

Annexure H: Transmission Connection Agreement

Note: This document may be amended to reflect such changes that ESCOM TL may deem necessary, including on account of internal and external governance and approval processes.

TRANSMISSION CONNECTION AGREEMENT

BETWEEN

ESCOM TL

AND

[IPP]

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PREAMBLE

THIS TRANSMISSION CONNECTION AGREEMENT dated [] is made by and between:

- (1) **ELECTRICITY SUPPLY CORPORATION OF MALAWI**, a company incorporated under the laws of the Republic of Malawi with registration number [] and having its registered office [] ("**ESCOM TL**"), acting in accordance with the Transmission Licence issued by the Malawi Energy Regulatory Authority and tasked with the responsibility of owning, operating and maintaining the Transmission System; and
- (2) [**IPP**] a company incorporated in terms of the Laws of Malawi (registered under company registration number: []) and having its registered offices at [], Malawi (hereinafter referred to as the "**Customer**") and/or, subject to the Electricity Act's requirements on the transfer of a licence, its Affiliate and/or a wholly owned Malawian subsidiary to be set specifically for the purposes of this Agreement, a company incorporated under the laws of the Republic of Malawi (Registration Number: []) and having its registered office at [].

(together, the "**Parties**" and "**Party**" shall mean either of them)

RECITALS:

- (A) ESCOM TL owns and operates the Transmission System and may enter into agreements with legal entities licensed to undertake the generation of electrical energy (i) for the connection of their licensed power plants to the Transmission System (as such term is defined below); (ii) for the use by such licensed entities of the Transmission System in connection with their generation undertakings; and (iii) for matters relating to the operational interface between such licensed power plants and the Transmission System;
- (B) The Customer has applied for and been granted a Generation Licence under the Electricity Act, [Act No];
- (C) The Customer and ESCOM TL acknowledge that this Agreement is entered into pursuant to the Independent Power Producer ("**IPP**") Programme of the Government of the Republic of Malawi;
- (D) The Customer has applied to ESCOM TL for connection of the Customer's Facility to be developed by the Customer at [] in the [] region in Malawi (hereinafter referred to as the "**Project Site**") to the Transmission System (as such term is defined herein);
- (E) ESCOM TL submitted a connection offer letter to the Customer, which the Customer has accepted (the "**Connection Offer Letter**"), of which an executed copy is attached hereto as Annexure I, such Connection Offer Letter being subject to the conclusion and coming into effect of this Agreement;
- (F) ESCOM TL has agreed to the connection of the Customer's Facility to the Transmission System at the Point of Connection, for the use by the Customer of the Transmission System in connection with their generation undertakings and for other matters relating to the operational interface between such licensed Customer's Facility and the Transmission System in accordance with this Agreement;

- (G) This Agreement, among other, sets out the terms and conditions upon which (a) ESCOM TL and/or the Customer shall undertake the connection works which will physically connect the Customer's Facility (as such term is defined below) to the Transmission System; (b) ESCOM TL shall permit the Customer to use the Transmission System in connection with its licensed generation undertaking at the Customer's Facility; (c) the Parties shall cooperate with each other in relation to the operational interface between the Customer's Facility and the Transmission System; and (d) Each Party shall pay to the other Party the required charges as set out in this Agreement.
- (H) [The Parties further acknowledge that the Malawi Energy Regulatory Authority ("**MERA**") oversight extends to amendments to this Transmission Connection Agreement (TCA) and that any amendments to this TCA must be submitted to MERA for regulatory oversight prior to signature thereof.]

IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, except where the context requires otherwise, the following capitalised words and expressions shall have the meanings assigned to them below, and cognate words and expressions shall have corresponding meanings; terms that are not defined shall have the meaning specified in either the Power Purchase Agreement ("**PPA**") or the Connection Offer Letter:

"Affected Party"	has the meaning given to it in Clause 16.1.1;
"Affiliate"	means in respect of either Party, any Person (excluding any government), hereinafter referred to as "company" which directly or indirectly: (a) is controlled by such Party; or (b) controls such Party; or (c) is controlled by a company which directly or indirectly controls such Party. For the purposes of the foregoing definition: (i) a company is directly controlled by another company or companies, if the latter company holds shares, quotas or voting rights, carrying in the aggregate the majority (more than fifty percent) of the votes exercisable at shareholders' meetings of the former company or companies, and (ii) a particular company is indirectly controlled by a company or companies, hereinafter called the "parent company" or "parent companies", if a series of companies can be specified, beginning with the parent company or parent companies and ending with the particular

	company, so related that each company of the series, except the parent company or parent companies, is directly controlled by one or more of the companies earlier in the series;
“AFSA”/ UNCITRAL”	<i>[means the Arbitration Foundation of Southern Africa];[means United Nations Commission on International Trade Law]</i>
“AFSA Rules”/ “UNCITRAL Rules”	means the arbitration rules of AFSA/ UNCITRAL in force from time to time;
“Agreed Interest Rate”	means the [];
“Agreement”	means this Transmission Connection Agreement (TCA) between ESCOM TL and the Customer;
“Annexures”	means the documents annexed to this Agreement as: <ul style="list-style-type: none"> (a) Connection Offer Letter, including: <ul style="list-style-type: none"> (i) Single Line Diagrams; (ii) the Connection Facilities – HV Lines and Substations; (iii) the Project Monitoring; (b) the Construction Programme: <ul style="list-style-type: none"> (i) Customer Construction Programme; (ii) ESCOM TL Construction Programme; (iii) Connection Works Milestone dates (c) the Transmission Charges; (d) the ESCOM TL Technical Specifications and Requirements; (e) the ESCOM TL Transmission Tariff Structure; (f) Form of Bank Guarantee;
"Auxiliary Power"	means power purchased by the Customer from ESCOM TL and imported to the Customer's Facility, for the Customer's own use;
“Bank Guarantee”	means a bank guarantee substantially in the form set out in Annexure H (Form of Bank Guarantee) which (a) is issued by a bank which holds an Approved Credit Rating and is registered under applicable Law to carry on the business of a bank in Malawi, and (b) constitutes an on-demand, unconditional and irrevocable commitment to pay by the bank by which it is issued;
“Bond Amount”	As provided in the Connection Offer Letter in Annexure 1;

"Breaching Party"	has the meaning given to it in Clause 17.1.1;
"Business Day"	means any day except a Saturday, a Sunday or a public holiday in Malawi;
"Change in Costs"	has the meaning given to it in the PPA;
"Change in Law"	has the meaning given to it in the PPA ;
"Charge" or "Charges"	means the Transmission Charges specified in Annexure E of the Connection Offer Letter and as they may be amended from time to time pursuant to Clause 9.5, charges approved by the MERA and any additional charges that may become applicable pursuant to Clause 9.6;
"Commercial Operation Date of the Customer's Facility"	means the day determined to be the Commercial Operation Date of the Customer's Facility under the PPA;
"Confidential Information"	has the meaning given to it in Clause 22.1;
"Connection"	means the connection of the Customer's Facility to the Transmission System;
"Connection Date"	means the date of connection of the Customer's Facility to the Transmission System;
"Connection Facilities"	means the transmission plant and equipment forming part of the Transmission System that are required to provide Connection for the Customer's Facility;
"Connection Offer Letter"	means the connection offer letter to the Customer, as attached hereto as Annexure 1;
"Connection Works"	means the ESCOM TL Connection Facilities and the Customer's Facility Connection Equipment;
"Consents"	has the meaning given to it in the PPA, mutatis mutandis;
"Construction Programme"	As per Annexure 1 to this Agreement which will include the activities from the Effective Date to the Commercial Operation Date of the Connection Works;
"Contract Year"	means each period of one (1) calendar year which falls within the term of this Agreement, provided that: the first Contract Year shall commence on the Effective Date of this Agreement; and the last Contract Year shall commence on the first day of the calendar year in which the term of this Agreement is due to end and shall end (unless this Agreement is terminated early in accordance with its terms) on the Termination Date;
"Customer's Facility"	Means the power plant to be established by the Customer to generate electricity as specified in the PPA, including any facilities ancillary thereto,

	whether completed or at any stage of development and construction, that is or will be connected to the Transmission System at the Point of Connection;
"Customer's Facility Connection Equipment"	means the transmission connection equipment under the responsibility of the Customer as in Annexure A and Annexure B of the Connection Offer Letter in Annexure 1;
"Daylight Hours"	has the meaning given to it in the PPA;
"Deemed Energy Payment"	shall have the meaning given to it under the PPA;
"De-Energise"	means the operation of any isolator, breaker or switch so as to prevent active power and reactive power to be transferred through the Point of Connection from or to the Customer's Facility to or from the Transmission System and "De-Energisation", "De-Energised" and "De-Energising" shall be construed accordingly;
"Disconnect"	means the removal of all or any of ESCOM TL Connection Facilities to such extent that the Point of Connection can no longer be energised and "Disconnection", "Disconnected" and "Disconnecting" shall be construed accordingly;
Distribution License	Is a function within ESCOM TL to develop, operate and mantian the distribution network and supply electricity to the consumers?
"Electricity Act"	means the Malawian Electricity Act, [Act No], as amended or superseded from time to time;
"Effective Date"	has the meaning given to it in Clause 2.1;
"Force Majeure Event"	has the meaning given to it in Clause 16.1;
"Generation Licence"	has the meaning given to it in the PPA;
"Grid Code"	<i>[means, at any time, the most recent version of the Grid Code published by the MERA pursuant to the Electricity Act];</i>
"Independent Expert"	has the meaning given to it in Clause 20.2;
"Indexed Tariff"	has the meaning given to it in the PPA;
"Law"	has the meaning given to it in the PPA, mutatis mutandis;
"Long Stop Date"	means <i>[twelve (12)]</i> months from the Signature Date of this Agreement;
"Make-up Period"	has the meaning given to it in Clause 2.1.3;
"Market Rules"	means the Malawi's Market Rules, issued by MERA, which contains the set of rules that provide

