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THE GOVERNMENT OF []

- AND -

[COMPANY]

GOVERNMENT SUPPORT AGREEMENT

RELATING TO

THE EMERGENCY POWER GENERATION COMPLEX AT
[LOCATION]

[DATE]

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ANNEX A SPECIFIED CONSENTS

THIS GOVERNMENT SUPPORT AGREEMENT (this “Agreement”) is made at [LOCATION] this [DATE] by and between:

- (1) **THE GOVERNMENT OF []** (“Government”) represented by the Minister of [] (“Minister”); and
- (2) [], a company duly incorporated under Applicable Laws and whose registered office is located at [ADDRESS] (the “Company”).

Both the Government and the Company are herein referred to individually as a “Party” and collectively as the “Parties”.

PREAMBLE

WHEREAS:

- A. The Government desires and intends to rely on the private sector to design, install, own and operate a [] MW temporary thermal power generation plant in [LOCATION] for the purpose of meeting part of the country’s electricity supply deficit;
- B. The Company desires and intends to build, own, operate and maintain the temporary thermal power generation plant;
- C. The Utility (as defined below) desires and intends to purchase the capacity and energy generated by the plant pursuant to the Power Purchase Agreement (as defined below);
- D. To promote the implementation of the Project (as defined below) and in exchange for the promises and agreements of the Company pursuant to this Agreement, the Government agrees to support the Project and undertake certain obligations as provided in this Agreement.

NOW THEREFORE in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained and intending to be legally bound, the Parties agree as follows:

ARTICLE I DEFINITIONS; INTERPRETATION

Section 1.1. Definitions

Whenever the following terms appear in this Agreement or the Annexes hereto, whether in the singular or in the plural, present, future or past tense, they shall have the meanings stated below unless the context otherwise requires:

“Act” means [RELEVANT LEGISLATION], as amended from time to time.

“Agreement” means this Government Support Agreement, and all Annexes thereto, as may be amended from time to time.

“Applicable Laws” means the national, provincial and local laws of [COUNTRY], and all orders, rules, regulations, executive orders, decrees, policies, judicial decisions, notifications or other similar directives made pursuant thereto, as such laws, orders, rules, regulations, decrees, policies, judicial decisions and notifications or other similar directives may be amended from time to time.

“Business Day” means a Day on which business by and between banks is legally permitted to be carried on in [LOCATION].

“Capacity Payment” has the meaning ascribed thereto in the Power Purchase Agreement.

“Change in Law” means:

- (i) the adoption, promulgation, repeal, modification or reinterpretation after the date of this Agreement by any Public Sector Entity of any Applicable Law (including a final, binding and non-appealable decision of any Public Sector Entity);
- (ii) the imposition by a Relevant Authority of any material term or condition in connection with the issuance, renewal, extension, replacement or modification of any Consent after the date of this Agreement; or
- (iii) the imposition by a Relevant Authority of any additional Consent that in the case of each of clause (i) or (ii) above establishes either a material increase in cost or decrease in revenue as a consequence of any requirement for any aspect of the Project that is materially more restrictive than the most restrictive requirements (a) in effect as of the date of this Agreement, (b) specified in any applications, or other documents filed in connection with such applications, for any Consent filed by the Company on or before the Commercial Operations Date, and (c) agreed to by the Company in this Agreement or the Power Purchase Agreement.

“Coercive Practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of this Agreement.

“Collusive Practice” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Utility or the Government, designed to establish bid prices at artificial, noncompetitive levels.

“Commercial Operations Date” has the meaning ascribed thereto in the Power Purchase Agreement.

“Company” has the meaning ascribed thereto in the preamble.

“Company Event of Default” means any event of default as provided for under Section 10.1.

“Complex” has the meaning ascribed thereto in the Power Purchase Agreement.

“Consents” means all consents, approvals, authorizations, notifications, concessions, acknowledgements, licenses, permits, decisions and similar items required to be obtained by the Company from any Relevant Authority for the Company or by the Company for the undertaking of the Project, including the Specified Consents.

“Consumables” means items necessary for the efficient operation of the Complex which must be replaced on a regular or intermittent basis including, but not limited to, fuel filters, air filters, lubricating oil and oil filters.

“Contractor” has the meaning ascribed thereto in the Power Purchase Agreement.

“Corrupt Practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in execution of this Agreement.

“Day” has the meaning ascribed thereto in the Power Purchase Agreement.

“Dollar” or “US\$” has the meaning ascribed thereto in the Power Purchase Agreement.

“Effectiveness of Agreement” means the occurrence of all steps necessary for the commencement of the term of this Agreement pursuant to Section 2.1, including execution of this Agreement and the Power Purchase Agreement and the fulfillment or waiver of all conditions precedent set forth in the Power Purchase Agreement.

“Energy Payment” has the meaning ascribed thereto in the Power Purchase Agreement.

“Energy Price Fuel Component” has the meaning ascribed thereto in Schedule 7 of the Power Purchase Agreement.

“Execution Date” means the date of signature of the Agreement.

“Force Majeure” has the meaning ascribed thereto in Section 11.1.

“Force Majeure - Natural” has the meaning ascribed thereto in Section 11.1.1.

“Force Majeure - Other” has the meaning ascribed thereto in Section 11.1.3.

“Force Majeure - Political” has the meaning ascribed thereto in Section 11.1.2.

