

CONFIDENTIALITY & NON- DISCLOSURE AGREEMENT

This CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT (this "**Agreement**") made the date referred to in Item 1 of the Schedule attached hereto (hereinafter called the "**Effective Date**") between **JAMAICA PUBLIC SERVICE COMPANY LIMITED**, a Company incorporated under the laws of Jamaica with its registered office at 6 Knutsford Boulevard in the parish of St. Andrew, Jamaica (hereinafter called "**JPS**"); and the individual/entity named and described in Item 2 of the Schedule attached hereto (hereinafter called the "**Counterparty**"). Each of JPS and Counterparty may be referred to as "**Party**" or collectively as "**Parties**".

WHEREAS

- a. JPS is licensed to generate, transmit, distribute and supply electricity for public and private purposes throughout the island of Jamaica.
- b. The Parties have expressed a willingness to provide Confidential Information (as hereinafter defined) solely to facilitate the transaction described in Item 3 of the Schedule attached hereto (hereinafter called the "**Transaction**"), on condition that such information shall be treated by the other Party as confidential.
- c. The Parties have been advised that the information to be provided by and or obtained in relation to the other Party will be treated in a confidential manner, and the Parties wish to enter into this Agreement to protect and safeguard the confidentiality of that information.

Now therefore in consideration of the above premises, mutual promises, other consideration not mentioned, the sufficiency of which is accepted, IT IS HEREBY AGREED as follows:

1. Definitions.

"**Confidential Information**" shall mean all information, data or material, disclosed before, on or after the Effective Date of this Agreement (in whatever form whether orally or in written, electronic, recorded or other format or medium including, but not limited to, computer files, diskettes, voicemail, or email) relating to the Disclosing Party or its Representatives (as hereinafter defined) or the Transaction including but not limited to business plans, customers, pricing, strategies, trade secrets, knowhow, other intellectual property, operations, finances, assets, technology including but not limited to hardware and software, methodologies or any

other information, whether tangible or intangible that may be directly or indirectly disclosed to the Receiving Party or its Representatives by the Disclosing Party or its Representatives in the course of the Parties' discussions regarding the Transaction. Confidential Information also includes, but is not limited to, Personal Data as defined in this Agreement or by applicable law, whichever is broader. For the avoidance of doubt, information, data or material (whether Personal Data or otherwise) shall not be required to be marked "Confidential" or "Proprietary" to be treated as Confidential Information under this Agreement.

"Confidential Material" shall mean all analyses, compilations, hardware, software, studies or other documents or records prepared by the Receiving Party or its Representatives to the extent such analyses, compilations, studies, documents or records contain or are generated from Confidential Information.

"Disclosing Party" shall mean any Party disclosing Confidential Information to the other Party under this Agreement.

"Person" shall be broadly interpreted to include, without limitation, any corporation, company, partnership, other entity or individual.

"Personal Data" means any information relating: (i) to an identified; or (ii) to a directly or indirectly identifiable, natural person.

"Protected Information" shall mean Confidential Information together with Confidential Material.

"Receiving Party" shall mean any Party to whom Confidential Information is disclosed under this Agreement.

"Representatives" shall mean, with respect to either Party hereto:

- (i) the officers, directors, employees, partners, members of such Party and its affiliates;
- (ii) its professional advisors (including, without limitation, financial advisors, legal counsel and accountants) or consultants who are engaged to advise that Party in connection with the Transaction;
- (iii) the agents, contractors and sub-contractors engaged by that Party in connection with the Transaction; and
- (iv) controlling Persons.

2. Exclusions to Definition of Confidential Information. Notwithstanding the definition of Confidential Information set forth in Section 1, Confidential Information does not include:

- (i) information which is now in the public domain, or which later enters the public domain, through no action by the Receiving Party or its Representatives in violation of this Agreement;
- (ii) information which the Receiving Party can demonstrate was already in its possession at the time of its disclosure hereunder, and which was not acquired, directly or indirectly, from the Disclosing Party in violation of this Agreement;
- (iii) information which is independently developed by the Receiving Party without reference to, or the use of, any Confidential Information;
- (iv) information which is lawfully received from a source other than the Disclosing Party under circumstances not involving, to the Receiving Party's knowledge, any breach of any confidentiality obligation to the Disclosing Party; or
- (v) information approved for disclosure or release by the Receiving Party by the prior written authorization from the Disclosing Party; authorization shall be specifically communicated and shall not be inferred.

