

AGREEMENT

This **Implementation Agreement** (hereinafter the "**Agreement**") is made on April 28, 2011 by and between the following parties:

- (1) **Government of Georgia**, represented by the Ministry of Energy and Natural Resources of Georgia (MOE) with authorization provided to the Minister of Energy and Natural Resources of Georgia, Alexander Khetaguri, pursuant to decree of the Government of Georgia #890 dated April 21, 2011 (the "**GOG**");
- (2) **Trans Electrica Limited** - with registered address: P.O. Box 958, Pasea Estate, Road Town, Tortola, BVI No.1479874; Mailing Address: 28 Nehru Place, New Delhi. 110019 India Phone: + 919 810180700; Fax: + 919 999983010 (the "**Company**"), represented by Director Mohinder Verma;
- (3) **Trans Electrica Georgia LTD** - with legal address at #43, Appt 41 I, Chavchavadze Ave, Tbilisi, Georgia Zip 0162 (the "**Project Company**"), represented by Director Paata Tsereteli;
- (4) **Electricity System Commercial Operator LTD** - with legal address at #2, Baratashvili str., Tbilisi, Georgia (the "**ESCO**"), represented by General Director Irina Milorava;
- (5) **Energotrans LTD** - with legal address at #2, Baratashvili str., Tbilisi, Georgia (the "**ET**"), represented by Director Kakha Sekhniashvili;

Preamble

Whereas, the Government of Georgia and Continental Energy LTD (Further replaced by Trans Electrica Limited – the Company) signed Memorandum of Understanding on June 29, 2007 and an amendment dated 23rd December, 2009 (the "**MOU**") on Construction of Khudoni Hydro Power Plant in Georgia, on the river Enguri;

Whereas, according to the Article 6.2. (as amended) of the MOU the Company has carried out detailed investigations of the Project and prepared a Detailed Project Report and intends to implement the construction of Khudoni Hydro Power Plant with installed capacity of 702MW;

Whereas, the Company submitted a proposal to the GOG on further development of the project;

Now Therefore, parties are willing for the purpose of implementation of the Project to agree in binding on terms and conditions of the present Agreement, according to which the Company and the Project company shall have right to implement the Project on BOO basis, further defined hereunder.



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Section 1. Definitions

1.1 The terms and definitions mentioned in this Agreement shall have the following meaning:

1. **"BOO"** shall mean Build, Own, Operate i.e. the exclusive right to design, construct, finance, own, implement, operate and maintain the Facility for indefinite term;
2. **"Effective Date"** shall mean the date of signature of this Agreement;
3. **"Electricity (Power) Balance"** shall mean the annual energy balance;
4. **"ESCO"** shall mean Electricity System Commercial Operator LTD;
5. **"ET"** shall mean Energotrans LTD;
6. **"GSE"** shall mean Georgian State Electro System LTD;
7. **"Sakrusenergo"** shall mean, JSC "Georgian Russian Energo Company" - სააქციო საზოგადოება გეს „საკრუსენერგო“ - JSC;
8. **"ET Agreement"** shall mean an agreement to be entered into between ET and the Company/Project Company, in connection with the Project;
9. **"Transmission Agreement"** shall mean an agreement on relevant transmission service with GSE, Saqrusenergo or any third party, which together with the ET Agreement shall form a legal basis for ensuring transmission of the electricity within Georgia and/or for the export purposes;
10. **"Facility"** shall mean the Khudoni Hydro Power Plant with the technical parameters given in Annex;
11. **"Financing Agreements"** shall mean financing agreements, pursuant to which the Company and/or the Project Company obtains debt or equity financing from the Lenders in connection with the Project;
12. **"Lenders"** shall mean private or public finance institutions, corporations, fund, banks, accounts, office corporate etc., which shall provide debt or equity financing to the Company and/or the Project Company for the purpose of implementation of the Project;
13. **"Generation License"** shall mean the document to be issued by the Georgian National Energy and Water Supply Regulatory Commission in accordance with the Georgian legislation, which confirms the right of the Project Company for the generation of electricity for indefinite time;
14. **"Guaranteed Power Purchase Agreement"** shall mean a direct agreement to be signed between the Company/Project Company and ESCO prior to starting operation of the Facility in accordance with the commercial terms defined in this Agreement;

