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19 May 2021

Market Announcements Office
ASX Limited
Exchange Centre
20 Bridge St, Sydney NSW 2000
Sydney NSW 2000

By e-lodgement

Dear Sir/Madam

Notice of initial substantial holder – Electric Power Development Co., Ltd., JPGA Partners Pty Ltd and JP Generation Australia Pty Ltd

Please see **attached** notice.

Yours sincerely

ChelseyDrake

Chelsey Drake
Partner
Allens
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Our Ref CAEB:000000
CYRB 514500086v1 000000 19.5.2021

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Form 603

Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme: Genex Power Limited (***GNX***)

ACN/ARSN: ACN 152 098 854

1. Details of substantial holder (1)

Name: This notice is given by Electric Power Development Co., Ltd. (**J-Power**), JPGA Partners Pty Ltd (**JPGA**) and JP Generation Australia Pty Ltd (**JP Generation**) (collectively the "**Substantial Holders**")

ACN/ARSN (if applicable): JPGA Partners Pty Ltd (ACN 643 855 618); JP Generation Australia Pty Ltd (ACN 643 853 650)

The holder became a substantial holder on 18/05/2021

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Fully paid ordinary shares in GNX (**GNX Shares**)	106,990,005	106,990,005	10.00% (based on 1,069,900,045 GNX Shares on issue)

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Substantial Holders	JPGA's relevant interest arises under s608(1)(a) of the Corporations Act 2001 (**Corporations Act**) as the registered holder of 106,990,005 of GNX Shares following a placement by GNX of such shares to JPGA under a Subscription Agreement entered into between J-Power and GNX dated 3 August 2020, as amended from time to time, a copy of which is set out as **Annexure A**. The other Substantial Holders are taken under s608(3) of the Corporations Act to have a deemed relevant interest in the GNX Shares which JPGA has a relevant interest in by virtue of s608(3) of the Corporations Act.	106,990,005 GNX Shares

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Substantial Holders	JPGA	JPGA	106,990,005 GNX Shares

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5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
JPGA	18/05/2021	$25,000,000 (as determined pursuant to the Subscription Agreement)		106,990,005 GNX Shares
The other Substantial Holders	18/05/2021	N/A – deemed relevant interests		106,990,005 GNX Shares

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
N/A	

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
J-Power	15-1, Ginza 6-Chome, Chuo-ku, Tokyo, 104-8165 Japan
JPGA	Level 4, Deutsche Bank Place, 126 Philip Street, Sydney NSW 2000
JP Generation	Level 4, Deutsche Bank Place, 126 Philip Street, Sydney NSW 2000

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Signature

print name	Chelsey Drake	capacity	Authorised Representative
sign here	ChelseyDrake	date	19/05/2021

DIRECTIONS

(1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.

(2) See the definition of "associate" in section 9 of the Corporations Act 2001.

(3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.

(4) The voting shares of a company constitute one class unless divided into separate classes.

(5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.

(6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.

(7) Include details of:

(a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and

(b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.

(8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown.'"

(9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

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Annexure A

This is Annexure "A" of 33 pages referred to in the accompanying Form 603.

Signature

print name	Chelsey Drake	capacity	Authorised Representative
sign here		date	19/05/2021

The copy attached to this Annexure A is a true copy of the original.

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Genex Power Limited

and

Electric Power Development Co., Ltd

Subscription Agreement

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Brisbane QLD 4000 Australia
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Contents

1	**Definitions and Interpretation**		**3**
	1.1	Definitions	3
	1.2	Interpretation	7
	1.3	Statements on the basis of knowledge or belief	8
2	**Conditions Precedent**		**8**
	2.1	Conditions Precedent	8
	2.2	Parties must co-operate	9
	2.3	Specific obligations of co-operation	9
	2.4	Waiver	10
	2.5	Termination before Completion	10
3	**Agreement to Subscribe**		**10**
	3.1	Subscription	10
	3.2	Agreement to serve as application	10
4	**Rights Attaching to Subscription Securities**		**10**
5	**Completion**		**10**
	5.1	Time and place of Completion	10
	5.2	Subscriber's obligations at Completion	11
	5.3	Issuer's obligations at Completion	11
	5.4	Issuer's obligations after Completion	11
	5.5	Simultaneous obligations at Completion	11
6	**Undertakings**		**11**
	6.1	The Issuer's undertakings	11
	6.2	No further Share issues	12
	6.3	Standstill	12
	6.4	Use of Subscription Amount	13
	6.5	The Subscriber's undertakings	13
7	**No Public Announcements**		**13**
8	**Board Rights**		**13**
	8.1	The Subscriber's board nomination	13
	8.2	Re-election of Nominee Director	14
	8.3	Hydro Trustee Nominee Director	14
9	**Information access and sharing rights**		**15**
10	**Right of First Refusal**		**15**
11	**Representations and Warranties**		**16**
	11.1	Representations and Warranties by the Issuer	16
	11.2	Representations and Warranties by the Subscriber	19
	11.3	Notice of breach	20
12	**Warranty Limitations**		**21**
	12.1	Issuer's disclaimer	21
	12.2	Warranty threshold	21
	12.3	Warranty cap	21
	12.4	Time limit on claims	21
	12.5	Consequential loss	21
	12.6	Disclosure qualifications	21
13	**Guarantee and indemnity**		**21**

Y. K.

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	13.1	Guarantee	21
	13.2	Issuer's right to demand	22
	13.3	Principal debtor	22
	13.4	Indemnity	22
	13.5	Continuing and independent guarantee and indemnity	22
	13.6	Obligations of Guarantor unaffected	23
	13.7	No duty to disclose	23
	13.8	Prohibited claims	23
	13.9	Competing claims	24
	13.10	Reinstatement of Principal's rights	24
14	**Termination**		**24**
	14.1	Termination by the Subscriber	24
	14.2	Termination by the Issuer	25
	14.3	Termination by a party	25
	14.4	Effect of Termination	25
15	**Indemnity**		**26**
16	**Inside Information**		**26**
17	**Confidentiality**		**26**
	17.1	Confidentiality	26
	17.2	Exceptions	26
18	**GST**		**26**
	18.1	Definitions	26
	18.2	Recovery of GST	26
	18.3	Liability for penalties	27
	18.4	Liability net of GST	27
	18.5	Adjustment events	27
	18.6	Survival	27
	18.7	Revenue exclusive of GST	27
	18.8	Cost exclusive of GST	27
19	**General**		**27**
	19.1	Governing Law and Jurisdiction	27
	19.2	Notices	27
	19.3	Assignment	29
	19.4	No waiver	29
	19.5	Costs and duty	29
	19.6	Severability	29
	19.7	Extent of obligations	29
	19.8	Entire agreement	30
	19.9	Amendment	30
	19.10	Further assurances	30
	19.11	Counterparts 30	
Schedule 1			**31**
	Technical Support Agreement		31

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This Agreement is made on 24 March 2021

Parties

1 **Genex Power Limited** (ABN 18 152 098 854) of Level 6, 28 O'Connell Street, Sydney NSW 2000 (the ***Issuer***).

2 **Electric Power Development Co., Ltd** of 15-1, Ginza 6-Chome, Chuo-ku, Tokyo, 104-8165 Japan (the ***Subscriber***).

Recitals

A The Issuer's issued share capital as at the date of this Agreement is 401,841,355 fully paid ordinary shares. In addition, as at the date of this Agreement, the Issuer has granted 42,250,000 options over unissued shares.

B The Issuer has agreed to issue and allot the Subscription Securities to the Subscriber at the Subscription Price on the terms of this Agreement.

C The Subscriber has agreed to subscribe for the Subscription Securities on the terms of this Agreement.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

10% Threshold Price means the subscription price for the Subscription Securities at which:

(a) the Subscription Price Cap Amount is subscribed by the Subscriber; and

(b) the number of Shares to be issued to the Subscriber is equal to 10.00% of the Issuer's total issued Shares after the issue of Shares to the Subscriber on the Completion Date.

Accounts means the individual and consolidated accounts (including the statements, directors' reports, auditors' reports and notes attached to or intended to be read with the accounts) of the Group for the financial years ending 30 June 2017, 30 June 2018 and 30 June 2019.

