

Public Disclosure Authorized

CONFORMED COPY

NUMBER 3411 UG

Uganda Distribution Concession Project Agreement

(Privatization and Utility Sector Reform Project)

between

UMEME LIMITED

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated February 23, 2005

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NUMBER 3411 UG

This PROJECT AGREEMENT (the “*Agreement*”) is dated February 23, 2005 between:

UMEME LIMITED, a private limited liability company incorporated under the laws of the Republic of Uganda (“*UMEME*”), with its principal office located at SM Chambers, 36 Nile Avenue, Kampala, Uganda; and

INTERNATIONAL DEVELOPMENT ASSOCIATION of 1818 H Street, N.W., Washington, D.C. 20433, United States of America (the “*Association*” or “*IDA*”).

WHEREAS, The Republic of Uganda (“*Uganda*”) and the Association entered into a Development Credit Agreement dated December 18, 2000 for the Public Utility Sector Reform Project (“*PUSRP*”);

WHEREAS, in furtherance of the objectives of the PUSRP, the Government of Uganda (“*GOU*”), the Uganda Electricity Distribution Company Limited (“*UEDCL*”), and the Uganda Electricity Transmission Company Limited (“*UETCL*”) have entered into, respectively, the Support Agreement, the Lease and a Power Sales Agreement, with UMEME (collectively the “*Privatization Agreements*”), whereby UMEME will, *inter alia*, operate and maintain the Distribution System (as defined in the Lease), UETCL will sell and UMEME will purchase electricity, and GOU shall provide certain undertakings to UMEME;

WHEREAS, the L/C Issuing Bank has issued or shall issue, at the request and for the account of UEDCL, a standby letter of credit in favor of UMEME (the “*IDA-Supported L/C*”), which will establish certain rights of UMEME to receive drawings on the IDA-Supported L/C following the occurrence of certain events;

WHEREAS, pursuant to an agreement dated on or about the date hereof between IDA and the L/C Issuing Bank (the “*IDA Commitment Agreement*”), IDA has agreed to pay the interest and principal of a loan (the “*IDA-Supported Loan*,” and the aggregate amount due from IDA at any time in respect of the IDA-Supported Loan, the “*IDA-Supported Loan Amount*”) made as a result of a proper drawing of the IDA-Supported L/C by UMEME as provided in the IDA-Supported L/C and in the event UEDCL, pursuant to that certain Reimbursement and Credit Agreement dated on or about the date hereof between UEDCL and the L/C Issuing Bank (the “*Reimbursement and Credit Agreement*”), defaults in the payment of the IDA-Supported Loan Amount within the repayment period required in the Reimbursement and Credit Agreement;

WHEREAS, to implement the commitment under the IDA Commitment Agreement, the Association will, with the agreement of Uganda, pursuant to an Amendment to the Development Credit Agreement, commit to allow disbursements under such Amendment to the Development Credit Agreement directly to the L/C Issuing Bank in the event of a proper drawing of the IDA-Supported L/C and in the event UEDCL defaults in the payment of the IDA-Supported Loan within the repayment period required in the Reimbursement and Credit Agreement;

WHEREAS, in the event the IDA-Supported L/C is not renewed or replaced upon the expiration of its then-current term at any time such that the IDA-Supported L/C is not in effect for seven years from the original effectiveness of the IDA-Supported L/C the Amendment to the Development Credit Agreement provides that UMEME may withdraw from the Credit provided

for under the Amendment to the Development Credit Agreement an amount equal to the amount of the IDA-Supported L/C available for drawing immediately prior to its expiration for deposit of such amount in the Escrow Account; and

WHEREAS, in consideration of IDA undertaking the obligations pursuant to the IDA Commitment Agreement and the Amendment to the Development Credit Agreement for the benefit of UMEME, UMEME agrees to undertake certain obligations to IDA as stated in this Agreement;

NOW, THEREFORE, the parties agree as follows:

1. **Definitions**

- (a) For the purposes of this Agreement, save as otherwise provided herein, all capitalized terms used in this Agreement which are defined in the Privatization Agreements shall have the meanings given to them therein.
- (b) The following additional terms shall have the following meanings in this Agreement:
 - (i) “**Advance**” has the meaning given to it in the IDA Commitment Agreement, and “**Advances**” shall mean more than one Advance;
 - (ii) “**Amendment to the Development Credit Agreement**” means the amending agreement to the Development Credit Agreement, dated on or about the date hereof and entered into between IDA and Uganda;
 - (iii) “**Concession Project**” means each and every act taken or that is required to be taken for the implementation by UMEME, UEDCL, UETCL and GOU (as the context may require) of their respective rights and obligations in accordance with and as contemplated by the Privatization Agreements;
 - (iv) “**Corrupt Practices**” means:
 - 1. the offering, promising or giving of any bribe, pay-off, kick-back, unlawful commission or other undue pecuniary or other advantage, whether directly or through intermediaries (including shareholders, directors, officers, employees and agents), to any official of the GOU, for that official or for a third party to influence the official to act or refrain from acting in relation to the performance of official duties, with the purpose of obtaining or retaining business or any other improper advantage; or
 - 2. the acquisition, possession, use, conversion, transfer or concealment of the true nature of property of any description, and legal documents or instruments evidencing title to, or interest in, such property knowing that such property is an economic advantage from criminal offenses, for the purpose of (i) concealing or disguising the illicit origin of the property or (ii) assisting any

person who is involved in the commission of a criminal offense as a result of which such property is generated, to evade the legal consequences of such actions.

- (v) “**Credit**” has the meaning given to it in the Amendment to the Development Credit Agreement;
- (vi) “**Development Credit Agreement**” means the development credit agreement dated December 18, 2000 and entered into between IDA and Uganda;
- (vii) “**Effective Date**” has the meaning given to it in the IDA Commitment Agreement;
- (viii) “**Escrow Account**” has the meaning given to it in the Escrow Agreement;
- (ix) “**Escrow Agent**” means Citibank N.A., London Branch;
- (x) “**Escrow Agreement**” means the escrow agreement dated on or about the date of this Agreement and entered into between UMEME, UEDCL and the Escrow Agent;
- (xi) “**IDA Agreements**” means the IDA Commitment Agreement, the IDA-Supported L/C, the Reimbursement and Credit Agreement, the Escrow Agreement and this Agreement, as amended from time to time;
- (xii) “**IDA Support Fee Payment Date**” means each support fee payment date determined in accordance with Section 2 of this Agreement to be the date upon which an installment of the IDA Support Fee is due and payable;
- (xiii) “**L/C Issuing Bank**” means Citibank Uganda Limited or such successor or replacement as may be agreed from time to time;
- (xiv) “**Lease Agreement**” means the Lease and Assignment Agreement between UMEME and UEDCL dated May 17, 2004, as amended from time to time;
- (xv) “**Maximum Aggregate Liability**” means US\$5,500,000;
- (xvi) “**Minimum Distribution Investment Commitment**” has the meaning given to it in the Lease Agreement;
- (xvii) “**Power Sales Agreement**” means the power sales agreement dated May 17, 2004 and made between UMEME and the Uganda Electricity Transmission Company Limited, as amended from time to time;
- (xviii) “**Privatization Agreements**” means the Lease Agreement, the Support Agreement and the Power Sales Agreement, as amended from time to time, and “**Privatization Agreement**” means any one of them;
- (xix) “**Rent**” has the meaning given to it in the Lease Agreement;
- (xx) “**Support Agreement**” means the support agreement between UMEME and GOU dated May 17, 2004, as amended from time to time;

- (xxi) “**Transaction Documents**” means the Privatization Agreements and the IDA Agreements, and “**Transaction Document**” means any one of them; and
- (xxii) “**Withdrawal Certificate**” shall have the meaning given to it in the Escrow Agreement.

2. **IDA Support and Other Fees**

- (a) In consideration of IDA’s obligations under the Amendment to the Development Credit Agreement and the IDA Commitment Agreement, UMEME shall pay the following fees:
 - (i) a support fee (the “**IDA Support Fee**”) to IDA and GOU in an amount equal to 0.75 percent (75 basis points) per annum of the Maximum Aggregate Liability, less any amount paid by IDA under the IDA Commitment Agreement payable on each IDA Support Fee Payment Date, as follows:
 - 1. to the GOU, an amount equal to the commitment fee then being charged by IDA for the Credit, currently 0.35 percent (35 basis points) per annum, as such fee may be modified annually by IDA and notified to UMEME by IDA or the GOU; and
 - 2. to IDA, an amount equal to the balance of the IDA Support Fee.
 - (ii) a one-time initiation fee (the “**IDA Initiation Fee**”) to IDA, to cover IDA’s internal costs, in the amount of one hundred thousand US Dollars (US\$100,000) which shall be due and payable upon the signature of this Agreement; and
 - (iii) a processing fee (the “**IDA Processing Fee**”) to IDA, to cover all reasonable out-of-pocket (external) expenses incurred by IDA (including travel expenses) in connection with the preparation, approval and execution of the Amendment to the Development Credit Agreement and the IDA Commitment Agreement by IDA, in an amount not exceeding, in aggregate, twenty-five thousand US Dollars (US\$25,000). The IDA Processing Fee shall be due and payable within ten (10) Business Days of receipt by UMEME of an invoice from IDA
- (b) The IDA Support Fee shall be payable in installments, the first installment of which shall be due on the sixtieth (60th) calendar day from the date of signature of this Agreement or on the Effective Date, whichever comes earlier, and subsequent installments of which shall be due each six (6) months thereafter until termination of this Agreement; (each a “**IDA Support Fee Payment Date**”) provided that if any such date would otherwise be a day which is not a day on which banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in New York City (in respect of payments due to IDA) and in Kampala, Uganda (in respect of payments due to the Government), then the IDA

