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COMPANIES FORM No. 410(Scot)

Particulars of a charge created by a company registered in Scotland

410

Please do not
write in
this margin

Pursuant to section 410 of the Companies Act 1985

To the Registrar of Companies
(Address overleaf - Note 5)

For official use

Company number

Please complete
legibly, preferably
in black type, or
bold block lettering

SC137656 ✓

Name of company

* Fife Energy Limited (the "Company") ✓

*
insert full name
of company

Date of creation of the charge (note 1)

10th January 1997 ✓

Description of the instrument (if any) creating or evidencing the charge (note 1)

Shares Pledge (the "Securities Charge") ✓

Amount secured by the charge

All present and future obligations and liabilities of:

(a) the Company to the Bank under the Securities Charge and under each other Finance Document to which the Company is a party and

(b) The Borrower under the Agreement and each other Finance Document to which it is a party and

(c) and/or, in either case, any deed or document supplemental thereto, whether actual, contingent, sole, joint and/or several or otherwise including, without prejudice to the foregoing generality, all obligations to indemnify the Bank

(the "Secured Liabilities").

all sums due.

Names and addresses of the persons entitled to the charge

The Governor and Company of the Bank of Scotland,

acting through its International Division based at Orchard Brae House, 30 Queensferry Road,

Edinburgh EH4 2UG (the "Bank") ✓

Presenter's name address telephone
number and reference (if any):

Messrs Dundas & Wilson CS
Saltire Court
20 Castle Terrace
EDINBURGH
EH1 2EN
SM/MPS/B0056332

For official Use
Charges Section



		
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COMPANIES HOUSE 24/1/97		

Short particulars of all the property charged.

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this margin

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legibly, preferably
in black type, or
bold block lettering

See paper apart

Statement, in the case of a floating charge, as to any restrictions on power to grant further securities and any ranking provision (note 2)

N/A

Particulars as to commission, allowance or discount paid (see section 413(3))

N/A

Signed Dundas & Wilson Date 22-1-97

On behalf of [~~company~~][chargee][†]

[†] delete as
appropriate

Notes

1. A description of the instrument e.g. "Standard Security" "Floating Charge" etc, should be given. For the date of creation of a charge see section 410(5) of the Act. (Examples - date of signing of an Instrument of Charge; date of recording/registration of a Standard Security; date of intimation of an Assignment.)
2. In the case of a floating charge a statement should be given of (1) the restrictions, if any, on the power of the company to grant further securities ranking in priority to, or pari passu with the floating charge; and/or (2) the provisions, if any, regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over the property which is the subject of the floating charge or any part of it.
3. A certified copy of the instrument, if any, creating or evidencing the charge, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of the creation of the charge. In the case of a charge created out of the United Kingdom comprising property situated outside the U.K., within 21 days after the date on which the copy of the instrument creating it could, in due course of post, and if despatched with due diligence, have been received in the U.K. Certified copies of any other documents relevant to the charge should also be delivered.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.

5. The address of the Registrar of Companies is:-

Companies Registration Office,
37 Castle Terrace,
Edinburgh EH1 2EB

Paper Apart applicable to the foregoing Companies Form 410 in respect of a Shares Pledge executed by Fife Energy Limited on 10th January 1997:-

- 1.1 In security of the payment and discharge of the Secured Liabilities the Company assigns to the Bank, pursuant to the Securities Charge, its whole right, title, interest and benefit in and to the Pledged Securities.
- 1.2 The Bank acknowledges that, notwithstanding any transfer or delivery to it ex facie absolutely of Pledged Securities and any registration of Pledged Securities in the name of the Bank or any person holding to the order of the Bank, or the custody thereof by the Bank or any such person, Pledged Securities are and shall truly be held by it as security for the payment and discharge of the Secured Liabilities on the terms and conditions of the Securities Charge.
- 2.1 The Company undertakes forthwith to transfer to the Bank or its nominees, by duly stamped transfer, such of the Pledged Securities as at the date of execution of the Securities Charge have not been so transferred and to issue certificates representing the Pledged Securities in the name of the Bank or such nominee as appropriate.
- 2.2 The Company shall for so long as the Securities Charge is in force pay duly and promptly all calls which may from time to time be made in respect of any unpaid monies under any Pledged Securities and/or any other monies which it may lawfully be required to pay in respect of any Pledged Securities, and in case of default the Bank may, if it thinks fit, make such payments on behalf of the Company.
- 2.3 The Company undertakes to the Bank that it will procure the registration of all transfers of the Pledged Securities presented in accordance with Clause 3.1 of the Securities Charge, a copy of which is annexed as relative hereto, by or on behalf of the Bank and will exercise its voting rights as a shareholder so as to procure Fife Limited will not, without the prior written consent of the Bank:-
 - 2.3.1 cancel increase create or issue or agree to issue or put under option or agree to put under option any share or loan capital or obligation now or hereafter convertible into share or loan capital of any class or call any uncalled capital;
 - 2.3.2 make any alteration to, grant any rights in relation to or otherwise re-organise or purchase or reduce its share capital or reserves in any way or enter into any composition or arrangement with its creditors or any class of creditors;
 - 2.3.3 transfer or dispose of any share or loan capital held in any Subsidiary for the time being;
 - 2.3.4 incorporate or acquire any Subsidiaries other than the Borrower;
 - 2.3.5 convene any meeting with a view either to the alteration of any of the provisions of its Memorandum or Articles of Association or to passing a resolution that it be wound up; or
 - 2.3.6 declare or pay an amount by way of dividend or make any other distribution or pay or agree to pay any charge for management secretarial or administrative or other services (other than any payment to the Company of any amount received by Fife

Limited from the Borrower in accordance with Clause 18.8 of the Agreement, a copy of which is annexed as relative hereto).

- 2.4 The Company covenants with the Bank that it will not without the prior written consent of the Bank:-
- 2.4.1 sell, transfer, or otherwise dispose of, or permit any other person to be registered as holder of the Pledged Securities or any part thereof or any interest therein, or agree to attempt to do so; or
 - 2.4.2 create or permit to subsist or agree to create or permit to subsist any Encumbrance (other than in favour of the Bank) on or over the Pledged Securities or any part thereof or interest therein; or
 - 2.4.3 take or participate in taking any steps preparatory to the winding-up of the Fife Limited or the Borrower; or
 - 2.4.4 suffer or permit Fife Limited or the Borrower to cancel, increase, create or issue or agree to issue or put under option or agree to put under option any share capital or obligation now or hereafter convertible into share capital of or in Fife Limited or the Borrower of any class or call any uncalled capital;
 - 2.4.5 suffer or permit Fife Limited or the Borrower to make any alteration to, grant any rights in relation to or otherwise re-organise or purchase or reduce the share capital or reserves of Fife Limited or the Borrower in any way or enter into any composition or arrangement with its creditors or any class of creditors of Fife Limited or the Borrower;
 - 2.4.6 convene any meeting with a view either to the alteration of any of the provisions of Fife Limited's or the Borrower's Memorandum and Articles of Association or to passing a resolution that Fife Limited or the Borrower be wound up;
 - 2.4.7 suffer or permit Fife Limited or the Borrower to permit any person other than the Company or the Bank (or its nominee) to be registered as holders of the Pledged Securities or any part thereof; or
 - 2.4.8 incorporate or acquire any company or business which competes with the Borrower.
- 2.5 Any monies expended by the Bank under the provisions of the Securities Charge shall be deemed to be properly paid by the Bank and the Company shall reimburse the Bank on demand, and such monies shall pending reimbursement constitute a part of the Secured Liabilities.
- 2.6 The Bank undertakes promptly to deliver to the Company all notices, intimations and other documentation received by it prior to the occurrence of an Event of Default in its capacity as a registered holder of the Pledged Securities.

Definitions applicable to the foregoing Companies Form 410 in respect of a Shares Pledge executed by Fife Energy Limited on 10th January 1997:-

Agreement means the Facility Agreement dated 20th December 1996 between the Borrower and the Bank, as amended by a supplemental letter thereto dated 10th January 1997;

Asset Transfer Agreement means the agreement dated 10th January 1997 between the Parent and the Borrower relating to the transfer of certain assets and the grant of a feu disposition;

Bank Accounts means each of the Proceeds Account, the Debt Service Escrow Account, the Debt Service Reserve Account, the Operation and Maintenance Reserve Account, the Insurances Account and the Compensation Account;

Bank Engineer means Merz and McLellan or such other firm of independent consulting engineers as may be appointed by the Bank from time to time with the consent of the Borrower, such consent not to be unreasonably withheld or delayed;

Bank Insurance Consultant means Sedgwick Bankrisk Limited in their capacity as insurance advisers to the Bank in relation to the Project and/or such other insurance advisers as the Bank may appoint with the approval of the Borrower (such approval not to be unreasonably withheld or delayed) as such from time to time;

Borrower means Fife Power, registered number SC162872 whose registered office is at Westfield Development Centre, Cardenden, Fife, KY5 0HP;

Compensation Account means an account opened by the Borrower pursuant to Clause 8.6 the details of which shall be notified to the Bank in accordance with Clause 4.1, both clauses of the Agreement which are annexed as relative hereto;

Construction Agreement means the document referred to as such in paragraph 1(f) of Part 1 of the Schedule to the Agreement, a copy of which is annexed as relative hereto, pursuant to which the Plant is to be designed, constructed and installed by the Constructor, as amended by a supplemental letter thereto dated 20th December 1996 and 10th January 1997;

Constructor means General Electric Company, a company incorporated under the laws of the State of New York, USA, with its head office at 3135 Easton Turnpike, Fairfield, Connecticut 06431 USA;

Constructor's Direct Agreement means the direct agreement dated 20th December 1996 and 10th January 1997 between the Constructor, the Borrower and the Bank relating (inter alia) to the termination of the Construction Agreement;

Debt Service Escrow Account means a deposit account opened by the Borrower pursuant to Clause 8.2 the details of which shall be notified to the Bank in accordance with Clause 4.1, both clauses of the Agreement which are Annexed as relative hereto;

Debt Service Reserve Account means a deposit account opened by the Borrower pursuant to Clause 8.3 the details of which shall be notified to the Bank in accordance with Clause 4.1, both clauses of the Agreement which are annexed as relative hereto;

Default Rate is the rate of interest specified in Clause 12.4 of the Agreement, a copy of which is annexed as relative hereto;

Direct Agreements means each of the Constructor's Direct Agreement, the Operations Direct Agreement, the Maintenance Direct Agreement, the Supplier's Direct Agreement, the Purchaser's Direct Agreement and the Equity Provider's Direct Agreements, any direct agreement delivered pursuant to Clause 5.1 of the Equity Provider's Direct Agreement which is annexed as relative hereto and any other agreement designated as such by the Bank and the Borrower in writing;

Eastern Supply Contract means the document referred to as such in paragraph 1(f) of Part 1 of the Schedule to the Agreement, a copy of which is annexed as relative hereto, pursuant to which Eastern Natural Gas (Retail) Limited agrees to sell and ship natural gas to the Borrower;

EIF means Energy Investors Fund II, L.P., a Delaware limited partnership and Project Finance Fund III, L.P., a Delaware limited partnership;

