4 Capacity Charge

The Power Purchaser shall be liable for payment of the Capacity Charge in accordance with Article 7. The Capacity Charge shall be adjusted in accordance with EXHIBIT B.

Article 2.5 Energy Charge

In addition to the Available Capacity, the Power Purchaser shall be liable to take and purchase the Net Energy Output of the Power Plant, according to the Energy Charge described in Article 7. The Energy Charge shall be adjusted in accordance with EXHIBIT B.

Article 2.6 Commissioning

The Generator and Power Purchaser shall consult with each other, as soon as practicable, on the proposed commissioning schedule for each Unit, including testing dates. The Generator shall notify the Power Purchaser within 48 hours on each occasion as to when such test will commence.

Article 2.7 Steady Generation

The Generator shall, within the allowed range of NEPS, ensure that the Power Plant operates at a stable load in accordance with the conditions of this Contract and the dispatch code, if any, for NEPS.

Article 2.8 Steady Off-take

The Power Purchaser shall maintain a steady off-take of electricity from the Power Plant in accordance with Article 2.1.

Article 2.9 Off-take During Pre-Commercial Operation Period

The Power Purchaser shall off-take the electricity generated during the Pre-Commercial Operation Period by each Unit to enable the Unit(s) to start and shut down for load adjustments and make payment at the price calculated at the On-grid Tariff in accordance with Article 7.1.

Article 2.10 Credit Support and Stability of Contract

As a condition of this Contract, prior to the Effective Date, the Power Purchaser shall submit to the Generator an undertaking from the Government of the Islamic Republic of Afghanistan for credit support and to maintain the stability of this Contract substantially similar in the form of the Credit

Support and Undertaking of Contract Stability contained in EXHIBIT E.

2.3 Article 3: Delivery of Electricity

Article 3.1 Delivery Point

The Power Purchaser shall be deemed to have received electricity when it is delivered to the Delivery Point shown in EXHIBIT C.

Article 3.2 Measurements and Records

The quantity of electricity delivered shall be metered and reported in accordance with the provisions of Schedule 2 to EXHIBIT C. Such measurements and reports shall, in the absence of manifest error and omission, be conclusive and final. The Generator and the Power Purchaser shall consult with each other to determine the procedure, if any, for further verification which may, from time to time, be considered necessary.

2.4 Article 4: Operation of the Power Plant

Article 4.1 General

Commencing with the Actual Completion Date of each Unit, the Generator shall utilize Prudent Electrical Practices and Prudent Utility Practices to keep the Power Plant operating at such capacity as may from time to time be necessary to meet the Power Purchaser's demand for electricity, subject to compliance with Article 4.3, Technical Limits in EXHIBIT F, and with International Best Operating Practice for thermal power plants.

Article 4.2 Regulations and Contracts

The Generator shall not breach any laws and regulations relevant to the operation of the Power Plant and the terms of this Contract or other contracts to which the Generator is a party, if the breach or violation would affect the performance of this Contract.

Article 4.3 Operation in Accordance with Design Specifications

- 4.3.1 The Generator shall operate the Power Plant safely and efficiently according to the engineering specifications to ensure that the Power Plant does not encounter avoidable breakdowns, damage or deterioration throughout the term of this Contract.
- 4.3.2 Each Unit shall be operated in accordance with its operating manuals so as not to exceed the limitations on operation recommended by the equipment manufacturer.

Article 4.4 Pre-Operation Services

Upon and the Effective Date of this Contract and until the Actual Completion Date of each Unit, the Generator shall provide the following Pre-Operation Services throughout the continuance of this Contract to such Unit as follows:

- a. Services necessary to prepare the Power Plant to commence operations and provide on-job training of the operating staff;
- b. Necessary staffing and resources to enable the Generator to perform its obligations with respect to the Power Plant construction and the commissioning of the Units; and
- c. Advice and support to the Power Purchaser concerning the connection of the Power Plant and the commissioning of the Units as may be reasonably expected to be within the scope of the Generator's qualifications, competence and experience.

Expenses related to the above shall not be included in the On-Grid Tariff under EXHIBIT B.

Article 4.5 Operation Services

Upon the Actual Completion Date of each Unit, the Generator shall provide the following Operation Services throughout the continuance of this Contract:

- a. Perform all its duties and obligations in relations to the Power Plant operation, so as to fulfill the Generator's obligations under this Article 4;
- b. Advice and support to the Power Purchaser concerning the operation of the Power Plant as may be reasonably expected to be within the scope of the Generator's qualifications, competence and experience; and
- c. Other Operation Services as agreed with the Power Purchaser.

Expenses related to the above shall be included in the Energy Charge component of the On- Grid Tariff in accordance with EXHIBIT B.

Article 4.6 Fuel Supply

- 4.6.1 The Generator is responsible for the fuel supply to the Power Plant according to the specifications for quantity and quality set forth in EXHIBIT D, and shall arrange for gas to the delivery point in the Gas Supply and Purchase Agreement so as to ensure that the Power Plant has sufficient fuel at all relevant times as may be necessary to generate the Minimum Generation Quantity for all Units as set out in Article 2.1.
- 4.6.2 Prior to the Actual Completion Date for each Unit, the Generator shall procure the fuel, chemicals, consumables and personnel needed for operational tests. The expenses of commissioning a Unit will be included in the Schedule of Approved Costs in EXHIBIT B.

Article 4.7 Plans and Budget

- 4.7.1 Ninety days before the end of each Year, the Generator shall submit to the Power Purchaser the Annual Generation Plan and dispatch schedule together with the estimated Approved Costs for operating the Power Plant for the next year.
- 4.7.2 After the Power Plant commences operations under the Annual Generation Plan, the Generator shall use its best reasonable efforts as a reasonable prudent operator to comply with the scheduling and dispatch requirements of the Power Purchaser for adjustments in daily and hourly loads.

Article 4.8 Preparation of Operation Plans

In order to ensure that the Power Plant operates efficiently at all times, according to Article 2.7, the Generator shall:

- a. Compile a preliminary operation plan no later than the end of July of each year, and specify:
 - i. the Power Plant's projected average operation load for the succeeding year;
 - ii. the projected periods during which each Unit may be shut down for overhaul, repair and maintenance in the succeeding year; and
- b. Hold regular meetings with the Power Purchaser regarding the off-take obligations and electricity demands so that, subject to the above provisions, the Generator may, at its discretion, amend the relevant operation plan, without prejudice to the On-Grid Tariff.

Article 4.9 Key Personnel

After consulting with the Power Purchaser, the Generator shall appoint a qualified, competent and experienced person to act as Plant Manager, who shall not be replaced without prior consultation with the Power Purchaser. If the Plant Manager resigns, or is dismissed or is otherwise unable to perform his duties, the Generator shall promptly consult with the Power Purchaser, and shall promptly appoint another qualified, competent and experienced person to fill the vacancy.