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15. **"Investment Costs"** shall mean, with reference to the accounts and financial statements of the Project Company at the date of termination of this Agreement:
- (a) if such termination takes place before the completion of construction of the Facility, all the costs related with the Project during the construction period, including but not limited to, all construction costs, insurance costs, development costs, consultancy costs, financial costs (including interest during construction, bank fees and commissions), expropriation costs, winding up costs including but not limited to, prepayment charges or similar charges or costs passed through by the Lenders in accordance with financing agreement and all other costs related with Project during the period of construction of the Facility; and third party contracts,
 - (b) if such termination takes place after the completion of construction of the Facility, all the investments costs not recovered related with the Project until such termination date, including but not limited to, all construction costs, operating costs, insurance costs, development costs, consultancy costs, financial costs (including interest, bank fees and commissions), expropriation costs, the accrued interest on the outstanding balance of the loan provided by the Lenders until the termination date and all other costs related with the Project up to the date of termination of the Project.
16. **"Operation Year"** shall mean each operation year commencing on 1 September and finishing on 31 August of the following year;
17. **"Parties"** shall mean the GOG, the Company, the Project Company, ESCO and ET jointly;
18. **"Principal Parties"** shall mean the GoG, the Company and the Project Company;
19. **"Project"** shall mean the construction and operation on a BOO basis of the Khudoni hydro Power Plant in Georgia, on the river Enguri;
20. **"Site"** shall mean the site of Project appurtenances, generating plant, land, waterways, roads and any rights acquired or to be acquired by the Project company for the purposes of the Project on, through, above or below the ground on which the Khudoni HPP or any part thereof is to be built and all rights of way and access from public highways;
21. **"State"** shall mean Georgia;
22. **"Commercial Operation"** shall mean once the Project is capable of delivering power on a regular basis after having successfully completed the commissioning tests as per prudent utility practices;
23. **"Take-or-Pay Principle"** shall mean the principle whereby, in accordance with the terms of the ET Agreement:
- (a) ET agrees to provide to the Project Company/Company (as the case may be) the necessary capacity through the Export Line for the Term in respect of Facility and if ET does not provide the Project

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Company/Company (as the case may be) with such capacity, ET shall reimburse the Project Company or Company (as the case may be) the full amount of the loss of profit which the Project Company/Company (as the case may be) incurs as a result of not being able to transmit to Turkey through the Export Line and any other costs; and

- (b) the Project Company/Company (as the case may be) agrees to pay ET a specified amount for the services being provided by ET to the Project Company/Company (as the case may be) in connection with the Export Line and if the Project Company/Company (as the case may be) utilizes such transmission services from ET in an amount less than such specified amount, the Project Company/Company (as the case may be) shall nevertheless pay such specified amount during the period specified in the ET Agreement except where such deficiency is as a direct result of the breach of ET or GOG under this Agreement and base for reimbursement to the Project Company/Company of the loss of profit;

24. **"Validity Term"** shall have the meaning given such term in Section 5.1 and upon expiration of which the Project company/company shall freely own and operate the Facility;
25. **"Transmission Grid"** shall mean the Internal Transmission Line and the Export Line;
26. **"Internal Transmission Line"** shall mean internal transmission network to be utilized for the purpose of transmission of power from the facility to the interconnection stations with Export Line;
27. **"Export Line"** shall mean the 500/400 KV from Akhaltsikhe to the Turkish border transmission line owned and operated by ET.

1.2 Other terms and definitions mentioned in this Agreement shall have the meaning given under the Georgian legislation.

Section 2. Subject of the Agreement

2.1 The purpose of this Agreement is to set out the implementation of the Project by the Company under the terms and conditions set out herein or amended from time to time in accordance with the Section 12 of this Agreement.

2.2 Considering the principles and provisions of the relevant laws of Georgia the Company shall ensure implementation of the Project through the Project Company. For the avoidance of doubt, all of the rights, responsibilities and obligations of the Company under this Agreement shall be considered the rights, responsibilities and obligations of the Project Company and all of the responsibilities and obligations of the Project Company under this Agreement shall be considered the responsibilities of the Company.

2.3 The Annexes to this Agreement define technical parameters of the Facility to be constructed by the Company/the Project Company, which includes the information

regarding location of the Facility, designated installed capacity, estimated investment, estimated annual power generation output.