EIF Fife II means EIF Fife II, L.L.C., and **EIF Fife III** means EIF Fife III, L.L.C., each a Delaware limited liability company having its principal place of business at 200 Berkeley Street, 20th Floor, Boston MA 02117-0111, United States of America;

Encumbrance includes fixed or floating security including, without limitation the generality, any standard security, assignation in security, pledge, floating charge, hypothecation, security interest, title retention or other preferential right having the effect of creating security;

Equity Providers means the Parent, Fife Limited, EIF, EIF Fife II, EIF Fife III and, respectively, their assignees and transferees permitted by the terms of the Agreement or any Equity Provider's Direct Agreement;

Equity Providers' Direct Agreement means the direct agreement dated 10th January 1997 entered into between the Equity Providers respectively, the Borrower and the Bank relating (inter alia) to the provision of equity finance and performance of the Shareholders Agreement;

Event of Default means any of the events specified in Clause 20.1 of the Agreement, a copy of which is annexed as relative hereto;

Fife Limited means Fife Limited, registered number SC167286 whose registered office is at Westfield Development Centre, Cardenden, Fife, KY5 0HP;

Finance Documents means the Agreement, the Security Documents, the Inter-Creditor Agreement, the Direct Agreements, the Insurance Programme and any other document designated as such by the Bank and the Borrower;

Instrument means the instrument dated 20th December 1996 constituting approximately £10,200,000 subordinated convertible secured loan stock of the Borrower

Insurance Account means an account opened by the Borrower pursuant to Clause 8.6 the details of which shall be notified to the Bank in accordance with Clause 4.1, both clauses of the Agreement which are annexed as relative hereto;

Insurance Programme means the programme of insurances required by the Bank from time to time following consultation with the Bank Engineer and the Bank Insurance Consultant and notified to the Borrower and being initially in the form set out in Part 4 of the Schedule to the Agreement, a copy of which is annexed as relative hereto;

Inter-Creditor Agreement means the inter-creditor agreement dated 10th January 1997 and made between the Borrower (1), the Parent (2), the Bank (3) and the Subordinated Creditors (4);

Maintenance Agreement means the document referred to as such in paragraph 1(f) of the Schedule to the Agreement, a copy of which is annexed as relative hereto, pursuant to which General Electric International Inc will be responsible for maintenance of the Plant after Project Handover as amended by a supplemental letter thereto dated 20th December 1996 and 10th January 1997;

Maintenance Direct Agreement means the direct agreement dated 20th December 1996 and 10th January 1997 between General Electric International Inc, General Electric Company, the Borrower and the Bank relating inter alia to the termination of the Maintenance Agreement;

Operation and Maintenance Reserve Account means a deposit account opened by the Borrower pursuant to Clause 8.4 the details of which shall be notified to the Bank in accordance with Clause 4.1, both clauses of the Agreement which are annexed as relative hereto;

Operations Agreement means the document referred to as such in paragraph 1(f) of Part 1 of the Schedule to the Agreement, a copy of which is annexed as relative hereto, pursuant to which Global Energy International Operations Limited will be responsible for operating the Plant after Project Handover;

Operations Direct Agreement means the direct agreement dated 9th and 10th January 1997 between Global Energy International Operations Limited, the Borrower and the Bank relating (inter alia) to the termination of the Operations Agreement;

Parent means Fife Energy Limited, registered number SC137656, whose registered office at the date of the Agreement is Westfield Development Centre, Cardenden, Fife KY5 0HP;

Phase 2 means the recommissioning of existing facilities and the construction at the Site of new facilities for gasification and briquette and subsequent operation of the Plant on a mix of synthetic gas and natural gas, and **Phase 3** means the construction at the Site of the steam turbine and heat recovery steam generator;

Plant means the PG6101 FA Combustion Gas Turbine Power Plant and ancillary equipment to be installed and commissioned under the Construction Agreement;

Pledged Securities means the securities described in paragraph (A) of Part 1 of the Securities Charge Schedule, a copy of which is annexed as relative hereto, which are to be transferred, or which have been transferred, to the Bank or its nominees, and the securities, monies, assets, rights and powers described in paragraphs (B) and (C) of the Schedule thereto, copies of which are annexed as relative hereto, and all other securities (if any) which are thereafter transferred or delivered to the Bank to be held subject to the terms and conditions of the Securities Charge;

PowerGen Purchase Contract means the document referred to as such in paragraph 1(f) of Part 1 of the Schedule to the Agreement, a copy of which is annexed as relative hereto, pursuant to which PowerGen plc agrees to purchase the entire net output of electricity from the Plant;

Proceeds Account means an account opened by the Borrower pursuant to Clause 8.1 the details of which shall be notified to the Bank in accordance with Clause 4.1, both clauses of the Agreement which are annexed as relative hereto;

Project means the construction, commissioning and operation of the simple cycle gas fired power station referred to in Recital (A) of the Agreement, a copy of which is annexed as relative hereto;

Project Documents means the documents referred to as such in paragraph 1(f) of Part 1 of the Schedule to the Agreement, a copy of which is annexed as relative hereto, together with any Services Agreement;

Project Handover means the date which is proposed by the Constructor and accepted by the Bank Engineer as the Date of Commercial Operation (as referred to in the Construction Agreement);

Purchaser's Direct Agreement means the direct agreement dated 10th January 1997 between the Bank, the Borrower and PowerGen plc relating, inter alia, to termination of the PowerGen Purchase Contract;

Required Form means, in relation to any document, as required in respect of both the form and substance thereof by the Bank;

Security Documents means:-

- (a) a standard security, granted by the Borrower over its interest in the Site (**the Standard Security**);
- (b) an assignation in security granted by the Borrower, over its rights, title and interest in and to, respectively, inter alia the Project Documents, the Bank Accounts and the Insurances (**the Assignment**);
- (c) a bond and floating charge granted by the Borrower over all its assets (**the Floating Charge**);
- (d) a fixed security over all the issued share capital of Fife Limited entered into between the Parent and the Bank (**the Securities Charge**);
- (e) a standard security granted by the Parent over its interest in the Site, being the standard security and personal bond subsisting as at the date hereof as varied by an agreement constituting a deed of restriction and variation (**the Parent Standard Security**);
- (f) a bond and floating charge granted by the Parent over all its assets (**the Parent Floating Charge**); and
- (g) any security granted from time to time pursuant to (i) Clauses 3.1 or 5.2 of the Equity Provider's Direct Agreement, copies of which are annexed as relative hereto or (ii) any further assurance undertaking or covenant in any Finance Document;

all in the Required Form;

Services Agreement means any agreement entered into in compliance with Clause 5.1 of the Equity Provider's Direct Agreement, a copy of which is annexed as relative hereto;

Shareholders Agreement means the investment agreement dated on or about 10th January 1997 between inter alia the Equity Providers and the Borrower whereby, inter alia, certain of the Equity Providers undertake to subscribe for or otherwise acquire certain shares in the Borrower;

Site means that part of the site at Westfield Development Centre, Westfield, Fife, Scotland on which inter alia the Plant and Phase 2 and/or Phase 3 are proposed to be constructed and operated which is transferred to the Borrower pursuant to the Asset Transfer Agreement and the feu disposition relative thereto;

Subordinated Creditor means each of EIF Fife II and EIF Fife III as holders of the loan stock constituted under the Instrument;

Subsidiary means (a) a subsidiary as defined in Section 736 of the Companies Act 1985 (as amended by Section 144 of the Companies Act 1989) and (b) a subsidiary undertaking as defined in Section 21 of the Companies Act 1989;

Supplier's Direct Agreement means the direct agreement dated 20th December 1996 and 10th January 1997 between Eastern Natural Gas (Retail) Limited, the Borrower and the Bank relating inter alia to the termination of the Eastern Supply Contract.

The expressions **the Company**, **the Borrower** and **the Bank** shall include the successors, assignees and transferees of the Company, the Borrower and the Bank.

Any reference in the Securities Charge to a document of any kind whatsoever (including the Securities Charge) is to that document as amended or varied or supplemented or novated or substituted from time to time.

18.5.4 take all action required under the Subordinated Finance Documents at the relevant time so as to enable it to issue the Subordinated Loan Stock fully paid up under the terms of the Instrument on Financial Close.

18.6 Insurances and Compensation The Borrower undertakes with the Bank that it will:-

18.6.1 comply with the Insurance Programme and, in particular, ensure that all construction phase insurances are in full force and effect by no later than the second Utilisation of the Facility or such later date as may be acceptable to the Bank Insurance Consultant and that all operational phase insurances are in full force and effect by no later than Project Handover; and

18.6.2 deal with all Insurance Proceeds or Compensation as specified in Clauses 8.5 and 10.1.

18.7 Controls on Payments to Subordinated Creditors The Borrower undertakes with the Bank that:-

18.7.1 it will not at any time pay or resolve to pay any redemption sum, principal, interest or other fee or charge in respect of or pursuant to the Subordinated Finance Documents except as permitted by the provisions of the Inter-Creditor Agreement; and

18.7.2 it will not terminate, replace, amend or waive any of the terms of the Subordinated Finance Documents, nor assign or transfer the benefit of any of the same.

On, but not before, the last day of the Drawdown Period (but only if Project Handover has occurred) the Borrower may, but shall not be obliged to, make a further Utilisation of all or part of the undrawn balance of the Commitment for the purpose of funding any payment of interest on and/or repayment of principal of Subordinated Debt remitted pursuant to Clause 5 of the Inter-Creditor Agreement.

18.8 Controls on Payments to Equity Providers The Borrower undertakes with the Bank that it will not at any time:-

18.8.1 declare, make or pay, or resolve to declare, make or pay, any dividend or other distribution (whether in cash or in kind) on or in respect of its share capital except that the Borrower may declare and pay in cash a dividend at any time prior to the next succeeding Record Date (but, for the avoidance of doubt, not at any other time), provided that each of the following conditions is met:-

18.8.1.1 Project Handover has occurred;

18.8.1.2 the balance on the Debt Service Reserve Account is not less than the Cushion;

18.8.1.3 no Event of Default or Default has occurred and is continuing; and

18.8.1.4 the then current Bank's Base Case discloses no breach of Clause 6 in respect of the immediately preceding, current and all future identified Reference Periods;

18.8.2 redeem, purchase, retire or repay (or resolve so to do) any of its share capital or like capital stock or any amount of principal in respect of or pursuant to the Subordinated Finance Documents, or issue any shares in the capital of the Borrower other than:-

18.8.2.1 the issue of shares on conversion of the Loan Stock and/or pursuant to the Shareholders Agreement; and

18.8.2.1 the issue, redemption or purchase of shares by the Borrower financed from cash balances otherwise available for dividend payment, provided all the conditions specified in Clause 18.8.1 are met in relation to the payment for the redemption or purchase;

and that it will not terminate, replace, amend or waive any of the terms of the Shareholders Agreement, nor assign or transfer the benefit of the same.

19. BUSINESS UNDERTAKINGS

19.1 **Duration and Extent** The undertakings in this Clause 19:-

19.1.1 shall remain in force from and after the date hereof and so long as any amount payable hereunder is or may be outstanding or any Commitment is in force; and

19.1.2 may be varied or waived by the Bank (at the request of the Borrower) in writing from time to time.

