

Proposed Draft

Model Project Development Agreement

(for Hydropower Projects with installed capacity less than 500MW)

Government of Nepal
Ministry of Energy
Department of Electricity Development

- and -

[Insert Name of Company]

Kathmandu, Nepal
[Date]

[Note: This Model Project Development Agreement is endorsed and authorised by the Ministry of Energy, Government of Nepal. This Model Project Development Agreement is deemed to be generally sufficient. However, it may be varied to meet the facts of a particular case as long as the variance complies with this Model Project Development Agreement. The Department of Electricity Development may require the Developer to justify any proposed variation from this Model Project Development Agreement.]

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THIS PROJECT DEVELOPMENT AGREEMENT is entered into on *[Insert date]* between:

- (1) The **Department of Electricity Development, Ministry of Energy**, Government of Nepal; and
- (2) *[Insert name of the Project Company]*, a limited liability company incorporated and registered under the Companies Act, 2063 of Nepal, having its registered office at *[Insert address]*, Nepal (the "**Company**"),

each a "**Party**" and together, the "**Parties**".

PREAMBLE

HAVING TAKEN INTO CONSIDERATION THE FOLLOWING:

- (A) The GON desires to promote the development of hydropower projects on a Build-Own-Operate-Transfer basis under the Hydropower Development Policy, 2058.
- (B) The GON has selected the Company to develop and execute the hydropower project at *[Describe location]* (as more fully defined in this Agreement), including the Transmission Line.
- (C) The GON has, pursuant to the MOU, granted the Survey Licences for the Project, including for the Transmission Line, to *[Insert name of the Company or Project Sponsor, as applicable]* upon receiving the applications required in accordance with the Electricity Act, 2049 (1992 AD) and the Electricity Regulation, 2050 (1993AD).
- (D) The Company has agreed to develop and execute the Project on the terms and conditions set forth herein and the Transaction Documents and the GON has agreed to support the Company in the development of the Project as mentioned herein. The Company shall own and operate the Project for the Term of this Agreement and shall transfer the Project to the GON free of charge on the expiry of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and undertakings contained herein, the Parties have agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the subject or the context otherwise requires, the following terms have the following meanings wherever used in this Agreement:.

"Affected Party"	means the Party adversely affected by a Force Majeure Event in accordance with, and subject to the terms of, Section 16.
"Affiliate"	means any Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, another Person.
"Agreement"	means this Project Development Agreement (including all Schedules, Annexes, Attachments and Exhibits) between the GON and the Company, as amended, modified and supplemented from time to time in accordance with the terms hereof.
"Agreement Date"	means the date of this Agreement.
"Alternative Cost"	means the purchaser's fully allocated cost of the next most economic source of similar volumes of energy and capacity absent a power purchase agreement between the Company and such third party for sale of energy and capacity from the Hydro Property.
"Bid Security"	means the security for the amount of [<i>Insert amount</i>] provided by the Company to the GON on or before the Agreement Date.
"Bonus Amount"	means the amount as referred to in Section 15.10.1.
"Business Day"	means any Day on which the offices of the GON are open for business.
"Capacity Royalty"	means the royalty charged on the installed capacity of the Power Station pursuant to Section 15.22 of this Agreement.
"Capacity Royalty Rate"	means the royalty payable to the GON every Year by the Company against and at the rate of per kW of installed capacity of the Power Station pursuant to Section 15.22 of this Agreement.
"Carbon Dioxide Equivalent"	means the internationally accepted base reference from time to time for the indication and determination of the global warming potential of greenhouse gases in units of carbon dioxide.
"National Level Welfare Fund"	means the fund as provided for in the Bonus Act, 2030 (1973 AD) and Labour Act, 2048 (1992 AD).

"Change in Law" means the:

- (A) adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change in application, change in interpretation or modification after the date hereof of any Laws of Nepal, by any GON Agency, or by a competent court of Nepal;
- (B) imposition of any material condition not required as of the date hereof in connection with the issuance, renewal or modification of any Government Approval, by any GON Agency;
- (C) change or modification of the Generation Licence by any GON Agency (other than as requested in response to a petition therefor by the Company agreeable to the GON); or
- (D) the imposition of other obligations imposing a cost on the Company,

which in case of any of the above, establishes either a material increase in cost, material reduction in revenue, or material delay in schedule as a consequence of any requirement for the design, construction, financing, ownership, operation or maintenance of the Hydro Property that is materially more restrictive than the most restrictive requirements (i) in effect as of the date hereof, (ii) specified in any applications, or other documents filed in connection with such applications, for any specified Government Approval, or (iii) agreed to by the Company in this Agreement, but excluding a Change in Tax.

The term "Change in Law" shall not include any imposition, adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change in application, change in interpretation or modification (a) implemented to address and rectify any Company Event of Default or any action or inaction on the part of the Company which is inconsistent with this Agreement, or (b) relating to the areas of human rights, labour, environment, and health and safety matters.

"Change in Tax" means the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application of the provisions of the relevant legislation, change in interpretation or modification after the date hereof of any Laws of Nepal by any GON Agency, relating to any tax or duty, including any application of any tax (including withholding taxes on distributions to shareholders to the extent such withholding taxes are final tax liabilities of the shareholders and are not subject to any credit or adjustment, including any credit or adjustment against any other tax liability) or duty which is imposed on the Company or any Contractor and causes the Company to incur for itself or on behalf of any Contractor any tax or duty in excess of those the Company would have incurred under the Laws of Nepal in effect as of the date hereof.

"Clean Development Mechanism"	means the market-based mechanism referred to in Article 12 of the Kyoto Protocol, created to encourage cooperation between developed country entities and developing country entities and to accelerate reductions of greenhouse gas emissions in developing countries.
"COD"	means the date specified in a certificate delivered by the Independent Engineer certifying that all power generating units comprising the Power Station have satisfied and successfully demonstrated performance in accordance with the testing and commissioning requirements set out in the Export Power Purchase Agreement.
"Committee Observer"	means the committee observer as referred to in Section 13.2.2.
"Company CPs"	means the conditions precedent as referred to in Section 2.2.
"Company Event of Default"	means the company's event of default as referred to in Section 18.1.
"Company Share"	means the company's share as referred to in Section Error! Reference source not found.
"Construction Contractors"	means the Contractors appointed by the Company for the construction of various Project components as listed in Schedule 26, to be updated from time to time.
"Contractor"	means the Construction Contractor, the O&M Contractor and any other direct contractors appointed by the Company, and/or any of their subcontractors, suppliers and their agents.
"Control"	means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise, and "Controlled" and "Controlling" shall be construed accordingly.
"Corporate Social Responsibility Plan"	means the corporate social responsibility plan set out in Schedule 15.
"Day"	means any twenty four (24) hour period beginning at 00:00 hours Nepal Standard Time.
"DER"	means the detailed engineering report of the Project which has been, or is to be, prepared pursuant to this Agreement and Survey License.
"Design Standards"	means the best standards for civil, electrical and mechanical works which are generally accepted in the international dam construction and safety industry, the waterways design industry, the power generation industry, and the construction industry, as the case may

be, including the standards of the International Electrotechnical Commission (IEC) and the specific design standards set out in Schedule 10, provided that all such standards shall also take into account the specific conditions in existence in Nepal and at the Project Area from time to time and provided that such Design Standards are approved in writing by the Technical Review Panel.

- "Dispute"** means the dispute as referred to in Section 21.1.
- "Dispute Notice"** means the notice as referred to in Section 21.2.
- "DoED"** means the Department of Electricity Development, Ministry of Energy of Nepal.
- "Dollar"** means the lawful currency of the United States of America.
- "Domestic Free Power Supply Agreement"** means the power supply agreement to be entered into between the Company and a GON Agency in respect of the provision of free electricity by the Company to the GON in accordance with the terms of this Agreement.
- "Domestic Power Purchase Agreement"** means the power purchase agreement to be entered into between the Company and a GON Agency in respect of the sale of power at an agreed tariff by the Company to a GON Agency in accordance with the terms of this Agreement.
- "Effective Date"** means the date on which all the conditions precedent set out in Section 2 have been satisfied or waived, as the case may be, in accordance with the terms of this Agreement.
- "EIA/IEE"** means the Environmental Impact Assessment or Initial Environmental Examination, as the case may be, of the Project, and/or the report on the same which is to be prepared as part of the DER, carried out in accordance with the Environment Protection Act, 2053 (1997 AD), the Environment Protection Regulation, 2054 (1997 AD), and other applicable international guidelines, and any other Laws of Nepal.
- "Emission Reduction Project Participant"** means an emissions reduction project participant for the purposes of Section J, Paragraph 66(b) of Decision 11/CP.7 of the Marrakesh Accords, being a sovereign state which has signed and ratified the Kyoto Protocol or any private entity or public entity authorised by such sovereign state to participate in the ER Project and to make decisions on the allocation of GHG Reduction Benefits from the ER Project.
- "Emission Reduction Purchase Agreement"** means a contract for the sale and purchase of GHG Reduction Benefits resulting from the ER Project.
- "Employment and Skills Training"** means the employment and skills training plan set out in Schedule 14.

Plan"

"Encumbrances" means any claim, option, charge (fixed or floating), mortgage, lien, pledge, equity, encumbrance, right to acquire, right of preemption, right of first refusal, title retention or any other third party right, or other security interest or any agreement or arrangement having a similar effect or any agreement to create any of the foregoing.

"Energy Royalty" means the royalty charged on electrical energy generated by the Power Station pursuant to Section 15.22 of this Agreement.

"Environment Management Plan" means the environment management plan set out in Schedule 18.

"ER Project" means the emission reduction project as referred to in Section 11.1.1.

"ER Project Costs" means the ER Project costs as referred to in Section 11.5.1.

"Explosives" means the explosives as referred to in Section 13.8.1.

"Export Offtaker" means the purchaser for the electrical output generated by the Power Station and sold by the Company under the Export Power Purchase Agreement.

"Export Power Purchase Agreement" means the power purchase agreement to be entered into between the Company and the Export Offtaker in respect of a proportion of the electrical output from the Power Station and as approved by the GON in accordance with Schedule 21 of this Agreement.

"Feasible Revenue" means the highest amount of revenue achievable from the price and volume terms beyond which a bankable, sustainable and enforceable power purchase agreement could not be achieved.

"Financial Close" means the date on which the Financing Documents have become effective, and the Company has access to the funds or financial assistance committed thereunder.

"Financing Documents" means the loan agreements, notes, indentures, security agreements, guarantees and other agreements, documents and instruments, including any hedging transactions entered into by the Company, in connection with the permanent financing (including refinancing) of the Project, as the same may be amended from time to time.

"Force Majeure Event" means the force majeure events as referred to in Section 16.1.1.

"Foreign Currency" means any currency other than Nepalese Rupees.

"Generation Licence" means the licence for the generation of electricity (as amended or supplemented from time to time) granted to the Company by the GON in accordance with the Laws of Nepal.

"GHG Reduction"	means the removal, limitation, reduction, avoidance, sequestration or mitigation from the atmosphere of one metric ton of emissions of greenhouse gases measured in Carbon Dioxide Equivalent.
"GHG Reduction Benefits"	means any unit verified and/or certified for issuance in respect of GHG Reductions in accordance with the International Rules, whether in the Clean Development Mechanism or in the non-Clean Development Mechanism based greenhouse gas emission reduction market, including Certified Emission Reductions (CERs).
"GLOF" 1.1.2	means glacier lake outburst flood as referred to in Section 15.6.means Government of Nepal.
"GON"	
"GON Agency"	means any national, regional, local/municipal level authority or administrative or regulatory body or taxing authority or quasi-judicial authority in Nepal having jurisdiction over the Company or the Project or any action or transaction contemplated in connection with this Agreement in Nepal.
"GON CPs"	means the conditions precedent as referred to in Section Error! Reference source not found.
"GON Decision"	means the GON's decision as referred to in Section13.5.3.
"GON Default Purchase Price"	means the GON's default purchase price as referred to in Schedule 5.
"GON Event of Default"	means the GON's event of default as referred to in Section 18.2.
"Good Electricity Industry Practice"	means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from the designers or builders or operators of facilities for the generation and transmission of electricity in accordance with internationally accepted best practices in a hydropower project under conditions comparable to those applicable to the Project, consistent with applicable Laws of Nepal and taking into account factors such as (i) the use of the latest hydroelectric technology, (ii) the relative size, performance, age and technology of the physical components of the Project, (iii) contractual commitments, and (iv) the best practices, methods and standards that are generally accepted internationally from time to time for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of the Project <u>provided that</u> such practices, methods and standards shall be adjusted as necessary, to take account of (A) operation and maintenance guidelines recommended by the manufacturers of the relevant plant and equipment, (B) the requirements of applicable Laws of Nepal, and (C) the specific conditions in existence in Nepal and at the Project Area from time to time.