Affiliate means any person or entity that is directly or indirectly in control of, controlled by, or under common control with, such other entity, including but not limited to, parent or subsidiary corporations or entities.

ARENA means the Australian Renewable Energy Agency (ABN 35 931 927 899).

ARENA Project Financial Close has the meaning given to that term in the Facility Agreement.

ASIC means the Australian Securities and Investments Commission.

Assignee has the meaning given in clause 13.1.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means ASX Limited (ACN 008 624 691).

ASX Settlement Operating Rules means the operating rules of the settlement facility provided by ASX Settlement Pty Limited.

Authorisation includes any authorisation, approval, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration, or exemption.

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Board means the board of directors of the Issuer.

Borrower means Kidston Hydro Project Co Pty Ltd ACN 633 290 490 as trustee for Kidston Hydro Project Trust.

Business Day means a day which is not a Saturday, Sunday or a public holiday in Sydney, Australia or Tokyo, Japan.

Capital Raising Amount means the amount of equity capital to be raised by the Issuer pursuant to clause 2.1(f), being an amount of not less than $75,000,000 (before costs incurred by the Issuer in connection with the capital raising) or such other amount as agreed between the parties in writing.

Claim means any allegation, debt, cause of action, Liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

Completion means the completion of the subscription and issue of the Subscription Securities in accordance with the terms of this Agreement.

Completion Date means ten (10) Business Days following satisfaction or waiver of the Conditions Precedent, or such other date agreed between the Issuer and Subscriber in writing.

Conditions Precedent has the meaning given in clause 2.1.

Conditions Precedent End Date means 30 June 2021, or such other date agreed between the Issuer and Subscriber in writing.

Conditions Precedent Satisfaction Date means the date on which the Conditions Precedent are fulfilled or waived in accordance with clause 2.

Constitution means the constitution of the Issuer.

Construction Proceeds Account has the meaning given to that term in the Facility Agreement.

Contingent Equity Account has the meaning given to that term in the Facility Agreement.

Contractual Close has the meaning given to that term in the Facility Agreement.

Contributed Equity Condition Precedent means the condition precedent in the Facility Agreement dealing with the contribution of equity by the Issuer and which is expected, at the date of this Agreement, to require the Issuer to provide evidence to the Lender that the Issuer has deposited approximately A$100,000,000 into a Construction Proceeds Account and approximately $15,000,000 to $ 20,000,000 into a Contingent Equity Account.

Corporations Act means the *Corporations Act 2001* (Cth).

Debt Facility means the facility for a minimum of $500 million made available under the Facility Agreement.

Director Appointment Period has the meaning given to that term in clause 8.1(a).

EnergyAustralia means EnergyAustralia Pty Ltd ACN 086 014 968 or its Affiliate.

Equity Commitment has the meaning given to that term in the Facility Agreement.

Equity Contribution has the meaning given to that term in clause 6.4(a)(i).

Equity Securities has the meaning given in the Listing Rules.

Facility Agreement means the facility agreement for a minimum of $500 million to be entered into between the Borrower as borrower and the Lender as lender, dated prior to Completion.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign*

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Acquisitions and Takeovers Regulation 2015 (Cth).

FID Date means the date that Contractual Close is achieved in accordance with the Facility Agreement.

FID Price means the Final Investment Decision Price, being the volume weighted average price per share of the ordinary shares in the Issuer (excluding specials) as advised by ASX for the five (5) trading day period immediately preceding the FID Date.

FIRB means the Australian Foreign Investment Review Board.

FSP means the Final Share Price, being the volume weighted average price per share of the ordinary shares in the Issuer (excluding specials) as advised by ASX for the five (5) trading day period immediately following the day after the Conditions Precedent Satisfaction Date.

Governmental Agency means any:

(a) government or governmental, semi governmental or judicial entity or authority; or

(b) minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government.

It also includes any regulatory organisation established under statute or any stock exchange.

Group means the Issuer and each of its subsidiaries.

Group Member means any member of the Group.

GRT Price means the volume weighted average price per share of the ordinary shares in the Issuer (excluding specials) as advised by ASX for the five (5) trading day period immediately preceding the Signing Date.

Guaranteed Obligations means

(a) the payment of the Subscription Price; and

(b) each of the obligations of the Subscriber under or in connection with this Agreement.

Guarantor has the meaning given in clause 13.1.

Hydro Board means the board of directors of the Hydro Trustee.

Hydro Trust means the Kidston Pumped Hydro Hold Trust, which will own and develop the Project.

Hydro Trustee means Kidston Hydro Hold Co Pty Ltd ACN 633 290 249.

Immediately Available Funds means cash, bank cheque or telegraphic or other electronic means of cleared funds.

Inside Information has the meaning set out in section 1042A of the Corporations Act.

Joint Development Agreement has the meaning given in clause 10(a)(ii).

Lender means a representative of the Queensland State Government for and on behalf of the Crown in Right of the State of Queensland.

Liability means any liability or obligation (whether actual, contingent or prospective) including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred.

Listing Rules means the official listing rules of ASX.

Loss means all damage, loss, cost and expense (including legal costs and expenses) of whatsoever nature or description.

Material Adverse Change means any event, change, effect, circumstances, condition, development or occurrence, individually or in the aggregate, causing, resulting in or having (or

with the passage of time likely to cause, result in or have) a Material Adverse Effect.

Material Adverse Effect means a material adverse effect on:

(a) the assets, liabilities, results of operations, condition (financial or otherwise) or business of a party and each of its subsidiaries as a whole; or

(b) the ability of a party to perform its material obligations under this Agreement.

NAIF means the Northern Australia Infrastructure Facility, a body corporate constituted under the *Northern Australia Infrastructure Facility Act 2016* (Cth).

New Issue means the issue or sale of Shares by the Issuer either to existing shareholders of the Issuer or to one or more directors or employees of the Issuer or to one or more third parties at any time after the Completion Date.

New Project means a new renewable energy generation and/or energy storage project to be developed by the Issuer (or any Related Body Corporate or Affiliate of the Issuer), and which is majority owned and controlled by the Issuer (or any Related Body Corporate or Affiliate of the Issuer), which specifically excludes the Project, the 50MW Kidston Stage 1 Solar Farm, the 50MW Jemalong Solar Farm and the proposed Battery Energy Storage System project of up to 100MW to be located at Boulder combe, Queensland.

Nominee Director has the meaning given in clause 8.1(a).

Options means the 37,250,000 options granted by the Issuer as at the Signing Date which, if exercised, will result in the issued share capital of the Issuer being 548,755,999 ordinary shares.

Project means the 250MW pumped storage hydro project to be developed at Kidston, North Queensland by a Related Body Corporate of the Issuer.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Interest has the meaning given in the Corporations Act.

Remaining Equity Commitment means the Equity Commitment, less any deposits of funds by the Issuer (or its Related Bodies Corporate) into the Construction Proceeds Account, prior to the Completion Date.

Shares means ordinary shares in the capital of the Issuer.

Signing Date means the date on which this Agreement is executed by both parties.

Subscription Amount means the aggregate amount in Australian Dollars of the Subscription Price multiplied by the number of Subscription Securities.

Subscription Percentage means 19.99%.

Subscription Price means, either:

(a) the higher of the TSP and the FSP; or

(b) the 10% Threshold Price,

which is the lesser amount between (a) and (b).

Subscription Price Cap Amount means the amount of $25,000,000.

Subscription Securities means the lesser of:

(a) such number of Shares so that the Subscriber will hold up to but not exceeding the Subscription Percentage of the Issuer's total issued Shares after the issue of Shares to the Subscriber on the Completion Date; or

(b) such number of Shares equal to the Subscription Price Cap Amount divided by the Subscription Price.

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Takeover Provisions means Chapter 6 of the Corporations Act.

Technical Support Agreement means the technical support agreement between the Issuer and Subscriber attached as Schedule 1 to this Agreement.

Trustee Nominee Director has the meaning given in clause 8.3(a).

TSP means the Tentative Share Price, being the volume weighted average price per share of the Shares (excluding specials) as advised by ASX for the five (5) trading day period immediately preceding the date prior to the Conditions Precedent Satisfaction Date.

Voting Power has the meaning given in the Corporations Act.

1.2 Interpretation

(a) Headings are for convenience only and do not affect interpretation.