3. Term. This Agreement shall be in effect from the Effective Date and for the period of time stated in Item 4 of the Schedule attached hereto (hereinafter called the "**Term**"), provided however that:

- (i) the restrictions on disclosure shall survive termination of the Agreement for a period of three (3) years from the date of expiry or termination of this Agreement; and
- (ii) for any trade secret the obligations of confidentiality will continue and survive until such information is no longer a trade secret.

Notwithstanding the termination of discussions concerning the Transaction or the return or destruction of Protected Information, the Receiving Party and its Representatives shall continue to be bound by their obligations of confidentiality and other obligations hereunder for the Term hereof on the terms and conditions set forth herein. This Agreement shall not merge with, or be terminated or superseded by, any future agreement between the Parties unless such agreement specifically so provides.

4. Restrictions on Disclosure of Protected Information. Subject to Section 9 of this Agreement, the Receiving Party shall keep the Protected Information confidential and, without the prior specific written consent of the Disclosing Party, shall not disclose or reveal it to any Person, except as permitted in this Agreement, or as required by applicable law. Notwithstanding the foregoing:

- (i) the Receiving Party may disclose Protected Information to its Representatives (a) who need to receive, review and consider the Protected Information for the purpose of the Transaction and (b) who are bound, at least, by the same level of confidentiality as is set out in this Agreement.
- (ii) JPS may disclose Protected Information to the Ministry with responsibility for energy, the Office of Utilities Regulation, the Generation Procurement Entity, and such other successor regulatory body.

5. Limitations on Use. The Receiving Party and its Representatives shall use the Protected Information solely for the purpose of the Transaction and for no other purpose.

6. Representatives. The Receiving Party shall be responsible for any breach of the terms of this Agreement by any of its Representatives to whom the Receiving Party disclosed Protected Information.

7. Ownership. The Receiving Party agrees that the Disclosing Party (or an affiliate, as applicable) is and shall remain the exclusive owner of the Protected Information and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of such rights to the Receiving Party is granted or implied under this Agreement. Neither this Agreement nor the conveying of Confidential Information hereunder shall be construed as granting or conferring any rights by licence or otherwise in any intellectual property provided to the Receiving Party under this Agreement.

8. Return or Destruction of Protected Information. At any time upon the written request of the Disclosing Party, unless otherwise permitted by the final sentence of this *Section 8*, the Receiving Party shall promptly:

- (i) either return to the Disclosing Party, or (if the Receiving Party so elects) destroy, all Confidential Information in the possession of the Receiving Party or its Representatives without retaining any copies; and
- (ii) destroy all Confidential Material in the possession of the Receiving Party or its Representatives without retaining any copies; *provided, however,* that in lieu of destroying all Confidential Material, the Receiving Party shall be permitted to hold such Confidential Material, subject to the confidentiality obligations and other obligations of this Agreement.

Within ten (10) business days of such written request by the Disclosing Party, the Receiving Party shall confirm in writing signed by a duly authorized officer of the Receiving Party that (a) all Confidential Information has been returned or destroyed, as applicable, and (b) all Confidential Material has been destroyed or is being held subject to the terms of this Agreement, provided that such Confidential Material is not held for a period exceeding the Term without the prior written consent of the Disclosing Party. In the event that the Receiving Party holds Confidential Material, the Receiving Party shall at the request of the Disclosing Party at the end of the Term, or such other approved extended term, destroy the Confidential Material and shall confirm in writing signed by a duly authorised officer of the Receiving Party that such Confidential Material has been destroyed.

