

LAND LEASE AGREEMENT

BETWEEN

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

Table of Contents

	<u>Page</u>
Article I DEFINITIONS	1
Section 1.1 Definitions.....	1
Section 1.2 Rules of Interpretation	6
Section 1.3 [Not Used].....	7
Article II TERM.....	7
Section 2.1 Term.....	7
Section 2.2 Scheduled Possession Date	7
Section 2.3 Possession Date.....	8
Article III OBLIGATIONS OF THE PROJECT COMPANY AND PEC.....	9
Section 3.1 Demise and Registration	9
Section 3.2 Rent, Initial Development Payment and Annual Development Payment.....	9
Section 3.3 Payment of Taxes and Charges.....	10
Section 3.4 Access Road.....	10
Section 3.5 Demised Premises Take Over	11
Section 3.6 Permitted Use, Development and Remedy of Defects of the Demised Premises	11
Section 3.7 Insurance	12
Section 3.8 Quiet Enjoyment	13
Section 3.9 [Not Used].....	13
Section 3.10 Lease of the Demised Corridor	13
Section 3.11 Easement Rights.....	14
Section 3.12 PEC Reservations and Easements.....	16
Section 3.13 No Additional Consideration	16
Section 3.14 [Access and Inspection]	17
Section 3.15 Surrender of Demised Premises.....	17
Article IV REPRESENTATIONS AND WARRANTIES	17
Section 4.1 Representations and Warranties by PEC	17
Section 4.2 Representations and Warranties by Project Company	18
Article V LIABILITY AND INDEMNIFICATION	19
Section 5.1 Limitation of Liability.....	19

Section 5.2	Indemnification	20
Section 5.3	Assertion of Claims.....	21
Section 5.4	Fines and Penalties.....	21
Section 5.5	Notice of Proceedings.....	21
Section 5.6	Defense of Claims.....	21
Section 5.7	Double Jeopardy	23
Article VI	ASSIGNMENT AND SECURITY	23
Section 6.1	Assignment	23
Section 6.2	[Mechanics' Liens]	23
Section 6.3	Creation of Security	24
Article VII	TERMINATION	25
Section 7.1	Termination for Default	25
Section 7.2	Termination Notices.....	27
Section 7.3	Survival.....	28
Section 7.4	Notice to Lenders; Agent	28
Article VIII	RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION	31
Section 8.1	Obligations Upon Termination	31
Section 8.2	Other Remedies.....	31
Article IX	RESOLUTION OF DISPUTES	32
Section 9.1	Governing Law	32
Section 9.2	Arbitration.....	32
Section 9.3	Commercial Acts; Sovereign Immunity	34
Article X	MISCELLANEOUS PROVISIONS.....	35
Section 10.1	Notice.....	35
Section 10.2	No Implied Waiver	36
Section 10.3	Successors and Assignees	36
Section 10.4	Third Parties.....	37
Section 10.5	Entire Agreement	37
Section 10.6	Language.....	37
Section 10.7	Transfer of Facility to the Government	37
Section 10.8	Easements and Rights-of-way.....	37
Section 10.9	No Association.....	37
Section 10.10	Set-off	37

Section 10.11 Interest on Late Payment	38
Section 10.12 Amendment.....	38
Section 10.13 Headings	38
Section 10.14 Survival.....	38
Section 10.15 Assignment	38
Section 10.16 Confidentiality	39
Section 10.17 Counterparts.....	39

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

WHEREAS, the Project Company has proposed to design, finance, acquire, construct, own, operate and maintain an electric power plant at [], Yemen, to supply electricity to PEC under the Power Purchase Agreement, as hereinafter defined.

WHEREAS, by notification dated [], the Government approved the acquisition by PEC of land comprising [] acres ([] hectares) at [], Yemen (the “Site”) that includes the Demised Premises (as defined hereinafter), which comprise approximately [] acres, the Demised Corridor (as defined hereinafter), which comprises approximately [] acres, and the Access Road (as defined hereinafter) as well as any appurtenances, rights of way and access to and from public highways [at or near the Site].

NOW, THEREFORE, in consideration of the Rent, the Initial Development Payment and the Annual Development Payment (as each term is hereinafter defined), and covenants and conditions hereinafter reserved and contained and on the part of the Project Company to be paid, performed and observed, PEC hereby demises to the Project Company the Demised Premises and grants to the Project Company non-exclusive, free and unfettered use of the Access Road for the Term (as hereinafter defined) on the terms, covenants and conditions hereinafter contained.

ARTICLE I

DEFINITIONS

Section 1.1 Definitions

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

“Access Road” bears the meaning ascribed in Section 3.4(a) of this Agreement;

“Access Road Extension Works Specifications” means the standards and technical specifications for the Access Road, as set out in Part A and Part C of Schedule IV of this Agreement;

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

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

“Annual Development Payment” bears the meaning ascribed in Section 2(b) of Schedule II of this Agreement;

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

“Commercial Operations Date” bears the meaning ascribed in Article 1 of the Power Purchase Agreement;

“Contract Year” means a period of three hundred sixty five (365) consecutive Days commencing on each consecutive anniversary of the Possession Date and ending as of the end of the Day preceding the next anniversary of the Possession Date, except for the first Contract Year which shall commence on the Possession Date;

“Contractor(s)” bears the meaning ascribed in Article 1 of the Power Purchase Agreement;

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

“Demised Corridor” means the land described as such in Part B of Schedule 1 of this Agreement;

“Demised Premises” means the parcel of land described as such in Part A of Schedule I of this Agreement;

“Dispute” means 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 Section 9.2) or the obligations or performance of a Party hereunder or under any provision hereof, or as to whether this Agreement or any provision hereof (including the agreements contained in Section 9.2) are invalid, illegal or unenforceable;

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

“Effective Date” bears the meaning ascribed in Section 2.1;

“Electrical Interconnection Facilities” bears the meaning ascribed in Article 1 of the Power Purchase Agreement;

“Environmental Guidelines” bears the meaning ascribed in Article 1 of the Power Purchase Agreement;

“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 the Possession Date to the end of the Term (or, if earlier, the first to occur of the surrender of the Demised Premises by the Project Company to PEC, the termination of this Agreement, the assignment of this Agreement to the Government, or 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.

“Environmental Matters” means any of the following:

(a) any release, emission, entry or introduction into the air, including the air within buildings and other natural or man-made structures above ground of any Hazardous Material or any material or substance regulated under the Environmental Guidelines,

(b) any discharge, release or entry into water, including into any river, watercourse, lake or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the river bed or of other land supporting such waters, ground waters, sewer or the sea of any Hazardous Material or any material or substance regulated under the Environmental Guidelines,

(c) any deposit, disposal, keeping, treatment, importation, exportation, production, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Material or any material or substance regulated under the Environmental Guidelines (including, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it reusable or reclaiming substances from it) and any substance or article which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled),

(d) the conservation, preservation or protection of the natural or man-made environment or any living organisms supported by the natural or man-made environment, or

(e) any other matter whatsoever directly affecting the environment or any part of it;

“Event of Default” means a Project Company Event of Default or a PEC Event of Default; ***[NTD: Coordinate across all Agreements]***

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

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

“Financial Closing Date” bears the meaning ascribed in Article 1 of the Power Purchase Agreement; ***[NTD: Coordinate with PPA]***

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

“Foreign Investor(s)” bears the meaning ascribed in Article 1 of the Power Purchase Agreement;

“Gas Supplier” means the Ministry of Oil & Mineral Resources, Republic of Yemen;

“Gas Supply Agreement” means the Gas Supply Agreement executed on [] between the Gas Supplier and the Project Company, as may be amended or supplemented from time to time.

