

AMENDED AND RESTATED

**IMPLEMENTATION AGREEMENT FOR THE NENSKRA
HYDROELECTRIC PROJECT**

DATED 31 AUGUST 2015

AMENDED AND RESTATED on 16 June 2017

THE GOVERNMENT OF GEORGIA

and

JSC ELECTRICITY SYSTEM COMMERCIAL OPERATOR

and

JSC GEORGIAN STATE ELECTROSYSTEM

and

JSC PARTNERSHIP FUND

and

JSC NENSKRA HYDRO

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THIS AGREEMENT (this **Agreement**) is made on 31 August 2015 (and amended and restated on _____)

BETWEEN:

- (1) The Government of Georgia, represented by the Ministry of Energy with authorisation provided to the Minister of Energy of Georgia, Mr. Kakha Kaladze, pursuant to a decree of the Government of Georgia #1827 dated 27 August 2015 and decree #1094 dated 2 June 2017 (the **GoG**);
- (2) JSC Nenskra Hydro, a joint stock company incorporated and existing under the laws of Georgia with company number 405112220, whose registered office is at Floor 4-5, Green Building, #6 Marjanishvili street, 0102, Tbilisi, Georgia (the **Company**);
- (3) JSC Electricity System Commercial Operator, a joint stock company incorporated and existing under the laws of Georgia with company number 205170036, whose registered office is at 2 Baratashvili Street, Tbilisi, Georgia (the **Offtaker**);
- (4) JSC Georgian State Electrosystem, a joint stock company incorporated and existing under the laws of Georgia with company number 204995176, whose registered office is at 2 Baratashvili Street, Tbilisi, Georgia (the **Dispatch Licensee**), and
- (5) JSC PARTNERSHIP FUND, a joint stock company established and existing under the laws of Georgia, registered by the National Agency of Public Registry of Georgia on 28 June 2011, under registration number 404404550, with registered office at 15 King Tamar Avenue, Tbilisi, Georgia (the **Fund**).

(each a **Party** and, collectively, the **Parties**).

WHEREAS:

- (A) The GoG and the Company desire for the Company to design, engineer, develop, finance, construct, own, operate, maintain, and transfer the Facility (or, as applicable in accordance with the terms of the Put and Call Option Agreement, for the Private Shareholders to transfer their Shares) at the expiration of the Term or upon early termination of this Agreement.
- (B) The Offtaker will purchase the Net Electrical Output in accordance with the terms of the PPA and this Agreement.
- (C) The GoG and the Company have agreed that the Company shall undertake the Project pursuant to the terms and conditions set out in the Project Agreements.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

Abandon means not to carry out any works or operations on the Site for 120 consecutive days other than due to adverse or unfavourable weather conditions during the winter months in any year, and Abandonment has a corresponding meaning.

Actual Adjusted Take or Pay Quantity or **Actual Adjusted TOPQ** has the meaning given to such term in Part 1 of Schedule 12 (Take or Pay Definitions).

Actual COD means the date on which:

- (a) a Takeover Certificate has been issued in respect of the Facility as a whole; and
- (b) the Company delivers to the GoG test results, certified by the Employer's Representative, demonstrating that all Minimum Performance Guarantees and the Minimum Acceptable Output have been achieved (Employer's Representative, Minimum Performance Guarantee and Minimum Acceptable Output have the meaning set out in the EPC Contract).

Actual Total Project Costs has the meaning given to such term in Schedule 3 (Energy Rate).

Additional Quantity has the meaning given to such term in Part 1 of Schedule 12 (Take or Pay Definitions).

Adjusted Annual TOPQ has the meaning given to such term in Part 2 of Schedule 12 (Take or Pay Definitions).

Adjusted Term Energy Rate has the meaning given to such term in Schedule 3 (Energy Rate).

Adjusted TOPQ has the meaning given to such term in Part 2 of Schedule 12 (Take or Pay Definitions).

Adverse Hydrological Event has the meaning given to such term in Schedule 6 (Adverse Hydrological Event).

Affiliate means any company, corporation or other entity which controls, is controlled by, or is under common control of a Party and such company, corporation or other entity shall be considered an Affiliate only so long as the ownership or control, directly or indirectly, meet these conditions: for the purposes of this definition, "**control**" shall mean the power to direct the management, the policies or composition of the board of directors (or equivalent body) of the company, corporation or other entity whether through the ownership of voting capital, by contract or otherwise and, at all times, the Fund, the Offtaker, the Dispatch Licensee and any Public Authority shall be deemed to be Affiliates of the GoG and each other.

Agricultural Land means any parcel of land which qualifies as such under the 2010 Law of Georgia on State Property or the 1996 Law of Georgia on Agricultural Land Ownership.

Annual Generation Period means each 12 month period starting on (and including) 1 January and ending on (and including) 31 December of the same calendar year. The first Annual Generation Period will commence on EGR COD and end on 31 December of the calendar year in which EGR COD falls. The last Annual Generation Period will commence on 1 January of the calendar year in which the Term is scheduled to expire and end on the expiry date of the Term.

Annual Take or Pay Commitment or **Annual TOP Commitment** has the meaning given to such term in Part 2 of Schedule 12 (Take or Pay Definitions).

Annual Take or Pay Quantity means 1,219 GWh. For the first and last Annual Generation Periods, the Annual Take or Pay Quantity will be adjusted by reference to the sum of each Take or Pay Quantity relating to the aggregate of the TOP Periods that occur in each such Annual Generation Period.

Applicable Law means the laws of Georgia, and all statutes, treaties, codes, ordinances, orders, rules, regulations, executive orders, notifications, or other similar directives issued by any Public Authority pursuant thereto, in each case:

- (a) that apply to the Company, the Shareholders, the Finance Parties, any intermediate company, or to their respective participation in the Project; and
- (b) as any of them may be amended, supplemented, replaced or reinterpreted by a Public Authority, or otherwise modified from time to time.

Applicable Purchase Price has the meaning given to such term in clause 2.3 of the Put and Call Option Agreement.

Base Case Return on Equity has the meaning given to such term in schedule 3 (*Calculation of Applicable Purchase Price and Share Transfer*) of the Put and Call Option Agreement.

Bid Security means an on-demand guarantee substantially in the form set out in Part 1 of Schedule 1 (Company Security Forms).

Bid Security Expiry Date means the date falling on the earlier of:

- (a) Financial Close; and
- (b) the date on which the Company delivers the Performance Security.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in Tbilisi, Georgia, and Seoul, Korea.

Call Option has the meaning given to such term in clause 2.1 of the Put and Call Option Agreement.

Catchment Area means the area comprising the Nenskra River and its tributaries that are upstream from the Nenskra Dam, as well as the Nakra River and its tributaries that are upstream from the Nakra Dam, from which the Company is entitled to impound and divert water for the purposes of the Project. Such area is geographically identified on the map annexed at Schedule 5 (Map of Catchment Area) as the Nenskra Dam Site Catchment and the Nakra Intake Catchment.

Change in Law means the adoption, promulgation, bringing into effect, modification, amendment, repeal or reinterpretation of any Applicable Law, other than any Applicable Law pertaining to Taxes, including:

- (a) the adoption, promulgation, bringing into effect, modification, amendment, repeal or reinterpretation of the Grid Code or the Market Rules, in each case as in effect as at the Execution Date;
- (b) the imposition by the GoG or a Public Authority of any term or condition in connection with the issuance, renewal, extension, replacement, or modification of any Consent; or
- (c) the imposition by the GoG or a Public Authority of any additional Consent that in any such case:
 - (i) establishes any requirement for the development, design, construction, financing, ownership, operation, maintenance or transfer relating to the participation by any Party, any Contractor, any Shareholder or any Finance Party in the Project that is more onerous or restrictive than the requirements:

- (A) in effect as at the Execution Date;
 - (B) specified in any applications, or other documents filed in connection with such applications, for any Company Consents filed by the Company on or before Actual COD; and
 - (C) agreed to by the Company in any of the Project Agreements; or
- (ii) otherwise has an adverse Material Company Effect.

Change in Law Threshold Amount means USD 100,000 (or its equivalent amount in another currency) in aggregate per year.

Change in Tax means:

- (a) any substantive deviation between the Tax Implications and the Tax Ruling (substantive, for the purpose of this definition, meaning a deviation that causes a financial impact to the Company of equal to or greater than the Change in Tax Threshold Amount) or, after the Execution Date, the adoption, promulgation, bringing into effect, modification, amendment, increase, repeal, interpretation, reinterpretation or application of any Applicable Law relating to any Tax including any application of any Tax, which is imposed on the Company or any Private Shareholder (including any withholding Taxes on distributions to Shareholders or the payment of amounts due and payable to the Finance Parties); and
- (b) until the Final Debt Maturity Date, for invoices paid in any Annual Generation Period, any event where the aggregate GEL amount paid to the Company pursuant to Clause 8.2(b) (Payment) of the PPA in that Annual Generation Period is lower than the aggregate GEL amount that would have been paid to the Company in respect of those invoices if, for each such invoice, the GEL amount had been calculated by reference to the official exchange rate posted by the National Bank of Georgia on the date of payment of that invoice and not by reference to the official exchange rate posted by the National Bank of Georgia on the last day of the TOP Period that that invoice applies to (and, for avoidance of doubt, the amount of such deficit shall be deemed to be a decrease in revenue).

Change in Tax Threshold Amount means USD 100,000 (or its equivalent amount in another currency) in aggregate per calendar year.

Check Metering Device means the metering device owned and installed by the Company as a means of verifying the accuracy of the Metering Device to measure the Net Electrical Output.

Claim has the meaning given to such term in Clause 1.2 (Rules of Interpretation).

COD Energy Rate has the meaning given to such term in Schedule 3 (Energy Rate).

Commissioning Program means the program prepared by or on behalf of the Company and delivered by the Company to the GoG under paragraph (a) of Clause 11.3 (Deliverables).

Commissioning Tests means each of the tests as set out in the relevant Schedule of the Commissioning Program.

Company has the meaning given to such term in the preamble to this Agreement.

Company Consents means the Consents that the Company (or any of its Contractors) is required to obtain and thereafter to maintain to fulfil the Company's obligations under the Project Agreements, the Finance Documents, the EPC Contract or the O&M Contract.

Company Construction EoD Purchase Price has the meaning given to such term in schedule 3 (*Calculation of Applicable Purchase Price and Share Transfer*) of the Put and Call Option Agreement.

Company Event of Default means any event defined as a Company Event of Default under Clause 27.1 (Company Events of Default).

Company Mismanagement means any failure of the Company:

- (a) acting in its capacity as Employer under the EPC Contract or the O&M Contract, and without taking into account any breaches of the EPC Contract or the O&M Contract by the EPC Contractor or the O&M Contractor for which the Company may be vicariously liable under this Agreement or otherwise, to manage the EPC Contract or the O&M Contract in accordance with Prudent Utility Practice;
- (b) to abide by any term or condition of any Company Consent; or
- (c) to comply with Applicable Law in performing its obligations under this Agreement.

Company Operation EoD Purchase Price has the meaning given to such term in schedule 3 (*Calculation of Applicable Purchase Price and Share Transfer*) of the Put and Call Option Agreement.

Complete Unit means any Unit for which a Takeover Certificate has been issued.

Completion has the meaning given to such term in the EPC Contract.

Confidential Information means all information (whether or not marked "confidential") disclosed by whatever means by one Party (the **Disclosing Party**) either directly or by any person associated with the Disclosing Party to any other Party (the **Receiving Party**), which concerns the business, operations or customers of the Disclosing Party, and includes, without limitation, the provisions and subject matter of, and the negotiations relating to, this Agreement and the other Project Agreements.

Connection Agreement means the connection agreement to be entered into prior to Financial Close by the Company and the Dispatch Licensee for the connection of the Facility to the Connection Facilities and the Grid System in accordance with the requirements and procedures set out in the Grid Code.

Connection Facilities means all facilities on the GoG side of the Point of Delivery to enable the Company to deliver electrical output in accordance with this Project Agreement.

Consent means any authorisation, consent, licence, lease, approval, ruling, permit, concession, acknowledgement, exemption, filing, variance, order, judgment, decree or publication of whatsoever nature which is required to be obtained by any Party, any Contractor, any Shareholder or any Finance Party, as the case may be, from any relevant Public Authority (including, for the avoidance of doubt, the Tax Ruling, each Takeover Certificate and registration of the PPA by the Dispatch Licensee).

Consents Report means a report on the status of each on-going application by the Company for a Company Consent.

Contractor means any of the Company's contractors and subcontractors in connection with the Project.

Daily Forecasted Net Electrical Output has the meaning given to such term in the PPA.

Debt Outstanding has the meaning given to such term in schedule 3 (*Calculation of Applicable Purchase Price and Share Transfer*) of the Put and Call Option Agreement.

Default Interest Rate means a rate equal to the sum of five per cent per annum and the short-term lending rate of the National Bank of Georgia at that time.

Delayed Commissioning Event shall be deemed to occur if:

- (a) other than as a direct result of a breach of the terms of any Project Agreement by the Company or any Private Shareholder, the Transmission Line and/or any of the Connection Facilities have not been completed and/or the Grid System is not ready to begin receiving electricity as required under Clause 10.1 (GoG Responsibilities) and Clause 10.3 (Completion of Transmission Line and Connection Facilities) on or before the date that is four months before the date of Scheduled EGR COD; and
- (b) such delay described under paragraph (a) above causes the EGR COD to occur after Scheduled EGR COD occurs.

Delayed Commissioning Period means the period starting on the date on which the Company would have been able to achieve EGR COD but for the occurrence of a Delayed Commissioning Event (and, for this purpose, the Company will be deemed to have been able to achieve EGR COD where it has received a Takeover Certificate for any Unit or would have received a Takeover Certificate for any Unit but for the Transmission Line and/or any of the Connection Facilities not being completed and/or the Grid System not being ready to begin receiving electricity as required under Clause 10.1 (GoG Responsibilities) and Clause 10.3 (Completion of Transmission Line and Connection Facilities)), and ending on the date on which the Company actually achieves EGR COD.

Direct Agreement means any direct agreement or agreements to be entered into in connection with the Project Documents as a condition precedent to the initial disbursement of funds under, or pursuant to any undertaking under the Finance Documents reflecting standard international market terms and conditions for the financing of a project similar to the Project (including an acknowledgment of the security interests granted to the Finance Parties and the Finance Parties' cure and step-in rights).

Dispatch Instructions means any properly recorded instructions (or approvals of Daily Forecasted Net Electrical Output (or a Revised Daily Forecasted Net Electrical Output)) to be provided by the Dispatch Licensee to the Company each day after EGR COD under Clause 15.5 (*Forecasting and Dispatch*) of this Agreement and Applicable Law notifying the Company of the requirements of the Dispatch Licensee for Net Electrical Output on an hourly basis for such day.

Dispatch Licensee has the meaning given to such term the preamble to this Agreement.

Dispute means any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it.

EGR COD means the later of:

- (a) the date on which the Company first achieves completion of Unit 1 and is able to supply electricity to the Point of Delivery; and
- (b) the date on which a Takeover Certificate has been issued in respect of Unit 1.

EGR Energy Rate has the meaning given to such term in Schedule 3 (Energy Rate).

Energy Rate means the tariff payable by the Offtaker for Net Electrical Output, or by Dispatch Licensee in relation to any Take or Pay Deficiency Payments, in each case in any Annual Generation Period (or part thereof), as determined in accordance with Schedule 3 (Energy Rate) and adjusted in accordance with Clause 14 (Energy Rate Adjustment).

Energy Rate Determination Date has the meaning given to such term in Clause 14.4 (No Agreement or Determination by 12 February).

Energy Rate Notice means the notice of that name to be delivered by the GoG to the Offtaker under Clause 14.5 (Energy Rate Notice), a form of which is set out at Schedule 3 (Energy Rate).

Environmental Conditions means any conditions, circumstances, or other matters of fact relating to or otherwise affecting the environment that violate the Environmental & Social Standards, including with respect to any natural resources (including flora and fauna), soil, surface water, ground water, any present or potential drinking water supply, subsurface strata, or the ambient air.

Environmental & Social Management Plan means the environmental and social management plan contained in the environmental and social impact assessment undertaken in relation to the Project.

Environmental & Social Standards means the requirements related to the environment and the protection and preservation thereof, and/or the social (including labour, health, safety and security) impacts of the Project and the mitigation thereof, imposed by any Applicable Law and by the Finance Parties.

EPC Contract means the agreement between the Company and the EPC Contractor for the design, engineering, procurement, construction, testing, commissioning and completion of the Facility entered into on or around the Execution Date.

EPC Contractor means Salini Impregilo SpA.

EPC Contract Price means the price payable by the Company to the EPC Contractor under the EPC Contract for the design, engineering, procurement, construction, testing, commissioning and completion of the Facility.

Estimated Remediation Costs means the sum total of the costs of remediation estimated in the Transfer Reports.

Event of Default means any Company Event of Default or any GoG Event of Default.

Event of Liquidation means, in respect of any Party: (a) any proceeding where a liquidator is appointed in respect of the winding up of that Party (and such proceeding is not disputed by the Party within 30 days of first being instituted); or (b) any resolution adopted by, in the case of the Company, the Shareholders, and in the case of the Dispatch Licensee, the GoG, for the voluntary winding up of the Party.

Excess Energy has the meaning given to such term in Part 2 of Schedule 12 (Take or Pay Definitions).

Execution Date means 31 August 2015.

Expense has the meaning given to such term in Clause 1.2 (Rules of Interpretation).

Facility means the hydroelectric power plant with an expected installed capacity of up to 280 MW (net) on the Nenskra River, including the Nakra Weir, the Nakra Transfer Tunnel, the Nenskra Reservoir, the Nenskra Dam, the Nenskra Headrace Tunnel, the Penstock, the Power Generation Facility, any other facilities on the Nenskra River or the Nakra River, any other permanent structures constructed by or on behalf of the Company in connection with the Project and any other related civil works, electro-mechanical equipment or any ancillary facilities up to the Point of Delivery.

Final Debt Maturity Date means the date on which the credit facilities made available under the Finance Documents, and all costs, interest, fees and expenses related thereto, are repaid or paid in full, or forecast to be repaid or paid in full, as the context requires.

Finance Document means any loan, credit, hedging, swap agreement, any security, any guarantee or other document under which the Company obtains financing, refinancing, hedging or guarantee in connection with the Project (including, for the avoidance of doubt, any working capital credit facility and any VAT credit facility, but excluding any of the foregoing to the extent they constitute or relate to any Shareholder Loan).

Finance Party means each entity (other than a Shareholder but only to the extent that it is solely acting in its capacity as a shareholder in the Company or the Company) that is a party to the Finance Documents, or any financial institution that subsequently becomes a party to the Finance Documents, together with their respective successors and assigns.

Financial Close means the execution and delivery of the Finance Documents and the satisfaction or waiver of all conditions precedent for the initial availability of funds under such Finance Documents.

Financial Model means the Company's computer model for the Project, acceptable to the Finance Parties, setting out the Company's base case assumptions for the Project.

FNTF means a full notice to proceed issued under clause 8.1 of the EPC Contract authorising the performance of Works after Financial Close.

Force Majeure Event means any Natural Force Majeure Event and any Political Force Majeure Event.

Forecasted Net Electrical Output has the meaning given to such term in clause 6.3 of the PPA.

Fund has the meaning given to such term in the preamble to this Agreement.

Georgia means the country of Georgia.

Georgian Lari or **GEL** means the lawful currency of Georgia.

GoG has the meaning given to such term in the preamble to this Agreement.

GoG Event of Default means any GoG Event of Default under Clause 27.2 (GoG Events of Default).

Grid Code means a normative document approved by the Georgian National Energy and Water Supply Regulatory Commission by Resolution #10 dated 17 April 2014, as amended from time to time.

Grid Event means unavailability whether in full or in part, of the Grid System, Connection Facilities or the Transmission Line, in each case for any reason (including any Natural Force Majeure Event affecting the ability of any party constructing or operating the Transmission Line) other than as a direct result of a default by the Company or the Sponsor under this Agreement, the PPA or the Shareholders' Agreement (as applicable).

Grid System means the Connection Facilities, the Transmission Line and any other transmission or distribution facilities of the Dispatch Licensee, through which the electrical output of the Facility may be transmitted and distributed.

High Pressure Power Waterways means the water transfer system to transfer the water through the Nenskra Headrace Tunnel from Nenskra Dam to Power Generation Facility.

Implementation Agreement means this Agreement and the Schedules attached to this Agreement.

Increased Costs Notice means a notice detailing increased costs or decreased revenue as a result of the events, occurrences or circumstances listed under Clause 23(a) (Increased Costs).

Indemnified Person has the meaning given to such term in paragraph (a) of Clause 37.3 (Indemnity).

Indemnifying Party has the meaning given to such term in paragraph (a) of Clause 37.3 (Indemnity).

Joinder Request has the meaning given to such term in paragraph (a) of Clause 33.3 (Joinder of Parties, Multiple Parties and Consolidation of Disputes).

Joint Development Agreement means the Joint Development Agreement dated 22 December 2014 (and subsequently amended on 7 April 2015) between the Sponsor and the Fund in relation to the Project.

Land Report means a report setting out all real property rights reasonably required by the Company in connection with the Project.

Lapse of Consent means any Consent:

- (a) ceasing to remain in full force and effect;
- (b) not being issued or renewed upon application having been properly and timely made and diligently pursued, or, in the case of any Company Consent, not being issued or renewed upon application therefor by the Company in accordance with paragraph (c) of Clause 9.1 (Consent Application Process);
- (c) not being issued or renewed within the period of time prescribed by Applicable Law as applied in a non-discriminatory manner and, if no period is prescribed by Applicable Law, within the following time periods:
 - (i) in the case of the Tax Ruling, by Financial Close, provided that the application therefor is made in a timely manner;
 - (ii) in the case of registration of the PPA by the Dispatch Licensee under and in accordance with the Market Rules, within two weeks after the proper and complete application for registration thereof;

- (iii) in the case of any Takeover Certificate, within one month after the date of proper and complete application therefor; and
- (iv) in any other case, within three months after the date of proper and complete application therefor; or
- (d) subsequent to its issuance, upon renewal or otherwise, being made subject to any terms or conditions that materially and adversely affect the Company's (and/or any Contractor's) ability to perform its obligations under any Project Agreement or otherwise in relation to the Project (including under the EPC Contract and the O&M Contract),

provided that in no event shall a Lapse of Consent occur in relation to the renewal or extension of any Consent as a result of the GoG or any Public Authority exercising any power pursuant to Applicable Law as a result of the Company or any other party to whom such Consent is granted failing to abide by any term or condition of such Consent.

Land Transfer Agreement means the agreement between the LEPL National Agency for State Property and the Company, substantially in the form annexed at Part 2 of Schedule 8 (Land Agreements), under which Land Rights are transferred to the Company as set out under Clause 8.2(b)(iii) (Land Classification and Transfer).

Lenders' Technical Adviser has the meaning given to such term in Schedule 3 (Energy Rate).

Linked Agreement has the meaning set forth in paragraph (d) of Clause 33.3 (Joinder of Parties, Multiple Parties and Consolidation of Disputes).

LNTP means each limited notice to proceed issued under the EPC Contract instructing the performance of works before Financial Close and before the issuance of a FNTP.

Low Level Outlet(s) means the structure used to: (a) release Nenskra Reservoir waters in order to reduce the reservoir water level without generation; (b) pass the Ecological Flow; and (c) to flush sedimentation from the Nenskra Reservoir.

Major Contractor means any Contractor (other than any subcontractor) whose contract or contracts with the Company in respect of the Project is or are worth more than USD 500,000 (or its equivalent in any other currency) in aggregate.

Major Maintenance Year means any Annual Generation Period in which major maintenance occurs, as required pursuant to the operations and maintenance agreement to be entered into in respect of the Facility.

Mandatory Supply Liquidated Damages has the meaning given to such term in clause 5 of the PPA.

Mandatory Supply Period means, on and from the Actual COD, the months of January, February and December in each calendar year.

Market Rules means the Electricity (Capacity) Market Rules as adopted by Decree #77 of the Minister of Energy of Georgia dated 30 August 2006, as amended from time to time.

Material Company Effect means a material effect on:

- (a) the ability of the Company to comply with any payment obligation under any Finance Document;

- (b) the Company or its ability to perform its obligations or exercise its rights under the Project Agreements, the Finance Documents to which it is a party, the EPC Contract or the O&M Contract;
- (c) the Project or on the ownership by the Company of the Facility, or a material part thereof, or by the Shareholders of their shares in the Company;
- (d) the revenues that can be earned by the Company or Shareholders by operating and maintaining the Facility in accordance with the terms of the Project Agreements, Applicable Law and Prudent Utility Practice; or
- (e) the costs that are incurred by the Company or Shareholders in order to construct, operate and maintain the Facility in accordance with the Project Agreements, the EPC Contract, the O&M Contract, Applicable Law and Prudent Utility Practice.

Metering Device means meters and metering devices installed, owned, operated and maintained by the Company to measure the Net Electrical Output of the Facility.

Metering Recording System has the meaning given to such term in Clause 16.2 (Measurement of Net Electrical Output).

Monthly Forecast has the meaning given to such term in clause 6.3 (*Monthly Forecasting*) of the PPA.

Nakra Transfer Tunnel means the tunnel to be constructed connecting the Nakra River, with an intake point behind the Nakra Weir, to the Nenskra Reservoir, with an outlet point behind the Nenskra Dam.

Nakra Weir means the weir of that name geographically identified in the map annexed at Schedule 5 (Map of Catchment Area).

Natural FM Purchase Price has the meaning given to such term in schedule 3 (*Calculation of Applicable Purchase Price and Share Transfer*) of the Put and Call Option Agreement.

Natural Force Majeure Event has the meaning set out below:

- (a) Natural Force Majeure Event means any event or circumstance or combination of events or circumstances (including the effects thereof) that:
 - (i) is beyond the reasonable control of a Party;
 - (ii) on or after the Execution Date, materially and adversely affects:
 - (A) the performance by such affected Party of its obligations under or pursuant to this Agreement or the PPA; or
 - (B) the ability of the Facility to generate, or deliver to the Point of Delivery, net electrical output; and
 - (iii) could not have been (and the material adverse effects of which could not have been) prevented, overcome, or remedied by the affected Party through the exercise of diligence and reasonable care.

(For the purpose of this paragraph (a), "material" includes any event or circumstance that causes or is reasonably likely to cause the affected Party to breach any of its obligations under or pursuant to any Project Agreement, and "materially" has a corresponding meaning.)

- (b) "the exercise of diligence and reasonable care" for the purpose of this definition includes acts and activities to protect the Project from a casualty or other event that are reasonable in light of: (i) the probability of the occurrence of such event; (ii) the probable effect of such event if it should occur; and (iii) the likely efficacy, cost and cost effectiveness of the protection measures.
- (c) Notwithstanding the foregoing, with respect to the Natural Force Majeure Events defined in paragraphs (d)(v) through (d)(viii) below:
 - (i) the requirements of paragraph (a)(i) above shall not apply; and
 - (ii) the requirements of paragraph (b) above shall be satisfied by, and require only, diligence and reasonable care in the exercise by the Company of its rights, and the performance of its obligations, under the EPC Contract.
- (d) Without limiting the above, Natural Force Majeure Events shall expressly include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements set forth above (such requirements, for the avoidance of doubt, qualified by paragraph (c) above in their application to the Natural Force Majeure Events defined in paragraphs (d)(v) through (d)(viii) below):
 - (i) lightning, fire, explosion, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado;
 - (ii) any event that would have been a Political Force Majeure Event except for the fact that the event did not take place inside or directly involve Georgia or result from an act or omission of the GoG;
 - (iii) epidemic or plague;
 - (iv) an intrusion into any IT system that is not a Political Force Majeure Event;
 - (v) the discovery of any ground or subsurface conditions at the Site, including along the route of any tunnels that will constitute part of the Facility or at the location of the foundations of any component of the Facility, that are or were unforeseeable, unforeseen, or different from the conditions that are specified in the EPC Contract;
 - (vi) as a direct result of any material inaccuracy in a measurement contained in the topographical information set out in Annex 2 of schedule 14 of the EPC Contract;
 - (vii) the discovery of unexploded ordnances at the Site; and
 - (viii) the discovery of any fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site.
- (e) Natural Force Majeure Events shall expressly not include the following conditions, except to the extent that such events or circumstances occur directly as a consequence of a Natural Force Majeure Event:
 - (i) adverse hydrology;

- (ii) the occurrence of any unforeseeable difficulties that may be caused by the conditions at the Site, other than as contemplated under paragraph (d) above;
- (iii) any Political Force Majeure Event;
- (iv) normal wear and tear or random flaws in materials and equipment;
- (v) breakdowns in equipment;
- (vi) any Grid Event or any full or partial curtailment in the output of the Facility that is caused by, or arises from, the act or omissions of any third party (other than a Public Authority, the GoG, the Offtaker or the Dispatch Licensee) including any vendor, materials supplier, customer, or supplier of the affected Party;
- (vii) lack of funds due to any commercial, economic or financial reason including either Party's inability to make a profit or achieve a satisfactory rate of return;
- (viii) changes in market conditions that affect the:
 - (A) cost of designing, constructing, financing, operating, maintaining or transferring the Facility; or
 - (B) demand or price for any of the Offtaker's or the Company's products;
- (ix) delay in performance of the obligations of any Contractor or supplier that results in the failure of the affected Party to meet its obligations under any Project Agreement;
- (x) late delivery of plant, machinery, equipment, material, spare parts, or consumables for the Project;
- (xi) the results or consequences of any breach by a Party of Applicable Law, the terms of any Consent, or of any of the Project Agreements; or
- (xii) the results or consequences of any wilful or negligent act or omission by a Party, or any failure by a Party to follow Prudent Utility Practice.

Nenskra Dam means the dam to be constructed including the Low Level Outlet and the Spillway.

Nenskra Headrace Tunnel means the tunnel to be constructed by or on behalf of the Company connecting the Nenskra Reservoir to the Penstock.

Nenskra Reservoir means that water body retained by the Nenskra Dam and receiving the Reservoir Inflow from principally the Nenskra River and the diverted Nakra River water.

Net Electrical Output means the net electrical energy generated by the Facility and delivered at the Point of Delivery pursuant to any Dispatch Instructions delivered under Clause 15.5 (Forecasting and Dispatch), measured in Mega Watt hours (**MWh**) or Kilowatt-hours (**kWh**), in each case as the context requires.

Non-Agricultural Land means any parcel of land that is not Agricultural Land.

Non-Dispatched Spilled Water has the meaning given to such term in Part 2 of Schedule 12 (Take or Pay Definitions).

Offtaker has the meaning given to such term in the preamble to this Agreement.

Offtaker Payment Security has the meaning given to such term under the PPA Credit Support Agreement.

O&M Contract means the operations and maintenance agreement for the Facility described under Clause 15.7 (O&M Contract).

O&M Contractor means a subsidiary of the Sponsor that will provide operations and maintenance services under the O&M Contract.

Original Shareholders means the Sponsor and the Fund.

Other Compensation Event means any event where:

- (a) the Company is unable to generate some or all the Forecasted Net Electrical Output (as adjusted for any Revised Forecasted Net Electrical Output pursuant to clauses 6.1(b) and 6.5 of the Power Purchase Agreement) of the Facility;
- (b) the Company is unable to deliver some or all of the Forecasted Net Electrical Output (as adjusted for any Revised Forecasted Net Electrical Output pursuant to clauses 6.1(b) and 6.5 of the Power Purchase Agreement) to the Point of Delivery; or
- (c) the Offtaker does not, or cannot, accept and purchase Net Electrical Output as is otherwise required under the terms of the PPA,

as a result of a Grid Event or a GoG Event of Default.

Penstock means the structure connecting the Nenskra Headrace Tunnel to the Power Generation Facility.

Performance Security means an on-demand guarantee substantially in the form set out in Part 2 of Schedule 1 (Company Security Forms).

Performance Security Expiry Date means the earliest of:

- (a) the date falling 30 days after Actual COD; and
- (b) if any termination of this Agreement occurs before Actual COD in accordance with Clause 28 (Early Termination), the date falling 30 days after the date of such early termination.

Permitted Transferee means:

- (a) any existing Shareholder;
- (b) any Affiliate of a Shareholder; or
- (c) any other entity or fund which has substantial experience in the electricity generating, transmission or distribution business, including specific hydro power experience.

Point of Delivery means the physical point or points that coincide with the interconnection point at which the transfer of net electrical energy expressed in MWh or kWh occurs to the Transmission Line, being in particular the terminals of the SF6 bus duct pot heads (or other agreed termination point based on the final site layout) in the Pot Head Yard.

Political Force Majeure Event means each of the following events to the extent that (other than in relation to paragraph (g) below) such event results in an adverse Material Company Effect:

- (a) any act of war (whether declared or undeclared), invasion, armed conflict, or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil war, civil commotion, or act or campaign of terrorism or political sabotage including any politically motivated intrusion into any IT system, in each case directly affecting or occurring in Georgia or occurring as a result of an act or omission of GoG or any Public Authority;
- (b) any chemical contamination, radioactive contamination or ionizing radiation in each case directly affecting or occurring in Georgia or occurring as a result of an act or omission of GoG or any Public Authority;
- (c) any Lapse of Consent;
- (d) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide in Georgia;
- (e) any pre-existing Environmental Condition;
- (f) any grant of third party rights by GoG or any Public Authority to:
 - (i) impound, use, or divert any of the waters in the Catchment Area at a location upstream of the Facility;
 - (ii) dam water downstream in a manner that results in the Facility being flooded; or
 - (iii) use water in any manner that conflicts with the water use rights of the Company and the exercise of such third party right results in a claim being brought against the Company or a restriction on the Company's rights; or
- (g) any Changes in Law or Changes in Tax that (i) make any material undertaking or obligation of the GoG, the Offtaker, or the Fund under any Project Agreement, any Finance Document, the EPC Contract or the O&M Contract unenforceable, invalid or void, (ii) render it unlawful for the Company or render the Company unable to, or materially affect its ability to, (A) repatriate dividends to any Shareholder, or to (B) pay any amount the Company is required to pay to the Finance Parties under the Finance Documents, (iii) render it unlawful for the Company or render the Company unable to, or materially affect its ability to, receive any material payment, perform any material obligation, or enjoy or enforce any material benefit under any of the Project Agreements, the Finance Documents, the EPC Contract or the O&M Contract or (iv) prior to Actual COD, causes, or will cause, any delay to the performance of the Company's obligations under this Agreement to the extent that such delay arises as a direct result of any extensions of time granted to the EPC Contractor in accordance with the terms of the EPC Contract.

Pot Head Yard means the electrical equipment where the electrical energy is transferred from the Facility to the Transmission Line and is where the Point of Delivery occurs.