2.4 The Company is authorized to transfer its full or partial rights and/or obligations hereunder to any third party, subject to written approval by the GOG. The GOG shall not unreasonably withhold such approval. For the avoidance of doubt, transfer of any rights and/or obligations between the Company and the Project Company shall not require GOG's express consent which is hereby deemed to have been given. Transfer of the liabilities between the Company and the Project Company shall not anyhow result in release of the Company or the Project Company from the liability, but rather implicate right to fulfill such obligations.

Section 3. Conditions Precedent

3.1 The general commitment of the Project Company/the Company to implement the Project as set out in this Agreement shall be conditional upon satisfaction of the following conditions precedents:

- (a) Issuance to Project Company of all licenses and permits necessary for implementation of the Project;
- (b) Obtaining by the Project Company and/or the Company of all Consents and approvals;
- (c) Agreement being reached between the Project Company and/or the Company and relevant Lender as to the terms and conditions of a direct agreement (to be based in accordance with standard international principles for such type of agreement) and the valid and binding execution of such direct agreement by the Project Company/Company and all relevant Lenders;
- (d) Relevant agreement with ESCO, ET, Georgian State Electro System LTD and Sakrusenergo signed, which shall ensure /Project Companies rights (i) regarding utilization of the Transmission Grid for transmitting electricity generated by the Facility within Georgia and/or for export purposes, (ii) regarding guaranteed purchase of electricity by ESCO as provided in Section 4.4. of this Agreement;
- (e) ESCO, ET, Georgian State Electro System LTD and Sakrusenergo performing any other obligations required of it under this Agreement and performing any obligations required of it under Power Purchase Agreement in order to achieve closure of the Financial Agreements;
- (f) GOG and the Project Company having jointly prepared a rehabilitation and resettlement plan for local residents likely to be adversely affected or displaced due to construction of the Project at the site.

3.2 Each Party shall use its best endeavors to procure satisfaction of the conditions precedents to the extent that satisfaction of any conditions precedent is within the power and authority of the relevant Party. Parties agree that if satisfaction of the conditions precedent defined in Section 3.1 is not achieved, notwithstanding the

reasonable attempt of the Company/Project Company to achieve satisfaction of the conditions precedent, the Company/Project Company shall not be considered to be in breach or to have failed to use their best endeavors to achieve satisfaction of such condition precedent.

3.3 Without prejudice to the conditions precedent outlined in this Section 3.1, Parties agree on time-lines to be deployed within the scope of implementation of the Project. The Company/the Project Company shall be bound to such time-lines regardless of fulfillment of the conditions precedent outlined in Section 3.1, to the extent that in case of failure of the Company and/or the Project Company to meet the below timelines, the GOG shall have right to impose penalties in accordance to Section 4.6. For the purpose of this provision the Project Company shall:

- (a) apply the construction permit for construction of the Khudoni Hydro Power Plant in a due manner and in accordance with the permission requirements set out in the Georgian legislation, shall obtain above mentioned permit and shall commence construction of the Khudoni Hydro Power Plant (subject to construction permit and relevant GOG approvals) not later than in 12 (twelve) months from the Effective Date;
- (b) complete construction of the Khudoni Hydro Power Plant not later than in 60 months from obtaining of construction permit;
- (c) commence Commercial Operation of the Khudoni Hydro Power Plant not later than in 12 months from completion of construction of Khudoni Hydro Power Plant.

Section 4. Rights and Obligations of the Parties

4.1 For the purposes of implementation of the Project, subject to the terms of this Agreement and the applicable legislation of Georgia, the Company/Project Company shall:

- (a) raise necessary funds for effective implementation of the Project;
- (b) arrange to carry out the collection of field data regained from the detailed Project Design, start the restore infrastructure for the Object, subject to prior obtaining of Construction Permit;
- (c) procure construction of the Facility described in the Annexes and commencement of operation in compliance with the agreed terms and timelines outlined in this Agreement and its Annexes;
- (d) submit to the GOG periodically, i.e. every six months information relating to the progress of the Project from the Effective Date until the commencement of operation of the facility; and
- (e) maintain the Facility within the technical parameters set out in the Annexes to this Agreement for the Validity Term.

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4.2 The Company/Project Company hereby undertakes that during the implementation of the Project it shall assure material compliance with all technical, legal and other terms listed for the Facility in the Annexes to this Agreement.