Article 4.10 Sub-Contracting

Subject to Article 4.3.1, the Generator may subcontract part of the Pre-Operation Services or the Operation Services to such subcontractors as are necessary to enable it to fulfill its obligations. Such subcontracting shall not relieve the Generator from its duties, obligations and liabilities under this Contract. The Generator shall be fully responsible for the actions and breaches of all subcontractors as if they were its own actions or failure to act.

Article 4.11 Working Capital

- 4.11.1 Prior to the actual Completion Date of each Unit, the Generator shall be required to demonstrate to the Power Purchaser that it has sufficient working capital to pay for the Completion of the Unit, as well as to satisfy any requirement for coverage ratios under the Financing Agreement for Units that are in operation.
- 4.11.2 During the operational period, the Generator shall be responsible for arranging and obtaining any necessary additional working capital on its own account as required and the interest expenses incurred in connection therewith shall be counted as part of the cost of generation.
- 4.11.3 The Power Purchaser shall assist the Generator in the arrangement of such loans but shall not be obliged to advance, or procure the advance of, or to guarantee or otherwise incur any liability in respect of any advance by a third party of, any funds to the Generator.
- 4.11.4 Prior to the Actual Completion Date of the first Unit, the Power Purchaser shall be required to demonstrate to the Generator that it has sufficient working capital or line of credit to pay for the delivery of electricity in accordance with Article 7.2.

Article 4.12 Obligations of Power Generation

Upon the Actual Completion Date of the Power Plant, the Generator shall be fully responsible for ensuring that the Power Plant is capable of generating the Minimum Generation Quantity in accordance with Article 2.3. If the Power Plant cannot generate its Minimum Generation Quantity, payment to the Generator may be adjusted in proportion to the resulting shortfall in generation in accordance with Article 9.3.

2.5 Article 5: Connection of Power Plant to NEPS

Article 5.1 Connection to NEPS Power Grid

- 5.1.1 Power Purchaser shall guarantee that by the Tariff Commencement Date each Unit of the Power Plant is capable of being connected to the NEPS Connection Point shown Schedule 3 to EXHIBIT C.
- 5.1.2 The Power Purchaser shall be capable, without delay or restriction, of providing the Power Plant with sufficient electricity as required for commissioning tests, start up and the synchronizing of each Unit to the NEPS Power Grid as well as to enable the Power Plant to continuously transmit the maximum output of electricity generated by each Unit during Unit Commissioning.
- 5.1.3 The Generator shall provide the Power Purchaser with access to the Power Plant in order to install and maintain the equipment necessary for the connection in accordance with EXHIBIT C.
- 5.1.4 The Generator shall own and maintain the equipment from the Power Plant to the Delivery Point or NEPS Connection Point [depending on the final system design], while the Power Purchaser shall own and maintain the equipment from the Delivery Point or NEPS Connection Point [depending on the final system design] to the NEPS Power Grid.

Article 5.2 Liability

- 5.2.1 The Generator shall be at fault if a Unit is

not:

- a. Interconnected with the NEPS Power Grid by the Tariff Commencement Date; or
- b. Available to generate electricity in accordance with Article 2.3.

5.2.2 The Power Purchaser shall be at fault if it fails to:

- a. Make any required payment in accordance Article 7.2; or
- b. Complete the connection with the NEPS Power Grid in accordance with Article 5.1 which results in a Unit not being able to deliver electricity to the NEPS Connection Point.

2.6 Article 6: Exchange of Information

Article 6.1 General

The Generator shall periodically provide information concerning the operation of the Power Plant and performance of the Pre-Operation Services and the Operation Services to the Power Purchaser in accordance with EXHIBIT C.

Article 6.2 Exchange of Information

- 6.2.1 The Power Purchaser shall promptly notify the Generator if it becomes aware that the transmission capacity of the NEPS Power Grid is insufficient to meet the scheduled delivery of electricity from the Power Plant.
- 6.2.2 The Generator and the Power Purchaser shall hold regular meetings to discuss and resolve any problems so as to ensure the smooth operation of the Power Plant and the smooth off-take of electricity.

Article 6.3 Telecommunications

An automated telecommunication system shall be installed between the Power Plant and the Power Purchaser's dispatch center. The Generator shall own and maintain the equipment between the Delivery Point and the Power Plant, while the Power Purchaser shall own and maintain the telecommunications equipment between the Delivery Point and the dispatch center.

2.7 Article 7: Tariff Methodology and Payments

Article 7.1 Components of On-Grid Tariff

- 7.1.1 The On-grid Tariff shall have two components:
 - a. A Capacity Charge, and
 - b. An Energy Charge due to fuel
 - c. An Energy Charge due to O&M.

Each component shall be calculated in accordance with EXHIBIT B.

- 7.1.2 As part of the annual estimate of Approved Costs prepared in accordance with Article 4.7.1, the Generator will specify the allocation of Approved Costs between the Capacity Charge and the Energy Charge components of the On Grid Tariff.
- 7.1.3 Before the end of each year, the Generator shall estimate the Capacity Charge and the Energy Charge for the next year in accordance with EXHIBIT B, and any adjustment shall be deemed to have been approved by the Relevant Authority.

Article 7.2 Power Purchaser's Payments

- 7.2.1 The Power Purchaser's liability to make payment to the Generator for the Capacity Charge under Article 2.4 shall be incurred as of 1 [October] in each Year; however, the Generator shall invoice the Power Purchaser in twelve equal monthly installments throughout the Year to which it applies. Each Month, the Power Purchaser shall pay an installment equal to Capacity Charge divided by the number of days in the relevant Year multiplied by the number of days in the relevant Month.

- 7.2.2 The Power Purchaser shall make payment to the Generator for the off-take of electricity above MPQ in the amount of the Energy Charge multiplied by the number of kilowatts delivered each day in the relevant month.
- 7.2.3 Notwithstanding any other provision of this Contract the Power Purchaser's obligation to pay the Capacity Charge component of the On-Grid Tariff in accordance with Article 7.2.1 and the Generator's right to receive such amounts are independent receipt of electricity by Power Purchaser and any other matter or circumstance whatsoever, except as to a refund under Article 7.4, and Power Purchaser's payment obligations are absolute, unconditional and independent of any other dealings between the parties or any other matter or circumstance.

Article 7.3 Commissioning Tests

All electricity generated by a Unit during a commissioning test before the Actual Completion Date will be delivered to Power Purchaser and payment of the On-Grid Tariff made according to Article 2.9.

Article 7.4 Refund for Shortfall in Generation

If a refund is due to Power Purchaser at the end of any Year due to a shortfall in generation under Article 4.12, the Generator shall make payment within 60 days following the end of the relevant Year.

Article 7.5 Default Interest

If the Power Purchaser defaults in the payment of money payable under this Contract on the due date for payment (or, where money is payable Upon Demand, Upon Demand being made) then interest shall be payable on the amount unpaid from the due date for payment until actual payment, at a rate equal to the London Interbank Offered Rate ("LIBOR) plus [] percent, calculated on a daily basis.

