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**[Date]**

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**(1) [THE GOVERNMENT]**

**(2) [STATE ELECTRICITY GENERATOR]**

**(3) [SPV]**

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**IMPLEMENTATION AGREEMENT  
RELATING TO [STATE ELECTRICITY GENERATOR]  
("SUPPLIER")**

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THIS AGREEMENT is made on [ ] of [ ] at [ ],

BETWEEN:

- (1) **[THE GOVERNMENT]** (the “Government”), represented by [ ];
- (2) **STATE ELECTRICITY GENERATOR** a company registered under number [ ] in [host country] and whose registered office is at [ ] (“the Supplier”); and
- (3) **[SPV]** a company a company registered under number [ ] in [host country] and whose registered office is at [ ] (“SPV”).

#### WHEREAS

- (A) the Supplier, established by the Government as a wholly government owned public shareholding company, is engaged in the generation of electricity in [host country];
- (B) The Government has undertaken a competitive tender process for selecting private sector investors to acquire certain shares owned by it, and generally to participate, in the Supplier;
- (C) The Investors through the SPV have submitted an offer to acquire 51% of the issued share capital of the Supplier and this offer has been accepted by the Government. The Investors have established SPV as their investment vehicle for the purposes of making such acquisition;
- (D) The Government and SPV have entered into a Share Acquisition Agreement as at the date of this Agreement for the sale and purchase of the above shares;
- (E) The Supplier has entered into the Power Purchase Agreements listed in Schedule 2 to this Agreement with the Purchaser, for the sale of Available Capacity, Net Electrical Output and Ancillary Services to the Purchaser from the Facilities;
- (F) The Government is willing to provide certain undertakings to the Supplier and SPV in relation to the Supplier’s Business, subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED as follows:

### 1. Definitions, Interpretation and Language

#### 1.1 Definitions and Interpretation

In this Agreement (including the Recitals), unless the context otherwise requires;

- 1.1.1 capitalised words used in this Agreement shall have the meanings assigned to them in Schedule 1;
- 1.1.2 words, importing persons or parties shall include firms and corporations and all references to persons shall include their permitted successors and assigns;
- 1.1.3 words importing the singular only also include the plural and vice versa where the context requires;

- 1.1.4 words importing the masculine shall include the feminine and neuter and vice versa;
- 1.1.5 the headings and marginal notes in this Agreement shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement and are included for ease of reference only;
- 1.1.6 the Recitals and the Schedules shall be deemed to be part of this Agreement and all references to Recitals, Articles, clauses and Schedules, shall be construed as references to recitals of, articles of, clauses of and schedules to this Agreement, and references to paragraphs in a clause or Schedule shall be construed as reference to paragraphs of that clause or Schedule, unless indicated otherwise; and
- 1.1.7 references to any law or statute shall be construed as a reference to that law or statute, as amended from time to time.

## 1.2 Language

The language of negotiation of this Agreement has been English, this Agreement is executed in English, and the English text shall prevail for all purposes of determining the intention of the Parties and in any construction of this Agreement.

## 2. Effectiveness and Term

Save for clause 3.1.2(a) and Article 17, which shall be effective from the date of signing of this Agreement, this Agreement shall become effective on the Completion Date and shall continue to have effect thereafter until the date on which the last PPA expires or is terminated earlier.

## 3. Obligations of the Government

- 3.1 In consideration of the Supplier entering into the PPAs, the Government undertakes to the Supplier in relation to the Supplier's Business in the terms set out in this clause 3.1:

### 3.1.1 Work Permits and Visas for the Supplier's Foreign Personnel

Subject to applicable law, the Government shall provide all reasonable assistance to the Supplier to secure visas and work permits for its foreign personnel necessary to be engaged in the Supplier's Business for the period they are so engaged in the Supplier's Business on terms and conditions prescribed by applicable law, provided that any fees or costs of such visas and work permits shall be payable by the Supplier.

### 3.1.2 Licenses

- (a) The Government shall cause a Generation License to be granted to the Supplier in the Agreed Form subject to payment by the Supplier of the prescribed application fee and license fee, if any.
- (b) Subject to applicable law and the Supplier and its contractors complying with the conditions for grant of a license, permit or consent, the Government agrees to provide all reasonable assistance to the Supplier in obtaining all other licenses, permits or consents of

whatever kind and nature (in addition to a Generation License) required to be obtained by the Supplier and its contractors, as the case may be, from any Competent Authority in connection with the Supplier's Business and the works to be carried out pursuant to the Conversion and Capacity Addition Contracts, provided that any prescribed fee or costs of such license, permit or consent shall be payable by the Supplier.

### 3.1.3 Imports

- (a) The Government shall provide reasonable assistance to the Supplier to ensure that it is able to import plant, equipment and other goods required for the Supplier's Business, subject to payment by the Supplier of the prescribed duty.
- (b) The Government shall ensure that the Supplier is able to export without restriction all items of plant and machinery imported by it for installation in the Facilities for the purpose of repair or refurbishment outside [HOST COUNTRY], to the extent repair and refurbishment services of the required quality cannot be procured in [HOST COUNTRY] at the required time or price, and to re-import the same without payment of customs duties.

### 3.1.4 Non-Discrimination

Neither the Government nor any Competent Authority shall take any action or combination of actions, unless permitted by this Agreement, which, in comparison to other entities engaged in the generation of electricity in [HOST COUNTRY], is discriminatory against the Supplier.

### 3.1.5 Action leading to termination of Power Purchase Agreement(s)

- (a) To the extent the Supplier is not in material breach of its obligations under the relevant PPA, the Government shall ensure that the Purchaser shall fulfill its obligations under each PPA.
- (b) Except in response to acts or omissions of the Supplier in material breach of its obligations under the law, the Government shall not take, and shall ensure that no Competent Authority shall take, any action which is capable of giving rise to or constituting an event entitling the Supplier to terminate any PPA.

### 3.1.6 Taxation Stability

- (a) If, during any Financial Year within the Stability Period, the Government:
  - (i) increases any rates of taxes, applicable to the Supplier above those specified in Schedule 3, Part 1 including, without limitation, corporate rate taxes and withholding taxes on the remittance by the Supplier of interest, dividends, royalties or management fees to any of its shareholders or their Affiliates or the Supplier Lenders, as the case may be;
  - (ii) changes the basis of calculation prevailing at the date of this Agreement, as modified by Schedule 3, Part 1, in relation to the

relevant taxes specified in paragraph (a)(i), which would result in a decrease of deductions, rebates or other allowances available to the Supplier in computing its liability to such taxes;

- (iii) otherwise amends any corporate taxation regimes applicable to the Supplier from those prevailing at the date of this Agreement, in a manner which would result in an increase in taxes specified in paragraph (a)(i) payable by the Supplier;
- (iv) imposes or introduces new taxes, levies or other fiscal imposts on the conduct of the Supplier's Business in addition to those specified in Schedule 3, Part 1;
- (v) increases the rates of customs duty applicable to goods and materials required for the Supplier's Business above the level specified in paragraph 2 of Schedule 3, Part 1; or
- (vi) imposes other duties or levies of any form on the Supplier's Business,

it shall compensate the Supplier in accordance with clause 3.1.7 for any reduction in the Supplier's cash flows or distributable profits, or the dividends, interest or other amounts receivable by any of its shareholders or their Affiliates or the Supplier Lenders, as the case may be, (collectively called "Losses") provided that the aggregate amount of any Losses in the relevant Financial Year exceeds the Threshold amount.

- (b) For the avoidance of doubt, the Supplier shall be entitled to be compensated for the full amount of the Losses pursuant to clause 3.1.7 and not only the amount in excess of the Threshold amount.
- (c) the Supplier shall be entitled to maintain books of account and to render income tax returns and returns in respect of customs and excise duties stated either in US Dollars or [LOCAL CURRENCY] in accordance with International Accounting Standards.
- (d) To the extent that the Government delegates or authorizes the collection of any taxes, duties or imposts leviable on the Supplier to any other Competent Authority, the Government shall procure that such Competent Authority complies with the provisions of this clause 3.1.6.

3.1.7 For the purpose of claiming under clause 3.1.6:

- (a) the Supplier shall send a notice to the Government following the end of a Financial Year in which Losses in excess of the Threshold amount have been incurred, setting out details of the Losses, together with details of such breach;
- (b) the Supplier and the Government shall attempt to agree the amount of compensation to be paid in respect of the Losses;
- (c) if within forty five (45) days from the date of receipt of notice by the Government pursuant to paragraph (a), the Supplier and the Government fail to reach agreement on the amount payable to the Supplier pursuant to clause 3.1.6, either Party may by notice to the other Party require that the matter (including any dispute as to whether

the Losses exceed the Threshold amount) be referred to the Expert for determination in accordance with Article 9.