Support Fee Payment Date shall instead be the next day on which such banks are open for general business in New York City or Kampala, as the case may be.

- (c) In the event that any installment of the IDA Support Fee is not paid on the applicable IDA Support Fee Payment Date and such installment remains unpaid by UMEME as of 3:00 p.m. (New York time) on the sixth (6th) Business Day following the relevant IDA Support Fee Payment Date, then IDA may, in its sole discretion, exercise its rights pursuant to Section 7 (*Remedies*) of this Agreement;
- (d) The IDA Support Fee shall be calculated on the basis of the actual number of days elapsed in the relevant period based on a year of three hundred sixty five (365) days.
- (e) The IDA Initiation Fee, the IDA Processing Fee and the portion of the IDA Support Fee referred to in sub-section 2(a)(i)2 above as being payable to IDA, shall be paid by electronic transfer in immediately available, freely transferable funds in United States Dollars before 11:00a.m. (New York time) on the relevant payment date or on the relevant IDA Support Fee Payment Date (as the case requires) to:

Wachovia Bank, N.A.
11 Penn Plaza, Floor 4
New York, New York 10038

Account: 200192003492

SWIFT Code: PNBPUS3NNYC
Ref: Attn.: IDA Guarantee Fee/Uganda

with written notice of the amount and value date to:

World Bank Treasury Operations

Tel: (202) 458-1877

Fax: (202) 522-1564

with copies to:

Loan Clients and Financial Services

World Bank

Tel: (202) 458-8330

Fax: (202) 522-3428

Manager (Project Finance and Guarantees Department)

The World Bank

1818 H Street, N.W.

Washington, D.C. 20433

United States of America

Telephone: 1-202- 473-1235

Facsimile: 1-202-522-0761

- (f) The portion of the IDA Support Fee referred to in Sub-section 2(a)(i)1 above as being payable to GOU shall be paid by electronic transfer in immediately available freely transferable funds in United States Dollars before 11:00 a.m. (New York time) on any IDA Support Fee Payment Date to:

Stanbic (U) Ltd.
PO Box 7131
Kampala, Uganda

Account No: 0240063786601

SWIFT Code: SBICUGKX

Ref: Attn.: Privatization and Utility Sector Reform Project

3. Access to Concession Project and Provision of Information

- (a) UMEME shall, upon reasonable prior notice, at no charge for access, afford IDA and its representatives access during normal business hours to:
- (i) examine and visit any of the premises or facilities under the ownership or control of UMEME being used for purposes of the Concession Project; and
 - (ii) the four most senior people employed by UMEME from time to time (currently those holding the positions of General Manager, Chief Financial Officer, Chief Technical Officer, Head of Customer Services) and such other staff as are designated by them as having knowledge of matters with respect to which IDA, acting reasonably, seeks information;

provided that IDA and its representatives shall comply with all of UMEME's safety instructions communicated to them and shall not interfere with UMEME's operations of its business and, *provided*, further, that UMEME's liability for any injury or death to such persons, other than where such injury or death results from the gross negligence or willful misconduct of UMEME, shall be limited to its third party liability insurance cover, each such third party liability insurance policy to identify IDA as an additional named insured or otherwise be in form and substance acceptable to IDA.

