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Model Implementation Agreement

THIS IMPLEMENTATION AGREEMENT is made as of this [•] day of [•] [•]

BETWEEN:

- (1) **THE MINISTRY** of [] (“**MINISTRY**”) of [] for and on behalf of [the Government] (“**Government**”); and
- (2) **[ABC]** a limited liability company established under the Laws of [], with its registered office at [•]), (the “**Company**”).

RECITALS

- A. The Government has adopted a Private Power Policy to encourage and promote participation in the generation of electricity in [] by privately owned and financed generating facilities to meet the needs of consumers of electricity.
- B. In furtherance of that policy and following a competitive bidding process the [Procuring Entity] has awarded the [insert name of project] (“the Project”) to the Company on the basis of Notice [•] of the Council of Ministers [or Ministry – depending on the size of the project] dated [•] and the Company has agreed to design, construct, finance, own, operate and maintain the Project pursuant to the provisions of this Implementation Agreement and the Power Purchase Agreement referred to in recital C.
- C. [Utility], a wholly the Government-owned limited liability enterprise incorporated by, desires and intends to purchase the capacity, net electrical output and ancillary services produced by the Project pursuant to the Power Purchase Agreement executed on [•], as authorized by the Ministry.
- D. To promote the implementation of the Project, and in exchange for the undertakings and agreements of the Company pursuant to this Implementation Agreement and the Power Purchase Agreement, the Government agrees to provide certain incentives and to provide certain assistance as provided in this Implementation Agreement.

[Note: This model assumes that Electricity Utility will be the power purchaser. If it is not, the name of the Procuring Entity can be substituted.]

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND RULES OF INTERPRETATION

The definitions set out in Schedule 1, Part 1 and the provisions relating to construction and interpretation of this Agreement set out in Schedule 1, Part 2 shall apply to this Implementation Agreement except where the context otherwise requires.

2. THE PROJECT

2.1 Right to Develop

Through the Relevant Authorities, the Government hereby grants to the Company throughout the Term the exclusive right:

- (i) to develop, design, finance, [rehabilitate], construct, own, operate, maintain and manage the Project; and

- (ii) to sell to [Utility] all the capacity, energy and ancillary services that the Project is capable of making available pursuant to the Power Purchase Agreement to be entered by and between [Utility] and the Company.

2.2 [Transfer of the Plant

The Government shall require the Company, and the Company hereby agrees, to transfer all the facilities of the Plant in fair operational condition at the end of the Term and to conduct all activities incidental thereto, and in accordance with the terms of this Implementation Agreement, the Power Purchase Agreement and the Lease.]

3. EFFECTIVE DATE AND DURATION

3.1 Effective Date

This Implementation Agreement shall enter into full force and effect from the date of its execution (the “Effective Date”).

3.2 Duration of Term

The term of this Implementation Agreement shall continue until the Power Purchase Agreement has been terminated and all outstanding obligations of [Utility] under the Power Purchase Agreement have been performed, unless terminated earlier or extended in accordance with the provisions of this Implementation Agreement other than this Clause 3.2.

4. FINANCIAL CLOSING

4.1 Duration

Unless otherwise agreed by the Parties, Financial Closing shall occur within 12 months from the Effective Date. From the Effective Date, the Company shall use its reasonable endeavours in good faith to achieve Financial Closing.

4.2 Security Deposit

The Company shall deliver the Security Deposit to the Government not later than 7 Business Days from the Effective Date. *[Note: The Model Power Purchase Agreement also requires the Company to provide security, which may be drawn by [Utility] in relation to non-achievement of the Final Commercial Operation Date. The imposition of both these security requirements upon the Company should be reviewed in the context of the type and scale of project.]*

4.3 Financing Plan

Within 60 days (or such longer period as the Government may agree) from the Effective Date, the Company shall submit to the Government the Financing Plan.

4.4 Achievement of Financial Closing

Financial Closing shall be achieved if each of the following conditions has been satisfied (or has been waived by the Government):

- 4.4.1 confirmation by the Company that the initial release of funds under the Financing Agreements has occurred; and
- 4.4.2 confirmation by the Lenders or the Lenders' agent that the Company has fulfilled all necessary requirements under the Financing Agreements and that the initial release of funds has occurred.

4.5 Failure to Achieve Financial Closing

Subject to Clause 12.3.1(b), if Financial Closing has not occurred within 12 months from the Effective Date (such period to be extended by one day for each day that Financial Closing is prevented from occurring due to a Force Majeure Event) or such later date as the Government may agree in writing, the Government or the Company may by notice terminate this Agreement with immediate effect. Upon termination:

- 4.5.1 the Security Deposit shall be returned to the Company within 7 days of written request by the Company if the failure to achieve Financial Closing is due to the non-fulfilment of any of the the Government obligations provided for in Clauses 5, 7 and 8 that has not been waived by the Company and the Government shall pay to the Company a sum equal to the amount of all cost and expenses reasonably incurred by the Company in developing the Project, provided however that such amount shall in no event exceed US\$[●] [*Note: Varies depending on the type and scale of project.*];
- 4.5.2 the Security Deposit shall be returned to the Company within 7 days of written request by the Company if the failure to achieve Financial Closing is due to a Force Majeure Event; or
- 4.5.3 the Security Deposit shall be forfeited by the Government if the failure to achieve Financial Closing is for any other reason.

4.6 Financing Agreements

Following achievement of Financial Closing, the Company shall provide the Government with a copy of the Financing Agreements substantially in accordance with the Financing Plan and confirmation in writing from the Company that Financial Closing has occurred.

4.7 Return of Security Deposit

The Government shall within 7 days of Financial Closing return to the Company the Security Deposit.

4.8 Only Remedies

Clause 4 sets out all the rights and remedies of one Party against the other Party by reason of this Implementation Agreement being terminated for failure to achieve Financial Closing.

5. OBLIGATIONS OF the Government

5.1 Governmental Approvals

Provided that the Company has complied with its obligations in Clause 6, the Government shall:

- 5.1.1 ensure that in a timely manner, all Relevant Authorities grant to the Company (or its agents, representatives or contractors as may be reasonably necessary) all Governmental Approvals in respect of which applications in accordance with Clause 6 have been made;
- 5.1.2 ensure that no Relevant Authority attaches, at any time during the Term, any term or condition to the Governmental Approvals which materially and adversely affects the Company or the Project;
- 5.1.3 ensure that all Governmental Approvals are, upon their expiry, renewed on substantially similar terms or on terms no less favourable than the then existing terms imposed on any third party;
- 5.1.4 ensure that no Relevant Authority revokes any Governmental Approval without Cause; and
- 5.1.5 in the event that a Governmental Approval has been revoked for Cause, procure the grant by the Relevant Authority of a further Governmental Approval if the Company has provided to the Relevant Authority reasonable evidence to demonstrate that the failure to comply with the Governmental Approval has been rectified and all fines have been paid.

5.2 Support to Obtain Consents

- 5.2.1 Without limiting the obligations of the Government pursuant to Clause 5.1, upon the request of the Company, the Government shall support, use and cause to be used all reasonable efforts to expedite consideration of the application for each Governmental Approval or renewal thereof made in the circumstances set out in Clauses 5.1.3 and 5.1.5.
- 5.2.2 Any request for support under this Clause 5.2 shall be accompanied with copies of the application for the Governmental Approval, and clear evidence that the issuance or renewal of the Governmental Approval was denied, deferred or was not processed in a timely manner.

5.3 Grant of Critical Consents

Subject to the compliance by the Company with its obligations under Clause 6 in relation to submitting applications for Governmental Approvals, the Government shall ensure that the Critical Consents are granted by the Relevant Authorities in accordance with Clause 5.1 on or before the date [30] days prior to the date scheduled for Financial Closing as set forth in the Financing Plan.

5.4 Grant of Investment Incentives

the Government shall ensure that the Investment Incentives are granted by the Relevant Authorities to the Company on or before Financial Closing.

5.5 Financing of the Project

the Government shall at any time and from time to time execute such further agreements or documents and do all such acts and things, as the Company or the Lenders may reasonably require to enable the Company to arrange financing for the Project on a limited recourse basis, including, but not limited to:

- 5.5.1 amending the provisions of this Agreement;
- 5.5.2 issuing a letter of comfort in relation with the Government' obligations, the applicable legal framework and any lack of laws and regulations; and
- 5.5.3 entering into a Direct Agreement with the Lenders of such form and substance as may reasonably be required by the Lenders.

5.6 [Guarantee of [Utility]'s Obligations

the Government hereby agrees to guarantee the performance of [Utility]'s obligations under the Power Purchase Agreement, and shall, at the request of the Company, in a timely manner take any necessary measures to ensure [Utility] strictly complies with its obligations under the Power Purchase Agreement.]

5.7 [Ministry Guarantee

the Government shall procure the issuance of a guarantee by the Ministry prior to Financial Closing in respect of the payment and performance obligations of [Utility] and the Government or any other Relevant Authority arising under or pursuant to this Implementation Agreement and the Power Purchase Agreement (the "Government Guarantee"). The Government Guarantee shall be of such form and substance as the Company and the Lenders may reasonably require.]

5.8 Expropriation, Nationalization and Confiscation

the Government shall ensure that no Relevant Authority expropriates, compulsorily acquires, nationalises, or confiscates all or any part of the Project, any assets, rights or other interest of the Company, or the interest of any Investors.

