**Dated** 23 May **2019**

**GUARANTCO LTD**

and

**THE TRUSTEES OF THE PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP TRUST**

and

**NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V.**

and

**THE PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP LIMITED**

---

# SUBSCRIPTION AGREEMENT (No. 9)

relating to shares in GuarantCo Ltd

---

## CONTENTS


1. INTERPRETATION ..... 3
2. PURPOSE AND USE OF FUNDS ..... 8
3. CONDITIONS PRECEDENT TO SUBSCRIPTION ..... 8
4. SUBSCRIPTION ..... 9
5. WARRANTIES / UNDERTAKINGS ..... 10
6. COMPLETION ..... 15
7. CONFIDENTIALITY ..... 15
8. DISPUTES ..... 16
9. NOTICES ..... 17
10. GENERAL ..... 19

SCHEDULE 1 ..... 21

SCHEDULE 2 ..... 22

SCHEDULE 3 ..... 23

**THIS AGREEMENT** is made on 2019

**BETWEEN**

(1) **GUARANTCO LTD,** a private company limited by shares and incorporated under the laws of Mauritius with registered number 58185 whose registered office is at Level 3, Alexander House, 35 Cybercity, Ebène 72201, Mauritius ("**GuarantCo**"); and

(2) **SG KLEINWORT HAMBROS TRUST COMPANY (UK) LTD.** of 5th Floor, 8 St James's Square, London SW1Y 4JU, England, **MULTICONSULT TRUSTEES LTD**. of Les Cascades Building, Edith Cavell Street, Port Louis, Mauritius, and **MINIMAX LTD**. of Les Cascades Building, Edith Cavell Street, Port Louis, Mauritius, as trustees of the **PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP TRUST**, a trust created under the laws of Mauritius (the "**PIDG Trust**"); and

(3) **NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V.**, a public company incorporated under the laws of The Netherlands whose registered address is at Anna van Saksenlaan 71, 2593 HW Den Haag, The Netherlands ("**FMO**"); and

(4) **THE PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP LIMITED,** a company incorporated under the laws of England whose registered office is at 6 Bevis Marks, London EC3A 7BA with registered number 11265124 ("**PIDG Ltd").**

**INTRODUCTION**

(A) GuarantCo (which was originally established in the UK in 2003 before being moved to Mauritius in 2005) has been established for the purpose set out in Clause 2.1.

(B) The initial equity funding of GuarantCo was raised from the PIDG Trust which, following further subscriptions for Shares pursuant to subscription agreements dated 17 October 2005, 23 November 2006, 20 April 2010 (as amended by an Amendment No.1 dated 29 September 2010), 17 June 2011, May 2013, 24 October 2014 (as amended by Amendment No. 1 dated 26 May 2016 and Amendment No. 2 dated 4 July 2017), 20 January 2017 and 14 December 2017 has subscribed for the aggregate number of Shares as are set out against its name in Schedule 2.

(C) Further equity funding for GuarantCo has been raised from FMO which has subscribed pursuant to subscription agreements dated 23 November 2006 and 29 September 2010 for the aggregate number of shares as are set out against its name in Schedule 2.

(D) PIDG Ltd was incorporated on 20 March 2018 as a wholly owned corporate entity of the PIDG Trust to provide central management of PIDG (as defined below) including the administration of funding and financing for GuarantCo.

(E) On 30 November 2016 Kleinwort Benson Trustees Limited (registered in England and Wales with number 514879) signed an asset purchase agreement to purchase the majority of the assets of SG Hambros Trust Company Limited (this agreement did not include the PIDG Trust and its assets). Effective on 30 November 2016 the name of Kleinwort Benson Trustees Limited changed to SG Kleinwort Hambros Trust Company (UK) Limited. As a consequence, SG Hambros Trust Company Limited has retired as Principal Trustee of the PIDG Trust and in due course will be wound up. SG Kleinwort Hambros Trust Company (UK) Limited has become the Principal Trustee of the PIDG Trust by a Second Amended and Restated Declaration of Trust for the PIDG Trust dated 4 September 2018. As at the date of this Agreement, the existing shares in GuarantCo held for the PIDG Trust are still held by SG Hambros Trust Company Ltd, Multiconsult Trustees Ltd and Minimax Ltd on trust for the PIDG Trust and will be transferred to SG Kleinwort Hambros Trust Company (UK) Ltd, Multiconsult Trustees Ltd and Minimax Ltd as current trustees of the PIDG Trust in due course. All shares under this Agreement will be issued to SG Kleinwort Hambros Trust Company (UK) Ltd, Multiconsult Trustees Ltd and Minimax Ltd as trustees of the PIDG Trust.

(F) The PIDG Trust wishes to subscribe and record subscriptions for additional Shares in the capital of GuarantCo on the terms and subject to the conditions set out in this Agreement with funding provided by DGIS (as defined in clause 1.1 below).