Power Generation Facility means the hydropower plant and its associated power generation and evacuation equipment and structures to be constructed including the SF6 Switchgear and the Pot Head Yard.

Power Purchase Agreement or **PPA** means the power purchase agreement entered into between the Company and the Offtaker on the date of this Agreement. A copy of which as at the date hereof is attached hereto as Schedule 10 (Power Purchase Agreement).

PPA Credit Support Agreement means the credit support agreement entered into between the Company and the Fund.

PPA Payments means all payments made by the Offtaker for Net Electrical Output under and in accordance with the PPA.

Private Lands means any Required Lands that are not Public Lands.

Private Shareholder means any Shareholder other than the Fund, the GoG, or any Affiliate of the GoG.

Private Shareholders' Agent has the meaning given to such term in the preamble to the Put and Call Option Agreement.

Private Shareholder Loan means any Shareholder Loan advanced or guaranteed by a Private Shareholder.

Project means the design, development, financing, construction, ownership, operation and maintenance and transfer of the Facility (or, as applicable in accordance with the terms of the Put and Call Option Agreement, transfer of the Shares held by the Private Shareholders).

Project Agreement means each of:

- (a) the Implementation Agreement;
- (b) the Connection Agreement;
- (c) the PPA;
- (d) the PPA Credit Support Agreement;
- (e) the Put and Call Option Agreement;
- (f) the Shareholders Agreement;
- (g) any Right to Build; and
- (h) any Land Transfer Agreement.

Projected Total Project Costs has the meaning given to such term in Schedule 3 (Energy Rate).

Prolonged Adverse Hydrological Event means the occurrence of an Adverse Hydrological Event in three or more consecutive Annual Generation Periods where the energy that has not been able to be provided due to the unavailability of water to operate in accordance with Prudent Utility Practice in each such Annual Generation Period is 284,200 MWh or greater.

Prolonged Natural Force Majeure Event means any Natural Force Majeure Event or its effects (other than any Adverse Hydrological Event or its effects) which in aggregate lasts for more than 12 months.

Prolonged PCOA Delay has the meaning given to such term in Clause 29(b) (Transfer on Early Termination or Expiry).

Prolonged Political Force Majeure Event means any Political Force Majeure Event or its effects which in aggregate lasts for more than six months.

Prudent Utility Practice means the practices, methods, techniques and standards that are generally accepted internationally from time to time and commonly used in the international power generation industry for the development, operation and maintenance of a project, machinery and equipment of the size and having the other characteristics of the Project in a safe, prudent and reliable manner, consistent with the parameters for such operation and maintenance set forth in this Agreement and the PPA (as applicable). These practices, methods, techniques and standards shall be adjusted as necessary to take account of the requirements of the laws of Georgia, physical conditions at the Site and operation and maintenance guidelines of the manufacturers of the materials and equipment incorporated into the Project which the Company is required to follow in order to maintain in effect any warranties, guarantees or insurance policies relating thereto.

Public Authority means any of:

- (a) the Government of Georgia, any subdivision thereof, any ministries or ministers, any local governmental authority with jurisdiction over the Company, the Project, or any part thereof;
- (b) the National Bank of Georgia;
- (c) any department, authority, instrumentality, agency, or judicial body of the Government of Georgia;
- (d) courts and tribunals in Georgia; or
- (e) any commission or independent regulatory agency or body having jurisdiction over the Company, the Project or any part thereof, including with respect to registration of the PPA, the Dispatch Licensee.

Public Land means each plot of land legally owned by the GoG, an Affiliate of the GoG or a Public Authority.

Put and Call Option Agreement means the put and call option agreement entered into between the Company, the Fund, the GoG, the Sponsor, and the Private Shareholders' Agent on the date of this Agreement. A copy of the Put and Call Option Agreement (as on the date this Agreement was amended and restated as stated above) is attached hereto as Schedule 9 (Put and Call Option Agreement).

Put Option has the meaning given to such term in the Put and Call Option Agreement.

Qualified Issuing Bank means a first-class international commercial bank with a long-term senior unsecured credit rating of at least A3 by Moody's or A- by Standard & Poor's.

Refinancing means:

- (a) any amendment, variation, supplement or replacement of, or entry into, any Finance Document (with the exception of the entry into the Finance Documents on Financial Close) that affects the amortisation profile, tenor or pricing of the debt financing for the Project;

- (b) the entry into or breakage of any swap or other derivative product (other than the entry into any swap or other derivative product with a Finance Party on or prior to Financial Close); or
- (c) any other arrangement put in place by the Company, its Affiliates or another person which has an effect which is similar to any of paragraphs (a) and (b) above.

Refinancing Gain means the amount given by taking the net present value of any positive amount given by subtracting (a) from (b) below, assuming a rate equal to the Base Case Return on Equity and a time period given by the number of years between the date of calculation and the Final Debt Maturity Date:

- (a) the amount of principal, interest, fees and expenses payable by the Company or its Affiliates as a result of any Refinancing; and
- (b) the amount of principal, interest, fees and expenses payable by the Company or its Affiliates under the Finance Documents (as such Finance Documents existed immediately prior to such Refinancing).

Required COD means the date falling 12 months following Scheduled COD, as such date may be amended or extended in accordance with this Agreement.

Required Insurance has the meaning given to such term in Clause 21.1 (Insurance Coverage).

Required Lands means the land parcels finally determined to be Required Lands under Clause 8.1 (Required Lands).

Reservoir Guidelines means the guidelines in relation to the Nenskra Reservoir which among others sets reservoir technical data, reservoir filling and emptying considering inflow, water level and capacity relation, water level and volume relation, available generation data for each water level and volume considering power plant efficiency, agreed and approved in accordance with Clause 15.8 (Reservoir Guideline).

Restoration has the meaning given to such term in Clause 26.2(a) (Preparation of Restoration Report Following a Political Force Majeure Event, Change in Law or Change in Grid System).

Restoration Expert has the meaning given to such term in Clause 26.2(a) (Preparation of Restoration Report Following a Political Force Majeure Event, Change in Law or Change in Grid System).

Restoration Implementation Period has the meaning given to such term in Clause 26.4(a) (Implementation of Restoration).

Restoration Report has the meaning given to such term in Clause 26.2(a) (Preparation of Restoration Report Following a Political Force Majeure Event, Change in Law or Change in Grid System).

Restoration Threshold Amount means an amount that is equal to:

- (a) until the issuance of the Taking Over Certificate under the EPC Contract, 10% of the total amount stated in the Uses of Funds table set out in Schedule 2 (Financing); and
- (b) from the expiry of the period under paragraph (a) above until the expiry or the termination of this Agreement, 10% of the Natural FM Purchase Price.

Revised Forecasted Net Electrical Output has the meaning given to such term in the PPA.

Right to Build means an agreement or agreements between LEPL National Agency for State Property and the Company under which the LEPL National Agency for State Property transfers certain parcels of land managed by LEPL National Agency for State Property for use by the Company under and in accordance with this Agreement, substantially in the form annexed at Part 1 of Schedule 8 (Land Agreements).

Scenario 1 has the meaning given to such term in Schedule 3 (Energy Rate).

Scenario 2 has the meaning given to such term in Schedule 3 (Energy Rate).

Scenario 3 has the meaning given to such term in Schedule 3 (Energy Rate).

Scenario 4 has the meaning given to such term in Schedule 3 (Energy Rate).

Scenario 5 has the meaning given to such term in Schedule 3 (Energy Rate).

Scenario 6 has the meaning given to such term in Schedule 3 (Energy Rate).

Scenario 7 has the meaning given to such term in Schedule 3 (Energy Rate).

Scenario 8 has the meaning given to such term in Schedule 3 (Energy Rate).

Scenario 9 has the meaning given to such term in Schedule 3 (Energy Rate).

Scheduled COD means the intended date of Actual COD, being the date falling 59 months after the earlier of Financial Close and the date on which the FNTP is issued.

Scheduled EGR COD means the intended date of EGR COD, being the date falling 37 months after the earlier of Financial Close and the date on which the FNTP is issued.

Scheduled Outage means an agreed outage of any Unit or part of the Facility for the purpose of maintenance, as requested by the Company and agreed to, or deemed accepted, by the GoG under Clause 17.1 (Scheduled Maintenance).

SF6 Switchgear means the sulphur hexa-fluoride (SF6) gas insulated switching equipment with double bus bars.

Shareholder Loan has the meaning given to such term in the Put and Call Option Agreement.

Shareholders means all shareholders in the Company.

Shareholders' Agreement means the agreement of that name dated on or around the date of this Agreement by and between the Shareholders in relation to the Company.

Shares means, at any time, the entirety of the ownership interests held in the Company by the Shareholders.

Shortfall Energy has the meaning given to such term in Clause 13.1 (Shortfall Energy). In respect of the first and last Annual Generation Periods, the GWh figure set out in paragraph (b) of Clause 13.1 (Shortfall Energy) shall be adjusted in proportion to the Annual Take or Pay Quantity for each of those Annual Generation Periods.

Site means the Required Lands upon which the Facility is to be constructed and operated and includes the land, spaces, waterways, roads and any rights acquired or to be acquired by the Company for the purposes of the Project on, through, above or below the ground on which all or any part of the Facility is to be built (including any working areas required by the Company and the Contractors, villages, townships and camps for the accommodation of the employees of the Company and the Contractors, and all rights of way and access from public highways and, where applicable, railway and seaward access).

Spillway means the structure needed to evacuate waters from the Nenskra Reservoir during a flood event to avoid overtopping of the Nenskra Dam.

Sponsor means Korea Water Resources Corporation, a corporation duly organised and existing under the laws of the Republic of Korea, having its principal place of business at 200beon-gil, Sintanjin-ro, Daedeok-gu, Daejeon 306-711, Republic of Korea.

Sponsor Event of Default means a Shareholder Event of Default under the Shareholders' Agreement (excluding any failure to comply with any funding obligation under any Finance Document) committed by the Sponsor (or any of its successors under the Shareholders' Agreement), where such Shareholder Event of Default has triggered an acceleration of the debt payable under the Finance Documents.

Take or Pay Deficiency Payment or TOP Deficiency Payment has the meaning given to such term in Part 1 of Schedule 12 (Take or Pay Definitions).

Take or Pay Deficiency Payment Refund or TOP Deficiency Payment Refund has the meaning given to such term in Part 1 of Schedule 12 (Take or Pay Definitions).

Take or Pay Deficiency Quantity or TOP Deficiency Quantity has the meaning given to such term in in Part 1 of Schedule 12 (Take or Pay Definitions).

Take or Pay Period or TOP Period has the meaning given to such term in Part 1 of Schedule 12 (Take or Pay Definitions).

Take or Pay Quantity or TOPQ has the meaning given to such term in Part 1 of Schedule 12 (Take or Pay Definitions).

Takeover Certificate means a certificate of that name issued in accordance with Applicable Law by the LEPL Technical and Constructions Supervision Agency of the Ministry of Economy and Sustainable Development of Georgia to certify physical completion of construction of any Unit and/or the Facility and the operational readiness thereof, as the context may require.

Taking Over Certificate has the meaning given to such term in the EPC Contract.

Tax means any tax, charge, impost, tariff, duty, basis for assessing taxes (including the rates of or periods for depreciation of assets for tax assessment purposes), fiscal concession, or allowance imposed by or payable to a Public Authority, including any value added tax, water or environmental or energy tax, import or customs duty, withholding tax, excise tax, tax on foreign currency or foreign exchange transactions or property tax. The term **Tax** shall not include any fee or charge payable to a Public Authority as consideration for goods or services provided by such Public Authority in relation to a commercial activity carried out by such Public Authority.

Tax Implications means the implications as to tax matters arising out of or in connection with the Project Agreements and the transactions contemplated by and/or related to the Project Agreements as set out in Schedule 4 (Tax Implications), to be reflected in the Tax Ruling.

Tax Ruling means an official tax ruling to be obtained by the Company from the LEPL Revenue Service of the Ministry of Finance of Georgia confirming the matters set forth in Schedule 4 (Tax Implications).

Term has the meaning given to such term in Clause 2 (Effectiveness and Term).

Term Energy Rate has the meaning given to such term in Schedule 3 (Energy Rate).

Transfer Completion means either:

- (a) the transfer of the Facility pursuant to clause 6.2 (*Completion Deliverables*) of the Put and Call Option Agreement; or
- (b) the transfer of the Shares held by the Private Shareholders pursuant to clause 5.2 (*Completion Deliverables*) of the Put and Call Option Agreement.

Transfer Date means the date of the Transfer Completion.

Transfer Escrow Account means an escrow account established for the purpose described in the Put and Call Option Agreement.

Transfer Remediation Plan means a remediation plan set out in a Transfer Report.

Transfer Report has the meaning given to such term in clause 4.2 (*Transfer Maintenance and Environmental Audit*) of the Put and Call Option Agreement.

Transmission Line means all the facilities between the string insulators connected to the gantry structure and Fiber optic junction box for OPGW installed in the gantry structure of Nenskra Sub-Station and the 500/220kV substation located at Khudoni (or such other precise location as is agreed between GoG and the Company and specified in Schedule 7 (Transmission Line and Connection Facilities Minimum Specifications)), as more particularly described in Schedule 7 (Transmission Line and Connection Facilities Minimum Specifications).

Unavailable means, in relation to any term or condition required to be included in a policy of insurance under Clause 21.1 (Insurance Coverage):

- (a) such term or condition is not available to the Company or any Major Contractor in the worldwide insurance market with reputable insurers of good standing; or
- (b) the insurance or reinsurance premium payable for insurance incorporating such term or condition is at such a level that such term or condition is not generally being incorporated in insurance procured in the worldwide insurance or reinsurance market with reputable insurers or reinsurers of good standing by operators acting in accordance with Prudent Utility Practice in Georgia.

Uninsurable means, in relation to a risk, either that:

- (a) insurance or reinsurance is not available to the Company or any Major Contractor in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance or reinsurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance or reinsurance market

with reputable insurers or reinsurers of good standing by operators acting in accordance with Prudent Utility Practice in Georgia.

Unit means the entirety of the physical equipment constituting any of the four hydraulic turbines/generators included in the Facility, including all ancillary equipment required to render such hydraulic turbine/generator operational.

Unit 1 means Section 1 as defined under the EPC Contract.

Unscheduled Outage means an outage of any Unit or part of the Facility for the purpose of maintenance that is not a Scheduled Outage, as advised by the Company to the GOG, the Dispatch Licensee and the Offtaker under Clause 17.2 (Unscheduled Maintenance) (but, for the avoidance of doubt, does not include circumstances where the Company has provided a Daily Forecasted Net Electrical Output (or a Revised Daily Forecasted Net Electrical Output) for a day and the Dispatch Licensee has failed to provide Dispatch Instructions in respect of such Daily Forecasted Net Electrical Output (or a Revised Daily Forecasted Net Electrical Output)).

US Dollars or **USD** means the lawful currency of the United States of America.

VAT means value-added tax or any equivalent take of the same nature levied by a Public Authority.

Water Level means the elevation of the static water surface of the reservoir at any moment in time expressed in meters above sea level (masl).

Works has the meaning given to such term in the EPC Contract.

Yearly Forecast has the meaning given to such term in the PPA.

1.2 Rules of Interpretation

- (a) In this Agreement, any reference to **indemnifying** any person against any event, matter or circumstance shall be construed as a reference to indemnifying that person in full and holding such person harmless on an after Tax basis from and against any and all claims (whether or not successful, compromised or settled), actions, liabilities, demands, proceedings or judgments which may be instituted, made, threatened, alleged, asserted or established in any jurisdiction against or otherwise involving such person (each a **Claim**) and from all losses, costs, damages, charges or expenses (including legal expenses reasonably incurred and all losses suffered or incurred in establishing a right to be indemnified under this Agreement) which such person may suffer or incur from time to time (each an **Expense**), in any such case arising out of, based upon or in connection with, whether directly or indirectly, such event, matter or circumstance, and **indemnified** and **indemnify** and similar expressions shall be interpreted accordingly.
- (b) Except to the extent expressly indicated otherwise, in this Agreement:
- (i) any reference to a person includes a body corporate, unincorporated association of persons (including a partnership, joint venture or consortium), government, state, agency, organisation and any other entity whether or not having separate legal personality, and an individual, his estate and personal representatives;
 - (ii) any reference to a Party to this Agreement includes the successors and assigns (immediate or otherwise) of that Party;
 - (iii) the words including and include shall mean including without limitation and include without limitation, respectively;

- (iv) words using the singular or plural number also include the plural or singular number, respectively;
 - (v) any reference to a day, month and year shall be to a day, month and year, respectively of the Gregorian calendar;
 - (vi) any reference to a quarter, quarterly or calendar quarter means a period of three months starting on (and including) 1 January, 1 April, 1 July and 1 October and ending on (and including) 31 March, 30 June, 30 September and 31 December respectively;
 - (vii) any reference importing a gender includes the other genders;
 - (viii) any reference to a time of day is to Tbilisi time;
 - (ix) any reference to writing includes typing, printing, lithography, photography, facsimile, and any form of electronic mail in a durable medium reproducing words in a visible, available and permanently accessible form and sent to the electronic address specified in paragraph (b) of Clause 37.13 (Notices);
 - (x) any reference to a document is to that document as amended, varied or novated from time to time otherwise than in breach of this Agreement or that document;
 - (xi) any reference to a Clause, paragraph or Schedule is to a clause, paragraph or schedule of or to this Agreement;
 - (xii) the Schedules form part of this Agreement;
 - (xiii) the headings do not affect the interpretation of this Agreement; and
 - (xiv) any reference to a company includes any company, corporation or other body corporate wheresoever incorporated.
- (c) If there is any conflict or inconsistency between a term in the body of this Agreement and a term in any of the Schedules or other documents referred to or otherwise incorporated into this Agreement, the term in the body of this Agreement shall take precedence. If there is any conflict or inconsistency between a term of this Agreement and any term of the PPA or the Put and Call Option Agreement, the term in this Agreement shall take precedence.
- (d) The *etiusdem generis* rule does not apply to this Agreement. Accordingly, specific words indicating a type, class or category of thing do not restrict the meaning of general words following such specific words, such as general words introduced by the word other or a similar expression. Similarly, general words followed by specific words shall not be restricted in meaning to the type, class or category of thing indicated by such specific words.
- (e) Clause 1.1 (Definitions) and paragraphs (a) through (d) above apply unless the contrary intention appears.

2. EFFECTIVENESS AND TERM

This Agreement will come into full force and effect on the Execution Date and, unless terminated earlier or extended in accordance with this Agreement, shall remain in full force and effect until the date that is 36 years from the later to occur of Actual COD and Scheduled COD (the **Term**).

3. PROJECT

3.1 Grant of Project Rights

- (a) The GoG grants to the Company, and the Company accepts, the exclusive right, for the duration of the Term, to:
- (i) design, engineer, develop, finance, construct, commission, own, operate and maintain the Facility, and to transfer the Facility to the GoG (or, as applicable in accordance with the terms of the Put and Call Option Agreement, for the Private Shareholders to transfer their Shares) at the expiration of the Term or upon early termination of this Agreement;
 - (ii) impound the waters of the Nenskra River behind the Nenskra Dam, impound the waters of the Nakra River behind the Nakra Weir, transfer the waters of the Nakra River from the intake point of the Nakra Transfer Tunnel behind the Nakra Weir to the outlet point of the Nakra Transfer Tunnel behind the Nenskra Dam, and use the waters impounded by the Nenskra Dam to generate Net Electrical Output and deliver and sell Net Electrical Output to the Offtaker in accordance with the terms of the PPA; and
 - (iii) generate, deliver and sell Net Electrical Output that is not purchased by the Offtaker to any third party, including any third party outside of Georgia, in accordance with the terms of the PPA,

in each case, in accordance with Applicable Law, the Company Consents, Prudent Utility Practice, and the Environmental & Social Standards.

- (b) For the purpose of paragraph (a)(iii) above, the GoG shall have no obligation to support the Company in its sale of Excess Energy to any third party.

3.2 Retention of Government Responsibilities

- (a) Notwithstanding:
- (i) any assignment or transfer, or proposed assignment or transfer, of the obligations of the Dispatch Licensee with respect to the Grid System or of the Offtaker's obligations under the PPA, whether pursuant to any change in or restructuring of the electricity industry in Georgia or otherwise;
 - (ii) any change in or restructuring of, or proposed change in or restructuring of, the ownership interests in the Offtaker, the Dispatch Licensee or the Fund; or
 - (iii) without prejudice to the provisions concerning severability in any Project Agreement, any invalidity, illegality or unenforceability, or deemed invalidity, illegality or unenforceability, of any Project Agreement,

this Agreement shall remain in full force and effect and the GoG and the Company shall be entitled to each of the rights, titles, remedies, powers and/or privileges to which it is purportedly entitled hereunder.

- (b) The GoG must procure, pursuant to a transfer of obligations, a change in ownership interests, or a restructuring of the electricity industry in Georgia, that any replacement or substitute of the Offtaker or the Dispatch Licensee (as applicable), promptly following such transfer, change or restructuring, accedes to and is bound by the terms of this Agreement and each other relevant Project Agreement in the same capacity as the original Offtaker or the original Dispatch Licensee (as applicable).

3.3 Sub-Contracting

- (a) The Company may delegate its obligations under any Project Agreement to one or more Contractors, but shall at all times remain liable to the GoG for the performance of its obligations under this Agreement, notwithstanding any delegation to any Contractor.
- (b) The Company must ensure that each Major Contractor, under its contract with the Company:
 - (i) represents and warrants that it is suitably qualified and experienced to perform the operations delegated to it (including, as applicable, operation, maintenance and repair of the Facility, implementation of the Dispatch Instructions and coordination of operation of the Facility with the Grid System); and
 - (ii) covenants that it is required, pursuant to its contract with the Company, to perform its obligations in accordance with Applicable Law, the Environmental & Social Standards, Consents and Prudent Utility Practices.

3.4 Other Business

- (a) The Company shall not engage in or carry on business that is unrelated to the Project.
- (b) To the extent the Offtaker does not take any Excess Energy under and in accordance with the PPA, the Company shall be entitled to sell such Excess Energy to any third party in accordance with Clause 3.1 (Grant of Project Rights).

4. PROJECT FINANCING

4.1 Senior Debt Financing

- (a) The Company shall arrange financing for the Project and shall ensure that: (i) no later than one month after the Execution Date, an LNTP is issued by the Company authorising the EPC Contractor to perform the works the subject of the LNTP with a value of at least USD 40,000,000; and (ii) Financial Close occurs no later than 30 months after the Execution Date.
- (b) The Company shall, on request, keep the GoG and the Fund informed of the progress of arranging financing for the Project and shall, no later than 30 days prior to the anticipated date of Financial Close, provide a term sheet summarising the material terms of the Finance Documents including:
 - (i) the identity of the Finance Parties and the financial commitment of each;
 - (ii) the interest rates charged with respect to each credit facility, including the default rate charged with respect to each credit facility in the event of default by the Company under the Finance Documents;
 - (iii) the amortisation profile of each credit facility;
 - (iv) the commitment fees and similar fees (if any) payable to the Finance Parties;
 - (v) the target debt to equity ratio; and
 - (vi) the required application of property damage insurance proceeds following an event of loss related to the Facility.

- (c) The Company shall, on or about Financial Close, deliver to the GoG true copies, certified by an officer of the Company, of all Finance Documents executed by the Company other than, for the avoidance of doubt, any intercreditor agreements, fee letters or mandate letters.
- (d) The GoG's and/or the Fund's receipt and/or review of any financing-related information or draft or execution version of any Finance Document does not give either the GoG or the Fund a right of approval over the terms of any Finance Document.
- (e) The Company may agree to any Refinancing without the GoG's approval.

4.2 Impact of Refinancing

If the timing of repayment of principal or the payment of any other amount under the Finance Documents is delayed, or the Company has agreed a Refinancing:

- (a) the amortisation profile set out at Schedule 2 (Financing) will be deemed amended to reflect such delay or Refinancing; and
- (b) except to the extent that the interest rate under the Finance Documents exceeds by more than 1 per cent per annum the highest interest rate (including, the default interest rate) applicable under the Finance Documents contemplated at the time of Financial Close (or under swap arrangements or interest rate fixing arrangements contemplated under the Finance Documents) (or if such Finance Document has been executed on prior to Financial Close, exceeds by more than 1 per cent per annum the interest rate (including, the default interest rate) applicable under that Finance Document at the time of Financial Close (or under swap arrangements or interest rate fixing arrangements contemplated under that Finance Document)) at such time calculated in accordance with the formulae for interest rate calculation as at Financial Close (or under swap arrangements or interest rate fixing arrangements contemplated under the Finance Documents at such time) (or such other formulae as has been approved by the GoG), the interest described as item (b) of the definition of Debt Outstanding will be deemed increased to reflect such delay or Refinancing,

provided that

- (A) if the primary cause of such delay or Refinancing is Company Mismanagement occurring after Actual COD, the GoG has approved or is deemed to have approved such amendment or such increase in accordance with Clause 4.3 (Determination of Company Mismanagement);
- (B) if in the case of a Refinancing after Actual COD, such Refinancing (1) results from the entry into new Finance Documents (which were not contemplated under the Finance Documents prior to entry into such Refinancing) with entities that were not Finance Parties prior to such Refinancing and (2) results in an increase in the principal amount outstanding under the Finance Documents as at the date of such Refinancing as compared to the position immediately prior to the entry into such new Finance Documents, then to the extent that the amendment of the amortization schedule would relate to such increase, the GoG has approved such increase;
- (C) otherwise, the Company or one of the Finance Parties has notified the GoG of such delay or Refinancing and of the amended amortisation schedule relating thereto (and, upon such notification, shall be deemed approved by the GoG).

4.3 Determination of Company Mismanagement

- (a) The Company shall promptly notify the GoG if the timing of repayment of principal or payment of any other amount under the Finance Documents is delayed, or if the Company has agreed a Refinancing. That notice shall indicate the reasons for the delay or Refinancing so that the GoG can assess whether the primary cause of such delay or Refinancing was Company Mismanagement occurring after Actual COD.
- (b) Subject to paragraph (d) below, within one month after the GoG's receipt of a notice under paragraph (a) above, the GoG shall notify the Company:
- (i) whether in its view the primary cause of such delay or Refinancing was or was not Company Mismanagement occurring after Actual COD; and
 - (ii) if the primary cause of such delay or Refinancing was, in its view, Company Mismanagement occurring after Actual COD, whether the GoG approves or rejects any related amendment to the amortisation profile set out at Schedule 2 (Financing) and increase to the interest in the definition of Debt Outstanding.
- (c) If:
- (i) the GoG does not notify:
 - (A) the Company within the one month period described under paragraph (b) above; or
 - (B) the Company and the Finance Parties in the one month period referred to in paragraph (d) below;
 - (ii) the GoG notifies that, in its view, the primary cause of any applicable delay or Refinancing was not Company Mismanagement occurring after Actual COD; or
 - (iii) an Expert determines that the primary cause of any applicable delay or Refinancing was not Company Mismanagement occurring after Actual COD (and the Company or one of the Finance Parties has notified the GoG of such determination),
- the related amendment to the amortisation profile set out at Schedule 2 (Financing) and increase to the interest in the definition of Debt Outstanding shall be deemed to be approved by the GoG and the amortisation profile set out at Schedule 2 (Financing) and the increase to interest shall be deemed amended accordingly.
- (d) If the GoG notifies the Company that in its view the primary cause of a delay or Refinancing was Company Mismanagement occurring after Actual COD and that the GoG rejects any related amendment to the amortisation profile set out at Schedule 2 (Financing) or increase to the interest in the definition of Debt Outstanding:
- (i) the Finance Parties (or any of them) may, within 60 days of such notice by the GoG, notify the Company and the GoG that they have determined that that delay or Refinancing was not primarily caused by Company Mismanagement occurring after Actual COD; and
 - (ii) if the GoG disagrees with such determination, the GoG may within one month of receipt of the Finance Parties' notice, notify the Company and the Finance Parties that it objects to the relevant Finance Parties' determination. If the GoG does not notify the Finance Parties of its objection within such one month period, the GoG shall be deemed to have confirmed that it has no objection to the relevant Finance Parties' determination.

- (e) Any dispute regarding whether any delay or Refinancing was not primarily caused by Company Mismanagement occurring after Actual COD or any determination by the GoG under this Clause shall be determined by an Expert under Clause 34 (Expert Determination).

4.4 Cooperation with Finance Parties

- (a) The GoG acknowledges that the Company intends to secure financing on the basis of the financing plan attached at Schedule 2 (Financing). On Financial Close, Schedule 2 (Financing) will be amended to reflect the exact equity contributions of the Fund and K-water to the Company and to include the amortisation profile of the financing actually secured by the Company for the Project.
- (b) The GoG shall, and shall procure that the Fund shall, on request, use reasonable efforts to assist the Company and cooperate with the Finance Parties to secure non-recourse debt financing.
- (c) In connection with the financing of the Project:
 - (i) each of the GoG, the Fund, the Offtaker and the Dispatch Licensee shall enter into a reasonable and customary Direct Agreement with the Finance Parties;
 - (ii) the Company shall be entitled to freely assign any right, title, interest or benefit in or under the Project Agreements or any part thereof to any Finance Party, and, upon exercise of the Finance Parties' step-in rights, transfer or novate any Project Agreement in favour of the Finance Parties, or their designee, in accordance with the Direct Agreement; and
 - (iii) the Company shall be entitled to grant a mortgage over its rights on all Required Lands to the Finance Parties and the GoG shall make such filings with any Public Authorities as may be reasonably requested by the Company to register and perfect such mortgages and, in respect of any Right to Build granted in respect of any of the Required Lands, the GoG shall execute the documentation required to transfer possession and use of the subject Required Lands and make such filings with any Public Authorities as may be reasonably requested by the Company to register and perfect a security interest to the Finance Parties over such possession and use rights.

4.5 Compliance with Applicable Law

Each Party shall perform its obligations under this Agreement in compliance with Applicable Law.

5. SECURITY FOR COMPANY PERFORMANCE

5.1 Security under Joint Development Agreement

Pursuant to clause 18.19 (*JDA Termination*) of the Put and Call Option Agreement, the Joint Development Agreement shall cease to have any force or effect on and from the Execution Date.

5.2 Bid Security

- (a) Not later than 15 days after the Execution Date, the Company shall deliver to the GoG the Bid Security.
- (b) The Bid Security shall:
 - (i) be issued by a Qualified Issuing Bank;
 - (ii) have a maximum amount available for draw equal to USD 3,000,000; and

- (iii) be maintained until the Bid Security Expiry Date.
- (c) If, other than for a Political Force Majeure Event or reasons attributable to the GoG, any Affiliate of the GoG:
- (i) the Company fails to extend or replace the then-posted Bid Security on or before the date falling 15 days prior to the stated expiration date of the then-posted Bid Security;
 - (ii) the bank that has issued the Bid Security ceases to be a Qualified Issuing Bank and the Company fails to replace the then-posted Bid Security on or before the date falling 15 days after the date on which the issuing bank ceases to be a Qualified Issuing Bank; or
 - (iii) either:
 - (A) an LNTP is not issued by the Company prior to the date that is one month after the Execution Date, authorising the EPC Contractor to perform the works the subject of the LNTP with a value of at least USD 40,000,000; or
 - (B) Financial Close does not occur by the date falling 30 months after the Execution Date,

the GoG may draw on the Bid Security for the full amount thereof.
- (d) If the GoG terminates this Agreement in accordance with Clause 28.1 (Termination – Company Event of Default) before Financial Close, the Company shall, within five Business Days of receipt of a written demand therefor from the GoG, pay liquidated damages to the GoG in the amount of USD 3,000,000. If the Company does not pay these liquidated damages in full to the GoG within five Business Days of receipt of a written demand therefor from the GoG, the GoG may draw on the Bid Security up to an amount equal to the due but unpaid liquidated damages.
- (e) The Parties agree that the liquidated damages payable under paragraph (d) above:
- (i) are a genuine and reasonable pre-estimate of the damages likely to be sustained by the GoG on termination of this Agreement in accordance with Clause 28.1 (Termination – Company Event of Default) before Financial Close; and
 - (ii) shall be the GoG's sole and exclusive entitlement to damages in respect of such termination.
- (f) If, on the Bid Security Expiry Date, any portion of the Bid Security remains undrawn, the GoG shall return the Bid Security to the Company no later than two Business Days after the Bid Security Expiry Date. On and from the date on which the Company delivers the Performance Security to the GoG under Clause 5.3 (Performance Security), the GoG shall not draw on the Bid Security.
- (g) The GoG may draw upon the Bid Security notwithstanding the existence of any Dispute as to the amount due to the GoG under this Agreement or under any other Project Agreement to which the GoG is a party.

5.3 Performance Security

- (a) Where, as at the date of Financial Close:
- (i) the GoG has drawn on the Bid Security in accordance with paragraph (c) of Clause 5.2 (Bid Security) but has not elected to terminate this Agreement in accordance with Clause 28.1 (Termination – Company Event of Default); or

(ii) the GoG has not drawn the Bid Security,

the Company shall deliver or shall procure delivery of the Performance Security to the GoG no later than the date falling 15 days after Financial Close.

(b) The Performance Security shall:

(i) be issued by a Qualified Issuing Bank;

(ii) have a maximum amount available for draw equal to USD 27,000,000; and

(iii) be maintained until the Performance Security Expiry Date.

(c) If, other than for a Political Force Majeure Event or reasons attributable to the GoG, any Affiliate of the GoG:

(i) the Company fails to extend or replace the then-posted Performance Security on or before the date falling 15 days prior to the stated expiration date of the then-posted Performance Security; or

(ii) the bank that has issued the Performance Security ceases to be a Qualified Issuing Bank and the Company fails to replace the then-posted Performance Security on or before the date falling 15 days after the date on which the issuing bank ceases to be a Qualified Issuing Bank,

the GoG may draw on the Performance Security for the full amount thereof.

(d) If the Company fails to pay delay damages that are due and payable pursuant to Clause 11.6 (Delay Damages – Scheduled COD) within 15 days of the GoG's written demand therefore in writing, the GoG may draw on the Performance Security up to an amount equal to the unpaid due and payable delay damages.

(e) If the GoG terminates this Agreement in accordance with Clause 28.1 (Termination – Company Event of Default) after Financial Close but before Actual COD, the Company shall, within five Business Days of receipt of a written demand therefor from the GoG, pay liquidated damages to the GoG in the amount of USD 27,000,000 less any amounts paid to the GoG pursuant to Clause 11.6 (Delay Damages – Scheduled COD). If the Company does not pay these liquidated damages in full to the GoG within five Business Days of receipt of a written demand therefor from the GoG, the GoG may draw on the Performance Security up to an amount equal to the due but unpaid liquidated damages.