“Government” means the Government of the Republic of Yemen;

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

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

“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 this Agreement,

substantially in the form set out in Schedule 3 of the Implementation Agreement, as may be amended from time to time by agreement of the parties thereto;

“Hazardous Materials” bears the meaning as defined in Article 1 of the Implementation Agreement;

“ICC Rules” bears the meaning ascribed in Section 9.2 of this Agreement;

“ICSID Rules” bears the meaning ascribed in Section 9.2 of this Agreement;

“Implementation Agreement” means the Implementation Agreement executed on [] between the Government, PEC and the Project Company, as may be amended or supplemented from time to time;

“Initial Development Payment” bears the meaning ascribed in Schedule II of this Agreement;

“Laws of Yemen” bears the meaning ascribed in Article 1 of the Power Purchase Agreement;

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

“Lien” bears the meaning ascribed in Article 1 of the Implementation Agreement;

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

“Notice of Intent to Terminate” bears the meaning ascribed in Section 7.2 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 issued and outstanding securities of the Project Company that are convertible into such shares at the option of the holder;

“Parties” means both PEC and the Project Company;

“Party” means either PEC or the Project Company;

“PEC” means the Public Electricity Corporation, Republic of Yemen;

“PEC Event of Default” bears the meaning ascribed in Section 7.1(b) of this Agreement;

“Phase I Power Plant” bears the meaning ascribed in Article 1 of the Power Purchase Agreement;

“Possession Date” bears the meaning ascribed in Section 2.3(a) of this Agreement;

“Power Purchase Agreement” means the agreement, executed on [] 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;

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

“Project Company” means [], a company incorporated under the laws of [], with its registered office located at [], and its permitted successors and assignees;

“Project Company Communication Facilities” bears the meaning ascribed in Article 1 of the Gas Supply Agreement;

“Project Company Event of Default” bears the meaning ascribed in Section 7.1(a) of this Agreement;

“Project Company Transportation Facilities” bears the meaning ascribed in Article 1 of the Gas Supply Agreement;

“Prudent Utility Practices” bears the meaning ascribed in Article 1 of the Power Purchase Agreement;

“Required Financial Closing Date” bears the meaning ascribed in Article 1 of the Implementation Agreement;

“Rent” bears the meaning ascribed in Schedule II of this Agreement;

“Relevant Authority” bears the meaning ascribed in Article 1 of the Implementation Agreement;

“Scheduled Possession Date” bears the meaning ascribed in Section 2.2(a) of this Agreement;

“Security Package” bears the meaning ascribed in Article 1 of the Implementation Agreement;

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

“Site Take-Over” bears the meaning ascribed in Section 3.5 of this Agreement;

“Specifications” means the Access Road Specifications;

“Succession Notice” bears the meaning ascribed in Section 6.2(b) of this Agreement;

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

“Taxes and Charges” means the general or special rates, taxes, Value Added Tax (“VAT”), charges, duties, assessments, impositions, imposts, levies, charges or outgoings whatsoever that are levied by any Government Authority in accordance with the Laws of Yemen on and after the Possession Date upon the Demised Premises or upon the owner or occupier in respect thereof or upon the Facility or upon the owner or occupier in respect thereof, including, without limitation, rates and taxes for the provision of water, sewage and electricity, and any other services or utilities under the Laws of Yemen;

“Term” bears the meaning ascribed in Section 2.1 of this Agreement;

“Termination Notice” bears the meaning ascribed in Section 7.2(c) of this Agreement;

“Transferee” bears the meaning ascribed in Section 6.2(d) of this Agreement;

“United States C.P.I.” means the value of the United States Consumer Price Index, as published from time to time in the publication of the International Monetary Fund entitled “International Financial Statistics”;

“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.

Section 1.2 Rules of Interpretation

In this Agreement:

(a) the headings are for convenience only and shall be ignored in construing this Agreement;

(b) the singular includes the plural and vice versa;

(c) references to Sections and Schedules are, unless the context otherwise requires, references to Sections and Schedules of this Agreement;

(d) unless otherwise provided herein, whenever a consent or approval is required hereunder by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;

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

(f) where definitions are incorporated into this Agreement from the Implementation Agreement or Power Purchase Agreement, as the case may be, such definitions in the Implementation Agreement or Power Purchase Agreement, as the case may be, shall continue to be applicable to the respective terms herein, notwithstanding the expiration or termination of the Implementation Agreement or Power Purchase Agreement.

Section 1.3 [Not Used]

ARTICLE II

TERM

Section 2.1 Term

(a) This Agreement shall be effective upon its full execution by the Parties (the “Effective Date”) and shall continue in full force and effect, unless earlier terminated by either Party in accordance with Article 7, until the later of the twenty-fifth (25th) anniversary of the Commercial Operations Date and the third (3rd) anniversary of the expiration or termination of the Power Purchase Agreement (as such agreement may be extended) (the “Term”).

The Parties agree to execute and deliver any and all documents and instruments necessary to effect the same.

(b) At the expiration of the Term, on receipt of a written request from the Project Company, PEC shall extend the term of this Agreement for a mutually agreed upon period on the same terms and conditions (including the annual rental payment but, for the avoidance of doubt, without a requirement to make a further initial payment equivalent to the Initial Development Payment and any subsequent payments equivalent to the Annual Development Payment) provided the Project Company agrees to use the Demised Premises and Demised Corridor for the purpose of the generation and sale of electric generation capacity or electric energy or both and uses reasonably incidental thereto.

Section 2.2 Scheduled Possession Date

(a) PEC shall deliver to the Project Company exclusive and continuing possession of the Demised Premises and non-exclusive, free and unfettered use of the Access

Road on or before sixty (60) Days (the “Scheduled Possession Date”) after the Effective Date. Such delivery shall be made in accordance with, and subject to, Section 3.5 and the other provisions of this Agreement.

(b) If the Possession Date does not occur by the Scheduled Possession Date, then liquidated damages shall accrue to the Project Company in an amount equal to []Rials ([] Rials) for each Day that the Possession Date has not occurred or is delayed beyond the Scheduled Possession Date. Such liquidated damages amount shall be set off against the Initial Development Payment and the first payment for Rent, and to the extent that such liquidated damages amount has not been fully set-off, the liquidated damages amount remaining (after such set-off) shall be paid by PEC to the Project Company by no later than 30 Days after the occurrence of the Possession Date; provided, that liquidated damages pursuant to this Section 2.2(b) shall be subject to a maximum aggregate amount of []Rials ([] Rials).

(c) PEC irrevocably agrees that the amount of liquidated damages under this Agreement, including Section 2.2, is reasonable and is not and shall not be construed to be a penalty.

Section 2.3 Possession Date

(a) The date on which PEC delivers to the Project Company exclusive and continuing possession of the Demised Premises and non-exclusive, free and unfettered use of the Access Road in accordance with the provisions of this Agreement shall be the “Possession Date”, provided that the Possession Date shall not occur

(A) unless and until Site Take Over has occurred in accordance with Section 3.5; and

(B) unless all representations and warranties by PEC set out in Section 4.1 of this Agreement are true and correct, when repeated as of such date; and

The Project Company shall, in its sole discretion be entitled to, by way of notice in writing to PEC, waive all or any of these pre-conditions set out in this Section 2.3(a) for the occurrence of the Possession Date. Such waiver shall only be applicable to this Section 2.3 and shall not in any way prejudice the rights of the Project Company hereunder or release PEC from any of its obligations under this Agreement.

(b) For the purposes of determining the Required Financial Closing Date in the Implementation Agreement and the Power Purchase Agreement, the Demised Premises and the Access Road shall be deemed delivered to the Project Company once the Possession Date has occurred.

ARTICLE III

OBLIGATIONS OF THE PROJECT COMPANY AND PEC

Section 3.1 Demise and Registration

(a) Demise

In consideration of the Rent, Initial Development Payment and Annual Development Payment hereinafter reserved and the covenants of the Project Company hereinafter contained, PEC hereby:

(i) demises to the Project Company the Demised Premises and grants to the Project Company non-exclusive, free and unfettered use of the Access Road for the duration of the Term in accordance with the terms and conditions set out in this Agreement; and

(ii) agrees to lease to the Project Company the Demised Corridor in accordance with the terms and conditions set out in this Agreement.

(b) Registration

PEC shall procure the registration of this Agreement under the [insert relevant Yemen law provision] and provide to the Project Company, by no later than [one hundred and twenty (120)] Days after the Effective Date, satisfactory evidence that such registration has been completed. PEC acknowledges that the Project Company is exempted from any registration duty and fees pursuant to Section 12.1 of the Implementation Agreement and, accordingly, such registration shall be at no cost to the Project Company.

[(c) Acceptance of Demised Premises “As is”]

[NTD: Consider adding this “As is” provision]

[PEC DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, WHETHER WRITTEN OR ORAL, AS TO THE LOCATION, THE GEOLOGICAL, HYDROLOGICAL PHYSICAL OR ENVIRONMENTAL CONDITION IN, ON OR UNDER, OR THE STATE OF REPAIR OF, THE DEMISED PREMISES, AND THE PROJECT COMPANY ACCEPTS THE DEMISED PREMISES “AS IS, WHERE IS” WITHOUT HAVING RELIED UPON ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, WHETHER WRITTEN OR ORAL, AS TO THE LOCATION, THE GEOLOGICAL, HYDROLOGICAL, PHYSICAL OR ENVIRONMENTAL CONDITION IN, ON OR UNDER, OR THE STATE OF REPAIR OF, THE DEMISED PREMISES.]

Section 3.2 Rent, Initial Development Payment and Annual Development Payment

(a) In consideration for the demise by PEC of the Demised Premises, the Demised Corridor and the grant of non-exclusive, free and unfettered use of the Access Road during the Term, the Project Company agrees and covenants to pay the Initial Development Payment, the

Annual Development Payment and the Rent during the Term in the amounts and on the terms set forth in Schedule II.

[NTD: Consider adding these provisions]

[(b) All payments to be made by the Project Company hereunder shall be paid to PEC in Rials by immediately available funds, without demand and without counterclaim, deduction or set off (except as provided in Section 10.10) of any kind, at [], Yemen. The Project Company's obligations to pay any Rent (or any other amounts that have accrued during the Term hereof but that remain unpaid as of the termination of this Agreement) shall survive the termination of this Agreement.

(c) No payment by the Project Company or receipt by PEC of an amount less than the Initial Development Payment, the Annual Development Payment or the Rent due and payable hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for the Initial Development Payment, the Annual Development Payment or the Rent be deemed an accord and satisfaction, and PEC may accept such check or payment without prejudice to PEC's right to recover the balance of such payments due or pursue any other remedy provided under this Agreement or by Law.]

Section 3.3 Payment of Taxes and Charges

The Project Company shall promptly and regularly pay to the appropriate Government Authority all Taxes and Charges. ***[NTD: Consider whether PEC should pay these Taxes.]***

Section 3.4 Access Road

(a) The existing access road from [] to [public highway] up to the main entrance of the [Facility] and its extension up to the Demised Premises shall be located on the parcel of land described in Part C of Schedule 1 (the "Access Road"). The Project Company shall, at its own cost, extend and complete the extension of the Access Road starting from the main entrance to [the Facility] up to the Demised Premises in accordance with the Access Road Extension Works Specifications no later than the Commercial Operations Date. After completion of the Access Road and its extension to the Demised Premises, the Project Company shall convey ownership of the extended portion of the Access Road to PEC.

(b) PEC hereby grants to the Project Company the right to the non-exclusive, free and unfettered use of the Access Road throughout the Term.

(c) Subject to Section 3.4(a) above, PEC shall throughout the Term maintain clear and unencumbered title (free of all mortgages and Liens) to the Access Road.

(d) PEC shall at its own cost throughout the Term maintain the Access Road to a standard sufficient for the purposes for which the Project Company intends to use it and in accordance with the terms of this Agreement.

Section 3.5 Demised Premises Take Over

[NTD: Consider whether this provision is consistent with Section 2.2]

PEC shall, after a joint measurement with the Project Company, hand over the Demised Premises to the Project Company no later than thirty (30) Days after the Effective Date. After taking over the Demised Premises from PEC, the Project Company shall install permanent posts to demarcate the boundary of the Demised Premises and install a temporary security fence as necessary around its perimeter. The Project Company shall maintain such temporary security fence until it has been replaced by a permanent security fence to be installed during construction of the Facility.

Section 3.6 Permitted Use, Development and Remedy of Defects of the Demised Premises

(a) Permitted Use

The Project Company shall use the Demised Premises and the Demised Corridor for the purposes of the Project and for the generation and sale of electric generation capacity or electric energy or both and uses reasonably incidental thereto.

(b) Permitted Development and Maintenance Work by the Project Company

Without prejudice to PEC's obligations under Section 3.5, the Project Company shall, during the Term, carry out work to develop and maintain the Demised Premises and the Demised Corridor including, without limitation, clearing, leveling, filling and compaction of the Demised Premises and the Demised Corridor, and building the Facility, roads, waterways and wells on, through, above and below the ground or on any part of it on which the Facility is to be built including, without limitation, any areas required by the Project Company and its contractors for carrying out work and for accommodation of the Project Company and the Contractor(s) at its own cost. Any modifications made or installed, or caused to be made or installed, by the Project Company in, on or under the Demised Premises, the Demised Corridor or the Access Road shall immediately become subject to the terms of this Agreement.

(c) Compliance with Law

The Project Company shall not use or develop or permit any Person to use or develop the Demised Premises and the Demised Corridor, or any portion thereof, in a manner that contravenes any provision of the Laws of Yemen.

(d) [Not Used]

(e) Repairs and Maintenance

Except as otherwise provided in this Agreement, PEC shall not be required to make any repairs or improvements to the Demised Premises or the Demised Corridor during the Term, or to supply maintenance for the Demised Premises or any improvements thereon.

[NTD: Consider adding the following Environmental Laws provisions]

(f) [Compliance with Environmental Laws]

[During the Term, the Project Company shall comply with, and shall cause its affiliates, agents, contractors, servants, employees and licensees to comply with, all environmental Laws of Yemen that directly or indirectly affect the construction, operation, maintenance and repair of the Facility or the use or occupancy by the Project Company and its affiliates, agents, contractors, servants, employees and licensees of the Demised Premises, the Demised Corridor, the Access Road and any easements granted to the Project Company hereunder.

During the term, the Project Company shall not use, nor shall the Project Company permit its affiliates, agents, contractors, servants, employees or licensees to use, the Facility, the Demised Premises, the Demised Corridor, the Access Road or any easements granted to the Project Company hereunder (i) to treat, store or dispose of Hazardous Materials, or cause Hazardous Materials to be treated, stored or disposed of, except for Hazardous Materials existing on the Facility, the Demised Premises, the Access Road or any easements granted to the Project Company hereunder on the date hereof, in any manner that would subject the Facility or the Site to any permitting requirements for the treatment, storage or disposal of Hazardous Materials or otherwise under the Laws of Yemen, or (ii) to store or otherwise use or handle any Hazardous Material except (A) where stored in containers and in quantities normally associated with the construction, operation, maintenance or repair of the Facility; (B) as normally and customarily used or required to be used in connection with the construction, operation, maintenance or repair of the Facility; or (C) for routine office maintenance and cleaning.

In all instances in which the Project Company is permitted to store or otherwise use or handle Hazardous Materials pursuant to this Section 3.6, each Hazardous Material shall be handled, stored, treated, used or disposed of in compliance with all environmental Laws of Yemen and in such a manner so as not to subject the Facility to any permitting requirements for the treatment, storage or disposal of Hazardous Materials or otherwise under the Laws of Yemen. The Project Company acknowledges that the performance of its obligations under this Section 3.6 shall include, without limitation: (i) the completion and timely filing of all permit applications (if any such permits are required to be solely in the name of the Project Company), reports and statements required pursuant to any applicable environmental Laws of Yemen, and the payment of all charges, fees and costs that may be assessed or imposed from time to time in connection therewith; (ii) the timely disclosure to PEC of any information required pursuant to any applicable environmental Laws of Yemen; and (iii) the prompt and proper remediation and disposal of all Hazardous Material, residues of or materials contaminated by any Hazardous Material used, generated or released in the performance of the construction, operation, maintenance or repair of the Facility.]

Section 3.7 Insurance

(a) The Project Company shall at all times while the Power Purchase Agreement is in effect obtain and maintain insurance in accordance with Article 14 of the Power Purchase Agreement.

(b) The Project Company will name PEC as an additional insured to the extent of PEC's insurable interest under the insurance policies required to be maintained pursuant to Section 3.7(a) as required under Article 14 of the Power Purchase Agreement.

(c) [All policies procured by the Project Company shall require the insurer to waive subrogation against PEC and the officials, employees and representatives of PEC.]

Section 3.8 Quiet Enjoyment

PEC covenants that, provided that the Project Company pays the Initial Development Payment, the Annual Development Payment and the Rent set out in Schedule II and complies with the terms of this Agreement, the Project Company shall not be impaired or otherwise prevented by PEC from using the Demised Premises, the Demised Corridor and the Access Road for the purposes set out in this Agreement and may peaceably enjoy the Demised Premises, the Demised Corridor and the Access Road from the Possession Date or the Demised Corridor Possession Date (in the case of the Demised Corridor) until the end of the Term without any interruption or interference by PEC or any person.

Section 3.9 [Not Used]

Section 3.10 Lease of the Demised Corridor

(a) Demised Corridor Amendment

(i) PEC shall deliver to the Project Company exclusive and continuing possession of the Demised Corridor and execute an amendment to this Agreement (the "Demised Corridor Amendment") to include the Demised Corridor as part of the land leased to the Project Company under this Agreement (and caused the same to be registered in accordance with Section 3.1(b) hereof) on the same terms applicable to the Demised Premises hereunder no later than one hundred and twenty (120) Days after acceptance by PEC of completion of the discharge channel of [the Facility] (the "Scheduled Demised Corridor Possession Date").

(ii) The terms of this Agreement shall apply mutatis mutandis in respect of the Demised Corridor except where it is specifically provided for in this Section 3.10.

(iii) There shall be no increase in the Rent payable hereunder as a result of the Demised Corridor Amendment.

(b) Demised Corridor Possession Date

The "Demised Corridor Possession Date" shall occur on the date that all of the following events have occurred:

(i) the Demised Corridor Amendment has been executed and registered in accordance with Section 3.1(b) hereof;

(ii) Demised Corridor Take-Over has occurred; and

(iii) all representations and warranties by PEC set out in Section 4.1 of this Agreement, (applied mutatis mutandis to the Demised Corridor) are true and correct, when repeated as of such date;

(c) Demised Corridor Take Over

PEC shall, after a joint measurement with the Project Company, hand over the Demised Corridor to the Project Company no later than thirty (30) Days after acceptance by PEC of the completion of the discharge channel of [the Facility]. After taking over the Demised Corridor from PEC, the Project Company shall install permanent posts to demarcate the boundary of the Demised Corridor and install temporary security fence as necessary around its perimeter as soon as possible. The Project Company shall maintain such temporary security fence until it has been replaced by a permanent security fence to be erected during construction of the Facility.

Section 3.11 Easement Rights

(a) Easements and Rights of Way for Electrical Interconnection Facilities

PEC shall, upon request by the Project Company, which shall not be made earlier than [one hundred and twenty (120)] Days after the Effective Date, grant to the Project Company permanent easements and rights of way as necessary to install, operate, maintain, replace or remove the Electrical Interconnection Facilities, tele-metering and telecommunication facilities and any other facilities that may be required for connecting the Facility to the [Electrical Interconnection Facilities] in accordance with terms agreed in Section 11.1(c) of the Power Purchase Agreement.

(b) Easements and Rights of Way for Gas Transportation Facilities

PEC shall, upon request by the Project Company, which shall not be made earlier than one hundred and twenty (120) Days after the Effective Date, grant to the Project Company such permanent easements and rights-of-way above and beneath the Access Road and arrange similar easements and rights of way beneath the relocated discharge channel of [the Facility] as may be necessary for the purposes incidental to the construction and/or the operations the Project Company Transportation Facilities, and the Project Company Communication Facilities.

[NTD: Consider adding the following easement provisions]

(c) [Utilities and Easements to Construct New Utilities Facilities]

[During the Term, the Project Company shall be responsible, at its sole cost and expense, for the construction and installation of all new easement facilities required to be constructed and installed in order to provide to the Facility new utility services that are necessary because the Project Company proposes to implement or requires a material change in the manner in which the Facility is operated. PEC shall grant to the Project Company an easement required to construct or install any such new easement facilities and such easement shall be subject to the terms and conditions of this Agreement, including, but not limited too, the following terms and conditions:

(i) The costs incurred by PEC in connection with the grant of each such new easement (including, without limitation, reasonable legal fees incurred in connection with preparation and review of documentation and the costs of any engineering or survey work) shall be paid by the Project Company as a condition precedent to the grant of such easement;

(ii) All construction, installation, maintenance, repair, replacement and removal of lines in the area of any such new easement shall be performed by PEC at the Project Company's expense;

(iii) PEC shall provide the Project Company with appropriate documentation in recordable form evidencing the grant of any such new easement; and

(iv) Such new easements shall be used only for the construction, installation, maintenance, repair and replacement of lines and attendant pipes, lines, equipment, facilities and other property associated with new utilities necessary to serve the Facility.

(d) Project Company Obligations with Respect to Easements

In no event shall the Project Company use any easement granted hereunder in a manner that would materially interfere with PEC's use of the Site or the property or improvements of other Persons located within any such easements. The Project Company shall at all times use its best efforts to keep any such easements free and clear from obstructions and impediments placed there by the Project Company, and, except as is otherwise specifically provided herein, the Project Company shall not use any such easements nor allow any such easements to be used for the purpose of parking vehicles (except on a temporary basis), storing equipment, material or products, or for any other purpose that would materially interfere with the activities conducted by PEC or any other Person on any such easements. To the extent that the Project Company's use of any such easements results in any additional cost, expense or liability to PEC (other than those costs, expenses or liabilities that are specifically allocated to PEC herein) for the provision, maintenance, operation or protection of any such easements, the Project Company shall reimburse PEC promptly for all such additional expenses or liabilities. All maintenance work, if any, performed by or on behalf of the Project Company within any such easements shall be done in a good and workmanlike manner, in accordance with plans and specifications previously approved by PEC, which approval will not be unreasonably withheld or delayed, in writing, in accordance with all applicable Laws and free and clear of all Liens.

(e) Acceptance of Easements "As is"

PEC DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, WHETHER WRITTEN OR ORAL, AS TO THE LOCATION, THE GEOLOGICAL, HYDROLOGICAL PHYSICAL OR ENVIRONMENTAL CONDITION IN, ON OR UNDER, OR THE STATE OF REPAIR OF, ANY EASEMENTS GRANTED HEREUNDER, AND THE PROJECT COMPANY ACCEPTS ANY SUCH EASEMENTS "AS IS, WHERE IS" WITHOUT HAVING RELIED UPON ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, WHETHER WRITTEN OR ORAL, AS TO THE LOCATION, THE

GEOLOGICAL, HYDROLOGICAL, PHYSICAL OR ENVIRONMENTAL CONDITION IN, ON OR UNDER, OR THE STATE OF REPAIR OF, ANY SUCH EASEMENTS.]

Section 3.12 PEC Reservations and Easements

(a) The Project Company shall, upon request by PEC, grant to PEC such permanent easements and rights of way beneath the Demised Premises and Demised Corridor as may be necessary for purposes incidental to the construction and/or the operations of power plants located within the other parts of the Site.

(b) [PEC excepts and reserves from the Demised Premises and this Agreement all of PEC's right, title and interest in and to oil, gas and other minerals in, on and under the Demised Premises; provided, however, that PEC shall not, as an incident to such reserved oil, gas and other mineral interests, have any right to use or occupy, or to allow any Person to use or occupy, any portion of the surface of the Demised Premises in connection therewith; provided, further, however, that any exploration, development, production or operation with respect to PEC's reserved oil, gas and other mineral interests shall be accomplished by pooling or directional drilling under the Demised Premises from sites located on tracts other than the Demised Premises.

(c) PEC excepts and reserves from the Demised Premises and this Agreement all of PEC's right, title and interest in and to existing pipelines, utility lines, equipment, fixtures, facilities, appurtenances and other property which are located in, on, over or under the Demised Premises, together with easements and rights-of-way in, upon, across, over and under portions of the Demised Premises, for the purpose of maintaining, operating, repairing, patrolling, inspecting, removing, replacing and using such pipelines, utility lines, equipment, fixtures, facilities, appurtenances and other property, it being understood among the Parties hereto that PEC's reservation of the foregoing property is not intended to preclude the Project Company from using or occupying the surface of such property lying within the Demised Premises.

(d) PEC excepts and reserves from the Demised Premises and this Agreement easements and rights-of-way in, upon, across, over and under the Demised Premises for the purpose of installing, laying, constructing, maintaining, operating, repairing, patrolling, inspecting, removing and replacing any future pipelines, utility lines, equipment, fixtures, facilities, appurtenances and other property together with all of PEC's right, title and interest in and to title to any future pipelines, utility lines, equipment, fixtures, facilities, appurtenances and other property which are installed hereafter by PEC or at PEC's direction.]

Section 3.13 No Additional Consideration

Consideration for any rights of PEC or the Project Company granted under this Article 3 shall be the execution of this Agreement and no other consideration shall be required.

[NTD: Consider adding the following provisions]

Section 3.14 [Access and Inspection]

[The Project Company shall permit PEC and PEC's representatives and designees to enter upon the Demised Premises and the Demised Corridor at any time for the purpose of inspecting the same (i) to ensure that any interconnection to the Yemen utilities systems is not adversely affecting or will not adversely such system; (ii) to assure the Project Company's compliance with this Agreement; or (iii) to permit PEC, as may be required, to comply with its obligations under this Agreement.

Section 3.15 Surrender of Demised Premises

The Project Company shall, upon the termination of this Agreement, surrender the Demised Premises, the Demised Corridor, the Access Road and any easements granted pursuant to this Agreement to PEC without delay, free and clear of all tenancies and occupancies and free and clear of all Liens, and the Project Company shall execute and deliver to PEC any and all documents, whether in recordable form or otherwise, reasonably required to evidence the termination of this Agreement or the relinquishment of any easements granted pursuant to this Agreement.]

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties by PEC

PEC represents and warrants that

(a) it has the power and authority to grant this Agreement and when it executes the Demised Corridor Amendment, it shall have the power and authority to grant the demise of the Demised Corridor as required hereunder;

(b) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by PEC and no other proceedings on the part of PEC are necessary for the grant of this Agreement;

(c) this Agreement has been duly and validly executed and delivered by PEC and constitutes a valid and binding commitment of it,

(d) it has clear and unencumbered title (free and clear of all mortgages and Liens) to the Demised Premises and the Access Road, and will have clear and unencumbered title (free and clear of all mortgages and Liens) to the Demised Corridor as of the execution date of the Demised Corridor Amendment,

(e) the Demised Premises and the Access Road are not, and the Demised Corridor will not be as of the execution date of the Demised Corridor Amendment, subject to any adverse estate, right, interest, covenant, restriction, easement, option, right of pre-emption, wayleave, irrevocable license or other right or arrangement in favor of any third party (whether in the nature of a public or private right or obligation or otherwise), nor is there any agreement to

give or create any of the foregoing (to be applicable in respect of the Demised Corridor as of the execution date of the Demised Corridor Amendment), and all rights of light, air and support associated with the Demised Premises and the Demised Corridor (to be applicable as of the execution date of the Demised Corridor Amendment) are enjoyed fully by PEC as of right,

(f) there are no outstanding actions, disputes, claims or demands between PEC and any third party or between the Government and any third party affecting PEC's title to the Demised Premises, the Demised Corridor or the Access Road or its right or ability to enter into this Agreement or the Demised Corridor Amendment,

(g) there are no Environmental Matters relating to or affecting the Demised Premises, the Demised Corridor (as of the execution date of the Demised Corridor Amendment) or the Access Road [*NTD: Consider qualifying with "to the best of PEC's knowledge"*],

(h) there is no investigation, inquiry or proceeding concerning any Environmental Matter relating to or affecting the Demised Premises, the Demised Corridor (to be applicable as of the execution date of the Demised Corridor Amendment) or the Access Road and so far as PEC is aware none is pending or threatened nor is there any fact or circumstance existing which might give rise to any of the foregoing,

(i) the Access Road in all respects conform to the specifications detailed in Schedule I,

(j) as of the Possession Date, the Access Road is fit for the purposes for which the Project Company intends to use it under this Agreement and the Power Purchase Agreement,

(k) as of the Demised Corridor Possession Date, the Demised Corridor in all respects is fit for the purposes for which the Project Company intends to use it under this Agreement and the Power Purchase Agreement; and

(l) it has provided adequate compensation (as required under the Laws of Yemen) to all persons:

- (i) who may have been displaced;
- (ii) whose land may have been acquired; or
- (iii) whose livelihood may have been affected;

when the Demised Premises, the Demised Corridor and/or the Access Road was acquired.

PEC further warrants that all representations and warranties set out in this Section 4.1 shall be true and correct when repeated on the Possession Date and the Demised Corridor Possession Date by reference to the facts and circumstances then subsisting.

Section 4.2 Representations and Warranties by Project Company

The Project Company represents and warrants to PEC that:

(a) it is a duly organized [], existing and in good standing under the Laws of [] and has, so far as is material to PEC, complied fully with all requirements of the applicable Laws of Yemen;

(b) it has all requisite power and authority to conduct its business, to own its properties and to execute, to deliver and to perform its obligations under this Agreement;

(c) there are no proceedings pending, or to the best of its knowledge, threatened, for the liquidation of the Project Company or that could materially or adversely affect the performance by the Project Company of its obligations under this Agreement or the Power Purchase Agreement;

[NTD: Consider adding the following two warranties:]

(d) [there is no pending or, to the best of the Project Company's knowledge, threatened, action, suit, investigation, arbitration or other proceeding that would impair the ability of the Project Company to perform its obligations under this Agreement];

(e) [to the best of its knowledge, there are no writs, judgments, injunctions, decrees or similar orders of any Government Authority outstanding against the Project Company that would materially or adversely affect its occupancy, use, operation or maintenance of the Demised Premises or Demised Corridor];

(f) this Agreement has been duly authorized, executed and delivered by it and constitutes the legal, valid and binding obligation of it; and

(g) as far as it is aware:

(i) the execution and delivery of this Agreement; and

(ii) subject to the receipt and maintenance of any necessary Government Authorizations, the performance of this Agreement;

will not constitute a violation of any Law of Yemen applicable to or relating to the Project Company, its assets or its business.

ARTICLE V

LIABILITY AND INDEMNIFICATION

Section 5.1 Limitation of Liability

Except as required by Section 5.2, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal or equitable theory for any 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; 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 any activity not contemplated by this Agreement.

Section 5.2 Indemnification

[NTD: Coordinate across all Agreements.]

(a) PEC

Except as specifically provided elsewhere in this Agreement, PEC shall indemnify and defend the Project Company for itself and as trustee for its officers, directors and employees against, and hold the Project Company and its officers, directors 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, its officers, directors and employees,

(i) for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by PEC in connection with this Agreement,

(ii) for any Loss arising out of or in connection with any Hazardous Material or any Environmental Matter that was present at the Demised Premises prior to the Possession Date [that PEC should have been aware of through the exercise of due diligence] ***[NTD: Consider adding bracketed language]*** or any failure by PEC to comply with the Laws of Yemen (insofar as they relate to Environmental Matters), the Environmental Guidelines or its obligations under Section 3.5 above,

(iii) for any Loss which arises out of or in connection with any failure by PEC to comply with, or any inaccuracy in any respect of, any representation, warranty or covenant given by PEC hereunder.

Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Section 5.2(a) shall apply to any Loss in respect of which the Project Company receives indemnification in full pursuant to the terms of the Power Purchase Agreement.

(b) Project Company

The Project Company shall indemnify and defend PEC for itself and as trustee for its officers, directors and employees against, and hold PEC and its officers, directors 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, PEC, its officers, directors and employees,

(i) for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Project Company in connection with this Agreement, or

(ii) any Loss arising out of or in connection with any Environmental Liabilities arising as a result of any act or omission by the Project Company or any failure by the Project Company to comply with the Laws of Yemen (insofar as they relate to Environmental Matters), or the Environmental Guidelines.

(c) Joint Negligence

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 Section 5.2 in proportion to its relative degree of fault.

(d) Survival

The provisions of this Section 5.2 shall survive for a period of five (5) years following the termination of this Agreement (or such later date as the Project Company actually vacates the Demised Premises).

Section 5.3 Assertion of Claims

The Project Company shall not be entitled to indemnification under Section 5.2 if and to the extent that payment in full has been received by the Project Company in respect of a Loss or proceeding under the indemnities contained in the Power Purchase Agreement, the Implementation Agreement, the Gas Supply Agreement or any other document comprising the Security Package in respect of the relevant act or omission.

PEC shall not be entitled to indemnification under Section 5.2 if and to the extent that payment in full has been received by any party in respect of a Loss or proceeding under the indemnities contained in the Power Purchase Agreement, the Implementation Agreement, the Gas Supply Agreement or any other document comprising the Security Package in respect of the relevant act or omission.

Section 5.4 Fines and Penalties

Any fines or other penalties incurred by a Party for non-compliance with the Laws of Yemen or the Government Authorizations or other governmental actions taken pursuant thereto shall not be reimbursed by the other Party but shall be the sole responsibility of the non-complying Party.

Section 5.5 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 5.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss or proceeding.

Section 5.6 Defense of Claims.

(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 5.2, 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 5.2, 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 5.6(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.

Section 5.7 Double Jeopardy

An order issued in a proceeding initiated by PEC and based upon a claim of breach of the Power Purchase Agreement shall be with prejudice to any proceedings against the Project Company that PEC could otherwise bring for breach by the Project Company of substantially the same obligations under this Agreement. Nothing in this Section shall prevent PEC from initiating proceedings to terminate this Agreement pursuant to Sections 7.1 and 7.2 of this Agreement.

ARTICLE VI

ASSIGNMENT AND SECURITY

Section 6.1 Assignment

Except as provided to the contrary in Sections 6.2 and 10.7, the Project Company shall not sell, charge, mortgage, exchange, transfer, convey, gift away or otherwise assign, sublet, license, encumber or in any way part with or dispose of the Demised Premises or the Demised Corridor other than by mutual agreement between the Parties in writing.

Section 6.2 [Mechanics' Liens]

[NTD: Consider adding this provision to supplement 6.1 above]

[In furtherance of Section 6.1, the Project Company shall not have any right, power or authority to bind PEC or any property or improvements of PEC for the payment of any claim for labor or material, for engineering or designer's fees or for any other claim arising in connection with the construction, alteration, repair, maintenance, restoration, reconstruction, inspection or operation of the Facility by or on behalf of the Project Company on the Demised Premises, or to render PEC's estate or interest in the Demised Premises, the Demised Corridor or the Access Road liable for any claim or lien for any labor, material or service or for any charge or expense incurred in connection therewith.]

Section 6.3 Creation of Security

(a) Notwithstanding Sections 6.1 and 6.2, solely for the purpose of financing the Project in connection with the Financial Closing, the Project Company may assign to the Lenders, or grant a security interest in favor of the Lenders in, the Project Company's rights and interests under or pursuant to this Agreement (such term to include the Demised Corridor Amendment, wherever applicable), including, without limitation, its rights and interests in

- (i) the Demised Premises;
- (ii) the Demised Corridor;
- (iii) the Access Road, and
- (iv) all tangible, intangible, movable and immovable property of the Project Company.

(b) The Lenders shall have no obligation to PEC under this Agreement until the Lenders or their designees succeed to the Project Company's rights and interests under the Power Purchase Agreement, the Implementation Agreement or 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 written notice of such succession (a "Succession Notice") immediately to PEC and shall assume liability for all of the Project Company's obligations under this Agreement (other than those under Section 5.2(b)), provided that any liability of the Lenders or their designees shall be limited to the Lenders' interest in the Demised Premises, the Demised Corridor and the Access Road.

Except as otherwise set forth in the immediately preceding sentence, none of the Lenders or 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 give rise to any duties or obligations whatsoever on the part of any of the Lenders owing to PEC.

(c) Upon notification by the Lenders or the Agent to PEC 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, and the Project Company's obligations with respect to, this Agreement, in accordance with this Article 6, the Lenders shall have the right, without limitation, to

- (i) take possession of the Demised Premises, the Demised Corridor and the Access Road and use the same for the purposes permitted under this Agreement, and
- (ii) cure any continuing default either under this Agreement or the Power Purchase 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 occurring before the delivery of such Succession Notice that is not capable of being cured and no right will exist for

PEC to terminate this Agreement based upon a Project Company Event of Default occurring prior to the delivery of the Succession Notice.

Without the requirement of obtaining any further consent from PEC, 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 a Transferee (hereinafter defined), so long as such Transferee shall assume in writing for the benefit of PEC all of the obligations of the Project Company under this Agreement, including the payment of all amounts due and payable by 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.

(d) As used herein, a “Transferee” shall be a person who

(i) is a company organized under the Laws of Yemen,

(ii) is an experienced and qualified power plant operator or has agreed to engage the services of a person who is an experienced and qualified power plant operator, and

(iii) shall have expressly assumed in writing for the benefit of PEC the obligations of the Project Company under this Agreement, including the payment of all amounts due and payable by the Project Company under this Agreement.

(e) At the request of the Project Company, which request shall be delivered to PEC not less than thirty (30) Days in advance of Financial Closing, PEC shall execute and deliver at the Financial Closing, all such acknowledgments to the Lenders or their designees with respect to any security created in accordance with this Section 6.2 as are reasonably requested by the Project Company and the Lenders to give effect to the foregoing provisions in this Article 6.

ARTICLE VII

TERMINATION

Section 7.1 Termination for Default

[NTD: Coordinate across all Agreements]

(a) Termination by PEC

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 PEC to terminate this Agreement pursuant to Section 7.2; provided, that no such event shall be a Project Company Event of Default (A) if it results from a breach by PEC of this Agreement, (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 or (D) if it results from a breach by the Government of the Implementation Agreement:

(i) other than the assignments to and by the Lenders contemplated under Section 6.3, the assignment or transfer of the Project Company's rights or obligations in the assets identified in Section 6.3(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 PEC;

(ii) 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;

(iii) 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;

(iv) any material breach by the Project Company of this Agreement, that is not remedied within thirty (30) Days after notice from PEC, 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;

(v) the occurrence of a Project Company Event of Default (as defined in the Power Purchase Agreement, the Implementation 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

(vi) the failure by the Project Company to make any payment of Rent, the Initial Development Payment, the Annual Development Payment or other charges or

payments required to be made by it hereunder within thirty-five (35) Days of the due date therefor.

(b) Termination by the Project Company

Each of the following events shall be an event of default by PEC (each a “PEC 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 7.2; provided, that no such event shall be a PEC Event of Default (A) if it results from a breach by the Project Company of the Power Purchase Agreement, the Gas Supply Agreement, the Implementation Agreement or this Agreement:

- (i) the Possession Date or the Demised Corridor Possession Date does not occur within three hundred and sixty five (365) Days of the Scheduled Possession Date;
- (ii) the dissolution, pursuant to law, of PEC, except for the privatization, amalgamation, reorganization, reconstruction or privatization of PEC, in each case 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 that, in the reasonable business judgment of the Project Company, provides an adequate alternative to the Guarantee;
- (iii) any statement, representation or warranty by PEC in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made and such incorrect statement, representation or warranty having a material and adverse effect on Project Company's ability to perform its obligations under this Agreement;
- (iv) any material breach by PEC of this Agreement that is not remedied within thirty (30) Days after notice from the Project Company to PEC stating that a material breach of this Agreement has occurred and is continuing that could result in termination of this Agreement, identifying the material breach in question in reasonable detail, and demanding remedy thereof; or
- (v) 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 Government Event of Default (as defined in the Implementation Agreement) that has not been waived or remedied within the applicable cure period provided therein.

Section 7.2 Termination Notices

(a) Upon the occurrence of a PEC 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 (“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 PEC Event of Default, as the case may be, giving rise to the Notice of Intent to Terminate.

(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; provided, that:

(i) with respect to a PEC Event of Default under Section 7.1(b)(i) or 7.1(b)(v), no cure period shall be available to PEC and the Project Company shall be entitled to forthwith deliver a Termination Notice pursuant to Section 7.2(c);

(ii) with respect to a Project Company Event of Default under Section 7.1(a)(v), no cure period shall be available to the Project Company and PEC shall be entitled to forthwith deliver a Termination Notice pursuant to Section 7.2(c). During the period following delivery of the Notice of Intent to Terminate, if any, 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 7.2(c), then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.

(c) Subject to Sections 7.3, upon expiration of the consultation period described in Section 7.2(b), and unless the Parties shall have otherwise agreed or unless the 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.

(d) Notwithstanding anything to the contrary in this Article 7, the Project Company shall not be entitled to terminate this Agreement in accordance with this Article 7 unless it complies with the provisions of Section 13.3 of the Implementation Agreement.

Section 7.3 Survival

In the event that the Facility is transferred to the Government under the terms of the Implementation Agreement, this Agreement shall immediately terminate and the Project Company shall have no further obligations to PEC hereunder except those obligations that arose prior to or upon the termination of this Agreement.

Section 7.4 Notice to Lenders; Agent

(a) Anything in this Agreement notwithstanding, from and after the occurrence of Financial Closing, PEC shall not seek to terminate this Agreement as the result of any Project Company Event of Default (other than a Project Company Event of Default under Section 7.1(a)(iii)) without first giving a copy of any notices required to be given to the Project Company under Section 7.2 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 7.2(b), (the “Initial Cure Period”) and such cure period shall commence upon delivery of each such notice to the Lenders.

(b) If there is more than one Lender, the Lenders will designate in writing to PEC an agent (the “Agent”) and any notice required hereunder shall be sent to such Agent, such notice to be effective if made to the Agent as if made 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 Lender or the Agent,
- (ii) when transmitted by facsimile to the number specified in accordance with the procedure set forth below, 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 Lender 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 7.3(b) 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 Lender or Agent is outside Yemen, any notice delivered to the Lender or Agent pursuant to this Section 7.3(b) shall be:

- (i) presented personally or sent by international courier or facsimile, and
- (ii) if sent by facsimile, confirmed by international courier;

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

The address and facsimile number for Lender or Agent shall be provided to PEC by the Project Company at Financial Closing and thereafter may be changed by the Lender or the Agent by subsequent delivery of a notice to PEC at the address or facsimile number of PEC set out in Section 10.1(a) (or at such other address or facsimile number in accordance with Section 7.3(b)(i)) and otherwise in accordance with the requirements of Section 10.1.

(c) From and after the occurrence of Financial Closing, no rescission or termination of this Agreement by PEC (other than as a result of a Project Company Event of Default under Section 7.1(a)(iii)) shall be valid or binding upon the Lenders without such notice, the expiration of:

- (i) the Initial Cure Period;
- (ii) the Evaluation Period provided in Section 7.3(d); and

(iii) if applicable, the Lenders Cure Period, provided in Section 7.3(e), as such Lenders Cure Period may be extended.

The Lenders may make, but shall be under no obligation to make, any payment or perform 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 within the Initial Cure Period as provided to the Project Company in this Agreement, PEC shall have all its rights and remedies with respect to such default as set forth in this Agreement:

Provided, that the Lenders, upon the termination of the Initial Cure Period, shall be offered a further period (the "Evaluation Period"), during which the Lenders shall 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 the Evaluation Period shall end on the sooner to occur of

(i) the Lenders' delivery to PEC 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"),

or

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

During the Evaluation Period, PEC'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 granted an additional period of one hundred and eighty (180) Days to cure any other Project Company Event of Default (in either case, the "Lenders Cure Period").

(f) During such Extended Cure Period, PEC's right to terminate this Agreement shall be suspended so long as 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.

(g) In the event that the Lenders fail to cure any Project Company Event of Default on or before the expiration of the Extended Cure Period, if any, as it may have been extended pursuant to Section 7.3(e), PEC may exercise any and all of its rights and remedies with respect to such default set forth in this Agreement and PEC may immediately terminate this Agreement, and such termination shall be effective immediately on delivery to the Lenders or the Agent of notice of such termination.

ARTICLE VIII

RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION

[NTD: Coordinate across all Agreements]

Section 8.1 Obligations Upon Termination

Upon expiration or termination of this Agreement, the Project Company shall immediately surrender the Demised Premises and the Demised Corridor (if applicable) and the Parties shall have no further obligations hereunder except for obligations that arose prior to such expiration or termination and that expressly survive such expiration or termination pursuant to this Agreement. For each Day following the end of the Term that the Project Company has not surrendered possession of the Demised Premises and the Demised Corridor, the Project Company shall be a holdover tenant, and the Project Company shall pay to PEC the Rent applicable to the last Contract Year of the Term, divided by 365 and multiplied by three (3). The Project Company irrevocably agrees that this rent is reasonable and constitutes liquidated damages to PEC and is not and shall not be construed to be a penalty.

Section 8.2 Other Remedies

(a) Remedies Cumulative

Except as otherwise provided herein:

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

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

(b) Limitation of Damages of Project Company

Notwithstanding Section 8.2(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 by the Project Company as a result of a PEC Event of Default. Therefore, the Parties have agreed that the termination of this Agreement and the remedies provided therefor under the Implementation Agreement, including, if applicable, the termination of the Implementation Agreement by the Project Company under Section 13.1 of the Implementation Agreement (and the termination of the Agreement under Section 7.1(b)(iii)) and the payment to the Project Company by the Government of the compensation provided under Section 14.1 of the Implementation Agreement as a result thereof, is in lieu of actual damages and any other liquidated damages which may otherwise be payable under this Agreement in respect of such termination and the collection of such amount (and, if applicable, the termination of the Implementation Agreement) is the sole remedy of the Project Company in respect of such

termination. The provisions of this Section 8.2 shall be without prejudice to any right or remedy of the Project Company which arises prior to termination of this Agreement.

(c) Limitation of Damages PEC

Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event that PEC terminates this Agreement as a result of a Project Company Event of Default under Section 7.1(a)(iii) and the Government elects to purchase the Facility and the Project Company transfers the Facility to the Government pursuant to Section 14.1 of the Implementation Agreement, then, upon such transfer and payment by the Government of the compensation provided under Section 14.1 of the Implementation Agreement, any claims by PEC against or liability of the Project Company under this Agreement (except as provided in Section 8.1) shall be fully extinguished and PEC shall have no further claim or recourse against the Project Company under this Agreement. The provisions of this Section 8.2 shall be without prejudice to any right or remedy of the Project Company which arises prior to termination of this Agreement.

ARTICLE IX

RESOLUTION OF DISPUTES

[NTD: Coordinate across all Agreements]

Section 9.1 Governing Law

This Agreement and the rights and obligations of the Parties hereunder shall be interpreted, construed and governed by the Laws of England.

Section 9.2 Arbitration

(a) The Parties shall attempt in good faith to resolve any 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 9.2(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 9.2(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) of the Implementation Agreement) 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 ICC Rules”). *[NTD: Consider using UNCITRAL rules]*

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

(d) The Parties agree that the arbitral tribunal constituted in pursuance of a request for arbitration made under Section 9.2(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.

(e) No arbitrator appointed pursuant to this Section 9.2 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.

(f) Subject (in the case of arbitral proceedings under Section 9.2(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 9.2 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.

(g) 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 9.2(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 9.2, 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 which 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).

(h) Until such time as any arbitral proceedings begun in pursuant of Section 9.2(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 9.2, any Dispute (whether or not any such Dispute shall have been referred to arbitration in pursuance of Section 9.2(a) and (b)), the subject matter of any Dispute or any arbitral proceeding begun in pursuance of Section 9.2(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 9.2(a) or (b).

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

Section 9.3 Commercial Acts; Sovereign Immunity

[NTD: Coordinate across all Agreements]

(a) PEC 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, PEC hereby irrevocably and unconditionally agrees that: (i) should any proceedings be brought against PEC 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 PEC; (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 the courts of any competent jurisdiction (including the courts in Yemen) for any action or proceeding filed by PEC to enforce any award or decision of any arbitrator(s) 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 9.3 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. For the purposes of this Section the courts of Yemen and the courts of any jurisdiction where property of the Project Company is located shall be courts of competent jurisdiction. 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 9.3 shall be referred for determination under Section 9.2 and shall fall within the definition of Dispute.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 10.1 Notice

(a) 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 Project Company: [PROJECT COMPANY]

Address: []

Attention: []

Facsimile: []

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

Address: []

Attention: []

Facsimile: []

- (b) All notices shall be deemed delivered
 - (i) when presented personally,
 - (ii) when transmitted by facsimile to the receiving Party's facsimile number specified above,
 - (iii) 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
 - (iv) 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.

(c) Either Party may by notice hereunder change the addresses, addresses or facsimile numbers to which such notices and communications to it are to be delivered or mailed.

Section 10.2 No Implied Waiver

(a) No waiver by either Party of any act that constitutes a default or violation under the provisions of this Agreement:

- (i) shall operate or be construed as a waiver of any other or further default or violations 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 hereunder, which shall remain in full force and effect.

Section 10.3 Successors and Assignees

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

Section 10.4 Third Parties

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.

Section 10.5 Entire Agreement

This Agreement, and the Schedules attached hereto, are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are hereby abrogated and withdrawn.

Section 10.6 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.

Section 10.7 Transfer of Facility to the Government

If the Implementation Agreement is terminated and the Facility is transferred to the Government pursuant to Article 14 of the Implementation Agreement, this Agreement will be assigned to the Government or at the election of the Project Company, shall terminate immediately without any liability whatsoever on the part of the Project Company. With effect from such assignment or termination, the Project Company will have no further obligations whatsoever under this Agreement.

Section 10.8 Easements and Rights-of-way

PEC hereby agrees with the Project Company that, at the written request of the Project Company, PEC shall expeditiously grant to the Gas Supplier such easements and rights-of-way as are contemplated under Section 4.2 of the Gas Supply Agreement.

Section 10.9 No Association

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.

Section 10.10 Set-off

If there are any amounts due and payable to the Project Company under this Agreement that remains unpaid, the Project Company shall be entitled to deduct the same from the Initial

Development Payment, the Annual Development Payment, Rent or any other payment that may be due from the Project Company to PEC (including payments due under the Power Purchase Agreement).

Section 10.11 Interest on Late Payment

In the event either Party fails to make any payment due to the other Party under the terms of this Agreement, such Party shall pay interest on all overdue amounts at the Bank Rate plus four percent (4%) per annum until full realization.

Section 10.12 Amendment

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.

Section 10.13 Headings

The headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement nor shall such headings be used in any manner to aid in the construction of this Agreement.

Section 10.14 Survival

Cancellation, expiration, early termination of this Agreement or arbitration of Disputes pursuant to Article 9 shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including, without limitation, warranties, remedies, promises of indemnity and confidentiality.

Section 10.15 Assignment

Except as provided in Section 6.3, 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, PEC 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, PEC 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 10.15 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 PEC's rights hereunder, the holder of any security created under this Section 10.15 shall not be prevented or impeded by PEC from enforcing such security in accordance with its terms.

Section 10.16 Confidentiality

(a) Each of the Parties shall, and shall ensure that their contractors, subcontractors, consultants, and agents, and each of their respective permitted successors and assigns, hold in confidence all documents and other information whether technical or commercial, which is of a confidential nature supplied to it by or on behalf of the other Party relating to the Project and shall not (save 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 10.16 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 10.16(a) 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.

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.

Section 10.17 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.

PUBLIC ELECTRICITY CORPORATION,
REPUBLIC OF YEMEN

[PROJECT COMPANY]

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE 1: SITE DESCRIPTION

PART A. DESCRIPTION OF THE DEMISED PREMISES

All that piece and parcel of land measuring [] acres situated within [].

PART B. DESCRIPTION OF THE DEMISED CORRIDOR

All that piece and parcel of land measuring [] acres situated within [].

PART C. DESCRIPTION OF THE LAND FOR THE ACCESS ROAD

Part I -Existing Access Road

All that piece and parcel of land measuring [] acres situated within [].

Part II - Extension of the Access Road

All that piece and parcel of land measuring [] acres situated within [].

SCHEDULE II: RENT PAYMENT TERMS

1 The rent payable for the Demised Premises (the “Rent”) shall be [] Rials per Contract Year for the first five (5) Contract Years commencing on the Possession Date. Rent payable for the next five (5) Contract Years shall be increased by an amount of 20% of the Rent payable in each of the immediately preceding five (5) Contract Years. The increased Rent amount shall be applicable (without any further increase until the expiry of another five (5) Contract Years thereafter) for the next five (5) Contract Years.

2. (a) The Initial Development Payment shall be [] Rials and shall be payable by the Project Company to PEC within seven (7) Days after the Possession Date, subject to the rights of the Project Company to deduct the same pursuant to Section 2.2(b).

(b) The Annual Development Payment shall be [] Rials and shall be paid by the Project Company to PEC in five equal installments of [] Rials each such installments to be payable at the times set out below:

- First installment on the first anniversary of the Commercial Operations Date
- Second installment on the second anniversary of the Commercial Operations Date
- Third installment on the third anniversary of the Commercial Operations Date
- Fourth installment on the fourth anniversary of the Commercial Operations Date
- Last installment on the fifth anniversary of the Commercial Operations Date

3. The Rent for each Contract Year shall be payable by the Project Company in two equal semiannual installments, one on the 1st Day of the relevant Contract Year and the other on the 1st Day of the seventh (7th) month of each Contract Year. Provided always that the first payment of Rent shall be made by the Project Company only seven (7) Days after the Possession Date.

4. In case of default in paying any installment or installments, the Project Company shall pay interest at the Bank Rate plus four percent (4%) per annum until full realization.

SCHEDULE III:

[NOT USED]

SCHEDULE IV: ACCESS ROAD EXTENSION WORKS SPECIFICATIONS

PART A General Specifications

1.0 Introduction

The extension of the Access Road will be finished at a level [] meter above the [200-year return period highest flood Level (“HFL”)].

The works shall also include (but shall not be limited to) the following:

[List appropriate works when they are known.]

2.0 Design Life

The design life of the extension works shall be not less than [] years.

3.0 Design Codes and Standards

The following codes and standards (as applicable) shall, at all times be complied with, in the Access Road extension works.

[Insert relevant codes and standards]

4.0 Sampling and Testing

All sampling and testing in respect of the Access Road extension works shall comply with the applicable codes and standards referred to in Section 3.0 of this Schedule.

5.0 Design Parameters and Assumptions

The following parameters and assumptions will be adopted in the design and construction of the Access Road extension works.

[Insert appropriate parameters and assumptions]

PART B

[Not Used]

PART C

Technical Specifications

1.0 General

The extension of the Access Road from the point of main entrance to [the Facility] up to the Demised Premises shall be of [insert appropriate material] construction. The location and the alignment of the Access Road are shown in Appendix A.

2.0 Baseline Criteria

[Insert baseline criteria]

3.0 Design Criteria

The Access Road will be designed and constructed to comply with the following criteria:

[Insert appropriate criteria]

4.0 Design

The Access Road shall be built following the standards of the []. The standards are listed below:

[Insert appropriate standards]

4.2 Geometric Design for the Road

(i) Elevation of the Road: []

(ii) Crossfall: []

(iii) Radius of Curvature: []

4.3 Pavement Design for the Road

4.3.1 Assumptions

The following assumptions are made as the basis of pavement design:

[Insert appropriate assumptions]

4.3.2 Pavement design

[Insert appropriate design]

4.4 Drainage Design for the Road

[Since the pavement of the road will be designed to shed water completely, there is no need to provide drainage for pavement. But drainage for the Access Road shall be installed to protect the Access Road from erosion.]

4.5 Road Signs and Markings

Road signs and speed limit signs shall be provided at all turns and appropriate locations as may be necessary.

The height of all the road signs will be [] m from the Access Road surface. [All road signs shall be coated with reflection paint. The margins of the Access Road sign board shall be painted red, background yellow and words black.]

5.0 Specification for Materials

[Insert appropriate specifications]

Abbreviations

[Abbreviations used in this Schedule]

[The following abbreviations are used in this schedule

FL:	Finished Level
HFL:	Highest Flood Level
MHWL:	Mean Highest Water Level
MHFL:	Mean Highest Flood Level
MLWL:	Mean Lowest Water Level
MLFL:	Mean Lowest Flood Level
NLWL:	Normal Lowest Water Level
PWD:	Public Works Datum
mm	millimetre
mm²	square millimetre
m	meter
m²	square meter
m³	cubic meter
km	kilometre
°C	degree Centigrade
%	percent
kg	kilogram
Nr	number
L	litre
s	second
hr	hour
N	Newton
KN	kilo Newton
Ha	hectare
t	tonne
dia	Diameter]