**IT IS AGREED** as follows:

## 1. INTERPRETATION

1.1 In this Agreement:

1.1.1 **"2018 DGIS Conditional Loan Agreement"** means the conditional loan agreement for multiple PIDG activities entered into between DGIS, PIDG Ltd and the PIDG Trust dated 22 November 2018 pursuant to which DGIS has agreed to make available to the PIDG Trust an interest free loan for PIDG Ltd to allocate to the activities of PIDG. PIDG Ltd expects to allocate up to US$8,000,000 (or such other amount as may be agreed between the parties thereto) to enable the PIDG Trust to subscribe for Shares;

1.1.2 "**Accounting Period**" means the accounting period of GuarantCo commencing each year on 1 January and ending on the following 31 December;

1.1.3 "**Accounts**" means at any time the latest available audited accounts of GuarantCo and the latest available management accounts of GuarantCo;

1.1.4 "**Board**" means the board of directors of GuarantCo, and "**Director**" means any member of the Board;

1.1.5 "**Business Day**" means a day (other than a Saturday or Sunday) on which banks are generally open for normal business in Amsterdam, London and Mauritius;

1.1.6 "**Completion**" means the implementation of the matters described in Clause 6;

1.1.7 "**Conditions**" means the conditions precedent referred to in Clause 3;

1.1.8 "**Constitution**" means the constitution of GuarantCo for the time being;

1.1.9 "**DFAT**" means the Australian Department of Foreign Affairs and Trade;

1.1.10 "**DFID**" means the Government of the United Kingdom acting through the Secretary of State for International Development at the Department for International Development;

1.1.11 "**DGIS**" means the Government of the Netherlands represented by the Directorate-General for International Cooperation – The Netherlands Minister for Foreign Trade and Development Cooperation of Ministry of Foreign Affairs Netherlands;

1.1.12 "**Financial Year**" means 1 January to 31 December in each year (or such other period as may be approved by GuarantCo with the prior written consent of PIDG Ltd);

1.1.13 "**FSC**" means the Financial Services Commission of Mauritius or any successor or replacement organisation or authority for the time being responsible for the regulation of the business of GuarantCo;

1.1.14 "**Funding Instrument**" shall mean the 2018 DGIS Conditional Loan Agreement as amended from time to time;

1.1.15 "**GuarantCo Owners**" means the PIDG Owners that fund GuarantCo, which at the date of this Agreement are DFID, FMO, SECO, Sida, DGIS and DFAT, and any additional GuarantCo Owner from time to time;

1.1.16 "**IFRS**" means the International Financial Reporting Standards issued by the International Accounting Standards Board, as amended from time to time;

1.1.17 "**Management Agreement**" means the management agreement dated 9 May 2016 between GuarantCo and the Manager as extended, amended and supplemented from time to time;

1.1.18 "**Manager**" means GuarantCo Management Company Limited, a limited liability company organised and existing under the laws of England with

Company Registration No 10041968 whose registered office is at 6 Bevis Marks, London EC3A 7BA, England;

1.1.19 "**Material Adverse Effect**" means a material adverse effect (which is continuing) on GuarantCo's business, operations, assets, financial condition results or general affairs or on its ability to fulfil its obligations under this Agreement but in any event, not including any such material adverse effect which has been cured or remedied;

1.1.20 "**Needs Letter**" has the meaning assigned thereto in Clause 3.1.5;

1.1.21 "**PIDG**" means the Private Infrastructure Development Group;

1.1.22 "**PIDG Code of Conduct**" means the code of conduct approved by the PIDG Owners and PIDG Ltd from time to time and which all PIDG Companies and PIDG Ltd are required to adopt and incorporate into their governing documents as a minimum standard of conduct;

1.1.23 "**PIDG Company**" means a corporate entity (e.g. a private company limited by shares or a limited liability partnership) owned (either wholly or in part) by the PIDG Trust including GuarantCo but not including PIDG Ltd;

1.1.24 "**PIDG Operating Policies and Procedures**" means the operating policies and procedures approved by the PIDG Owners and PIDG Ltd from time to time (or equivalent policies and procedures) and which the PIDG Owners require all PIDG Companies and PIDG Ltd to adopt and incorporate into their governing documents as a minimum standard including the PIDG Procurement Policy and Guidelines, the PIDG Environmental and Social Policy and Procedures, the PIDG Anti-corruption and Integrity Policy and Procedures, the PIDG Disclosure Policy and Procedures, the PIDG Appointment and Evaluation of Directors Policy and Procedures, the PIDG Remuneration Policy and Procedures (including the PIDG Remuneration Framework), the PIDG Travel and Expense Reimbursement Policy and Procedures, the PIDG Conflict of Interest and Share Dealing Policy and Procedures, the PIDG Complaints Policy and Procedures, the PIDG Risk Management Policy and Procedures and the PIDG Due Diligence Policy and Procedures;

1.1.25 "**PIDG Owner**" means an organisation that has acceded to the memorandum of understanding for the PIDG dated 10 October 2013 and is a member of the PIDG;

1.1.26 "**PIDG Results Monitoring Handbook**" means the results monitoring handbook of the PIDG approved by PIDG Ltd (as at the date of this Agreement the most recent revision date was September 2013) as amended from time;

1.1.27 "**Purpose**" means the purpose of GuarantCo referred to in Clause 2.1;

1.1.28 "**Reorganisation Agreement**" means the agreement dated 29 June 2018 and entered into between, *inter alia,* the PIDG Trust, GuarantCo, PIDG Ltd and the GuarantCo Owners to implement the "Governance Framework" approved by the PIDG Owners in Sydney, Australia in November 2016;

1.1.29 "**SECO**" – the Swiss State Secretariat for Economic Affairs of the Government of the Confederation of Switzerland;

1.1.30 "**Second Amended and Restated GuarantCo Funders' Agreement**" means the second amended and restated agreement to be entered into on or about the date hereof between PIDG Ltd, FMO, the PIDG Trust and GuarantCo with regard to, inter alia, the funding and operation of GuarantCo and the regulation of certain Shareholder matters, as extended, amended and restated and supplemented from time to time;

