

IMPLEMENTATION AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF YEMEN,

THE PUBLIC ELECTRICITY CORPORATION, REPUBLIC OF YEMEN

AND

[PROJECT COMPANY]

Executed on \_\_\_\_\_

[ ] Power Project

a [400] MW Gas-Fired,  
Combined Cycle Electric Facility  
Located at [ ], Yemen

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Schedule 1	Government Authorizations
Schedule 2	Compensation Amounts
Schedule 3	Form of Guarantee

THIS IMPLEMENTATION AGREEMENT (this “Agreement”), is executed on \_\_\_\_\_, in [ ], Yemen between THE GOVERNMENT OF THE REPUBLIC OF YEMEN (the “Government”) , the PUBLIC ELECTRICITY CORPORATION, REPUBLIC OF YEMEN (the “PEC”), and [ ], a company incorporated under the laws of [ ] (the “Project Company”), with its head office located at [ ].

WHEREAS:

(1) the Government as a matter of policy has decided to increase the electrical generation capacity in the Republic of Yemen in order for it to meet the current shortage in electric power and projected increase in electric power demand in a safe, reliable and economic manner;

(2) with the authorization of the Government, PEC invited proposals through a competitive tendering process from eligible sponsors to develop a 400 megawatt, gas-fired combined cycle power generation facility along with all support facilities at [ ], Yemen on a Build, Own and Operate (BOO) basis and received proposals from several qualified bidders, including the Project Sponsor;

(3) the Project Sponsor proposed to design, engineer, construct, finance, own, operate and maintain a [combined-cycle] electric power generation facility with a capacity of approximately [400] megawatts net (the “Facility”), located at [ ], Yemen, to supply electric power to PEC, using Gas [or Alternative Fuel] *[NTD: coordinate with PPA]* purchased from the Ministry of Oil & Mineral Resources, Republic of Yemen (the “Gas Supplier”);

(4) after evaluation of the aforesaid proposals, the Government selected the Project Sponsor as the entity to develop the Facility and the Project Sponsor established the Project Company for this purpose;

(5) the Project Company is entering into a Power Purchase Agreement (as hereinafter defined) with PEC under which the Project Company will sell electric power from the Facility to PEC, a Gas Supply Agreement (as hereinafter defined) with the Gas Supplier under which the Project Company will purchase Gas [or Alternative Fuel] to operate the Facility from the Gas Supplier and a Land Lease Agreement (as hereinafter defined) with PEC; and

(6) it is a condition precedent to the Power Purchase Agreement becoming effective that the Government and PEC enter into this Agreement with the Project Company and that this Agreement comes into full force and effect in accordance with its terms.

NOW, THEREFORE, the Government and the Project Company agree as follows:

ARTICLE 1

DEFINITIONS

Wherever the following capitalized terms are used in this Agreement or the schedules hereto, whether in the singular or the plural, or the future or past tense, they shall have the meanings ascribed to each of them below, unless the context otherwise requires:

“Abandonment” means the voluntary cessation of operation of the Facility, and the withdrawal of all, or substantially all, personnel by the Project Company from the Site for reasons other than PEC’s acts or omissions or a Force Majeure Event under (and defined in) the Power Purchase Agreement; *[NTD: coordinate with PPA]*

“Agent” bears the meaning ascribed thereto in Section 13.4;

“Agreement” means this Implementation Agreement between the Government and the Project Company, together with the Schedules attached hereto, executed on the date first above written, as may be amended or supplemented from time to time;

“Yemen” means the Republic of Yemen;

“[ ] Bank” means the bank established under Article [ ] of the [ ] for the purpose of carrying on the business of the central banking of Yemen and also includes its successors;

“Bank Rate” bears the meaning ascribed in Section 1 of the Power Purchase Agreement;

“PEC” bears the meaning ascribed in the preamble of this Agreement;

“Business Day” means any Day on which banks in Yemen are legally permitted to be open for business including partial Days in Yemen, except for official holidays declared by the Government; *[NTD: coordinate with PPA]*

“Capacity Payment” bears the meaning ascribed in Article 1 of the Power Purchase Agreement;

“Carrying Cost” means the interest accruing on the then-outstanding principal amount of the debt related to the Facility under the Financing Documents and any guarantee fees accruing thereunder;

“Carrying Cost Period” bears the meaning ascribed in Sections 11.5(a) or 11.5(e) of this Agreement, as applicable;

“Change in Law” means: *[NTD: coordinate with PPA]*

(a) the adoption, promulgation, amendment, modification, repeal or reinterpretation after the date of this Agreement by any Government Authority of any Law of Yemen, or

(b) the imposition by a Government Authority of any material condition in connection with the issuance, renewal, extension, replacement or modification of any Government Authorization after the date of this Agreement;

that in either case establishes requirements for the development, construction, ownership, operation or maintenance of the Facility that are materially more restrictive or more onerous than the most restrictive or most onerous requirements

(i) in effect under the Laws of Yemen on the date of this Agreement [or, to the extent more restrictive or more onerous than the requirements in this paragraph (i)],

(ii) [(A)] specified in any applications, or other documents filed in connection with such applications, for any Government Authorization filed by the Project Company on or before the Commercial Operations Date, or

[(B)] agreed to by the Project Company in any agreement in the Security Package.

***[NTD: review structure/formulation of definition]***

“Commercial Operations Date” bears the meaning ascribed in Article 1 of the Power Purchase Agreement; ***[NTD: coordinate with PPA]***

“Commissioning” bears the meaning ascribed in Article 1 of the Power Purchase Agreement; ***[NTD: coordinate with PPA]***

“Contracted Facility Capacity” bears the meaning ascribed in Article 1 of the Power Purchase Agreement; ***[NTD: coordinate with PPA]***

“Contact Year” bears the meaning ascribed in Article 1 of the Power Purchase Agreement; ***[NTD: coordinate with PPA]***

“Construction Contract” means the agreement(s) entered into between the Project Company and the Construction Contractor(s) for the design, engineering, procurement, construction, completion, start-up, testing, and Commissioning of the Facility, as may be amended or supplemented from time to time; ***[NTD: coordinate with PPA]***

“Construction Contractor(s)” means the power generation facility construction company(ies), and any successors thereto, appointed or to be appointed by the Project Company and not objected to by the Government prior to such appointment pursuant to and under Section 5.2(b) of this Agreement; ***[NTD: coordinate with PPA]***

“Construction Start Date” bears the meaning ascribed in Article 1 of the Power Purchase Agreement; ***[NTD: coordinate with PPA]***

“Contractor(s)” means the Construction Contractor(s) and the O&M Contractor(s) and any of their direct sub-contractor(s) integrally involved in the Project;

“Critical Government Authorizations” means those Government Authorizations identified as “Critical Government Authorizations” in Part 1-A of Schedule 1 of this Agreement;

“Customs Authority” means the Relevant Authority with jurisdiction over the collection of Customs Duties and VAT on goods, machinery and equipment imported into Yemen and the clearance or release thereof under the Laws of Yemen;

“Customs Duties and VAT” means customs duties levied under the [insert the relevant Yemen customs law provision], imposed under the Laws of Yemen and any import licence fees, other taxes or levies, imposed under the Laws of Yemen but excluding fees and charges of a commercial nature associated with the importation of goods;

“Day” means the twenty-four (24) hour period beginning and ending at 12:00 midnight Yemen Standard Time;

“Deemed P/C Event” bears the meaning ascribed in Section 11.5(a);

“Demised Premises” bears the meaning ascribed in Article 1 of the Land Lease Agreement;

“Dependable Capacity” bears the meaning ascribed in Section 1 of the Power Purchase Agreement; ***[NTD: coordinate with PPA]***

“Dispute” bears the meaning ascribed in Section 15.2 of this Agreement;

“Dollar” and “US\$” means the United States Dollar, the lawful currency of the United States of America;

“Effective Date” means the date on which the last of this Agreement, the Power Purchase Agreement, the Gas Supply Agreement and the Land Lease Agreement is signed or executed by each of the parties thereto;

“Election Notice” bears the meaning ascribed in Section 13.4(d) of this Agreement.

“Electrical Interconnection Facilities” bears the meaning ascribed thereto in Article 1 of the Power Purchase Agreement; ***[NTD: coordinate with PPA]***

“Environmental Guidelines” means the environmental guidelines and occupational health and safety standards of the World Bank as were in effect on the date of this Agreement; ***[NTD: coordinate with PPA] [NTD: Consider applicability of Equator Principles]***

“Environmental Liabilities” means all losses, damages, and expenses (including, without limitation, the reasonable costs of investigation, testing, containment, removal, cleanup, abatement or remediation and reasonable attorneys’ fees and costs), whether or not quantified in amount, relating to the presence in the environment of Hazardous Materials attributable to the Facility from and after the earlier of the date of acquisition by the Project Company of any immovable property portion of the Facility or the Financial Closing Date [to the date of transfer of the Facility to the Government or its designee,] or the violation by the Project Company, its agents or employees of any environmental Laws of Yemen or the Environmental Guidelines, provided, that Environmental Liabilities shall not include any losses, damages or expenses (including, without limitation, any costs of investigation, testing, containment, removal, cleanup, abatement or remediation or attorneys’ fees and costs) relating to, or arising out of, any act or omission, including the release of any such Hazardous Materials, that was lawful and in compliance with the Laws of Yemen and the Environmental Guidelines at the time of such act or

omission; provided, further, that the burden shall be on the Project Company to prove that such act or omission was lawful at the time of such act or omission; *[NTD: coordinate with PPA]*

“Escalable Capacity Payment” bears the meaning ascribed in Article 1 of the Power Purchase Agreement; *[NTD: coordinate with PPA]*

“Escrow Account” means the escrow account or accounts, including retention or other similar accounts, to be established by the Project Company under the Escrow Agreement as required by the Lenders;

“Escrow Agreement” means the escrow agreement or agreements to be executed by and between the Project Company and the Lenders pursuant to the terms of or as part of the Financing Documents;

“Evaluation Period” bears the meaning ascribed in Section 13.4(d) of this Agreement;

“Event of Default” means a Project Company Event of Default or a Government Event of Default, as the case may be;

[“Exchange Regulations Act” bears the meaning ascribed in Section 8.1 of this Agreement;]

“Facility” means the Gas fired, [combined cycle] power station consisting of [two] gas turbine generators [and one steam turbine generator,] capable of approximately 400 MW net capacity [at Reference Site Conditions (as defined in the Power Purchase Agreement)] to be owned and constructed by the Project Company near [ ], Yemen, whether completed or at any stage of its construction, including without limitation or regard to level of development, land, engineering and design documents and Construction Contract, all energy producing equipment and its auxiliary equipment, water intakes and discharge, water treatment facilities, solid waste, disposal facilities, fuel receiving and handling facilities and equipment on the Project Company’s side of the Point of Delivery including Project Company Transportation Facilities and Project Company Communication Facilities (as each of the terms are defined in the Gas Supply Agreement), the Electrical Interconnection Facilities, the switchyard, the Metering System (as defined in the Power Purchase Agreement), together with the residential facilities (if any) provided to certain employees of the Project Company, the Contractor(s) and any subcontractors; *[NTD: coordinate with PPA and GSA]*

“FEC Payment” bears the meaning ascribed in Section 11.5;

“FEC Payment Date” bears the meaning ascribed in Section 11.5;

“Financial Closing” bears the meaning ascribed thereto in Article 1 of the Power Purchase Agreement;

“Financial Closing Date” means the date on which Financial Closing occurs;

“Financing Documents” means the loan agreements, notes, indentures, security agreements, guarantees and other documents relating to the construction and permanent

financing (including refinancing) of the Facility or any part thereof executed and delivered under Section 9.3 of this Agreement;

“First Initial Operations Date” bears the meaning ascribed thereto in Article 1 of the Power Purchase Agreement; ***[NTD: coordinate with PPA; this concept does not exist in present PPA draft]***

“Force Majeure Events” bears the meaning ascribed in Section 11.1 of this Agreement; ***[NTD: coordinate across all agreements, but especially PPA]***

“Foreign Currency” means any currency other than the Rial;

“Foreign Investors” means shareholders of the Project Company who are foreigners or nonresidents of Yemen holding dual nationalities;

“Gas” bears the meaning ascribed in Article 1 of the Gas Supply Agreement;

“Gas Supplier” bears the meaning ascribed in the recitals of this Agreement;

“Gas Supply Agreement” means the agreement to be executed between the Gas Supplier and the Project Company for the supply of Gas to be used by the Facility to generate electric power, as may be amended from time to time with the prior written approval of PEC in accordance with the Power Purchase Agreement; ***[NTD: coordinate with PPA and GSA]***

“Government” bears the meaning ascribed in the preamble of this Agreement;

“Government Authorizations” means all such approvals, consents, Authorizations, acknowledgements, licenses or permits required to be issued by any Government Authority to the Project Company for the establishment of the Project Company or to the Project Company or the Contractors (as applicable) for the construction, financing, ownership, operation, and maintenance of the Facility by the Project Company or the Contractors, including, without limitation, those Government Authorizations listed in Schedule 1;

“Government Authority” means ***[NTD: coordinate across all agreements]***

(i) the Government or any entity subject to the overall control or direction as to matters of policy of the Government or which is otherwise under and controlled by the Government, including, without limitation, but only for so long as they are under the control of the Government, PEC, the Gas Supplier, and Yemen Bank,

(ii) any local governmental authority or any subdivision of any of the foregoing,

(iii) any Yemen court or tribunal with jurisdiction over the Project Company, the Facility, the Contractor(s), the Lenders or the Project or any part thereof, and

(iv) any department, authority, regulatory agency, instrumentality, agency, body or corporation or other entity controlled by any of the foregoing.

“Guarantee” means the guarantee by the Government of the payment obligations of

- (a) PEC under the Power Purchase Agreement,
- (b) the Gas Supplier under the Gas Supply Agreement, and
- (c) PEC under the Land Lease Agreement,

substantially in the form set out in Schedule 3, as may be amended from time to time by agreement of the Parties under Section 18.1 of this Agreement;

“Hazardous Materials” means any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance or waste, any flammable, explosive or radioactive materials regulated under, or subject to, any Laws of Yemen; *[NTD: coordinate with PPA]*

“Initial Cure Period” bears the meaning ascribed in Section 13.4(a) of this Agreement;

[“Initial Shareholders” bears the meaning ascribed thereto in the Power Purchase Agreement]; *[NTD: coordinate with PPA]*

“Investor” means the holders from time to time of Ordinary Share Capital, as well as the holders of any securities that are convertible at the option of the holder into Ordinary Share Capital;

“Land Lease Agreement” means the agreement to be executed between PEC and the Project Company for the lease of land by PEC to the Project Company for the location of the Facility, as may be amended from time to time by the parties thereto;

“Lapse of Consent” means any Government Authorizations *[NTD: coordinate with PPA]*

- (a) ceasing to remain in full force and effect, or
- (b) not being issued or renewed upon application having been properly and timely made and diligently pursued, or
- (c) being made subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Project Company’s ability to perform its obligations under any document included within the Security Package,

in each of the above instances despite the Project Company’s compliance with the applicable procedural and substantive requirements as applied in a “non-discriminatory” (as explained in Section 2.1) manner;

“Laws of Yemen” means, in relation to this Agreement, all laws in force in Yemen, and includes all statutes, rules, regulations, codes, orders, directives, judgments, notifications made or issued by any competent authority pursuant to or under any such law and any decree or judicial decision given or pronounced by any court of competent jurisdiction;

“Lenders” means the lenders party to the Financing Documents, together with their respective successors and assigns;

“Lenders Cure Period” bears the meaning ascribed in Section 13.4(e) of this Agreement;  
*[NTD: coordinate with PPA]*

“Lien” means any encumbrance, lien, charge or security interest upon or in the Facility;

“Loss” means any loss, damage, liability, payment, obligation, claim, action, cost or penalty (excluding any profit or any indirect or consequential loss, damage, liability, payment, obligation, claim, action, cost or penalty), and all expenses (including without limitation reasonable legal fees) related thereto; *[NTD: coordinate with PPA]*

“Month” means a calendar month according to the Gregorian calendar;

“O&M Agreement” means the Agreement(s), if any, between the Project Company and the O&M Contractor(s) for the operation and maintenance of the Facility, as may be amended or supplemented from time to time;

“O&M Contractor(s)” means any power generation facility operation and maintenance company, and any successor thereto, appointed or to be appointed by the Project Company and not objected to by the Government prior to such appointment in accordance with Section 5.2(c) of this Agreement;

“Ordinary Share Capital” means any issued and outstanding shares of the Project Company with voting or other rights of management and control and any outstanding securities of the Project Company that are convertible into such shares at the option of the holder;

“Parties” means the Government, PEC and the Project Company;

“Party” means either the Government, PEC or the Project Company, as the case may be;

“Permitted Liens” means minor imperfections of title and Liens that in the aggregate are not substantial in amount, do not detract from the value of the property subject thereto or impair the Facility, and existed at the date of acquisition of the Site or have arisen only in the ordinary course of business and consistent with normal utility practices;

“Permitted Transferee” bears the meaning ascribed in Section 10.3(c) of this Agreement;

“Power Purchase Agreement” or “PPA” means the agreement to be executed between PEC and the Project Company for the sale of Dependable Capacity and Net Energy Output (as each term is defined therein) by the Project Company to PEC from the Facility, as may be amended or supplemented from time to time;

“Preliminary Estimate” bears the meaning ascribed in Section 11.5(a) of this Agreement;

“Prescribed Fee” means, with respect to a particular Government Authorization, the charge or fee, if any, prescribed by the Laws of Yemen;

“Prescribed Form” means, with respect to a particular Government Authorization, the form, if any, (including all information and details) prescribed by the Laws of Yemen for the application for, or renewal of, such Government Authorization;

“Project” means the development, design, engineering, manufacture, financing, construction, permitting, start-up, testing, completion, insurance, Commissioning, ownership, operation and maintenance of the Facility, and all activities incidental thereto;

“Project Company” bears the meaning ascribed in the preamble of this Agreement and its permitted successors and assignees; **[NTD: coordinate across all agreements]**

“Proposal Security” bears the meaning ascribed thereto in Article 1 of the Power Purchase Agreement; **[NTD: coordinate with PPA]**

[“Project Sponsor”] bears the meaning ascribed thereto in Article 1 of the Power Purchase Agreement; **[NTD: coordinate with PPA]**

“P/C Event” bears the meaning ascribed in Section 11.5;

“Reference Tariff” bears the meaning ascribed in Article 1 of the Power Purchase Agreement; **[NTD: coordinate with PPA]**

“Relevant Authority” means the department, authority, instrumentality or agency from which a Government Authorization is to be obtained and any authority, body or other person having jurisdiction under the Laws of Yemen with respect to the Project Company, the Facility or the financing, construction, ownership, operation or maintenance of the Facility (other than PEC (as lessor under the Land Lease Agreement) or PEC and the Gas Supplier when exercising rights or performing obligations under the Power Purchase Agreement, the Land Lease Agreement or the Gas Supply Agreement, respectively);

“Report” bears the meaning ascribed in Section 11.6(a) of this Agreement;

“Request for Proposals” means the Request for Proposals dated [ ], pursuant to which PEC solicited proposals for the implementation of the Project from interested parties;

“Required Commercial Operations Date” means the date falling [twenty-nine and half (29 1/2)] months after the Financial Closing Date, provided, that such date shall be extended: (a) in accordance with the terms of the Power Purchase Agreement as a result of Force Majeure Event(s) (as such term is defined therein) or due to Force Majeure Event(s) under this Agreement; or (b) under Sections 7.5 or 11.1(c)(ii) of the Power Purchase Agreement; or (c) under Sections 4.5, 7.2 or 13.6 of this Agreement; **[NTD: consider adjusting timeline] [NTD: coordinate with PPA]**

“Required Financial Closing Date” means the date falling seven and half (7 1/2) months after the Effective Date, provided, that such date shall be extended: (a) in accordance with the terms of the Power Purchase Agreement as a result of Force Majeure Event(s) (as such term is defined therein) or due to Force Majeure Event(s) under this Agreement; or (b) under Sections 4.5 or 13.6 of this Agreement; **[NTD: coordinate with PPA]**

“Restoration” bears the meaning ascribed in Section 11.5(a) of this Agreement;

“Restoration Cost Estimate” bears the meaning ascribed in Section 11.5(a) of this Agreement;

“Restoration Schedule” bears the meaning ascribed in Section 11.5(a) of this Agreement;

“Rial” means the Yemen Rial, the lawful currency of Yemen;

“Scheduled Commercial Delivery Date” bears the meaning ascribed in Article 1 of the Gas Supply Agreement; *[NTD: coordinate with GSA]*

“Scheduled Commercial Operations Date” bears the meaning ascribed in Article 1 of the Power Purchase Agreement; *[NTD: coordinate with PPA]*

“Security Package” means:

- (a) this Agreement;
- (b) Power Purchase Agreement;
- (c) Gas Supply Agreement;
- (d) O&M Agreement, if any;
- (e) Construction Contract;
- (f) Shareholders’ Agreement, if any;
- (g) Financing Documents, mortgages and other security documentation;
- (h) Escrow Agreement;
- (i) insurance policies;
- (j) Guarantee;
- (k) Land Lease Agreement; and

(1) consents to and acknowledgments of assignments and direct agreements in favor of Lenders in respect of the documents assigned as security to the Lenders under the Financing Documents;

“Shareholders’ Agreement” means the agreement, if any, between the [Initial Shareholders] containing provisions for the management of the Project Company, as may be amended or supplemented from time to time;

“Site” means the land, spaces, waterways, roads, wells and any rights acquired or to be acquired by the Project Company for the purposes of the Facility on, through, above or below the

ground on which the Facility or any part thereof is to be built (including, without limitation, any working areas required by the Project Company and the Contractor(s), villages, townships, and camps for the accommodation of the employees of the Project Company and the Contractor(s) and any subcontractors, all rights of way and access from public highways, and seaward access if applicable); *[NTD: coordinate with PPA]*

“Succession Notice” bears the meaning ascribed in Section 9.2(b) of this Agreement;

“Supplemental Tariff” bears the meaning ascribed thereto in Section 1 of the Power Purchase Agreement; *[NTD: coordinate with PPA]*

“Supplemental Tariff Payments” bears the meaning ascribed in Section 1 of the Power Purchase Agreement; *[NTD: coordinate with PPA]*

“Taxes” means any and all taxes, duties, imposts and fees (other than fees of a commercial nature or for the provision of services), whenever imposed and applicable under the Laws of Yemen;

“Termination Notice” means a written notice issued by the Government, PEC or the Project Company, as the case may be, terminating this Agreement, pursuant to Section 13.2(c) of this Agreement;

“Threshold Amount” bears the meaning ascribed in Section 11.5(f) of this Agreement;

“Year” means each twelve (12) Month period commencing on 12: 00 midnight on December 31 and ending on 12: 00 midnight the following December 31 during the term of this Agreement specified in Article 3 of this Agreement.

## ARTICLE 2

### INTERPRETATION

#### 2.1 Interpretation.

(a) General. In this Agreement:

- (i) the headings are for convenience only and shall be ignored in construing this Agreement;
- (ii) the singular includes the plural and vice versa;
- (iii) the word “includes” shall mean “including without limitation”;
- (iv) references to Articles, Sections, and Schedules are, unless the context otherwise requires, references to Articles and Sections of, and Schedules to, this Agreement;

(v) unless otherwise expressly 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;

(vi) in carrying out their obligations and duties under this Agreement each Party shall have an implied obligation of good faith; and

(vii) the use of the terms “non-discriminatory” and “discriminatory” herein is not intended to prohibit or limit in any way the Government or any Government Authority from making rational distinctions between parties or from utilizing measures, establishing conditions, or enforcing requirements that are, in each case, intended or designed to advance the purposes of the program being implemented by the Government or Government Authority or of a Government Authorization. They are intended, however, to prohibit the use of governmental authority, over, for example, permits and licenses, so as to deprive the Project Company of the benefits of this Agreement or the Power Purchase Agreement or the Gas Supply Agreement or the Land Lease Agreement by the application of a higher standard to the Project Company (alone, or together with others in a small class) than to others similarly situated because of, for example, its foreign ownership, or so as to gain commercial or political advantage.

(b) Concurrent Delays.