#### 3.1.8 Foreign currency accounts and repatriation

- (a) Neither the Government nor any Competent Authority shall impose any limitation on the Supplier in opening, maintaining and operating foreign currency accounts in or outside [HOST COUNTRY] necessary for the Supplier's Business.
- (b) The Government shall ensure that the Supplier will be able, without restriction, to purchase foreign currency, through commercial entities permitted by the laws of [HOST COUNTRY] to supply foreign currency, for:
  - (i) meeting the Supplier's obligations, if any, of repayment of amounts associated with loans taken to finance any repairs or improvements to the Facilities (including, without limitation, repayments of principal and interest and other financing costs);
  - (ii) the repatriation by the Supplier, of interest, loan repayments, dividends, or other distributions to SPV; and
  - (iii) the repatriation of salaries of expatriate personnel employed by the Supplier.
- (c) The Government shall ensure the availability of foreign currency for conversion to the extent required for the purposes described in paragraph (b).
- (d) To meet its obligations set out in paragraphs (b) (i) to (b) (iii) (inclusive), the Supplier shall be permitted to repatriate required amounts from [HOST COUNTRY] in foreign currency.
- (e) Neither the Government nor any Competent Authority shall prevent the Supplier from receiving, from outside of [host country], funds necessary for the Supplier's Business.

#### 3.1.9 Acquisition of Land and Rights of Way

If requested by the Supplier and at the Supplier's cost, the Government shall, to the extent permitted by law, use reasonable endeavors to acquire expeditiously for the Supplier any land or right of way reasonably required by it for carrying on the Supplier's Business in accordance with the provisions of [THE RELEVANT ELECTRICITY LEGISLATION], provided that the Supplier has made due and timely application prescribed for such acquisition to the relevant Competent Authority.

#### 3.1.10 Consequences of Change in Law

- (a) If any Change in Law, either alone or taken together with any other Changes in Law, will increase the cost to the Supplier of operating and maintaining one or more Facilities or decrease the gross revenue earned by the Supplier pursuant to the PPAs during any Financial Year beyond the Threshold (a "Relevant Change in Law"), then, subject to paragraphs (c) and (d), the Supplier shall be entitled to receive



compensation from the Government to ensure that the Supplier is in no better or worse financial position than it was prior to introduction of such Relevant Change in Law.

- (b) [Where any Modification is required to be carried out to any Facility pursuant to a Relevant Change in Law (“Statutory Modification”):
- (i) such Statutory Modification shall be carried out in accordance with the provisions relating to carrying out Statutory Modifications set out in the PPA of the relevant Facility;
  - (ii) following completion of the Statutory Modification, the Supplier shall by notice in writing notify the Government of the amount of compensation due to it in respect of such Statutory Modification, calculated with reference to the applicable Allowable Consequences, together with the detailed calculation of the amount claimed. The Parties shall attempt to mutually agree the amount payable to the Supplier. Failing agreement between the Parties, either Party may by giving notice to the other Party require that the matter (including any dispute as to whether a Relevant Change in Law has occurred) be referred to an Expert for determination in accordance with Article 9;
  - (iii) to the extent the Government agrees to pay the amount claimed by the Supplier in its notice pursuant to paragraph(b)(ii), the amount shall be payable within sixty (60) days from the date of receipt of such notice by the Government or such other period as the Parties may agree in writing. If the amount is not paid within that sixty (60) day period, the Government shall be liable to pay the amount claimed with interest at the Default Rate from the due date of payment until the actual date of payment, both days inclusive;
  - (iv) in the event of a Dispute as to the amount of compensation claimed by the Supplier pursuant to paragraph (c)(ii), the Government shall pay the undisputed amount in accordance with paragraph (c)(iii) and of the disputed amount shall pay the amount determined by the Expert within sixty (60) days of its determination together with interest determined in accordance with paragraph (c) (iii); and
  - (v) [following completion of the Statutory Modification,] the PPA relating to the relevant Facility shall be amended in accordance with the applicable provisions of that PPA.]
- (c) In order to claim compensation for an increase in costs or a reduction in revenues suffered by the Supplier in a Financial Year as a result of a Relevant Change in Law[, other than in respect of a Statutory Modification]:
- (i) the Supplier shall send a notice to the Government regarding such event and its estimate of the compensation necessary to ensure that the Supplier is in no better or worse financial position as a consequence of the Relevant Change in Law;



- (ii) the Parties shall attempt to agree to the amount payable to the Supplier; and
  - (iii) if within ninety (90) days of submission of such notice, the Parties are unable to reach agreement on the amount of compensation payable, either Party may refer the matter (including any dispute as to whether a Relevant Change in Law has occurred) to an Expert for determination in accordance with Article 9.
- (d) For the avoidance of doubt, the Supplier shall be entitled to be compensated for the effects of a Relevant Change in Law in full and not only for the amount in excess of the Threshold amount.

3.2 In consideration of SPV purchasing shares in the Supplier from the Government, the Government undertakes to SPV in the terms set out in this clause 3.2:

3.2.1 Foreign currency accounts and repatriation

- (a) Neither the Government nor any Competent Authority shall impose any limitation on SPV in opening, maintaining and operating foreign currency accounts in or outside [HOST COUNTRY] necessary for the Supplier's Business.
- (b) The Government shall ensure that SPV will be able, without restriction, to purchase foreign currency, through commercial entities permitted by the laws of [HOST COUNTRY] to supply foreign currency, for the repatriation by SPV of interest, loan repayments, dividends, or other distributions to the Investors.
- (c) The Government shall ensure the availability of foreign currency for conversion of local currency payments made to SPV to the extent required for the purposes set out in paragraph (b).
- (d) The Government will permit the SPV to transfer out of [HOST COUNTRY], in foreign currency, all and any amounts required for the purposes described in paragraph (b).
- (e) Neither the Government nor any Competent Authority shall prevent SPV from receiving from outside of [HOST COUNTRY], funds in relation to its investment in the Supplier, to the extent related to the Supplier's Business.

3.2.2 Taxation Stability

- (a) If at any time during the Stability Period, the Government:
  - (i) increases any rates of taxes in relation to SPV Taxable Items above the rates specified in Schedule 3, Part 2 including, without limitation, withholding taxes applicable to SPV in respect of relevant SPV Taxable Items, above the rates set out in Schedule 3, Part 2;
  - (ii) changes the basis of calculation of tax prevailing at the date of this Agreement, as modified by the basis specified in paragraph 1(b) of Schedule 3, Part 2, in relation to SPV Taxable Items

which would result in a decrease of deductions, rebates or other allowances available to SPV in computing its liability to taxes specified in Schedule 3, Part 2 in relation to SPV Taxable Items;

- (iii) otherwise amends the corporate taxation regimes applicable to SPV from those prevailing at the date of this Agreement, in a manner which would result in an increase in taxes specified Schedule 3, Part 2 payable by SPV in relation to SPV Taxable Items;
- (iv) imposes new taxes or levies on SPV, including, without limitation withholding tax applicable to SPV, in relation to SPV Taxable Items, in addition to those specified in Schedule 3, Part 2;

it shall compensate SPV for any loss suffered by SPV in accordance with clause 3.2.3 if the amendment, imposition, increase or introduction increases SPV's tax liability in relation to SPV Taxable Items beyond the Threshold amount;

- (b) SPV shall be entitled to maintain books of account and to render income tax returns stated either in [US Dollars] or [LOCAL CURRENCY] in accordance with International Accounting Standards;
- (c) To the extent that the Government delegates or authorizes the collection of any taxes, duties or imposts leviable on SPV to any other Competent Authority, the Government shall procure that such authorities comply with the provisions of this clause 3.2.2.

3.2.3 For the purpose of claiming under clause 3.2.2:

- (a) SPV shall following the end of the relevant Financial Year, send a notice to the Government setting out details of the amount of additional tax liability suffered by SPV as a consequence of the breach by the Government of its undertakings in clause 3.2.2. If SPV will suffer the additional tax liability in more than one Financial Year as a result of such breach, SPV shall be entitled to submit a notice in respect of the breach following each Financial Year;
- (b) SPV and the Government shall attempt to agree the amount to be compensated under clause 3.2.2;
- (c) if within forty five (45) days from the date of receipt of notice by the Government pursuant to paragraph (a), SPV and the Government fail to reach agreement on the amount payable to SPV pursuant to clause 3.2.2 in respect of the breach specified in SPV's notice, SPV may refer the matter for determination by an Expert in accordance with Article 9.