5.9 Construction, Operation and Maintenance

Subject to the provisions of this Implementation Agreement and the Power Purchase Agreement, the Government and the other Relevant Authorities shall not intervene in the construction, operation and maintenance of the Project in a manner that is adverse to the Project or the Company, save as may be necessary to protect public health and safety and to perform their statutory duties. At the request of the Company, the Government shall assist to prevent and to stop any illegal or unauthorised interference in the construction, operation and maintenance of the Project by any third party.

5.10 Assurance Against Discriminatory Action

Neither the Government nor any other Relevant Authority shall take any discriminatory action (which shall include the imposition of obligations, conditions or standards in relation to the Project that are unduly and materially more onerous than those relating to any similar power station project that is privately financed on a similar basis by any person other than the the Government or any Relevant Authority) that materially and adversely affects the Project, the performance of the Company's obligations or the enjoyment of its rights or the interests of the Investors under this Implementation Agreement, the Power Purchase Agreement or the Lease.

6. OBLIGATIONS OF THE COMPANY

6.1 Application for Governmental Approvals

The Company shall make (or cause to be made) and diligently pursue an application that complies with the necessary legal, regulatory and procedural requirements for each Governmental Approval necessary for the Company to design, develop, construct, finance, insure, own, operate and maintain the Project as contemplated in this Implementation Agreement and the Power Purchase Agreement.

6.2 Construction of the Project

The Company shall design, develop, construct, finance, insure, own, operate and maintain the Project in accordance with the applicable Laws and the terms of the Power Purchase Agreement, this Implementation Agreement and the Lease.

6.3 Environmental Protection, Health and Safety

The Company shall comply with the applicable Laws and requirements of the Power Purchase Agreement regarding environmental protection, health and safety.

6.4 Corporate Documentation

Before Financial Closing, the Company shall deliver to the Government a copy, certified as a true copy by a duly authorised officer of the Company, of:

- 6.4.1 the articles of incorporation and the certificate of incorporation of the Company;
- 6.4.2 resolutions passed by the board of directors of the Company authorising the execution, delivery and performance by the Company of the Power Purchase Agreement, this Implementation Agreement, the Financing Agreements and any other agreement or document to be executed and delivered in respect thereof;
- 6.4.3 [the Construction Contract (excluding any information of a proprietary and technical or commercially sensitive nature) and all security documents provided by the Construction Contractor pursuant to the Construction Contract, substantially in accordance with the terms of the Power Purchase Agreement; and]
- 6.4.4 [a copy of any fuel supply agreement.]

7. RIGHTS IN RELATION TO THE SITE

7.1 Acquisition of Site

7.1.1 the Government shall grant, or procure the grant by [[Utility]] of, with effect from the Effective Date, the right for the Company (and if it so requires, any employee, agent, representative or contractor of the Contractor) to enter the Site in order to carry out such site investigations as the Company may reasonably require, subject to:

- (a) the Company giving prior notice of its intention to exercise its rights under this Clause 7.1.1 to the Ministry and [Utility];
- (b) all persons entering the Site complying with such reasonable requirements as the Ministry or [Utility] may stipulate relating to the security and safety of the Site; and
- (c) all such persons using all reasonable endeavours to minimise any interference with any activities of the Ministry or [Utility] on or adjoining the Site.

7.1.2 the Government shall grant, or procure the grant by [[Utility]] of, the Lease within 120 days after the Effective Date, to become effective at the latest on Financial Closing, so as to permit the Company to assume vacant possession of the Site, on such terms and conditions as are set out in the Lease and the Power Purchase Agreement.

7.1.3 the Government shall (at its own expense) grant, or procure the grant of, all necessary rights of way, easements and other rights, including those required to construct and maintain any fuel and power interconnections for the Facility, to enable the Company to carry out its obligations and to exercise its rights under this Implementation Agreement, the Power Purchase Agreement and the Lease throughout their respective terms.

7.2 Support to obtain Site and Transportation

7.2.1 the Government will ensure that access and transportation to and from the Site suitable for construction and operation of the Facility is available.

7.2.2 Either Party may advise the other Party from time to time of any difficulties encountered in relation to the activities the Government is required to perform under this Clause 7.2 and if any such difficulties create (in the Company's opinion) a significant possibility that the Company will be prevented or materially impaired in meeting its obligations under the Project Agreements, then, upon the request of the Company, the Government shall take such action as is reasonable under the circumstances to enable the Company to secure the necessary services.

8. FINANCIAL ISSUES

8.1 Security

8.1.1 For the purpose of financing the Project and in compliance with the Laws, the Company may charge or assign by way of security, in favour of the Lenders, its interests in:

- (a) this Implementation Agreement;
- (b) the Power Purchase Agreement;
- (c) any other agreement or document related to the Project;
- (d) the Site;
- (e) the immovable property situated on the Site; or
- (f) the moveable property and intellectual property of the Company.

8.1.2 the Government agrees to execute and give all acknowledgements of any security or assignments created pursuant to Clause 8.1.1 as are reasonably requested by the Company to give effect to Clause 8.1.1.

8.2 Foreign Exchange and Bank Accounts

In compliance with the Laws, the Company shall have the right to open any type of foreign or local bank accounts and shall have the right to freely convert an amount in [] or any type of foreign currency into any other currency and transfer any such amount abroad.

9. REPRESENTATIONS AND WARRANTIES

9.1 the Government Representations and Warranties

The Government hereby represents and warrants to the Company that:

9.1.1 the Ministry has full power and authority to execute and deliver this Implementation Agreement on behalf of the Government;

9.1.2 the Government has full power and authority to perform its obligations under this Implementation Agreement;

9.1.3 the execution, delivery and performance of this Implementation Agreement by or on behalf of the Government:

- (a) has been duly authorized by all requisite action on the part of the Government; and
- (b) will not:
 - (i) violate the Laws or any applicable order of any Relevant Authority; or

- (ii) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Government is a party or by which the Government or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the properties or financial condition of the Government or on its ability to perform its obligations under this Implementation Agreement;
- 9.1.4 this Implementation Agreement has been duly executed and delivered by the Ministry on behalf of the Government;
- 9.1.5 assuming it constitutes a legal, valid and binding obligation of the Company, this Implementation Agreement constitutes a legal, valid and binding obligation of the Government, enforceable against it in accordance with its terms, subject to general principles of equity.
- 9.1.6 no filing or registration with, no notice to and no permit, authorization, consent or approval of any person is required for the execution, delivery or performance of this Implementation Agreement by the Government, except for such filings, registrations and notices that have been made or given, and such permits, authorizations, consents or approvals as have been obtained and are in full force and effect.
- 9.1.7 the Government is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations under this Implementation Agreement, the validity or enforceability of this Implementation Agreement or on the financial condition of the Government; and
- 9.1.8 there is no action, suit, proceeding or investigation pending, or to the Government's knowledge, threatened, against the Government which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Implementation Agreement, the validity or enforceability of this Implementation Agreement or on the financial condition of the Government.

9.2 Company Representations and Warranties

The Company hereby represents and warrants to the Government that:

- 9.2.1 the Company is a limited liability company, duly organized, validly existing and in good standing under the Laws, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted.
- 9.2.2 the Company has full corporate power and authority to execute and deliver this Implementation Agreement and to perform its obligations under this Implementation Agreement.

- 9.2.3 the execution, delivery and performance of this Implementation Agreement by the Company:
- (a) has been duly authorized by all requisite corporate action on the part of the Company, and no other proceedings on the part of the Company or any other person are necessary for such authorization; and
 - (b) will not:
 - (i) violate the Laws or any applicable order of any Relevant Authority or any provision of the [memorandum and clauses of association] of the Company; or
 - (ii) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Company is a party or by which the Company or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Company, or on its ability to perform its obligations under this Implementation Agreement;
- 9.2.4 this Implementation Agreement has been duly executed and delivered by the Company;
- 9.2.5 assuming it constitutes a legal, valid and binding obligation of the Government, this Implementation Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to:
- (a) bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights; and
 - (b) general principles of equity;
- 9.2.6 to the best of its knowledge after reasonable inquiry, no filing or registration with, no notice to and no permit, authorization, consent or approval of any person is required for the execution, delivery or performance of this Implementation Agreement by the Company, except for the Company Consents;
- 9.2.7 the Company is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations under this Implementation Agreement, or the validity or enforceability of this Implementation Agreement; and
- 9.2.8 there is no action, suit, proceeding or investigation pending or, to the Company's knowledge, threatened:
- (a) for the dissolution of the Company; or

(b) against the Company,

which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Implementation Agreement, or the validity or enforceability of this Implementation Agreement.

10. ASSIGNMENT AND NOVATION

10.1 Consent Required

Subject to Clause 8.1.1, the Parties are not permitted to assign or novate their interests in this Implementation Agreement without the consent of the other Party.

10.2 Binding Agreement

This Implementation Agreement, as it may be amended from time to time, shall be binding upon and inure to the benefit of the Parties to it and their respective successors, legal representatives, and assigns permitted under this Implementation Agreement.

10.3 Consequences of Sale, Transfer, Novation or Assignment without Consent

Any sale, transfer, novation, or assignment of any interest in the Facility or in this Implementation Agreement made without fulfilling the requirements of this Clause 10.3 or Clause 10.4 shall be null and void and shall constitute an Event of Default. For the purposes of this Clause 10.3, a sale, transfer, or assignment shall include a sale of all or a majority interest in the stock or voting control of the Company or the interests of the Company in this Implementation Agreement.

10.4 Change of Control

Any direct or indirect Change of Control of the Company, whether voluntary or by operation of law, shall require the prior consent of the Government.