(b) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.

(c) The following rules apply unless the context requires otherwise.

(i) The singular includes the plural, and the converse also applies.

(ii) A gender includes all genders.

(iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

(iv) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.

(v) A reference to a clause, Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this Agreement.

(vi) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.

(vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.

(viii) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

(ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

(x) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.

(xi) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).

(xii) A reference to a day means a day in the jurisdiction where the relevant obligation is to be performed.

(xiii) A reference to currency, $ or AUD means Australian Dollars.

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(xiv) A reference to time is to the time in Sydney Australia.

1.3 Statements on the basis of knowledge or belief

Any statement made by a party on the basis of its knowledge and belief or awareness is made on the basis that the party has, in order to establish that the statement is true and not misleading in any respect:

(a) made all reasonable inquiries of the officers, managers, employees and other persons with responsibility for the matters to which the statement relates; and

(b) if those inquiries would have prompted a reasonable person to make further inquiries, made those further inquiries,

and that, as a result of those inquiries, the party has no reason to doubt that the statement is true and not misleading in any respect.

2 Conditions Precedent

2.1 Conditions Precedent

Completion will not proceed unless and until the following conditions (the ***Conditions Precedent***) are fulfilled or waived in accordance with this Agreement:

(a) (**Facility Agreement**) the Facility Agreement is executed by all the parties to it and a copy of the executed document is delivered to the Subscriber;

(b) (**NAIF Financial Close**) the Subscriber is provided with written evidence in which the Lender(s) or NAIF confirm(s) that all of the conditions precedent to utilisation of the Debt Facility in the Facility Agreement, other than ARENA Project Financial Close, the Completion of this Agreement and the Contributed Equity Condition Precedent, have been fulfilled or waived;

(c) (**Shareholder Approval**) a duly convened general meeting of the Issuer has approved:

(i) the issue and allotment of the Subscription Securities contemplated by this Agreement by the requisite majorities under Listing Rule 7.1 and otherwise in accordance with the Corporations Act and the Listing Rules; and

(ii) the appointment of the Nominee Director to the Board as a non-executive director of the Issuer by the requisite majorities under the Constitution and Corporations Act and otherwise in accordance with the Constitution and the Corporations Act,

and such approval has not lapsed or expired (or will not have lapsed or expired as at the Completion Date);

(d) (**Technical Support Agreement**) the Technical Support Agreement is executed by all the parties to it (including the Subscriber) with counterparts of each document delivered to the Subscriber;

(e) (**FIRB approval**) the Treasurer of the Commonwealth of Australia (or his or her delegate):

(i) provides written notice that there are no objections under the FATA to the issue and allotment of the Subscription Securities contemplated by this Agreement and that notice is either:

(A) not subject to any conditions; or

(B) subject only to any of the following:

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(1) tax-related conditions which are in the form, or substantially in the form, of those set out in Attachment B of FIRB Guidance Note 47 on 'Tax Conditions' (in the form released on 13 August 2018); or

(2) data related conditions; or

(3) any other conditions that are acceptable to the Subscriber (acting reasonably); or

(ii) becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the issue and allotment of the Subscription Securities contemplated by this Agreement;

(f) (**Capital Raising**) the Issuer has completed an equity capital raising of not less than the Capital Raising Amount through the issue of ordinary shares in the Issuer, such that following Completion of this Agreement, the Issuer will have the Remaining Equity Commitment in immediately available funds (after deducting any costs or expenses incurred in connection with the capital raising and this Agreement); and

(g) (**ARENA Project Financial Close**) the Subscriber is provided with written evidence in which ARENA confirms that all of the conditions precedent to ARENA Financial Close, other than the payment of the Equity Contribution in accordance with clause 6.4(a)(i) and NAIF Financial Close, have been fulfilled or waived.

2.2 Parties must co-operate

Each party must co-operate with the other and do all things reasonably necessary to procure that the Conditions Precedent are fulfilled as soon as reasonably possible, and in any event on or before the Conditions Precedent End Date.

2.3 Specific obligations of co-operation

Without limiting the generality of clause 2.2:

(a) each party must make all necessary and appropriate applications and supply all necessary and appropriate information for the purpose of enabling the Conditions Precedent to be fulfilled;

(b) no party may withdraw or procure the withdrawal of any application made or information supplied under paragraph (a) of this clause 2.3;

(c) in respect of the Condition precedent contained in clause 2.1(e), the Issuer must provide such assistance in respect of any such application for FIRB approval as the Subscriber may reasonably request, and each party must take all reasonable steps required as part of the approval process in respect of any such application, including responding to reasonable requests for information at the earliest practicable time;

(d) no party may take any action that would or would be likely to prevent or hinder the fulfilment of the Conditions Precedent;

(e) each party must:

(i) supply to the other party copies of all applications made and all information supplied for the purpose of enabling the Conditions Precedent to be fulfilled;

(ii) keep the other party informed in a timely manner of the status of any discussions or negotiations with relevant third parties regarding the Conditions Precedent; and

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(f) promptly notify the other party in writing on becoming aware of the fulfilment of any Condition Precedent, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied;

(g) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms.

2.4 Waiver

(a) The Conditions Precedent contained in clauses 2.1(a), (b), (c),(d) and (f) are for the benefit of the Subscriber and may only be waived by the Subscriber.

(b) The Condition Precedent contained in clause 2.1(e) is for the benefit of the Issuer and the Subscriber. Any breach or non-satisfaction of this Condition Precedent cannot be waived.

2.5 Termination before Completion

(a) (**Failure to satisfy Conditions Precedent**) If the Conditions Precedent are not satisfied on or before the Conditions Precedent End Date, then either party may terminate this Agreement by giving 5 Business Days written notice and this Agreement shall be of no further force and effect.

(b) (**Issuer termination right**) In the event that at the FID Date, the FID Price is below the GRT Price, the Issuer may elect to terminate this Agreement at its sole discretion by giving written notice to the Subscriber within two (2) Business Days of the FID Date and, if such notice is given, this Agreement shall be of no further force and effect.

(c) A party may only terminate this Agreement under clause 2.5(a) or 2.5(b) if that party has complied with clauses 2.2 and 2.3.

3 Agreement to Subscribe

3.1 Subscription

The Subscriber will subscribe, and the Issuer will issue to the Subscriber, the Subscription Securities on the Completion Date for the Subscription Price.

3.2 Agreement to serve as application

This Agreement serves as an application by the Subscriber for the allotment of the Subscription Securities on the Completion Date and accordingly it will not be necessary for the Subscriber to provide a separate (additional) application on or prior to the Completion Date. The Subscriber agrees to be bound by the Constitution of the Issuer upon the issue of the Subscription Securities.

4 Rights Attaching to Subscription Securities

The Subscription Securities will rank equally in all respects with the existing ordinary Shares of the Issuer on issue when the Subscription Securities are issued.

5 Completion

5.1 Time and place of Completion

Completion will take place at 9am on the Completion Date or any other time agreed by the Issuer and Subscriber.

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5.2 Subscriber's obligations at Completion

At Completion, the Subscriber must:

(a) pay, or cause to be paid, the Subscription Amount to the Issuer in Australian dollars in Immediately Available Funds to the account notified by the Issuer to the Subscriber in writing prior to the Completion Date (and such payment of the Subscription Amount must be without set-off or deduction);

(b) deliver to the Issuer a consent to act, completed by its nominee, to be appointed as a non-executive director on the Board.

5.3 Issuer's obligations at Completion

At Completion, the Issuer will:

(a) issue and allot the Subscription Securities to the Subscriber;

(b) register the Subscriber as the holder of the Subscription Securities; and

(c) take all other steps required under its constitution, the ASX Settlement Operating Rules and the Corporations Act to constitute and evidence the Subscriber as the holder of the Subscription Securities.

5.4 Issuer's obligations after Completion

The Issuer must:

(a) as soon as practicable, but in any event within one (1) Business Day after the Completion Date:

(i) apply for quotation of the Subscription Securities in accordance with the Listing Rules at its own cost and use its best endeavours at its own cost to obtain quotation of the Subscription Securities;

(ii) instruct its registry to issue a holding statement to the Subscriber evidencing the holding of the Subscription Securities;

(b) as soon as practicable and in any event within five (5) Business Days after issuing the Subscription Securities give ASX a notice in accordance with sections 708A(5)(e) and 708A(6) of the Corporations Act.