1.1.31 "**Shares**" means ordinary shares of no par value in the capital of GuarantCo, having the rights and being subject to the restrictions set out in the Constitution;

1.1.32 "**Shareholder**" means the holder of any Share;

1.1.33 **"Sida"** means the Swedish Government, acting through the Swedish International Development Cooperation Agency;

1.1.34 "**Subscription**" means a subscription for Shares by the PIDG Trust pursuant to the terms hereof;

1.1.35 "**Subscription Amount**" means the amount so specified in any Subscription Request;

1.1.36 "**Subscription Date**" means the date specified in any Subscription Request;

1.1.37 "**Subscription Request**" means a completed, signed and dated written notice from GuarantCo to the PIDG Trust in the form set out in Schedule 3**;**

1.1.38 **"Total Available Commitment"** for any calendar year means the amount set out as the total available commitment from the PIDG Trust for such calendar year in Schedule 1 (as may be increased or decreased from time to time in accordance with the provisions of Clause 4.5); and

1.1.39 "**Unified Investment Policy**" means the investment policy for the PIDG Companies approved by PIDG Ltd and the PIDG Owners from time to time**;**

1.1.40 "**Warranties**" means the warranties contained in Clause 5.

1.2 Any express reference to any enactment (which includes any legislation in any jurisdiction) includes references to:

1.2.1 that enactment as re-enacted, amended, extended or applied by or under any other enactment before or after the date of this Agreement;

1.2.2 any enactment which that enactment re-enacts (with or without modification); and

1.2.3 any subordinate legislation (including regulations) made (before or after the date of this Agreement) under any enactment, as re-enacted, amended, extended or applied as described in Clause 1.2.1, or under any enactment referred to in Clause 1.2.2.

1.3 References to an "**agreement**" or "**document**" shall be construed as a reference to such agreement or document as the same may have been amended, varied, supplemented or novated in writing at the relevant time in accordance with the requirements of such agreement or document and, if applicable, of this Agreement with respect to amendments.

1.4 References to a "**person**" shall be construed so as to include any individual, firm, company, government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality).

1.5 References to any English legal term for any action, remedy, method or judicial proceeding, legal document, legal status, court, official, or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term.

1.6 References to "**US Dollars**" or "**US$**", are to the lawful currency from time to time of, the United States of America.

1.7 References to **"GBP"** or **"£"** are to the lawful currency from time to time of the United Kingdom.

1.8 Where there is any inconsistency between the definitions set out in this Clause and the definitions set out in any Clause or Schedule, then for the purposes of construing such Clause or Schedule, the definitions set out in such Clause or Schedule shall prevail.

1.9 The singular shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.

1.10 The index and the headings in this Agreement do not affect its interpretation.

1.11 Any Schedule or Appendix to this Agreement shall take effect as if set out in this Agreement and references to this Agreement shall include its Schedules and Appendices.

1.12 References to (i) a "**Party**" is to a party to this Agreement, and to (ii) "**Clauses**", "**Paragraphs**" and "**Schedules**" are references to the clauses, paragraphs and schedules of this Agreement.

1.13 Clauses 1.1 to 1.12 apply unless the contrary intention appears.

## 2. PURPOSE AND USE OF FUNDS

2.1 The purpose of GuarantCo is as set out in Clause 2 of the Second Amended and Restated GuarantCo Funders' Agreement.

2.2 Subject to Clause 3, the PIDG Trust agrees to subscribe at a subscription price of US $1 per Share for, and GuarantCo agrees to allot to the PIDG Trust, Shares for a maximum aggregate subscription price which shall in no circumstances exceed the figure set out in Schedule 1 of this Agreement in respect of the relevant year (subject to the provisions of Clause 4.1).

2.3 The subscription monies received by GuarantCo pursuant to Clause 2.2 shall be used exclusively by GuarantCo for the purpose set out in Clause 2.1, the 2018 DGIS Conditional Loan Agreement and as working capital in connection therewith and shall be applied in accordance with any relevant Subscription Request.

## 3. CONDITIONS PRECEDENT TO SUBSCRIPTION

3.1 The obligations of the PIDG Trust in respect of each Subscription are conditional on each of the following being fulfilled to PIDG Ltd.'s satisfaction (in both form and content):

3.1.1 the 2018 DGIS Conditional Loan Agreement and the Management Agreement remaining in full force and effect and there having been no breach of any such agreement and the effecting of this Agreement shall not cause any such breach to occur;

3.1.2 there having been no breach of: -

(a) any of the Warranties given by GuarantCo or FMO at any time hereunder; or

(b) any provision of the Unified Investment Policy (unless waived or approved in advance in writing by PIDG Ltd); or

(c) any provision of the PIDG Code of Conduct or the PIDG Operating Policies and Procedures (unless waived or approved in advance in writing by PIDG Ltd);

3.1.3 there having been no breach of any provision of this Agreement or the Second Amended and Restated GuarantCo Funders' Agreement and the Subscription shall not cause any such breach to occur;

3.1.4 each of this Agreement and the Second Amended and Restated GuarantCo Funders' Agreement remains in full force and effect;

3.1.5 receipt by PIDG Ltd of a needs letter in form and substance acceptable to PIDG Ltd in accordance with the provisions of the Second Amended and Restated GuarantCo Funders Agreement;

3.1.6 receipt by the PIDG Trust of sufficient funds from DGIS under the 2018 DGIS Conditional Loan Agreement to subscribe for the Shares as requested under the relevant Subscription Request; and

3.1.7 the proposed issue of Shares to the PIDG Trust pursuant to the terms hereof being approved (if necessary) (i) by the Board, and (ii) by ordinary resolution of Shareholders on the record as at the date thereof.

