

Operation and Maintenance Agreements (Speciment)

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OPERATION AND MAINTENANCE AGREEMENT

AN AGREEMENT made on

BETWEEN

ABC, a limited liability PMA company incorporated under the laws of Indonesia (the owner), and

XYZ, a private limited liability company incorporated under the laws of England (the operator)

WHEREAS

- a. The owner intend to finance, construct, own, operate, and maintain the Power Station.
- b. The owner has a requirement for operation services in relation to the start up activities, commissioning, performance testing, and operation, and maintenance of the Power Station.
- c. The operator has expertise in the operation and maintenance of power stations and is able and willing to provide services upon the terms and conditions set forth in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definition

In this agreement, including the Recitals, Schedules, and Appendixes, the following terms shall have the following meaning:

Agreement means this Operation and Maintenance Agreement together with the Schedules and Appendixes attached hereto.

Affiliate means in relation to either Party:

- a. a company or corporation which is either a Holding Company or a Subsidiary of such Party; or
- b. a company or corporation which is a Subsidiary of a Holding Company of which such Party is also a Subsidiary.

Common Facilities has the meaning ascribed to it in Appendix A of the Power Purchase Agreement.

Consents have the meaning ascribed to it in the Power Purchase Agreement.

Construction Contractor means PQR or such consortium as may be formed by PQR for the performance of the Works (as defined in the Turnkey Construction Contract) in accordance with the terms of the Turnkey Construction Contract.

Contract Year and Contract Year 1 have the restrictive meanings, ascribed to them in the Power Purchase Agreement.

Easements have the meaning ascribed to it in Appendix T to the Power Purchase Agreement.

Event of Force Majeure has the meaning ascribed to it in Article 20.1.

Financing Agreement means collectively the loan and security agreements entered into on or prior to the Financing Date to finance the Project as the same may be amended from time to time in accordance with the terms and conditions thereof.

Fixed Fees mean the annual fixed fees payable to Operator in accordance with Article 10.3, as the same may be adjusted in accordance with the terms of this Agreement.

Good Utility-Practice shall mean, at a particular time, those practices, methods and acts as are in accordance with standards of prudence applicable to the coal-fired electric utility industry which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition

Government Authority has the meaning ascribed to it in the Power Purchase Agreement.

Governmental Instrumentality has the meaning ascribed to it in the Power Purchase Agreement.

Holding Company means any company or corporation of whom the relevant Party is a Subsidiary.

Initial Consumables means the initial stock of consumable items for the Power Station, including oils, greases, adhesives, gasket materials, oil filters, air intake filters and water treatment plant chemicals provided to the Owner by the Construction Contractor under the Turnkey Construction Contract and which are more particularly described in Appendix A thereto;

Initial Spares means the initial stock of spare parts provided to the Owner by the Construction Contractor under the Turnkey Construction Contract, being the spare parts listed in Schedule 5 to Appendix A under the heading "Mandatory Spares" and certain spare parts listed therein under the headings "Recommended Spares" and "Strategic Spares" that the Owner may have elected to purchase prior to the Operation Date;

Insurances have the meaning ascribed to it in Article 15.2.

Key Personnel has the meaning ascribed to it in Article 5.3.

Legal Requirements has the meaning ascribed to it in the Power Purchase Agreement.

Lenders mean any of the lenders who are party to any of the Financing Agreements, or any agent or agents, or any trustee for, such lenders.

Long Term Plan has the meaning ascribed to it in Article 13.1.

Mobilization Date means the date for the commencement of the provision by the Operator of the Operator Services specified in Schedule 2, being 16 (sixteen) months after the Financing Date, as the same may be varied by the Owner pursuant to Article 8.2.

Mobilization Fee means the fixed fee payable to the Operator pursuant to Article 10.2.

Mobilization Period means the period commencing on the Mobilization Date and ending:

- a. in the case of the first Unit to be Taken Over and the Common Facilities, on the Operation Date; and
- b. in the case of the second Unit to be Taken Over, on the Commercial Operation Date.

Month means a calendar month.

Net Dependable Capacity has the meaning ascribed to it in the Power Purchase Agreement.

Operating Committee means the committee established pursuant to Section 7.1 (e) of the Power Purchase Agreement.

Operating Return means, for any Budgetary Period, the gross operating income of the Power Station (including, without limitation, income derived from the sale of ash) less the aggregate of all fuel costs and the costs of the Operator Services incurred during the Budgetary Period.

Operational Period means the period commencing:

- a. in the case of the first Unit to be Taken Over and the Common Facilities, on the Operation Date; and
- b. in the case of the second Unit to be Taken Over, on the Commercial Operation Date,

and ending on the date of termination of this Agreement.

Operation Date means the date of Taking Over of the first Unit.

Operator Consents means those Governmental Authorizations that are required to perform the Operator Services.

Operator Data and Information has the meaning ascribed to it in Article 22.5.

Operator Services means the services to be provided by the Operator pursuant to Article 4.

Operator's Representative has the meaning ascribed to it in Article 4.17;

Overhaul Contract means one or more contracts that may be entered into between the Operator and an Overhaul of the Power Station during a Planned Outage and/or the repair of a Breakdown.

Overhaul Contractor means each contractor for the inspection and/or overhaul of the Power Station during a Planned Outage and/or the repair of a Breakdown appointed by the Operator and approved by the Owner pursuant to the terms hereof;

Owner Consents means all of the Governmental Authorizations other than the Operator Consents;

Owner Data and Information has the meaning ascribed thereto in Article 22.1.

Owner's Representative has the meaning ascribed thereto by Article 8.9.

Planned Maintenance Schedule has the meaning set out in Article 6.3.

Planned Outage means scheduled inspection and/or maintenance the nature and duration of which is as agreed and determined by the Owner and the Operator pursuant to Article 6.3.

Plant Manual means the manual to be prepared pursuant to the Turnkey Construction Contract.

PLN means PT PLN (Persero), the state electricity corporation owned by the Government of the Republic of Indonesia.

XYZ Guarantee means the guarantee to be provided by XYZ or, if different, the ultimate Holding Company of the Operator pursuant to Article 16 and in the form of Schedule 4;

Power Purchase Agreement means an agreement between the Owner and PLN for the purchase of the capacity of, and electrical energy generated by, the Power Station;

Power Station means the coal fired power generating facility consisting of two units of 610 MW each of nominal net design capacity to be located at Paton, East Java, Indonesia.

Project has the meaning ascribed to it in the Power Purchase Agreement.

Project Documents means, collectively, this Agreement, the Transfer Agreement, the Assignment and Assumption Agreement, the Sponsors' Agreement, The Power Purchase Agreement, the Turnkey Construction Contract, the Coal Supply Contracts, and the Financing Agreement.

Recoverable Costs has the meaning set out in Article 12.1.

Site has the meaning ascribed to it in the Power Purchase Agreement.

Sponsors' Agreement has the meaning ascribed to it in the Power Purchase Agreement.

Subsidiary means any company or corporation:

- a. the composition or actions of whose board of directors is controlled by another company or corporation; or
- b. more than half the voting power of the share capital of which is controlled by another company or corporation; or
- c. more than half of the issued share capital of which is owned by another company or corporation;

Taking Over shall have the meaning ascribed to it in the Turnkey Construction Contract;

Term has the meaning ascribed to it in Article 3.

Tests on Completion have the meaning ascribed to it in the Turnkey Construction Contract.

Transfer Agreement means an agreement in form and substance satisfactory to the Owner to be made between the Owner, the Operator and PT XYZ Indonesia or such other Affiliate of the Operator incorporated under the laws of Indonesia and licensed to conduct operations and maintenance services herein provided under the laws of Indonesia, provided always that such Affiliate shall, unless prevented by applicable laws or by withholding of regulatory approvals, contain in its name the word "XYZ" (Transferee) whereby the Operator will transfer its rights and obligations under this Agreement to the Transferee and the Transferee will assume such rights and the performance of such obligations.

Turnkey Construction Contract means the Turnkey Construction Contract between the Owner and the Construction Contractor.

Unit has the meaning ascribed to it in the Power Purchase Agreement.

Week means a period of seven consecutive days.

Wilful Misconduct means an intentional and conscious, or reckless disregard of any provisions of this Agreement or any other document prepared pursuant to this Agreement and relating to the provision of Operator Services.

Year means a calendar year.

1.2. Interpretation

References to Articles, Recitals, Schedules, and Appendices are (unless otherwise stated) to articles, recitals, schedules, and appendices of this agreement and which form part of this Agreement.

Reference to a statute, law, by-law, regulation, rule, directive, delegated legislation, or order is to the same as amended, modified or replaced from time and to any by-law, regulation, rule, directive, delegated legislation or order made thereunder.

Words importing the singular also include the plural and vice versa, words importing a gender include every other gender and references to persons include bodies corporate or unincorporated, including partnerships and their successors and assigns.

The headings to the Articles are for convenience only and have no legal effect.

All references to agreements shall mean such agreements as from time to time amended or modified provided always that such amendments or modifications have been notified by the Owner to the Operator. However, notwithstanding notification to the Operator no such amendment or modification shall expand or alter the obligations of the Operator hereunder except as may be agreed between the parties.

2. CONDITIONS PRECEDENT

2.1. Conditions Precedent of Owner

The obligations of the Owner under this Agreement are subject to the fulfillment to the satisfaction of the Owner or the waiver by the Owner of the following conditions precedent:

- (a) the Transfer Agreement shall have been executed by the Operator and the Transferee and delivered to the Owner;
- (b) the XYZ Guarantee shall have been executed and delivered to the Owner; and
- (c) each of the Project Documents shall be in full force and effect (save to the extent of any condition as to this Agreement becoming effective) and none of the parties thereto shall be in breach of any of their respective obligations thereunder and the Operator shall have secured all Operator Consents.

2.2. Conditions Precedent of Operator

The relevant obligations of the Operator under this Agreement are subject to the fulfillment to the satisfaction of the Operator or the waiver by the Operator of the following conditions precedent:

- (a) the Owner shall have secured all Owner Consents necessary to permit the performance of the relevant Operator Services;
- (b) to the extent necessary to perform the relevant Operator Services, the Owner shall have performed its obligations under Article 8.1;
- (c) each of the Project Documents (other than the Transfer Agreement) shall be in full force and effect (save to the extent of any condition as to this Agreement becoming effective) and none of the parties thereto shall be in breach of any of their respective obligations thereunder; and
- (d) the Operator shall have received copies of the Project Documents (other than those to which it is a party) and confirmation from the Owner that the Financing Date shall have occurred.

3. TERM

The Operator shall, subject to the provisions of Article 21, provide the Operator Services during the period commencing on the Mobilization Date and expiring on the thirtieth (30th) anniversary of the Commercial Operation Date (the Term)

4. APPOINTMENT AND OPERATOR SERVICES

4.1. Appointment of the Operator

The Owner hereby appoints the Operator to provide the Operator Services and the Operator hereby accepts such appointment, in each case in accordance with and subject to the terms of this Agreement.

4.2. Operator Services

The Operator shall:

- (a) during the Mobilization Period, perform or cause to be performed all necessary preparatory steps to enable the Operator to Provide the services described in the remainder of this article 4.2. on and with effect from the then currently scheduled Operation Date. Such preparatory steps shall include the pre-operational services set out in Schedule 2;
- (b) during the Operational Period:
 - (i) from and after the operation Date, perform or cause to be performed all operation and maintenance whatsoever of the relevant Unit and the Common Facilities; and
 - (ii) from and after the Commercial Operation Date, perform or cause to be performed all operation and maintenance whatsoever of the Power Station.

and in connection therewith shall supply or cause to be supplied all services, goods, and materials requires to operate and maintain the Power Station in accordance with the provisions of this Agreement. Such services shall include those set out in Schedule 3;

- (c) during the Operational Period, operate all other parts of the Power Station which are safe and functional but to the extent that in carrying out its obligations the Operator is required to operate and maintain plant and equipment which have not been Taken Over then, in so doing, the Operator shall only operate such parts of the Power Station in accordance with the requests of the owner, and shall not be responsible if in properly implementing such requests any right of the Owner under the Turnkey Construction Contract is waived or compromised;
- (d) plan, co-ordinate, supervise, and control all Planned Outage work and agree the occurrence and duration of Planned Outage work with the Owner. Such work shall be carried out by the Operator or by one or more Overhaul contractors; and
- (e) co-ordinate, supervise, ad control all Breakdown work. Such work shall be carried out by the Operator or by one or more Overhaul Contractors.

4.3. Presence during Commissioning and Tests on Completion

The Operator shall be present at and during the Commissioning and performance of the Tests on Completion of (a) the first Unit to be commissioned, together with the common Facilities, and (b) the subsequent Unit to be commissioned, and as required by the Turnkey construction Contract or to the extent otherwise so requested by the Owner, shall operate the Power Station under the direction and control of the Owner (or of the Construction Contractor on behalf of the Owner) and at the Owner's risk during such Commissioning and performance of the such Tests on Completion (including those operations required to be performed as a pre-condition to the occurrence of the Operation Date or the Commercial Operation Date) in order to comply with the provisions of Appendix J of the Power Purchase Agreement. Notwithstanding the obligation of the Operator to comply with Good Utility practice in providing the Operator Services, the Operator shall not be responsible for any damage to the Power Station or loss of availability arising as a result of such commissioning activities and performance of Tests on Completion carried out in accordance with the directions of the Owner or the Construction Contractor or otherwise to comply with the requirements of Appendix J of the Power Purchase Agreement, except to the extent such damage or loss of availability arises due to the Wilful Misconduct or negligence of the Operator. If the first Unit and the Common Facilities have been Taken Over and handed over to the Operator, the Operator shall, in its operation of the first Unit and the Common Facilities, co-operate with the Owner, the Construction contractor and their respective agents, contractors, and subcontractors to enable the occur in accordance with the Turnkey Construction Contract and shall avoid any action or inaction which might interfere with the construction, erection, Commissioning, and Tests on Completion of any part of the Power Station which has not at the relevant time been Taken Over.

4.4. Standards of Performance

The Operator shall perform the Operator Services in a safe and efficient manner and in accordance with:

- (a) Good Utility Practice;
- (b) all applicable Legal Requirements, including without limitation those relating to health and safety and pollution control;
- (c) this agreement, the relevant terms of all other Project Documents, the Owner Consents, and the Operator Consents;
- (d) the requirements of all insurance and reinsurance policies relating to the Power Station, including those required to be maintained pursuant to Article 15;
- (e) the Plant Manual;
- (f) general labor conditions to the extent that they apply in the region in which the Site is located;
- (g) the then current Long Term Plan and Annual Budget and Operating Plan;

- (h) all relevant manufacturers' or suppliers' recommendations or requirements, including those specified in the Plant Manual;
- (i) the Agreed Procedures;

Provided that if there is a conflict between any of the above requirements, the Operator shall inform the Owner accordingly and the Parties shall agree the manner in which the Operator shall perform the Operator Services, such agreement constituting an amendment or addition to the Agreed Procedures. Prior to such agreement, the Operator shall give priority to the obligations falling in paragraphs (b), (c), and (d), and thereafter to the obligation to comply with Good Utility practice, notwithstanding that such requirements may conflict with certain other requirements.

4.5. Best Interests of Owner

Subject to the overriding requirements of Article 4.4., the operator shall operate and maintain the Power Station in such a manner as is in the best interests of the Owner so as to maximize the Operating Return on a year by year basis over the required useful life of the Power Station.

4.6. Minimizing Deterioration

Subject to the overriding requirements of Articles 4.4. and 4.5. the Operator shall operate and maintain the Power Station in such a manner as to minimize the natural deterioration of the Power Station.

4.7. Defects Liability

During any period when defects in the Power Station may be required to be rectified by the Construction Contractor under the defects liability provisions of the Turnkey Construction Contract, the Operator shall, forthwith upon becoming aware of any such defect, notify the Owner, giving full details of the relevant defect. In performing the Operator Services, the Operator shall ensure it does not (save as expressly set out in Article 4.3.) prejudice any of the Owner's rights under such defects liability provisions and shall promptly provide all such assistance as the Owner may reasonably require in order to establish or pursue any claim under such defects liability provisions.

4.8. Maintenance of Records

The Operator shall maintain operating logs, record, and reports documenting the operation and maintenance of the Power Station and shall maintain current revisions of the drawings, specifications, lists, and other materials provided by the Owner to the Operator, in each case as more particularly set out in Schedule 3.

4.9. Inventory

The Operator shall monitor, control, and manage the inventory of spare parts, tools, equipment, and other supplies for the Power Station. The Operator shall procure any replacements thereof or additions thereto necessary for the operation and maintenance of the Power Station, provided that procurement of any major spares items or piece of equipment shall be subject to the prior approval of the Owner in accordance with the Agreed Procedures. Title to all such spare parts, tools, equipment, and other supplies shall pass to the Owner immediately upon the earlier of their delivery to the Site or payment therefore. The cost of such replacements or additions shall be a Recoverable Cost if the Operator has incurred such cost, unless it results from the negligence or Wilful Misconduct of the Operator.