19.2 **Notification** The Borrower will:-

19.2.1 notify the Bank in writing of any Default forthwith upon the occurrence thereof and of the commencement or instigation of any litigation, tribunal, arbitration or administrative action or proceeding against it where the sum in issue exceeds £10,000; and

19.2.2 promptly at the request of the Bank from time to time furnish the Bank with a certificate signed by two senior officials of the Borrower certifying that, to the best of their knowledge, information and belief having made due inquiry, no Default has occurred save as therein may be specified and detailing the steps taken or being taken to remedy the same.

19.3 **Consents** The Borrower will obtain and promptly renew from time to time, and will promptly furnish certified copies to the Bank of, all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it to perform its obligations under this Agreement and each other Finance Document to which it is a party or required for the validity or enforceability of this Agreement and the Borrower shall comply with the terms of the same. In the case of the matters referred to in column (A) below these will be obtained by the Borrower in the Required Form by no later than the date specified alongside in column (B) below:-

(A)

(B)

19.3.1 Section 4, Electricity Act 1989 3 months after Financial Close generation licence;

Updated Base Case) at least 5 Business Days prior to each Reference Date, together with Cash Flow Calculations based on such Updated Base Case whereupon the same will come into effect. If the Borrower has accepted (in accordance with Clause 7.3.2) each agreed figure and (if applicable) each of the Bank's figures specified in a Proposed Base Case for the Technical Assumptions, such Proposed Base Case shall automatically come into effect as an Updated Base Case and the Bank shall promptly notify the Borrower accordingly. The figures stated in each Updated Base Case shall, in the absence of manifest error, be final and binding on all the parties hereto.

7.6 **No Determination** If an Expert's determination is not made in time for the delivery of the relevant Updated Base Case, then the Bank's determination of the Updated Base Case shall apply. The figures stated in each Updated Base Case shall, in the absence of manifest error, be final and binding on all the parties hereto.

7.7 **Amendments to Model** Each of the Bank with the consent of the Borrower and the Borrower with the consent of the Bank, in each case, such consent not to be unreasonably withheld or delayed, may make amendments to the Monitoring Cash Flow Model which it believes in good faith are required for the purpose of correcting any manifest error in the form or structure of the Monitoring Cash Flow Model. The costs, if any, incurred in giving effect to any amendments to the Monitoring Cash Flow Model will be borne by the Borrower.

7.8 **Notification of Ratios** The Bank will determine and notify to the Borrower from time to time, from each Bank's Base Case so completed and delivered as at a Reference Date:-

7.8.1 the Loan Life Cover Ratio as at that Reference Date and as at each other identified Reference Date until the Final Repayment Date; and

7.8.2 the Debt Service Cover Ratio for the Reference Period ending on that Reference Date and for each other identified Reference Period until the Final Repayment Date.

8. **BANK ACCOUNTS**

8.1 **Proceeds Account** The Borrower undertakes with the Bank that, from the date of this Agreement and so long as any moneys are actually or contingently owing under this Agreement, it will ensure that at all times all moneys received by it (including all Damages) are directly received in or (if received in cash or by cheque) promptly paid to the Proceeds Account, which shall be operated in the following manner:-

8.1.1 subject to the provisions of this Agreement, and in particular (without limitation) to the provisions of Clause 8.1.2, payments may be made from the Proceeds Account in order to meet (a) Project Costs not referred to in Clause 8.1.2 and not prohibited by Clauses 18.7 and 18.8 and (b) operating costs, in each case under the Approved Budget in force at any date;

8.1.2 upon payment of amounts due and payable and referred to in Clause 8.1.1, payments may only be made from the Proceeds Account in order to finance, in the following order of priority:-

8.1.2.1 accrued interest and other amounts in respect of fees and expenses (other than principal) due and payable under this Agreement;

8.1.2.2 principal amounts due and payable under this Agreement;

- 8.1.2.3 sums required to be paid to the Debt Service Escrow Account in accordance with Clause 8.2;
- 8.1.2.4 sums required to be paid to the Debt Service Reserve Account in accordance with Clause 8.3;
- 8.1.2.5 sums required to be paid to the Operation and Maintenance Reserve Account in accordance with Clause 8.4;
- 8.1.2.6 (subject to Clause 18.7) accrued interest and other amounts in respect of fees and expenses (other than principal) due and payable under the Instrument;
- 8.1.2.7 (subject to Clause 18.7) principal amounts due and payable under the Instrument; and
- 8.1.2.8 subject to Clause 8.7.6, any other amounts which may be paid by the Borrower in accordance with Clause 18.8.

8.2 Debt Service Escrow Account The Borrower undertakes with the Bank that the Debt Service Escrow Account shall be operated in the following manner:-

8.2.1 the Borrower shall transfer funds into the Debt Service Escrow Account from time to time from the balance at any time of the Proceeds Account, after payment of the amounts referred to in Clauses 8.1.1, 8.1.2.1 and 8.1.2.2, all to the intent that the balance on the Debt Service Escrow Account shall not at any time be less than the amount required in order to ensure that the total of the projected Cash Flow Before Financing for the period ending on the next succeeding Reference Date plus the balance on that Account is not less than 1.25 times the amount of all Debt Service for that period, all as shown in the Bank's Base Case current at that time. On, but not before, the last day of the Drawdown Period (but only if Project Handover has occurred) the Borrower may, but shall not be obliged to, make a further Utilisation of all or part of the undrawn balance of the Commitment for the purpose of funding the Borrower's obligations under this Clause 8.2.1 to transfer funds into the Debt Service Escrow Account; and

8.2.2 withdrawals may be made by the Borrower:-

- (a) to meet Debt Service in that period; and
- (b) when the total of the projected Cash Flow Before Financing for that period, plus the balance on that Account, exceeds 1.25 times the Debt Service for that period all as shown in the Bank's Base Case, but not otherwise.

8.3 Debt Service Reserve Account The Borrower undertakes with the Bank that the Debt Service Reserve Account shall be operated in the following manner:-

8.3.1 the Borrower shall transfer funds into the Debt Service Reserve Account from time to time from the balance at any time of the Proceeds Account, after payment of the amounts referred to in Clauses 8.1.1, 8.1.2.1, 8.1.2.2 and 8.1.2.3, all to the intent that the balance on the Debt Service Reserve Account shall not at any time be less than

the amount of all Debt Service shown by the Bank's Base Case current at that time to be payable in the period up to and including the next succeeding Repayment Date (**the Cushion**). The Borrower undertakes to use all reasonable endeavours (not including, for the avoidance of doubt, the raising of any other Borrowings), subject to the provisions of this Agreement, to establish a balance of not less than the Cushion and thereafter to maintain such balance at not less than the Cushion from time to time (and on, but not before, the last day of the Drawdown Period (but only if Project Handover has occurred) and after compliance with Clause 8.2, the Borrower may, but shall not be obliged to, make a further Utilisation of all or part of the undrawn balance of the Commitment for the purpose of funding the Borrower's obligations under this Clause 8.3.1 to transfer funds into the Debt Service Reserve Account); and

8.3.2 no withdrawals may be made by the Borrower from the Debt Service Reserve Account unless, immediately after such withdrawal, the credit balance thereon would not be less than the Cushion.

8.4 **Operation and Maintenance Reserve Account** The Borrower undertakes with the Bank that the Operation and Maintenance Reserve Account shall be operated in the following manner:-

8.4.1 the Borrower shall transfer funds into the Operation and Maintenance Reserve Account from time to time from the balance at any time of the Proceeds Account, after payment of the other amounts referred to in Clauses 8.1.1, 8.1.2.1, 8.1.2.2, 8.1.2.3 and 8.1.2.4, all to the intent that the balance on the Operation and Maintenance Reserve Account shall not at any time be less than the amount of total costs shown by the respective lines "Global O&M (indexed)" and "GE Maintenance (indexed)" in the operating costs section of the Bank's Base Case current at that time to be payable in both of the Reference Periods ending on the next two succeeding Repayment Dates (**the Reserve**). The Borrower undertakes to use all reasonable endeavours (not including, for the avoidance of doubt, the raising of any other Borrowings), subject to the provisions of this Agreement, to establish a balance of not less than the Reserve and thereafter to maintain the balance at not less than the Reserve from time to time;

8.4.2 no withdrawals may be made by the Borrower from the Operation and Maintenance Reserve Account unless, immediately after such withdrawal, the credit balance thereon would not be less than the Reserve.

8.5 **Letters of Credit** As an alternative, in part or in whole, to transferring funds to the Debt Service Reserve Account in accordance with the provisions of Clause 8.3, the Borrower may provide one or more standby letters of credit drawn on a bank, and in a form, acceptable in each case to the Bank, and until 3 Business Days before the expiry of any such letters of credit, references herein to the credit balance of the Debt Service Reserve Account shall include a reference to the face value of such letters of credit. The Borrower undertakes that:-

8.5.1 where a letter of credit is to be replaced on its expiry by another letter of credit, the new letter of credit shall be issued to and deposited with the Bank not later than 3 Banking Days prior to the expiry date; and

8.5.2 where a letter of credit is not to be so replaced, an amount equal to the face value of the expiring letter of credit shall be paid into the Debt Service Reserve Account not later than 3 Banking Days prior to the expiry date.

8.6 Insurance and Compensation Accounts The Insurance Account and Compensation Account shall be operated in the following manner:-

8.6.1 the Borrower shall procure that all Insurance Proceeds are promptly paid into the Insurance Account. The Borrower may withdraw amounts from the Insurance Account at any time:-

8.6.1.1 in order to reinstate that part of the Plant in respect of which they were received, subject (where the Borrower is not required to so re-instate by the terms of the relevant policy) to the prior written consent of the Bank if at that time a Default shall have occurred and be continuing; or

8.6.1.2 in order to comply with its obligations under Clause 10.1; or

8.6.1.3 for any other purpose with the consent of the Bank (such consent not to be unreasonably withheld or delayed); or

8.6.1.4 to pay any third party who it can be demonstrated to the satisfaction of the Bank is actually entitled to receive those Insurance Proceeds;

8.6.2 the Borrower shall procure that all Compensation is promptly paid into the Compensation Account. The Borrower may withdraw amounts from the Compensation Account at any time:-

8.6.2.1 in order to comply with its obligations under Clause 10.1;

8.6.2.2 if the Bank is reasonably satisfied that the same should be applied in remedying or making good any loss or deprivation in respect of which the same was paid, for transfer, on such dates as the Bank may approve, to the Proceeds Account; or

8.6.2.3 if the Bank is reasonably satisfied that the Compensation received was not received in connection with any event which would materially adversely affect the ability of the Borrower to perform its obligations under this Agreement, for transfer, on such dates as the Bank may approve, to the Proceeds Account.

