

| DRAFT PREPARED 3 March 2017

Date: [       ]

THE GOVERNMENT OF BERMUDA

AND

[XXXXXX]

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IMPLEMENTATION AGREEMENT  
IN RELATION TO THE DEVELOPMENT OF 6MW<sub>AC</sub> SOLAR POWER PROJECT AT THE  
FINGER, ST. DAVID'S ISLAND, BERMUDA

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THIS IMPLEMENTATION AGREEMENT (this “**Agreement**”) is made on the \_\_\_\_\_ Day of \_\_\_\_\_ 201[●], between:

(1) **THE GOVERNMENT OF BERMUDA** represented by its Ministry of Economic Development and Ministry of Public Works, Bermuda (“**GOB**”); and

(2) [●], a company incorporated under the laws of Bermuda (the “**Company**”),

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

WHEREAS:

- A. GOB has decided to encourage the Company to generate, supply and sell energy to the Bermuda Electric Light Company Limited (“**BELCO**”);
- B. the Company is desirous of establishing a 6 MW capacity solar power generation facility at the Finger Point, St David’s Island, Bermuda;
- C. the Company and BELCO are entering into a Power Purchase Agreement and a Connection Agreement to this effect on or about the date of this Agreement (under which Company is named as the Seller);
- D. to promote the increased generation and supply of electricity at the aforementioned facility, GOB has agreed to provide certain assistance, support and concessions to the Company; as provided in this Agreement;

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound 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 Bermuda Electricity Act 2016.

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

“**Agreement for Lease**” means the agreement for lease between GOB and the Company dated on or about the date of this Agreement.

“**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, and is defined in Annex A.

“**BELCO**” means the Bermuda Electric Light Company Limited.

“**Bermudian**” means

- (a) an individual with Bermudian status pursuant to the Bermuda Immigration and Protection 1956;
- (b) a local company which is not prohibited from carrying on business in Bermuda by section 114 of the Bermuda Companies Act 1981;
- (c) a local limited liability company which is not prohibited from carrying in business by section 10 of the Limited Liability Companies Act 2016; and
- (d) a partnership where each individual partner has Bermudian status pursuant to the Bermudian Immigration and Protection Act 1956.

“**Business Day**” means any day of the week other than a Saturday or Sunday, or public holiday in Bermuda.

“**Connection Agreement**” means the connection agreement between the Company and BELCO dated on or about [insert date].

“**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.

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

“**Financing Agreements**” has the definition given to that term in the PPA.

“**Foreign Currency**” any currency other than Bermudian Dollars.

“**Foreign Investors**” Investors who are not Bermudian.

“**GOB**” means the Government of Bermuda.

“**Governmental Authority**” has the meaning given to it in 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 Bermuda 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.

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

**“Local Labour Content”** shall have the definition given to that term, and be calculated pursuant to, Annex B.

**“Ministries”** means the Ministry of Economic Development and the Ministry of Public Works of GOB or their successors responsible for energy and public works.

**“Offtaker”** means BELCO.

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

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

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

**“Project”** means the development, design, financing, procurement, construction, installation, ownership, operation, maintenance and insurance of the Facility (as that term is defined in the Power Purchase Agreement) and all related infrastructure.

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

**“Regulatory Authority”** means the Regulatory Authority, established under the Regulatory Authority Act 2011, and referred to in the Electricity Act 2016.

**“Security Package”** means:

- (a) the Project Agreements;
- (b) the Financing Agreements, including 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].

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

**“Bulk Generation Licence”** means the licence issued by the Regulatory Authority, or a Government authority with statutory power, to the Company for the generation and sale of electricity to BELCO.