(i) If any two or more of the following situations exist at the same time:

(A) The Project Company is affected by a Political Force Majeure Event or a Change in Law (under and as such terms are defined in the this Agreement and/or the Power Purchase Agreement) prior to the Commercial Operations Date; and/or

(B) PEC has failed to allow the Project Company to commence necessary extension and modification works to the Project within the time period specified in [Section 11.1(c)(ii) of the Power Purchase Agreement] or PEC has deferred any Commercial Operations Test (as each such term is defined in the Power Purchase Agreement) as contemplated by [Section 7.5] of the Power Purchase Agreement; and/or ***[NTD: coordinate with PPA]***

(C) The Gas Supplier has failed to make Gas available at the Point of Delivery (as defined in the Gas Supply Agreement) as contemplated by Article 12 of the Gas Supply Agreement;

then, for the purposes of the Relevant Provisions (as defined below) (and notwithstanding any other provision of this Agreement), it shall be deemed to be the case that only whichever of such situations arose first (the “First Delay”) shall have existed at such time and the other situations above which in fact existed at the same time shall be deemed not to have existed until the First Delay no longer exists (in which case this Section 2.1(b) shall again be applied if two or more of the above situations exist at such time) and the Relevant Provisions shall be construed accordingly.

(ii) [The Relevant Provision is the proviso to Section 11.5(e)(i).]

### ARTICLE 3

#### TERM

The term of this Agreement shall commence on the date first above written and shall, unless terminated earlier in accordance with the terms of this Agreement, continue in full force and effect for a period that ends on the [earlier of] the expiration date [or early termination] of the Power Purchase Agreement.

### ARTICLE 4

#### GOVERNMENT AUTHORIZATION FOR PROJECT

##### 4.1 Applications by the Project Company for Government Authorizations.

(a) The Project Company shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Government Authorizations in the Prescribed Form and with the Prescribed Fee to the appropriate Relevant Authorities and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and all such information and all designs, structures, undertakings, activities, construction and other matters proposed, described or identified therein shall satisfy the substantive and procedural requirements of the applicable Laws of Yemen applied in a “non-discriminatory” manner.

(b) Within [sixty (60)] Days of the execution of this Agreement, the Project Company shall make application for all Government Authorizations specified in Schedule 1 and for which application is capable of being made under the Laws of Yemen by the end of such period, having due regard for the information available to the Project Company (which the Project Company shall use all reasonable efforts to obtain at the earliest possible date); provided, that for any such Government Authorizations for which application cannot be made within such [sixty (60)] Day period, application for each such Government Authorization shall be made within seven (7) Days of the first date on which application for such Government Authorization is capable of being made under the Laws of Yemen, having due regard for the information available to the Project Company. In respect of the Government Authorizations in Schedule 1, in the event that any Relevant Authority is not satisfied with the form or substance of the application or with the information supplied in the application for a Government Authorization or if the required fees or charges are not paid in accordance with the applicable requirements under the Laws of Yemen, including, without limitation, non-compliance with or non-satisfaction of any of the substantive or procedural requirements of the Laws of Yemen, such Relevant Authority shall deliver notice thereof to the Project Company within seven (7) Business Days of the receipt by such Relevant Authority of such application (or with respect to any required fees or charges, within seven (7) Business Days following the date by which such fees and charges are required to be paid). If the Relevant Authority does not notify the Project Company of the non-acceptance of such application in writing within either such seven (7)

Business Day period, the application shall be deemed complete in all respects at the expiry of such seven (7) Business Day periods.

#### 4.2 Reporting Requirement.

(a) The Project Company shall prepare or cause to be prepared, at least Monthly (but with respect to the Critical Government Authorizations at least every fifteen (15) Days) prior to the Commercial Operations Date, and at least quarterly thereafter, reports listing its schedule for submitting Government Authorization application forms or renewal application forms, the status of any Government Authorization applications then outstanding, notifications of the granting or denial of any Government Authorization or renewal Government Authorization, and notifications of any violations of any Government Authorization. Each report shall be submitted to the Government at the notice address provided in Article [ ] of this Agreement. Each report shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The first section of each report shall also summarize any problems regarding any material Government Authorization or Government Authorization application that may affect the Project Company's performance under this Agreement, the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement.

(b) In the event of any Lapse of Consent, the Project Company shall submit a report pursuant to this Section 4.2 within three (3) Days after becoming aware thereof.

#### 4.3 Government Support to Obtain Government Authorizations.

(a) Subject to the Project Company's timely submission of the reports required by Section 4.2, upon request of the Project Company, the Government shall support and use all reasonable efforts to expedite the consideration of the Project Company's applications for the Government Authorizations or reissuances thereof filed pursuant to and in accordance with Section 4.1, and the timely issuance thereof or reissuance of a Government Authorization subject to a Lapse of Consent by the Relevant Authorities. The Government shall use all reasonable efforts under the circumstances to ensure that the Government Authorizations when issued by Relevant Authorities have an effective period for the maximum permissible period under the Laws of Yemen; provided, that the Government shall have no obligations hereunder where the issuance of a Government Authorization for an effective period of less than the maximum permissible period is supported by the relevant facts and circumstances involved, including but not limited to the location of the Facility, its size and age, the technology used at the Facility, the purposes and objectives that the Government Authorization is intended to achieve, and the practices of the Relevant Authority in connection with the issuance of similar authorizations to third parties. Where no maximum permissible period is specified under the Laws of Yemen, the Relevant Authority shall be entitled to issue a Government Authorization, assuming the Project Company has complied with its obligations hereunder with respect to such Government Authorization, that it deems reasonable and appropriate under the circumstances.

(b) Any request for support under this Section 4.3 shall be accompanied with copies of the application for the relevant Government Authorization, any notice that the issuance or reissuance of the Government Authorization was denied or deferred, and a statement of the

Project Company's efforts in obtaining the issuance or reissuance of the Government Authorization to date.

(c) If the Project Company and the Contractor(s) comply with all applicable Laws of Yemen, the Government will ensure that the Relevant Authority expeditiously grants work permits, residence permits, employment passes, visas, and other permits, as are necessary for individuals involved in the Project, following application therefor by the Project Company and the Contractor(s). ***[NTD: Consider adding more details regarding travel of employees and their families, etc.]***

Notwithstanding the foregoing, however, the Government or the Relevant Authority may, in any individual case, decline to grant an application, or expel a person previously admitted, to protect the national security interests, public health and safety of Yemen, as reasonably determined by the Government or the Relevant Authority.

***[NTD: Consider adding Required Change in Law provision, which would provide that the Government will make reasonable efforts to enact any Change of Law necessary to give effect to this Agreement.]***

#### 4.4 Conditions to Government Authorizations.

(a) The Government or any Relevant Authority may attach such "nondiscriminatory" terms and conditions to the issuance or renewal of any of the Government Authorizations as are required under the Laws of Yemen, and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the Government, a Force Majeure Event under Article 11 (unless it constitutes a Change in Law), or a Government Event of Default under Section 13.1(b).

(b) The Project Company and the Contractor(s) shall abide by all such terms and conditions. If the Project Company or any of the Contractor(s) fails to abide by any terms or conditions of any Government Authorization, then the exercise of a power by the Government or any Relevant Authority pursuant to the Laws of Yemen in respect of such failure shall not by itself constitute a breach of this Agreement by the Government, a Force Majeure Event under Article 11 or a Government Event of Default under Section 13.1(b).

#### 4.5 Remedies for Government Nonperformance.

(a) If the Project Company and its Contractor(s) have complied and are in compliance with Section 4.1 and Section 4.2 and any of the Government Authorizations specified in Part 1-B of Schedule 1 is not received within sixty (60) Days following the later of the date of this Agreement or the filing of the application therefore, or if any of the Critical Government Authorizations is not received within thirty (30) Days, or, in the case of Government Authorization 1(d) and, (e) in Part 1-A of Schedule 1 and Government Authorization 6 in Part 2 of Schedule 1, thirty (30) Business Days, following the later of the date of this Agreement or the filing of the application therefor, or, subsequent to its issuance but prior to Financial Closing, if a Government Authorization specified in Part 1-B of Schedule 1 or a Critical Government Authorization ceases to remain in full force and effect or is made subject to any terms or conditions that materially and adversely affect the Project Company's ability to

perform its obligations under any document within the Security Package (despite the Project Company's compliance with the applicable procedural and substantive requirements of the Government Authorization or the application therefor), the Required Financial Closing Date and the Required Commercial Operations Date and the Scheduled Commercial Delivery Date shall be extended on a Day-for-Day basis for each Day that any such Government Authorization or Government Authorizations cease to remain in full force or effect or continue to be subject to any such material adverse terms or conditions (despite compliance with the applicable procedural and substantive requirements of such Government Authorization or Government Authorizations) following the expiration of the thirty (30) Day period or thirty (30) Business Day period or the sixty (60) Day period, as the case may be; provided, that during any period where more than one (1) Government Authorization remains outstanding (following the end of the thirty (30) Day or thirty (30) Business Day period or sixty (60) Day period, as the case may be), the Project Company shall be entitled to only one (1) Day of extension for each one (1) Day in such period. For the purposes of this Section 4.5(a) the references to "Government Authorization or Government Authorizations remains outstanding" shall be deemed to include any Government Authorization or Government Authorizations not issued or renewed and, following issuance, any Government Authorization or Government Authorizations ceasing to remain in full force and effect or made subject to any terms or conditions that materially and adversely affect the Project Company's ability to perform its obligations under any document within the Security Package (despite the Project Company's compliance with the applicable procedural and substantive requirements of the Government Authorization or the application therefor).

(b) If such outstanding Government Authorization or Government Authorizations have not been issued or renewed by the end of six (6) months beginning on the last Day of the aforesaid thirty (30) Day or thirty (30) Business Day or sixty (60) Day period, as the case may be, or if, subsequent to its issuance, any such Government Authorization ceases to remain in full force and effect or is made subject to any terms or conditions that materially and adversely affect the Project Company's ability to perform its obligations under any document within the Security Package (despite the Project Company's compliance with the applicable procedural and substantive requirements of the Government Authorization or the application therefor), the Project Company shall be permitted to terminate this Agreement, the Power Purchase Agreement, the Gas Supply Agreement and the Land Lease Agreement with no further obligations to the Government, PEC, the Gas Supplier and PEC (as the lessor under the Land Lease Agreement), respectively. Upon such termination, notwithstanding any provision to the contrary in this Agreement, the Government shall procure the following (and such obligations shall survive the termination of this Agreement):

(i) the return of the Proposal Security (undrawn) to the Project Company by PEC (and in the event that there has been any drawing(s) thereon, the full amount(s) drawn shall be contemporaneously returned to the Project Company in the same currency); and

(ii) the unconditional agreement from:

(A) PEC for termination of the Power Purchase Agreement;

- (B) the Gas Supplier for termination of the Gas Supply Agreement; and
- (C) PEC for termination of the Land Lease Agreement;

in each case, with effect from the date of termination of this Agreement, without any cost to the Project Company and upon terms that would ensure that the Project Company will, upon such termination, have no further obligation under the aforesaid agreements towards PEC, the Gas Supplier and PEC (as the lessor under the Land Lease Agreement), respectively.

***[NTD: Consider adding a provision clarifying that the Project Company has the exclusive right to develop the Project.]***

## ARTICLE 5

### SITE ACQUISITION, CONSTRUCTION AND OPERATION

#### 5.1 Acquisition of Site.

(a) PEC has leased the Demised Premises to the Project Company pursuant to the Land Lease Agreement. Such Demised Premises shall form part of the Site. [The Government hereby acknowledges that the Land Lease Agreement is in form and substance acceptable to the Government]. ***[NTD: coordinate with Land Lease Agreement]***

(b) The Project Company shall obtain adequate water supplies for the Facility, make arrangements for delivery and receipt at port facilities in Yemen ***[NTD: specify Aden?]*** of equipment and materials necessary to construct the Facility, and make arrangements for transport to the Site of all such equipment and materials from the port facilities. The Project Company shall complete these activities in compliance with the terms of this Agreement, the Power Purchase Agreement and the Gas Supply Agreement. ***[NTD: Will the Government provide these services to the Project Company along with other related responsibilities?]***

(c) If at any time the Project Company encounters difficulties in acquiring the Site such that it will be prevented or impaired in meeting its obligations hereunder or under the Power Purchase Agreement or the Gas Supply Agreement, then upon request of the Project Company (and provided that the Project Company has complied with its obligations hereunder), the Government shall take such actions as are reasonable and appropriate under the circumstances (which may include, in the sole discretion and election of the Government, the acquisition of the Site by the Government for and on behalf of the Project Company) to assist the Project Company in its efforts to acquire the Site in accordance with the terms hereof.

(d) Without prejudice to Section 5.1(c), the Government undertakes to procure performance by PEC of its obligations under the Land Lease Agreement in accordance with the provisions thereof.

## 5.2 Construction and Operation of Facility.

(a) Appointment of Contractor(s). The Project Company shall design, engineer, procure, finance, construct, install, test, commission, own, operate and maintain the Facility in accordance with the provisions of this Agreement, the Power Purchase Agreement, the Gas Supply Agreement, the Land Lease Agreement and the Laws of Yemen and, to the extent not inconsistent therewith, the Environmental Guidelines; provided, that the Project Company may contract with the Construction Contractor(s) to design, engineer, procure, construct, install, test and commission the Facility and the O&M Contractor(s) to operate and maintain the Facility; provided, further, that the appointment of the Construction Contractor(s) and the O&M Contractor(s) by the Project Company shall not relieve the Project Company of any of its obligations or potential liability regarding any of the foregoing responsibilities.

(b) Construction Contractor(s). The Project Company shall deliver to the Government a certificate of a duly authorized officer of the Project Company setting forth the name and nationality of the Construction Contractor(s) (and any replacement or substitute thereto) and any [major subcontractor] (and any replacement or substitute thereto) not later than fifteen (15) Business Days prior to the execution of the Construction Contract. ***[NTD: Consider defining "major subcontractor"]*** If no objection is raised by the Government by the end of such fifteen (15) Business Day period, such certificate shall be deemed to be not objected to by the Government. Such certificate shall also identify in detail (with such supporting documents as may be reasonably requested by the Government) the total cost of spare parts (cost plus transportation cost) expected to be imported by the Project Company or the Construction Contractor(s) under the Construction Contract and the total cost (cost plus transportation cost) of all of the equipment expected to be supplied under the Construction Contract for incorporation into the Facility (excluding the cost of spare parts). The Project Company shall provide the actual cost (cost plus transportation cost) of all spare parts and the actual cost (cost plus transportation cost) of all equipment imported for incorporation into the Facility (excluding the cost of spare parts) as of the Commercial Operations Date in a certificate delivered to the Government within thirty (30) Days following the occurrence of the Commercial Operations Date (with such supporting documents as may be reasonably requested by the Government).

(c) O&M Contractor. The Project Company shall deliver to the Government a certificate of a duly authorized officer of the Project Company setting forth the name and nationality of any O&M Contractor(s) (and any replacement or substitute thereto) and any [major subcontractor] (and any replacement or substitute thereto) not later than fifteen (15) Business Days prior to the execution of any O&M Agreement. ***[NTD: Consider defining "major subcontractor" in O&M context]*** If no objection is raised by the Government by the end of such fifteen (15) Business Day period, such certificate shall be deemed to have been not objected to by the Government.

(d) Operation of the Facility by the Project Company. Notwithstanding anything contained in this Section 5 to the contrary, the Project Company shall be entitled, upon notice to the Government and PEC, to engage its own personnel to operate the Facility or, in the case where the O&M Agreement then in effect has been terminated by the Project Company in accordance with its terms, engage some or all of the personnel of the former O&M Contractor(s) to operate the Facility, in either case with prior notice to the Government.

5.3 Facility Security. The Project Company shall provide security personnel for the protection and security of the Facility. From time to time, the Project Company may request additional security forces from the Government to meet unusual security requirements. All such additional security forces shall remain under the exclusive control and direction of the Government. [All actual expenses incurred by the Government in providing such security forces requested by the Project Company shall, within five (5) Business Days of delivery of demand by the Government to the Project Company, be reimbursed to the Government by the Project Company as and when incurred by the Government.] No such request by the Project Company shall preclude a claim under any provisions of Article 11 by the Project Company, nor shall the Government's provision of such security forces be deemed of itself an admission or agreement by the Government that any of the events described in Article 11 has occurred. ***[NTD: Consider whether the Government should make military and security forces available at no cost to Project Company.]***

## ARTICLE 6

### LIABILITY; INSURANCE

6.1 Limitation of Liability. Except as provided in Section 6.2, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any other legal theory for any special, indirect, consequential, incidental, punitive, or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement or the Guarantee; provided, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

#### 6.2 Indemnification.

(a) The Government shall defend, indemnify the Project Company and its directors, officers and employees against, and hold the Project Company and its directors, officers and employees harmless from, at all times after the date hereof, any and all Losses incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Project Company and its directors, officers and employees for personal injury or death to persons or damage to property arising out of the negligent or intentional act or omission of, or default on the part of, the Government in connection with this Agreement.

(b) The Project Company shall defend, indemnify the Government and its ministers, officers and employees against, and hold the Government and its ministers, officers and employees harmless from, at all times after the date hereof, any and all Losses incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Government and its ministers, officers and employees for personal injury or death to persons or damage to property arising out of the negligent or intentional act or omission of, or default on the part of, the Project Company in connection with this Agreement.

(c) In the event that any Loss results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

(d) The provisions of this Section 6.2 shall survive for a period of five (5) years following the termination of this Agreement.

6.3 Indemnification for Fines and Penalties. Any fines or other penalties incurred by the Project Company for non-compliance with applicable Laws of Yemen or other governmental actions taken pursuant thereto or the Government Authorizations shall not be reimbursed by the Government and shall be the sole responsibility of the Project Company.

6.4 Limitation on Indemnification.

(a) Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement until all such Losses of such Party arising during the then current Year exceed, in the aggregate, one hundred thousand Dollars (US\$100,000). For purposes of this Section 6.4, a Loss (or claim for indemnification) shall be deemed to arise in the Year during which the event giving rise to the Loss (or claim for indemnification) occurred or, in the case where the event is continuing in more than one Year, in the Year during which the event ends.

(b) Neither Party shall be entitled to indemnification under Section 6.2 if and to the extent that a Party has received payment in full in respect of a Loss or proceeding under the indemnities contained in the Power Purchase Agreement, the Gas Supply Agreement, or any other document comprising the Security Package in respect of the relevant act or omission.

6.5 Notice of Proceedings. Each Party shall promptly notify the other Party of any Loss or proceeding in respect of which it is or may be entitled to indemnification under Section 6.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss or proceeding.

6.6 Defense of Claims.

*[NTD: Need to coordinate and conform with PPA and GSA.]*

(a) The indemnifying Party shall be entitled, at its option, and expense and with counsel of its selection, to assume and control the defense of any claim, action, suit or proceeding in respect of, resulting from, relating to or arising out of any matter for which it is obligated to indemnify the other Party hereunder, subject to the prior approval of such counsel by the indemnified Party; provided, it gives prompt notice of its intention to do so to the indemnified Party and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to the assumption by the indemnifying Party of such defense.

(b) Notwithstanding the provisions of Section 6.6(a), unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defense of a claim, suit, action or proceeding in accordance with Section 6.6(a), the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or

arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.

(c) Upon assumption by the indemnifying Party of the control of the defense of a claim, suit, action or proceeding, the indemnifying Party shall reimburse the indemnified Party for the reasonable costs and expenses of the indemnified Party in the defense of the claim, suit, action or proceeding prior to the indemnifying Party's acknowledgment of the indemnification and assumption of the defense.

(d) Neither Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party; provided, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party. Except where such consent is unreasonably withheld, if a Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other Party without the prior written consent of the other Party, the other Party shall be excused from any obligation to indemnify the Party making such settlement or compromise in respect of such settlement or compromise.

(e) Following the acknowledgment of the indemnification and the assumption of the defense by the indemnifying Party, the indemnified Party shall have the right to employ its own legal counsel and such legal counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified Party, when and as incurred, unless:

(i) the employment of legal counsel by such indemnified Party has been authorized in writing by the indemnifying Party;

(ii) the indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defense of such action;

(iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defense of such action and shall have been so notified by the indemnified Party; or

(iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defenses available to it that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.

If clause (ii), (iii) or (iv) of this Section 6.6(e) shall be applicable, then counsel for the indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

6.7 Power Purchase Agreement Double Jeopardy.

(a) Except disputes or breaches related to [Section 4 (Term, Defaults and Remedies), Section 14 (Insurance), Section 17 (Taxes) and Section 6.1 (Permits, Licenses and Approvals)] of the Power Purchase Agreement, settlement or waiver in writing by PEC of any dispute or breach under the Power Purchase Agreement shall be binding on the Government with respect to the identical issue or claim, as the case may be. **[NTD: coordinate with PPA.]** [Settlement or waiver of any dispute or breach related to Section 4 (Term, Defaults and Remedies), Section 14 (Insurance), Section 17 (Taxes) and Section 6.1 (Permits, Licenses and Approvals) of the Power Purchase Agreement shall be effective only if agreed to, in writing, by both PEC and the Government.] **[NTD: Similar provision is needed in PPA to be effective.]**

(b) Notwithstanding any other provision in this Agreement to the contrary, PEC shall be responsible in the first instance for pursuing any claim against the Project Company based upon a failure of the Project Company to satisfy its obligations under the Power Purchase Agreement. The Government shall not bring any proceedings (or, other than through PEC, cause any proceedings to be brought) against the Project Company for any breach of its obligations under Sections 4 and 5 (to the extent these Sections relate to substantially similar obligations of the Project Company under the Power Purchase Agreement) or Section 6.9, if PEC has fully pursued, or is then pursuing, a claim or claims against the Project Company based upon an alleged breach of the Power Purchase Agreement for failure to meet or satisfy substantially the same obligations.

(c) An order issued in a proceeding initiated by PEC and based upon a claim of a breach of the Power Purchase Agreement shall be with prejudice to any proceedings against the Project Company that the Government could otherwise bring for breach by the Project Company of substantially the same obligations under this Agreement.

(d) Nothing in this Section 6.7 shall prevent the Government and PEC from separately initiating proceedings to terminate this Agreement and the Power Purchase Agreement, respectively, pursuant to Section 13.2 of this Agreement and Sections [4.2 and 4.4] of the Power Purchase Agreement. **[NTD: coordinate with PPA.]**

6.8 Gas Supply Agreement Double Jeopardy.

(a) Except for disputes or breaches related to Article 13 (Default and Termination) of the Gas Supply Agreement, settlement or waiver in writing by the Gas Supplier of any dispute or breach under the Gas Supply Agreement shall be binding on the Government with respect to the identical issue or claim, as the case may be. Settlement or waiver of any dispute or breach related to Article 13 of the Gas Supply Agreement shall be effective only if agreed to, in writing, by both the Gas Supplier and the Government. **[NTD: coordinate with GSA- section references and addition of similar provision therein.]**

(b) Notwithstanding any other provision in this Agreement to the contrary, the Gas Supplier shall be responsible in the first instance for pursuing any claim against the Project Company based upon a failure of the Project Company to satisfy its obligations under the Gas Supply Agreement. The Government shall not bring any proceedings (or, other than through the

Gas Supplier, cause any proceedings to be brought) against the Project Company for any breach of its obligations under Sections 4 and 5 (to the extent those Sections relate to substantially similar obligations of the Project Company under the Gas Supply Agreement), if the Gas Supplier has fully pursued, or is then pursuing, a claim or claims against the Project Company based upon an alleged breach of the Gas Supply Agreement for failure to meet or satisfy substantially the same obligations.

(c) An order issued in a proceeding initiated by the Gas Supplier and based upon a claim of a breach of the Gas Supply Agreement shall be with prejudice to any proceedings against the Project Company that the Government could otherwise bring for breach by the Project Company of substantially the same obligations under this Agreement.

(d) Nothing in this Section 6.8 shall prevent the Government and the Gas Supplier from separately initiating proceedings to terminate this Agreement and the Gas Supply Agreement, respectively, pursuant to Section 13.2 of this Agreement and Section [13.2] of the Gas Supply Agreement. *[NTD: coordinate with GSA.]*

6.9 Maintenance of Specified Insurance Policies. The Project Company shall obtain and maintain insurance from financially strong and internationally reputable insurance companies in accordance with [Article 14] of the Power Purchase Agreement. If and to the extent that the Government can be named as an additional insured on any fire, perils, casualty and liability insurance policies covering the Facility, the Government shall be so named by the Project Company; provided, that the Government shall agree to subordinate its interest in all such policies (except general liability coverage) to the interests of the Lenders therein.

6.10 Exemption from National Insurance. The Government shall exempt the Project Company and the Contractor(s) from purchasing any insurance or reinsurance for the Project from [\_\_\_\_\_] or any other local insurance company and allow the Project Company at its sole discretion to procure insurance and reinsurance from insurance companies outside Yemen for the Project.