8.7 The Bank Accounts Each of the Bank Accounts shall be operated in accordance with mandates in the approved form and in accordance with the following provisions:-

8.7.1 the Borrower shall maintain the Bank Accounts at all times during the continuance in force of this Agreement at a branch or division of the Account Bank approved by the Bank, acting reasonably. The initial Account Bank is The Governor and Company of the Bank of Scotland, acting for the time being through its International Division and/or its Glenrothes branch;

8.7.2 the Account Bank may be changed to another bank or financial institution designated by the Bank if the Bank, acting reasonably, so requests and the Borrower, acting reasonably, so agrees;

- 8.7.3 a change in the identity of the Account Bank shall only become effective upon the proposed new Account Bank agreeing with the Bank and the Borrower, in a manner satisfactory to the Bank, acting reasonably, to fulfil the role of the Account Bank under this Agreement;
- 8.7.4 in the event of a change of Account Bank, the amount (if any) standing to the credit of the Bank Accounts maintained with the former Account Bank shall be transferred to the corresponding Bank Accounts maintained with the new Account Bank forthwith upon the appointment taking effect. The Borrower shall take any action which the Bank may require to facilitate a change of Account Bank and any transfer of credit balances (including the execution of appropriate bank mandate forms on terms not materially more onerous than those applicable in respect of the former Account Bank);
- 8.7.5 the Bank Accounts may not go into overdraft and shall be maintained in Sterling. Amounts standing to the credit of the Bank Accounts shall bear interest at such rate(s) as may be agreed from time to time in writing between the Account Bank and the Borrower;
- 8.7.6 amounts may only be withdrawn or transferred from the Bank Accounts in accordance with the provisions of this Agreement or by the Bank on an enforcement of the Security Documents. Notwithstanding any provision of this Agreement or any Security Document to the contrary, no amounts may be withdrawn by or transferred to the Borrower whilst there is a Default subsisting unless the Bank otherwise consents to such withdrawal, such consent not to be unreasonably withheld or delayed;
- 8.7.7 on the retrocession of the Assignment, the Bank will, at the request and cost of the Borrower, do all things (if any) necessary on its part to close the Bank Accounts and transfer the balance on the same to such other account(s) of the Borrower as the Borrower may specify.

9. REPAYMENT

- 9.1 **Term Loans** The Borrower shall repay on each of the twenty-four semi-annual Repayment Dates set out in column (1) below that percentage of all the Term Loans outstanding on the expiry of the Drawdown Period set out alongside in column (2) below:-

(1)	(2)
31st March 1999	0.962383%
30th September 1999	4.078562%
31st March 2000	2.146772%
30th September 2000	3.335044%
31st March 2001	2.392887%
30th September 2001	3.568357%
31st March 2002	3.173371%
30th September 2002	3.309231%
31st March 2003	3.450907%
30th September 2003	3.598649%
31st March 2004	3.002173%
30th September 2004	4.663923%

- 1.2.2 the term **assets** includes properties and rights of every kind, present, future and contingent (including uncalled share capital), and every kind of interest in an asset;
- 1.2.3 the index to and the headings in this Agreement are for convenience only and shall be ignored in construing this Agreement;
- 1.2.4 a reference to any Debtor Party and/or to any Finance Party shall, subject to Clause 27, be deemed to be a reference to or include, as appropriate, their respective permitted successors and assignees or transferees;
- 1.2.5 references to Clauses and sub-clauses and the Schedules are references to, respectively, the Clauses and sub-clauses of, and the Schedules to, this Agreement;
- 1.2.6 all references to statutes and other legislation include all modifications, re-enactments and amendments thereof; and
- 1.2.7 a reference to this Agreement or to another agreement or document shall be construed as including a reference to all permitted amendments, variations or novations thereof or supplements thereto from time to time in force; and
- 1.2.8 any request by the Borrower for a waiver or consent under any Finance Document shall be in writing and, if not countersigned by the Equity Investors, shall be declined by the Bank without further consideration.

2. COMMITMENT

- 2.1 **Facility** Subject to the terms of this Agreement, the Bank agrees to make available to the Borrower the Term Facility in an aggregate principal amount not exceeding its Term Facility Commitment for the purposes specified in Clause 3.
- 2.2 **Time Limit** If Financial Close has not occurred by 31st January 1997, or such later date as the Bank may agree in writing, then all the Commitments shall automatically be cancelled at close of business on such date.

3. PURPOSE AND UTILISATION

- 3.1 **Term Facility** The proceeds of each Utilisation of the Term Facility shall be applied for the purpose of financing Project Costs (but not Transfer Costs or the Phase 2 Licence Fee, which shall be refinanced under the Subordinated Finance Documents) or in accordance with the provisions of Clauses 8.2.1 and/or 8.3.1 and/or 18.7.
- 3.2 **No Inquiry** Without prejudice to the foregoing and to the remaining provisions of this Agreement, the Bank shall not be bound to inquire as to, nor shall it be responsible for, the application by the Borrower of the proceeds of any Utilisation.

4. CONDITIONS PRECEDENT

- 4.1 **Initial Conditions** The obligations of the Bank hereunder are subject to the condition that the Bank shall receive prior to the issue of the first Drawdown Notice all of the documents and evidence referred to in Part 1 of the Schedule in the Required Form.

4.2 **Specific Conditions** The obligations of the Bank hereunder in respect of the second Utilisation of the Facility are subject to the conditions precedent that:-

- 4.2.1 the Bank is satisfied that there has been full identification and implementation of the Insurance Programme, except to the extent that the Bank Insurance Consultant is satisfied that any part of the Insurance Programme need not be effected at such time;
- 4.2.2 the Bank has received satisfactory evidence of (a) the submission to the Office of the Electricity Regulator (**OFFER**) of a duly completed application by the Borrower for a generating licence pursuant to Section 4 of the Electricity Act 1989 and of a request for a letter from OFFER to the Bank in the Required Form relating to the revocation of such licence and the grant of a new licence and (b) OFFER's acknowledgement of receipt of such application and request and its estimation of the timescale within which the application and request will be finalised;
- 4.2.3 the Bank has received an updating letter from Cremer & Warner in relation to the environmental report on the Site referred to in paragraph 1(m) of Part 1 of the Schedule; and
- 4.2.4 the Bank has either received (a) confirmation from the Bank Engineer that the gasifier recommissioning proposed to be promoted at or adjacent to the Site by Global Environmental Limited will not interfere with or otherwise adversely affect the Project or (b) an undertaking from Global Environmental Limited to the effect that it will not proceed with such promotion nor exercise any option in relation thereto until the Bank receives such confirmation.

4.3 **General Conditions** The obligations of the Bank hereunder in respect of each Utilisation are subject to the further conditions precedent that:-

- 4.3.1 both at the time of the request for and for the making of the Utilisation:-
 - 4.3.1.1 the matters represented and warranted in Clause 17.1 are correct on and as of such times as if made at each such time and would be so correct immediately after such Utilisation (subject to any matters disclosed in writing to the Bank and accepted by the Bank as disclosures to the representations and warranties in Clause 17.1); and
 - 4.3.1.2 no Default has occurred and is continuing or would result from such Utilisation;
- 4.3.2 the Borrower has received approximately £10,200,000 pursuant to the Instrument and applied such sums against Transfer Costs, the Phase 2 Licence Fee and other Project Costs;
- 4.3.3 the Parent has repaid and discharged in full all Existing Liabilities (except in the case of the Parent's Existing Liability of £500,000 owed to the Bank which shall be financed from the first Utilisation hereunder but held by the Bank in an escrow account at International Division until released in satisfaction of such liability on the second Utilisation being made hereunder);
- 4.3.4 the Bank is satisfied with the terms of the certificates given under Clauses 5.3 and 5.4;

4.3.5 the Bank is satisfied that any proposed expenditure relating to the Project identified in the most recent Bank's Base Case for which the Bank considers that funds are not or will not be available under this Agreement or the Instrument or the Shareholders Agreement is covered in full by other commitments given to the Borrower in form and substance reasonably satisfactory to the Bank;

4.3.6 the Bank shall have received such other documents, opinions, certificates, authorisations or assurances as it may reasonably request.

4.4 **Certified Copies** Each of the copy documents to be delivered under Clause 4.1 shall be certified by a competent senior official of the Borrower as being correct, complete and up to date.

4.5 **Waiver** Each of the conditions specified in Clauses 4.1, 4.2, 4.3 and 4.4 is for the benefit of the Bank and may be waived on such terms and conditions and to such extent as the Bank may confirm in writing to the Borrower.

5. **TERM FACILITY**

5.1 **Term Loans** Subject to the terms of this Agreement, Term Loans will be made to the Borrower by the Bank under the Term Facility at any time during the Drawdown Period when requested by the Borrower. Any amount of the Term Facility Commitment not utilised on expiry of the Drawdown Period shall automatically be cancelled at close of business in London on such date.

5.2 **Drawdown of Advances** Subject to the terms and conditions of this Agreement and upon the fulfilment of the conditions set out in Clause 4, each Loan shall be made to the Borrower, in minimum amounts of £500,000 and/or integral multiples of £100,000 if more, following receipt by the Bank from the Borrower not later than 10 am (London time) on the third Business Day before the date on which the Loan is intended to be made of a Drawdown Notice together with:-

5.2.1 in the case of Project Costs arising under the Construction Agreement shown in the then current Bank's Base Case, a verification certificate of the Bank Engineer; and

5.2.2 in the case of all Project Costs not referred to in Clause 5.2.1, a certificate of the Borrower only.

Save where the Constructor has provided to the Bank a retention bond in accordance with the Construction Agreement, each payment to the Constructor shall be made net of a 5% retention as provided in Article 6.2.2 of the Construction Agreement. An amount of the Commitment equal to the cumulative amount of all such retentions shall be reserved and may not be drawn by the Borrower until payment of the retention monies becomes due or (if earlier) Project Handover. A Drawdown Notice shall be effective on actual receipt by the Bank and, once given, shall (subject to the provisions of this Agreement) be irrevocable. Only one Drawdown Notice may be served in each calendar month.

5.3 **Borrower Certificates** Each certificate of the Borrower which accompanies a Drawdown Notice shall specify in reasonable detail:-

5.3.1 the Project Costs or other amounts in relation to which the Loan is required;

THE SCHEDULE**Part 1 - Initial Conditions Precedent**

1. The following documents, in their original duly signed form (or, where the Bank agrees, a copy thereof):-
 - (a) the Security Documents and each of the documents and all of the evidence required to be delivered thereunder;
 - (b) the Subordinated Finance Documents;
 - (c) the Shareholders Agreement;
 - (d) the Inter-Creditor Agreement;
 - (e) the Fee Letters;
 - (f) the Project Documents (each in the Required Form) as detailed in Part I of the Schedule to the Assignment and required by the Bank to be in existence at Financial Close, namely:-
 - (i) the Construction Agreement;
 - (ii) the Eastern Supply Contract;
 - (iii) the PowerGen Purchase Contract;
 - (iv) the Operations Agreement;
 - (v) the Maintenance Agreement; and
 - (vi) the Asset Transfer Agreement;
 - (g) the Direct Agreements;
 - (h) specimen signatures, authenticated by the Company Secretary of the Borrower, of the persons authorised in the resolutions of the Board of Directors referred to in paragraph 2(b) below;
 - (i) the final technical review of, incorporating the due diligence by the Bank Engineer on, the Project (in a form and substance acceptable to the Bank);
 - (j) the first Approved Budget, for the period ending on a date acceptable to the Bank, together with the Initial Base Case;
 - (k) details of the relevant account numbers for the Bank Accounts;
 - (l) a report on the Insurance Programme from the Bank Insurance Consultant (in a form and substance satisfactory to the Bank) together with a letter from the Bank Insurance

Borrower may not prepay all or any part of the Loans except in accordance with the express terms of this Agreement.