"Government Approval"	means all consents, approvals, authorisations, notifications, concessions, acknowledgements, licences, permits or similar items required to be obtained by the Company from any GON Agency for the Project.
"Guidelines for the Preparation of the Corporate Social Responsibility Plan"	means the guidelines for the preparation of the corporate social responsibility plan set out in Schedule 15.
"Guidelines for the Preparation of the Employment and Skills Training Plan"	means the guidelines for the preparation of the employment and skills training plan set out in Schedule 14.
"Guidelines for the Preparation of the Environment Management Plan"	means the guidelines for the preparation of the environment management plan set out in Schedule 18.
"Guidelines for the Preparation of the Local Procurement and Development Plan"	means the guidelines for the preparation of the local procurement and development plan set out in Schedule 13.
"Guidelines for the Preparation of the Rehabilitation and Resettlement Plan"	means the guidelines for the preparation of the rehabilitation and resettlement plan set out in Schedule 16.
"Handover Amount"	means the handover amount as referred to in Schedule 2.
"Handover Period"	means the period from the date which is four (4) Years prior to the date of expiry of this Agreement until the date of expiry of this Agreement.
"Handover Plan"	means the plan delivered by the Company to the GON in accordance with Schedule 2 setting out the Company's proposals as to the Renewal Works and the Renewal Programme and its estimate of the Renewal Amount and approved by the Technical Review Panel.
"Handover Guarantee"	means the handover guarantee as referred to in paragraph Error! Reference source not found. of Schedule 2.
"Highest Feasible"	means the prices and volumes that maximise revenue to the Project,

Proportion"	above which a power purchase agreement would cease to be achievable. 1.1.3
"Hydro Property"	means: (A) the Power Station; and (B) the Transmission Line, together with all Restorations, all fixed and movable assets, fixtures, fittings, spare parts, plants and equipment (including test equipment and special tools and vehicles used in plant management and operation), all improvements, associated facilities, infrastructure and works.
"ICC"	means the International Chamber of Commerce as referred to in Section 21.4.4.
"Indemnified Person"	means the indemnified person as referred to in Section 5.6.1.
"Independent Engineer"	means an independent consulting engineering company, of international repute having relevant expertise in the field of hydro-electric projects, appointed in accordance with Section 4.
"Initiating Party"	means the initiating party as referred to in Section 21.4.3.
"Insurance Policies"	means the insurance policies as referred to in Schedule 6.
"International Rules"	means the UNFCCC, the Kyoto Protocol, the Marrakesh Accords and any relevant decisions, guidelines, modalities and procedures made pursuant or issued thereto, as amended from time to time, including any successor or supplementary international agreements.
"Key Guidelines"	means those of best international practices and guidelines satisfactory to the GON, Lenders, insurers and guarantors, as specified in Schedule 23 or as otherwise notified by the GON to the Company.
"kW"	means kilowatt.
"kWh"	means kilowatt-hour.
"Kyoto Protocol"	means the Protocol to the UNFCCC adopted at the Third Conference of the Parties to the UNFCCC in Kyoto, Japan on 11 December 1997, as may be amended from time to time.
"Land Acquisition Application"	means the land acquisition application as referred to in Section 10.2.2.
"Laws of Nepal"	means: (A) the Constitution of Nepal and all Nepalese laws, statutes, treaties, rules, codes, ordinances, regulations, certificates,

decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licences, and permits of any GON Agency; and

(B) judgments, decrees, injunctions, writs, orders or like actions of any GON Agency, court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction,

in each case (i) that applies to the Company or the Project and (ii) as amended, supplemented, replaced or reinterpreted by a GON Agency or court or otherwise modified from time to time.

"Lenders" means any Lenders, export credit agencies, multilateral institutions and others providing financing or refinancing to or on behalf of the Company for the Project, or any portion thereof or any trustee or agent acting on behalf of any of the foregoing.

"Local Committee Observer" means the local committee observer as referred to in Section 13.4.2.

"Local Procurement and Development Plan" means the local procurement and development plan set out in Schedule 13.

"Local Project Coordination Committee" means the local project coordination committee as referred to in Section 0.

"Loss" means any and all loss, damage, liability, payment or obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation), and all expenses (including reasonable legal fees).

"Marrakesh Accords" means Decision 2/CP.7 to Decision 24/CP.7, inclusive, of the Seventh Conference of the Parties to the UNFCCC, as adopted by the Conference of the Parties acting as the Meeting of the Parties to the Kyoto Protocol in Montreal, Canada in December 2005.

"MoEn" means the Ministry of Energy of the GON.

"Month" means a calendar month according to the Nepalese calendar beginning at 12:00 midnight on the last Day of the preceding month and ending at 12:00 midnight on the last Day of the relevant month.

"Municipalities" means the municipalities as provided for in the Local Self-Governance Act, 2055 (1999 AD).

"MW" means megawatt.

"Nepal" means the State of Nepal.

"Nepal Benefits Plan" means the Nepal benefits plan set out in Schedule 17.

"Non-GON Project Land"	means the Non-GON project land as referred to in Section 10.2.1.
"Notice of Transfer"	means a notice issued by either Party to the other Party stating that it wishes to exercise its option to have the Hydro Property transferred pursuant to Section 18.4 and proposing a date of transfer not later than ninety (90) Days after the date of delivery of such notice.
"O&M Contractor"	means the Contractor(s) engaged in the operation and maintenance of the Hydro Property.
"Other Force Majeure Event"	means the other force majeure event as referred to in Section 16.1.2.
"Performance Security"	means a bond in the amount pursuant to Section 15.21 and to be provided in accordance with Section 2.2.2 hereof, in Dollars, which shall be in the form of either: <ul style="list-style-type: none"> (A) an unconditional and irrevocable bank guarantee issued by a Nepalese bank; or (B) an unconditional and irrevocable bank guarantee of an international bank duly endorsed by a first category Nepalese bank, in each case, acceptable to the GON.
1.1.4	1.1.5
"Person"	means an individual, corporation, partnership, joint venture, trust or unincorporated organization, or a government or any agency or political subdivision thereof (including any GON Agency).
"Plans"	means the plans as referred to in Section 15.2.1.
"Political Force Majeure Event"	means the political force majeure event as referred to in Section 16.1.3.
"Power Station"	means all structural components from headworks to the tailrace, reservoir, reregulating structure and reservoir (if applicable), transmission line (if dedicated), switchyard and any other works necessary for commercial production, the full specifications of which are set out in Schedule 8.
"Prohibited Act"	means: <ul style="list-style-type: none"> (A) offering, giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward (i) for doing or not doing (or for having done or not done) any act in relation to the Project or performance of the Project, or (ii) for showing or not showing any kind of favour or disfavour to any person in relation to the Project; or (B) committing any offence under any legislation applicable to the Company for the prevention of corruption or bribery, in

respect of fraudulent acts or in respect of any attempt or conspiracy to defraud.

- "Project"** means the development, design, engineering, financing, procurement, insurance, construction, completion, testing, commissioning, ownership, operation, maintenance and transfer of the Hydro Property.
- "Project Affected People"** means all persons losing assets or use of resources as a direct result of the Project, including (i) people losing land they have held under customary or traditional rights, (ii) people utilising common property resources, (iii) squatters residing on public lands, (iv) encroachers deprived of established access to resources, (v) people with formally recognised property rights, and (vi) tenants, artisans, and wage earners whose livelihoods or living standards would be adversely affected as a direct result of the Project but excluding persons opportunistically invading the Project Area, after the issuance of a Survey Licence, for the purpose of obtaining assistance.
- "Project Area"** means the geographical area within which the Project shall be developed, constructed and operated and includes the right of way between the Power Station and the designated substation(s) or an international border over which the Transmission Line shall be constructed, as more fully described in Schedule 7.
- "Project Coordination Committee"** means the project coordination committee as referred to in Section 13.2.1.
- "Project Task Force"** means the project task force as referred to in Section 13.3.1.
- "Project Rights"** means all rights, title and interest in and to the Project and contracts executed in connection with the Project.
- "Project Specifications"** means the Power Station specifications set out in Schedule 8 and the transmission specifications set out in Schedule 9.
- "Records"** means all legal, technical, commercial, financial and other documents, including books, records, corporate and financial documents, deeds, permits, leases, easements, manuals and drawings of the Company relating to the Project, including all operating manuals, operation summaries, transfer notes, design drawings and historic operating and maintenance records.
- "Related Agreement"** means this Agreement and the Transaction Documents relating to the Project.
- "Renewal Amount"** means the costs of carrying out the Renewal Works.
- "Renewal"** means the programme for the carrying out of the Renewal Works over the Term in accordance with this Agreement as more fully set

"Programme"	out in Schedule 2.
"Renewal Works"	means the maintenance or other works of renewal, reconstruction, repair or reinstatement required to be carried out in respect of the Project, in accordance with this Agreement, to procure that they will, on the date of expiry of this Agreement, satisfy the Handover Requirements (as defined in Schedule 2).
["Rehabilitation and Resettlement Plan"]	means the rehabilitation and resettlement plan set out in Schedule 16.]
"Responding Party"	means the responding party as referred to in Section 21.4.3.
"Restoration"	means <ul style="list-style-type: none"> (A) the remedying or repair of damage caused to the Hydro Property or any part thereof as a result of a Force Majeure Event so as to restore the Hydro Property (as much as it is possible to do so) to the condition it was in immediately prior to the occurrence of such Force Majeure Event; or (B) any modification or capital addition required to be made to the Hydro Property or any part thereof as a result of (i) the compliance by the Company with a Change in Law or (ii) the occurrence of any Political Force Majeure Event.
"Restoration Cost"	means the restoration cost as referred to in Schedule 1.
"Restoration Cost Estimate"	means a written cost estimate prepared by the Company setting out the projected range of costs reasonably and necessarily required to effect that Restoration consistent with the then prevailing standards of construction of hydropower projects similar to the Project.
"Restoration Report"	means the restoration report as referred to in Schedule 1.
"Restoration Schedule"	means a preliminary schedule for the completion of Restoration prepared by the Company, such schedule to include a period for solicitation of engineering services or other services necessary to effect the Restoration and the negotiation and execution of a contract therefor and a reasonable period to arrange the financing (whether in the form of debt or equity or some combination thereof), as such Restoration Schedule may be extended from time to time.
"Revenue Objective"	means the price and volume terms and conditions of the Export Power Purchase Agreement and/or Domestic Power Purchase Agreement that maximises Feasible Revenue from the Project.
	1.1.6
"River"	means <i>[Insert name and description of the river on which the dam will be constructed]</i> .

"Rupees"	means the lawful currency of Nepal.
"Scheduled COD"	means [<i>the required commercial operation date</i>], as such date may be extended pursuant to this Agreement and the terms of Export/Domestic Power Purchase Agreement.
"SIAC"	means the Singapore International Arbitration Centre.
"SIAC Rules"	means the SIAC Rules as referred to in Section 21.5.1.
"Sponsors"	means [<i>Insert details of Project Sponsors</i>].
"Sponsor Support Agreement"	means [<i>Insert details of the relevant agreement with Project Sponsors</i>].
Staff Welfare Fund"	means the Staff Welfare Fund as provided for in the Nepal Labour Act, 2048 (1992 AD) and Bonus Act 2030 (1973 AD).
"Survey Licences"	means: <ul style="list-style-type: none"> (A) licence number [<i>Insert details</i>] issued by the GON on [<i>Insert date</i>] which permits [<i>the Company/[Project Sponsor (as applicable)]</i>] to conduct surveys, studies and investigations in connection with the production of electricity; and (B) licence number [<i>Insert details</i>] issued by the GON on [<i>Insert date</i>] which permits [<i>the Company/[Project Sponsor (as applicable)]</i>] to conduct studies and investigations in connection with the transmission of electricity.
"Task Force Observer"	means the task force observer as referred to in Section 13.3.4.
"Taxable Income"	means the income on which the Company is liable to pay income tax under the Laws of Nepal.
"Technical Dispute"	means the technical dispute as referred to in Section 21.4.1.
"Technical Review Panel"	means the technical review panel as referred to in Section 5.1.1.
"Term"	means the term of this Agreement as referred to in Section 3.4.
"Termination Notice"	means a notice delivered by a Party to the other Party pursuant to Section 18.3.1 stating that it wishes to terminate this Agreement.

"Threshold Amount"	means <i>[Ten (10) percent (%) of the total Project cost estimated by the Lenders under the Financing Agreements and indexed appropriately]</i> ¹ .
"Transaction Documents"	means each of this Agreement, the Financing Documents and the key Project documents listed in Schedule 27.
"Transfer"	means the transfer as referred to in Section 24.1.1.
"Transferee"	means the transferee as referred to in Section 24.1.2.
"Transfer Date"	means the transfer date as referred to in Schedule 4.
"Transmission Licence"	means the licence issued under the Laws of Nepal to the Company or its Affiliate for construction of the Transmission Line and transmission of electricity through it as amended or supplemented from time to time.
"Transmission Line"	means the <i>[Insert details]</i> kV transmission line running from <i>[Insert details]</i> to <i>[Insert details]</i> which is to be constructed as part of the Project, as more specifically described in Schedule 9.
"UNFCCC"	means the United Nations Framework Convention on Climate Change adopted in New York on 9 May 1992.
"Village Development Committees"	means the village development committees as provided for in the Local Self Governance Act, 2055 (1999 AD).
"Year"	means each twelve (12) Month period commencing in Vaisakh and ending the following Chaitra under the Vikram calendar.

1.2 Interpretation

In this Agreement unless the contrary intention appears:

1.2.1 a reference to this Agreement or a reference to another instrument includes any variation or replacement of either of them;

1.2.2 a reference to a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;

1.2.3 the singular includes the plural and vice versa;

1.2.4 one gender includes any other gender;

1.2.5 a reference to a Person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assignees;

¹**NOTE TO DRAFT:** To be discussed with commercial and technical advisers taking into account matters such as (i) Project size, (ii) debt amount, (iii), Project specifications and features, and (iv) economic and geological environment.

1.2.6 whenever a Party is to provide its consent or perform its duty or exercise its discretion or conduct any act under this Agreement, it shall do so acting reasonably and with due dispatch;

1.2.7 in case of a period of time, unless otherwise specified, time periods within or following which any payment is to be made or any act is to be done shall be calculated by excluding the Day on which the period commences and including the Day on which the period ends;

1.2.8 if a word or phrase is specifically defined in this Agreement, then other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

1.2.9 headings are for ease of reference only and do not affect interpretation;

1.2.10 the terms "including" and "include" mean including or include (as applicable) without limitation; and

1.2.11 in interpreting this Agreement, a construction that would promote the purpose or object underlying this Agreement must be preferred.

2.0 **FAILURE TO CONSUMMATE THE PDA**

- 2.01 The Parties will sign and date a Letter indicating agreement to a Start Date of PDA Negotiations ("**SDPDAN**"). This Section 2.0 of the PDA Template will become a legally binding attachment to the aforementioned Letter.
- 2.02 If the Parties fail to sign a negotiated PDA within [*Insert number of weeks*] weeks of the SDPDAN pursuant to Section 2.01, the Survey Licence will be terminated and the Project will become available for rebidding, or other alternatives that the GON may decide.
- 2.03 If the Project becomes available for rebidding pursuant to Section 2.02:
- (i) the Company will ensure all necessary measures to protect assets and will transfer to the GON without delay all Project documents, and the Project Company will cease to have any rights in respect of the Project documents;
 - (ii) all Project assets under the administration of the Company will be put in escrow without compensation;
 - (iii) the GON will assure the safety and integrity of the Project assets in escrow;
 - (iv) the GON will rebid the Project;
- The Company retains the right to be a qualified bidder, and it may submit a bid under the terms specified in the bid documents.
- 2.04 If the Company is the successful bidder, the Project assets in escrow will revert to the Company at the higher of the sell price or the original cost of the Project assets and the Company will have no rights to any claims in respect of the Project assets.
- 2.05 If the Company is not the successful bidder, the GON may offer the successful bidder right of first refusal to purchase the Assets in escrow.
- 2.06 If the successful bidder does not buy the Project assets, the Project assets will become the property of the GON.
- 2.07 Pursuant to Section 2.06, the GON may, at its sole discretion:
- (A) retain the Project assets for its own use;
 - (B) destroy the Project assets,
 - (C) market the Project assets to another party
- 2.08 For purposes of implementing Section 2.03, upon the commencement of PDA Negotiations the Company will submit to the GON detailed and certified accounts of the costs it incurred to develop the Project assets in the state they existed at the SDPDAN and any to which it remains contractually bound.