4.3 For the first ten years of operation, beginning from the date of commencement of operation the Facility (the "Initial Operating Period"), the full power output of Facility during the winter months of each year, (being the months of December, January and February (the "Winter Months")) shall be, under conditions defined in Section 4.4, sold exclusively for the purposes of meeting the internal demand of Georgia subject to requirement, which shall be reflected in the Electricity (Power) Balance of the respective year or other similar document.

4.4 For the purposes of Section 4.3 above, for the Initial Operating Period, during the Winter Months, the Company/the Project Company shall sell the generated power at its sole discretion to any purchaser in Georgia under a free (deregulated) tariff and/or in accordance with the Guaranteed Power Purchase Agreement to be signed with ESCO. Guaranteed Power Purchase Agreement shall be based on put option principle, providing for the put-option right of the Company/the Project Company to sell the generated power to ESCO with a tariff not to be less than 5.84 USD Cent per KWh ("Put Option Price") at the inter connection point. Without limiting put-option rights, the tariff may be renegotiated between the parties pursuant to the electricity market conditions, but shall not exceed tariff for thermal generation by that time in Georgia. The Project Company/Company may otherwise sell generated power at its discretion and may export electricity. If the Company/Project Company exercises the put-option right defined in this provision and ESCO is unable to purchase full or partial generated power due to any reasons including reduced requirements, it still shall pay the Project Company or Company the difference between (i) the Put Option Price and (ii) the revenue received through alternative sale of the power generated during Winter Months, if the Project Company/Company is able to find other purchaser.

4.5 In the period indicated in Section 4.3 above, the power generated by the Facility shall be sold in accordance with Section 4.4, while in the other months of each operation year the Project Company/Company shall have the right at its sole discretion to choose which market (either local or export) to sell electricity produced by the Facility and the price at which it shall be sold.

4.6 In case of a delay of any terms of the time-schedule set out in Section 3.3, which is attributable solely to the Company/Project Company, the GOG shall have right to impose following penalties on the Company/Project Company:

- (a) 1,000 (one thousand) USD per each delayed day for the first complete calendar month of delay;
- (b) 2,000 (two thousand) USD per each delayed day starting from the second until the end of the third complete calendar months of delay;
- (c) 3,000 (three thousand) USD per each delayed day starting from the fourth until the end of the sixth complete calendar months of delay; and

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- (d) 5,000 USD (five thousand) per each delayed day starting from the sixth until the end of the twelfth complete calendar months of delay.

4.7 Without limiting rights of the GOG on damage compensation, the total amount of penalties (1,320,000, one million three hundred twenty thousand USD – the "Penalty Cap") accrued in accordance with the Section 4.6 shall be GOG's remedy and the Company's and the Project Company's liability in relation to any delay of the timelines under Section 3.3. For avoidance of doubt clause 4.6 shall cease to apply with effect from the commencement of commercial operation of the Facility.

4.8 If the Company/Project Company within 14 (fourteen) working days from the first day of delay provides GOG with relevant reasonable justification in writing and evidence that the reason for delay is not attributable to the Company/Project Company, then the Company/Project Company shall be released from the sanctions applicable under Section 4.6 and shall be entitled to request an adequate time extension.

4.9 For the purpose of Sections 4.6 and 4.8 and for avoidance of any doubt, any delay in implementing the terms and conditions of the Agreement shall be considered as not being attributable to the Company/Project Company if it is caused:

- (a) by a force majeure event in accordance with Section 15;
- (b) by the breach of the Agreement by the GOG;
- (c) state or local self governing bodies of Georgia, or their representatives acting illegally, failing to act, or not fulfilling their obligations, fully or partially; or
- (d) by any transmission and/or dispatch licensees of the Georgian electricity system or their representatives acting illegally, failing to act, or not fulfilling their obligations (fully or partially).

4.10 The Company/Project Company shall be entitled to an extension of time for fulfillment of its obligations under this Agreement in case of the following event:

- (a) There are general law and order problems in and around the site for security and safety of properties of the Project Company, protection of life of workers, design, construction, commissioning and subsequent operation and maintenance including access to the site;
- (b) Exceptionally adverse climatic conditions;
- (c) Unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions, or
- (d) Any other unforeseeable physical conditions such as natural physical conditions & man made and other physical obstructions and pollutants which the Project Company encounters at site when executing the works, including sub surface and hydrological condition, delays, impediment or

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prevention caused by or attributable to the GOG or other public bodies.