2.8 Article 8: Invoices

Article 8.1 Invoices

- 8.1.1 The Generator shall provide to the Power Purchaser a monthly invoice for the Capacity Charge and the Energy Charge of the On-Grid Tariff prepared in accordance with EXHIBIT A.
- 8.1.2 The Generator will be responsible for converting relevant parts of the On-Grid Tariff incurred in currencies other than US\$.

Article 8.2 Method of Payment

- 8.2.1 The Generator's invoice shall be paid in full in within 30 days of its date without any credit, deduction, set-off or withholding of any nature whatsoever.
- 8.2.2 If any withholding is required by law, the Power Purchaser shall at the same time of making payment, pay to the Generator such additional amounts as will ensure that the Generator receives the full amount of the appropriate component of the On-Grid Tariff on the due date as if such deduction or withholding had not been made.
- 8.2.3 If Power Purchaser cannot fulfill its payment obligations on the date specified in this Contract, it shall pay to the Generator a late payment penalty calculated at [] % of the delinquent amount of payments per day on an accumulative basis.
- 8.2.4 In order to enable the Generator to carry out the Pre-Operation Services pursuant to Article 4.4, the Power Purchaser shall pay the Generator a monthly management fee, calculated at a rate of [***] of the Capacity Charge component of the On-Grid Tariff.

2.9 Article 9: Failure to Generate

Article 9.1 Determining the Cause

The following procedure shall be used to determine whether any failure to generate the Minimum Generation Quantity for other than a planned shutdown under Article 9.2 was due to Power Plant Force Majeure, or was the responsibility of the Generator:

- a. The Generator and Power Purchaser, acting through their respective technical consultants, shall attempt in good faith to reach agreement on the cause for failure to generate electricity. Any such agreement shall be binding to all parties.
- b. If no agreement can be reached within 14 days after the day on which all parties were notified, then either party may request an expert, mutually agreed upon, from a third party, to make a decision which, when made, shall be binding on all parties.
- c. Either party may appeal the decision by the Expert to Arbitration as described in Article 16.4.
- d. Pending the decision, the Power Purchaser shall make payments as invoiced in accordance with Article 8.1 as if the cause of the occurrence were Power Plant Force Majeure.
- e. If it is subsequently determined that the cause was due to the failure of the Generator to perform its obligations under this Contract, the Generator shall refund in accordance with Article 7.4.

Article 9.2 Planned Shutdown

Generation from a Unit may be suspended due to a planned shutdown for a period not exceeding, in aggregate:

- a. [Forty-five days for each Unit in each third Year] in which a major overhaul will take place; and
- b. [Twenty-two days for each Unit] in each Year, for the purposes of repair and maintenance. Any such shutdown or other failure to dispatch under Article 9.2 shall not affect Power Purchaser's obligation to pay the Capacity Charge in accordance with Article 7.1.

Article 9.3 Unplanned Shutdowns

If in any Year any Unit is shutdown or fails to generate due to unplanned outages for a period in excess of that specified in Article 9.2 and it is determined in accordance with Article 9.1 that the cause of such shutdown or failure to generate is the responsibility of the Generator or is caused by Power Plant Force Majeure, the Minimum Generation Quantity shall be reduced in proportion attributable to the period of shutdown or failure to generate and a refund shall be due under Article 7.4. There will be no reduction in MGQ if the shutdown or failure to generate is due to the responsibility of the Power Purchaser or its claim of Force Majeure.

2.10 Article 10: Indemnity

If a party to this Contract is in breach of its obligations, the breaching party shall bear responsibility for and shall indemnify and hold the non-breaching party harmless from and against any loss or damage, cost, liability or claim against the non-breaching party, and all expenses directly relating to the breach, including, but not limited to, legal fees and expenses, which may be suffered by the non-breaching party, excluding all incidental and consequential damages.

2.11 Article 11: Insurance

Article 11.1 Generator's Insurance During Construction

During the Construction Period, the Generator shall effect and maintain, or shall cause any Project Contractor engaged in connection with construction of all or part of the Works to effect and maintain, such construction-related insurance with respect to that part of the Works then in

progress as the Generator, acting in accordance with International Best Practice considers appropriate, which shall include the following insurance with the minimum single event coverage and maximum deductibles:

Insurance Type	Minimum Coverage (US\$)	Maximum Deductible (US\$)
Construction All Risks	[\$200] million	[\$10] million
General Liability (including Breach of Contract)	[\$10] million	[\$ 1] million
Workers Compensation and/or Employer's Liability	Per Afghan law	Per Afghan law

Article 11.2 Generator's Insurance During Operation

During the term of this Contract, the Generator shall effect and maintain, or shall cause the Operator or other Project Contractor engaged in connection with all or a part of the operation of the Power Plant to effect and maintain, such operating related insurance with respect to the operation and maintenance of the Power Plant as the Generator acting in accordance with International Best Practice considers appropriate, which shall include the following insurance with the minimum single event coverage and maximum deductibles:

Insurance Type	Minimum Coverage (US\$)	Maximum Deductible (US\$)
Operator's All Risk (excluding business interruption but including connection line)	[\$ 200] million	[\$10] million
General Liability (including Breach of Contract)	[\$10] million	[\$1] million
Workers Compensation and/or Employer's Liability	Per Afghan law	Per Afghan law

Article 11.3 Lending Obligations

If the Generator enters into a Financing Agreement for the purpose of constructing the Power Plant, the Generator shall comply with all conditions regarding insurance which are included in the Financing Agreement.

Article 11.4 Adverse market conditions

The Generators obligations in this Article 11 are applicable to the extent that insurance is commercially available in the insurance market for Afghanistan. If the condition in the insurance market for Afghanistan is such that it is not possible for the Generator to satisfy the requirements of Article 11.1, 11.2. or 11.3 at a cost or on terms that in the written opinion of an internationally recognized insurance broker are not commercially reasonable, the Generator shall be relieved of its obligations under Article 11.1 or 11.2 and may self-insure, provided:

- a. the relief under this Article 11.4 applies only to the extent that compliance with Article 11.1 or 11.2 is not possible on commercially reasonable terms and at a cost that does not or will not be reasonably likely to have an adverse impact on the economics of the Power Plant;
- b. the Generator may self-insure only to the extent that it can establish on the basis of its most recent audited accounts that it has net assets equal to 1.4 times the amount of the coverage required under Article 11.1 or 11.2 in respect of which it seeks to self-insure;

- and
- c. the Generator shall reinstate insurance in accordance with Article 11.1 or 11.2, as the case may be, when market conditions change such that full compliance with Article 11.1 or 11.2 is possible on commercially reasonable terms and at a cost that does not or will not be reasonably likely to have an adverse impact on the economics of the Power Plant.

Article 11.5 Application of Insurance Proceeds

The Generator shall, subject to the terms of its financing arrangements with lenders other than Shareholders or their Affiliates, apply any proceeds received in respect of insurance against property damage risks to repair such property damage, unless the damage has resulted in either a constructive total loss or a total loss or unless such repair fails to meet the Economic Restoration Criteria. The Generator shall be entitled to create security in respect of insurance in favor of a Creditor. In the event that such Creditor would have the right not to apply the proceeds received in respect of any insurance to repair the damage, the Generator shall apply an equivalent amount to repair of the damage unless the damage has resulted in a constructive total loss or a total loss or unless such repair fails to meet the Economic Restoration Criteria.