“Foreign Political Events” has the meaning ascribed thereto in Section 11.1.2(ii).

“Fraudulent Practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of this Agreement.

“Government” means the Government of [COUNTRY].

“Government Event of Default” means any event of default as provided for under Section 10.2.

“Lapse of Consent” means any Consent (i) ceasing to remain in full force and effect and not being renewed or replaced within the time period prescribed by the applicable Laws of [COUNTRY] or (ii) not being issued upon application having been properly and timely made and diligently pursued or (iii) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Party’s ability to perform its obligations under this Agreement or the Power Purchase Agreement, in each of the above instances despite such Party’s compliance with the applicable procedural and substantive requirements as applied in a non-discriminatory manner.

“License” means the license issued by the Utility to the Company for the generation and supply of electricity from the Complex.

“Local Political Events” has the meaning ascribed thereto in Section 11.1.2(i).

“Minister” has the meaning ascribed thereto in the preamble.

“Month” has the meaning ascribed thereto in the Power Purchase Agreement.

“Notice of Default” has the meaning ascribed thereto in Section 10.3.1.

“Notice of Intent to Terminate” has the meaning ascribed thereto in Section 10.3.5.

“Obstructive Practice” means any of (i) the act of deliberately destroying, falsifying, altering or concealing evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation, into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice, or Collusive Practice; (ii) the act of threatening, harassing, or intimidating any Party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation, or

(iii) an act intended to materially impede the exercise of the inspection and audit rights provided for in Section 16.11 of this Agreement.

“Power Purchase Agreement” means the Power Purchase Agreement dated [DATE], entered into between the Utility and the Company in relation to the Project.

“Prescribed Fee” means, with respect to any Consent, the charge or fee, if any, prescribed by Applicable Laws.

“Prescribed Form” means, with respect to any Consent, the form, if any, (including all information and details) prescribed by Applicable Laws for the application for or renewal of such Consent.

“Project” has the meaning ascribed thereto in the Power Purchase Agreement.

“Public Sector Entity” means (i) the Government, any local governmental authority, or any subdivision of either with jurisdiction over the Company, the Project, or any part thereof, or (ii) any department, authority, instrumentality, agency, or judicial body of the Government or any such local governmental authority, (iii) courts and tribunals in [COUNTRY], and (iv) any commission or independent regulatory agency or body having jurisdiction over the Company, the Project or any part thereof.

“Relevant Authority” means the Government and any local governmental authority with jurisdiction over the Company, the Complex or any part thereof, courts or tribunals in [COUNTRY] and any department, authority, instrumentality, agency or judicial body of the Government, or any local governmental authority including any department, authority, instrumentality or agency from which a Consent is to be obtained and any authority, body or other person having jurisdiction under Applicable Laws with respect to the Company, the Complex, or any aspect of the Project.

“Local Currency” means the currency that is the legal tender of the [COUNTRY].

“Site” has the meaning ascribed thereto in the Power Purchase Agreement.

“Specified Consents” means the Consents identified in Annex A.

“Utility” means [] [established pursuant to the Act].

[“World Bank” has the meaning ascribed thereto in the Power Purchase Agreement.]¹

“Year” has the meaning ascribed thereto in the Power Purchase Agreement.

Section 1.2. Rules of Interpretation.

In this Agreement:

¹ where World Bank involved

- (i) the headings and paragraph numbering are for convenience only and shall not be considered in construing this Agreement;
- (ii) the singular includes the plural and vice versa;
- (iii) the Annexes (and any Schedules or tables thereto) to this Agreement form part of this Agreement, and capitalized terms used in the Annexes (and if any Schedules thereto) that are not defined therein shall have the meanings given to them in Section 1.1;
- (iv) references to Articles, Sections and Annexes in the body of this Agreement are, unless otherwise specified, references to Articles of, Sections of, and Annexes to, this Agreement;
- (v) references to any agreement, enactment, ordinance or regulation includes any amendment thereof or any replacement in whole or in part;
- (vi) references to a Party shall be construed so as to include that Party's assigns or transferees permitted in accordance with the terms of this Agreement and its successors in title;
- (vii) 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;
- (viii) words importing any gender include the other gender; and
- (ix) the words "include," "includes" and "including" are not limiting; and shall be construed without limitation.

ARTICLE II TERM OF THE AGREEMENT

Section 2.1. Initial Term

The initial term of this Agreement shall commence on the later to occur of: (i) the date that the last of this Agreement and the Power Purchase Agreement is executed and delivered by each of the parties thereto, (ii) the date of the “Effectiveness of Agreement” (as defined in the Power Purchase Agreement) in relation to the Power Purchase Agreement. Unless sooner terminated pursuant to the provisions of this Agreement, this Agreement shall terminate on the later of [twelve (12)]² months from the Commercial Operations Date and the date that the Parties have fulfilled their obligations hereunder. The termination of this Agreement shall be without prejudice to all rights and obligations of the Parties accrued under this Agreement prior to such termination.

Section 2.2. Renewal Term

If the Power Purchase Agreement is extended beyond a term of [twelve (12)]³ months pursuant to the first sentence of Section 3.2 of the Power Purchase Agreement, then this Agreement shall be correspondingly extended on the same terms and conditions as are found herein. This Agreement may thereafter be extended for an additional period on terms mutually agreeable to the Company and the Government.