6.11 Land Lease Agreement Double Jeopardy.

(a) Except for disputes or breaches related to [Article 8 of the Land Lease Agreement], settlement or waiver in writing by PEC of any dispute or breach under the Land Lease Agreement shall be binding on the Government with respect to the identical issue or claim hereunder, as the case may be. Settlement or waiver of any dispute or breach related to Article 8 of the Land Lease Agreement shall be effective only if agreed to, in writing, by both PEC and the Government. *[NTD: Coordinate with Lease- section references and addition of similar provision therein.]*

(b) Notwithstanding any other provision in this Agreement to the contrary, PEC shall be responsible in the first instance for pursuing any claim against the Project Company based upon a failure of the Project Company to satisfy its obligations under the Land Lease Agreement. The Government shall not bring any proceedings against the Project Company for any breach of its obligations under Articles 4 and 5 (to the extent those Sections relate to substantially similar obligations of the Project Company under the Land Lease Agreement), if

PEC has fully pursued, or is then pursuing a claim or claims against the Project Company based upon an alleged breach of the Land Lease Agreement for failure to meet or satisfy substantially the same obligations.

(c) An order issued in a proceeding initiated by PEC and based upon a claim of a breach of the Land Lease Agreement shall be with prejudice to any proceedings against the Project Company that the Government could otherwise bring for breach by the Project Company of substantially the same obligations under this Agreement.

(d) Nothing in this Section shall prevent the Government or PEC from separately initiating proceedings to terminate this Agreement or the Land Lease Agreement (as the case may be), respectively, pursuant to Sections 13.1 and 13.2 of this Agreement and Sections [7.1 and 7.2] of the Land Lease Agreement. *[NTD: coordinate with Lease.]*

## ARTICLE 7

### IMPORT CONTROLS

#### 7.1 Right to Import.

(a) The Government encourages the Project Company and its Contractors to incorporate or consume as much locally produced material, equipment and supplies as possible in the construction, Commissioning, operation and maintenance of the Facility. Nonetheless, the Project Company and its Contractor(s) shall be entitled to import without restriction all items required for the design, engineering, procurement, construction, completion, testing, commissioning, operation and maintenance of the Facility, including, without exclusion, spare parts and replacements to the spare parts inventory.

(b) Machinery, tools, parts, implements and equipment that are necessary for the construction, erection, testing, operation and maintenance of the Facility will be allowed temporary importation facilities, without restriction, on a re-exportable basis under the [identify the appropriate Yemen customs law provision], as in existence on the date of this Agreement.

(c) All items not consumed or incorporated into the Facility may be freely re-exported by the Project Company without incurring liability for Customs Duties and VAT in Yemen.

(d) The Government may, as provided by the Laws of Yemen, require the Project Company to re-export any items or equipment used in the construction of the Facility that are not reasonably required for the Project Company to operate and maintain the Facility, unless the Project Company agrees promptly to pay the normal Customs Duties and VAT for those items and equipment. The Project Company shall be afforded a reasonable time, but not less than three (3) months following the Commercial Operations Date, to reexport any such items or equipment required by the Government to be reexported.

## 7.2 Customs Clearance.

(a) To expedite clearance by the Customs Authority of all machinery, tools, implements, spare parts and equipment imported into Yemen by the Project Company for incorporation into, or use in the construction of, the Facility pursuant to this Article 7, the Government (through PEC) shall take all advance steps and issue such advance instructions, certificates and documentation as may be necessary or reasonable under the circumstances to ensure such clearance. In particular, the Government shall, not later than the fifth (5th) Business Day following the receipt from the Project Company of all information reasonably required by the Government regarding such machinery, tools, implements, spare parts and equipment, issue to the Customs Authority, with a copy to the Project Company, a certificate as provided in [identify the appropriate Yemen customs law provision] (the “Clearance Certificate”), confirming that such machinery, tools, implements, spare parts (subject to the limitation set forth in Section 12.1(b)) or equipment are items that the Project Company may import without restriction and without payment of Taxes, including Customs Duties and VAT.

(b) If, notwithstanding compliance by the Government with Section 7.2(a), from and after the later of the date the Clearance Certificate is delivered to the appropriate Customs Authority and the date that any machinery, tools, implements, spare parts and equipment are available to the Customs Authority for inspection, the Project Company experiences more than [ten (10)] Business Days delay in clearance by the Customs Authority of any such machinery, tools, implements, spare parts and equipment imported into Yemen, the Government (through PEC) pursuant to this Section 7.2 shall take such steps or action or issue such documentation reasonable and appropriate under the circumstances to expedite such clearance.

(c) If, following notice to PEC in writing of a delay in clearance from customs of any machinery, tools, implements, spare parts and equipment of a greater length than provided in Section 7.2(b), the Project Company experiences more than seven (7) Business Days of additional delay in clearance by the Customs Authority of any such machinery, tools, implements, spare parts and equipment imported by the Project Company into Yemen pursuant to this Section 7.2 or PEC fails to issue to the Customs Authority the Clearance Certificate pursuant to Section 7.2(a) within the time period required therein, the Project Company shall be entitled to a Day-for-Day extension to the Required Commercial Operations Date and the Scheduled Commercial Delivery Date.

(d) Notwithstanding Section 12.1(b), in case of importation of items not covered under [identify appropriate Yemen law customs provision], the following provisions shall apply:

***[NTD: Needs further discussion: these provisions are inconsistent with 12.1(b), which universally exempts Project Company from these sorts of taxes and duties.]***

(i) the imported project materials shall be subject to payment of Customs Duties and VAT, supplementary duty (if any) and infrastructure development surcharge (IDSC) at clearance stage;

(ii) machinery, tools, spare parts and equipment imported for the construction, erection, maintenance, testing and commissioning of the Facility on a re-exportable basis will be allowed temporary importation facilities under [identify appropriate Yemen customs law provision] and rules framed thereunder, as in existence on the date of this Agreement; and

(iii) Foreign experts and consultants who are direct employees of [“International Organization” or “Development Partner of Yemen” specified in \_\_\_\_\_] will only be allowed the facilities and concessions admissible under that [provision] as privileged persons. Other expatriate personnel employed in the Project will not be entitled to any facilities or concessions.

(e) [Any goods supplied and services received or provided locally for the construction, procurement, erection, maintenance, testing and commissioning of the Facility shall be subject to value added tax and supplementary duty (if any) under the [insert relevant Yemen VAT provision] and rules made thereunder, as in existence on the date of this Agreement. *[NTD: Should Project Company be exempt from these taxes?]*

7.3 Export and Re-import. The Project Company shall be entitled to export without restriction all machinery, tools, implements, spare parts and equipment imported by it under Section 7.1 for permanent installation in, or construction of, the Facility for the purpose of repair or refurbishment of the same outside Yemen and to re-import the same without restriction, and the Government shall, at the request of the Project Company, take reasonable measures to expedite the issuance of any Government Authorization required for the export and re-import of such machinery, tools, implements, spare parts and equipment.

## ARTICLE 8

### BANK ACCOUNTS; FOREIGN EXCHANGE

8.1 Use of Yemen Bank Accounts; Exceptions. All of the Project Company’s transactions relating to the Project that require Foreign Currency, including debt servicing and repatriation of earnings, will be initiated through bank accounts in Yemen in accordance with the [Insert applicable Yemen statutory provision], as in existence on the date of this Agreement (the “Exchange Regulations Act”); provided, that Foreign Currency provided by foreign Lenders, liquidated damages paid by foreign Contractors or vendors, proceeds of insurance and reinsurance by foreign insurers and any other foreign sources that are used to pay foreign Contractor(s), vendors, insurers, reinsurers or Lenders may be paid directly to such persons through bank accounts of the Project Company located outside Yemen; provided, further, that the Project Company shall make available to the Government the statements and accounts reflecting all such transactions, transfers and payments.

8.2 Government Authorization to Rial and Dollar Accounts. The Government shall ensure that the Yemen Bank gives the Project Company and its Contractors consent for the opening and operation of Rial and Dollar bank accounts, including bank accounts necessary to implement the Project (including any reserve or Escrow Accounts reasonably required by the foreign Lenders to be maintained under the Financing Documents) inside Yemen, and the

accumulation of earnings and other receipts and the transfer of funds into and out of such accounts. The Government shall ensure that the Yemen Bank gives the Project Company permission to open and maintain Dollar bank accounts necessary to implement the Project (including any reserve or Escrow Accounts required by the foreign Lenders to be maintained under the Financing Documents) outside Yemen, and transfer any funds to or from its accounts in Yemen to or from its accounts maintained outside Yemen to implement and carry out the Project in accordance with the Exchange Regulations Act prevailing on the date of this Agreement, with such exemptions as may be necessary to give effect to the provisions of this Section 8; provided, that nothing in this Agreement shall prevent the Project Company from opening, operating and retaining moneys in additional Dollar bank accounts outside Yemen from time to time if and to the extent that it is or becomes otherwise permitted under the Laws of Yemen.

### 8.3 Transfer and Repatriation of Necessary Funds.

(a) The exchange of Rials into Dollars and the transfer outside Yemen of all Dollars received in connection with the Project (including from any party to any of the documents in the Security Package) shall, except as provided in Sections 8.1 and 8.2, be governed by the Exchange Regulations Act, as in existence on the date of this Agreement.

(b) The Government shall permit the free and immediate transfer of all funds and other financial settlements or receipts in Dollars (or converted from Rials into Dollars) necessary to implement and carry out the Project and perform its obligations under the documents and agreements included in the Security Package, in accordance with the Exchange Regulations Act, with such exemptions as may be necessary to give effect to the provisions of this Section 8, and shall ensure full, timely and unencumbered repatriation rights with respect to all funds and other financial settlements or receipts in Dollars (or converted from Rials into Dollars, whether converted through the interbank foreign exchange market or by the Yemen Bank, as provided in Section 8.4(b)).

### 8.4 Availability of Dollars.

(a) The Project Company shall be permitted to purchase Dollars through normal commercial banking channels (and to hold in an account of the Project Company permitted under Section 8.2) in the amount necessary for:

(i) meeting the Project Company's Foreign Currency payment obligations under any agreement that constitutes a part of the Security Package (other than the Financing Documents, for which clause (viii) shall apply),

(ii) the repatriation by the Project Company of any capital contributions or dividends to Foreign Investors and repatriation upon conversion of Dollar proceeds from sales of Ordinary Share Capital purchased with Foreign Currency, which sales are made in accordance with the terms of this Agreement, and proceeds of sale upon dissolution or liquidation,

(iii) the Foreign Currency expenses of the Project (including, without limitation, remuneration of the Construction Contractor(s), O&M Contractor(s) and

Lenders and, where applicable, fees, salaries and other monetary emoluments of its employees, agents, and direct foreign collaborators, experts and suppliers and the purchase of spare parts), the payment of premiums and fees to offshore insurers and reinsurers,

(iv) all payments into, or out of, any reserve or Escrow Accounts required by the Lenders under the Financing Documents or by PEC under the Power Purchase Agreement that require Foreign Currency, in accordance with Section 8.3(a),

(v) any compensation payments to be made by the Government in the event of a termination of this Agreement,

(vi) in the event of a Restoration or modification of the Facility pursuant to Section 11, any financing provided by the Government in Rials and payable to foreign contractors of any kind,

(vii) any payments of liquidated damages by PEC to the Project Company in connection with the Power Purchase Agreement or by the Gas Supplier to the Project Company in connection with the Gas Supply Agreement, and

(viii) meeting the Project Company's payment obligations in any Foreign Currency under the Financing Documents, including, without limitation, repayments of principal (whether scheduled or accelerated by Lenders), interest (including default interest), commissions, fees (including without limitation commitment and guarantee fees), expenses, costs, Lender make-whole payments, and other prepayment costs, and the realization of remedies under the Guarantee.

(b) Upon receipt by Government of an application in the Prescribed Form from the Project Company or its nominated commercial bank, the Government shall, not later than the sixth (6th) Business Day (the "Transaction Day") following the date of such application, cause the Yemen Bank to provide to the Project Company's nominated commercial bank, such Dollars in the requested amount as are necessary to meet the expenditures or satisfy the transactions referred to in Section 8.4(a), at the Yemen Bank's rate for purchases of Dollars (of like-amount to the requested amount) by authorized Dealers in Yemen on the Transaction Day.

8.5 Yemen Bank Government Authorizations. The Government shall ensure that the Yemen Bank gives any general or specific permission or Government Authorization required under the Exchange Regulations Act to authorize any of the accounts, transfers, conversions or transactions expressly provided in this Section 8 of this Agreement.

## ARTICLE 9

### SECURITY

#### 9.1 Creation of Security.

(a) For the purpose of financing the Project, in connection with the Financial Closing, the Project Company may assign to, or create a security interest in favor of, the Lenders in its rights and interests under or pursuant to

- (i) this Agreement,
- (ii) any agreement or document included within or contemplated by the Security Package,
- (iii) the Facility,
- (iv) the Site,
- (v) the movable, immovable and intellectual property of the Project Company, and
- (vi) the revenues or any of the rights or assets of the Project Company.

(b) The Lenders shall have no rights (except as expressly provided herein) or obligations to the Government under this Agreement until such time as the Lenders or their designees succeed to the Project Company's interest under this Agreement, whether by exercise of their rights or remedies under the Financing Documents or otherwise, in which case the Lenders or their designees shall give notice in writing of such succession (a "Succession Notice") to the Government and shall assume liability for all of the Project Company's obligations under this Agreement, [including payment of any amounts due and owing to the Government for defaults by the Project Company under this Agreement (other than damages or penalties incurred by the Project Company under Section 6.2(b), except for such damages and penalties arising while the Lenders, pursuant to their rights and remedies under the Financing Documents have assumed control of the Facility, and then only if the general liability insurance required by Section 6.9 is not in effect), arising prior to the Lenders' or such designees succession to the Project Company's interest in and under this Agreement]; provided, that any liability of the Lenders or their designees shall be strictly limited to the Lenders' interest in the Facility.

(c) Except as otherwise set forth in Section 9.1(b), neither the Lenders (and the Agent, as described in Section 13.4) nor their designees shall be liable for the performance or observance of any of the obligations or duties of the Project Company under this Agreement, nor shall the assignment by the Project Company of this Agreement to the Lenders pursuant to Section 9.2(a) give rise to any duties or obligations whatsoever on the part of any of the Lenders owing to the Government.

(d) Upon notification by the Lenders or the Agent to the Government of the occurrence and continuance of an event of default under the Financing Documents and the succession of the Lenders to the Project Company's interests in and under this Agreement, the Lenders shall have the right, among others, to:

(i) take possession of the Facility and, prior to the Commercial Operations Date, complete construction of the Facility and operate the same and, after the Commercial Operations Date, operate the same; and

(ii) cure any continuing Project Company Event of Default as provided under Section 13.4 of this Agreement.

Notwithstanding the foregoing, upon the delivery of a Succession Notice, the Lenders shall have no obligation to cure any Project Company Event of Default that is not capable of being cured, including (without limitation) those under Sections [13.1(a) (vi) (assignment of Project Company's rights), (vii) (winding up of the Project Company) or (viii) (material misrepresentation)] and no right will exist for the Government to terminate this Agreement based upon such Project Company Events of Default occurring prior to the delivery of the Succession Notice by the Lenders.

(e) [Without the requirement of obtaining any further consent from the Government,] upon the exercise by the Lenders or their designees of any of the remedies set forth in the Financing Documents, the Lenders may assign their rights and interests and the rights of the Project Company under this Agreement to any Transferee (as hereinafter defined) so long as such Transferee shall assume in writing for the benefit of the Government all of the obligations of the Project Company under this Agreement. Upon such assignment and assumption, the Lenders shall be relieved of all obligations under this Agreement arising after such assignment and assumption.

(f) Upon notice to the Government of a default under the Financing Documents, the Government shall, at the request and expense (as and when incurred by the Government) of the Agent, cooperate with the Lenders in the Lenders' exercise of such rights under this Agreement and the Financing Documents.

(g) As used herein, a "Transferee" shall be a person who:

(i) is a company incorporated or registered under the Laws of Yemen;

(ii) either is an experienced power plant operator or shall have agreed to engage the services of a person who is an experienced power plant operator;

(iii) shall have paid all amounts, if any, then due and payable to the Government under this Agreement; and

(iv) shall have expressly assumed in writing for the benefit of the Government the obligations of the Project Company under this Agreement (including but not limited to) the obligation of the Project Company to maintain and operate the Facility in accordance with the requirements of the Power Purchase Agreement.

(h) At the request of the Project Company, delivered to the Government not less than thirty (30) Days in advance, the Government shall execute and deliver at Financial Closing acknowledgments to the Lenders or their designees with respect to any security created pursuant to this Article 9 and the rights of such parties under this Agreement as the Lenders may reasonably request in accordance with customary practices in transactions of this nature.

9.2 Delivery of Financing Documents; Evaluation of Principal Repayment Schedule.

(a) The Project Company shall deliver to the Government a schedule or a copy of a reference term sheet related to the Financing Documents setting forth a principal repayment schedule reasonably consistent with the Reference Tariff, together with the maximum principal amounts and interest rate or rates, and any schedules or formulae that will be included in the Financing Documents for the computation of fees and charges payable to the Lenders upon the winding up for early termination of the loans under the Financing Documents not later than thirty (30) Days prior to Financial Closing. The Government may evaluate the principal repayment schedule and other principal financial terms to ensure that the other principal financial terms are consistent with the principal repayment schedule, and that the principal amount, principal repayment schedule and the interest rate are reasonably consistent with the Reference Tariff and to evaluate the impact of the terms of the Financing Documents on the Government's obligations upon any termination of this Agreement. If the Government has any objections to the terms specified in such term sheet or schedule, it shall inform the Project Company thereof within fifteen (15) Business Days of its receipt thereof; otherwise, it shall be deemed not to have objected to those terms, and the Project Company shall be entitled thereafter to execute Financing Documents containing those terms and a principal repayment schedule of the specified term or a shorter term without further notice to or approval by the Government. Each loan agreement constituting part of the Financing Documents will provide that any liquidated damages received by the Project Company from its Construction Contractor(s) for capacity or other testing shortfalls shall be used either to reduce the outstanding principal amount of debt under such loan agreement or to correct such shortfalls. The Project Company shall provide the Government with a copy of the loan agreements executed on the date of the Financial Closing Date not later than fifteen (15) Business Days after Financial Closing.

(b) The Project Company shall deliver to the Government copies of all non-material amendments to the executed Financing Documents within ten (10) Days after the execution of each such document. The Project Company shall not execute any material amendment or modification related to the repayment of principal (including any refinancing or restructuring of payment obligations under any Financing Document) without submitting to the Government not less than fifteen (15) Business Days prior to execution of the loan documents a schedule or term sheet setting forth the proposed revised principal repayment schedule and the other principal financial terms or material modifications related thereto. If the Government has any objections to the term sheet or schedule related to the proposed modification to the principal repayment schedule or material modifications it shall inform the Project Company thereof within fifteen (15) Business Days of its receipt thereof; otherwise, it shall be deemed not to have objected to those terms, and the Project Company shall be entitled thereafter to execute Financing Documents containing those terms and a principal repayment schedule of the specified term or a shorter term without further notice to or approval by the Government. The Government shall not object to a material amendment or modification or a refinancing or the terms thereof so

long as the principal repayment schedule and other principal financial terms are consistent with the Reference Tariff and do not increase in any material respect the obligations of the Government arising upon termination of this Agreement.

## ARTICLE 10

### RESTRICTIONS ON ACQUISITIONS AND TRANSFERS OF SHARES OR ASSETS

10.1 Assurance Against Discriminatory Action. The Government shall ensure that no Government Authority takes any discriminatory action that materially and adversely affects the Project or the performance of the Project Company's obligations or the enjoyment of its rights or the interests of the Investors or Lenders under the Security Package or expropriates or, except as hereinafter provided, acquires the Facility or the Project Company, whether in whole or in part. Nothing in the foregoing shall apply to any actions taken by the Government or PEC or any other Government Authority pursuant to their respective rights and obligations arising under this Agreement, the Power Purchase Agreement, the Gas Supply Agreement, the Land Lease Agreement or any other document that constitutes a part of the Security Package.

#### 10.2 Acquisition of Shares or Assets.

(a) The Government warrants to the Project Company that neither it nor PEC, the Gas Supplier, PEC (as the lessor under the Land Lease Agreement), nor any Government Authority will expropriate, compulsorily acquire, nationalize or otherwise compulsorily procure any Ordinary Share Capital or assets of the Project Company (except for the exercise of the Government's rights pursuant to Section 14.1 to acquire the rights, title and interests of the Project Company in the Facility).

(b) The Government further warrants to the Project Company that during the term of this Agreement neither it nor PEC, the Gas Supplier, PEC (as the lessor under the Land Lease Agreement), any Government Authority nor any corporation or company directly or indirectly owned or controlled by the Government and/or any Government Authority will acquire any Ordinary Share Capital if the result would be for the Government, any Government Authority or any corporation or company directly or indirectly owned or controlled by the Government or any Government Authority to own or control [twenty-six percent (26%)] or more of the issued Ordinary Share Capital. ***[NTD: Discuss with GRY the appropriate threshold level here.]***

(c) Notwithstanding Sections 10.2(a) and (b), nothing in this Agreement shall be construed as a waiver by the Government or PEC of PEC's exercise of its power of eminent domain so long as it is exercised under the Laws of Yemen and the effect of such exercise does not materially and adversely affect the Project Company's ability to perform its obligations under and enjoy the benefits of the Power Purchase Agreement or, without just and adequate compensation, adversely affect its use and enjoyment of the Site.

### 10.3 Restriction on Transfer of Shares.

(a) The Project Company shall, in respect of the transfer of the registered ownership of any Ordinary Share Capital, make appropriate provisions in its Articles of Association to ensure compliance with the provisions of this Section 10.3 and shall include appropriate legends on all share certificates evidencing Ordinary Share Capital of the Project Company to put prospective purchasers of such Ordinary Share Capital on notice of the restrictions in the following provisions and, to the extent permitted by the Laws of Yemen, shall not register or give effect to any purported transfer of Ordinary Share Capital that is not in compliance with such restrictions or do not bear such legend.

(b) [The Project Company shall decline to register the transfer of issued Ordinary Share Capital to persons of a nationality that is specifically proscribed in any notice delivered by the Government to the Project Company for the period specified in such notice or until such time that the Project Company is notified that the proscription is revised or rescinded.] ***[NTD: Discuss with GRY; could discourage investors if presented in such an open-ended, non-specific manner.]*** The Government undertakes that it shall not proscribe any nationalities other than those nationalities that the Government considers in its sole discretion to be prejudicial to the national security interest of Yemen for persons having such nationality to hold Ordinary Share Capital. The Project Company shall use reasonable means under the circumstances to investigate the declaration of nationality stated on any application for registration or transfer of Ordinary Share Capital if, as a result of such transfer, the Investor making such application would hold five percent (5%) or more of the issued Ordinary Share Capital of the Project Company. In all other cases, the Project Company shall be entitled to rely on such declaration to determine whether registration is permitted under this Section 10.3(b). Where any such declaration discloses that the prospective purchaser is a national of Yemen or of a state not proscribed by the Government in its notice to the Project Company, then the Project Company shall be at liberty to register the transfer or issue of the shares.

(c) No Initial Shareholder shall transfer any Ordinary Share Capital owned directly or through one or more wholly-owned subsidiary companies or corporations by it at any time prior to the Commercial Operations Date or for a period of [eight (8)] years after the Commercial Operations Date, except for:

- (i) a transfer to another Initial Shareholder;
- (ii) subject to the national interests of Yemen, as such interests shall be determined in the discretion of the Government, a transfer to a wholly-owned affiliate corporation of any Initial Shareholder that continues as such wholly-owned affiliate corporation;
- (iii) a transfer required under any Laws of Yemen or by the operation of the Laws of Yemen or by order of a court, tribunal or governmental authority or agency having appropriate jurisdiction;
- (iv) a transfer resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Security Package;

(v) a transfer to which the Government has given its prior written approval; or

(vi) a transfer as part of a public offering or a transfer through a private offering to a Permitted Transferee (as defined below); provided, that the Initial Shareholders retain ownership directly or through one or more wholly-owned subsidiary corporations of not less than fifty-one percent (51 %) of the outstanding Ordinary Share Capital.

that (d) As used in Section 10.3(c), a “Permitted Transferee” shall be a company

(i) has (or its wholly-owning parent corporation has) a net capitalization value (as shown in the audited financial statements for the immediately preceding fiscal year of the proposed transferee that have been filed with a regulatory agency or authority with jurisdiction over the transferee, its business or the issuance of its securities) of not less than five hundred million Dollars (US\$500,000,000) (or its equivalent) or a rating for its highest ranking long term debt or, if there is no outstanding long term debt, a corporate rating of not less than [“B+”] (or the equivalent) by any internationally recognized securities rating agency; *[NTD: refer to specific rating agency]*

(ii) is not and has not (and its controlling parent or any controlled subsidiary corporation is not and has not) within the past twenty-four (24) months been involved in any arbitration or litigation with the Government, PEC or the Gas Supplier or any parent or subsidiary corporation thereof; and

(iii) has not (and its controlling parent corporation and any controlled subsidiary corporation has not), either directly or through actions of any of their officers or members of their Boards of Directors, been convicted of or had a material contract to which it is a party cancelled or terminated as a result of fraud, bribery or corrupt business practices or illegal activities, where the amount involved is two million Dollars (US\$2,000,000) or more (or its equivalent) or the value of the contract over its term is twenty five million Dollars (US\$25,000,000) or more (or its equivalent) within the immediately preceding five (5) years in any jurisdiction.