	the framework for an efficient, transparent and reliable electricity market; to set out the responsibilities of the Market Participants, the TL, the SB and the SMO in relation to trading, co-ordination, dispatch, pricing, metering, settlement and payments and ensure an efficient, transparent and predictable settlement system and set the payment obligations;
"Maximum Export Capacity"	means the maximum capacity (specified in clause 3 of the Connection Offer Letter in Annexure 1) at the Point of Connection of the Customer's Facility for injection into the Transmission System;
"Maximum Import Capacity"	means the maximum capacity (specified in kVA in clause 3 of the Connection Offer Letter in Annexure 1) of the Point of Connection of the Customer's Facility for taking power off the Transmission System;
"Megawatt " or "MW "	means a measure of active electrical power equal to one million watts;
"Megavolt-amperes" or "MVA"	means a measure of active and reactive electrical power equal to one million volt-amperes;
"Malawi Energy Regulatory Authority" or "MERA"	means the Malawi Energy Regulatory Authority constituted and empowered under the Electricity Act;
"Metering Equipment"	means the Main Measuring System and the Check Measuring System for measuring active power, and measuring devices for measuring reactive power;
"Milestone"	means each key stage during the construction period as identified in the Construction Programme;
"Monthly Extension Charges"	As provided in Annexure E to the Connection Offer Letter in Annexure 1;
"MWh"	means a measure of active electrical energy equal to one MW of active electrical power supplied, conveyed or consumed in one hour;
"MVAh"	means a measure of active and reactive energy equal to one MVA of active and reactive electrical power supplied, conveyed or consumed in one hour;
"[currency]"	means the [currency] ;
"ESCOM TL Technical Specifications"	as per Annexure F of the Connection Offer Letter in Annexure 1;
"Non-Breaching Party"	has the meaning given to it in Clause 17.1.1;
"Notifying Party"	has the meaning given to it in Clause 17.1.2;

“Operating Committee”	has the meaning given to it in the PPA;
"Party"	means a party to this Agreement and shall include its successors in title, permitted assignees and permitted transferees;
"Person"	means any individual, company, corporation, firm, partnership, joint venture, undertaking, organisation, trust, government authority or government department (in each case whether or not having separate legal personality);
“Point of Connection”	means the point at which the Customer’s Facility is connected to the Connection Facilities as shown in Annexure A of the Connection Offer Letter in Annexure 1;
“Potentially-Breaching Party”	has the meaning given to it in Clause 17.1.2;
“Power Project”	has the meaning as set forth in the PPA;
“Power Purchase Agreement” or “PPA”	means the power purchase agreement for the sale of energy by the Customer to ESCOM TL;
"Project"	the connection of the Customer’s Facility to the Transmission System;
"Project Site"	has the meaning as set forth in the PPA;
"Project Costs"	has the meaning given to it in Clause 9.1;
"Project Documents"	means this Agreement, the EPC Agreement, Power Purchase Agreement, the Generation Licence (as determined in the PPA), the Consents (as determined in the PPA), the Operation and Maintenance Agreement, and any other agreements or contracts in relation to the Project;
“Prudent Industry Practice”	has the meaning given to it in the Power Purchase Agreement;
“[IPP Programme/ Framework]”	means the [<i>Independent Power Producer Programme/ Framework</i>] adopted by the Government of the Republic of Malawi through the [<i>Ministry of Natural Resources, Energy and Environment</i>], and implemented by the MERA and ESCOM TL;
“Remedy Period”	has the meaning given to it in Clause 17.2.2;
“[Safety Code]”	means the [<i>Malawian Electricity Safety Code</i>];
“Scheduled Connection Date”	has the meaning set forth in the Connection Offer Letter in Annexure 1.
"Scheduled Transmission System Outage"	means a pre-scheduled interruption in the generating capacity of the Customer's Facility or the transmission capacity of the Transmission System

	(as the case may be) agreed between the Parties (in accordance with Clause 7.4.3 as the case may be);
“Signature Date”	means the date on which the last Party to this PPA signs this Agreement;
Single Buyer or SB	Means a function within ESCOM TL responsible to purchase capacity to generation companies, and resell to the Distribution License.
System and Market Operator or SMO	means a function within ESCOM TL Ltd responsible for operating the system and administering the market, and holds the System and Market Operation licence granted or deemed to be granted by the Authority under the Energy Regulation Act.
“Termination Date”	has the meaning given to it in Clause 2.1.2;
“Transmission Unavailability”	has the meaning given to it in the PPA;
"Transmission Unavailability Threshold"	has the meaning given to it in the PPA;
"Transmission Connection Equipment"	means the Connection Equipment under the responsibility of ESCOM TL, as specified in Annexure A and Annexure B;
"Transmission Default"	means the following events to the extent caused by ESCOM TL which prevents the Customer from exporting power from the Point of Connection or use the Transmission System, namely: a delay in the Scheduled Connection Date or Transmission Unavailability exceeding the Transmission Unavailability Threshold as defined in the PPA.
Transmission License or TL	Is a function within ESCOM TL to expand, operate and maintain the Malawi’s Transmission System
"Transmission System"	means the electricity transmission infrastructure in Malawi owned and operated by ESCOM TL;
“Transmission Tariff Methodology”	means the method for calculating the charges for the provision by ESCOM TL of transmission-related services as approved from time to time by the MERA. As described in Annexure G to the Connection Offer Letter;
"Unscheduled Transmission System Outage"	means any period when the Customer’s Facility or the Transmission System (as the case may be) is out of service to do repair work as a result of an unforeseen equipment failure or for any other reason.

1.2 Interpretation

In this Agreement, unless provided otherwise:

- 1.2.1 clause headings used in this Agreement have no effect on the interpretation or construction of any of the terms of the Agreement;
- 1.2.2 if any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on either Party, then, notwithstanding that it is in a definition, effect shall be given to it as a substantive provision of this Agreement;
- 1.2.3 1.2.3 if any provision in the recital is a substantive provision conferring rights or imposing obligations on either Party, then, notwithstanding that it is in the recital, effect shall be given to it as a substantive provision of this Agreement;
- 1.2.4 unless otherwise specified, any reference to a recital, an Annexure or a Clause shall be reference to a recital, an Annexure or Clause in the Agreement;
- 1.2.5 any reference to another agreement or document (including the Grid Code) shall be construed as a reference to that other agreement or document as the same may have been, or may from time to time be, amended;
- 1.2.6 the use of the singular form of a word includes the plural form and the use of the plural form includes the singular;
- 1.2.7 any word or expression, cognate with respect to a word or expression defined in the Agreement shall bear a corresponding meaning;
- 1.2.8 the words “include” and “including” are to be construed without limitation;
- 1.2.9 wherever provision is made for the giving or issuing of any notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination by any Person, unless otherwise specified, such notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination shall be in writing (and writing shall be inclusive of mail transmitted electronically) and the words “notify”, “decide”, “consent”, “accept”, “agree”, “endorse”, “approve”, “certify”, “instruct” or “determine” and other cognate expressions shall be construed accordingly;
- 1.2.10 references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- 1.2.11 a time of day shall be construed as a reference to Central African Time (CAT);
- 1.2.12 any reference to “month” shall mean a “calendar month”.
- 1.2.13 [In the case of conflict between the provisions of the PPA and this Agreement, the provisions of the PPA shall prevail].Note: Depends on the contracting parties to the PPA.

2. Duration of Agreement

2.1 Term

- 2.1.1 This Agreement shall commence on the date on which the last Party to this Agreement signs this Agreement and shall become effective upon the date that the conditions precedent have been met (“Effective Date”) as set out in Clause 2.1.5 (Conditions Precedent).
- 2.1.2 This Agreement, unless terminated earlier by either Party in accordance with the provisions of this Agreement, shall terminate [] years following the Commercial Operation Date of the Customer's Facility (the "Termination Date").
- 2.1.3 Without limiting the generality of Clause 2.1, the Term shall be extended by the number of days which is equal to the aggregate number of days or part days during which a Party is unable to perform its obligation pursuant to a Force Majeure Event, and is relieved of its obligations to so perform in accordance with Clause (d) (Force Majeure) (the “Make-up Period”).
- 2.1.4 The occurrence of Force Majeure events during the Make-up Period shall give rise to a further extension of the Make-up Period.
- 2.1.5 All terms and conditions contained in this Agreement and the respective rights and obligations of the Parties shall remain unchanged for the duration of the Make-up Period.

3. Conditions Precedent

3.1 Charges and Security

This Agreement shall, subject to Clause 3.2.4, only become effective upon the satisfaction by the Customer or the waiver by ESCOM TL of each of the following conditions precedent:

- 3.1.1 the Customer having provided security to ESCOM TL in accordance with Clause 0 (Charges and Security) in form and substance satisfactory to ESCOM TL; and
- 3.1.2 the fulfilment or waiver by either Party of the conditions precedent mentioned in this Clause 2.1.5.

3.2 Consents and Approvals

3.2.1 This Agreement shall, subject to Clause 3.2.4, only become effective following the satisfaction of each of the following conditions precedent by ESCOM TL:

- (a) the acquiring of all environmental consents required under applicable legislation;
- (b) the site for the Transmission Connection Equipment and the transmission infrastructure related thereto being made available to ESCOM TL for the life of the Project (at ESCOM TL's TL cost and risk).

3.2.2 This Agreement shall, subject to Clause 3.2.4, only become effective following the satisfaction of each of the following conditions precedent by the Customer:

- (a) the Customer obtaining and holding a Generation Licence and such Generation Licence is in full force and effect and the Customer is in compliance with the conditions attached thereto;
- (b) the Customer having been granted permission to occupy and obtaining the vacant possession of, or full and unencumbered title to, the site for the Customer and all necessary way-leaves and other access rights as are necessary to ensure the connection of the Customer's Facility infrastructure to the Transmission System;
- (c) the acquiring of the environmental consents required by the Customer; and
- (d) the PPA becoming effective.