11. INTEREST PERIODS

- 11.1 **Selection** The Borrower shall give notice in writing to the Bank to be received by the Bank not later than 11.00 am (London time) two Business Days prior to the commencement of each Interest Period, specifying whether that Interest Period is to be of one, three or six months' duration or such other period as the Bank may agree.
- 11.2 **Duration** Each Interest Period shall commence on the borrowing of the Loan concerned or (as the case may be) on the expiry of the preceding Interest Period relative thereto and shall, subject to the provisions of this Clause 11, be of the duration selected by the Borrower, in accordance with Clause 11.
- 11.3 **Deemed Selection** If the Borrower fails to select an Interest Period in accordance with the above, there shall be deemed to have been selected an Interest Period of three months.
- 11.4 **Extension** If any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next Business Day unless such next Business Day would fall in the next calendar month, in which case such Interest Period shall end on the preceding Business Day. If any Interest Period commences on the last Business Day in a calendar month or if there is no corresponding day in the calendar month in which it is to end, then it shall end on the last Business Day in a calendar month.
- 11.5 **Splitting** If the Bank so requires after Project Handover, Loans shall be consolidated or split as specified by the Bank to the extent necessary to ensure that concurrent Interest Periods relative thereto end on not more than five different dates.
- 11.6 **Shortening** If an Interest Period relative to any Loan would otherwise overrun the Final Repayment Date, such Interest Period shall be shortened so that such Interest Period ends on such Date. If any Interest Period relative to any Term Loan would otherwise overrun any other Repayment Date, the Term Loan shall be divided into two parts, one in the amount of the relevant Repayment Instalment or other principal amount payable and having an Interest Period ending on the Repayment Date and the other in the amount of the balance of the relevant Term Loan having an Interest Period ascertained in accordance with the preceding provisions of this Clause. Each such part shall be treated as a separate Term Loan.
- 11.7 **Notification** The Bank will notify the Borrower of the duration of each Interest Period promptly after ascertaining the same.

12. INTEREST

- 12.1 **Loans** The rate of interest applicable to each Loan for each Interest Period relative thereto shall be the rate per annum determined by the Bank to be the aggregate of:-
- 12.1.1 the Applicable Margin from time to time, and
- 12.1.2 LIBOR, and
- 12.1.3 Reserve Asset Costs for the relevant period.

- 12.2 **Payment** Save as otherwise provided herein, accrued interest in relation to each Loan for each Interest Period relative thereto shall be payable by the Borrower on the last day of each Interest Period and, in the case of Interest Periods which exceed three months, on the expiry of each three month period during the same and, in relation to the amount prepaid, on the date of prepayment of all or any of such Loan.
- 12.3 **Accrual** Interest shall accrue from day to day and be computed on the basis of a year of 365 days and for the actual number of days elapsed, and shall be paid in Sterling.
- 12.4 **Overdue Sums** If the Borrower fails to pay any amount payable by it hereunder on the due date therefor, the Borrower shall on demand by the Bank from time to time pay interest on such overdue amount (including overdue default interest) from the due date up to the date of actual payment, as well after as before judgment, at a rate determined by the Bank to be two per cent (2%) per annum above the higher of:-
- 12.4.1 the rate applicable to such overdue amount immediately prior to the due date (but so that the effect of this Clause 12.4.1 shall not be to increase the rate of interest payable in respect of overdue default interest above 2% over the rate applicable (including any increase in Applicable Margin under Clause 12.5) to the underlying obligation immediately before such obligation became overdue); and
- 12.4.2 the Applicable Margin plus LIBOR for an amount comparable to the overdue amount on call or for successive Interest Periods of any duration up to three months as the Bank may determine from time to time, plus Reserve Asset Costs for the relevant period. For the purpose of this Clause 12.4.2 LIBOR shall be determined either on the Business Day before, or on the first Business Day of each such period, as the Bank may determine from time to time. If the Bank is unable to supply a rate for the purposes of determining LIBOR, such rate shall be determined by reference to the cost of funds to the Bank from such other sources as the Bank may from time to time determine.
- 12.5 **Interest Step-Up** The Applicable Margin shall be increased by two per cent (2%) per annum:-
- 12.5.1 for so long as any Event of Default has occurred and until the relevant Event of Default has been remedied or waived in writing by the Bank; and/or
- 12.5.2 for the period commencing two weeks after the date on which the Bank notifies the Borrower that the Borrower is failing to comply with any of its obligations under Clause 6 and ending on the date a subsequent certificate delivered hereunder shows compliance with Clause 6.
- 12.6 **Determination** Each determination of a rate of interest by the Bank hereunder shall, in the absence of manifest error, be conclusive and binding upon all parties hereto and shall be promptly notified to the Borrower.
13. **SUBSTITUTE BASIS**
- 13.1 **Suspension** Notwithstanding anything to the contrary herein contained, if and each time that prior to the commencement of any Interest Period relative to a Loan, the Bank shall have determined that:-

3. **EIF UNDERTAKINGS**

- 3.1. EIF hereby undertakes to the Bank that it will, within 30 days of a written request to that effect from the Bank, deliver to the Bank:-
- 3.1.1 a first ranking fixed security in favour of the Bank over the whole of the issued limited liability company interests of EIF Fife II and EIF Fife III, securing the obligations and liabilities of the Company to the Bank under the Finance Documents and otherwise in form and substance equivalent to that provided for by the Securities Charge (which fixed security shall include "non-recourse" provisions in form and substance substantially equivalent to Clause 8 hereof); and
- 3.1.2 a legal opinion in form and substance satisfactory to the Bank from Messrs Bingham Dana & Gould, LLP as to Delaware law and the federal laws of the United States of America with regard to the capacity of EIF to grant such fixed security.
- 3.2 During the period from receipt of a request from the Bank referred to in Clause 3.1 to the fulfilment of the provisions of Clause 3.1 by EIF, EIF shall hold all its rights, benefit and interest in and to the issue of common stock of the EIF Investors on trust for the Bank.
- 3.3 EIF hereby undertakes not to dispose of all or any part of its interest in any of the EIF Investors without the prior written consent of the Bank (which shall not be unreasonably withheld if fresh security is created and a legal opinion issued in respect of such transferred interest, in accordance with Clause 3.1).
- 3.4 EIF hereby undertakes to supply the Bank with a copy of its annual audited accounts at the same time as they are published.

4. **FIFE UNDERTAKINGS**

- 4.1 Fife hereby undertakes to the Bank that:-
- 4.1.1 it shall carry on no business other than the holding of an interest in the share capital of the Company;
- 4.1.2 it shall hold no assets other than shares in the capital of the Company;
- 4.1.3 it shall not create or permit to subsist any security interest whatsoever over any of its assets;
- 4.1.4 it shall incur no indebtedness whatsoever; and
- 4.1.5 it shall deliver to the Bank forthwith on receipt from the Company a copy of all notices and other communications relating to its shareholding therein.

5. **PARENT UNDERTAKINGS**

- 5.1 The Parent hereby undertakes to the Bank that:-
- 5.1.1 it will make available to the Company and/or the Bank such rights, servitudes, wayleaves etc in relation to the Parent's assets (**the Services**) as may from time to time be required by the Company and/or the Bank in order to enable the Company to

construct and operate the Project in accordance with the provisions of the Finance Documents;

- 5.1.2 the Services shall be provided for so long as any amount is or may be outstanding under the Facility Agreement at no cost to the Company;
 - 5.1.3 within 30 days of a written request from the Company and/or the Bank to that effect, the Parent shall enter into a Services Agreement in form and substance satisfactory to the Bank setting out provisions for the identification and delivery of the Services in detail and for the required duration; and
 - 5.1.4 the Parent will simultaneously with the execution of the Services Agreement referred to in Clause 5.1.3, execute and deliver to the Bank (if the Bank so requires) a direct agreement in form and substance satisfactory to the Bank relating (inter alia) to the performance of the Services Agreement.
- 5.2 The Bank acknowledges to the Parent that the Parent may request the consent of the Bank to the disposal by the Parent to Fife Electric Limited or to Global Environmental Limited of certain of its assets which are the subject of the Parent Standard Security and the Parent Floating Charge, for the purposes of the construction and operation of certain power plant projects other than the Project. Accordingly, subject to compliance by the Parent at all times with Clause 5.1, the Bank hereby agrees that if:-
- 5.2.1 it receives a written request to that effect from the Parent requesting a release of specified assets (**New Project Assets**);
 - 5.2.2 such request identifies in reasonable detail the proposed transferee of the New Project Assets and the proposed arrangements for their use;
 - 5.2.3 the Bank is satisfied, acting reasonably, that the proposed use of the New Project Assets will not interfere with or prejudice the construction and/or operation of the Project;
 - 5.2.4 there is no subsisting Event of Default or Default under the Facility Agreement; and
 - 5.2.5 (in the case of any transfer to Global Environmental Limited), the amount payable to the Parent for the transfer is paid in full to the Bank to be held on deposit by way of security for the Company's obligations under the Finance Documents until the occurrence of Project Test Completion, and the Parent enters into such fixed security over such deposit as the Bank may require in form and substance satisfactory to it in relation thereto;

then, upon the occurrence of financial close in relation to the financing of the relevant power plant project, the Bank shall (a) consent to the transfer of the New Project Assets to the transferee and (b) agree to such amendments to the Parent Standard Security and/or the Parent Floating Charge and/or give such confirmations in respect thereof as may be necessary or desirable in order to enable such transfer to be effected. The Bank may waive all or any of the above conditions in writing upon receipt of any request by the Parent to do so.