(e) Prior to the transfer of Ordinary Share Capital to any Permitted Transferee, the Government shall be entitled to receive a certificate from the prospective Permitted Transferee affirming and certifying its compliance with the requirements of Section 10.3(c) and (d) above and within thirty (30) Days of any transfer of Ordinary Share Capital from an Initial Shareholder to a Permitted Transferee the Project Company shall provide notice in writing to the Government of such transfer.

(f) Unless permitted by any of the exceptions specified in Section 10.3(c) and 10.3(d) above, no Initial Shareholder shall transfer any Ordinary Share Capital (owned directly or through one or more wholly-owned subsidiary corporations), after the expiration of a period of eight (8) years from the Commercial Operations Date, except with the prior written approval

of the Government; provided, that the Government hereby agrees that such approval shall be granted unless such transfer is to persons of a nationality that is specifically proscribed in any notice delivered by the Government to the Project Company.

(g) The Government undertakes that it shall not proscribe any nationalities other than those nationalities that the Government considers in its sole discretion to be prejudicial to the national security interest of Yemen for persons having such nationality to hold Ordinary Share Capital.

## ARTICLE 11

### FORCE MAJEURE

11.1 Definition. “Force Majeure Event’ shall mean any event or circumstance or combination of events or circumstances (including the effects of such events and circumstances or combination of events or circumstances) that materially and adversely affects the performance by a Party of its obligations under this Agreement, but only if and to the extent that such events and circumstances are not within the reasonable control of the affected Party; provided, that an event or circumstance or combination of events or circumstances (including the effects of such events and circumstances or combination of events or circumstances) shall not be construed as a Force Majeure Event unless such material and adverse effect could not have been prevented, overcome or remedied [in whole or in part] ***[NTD: consider deleting bracketed phrase as it is too limiting]*** by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts or activities to protect the Parties’ facilities from a casualty event that are reasonable in light of the likelihood of such event, the probable effect of such event if it should occur and the likely efficacy of the protection measures.

“Force Majeure Events” includes each of the following events and circumstances, but only to the extent that they or their consequences satisfy the above requirements:

***[NTD: Need to coordinate this definition across PPA and GSA]***

(a) political events that occur inside or directly involve Yemen (“Political Force Majeure Events”), including, but not limited to:

(i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, political act or act of terrorism;

(ii) any Lapse of Consent that (A) shall have itself existed for thirty (30) Days or more after its occurrence; (B) together with any and all other Lapses of Consent that have occurred in the same Year, shall have existed in the aggregate for forty (40) Days or more in such Year; ***[NTD: compare and conform with PPA and GSA]***  
***[NTD: Also, discuss what makes this a Political FM Event- is it simply duration of event?]***

(iii) radioactive contamination or ionizing radiation originating from a source in Yemen or resulting from another Political Force Majeure Event; or

(iv) strikes, works to rule or go-slows that extend beyond the Facility, 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 the Project Company (or the Contractor(s)) as part of a broader pattern of labor actions against companies or facilities with foreign ownership or management;

(b) Changes in Law;

(c) other events beyond the reasonable control of the affected Party (“Other Force Majeure Events”), including, but not limited to:

(i) uncontrollable events, including, but not limited to:

(A) lightning, earthquake, flood, tsunami, storm, cyclone, typhoon, or tornado;

(B) fire, explosion or chemical contamination (other than resulting from an event described in Section 11.1(a), in which case it shall be a Political Force Majeure Event);

(C) epidemic or plague;

(D) a Lapse of Consent unless such Lapse of Consent is a Political Force Majeure Event; or *[NTD: see note in Section 11.1(a)(ii).]*

(E) prior to the Commercial Operations Date, a delay beyond the thirtieth (30th) Day after the scheduled receipt date at the Party’s construction site of a major piece of equipment that has been timely ordered and must be manufactured expressly for such Party, where such delay is caused solely by an accident in transportation or a strike.

(ii) political events that occur outside Yemen and do not directly involve Yemen, including, but not limited to:

(A) 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 of terrorism;

(B) radioactive contamination or ionizing radiation originating from a source outside Yemen and not falling within Section 11.1(a)(iii); or

(C) strikes, works to rule or go-slows that are widespread or nationwide;

(d) Force Majeure Events shall expressly not include the following conditions, except to the extent that they result directly from any event or circumstance or combination of events or circumstances in relation to any Contractor(s), the Gas Supplier or other supplier and the performance of its obligations under an agreement which would constitute a Force Majeure

Event if such Contractor, the Gas Supplier or other supplier was a party hereto and such agreement were this Agreement (other than resulting from an event described in Section 11.1(a) or (b), in which case, if such event or circumstance affects the Gas Supplier or the Construction Contractor(s) or the O&M Contractor(s), it shall be a Political Force Majeure Event or a Change in Law, as the case may be for the Project Company);

(i) Unavailability, late delivery or changes in cost of machinery, equipment, materials, spare parts or consumables (including Gas);

(ii) a delay in the performance of any Contractor(s) or supplier to either of the Parties, normal wear and tear or random flaws in materials and equipment or breakdowns in equipment.

## 11.2 Notification Obligations.

(a) If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall

(i) give the other Party notice of the Force Majeure Event(s) as soon as practicable, but in any event, not later than forty-eight (48) hours after the occurrence of the Force Majeure Event(s) or six (6) hours after the resumption of any means of providing notice between the Project Company and the Government, whichever is later, and

(ii) give the other Party a second notice, describing the Force Majeure Event(s) in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party will be unable to perform the 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 Event(s) is given by the affected Party. When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event(s) and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Force Majeure Event(s).

(b) The affected Party shall also provide notice to the other Party of

(i) with respect to an ongoing Force Majeure Event, the cessation of the Force Majeure Event, and

(ii) the affected Party's ability to recommence performance of its obligations under this Agreement

as soon as possible, but in any event, not later than seven (7) Days after the occurrence of each of (i) and (ii) above.

(c) Failure by the affected Party to give notice of a Force Majeure Event to the other Party within the forty-eight (48) hour period or six (6) hour period required by Section 11.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, that in such case, the affected Party shall not be excused pursuant to Section 11.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice required by Section 11.2(a)(i) has been given. If such notice is given within the forty-eight (48) hour period or six (6) hour period as required by Section 11.2(a)(i), the affected Party shall be excused for such failure or delay pursuant to Section 11.4 from the date of commencement of the relevant Force Majeure Event.

11.3 Duty to Mitigate. The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event, including, but not limited to, the payment of all reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures.

11.4 Delay Caused by Force Majeure.

(a) So long as the affected Party has at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 11.3 and continues to so comply, then:

(i) 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 Agreement during the existence of a Force Majeure Event; and

(ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended; provided, that no relief, including without limitation, the extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 11.4 to the extent that such failure or delay would, as a result of the affected Party's breach of this Agreement, have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred.

(b) Without prejudice to amounts payable pursuant to this Article 11 or Article 14, the unaffected Party shall not bear any liability for any loss or expense suffered by the affected Party as a result of a Force Majeure Event.

(c) Notwithstanding the foregoing, the Government shall not in any event be entitled to claim for itself any excuse for the nonperformance of its obligations hereunder as a result of the occurrence of a Political Force Majeure Event or a Change in Law.

11.5 Restoration; Compensation.

(a) In the event that a Political Force Majeure Event results in material damage to the Facility that requires a material modification, capital addition or repair to the Facility necessary to return the Facility to its performance capability or its physical state immediately preceding the occurrence of the Political Force Majeure Event or compliance by the Project Company with a Change in Law requires a material modification or capital addition to the Facility (in each case, a "Restoration"), the Project Company shall, within twenty-eight (28)

Days after the date by which it was first required to provide notice to the Government under Section 11.2(a), except if the Political Force Majeure Event or Change in Law, as the case may be, has not ended by the time of such notice, in which case within twenty-eight (28) Days of the notice required by 11.2(b)(i), develop and deliver to the Government a preliminary written estimate (the “Preliminary Estimate”) of:

(i) the projected range of cost of the Restoration less any insurance proceeds available or likely to become available to the Project Company (the “Restoration Cost Estimate”); and

(ii) a preliminary schedule for the completion of the Restoration, such schedule to include a period for solicitation of engineering services to effect the Restoration and negotiation and execution of a contract therefor and, if the Restoration Cost Estimate will be less than the Threshold Amount (as defined in Section 11.5(f)), a reasonable period to arrange the financing, whether such financing is in the form of debt or equity or some combination thereof (such schedule and each such schedule contained in the Report to be delivered pursuant to Section 11.5(c) in connection with an Other Force Majeure Event shall be referred to herein as a ‘Restoration Schedule”).

The Project Company shall make the Preliminary Estimate as comprehensive and as complete as possible under the circumstances and the Government and the Project Company shall meet within fifteen (15) Days of the delivery of the Preliminary Estimate to discuss the conclusions set forth therein. As used in this Section “material damage,” a “material modification”, a “material capital addition” or a “material repair” means damage, modification, capital addition or repair that requires, as a result thereof, a Restoration with a cost of six hundred thousand Dollars (US\$ 600,000) or more.

**Payments Due to Political Force Majeure Event or Change in Law**

*[NTD: Consider whether a simpler form of indemnification is more appropriate.]*

*[NTD: The formatting and organization follow the Bangladesh form for consistency and first draft purposes, but we should consider reorganizing the remainder of section to a more rational format/organization.]*

If there occurs such a Political Force Majeure Event or Change in Law (as described in this Section 11.5(a) above):

(A) prior to the Commercial Operations Date, the Government shall:

(a) on each FEC Payment Date (as defined in clause (cc) below), pay to the Project Company the relevant FEC Payment (as defined in clause (BB) below); and

*[NTD: see below under clause (B); consider why FEC Payment is not required after COD.]*

(b) within twenty five (25) Days of demand from the Project Company, pay the Project Company, for each Month (or portion thereof) of the Carrying

Cost Period (as defined in clause (AA) below), an amount equal to the Carrying Cost plus one hundred percent (100%) of the Escalable [portion of the] Capacity Payment that would have been due and payable to the Project Company by PEC pursuant to the Power Purchase Agreement had the Commercial Operations Date occurred on the Scheduled Commercial Operations Date prevailing immediately prior to the occurrence of the Political Force Majeure Event or Change in Law and computed based on the assumption that Dependable Capacity during the Carrying Cost Period equals the [Contracted Facility Capacity] (and as adjusted for exchange rate changes and inflation to the date of payment on the same basis as set forth in [Article 13] of the Power Purchase Agreement applied mutatis mutandis). *[NTD: coordinate “Contracted Facility Capacity” with PPA]*

For the avoidance of doubt, the amounts payable under the immediately preceding paragraphs (a) and (b) above are independent of each other and payment under either paragraph shall not reduce or otherwise affect the amount payable under the other such paragraph.

(B) after the Commercial Operations Date, the Government shall, within twenty five (25) Days of demand from the Project Company, pay to the Project Company, for each Month (or portion thereof) of the Carrying Cost Period, an amount equal to the full Capacity Payment that would have been due and payable to the Project Company by PEC pursuant to the Power Purchase Agreement had the Political Force Majeure Event or Change in Law not occurred computed based on the assumption that Dependable Capacity during the Carrying Cost Period equals the Dependable Capacity prevailing immediately prior to the occurrence of such Political Force Majeure Event or Change in Law (and as adjusted for exchange rate changes and inflation to the date of payment on the same basis as set forth in [Article 13] of the Power Purchase Agreement applied mutatis mutandis) (but only to the extent that the Capacity Payment is not paid to the Project Company by PEC as a result of the Political Force Majeure Event or Change in Law, as the case may be).

For the purpose of this Section 11.5(a):

(AA) “Carrying Cost Period” shall mean:

(i) if the Political Force Majeure Event or Change in Law occurs prior to the Commercial Operations Date, the period beginning with the Scheduled Commercial Operations Date prevailing immediately prior to the occurrence of the Political Force Majeure Event or Change in Law and ending on:

(1) if no termination results, the earlier of the date that the Project Company is able to resume performance of its obligations under this Agreement either (as applicable) to the level of performance immediately prior to the occurrence of such Political Force Majeure Event or such that it complies with the Change in Law, as the case may be, as specified in the notice given pursuant to Section 11.2(b)(ii), or the end of the Restoration Schedule (as such Restoration Schedule may have been extended due to an intervening Force Majeure Event or pursuant to Section 11.8(b)), or

(2) if termination does result, the Day that compensation is paid coincident with or following termination under Articles 11 or 13; or

(ii) if the Political Force Majeure Event or Change in Law occurs after the Commercial Operations Date, the period beginning with the onset of the Political Force Majeure Event (unless a timely notice was not given under Section 11.2(a)(i), in which case from the time such notice was given) or the Change in Law and ending on:

(1) if no termination results, the earlier of the date the Project Company is able to resume performance of its obligations under this Agreement either (as applicable) to the level of performance, immediately prior to the occurrence of such Political Force Majeure Event or such that it complies with the Change in Law, as the case may be, as specified in the notice given pursuant to Section 11.2(b)(ii), or the last Day of the Restoration Schedule (as such Restoration Schedule may have been extended due to an intervening Force Majeure Event or pursuant to Section 11.8(b)); or

(2) if termination does result, the Day that compensation is paid coincident with or following termination under Articles 11 or 13.

(BB) “FEC Payment” in respect of a Political Force Majeure Event or Change in Law (each, hereinafter referred to as a “P/C Event”), shall be calculated in accordance with the formula below:

$$\text{FEC}_p \text{ (US\$)} = \sum_{h=1}^H \text{CFC (kW)} \times 0.5 \text{ (hrs)} \times 0.0249 \text{ (US\$ per kWh)}$$

Where:

**FEC<sub>p</sub>** = the FEC Payment in respect of a P/C Event (in Dollars)

**CFC** = 495,000 kW

**H** = The number of half hour intervals “h” in the period commencing at the onset of the P/C Event and ending at the time the affect of the P/C Event on the Project Company ceases (such period, hereinafter, the “Affected Period”).

provided that if a P/C Event occurs after the [First Initial Operations Date] *[NTD: coordinate with PPA; concept does not currently exist in PPA]* and the duration of an Affected Period is greater than seven (7) Days, the P/C Event shall, for the purposes of calculation of the FEC Payment only, be deemed to be made up of a number of separate P/C Events occurring one after another (each a “Deemed P/C Event” for which there will be a separate FEC Payment), with the first Deemed P/C Event occurring at the time the P/C Event in question first occurred. Each Deemed P/C Event shall have a duration of seven (7) Days, except for the last Deemed P/C Event which shall end at the time the affect of the P/C Event on the Project Company ceases.

In this Section 11.5(a), the affect of a P/C Event on the Project Company “ceases” on the earlier of the date that the Project Company is able to resume performance of its obligations under this Agreement either (as applicable) to the level of performance in effect immediately prior to the occurrence of such Political Force Majeure Event or such that it complies with the Change in Law, as the case may be, as specified in the notice given pursuant to Section 11.2(b)(ii), or the end of the Restoration Schedule (as such Restoration Schedule may have been extended due to an intervening Force Majeure Event or pursuant to Section 11.8(b) )

(CC) “FEC Payment Date.”

If a P/C Event occurs:

(1) prior to the [First Initial Operations Date], the “FEC Payment Date” shall be the First Initial Operations Date; *[NTD: Clarify if (1) and (2) apply where P/C Event commences prior to First Initial Operations Date and continues after First Initial Operations Date.]*

(2) after the First Initial Operations Date but before the Commercial Operations Date, and the Affected Period is:

(aa) seven (7) Days or less, the “FEC Payment Date” shall be the Day after the date on which the affect of the P/C Event on the Project Company ceases;

(bb) seven (7) Days or greater, each of the following shall be a “FEC Payment Date”:

(x) the seventh Day after the date on which the P/C Event first occurred; and

(y) every seventh Day thereafter for so long as the Affected Period is continuing, provided that the last FEC Payment Date shall be the Day after the date on which affect of the P/C Event on the Project Company ceases;

In addition to the payments in (A) and/or (B) above, the Government shall pay to the Project Company, within twenty five (25) Days of demand by the Project Company, which demand shall not be delivered to PEC more than twenty seven (27) Days prior to the date or dates upon which the corresponding principal repayments that are then due and payable from the Project Company to the Lenders under the terms of the Financing Documents, an amount equal to any principal repayments required to be paid by the Project Company to the Lenders under the Financing Documents that are deemed to have accrued for the purpose of this Section 11.5(a) on a daily basis in accordance with the following formula during the Carrying Cost Period:

$$A = R/P$$

Where:

- A = the amount of principal deemed to accrue on the relevant Day;
- R = the total amount of principal to be repaid by the Project Company on the next scheduled principal repayment date after the relevant Day under the Financing Documents; and
- P = the numbers of Days in the period beginning on the previous scheduled principal repayment date under the Financing Documents and ending on such next scheduled principal repayment date (or, in the case of the first scheduled principal repayment, beginning on the Scheduled Commercial Operations Date prevailing immediately prior to the Political Force Majeure Event or Change in Law and ending on the first scheduled principal repayment date under the Financing Documents )

All amounts in respect of such principal repayments so paid by the Government to the Project Company are hereinafter referred to as “Principal Payments”.

Notwithstanding any contrary provision of this Agreement or the Power Purchase Agreement, all amounts payable under this paragraph are to be paid to the Project Company not later than the Day the compensation amount determined in accordance with Article 14 is paid. All amounts payable under this Section 11.5(a) by the Government shall be further adjusted for changes in the value of the Rial against the Dollar from the exchange rate used to prepare the relevant Monthly invoice pursuant to this Section 11.5(a) to the exchange rate prevailing on the first Business Day after the date that the relevant amount is received by the Project Company from the Government on the same basis as is set forth in Section 13.1(d) of the Power Purchase Agreement applied mutatis mutandis, and any payment due from the Government to the Project Company as a result of such adjustment shall be paid at the time provided in Section 13.1(d) of the Power Purchase Agreement mutatis mutandis. In the event that the Government has made any Principal Payments to the Project Company during or following a Political Force Majeure Event or Change in Law, the Government and the Project Company will agree on a schedule for repayment of those Principal Payments, beginning on the Commercial Operations Date plus interest, on the outstanding balance of any such Principal Payments at the weighted average interest rate prevailing on the loans (adjusted for the change in the value of the Rial against the Dollar) under the Financing Documents on which the principal repayment was made until the Principal Payments have been repaid in full. Such schedule shall provide for Monthly payments (to be made immediately following the Project Company’s scheduled debt service payments) and shall be based on repayment in full within five (5) years following the Commercial Operations Date; provided, that payments under this Section 11.5(a) are fully subordinate to amounts due and payable to the Lenders under the Financing Documents, so that if and to the extent that funds for such payments are not available to the Project Company from cash flow from the Project less amounts paid or due for operating costs, taxes and debt service, such payments will be deferred with interest at the above-stated rate, and the failure of the Project Company to make any part or all of any such payment shall not constitute a late payment or a Project Company Event of Default under this Agreement.

- (i) If the Project Company concludes that the Restoration Cost Estimate will be less than the Threshold Amount (as defined in Section 11.5(f)) and the

Government, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with the Restoration Cost Estimate and with the Restoration Schedule, then the Project Company shall, subject to Section 11.5(e), proceed with the Restoration in accordance with the Restoration Schedule.

(ii) If

(A) the Project Company concludes that the Restoration Cost Estimate will be less than the Threshold Amount and the Government, within fifteen (15) Days of its receipt of the Preliminary Estimate, notifies the Project Company that the Government disagrees with the Project Company's conclusion and/or that it disagrees with the Restoration Schedule, or

(B) the Project Company concludes that the Restoration Cost Estimate will be greater than the Threshold Amount and the Government, within fifteen (15) Days of its receipt of the Preliminary Estimate, agrees with such conclusion,

then the Project Company shall proceed with the preparation of a Report (as defined in Section 11.6(a)) and the provisions of Section 11.5(b) shall apply.

(iii) If the Project Company concludes that the Restoration Cost Estimate will be greater than the Threshold Amount and the Government, within fifteen (15) Days of its receipt of the Preliminary Estimate, disagrees with the Preliminary Estimate, such matter (and any disagreement regarding the Restoration Schedule) shall be referred to an expert for resolution pursuant to Section 11.6(c) within twenty (20) Days of the date the Government delivers notice to the Project Company that the Government disagrees with the Restoration Cost Estimate. If the expert concludes that the Restoration Cost Estimate is less than the Threshold Amount, the provisions of the immediately preceding paragraph (i) of this Section 11.5(a) shall apply. If the expert concludes that the Restoration Cost Estimate is greater than the Threshold Amount, then the Project Company shall proceed with the preparation of a Report and the provisions of Section 11.5(b) shall apply.

(b) If a Report is required to be prepared, then at the conclusion of the meetings of the Parties to discuss the Report (as contemplated by Section 11.6(b)), the Parties shall either agree or disagree with respect to the matters addressed therein. If the Parties disagree, the matter shall be referred to an expert for resolution pursuant to Section 11.6(c). If the Parties agree or the expert determines that a Restoration of the Facility is not technically and economically feasible, this Agreement shall immediately terminate and the provisions of Section 14.1(e)(ii) shall apply. If the Parties reach agreement on such matters, or, in the case of a disagreement, after resolution by an expert pursuant to Section 11.6(c), and Restoration of the Facility is agreed by the Parties or determined by the expert to be technically and economically feasible, the Government shall, within fifteen (15) Days of such agreement or resolution, provide the Project Company with a written notice of its election to either (i) terminate this Agreement pursuant to Section 11.7(a) and pay the applicable compensation pursuant to Section 14.1(e)(i),

or (ii) authorize the Project Company to proceed with Restoration, in which case the following provisions shall apply:

(i) The Project Company shall proceed in good faith to try to secure financing for the cost of Restoration on terms satisfactory to the Project Company and the Government. If the Project Company is unable to obtain binding commitments for such financing within three hundred (300) Days of receipt of the Government's notice authorizing the Project Company to proceed with Restoration, then unless the Government commits to provide financing on such terms for the Restoration within the next thirty (30) Days and provides such funds to the Project Company within another ninety (90) Days, the failure to secure financing shall be treated as an election by the Government to terminate this Agreement pursuant to [Section 111(a)] *[NTD: Need to check cross-reference]*, in which case the Government will be required to pay the applicable compensation pursuant to Section 14.1(e)(iii).

(ii) If financing for the Restoration has been secured, then the Project Company shall proceed with the Restoration in accordance with the Restoration Schedule and, upon completion of the Restoration, the Project Company shall be entitled to special compensation pursuant to Section 11.7(a)(i) or 11.7(a)(ii), as the case may be.

(iii) The Project Company shall provide the Government with a summary of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work.

(c) If the Facility or any part thereof is damaged as a result of an Other Force Majeure Event and the Project Company fails to restore the operation of the Facility within thirty (30) Days following the commencement of that Other Force Majeure Event, then the Project Company shall prepare and deliver a Report pursuant to Section 11.6.

(i) If the Project Company concludes that the Facility can be restored such that the Project Company can continue to meet its obligations under the Power Purchase Agreement [and the provisions of clause (c)(ii) below do not apply], the Project Company shall proceed with the Restoration in accordance with the Restoration Schedule contained in the Report. The cost of the Restoration shall be the sole responsibility of the Project Company and no special compensation shall be paid to the Project Company.