11. LIABILITY, INDEMNIFICATION AND SOVEREIGN IMMUNITY

11.1 Limitation of Liability

11.1.1 Neither Party:

- (a) shall have any liability to the other Party for any Loss suffered by that Party with respect to the subject matter of this Implementation Agreement except pursuant to, or for breach of, this Implementation Agreement; and
- (b) shall be liable to the other in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages.

11.1.2 This Clause 11 does not constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Implementation Agreement or any activity not contemplated by the Project Agreements or the Financing Agreements.

11.2 Indemnification

11.2.1 Except and to the extent that the Government is indemnified pursuant to the terms of any of the Project Agreements or Financing Agreements or is reimbursed for any Losses pursuant to any policy of insurance, the Company shall:

(a) indemnify and defend the Government, its officers and employees against; and

(b) hold the Government, its officers and employees harmless from,

at all times after the date on which this Implementation Agreement enters into full force and effect, any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Government, its officers and employees for personal injury or death to persons (including third persons) or damage to property (including third party property) arising out of any negligent act or omission or any intentional misconduct by the Company in connection with this Implementation Agreement.

11.2.2 Except and to the extent that the Company is indemnified pursuant to the terms of any of the Project Agreements or Financing Agreements or is reimbursed for any Losses pursuant to any policy of insurance, the Government shall:

(a) indemnify and defend the Company, its officers, directors and employees against; and

(b) hold the Company and its officers, directors and employees harmless from,

at all times after the date on which this Implementation Agreement enters into full force and effect, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Company, its officers, directors and employees for personal injury or death to persons (including third persons) or damage to property (including third party property) arising out of any negligent act or omission or any intentional misconduct by the Government in connection with this Implementation Agreement.

11.2.3 Subject to the Parties otherwise agreeing, or a court of law or arbitrator appointed pursuant to this Agreement otherwise determining, in the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of both the Company and the Government (or [Utility]), the Parties shall be deemed to be equally liable for such injury or damages (and indemnify and hold harmless the other Party for its share of liability for such injury or damages).

11.2.4 If the Parties agree, or a court of law or arbitrator appointed pursuant to this Agreement determines, that the Parties are not equally liable for injury or damages referred to in Clause 11.2.3, the Parties will be bound to (and indemnify each other against), liability in such portions agreed or determined.

11.2.5 The provisions of this Clause 11 shall survive for a period of 5 years following the termination or expiry of this Agreement with respect to any acts or omissions or

claims for indemnification that occurred or arose prior to such termination or expiry.

11.3 Indemnification for Fines and Penalties

Subject to the other provisions of this Implementation Agreement, any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of another Party) for non-compliance with the Law, shall not be reimbursed by the other Party but shall be the sole responsibility of the Party not complying with the relevant Laws.

11.4 Notice of Proceedings

11.4.1 Each Party (the “Indemnified Party”) shall promptly notify the other Party (the “Indemnifying Party”) of any Loss or proceeding in respect of which such Indemnified Party is or may be entitled to indemnification pursuant to Clause 11.2, as soon as reasonably practicable after the Indemnified Party becomes aware of the Loss or proceeding and that such Loss or proceeding may give rise to an indemnification, but in any event no later than [21] days after the receipt by the Indemnified Party of notice of the commencement of any action for which indemnity may be sought.

11.4.2 The delay or failure of the Indemnified Party to provide the notice required pursuant to Clause 11.4.1 shall not release the Indemnifying Party from any indemnification obligation that it may have to the Indemnified Party except:

- (a) to the extent that such failure or delay materially and adversely affected the Indemnifying Party's ability to defend such action or increased the amount of the Loss; and
- (b) that the Indemnifying Party shall not be liable for any costs or expenses of the Indemnified Party in the defence of the claim, suit, action or proceeding during such period of failure or delay.

11.5 Assumption of Defence

The Indemnifying Party may assume the defence of any proceeding of which it has received notice pursuant to Clause 11.4 with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that the Indemnified Party shall render all reasonable assistance requested by the Indemnifying Party in relation to the defence and that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defences available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. The Indemnifying Party may agree a settlement with the claimant in respect of the proceeding which places non-monetary obligations upon the Indemnified Party, providing that independent counsel confirms that such obligations are reasonable in the circumstances.

11.6 Indemnifying Party's Failure to Assume Defence

If the Indemnifying Party fails to assume the defence of a claim meriting indemnification, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim, provided that compromise, settlement or full payment of any such claim may be made only following confirmation by independent counsel that such claim is meritorious or warrants settlement. Where such consent is not obtained prior to such compromise, settlement or payment, the Indemnifying Party shall be released and discharged from all obligations in respect of that claim under Clause 11.

11.7 Amount Owing to Indemnified Party

Except as otherwise provided in this Clause 11, in the event that a Party is obliged to indemnify and hold the other Party and its successors and assigns harmless under this Clause 11, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

11.8 Subrogation

11.8.1 Upon payment of any indemnification provided by a Party pursuant to Clause 11.2, the Indemnifying Party, without any further action, shall be subrogated to any and all claims that the Indemnified Party may have relating thereto.

11.8.2 The Indemnified Party shall, at the request and expense of the Indemnifying Party, cooperate with the Indemnifying Party and give at the request (and expense) of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such claims.

11.9 Sovereign Immunity

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

11.9.1 agrees that the execution, delivery and performance by it of this Implementation Agreement do not constitute sovereign acts;

11.9.2 agrees that, in the event that any proceedings are brought against it or its assets in relation to this Implementation Agreement or any transaction contemplated by this Implementation 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 or with respect to its assets; and

11.9.3 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.

12. FORCE MAJEURE EVENT

12.1 Definition of Force Majeure Event

12.1.1 The term "Force Majeure Event", as used in this Agreement, shall, subject to Clause 12.2, mean any event, circumstance or combination of events or

circumstances beyond the reasonable control of, and without the fault or negligence of, a Party occurring on or after the date of this Agreement that materially and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement, provided that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and Reasonable Care.

12.1.2 A Force Majeure Event shall be a Political Force Majeure Event or an Other Force Majeure Event but only to the extent that such event, circumstance or combination of events or circumstances satisfies the requirements of Clause 12.1.1.

12.1.3 A Political Force Majeure Event is any event, circumstance or combination of events or circumstances of the following types that occur(s) inside or directly involve(s) [] (which shall include events outside []):

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution;
- (b) radioactive contamination or ionising radiation originating from a source in [] or resulting from another Political Force Majeure Event;
- (c) any riot, insurrection, civil commotion, act or campaign of terrorism that is of a political nature, including actions associated with or directed against the Company (or Contractors) as part of a broader pattern of actions against companies or facilities with foreign ownership or management;
- (d) any of the Governmental Approvals not being granted upon application having been duly made by the Company pursuant to Clause 6.1 and diligent efforts having been made by the Company to obtain such Governmental Approvals;
- (e) any strike, work-to-rule or go-slow (even if such differences could be resolved by conceding to the demands of a labour group) which is not primarily motivated by a desire to influence the actions of the Company so as to preserve or improve conditions of employment, and:
 - (i) is part of an industry wide strike, work-to-rule or go-slow, in response to the coming into force, modification, repeal, or change in the interpretation of application of any Law after the date of this Agreement;
 - (ii) is by the employees of any Relevant Authority in response to the coming into force, modification, repeal or change in the interpretation of any Law after the date of this Agreement; or
 - (iii) is caused by a Political Force Majeure Event;
- (f) a Change in Law; and

- (g) the discovery of mines or munitions on or adjacent to the Site rendering operation of the Facility impossible without imposing risk on any persons or property at or on the Site.

12.1.4 Other Force Majeure Events include any event, circumstance or combination of events or circumstances of the following types, except to the extent that it or they constitute(s) or is or are caused by, a Political Force Majeure Event:

- (a) earthquake, flood, storm, cyclone, lightning or other sudden acts of the elements on a level that exceeds the design criteria of the Facility;
- (b) fire, explosion, or chemical contamination;
- (c) epidemic or plague;
- (d) any strike, work-to-rule or go-slow (even if such difficulties could be resolved by conceding to the demands of a labour group);
- (e) any event, circumstance or combination of events or circumstances of the following types that occurs outside [] and does not directly involve []:
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism;
 - (ii) radioactive contamination or ionising radiation originating from a source outside [];
 - (iii) strikes, works to rule, or go-slows (even if such difficulties could be resolved by conceding to the demands of a labour group) which are not primarily motivated by a desire to influence the action of a single employer so as to preserve or improve conditions of employment; and
- (f) vandalism.

12.1.5 A delay in the performance of any Contractor that results directly from any Political Force Majeure Event or Other Force Majeure Event shall itself constitute a Political Force Majeure Event or an Other Force Majeure Event, as the case may be, to the extent only that it satisfies the requirements for a Force Majeure Event specified in Clause 12.1.1.