² PPAs for mobile plant are typically short term – 1 or 2 years in duration

³ length of renewal period and whether renewal period is permitted will be subject to terms of original procurement document/ applicable procurement laws

ARTICLE III IMPLEMENTATION OF THE PROJECT

Section 3.1. Compliance with Laws and Agreements

The Company shall undertake every aspect of the Project in accordance with this Agreement, the Power Purchase Agreement, the Consents and all Applicable Laws.

Section 3.2. Accounting

The Company shall maintain complete and accurate records in [Dollars]⁴ (and, to the extent required by Applicable Laws or by the Board of Directors of the Company, in local currency, including the exchange rate between the two currencies) accounting for all transactions relating to any aspect of the Project, which records shall be subject to inspection by the Government on reasonable notice.

Section 3.3. Environmental Protection

The Company shall:

- (i) if required under Applicable Laws, conduct or cause to be conducted an environmental impact study in respect of the Project in accordance with Applicable Laws;
- (ii) at all times comply with Applicable Laws and the applicable requirements of the Power Purchase Agreement regarding environmental protection, health and safety, and shall take additional steps as may be reasonably necessary to protect the environment and promote safety;
- (iii) promptly notify the Government of any environmental accidents or emergencies and report periodically on remedial programs and emergency response plans for environmental impact from the operations of the Complex; and
- (iv) ensure proper handling of fuel and other inputs and guard against leakages and other environmental hazards.

Section 3.4. Sale of Fuel

The Company shall ensure that no fuel purchased for the Project by the Company is resold into the [COUNTRY] market or any other market in the neighboring countries.

⁴ possible for consideration to be entirely in local currency

Section 3.5. Transportation

The Company shall make arrangements for the delivery and receipt at a port, airport, or other facility in [COUNTRY] of equipment and materials necessary to perform its obligations under the Power Purchase Agreement, and make arrangements for transport to the Site of all such equipment and materials from the port, airport or other facility. The Company shall complete these activities in compliance with the terms of this Agreement and the Power Purchase Agreement.

SAMPLE

ARTICLE IV CONSENTS

Section 4.1. Applications by the Company for Consents

The Company shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Consents in the Prescribed Form and with the Prescribed Fee to the appropriate Relevant Authority and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the applicable Laws of [COUNTRY] applied in a non-discriminatory manner.

Section 4.2. Status of Consent Applications and Lapses of Consent

The Company shall provide to the Government and the Utility, one Week prior to the prior to the Commercial Operations Date, a report setting out the status of all Consent applications. Thereafter, the Company shall in the event of any Lapse of Consent, submit a report to the Government and the Utility within [three (3)] Days after becoming aware of the Lapse of Consent, which report shall set out the steps that the Company proposes to take to remedy the Lapse of Consent.

Section 4.3. Government Assistance

The Government shall:

- (i) subject to the Company's timely submission of application for Specified Consents, use all reasonable efforts to expedite or cause to be expedited consideration of the applications and the timely issuance or re-issuance of the Specified Consents by the relevant authorities. Any request for support under this Section 4.3 shall be accompanied by copies of the application for the Specified Consent, any notice that the issuance or re-issuance of the Specified Consent was denied or deferred and a statement of the Company efforts in obtaining the issuance or re-issuance of the Specified Consent to date. By agreeing to support the Company's efforts to obtain the Specified Consents, the Government does not relieve in any way, the Company of its obligations or potential liability under this or any other Agreement or under Applicable Laws, and
- (ii) facilitate the procurement of any other Consent in the event that the Company is required to obtain further Consents other than the Specified Consents.

ARTICLE V
GOVERNMENT SUPPORT TO THE PROJECT

Section 5.1. Government Support Obligations

The Government shall, upon a reasonable request by the Company, use its good offices to support the Company's performance of its obligations to undertake the Project. By agreeing to use its good offices to support the Company's efforts, the Government does not relieve in any way the Company of its obligations or potential liability under this or any other agreement.

Section 5.2. Financial Assistance to the Utility

With the assistance of funding provided by the World Bank in regard to the obligations of the Utility to make Capacity Payments and Energy Payments (save for the Energy Price Fuel Component), the Government shall provide to the Utility the funds for the Capacity Payments and the Energy Payments, to the extent that the Utility may have insufficient funds available for those purposes.

Section 5.3. Import/Export Duty

5.3.1 The Government shall waive customs import and re-export duties and taxes on the power plant, equipment, fittings and accessories, spare parts, tools, Consumables and other items required by the Company for the purposes of the Project, other than duties on the fuel consumed (which latter duties are included in the Energy Price Fuel Component formula in Schedule 7 of the Power Purchase Agreement.

5.3.2 This Section 5.3 shall survive for [six Months] from the termination of this Agreement for the purposes of re-export of items imported during the Term of this Agreement.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES

Section 6.1. Company Representations and Warranties.