3.2.3 Notice

- (a) The Parties shall notify the other in writing by the [fifteenth (15th)] day of each month on progress made in satisfying the conditions precedent enumerated in this Clause 2.1.5 for which it is responsible.
- (b) The Parties undertake to promptly inform the other party in writing of anything which will or is likely to materially delay or prevent the fulfilment of any of the conditions precedent by the Long Stop Date.
- (c) A Party shall promptly notify the other Party in writing when the conditions precedent have been satisfied or waived in writing by the Party in whose favour the condition precedent are operating.

3.2.4 Waiver of conditions precedent

- (a) ESCOM TL shall be entitled to waive any of ESCOM TL's TL conditions precedent, provided that ESCOM TL has received prior written consent by the Customer, of its consent to the waiver of ESCOM TL's relevant condition precedent.
- (b) The Customer shall be entitled to waive any of the Customer's conditions precedent, provided the Customer has received prior written consent by ESCOM TL, of its consent to the waiver of the relevant Customer's relevant condition precedent.
- (c) A Party who wishes to waive any condition precedent must provide the other Party with evidence (to the other Party's reasonable satisfaction) that the waiver of such condition precedent will not have a material adverse effect on its ability to satisfy its obligations under this Agreement.

3.2.5 Non-fulfilment of conditions precedent

If the conditions precedent are not satisfied or waived on or before the Long Stop Date, either Party shall have the right to terminate the

Agreement by issuing a termination notice to the other Party, within a period of [thirty (30) days] after the occurrence of the Long Stop Date. Neither Party shall have any liability whatsoever to the other Party in respect of such termination, except in relation to any antecedent breaches of this Agreement.

3.3 Scope of this Agreement

This Agreement makes provision for: (a) the Connection of the Customer's Facility to the Transmission System; (b) ESCOM TL permitting the Customer to use the Transmission System in connection with its licensed generation undertaking at the Customer's Facility in accordance with this Agreement; (c) the cooperation between the Parties in relation to the operational interface between the Customer's Facility and the Transmission System; and (d) payment by the Customer of the required charges to ESCOM TL as set out in this Agreement, provided that this Agreement shall not govern any other services provided by ESCOM TL to the Customer or by the Customer to ESCOM TL unless specifically contained herein.

4. Charges and Security

4.1 The Customer shall satisfy ESCOM TL that it is capable of effecting the payment in respect of the Connection Facilities, as contemplated in Clause 8.4 (Charges and Payments for Connection Facilities), by:

4.1.1 providing ESCOM TL with evidence of the Customer's credit rating and such credit rating is at ESCOM TL's sole discretion, at a satisfactory level; or

4.1.2 providing a bond or bonds or other form of guarantee (from a Malawian banking institution registered in terms of Malawian laws) approved by ESCOM TL in favour of ESCOM TL; or

4.1.3 a letter from the Customer's lenders, indicating that funds required under this Agreement, shall be available to the Customer.

4.2 If the Customer has provided ESCOM TL with evidence of the Customer's credit rating pursuant to Clause 4.1.1 above and the Customer's credit rating is downgraded or the Customer has reason to believe that its credit rating may be downgraded:

4.2.1 the Customer shall forthwith notify ESCOM TL of same; and

4.2.2 ESCOM TL may on giving the Customer [three (3)] Business Days written notice require the Customer to provide a bond or bonds or other form of guarantee in the form described in Clause 4.1 above.

5. Responsibilities of Customer

Subject to the terms and conditions of this Agreement and its Generation Licence the Customer shall, acting in accordance with Grid Code and Prudent Industry Practice:

5.1 Design, engineer, procure, supply, erect, deliver, construct, install, test commission, operate and maintain the Customer's Facility in accordance with this Agreement and the PPA;

- 5.2 Design, engineer, procure, supply, erect, deliver, construct, install, test, commission, operate and maintain the Customer's Facility and/or the Customer's Facility Connection Equipment in all material respects in accordance with Grid Code and ESCOM TL Technical Specifications and Requirements (attached hereto in Annexure F) and the Grid Code;
- 5.3 Ensure that that the Customer's Facility and/or the Customer's Facility Connection Equipment are compliant with the Grid Code and ESCOM TL Technical Specifications and Requirements for connections to the Transmission System;
- 5.4 If ESCOM TL (acting reasonably) believes that the Customer's Facility and/or the Customer's Facility Connection Equipment do not meet the relevant design standards in or referred to in the ESCOM TL Technical Specifications and Requirements and/or the Grid Code and/or may pose a threat to the safety and reliability of the Transmission System, then ESCOM TL may, following consultation with the Customer, and a delivery of a written notice which shall detail its basis, reject the connection of the Customer's Facility. In such a case, if disputed by the Customer as anticipated in clause 20.2, the matter will be referred to an Independent Expert as per the provisions of this Agreement. If the rejection was found by the Independent Expert to be unjustified and the rejection caused a delay in the commissioning of the Customer's Facility as per the Customer Construction Programme, the Customer will be entitled to extension of time for completion and ESCOM TL shall compensate the Customer that the Customer Capacity was available, as specified in the PPA.;
- 5.5 Obtain and maintain all Consents in connection with the design, engineering, procurement, supply, erection, delivery, construction, installation, improvement, testing, commissioning, operation and maintenance of the Customer's Facility and the Customer's Facility Connection Equipment and the injection of electrical energy into the Transmission System at the Point of Connection;
- 5.6 Achieve the construction milestones as provided in Annexure D1 (Customer Construction Programme) by the corresponding dates, so as to enable ESCOM TL to complete the Connection Works in accordance with Annexure D2 (ESCOM TL Construction Programme) and, in particular, to commission the Transmission Connection Equipment by the Scheduled Connection Date. Without limiting the foregoing, the Customer shall promptly notify ESCOM TL in writing of any deviations from any of the milestones as provided in Annexure D1 (Customer Construction Programme).

6 Delays in Scheduled Connection Date

- 6.2 ESCOM TL shall achieve the Connection Date prior to or on the Scheduled Connection Date as provided in Annexure D2 (ESCOM TL Construction Programme), so as to enable the Customer to complete the construction works of the Customer's Facility in accordance with Annexure D1 (Customer Construction Programme) and, in particular, the commissioning of the Connection Works prior to or on the Scheduled Connection Date.
- 6.3 In the event, there is a delay by ESCOM TL in achieving the Connection Date by the Scheduled Connection Date as per the ESCOM TL Construction Programme, due to a Transmission Default, resulting in a corresponding delay

to the Target Commercial Operation Date (as specified in the PPA) of the Customer's Facility, ESCOM TL shall be liable to consider that the Customer's Capacity was available and receive the Capacity Payments in accordance with the terms of the PPA. The aforementioned is subject to the obligation of the Customer to take steps to mitigate its losses.

- 6.4 Without limiting the foregoing, ESCOM TL shall promptly notify the Customer in writing of any deviations from any of the milestones as provided in Annexure D2 (ESCOM TL Construction Program), which notice shall identify:
- (a) the nature of the reason for the deviation;
 - (b) the impact which such deviation has had, or in the reasonable opinion of ESCOM TL (acting as a reasonable and prudent operator), is likely to have, on its ability to achieve any milestone on the applicable due date; and
 - (c) the steps which ESCOM TL (acting as a reasonable and prudent operator) has taken, is taking and will take to mitigate adverse consequences of such deviation.
- 6.5 As soon as a Party becomes aware of any fact, matter or thing that may delay the Scheduled Connection Date, that Party shall as soon as reasonably practicable notify the other Party in writing of the delay, the reasons for the delay, the measures that the notifying Party proposes to take to mitigate, the impact of the delay and an estimate of the likely duration of the delay.
- 6.6 In the event of a delay in the Scheduled Connection Date occurring, the Parties undertake to take all reasonable measures to ensure that any acceptance tests as provided for in Annexure D2 (ESCOM TL Construction Program) or other works necessary to achieve the Scheduled Connection Date shall be undertaken as soon as possible after the circumstances that resulted in such delay, default or circumstance are no longer in place.

7 Connection Services

7.2 Connection Services

- 7.2.1 ESCOM TL shall connect the Customer's Facility at the Point of Connection so as to enable the Customer to inject power into the Transmission System, up to the Maximum Export Capacity and/or to take power from the Transmission System at up to the Maximum Import Capacity.
- 7.2.2 The Customer may take power at the Point of Connection provided that:
- (d) the amount of power taken by the Customer at the Point of Connection does not exceed the Maximum Import Capacity;
 - (e) the Customer has complied and at all times complies with the Grid Code and ESCOM TL Technical Specifications and Requirements and any instructions issued pursuant to the aforesaid documents. In the event of a conflict between the ESCOM TL Technical Specifications and Requirements and the Grid Code, the Grid Code shall prevail; and

- (f) the amount of power taken by the Customer at the Point of Connection shall be limited to Auxiliary Power requirements only.
- 7.2.3 Subject to Clause 0 (De-Energisation), ESCOM TL shall keep the Point of Connection energised at all times subject to any provisions of this Agreement containing anything to the contrary. In the event the Customer suffers any loss or damage as a result of ESCOM TL's failure to keep the Point of Connection energised as a result of a Transmission Default the Customer shall be entitled to compensation according to the Deemed Energy Payment provisions of the PPA.
- 7.2.4 ESCOM TL shall complete the Connection Works by the Scheduled Connection Date according to the schedule specified in section 4 of Annexure D to the Connection Offer Letter.