5.5 Simultaneous obligations at Completion

In respect of Completion:

(a) the obligations of the parties under this Agreement are interdependent and Completion will only occur once all obligations required at Completion are satisfied; and

(b) all actions required to be performed will be taken to have occurred simultaneously on the Completion Date.

6 Undertakings

6.1 The Issuer's undertakings

The Issuer must:

(a) prepare and lodge on a prompt and timely basis all documents required by the Listing Rules as necessary for the consummation of the transactions contemplated by this Agreement;

(b) use all reasonable efforts to co-operate with the Subscriber and its representatives in:

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(i) preparing all documents required to be lodged by the Subscriber with ASX in connection with the execution, delivery and performance of this Agreement and the transactions contemplated by it; and

(ii) achieving the timely lodgement of all such documents;

(c) use all reasonable efforts to take, or cause to be taken, all other actions and do, or cause to be done, all other things necessary or appropriate to consummate the transactions contemplated by this Agreement; and

(d) immediately notify the Subscriber if at any time before the Completion Date the Issuer becomes aware of any third party objecting to, challenging, interfering with or obstructing (or proposing to object to, challenge interfere with or obstruct) any of the transactions contemplated by this Agreement.

6.2 No further Share issues

(a) The parties acknowledge and agree that the intention of this Agreement is for the Subscriber to subscribe for such number of Subscription Securities that is equal to either the Subscription Percentage or Subscription Cap Amount (whichever is the lesser amount).

(b) In consideration of this, subject to clause 6.2(c), during the period from the Signing Date to the Completion Date inclusive, the Issuer must not enter into any agreement or legally binding commitment to give to any person any right to invest in or acquire shares or any security convertible into or exercisable for Shares in the Issuer and will not issue, redeem, reorganise or cancel any ordinary Shares in the Issuer or any Options without obtaining the prior written consent of the Subscriber.

(c) Clause 6.2(b) does not apply to:

(i) ordinary course grants of performance options, rights and/or shares to directors, senior executives and employees of the Group (including under any incentive plan), and/or any issue of Shares by the Issuer following the exercise or conversion of any such performance options, rights and/or shares;

(ii) any issue of Shares by the Issuer following the exercise or conversion of any existing securities on issue as at the Signing Date;

(iii) any issue of convertible notes to ARENA with a face value of up to but not exceeding $550,000 in aggregate;

(iv) any issue of Shares upon the conversion of any convertible notes on issue as at the Signing Date, or to be issued prior to the Completion Date in accordance with clause 6.2(c)(iii), to ARENA; and

(v) any issue of Shares to professional, sophisticated, institutional or retail investors for purposes of funding the equity requirements for the Project and/or the Issuer's ongoing working capital requirements.

6.3 Standstill

(a) During the time period between the Signing Date and the Completion Date (inclusive), the Subscriber agrees that it will not, and will ensure that each of its Affiliates and Associates do not, acquire or agree to acquire any Equity Securities (or Relevant interest in any Equity Securities) in the Issuer.

(b) The Subscriber acknowledges and agrees that:

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(i) the intention of the parties as at the date of this Agreement and as at Completion is for the Subscriber to hold a maximum aggregate interest in the Issuer of 19.99%; and

(ii) it must not increase its aggregate Relevant Interest in the Issuer other than in accordance with applicable laws, including the Takeover Provisions under the Corporations Act.

6.4 Use of Subscription Amount

(a) The Issuer must apply the Subscription Amount:

(i) within 1 Business Day after the Completion Date, towards the Equity Commitment under the Facility Agreement by depositing the full amount of the Remaining Equity Commitment into the Construction Proceeds Account and the Contingent Equity Account in order to satisfy the Contributed Equity Condition Precedent (the ***Equity Contribution***)); and

(ii) in respect of any balance, towards working capital for the Group.

(b) Immediately following the Equity Contribution, the Issuer must provide written confirmation to the Subscriber that the Issuer has completed the Equity Contribution in accordance with the Facility Agreement.

6.5 The Subscriber's undertakings

(a) The Subscriber will use all reasonable efforts to co-operate with the Issuer and its representatives in:

(i) preparing all documents to be lodged by the Issuer with ASX in connection with the execution, delivery and performance of this Agreement and the transactions contemplated by it; and

(ii) timely lodgement of all such documents.

(b) The Subscriber will use all reasonable efforts to take, or cause to be taken, all other action and do, or cause to be done, all other things necessary or appropriate to consummate the transactions completed by this Agreement.

7 No Public Announcements

Neither party will make any public announcements or statements to the media in relation to this Agreement or its subject matter except in accordance with the earlier written approval of the other, which approval will not be unreasonably withheld or delayed in consideration of the requirements under clause 17.2.

8 Board Rights

8.1 The Subscriber's board nomination

(a) Subject to Completion, the Issuer shall appoint a representative of the Subscriber (nominated in writing by the Subscriber after consultation with the Issuer and otherwise in accordance with clause 8.1(b)) to the Board as a non-executive director of the Issuer (the ***Nominee Director***) who will be appointed to the Board for the following period:

(i) for so long as the Subscriber and its Related Bodies Corporate (or their respective nominees or custodians) hold in aggregate at least 5% or more of the Shares; or

Y. K.

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(ii) during the period commencing on the Completion Date and ending on the date which is 5 years after the Completion Date,

whichever occurs later (the ***Director Appointment Period***).

(b) The Subscriber agrees that the Nominee Director shall have the appropriate commercial and professional experience to fulfil the role and that such person otherwise satisfies any Listing Rule requirements.

(c) The Subscriber's Board representation rights under this clause 8.1 cease and expire at the end of the Director Appointment Period. If the Subscriber's Board representation rights under this clause 8.1 cease, the Subscriber must procure that its Nominee Director resigns.

(d) The Issuer agrees that:

(i) for so long as a Nominee Director is a director of the Issuer, the Issuer:

(A) acknowledges that such person will be entitled to take into account the interests of the Subscriber, subject at all times to the director's fiduciary duties to the Issuer; and

(B) will consult in good faith with the Subscriber in relation to the appointment of the Nominee Director on to any committee of the Board; and

(ii) D&O insurance and all other arrangements of support provided by the Issuer to its non-executive directors (including by way of deeds of indemnity and access or similar) are no more or less favourable than those provided for the other directors and will be provided by the Issuer for the Nominee Director (including tail coverage) at the Issuer's expense (including any relevant insurance premiums) and at the Nominee Director's direction (if applicable).

(e) If the Nominee Director is removed by the shareholders of the Issuer, is not re-elected by shareholders of the Issuer or resigns from the Board, the Subscriber may nominate another person to be the Nominee Director in his or her place and the Issuer shall, to the extent permitted in accordance with the Constitution, the Listing Rules, the Corporations Act and the directors' fiduciary duties, take all reasonable steps to appoint this person as a director of the Board and will use reasonable endeavours to encourage shareholders to support the election of the replacement Nominee Director at any general meeting of the Issuer at which that person is standing for election.

8.2 Re-election of Nominee Director

(a) During the Director Appointment Period, the Nominee Director will be subject to re-election as required by the Listing Rules or the Constitution and the Issuer will use reasonable endeavours to encourage shareholders to support any such re-election subject at all times to the director's duties.

(b) The Subscriber acknowledges the restrictions in the Listing Rules and the Constitution regarding the requirements for the election of directors of the Issuer.

8.3 Hydro Trustee Nominee Director

(a) Subject to Completion, and for so long as the Subscriber and its Related Bodies Corporate retain the right to appoint the Nominee Director in accordance with clause 8.1, the Subscriber shall have the right to appoint the Nominee Director to the Hydro Board as a director of Hydro Trustee (***Trustee Nominee Director).***

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(b) The Subscriber may exercise its right in accordance with clause 8.3(a) by written notice to the Issuer, upon which the Issuer must procure that the Nominee Director is appointed to the Hydro Board within 10 Business Days of such written notice.

(c) In the event that the Nominee Director is removed and replaced as a director of the Issuer in accordance with clause 8.1(e), the Issuer shall procure that the Trustee Nominee Director is removed and replaced with the replacement Nominee Director.