2. CONDITIONS PRECEDENT

2.1 GON CPs

Unless waived in writing by the Company, the GON shall satisfy the following conditions precedent by the date falling six (6) Months after the Agreement Date, failing which the Company shall be entitled to terminate this Agreement in accordance with Section 3.5.1 and recover the Bid Security² from the GON:

2.1.1 the GON shall have constituted the Technical Review Panel;

2.1.2 the GON shall have entered into an agreement with the Company to lease the GON-owned part of the Project Area in accordance with Section 10 and such agreement shall have become effective;

2.1.3 the GON shall have, or shall have procured that the relevant GON Agency has, executed the Domestic Free Power Purchase Agreement [*and Domestic Power Purchase Agreement*]; and

2.1.4 [*Other Conditions Precedent to be considered on a case-by-case basis*],
(together, the "GON CPs").

2.2 Company CPs

Unless waived in writing by the GON, the Company shall satisfy the following conditions precedent by the date falling six (6) Months after the Agreement Date, failing which the GON shall be entitled to terminate this Agreement in accordance with Section 3.5.2 and retain the Bid Security:

2.2.1 the Company shall have obtained the Generation Licence, Transmission Licence and any other Government Approvals;

2.2.2 the Company shall have submitted the Performance Security to the GON;

2.2.3 the Company shall have submitted to the GON evidence (in a form reasonably satisfactory to the GON) confirming that the Project is capable of achieving Financial Close, other than any outstanding conditions precedent contained in the Financing Documents which require this Agreement to come into effect;

2.2.4 the Company shall have submitted certified copies of all internal corporate approvals in relation to the Project and the Transaction Documents to the GON, including the internal corporate approvals listed in Schedule 25;

2.2.5 the Company shall have executed the Domestic Free Power Supply Agreement [*and Domestic Power Purchase Agreement*];

2.2.6 the Company shall have executed the Export/Domestic Power Purchase Agreement(s) and shall have [*prepared a plan*]/[*put in place arrangements*] for the sale of any outstanding capacity and energy (whether on merchant or long-term basis), and shall have submitted certified copies of the same to the GON;

2.2.7 The Company shall have demonstrated to the GON's satisfaction that the Project's revenue objective ("**Project's Revenue Objective**") has been achieved as follows:

²**NOTE TO DRAFT:** The Bid Security will be provided as a Condition Precedent to the GON entering this Agreement. As such, it should be specified as a requirement in any future RFP to be released by the GON. In addition, for the unsolicited projects for which survey and other licences have been issued but for which no bid security has been obtained, a bid security in an appropriate amount should be obtained from such developers, prior to the GON entering into this Agreement with them.

- (A) in relation to the Export/Domestic Power Purchase Agreement, by obtaining relevant approval from the relevant importing country's electricity regulatory commission or authority for the Export Power Purchase Agreement that maximises revenue to the Project, given the terms and conditions allowed by such regulatory commission in accordance with the prevailing regulations in the importing country;
- (B) in relation to the sale of power on merchant basis where price and volume of power are determined in open, competitive and approved electricity trading markets, and such price and volume terms for the sale of power from the Project are fully determined in such electricity trading market. The Company shall be required to provide evidence and report to the GON on a Monthly basis the published market prices and sale prices actually achieved by the Company, which shall be the same;
- (C) where the sale of power is on bilateral, long-term basis between the Company and a third party, the price and volume terms of such bilateral power purchase agreement achieves for the Project the Highest Feasible Proportion of the export energy Alternative Cost;

If the Parties Dispute whether the Project Revenue Objective is likely to be achieved or is being achieved as a result of the provisions or their implementation of the agreements and arrangements contemplated in Section 2.2.7, such Dispute will be deemed to be a Technical Dispute and will be referred for Expert Determination in accordance with Section 21.4.

2.2.8 *[The Company shall have executed the Transaction Documents (other than the Financing Documents), and shall have submitted certified copies of the same to the GON;]*

2.2.9 the Technical Review Panel shall have reviewed and recommended for approval the Plans, the DER, the environmental and social and resettlement documents, and the Project (including the dam design and dam safety aspects, sustainability, Handover Plan, life cycle plan for maintenance, management, rehabilitation and renewal and silt prevention and management plan);

2.2.10 the Company shall have delivered the Handover Plan to the GON;

2.2.11 the Sponsors shall have subscribed for one hundred percent (100%) of the agreed equity commitment to the Company;

2.2.12 the Company shall have submitted to the GON all information relating to the technical, economic, financial, environmental and social aspects of this Agreement and the Project; and

2.2.13 *[Other Conditions Precedent to be considered on a case-by-case basis],*
(together, the "Company CPs").

2.3 **Financing Documents**

Promptly after the Effective Date, and in any event no later than [sixty (60)] Days thereafter, the Company shall submit to the GON certified copies of all executed Financing Documents.

3. CONCESSION, TERM AND PURPOSE

3.1 Scope of the Project

Subject to, and in accordance with, the terms of this Agreement:

3.1.1 the GON grants to the Company from the Effective Date, for the Term, the right to:

- (A) design, engineer, finance, procure, construct, complete, test, commission, develop, insure, own, operate and maintain the Hydro Property;
- (B) use water of the River for the Project;
- (C) the Project; and
- (D) electrical energy generated from the Project within and outside the territorial jurisdiction of Nepal.

3.1.2 the Hydro Property will be transferred to the GON or the GON's designee at the end of the Term free of charge in accordance with Schedule 2.

3.2 The Project

3.2.1 The Company shall be solely responsible for the Project in accordance with the Project Specifications, applicable Plans, Design Standards, Good Electricity Industry Practice and this Agreement.

3.2.2 The Hydro Property shall be fit for purpose and carried out to the specified level of skill, care and diligence such that the Hydro Property is designed (except the replaceable electrical and mechanical components that undergo wear and tear) to achieve a minimum economic operating life of:

- (A) one hundred (100) Years for all civil works in the head works, including storage dam spillway and/or diversion weir/barrage/dam;
- (B) fifty (50) Years for all other civil works and transmission line(s); and
- (C) thirty (30) Years for all electrical and mechanical plants and their components,

and the Hydro Property will be transferred to the GON or its designee in good and normal operating condition in accordance with this Agreement (in particular, Schedule 3 of this Agreement). For ensuring that the electrical and mechanical plants and their components of the Project are in good running condition, just before the handover of the Project to the GON, the Company shall replace all the electrical and mechanical plants and their components on account of which the power output of the Project has reduced to less than ninety (90) per cent of the rated power output.

3.3 Generation and Transmission Licences

The Generation Licence and the Transmission Licence shall be issued to the Company for a period of thirty (30) Years in accordance with the Electricity Act, 2049 (1992 AD) and Electricity Regulations, 2050 (1993 AD).

3.4 Term

3.4.1 Except for Sections [1, 2, 3.4, 3.5, 3.6, 4, 5, 9, 15.3, 15.8, 15.11, 15.12, 15.15, 15.16, 15.19, 15.20, 15.21, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,29 ,30, 31, 32, 33, 34, 35], which will come into effect on and from the Agreement Date, this Agreement shall come into effect on and from the Effective Date.

3.4.2 The Term of this Agreement shall commence on and from the date of issuance of the Generation Licence and, shall remain valid until the thirtieth (30th) anniversary of the date of issuance of the Generation Licence unless terminated earlier in accordance with this Agreement.

3.5 **Early Termination**

3.5.1 If the GON CPs are not satisfied within six (6) Months of the Agreement Date in accordance with Section 2.1, then the Company may terminate this Agreement by giving a thirty (30) Day prior written notice to the GON.

3.5.2 If the Company CPs are not satisfied within six (6) Months of the Agreement Date in accordance with Section 2.2, then the GON may terminate this Agreement by giving a thirty (30) Day prior written notice to the Company.

3.5.3 The Parties may at any time terminate this Agreement by mutual agreement in writing.

3.6 **Survival**

3.6.1 Subject to Section 3.6.2 below, if this Agreement expires pursuant to Section³3.4.2 or is terminated pursuant to Sections [3.5, 7.1.2, 7.1.3, 16.10, **Error! Reference source not found. and 18.3**], each Party's rights and obligations shall cease immediately on such expiry or termination, other than Sections [9, 20, 21, 22, 23, 28, 29, 31 and 34]⁴ which shall survive such expiry or termination.

3.6.2 Expiry or termination of this Agreement shall not affect the rights and obligations of the Parties existing before such expiry or termination.

4. **INDEPENDENT ENGINEER**

4.1 **Appointment of the Independent Engineer**

Within thirty (30) Days of the Agreement Date, the Parties shall jointly prepare a roster of 10 to 15 independent consulting firms of engineers of international repute, and the GON shall appoint the Independent Engineer from the roster within next 30 days. Such independent consulting firms shall not include:

4.1.1 any of the Company's Affiliates; or

4.1.2 the firms having any relation with the Company or its Affiliates which would create a conflict of interest with the Company.

4.2 **Roles of Independent Engineer**

4.2.1 The Independent Engineer shall provide engineering advice and reports to the GON, as required by the GON, with regard to the monitoring, testing and certifying of the design, construction and commissioning of the Hydro Property against the Design Standards, Project Specifications, standards and specifications set out in the Export/Domestic Power Purchase Agreement and Key Guidelines.

4.2.2 The Independent Engineer shall have the right to engage such expert consultants and advisers as it considers appropriate to assist and facilitate it in fulfilling its obligations under this Agreement.

³NOTE TO DRAFT: To be reviewed before Agreement is finalised.

⁴NOTE TO DRAFT: To be reviewed before this Agreement is finalised.

4.3 **Costs of the Independent Engineer**

The Company shall bear all costs, expenses, fees and charges relating to the appointment and operations of the Independent Engineer, including all costs relating to the engagement of consultants and advisers under Section 4.2.2.

4.4 **Access**

The Parties shall:

- 4.4.1 cooperate with the Independent Engineer in all matters relating to the Project;
- 4.4.2 promptly provide such access to the Project Area, the Company's premises and any information and data relating to the Project, and such office accommodation and other facilities as may reasonably be required by the Independent Engineer for the purposes of carrying out the Independent Engineer's obligations under this Agreement; and
- 4.4.3 inform the Independent Engineer of all relevant site regulations with which the Independent Engineer must comply.

4.5 **Removal of Independent Engineer**

The GON may relieve of the Independent Engineer on the following grounds:

- (a) if the Independent Engineer fails to independently and impartially discharge its duties and responsibilities set forth in Section 4.2; and
- (b) *[Insert other grounds]*
- (c)

5. TECHNICAL REVIEW PANEL

5.1 **Technical Review Panel**

5.1.1 Within ninety (90) Days of the Agreement Date, the GON shall appoint at its sole discretion a panel of *[Insert number of experts]* independent experts with sufficient technical and professional skills and qualifications to carry out their obligations under this Section 5 (the "**Technical Review Panel**").

5.1.2 The GON will use its reasonable endeavours to coordinate the obligations of the Technical Review Panel under this Agreement in accordance with the technical review requirements of the Key Guidelines.

5.1.3 The GON will notify the Company of any appointments and changes in the membership of the Technical Review Panel.

- 5.1.4 The Technical Review Panel shall at all times act:
- (A) in accordance with the Key Guidelines and with this Agreement;
 - (B) reasonably and in good faith; and
 - (C) in accordance with Good Electricity Industry Practices.

5.2 **Responsibilities of the Technical Review Panel**

- 5.2.1 The Technical Review Panel shall:
- (A) prior to the Effective Date, review and recommend for the approval of the Plans, the DER, the environmental reports, and the Project (including the dam design and dam safety aspects, sustainability,

Handover Plan, life cycle plan for maintenance, management, rehabilitation and renewal and silt prevention and management plan);

(B) provide on-going independent advice to the Parties, as required by the GON, on all technical, safety, environmental and social matters associated with the Project, including:

- (1) compliance with and implementation of the Plans, the DER, the EIA/IEE and [*others (as applicable)*];
- (2) compliance with the Key Guidelines;
- (3) mitigation against, and remedy of, environmental and social impacts of the Project;
- (4) sustainability of assets;
- (5) dam design and dam safety aspects;
- (6) sediment management; and
- (7) the appropriateness and relevance of the Plans.

5.2.2 The Technical Review Panel shall, at the request of either Party, submit any such advice in the form of a written report or a written determination which shall be issued to the Parties. The Technical Review Panel shall, prior to issuing any final report or determination, issue draft reports and determinations which shall be discussed with the Parties. The Parties shall be provided with a reasonable opportunity to make oral and written submissions before the Technical Review Panel.

5.2.3 If either Party does not agree with the Technical Review Panel's final written report or written determination given pursuant to Section 5.2.2, either Party may refer the dispute to an expert for determination as a Technical Dispute pursuant to Section 21.4.

5.3 **Company's obligations**

Within ten (10) Days after receipt of a final written report or final written determination from the Technical Review Panel under Section 5.2.2, the Company shall implement or otherwise give effect to such final report or final determination.

5.4 **Costs of the Technical Review Panel**

The Company shall be responsible for paying all costs associated with the appointment and obligations of the Technical Review Panel, including all fees, charges and expenses, within fifteen (15) Days of receipt of an invoice from the Technical Review Panel.