7.3 Operation of Customer's Facility and Transmission System

- 7.3.1 ESCOM TL shall, at all times, operate the Connection Facilities in accordance with the Safety Code, Grid Code and otherwise in accordance with Prudent Industry Practice for the operation of transmission plant and equipment;
- 7.3.2 ESCOM TL shall be deemed to have acted in accordance with Prudent Industry Practice for the operation of transmission system and equipment if it complies with, observes, or performs all relevant provisions of the Grid Code where such provisions are prescribed in the Grid Code;
- 7.3.3 The Customer shall operate the Customer's Facility and the Customer's Facility Connection Equipment in accordance with the Grid Code and ESCOM TL Technical Specifications and Requirements and otherwise in accordance with Prudent Industry Practice. In the event of a conflict between the ESCOM TL Technical Specifications and Requirements and the Grid Code, the Grid Code shall prevail.
- 7.3.4 The Customer shall be deemed to have acted in accordance with Prudent Industry Practice for the operation of the Customer's Facility and the Customer's Facility Connection Equipment and equipment if it complies with, observes or performs all relevant provisions of the Grid Code and/or ESCOM TL Technical Specifications and Requirements where such provisions are prescribed.
- 7.3.5 ESCOM TL may require the Customer to comply with, observe or perform provisions that are not prescribed in the ESCOM TL Technical Specifications and Requirements and/or the Grid Code if ESCOM TL considers such provisions are necessary to ensure that the operation of the Customer's Facility and the Customer's Facility Connection Equipment is in accordance with Prudent Industry Practice. If ESCOM TL so requires, ESCOM TL shall:
 - (a) provide to the Customer the reasons for requiring such provisions;
 - (b) consult with the Customer on how such provisions may be met; and

- (c) if the Parties cannot agree on the need for such provisions or on how such provisions should be met, refer the matter for resolution by the Independent Expert in terms of clause 0, provided that Customer shall not be required by ESCOM TL to act in contravention of
 - (i) any applicable Laws (including, without limitation, all health, safety and environmental Laws);
 - (ii) Grid Code and Market Rules
 - (ii) Prudent Industry Practice; or
 - (iii) the relevant manufacturer's guidelines and instructions.

Any additional work required from the Customer as a result of any Change in Law which results in a Change of Cost to the Customer, shall be dealt with under the provisions of clause 16 of the PPA (Change in Costs).

7.3.6 The Customer shall, acting in accordance with Prudent Industry Practice:

- (a) Unless with the written approval of ESCOM TL, under no circumstances, test or otherwise operate the Customer's Facility or the Customer's Facility Connection Equipment or export any electrical energy from the Customer's Facility prior to the Connection Date;
- (b) Save as per the provisions of this Agreement, not exceed the Maximum Export Capacity when transmitting electrical energy between the Customer's Facility and the Transmission System; and
- (c) Forthwith upon being requested to do so by ESCOM TL on written notice given at any time after the Connection Date, undertake such testing of any Customer's Facility and / or the Customer's Facility Connection Equipment in accordance with the Grid Code and /or ESCOM TL Technical Specifications and Requirements.

7.4 Maintenance and Outage Coordination

- 7.4.1 ESCOM TL shall maintain the Connection Facilities in accordance with Prudent Industry Practice for the maintenance of transmission plant and equipment;
- 7.4.2 The Customer shall maintain the Customer's Facility and the Customer's Facility Connection Equipment in accordance with Prudent Industry Practice for the maintenance of the Customer's Facility and the Customer's Facility Connection Equipment connected at the Point of Connection;
- 7.4.3 The Parties agree that the Transmission System may be unavailable for not more than the Transmission Unavailability Threshold annually, during which ESCOM TL shall perform Transmission System maintenance. ESCOM TL shall, not less than [two (2) months] prior to the Scheduled Connection Date and then on an annual basis for the

remainder of the term of this Agreement, the maintenance coordination of all the generation and transmission facilities, as established in the Market Rules. After completion of the Annual Maintenance Schedule, ESCOM SMO shall , provide to the Customer its proposal for Scheduled Transmission System Outages, and shall use its best endeavours to coordinate that the timing of the Scheduled Transmission System Outages shall not be during Daylight Hours (i.e., shall not overlap generation hours). Such schedule shall include:

- (a) the number of expected Scheduled Transmission System Outages; and
- (b) the estimated dates and duration of each Scheduled Transmission System Outage.

7.4.4 The Operating Committee shall meet and coordinate the timing of Scheduled Transmission System Outages for the forthcoming Contract Year, at least [one (1) month] prior to the commencement of that Contract Year.

7.4.5 If there is a requirement to change the dates of any Scheduled Transmission System Outage, ESCOM SMO shall provide the Customer with written notice at least [twenty-eight (28)] days in advance of the relevant Scheduled Transmission System Outage.

7.4.6 ESCOM TL shall be responsible for all costs incurred by it in connection with or arising from any maintenance carried out by it or on its behalf on the Transmission System. The Customer shall not be entitled to any payment and/or indemnification from ESCOM TL in connection with such Scheduled Transmission System Outages.

7.4.7 Subject to having complied with the foregoing provisions of this Clause 7.4, ESCOM TL shall be entitled to shut down the Transmission System from service at the agreed date and time. The Scheduled Transmission System Outages and Unscheduled Transmission System Outages (excluding Force Majeure events) shall not lead to a Transmission Unavailability in excess of the Transmission Unavailability Threshold. Should the Transmission Unavailability be in excess of the Transmission Unavailability Threshold on an annual basis for reasons other than Force Majeure, ESCOM SB will consider that the Customer plants was available and will receive the Capacity Payment as established in the PPA.

7.4.8 ESCOM TL shall notify the Customer promptly:

- (a) Upon the occurrence of any event resulting in the Transmission System being unable to operate or events affecting the Transmission System stability; and/or
- (b) If ESCOM TL determines that the maintenance of the Transmission System is required prior to the next Scheduled Transmission System Outage scheduled pursuant to Clause 7.4.3 and that an Unscheduled Transmission System Outage is required.

7.4.9 In each case ESCOM TL shall:

- (a) give the Customer notice of such event as soon as reasonably practicable after the occurrence of such event, or, in the case of an Unscheduled Transmission System Outage, ESCOM TL becoming aware of the need for such outage;
- (b) notify the Customer of the expected duration of the Unscheduled Transmission System Outage; and
- (c) use its best efforts to minimise the duration and effects on the Transmission System of the Unscheduled Transmission System Outage.

8 Ownership of Equipment

- 8.2 ESCOM TL shall at all times retain ownership of, risk in, and title to the Transmission Connection Equipment. The Customer shall not encumber or attempt to encumber or cause to be encumbered any of the Transmission Connection Equipment.
- 8.3 The Customer shall at all times retain ownership of, risk in, and title to the Customer's Facility Connection Equipment
- 8.4 The Parties acknowledge and agree that nothing herein, including the payment by the Customer of the Project Costs, shall confer on the Customer any right of ownership or any encumbrance over or other legal or beneficial right in respect of, any of the Connection Works.

5.0 Charges and Payments for Connection Works

- 9.1 The Customer shall pay to ESCOM TL the payment of the costs set out in this Clause 9.1 (the "**Project Costs**"). The Project Costs shall be paid according to the following schedule:

Amount [] (VAT excluded)	Scheduled and agreed payment dates	In Consideration of
[]	Upon the signing the Agreement:	Final design and planning, including ESCOM TL project management and tendering evaluation on materials and project execution.
[]	[] months from the signing of the Agreement:	Ordering materials, starting with ground and civil works.
[]	[] months from the signing of the Agreement:	Construction of the Connection Facilities
[]	[] months from the signing of the Agreement:	Steel works, assembly and erection of the Connection Facilities
[]	[] months from the signing of the Agreement:	Electrical works, testing of the Connection Facilities
[]		Project Costs

9.1.1 The Project Costs does not include VAT.

9.1.2 The Project Costs are specified in [currency] as at the date of the Connection Offer Letter and may be adjusted for inflation by ESCOM TL from the date of the Connection Offer Letter to the date on which the amount is invoiced for payment. The inflation - adjusted amounts payable shall be invoiced by ESCOM TL and paid by the Customer in accordance with Clause 0 (Invoicing and Payment) of this Agreement.

9.2 Final Costs

The Project Costs indicated in Clause 9.1 above hereto above are based on a fixed capital price. No capital refund or capital shortfall shall be allocated to the Customer's account on completion of the Project.

9.3 Charges

The Customer shall pay to ESCOM TL the Charges for the use of the Transmission System and all transmission services to be rendered by ESCOM TL in connection with such use, which Charges shall be as set out in the Connection Offer Letter attached hereto as Annexure I. Invoicing and Payment

9.4 Invoicing

ESCOM TL shall invoice the Customer for the Charges monthly. The invoice for each month shall be sent by ESCOM TL to the Customer no later than the [7th day] of each calendar month.

9.5 Payment

9.5.1 The Customer shall pay to ESCOM TL the invoiced amount no later than [thirty 30 days] after the date of the invoice ("Due Date"). When the Due Date is other than a Business Day, the Charges shall be due and payable on the first Business Day following.

9.5.2 The Customer shall pay the invoiced amount of the Charges without any set-off, counterclaim or other deduction.

9.5.3 All invoices to ESCOM TL shall be made in [currency], and not indexed to any other currency.

9.5.4 ESCOM TL shall notify the Customer of its Malawian bank account details for payment.

9.5.5 The Customer shall notify ESCOM TL of its Malawian bank account details for payment by ESCOM TL to the Customer.

9.5.6 No Party shall be entitled to offset any amounts payable to the other Party under or in relation to this Agreement.

9.5.7 If the Customer believes the invoice to be in error it shall notify ESCOM TL, in writing, forthwith and:

(a) if the invoice is in error ESCOM TL shall send the Customer a revised invoice and adjust the Due Date accordingly;

(b) if the invoice is not in error, ESCOM TL shall advise the Customer, by a written notice forthwith of the same and the Due Date shall be within [fourteen (14)] days of such notice.

9.5.8 All amounts payable under this Agreement shall be paid:

- (a) free of any restriction or condition;
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of any bank charge or tax imposed, levied, collected, withheld or assessed by or within Malawi or by any federation or organisation of which Malawi is a member at time of payment.

9.5.9 If either Party must deduct or withhold any such tax or other amount from any amount payable under this Agreement, it will pay such additional amount to the other Party as is necessary to ensure that the other Party receives and retains (free from any liability other than tax on its own net income) a net amount equal to what it would have received and retained had the deduction or withholding not been required or made.