4.10. Fuel Management

The Operator shall, without prejudice to its obligations under Schedule 3, administer each of the Coal Supply Contracts and the coordination between each of them on behalf of the Owner and coordinate coal shipping movements with PLN and **PT PEC** in order to ensure an adequate and continuous supply of coal. In addition, the Operator shall provide advice and assistance to the Owner in connection with the preparation of the Coal Supply Plan and any revisions thereto and the annual coal price negotiation under the existing Coal Supply Contracts. If the Owner requests, the Operator shall also provide advice and assistance in connection with the renegotiation of the Coal Supply contracts; provided that the scope of such advice and assistance will be subject to mutual agreement between the Parties. The cost of providing such service in relation to the renegotiation of the coal Supply Contracts shall be regarded as a Recoverable Cost. The Parties agree that to the extent that such advice and assistance and other services relating to fuel management generally are provided by a third party, including XYZ, PQR, or any of their respective Affiliates (other than the Operator), any cost incurred by the Operator in connection with such service shall be subject to the prior written approval of the Owner and shall be regarded as a Recoverable Cost.

4.11. Waste Management

The Operator shall manage on behalf of the Owner the disposal of ash and all other wastes generated by the operation of the Power Station.

4.12. Operator not Agent

Except as otherwise specified in this Agreement or under the express written authorization of the Owner from time to time, the Operator will:

- (a) not pledge the credit of the Owner in respect of any commitments for which it has no authority by reason of Article 13.9,
- (b) not describe itself as agent or representative of the Owner,
- (c) not make any warranty or representation relating to the Owner without the Owner's prior approval; and
- (d) place contracts and/or order all goods, materials, and services required to perform the Operator Services in accordance with the Agreed Procedures so as to preserve any relief or exemptions from sales and other taxes and customs and other import duties that may then be available to the Owner and the Operator will deliver to the Owner any sales or other tax or customs duty invoices addressed to the Owner but received by the Operator.

4.13. Coordination

The Operator shall act on behalf of the Owner in coordinating generation and dispatch of the Power Station with PLN in accordance with Appendix L of the Power Purchase Agreement and shall administer on behalf of the Owner the invoicing and payment procedures specified in Appendix P of the Power Purchase Agreement. The representatives of the Owner on the Operating Committee shall comprise one member appointed by the Owner and one member appointed by the Operator.

4.14. Access for Representatives

The Operator shall permit representatives of the Owner and its designees and of the Lenders to visit or be present at the Power station at any time on reasonable prior notice to the Operator, provided that such representatives or designees shall conform with the Operator's safety requirements and shall not unduly interfere with the operation or maintenance of the Power Station.

4.15. Negative Undertakings

Unless previously expressly approved by the Owner or specifically provided in this Agreement (including the Agreed Procedures), neither to Operator nor any of its sub-contractors, agents, or representatives shall:

- (a) modify or alter the Power Station or any component thereof in a manner that varies the function, output or efficiency of the Power Station or any component thereof, other than any minor modification or alteration permitted under the Agreed Procedures;
- (b) sell, lease, pledge, or mortgage, convey, or make any license, exchange or other transfer or disposition or any property or asset of the Owner, or purport to do any of the foregoing, except as expressly permitted under this Agreement; or
- (c) make, enter into, execute, amend, modify, or supplement any contract or agreement on behalf of or in the name of the Owner.

4.16. Performance by Others

Except as otherwise specified in this Agreement, the Operator shall have the exclusive right and shall be obliged to carry out or procure the carrying out of all the operator Services by itself, its Affiliates (provided that the relevant Affiliate(s) shall, unless prevented by applicable laws or the withholding of regulatory approvals, contain in its name the word "XYZ") or, subject to compliance with the provisions of this Article, appropriately qualified and experienced sub-contractors provided that:

- (a) the Operator or such Affiliate of the Operator shall at all times maintain direct overall control and administration of the Operator Services;
- (b) performance by persons other than the Operator of Operator Services shall not, as between the Owner and the Operator, relieve the Operator of any of its obligations or liabilities under this Agreement or entitle the Operator to claim any additional amount by way of Mobilization Fee, Fixed Fee, or Recoverable Costs;

- (c) the XYZ Guarantee shall at all times remain in full force and effect with respect to the performance of the relevant Operator Services;
- (d) the Operator shall not sub-contract all of the Operator Services; and
- (e) the Operator shall not sub-contract substantial parts of the Operator Services without the consent of the Owner which shall not be unreasonably withheld.

4.17. Operator's Representative

The Operator shall nominate in writing a representative (the Operator's Representative) who shall have authority to act on behalf of the Operator (subject to any limitations notified in writing to the Owner). Subject as aforesaid, the Owner shall be entitled to presume that the Operator's Representative shall have the full authority of the Operator. The Operator's Representative shall be one of the members of the Operating Committee for the Project to be established in accordance with the requirements of Appendix L of the Power Purchase Agreement. The Owner shall have no right to give instructions or directions to persons employed by the Operator other than through the Operator's Representative.

4.18. Operator Consents

The Operator shall use all reasonable efforts to obtain and maintain the Operator Consents and shall comply with all the conditions of such Operator Consents and the Owner Consents. The Operator shall assist the Owner in obtaining and maintaining the Owner Consents and shall take no action, nor shall it fail to take any action, which may result in any Operator Consent or Owner Consent being revoked or withdrawn.

4.19. Indonesian Participation

The Operator shall and shall cause any Affiliate and each of the Overhaul Contractors or its other subcontractors:

- (a) to the maximum extent permitted by the Financing Documents, to give preference to the use of equipment, materials, and products produced and manufactured in Indonesia;
- (b) to the maximum extent permitted by the Financing Documents, to give preference to the use in the performance of Operator Services to Indonesian labor (both skilled and unskilled), Indonesian supervisory, professional, and other personnel, Indonesian services, and Indonesian contractors;
- (c) to use in respect of any insurance policies obtained in connection with the performance of Operator Services Indonesia insurance companies, brokers and agents; and
- (d) to use Indonesian importers, agents, and freight forwarders;

provided, in the case of (a) and (b), that such equipment, materials, products, personnel, service providers, and contractors are at least as reasonably favorable to the Operator as others available taking into account price, quality, reliability, and schedule.

4.20. Overhaul Contracts

The Operator shall not award any Overhaul Contract for any item of plant or equipment comprised in the Power Station which is supplied by PQR (and not, for the avoidance of doubt, supplied by any other member of the consortium formed by PQR as Contractor under the Turnkey construction Contract) unless the Operator shall first have offered PQR the opportunity to tender for the performance of the work to be performed under such Overhaul Contract in accordance with the following procedure:

- (a) the Operator shall prepare, or procure the preparation of, a draft scope of work, specification, and contract terms for the work to be performed under the Overhaul Contract and shall submit such draft to PQR in sufficient time prior to the required date for commencement of the relevant work to permit the procedure set out in the remainder of this Article 4.20 to be performed without causing any delay to the proposed date for commencement of such work;
- (b) within 60 days after receipt of the scope of work, specification and contract terms referred to in (a) above, PQR shall submit its proposal (including its proposed price) for the performance of the relevant work on the basis of such scope of work, specification and contract terms. Thereafter the parties shall enter into good faith negotiations for a period not exceeding thirty (30) days, commencing no later than thirty (30) days after receipt from PQR of its proposed price as aforesaid;
- (c) if:
 - (i) notwithstanding such good faith negotiations as referred to in (b) above, the Operator and PQR are unable to reach agreement on the terms of an Overhaul Contract for the performance of the relevant work; or

- (ii) the Operator is of the bona fide opinion that PQR' proposal referred to in (b) above is less commercially favorable to the Operator than the terms which the operator may be able to obtain by submitting the work to be performed under the relevant Overhaul Contract to competitive tender; or
- (iii) PQR fails to submit a proposal for the relevant work within the 60 days period referred to in (b) above,

Then Operator may submit the work to be performed under the relevant Overhaul Contract to competitive tender involving such further potential contractors as the Operator may in its absolute discretion select, on the basis of a draft scope of work, specification and contract terms substantially the same as that provided to PQR.

4.21. Project Document

The Operator hereby acknowledges that it is fully aware of the terms of the Project Documents (and, in particular, the Owner's obligations thereunder), copies of which have been delivered to it.

5. STAFFING OF THE POWER STATION

5.1. Appointment and Training

The Operator shall be responsible for the recruitment, appointment, training, and management of all personnel required by the Operator to perform its obligations under this Agreement. The Operator shall ensure that its personnel are adequately trained and those appropriate training programs are implemented during the Term.

5.2. Qualified Personnel

The Operator shall ensure that the Operator Services are undertaken by suitably experienced and qualified personnel. Without prejudice to the generality of the foregoing, the Operator shall ensure that adequate numbers of staff are employed to perform the Operator Services in the manner required hereunder and shall minimize turnover in personnel.

5.3. Key Personnel

Not later than six (6) months prior to the Operation Date, the Operator shall notify the Owner of its proposed key personnel (whose job titles are listed in Schedule 5) in finance and administration, engineering, and maintenance and operations including the plant manager (or the equivalent title of the individual with day-to-day primary responsibility for the provision of the Operator Services) (the Key Personnel) and provide details of each individual's previous experience, and shall only make (and terminate) such appointments following consultation with the Owner. If, following the appointment of any Key Personnel, it reasonably appears to the Owner that such Key Personnel are in capable of performing to the standard required for the purposes of this Agreement or any Key Personnel are negligent or guilty of Wilful Misconduct the Owner shall be entitled to request the replacement of such Key Personnel and the Operator shall be required to find a suitable replacement at no incremental cost to the Owner and any incremental costs associated therewith shall be borne by the Operator.

5.4. Discipline

The Operator shall at all times maintain good order and appropriate disciplinary practices amongst its personnel. Subject to Article 5.3., the Operator will be responsible for selection, hiring, assigning, and supervising staff (including obtaining all necessary work permits, permissions, registrations, authorizations, and licenses in relation to such staff).

5.5. Presence for Testing and Training

The Operator shall provide the personnel required to be present at Commissioning and Tests on Completion and to receive initial plant training in accordance with the Turnkey Construction Contract, in each case in sufficient time to enable the Construction Contractor to maintain the schedule of work under the Turnkey Construction Contract, and shall ensure that the relevant personnel comply with the instructions, safety requirements, and orders of the Construction Contractor in connection therewith.

6. PLANNED OUTAGE AND BREAKDOWN

6.1. Owner's Approval

It is specifically agreed that the terms and conditions of an Overhaul Contract (including the price at which the Overhaul Contractor will provide its services) shall (save in the circumstances contemplated by article 7.1) be subject to approval by the Owner, provided that such approval shall not be unreasonably withheld or delayed, and that such approval shall not relieve the Operator of any of its obligations or liabilities under this Agreement.

6.2. Planning of Outages

For each Contract Year, the Operator shall draw up a chart setting out the proposed dates of Planned Outages, the activities to be undertaken and their duration (the Planned Maintenance Schedule). The planned Maintenance Schedule for Contract Year 1 shall be submitted by the Operator at least three (3) months prior to the Operation Date. Within twenty-one (21) days of the Commercial Operation Date, the Operator shall submit a revised Planned Maintenance Schedule for Contract Year 1 reflecting any changes as a result of the timing of the Commercial Operation Date. The Owner shall have the right to review and comment upon a Planned Maintenance Schedule within the time limits prescribed in Article 8.2.1.(a)(ii) or 8.2.1.(b)(ii) of the Power Purchase Agreement for review by PLN; provided that in accordance with the requirements of Article 8.2. of the Power Purchase Agreement, if the Commercial Operation Date occurs in October or November, the Operator shall submit its Planned Maintenance Schedule for Contract Year 2 at the same time as it submits the revised Planned Maintenance Schedule for Contract Year 1. Planned Maintenance Schedules for subsequent Contract Years shall be submitted not later than October 1 in the preceding Contract Year. If the Owner objects to a Planned Maintenance Schedule it shall identify the activity and/or date which is to be rescheduled and shall offer alternative dates for the same. The Operator shall consider the Owner's objections and if the rescheduling would have no adverse effect on the safety, performance, reliability, and life span of the Power Station or a part thereof and will not result in the Power Station being operated or maintained in a manner inconsistent with Good Utility Practice and will not result in the Power Station failing to be maintained in accordance with Good Utility Practice, the Operator shall agree to the rescheduling as proposed by the Owner. If the proposed rescheduling would have an adverse effect on the safety, performance, reliability, or life span of the Power Station or a part thereof or would result in the Power Station being operated or maintained in a manner inconsistent with Good Utility Practice, the Operator shall notify the Owner accordingly and, if the Owner has objected due to PLN's objection under Articles 8.2.1.(a)(ii) or 8.2.1.(b)(ii) of the Power Purchase Agreement, the Owner will ensure that PLN is aware of the Operator's objections and, if necessary, exercise its rights under the Power Purchase Agreement to cause such a dispute to be resolved in accordance with the dispute resolution procedure thereunder.

6.3. Notice of Shut-down and Start-up, Testing, and Adjustments

Prior to shutting down the Power Station or part thereof for a Planned Outage or repair of a Breakdown, the Operator's operation personnel shall notify PLN and the Owner of the time when the Power Station or part thereof is scheduled to be taken out of service and to return service within the notification periods specified in Appendix L of the Power Purchase Agreement. Upon completion of the work involved in a Planned Outage or the repair of a Breakdown, the Operator shall perform the requisite adjustments and tests, if any, to establish that such work has been completed successfully and/or the Power Station or any part thereof is performing normally, having regard to operating conditions and the age of the Power Station or the relevant part. The Operator shall have the right to request that PLN take the electrical energy generated during such tests provided the electrical energy generated during such tests would not result in grid disturbances.

6.4. Rescheduling of Planned Outages

If required, the Operator will comply with any request of PLN for the rescheduling of any Planned Outage which complies with the requirements of Article 8.2.1.(c) (i) of the Power Purchase Agreement; provided that the Owner will not agree to any proposed rescheduling of a Planned Outage pursuant to Article 8.2.1.(c) if the Operator considers that the proposed rescheduling would have an adverse effect on the safety, performance, reliability or life span of the Power Station or any part thereof or would result in the Power Station being operated or maintained (or failing to be operated or maintained) in a manner inconsistent with Good Utility Practice.

6.5. Adjustment of Planned Outages

If, during any Breakdown period, the Operator is able to perform maintenance that effectively replaces maintenance that would have been performed during a future Planned Outage, the Operator shall comply with the requirements of Article 8.2.1.(d) of the Power Purchase Agreement and shall adjust the current Planned Maintenance Schedule so as to reduce the duration of future Planned Outages by the relevant number of hours of maintenance performed in the period of Breakdown and shall further adjust the current Annual Budget and Operating Plan to account for the increase or reduction in maintenance costs for the current Budgetary Period.

6.6. Protective Relays

The Operator shall operate the Power Station with all of its protective relays in service whenever the Power Station is connected to or is in parallel with the PLN grid system. Any deviation shall only be for brief periods of emergency or maintenance and repair.

6.7. Agreed Procedures

- (a) Subject to the Operator having received all relevant manufacturers' or suppliers' recommendations or requirements (including without limitation, all drawings, instructions, and procedures) relating to the operation, maintenance, and repair of the relevant item of equipment or plant by no later than 6 months prior to the Operation Date, the Operator shall prepare a preliminary manual detailing the proposed procedures, systems, policies, and programmes for the operation, administration, accounting, budgeting, maintenance, security, safety, and monitoring of plant performance in respect of the Power Station and otherwise in connection with the implementation of the Operator Services (Agreed Procedures) and shall submit such manual for approval by the Owner not later than 3 months prior to the Operation Date. The Owner shall not unreasonably withhold its approval to the Operator's proposals for the Agreed Procedures but if the Owner cannot agree to such proposals, the matter shall be resolved by an expert pursuant to Article 19. The Owner recognizes that the preliminary manual will not contain a complete set of Agreed Procedures which will only be finally established once the Operator has actual experience of the operation of the Power Station. The Agreed Procedures shall form part of this Agreement.
- (b) The Owner may request that the Operator update the Agreed Procedures from time to time as may be appropriate to reflect changes in the assumptions made in their preparation which are necessary or desirable in the light of the actual performance of the Power station or its usage or any other material change in circumstances from the date of initial preparation or which the Owner considers appropriate based on the actual experience of the Parties from the operation of the Power station in accordance with the Agreed Procedures. Such updates shall be submitted to the Owner for approval. Moreover, the Operator may, at any time, propose revisions to the Agreed Procedures which it considers desirable, based on its experience of performing the Operator Services and shall do so to the extent that such revisions are necessary to reflect the then current Good Utility Practice. Such further revisions shall require the Owner's approval, which approval shall not be unreasonably withheld. The Operator's obligation to adopt such updates or revisions shall be conditional or reaching agreement on an equitable adjustment to the Fixed Fee pursuant to Article 9.2, if applicable. If the Owner and the operator cannot agree such updates or revisions to the Agreed Procedures, the matter shall be resolved by an expert pursuant to Article 19.