(f) The Parties agree that the liquidated damages payable under paragraphs (d) and (e) above:

(i) are a genuine and reasonable pre-estimate of the damages likely to be sustained by the GoG on termination of this Agreement in accordance with Clause 28.1 (Termination – Company Event of Default) before Actual COD; and

(ii) shall be the GoG's sole and exclusive entitlement to damages in respect of such termination.

(g) If, on the Performance Security Expiry Date, any portion of the Performance Security remains undrawn, the GoG shall return the Performance Security to the Company no later than five Business Days after the Performance Security Expiry Date.

- (h) The GoG may draw upon the Performance Security notwithstanding the existence of any Dispute as to the amount due to the GoG under this Agreement or under any other Project Agreement to which the GoG is a party.

6. REPRESENTATIONS AND WARRANTIES

6.1 GoG, Offtaker and the Dispatch Licensee Representations and Warranties

- (a) As at the Execution Date, with such representations and warranties deemed to be repeated as at Financial Close and Actual COD (unless expressed to be given as at a specific date), each of the GoG, the Offtaker and the Dispatch Licensee represents and warrants to the Company that:
- (i) the rights to the Project which this Agreement grants or purports to grant to the Company have been validly granted and this Agreement has been validly awarded and executed by the GoG, Offtaker and the Dispatch Licensee as the case may be;
 - (ii) each Project Agreement to which it is a party has been duly authorised, executed and delivered by it and constitutes its valid, legal and binding obligation, enforceable in accordance with its terms;
 - (iii) none of the execution, delivery, or performance by it of any Project Agreement to which it is a party, its compliance with the terms and conditions of any such Project Agreement, and the carrying out by it of the transactions contemplated by any such Project Agreement, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions, or provisions of any agreement entered into by it, Applicable Law or any applicable permit, or any order, writ, injunction, judgment, or decree of any Public Authority in relation to it;
 - (iv) in relation to the Project, it (and, in the case of the GoG, any Affiliate of the GoG) is in compliance with applicable anti-corruption, anti-money laundering, anti-terrorism, economic sanction and anti-boycott laws of Georgia and no prohibited payments or illegal activities have been made or carried out by it, its agents or, in the case of the Offtaker and the Dispatch Licensee, its management officers;
 - (v) each of the Offtaker and the Dispatch Licensee is a joint stock company that is wholly owned by the Fund, and the Fund is a joint stock company that is wholly owned by the GoG;
 - (vi) each of the Offtaker, the Dispatch Licensee and the Fund are duly organised and validly existing under the laws of Georgia and have all requisite legal power and authority to execute the Project Agreements to which each of them is party and to carry out the terms and conditions of each such Project Agreement; and
 - (vii) none of the GoG, the Offtaker, the Dispatch Licensee or the Fund has the legal capacity or authority to claim sovereign immunity.
- (b) The GoG additionally represents and warrants to the Company that:
- (i) no third party has any valid rights that conflict with the rights granted to the Company under Clause 3.1 (Grant of Project Rights) or under any other Project Agreement;
 - (ii) the Tax Implications set out in Schedule 4 (Tax Implications) are in full compliance with Applicable Law; provided that the sole remedy of Company for breach of this representation and warranty shall be to claim for Change in Tax as set forth in Clause 23 (Increased Costs).

6.2 Company Representations and Warranties

As at the Execution Date, with such representations and warranties deemed to be repeated as at Financial Close and Actual COD (unless stated otherwise), the Company represents to the GoG, to the Offtaker and to the Dispatch Licensee that:

- (a) the Company is duly organised and validly existing under the laws of Georgia and has all requisite legal power and authority to execute each Project Agreement to which it is a party and to carry out the terms, conditions and provisions included in each such Project Agreement;
- (b) this Agreement and each Project Agreement to which the Company is a party has been duly authorised, executed and delivered by the Company and constitutes the valid, legal and binding obligation of the Company enforceable in accordance with its terms (except for any mandatorily applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditors' rights generally);
- (c) none of the execution, delivery, or performance by the Company of this Agreement or any other Project Agreement to which the Company is a party, the compliance with the terms and provisions of each such Project Agreement, and the carrying out of the transactions contemplated by each such Project Agreement, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions, or provisions of any agreement entered into by the Company, Applicable Law or any applicable permit, or any order, writ, injunction, judgment, or decree of any Public Authority against the Company;
- (d) there are no actions, suits or proceedings pending or threatened, against or affecting the Company before any court or administrative or quasi-judicial body or arbitration tribunal that might materially adversely affect the ability of the Company to meet and carry out its obligations under this Agreement; and
- (e) as at the Execution Date, the Company is compliant with applicable anti-corruption, anti-money laundering, anti-terrorism, economic sanction and anti-boycott laws of Georgia and no prohibited payments or illegal activities have been made or carried out by the Company or its management officers in order to obtain, retain, or direct business under any Project Agreement.

7. OWNERSHIP

7.1 Project

Subject to Clause 4.4 (Cooperation with Finance Parties) and save for any such sale, disposal or transfer made in accordance with the terms of the Finance Documents or the Project Agreement, the Company shall not, without the prior consent of the GoG, sell, dispose of or otherwise transfer any of its rights and obligations in the Project including, without limitation, ownership of the Facility or part thereof.

7.2 Restrictions on Ownership/Transfer of Shares

Subject to the restrictions set out in this Clause 7.2, the Shareholders are free to sell, dispose of or otherwise transfer any Shares without restriction or consent from the GoG or any Public Authority.

- (a) Until the second anniversary of Actual COD, the Sponsor must own more than 50% of the Shares.

- (b) From and after the second anniversary of Actual COD, the Sponsor and each other Private Shareholder is permitted to sell, dispose of or otherwise transfer any Shares without restriction or consent provided that at all times:
 - (i) more than 50% of the Shares are owned directly or indirectly by a Permitted Transferee; or
 - (ii) either: (A) the operations and maintenance arrangements as at Actual COD remain in place following such transfer or are transferred to a Permitted Transferee; or (B) new operations and maintenance arrangements are entered into on similar terms with a Permitted Transferee.
- (c) On request by GoG (acting reasonably), the Company shall provide a copy of the Company's share register evidencing that it is in compliance with at least one of the requirements set out under paragraph (b)(i) and paragraph (b)(ii) above. Any dispute regarding whether an entity is a Permitted Transferee shall be resolved in accordance with Clause 34 (Expert Determination).
- (d) Any change of ownership of the Shares arising as a consequence of:
 - (i) the grant or enforcement of security in favour of the Finance Parties over or in relation to any of the Shares;
 - (ii) any change in legal ownership of any interest in the Shares owned by the Fund or another GoG Affiliate; or
 - (iii) the provisions of any Project Agreement,shall be disregarded for the purpose of this Clause 7.2.

7.3 Intellectual Property

The Company shall have and retain the ownership or right to use all intellectual property developed or acquired in relation to the Project.

8. LAND RIGHTS

8.1 Required Lands

- (a) The Company shall, as soon as practicable after the Execution Date, deliver the Land Report to the GoG, setting out in detail all land parcels required for the Company to undertake the Project.
- (b) Not later than 15 days from the date on which the GoG receives the Land Report, the GoG shall deliver to the Company notice of any objection to the Land Report. Following the delivery of such a notice of objection, the Parties shall attempt to reach agreement on the matters raised in the notice of objection through direct negotiations. If the Parties are unable to reach agreement on such matters, then:
 - (i) all undisputed land parcels shall be deemed to be part of the Required Lands;
 - (ii) all disputed land parcels shall be referred to Expert determination in accordance with Clause 34 (Expert Determination); and
 - (iii) the Expert shall determine which disputed land parcels will be deemed to be part of the Required Lands in accordance with Clause 34 (Expert Determination).

- (c) If, within 15 days of the date on which the GoG receives the Land Report, the GoG has not issued a notice of any objection to the Land Report, the land parcels listed in the Land Report as required for the Company to undertake the Project shall be deemed Required Lands.

8.2 Land Classification and Transfer

- (a) Not later than 60 days after the date on which all of the Required Lands are finally determined, the GoG shall provide a report to the Company that describes those parcels of the Required Lands that are Public Lands and those parcels that are Private Lands (if any). In respect of any Private Lands, the report shall describe the anticipated costs and the status of any process being undertaken by the GoG to obtain ownership of such Private Lands. In respect of any parcels of Required Lands designated as Agricultural Lands, the report shall describe the status of any process being undertaken by the GoG to re-designate such parcels as Non-Agricultural Lands. The report shall also identify any parcels of the Required Lands in respect of which Clause 8.4 (Impossibility of Transfer – Right to Build) is (or is reasonably expected to be) applicable.
- (b) The GoG, shall (or shall procure that), thereafter:
- (i) acquire title to any Private Lands that are part of the Required Lands;
 - (ii) procure that all Required Lands designated as Agricultural Lands are re-designated as Non-Agricultural Lands prior to the date of transfer to the Company;
 - (iii) by the required date set out in the Land Report (and in any event prior to Financial Close), unconditionally transfer to the Company (using a Land Transfer Agreement that is substantially in the form set out at Schedule 8 (Land Agreements)) clear title that is valid and free of encumbrances to all Required Lands (other than those Required Lands in respect of which Clause 8.4 (Impossibility of Transfer – Right to Build) is applicable); and
 - (iv) ensure that all required registrations are completed as required to give effect to the re-designation of the Required Lands, transfer of title to the Required Lands or issuance of a Right to Build with respect to any applicable Required Lands as set forth in Clause 8.4 (Impossibility of Transfer – Right to Build).

8.3 GoG Responsibilities

In connection with the acquisition and transfer to the Company of title to the Required Lands, the GoG:

- (a) shall comply in all respects with the Environmental & Social Management Plan;
- (b) shall provide prompt notice to the Company of any litigation, threatened litigation or other risk of delay in relation to the acquisition and transfer in accordance with paragraph (b)(iii) of Clause 8.2 (Land Classification and Transfer);
- (c) represents and warrants as at each date on which title to any parcel of the Required Lands is transferred to the Company that:
 - (i) such lands have been procured in accordance with Applicable Law;
 - (ii) such lands are designated as Non-Agricultural Lands and that there are no current operations on such lands; and
 - (iii) such lands have valid and clear title, free of any encumbrances; and

- (d) shall promptly indemnify the Company against Claims and Expenses arising from any third party claim in relation to the acquisition of, or transfer of title to, any parcel of the Required Lands, or any ownership or use of any parcel of the Required Lands prior to the date of transfer, whether such claim arises prior to the date of transfer or at any time after the date of transfer.

8.4 Impossibility of Transfer – Right to Build

- (a) If, for any reason under Applicable Law, the GoG is unable to transfer to the Company clear title to any parcel of the Required Lands, the GoG shall grant to the Company an irrevocable, valid and unencumbered Right to Build in respect of each such parcel of the Required Lands that cannot be transferred to the Company under Applicable Law. The Right to Build shall be substantially in the form set out at Schedule 8 (Land Agreements).
- (b) The representations and warranties, undertakings and indemnity of the GoG under Clause 8.3 (GoG Responsibilities) shall apply in relation to each parcel of the Required Lands in respect of which the GoG grants the Company a Right to Build under paragraph (a) above.

8.5 Payment for Required Lands

- (a) In consideration for the GoG performing its obligations set out under this Clause 8, the Company shall pay:
 - (i) the GoG in respect of all of the parcels of the Required Lands that are Public Lands, including the parcels of the Required Lands transferred under the Right to Build, an amount equal to one US Dollar (inclusive of all Taxes, registration and stamp fees and other costs); and
 - (ii) the GoG, or in the Company's discretion, directly to any private individuals with rights in relation to the Required Lands, in respect of all of the parcels of the Required Lands that are Private Lands including the parcels of the Required Lands transferred under the Right to Build, upon receipt by the Company of evidence that is reasonably satisfactory to the Company of such costs and expenses, the reasonable costs and expenses incurred by the GoG in relation to the GoG acquiring all legal rights to the Private Lands in accordance with Applicable Law.
- (b) The Company shall pay the amount payable under paragraph (a)(i) above on the date that the GoG provides evidence reasonably satisfactory to the Company that all of the parcels of the Required Lands that are Public Lands including the parcels of the Required Lands transferred under the Right to Build have been transferred to the Company and all related formalities have been completed. The Company shall pay the amount payable to GoG under paragraph (a)(ii) above within 30 days after each date on which the GoG provides evidence reasonably satisfactory to the Company that any Private Lands including the parcels of the Required Lands transferred under the Right to Build are transferred or granted to the Company and all related formalities have been completed. If the Company elects to pay amounts to any private individuals under paragraph (a)(ii) above the Company will pay such amounts on the date when the applicable Private Lands are transferred or granted to the Company and all related formalities have been completed.

9. CONSENTS

9.1 Consent Application Process

- (a) Without prejudice to the GoG's obligations in relation to Company Consents, the Company shall, at its own cost and expense:

- (i) apply for a Tax Ruling on the basis of the Tax Implications set out in Schedule 4 (Tax Implications); and
 - (ii) apply for and obtain and maintain in full force and effect all Company Consents.
- (b) From the Execution Date until Financial Close, the Company shall, bi-annually, deliver to the GoG a report identifying:
- (i) all Company Consents that the Company has, as at the date of the Consents Report, obtained for the ownership, operation and maintenance of, and the supply of power from, the Facility; and
 - (ii) the Company Consents not yet required to be obtained for the operation and maintenance of, and the supply of power from, the Facility.

The Company will attach to each Consents Report a copy of each Company Consent, and each notice of renewal, rejection or deferral received in connection with any application for a Company Consent, received during the relevant time period.

- (c) If the Company or any Contractor:
- (i) submits an application for a Company Consent or a Tax Ruling on a timely basis;
 - (ii) pays all fees required by Applicable Law in connection with such Company Consent or Tax Ruling application; and
 - (iii) complies with all substantive and material requirements under Applicable Law in relation to such Company Consent or Tax Ruling application,

the GoG, within its competence, shall and shall cause Public Authorities to, grant or renew each such Company Consent or such Tax Ruling without delay, and, in the case of the Tax Ruling, not later than Financial Close.

9.2 Consent Conditions

- (a) The GoG or any Public Authority may attach such terms and conditions to the issuance or renewal of any of the Company Consents as are in accordance with Applicable Law, provided that such terms and conditions do not (directly or indirectly) have an adverse Material Company Effect.
- (b) Provided that the GoG has complied with its obligations under this Clause 9 and Clause 22.2 (Inspection), the attachment of such terms and conditions as are in accordance with Applicable Law shall not in and of itself constitute a breach by the GoG of its obligations under this Agreement, a Natural Force Majeure Event, a Political Force Majeure Event or a GoG Event of Default.

9.3 Compliance with Consents

- (a) If the Company fails to abide by any term or condition of any Company Consent, then the GoG or any Public Authority may exercise any power pursuant to Applicable Law in respect of such failure and such exercise shall not of itself constitute a breach of this Agreement by the GoG, a Natural Force Majeure Event or a GoG Event of Default.
- (b) Nothing in this Agreement shall limit the GoG or any Public Authority from taking any action in relation to a breach of, or non-compliance with, a Company Consent that the GoG or such Public Authority is entitled to take under Applicable Law.

10. TRANSMISSION LINE, CONNECTION FACILITIES AND GRID SYSTEM

10.1 GoG Responsibilities

- (a) The GoG shall, or shall procure that the Dispatch Licensee shall, design, construct, install, commission, own, operate and maintain the Transmission Line and Connection Facilities in accordance with Prudent Utility Practice, Applicable Law, the Environmental & Social Standards and the specifications and obligations set out in Schedule 7 (Transmission Line and Connection Facilities Minimum Specifications).
- (b) The Parties acknowledge and agree that the specifications and obligations to be set out in Schedule 7 (Transmission Line and Connection Facilities Minimum Specifications) shall set out the specifications of: the Transmission Line and Connection Facilities (which among others will allow for technical coordination between the Facility and the Grid System); and the Metering Device and the Check Metering Device. Such specifications shall be agreed and appended to Schedule 7 (Transmission Line and Connection Facilities Minimum Specifications) before Financial Close as follows:
- (i) No later than three months after receipt from the Company of the duly filled in application form and all relevant documentations for connection of Facility to the Grid System in accordance with the requirements set out in the Grid Code, the Dispatch Licensee shall deliver to the Company the specifications of the Transmission Line and Connection Facilities, and of the Metering Device and the Check Metering Device, as well as the draft Connection Agreement. Such specifications shall be submitted to the Lenders' Technical Adviser for approval, which approval must be obtained before Financial Close but no later than 3 months following the delivery of such specifications by the Dispatch Licensee to the Company. To obtain such approval the Dispatch Licensee and the Company shall, as necessary, agree to incorporate reasonable changes requested by the Lenders' Technical Adviser into those specifications, provided that such changes shall be compliant with the Grid Code.
- (ii) Upon receipt of the Lenders' Technical Adviser's approval for the specifications of the Transmission Line and Connection Facilities, and for the Metering Device and the Check Metering Device, in each case that have been agreed by the Dispatch Licensee and the Company, Connection Agreement shall be signed and such specifications shall be appended to Schedule 7 (Transmission Line and Connection Facilities Minimum Specifications) and will form part of this Agreement.
- (iii) If the Dispatch Licensee and the Company fail to agree the specifications of the Transmission Line and Connection Facilities, or of the Metering Device and the Check Metering Device, in accordance with paragraphs (i) and (ii) above, or there is a Dispute regarding the specifications, such matter or Dispute shall be resolved in accordance with Clause 34 (Expert Determination).
- (c) The GoG shall procure that the construction, testing and commissioning of the Transmission Line and Connection Facilities will be completed no later than four months before Scheduled EGR COD provided that the Connection Agreement is signed before earlier of the Financial Close or the date on which the FNTF is issued.
- (d) At any time, the GoG shall, promptly and, in any event, not later than 30 days following the delivery of a written request by the Company, provide any information requested by the Company regarding the Transmission Line and the Connection Facilities, including information regarding:
- (i) planning and timing of construction activities;

- (ii) any potential delays in construction; and
- (iii) any technical information that might be required by the Company for the purpose of completing the detailed design of the Facility.

10.2 Company Responsibilities

- (a) The Company shall be responsible for designing, constructing, installing, commissioning, operating and maintaining all auxiliary and interconnecting equipment on the Company's side of the Point of Delivery.
- (b) The Company shall promptly, and in any event not later than 30 days, after the delivery of a written request by the GoG provide any information requested by the GoG regarding the auxiliary and interconnecting equipment on the Company's side of the Point of Delivery, including information regarding:
 - (i) planning and timing of construction activities;
 - (ii) any potential delays in construction; and
 - (iii) any technical information that might be required by the GoG for the purpose of completing the detailed design of the Transmission Line and the Connection Facilities.

10.3 Completion of Transmission Line and Connection Facilities

- (a) When the GoG (or Dispatch Licensee) completes construction, testing and commissioning of the Transmission Line and Connection Facilities, an authorised representative of the GoG shall certify in writing to the Company that the Transmission Line and the Connection Facilities have been constructed, tested and commissioned and the Grid is ready to begin receiving electricity from the Facility in accordance with the Project Agreements.
- (b) The GoG shall provide to the Company a copy of the certification issued by the Dispatch Licensee that the Transmission Line and Connection Facilities are suitable for purpose.

10.4 Delayed Commissioning Events

- (a) If a Delayed Commissioning Event occurs:
 - (i) for the duration of the Delayed Commissioning Period, the Dispatch Licensee shall pay delay liquidated damages to the Company at the rate of (A) prior to the Scheduled COD, USD 46,666 per day per Complete Unit, and (B) on and from the Scheduled COD, USD 80,000 per day per Complete Unit (and, for this purpose, the Dispatch Licensee, the GoG and the Company agree that the delay liquidated damages are a genuine and reasonable pre-estimate of the damages likely to be sustained by the Company as a result of the GoG's delay in achieving construction, testing and commissioning of the Transmission Line and Connection Facilities); and
 - (ii) the Company shall be entitled to an extension of time pursuant to Clause 30 (Extension of Time).
- (b) The Company shall, within 12 days from the end of any month in which a Delayed Commissioning Event occurs or is continuing, prepare and deliver to the Dispatch Licensee (with a copy to the GoG) a notice setting out the aggregate amount of delay liquidated damages for which the Dispatch Licensee is liable.

- (c) The Dispatch Licensee must pay the amount stated as payable in the notice within 30 days after the receipt of such invoice in accordance with Clause 37.6 (Payments).

10.5 Other Compensation Events

- (a) If an Other Compensation Event occurs following EGR COD, the Company shall not be liable (whether under this Agreement, the Power Purchase Agreement or otherwise) for any failure to generate or deliver Forecasted Net Electrical Output (as adjusted for any Revised Forecasted Net Electrical Output pursuant to clauses 6.1(b) and/or 6.5 of the Power Purchase Agreement) to the extent caused by the Other Compensation Event and the GoG shall pay the Company the amount that would have been payable by the Offtaker pursuant to clause 4 (*Sale and Purchase of Net Electrical Output*) of the PPA but for the Other Compensation Event, as if:
 - (i) the Facility had generated and delivered to the Point of Delivery the Forecasted Net Electrical Output (as adjusted for any Revised Forecasted Net Electrical Output pursuant to clauses 6.1(b) and 6.5 of the Power Purchase Agreement) (such forecast made as if the Other Compensation Event had not occurred); and
 - (ii) the Offtaker had purchased such Forecasted Net Electrical Output (as adjusted for any Revised Forecasted Net Electrical Output pursuant to clauses 6.1(b) and 6.5 of the Power Purchase Agreement),

the Company shall use its reasonable efforts to mitigate the impact of any Other Compensation Event on its ability to generate or deliver Forecasted Net Electrical Output.

- (b) The Company shall prepare and deliver an invoice to the GoG within 12 days from the end of any month in which an Other Compensation Event occurs, or, where an Other Compensation Event extends beyond one month, within 12 days from the end of any month in which the Other Compensation Event continues.
- (c) The GoG shall pay the amount stated as payable in the invoice within 30 days after the receipt of such invoice in accordance with Clause 37.6 (Payments).

10.6 Coordination between Facility and Grid System

- (a) Each Party shall notify each other Party in advance of any changes to the Facility or the Grid System, the Connection Facilities and/or the Transmission Line that may affect coordination between the Facility and the Grid System.
- (b) If a Grid Event or any change to the Grid System, the Connection Facilities and/or the Transmission Line prevents the Company from meeting any time requirement under this Agreement, the Company shall be entitled to an extension of time in the manner provided by Clause 30 (Extension of Time). The Company shall not be liable (whether under this Agreement, the Power Purchase Agreement or otherwise) for any failure to generate or deliver Forecasted Net Electrical Output (as adjusted for any Revised Forecasted Net Electrical Output pursuant to clauses 6.1(b) and 6.5 of the Power Purchase Agreement) to the extent caused by any Grid Event or change to the Grid System, the Connection Facilities and/or the Transmission Line.
- (c) If any change to the Facility (other than changes resulting from (i) Political Force Majeure, (ii) Change in Law or Change in Tax, (iii) GoG Event of Default, (iv) Grid Event, or (v) change to the Grid System, connection Facilities and/or the Transmission Line) prevents the GoG, the Offtaker and/or the Dispatch Licensee from meeting any time requirement under this Agreement with respect to construction and commissioning of the Connection Facilities and/or the Transmission Line, the

GoG, the Offtaker and/or the Dispatch Licensee shall be entitled to an extension of time pursuant to Clause 30 (Extension of Time).

11. CONSTRUCTION

11.1 Deforestation

If Applicable Law or Consents require the product of any deforestation by or on behalf of the Company to be delivered to a designated location, the GoG will provide details to the Company of such location by such time as reasonably allows the Company to make arrangements for transportation and delivery.

11.2 Timing for FNTP

The Company will issue the FNTP no later than 30 months after the Execution Date.

11.3 Deliverables

The Company shall deliver to the GoG and to the Offtaker the following documents on or before the specified dates:

- (a) not later than 30 days before the Scheduled EGR COD, the Commissioning Program, and, thereafter, at any time before Actual COD, written notice of any material changes in the Commissioning Program;
- (b) as soon as available, but not later than 60 days following Actual COD, two copies of all results of Commissioning Tests performed on the Facility, including tests of major equipment included in the Facility;
- (c) as soon as available, but not later than 60 days following Actual COD, for the major items of plant incorporated into the Facility, one copy, as received by the Company, of all manufacturers' specifications and manufacturers' operation manuals; and
- (d) as soon as available, but not later than 60 days following Actual COD, one signed and sealed copy of the as built drawings for the Facility.

11.4 Technical Specifications

Not later than Financial Close, the Parties will attach to this Agreement the final agreed technical specifications for the Transmission Line and Connection Facilities as Schedule 7 (Transmission Line and Connection Facilities Minimum Specifications).

The Parties agree that the Facility and the main structures and characteristics of the Facility will be sized and specified in accordance with the detailed design process under the EPC Contract taking into consideration of the technical specifications issued in accordance Clause 10.1(b)(i).

11.5 No Approval Right

- (a) The documents delivered under Clause 11.3 (Deliverables) are for the receiving Party's information purposes only.
- (b) The receiving Party has no right of approval with respect to the design, construction or commissioning of the Facility, and the receipt of any information by the receiving Party under Clause 11.3 (Deliverables) shall not be construed as an endorsement by the receiving or visiting Party of the design, safety, durability or reliability of the Facility.

- (c) The receiving Party will treat all information received under Clause 11.3 (Deliverables) as Confidential Information.

11.6 Delay Damages – Scheduled COD

- (a) If on or before Scheduled COD, Actual COD has not occurred, the Company shall pay delay liquidated damages to the GoG at the rate of USD 40,000 per day for every day that passes after Scheduled COD until Actual COD.
- (b) The Company shall pay delay damages in respect of any month within 15 days of the receipt of a written demand therefore from the GoG. Late payments shall be subject to interest charges in accordance with Clause 37.8 (Default Interest).
- (c) Delay damages payable pursuant to this Clause 11.6 shall be paid as liquidated damages and not as a penalty. The Parties agree that the delay damages are a genuine and reasonable pre-estimate of the damages likely to be sustained by the GoG as a result of the Company's delay in achieving Actual COD.
- (d) Other than termination under Clause 28.1 (Termination – Company Event of Default), the delay damages payable under this Clause 11.6 shall be the only damages due from the Company and the only remedy available to the GoG for delay by the Company in achieving Actual COD. The total amount due under this Clause 11.6 shall not exceed USD 27,000,000.

11.7 Delay beyond Required COD

- (a) If the Company expects that it will not be able to achieve Actual COD by Required COD for reasons other than:
 - (i) a Natural Force Majeure Event;
 - (ii) a Political Force Majeure Event;
 - (iii) a Delayed Commissioning Event; or
 - (iv) any other event which entitles the Company to an extension of time under Clause 30 (Extension of Time),

the Company may deliver a written proposal to the GoG for achieving Actual COD by an extended Required COD.

- (b) Not later than ten days after the GoG receives the Company's written proposal, the GoG will respond in writing to the Company stating either that:
 - (i) the GoG approves the Company's proposal, in which case Required COD will be extended to the extended Required COD set out in the Company's proposal; or
 - (ii) the GoG does not approve the Company's proposal, in which case Required COD will not be extended.
- (c) In the event of an approval under paragraph (b)(i) above:
 - (i) the Company's obligation to pay delay liquidated damages under Clause 11.6 (Delay Damages – Scheduled COD) until Actual COD shall continue unaffected;
 - (ii) if the extension exceeds 310 days, each of:

- (A) the amount available to be drawn under the Performance Security; and
- (B) the cap on liquidated damages set out in paragraph (d) of Clause 11.6 (Delay Damages – Scheduled COD),

shall be increased by an amount equal to USD 40,000 multiplied by the number of days by which the extension exceeds 310 days; and

- (iii) the GoG's right to terminate under Clause 28.1 (Termination – Company Event of Default) will not arise until extended Required COD as set out in the Company's proposal.

11.8 Confirmation of Completion of Construction in accordance with this Agreement for the purposes of the Right to Build and Land Transfer Agreement

Upon issuance of the Takeover Certificate, the Company shall submit it to the Ministry of Energy of Georgia. The latter shall be entitled to examine the Takeover Certificate only in respect of compliance with the conditions of this Agreement, but shall not be entitled to request any other document. On the basis of the Takeover Certificate and in the event of its compliance with the conditions of this Agreement, the Ministry of Energy of Georgia shall issue written confirmation certifying that the Facility was constructed and is operational in accordance with this Agreement within 30 calendar days of receiving the Takeover Certificate from the Company.

12. TAKE OR PAY OBLIGATION

12.1 Take or Pay

During each TOP Period:

- (a) subject to paragraph (b) below, (i) the Dispatch Licensee shall dispatch a quantity of Net Electrical Output that equals or exceeds the Actual Adjusted TOPQ for such TOP Period, and (ii) the Offtaker shall pay for the Net Electrical Output at the applicable Energy Rate in accordance with the terms of the PPA; and
- (b) to the extent that the Dispatch Licensee fails to dispatch at least the Actual Adjusted TOPQ for such TOP Period, the Dispatch Licensee shall pay the TOP Deficiency Payment to the Company in respect of such TOP Period within 40 days of the end of such TOP Period.

12.2 TOP Deficiency Payment

In the event that:

- (a) the Company delivers an invoice for a TOP Deficiency Payment to the Dispatch Licensee in respect of a TOP Period (TOP Period 't'); and
- (b) either:
 - (i) the Dispatch Licensee dispatches any Additional Quantity during the next TOP Period (TOP Period 't+1') occurring during the Annual Generation Period during which TOP Period 't' occurred; or
 - (ii) any TOP Deficiency Payment Refund has accrued in favour of the Dispatch Licensee pursuant to Clause 12.4 (TOP Deficiency Payment Refund) but the Dispatch Licensee has not received full and final payment for such TOP Deficiency Payment Refund from the Company,

then the TOP Deficiency Payment due in respect of TOP Period 't' shall be reduced by:

- (A) in the event that paragraph (b)(i) above applies, the product of (x) the Additional Quantity referred to in paragraph (b)(i) above and (y) the Energy Rate that was applicable during TOP Period 't' (which, for avoidance of doubt, will never be the Energy Rate applicable to Excess Energy); or
- (B) in the event that paragraph (b)(ii) above applies, the amount of the TOP Deficiency Payment Refund referred to in paragraph (b)(ii) above (and the TOP Deficiency Payment Refund that would be payable in accordance with Clause 12.4 (TOP Deficiency Payment Refund) is reduced by a corresponding amount).

12.3 Revision of Company invoices to Dispatch Licensee

In the event that Clause 12.2(b) (TOP Deficiency Payment) is applicable:

- (a) the Company shall send the Dispatch Licensee a revised invoice in respect of TOP Period 't' reflecting the reduction required in accordance with Clause 12.2(b) (TOP Deficiency Payment); and
- (b) the Dispatch Licensee shall pay the full amount set out in that revised invoice no later than on the last day for payment set out in the invoice originally received by the Dispatch Licensee in accordance with Clause 12.1 (Take or Pay).

12.4 TOP Deficiency Payment Refund

(a) In the event that:

- (i) the Dispatch Licensee dispatches any Additional Quantity with respect to a TOP Period (TOP Period 't'); and
- (ii) the Company has received a TOP Deficiency Payment in respect of one or more previous TOP Period(s) occurring during the Annual Generation Period during which TOP Period 't' occurred,

then the Company shall pay to the Dispatch Licensee the TOP Deficiency Payment Refund calculated in respect of TOP Period 't' within ten Business Days of the receipt by the Company of full and final payment by the Offtaker for the relevant Additional Quantity.

- (b) For the avoidance of doubt, if in relation to any Annual Generation Period the Company receives one or more TOP Deficiency Payments and the Company is not required by Clause 12.4(a) (TOP Deficiency Payment Refund) to make one or more TOP Deficiency Payment Refunds up to the aggregate amount of such TOP Deficiency Payment(s) in respect of Additional Quantities generated by the Company during TOP Periods occurring during such Annual Generation Period, then the Company shall have no further obligation in relation to such TOP Deficiency Payment(s).

12.5 Aggregate Annual Payment Requirements

If, at the end of any Annual Generation Period, the aggregate of:

- (a) the payments that accrued pursuant to clause 8.1(a) (*Invoicing*) of the PPA during such Annual Generation Period; and

- (b) the TOP Deficiency Payments that accrued during such Annual Generation Period (minus any reductions made pursuant to Clause 12.2 (TOP Deficiency Payment)),

(such aggregate, the **Aggregate Annual Payment**) are less than the Annual TOP Commitment in respect of such Annual Generation Period, then the Dispatch Licensee shall pay to the Company a lump sum payment within 30 days of demand equivalent to the lower of:

- (i) the difference between the Annual TOP Commitment and the Aggregate Annual Payment; and
- (ii) the quantity of net electrical output the Company could have generated using Non-Dispatched Spilled Water in that Annual Generation Period multiplied by the applicable Energy Rate.

12.6 Annual Electricity Balance of Georgia

On and from the Scheduled EGR COD, for as long as there is such a balance, the GoG shall procure that the electricity to be generated by the Facility is included in the annual electricity balance of Georgia.

13. ADVERSE HYDROLOGICAL EVENTS

13.1 Shortfall Energy

In the event that the inflows of water into the reservoir during any Annual Generation Period and/or the quantity of water stored in the reservoir as of the beginning of the Annual Generation Period are insufficient (taking into consideration the obligations of the Company under Applicable Law and under any applicable social and environmental remediation plan or similar plan) to generate Net Electrical Output equal to the Annual Take or Pay Quantity, then the lower of:

- (a) the quantity of Net Electrical Output the Project is unable to generate as a result of such shortfall in the availability of water (as such amount is calculated applying the formula for Shortfall Energy set out in Schedule 6 (Adverse Hydrological Event)); and
- (b) 284.2 GWh (which amount corresponds to the difference between 1,219 GWh and 934.8 GWh),

shall be classified as **Shortfall Energy** (and the quantity of energy so classified shall be referred to as the **Shortfall Quantity**).

13.2 Adjustment of Energy Rate for Shortfall Energy

In the event that any Shortfall Quantity arises during any Annual Generation Period, then the Energy Rate that is applicable during the following Annual Generation Period shall be increased in accordance with Schedule 3 (Energy Rate).