(ii) If the Project Company concludes that the Facility can be restored such that the Project Company can continue to meet its obligations under the Power Purchase Agreement but the Government does not agree with the Restoration Schedule contained in the Report, then the Government shall notify the Project Company within fifteen (15) Days of the receipt of the Report and shall, in such notice, propose an alternative Restoration Schedule. The Project Company and the Government shall try, in good faith, to agree upon a revised Restoration Schedule. If the Parties cannot agree upon a revised Restoration Schedule within the fifteen (15) Day period following the notice, then either Party may submit the matter to an expert pursuant to Section 11.6(c) to determine the proper Restoration Schedule. Notwithstanding the foregoing, the Project Company shall, subject to satisfying any of the conditions or requirements of the entity

providing the financing for the Restoration (including any insurance company paying a claim to the Project Company), have the option to proceed with the Restoration while the issue of the Restoration Schedule is being resolved.

(iii) If the Project Company concludes that the Facility cannot be restored such that the Project Company can continue to meet its obligations under the Power Purchase Agreement, then the Project Company shall have the right to terminate this Agreement, in which case the Project Company shall not be entitled to any compensation from the Government and the Government shall have no further rights to or interest in the Facility; provided, however, that in this event the Parties will enter into good-faith negotiations concerning the terms on which and the price at which the Facility would be sold to the Government, subject, however, to the salvage rights of any insurance companies and subject to the security interests of the Lenders.

(d) (i) In the event of the occurrence of

(A) a force majeure event under the Power Purchase Agreement that prevents the operation or Commissioning of the Facility (whether as one Simple Cycle Unit, two Simple Cycle Units, or the Combined Cycle Unit (as such terms are defined in the Power Purchase Agreement)), including preventing the Project Company from making available [Free Capacity] or supplying [Free Electricity] because PEC is unable to receive power from the Facility or to deliver power to the Facility, or *[NTD: check definitions- concepts not defined herein]*

(B) a force majeure event under the Gas Supply Agreement that prevents the operation or Commissioning of the Facility (whether as One Simple Cycle Unit, two Simple Cycle Units, or the Combined Cycle Unit) including preventing the Project Company from making available [Free Capacity] or supplying [Free Electricity] because the Gas Supplier is not capable of providing Gas to the Facility,

and in either event the Facility is not able to operate for more than twelve (12) months or the Project Company is unable to make available [Free Capacity] or supply [Free Electricity] for more than twelve (12) months or the scheduled date for Commissioning of the Facility (as one Simple Cycle Unit, two Simple Cycle Units, or the Combined Cycle Unit, as the case may be) is delayed by more than twelve (12) months, then either Party shall have the option to terminate this Agreement and, upon such termination, the Government shall be required to pay to the Project Company the appropriate level of compensation as provided in Section 14.1(f).

(ii) In the event of the occurrence of an Other Force Majeure Event declared by the Project Company under the Power Purchase Agreement (other than a force majeure event declared by the Gas Supplier under the Gas Supply Agreement) that, prior to the Commercial Operations Date, prevents the Project Company from achieving the Commercial Operations Date within fifteen (15) months following the Scheduled Commercial Operations Date [prevailing immediately prior to such Other Force Majeure Event] or, following the Commercial Operations Date, prevents operation of the Facility

for a continuous period of nine (9) months or more, then, in either event, the Government shall have the option to terminate this Agreement and, upon such termination, the Government shall be required to pay to the Project Company the appropriate level of compensation as provided in Section 14.1(f).

(e) Notwithstanding any provision of this Section 11 to the contrary, the Project Company shall not be obligated hereunder to proceed with any Restoration unless and until the Project Company has received all necessary Government Authorizations therefor. The Project Company shall use good faith efforts to obtain such Government Authorizations as soon as reasonably practicable. If, despite the Project Company's good faith efforts, the Project Company is unable for any reason other than its own fault to obtain any such Government Authorizations within a reasonable period of time not to exceed six (6) months after the date that the Project Company becomes obligated to proceed with any Restoration, then either Party shall have the right to terminate this Agreement. Upon any such termination that is due to the Project Company's inability to obtain any Government Authorizations despite its good faith efforts, the Government shall be required to pay to the Project Company the applicable compensation pursuant to Section 14.1(g); provided, that the Government shall only be obligated to make such payment if it receives satisfactory evidence that the Project Company made good faith efforts to obtain all necessary Government Authorizations.

Upon the occurrence of, and during the continuance of, any Political Force Majeure Event or Change in Law that, in either case, does not require a Restoration, but, (a) prior to the Commercial Operations Date, results in a delay of the [First Initial Operations Date] or the Commercial Operations Date, Commissioning of the Facility (whether as one Simple Cycle Unit, two Simple Cycle Units, or the Combined Cycle Unit) or that adversely affects the ability of or the time at which the Project Company is able to make available [Free Capacity] and/or supply [Free Electricity] to PEC (as such capitalized terms are defined in the Power Purchase Agreement) pursuant to Section 13.2.1 of the Power Purchase Agreement, or (b) after the Commercial Operations Date, results in a decrease of the Capacity Payment (in each case, a "Non-Restoration Event"), then the Government shall pay to the Project Company the following amounts:

(i) if the Political Force Majeure Event or Change in Law occurred prior to the Commercial Operations Date, the same amounts, payable in the same manner and time, and for the same periods, as described in Section 11.5(a)(A), or

(ii) if the Political Force Majeure Event or the Change in Law occurred after the Commercial Operations Date, the same amounts, payable in the same manner and time, and for the same period as described in Section 11.5(a)(B).

The term "Carrying Cost Period" for purposes of this Section 11.5(e) only shall have the same meaning as it bears in Section 11.5(a), except without reference to the Restoration Schedule. The Government shall also make Principal Payments to the Project Company for the purpose, in the manner and time, and for the period described in Section 11.5(a). All amounts payable under this Section 11.5 (e) by the Government shall be further adjusted for changes in the value of the Rial against the Dollar from the exchange rate used to prepare the relevant Monthly invoice pursuant to this Section 11.5(e) to the exchange rate prevailing on the first Business Day after the date that

the relevant amount is received by the Project Company from the Government on the same basis as is set out in Section 13.1(d) of the Power Purchase Agreement applied mutatis mutandis, and any payments due from the Government to the Project Company as a result of such adjustment shall be paid at the time provided in Section 13.1(d) of the Power Purchase Agreement, mutatis mutandis. If the Government paid Principal Payments to the Project Company in connection with this Political Force Majeure Event or Change in Law, as the case may be, the Project Company shall repay them and pay interest on the outstanding balance, all in the manner set out in Section 11.5(a).

(f) For purposes of this Article 11, the term “Threshold Amount” shall mean an amount equal to: (i) ten percent (10%) of the Construction Contract price through the fifth (5th) anniversary of the Commercial Operations Date; (ii) seven and one-half percent (7.5%) of the Construction Contract price after the fifth (5th) anniversary of the Commercial Operations Date through the tenth (10th) anniversary of the Commercial Operations Date; or (iii) five percent (5%) of the Construction Contract price after the tenth (10th) anniversary of the Commercial Operations Date through the end of the term of this Agreement. If more than one event that requires a Restoration occurs during the term of this Agreement, the determination of whether the cost of Restoration exceeds the Threshold Amount shall aggregate amounts spent on Restoration, taking into account both past expenditures for this purpose and the amount estimated to be necessary for the Restoration under consideration, and the Threshold Amount shall equal fifteen percent (15%) of the Construction Contract price.

(g) Notwithstanding anything herein to the contrary, in the event of (i) the occurrence of a Political Force Majeure Event that continues for a period exceeding one hundred eighty (180) Days, (ii) a series of related Political Force Majeure Events that continue in the aggregate for a period that exceeds one hundred eighty (180) Days during any Year, or (iii) a Change in Law following which (x) an expert determines that a Restoration or modification is not feasible or the Government decides that the cost of Restoration or modification is not acceptable to the Government and (y) the Facility does not operate for one hundred eighty (180) Days following such determination or decision, and during such period the Change in Law is not rescinded or modified in a way to permit the Restoration or modification, either Party shall have the option to terminate this Agreement immediately by delivering written notice of such termination to the other Party, and, upon such termination, the Government shall be required to pay to the Project Company the compensation provided in Section 14.1(e)(v).

#### 11.6 Appraisal Report and Use of Expert.

(a) When required by Section 11.5(a), or 11.5(c), the Project Company shall commence the preparation of an appraisal report (the “Report”) within [fifteen (15)] Days after the date it was determined that a Report would be necessary, and deliver a copy of such Report to the Government within [fifty-eight (58)] Days thereafter. The Report shall address, in such detail as is practicable under the circumstances and accompanied by reasonable supporting data, the following matters (to the extent applicable):

(i) in the case of a Force Majeure Event covered by Section 11.5(a) or 11.5(c),

(A) describe the Force Majeure Event and the damage to, and/or the other affects or impacts on, the Facility,

(B) estimate in good faith the time it will take to restore the Facility (as much as it may be possible to do so) to its condition immediately prior to the Force Majeure Event or to bring the Facility into compliance with the Change in Law, and

(C) propose a Restoration Schedule; or in the case of a Force Majeure Event covered by Section 11.5(a), provide a statement and explanation in good faith regarding whether restoration or modification of the Facility or necessary capital additions are technically feasible and financially viable, including the Project Company's good faith estimate of:

a. the costs to restore the Facility to its condition immediately prior to the Force Majeure Event and the associated delay costs or the costs to come into compliance with the Change in Law;

b. a revised cash flow forecast for the Facility;

c. the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be received, and the particular purposes for which such proceeds are required to be applied; and

(ii) in the case of a Force Majeure Event or a Change in Law covered by Section 11.5(a), describe the plan to finance the costs of the Restoration, how such financing will be coordinated with the current loans under the Financing Documents, and any special requirements of the Lenders for the Restoration;

(iii) in the case of a Force Majeure Event or a Change in Law covered by Section 11.5(a), the projected modification to the tariff in the Power Purchase Agreement that would be required to pay special compensation under Section 11.7; and

(iv) in the case of a Force Majeure Event covered by Section 11.5(a) or 11.5(c), provide certificates and reports of the Project Company's financial and technical advisers, as appropriate or as reasonably requested by the Government, in support of the applicable matters referred to in this Section 11.6(a).

(b) Within fifteen (15) Days of the delivery of a Report to a Party or such further time as the Parties may agree, the Parties shall meet to discuss the Report and any action(s) to be taken. In connection with the review by the Government of a Report prepared by the Project Company, the Project Company shall provide promptly to the Government such additional financial and related information pertaining to the Report and the matters described therein as the Government may reasonably request.

(c) The following disputes between the Government and the Project Company shall be submitted to an expert for resolution within the time periods specified: (A) with respect

to disputes regarding any matter set forth in a Report, no later than twenty (20) Days after expiration of the period for review and consultation provided by Section 11.6(b); (B) with respect to disputes pursuant to Section 11.5, within the applicable period provided for in Section 11.5; and (C) with respect to whether an item of cost incurred by the Project Company should be recovered as provided in Section 11.7(b), within twenty (20) Days following the delivery of a written request to do so by either Party.

(i) The expert shall be an engineer with extensive experience in the construction and operation of electric power plants similar to the Facility. The expert shall be chosen by the Parties or, failing agreement between the Parties, by the International Chamber of Commerce. Unless the Parties otherwise agree, the expert shall not be an officer, employee or agent or former officer, employee or agent of either Party.

(ii) If the Project Company or the Government reasonably believes that the cost of a Restoration is likely to exceed two-thirds (2/3) of the Threshold Amount, then the Parties shall cooperate in good faith to select an expert each time that a Preliminary Estimate is to be prepared pursuant to Section 11.5 and engage such expert to be available in case a dispute will need to be resolved. The expert shall be provided with a copy of the Preliminary Estimate and any other written materials prepared by either Party and asked to read all materials that are provided. These initial costs to have the expert available and prepared to resolve a dispute quickly shall be shared equally by the Parties.

(iii) Once a dispute is referred to the expert, each Party shall provide all materials in support of its position to the expert and to the other Party within ten (10) Days of the expert's selection and may, within five (5) Days of the date it receives information from the other Party, submit such additional information to the expert in response to the information submitted. Each party shall use its best efforts to provide the expert with any additional information the expert requests. The expert shall be charged with the responsibility to use his best efforts to render his decision regarding any referred matter within thirty (30) Days of the date of the referral. Each Party shall be responsible to pay fifty percent (50%) of the costs of the expert and to pay for its own cost; provided, that if the expert determines that the position of a Party had substantially no merit, the expert, as part of his decision, may require one Party to pay for all of the costs of the other Party.

(iv) Notwithstanding any other provision in this Agreement to the contrary regarding the role of experts in resolving disputes, unless the Parties agree to the contrary in writing signed by both Parties at the time the expert is selected, the decision of the expert as to any matter referred under Sections 11.5 and 11.6 shall be final and binding on both Parties and shall not be subject to appeal. The Parties expressly waive, to the fullest extent permitted by law, any and all rights that they may now have or may have in the future to contest the decision of the expert before any court or other adjudicatory or administrative body.

## 11.7 Special Compensation for Force Majeure Events.

(a) In the case of a Force Majeure Event that is covered by Section 11.5(a) or [11.5(b)], *[NTD: Check cross-reference; appears error in Bangladesh form, should this be 11.5(c)? Need to verify.]* the Government shall determine whether to proceed with the Restoration (subject to the obligation to pay special compensation pursuant to Sections 11.7(a)(i) or 11.7(a)(ii), as the case may be), or terminate this Agreement. The Project Company acknowledges that the Government may delegate the review of a Report to PEC, the Gas Supplier, or any Relevant Authority and agrees to cooperate with PEC, the Gas Supplier or any such Relevant Authority as if it were the Government.

(i) In the case of a Political Force Majeure Event covered by Section 11.5(a), the Project Company shall, unless this Agreement has been terminated by the Government pursuant to Section 11.7(a) or 11.8(b), be entitled to an increase in the tariff pursuant to [Section 13.1(g)] and [Section 16.6] of the Power Purchase Agreement to recover the costs resulting from such Political Force Majeure Event, including (i) the costs (in excess of the materiality threshold in Section 11.5(a)) incurred in effecting the Restoration, as provided in Section 11.7(b) and (ii) the increase in the operating cost to the Project Company, including the cost of additional quantities or higher quality of consumables (including Gas) resulting from operation of the Facility prior to completion of the Restoration.

(ii) In the case of a Change in Law covered by Section 11.5(a), the Project Company shall, unless this Agreement has been terminated by the Government pursuant to Sections 11.7(a) or 11.8(b), be entitled to an increase in the tariff pursuant to [Section 13.1(8)] and [Section 16.7] of the Power Purchase Agreement to recover the costs of complying with such Change in Law, including (i) the costs (in excess of the materiality threshold in Section 11.5(a)) incurred in effecting the Restoration, as provided in Section 11.7(b) and (ii) the increase in the operating cost of the Facility including the cost of additional quantities or higher quality of consumables (including Gas).

(b) The costs to be recovered by the Project Company pursuant to [Section 16.6] and [Section 16.7] of the Power Purchase Agreement shall include (i) the costs that are actually incurred by the Project Company to effect the Restoration (including Carrying Cost incurred during the Restoration Schedule period in connection therewith), to the extent those costs exceed any insurance proceeds and to the extent those costs exceed the materiality threshold in Section 11.5(a), (ii) additional costs of operating the Facility, including the cost of additional quantities or higher quality of consumables (including Gas), and (iii) financing costs and return on equity in relation thereto as provided for in Section 13.1(g) of the Power Purchase Agreement; provided, that in respect of costs incurred to effect a Restoration each such item of cost shall have been reasonable and appropriate for the Project Company to effect such Restoration consistent with the standards for the original construction and operation (or, if higher, such standards as are necessary in order to comply with the applicable Laws of Yemen or Environmental Guidelines), and they shall be deemed to be reasonable and appropriate costs if they have been incurred in accordance with the Restoration Cost Estimate agreed or finally determined in accordance with Section 11.7 and in respect of which the Government has not exercised its right (if any) to terminate the Agreement pursuant to Section 11.7(a). The Project

Company shall deliver a schedule of such costs to the Government, together with copies of the invoices, for review by the Government. If the Government contests any item of cost and the Government and the Project Company cannot agree, the issue of whether such item of cost should be recovered under the Power Purchase Agreement shall be referred to an expert pursuant to Section 11.6(c).

(c) If there is any Dispute as to whether any payment is due and payable to the Project Company pursuant to this Section 11.7 or any Dispute as to the amount or timing of any such payment, then pending resolution of the Dispute, the Government or PEC, as the case may be, shall be obligated to pay to the Project Company the undisputed amount and, upon assurance from the Lenders reasonably acceptable to the Government that any amounts paid in dispute and ultimately determined not to be chargeable to the Government shall be promptly repaid to the Government as provided below, pay any disputed amount into an Escrow Account that is a segregated separate sub-account established by the Project Company under its Escrow Agreement for that purpose and in accordance with the requirements of the Financing Documents. Amounts paid by the Government or PEC that are ultimately determined not to be chargeable to the Government or PEC, as the case may be, shall be re-paid by the Project Company to the Government or PEC with interest equal to the Bank Rate plus two percent (2%) from the date of payment to the date of repayment by the Project Company.

#### 11.8 Termination as a Result of a Force Majeure Event.

(a) If this Agreement is terminated as a result of a Force Majeure Event or Change in Law covered by Section 11.5(b) [11.5(a)?] or 11.5(d) [11.5(c)?], then the provisions of Section 14.1(c) (for all terminations resulting from a Change in Law other than pursuant to Section 11.5(g)(iii)) or 14.1(e) (in case of terminations pursuant to Section 11.5(b) [11.5(a)?] in respect of a Political Force Majeure Event) or 14.1(f) (in the case of terminations pursuant to Section 11.5(d) [11.5(c)?]) shall be applied to determine whether compensation is to be paid by the Government to the Project Company.

(b) If the Project Company is required to proceed with a Restoration pursuant to Section 11.5(a), [11.5(b)] or 11.5(c) and the Restoration has not been or will not be completed by the end of the Restoration Schedule (as such Restoration Schedule may have been extended due to an intervening Force Majeure Event) or within the Restoration Cost Estimate, then the Project Company may, and if the Restoration Cost Estimate or Restoration Schedule is expected to be exceeded by fifteen percent (15%), the Project Company shall, develop a revised cost estimate and schedule as soon as possible and provide an explanation of the delay or revised cost or both to the Government. If the Government agrees that the delay and revised schedule, or revised cost estimate are reasonable and do not result from negligence, fault or unnecessary delay by the Project Company, whether in the preparation of the Restoration Schedule and Restoration Cost Estimate in light of the information reasonably available at the time, and under the circumstances under which the Restoration Cost Estimate and Restoration Schedule were required to be prepared, or in effecting the Restoration, or otherwise, the Government shall continue making the payments pursuant to Section 11.5(a), including Principal Payments, if any, (subject to repayment by the Project Company following the occurrence of the Commercial Operations Date pursuant to Section 11.5(a)). If the Government does not accept the explanation, the revised schedule or the cost estimate, the matter shall be referred to an expert selected in

accordance with Section 11.6 for resolution, and the Government shall continue making the appropriate payments pending resolution of the Dispute by the expert. The expert shall make its determination with respect to the revised schedule or revised cost and the Project Company's liability therefor within thirty (30) Days of such referral. If the expert determines that the delay was not reasonable and that it was due to the Project Company's negligence, fault or unnecessary delay, the Restoration Schedule shall not be revised. If the expert concludes that the delay was reasonable under the circumstances and not due to the negligence, fault or unreasonable delay of the Project Company, the expert shall fix the revised Restoration Schedule and Restoration Cost Estimate. If the revised Restoration Cost Estimate is more than one hundred fifteen percent (115%) of the Restoration Cost Estimate, [or the revised Restoration Schedule is more than one hundred fifteen percent (115%) of the Restoration Schedule,] ***[NTD: Need to discuss meaning with regard to "schedule"]*** the Government may elect to terminate this Agreement, unless the Project Company elects to attempt to complete the Restoration during the Extended Period, as described below. Upon such termination, the provisions of Section 14.1(c), 14.1(d) or 14.1(e)(vi), as applicable, will apply. If the revised Restoration Cost Estimate or Restoration Schedule do not exceed the one hundred fifteen percent (115%) threshold or, the Government does not terminate this Agreement, the Government shall continue to make payments pursuant to Section 11.5(a), including Principal Payments, if any, (subject to repayment by the Project Company following the occurrence of the Commercial Operations Date pursuant to Section 11.5(a)) to the Project Company during such revised schedule period. After the end of the Restoration Schedule, as it may have been revised, the Government shall have no further obligation to make payments pursuant to Section 11.5(a), and any additional costs incurred by the Project Company to expedite the completion of the Restoration shall not be included in the costs that form the basis of the tariff under [Section 16.6 or 16.7] of the Power Purchase Agreement. Notwithstanding the foregoing, if the Restoration has not been completed by the end of the Extended Period (as defined in the next sentence), then, unless the Project Company is diligently attempting to complete the Restoration, the Government shall be entitled to terminate this Agreement upon thirty (30) Days notice, whereupon Section 14.1(d) or 14.1(e)(iv), as the case may be, shall apply. The Extended Period shall commence on the first Day following the end of the Restoration Schedule (as such Restoration Schedule may have been extended due to an intervening Force Majeure Event or revised in accordance with this Section 11.8(b)) and will end on the last Day of a period equal to twenty-five (25) percent of the number of Days (recorded up to the next whole Day) in the Restoration Schedule (as it may have been revised); provided, however, that the Extended Period shall be extended for the full period of any intervening Force Majeure Event plus the period of time necessary for the Project Company to overcome the effects of the intervening Force Majeure Event.

## ARTICLE 12

### TAXATION; CUSTOMS DUTIES

#### 12.1 Taxation of the Project Company.

***[NTD: Consider granting a tax holiday throughout the term of the Agreement]***

(a) Where the Project Company maintains its existence as a company incorporated under the Laws of Yemen operating exclusively as a power generation company,

the Project Company shall, commencing on the Commercial Operations Date and continuing until the fifteenth (15th) anniversary of the Commercial Operations Date, be exempt from taxation or withholding tax in Yemen (or withholding of tax by PEC, the Gas Supplier, PEC (as the lessor under the Land Lease Agreement) and the Government) on its income.

(b) Subject to Section 7.2(d), the Project Company and its Contractors, prior to the Commercial Operations Date, shall be allowed to import machinery, tools, implements and equipment (other than office and household equipment) to be permanently incorporated into the Facility or required for the construction, Commissioning, testing, operation and maintenance of the Facility without payment of any Taxes, and the Government shall grant the necessary exemptions to give effect to this Section 12.1(b) if and when necessary. Subject to Section 7.2(d), the Project Company and the Contractor(s) shall be exempt from the payment of any Taxes, including Custom Duties and VAT, on spare parts or repaired or refurbished parts imported during the period commencing on the date hereof and continuing until the twelfth (12th) anniversary of the Commercial Operations Date and incorporated from time to time into the Facility during the term of this Agreement; provided, that the imported spare parts or repaired or refurbished parts exempted from Taxes hereunder shall have a cost (which in the case of repaired or refurbished parts shall be expressly limited to the cost of material and parts used or added to the repaired or refurbished part or parts in connection with such repair or refurbishment) plus transportation cost, of not greater than ten percent (10%) of the total equipment cost (cost plus transportation cost) for the construction of the Facility (excluding the cost plus transportation cost of spare parts). Any machinery and equipment imported for the construction, erection and testing of the Facility shall be exported within six (6) months following the Commercial Operations Date or, absent such reexportation, all applicable Customs Duties and VAT and other applicable Taxes, shall be paid by the Project Company.

In the event that there is a claim of Customs Duties and VAT due on plant or equipment imported for incorporation into, or use in the construction, operation, or maintenance of the Facility or on spare parts or on repaired or refurbished parts within the ten percent (10%) exempted amount referred to in Section 12.1(b), and the Project Company chooses, notwithstanding the provisions of Section 12.1(b), to pay such duties under protest, upon notice to the Government by the Project Company, the Government shall ensure that the dispute is resolved consistent with the terms of this Agreement and the Laws of Yemen within two hundred and seventy (270) Days after the Project Company files its refund claim with the relevant Government Authority.

***[NTD: consider whether Section 7.2(b) is inconsistent with this provision.]***

(c) The Project Company shall be exempt from any stamp duty and fees on the registration of the Financing Documents and deeds recorded in connection with acquisition of the Site in Yemen.