20. **DEFAULT**

20.1 **Events of Default** Each of the events set out below is (subject to the provisions of Clause 20.2) an Event of Default (whether or not caused by any reason whatsoever outside the control of the Borrower or of any other person):-

20.1.1 **Failure to Pay** The Borrower does not pay on the due date any amount of principal, or within two days of the due date any amount of interest or any other amount, payable by it hereunder or under any other Finance Document; or

20.1.2 **Failure to Comply** The Borrower fails to comply with any of its obligations under this Agreement or any other Finance Document (other than those obligations referred to in Clause 20.1.1) whether or not any such obligation is enforceable against the Borrower;

20.1.3 **Breach of Warranty** Any representation, warranty or statement made or repeated in, or in connection with, this Agreement or any other Finance Document or in any accounts, certificate, statement or opinion delivered by or on behalf of the Borrower hereunder or in connection herewith is incorrect in any material respect (as determined by the Bank) when made or deemed to be repeated; or

20.1.4 **Cross Default** In relation to Borrowings of the Borrower raised other than under the Finance Documents:-

20.1.4.1 any such Borrowing becomes prematurely due and payable or capable of being declared due and payable or any obligation to make such a Borrowing available is cancelled or capable of being cancelled as a result of a default relative thereto; or

20.1.4.2 any such Borrowing or any sum payable in respect thereof is not paid when due; or

20.1.4.3 any Encumbrance securing any such Borrowing becomes enforceable; or

20.1.4.4 a demand is made upon any guarantee given by the Borrower; or

20.1.5 **Insolvency** The Borrower is deemed unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986 or becomes unable generally to pay its debts as they fall due, or otherwise becomes or is declared insolvent or apparently insolvent, or suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so; or

20.1.6 **Administration Orders** An application for an administration order in relation to the Borrower is presented to the court or any meeting of the Borrower is convened for the purpose of considering any resolution to present an application for such an order; or

20.1.7 **Compositions with Creditors** Any steps are taken save in circumstances previously sanctioned by the Bank in writing with a view to proposing (under any enactment or otherwise) any kind of composition, scheme of arrangement, compromise or arrangement involving the Borrower and its creditors generally (or any class of them) including a trust deed for behoof of its creditors; or

- 20.1.8 **Receivers** Any administrative or other receiver of the Borrower or any of its property is appointed or the directors of the Borrower request any person to appoint such a receiver; or
- 20.1.9 **Creditors Actions** Any steps are taken to repossess any goods in the Borrower's possession under any hire purchase, conditional sale, retention of title or similar agreement or any steps are taken with a view to putting or effecting in force any kind of diligence, attachment, sequestration, distress, arrestment or execution (except in all cases where any such steps:-
- 20.1.9.1 give rise to a claim or potential liability of less than £10,000 and the claim or liability is being contested in good faith; or
- 20.1.9.2 are otherwise discharged within thirty days after being levied, enforced or sued out; or
- 20.1.9.3 are in relation to diligence on the dependence of an action or to found jurisdiction);
- against the Borrower or any of its property; or
- 20.1.10 **Winding Up** Any meeting of the Borrower is convened for the purpose of considering any resolution for (or to petition for) its winding up, the Borrower passes such a resolution, or the Borrower or any other person presents any petition for the Borrower's winding up, or an order for the Borrower's winding up is made on the petition of any of its creditors (other than for the purpose of any reconstruction or amalgamation previously sanctioned in writing by the Bank); or
- 20.1.11 **Reconstruction** Any steps are taken with a view to the dissolution of the Borrower (other than for the purpose of any reconstruction or amalgamation previously sanctioned in writing by the Bank); or
- 20.1.12 **Similar Events** Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 20.1.5 to 20.1.11 inclusive above shall occur under the laws of any applicable jurisdiction; or
- 20.1.13 **Cessation of Business** The Borrower ceases, or threatens to cease, to carry on all or a substantial part of its business; or
- 20.1.14 **Consents** Any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable the Borrower to comply with any of its obligations hereunder which are material (as determined by the Bank) is modified, revoked or withheld or does not remain in full force and effect and is not reinstated in full force and effect or replaced by an equivalent authorisation, approval or consent having the same effect within fourteen days of its having so ceased to be in full force and effect; or
- 20.1.15 **Illegality** At any time it is unlawful for the Borrower to perform any of its obligations hereunder or under any other Finance Document to which it is a party or for any reason whatsoever any Security Document is not binding or enforceable against any Debtor Party which is a party thereto or does not confer or (other than

as a result of any due discharge) ceases to confer the security thereby intended to be created (unless a substitute or replacement security acceptable to the Bank is granted by the relevant Debtor Party); or

- 20.1.16 **Principal Project Parties** Any of the events described in Clauses 20.1.4 to 20.1.15 inclusive shall occur in relation to the Parent or to any other Principal Project Party and/or in connection with any Project Document to which any such person is a party; or
- 20.1.17 **Accounts** The audited consolidated accounts of the Borrower are, in the opinion of the Bank, qualified to a material extent; or
- 20.1.18 **Material Adverse Change** There occurs, in the opinion of the Bank, a material adverse change in the financial condition of the Borrower by reference to any of the accounts referred to in Clause 17.1.7 and to the Initial Base Case and the same is not remedied to the satisfaction of the Bank within such reasonable period as the Bank may specify for the purpose; or
- 20.1.19 **Abandonment, Destruction or Expropriation** There occurs abandonment of the Project, or all or a substantial part of the Project is damaged or destroyed, or all or a material part of the Borrower's interest in the Project is nationalised or otherwise expropriated; or
- 20.1.20 **Handover Delay** Project Handover shall not have occurred on or before 30th November 1998 or such later date as the Bank may agree in writing; or
- 20.1.21 **Test Completion Delay** Project Test Completion shall not have occurred on or before 31st December 1998; or
- 20.1.22 **Error in Certificates** The Borrower receives an amount by way of Loan against any certificate of the Borrower as provided for in terms of Clause 5, and any progress report produced in respect of the period in which such Loan was made states that the relevant certificate was issued in error to a material extent (in the opinion of the Bank) for any reason whatsoever; or
- 20.1.23 **Environmental Breach** The Borrower commits, in respect of the Project, a breach of any statute or common law, rule, regulation, direction, licence, common law duty of care or consent relating to the protection of the environment (as defined in the Environmental Protection Act 1990) including, without limitation, any such breach relating to the release of any substances into the environment, the presence, disposal, or other dealings with waste or to the Borrower's duties as occupier of and employer on the Site or any part thereof which in any such case would in the opinion of the Bank have a material adverse effect on:-
- 20.1.23.1 the ability of the Borrower to perform its obligations under this Agreement; and/or
- 20.1.23.2 the validity or enforceability of the Security Documents; or
- 20.1.24 **Contaminated Site** The Site becomes Contaminated Land to an extent which is material in the opinion of the Bank Engineer taking into account the obligations of the Borrower with regard to the Site and the Project under this Agreement; or

- 20.1.25 **Constructor Breach** The Constructor commits a material breach of or omits to observe any of the obligations or undertakings expressed to be assumed by it under the Construction Agreement which is, while it remains unremedied, in the reasonable opinion of the Bank likely materially and adversely to affect the ability of the Borrower to perform all or any of its obligations hereunder and, in respect of any such breach or omission which in the opinion of the Bank is capable of remedy, fails to remedy the same within such grace period as may be provided for remedy of the same by the relevant Project Document; or
- 20.1.26 **Operations or Maintenance Breach** The Operator or, as the case may be, General Electric International Inc commits a material breach of or omits to observe any of the obligations or undertakings respectively expressed to be assumed by it under the Operations Agreement or the Maintenance Agreement which is, while it remains unremedied, in the reasonable opinion of the Bank likely materially and adversely to affect the ability of the Borrower to perform all or any of its obligations hereunder; or
- 20.1.27 **Project Document Breach** The Borrower or any Principal Project Party commits any breach of or fails to observe any of the obligations or undertakings expressed to be assumed by it under any Project Document to which it is a party which is, while it remains unremedied, in the reasonable opinion of the Bank likely materially and adversely to affect the ability of the Borrower to perform all or any of its obligations hereunder and, in respect of any such breach or omission which in the opinion of the Bank is capable of remedy, fails to remedy the same within such grace period as may be provided for remedy of the same by the relevant Project Document; or
- 20.1.28 **Connection and Licences** The Connection Agreements are not in full force and effect by 31st March 1998 and/or the Borrower's Licence under Section 4 of the Electricity Act 1989 to generate electricity is not granted and received within 3 months after Financial Close (together with confirmation reasonably satisfactory to the Bank from OFFER regarding revocation of the Licence and the issue of a replacement licence), or such Licence or the Borrower's Licence under Section 36 of that Act becomes capable of revocation, or is revoked, or is modified in a manner which the Bank determines to be material to the Project; or
- 20.1.29 **Termination of Supply or Purchase Contracts** Any event entitling (or which would after the expiry of any applicable grace period entitle) a party thereto other than the Borrower to exercise a right of termination occurs under the Eastern Supply Contract and/or the PowerGen Purchase Contract; or
- 20.1.30 **Termination of Other Project Documents** The Constructor or the Operator or any other party to a Direct Agreement (other than the Bank) serves a Termination Notice (as defined in the relevant Direct Agreement) under that Direct Agreement, or is in breach of its obligations under a Direct Agreement; or
- 20.1.31 **Failure to Contribute** The subscription for, or other acquisition of, shares in the Borrower provided for under the terms of the Shareholders Agreement is not duly completed by Financial Close; or

- 20.1.32 **Loan Life Cover Ratio Default** The Loan Life Cover Ratio on any Reference Date is less than 1.1:1; or
 - 20.1.33 **Debt Service Cover Ratio Default** The Debt Service Cover Ratio for any Reference Period is less than 1.05:1; or
 - 20.1.34 **Availability** General Electric International Inc fails to comply with its availability guarantee given in Clause 6 of the Maintenance Agreement; or
 - 20.1.35 **Change of Control** There is any Change in Control of the Parent or Global Energy or the Operator (unless the Bank shall have given its prior written consent); or
 - 20.1.36 **Change of Ownership** The Parent ceases to own directly or indirectly 100% of the issued share capital of Fife Limited and 51% of the entire issued voting share capital of the Borrower (other than pursuant to Article 5.07 of the Shareholders Agreement and/or Article 12 of the Borrower's Articles of Association) or EIF ceases to own directly or indirectly 100% of the issued common stock of EIF Fife II and EIF Fife III (other than pursuant to Clause 2 of the Equity Provider's Direct Agreement); or
 - 20.1.37 **Transfers of Ownership** The Equity Providers together do not, or cease to, own, directly or indirectly, 100% of the entire issued share capital of the Borrower; or
 - 20.1.38 **Cure Plan Failure** The Borrower receives notice as provided in terms of Clause 20.2; or
 - 20.1.39 **Eastern Third Party Support** The condition precedent specified in Clause 2.3(g) of the Eastern Supply Contract has not been satisfied or waived within 8 weeks after Financial Close.
- 20.2 **Cure Plan** The Bank may, unless it reasonably believes that the event in question is incapable of cure or remedy within a period (being not less than 7 days) acceptable to the Bank, at any time after it becomes aware of the occurrence of any of the events specified in Clauses 20.1.2, 20.1.18, 20.1.20, 20.1.21, 20.1.22, 20.1.23, 20.1.24, 20.1.25, 20.1.26, 20.1.27 or 20.1.28, so long as the same is continuing, by notice (**the Cure Notice**) to the Borrower require the Borrower in consultation with the Bank and, if appropriate, the Bank Engineer to submit within 14 days a programme of action (agreed by it with the Parent and EIF, if appropriate) which will, if performed, cure or remedy the event in question to the satisfaction of the Bank within a period (being not less than 7 days) acceptable to the Bank (**the Cure Plan**) to the effect that:-
- 20.2.1 the event in question shall not in any case constitute an Event of Default until Clause 20.2.4 applies;
 - 20.2.2 where the event arises from a requirement applicable to a specific date not being fulfilled on that date, and so may not be remediable, the same may be "cured" by the Borrower demonstrating to the satisfaction of the Bank that such requirement will be fulfilled either as at the next applicable specific date or within a period acceptable to the Bank and/or by the establishing of a revised Monitoring Cash Flow Model and a new base case derived therefrom;

Part 4 - INSURANCE PROGRAMME
dated 10 January 1997 1996

References in this document to paragraphs and Appendices shall be construed as references to the paragraphs and Appendices of this document, unless the context otherwise requires.