7. EMERGENCY PROCEDURES

7.1. Unilateral Action

Notwithstanding the provisions of Articles 4.15.(a), 6.7., and 9.2., relating to proposed plant modifications or changes in Agreed Procedures or Articles 6.1. or 13 in respect of prior approval of expenditure, in the case of action urgently required for emergency or remedial purposes the Operator may, if it would not be reasonably practicable in the relevant circumstances to obtain the prior approval of the Owner, act unilaterally and, to the maximum extent practicable, shall carry out the minimum work in scope and time and/or make the minimum change to the Agreed Procedures which at that time is necessary to deal with the relevant situation in accordance with Good Utility Practice.

7.2. Notice

The Operator shall notify the Owner as soon as reasonably practicable of any action taken or to be taken pursuant to article 7.1. and the reasons therefore, and the Parties shall agree on any further action or change in the Power Station or Agreed Procedures which may be appropriate in the circumstances.

7.3. Plans

The Operator shall cooperate with PLN in establishing agreed emergency plans for the Power Station at least ninety (90) days before the Operation Date which will address such matters as are specified in Article 8.2.4. of the Power Purchase Agreement.

8. OBLIGATIONS OF THE OWNER

8.1. Access and Occupation of Site

The Owner shall during the Mobilization Period, procure the provision of access to the Site in accordance with the Turnkey Construction Contract to the Operator in order to perform the Operator Services specified in Schedule 2. The Owner shall at all times during the Operational Period retain the exclusive right to occupy the site and the Operator shall be permitted to enter into, remain on and undertake activities at the Power Station and the Site in order to perform the Operator Services specified in Schedule 3. The Operator shall also be entitled to exercise the Easements which have been granted to the Owner by PLN as may be necessary for it to perform such Operator Services. The Operator shall exercise the Easements strictly in accordance with the provisions of appendix T of the Power Purchase Agreement and shall indemnify the Owner on demand from and against any and all claims, liabilities, costs damages, and expenses of any kind which it may suffer or incur as a consequence of the Operator breaching any of the provisions of Appendix T of the Power Purchase Agreement in the exercise or purported exercise of the Easements.

8.2. Condition of the Site

The Owner accepts responsibility for the environmental condition of the Site and the land subject to the Easements prior to the commencement of the Operational Period and shall bear the costs incurred by the Operator in complying with, or arising from the

violation of, any environmental protection, pollution, sanitation, or safety Legal Requirements which relate to, or which are caused by, the environmental condition of the Site and the land subject to the Easements prior to the commencement of the Operational Period other than to the extent that such costs result from the failure of the Operator to conduct its activities in accordance with Good Utility Practice. The Operator accepts responsibility for the environmental condition of the Site and the land subject to the Easements during the Operational Period and shall bear the cost of complying with, or arising from the violation of, any such Legal Requirements as aforesaid during such period other than to the extent that such costs

- (i) result from a Legal Requirement not existing or not applicable to the Operator at the date of this Agreement and which do not result from the failure of the Operator to conduct its activities in accordance with Good Utility Practice, or,
- (ii) are attributable to any act or omission of PLN, the Owner, the Construction Contractor or their respective employees and agents (other than the Operator), or,
- (iii) are the responsibility of the Owner as aforesaid.

8.3. Mobilization Data

The Owner shall give the Operator not less than one hundred and twenty (120) days' notice of any revision to the Mobilization Date, and upon receipt of such notice the revised date shall become the Mobilization Date for the purposes of this Agreement.

8.4. Commissioning and Tests on Completion

The owner shall use all reasonable efforts to ensure that the construction, Commissioning, and Tests on Completion of the Second Unit do not interfere with the operation and maintenance of the first Unit to an extent beyond that reasonably required to permit such construction, Commissioning, and testing of the second Unit to take place in accordance with the terms of the Turnkey Construction Contract.

8.5. Hand-over

The Owner shall, subject to Article 8.4., hand over each Unit of the Power Station and the Common Facilities to the Operator as a complete operational site and shall provide the Initial Consumables and the Initial Spares to the Operator; provided that the Owner shall have no liability to the Operator for any breach of this Article 8.5. other than to pay an increase in the Fixed Fee pursuant to Article 10.5., if applicable.

8.6. Fuel, Spares, Utilities, Office Space

The Owner shall bear the cost of:

- (a) all deliveries of coal to the Site;
- (b) electricity, steam, water, waste services, and other utilities, including the transportation away from the Site and any necessary treatment or disposal of any waste or waste products;
- (c) spare parts, materials, equipment, tools, consumables, and other supplies; and
- (d) providing suitable and adequately equipped office space at the Site, including personal computers and computer hardware storage facilities.

Provided that, the Operator shall within a reasonable period prior to the Operation Date, submit to PLN on behalf of the Owner a request for steam, power and energy to test and commission each Unit and to operate and maintain each Unit and the Power Station for each calendar year as required under the provisions of Appendix O of the Power Purchase Agreement and the Owner shall have no liability to the Operator hereunder (but without prejudice to its obligations to pay Fees and Recoverable Costs pursuant to Article 10) for failing to supply steam, power, and energy as a consequence of the Operator's failure to supply such request to PLN.

8.7. Provision of Drawings

The Owner shall provide to the Operator prior to the Mobilization Date all such drawings, specifications, diagrams, and other information in respect of the Power Station as are then available to the Owner under the Turnkey Construction Contract and which the Operator may reasonably require in order to perform its obligations under this Agreement. The Owner shall also ensure that a copy of any defects list issued under the Turnkey Construction Contract is delivered to the Operator following receipt by the Owner.

8.8. Transmission System

As between the Owner and the Operator, the Owner shall be responsible for all electricity transmission equipment and connections to the PLN grid system as are necessary beyond the relevant Interconnection Point(s) specified in Appendix 1 of the Power Purchase Agreement; provided that the Owner shall have no liability to the operator whatsoever in connection therewith or for any failure to provide or in the performance of the same, except for its obligations to pay Fees and Recoverable Costs pursuant to Article 10.

8.9. Compliance with Laws

The Owner shall comply with all Legal Requirements applicable to the performance of its obligations under this Agreement.

8.10. Owner's Representative

The Owner shall nominate in writing a representative (the Owner's Representative) who shall have authority to act on behalf of the Owner (subject to any limitations notified in writing to the Operator). Save as otherwise provided, the Operator shall be entitled to presume that the Owner's Representative shall have full authority to act on behalf of the Owner.

8.11. Assistance with regard to Consents

The Owner shall assist the Operator in obtaining and maintaining the Operator Consents and shall take no action, nor shall it fail to take any action, which may result in any Operator Consent being revoked or withdrawn.

8.12. Utility Vehicles

The Owner shall provide all utility vehicles required for the performance of the Operator Services as may be agreed from time to time between the owner and the Operator.

9. VARIATIONS TO THE WORKS, POWER STATION, AND ENVIRONMENTAL

9.1. Variations to Works

If there is any material variation to the works or material modification to the plant design or the plant specification as set out in the Turnkey Construction Contract or the Power Purchase Agreement or if there is a de facto material variation or modification because the Power Station is not built in accordance with such plant design or plan specification, then the Owner shall promptly notify the operator thereof. In such circumstances, the Operator and the Owner shall both have the right to propose relevant amendments to this Agreement which shall then be discussed in good faith and agreed between them and (whether or not any other amendments are agreed) there shall be an agreed equitable adjustment as appropriate to the Mobilization Fee or the Fixed Fee having regard to the impact of such variation or modification on the scope of any of the Operator Services whose cost is borne by the Operator or for which its remuneration is fixed. In the absence of agreement, the matter shall be decided by an expert pursuant to Article 19.

9.2. Modifications to Power Station and Agreed Procedures

The Owner and the Operator shall both have the right to propose extensions, improvements, or modifications to the Power Station at any time and subject to overriding requirements of Good Utility Practice the Operator shall adopt these extensions, improvements, or modifications. The Operator will have a continuing obligation throughout the Term to propose such extensions, improvements, or modifications to the extent necessary to reflect the then current Good Utility Practice or otherwise to better perform its obligations under Article 4.5. The obligation of the Operator to adopt such extensions, modifications, or improvements, or any updates, or revisions to the Agreed Procedure pursuant to Article 6.7.(b) shall be conditional on the Parties agreeing an equitable adjustment to the Fixed Fee to reflect the increase in the scope of any of the Operator Services whose cost is borne by the Operator or for which the remuneration is fixed. In default of agreement that matter shall be referred to an expert pursuant to Article 19.

9.3. Changes in Legal Requirements

If after the date of this Agreement the Operator incurs or is obliged to incur any material increase or benefits from any material savings in the cost of any of the Operator Services which is borne by the Operator as a direct result of a change in any Legal Requirement of any Governmental Instrumentality of the Republic Of Indonesia which constitutes a Triggering Event for the purposes of Appendix H of the Power Purchase Agreement, the Operator shall forthwith notify the Owner of the change and will provide an estimate in reasonable detail to the Owner of:

- (a) the latest date by which the increased cost or the earliest date by which the saving will be effective; and

- (b) the steps the Operator proposes to take which result in the increased cost or saving and methods it proposes to use to minimize such increase or to maximize such saving,

and both the Operator and the Owner shall take all reasonable steps consistent with Good Utility Practice to minimize the increase or maximize the saving in cost, whereupon there shall be an equitable adjustment as appropriate upwards or downwards, as the case may be, to the Mobilization Fee or the Fixed Fee having regard to the relevant increase or decrease in the cost to the Operator of performing the relevant Operator Services. In the event that the Operator and the Owner cannot agree the quantum of the equitable adjustment in the fees, the matter shall be referred to an expert pursuant to article 19.

10. FEES

10.1. Fees Payable

In consideration of the Operator providing the Operator Services, the Owner shall pay to the Operator the Mobilization Fee, the Fixed Fees, and make available the Recoverable Costs as are more particularly set out in this Agreement.

10.2. Mobilization Fee

During the Mobilization Period, the Owner shall pay to the Operator an aggregate fixed fee of **US\$** payable in the installments and at the times specified in Schedule 1, on account of all Operator Services to be provided during the Mobilization Period. Each installment of the Mobilization Fee shall, subject to Article 14.5., be paid not later than 28 days after the date of receipt by the Owner of the relative invoice in accordance with Article 14.1.

10.3. Fixed Fee

With effect from the Operation Date, the Owner shall pay to the Operator a fixed annual fee in United States Dollars and Rupiah as compensation for, respectively, the Operator's non-Rupiah based fixed costs (FF_F) and the Operator's Rupiah based fixed costs (FF_L) incurred in the provision of the Operator Services during the Operational Period. The respective amounts of FF_F and FF_L shall be determined by the Parties in accordance with the annual budgetary procedure stipulated in Article 13; provided that the aggregate amount of FF_F and FF_L shall not be greater than US\$ at 1995 prices (as adjusted in accordance with the provisions of this Agreement). In any event FF_F shall not exceed FF_L . The Fixed Fee may be subject to adjustment in accordance with the provisions of articles 9, 10.4., and 10.5. and shall, subject to Articles 14.5., be paid in equal monthly installments not later than 28 days after the date of receipt of an invoice for the relevant installment. The amount of the Fixed Fee shall be inflation adjusted at the start of each Year of the Operational Period as follows:

The Fixed Fee applied in any Year m (FF_m) shall consist of the sum of the values for FF_{Fm} and FF_{Lm} calculated as follows:

$$FF_{Fm} = FF_F * \left(\frac{CPI}{CPI_b} \right)$$

$$FF_L = FF_L * \left(\frac{ICPI}{ICPI_b} \right)$$

Where:

- FF_{Fm} = Fixed Fee in respect of non-Rp based fixed costs for Year m
- FF_{Lm} = Fixed Fee in respect of Rp based fixed costs for Year m
- FF_F = Fixed Fee in respect of non-Rp based fixed costs as at the Operation Date
- FF_L = Fixed Fee in respect of Rp based fixed costs as at the Operation Date
- FF_L = For any Year, the Consumer Price Index for the United States as reported by the United States Bureau of Statistics for September of the calendar year preceding Year m
- CPI =

The Consumer Price Index for the United States as reported by the United States Bureau of Statistics for September 1994

CPI_b = For any Year, the Consumer Price Index for 27 Capital cities in Indonesia as reported by the Biro Pusat Statistik – Indikator Ekonomi for September of the calendar year preceding Year m.

ICPI = The Consumer Price Index for 27 Capital cities in Indonesia as reported by the Biro Pusat Statistik – Indikator Ekonomi for September 1994.

ICPI_b =

10.4. Pro Rata Adjustment of Fixed Fee

The amount of the Fixed Fee set out in Article 10.3. has been calculated on an annual basis. Accordingly:

(a) The Fixed Fee for Year 1 shall be adjusted as follows:

$$FF_a = FF * \frac{A}{B}$$

FF_a = Adjusted Fixed Fee for Year 1

FF = FF_{Fm} + FF_{Lm} for Year 1 as determined under Article 10.3.

A = Number of days from but excluding the Operation Date to and including the succeeding 31 December; and

B = 365

B =

(b) The Fixed Fee for the Final Year shall be adjusted as follows:

$$FF_b = FF * \frac{A}{B}$$

FF_a = Adjusted Fixed Fee for Year 1

FF = FF_{Fm} + FF_{Lm} for Final Year determined under Article 10.3. but on an annual basis

A = Number of days from but excluding the start of the final Year to and including the date of termination of this Agreement; and

B = 365

B =

10.5. Change in Assumptions

The amount of the Mobilization Fee and the Fixed Fee is calculated on the assumption that the Power Station will comply with the specification contained in the Turnkey Construction Contract and that coal supplied as fuel for the Power Station will have the handling characteristics and composition specified in the heads of terms of the Coal Supply Contracts in existence at the date of this Agreement and in the Power Purchase Agreement. If either of these assumption proves to be substantially incorrect and, as a result, the costs of the Operator in providing the Operator Services are increased the Parties shall agree an equitable adjustment in the Mobilization Fee and/or the Fixed Fee to reflect such increase in costs. In the event that the Operator can demonstrate to the

reasonable satisfaction of the Owner that due to unforeseeable market conditions beyond the control of the Operator exceptional increases in staff salaries will be required after the Commercial Operation Date which cannot be matched by improvements in worker productivity or other remedies available to the Operator the Owner and Operator shall promptly meet to discuss the situation and shall use reasonable endeavors to minimize any detrimental effects on the Owner and the Operator. Save as otherwise expressly provided in this Agreement, the Mobilization Fee and the Fixed Fee shall not be capable of being varied for any reason.

11. INCENTIVISATION OF EMPLOYEES

As part of each Annual Budget and Operating Plan, the Operator will be required to propose to the Owner for its discretionary approval a performance incentive scheme for the Operator's employees for having improved the Operating Return for the relevant Budgetary Period. The Operator's best estimate of the cost of such incentivisation scheme will be included in each Annual Budget and Operating Plan as a Budgeted amount. At the end of the relevant Budgetary Period the Owner and the Operator shall review the actual Operating Return for that Budgetary Period as against that contained in the Annual Budget and Operating Plan and approved by the Owner as representing the target Operator Return for the purposes of such performance incentive scheme and the Owner shall determine what, if any, incentive payments shall be made to the Operator's employees under the performance incentive scheme. Any such incentive payments approved by the Owner will be a Recoverable Cost.

12. RECOVERABLE COSTS

12.1. Payable by Owner

In addition to the fees payable under Article 10, the Owner shall bear the cost of all amounts becoming due to the Operator or to third persons relating to Budgeted Amounts which have been properly incurred by the Operator in accordance with the provisions of this Agreement (Recoverable Costs). All Recoverable Costs incurred in US dollars will be paid in US dollar and will be paid in the manner specified in Article 12.2.

12.2. Payment Accounts

The Owner shall, prior to the Operation Date, open and maintain rupiah and US Dollar accounts (each a Payment Account) for the payment of all Recoverable Costs. By not later than the first business day of each Month of a Budgetary Period, the Owner shall deposit in the Payment Account an amount on account of the Budgeted Amounts estimated for that Month in the then current Accrual Budget and Operating Plan. Subject to Article 12.3, the amount of such deposits shall be that stated in the Annual Budget and Operating Plan as falling due for payment in rupiah or US dollars, as the case may be, in the relevant Month. The Payment Accounts shall be used solely for the receipt and disbursement of amounts on account of Recoverable Costs and accordingly the Owner and the Operator shall ensure that amounts paid into a Payment Account shall not be utilized other than in payment of the relevant Recoverable Costs. The documentation for the opening of the Payment Accounts will provide that the Operator may withdraw funds from the relevant Payment Account for the payment of Recoverable Costs without countersignature by the Owner, but that amount shall not be capable of being disbursed from that Payment Account, other than for the payment of Recoverable Costs, without the Owner's prior written approval.