- (b) UMEME shall, in each case at reasonable times and frequency and upon reasonable notice from IDA, permit IDA and its representatives to examine and make copies of UMEME's operating records, books of account and other records relating to the Concession Project, including all records and related information pertaining to Rent payments made or Rent offsets (and if there are offsets, the justification therefor), all Withdrawal Certificates issued by UMEME to the Escrow Agent for payments demanded pursuant to the Escrow Agreement and/or drafts issued by UMEME pursuant to the IDA-Supported L/C, all payments actually made to or claimed by the Escrow Agent pursuant to the Escrow Agreement and/or the IDA-Supported L/C, and any replenishments made (or not

made when required) to the Escrow Account and/or as specified in the IDA-Supported L/C.

- (c) UMEME shall have its records, accounts and financial statements for each financial year audited in accordance with generally accepted auditing principles consistently applied, by any of KPMG International, Deloitte Touche Tohmatsu, Ernst & Young or Price Waterhouse Coopers or any of their successors, as the case requires, or such other independent auditors as are acceptable to IDA (whose fees and expenses shall be for the account of UMEME), and shall furnish to IDA as soon as available, but in any case not later than one hundred twenty (120) calendar days after the end of each such year, the certified copies of its financial statements for such year as so audited; *provided* that no breach of this provision shall result if UMEME remedies any non-compliance within thirty (30) calendar days after the date of notice of such non-compliance from IDA or, if IDA (acting reasonably) determines that such non-compliance is of a nature such that it cannot reasonably be remedied within such thirty (30) calendar-day period but is susceptible to remedy within a longer period, UMEME, as promptly as possible, commences action reasonably designed to remedy such failure and continues diligently to pursue such action until remedied (but in no event for more than an aggregate of ninety (90) calendar days after the date of notice of non-compliance or such longer period as may be reasonably agreed by IDA).

4. **Confidentiality**

- (a) UMEME waives any rights it may have to prevent or restrict IDA from disclosing (and confirms that IDA may disclose) to any person the IDA Agreements and the transactions contemplated thereby (including, subject to any confidentiality restrictions applicable thereto, any expert determination, arbitral award or binding settlement agreement issued or reached pursuant to any Transaction Document); and such other information on the nature of the Concession Project or the Privatization Agreements (other than confidential financial or other proprietary information (including the Privatization Agreements themselves to the extent they are covered by confidentiality undertakings of the contracting parties thereto) that has been provided to IDA by UMEME and regarding which UMEME has requested in writing that such information be redacted) that in accordance with IDA policies (whether externally or internally published or disseminated) is required to be disclosed including in connection with the monitoring of compliance with applicable IDA environmental and social safeguard policies.
- (b) UMEME waives any rights it may have to prevent or restrict any person that is a party to any Transaction Document from disclosing (and confirms that any such person may disclose) the subject matter and content of any such Transaction Document to IDA.
- (c) Except as provided in paragraph (a) above or as is required by law, IDA agrees with UMEME that IDA will not disclose outside IDA (other than to its accountants, consultants and counsel) without the prior written consent of UMEME (which shall not be unreasonably withheld or delayed), any information

or documents concerning UMEME or the Concession Project not already in the public domain that UMEME has expressly identified as confidential and which are received by IDA under this Agreement or under any other Transaction Document. For the purpose of this paragraph (c), information in the public domain shall include information: (i) which is already known to IDA other than through disclosures of confidential information made in the course of negotiations in relation to the Concession Project or the IDA Agreements; (ii) which becomes available to IDA from sources that to the best of IDA's knowledge are under no obligation of confidentiality to UMEME; (iii) which is independently developed by IDA; (iv) which is now or hereafter available to the public through no breach of this Agreement by IDA; or (v) which has been disclosed by third parties with the prior approval of UMEME.

5. Representations and Warranties

- (a) UMEME represents and warrants to IDA that:
- (i) it is a company limited by shares, duly organized, validly existing and in good standing under the Laws of Uganda (as defined in the Lease) and has all requisite corporate power to own and/or lease, operate and maintain its properties and assets (including in particular the Distribution System), to conduct its business as it is presently being conducted and to enter into, observe and perform its obligations under this Agreement and under the Privatization Agreements;
 - (ii) this Agreement has been duly authorized, executed and delivered by UMEME and constitutes its valid and legally binding obligation enforceable against UMEME in accordance with its terms, and UMEME has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement;
 - (iii) the execution, delivery and performance by UMEME of, and the transactions contemplated by, this Agreement do not and shall not violate or conflict with:
 - 1. any of the Laws of Uganda or any applicable order of any Relevant Authority;
 - 2. the constitutional documents of UMEME (as they may have been amended) (including the Memorandum and Articles of Association of UMEME), and each other instrument executed or to be executed as is required or is necessary thereunder to organize, establish, and maintain UMEME as contemplated under the Privatization Agreements; or
 - 3. any other document which is binding upon UMEME or any of its assets including any Consent (as they may have been amended);