3.2.4 Neither the Government nor any Competent Authority shall take any action which makes it unlawful for SPV to hold or continue to hold shares in the Supplier.

#### **4. The Supplier's Obligations**

##### **4.1 To perform the PPAs, FSA and GSA**

The Supplier shall dutifully perform its obligations arising under or in connection with the PPAs, FSA and GSA in accordance with their terms, to the extent the Purchaser, the Fuel Supplier and the Gas Supplier perform their respective obligations. If the Fuel Supplier is unable to supply Oil pursuant to the FSA, the Supplier may procure Oil from an alternative source either itself or jointly with the Government.

##### **4.2 Obligations in relation to Conversion and Capacity Addition Contracts**

The Supplier shall undertake the Conversion Works and installation of a Gas Turbine pursuant to the relevant Conversion and Capacity Addition Contracts and shall:

- 4.2.1 not terminate the Conversion and Capacity Addition Contracts, without the prior written consent of the Government;
- 4.2.2 use reasonable endeavors to ensure compliance by each counterparty with the terms of the Conversion and Capacity Addition Contracts, including ensuring that the respective Scheduled Operation Dates are achieved;
- 4.2.3 during the course of the works under the Conversion and Capacity Addition Contracts submit a monthly progress report to the Government covering:
  - (a) all relevant aspects of the works under the Conversion and Capacity Addition Contracts and highlighting all actual or potential departures from the respective Scheduled Commercial Operation Dates;
  - (b) all material disputes or disagreements which have occurred; and
  - (c) the proposed measures to be taken by the Supplier to overcome any delay or to resolve the grounds for any such disputes or disagreements;
- 4.2.4 during the course of the works under the Conversion and Capacity Addition Contracts, hold periodic meetings with the Government at such times to be confirmed between the Parties to discuss matters relating to the progress of the works.

##### **4.3 Arranging Finance**

The Supplier shall bear and be solely responsible at its cost and risk for arranging all necessary financing for the purpose of the Supplier's Business and for the performance of its obligations under the Project Agreements.

##### **4.4 To provide all information required under approvals**

Without prejudice to the Government's undertaking in clause 3.1.2(b), the Supplier shall provide all information and supporting documentation required

by any Competent Authority in respect of any application for the grant of or under any license, permit or consent in respect of the Supplier's Business.

#### 4.5 Compliance with Licenses

The Supplier shall at all times comply with the terms and conditions of the Generation License and any other license, permit or consent applying to it and shall be responsible for the compliance by its officers, employees, directors, agents, contractors and Affiliates with any such license, permit or consent applying to them in relation to their undertaking duties relating to the Facilities and the Supplier's Business.

#### 4.6 Duty to keep the Facilities secure

The Supplier shall at all times take all reasonable precautions to keep each Facility secure from the risks of unlawful interference to its operation or of damage by third parties, including but not limited to, damage by riot, civil commotion, sabotage, act of vandalism or criminal damage.

#### 4.7 Compliance with Laws

The Supplier shall at all times comply with the laws of [host country] and shall be responsible for the compliance with these laws by its officers, employees, directors, agents, contractors and Affiliates.

#### 4.8 Procurement of Goods and Services

4.8.1 Without prejudice to the Supplier's right to import without restriction all goods and services required for the conduct of the Supplier's Business, the Supplier will procure goods and services from suppliers within [host country] to the extent practicable and if available at the required quality, standard, time and price.

4.8.2 The Supplier shall procure goods and services on commercial terms and on an arm's length basis.

#### 4.9 Rights of existing employees

The Supplier undertakes not to make material changes to the terms and conditions of employment of any of its employees existing as at the date of this Agreement, except with the prior consent of the relevant employees, unless otherwise permitted by the terms of their appointment.

### 5. Force Majeure

#### 5.1 Events of Force Majeure

For the purpose of this Agreement, an "Event of Force Majeure" means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of reasonable diligence and in the case of the Supplier observing Good Utility Practice, cannot be, or be caused to be, prevented, avoided or removed by such Party, and (ii) such circumstance materially and adversely affects the ability of the Party to perform its obligations under this Agreement, and such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to

avoid the effect of such event on the Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof.

## 5.2 Instances of Force Majeure

5.2.1 Subject to the provisions of clause 5.1, Events of Force Majeure shall include, but not be limited to:

- (a) Natural Force Majeure Events
  - (i) fire, chemical or radioactive contamination or ionising radiation, earthquakes, lightning, cyclones, hurricanes, floods, droughts or such other extreme weather or environmental conditions, unanticipated geological or ground conditions, epidemic, famine, plague, other natural calamities and acts of God;
  - (ii) explosion, accident, breakage of facilities, plant or equipment, structural collapse, or chemical contamination (other than resulting from an act of war, terrorism or sabotage), caused by a person not being the affected Party or one of its contractors or subcontractors or any of their respective employees or agents;
  - (iii) acts of war (whether declared or undeclared), invasion, or acts of terrorists, whether or not they involve [host country] and, to the extent they take place outside [host country], blockade, embargo, riot, public disorder, violent demonstrations, insurrection, rebellion, civil commotion and sabotage;
  - (iv) strikes, lockouts, work stoppage, labor disputes, and such other industrial action by workers related to or in response to the terms and conditions of employment of those workers or others with whom they are affiliated save, in relation to the Supplier, when such event is directly related to, or in direct response to any employment policy or practice (with respect to wages or otherwise) of the Supplier;
  - (v) in relation to the Supplier, non-performance by a counter-party to a contract by reason of an event or circumstance that would constitute a Natural Force Majeure Event under this Agreement;
- (b) Political Force Majeure Events
  - (i) failure of a Competent Authority to supply water for the construction or operation of a Facility;
  - (ii) to the extent they take place in [host country], blockade, embargo, riot, public disorder, violent demonstrations, insurrection, rebellion, civil commotion and sabotage;
  - (iii) failure or inability of the Supplier to obtain or renew any license, consent or permit on terms and conditions as favorable in all material respects as those contained in the

original license, consent or permit relating to the Supplier's Business (other than due to a breach by the Supplier of any of such terms and conditions);

- (iv) any action or failure to act without justifiable cause by any Competent Authority (including any action or failure to act without justifiable cause by any duly authorized agent of any Competent Authority);
- (v) expropriation or compulsory acquisition of a Facility or a Site;
- (vi) any legal prohibition on the Supplier to conduct the Supplier's Business, including passing of a statute, decree, regulation or order by a Competent Authority prohibiting the Supplier from conducting the Supplier's Business;
- (vii) in relation to the Supplier, non-performance by a counter-party under a contract relating to the Supplier's Business by reason of an event or circumstance specified above in this paragraph (b), as applied to the counterparty,

provided that breakdown of plant or equipment (unless itself caused by an Event of Force Majeure), or unavailability of funds, shall not constitute an Event of Force Majeure.

### 5.3 Consequences of Force Majeure

5.3.1 Except as provided in clause 5.4, and subject to compliance with clause 5.5, either Party shall be excused from performance and shall not be in default in respect of any obligation hereunder to the extent that the failure to perform such obligation is due to a Natural Force Majeure Event.

5.3.2 Additionally, the Supplier (but not the Government) shall be excused from performance and shall not be in default in respect of any obligation under this Agreement to the extent that the failure to perform such obligation is due to a Political Force Majeure Event.

### 5.4 Payment Obligations not excused

Notwithstanding that an Event of Force Majeure exists, the provisions of this Article 5 shall not excuse any obligation of the Government to pay monies under this Agreement.

### 5.5 Notice of Force Majeure

5.5.1 If a Party wishes to claim protection in respect of an Event of Force Majeure, it shall, subject to clauses 5.3 and 5.4, as soon as possible after it becomes aware or ought to have been aware (exercising due diligence) of the occurrence of such Event of Force Majeure, notify the other Party of the nature and expected duration of such Event of Force Majeure and



shall thereafter keep the other Party informed until such time as it is able to perform its obligations.

5.5.2 The Parties shall use their reasonable endeavors to:

- (a) overcome the effects of the Event of Force Majeure including, without limitation, by recourse to mutually acceptable (which acceptance shall not be unreasonably withheld by either Party) alternative sources of services, equipment, materials and construction equipment;
- (b) mitigate the effect of any delay occasioned by any Event of Force Majeure, including by recourse to alternative acceptable (which acceptance shall not be unreasonably withheld by either Party) sources of services, equipment and materials, and construction equipment; and
- (c) ensure resumption of normal performance of this Agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable,

provided that, the Supplier shall not be obliged to settle any strike, lock out, work stoppage, labor dispute or such other industrial action by its employees.