(d) The Issuer agrees that for so long as the Trustee Nominee Director is a director of Hydro Trustee and to the extent not already provided for under clause 8.1(d)(ii), D&O insurance and all other arrangements of support provided by the Issuer to directors of Hydro Trustee (including by way of deeds of indemnity and access or similar) are no more or less favourable with those provided for the other directors and will be provided by the Issuer for the Trustee Nominee Director (including tail coverage) at the Issuer's expense (including any relevant insurance premiums) and at the Trustee Nominee Director's direction (if applicable).

(e) The right of the Subscriber in clause 8.3(a) shall immediately cease and expire:

(i) in the event that the Trustee Nominee Director votes on a resolution of the Hydro Board in a manner that is inconsistent with the majority of the other nominated representative directors of the Issuer on the Hydro Board; or

(ii) upon expiry of the Subscriber's right to appoint the Nominee Director in accordance with clause 8.1.

9 Information access and sharing rights

(a) The parties acknowledge and agree that the Subscriber is entitled to receive from the Nominee Director all information regarding the Issuer or its business which is circulated to Board members or is otherwise reasonably requested by the Subscriber to the extent permitted by law, and subject to compliance with any third party confidentiality requirements, privilege considerations and clause 16 and 17.

(b) To the extent any information is provided by the Nominee Director to the Subscriber and which is not publicly available, such information is considered confidential and must not be disclosed other than in accordance with the exceptions set out in clause 17.2.

(c) The Issuer agrees to cooperate and provide all information reasonably requested by the Subscriber to enable the Subscriber to comply with its reporting requirements to any Governmental Agency (including, without limitation, to assist in responding to any notice to produce information).

10 Right of First Refusal

(a) Following Completion and during the Director Appointment Period, unless otherwise agreed by the Subscriber in writing, the Issuer must not discuss any New Project with any third party or offer any third party an opportunity to invest in, develop or implement any New Project unless the Issuer has first had a formal discussion with the Subscriber in relation to the investment in, development or implementation of the New Project and either:

(i) the Subscriber has given written notice to the Issuer that it does not wish to participate in the New Project; or

(ii) the parties are unable to agree and execute a legally binding agreement in relation to the joint development and implementation of the New Project (the ***Joint Development Agreement***) within 30 Business Days of the date of the

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initial discussion between the parties in relation to the New Project (or such other period agreed between the parties in writing).

(b) The parties must use their best endeavours to negotiate in good faith the formal terms of, and enter into, the Joint Development Agreement within the time period specified in clause 10(a)(ii).

(c) A reference in this clause to the Issuer includes any of the Issuer's Related Bodies Corporate and Affiliates and the Issuer will ensure that none of its Related Bodies Corporate or Affiliates:

(i) undertakes an activity in respect of any New Project without following the process in this clause 10; or

(ii) seeks to circumvent or contravene the first right provisions of this clause 10.

11 Representations and Warranties

11.1 Representations and Warranties by the Issuer

The Issuer represents and warrants to the Subscriber that each of the following statements is true, accurate and not misleading as at each of the Signing Date and the Completion Date:

(a) (**status**) It is a body corporate validly existing under the laws of its place of incorporation or establishment.

(b) (**corporate power**) It has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.

(c) (**corporate action**) It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement. On the Completion Date, full beneficial title in the Subscription Securities will vest in the Subscriber.

(d) (**accuracy and completeness**) To the best of the Issuer's knowledge and belief, all information relating to the Issuer and the Group and the Issuer and/or the Group's operations provided to the Subscriber or its advisers in connection with the proposed investment by the Subscriber in the Issuer as contemplated by this Agreement, and all information publicly disclosed by the Issuer, is true in all material respects and is not by omission or otherwise misleading in any material respect. Nothing has occurred which renders any of the information which has been disclosed to the Subscriber or its advisers, or which has been publicly disclosed by the Issuer, inaccurate in any material respect.

(e) (**compliance with law**) To the best of the Issuer's knowledge and belief, it is not, and no Group Member is, in breach of any provision of:

(i) the Corporations Act;

(ii) the Listing Rules (except where compliance has been waived, or as modified, by ASX);

(iii) its constitution or any other constituent organisational document;

(iv) any legally binding requirement of ASIC or ASX specifically addressed to a Group, or that a Group Member is specifically subject to;

(v) any other law to which it is subject or any order of any Governmental Agency that is binding on it; or

(vi) any other undertaking or instrument or Authorisation or court or administrative order binding on it (or its Affiliates).

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(f) (**disclosure compliance**) Subject to Listing Rule 3.1A, it has complied with all its disclosure requirements under the Corporations Act and the Listing Rules and there is no material information or circumstance which the Issuer is not obliged to notify ASX about, pursuant to Listing Rule 3.1.

(g) (**accounts**) The Issuer has delivered to the Subscriber true and complete copies of the Accounts and has disclosed the Accounts to ASIC and ASX.

The Accounts:

(i) have been prepared in accordance with the Corporations Act and applicable accounting standards;

(ii) of each Group Member show a true and fair view of:

(A) the assets and liabilities and of the state of affairs, financial position and results of each Group Member as at and up to 30 June 2019 in each financial year to which they relate; and

(B) the profit or loss of each Group Member for the financial period ended on 30 June in each financial year to which they relate;

(iii) have been prepared in accordance with the same accounting policies as were applied in the corresponding accounts for the preceding 3 financial periods;

(iv) are not affected by any abnormal or extraordinary item, except as expressly disclosed in the Accounts;

(v) take account of all gains and losses, whether realised or unrealised, arising from foreign currency transactions and on translation of foreign currency financial statements;

(vi) include reserves and provisions for taxation that are sufficient to cover all tax liabilities of each Group Member in respect of all periods up to 30 June 2019 in each financial year to which they relate;

(vii) provide for all liabilities for long service leave and annual leave entitlements;

(viii) provide for all other liabilities (whether quantified, contingent or otherwise) of each Group Member at 30 June 2019 in each financial year to which they relate; and

(ix) give full particulars in the notes of all contingent liabilities and commitments and any other liabilities which cannot be quantified.

(h) (**consolidated accounts**) In addition, the consolidated accounts included in the Accounts show a true and fair view of:

(i) the assets and liabilities and of the state of affairs, financial position and results of the consolidated entity constituted by the Issuer and the entities it is required by the accounting standards to include in its consolidated financial statement as at and up to 30 June 2019 in the financial year to which they relate; and

(ii) the profit or loss of the consolidated entity financial statement for the financial period ended on 30 June 2019 in the financial year to which they relate.

(i) (**conduct since 30 June 2019**) Since 30 June 2019, each of the following has occurred.

(i) (**conduct of business**) The business of each Group Member has continued in the ordinary and usual course and not otherwise.

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(ii) (**dealings**) No Group Member has dealt with any person except at arm's length. No property has been acquired by any Group Member for more than market value.

(iii) (**capital expenditure**) No Group Member has made any capital expenditure, other than as referred to in the Accounts or in the ordinary course of business.

(iv) (**deferral of capital expenditure**) No decision has been made to defer any capital expenditure of any Group Member other than in the ordinary course of business.

(v) (**contracts**) No contract has been terminated or has expired which could reasonably be expected to have a Material Adverse Effect on the profitability of any business conducted by a Group Member other than in the ordinary course of business.

(vi) (**authorisations**) No Authorisation from which any Group Member benefits has been terminated or has expired and in either case could reasonably be expected to have a Material Adverse Effect on the profitability of any business of a Group Member other than in the ordinary course of business.

(j) (**binding obligation**) This Agreement is its valid and binding obligation.

(k) (**no contravention**) Neither the entry into nor performance by it of this Agreement nor any transaction contemplated under this Agreement violates in any material respect any provision of any judgment binding on it, its constituent documents, any law or any document, agreement or other arrangement binding on it or its assets.

(l) (**material contracts**) To the best of the Issuer's knowledge and belief, all contracts entered into by the Issuer that are material for the carrying on of its business are valid and enforceable in accordance with their terms and entry into this Agreement will not result in any person having the right (whether actual or contingent) to terminate any material contract material to the carrying on the Issuer's business.