- (iv) each of the representations made to UEDCL pursuant to Sections 5.1(b)-(g) of the Lease, and each of the representations made to GOU pursuant to Sections 7.1(b)-(f) of the Support Agreement, is made to and for the benefit of IDA hereunder (it being agreed that each reference in those Sections to “this Agreement” or “hereunder” shall be understood to be a reference to the Lease or the Support Agreement as the case may be); and
- (v) UMEME has not and to the best of its knowledge and belief (after due enquiry) none of its shareholders, directors, officers, employees, agents, contractors or their affiliates has engaged in Corrupt Practices in relation to the Concession Project or any transaction contemplated under the Privatization Agreements.

6. Covenants

UMEME hereby covenants to IDA:

(a) **No Material Change to Privatization Agreements**

not to make, or permit the making of, any material change, variation, modification or amendment to the Escrow Agreement, the IDA-Supported L/C or any Privatization Agreement to which it is a party if such change has or is reasonably likely to have a material adverse effect on any rights or obligations of IDA under the IDA Agreements, unless IDA has provided its prior written consent to such change, variation, modification or amendment; and to timely notify IDA of any such proposed change, variation, modification or amendment by a party to the Escrow Agreement, the IDA-Supported L/C or a Privatization Agreement;

(b) **Cooperation**

in the event that IDA, acting in good faith, notifies UMEME of its concerns that there has been a violation of the provisions of Section 5(a)(v) or Section 6(c) of this Agreement, to cooperate in good faith with IDA and its representatives in determining whether such a violation has occurred, and respond promptly and in reasonable detail to any notice from IDA, and furnish documentary support for such response upon a request from IDA, including undertaking a review by UMEME’s auditors of the books, accounts, and records of UMEME and provide a copy of such review to IDA;

(c) **Improper Payments**

that it shall not, and shall use all reasonable endeavors (consistent with management and supervisory practices and policies which would prudently and ordinarily be expected of an internationally reputable person engaged in the same type of undertaking) to ensure that its shareholders, directors, officers, employees, agents, contractors and any affiliates thereof shall not engage (directly or indirectly) in Corrupt Practices during the execution of any activity under the Privatization Agreements or otherwise in connection with the IDA Agreements;

(d) **Monitoring and Compliance Plan**

to establish and provide a copy to IDA, within ninety (90) calendar days of the Transfer Date (as defined in the Lease), a monitoring and compliance plan satisfactory to IDA to ensure the periodic monitoring of UMEME's obligations under Section 5(a)(v) and Section 6(c) above; *provided* that IDA shall have thirty (30) calendar days from receipt of such plan to provide comments on such plan to UMEME and UMEME shall have an additional fifteen (15) calendar days to incorporate IDA's comments, but, if IDA fails to provide such comments within such period, such plan shall be deemed to be satisfactory to IDA; and *provided further that* no breach of this covenant shall result if UMEME remedies any non-compliance within thirty (30) days after the date of notice of such non-compliance from IDA;

(e) **Environmental Compliance**

to carry out, operate and maintain for the term of the Lease UMEME's business in Uganda and the Concession Project, including the Minimum Distribution Investment Commitment, in compliance with applicable environmental Laws of Uganda and Consents (relating to environmental compliance); *provided that* no breach of this covenant shall result if UMEME remedies any non-compliance within thirty (30) days after the date of notice of such non-compliance from IDA; and

(f) **Provision of Information**

to keep IDA promptly (or with such other regularity as IDA and UMEME may otherwise agree in writing) informed and provide relevant copies of:

- (i) any notice of assignment or transfer of any rights or obligations of UMEME or the Escrow Agent under the IDA-Supported L/C or the Escrow Agreement; and
- (ii) any material notification received from the Escrow Agent or provided by UMEME in accordance with the IDA-Supported L/C or the Escrow Agreement, including each draft under the IDA-Supported L/C and each Withdrawal Certificate under the Escrow Agreement, or provided by UMEME in accordance with the Lease Agreement.