9.6 Disputed Amounts

9.6.1 Should the Customer dispute an amount invoiced by ESCOM TL, the Customer should notify ESCOM TL of the dispute and grounds of the dispute within [ten (10)] Business Days of receipt of such an invoice.

9.6.2 If the Customer disputes the amount invoiced by ESCOM TL the Customer shall pay ESCOM TL the undisputed amount by the Due Date and the dispute shall be resolved in accordance with Clause 0 (Dispute Resolution).

9.6.3 Subject to Clause 9.7, following resolution of a dispute the Party that is liable to pay the other Party shall pay the other Party the amount owing, including default interest, within [five (5)] Business Days of the resolution of the dispute.

9.7 Default Interest

9.7.1 If any amount payable by one Party to the other under this Agreement has not been paid on or before the date specified in this Agreement for payment, the unpaid amount including payments due following resolution of a dispute shall accrue interest from the date on which payment was due until the date on which payment is made.

9.7.2 The interest shall accrue daily and be compounded monthly at a rate equal to the Agreed Interest Rate from the date when payment was due until the amount due is actually received by the payee. Any overpayments by either Party resulting from an invoicing or payment error, will attract interest at the Agreed Interest Rate.

10 Customer's Facility

10.1 Technical Specifications

The Customer undertakes to construct the Customer's Facility and the Customer's Facility Connection Equipment in compliance with the Grid Code and ESCOM TL Technical Specifications and Requirements and any other

technical requirements set out in Annexure I and F, attached hereto. The Customer undertakes to comply with the ESCOM TL Technical Specifications and Requirements and the Grid Code to the extent that same is applicable to the Customer and the Customer's Facility and the Customer's Facility Connection Equipment and acknowledges that for the purposes of Clause 0 (Breach of this Agreement and the Grid Code) a material breach of the ESCOM TL Technical Specifications and Requirements and/or the Grid Code shall be deemed to be a breach of this Agreement.

10.2 Amendments to ESCOM TL Technical Specifications and Requirements and Grid Code

The Customer acknowledges and agrees that the ESCOM TL Technical Specifications and Requirements and/or the Grid Code may be amended from time to time and that the Customer is responsible for any reasonable costs and expenses it may be required to incur arising from such amendments and its obligations to comply with them. An amendment to the ESCOM TL Technical Specifications and Requirements and/or the Grid Code and which results in any increase in costs to the Customer, and which affects all other power plants under the [IPP Framework/ Programme], shall be deemed a Change in Costs in terms of clause 16 of the PPA and that clause shall apply to this Agreement.

10.3 Modifications

- 10.3.1 No material modifications that affect the Transmission System or the Connection Facilities may be made to the Customer's Facility except in accordance with this Clause 10.3 and subject always to the provisions of the ESCOM TL Technical Specifications and Requirements and the Grid Code, to the extent applicable.
- 10.3.2 If the Customer wishes to modify the Customer's Facility the Customer shall submit to ESCOM TL its proposed modification and shall provide to ESCOM TL such information as ESCOM TL reasonably requires to assess the effect of the proposed modification on the Transmission System, as soon as practically possible.
- 10.3.3 ESCOM TL will consider the proposed modification and advise the Customer within [fourteen (14) days] from the date of such proposal:
- (a) whether ESCOM TL will permit the proposed modification unchanged; or
 - (b) whether ESCOM TL requires the proposed modification to be changed to avoid adverse effects on the operation of the Transmission System; or
 - (c) whether the proposed modification, changed as necessary to avoid adverse effects on the operation of the Transmission System, will result in ESCOM TL being required to modify the Transmission System; and
 - (d) if the Transmission System needs to be modified to accommodate the proposed modification to the Customer's Facility, the estimated cost.

11 If the proposed modification of the Customer's Facility requires ESCOM TL to modify the Transmission System, ESCOM TL will provide to the Customer an offer in respect of the modifications to the Transmission System and the provisions of Clause 4.2.2 will apply to the design, construction, commissioning and payment for the modifications to the Transmission System.

12 Metering System

12.1 Metering Installations

12.1.1 Unless otherwise agreed between the Parties, ESCOM TL shall install, maintain and operate [revenue class] meters at or in close proximity to the Point of Connection for the purpose of measuring the electrical power injected into or taken from the Transmission System by or through the Customer's Facility. The location of the meters shall be in the location defined in the Connection Offer Letter attached as Annexure I.

12.1.2 Metering installations shall be according to Part 5 of the Grid Code, for connections Type 1 and Annexure B of the Connection Offer Letter, as long as this offer does not contradict any specification of the Grid Code.

12.1.3 Each Metering Installation shall comprise the number of principal and check meters defined in the Grid Code. These meters shall be suitable for three phase imbalanced loads, and measure power in full four-quadrant mode. The class type and accuracy tolerances shall be in accordance with prevailing standards as are referenced in the Grid Code.

12.1.4 The Customer shall have the right to install check metering to monitor the Metering Equipment of ESCOM TL.

12.2 Meter Tests

12.2.1 Commissioning, auditing and testing of Metering Installations shall be done in accordance with the Grid Code specifications. Each meter shall be tested:

- (a) Upon installation or following any repair; or
- (b) when the Customer or ESCOM TL reasonably requires and, in the absence of evidence of malfunction, annual testing shall be deemed reasonable; or
- (c) when the main and check meters differ by more than [1% (one percent)]; or
- (d) at least once in every [10 (ten) years], when each meter shall be checked and calibrated against a standard instrument as per the Grid Code.

The cost of testing a meter shall be borne by the Party requesting the test except when the Customer requests a test and the test demonstrates that the meter was more than [1% (one percent)] inaccurate in which case ESCOM TL shall bear the cost.

12.3 Adjustment of Invoices

- 12.3.1 In the event of any meter which has been used for the purpose of calculating amounts payable being found pursuant to any test made pursuant to Clause 12.2 to be exceeding the allowed accuracy range of [one (1) %] or where evidence exists of meter tampering or other interference, all previous invoices for Charges that have been calculated using metered data from the ESCOM TL meter and all future invoices until such time as the faulty meter is replaced or recalibrated shall be recalculated after applying adjustments to correct the metered data for the meter inaccuracy.
- 12.3.2 If the ESCOM TL Meter is faulty and metered data are available from the Customer meter, the metered data from the Customer meter shall be used to calculate the Charges during the period of inaccuracy of the ESCOM TL meter.
- 12.3.3 If any of the Parties has invoiced the other Party for payment of any Charge calculated using metered data from a faulty meter, the relevant Party shall recalculate the relevant Charges. Any additional amount payable by or refund due to the other Party as a result of that recalculation shall be included as an adjustment in the invoice for the month immediately following the receipt of the correct metered data.

13 Protection

13.1 Equipment to be Installed

- 13.1.1 As specified in Annexure 1 (the Connection Offer Letter), the Customer shall, at its own expense, provide and install as part of the Customer's Facility and/or the Customer's Facility Connection Equipment and in accordance with the Grid Code and ESCOM TL Technical Specifications and Requirements and any requirements set out in the Annexures, to this Agreement:
- (a) communication and other equipment, as are reasonably required by the Grid Code and ESCOM SMO for the purposes of operation of the Transmission System. For information purposes only, and without limitation, such equipment may include dial up telephone line connections and/or fibre optic link between the Customer and ESCOM TL SMO and via the public telephone network for voice communication and data collection from the Metering Installation as detailed in the Grid Code and ESCOM TL Technical Specifications and Requirements as specified in Annexure I;
 - (b) power supplies for the operation of metering, operational instrumentation, ESCOM TL's switchgear, control and protection equipment. Such power supplies, unless otherwise advised by ESCOM TL, shall be [230V AC, 50Hz];
 - (c) Control and protection equipment, associated instrument transformers and cabling and power supplies therefore, as specified in Grid Code and Annexure I.

13.1.2 Such equipment, transformers, cabling and power supplies shall be maintained by the Customer throughout the term of this Agreement to the reasonable satisfaction of ESCOM TL and the Customer shall provide to ESCOM TL such evidence as to the completion of such maintenance as is from time to time required by ESCOM TL (acting reasonably).

13.2 Signalling and Indications

The Customer shall provide to ESCOM TL relevant signalling and indications as required by ESCOM TL (acting reasonably). Such signalling and indication shall provide ESCOM TL with parameters of the Customer's Facility including the status of switchgear, power flows and voltages.

14. Rights of Access

The Parties agree that whilst the ESCOM TL Substation shall be located in the ESCOM TL area (as set out in Annexure A), certain ancillary facilities, equipment, lines, cables and wires included in the Transmission Connection Equipment (such as tele-control equipment) may be installed by or on behalf of ESCOM TL at the Customer's Facility.

14.1 Customer to Grant Consents

The Customer shall at its own expense grant to ESCOM TL all consents as are reasonably required to be given by the Customer for the installation, operation, maintenance, inspection, removal of and access to ESCOM TL's plant and equipment situated at or on the Customer's Facility.

14.2 Access at Times to be Agreed

ESCOM TL's employees and/or authorised agents and/or subcontractors may, subject to the Customer's prior written approval, enter at times to be agreed between the Parties the Customer's Facility to enable ESCOM TL to carry out any works, modifications or inspections, or for operating, testing, repairing, renewing, maintaining, isolating, protecting or removing ESCOM TL's equipment, material or temporary works, Disconnecting or De-Energising, monitoring compliance with the terms of this Agreement or the Grid Code, or to enable ESCOM TL to fulfil its obligations under this Agreement and the PPA. ESCOM TL shall give the Customer [forty eight (48) hour] notice prior to requiring access to the Customer's premises, such consent to be given or denied (with reasonable justification) within the [forty eight (48) hour] notice.

14.3 Access at Any Time

In the event of emergency, ESCOM TL's employees and/or authorised agents and/or subcontractors shall be entitled to enter the Project Site and Customer's Facility at any time and, only when in ESCOM TL's opinion such

entry is necessary for the prudent operation of the Transmission System, including in respect of De-Energisation of the Connection.