(d) Upon proper application in accordance, mutatis mutandis, with the provisions of Section 4.1(a):

(i) Where the Project Company is a [insert relevant Yemen law provision] under the Laws of Yemen, the Foreign Investors shall, so long as such Foreign

Investors are also exempt from the payment of such capital gains taxes in the jurisdiction of their domicile, be exempt from the payment of capital gains tax in Yemen in respect of a transfer or disposal of Ordinary Share Capital in accordance with the terms of this Agreement;

(ii) The expatriate employees of the Project Company shall be exempt from tax or withholding tax in Yemen on their income received from the Project Company in connection with work on the Project for a period of three (3) years commencing on the date of each such employee's first entry into Yemen as an employee of the Project Company; ***[NTD: Consider adding provision that after this 3 year period, the Project Employees should not have to pay taxes that are higher than what they would have paid in their home country for their income.]***

(iii) Power generation has been declared by the Government as an "industry" and, accordingly, the Project Company shall be eligible for all other concessions which were available to industrial projects in Yemen on the date of this Agreement under and in accordance with the Laws of Yemen;

(iv) Any direct foreign collaborators, companies and experts of the Project Company involved in the Project shall be exempt from tax and withholding tax on such of their income as is paid to it by the Project Company as "royalties" or as "technical know how fees" or as "technical assistance fees" in connection with the Project;

(v) The Government shall permit remittance of up to fifty percent (50%) of the salary of the expatriate employees employed in Yemen by the Project Company or the Contractor(s) and the Government shall provide all requisite facilities for repatriation of their savings and retirement benefits at the time of their departure from Yemen ***[NTD: Consider rephrasing this provision.];*** and

(vi) The Project Company, Lenders and the Contractor(s) shall be governed by the applicable double taxation treaties or other bilateral arrangements between the Government and their respective countries of domicile in effect as of the date of this Agreement and thereafter from time to time; provided, that such treaties and arrangements are no less favorable than those applicable and in existence on the date of this Agreement, if any.

12.2 Taxation of Lenders. The foreign Lenders shall not be subject to taxation or withholding tax in Yemen in respect of their income from interest and fees arising from loans extended to the Project Company under the Financing Documents during the term of the Power Purchase Agreement, subject, however, to the fulfillment of all applicable conditions specified in the relevant bilateral tax treaty applicable to each Lender's country in conjunction with the [insert relevant Yemen law provision], as may be amended at the time the related Financing Documents become effective.

12.3 Foreign Investors. Foreign Investors will be governed by the bilateral tax treaties or other bilateral arrangements between the Government and their respective countries of

domicile as at the date of this Agreement and thereafter from time to time; provided, that such treaties or arrangements are no less favourable than those applicable and in existence on the date of this Agreement, if any. If there is no bilateral tax treaty between Yemen and any Foreign Investor's country of residence, the Foreign Investor will be taxed in accordance with the Laws of Yemen.

12.4 Taxes on Electricity. The Project Company shall be exempted from any imposition of tax on the sale of electricity to PEC.

12.5 Tax Change Not a Breach. No charge or assessment of a tax or duty on the Project Company, the Contractor or the Foreign Lenders in excess of the rate for such tax or duty expressly provided under this Article 12, if any, shall be a breach of this Agreement by the Government; provided, that the charge or assessment of a tax or duty in excess of the rate provided hereunder shall be a basis for an adjustment in the compensation payable to the Project Company under the Power Purchase Agreement in accordance with Section 13.1(e) thereof.

12.6 Withholding of Taxes at Source.

(i) The Project Company shall deduct Taxes at source as applicable under [insert appropriate Yemen tax law] and rules framed thereunder, as in existence on the date of this Agreement, on the income or receipts of the local and foreign Contractor(s) employed in the Project and shall pay such Taxes deducted at source to the Government.

(ii) Local and foreign consultants employed in the Project will pay Taxes as applicable under [insert appropriate Yemen tax law] and rules framed thereunder, as in existence on the date of this Agreement.

## ARTICLE 13

### TERMINATION

13.1 Termination for Default.

***[NTD: Need to coordinate with Default and Termination provisions of PPA.]***

(a) Termination by the Government. Each of the following events shall be an event of default by the Project Company (each a "Project Company Event of Default") that, 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 13.2; provided, that no such event shall be a Project Company Event of Default (A) if it results from a breach by the Government of this Agreement or the Guarantee, (B) if it results from a breach by PEC of the Power Purchase Agreement, (C) if it results from a breach by the Gas Supplier of the Gas Supply Agreement, (D) if it results from a breach by PEC of the Land Lease Agreement or (E) if it occurs as a result of or during a Force Majeure Event for the period provided pursuant to Section 11.4:

(i) the failure of the Project Company to achieve Financial Closing by the Required Financial Closing Date, provided that such failure shall not be a Project Company Event of Default if the reason for such failure is the non-delivery of the Performance Security Deposit (as defined in the Power Purchase Agreement) for so long as PEC has failed to comply with Section 8.5(a)(iii) of the Power Purchase Agreement;

(ii) the failure of the Project Company to achieve Construction Start Date within ninety (90) Days after the Financial Closing Date;

(iii) the failure of the Project Company to achieve the Commercial Operations Date within six (6) months following the Required Commercial Operations Date;

(iv) after the Construction Start Date but prior to the achievement of the Commercial Operations Date, the abandonment of the Facility by the Project Company or the failure of the Project Company to develop the Facility in a diligent manner for a period of thirty (30) consecutive Days without prior notice to, and the prior written consent of, the Government (in either case, other than as a result of PEC's acts or omissions or a Lapse of Consent); provided, that after the commencement of on-Site construction of the Facility, the Project Company shall not be deemed to have abandoned its construction of the Facility (and therefore its prosecution of the Facility) so long as it is using all reasonable efforts to regain control of the Facility or reinstate such construction;

(v) the abandonment by the Project Company of the operation of the Facility after the Commercial Operations Date for a consecutive period of twenty-five (25) Days without prior notice to, and the prior written consent of, the Government; provided, that the Project Company shall not be deemed to have abandoned its operation of the Facility so long as it is using its best efforts to regain control of the Facility or reinstate such operation;

(vi) other than the assignments to and by the Lenders contemplated under Section 9.2, the assignment or transfer of the Project Company's rights or obligations in the assets identified in Section 9.2(a) without obtaining the prior written consent of the Government or the transfer, conveyance, loss or relinquishment to any person or entity of the Project Company's right to own and/or operate the Facility or any material part thereof or to occupy the Site to any person (other than PEC pursuant to Power Purchase Agreement) without the prior written approval of the Government;

(vii) 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), the occurrence of any of the following events:

(A) the passing of a resolution by the shareholders of the Project Company for the winding up of the Project Company;

(B) the voluntary filing by the Project 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 Project Company after notice to the Project 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 Project Company of an order winding up the Project Company that is not stayed or reversed by a court of competent authority within thirty (30) Days;

(viii) any statement, representation, or warranty by the Project 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 has a material and adverse effect on the Project Company's ability to perform its obligations under this Agreement;

(ix) any material breach by the Project Company of this Agreement, that is not remedied within thirty (30) Days after notice from the Government, stating that a material breach of this Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in question in reasonable detail, and demanding remedy thereof;

(x) the occurrence of a Project Company Event of Default (as defined in the Power Purchase Agreement, Land Lease Agreement or the Gas Supply Agreement) that has not been waived or remedied within the applicable cure period provided to the Project Company or the Lenders therein; or

(xi) Any default or defaults by the Project Company in the making of any undisputed payment or payments required to be made by it under this Agreement, the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement, as the case may be, on the due date specified in such agreement that continues unpaid for a period of thirty (30) Days plus five (5) Business Days following the due date therefor.

(b) Termination by the Project Company. Each of the following events shall be an event of default by the Government (each a "Government Event of Default") that, if not cured within the time period permitted (if any) to cure shall give rise to the right on the part of the Project Company to terminate this Agreement pursuant to Section 13.2; provided, that no such event shall be a Government Event of Default (A) if it results from a breach by the Project Company of the Power Purchase Agreement, the Gas Supply Agreement, the Land Lease Agreement or this Agreement, or (B) if it occurs as a result of a Force Majeure Event during the period provided pursuant to Section 11.4:

(i) The expropriation, compulsory acquisition or nationalization by the Government or any Government Authority of

(A) any Ordinary Share Capital or

(B) any material asset or right of the Project Company (except as contemplated by the Security Package);

(ii) Any procurement by the Government or any Government Authority or any combination thereof of

(A) any Ordinary Share Capital if the result would be for the Government or one or more Government Authority(ies) or both to acquire control of the Project Company or its management (and there shall be an irrebuttable presumption that the ownership by the Government or any Government Authority or both of more than twenty-five percent (25%) of the Ordinary Share Capital shall constitute such control), or

(B) any material asset or right of the Project Company (except as contemplated by the Security Package);

(iii) The dissolution, pursuant to law, of PEC, except for:

(A) the privatization of PEC's thermal power stations; or

(B) an amalgamation, reorganization, reconstruction or further privatization of PEC, in each case where:

a. the Government, without interruption, guarantees the performance of the succeeding entity or entities on the same terms and conditions as the Guarantee; or

b. such other commercial security is provided for the obligation of the succeeding entity or entities that in the reasonable business judgment of the Project Company provides an adequate alternative to the Guarantee;

and all of PEC's obligations under this Agreement have been assigned pursuant to law or contractually assumed, through a novation or otherwise, by one or more entities, each of which has the legal capacity and appropriate commercial function to perform its obligations;

(iv) The dissolution, pursuant to law, of the Gas Supplier, except for an amalgamation, reorganization, reconstruction or privatization of the Gas Supplier where the Government, without interruption, guarantees the performance of the succeeding entity or entities on the same terms and conditions as the Guarantee or such other commercial security is provided for the obligation of the succeeding entity or entities that, in the reasonable business judgment of the Project Company, provides an adequate alternative to the Guarantee, and all of the Gas Supplier's obligations under the Gas Supply Agreement are assigned pursuant to law or contractually assumed, through a novation or otherwise, by one or more entities, each of which has the legal capacity and appropriate commercial function to perform its obligations;

(v) The dissolution, pursuant to law, of PEC, except for an amalgamation, reorganization, reconstruction or privatization of PEC where the Government, without interruption, guarantees the performance of the succeeding entity or entities on the same terms and conditions as the Guarantee or such other commercial security is provided for the payment obligation of the succeeding entity or entities that, in the reasonable business judgment of the Project Company, provides an adequate alternative to the Guarantee, and all of PEC's obligations under the Land Lease Agreement are assigned pursuant to law or contractually assumed, through a novation or otherwise, by one or more entities, each of which has the legal capacity and appropriate commercial function to perform its obligations;

(vi) Any default or defaults by the Government in the making of any payment or payments required to be made by it under the Guarantee referred to in Article 16 on the due date for payment specified in the Guarantee that continues unpaid for five (5) Business Days;

(vii) Any material breach by the Government of this Agreement that is not remedied within thirty (30) Days after the Project Company provides notice to the Government stating that a material breach of this Agreement has occurred that could result in the termination of this Agreement, identifying the material breach in reasonable detail, and demanding remedy thereof;

(viii) The occurrence of a Gas Supplier Event of Default (as defined in the Gas Supply Agreement), a PEC Event of Default (as defined in the Power Purchase Agreement) or a PEC Event of Default (as defined in the Land Lease Agreement) that has not been waived or remedied within the applicable cure period provided therein;

(ix) Any change in any Laws of Yemen making

(A) unenforceable, invalid or void any material undertaking of the Government, PEC or the Gas Supplier under this Agreement, the Land Lease Agreement, the Guarantee, the Power Purchase Agreement or the Gas Supply Agreement;

(B) it unlawful for the Project Company, its Lenders or the investors to make or receive any payment, to perform any obligation or to enjoy or enforce any material right under this Agreement or any other document in the Security Package; or

(C) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right unenforceable, invalid or void as a result of any such change in law; or

(x) Any change in any of the Laws of Yemen from those in existence on the date hereof placing any material restrictions or limitations (beyond those restrictions or limitations that are in existence on the date of the execution of this Agreement) on the ability of the Project Company to exchange for Dollars, or for Foreign Investors to repatriate, any capital, dividends, distributions or other proceeds from the

Project Company (provided, that such distributions do not arise in connection with a breach by the Project Company of this Agreement), which restrictions or limitations remain in place for more than one hundred and eighty (180) Days without an arrangement being provided to exempt the Project Company or its Foreign Investors from all such restrictions and limitations.

### 13.2 Termination Notices.

(a) Upon the occurrence of a Government Event of Default or a Project Company Event of Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting Party may, at its option, initiate termination of this Agreement by delivering a written notice (a “Notice of Intent to Terminate”) of its intent to terminate this Agreement to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the Project Company Event of Default or the Government Event of Default, as the case may be, giving rise to such notice.

(b) Following the delivery of a Notice of Intent to Terminate, the Parties shall consult for a period of forty-five (45) Days in case of a failure by either Party to make payments when due, and ninety (90) Days with respect to any other Event of Default (or such longer period as the Parties mutually may agree) as to what steps shall be taken with a view to mitigating the consequences of the relevant event taking into account all prevailing circumstances. During the period following the delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default, and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 13.2(c), then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.

(c) Subject to the provisions of Section 13.3 or 13.4, as the case may be, upon expiration of the consultation period described in Section 13.2(b), and unless the Parties shall have otherwise agreed or unless the Government Event of Default or Project Company Event of Default giving rise to the Notice of Intent to Terminate shall have been remedied, the Party having given the Notice of Intent to Terminate may terminate this Agreement by delivering a Termination Notice to the other Party, whereupon this Agreement shall immediately terminate and Article 14 shall apply.

### 13.3 Notice to the Government of PEC’s or the Gas Supplier’s Default.

(a) Anything in this Agreement notwithstanding, the Project Company shall not seek to terminate this Agreement, the Power Purchase Agreement or the Gas Supply Agreement due to any default by PEC or the Gas Supplier without first giving a copy of any notices given to PEC or the Gas Supplier, as the case may be, under Sections 4.3 and 4.4 of the Power Purchase Agreement or Sections 13.1(b) and 13.2 of the Gas Supply Agreement, to the Government, such notices to be coupled with a request to the Government to cure any such default within the same cure period as provided to PEC or the Gas Supplier, as the case may be, under the Power Purchase Agreement or the Gas Supply Agreement, respectively, such cure period to commence upon delivery of each such notice to the Government.

(b) Each such notice shall be deemed to have been delivered

- (i) when presented personally to the Government;
- (ii) when transmitted by facsimile; or
- (iii) five (5) Days after being deposited in a regularly maintained receptacle for the Postal Service in Yemen, postage prepaid, registered or certified, return receipt requested, addressed to the Government, at the address indicated in Article 17 (or such other address as the Government may have specified by written notice delivered in accordance herewith).

Any notice given by facsimile under this Section 13.3 shall be confirmed in writing, delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Government, PEC or the Gas Supplier.

(c) No rescission or termination of this Agreement, the Power Purchase Agreement or the Gas Supply Agreement by the Project Company shall be effective without such notice and expiration of such cure period.

The Government may, but shall be under no obligation to, make any payment (other than is required under the Guarantee) or to perform any act required of PEC under the Power Purchase Agreement or the Gas Supplier under the Gas Supply Agreement with the same effect as if the payment or act had been made or performed by PEC or the Gas Supplier, as the case may be.

(d) If the Government fails to cure or is unable or unwilling to cure a PEC Event of Default or a Gas Supplier Event of Default, as the case may be, within the cure periods provided to PEC or the Gas Supplier, as the case may be, under the Power Purchase Agreement or the Gas Supply Agreement, respectively, the Project Company shall have all of its rights and remedies with respect to such default as set forth in this Agreement, the Power Purchase Agreement, or the Gas Supply Agreement, as the case may be; provided, that if the Government is diligently attempting to cure any default other than a payment default of PEC or the Gas Supplier, as the case may be, and demonstrable progress toward affecting such cure is being made, the Government shall be granted an additional period not exceeding ninety (90) Days to affect such cure before the Project Company may exercise its rights and remedies with respect to such default set forth in this Agreement and the Power Purchase Agreement or the Gas Supply Agreement, as the case may be.

#### 13.4 Notice to the Lenders of the Project Company's Default.

(a) Anything in this Agreement notwithstanding, from and after the occurrence of Financial Closing, the Government shall not seek to terminate this Agreement (except as a result of a Project Company Event of Default under Section 13.1(a)(ii)) without first giving a copy of any notices given to the Project Company under Sections 13.1 and 13.2 to the Lenders, such notice to be coupled with a request to the Lenders to cure any such default within the cure period specified in Section 13.2(b) (the "Initial Cure Period"), which period shall commence upon delivery of each such notice to the Lenders.

(b) The Lenders will designate in writing to the Government an agent (the “Agent”) and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if delivered to each of the Lenders.

Each such notice shall be in writing and shall be deemed to have been delivered:

- (i) when presented personally to the Lenders or the Agent,
- (ii) when transmitted by the Government and received by the Lenders or the Agent by facsimile to the number specified in accordance with the procedure set forth below, or five (5) Days after being deposited in a regularly maintained receptacle for the Postal Service in Yemen, postage prepaid, registered or certified, return receipt requested, addressed to the Lenders or Agent at the address indicated at Financial Closing (or such other address or to the Agent at such address as the Lenders may have specified by written notice delivered in accordance herewith).

Any notice given by facsimile under this Section 13.4 shall be confirmed in writing, delivered personally or sent by prepaid post, but failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Lender or the Agent.

Notwithstanding the foregoing, if the address of the Lenders or Agent is outside Yemen, any notice delivered to the Lenders or Agent pursuant to this Section 13.4 shall be:

- (iii) presented personally or sent by international courier or facsimile;
- and
- (iv) if sent by facsimile, confirmed by international courier.

and the Initial Cure Period shall commence upon receipt by the Lenders or Agent of the notice referenced above.

The address and facsimile number for the Lender or Agent shall be provided to the Government by the Project Company at Financial Closing and thereafter may be changed by the Lenders or the Agent by subsequent delivery of a notice to the Government at the address or facsimile number for the Government provided in Section 17.1 (or at such other address or facsimile number subsequently delivered to the Lenders or the Agent in accordance with this Section 13.4) and otherwise in accordance with the requirements of Section 17.1.

(c) From and after Financial Closing, no rescission or termination of this Agreement by the Government (other than termination resulting from a Company Event of Default under Section 13.1(a)(ii)) shall be valid or binding upon the Lenders without such notice and the expiration of:

- (i) the Initial Cure Period;
- (ii) the Evaluation Period (as defined below) provided in this Section 13.4; and

(iii) if applicable, the Lenders Cure Period (as defined below), as provided in this Section 13.4 as such Lenders Cure Period may be extended.

The Lenders may make, but shall be under no obligation to make, any payment or perform or procure the performance of any act required to be made or performed by the Project Company, with the same effect as if made or performed by the Project Company.

(d) If the Lenders fail to cure or are unable or unwilling to cure any Project Company Event of Default that is required to be cured prior to the expiration of the periods referred to above in this Section 13.4, the Government shall have all its rights and remedies with respect to such default as set forth in this Agreement; provided, that:

(i) upon the expiration of the Initial Cure Period, the Lenders shall have a further period (the "Evaluation Period") during which the Lenders may evaluate such Project Company Event of Default, the condition of the Facility and other matters relevant to the actions to be taken by the Lenders concerning such Project Company Event of Default; and

(ii) the Evaluation Period shall end on the sooner to occur of:

(A) the Lenders' delivery to the Government of a notice that the Lenders have elected to procure the cure of such Project Company Event of Default or otherwise pursue their remedies under the Financing Documents (an "Election Notice"); and

(B) thirty (30) Days following the end of the Initial Cure Period.

During the Evaluation Period, the Government's rights and remedies with respect to a Project Company Event of Default shall be suspended.

(e) Upon the delivery of the Election Notice, the Lenders shall be permitted an additional period of one hundred and eighty (180) Days to cure any Project Company Event of Default (the "Lenders Cure Period" )

During the Lenders Cure Period, the Government's right to terminate this Agreement shall be suspended so long as the Lenders are diligently:

(i) attempting to procure (other than by the Project Company unless the Project Company is acting at the direction of the Lenders) the cure of such default; or

(ii) pursuing the enforcement of their rights and remedies under the Financing Documents against the Project Company.

(f) In the event that the Lenders fail to cure any Project Company Event of Default on or before the expiration of the Lenders Cure Period, as it may have been extended, the Government may exercise its rights and remedies with respect to such default set forth in this Agreement, and the Government may immediately terminate this Agreement, and such

termination shall be effective on delivery to the Lenders or the Agent of notice of such termination.

### 13.5 Other Remedies.

(a) Except where expressly provided otherwise in this Agreement:

(i) the exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude the Party from exercising other remedies that are provided herein or are available at law; and

(ii) remedies are cumulative, and the exercise of, or the failure to exercise, one or more remedies by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by that Party.

(b) Notwithstanding the provisions of Section 13.5(a), the Parties agree that Government may be damaged in amounts that may be difficult or impossible to determine in the event that Financial Closing is not achieved as required by Section 13.1(a)(i) and, in the event of any such breach by the Project Company, the sole right and remedy of the Government for any such default shall be the right (but not the obligation) to terminate this Agreement pursuant to Section 13.2. Upon such termination as a result of such breach, the Parties acknowledge that PEC shall be entitled to encash the Proposal Security in full.

(c) Notwithstanding the provisions of Section 13.5(a), the Parties agree that the Project Company may be damaged in amounts that may be difficult or impossible to determine in the event that this Agreement is terminated due to a Government Event of Default. Therefore, the Parties agree that the compensation amounts provided in Section 14.1(b) and the transfer of the Facility to the Government in exchange therefore is reasonable and constitutes liquidated damages to the Project Company for any default by the Government under Section 13.1(b) and it is further understood and agreed that the payment by the Government of the compensation amount provided in Section 14.1(b) and transfer of the Facility to the Government and the termination of this Agreement pursuant to Section 13.2 is the sole remedy of the Project Company for such event.

### 13.6 Proposal Security.

(a) The Proposal Security has been delivered to PEC and is required to be maintained in effect in accordance with the provisions of the Power Purchase Agreement until the occurrence of the Financial Closing. If at any time prior to the occurrence of Financial Closing the Proposal Security will expire within thirty (30) Days and the Project Company does not extend the period of effectiveness of the Proposal Security for a period of not less than four (4) months or provide a replacement Proposal Security in accordance with Section 8.5(a) of the Power Purchase Agreement, such security to have a term of not less than four (4) months, PEC shall be entitled immediately to encash the Proposal Security (or any replacement guarantee then in effect) in full.

(b) The Proposal Security secures the Project Company's obligation to achieve Financial Closing in accordance with the terms of this Agreement. If the Project

Company will not achieve Financial Closing on or before the Required Financial Closing Date, then, at any time prior to thirty (30) Days before the Required Financial Closing Date, the Project Company may deliver to PEC the Proposal Security in an amount equal to four times of its original amount and a request in writing that the Required Financial Closing Date, the Required Commercial Operations Date and Scheduled Commercial Delivery Date be extended for an additional period of ninety (90) Days, and upon receipt by PEC of the enhanced Proposal Security, the Government shall extend the Required Financial Closing Date, the Required Commercial Operations Date and the Scheduled Commercial Delivery Date for an additional period of ninety (90) Days. The Project Company shall, mutatis mutandis, be entitled to one additional extension of the Required Financial Closing Date upon delivery of a request in writing for such further extension and the Proposal Security in the amount of four million Dollars (US\$4,000,000), whereupon the Required Financial Closing Date shall be extended for a further period of ninety (90) Days.

## ARTICLE 14

### RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION

#### 14.1 Compensation Upon Termination.

##### (a) Project Company Event of Default.

(i) In the event the Government terminates this Agreement pursuant to Section 13.1(a)(i) as a result of a Project Company Event of Default for failure to timely reach Financial Closing, its rights and remedies shall be limited to those set out in Section 13.5(b).

(ii) In the event the Government terminates this Agreement pursuant to Section 13.1(a)(ii) through (xi) as a result of any other Project Company Event of Default, the Government or its designee shall have the right, but shall not be required, to acquire all of the Project Company's rights, title and interests in and to the Facility; provided, that the Government or its designee, upon such acquisition, pays the Project Company the compensation amount set forth in Row I of the Compensation Table in Schedule 2. If the Government does not elect to purchase the Facility upon the effective date of the termination, the Government shall have no further rights or interest in the Facility or obligations to the Project Company hereunder.