7. **Remedies**

If UMEME breaches any of its representations, covenants or other obligations under this Agreement and such breach is continuing, IDA shall have the right to: (i) notify the L/C Issuing Bank that IDA shall have no liability to make any payments to the L/C Issuing Bank for amounts due to the L/C Issuing Bank from UEDCL under the Reimbursement and Credit Agreement for any Advances made by the L/C Issuing Bank under the IDA-Supported L/C after receipt by the L/C Issuing Bank of such notice from IDA; and (ii) to

deny any withdrawal requested by UMEME under the Amendment to the Development Credit Agreement for disbursement to the Escrow Account following the expiration of the IDA-Supported L/C. If IDA has issued a notice to the L/C Issuing Bank under Sub-section 7(i) above and UMEME subsequently remedies the breach in respect of which such notice was issued, IDA will promptly notify the L/C Issuing Bank of such remedy in accordance with Article 8(2) of the Conditions to the IDA Commitment Agreement. Except for any breach of UMEME's obligations under Section 2 (*Support and Other Fees*), Section 8 (*Indemnity and Costs and Expenses*) or Section 15 (*Governing Law and Dispute Resolution*) of this Agreement, IDA shall have no further recourse for any breach by UMEME of any of its representations, covenants or other obligations under this Agreement.

8. **Indemnity and Costs and Expenses**

UMEME shall indemnify and reimburse IDA promptly on demand in respect of:

- (a) all reasonable out-of-pocket costs and expenses (including reasonable fees of legal counsel, consultants and advisors, and traveling costs and expenses) incurred by IDA in connection with:
 - (i) IDA's action in preparation for the exercise of or the actual exercise, enforcement, or preservation of any of IDA's rights or interests under this Agreement or the IDA Commitment Agreement, or any other document or instrument related hereto or thereto, in any arbitral proceedings or at law; *provided that*, in the event an arbitral award issued pursuant to Section 15 (*Governing Law and Dispute Resolution*) award restricts the costs and expenses to which IDA is entitled, UMEME's liability pursuant to this provision shall be limited to the amount of such costs and expenses allowed under the arbitral award; *and*
 - (ii) the consideration of any requests for IDA's consent to any amendment or waiver of a right under this Agreement or any other IDA Agreement, or other documents or instruments related thereto (including the Privatization Agreements), whereby such waiver or consent is necessary or required, each as a result of amendments and/or waivers proposed or consented to by UMEME;

provided that, UMEME shall not be liable to pay for any traveling costs and expenses incurred by IDA in connection with ongoing supervision visits undertaken by IDA.

9. **Credit Drawing upon Non-renewal or Non-replacement of IDA-Supported L/C**

In the event that the IDA-Supported L/C is not renewed or replaced upon the expiration of its then-current term, UMEME may, by issuing a demand to IDA in, or substantially in, the form set out in Schedule I (an "*IDA Credit Demand*"), request a disbursement from the Credit (an "*IDA Credit Drawing*") in an amount up to, but not exceeding, that

amount of the IDA-Supported L/C available for drawing immediately prior to its expiration. UMEME agrees that all funds disbursed by IDA pursuant to an IDA Credit Demand shall be paid directly into the Escrow Account. IDA shall make payment of the amount requested in the IDA Credit Demand on the date of expiration of the IDA-Supported L/C provided such IDA Credit Demand is received by IDA on or before the date that is eight (8) Business Days for IDA prior to the expiration of the IDA-Supported L/C. If the IDA Credit Demand is received by IDA after such date, IDA shall make payment on the date that is eight (8) Business Days for IDA after receipt by IDA of the IDA Credit Demand.

10. IDA Undertaking

IDA agrees that it shall not make any material change, variation, modification or amendment to the IDA Commitment Agreement or to the Development Credit Agreement, as amended by the Amendment to the Development Credit Agreement if such change has or is reasonably likely to have a material adverse effect on UMEME, unless UMEME has provided its prior written consent to such change, variation, modification or amendment; and to notify UMEME of any such proposed change, variation, modification or amendment to the IDA Commitment Agreement or the Development Credit Agreement.