Notwithstanding the foregoing requirements of this Section 8, the Receiving Party and its Representatives may retain copies of the Protected Information for the purpose of

defending any claim related to this Agreement in existence or imminent at the time of the request from the Disclosing Party or any transaction related hereto or as may be required in accordance with its or their respective legal, compliance and/or automated backup archiving practices.

No such termination of the Agreement or return or destruction of the Confidential Information or Confidential Material will affect the confidentiality obligations of the Receiving Party, or its Representatives, all of which will continue in effect as provided in this Agreement.

9. Required Disclosures. Promptly upon learning that it may or will be legally compelled to disclose Protected Information (whether by interrogatories, subpoenas, civil investigative demands or otherwise) or is requested to disclose Protected Information by a governmental authority or agency, the Receiving Party shall (to the extent reasonably practicable and legally permissible to do so) notify the Disclosing Party and keep the Disclosing Party well-informed of any developments with respect to that compulsion or request. When time is of the essence, the Receiving Party may provide notice or updates orally, but must follow these communications with written summaries. The Receiving Party shall, at the Disclosing Party's expense (to the extent reasonably practicable and legally permissible to do so), cooperate with the Disclosing Party to enable the Disclosing Party to seek a protective order or other similar relief or to narrow the scope of such legal compulsion or request. If, in the opinion of its legal counsel and in the absence of a protective order or waiver, the Receiving Party is legally compelled to disclose Protected Information, the Receiving Party will disclose only so much of the Protected Information as, in the opinion of its legal counsel, is legally required. In any such event, the Receiving Party agrees to use good faith efforts to ensure that all Protected Information that is so disclosed shall be accorded confidential treatment. Notwithstanding the foregoing, the Receiving Party or its Representatives shall each be permitted to disclose Protected Information or any portion thereof without notice to the Disclosing Party upon the written routine request of any government or regulatory body having or claiming to have authority to regulate or oversee any aspect of the Disclosing Party's or such Representative's business or that of its or their affiliates, provided that the Disclosing Party or such Representative shall advise the governmental or regulatory body of the confidential nature of such information; provided, further, that in the event the Receiving Party or such Representative makes such disclosure, it shall thereafter notify the Disclosing Party (to the extent legally permissible to do so) that such disclosure has occurred.

10. No Representations or Warranties Concerning Confidential Information. The Receiving Party acknowledges that (unless otherwise expressly stated in documentation signed by the Disclosing Party) neither the Disclosing Party nor any of its Representatives makes any express or implied representation or warranty as to the accuracy or completeness of any Confidential Information, and the Receiving Party agrees that neither the Disclosing Party nor any of its Representatives shall have any liability to the Receiving Party or any of its Representatives relating to or arising from its or their use of any Confidential Information or from any errors therein or omissions therefrom.

11. Remedies. The Receiving Party acknowledges that the improper disclosure or use of the Protected Information could cause irreparable harm to the Disclosing Party and that money damages may be an inadequate remedy for breach of this Agreement. In the event of any breach or threatened breach by the Receiving Party (or any of its Representatives), the Disclosing Party shall be entitled to seek injunctive and other equitable relief, without proof of actual damages, to prevent the unauthorized disclosure or use of Protected Information and the Receiving Party shall not plead in defense thereto that there would be an adequate remedy at law, and the Receiving Party waives any applicable right or requirement that a bond be posted by the Disclosing Party. Each Party agrees to indemnify and hold the other Party harmless from any direct, out-of-pocket losses, damages, costs or liabilities (including reasonable legal fees and the reasonable cost of enforcing this Agreement, but excluding any claims for indirect, consequential, lost profit, special or punitive damages) arising out of or resulting from a breach by it or its Representatives of any of the provisions of this Agreement.

12. No Obligation to Proceed. Neither Party has any obligation to disclose Confidential Information to the other Party. Either Party may, at any time, (i) cease giving Confidential Information to the other Party without liability and/or (ii) request in writing the return, destruction and/or holding of Protected Information pursuant to Section 8.