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

## **2 INTERPRETATION**

### **2.1 Rules of Interpretation**

In this Agreement:

- 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 References to this Agreement shall include a reference to all Schedules and Appendices hereto, as the same may be amended, modified, supplemented or replaced from time to time;
- 2.1.4 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;
- 2.1.5 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;
- 2.1.6 The headings and paragraph numbers are inserted for convenience only and are to be ignored for the purposes of construction;
- 2.1.7 Calculations carried out pursuant to this Agreement shall unless otherwise stated be rounded to two (2) decimal places;
- 2.1.8 A reference to an entity includes reference to its successors and permitted assigns pursuant
- 2.1.9 A reference to a statute or statutory provision is a reference to it as amended, or superseded from time to time; and
- 2.1.10 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**

- 3.1.1 This Agreement shall come into full force and effect on the date the PPA is executed.
- 3.1.2 This Agreement shall, unless terminated earlier in accordance with the terms of this Agreement, continue in full force and effect until the PPA expires or is terminated, at which point this Agreement will automatically terminate.



## **4 IMPLEMENTATION BY THE COMPANY**

### **4.1 Company obligations**

- 4.1.1 The Company shall comply with its obligations under the Power Purchase Agreement, the Connection Agreement, Agreement for Lease and Lease.

### **4.2 Application by the Company for Authorisation**

- 4.2.1 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 Bermuda applied in a non-discriminatory manner.

### **4.3 Status of Authorisation Applications**

- 4.3.1 The Company shall make or cause to be made at least once every year in any particular calendar year until operations, reports to GOB 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 the Project Agreements. 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 Local Labour Content**

- 4.4.1 The Company shall ensure (i) that Local Labour Content is at least 45% during the design and construction phase, (ii) that a Bermudian entity is the operations and maintenance provider for the solar facility. The Local Labour Content shall be calculated in accordance with Annex B.
- 4.4.2 The Company shall certify to the GOB in writing no less than annually (the first certificate being provided on the first anniversary of this Agreement) that it is meeting the requirements stipulated under clause 4.4.1 and shall provide the GOB with such information and documentation it may from time to time request and grant and afford the GOB full and unfettered access to its accounts, books and records in each case to allow the GOB to verify that the Company has complied with its obligations under clause 4.4.1.

### **4.5 Land Rights**

- 4.5.1 The GOB has allocated a site for use by the Company, which will be leased through a Lease Agreement giving the Company permission to develop the Facility and use the land. The terms of this Lease are detailed in the Lease Agreement and Agreement for Lease.
- 4.5.2 The Company shall be responsible for acquiring and paying for any land, wayleave, right of way, easement or other interest in land which it may require for carrying on the Project.

## 5 SUPPORT OF GOB

### 5.1 Support for Obligations

- 5.1.1 GOB shall upon reasonable request by the Company use its good offices to support the Company's performance of its obligations under the Project Agreements. By agreeing to use its good offices to facilitate the Company's performance of its obligations, GOB has not relieved, and does not relieve in any way, the Company of its obligations or potential liability under the Project Agreements. The assistance envisaged in this provision shall not include financial assistance apart from that which is expressly stated herein.

### 5.2 Support to Obtain Authorisations

- 5.2.1 Subject to the Company's timely submission of the reports required by Section 4.3 and upon the Company's reasonable request, GOB shall support and use all reasonable efforts to expedite the consideration and timely 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 an Authorisation subject to a Lapse of Consent. Such support shall include the provision by GOB 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 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, GOB has not relieved, and does not relieve in any way, the Company of its obligations or potential liability under any other agreement.
- 5.2.2 Any Governmental Authority may attach such reasonable and non-discriminatory terms and conditions to the issuance or renewal of any of the Authorisations as are in accordance with the laws of Bermuda. The attachment of such terms and conditions (and any action taken in breach of the same) shall not in and of itself constitute a breach of this Agreement by GOB .
- 5.2.3 The GOB will provide reasonable support to the Company with obtaining Right of Way or any other interest in the land which is reasonably necessary for building the interconnection line.

Commented [C1]: See Q10 of Round 3 Q&A

## 6 RESTRICTIONS ON ACQUISITION AND TRANSFER OF SHARES AND ASSETS

## **6.1 Assurance against Discrimination**

- 6.1.1 GOB 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 obligations or the enjoyment of the Company's rights under the Project Agreements or except as provided in the Project Agreements, compulsorily acquire the Facility or the Company, whether in whole or in part.