5.6 Uneconomic Reinstatement

If an Event of Force Majeure occurs that causes damage which renders the affected Facility a total loss such that following reinstatement of the affected Facility, the Supplier's earnings would not be sufficient to cover its costs of reinstating and operating the affected Facility, taking into account available insurance proceeds ("Uneconomic Force Majeure"), then the Supplier shall not be obligated to rebuild or reinstate the affected Facility, unless and until the Parties have agreed upon the terms for such reinstatement. Any dispute as to whether an Uneconomic Force Majeure has occurred may be referred by either Party for determination by the Expert.

## 6. Indemnities

6.1 The Supplier Indemnity

- 6.1.1 the Supplier shall be responsible for all third party claims for injury to or loss or damage to the property of any person (including without limitation reasonable legal fees) ("the Supplier Third Party Claims") arising out of ownership and maintenance of the Facilities and resulting from any act or omission of the Supplier at any time after the Effective Date.
- 6.1.2 the Supplier shall fully indemnify and hold the Government, its officers, employees, contractors and agents harmless in respect of the Supplier Third Party Claims, provided that the Government has not been compensated for the Supplier Third Party Claim in question under an insurance policy and, provided further, that the indemnity shall not extend to and the Government hereby waives any claim against the



Supplier in respect of the Supplier Third Party Claim to the extent it was caused by any act or omission of the Government, its officers, employees, contractors or agents.

## 6.2 Government Indemnity

- 6.2.1 The Government shall be responsible for any third party claim for injury to or loss or damage to property of any person (including reasonable legal fees) arising out of:
- (a) any non-compliance by the Supplier with any Environmental Standard prior to the Effective Date; or
  - (b) its performance of this Agreement and resulting from any act or omission of the Government at any time after the Effective Date, (each referred to as a “Government Third Party Claim”).
- 6.2.2 The Government shall fully indemnify and hold the Supplier, its Affiliates, officers, employees, contractors and agents harmless in respect of Government Third Party Claims provided that the Supplier has not been compensated for the Government Third Party Claim in question under an insurance policy and, provided further, that, save for the claims referred to in paragraph (a) of clause 6.2.1, the indemnity shall not extend to and the Supplier hereby waives any claim against the Government in respect of Government Third Party Claims, to the extent it was caused by any negligent act or omission of the Supplier, its Affiliates, officers, employees, contractors or agents.

## 6.3 Right to Defend Action

The indemnifying Party shall have the right, but not the duty, to assume the defence of any third party claim referred to in clauses 6.1 or 6.2, as the case may be. Any Party shall, as soon as practicable after receiving notice of any claim brought against it, deliver to the other indemnifying Party full particulars thereof and shall render all reasonable assistance requested by such Party in the defence of such third party claim. The foregoing obligations, indemnities and liabilities assumed by the Parties hereunder shall not be affected by any limits on insurance held by the Parties.

## 6.4 Indemnified Party not to Compromise

Where either Party has an obligation under clause 6.1.2 or 6.2.2, as the case may be, of indemnifying the other Party, such other Party shall not compromise or in any way settle any claim, lawsuit, action or cause of action without the express written consent of the other Party who has the obligation of indemnifying under clause 6.1.2 or 6.2.2, as the case may be. Where such consent is not obtained prior to such compromise or settlement, the Party who had the obligation of indemnifying shall be released and discharged from all obligations under clause 6.1.2 or 6.2.2, as the case may be.

- 6.5 Any payment payable by the indemnifying Party to the indemnified Party pursuant to this Article 6 shall be paid within forty five (45) days from the date on which the indemnified Party makes any payment in connection with a third party claim.

## **7. Insurance by the Supplier**

7.1 Without limiting the Supplier's obligations and responsibilities under this Agreement, the Supplier shall maintain in respect of each Facility and for the duration of the PPA for that Facility, the insurance policies set out in Schedule 4 Part 1, provided that the public liability insurance policy shall be in the joint names of the Supplier and the Government.

### **7.2 General Insurance Obligations**

The following provisions shall apply to the Supplier's insurance obligations under clause 7.1:

7.2.1 the insurance required to be maintained pursuant to clause 7.1 shall be in the amounts specified below:

- (a) for the first Financial Year, the amount of insurance cover shall be as specified in Schedule 4, Part 1;
- (b) for each following Financial Year, the amounts specified in Schedule 4, Part 1 shall be adjusted in the manner specified in Schedule 4, Part 2; and
- (c) with effect from the beginning of the sixth Financial Year, and thereafter, on the commencement of every sixth Financial Year, the Supplier shall revise the amount of insurance cover under each policy specified in Schedule 4, Part 1 to a level consistent with Good Utility Practice;

7.2.2 any dispute on the amounts for which insurance should be maintained pursuant to clause 7.2.1 may be referred by either Party to the Expert for determination in accordance with Article 9;

7.2.3 if the Supplier fails to provide evidence when required that the insurance referred to in clause 7.1 is in force, then the Government may itself take out such insurance and pay such premiums as may be necessary to maintain it in force. The Government may recover any amount so paid from time to time as a debt owed by the Supplier, along with interest at the Default Rate on the amount of premium paid from the date of its payment up to, but excluding, the date of reimbursement by the Supplier;

7.2.4 the public liability insurance policy maintained pursuant to clause 7.1 shall include a cross liability and non-vitiating clause to the effect that the insurance shall apply to the jointly named Parties as separate insurers and the act or omission of one Party cannot affect the other Party's cover; and

7.2.5 the Supplier shall promptly supply to underwriters and insurers all documentation and information which they may reasonably require to effect and maintain the insurance required by this Article 7.

### **7.3 Application of Proceeds of Insurance**

7.3.1 Subject to clause 5.6, proceeds of insurances with respect to breakdown, damage or destruction of structures, plant and equipment comprised in the Facility to which such insurance cover relates, shall be promptly

applied to the repair and replacement (temporary and permanent) of such structures, plant and equipment.

- 7.3.2 In respect of insurance policies, other than those specified in clause 7.3.1, the Supplier shall be entitled to apply the proceeds of any insurance claims at its own discretion, provided that if the Supplier is otherwise compensated for such insured event by the Government or the Purchaser, the Supplier shall forthwith pay the proceeds of such insurance to the Government or the Purchaser, as the case may be.

#### 7.4 Insurance Certificates

the Supplier shall cause its insurers or agents to provide the Government with certificates of insurance evidencing policies and terms specified in this Article 7. Failure by the Supplier to obtain the insurance coverage or certificates of insurance required by this Article 7 shall not relieve the Supplier of the insurance requirements set out in this Article 7 or in any way relieve or limit the Supplier's obligations and liabilities under any provision of this Agreement.

## 8. Termination

### 8.1 Events of Default

#### 8.1.1 The Supplier Event of Default

Each of the events described below shall constitute a Supplier Event of Default:

- (a) the breach by the Supplier of any material obligation under this Agreement, which (where capable of remedy) is not remedied within sixty (60) days after a notice from the Government stating that such a breach has occurred, identifying the breach in question in reasonable detail and demanding remedy thereof provided that, if the Supplier has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within sixty (60) days after the date of such notice, it shall be allowed such further period as may be reasonable for completing the remedial action not exceeding another sixty (60) days;
- (b) the dissolution, merger, consolidation, amalgamation, reorganization or reconstruction of the Supplier, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
- (c) save for the purposes permitted under paragraph (b), the occurrence of any of the following events (other than as a direct result of a Government Event of Default):
  - (i) passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to the Supplier;
  - (ii) the appointment of a trustee, liquidator, custodian or a similar person in a proceeding referred to in paragraph(c)(i), which appointment has not been set

aside or stayed within sixty (60) days of such appointment; or

- (iii) the making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of the Supplier, which order has not been set aside or stayed within sixty (60) days;
- (d) issue by the Purchaser of a notice to the Supplier to terminate all the PPAs as a result of default by the Supplier under one or more PPAs (as defined under the relevant PPA) in accordance with the terms of the relevant PPA for issue of such notice.