3.2 PIDG Ltd undertakes to provide to GuarantCo a declaration of effectiveness when the Conditions specified in Clause 3.1 have been fulfilled to its satisfaction.

3.3 PIDG Ltd may waive all or any of the Conditions in whole or in part at any time by notice in writing to GuarantCo. Any such waiver may be subject to further conditions.

3.4 Each of the Parties shall use all reasonable endeavours to assist in the fulfilment of the Conditions.

## 4. SUBSCRIPTION

4.1 Subject to Clause 3.1, and in reliance on the Warranties and other covenants and undertakings on the part of GuarantCo as set out in this Agreement, on receipt of a Subscription Request signed by GuarantCo and submitted to it by PIDG Ltd in accordance with Clause 4.3, the PIDG Trust shall on the relevant Subscription Date subscribe at a subscription price of US $1 per Share for, and GuarantCo shall allot to the PIDG Trust, such number of Shares as are represented by the relevant Subscription Amount, provided that the aggregate Subscription Amount under this Agreement shall not in any circumstances exceed the maximum subscription price referred to in Clause 2.2.

4.2 If the PIDG Trust makes a subscription in GBP, GuarantCo shall allot to the PIDG Trust such amount of Shares as result from the conversion of the Subscription Amount to US$ using such exchange rate as may be agreed between the Parties in advance of such Subscription, PROVIDED THAT the aggregate of all Subscriptions shall not exceed the maximum aggregate Subscription Amount set out in Schedule 1.

4.3 Subject to Clause 4.2, whenever PIDG Ltd desires the PIDG Trust to make a Subscription in GuarantCo, GuarantCo shall deliver to PIDG Ltd a completed, signed and dated Subscription Request to be received by PIDG Ltd not later than 12:00 pm (London time) 15 Business Days prior to the proposed Subscription Date (or such shorter time period as the PIDG Trust shall in its absolute discretion agree from time to time). Each Subscription Request shall attach copies of any documents required under this Agreement or the Second Amended and Restated GuarantCo Funders Agreement. PIDG Ltd shall submit a copy of the Subscription Request to the PIDG Trust upon receipt from GuarantCo in order to notify the PIDG Trust that it may be expected to subscribe for Shares if the relevant conditions precedent set out in Clause 3 have been fulfilled to PIDG Ltd.'s satisfaction or waived in accordance with Clause 3.3.

4.4 Subject to the terms of this Agreement, the PIDG Trust shall on the Subscription Date specified in the relevant Subscription Request pay the amount requested in full in cash in US Dollars or such other currency as the PIDG Trust may agree to the credit of GuarantCo at such bank as GuarantCo shall designate in the Subscription Request (and references to "payment in cash" shall include payment by means of electronic transfer of funds) PROVIDED THAT the aggregate of all subscriptions shall not exceed the maximum aggregate Subscription Amount set out in Schedule 1.

4.5 In the event that the total of all Subscription Amounts requested in any calendar year is less than the Total Available Commitment for such calendar year, the Total Available Commitment for the following calendar year shall be increased by such difference, subject to the approval of PIDG Ltd.

## 5. WARRANTIES / UNDERTAKINGS

5.1 The PIDG Trust, FMO, GuarantCo and PIDG Ltd each warrant to each other that in each case:

5.1.1 it has the requisite power and authority to enter into and perform this Agreement;

5.1.2 this Agreement constitutes valid and legally binding obligations on it in accordance with its terms;

5.1.3 compliance with the terms of this Agreement does not and will not conflict with or constitute a default under any provision of:

(a) any agreement or instrument to which it is a party; or

(b) its constitutional documents; or

(c) any order, judgment, injunction, or as far as it is aware any other restriction of any kind or character by which it is bound.

5.2 GuarantCo further warrants to the PIDG Trust and PIDG Ltd on the date of this Agreement and again on each Subscription Date that:

5.2.1 GuarantCo is a limited liability company and duly incorporated under the laws of Mauritius and has the corporate power to own its assets, conduct its business as described in clause 2.1 of this Agreement and to enter into, and comply with its obligations under, this Agreement;

5.2.2 this Agreement has been duly authorised and executed by GuarantCo and the obligations expressed to be assumed by it hereunder constitute valid and legally binding obligations of GuarantCo, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws of general applicability affecting the enforcement of creditors' rights generally;

5.2.3 neither the entry into this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which GuarantCo is a party or by which it is bound, or violate any of the terms or provisions of the Constitution or any authorisation, judgment, decree or order or any law or other rule or regulation applicable to GuarantCo;

5.2.4 GuarantCo has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated hereby. All authorisations required to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement and to make it admissible in evidence in its jurisdiction of incorporation have been obtained and are in full force and effect;

5.2.5 in any proceedings taken in its jurisdiction of incorporation in relation to any of this Agreement, the choice of English law as the governing law of this Agreement and any award obtained in England in relation to this Agreement will be recognised and enforced;

5.2.6 GuarantCo is not in breach of or in default under any agreement to which it is a party, or which is binding on it or any of its assets to an extent or in a manner which might result in a Material Adverse Effect;

5.2.7 all tax returns and reports of GuarantCo required by applicable law to be filed have been duly filed and all taxes, obligations, fees and other governmental charges upon GuarantCo, or its properties, or its income or assets, which are due and payable or to be withheld, have been paid or withheld, other than those presently payable without penalty or interest or

with respect to which the failure to pay has not resulted in or may reasonably be not expected to result in a Material Adverse Effect;