Article 11.6 Contractors

The Generator shall require its contractors and subcontractors to obtain and maintain insurance mutatis mutandis against the risks referred to in this Article 11.

Article 11.7 Cost of Insurance in Tariff

The cost of insurance shall be included in the On-Grid Tariff as part of the Capacity Charge.

Article 11.8 Insurance from Power Purchaser

Power Purchaser shall obtain and maintain general liability insurance in policy limit of US [\$10] million to cover its liability under this Contract and shall be responsible for any liability relating to workers and staff and as required by the relevant laws of Afghanistan.

Article 11.9 Policies and Claims

The Power Purchaser shall comply with all requirements of such insurance and shall provide the Generator with all information and assistance within its capacity to aid the Generator in making any claims under insurance carried and maintained under this Article 11 and in processing claims under its insurance. Power Purchaser shall promptly notify the Generator of the occurrence of any accident or other event covered by or affecting the insurance.

2.12 Article 12: Force Majeure

Article 12.1 Power Plant Force Majeure

Power Plant Force Majeure shall include any of the following events:

- a. war, hostility or insurrection;
- b. plague or other epidemics;
- c. fire;
- d. lightning;
- e. earthquake; or
- f. damages to property as a result of the operation of the forces of nature, including natural calamities, and which an experienced power plant operator or electricity supplier, as the case may be, could not foresee; which, in each case;
 - i. Occurs within the boundaries of the Power Plant;
 - ii. Prevents the Power Plant from generating electricity; and

- iii. Cannot be prevented by any effort according to the good operating practices for gas-fired power plants.

Article 12.2 Notification

If an event constituting Power Plant Force Majeure occurs at any time, the Generator shall, as soon as possible, notify the Power Purchaser of such event. Together with such notification, the Generator shall present its proposals to mitigate the effects of such event of Power Plant Force Majeure.

Article 12.3 Consultation

Power Purchaser and the Generator shall as soon as possible consult with each other with the object of maintaining economic production of electricity by the Power Plant and minimizing any occurrence of expenses and disruption.

Article 12.4 Mitigation

Generator shall use all reasonable efforts to resume operation of the Power Plant as soon as possible.

2.13 Article 13: Notices

Article 13.1 Address for Notices

Under this Contract, each invoice, notice or other document sent by each party by courier, mail or facsimile or delivered to the other party shall be in writing and sent or delivered to the other party at the following address:

- a. Power Purchaser:
- b. The Generator:

or at any other address as one party may have notified to the other party in writing from time to time.

Article 13.2 Delivery of Notices

Any such invoice, notice or other document:

- a. May be delivered in person to the relevant address on any day during the hours of 9.00 a.m. to 12.00 noon and 2.00 p.m. to 5.00 p.m. in an envelope. The envelope shall indicate on the front of it the subject matter of its contents and the envelope shall be marked for the attention of such officer or employee (if any) as the relevant party shall have notified to the other party for the purpose;
- b. If so presented for delivery, may be handed to any person then present at such address who will provide written notice of the receipt of the same; and
- c. If the person effecting delivery is unable to obtain such written acknowledgment within one hour of his arrival at such address, may be left there.

Article 13.3 Deemed Delivery

Any invoice, notice or other document delivered by hand shall be deemed to have been delivered and received if delivery is made in accordance with Article 13.2. Any document sent by facsimile shall be deemed to be delivered on the working day after it is sent. Any document sent by mail shall be deemed to have been delivered three working days after it is mailed.

2.14 Article 14: Miscellaneous

Article 14.1 Separate and Independent Contract

This Contract shall be construed as a separate and independent contract. If there is any conflict between this Contract and any other agreement between any of the parties relating to the same subject matter, the provisions of this Contract shall prevail.

Article 14.2 Language of Contract

This Contract shall be executed in Dari and English. Both the English and Dari versions of this Contract are of equal validity. In the event of a conflict in interpretation, the English version shall control.

Article 14.3 Amendments

Any amendments to this Contract and/or the Appendices shall be in writing and signed by the duly authorized representatives of the Generator and Power Purchaser and approved by the Relevant Authority.

2.15 Article 15: Termination

Article 15.1 Termination by Agreement

Except as provided in Article 15.2 neither Party may terminate this Contract without the consent of the other or (in the case of an assignment by any Party, whether by way of security or otherwise) the assignee of the other Party. In any event this Contract shall not be capable of termination without the consent of Creditors so long as the Generator has any obligations, actual or contingent, pursuant to a Financing Agreement.

Article 15.2 Termination Events

The following circumstances shall constitute a Termination Event:

- a. After the Construction Commitment Date the Power Purchaser fails to perform its obligations under, or commits a breach of, this Contract, and such failure or breach is not remedied within a period of 90 days after receipt by the Power Purchaser from the Generator of a notice setting out full particulars of the obligation not complied with or the alleged breach and demanding remedy;
- b. The Power Purchaser takes any external action or starts any legal proceedings under any law or regulation or takes any other steps in the context of insolvency for:
 - i. It to be adjudicated bankrupt or insolvent; or
 - ii. Its winding up, administration or dissolution, on grounds of insolvency; or
 - iii. The appointment of a liquidator, trustee, receiver, administrator or similar officer of the Company or of the whole or any material part of its undertaking, assets, rights or revenues;
- c. The Power Purchaser is adjudicated bankrupt or insolvent, or is wound up, placed in administration or dissolved on grounds of insolvency, or a liquidator, trustee (in the context of an insolvency), receiver, administrator or similar officer is appointed in respect of the Power Purchaser or of the whole or a material part of its undertaking, assets, rights or revenues; and
- d. The Power Purchaser fails to comply with an award made against it under the Dispute Resolution Procedure or implement a binding resolution of a Technical Dispute; or
- e. The Company fails to make a payment under Article 7.2.

Article 15.3 Notification of Termination Event

- 15.3.1. If the Generator determines that a Termination Event has occurred that is capable of correction and cure, the Generator may give written notice ("Notice of Default") to the Power Purchaser stating the full particulars of the circumstances and demanding that the Power Purchaser take action to correct or cure the default.
- 15.3.2. Upon receipt of a Notice of Default, the Power Purchaser shall:
 - a. Take such action as it considers appropriate to correct or cure the default, and notify the Generator of the actions taken; or
 - b. Dispute that a Termination Event has occurred and give a notice of

dispute in accordance with Article 16.2.

- 15.3.3. If the Power Purchaser fails to respond to the Generator within 28 days of receipt of the Notice of Default (or such longer period as may be agreed between the Parties,) or fails within 60 days of receipt of the Notice of a Termination Event to rectify the Termination Event, the Power Purchase shall be liable to make payment in accordance with Article 15.4.

Article 15.4 Payment for Termination Event

- 15.4.1. Upon the occurrence of a Termination Event, Power Purchaser shall be obliged to immediately pay to the Generator the Termination Payment, whereupon the Generator shall transfer all right, title and interest in the Power Plant to Power Purchaser or to such other person as Power Purchaser shall nominate and, without prejudice to any existing accrued rights of the parties, this Contract shall automatically terminate.
- 15.4.2. If the Parties do not, for whatever reason, within 60 days after the occurrence of a Termination Event, agree the amount of the Termination Payment or any component, Power Purchaser shall immediately pay to the Generator on account of Termination Payment an amount equal to the amount certified by the Financing Agreement Agent as the amount that would be payable as a Termination Payment under Article 1.39 (ii). The Termination Payment shall be applied first towards full satisfaction of all amounts due under or in connection with the Financing Agreement, without prejudice to the rights and obligations hereunder of either the Generator or Power Purchaser to subsequently require or make any necessary adjusting payments between them once the amount of the Termination Payment is agreed or determined between them.

2.16 Article 16: Law and Dispute Resolution

Article 16.1 Governing Law

This Contract shall be governed and construed in accordance with the laws of Afghanistan. If any disputes arise, they shall be settled according to the laws of Afghanistan.

Article 16.2 Settlement of Disputes

- 16.2.1 In the event of any dispute or claim of any kind that may arise between the Parties relating to the construction, interpretation or application of any of the terms and conditions of this Contract or the performance of their respective obligations ("Dispute"), either Party may by written notice inform the other Party of a Dispute.
- 16.2.2 The Parties shall within a period of 15 Days from the date of receipt of the Dispute Notice by such other Party meet and negotiate in good faith to settle the Dispute. In the event of the failure of the Parties to settle the Dispute amicably within such 15 Day period, either Party may refer the Dispute for resolution by expert determination or arbitration, as applicable, in accordance with the provisions of Articles 16.3 and Article 16.4.

Article 16.3 Expert Determination

- 16.3.1 In the event any Dispute is regarding the accuracy of a technical or a financial nature and has not been settled in accordance with Article 16.2, either Party may within 30 Days from the date of receipt of the Dispute Notice by the Party receiving such notice, refer the Dispute to an expert ("Expert"). The Expert shall be any person, body or organization of repute, appointed by the Parties by mutual consent in accordance with this Article 16.2 who shall be independent of either Party.
- 16.3.2 The Parties are to discuss and agree on the appointment of the Expert. In the event that the parties are unable to agree on the technical or financial Expert within a

period of 30 Days from the date of the Notice of Dispute, either Party may request the International Centre for Expertise of the International Chamber of Commerce (ICC) to appoint such Expert(s) whose determinations shall be made in accordance with the ICC's Rules for Expertise.

- 16.3.3 Except as the Expert may otherwise decide, the costs of any Expert determination and related proceedings under this Article 16.2 shall be borne equally by the Parties. Except as the Expert may otherwise decide, each Party shall bear its own costs of preparation, filing and respective attorney's fees and costs.

Article 16.4 Arbitration

- 16.4.1 Any Dispute, not resolved by the Parties within the specified period in accordance with Article 16.2 or 16.3, shall be resolved exclusively and finally in arbitration conducted by a panel of 3 arbitrators in accordance with the [ICC's Rules of Arbitration].
- 16.4.2 Either Party may by written request notify the other Party of its intent to refer such Dispute or such Expert determination to arbitration. Within 30 Days of receipt of such notice by such other Party, the Parties shall each appoint one arbitrator. Within 30 Days of the appointment of the second arbitrator, the two such appointed arbitrators shall appoint a third arbitrator or presiding arbitrator. In the event that the two arbitrators appointed by the Parties are unable to agree on the third or the presiding arbitrator, the presiding arbitrator shall be appointed by the [President of the ICC].
- 16.4.3 Any arbitration proceeding under this Article shall be conducted in the English language in [Paris, France].
- 16.4.4 The arbitral tribunal shall apply the law selected by the Parties in Article 16.1 in resolving any Dispute arising under this Contract.
- 16.4.5 The arbitral tribunal convened under this Article shall have the power to grant an injunction or injunctions to prevent breaches of this Contract, and to fashion appropriate remedies for a Party's failure to comply therewith.
- 16.4.6 Any decision of or award by an arbitral tribunal under this Article shall be in the English language and shall include the findings of facts and conclusions of law upon which it is based. The decision or award shall be final and binding upon the Parties and judgment for execution and enforcement of any award may be entered upon in any court of competent jurisdiction.
- 16.4.7 Unless the arbitration tribunal rules to the contrary, each Party shall bear its own costs and expenses including those of its attorneys, witnesses and employees retained by it but the arbitration fees and costs shall be borne by the defaulting Party. Where the arbitration panel does not hold either Party as the defaulting Party, the arbitration panel shall reasonably decide the proportion in which arbitration fees and costs are to be shared by the Parties.
- 16.4.8 Notwithstanding the subsistence of any arbitration proceedings, the Parties shall continue to perform their respective obligations under this Contract and either Party shall not withhold, any payment obligation admitted by it.

Article 16.5 Remedies

- 16.5.1 Without prejudice to the right of either Party to arbitration under Article 16.4, either Party shall have the right to seek, from any court of competent jurisdiction, provisional measures in aid of arbitration (including, a temporary restraining order or preliminary injunction) to prevent harm or damage.
- 16.5.2 Either the Generator or the Power Purchaser, without prejudice to its right to

arbitration, shall be entitled to enforce specifically the terms and provisions of a decision or an award and may seek enforcement of an arbitral injunction or injunctions in any court of competent jurisdiction, this being in addition to any other remedy to which that Party may be entitled at law or in equity. All rights, powers and remedies provided under this Contract or otherwise available in respect hereof shall be cumulative and not alternative, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy.

2.17 Article 17: Effect, Term and Confidentiality

Article 17.1 Effect of Contract

This Contract will come into effect on the date of execution by both parties.

Article 17.2 Term

This Contract shall remain in force until the expiration of [] years from the Effective Date and shall be extended for the same period as the period of Power Plant Force Majeure.

Article 17.3 Confidentiality

Copies of this Contract shall be submitted for regulatory purposes to the Relevant Authority by Power Purchaser. The Power Purchaser shall consult with the Generator regarding which provisions should be submitted under claims of confidentiality.

2.18 Article 18: Assignment

Article 18.1 Consent

Power Purchaser hereby acknowledges and consents to the assignment by the Generator of any or all of its rights and benefits under this Contract in favor of any Creditor(s).

Article 18.2 Parties

The terms "Power Purchaser", "Generator" and "Party" shall include their respective successors and permitted assigns.

IN WITNESS WHEREOF, this Contract has been duly executed by the parties as of the date first above written.

[Sheberghan Power Development Company]

Da Afghanistan Breshna Sherkat

Representative:

Representative

Date:

Date:

2.19 Exhibit A: Invoice Format

Invoice for Electricity Fee Payment from Month: [Date:] to Month:[Date:] Date of Meter Recording:

Date of Table Entry:

This month is the _____ month of this quarter,

The meter reading for the preceding month was ____, The meter reading for this month is __.