#### 8.1.2 Government Event of Default

Each of the events described below shall constitute a Government Event of Default:

- (a) the breach by the Government of any material obligation under this Agreement, which in case of breach capable of remedy is not remedied within:
  - (i) forty five (45) days in case of failure to pay to the Supplier or SPV, an amount in excess of an equivalent of ten million US Dollars (USD 10,000,000) converted to [LOCAL CURRENCY] at the rate of exchange prevailing on the due date of payment, as certified by the Central Bank of [HOST COUNTRY]; or
  - (ii) sixty (60) days in respect of a breach, other than a breach of an obligation to pay an amount exceeding the limit specified in paragraph (a)(i),  
after a notice from the Supplier that such a breach has occurred, identifying the breach in question in detail and demanding remedy thereof; provided that, if the Government has diligently and as quickly as possible, commenced the necessary remedial action referred to in paragraph (a) (ii) above, but is unable to complete it within the period specified therein, the Government shall be allowed such further period as may be reasonable for completing the remedial action not exceeding another sixty (60) days;
- (b) issue by the Supplier of a notice to the Purchaser to terminate all the PPAs as a result of a default by the Purchaser under one or more PPAs (as defined under the relevant PPA) in accordance with the terms of the relevant PPA for issue of such notice;
- (c) failure by the Government to pay any amount due to the Supplier pursuant to the Government Guarantee;
- (d) the Government has made any material misrepresentation in the representation and warranties set forth in Article 14 or has not disclosed any material fact which renders any such representation and warranty materially misleading; or

- (e) cancellation or amendment of any PPA, other than for the purposes of introducing wholesale competition in electrical energy and where the following conditions are fulfilled:
  - (i) a period of ten (10) years has elapsed from the Effective Date of that PPA;
  - (ii) the requirements prior to introduction of wholesale competition as specified in [ELECTRICITY LEGISLATION] have been complied with;
  - (iii) the introduction of wholesale competition does not adversely affect the profitability of the Supplier under this Agreement and Project Agreements or the Supplier's ability to finance its activities; and
  - (iv) there is no discrimination against the Supplier in this regard.

## 8.2 Consequences of Event of Default

- 8.2.1 If the Government commits a Government Event of Default, the Supplier may by notice terminate this Agreement with effect from the date specified in the notice, but not earlier than [one hundred and twenty (120) days] from the date of such notice.
- 8.2.2 If the Supplier commits a the Supplier Event of Default, the Government may, by notice terminate this Agreement with effect from the date specified in such notice, but not earlier than [one hundred and twenty (120) days] from the date of such notice.
- 8.2.3 Following the issue of a Termination Notice by the Supplier, SPV may require the Government to purchase its shares in the Supplier, in accordance with the Shareholders Agreement.
- 8.2.4 Following the issue of a Termination Notice by the Government, the Government may require SPV to sell its shares in the Supplier, in accordance with the Shareholders Agreement.

## 8.3 Termination

- 8.3.1 This Agreement shall terminate automatically, without the need for either Party to take any action:
  - (a) if the Effective Date is not reached by [*the longstop date*];
  - (b) on the termination or expiry of the term of the last remaining PPA;
  - (c) on the earlier of:
    - (i) completion of the sale of SPV's shares in the Supplier in accordance with the Shareholders Agreement, following a Termination Notice; or
    - the date of termination of this Agreement specified in the Termination Notice,

unless the relevant Termination Notice has been withdrawn.

- 8.3.2 Notwithstanding anything contained in this Agreement, the Government shall not initiate any action against the Supplier in relation to a the Supplier Event of Default or any other breach by the Supplier of its obligations under this Agreement, if the Purchaser has initiated an action under the PPA against the Supplier in respect of substantially the same matter.
- 8.3.3 On termination of this Agreement, neither Party shall have any liability to the other for any damages or loss, whether under this Agreement, at law or otherwise, save in respect of rights accrued to it under this Agreement prior to its termination.
- 8.3.4 The events specified in this Article 8 shall be the sole grounds on which this Agreement may be terminated.

## **9. Dispute Resolution**

- 9.1 If any dispute arises between the Parties (including SPV) in connection with or relating to this Agreement (a “Dispute”) any Party to the Dispute may, by notice in writing to the other Parties to the Dispute, require it to be referred to the Chief Executive Officer of the Supplier and the [MINISTER] of the [ENERGY MINISTRY], Government of [HOST COUNTRY], who shall attempt to resolve the Dispute through discussion. For the purposes of this Article 9, in a Dispute involving both the Supplier and SPV, they shall be regarded as a single Party.
- 9.2 If a Dispute is not resolved within twenty (20) Business Days after notice under clause 9.1 by mutual discussion and such Dispute is required by this Agreement to be referred to an Expert, any Party (including the SPV) may by notice to the other Party (including the SPV) require the Dispute to be referred to an Expert in accordance with the procedure specified in clause 9.3.
- 9.3 The parties to a Dispute shall jointly appoint an Expert within twenty (20) Business Days, or such longer period as may be agreed by the parties to the Dispute, after the date of receipt of the notice by the addressee of notice under clause 9.2. If the parties to the Dispute fail to agree on an appointee, either party to the Dispute may apply to the International Chamber of Commerce Centre for Expertise to appoint an Expert requesting that the appointment be made within twenty (20) Business Days after the date of receipt of the application. The following procedure shall apply to determination of a Dispute by an Expert and the Parties shall procure that it is reflected in the Expert’s terms of reference:
  - 9.3.1 The Expert shall:
    - (a) give each of the parties to the Dispute the opportunity of making oral and/or written representations to him on the Dispute within fifteen (15) Business Days after the date of his appointment;
    - (b) give his decision within thirty (30) Business Days (or such longer period as may be decided by the Expert but not exceeding forty five (45) Business Days) after the date of his appointment;



- (c) determine the amount of his fees and the responsibilities of the parties to the Dispute for such fees and expenses; and
  - (d) give copies of his decision and the reasons therefore in writing to each of the parties to the Dispute.
- 9.3.2 The parties to the Dispute shall promptly provide the Expert and each other with all such evidence and information within their respective possession or control as the Expert may consider necessary for determining the Dispute or which is relevant to and bears upon the Dispute.
- 9.3.3 If the Expert shall fail to give his decision pursuant to clause 9.3.1 within the period specified in paragraph (b) of clause 9.3.1, any party to the Dispute may by notice in writing to the other require that the Dispute is decided by reference to arbitration, whereupon the Expert shall be instructed not to consider the matter further.
- 9.3.4 The Expert shall not act as arbitrator but shall decide the Dispute using his skill, experience and knowledge and with regard to such matters as are expressly specified in this Agreement to be considered by him and as the Expert in his sole discretion considers appropriate. The decision of the Expert pursuant to this clause 9.3 shall (subject to clause 9.3.3) be final and binding on the parties save in respect of fraud or manifest error.
- 9.3.5 Unless the Expert's decision is set aside for reasons specified in clause 9.3.4, the parties to the Dispute hereby agree to be bound by, perform the Agreement in accordance with, and undertake to implement, as the case may be, the determination of the Expert. Failure by a party to the Dispute to so act shall constitute a breach of the Agreement. Any
- Dispute concerning the Expert's determination may be submitted to arbitration in accordance with clause 9.4. The Tribunal shall be bound by the determination of the Expert and the only issue for the Tribunal to determine shall be whether the parties to the Dispute have complied with the determination of the Expert.
- 9.3.6 In the event that the Expert becomes unwilling or unable to act in relation to the Dispute or (being a firm or partnership) is discontinued or (being a company) goes into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or commences carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors, then the parties to the Dispute shall agree on substitute Expert. The substitute shall be selected in accordance with the procedure specified in this clause 9.3.
- 9.4 If a Dispute cannot be settled within twenty (20) Business Days by discussion after notice under clause 9.1, and is not required to be referred by this Agreement to an Expert, the Dispute shall be finally settled by an arbitral tribunal (the "Tribunal") under UNCITRAL Rules for International Arbitration as in force at the time such arbitration is commenced (the "UNCITRAL Rules").