4.11 Provided that terms for fulfillment of the obligations within the time-schedule is not extended as provided in this Section 4, the Company/Project Company shall be obliged to make payments due according to Section 4.6 within 75 calendar days after the GOG notification.

4.12 For the purposes of implementation of the Project, subject to the terms of this Agreement and the applicable legislation of Georgia, the GOG:

- (a) shall assist the Company/Project Company with the implementation of the Project within its authority as contemplated by this Agreement, and GOG shall assist the Project Company in acquiring the relevant licenses and permits, which includes but is not limited to water usage and environment impact license, license/permit for storing & using explosives, collection, crushing and using boulders, river bed materials and rock from quarries etc, provided that the Company/Project Company meets the relevant requirements under the Georgian legislation.
- (b) shall take all necessary actions within its authority to prevent any possible delay in importation of any material to the State for the purposes of the Project, provided that the Company/Project Company has met the relevant requirements under the Georgian legislation.
- (c) shall submit the proposal to the President of Georgia to transfer of necessary land parcel and all existing assets provided for Khudoni Hydro Power Plant construction to the Project Company for the symbolic price of 1 (one) USD free of all encumbrances, subject to completion of construction of the Facility and/or implementation of the Project by the Company/Project Company ("**Transferred Assets**"). The Company or the Project Company shall be allowed to assign to, dispose, or create a security interest in favor of Lenders in its rights and interests. In order for the Company/Project Company to exercise such rights on assignment, disposal and/or creating security interests, it shall obtain prior written approval from the GOG. For avoidance of any doubt, negotiations with Lenders and preparing the relevant drafts of agreements including term sheet and/or drafts of any kind of preliminary agreements for the purpose to exercise such right by the Company/Project Company shall not be the subject of prior written approval from the GOG. After commencement of the Commercial Operation of the Facility, the foregoing limitation shall cease and the Company/Project Company shall have right to freely assign to, dispose, or create a security interest in favor of Lenders.
- (d) in case if the Company applies for permits/licenses and has met relevant requirements under the Georgian legislation and permits/licenses are not issued by the state authorities within the timeframes given under Georgian legislation, GOG shall grant to the Company/Project Company a relevant time extension for fulfillment of its obligations under this Agreement.

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- (e) within its competence permit or assist the Project Company in obtaining relevant permits and authorization to construct roads, bridges, culverts and other infrastructure as considered necessary for the Project on the site.
- (f) recognizes that Khudoni Hydro Power Plant being a river storage scheme will utilize the flowing water of river Enguri to generate electricity. Such a right to utilize water available up stream of the Project is hereby granted by GOG for the Agreement Period to Project Company without charging any royalty, duty, cess or levy of any kind whatsoever for such use of water on Project Company other than fees for utilization of water resources envisaged by the Georgian legislation.
- (g) shall provide necessary assistance to the Project Company in obtaining permission of the relevant authorities for the removal of trees standing on the acquired/leased land and on the state-owned lands, which in the reasonable opinion of the Company/Project Company are required to be felled or removed for the Implementation of the Project.
- (h) agrees for the purpose of ensuring closure of Financial Agreements between the Company and/or the Project Company and the Lenders to consider in good faith any reasonable request related to amendments and modifications of this Agreement and/or signing other related agreements with the Lenders, in accordance with the provisions of Section 12.3;
- (i) shall within its competence assist the Company/the Project Company to secure the closure of relevant agreements with ET, ESCO, GSE and Sakrusenergo.

4.13 Any change in law or regulation of Georgia which has material adverse effect on the financial conditions of the Company/Project Company for the purpose of the Project, shall be determined as "**Material Adverse action**". Any unavoidable additional expenses of the Company/Project Company caused by the Material Adverse Action shall be compensated by increasing the Put Option Price. Provisions of this Section shall be valid for 10 (ten) years after commencement of Commercial Operation of the Facility.

4.14 The ET and The Company/the Project Company will sign relevant agreement based on Take-or-Pay Principle, which shall ensure the right of the Company/the Project Company to utilize Export Line for the purpose of export of electricity produced by the Facility to Turkey. ET, according to ET Agreement and Georgian legislation for the relevant period, shall guarantee the provision of the necessary capacity to the Company/the Project Company on the above mentioned line to allow the transmission of the electricity to be produced by the Facility for a period of 20 years after commencement of operation of the Facility taking in to consideration the Normative losses in Transmission Grid.