The Company hereby represents and warrants to the Government that:

- (i) the Company is duly incorporated, and validly existing, in accordance with the laws of [];
- (ii) the Company has full power to carry on its business and to enter into, legally bind itself by, and perform its obligations under, this Agreement;
- (iii) this Agreement has been duly authorized, executed, and delivered by the Company and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to general principles of equity;
- (iv) the execution, delivery, and performance of this Agreement does not, and will not, constitute a violation of (a) any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to the Company, its assets or its businesses, or (b) the Company's Articles of Association or other organic documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
- (v) there are no outstanding judgments against the Company, and, to the best knowledge of the Company, no action, claim, suit or proceeding is pending or threatened against the Company before any court, governmental authority or arbitrator of competent jurisdiction that could reasonably be expected to affect materially and adversely the financial condition or operations of the Company or the ability of the Company to perform its obligations under this Agreement or any other agreement relating to any aspect of the Project or which purports to affect the legality, validity or enforceability of this Agreement;
- (vi) the Company is not in default under any agreement to which it is a party or by which it or its property may be bound, nor in any default of any technical or financial obligation, which could have a material adverse effect on the ability of the Company to perform its obligations under this Agreement; and
- (vii) no information given by the Company in relation to this Agreement contains any misstatement of fact or omits to state a fact which would be materially adverse to the enforcement of the rights and remedies of the Government or which would be necessary to make any statement,

representation or warranty contained herein or therein true and correct in all material respects.

Section 6.2. Government Representations and Warranties

The Government hereby represents and warrants to the Company that:

- (i) the Minister has full power and authority to execute and deliver this Agreement on behalf of the Government. The Government has full power and authority to perform its obligations hereunder. The execution, delivery and performance of this Agreement by the Government (a) has been duly authorized by all requisite legal action on the part of the Government, and no other proceedings on the part of the Government or any other person are necessary for such authorization, and (b) will not violate Applicable Laws or any applicable order of any Relevant Authority or 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 Government's ability to perform its obligations hereunder;
- (ii) this 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; and
- (iii) no filing or registration with, no notice to and no permit, authorization, consent or approval of any Relevant Authority is required for the execution or delivery of performance of this Agreement by the Government, or of its obligations hereunder, except for the authorizations and approvals that have been obtained.

ARTICLE VII ASSIGNMENT

Section 7.1. Assignment

No assignment or transfer, as security or otherwise, by a Party of the Party's rights or obligations under this Agreement shall be effective without the prior written consent of the other Party.

SAMPLE

ARTICLE VIII TAXATION

Section 8.1. Tax

The Company shall be subject to all applicable taxes, fees and charges under Applicable Laws except those specifically provided for under this Agreement.

Section 8.2. Change in Tax

Notwithstanding anything contained in this Article VIII, the assessment or imposition by the Government of any tax or withholding tax on the Company, or a tax on supplies by the Company, or on dividends on the Company shares, after the Execution Date, provided that such a tax shall be assessable, imposed or applied generally to all companies operating in [COUNTRY] in accordance with Applicable Laws, shall not constitute a breach or default of the Government under this Agreement.

ARTICLE IX CHANGE IN LAW

Section 9.1. Change in Law

Subject to Section 9.2, the Government shall reimburse the Company for the costs incurred by the Company as a result of complying with any Change in Law that has a material adverse effect on the Project, provided that the Company demonstrates the costs of complying with the Change in Law; provided, however, that the Company shall forfeit any such claims if the Company fails to claim any amounts payable under this Section 9.1 within three (3) Months of the date when the Company incurred such costs.

Section 9.2. Change in Tax Excluded

Notwithstanding Section 9.1, the Government shall have no obligation to reimburse the Company for any costs incurred by the Company as a result of a change in tax as described in Section 8.2.

ARTICLE X TERMINATION

Section 10.1. Company Events of Default

Each of the following events shall be an event of default by the Company (each a “Company Event of Default”) which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Government to terminate this Agreement pursuant to Section 10.3; provided, however, that no such event shall be a Company Event of Default if it results substantially from a breach by the Government of this Agreement or occurs as a result of a Force Majeure for the period provided pursuant to Section 11.1:

- (i) any breach by the Company of its obligations under this Agreement that is not remedied within [sixty (60)] Days after the notice from the Government giving reasonable details of the breach by the Company and demanding remedy thereof; provided, however, that for breaches requiring more than [sixty (60)] Days to cure, the Company may have such additional time to cure any such breach under this Agreement as it estimates may be necessary to cure such if, prior to the end of such [sixty (60)] Day period, the Company provides satisfactory evidence to the Government that (a) it has commenced and is diligently pursuing a cure and (b) more than [sixty (60)] Days is reasonably required to effectuate such cure together with good faith estimates of the amount of time needed to effectuate the cure;
- (ii) the License is revoked pursuant to the Act due to an omission or violation thereunder by the Company, its agents or its employees, and all appeals in relation thereto have been exhausted;
- (iii) the Power Purchase Agreement is terminated by the Utility as a consequence of a “Company Event of Default” (as defined in the Power Purchase Agreement) under the Power Purchase Agreement;
- (iv) the assignment or transfer of the Company’s rights or obligations in the Project without obtaining the prior written consent of the Government, or the transfer, conveyance, loss, or relinquishment of the Company’s right to own and/or operate the Complex or any material part thereof or to occupy the Site without the prior written approval of the Government;
- (v) except for the purpose of amalgamation or reconstruction (provided that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement and further provided that such amalgamation has been agreed to by the Government), the occurrence of any of the following events: (a) the passing of a resolution by the shareholders of the Company for the winding up of the Company; (b) the

voluntary filing by the Company of a petition of bankruptcy, moratorium, or other similar relief; (c) the appointment of a provisional liquidator in a proceeding for the winding up of the Company after notice to the Company and due hearing, which appointment has not been set aside or stayed within [ninety (90)] Days of such appointment; (d) the making by a court with jurisdiction over the Company of an order winding up the Company that is not stayed or reversed by a court of competent authority within [ninety (90)] Days;

- (vi) any statement, representation, or warranty by the Company in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made, and such failure or incorrect statement, representation, or warranty having a material and adverse effect on the Company's ability to perform its obligations under this Agreement or on the obligations or liabilities of the Government under this Agreement; or
- (vii) any default by the Company in the making of any payment or payments required to be made by it under this Agreement or the Power Purchase Agreement, as the case may be, on the due date specified in such agreement, that continues unpaid for [thirty (30)] Days.