14. ENERGY RATE ADJUSTMENT

14.1 Company Adjustment Notice

Not later than 15 January of each Annual Generation Period, the Company will provide a written notice (an **Adjustment Notice**) to the GoG stating either that:

- (a) no events occurred in the immediately preceding Annual Generation Period (or, in respect of the first Adjustment Notice delivered by the Company, no events occurred in the period

from the Execution Date to the last day of the preceding Annual Generation Period) that, either under this Agreement or under the PPA, give rise to a right for the Company to claim an increase, or for the Offtaker to claim a decrease, in the Energy Rate payable in the following Annual Generation Period(s), in each case in accordance with Schedule 3 (Energy Rate); or

- (b) events did occur in the immediately preceding Annual Generation Period (or, in respect of the first Adjustment Notice delivered by the Company, events did occur in the period from the Execution Date to the last day of the preceding Annual Generation Period) that, either under this Agreement or under the PPA, give rise to a right for the Company to claim an increase, or for the Offtaker to claim a decrease, in the Energy Rate payable in the following Annual Generation Period(s), in each case in accordance with Schedule 3 (Energy Rate), and, if the Company gives notice under this paragraph (b), the Company must:
- (i) list each event that has occurred;
 - (ii) describe the financial impact of each event on the Company in reasonable detail;
 - (iii) for each event, specify the amount of the increase or decrease to the Energy Rate that the Company considers is required to be made in the following Annual Generation Period(s) in accordance with Schedule 3 (Energy Rate);
 - (iv) specify the net amount of the increase or decrease to the Energy Rate that the Company considers is required to be made in the following Annual Generation Period(s) (taking into account increases or decreases required to be carried forward from prior Annual Generation Periods) in accordance with Schedule 3 (Energy Rate); and
 - (v) specify the Company's assessment of the adjusted Energy Rate for the following Annual Generation Period.

14.2 GoG Response

- (a) Not later than 31 January of each Annual Generation Period (or, if later, 14 days after the date upon which the GoG receives the applicable Adjustment Notice), the GoG must provide to the Company a written response to the Adjustment Notice stating either that:
- (i) the GoG agrees with the information provided in the Adjustment Notice; or
 - (ii) the GoG does not agree with the information provided in the Adjustment Notice, and, if the GoG gives notice under this paragraph (ii), the GoG must:
 - (A) list each event that the GoG believes to have occurred in the immediately preceding Annual Generation Period (or, in respect of the first Adjustment Notice delivered by the Company, any events from the Execution Date to 31 December of the previous calendar year) that, either under this Agreement or under the PPA, gives rise to a right for the Company to claim an increase, or for the Offtaker to claim a decrease, in the Energy Rate payable in the following Annual Generation Period(s), in each case in accordance with Schedule 3 (Energy Rate);
 - (B) for each event, specify the amount of the increase or decrease to the Energy Rate that the GoG considers is required to be made in the following Annual Generation Period(s) in accordance with Schedule 3 (Energy Rate);

- (C) specify the net amount of the increase or decrease to the Energy Rate that the GoG considers is required to be made in the following Annual Generation Period(s) (taking into account increases or decreases required to be carried forward from prior Annual Generation Periods) in accordance with Schedule 3 (Energy Rate); and
 - (D) specify the GoG's assessment of the adjusted Energy Rate for the following Annual Generation Period.
- (b) Determinations made by the GoG under paragraph (a) above shall be consistent with any earlier agreement or determination reached in accordance with Clause 23 (Increased Costs).
 - (c) If the GoG has not delivered a written notice to the Company by the date required by paragraph (a) above the GoG will be deemed to have agreed with the information provided by the Company in the Adjustment Notice pursuant to paragraph (a)(i) above.

14.3 Disputes

- (a) If the GoG provides notice under paragraph (a)(ii) of Clause 14.2 (GoG Response) that it disagrees with the Company as to the increase or decrease to the Energy Rate required to be made in the following Annual Generation Period(s) in accordance with Schedule 3 (Energy Rate), the GoG and the Company will meet and seek to jointly agree such increase or decrease by no later than 12 February of that Annual Generation Period (being the date on which the Company must deliver an invoice in respect of the first TOP Period of that Annual Generation Period).
- (b) If the GoG and the Company are not able to reach agreement by the date required by paragraph (a) above, either Party may refer the matter to determination by an Expert under Clause 34 (Expert Determination). The Expert shall be required to make its determination by no later than 30 days after its appointment.

14.4 No Agreement or Determination by 12 February

- (a) If there is no agreement or no Expert determination by 12 February of any Annual Generation Period, then the Energy Rate payable in the instant Annual Generation Period will be the applicable Term Energy Rate for that Annual Generation Period (as Term Energy Rate is defined in Schedule 3 (Energy Rate)), until the revised Energy Rate is agreed or determined (as applicable) (for any Annual Generation Period, the date such revised Energy Rate is agreed or determined, the Energy Rate Determination Date) and the revised Energy Rate (once agreed or determined, as applicable) shall apply with retroactive effect from 1 January.
- (b) If, pursuant to paragraph (a) above:
 - (i) the Energy Rate is decreased, the Company will pay a lump sum to the GoG for the account of the Offtaker or the Dispatch Licensee (as applicable) in an amount equal to the aggregate of the difference between the previous Energy Rate and the revised Energy Rate multiplied by the total Net Electrical Output paid for by the Offtaker or the Dispatch Licensee (as applicable) during the period from 1 January through the Energy Rate Determination Date, within 30 days after the Energy Rate Determination Date, and payment of such sum to the GoG will discharge any obligation of the Company to pay such sum to the Offtaker or the Dispatch Licensee (as applicable); and
 - (ii) the Energy Rate is increased, the GoG will pay a lump sum to the Company in an amount equal to the aggregate of the difference between the previous Energy Rate and the revised Energy Rate multiplied by the total Net Electrical Output paid for by the Offtaker or the Dispatch Licensee (as applicable) during the period from 1 January through the Energy Rate

Determination Date, within 30 days after the Energy Rate Determination Date, and payment of such sum to the Company will discharge any obligation of the Offtaker or the Dispatch Licensee (as applicable) to pay such sum to the Company.

14.5 Energy Rate Notice

As soon as practicable following agreement or determination of the increase or decrease to the Energy Rate required to be made in the following Annual Generation Period(s), but not later than 12 February of each Annual Generation Period (or, if Clause 14.3 (Disputes) applies, within five days after the Energy Rate Determination Date), the GoG will provide to the Offtaker and the Dispatch Licensee an Energy Rate Notice setting out the Energy Rate payable in the instant Annual Generation Period and such Energy Rate Notice shall be binding on the Offtaker and the Dispatch Licensee.

15. OPERATIONS

15.1 General Covenants

The Company shall operate, maintain and repair the Facility in accordance with:

- (a) this Agreement and the PPA;
- (b) Applicable Law;
- (c) the Dispatch Instructions; and
- (d) Prudent Utility Practice.

15.2 Company Consents

- (a) Subject to the GoG's obligations to support the Company with obtaining and maintaining Consents as set out under paragraph (c) of Clause 9.1 (Consent Application Process), the Company shall at all times obtain and maintain in force all Company Consents required under Applicable Law for the performance of the Company's obligations under this Agreement and the other Project Agreements to which it is a party.
- (b) The Offtaker shall, upon request of the Company, use reasonable endeavours to assist the Company to obtain and maintain in force any Company Consents required to be obtained and maintained by the Company by providing to the Company relevant information known to it or in its possession.

15.3 Offtaker Consents

- (a) The Offtaker shall at all times obtain and maintain in force all Consents required under Applicable Law for the performance of the Offtaker's obligations under this Agreement and the PPA.
- (b) The Company shall, upon request of the Offtaker, use reasonable endeavours to assist the Offtaker to obtain and maintain in force any Consent required to be obtained and maintained by the Offtaker by providing to the Offtaker relevant information known to it or in its possession.

15.4 Dispatch Licensee Consents

- (a) The Dispatch Licensee shall at all times obtain and maintain in force all Consents required under Applicable Law for the operation and performance of the Grid System.

- (b) The Company shall, upon request of the Dispatch Licensee, use reasonable endeavours to assist the Dispatch Licensee to obtain and maintain in force any Consent required to be obtained and maintained by the Dispatch Licensee by providing to the Dispatch Licensee relevant information known to it or in its possession.

15.5 Forecasting and Dispatch

- (a) The Company must provide to the Dispatch Licensee each Yearly Forecast and Monthly Forecast provided to the Offtaker under clause 6 (*Forecasting*) of the PPA including any revision in accordance with such Clause.
- (b) For each day, the Dispatch Licensee may instruct the Company, through the delivery of Dispatch Instructions, to generate and deliver to the Point of Delivery Net Electrical Output up to the Daily Forecasted Net Electrical Output. Where, for any day, the Company has properly issued a Revised Forecasted Net Electrical Output in accordance with clause 6.5 (*Revised Forecasting*) of the PPA, the Dispatch Licensee may instruct the Company, through the delivery of Dispatch Instructions, to generate and deliver to the Point of Delivery Net Electrical Output up to the Revised Forecasted Net Electrical Output for that day.
- (c) The Company has to comply with the Dispatch Instructions in accordance with Applicable Law.
- (d) Subject to paragraph (e) below and if within 15 Business Days after the end of a TOP Period, the Dispatch Licensee delivers a notice to the Company requesting a reduction of the Forecasted Net Electrical Output and the Revised Forecasted Net Electrical Output for that TOP Period on the basis that that the conditions under paragraphs (i) and (ii) have been satisfied, then, if during that TOP Period:
 - (i) the Dispatch Licensee does not dispatch a quantity of Net Electrical Output that equals or exceeds the Actual Adjusted TOPQ for such TOP Period; and
 - (ii) the Forecasted Net Electrical Output, and the Revised Forecasted Net Electrical Output, for that TOP Period exceeded the actual availability of the Facility to generate electrical energy due to the actual hydrological conditions and applicable Reservoir Guidelines, in each case, for that TOP Period,the Company shall retroactively reduce the Forecasted Net Electrical Output and Revised Forecasted Net Electrical Output so that it equals the actual availability that the Facility had during that TOP Period to generate electrical energy due to the actual hydrological conditions and the applicable Reservoir Guidelines, in each case, to the end of that TOP Period.
- (e) If, within 15 Business Days after the end of a TOP Period, the Dispatch Licensee does not deliver a notice to the Company that the conditions under paragraphs (d)(i) and (d)(ii) have been satisfied, the Company shall have no further obligation under paragraph (d) to retroactively reduce the Forecasted Net Electrical Output and Revised Forecasted Net Electrical Output for that TOP Period. For avoidance of doubt, in making determinations required under paragraph (d)(ii) in connection with a TOP Period, the Parties shall in no event consider any event or circumstance that occurs after the end of that TOP Period.
- (f) If the Company disputes any notice from the Dispatch Licensee that the conditions under paragraphs (d)(i) and (ii) have been satisfied then, to the extent of such dispute, Forecasted Net Electrical Output and Revised Forecasted Net Electrical Output shall not be reduced until such dispute is resolved. If not determined by the Dispatch Licensee and the Company within 5 Business Days of such dispute arising (or such longer period as may be agreed by the Dispatch Licensee and the Company), any

dispute regarding whether that the conditions under paragraphs (d)(i) and (ii) have been satisfied shall be determined by an Expert under Clause 34 (*Expert Determination*).

15.6 Information and Records

- (a) Each of the Offtaker, the Dispatch Licensee and the Company authorises such other Party or Parties to record any communications relating to Forecasted Net Electrical Output, Revised Forecasted Net Electrical Output and any Dispatch Instructions, and agrees to supply, at the request of the other Party, a copy or transcript of any such recording at any time during the 60 month period referred to in paragraph (b) below.
- (b) All records and data required to be maintained under Applicable Law or pursuant to the Project Agreements by any Party shall be maintained for a minimum of 60 months after the creation of such record or data and for any additional length of time required by any Public Authority or Applicable Law with jurisdiction over either Party and neither Party shall dispose of or destroy any such records or data after such 60 month period, unless the Party desiring to dispose of or destroy any such records or data has first given 30 days' prior written notice to the other Party, generally describing the records or data to be destroyed or disposed of, and the Party receiving such notice has not objected thereto in writing within ten days.
- (c) Each Party shall have the right, upon reasonable prior written notice to another Party, to examine and/or make copies of the records and data of the other Party relating to this Agreement and/or the PPA at any time during normal office hours.

15.7 O&M Contract

For the period from Actual COD until the Final Debt Maturity Date, the Company shall enter into the O&M Contract with the O&M Contractor. The O&M Contract must include the following terms and conditions:

- (a) the O&M Contractor shall be required to perform relevant operation and maintenance obligations of the Company under this Agreement, the PPA and the Put and Call Option Agreement (including the obligations under clause 7 (*Condition of the Facility*) of the Put and Call Option Agreement) on a substantially back-to-back basis;
- (b) the O&M Contractor's liability under the O&M Contract will be limited to USD 10,000,000 in aggregate plus insurance proceeds received in respect of environmental damage under the Contractor's Liability Policy referred to under Clause 21.1(c) (*Insurance Coverage*); and
- (c) the O&M Contractor must procure credit support for its obligations under the O&M Contract in the form of a parent company corporate guarantee.

15.8 Reservoir Guidelines

- (a) No later than two months after the date of this Agreement, the Company shall submit operational guidelines in relation to the Nenskra Reservoir. The Dispatch Licensee and the Company shall agree on the operational guidelines within four months after the date of this Agreement. Such operational guidelines shall be submitted to the Lenders' Technical Adviser for approval, which approval must be obtained before Financial Close. To obtain such approval the Dispatch Licensee and the Company shall, as necessary, agree to incorporate reasonable changes requested by the Lenders' Technical Adviser into the operational guidelines.

- (b) Upon receipt of the Lenders' Technical Adviser's approval for any operational guidelines in relation to the Nenskra Reservoir that have been agreed by the Dispatch Licensee and the Company, such operational guidelines shall be the Reservoir Guidelines.
- (c) The Reservoir Guidelines shall be binding on the Dispatch Licensee and the Company and may only be amended by mutual agreement of the Dispatch Licensee and the Company, and until the Final Debt Maturity Date, provided that the Lenders' Technical Adviser has approved such amendments.
- (d) If the Dispatch Licensee and the Company fail to agree the Reservoir Guidelines in accordance with paragraph (a) above or there is a Dispute regarding the Reservoir Guidelines, such matter or Dispute shall be resolved in accordance with Clause 34 (Expert Determination).

16. METERING

16.1 Energy Metering Devices

- (a) Following construction, testing and commissioning of the Connection Facilities and Transmission Line and not later than one month before EGR COD:
 - (i) the Company shall install a Metering Device at the Point of Delivery; and
 - (ii) the Company shall install a Check Metering Device at the Point of Delivery.
- (b) The Metering Device and the Check Metering Device shall each be designed and installed in accordance with the specifications set out in Schedule 7 (Transmission Line and Connection Facilities Minimum Specifications).

16.2 Measurement of Net Electrical Output

The Company must ensure that the Metering Device and the Check Metering Device each include electronic recording equipment capable of making continuous recordings of the Net Electrical Output (the **Metering Recording System**). The Metering Recording System of the Metering Device will be used to determine the Net Electrical Output.

16.3 Verifications of Measurement of Net Electrical Output

- (a) The information contained in the Metering Recording System of each of the Metering Device and the Check Metering Device will be verified by checking that the sum of the hourly readings in the Metering Recording System over a specified period are consistent with the local readings for the Metering Device and the Check Metering Device over the same period.
- (b) The first verification of the Metering Device and the Check Metering Device will be conducted on or before EGR COD. Thereafter, the Metering Device and the Check Metering Device will be verified on the last day of each month at 09:00.
- (c) The Company will be responsible for reading the Metering Device and the Check Metering Device. Up to three representatives in aggregate from the GoG, the Offtaker and the Dispatch Licensee are entitled to be present at the reading of the Metering Device and the Check Metering Device, in which case the readings will be jointly taken, recorded and signed.
- (d) The Company must maintain a log of all readings taken and must, within five Business Days of taking any reading, deliver a written record of such reading to the Offtaker, the Dispatch Licensee and to the GoG.

16.4 Inaccuracies in Measurement of Net Electrical Output

When, as a result of any reading, the Metering Device is found to be inaccurate by more than two tenths of a per cent (0.2%) or is otherwise not functioning or is functioning improperly, then the correct amount of Net Electrical Output delivered to the Offtaker for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:

- (a) first, the readings of the Check Metering Device, if any, shall be utilised to calculate the correct amount of Net Electrical Output, unless a test of such Check Metering Device reveals that the Check Metering Device is inaccurate by more than two tenths of a per cent (0.2%) or is otherwise functioning improperly;
- (b) if the Check Metering Device is not within the acceptable limits of accuracy or is otherwise functioning improperly, then the Company and the Offtaker shall jointly prepare an estimate of the correct reading on the basis of all available information including deliveries of Net Electrical Output during periods of similar operating conditions when the Metering Device was registering accurately;
- (c) in the event that the Parties cannot agree on the actual period during which inaccurate measurements were made, the period during which measurements are to be adjusted shall be one-half of the period from the previous test of the Metering Device; and
- (d) the difference between the previous payments by the Offtaker for the period of inaccuracy or improper functioning and the recalculated amount shall be offset against or added to the next payment to the Company under this Agreement, as appropriate.

16.5 Sealing and Repair of Metering Device and Check Metering Device

- (a) The seals on the enclosures for the Metering Device and the Check Metering Device shall be broken only by the Company in the presence of a representative from the GoG, the Offtaker or the Dispatch Licensee when the Metering Device or the Check Metering Device is to be inspected, tested or adjusted.
- (b) When any component of the Metering Device or the Check Metering Device is found to be outside acceptable limits of accuracy or otherwise not functioning properly, the Company must repair, recalibrate or replace such component of the Metering Device or the Check Metering Device.
- (c) Upon the completion of any examination, maintenance, repair or recalibration of, or replacement of any component in, the Metering Device or the Check Metering Device, the relevant Metering Device will be jointly sealed.

16.6 Water Metering

- (a) Not later than the date on which the first Commissioning Test is scheduled to be performed, the Company shall install Water Level meters at the reservoir and flow meters at each turbine (collectively, the **Water Meters**). The Water Meters will be installed in the powerhouse before each turbine. Each Water Meter shall be designed such that the margin of error of the installation shall be no greater than 1% for water flows through the Water Meter.
- (b) The Company must inspect and test the Water Meters for accuracy on or before EGR COD, and must provide the GoG, the Offtaker and the Dispatch Licensee with no less than seven days' notice of any scheduled test of the Water Meters. Up to three representatives in aggregate from the GoG, the Offtaker and the Dispatch Licensee are entitled to be present at the scheduled test.

16.7 Testing of Water Meters

- (a) The Company must inspect and test the Water Meters for accuracy on or before EGR COD and thereafter at least once in each Annual Generation Period.
- (b) The Company must provide the GoG, the Offtaker and the Dispatch Licensee with no less than seven days' notice of any scheduled test of the Water Meters. Up to three representatives in aggregate from the GoG, the Offtaker and the Dispatch Licensee are entitled to be present at the scheduled test.

16.8 Reporting of Water Use

From the month in which the Company first performs any Commissioning Test, not later than 15 days from the end of each month, the Company will provide to the GoG a statement of all water used by the Facility in the previous month, as recorded by the Water Meters.

17. MAINTENANCE

17.1 Scheduled Maintenance

- (a) Not later than 90 days prior to Scheduled COD, and thereafter no later than 90 days prior to the commencement of each Annual Generation Period, the Company shall provide the GoG, the Dispatch Licensee and the Offtaker its desired schedule of Scheduled Outages for the coming Annual Generation Period (or part thereof for each of the first and last schedule delivered).
- (b) Not later than 45 days prior to Scheduled COD, and thereafter no later than 45 days prior to the commencement of each Annual Generation Period, the GoG shall notify the Company whether its proposed schedule is acceptable. If the GoG cannot accept the proposed schedule, it shall advise the Company of a period when the GoG determines that any unacceptable Scheduled Outages can be rescheduled. Such rescheduled Scheduled Outages shall be as close as reasonably practicable to the requested period and shall be of equal duration as the requested period. If the GoG does not notify the Company whether its proposed schedule is acceptable by the date required under this paragraph, the schedule submitted by the Company in accordance with paragraph (a) above shall be deemed to be accepted by the GoG.
- (c) The Company shall conduct Scheduled Outages only during periods agreed to in writing by the GoG; provided, however, that the Company shall never be required to conduct Scheduled Outages during the Mandatory Supply Period.
- (d) The Company shall be entitled to not more than 20 days in aggregate of Scheduled Outages during any Annual Generation Period (other than any Major Maintenance Year) and of not more than 90 days in aggregate in any Major Maintenance Year.

17.2 Unscheduled Maintenance

- (a) When the circumstances warrant an Unscheduled Outage, the Company shall advise the GoG, the Dispatch Licensee and the Offtaker of such circumstances and of the commencement and estimated duration of the Unscheduled Outage.
- (b) Unless the circumstances are such that the Facility requires immediate maintenance, the GoG, following consultation with the National Dispatch Center, shall grant the Company the right to

18. ENVIRONMENTAL PROTECTION, HEALTH AND SAFETY

The Company shall:

- (a) comply with all Environmental & Social Standards, including any requirement thereunder in relation to undertaking, completing, updating, or developing, and thereafter implementing, any environmental and social impact assessment, Environmental & Social Management Plan or similar assessment or plan that is required by the Environmental & Social Standards; and
- (b) comply with Prudent Utility Practice in relation to the protection of the environment, the promotion of health and safety, and the prevention of the occurrence of any Environmental Condition.

19. EMPLOYMENT, TRAINING AND RESOURCES

- (a) The Company will undertake reasonable commercial efforts to:
 - (i) assist in the transfer of technology and training of the citizens of Georgia;
 - (ii) employ citizens of Georgia for the development, design, construction, operation, and maintenance of the Project to the extent reasonable, taking into consideration availability and required skills of such citizens;
 - (iii) include employee training programmes as required in the normal conduct of its business, which training programmes shall, from time to time, include training in the skills necessary or reasonably appropriate for the development, design, construction, operation, and maintenance of the Project (including technical and administrative matters such as contract administration); and
 - (iv) endeavour to, and to cause its Contractors to, give preference to goods and materials from Georgia when the goods and materials are of an equal or better quality, available on a timely basis, and at an equal or lower price.
- (b) The Company agrees to submit to the GoG on an annual basis a report on the matters listed in this Clause 19.

20. TAXES, EXPORT, IMPORT, IMMIGRATION AND EXCHANGE CONTROLS

20.1 Taxes

- (a) Subject to clause 9 (*Costs of Transfer*) of the Put and Call Option Agreement, the Company hereby undertakes to pay all present, future, central, municipal or other lawful Taxes applicable to the Company, the Facility and the Company's other assets as and when required under Applicable Law.
- (b) The GoG must, in accordance with paragraph (e) of Clause 7 of Schedule 4 (Tax Implications), refund to the Company all VAT paid by the Company to the EPC Contractor under the EPC Contract.

20.2 Right to Import and Customs Duties

- (a) Subject to the obligations of the Company to obtain any Company Consents in respect thereof, the Company and its Contractors shall be entitled to import and re-export without restriction such plant, machinery and equipment not manufactured locally as is required for the Project, subject to the payment of applicable customs duties and value added tax.

- (b) Subject to Clause 35 (Assignment and Transfer), and except as required by the Finance Documents (including pursuant to enforcement of security granted to any Finance Party) or the Project Agreements, such imported plant, machinery and equipment shall not be sold or otherwise transferred to or used by another person other than the Company or its Contractors outside of the ordinary course of business activities of a hydropower facility owner, operator, contractor or subcontractor.

20.3 Immigration Controls

Subject to any obligation imposed by Applicable Law to obtain Consents in respect thereof, the GoG shall expeditiously grant to the Company and each of its Contractors work permits, employment passes, visas, and other permits, as necessary and not affecting the national security interests and/or public health and safety in Georgia.

20.4 Exchange Controls

- (a) Without prejudice to any obligation imposed by Applicable Law to obtain Consents in respect thereof, the Company, each Shareholder, each Contractor and each Finance Party shall have the right to:
 - (i) convert funds that are held by it in the form of GEL to US Dollars or Euros;
 - (ii) remit outside Georgia, dividends by, and capital reductions in, the Company and all distributions or payments to a Shareholder, a Finance Party, any Contractor, or any of their Affiliates, contractors or employees; and
 - (iii) freely open and maintain bank accounts outside of Georgia.
- (b) Clause 9.1(c) (Consent Application Process) shall apply to any application for a Consent submitted by the Company, any Shareholder or any Finance Party to exercise any of the rights granted under this Clause 20.4.

21. INSURANCE

21.1 Insurance Coverage

The Company, at its sole cost and expense, shall obtain and maintain, or cause to be obtained and maintained:

- (a) such policies of insurance as may be required by Applicable Law;
- (b) such policies of insurance as usually and ordinarily maintained consistent with Prudent Utility Practice with respect to hydroelectric dams that are similar to the Facility in Georgia; and
- (c) without limitation to paragraphs (a) and (b) above, for the period from Actual COD until the Final Debt Maturity Date, a Contractor's Liability Policy that will include the following cover and terms:
 - (i) third party liability in respect of environmental claims;
 - (ii) environmental clean-up costs in respect of the Site;
 - (iii) name the O&M Contractor as insured;

- (iv) name the Company and each Finance Party as an additional insured in respect of its own insurable interest with protection in respect of vitiating acts or omissions of other insureds or additional insureds; and
- (v) policy limit of liability of at least USD 20,000,000,

(for the purpose of this Clause 21, **Required Insurance**).

The Parties acknowledge and agree that the Required Insurances will be subject to security in favour of the Finance Parties.

21.2 Unavailability and Uninsurability

- (a) The Company shall not be in breach of its obligations under Clause 21.1 (Insurance Coverage) if and to the extent that any particular term or condition of any Required Insurance (or any required endorsement) is Unavailable, or any risk has become Uninsurable, for reasons other than any negligence or default by the Company, and the Company has delivered notice thereof to the GoG accompanied by a written report prepared by an insurance consultant of recognised international standing stating that the relevant term or condition is Unavailable or the relevant risk has become Uninsurable.
- (b) If a risk has become Uninsurable, the Company will use commercially reasonable efforts to obtain, at its sole cost and expense, other insurance that provides, to the maximum extent reasonably achievable, comparable protection against the risk to be insured.
- (c) If a term or condition of any Required Insurance (or any required endorsement) is Unavailable or a risk has become Uninsurable due to any act or omission of the GoG or any of its Affiliates, any GoG Event of Default or any Political Force Majeure Event, then, on the occurrence of such Uninsurable risk or risk for which Required Insurance is Unavailable, the Company will give written notice to the GoG of the occurrence of the risk and the estimated quantum of loss occasioned by such risk (as assessed by an independent and suitably qualified valuer or insurance assessor appointed jointly by the GoG and the Company), and the GoG will, at its option, by written notice to the Company not later than five Business Days from the occurrence of the risk, either:
 - (i) pay to the Company an amount equal to the estimated quantum of loss within 30 days of receipt of the Company's written notice (and, in such event, the Company will, subject to the terms and conditions of the Finance Documents, apply such amount to remedy the relevant event); or
 - (ii) terminate this Agreement by delivering 30 days' advance notice of such termination to the Company.
- (d) If the GoG does not provide a written notice of election within 30 days from the occurrence of a risk that is Uninsurable or a risk for which Required Insurance is Unavailable, the GoG will be deemed to have elected to pay to the Company an amount equal to the estimated quantum of loss within 30 days of receipt of the Company's written notice.

21.3 Proceeds of Insurance

Subject to the terms and conditions of the Finance Documents, the Company shall apply the proceeds of any "all risks" insurance obtained by it (whether directly or indirectly) to the repair of the Facility.

21.4 Disputes

If there is a dispute regarding any proceeds being required to repair the Facility, it will be determined by an Expert under Clause 34 (Expert Determination).

22. REPORTING AND INSPECTION

22.1 Reporting

- (a) In addition to any other reporting obligation set out in this Agreement:
- (i) until Actual COD, the Company shall submit to the GoG on a semi-annual basis a construction report in the form delivered to the Finance Parties in accordance with the Finance Documents (with such reasonable redactions in or of sections that do not solely relate to construction activities or costs including any provisions describing the status of the Company's relations with the GoG, the Fund, the Offtaker, the Dispatch Licensee or any Public Authority);
 - (ii) following Actual COD, the Company shall submit to the GoG and to the Offtaker on an annual basis an operations report in a form to be agreed between the Company and the GoG (acting reasonably);
 - (iii) not later than 20 days prior to Scheduled EGR COD, the Company will inform the GoG, the Offtaker and the Dispatch Licensee of the then-expected date on which EGR COD will occur; and
 - (iv) not later than 20 days prior to Scheduled COD, the Company will inform the GoG, the Offtaker and the Dispatch Licensee of the then-expected date on which Actual COD will occur.
- (b) The Company shall be entitled to share reports provided to GoG and/or to any GoG Affiliate, under any Project Agreement, and any other information relating to the Project (including correspondence to and from the GoG and any GoG Affiliate), with the Shareholders and the Finance Parties.

22.2 Inspection

- (a) Each of the GoG, the Dispatch Licensee and the Offtaker shall, at its sole risk and expense, have the right to visit and observe the construction or operation of the Facility and the Commissioning Tests upon reasonable advance notice to the Company; provided, however, that:
- (i) the visiting Party shall, where possible, coordinate its inspections with any inspections to be undertaken by the Offtaker under the PPA; and
 - (ii) all persons visiting the Facility on behalf of the visiting Party shall comply with the reasonable instructions and directions of the Company or its Contractors in respect of health, safety, security and environmental matters.
- (b) The Company shall, at its sole risk and expense, have the right to visit and observe the construction of the Transmission Line and Connection Facilities upon reasonable advance notice to the GoG; provided, however, that all persons visiting the Transmission Line and Connection Facilities on behalf of the Company shall comply with the reasonable instructions and directions of the GoG or its Contractors in respect of health, safety, security and environmental matters.

22.3 No Approval Right

The rights of inspection set out under Clause 22.2 (Inspection) are for the visiting Party's information purposes only. The visiting Party shall have no right of approval with respect to the design, construction or commissioning of the Facility, and the exercise by the visiting Party of its rights under Clause 22.2 (Inspection) shall not be construed as an endorsement by the receiving or visiting Party of the design, safety, durability or reliability of the Facility or the manner of operation or maintenance of the Facility.

23. INCREASED COSTS

- (a) The Company may give the GoG an Increased Costs Notice if the aggregate impact of any one or more:
- (i) Change in Law decreases revenues and/or increases costs of the Company or the Shareholders to an amount equal to or above the Change in Law Threshold Amount;
 - (ii) Change in Tax decreases revenues and/or increases costs of the Company or the Shareholders to an amount equal to or above the Change in Tax Threshold Amount; or
 - (iii) (A) Political Force Majeure Event; (B) Restoration; (C) change to the Grid System, the Connection Facilities and/or the Transmission Line; or (D) Grid Event, in each case, has, or will have, an adverse effect on the Company's or Shareholder's revenues and/or costs as set out in paragraphs (d) and (e) of the definition of Material Company Effect.

For the purposes of this Clause 23, 'material effect' in the definition of Material Company Effect means a decrease in revenue or an increase in costs of in aggregate the equivalent USD 100,000 (or its equivalent amount in another currency) or more in any Annual Generation Period.

- (b) The Increased Costs Notice shall include reasonable details of any of the circumstances related to the claimed increased costs or reduced revenues. The Company shall act in accordance with Prudent Utility Practices to minimise increased costs and expenses and minimise any reduction of revenue incurred as a result of the events and circumstances listed in paragraph (a) above.
- (c) Notwithstanding paragraph (a) above, the Company shall not be entitled to recover under this Clause 23:
- (i) any increased costs or loss of revenues for which the Company has received full compensation under another provision of this Agreement prior to the delivery of the Increased Cost Notice;
 - (ii) any increased costs and expenses or loss of revenue that arise from events, occurrences, or circumstances that constitute a Change in Law where such increased costs and expenses and/or loss of revenue is less than the Change in Law Threshold Amount;
 - (iii) any increased costs and expenses or loss of revenue that arise from events, occurrences, or circumstances that constitute a Change in Tax where such increased costs and expenses and/or loss of revenue is less than the Change in Tax Threshold Amount;
 - (iv) any loss of revenue that may arise out of a delay in the achievement of Financial Closing and/or an extension to the Required Financial Closing Date; or
 - (v) any increased costs and expenses or loss of revenue that arises from an event, occurrence or circumstance that constitutes a Delayed Commissioning Event.

- (d) Unless the GoG earlier delivers to the Company notice of the GoG's agreement to amounts claimed under an Increased Costs Notice, the Parties shall meet within 15 days of the issuance of any Increased Costs Notice to discuss and endeavour to agree on the adjustments or lump sum compensation to which the Company is entitled under paragraph (e) below. In the event the Parties have not agreed to such adjustments or lump sum compensation within 45 days of the issuance of any Increased Costs Notice, then such Dispute shall be resolved in accordance with Clause 34 (Expert Determination). The GoG shall pay to the Company, in accordance with paragraph (e) below, the amount so agreed (whether by the GoG's agreement to amounts claimed in an Increased Costs Notice or following discussions) or so determined by an Expert.
- (e) Subject to paragraph (g) below, upon the occurrence of the increased costs or decreased revenues that are the subject of an Increased Costs Notice, the GoG shall have the option, exercisable by written notice to the Company within 15 days of the date of the Increased Costs Notice, to:
- (i) increase the Energy Rate in accordance with Schedule 3 (Energy Rate); or
 - (ii) pay such amount, or pay the residual portion of such amount if an increase in the Energy Rate under paragraph (i) above would not result in a full repayment to the Company, directly to the Company as a lump sum payment, which shall be due and payable no later than 30 days after the date of the occurrence of the increased costs or decreased revenues that are the subject of the applicable Increased Costs Notice (or, if later, the date of the Increased Costs Notice).

Subject to paragraph (g) below, if the GoG has not delivered a written notice of its election to the Company within 15 days of the date of the Increased Costs Notice, the GoG will be deemed to have elected to increase the Energy Rate in accordance with Schedule 3 (Energy Rate).

- (f) If the GoG has a lump sum payment obligation in accordance with paragraph (e)(ii) above, at the GoG's election, either:
- (i) the GoG shall, or shall cause the Fund to, pay the applicable lump sum amount to Company;
 - (ii) the GoG shall cause the Fund to make a Shareholder Loan in the amount of the applicable lump sum amount to the Company on the terms set forth in the Shareholders' Agreement; or
 - (iii) the GoG shall cause the Fund to make additional contributions of equity to the Company in an amount equal to the applicable lump sum amount in accordance with the terms of the Shareholders' Agreement.

If the GoG elects to cause the Fund to make a Shareholder Loan to the Company or contribute additional equity to the Company pursuant to paragraph (f)(ii) or (f)(iii) above respectively, then the Energy Rate will be adjusted in accordance with Clause 4 (Adjustment Calculation) of Schedule 3 (Energy Rate).

- (g) If increased costs or decreased revenues that are the subject of an Increased Costs Notice relate to a Change in Tax, and if such amounts when aggregated with all outstanding amounts that remain due to the Company in connection with any other Change in Tax are:
- (i) prior to Actual COD: in excess of USD 25,000,000, or
 - (ii) on or after Actual COD: in excess of USD 20,000,000,

the GoG shall, subject paragraph (h), pay any amount in excess of the respective USD 25,000,000 or USD 20,000,000 threshold by way of a lump sum payment in accordance with paragraph (e)(ii) above.