(b) Government Event of Default. In the event the Project Company terminates this Agreement pursuant to Section 13.1(b)(i) through (x) as a result of a Government Event of Default, the Project Company may elect to transfer the Facility to the Government or its designee and, upon such transfer, the Government or its designee shall pay the Project Company the compensation amount set forth in Row 11 of Schedule 2.

(c) Termination Following Change in Law. In the event of a termination of this Agreement following a Change in Law other than pursuant to Section 11.5(g)(iii), the Government shall pay the Project Company the compensation amount set forth in Row II of the

Compensation Table in Schedule 2. Upon payment of such compensation amount, the Project Company shall transfer the Facility to the Government.

(d) Termination for Failure of the Project Company to Achieve Restoration Schedule Following Other Force Majeure Event. If following an Other Force Majeure Event, the Government terminates this Agreement in accordance with Section 11.8(b), as a result of the Project Company's failure to timely complete the Restoration as required in Section 11.8(b), the Government or its designee shall have the right, but shall not be required, to acquire all of the Project Company's rights, title and interests in and to the Facility; provided, that the Government or its designee, upon such acquisition, pays the Project Company the compensation amount set forth in Row IV of the Compensation Table in Schedule 2. If the Government does not elect to purchase the Facility upon the effective date of the termination, the Government shall have no further rights or interest in the Facility or obligations to the Project Company hereunder.

(e) Termination Following Political Force Majeure Event.

(i) If following a Political Force Majeure Event, the Parties agree or an expert determines that Restoration is feasible, but the Government elects to terminate this Agreement, the Government shall pay the Project Company the compensation amount set forth in Row II of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Project Company shall transfer the Facility to the Government.

(ii) If following a Political Force Majeure Event, the Parties agree or an expert determines that Restoration is not feasible, the Government shall pay the Project Company the compensation amount set forth in Row II of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Project Company shall transfer the Facility to the Government.

(iii) If following a Political Force Majeure Event, the Parties agree or an expert determines that Restoration is feasible, but the Project Company is unable to obtain financing for the Restoration, the Government shall pay the Project Company the compensation amount set forth in Row VI of the Compensation Table in Schedule 2. Upon the payment of such compensation amount, the Project Company shall transfer the Facility to the Government.

(iv) If following a Political Force Majeure Event, the Government terminates this Agreement in accordance with Section 11.8(b) as a result of a failure to timely complete a Restoration, the Government shall, so long as the Project Company has made a demonstrable good faith effort to effect the Restoration, pay the Project Company the compensation amount set forth in Row IV of the Compensation Table in Schedule 2. If the Project Company has not made a demonstrable good faith effort to effect the Restoration, the Government shall pay the Project Company the compensation amount set forth in Row V of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Project Company shall transfer the Facility to the Government.

(v) If a Political Force Majeure Event has continued uninterrupted for more than one hundred eighty (180) Days, intermittent Political Force Majeure Events have taken place over one hundred eighty (180) Days in any Year, or, following a Change in Law, an expert has determined that Restoration or modification of the Facility is not technically feasible or the Government has determined that the costs of Restoration or modification are unacceptable and the Change in Law has not been modified or rescinded to make such Restoration or modification technically or financially acceptable to the Government and the Facility has not been operated for one hundred eighty (180) Days, and either Party terminates this Agreement in accordance with Section 11.8, the Government shall pay the Project Company the compensation amount set forth in Row II (for a Government termination) or Row III (for a Project Company termination) of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Project Company shall transfer the Facility to the Government.

(vi) If following a revision of the Restoration Cost Estimate or the Restoration Schedule of a Restoration resulting from a Political Force Majeure Event, the Government elects to terminate this Agreement pursuant to Section 11.8, the Government shall pay the Project Company the compensation amount set forth in Row VI of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Project Company shall transfer the Facility to the Government.

(f) Termination Following Force Majeure Event Under the Power Purchase Agreement or the Gas Supply Agreement.

(i) If following a force majeure event affecting PEC or a force majeure event under the Gas Supply Agreement, either Party pursuant to Section 11.5(d)(i) elects to terminate this Agreement, the Government shall pay the Project Company the compensation amount set forth in Row II (for a Government termination) or Row 111 (for a Project Company termination) of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Project Company shall transfer the Facility to the Government.

(ii) If following an Other Force Majeure Event affecting the Facility (other than one arising as a result of a force majeure event declared by the Gas Supplier), the Government pursuant to Section 11.5(d)(ii) elects to terminate this Agreement, the Government shall pay the Project Company the compensation amount set forth in Row VI of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Project Company shall transfer the Facility to the Government.

(g) Termination Following Project Company's Inability to Obtain Permits. If this Agreement is terminated pursuant to Section 11.5(e) as a result of the Project Company's inability to obtain a necessary Government Authorization, the Government shall pay the Project Company the compensation amount set forth in Row II of the Compensation Table in Schedule 2. Upon payment of such compensation amount, the Project Company shall transfer the Facility to Government.

(h) Use of Certain Insurance Proceeds. Whenever this Agreement is terminated pursuant to Article 11 following a Force Majeure Event, and the Government is obligated to pay compensation to the Project Company pursuant to Section 14.1 and insurance proceeds are available in connection with the Force Majeure Event, the total amount of the net proceeds made available under the insurance policies to which the Project Company is entitled with respect to the Facility shall, if not used to effect a Restoration or make repairs to the Facility, be used to pay the following items in the following order of priority:

- (i) to the payment of all indebtedness secured by the Facility;
- (ii) then to the other compensation, if any, payable by the Government to the Project Company as set forth in Schedule 2; and
- (iii) then to the Project Company.

(i) Assignment and Assumption of Gas Supply Agreement. In the event of a termination of this Agreement and the termination of the Power Purchase Agreement as a result of default thereunder by PEC and/or the Government, the Project Company shall assign the Gas Supply Agreement to the Government, and the Government, upon such assignment, shall assume the rights and obligations of the Project Company thereunder.

(j) Return of Proposal Security. In the event of a termination of this Agreement for reasons other than a termination set out in Sections 14.1(a)(i) or (d), the Government shall, promptly, upon such termination (which shall include, without limitation, termination as set out in Sections 14.1 (a)(ii), (b), (c), (e), (f) and (g) above), procure the return of the Proposal Security by PEC (without any drawings thereon) to the Project Company.

14.2 Obligations Upon Termination. Upon the expiration or earlier termination of this Agreement, the Parties shall have no further obligations hereunder except for obligations that arose prior to or arise upon such expiration or termination and obligations that expressly survive such expiration or termination pursuant to this Agreement; provided, that notwithstanding anything to the contrary in this Agreement, the rights and obligations set out in Article 8 (Bank Accounts; Foreign Exchange), Article 12 (Taxation; Customs Duties) and Article 15 (Resolution of Disputes) shall survive any termination or expiration of this Agreement until all provisions are fulfilled and all funds payable hereunder by Government are received by the Project Company or the Lenders upon the sale or other disposal of the assets related to the Project, including, without limitation, proceeds from the enforcement by the Lenders of the security created by the Project Company under or pursuant to the Security Package have been repatriated.

14.3 Facility to be Free and Clear. Any transfer of the Facility by the Project Company to the Government (or its designee) in accordance with the provisions of this Article 14 shall be made free and clear of all Environmental Liabilities and all Liens and encumbrances other than Permitted Liens; provided, that the Government has paid to the Project Company all compensation amounts that are payable in accordance with this Article 14.

## ARTICLE 15

### CHOICE OF LAW AND RESOLUTION OF DISPUTES

15.1 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be interpreted, construed and governed by the laws of England.

15.2 Arbitration.

*[NTD: Consider using UNCITRAL or International Chamber of Commerce Rules.]*

(a) The Parties shall attempt in good faith to resolve any dispute or difference arising under, out of, in connection with or relating to this Agreement, including, without limitation, any dispute or difference concerning the existence, validity or enforceability or interpretation of this Agreement or any provision hereof (including the existence, validity or enforceability of the agreements contained in this Section 15.2) or the obligations or performance of a Party hereunder or under any provision hereof, or as to whether this Agreement or any provisions hereof (including agreements contained in this Section 15.2) are invalid, illegal or unenforceable (each a “Dispute”) through consultation between the Parties. If any such Dispute has not been resolved within ninety (90) Days of the delivery by a Party to the other Party of a written notice, identifying the Dispute in reasonable detail and requesting consultations between the Parties to resolve the Dispute, such Dispute shall (subject only to the provisions of Section 11.5, Section 11.6, Section 11.7 Section 11.8 and Section 15.2(b)) be resolved exclusively by means of arbitration in accordance with the Rules of Procedure for Arbitration Proceedings (the “ICSID Rules”) of the International Centre for the Settlement of Investment Disputes (the “Centre”) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States 1965 (the “Convention”), and except as provided in Section 15.2(b), the Parties accordingly irrevocably and unconditionally agree to submit themselves and any Dispute to the jurisdiction of the Centre. For the purposes specified in Articles 25(1) and 25(2)(b) of the Convention with respect to the jurisdiction of the Centre pursuant to the Convention, the Parties irrevocably agree that (a) any Dispute is a legal dispute arising directly out of an investment between a Contracting State and a national of another Contracting State and (b) the Project Company is and shall at all times remain a national of another Contracting State by reason of foreign control unless and until (by reason of any sale or transfer of any Ordinary Share Capital by Foreign Investors other than as a result of an act or action proscribed under Section 10.2(a)) the amount of the Ordinary Share Capital held by Foreign Investors is in the aggregate less than fifty-one (51%) of the Ordinary Share Capital. Where there is a reduction in the amount or percentage of Ordinary Share Capital held by Foreign Investors that results from such a proscribed act or action, such reduction shall not be included in the determination of the percentage ownership of Ordinary Share Capital by Foreign Investors.

(b) In the event that (i) any request for arbitration made in accordance with Section 15.2(a) and Article 36 of the Convention is not registered by the Secretary-General under Article 36(3) of the Convention, (ii) the Centre or the arbitral tribunal fails or refuses to assume or to exercise jurisdiction or to continue to exercise jurisdiction with respect to any Dispute referred to it or (iii) for any other reason the Dispute cannot be finally determined by arbitral

proceedings pursuant to the ICSID Rules, then any such Dispute shall be determined by means of arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (“the [CC Rules]”). *[NTD: Consider using UNCITRAL rules]*

(c) Any arbitration proceeding shall be conducted in [ ], Yemen.

(d) The Government hereby irrevocably (i) agrees that for purposes of the Power Purchase Agreement, the Land Lease Agreement and the Gas Supply Agreement, respectively, PEC (under the Power Purchase Agreement and the Land Lease Agreement) and the Gas Supplier are agencies of the Government for which and to which the provisions of Article 25(3) of the Convention shall apply, (ii) grants its consent to and approval of the submission and consent by PEC (under the Power Purchase Agreement and the Land Lease Agreement), and the Gas Supplier, respectively, to the jurisdiction of the Centre for the purposes of the arbitration agreements set forth in the Power Purchase Agreement, in the Land Lease Agreement and in the Gas Supply Agreement, respectively, and in respect of any arbitral proceeding which may be begun thereunder, in each case for the purposes specified in Article 25(3) of the Convention and, (iii) undertakes to notify the Centre of its consent and approval if and when so required.

(e) The Parties agree that the arbitral tribunal constituted in pursuance of a request for arbitration made under Section 15.2(a) or (b) shall consist of a sole arbitrator, who shall be a person who has held judicial office for a period of not less than three (3) years in a court of record in England or in a jurisdiction whose laws are substantially derived from the common law of England. The Parties further agree that, except in the case of an appointment made by the Chairman of the Administrative Council in pursuance of Article 38 of the Convention and Rule 4(1) of the ICSID Rules, any person appointed as sole arbitrator need not be a person designated to serve on the Panel of Arbitrators constituted under Section 4 of Chapter I of the Convention.

(f) No arbitrator appointed pursuant to this Section 15.2 shall be a national or resident of the jurisdiction of either Party or any shareholder or group of shareholders owning directly or indirectly five percent (5%) or more of the Ordinary Share Capital, nor shall any such arbitrator be a shareholder or employee or agent or former employee or agent of, or have or have had any material interest (directly or indirectly) in the business of or in, any Party or such person.

(g) Subject (in the case of arbitral proceedings under Section 15.2(a)) to the provision of Section 5 of Chapter IV of the Convention and Chapter VII of the ICSID Rules, each Party hereby irrevocably undertakes (i) to treat any arbitral award or procedural order made by the arbitral tribunal constituted pursuant to this Section 15.2 as final and binding and (ii) undertakes to comply with and to carry out any such arbitral award or procedural order, fully and without delay.

(h) Without prejudice to the provisions of Article 47 of the Convention and Rule 39 of ICSID Rules (in the case of any arbitral proceeding begun in pursuance of Section 15.2(a) of this Agreement), the Parties agree that the arbitral tribunal may, upon the application of either Party, order a Party or the Parties to take such interim measure or measures of protection as the arbitral tribunal may consider necessary with respect to the subject matter of the

Dispute or any ancillary claim referred to it, the maintenance or efficient conduct of the arbitration or the preservation of the rights and interests of any Party under or with respect to this Agreement and the arbitration agreements set forth in this Section 15.2, including, without limitation, the making of an order requiring any Party to refrain from filing or pursuing or to terminate or withdraw any action, suit or proceeding in any court of competent jurisdiction or, to the extent not prohibited by law, other authority that has (directly or indirectly) a connection with the subject matter of the arbitral proceeding or jurisdiction relating to such subject matter, and the Parties agree to abide by and comply with such order(s).

(i) Until such time as any arbitral proceedings begun in pursuance of Section 15.2(a) or (b) have been finally concluded (and, for this purpose, all rights of appeal, if any, shall have been exhausted), except for proceedings brought exclusively for the purpose of recognition and enforcement of any arbitral award or procedural order made by an arbitral tribunal duly constituted hereunder, each Party irrevocably agrees not to initiate any proceedings, file any action or suit in any court of competent jurisdiction or before any judicial or other authority arising under, out of, in connection with or relating to this Agreement, the arbitration agreements set forth in this Section 15.2, any Dispute (whether or not any such Dispute shall have been referred to arbitration in pursuance of Section 15.2(a) and (b)), the subject matter of any Dispute or any arbitral proceeding begun in pursuance of Section 15.2(a) or (b), including without limitation (i) proceedings brought with a view to recourse or appeal against or revision or the annulment of any arbitral award or procedural order made by the arbitral tribunal or (ii) proceedings in which relief or remedy is sought by way of injunction or other judicial order (interlocutory or final) which would have the effect (directly or indirectly) of restraining or impeding the maintenance or prosecution by either Party of any arbitral proceeding initiated in pursuance of Section 15.2(a) or (b).

(j) The language of the arbitration shall be in English.

### 15.3 Separability and Related Disputes.

(a) The arbitration agreement set forth in Section 15.2 and this Section 15.3 shall be (i) governed by and construed in accordance with the laws of England and (ii) treated as an agreement independent of and separable from the other terms of this Agreement and, accordingly, a determination or ruling by an arbitral tribunal properly constituted in pursuance of Section 15.2(a) or (b) that this Agreement or any provision hereof (other than Section 15.2) is invalid, illegal or unenforceable, shall not invalidate the arbitration agreement set forth in Section 15.2 and this Section 15.3.

(b) If the Dispute raises issues which are substantially the same or connected with issues raised in a related dispute between the Project Company and PEC, the Project Company and PEC (as the lessor under the Land Lease Agreement) or the Project Company and the Gas Supplier under the Power Purchase Agreement, the Land Lease Agreement and the Gas Supply Agreement, respectively, and if the related dispute has already been referred for determination to arbitration and if referral of the related Dispute hereunder would not impair or adversely affect the rights or interests of the Parties, the Project Company and the Government hereby agree that the Dispute shall be referred to the same arbitral tribunal constituted to determine the related dispute.

#### 15.4 Commercial Acts; Sovereign Immunity.

(a) The Gas Supplier unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitute private and commercial acts. In furtherance of the foregoing, the Gas Supplier hereby irrevocably and unconditionally agrees that: (i) should any proceedings be brought against the Gas Supplier or its assets, other than assets protected by the diplomatic and consular privileges under the 1978 Immunity Act of the United Kingdom or the 1976 Sovereign Immunities Act of the United States of America or any analogous legislation (collectively, the “Protected Assets”) in any jurisdiction in connection with this Agreement or any of the transactions contemplated by this Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of the Gas Supplier; (ii) it waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and (iii) consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including without limitation, the making, enforcement or execution against or in respect of any of its assets other than the Protected Assets).

(b) The Project Company hereby unconditionally and irrevocably consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may thereafter acquire, of any court of competent jurisdiction, including the courts of Yemen, for any action filed by the Government to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve any Dispute between the Parties. The Project Company waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 15.4(b) and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same. The Project Company agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court. The Project Company irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of any jurisdiction.

(c) For the avoidance of doubt any dispute or difference between the Parties as to whether either Party has complied with the affirmation set out in this Section 15.4 shall be referred for determination under Section 15.2 and shall fall within the definition of Dispute.

#### ARTICLE 16

#### GUARANTEE

The Government shall, at Financial Closing, execute and deliver to the Project Company the Guarantee.

ARTICLE 17

NOTICES

17.1 Address for Notices. Except as otherwise expressly provided in this Agreement, all notices or other communications that are required or permitted hereunder shall be in English and in writing and sufficient if delivered personally, as evidenced by the corresponding seal or similar evidence of the recipient Party, or sent by registered or certified mail, telecopier, telex, or telegram addressed as follows:

If to the Government: THE GOVERNMENT OF THE REPUBLIC OF YEMEN

Attention: [ ]

Address: [ ]

Facsimile: [ ]

If to PEC: THE PUBLIC ELECTRICITY CORPORATION, THE REPUBLIC OF YEMEN

Attention: [ ]

Address: [ ]

Facsimile: [ ]

If to the Project Company: [PROJECT COMPANY]

Attention: [ ]

Address: [ ]

Facsimile: [ ]

17.2 Delivery. All Notices shall be deemed delivered

- (a) when presented personally,
- (b) when transmitted by facsimile to the receiving Party's facsimile number specified above,
- (c) five (5) Business Days after being delivered to a reputable international courier for express delivery, addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith), or
- (d) five (5) Business Days after being deposited in a regularly maintained receptacle for the Postal Service in Yemen, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated above (or such other address

as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above in accordance herewith).

Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, 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.

17.3 Changes. Either Party may by notice under this Agreement change the addresses, addresses or facsimile numbers or both to which such notices and communications to it are to be delivered or mailed.

## ARTICLE 18

### MISCELLANEOUS PROVISIONS

#### 18.1 Variations in Writing; Amendment of Project Agreements.

(a) All additions, amendments and variations to this Agreement shall be binding only if in writing, expressly stated to be such an addition, amendment or variation, and signed by duly authorized representatives of the Parties.

(b) No amendment or modification of the Power Purchase Agreement or the Gas Supply Agreement shall be effective without the prior written consent of the Government if and to the extent that such amendment or modification increases the obligations or liabilities of the Government under this Agreement or the Guarantee.

18.2 Entire Agreement. This Agreement and, when executed and delivered, the Power Purchase Agreement, the Gas Supply Agreement, and the Land Lease Agreement, together with their attached schedules and annexures, incorporate the entire understanding between the Parties in relation to the Project and, upon the occurrence of the Effective Date, shall supersede all previous oral and written representations, agreements or arrangements between the Parties in respect of the Project.

#### 18.3 Waiver.

(a) No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement:

(i) shall operate or be construed as a waiver of any other or further default whether of a like or different character; or

(ii) shall be effective unless in writing duly executed by an authorized representative of the Party.

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

variation or as the relinquishment of any such right under this Agreement, which shall remain in full force and effect.

#### 18.4 Confidentiality.

(a) Each of the Parties shall, and shall ensure that their contractors, subcontractors, consultants, agents and respective permitted successors and assigns, hold in confidence all documents and other information, whether technical or commercial, that are of a confidential nature, supplied to it by or on behalf of the other Party relating to the Project and shall not (except as required by law or appropriate regulatory authorities or prospective lenders to, or investors in, the Project Company or the respective professional advisers of the Parties or of such lenders or investors as aforesaid) publish or otherwise disclose, or use the same for its own purposes, otherwise than as may be required to perform its obligations under this Agreement. The provisions of this Section 18.4 shall survive the termination of this Agreement, but shall expire and be of no further effect upon the fifth (5th) anniversary of the date of termination of this Agreement. *[NTD: Consider adding Arbitration exception]*

(b) The provisions of Section 18.4(a) above shall not apply to:

- (i) information in the public domain otherwise than by breach of this Agreement;
- (ii) information in the possession of the receiving Party thereof before divulgence that was not obtained under any obligation of confidentiality; and
- (iii) information obtained from a third party who the receiving Party believes, after reasonable inquiry, is free to divulge the same so long as the information was not obtained by the receiving Party under any obligation of confidentiality to the third party. *[NTD: Consider adding more exceptions]*

(c) Nothing herein 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.

#### 18.5 Accounts and Reports.

(a) Appointment of Auditors. The Project Company shall make arrangements with respect to the installation and operation of an accounting and cost control system and for the appointment as auditors of a firm of independent chartered accountants reasonably acceptable to the Government.

(b) Right of Inspection. The Project Company shall permit representatives of the Government, on reasonable notice, to enter upon and inspect the Facility and the design, construction, operation and maintenance thereof. The Project Company shall maintain complete and accurate records accounting for all transactions relating to any Restoration of the Facility, which records shall be subject to inspection and audit by the Government.

(c) Periodic Reports.

(i) The Project Company shall, as soon as available but in any event within sixty (60) Days of filing or of the date that would be required for filing by a private limited company, furnish to the Government two (2) copies of all documents filed or that would be required to be filed in compliance with the requirements applicable to [insert relevant Yemen law provision], as amended or as may be superseded from time to time.

(ii) The Project Company shall, as soon as available, furnish to the Government (A) a report on any factors materially and adversely affecting, or that might materially and adversely affect, the Project or the Project Company's business and operations, and (B) copies of the monthly progress reports and any other construction-related reports given to PEC.

(d) Reporting of Changes. The Project Company shall, at least fourteen (14) Days prior to its becoming effective, report any contemplated (i) material change in its [Memorandum and Articles of Association], (ii) change in its fiscal year, (iii) change in the constitution of its Board of Directors, (iv) change in its Chief Executive Officer and (v) without prejudice to Section 10.3, registration of a transfer of Ordinary Share Capital to any person who thereby becomes a registered holder of greater than five (5) percent of the issued Ordinary Share Capital or of a transfer of Ordinary Share Capital to or from a person who, immediately prior to such transfer, held greater than five (5) percent of the issued Ordinary Share Capital.

(e) Providing of Lists of Lenders and Creditors. Together with the periodic report required by Section 18.5(c)(i), the Project Company shall provide to the Government a list of each of its Lenders and creditors to which the Project Company owes a sum equivalent to at least one million Dollars (US\$1,000,000) including the amount due under each loan to each of them. The list shall also indicate any changes, as compared to the list submitted the previous year, that might have occurred.

(f) Information Regarding Statutory Notice; Minding Up Proceedings.

(i) The Project Company shall, within seven (7) Days of receipt thereof, provide a copy of any notice that the Project Company may be served under [insert relevant Yemen law provision] by any of the Lenders or the Project Company's creditors.

(ii) The Project Company shall provide to the Government all information in respect of any further actions taken by the Lenders or its creditors following any notice under [insert relevant Yemen law provision].

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

18.7 No Liability for Review. No review, non-objection or approval by the Government of any agreement, document, instrument, drawing, specifications or design proposed by the Project Company shall relieve the Project Company from any liability that it

would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification or design or failure to comply with applicable Laws of Yemen or to satisfy the Project Company's obligations under this Agreement, the Power Purchase Agreement, and the other documents comprising the Security Package with respect thereto, nor shall the Government be liable to the Project Company or any other person by reason of its review, non-objection or approval of an agreement, document, instrument, drawing, specification or design.

18.8 No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty or any liability to or any right of suit or action whatsoever, to any person not a Party to this Agreement, except for the specific rights granted to the Lenders hereunder.

18.9 [Not Used].

18.10 Non-Discrimination.

(a) If any Government Authority grants pursuant to the Laws of Yemen (i) the Construction Contractor(s), or operations and maintenance contractors of any company implementing a private power generation project in Yemen concessions and incentives with respect to its income derived from such private generation project and/or (ii) the foreign shareholders of any private limited company implementing a private generation project in Yemen tax exemption on capital gains from transfer of shares by such shareholders, the Government shall procure that such concessions and incentives are granted to the Contractor(s) and Foreign Investor, as the case may be, and at the written request of the Project Company to the Government this Agreement shall be amended to include such concessions and incentives.