## **7 TAXATION AND CURRENCY EXCHANGE**

### **7.1 Taxation**

- 7.1.1 The Company shall be subject to all applicable taxes, fees and charges applicable under Bermudian Law, including, but not limited to, all customs duties, income taxes and other taxes applicable in Bermuda; 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 the laws of Bermuda or as set forth in any Authorisation.
- 7.1.2 There shall be no land tax on the specific piece of land for which the Government has signed the Lease Agreement with the Company

### **7.2 Foreign Exchange Regulation**

- 7.2.1 The foreign currency exchange and transfer abroad of all funds related to the Project shall be governed by the laws of Bermuda.

### **7.3 Bank Accounts**

- 7.3.1 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 Bermuda may be paid directly to such persons and not conducted through bank accounts in Bermuda. 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 Bermuda.
- 7.3.2 GOB shall ensure that, upon proper application being made by the Company, the Governmental Authority shall:
- (a) give the Company and all its subcontractors all necessary consents for the opening, operation, and retention of foreign currency bank accounts inside Bermuda for the purposes of the Project (including the payment of all foreign exchange by the Company into such accounts and withdrawals therefrom); and
  - (b) give the Company permission to maintain bank accounts outside Bermuda for the purposes of the Project and to transfer funds from its accounts in

Bermuda to its accounts maintained outside Bermuda 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 Bermuda from time to time after the date of this Agreement if and to the extent that it is or becomes otherwise permitted under the laws of Bermuda.

#### **7.4 Free Transfer of Necessary Funds**

7.4.1 Without prejudice to Section 7.3, GOB shall permit:

- (a) the free transfer of all funds and financial settlements (to the extent denominated in either Bermudian Dollars 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
- (b) the conversion of Bermudian Dollars into US Dollars.

7.4.2 For the purposes set out in Section 7.4.1(a), if any restriction exists on the free and immediate transfer of US Dollars outside Bermuda, GOB 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 Bermuda and required by the Company upon delivery of such US Dollars to GOB.

#### **7.5 Other Remedies**

7.5.1 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.

### **8 REPRESENTATIONS AND WARRANTIES**

#### **8.1 GOB Representations and Warranties**

8.1.1 GOB hereby represents and warrants to the Company that:

- (a) The Ministries have full power and authority to execute and deliver this Agreement on behalf of GOB. GOB has full power and authority to perform its obligations hereunder. The execution, delivery and performance of this Agreement by or on behalf of GOB (i) has been duly authorised by all requisite action on the part of GOB and (ii) will not (A) violate the laws of Bermuda 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 GOB is a party or by which GOB 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 GOB or on its ability to perform its obligations hereunder. This Agreement has been duly executed and delivered by the Ministries on behalf of GOB.

- (b) This Agreement constitutes a legal, valid and binding obligation of GOB, enforceable against it in accordance with its terms subject to general principles of equity.
- (c) 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 GOB except for such permits, authorisations, consents or approvals as have been obtained.
- (d) GOB 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.
- (e) There is no action, suit, proceeding or investigation pending, or to GOB's knowledge, threatened, against GOB 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.

## **8.2 Company Representations and Warranties**

### **8.2.1** The Company hereby represents and warrants to GOB that:

- (a) The Company is a limited liability company, duly organised and validly existing under the laws of Bermuda, 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.
- (b) 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) the laws of Bermuda 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.

- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.