The quantity of Electricity Delivered under Article 2.2 (MGQ) is:_____.

The quantity of Electricity Delivered under Article 2.3 (above MGQ) is _____.

The quantity of Electricity Delivered under Article 7.3 (Commissioning Test) is _____.

Sum Due pursuant to Article 7.2 is: \$ _____

Outstanding Balance due _____

Total Amount payable (Sum Due + Balance Due) ¹ _____

On-Grid Tariff Estimate:

a. On-Grid Tariff in respect of the 1st, 2nd, 4th, 5th, 7th, 8th, 10th and 11th months of each Year is:

The On-Grid Tariff Capacity Charge \$ _____,

The On-Grid Tariff Energy Charge \$ _____.

b. Payment due in respect of the 3rd and 9th month of each Year is: The On-

Grid Tariff Capacity Charge is: \$ _____,

The On-Grid Tariff Energy Charge is: \$ _____.

c. Payment due in respect of the 6th month of each Year is: The On-

Grid Tariff Capacity Charge is: \$ _____,

The On-Grid Tariff Energy Charge is: \$ _____.

d. Payment due in respect of the 12th month of each Year is

The On-Grid Tariff Capacity Charge is: \$ _____,

The On-Grid Tariff Energy Charge is: \$ _____.

¹ Balance Due = unpaid account of the amount payable for the preceding month + default charge as referred to in Article 7.5

2.20 Exhibit B: On-Grid Tariff Calculation

Schedule 1: Methodology

The methodology for estimating Approved Costs for the Power Plant is presented below in US\$. The On-Grid Tariff has a typical two-part structure with an Energy Charge for the energy actually dispatched and a Capacity Charge based on the available capacity. The Capacity Charge which is intended to recover capital costs fixed operating costs and return on equity (ROE); and an Energy Component which is intended to recover fuel costs and variable operating costs.

1 Capacity Charge

- 1.1 The Capacity Charge for the Power Plant is payable on the basis of the contract capacity as tested at the Commissioning of Operations Date (COD), and periodically thereafter. This payment is calculated on an Afghan/kWh basis of capacity and, in order to calculate a rate in Afghan/kWh, a notional [] % capacity factor has been utilized.
- 1.2 The key assumptions factored in the Capacity Charge are the total capital cost of the Power Plant, the debt-equity ratio, the cost of funding and currency thereof, together with the exchange rate. The following are the assumptions used on the reference dates:
 - a. Total Power Plant Cost: US\$ [] (including fixed turnkey EPC price).
 - b. Debt-Equity Ratio: [75:25]
 - c. Exchange Rates: 1 USD = [] Afghans; 1 Euro = US\$ []
 - d. Funding: Debt: [] %. Equity: [] %.
 - e. Taxes:
 - i. Customs Duty at [] % on imported machinery as per Foreign Investment Act and Electricity Act.
 - ii. Dividend Withholding Tax of [] % as per
 - iii. Customs Duty at [] % on imported spare parts.
 - iv. Corporate Tax Rate at [] % as per.
 - v. Minimum Turnover Tax Rate [] %.
- 1.3 At the time of Financial Closing, the Approved Costs shall be updated for the various base figures (e.g. fuel price, EPC, O&M and Insurance prices, adjusted by actual exchange rates compared to the Reference Exchange Rates (Afghan/USD = [], Afghan/Euro = [], and USD/Euro = [], and Interest During Construction adjusted by prevailing LIBOR to arrive at the reference tariff table to be used in this Contract.
- 1.4 At the COD, the tariff figures will be updated on the basis of actual interest incurred during construction and variations in the Reference Exchange Rates during construction.
- 1.5 Any modifications or additions required by the Power Purchaser that are not considered in the Approved Costs shall be treated as pass-through.
- 1.6 The Fixed O&M component of the Capacity Charge represents the fixed costs of all the staff for O&M, plant administration, security, transportation, overheads, office costs, professional fees such as audit, tax and legal, as well as some minor fixed operational costs such as environmental monitoring, that do not change with dispatch levels. Fixed O&M shall be indexed to the following:
 - (a) US CPI [] % of component
 - (b) Afghanistan WPI [] % of component
- 1.7 The Insurance component consists of all-risk insurance/reinsurance for the Power Plant, as well as business-interruption insurance (which are a lender-stipulated requirement). Insurance shall be indexed to the following to the Afghan/USD exchange rate []
- 1.8 The return on equity (ROE) component includes a return on invested equity giving an internal rate of return (IRR) of [15%] net after deduction of withholding tax.
- 1.9 Additionally, this component also includes the cost impact of a working capital loan to finance the Net Accounts Receivable with Sales Tax and Fill of Fuel.

1.10 A working capital loan facility of approximately US\$ [] equivalent in Afghan is assumed in order to finance purchase of natural gas under a long-term Gas Sale and Purchase Agreement, net accounts receivables, and working capital impact of 15% sales tax. The interest rate for this working capital loan is 6 months LIBOR []%+ 2% Spread = []% total.

1.11 The assumptions used in calculation of the above are:

- a. Amount of Debt: US\$ [] []% of total Power Plant cost including IDC)
- b. Term of Loan: [] months of construction period (grace) + [] years of semi-annual debt service after the COD
- c. Interest Rates: 6 months LIBOR []%) + []% Spread
- d. Currency: US\$.
- e. Indexation: Funding in of interest component would be indexed to the 6 month LIBOR rate.

1.12 Approved Costs Allocated to Capacity Charge

a. EPC Cost

EPC Cost covers power generation sets together with all the necessary auxiliary machinery, equipment and systems including the erection and commissioning of the equipment and construction of buildings. The EPC cost includes cost of the delivery point for natural gas at the site of the Power Plant. This turnkey price of the Power Plant is based on the award of a firm EPC contract.

b. Taxes & Duties

Taxes & Duties covers all import taxes and duties as per the Foreign Investment Act said to be []% of EPC cost.

c. Emergency spare parts

Emergency spare parts covers the costs of standard lot of spare parts aimed to reduce as much as possible the outage times for maintenance of the Power Plant, i.e. instead of taking a component out and testing it, the component would be exchanged and replaced so that the removed component is tested and used as a spare for the next checking time. These are estimated at 1.5% of EPC costs.

d. Mobilization Costs

Mobilization Costs covers the expenses of Generator and O&M Contractor personnel, i.e. hiring local personnel for operation and maintenance, training at manufacturer's factory on diesel engine and auxiliaries, etc. costs of trips and courses, selection of an expatriate to carry out the operation and management

e. Land lease, fees and infrastructure

Land lease, fees and infrastructure covers the purchase of land, together with stamp duty and registration fees, court fees and lawyers.

f. Development costs

Development Costs includes sponsors development costs and insurance for delay of commissioning the Units. These include costs of feasibility studies, environmental studies, geological and hydrological studies, soil investigation, and load flow and short circuit assessments, fees of engineering consultants, lawyers in Afghanistan as well as from abroad.