12.3. Statements and Settlement

Within 14 day after the end of each Month or as varied by the Agreed Procedures, the Operator shall submit to the Owner a statement, accompanied by certified copy invoices and such other evidence as the Owner may reasonably require in order to verify any relevant amount in such statement, detailing the actual Recoverable Costs paid during the Month in question and stating the adjustment (if any) to be made by one party to the other against the deposit on account of Budgeted Amounts previously made by the Owner pursuant to Article 12.2 for that Month. Any amount to be paid by or to the Owner pursuant to such adjustment shall be added to, or, as the case may be, deducted from the next payment to be deposited by the Owner in the relevant Payment Account pursuant to Article 12.2. (or, if the amount payable to the Owner is greater than such next deposit, shall be deducted from the amount of successive deposits thereafter, provided that if the amount payable to the Owner is greater than the aggregate amount of all such deposits remaining to be paid by the Owner pursuant to this Agreement, the Operator shall forthwith pay to the Owner an amount equal to such excess) to the extent required in order to effect a correct monthly reconciliation of the deposit made by the Owner and actual Recoverable Costs paid by the Operator.

12.4. Further Adjustments

If the Owner reschedules or adjusts the Planned Outages pursuant to Articles 6.4. or 6.5. or requires to Article 6.7.(b) or an extension, improvement or modification to the Power Station pursuant to Article 9 or there is any material change in the actual level or regime of Dispatch of the Power Station or any other material change in circumstances and the effect of any thereof would mean that the Budgeted Amounts for the remainder of the relevant Budgetary Period will be increased or reduced, the Operator shall as soon as is reasonably practicable following the occurrence of any of the above matters submit proposals for any adjustment to the Budgeted Amounts in the Annual Budget and Operating Plan for the Owner's review and approval in accordance with articles 13.5. to 13.8. If

the Owner approves or objects to such proposals, the Budgeted Amounts shall be adjusted to take account of its decision and, where applicable, the amount of the advance payment in respect thereof shall be increased or reduced or deferred for such period as the Owner shall determine.

13. BUDGET AND OPERATING PLAN

13.1. Submission of Draft Budgets

The Operator shall submit to the Owner in respect of each Budgetary Period:

- (a) a long term budget for the next five Years commencing on the first day of relevant Budgetary period (the Long Term Plan); and
- (b) a detailed annual operating budget for the Budgetary Period together with an operating plan and maintenance programme for such Budgetary Period stating the Target Operating Return and plant performance and cost objective for the relevant Budgetary period (the Annual Budget and Operating Plan).

The Long Term Plan and the Annual Budget and Operating Plan shall be submitted (in the case of the first Budgetary Period as soon as reasonably practicable after the Mobilization Date and no later than 90 days prior to the then currently scheduled Operation Date and (in the case of subsequent Budgetary Periods) by not later than 90 days prior to the start of the relevant Budgetary Period. For information purpose only an indicative Long Term Plan for the first Budgetary Period and the four subsequent Years is attached hereto as Appendix 1.

13.2. Contents of Long Term Plan

Each Long Term Plan submitted pursuant to Article 13.1, shall:

- (a) be the Operator's bona fide best estimate of the cost of operating the Power Station and providing the Operator Service and the duration and cost of maintenance and Planned Outages during the period to which it relates;
- (b) be revised for each Budgetary Period to take account of the actual and anticipated operation and performance of the Power Station and provision of the Operator Services, and any changes required by the Owner or under the Power Purchase Agreement;
- (c) identify any material discrepancies against the last preceding Long Term Plan; and
- (d) contain revision to the Target Operating Return by reference to Operating Return for the preceding Budgetary Periods.

13.3. Contents of Annual Budget and Operating Plan

The Annual Budget and Operating Plan shall be the Operator's bona fide best estimate of the Budgeted Amounts, which will be incurred during the relevant Budgetary Period and shall itemise such Budgeted Amounts on a monthly basis, including estimates as to:

- (a) The necessary or proposed maintenance to be carried out on all parts of the Power Station, including all work which are likely to require or cause a Planned Outage or to reduce the output of the Power Station;
- (b) Consumables and spares purchased;
- (c) Overhaul Contracts to be entered into and all other sub-contracted services to be procured;
- (d) Any capital expenditure for an extension, improvement, or modification of the Power Station or any part pursuant to Article 9.2. or to the Agreed Procedures which the Operator proposes pursuant to Article 6.7.(b)
- (e) The Operator's proposals for availability of the Power Station for each Week during such Budgetary Period; and
- (f) The Operator's proposals for the values of FF_F and FF_L in the Fixed Fee payable for the relevant Budgetary Period; and
- (g) Such other reasonable information as the Owner shall have requested the Operator to provide.

13.4. Quarterly Reviews

The Operator shall review the Annual Budget and Operating Plan every three months from the commencement of each Budgetary Period and shall present a report on such review to the Owner together with its proposals for any changes to the Annual Budget and Operating Plan for the Owner's review and approval in accordance with Articles 13.5. to 13.8. (inclusive).

13.5. Approval Procedure

Upon receipt by the Owner of the first draft or the proposed Annual Budget and Operating Plan, the proposed Long Term Plan and any proposals to amend any plan, the Owner shall consider such plan or proposal to amend and may either approve or require modifications be made to it. The parties shall consult and shall use all reasonable endeavors to reach agreement on each proposed plan or amendment so as to obtain the approval thereof prior to the commencement of the period to which it relates. In determining the appropriate value of FFF and FFL in the Fixed Fee for the relevant Budgetary Period, the Operator shall be obliged to provide the Owner with evidence of the amount of its non-rupee based fixed costs and its rupee based fixed costs and its rupee based fixed costs but shall not be required to disclose its anticipated profit element in the Fixed Fee. If the Owner and the Operator cannot agree the appropriate values of FFF and FFL within the time limit specified in Article 13.6., either Party shall have the right to refer the matter to an expert pursuant to Article 19. In reaching his determination, the expert shall be entitled to review the Operator's profit element in the Fixed Fee on condition that it is not revealed to the Owner.

13.6. Owner's Modifications

If the Owner requires modifications to any of the plans or proposed amendments submitted to it under Article 13.5. or Article 12.4., the Owner shall notify the Operator in writing of the same and its reasons therefor. The Owner shall exercise its power to approve or require modifications to the proposed Plans or amendments reasonably and promptly and in any event within 30 days of delivery. The Parties shall consult and use all reasonable endeavors to reach agreement in respect of such modifications requested by the Owner within the next following 30 days. If, by the date which is 60 days after delivery thereof to the Owner, the Owner has not approved the relevant plan or proposed amendments or notified the Operator that the Lenders have withheld their approval pursuant to the financing Agreements, then the Owner shall forthwith notify the Operator of the Owner's final decision and the Operator shall comply with such decision in all respects.

13.7. Operator's Right to Object

If the Owner notifies the Operator of its final decision to withhold approval in accordance with Article 13.6. in respect of any plan or amendment then the Operator may submit its reasonable written objections to the Owner stating its reasons for disagreeing with the Owner and the nature of the consequences that the Operator predicts may flow from acting in accordance with the Owner's decision. If the Operator believes that the Owner's decision will cause it to contravene Good Utility Practice or any applicable Legal Requirements it may provide to the Owner notice of its intention to serve a notice of termination of this Agreement pursuant to Article 21.3.(j), such notice of termination to be served on a date falling not less than 30 days after the date of the first mentioned notice, and may serve such a notice of termination if the relevant dispute has not been resolved upon the expiry of such 30 days period; provided that the Owner shall have no liability to the Operator as a result of such termination unless such contravention of Good Utility Practice involved a safety related issue or would have caused the Operator to infringe any applicable Legal Requirements.

13.8. Consequences of Compliance

If the Operator has submitted a written objection in accordance with Article 13.7. and demonstrates that any liabilities which have arisen are a consequence of the Owner's decision then the Operator shall have no liability in respect of those consequences, provided always that the Operator has acted in accordance with Good Utility Practice and has used its reasonable endeavors to minimize such consequences and liabilities.

13.9. Budget Control

The Operator shall comply with the Annual Budget and Operating Plan for the applicable Budgetary Period and shall have no authority save as approved by the Owner in accordance with Articles 13.5. to 13.8. to undertake any transaction or incur any expenditure, whether as agent of the Owner or otherwise, which is not part of or which exceeds any Budgeted Amounts specified in such Annual Budget and Operating Plan provided that:

- (a) the Operator shall be entitled to incur expenditure which is not part of or which exceeds any Budgeted Amounts specified in the Annual and Operating Plan Budget if such expenditure is proper and necessary in the reasonable opinion of the Operator to avoid or minimize the impact of any emergency in accordance with Good Utility Practice, provided always that the Operator has complied with Article 7.1. or where the approval of the Owner to any modification to the Annual Budget and in time to avoid or minimize the impact of the emergency in accordance with Good Utility Practice provided always that the Operator minimizes such expenditure to the extent possible under the circumstances and in accordance with Good Utility Practice and provides a full report of the said emergency and the expenditure incurred in relation thereto to the Owner as soon as practicable thereafter;
- (b) the Operator shall be entitled, or be deemed to have been entitled, as appropriate, to incur expenditure in excess of the Annual Budget and Operating Plan if the Owner has approved in writing an adjustment to the Annual Budget and Operating Plan prior to the time expenditure is made or if it approves such adjustment within a reasonable period after the expenditure is incurred;
- (c) in respect of any Budgeted Amount contained in an Annual Budget and Operating Plan with a value in excess of the amount from time to time specified in the Agreed Procedures, the Operator shall before incurring such expenditure obtain the Owner's prior written approval;

- (d) in respect of any single item in any Budgeted Amount in an Annual Budget and Operating Plan, the Operator may without the prior written approval of the Owner exceed the amount allocated for the relevant Budgetary Period in respect of that single item in any Budgeted Amount, but shall not exceed 110 percent of the amount so allocated without the prior written approval of the Owner or as otherwise stipulated in the Agreed Procedures; provided further that the Operator shall not exceed the cumulative total budgeted expenditure for that Budgetary Period for all Budgeted Amounts in that Annual Budget and Operating Plan and
- (e) In respect of any monthly expenditure in an Annual Budget and Operating Plan the Operator shall be entitled to incur expenditure in excess of the Budgeted Amounts allocated for that Month if such expenditure, when added to the expenditure incurred in the preceding Months of that year, equals or is less than the cumulative total expenditure budgeted for in those Months unless the Operator has failed to procure the relevant items or services budgeted for in the relevant Months.

The routine administration and application of the budgetary procedures specified in this Article 13 shall be agreed between the parties as part of the Agreed Procedures.

14. INVOICING, PAYMENT, ACCOUNTING, AND AUDIT

14.1. Invoicing and Payment

- (a) On the dates. Specified in Schedule 1, the Operator shall submit to the Owner an invoice detailing the installment of the Mobilization Fee which is then payable pursuant to Article 10.2.;
- (b) At the end of each Month, the Operator shall submit to the Owner an invoice detailing the installment of the adjusted Fixed Fee which is then payable pursuant to Article 10.3.; and
- (c) At the end of each Month, the Operator shall submit to the Owner an itemised account in respect of the Recoverable Costs becoming due to Operator or third parties during such Month, accompanied by invoices and other information which Owner may reasonably require to satisfy itself that the amount of the Recoverable Costs claimed by the Operator is properly payable.

14.2. Taxes

All amounts due to the Operator hereunder, whether for the Operator Services or by way of reimbursement or otherwise shall be exclusive of any Value Added Tax, stamp duty, or other tax, or duty from time to time required by any Legal Requirements of any Governmental Instrumentality of the Republic of Indonesia to be charged thereon (other than taxes on or creditable against the overall net income of the Operator) which the Owner shall pay to the op in addition to the relevant amount, and all references to payments by the Owner shall be construed accordingly.

14.3. Means of Payment

The payment of all amounts due from one party to the other hereunder shall be by bank telegraphic transfer to such account as the payee shall from time to time nominate to the other party by notice in writing.

14.4. Late Payment

If any amount to be paid by either party hereunder is not received on or before the date for payment specified such party shall pay to the other party interest on the outstanding balance from the due date to the date on which payment is actually received at the Foreign Currency Interest Rate (as defined in the Power Purchase Agreement) for payments denominated in Rupiah. Time of payment shall be of the essence of this Agreement.

14.5. Set-off

Either party may deduct and set off against any amounts due or to become due to the other Party from it under or in connection with this Agreement, any amounts due from the other Party to it under or in connection with this Agreement.

15. INSURANCE

15.1. Mobilization Period

The Owner shall ensure that throughout the Mobilization Period the Construction Contractor or the Owner maintains the insurances required in respect of such period under the Power Purchase Agreement and that any and all employees, agents, subcontractors and

plant and equipment of the Operator are covered by such insurance (subject to the Owner's liability for deductibles) during their presence at the Site.

15.2. Operational Period

During the Operational Period, the Owner will obtain and maintain the policies of insurance described in Schedule 6 on the terms set forth therein and such other insurances as the Owner may from time to time determine to be necessary to comply with applicable legal Requirements and the provisions of the Project Documents relating to insurance (*Inurances*). The Owner shall, as soon as they become available, furnish the Operator with certificates of insurance evidencing the policies and the endorsements described in Schedule 6.

15.3. Alternative Cover

The cost of the Insurances shall be borne by the Owner; provided that if the Operator would be able to obtain the same level of cover as any of the insurances at a lower cost, the Owner may request the Operator to obtain and maintain such insurances (which will then be treated as forming part of the Insurances) and the Owner shall reimburse the Operator all premiums paid in respect of such insurances as a Recoverable Cost. The provisions of paragraphs 3.1 and 3.2 of Schedule 6 will apply to any such alternative insurances replacing references therein to Owner by Operator and vice versa.

15.4. Continuous Monitoring

The Operator shall monitor on a continuing basis the availability of new forms of insurance in relation to the risks required by the Owner to be insured against and shall report on significant alternations (whether adverse or favorable) to the availability and cost of such insurances.

15.5. Notice of Claims

The Operator shall promptly the Owner as soon as it becomes aware of any circumstances that could give rise to a claim under the Insurances. The Operator shall provide the Owner on request with such information as it may reasonably require to enable the Owner to make or process claims under the Insurances or to provide information concerning such Insurances to other persons as the Owner may direct.

15.6. Operator's Insurances

The Operator shall through the Term maintain at its own expense:

- (a) Employer's Liability/Workmen's Compensation Insurance as required by all applicable Legal Requirements for its employees;
- (b) Automobile Public Liability Insurance covering all vehicles owned or leased by the Operator in the performance of the Operator Services for not less than the minimum amount required by applicable Legal Requirements.

The Operator shall furnish copies of all relevant insurance policies and renewal certificates to the Owner upon request.

If the Operator fails to obtain any of the insurances referred to in this Article 15.6, the Owner shall, without prejudice to its other rights and remedies, have the right to procure such insurances at the Owner's expense and to recover such cost from the Operator.

16. GUARANTEE

The Operator shall procure that at all times during the continuance of this Agreement the performance of its obligations under this Agreement shall be guaranteed by its ultimate Holding Company and to that end the Operator shall procure that a guarantee in the form of Schedule 4 shall be executed by XYZ and be delivered to the Owner.

17. REPRESENTATION AND WARRANTIES

Each of the Parties represents and warrants to the other (and where appropriate the Operator represents and warrants to the Owner) that:

- (a) it is a corporation duly organized, validly existing and is current on all payments to maintain such existence under the laws of Indonesia;

- (b) it has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under the agreements to which it is or is to be a party;
- (c) in the case of the Operator, it will be duly qualified and licensed to do business in Indonesia at the Mobilization Date;
- (d) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, and each of the execution, delivery and performance by it of this Agreement has been duly authorized by all necessary action on its part, does not require any approval, except as has already been obtained, of its Board of Directors or any consent of or approval from any trustee, lessor, or holder of any indebtedness or other of its obligations, except for such as have been duly obtained, and does not contravene or constitute a default under the documents which establish or maintain its constitution or, to the best of its knowledge, any provision of applicable legal Requirements or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject the Power Station or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement; and it I in compliance with all applicable Legal Requirements and Governmental Authorizations (i) which govern its ability to perform its obligations under this Agreement, or (ii) the noncompliance with which would have a material adverse effect on its ability to perform its obligations under this Agreement;
- (e) neither the execution and delivery by it of this Agreement, nor the consummation by it of any of the transactions contemplated hereby, requires the consent or approval of the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of, any Governmental Instrumentality;
- (f) it has duly and validly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms;
- (g) the Operator has all the required skills and capacity necessary to perform, or procure the performance of, the Operator Services in a proper, timely and professional manner, utilizing sound engineering principles, project management procedures, supervisory procedures, all in accordance with the standards required by this Agreement;
- (h) the Operator has knowledge of all of the legal requirements and business practices that must be followed in performing the Operator Services and the Operator Services will be in conformity with such requirements and practices and in compliance with all Legal Requirements and applicable Governmental Authorizations; all engineering services to be provided as part of the Operator Services shall be provided by engineers qualified to perform such services;
- (i) it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement;
- (j) the Operator is able to furnish the plant, tools, materials, supplies, equipment, labor, design, operation, maintenance and repair services needed for the Power Station, I experienced in and competent to perform the Operator Service, contemplated by this Agreement, and, with effect from the Mobilization Date, the Operator will be qualified to perform the Operator Services in Indonesia and all Consents and Governmental Authorizations required for the performance of its obligations under this Agreement will have been obtained by it and will remain in full force and effect;
- (k) the Operator owns or has the right to use all the patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, permits or rights with respect to the foregoing (*intellectual property rights*) necessary to perform the Operator Services and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others, other than any intellectual property rights which have been granted or made available to the Operator by the Owner;
- (l) there is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority, arbitral tribunal or other body pending or, to the best of its knowledge, threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to result in material adverse effect on its obligation under this Agreement or on the validity or enforceability of this Agreement;
- (m) all equipment and materials incorporated in the Power Station by the Operator shall be new and free and clear of all security interest, other than those created by the Owner pursuant to the Financing Agreement;
- (n) the Operator Service shall be performed in accordance with this Agreement and Good Utility Practice and in a good and workmanlike manner and shall be free from defects;
- (o) installation of any and all material, supplies, and equipment shall be in strict accordance with manufacturers' requirements;
- (p) the Operator shall use all reasonable efforts to obtain commercial "repair or replace" warranties of at least one-year duration from each Overhaul Contractor or other subcontractor, which warranties shall be standard for the coal fired electric utility industry in all material respects and shall be written so as to survive all inspections, tests, and approvals by the Operator, the Owner, or PLN (the Operator's compliance with this warranty and covenant shall in no way limit or modify the Operator's other warranty obligations hereunder); and
- (q) the Operator has read and has had full opportunity to discuss with the Owner the provisions of the Project Documents which have been specifically disclosed and identified by the Owner to the Operator.