- 9.5 Each party to the Dispute must appoint an arbitrator within twenty (20) Business Days of the date of a request to initiate arbitration, on the basis that their appointees will then jointly appoint a third arbitrator within twenty (20) Business Days of the date of the appointment of the second arbitrator, to act as chairman of the Tribunal. If any arbitrator is not appointed within the time limits set forth in this clause 9.5, either party to the Dispute may apply to [the Permanent Secretary to the International Court of Justice] in accordance with rules established for this purpose to appoint an arbitrator requesting that the appointment be made within twenty (20) Business Days of receipt of the application. Subject only to UNCITRAL Rules, both parties undertake to implement the arbitration award. The seat of the arbitration shall be [LOCATION]. The language of the arbitration shall be English.
- 9.6 The award rendered in any arbitration shall apportion the costs of the arbitration between the parties to the Dispute as the arbitrators see fit. The award rendered shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the Tribunal's decision.
- 9.7 The award rendered in any arbitration commenced hereunder or any order passed by a competent court pursuant to applicable law in relation to an interlocutory matter concerning the Dispute pending the conclusion of arbitration proceedings may be entered in any court having jurisdiction for its enforcement.
- 9.8 No party to the Dispute shall have any right to commence or maintain any suit or legal proceeding concerning a Dispute hereunder, other than a proceeding permitted by applicable law in relation to any interlocutory matter referred to in clause 9.7, in any court, whether in [HOST COUNTRY] or outside, until the Dispute has been determined in accordance with the arbitration procedure provided for herein and then only to enforce or facilitate the execution of the award rendered in such arbitration or any interlocutory order referred to in clause 9.7.
- 9.9 During the course of any arbitration hereunder:
- 9.9.1 the Government and the Supplier shall continue to perform their respective obligations hereunder; and
- 9.9.2 neither the Supplier nor the Government shall exercise any other remedies hereunder arising by virtue of the matters in Dispute.
- 9.10 The party to the Dispute against whom an arbitration award for payment of an amount is made shall pay interest at the Reference Interest Rate from the due date of payment until the date of payment of such award, both days inclusive.
- 9.11 Any award rendered pursuant to arbitration hereunder shall constitute a "foreign award" within the meaning of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Enforcement of Foreign Judgments Law No.8 of 1952.

## **10. Governing law**

This Agreement shall be governed by, and construed under, the laws of [HOST COUNTRY].

## **11. Currency, Due Date of Payment and Delayed Payments**

- 11.1 [All payments under this Agreement shall be due in [US Dollars] and may be made in [LOCAL CURRENCY] in an amount equivalent to the amount due in [US Dollars] at the rate of exchange prevailing on the date of payment, as certified by the Central Bank of [HOST COUNTRY]].
- 11.2 A Party (including SPV) entitled to payment under this Agreement shall raise an invoice on the other Party accompanied by supporting calculations of the amounts claimed and where the sending Party (including SPV) relies on the data and documents maintained by it, such data and documents shall be made available for inspection by the receiving Party on reasonable prior notice.
- 11.3 Unless otherwise specified in this Agreement, any amount payable by one Party to the other Party (including the SPV) pursuant to this Agreement shall be paid within forty five (45) days from the date of the invoice raised by the Party (including SPV) and where disputed, when agreed or determined.
- 11.4 When making payment of a disputed sum, the Party liable to make payment shall pay interest:
- 11.4.1 at the Reference Interest Rate, if the amount payable is less than the disputed amount; or
- 11.4.2 at the Default Rate, if the whole of the disputed amount is payable, from the due date for payment of the Invoice up to, but excluding, the date of payment.

## **12. Enforcement**

- 12.1 Subject to any right of appeal, second appeal, revision or any other legal proceeding or remedy available to the Supplier and SPV under law, each of the Supplier and SPV consents with respect to the enforcement of any final judgment against it in any proceeding, whether in [HOST COUNTRY] or outside, and to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever, irrespective of its use or intended use, including property situate outside [HOST COUNTRY]).
- 12.2 Subject to any right of appeal, second appeal, revision or any other legal proceeding or remedy available to the Government under law, the Government undertakes to enforce any final judgment against it in any proceeding, whether in [HOST COUNTRY] or outside, in accordance with the provisions of [RELEVANT LEGISLATION].

## **13. Sovereign Immunity**

The Government unconditionally and irrevocably and to the maximum extent permitted by law:

- 13.1.1 agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;
- 13.1.2 agrees that, should any proceedings be brought against it in relation to this Agreement or any transaction contemplated by this Agreement, no sovereign immunity from such proceedings shall, to the extent that it would otherwise be entitled to do so under the law, be claimed by or on behalf of itself; and
- 13.1.3 to the maximum extent permitted by law, waives any right of sovereign immunity which it or any related entity now has or may acquire in the future.

#### **14. Representation and Warranties of Government**

The Government represents and warrants to the Supplier that:

- 14.1 it has the full legal ability and authority to enter into and carry out its obligations under this Agreement and the Government Guarantee and both this Agreement and Government Guarantee constitute valid, legally binding and enforceable obligations of the Government and do not conflict with the terms of any agreement by which it may be bound;
- 14.2 all approvals necessary to allow the Government to enter into this Agreement and the Government Guarantee and to carry out the obligations contemplated therein have been given or received and shall remain in full force and effect;
- 14.3 there are no applicable constitutional provisions, laws, regulations, decrees or rules of the Competent Authorities of [HOST COUNTRY] in force on the date of execution of this Agreement, which restrict or prohibit the ability of the Government to enter into and perform the terms of this Agreement and the Government Guarantee. The Government is not entitled to immunity from legal process or jurisdiction on grounds of sovereignty or otherwise; and
- 14.4 neither this Agreement nor the Government Guarantee conflicts with any provisions of any law, including any regulation, of [HOST COUNTRY] as in effect on the date of execution of this Agreement.

#### **15. Limitation of Liability**

Other than as expressly provided in this Agreement and in respect of indemnities provided in clauses 6.1.2, 6.2.2, 3.1.6 or 3.2.2, neither Party shall be liable to the other for the other's Consequential Loss.

#### **16. Notices**

- 16.1 All notices given under this Agreement are to be in writing in English and shall be:
  - 16.1.1 sent:
    - (a) in the case of the Supplier, to [ ], or by fax to [ ], and marked for the attention of [ ];
    - (b) in the case of the Government, to to [ ], or by fax to [ ], and marked for the attention of [ ];

(c) [SPV's address]

or another postal address or facsimile number notified for the purposes of this Article 16; and

16.1.2 in writing and delivered by hand or sent by first class prepaid post (airmail if overseas), or facsimile transmission and deemed to have been received:

- (a) in case of delivery by hand when delivered; or
- (b) in the case of first class prepaid post, on the second (2<sup>nd</sup>) day following the day of posting, or if sent by airmail outside [HOST COUNTRY], on the fifth (5<sup>th</sup>) day following the day of posting; or
- (c) in the case of facsimile transmission, at the time of actual receipt,

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours, such notice or other communication shall be deemed to be given or made at the start of working hours on the next Business Day.

16.2 A Party may notify the other Parties of a change to its name, relevant addressee, address or facsimile number for the purposes of clause 16.1, provided that such notification shall only be effective on:

16.2.1 the date specified in the notification as the date on which the change is to take place; or

16.2.2 if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date falling five (5) Business Days after notice of any such change has been given.

## **17. Confidentiality and Publicity**

17.1 Each Party (including SPV) shall take all proper steps to keep confidential the contents of this Agreement and any information provided by any other Party (including SPV) relating to the negotiation or performance of this Agreement except with prior written consent or to the extent that any such information:

17.1.1 becomes public, otherwise than by reason of a failure of a Party to adhere to the terms of this Article 21;

17.1.2 is required to be disclosed by law or any Competent Authority or pursuant to a license issued under the [ELECTRICITY LEGISLATION]; or

17.1.3 is disclosed to an employee, servant, agent, consultant or adviser of a Party (including SPV) and which is reasonably necessary to enable the disclosing Party to give effect to this Agreement provided that such person agrees to be bound by the provisions of this Article 17.

17.2 The obligations contained in clause 17.1 shall survive termination of this Agreement for a period of five (5) years and shall be of no effect thereafter.

## **18. Amendments**

This Agreement may only be amended or varied by the written agreement of both Parties.

## **19. Waiver**

No waiver or failure by a Party (including SPV) to insist on the strict performance of this Agreement or to act in respect of the defaults of any other Party and no acceptance of payment or performance during the continuance of any such default precludes any right, relief or remedy available to the Non-Defaulting Party, and may not be relied on by the other Party as a consent to those defaults.

## **20. Successors**

This Agreement binds and enures to the benefit of the Parties and their respective successors and permitted assigns.

## **21. Assignment and Transfers of Interest**

21.1 The Government shall not assign or transfer all or part of its rights, benefits or obligations under this Agreement except with the Supplier's and SPV's prior written consent.

21.2 SPV shall not assign or transfer all or any part of its rights, benefits or obligations under this Agreement except with the Government's prior written consent, which consent shall not be unreasonably withheld or delayed, provided that SPV may without Government's consent, assign or create a security interest over its rights under this Agreement to the SPV Lenders.

21.3 the Supplier shall not sell, assign or otherwise transfer all or any of its rights, benefits or obligations under this Agreement except with Government's prior written consent, such consent not to be unreasonably withheld or delayed, provided that the Supplier may, without the Government's consent, assign or create a security interest over its rights and interests under this Agreement to the Supplier Lenders.