12.2 Exclusions from Force Majeure Event

Notwithstanding anything in Clause 12.1, a Force Majeure Event in relation to either Party shall not include:

- 12.2.1 normal wear and tear or random flaws in materials and equipment or breakdowns in equipment;

- 12.2.2 the inability at any time or from time to time of the Transmission System to accept electricity generated by the Company, unless caused by an unlawful act or omission of the Non-Affected Party, an act or omission of the Non-Affected Party in breach of this Agreement, or any event, circumstance or combination of events or circumstances which constitutes a Force Majeure Event;
- 12.2.3 [the lack of flow of water to the Facility, except (and to the extent) caused by an event, circumstance or combination of events or circumstances which constitutes a Force Majeure Event;] *[Note: For hydro-facilities only.]*
- 12.2.4 any full or partial curtailment in the electric output of the Facility that is caused by, or arises from, the acts or omissions of any third party (other than a Public Sector Entity) including any vendor, materials supplier, customer, or supplier of the Company, except (and to the extent) such acts or omissions are themselves caused by any event, circumstance or combination of events or circumstances which constitutes a Force Majeure Event;
- 12.2.5 lack of funds due to any commercial, economic or financial reason, including the Company's inability to make a profit or achieve a satisfactory rate of return but not including a lack of funds due to non-availability of facilities to convert currency or any event, circumstance or combination of circumstances which constitutes a Force Majeure Event; or
- 12.2.6 changes in market conditions that affect the cost of [Utility]'s or the Company's supply of fuel or alternative supplies of fuel, or that affect demand or price for any of [Utility]'s or the Company's products.

12.3 Failure or Delay Caused by Force Majeure

- 12.3.1 Subject to Clauses 12.3.2 and 12.3.3, upon the occurrence and during the continuance of a Force Majeure Event:
- (a) the Affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Implementation Agreement to the extent that such failure or delay in performance has been caused or contributed to by one or more Force Majeure Event or its or their effects or by any combination thereof, subject to:
 - (i) Clause 12.4 if the Force Majeure Event is a Political Force Majeure Event; or
 - (ii) Clause 12.5 if the Force Majeure Event is an Other Force Majeure Event; and
 - (b) any time limits and deadlines for the performance by the Affected Party of its obligations under this Implementation Agreement which are affected by such Force Majeure Event shall be extended by one day for each day that the Affected Party is unable to comply, or is delayed in complying, with its obligations under this Agreement because of the occurrence of a Force Majeure Event, or the effects of that Force Majeure Event.

12.3.2

- (a) The provisions of Clause 12.3.1 shall apply provided that:
- (i) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event plus a reasonable additional period to remobilise following the date on which the Force Majeure Event ceases to render the Affected Party unable to perform its obligations under this Implementation Agreement;
 - (ii) the Affected Party proceeds with reasonable diligence to remedy its inability to perform its obligations under this Agreement and provides weekly progress reports to the Non-Affected Party describing actions taken to end the Force Majeure Event or overcome and mitigate its effects;
 - (iii) the Affected Party shall have the burden of proving that the circumstance, event or combination of circumstances or events constitutes a valid Force Majeure Event and that it has exercised reasonable diligence and efforts to avoid the effects of any alleged Force Majeure Event;
 - (iv) the Affected Party provides the Non-Affected Party (at the sole cost and risk of the Non-Affected Party) reasonable facilities for obtaining further information about the Force Majeure Event, including the inspection of any relevant facility; and
 - (v) when the Affected Party anticipates that it is able to resume performance of its obligations under this Agreement, that Party shall give the Non-Affected Party notice to that effect as soon as possible.
- (b) The Affected Party shall give the Non-Affected Party notice, as soon as is reasonably practicable after it has occurred (but in any event no later than 5 Business Days after it has occurred), of the Force Majeure Event and as soon as is reasonably practicable give further notice containing information adequate to justify the claim and advise the steps and time necessary to overcome such Force Majeure Event.
- (c) The Affected Party shall use its reasonable endeavours to:
- (i) mitigate and/or overcome the effects of any Force Majeure Event, including by recourse to mutually acceptable alternative sources of services, equipment and material, and construction equipment (such acceptance not to be unreasonably withheld or delayed by either Party); and
 - (ii) ensure resumption of normal performance of this Agreement as soon as reasonably practicable.

- 12.3.3 No relief, including the extension of performance deadlines and the term of this Agreement, shall be granted to the Affected Party pursuant to Clause 12.3.1:
- (a) unless and until the Affected Party has given the Non-Affected Party notice of the occurrence of the Force Majeure Event in accordance with Clause 12.3.2(b); and
 - (b) to the extent that such failure or delay in performance arises as a result of a failure by the Affected Party to comply with its obligations under Clause 12.3.2(c) or would have nevertheless been experienced by the Affected Party had the Force Majeure Event not occurred.
- 12.3.4 Other than for breaches of this Agreement by the Non-Affected Party, and subject to Clause 11, the Non-Affected Party shall not bear any liability for any Loss or expense suffered by the Affected Party as a result of a Force Majeure Event or its effects.

12.4 Political Force Majeure Event

The Company (but not the Government) shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Implementation Agreement to the extent that such failure or delay in performance has been caused or contributed to by one or more Political Force Majeure Events or its or their effects or by any combination thereof.

12.5 Other Force Majeure Event

The Term shall be extended for a period equal to the duration of any Other Force Majeure Event.

13. TERMINATION

13.1 Company Events of Default

13.1.1 Subject to Clause 13.1.2, each of the following events shall be an event of default by the Company (each, a “Company Event of Default”), which, if not remedied within the time permitted (if any), shall give rise to a right on the part of the Government to terminate this Implementation Agreement pursuant to Clause 13.3:

- (a) except for the assignment to the Lenders contemplated under Clause 10 the assignment or transfer of the Company’s rights or obligations in this Implementation Agreement or interest in the Facility to any person or any direct or indirect Change of Control of the Company without the prior approval of [Utility] unless:
 - (i) the prior consent of the Government has been given; or
 - (ii) Seller’s rights or obligations in this Agreement or interest in the Facility have been re-assigned or re-transferred to Seller or the direct or indirect Change of Control of Seller reversed within 60 days of notice from the Purchaser to achieve the same;

- (b) the merger, consolidation, amalgamation or reconstruction of the Company without the prior consent of the Government (such consent not to be unreasonably withheld where the Company can reasonably demonstrate that the Company (or any successor entity) shall continue to be able to meet the Company's obligations under the Power Purchase Agreement);
- (c) the Company having been wound up, been placed into receivership, had a liquidator appointed to it or been struck off the register of companies held by the [Registrar of Companies];
- (d) the Company's filing of a winding-up petition in respect of itself;
- (e) the filing of a winding up petition against the Company as debtor that could materially impact upon the Company's ability to perform its obligations under the Power Purchase Agreement provided, however, that the Company does not obtain a stay or dismissal of the filing within [60] days after the date of notice from [Utility] to the Company and (if applicable) the Lenders' representative as provided for in the Direct Agreement;
- (f) the Company's failure to make any payment required to be made by it under this Implementation Agreement within [30] days of the date (after the date on which that payment is due) on which the Government notifies the Company of the failure;
- (g) any material breach by the Company of this Implementation Agreement, in each case that is not remedied where the breach is remediable within [60] days after receipt of notice from the Government identifying the breach in question in reasonable detail, and demanding remedy thereof. This [60] day period shall be extended for any such breach that can be remedied only in more than [60] days and the Company may have such additional time to remedy that breach as the Government reasonably estimates may be necessary if, prior to the end of the [60] day period, the Company provides evidence to the Government's reasonable satisfaction that it has commenced and is diligently pursuing a remedy and that more than [60] days will be required in order to effect such remedy and provides a good-faith estimate of when the breach will be remedied;
- (h) any representation or warranty made by the Company in this Implementation Agreement proving to have been false or misleading in any material respect when made if such circumstance results in a material adverse impact on the Government; or
- (i) termination by [Utility] of the Power Purchase Agreement as a consequence of the Company's default under the Power Purchase Agreement.

13.1.2 No such event referred to in Clause 13.1.1 shall become a Company Event of Default if it substantially results from:

- (a) a breach by the Government of this Implementation Agreement;

- (b) a Purchaser Event of Default; or
- (c) the occurrence of a Force Majeure Event where the Company has complied with Clause 12.3 (but only to the extent that the Force Majeure Event affects the ability of the Company to perform its obligations under this Implementation Agreement).

13.2 the Government Events of Default

13.2.1 Subject to Clause 13.2.2, each of the following events shall be an event of default by the Government (each, a “the Government Event of Default”), which if not remedied within the time period permitted (if any), shall give rise to the right of the Company to terminate this Implementation Agreement pursuant to Clause 13.3:

- (a) any default or defaults by the Government [or the Ministry of Economy and Finance] in making any payment required to be made by it under this Implementation Agreement [or the Government Guarantee] within [30] days of the date on which that payment is due;
- (b) any material breach by the Government of this Implementation Agreement that is not remedied where the breach is remediable within [60] days after receipt of notice from the Company identifying the breach in question in reasonable detail, and demanding remedy thereof. This [60] day period shall be extended for any such default that can be remedied only in more than [60] days and the Government may have such additional time to remedy that breach as the Company reasonably estimates may be necessary if, prior to the end of the [60] day period, the Government provides evidence to the Company’s reasonable satisfaction that it has commenced and is diligently pursuing a remedy and that more than [60] days will be required in order to effect such remedy and provides a good-faith estimate of when the breach will be remedied;
- (c) any representation or warranty made by the Government in this Implementation Agreement proving to have been false or misleading in any material respect when made or ceasing to remain true during the Term if such cessation results in a material adverse impact on the Company;
- (d) the expropriation, management takeover, compulsory acquisition, requisition or nationalisation by any Public Sector Entity of:
 - (i) any shares in the Company or any Investor if the result would be for such Public Sector Entity (whether alone or with any other Public Sector Entities) to acquire ownership or control of a majority of the shares in the Company or any Investor or the right to control or direct the composition or decisions of the board of directors or the management of the Company; or
 - (ii) any material asset or right of the Company relating to the Project or of any asset or right without which the Company will be unable to comply with its obligations under the Power Purchase Agreement;