(m) (**no litigation**) Except as disclosed in the Accounts and the Issuer's annual report for the financial year ended 30 June 2019, the Issuer is not aware of any facts or circumstances likely to lead to any prosecution, litigation or arbitration involving the Issuer or any person for whom the Issuer may be liable, and has not been threatened with any prosecution, litigation or arbitration involving the Issuer or any person for whom the Issuer may be liable. To the best of the Issuer's knowledge and belief, the Issuer is not involved in any proceeding before or investigation by any Governmental Agency or other body and no such proceeding or investigation is pending or threatened against the Issuer or any person for whom it may be liable.

(n) (**consents/approvals**) Except for the admission of the Subscription Securities to the Official List of ASX , no consent, approval, authorisation, order, registration or qualification of or with any Governmental Agency or any other person is required for the Issuer to perform its obligations under this Agreement.

(o) (**capitalisation**) As at the Signing Date and the Completion Date, the Issuer and/or the Group Members have no outstanding obligations or intent to issue, redeem or cancel any Shares or options in the Issuer other than as permitted by clause 6.2(c), and there exist no rights to acquire capital or voting rights in the Issuer other than this Agreement and the Options.

(p) (**no finder**) Neither the Issuer nor any party acting on its behalf has paid or become liable to pay any fee or commission to any broker, finder or intermediary for or on account of

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transactions contemplated by this Agreement (excluding legal fees payable in connection with this Agreement).

The representations and warranties by the Issuer in this clause 11.1 are continuing obligations of the Issuer and survive the issue of the Subscription Securities and do not merge on the Completion Date.

11.2 Representations and Warranties by the Subscriber

The Subscriber represents and warrants to the Issuer that each of the following statements is true, accurate and not misleading as at each of the Signing Date and the Completion Date:

(a) (**status**) It is a body corporate validly existing under the laws of its place of incorporation or establishment.

(b) (**corporate power**) It has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.

(c) (**corporate action**) It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement.

(d) (**binding obligation**) This Agreement is its valid and binding obligation, enforceable against it in accordance with its terms by appropriate legal remedy.

(e) (**no contravention**) Neither the entry into nor performance by it of this Agreement nor any transaction contemplated under this Agreement or completion of a transaction contemplated by this Agreement violates in any material respect any provision of any judgment binding on it, its constituent documents, any law or any document, agreement, obligation (including any statutory, contractual or fiduciary obligation) or other arrangement binding on it or its assets.

(f) (**related party**) It is not a "related party" (as that term is defined in the Corporations Act) of any Group Member.

(g) (**investor status**) It does not require a disclosure document in connection with the offer and issue of the Subscription Securities under Chapter 6D of the Corporations Act or Part 7.9 of the Corporations Act because it is both (i) a sophisticated or professional investor (within the meaning of subsections 708(8) and 708(11) of the Corporations Act), and (ii) a wholesale client for the purposes of section 761G of the Corporations Act.

(h) (**no disclosure document**) It understands that the offering and issuance of the Subscription Securities are being made without the preparation and delivery of a prospectus, product disclosure statement or any other offer or disclosure document prepared in accordance with the Corporations Act.

(i) (**FIRB**) It is not a 'foreign government investor' (as defined in the FATA) or an 'associate' (as defined in the FATA) of a 'foreign government investor'.

(j) (**publicly available information**) It is aware that publicly available information about the Group can be obtained from ASX (including from its website www.asx.com) and ASIC.

(k) (**anti-money laundering**) Any subscription for the Subscription Securities by the Subscriber pursuant to this Agreement will be done with funds that are from legitimate sources in connection with regular business activities, do not constitute the proceeds of crime as contemplated by the *Proceeds of Crime Act 1987 or 2002* (Cth) and would not constitute a breach of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), and it will be in compliance with the requirements of any equivalent laws or relevant obligations under anti-money laundering and counter-terrorism financing laws

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and regulations in the jurisdictions in which it is incorporated or carries on business to the extent that those laws apply to its subscription for the Subscription Securities.

(l) (**reliance**) At no time has:

(i) the Group, or any other person on behalf of it, communicated to the Subscriber; or

(ii) the Subscriber relied on,

any representation, warranty, promise or undertaking in respect of the future financial performance or prospects of the Group or otherwise.

(m) (**own enquiries**) It has made its own enquiries and relied upon its own assessment of the Subscription Securities and the Group, and has conducted its own investigation with respect to the Subscription Securities and the Group and has decided to agree to subscribe for the Subscription Securities based on its own enquiries.

(n) (**no financial product advice**) This Agreement does not constitute financial product advice or a recommendation to subscribe for the Subscription Securities and that in negotiating and entering into this Agreement, the Issuer has not had regard to the Subscriber's particular objectives, financial situation and needs.

(o) (**US Securities Act**) It understands that the offer and sale of the Subscription Securities have not been, and will not be, registered under the US Securities Act or the securities laws of any state or other jurisdiction of the United States, and the Subscription Securities may not be offered, sold, pledged or otherwise transferred without registration under the US Securities Act (which the Subscriber acknowledges the Issuer has no obligation to do or to procure) unless the Subscription Securities are offered, sold, pledged, transferred or otherwise disposed of in a transaction exempt from, or not subject to, the registration requirements of the US Securities Act and the securities laws of any state or any other jurisdiction in the United States.

(p) (**purpose**) It is not applying for issue of the Subscription Securities with the purpose of selling, transferring or otherwise issuing or transferring interests in the Subscription Securities.

(q) (**no Relevant Interest**) It does not (and none of its Affiliates or Associates) has:

(i) a Relevant Interest in any Equity Securities in the Issuer;

(ii) Voting Power in the Issuer; or

(iii) any interest which has the economic effect of being substantially equivalent to a Relevant Interest or Voting Power (including any cash settled equity swap or contract for difference or other derivative).

11.3 Notice of breach

(a) The Issuer undertakes to the Subscriber that it will notify the Subscriber as soon as practicable after it becomes aware of a breach of any representation or warranty under clause 11.1 or any undertaking given by it in this Agreement.

(b) The Subscriber undertakes to the Issuer that it will notify the Subscriber as soon as practicable after it becomes aware of a breach of any representation or warranty under clause 11.2 or any undertaking given by it in this Agreement.

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12 Warranty Limitations

12.1 Issuer's disclaimer

Subject to any law to the contrary and except as provided in the warranties set out in clause 11.1, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are excluded and the Issuer disclaims all liability in relation to those to the maximum extent permitted by law.

12.2 Warranty threshold

The Subscriber may not make any Claims for breach of a warranty given by the Issuer under this Agreement unless the amount of the claim:

(a) exceeds $200,000 in respect of a particular matter or in respect of a number of similar or related matters taken together; and

(b) exceeds $500,000 in aggregate, in respect of all matters referred to in clause 12.2(a),

but once the amount of the claim exceeds $25,000 in aggregate the Subscriber may Claim for all of the Liability or Loss suffered.

12.3 Warranty cap

If the Issuer breaches any warranty set out in clause 11.1, and subject to this clause 12, the Issuer is liable for the resulting loss up to a maximum amount of 100% of the Subscription Amount actually paid.

12.4 Time limit on claims

The Subscriber may not make any Claim for breach of warranty unless it has notified the Issuer in writing of that Claim within 18 months from the Completion Date, such notification to include, at a minimum (i) the known facts giving rise to the Claim, (ii) the legal basis for the Claim and (iii) the remedies it will seek. A Claim is not enforceable against the Issuer and is taken to have been withdrawn unless any legal proceedings in connection with the Claim are commenced within six (6) months after written notice of the Claim is served on the Issuer.

12.5 Consequential loss

The Issuer excludes all liability for indirect and consequential loss or damage (including for loss of profit (whether direct, indirect, anticipated or otherwise), loss of expected savings, opportunity costs, loss of business (including loss or reduction of goodwill), damage to reputation and loss or corruption of data regardless of whether any or all of these things are considered to be indirect or consequential losses or damage) in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to this Agreement or its subject matter.

12.6 Disclosure qualifications

Each of the warranties given by a Group Member under clause 11.1 is qualified by any information fairly disclosed in ASX announcements made before the date of this Agreement.