18. INDEMNIFICATION AND LIMITATION OF LIABILITIES

18.1. Employee and Third Party Liability

Subject to Articles 18.4. and 18.5., each of the Owner and the Operator (*the indemnifying Party*) shall indemnify, compensate, and hold harmless the other party (*the indemnified Party*) and its officers, directors, Affiliates, agents, employees, contractors, and subcontractors from and against any and all judgments, losses, claims, liabilities, costs, damages, and expenses (including reasonable legal fees) of whatever kind and nature (*Losses*) in respect of personal injury or death or property damage to any person employed directly or indirectly by the Indemnified Party its Affiliates or any of their respective subcontractors, or in respect of personal injury or death or caused by any act or omission of the Indemnifying Party or its officers, directors, Affiliates, agents, employees, contractors, or subcontractors, that arises out of or is in any manner connected with the performance of this Agreement to the extent such injury, death, or damage is attributable to the negligence or Wilful Misconduct of, or breach of this Agreement by, the indemnifying Party or its officers, directors, Affiliates, agents, employees, contractors or subcontractors. If the Indemnified Party is entitled to recover any such Losses under any of the Insurance or other insurance coverage maintained by it, the Indemnified Party shall make a claim against such insurances. For the avoidance of doubt, the Indemnifying Party's liability under this Article 18.1. shall be reduced by the amount recovered by the Indemnified Party under such insurances.

18.2. Non-compliance with Applicable Legal Requirements

The Operator shall indemnify, compensate, and hold the Owner harmless from any fines, penalties, and similar charges which may be attributed to or imposed or asserted against the Owner by reason of the breach by the Operator of this Agreement which results in the failure of either the Owner or Operator to comply fully with applicable Legal Requirements or the Owner Consents or the Operator Consents. The Operator shall also reimburse the Owner any and all legal and other expenses reasonably incurred by the Owner in connection with contesting the attribution, imposition, or assertion against the Owner of, or otherwise relating to, any such fines, penalties, or similar charges.

18.3. Breach

Subject to Article 18.4., the Operator shall indemnify, compensate, and hold the Owner harmless from and against any Losses which it may suffer or incur under any of the Project Documents or as a consequence of the termination of any thereof (including, without limitation, the loss of Capacity Payments under the Power Purchase Agreement) and which arises, whether directly or indirectly, as a result of the breach of this Agreement by the Operator; to the extent that the Owner has not contributed by act or omission to the Losses and that it shall take all reasonable steps to avoid or mitigate any such Losses.

18.4. Limitation of Liability of the Operator

The aggregate liability of the Operator:

- (a) under article 18.2. (other than in respect of any environmental Legal Requirement or otherwise where liability could also be established under Article 8.2.) and article 18.3. and in connection with any other Losses which the Owner may suffer or incur as a result of any breach by the Operator of its obligations under this Agreement, whether prior to or arising as a consequence of the termination of this Agreement and whether in respect of one or more claims (but excluding for these purposes any claims made under Articles 8.2. or 18.1. (other than in respect of damage to or destruction of property) or where the Losses result from the willful Misconduct of the Operator) shall not exceed in aggregate for any Budgetary Period an amount equal to the Fixed Fee (after indexation pursuant to Article 10.3 for the Budgetary Period in which such Losses were suffered or incurred);
- (b) under article 18.1. in respect of claims made by third parties shall not exceed in aggregate, for any Budgetary Period or, if different, the period of cover of the current Third Party Liability insurances, the aggregate amount of cover under such Third Party Liability insurances maintained by the Owner pursuant to Article 15.2. and the amount of any deductibles in respect thereof; and
- (c) under Article 18.1. (other than as set out in Article 18.4.(a)) or Article 8.2. or where the Losses result from the Wilful Misconduct of the Operator, shall be without limit.

18.5. Limitation of Liability of the Owner

The aggregate liability of the Owner:

- (a) under Article 18.1. in respect of claims made by third parties shall not exceed in aggregate, for any Budgetary Period or, if different, the period of cover of the current Third Party Liability insurances, the aggregate amount of cover under such Third Party Liability insurances maintained by the Owner pursuant to Article 15.2. and the amount of any deductibles. In respect thereof;

- (b) in connection with any other Losses which the Operator may suffer or incur as a result of the breach by the Owner of its obligations under this agreement, whether prior to or arising on a consequence of the termination of this Agreement, not exceed in aggregate an amount equal to the Fixed Fee (after indexation pursuant to Article 10.3.) for the Budgetary Period in which such Losses were suffered or incurred; and
- (c) under Article 8.2. or 18.1. (other than in respect of damage to or destruction of any property in which case liability shall not exceed in aggregate for any Budgetary period an amount equal to the Fixed Fee (after indexation pursuant to Article 10.3. for the Budgetary Period in which such Losses were suffered or incurred) or where the Losses were suffered or incurred)) or where the Losses result from the Wilful Misconduct of the Owner, shall be without limit.

18.6. Acknowledgement

Each party acknowledges and agrees that the other party holds the benefit of Articles 18.1. and 18.2. for itself and as a trustee and agent for its officers, directors, Affiliates, employees, agents, contractors, and subcontractors.

18.7. Enforcement

For the avoidance of doubt, nothing in this Article 18 shall prevent or restrict a Party enforcing any obligation (including suing for a debt) owed to it under this Agreement.

19. SETTLEMENT OF DISPUTES

19.1. Mutual Discussions

If any dispute or difference of any kind whatsoever (a *Dispute*) shall be arise between the parties in connection with, or arising out of, this Agreement, or the breach, termination or validity hereof, the parties shall attempt, for a period of 30 days after the receipt by one party of a notice from the other party of the existence of the Dispute, to settle such Dispute in the first instance by mutual discussions between the parties.

19.2. Referral to an Expert

19.2.1. If the Dispute cannot be settled by mutual discussion within the 30 days period provided in Article 19.1. and either (a) referral to an expert is specifically required by this Agreement or (b) the Parties so agree in writing, the Dispute shall be referred to an expert for determination.

19.2.2. The Party specified in the relevant provision as having the right (or either party if no single party is so specified) may give notice (*Notice of Intention to Refer*) to the other party of its intention to so refer the Dispute. The party giving that notice is referred to herein as the Applicant, and the party to whom such notice is given is referred to herein as the Respondent.

19.2.3. A notice of Intention to Refer shall include, inter alia:

- (a) a description of the Dispute;
- (b) the grounds on which the Applicant relies in seeking to have the Dispute determined in its favor;
- (c) all written material which the Applicant proposes to submit to the expert;

provided that this Article 19.2.3. shall not be construed so as to prevent the Applicant from using or producing further written material which comes into existence or comes to the Applicant's attention after the Notice of Intention to Refer is given, but in such event the Applicant shall give the Respondent prior written notice of the Applicant's intention to use or produce such material and the Respondent shall be allowed a reasonable time to respond thereto.

19.2.4. The Respondent shall, within 21 days after receipt of the Notice of Intention to Refer, give to the Applicant a notice (*Notice of Intention to Defend*) of its intention to defend which shall include, inter alia:

- (a) the grounds upon which the Respondent relies in seeking to have the Dispute determined in its favour, and
- (b) all written material that the Respondent propose to submit to the expert;

provided that this Article 19.2.4. shall not be construed so as to prevent the Respondent from using or producing further written material which comes into existence or comes to the Respondent's attention after the Notice of Intention to Defend is given, but in such event the Respondent shall give the Applicant prior written notice of the Respondent's intention to use or produce such material and the Applicant shall be allowed a reasonable time to respond thereto.

- 19.2.5. If within 14 days after the Applicant's receipt of a Notice of Intention to Defend, the parties have agreed on an expert and on the terms under which the Dispute shall be referred, the Dispute shall be so referred. In the event the parties are unable within such 14 days period to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either party may request the International Chamber of Commerce's International Centre for Expertise to appoint an expert, and the matters to be determined by such expert shall be those set out in the Notice of Intention to Refer and the Notice of Intention to Defend; provided that the expert shall not be a national of the jurisdiction of either party.
- 19.2.6. Within even days of the appointment of the expert, the expert shall designate a time and place for a hearing of the parties on Dispute, which time shall not be more than 21 days after the expert's appointment.
- 19.2.7. The parties shall not be entitled to apply for discovery of documents but shall be entitled to have access to other party's record and data in accordance with Article 22, save as otherwise provided in Article 13.5.
- 19.2.8. At the time nominated for the hearing, each party must appear before the expert and present its case. The parties may each be assisted in such hearing by advisors of their choosing.
- 19.2.9. The expert must render his decision on the Dispute as soon as possible after completion of the hearing and must forthwith advise the parties in writing of his determination and his reasons therefore. The decision rendered shall apportion the cost of the referral to the expert.
- 19.2.10. Any evidence given or statements made in the course of the hearing may not be used against a party in any other proceedings.
- 19.2.11. Any proceeding under this Article 19.2. shall not be required to follow the procedural laws related to arbitrations.
- 19.2.12. The decision of the expert shall be final and binding upon both parties upon the delivery to them of the expert's written determination, save in the event of fraud or manifest error.
- 19.2.13. If the expert does not render a decision within a period of 90 days of completion of the hearing or such longer or shorter period as the parties may agree in writing, either party may, upon giving notice to the other, terminate such appointment, and a new expert shall be appointed who shall resolve the Dispute in accordance with this Article 19.2. If the Dispute is not resolved by one or more experts within 12 months after receipt by the Respondent of the Notice of Intention to Refer, or enforcement of this Article 19.2. or of any decision under this Article 19.2. is denied for any reason, then either party may refer the Dispute for arbitration in accordance with Article 19.3.

19.3. Arbitration

- 19.3.1. if the Dispute cannot be settled within 30 days by mutual discussions as contemplated by Article 19.1, and referral to an expert is not required of or elected by the parties pursuant to Article 19.2.1, or if a party so requests in accordance with Article 19.2.13, the Dispute shall finally be settled by an arbitral tribunal (the *Tribunal*) under the UNCITRAL arbitration rules contained in resolution 31/98 adopted by the United Nations General Assembly on December 15, 1976 and entitled *Arbitration Rules of the United Nations Commission on International Trade Law* as in force at the time such arbitration commenced. Each party will appoint an arbitrator within thirty (30) Days of the date of a request to initiate arbitration who will then jointly appoint a third arbitrator within thirty (30) Days of the date of the appointment of the second arbitrator, to act as Chairman of the Tribunal. Arbitrators not appointed within the time limits set forth in the preceding sentence shall be appointed by the President of the International Chamber of Commerce. Both parties undertake to implement the arbitration award. The site of the arbitration shall be Stockholm, Sweden and the applicable procedural law of the arbitration shall be Swedish. The language of the arbitration shall be English. The parties expressly agree to waive the applicability of (a) Article 650.2 of the Indonesian Code of Civil Procedure so that the appointment of arbitrators shall not terminate as of the sixth month from the date(s) of their appointments and (b) the second sentence of Article 620.1 of the Indonesian Code of Civil Procedure so that the arbitration need not be completed within a specific time.
- 19.3.2. The award rendered shall apportion the costs of the arbitration. The Parties agree that the Tribunal shall be bound by strict rules of law.
- 19.3.3. The award rendered shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the Tribunal's decision.
- 19.3.4. The award rendered in any arbitration commenced hereunder shall be final and binding upon the parties and judgment thereon may be entered in any court having jurisdiction for its enforcement. The parties hereby renounce their right to appeal from the decision of the arbitral panel and agree that in accordance with Article 641 of the Indonesian Code of Civil Procedure neither party shall appeal to any court from the decision of the arbitral panel and accordingly the parties hereby waive the applicability of Articles 15 and 108 of Law No. 1 of 1950 and any other provision of Indonesian law and regulations which would otherwise give the right to appeal the decisions of the arbitral panel. In addition, the parties agree that neither party shall have any right to commence or maintain any suit or legal proceeding concerning a Dispute hereunder until the Dispute has been determined in accordance with the arbitration

procedure provided for herein and then only to enforce or facilitate the execution of the award rendered in such arbitration.

- 19.3.5. During the pendency of any expert proceeding or arbitration (i) the Operator shall continue to perform its obligations hereunder unless the Owner shall instruct the Operator to cease performance of any of the Operator Services, and the Owner shall, subject to Article 14.5, continue to pay all amounts due hereunder and not in dispute and (ii) neither party shall exercise any other remedies hereunder arising by virtue of the matters in dispute, provided in any event that the right to terminate this Agreement pursuant to Article 21 may be exercised notwithstanding pendency of any arbitration or expert proceeding.

20. FORCE MAJEURE

20.1. Events of Force Majeure

An *Event of Force Majeure* shall mean any circumstance not within the reasonable control, directly or indirectly, of the party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such party, (ii) in the case of claims by the Operator, such event materially adversely affects (in cost and/or time) the ability of the Operator to perform its obligations under this Agreement, and the Operator has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Operator's ability to perform its obligations under this Agreement and to mitigate the consequences thereof, (iii) such event is not the direct or indirect result of the failure of such party to perform any of its obligations under any of the project Documents, and (iv) such party has given the other party prompt notice describing such event, the effect thereof and the actions being taken in order to comply with this Article 20.1.

20.2. Instances of Force Majeure

Subject to the provisions of Articles 20.1 and 20.4, Events of Force Majeure shall include, but not be limited to:

- (i) acts of war or the public enemy whether war be declared or not;
- (ii) public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations;
- (iii) explosions, fires, earthquakes or other natural calamities and acts of God;
- (iv) national, regional or sector-wide strikes, lockouts or other industrial action provided that the Operator or any Overhaul Contractor or other subcontractor is not responsible for such strike, lockout or other industrial action;
- (v) any action or failure to act without justifiable cause by any Governmental Instrumentality of the Republic of Indonesia (including any action or failure to act without justifiable cause by any duly authorized agent of any such Governmental Instrumentality), including without limitation the denial of or delay without justifiable cause in the granting of any Owner Consent or Operator Consent upon due application therefore and diligent effort by applicant to obtain, the failure without justifiable cause of any such Owner Consent or Operator Consent once granted to remain in full force and effect or to be renewed on substantially similar terms, and any delay in the importation of equipment or supplies into Indonesia resulting from any action or failure to act without justifiable cause by any Governmental Instrumentality of the Republic of Indonesia;
- (vi) the adoption, enactment or application to the Owner, the Operator, the Construction Contractor, any Overhaul Contractor, any other subcontractor or the Power Station (or any part thereof) of any Legal Requirement of any Governmental Instrumentality of the Republic of Indonesia (i) relating to the environment other than those set forth or referred to in Appendix N of the Power Purchase Agreement or encompassed by those so set forth or referred to therein or (ii) not existing or not applicable to (as the case may be) the Owner, the Operator, such Overhaul Contractor or other subcontractor or the Power Station on the date of this Agreement, or any change in any such Legal Requirement or the application or interpretation thereof by a Governmental Instrumentality of the Republic Indonesia after the date of this Agreement, but not including any such Legal Requirement or interpretation or application thereof in existence at such date which by its terms became or will become effective and applicable to the Operator, such Contractor or the Project after such date;
- (vii) the occurrence of a Coal Supply Force Majeure Event; and
- (viii) the occurrence of an Event of Force Majeure under the Power Purchase Agreement.

20.3. Effect of Force Majeure

- (a) Except as provided in Article 20.4, either party shall be excused from performance and shall not be construed to be in default in respect of any obligation hereunder for so long as failure to perform such obligation shall be due to an Event of Force Majeure.
- (b) If an Event of Force Majeure shall have occurred, the parties shall consult with one another as soon as practicable concerning the effect of such delay upon the performance of the Operator Services and the ability of the Operator, any Overhaul

Contractor or their subcontractors to reschedule performance of the Operator Services to avoid or minimize disruption to availability, dispatch, repair or maintenance work resulting from the Event of Force Majeure.