Section 10.2. Government Event of Default

Each of the following events shall be an event of default by the Government (each a "Government Event of Default"), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Company to terminate this Agreement pursuant to Section 10.3; provided, however, that no such event shall be a Government Event of Default if it results from a breach by the Company of this Agreement, the License, the Power Purchase Agreement, or the Consents or occurs as a result of a Force Majeure for the period provided pursuant to Section 11.1:

- (i) any material breach by the Government of this Agreement that is not remedied within [sixty (60)] Days after notice from the Company giving reasonable details of the breach of the Government and demanding remedy thereof; provided, however, that for material breaches requiring more than [sixty (60)] Days to cure, the Government may have such additional time to cure any such material breach under this Agreement as it necessitates may be necessary to cure such breach if, prior to the end of such [sixty (60)] Day period, the Government provides satisfactory evidence to the Company that (a) it has commenced and is diligently pursuing a cure and (b) more than [sixty (60)] Days is reasonably required to effectuate such cure and provides a good faith estimate of the amount of time needed to effectuate the cure;

- (ii) the Power Purchase Agreement is terminated by the Company as a consequence of a “Utility Event of Default” (as defined in the Power Purchase Agreement) under the Power Purchase Agreement; or
- (iii) the dissolution, pursuant to law of the Utility, except for an amalgamation, reorganization, reconstruction, or further privatization of the Utility, where the Government, without interruption, arranges to provide financial assistance to the succeeding entity or entities on substantially the same terms and conditions as are applicable to the Utility.

Section 10.3. Notices and Termination

- 10.3.1 Upon the occurrence of a Government Event of Default or a Company Event of Default, as the case may be, that is not cured within the applicable period for cure, the non-defaulting Party may, at its option, initiate termination of this Agreement by delivering a notice of the occurrence of a Company Event of Default or Government Event of Default (a “Notice of Default”).
- 10.3.2 The Notice of Default shall specify in reasonable detail the Company Event of Default or the Government Event of Default, as the case may be, giving rise to such notice.
- 10.3.3 Following the delivery of a Notice of Default, the Party in default may continue to undertake efforts to cure the default for a period (commencing on the delivery of such notice) of [ten (10)] Days (or such longer period as the Parties may mutually agree), and if the default is cured at any time prior to [ten (10)] Days (or such longer rectification period as the Parties mutually agree) from the delivery of the Notice of Default, then the non-defaulting party shall have no right to terminate this Agreement in respect of such cured default.
- 10.3.4 In each case from the date the relevant Notice of Default is deemed to have been delivered pursuant to Section 15.2, the Party in default shall furnish to the non-defaulting Party, during any cure period, weekly reports on its progress in curing the Government Event of Default or the Company Event of Default.
- 10.3.5 Upon expiration of the period, if any, allowed to cure the Company Event of Default or the Government Event of Default, as the case may be, and unless the Parties shall have otherwise agreed or unless the Company Event of Default or the Government Event of Default, as the case may be, giving rise to the Notice of Default shall have been remedied, the Party having given the Notice of Default may terminate this Agreement by delivering to the other Party a termination notice (“Notice of Intent to Terminate”) of its intent to terminate this Agreement and specifying in reasonable detail the Company Event of Default or Government Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate, and this Agreement shall terminate.

10.3.6 The Parties shall continue to perform their respective obligations under this Agreement pending the final resolution of any dispute raised by the receiving Party of a Notice of Default or a Notice of Intent to Terminate, provided that the notice of dispute has been delivered to the Party claiming the occurrence of Government Event of Default or the Company Event of Default, as the case may be, before the end of the relevant cure period.

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ARTICLE XI FORCE MAJEURE

Section 11.1. Meaning of Force Majeure

In this Agreement, “Force Majeure” means any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party which renders impossible the performance by that Party of its obligations or the enjoyment by that Party of its rights under or pursuant to this Agreement; provided, however, 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, it being understood and agreed that reasonable care includes acts and activities to protect the Complex from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Without limitation to the generality of the foregoing, “Force Majeure” shall include the following events and circumstances to the extent that they satisfy the above requirements:

11.1.1 natural events (“Force Majeure - Natural”), including:

- (i) acts of God; (including lightning, fire, earthquake, flood, storm, hurricane, cyclone, typhoon, tidal wave and tornado);
- (ii) epidemic or plague;
- (iii) explosion or chemical contamination (other than resulting from an event or circumstance described in Section 11.1.2(i)(a), in which case it shall be a Local Political Event);

11.1.2 the following political events or circumstances (“Force Majeure - Political”):