13 Guarantee and indemnity

13.1 Guarantee

In the event Electric Power Development Co., Ltd assigns its rights and obligations under this Agreement in accordance with clause 19.3, Electric Power Development Co., Ltd (in this clause 13, the **Guarantor**) unconditionally and irrevocably agrees to guarantee to the Issuer the due and punctual performance by the assignee (**Assignee**) of the Guaranteed Obligations.

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13.2 Issuer's right to demand

If the Assignee defaults in the performance of the Guaranteed Obligations in accordance with this Agreement, the Guarantor must perform the Guaranteed Obligations immediately on demand by the Issuer.

13.3 Principal debtor

If the Guaranteed Obligations are not fully enforceable against or not fully recoverable from the Assignee as debtor or from the Guarantor as surety for any reason, including:

(a) any legal limitation, disability or lack of capacity, power or authority affecting the Assignee or the Guarantor or an improper exercise of power or authority by any person;

(b) any provision of this Agreement or any transaction relating to the Guaranteed Obligations being or becoming void, voidable, unenforceable or time-barred; or

(c) any winding-up, bankruptcy, reorganisation, amalgamation or similar event or circumstance affecting the Assignee or the Guarantor,

the Guaranteed Obligations:

(d) are recoverable from, or enforceable against, the Guarantor as though they had been incurred and owing by the Guarantor and the Guarantor was the sole and principal debtor in respect of the Guaranteed Obligations; and

(e) must be paid or performed by the Guarantor immediately on demand by the Issuer.

13.4 Indemnity

(a) As a separate and independent obligation, the Guarantor unconditionally and irrevocably indemnifies the Issuer against all Claims arising directly or indirectly from, or which the Issuer suffers or incurs in connection with:

(i) the failure of the Guarantor or the Assignee to duly and punctually comply with or perform its obligations or purported obligations under or in connection with this Agreement;

(ii) any representation or warranty made by the Guarantor or the Assignee under this Agreement being or becoming untrue or misleading; or

(iii) the exercise or attempted exercise by the Issuer of a right or power under this clause 13.

(b) The indemnity in clause 13.4(a) remains in effect even if the guarantee under clause 13.1 is not or ceases to be valid or enforceable against the Guarantor for any reason.

(c) The Guarantor must immediately on demand by the Issuer pay to the Issuer any amount certified by the Issuer as payable under clause 13.4(a).

13.5 Continuing and independent guarantee and indemnity

(a) The guarantees and indemnities in this clause 13:

(i) are continuing obligations;

(ii) survive termination of this Agreement;

(iii) extend to cover this Agreement as amended, varied or replaced, whether with or without the consent of the Guarantor;

(iv) are independent of, and not in substitution for or affected by, another security interest or guarantee or other document or agreement which the Issuer or another person may hold concerning the Guaranteed Obligations; and

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(v) continue in full force and effect until all of the Guaranteed Obligations and all of the Guarantor's obligations under or in connection with this Agreement have been irrevocably performed in full, regardless of any intermediate payment or discharge in whole or in part.

(b) It is not necessary for the Issuer to incur expense or make payment before enforcing a right of indemnity under this clause 13.

(c) The Guarantor waives any rights that it may have of first requiring the Issuer (or any other person for whose benefit the guarantee and indemnity in this clause 13 is given) to commence proceedings, or enforce any other right, against the Assignee or any other person before claiming under this clause 13.

13.6 Obligations of Guarantor unaffected

The Guarantor's obligations under this Agreement are not released or discharged by:

(a) any time, waiver, consent, indulgence or other concession granted to the Assignee;

(b) a release, forbearance to sue, discharge, relinquishment, compounding or compromising of the obligations of any party to this Agreement or in respect of the Guaranteed Obligations;

(c) any change in the constitution of the Assignee or the Guarantor or their absorption in, amalgamation with or merger into, or the acquisition of all or part of their undertaking by, any other person;

(d) an amendment of, supplement to or replacement of the obligations of any party to this Agreement including any amendment, supplement or replacement under which the Assignee's obligations are increased, the Assignee incurs additional obligations or the time and method of payment by the Assignee is varied;

(e) an obligation of any party to this Agreement being or becoming illegal, void, voidable or unenforceable (regardless of whether by reason of a legal limitation, disability or incapacity on the part of the Issuer and whether this Agreement is void ab initio or is subsequently avoided); or

(f) any part of the Guaranteed Obligations being or becoming irrecoverable or never having been recoverable;

(g) a rule of law or equity to the contrary;

(h) the partial performance of the Guaranteed Obligations;

(i) the Issuer granting any time or other indulgence or concession to, compounding or compromising with, or wholly or partially releasing the Assignee or the Guarantor of any obligation; or

(j) another thing happening that might otherwise release, discharge or affect the obligations of the Guarantor under this Agreement.

13.7 No duty to disclose

The Issuer was not before the execution of this Agreement, and is not at any time after the execution of this Agreement, under a duty to disclose to the Guarantor or any other person any information concerning the Assignee or the Assignee's affairs or transactions with the Issuer.

13.8 Prohibited claims

The Guarantor must not, without the Issuer's prior written consent:

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(a) make any claim for any amount paid under this Agreement or enforce any right against the Assignee or its property;

(b) raise a defence available to the Guarantor, the Assignee or any other person against the Issuer, or exercise any right of set-off or make a counterclaim (whether arising in favour of itself or of the Assignee) against the Issuer, in reduction of its liability under this Agreement;

(c) claim the benefit of any security or guarantee held now or in the future by the Issuer for or in respect of the Guaranteed Obligations; or

(d) take any security or guarantee to secure the reimbursement to it of any amount paid under this Agreement,

until all of the Guaranteed Obligations and all of the Guarantor's obligations under this Agreement have been finally and fully satisfied.

13.9 Competing claims

In a winding-up or bankruptcy of the Assignee:

(a) the Guarantor may not prove or make a claim against the Assignee or the Assignee's assets in competition with the Issuer until all of the Guaranteed Obligations and all of the Guarantor's obligations under this Agreement have been finally and fully satisfied; and

(b) the Issuer's receipt of any payment or other dividend out of the Assignee's assets will not affect the Issuer's right to recover from the Guarantor payment and satisfaction in full of all of the Guaranteed Obligations and all of the Guarantor's obligations under this Agreement.

13.10 Reinstatement of Principal's rights

(a) If any transaction made in or towards satisfaction of the Guaranteed Obligations or any of the Guarantor's obligations under this Agreement is void or voidable under any law (including any law relating to preferences, bankruptcy, administration or the winding-up of companies), the Issuer is entitled to the same rights and remedies against the Guarantor as it would have had if the transaction had never taken place.

(b) If required by the Issuer, the Guarantor must at its own expense, sign all documents and do all acts necessary to restore to the Issuer the benefit of this Agreement immediately before the transaction referred to in clause 13.10(a) took place.

(c) Clauses 13.10(a) and 13.10(b) survive the termination of this Agreement unless the Issuer expressly agrees otherwise in writing.

14 Termination

14.1 Termination by the Subscriber

The Subscriber may immediately terminate this Agreement at any time by notice given to the Issuer, without cost or liability to the Subscriber, so that it is relieved of all its obligations under this Agreement, if any of the following events occur on or before the Conditions Precedent Satisfaction Date:

(a) (**representations and warranties**) the Issuer breaches any representation or warranty given by it under this Agreement;

(b) (**material adverse change**) a Material Adverse Change occurs within the Issuer;

(c) (**breach**) the Issuer fails to perform or observe any of its material obligations under this Agreement or breaches any of its warranties in any material respect, where such breach

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is not remedied within five (5) Business Days of the Issuer receiving notice from the Subscriber of details of the breach and its intention to terminate;

(d) (**fraud**) the Issuer or any of its directors or officers engage in, or have engaged in, any fraudulent conduct or activity whether or not in connection with the transactions contemplated by this Agreement;

(e) (**prosecution**) any of the following occur:

(i) a director of the Issuer is charged with an indictable offence in relation to their conduct as a director of the Issuer;

(ii) any Governmental Agency commences any investigation or action against the Issuer or any of its directors in their capacity as a director of the Issuer, or announces that it intends to take such action; or

(iii) any director of the Issuer is disqualified from managing a corporation under Part 2D.6 of the Corporations Act; or

(f) (**listing**) the Issuer ceases to be admitted to the official list of the ASX.