5.5 **Access**

The Company shall:

5.5.1 cooperate with the Technical Review Panel in all matters relating to the Project;

5.5.2 promptly provide such access to the Project Area, the Company's premises and any information and data relating to the Project, and such office accommodation and other facilities as may reasonably be required by the Technical Review Panel for the purposes of carrying out the Technical Review Panel's obligations under this Agreement; and

5.5.3 inform the Technical Review Panel of all relevant site regulations with which the Technical Review Panel must comply.

5.6

Technical Review Panel not to be liable

The Company agrees with the GON that the Company will:

- 5.6.1 not seek to hold the Technical Review Panel or the present or past members of the Technical Review Panel or any of them (each in this Section, an "**Indemnified Person**") liable for any loss, damage or claim incurred or suffered by the Company in respect of any comment or recommendation of the Technical Review Panel and/or that Indemnified Person, whether made in accordance with the provisions of this Agreement or not and regardless of whether that comment or recommendation was made negligently or wilfully or not; and
- 5.6.2 on demand by the GON, indemnify and keep indemnified each Indemnified Person by way of a continuing indemnity, and defend and hold harmless the Indemnified Persons, and each of them, from and against any proceedings of any nature whatsoever, penalties, demands, suits, costs and expenses (including reasonable lawyers' fees and expenses) arising from or in respect of any claim made by the Company or its Affiliates or any of their respective directors, employees, agents or advisers.

6. RIGHT AND OBLIGATION ON THE USE OF RIVER WATER

The GON shall confer on the Company rights and use of flow of the River to the extent and under the conditions specified in the Generation License. The GON shall not issue, and shall ensure that no GON Agency issues, any other licence or permit for use of the water in the catchment area that substantially impairs the flow of such water. The Company shall not impair the use of River for drinking water, irrigation, and other industrial, recreational and cultural uses without making alternative provisions to the satisfaction of the existing users. The Company shall ensure that the water released from the Power Station after COD is of the same quantity, quality and discharge rate as before COD. In case the water released from the Hydro Property is not of the same quantity, quality and discharge rate as before COD, it should not substantially impair the value and operation of the existing projects or projects being constructed or being proposed for the future in the downstream stretches of the River. The Company agrees that it will cooperate and coordinate its operations with other projects to be developed on the River in order to optimise basin value, where consistent with the achievement of expected return on equity. It will also share its engineering design and operating assumptions with other hydropower project developers being developed in the same basin.

7. COMMISSIONING, CONSTRUCTION AND COMMERCIAL OPERATIONS DATE

- 7.1.1 The Company shall design, construct and commission the Hydro Property in accordance with this Agreement, the Design Standards, the Project Specifications, the Plans and the Export/Domestic Power Purchase Agreement before the Scheduled COD and as certified by the Independent Engineer pursuant to Section 4.
- 7.1.2 If the Company does not achieve COD by the Scheduled COD as a result of a default, breach or omission by the Company, the GON may terminate this Agreement in accordance with Section 18.1.3.
- 7.1.3 If the Company does not achieve COD by the Scheduled COD as a result of a default, breach or omission by the GON, the Company may terminate this Agreement in accordance with Section 18.2.4.

7.1.4 In the event that the Company does not achieve COD by the Scheduled COD because of a Force Majeure Event or any combination of such events, Scheduled COD shall be extended Day-for-Day for every Day of delay to COD caused by such Force Majeure Event subject to Section 16; provided, however, that no such relief shall be granted to the Company to the extent that such delay would nevertheless have been experienced by the Company had such Force Majeure Event not occurred or condition existed.

7.1.5 Notwithstanding anything to the contrary contained in this Agreement, the GON shall not have the right to draw upon the Performance Security if, at the time of determination, Scheduled COD has not occurred due to a default, breach or omission by the GON, a Force Majeure Event or any combination of such events.

8. METERING

8.1.1 Metering standards and testing are specified in Schedule 12.

8.1.2 The Company shall, at its expense, procure and install the metering system and check metering system and related equipment to measure the electrical energy generated by the Project for the purposes of calculation of the Energy Royalty and to measure electrical energy free of cost to be delivered to the GON or any GON Agency. At COD, the Company shall convey and transfer the check metering system and related equipment to the GON but the Company shall continue to be responsible for the maintenance of the metering system and check metering system.

8.1.3 The metering system and check metering system shall be sealed, and the seals broken only when the metering system and check metering system are to be inspected and tested or adjusted in accordance with Schedule 12.

8.1.4 The metering system and check metering system shall comply with the requirements set out in Schedule 12.

9. INFORMATION SHARING AND ACCESS

9.1 Disclosure of Confidential Information

9.1.1 Neither Party shall divulge any trade, commercial or technical secrets or confidential matters, reports, documents, data or information (including the DER) of the other Party to any third party except:

(A) as required by the Laws of Nepal or a competent court of Nepal;

(B) with the prior written consent of the other Party;

(C) to such of its officers, employees and those of its related bodies corporate who need to know of such matters for the ordinary business purposes of the Party or in connection with the Project, provided that it must use its best endeavours to ensure that all matters divulged are kept confidential by the persons to whom they are divulged;

(D) to any of its consultants, banks, financiers, insurers or other advisers (including the Lenders); or

(E) to any accountant, legal or other professional advisers.

9.1.2 Nothing contained in this Section 9.1 shall limit the obligation on the Company to disclose any such confidential information to the GON and other persons who

may require such confidential information in connection with the discharge of their obligations under this Agreement.

- 9.1.3 Subject to the provisions of this Section 9.1, the Laws and policies of Nepal on disclosure of the GON confidential information, each of the Parties shall, within a reasonable period following receipt of a request, provide the other Party with such information as that Party has available which is or may be necessary or useful to enable such other Party to perform its obligations under this Agreement.

9.2 **Accounts and reports**

- 9.2.1 The Company shall prepare and maintain Records in the quality and quantity required for facilitating efficient management and supervision of the Project, for providing information to the GON, and for informing the public and the Company's customers of the quality and performance of its operations and the Project.
- 9.2.2 The Company shall maintain complete and accurate records in Dollars (and, to the extent required by the Laws of Nepal or by the board of directors of the Company, in Rupees), accounting for all transactions relating to the Project. Financial records and accounts shall be maintained in accordance with applicable generally accepted international accounting principles as agreed to by the GON. Such records shall be subject to inspection by the GON on reasonable notice.
- 9.2.3 Beginning on the Effective Date, the Company shall prepare and maintain current Records of the Hydro Property in sufficient detail as required by the Company to provide a full understanding of the state of the Project. Such Records shall include physical drawings, databases and calculation sheets along with historical records relating to their constitution, repairs, and maintenance, including all works carried out as replacements, rehabilitation and maintenance.
- 9.2.4 The Company shall provide the GON, any GON Agency (if applicable), the Technical Review Panel, the Project Task Force, the Project Coordination Committee, the Local Project Co-ordination Committee, the Independent Engineer, the Handover Expert (as defined in Schedule 2) and their respective designated representatives and agents with copies of the records contemplated in this Section 9, as requested by such Person.
- 9.2.5 The Company shall provide the GON, any GON Agency (if applicable), the Technical Review Panel, the Project Task Force, the Project Coordination Committee, the Local Project Coordination Committee, the Independent Engineer, the Handover Expert and their respective designated representatives and agents with any other information as such Person may reasonably require, including:
- (A) immediate notification of disasters, accidents within the Project Area causing loss of properties and lives, or serious injury;
 - (B) immediate notification of incidents causing any pollution or other forms of environmental damage;
 - (C) immediate notification of material industrial relations issues; and
 - (D) immediate notification of material public complaints.
- 9.2.6 The Company shall, at its own cost and expense, make arrangements reasonably satisfactory to the GON with respect to the installation and operation of an accounting and cost control system and a firm of independent chartered accountants as the auditor, reasonably acceptable to the GON.
- 9.2.7 Within thirty five (35) Days following the Agreement Date, the Company shall, at its own cost and expense, select and appoint an independent auditor pursuant to the Laws

of Nepal to perform an audit on the Company and the Project. The GON may also appoint, at its own cost and expense, an independent auditor pursuant to the Laws of Nepal to undertake the duties of an auditor including:

- (A) verification of the standards and quality of the Project;
- (B) review of the performance of any statutory or contractual obligation of the Company; and
- (C) verification of the financial records of the Company.

9.2.8 The Company shall prepare an annual report which shall include, at a minimum, the following technical and financial information:

- (A) any circumstances having an impact on the financial obligations of the Company under this Agreement;
- (B) numbers and categories of customers and of personnel employed, levels of operations, performance and operations quality compliance;
- (C) renovation works and repairs carried out or to be carried out;
- (D) exceptional events such as pollution incidents, strikes, etc.;
- (E) emergencies;
- (F) measures, if any, taken by the Company during the applicable Year with respect to its obligations hereunder related to the protection and preservation of the environment;
- (G) the operations performed during the applicable Year; and
- (H) an audited set of accounts prepared in accordance with generally accepted international accounting principles and practices, as agreed by the GON.

9.2.9 The Company shall submit such annual report to the GON within one hundred and twenty (120) Days after the end of each financial year during the Term (or such earlier date as required under the Laws of Nepal). The Parties shall agree upon the format of such annual report and the Company shall provide any clarification requested by the GON.

9.2.10 The Company shall maintain and make available to the GON

- (A) unaudited financial statements of the Company on a quarterly basis; and
- (B) computable audited financial statements of the Company and a computable financial model of the Company that demonstrate the sustained achievement of the Project Revenue Objective on an annual basis.

For the purposes of this Section, the term "**computable**" means computer application based statements and models that contain all the formulae and entries in an accessible, transparent and computable format.

9.3 **Access and inspection**

9.3.1 The Company shall permit the GON, any GON Agency, the Technical Review Panel, the Project Task Force, the Project Coordination Committee, the Local Project Coordination Committee, the Independent Engineer, the Handover Expert and their respective designated representatives and agents to enter and inspect the Hydro Property for the purpose of verifying the Company's compliance with this Agreement and any other requirements under the Laws of Nepal (including the Generation Licence and

Transmission Licence). The Company may be notified in writing in advance of any inspection of the names of the individuals to be permitted access and the time and date of such visit.

- 9.3.2 The Company shall permit the GON, any GON Agency, the Technical Review Panel, the Project Task Force, the Project Coordination Committee, the Local Project Coordination Committee, the Independent Engineer, the Handover Expert and their respective designated representatives and agents without prior notification to enter and inspect the Hydro Property in the event of a crisis, incident or other untoward position or threat to the public, health, environment and safety.
- 9.3.3 The Company shall also grant access to the Project Area to the GON, any GON Agency, the Technical Review Panel, the Project Task Force, the Project Coordination Committee, the Local Project Coordination Committee, the Independent Engineer, the Handover Expert and their respective designated representatives and agents on mutually agreed terms for the purpose of fulfilling its obligations under this Agreement.
- 9.3.4 The GON, any GON Agency, the Technical Review Panel, the Project Task Force, the Project Coordination Committee, the Local Project Coordination Committee, the Independent Engineer, the Handover Expert and their respective designated representatives and agents shall have the right of access through the Project Area to other facilities controlled by the Company or any one of them under circumstances where reasonable, alternative means of access are not available subject to the prior reasonable consent of the Company provided that any Person granted such right of way shall follow the rules concerning safety, traffic, security and other regulations relating to the Project Area and the performance of the Project prescribed by the Company, which rules shall not be discriminatory in application.
- 9.3.5 The Company shall grant access to the Project Area to the GON, any GON Agency and any authority contemplated in this Agreement or their respective designated representatives and agents for the purpose of carrying out any activities which they are legally entitled to carry out on the Project Area pursuant to the Laws of Nepal.

10. LAND ACQUISITION

10.1 Acquisition of GON-Owned Land (Format properly)

10.2 The GON-owned part of the Project Area shall be leased to the Company at an annual rent of [Insert amount based on Project requirements] before the Effective Date. Acquisition of Non-GON Land

- 10.2.1 The Company shall make best efforts to acquire title to and vacant possession of the Project *Area and right of way for the Transmission* Line not owned by GON ("**Non-GON Project Land**") directly from the owners of such land at the prevailing market prices within a period of [*Insert number of months*] Months from the Agreement Date.
- 10.2.2 If the Company fails to acquire title to and vacant possession of **any portion** of the Non-GON Project Land in accordance with Section **10.2.1**, **then** the Company may submit a written application to the GON requiring the GON to acquire such portion of the Non-GON Project Land (the "**Land Acquisition Application**").
- 10.2.3 The Land Acquisition Application shall set out in reasonable detail the steps taken by the Company to comply with its obligations under Section 10.2.1, including such information as may be required under the Laws of Nepal.

- 10.2.4 If in the GON's reasonable assessment, the Company has complied with its obligations set out in Section 10.2.1 then the GON shall use the powers granted to it under the Laws of Nepal to (i) acquire title and vacant possession of such Non-GON Project Land and (ii) transfer it to the Company within a period of [*Insert number of Months*] Months from the date of the Land Acquisition Application.
- 10.2.5 The Company shall be responsible for meeting the acquisition cost of the Project Area and right of way for the Transmission Line acquired in accordance with this Section 10, including the acquisition cost of any Non-GON Project Land compulsorily acquired by the GON in accordance with its powers granted under the Laws of Nepal.
- 10.2.6 The Company shall develop a strategic plan for acquisition of land in the Project Area in compliance with the Land Acquisition Act, 2034 (1977), applicable Plans and Key Guidelines in order to ensure satisfactory and timely resettlement of Project Affected People and payment of compensation where necessary within the Project Area. The GON shall assist the Company in this regard including negotiation to procure Non-GON Project Land.
- 10.2.7 During the Term, the Company shall not sell, transfer, alienate or create any Encumbrances over the Project Area except in accordance with Section 23.

11. CARBON AND OTHER ENVIRONMENTAL CREDITS

11.1 Feasibility of the ER Project

- 11.1.1 As soon as reasonably practical, and in any event on or before the date that occurs thirty (30) Days after the Effective Date, or as subsequently agreed between the Parties, the Company shall, with the advice and consent of the GON, retain, pursuant to terms of reference approved by the GON, a qualified and experienced GHG Reduction project development consultant to produce a detailed report that outlines the feasibility, options and necessary steps for the creation and sale of GHG Reduction Benefits from the Project (the "**ER Project**").
- 11.1.2 The GON shall respond in writing within twenty (20) Days of the Company's request to approve the identified GHG Reduction project development consultant and the terms of reference pursuant to which the consultant is engaged. The report shall be produced for and on behalf of and delivered to both the GON and the Company as soon as possible, and in any event not later than one hundred and twenty (120) Days following the selection of the GHG Reduction project development consultant. The GON and the Company shall supply any information and assistance reasonably requested by the consultant as necessary to complete the report.