14.4 ESCOM TL to grant consents

ESCOM TL shall grant access to the Customer, its employees and/or agents to ESCOM TL's portion of land (excluding the fenced off substation area), and the access road for the purposes of construction, operation and maintenance of the Customer's Facility and/or the Customer's Facility Connection Equipment and the [] kV line connecting the Customer's Facility and the ESCOM TL [] Substation.

15. De-Energisation

15.1 Circumstances of De-Energisation

The Point of Connection may be De-Energised:

15.1.1 at the request of the Customer;

15.1.2 subject to Clause 7.4 when ESCOM TL believes there is an emergency which requires it to De-Energise the Point of Connection to connect new plant or equipment or to carry out maintenance of the Transmission System;

15.1.3 if ESCOM TL considers it necessary to prevent loss of life or damage to property or if there is reason to believe that the condition of the Point of Connection poses an immediate threat of injury or death to any person;

15.1.4 if ESCOM TL believes there is an emergency that requires the Point of Connection to be De-energised to maintain the safe operation of the Transmission System;

15.1.5 if the Customer is in material breach of the Grid Code, the ESCOM TL Technical Specifications and Requirements, or any relevant safety regulation or requirement in force at the time and is unable or unwilling to remedy the breach after a [thirty (30) day] prior written notice and the Customer's breach poses a serious threat to the secure operation of the Transmission System;

15.1.6 in the event of a Force Majeure Event;

15.1.7 in the event of default of payment of any amount owed by the Customer to ESCOM TL after a [thirty (30) day] prior written notice and such payment default having occurred on three consecutive occasions and

15.1.8 on the termination of this Agreement.

15.2 Energisation Following De-Energisation

If the Point of Connection has been De-Energised it shall be energised as soon as practicable, following:

15.2.1 a request from the Customer that it be energised, if the Point of Connection was initially De-Energised at the Customer's request,

- 15.2.2 the completion of maintenance, if the Point of Connection was De-Energised by ESCOM TL to carry out maintenance of the Transmission System,
- 15.2.3 the remedying of a situation causing danger to persons or property if the Point of Connection was De-Energised by ESCOM TL to prevent damage or loss to persons or property,
- 15.2.4 the remedying of an emergency situation on the Transmission System, if the Point of Connection was De-Energised by ESCOM TL to maintain the safe operation of the Transmission System,
- 15.2.5 payment of any amounts due, if the Point of Connection was De-Energised by ESCOM TL because of default of payment of an amount owed by the Customer to ESCOM TL,
- 15.2.6 the Customer's remedying of the breach, if the Point of Connection was De-Energised by ESCOM TL because of the Customer's breach of the ESCOM TL Technical Specifications and Requirements of the Grid Code or any other relevant safety regulation or other requirements in force at the time.

15.3 **Cost of De-Energisation and Energisation**

15.3.1 **The cost of De-energisation and Energisation shall be borne by the Customer:**

- (a) if the Point of Connection was De-Energised and energised at the request of the Customer; or
- (b) if the Point of Connection was De-Energised by ESCOM TL because the Customer was in material breach of the ESCOM TL Technical Specifications and Requirements, the Grid Code or any relevant safety regulation or other requirement in force at the time;
- (c) in the event of a default of payment of any amount owed by the Customer to ESCOM TL as anticipated in Clause 15.1.7; or
- (d) on termination of this Agreement due to the Customer's default.

15.3.2 **If the Point of Connection is De-Energised due to:**

- (a) a reason other than those set out in Clause 15.1; or
- (b) ESCOM TL's failure to operate the Transmission System according to Prudent Industry Practice;
- (c) ESCOM TL's negligence;
- (d) maintenance of the Transmission System in excess of the Transmission Unavailability Threshold in any Contract Year, and in the event the Customer suffers any loss or damage as a result of any of De-Energisation and Energisation under this clause 15.3.2, ESCOM TL shall be liable to compensate the Customer in accordance to the Deemed Energy Payments pursuant to the terms of the PPA.

16 Force Majeure

16.1 Definition of Force Majeure

16.1.1 A Force Majeure Event means any event or circumstance which:

- (a) is beyond the reasonable control of the Party affected by the Force Majeure (the “**Affected Party**”) or its Contractors;
- (b) is without fault or negligence on the part of the Affected Party or its Contractors and is not the result of a breach by the Affected Party or its Contractors of any of their obligations under any Project Document (including, in respect of the Affected Party, this Agreement), Consents or applicable Law;
- (c) was not foreseeable, or if foreseeable, could not have been (including by reasonable anticipation) avoided or the effects of which could not have been overcome by the Affected Party or its Contractors, acting in accordance with Prudent Industry Practice; and
- (d) prevents, hinders or delays the Affected Party in its performance of any of its obligations under this Agreement.

16.1.2 If an Affected Party or its Contractors could, by acting in accordance with Prudent Industry Practice, have mitigated an event or circumstance that otherwise satisfies the requirements set out in paragraphs (a) to (d) of Clause 16.1.1, that part of the event or circumstance that could have been mitigated, shall not be Force Majeure.

16.1.3 Without limiting the generality of the foregoing, Force Majeure may include any of the following acts, events or circumstances, but only to the extent that it satisfies the requirements set out in paragraphs (a) to (d) of Clause 16.1.1 and Clause 16.1.2:

- (a) any material effect of the natural elements, including lightning, drought, wind, fire, earthquake, solar flares, volcanic eruption, landslide, flood, storm, tsunami, cyclone, typhoon, tornado, or meteorites; or
- (b) air crash, shipwreck, train wreck or major failure or stoppage of transportation, objects falling from aircraft or other aerial devices, sonic boom, explosions or chemical contamination; or
- (c) epidemic, famine or plague; or
- (d) any event or circumstance constituting Force Majeure under any other Project Document; or
- (e) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, sabotage, act of terrorism or exercise of military or usurped power; or
- (f) radioactive contamination or ionising radiation; or
- (g) labour unrest, strike, go-slow or other labour action but not those affecting only the personnel of a Party;

provided that the following shall not constitute a Force Majeure Event unless caused by or resulting from Force Majeure:

- (a) a failure or inability to make any payment, any inability to raise finance or any changes in price or market conditions;
- (b) late delivery or interruption in the delivery of machinery, equipment, materials, spare parts or consumables;
- (c) a delay or failure by a third party which prevents, hinders or delays the Affected Party in the performance of its obligations under this Agreement, save where the cause of such delay or failure by the third party would constitute Force Majeure event pursuant to this Agreement; or
- (d) any technical or operational problems with the Power Project arising from a fault in the construction, operation and/ or maintenance of the Customer's Facility which is attributed to any failure by the affected Party to obtain and/or maintain a Consent;
- (e) wear and tear, flaws, breakdown in or degradation of, any equipment or machinery.

16.2 Procedure

16.2.1 If an Affected Party wishes to cite a Force Majeure Event as being the cause of it being unable to meet any or some of its obligations hereunder, the Affected Party shall, as soon as reasonably practicable of it becoming aware of the Force Majeure Event but not later than two days of the occurrence of the event, advise the other Party of the nature, cause and/or likely duration of the Force Majeure Event (to the extent the same can be reasonably determinable at the time of such notice) and, when appropriate or when reasonably requested to do so by the other Party, update such information.

16.2.2 Both Parties shall take such steps as are reasonably available to it to overcome such Force Majeure Event and each Party shall mitigate its effect on the ability of the Affected Party to meet its obligations under this Agreement, and shall consult to develop and implement a remedial plan to minimise each Party's losses.

16.2.3 The Affected Party shall promptly provide notice to the other Party of:

- (a) the cessation of the Force Majeure Event; and
- (b) its ability to immediately recommence performance of its obligations under this Agreement by reason of the cessation of the Force Majeure Event.

16.2.4 During the occurrence of a Force Majeure Event, each Party shall bear its own costs resulting from the occurrence of the Force Majeure Event.

16.3 Consequences of Force Majeure

16.3.1 Notwithstanding any other provisions of this Agreement, to the extent the Affected Party hereto is unable to perform any of its obligations under this Agreement due to a Force Majeure Event then the Affected

Party shall be relieved from liability in respect of such obligations and shall be entitled to suspend performance of such obligations in accordance with and subject to this Clause 16.3.

16.3.2 If it is agreed or determined that a Force Majeure Event has occurred, the Affected Party shall, provided that it has complied with the requirements of Clause 16.2, not be liable for any failure to perform an obligation under this Agreement as a consequence of such Force Majeure Event, to the extent only that -

- (a) such performance is prevented, hindered or delayed by the Force Majeure Event; and
- (b) such failure could not have been mitigated by the Affected Party acting in accordance with Prudent Industry Practice.

16.3.3 Any time period specified in this Agreement for the performance of any obligation shall be extended on a day-for-day basis for each day that the Force Majeure Event prevents, hinders or delays the Affected Party from performing that obligation within the time period, and the term of this Agreement shall be extended accordingly.

16.4 Termination on Account of Force Majeure

If the event or circumstance of Force Majeure or its direct effect or consequences on the operations of either Party is of such magnitude or will be (or it is more probable than not that it will be) of such duration that after a period of [twelve (12) months] it is unreasonable in all the circumstances for either Party to perform its obligations under this Agreement, either Party may upon not less than [thirty (30) days"] notice terminate this Agreement.

17 Breach of this Agreement and the Grid Code

17.1 Notice of Breach

17.1.1 If either Party becomes aware that it is or could be in breach of any of the provisions of this Agreement, the Grid Code or any relevant safety regulation or other requirement in force at the time (the "Breaching Party"), then such Breaching Party shall as soon as reasonably practicable, but no later than [fourteen (14) days], notify the other Party (the "Non-Breaching Party") of the breach or potential breach and advise whether in its opinion the breach can be remedied and the timescale for the remedy and giving sufficient details thereof to the Non-Breaching Party to enable it to assess the importance of the breach.