- (e) where, at any time, as a result of any Change in Law:
 - (i) the making, or receipt by the Company, of any payment in the currency and in the manner contemplated by the Company under any Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Governmental Approvals;
 - (ii) the distribution of profits of the Company to any Investor becomes illegal, invalid or materially restricted;
 - (iii) the performance of any obligation by any party to a Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Laws or Governmental Approvals or any Project Agreement or Financing Agreement becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Governmental Approvals;
 - (iv) the enforcement of rights of the Company, any Investor or the Lenders in connection with the Project against assets of [Utility] or the Government (or, in the case of the Lenders, the Company) situated in [] becomes illegal, invalid, void, materially restricted or unenforceable under the Law or any Governmental Approvals; or
 - (v) the settling of Disputes by an arbitrator becomes illegal or materially restricted under the Laws or any Governmental Approvals;
- (f) cancellation or amendment of any power purchase agreement, other than for the purposes of introducing wholesale competition in electric energy and where the following conditions are fulfilled:
 - (i) a period of 10 years has elapsed from the date of entry into full force and effect of that power purchase agreement;
 - (ii) the introduction of wholesale competition does not adversely affect the profitability of the Company under this Implementation Agreement and the other Project Agreements, the Company's ability to finance its activities or the Company's ability to make payments to the Lenders on their due dates; and
 - (iii) there is no discrimination against the Company in this regard;
- (g) if:
 - (i) any Governmental Approval, including the Critical Consents before Financial Closing, is not granted upon application having been duly made pursuant to Clause 6.1;

- (ii) any Governmental Approval, including the Critical Consents, having been granted, ceases to remain in full force and effect or, if granted for a limited period, is not renewed upon application having been duly made pursuant to Clause 6.1 or is renewed upon terms and conditions which result in the inability of the Company, the Lenders, the Investor or the Contractors (“Relevant Applicant”) to exercise their rights or perform their obligations under this Implementation Agreement, any Project Agreement or Financing Agreement,

unless such refusal to grant or the revocation or amendment of such Governmental Approval is due to:

- (iii) the default or neglect of the Relevant Applicant; or
- (iv) a failure by the Relevant Applicant to abide by:
 - (A) any rules or requirements for the application for, or the renewal of, the Governmental Approval; or
 - (B) without limiting Clause 13.2.1(e), any applicable Law;

which, in each case, legally entitles the issuing authority to not issue, revoke, or make the relevant amendment in the terms and conditions of the Governmental Approval; or

- (h) termination by the Company of the Power Purchase Agreement as a consequence of a Purchaser Event of Default under the Power Purchase Agreement.

13.2.2 No such event referred to in Clause 13.2.1 shall become a the Government Event of Default if it substantially results from:

- (a) a breach by the Company of this Implementation Agreement or the Power Purchase Agreement; or
- (b) the occurrence of a Force Majeure Event where the Government has complied with Clause 12.3 (but only to the extent that the Force Majeure Event affects the ability of the Government to perform its obligations under this Implementation Agreement).

13.3 Termination Due to Event of Default

13.3.1 Upon the occurrence of an Event of Default which has not been remedied within the applicable remedy period, the non-defaulting Party shall have the right to declare a date, which shall be between [30] and [45] days after the notice thereof to the defaulting Party, upon which this Implementation Agreement shall terminate. If the Government is the non-defaulting Party, it shall (if applicable) copy its termination notice to the Lenders’ representative. Neither Party shall have the right to terminate this Implementation Agreement except as provided for upon the occurrence of an Event of Default as described in this Clause 13 or as otherwise may be explicitly provided for in this Implementation Agreement.

13.3.2 Where the Company or the Government is prevented from complying with its obligations or exercising its rights under this Implementation Agreement as a result of one or more Force Majeure Events or its or their effects or by any combination thereof for a continuous period of [365] days, then either Party shall have the right to terminate this Implementation Agreement by notice to the other, effective immediately.

13.4 Other Remedies

13.4.1 The exercise of the right of a Party to terminate this Implementation Agreement does not preclude such Party from exercising other remedies that are available to such Party under this Implementation Agreement or, subject to this Implementation Agreement, otherwise available at law.

13.4.2 Remedies available to a Party under this Implementation Agreement or at law are cumulative, save where this Implementation Agreement otherwise provides an exhaustive remedy, penalty or right in respect of a particular breach, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, the simultaneous or later exercise of other remedies by such Party.

13.4.3 In addition to the other remedies specified in this Clause 13, in the event that any Event of Default is not remedied within the applicable remedy period set forth in this Implementation Agreement, the non-defaulting Party may elect to treat this Implementation Agreement as being in full force and effect and shall have the right to seek specific performance of this Implementation Agreement by the defaulting Party in accordance with Clause 15.2.

13.5 Rights and Obligations Upon Termination

13.5.1 If this Implementation Agreement terminates early (for any reason) and (notwithstanding the termination) the Company continues to operate the Facility:

- (a) the Company shall have the right to enter into agreements to sell any part of the capacity or net electrical output of the Facility and provide ancillary services to any person to the extent permitted by Law; and
- (b) [Utility] shall provide the Company with access to and use of the Transmission System on reasonable and non-discriminatory terms and conditions.

13.5.2 Clause 13.5.1 and this Clause 13.5.2 shall survive termination of this Implementation Agreement by any period necessary to give effect to these provisions.

13.6 Double Jeopardy

13.6.1 Where:

- (a) a final, non-appealable award or order has been issued by an expert or arbitrator in a proceeding initiated by [Utility], based upon a claim for breach by the Company of any of its obligations under the Power Purchase Agreement;

- (b) [Utility] settles any dispute with the Company related to, or waives in writing any breach by the Company of, any of its obligations under the Power Purchase Agreement; or
- (c) [Utility] is pursuing a claim against the Company based upon an alleged breach by the Company of its obligations under the Power Purchase Agreement,

the Government shall be precluded from pursuing, or, in the case of Clauses 13.6.1(a) and 13.6.1(b), ever pursuing thereafter, any claim it would otherwise have against the Company based on the same facts and acts or omissions by the Company, for breach of substantially the same (or related) obligations which the Company owed the Government under this Implementation Agreement.

13.6.2 Clause 13.6.1(a) shall not prevent the Government from separately proceeding to terminate this Implementation Agreement pursuant to Clause 13.3, and to exercise any rights in respect of such termination set forth in Clause 13.5.

13.6.3 In the event that the Government pursues a claim in non-compliance with Clause 13.6.1, the Government shall reimburse the Company for the reasonable costs and expenses that the Company incurs in defending the claim so pursued by the Government.

13.7 Duty to Mitigate

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimise any cost, expense, damage or loss it may incur as a result of the other Party's performance or non-performance of this Implementation Agreement.

14. DISPUTE RESOLUTION

In the event that any Dispute arises between the Parties, the dispute resolution provisions contained in Schedule 4 shall apply.

15. MISCELLANEOUS PROVISIONS

15.1 Expenses of the Parties

Each Party shall bear all costs and expenses, including all fees and expenses of agents, representatives, counsel and accountants employed by the Parties, incurred by it in connection with entering into this Implementation Agreement, and the other Party shall have no liability in respect thereof.

15.2 Right to Specific Performance

In the event either Party fails to perform its obligations under this Implementation Agreement, the other Party shall have the right to require specific performance of the obligation not performed.

15.3 Further Assurances

If it shall be necessary and proper after the execution of this Agreement to execute any additional documents or take further action to carry out the intent of this Agreement, the Parties agree to take such action.

15.4 Governing Law

This Agreement shall in all respects be governed by and construed in accordance with the Laws.

15.5 Entire Agreement

This Implementation Agreement, together with the other Project Agreements and the Financing Agreements, is intended by the Parties to be the final expression of their agreement with respect to the incentives and assistance to be provided by the Government in relation to the Project and is intended also to be a complete and exhaustive statement of their agreement with respect to the subject matter contained herein. As such, the terms and provisions contained in this Implementation Agreement supersede all previous communications, representations or agreements, oral or written, between the Parties with respect to the sale of electric capacity and energy from the Facility.

15.6 Amendments

This Implementation Agreement can be amended only by written agreement among the Parties.

15.7 Waiver

15.7.1 No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Implementation Agreement:

- (a) shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or
- (b) shall be effective unless in writing duly executed by a duly authorized representative of such Party.

15.7.2 Neither the failure by a Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Implementation Agreement nor time or other indulgence granted by one Party to the other shall act as a waiver of such breach nor as an acceptance of any variation, or as the relinquishment of any such right or any other right under this Implementation Agreement.

15.8 Confidentiality

15.8.1 Each Party and its employees, contractors, consultants and agents shall use its reasonable endeavours to keep confidential the contents of this Implementation Agreement and any documents or other form of information provided under it, including electronic communications, marked as confidential by or on behalf of the Party providing it.

15.8.2 Each Party shall use its reasonable endeavours to ensure that all information obtained by it under this Implementation Agreement shall only be made available to and used by its employees or staff having a need for such information in order to permit the Party to perform its obligations and exercise its rights under this Implementation Agreement and, except as may be required by any Law or Relevant Authority other than the Government, shall not publish or otherwise disclose the same to third parties.