11. Notices

- (a) All notices or other communications to be given or made hereunder shall be in English and in writing, shall be addressed for the attention of the persons indicated below and shall be delivered personally or sent by courier or facsimile. The addresses of UMEME and IDA and their respective facsimile numbers shall be:

If to UMEME:

Umeme Limited
SM Chambers
36 Nile Avenue
P.O. Box 3213
Kampala, Uganda
Facsimile: +256-41-230-388
Telephone: +256-41-360-744

With a copy to:

Globeleq Ltd
2 More London Riverside
London SE1 2JT
United Kingdom
Attention: Luka Buljan
Facsimile: +44-20-7234 5432
Telephone: + 44-20-7234 5431

and

Eskom Enterprises (Pty) Ltd
P.O. Box 40712
Cleveland
Johannesburg
2022 Republic of South Africa
Attention: Joe Strydom
Facsimile: +27-11-800-3974
Telephone: +27 11 800 5780

If to IDA:

Manager (Africa Energy Department)
The World Bank
1818 H Street, N.W.
Washington, D.C. 20433
United States of America
Facsimile: 1-202-473-7916
Telephone: 1-202-473-3792

With a copy to:

Manager (Project Finance and Guarantees Department)
The World Bank
1818 H Street, N.W.
Washington, D.C. 20433
United States of America
Telephone: 1-202- 473-1235
Facsimile: 1-202-522-0761

Except as otherwise expressly provided in this Agreement, all notices shall be deemed to be delivered (i) when delivered by hand or by overnight courier or (ii) if received during business hours on a Business Day for the receiving party, when transmitted by facsimile to the receiving party's facsimile number and, if received

after business hours or on a day that is not a Business Day for the receiving party, on the receiving party's first Business Day following the date transmitted by facsimile to the receiving party's facsimile number. Any notice given by facsimile shall be confirmed in writing, delivered personally or sent by courier, or by return facsimile.

- (b) Any party may by thirty (30) calendar days' prior written notice to the other party change the address, addressee and/or facsimile number to which such notices and communications to it are to be delivered or mailed.

12. **Severability of Provisions**

If any provision of this Agreement is or becomes prohibited, illegal, invalid, or unenforceable in any jurisdiction, such prohibition, illegality, invalidity, or unenforceability shall not affect or impair the legality, validity, or enforceability of the remaining provisions nor the legality, validity, or enforceability of such provisions in any other jurisdiction.

13. **Amendment**

This Agreement may only be amended in writing signed by the duly authorized representatives of the parties hereto.

14. **Separate Contractual Rights**

Nothing in this Agreement shall limit or restrict the rights of IDA or UMEME pursuant any other agreement.

15. **Governing Law and Dispute Resolution**

- (a) This Agreement shall be governed by and construed in accordance with the laws of England.
- (b) The parties agree that any dispute arising out of or in connection with this Agreement which cannot be amicably settled within thirty (30) calendar days after one party gives the other party written notice of the dispute, shall be settled by arbitration as follows:
 - 1. The dispute shall be finally settled by arbitration before a tribunal (the "*Arbitration Tribunal*") conducted in accordance with the rules of the United Nations Commission on International Trade Law (UNCITRAL) as in effect on the date of this Agreement (the "Rules"). The arbitration proceedings shall be conducted, and the award shall be rendered, in the

English language. In the event of a difference between the Rules and the terms of this Agreement, the terms of this Agreement shall govern.

2. Unless the parties otherwise agree, the number of arbitrators shall be three. Each party shall select one arbitrator within thirty (30) calendar days of a request by a party for arbitration pursuant to this Section 15(b). The two arbitrators thus appointed shall, within thirty (30) calendar days of the selection of the second arbitrator, select a third arbitrator to serve as the chairperson of the Arbitration Tribunal for resolution of the dispute. If the two arbitrators so appointed fail to timely select a third arbitrator to serve as a chairperson, such arbitrator shall be appointed by the London Court of International Arbitration in accordance with the Rules.
3. Any arbitral award under this Section 15(b) shall be final and binding upon the parties and shall be the sole and exclusive remedy between the parties regarding all disputes, and each party undertakes to comply with and to carry out any such arbitral award, fully and without delay.
4. This Agreement and the rights and obligations of the parties hereunder shall remain in full force and effect pending the award in any arbitration proceeding instituted hereunder.
5. Until such time as any arbitral proceedings begun pursuant to this Section 15(b) have been finally concluded, each party irrevocably agrees not to initiate any proceedings, file any action or suit in any court of competent jurisdiction or before any judicial or other authority arising under, out of, in connection with or relating to this Agreement, the arbitration agreements set forth in this Section 15(b), or any subject matter which is the subject matter of the arbitral proceeding begun pursuant to this Section 15(b).
6. Any arbitration shall be conducted in London, England.
7. The arbitration agreement set forth in this Section 15(b) shall be treated as an agreement independent of and separable from the other terms of this Agreement and, accordingly, a determination or ruling by an arbitral tribunal properly constituted pursuant to this Section 15(b) that this Agreement or any provision hereof (other than this Section 15(b)) is invalid, illegal or unenforceable, shall not invalidate the arbitration agreement set forth in this Section 15(b).
8. The Arbitration Tribunal may, with the consent of the parties given at the time of the filing of a dispute or at any time during the proceedings prior to an award being issued, consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to

any of the Privatization Agreements if the subject matter of the disputes arises out of or relates to essentially the same facts or transactions. Such consolidated arbitration shall be determined by the Arbitration Tribunal appointed for the arbitration proceeding that was commenced first in time.