11.2 Business plan

Within a reasonable period following the issuance of the report in Section 11.1.2, the Company shall prepare and submit to the GON for its approval a business plan for the creation, marketing and sale of the GHG Reduction Benefits. In the event the GON does not provide the Company with a written disapproval of the business plan within sixty (60) Days of its submission to the GON, the business plan shall be deemed to have been approved.

11.3 Consents

- 11.3.1 If the ER Project is pursued under the Clean Development Mechanism or an alternative regulatory scheme, the GON shall have the right to be added as an Emission Reduction Project Participant.

- 11.3.2 The GON shall have the right to decide whether to be added as a party to any Emission Reduction Purchase Agreement(s) created as part of the ER Project.
- 11.3.3 The GON shall have the right to approve any publicity efforts undertaken in connection with the ER Project, provided that such right is exercised on a timely basis.
- 11.3.4 The GON and the Company shall not unreasonably withhold information or refuse access to any person or entity necessary for the implementation of the ER Project, including physical access to the Hydro Property.

11.4 **Regular reports**

- 11.4.1 Prior to the generation or issuance of any GHG Reduction Benefits, commencing with the calendar quarter following the Effective Date, the Company shall provide to the GON, within thirty (30) Days of the end of each calendar quarter, a written report detailing the status of its efforts and progress made in implementing the ER Project. The quarterly reports shall contain an itemisation of all costs incurred, revenues received and profits distributed by the Company in relation to the ER Project.
- 11.4.2 Once the ER Project has been registered or certified under the Clean Development Mechanism, an alternative regulatory regime, or voluntary standards, as the case may be, and has commenced the generation or issuance of any GHG Reduction Benefits, the Company shall provide, within thirty (30) Days of the end of each calendar quarter, a written statement to the GON on the status of the ER Project. Each such quarterly report shall include:
 - (A) an itemisation of all costs and the sources of such costs incurred by the Company in relation to the ER Project;
 - (B) an itemisation of all revenues and the sources of such revenues received in relation to the ER Project;
 - (C) an itemisation calculating the profits and shares due and distributed or to be distributed to both the Company and the GON;
 - (D) detailed information about the generation of any GHG Reduction Benefits; and
 - (E) detailed information about the sale of any GHG Reduction Benefits, including the buyer(s), price and quantity information.
- 11.4.3 Each such quarterly report that is to be provided in January shall contain, in addition to the foregoing, detailed projections of future costs and revenues expected to be incurred or earned (as the case may be) during the following Year in connection with the ER Project.

11.5 **Costs**

- 11.5.1 The Company shall be responsible for paying all costs associated with implementing the ER Project (collectively, the "**ER Project Costs**"), including:
 - (A) all costs incurred by the Company to retain the GHG Reduction project development consultant in accordance with Section 11.1 and all brokers, marketers, designated operational entities, accountants, engineers, legal counsel and other consultants retained in connection with the ER Project; and
 - (B) all fees, taxes and expenses incurred in connection with the ER Project.
- 11.5.2 On or before the first Day of the last Month in each Year, the Company shall submit to the GON for its approval a budget that (i) contains a reasonable estimate of the costs to

implement the ER Project for the following Year, and (ii) indicates any consultants that are an Affiliate of the Company that will be paid material fees and expenses in connection with the ER Project during the period covered by such budget. In the event that the GON does not provide to the Company a written disapproval of the budget within thirty (30) Days after its submission to the GON, the budget will be deemed to have been approved.

11.5.3 The Company agrees that it shall not incur ER Project Costs in excess of the amounts indicated in the approved budget without the prior consent of the GON.

11.5.4 The Company shall bear the sole risk that no GHG Reductions will be generated or sold, in which case, the GON shall not have any liability to reimburse the Company for any costs which the Company has incurred, or is likely to incur, in relation to the ER Project.

11.6 Ownership; marketing; sharing of profits

11.6.1 The GON and the Company shall jointly own all GHG Reduction Benefits generated by the Project till the end of Generation License Period, beyond which the GON shall solely own the GHG Reduction Benefits.

11.6.2 If and when any revenues are received from any sale of GHG Reduction Benefits, the net available revenues after deducting the cost involved in achieving the GHG Reduction Benefits shall be distributed to the Parties as follows: (i) fifty percent (50%) to the GON; and (ii) fifty percent (50%) to the Company.

11.6.3 The distribution of profits under Section 11.6.2 shall be made quarterly, within forty (40) Days of the close of each calendar quarter.

12. TAXES AND OTHER INCENTIVES

12.1 Income tax exemption

12.1.1 The Company shall pay income tax to the GON pursuant to the Laws of Nepal in force.

12.1.2 The GON shall exempt the Company, provided, however, that the Company achieves the COD on or before the end of Year 2075 BS, from the requirement to pay as followings:

- (a) one hundred percent (100%) of its assessed income tax for a period of seven (07) Years from COD; and
- (b) fifty percent (50%) of its assessed income tax for a period of three (03) Years following the seven(07)Year period referred to in Section 0(a).

12.2 Tax depreciation of Project costs

12.2.1 The Company shall be entitled to depreciate any item of plant, machinery or equipment procured and used during the construction period in accordance with the reducing balance method on a Yearly basis from the date of commissioning of such item for the term of the Generation Licence and Transmission Licence.

12.2.2 The Company may adjust its taxable income by amortising all Project costs and expenses in accordance with the Income Tax Act, 2058 (including all costs and expenses incurred in providing the principal features of the Hydro Property and interest and finance charges capitalized during the construction period).

12.3 Value added tax

- 12.3.1 The GON shall ensure that the value added tax payable on the Project construction contracts by the Company shall not be levied on the value of the machinery, equipment, any spare parts, penstock pipes, and the steel used to fabricate penstock pipes, which are not manufactured in Nepal, to be used permanently in the Project.
- 12.3.2 The GON may inspect the inventory records for such goods and materials to satisfy itself that they are being used exclusively for the Project.

12.4 Customs and Import Duties

- 12.4.1 The GON shall provide an exemption from import licence fees and value added tax and impose customs duty of one percent (1%) on plant, machinery and equipment (including spare parts worth up to ten percent (10%) of the cost of equipment not manufactured in Nepal) imported into Nepal for the purpose of the Project, in accordance with Section 12 (7) of the Electricity Act, 2049 (1992 AD).
- 12.4.2 The GON shall provide a facility to the Company to import equipment and other items (excluding consumable goods) on a re-export basis no later than three (3) Months from COD, and no import licence fees, value added tax or customs duty shall be levied by the GON on such items. The Company shall produce an irrevocable bank guarantee or deposit cash for this facility for the amount of the import licence fees, value added tax and customs duty. The GON shall promptly release the bank guarantee on receipt of confirmation that the items have been re-exported.
- 12.4.3 The Company shall furnish a list of required equipment and other items (excluding consumable goods) under this re-export scheme to GON before the commencement of construction of the Project and it is agreed that the list may be revised every six (6) Months. The master list of equipment that will be imported, used and re-exported upon completion of the associated works needs to be submitted by the Company and approved by the GON

12.5 Land tax

The Company shall pay land tax for any relevant land in the Project Area (including Non-GON Project Land) acquired by the Company at the rates applicable from time to time.

12.6 Registration fees

A registration fee in accordance with the prevailing laws of Nepal shall be charged for the registration of deeds related to a foreign loan for investment on development and operation in electricity and on the registration of deeds conveyed to pledge the movable and immovable assets in the name of foreign lender for such loan.

13. GON OBLIGATIONS

13.1 Non discrimination

The GON shall not take any discriminatory action which materially and adversely affects the Project or the performance of the Company's or any Contractor's obligations or the enjoyment of the Company's rights under this Agreement, provided that the foregoing shall not in any way limit or restrict the ability of the GON to freely agree with or impose upon companies and investors in other independent power projects different terms from those set out in or imposed pursuant to this Agreement, which:

- 13.1.1 are consistent with the GON's power policy, as amended and updated from time to time, and do not materially and adversely affect the performance of the Company's obligations under this Agreement; or
- 13.1.2 are justified by a relevant factual difference between the Company or the Project and the other company or investor on this Project and do not violate the Company's rights under this Agreement.

13.2 Establishment of a Project Coordination Committee

13.2.1 The GON shall form a committee comprised of the officials set out below (as may be changed by the GON from time to time) to coordinate with relevant GON Agencies, provide facilities and conduct necessary works for the development and operation of the Project (the "**Project Coordination Committee**"):

<i>[Minister for Energy</i>	<i>Chairman</i>
<i>Minister of State for Energy</i>	<i>Deputy Chairman</i>
<i>Secretary, Ministry of Energy</i>	<i>Member</i>
<i>Secretary, Ministry of Finance</i>	<i>Member</i>
<i>Secretary, Ministry of Environment, Science and Technology</i>	<i>Member</i>
<i>Secretary, Ministry of Home Affairs</i>	<i>Member</i>
<i>Secretary, Ministry of Land Reform and Management</i>	<i>Member</i>
<i>Secretary, Ministry of Forests and Soil Conservation</i>	<i>Member</i>
<i>Secretary, Ministry of Industry</i>	<i>Member</i>
<i>Director General, DoED</i>	<i>Member-Secretary]</i>

13.2.2 The Company may appoint one (1) person (and at its discretion, any substitute) as an observer to communicate with the Project Coordination Committee (the "**Committee Observer**").

13.2.3 The Committee Observer shall be entitled to attend any meetings of the Project Coordination Committee to which he is invited.

13.3 Establishment of Project Task Force

13.3.1 Within thirty (30) Days of the Agreement Date, the GON shall establish a task force (the "**Project Task Force**") to:

- (A) facilitate and expedite communication between the Company and the GON; and
- (B) facilitate and expedite the process for the making of decisions affecting the Project by the relevant GON Agencies.

13.3.2 The Project Coordination Committee may prescribe the working procedures of the Project Task Force.

- 13.3.3 The Project Task Force will comprise senior technical and professional representatives from relevant GON Agencies and shall be coordinated by the Member-Secretary of the Project Coordination Committee.
- 13.3.4 The Company may appoint one (1) person (and at its discretion, any substitute) as an observer to communicate with the Project Task Force (the "**Task Force Observer**").
- 13.3.5 The Task Force Observer shall be entitled to attend all meetings of the Project Task Force and, except in an emergency (in which case the Project Task Force shall use reasonable efforts to give the Task Force Observer such notice as is reasonably achievable in the circumstances), the Project Task Force shall give the Task Force Observer at least seven (7) Days' prior written notice of any Project Task Force meeting.

13.4 Establishment of a Local Project Coordination Committee

The GON shall form a committee comprised of the officials set out below (as may be changed by the GON from time to time) to coordinate with relevant GON Agencies, local entities and authorities, Project Affected People and the Company to facilitate and expedite the Project at the local Project Area level, provide facilities and conduct necessary works for the development and operation of the Project (the "**Local Project Coordination Committee**"):

[Name of the GON agency

Designation]

13.4.1 The Project Coordination Committee may prescribe the working procedures of the Local Project Coordination Committee.

13.4.2 The Company may appoint one (1) person (and at its discretion, any substitute) as an observer to communicate with the Local Project Coordination Committee (the "**Local Committee Observer**").

13.4.3 The Local Committee Observer shall be entitled to attend any meetings of the Local Project Coordination Committee to which he is invited.

13.5 Grant of Government Approvals

13.5.1 Within one hundred and twenty (120) Business Days of the Agreement Date, the Company will submit to GON a Project critical path that takes into account the practical realities of doing business in Nepal, showing a schedule of all the Government Approvals, including submission dates and expected approval dates, that it requires from GON and all GON Agencies, including the Generation Licence and the Transmission Licence provided such applications are in compliance with the Laws of Nepal for the grant or issue of such Government Approvals.

13.5.2 The schedule of Government Approvals format and information required pursuant to Section 13.5.1 is provided in Schedule 22. The schedule of Government Approvals in Schedule 22 will become the final schedule of Government Approvals pursuant to Sections 13.5.5 to 13.5.12.

13.5.3 Within one hundred and twenty (120) Days of receiving the schedule of Government Approvals pursuant to Sections 0 and 13.5.1, GON, in consultation with the Company, will review the schedule of Government Approvals and decide (the "**GON Decision**") (i) whether in its opinion the requested Government Approvals are consistent with the requirements of the Project and if so the time by which it will grant each such requested Government Approval, or (ii) that it declines to grant specified Government Approvals.

13.5.4 Within one (1) Business Day of completing its review of the Schedule of Government Approvals pursuant to Section 13.5.3 (the "**Delivery Date**"), GON will

deliver to the Company the written GON Decision for each requested Government Approval in conformity with Section 13.5.3.

13.5.5 The schedule of Government Approvals is final and binding on the Parties and becomes the final schedule of Government Approvals pursuant to Section 13.5.3, provided that, within the review period of thirty (30) Business Days from the Delivery Date, (i) the Company does not respond to the GON Decision or (ii) the Company informs the GON that the Company accepts the GON Decision.

13.5.6 If within the review period contemplated in Section 13.5.5, the Company notifies to the GON in writing of its disagreement and the grounds for its disagreement with any aspect of the GON Decision, such Dispute shall be resolved pursuant to Section 21.

13.5.7 Within thirty (30) Business Days of the resolution of such Dispute, the Project Coordination Committee will compile the final schedule of Government Approvals and submit it to the Company and the GON for their signature.

13.5.8 Within thirty (30) Business Days that the GON and the Company have received the final schedule of Government Approvals from the Project Coordination Committee pursuant to Section 13.5.7, the GON and the Company shall review the schedule for accuracy and sign it, from which time the final schedule of Government Approvals will be binding on the Parties. If the Company later notes that it overlooked the need for any Government Approvals that existed before the Effective Date of this Agreement, the Company will request that such overlooked Government Approvals be added to the final schedule of Government Approvals and the GON will grant its consent to such amendment of the schedule unless GON has reasonable grounds to withhold its consent. In the event of a Dispute between the GON and the Company in respect of adding such overlooked Government Approvals to the final schedule of Government Approvals, the Dispute will be resolved in accordance with Section 21 of this Agreement.