4.15 In case if the GOG or any public Sector entity expropriates, compulsorily acquires, nationalizes or otherwise compulsorily procures Facility, any share Capital or any assets of the Company/Project Company whether in whole or part the Company shall be Compensated with relevant fair market value at that time.

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4.16 The GSE and the Sakrusenergo will sign with the Company/Project Company relevant agreements, which shall ensure the right of the Company and/or the Project Company to utilize Transmission Grid, including that Internal Transmission Line.

4.17 Principle parties shall develop and approve resettlement action plan which shall be implemented, by the Company and/or the project Company. All associated costs related to the implementation of the resettlement action plan shall be born by the Company and/or the project Company. The GOG shall assist the Company/Project Company to implement the resettlement plan upon request, in accordance with the Georgian legislation and within it's competence.

Section 5. Effectiveness of the Agreement

5.1 This Agreement shall enter into force from the Effective Date and shall remain in full force and effect for 20 years. For the avoidance of any doubt, the expiry of the Validity Term, and also in case of suspension of this Agreement as a result of a force majeure event pursuant to Section 15 of this Agreement, shall have no impact on the ownership, usage, operation or legal and trading rights (including sale and export of the electricity generated by the Facility) of the Company/the Project Company with respect to the Project. Upon expiration of the Term, the Company/the Project Company shall freely own and operate the Facility, generate electricity and sell and/or export all the electricity generated or acquired by the Company/Project Company on its own trading terms in accordance with applicable international agreements of Georgia, the constitution of Georgia and Georgian legislation.

5.2 If at some time after this Agreement has been suspended as a result of a force majeure event in accordance with Section 15 of this Agreement, such force majeure event ends, with the result that the Company/Project Company is then able to continue to construct and/or operate the Project (as the case may be), then the Parties shall agree to enter into good faith discussions for the purposes of entering into new agreements on substantially the same terms as this Agreement, the agreements on transmission though Internal Transmission Line and Export Line and agreement power purchase agreement if applicable.

Section 6. Termination and Reimbursement of damages.

6.1 The GOG shall have right, by first serving written notification to the Company and/or the project Company, to terminate this Agreement if:

- (a) The Company/ the Project Company will not meet it's time schedule outlined in Section 3.3, such delay is not excused, i.e. time extension is not provided in accordance with Sections 4.8, 4.9 and 4.10, and the Penalty Cap is exhausted;
- (b) The Company and/or the Project Company will not make payments defined in Section 4.6 in due course.

6.2 Without limiting any other provision of this Agreement, the Company shall have the right to terminate this Agreement if the GOG fails to fulfill its obligations defined

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in Section 4.12. The GoG must be notified no later than 60 (sixty) days prior to such termination;

6.3 Subject to the provisions of this Agreement, where this Agreement is breached by any Principal Party the breaching Principal Party shall reimburse the other Principal Party for all damage (other than for loss of profit) proven to be directly caused by the breach of the breaching Principal Party.

6.4 The Principal Parties agree and acknowledge that in the case of termination of this Agreement by the Company due to the breach of this Agreement by the GOG, the GOG shall be liable to reimburse the Company/Project Company for reimbursement of:

- (a) the Investment Costs;
- (b) the cost of materials or goods reasonably ordered for the works which shall have been delivered to the Project Company/Company or of which the Project Company/Company is legally liable to accept delivery, such materials or goods becoming property of the GOG upon such payments being made by it;
- (c) the reasonable cost of repatriation of all the Project Company/Company staff and workmen employed on or in connection with the works at the time of such termination.

6.5 Following such reimbursement by the GOG to the Company or the Project Company, all tangible and/or intangible assets created and/or financed with the Investment Cost which is reimbursed by GOG shall be transferred to the ownership of the GOG and such assets shall be transferred free of all encumbrances.

6.6. In case of termination of this Agreement by the GOG pursuant to Section 6.1, the Transferred Assets as defined in paragraph (c) of section 4.12 shall be transferred to the State ownership without compensation. In that case the Company/Project Company shall have the right to dismantle immovable assets and to retain ownership of and remove the movable assets located on such land plot that were created or financed by the Company/Project Company, unless otherwise mutually agreed by the Principal Parties;

Section 7. Substitution Rights

7.1 The GOG acknowledges that it shall not exercise its right to terminate this Agreement in accordance with the Section 6 of this Agreement before complying with the procedure specified in this Section. Provisions of this Section shall be applicable only after respective Financial Agreement are signed with the Lenders.