13. No Obligation or Joint Venture. The Parties hereto understand and agree that unless and until a definitive agreement has been executed and delivered, no contract or agreement concerning the Transaction (other than this Agreement) shall be deemed to exist between the Parties, and neither Party shall be under any legal obligation of any kind whatsoever with respect to pursuing or consummating such Transaction by virtue of this or any written or oral expression thereof, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this Agreement, the term “**definitive agreement**” does not include an executed letter of intent or any other preliminary written agreement or offer, unless specifically so designated in writing and executed by both Parties. This Agreement neither obligates a Party to deal exclusively with the other Party nor prevents a Party or any of its affiliates from competing with the other Party or any of its affiliates. Either Party may terminate consideration and discussion of the Transaction at any time and for any reason whatsoever, and the terminating Party shall have no liability to the other Party by reason of the termination; provided, however, that such termination shall not affect the restrictions on disclosure detailed in this Agreement.

14. Independent Review. Each Receiving Party agrees to assume full responsibility for all conclusions that it derives from its review of the Confidential Information.

15. Publicity. Neither Party shall use any logo, trademark, design, mark or any distinguishing feature of the other Party in any manner (including without limitation, in any advertising or promotional material) without the express prior written authorization of such other Party, which may be arbitrarily withheld.

16. Nondisclosure of Existence of Negotiations. Without the prior written consent of the other Party, or except, as legal counsel advises may be required by applicable law or regulation, each Party shall not disclose to any Person, other than its Representatives (in connection with such Representatives' facilitation of the Transaction), that (i) the Confidential Information has been disclosed to the Receiving Party, or (ii) Confidential Material has been generated by the Receiving Party, or (iii) discussions or negotiations are taking place between the Parties regarding the Transaction, including, without limitation, the status of such discussions or negotiations. Notwithstanding anything to the contrary, this paragraph 16 shall not prevent the Receiving Party from disclosing the fact that these discussions are taking place or other facts with respect to such discussions (including the status thereof or the fact that Confidential Information has been made available to it), to any financial institution, equity investor or other source or potential source of financing (a "**Financing Source**") for the Transaction (it being understood that (a) each such Financing Source shall be informed by the Receiving Party of the confidential nature of the Confidential Information and shall be directed by the Receiving Party to treat all of the Confidential Information confidentially and not use it other than for the purposes of evaluating the Financing of the Transaction; and (b) in any event, the Receiving Party shall be responsible for any breach of this Agreement by any Financing Source.

17. Entire Agreement. This Agreement contains the entire agreement between the Parties concerning the subject matter hereof and supersedes any previous agreements, whether written or oral, pertaining to such subject matter.

18. Amendment. This Agreement may only be amended by a written document signed by both Parties.

19. No Waiver. No waiver of any provision of this Agreement, or of a breach hereof, shall be effective unless it is in writing, signed by the Party waiving the provision or the breach hereof. No waiver of a breach of this Agreement (whether express or implied) shall constitute a waiver of a subsequent breach hereof. It is further agreed that no failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof.

20. Assignment. No party to this Agreement may assign or transfer this Agreement, or any rights, obligations, claims or proceeds from claims arising under it, without the prior written consent of the other Party, and any assignment without such consent shall be void and invalid and shall constitute a breach for the purposes of Section 11 of this Agreement.

21. Severability. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

22. Binding. This Agreement shall be binding upon the Parties and upon their respective successors and permitted assigns.

23. Governing Law. This Agreement, and any disputes arising from it, whether contractual or non-contractual, shall be governed and construed in accordance with the laws of Jamaica and shall be deemed in all respects to be a Jamaican contract. The Parties agree that any suit, action or proceedings in relation to any manner pertaining to this Agreement shall be brought in Jamaica. ***The Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the Jamaican Courts with respect to any dispute or matter arising under or relating to this Agreement and hereby waive any claim that Jamaica is an inconvenient forum or that Jamaica's courts do not have jurisdiction.***

24. Language & Interpretation. The official language of this Agreement shall be English, and any translation into any other language shall be for convenience only.

25. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original for all purposes and all of which taken together shall constitute a single instrument between the Parties. Electronic and facsimile signatures shall be deemed original and binding signatures.

[Signature page follows]