5.2.8 GuarantCo is not engaged in nor, to the best of its knowledge after due enquiry, threatened by, any litigation, arbitration or administrative proceedings which, if determined in a manner adverse to GuarantCo by a final non-appealable judgment or decision of a court, arbitral tribunal or administrative or other body would result in or may reasonably be expected to result in a Material Adverse Effect;

5.2.9 to the best of its knowledge and belief after due enquiry, GuarantCo is not in violation of any applicable law or regulation which has resulted in or may reasonably be expected to result in a Material Adverse Effect;

5.2.10 under the laws of Mauritius, it is not required that this Agreement be filed, recorded, or enrolled with any court or other authority in Mauritius or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated herein, save for the fact that registration would be required in order for the Agreement to be binding on third parties;

5.2.11 GuarantCo has not established a place of business in the United Kingdom;

5.2.12 the particulars of GuarantCo set out in Schedule 2 (as amended from time to time with the consent of PIDG Trust) are correct;

5.2.13 except as referred to in this Agreement or the Second Amended and Restated GuarantCo Funders' Agreement or the Reorganisation Agreement or as set out in the Constitution, no person has any right, contingent or otherwise, to subscribe for or otherwise to acquire any shares or other securities of GuarantCo;

5.2.14 the audited accounts of GuarantCo for the 12-month period to 31 December 2018 provide a true and fair view of the assets and liabilities (whether present or future, actual or contingent) and state of affairs and financial position of GuarantCo as at 31 December 2018 and of the profits and losses of GuarantCo for the period in respect of which they have been prepared; and

5.2.15 the management accounts of GuarantCo for the period to 31 March 2019 have been prepared with due care and attention, on bases consistent with those adopted in the preparation of previous management accounts of GuarantCo (except where changes were required as a result of the implementation of IFRS 9) and show with reasonable accuracy the assets and liabilities (whether present or future, actual or contingent) and state of affairs and financial position of GuarantCo as at 31 March 2019 and of the

profits and losses of GuarantCo for the period in respect of which they have been prepared.

5.3 GuarantCo hereby undertakes to the PIDG Trust and PIDG Ltd that:

5.3.1 it will at all times conduct its business in accordance with the Unified Investment Policy, the Second Amended and Restated GuarantCo Funders' Agreement, the PIDG Code of Conduct, the PIDG Operating Policies and Procedures and the Reorganisation Agreement, and comply with OECD Principles of Corporate Governance issued from time to time to the extent applicable for GuarantCo;

5.3.2 it will procure that the audited financial statements it produces in respect of each Accounting Period are prepared in accordance with IFRS;

5.3.3 it will not enter into any transaction with any person other than in the ordinary course of its business on the basis of arm's length arrangements;

5.3.4 it will ensure that procurement of goods and services are made, governed by and affected in accordance with competitive bidding procedures in accordance with the PIDG Procurement Policy and Guidelines;

5.3.5 internal procedures and controls have been instituted for the purpose of preventing the Manager and GuarantCo from becoming an instrument for money laundering, the financing of terrorist activities, fraud or other corrupt or illegal purposes or practices;

5.3.6 it will provide to PIDG Ltd the documentation and information in the Second Amended and Restated GuarantCo Funders' Agreement and in the case of items 9.1 (iii) and (viii) therein (the PIDG Trust management accounts and audited accounts) provide such assistance to the PIDG Trust and PIDG Ltd as is within GuarantCo's control;

5.3.7 it will retain or cause to be retained until at least seven (7) years after the PIDG Trust has received the audit report for the fiscal year in which the last Subscription was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing GuarantCo's expenditures and ensure that such records and accounts are included in the annual audit of GuarantCo and enable the representatives of PIDG Trust, PIDG Ltd and the GuarantCo Owners to examine such records and accounts of GuarantCo;

5.3.8 it will obtain and retain in force (and where appropriate renew in a timely manner) or procure, where relevant, the obtaining or maintenance of all authorisations, the failure of which to obtain or maintain may reasonably be expected to result in a Material Adverse Effect and comply with all the conditions and restrictions contained in, or imposed upon, GuarantCo by

5.3.9 it will comply with all the reporting requirements set out in the Second Amended and Restated GuarantCo Funders Agreement and the Reorganisation Agreement.

5.4 Each of the Warranties set out in this Clause 5 is separate and independent.

5.5 In this Clause the following additional definitions and rules of interpretation apply:

**"Claim"** means a claim under the Warranties;

**"Substantiated Claim"** means a Claim in respect of which liability is admitted by the party against whom such Claim is brought, or which has been adjudicated upon by an arbitrator(s) or a Court of competent jurisdiction and no right of appeal lies in respect of such adjudication or the parties are debarred by passage of time or otherwise from making appeal;

A Claim is **"connected"** with another Claim or Substantiated Claim if they all arise out of the occurrence of the same event or relate to the same subject matter.

5.5.1 This Clause limits the liability of each Party in relation to any Claim.

5.5.2 The liability of each Party for all Substantiated Claims against it, when taken together, will not exceed such sum as has actually been subscribed by the PIDG Trust for Shares pursuant to this Agreement, and no Party shall be entitled to recover damages or otherwise obtain reimbursement or restitution more than once in respect of the same loss.