15.8.3 Either Party shall be entitled to disclose the terms and conditions of this Implementation Agreement and any data acquired by it under or pursuant to this Implementation Agreement without the prior consent of the other Party if such disclosure is made in good faith:

- (a) in the case of the Company, to any Affiliate of such Party upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in Clauses 15.8.1 and 15.8.2;
- (b) to any outside professional consultants or advisers engaged by or on behalf of such Party and acting in that capacity upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in Clauses 15.8.1 and 15.8.2;
- (c) to the Lenders, any security agent or trustee, any bank or other financial institution and its advisers from which such Party is seeking or obtaining finance upon obtaining from the Lenders, any security agent or trustee, such bank or other institution and its advisers an undertaking of confidentiality equivalent to that contained in Clauses 15.8.1 and 15.8.2;
- (d) to the extent required by a Governmental Approval or binding requirement of a Public Sector Entity or the rules of a recognised stock exchange;
- (e) to the extent required by law or pursuant to any order of any court of competent jurisdiction;
- (f) to directors, employees and officers, as relevant, of such Party,

and is reasonably necessary to enable such Party to perform this Implementation Agreement or to protect or enforce its rights under this Implementation Agreement.

15.8.4 Clauses 15.8.1 and 15.8.2 shall not apply to:

- (a) any information in the public domain otherwise than by a breach of Clauses 15.8.1 or 15.8.2 by the same Party;
- (b) information in the possession of a Party before divulgence that was not obtained under an obligation of confidentiality;
- (c) information obtained from a third party that was free to divulge such information to other third parties and that was not obtained by either Party under an obligation of confidentiality; or

- (d) information contained in a document that has been reviewed and cleared for public disclosure by the Party claiming confidentiality in the information.
- 15.8.5 Neither Party shall issue or cause the publication of any press release or other public announcement in relation to the Facility or this Implementation Agreement without the prior approval of the other Party.
- 15.8.6 This Clause 15.8 shall survive for a period of [5] years from the date of termination of this Implementation Agreement.

15.9 Counterparts

This Implementation Agreement may be executed in any number of counterparts, all executed counterparts shall be considered one and the same Implementation Agreement and each of them shall be deemed an original.

15.10 Severability

- 15.10.1 Subject to Clause 15.10.2, if any provision of this Implementation Agreement is held by a court or other authority of competent jurisdiction to be illegal, invalid, void, unenforceable or against the public interest, the rest of this Implementation Agreement will remain in full force and effect and will in no way be adversely affected.
- 15.10.2 Severance will not be permitted under Clause 15.10.1 where severance of such provision would render the performance of a Party's material obligations impracticable or impossible.
- 15.10.3 The Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any provision held to be illegal, invalid, void, unenforceable or against the public interest, which substitute provisions are satisfactory to all relevant Public Sector Entities and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

15.11 Relationship of the Parties

- 15.11.1 This Implementation Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.
- 15.11.2 Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 15.11.3 The Company shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of persons to perform its obligations under this Implementation Agreement, including all local and national income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by the Company shall be considered employees of the Government for any purpose; nor shall the Company represent to any person that he or she is or shall become an employee of the Government.

15.12 No Third Parties

Other than as specified in Clause 10, this Implementation Agreement is intended solely for the benefit of the Parties and nothing in this Implementation Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, or confer any right of suit or action on any person not a Party.

15.13 Language

This Agreement shall be executed in Khmer and English versions and both versions shall have equal value, provided that in case of any discrepancy or inconsistency between the Khmer version and the English version, the English version shall prevail.

15.14 Notices

15.14.1 All notices or other communications to be given or made under this Implementation Agreement shall be in English and in writing, shall be addressed for the attention of the persons indicated below and shall be delivered personally or sent by courier or facsimile. The addresses of the Parties and their respective facsimile numbers shall be:

If to the Government:

[•]

Attn: [•]

If to the Company:

[•]

Attn: [•]

15.14.2 Except as otherwise expressly provided in this Implementation Agreement, all notices shall be deemed to be delivered:

- (a) when the notice is delivered by hand or by overnight courier; or
- (b) if received during business hours on a Business Day for the receiving Party, when the notice is transmitted by facsimile to the receiving Party's facsimile number; and
- (c) if received after business hours or on a day that is not a Business Day for the receiving Party, on the receiving Party's first Business Day following the date the notice is transmitted by facsimile to the receiving Party's facsimile number.

Any notice given by facsimile shall be confirmed in writing, delivered by hand or sent by courier, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed.

15.14.3 Any Party may by notice change the addresses, addressees and/or facsimile number to which such notices and communications to it are to be delivered or mailed.

IN WITNESS whereof this Implementation Agreement has been executed by the Parties hereto and is intended to be and is hereby delivered on the day and year first above written.

FOR AND ON BEHALF OF [GOVERNMENT]

FOR THE COMPANY

Name: _____

Position: _____

COMMON SEAL OF _____

WAS HEREUNTO AFFIXED WITH THE
AUTHORITY OF THE BOARD OF DIRECTORS

SAMPLE

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

Index

- A. Definitions
- B. Interpretation

Part 1

Definitions

Unless the context otherwise requires, the following terms shall have the following meanings whether used in the singular or in the plural:

- “Affected Party” means the Party affected by a Force Majeure Event and seeking to avoid liability for any failure or delay in performing its obligations pursuant to or under this Agreement by reliance on the provisions of Clause 12.3.
- “Business Day” means any day of the week other than a Saturday or Sunday that is not a [] national holiday or a day on which banks are authorized by law or executive order to be closed in []; provided, however, that in the event that such a law or executive order results in banks in [] being closed for more than 3 weekdays or non holidays in succession, the next weekday following such 3 days shall be deemed to be a Business Day.
- “Cause” means with respect to the revocation of any Governmental Approval, a revocation on account of any wilful default or gross negligence on the part of the Company or its contractors in complying with the material terms of a Governmental Approval or any applicable Law consistently applied in a non-discriminatory manner and in accordance with the spirit of this Implementation Agreement.
- “Change in Law” means:
- (1) the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change in application, change in interpretation or modification after the date

of execution of this Agreement of any Law, by any Relevant Authority;

- (2) the imposition of any material condition not required as of the date of execution of this Agreement in connection with the issuance, renewal or modification of any Governmental Approval, by any Relevant Authority; or
- (3) the imposition by any Relevant Authority of any Governmental Approval additional to those Governmental Approvals required as of the date of execution of this Agreement,

which in case of any of the above establishes either a material increase in cost or material reduction in revenue as a consequence of any requirement for the design, construction, financing, ownership, operation or maintenance of the Project that is materially more restrictive than the most restrictive requirements (a) in effect as of the date of execution of this Agreement; or (b) specified in any applications, or other documents filed in connection with such applications, for any Governmental Approval required as of the date of execution of this Agreement; or (c) agreed to by the Company in any Project Agreement [, or Financing Agreement,].

“Change of Control”

means, in relation to a person, company or entity, a change of the person, company or entity, that possesses, directly or indirectly, the power to direct or cause the direction of the management or the policies of that person, company or entity, whether through ownership, by contract or otherwise.

“Company Consents”

means the consents listed in Schedule 3.

“Company Event of Default”

means an event referred to in Clause 13.1.

“Construction Contract”

means the agreement to be entered into between the Company and the Construction Contractor for the design, construction and commissioning of the generating station in accordance with the Power Purchase Agreement.

“Construction Contractor”

means the party or parties to the Construction Contract (other than the Company).

“Contractor”	means any person with whom the Company contracts for the provision of goods or services relating to the design, construction, operation or maintenance of the Facility.
“Critical Consents”	means the Governmental Approvals listed in Schedule 2.
“Direct Agreement”	means the agreement entered into, or to be entered into, between the Government, [[Utility]], the Company and a security agent or trustee on behalf of the Lenders under which the Lenders may step in to cure a Company Event of Default under the Power Purchase Agreement or to assign the rights and obligations of the Company under it to a third party capable of performing such obligations.
“Dispute”	means any dispute between the Parties whether resulting from a claim in contract, in tort or based on any other legal doctrine which may arise out of, or in connection with, (whether, in each case, wholly or partially, directly or indirectly) this Implementation Agreement or the interpretation, application, implementation, validity, breach or termination of this Implementation Agreement or any related instrument, agreement or document, or any other provision hereof or thereof.
“Dollars” or “US\$”	means the currency that is the legal tender of the United States of America.
“Electricity Authority of []” or “EAC”	means the electricity regulator established under the Electricity Law.
“[Utility]”	means Electricité du Cambodge.
“Effective Date”	means the date referred to in Clause 3.1.
“Electricity Law”	means the Electricity Law of the Kingdom of [] adopted on February 2, 2001.
“Event of Default”	means a Company Event of Default or a the Government Event of Default.
“Facility”	means [●] Generating Station, whether completed or at any phase in its construction, as more particularly described in the Power Purchase Agreement and, in particular, schedule 2 of the Power Purchase Agreement.