g. Insurance costs

Insurance Costs covers the costs during construction of the insurance of the assets, incurred prior to the Commissioning of Operations Date (the COD). This is estimated at 1.35% of EPC costs.

h. Administration & Utilities

Admin & Utilities includes the cost of annual staff costs, utilities during construction, cost of Independent Engineer and other administrative expenses.

i. Non EPC Construction & Other Capital Expenditures

Non EPC Construction covers the cost of items which have been excluded by

EPC contractor and have to be borne by the Power Plant sponsors. It includes Administration and office buildings, residential colonies and procurement of telecommunication systems, power and water connections, SCADA, Fuel Cost during testing. Weather Station and other operational, office and electric equipment

j. Financing Fees & Charges

Financing Fees & Charges includes the up-front fee, commitment fee, lenders consultant's fee, L/C charges etc. It is assumed that local funding would be available for the Power Plant, in case of foreign funding additional financing cost will be considered as pass through.

k. Interest During Construction (IDC)

Interest During Construction is calculated on the basis of anticipated interest rates, equity injections, and the construction payment schedule. It may kindly be noted that Generator's COD is based on a period of 18 months corresponding to [].

l. Depreciation

This cost represents recovery of the original equity capital invested, through the depreciation of capital investment using straight line depreciation over a [] year period. Once the Power Plant is fully depreciated it remains the property of Generator may operate as a merchant plant after the [] year period of the Power Purchase Agreement.

2 Energy Charge

2.1 The Energy Charge is based on the actual kWh off-take, and consists of fuel cost and the variable O&M cost.

2.2 The generation sets being proposed for the Power Plant are advanced technology machines providing high thermal efficiencies. After factoring the impact of fuel cleaning, average plant aging, and a notional [] % plant load factor, this translates to approximately [] % net site efficiency at 100% Load running on natural gas.

2.3 Approved Costs Allocated to Energy Charge Fuel

This component represents the fuel consumption at a guaranteed efficiency level for the plant based on a notional []% capacity factor. Consequently, the On-Grid Tariff subsumes the efficiency risk being borne by Generator. The main assumptions used to derive this price are:

- a. Natural Gas Price: US\$ [] per cubic meters excluding transportation cost
- b. Thermal efficiency: []% (life-cycle net at site conditions at 100% Load)
- c. Output: [200] MW (net at site conditions)
- d. Heat Rate: [] kJ/kWh
- e. Heating Value of [] kcal/kg
- f. Partial Loading: Heat Rate Curves from generation sets manufacturers to be used for partial load heat rate calculation and payment in case the plant load falls below []%.

2.4 Variable O&M

This component primarily includes imported spare parts to be changed on normal scheduled maintenance and unscheduled maintenance. Also, it includes chemicals, water charges for operations, as well as specialized technical services from non-US manufacturer, during maintenance of the plant. The generation sets and associated equipment have manufacturer-recommended overhauling schedules that are based on actual running hours. The actual timing of the Major Overhaul depends on the actual dispatch provided to the plant. The labor for the Variable O&M is on Fixed O&M. This tariff component will also be adjusted by variations in the USD/ Euro exchange rate through the [] year life of the Power Plant on an annual basis.

2.21 Exhibit C: Connection and Delivery of Power

Schedule 1: Metering of Off-take

- 1 The KWH meter to record both active and reactive power quantity supplied by the Power Plant to the NEPS Grid shall be located at Breakers No. 1, 2, and 3 at the high voltage side of the step-up transformer of the Power Plant.
- 2 The KWH meter to record power supply from the Power Purchaser to the Power Station shall be located at the Breaker No. 4 at the high voltage side of the start-up transformer of the Power Plant.
- 3 Under normal operation, power from the Power Plant to the NPES Grid shall be transmitted through the 220KV step-up substation of the Power Plant and the 220KV transmission line.
- 4 The accuracy of metering equipment shall comply with accuracy standards for Class 1 metering equipment, namely:
 - Active Power Meter: Grade 0.5
 - Reactive Power Meter: Grade 2.0
 - PT: Grade 0.2
 - CT: Grade 0.2

The metering equipment shall be managed in accordance with [ASME standards]
- 5 Under normal operation, auxiliary power of the Power Plant shall be provided by the high-voltage station service transformer; in case of outage of the station service transformer, it shall be provided by the start-up transformer.
- 6 Power transmitted from the Power Plant to Power Grid shall be calculated through the following formula:

$$Qg1 + Qg2$$
 Where:
 - Qg1 is the active power volume supplied by the Power Plant to the NEPS Power Grid measured by KWH meter at the Breaker No. 1
 - Qg2 is the reactive power volume supplied by the Power Plant to the Power Purchaser Grid measured by KWH meter at the Breaker No. 2.
- 7 Power transmitted from Power Purchaser Grid to the Power Plant shall be calculated as the active power quantity measured by KWH meter at the Breaker No. 3 at the high voltage side of the start-up transformer.
- 8 The Generator and Power Purchaser shall jointly appoint a qualified institution to be responsible for recording of all KWH meters. At noon of the last day of each month or a time in the same day as agreed upon by the Parties, the Generator and Power Purchaser shall send representatives to the site to witness the recording. In case that any one Party is absent at such an agreed time, the Party present shall witness the recording alone, and the result of such recording shall be binding on both Parties.
- 9 The Generator and Power Purchaser shall jointly appoint a qualified institution to calibrate all meters and their auxiliary parts every year. At the time when calibration takes place, the Generator and Power Purchaser shall send representatives to the site to witness the calibration. In case that any one side is absent at such an agreed time, the Party present shall witness the calibration alone, and the result of such calibration shall be binding on both Parties.
- 10 If any Party finds, for some reason, that the above metering equipment may be inaccurate, that Party shall immediately notify the other Party of the situation. The inaccurate metering equipment shall be tested and recalibrated promptly. The power output at the time of a metering inaccuracy shall be calculated at a temporary metering point determined by both Parties.

Schedule 2: Statements and reports

Power Purchaser shall, before delivery of the first Unit, provide suggestions on forms of the following daily, monthly and annual reports, and determine the forms in consultation with the Generator.

1 Daily reports

Power Purchaser shall provide the Generator with daily reports on daily operation of the Power Plant, including without limitation the following items:

- a. Net generation volume of each Unit; Gas consumption of each Unit;
- b. Causes for deviation of each Unit from the daily load curve; and
- c. A description of emergencies or unusual events resulting in reduction of power generation.

2 Monthly reports

Power Purchaser shall, within the first 10 days of each month, provide to the Company a monthly report on the performance of the Units for the previous month. The report shall include, but not be limited to the following:

- a. Statistical statement on operation in the form required by the Relevant Authority;
- b. Major repair and maintenance activities carried out during the previous month, and those planned for the next month;
- c. Approved Costs for the previous month and those estimated for the next month;
- d. A statistical statement of the Power Plant's safety record during the previous month; and
- e. A summary of unusual events and emergencies during the previous month, and measures already taken by the Generator to mitigate the effects of same.