5.5.3 No Party will be liable for a Claim unless:

(a) the amount of a Substantiated Claim, or of a series of connected Substantiated Claims of which that Substantiated Claim is one, exceeds ten thousand US Dollars (US $10,000);

(b) the amount of all Substantiated Claims that are not excluded under Clause 5.5.3(a) when taken together exceeds fifty thousand US Dollars (US $50,000) in which case, the whole amount (and not just the amount by which the limit in this sub-clause is exceeded) is recoverable.

5.5.4 No Party is liable for any Claim to the extent that the Claim relates to any matter specifically and fully provided for in the Accounts.

5.5.5 No Party is liable for a Claim unless the Party making the Claim has given notice in writing of the Claim to the Party against which the Claim is made, specifying in reasonable detail the nature of the Claim and the amount claimed, within the period (as the case may be) of one (1) year beginning with the date of this Agreement or, in respect of any Warranty given by GuarantCo to the PIDG Trust and PIDG Ltd pursuant to Clause 5.2, one

(1) year beginning with the date of each Subscription by the PIDG Trust hereunder.

5.5.6 Nothing in this Clause applies to a Claim that arises or is delayed as a result of dishonesty, fraud or wilful concealment by a Party against whom the Claim is made or by its agents or advisers.

## 6. COMPLETION

6.1 Subject to Clause 4, completion of each Subscription shall take place on the Subscription Date set out in the relevant Subscription Request at such time and place as the Parties shall agree.

6.2 At completion of each Subscription, GuarantCo shall, in accordance with Clause 3.1.7, procure that meetings of the Board (and, if necessary, of the Shareholders) are held or written resolutions passed at/by which it is resolved that subject to receipt of the relevant subscription moneys by GuarantCo:

6.2.1 the PIDG Trust shall be allotted the number of Shares set out in the relevant Subscription Request; and

6.2.2 the PIDG Trust shall be entered in the register of members of GuarantCo as the holders of such Shares allotted to it and share certificates shall be issued accordingly in accordance with the provisions of Clause 6.3 below.

6.3 Following completion of the matters referred to in Clause 6.2:

6.3.1 the PIDG Trust shall pay GuarantCo in full for the Shares allotted to it in immediately available funds in accordance with Clause 4.4; and

6.3.2 a certificate for the Shares allotted shall be delivered to the PIDG Trust.

## 7. CONFIDENTIALITY

7.1 Subject to Clause 7.2, the PIDG Trust, FMO and PIDG Ltd undertake to GuarantCo, and the PIDG Trust and PIDG Ltd shall procure that the GuarantCo Owners and all other PIDG Owners shall undertake to GuarantCo, that they shall keep confidential all information of a secret or confidential nature received by them relating to GuarantCo (it being understood that this Agreement, the Funding Instrument and the Second Amended and Restated GuarantCo Funders' Agreement shall not be confidential).

7.2 Clause 7.1 does not apply to the disclosure of information:

7.2.1 pursuant to the PIDG Disclosure Policy and Procedures;

7.2.2 to the extent that such information comes into the public domain (other than through a breach of this Clause 7) or as required by law (including

the UK Freedom of Information Act 2000) or by any court or the FSC or any other regulatory body; or

7.2.3 to any of PIDG Ltd and/or the PIDG Trust's trustees, officers and employees and its and their professional advisers provided that any such disclosure is made on the basis that the information is treated as confidential by the recipient and used by him only for the purpose for which it was disclosed.

## 8. DISPUTES

8.1 **Governing Law:** This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with this Agreement, including any question regarding its existence, validity, termination or enforceability (a "**Dispute**") shall be resolved in accordance with the laws of England.

8.2 **Amicable Settlement:** If any Dispute arises between any of the Parties, they shall use all reasonable endeavours to resolve the matter amicably. If one Party gives any other Party notice that a material Dispute has arisen, and the Parties are unable to resolve such Dispute within thirty (30) days of service of such notice, then such Dispute shall be referred to the respective chairmen or chief executives or their equivalents of the Parties in dispute. No Party shall resort to arbitration against any other Party under this Agreement until at least thirty (30) days after such referral. This shall not affect a Party's right, where appropriate, to seek interim relief.

8.3 **Arbitration:** All Disputes which are unresolved by the chairmen or chief executives or their equivalents pursuant to Clause 8.2, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (**"LCIA"**) Rules, which Rules are deemed to be incorporated herein.

8.4 **Constitution and Language:** Arbitration under the LCIA Rules shall consist of one arbitrator who shall be either a barrister or a solicitor admitted to practice in England and Wales for at least fifteen (15) years. The parties to an arbitration under this Agreement shall attempt to agree the arbitrator within twenty (20) days of the commencement of the arbitration. Failing such agreement, the sole arbitrator shall be appointed by the LCIA Court. The seat of the arbitration shall always be, and all arbitration proceedings shall be in London, England (though if the parties to an arbitration agree, any arbitration proceeding may be held in such other venue as may be mutually convenient). The language of the arbitration shall be English.

8.5 **Appeals:** None of the Parties shall make an application pursuant to Sections 45 or 69 of the Arbitration Act 1996. The decision of the arbitrator shall be final and binding and non-appealable.

8.6 **Aid to Arbitration:** All Parties irrevocably submit to the non-exclusive jurisdiction of the courts of England to support and assist the arbitration process pursuant to

Clause 8.3 including, if necessary, the grant of interlocutory relief pending the outcome of that process.