17.1.2 If either Party in its opinion believes (the "Notifying Party") that the other Party is or could be in breach of any of the provisions of this Agreement or the Grid Code or any relevant safety regulation or other requirement in force at the time (the "Potentially Breaching Party") then the Notifying Party shall notify as soon as reasonably practicable, but no later than [fourteen (14) days], the Potentially Breaching Party of the breach or potential breach and request the Potentially Breaching Party to advise whether the breach can be remedied and the timescale for the remedy

and giving sufficient details thereof to enable the Notifying Party to assess the importance of the breach.

17.2 Notice to Remedy

17.2.1 If either Party has determined that the other Party is in breach of this Agreement or the Grid Code or any relevant safety regulation or other requirement in force at the time, the Parties shall discuss the breach in good faith with the aim of agreeing on a means of remedying the breach.

17.2.2 If the breach is capable of remedy the Parties shall agree upon a time period, but in any event no longer than [sixty (60) days], within which the Breaching Party shall remedy the breach (the "Remedy Period") provided that if such failure cannot be remedied by the Breaching or Potentially Breaching Party within such period of [sixty (60) days] with the exercise of reasonable diligence, then such Remedy Period shall be extended by mutual agreement for an additional reasonable period of time (not to exceed a further [sixty (60) days]).

17.3 Right to Terminate

If (a) the breach is capable of remedy but is not remedied before the end of the Remedy Period; or (b) if the breach is incapable of remedy; or (c) the Breaching Party is unwilling to remedy the breach and the breach poses a serious threat to the secure operation of the Transmission System and/or the Connection Facilities and/or the Customer's Facility and/or the Customer's Facility Connection Equipment and /or the Project Site and/or the Point of Connection, the Non-Breaching Party shall have the right to terminate this Agreement on giving the Breaching Party [thirty (30) days] written notice. Nothing in this Clause shall prevent any Party from availing itself of the usual remedies at law and/or to claim damages arising from such breach.

18 Termination

18.1 Circumstances of Early Termination

18.1.1 Notwithstanding Clause 0, ESCOM TL shall have, subject to the lapse of the respective prior notice period as per Clause 0 (Breach of this Agreement and the Grid Code) above, the right to terminate the Agreement:

- (a) if the Customer has failed to make payment of a duly rendered invoice or any other amount due to ESCOM TL under the Agreement and ESCOM TL has given not less than [sixty (60) days"] notice.
- (b) if the Customer is declared bankrupt, placed in curatorship, enters into a scheme of arrangement (other than for the purpose of a solvent reconstruction or amalgamation approved by ESCOM TL (such approval not to unreasonably withheld) and such proceedings were not cancelled within [sixty (60) days] from the date of commencement of such proceedings;

- (c) if the Customer has failed to obtain or maintain any licences, authorisations or other approvals required to generate electricity in Malawi pursuant to Clause 3.2.2;
- (d) on account of a material breach of the Grid Code or ESCOM TL Technical Specification (under Annexure F of the Connection Offer Letter in Annexure 1) pursuant to Clause 17.1; or
- (e) on termination of the PPA.

18.1.2 Notwithstanding Clause 0.the Customer, subject to the lapse of the respective prior notice period as per Clause 0 (Breach of this Agreement and the Grid Code) above, shall have the right to terminate the Agreement:

- (a) if ESCOM TL is declared bankrupt, placed in curatorship, enters into a scheme of arrangement (other than for the purpose of a solvent reconstruction or amalgamation approved by ESCOM TL (such approval not to unreasonably withheld)) and such proceedings were not cancelled within [60 (sixty) days] from the date of commencement of such proceedings ;
- (b) if ESCOM TL has failed to obtain or maintain any licences, authorisations or other approvals required to transmit electricity in Malawi;
- (c) on account of Force Majeure as contemplated under Clause 16.4; or
- (d) on termination of the PPA.

18.2 Termination and Disconnection

ESCOM TL shall be entitled to disconnect the Customers Facility from the Transmission System following the termination of this Agreement.

19 Liability for Damage or Loss

19.1 Indemnity

19.1.1 Subject to Clause 19.1.2, each Party shall indemnify, defend and hold harmless the other Party against all losses, damages, claims, liabilities, costs or expenses which the other Party may suffer or incur by reason of any claim for or in respect of: (i) the death or personal injury of any individual or (ii) damage to property or (iii) any third-party liabilities and damages, arising out of the indemnifying Party"s default under this Agreement, save where that default is excused in terms of Clause (d) (Force Majeure) of this Agreement, except to the extent that the Party seeking to be indemnified is at fault or is negligent.

19.1.2 Indemnification required from a Party under Clause 19.1.1 shall be capped at [amount], VAT excluded. In the event that any losses, claims or damages in relation to any death or personal injury arises out of or results from the joint or concurrent negligence or the intentional conduct of both Parties, each Party shall be liable in proportion to its degree of negligence or fault. The Parties shall make all reasonable endeavours to

mitigate any losses they may suffer as a result of the breach of any of the other Party's material obligations under this Agreement.

19.1.3 Neither Party shall be liable for the other Party's losses save as expressly provided for in this Agreement.

19.2 Damages

Other than as provided in this Agreement and in the PPA, in no event shall either Party be liable to the other Party, at law or in equity and whether based on contract, tort or otherwise, for any indirect, incidental, special or consequential damages incurred by such Party or any third party as a result of the performance or non-performance of the obligations imposed pursuant to this Agreement, irrespective of the causes thereof, including fault or negligence. To the extent that any damages required to be paid hereunder are liquidated, the Parties acknowledge that such damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient, and the liquidated damages constitute a reasonable approximation of the harm or loss that may be suffered by the affected Party.

20 Dispute Resolution

20.1 Procedure

20.1.1 If any dispute arises relating to this Agreement or any claims for damages or otherwise are made as the result of breach of any obligation hereunder, the Parties shall meet and use their reasonable efforts to resolve such dispute through good faith negotiation. The Parties acknowledge the MERA's entitlement to mediate the settlement of certain disputes between the Parties as provided in the Generation Licence. The Parties shall follow the applicable dispute resolution as set by the MERA.

20.1.2 Should the Parties fail to resolve such dispute in accordance with Clause 20.1.1 within [seven (7) days] of their meeting or such longer period as the Parties may agree, the matter shall be elevated to chief executive level for resolution.

20.1.3 Should the Chief Executives of the Parties fail to resolve such dispute in accordance with Clause 20.1.2 within [fourteen (14) days] of their meeting or such longer period as the Parties may agree, any Party may refer such dispute or difference (except for a technical dispute which shall be dealt with in accordance with Clause 20.2) to arbitration to be undertaken by three (3) arbitrators agreed to by the Parties in accordance with Clause 20.3. Should the Parties fail to agree on arbitrators within [14 (fourteen) days] of the referral of the dispute to arbitration, the President of the Law Society of Malawi shall appoint the arbitrators from a list of approved arbitrators having the requisite experience and expertise in the field of the dispute.

20.2 Reference of Technical Disputes to Independent Expert

20.2.1 If the Parties are unable to resolve a technical dispute through good faith negotiation or resolution by the Chief Executives, the dispute shall be resolved by an independent person that is a technical expert on the

matter under dispute (“Independent Expert”) agreed between and appointed by both Parties.

20.2.2 The Parties agree that the Independent Expert shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to the Independent Expert under this Agreement by reference to Prudent Industry Practice using the Independent Expert’s skills, experience and knowledge and with regard to such other matters as the Independent Expert in the Independent Expert’s sole discretion considers appropriate.

20.2.3 The Parties agree they will make every effort to supply whatever information, documents and materials the Independent Expert considers necessary to address the matters referred and will act in good faith regarding matters falling within the ambit of this Clause 20.2.

20.2.4 The Independent Expert will endeavour to provide the Independent Expert’s decision within the shortest time possible. In most cases, it is expected that the Independent Expert should be able to supply a decision to the Parties within [fourteen (14) Business Days]. If for any reason, the Independent Expert requires longer than [fourteen (14) Business Days], the Independent Expert will provide the Parties a written explanation for the required extension of time with an estimate of the likely timetable for a decision on the matter referred.

20.2.5 The Parties shall share equally the fees and expenses of the Independent Expert.

20.2.6 Should the Independent Expert fail to resolve such dispute in accordance with this Clause 20.2 within [fourteen (14) Business Days] or such longer period as the Parties may agree, any Party may refer such dispute or difference to arbitration in accordance with the provisions of Clause 20.1.3 and in accordance with Clause 20.3.

20.3 Arbitration

20.3.1 Except where otherwise specifically provided for, any dispute at any time between the Parties or any failure by them to reach agreement in regard to any matter arising out of or in connection with this Agreement or its interpretation or effect, or arising in any way out of the termination or failure of any of them, shall be submitted to arbitration pursuant to the arbitration laws of Malawi. In the event the arbitration laws are deemed insufficient, the [AFSA/ UNCITRAL] rules shall apply.

20.3.2 The decision of the arbitrators shall be given in writing as soon as reasonably possible and not later than [six (6) weeks] from the date on which the hearing, including argument, was concluded. The decision shall be final and binding upon the Parties and shall not be subject to appeal to any court or tribunal of any kind unless manifestly unlawful or unjust, provided however that any Party may take action in any court of competent jurisdiction to enforce the arbitrators’ decision, including its award in respect of the costs of arbitration.

20.3.3 Each Party shall bear its own costs and the costs of arbitration shall be borne equally by the Parties, unless the arbitrators decide otherwise.

20.3.4 Arbitration shall be conducted in accordance with the arbitration laws of Malawi and shall be held in [place], Malawi before three (3) arbitrators. The arbitration shall be conducted in the English language.

20.3.5 The Parties may be legally represented and may present evidence by independent experts or as otherwise permitted by the arbitrators.

20.3.6 The aforesaid notwithstanding, any Party shall be entitled to approach any competent court having jurisdiction for urgent relief on an interim basis, pending the finalisation of the resolution of the dispute in terms of this Clause 20.3.