- (i) any of the following events or circumstances that occurs inside or directly involves [COUNTRY] (“Local Political Events”), including:
 - (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
 - (b) nationwide strikes, works to rule or go-slows that extend beyond the Complex or are widespread or nationwide, or that are of a political nature, such as, by way of example and not limitation, labor actions associated with or directed against a [COUNTRY] political party, or those that are directed against the Company as a part of a broader pattern of labor actions against companies or facilities with foreign ownership or management;

- (c) radioactive contamination or ionizing radiation originating from a source in [COUNTRY] or resulting from another Local Political Event;
 - (d) any Lapse of Consent that shall have existed for thirty (30) or more consecutive Days;
 - (ii) any of the following events or circumstances that occurs outside [COUNTRY] and does not directly involve [COUNTRY] (“Foreign Political Events”) including:
 - (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;
 - (b) strikes, works to rule or go-slows that are widespread or nationwide;
 - (c) radioactive contamination or ionizing radiation originating from a source outside [COUNTRY] and not falling within Section 11.1.2(i)(c); and
- 11.1.3 other events beyond the reasonable control of the affected Party (“Force Majeure - Other”), including:
- (i) any Lapse of Consent that shall have existed for less than [thirty (30)] consecutive Days; and
 - (ii) any strike, work-to-rule, go-slow, or analogous labor action that is not politically motivated and is not widespread or nationwide.
- 11.1.4 Force Majeure shall not include:
- (i) lack of funds due to any commercial, economic or financial reason such as, but not limited to, a Party’s inability to make a profit or achieve a satisfactory rate of return due to the provisions of this Agreement or changes in market conditions (although the inability to use available funds, due to any reason set out above, shall be regarded as Force Majeure);
 - (ii) late delivery of machinery or other materials or a delay in the performance by any supplier, including a supplier of the fuel to be used by the Complex, except where such late delivery or delay is itself attributable to Force Majeure;
 - (iii) normal wear and tear or random flaws in materials and equipment or breakdowns in equipment; or

- (iv) hazards, including but not limited to the growth of trees, which can be reasonably anticipated in normal utility operations and planned for as part of prudent utility design, operations and maintenance activities.

Section 11.2. Notification and Obligation to Remedy.

- 11.2.1 In the event of the occurrence of a Force Majeure that prevents a Party from performing its obligations hereunder (other than an obligation to pay money), such Party shall: (i) notify as soon as reasonably practicable (but in any event with forty-eight (48) hours) the other Party in writing of such Force Majeure; (ii) not be entitled to suspend performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure; (iii) use all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable; (iv) give the other Party a second notice, describing the Force Majeure(s) in reasonable detail and, to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the initial notice of the occurrence of the Force Majeure(s) is given by the affected Party; (v) keep such other Party apprised of such efforts on a continuous basis; and (vi) provide written notice of the resumption of performance hereunder. Notwithstanding the occurrence of Force Majeure, the Parties shall perform their obligations under this Agreement to the extent the performance of such obligations is not impeded by the Force Majeure.
- 11.2.2 Failure by the affected Party to have given written notice of Force Majeure to the other Party within the forty-eight (48) hour period required by Section 11.2.1 shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case the affected Party shall not be excused pursuant to Section 11.3.1 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If such notice is given within the forty-eight (48) hour period required by Section 11.2.1, the affected Party shall be excused for such failure or delay pursuant to Section 11.3.1 from the date of commencement of the relevant Force Majeure.

Section 11.3. Consequences of Force Majeure

- 11.3.1 Neither Party shall be responsible or liable for, or deemed in breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement which it cannot perform due solely to one or more Force Majeure or its or their effects or by any combination thereof, and the periods allowed for the performance by the Parties of such obligation(s) shall be extended on a Day-for-Day basis for so long as one or more Force Majeure continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Agreement; provided, however, that

no relief shall be granted to the Party claiming Force Majeure pursuant to this Section 11.3 to the extent that such failure or delay would have nevertheless; been experienced by that Party had such Force Majeure not occurred; and provided, further, that the Party not claiming Force Majeure may immediately terminate this Agreement without further obligation if Force Majeure delays a Party's performance for a period greater than fifteen (15) Days prior to the Commercial Operations Date or (ii) two (2) consecutive Months after the Commercial Operations Date.

SAMPLE

ARTICLE XII INSURANCE

Section 12.1. Insurance

The Company shall obtain and maintain insurance from financially strong and internationally reputable insurance companies in accordance with Article XIII of the Power Purchase Agreement.

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ARTICLE XIII LIMITATION OF LIABILITY AND INDEMNIFICATION

Section 13.1. Limitation of Liability

Except as specifically provided under this Agreement, neither Party shall be liable to the other in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive, exemplary damages; provided, however, that this provision is not intended to constitute a waiver of any right of either Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

Section 13.2. Indemnification

13.2.1 The Government shall indemnify the Company against and hold the Company harmless from any and all losses incurred, suffered, sustained or required to be paid directly or indirectly, by or sought to be imposed upon the Company arising out of gross negligence or intentional act or omission by the Government in connection with this Agreement; provided, however, that, notwithstanding the foregoing, indemnification shall not be required to the extent that a Party claiming indemnification receives indemnification or reimbursement or recovery (in full or in part) from any other source (including any policy of insurance).