- (h) For each instance where the GoG has obligation to pay a lump sum amount under paragraph (g), the GoG's lump sum obligation shall be limited to USD 20,000,000. If, after the Company receives such a lump sum payment of USD 20,000,000, full payment for applicable amounts due to Company has not been made, the GoG's option under paragraph (e) shall resume.
- (i) The Company may from time to time deliver to the GoG additional notices identifying additional increases in costs and/or reductions of revenue that have resulted or will result from events or circumstances set out in a past Increased Cost Notice. Any such additional notices shall be given not later than 12 months after the Company knows of such additional costs or reduction of revenue. Following the delivery of such a notice, the Parties shall follow the process set out in paragraph (d) above to agree or determine the additional amount that the GoG shall pay the Company in accordance with paragraph (e) above (in such case, the agreement or determination shall be deemed to be an Increased Costs Notice delivered to the GoG).

24. SHARING OF GAINS

24.1 Change in Law, Change in Tax

If a Change in Law and/or a Change in Tax has a positive effect on the Company's or Shareholders' revenues and/or costs in a manner consistent with paragraphs (d) and (e) of the definition of Material Company Effect (but only, in the case of a Change in Tax, where the Change in Tax affects such revenues and/or costs to an amount equal to or above the Change in Tax Threshold Amount and, in case of a Change in Law, where the Change in Law affects such revenues and/or costs to an amount equal to or above the Change in Law Threshold Amount), the financial benefit to the Company and/or the Shareholders of such Change in Law or Change in Tax will be shared equally between the Company and the GoG.

24.2 Refinancing

If any amendment, waiver or exercise of a right under any Finance Document, or any Refinancing results in a Refinancing Gain, the financial benefit to the Company and/or the Shareholders of such Refinancing Gain will be shared equally between the Company and the GoG.

25. FORCE MAJEURE EVENTS

25.1 Time Consequences for Natural and Political Force Majeure Events

- (a) Subject to the obligation of an affected Party to notify the non-affected Party of the occurrence of a Force Majeure Event pursuant to Clause 25.2 (Notice of Force Majeure), and to an affected Party's obligation to use reasonable efforts to remedy its inability to perform pursuant to Clause 25.3 (Cure), no Party shall be responsible or liable for, or deemed in default of any provision of or obligation under this Agreement or the other Project Agreements to which it is a party because of any failure or delay in complying with its obligations under or pursuant to this Agreement or any other Project Agreement to which it is a party which it is delayed, impeded or prevented from performing due to one or more Force Majeure Events or its or their effects or by any combination thereof, and the periods allowed for the performance by the affected Party of such obligation(s), as well as the Term, shall be extended as follows:
 - (i) if a Natural Force Majeure Event occurs prior to Actual COD, the Company shall be entitled to an extension of time pursuant to Clause 30 (Extension of Time);

- (ii) if a Political Force Majeure Event occurs, the Company shall be entitled to an extension of time pursuant to Clause 30 (Extension of Time); and
 - (iii) if a Natural Force Majeure Event occurs after Actual COD, the Company shall be entitled to an extension of time pursuant to Clause 30 (Extension of Time) and a reasonable extension of the Term which shall, considering the Financial Model and the Base Case Return on Equity, be sufficient to place the Company in the same financial position that it would have been in at the end of the Term had the Natural Force Majeure Event not occurred.
- (b) In no circumstances shall the occurrence of a Force Majeure Event relieve any Party from its obligations to make any payment when due under this Agreement or the other Project Agreements.
 - (c) Each Party shall perform its obligations under this Agreement to the extent the performance of such obligations is not delayed, impeded or prevented by the Force Majeure Event.

25.2 Notice of Force Majeure

- (a) A Party affected by a Force Majeure Event must notify as early as possible the other Party of the occurrence of a Force Majeure Event.
- (b) Within a reasonable time following the Force Majeure Event, the affected Party shall give the other Party a second notice, providing, to the extent which can be reasonably determined at the time of such notice, the material circumstances of the Force Majeure Event, a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations, and a preliminary estimate of the effect on the Company's revenues and/or costs.
- (c) Within a reasonable time following the end of the Force Majeure Event, the affected Party shall provide written notice of its resumption of full performance of its obligations under this Agreement.

25.3 Cure

- (a) A Party affected by a Force Majeure Event must use reasonable efforts to remedy its inability to perform and to resume full performance under this Agreement as soon as practicable. A Party shall not, however, be required to purchase or sell electrical energy to a third party.
- (b) The unaffected Party shall use reasonable efforts to assist the affected Party to remedy the effects of the Force Majeure Event and facilitate the affected Party's continued performance under this Agreement.

26. RESTORATION OF THE FACILITY FOLLOWING A FORCE MAJEURE EVENT, CHANGE IN LAW, OR CHANGE TO THE GRID SYSTEM

26.1 Application of Proceeds of Insurance Following a Force Majeure Event

Subject to the rights of the Finance Parties under the Finance Documents (including the relevant Direct Agreement):

- (a) in the event that the Facility is physically damaged by a Force Majeure Event, the Company shall apply the proceeds of "all risks" insurance actually received by it towards rehabilitation of the Facility; and

- (b) if the GoG requests that the Company does not apply the proceeds of "all risks" insurance to the repair of the Facility, the Company may terminate this Agreement in accordance with Clause 28.7 (Termination – Application of Insurance Proceeds).

26.2 Preparation of Restoration Report Following a Political Force Majeure Event, Change in Law or Change in Grid System

(a) In the event that:

- (i) Political Force Majeure Events result in uninsured damage to the Facility with an aggregate estimated cost in excess of USD 100,000 (or its equivalent amount in another currency) in any Annual Generation Period (including following application of the proceeds of any insurance in accordance with Clause 26.1 (Application of Proceeds of Insurance Following a Force Majeure Event));
- (ii) any changes to the Grid System, the Connection Facilities and/or the Transmission Line that in aggregate have the effect of requiring a modification or a capital addition to the Facility with an estimated cost in excess of USD 100,000 (or its equivalent amount in another currency) in any Annual Generation Period; or
- (iii) compliance by the Company with any one or more occurrence of a Change in Law requires a modification or a capital addition to the Facility in aggregate with an estimated cost in excess of the Change in Law Threshold Amount,

(each such modification or capital addition referred to herein as a **Restoration**),

the Company shall, at the Company's cost (subject to cost recovery in accordance with Clause 23 (Increased Costs)), engage an independent engineering consultancy firm reasonably acceptable to the GoG (the **Restoration Expert**) to develop and deliver to the GoG a written **Restoration Report**.

(b) The Restoration Report shall describe and contain:

- (i) a description of the Political Force Majeure Event, change to the Grid System, the Connection Facilities and/or the Transmission Line or Change in law, and the damage to the Facility, and/or the other effects or impacts on, the Facility;
- (ii) a statement and explanation regarding whether Restoration or modification of the Facility or necessary capital additions are technically feasible;
- (iii) an estimation of the time it will take to restore the Facility (insofar as it may be possible to do so) to its condition immediately prior to the Force Majeure Event, change to the Grid System, the Connection Facilities and/or the Transmission Line or Change in law, or to bring the Facility into compliance with the Change in Law;
- (iv) an estimation of the cost to restore the Facility to its condition immediately prior to the Force Majeure Event or change to the Grid System, the Connection Facilities and/or the Transmission Line or Change in law, or the costs to come into compliance with the Change in Law and the expected associated financing costs;
- (v) a revised cash flow forecast for the Facility; and
- (vi) an estimation of the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be received, and the particular purposes for which such proceeds are required to be applied.

- (c) The Company shall provide reasonable supporting data for the information included in the Restoration Report and shall provide copies of all certificates and reports of the Company's financial and technical advisers, as appropriate or as reasonably requested by the GoG, in support of the applicable matters referred to in this Clause 26.2.
- (d) If any Party disputes any aspect of the Restoration Report such dispute may be referred to Expert determination in accordance with Clause 34 (Expert Determination).

26.3 Obligations Following Delivery of Restoration Report

- (a) In the event that the Restoration Report:
 - (i) indicates that it is technically feasible to undertake the Restoration;
 - (ii) estimates that the cost of Restoration will not exceed the Restoration Threshold Amount; and
 - (iii) estimates that the Restoration can be completed within one year of the commencement thereof,then the Company shall proceed with the implementation of the Restoration in accordance with Clause 26.4 (Implementation of Restoration).
- (b) If paragraph (a) above does not apply, then either Party may terminate this Agreement in accordance with Clause 28.6 (Termination – Restoration).

26.4 Implementation of Restoration

- (a) The Company shall implement a Restoration once:
 - (i) debt and/or equity financing for the Restoration has been secured by the Company on terms that are reasonably acceptable to the Parties and consistent with any relevant limits or ratios imposed by the Financing Documents (including with regard to debt to equity ratios); and
 - (ii) the GoG and the Company have agreed on the amount of the Company's entitlement under Clause 23 (Increased Costs) and the period of time during which the Company shall complete the Restoration, or such amount and period of time have been determined by an expert in accordance with Clause 34 (Expert Determination) (the **Restoration Implementation Period**).
- (b) If the condition in paragraph (a) above has not been satisfied within six months of the delivery of a Restoration Report, then GoG may elect to:
 - (i) provide any required financing by way of a secured loan to the Company that is subordinated to the claims of the Finance Parties under the Finance Documents, but is at least pari passu with all other subordinated debt of the Company and ranks in priority to any Shareholder Loans to the Company;
 - (ii) cause the Fund to make a secured loan to the Company on the same terms as the GoG may elect or provide such a secured loan; and/or
 - (iii) cause the Fund to make an additional capital contribution to the Company by way of a Shareholder Loan or cash contribution in an amount equal to any required additional financing,

and in the event that the GoG does not elect to provide any required additional financing within 30 days of the expiry of the six month period referred to above, then either Party shall have the right to terminate this Agreement pursuant to Clause 28.6 (Termination – Restoration).

- (c) Following the implementation of a Restoration, the Company shall provide the GoG with a detailed account of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work. The GoG may engage an independent auditor to audit the costs incurred by the Company in connection with the implementation of the Restoration.

27. EVENTS OF DEFAULT

27.1 Company Events of Default

- (a) Each of the following is a Company Event of Default:
 - (i) if any warranty or representation made by the Company under this Agreement is inaccurate or misleading at the time it was made and such inaccurate or misleading warranty or representation has a material adverse effect on the legality or capacity of either the Company or the GoG to continue to perform its obligations under any Project Agreement, or a material adverse effect on the rights of the GoG, the Offtaker or the Dispatch Licensee under any Project Agreement;
 - (ii) the Company does not issue an LNTP by the time and with the minimum value set out in paragraph (a) of Clause 4.1 (Senior Debt Financing);
 - (iii) the Company does not achieve Financial Close by the time set out in paragraph (a) of Clause 4.1 (Senior Debt Financing);
 - (iv) the Company does not achieve Actual COD by Required COD as set out in Clause 11.7 (Delay beyond Required COD);
 - (v) any uncured or un-waived Company Event of Default, as defined in each relevant Project Agreement, under any of the other Project Agreements to which (A) the Company and (B) the GoG, or a Public Authority, is a party;
 - (vi) the Bid Security, Performance Security, or any replacement or related demand guarantee, collateral or documentation is not provided by the date required by, or maintained or replenished in accordance with, this Agreement, or is terminated, withdrawn, cancelled, or otherwise becomes invalid or unenforceable prior to the Bid Security Expiry Date, or, as the case may be, the Performance Security Expiry Date (except, in each case, if the Company has the ability under this Agreement to cure such termination, withdrawal, cancellation, invalidity or unenforceability and has effected such cure within the applicable cure period);
 - (vii) the Company repudiates this Agreement or any other Project Agreement;
 - (viii) the Company Abandons the Project (other than because of a GoG Event of Default or any other event or circumstance entitling the Company to an extension of time pursuant to Clause 30 (Extension of Time)); or
 - (ix) the Company suffers an Event of Liquidation.
- (b) Each of the following shall be a Company Event of Default where, following its occurrence, the GoG gives notice to the Company stating the Company is in default and the reason(s) why the Company is in default and the Company fails to remedy such default within 60 days after delivery of

such notice (or if any such default cannot, due to its nature, be remedied within such 60 days, the Company fails to either (i) commence to remedy such default within such 60 days and to diligently and continuously pursue to remedy such default thereafter, or (ii) to remedy such default within 90 days):

- (i) the failure of the Company to pay to the GoG any amount that is due and payable to the GoG or any GoG Affiliate under this Agreement or any other Project Agreement;
- (ii) with the exception of those events expressly set out in this Clause 27.1, any uncured or un-waived breach of the Company's material undertakings under this Agreement or any other Project Agreement, including any failure to:
 - (A) issue the FNTP as required under Clause 11.2 (Timing for FNTP); or
 - (B) deliver the Transfer Report in accordance with the Put and Call Option Agreement or fund the Transfer Escrow Account in accordance with the Put and Call Option Agreement; or
- (iii) any Sponsor Event of Default.

27.2 GoG Events of Default

- (a) Each of the following is a GoG Event of Default:
 - (i) if the GoG, the Dispatch Licensee or the Offtaker fails to pay to the Company any amount that is due and payable under this Agreement or any other Project Agreement and/or the GoG fails to refund VAT in accordance with Clause 20.1 (Taxes) of this Agreement within 30 days after the date the Company gives the defaulting Party written notice of such failure to pay;
 - (ii) if any warranty or representation made by any of the GoG, the Offtaker or the Dispatch Licensee under this Agreement or any other Project Agreement is inaccurate or misleading at the time it was made and such inaccurate or misleading warranty or representation has a material adverse effect on the legality or capacity of either the GoG, the Offtaker or the Dispatch Licensee or the Company to continue to perform its obligations under this Agreement or any other Project Agreement, or a material adverse effect on the rights of the Company under this Agreement or any other Project Agreement or the Finance Parties' rights under any Direct Agreement;
 - (iii) the Offtaker Payment Security, or any replacement or related demand guarantee, collateral or documentation, is not provided by the date required under, or maintained or replenished in accordance with, the PPA Credit Support Agreement, or any of the Offtaker Payment Security, PPA or the PPA Credit Support Agreement is terminated, withdrawn, cancelled, or otherwise becomes invalid or unenforceable (except, in relation to the Offtaker Payment Security, if the Fund has the ability under the PPA Credit Support Agreement to cure such termination, withdrawal, cancellation, invalidity or unenforceability and has effected such cure within the applicable cure period);
 - (iv) the Offtaker: (A) applies for, or consents to the appointment of, a receiver, trustee, custodian, intervenor, or liquidator of itself or of all or a substantial part of its assets; (B) files a voluntary petition in bankruptcy, admits in writing that it is unable to pay its debts as they become due, or generally fails to pay its debts as they become due; (C) makes a general assignment for the benefit of creditors; (D) files a petition or answer seeking reorganisation or an arrangement with creditors or to take advantage of any bankruptcy, reorganisation, or

insolvency laws; (E) files an answer admitting the material allegations of, or consents to, or defaults in answering, a petition filed against it in any bankruptcy, reorganisation or insolvency proceeding where such action or failure to act will result in a determination of bankruptcy or insolvency against it; or (F) takes any corporate action to authorise any of the foregoing;

- (v) the Dispatch Licensee suffers an Event of Liquidation, provided that GoG shall have 60 days to cure any default arising under this paragraph (v) by procuring, pursuant to a transfer of obligations, a change in ownership interests, or a restructuring of the electricity industry in Georgia, a replacement or substitute of the Dispatch Licensee, and promptly following such transfer, change or restructuring, accession by the substitute entity to this Agreement and each other relevant Project Agreement in the same capacity as the original Dispatch Licensee;
 - (vi) if any proceeding is instituted in any court of competent jurisdiction or Public Authority of competent jurisdiction seeking, in respect of the Offtaker, adjudication in bankruptcy, reorganisation, dissolution, winding-up, liquidation, a composition or arrangement with creditors, a readjustment of indebtedness, the appointment of a trustee, receiver, liquidator, or the like of it or of all or any substantial part of its property or assets, or other like relief in respect of it under any bankruptcy, reorganisation, or insolvency law; and, if such proceeding is being contested by it in good faith, the same continues undismissed for a period of 90 days;
 - (vii) any of the GoG, the Offtaker, the Dispatch Licensee or any Public Authority repudiates this Agreement or any other Project Agreement or Direct Agreement to which it is a party; and
 - (viii) if the GoG or any Public Authority seizes, expropriates, condemns, compulsorily purchases or nationalises, or purports to seize, expropriate, condemn, compulsorily purchase or nationalise, any of the assets or rights of the Company or any of the Shares.
- (b) Each of the following shall be a GoG Event of Default where, following its occurrence, the Company gives notice to the GoG stating that one of the following events has occurred and the GoG fails to remedy such event within 60 days after delivery of such notice (or if any such event cannot, due to its nature, be remedied within such 60 days, the GoG fails to either (i) commence to remedy such default within such 60 days and to diligently and continuously pursue to remedy such default thereafter, or (ii) to remedy such default within 90 days):
- (i) with the exception of those events expressly set out in this Clause 27.2, any breach by the GoG of its material undertakings under this Agreement including those undertakings under Clause 3.1 (Grant of Project Rights), Clause 4.4 (Cooperation with Finance Parties), Clause 8 (Land Rights), Clause 9 (Consents), Clause 10 (Transmission Line, Connection Facilities and Grid System) and Clause 20.4 (Exchange Controls);
 - (ii) with the exception of those events expressly set out in this Clause 27.2, any breach by any Affiliate of the GoG, the Offtaker, the Dispatch Licensee or any Public Authority of its material undertakings under any Project Agreement;
 - (iii) in respect of any Adverse Hydrological Event, and those events for which the GoG has an option to elect to increase the Energy Rate payable in order to compensate for costs, loss, liabilities or lost revenues, the GoG has elected to compensate such cost, loss, liability or lost revenue through an increase in the Energy Rate under and in accordance with Schedule 3 (Energy Rate) and:

- (A) in respect of an Adverse Hydrological Event or any other circumstance where GoG has the option to increase the Energy Rate (including payment for Change in Law above the Change in Law Threshold, change to Grid System, Connection Facilities and/or Transmission Line), such cost, loss, liability or lost revenue has not been fully compensated by the end of the second Annual Generation Period following the Annual Generation Period in which such liability was incurred for any reason other than a foreign exchange loss described in paragraph (b) of the definition of Change in Tax; and/or
- (B) in respect of a Change in Tax other than a Change in Tax that arises as a result of a foreign exchange loss pursuant to paragraph (b) of the definition of Change in Tax, such cost, loss, liability or lost revenue has not been fully compensated by the end of the first Annual Generation Period following the Annual Generation Period in which such cost, loss, liability or lost revenue occurred for any reason other than a foreign exchange loss described in paragraph (b) of the definition of Change in Tax; and
- (iv) if any Project Agreement other than this Agreement becomes capable of termination by the Company (or, in the case of the Shareholders' Agreement, if the Sponsor validly issues a PCOA Notice under clause 16.4 (*Actions on Delivery of a Shareholder Event of Default Notice*) under the Shareholders' Agreement) as a result of a default by the GoG, the Offtaker, the Fund or a Public Authority under any such Agreement.
- (c) Each of the GoG, the Offtaker and the Dispatch Licensee will be deemed to have elected to terminate this Agreement where the Fund does not replenish the Offtaker Payment Security because the maximum amounts listed in paragraph (b) of clause 5 (*Replenishment*) of the PPA Credit Support Agreement have been reached. Such failure to replenish will be treated as a GoG Event of Default for the purpose of this Agreement.

28. EARLY TERMINATION

28.1 Termination – Company Event of Default

If a Company Event of Default occurs, the GoG may terminate this Agreement immediately by notice to the Company.

28.2 Termination – GoG Event of Default

If a GoG Event of Default occurs, the Company may terminate this Agreement immediately by notice to the GoG.

28.3 Termination – Prolonged Natural Force Majeure Event

If a Prolonged Natural Force Majeure Event occurs either Party may terminate this Agreement by delivering 30 days' advance notice of such termination to the other Party.

28.4 Adverse Hydrological Event, Prolonged Adverse Hydrological Event

- (a) If, after Actual COD, a Prolonged Adverse Hydrological Event occurs, either the GoG or the Company may terminate this Agreement by delivering 30 days' advance notice of such termination to the other Party. Such notice must be delivered no later than 30 days after the last day of the applicable Prolonged Adverse Hydrological Event.

- (b) If, after Actual COD, five or more Adverse Hydrological Events occur in non-consecutive Annual Generation Periods, where the Shortfall Energy in each Annual Generation Period affected by an

Adverse Hydrological Event is 284,200 MWh or greater, the GoG may terminate this Agreement immediately by notice to the Company. The notice of termination referred to under this paragraph (b) must be delivered no later than 180 days after the Adverse Hydrological Event giving rise to the termination right.

28.5 Termination – Prolonged Political Force Majeure Event

If a Prolonged Political Force Majeure Event occurs either Party may terminate this Agreement by delivering 30 days' advance notice of such termination to the other Party.

28.6 Termination – Restoration

If a right to terminate this Agreement arises under any of:

- (a) Clause 26.3(b) (Obligations Following Delivery of Restoration Report); or
- (b) Clause 26.4(b) (Implementation of Restoration),

either Party may terminate this Agreement by delivering 30 days' advance notice of such termination to the other Party.

28.7 Termination – Application of Insurance Proceeds

If a right to terminate this Agreement arises under Clause 26.1(b) (Application of Proceeds of Insurance Following a Force Majeure Event), either Party may terminate this Agreement by delivering 30 days' advance notice of such termination to the other Party.

28.8 Cross-Termination

The Dispatch Licensee shall not terminate the Connection Agreement, and the Offtaker shall not terminate the PPA unless, on or prior to such termination, the GoG terminates this Agreement in connection with the termination of the Connection Agreement and/or the PPA. The GoG shall procure that the Right to Build and the Land Transfer Agreement are not terminated unless, on or prior to such termination, the GoG terminates this Agreement in accordance with the provisions of this Agreement.

29. TRANSFER ON EARLY TERMINATION OR EXPIRY

- (a) The provisions of the Put and Call Option Agreement shall apply on early termination or expiry of this Agreement.
- (b) If the Applicable Purchase Price is not paid within 180 days after the date any applicable Put Option or Call Option is exercised because:
 - (i) the Facility (or a portion thereof) or the Shares, as the case may be, have not been transferred in accordance with the provisions of this Agreement and the Put and Call Option Agreement or have been transferred (including pursuant to an expropriation, nationalisation or compulsory acquisition) in a manner that is not in accordance with this Agreement and the Put and Call Option Agreement within the 180 day period; and
 - (ii) such transfer does not occur during the 180 day period because:
 - (A) the provisions of this Agreement or the Put and Call Option Agreement, as the case may be, are illegal, invalid, not enforceable or require the approval of any third party

(including any court or receiver that may be appointed as the result of any bankruptcy proceeding);

- (B) of an act or omission by the GoG, any of its Affiliates, the Fund, the Offtaker, the Dispatching Licensee, or any Public Authority or any other event or circumstance beyond the reasonable control of the Company or the Private Shareholders;
- (C) of a Force Majeure Event;
- (D) of Applicable Law, a Change in Law or a Change in Tax;
- (E) of a failure to obtain a Consent that has been properly and timely applied for by the Company or the Private Shareholders; or
- (F) of an expropriation, nationalisation or compulsory acquisition,

(a Prolonged PCOA Delay).

(c) In the event of a Prolonged PCOA Delay, the GoG shall pay:

(i) in the case of an expropriation, nationalisation or compulsory acquisition, as expropriation, nationalisation or compulsory acquisition compensation, an amount equal to:

(A) the amount that, but for the Prolonged PCOA Delay, would have been payable in accordance with:

- I. clause 5.2(a) (*Completion Deliverables*) of the Put and Call Option Agreement if the GoG elected, or was deemed to have elected, to purchase Private Shares from the Private Shareholders under clause 3 (*GoG Election*) of the Put and Call Option Agreement; or
- II. clause 6.2(a) (*Completion Deliverables*) of the Put and Call Option Agreement if the GoG elected to purchase the Facility from the Company under clause 3.1 (*Election*) of the Put and Call Option Agreement,

minus

(B) any expropriation, nationalisation or compulsory acquisition compensation that has already been paid to the Company, the Private Shareholders and/or the Finance Parties as compensation for any such event prior to the payment under paragraph (A) above; or

(ii) in all other cases, as termination compensation, an amount equal to the amount that, but for the Prolonged PCOA Delay, would have been payable in accordance with:

(A) clause 5.2(a) (*Completion Deliverables*) of the Put and Call Option Agreement if the GoG elected, or was deemed to have elected, to purchase Private Shares from the Private Shareholders under clause 3 (*GoG Election*) of the Put and Call Option Agreement; or

(B) clause 6.2(a) (*Completion Deliverables*) of the Put and Call Option Agreement if the GoG elected to purchase the Facility from the Company under clause 3.1 (*Election*) of the Put and Call Option Agreement.

(d) In all cases of a Prolonged PCOA Delay:

- (i) the Company, the Private Shareholders and/or the Finance Parties, as applicable, shall use their best efforts to effect the transfer of any untransferred portion the Facility or the Shares, as the case may be, to the GoG as soon as practicable; and
- (ii) in the event that the use of such best efforts fails to effect such transfer within a reasonable period of time:
 - (A) the GoG may expropriate any untransferred portion of the Facility or the Shares, as the case may be; and
 - (B) the Company agrees, on behalf of itself and the Private Shareholders, that the compensation paid in full pursuant to paragraph (c) above shall constitute prompt, fair, and effective compensation for such expropriation, nationalisation or compulsory acquisition.
- (e) If the GoG is liable to pay compensation under paragraph (c) above, the Company or the Private Shareholders, as applicable, may prepare and deliver an invoice to the GoG. Within 30 days after the invoice has been delivered, the GoG shall pay any undisputed amounts in accordance with Clause 37.6 (Payments). Any disputed amounts shall be determined in accordance with Clause 33.2 (Arbitration).
- (f) For so long as any amounts due and payable to the Finance Parties under the Finance Documents remain outstanding, any amount payable under this Clause 29 (including any other expropriation, nationalisation or compulsory acquisition compensation that has previously been paid) must not be less than the Applicable Purchase Price Floor set out under clause 10 (*Applicable Purchase Price Floor and Security*) of the Put and Call Option Agreement.
- (g) Any payment to be made to a Finance Party incorporated outside of Georgia under or in connection with this Clause 29 shall be calculated in USD and paid in USD in accordance with the relevant Direct Agreement.

30. EXTENSION OF TIME

- (a) If either the GoG or the Company is or will be, delayed in, or otherwise impeded or prevented from, performing any of its obligations by a date required under any Project Agreement (including, in relation to the Company, the required dates for issuing an LNTP, achieving Financial Close, issuing the FNTP, delivery of any document under Clause 11.3 (Deliverables) or achieving Actual COD by Scheduled COD or Required COD), and any such delay, impediment or prevention:
 - (i) is caused by or attributable to any breach by or Event of Default of the other Party or any Affiliate of the other Party of the terms of any Project Agreement; or
 - (ii) otherwise entitles the Company to an extension of time under this Agreement or the PPA (including under Clauses 10.4 (Delayed Commissioning Events), 10.6 (Coordination between Facility and Grid System) and 25.1 (Time Consequences for Natural and Political Force Majeure Events)),

then the affected Party shall be entitled to an extension of time in accordance with paragraph (b) below.
- (b) Each extension of time granted to the affected Party shall be sufficient to overcome the effects of the cause of the delay, impediment or prevention, and, in any event, shall not be less than the amount of days that the affected Party is delayed, impeded or prevented from performing its obligations under the relevant Project Agreement. For the avoidance of doubt, if such delay, impediment or prevention

is in respect of, caused by, or attributable to an event that resulted in an extension of time in favour of the EPC Contractor under the EPC Contract, the extension of time granted under this Agreement shall be equal to any applicable extension of time granted to the EPC Contractor under the EPC Contract.

31. WAIVER OF SOVEREIGN IMMUNITY

- (a) To the fullest extent permitted by law the GoG, the Offtaker, and the Dispatch Licensee, on behalf of itself and of its assets, with the exceptions listed below, irrevocably and unconditionally:
- (i) submits to the jurisdiction of the courts of any jurisdiction in relation to the recognition of any judgment or order of that court in support of any arbitration in relation to any Dispute and in relation to the recognition of any arbitral award and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of that court or the courts of any other jurisdiction in relation to the recognition of any such judgment or court order or arbitral award and agrees to ensure that no such claim is made on its behalf; and
 - (ii) consents to the enforcement of any order or judgment in support of arbitration or any award made or given in connection with any Dispute and the giving of any relief in the courts of any jurisdiction whether before or after final arbitral award including: (A) relief by way of interim or final injunction or order for specific performance or recovery of any property; (B) attachment of its assets; and (C) enforcement or execution against any property, revenues or other assets whatsoever (irrespective of their use or intended use) and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of the courts of any jurisdiction in relation to such enforcement and the giving of such relief (including to the extent that such immunity may be attributed to it), and agrees to ensure that no such claim is made on its behalf.
- (b) Nothing herein constitutes a waiver by any of the GoG, the Offtaker or the Dispatch Licensee, on behalf of itself, with respect to:
- (i) assets protected by diplomatic and consular privileges, including:
 - (A) present or future premises of the mission, including any bank account as defined in the Vienna Convention on Diplomatic Relations 1961; and
 - (B) consular premises, including any bank account as defined in the Vienna Convention on Consular Relations 1963 or otherwise used by a diplomat or consular mission of Georgia or any agency or instrumentality thereof (except as may be necessary to effect service of process);
 - (ii) property of a military character or under the control of a military authority or defence agency of Georgia;
 - (iii) property dedicated to a public, governmental or cultural use (as opposed to a commercial use);
 - (iv) any property belonging to the National Bank of Georgia, whether or not held in a Georgian or a non-Georgian bank or any other financial institution; or
 - (v) property located in Georgia of any type covered by Article 2¹ of the Law of Georgia on Enforcement Proceedings.

32. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by Georgian law.

33. DISPUTE RESOLUTION

33.1 Negotiation

Within 14 calendar days of a Party delivering a notice to another Party or Parties of a Dispute, the Parties shall attempt to settle the Dispute through direct negotiations. If the Parties are unable to reach an agreement within 14 calendar days of the delivery of such a notice, any Party to the Dispute may refer the Dispute to arbitration in accordance with Clause 33.2 (Arbitration) or Expert determination in accordance with Clause 34 (Expert Determination).

33.2 Arbitration

- (a) Subject to Clause 33.1 (Negotiation), a Dispute shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce (for the purpose of this Clause 33, the **Rules**).
- (b) The Rules are incorporated by reference into this Clause 33 and capitalised terms used in this Clause 33 which are not otherwise defined in this Agreement have the meaning given to them in the Rules.
- (c) The number of arbitrators shall be three. The arbitrators nominated by the Claimant and the Respondent (the Parties to the Dispute) shall jointly nominate the third arbitrator who, subject to confirmation by the Court, will act as president of the arbitral tribunal. The arbitrators nominated by the Parties to the Dispute shall endeavour to agree on the nomination of the third arbitrator within 30 days from the confirmation or appointment of the co-arbitrators. The Parties to the Dispute may agree to extend this term. If the Parties to the Dispute do not agree to extend such term, or where the arbitrators nominated by the Parties to the Dispute are unable to agree on the nomination of the third arbitrator within 60 days from the confirmation or appointment of the co-arbitrators, the third arbitrator shall be appointed by the International Chamber of Commerce in accordance with the Rules.
- (d) The seat or legal place of arbitration shall be London.
- (e) The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.
- (f) Service by the Secretariat of any Request for Arbitration made pursuant to this Clause 33 shall be at the address given for the sending of notices under this Agreement at Clause 37.13 (Notices).
- (g) This Clause 33.2 and Clause 33.3 (Joinder of Parties, Multiple Parties and Consolidation of Disputes) are governed by English law.
- (h) Any award of the tribunal shall be final and binding from the day it is made, and the Parties waive any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 (*Determination on a preliminary point of law*) and 69 (*Appeal on a point of law*) of the English Arbitration Act 1996.
- (i) Each Party acknowledges and agrees that the arbitration provisions of this Clause 33.2 are valid and binding on them and agree not to argue to the contrary. Each Party further acknowledges and agrees that any award of the arbitral tribunal would be given effect to in their respective jurisdictions in

accordance with (and subject to the limitations contained in) the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

33.3 Joinder of Parties, Multiple Parties and Consolidation of Disputes

- (a) Any Party seeking to commence arbitration under this Agreement in connection with a dispute (an **Existing Dispute**) shall, in addition to complying with the relevant provisions of the Rules, serve a copy of its Request for Arbitration on all parties to the Linked Agreements at the addresses specified in the clauses of such agreements that address the service of notices, on the same day on which the Request for Arbitration is filed with the International Chamber of Commerce.
- (b) A Respondent to an arbitration commenced under this Clause 33 shall, in addition to complying with the relevant provisions of the Rules, serve a copy of its Answer to the Request on all parties to the Linked Agreements at the addresses specified in the clauses of such agreements that address the service of notices, on the same day on which the Answer to the Request is filed with the International Chamber of Commerce.
- (c) If a party to any of the Linked Agreements who is not a party to the Existing Dispute, wishes to intervene as a party in the Existing Dispute, that party shall, within 15 days of its receipt of the Request for Arbitration, or within 15 days of its receipt of the Answer to the Request (if the Answer to the Request raises new issues that justify that party's interest in joining the Existing Dispute as a party), make a request in writing to the parties to the Existing Dispute to be joined as a party to the Existing Dispute (a **Joinder Request**). The parties to the Existing Dispute shall, within seven days of receipt of the Joinder Request, accept or object on reasonable grounds to the Joinder Request. If the Joinder Request is accepted, Articles 7, 8 and 9 of the Rules shall be applicable and the tribunal shall be constituted as provided for in Article 12 of the Rules, in particular Sections 12(6), (7) and (8).
- (d) For purposes of Article 10 of the Rules, the Parties hereby agree to the consolidation of arbitration commenced under any of the Linked Agreements, as and when appropriate. In this Clause 33.3, **Linked Agreement** means each Project Agreement.