7.2 If at any time the GOG intends to exercise its right to terminate the Agreement, along with serving a notice on the Company and the Project Company about termination of this Agreement in accordance with Section 6, the GoG shall serve a notice on the Lenders (a "Notice of Termination Right").

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7.3 Following receipt by the Lenders of the Notice of Termination Right and until the date falling three months after the date of receipt by the Lenders of the Notice of Termination Right, provided that the Lenders ensure protection of the financial rights and interests of the Company/Project Company, the Lenders shall have the right to nominate an entity ("Substituted entity"), which shall continue project implementation and ensure completion of the construction of the Facility within the time-lines set out in Section 3.3.

7.4 The Lenders shall be entitled to effect such change within three months of receipt of the Notice of Termination Right. In order to effect such substitution, the Lenders shall notify their or its intention to the GOG (the "Substitution Notice") and shall provide to the GoG all information that may be necessary for the GoG to verify that the conditions specified in this Section are satisfied.

7.5 The Lenders shall be entitled to request that new terms and conditions should apply to the contractual arrangements between the GOG and the Substituted Entity, provided that the contractual arrangements between the GOG and the Substituted Entity should be substantially the same as those between the Company, the Project Company and the GOG in the Agreement.

7.6 The GOG shall, within a reasonable time following the date of the Substitution Notice, and in any event within two (2) months, inform the Lenders of its acceptance or not of the proposed substitution, which acceptance shall not be unreasonably withheld by the GOG.

Section 8. Other Developments affecting Project

8.1 The GOG agrees that it shall not initiate, approve, authorise, consent to or otherwise endorse any projects, developments or other schemes (of whatever nature) which may adversely affect (in the reasonable opinion of the Company) the Technical Parameters of the Facility.

Section 9. Discriminatory Change in Law and Tax

9.1 The GoG agrees that it shall not initiate or propose any changes in the law of Georgia or approve or otherwise allow any regulations which would apply expressly to:

- (a) the Project and not to similar projects procured under an agreement with the GoG;
- (b) the Project Company or the Company and not to other persons; and/or
- (c) any contractors or operators with whom the Project Company or the Company has entered into contractual arrangements in connection with the Project and not to other persons.

9.2 The GoG may not initiate any regulation or amendment to the law in respect of any discriminatory taxes or other similar duties to be imposed, which would apply expressly to:

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- (a) the Project and not to similar projects procured under an agreement with the GoG;
- (b) the Project Company or the Company and not to other persons; and/or
- (c) any contractors or operators with whom the Project Company or the Company has entered into contractual arrangements in connection with the Project and not to other persons.

Section 10 Transfer of Shares

10.1 There shall be no restrictions on the sale, transfer or assignment of the shares in the Company/Project Company by the shareholders in the Project Company. The shareholders in the Company/Project Company shall be entitled to sell, assign or transfer any or all of their shares to any other person or entity and at any time

Section 11. Security

11.1 The Parties agree that the Company and/or the Project Company and the shareholders in the Project Company shall be entitled to provide any security to the Lenders, without obtaining the prior written consent from the GOG in connection with the financing to be provided by the Lenders for the Project subject to the provision of paragraph (c) of section 4.12 of this Agreement.

Section 12 Amendments

12.1 This Agreement may be amended from time to time by mutual consent in writing between the Parties.

12.2 If any clause or provision of this Agreement is or becomes invalid or illegal at any time, such invalidity or illegality shall not affect the validity or legality of the Agreement as a whole nor that of any other provision of the Agreement. It is further agreed that the Parties shall make all reasonable endeavours to agree as far as possible that invalid terms shall be amended or replaced by valid terms with similar effect in order to maintain the purpose and continuity of this Agreement.

12.3 The GOG agrees to consider requests from the Company in good faith that the Agreement may be amended to take account of the requirements of the Lenders, provided that:

- (a) to the extent that the GOG has considered such requests in good faith, the GOG shall not be required to accept any such amendments;
- (b) such non-acceptance by the GOG shall not be considered to be a breach by GOG under this Agreement; and

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- (c) the Company/Project Company shall not be entitled to delay its obligations under this Agreement as a result of such non-acceptance by the GOG.