1. INSURANCES TO BE EFFECTED

1.1 Construction phase

(A) **Scope and duration:** Appendix 1 specifies the insurances which have been or are to be effected by, or procured by, the Borrower for the benefit of the Borrower and, among others, each Finance Party. The Borrower shall procure that at its own expense:-

- (1) the insurances specified in Appendix 1 are effected from Financial Close; and
- (2) all insurances specified in Appendix 1 are maintained in full force and effect by no later than the second Utilisation under the Facility Agreement (or such later date as the Bank may agree in writing) until:-
 - (a) (in the case of physical damage and loss insurances of any asset (or part thereof) covered thereby) Project Handover, or such other date or dates as may be agreed by the Bank;
 - (b) (in the case of third party/public legal liability and delay in start-up insurances) Project Handover, or such other date or dates as may be reasonably agreed by the Bank (in consultation with the Bank Insurance Consultant); and
 - (c) (in the case of all other insurances specified in Appendix 1) Project Handover, or the date or dates as at which insurances against the risks and liabilities covered by such insurances are effected under paragraph 1.2, whichever is the later.

(B) **Undertakings:** The Borrower shall procure that at its own expense the said insurances:-

- (1) are effected against the risks and liabilities and maintained in the amounts specified in Appendix 1 (as varied from time to time as required by paragraphs 1.1(B)(3)-(5) or agreed or determined under paragraph 6 or paragraph 7);
- (2) include only such provisions for self-insurance, whether by deductible or otherwise, as are specified in Appendix 1 (subject to any variation thereof from time to time agreed or determined under paragraph 6 or paragraph 7);
- (3) cover the Plant to its full replacement value, increased from time to time as necessary to maintain such full replacement value in accordance with the provisions of the Construction Agreement;
- (4) in respect of delay in start-up, are increased from time to time to such amounts as may be requested by the Bank (in consultation with the Bank Insurance Consultant);

- (5) are otherwise increased from time to time:-
- (a) to such amounts as would be effected by a prudent operator of a business similar to that of the Borrower and financed on a limited recourse basis save to the extent that the Bank (in consultation with the Bank Insurance Consultant) otherwise agrees in writing; and/or
 - (b) to such amounts and with such deductibles as the Bank, (in consultation with the Bank Insurance Consultant) may require, taking into account, among other things, market availability in respect of risks, liabilities and amounts of insurance, the financial position of the Borrower and the interests of each Finance Party under the Finance Documents.
- (C) **Warranties:** The Borrower represents and warrants to and for the benefit of each other party to this Agreement (and their respective successors and assignees) that as at the date hereof there are no insurances not disclosed to the Bank which have been effected pursuant to paragraph 2(C) and are presently in effect under which the Borrower is insured or has any rights. The representation and warranty set out in this paragraph 1.1(C) shall survive the execution of this Agreement and shall be deemed to be repeated on each date the insurances in Appendix I are required to be maintained in accordance with paragraph 1.1(A) (2).

1.2 **Operational phase**

- (A) **Scope and duration:** Appendix 2 specifies the insurances which are to be effected by, or procured by, the Borrower for the benefit of the Borrower and, among others, each Finance Party. The Borrower shall procure that insurances against the risks and liabilities specified in Appendix 2 are in force at its own expense until the Secured Liabilities (as defined in the Security Documents) are irrevocably paid and discharged in full) with effect from the dates as at which any risk or liability specified in Appendix 2 is not or ceases to be covered under the insurances effected under paragraph 1.1 above and subject to Clause 18.6.1 of the Agreement.
- (B) **Undertakings:** The Borrower shall procure that at its own expense the said insurances:-
- (1) are effected against the risks and liabilities and maintained in the amounts specified in Appendix 2 as varied from time to time as required by paragraphs 1.2(B)(3)-(5) or as agreed or determined under paragraph 6 or paragraph 7);
 - (2) include only such provisions for self-insurance, whether by deductible or otherwise, as are specified in Appendix 2 (subject to any variation thereof from time to time, agreed or determined under paragraph 6 or paragraph 7);
 - (3) cover the Plant to its full replacement value, increased from time to time as necessary to maintain such full replacement value;
 - (4) in respect of business interruption, are increased from time to time to such amounts as may be requested by the Bank (in consultation with the Bank Insurance Consultant);

(5) are otherwise increased from time to time:-

- (a) to such amounts as would be effected by a prudent operator of a business similar to that of the Borrower and financed on a limited recourse basis save to the extent that the Bank (in consultation with the Bank Insurance Consultant) otherwise agrees in writing; and/or
- (b) to such amounts and with such deductibles as the Bank (in consultation with the Bank Insurance Consultant) may require, taking into account, among other things, market availability in respect of risks, liabilities and amounts of insurance, the financial position of the Borrower and the interests of each Finance Party under the Finance Documents.

2. **ADDITIONAL COVERAGES**

(A) **Insurances required by law:** Without prejudice to the other provisions of this document, during the periods referred to in paragraphs 1.1 and 1.2 the Borrower shall:-

- (1) from time to time effect and maintain in full force those insurances which it is required to have by any applicable law or by the terms of the Project Documents; and
- (2) use all reasonable efforts to effect and maintain in full force those insurances which it is required to have by the terms of any other contract to which it is at any time a party.

(B) **Additional insurances and risk management steps:**

(1) The Bank (after consulting the Borrower and the Bank Insurance Consultant) may, from time to time, by notice to the Borrower, require the Borrower:-

- (a) to effect such insurance coverage in respect of any risks, contingencies or liabilities other than those specified in Appendices 1 and 2 as the Bank may from time to time request including those which:-
 - (i) would from time to time be insured by a prudent operator of a business similar to that of the Borrower and financed on a limited recourse basis; and/or
 - (ii) the financial resources of the Borrower make it necessary (in the Bank's absolute discretion, after consultation with the Bank Insurance Consultant) for the Borrower to be insured against;

in either case, in such amounts and with such deductibles as the Bank, (in consultation with the Bank Insurance Consultant) may require taking into account, among other things, market availability in respect of risks, liabilities and amounts of insurance, the financial position of the Borrower and the interests of each Finance Party under the Finance Documents; and

- (b) to take such steps as may be required, after consultation with the Borrower, to comply with any risk management report(s) produced from time to time by the Bank Insurance Consultant and/or the insurers of the Project (the Insurers).

- (2) The Borrower shall, following receipt of notice from the Bank under paragraph 2(B)(1), insure, with effect from the date of such notice (or as soon as reasonably practicable in the light of prevailing market conditions), against the risks and liabilities, in the amounts and with the deductibles specified in such notice.

(C) **Borrower's insurance:**

- (1) For the avoidance of doubt, and subject to subparagraph (2) below, the Borrower shall at any time be entitled to effect such other insurances in addition to or supplementing those referred to elsewhere in this document as it may think fit.
- (2) The Borrower shall notify the Bank at each Review Date (as defined in paragraph 7(A)) of any insurances effected pursuant to paragraph 2(C)(1) since the previous Review Date pursuant to sub-paragraph (1) above. Any such insurances shall be treated for all purposes as if effected pursuant to paragraph 1.1 or 1.2, as the case may be.

(D) **Constructor's Insurance:**

- (1) The Borrower shall take all reasonable steps to ensure that the Constructor effects the policies required to be effected by it under the provisions of the Construction Agreement.
- (2) Such policies of the Constructor shall provide coverage for the Bank in nature and extent, reasonably acceptable to the Bank Insurance Consultant and equivalent (so far as applicable) to the coverage required of the Borrower pursuant to the provisions of this Insurance Programme including, without limitation, the provision of difference in conditions policies and of letters of undertaking from the Constructor's brokers.

3. **PROVISIONS COMMON TO ALL INSURANCES**

- (A) **Policies:** The Borrower shall procure that each policy taken out pursuant to paragraphs 1.1, 1.2, 2(B), 2(C)(1), 6(B) and 7(F) of this document shall:-

- (1) be placed and maintained through such brokers and with such insurers or underwriters as may be approved from time to time by the Bank (after consulting the Bank Insurance Consultant);
- (2) be in such form and substance, consistent with the obligations of the Borrower under this document, as may be approved from time to time by the Bank in writing (after consulting the Bank Insurance Consultant);
- (3) be the subject of an Intimation of Assignment duly given (the Borrower undertaking to serve such Intimation forthwith upon the execution of the Assignment or in the case of any policy of insurance taken out pursuant to this document after the date of the Assignment, forthwith upon the effecting of such policy upon the relevant Insurers) in the form required in Appendix 5 (except to the extent that the Bank, after consultation with the Bank Insurance Consultant may otherwise agree) and by Financial Close) will have attached to each policy intimation of such assignment

endorsed on each such policy and such other endorsements substantially in the form set out in Appendix 3;

- (4) contain a provision whereunder the Insurers waive all rights of subrogation howsoever arising which they may have or acquire against each Finance Party arising out of any occurrence in respect of which any claim is admitted under the policy;
 - (5) provide that all the provisions of the policy (except those relating to limits of liability) shall operate as if there were a separate policy covering each insured party;
 - (6) shall include each Finance Party as additional insureds under the policy for their security interest in, amongst other things, the Plant and such provisions for the protection of each Finance Party as the Bank may reasonably require;
 - (7) contain an acknowledgement by the insurers that in no circumstances shall any Finance Party be liable for the payment of premiums or any other obligation owed to the Insurers;
 - (8) be notified (except in the case of paragraph 2(C)(1) where the provisions of paragraph 2(C)(2) apply) to the Bank within 7 days of the said policy being taken out.
- (B) **Principal insured:** The Borrower shall procure that in each policy taken out pursuant to paragraphs 1.1, 1.2, 2(A), 2(B), 2(C)(1), 6(B) and 7(F) of this document the Borrower is named as the principal insured subject to paragraphs 3(A)(3) and 3(A)(6).
- (C) **Policies/Premiums:** The Borrower shall produce to the Bank each policy of insurance taken out pursuant to this document and procure the prompt payment of all premiums payable under each such policy in accordance with its terms and shall promptly produce to the Bank receipts for all such premium payments. Upon the renewal of any such policy the Borrower shall produce to the Bank, on or before its expiry date, evidence of such renewal.
- (D) **Brokers' undertakings:** The Borrower shall procure that each broker or agent through whom any insurance policy required to be effected or renewed under Appendix 1 or 2 to this document is effected or renewed delivers to the Bank a letter substantially in the form set out in Appendix 4 as soon as practicable after each such insurance policy is effected or renewed and in any event annually on each anniversary of Financial Close and within 30 days of any amendment to this document. This sub-paragraph (D) shall only apply on and as from the date of first drawdown hereunder.
- (E) **Non-avoidance of coverage:** The Borrower shall promptly and diligently perform and comply in all respects with its respective obligations contained in and the terms and conditions of each policy of insurance taken out pursuant to this document including without limitation any stipulations or restrictions as to the use and/or operation of any asset and shall not at any time do (or omit to do) anything whereby any policy of insurance taken out pursuant to this document may be rendered void or voidable or suspended, impaired or defeated in whole or in part and shall promptly notify the Bank of any occurrence which gives rise or might give rise to a material claim under any such policy of insurance and of any event which might cause any such policy of insurance to lapse or become invalid including any default by the Borrower and institute and maintain all such proceedings as may

be necessary or expedient to preserve or protect its interest and that of each Finance Party in each policy from time to time taken out by any person pursuant to this document.