“Financial Closing”	means the date on which the conditions precedent to first draw down under the Financing Agreements for the financing of the Project are satisfied in full.
“Financing Agreements”	means the loan agreements, notes, indentures, security agreements, guarantees and other agreements, documents and instruments relating to the permanent financing (including refinancing) of the Project, as the same may be amended from time to time.
“Financing Plan”	means [in relation to a particular phase of the Project,] the Company’s proposed financing plan for the Project, which shall set out in reasonable detail the identity and credit standing of the proposed Investors, the amount and form of equity to be contributed by the Investors in the Company, the amount of all loans to be provided to the Company by the Lenders, the maximum proposed debt, the debt equity ratio (which shall be equal to or less than the Required Ratio), and a confirmation that under the repayment schedule for all initial debt financing such debt shall be amortised to zero within not more than [●] years from the date of initial drawdown.
“Force Majeure Event”	means an event, circumstance or combination of events or circumstances as set forth in Clause 12.1.1.
“Foreign Investment Law”	means the Law on Investment of the Kingdom of [] adopted on August 4, 1994 and the Law on amendments to the 1994 Investment Law adopted on March 24, 2003.
“Governmental Approval”	means any acknowledgement approval, authorization, consent, concession, exemption, licence, permit, privilege, and waiver from, or filing with, or notice to or from, any Relevant Authority required for all or any of the Company, the Company’s contractors or the Lenders, and their respective employees, agents, representatives or contractors, in relation to the Project, including those specified in Schedule 2.
[“Government Guarantee”	means the guarantee referred to in Clause 5.7.]
“Implementation Agreement”	means this Implementation Agreement, together with all Schedules attached hereto, as the same may be amended from time to time.
“Indemnified Party”	means the Party referred to as such in Clause 11.4.1.

“Indemnifying Party”	means the Party referred to as such in Clause 11.4.1.
“Interconnection Agreement”	means the agreement between the Company and [Utility] relating to the interconnection facilities for the Facility.
“Investment Incentives”	means the incentives, exemptions and benefits as provided under the Foreign Investment Law.
“Investors”	means the holders from time to time of Ordinary Share Capital.
“Law”	means the laws of [], and all orders, rules, regulations and decrees thereunder, judgments and notifications, including any Grid Protocol, made pursuant thereto, as such laws, orders, rules, regulations, decrees, judgments and notifications may be modified, vacated or amended from time to time.
“Lease”	means the lease agreement to be executed between [[Utility]] and the Company in relation to the Project.
“Lenders”	means the banks and other financial institutions and agencies party to the Financing Agreements, including any security agent or trustee.
“Loss”	means any and all loss, damage, liability, payment or obligation (including any indirect or consequential loss, damage, liability, payment or obligation, and all expenses (including reasonable legal fees)).
“MW”	means Mega Watt.
“Non-Affected Party”	means the Party that is not the Affected Party.
“Ordinary Share Capital”	means shares of the Company with voting or other rights of management and control and securities of the Company that are convertible into such shares at the option of the holder.
“Other Force Majeure Event”	means a Force Majeure Event that is not a Political Force Majeure Event.
“Party”	means the Government, or the Company, as the case may be.

“Political Force Majeure Event”	means a Force Majeure Event for which the event, circumstance or combinations of events or circumstances is or are of the types set forth in Clause 12.1.3.
“Power Purchase Agreement”	means the agreement of that name by and between [[Utility]] and the Company, dated [as of the date hereof], for the sale of the capacity, energy and ancillary services of the Project, as the same may be amended from time to time.
“Project”	means the development, design, construction, financing, insurance, ownership, operation and maintenance of a [<i>state type of facility</i>] electric generating station with an expected total net generating capability of approximately [•] MW.
“Project Agreements”	means the Power Purchase Agreement, this Agreement, the Interconnection Agreement and the agreements, other than the Financing Agreements, that are required to be executed on or before Financial Closing in connection with the construction, operation, or maintenance of the Project, as the same may be amended from time to time.
“Public Sector Entity”	means: <ul style="list-style-type: none"> (1) the Government; (2) any political subdivision of the Government; (3) any ministry, department, political subdivision, instrumentality or agency under the direct control of the Government; (4) any company, corporation, government undertaking or commission under the direct control of the Government; or (5) any other entity under the direct control of the Government.
“Purchaser Event of Default”	means an event referred to as such in Clause 17.2 of the Power Purchase Agreement.
“Reasonable Care”	includes all acts or activities performed to protect the Project from an adverse event, which are reasonable in light of the likelihood of such event, the likely effect of such event if it should occur, and

	the likely efficacy, cost and cost-effectiveness of protective measures.
“Relevant Applicant”	means an applicant for a Governmental Approval as referred to in Clause 13.2.1(e)(ii).
“Relevant Authority”	means the Government, any ministry, department, political subdivision, instrumentality, agency, authority, commune, provincial authority or other relevant entity from which a Governmental Approval is to be obtained from time to time and any authority, body or other person having jurisdiction under the Laws of [] with respect to the Company or the Project, including, for the avoidance of doubt, the [Utility].
“Required Ratio”	means a debt: equity ratio of [70:30].
“the Government Event of Default”	means an event referred to in Clause 13.2.
“[]”	means the currency that is the legal tender of [].
“Security Deposit”	means the development security as required under the Foreign Investment Law amounting to the lesser of: <ul style="list-style-type: none"> (1) [1.5% of the total cost of the Project; or] (2) US\$1,000,000.
“SIAC”	means Singapore International Arbitration Centre.
“Site”	The land used for the construction and operation of the Project as further detailed in schedule 2, part 3 of the Power Purchase Agreement.
“Tax”	means any central, local district, administrative, municipal or other lawful tax, levy, impost, duty or other charge of a similar nature (including any penalty or interest payable in connection with any failure to pay or delay in paying the same).
“Technical Dispute”	means a Dispute that relates to a technical, engineering, operational or accounting matter and is of a type susceptible to resolution by an expert in the relevant field, provided that any matter that this Implementation Agreement provides is to be determined by an expert shall be deemed to be a Dispute of this kind.
“Term”	The initial term of this Implementation Agreement specified in Clause 3, as it may be extended from

time to time in accordance with the provisions of this Agreement.

“Transmission System”

means the transmission and distribution (of any voltage) facilities owned and constructed by [Utility] through which the net electrical output of the Facility will be received and distributed by [Utility] to users of electricity.

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Part 2

Interpretation

1. In this Implementation Agreement:
 - 1.1 capitalised terms defined in Part 1 of Schedule 1 shall be used herein as defined therein;
 - 1.2 the headings are included for ease of reference only and shall be ignored in interpretation or construction of this Implementation Agreement;
 - 1.3 the singular imports the plural and vice versa where the context requires;
 - 1.4 all references to Clauses, Schedules (and Parts and Paragraphs), shall be construed as references to clauses of and schedules to (and parts of and paragraphs to Schedules of) this Implementation Agreement;
 - 1.5 the Schedules attached hereto are incorporated in and are intended to be a part of this Implementation Agreement; provided that, in the event of a conflict between the terms of any Schedule and the terms of the remainder of this Implementation Agreement, the terms of the remainder of this Implementation Agreement shall take precedence;
 - 1.6 the words “include” and “including” are to be construed without limitation;
 - 1.7 references to proceedings includes litigation, arbitration, and investigation;
 - 1.8 references to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
 - 1.9 references to performance of an obligation by a Party in “a timely manner” mean performance of that obligation so as to allow the other Party a reasonable time within which to perform its obligations under this Implementation Agreement and the Financing Plan, and, in particular, if the Facility is under construction or in operation, so as to avoid material delay to construction of the Facility or adverse interference with the Company’s ability to perform its obligations under the Power Purchase Agreement;
 - 1.10 unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
 - 1.11 in carrying out its duties and obligations hereunder, each Party shall have an implied obligation of good faith;
 - 1.12 where provision is made for the giving of any notice, certificate, determination, consent or approval by any person that notice, certificate, determination, election, consent or approval shall be in writing, and the words “notifies”, “certifies”, “determined”, “elects”, “consents” or “approved” shall be construed accordingly;
 - 1.13 words importing persons or Parties shall include corporations, partnerships, joint ventures, trusts, unincorporated organizations, a Relevant Authority or any other legal entity and all references to persons shall include their permitted successors and assigns;

- 1.14 words not otherwise defined in this Implementation Agreement shall have meanings as commonly used in the English language; and
- 1.15 the language of negotiation of this Agreement has been English, this Implementation Agreement is executed in English, and this English text shall prevail for the purposes of determining the intention of the Parties and in any construction of this Implementation Agreement.
2. This Implementation Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party. The Parties have agreed to the wording of this Implementation Agreement and none of the provisions of this Implementation Agreement shall be construed against one Party on the ground that such Party is the author of this Implementation Agreement or any part of it.

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SCHEDULE 2 CRITICAL CONSENTS

1. The Critical Consents are:
 - 1.1 approval of the Government of the competitive bidding procedure to procure the Project;
 - 1.2 award of the Project by the Government to the Company;
 - 1.3 letter of non-objection by [] on the award of the Project to the Company;
 - 1.4 execution of the Power Purchase Agreement by the Company and the procuring entity;
 - 1.5 [report from the Ministry to the National Assembly on the granting of the government guarantee to the Company;]
 - 1.6 [adoption of a legislative act by the National Assembly which shall allow the Government to provide a government guarantee and confirm the authority and the capacity of the Government to assume the financial obligations pursuant to the terms of this Implementation Agreement and the Power Purchase Agreement;]
 - 1.7 the grant to the Company of the Lease, and the grants of the rights of way and easements as required under Clause 7, including all necessary registrations, approvals or licenses to ensure the full validity of the Lease, and relevant rights of ways and easements; and
 - 1.8 the grant to the Company [and [●]], on terms wholly satisfactory to the Company, of the following Governmental Approvals:
 - 1.8.1 Establishment
 - (a) Investment license and Investment Incentives; and
 - (b) Registration of the Company;
 - 1.8.2 Tax
 - (a) Master list import exemption; and
 - (b) Fuel import duty exemption quota ;
 - 1.8.3 Ministry
 - (a) Permit for operating a electricity facility;
 - 1.8.4 [Energy Ministry]
 - (a) Generation Licence on such terms and conditions wholly acceptable to the Company;
 - 1.8.5 Construction
 - (a) Construction Permit for Facility;

- (b) Construction Permit for smaller works;
- (c) Tonle Sap water intakes;
- (d) Pontoon structure on river;
- (e) Street excavation and use license for water/fuel piping and electrical; and
- (f) Waste water and storm water discharge ;

1.8.6 Transportation

- (a) Off loading of fuel at Port;

1.8.7 Environment

- (a) “Agreement” with Ministry of Environment to regulate the Company’s compliance with environmental regulations in a form and substance satisfactory to the Company;
- (b) Site assessment approval;
- (c) Environmental Impact Assessment Report approval;
- (d) Exportation of hazardous waste;
- (e) Transportation of hazardous waste;
- (f) Discharge or transportation of wastewater; and
- (g) Investment of the treatment or incineration of hazardous waste; and

1.8.8 Immovable Property

- (a) Registration of title transfer (if applicable);
- (b) Registration of easements;
- (c) Registration of Lease ;
- (d) Registration of security interest in land;
- (e) Registration of security interest in improvements; and
- (f) Registration of security interest in easement.