Section 13 . Notifications

13.1 A notice under or in connection with this Agreement (a "Notice"):

- (a) shall be in writing;
- (b) shall be made in English language accompanied with translation in Georgian; and
- (c) shall be delivered personally or sent by first class post (and air mail if overseas) courier, or fax (with original to follow) to the Party due to receive the Notice at its address set out in this Agreement or to another address, person, telex or fax number specified by that Party by written notice to the other Party.

13.2 Notice given under Section 13.1 is effective when actually received.

Section 14 . Governing Law and Dispute Resolution

14.1 This AGREEMENT shall be governed by the laws of Georgia.

14.2 The Parties hereto will use their best efforts to settle amicably any dispute, controversy or claim arising out of or in connection with, or the breach, termination, invalidity or interpretation of, this Agreement. The Parties agree that their respective duly authorized representatives shall regularly meet during the validity period of this Agreement for the purpose of attempting to settle by amicable agreement any and all disputes then in existence between them. Any such settlement shall take effect only if in writing and signed on behalf of the Parties. For the purpose of this provision an independent mutually agreed individual, company or institution shall decide on disputes relating to implementation compliance status of the Project.

14.3 Any dispute which cannot be settled amicably within 30 days after receipt by one Party of the other Party's written request to do so may be submitted by either Party to arbitration before an arbitral tribunal in accordance with rules of procedure for arbitration proceedings of International Centre for Settlement of Investment Disputes (ICSID) and conducted in the English language in Geneva, Switzerland. The decision of any such arbitral tribunal shall be final and binding on the Parties, and may not be appealed against.

Section 15. Force Majeure

15.1 Definition of Force Majeure:

Force Majeure shall mean any exceptional event beyond the reasonable control of either party of this Agreement, the occurrence of which could not have been reasonably foreseen at the Effective Date, including but not limited to, war (whether declared or not), revolution, riot, insurrection, general and illegal

strikes, strikes of employees of the third companies, civil commotion, invasion, armed conflict, hostile act of a foreign enemy, blockade, embargo, act of terrorism, sabotage, civil disturbance, radiation, biological or chemical contamination, ionizing radiation, explosion, fire, epidemic, cyclone, tidal wave, hurricane, landslide, lightning, earthquake, flood, volcanic eruption, other natural disaster or calamity of any kind and any other similar event.

15.2 Notice of Force Majeure

If any Party hereto is affected by Force Majeure as defined in Section 15.1 it shall give written notice as soon as reasonably practicable after becoming aware thereof to the other Party. The affected Party shall likewise immediately notify the other Party in writing and, in any event, within 20 business days of the date Force Majeure event ceases. A detailed report elaborating the reasons and consequences of the Force Majeure event will be provided by the Company/Project Company to the GOG.

15.3 No Breach

If a Force Majeure event shall prevent the total or partial performance of any of the obligations of either Party under this Agreement, then the Party claiming Force Majeure shall be excused from whatever performance is prevented thereby to the extent so affected and the other Party shall not be entitled to terminate this Agreement except as otherwise provided herein. Notwithstanding the Force Majeure event, the Party claiming Force Majeure shall use commercially reasonable efforts to continue to perform its obligations under this Agreement and to minimize any adverse effects of such event of Force Majeure.

15.4 Termination upon Force Majeure

- (a) If a Force Majeure event shall occur and continue for an aggregate period of at least 120 days within a period of 12 months to have any of the effects described in this Section 15.3, then either Principal Party shall have the right to terminate this Agreement.
- (b) Additionally, if a Force Majeure event shall occur and the consequences thereof shall materially and adversely affect the economic or commercial position of the Company or the Project Company from what it was on the Effective Date of this Agreement or from what it is or what it would have been but for the occurrence of such Force Majeure event and the consequences thereof, and such event and/or the consequences thereof continue for a period of at least 120 days from the date on which the Company or the Project Company shall give written notice thereof to the GoG, then the Company shall, regardless of any Agreement in respect thereof, have the right to terminate this AGREEMENT.

16 Entire AGREEMENT

16.1 This Agreement is executed in English language, with four original counterparts.

16.2 This Agreement shall enter into force on the Effective Date.

Tz

J.C.