- (F) **Claims procedure:** The Borrower shall (subject to the prior written approval of the Bank) collect, recover, compromise and give a good discharge for all claims now outstanding or at any time hereafter arising under the policies of insurance required under this document under which the Borrower is loss payee and institute all such proceedings in connection therewith as the Bank in its absolute discretion thinks fit. The Bank shall not be obliged to make any enquiry as to the nature of sufficiency of any payment received by it under the policies of insurance required under this document and shall not be responsible for its own act or omission or for that if any of its directors, officers, employees, agents, counsel or others acting on its behalf in the enforcement of any right assigned to it under the Assignment and unless caused by wilful misconduct or gross negligence.

4. **INFORMATION**

- (A) **Information:** The Borrower shall give to the Bank and the Bank Insurance Consultant such information as to the insurances taken out pursuant to this document (or as to any matter which may be relevant to such insurances) as the Bank may, from time to time, reasonably request.
- (B) **Alteration of coverage:** The Borrower shall procure that no reductions in limits or coverage (including those resulting from extensions) or increases in deductibles, exclusions or exceptions shall be made to any insurance effected pursuant to this document without the written consent of the Bank, after consultation with the Bank Insurance Consultant.

5. **OMISSION TO COMPLY WITH PROVISIONS OF INSURANCES**

If at any time and for any reason any insurance required to be maintained under this document shall not be in full force and effect for any reason other than that set out in paragraph 8(A), then, without prejudice to the rights of the Bank and each Finance Party under Clauses 8.5, 20.1 or 20.2 of the Agreement, the Bank shall thereupon, or at any time whilst the same is continuing, be entitled to procure such insurance at the expense of the Borrower and, without prejudice to any other obligations of the Borrower under the Finance Documents, require the Borrower to take all such steps to minimise hazard as the Bank may consider expedient or necessary after consulting the Bank Insurance Consultant.

6. **CHANGES IN CIRCUMSTANCES**

- (A) **Increases in amounts:** Without prejudice to the provisions of paragraph 1 above and paragraph 7 below, if since the most recent Review Date the Bank, after consulting the Bank Insurance Consultant, in its opinion considers as a result of any change in circumstances the amounts and/or deductibles referred to in paragraph 7(A)(2) below to be inadequate or inappropriate, as the case may be, and that it would materially prejudice the interests of any Finance Party under the Finance Documents to wait until the procedure provided for in paragraph 7 is concluded, the Bank may by written notice to the Borrower require that insurances be effected in the amounts and with the deductibles specified in such notice with effect from the date of receipt of such notice by the Borrower or, in the light of prevailing market conditions, as soon as practicable thereafter, until the following Review Date.
- (B) **Borrower to effect increased insurances:** The Borrower shall, as soon as practicable following receipt of such notice from the Bank, procure in accordance with the terms of such

notice and in the amounts and with the deductibles specified in such notice, such insurance to be effected as from the date of receipt of such notice or, if unable to effect such insurance in the light of prevailing market conditions, as soon as practicable thereafter.

7. **PROCEDURE FOR AGREEING AND DETERMINING INSURANCE**

(A) **Reviews of amounts and scope of insurances:** The Borrower shall, no later than the date (each, in this document, a **Borrower's Proposal Date**) falling 60 Business Days prior to the renewal or expiry date in respect of each material insurance, deliver to the Bank and the Bank Insurance Consultant a notice stating the Borrower's proposals as to:

- (1) the changes (if any) since Financial Close or the previous Borrower's Proposal Date (if later) with regard to that insurance (in this document, **the Relevant Insurance**) in the risks or liabilities to be insured pursuant to this document;
- (2)
 - (a) the replacement value of all assets required to be insured pursuant to the Relevant Insurance on a replacement value basis, in such detail as the Bank (in consultation with the Bank Insurance Consultant) may reasonably require;
 - (b) the insured amounts in respect of all other risks required to be insured pursuant to the Relevant Insurance; and
 - (c) the amount of the deductibles applicable to the Relevant Insurance;

in each case, for the period of twelve months (or such other period as may be agreed between the Borrower and the Bank) following the date (in this document, **the Review Date**) falling 60 Business Days after the relevant Borrower's Proposal Date (each such period, in this document **an Insurance Period**) together with information showing in reasonable detail how the same are calculated and any other information relating thereto reasonably required by the Bank (in consultation with the Bank Insurance Consultant).

(B) **Review by Bank Insurance Consultant:** The Bank shall, upon receipt of any proposal under sub-paragraph (A) above, instruct the Bank Insurance Consultant to consider the same and to advise the Bank within 15 Business Days (or such other period as the Bank may agree) after such receipt, whether or not it agrees with such proposals or notices.

(C) **Agreement of proposals:** Within 7 Business Days of receiving such advice from the Bank Insurance Consultant, the Bank shall inform the Borrower whether or not the relevant proposal is agreed in whole or in part. If any proposal is not so agreed in whole, the Bank (after consulting the Bank Insurance Consultant) shall, together with such notice, deliver to the Borrower counter-proposals provided that no approach shall be made to the insurance market without prior advice to the Borrower) with regard to any part of the Borrower's proposal not so agreed and any other matter referred to in sub-paragraph (A) above which in the Bank's opinion (after consulting the Bank Insurance Consultant) should have been contained in such Borrower's proposal. Within 5 Business Days of receiving such notice, the Borrower shall inform the Bank whether such counter-proposals are agreed in whole or in part. If any proposal or counter-proposal is not so agreed in whole, the Bank Insurance Consultant (acting on behalf of each Finance Party) and a firm of insurance brokers appointed by the Borrower shall negotiate in good faith for a further period of 5 Business Days after the date on which the Bank is informed that its counter-proposals are not agreed

with a view to resolving the matter in a manner acceptable to the Bank (after consulting the Bank Insurance Consultant) and the Borrower.

- (D) **Determination by the Bank:** If the Bank Insurance Consultant and such insurance brokers are unable so to resolve the matter within the said further period of 5 Business Days, the dispute shall be determined by the Bank within 10 Business Days of the expiry of such period. The Bank shall, in determining such dispute, have regard to the insurances (including, among other things, the scope of cover, the amount insured and the applicable deductibles) which would be effected by a prudent operator of a business similar to that of the Borrower and taking into account, among other things, market availability in respect of risks, liabilities and amounts of insurances, the financial position of the Borrower and the interests of each Finance Party under the Finance Documents. For the avoidance of doubt, the Bank shall be entitled to agree to the Borrower self-insuring specified risks to the extent which, in the opinion of the Bank, is prudent in the light of all the circumstances.
- (E) **Failure to notify the Bank:** If the Borrower fails to deliver any notice referred to in paragraph 7(A) by the Borrower's Proposal Date, the Bank (after consulting the Bank Insurance Consultant) may specify any change, whether of amount or otherwise, required under sub-paragraph (A) above, such change to be included in a notice thereunder with regard to the relevant Insurance Period delivered to the Borrower, and paragraph 7(F) below shall apply, mutatis mutandis, to the matters specified in such notice as if they had been determined by the Bank under paragraph 7(D).
- (F) **The Borrower to effect appropriate insurances:** Forthwith upon receipt of notice from the Bank of any agreement or determination under paragraph 7(C), 7(D) or 7(E), the Borrower shall insure against the risks, in the amounts, and with the deductibles so agreed or determined, with effect from the Review Date immediately following the Borrower's Proposal Date and throughout the Insurance Period immediately following that date or, if unable to effect such insurance in the light of prevailing market conditions, as soon as practicable thereafter.

FACILITY AGREEMENT

BETWEEN

FIFE POWER, registered number SC162872, whose registered office is at Westfield Development Centre, Cardenden, Fife KY5 0HP (**the Borrower**) of the first part; and

THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND, acting through its International Division based at Orchard Brae House, 30 Queensferry Road, Edinburgh EH4 2UG as provider of the term facility (**the Bank**) of the second part.

CONSIDERING THAT:

- (A) The Borrower is a special purpose unlimited liability company established in order to build, own and operate a simple cycle gas fired power station at Westfield, Fife which is designed to produce approximately 75 MW of electricity from natural gas;
- (B) The Borrower has entered into a fixed price turnkey contract with General Electric Company for the installation of a GE PG6101 FA gas turbine and for commissioning of the plant;
- (C) The Borrower has obtained budget quotations for the connection of the power station with the host public electricity supplier, Scottish Power plc and for the connection of gas supplies, and intends to enter into connection agreements in relation thereto;
- (D) The Borrower has entered into (i) an operations agreement with Global Energy International Operations Limited for the operation of the power station, (ii) a maintenance management programme agreement with General Electric International Inc for the maintenance and availability of the power station, (iii) a gas sales agreement with Eastern Natural Gas (Retail) Limited for the supply of natural gas to the power station and (iv) a power purchase agreement with PowerGen plc for the purchase of electricity produced by the power station; and
- (E) The Bank has agreed to make available a loan facility to provide finance for the project on the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

1.1 Definitions In this Agreement:-

Account Bank means The Governor and Company of the Bank of Scotland, acting for the time being through its International Division or any other person with whom the Bank Accounts are maintained under Clause 8;



**CERTIFICATE OF THE REGISTRATION
OF A CHARGE**

Company number 137656

I hereby certify that a charge created by

FIFE ENERGY LIMITED

on 10 JANUARY 1997

for securing ALL SUMS DUE, OR TO BECOME DUE

in favour of
the GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND

was delivered pursuant to section 410 of the Companies Act, 1985,
on 24 JANUARY 1997

Signed at Edinburgh
27 JANUARY 1997

R. Graham
For Registrar of Companies



C O M P A N I E S H O U S E

N.B. Searchers may find it desirable to refer to the documents mentioned in column (2) for more detailed particulars

REGISTER of Charges, Alterations to Charges,

COMPANY: SC137656 CHARGE: 11

(1) Date of Registration	(2) Serial Number of Document on File	(3) Date of Creation of each Charge and Description thereof	(4) Date of the aquisition of the Property	(5) Amount secured by the Charge £	(6) Short Particulars of the Property Charged	(7) Names of the Persons entitled to the Charge
24/01/1997		10/ 1/97 SHARES PLEDGE		ALL SUMS DUE, OR TO BECOME DUE	ITS WHOLE RIGHT,TITLE,INTEREST AND BENEFIT IN AND TO THE PLEDGED SECURITIES.	the GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND

Memoranda of Satisfaction and Appointments etc. of Receivers

N.B. Searchers may find it desirable to refer to the documents mentioned in column (2) for more detailed particulars

COMPANY: SC137656 CHARGE: 11

(8) In the case of a floating charge, a statement of the provisions, if any, prohibiting or restricting the creation by the company of any fixed security or any other floating charge having priority over, or ranking <i>pari passu</i> with the floating charge.	(9) In the case of a floating charge, a statement of the provisions if any regulating the order in which the floating charge shall rank with any other subsisting or future floating charges or fixed securities over the property the subject of the floating charge or any part of it.	(10) Amount or rate per cent of the Commission Allowance or discount	(11) Memoranda of Satisfaction	(12) Receiver		
				Name	Date of Appointment	Date of Ceasing to act