14.2 Termination by the Issuer

The Issuer may terminate its obligations under this Agreement any time prior to the issue of any Subscription Securities by notice to the Subscriber if:

(a) the Issuer is in any way prevented by any regulatory authority from proceeding with the issue of the Subscription Securities;

(b) the Subscriber is placed into insolvency, an order for the winding up of the Subscriber has been made or threatened, the Subscriber has been placed into administration or the Issuer's issue of the Subscription Securities would be a breach of any applicable law, regulation or ordinance;

(c) (**breach**) the Subscriber fails to perform or observe any of its material obligations under this Agreement or breaches any of its warranties in any material respect, where such breach is not remedied within five (5) Business Days of the Subscriber receiving notice from the Issuer of details of the breach and its intention to terminate; or

(d) (**fraud**) the Subscriber or any of its directors or officers engage in, or have engaged in, any fraudulent conduct or activity whether or not in connection with the transactions contemplated by this Agreement.

14.3 Termination by a party

A party may only terminate this Agreement under clause 14.1 or 14.2 (as the case may be) if that party is not otherwise in breach of this Agreement.

14.4 Effect of Termination

If this Agreement is terminated in accordance with 2.5 or this clause 13, this Agreement will cease to have force and effect without any liability or obligation on the part of any party, except that:

(a) this clause 14.4 and clauses 1, 13, 15, 16, 17, 18 and 19 will survive termination; and

(b) each party will retain any rights and remedies that accrued prior to termination, including any rights and remedies in respect of any past breach of this Agreement.

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15 Indemnity

Each party indemnifies the other against each claim, action, proceeding, judgment, damage, costs, loss, expense or liability (including legal costs on a full indemnity basis) incurred or suffered by or brought by or made or recovered against the other in connection with or arising out of any breach of any provision of this Agreement by the other.

16 Inside Information

The Subscriber acknowledges that information provided by the Issuer pursuant to this Agreement may comprise Inside Information. The Subscriber acknowledges that it must comply with (and to procure that each of its group members and their respective employees and officers comply with) all applicable laws (including the Corporations Act and Listing Rules) that may apply in relation to dealing in the securities of the Issuer while in possession of any Inside Information or the disclosure of such information.

17 Confidentiality

17.1 Confidentiality

Subject to clause 17.2:

(a) each party must keep the terms of this Agreement confidential; and

(b) the Subscriber must keep all information provided by the Issuer, its Related Bodies Corporate, officers or advisers in connection with the transactions contemplated by this Agreement confidential.

17.2 Exceptions

A party may make any disclosures of confidential information in relation to this Agreement as it thinks necessary:

(a) to its professional advisers, insurers, bankers, financial advisers and financiers, if those persons are under a duty of confidentiality;

(b) to any of its Related Bodies Corporate, the officers or employees of its Related Bodies Corporate, and, subject to an undertaking to keep information disclosed confidential, the professional advisers, insurers, bankers, financial advisers and financiers of its Related Bodies Corporate;

(c) to comply with any applicable law or requirement of any court, tribunal, regulatory or supervisory authority or Governmental Agency, Corporations Act or the Listing Rules;

(d) to any of its officers or employees to whom it is necessary to disclose the information; or

(e) to any rating agency, insurer or insurance broker of, or direct and indirect provider of credit protection to, that party or any affiliate of that party.

18 GST

18.1 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.

18.2 Recovery of GST

If GST is payable, or notionally payable, by a party (***Supplier***) on a supply it makes under or in connection with this Agreement, the party providing the consideration for that supply (***Recipient***)

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must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the ***GST Amount***). Subject to the prior receipt of a tax invoice (or an adjustment note, as applicable), the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

18.3 Liability for penalties

If the Recipient fails to make the payment of an amount in accordance with this clause 18, the Recipient must pay to the Supplier (or the representative member liable for the GST on the relevant supply under the GST Act) on demand the amount of any loss, cost expense, penalty, fine, interest, fee or other amount to which the Supplier (or the representative member liable for such amount,) becomes liable as a direct result of the Recipient's failure to make such payment. It will not be a defence to any claim against the Recipient that the Supplier (or the representative member liable for such amount) has failed to mitigate damages by paying an amount of GST when it fell due under the GST Law.

18.4 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

18.5 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties. The supplier will promptly issue an adjustment note to the recipient in respect of the adjustment event.

18.6 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

18.7 Revenue exclusive of GST

Any reference in this Agreement to value, sales, revenue or a similar amount (***Revenue***), is a reference to that Revenue exclusive of GST.

18.8 Cost exclusive of GST

Any reference in this Agreement to a cost, expense or other similar amount (***Cost***), is a reference to that Cost exclusive of GST.

19 General

19.1 Governing Law and Jurisdiction

This Agreement is governed by the laws of New South Wales, Australia. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

19.2 Notices

Any notice, demand, consent or other communication (a ***Notice***) given or made under this Agreement:

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(a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);

(b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the addressor email address below or the addressor email address last notified by the intended recipient to the sender:

(i) to the Issuer:

Address: Suite 6, Level 6, 28 O'Connell Street, Sydney NSW 2000

Email: jc@genexpower.com.au

Attention: Justin Clyne

with a copy to:

Baker McKenzie, Tower One - International Towers Sydney
Level 46, 100 Barangaroo Avenue, Sydney NSW 2000

Facsimile no: +61 2 9225 1595

Email: Kate.Jefferson@bakermckenzie.com

Attention: Kate Jefferson

(ii) to the Subscriber:

Address: 15-1, Ginza 6-Chome, Chuo-ku, Tokyo, 104-8165 Japan

Email: Kenichi_Seshimo@jpower.co.jp

Attention: Kenichi Seshimo

with a copy to:

Allens

Level 26, 480 Queen Street, Brisbane QLD 4000

Facsimile no: +61 7 3334 3444

Email: Chelsey.Drake@allens.com.au

Attention: Chelsey Drake

(c) will be conclusively taken to be duly given or made:

(i) in the case of delivery in person, when delivered;

(ii) in the case of delivery by express post, to an address in the same country, two (2) Business Days after the date of posting;

(iii) in the case of delivery by any other method of post, six (6) Business Days after the date of posting (if posted to an address in the same country) or ten (10) Business Days after the date of posting (if posted to an address in another country);

(iv) in the case of email, at the earliest of:

(A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;

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(B) the time that the intended recipient confirms receipt of the email by reply email; and

(C) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made:

(v) in the case of delivery by hand or post, at a time that is later than 5pm;

(vi) in the case of delivery by email, at a time that is later than 7pm; or

(vii) on a day that is not a business day,

in the place specified by the intended recipient as its postal address under clause 19.2(b), it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

19.3 Assignment

(a) Subject to clause 19.3(b), the Subscriber cannot assign, novate, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the Issuer which may not be unreasonably withheld.

(b) The Subscriber may assign or novate its rights or obligations under this Agreement at any time prior to the Completion Date if the transferee or assignee is a Related Body Corporate or Affiliate of the Subscriber.

19.4 No waiver

(a) No acquiescence, waiver or other indulgence granted by either party to any other party will in any way discharge or relieve that other party from any of its other obligations under this Agreement.

(b) A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

19.5 Costs and duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including any fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne equally by the parties.

19.6 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

19.7 Extent of obligations

If any payment under this Agreement becomes void by any statutory provision or otherwise, the obligations of the party that made the payment will be taken not to have been discharged in

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respect of that payment and the parties will be restored to the rights which each respectively would have had if that payment had not been made.

19.8 Entire agreement

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively ***Conduct***) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. Neither party has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.

19.9 Amendment

This Agreement may be amended only by another agreement executed by all the parties.

19.10 Further assurances

Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Agreement and the transactions contemplated by it.

19.11 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

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Schedule 1

Technical Support Agreement

Attached.

Executed as an agreement

Signed by **Genex Power Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Simon Robert Kidston
Director

Print Name

Signature of director / ~~company secretary~~

Ben Guo
Director

Print Name

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Signed for **Electric Power Development Co., Ltd** by its authorised representative in the presence of:

石黒 友希夫

Witness Signature

Yukio Ishiguro

Print Name

Authorised Representative Signature

Jun Harada

Print Name

Director General

Position

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