- (c) Nothing in this Agreement shall operate as or be construed to constitute a waiver, renunciation or any other modification of any privilege or immunity of IDA under Article VIII of its Articles of Agreement or under any applicable law.

16. Effective Date and Termination

This Agreement shall come into full force and effect on its date of signature. This Agreement shall terminate upon: (a) the expiration or termination of the IDA Commitment Agreement; (b) IDA's payment in full of the IDA-Supported Loan Amount; and (c) the withdrawal by UMEME under the Amendment to the Development Credit Agreement of amounts eligible for withdrawal under such Section for disbursement to the Escrow Account following the expiration of the IDA-Supported L/C; *provided* that the provisions of Section 8 (*Indemnity and Costs and Expenses*) and Section 15(b) (*Governing Law and Dispute Resolution*) shall survive any termination of this Agreement.

17. Execution in Counterparts

This Agreement may be executed in two counterparts and both of such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed as a deed under seal by their duly authorized representatives on the date first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Judy O'Connor
Authorized Representative

UMEME LIMITED

By /s/ Luka Buljan
Managing Director

SCHEDULE I

FORM OF IDA CREDIT DEMAND

To: International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Attention: Loan Department

Facsimile: 1-202-522-1645

with a copy to: Uganda Electricity Distribution Company Limited
Amber House
Plot 29/33 Kampala Road
PO Box 7390
Kampala, Uganda

Attention: Managing Director

Facsimile: 256 41 255600

and to: Ministry of Finance
PO Box 8147
Kampala, Uganda

Attention: The Permanent Secretary/Secretary to the Treasury

Facsimile: 256 41 234 700/9

Ladies and Gentlemen,

IDA CREDIT DEMAND NOTICE

pursuant to: (a) the Uganda Distribution Concession Project Agreement between UMEME Limited and the International Development Association dated _____, 2005, Number 3411 UG; and (b) the Amending Agreement to the Development Credit Agreement (Privatization and Utility Sector Reform Project), between the Republic of Uganda and the International Development Association dated _____, 2005, Number 3411 UG

1. The Project Agreement

We refer to the Uganda Distribution Concession Project Agreement between UMEME Limited (“*UMEME*”) and the International Development Association (“*IDA*”) dated _____, 2005, Number 3411 UG (the “*Project Agreement*”).

2. Definitions

Unless defined in this document or the context requires otherwise, all capitalized terms contained herein shall have the meanings given to them in the Project Agreement.

3. IDA Credit Drawing

We request an IDA Credit Drawing in the amount of _____ from the Credit pursuant to Section 9 (*Credit Drawing upon Non-renewal or Non-replacement of IDA-Supported L/C*) of the Project Agreement and as permitted pursuant to the Amendment to the Development Credit Agreement. We certify that we have not requested any Advance in respect of any portion of such amount under the IDA-Supported L/C.

4. Account Details

Please pay the IDA Credit Drawing to the following account:

Accountholder’s Name: _____

Account Name: _____

Account Number: _____

Account Bank: _____

Account Bank Branch Number & Contact Details: _____

5. Certification

We certify that:

- (a) we have received a notice from the L/C Issuing Bank that the IDA-Supported L/C has not been renewed, a copy of which is attached hereto and that we have not found a replacement or successor L/C Issuing Bank;
- (b) we have not and will not submit a draft under the IDA-Supported L/C for the amount we are requesting to draw under this IDA Credit Demand Notice; and
- (c) we are entitled to issue this IDA Credit Demand pursuant to Section 9 of the Project Agreement and the Amendment to the Development Credit Agreement for the purpose of the funds being deposited into the Escrow Account.

6. Accompanying Documents

Notice of non-renewal, pursuant to Clause 9 of the IDA-Supported L/C, by Citibank Uganda Limited in its capacity as L/C Issuing Bank.

Dated: [*insert date*]

Signed by: _____

(Printed Name of Signatory: _____)

for and on behalf of UMEME Limited.