13.5.9 If after signing of the final schedule of Government Approvals pursuant to Section 13.5.8, the GON or GON Agencies introduce new Government Approvals requirements, the new Government Approvals requirements will be considered a Change in Law and be subject to the provisions of this Agreement for Change in Law.

13.5.10 The failure of the GON or GON Agencies to grant any Government Approvals by the specified date in the final schedule of Government Approvals pursuant to Section 13.5.8 will be deemed to be a GON Event of Default pursuant to Section 18.2 of this Agreement.

13.5.11 If requested by the Company, the GON will facilitate discussions between the Company, the Contractors and any GON Agencies (including local bodies such as district and Village Development Committees and Municipalities) in relation to the Government Approvals required for the Project.

13.5.12 Notwithstanding Section 13.5.1 to Section 13.5.11 inclusive,

- (A) the GON shall be under no obligation to grant or issue, or cause any GON Agency to grant or issue, a Government Approval if the applicant has failed to meet any requirements for the grant or issue of such Government Approval; and
- (B) the GON shall be under no obligation to renew or cause the renewal of any Government Approval which has been revoked by a GON Agency due to a failure by the Person to whom the relevant Government Approval had been issued to abide by any material terms or conditions of such Government Approval.

13.6 Visas

13.6.1 At least sixty (60) Days prior to the proposed start date for the employment of any non-Nepalese employee of the Company, the Company shall provide the GON with the following details regarding such employee:

- (A) a certified copy of such proposed employee's passport or similar identification;
- (B) a full job description for such proposed employee;
- (C) the proposed start date for such employee with the Company;
- (D) the proposed employee's qualifications;
- (E) a letter of recommendation from the Company addressed to [*GON to insert appropriate Ministry*] in respect of the proposed employee;
- (F) full details of any dependents of such employee;
- (G) any other information required by the Laws of Nepal; and
- (H) any other information requested by the GON or any GON Agency in respect of such employee or its dependents.

13.6.2 At least thirty (30) Days prior to the proposed start date for the employment of any non-Nepalese employee of the Company, the GON shall issue appropriate visas and permits to such employees and their dependents provided that the GON shall not be required to grant such visas or permits other than in accordance with the terms of this Agreement, the Laws of Nepal and the GON's regular visa-processing protocols in force from time to time.

13.7 Communications permits

13.7.1 Subject to the requirements of the Laws of Nepal, the GON shall issue to the Company the necessary Government Approvals (other than those referred to in Section 13.7.2) for the importation, installation and use of appropriate radio communication systems, including satellite communication equipment and "walkie-talkies", which are required for the Company to maintain communication channels with representatives of third parties.

13.7.2 Notwithstanding Section 13.7.1, the Company shall, in accordance with the Laws of Nepal and any other protocols in force from time to time, be required to obtain additional approval from the Ministry of Information and Communications and any other relevant GON Agency for any such radio communication system which connects directly with either (i) the Nepalese national telecommunications system or (ii) any international telecommunications system.

13.8 Explosives

13.8.1 In cooperation with the relevant GON Agencies, the GON shall assist the Company to obtain permission to import, transport, store and use such explosives as are reasonably required for construction work in the Project Area (the "**Explosives**").

13.8.2 Once the Company has obtained the permission contemplated by Section 13.8.1, the GON may, immediately and at any time, rescind such permission if the GON determines, in its reasonable discretion, that the Explosives have been used for any purpose other than in connection with construction work in the Project Area.

13.8.3 Immediately upon any temporary rescission contemplated by Section 13.8.2, the GON may seize, and the Company must offer up, any Explosives in the possession of the Company or any of its directors, employees or agents to the GON.

13.8.4 Any temporary rescission contemplated by Section 13.8.2 may not extend beyond thirty (30) Days following such rescission, during which time the GON will investigate whether the Explosives were in fact used for any purpose other than in connection with construction work in the Project Area.

13.8.5 If the GON determines that the Explosives were not used for any purpose other than construction work in the Project Area, the GON will immediately reinstate the Company's permission to import, transport, store and use the Explosives and will return to the Company any Explosives seized pursuant to Section 13.8.3.

13.8.6 If the GON determines that the Explosives were used for any purpose other than in connection with construction work in the Project Area, the GON may permanently rescind the Company's permission to import, transport, store and use the Explosives and will maintain control of any Explosives seized pursuant to Section 13.8.3.

13.9 **Fuel**

13.9.1 If the Company cannot obtain sufficient fuel during the construction period of the Project to ensure the timely construction of the Hydro Property, the Company may submit written evidence of such fuel shortage to the GON for consideration.

13.9.2 If the GON, acting reasonably, considers that the written evidence submitted by the Company provides a fair and accurate representation of the Company's fuel shortage, within thirty (30) Days of receipt of such evidence of a fuel shortage, the GON shall use its reasonable endeavours to procure the availability of sufficient fuel to satisfy the Company's fuel requirements during the construction of the Hydro Property.

13.9.3 If the GON is unable to procure the availability of fuel for the Company in accordance with Section 13.9.2, the GON shall grant to the Company the necessary Government Approvals for the import of fuel in connection with the construction of the Hydro Property, provided that the GON shall be under no obligation to issue such Government Approvals for the import of fuel if the applicant has failed to meet any requirements for the issue of such Government Approval for the import of fuel.

13.10 **Port of Entry and transport arrangements**

13.10.1 The GON shall facilitate (i) the import of plant, construction materials and equipment required for the Project at the point of entry into Nepal and (ii) the transportation of such plant, construction materials and equipment to the Project Area.

13.10.2 Subject to the requirements of the Laws of Nepal, the GON shall issue to the Company all import licences for plant, construction materials and equipment required for the Project provided that the GON shall be under no obligation to issue such import licence if the applicant has failed to meet any requirements for the issue of such import licence.

13.11 **Exchange facility**

13.12 **Heading to be removed Foreign Currency**

In accordance with Section 13 of the Electricity Act, 2049 (1992 AD), the GON shall, on written request by the Company, provide, or procure the availability of, all necessary foreign currency at prevailing market rates of exchange. In accordance with the Foreign Investment and Technology Transfer Act, 2049 (1992 AD), the GON shall permit, at no charge to the Company, the repatriation of monies received by the Company from the sale of electrical output in Nepal from the Project.

13.13 Local taxes

The GON shall use reasonable endeavours to assist the Company in discussions with local bodies regarding the payment of local taxes and charges for local construction materials (such as stone, gravel, sand and clay) and tolls for all goods, plant, materials and equipment transported to the Project Area. Such taxes and charges shall reflect the cost of provision of such materials.

13.14 Provision of documentation in connection with the Project

The GON shall use reasonable endeavours to make available to the Company the following documents, data, information, reports and papers prepared for the GON in connection with the Project to assist in the preparation of the DER and the development of the Project, subject to the Company reimbursing to the GON all costs incurred in the preparation of such documents, data, information, reports and papers:

[All documents, data, information, reports and papers to be listed on a project-by-project basis.]

13.15 Site access

13.15.1 Subject to the requirements of the Laws of Nepal, the Plans, and the EIA/IEE and the payment of all applicable charges, taxes, fees and royalties, the GON shall grant to the Company and the Contractors the:

- (A) right to enter the Project Area to carry out such site investigations and other pre-construction activities as the Company may reasonably require;
- (B) exclusive rights of access to, and use and possession of, the Project Area save and except as expressly permitted in the Government Approvals issued in connection with the Project;
- (C) right to access forest land, riverbeds, river banks and water in the Project Area to:
 - (1) construct and use all necessary buildings and other structures, roads, ropeways, rail lines and transmission lines;
 - (2) open tunnel audits and dump spoil from tunnels in mutually agreed designated areas;
 - (3) lay pipelines to take water from springs;
 - (4) during the construction period, open quarries, take out or deposit stone, sand and earth therein; and
 - (5) perform any other activity necessary in connection with the Project and the generation of electrical output from the Project.

13.15.2 The Company shall not incur any additional charges other than the leasing charges in connection with the performance of the activities permitted pursuant to Section 13.15.1(C) provided, however, that the Company shall pay any charges imposed pursuant to the Forest Act, 2049(1993) and the Forest Regulations, 2050, with respect to any forest area used by the Company.

13.15.3 The Company may temporarily exclude any person from the Project Area, if such exclusion is necessary or desirable in the interest of safety.

13.15.4 Subject to the provisions of Section 9.3, the Company shall have control over access to the Project Area including the dam or diversion structure, Power Station, reservoir and

its foreshore, the Transmission Line, and the use of all roads constructed by the Company within the Project Area, with the authority to reasonably restrict access and use to personnel authorised by the Company in the interests of safety.

13.15.5 The Company shall allow local residents free and unfettered access to the reservoir and its foreshore, other than any area to which access is reasonably restricted in the interests of safety.

13.15.6 In accordance with the relevant environment-related Government Approvals, Survey Licences and other applicable licences, the GON shall grant to the Company and the Contractors the right to clear the forests and bushes and excavate, (above the surface or underground, as required), for carrying out Project-related investigations.

13.16 **Roads to Project Area**

13.16.1 Subject to the requirements of the Laws of Nepal, the Plans and the EIA/IEE:

- (A) the GON shall make available to the Company all existing public roads in the Project Area and neighbouring areas;
- (B) the GON shall allow the Company and its Contractors the use of existing public roads in the Project Area and neighbouring areas for necessary transport in connection with the Project; and
- (C) with the prior written consent of the GON, the Company shall, at its own expense, modify, improve and/or strengthen roads and bridges, temporarily or permanently, which are required for the transport of heavy equipment in the Project Area and neighbouring areas.

13.16.2 The Company shall repair or cause to be repaired any damage to existing roads or bridges in the Project Area and neighbouring areas caused by the Company's use of such roads or bridges and the Company shall ensure that any such damaged roads or bridges are restored to materially the same condition they were in immediately prior to such damage. The Company shall use reasonable efforts to minimise the obstruction of traffic during any repair contemplated by this Section 13.16.2.

13.16.3 The GON shall allow the Company and its Contractors to construct temporary and permanent roads, tracks, bridges and ropeways as reasonably required within the Project Area in order to permit the mobilisation of heavy construction and power equipment. Such facilities shall be constructed, and such temporary facilities shall be dismantled and disposed of (except where the Company is notified otherwise by the GON), by the Company in accordance with the Laws of Nepal including section 24 of the Electricity Act, 2049 (1992), the environmental conditions provided in the Generation Licence and Transmission Licence, and all other applicable Laws of Nepal.

13.16.4 The Company shall obtain the prior consent of the GON for any construction works within forest areas as referred to in the Forest Act, 2049 (1993) and the Forest Regulations, 2050.

13.17 **Security**

13.17.1 The Company shall be responsible for the security of the Project and the Project Area.

13.17.2 If necessary, within fifteen (15) Days of the receipt of any written request properly submitted by the Company to the GON, the GON may provide additional security for the Project and the Project Area and take immediate and effective measures to protect the Project, Project Area and Company's and its Contractors' and subcontractors' personnel. The Company shall bear all expenses incurred by the GON and any GON Agencies in relation to the provision of such additional security.

13.18 **Transmission Line**

13.18.1 The GON may, at its discretion and subject to its technical and economic feasibility analysis and evaluation, request the Company to enter into negotiations to construct the Transmission Line in a manner that would provide for the future addition of transmission capacity at a lower marginal cost compared with the cost of duplicating initial transmission capacity for the needs of subsequent power projects.

13.18.2 Upon receipt of such request, the Company shall not unreasonably refuse to enter into negotiations for the said purpose, provided that (i) the technical specifications under negotiation would not impair the reliability standards to which the Company is contractually obligated, (ii) the Parties agree on a mutually acceptable arrangement for defraying the incremental cost pending the availability of future load to assume their pro-rata shares of these costs, and (iii) the Lenders do not object to such arrangements.

13.18.3 The GON may, at its discretion, request the Company to enable other users to access the excess capacity of the Transmission Line that the Company may be able to provide from time to time. The Company shall not unreasonably deny such access to the Transmission Line provided that (i) the reliability standards to which the Company is contractually obligated will not be impaired, (ii) the Company remains in compliance with the importing country's electricity grid code, and (iii) the Parties agree on a mutually satisfactory compensation arrangement.

13.18.4 The GON may, at its discretion, request the Company, and the Company shall not unreasonably refuse, to interconnect the Transmission Line with the Nepalese national grid and provide open access over the Transmission Line on terms and conditions compatible with the Nepalese national grid provided that (i) it will not impair the reliability standards to which the Company is contractually obligated, (ii) it will not impair the RoE that the Company would otherwise earn on its Project, as approved by the GON, (iii) the Lenders do not object to such an arrangement; and (iv) the dispatching arrangements and grid stability conditions of the importing country's power grid will not be adversely affected.

13.18.5 The Company agrees that it is solely responsible for the Transmission Line and for evacuation of power from the Power Station to the Export Off taker under the Export Power Purchase Agreement.

14. **REPATRIATION**

Subject to the requirements of this Agreement and the Laws of Nepal (including the Foreign Investment and Technology Transfer Act, 2049 (1992)), the GON shall permit the Company to transfer (at no additional charge payable by the Company to the GON, but subject to payment of applicable charges to Nepalese banks and intermediaries) out of Nepal its investment in the Project freely and without delay including:

- 14.1.1 profits, dividends, interest, and other fees and amounts derived from the investment;
- 14.1.2 proceeds from the sale of energy and all or any part of the investment;
- 14.1.3 payments made under a contract entered into in connection with the development and operation and maintenance of the Project by the Company or its investment, including payments made pursuant to a Financing Document; and
- 14.1.4 payments arising under any dispute settlement process.