3 Annual Report

Within 60 days after the end of each calendar year, the Generator shall submit to the Power Purchaser a report for such calendar year which shall include but not be limited to the following:

- a. Annual operational data;
- b. Annual repair and maintenance data;
- c. Annual safety record and statistics of accidents;
- d. Annual financial statement;
- e. A summary of any disputes relating to the Power Plant;
- f. A summary of the environmental monitoring required under the Power Plant's emission permit;
- g. A copy of reports submitted to the Relevant Authority; and
- h. Other reports on the performance of the Power Plant relevant to the performance of this Contract upon the reasonable request of the Power Purchaser.

4 Access to the Power Plant

- a. Generator shall provide all necessary working and living facilities to the resident representative of the Power Purchaser at the Power Plant.
- b. Generator shall allow representatives or consultants from the Power Purchaser to inspect and monitor the operation of the Power Plant at reasonable times.
- c. Upon request of the Power Purchaser, the Generator shall allow the Power Purchaser or its representatives to have access at any time to any information, data and records relevant to the performance of this Contract.

Schedule 3: Design of Generator Circuit Breaker at Delivery Point

The power produced by the Power Plant shall be transferred to the unit transformer via the generator circuit breaker (GCB). The electrical requirements for generator circuit breaker are as specified in the IEEE C37.013 standard. Apart from the rated voltage, the most important selection criteria for GCB are the rated current and the rated breaking current of the Unit. Associated equipment such as disconnectors, grounding switches, a short-circuiting connection, current transformers, voltage transformers, protective capacitors and surge arresters can be integrated in the GCB enclosure.

2.22 Exhibit D: Fuel Specifications

Item	Specification	Acceptable Deviation
Carbon (%)	<input type="checkbox"/>	+/- 3
Hydrogen (%)	<input type="checkbox"/>	+/- 0.3
Nitrogen (%)	<input type="checkbox"/>	+/- 0.1
Sulfur (%)	<input type="checkbox"/>	+/- 0.03
Oxygen (%)	<input type="checkbox"/>	+/- 0.5
Ash (%)	<input type="checkbox"/>	+/- 4
Water Content (%)	<input type="checkbox"/>	+/- 0.05
Fixed Water (%)	<input type="checkbox"/>	+/- 0.20
Vaporized (%)Substances	<input type="checkbox"/>	+/- 1
Low Heat (Kcal/kg)	<input type="checkbox"/>	+/- 300

2.23 Exhibit E: Credit Support and Undertaking of Contract Stability

[SHEBERGHAN POWER DEVELOPMENT COMPANY]

Kabul, Afghanistan

Gentlemen:

Re: Credit Support and Stability of Contract

The Government of the Islamic Republic of Afghanistan ("Government") provides the following undertaking in support of the ability of Da Afghanistan Breshna Sherkat (DABS), who is referred to as the "Power Purchaser". The Government will assure that DABS will faithfully perform its obligations as provided in the Contract. In the event that DABS is unable to make payments as due as the primary obligor under Article 7 of the Contract, then upon a default, the Government will make payment of all deficient sums in accordance with the following terms and conditions:

- 1 The said amount, or any part thereof, shall be paid within 30 days upon our receipt of your demand by way of a written statement that the amount claimed is duly payable under the Contract.
- 2 That the sum demanded is not being disputed by DABS, or that any has been determined in accordance with Article 16 of the Contract and that a binding award has been made against DABS in the amount demanded.
- 3 All actions, rights or power or take any action against DABS, all notices (whether of non-payment by DABS, dishonor, protest or otherwise) under the Contract have been exhausted.
- 4 Any sum paid shall be in United States dollars to the bank account you have designated in your demand excluding reduction by reason of any and all present and future taxes, levies, imposts, deductions, assessments, charges or withholdings whatsoever levied, assessed, imposed or collected with respect to the Contract.
- 5 This undertaking shall be effective immediately and expire ninety automatically (90) days after the termination of the Contract without any formality become null and void for all its effects and this Letter of Guarantee shall be returned to us immediately.

In accordance with Article 2.10 of the Contract, the Government acknowledges that the Generator has entered into this Contract in reliance on the stability of the laws, decrees, regulations, and orders of Afghanistan as they exist on the Effective Date and undertakes to provide the Contractor with the following assurances of their stability.

- 1 In the event that any change to the laws, decrees, regulations, or orders of Afghanistan occurs subsequent to the Effective Date which materially restricts, divests, or limits any rights or benefits accruing to the Generator or which materially increases the Generator's financial obligations under this Contract or under the laws, decrees, regulations, or orders of Afghanistan as in existence on the Effective Date, the Generator may, at any time thereafter, so notify the Government in writing. For purposes of this undertaking, a material increase in the Afghan tax burden, which is not of general application, levied on the Generator's sub-contractors, shall be treated as a material increase in the Generator's obligations.
- 2 Promptly upon receipt of such notice, the Government, DABS and the Generator shall meet to negotiate in good faith and agree upon the modifications which need to be made to the terms of this Contract to restore the Generator's economic rights and benefits to a level equivalent to what they would have been, had such change not occurred, or upon such other remedy as they agree may be appropriate.
- 3 In the event the Government and the Generator are unable to agree within ninety (90) Days of the Generator's notice to the Government: (a) whether a material change to the laws, decrees, regulations or orders of Afghanistan has occurred subsequent to the Effective Date which materially restricts, divests, or limits any rights or benefits accruing to the Generator or which materially increases the Generator's financial obligations as aforesaid; or (b) upon the

modifications which may be needed to the Contract or upon such other remedy as may be required, then either party may refer the matter or matters in dispute for determination by arbitration in accordance with Article 16 of the Contract.

- 4 The arbitrator in such event shall be empowered to determine whether a material change in conditions has occurred and the modifications, if any necessary to the Contract to restore the Generator's economic rights and benefits to a level equivalent to what they would have been, had such change not occurred.
- 5 The arbitrator's determination shall be final and binding. It shall become part of the Contract and such incorporation shall not require the written agreement of DABS or the Government.

The Government recognizes and acknowledges that this undertaking and the Contract constitute a commercial transaction, and that the rights and obligations of the Generator and DABS are of a commercial and not a governmental nature. To the fullest extent not prohibited by Law, each of the Government hereby irrevocably waives on behalf of itself and its assets, any and all immunities for jurisdiction, enforcement and any other purpose whatsoever. For the avoidance of doubt this waiver includes immunity from: (a) any Expert determination, mediation, or arbitration proceeding commenced pursuant to this Contract; (b) any judicial, administrative, or other proceedings to aid the Expert determination, mediation, or arbitration commenced pursuant to this Contract; and (c) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order, or attachment (including pre-judgment attachment) that results from an Expert determination, mediation, arbitration, or any judicial or administrative proceedings commenced pursuant to the Contract.

Sincerely yours

Minister of Finance
Government of the Islamic Republic of Afghanistan

2.24 Exhibit F: Technical Limits and Contracted Characteristics