(b) The Government shall ensure that at any given time only one price shall apply for selling Gas to owners of all private power generation projects in Yemen by any Government Authority.

18.11 Relationship of the Parties. This Agreement shall not be interpreted or construed to create an association, joint venture, partnership or agency between the Parties or to impose any partnership obligation or liability upon either Party. 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 to otherwise bind, the other Party. Nothing in this Agreement shall be construed as creating any relationship between the Parties other than that of the independent sale and purchase of Gas. The Parties do not intend to create any rights, or grant any remedies to, any third party beneficiary of this Agreement.

18.12 Language. The language of this Agreement shall be English. All documents, notices, waivers and all other communication written or otherwise between the Parties in connection with this Agreement shall be in English.

18.13 Assignment. Except as provided in Section 9.2, this Agreement may not be assigned by either Party other than by mutual agreement between the Parties in writing. Notwithstanding the foregoing, the Project Company may, on or prior to Financial Closing Date, transfer all of its rights, title and interest in and to this Agreement to another entity, which may

be a partnership, joint venture or other entity, if such a transferee is controlled by the same investors of the Project Company or by the Project Company's principals and such transferee is organized under Laws of Yemen. For the purpose of financing the Facility, the Government agrees that the Project Company may assign to the Lenders its rights and interest or create security over its rights and interest under or pursuant to this Agreement. At the request of the Project Company, delivered to the Gas Supplier not less than thirty (30) Days in advance, the Government shall execute and deliver, at the cost and expense of the Project Company, at the execution and delivery of the Financing Documents such acknowledgments to the Lenders or their designees with respect to any security created pursuant to this Section 18.13 and the rights of such parties under this Agreement as the Lenders may reasonably request in accordance with customary practices in transactions of this nature. Without prejudice to the Government's rights hereunder, the holder of any security created under this Section 18.13 shall not be prevented or impeded by the Government from enforcing such security in accordance with its terms.

18.14 Counterparts. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement, and be binding on both Parties hereto.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

**FOR: THE REPUBLIC OF YEMEN**

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

Name:

Title:

**FOR: [PROJECT COMPANY]**

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

Name:

Title:

**FOR: THE PUBLIC ELECTRICITY CORPORATION, REPUBLIC OF YEMEN**

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

Name:

Title:

**SCHEDULE 1: GOVERNMENT AUTHORIZATIONS\***

**[Determine which authorizations are needed and insert, determining appropriate Yemen laws]**

<p>PART 1: GOVERNMENT AUTHORIZATIONS REQUIRED BEFORE FINANCIAL CLOSING</p>
<p>PART A: CRITICAL GOVERNMENT AUTHORIZATIONS</p>

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\* To the extent of any inconsistencies between the terms and provisions of the Implementation Agreement and this Schedule 1, the terms and provisions of the Implementation Agreement shall be in all respects controlling. Capitalized terms used and not defined herein are as defined in the Implementation Agreement (of which this Schedule 1 constitutes a part).



## **SCHEDULE 2: COMPENSATION AMOUNT S**

This Schedule 2 consists of two parts. Part 1 is a Compensation Table showing in a tabular format the amounts payable in accordance with Section 11 and Section 13.1. The table refers to various compensation elements, labeled as a, b, c, d, and e, which are set forth in Part 2.

The calculations with respect to each such compensation element shall be verified by an international accounting firm acceptable to the Parties and the Lenders.

### **PART 1 OF SCHEDULE 2 - COMPENSATION TABLE TERMINATION COMPENSATION PAYABLE BY GOVERNMENT**

I. a

(Section 14.1(a) )

II. a+b+c+ d

(Section 14.1(b); Section 14.1(c); Section 14.1(8); Section 14.1(e)(i); Section 14.1(e)(ii); Section 14.1(e)(v) (Government termination); Section 14.1(f)(i) (Government termination) )

III. a+b+c/2+d;

provided, that if the Political Force Majeure Event occurs prior to the Commercial Operations Date, “c” shall be multiplied by a fraction, the numerator of which is the equity invested by the Project Company at the time of termination and the denominator or which is the planned equity investment by the Commercial Operations Date.

Section 14.1(e)(v)(Project Company termination); Section 14.1(f)(i)(Project Company termination))

IV. a + e

Section 14.1(d); Section 14.1(e)(iv))

V. a + (e/1.25)

Section 14.1(e)(iv)

VI. a+b+ d

Section 14.1(e)(iii); Section 14.1(e)(vi); Section 14.1(1 (ii) )

## PART 2 OF SCHEDULE 2 - COMPENSATION ELEMENTS

In this Schedule 2, the letters a, b, c, d, and a are used to signify different elements of compensation to be paid upon the occurrence of the events described in Section 14 and this Schedule 2. The letters shall represent the following amounts:

- a = the sum of (i) the total amount of principal outstanding to the Lenders under the Financing Documents incurred by the Project Company in compliance with Section 9.3 of the Implementation Agreement and interest (including (but only as provided below) default interest) thereon plus (ii) the total amount outstanding under any loan agreements for capital improvements to the Facility that are required under this Agreement, as approved by the Government, taking into account all Supplemental Tariff Payments made through such dates plus (iii) the total amount of any other outstanding debt incurred by the Project Company that was approved by the Government, less any insurance proceeds received by the Project Company following a Force Majeure Event and not spent for Restoration plus (iv) any winding-up costs, prepayment charges, or similar charges or costs passed through by the Lenders to the Project Company in accordance with the Financing Documents as shown in the schedule provided to the Government under Section 9.3. For the purpose of Clauses (i) and (iv) of this item a, the total amount outstanding to Lenders under the Financing Documents shall be an amount equal to all unpaid principal, accrued interest (including default interest), prepayment penalties, fees, commissions, costs, and expenses owing to the Lenders as of the date of payment by the Government which shall be determined and certified by the Lenders to the Government. Notwithstanding the foregoing, in no event shall the principal amount exceed the amount shown to be outstanding in the amortization schedule provided to the Government pursuant to Section 9.3 unless directly attributable to a Government Event of Default and no accrued interest shall be paid by the Government for any interest that accrued under the Financing Documents or other loan agreements from and after a default by the Project Company thereunder unless such default results from a Government Event of Default, PEC or the Gas Supplier under the Implementation Agreement, the Power Purchase Agreement or the Gas Supply Agreement, respectively. The sum of all amounts owing to the Lenders under clauses (i) and (iv) above, shall within thirty (30) Days of a request of the Government, prior to termination by the Government, be specified by the Lenders as to such amounts owing on a date not less than sixty (60) Days following the request and specified in the request by the Government.
- b = as of the date of transfer of the Facility to Government, the equity investment by the shareholders of the Project Company, expressed in Dollars, reduced on a straight line basis from the Commercial Operations Date through the term of this Agreement to five percent (5%) of the initial value of such equity; which amount shall be further reduced by the estimated cost of maintenance to be performed during the then-Scheduled Outage or Scheduled Outages and the estimated cost of the maintenance to be performed during the next major maintenance overhaul, in each case pro rated by the ratio of (i) the number of Days in the period from the last such maintenance until the date of termination to (ii) the number of Days in the period between the last such maintenance and the scheduled date for the next such maintenance.

- c = for a period equal to the lesser of (i) five (5) years and (ii) the remainder of the Term (as defined in the Power Purchase Agreement) of the Power Purchase Agreement but in no event less than two (2) years, an amount equal to the “Net Cash Flow,” expressed in Dollars, for such period (or if such period extends beyond the base case for the last year of the base case), discounted to its present value by applying a discount rate equal to twelve percent (12%) to the base case pro forma presented to the Lenders at Financial Closing plus the Net Cash Flow under any Supplemental Tariff. The term “Net Cash Flow” shall mean the net cash profits of the Project Company with respect to the Facility less all principal repayment amounts and without regard to depreciation, all as projected in such base case pro forma.
- d = the summation of (i) any additional equity amounts that are contributed by the shareholders, expressed in Dollars, of the Project Company for any of the events that are described under Section 11.5 plus any such other equity contributions, expressed in Dollars, approved by the Government, in each case reduced by three and two-tenths percent (3.2%) of the original amount of the equity contribution for each year following the date of such equity contribution.
- e = The summation of (i) any additional equity amounts, expressed in Dollars, that are contributed by the shareholders of the Project Company for any of the events that are described under Section 11.5 prior to the Political Force Majeure Event or Other Force Majeure Events giving rise to the Restoration which led to the termination by the Government pursuant to Section 11.8(b), reduced by three and two-tenths percent (3.2%) of the original amount of the equity contribution for each year following the date of such equity contribution plus (ii) original equity contributions, expressed in Dollars, adjusted in the manner described in (b) above plus other equity contributions, expressed in Dollars, prior to such Political Force Majeure Event and approved by the Government, reduced by three and two-tenths percent (3.2%) of the original amount of the equity contribution for each year following the date of such equity contribution.

### SCHEDULE 3: FORM OF GUARANTEE

THIS GUARANTEE is made in [ ] the of [insert date of Financial Close]

BETWEEN:

- (1) THE REPUBLIC OF YEMEN (the “Guarantor”); and
- (2) [THE PROJECT COMPANY], a company incorporated under the laws of [ ], whose registered office is located in [ ] (the “Project Company”).

WHEREAS:

- (A) The Guarantor and the Project Company have entered into an Implementation Agreement (the “Implementation Agreement”).
- (B) The Public Electricity Corporation, Republic of Yemen (“PEC”) has entered or will enter into or a Power Purchase Agreement with the Project Company (the “Power Purchase Agreement”).
- (C) The Ministry of Oil & Mineral Resources, Republic of Yemen, (the “Gas Supplier”) has entered or will enter into a Gas Supply Agreement with the Project Company (the “Gas Supply Agreement”).
- (D) PEC (the “Lessor”) has entered or will enter into a Land Lease Agreement with the Project Company (the “Land Lease Agreement”).
- (E) In accordance with Section 16 of the Implementation Agreement, the Guarantor has agreed to enter into this Guarantee of the payment obligations of (i) PEC under the Power Purchase Agreement, (ii) the Gas Supplier under the Gas Supply Agreement and (iii) the Lessor under the Land Lease Agreement.

NOW THEREFORE, IT IS HEREBY AGREED as follows:

#### 1. GUARANTEE

##### 1.1 Guarantee

In consideration of the Project Company entering into the Power Purchase Agreement with PEC, the Gas Supply Agreement with the Gas Supplier and the Land Lease Agreement with the Lessor, the Guarantor hereby irrevocably and unconditionally guarantees and promises to pay the Project Company any and every sum of money PEC, the Gas Supplier and the Lessor are obligated to pay to the Project Company under or pursuant to the Power Purchase Agreement, the Gas Supply Agreement and the Land Lease Agreement that PEC, the Gas Supplier or the Lessor has failed to pay when due in accordance with the terms of the relevant agreement or agreements, which obligation of the Government shall include monetary damages arising out of any failure by PEC, the Gas Supplier or the Lessor to perform its obligations under the Power Purchase

Agreement, the Gas Supply Agreement or the Land Lease Agreement, respectively, to the extent that any failure to perform such obligations gives rise to monetary damages.

## 1.2 Waiver of Defenses

The obligations of the Guarantor under this Guarantee shall be absolute and unconditional and shall remain in full force and effect until all the covenants, terms, and agreements set forth in the Power Purchase Agreement, the Gas Supply Agreement and the Land Lease Agreement shall have been completely discharged and performed, unless waived by the Project Company in writing. The obligations of the Guarantor shall not be modified or impaired upon (and the Guarantor waives any defense to the performance of such obligations based upon) the happening from time to time of any event, including the following:

- 1.2.1 The extension of time for payment of any amounts due or of time for performance of any of the covenants, terms, or agreements of PEC, the Gas Supplier, or the Lessor set forth in the Power Purchase Agreement, the Gas Supply Agreement, or the Land Lease Agreement respectively.
- 1.2.2 Amendments to the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement, as the case may be.
- 1.2.3 The failure, omission, or delay by the Project Company to enforce, ascertain, or exercise any right, power, or remedy under or pursuant to the terms of the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement, or this Guarantee;
- 1.2.4 The bankruptcy, insolvency, or other failure or financial disability of PEC, Gas Supplier, the Lessor or the Project Company;
- 1.2.5 The addition, or partial or entire release of any guarantor, maker or other Party (including PEC, the Gas Supplier or the Lessor) primarily or secondarily responsible for the performance of any of the covenants, terms, or agreements set forth in the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement or by any extension, waiver, amendment, or thing or circumstance whatsoever in law or in equity that may release or create a defense or discharge for a guarantor (other than complete performance in accordance with the terms of the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement);
- 1.2.6 Any failure of PEC, the Gas Supplier or the Lessor to comply with the requirements of any law, regulation or order;
- 1.2.7 The dissolution, privatization, reorganization or any other legal alteration of the legal structure of PEC, the Gas Supplier or the Lessor; and
- 1.2.8 Any assignment pursuant to Section 9.2(a) of the Implementation Agreement by the Project Company of the Implementation Agreement, the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement;

- 1.2.9 Any invalidity, illegality, or unenforceability of the Implementation Agreement, the Power Purchase Agreement, the Gas Supply Agreement, the Land Lease Agreement, or any of their respective provisions, terms or conditions; and
- 1.2.10 Any other act (other than payment of amounts due), event or omission which, but for this Section 1.2, might operate to discharge, impair, or otherwise affect any of the obligations of the Government under this Guarantee

### 1.3 Continuing Guarantee

This Guarantee shall be a continuing security and, accordingly, shall extend to cover (i) the balance due to the Project Company at any time from PEC, the Gas Supplier or the Lessor, as the case may be, under each of the respective agreements. No demand made by the Project Company hereunder shall prejudice or restrict the right of the Project Company to make further or other demands.

### 1.4 Additional Security

1.4.1 This Guarantee shall be in addition to, and not in substitution for or derogation of, any other security that the Project Company may at any time hold in respect of the obligations of PEC under the Power Purchase Agreement, the Gas Supplier under the Gas Supply Agreement or the Lessor under the Land Lease Agreement.

1.4.2 The Project Company may enforce this Guarantee notwithstanding that it may hold any other guaranty, lien, or security of or for the obligations of PEC under the Power Purchase Agreement, the Gas Supplier under the Gas Supply Agreement or the Lessor under the Land Lease Agreement or have available to it any other remedy at law or equity.

### 1.5 Preliminary Demand

1.5.1 Notwithstanding that this Guarantee is the unconditional obligation of the Guarantor, before taking steps to enforce this Guarantee and demand payment from the Government, the Project Company agrees to make demand in writing for payment from PEC, the Gas Supplier or the Lessor, as the case may be, with a copy of such demand delivered by the Project Company to the Guarantor. After thirty (30) Days from the date payment was due, the Project Company may notify the Government in writing that payment from PEC, the Gas Supplier or the Lessor, as the case may be, is past due and make a demand for payment from the Government under this Guarantee, and the Government shall make payment within five (5) Business Days thereafter. Late payments hereunder shall bear interest at an annual rate equal to that established for late payment in the applicable agreement (the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement, as the case may be).

1.5.2 Except as provided in Section 1.5.1, the Project Company shall not be obliged before taking steps to enforce this Guarantee to exercise any other remedies that may be available to it under or in respect of the Power Purchase Agreement, the

Gas Supply Agreement or the Land Lease Agreement, as the case may be, or to initiate any proceedings or obtain judgment against PEC, the Gas Supplier or the Lessor thereon.

## 1.6 Certification

Any demand for payment made pursuant to this Guarantee shall be made in person by a duly authorized officer of the Project Company at the Guarantor's offices provided in Section 5.1.1 of this Guarantee and shall be accompanied by a certificate signed by a duly authorized officer of the Project Company stating that:

“We hereby certify that (A) (1) [ ] (the “Project Company”) is making this demand on the Republic of Yemen (the “Guarantor”) in the amount of Rial [insert amount] in accordance with Section 1 of the Guarantee dated [ ], between the Guarantor and the Project Company; (2) the amount specified above is now due and payable by [the Public Electricity Corporation, Republic of Yemen (the “PEC”)] [The Ministry of Oil & Mineral Resources (the “Gas Supplier”)] and PEC (the “Lessor”) under the [Power Purchase Agreement between the Project Company and PEC] or [the Gas Supply Agreement between the Project Company and the Gas Supplier] or [the Land Lease Agreement between the Project Company and the Lessor]; (3) demand in writing for payment from PEC or the Gas Supplier or the Lessor as the case may be, was made on the date payment was due and not less than 30 Days from the date hereof and (4) such amount, on the date hereof, remains unpaid by [PEC] or [the Gas Supplier] or [the Lessor]. “

## 1.7 Subordination

Any right that the Guarantor may at any time have to be indemnified by PEC, the Gas Supplier or the Lessor, as the case may be, in respect of sums paid out by the Guarantor in performance of this Guarantee shall be subordinated to the rights of the Project Company to recover from PEC, the Gas Supplier or the Lessor in full all sums that are then due and payable from PEC, the Gas Supplier or the Lessor, as the case may be, under the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement, respectively.

## 1.8 No Set-off

No set-off, counterclaim, reduction, or diminution of any obligation that the Guarantor has or may have against the Project Company shall be available to the Guarantor against the Project Company in connection with any obligation of the Guarantor to the Project Company under this Guarantee, except for the right to set-off amounts which are then due and payable by the Project Company to PEC, the Gas Supplier or the Lessor under the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement, respectively.

## 1.9 Arbitration; Jurisdiction

1.9.1 Arbitration. The Parties irrevocably agree that any dispute or difference arising under, out of, in connection with or relating to, this Guarantee, including, without limitation, any dispute or difference concerning the existence, validity or

enforceability of this Guarantee or any provision hereof (including the existence, validity or enforceability of the agreements contained in this Section 1.9.1) or as to whether this Guarantee or any provisions hereof (including agreements contained in this Section 1.9.1) are invalid, illegal or unenforceable (each a “Dispute”) shall be resolved in accordance with the provisions of Section 15.2 and Section 15.3(a) of the Implementation Agreement, which provisions are, mutatis mutandis, incorporated herein by reference. Each Party hereby consents to the jurisdiction of any courts of competent jurisdiction for any action filed by the other Party under this Guarantee to enforce any award or decision of any arbitrator who was duly appointed under this Guarantee to resolve any Dispute hereunder between the Parties.

1.9.2 Commercial Acts. The Guarantor unconditionally and irrevocably agrees that the execution, delivery, and performance by it of this Guarantee constitutes commercial acts.

1.93 Sovereign Immunity; Jurisdiction.

(a) The Guarantor unconditionally and irrevocably:

- (i) agrees that should any proceedings be brought against it or its assets, other than its military aircraft, naval vessels, other defence properties and other assets of a type for which diplomatic and consular privileges are afforded under the Immunity Act of the United Kingdom of 1978 or the Sovereign Immunities Act of 1976 of the United States of America or any analogous legislation (collectively, “Protected Assets”) in any jurisdiction where such assets or property of the Guarantor are located to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve a Dispute between the Parties, no claim of immunity from such proceedings will be claimed by or on behalf of the Guarantor on behalf of itself or any of its assets (other than Protected Assets) that it now has or may in the future have in any such jurisdiction in connection with any such proceedings;
- (ii) waives any right of immunity which it or any of its assets (other than Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and consents generally to the jurisdiction of any court of competition jurisdiction for any action filed by the Project Company to enforce any award or decision of any arbitrator who was duly appointed under this Guarantee to resolve any Dispute between the Parties (including without limitation, the making, enforcement or execution against or in respect of any of its assets whatsoever (other than the Protected Assets)) regardless of its use or intended use and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to

plead or claim the same. The Guarantor agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.

- (b) The Project Company irrevocably waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of any jurisdiction.

## 2. TAXATION

In addition to any amount then due and payable to the Project Company by PEC, the Gas Supplier or the Lessor, as the case may be, under the Power Purchase Agreement, the Gas Supply Agreement or the Land Lease Agreement, respectively, and payable by the Guarantor under the terms of this Guarantee, the Guarantor shall be liable for any Tax levied or imposed by a Government Authority or any political subdivision or authority thereof on or with regard to any payment hereunder unless the payment, if made by PEC, the Gas Supplier or the Lessor, as the case may be, would itself have caused the Project Company to become liable for the Tax. If under applicable law the Guarantor is unable to pay the Tax and the Project Company is required to pay the Tax, the amount to be paid to the Project Company hereunder shall be increased by an amount sufficient so that such payment, net of the Tax, would equal the payment the Project Company would have received from PEC, the Gas Supplier or the Lessor net of any Taxes applicable to payment from PEC, the Gas Supplier or the Lessor to the Project Company.

## 3. UNDERTAKING

### 3.1 Duration

This Guarantee shall remain in full force and effect from and after the date hereof until the termination of the initial term of the Power Purchase Agreement, the Gas Supply Agreement and the Term (as defined in the Land Lease Agreement) of the Land Lease Agreement and for so long thereafter as any amount owed the Project Company by PEC, the Gas Supplier or the Lessor in connection with such term is or may be outstanding.

## 4. No WAIVER; REMEDIES CUMULATIVE

### 4.1 No Waiver

No failure or delay by the Project Company to exercise any right or remedy under this Guarantee shall constitute a waiver of that right or remedy. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by the Project Company shall be effective unless it is in writing.

### 4.2 Remedies Cumulative

The rights and remedies of the Project Company provided by this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

5. NOTICES

5.1 Address for Notices

All notices or other communications (together “Notices”) to be given or made hereunder shall be in writing, shall be addressed for the attention of the person indicated below and shall be delivered personally or sent by registered or certified mail or facsimile or courier. All Notices shall be deemed delivered (a) when presented personally, (b) if received on a Business Day of the receiving Party, when transmitted by facsimile to the receiving Party’s facsimile number specified above and, if received on a Day that is not a Business Day of the receiving Party, on the first Business Day of the receiving Party following the date transmitted by facsimile to the receiving Party’s facsimile number specified above, (c) one (1) Business Day after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated above (or such other address as such Party may have specified by notice delivered to the delivering Party at its address or facsimile number specified above) or (d) five (5) Days after being deposited in a regularly maintained receptacle for the postal service in Yemen, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated above (or such other address as the receiving Party may have specified by written Notice delivered to the delivering Party at its address or facsimile number specified above). Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, 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. The address for service of each Party and its respective facsimile number shall be:

5.1.1 For the Guarantor:

Attention: [ ]

Address: [ ]

5.1.2 For the Project Company:

Attention: [ ]

Address: [ ]

or such other addresses or facsimile numbers as either Party may have notified to the other Party in accordance with this Section 5.1.

Notwithstanding the foregoing, if the address of the Lender or Agent is outside Yemen, any notice delivered to the Lender or Agent pursuant to this Section 5.1 shall be sent by international courier or facsimile, and if sent by facsimile confirmed by international courier.

6. ASSIGNMENT

6.1 Assignment by the Guarantor

The Guarantor may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Project Company.

#### 6.2 Assignment by the Project Company

The Project Company may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Guarantor. Notwithstanding the provision of the immediately preceding sentence, for the purpose of construction or permanent financing of the Facility, the Project Company may assign or create a security interest over its rights and interests in and to this Guarantee in favor of the Lenders.

#### 6.3 Successors

This Guarantee shall be binding upon and inure to the benefit of the Guarantor and the Project Company and the respective successors and permitted assigns of each.

### 7. GOVERNING LAW

The rights and obligations of the Parties under or pursuant to this Guarantee shall be governed by and construed according to the laws of England.

### 8. MISCELLANEOUS

#### 8.1 Severability

If one or more provisions contained in this Guarantee is held or found to be invalid, illegal, or unenforceable in any respect, the provision(s) shall be given effect to the extent permitted by law and the invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Guarantee.

#### 8.2 Representations and Warranties

The Guarantor represents and warrants that:

8.2.1 it has the full power, authority and legal right to incur the obligation, to execute and deliver, and to perform the terms and provisions of this Guarantee;

8.2.2 this Guarantee constitutes legal, valid and binding obligations of the Guarantor in accordance with its terms; and

8.2.3 all necessary actions have been taken and all necessary approvals and consents have been obtained under the laws of Yemen to enable the Guarantor to perform its obligations hereunder.

#### 8.3 Definitions

The capitalized terms used but not defined in this Guarantee shall have the meanings given to them in the Implementation Agreement.

IN WITNESS WHEREOF, this Guarantee has been executed the day first above written.

FOR: THE REPUBLIC OF YEMEN

FOR: [PROJECT COMPANY]

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

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

Name:

Name:

Title:

Title: