



Date: []

THE GOVERNMENT OF THE REPUBLIC OF UGANDA

AND

[XXXX]

**IMPLEMENTATION AGREEMENT
IN RELATION TO THE DEVELOPMENT OF XXX
HYDRO POWER PROJECT ON XXX RIVER IN XXX
DISTRICT**

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THIS IMPLEMENTATION AGREEMENT (this “**Agreement**”) is made on the ____ day of _____ 201[3], between:

- (1) **THE GOVERNMENT OF THE REPUBLIC OF UGANDA** represented by its Ministry of Energy and Mineral Development of P.O. Box 7270, Kampala, Uganda (“**GOU**”); and
- (2) [**●**], a private limited liability company incorporated under the laws of Uganda (the “**Company**”),

(each of GOU and the Company are herein referred to individually as a “**Party**” and, collectively, as the “**Parties**”).

WHEREAS:

- (A) GOU has decided to encourage the Company to generate, supply and sell energy to the Uganda Electricity Transmission Company Limited;
- (B) the Company is desirous of establishing a [**●**] MW capacity power generation facility in [**●**] District, using the waters of the River [**●**];
- (C) the Company and UETCL are entering into a power purchase agreement to this effect on or about the date of this Agreement;
- (D) to promote the increased generation and supply of electricity at the aforementioned facility, GOU has agreed to provide certain assistance, support and concessions to the Company; as provided in this Agreement;
- (E) the Company desires and intends to develop, own, operate and maintain the Generation Facility [and manage the construction of the Related Infrastructure]¹ pursuant to the provisions of the Project Agreements and the Financing Agreements; and
- (F) UETCL desires and intends to purchase the net electrical output and ancillary services with respect to the Generation Facility pursuant to the Power Purchase Agreement.

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

1 DEFINITIONS

1.1 Definitions

In this Agreement, unless the context otherwise requires, the capitalised terms used in this Agreement shall have the meanings given to them below:

“**Act**” means the Electricity Act Chapter 145 of the laws of Uganda.

¹ Amend as appropriate.

“**Agreement**” means this Implementation Agreement, together with all Annexes dated as of the date hereof, between GOU and the Company, as the same may be amended from time to time.

“**Authorisation**” means any approval, consent, licence, permit, authorisation or other permission granted or to be granted by a Governmental Authority required for the enforcement of rights or performance of obligations under this Agreement by a Party.

“**Authority**” means the Electricity Regulatory Authority established pursuant to the Act.

“**Business Day**” means any day of the week other than a Saturday or Sunday that is not a Ugandan national holiday.

“**Change in Law**” means the occurrence of any of the following after the execution of this Agreement:

- (a) the enactment of a new Laws of Uganda;
- (b) the repeal or modification or re-enactment of any Laws of Uganda in effect as of the date of this Agreement;
- (c) the commencement of any Laws of Uganda which has not yet entered into effect, other than prospective Laws of Uganda which have not yet been brought into force as of the date hereof but have been published as a prospective Laws of Uganda and such is available for the Company to review;
- (d) an interpretation or application of any Laws of Uganda by any Governmental Authority having direct authority for its interpretation or application which did not exist at the date of this agreement
- (e) the imposition or modification by a Governmental Authority of a requirement for any Authorisation which did not exist at the date of this Agreement; or
- (f) the enactment or interpretation of any provision of Laws of Uganda or dealing with currency exchange whether it be a change in the way the exchange rate is allowed to be computed or determined or a change in the ability of GENCO to freely convert Ugandan Shillings to US Dollars or vice versa or the ability of GENCO to freely repatriate its profits, earnings and or its capital in each case which did not exist at the date of this agreement/;

where (A) any of the above establishes either a material increase or decrease in cost or a material reduction or increase in revenue as a consequence of any requirement for the design, construction, financing, ownership, operation or maintenance of the Project that is materially more restrictive than the most restrictive requirements specified in any Authorisation in effect as of the date of this Agreement or (B) any impact of (a) to (f) above leads to any of the consequences detailed in Section 17.2.5.

“**Change in Tax**” means the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application against the provisions of the relevant legislation, change in interpretation or modification after the date hereof of any Laws of Uganda by any Governmental Authority, relating to any tax, duty,

licence fee or other revenue-producing measure, including any application of any tax, duty, licence fee or other revenue-producing measure which differs from the assumptions in Schedule 8 to the Power Purchase Agreement.

“**Company Default Purchase Price**” means an amount calculated in accordance with Annex D.

“**Company Event of Default**” has the meaning given to it in Section 17.1.

“**Consequential Loss**” means all losses, costs and financial harm not directly (whether or not foreseeable) resulting from any breach by a Party of its obligations hereunder.

“**Contract Year**” has the meaning given in the Power Purchase Agreement.

“**Contractors**” means the entity or entities designated by the Company, pursuant to Section 3.3 of the Power Purchase Agreement, to design, construct, operate and maintain the Project.

“**Day**” or “**day**” means a period of twenty-four (24) hours beginning at 00:00 Hours on a day and ending at 24:00 Hours on that day.

“**Direct Agreement**” means the agreement dated on or about the date of this Agreement between GOU, the Company and the Lenders in respect of this Agreement.

“**Dispute**” means any dispute or disagreement or difference arising under or relating to this Agreement, including any dispute or difference concerning the existence, legality, validity or enforceability of this Agreement or any provision hereof or the obligations or performance of a Party hereunder or under any provision hereof.

“**Energy**” has the meaning given in the Power Purchase Agreement.

“**Energy Charge**” has the meaning given in the Power Purchase Agreement.

“**EPC Contract(s)**” means the contract(s) (if any) pursuant to which the Company engages a third party to perform all or some of the engineering, procurement and/or construction of the Generation Facility [and the Related Infrastructure].

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

“**Expert**” has the meaning ascribed thereto in Clause 12.2.1.

“**Financial Close**” has the meaning given to it in the Power Purchase Agreement.

“**Financing Agreements**” means the loan agreements, notes, indentures, security agreements, guarantees and other agreements, documents and instruments, including any hedging transactions entered into by the Company in connection with the financing of the Project, relating to the permanent financing (including refinancing) of the Project, as the same may be amended from time to time.

“Force Majeure Event” means an event constituting Force Majeure as defined under Section 15.1.

“Foreign Currency” any currency other than Shillings.

“Foreign Investors” Investors who are not Ugandan nationals.

“Generation Facility” means the new electricity generation facility of [] MW capacity at [], [] District as defined under the Generation License.

“GOU” means the Government of the Republic of Uganda.

“GOU Default Purchase Price” means an amount calculated in accordance with Annex D.

“GOU Event of Default” has the meaning given to it in Section 17.2.

“Governmental Authority” has the meaning given to it in the Power Purchase Agreement.

“Interconnection Facilities” means the interconnection to the Delivery Point as more particularly detailed under Schedule 1 of the Power Purchase Agreement.

“Lapse of Consent” means any Authorisation:

- (a) not being issued (or, having lapsed, not being renewed or replaced) within one hundred eighty (180) Days of properly and timely made and diligently pursued application by the Company for that Authorisation to be issued, renewed, or replaced, as the case may be, and as a result the Company’s ability to perform its obligations under this Agreements is materially and adversely affected;
- (b) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Company’s ability to perform its obligations under this Agreement; or
- (c) being withdrawn, cancelled, or suspended other than as provided under Laws of Uganda and as a result the Company’s ability to perform its obligations under this Agreement is materially and adversely affected,

in each of the above instances despite the Company’s compliance with the applicable procedural and substantive requirements as applied in a non-discriminatory manner.

“Laws of Uganda” means any requirements established under any statute, law, regulation or other legislation, or any decree, order or directive emanating from any Governmental Authority of the Republic of Uganda, in respect to the Company, UETCL and/or GOU.

“Lease” means each lease or right to use agreement to be executed between the Company and a Governmental Authority in relation to the Project as described in Annex B.

“**Lenders**” means the banks and other financial institutions party to the Financing Agreements including any security agent or trustee.

“**License**” means the license issued by the Authority to the Company for the generation and sale of electricity to UETCL.

“**Loss**” means any loss, damage, liability, payment, obligation or expense (excluding any indirect or consequential loss, damage, liability, payment, obligation or expense).

“**Metering System**” has the meaning given in the Power Purchase Agreement.

“**Ministry**” means The Ministry of Energy and Mineral Development of GOU or its successor responsible for electricity.

“**Other Force Majeure Events**” has the meaning given in Section 15.1.2.

“**Other Force Majeure Purchase Price**” means an amount calculated in accordance with Annex D.

“**Parties**” means GOU and the Company.

“**Party**” means either GOU or the Company, as the case may be.

“**Person**” means an individual, corporation, partnership, joint venture, trust, unincorporated organization, Governmental Authority, or any other legal entity.

“**Political Force Majeure Events**” has the meaning given in Section 15.1.1.

“**Power Purchase Agreement**” means the agreement of that name executed between UETCL and the Company on [*insert date*].

“**Prescribed Fee**” means, with respect to a particular Authorisation, the charge or fee, if any, prescribed by Laws of Uganda.

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

“**Project**” means the development, design, financing, procurement, construction, installation, ownership, operation, maintenance and insurance of the Generation Facility, the Interconnection Facilities [and]/[,] the Metering System [and the development, design, financing, procurement, construction, installation of the Related Infrastructure].

“**Project Agreements**” means this Agreement, the Power Purchase Agreement and any other agreement between the Company and any Governmental Authority relating to the Project.

“**Prudent Utility Practice**” has the meaning given to it in the Power Purchase Agreement.

“**REA**” means Rural Electrification Agency.

["**Related Infrastructure**" has the meaning given to it in the Power Purchase Agreement.]²

["**Route**" has the meaning given to it in the Power Purchase Agreement.]

"**Security Package**" means:

- (a) the Project Agreements;
- (b) the Financing Agreements, including the Direct Agreement and the documents creating or evidencing the security for the Lenders, including any trust arrangements;
- (c) the Company's Memorandum and Articles of Association and any instrument constituting or evidencing shares or other securities convertible into shares which are to be issued or committed at Financial Closing;
- (d) [*other*].

"**Technical Dispute**" means a dispute that relates to a technical, engineering, operational, or accounting issue or matter related to this Agreement that, in any case, is the type of issue or matter that is reasonably susceptible to consideration by an expert in the relevant field or fields and is reasonably susceptible to resolution by such expert.

"**Term**" means the term of this Agreement as calculated in accordance with Section 3.

"**Threshold Amount**" US\$[●].

"**UECTL**" means the Uganda Electricity Transmission Company Limited.

"**UETCL DGE Payments**" has the meaning given in the Power Purchase Agreement.

"**UGX**" or "**Shillings**" means Uganda Shillings.

"**US Dollars**" (or "**USD**" or "**US\$**") means the lawful currency of the United States of America.

Unless the context otherwise requires and save as specifically defined herein above, words and expressions defined in the Power Purchase Agreement shall have the same meanings when used in this Agreement.

2 INTERPRETATION

2.1 Rules of Interpretation

In this Agreement:

² Amend as appropriate.

- 2.1.1 References in the singular shall include references in the plural and vice versa, and words denoting natural persons shall include corporations and any other legal entity and vice versa;
- 2.1.2 References to the words “include”, “includes” and “including” are to be construed without limitation;
- 2.1.3 Except to the extent that the context requires reference to a particular Section, paragraph or Annex shall be references to that Section, paragraph or Annex in or to this Agreement;
- 2.1.4 Except to the extent that the context requires any reference to “this Agreement” or any other agreement or document is a reference to such document or agreement as amended, supplemented or notated from time to time and includes a reference to any document which amends, is supplemental to, notates, or is entered into, made or given pursuant to or in accordance with any terms to it;
- 2.1.5 The headings and paragraph numbers are inserted for convenience only and are to be ignored for the purposes of construction;
- 2.1.6 Calculations carried out pursuant to this Agreement will be rounded [up] to two (2) decimal places;
- 2.1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; and
- 2.1.8 The language of negotiation of this Agreement has been English, this Agreement is executed in English, and this English text shall prevail for the purposes of determining the intention of the Parties and in any construction of this Agreement.

3 TERM OF AGREEMENT

This Agreement shall come into full force and effect on the later of:

- 3.1.1 the Execution Date; and
- 3.1.2 the date on which all conditions to the Power Purchase Agreement coming into full force and effect have been satisfied or waived, other than the coming into force of this Agreement,

(the “**Effective Date**”).

This Agreement shall, unless terminated earlier in accordance with the terms of this Agreement, continue in full force and effect for the period of the Power Purchase Agreement.

If the Effective Date has not occurred within [●]³ months from the Execution Date, such period to be extended by one day for each day that the Effective Date is prevented from occurring due to a Force Majeure Event, a GOU Event of Default or a breach by UETCL of the Power Purchase Agreement, or such later date as GOU may agree in writing, GOU or the Company may by notice terminate this Agreement with immediate effect.

To the extent the Generation Facility is greater than 10MW, upon the conclusion of the full Term (as defined in the Power Purchase Agreement), the Company shall sell and convey all its right, title and interest in the Generation Facility to GOU for the sum of US\$1.00 plus any due but unpaid Energy Charge under the Power Purchase Agreement. If the Power Purchase Agreement is terminated pursuant to Section 10.1.3 of the Power Purchase Agreement due to a Force Majeure Event continuing for a period in excess of one hundred and eighty days, unless UETCL exercises the option for GOU to purchase the Generation Facility, the Generation Facility shall not be required to be transferred to GOU. If the Generation Facility is less than 10MW, the Company shall not be required to transfer the Generation Facility to GOU.

4 IMPLEMENTATION BY THE COMPANY

4.1 Company obligations

The Company shall procure the design, engineering, financing, insurance, construction, completion, operation and maintenance of:

- 4.1.1 the Generation Facility;
- 4.1.2 [the Related Infrastructure];
- 4.1.3 the Interconnection Facilities; and
- 4.1.4 the Metering System;

in each case, in accordance with Laws of Uganda, all the Authorisations, sound engineering and construction practices and Prudent Utility Practices.

4.2 Application by the Company for Authorisation

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

³ Period to be inserted.

4.3 Status of Authorisation Applications

The Company shall make or cause to be made at least [once every six months in any particular calendar year], reports to GOU listing its schedule for submitting Authorisation application forms or renewal application forms, the status of any Authorisation applications then outstanding or notifications of the granting or denial of any Authorisation that may be necessary during the particular period of the Project implementation. Each report shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The report shall also summarise any problems regarding any material Authorisation or Authorisation application that may affect the Company's performance under this Agreement or the Power Purchase Agreement. In the event of any Lapse of Consent, the Company shall submit a report pursuant to this Section 4.3 within three Business Days after becoming aware thereof.

4.4 Employment, Training and Use of Ugandan Resources

4.4.1 The Company shall use reasonable efforts to employ Ugandans in its operations and shall conduct employee-training programmes from time to time of its Ugandan employees.

4.4.2 The Company shall use reasonable efforts to give preference to the purchase of Ugandan goods and materials provided that such goods and materials are of acceptable quality and are available on competitive terms.

4.5 Contracting

4.5.1 The Company may delegate its responsibilities to construct the Generation Facility and manage the construction of the Related Infrastructure to one or more Contractors.

4.5.2 The Company may delegate its responsibility to operate and maintain the Generation Facility to a Contractor.

4.5.3 The Company shall at all times remain liable for the performance of its obligations under the Project Agreements and Financing Agreements, notwithstanding any delegation to any Contractor.

4.5.4 Except to the extent that the Project Agreements or Financing Agreements specifically assign responsibilities or obligations to other persons, the Company shall make all necessary arrangements to enable it to carry out its obligations under the Project Agreements and the Financing Agreements.

4.6 Land Rights

4.6.1 Save as detailed in Section 4.6.3 below, the Company shall be responsible for acquiring any land, wayleave, right of way, easement or other interest in land which it may require for carrying on the Project [including for the purpose of the construction of the Related Infrastructure⁴].

⁴ To be inserted if GENCO is to undertake Grid work.

- 4.6.2 Save as detailed in Section 4.6.3 below, the Company shall pay all the costs associated with any third-party land for the Project requiring acquisition, way-leaves and/or easements and/or involving disturbance of land user rights such as cultivation and occupation as identified in any Resettlement Action Plan (“RAP”) created for the Project.
- 4.6.3 To the extent that the Related Infrastructure involves the construction of a transmission line of a length greater than 5km, GOU will procure the completion of all such Related Infrastructure subject to the Company providing all necessary assistance in respect of the design of such Related Infrastructure and having included the costs for such Related Infrastructure in its feasibility study submitted to ERA in respect of the Project.

5 SUPPORT OF GOU

5.1 Rights to Generation Facility

Subject to the terms and conditions of the Project Documents, the Financing Agreements and the Authorisations, GOU grants to the Company for the term of this Agreement the exclusive right to design, finance, insure, construct, own, operate and maintain the Generation Facility. A breach by the Company of the terms and conditions of any of the Project Documents, the Financing Agreements or the Authorisations will not result in the loss by the Company of its exclusive right to design, finance, insure, construct, own, operate and maintain the Generation Facility under this Section 5.1 before termination of this Agreement.

5.2 Support for Obligations

GOU shall upon reasonable request by the Company, use its good offices to support the Company’s performance of its obligations to design, construct, operate and maintain the Generation Facility and manage the construction of the Related Infrastructure. By agreeing to use its good offices to provide facilitation for the Company’s efforts, GOU has not relieved and does not relieve in any way, the Company of its obligations or potential liability under this Agreement or any other agreement. The assistance envisaged in this provision shall not include financial assistance apart from that which is expressly stated herein.

5.3 Support to Obtain Authorisations

5.3.1 Subject to the Company’s timely submission of the reports required by Section 4.3 and upon reasonable request of the Company, GOU shall support and use all reasonable efforts to expedite the consideration and granting by the Governmental Authorities of the Company’s applications for the Authorisations or re-issuances thereof filed pursuant to Section 4.2, and the timely issuance thereof or re-issuance of a Authorisation subject to a Lapse of Consent. Such support shall include the provision by GOU of advice as to the content of such applications and liaison with and between the Company and the Governmental Authority as to the progress of such applications. Any request for support under this Section 5.3 shall be accompanied with copies of the application for the Authorisation, any notice that the issuance or re-issuance of the Authorisation was denied or deferred and a statement of the

Company's efforts in obtaining the issuance or re-issuance of the Authorisation to date. By agreeing to take such reasonable and appropriate action in support of the Company's efforts, GOU has not relieved, and does not relieve in any way, the Company of its obligations or potential liability under any other agreement.

5.3.2 Subject to the Company's compliance with Sections 4.2 and 4.3, GOU shall grant or issue or shall cause the Governmental Authority to grant or issue the Authorisations that may be required from time to time.

5.3.3 GOU shall not abrogate or otherwise disavow any Authorisation, whether obtained before or after the date of this Agreement, provided that GOU shall not be in breach of this obligation where, to the extent, and for as long as, any Authorisation ceases to be in force because of the breach by the Company of any of the terms and conditions attaching to such Authorisation.

5.3.4 Any Governmental Authority may attach such non-discriminatory terms and conditions to the issuance or renewal of any of the Authorisations as are in accordance with Laws of Uganda, always provided that such additional terms and conditions do not cause a material adverse change to the terms and conditions of the Power Purchase Agreement. The attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by GOU or a GOU Event of Default under Section 17.2, subject to the proviso in the first sentence of this Section 5.3.4. The Company and the Contractors shall abide by all such terms and conditions. If the Company or any of the Contractors fails to abide by any term or condition of any Authorisation, then the exercise by any Governmental Authority of a power pursuant to Laws of Uganda in respect of such failure shall not of itself constitute a breach of this Agreement by GOU or a GOU Event of Default pursuant to Section 17.2.

5.4 Access to Project Site

GOU shall grant all rights and permits necessary to enable the Company to get access to the all areas reasonably necessary for the Project, carry out road rehabilitation and construction work, and to use the said roads, existing roads and other structures for all transport purposes of the Project.

5.5 Financing and Direct Agreement

GOU shall cooperate with the Company from time to time in connection with the limited recourse financing of the Project and agrees to negotiate and conclude in good faith a Direct Agreement with the Lenders and the Company provided however that the terms and conditions of such Direct Agreement shall be those typical and customarily found in the limited recourse financing of infrastructure projects and consistent with similar agreements previously entered by GOU.

5.6 Existence of UETCL

GOU will cause UETCL to remain in existence for the term of this Agreement, provided, however, that notwithstanding the foregoing, GOU may privatise any or all

of the functions of UETCL if such privatisation does not have a material and adverse effect on the ability of UETCL or any successor to UETCL under the Power Purchase Agreement to perform its obligations (including payment obligations) thereunder.

6 ADVISORY COMMITTEE

6.1 Establishment of the Committee

Not later than thirty (30) days after the Execution Date, a Committee (“**Advisory Committee**”) shall be established consisting of four (4) members, two (2) of whom shall be appointed by GOU and two (2) by the Company. The chairman of the Advisory Committee shall be one of the GOU appointees. The mandate of the Committee shall be as set forth in Section 6.3.

6.2 Meetings of the Committee

All meetings of the Advisory Committee shall be held in Kampala at the offices of the REA or any such other place as the members may agree to and shall be held at least once a calendar year quarter and shall require at least three members present to form a quorum. The Rural Electrification Agency shall form the secretariat. Each member shall have the right to bring an expert advisor to any meeting of the Advisory Committee to assist in the discussions of technical and other matters requiring expert advice.

6.3 Functions of the Committee

Notwithstanding any other functions that the Advisory Committee may exercise under this Section 6, the Advisory Committee shall have the following functions:

- 6.3.1 to monitor the progress of implementation of the construction of the Project and the Related Infrastructure as required under the Project Agreements and the License;
- 6.3.2 to make appraisals of the implementation progress under Section 6.3.1 above; and
- 6.3.3 to carry out any other function that the Advisory Committee may deem relevant in the interest of implementation of the Project.

6.4 Decisions of the Advisory Committee

Decisions of the Advisory Committee shall be made unanimously through good faith consultations.

6.5 Costs and expenses of the Advisory Committee

The appointer of each member of the Advisory Committee shall bear the costs and expenses of its appointee regarding meetings and work done for and on behalf of the Advisory Committee.

7 RESTRICTIONS ON ACQUISITION AND TRANSFER OF SHARES AND ASSETS

7.1 Assurance against Discrimination

7.1.1 GOU shall not take and shall ensure that no Governmental Authority takes, any discriminatory action which materially and adversely affects the Project, the performance of the Company's or any Contractor's obligations or the enjoyment of the Company's rights under this Agreement and the Power Purchase Agreement or expropriate or, except as hereinafter provided by the terms of this Agreement, compulsorily acquire the Generation Facility or the Company, whether in whole or in part.

7.1.2 GOU shall not seek and shall ensure that no Governmental Authority seeks to impose obligations, conditions or standards on the Company and/or any Contractor and/or the Project which are unduly more burdensome or difficult than those relating to any similar Generation Facility connected to the UETCL System, or those relating to any other privately funded infrastructure development project implemented on a Build-Operate and-Own basis.

7.2 Acquisition of Shares or assets

GOU undertakes that neither it nor any Governmental Authority shall expropriate, compulsorily acquire, nationalize or otherwise compulsorily procure any share capital, the assets, or the other rights and interests of the Company.

8 TAXATION AND CURRENCY EXCHANGE

8.1 Taxation

The Company shall be subject to all applicable taxes, fees and charges applicable under Ugandan Law, including, but not limited to, all customs duties, income taxes and other taxes applicable in Uganda; provided, however, that the Company shall be entitled to receive all of the concessions, reductions and exemptions from taxation applicable to the Company, if any, under Laws of Uganda or as set forth in any Authorisation.

8.2 Foreign Exchange Regulation

The foreign currency exchange and transfer abroad of all funds related to the Project shall be governed by Laws of Uganda.

8.3 Bank Accounts

8.3.1 Foreign exchange provided to the Company by foreign Lenders and used to pay foreign contractors or vendors in respect of services provided or equipment or materials purchased outside Uganda may be paid directly to such persons and not conducted through bank accounts in Uganda. Foreign exchange received pursuant to a successful claim made under the insurance policies maintained by the Company may be retained abroad and need not be conducted through bank accounts in Uganda.

8.3.2 GOU shall ensure that, upon proper application being made by the Company, the Governmental Authority shall:

- (a) give the Company and the Contractors all necessary consents for the opening, operation, and retention of foreign currency bank accounts inside Uganda for the purposes of the Project (including the payment of all foreign exchange received under the Financing Agreements or otherwise by the Company into such accounts and withdrawals therefrom); and
- (b) give the Company permission to maintain bank accounts outside Uganda for the purposes of the Project and to transfer funds from its accounts in Uganda to its accounts maintained outside Uganda as are necessary to implement and carry out the Project in accordance with and in order to carry out its obligations and exercise its rights under this Agreement and the Security Package including, without limitation, such accounts as are required under the Security Package;

provided, however, that nothing in this Agreement shall prevent the Company from opening, operating and retaining moneys in additional foreign currency bank accounts outside Uganda from time to time after the date of this Agreement if and to the extent that it is or becomes otherwise permitted under Laws of Uganda.

8.4 Free Transfer of Necessary Funds

Without prejudice to Section 8.3, GOU shall permit (i) the free transfer of all funds and financial settlements (to the extent denominated in either UGX or US Dollars) necessary to implement and carry out the Project or the implementation of this Agreement or any other agreement or document forming part of the Security Package; and (ii) the conversion of Shillings into US Dollars. For the purposes set out in Section 8.4(i), if any restriction exists on the free and immediate transfer of US Dollars outside Uganda, GOU shall (within 3 Business Days of receipt of an application from the Company) pay to the offshore account specified by the Company, any US Dollars held by the Company in Uganda and required by the Company upon delivery of such US Dollars to GOU.

9 CONTINUED PERFORMANCE OF PAYMENT OBLIGATIONS

In the event of an unbundling or restructuring of the UETCL, GOU shall cause the relevant entity/entities surviving UETCL to adopt and become fully liable and continue to perform the UETCL obligations under this Agreement, the Power Purchase Agreement and the other Project Agreements to which it is a party.

10 ENVIRONMENTAL APPROVAL

GOU confirms that the environmental certificate issued by National Environmental Management Authority (NEMA) is the final and binding environmental clearance required for the Generation Facility and the Related Infrastructure to be constructed

and operated, and that the facility does not need to obtain any similar clearance from any other Governmental Authority.

11 USAGE OF WATER AND RIPARIAN RIGHTS

11.1 Usage of Water

Subject to the applicable Law and practice, GOU expressly confirms that the payment made to the Directorate of Water for usage of water for generation of hydroelectricity by this Project is the sole levy for using of water from the proposed take-off point to the tail-water point for the full duration of the period of operation of the Project.

11.2 Development upstream the river

GOU shall ensure that no other activity occurs upstream of the Generation Facility in the way of irrigation projects, hydropower projects, flood control projects upstream of the facility, or any other activity that is likely to interfere with and/or alter the water patterns used by the Generation Facility; provided that, if a need arises for such activity upstream, GOU and the Company shall agree on the measures to be taken prior to such activity occurring to ensure that there is no interference with the existing water patterns to the detriment of the Project.

12 RESOLUTION OF DISPUTES

12.1 Mutual Discussion

12.1.1 If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with or arising out of this Agreement, the Parties shall attempt to amicably settle such dispute in the first instance within thirty (30) days or within an agreed time frame by mutual discussion.

12.1.2 Upon completion of such thirty (30) day period, or such additional period as may be agreed, either Party may request that the dispute be settled in accordance with Sections 12.2 and/or 12.3 (as the case may be).

12.2 Technical Disputes

12.2.1 Where this Agreement provides or the Parties otherwise agree that a dispute shall be treated as a Technical Dispute, such Technical Dispute may be referred to an expert agreed upon by the Parties for determination (such person, an “**Expert**”).

12.2.2 The Expert shall have demonstrated expertise in the area to which such technical dispute relates and shall not be an agent, employee or contractor of either Party involved in the technical dispute.

12.2.3 If the identity of the Expert is not agreed between the Parties within fifteen days (15) days of a request in writing by the Party initiating the Technical Dispute, the Expert shall be appointed by the International Centre of Expertise in accordance with the provisions for appointment of experts under the Rules for Expertise of the International Chamber of Commerce.

- 12.2.4 Consideration of the Technical Dispute by an Expert shall be initiated by the Party seeking consideration of the Technical Dispute by the Expert submitting within 10 days of the appointment of the Expert to both the Expert and the other Party written materials setting forth:
- (a) a description of the Technical Dispute;
 - (b) a statement of the initiating Party's position; and
 - (c) copies of records supporting the initiating Party's position.
- 12.2.5 Within 10 days of the date upon which a Party has submitted the materials described in Section 12.2.4, the responding Party may submit to the Expert (and, if the responding Party does so, the responding Party shall also submit to the other Party) written materials setting forth:
- (a) a description of the Technical Dispute;
 - (b) a statement of the responding Party's position; and
 - (c) copies of any records supporting the responding Party's position.
- 12.2.6 The Expert shall consider the information submitted by the initiating Party in accordance with the provisions of Section 12.2.4, the information submitted by the responding Party in accordance with the provisions of Section 12.2.5 and, in the Expert's discretion, any additional written materials submitted by either Party.
- 12.2.7 Any additional written materials submitted by a Party to the Expert shall be simultaneously submitted by such Party to the other Party.
- 12.2.8 The Expert's final decision should be rendered within thirty (30) days of the date of the Expert's appointment or as soon as practicable thereafter.
- 12.2.9 The Expert shall act as an expert and not as an arbitrator.
- 12.2.10 The costs of the Expert shall be borne as determined by the Expert or, in default of such determination, equally by the Parties.
- 12.2.11 The Expert's determination shall (in the absence of alleged fraud or manifest error) be final and binding on the Parties and not subject to appeal.
- 12.2.12 If any Party wishes to challenge a decision of the Expert, it may do so only by initiating arbitration in accordance with Section 12.3 within thirty (30) days of its receipt of the decision of the Arbitrator on the alleged grounds of fraud and/or manifest error.
- 12.2.13 If no challenge to a decision of the Expert is made in accordance with Section 12.2.12, the relevant decision of the Expert shall be final and binding on the Parties and not subject to appeal.

12.3 Arbitration

- 12.3.1 All and any disputes or differences arising out of or in connection with this Agreement, including any dispute relating to any non-contractual obligations arising out of or in connection with it, which are not first resolved amicably between the Parties in accordance with Sections 12.1 and 12.1.1, shall be finally settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (the “**UNCITRAL Rules**”) as at present in force.
- 12.3.2 Unless the parties agree differently, the following shall apply. The number of arbitrators comprising the Tribunal shall be three. The appointing authority according to article 6 in the UNCITRAL rules shall be the President for the time being of the London Court of International Arbitration. The Arbitration shall be conducted and any award shall be rendered in the English language. The seat of the arbitration shall be Mauritius.
- 12.3.3 The decision of the Tribunal shall be final and binding upon the Parties and shall not be subject to appeal.
- 12.3.4 If any Dispute arising out of or in connection with this Agreement (“**Implementation Agreement Dispute**”) raises issues which are substantially the same as issues arising out of or in connection with any dispute in connection with the Power Purchase Agreement (a “**PPA Dispute**”) either Party may, by written notice to the other Party and to any arbitrators who have already been agreed or appointed pursuant hereto, require the Implementation Agreement Dispute to be referred to and finally settled by the arbitral tribunal appointed and subsisting in relation to the PPA Dispute provided that:
- (a) the arbitral tribunal appointed under the PPA Dispute has the necessary expertise and is otherwise qualified to arbitrate the Implementation Agreement Dispute;
 - (b) the PPA Dispute proceedings have not been closed; and
 - (c) the Parties are given the opportunity to be heard, including (to the extent necessary) by way of amendment to the procedural timetable applicable to the PPA Dispute.
- 12.3.5 The Parties hereby waive all of their rights as regards the appointment of the arbitral tribunal appointed to arbitrate the PPA Dispute. The appointment of an arbitral tribunal pursuant to this Agreement in connection with the Implementation Agreement Dispute and its jurisdiction to resolve the Implementation Agreement Dispute shall terminate immediately upon the giving of such notice and the arbitral tribunal shall be deemed to be *functus officio* in connection with the Implementation Agreement Dispute. The Parties hereby agree that a PPA Dispute may be referred to and finally settled by the arbitral tribunal appointed and subsisting in relation to the Implementation Agreement Dispute. The Parties hereby waive, to the maximum extent permitted by applicable law, any objections that they may

have as to the validity and/or enforcement of any arbitral awards made by the tribunal following the joinder of disputes or arbitral proceedings in accordance with this Section 12.3 to the extent that such objections are based on the fact that joinder of the same has occurred.

13 INDEMNIFICATION

13.1 Indemnification

13.1.1 GOU shall indemnify the Company against, and hold the 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 Company or its officers, directors and employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by GOU in connection with this Agreement. Notwithstanding the foregoing, indemnification shall not be required to the extent that a Party claiming indemnification (i) receives indemnification pursuant to the terms of any of the Project Agreements, the Financing Agreements, the EPC Contract and/or any operations and maintenance agreement, or (ii) is reimbursed pursuant to any policy of insurance.

13.1.2 The Company shall indemnify GOU against, and hold GOU and its 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, GOU or its employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Company in connection with this Agreement. Notwithstanding the foregoing, indemnification shall not be required to the extent that a Party claiming indemnification (i) receives indemnification pursuant to the terms of any of the Project Agreements, the Financing Agreements, the EPC Contract and/or any operations and maintenance agreement, or (ii) is reimbursed pursuant to any policy of insurance.

13.1.3 In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of both the Company and GOU, the Parties shall be deemed to be equally liable for such injury or damages unless it is determined in accordance with the provisions of Section 12.2 or 12.3 that the Parties' relative degree of fault is other than 50/50, in which event each Party shall be liable in proportion to its relative degree of fault as so determined.

13.1.4 The provisions of this Section 13.1 shall survive for a period of five years following any termination of this Agreement with respect to any acts or omissions or claims for indemnification which occurred or arose prior to such termination.

13.2 Assertion of Claims to Exceed Minimum Amount

13.2.1 Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise

be the subject of indemnification under this Agreement until all Losses of such Party, in the aggregate, during the then-current calendar year exceed an amount equal to US\$10,000, in which event such Party shall be able to recover for all its Losses for such year. For the purposes of this Section 13.2, a Loss (or claim for indemnification) shall be deemed to arise in the calendar year the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one calendar year, in the calendar year such event ends.

13.3 Indemnification for Fines and Penalties

13.3.1 Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of another Party) for non-compliance with Laws of Uganda or any applicable consent, permit, licence or approval shall not be reimbursed by any Party but shall be the sole responsibility of the non-complying Party.

13.4 Notice of Proceedings

13.4.1 Each Party shall promptly notify the other Party of any Loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to Section 13.1. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss or proceeding and that such Loss or proceeding may give rise to an indemnification, but in any event no later than 14 days after the receipt by the Party seeking indemnification of notice of the commencement of any action for which indemnity may be sought. The delay or failure of such indemnified Party to provide the notice required pursuant to this Section 13.4 to the other Party shall not release the other Party from any indemnification obligation which it may have to such indemnified Party except (i) to the extent that such failure or delay materially and adversely affected the indemnifying Party's ability to defend such action or increased the amount of the Loss, and (ii) that the indemnifying Party shall not be liable for any costs or expenses of the indemnified Party in the defence of the claim, suit, action or proceeding during such period of failure or delay.

13.5 Defence of Claims

13.5.1 Upon acknowledging in writing its obligation to indemnify an indemnified Party to the extent required pursuant to this Section 12.3, the indemnifying Party shall be entitled, at its option (subject to Section 13.5.4), to assume and control the defence of such claim, action, suit or proceeding at its expense with counsel of its selection, subject to the prior reasonable approval of the indemnified Party.

13.5.2 Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party to the extent required pursuant to this Section 13, and assumes control of the defence of a claim, suit, action or proceeding in accordance with Section 13.5.4, 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.

13.5.3 Neither the indemnifying Party nor the indemnified Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other; provided, however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may, subject to Section 13.5.4, 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.

13.5.4 Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party pursuant to Section 13.5.1, the indemnified Party shall have the right to employ its own counsel and such 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 counsel by such indemnified Party has been authorised in writing by the indemnifying Party; (ii) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action; (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence 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 that there may be specific defences available to it which 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 the indemnified Party beyond the scope of this Agreement. If items (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such counsel shall constitute reimbursable legal or other expenses hereunder.

13.6 Subrogation

13.6.1 Upon payment of any indemnification by a Party pursuant to Section 13.1, the indemnifying Party, without any further action, shall be subrogated to any and all claims that the indemnified Party may have relating thereto, and such indemnified Party shall at the request and expense of the indemnifying Party co-operate with the indemnifying Party and give at the request and

expense of the indemnifying Party such further assurances as are necessary or advisable to enable the indemnifying Party vigorously to pursue such claims.

14 LIMITATION OF LIABILITY

Except as specifically provided herein, neither Party shall be liable to the other for the other's Consequential Loss, however, nothing in this Section 14 shall relieve either Party from any express obligation under this Agreement to make a payment to the other Party when due. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; *provided, however*, that this provision is not intended to constitute a waiver of any rights of either Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by the Project Agreements or Financing Agreements.

15 FORCE MAJEURE

15.1 Definition of Force Majeure

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of a Party occurring on or after the date hereof that materially and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole by the affected Party through the exercise of diligence and reasonable care. The Parties agree that reasonable care includes acts or activities to protect the Project from a casualty event, which are reasonable in light of the likelihood of such event, the effect of such event if it should occur, and the likely efficacy, cost and cost-effectiveness of protective measures. Subject to the exclusions in Section 15.2, “**Force Majeure Event**” shall include the following events and circumstances, but only to the extent that they satisfy the above requirements:

15.1.1 events or circumstances or any combination of events and/or circumstances of the following types that occur inside or directly involve Uganda (“**Political Force Majeure Events**”):

- (a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution;
- (b) radioactive contamination or ionising radiation originating from a source in Uganda or resulting from another Political Force Majeure Event;
- (c) any riot, insurrection, civil commotion, act or campaign of terrorism that is of a political nature, such as, by way of example and not limitation, actions associated with or directed against the Company and/or its Contractors as part of a broader pattern of actions against companies or facilities with foreign ownership or management;
- (d) a Lapse of Consent that (i) shall have existed for 26 days or more, (ii) together with any and all Lapses of Consent that have occurred in the

same calendar year, shall have existed in the aggregate for 45 days or more in such year, or (iii) together with any and all Lapses of Consent that have occurred in the same or preceding two calendar years, shall have existed in the aggregate for 60 days or more;

- (e) any strike, work-to-rule or go-slow which is not primarily motivated by a desire to influence the actions of the Company so as to preserve or improved conditions of employment, and:
 - (i) is part of an industry-wide strike, work-to-rule or go-slow, in response to the coming into force, modification, repeal or change in the interpretation or application of any Law of Uganda after the date of this Agreement; or
 - (ii) is by the employees of any Governmental Authority in response to the coming into force, modification, repeal or change in the interpretation or application of any Law of Uganda after the date of this Agreement; or
 - (iii) is caused by a Political Force Majeure Event, and

for the avoidance of doubt, events included within this Section 15.1.1(e) shall not constitute Other Force Majeure Events, notwithstanding Section 15.1.2;

- (f) any Change in Law having the effect of preventing or delaying the construction, commissioning or testing of the Generation Facility [or the Related Infrastructure]⁵ or which prohibit (by rendering unlawful) the operation of the Generation Facility or which imposes material limitations on the operation of the Generation Facility, unless GOU remedies in whole the financial effects on the Company and does so in a way that does not have an adverse effect, whether permanent or temporary, on the Company or the Lenders; or
- (g) either: any (i) order or injunction issued by any Governmental Authority; or (ii) any declaration pursuant to a statutory instrument in either case in respect of archaeological or paleontological remains discovered on or under the Site [or the Route] that would not have been revealed by a soils investigation of the Site [or the Route] carried out at the date of this Agreement; or

15.1.2 events or circumstances or any combination of events and/or circumstances of the following types, except to the extent that they constitute or are caused by a Political Force Majeure Event (“**Other Force Majeure Events**”):

- (a) earthquake, flood, storm, cyclone or lightning, provided that where such event occurs after the Commercial Operation Date, only where it is on a level that exceeds the design criteria of the Generation

⁵ Adjust as required.

Facility, except for the maximum credible seismic design event as specified in Annex A to the Power Purchase Agreement;

- (b) fire, explosion, mudslides or chemical contamination;
- (c) epidemic or plague that extend beyond the affected Party's organisation and are widespread or nationwide;
- (d) a Lapse of Consent (other than a Lapse of Consent that constitutes a Political Force Majeure Event); or
- (e) any strike, work-to-rule or go-slow which is not primarily motivated by a desire to influence the actions of the Company so as to preserve or improve conditions of employment.

15.2 Exclusions

Events or circumstances which shall not constitute Force Majeure include:

- 15.2.1 lack of funds due to any commercial, economic or financial reason such as, but not limited to, a Party's inability to make a profit or achieve a satisfactory rate of return due to the provisions of this Agreement or changes in market conditions (including due to any Change In Law);
- 15.2.2 any unexpected changes in the cost and quantities of plant or materials during the construction stage arising out of or relating to lack of proper planning, due diligence or the necessary feasibility studies;
- 15.2.3 late delivery of machinery or other materials or a delay in the performance by any contractor or supplier (except where such late delivery or delay is itself attributable to a Force Majeure Event);
- 15.2.4 normal wear and tear or random flaws in materials and equipment or breakdown in equipment;
- 15.2.5 hazards, including but not limited to lightning or the growth of trees, which can be reasonably anticipated in normal utility operations and planned for as part of Prudent Utility Practice; and
- 15.2.6 the inability at any time or from time to time of the UETCL System to accept electricity except where caused by a Political Force Majeure Event.

15.3 In Case of an Event of Force Majeure

- 15.3.1 Save that a declaration of Force Majeure shall not relieve any Party from the requirement to make any payment when due, if a Party is prevented from or delayed in performing an obligation hereunder by reason of a Force Majeure Event (the "**Affected Party**"), the Affected Party shall:
 - (a) be relieved from the requirement to perform that obligation during the continuance of the Force Majeure Event;

- (b) promptly notify the other Party of the occurrences of the event within ninety six (96) hours giving full particulars and satisfactory evidence in support of its claim; and in the event of a breakdown of communication rendering it not reasonably practicable to give notice of Force Majeure within the period specified above, the Affected Party may give such notice as soon as possible, but not later than twenty four (24) hours after reinstatement of communication; and
- (c) use all reasonable endeavours to overcome the consequences of the event and where the Force Majeure Event has been eliminated or no longer affects a Party, the obligations in this Agreement shall recommence forthwith, and the applicable period for the performance of the obligation shall be extended by a period equal to the duration of the Force Majeure Event.

15.3.2 If either Party is prevented, hindered or delayed in the performance of material obligations under this Agreement by reason of Force Majeure occurring after the Commercial Operation Date, then provided the Affected Party has complied with its obligations under this Section 15, the term of this Agreement shall be extended by a period in time equal to the period that the term of the Power Purchase Agreement is extended.

15.4 Compensation for Political Force Majeure Events

15.4.1 Prior to the Commercial Operation Date

Upon the occurrence of a Political Force Majeure Event occurring prior to the Commercial Operations Date, the Company shall be entitled to recover the costs reasonably and necessarily incurred by the Company or the Contractors as a result of one or more Political Force Majeure Events or its or their effects or by any combination thereof in:

- (a) protecting the Generation Facility and the Related Infrastructure against damage or deterioration;
- (b) suspending the delivery of (and storing, pending the resumption of deliveries) any plant, equipment and materials which have been ordered by the Company for the Generation Facility or the Related Infrastructure;
- (c) demobilising and, upon resumption of performance, remobilisation of their plant and employees and those of any subcontractor, including the cost of such employees being kept on standby, pending resumption of the works;
- (d) extending the hire period of any plant, equipment, appliances and vehicles, including the additional cost of hire; and
- (e) any further costs incurred by the Company in relation to the financing of the costs identified in paragraphs (a) through (d) above, including any fees payable to Lenders in respect of such further financing.

The Company shall fund the first US\$[●]⁶ of such costs, and shall be entitled to recover the balance of such costs directly from GOU.

15.4.2 After the Commercial Operations Date

- (a) Subject to Clause 15.4.2(b), if the Political Force Majeure Event occurs after the Commercial Operation Date, the Company shall be entitled to recover from GOU an amount to compensate the Company and the Lenders for:
 - (i) the corresponding payment for Energy which would have been produced at the Generation Facility and delivered by GENCO to UETCL under the Power Purchase Agreement had the Political Force Majeure Event not occurred, on the basis that (A) such amount of Energy is Deemed Energy (as defined in, and measured in accordance with, the Power Purchase Agreement), and (B) such payment shall be calculated as the corresponding UETCL DGE Payment in respect of such Deemed Energy which would have otherwise been payable by UETCL under the Power Purchase Agreement had UETCL not been excused from making such UETCL DGE Payment under the Power Purchase Agreement; and
 - (ii) direct incremental costs incurred by GENCO as a result of the Political Force Majeure Event.
- (b) In respect of any period when a Political Force Majeure Event (affecting either the Company and/or UETCL) subsists, GOU shall not be required to pay any amount under Clause 15.4.2(a) to the extent that the Political Force Majeure Event gives rise to an Interruption Event, and the duration of that Interruption Event falls within a 176 hour period referred to in Clause 4.6.2 of the Power Purchase Agreement.

15.5 Procedure for Making Claim

15.5.1 If the Company wishes to claim any amount pursuant to Sections 15.4.1 or 15.4.2, it shall deliver to GOU an invoice (a “**PFME Invoice**”) including a description (in reasonable detail) of the relevant costs incurred and:

- (a) where costs have been incurred to third parties, copies of relevant invoices which provide a description (in reasonable detail) of the goods and/or services provided and the costs incurred;
- (b) where costs have been incurred internally, a costed breakdown and description (in reasonable detail) of the costs incurred; and

⁶ Amount to be considered as relevant on each project.

- (c) in relation to principal and interest costs, a certificate given on behalf of the Lenders confirming the amount(s) incurred during the relevant period.

15.6 Procedure for Paying Claim

15.6.1 Subject to the provisions of Section 15.6.2, where a PFME Invoice has been delivered in accordance with the provisions of Section 15.5.1 and 19.1, GOU shall pay the amount stated in such PFME Invoice within ninety (90) days of receipt.

15.6.2 If any sum or part of any sum stated in a PFME Invoice, is in good faith disputed by GOU, then GOU shall:

- (a) promptly issue to the GENCO a written notice (“**PFME Invoice Dispute Notice**”) specifying exactly what it is disputing within the PFME Invoice and thereafter pay any undisputed sum within ninety (90) days of receipt of the PFME Invoice;
- (b) pay such amount as is agreed or determined payable in respect of the disputed sum within ninety (90) days of:
 - (i) the date on which the Parties resolve the disputed sum; or
 - (ii) the date of determination by an Arbitrator, if the Parties fail to reach agreement, and the matter has been referred for arbitration in accordance with Section 12.

15.7 Termination for prolonged Force Majeure

If a Force Majeure Event has occurred and continued for a period of one hundred and eighty (180) days from the date of its occurrence, then the Company shall be entitled to serve upon the GOU twenty-eight (28) days’ notice to terminate this Agreement. If at expiry of such period of twenty-eight (28) days, such Force Majeure Event shall still continue, then this Agreement shall terminate and, upon such termination, the provisions of Sections 17.5.3 (in respect of an Other Force Majeure Events) and 17.5.4 (in respect of Political Force Majeure Events) shall apply.

15.8 Termination for Force Majeure where reinstatement uneconomic

If the Parties agree that the reinstatement or remedy of damage to the Generation Facility caused by a Force Majeure Event is not feasible or does not make economic sense, either Party may terminate this Agreement with immediate effect and, upon such termination, the provisions of Sections 17.5.3 (in respect of an Other Force Majeure Events) and 17.5.4 (in respect of Political Force Majeure Events) shall apply.

16 ECONOMIC STABILISATION

16.1 Definitions

For the purpose of this Section 16:

16.1.1 “**Material Adverse Effect**” means an increase in the cost to the Company of the Project (including any increase in amounts payable by the Company to any Governmental Authority) and/or a decrease in the gross revenue received by the Company from sales of Energy generated by the Generation Facility.

16.1.2 “**Material Positive Effect**” means a decrease in the cost to the Company of the Project (including any decrease in amounts payable by the Company to any Governmental Authority) and/or an increase in gross revenue received by the Company from sales of Energy generated by the Generation Facility.

16.2 Adverse Change in Law or Change in Tax

16.2.1 In the event of a Change in Law (which is not also a Political Force Majeure Event⁷) or Change in Tax the economic impact of which is not provided for in the calculation of the Energy Charge (or, to the extent applicable, the UETCL DGE Payments) and which has a Material Adverse Effect, subject to the provisions of Sections 16.4 to 16.6 (inclusive) GOU shall pay to the Company such compensation as may be necessary to put the Company in the same economic position as the Company would have been in had such Change in Law or Change in Tax not occurred or otherwise not been made.

16.2.2 Payment of such compensation shall be due on and from ninety (90) days from the date of notification of a claim made by the Company in accordance with the provisions of Section 19.1 to the GOU in respect of such Change in Law or Change in Tax, provided that such notice is made no earlier than the earliest date for making such notification determined in accordance with the provisions of Section 16.5.3.

16.3 Positive Change in Law or Change in Tax

16.3.1 In the event of a Change in Law or Change in Tax the economic impact of which is not provided for in the calculation of the Energy Charge (or, to the extent applicable, the UETCL DGE Payments) and which has a Material Positive Effect, the Company shall be obligated to pay to the GOU such compensation as may be necessary to put the Company in the same economic position as the Company would have been in had such Change in Law or Change in Tax not occurred or otherwise not been made.

16.3.2 Payment of such compensation shall be due on and from ninety (90) days from the date of notification of a claim made by the GOU in accordance with the provisions of Section 19.1 to the Company in respect of such Change in Law or Change in Tax or otherwise such amount shall be capable of being set-off by UETCL in respect of any sum due by UETCL to the Company pursuant to the Power Purchase Agreement.

16.4 Caveats

16.4.1 No obligation shall arise under Section 16.2 to the extent that the relevant Change in Law or Change in Tax is consistent with legislation or regulation

⁷ PFME compensated under Section 15.4.

by GOU (or any Governmental Authority) in relation to human rights, employment of labour, or the health, safety and environmental aspects of the Project in a manner which either:

- (a) is reasonably required by international labour and/or human rights treaties to which GOU is a party from time to time;
- (b) imposes standards or requirements which are no more stringent than equivalent standards or requirements:
 - (i) set out in IFC's Performance Standards on Social and Environmental Sustainability (including the technical reference documents known as IFC's Environmental, Health, and Safety Guidelines);
 - (ii) set out in the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 and covering: (1) freedom of association and the right to collective bargaining, (2) the elimination of forced and compulsory labour, (3) the abolition of child labour and (4) the elimination of discrimination in the workplace; or
 - (iii) is otherwise required of the Company or in relation to the Project by the Lenders; or
- (c) imposes standards or requirements which are no more stringent than equivalent standards or requirements generally applicable within the European Union (including under any EU directives) from time to time.

16.4.2 No obligation shall arise under Section 16.2 unless the relevant Change in Law(s) or Change in Tax(es) (whether along or together) cause a cumulative Material Adverse Effect in excess of [US\$250,000] (the "**Threshold Amount**"); however, if the Threshold Amount is exceeded then the whole economic impact shall be compensated and not just the portion in excess of the Threshold Amount.

16.5 Regulatory Application

16.5.1 If the Company believes that any Change in Law or Change in Tax would give rise to a claim by the Company pursuant to Section 16.2, prior to making any such claim the Company shall first make an application to ERA for a review of the Energy Charge and diligently pursue such application with ERA in accordance with any prescribed procedures therefor and otherwise in good faith.

16.5.2 To the extent that ERA awards an increase in the Energy Charge as a result of such application, the Company shall agree, and GOU shall procure that UETCL agrees, that the Power Purchase Agreement shall be automatically amended forthwith to reflect ERA's award.

16.5.3 The Company shall not give any notice of any claim under Section 16.2 in respect of any Change in Law or Change in Tax until the earlier of (a) an award made by ERA in relation to an application made by the Company pursuant to Section 16.5.1 in respect of the relevant Change in Law or Change in Tax, or (b) one hundred and eighty (180) days after the relevant application to ERA was made in accordance with the provisions of Section 16.5.1.

16.6 Determination of Amount Payable

16.6.1 Upon either Party's request, GOU and the Company shall endeavour in good faith for a period of ninety (90) days after notification by the Company to GOU under Section 16.2 or by GOU to the Company under Section 16.3 (the "**Notification Date**") to agree on any disputed amount of compensation required to restore the economic position of the Company.

16.6.2 If agreement is not reached by GOU and the Company on such disputed amount of compensation within the ninety (90) day period from the relevant Notification Date, then:

- (a) the payor shall pay any undisputed sum forthwith and thereafter pay such amount as is agreed or determined payable in respect of the disputed sum within ninety (90) days of:
 - (i) the date on which the Parties resolve the disputed sum; or
 - (ii) the date of determination by an Arbitrator, if the Parties fail to reach agreement, and the matter has been referred for arbitration in accordance with Section 12.2.1; and
- (b) either Party may pursue resolution of the dispute in accordance with the dispute resolution procedure set out in Section 12.2.1.

17 TERMINATION

17.1 Company Event of Default

Each of the following events shall be an event of default by the Company (each a "**Company Event of Default**") which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of GOU to terminate this Agreement pursuant to Section 17.3; provided, however, that no such event shall be a Company Event of Default if it results substantially from (i) a breach by UETCL under the Power Purchase Agreement, (ii) a GOU Event of Default hereunder, (iii) the occurrence of a Force Majeure Event, or (iv) any combination thereof:

17.1.1 any material breach by the Company of this Agreement that is not remedied within ninety (90) Days after the notice from GOU giving reasonable details of the breach by the Company and demanding remedy thereof; provided, however, that for material breaches requiring more than ninety (90) Days to cure, the Company may have such additional time to cure any such material breach under this Agreement as it estimates may be necessary to cure such

breach if, prior to the end of such ninety (90) Day period, the Company provides satisfactory evidence to GOU that (a) it has commenced and is diligently pursuing a cure and (b) more than ninety (90) Days is reasonably required to effectuate such cure together with good faith estimates of the amount of time needed to effectuate the cure;

17.1.2 the GENCO License is revoked pursuant to the Act due to an omission or violation thereunder by the Company, its agents, its employees or contractors and all appeals in relation thereto have been exhausted.

17.2 GOU Event of Default

Each of the following events shall be an event of default by GOU (each a “**GOU Event of Default**”), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Company to terminate this Agreement pursuant to Section 17.3; provided, however, that no such event shall be a GOU Event of default if it results from a breach by the Company of the GENCO License, any of the Project Agreements or the Authorisations:

17.2.1 the dissolution, pursuant to law, of UETCL except for an amalgamation, reorganisation, reconstruction, capitalisation or privatisation where all of UETCL’s obligations under the Power Purchase Agreement are assigned pursuant to law, or contractually assumed, through novation or otherwise, by the entity or entities which own(s) and/or operate(s), as the case may be, the undertakings of UETCL in succession to UETCL; *provided, that*, any sale or other capital transaction with respect to UETCL’s distribution assets shall not be subject to this Section 17.2;

17.2.2 any material breach by GOU of this Agreement that is not remedied within ninety (90) Days after notice from the Company giving reasonable details of the breach by GOU and demanding remedy thereof; provided, however, that for material breaches requiring more than ninety (90) Days to cure, GOU may have such additional time to cure any such material breach under this Agreement as it estimates may be necessary to cure such breach if, prior to the end of such ninety (90) Day period, GOU provides satisfactory evidence to the Company that (a) it has commenced and is diligently pursuing a cure, and (b) more than ninety (90) Days but not more than one hundred and eighty (180) Days is reasonably required to effectuate such cure and provides a good faith estimate of the amount of time needed to effectuate the cure;

17.2.3 any default or defaults by GOU in the making of any payment or payments required to be made by it under this Agreement on the due date for payment as specified in this Agreement that continues unpaid for sixty (60) Business Days;

17.2.4 any expropriation, compulsory acquisition or nationalization by GOU or any Governmental Authority of (a) any ordinary share capital, or (b) any material asset or right of the Company;

17.2.5 any Change in Law or Change in Tax that:

- (a) makes unenforceable, invalid or void any material obligation of GOU or UETCL under this Agreement or the Power Purchase Agreement;
 - (b) makes it unlawful for the Company or the Contractors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under this Agreement, or any other document in the Security Package; or
 - (c) places material restrictions or limitations on the ability of the Company to convert UGX received from UETCL under or pursuant to the Power Purchase Agreement (or any other UGX denominated payments which may be or become owed to the Company in connection with the Project) into US Dollars or to repatriate any such US Dollars to the Foreign Investor(s) by way of (i) dividend, (ii) servicing, repaying or prepaying any loans received from such Foreign Investor(s), and/or (iii) a distribution of capital, which restrictions or limitations remain in place more than 180 days without an arrangement being provided to exempt the Company or its Foreign Investors from all such restrictions and limitations;
- 17.2.6 a Lapse of Consent which is not remedied within sixty (60) Days, provided the Company on its part has used its reasonable endeavours to obtain such Authorisation; and
- 17.2.7 the termination by the Company of the Power Purchase Agreement as a consequence of a UETCL Event of Default under the Power Purchase Agreement.

17.3 Notices and Termination

- 17.3.1 Upon the occurrence of a GOU Event of Default or a Company Event of Default, as the case may be, which is not cured within the applicable period for cure, the non-defaulting Party may, at its option, deliver a notice (a “**Notice of Intent to Terminate**”) of its intent to terminate this Agreement. The Notice of Intent to Terminate shall specify in reasonable detail the Company Event of Default or GOU Event of Default, as the case may be, giving rise to such notice.
- 17.3.2 Save in respect of the Events of Default referred to in Sections 17.2.3, 17.2.4, 17.2.5, 17.2.7, following the delivery of a Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default for a period (commencing on the delivery of such notice) of ninety (90) Days (or such longer period as the Parties may mutually agree), and if the default is cured at any time prior to ninety (90) Days (or such longer rectification period as the Parties may mutually agree) from the delivery of the Notice of Intent to Terminate then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.
- 17.3.3 Upon expiration of the cure period referred to above or immediately in respect of the Events of Default referred to in Sections 17.2.3, 17.2.4, 17.2.5, 17.2.7 (as the case may be), if the Company Event of Default or GOU Event

of Default, as the case may be, giving rise to the Notice of Intent to Terminate shall not have been remedied, the Party having given the Notice of Intent to Terminate may terminate this Agreement by delivering a termination notice (“**Termination Notice**”) to the other Party, and this Agreement shall terminate.

17.4 Other Remedies

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

17.5 Transfer of the Generation Facility upon Termination

17.5.1 In the event that GOU terminates this Agreement pursuant to Section 17.3 as a result of a Company Event of Default, at GOU’s option, the Company shall sell the Generation Facility to GOU or its designee for the Company Default Purchase Price in accordance with the procedures set out in Annex D.

17.5.2 In the event the Company terminates this Agreement pursuant to Section 17.3 as a result of a GOU Event of Default, then GOU or its designee shall, at the Company’s option, purchase the Generation Facility for the GOU Default Purchase Price in accordance with the procedures set out in Annex D.

17.5.3 If as a result of an Other Force Majeure Event, this Agreement is terminated as provided in Sections 15.7 (*Termination for prolonged Force Majeure*) or 15.8 (*Termination for Force Majeure where reinstatement uneconomic*), then the Company shall, at GOU’s option, sell the Generation Facility to GOU or its designee for the Other Force Majeure Purchase Price in accordance with the procedures set out in Annex D.

17.5.4 If as a result of a Political Force Majeure Event, this Agreement is terminated as provided in Sections 15.7 (*Termination for prolonged Force Majeure*) or 15.8 (*Termination for Force Majeure where reinstatement uneconomic*), then GOU or its designee shall, at the Company’s option, purchase the Generation Facility for the Political Force Majeure Purchase Price in accordance with the procedures set out in Annex D.

17.6 Exercise of Termination Option

17.6.1 GOU and the Company may exercise any option it has under this Section 17 to require a sale to, or, as the case may be, a purchase by, GOU or its designee of the Generation Facility by giving a Transfer Notice to the other Party at any time within 60 Days after the Day on which this Agreement is terminated or (where this Agreement expires upon the termination of the Power Purchase Agreement as a result of a Company Event of Default or a UETCL Event of Default under that Agreement) the day on which this Agreement expires.

17.6.2 If either Party does not exercise the option it has by issuing a Transfer Notice within that 60 Day period, then it shall be conclusively presumed to have waived and renounced its rights to require the other Party to sell or, as the case may be, purchase the Generation Facility pursuant to this Section 17.

17.6.3 If a Party shall fail to issue a Transfer Notice within that 60-Day period, the Company shall continue to own the Generation Facility and shall be free to sell or transfer it to any third party.

17.7 Obligation Upon Termination

Upon the expiration or earlier termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for obligations or liabilities that arose prior to or arise upon such expiration or termination and obligations or liabilities that expressly survive such expiration or termination pursuant to this Agreement, provided, however, that notwithstanding anything to the contrary in this Agreement, the rights and obligations set out in Sections 1, 2, 12, 17, 19.1, 19.8, 19.9 and Annex D (*Purchase Price and Procedure on Transfer*) shall survive such termination or expiration until all provisions are fulfilled and all funds payable hereunder by GOU to the Company or the Lenders upon the sale or other disposal of the assets related to the Generation Facility are so paid, including without limitation, proceeds from the enforcement by the Lenders of the security created by the Company under or pursuant to the Security Package have been repatriated to the Lenders.

18 REPRESENTATIONS AND WARRANTIES

18.1 GOU Representations and Warranties

GOU hereby represents and warrants to the Company that:

18.1.1 The Ministry has full power and authority to execute and deliver this Agreement on behalf of GOU. GOU has full power and authority to perform its obligations hereunder. The execution, delivery and performance of this Agreement by or on behalf of GOU (i) has been duly authorised by all requisite action on the part of GOU and (ii) will not (A) violate the Laws of Uganda or (B) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which GOU is a party or by which GOU or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the properties or financial condition of GOU or on its ability to perform its obligations hereunder. This Agreement has been duly executed and delivered by the Ministry on behalf of GOU.

18.1.2 This Agreement constitutes a legal, valid and binding obligation of GOU, enforceable against it in accordance with its terms subject to general principles of equity.

18.1.3 No filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or

performance of this Agreement by GOU except for such permits, authorisations, consents or approvals as have been obtained.

- 18.1.4 GOU is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.
- 18.1.5 There is no action, suit, proceeding or investigation pending, or to GOU's knowledge, threatened, against GOU which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

18.2 Company Representations and Warranties

The Company hereby represents and warrants to GOU that:

- 18.2.1 The Company is a limited liability company, duly organised and validly existing under the laws of Uganda, and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted.
- 18.2.2 The Company has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by the Company (i) has been duly authorised by all requisite corporate action on the part of the Company, and no other proceedings on the part of the Company or any other Person are necessary for such authorisation, and (ii) will not (A) violate (1) Laws of Uganda or any applicable order of any Relevant Authority or (2) any provision of the Memorandum and Articles of Association of the Company or (B) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Company is a party or by which the Company or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on the business, properties, financial condition or results of operation of the Company, or on its ability to perform its obligations hereunder. This Agreement has been duly executed and delivered by the Company.
- 18.2.3 This Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganisation, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights and (ii) to general principles of equity.
- 18.2.4 To the best of its knowledge, after reasonable inquiry, no filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by the Company, except for the Authorisations.

18.2.5 The Company is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

18.2.6 There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, threatened (i) for the dissolution of the Company, or (ii) against the Company, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement.

19 MISCELLANEOUS PROVISIONS

19.1 Notices

19.1.1 Except as otherwise expressly provided in this Agreement, any certificates, notices or written instructions to be given under this Agreement shall be served by sending the same by post, courier, facsimile, email or leaving the same at the following addresses and marked for the attention of the persons specified in this Section 19.1:

If to **GOU**:

Attention: The Permanent Secretary

Address: Ministry of Energy and Mineral Development, Amber House, P.O. Box 7270, Kampala, Uganda

Telephone No. +256 41 234733

Facsimile No. +256 41 234732

[Email Address: []]

If to the **Company**:

Attention: The Managing Director

Address: []⁸

Telephone No. []

Facsimile No. []

[Email Address: []]

19.1.2 Any Party may change its nominated address/addresses or facsimile number by prior notice to the other Parties.

⁸ Details to be inserted.

19.1.3 Notices given by registered post shall be effective upon the earlier of (i) actual receipt, and (ii) seven (7) Days after mailing. Notices given by leaving them with the addressee shall only be valid if the addressee or a responsible officer of the addressee acknowledges receipt in writing.

19.1.4 Notices given by email shall be confirmed by sending a copy of the message by another means of delivery permitted by this Section 19.1 and shall be deemed to have been received upon the earlier of (a) receipt by the sender of a return email confirming receipt of the notice, or (b) the effectiveness or deemed receipt in accordance with the other provisions of this Section 19.1 of the copy of the notice sent in accordance with the provisions of this Section 19.1.4.

19.1.5 Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has not been received in legible form:

(a) by 1500 Hours on the Day of sending if sent on a Business Day between 0900 Hours and 1500 Hours; and

(b) by 1000 Hours on the next following Business Day if sent after 1500 Hours on a Business Day but before 0900 Hours on the next Business Day.

19.2 Amendment

This Agreement may only be amended or varied by the written agreement of each Party. Any such amendment shall be approved by the Authority prior to such amendment coming into force.

19.3 Parties

This Agreement is intended solely for the benefit of the Parties and, nothing in this Agreement shall be construed to create any rights in, duty to, standard of care to, or any liability to, any Person not a Party to this Agreement.

19.4 No Waiver

19.4.1 No waiver or failure by a Party to insist on the strict performance of this Agreement or to act in respect of the default or defaults of the other party and no acceptance of payment or performance during the continuance of any such default or defaults shall preclude any right, relief or remedy under or in connection with this Agreement available to the non-defaulting Party and may not be relied on by the defaulting Party as a consent to that default or those defaults or its or their repetition.

19.5 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship or partnership between the Parties or to impose any

partnership or agency obligation or liability upon either Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

19.6 Survival

The expiration or earlier termination of this Agreement shall not relieve the Parties of the obligations that are expressly provided to survive termination in Section 17.7 or by their nature should survive such cancellation, expiration or termination, including, without limitation, warranties, remedies, promises of indemnity and confidentiality.

19.7 Language

The Language for the purpose of administering or interpretation of this agreement shall be English.

19.8 Governing Law

This Agreement and the rights and obligations of the Parties hereunder shall be governed by and interpreted and construed in accordance with the laws of the Republic of Uganda.

19.9 Sovereign Immunity

19.9.1 Subject to Section 19.9.2, GOU unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitutes a private and commercial act. In addition to the foregoing, GOU unconditionally and irrevocably agrees that: (i) should any proceeding (including any arbitration proceeding) be brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets; (ii) it waives any right of immunity that it or any of its assets now has or may acquire in the future in any jurisdiction in connection with any such proceedings; and (iii) it consents generally in respect of the enforcement of any judgment against it in any such proceedings (including any arbitration proceedings) in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any assets whatsoever irrespective of their use or intended use.

19.9.2 Without prejudice to any provision in any jurisdiction which provides immunity (notwithstanding the provisions of Section 19.9.1) over any assets, property or other thing (whether physical or intangible) or in each case over any class thereof, Section 19.9.1 shall not apply to any assets, property or other thing (whether physical or intangible) which is:

- (a) used for the purposes of maintaining a diplomatic or consular mission of Uganda or the residence of the head of any such mission (including buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purpose of any such mission or

residence, the furnishings and other property thereon, and the means of transport of any such mission);

- (b) used (or intended to be used) in connection with a military activity and which is (A) of a military character and/or (B) under the control of a military authority or defence agency of Uganda;
- (c) of particular cultural or historical significance to the people of Uganda (or any region or group of people within Uganda); or
- (d) infrastructure of strategic importance within Uganda including dams, airports, roads, railways, infrastructure used for the transmission of sound and/or data, and power generation, transmission and distribution assets.

19.10 Entirety of Agreement

This Agreement constitutes the entire agreement between the Parties and all prior representations, negotiations and undertakings shall be excluded from any construction of this Agreement.

19.11 Assignment, Transfer of Interest and Changes in Ownership

19.11.1 Subject to the terms of any agreement entered into between the Lenders and GOU (including a direct agreement), neither Party may assign or otherwise transfer all or any of its rights, benefits or obligations hereunder without the other Party's prior written consent, provided such consent is not to be unreasonably withheld or delayed, if the Party seeking assignment can satisfy the other Party of such proposed assignee's financial, technical and legal status and ability to observe and perform this Agreement, Provided however that the Party wishing to assign has given notice to that effect to the other Party and such notice shall have given sufficient information to show the status and ability of the proposed assignee to carry out the terms of this Agreement.

19.11.2 No assignment pursuant to Section 19.11.1 shall have effect unless and until the assigning Party has:

- (a) procured the proposed assignee to covenant directly with the other Party in a form reasonably satisfactory to such Party to observe and perform all the terms and conditions of this Agreement; and
- (b) has provided to the other Party a certified copy of the assignment (excluding consideration paid or payable for such assignment).

19.11.3 Notwithstanding the foregoing provisions, for the purpose of financing the Project, it is expressly acknowledged that the Company intends to obtain such financing for the Project from Lenders, the Company may assign to, or grant a security interest in favour of, the Lenders of all of its rights and interests under or pursuant to this Agreement. The Company shall notify GOU of the creation of such security over its rights and interests under this

Agreement at least thirty (30) days prior to the execution of any such assignment or security interest.

19.12 Confidentiality

19.12.1 Each of the Parties and their Contractors, consultants and agents shall hold in confidence all documents and other information whether technical or commercial supplied to it by or on behalf of the other Party relating to the design, procurement and construction and installation, insurance, operation, maintenance, management and financing of the Generation Facility and all information and documents obtained by it in the course of any inspection performed in accordance with the terms of this Agreement, and shall not, save as required by law or appropriate regulatory authorities or prospective lenders to the Company and their professional advisers, 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.

19.12.2 The provisions of paragraph 19.12.1 above shall not apply to:

- (a) any information in the public domain otherwise than by breach of this Agreement;
- (b) information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality; and
- (c) information obtained from a third party who is free to divulge the same, and which is not obtained under any obligation of confidentiality.

19.12.3 The provisions of this Section 19.12 shall survive the term of this Agreement.

19.13 Successors and Assigns

This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

19.14 Severability

19.14.1 If any provision or part of a provision of this Agreement or its application to any party is invalid or cannot be enforced, then all other provisions of this Agreement will be construed, insofar as possible, to be valid and enforceable or in manner which enables them to continue to have full force and effect, and the invalid or unenforceable part shall be severed from this Agreement with a view to maintaining, to the fullest extent possible, the validity and enforceability of all other provisions of this Agreement.

19.14.2 If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable, or is declared by any court of competent jurisdiction or any Governmental Authority to be invalid, illegal or unenforceable or if such Governmental Authority:

- (a) refuses or formally indicates an intention to refuse authorization of, or exemption to, any of the provisions of or arrangements contained in this Agreement (in the case of a refusal either by way of outright refusal or by way of requirement that this Agreement be amended or any of its provisions be deleted or that a party give an undertaking or accept a condition as to future conduct); or
- (b) formally indicates that to continue to operate any provisions of this Agreement may expose the Parties to sanctions under any law, order, enactment or regulation, or requests any Party to give undertakings or to accept conditions as to future conduct in order that such Party may not be subject to such sanctions;

then in all cases, whether initially or at the end of any earlier period or periods of exemption, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions which substitute provisions are satisfactory to all relevant Governmental Authorities and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

19.15 Further Assurance

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

19.16 Counterparts

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

IN WITNESS WHEREOF the duly authorised representative of the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written

Signed for and on behalf of GOU:

**HONOURABLE IRENE MULONI
MINISTER OF ENERGY AND MINERAL DEVELOPMENT**

IN THE PRESENCE OF:

**MR. F. A KABAGAMBE-KALIISA
PERMANENT SECRETARY
MINISTRY OF ENERGY AND MINERAL DEVELOPMENT**

THE COMMON SEAL OF THE COMPANY WAS AFFIXED HERETO

IN THE PRESENCE OF

DIRECTOR

_____ [NAME] _____
SECRETARY

ANNEX A: AUTHORISATIONS

All applicable permits under the Act

Construction Permits: from local authorities for the laying of electricity distribution lines

Entry and Work Permits from the Immigration Authorities for foreign employees

Environmental Certificate from the National Environmental Management Authority for the construction of the Generation Facility.

Environmental Certificate from the National Environmental Management Authority for the construction of the Related Infrastructure.

Investment Licence from the Uganda Investment Authority to establish a business enterprise in Uganda.

Licence from the Electricity Regulatory Authority for generation and sale of electricity.

All the permits set out under all the relevant legislation and the Power Purchase Agreement.

[Note: list to be reviewed.]

ANNEX B: [NOT USED]

ANNEX C: LEASE

ANNEX D: PURCHASE PRICE AND PROCEDURE ON TRANSFER

Payments on Transfer

1. Definitions

All capitalised terms shall have the meanings given to them in this Agreement, except as otherwise defined herein. When used herein, the defined terms set out below shall have the following meanings:

“**Calculation Date**” means the actual date on which termination of the Agreement by either party in accordance with Section 15.7 (*Termination for prolonged Force Majeure*) or Section 15.8 (*Termination for Force Majeure where restoration uneconomic*), by GOU for a Company Event of Default Company pursuant to Section 17.3, or by Company for a GOU Event of Default pursuant to Section 17.3 takes effect.

“**Company Default Purchase Price**” shall mean an amount equal to:

- (a) Financing Costs outstanding at the Calculation Date; less
- (a) the greater of:
 - (i) Shareholders’ Equity Commitment minus Shareholders’ Actual Equity Contributions; and
 - (ii) Zero.

“**Contract Year**” means:

- (b) for the first Contract Year, the period from the day following the Commercial Operation Date and:
 - (i) ending on 31 December in the Year in which Commercial Operation Date falls, or
 - (ii) if the Commercial Operation Date falls on 31 December, ending on 31 December in the Year following which the Commercial Operation Date falls; and
- (c) for each subsequent Contract Year, each subsequent consecutive twelve (12) month period:
 - (i) commencing on 1 January in a year, and
 - (ii) falling (whether in full or in part) within the Term,

provided that the Contract Year in which the last day of the Term falls shall end on the last day of the Term.

“**Equity**” means the capital of the Company attributable to its Shareholders in respect of their investment in the Company by the Shareholders, including a shareholder loan which, on its terms, is subordinated to all indebtedness and liabilities of Company.

“Equity Amount Outstanding” means the sum equal to the all Equity Contributions made in cash prior to the Calculation Date less the sum of the all Equity Distributions made in cash prior to the Calculation Date; provided that, if such difference shall result in an amount that is less than zero (0), such amount shall be deemed to be zero (0). The value of each Equity Contribution and Equity Distribution made in any currency other than Ugandan Shillings shall be determined in accordance with Sections 8.2 to 8.4 (inclusive) as of the date of such contribution or distribution.

“Equity Contribution” means the quantum of any amount of cash actually paid or advanced to the Company by any of its shareholders whether in the form of equity or a shareholder loan that constitutes Equity.

“Equity Distribution” means the quantum of any amount returned by the Company to its shareholders whether in the form of dividends, redemption of capital, repayment of shareholder loans qualifying as Equity or otherwise.

“Financing Costs” means all principal amounts and all costs associated with financing the development, ownership, operation and transfer of the Facility incurred pursuant to the Financing Agreements, including without limitation: all amounts required to repay principal amounts drawn under the Financing Agreements; interest accrued under the applicable Financing Agreements to the Calculation Date; fees; breakage costs, repayment premia and any indemnities due under the Financing Agreements, but not including any amount resulting from a wilful failure of the Company to comply with the terms of the Financing Agreements LESS any amounts outstanding to the credit of any account pledged to the Lenders as part of their Security Package.

“GOU Default Purchase Price” shall mean an amount equal to the sum of:

- (a) Financing Costs outstanding at the Calculation Date; plus
- (b) Termination Costs; plus
- (c) Equity Amount Outstanding; plus
- (d) an amount equal to the revenue which would have been expected to be earned by the Project Company in the six (6) months following the Calculation Date assuming that no GOU Event of Default had occurred prior to the Calculation Date and that no GOU Event of Default, Company Event of Default or Force Majeure Event would occur during the relevant six (6) month period (provided that this sum will be adjusted downward due to any circumstance or event that is not attributable to UETCL or GOU that resulted or would have resulted in a reduction of revenue).

“Other Force Majeure Purchase Price” shall mean an amount equal to:

- (a) Financing Costs outstanding at the Calculation Date; plus
- (b) Termination Costs; less
- (c) amounts received by the Company as insurance proceeds.

“Political Force Majeure Purchase Price” shall mean an amount equal to:

- (a) GOU Default Purchase Price; less
- (b) amounts paid by GOU to Company (if any) pursuant to Section 15.4.

“**Remaining Term**” means, as of the Calculation Date, the anticipated remaining Term as extended pursuant to this Agreement.

“**Shareholder**” means each shareholder that holds one or more share in the share capital of the Company.

“**Shareholders’ Actual Equity Contributions**” means the aggregate amounts of Equity actually contributed or caused to be contributed by the Shareholders at the Calculation Date.

“**Shareholders’ Equity Commitment**” means the maximum Equity amount that can be required by the Financing Agreements to be paid by or on behalf of the Shareholders excluding any amounts in relation to cost overruns.

“**Termination Costs**” means:

- (a) all income, receipts, sales, value added, transfer, property or other taxes and any other costs imposed on the Company by GOU as a result of termination of this Agreement, transfer of right, title and interest in the Generation Facility to GOU (or its nominee);
- (b) all amounts payable by the Company with respect to termination of any related agreement including any contract with any EPC contractor, operator or supplier in relation to the Project; and
- (c) all amounts payable by the Company to the counterparties of any related agreement and not yet paid for by the Company and for which no amount of the financing from the Lenders under the Financing Agreements or drawing of Equity has been incurred.

2. Transfer Price in respect of the Generation Facility where GOU elects to purchase the Generation Facility

- (a) If GOU exercises its option to purchase the Generation Facility pursuant to Section 17.5.1 following a Company Event of Default (or if UETCL exercises its option to require the Company to sell the Generation Facility in accordance with the provisions of Clauses 10.3.1 and 10.3.5 of the Power Purchase Agreement), GOU shall purchase the Generation Facility for the Company Default Purchase Price.
- (b) If GOU exercises its option to purchase the Generation Facility pursuant to Section 17.5.3 following an Other Force Majeure Event (or if UETCL exercises its option to require the Company to sell the Generation Facility in accordance with the provisions of Clauses 10.3.3 and 10.3.5 of the Power Purchase Agreement), GOU shall purchase the Generation Facility for the Other Force Majeure Purchase Price.

3. Transfer Price in respect of the Generation Facility where the Company elects to sell the Generation Facility

- (a) If the Company exercises its option to sell the Generation Facility to GOU pursuant to Section 17.5.2 following a GOU Event of Default then GOU shall purchase the Generation Facility for the GOU Default Purchase Price.

- (b) If the Company exercises its option to sell the Generation Facility to GOU pursuant to Section 17.5.4 following a Political Force Majeure Event then GOU shall purchase the Generation Facility for the Political Force Majeure Purchase Price.

4. Termination

- (a) Upon receipt of the Company Default Purchase Price, Other Force Majeure Purchase Price, GOU Default Purchase Price or Political Force Majeure Purchase Price by the Company, this Agreement will terminate and the Company shall, on such date, transfer all right, title and interest in the Generation Facility to GOU (or its nominee).
- (b) The Generation Facility shall be transferred to GOU (or its nominee) with no representations or warranties provided by the Company, whether express or implied, in respect of the Generation Facility.
- (c) On the date of transfer in accordance with the above paragraph, the Parties shall execute all such documents and instruments and do all such other acts and things as are necessary to ensure that the transfer of the Generation Facility is effected in a legal, valid and enforceable manner on such date of transfer.

5. Calculations

- (a) In the event that the Company Default Purchase Price determined in accordance with the definition thereof shall be a negative number, the Company shall pay such amount to GOU concurrently with transfer of the Company's right, title and interest in the Generation Facility to GOU.
- (b) In calculating all amounts payable pursuant to this Annex D (*Purchase Price And Procedure On Transfer*), there shall be no double-counting of the components making up any such amounts.
- (c) All payments under this Annex D shall be made in Shillings based on a reasonable estimation of (i) the Shilling/US Dollar exchange rate available to the GENCO following receipt of payment, (ii) if relevant amounts are incurred in a currency other than US Dollars, the exchange rate between USD and the relevant currency available to the GENCO following receipt of payment, and (iii) the expected interest and other amounts that will be due on the date of payment to Lenders. Where following payment to the GENCO the actual exchange rate(s) obtained and/or the costs of conversion and/or the time taken to convert results in over or under payment by GOU to the GENCO an appropriate adjusting payment shall be made as is reasonable in all the circumstances to ensure that the purpose of this Annex D is achieved.