20.4 Obligations during Disputes

20.4.1 While a dispute is continuing, the Parties are required to continue to perform their respective obligations, including the payment of the Energy Payment according to the PPA, under this Agreement until such dispute has been fully and finally resolved.

20.4.2 Where a dispute has been referred for resolution by arbitration in accordance with the arbitration laws of Malawi, then neither of the Parties shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the dispute until the dispute has been resolved by the decision of the arbitrators.

20.5 Proceedings in Confidence

All proceedings held by the Parties for the purpose of resolving disputes shall be held in private and except as permitted or required by any other provision of this Agreement, shall not be open to third parties, it being agreed that for the purposes of this Agreement the record and outcome of any proceedings shall also constitute Confidential Information of each Party hereto and safeguarded in accordance with the provisions of Clause 21.2.3 (Confidentiality).

21 Cession and Assignment

21.1 Prior Consent

The Parties shall not be entitled to cede or assign this Agreement or any of its rights and obligations without the prior written consent of the other Party except to the lenders for the purpose of providing security under the Finance Documents or an assignment by the Customer to its Affiliate and/or a wholly owned subsidiary. Such consent shall not be unreasonably withheld: Provided that where such cession or assignment requires approval under the Act, such approval must first be obtained before such cession or assignment becomes effective.

21.2 Restructuring

21.2.1 Notwithstanding the above, ESCOM TL shall be entitled to cede, assign or transfer its rights and obligations under this Agreement to a third party but only in the context of: (i) the dissolution of ESCOM TL; (ii) the restructuring, amalgamation, reorganisation or analogous event of

ESCOM TL; or (iii) the transfer of all or any material part of ESCOM TL's property, assets and undertaking to a third party or successor, provided that, in each case such dissolution, restructuring, amalgamation, reorganisation, analogous event or transfer is at the instruction of or sanctioned by the Government of the Republic of Malawi or any Competent Authority.

21.2.2 In the event of a restructuring or reorganisation of ESCOM TL resulting in the cession or assignment of this Agreement to an Affiliate of ESCOM TL, ESCOM TL shall be jointly and severally liable with the newly created entity for the performance of its obligations in terms of this Agreement.

21.2.3 In the event that the restructuring or reorganisation of ESCOM TL resulting in the cession or assignment of this Agreement to an entity not forming part of the ESCOM TL group of companies, such restructuring or reorganisation shall not take place without the prior written consent of the Seller's lenders, provided that such consent shall not be unreasonably withheld.

22 Confidentiality

22.1 Confidential Information

Each Party shall treat any and all information and data disclosed to it by the other Party in connection with this Agreement in any form whatsoever, and this Agreement itself (the "**Confidential Information**") as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than in connection with this Agreement and the transaction contemplated hereby.

22.2 Duty to Maintain Confidentiality

Each Party will use the same means as it uses to protect its own Confidential Information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No information referred to in Clause 22.1 will be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the other Party (other than to its advisers and the lenders and their advisers).

22.3 Exclusions

These provisions shall not apply to information which is:

- 22.3.1 publicly known or has become publicly known through no unauthorised act of the recipient Party;
- 22.3.2 rightfully received by the recipient Party from a third party;
- 22.3.3 independently developed by the recipient Party without use of the other Party's information;
- 22.3.4 disclosed by the other Party to a third party without similar restrictions;
- 22.3.5 required to be disclosed pursuant to a requirement of a Competent Authority or any applicable Law, so long as the Party required to

disclose the information gives the other Party prior notice of such disclosure; or

22.3.6 publicly disclosed with the other Party's written consent.

22.4 Disclosure

22.4.1 All media releases, public announcements and public disclosures by any Party or their respective employees or agents relating to this Agreement or its subject matter, including without limitation promotional marketing material, shall be co-ordinated with and approved by each Party prior to the release thereof.

22.5 The foregoing will not apply to any announcement intended solely for internal distribution by any Party or to any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the Party in question.

23 Survival on Termination

Termination of this Agreement shall not affect the accrued rights and liabilities of the Parties hereto and the provisions of Clause 0 (Termination), Clause 0 (Dispute Resolution), Clause 21.2.3 (Confidentiality) and Clause 25.9 (Applicable Law and Jurisdiction) shall continue to have effect notwithstanding the termination of this Agreement.

24 Notices

24.1 Giving of Notices

24.1.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and sent by hand or facsimile. Any such notice or other communication shall be addressed as provided in Clause 24.2 and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if sent by hand, upon delivery at the physical address of the relevant Party;
- (b) if sent by facsimile, on the Business Day following the successful transmission of the facsimile;
- (c) if sent by electronic mail, upon receipt by the sender of a "read" receipt or an acknowledgement of receipt of the notice or other communication by the intended recipient.

24.1.2 Each notice, demand, request, statement, instrument, certificate or other communication given, delivered or made by one Party to the other under or in connection with this Agreement shall be in English.

24.2 Address for Notices

The relevant addressee, address and facsimile number of each Party for the purposes of this Agreement subject to Clause 24.3 (Notice of Change of Address) are as follows:

In the case of ESCOM TL

In the case of [IPP]

Addresses:

Fax:

Email:

Attention:

24.3 Notice of Change of Address

Either Party must notify the other Party of a change to its name or relevant address in writing no less than [thirty (30) days] before the change is due to take place provided that a change of address must be to an address in Malawi.

25 Miscellaneous

25.1 No Partnership

This Agreement does not create, nor is it evidence of a partnership or joint enterprise of any kind. Rather, the Parties are and shall remain independent and no Party has the power to bind the other for any purpose (except as otherwise specifically provided in this Agreement). Nothing contained in this Agreement shall be construed to constitute either Party as any of the other Party's attorney, partner or agent.

25.2 No Waiver of Rights

No delay, neglect, grant or extension of time or forbearance on the part of either Party in enforcing against the other Party any provision of this Agreement shall be deemed to be a waiver of or shall in any way prejudice any right of that Party under this Agreement. No waiver by either Party of any default or defaults by the other Party 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 or defaults whether of a like or different character; or shall be effective unless in writing duly executed by a duly authorised representative of the waiving Party. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions, and provisions of this Agreement nor time or other indulgence granted by one Party to the other whether in writing or not shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement which shall remain in full force and effect.

25.3 No Third Party Rights

This Agreement is intended solely for the benefit of the Parties. Other than as specifically provided for in this Agreement, nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to any Person not a Party to this Agreement.

25.4 Direct Agreement

ESCOM TL recognises that the Seller may wish to finance or refinance the Power Project through limited recourse or other financing and that the entering into of the a Direct Agreement shall be a precondition to the provision of such finance. ESCOM TL will co-operate in good faith with the Seller and its Lenders to agree and enter into such a Direct Agreement.

25.5 Severability

Each Party agrees that it will perform its obligations under the terms of this Agreement in accordance with all applicable Laws, rules and regulations now or hereafter in effect. If any Clause or Clauses of this Agreement is found to be illegal or unenforceable, then the Parties shall take all possible steps to re-negotiate and to re-structure this Agreement in such a manner that it will comply with provisions of such laws. If this cannot be done, the offending Clause or Clauses will be removed and regarded as *pro non scripto*, and the remaining Clauses of this Agreement shall remain binding on the Parties; provided that, where necessary, such remaining Clauses shall be amended as necessary by mutual agreement of the Parties.

25.6 Amendments

This Agreement may be amended or modified only in writing and such amendment shall executed by the Parties hereto which states specifically that it is intended to amend or modify this Agreement. In the event of changes to the Grid Code, which require changes to this Agreement, the Parties shall negotiate in good faith to incorporate such changes into this Agreement.

25.7 Counterparts

This Agreement may be executed in any number of identical counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same agreement. No counterpart shall be effective until each Party has executed at least one part or counterpart.

25.8 Anti-Corruption Measures

Each Party undertakes not to offer, directly or indirectly, advantage to third parties and not to request, promise or accept for its own benefit or that of a third party, illicit gifts with the purpose of obtaining favourable judgement in the performance of this Agreement or in relation to any other matters between the Parties whether or not directly related to this Agreement. Such undertaking shall bind each Party and its directors, officers, employees, authorised agents, contractors, sub-contractors and professional advisers.

25.9 Applicable Law and Jurisdiction

This Agreement shall be governed, construed and interpreted in accordance with the laws of Malawi and the Parties consent to the non-exclusive jurisdiction of the High Court of Malawi, subject to the provisions of Clause 0 (Dispute Resolution). The Parties agree that a judgment in any proceedings in

connection with this Agreement by the Malawian courts shall be binding upon them and may be enforced against them in any other jurisdiction.

25.10 Change in Law

Nothing in this Agreement shall prejudice or affect the rights or powers of either Party under any statute, statutory instrument or regulation for the time being in force. If at any time following the date of signature of this Agreement a change in law results in a Change in Cost as anticipated in the PPA the Parties shall, as soon as is reasonably practical, meet to negotiate the adjustment of this Agreement to ensure that the Customer or ESCOM TL is not prejudiced as a result of such change in cost and the same mechanism of a Change in Costs as set out in the PPA (Clause 16) shall apply to this Agreement with the necessary adjustments.

25.11 Waiver of Immunity

The Parties hereby unconditionally and irrevocably agree that the entry into and performance of this Agreement by the Parties constitute private and commercial acts and neither of the Parties nor any of their assets is entitled to immunity from arbitration or legal process or jurisdiction on grounds of sovereignty or otherwise.

IN WITNESS WHEREOF this Agreement have been executed as a deed by the Parties with the intent that it is delivered on the day and year first above written:

Executed as a Deed by

ELECTRICITY SUPPLY CORPORATION OF MALAWI (ESCOM TL)

acting by

[name of authorised signatory]

Authorised signatory

and

[name of authorised signatory]

Authorised signatory

Executed as a Deed by

[IPP]

acting by

[name of authorised signatory]

Authorised signatory

and

[name of authorised signatory]

Authorised signatory