13.2.2 The Company shall indemnify the Government against and hold the Government harmless from any and all losses incurred, suffered, sustained or required to be paid, directly or indirectly, by or sought to be imposed upon the Government arising out of gross negligence or intentional act or omission by the Company in connection with this Agreement; provided, however, that, notwithstanding the foregoing, indemnification shall not be required to the extent that a Party claiming indemnification receives indemnification or reimbursement or recovery (in full or in part) from any other source (including any policy of insurance).

Section 13.3. No Indemnification for Fines and Penalties

Any fines or other penalties incurred by the Company for non-compliance with Applicable Laws or other governmental directions issued pursuant thereto and in accordance therewith or the Consents shall be the sole responsibility of the Company.

Section 13.4. Double Jeopardy under Power Purchase Agreement

13.4.1 Except for disputes or breaches related to Section 4.1 (License), and Article XIII (Insurance), Article XVI (Taxes), and Article XVII (Defaults and Termination) of the Power Purchase Agreement, the settlement or waiver in writing by the Utility of any dispute or breach under the Power Purchase Agreement shall be binding on the Government with respect to an issue or claim, as the case may be, based on the same facts or acts or omissions by the Company. Settlement or

waiver of any dispute or breach related to Section 4.1 (License), and Article XIII (Insurance), Article XVI (Taxes), and Article XVII (Defaults and Termination) of the Power Purchase Agreement shall be effective only if agreed to, in writing, by both the Utility and the Government.

- 13.4.2 Notwithstanding any other provision in this Agreement to the contrary, the Utility shall be responsible in the first instance for pursuing any claim against the Company based upon a failure of the Company to satisfy its obligations under the Power Purchase Agreement. The Government shall not bring (or, other than through the Utility, cause any proceedings to be brought) against the Company for any breach of its obligations under Article III and Section 3.5 and Section 4.1 (to the extent such Articles and Sections relate to substantially similar obligations of the Company under the Power Purchase Agreement) or Article VII of this Agreement, if the Utility has fully pursued, or is then pursuing, a claim or claims against the Company based upon an alleged breach of the Power Purchase Agreement. A final, non-appealable order issued in a proceeding initiated by the Utility, and based upon a claim of a breach of the Power Purchase Agreement, shall be without prejudice to any proceedings against the Company that the Government could otherwise bring for breach by the Company of substantially the same obligations under this Agreement. Nothing in this Section 13.4 shall prevent the Government and the Utility from separately initiating proceedings to terminate this Agreement and the Power Purchase Agreement, respectively, pursuant to Article X of this Agreement and Article XVII of the Power Purchase Agreement.

ARTICLE XIV RESOLUTION OF DISPUTES

Section 14.1. Amicable Settlement

The Parties agree that, if any dispute or difference of any kind whatsoever concerning the implementation or interpretation of the provisions of this Agreement or the breach, termination or invalidity thereof shall arise between the Parties, the Parties shall attempt in good faith to settle such dispute in the first instance within fifteen (15) Days by mutual discussions between the Parties.

Section 14.2. Referral to an Adjudicator

If the dispute cannot be settled within the period allowed in Section 14.1 and:

- (i) referral to an adjudicator is not waived by an amendment to this Agreement; or
- (ii) the Parties do not otherwise agree in writing,

the dispute shall be referred to an adjudicator for determination, in accordance with the procedures for referral to an expert set out in Section 18.2 of the Power Purchase Agreement.

Section 14.3. Arbitration

If the dispute is not resolved between the Parties after the exhaustion of the remedies provided in Section 14.1 and Section 14.2, they shall be finally settled by arbitration in accordance with the procedures for arbitration set out in Sections 18.3, 18.4 and 18.5 of the Power Purchase Agreement.

ARTICLE XV NOTICES

Section 15.1. Address for Notices

Any notice, communication, request or correspondence required or permitted under the terms and conditions of this Agreement shall be in writing, in the English language (it being understood that any such communication or paper in a language other than English shall be of no force or effect), and shall be (i) delivered personally; (ii) transmitted by facsimile and either the recipient acknowledges receipt to sender or the sender delivers to recipient a transmission confirmation; or (iii) sent by an internationally-recognized overnight mail or courier service, with delivery receipt requested, to the following addresses:

If to the Government:

Attn:
Address:
Fax:

If to the Company:

Attn:
Address:
Fax:

or such other address and/or facsimile number as either Party gives [ten (10)] Days prior written notice to the other Party in accordance with this Section 15.1.

Section 15.2. Effectiveness of Service

Notices shall be effective: (i) in the case of personal delivery, when received by the recipient; (ii) in the case of transmission by facsimile, if receipt of the transmission occurs before 17:00 recipient's time on a Business Day and recipient receives a transmission confirmation or otherwise acknowledges transmission, upon receipt of transmission, or if receipt of the facsimile transmission occurs after 17:00 recipient's time and recipient receives a transmission confirmation or otherwise acknowledges transmission, the next succeeding Business Day, or (iii) in the case of an internationally-recognized and reputable priority courier, [four (4)] Days after dispatch.

ARTICLE XVI MISCELLANEOUS PROVISIONS

Section 16.1. Variations in Writing

All additions, amendments or variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of both Parties.

Section 16.2. Entire Agreement

This Agreement and all Annexes thereto together represent the entire understanding between the Parties in relation to the subject matter thereof and supersede any or all previous agreements or arrangements between the Parties (whether oral or written).

Section 16.3. Severability

In the event that any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or of the same provisions in any other jurisdiction shall not in any way be affected or impaired thereby.