## **22. Severability**

If any provision of this Agreement is or becomes invalid or unenforceable, it shall not prejudice the remaining provisions of this Agreement, which shall continue in full force and effect.

## **23. Relationship of Parties**

23.1 This Agreement does not create an association, joint venture, or partnership between the Parties (including SPV) or any of them.

23.2 No Party (including SPV) has any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other.

**24. Good Faith**

The Parties (including SPV) undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its objectives.

**25. Further Assurance**

Each Party (including SPV) agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary for the carrying out of the provisions of this Agreement.

**26. Entirety of Agreement**

This Agreement constitutes the entire agreement between the Parties (including SPV) in relation to its subject matter and, except in case of fraud, all prior representations, negotiations and undertakings of any nature whatsoever between the Parties (including SPV) with any bearing on the subject matter of this Agreement are superseded and extinguished, and all rights and liabilities arising by reason of them, whether accrued or not at the date of this Agreement, are cancelled, to the extent they have such bearing.

**27. Costs**

Each Party (including SPV) shall bear all costs and expenses incurred by it in connection with entering into this Agreement.

**28. Survival**

Clause 8.3.3, Articles 1, 9, 10, 15, 16, 17, 28, 29 and Schedule 1, and paragraphs (1)(b) of Schedule 3 Part 1 and Part 2 shall survive the termination of the Agreement without restriction as to the duration of the period of survival unless otherwise specified in the Agreement.

**29. Counterparts**

This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

THE GOVERNMENT

By: \_\_\_\_\_

Name: [ ]

Designation: [ ]

THE SUPPLIER

By: \_\_\_\_\_

Name: [ ]

Designation: [ ]

**in the presence of:**

\_\_\_\_\_

Name: [ ]

Designation: [ ]

[SPV]

By: \_\_\_\_\_

Name: [ ]

Designation: [ ]

**in the presence of:**

\_\_\_\_\_

Name: [ ]

Designation: [ ]



## Schedule 1 - Definitions

**“Agreed Form”:** means, in relation to any document, that document in a form agreed between the Parties and signed for the purposes of identification by or on behalf of the Parties prior to the date of this Agreement;

**“Affiliate:** in relation to the Supplier means any holding company or subsidiary company of the Supplier or any subsidiary company of the holding company of which the Supplier is a subsidiary company; Subsidiary Company and Holding Company shall have the meaning assigned to them in [COMPANIES LEGISLATION], as amended from time to time;

**“Allowable Consequences”:** has the meaning assigned to the term in the PPA of the relevant Facility;

**“Ancillary Services”:** in relation to a Facility, has the meaning assigned to the term in the Power Purchase Agreement relating to that Facility;

**“Available Capacity”:** in relation to a Facility, has the meaning assigned to the term in the Power Purchase Agreement relating to that Facility;

**“Business Day”:** means any day, other than Friday, Saturday and public holidays, on which banks are open for business in [HOST COUNTRY] and [New York];

**“the Supplier’s Business”:** means the design, development, construction, completion, testing, commissioning, operation, maintenance and ownership of the Facilities and sale of Available Capacity, Net Electrical Output and Ancillary Services from such Facilities to the Purchaser, as described in, and in accordance with, the Project Agreements;

**“the Supplier Event of Default”:** has the meaning assigned to the term in clause 8.1.1;

**“the Supplier Lenders”:** means any institution, corporation or organization providing loans to the Supplier to finance its activities in connection with the Supplier’s Business;

**“the Supplier Third Party Claim”:** has the meaning assigned to the term in clause 6.1.1;

**“Change in Law”:** means any of the following events occurring after the date of this Agreement as a result of, or in connection with, any action or inaction by any Competent Authority:

- (i) repeal, in whole or in part or a modification of an existing law of [HOST COUNTRY], other than laws relating to taxation;
- (ii) enactment or making of a new consent, permit, license or similar approvals or law of [HOST COUNTRY];
- (iii) modification of any existing consent, permit, license or similar approvals after it is granted (other than due to a breach by the Supplier of its conditions);
- (iv) cancellation or non-renewal of, or a materially adverse change in, the conditions applicable to any consent, permit, license or similar approval granted to the Supplier in relation to the Supplier’s Business, the Facilities or the Site (other than due to a breach by the Supplier of such conditions);

- (v) commencement of any law of [HOST COUNTRY] that has not become effective as of the date of this Agreement;
- (vi) imposition of a requirement for clearances or consents, permits, licenses and similar approvals not required as of the date of this Agreement; or
- (vii) change in the manner in which consents, permits, licenses and similar approvals or law of [host country] is applied or in the application or interpretation thereof by any Competent Authority having authority for the interpretation, application or enforcement of such consents, permits, licenses and similar approvals or law of [host country];

**“Companies Law”:** means [ ], as amended;

**“Competent Authority”:** means the Government or any Government agency or any provincial or national authority, department, inspectorate, minister, official, court, tribunal or public or statutory body (whether autonomous or not), of [HOST COUNTRY] (including for the avoidance of doubt any licensing authority) exercising a statutory authority;

**“Completion Date”:** has the meaning assigned to the term in the Share Acquisition Agreement;

**“Consequential Loss”:** means all losses, costs and financial harm in respect of loss of contract, loss of use of machinery or property, loss of production, profit or revenue or any other economic loss, cost or claim of whatever kind and nature suffered by a Party (including SPV) under or in connection with this Agreement however caused (including the default of another Party (including SPV) or a breach of any duty owed in law by another Party (including SPV)), and whether or not foreseeable at the date of this Agreement;

**“Conversion and Capacity Addition Contracts”:** means [ ],

**“Conversion Works”:** means:

- (i) converting the operation of [ ] from open cycle mode to combined cycle mode; and
- (ii) converting all the Generating Units of the Rehab Facility to provide dual operation capability on Oil and natural gas;]

**“Default Rate”:** means a rate of interest equal to lesser of:

- (i) [ ] per cent above the one month [LIBOR]; or
- (ii) the maximum rate permitted by law from time to time;

**“Dispute”:** has the meaning assigned to the term in clause 9.1;

**“Effective Date”:** means the Completion Date;

**“Electricity Law”:** means the [ ], and as amended from time to time;

**“Environmental Standards”:** means the standards and technical rules drawn up by the relevant Competent Authority prior to the date of this Agreement pursuant to law for the purpose of protecting the environment, including: (1) the protection of human health, flora, fauna and the ecosystems on which they depend; and (2) the assessment of environmental impacts and the protection of air, land and water;

**“Event of Default”**: means either the Government Event of Default or the Supplier Event of Default, as the case may be;

**“Event of Force Majeure”**: has the meaning assigned to the term in clause 5.1;

**“Expert”**: means an independent consulting firm, company or association of persons with specialized skills in the interpretation of power engineering and supply contracts and financial and economic analysis appointed pursuant to clause 9.3;

**“Facilities”**: means the generating stations owned by the Supplier, as more particularly identified in the PPAs;

**“Financial Year”**: means: (a) the period commencing the date of signing of this Agreement until 31 December 2003; and (b) thereafter, each period of 12 months commencing 1 January and ending on 31 December or (where applicable) the date on which this Agreement is terminated before 31 December;

**“Fuel Supplier”**: means [            ];

**“FSA”**: means the Fuel Supply Agreement as of the date of this Agreement between the Supplier and Fuel Supplier, providing for the supply of Oil to the Supplier;

**“Gas Supplier”**: means [            ];

**“Gas Turbine”**: means a gas turbine of [    ] MW together with all associated plant and equipment to be installed at [    ], pursuant to the relevant [Conversion and Capacity Addition Contract];

**“Generation License”**: means the license to be issued to the Supplier by the [relevant authority] in the Agreed Form under [ENERGY LAW] to establish, operate and maintain the Facilities;

**“Generating Unit”**: of a Facility has the meaning assigned to the term in the Power Purchase Agreement related to that Facility;

**“Government”**: means the Government of [HOST COUNTRY];

**“Government Event of Default”**: has the meaning assigned to the term in clause 8.1.2;

**“Government Guarantee”**: means the guarantee executed by the Government in the Agreed Form as of the date of this Agreement in favor of the Supplier;

**“Government Third Party Claim”**: has the meaning assigned to the term in clause 6.2.1;

**“Good Utility Practice”**: means, at any particular time, those internationally accepted practices, methods and techniques that are generally followed by the independent power and electric utility industry operating and maintaining electricity equipment similar to the Facilities lawfully, safely, economically and efficiently under similar conditions and generally conforming to the operation and maintenance guidelines recommended by the manufacturers of the equipment;