15. COMPANY OBLIGATIONS

15.1 EIA/IEE

- 15.1.1 The Company shall prepare and conduct the EIA/IEE in accordance with the Laws of Nepal, Key Guidelines, and the Plans, and shall include consideration of, among others, the access road, power house, embankments, tunnels or canals, headworks, camps, quarries, muck disposal, spoil banks, transmission lines and sub-stations.
- 15.1.2 The Company shall produce the executive summary of the EIA/IEE in both English and Nepali languages.
- 15.1.3 The Company shall submit the EIA/IEE to the GON for approval. The GON shall approve the EIA/IEE provided that the EIA/IEE complies with the requirements of the Laws of Nepal, including the Environment Protection Act, 2053 (1997), the Environment Protection Regulation, 2054, and the National Environmental Impact Assessment Guidelines, 2050, as well as any regulations and guidelines made there under.
- 15.1.4 The approved EIA/IEE shall be an integral part of this Agreement and the Project, and the Company shall comply, and promptly rectify any non-compliance, with the environmental, occupational, health and safety requirements detailed in the approved EIA/IEE and the Plans.
- 15.1.5 The Company shall ensure at all times when developing and operating the Hydro Property that such quantum of water which is the greater of (A) ten percent (10%) of the Monthly average discharge of the River in the relevant month, and (B) the minimum quantity which is stipulated in the EIA/IEE, shall be released into the natural watercourse downstream of the dam or the diversion structures.

15.2 Plans, resettlement and rehabilitation

- 15.2.1 The Company shall comply with (i) the Local Procurement and Development Plan, (ii) the Employment and Skills Training Plan, (iii) the Corporate Social Responsibility Plan, (iv) the Rehabilitation and Resettlement Plan, (v) the Environment Management Plan, (vi) the environmental impact assessment report, (vii) the initial environmental examination report, (viii) the Nepal Benefits Plan and [*Insert names of other plans that need to form part of this agreement, as required for each project – to be reviewed on a case-by-case basis and such plans (or guidelines for preparation of such plans) to be annexed to the agreement*)](collectively, the "**Plans**").
- 15.2.2 The Company shall resettle, rehabilitate and compensate Project Affected People in accordance with the Plans. The Company shall implement the Rehabilitation and Resettlement Plan to ensure that the living standards and livelihood of the Project Affected People shall be higher than the standard prevailing sixty (60) Days before the Agreement Date.
- 15.2.3 The GON shall provide administrative support and assistance to the Company in implementing the Plans and the Company's other obligations described in this Section 15.2.
- 15.2.4 The Company shall comply with and carry out its obligations in this Section 15.2 at its own cost and expense.

15.3 Arm's length transactions

The Company shall not enter into any agreement, arrangement or negotiations, whether in relation to a sale, lease, licence, transfer, loan or other disposal, with any person (including Affiliates) except to the extent such agreement, arrangement or transaction is:

- 15.3.1 in the ordinary course of business;
- 15.3.2 on an arm's length basis;
- 15.3.3 subject to an internationally competitive transparent process of bidding; and
- 15.3.4 at a fair market value on normal market terms

15.4 Certain Infrastructure Facilities

15.4.1 The Company shall, by the date falling [*Insert number of Years*] after the Agreement Date, construct the following infrastructure facilities as described in the Project Specifications at its own cost and expense:

- (A) the education facilities;
- (B) the medical and emergency medical evacuation facilities;
- (C) the helipad or a landing strip, as the case may be; and
- (D) Drinking water facilities.

15.4.2 The GON, through its agencies, shall provide reasonable support and assistance in the form of coordination among the agencies and making available required permits, etc., to the Company in relation to the construction of such infrastructure facilities as mentioned in Section 15.4.

15.5 Local Share

All Project Affected People required to be resettled and rehabilitated as a result of the Project, including all persons residing permanently in the district of the Project Area at the date on which the construction activities for the Project commence, may, by written notice to the Company and/or the GON in the period from the Effective Date to two years beyond COD, exercise an option to purchase up to a equity share in the Company at face value. On receipt of such notice, the Company shall make arrangements to sell the requested equity share in the Project to such people in consultation with the GON.

15.6 GLOF early warning system

Within one (1) Year of the Effective Date, the Company shall conduct a study, at its own cost, of the potential effects on the Hydro Property of a glacier lake outburst flood ("GLOF"). Upon completion of such study, a full and detailed report shall be submitted to the GON. If the GON in consultation with the Technical Review Panel determines that the installation of an early warning system in respect of a GLOF is required, the Company shall, at its own cost, establish such a system in consultation with the GON.

15.7 Electrification and free energy to local households

By COD, the Company shall have electrified all households comprising the Village Development Committee wards, which are located on, or within (*Insert Number*) metres of, the Hydro Property except Transmission Line. Following COD, the Company shall, without charge, supply twenty (20) kWh of electrical output each Month to all households comprising the Village Development Committee wards, which are located on, or within (*Insert Number*) metres of, the Hydro Property except Transmission Line.

15.8 Use of local resources, institutions and human resources and national product and services

15.8.1 Prior to the commencement of any work, the Company shall submit a detailed Nepal Benefits Plan for the approval of the GON through the Ministry of Energy, as set out in Schedule 17. The Nepal Benefits Plan shall address the following requirements and confirm the Company's commitments as to how it will provide for(i) opportunity for

manufacturers, consultants, contractors and service companies in Nepal with first consideration and a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity, and(ii) first consideration and the employment and training for future employment of Nepalese citizens.

- 15.8.2 The Company recognises that training citizens of Nepal in technical and managerial aspects of the Project, including establishing a system for quality management in hydropower projects, and maximising technology transfer are central to the interests of the GON in the Project;
- 15.8.3 The Company shall use, and maximise the use of, to the greatest reasonable extent and supported by proactive training and recruitment, citizens of Nepal, local skills and labour crafts, and local institutions (including, but not limited to, community based organisations, non-governmental organisations, consulting firms, professionals, individuals, contractors, suppliers and national products and services) pursuant to the Labour Act, 2048 (1992), and the Labour Regulations, 2050, for the Project, taking into consideration availability and required skills.
- 15.8.4 The Company shall give first consideration and make best efforts to maximise procurement of goods and services from Nepalese manufacturers and service providers where they are competitive and meet quality and deliverability requirements, and the Company shall be proactive in programmes designed to assist Nepalese suppliers to meet the Project's requirements for goods and services.
- 15.8.5 The Company shall procure that, to the extent possible, the Contractors shall comply with the obligations in Section 15.8.2.
- 15.8.6 The Company shall submit reports every six (6) Months to the GON detailing the progress made towards meeting the objectives set forth in this Section 15.8 and the Nepal Benefits Plan.

15.9 **Technology and training**

- 15.9.1 The Company shall conduct, in the normal course of business and in accordance with Good Electricity Industry Practice and the applicable Plans, employee training programmes from time to time, including training in each of the skills used in the Project and training in modern management methods for those employees qualified for management training. The training programmes shall from time to time focus on technical, managerial and administrative matters, including [*GON to include any specific requirements for training programmes*]. The cost of such employee training will be a normal cost of business and shall be at the Company's own cost and expense.
- 15.9.2 The Company shall submit reports every six (6) Months to the GON describing in detail its employee training programmes, the implementation of such training programmes and the amounts spent on such training programmes.
- 15.9.3 The Company shall, to the extent reasonable within the conduct of its business, assist in the transfer of technology to the GON; provided, however, that this Section 15.9.3 shall not obligate the Company to breach any confidentiality undertaking. For the purpose of transfer of technology, MoEn/DoED may second..... (insert number) technical personnel to the Company during the construction phase of the Project. Such seconded personnel shall work in association with the Company's technical experts and under their general guidance. MoEn/DoED shall pay the basic salary and other entitlements to such seconded personnel in accordance with the standard procedures of the GON. The Company shall provide a hardship allowance, and any other allowances, to such

seconded personnel on a materially similar basis and amount as any such allowances which are provided to the Company's personnel.

15.10 **Bonus and housing facilities**

15.10.1 **Bonus and housing facilities**

- (A) The Company shall set aside ten (10) percent (%) of its Net Profit for contributions to the Bonus Amount and welfare funds.
- (B) The Company shall establish a Staff Welfare Fund which shall be operated in accordance with the criteria established by the Company and the Laws of Nepal.
- (C) As an annual bonus, the Company shall distribute to its workers and staff the lesser of (i) ten (10) percent (%) of its Net Profit in each fiscal Year and (ii) the aggregate annual salaries payable to all workers and staff (the "**Bonus Amount**"), provided that the Company shall not be required to make bonus payments which exceed the aggregate annual salary of each worker/member of staff in such Year.
- (D) The Company shall deposit any amounts remaining from the Bonus Amount following full distribution in accordance with Section 15.10.1(C) into the Staff Welfare Fund and the Welfare Fund at National Level in the proportion prescribed by the Labour Act 2048 (1992) or equivalent legislation in force in Nepal from time to time.

15.10.2 Where required at the Project site, the Company shall provide accommodation facilities for its workers and staff at its own cost and expense. Consideration should be given, in consultation with Project Affected People, to construct a proportion of this housing to permanent standards based on meeting the wishes of the Project Affected People who may wish to move into these accommodation facilities once the Project construction is completed.

15.11 **Responsibilities of the Company**

15.11.1 The Company shall be solely responsible for, among others:

- (A) implementing the Project;
- (B) planning, scheduling, monitoring, reporting and cost control;
- (C) establishing the procedures by which drawings, specifications and technical documents are to be prepared by the Contractors, equipment manufacturers, and any other relevant Persons;
- (D) procuring, negotiating the contracts with, and managing the Construction Contractor and the O&M Contractor (and any other Contractors required for the Project from time to time);
- (E) arranging financing for the Project;
- (F) supervision of the Project Area;
- (G) quality assurance;
- (H) obtaining performance guarantees for individual equipment items from the relevant equipment suppliers;
- (I) monitoring overall performance of the Project; and
- (J) liaising between the GON and the Company's employees, Contractors and advisers.

15.11.2 During construction of the Hydro Property, the Company shall submit (i) bi-annual reports to the GON in accordance with the Electricity Regulations, 2050 and (ii) progress reports every three (3)Months.

15.11.3 The GON shall deal exclusively with the Company in making arrangements for providing all rights granted under this Agreement to the Company's employees, Contractors and advisers.

15.12 **Technical Details to be Complied**

15.12.1 The Company shall comply with all requirements of, and cooperate fully with, the GON, the Technical Review Panel, the Independent Engineer and the Handover Expert in accordance with the terms of this Agreement.

15.12.2 The Company shall not carry out any material changes to the Project without the prior approval of the GON and Technical Review Panel (or Independent Engineer as the case may be).

15.13 **Submission of Documentation**

15.13.1 The Company shall, at its own cost and expense, submit to the GON three (3) hard copies and one (1) soft copy of the design drawings, construction drawings, "as built" drawings and other engineering details of the Project within ninety (90) Days of the Effective Date.

15.13.2 No later than sixty (60) Days prior to commissioning of the first power unit at the Power Station, the Company shall develop and prepare, in accordance with the Project Specifications, procedures, manuals and drawings required for the safe and efficient operation and maintenance of the Project. The Company shall update such procedures, manuals and drawings as required from time to time, and shall provide such updated procedures, manuals and drawings to the GON.

15.13.3 The Company shall provide three (3) hard copies and one (1) soft copy of all procedures, manuals and drawings prepared under Section15.13.2 to the GON within ninety (90) Days following COD.

15.13.4 Following COD, the Company shall submit to the GON annual reports including an audit report and operation and maintenance details in accordance with the Laws of Nepal, including the Electricity Regulations, 2050.

15.14 **Insurance**

During the Term, the Company shall, at its own cost and expense, obtain and maintain in effect the insurances for the Project set out in Schedule 6.

15.15 **GON right to power**

15.15.1 The Company shall design the Project to enable the GON to offtake the contracted electrical output generated by the Power Station into the Integrated Nepalese Power System.

15.15.2 The Company shall deliver [*Insert percentage*] of the electrical output generated by the Power Station to the GON or a designated GON Agency without charge. The terms and conditions under which the offtake of power by the GON shall take place (including metering, scheduling, dispatch and outages) shall be agreed between the Parties under the Domestic Free Power Supply Agreement, provided that the Company shall be solely responsible for the delivery of electrical output from the Power Station. The switchyard infrastructure for such supply of power and energy to the GON shall be constructed, operated and maintained by the Company at its own cost and expense.

15.15.3 [In order to meet domestic demand and if requested by the GON, the Company shall sell a maximum of *[Insert percentage]* of the electrical output generated by the Power Station to the GON or a designated GON Agency at an agreed tariff. The terms and conditions under which the offtake of power by the GON shall take place (including metering, scheduling, dispatch and outages) shall be agreed between the Parties under a Domestic Power Purchase Agreement, provided that the Company shall be solely responsible for the delivery of electrical output from the Power Station. The switchyard infrastructure for such supply of power and energy to the GON shall be constructed, operated and maintained by the Company at its own cost and expense.]⁵

15.16 Good Electricity Industry Practice

15.16.1 The Company shall conduct the Project in accordance with Good Electricity Industry Practice.

15.16.2 The Company may engage substitute qualified entities or organisations to collaborate in the operation and maintenance of the Project provided that prior written notice is given to the GON and any applicable GON Agency.

15.17 Project handover

15.17.1 On the date of expiry of this Agreement:

- (A) the Company shall transfer all of its rights, title and interest in the Project in good running condition to the GON or the GON's designee in accordance with the procedures set out in Schedule 2, free of cost and without any liabilities to the GON or the GON's designee; and
- (B) the Company shall be wound-up and dissolved in accordance with its constitutional documents.

15.17.2 Schedule 2 shall apply during the Handover Period.

15.18 Training prior to Project handover

15.18.1 Two (2) Years prior to the date on which the Project is to be transferred to the GON, the Company shall arrange for training, at its own cost and expense, of a sufficient number of staff of the GON or any other entity designated by the GON to enable the GON to operate, maintain and manage the Hydro Property to the standards required under this Agreement following the expiry of this Agreement.

15.18.2 The Parties shall mutually agree the number of employees to be trained and the content, duration and period of training in order to satisfy the obligations on the Company under this Section 15.18.

15.19 Compliance with Laws of Nepal

The Company shall, and shall procure that its employees, the Contractors and the employees of the Contractors shall, comply with the Laws of Nepal, including all applicable anti-corruption, anti-bribery, anti-money laundering and anti-terrorist financing laws and regulations.