8.7 **Agent:** Each Party not resident in the United Kingdom hereby appoints the party set out against its name below as its agent for the service of process in England for any Dispute, service upon whom shall be deemed completed whether or not forwarded to or received by the relevant appointer:

**GuarantCo:**

GuarantCo Management Company Limited
6 Bevis Marks
London EC3A 7BA
United Kingdom

**The PIDG Trust**

c/o SG Kleinwort Hambros Trust Company (UK) Limited
5th Floor
8 St James's Square
London
SW1Y 4JU
United Kingdom

**FMO:**

Royal Netherlands Embassy
38 Hyde Park Gate
London
SW7 5DP
United Kingdom

## 9. NOTICES

9.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be made to the relevant address set out below (a) by personal hand delivery; or (b) by post, postage prepaid, by the quickest mail available and by registered mail if available; or (c) by email. Any notice or communication shall be deemed to have been received (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (b) if sent by post and/or by registered mail at 9.00 am on the tenth Business Day after posting or at the time recorded by the delivery service; and (c) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 9.1, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

9.2 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9.3 The addresses referred to in Clause 9.1 are:

9.3.1 **GuarantCo**:

c/o Intercontinental Trust Limited
Level 3
Alexander House
35 Cybercity
Ebene 72201
Mauritius

Email: guarantcoadmin@intercontinentaltrust.com
FAO: Company Administrator - GuarantCo Ltd

9.3.2 **The Trustees of the PIDG Trust:**

c/o SG Kleinwort Hambros Trust Company (UK) Limited
5th Floor
8 St James's Square
London
SW1Y 4JU

Email: Rachel.iles@sghambros.com
FAO: Rachel Iles

9.3.3 **FMO:**

Anna van Saksenlaan 71
PO Box 93060
2509 AB
The Hague
The Netherlands

Email: T.Blokland@fmo.nl
FAO: Tessa Blokland

9.3.4 **PIDG Ltd**

6 Bevis Marks
London EC3A 7BA
United Kingdom

E-mail: diane.harris@pidg.org

FAO: The Company Secretary, PIDG Ltd

9.4 A notice or other communication received on a day other than a Business Day, or after business hours, in the place of receipt shall be deemed to be given on the next following Business Day in such place.

## 10. GENERAL

10.1 Each of the Parties shall, to the extent permitted by law, from time to time do or procure all things as may be required to give effect to this Agreement and to all other agreements referred to in this Agreement, including, without limitation, the execution of all deeds and documents, procuring the convening of all meetings, the giving of all necessary waivers and consents, the passing of all resolutions and otherwise exercising all powers and rights available to them to ensure that the Shareholders and any Directors of GuarantCo appointed by them (or their alternates) give effect to the terms of this Agreement.

10.2 No Party shall make or permit any person connected with it to make any announcement concerning this Agreement or any ancillary matter before, on or after the date of this Agreement except as required by law or any regulatory body.

10.3 The Parties shall each bear their own costs and expenses incurred in relation to the preparation, negotiation and execution of this Agreement and all ancillary matters.

10.4 This Agreement and the documents referred to in it contain the whole agreement between the Parties relating to the transactions contemplated by this Agreement and supersede all previous agreements between the Parties relating to these transactions.

10.5 This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any Party may enter into this Agreement by executing a counterpart.

10.6 No amendment or variation of this Agreement or any provision of this Agreement shall be effective unless it is in writing and duly executed by or on behalf of all the Parties.

10.7 None of the rights or obligations under this Agreement may be assigned or transferred without each Party's written consent.

10.8 Any Party may release or compromise in whole or in part any liability of the other Parties under this Agreement or grant any of them any time or other indulgence, but any such action shall not affect any other liability of such other Parties hereunder.

10.9 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor constitute any Party the agent of any other Party for any purpose.

10.10 The provisions contained in each Clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others is invalid; if any provision is void but would be valid if some part of it

were deleted, the provision shall apply with such modification as may be necessary to make it valid.

10.11 In giving any opinion, approval, consent or waiver or refusing any opinion, approval, consent or waiver under this Agreement, the PIDG Trust and/or PIDG Ltd may act entirely at its discretion except where explicitly stated otherwise in this Agreement.

10.12 Time is not of the essence in relation to any obligations under this Agreement unless:

10.12.1 time is expressly stated to be of the essence in relation to that obligation;

10.12.2 one Party fails to perform an obligation by the time specified in this Agreement and another Party serves a notice on the defaulting Party requiring it to perform the obligation by a specified time and stating that time is of the essence in relation to that obligation.

10.13 The language of this Agreement is English and all notices, demands, requests, statements, certificates or other documents or communications shall be in English unless otherwise agreed in writing.

10.14 Save where expressly stated to the contrary, the Contracts (Rights of Third Parties) Act 1999 of England and Wales shall not apply to this Agreement.

**THIS AGREEMENT** has been signed by the Parties or their duly authorised representatives on the date which appears on the first page of this Agreement

**SCHEDULE 1**

**THE PIDG TRUST SUBSCRIPTION**

| | A | B | C | D | E |
|---|---|---|---|---|---|
| | **2018** | **2019** | **2020** | **2021** | **Total** |
| **Total Available Commitment** | $2m* | $2m* | $2m* | $2m* | US$8m* |

*Indicative amounts to be disbursed under the 2018 DGIS Conditional Loan Agreement, subject to proof of need by GuarantCo and allocation of the funding by PIDG Ltd to GuarantCo.