34. EXPERT DETERMINATION

- (a) Any Dispute that:
 - (i) is of a technical nature and has an aggregate amount claimed that does not exceed USD 1,000,000 (or its equivalent in GEL);
 - (ii) relates to the issuance of a Takeover Certificate; or
 - (iii) is otherwise listed in this Agreement as capable for referral to Expert determination,shall be resolved in accordance with this Clause 34. If the Party raising the existence of the Dispute considers that it meets the criteria of this paragraph (a), it shall indicate so in the notice of Dispute delivered under Clause 33.1 (Negotiation). The other Party shall indicate in writing, no later than ten days after receipt of the notice, that it agrees with such characterisation of the Dispute. In any other case, the Dispute shall be resolved in accordance with Clause 33 (Dispute Resolution).
- (b) A Dispute which the Parties agree in writing meets the conditions in paragraph (a) above (a **Technical Dispute**) shall be referred to an independent expert for determination (the **Expert**). The Parties shall agree on the appointment of the Expert and shall agree with the Expert the terms of his appointment. If the Parties are unable to agree on the identity of the Expert, or if the person proposed is unable or unwilling to act, then, within seven days of either Party serving details of a

suggested expert on the other or the proposed expert declining to act, either Party shall then be entitled to request that an expert be appointed by the International Centre for ADR of the International Chamber of Commerce in accordance with the provisions for appointment of experts under the International Chamber of Commerce Rules for the Appointment of Experts and Neutrals (the **Expert Rules**) on the application of a Party. All costs of and associated with the request for the appointment of an expert by the International Centre for ADR in accordance with the provisions for Appointment of Experts under the Expert Rules shall be borne equally between the Parties.

(c) The Expert shall act on the following basis:

- (i) on his appointment, the Expert shall confirm his neutrality, independence and the absence of conflicts in determining the Technical Dispute;
- (ii) the Expert's determination shall be final and binding, provided that any Party may refer any determination of the Expert to arbitration in accordance with Clause 33.2 (Arbitration) and Clause 33.3 (Joinder of Parties, Multiple Parties and Consolidation of Disputes), within ten days of the notification of such determination, for all disputes other than:
 - (A) any dispute falling under paragraph (a)(i) above;
 - (B) disputes concerning whether an entity is a Permitted Transferee for the purpose of the Shareholders' Agreement; and
 - (C) disputes concerning the identification of land parcels forming the Required Lands under Clause 8.1 (Required Lands),

provided, however, that no dispute concerning (x) the amount of any TOP Deficiency Quantity, (y) payment of any TOP Deficiency Payment or (z) determination of the Energy Rate can be referred to arbitration until the GoG and/or the Dispatch Licensee has paid in full to the Company any amount the subject of such dispute. For any Dispute falling under paragraph (a)(ii) above the Parties must comply with the Expert's determination pending the outcome of arbitration. The referring Party need not comply with the 14 day negotiation period set forth in Clause 33.1 (Negotiation);

- (iii) the Expert shall decide the procedure to be followed in the determination in accordance with this Agreement and in consultation with the Parties and shall be requested to make his determination in writing, with reasons, within 30 days after his appointment;
- (iv) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within seven days of the Expert's determination being notified to the Parties or as specified within the determination;
- (v) any action required by the expert determination shall be implemented within 14 days following the expert determination being notified to the Parties or as specified within the determination;
- (vi) the Expert may, if he thinks fit, award interest at the Default Interest Rate on any amount which is determined to be payable (excluding costs) by one Party to the other from the date of the notice of Dispute delivered under Clause 33.1 (Negotiation); and
- (vii) the costs of the determination, including the fees and expenses of the Expert (but excluding the Parties' own costs which shall be borne by the Party incurring those costs), shall be borne equally by the Parties.

35. ASSIGNMENT AND TRANSFER

- (a) Except as permitted by the Direct Agreement, required by the Put and Call Option Agreement or the Finance Documents (including pursuant to enforcement of security granted to any Finance Party) or otherwise permitted by paragraph (b) below, no Party may, without the prior written consent of the other Parties, encumber, assign, grant any security interest over, hold on trust or otherwise transfer the benefit and obligations under this Agreement.
- (b) The Company may at any time, and without the consent of any other Party, grant any security interest, freely assign any right, title, interest or benefit in or under this Agreement or any part thereof to any Finance Party.

36. DOUBLE PAYMENT

In no event will the Company, the GoG or any Affiliate of the GoG be entitled to double payment under the Project Agreements with respect to the same event.

37. MISCELLANEOUS

37.1 Confidentiality

- (a) Each Party shall keep, and shall procure that each of its employees shall keep, the Confidential Information confidential and not disclose it to any person, other than as permitted under this Clause 37.1.
- (b) Paragraph (a) above shall not apply to the disclosure of Confidential Information if and to the extent:
 - (i) required by any Applicable Law or by regulation of any country with jurisdiction over the affairs of the Receiving Party; or
 - (ii) required by the rules of any competent authority or securities exchange on which securities of the Receiving Party are listed; or
 - (iii) required by any court of competent jurisdiction, tax authority or any competent judicial, governmental, supervisory or regulatory body; or
 - (iv) that such information is in the public domain other than through breach of this Clause 37.1,provided that in the case of paragraphs (i), (ii) and (iii) above the Receiving Party shall to the extent reasonably practicable and permitted by such Applicable Law, regulation, rules or body promptly notify in writing the Disclosing Party and co-operate with the Disclosing Party regarding the timing and content of such disclosure and any action which the Disclosing Party may reasonably wish to take to challenge the validity of such requirement.
- (c) The Receiving Party may disclose Confidential Information to its employees, directors, agents, sub-contractors, Finance Parties (and their officers, employees, directors, agents and advisors), rating agencies and professional advisers on a strict "need-to-know" basis only, provided it makes each such recipient aware of the obligations of confidentiality assumed by it under this Agreement and provided that it uses all reasonable endeavours to ensure that such recipient complies with those obligations as if it was a Party to this Agreement.
- (d) The body of this Agreement, but not the Schedules hereto or any other Project Agreement, may be disclosed by the GoG by posting the body of this Agreement to one or more websites or other forums accessible by the general public. Following such disclosure, the body of this Agreement, but

not the Schedules hereto or any other Project Agreement, shall be "in the public domain" for the purposes of paragraph (b)(iv) above.

37.2 Announcements

- (a) No Party (nor any of its Affiliates or representatives) shall make any announcement in connection with the existence or subject matter of this Agreement (or any other Project Agreement) without the prior written approval of the other Party, such approval not to be unreasonably withheld or delayed.
- (b) The restriction in paragraph (a) above shall not apply to the extent that the announcement or circular (i) is required by law, by any stock exchange or any regulatory or supervisory body or authority of competent jurisdiction, whether or not the requirement has the force of law, or (ii) contains only information which has previously become publicly available other than through that Party's fault (or that of any of its Affiliates or representatives). If this exception applies, the Party making the announcement or issuing the circular must use its reasonable endeavours to consult with the other Party in advance with a view to agreeing its form, content and timing, in each case to the extent permitted by law or the rules of the relevant stock exchange or regulatory or supervisory body.
- (c) The restrictions contained in this Clause 37.2 shall continue to apply after expiry or termination of this Agreement without limit in time.

37.3 Indemnity

- (a) Subject to paragraph (b) below, each Party (the **Indemnifying Party**) shall on demand indemnify in full and hold harmless the other Party, its Affiliates, and their respective directors, officers, employees, consultants, agents and representatives (each an **Indemnified Person**) from and against any and all Claims and Expenses, in any such case arising out of, based upon or in connection with, any death, injury or loss or damages to property suffered by an Indemnified Person or by a third party, to the extent arising from any negligent act or omission, wilful misconduct or fraud of the Indemnifying Party, its Affiliates, and their respective directors, officers, employees, consultants, agents and representatives, whether directly or indirectly.
- (b) The indemnity in paragraph (a) above shall not apply to the extent that any Claim or Expense results directly from negligence, fraud or wilful default on the part of an Indemnified Person.
- (c) The GoG shall, in addition, indemnify in full and hold harmless the Company from and against any and all Claims and Expenses, in any such case arising out of, based upon or in connection with any loss or damages suffered by the Company from any third party claim to rights to the Project.

37.4 Liability

Except as expressly set forth in this Agreement, the PPA, the PPA Credit Support Agreement and the Put and Call Option Agreement, no Party shall be liable to any other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, save in the case of wilful misconduct or gross negligence.

37.5 Costs and VAT Expenses

- (a) Each Party shall pay the costs and expenses incurred by it in connection with the entering into and completion of this Agreement.
- (b) Each amount, unless expressly stated otherwise, stated in this Agreement is exclusive of VAT (if any) and shall accordingly be construed as a reference to that amount plus any VAT in respect of it.

37.6 Payments

- (a) Subject to paragraph (b) below, Clause 20.4 (Exchange Controls) and Clause 29(g) (Transfer on Early Termination or Expiry), each payment to be made under this Agreement shall be calculated in USD and in GEL (by reference to the official exchange rate posted by the National Bank of Georgia on the date of calculation) and made in the equivalent amount of GEL calculated by reference to the official exchange rate posted by the National Bank of Georgia on the date such payment became due and payable, as follows:
- (i) to the Company by transfer of the relevant amount into the relevant account on the date (and, if applicable, at or before the time) the payment is due for value on that date and in immediately available funds. The relevant account of the Company for payments to the Company is the account specified in Schedule 11 (Bank Accounts) or such other account (including any onshore or offshore account) as the Company shall, not less than ten Business Days before the date that payment is due, have specified by giving notice to the GoG for the purpose of that payment;
 - (ii) to the GoG by transfer of the relevant amount into the relevant account on the date (and, if applicable, at or before the time) the payment is due for value on that date and in immediately available funds. The relevant account of the GoG for payments to the GoG is the account specified in Schedule 11 (Bank Accounts) or such other account as the GoG shall, not less than ten Business Days before the date that payment is due, have specified by giving notice to the Company for the purpose of that payment;
 - (iii) to the Offtaker by transfer of the relevant amount into the relevant account on the date (and, if applicable, at or before the time) the payment is due for value on that date and in immediately available funds. The relevant account of the Offtaker for payments to the Offtaker is the account specified in Schedule 11 (Bank Accounts) or such other account as the Offtaker shall, not less than ten Business Days before the date that payment is due, have specified by giving notice to the Company for the purpose of that payment; and
 - (iv) to the Dispatch Licensee by transfer of the relevant amount into the relevant account on the date (and, if applicable, at or before the time) the payment is due for value on that date and in immediately available funds. The relevant account of the Dispatch Licensee for payments to the Dispatch Licensee is the account specified in Schedule 11 (Bank Accounts) or such other account as the Dispatch Licensee shall, not less than ten Business Days before the date that payment is due, have specified by giving notice to the Company for the purpose of that payment.
- (b) If a paying Party disputes a portion of a claim for payment under this Agreement it shall, notwithstanding the dispute, pay all undisputed amounts by the date so required under this Agreement. Matters related to the disputed portion of the payment shall be referred for determination under Clause 33 (Dispute Resolution) or Clause 34 (Expert Determination).
- (c) All payments under this Agreement will be made without set-off, deduction (except for any deductions mandatorily required by Applicable Law) or counterclaim.

37.7 Gross-up

- (a) If either Party is required by law to make a deduction or withholding in respect of any sum payable under this Agreement, it shall, at the same time as the sum which is the subject of the deduction or withholding is payable, pay to the other Party such additional amount as shall be required to ensure that the net amount received by the other Party will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

- (b) If a payment is adjusted as a result of the application of paragraph (a) above, then the receiving Party shall exercise reasonable endeavours to apply for and diligently pursue any available credit against, relief from, remission or repayment of any tax or any liability in respect of any tax (as the case may be, whether interim or final) related to such payment. Upon the recovery thereof by the receiving Party, the receiving Party shall transfer to the paying Party a sum (after deducting costs and expenses incurred in connection with making such recovery) which will leave the receiving Party (after the transfer) in the same after-tax position as it would have been in had the adjustments to the payment set out in paragraph (a) above not been required.

37.8 Default Interest

If a Party defaults in the payment when due of any sum payable under this Agreement, it shall pay interest on that sum from the due date to the date of actual payment (after as well as before judgment), at the Default Interest Rate, which interest shall accrue from day to day and be compounded monthly. Any exercise by a Party of its rights under this Clause 37.8 is without prejudice to any other rights or remedies available to the Party under this Agreement or otherwise.

37.9 Further Assurances

Each Party shall and shall procure that each of its Affiliates shall upon request, at its own expense, at all times from the date of this Agreement do or procure the doing of all things as may be required to give full effect to this Agreement, including the execution of all deeds and documents.

37.10 No Partnership or Agency

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

37.11 Waiver

- (a) The rights of each Party under this Agreement:
- (i) may be exercised as often as necessary; and
 - (ii) may be waived only in writing and specifically.
- (b) Delay in exercising or non-exercise of any such right is not a waiver of that right.
- (c) A waiver (whether express or implied) by one of the Parties of any of the provisions of this Agreement or of any breach of or default by the other Party in performing any of those provisions shall not constitute a continuing waiver and that waiver shall not prevent the waiving Party from subsequently enforcing any of the provisions of this Agreement not waived or from acting on any subsequent breach of or default by the other Party under any of the provisions of this Agreement.

37.12 Third Party Rights

Nothing in this Agreement will be construed to create any duty or any liability to, or any right of suit or action whatsoever, any person not a Party to this Agreement except to the extent contemplated by Clause 35 (Assignment and Transfer).

37.13 Notices

- (a) Any notice or other communication to be given under this Agreement or any other Project Agreement must be in writing (which includes fax and electronic mail (subject to paragraph (b)

below)) and may be delivered or sent by post or fax to the Party to be served at its address appearing as follows, with a copy by electronic mail, in accordance with paragraph (b) below:

to the GoG at:

Address: 2 Sanapiro Street, 0105,
Tbilisi, Georgia
Fax:
Marked for the attention of the Ministry of
Energy of Georgia

to the Company at:

Floor 4-5, Green Building,
#6 Marjanishvili street, 0102,
Tbilisi, Georgia
Fax: N/A
Marked for the attention of Mr. Youngtak Choi

to the Offtaker at:

Address:

Fax:
Marked for the attention of:

to the Dispatch Licensee at:

Address:

Fax:
Marked for the attention of:

or at such other address or fax number as it may have notified to the other Party in accordance with this Clause 37.13. Any notice or other document sent by post shall be sent by prepaid first class recorded delivery post (if within Georgia) or by prepaid airmail.

- (b) Copies of notices under this Agreement may, subject to the appropriate enabling legislation, be sent by one Party to the other Party by use of electronic mail. E-mail notices shall be sent:

to the GoG at:

Email: mail@energy.gov.ge

to the Company at:

Email: youngtak.choi@nenskrahydro.ge

to the Offtaker at:

Email:

to the Dispatch Licensee at:

Email:

- (c) Any notice or other formal communication shall be deemed to have been given:
- (i) if delivered, at the time of delivery;
 - (ii) if posted, at 10.00 a.m. on the second Business Day after it was put into the post; or
 - (iii) if sent by fax, on the date of transmission, if transmitted before 3.00 p.m. on any Business Day, and in any other case at 10.00 a.m. on the Business Day following the date of transmission.
- (d) In proving service of a notice or other formal communication, it shall be sufficient to prove that delivery was made, or that the envelope containing the communication was properly addressed and posted either by prepaid first class recorded delivery post or by prepaid airmail, as the case may be, or that the fax was properly addressed and transmitted.

- (e) This Clause 37.13 shall not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

37.14 Amendment

Any amendment or modification of this Agreement shall not be binding on the Parties unless set out in writing, expressed to vary this Agreement, and signed by authorised representatives of each of the Parties.

37.15 Whole Agreement

- (a) This Agreement and the documents referred to in it (including the other Project Agreements) contain the whole agreement between the Parties relating to the transactions contemplated by this Agreement and supersedes all previous agreements between the Parties relating to the Project. Except as required by statute, no terms shall be implied (whether by custom, usage or otherwise) into this Agreement.
- (b) Each Party:
 - (i) acknowledges that, in agreeing to enter into this Agreement, it has not relied on any express or implied representation, warranty, draft agreement, undertaking, promise collateral contract or other assurance or arrangement of any kind whether or not in writing made by or on behalf of any other Party at any time before the signature of this Agreement; and
 - (ii) waives all rights and remedies which, but for this paragraph (b), might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance.
- (c) Nothing in the preceding paragraph limits or excludes any liability for fraud.

37.16 Severability

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction:

- (a) the validity, legality and enforceability under the law of that jurisdiction of any other provision; and
- (b) the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision,

shall not be affected or impaired in any way.

37.17 Survival

The following Clauses shall survive termination of this Agreement: paragraph (b)(ii) of Clause 6.1 (GoG, Offtaker and the Dispatch Licensee Representations and Warranties); paragraph (d) of Clause 8.3 (GoG Responsibilities), Clause 20.1 (Taxes), Clause 23 (Increased Costs), Clause 29 (Transfer on Early Termination or Expiry), Clause 32 (Governing Law), 33 (Dispute Resolution), 36 (Double Payment), 37.1 (Confidentiality), 37.3 (Indemnity), 37.4 (Liability), 37.5 (Costs and VAT Expenses), 37.6 (Payments), 37.7 (Gross-up), 37.8 (Default Interest), 37.9 (Further Assurances), 37.17 (Survival) and Schedule 4 (Tax Implications).

37.18 Language

The language of this Agreement and each other Project Agreement is English and all notices, demands, requests, statements, certificates or other documents or communications must be in English unless otherwise agreed in writing or required by Applicable Law. If this Agreement, any other Project Agreement or any other related documents are translated into another language, the English version shall prevail.

37.19 Counterparts

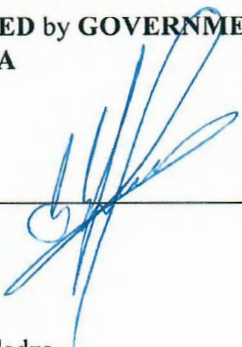
This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement, and any Party (including any duly authorised representative of a Party) may enter into this Agreement by executing a counterpart. Facsimile signatures shall be valid and binding to the same extent as the original signatures.

AS WITNESS this Agreement has been signed by the Parties (or their duly authorised representatives) on the date stated at the beginning of this Agreement.

SIGNATORIES

EXECUTED by GOVERNMENT OF GEORGIA

Signature



Kakha Kaladze
Name

EXECUTED by JSC NENSKRA HYDRO

Signature

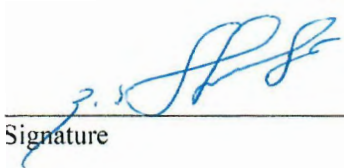


Name

CHOI, BYOUNG SEOB

EXECUTED by JSC ELECTRICITY SYSTEM COMMERCIAL OPERATOR

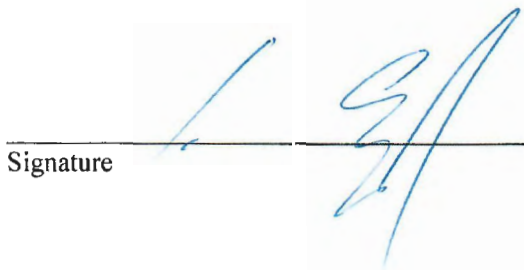
Signature



Vakhtang Ambokadze
Name

EXECUTED by JSC GEORGIAN STATE ELECTROSYSTEM

Signature



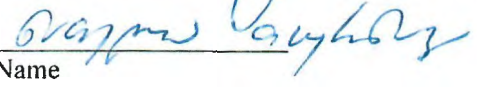
Sulkhan Zumburidze
Name

EXECUTED by JSC PARTNERSHIP FUND

Signature

A handwritten signature in blue ink, appearing to be 'Graham Taylor', written over a horizontal line.

Name

A handwritten name in blue ink, appearing to be 'Graham Taylor', written below a horizontal line.

SCHEDULE 1
COMPANY SECURITY FORMS
PART 1
FORM OF BID SECURITY
[Qualified Issuing Bank Letterhead]

BID SECURITY

To the Beneficiary: The Government of Georgia
[Insert address details of the Government of Georgia]

Date: *[Insert date]*

Guarantee No.: *[Insert Guarantee reference number]*

Guarantor: *[Insert name and address of issuing bank, unless indicated in the letterhead]*

Applicant: *[Insert details of Sponsors providing security on the Company's behalf]*

Dear Sirs,

1.1 Introduction

We refer to the Implementation Agreement dated [●], 2015, between [*Company*] (the **Company**) and the Beneficiary (the **Implementation Agreement**). Unless otherwise defined herein, capitalised terms used in this Guarantee shall have the meanings set out in the Implementation Agreement.

1.2 On-Demand Guarantee

We hereby establish this Guarantee for the benefit of the Beneficiary in an amount not exceeding a total of Three Million US Dollars (USD 3,000,000.00) (the **Guaranteed Amount**).

We irrevocably undertake to pay the Beneficiary, on one or more occasions, such amount as the Beneficiary may claim in a Complying Demand (as defined under paragraph 1.4 below), provided that such amount shall not in the aggregate exceed the Guaranteed Amount and at least one of the following events has occurred:

- (a) the Company has not issued an LNTP on or before the date that is one month after the Execution Date of the Implementation Agreement;
- (b) Financial Close has not occurred on or before the date falling 30 months after the Execution Date of the Implementation Agreement; or
- (c) the Guarantor has ceased to be a Qualifying Bank and the Company has failed to replace or procure the replacement of this Guarantee within 15 days of the Guarantor ceasing to be a

Qualifying Bank as required by paragraph (c)(ii) of Clause 5.2 (Bid Security) of the Implementation Agreement (a **Downgrade Draw Event**).

1.3 Guarantee Expiry

This Guarantee shall be valid from the date hereof and shall expire on the earliest of:

- (a) the date on which the Beneficiary has received the Performance Security under the terms of the Implementation Agreement (which date the Beneficiary must notify to us in writing promptly following the occurrence thereof);
- (b) the date falling 15 days after the date of occurrence of Financial Close (which date the Beneficiary must notify to us in writing promptly following the occurrence thereof); and
- (c) close of normal banking hours at the office of the Guarantor listed above on [*insert date that is seven days after the date that is 30 months after the Execution Date of Implementation Agreement*],

(each being an **Expiry Event**).

1.4 Complying Demands

A **Complying Demand** is a written demand in the form of a statement as set out in Annex A to this Guarantee that is received at our address indicated above before the occurrence of an Expiry Event and is purportedly signed by an authorised representative of the Beneficiary. A Complying Demand must, as of the date of the applicable demand, state:

- (a) that either (A) the Company has not issued an LNTP on or before the date that is one month after the Execution Date of the Implementation Agreement, (B) Financial Close has not occurred on or before the date falling 30 months after the Execution Date of the Implementation Agreement, or (C) the Company has failed to replace or procure the replacement of this Guarantee within 15 days of the Guarantor ceasing to be a Qualifying Bank as required by paragraph (c)(ii) of Clause 5.2 (Bid Security) of the Implementation Agreement; and
- (b) the amount being claimed under the applicable demand.

1.5 Miscellaneous

Any payments made by us under this Guarantee will be made without set-off or deductions for taxes, duties, fees or similar charges.

The undertakings in this Guarantee constitute direct and irrevocable obligations on our part, and we shall not be exonerated from all or any part of such obligations for any reason or cause whatsoever, including changes in the scope, terms or conditions of the Implementation Agreement.

Any claims hereunder may be made in total or in part, without invalidating this Guarantee as to any sum not claimed.

On the occurrence of any Expiry Event, this Guarantee is automatically released and of no further effect irrespective of whether it is returned to us for cancellation.

This Guarantee is personal to the Beneficiary and is not transferable or assignable. No one other than the Beneficiary and the Guarantor shall have any right to enforce any of its terms.

Annex A to Bid Security Guarantee – Complying Demand

[GoG Letterhead]

[Insert Date]

[Authorised representative of the Beneficiary]
[Address]

DEMAND UNDER GUARANTEE Number: [•] (the Guarantee)

Dear []

Capitalised terms not otherwise defined herein shall have the meaning set out in the Guarantee.

The Beneficiary hereby demands payment under the Guarantee of an amount equal to [insert amount].

The Beneficiary certifies that [the Company has not issued an LNTP on or before the date falling one month after the Execution Date of the Implementation Agreement] **or** [Financial Close has not occurred on or before the date falling 30 months after the Execution Date of the Implementation Agreement] **or** [the Company has failed to replace or procure the replacement of the Guarantee within 15 days of the Guarantor ceasing to be a Qualifying Bank as required by paragraph (c)(ii) of Clause 5.2 (Bid Security) of the Implementation Agreement].

The Beneficiary further certifies that no Expiry Event has occurred as at the time of this demand.

Yours sincerely

.....
[Insert name]
[Title]
Authorised representative of the Beneficiary

PART 2

FORM OF PERFORMANCE SECURITY

[Qualified Issuing Bank Letterhead]

PERFORMANCE SECURITY

To the Beneficiary: The Government of Georgia
[Insert address details of the Government of Georgia]

Date: *[Insert date]*

Guarantee No.: *[Insert Guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

Applicant: *[Insert details of Sponsors providing security on the Company's behalf]*

Dear Sirs,

1.1 Introduction

We refer to the Implementation Agreement dated [●], 2015, between *[Company]* (the **Company**) and the Beneficiary (the **Implementation Agreement**). Unless otherwise defined herein, capitalised terms used in this Guarantee shall have the meanings set out in the Implementation Agreement.

1.2 On-Demand Guarantee

We hereby establish this Guarantee for the benefit of the Beneficiary in an amount not exceeding a total of Twenty-Seven Million US Dollars (USD 27,000,000.00) (the **Guaranteed Amount**).

We irrevocably undertake to pay the Beneficiary, on one or more occasions, such amount as the Beneficiary may claim in a Complying Demand (as defined under paragraph 1.4 below), provided that such amount shall not in the aggregate exceed the Guaranteed Amount (as such amount may be reduced in accordance with paragraph 1.5 below) and at least one of the following events has occurred:

- (a) the Company has failed to pay the Beneficiary delay damages that are due and payable pursuant to Clause 11.6 (Delay Damages – Scheduled COD) of the Implementation Agreement (a **DLD Draw Event**);
- (b) the Beneficiary has terminated the Implementation Agreement for a Company Event of Default before Actual COD in accordance with Clause 28.1 (Termination – Company Event of Default) of the Implementation Agreement (a **Termination Draw Event**); or
- (c) the Guarantor has ceased to be a Qualifying Bank and the Company has failed to replace or procure the replacement of this Guarantee within 15 days of the Guarantor ceasing to be a Qualifying Bank as required by paragraph (c)(ii) of Clause 5.3 (Performance Security) of the Implementation Agreement (a **Downgrade Draw Event**).

1.3 Guarantee Expiry

This Guarantee shall be valid from the date hereof and shall expire on the earliest of:

- (a) if the Implementation Agreement is terminated before Actual COD by either the Company or the Beneficiary for any reason, the date falling 30 days after the date of such termination (which date the Beneficiary must notify to us in writing promptly following the occurrence thereof by delivering to us the applicable notice of termination);
- (b) the date falling 30 days after Actual COD (which date the Beneficiary must notify to us in writing promptly following the occurrence thereof); and
- (c) close of normal banking hours at the office of the Guarantor listed above on [*insert Required COD*],

(each being an **Expiry Event**).

1.4 Complying Demands

A **Complying Demand** is a written demand in the form of a statement as set out in Annex A to this Guarantee that is received at our address indicated above before the occurrence of an Expiry Event and is purportedly signed by an authorised representative of the Beneficiary. A Complying Demand must, as of the date of the applicable demand, state:

- (a) if a DLD Draw Event has occurred:
 - (i) that the Company has failed to pay the Beneficiary delay damages that are due and payable pursuant to Clause 11.6 (Delay Damages – Scheduled COD) of the Implementation Agreement;
 - (ii) the amount of unpaid delay damages that are due and payable;
 - (iii) the amount being claimed by the Beneficiary under the applicable demand;
 - (iv) the aggregate of, all amounts previously paid by the Company to the Beneficiary in respect of delay damages under Clause 11.6 (Delay Damages – Scheduled COD) of the Implementation Agreement, and all amounts previously drawn by the Beneficiary under this Guarantee; and
 - (v) that the aggregate of the amounts set out in respect of paragraphs (iii) and (iv) above does not exceed USD 27,000,000.00;
- (b) if a Termination Draw Event has occurred:
 - (i) that the Beneficiary has terminated the Implementation Agreement for a Company Event of Default before Actual COD in accordance with Clause 28.1 (Termination – Company Event of Default) of the Implementation Agreement;
 - (ii) the aggregate amount of delay damages that the Beneficiary has received from the Company pursuant to Clause 11.6 (Delay Damages – Scheduled COD) of the Implementation Agreement;
 - (iii) the amount being claimed under the applicable demand; and

Annex A to Performance Security Guarantee – Complying Demand

[GoG Letterhead]

[Insert Date]

[Authorised representative of the Beneficiary]
[Address]

DEMAND UNDER GUARANTEE Number: [•] (the **Guarantee**)

Dear []

Capitalised terms not otherwise defined herein shall have the meaning set out in the Guarantee.

The Beneficiary hereby demands payment under the Guarantee of an amount equal to [insert amount].

[Option 1: The Beneficiary certifies that as at the time of this demand:

- (i) *the Company has failed to pay the Beneficiary delay damages that are due and payable pursuant to Clause 11.6 (Delay Damages – Scheduled COD) of the Implementation Agreement;*
- (ii) *the amount of unpaid delay damages that are due and payable is [insert amount];*
- (iii) *the aggregate of, all amounts previously paid by the Company to the Beneficiary in respect of delay damages under Clause 11.6 (Delay Damages – Scheduled COD) of the Implementation Agreement, and all amounts previously drawn by the Beneficiary under the Guarantee, is [insert amount]; and*
- (iv) *the aggregate of the amount demanded under this demand and the amount set out in paragraph (iii) above does not exceed USD 27,000,000.00.]*

[Option 2: The Beneficiary certifies that as at the time of this demand:

- (i) *it has terminated the Implementation Agreement for a Company Event of Default before Actual COD in accordance with Clause 28.1 (Termination – Company Event of Default) of the Implementation Agreement;*
- (ii) *the aggregate amount of delay damages that the Beneficiary has received from the Company pursuant to Clause 11.6 (Delay Damages – Scheduled COD) of the Implementation Agreement is [insert amount]; and*
- (iii) *the amount being claimed under this demand does not exceed an amount equal to USD 27,000,000.00 less the aggregate amount set out in paragraph (ii) above.]*

[Option 3: The Beneficiary certifies that, as at the time of this demand, the Company has failed to replace or procure the replacement of the Guarantee within 15 days of the Guarantor ceasing to be a Qualifying Bank as required by paragraph of (c)(ii) Clause 5.3 (Performance Security) of the Implementation Agreement].

[Drafting Note (to be deleted in executed demand): The executed demand must contain italicized text of either Option 1, Option 2 or Option 3 above. The options that are not applicable should be deleted prior to execution.]

The Beneficiary further certifies that no Expiry Event has occurred as at the time of this demand.

Yours sincerely

.....
[Insert name]

[Title]

Authorised representative of the Beneficiary

Annex B to Performance Security Guarantee – Reduction Request

[Applicant Letterhead]

[Insert Date]

[Authorised representative of the Applicant]

[Address]

REDUCTION REQUEST UNDER GUARANTEE Number: [•] (the Guarantee)

Dear []

Capitalised terms not otherwise defined herein shall have the meaning set out in the Guarantee.

The Applicant hereby requests that the Guaranteed Amount be reduced to an amount equal to *[insert amount]*.

The Applicant certifies that as at the time of this reduction request:

- (a) the Company has duly paid an aggregate amount of delay damages to the Beneficiary pursuant to Clause 11.6 (Delay Damages – Scheduled COD) of the Implementation Agreement equal to *[insert amount]*; and
- (b) after the Guaranteed Amount is reduced by the amount requested above, the remaining Guaranteed Amount shall be equal to or greater than an amount equal to USD \$27,000,000.00 *less* the aggregate amount set out in paragraph (a) above.

Yours sincerely

.....
[Insert name]

[Title]

Authorised representative of the Applicant

SCHEDULE 2

FINANCING

The table below is a non-binding indicative financing plan. As set out at Clause 4.4 (Cooperation with Finance Parties), of the Implementation Agreement on Financial Close the table below will be amended to reflect the exact equity contributions of the Fund and the Sponsor to the Company and to include the amortisation profile of the financing actually secured by the Company for the Project.

SOURCES OF FUNDS	USDm	%
Total Equity	302.5	30.0%
K-water (incl. EGR and Equity Bridge Loan)	271.5	26.3%
Partnership Fund	23.0	2.2%
EBRD Equity Loan	15.0	1.5%
Senior Debt	722.2	70.0%
KDB (PRG)	100.0	9.7%
ADB	174.1	16.9%
EBRD	174.1	16.9%
EIB	100.0	9.7%
SACE	174.1	16.9%
SOURCES OF FUNDS (before VAT)	1,031.7	100.0%
VAT loan sizing	22.0	
USES OF FUNDS	USDm	%
Investment capex	801.0	77.6%
EPC Contract	605.5	58.7%
Other capex	195.5	19.0%
Financing costs	185.7	18.0%
Other uses of funds	44.9	4.4%
DSRA funding	35.5	3.4%
Working Capital Need	6.1	0.6%
Land tax	3.3	0.3%
USES OF FUNDS (before VAT)	1,031.7	100.0%
Maximum quarterly VAT paid	22.0	

SCHEDULE 3

ENERGY RATE

1. DETERMINATION OF ENERGY RATE

1.1 Definitions

Scenario 1 means the column titled 'Scenario 1' in the table set out under paragraph 2 (Scenario Energy Rates) below.

Scenario 2 means the column titled 'Scenario 2' in the table set out under paragraph 2 (Scenario Energy Rates) below.

Scenario 3 means the column titled 'Scenario 3' in the table set out under paragraph 2 (Scenario Energy Rates) below.

Scenario 4 means the column titled 'Scenario 4' in the table set out under paragraph 2 (Scenario Energy Rates) below.

Scenario 5 means the column titled 'Scenario 5' in the table set out under paragraph 2 (Scenario Energy Rates) below.

Scenario 6 means the column titled 'Scenario 6' in the table set out under paragraph 2 (Scenario Energy Rates) below.

Scenario 7 means the column titled 'Scenario 7' in the table set out under paragraph 2 (Scenario Energy Rates) below.

Scenario 8 means the column titled 'Scenario 8' in the table set out under paragraph 2 (Scenario Energy Rates) below.

Scenario 9 means the column titled 'Scenario 9' in the table set out under paragraph 2 (Scenario Energy Rates) below.

EGR Energy Rate means, for each calendar year, the Energy Rate that is applicable in Scenario 9. For avoidance of doubt paragraph 4 (Adjustment of Energy Rate), paragraph 5 (Adverse Hydrological Events) and paragraph 6 (Mandatory Supply Liquidated Damages) below shall have no application to the EGR Energy Rate.