**SCHEDULE 3
COMPANY CONSENTS**

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SCHEDULE 4 DISPUTE RESOLUTION

Index

- A. Notice of Dispute
- B. Resolution by Parties
- C. Technical Disputes
- D. Arbitration

Part 1

Notice of Dispute

- 1.1 In the event that any Dispute arises between the Parties, or this Implementation Agreement deems there to be a Dispute, the Party wishing to declare a Dispute shall deliver to the other Party a notice identifying the issue in Dispute.

Part 2

Resolution by Parties

- 2.1 Within 30 days of delivery of a notice of a Dispute, the Parties shall attempt in good faith to settle such Dispute by discussions among those representatives of each Party with the appropriate decision-making authority to resolve it.
- 2.2 In the event that the representatives referred to in Paragraph 2.1 are unable to reach agreement within 30 days, or such longer period as they may agree, then either Party may refer the matter to an expert in accordance with Part 3 or, if the Dispute is not a Technical Dispute, commence arbitration of the Dispute in accordance with Part 4.
- 2.3 The right to have Disputes determined by an expert or an arbitrator shall survive termination of this Implementation Agreement.

Part 3

Technical Disputes

- 3.1 In the event that the Parties are unable to resolve a Technical Dispute in accordance with Part 2, then any Party may refer the Technical Dispute to an expert for determination, in which case the provisions of Paragraphs 3.2 to 3.3 shall apply. In the event of any conflict between the terms of this Part 3 and the terms of the remainder of this Implementation Agreement other than Parts 1, 2 and 4, the terms of the remainder of this Implementation Agreement other than Parts 1, 2 and 4 shall take precedence.
- 3.2 The expert shall have demonstrated expertise in the area to which the Technical Dispute relates and shall not directly or indirectly be associated with either Party as agent, employee, consultant, contractor or otherwise. In the event that the Parties cannot agree within 10 days as to whether a Dispute falls within the definition of a Technical Dispute,

this Part 3 shall not be used to resolve the Dispute and the Parties shall proceed directly to arbitration under Part 4 to resolve the Dispute.

3.3 The Party initiating submission of a Technical Dispute to an expert shall provide the other Party with a notice stating that it is submitting the Technical Dispute to an expert and nominating the person it proposes to be the expert. The other Party shall, within 15 days of receiving such notice, notify the initiating Party as to whether the proposed expert is acceptable. If the non-initiating Party fails to respond or notifies the initiating Party that the proposed expert is not acceptable, either Party may request the [SIAC] to nominate an expert as quickly as possible. If the [SIAC] is unwilling or unable to appoint an expert, the Dispute shall not be referred to an expert and either Party may, by notice to the other Party, refer the Dispute to arbitration in accordance with Part 4. The expert shall be engaged on such reasonable terms as the expert shall accept. 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 engagement:

3.3.1 The expert shall:

- (a) give each of the Parties the opportunity of making oral and/or written representations to him on the matter in Dispute within 45 days of the referral of the Dispute to him;
- (b) give his decision within 30 days (or such longer period as may be decided by the expert but not exceeding 45 days) from the earlier of the cessation of the period specified in Paragraph 3.3.1(a) or the date that the expert is satisfied that it has received adequate representations from both Parties;
- (c) give written reasons for his decision;
- (d) determine the amount of his fees and the costs of referral to him in accordance with the terms of his engagement and which Party shall be responsible for such fees and costs; and
- (e) give copies of his decision and the reasons for his decision in writing to each of the Parties.

3.3.2 The Parties 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.

3.3.3 If the expert shall fail to give his decision pursuant to Paragraph 3.3.1 within the period specified in Paragraph 3.3.1(b), either Party may by notice to the other require that the Dispute is decided by reference to arbitration pursuant to Part 4, whereupon the expert shall be instructed not to consider the matter further.

3.3.4 The expert shall not act as arbitrator and shall decide the Dispute referred to him using his skill, experience and knowledge and with regard to such matters as are expressly specified in this Implementation Agreement to be considered by him and as the expert in his sole discretion considers appropriate. The decision of the expert pursuant to this Part 3 shall (subject to Paragraph 3.3.3) be final and binding on the Parties, save in respect of fraud or manifest error.

- 3.3.5 Unless the expert's decision is set aside for reasons specified in Paragraph 3.3.4, the Parties agree to be bound by, perform this Implementation Agreement in accordance with, and undertake to implement, as the case may be, the determination of the expert. If a Dispute concerning the expert's determination is submitted to arbitration in accordance with Part 4, the arbitrator shall be bound by the determination of the expert and the only issue for the arbitrator to determine shall be whether the Parties have complied with the determination of the expert.
- 3.3.6 In the event that the Parties do not agree to be bound by, perform this Implementation Agreement in accordance with, and undertake to implement, as the case may be, the determination of the expert in accordance with Paragraph 3.3.5, such non-compliance with the determination of the expert shall be referred to an arbitrator, in accordance with Part 4. The arbitrator shall be bound by the determination of the expert given in accordance with Paragraph 3.3.1, and the only issue for the arbitrator to determine shall be the Parties' compliance with the determination of the Expert.
- 3.3.7 In the event that the expert fails or is unable to act in relation to the Dispute for a continuous period of one month or (being a firm or partnership) is dissolved or 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 shall agree on a substitute expert. The substitute expert shall be selected in accordance with the procedure specified in this Paragraph 3.3.

Part 4

Arbitration

- 4.1 Either Party may refer, by notice to the other Party, any Dispute that is not resolved pursuant to Part 2 or is not required by this Implementation Agreement to be determined by an expert under Part 3 to be finally and bindingly determined by an arbitrator in accordance with the [SIAC Rules], as amended from time to time. The arbitrator shall possess skills in the interpretation, negotiation or implementation of power purchase and supply contracts or financial and economic analysis (as appropriate) and shall not, directly or indirectly, be associated with either Party as officer, employee, consultant, contractor or otherwise. The Parties will jointly appoint an arbitrator within 20 days of the referral of the Dispute to arbitration. If an arbitrator is not appointed within 20 days of such referral, either Party may request the [SIAC] to appoint an arbitrator as quickly as possible (and the [SIAC] shall be the appointing authority under the [SIAC Rules]). The arbitrator shall be engaged on such reasonable terms as the arbitrator shall accept. The Parties undertake to implement the arbitration award. The arbitration shall be conducted in Singapore (or in such other nearby location as may be agreed by the Parties which is a contracting state under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the language of the arbitration shall be English.
- 4.2 In the event that the arbitrator fails or is unable to act in relation to the Dispute for a continuous period of one month or (being a firm or partnership) is dissolved or 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 shall agree on a substitute arbitrator. The substitute arbitrator shall be selected in accordance with the procedure specified in Paragraph 4.1.

- 4.3 The arbitrator shall apportion the costs of the arbitration including incidental expenses between the Parties as he shall think 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 arbitrator's decision.
- 4.4 The 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 may be entered in any court in [] or in any other applicable jurisdiction having jurisdiction for its enforcement. Neither Party shall have any right to commence or maintain any suit or legal proceeding concerning a Dispute in any court, whether in [] or elsewhere, until the Dispute has been determined in accordance with the arbitration procedure provided for in this Part 4 and then only to enforce or facilitate the execution of the award rendered in such arbitration.
- 4.5 During the course of any arbitration hereunder:
- 4.5.1 the Parties shall to the maximum extent possible continue to perform their respective obligations under this Implementation Agreement; and
- 4.5.2 neither Party shall exercise any other remedies arising under this Implementation Agreement with respect to the matters in Dispute.
- 4.6 The arbitrator may consolidate an arbitration arising out of or relating to this Implementation Agreement with any arbitration arising out of or relating to one or more of the Project Agreements or Financing Agreements that provides for arbitration in accordance with the [SIAC Rules], as amended from time to time, if the subject matter of the disputes arises out of or relates to essentially the same facts or transactions. Such consolidated arbitration shall be determined by the arbitrator appointed for the arbitration proceeding that was commenced first in time.
- 4.7 Except as otherwise provided in this Part 4, the rights of the Parties to proceed with dispute resolution under this Part 4 shall be independent of their rights or the rights of related entities to proceed with dispute resolution under any of the other Project Agreements or Financing Agreements.

MODEL IMPLEMENTATION AGREEMENT

between

[Ministry] on behalf of the [Government]

and

[Project Company]

[Date]

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