## 9 MISCELLANEOUS PROVISIONS

### 9.1 Notices

9.1.1 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:

**If to GOB:**

Attention: [ XX, Title [Permanent Secretary/Director of Energy]]  
 Address: Ministry of Economic Development  
 [Address, Hamilton, Bermuda]  
 Telephone No. [+1.....]  
 Facsimile No. [+1.....]  
 [Email Address: [XYZ@gov.bm]

Attention: [ XX, Title [Director/Permanent Secretary]]  
 Address: Ministry of Public Works  
 [Address, Hamilton, Bermuda]  
 Telephone No. [+1.....]  
 Facsimile No. [+1.....]  
 [Email Address: [XYZ@gov.bm]

**If to the Company:**

Attention: The Managing Director/ Chief Executive  
 Address: [ ]  
 Telephone No.: [ ]  
 Facsimile No.: [ ]

Email Address: [ ]

- 9.1.2 Any Party may change its nominated address/addresses or facsimile number by prior notice to the other Parties.
- 9.1.3 Notices given by post are deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.
- 9.1.4 Notices given by email shall be deemed to be delivered when they leave the information system of the sender.
- 9.1.5 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.

## **9.2 Amendment**

- 9.2.1 This Agreement may only be amended or varied by the written agreement of each Party.

## **9.3 Parties**

- 9.3.1 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.

## **9.4 No Waiver**

- 9.4.1 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.

## **9.5 No Partnership**

- 9.5.1 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.

## 9.6 Governing Law

9.6.1 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 Bermuda.

## 9.7 Entirety of Agreement

9.7.1 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.

## 9.8 Assignment, Transfer of Interest and Changes in Ownership

9.8.1 Neither Party shall assign this Agreement without the other Party's consent (not to be unreasonably withheld). This clause does not apply to the granting of any security for any loan to the Company under the Financing Agreements. GOB shall, if requested by a Lender under the Financing Agreements, execute such documentation as may be reasonably required with respect to the assignment, provided such documents do not alter GOB's rights and obligations under this Agreement. Company shall pay all reasonable costs of GOB's review of any such documentation. For the purposes of this Clause, "assign" and "assignment" includes a Change of Ownership (as that term is defined in the PPA) with respect to that Party, and "Financing Agreements" has the definition given to that term in the PPA.

9.8.2 No assignment pursuant to Section ~~9.8.140.8.1~~ 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).

## 9.9 Confidentiality

9.9.1 Except as provided by the Power Purchase Agreement and the Connection Agreement, each of the Parties and their subcontractors, 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 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.

9.9.2 The provisions of paragraph ~~9.9.140.9.4~~ 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.

9.9.3 The provisions of this Section ~~9.9.140.9~~ shall survive the Term of Agreement.

## **9.10 Successors and Assigns**

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

## **9.11 Severability**

9.11.1 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.

9.11.2 Section ~~9.11.340.41.3~~ applies 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 authorisation 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.

9.11.3 If ~~9.11.2~~<sup>10.11.2</sup> applies, 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 the Company with the objective of producing as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

## 9.12 Further Assurance

9.12.1 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.

**IN WITNESS WHEREOF** the duly authorised representatives 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 GOB:

\_\_\_\_\_  
NAME  
HONOURABLE MINISTER OF ECONOMIC DEVELOPMENT

\_\_\_\_\_  
NAME  
HONOURABLE MINISTER OF PUBLIC WORKS

IN THE PRESENCE OF:

\_\_\_\_\_  
NAME  
PERMANENT SECRETARY  
MINISTRY OF ECONOMIC DEVELOPMENT

\_\_\_\_\_  
NAME  
PERMANENT SECRETARY  
MINISTRY OF PUBLIC WORKS

THE COMMON SEAL OF THE COMPANY WAS AFFIXED HERETO IN THE PRESENCE OF

\_\_\_\_\_  
DIRECTOR

\_\_\_\_\_  
\_\_\_\_ [NAME] \_\_\_\_ SECRETARY

\_\_\_\_\_

## **10 ANNEX A: AUTHORISATIONS**

Approvals, consents and permits that constitute mandatory authorisations to be obtained by the Company:

[ ]

## **11 ANNEX B: GUIDELINES FOR CALCULATION OF LOCAL CONTENT**

See Instructions to Proponents Appendix D.3.