COD Energy Rate means the Energy Rate confirmed or calculated in accordance with paragraph 3.2 (Adjustment) below.

Term Energy Rate means:

- (a) for the first 13 Annual Generation Periods following the Annual Generation Period in which Actual COD occurs (the first being the Annual Generation Period starting on 1 January falling immediately after Actual COD): the COD Energy Rate indexed by 3% per annum on a year-on-year basis; and
- (b) for the remaining Annual Generation Periods (or part thereof) until the end of the Term: the Term Energy Rate applicable during the 13th Annual Generation Period following Actual COD.

Adjusted Term Energy Rate means the Term Energy Rate:

- (a) *plus* any increase in accordance with paragraph 4 (Adjustment of Energy Rate);
- (b) *plus* any increase in accordance with paragraph 5 (Adverse Hydrological Events); and
- (c) *minus* any decrease in accordance with paragraph 6 (Mandatory Supply Liquidated Damages) below.

1.2 Energy Rate by Period

The Energy Rate shall be:

- (a) during the period starting on (and including) EGR COD and, subject to paragraph 3.2(f) (Adjustment), ending on the day before Actual COD, the EGR Energy Rate;
- (b) subject to paragraph 3.2(f) (Adjustment), during the period starting on (and including) Actual COD and ending on 31 December of the year during which Actual COD occurs, the COD Energy Rate; and
- (c) during the period starting on (and including) 1 January falling immediately after Actual COD and ending on the last day of the Term: the Adjusted Term Energy Rate.

2. SCENARIO ENERGY RATES

Unit: USD per kWh

Annual Generation Period	Scenario 1 Energy Rate (Savings Amount = \$76M)	Scenario 2 Energy Rate (Savings Amount = \$70M)	Scenario 3 Energy Rate (Savings Amount = \$60M)	Scenario 4 Energy Rate (Savings Amount = \$50M)	Scenario 5 Energy Rate (Savings Amount = \$40M)	Scenario 6 Energy Rate (Savings Amount = \$30M)	Scenario 7 Energy Rate (Savings Amount = \$20M)	Scenario 8 Energy Rate (Savings Amount = \$10M)	Scenario 9 Energy Rate (Savings Amount = \$0)
If Actual COD occurs in 2020, the Energy Rate applicable during 2020	0.07750	0.07776	0.07818	0.07860	0.07905	0.07950	0.08039	0.08127	0.08214
If Actual COD occurs in 2021, the Energy Rate applicable during 2021	0.07983	0.08009	0.08053	0.08096	0.08142	0.08188	0.08280	0.08371	0.08461

If Actual COD occurs in 2022, the Energy Rate applicable during 2022	0.08222	0.08249	0.08294	0.08339	0.08386	0.08434	0.08529	0.08622	0.08714
If Actual COD occurs in 2023, the Energy Rate applicable during 2023	0.08469	0.08496	0.08543	0.08589	0.08638	0.08687	0.08785	0.08880	0.08976

3. TOTAL PROJECT COSTS ADJUSTMENT

3.1 Definitions

Actual Total Project Costs means the costs and expenses incurred in connection with the Project on or before Actual COD by:

- (a) the Shareholders or the Company up to 31 December 2016, which amount shall be set out by reference to an audit to be completed by independent auditor(s) and confirmed by the Lenders' Technical Adviser; and
- (b) the Company from and after the date that is 1 January 2017.

ATPC Statement means a report, certified by an officer of the Company, setting forth the Actual Total Project Costs along with a detailed breakdown of such costs and a description of the methods used by the Company to record and verify such costs.

Lenders' Technical Adviser means Mott MacDonald, or such other independent technical and environmental advisers as the Finance Parties may appoint in relation to the Project in accordance with the Finance Documents.

Projected Total Project Costs means USD 1,031,664,000.

3.2 Adjustment

- (a) At any time before Actual COD when, in the view of the Company, the Actual Total Project Costs equal or exceed the Projected Total Project Costs, the Company may submit an ATPC Statement to the GoG and to the Lenders' Technical Adviser. If, on or before Actual COD the Company has not yet submitted an ATPC Statement, the Company shall, no later than 60 days following Actual COD, submit an ATPC Statement to the GoG and to the Lenders' Technical Adviser.
- (b) Within 60 days following the date on which an ATPC Statement is submitted, or such later date as requested by the Lenders' Technical Adviser, the Lenders' Technical Adviser shall submit a notice to the Company, and the Company shall copy such notice to the GoG, setting forth the value of the Actual Total Project Costs.
- (c) If the Actual Total Project Costs equal or exceed the Projected Total Project Costs, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 9.

- (d) If the Projected Total Project Costs *minus* the Actual Total Project Costs (as assessed by the Lenders' Technical Adviser in accordance with paragraph (b)) is greater than 0 (such difference being the **Savings Amount**), the COD Energy Rate shall be calculated in accordance with paragraphs (i) to (xi) below (as applicable):
- (i) if the Savings Amount is USD 0, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 9;
 - (ii) if the Savings Amount is USD 10,000,000, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 8;
 - (iii) if the Savings Amount is USD 20,000,000, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 7;
 - (iv) if the Savings Amount is USD 30,000,000, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 6;
 - (v) if the Savings Amount is USD 40,000,000, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 5;
 - (vi) if the Savings Amount is USD 50,000,000, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 4;
 - (vii) if the Savings Amount is USD 60,000,000, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 3;
 - (viii) if the Savings Amount is USD 70,000,000, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 2;
 - (ix) if the Savings Amount is USD 76,000,000, the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 1;
 - (x) if the Savings Amount is an amount that falls in between any two of the USD values stated in paragraphs (i) – (ix) above (each such value being a **Relevant Value**), the COD Energy Rate shall be calculated with a linear interpolation method using the applicable Energy Rate for each Relevant Value; and
 - (xi) if the Savings Amount is greater than USD 76,000,000 the COD Energy Rate shall equal the Energy Rate that is applicable during the relevant year in Scenario 1.
- (e) Subject to manifest error by the Lenders' Technical Adviser, the Parties shall unconditionally accept any determinations by or confirmations from the Lenders' Technical Adviser in connection with any matters described under paragraphs (a) through (d) above.
- (f) If there is any delay in receipt by the Parties of the Lenders' Technical Adviser's confirmation in accordance with paragraph (b) above (the **LTA Confirmation**), then notwithstanding anything to the contrary in this Schedule 3, the Parties will continue to apply the EGR Energy Rate until the date on which the Parties receive the LTA Confirmation, following which the COD Energy Rate calculated in accordance with this paragraph 3.2 will apply. To the extent this results in the Company being over compensated the Energy Rate for the immediately following Annual Generation Period shall be decreased by an amount that will, by the end of such Annual Generation Period, fully compensate the Offtaker for the amount of such over compensation.

4. ADJUSTMENT OF ENERGY RATE

4.1 Definitions and Interpretation

The following definitions and rules of interpretation shall apply only for the purposes of this paragraph 4:

- (a) **FTAO_{t,t+1}** means a "fixed tariff add-on" (in USD/kWh) calculated as follows:

$$FTAO_{t,t+1} = \frac{AC_{t-1} * \frac{12.5\%}{1 - (1 + 12.5\%)^{-2}}}{1,219,000,000 \text{ kWh}}$$

Where:

AC means, only in relation to amounts that have not already been paid to the Company:

- (i) during the period starting on the Execution Date and ending on 31 December during the year in which Actual COD occurs: the aggregate sum of each Yearly Amount. **Yearly Amount** means, for each calendar year during this period, an amount equal to:
- (A) in USD, the sum of any amounts due to the Company under Clause 23(d) (Increased Costs) and incurred or suffered by the Company during such calendar year in connection with any events (other than a Change in Tax) that entitle the Company to payment pursuant to Clause 23 (Increased Costs) of the Implementation Agreement; *multiplied by*
- (B) $(1 + 12.5\%)^y$ (y being the number of calendar years that the applicable calendar year occurred before the calendar year during which Actual COD occurs so that y equals 0 for the calendar year during which Actual COD occurs and that y equals 1 for calendar year before that); and
- (ii) during the period starting from 1 January during the Annual Generation Period immediately following the Annual Generation Period during which Actual COD occurs until the end of the Term: in USD, the sum of any amounts due to the Company under Clause 23(d) (Increased Costs) and incurred or suffered by the Company during the previous Annual Generation Period in connection with any events (other than a Change in Tax) that entitle the Company to payment pursuant to Clause 23 (Increased Costs) of the Implementation Agreement.

- (b) **TTAO_t** means a "tax tariff add-on" (in USD/kWh) calculated as follows:

$$TTAO_t = \frac{AC_{t-1} * \frac{12.5\%}{1 - (1 + 12.5\%)^{-1}}}{1,219,000,000 \text{ kWh}}$$

Where:

AC means, only in relation to amounts that have not already been paid to the Company:

- (i) during the period starting on the Execution Date and ending on 31 December during the year in which Actual COD occurs: the aggregate sum of each Yearly Amount.

Yearly Amount means, for each calendar year during this period, an amount equal to:

- (A) in USD, the sum of any amounts due to the Company under Clause 23(d) (Increased Costs) and incurred or suffered by the Company during such calendar year in connection with any Change in Tax that entitles the Company to payment pursuant to Clause 23 (Increased Costs) of the Implementation Agreement; *multiplied by*
 - (B) $(1 + 12.5\%)^y$ (y being the number of calendar years that the applicable calendar year occurred before the calendar year during which Actual COD occurs so that y equals 0 for the calendar year during which Actual COD occurs and that y equals 1 for calendar year before that); and
- (ii) during the period starting from 1 January during the Annual Generation Period immediately following the Annual Generation Period during which Actual COD occurs until the end of the Term: in USD, the sum of any amounts due to the Company under Clause 23(d) (Increased Costs) and incurred or suffered by the Company during the previous Annual Generation Period in connection with any Change in Tax that entitles the Company to payment pursuant to Clause 23 (Increased Costs) of the Implementation Agreement.
- (c) **period "t"** means the first Annual Generation Period during which $FTAO_{t,t+1}$, or as the case may be, $TTAO_t$, is applied.
 - (d) **period "t+1"** means the Annual Generation Period immediately following period "t".
 - (e) If this Clause refers to amounts in USD and such amounts relate to increased costs that were incurred in GEL, then the applicable USD amount shall be calculated by reference to the official exchange rate posted by the National Bank of Georgia on the date such increased costs were actually incurred by the Company.
 - (f) For avoidance of doubt, this paragraph 4 applies at any time when the Energy Rate is to be adjusted in accordance with Clause 23 (Increased Costs), including under Clause 23(e) and Clause 23(f).

4.2 Adjustment Calculation

- (a) If the Company is eligible for payment by the GoG pursuant to Clause 23 (Increased Costs) of the Implementation Agreement, and if the GoG has elected to increase the Energy Rate in accordance with this Schedule 3 (Energy Rate), then subject to paragraphs (b) - (e) below, the Term Energy Rate shall be increased:
 - (i) during period "t" and "t+1", by $FTAO_{t,t+1}$; and/or
 - (ii) during period "t", by $TTAO_t$.
- (b) If during period "t" the Net Electrical Output is lower than 1,219,000,000 kWh for any reason other than an Adverse Hydrological Event, then during period "t+1":
 - (i) $FTAO_{t+1}$ shall be increased by the difference between $FTAO_t$ *multiplied by* 1,219,000,000 kWh and $FTAO_t$ *multiplied by* the Net Electrical Output during period "t", such amount *divided by* 1,219,000,000 kWh; and

- (ii) an increased amount equal to $TTAO_t$ from period "t" shall continue to be applied from the beginning of period "t+1" (in addition to any other increases in accordance with this Agreement), and shall be applied to an amount of Net Electrical Output equal to 1,219,000,000 kWh *minus* the Net Electrical Output from period "t".
- (c) If during period "t+1" the Net Electrical Output is lower than 1,219,000,000 kWh for any reason other than an Adverse Hydrological Event, then an increased amount equal to $FTAO_{t+1}$ from period "t+1" shall continue to be applied from the beginning of period "t+2" (in addition to any other increases in accordance with this Agreement), and shall be applied to an amount of Net Electrical Output equal to 1,219,000,000 kWh *minus* the Net Electrical Output from period "t+1".
- (d) If the Offtaker purchases any Excess Energy during period "t" and/or period "t+1" when the Term Energy Rate is increased by a $FTAO_{t+1}$, the $FTAO_{t+1}$ in period "t+1" will stop being added to the Adjusted Term Energy Rate at such time when:
 - (i) $FTAO_{t+1}$ *multiplied by* the Net Electrical Output during period "t" and/or period "t+1" (including Excess Energy), *plus*
 - (ii) an amount equal to 0.9 *multiplied by* the applicable Term Energy Rate *multiplied by* the quantity of Excess Energy delivered during period "t" and period "t+1",

equals or exceeds 2,438,000,000 kWh *multiplied by* $FTAO_{t+1}$. For avoidance of doubt, the reference to 0.9 represents a value equal to 90% of the Energy Rate which will be applied to reduce amounts due pursuant to Clause 23 (Increased Costs).

- (e) If the Offtaker purchases any Excess Energy during period "t" when the Term Energy Rate is increased by a $TTAO_t$, then that $TTAO_t$ will stop being added to the Adjusted Term Energy Rate at such time:
 - (i) $TTAO_t$ *multiplied by* the Net Electrical Output during period "t" (including Excess Energy), *plus*
 - (ii) to the extent that paragraph (d)(ii) is not applicable, an amount equal to 0.9 *multiplied by* the applicable Term Energy Rate *multiplied by* the quantity of Excess Energy delivered during period "t",

equals or exceeds 1,219,000,000 kWh *multiplied by* $TTAO_t$. For avoidance of doubt, the reference to 0.9 represents a value equal to 90% of the Energy Rate which will be applied to reduce amounts due pursuant to Clause 23 (Increased Costs). To the extent the amount contemplated under paragraph (e)(ii) is being applied to reduce the sum of any amounts due to the Company under Clause 23(d) (Increased Costs), other than amounts in connection with a Change in Tax, the value of (e)(ii) shall be 0.

4.3 Acknowledgement of a Change in Tax

On 28 April 2016 the LEPL Revenue Service issued a Tax Ruling in relation to the Project which, contrary to the provisions of paragraph 4 of Schedule 4 to the Implementation Agreement, determined that the Facility is to be treated as a tangible asset during the entire Project lifecycle and therefore subject to property tax. Accordingly, the Parties acknowledge and agree that a Change in Tax has occurred and that the Company will be eligible for reimbursement by the GoG pursuant to Clause 23 (Increased Costs) of the Implementation Agreement of all amounts payable by the Company in connection with such Change in Tax.

5. ADVERSE HYDROLOGICAL EVENTS

- (a) The following definitions shall apply only for the purposes of this paragraph 5:

AD_{t-1} means the aggregate Net Electrical Output in the previous Annual Generation Period.

SQ_{t-1} means the greater of:

- (i) $AD_{t-1} - 1,219,000,000$ kWh; and
- (ii) $-284,200,000$ kWh,

provided that such amount shall in no event be greater than zero.

t means the number of Annual Generation Periods since Actual COD provided that when t equals one this shall represent the year when Actual COD occurs.

- (b) If an Adverse Hydrological Event occurs, the Adjusted Term Energy Rate during the immediately following Annual Generation Period shall be increased by *Hydro Adjustment_t* (expressed in USD per kWh) calculated as follows:

$$\text{Hydro Adjustment}_t = \frac{-SQ_{t-1} * (\text{Adjusted Term Energy Rate}_{t-1} + \text{Hydro Adjustment}_{t-1}) * 1.125}{1,219,000,000 \text{ kWh}}$$

For the avoidance of doubt, if there was no Adverse Hydrological Event in Annual Generation Period $t-2$, then "Hydro Adjustment_{t-1}" shall equal zero.

- (c) If during period "t" the Net Electrical Output is lower than 1,219,000,000 kWh for any reason other than an Adverse Hydrological Event, then during period "t+1" an increased amount equal to *Hydro Adjustment_t* from period "t" shall continue to be applied from the beginning of period "t+1" (in addition to any other increases in accordance with this Agreement), and shall be applied to an amount of Net Electrical Output equal to 1,219,000,000 kWh *minus* the Net Electrical Output from period "t".

6. MANDATORY SUPPLY LIQUIDATED DAMAGES AND FX GAINS

If, in any Annual Generation Period:

- (a) the Company elects, under the terms of the PPA, to satisfy any liability for Mandatory Supply Liquidated Damages through a decrease in the Energy Rate; or
- (b) until the Final Debt Maturity Date only, for invoices paid in any Annual Generation Period, any event where the aggregate GEL amount paid to the Company pursuant to Clause 8.2(b) (Payment) of the PPA in that Annual Generation Period is higher than the aggregate GEL amount that would have been paid to the Company in respect of those invoices if, for each such invoice, the GEL amount had been calculated by reference to the official exchange rate posted by the National Bank of Georgia on the date of payment of that invoice and not by reference to the official exchange rate posted by the National Bank of Georgia on the last day of the TOP Period that that invoice applies to,

the Energy Rate for the immediately following Annual Generation Period shall be decreased by an amount that will, by the end of such Annual Generation Period, fully compensate the Offtaker for:

- (c) in the case of paragraph (a), the amount of such Mandatory Supply Liquidated Damages, and

- (d) in the case of paragraph (b), the amount of the net gain that the Company earned in such Annual Generation Period as a consequence of the GEL amount being calculated on the last day of the TOP Period that each invoice applies to instead of on the date of payment,

assuming in each case that Net Electrical Output will equal 1,219,000,000 kWh during such Annual Generation Period. In the event that the Net Electrical Output during such Annual Generation Period exceeds 1,219,000,000 kWh, then the decrease to the Energy Rate shall not apply to any Excess Energy. In the event that the Net Electrical Output during such Annual Generation Period is less than 1,219,000,000 kWh, then the decrease shall continue to apply until the decrease has been applied to 1,219,000,000 kWh in aggregate.

7. FINAL YEAR ADJUSTMENTS

The Parties acknowledge that the aggregate value of the TOPQs during the final Annual Generation Period of the Term may be less than 1,219,000,000 kWh. In this case the Parties shall adjust the calculations under paragraph 4 (Adjustment of Energy Rate), paragraph 5 (Adverse Hydrological Events) and paragraph 6 (Mandatory Supply Liquidated Damages) so that the full value of any compensation to be paid through those paragraphs is received by the relevant Party by the expiry of the Term.

SCHEDULE 4

TAX IMPLICATIONS

1. This Schedule elaborates on tax implications of this Agreement and the Power Purchase Agreement and in case of any discrepancy between this Schedule and the provisions of aforementioned agreements in terms of tax implications of the Project, this Schedule shall prevail.
2. For tax purposes, the Project consists of the following independent, stand-alone transactions listed herein below and tax implications thereof shall be interpreted separately per each transaction:
 - (a) transfer of title on Required Lands to the Company;
 - (b) design and construction of the Facility;
 - (c) operation and maintenance of the Facility; and
 - (d) transfer of the Facility or the Shares of the Company to the GoG.
3. The Facility under construction/constructed Facility is in limited ownership of the Company provided that:
 - (a) the GoG regulates the key terms and conditions of the Facility's operations;
 - (b) the GoG is entitled to receive the Facility in the form of the Company's Shares at the end of the Term; and
 - (c) the Shareholders are obliged to transfer the shares in the Company in accordance with this Agreement at the end of the Term.
4. Considering the aforementioned, it is hereby acknowledged and agreed that for the tax purposes the Facility is recognised as intangible asset during the entire Project lifecycle. The intangible asset – the Facility, comprises of property, plant, equipment and rights envisaged under Clause 3.1 (Grant of Project Rights) of this Agreement required and *per se* designated for the design, construction, operation of the Facility.
5. The Company does not receive and/or grant any remuneration/compensation and/or any tangible/intangible asset in exchange of the rights envisaged in Clause 3.1 (Grant of Project Rights) of this Agreement. Thus, none of the transactions of the Project listed in paragraph 2 of this Schedule is or shall ever be recognised as barter for the tax purposes. All rights pertaining to the Project are obtained by the Company on a free of charge basis.
6. As per the Tax Code of Georgia (Tax Code) and subject to Clause 8 (Land Rights) of this Agreement, transfer of ownership title on the Required Land by the GoG to the Company is exempted from any and all taxes (including VAT and Corporate Income Tax). Obtaining the ownership title on the Required Lands does not entail any income/benefit for the Company.
7. Design and Construction of the Facility and implications thereof:
 - (a) Design and Construction of the Facility is a stand-alone transaction carried out by the latter without receiving any remuneration/compensation and/or any tangible/intangible assets in exchange thereof.

- (b) Considering that the Company is a temporary owner of the Facility and the latter is designated for subsequent free of charge transfer to the GoG in the form of a transfer of the Company's Shares to the GoG, the Facility under construction/constructed Facility, as well as, any and all property, plant and equipment *per se* designated for operation of the Facility are recognised as a single intangible asset for the tax purposes.
- (c) For the tax purposes the EPC to be entered between the Company and respective Contractors is not recognised as the long-term contract.
- (d) As per Article 161 (1) (a.b) of the Tax Code the date of interim statements(s) issued in the frame of EPC is recognised as the date of completion and delivery of respective service(s), accordingly, as per Article 174 (a) of the Tax Code the Company is entitled to VAT refund for respective taxable period(s).
- (e) As per Articles 63 (1) of the Tax Code and Clause 20.1(b) of this Agreement, the Company is entitled to receive VAT refund:
 - (i) from the Execution Date till December 1, 2015 - within 4 (four) months from the date of submission of respective request by the Company to respective Public Authority; and
 - (ii) from December 1, 2015 - within 1 (one) months from the date of submission of respective request by the Company to respective Public Authority.
- (f) If the Company does not generate any income during the design and construction of the Facility and it only incurs cost in the frame of EPC, no taxable basis shall arise in terms of Corporate Income Tax (CIT) in accordance with the Tax Code. For the avoidance of any doubt, as a result of and/or in relation to obtaining loan financing from the lenders, the Company does not generate/receive any income/benefit for CIT purposes.
- (g) For the purposes of thin capitalisation rule envisaged under Article 123 of the Tax Code, debt to equity ratio of the Company shall be calculated considering only the loans obtained from non-IFI commercial banks.
- (h) The Company is allowed to capitalise interest paid during construction period and incurred in the frame of respective Loan Facilities, i.e. to add the interest to the value of the Facility.
- (i) As per article 206 (1) (k) of the Tax Code, the land occupied by water reservoirs designated for the supply of potable water to population, electric stations, and land improvement systems and operation thereof and sanitary and protection and technical zones of these sites is exempted from property tax on land, accordingly, the Company shall not be liable to incur costs in terms of property tax (PT) on such lands.
- (j) As per articles 203 (2) and 204 (2) of the Tax Code, property tax on Required Land that does not fall under the categories of land provided in clause 7(i) of this Schedule, the Company shall be obligated to pay property tax on land calculated based on the following formula:

$$PT \text{ on land} = BRXSQ.MXTR$$

Where: BR – base rate is fixed at 0.24 GEL as per Article 204 (2) (a) of TC; SQ.M is the area of Required Land subject to sub-clause (h) of this Schedule; TR is territorial ratio established by the municipality of Mestia, Svaneti, which is currently fixed at 0.75 GEL, but as per Article 204 (2) (b) of TC shall not be higher than 1.5 Gel.

8. Operation of Facility and implications thereof:

- (a) For the tax purposes the right of operation of the Facility is not recognised as financial asset and such right is not obtained by the Company in exchange of any service rendered/product supplied to the GoG and/or any remuneration/compensation, tangible/intangible assets enshrined in this Agreement, the PPA and or any other agreement executed in the frame of the Project.
- (b) As per clause 309 (6) of the Tax Code supply of electricity is exempted from VAT with a right to credit until January 1, 2016. In case if suspension of Article 309 (6) of the Tax Code is not extended further, the Company shall charge VAT on top of the Energy Rate payable by the Offtaker or any other third party which is being supplied with electricity generated by the Facility.
- (c) Supply of the Net Electric Output by the Company to the Offtaker above the Take or Pay Quantity in accordance with clause 4.1(c) of the PPA at price of 10% of the Energy Rate is recognised as supply at market value for CIT and VAT purposes.
- (d) As per Article 206 (1) (k) of the Tax Code, the land occupied by water reservoirs designated for the supply of potable water to population, electric stations, and land improvement systems and operation thereof and sanitary and protection and technical zones of these sites is exempted from property tax on land, accordingly, the Company shall not be liable to incur costs in terms of PT on such lands.
- (e) As per Articles 203 (2) and 204 (2) of the Tax Code, property tax on Required Land that does not fall under the categories of land provided in paragraph 8(d) the Company shall be obligated to pay property tax on land calculated based on the following formula:

$$PT \text{ on land} = BRXSQ.MXTR$$

Where: BR is the base rate fixed at 0.24 GEL as per Article 204 (2) (a); SQ.M is the area of Required Land subject to sub-clause (h) of this Schedule; TR is the territorial ratio established by the municipality of Mestia, Svaneti, which is currently fixed at 0.75 GEL, but as per Article 204 (2) (b) shall not be higher than 1.5 GEL.

- (f) According to Article 113 of the Tax Code, the Company is entitled to deduct depreciation costs from the aggregate value of the Facility annually on a pro rata basis during the useful life of the Facility, which is set at 36 years starting from the later of Actual COD and Scheduled COD. For the avoidance of any doubt it is hereby clarified, that this rule remains applicable, after bringing into effect of Article 123 of the Tax Code and applicability of thin capitalisation to the Company.
- (g) The value of material improvement/repair of property, plant and equipment required for the normal operation of the Facility, referred to in section 3 of this Schedule shall be added to the value of the Facility (intangible asset) and shall be subject to further depreciation in accordance with paragraph 8(f) of this Schedule during the useful life.

9. Transfer of the Shares of the Company to the GoG and implications thereof:

- (a) According to Article 168 (4) (i) and (2) (a) of the Tax Code and subject to Clause 28 (Early Termination) of this Agreement, transfer of the Shares to the GoG on a free of charge basis upon expiry of the Term is exempted from VAT.

- (b) According to Article 100 (4) (b) of the Tax Code and subject to Clause 28 (Early Termination) of this Agreement, the Company is not obligated to include any gain/benefit/income generated as a result of free of charge transfer of the Shares to the GoG upon expiry of the Term in its gross income.
- 10. If, under Clause 24.1 (Change in Law, Change in Tax) or Clause 24.2 (Refinancing) of this Agreement, the Company shares a financial benefit with the GoG by means of a lump sum payment to the GoG, such amount shall be subject to deduction from gross income of the Company for the purposes of CIT.

SCHEDULE 5
MAP OF CATCHMENT AREA



SCHEDULE 6

ADVERSE HYDROLOGICAL EVENT

Adverse Hydrological Event means an event where during any Annual Generation Period, covering the period of time from 1 January through 31 December, the Reservoir Inflow is less than the Required Water Flow for Take or Pay Quantity.

Assuming:

Beginning Dam Water Level means the water level, expressed in meters above mean sea level (mamsl), measured at the gauge installed at the Nenskra Dam at the beginning of 1 January during any year during the Term.

Beginning Dam Water Volume means the volume, expressed in m³, derived from the elevation-volume characteristic of the applicable Beginning Dam Water Level.

Ecological Flow means the minimum water flow that must be released to the rivers Nenskra and Nakra downstream of the Nenskra Dam or the Nakra Weir as compensation for the water diverted to the Power Generation Facility or the Nakra Transfer Tunnel as required by the Applicable Law or the Environmental & Social Management Plan.

Ending Dam Water Level means the water level, expressed in mamsl, measured at the gauge installed at the Nenskra Dam at the end of 31 December during any year during the Term.

Ending Dam Water Volume means the volume, expressed in m³, derived from the elevation-volume characteristic of the applicable Ending Dam Water Level.

LLO Release Flow means the quantity of water measured in cubic metres per second through the Low Level Outlet. The flow will be measured during the applicable calendar year by the water flow meter installed in the Low Level Outlet, calculated by dividing the sum of measured values (every minute) by the number of recorded values.

Mean Reservoir Water Level means the mean Water Level, expressed in mamsl, measured during the Term, excluding any calendar year when an Adverse Hydrological Event occurs, at the gauge installed at the Nenskra Dam, calculated by dividing the sum of daily measured values by the number of recorded values.

Required Water Flow for Take or Pay Quantity means the mean inflow into the reservoir of 25.31m³/s.

Reservoir Inflow means all water ingress to the Nenskra Reservoir including but not limited to the water from the Nakra River, the Nenskra River, the tributaries in the reservoir catchment area, the ground water and precipitation on the reservoir surface; expressed as:

$$((\text{Ending Dam Water Volume} - \text{Beginning Dam Water Volume}) / 31,536,000) + \text{Turbine Flow} + \text{Ecological Flow} + \text{Spillway Release Flow} + \text{LLO Release Flow} + \text{Seepage Flow}$$

Seepage Flow means 0.25m³/s.

Shortfall Energy shall be calculated as follows:

$$E = \eta * \rho * Q * g * h * 8760$$

where:

E is Energy in kWh;

η is the combined dimensionless efficiency of the turbine, generator and transformer as defined in the technical specifications;

ρ is the density of water in kilograms per cubic metre;

Q is the Shortfall Water Flow in cubic meter per seconds;

g is the acceleration due to gravity; and

h is the Mean Reservoir Water Level minus the installed elevation level of the turbine runner centreline measured in mamsl minus hydraulic losses measured in meters as defined in the Technical Specifications for the EPC Contract.

Shortfall Water Flow means, if greater than zero, the Required Water Flow for Take or Pay Quantity minus Reservoir Inflow.

Spillway Release Flow means the quantity of water measured in cubic meters released through the Spillway divided by 31,536,000. The quantity will be determined during the applicable calendar year by the Nenskra Reservoir water level measured during the time of discharge at the gauge installed at the Nenskra Dam and by applying the discharge/water level relationship for the Spillway during the spilling period.

Turbine Flow means the mean flow, expressed in m³/s, measured during the applicable calendar year at the water meters installed in the powerhouse before each turbine (including periods when the turbine is not operating), calculated by dividing the sum of measured values (every minute) by the number of recorded values.

SCHEDULE 7

TRANSMISSION LINE AND CONNECTION FACILITIES MINIMUM SPECIFICATIONS

PART 1

TRANSMISSION LINE AND CONNECTION FACILITIES MINIMUM SPECIFICATIONS

This Part 1 shall be updated prior to Financial Close to include the specifications of the Transmission Line and Connection Facilities in accordance with Clause 10.1(b) (Transmission Line, Connection Facilities and Grid System).

PART 2

METERING

This Part 2 shall be updated prior to Financial Close to include the specifications of the Metering Device and the Check Metering Device in accordance with Clause 10.1(b) (Transmission Line, Connection Facilities and Grid System).

SCHEDULE 8
LAND AGREEMENTS
PART 1
FORM OF RIGHT TO BUILD AGREEMENT

DRAFT

PAID RIGHT TO BUILD AGREEMENT

[] 2017

Between

LEPL – NATIONAL AGENCY OF STATE PROPERTY
as Owner

and

JSC "NENSKRA HYDRO"
as Possessor of the Right to Build

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Georgia, Tbilisi [] 10 November 2016 as amended on [] 2017

- (1) **LEPL – NATIONAL AGENCY OF STATE PROPERTY** (*hereinafter; the Owner*), represented by the Legal Adviser of the Legal Support Unit of the Legal Department, acting according to the №[] Power of Attorney Certificate issued by the Chairman of the LEPL – National Agency of State Property on []; and
- (2) **JSC "NENSKRA HYDRO"** (identification number: №405112220) (*hereinafter; the Possessor of the Right to Build*), represented by ... (Passport number: []) Chief Executive Officer

(*hereinafter; the Owner and the Possessor of the Right to Build separately referred to as the Party and jointly referred to as the Parties*),

On the basis of the Civil Code of Georgia, the Law of Georgia on State Property, the Implementation Agreement for the Nenskra Hydroelectric Project (*hereinafter; the Implementation Agreement*) conducted between the Government of Georgia, JSC "Electricity System Commercial Operator", JSC "Georgian State Electrosystem" and JSC "Nenskra Hydro", dated 31 August 2015, as amended and restated on [] 2017, the put and call option agreement (*hereinafter; the Put and Call Option Agreement*) between the Government of Georgia, JSC "Partnership Fund", Korea Water Resources Corporation and JSC "Nenskra Hydro", dated 31 August 2015, as amended and restated on [] 2017 and the Decree of the Government of Georgia №[] on "Approving the Agreements to be concluded by the Government of Georgia, JSC "Partnership Fund" and JSC "Electricity System Commercial Operator", are entering into the following agreement (*hereinafter; the Agreement*).

This document amends and restates the original right to build granted on 10 November 2016. For the avoidance of doubt, the text of the original right to build granted on 10 November 2016 is deleted in its entirety and is substituted by the text as provided in this agreement.

1. SUBJECT OF THE AGREEMENT

- (a) On the basis of the Agreement the Owner transfers possession and use (*hereinafter; the Right to Build*) and the Possessor of the Right to Build accepts possession and use of the state-owned property specified in the Annex 1 (*hereinafter; the Property*).
- (b) The Agreement shall enter into force upon its signing and remain effective during the term of 55 (fifty-five) years from signing the Agreement.
- (c) The Owner warrants that at the time of signing the Agreement the Owner has valid legal title over the Property and it is free and clear from any encumbrances, there is no lien and the Property is not transferred to a third party with a right to use. In case of any defect with the Property, the terms of the Implementation Agreement shall apply.
- (d) As confirmed by the extracts issued by the LEPL – National Agency of Public Registry dated [] 2017 (*hereinafter; the Public Registry*) the Owner hereby represents and warrants that by the time of signing the Agreement none of the land parcels of the Property are categorized as agricultural land.

2. PRICE OF POSSESSION AND THE PAYMENT TERMS

- (a) The Possessor of the Right to Build shall pay the consideration for the Right to Build (*hereinafter; the Consideration*) in the amount of USD 1 within 2 (two months) from signing the Agreement. The Consideration shall be paid in its equivalent in GEL pursuant to the official currency exchange rate set by the National Bank of Georgia on the date of the payment.

- (b) The Consideration shall be made by wire transfer to the Owner's following bank account:

GEL Account

The owner of the account: LEPL – National Agency of State Property
Account Number: GE44BG000000655070700 Currency/GEL
Receiving Bank: JSC Bank of Georgia;
Bank Code: BAGAGE22

- (c) The Consideration shall be considered to be paid from the moment the payment is reflected on the account of the Owner. The Owner shall provide a receipt for such payment to the Possessor of the Right to Build.