[**“GSA”**: means the Gas Supply Agreement, entered into on the date of this Agreement, between the Supplier and the Gas Supplier providing for the supply of natural gas to the Supplier at [LOCATION]];

**“International Accounting Standards”**: means the accounting standards published by the Board of the International Accounting Standards Committee;

**“Investors”**: has the meaning assigned to the term in the Share Acquisition Agreement;

**“[local currency]”**: is the official currency of the [host country];

**“LIBOR”**: means in relation to any period for which an interest rate is to be determined under this Agreement, the arithmetic mean (rounded upwards, if necessary, to the nearest whole multiple of one sixteenth of one percent (1/16%) of the U.S. Dollar London Interbank Offered Rates for such period appearing on page 3750 (or such other page as may replace page 3750) of the Reuters screen at or about 11:00 a.m. (London time) on the second Business Day prior to the first day of such period;]

**“Losses”**: has the meaning assigned to the term in clause 3.1.6(a);

**“Modification”**: has the meaning assigned to the term in the PPA of the relevant Facility;

**“Natural Force Majeure Events”**: means the Events of Force Majeure specified in paragraph (a) of clause 5.2.1;

**“Purchaser”**: means the National Electric Power Company of [host country];

**“Net Electrical Output”**: in relation to a Facility, has the meaning assigned to the term in the Power Purchase Agreement relating to that Facility;

**“Non Defaulting Party”**: means the Party that has not committed an Event of Default;

**“Oil”**: means heavy oil or diesel oil, as the case may be, of the specification set out in the Fuel Supply Agreement;

**“Party”**: means the Government or the Supplier or SPV (where specifically mentioned or the context so requires) and “Parties” means collectively the Government, the Supplier and, where specifically mentioned or the context so requires, SPV;

**“Political Force Majeure Event”**: means the Events of Force Majeure specified in paragraph (b) of clause 5.2.1;

**“PPAs”**: means the Power Purchase Agreements listed in Schedule 2 between the Supplier and the Purchaser, as of the date of this Agreement pursuant to which the Supplier has agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Supplier, Available Capacity, Net Electrical Output and Ancillary Services from the Facilities to which such agreements relate;

**“Project Agreements”**: means the PPAs, FSA, GSA and the Conversion and Capacity Addition Contracts;

**“Reference Interest Rate”**: means a rate of interest equal to the lesser of:

- (i) [two and one half percent (2 1/2%)] above the one month LIBOR from time to time; and
- (ii) the maximum rate permitted from time to time under [HOST COUNTRY] Law.

**“Relevant Change in Law”**: has the meaning assigned to the term in clause 3.1.10;

**“Scheduled Operation Date”**: in relation to the Conversion Works and the installation of Gas Turbine pursuant to the relevant Conversion and Capacity Addition Contract, has the meaning assigned to the term in the PPA relating to the

relevant Facility;

**“Shareholders Agreement”**: means the agreement entered into between the Government, the Supplier and SPV as at the date of this Agreement governing the rights and obligations of the SPV and the Government in relation to management of the Supplier;

**“Share Acquisition Agreement”**: means the agreement executed between the Government, the Supplier, Investors and SPV as of the date of this Agreement, as amended from time to time, for purchase by SPV of Government’s shares in the Supplier to the extent specified in that agreement;

**“Site”**: in respect of each Facility means the site as identified in the PPAs in relation to that Facility;

**“SPV”**: means [*special purpose vehicle*]

**“SPV Lenders”**: means any institution, corporation or organization providing loans to SPV to finance the purchase of Government’s shares in the Supplier pursuant to the Share Acquisition Agreement;

**“SPV Taxable Item”**: means

- (a) income arising from payments to SPV from the Supplier by way of dividend or, payments of principal or interest in respect of loans by SPV to the Supplier; and
- (b) remittance by SPV of dividend, principal, interest, royalties or management fees to any of its shareholders or their Affiliates or SPV Lenders, as the case may be, in respect of the Supplier’s Business;

**“Stability Period”**: means the earlier of a period of [15 years] from the Effective Date or the term of expiry of the last PPA;

**“Statutory Modification”**: means any Modification required to be carried out pursuant to a Relevant Change in Law;

**“Steam Turbine”**: means the steam turbine of [ ] MW and a heat recovery unit, together with all associated plant and equipment to be installed at the Rehab Facility pursuant to the relevant Conversion and Capacity Addition Contract;

**“Termination Notice”**: means the notice issued pursuant to clause 8.2.1 by the Supplier or clause 8.2.2 by the Government, as the case may be, for terminating this Agreement;

**“Threshold”**: means the sum of [ ];

**“Tribunal”**: has the meaning assigned to the term in clause 9.4;

**“Uneconomic Force Majeure”**: has the meaning assigned to the term in clause 5.6; and

**“US Dollars” and “USD”**: means the official currency of the United States of America.

## **Schedule 2 - Power Purchase Agreements**

The Supplier and the Purchaser have entered into a Power Purchase Agreement as of the date of this Agreement in respect each of the following Facilities:

SAMPLE

### **Schedule 3 Tax Stability Part 1: Tax Regime for the Supplier**

The tax principles and the rates of taxes in respect of which the Government has given its undertaking to the Supplier under clause 3.1.6 are as follows:

(A) **Rates of Taxes**

<b>Tax</b>	<b>Rate</b>
(a) Income Tax	
(b) Customs and Excise Duties	
(c) Withholding Tax	
(d) All other taxes, charges and fees	

(B) **Tax Principles**

The carry forward of losses shall be permitted from the date at which the loss was incurred, without any restriction as to period over which it can be carried forward. Losses should be set off against income on a first in, first out basis with earlier losses set off before later losses.

For the avoidance of doubt, it shall be permissible for the Supplier to carry forward any losses incurred by it prior to the expiry or earlier termination of this Agreement in accordance with this paragraph (B).

### **Part 2: Tax regime for SPV**

The principles and taxes and rates of taxes in respect of which the Government has given its undertaking to SPV under clause 3.2.2 are as follows:

(A) **Rates of Taxes**

<b>Tax</b>	<b>Rate</b>
(a) Income Tax	
(b) Customs and Excise Duties	
(c) Withholding Tax	
(d) All other taxes, charges and fees	



(B) **Tax Principles**

The carry forward of losses shall be permitted from the date at which the loss was incurred without any restriction as to period over which it can be carried forward. Losses should be set off against income on a first in, first out basis with earlier losses set off before later losses.

For the avoidance of doubt, it shall be permissible for SPV to carry forward any losses incurred by it prior to the expiry or earlier termination of this Agreement in accordance with this paragraph (B).

SAMPLE

**Schedule 4 – Insurance**  
**Part 1**

No	Policy	Coverage	Minimum Insured Amount
1.	Comprehensive Insurance	Damage to property from explosion, storm, tempest, windstorm, hailstorm, typhoon, hurricane, tornado, cyclone, flood, earthquake, subsidence, landslip, ground heave, volcanic, action, aircraft or articles dropped therefrom, impact by any vehicle, bursting of water pipes, apparatus or tanks. Riot, strike, civil commotion, leakage sprinklers and fuel pipes and malicious damage.	
2.	Business Interruption	Interruption in business due to explosion, storm, tempest, windstorm, hailstorm, typhoon, hurricane, tornado, cyclone, flood, earthquake, subsidence, landslip, ground heave, volcanic, action, aircraft or articles dropped therefrom, impact by any vehicle, bursting of water pipes, apparatus or tanks. Riot, strike, civil commotion, leakage sprinklers and fuel pipes and malicious damage.	
3.	Motor Comprehensive Insurance		
4.	Construction All Risk, Third Party Liability the Supplier's existing property, cross-liability and testing / maintenance		
5.	Public Liability Insurance		
6.	Employees Life and Personal Accidents Insurance		
7.	Marine Open Insurance Policy	Institute Cargo Clause A and Institute War Clauses	
8.	Facelifts Machinery / Insurance	Material damage to the Supplier's forklifts and goods carried at the Facility	

## Part 2

### Adjustment to Insured Amount

$$RIA_y = IA \times \frac{CPI_{y-1}}{CPI_0}; \text{ where}$$

$RIA_y$  = Revised Insurance Amount for each Financial Year (y) following the expiry of the first Financial Year;

IA = the Insured Amount specified in Part 1, as revised pursuant to clause 7.2.1;

$CPI_{y-1}$  = means the [host country] Consumer Price Index published in the last month of the preceding Financial Year (y-1); and

$CPI_0$  = means the [host country] Consumer Price Index in effect on the date of signing this Agreement