- (c) The Operator acknowledges that if an Event of Force Majeure shall have occurred that causes material damage to the Power Station, the Owner shall be required under the Power Purchase Agreement to enter into good faith negotiations regarding an adjustment of amounts payable under the Power Purchases Agreement and the Owner shall be required to use its best efforts to obtain funding to complete or repair the Power Station. During such period, the Owner may suspend the performance of Operator Services (or reduce them to such level as shall be consistent with the then current levels of dispatch, the condition of the Power Station and Good Utility Practice) and the provisions of Article 7 shall apply. There shall be an equitable adjustment as appropriate upwards or downwards, as the case may be, to the Mobilization Fee or the Fixed Fee having regard to the increase or decrease in the cost to the Operator of performing the relevant Operator Services during such period of suspension and/or upon remobilization thereafter. In the event that the Owner and the Operator cannot agree the quantum of the equitable adjustment to the fees, that matter shall be referred to an expert pursuant to Article 19.
- (d) During the continuance of an Event of Force Majeure and except as explicitly set out herein the Owner's obligation to make payments to Operator shall be limited to the extent that the Owner and the Operator are capable of performing their respective obligations. There shall be an equitable adjustment to the fees payable to the Operator in the event that the Operator is not able to perform all of the Operator Services. If the Owner and the Operator cannot agree the quantum of the equitable adjustment to the fees, the matter shall be referred to an expert pursuant to Article 19. Notwithstanding the occurrence of an Event of Force Majeure, if the Owner is entitled to claim payments for Net Dependable Capacity from PLN under the Power Purchase Agreement, the Operator shall be entitled to continue to receive its remuneration hereunder.

20.4. Certain Delays Not Excused

Notwithstanding that an Event of Force Majeure otherwise exists, the provisions of this Article 20 shall not excuse:

- (a) late payment of money;
- (b) late delivery of equipment of materials caused by negligent acts or omissions on the part of the Owner, the Operator, Overhaul Contractors, or any other subcontractor except any such late delivery otherwise arising from an Event of Force Majeure shall be excused if it arose from a negligent act or commission of an Overhaul Contractor or a subcontractor with a reasonable and prudent business person would not have anticipated from a qualified Overhaul Contractor or subcontractor;
- (c) late performance by the Operator, Overhaul Contractors or any other subcontractors caused by the Operator's or the Overhaul Contractors' or such other subcontractors' failure to engage qualified subcontractors and suppliers or to hire an adequate number of personnel or labor.

20.5. Coal Supply Force Majeure

In the case of Coal Supply Force Majeure Event, the Operator shall take all reasonable alternative measures to avoid the effect of such event and to mitigate the consequences thereof as provided in clause (ii) of the definition of Coal Supply Force Majeure Event set out in the Power Purchase Agreement and, to that end, the Operator shall take all such action. On behalf of the Owner as shall be necessary or desirable in order to ensure that the Owner complies with the provisions of Article 3 of Appendix S to the Power Purchase Agreement.

20.6. Notice of Force Majeure Procedure

As soon as possible following the date of commencement of any Event of Force Majeure, if either party desires to invoke such Event of Force Majeure as a cause for delay in the performance of any obligation (other than the payment of money) hereunder, it shall advise the other party in writing of such date and the nature and expected duration of such Event of Force Majeure. As soon as possible and in any event within 24 hours following the termination of such Event of Force Majeure, the party having invoked such Event of Force Majeure as a cause for such delay shall submit to the other party reasonable proof of the nature of such delay and its effect upon the time of performance. The parties:

- (a) shall make all reasonable efforts to prevent an reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure including recourse to alternate acceptable sources of services, equipment and materials and construction equipment; and
- (b) shall use their best efforts to ensure resumption of normal performance of this Agreement after termination of any Event of Force Majeure and shall perform their obligations to the maximum extent practicable agreed between the parties.

21. TERMINATION AND SUSPENSION

21.1. Expiry

Unless previously terminated, this Agreement shall terminate on the date which falls thirty years after the Commercial Operation Date.

21.2. Options to Terminate

Either party may terminate this Agreement with or without cause or require the renegotiation of its terms by giving the other party at least six months' prior written notice thereof, such notice to be given so as to expire on the fifteenth, twentieth and twenty-fifth anniversaries of the Operation Date. Within 30 days of the date (if any) specified for the termination of this Agreement pursuant to this Article 21.2, the Operator shall be entitled to receive from the Owner any and all sums otherwise due and payable hereunder on account of the performance of Operator Services up to and including the date of such termination.

21.3. Operator's Right to Terminate

The Operator may terminate this Agreement by giving not less than 30 days' prior written notice to the Owner if any of the following events has occurred and is continuing:

- (a) the Owner, as part of a scheme of arrangement or composition with its creditors, makes any assignment for the benefit of its creditors generally which is not reversed within 90 days of a written notice from the Operator requesting the Owner to effect a reversal thereof;
- (b) a receiver or similar officer is appointed or court proceedings are issued for such an appointment to be made in respect of all or any material part of the Owner's assets and such appointee or the Owner does not provide satisfactory security for the fees payable to the Operator hereunder within 20 days after receipt of a written notice from the Operator requesting such security;
- (c) an effective order is made (and not set aside or stayed within 60 days), or an effective resolution is passed, for the liquidation, winding up or dissolution of the Owner or an administration order is made (and not set aside or stayed within 60 days) against the Owner and the Operator does not receive satisfactory security for the fees payable to the Operator hereunder within 20 days after receipt of a written notice to the liquidator or similar officer appointed requesting such security;
- (d) the Owner ceases for reason not caused by the act or omission of the Operator to hold or maintain the Owner Consents or any of them terminates and, in any such case, the relevant cessation or termination would prevent the lawful operation of the Power Station (in each case after all appeals allowable by applicable Legal Requirements have been exhausted or the time for filing such appeals has expired);
- (e) the Power Purchase Agreement has terminated;
- (f) an Event of Force Majeure continues for a period in excess of 12 months and the Owner shall have suspended the payment of the Mobilization Fee, Fixed Fees, Recoverable Costs or other payments payable to the Operator under this Agreement;
- (g) the Owner has failed to pay the Operator any sum properly due (provided that no sum shall be properly due for so long as it is the subject of a bona fide dispute between the parties), provided 30 days have elapsed since the due date for payment;
- (h) the Owner commits any other material breach of this Agreement and such breach continues for a period of not less than 45 days and continues for a further period of 21 days after a notice is served by the Operator requiring the Owner to remedy such breach;
- (i) any of the representations and warranties given by the Owner under Article 17 shall prove to be, or to have been, incorrect to a material extent when made, or would be incorrect to a material extent if repeated at the relevant time by reference to the circumstances the exiting (other than the representations contained in paragraph (i) and (l) thereof); or
- (j) the Operator has served a notice of its intention to terminate this Agreement pursuant to Article 13.7., not less than 30 days have expired since the date of receipt by the Owner of such notice, and the dispute entitling the Operator to serve such notice of intention to terminate has not been resolved.

21.4. Owner's Right to Terminate

The Owner may terminate this Agreement by giving not less than 30 days' prior written notice to the Operator if any of the following events has occurred and is continuing:

- (a) the Operator commit any material breach of this Agreement and such breach continues for a period of not less than 45 days and continues for a further period of 21 days (or such shorter time period as may be necessary to avoid the imposition of penalties or the loss. Of any of the Owner Consents or the Operator Consents) after a notice is served by the Owner requiring the Operator to remedy such breach; such material breach shall include, without limitation, the Operator's operating the Power Station in material violation of any applicable Legal Requirements, any Owner Consents, Operator Consents or Good Utility Practice;
- (b) the willful and unexcused failure by the Operator to operate any operable Unit in accordance with the provisions of this Agreement for more than seven consecutive days without the written consent of PLN after the Taking Over of that Unit and

the failure of the Operator to resume operation of that Unit within seven days after receipt of notice from the Owner requiring such resumption;

- (c) the Operator or XYZ amalgamates, merges, or consolidates with any other person without the prior consent of the Owners (such consent not to be unreasonably withheld or delayed) and such amalgamation, merger, or consolidation materially and adversely affects the interests of the Owner and is not reversed within 45 days after receipt of a written notice from the Owner requesting the Operator to effect a reversal thereof;
- (d) any change in the ownership or control of the Operator or XYZ occurs or XYZ's shareholding in the Owner at any time is less than 15 percent of the issued shares of the Owner, in each case without the prior consent of the Owner (such consent not to be unreasonably withheld or delayed in the case of the transfer of ownership or control of the Operator to XYZ or a Subsidiary of XYZ) and such change or diminution in interest materially and adversely affects the interest of the Owner and is not reversed within 45 days of a written notice from the Owner requesting the Operator to effect a reversal thereof;
- (e) the Power Purchase Agreement has terminated;
- (f) if for any reason the XYZ Guarantee fails or ceases to constitute legal, valid, and binding obligations of XYZ enforceable in accordance with its terms;
- (g) the Operator or XYZ as part of a scheme of arrangement or composition with its creditors makes any assignment for the benefit of its creditors generally which is not reversed within 45 days of a written notice from the Owner requesting the Operator to effect a reversal thereof;
- (h) a receiver or similar officer is appointed or court proceedings are issued for such an appointment to be made in respect of all or any material part of the Operator's or XYZ's assets and such appointee, the Operator or XYZ do not provide satisfactory security for the obligations of the Operator hereunder within 20 days after receipt of a written notice from the Owner requesting such security;
- (i) an effective order is made or an effective resolution is passed for the liquidation, winding-up or dissolution of the Operator or of XYZ or an administration order is made against the Operator or XYZ and the Owner do not receive satisfactory security for the obligations of the Operator hereunder within 20 days after receipt of a written notice to the liquidator or similar officer requesting such security;
- (j) if any Event of Force Majeure continues for a period in excess of 12 months; or
- (k) any of the representations and warranties set out in Article 17 shall prove to be, or to have been, incorrect to a material extent when made, or would be incorrect to a material extent if repeated on the relevant date by reference to the circumstances then existing; or
- (l) the Owner has not received the Transfer Agreement duly executed by the Operator and the Transferee by the Mobilization Date.

21.5. Payments on Termination

Upon termination of this Agreement:

- (a) the Owner shall, subject to terms of this Agreement, pay to the Operator on the date of termination:
 - (i) any Mobilization Fee or Fixed Fee payable in respect of Operator Services provided up to and including such date of termination but unpaid;
 - (ii) all Recoverable Costs actually incurred by the Operator up to and including the date of such termination;
 - (iii) all other amounts then payable to the Owner to the Operator under this Agreement, including without limitation, pursuant to Article 18, and
 - (iv) all costs and expenses reasonably incurred as a result of the termination of this Agreement which would not have been incurred but for such termination, and subject to the Operator taking all reasonable steps to minimize such costs; and
- (b) the Operator shall, subject to terms of this Agreement, pay to the Owner on the date of termination all amounts then payable by the Operator under this Agreement, including without limitation, pursuant to Article 18.

The provisions of this Article 21.5. shall survive termination of this Agreement and shall be without prejudice to the rights of either party to claim damages as a result of any breach by the other party of its obligation under this Agreement, whether prior to or arising out of the termination of this Agreement.

21.6. Continuing Operator Services

If on termination of this Agreement (other than pursuant to Articles 21.3 or 21.4, where the reason for such termination is the termination of the Power Purchase Agreement) the Owner has not appointed another person to provide substantially the same services as the Operator services, the Operator shall if so required by the Owner continue to provide those Operator Services required to enable the Owner to fulfill its immediate obligations under the Power Purchase Agreement subject to the terms and conditions of this Agreement, until the expiry of a further period of 90 days and subject to proper payment for those Operator Services during such period in accordance with the terms of this not be required to enter into any new third party contractual obligations in relation to such continued provision of the Operator Services (other than to the extent required under Article 7.1 or otherwise to rectify Breakdowns or conduct Planned Outages) and shall be entitled to terminate any such obligation which cannot lawfully be assigned by the Operator to the Owner (which shall indemnify the Operator in respect of all liabilities under any contract so assigned arising after the date of assignment).

21.7. Co-operation with Replacement Operator

During the six months prior to, and upon, termination of this Agreement the Operator shall fully co-operate with the Owner in the transfer of the performance of the Operator Services to, and the training of, a replacement operator and shall provide access to the Power Station for the representatives of any potential replacement operator. The Operator shall assign to the replacement operator at the Owner's request all contracts including Overhaul Contracts and other subcontracts which it has entered into with third parties in connection with the Operator Services which provide for assignment or where the other party consents to such assignment. Furthermore, the Operator shall provide the Owner or such replacement operator with the right to continue to use any and all patented and/or proprietary information a. may be reasonably necessary for the safe and proper operation and maintenance of the Power Station. Except where such termination occurred pursuant to Article 21.4, the Owner shall reimburse the Operator for services provided under this Article 21.7.

21.8. Cessation of Occupation

On termination of its appointment hereunder, the Operator shall (save as provided in Articles 21.6 and 21.7) cease forthwith to occupy the Power Station and the Site, shall deliver up the Power Station and the Site in good and substantial repair and all stocks of spares and consumables in as good a condition as may reasonably be expected, subject in each to such fair wear and tear as may reasonably be expected, subject in each case to such fair wear and tear as reflects the actual level of operation of the Power Station (on the assumption that the Operator has fully complied with its obligation under this Agreement with respect to the provision of Operator Services) and shall deliver to the Owner all other property in the possession of the Operator including:

- (a) all documents, books, records and accounts of the Owner;
- (b) all tools, equipment, computer software, data storage and other facilities; and
- (c) all moneys held by the Operator as agent for or to the order of or otherwise on behalf of the Owner.

In addition, any intellectual property rights granted to the Operator by the Owner for the performance of the Operator Services shall automatically terminate.

21.9. Personnel

Upon termination of this Agreement the Operator shall endeavor to comply with such reasonable requests as to the retention of Key Personnel and other personnel as the Owner may make for the purpose of ensuring to the fullest extent possible in the circumstances continuity of personnel in the provision of Operator Services by such replacement operator as the Owner may appoint.

21.10. Suspension

If the Owner ceases for any reason (not caused by the act or omission of the Operator) to hold or maintain any of the Owner Consents, the cessation of which would prevent the lawful operation of the Power Station then the Operator shall be entitled to suspend the relevant part of the Operator Services. However, if the Operator is requested to continue all or any of the Operator Services while the Owner exhausts all appeals allowable by Legal Requirements or while the time for filling the same elapses the Operator shall do so subject to obtaining such confirmations as the Operator shall in its sole discretion require that so to continue to provide the relevant Operator Services is not unlawful and provided that (if the Operator shall so continue during such time) the Owner shall indemnify the Operator its employees, servants and agents against any and all losses, damages, claims and expenses arising out of such continuation of all or part of the Operator Services during the relevant period, such indemnity to be full and without limitation as to amount.

22. CONFIDENTIALITY

22.1. Existing Data and Information

All data and information in the ownership of the Owner prior to the data hereof or obtained at the expense of the Owner under this Agreement (*Owner Data and Information*) may, subject to Article 22.3, be used by the Operator exclusively for the purposes of performing the Operator Services.

22.2. Access to Owner Data and Information

The owner shall, subject to existing obligations of confidentiality binding the Owner:

- (a) allow the Operator access to all Owner Data and Information in the possession of the Owner as the Operator may require for the purposes of performing its obligations hereunder; and
- (b) make available to the Operator copies of such Owner Data and Information upon request.

22.3. Confidentiality of Owner Data and Information

The Operator shall (and shall procure that Overhaul Contractors and its other agents, subcontractors and employees shall) hold Owner Data and Information confidential and shall not divulge it in any way to any third party, without prior written approval of the Owner except:

- (a) to any Affiliate or sub-contractor of the Owner or to PLN or the Construction Contractor for the purpose only of enabling the Owner to perform its obligations under the Project Documents;
- (b) to any actual or potential assignee of the Owner's rights and obligations (or any of them) hereunder (including without limitation actual or potential Lenders).
- (c) to any outside professional consultant engaged by the Owner and acting in that capacity for the purposes only of this Agreement;
- (d) for the purposes of dispute resolution by an expert or by arbitration pursuant to Article 19, or (to the extent that the subject matter of the dispute also gives rise to arbitration or dispute resolution by an expert under the terms of the Power Purchase Agreement) pursuant to the Power Purchase Agreement;
- (e) to the extent required by any Legal Requirements or any regulatory body having similar powers or any relevant stock Exchange; or
- (f) to the extent required by the Lenders or other parties according to the Financing Agreement.

22.4. Exclusion

The provisions of Article 22.5. shall not (subject to existing obligations of confidentiality binding the Operator) extend to Operator Data and Information which the Owner can show:

- (a) was at the time of receipt in the public domain or which subsequently become apart of the public domain other than by any breach of the Owner hereunder; or
- (b) was lawfully acquired in its capacity as Owner from third parties who had full rights to disclose it.