3. RIGHTS AND OBLIGATIONS OF THE PARTIES

- (a) The Possessor of the Right to Build shall:

- (i) Ensure construction and acceptance for exploitation of the **Nenskra HPP** (hereinafter, the **Project**) in compliance with the Implementation Agreement.
- (ii) For the purposes of confirming the fulfilment of the obligation set out in Clause 3(a)(i) of the Agreement, no later than 75 (seventy-five) calendar days upon expiration of such obligation, submit to the Owner the written confirmation issued by the Ministry of Energy of Georgia confirming completion of construction and acceptance for exploitation of the Nenskra HPP in accordance with the Implementation Agreement. The Possessor shall not be in breach of this obligation to the extent that the Possessor is delayed in submitting the written confirmation issued by the Ministry of Energy of Georgia to the Owner as a result of any delay in: (A) LEPL Technical and Constructions Supervision Agency of the Ministry of Economy and Sustainable Development of Georgia issuing the certificate of acceptance into exploitation; or (B) the Ministry of Energy of Georgia confirming the fulfilment of the obligations of the Possessor of the Right to Build under the Implementation Agreement, on the condition that the Company has met all the requirements relating to submission of the relevant documentation under the Applicable law.
- (iii) Pay the costs related to the registration of the Right to Build at the Public Registry.
- (iv) In case of any claims arising from a third party against the Possessor of the Right to Build in connection with the Property based on any rights established over the Property before signing the Agreement, the Possessor of the Right to Build shall inform the Owner within a reasonable period of time. In case any such claim arises the terms of [clause 8.3(d)] of the Implementation Agreement shall apply.
- (v) Submit to the Owner such reasonable information related to the performance of the obligations undertaken by it under the Agreement no later than 30 (thirty) calendar days since receiving such request from the Owner. For the avoidance of any doubt, the information submitted under this Clause shall include the description of performance of obligations defined in the Clause 3(a)(i) of the Agreement.

- (b) The Owner shall transfer the Right to Build over the Property and possession of the Property to the Possessor of the Right to Build under the terms and conditions of the Agreement immediately after registration of the Agreement at the Public Registry. The Possessor of the Right to Build shall have

the right to undertake this registration of the Agreement with the Public Registry, and the Owner, within its competence, shall provide all necessary or desirable assistance in this regard.

- (c) Within 30 (thirty) calendar days after submission of the document in accordance with Clause 3(a)(ii) above confirming fulfilment of the respective obligation under the Agreement by the Possessor of the Right to Build, the Owner shall confirm in writing the acceptance of the full or partial fulfilment of the obligation, which shall be the basis for removing the respective obligations or registering changes to such obligations at the Public Registry. Furthermore, the Owner within its competence shall take any and all measures and sign any and all documents that may be required or desirable for the purposes of altering or removing the obligations registered at the Public Registry.
- (d) The Possessor of the Right to Build shall be authorized:
 - (i) to exercise the Right to Build over the parts of the Property that are not necessary for the Right to Build, but facilitate better use of the buildings and land on the Property; and/or
to:
 - (A) to mortgage the Right to Build in favour of the Finance Parties (as this term is defined in the Implementation Agreement) or any one of them; and otherwise
 - (B) to mortgage the Right to Build based on the advance written consent of the Owner and that later is not entitled to withhold such consent without the reasonable justification,
 - (C) upon transfer of the mortgaged Right to Build directly into the ownership of the mortgagor or sale of the mortgaged Right to Build Property in accordance with the Law of Georgia on Enforcement Proceedings or the Civil Code of Georgia (irrespective of the form of sale), due to the Possessor of the Right to Build's failure to fulfil its obligations secured under the mortgage, the Possessor of the Right to Build's rights and obligations under the Agreement shall be fully transferred to the new and each subsequent owner.
 - (ii) to request the release and return of the Property from any illegal possession, inter alia to request the removal of any impediment to using the Property and to claim compensation for any damages caused to the Property by the third parties.
- (e) Notwithstanding the above, the Owner acknowledges that the Possessor of the Right to Build is seeking financing for the Project from Finance Parties (as defined in the Implementation Agreement) and hereby gives its consent to mortgaging the Right to Build in favour of Finance Parties or any one of them. For the avoidance of any doubt, no separate written consent of the Owner shall be required for mortgaging the Right to Build in favour of the Finance Parties or any one of them, as such consent is deemed to have been irrevocably issued hereunder.
- (f) Once terminated in compliance with the terms of Clause 6(a) of the Agreement, the Owner is authorized without the consent of the Possessor of the Right to Build register unilaterally the termination of Right to Build over the Property at the Public Registry.

4. SPECIAL TERMS OF THE AGREEMENT

- (a) Any building or other immovable property erected or created on the territory of the **Property** on the basis of the Right to Build, shall be considered as an essential and integral part of the Right to Build (*hereinafter*; "Essential Part of the Right to Build"). The Possessor of the Right to Build shall be registered as an owner of such Essential Part of the Right to Build at the Public Registry during the

term of the Agreement and the Owner shall take any and all measures, which are desirable and/or mandatory in order to register the Possessor of the Right to Build as an owner of such Essential Part of the Right to Build at the Public Registry during the term of the Agreement within its competence.

During the term of the Agreement the Possessor of the Right to Build is entitled to dispose of or otherwise encumber the Right to Build to the Finance Parties (as defined in the Implementation Agreement) or any of them, pursuant to the Finance Documents (as defined in the Implementation Agreement and/or in accordance with the Implementation Agreement and the Put and Call Option Agreement.

- (b) The Possessor of the Right to Build shall be entitled to use all the natural and legal products of the Property.
- (c) The destruction of any building constructed on the basis of the Right to Build does not terminate the Right to Build.
- (d) The obligations of the Possessor of the Right to Build provided under the Agreement shall be deemed as fulfilled following the submission by the Possessor of the Right to Build of the written confirmation of the Ministry of Energy confirming completion of construction and acceptance for exploitation of the Nenskra HPP in accordance with the Implementation Agreement as per Clause 3(a)(ii). The written confirmation shall be provided by the Ministry of Energy to the Possessor of the Right to Build within 30 (thirty) calendar days after submission to the Ministry of Energy of the certificate of acceptance into exploitation issued by the LEPL – Technical and Construction Supervision Agency (as provided under Clause 11.8 of the Implementation Agreement).
- (e) In case of the expiration of the term of the Agreement the Possessor of the Right to Build refuses in advance to claim from the Owner under this Agreement relevant compensation for the building erected on the territory of the Property. For the avoidance of doubt, this provision does not limit any right of the Possessor of the Right to Build to claim compensation from any other party under the Implementation Agreement, the Put and Call Option Agreement, any other contractual document or otherwise at law.

5. LIABILITIES OF THE PARTIES

- (a) If the Possessor of the Right to Build fails to fulfil and/or improperly fulfils the obligations undertaken in the Agreement the Possessor of the Right to Build shall receive a written notice from the Owner prescribing the amount of penalties to be paid in accordance with applicable law and the details of the bank account of the Owner for the payment of the penalties.
- (b) If the Possessor of the Right to Build breaches the obligation envisaged by the Clause 2(a) of the Agreement, after written notice by the Owner of such breach, the Possessor of the Right to Build shall pay the penalty in the amount of 0.1% of the unpaid sum for each delayed day.
- (c) If the Possessor of the Right to Build breaches the obligation envisaged by the Clause 3(a)(i) of the Agreement for a reason that is unrelated to any action or inaction of the Owner, after written notice by the Owner of such breach, the Possessor of the Right to Build shall pay a penalty in the amount of 300 (three hundred) GEL for each delayed day.
- (d) If the Possessor of the Right to Build breaches the obligation envisaged by the Clause 3(a)(ii) of the Agreement the Possessor of the Right to Build shall pay a penalty in the amount of 50 (fifty) GEL for each delayed day. The penalty imposed for the breaches of the obligation envisaged by the Clause 3(a)(ii) shall not exceed 5 000 (five thousand) GEL.

- (e) The payment of a penalty under this Clause 5 does not relieve the Possessor of the Right to Build or the Owner, as applicable, from the obligations envisaged by the Agreement.

6. TERMINATION OF THE AGREEMENT

- (a) The Agreement may only be terminated:
 - (i) Based on mutual agreement of the parties;
 - (ii) Upon expiry of the scheduled term of the Implementation Agreement and payment in full of all amounts due and payable under the Implementation Agreement and the Put and Call Option Agreement following such expiry; and
 - (iii) For other reasons set out in this Agreement or under Georgian law giving rise to termination, provided that, in all cases, such termination may solely take place in accordance and subject to the terms of the the Direct Agreement (as defined in the Implementation Agreement) to be entered into between the Owner, the Possessor of the Right to Build, the Government of Georgia and the Finance Parties (as defined in the Implementation Agreement) and following the termination of the Implementation Agreement in accordance with its terms and payment in full of all amounts due and payable under the Implementation Agreement and the Put and Call Option Agreement following such termination.
- (b) In case of termination or expiry of the Agreement in accordance with Clause 6(a), the Possessor of the Right to Build shall:
 - (i) Release the Property and/or the Essential Part of the Right to Build;
 - (ii) Transfer the Essential Part of the Right to Build to the Owner.

The Parties acknowledge that, the Owner shall not be obliged to pay any sum of money or transfer any benefits to the Possessor of the Right to Build in connection with the Property and Essential Part of the Right to Build other than as provided in the Implementation Agreement and Put and Call Option Agreement.

7. NOTICES

- (a) Any notice or correspondence between the Parties shall be in writing, in Georgian language and shall be delivered in person by registered mail; or courier to the addresses indicated below or other addresses that shall be indicated beforehand by the relevant Party.
- (b) For the purposes of the Paid Right to Build Agreement, the notice details of the Parties shall be as follows:
 - (i) For the Owner:

LEPL – National Agency of State Property

Address: 10A, Chovelidze street, Tbilisi, Georgia

Tel.: + 995 32 2 991072; + 995 32 2 991111.
 - (ii) For the Possessor of the Right to Build:

Address: Floor 4-5, Green Building, #6 Marjanishvili Street, Tbilisi 0102, Georgia

Tel: +995 599 13 36 73

Email: hiroxykim@gmail.com

- (c) The Parties shall notify each other if they make changes in their identification data, including a change of registered addresses, not later than 30 (thirty) calendar days after making any such changes. If the Parties fail to do so any correspondence sent to the old address, including a written notice, and shall be considered as delivered on receipt thereof.

8. APPLICABLE LAW AND DISPUTE RESOLUTION

- (a) The Agreement shall be governed and interpreted in accordance with the legislation of Georgia.
- (b) All disputes arising out of the Agreement between the Parties shall be settled by mutual agreement between the Parties. In case such an agreement is not reached, a dispute shall be settled by the courts of Georgia.

9. MISCELLANEOUS PROVISIONS

- (a) Any amendment or/and addition may be made to the Agreement on the basis of a written consent of the Parties that shall be concluded as a separate agreement and shall be attached to the Agreement as an integral part thereof.
- (b) All amendments/additions or/and annexes of the Agreement represent an integral part of the Agreement. Any such document shall be signed in the same manner as the Agreement is.
- (c) The headings in the Agreement are provided solely for the convenience and shall not affect the interpretation of the given terms of the Agreement.
- (d) Parties agree that in case of discrepancies between the Agreement and the Implementation Agreement, the Implementation Agreement shall prevail.
- (e) The Agreement is signed in the Georgian and English languages in 3 (three) copies having an equal legal force which shall be transferred to the Parties and the Public Registry. In the event of discrepancy between the English and Georgian versions, the English version shall prevail.

SIGNATORIES

The Owner

LEPL – NATIONAL AGENCY OF STATE PROPERTY

Representative

The Possessor of the Right to Build

JSC "NENSKRA HYDRO"

Representative

PART 2
FORM OF LAND TRANSFER AGREEMENT

LAND TRANSFER AGREEMENT

[●] 2017

Between

LEPL "NATIONAL AGENCY OF STATE PROPERTY"
as Seller

and

JSC "NENSKRA HYDRO"
as Purchaser

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The present Land Transfer Agreement (the **Agreement**) is entered into in Tbilisi, Georgia, on [●] 2017, by and between the following Parties:

- (1) **LEPL "NATIONAL AGENCY OF STATE PROPERTY"** (the **Seller**), represented by [●], acting on the basis of and in the capacity granted under the power of attorney No.[●] issued by the Chairman of the LEPL "National Agency of State Property" on [●], on the one hand; and
- (2) **JSC "NENSKRA HYDRO"** (identification number: №405112220) (the **Purchaser**), represented by [●]; on the other hand;

The Seller and the Purchaser shall hereinafter be referred to as the **Parties** and separately – as the **Party**.

The Parties execute the Agreement on the basis of the Law of Georgia on State Property, Order No. 1-1/1537 of the Minister of Economy and Sustainable Development of Georgia on Approval of the Regulations on Direct Sale of State Property through Privatization, dated 16 September 2010, the Decree No. [●] of the Government of Georgia on "Privatization of State-owned Property by the Direct Sale to JSC "Nenskra Hydro", dated [●], and the Implementation Agreement For the Nenskra Hydroelectric Project, entered into between the Government of Georgia (the **GoG**), JSC "Electricity System Commercial Operator", JSC "Georgian State Electrosystem" and JSC "Nenskra Hydro" on 31 August 2015, as amended and restated on [] 2017 (the **IA**) and the put and call option agreement between the GoG, JSC "Partnership Fund", Korea Water Resources Corporation and JSC "Nenskra Hydro" dated 31 August 2015, as amended and restated on [] 2017 (the **Put and Call Agreement**).

1. SUBJECT OF THE AGREEMENT

The Seller transfers and the Purchaser receives the ownership title over the immovable property listed under Annex No.1 to the Agreement (the **Property**), subject to fulfilment of the obligations provided under the Agreement.

2. PRIVATIZATION AMOUNT AND PAYMENT PROCEDURE

- (a) The Purchaser shall pay the privatization amount of USD 1 within 1 (one) month after execution of the Agreement. The privatization amount shall be paid in its equivalent in GEL pursuant to the official currency exchange rate set by the National Bank of Georgia on the date of the payment.
- (b) The Purchaser shall pay the privatization amount by means of bank transfer to the following bank account:

GEL Account:

Account name (recipient): LEPL National Agency of State Property

Account number: GE50BG000000655067100/Account currency: GEL

Recipient bank: JSC "Bank of Georgia"

Recipient bank code: No. BAGAGE22

- (c) When transferring the privatization amount, the Purchaser shall indicate the information about the date of signing the Agreement, the name of the Purchaser and its identification code or cadastral code of the Property to identify the payment.

- (d) The privatization amount shall be considered as paid from the moment when it is reflected on the Seller's bank account. The Seller shall provide a receipt for such payment to the Purchaser.
- (e) In case of change of the bank account information provided under Clause 2(b) of the Agreement, the Seller shall notify the Purchaser in writing.

3. RIGHTS AND OBLIGATIONS OF THE PARTIES

- (a) The Purchaser is obliged to:
 - (i) Ensure construction of and acceptance into exploitation of Nenskra HPP in accordance with the terms of the IA;
 - (ii) For the purposes of confirming the fulfilment of the obligations set out in Clause 3(a)(i) of the Agreement, submit to the Seller the written confirmation issued by the Ministry of Energy of Georgia confirming completion of construction and acceptance for exploitation of the Nenskra HPP in accordance with the Implementation Agreement within 75 (seventy-five) calendar days from expiration of the term for fulfilment of such obligation. The Purchaser shall not be in breach of this obligation to the extent that the Purchaser is delayed in submitting the written confirmation issued by the Ministry of Energy of Georgia to the Seller as a result of any delay in: (A) LEPL Technical and Constructions Supervision Agency of the Ministry of Economy and Sustainable Development of Georgia issuing the certificate of acceptance into exploitation; or (B) the Ministry of Energy of Georgia confirming the fulfilment of the obligations of the Possessor of the Right to Build under the Implementation Agreement, on the condition that the Company has met all the requirements relating to submission of the relevant documentation under the Applicable law.
 - (iii) Cover the costs related to registration of the ownership title over the Property and obligations under the Agreement at the LEPL - National Agency of Public Registry (the **Public Registry**), as well as any other costs related to the execution of the Agreement;
 - (iv) Submit to the Seller the information on the status of the fulfilment of obligations under the Agreement, upon the relevant request of the Seller, but no later than 30 (thirty) calendar days after receipt of such request.
- (b) Within 30 (thirty) calendar days after submission of the document confirming the fulfilment of the respective obligation under the Agreement by the Purchaser, the Seller shall confirm in writing the acceptance of the full or partial fulfillment of the obligation, which shall be the basis for removing the respective obligations or registering changes to such obligations at the Public Registry. Furthermore, the Seller shall take any and all measures and sign any and all documents that may be required or desirable for the purposes of altering or removing the obligations registered at the Public Registry within its competence.

4. SPECIAL PROVISIONS OF THE AGREEMENT

- (a) The ownership title over the Property is transferred to the Purchaser upon execution of the Agreement and registration of the ownership title at the Public Registry. In addition, the ownership title over the Property is transferred to the Purchaser subject to fulfilment of the obligations under the Agreement.
- (b) The Property is transferred into the possession of the Purchaser upon registration of the ownership title at the Public Registry.

- (c) In addition to registration of the Purchaser's title to the Property, the Purchaser's obligations under Clauses 3(a)(i) and 3(a)(ii) hereinabove shall also be registered at the Public Registry.
- (d) The obligations of the Purchaser provided under the Agreement shall be deemed as fulfilled following the submission to the Seller of the written confirmation of the Ministry of Energy confirming completion of construction and acceptance for exploitation of the Nenskra HPP in accordance with the Implementation Agreement as per Clause 3(a)(ii). The written confirmation shall be provided by the Ministry of Energy to the Purchaser within 30 (thirty) calendar days after submission to the Ministry of Energy of the certificate of acceptance into exploitation issued by the LEPL – Technical and Construction Supervision Agency (as provided under Clause 11.8 of the Implementation Agreement).
- (e) In the event the Purchaser sells the Property under the Agreement and while the Purchaser's obligations under Clauses 3(a)(i) and 3(a)(ii) of the Agreement are still registered at the Public Registry, the Purchaser shall be entitled to sell the Property to the new owner on the same terms and conditions as provided under the Agreement. The Seller shall be notified on the sale of the Property in writing.
- (f) In case the Purchaser sells part of the Property after payment of the privatization amount, the new owner shall be liable for the fulfilment of the obligations undertaken by the Agreement jointly with the Purchaser. The Seller shall be notified on sale of the Property in writing.
- (g) The Purchaser may encumber the Property with a mortgage for the purposes of fulfilment of the privatization obligations hereunder, subject to a written consent of the Seller. Upon transfer of the mortgaged Property directly into the ownership of the mortgagor or sale of the mortgaged Property in accordance with the Law of Georgia on Enforcement Proceedings or the Civil Code of Georgia (irrespective of the form of sale), due to the Purchaser's failure to fulfil its obligations secured under the mortgage, the Purchaser's rights and obligations under the Agreement shall be fully transferred to the new and each subsequent owner.
- (h) The Seller acknowledges that the Purchaser is seeking financing for the Nenskra HPP project from Finance Parties (as defined in the Implementation Agreement) and hereby gives its consent to mortgaging the Property in favour of such Finance Parties or any one of them (and their successors, transferees and assigns). For the avoidance of any doubt, no separate written consent of the Seller shall be required for mortgaging the Property in favour of the Finance Parties or any one of them, as such consent is deemed to have been irrevocably issued hereunder.

5. LIABILITIES OF THE PARTIES AND TERMINATION OF THE AGREEMENT

- (a) In case of breach of terms hereof, the Purchaser shall receive a written notice indicating the term for curing the breach, the obligation to pay the penalty, if any, and details of the bank account, where the penalty should be paid.
- (b) In case of failure to fulfil or improper performance of the obligation to pay privatization amount under Clause 2(a) of the Agreement, the penalty in the amount of 0.1% of the outstanding amount shall be imposed on the Purchaser, for each overdue day.
- (c) In case of breach of the obligations under Clause 3(a)(i) of the Agreement, a penalty in the amount of GEL 300 (three hundred) shall be imposed on the Purchaser for each overdue day.
- (d) In case of breach of any other obligation under this Agreement, a penalty in the amount of GEL 300 (three hundred) shall be imposed on the Purchaser for each overdue day.

- (e) The payment of penalty imposed under the Agreement shall not release the Purchaser from the duty to perform its obligations hereof.
- (f) This Agreement may only be terminated:
 - (i) by mutual agreement of the Parties;
 - (ii) upon the expiry of the IA scheduled term and payment in full of all amounts due and payable under the Implementation Agreement and the Put and Call Option Agreement following such termination;
 - (iii) for other reasons set out in the Agreement or under Georgian law giving rise to termination, provided that, in all cases, such termination may solely take place in accordance and subject to the terms of the Direct Agreement to be entered into between the Purchaser, the GoG and the Finance Parties and following the termination of the IA in accordance with its terms and payment in full of all amounts due and payable under the Implementation Agreement and the Put and Call Option Agreement following such termination (including, without limitation, payment of any Applicable Purchase Price (as defined in the Put and Call Agreement)).
- (g) In case of termination of the Agreement, the Property shall be returned in the state ownership. The Purchaser will not be reimbursed for the paid amounts and expenses, and registered mortgage in favour of the third parties shall be cancelled.

6. FORCE-MAJEURE

- (a) The Parties shall not be liable for non-performance or improper performance of the obligations under the Agreement, if such non-performance or improper performance was caused by force-majeure events. For the purposes of this Agreement, force-majeure events shall be those circumstances or events that are beyond the control of the Seller or the Purchaser and the respective Party was not able to foresee and/or prevent it and the occurrence of which makes it impossible to fulfil the obligations under the Agreement. Force-majeure events shall include, but not be limited to the following: natural disasters, strikes, sabotage, civil unrest, war (declared or undeclared) or other military, terrorist or guerilla actions, blockade, insurrections, earthquakes, avalanches or other acts of God.
- (b) The Party which is unable to perform its obligations due to the force-majeure circumstance or event, shall notify the other Party of the occurrence, as well as termination of the mentioned circumstances or events no later than 10 (ten) calendar days after its occurrence or termination. Otherwise, the Party loses the right to rely on such circumstances and events as the basis for waiving the liability for non-performance or improper performance of its obligations. Such notification shall include the description of the force-majeure circumstance or event and its impact on the performance of the obligations hereunder of the respective Party, as well the delay expected in the fulfilment of such obligations.
- (c) The performance of the Parties' obligations shall be postponed for the duration of the force-majeure events.
- (d) From the date of termination of the force-majeure event, which was the basis for suspension of fulfilment of the obligations hereunder, calculation of the contractual terms shall be renewed. The remaining portion of the respective term shall be extended accordingly.
- (e) In case the force-majeure event last for more than 3 (three) months, the Parties shall be authorized to discuss the termination of the Agreement, provided that, in all cases, such termination may solely take place in accordance and subject to the terms of the Direct Agreement to be entered into between the Purchaser, the GoG and the Finance Parties and following the termination of the IA in

accordance with its terms and the payment of the Applicable Purchase Price under the Put and Call Option Agreement (as defined in the IA).

7. NOTICES

(a) Any notice and communication between the Parties shall be in writing, in Georgian and shall be delivered directly or through courier service at address specified bellow or at other address by prior notice.

(b) Details of the Parties:

(i) For the Seller:

LEPL "National Agency for State Property"

Address: 10A Tchovelidze street, Tbilisi, Georgia

Tel.: +995 32 299 11 05/+995 32 299 11 11

(ii) For the Purchaser:

JSC "Nenskra Hydro"

Address: [●]

Tel.: [●]

(c) The Purchaser shall notify the Seller on any changes in its identification data, including change of address, within 10 (ten) calendar days of such change. Otherwise, any correspondence sent by the Seller to the Purchaser's old address shall be considered to be delivered.

8. GOVERNING LAW AND DISPUTE RESOLUTION

(a) The Agreement shall be governed by and construed in accordance with the laws of Georgia.

(b) If the dispute arises between the Parties, it shall be resolved by common courts of Georgia in accordance with the laws of Georgia.

9. MISCELLANEOUS PROVISIONS

(a) Any amendment to the Agreement shall be made by written agreement of the Parties to be executed in the same form as this Agreement.

(b) Any and all amendments and/or annexes hereof shall form integral part of the Agreement.

(c) Headings in the Agreement are used for ease of reference only and shall not affect interpretation of the respective provisions.

(d) Agreement is executed in Georgian, in 3 (three) counterparts having equal legal force, which are given to the Parties and the Public Registry.

(e) The Agreement shall take effect upon its execution by the Parties.

SIGNATORIES

The Seller

LEPL "NATIONAL AGENCY OF STATE PROPERTY"

The Purchaser

JSC "NENSKRA HYDRO"

SCHEDULE 9
PUT AND CALL OPTION AGREEMENT

SCHEDULE 10
POWER PURCHASE AGREEMENT

SCHEDULE 11
BANK ACCOUNTS

Company:

Bank: [Name and address of bank]
[Sort code: [●]]
Account number: [●]
[Account name: [●]]
SWIFT code: [●]

GoG:

Bank: [Name and address of bank]
[Sort code: [●]]
Account number: [●]
[Account name: [●]]
SWIFT code: [●]

Offtaker:

Bank: [Name and address of bank]
[Sort code: [●]]
Account number: [●]
[Account name: [●]]
SWIFT code: [●]

Dispatch Licensee:

Bank: [Name and address of bank]
[Sort code: [●]]
Account number: [●]
[Account name: [●]]
SWIFT code: [●]

SCHEDULE 12

TAKE OR PAY DEFINITIONS

PART 1

MONTHLY TAKE OR PAY DEFINITIONS

In this Agreement:

Actual Adjusted Take or Pay Quantity or **Actual Adjusted TOPQ** means, with respect to each TOP Period (TOP Period 'i'), the lower of:

- (a) the Forecasted Net Electrical Output for TOP Period 'i' (adjusted for any Revised Forecasted Net Electrical Output pursuant to clauses 6.1(b), and 6.5 of the PPA in respect of TOP Period 'i' before the beginning and/or during such period 'i'); and
- (b) an amount calculated, immediately after the expiration of TOP Period 'i', as follows:

$$ActualAdj.TOPQ_t = \sum_{i=1}^t TOPQ_i - \sum_{i=1}^t TechOutages_i - \sum_{i=1}^{t-1} NEO_i - \sum_{i=1}^{t-1} TOPDQ_i$$

Where:

i means the number of TOP Periods that have occurred during the Annual Generation Period during which TOP Period 'i' occurred, including TOP Period 'i';

$i-1$ means the number of TOP Periods that have occurred during the Annual Generation Period during which TOP Period 'i' occurred, not including TOP Period 'i';

TOPQ_i means the TOPQ for TOP Period 'i';

Tech.Outages_i means for TOP Period 'i':

- (i) in the event that the aggregate quantity of Net Electrical Output that is delivered during TOP Period 'i' is less than the TOPQ for TOP Period 'i' the difference between:

- (A) the TOPQ for TOP Period 'i', and
- (B) the aggregate quantity of Net Electrical Output that is delivered during TOP Period 'i',

but only to the extent such difference was caused by one or more Scheduled Outages or Unscheduled Outages and such Scheduled Outages or Unscheduled Outages were not caused by:

- (1) a Political Force Majeure Event (as such term is defined in this Agreement);
- (2) a Delayed Commissioning Event (as such term is defined in this Agreement);
- (3) an Other Compensation Event (as such term is defined in this Agreement);

- (4) a change to the Grid System, the Connection Facilities and/or the Transmission Line that prevents the Facility from generating Net Electrical Output (as such terms are defined in Agreement); or
 - (5) any shortage of water ingress to the Nenskra Reservoir including but not limited to the water from the Nakra River, the Nenskra River, the tributaries in the reservoir catchment area, the ground water and precipitation on the reservoir surface,
- (ii) in the event that paragraph (i) does not apply, zero (0);

NEO_i means the quantity of Net Electrical Output during TOP Period 'i'; provided, that, *NEO_i* means and equals zero for the calculation of the value of *ActualAdj.TOPQ_i* for the first TOP Period to occur during an Annual Generation Period; and

TOPDQ_i means the sum of:

- (i) when the Dispatch Licensee fails to dispatch at least the Actual Adjusted TOPQ during TOP Period 'i', a positive amount equal to the TOP Deficiency Quantity calculated in respect of TOP Period 'i'; and
- (ii) when the Dispatch Licensee receives a TOP Deficiency Payment Refund during TOP Period 'i', a negative amount equal to the Additional Quantity that relates to the TOP Deficiency Payment Refund,

provided, that, *TOPDQ_i* means and equals zero for the calculation of the value of *ActualAdj.TOPQ_i* for the first TOP Period to occur during an Annual Generation Period.

Additional Quantity means, with respect to a TOP Period, Net Electrical Output in excess of the Actual Adjusted TOPQ for such TOP Period.

Take or Pay Deficiency Payment or **TOP Deficiency Payment** means, in respect of each TOP Period, an amount equal to the TOP Deficiency Quantity during such TOP Period *multiplied by* the applicable Energy Rate.

Take or Pay Deficiency Payment Refund or **TOP Deficiency Payment Refund** means, with respect to any TOP Period (TOP Period 't'), the lower of:

- (a) the Additional Quantity dispatched during TOP Period 't' multiplied by the Energy Rate applicable during TOP Period 't'; and
- (b) the amount of:
 - (i) the sum of any TOP Deficiency Payments paid by the Dispatch Licensee in respect of any TOP Periods that occurred prior to TOP Period 't' and during the Annual Generation Period during which TOP Period 't' occurred; minus
 - (ii) the sum of any TOP Deficiency Payment Refunds that accrued in respect of any TOP Periods that occurred prior to TOP Period 't' and during the Annual Generation Period during which TOP Period 't' occurred,

provided, however, that the resultant figure of paragraph (i) minus paragraph (ii) above shall not be less than zero.

Take or Pay Deficiency Quantity or **TOP Deficiency Quantity** means, with respect to any TOP Period:

- (a) the Actual Adjusted TOPQ for such TOP Period; minus
 - (b) the quantity of Net Electrical Output during such TOP Period,
- provided, however, that the resultant figure shall not be less than zero.

Take or Pay Period or **TOP Period** refers to any calendar month falling after EGR COD.

Take or Pay Quantity or **TOPQ** means:

- (a) with respect to the TOP Period commencing each January 1st, 89.28 GWh;
- (b) with respect to the TOP Period commencing each February 1st, 83.52 GWh;
- (c) with respect to the TOP Period commencing each March 1st, 86.87 GWh;
- (d) with respect to the TOP Period commencing each April 1st, 82.99 GWh;
- (e) with respect to the TOP Period commencing each May 1st, 147.02 GWh;
- (f) with respect to the TOP Period commencing each June 1st, 151.05 GWh;
- (g) with respect to the TOP Period commencing each July 1st, 157.23 GWh;
- (h) with respect to the TOP Period commencing each August 1st, 141.65 GWh;
- (i) with respect to the TOP Period commencing each September 1st, 83.71 GWh;
- (j) with respect to the TOP Period commencing each October 1st, 64.10 GWh;
- (k) with respect to the TOP Period commencing each November 1st, 42.30 GWh; and
- (l) with respect to the TOP Period commencing each December 1st, 89.28 GWh.

PART 2

ANNUAL SETTLEMENT DEFINITIONS

In this Agreement:

Adjusted Annual TOPQ means, in respect of any Annual Generation Period, the aggregate of the Adjusted TOPQs calculated in respect of each TOP Period occurring during such Annual Generation Period.

Adjusted TOPQ means, with respect to each TOP Period:

- (a) In the event that the aggregate quantity of Net Electrical Output delivered during TOP Period 'i' is less than the TOPQ for TOP Period 'i', the lower of:
- (i) the TOPQ for such TOP Period;
 - (ii) the Forecasted Net Electrical Output for TOP Period 'i' (adjusted for any Revised Forecasted Net Electrical Output pursuant to clauses 6.1(b) and 6.5 of the PPA in respect of TOP Period 'i' before the beginning and/or during such period 'i'); and
 - (iii) the aggregate quantity of Net Electrical Output delivered during TOP Period 'i',

but only to the extent that the Forecasted Net Electrical Output or the quantity of Net Electrical Output respectively referred to in paragraphs (ii) and (iii) above are lower than the TOPQ for such TOP Period for reasons other than:

- (A) the Dispatch Licensee, or as applicable the Offtaker, not dispatching the Facility up to the lower of:
 - (I) the TOPQ for such TOP Period, or
 - (II) the Forecasted Net Electrical Output for such TOP Period (adjusted for any Revised Forecasted Net Electrical Output pursuant to clauses 6.1(b) and 6.5 of the PPA in respect of such TOP Period before the beginning or during such period);
 - (B) a Political Force Majeure Event;
 - (C) a Delayed Commissioning Event;
 - (D) an Other Compensation Event;
 - (E) a change to the Grid System, the Connection Facilities and/or the Transmission Line that prevents the Facility from generating Net Electrical Output; or
 - (F) only for the purpose of calculations that involve Excess Energy:
 - (I) the unavailability of water to be used for the generation of Net Electrical Output; or
 - (II) a Natural Force Majeure Event; or
- (b) in the event that paragraph (a) above does not apply, the TOPQ for such TOP Period.

Annual Take or Pay Commitment or Annual TOP Commitment means, for any Annual Generation Period, the Adjusted Annual TOPQ multiplied by the applicable Energy Rate.

Excess Energy means, with respect to any Annual Generation Period, any Net Electrical Output above the Adjusted Annual TOPQ.

Non-Dispatched Spilled Water means, with respect to any Annual Generation Period:

- (a) the Spillway Release Flow (as such term is defined in this Agreement) during such Annual Generation Period; plus
- (b) the LLO Release Flow (as such term is defined in this Agreement) during such Annual Generation Period; minus
- (c) the Ecological Flow (as such term is defined in this Agreement) during such Annual Generation Period,

but only to the extent the resulting quantity of water was made available for dispatch in the Yearly Forecast (as such term is defined in the PPA) in respect of such Annual Generation Period, as modified by each Monthly Forecast (as such term is defined in the PPA) in respect of each month occurring during such Annual Generation Period, and was not dispatched by the Dispatch Licensee. For the avoidance of doubt, Spillway Release Flows and LLO Release Flows that are caused by:

- (i) Scheduled Outages;
- (ii) Unscheduled Outages; or
- (iii) any other circumstance that;
 - (1) reduces the availability of the Facility or any part thereof, or the ability of the Facility or any part thereof to store water or generate and deliver Net Electrical Output; and
 - (2) is not attributable to any action or omission of the Dispatch Licensee or any limitation on the ability of the Grid System (as such term is defined in this Agreement) to transmit Net Electrical Output,

(including Spillway Release Flows and LLO Release Flows that are caused or confirmed by Dispatch Instructions that are due to the circumstances described in sub-clauses (i) through (iii) above) shall not be classified as Non-Dispatched Spilled Water.