## SCHEDULE 2

## PARTICULARS OF THE COMPANY

**(As at the date of this Agreement)**

| | |
|---|---|
| **Share Capital:** | |
| Class | Ordinary shares of no-par value |
| Issued | 310,073,174.8 |
| **Shareholders:** | |
| Name | Number of Shares: |
| SG Hambros Trust Company Ltd (pending proposed share transfer to SG Kleinwort Hambros Trust Company (UK) Ltd), Multiconsult Trustees Ltd. and Minimax Ltd as trustees of the Private Infrastructure Development Group Trust | 276, 073,174.8 |
| Nederlandse Financierings-Maatschappij Voor Ontwikkelingslanden N.V | 34,000,000.00 |
| **Directors:** | Yukiko Omura, Layth Al-Falaki, Rajkamal Taposeea, Patrice Maveyraud, Cyril Wong |
| **Secretary:** | Intercontinental Trust Limited |
| **Registered office:** | Level 3<br>Alexander House<br>35 Cyber City<br>Ebène 72201<br>Mauritius |
| **Company number:** | 58185/ C1/ GBL |
| **Date of incorporation:** | 25 August 2005 |
| **Accounting reference date:** | 31 December |
| **Auditors:** | EY(Mauritius) |

## SCHEDULE 3

## FORM OF SUBSCRIPTION REQUEST

To: [ ]

Date

Dear Sirs

**Subscription Request - Subscription Agreement (No.9) dated [ ] (the "Subscription Agreement (No.9)")**

Terms used in this Subscription Request shall have the same meaning given to them in Subscription Agreement (No.9) unless otherwise defined herein.

Pursuant to Clause 4.1 of the Subscription Agreement (No.9) between ourselves and yourselves, FMO and The Private Infrastructure Development Group Limited ("**PIDG Ltd**") we hereby request the following proposed subscription of Ordinary Shares of no-par value in the capital of GuarantCo:

1. Number of Ordinary Shares to be subscribed: [ ] Ordinary Shares
2. Subscription Date: [ ]
3. Subscription Amount: US$ [ ]
4. Payment Instructions:

   Bank: [ ]

   Address: [ ]

   A/C Name: [ ]

   A/C Number: [ ]

***Subscription*** We confirm that (i) the matters warranted by GuarantCo in Clause 5.2 of Subscription Agreement (No.9) are true and accurate at the date of this Subscription Request and will be true and accurate as at the Subscription Date specified above as if made at such date, and (ii) that the conditions set out in Clause 3.1 of Subscription Agreement (No.9) have been duly complied with.

Yours faithfully

For and on behalf of
GuarantCo Ltd
Authorised Signatory

**EXECUTED** by **GUARANTCO LTD** acting by the identified person(s) acting on the authority of the said company in accordance with the laws of Mauritius )

Name/Title:

**EXECUTED** by the **PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP TRUST** acting by its trustees on the authority of the said trust in accordance with the laws of their respective jurisdictions of incorporation: )

Name/Title: RACHEL ILES – DIRECTOR
(authorised signatory for **SG Kleinwort Hambros Trust Company (UK) Ltd**)

Name/Title: SCOTT RUSS TRUST OPERATIONS MANAGER
(authorised signatory for **SG Kleinwort Hambros Trust Company (UK) Ltd**)

Name/Title:
(authorised signatory for **Multiconsult Trustees Ltd**)

Name/Title:
(authorised signatory for **Minimax Ltd**)

**EXECUTED** by **NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V.** acting by the identified persons acting on the authority of the said company in accordance with the laws of the Netherlands: )

Name/Title:

Name/Title:

**EXECUTED** by **GUARANTCO LTD** acting by the identified person(s) acting on the authority of the said company in accordance with the laws of Mauritius

Name/Title:

**EXECUTED** by the **PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP TRUST** acting by its trustees on the authority of the said trust in accordance with the laws of their respective jurisdictions of incorporation:

Name/Title:
(authorised signatory for
**SG Kleinwort Hambros Trust Company (UK) Ltd)**

Name/Title:
(authorised signatory for
**SG Kleinwort Hambros Trust Company (UK) Ltd)**

Name/Title: Rubina Hossen Ally and Ashraf Ramtoola
(authorised signatory for
**Multiconsult Trustees Ltd)**

Name/Title: Gyaneshwarnath Gowrea and Kamalam Rungapadachy
(authorised signatory for
**Minimax Ltd)**

**EXECUTED** by **NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V.** acting by the identified persons acting on the authority of the said company in accordance with the laws of the Netherlands:

Name/Title:

Name/Title:

**EXECUTED** by **GUARANTCO LTD** acting by the identified person(s) acting on the authority of the said company in accordance with the laws of Mauritius

Name/Title:

**EXECUTED** by the **PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP TRUST** acting by its trustees on the authority of the said trust in accordance with the laws of their respective jurisdictions of incorporation:

Name/Title:
(authorised signatory for **SG Kleinwort Hambros Trust Company (UK) Ltd**)

Name/Title:
(authorised signatory for **SG Kleinwort Hambros Trust Company (UK) Ltd**)

Name/Title:
(authorised signatory for **Multiconsult Trustees Ltd**)

Name/Title:
(authorised signatory for **Minimax Ltd**)

**EXECUTED** by **NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V.** acting by the identified persons acting on the authority of the said company in accordance with the laws of the Netherlands:

Name/Title: J.J. de Vries Robbé
Manager Legal

Name/Title: J.L. Dingemans
Manager – Private Equity

**EXECUTED** by **THE PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP LIMITED** acting by the identified person(s) acting on the authority of the said company in accordance with the laws of England )

Name/Title: MIKE CHILTON
Chief financial officer