22.5. Survival

In the event of termination of this Agreement the Operator and the Owner shall nevertheless remain bound by the provisions of this Article 22.

23. OPERATOR AN INDEPENDENT CONTRACTOR

The Operator shall perform and execute the provisions of this Agreement as independent contractor to the Owner and shall not be an agent or employee of the Owner except as expressly provided herein.

24. SUBSTITUTED ENTITY OR DIRECT AGREEMENT

The Operator agrees that if so requested by the Lenders after a default by the Owner under the Financing Agreements has occurred and is continuing the Operator will enter into a direct agreement with the Lenders (or a company incorporated by them for the purpose) on substantially the same terms, mutatis mutandis, as this Agreement. The Operator further agrees to afford the Lenders a right to remedy any breach by the Owner of its obligations under this Agreement prior to issuing any notice to terminate this Agreement pursuant to Article 21.3.

25. NOTICES

Any notice or other communication required to be given pursuant to this Agreement shall be in writing and may be given by delivering the same by hand at, or by sending the same by prepaid registered mail or courier or by facsimile to, the relevant address set out below or such other address, as either party may notify to other Party from time to time. Any such notice given as aforesaid shall be deemed to have been given or received at the time of delivery (if delivered by hand or sent by courier), 7 days after the date of posting if sent by mail, 3 days after the date of dispatch if sent by courier, or on the first working day following the day of transmission (if sent by facsimile). References to mail shall in the case of communications sent from one country to another be deemed to be references to airmail.

OPERATOR

For the attention of: Company Secretary

XYZ
53 New Broad Street
London EC2M 1JJ
England

OWNER

For the attention of:

ABC
Mustika Center lantai 1
Jalan Gatot Subroto Kav. 74-74,
Jakarta 12870
Indonesia

For the attention of: President Director
Facsimile: (62 21) 8306794

26. LANGUAGE

The language of this Agreement, contract documents, information, and correspondence, of the negotiation of any matters to be decided hereunder and for all operational and maintenance purposes shall be English.

27. VALIDITY AND WAIVERS

27.1. Severability

If any provision contained in this Agreement is or becomes ineffective or invalid or is held to be in effective or invalid by a competent authority or court or tribunal having final jurisdiction thereon, all other provisions of this Agreement shall remain in full force and effect and there shall be substituted for the said provision such valid and effective provisions as have an economic effect as similar as possible to said provision.

27.2. Waivers

The failure of the parties to enforce at any time any of the provisions of this Agreement, or any rights in respect thereof, shall not in any way affect the validity of this Agreement or the obligations or liabilities of the parties hereunder. The exercise by one party of any of its rights hereunder shall not preclude or prejudice the other party from exercising its rights under this Agreement.

28. AMENDMENTS

28.1. In Writing

No amendment or variation of this Agreement shall be effective unless the same shall have been expressed in writing and duly executed by the parties.

28.2. Changes in Documentation

If any of the documents or indices referred to in this Agreement are unavailable or cease publication or if any of the reference data used to compile any such indices shall change, the parties shall negotiate in good faith to agree alternative source documents or indices which as nearly as practicable achieve the same result as the source documents or indices, and in the absence of agreement, the matter will be referred to an expert for resolution in accordance with Article 19; provided however that in the case of any source documents or indices which are also referred to in the Power Purchase Agreement, the alternative source documents or indices pursuant to the PPA shall be deemed to be the alternative source documents or indices for purposes of this Agreement.

29. ENTIRE AGREEMENT

Each party hereby confirms that:

- (a) this Agreement sets out the entire agreement and understanding between the parties in relation to the operation and maintenance of the Power Station and supersedes all previous agreements, arrangements, and understandings between them with regard to such operation and maintenance; and that
- (b) neither party is entering into this Agreement or any of the arrangements contemplated hereby in reliance upon any representation or warranty not expressly set out herein.

30. ASSIGNMENT

30.1. Prohibition

Except as set out in Articles 30.2. and 30.3., this Agreement may not be assigned by either party without the prior written consent of the other party.

30.2. By owner

The Owner may without the Operator's consent assign its rights under this Agreement to:

- (a) the Lenders by way of security for its obligations to the Lenders in relation to the financing of the Power Station;
- (b) to PLN, if PLN exercise its option or complies with its obligation to acquire the Owner's interest in the Power Station and all related Project Documents under the Power Purchase Agreement.

The Operator agrees to execute a consent to any such assignment and such other documents as may reasonably be requested by the Owner, the Lenders or, as the case may be, PLN in connection with such assignment; provided that in no circumstances will the Operator incur any greater liability hereunder as a result of such assignment.

30.3. By Operator

The Operator shall be entitled to assign its rights and transfer its obligations under this Agreement to an Affiliate of the Operator subject to:

- (a) the Operator's proposal being sent to the Owner with all relevant information regarding the Affiliate; and
- (b) the consent in writing of the Owner (such consent not to be unreasonably withheld and the Parties agree that it will be reasonable to withhold such consent if the liabilities of the Owner hereunder are increased as a result of such assignment) and (if required under any project Document) the Lenders; provided that the consent of the Owner and the Lenders shall not be required for the assignment and transfer by the Operator of all of its rights and obligations hereunder to the Transferee under the Transfer Agreement prior to the Mobilization Date; and
- (c) such Affiliate entering into an agreement with the Owner on substantially the same terms as are set out herein (including this Article 30.3) for the purpose of assuming the rights and obligations of the Operator to be assigned to such Affiliate; and

- (d) the Operator providing such guarantees of the obligations of the relevant Affiliate as the Owner and the Lenders may require (which, for the avoidance of doubt, may be upon terms more onerous or as to greater financial amounts than the XYZ Guarantee) having regard to the identity of that Affiliate.

31. EXPENSES

Each party shall pay its own costs and expenses (including, without limitation, the fees, and expenses of its agents, representatives, advisors, counsel, and accountants) necessary for the negotiation, preparation, execution, delivery, performance of, and compliance with this Agreement.

32. FURTHER ACTS AND ASSURANCE

Each of the parties agrees to execute and deliver all such further instruments, and to do and perform all such further acts and things, as shall be necessary or convenient to carry out the provisions of this Agreement.

33. CONFLICTS OF INTEREST; COMMISSION PAYMENTS

The Operator represents and agrees that no person or entity has been retained or employed to solicit its provision of the Operator Services upon any arrangement or understanding for the payment of any commission, fee, or other compensation of any kind, except for payments to bonafide employees of the Operator or bona fide commercial agents maintained by the Operator for the purpose of securing business. The Operator further represents that neither it nor any of its officers, directors, employees, or agents have made, received, provided, or offered, and the Operator agrees that neither it nor any such other entity or person shall make, receive, provide, or offer, any gift, entertainment, payment, loan, or other consideration for the purpose of influencing the procurement of any particular item required for the provision of Operator Service, except for any payments permitted by the previous sentence and except for incentive payments to suppliers and subcontractors in connection with the performance of their work.

34. NO PARTNERSHIP

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either party, or to create any duty, standard of care or liability to any person or entity not a part hereto. Each party shall be liable individually and severally for its own obligations under this Agreement.

35. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the Republic of Indonesia. The parties hereby waive the provisions of Articles 1266 and 1267 of the Indonesian Civil Code with respect to this Agreement to the extent that such waiver is necessary to terminate this Agreement without judicial Agreement.

In anticipation of the completion of the formation of ABC (i.e. approval of the Ministry of Justice of the Deed of Establishment of ABC and its publication in the Official Gazette), this Agreement has also been approved and executed by PT Bumipertiwi Tatapradipta, Siemen Aktiengesellschaft and XYZ Overseas Holdings Limited (collectively, the ABC Shareholders).

After completion of formation of ABC, the ABC Shareholders shall at their own cost assign this Agreement to ABC and cause ABC to assume all the obligations of the Owner hereunder. The Operator hereby consents to such assignment and assumption and agrees that upon the execution by the ABC Shareholders and ABC of the relevant assignment and assumption agreement, the ABC Shareholders shall be released from all obligations hereunder and all such obligations shall be and remain the obligations of ABC.

It is understood and agreed that each of the PT Jawa Power Shareholders is jointly and severally liable for the obligations of the Owner hereunder unless and until the Deed of Establishment of PT Jawa Power shall have been approved by the Minister of Justice of the Republic of Indonesia and the relevant assignment and assumption agreement shall have been executed by the PT Jawa Power Shareholders and PT Jawa Power.

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first above written.



SCHEDULE 1

Mobilization Events

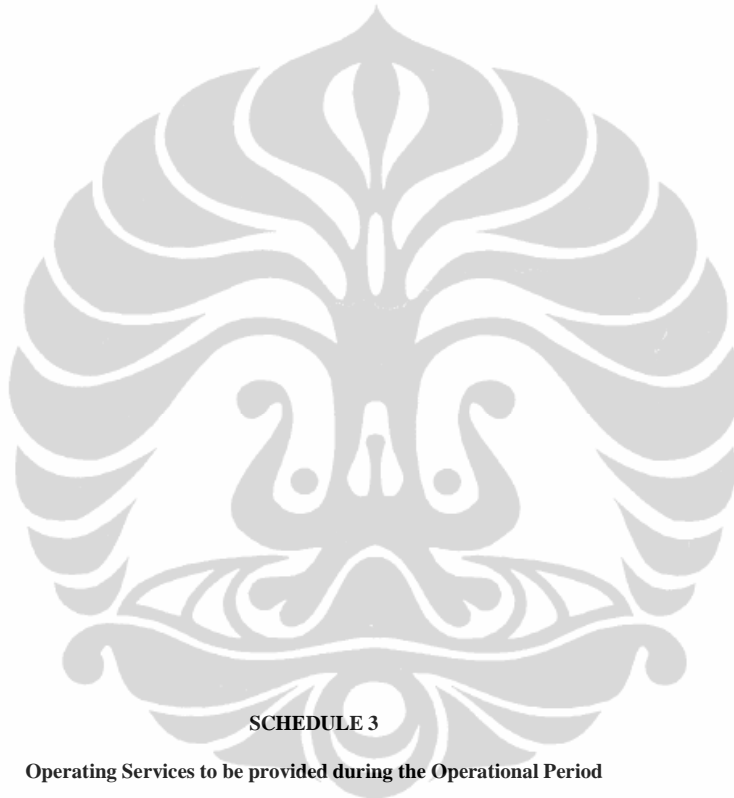
SCHEDULE 2

Mobilization Services

During the Mobilization Period the Operator shall:

- (a) recruit in a timely fashion all necessary qualified and experienced personnel (including all Key Personnel) for the mobilization, operation and maintenance of the Power Station to enable the Operator to perform the Operator Services in accordance with this Agreement;
- (b)
 - (i) provide all proper and adequate training in all relevant disciplines and activities for all personnel including internal training programmes and, as appropriate, externally, at manufacturers' works and at other location;
 - (ii) make available such complement of personnel to be agreed with the Construction Contractor for training by the Construction Contractor in the operation and maintenance of the Power Station;
 - (iii) develop appropriate recruitment standards and procedures to ensure that only people capable of completing the training programme are employed by either the Operator or any subcontractor who will be engaged to provide locally sourced personnel;
 - (iv) carry out an ongoing review of the level of competence of all staff during training and replace unsuitable personnel;
 - (v) make all necessary administrative and other arrangements and provide for training personnel (including safety training, first aid training and fire fighting training);
- (c) participate in any relevant training, inspections, and testing occurring during the Mobilization Period, including testing, start-up, trial operation and performance operation of individual items of equipment, Commissioning, and Tests on Completion of each Unit, the Common Facilities and the entire Power Station;
- (d) prepare and submit to the Owner for approval an optimum level for an inventory of spares, tools, lifting tackle, and other equipment level for an inventory of spares, tools, lifting tackle, and other equipment required for the operation and maintenance of the Power Station and procure such items in accordance with the terms of this Agreement;
- (e) assist the Owner in recommending and determining the definitive list of Initial Spares and the Initial Consumables;
- (f) prepare and submit to the Owner formats for all plans and reports as required under this Agreement during the Operational Period, including the Annual Budget and Operating Plan, and the Long Term Plan;
- (g) obtain or initiate all registers, documentation, or record required by Legal Requirements or Good Utility Practice in connection with the operation and maintenance of Power Station;
- (h) review and comment on the draft operation and maintenance manuals as provided under the Turnkey Construction Contract and prepare the Agreed Procedure consisting of procedures, manuals, and instructions in respect of operating; maintenance; safety; administration; incident reporting; security; performance monitoring; fire fighting; first aid; and emergencies;
- (i) supply, install, test, and commission (including the input of all relevant data), to the satisfaction of the Owner, a computer system for personnel administration, office automation, operation, and maintenance management and inventory and stores control;
- (j) define and implement site security proposals;
- (k) liaise with PLN to discuss metering practices, procedures for dispatch of the Power Station by PLN, the procedure for establishing the initial Net Dependable Capacity of the Power Station and intertie/synchronizing circuit breaker procedures, including the preparation of test schedules and the delivery thereof to PLN within the time limits prescribed in Article 7.4.(a) of the Power Purchase Agreement and the mutual development with PLN of rejection test schedules and procedures in accordance with Article 7.4.(b), and Appendix J of the Power Purchase Agreement;
- (l) make all necessary application for, and take all such other steps to secure all Operator Consents;

- (m) prepare invoices for the Net Electrical Output (as defined in the Power Purchase Agreement) of each Unit during the Mobilization Period relating to that Unit;
- (n) assist the Owner to verify invoices for fuel and other consumables consumed during the Mobilization Period;
- (o) recommend and agree with the Owner the maintenance and operations policy to be adopted for the Power Station, including the use of subcontract and outside maintenance and repair facilities;
- (p) implement an agreed system of plant identification and numbering;
- (q) develop operation, administration, maintenance, security, safety, and performance monitoring procedures and submit these to approval by the Owner; and
- (r) perform all necessary administrative services in connection with the above.



SCHEDULE 3

Operating Services to be provided during the Operational Period

1. Operational Work

The Operator shall:

- (a) operate the Power Station in accordance with Article 4 of this Agreement;
- (b) carry out any agreement, availability, system, or other tests as required by the Owner, including without limitation, NDC Tests at the times required under the testing regime contained in Appendix J of the Power Purchase Agreement;
- (c) manage the purchase of coal and sample and analyze each load of coal as it is received and manage the coal stocks, blending, and other coal handling activities and manage other consumable, including the review and verification of coal invoices and provide the coal suppliers with notice of use and projections of future use;
- (d) staff the main control room of the Power Station with the requisite number of one or more qualified operators at all times;
- (e) maintain records of operational notices; maintain records of the Power Station's operating performance data including operating hours and adjustments to expired hours. And expired life, all measurements and records which may be required under the terms of applicable legal Requirements, the Owner's Licence, the Owner Consents, the Operator Consents, and the Project Documents and perform environmental monitoring services.

- (f) if requested, supply to the Owner on a timely basis or on reasonable demand such pertinent operating information relating to the Power Station as may be required under this Agreement or as may be reasonably requested by the Owner from time to time;
- (g) provide all requisite qualified and trained staff in accordance with Article 5 and obtain any other resources and sub-contractors as are necessary to provide the Operator Services and operate and maintain the PS on a day-to-day basis and carry out all necessary administration in respect of such staff and sub-contractors (including employee relations matters);
- (h) introduce a system for staff consultation and liaison including safety matters in keeping with all Legal Requirements, the Owner's Consents, the Operator Consents, and good industrial relations;
- (i) implement methods and procedures to ensure a safe operating environment for staff and equipment;
- (j) establish and operate a sub-contractor control and supervision system;
- (k) arrange for any necessary administrative services in connection with the Operator Services;
- (l) carry out all maintenance programmes within the Budgeted Amounts applicable thereto or as agreed with the Owner;
- (m) maintain site security;
- (n) maintain and renew all Operator Consents and assist the Owner in maintaining and renewing all Owner Consents;
- (o) provide all such information to insurers and reinsurers in relation to the Power Station or its employees, operation, or maintenance as may be required under the terms of the relevant policies and within any time limits specified under such policies; and
- (p) if requested, supply to the Owner on a timely basis or on reasonable demand such pertinent operating information relating to the Power Station, as may be required under this Agreement or as may be reasonably requested by the Owner from time to time.