Section 16.4. Waivers

16.4.1 No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement shall (i) operate or be construed as a waiver of any other or further default whether of a like or different character (ii) be effective unless in writing duly executed by an authorized representative of such Party.

16.4.2 The failure by either Party to insist on any occasion upon the performance of the terms, conditions or provisions of this Agreement or time or other indulgence granted by one Party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

Section 16.5. Confidentiality

16.5.1 Each of the Parties shall hold in confidence all documents and other information, whether technical or commercial, relating to the Project or the Complex that is of a confidential nature and that is supplied to it by or on behalf of the other Party. The Party receiving such documents or information shall not publish or otherwise disclose them or use them for its own purposes (otherwise than as may be required by it, its professional advisers, or potential or actual investors to perform its obligations under this Agreement or to any expert or arbitrator appointed pursuant to the terms of this Agreement).

16.5.2 The provisions of Section 16.5.1 shall not apply to any information: (i) which is or becomes available to the public other than by breach of this Agreement; (ii) which is in or comes into the possession of the receiving Party prior to the

aforesaid publication or disclosure and which was not or is not obtained under any obligation of confidentiality; (iii) which was or is obtained from a third party who is free to divulge the same and which was or is not obtained under any obligation of confidentiality; or (iv) which is required by law or appropriate regulatory authorities to be disclosed; provided, however, that the Party supplying the information is notified of the requirement set forth in sub clause (iv) at least five (5) Business Days prior to such disclosure and the disclosure is limited to the maximum extent possible.

16.5.3 For the avoidance of doubt, nothing herein contained shall preclude the use of provisions similar to those contained in this Agreement and the other agreements referred to herein in any agreements prepared and issued in connection with other projects.

Section 16.6. Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and permitted assigns.

Section 16.7. No Liability for Review

No review or approval by the Government of any agreement, document, instrument, drawing, specifications or design proposed by the Company shall relieve the Company from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specifications or design or from failure to comply with Applicable Laws with respect thereto, nor shall the Government be liable to the Company or any other person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design. Furthermore, the Government shall not be liable to the Company or any other person by reason of its observation or inspection of, or any suggestions relating to any aspect of the Project.

Section 16.8. No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties hereto and, except for rights expressly granted to other persons, nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, any liability to, or any right of suit or action in, any person not a Party to this Agreement.

Section 16.9. No Use of Contractors

The Company shall not engage a Contractor to undertake any part of the Project except upon receipt of the written approval of the Government, which engagement of such a Contractor by the Company shall not relieve the Company of any of its obligations or potential liability regarding any term or condition of this Agreement.

Section 16.10. Affirmation

16.10.1 The Company and the Utility each declares and affirms, each on its own behalf, that it has not, directly or through an agent, engaged in Corrupt Practices, Fraudulent Practices, Collusive Practices, Coercive Practices, or Obstructive Practices in competing for this Agreement or during the procurement or execution of this Agreement, and that it will not in the future engage in such practices relative to this Agreement.

16.10.2 The Company and the Utility each declares and affirms, each on its own behalf, that it shall in the future not pay any bribe, pay-off, kick-back or unlawful commission during the term of and relative to this Agreement.

Section 16.11. [Inspection and Auditing by the World Bank]⁵

[The Company shall permit the World Bank to inspect its accounts and records and other documents relating to the submission of proposals and contract performance pertaining to this Agreement and to have them audited by auditors appointed by the World Bank. The Company's attention is drawn to Section 16.10.1 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Section 16.11 may constitute a prohibited practice for purposes of Section 16.10.1 of this Agreement.]

Section 16.12. Governing Law

This Agreement and the rights and obligations of the Parties under or pursuant to this Agreement shall be governed by and construed according to Applicable Laws.

Section 16.13. Relationship of the Parties

This Agreement shall not make either of the Parties partners or joint venturers one with the other, nor make either the agent of the other. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or the otherwise bind, the other Party.

Section 16.14. Counterparts

This Agreement may be executed in two (2) or more original copies and each such copy may be executed by each of the Parties in separate counterparts, each of which copies when executed and delivered by the Parties shall be an original, but all of which shall together constitute one and the same instrument.

⁵ where World Bank involved

Section 16.15. Partial Invalidity

The illegality, invalidity or unenforceability of any provision of this Agreement in whole or in part under the law of any jurisdiction shall neither affect its (i) legality, validity or enforceability under the law of any other jurisdiction, nor (ii) the legality of any other provision or part thereof.

Section 16.16. Survival

Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination.

Section 16.17. Language

The language for the purpose of administering this Agreement, including any adjudicator proceeding or arbitration hereunder, shall be [English].

Section 16.18. Good Faith

In carrying out its obligations and duties under this Agreement, each Party shall have an implied obligation of good faith.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties hereto have caused this Agreement to be signed in their respective names as of the day, month and year first above mentioned.

**FOR AND ON BEHALF OF THE
GOVERNMENT OF []:**

By: _____
Name:
Title:

WITNESSED BY:

By: _____
Name: _____

**FOR AND ON BEHALF OF
[COMPANY]:**

By: _____
Name: _____
Title: Director

WITNESSED BY:

By: _____
Name: _____

SAMPLE

ANNEX A

SPECIFIED CONSENTS

1. Entry and work permits from the immigration authorities for foreign employees
2. Environmental certificate from national environment management authority for the construction of the Complex.

[OTHERS]

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