2. Maintenance and Repair Work

The Operator shall:

- (a) be responsible for day-to-day maintenance and repairs to the Power Station and for the management of overhauls and Breakdown repairs. If necessary, the Operator shall engage such additional outside services as are necessary to carry out repair work and other activities including special tests and investigation and in such circumstances, the Operator shall make available so far as reasonably practicable, its own resources to assist in such work. The Operator shall manage all such work and resources;
- (b) be responsible for all necessary testing, maintenance, and repair services in relation to the Power Station including but not limited to land, roads, fences, buildings, and all other associated equipment including transport, and mobile machinery, and apparatus. Without limiting the generality of Article 6, the Operator shall make arrangements for Overhaul Contracts for such maintenance, repair, and testing services as shall be required to carry out scheduled inspections, overhauls, and major breakdown repairs. The Operator shall in particular carry out the following:
 - (i) routine, periodic, and visual inspection of the Power Station;
 - (ii) routine and periodic testing of the Power Station, including non-destructive testing;
 - (iii) routine, preventative (including the development and implementation of specific preventative maintenance procedures), scheduled, non-scheduled, and emergency maintenance, and repair services;
 - (iv) replacement of parts;
 - (v) routine testing of safety systems;
 - (vi) routine monitoring of coal quality;
- (c) keep maintenance records of the generating equipment and control and protective equipment at the Power Station which records shall be available to the Owner for inspection at all reasonable times;
- (d) maintain and make available to the Owner a register of all equipment (including an asset register for the Owner for financial and tax accounting purposes) in accordance with applicable Legal Requirements, the Owner Consents, and the Operator Consents, including recording all test dates and results;

- (e) maintain a record of the history of major items of plant, such record to indicate the current condition of such plant, details of maintenance in respect thereof and details of incidents and failures in relation thereto;
- (f) establish and operate a stores and spares inventory recording and requisition system;
- (g) establish and operate a sub-contractor control and supervision system;
- (h) establish and operate a system for a review and update of operating and maintenance manuals for the Power Station;
- (i) operate, maintain, and perform all meters and metering obligations required under the Project Documents or otherwise required by Good Utility Practice;
- (j) store and maintain an accurate and up-to-date file of all drawings, specifications, data sheets, diagrams, plans, samples and models, and other information (including calculations and logic or sequence overview diagrams for computer software) and documents required in connection with the design of the Power Station;
- (k) keep and maintain all technical records and drawing files at the Power Station;
- (l) keep as-built drawings up-to-date to reflect all changes to the Power Station;
- (m) keep and maintain all warranty records for all equipment or facilities covered by the manufacturer's or EPC Contractor's warranties, together with all records of all transactions regarding such warranties;
- (n) notify the Owner of planned inspections, maintenance, and repairs requiring shutdowns of major equipment;
- (o) develop weekly preventative maintenance and minor maintenance repair schedules, and plan schedule major repairs and annual inspections allowing sufficient lead time to arrange necessary permits/approvals, materials and manpower in accordance with the provisions of the Project documents;
- (p) develop and implement, in co-operation with the Owner, integrated safety and fire prevention measures and programs including training the employees in safety and fire prevention, and maintaining the fire sprinkler system and portable fire extinguishers;
- (q) co-ordinate with the Owner to develop and implement integrated security measures and procedures for the Power Station;
- (r) maintain the Power Station in a clean and presentable manner including all grounds and landscaping in such a manner as to project a positive image of the Owner and its contribution to the community;
- (s) co-ordinate its operations with the Owner and PLN, and maintain an effective communication system on Site between and among the operators, supervisors, the Owner, and PLN;
- (t) co-ordinate and prosecute any and all warranty claims, subject to obtaining the prior written approval of the Owner, against suppliers of parts, equipment, and materials, and any claims against any insurance carrier for payment of claims, liabilities or losses in connection with the Power Station or its operation by such insurance;
- (u) monitor the electricity output of the Power Station and provide all data, as specified by the Owner, to determine compliance with performance warranties concerning the Power Station;
- (v) act as the representative of the Power Station in all matters concerning operating and environmental permits;
- (w) be responsible for the removal and proper disposal of all wastes, sludge or effluent, toxic, or otherwise in accordance with all applicable Laws;
- (x) prepare and submit all reports required under all applicable Legal Requirements and the monthly, quarterly, and annual Activity Reports required under Appendix M of the Power Purchase Agreement and in compliance therewith;
- (y) perform all necessary water treatment and operate and maintain the waste water treatment facility;
- (z) verify, review, and certify in a timely manner the payment records originating from PLN for electricity and capacity sales in relation to the Power Station;
- (aa) maintain and operate the Power Station's first aid center;
- (bb) implement an inventory and station management system covering the procurement, storage, control, and inventory of spares, materials, consumables, and tools and monitor and ensure the timely ordering of spares, materials, consumable, and tools for the operation and maintenance of the Power Station; and
- (cc) be responsible for the maintenance of the housing colony and community services for its employees.

3. Reports

(a) Daily Report

The Operator shall provide to the Owner daily reports on the operation and performance of the Power Station. These reports shall include any information which under the terms of this Agreement is required to be supplied to or otherwise reasonably required to be supplied to or otherwise reasonably required by the Owner and without limiting the generality of the foregoing:

- (i) any efficiency reports;
- (ii) any information to be submitted under Article 7.3.(b) and other provisions of the Power Purchase Agreement; and
- (iii) any coal used in respect of the preceding day.

(b) Weekly Report

The Operator shall provide weekly reports on the operation and performance of the Power Station on each Tuesday or any other day agreed with the Owner. These reports shall include any information which under the terms of this Agreement is required to be supplied to or otherwise reasonably required by the Owner and without limiting the generality of the foregoing shall include:

- (i) starting reliability details; and
- (ii) any information to be submitted under the Power Purchase Agreement.

(c) Monthly Report

The Operator shall provide monthly reports by the fourth day of each Month. These reports shall include any information which under the terms of this Agreement is required to be supplied to or otherwise reasonably required by the Owner and without limiting the generality of the foregoing shall include:

- (i) all major repairs or maintenance performed on the Power Station or any Unit or other portion thereof within the previous month and all major repairs or maintenance work projected during the next month, together with the projected time schedule for such intended major repairs or maintenance;
- (ii) information in respect of efficiency;
- (iii) information in respect of monthly availability and in respect of coal usage together with details of outages and scheduled maintenance;
- (iv) budget performance with respect to planned expenditure and commitments by the Operator under the Annual Budget and Operating Plan;
- (v) information relating to staff and industrial relations, including staffing levels for the relevant period;
- (vi) safety and accident statistics for the Power Station;
- (vii) a brief summary of complaints made in respect of the Power Station including details of the level and nature of complaints; and
- (viii) details of any labor disputes known to the Operator affecting the Power Station.

(d) Annual Report

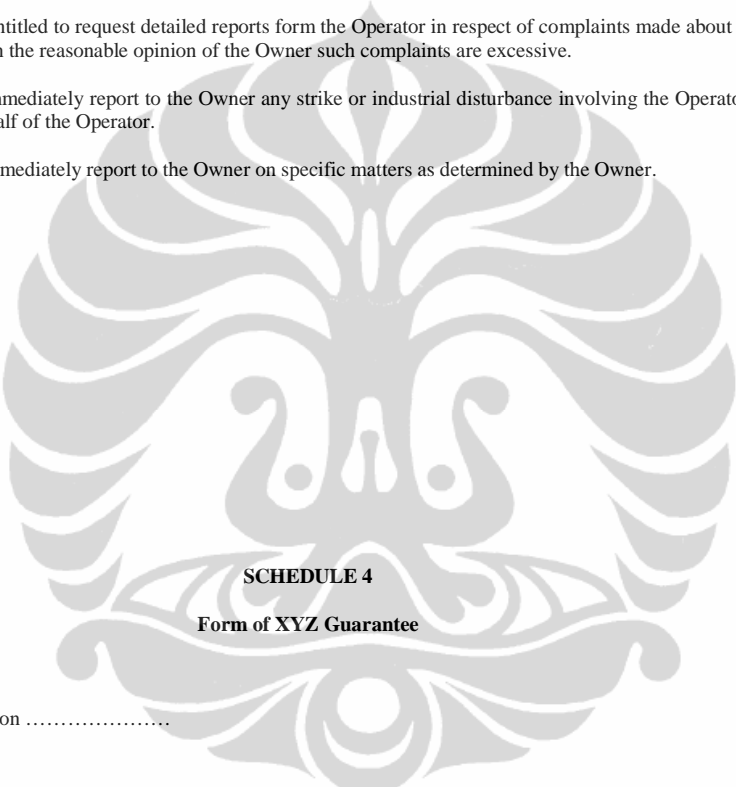
The Operator shall supply the Owner with an annual report for each Budgetary Period within 15 days of the end of such Budgetary Period. These reports shall include any information that under the terms of this Agreement is required to be supplied to or otherwise reasonably required by the Owner and without limiting the generality of foregoing shall include:

- (i) summary of repairs and maintenance;
- (ii) summary of plant performance and operation including month by month efficiency, availability, maintainability, and reliability information and a plant thermal performance report;
- (iii) recommendations for the improvement of plant performance, and operation including operating methodology to reflect the optimum economic use of coal, shutdowns and any other operating parameters;
- (iv) summary of coal supplied, stored, and used and capacity available and electrical energy delivered;
- (v) summary of forced outages;

- (vi) annual financial report including performance by the Operator against the Annual Budget and Operating Plan;
- (vii) summary of the results of major inspections and overhauls;
- (viii) summary of usage of lubricants and chemicals; and
- (ix) summary of the use of auxiliary services including power and water.

(e) Other Report

- (i) The Operator shall report to the Owner in writing on any incident occurring at the Power Station which involves an injury reportable pursuant to any applicable Legal Requirements. This report shall be in addition to any required to be made by the Owner as occupier for insurance purposes.
- (ii) The Owner shall be entitled to request detailed reports from the Operator in respect of complaints made about the operation of the Power Station if in the reasonable opinion of the Owner such complaints are excessive.
- (iii) The Operator shall immediately report to the Owner any strike or industrial disturbance involving the Operator or any person engaged by or on behalf of the Operator.
- (iv) The Operator shall immediately report to the Owner on specific matters as determined by the Owner.



SCHEDULE 4

Form of XYZ Guarantee

THIS GUARANTEE is made on

GIVEN BY

XYZ PLC whose registered office is at (the Guarantor)

IN FAVOUR OF

ABC whose registered office is at, Jalan, Indonesia (the Owner).

WHEREAS

- (a) The Owner has entered into an Operation and Maintenance Agreement dated (the Agreement) with XYZ Overseas Holdings Limited (POHL) which will be novated prior to the Mobilization Date in favour of PT XYZ Indonesia or another Affiliate of POHL incorporated in Indonesia (Transferee) pursuant to a Transfer Agreement (POHL and the Transferee being herein collectively referred to as the Operator).
- (b) The Guarantor has agreed to guarantee the performance of the Operator's obligations under the Agreement and the Transferee's obligations under the Transfer Agreement as set out below.

IT IS HEREBY AGREED as follows:

1. The Guarantor unconditionally and irrevocably, as a continuing obligation, guarantees the proper and punctual performance by (i) the Operator, its successors and assigns of each of its obligations under the Agreement and (ii) the Transferee of each of its obligations under the Transfer Agreement and guarantees to pay the Owner on demand, if the Operator fails to pay

them, all amounts whatsoever which the Agreement provides are to be paid by the Operator; provided that no claim may be made by the Owner under this Guarantee in respect of any failure by the Operator to perform its obligations, or to pay any amounts due, under the Agreement or any failure by the Transferee to perform its obligations under the Transfer Agreement if such matter is disputed by the Operator or the Transferee until such dispute has been resolved in favor of the Owner in accordance with the dispute resolution procedures contained in the Agreement or the Transfer Agreement.

2. The Guarantor's liability hereunder shall not be discharged or impaired by:
 - (a) the existence or validity of any other security taken by the Owner in relation to the Agreement or the Transfer Agreement or any enforcement of or failure to enforce or the release of any such security;
 - (b) any amendment to or variation of the Agreement or the Transfer Agreement or any security relating to the Agreement or the Transfer Agreement or any assignment thereof or hereof;
 - (c) any release of or granting of time or any other indulgence to the Operator, the Transferee, or any assignment thereof or hereof;
 - (d) any other act, event, neglect, or omission which would or might but for this clause operate to impair or discharge the Guarantor's Liability hereunder.
3. Any release, compromise, or discharge of the obligations of the Guarantor shall be deemed to be made subject to the condition that it will be void if any payment or security which the Owner may receive or have received is set aside or proves invalid for whatever reason.
4. As a separate, continuing and primary obligation, the Guarantor undertakes to indemnify the Owner on demand against all losses, claims, or costs suffered or incurred by it should the amounts due under Clause 1 not be recoverable for any reason whatsoever including (but not limited to) the Agreement or the Transfer Agreement being or becoming void, voidable, or unenforceable otherwise than as a consequence of the Wilful Misconduct of the Owner.
5. The Guarantor shall not, without obtaining the prior written consent of the Owner:
 - (a) prove in a liquidation or winding-up of the Operator or the Transferee in competition with the Owner for any amount whatsoever owing to the Owner by the Operator or the Transferee on any account whatsoever;
 - (b) claim payment whether directly or by set-off, lien, counterclaim, or otherwise of any amount which may be or has become due to the Guarantor by the Operator if the Operator has defaulted under the Agreement;
 - (c) exercise any other right or remedy in respect of any amount paid by the Guarantor hereunder.
6. The Guarantor hereby waives any right which it may have to require the confiscation and sale of assets of the Operator pursuant to Article 1831 of the Indonesian Civil Code prior to any demand being made by the Owner pursuant to this Guarantee.
7. The provisions of Article 14.4. of the Agreement shall apply *mutatis mutandis* to this Guarantee. The Guarantor shall not be liable to pay interest under this Guarantee on amounts guaranteed that bear interest independently of this Guarantee. The liability of the Guarantor under this Guarantee shall not be greater than the equivalent liability of the Operator under the Agreement or the Transferee under the Transfer Agreement.
8. This Guarantee is irrevocable and shall not be assigned by either party, save that the Owner may assign its rights, title, and interest in and to this Guarantee to:
 - (a) any person or persons providing finance to the Owner for the purposes of financing the design, engineering, procurement, testing, operation, or maintenance of the Power Station, or to any agent or trustee for such person or persons; and
 - (b) to PLN if PLN exercise its option or complies with its obligations under the Power Purchase Agreement to purchase the Owner's interest in the Power Station and its related contracts.
9. This Guarantee shall be governed by the laws of the England and Wales.
10. Demands under this Guarantee shall be made in writing signed by the President Director or by two directors or other duly authorized representatives of the Owner. Notices of demand may be sent by the Owner to the Guarantor by courier (and shall be taken as having been received by the Guarantor three days after their posting by the Owner), by facsimile (and deemed received on the business day in the place of receipt next following the date of dispatch) or may be delivered personally to the Guarantor at its aforementioned registered office and regarded as delivered at the time of delivery. All notices shall be marked for the attention of the Company Secretary.
11. Terms defined in the Agreement shall have the same meaning when used in this Guarantee.

IN WITNESS WHEREOF this Guarantee has been executed as a Deed the Date and year first above written.

EXECUTED AS A DEED by
XYZ PLC
Director/Secretary



SCHEDULE 5

Key Personnel

- (i) Station Manager,
- (ii) Operations Manager,
- (iii) Maintenance/Engineering Manager,
- (iv) Administration/Finance Manager,
- (v) Environment/Performance Manager.

SCHEDULE 6

Schedule of Minimum Insurance Requirements

1. GENERAL

The Owner shall obtain and maintain, or cause to be obtained and maintained, insurance and, if required by the Lenders, reinsurance policies from financially sound and reputable insurers or reinsurers providing at least the types of coverage and terms described below, subject to the constraints of availability on commercially reasonable terms in the international insurance market at the times such insurance is required to be obtained.

2. INSURANCE COVERAGE

2.1. All risks Property/Boiler Machinery Insurance

Coverage:

This insurance shall cover physical loss of or damage to the Power Station.

2.2. Comprehensive General Liability Insurance

Coverage:

Coverages to include legal liability for damage to property of or bodily injury to third parties arising out of the ownership, operation, and maintenance of the Power Station.

2.3. Automobile Liability Insurance

Coverage:

This insurance shall cover legal liability for damage to property of or bodily injury to third parties arising out of the ownership, use and maintenance of motor vehicles owned or operated by the Owner.

2.4. Marine Cargo Insurance, if Coal Supply Agreement to be FOB Loadport.

3.

3.1. Endorsements

The Owner shall cause the insurers to provide the following endorsement items on the comprehensive or commercial general liability insurance policies and, if applicable, umbrella, or excess liability policies relating to the operation and maintenance of the Power Station.

- (a) each of the Operator, PLN, the Lenders, and their respective directors, officers, and employees shall be additional named insureds under such policies;
- (b) the insurance shall be primary with respect to the interest of each of the additional named insureds and any other insurance maintained by them is excess and not contributory with such policies;
- (c) such policies shall include standard cross liability and severability of interest clause;

- (d) notwithstanding any provision of the policies, the policies may not be cancelled, non-renewed or materially changed by the insurer without giving 30 or, in the case of cancellation for non-payment of premium, 10 days' prior written notice to each of the additional named insureds;
- (e) that the additional insureds shall have no obligation to pay, but he right to pay, premiums.

In addition, the Owner shall cause the insurers to provide the endorsement referred to in Section 3.1.(d) in its All Risks Property/Boiler Machinery Insurance policies covering the Power Station.

3.2. Waivers of Subrogation

The Owner shall cause the insurers to waive all rights of subrogation against the Operator, PLN, the Lenders, and against their respective employees and contractors in respect of a claim arising under its insurance policies, unless such claim arises form wilful misconduct or gross negligence of the relevant person or of their employees or contractors.