15.20 [Non-refundable fee

Prior to the Agreement Date, the Company shall provide the DoED a non-refundable fee at the rate of one thousand five hundred (1,500) Dollars per MW of proposed installed capacity of the Power Station.]⁶

⁵NOTE TO DRAFT: Section 15.15.3 may not be applicable for all projects. Please delete if not required.

⁶NOTE TO DRAFT: To be used only for non-bid projects.

15.21 Performance Security

- 15.21.1 Prior to the Effective Date and in accordance with the application for the Generation Licence, the Company shall provide to the GON Performance Security at the rate of 0.5 percent of the total project cost determined at the feasibility study level or any other updated and/or upgraded study conducted thereafter per MW of installed capacity of the Project.
- 15.21.2 The GON shall, with written notification to the issuer of the Performance Security, release the Performance Security promptly after the Company submits an application to *the GON with a certificate of* the Independent Engineer certifying that COD has occurred.

15.22 Royalties Payable to GON

- 15.22.1 The Company shall pay Capacity Royalty and Energy Royalty to the GON pursuant to the Laws of Nepal in force.
- 15.22.2 The Capacity Royalty shall be calculated as follows:

"Capacity Royalty" means the Capacity Royalty Rate multiplied by installed capacity (in kW) as certified by the Independent Engineer on COD.
15.22.3

"Capacity Royalty Rate" means the Capacity Royalty Rate as specified in the Laws of Nepal.

- 15.22.4 The Energy Royalty shall be calculated as follows:

"Energy Royalty" means (generated energy less Self Consumption) multiplied by Average Selling Price multiplied by Energy Royalty Rate.

"Average Selling Price " means the weighted average of prevailing tariff rate for the energy sold under the Export Power Purchase Agreements, the prevailing tariff rate for the energy sold or supplied under the Domestic Power Purchase Agreement (if any) and the prevailing tariff rate for any energy sold on merchant sale basis.

"Energy Royalty Rate" means the relevant Energy Royalty figure contained in the table in Section 15.22.1.

"Generated Energy" means the energy generated from the Project as measured at the metering system.

"Self Consumption" means that portion of the total energy generated by the Project but used for the Project's operations.

- 15.22.5 The Company shall pay the Capacity Royalty to the GON quarterly in advance, irrespective of the level of electrical output generated by the Project. The first such quarterly payment shall be paid within thirty (30) Days of the date on which the first power unit of the Project is commissioned and shall thereafter continue to be paid on or before the same dates in each Year for the Term.

- 15.22.6 The Company shall pay the Energy Royalty to the GON quarterly in arrears on the same date as the Capacity Royalty is paid, provided that the Energy Royalty shall be payable

only from the date the first power unit of the Project commences generation and supply of electrical output.

15.22.7 The Company shall not be required to pay the Energy Royalty to the GON in respect of the electrical output to be provided by the Company to the GON free of charge pursuant to Section 15.15.2.

16. FORCE MAJEURE

16.1 Definition of Force Majeure Event

16.1.1 A "**Force Majeure Event**" shall mean any event or circumstance or combination of events or circumstances beyond the reasonable control of the Affected Party, but only to the extent that:

- (A) such circumstance, event or condition, despite the exercise of diligence and Good Electricity Industry Practice, cannot be prevented, reasonably anticipated, avoided or overcome by the Affected Party;
- (B) such circumstance, event or condition prevents the performance by the Affected Party of its obligations under or pursuant to this Agreement (save for payment obligations);
- (C) the Affected Party has taken all reasonable precautions, due care and measures (including acting in accordance with Good Electricity Industry Practices, whether or not requiring the expenditure of reasonable sums of money), to prevent, avoid or overcome the effect of such circumstance, event or condition on its ability to perform its obligations under this Agreement and to mitigate its consequences;
- (D) such circumstance, event or condition is not the direct or indirect result of a breach or failure by the Affected Party to perform any of its obligations under this Agreement; and
- (E) such circumstance, event or condition is without fault or negligence of the Affected Party.

16.1.2 Subject to the exclusions in Section 16.2 and provided that they satisfy the requirements in Section 16.1.1 above, "**Other Force Majeure Events**" shall include events or circumstances or any combination of events and/or circumstances of the following types:

- (A) earthquake, devastating flood, Glacier Lake Outburst Flood, storm of an historically exceptional nature, cyclone, tornado, typhoon, hurricane, volcanic eruption, or lightning, provided that where such event affects the Hydro Property and/or any other facility or equipment, only where such event is on a level that exceeds the design specifications and/or design standards of the Hydro Property or the relevant facility or equipment (as applicable);
- (B) fire to the extent such fire is beyond the design specifications and/or design standards of the Hydro Property or facility or equipment (as applicable), explosion, landslides or mudslides;
- (C) epidemic or plague;
- (D) any strikes, lock-outs, industrial disputes, industrial difficulties, work bans, blockages, picketing or similar action (other than solely or

primarily by employees of the Affected Party or its Contractors), in each case in existence for a continuous period of fourteen (14) Days;

- (E) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade or embargo, falling outside the scope of the Political Force Majeure Event described in paragraph 16.1.3(A) below;
- (F) any acts of rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism or sabotage of a political nature, falling outside the scope of the relevant Political Force Majeure Event described in paragraph 16.1.3(B) below; or
- (G) any radioactive contamination or ionising radiation, toxic or dangerous chemical contamination, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the site of contamination or radiation by the Company or those employed by the Company or engaged by the Company (including the Contractors).

16.1.3 Subject to the exclusions in Section 16.2 and provided that they satisfy the requirements in Section 16.1.1 above, "**Political Force Majeure Events**" means events or circumstances or any combination of events and/or circumstances of the following types:

- (A) any acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy, blockade or embargo in each case occurring within Nepal or involving Nepal;
- (B) any acts of rebellion, riot, civil commotion, strikes of a political nature, in each case (i) in existence for a continuous period of sixty (60) Days during each Year and (ii) occurring within Nepal, including actions directed against the Company (or Contractors) as part of a broader pattern of actions against companies or facilities with foreign ownership or management; or
- (C) any act or campaign of terrorism or sabotage of a political nature occurring within Nepal.

16.2 Exclusions from Force Majeure Events

Notwithstanding anything contained in Section 16.1, Force Majeure Events shall not extend to:

- 16.2.1 strikes, lock-outs, industrial disputes, industrial difficulties, work bans, blockages, picketing or similar action solely or primarily by employees of the Affected Party or its Contractors;
- 16.2.2 failure to make a payment of money in accordance with the Party's obligations under this Agreement, including but not limited to that due to economic hardship or financial inability, including any failure, inability or difficulty in making payments or lack of funding sufficient to meet any payment obligation of the Affected Party;
- 16.2.3 any failure by the Company or its Contractors to obtain or maintain any Government Approval due to negligence or default by the Company or such Contractor;
- 16.2.4 any failure to take into account prevailing site conditions which (i) have been identified in the DER or any other documents which are required to be submitted to the Technical Review Panel or (ii) could otherwise have been foreseen by an experienced international

engineering and construction contractor acting in accordance with good standards of prudence applicable to the international construction industry and taking into account the specific conditions, including site geological conditions, in existence in Nepal from time to time;

- 16.2.5 any failure or delay by any Contractor which results in the failure or inability of the Company to perform its obligations under this Agreement where the cause of such failure by the Contractor would not constitute a Force Majeure Event pursuant to this Agreement;
- 16.2.6 late performance by the Company or any Contractor caused by the failure of the Company or such Contractor to engage qualified subcontractors and suppliers or to hire an adequate number of personnel or labour;
- 16.2.7 unavailability, late delivery or changes in the cost of equipment, machinery, works or materials, spare parts or fuel or consumables, unless such is the direct effect of a Force Majeure Event;
- 16.2.8 fluctuations or reductions in demand for the electrical energy generated by the Project, including under the Export Power Purchase Agreement;
- 16.2.9 inability to obtain or maintain adequate funding;
- 16.2.10 mechanical or electrical breakdown or failure of equipment, machinery or works owned or operated by either Party due to the manner in which the equipment, machinery or works have been operated, transported or maintained (including where such transportation, operation or maintenance was not in accordance with Good Electricity Industry Practices);
- 16.2.11 any action or inaction of any authority, administrative or regulatory body, tax authority or any other body having a similar role or function in the importing country;
- 16.2.12 delays resulting from reasonably foreseeable unfavourable weather conditions or other similar reasonably foreseeable adverse conditions; or
- 16.2.13 non-performance resulting from normal wear and tear or random flaws in materials and equipment or breakdowns in equipment.

16.3 **Obligation to notify**

- 16.3.1 If an Affected Party reasonably considers that a circumstance has arisen which constitutes or is likely to constitute or result in a Force Majeure Event in relation to it, the Affected Party shall, as soon as is reasonably possible, and in any case no later than seven (7) Days following the occurrence of a Force Majeure Event, give the other Party notice setting out the following in reasonable detail:
 - (A) a description of the relevant Force Majeure Event;
 - (B) the rights or obligations of the Affected Party under this Agreement which have been or shall be, or are likely to be, affected by such Force Majeure Event; and
 - (C) an estimate of the expected duration of such Force Majeure Event.
- 16.3.2 Failure by the Affected Party to give notice of a Force Majeure Event to the other Party within the seven (7) Day period required by Section 16.3.1 shall not prevent the Affected Party from giving such notice at a later time, provided, however, that in such case, the Affected Party shall not be excused pursuant to this Section 16 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice has been given. If such notice is given within the seven (7) Day period, the Affected Party

shall be excused for such failure or delay from the date of commencement of the relevant Force Majeure Event.

16.3.3 In the case of a Force Majeure Event which prevents the Affected Party from performing an obligation under this Agreement, the Affected Party shall keep the other Party informed from time to time and on reasonable request in relation to:

- (A) the Affected Party's estimate of the likely duration of such Force Majeure Event;
- (B) the action taken and the action proposed to be taken by the Affected Party in order to mitigate and cure such Force Majeure Event;
- (C) the cessation of such Force Majeure Event or the successful mitigation or minimisation of the effects of such Force Majeure Event; and
- (D) any other matter which the other Party may reasonably request in connection with the occurrence of such Force Majeure Event.

16.4 **Obligation to mitigate**

16.4.1 The Affected Party shall make all reasonable endeavours to prevent and reduce to a minimum and mitigate the effect of any delay, loss or damage occasioned by any Force Majeure Event, including recourse to alternate sources of revenue, services, equipment and materials;

16.4.2 The Affected Party shall as soon as reasonably possible, and in accordance with Good Electricity Industry Practice, ensure the resumption of normal performance of this Agreement after the cessation of any Force Majeure Event or its effects and shall otherwise perform its obligations under this Agreement to the extent not excused under the Force Majeure provisions contained in this Section 16; and

16.4.3 The Affected Party shall within five (5) Days following the cessation of any Force Majeure Event, submit to the other Party reasonable proof of the nature of such delay and its effect upon the performance of its obligations under this Agreement.

16.4.4 The Affected Party shall continue to perform such of its obligations, which are not affected by the Force Majeure Events and which are capable of being performed in accordance with the provisions of this Agreement.

16.4.5 The period of extension under Section 16.5 shall exclude any delay in the exercise of the affected rights or performance of the affected obligations, which are attributable to a failure by the Affected Party to comply with Sections 16.4.1, 16.4.2 and 16.4.4. Furthermore, the extent to which obligations are extended under Section 16.5 will be reduced to the extent that the Affected Party's inability to perform the obligation is attributable to a failure by the Affected Party to comply with Section 16.4

16.4.6 The Affected Party shall bear the onus of proving that it has complied with its obligations under Section 16.4,

16.5 **Delay caused by Force Majeure Events**

Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof:

16.5.1 the Affected Party shall not be liable for any delay or failure in performing its obligations under this Agreement;

16.5.2 the time limits and deadlines for the performance by the Affected Party of its obligations under this Agreement which are affected by such Force Majeure Event shall be extended for as long as the Affected Party is unable to comply, or is delayed in

complying, with its obligations in this Agreement by such Force Majeure Event as determined by the Compensation Committee of Independent Experts. However, such extension of time limits and deadlines shall in no case exceed five (5) years in total; and

- 16.5.3 other than for breaches of this Agreement by the other Party, and subject to the effects of Sections 22.1, 16.5.4, 16.7, 16.8 and 18.4, the other Party shall not bear any liability for any loss or expense suffered by the Affected Party as a result of a Force Majeure Event or its effects,

provided that no relief, including the extension of performance deadlines and the Term of this Agreement, shall be granted to the Affected Party pursuant to this Section 16.5 to the extent that such failure or delay:

- (A) would have nevertheless been experienced by the Affected Party had the Force Majeure Event not occurred; or
- (B) was caused by the failure of the Affected Party to comply with its obligations under Section 16.4 to mitigate such Force Majeure Event.

16.5.4 The GON shall constitute a Compensation Committee of Independent Experts to determine the period to be extended and the amount to be compensated to the Affected Party upon the occurrence of a Force Majeure Event as referred in this Section 16. If either Party does not accept the decision of the Compensation Committee of Independent Experts, such matter may be referred to an arbitration in accordance with Section 21. The cost of the compensation committee shall be equally borne by the GON and the Company.

16.6 **Consequences of Political Force Majeure Events prior to COD**

- 16.6.1 Upon the occurrence of a Political Force Majeure Event prior to COD, the Company shall be entitled to recover (without duplication of any amounts recovered under the Export Power Purchase Agreement) the costs reasonably and necessarily incurred by the Company or any Contractor as a result of one or more Political Force Majeure Events or its or their effects or by any combination thereof in:

- (A) protecting the Hydro Property against damage or deterioration;
- (B) suspending the delivery of (and storing, pending the resumption of deliveries) any plant, equipment and materials which have been ordered by the Company for the Hydro Property;
- (C) demobilising and, upon resumption of performance, remobilisation of their plant and employees and those of any subcontractor, including the cost of such employees being kept on standby, pending resumption of the works;
- (D) extending the hire period of any plant, equipment, appliances and vehicles, including the additional cost of hire; and
- (E) any further costs incurred by the Company in relation to the financing of the costs specified above, including any fees payable to the Lenders in respect of further financing.

Provided, however, that the GON shall be held liable only to such cost which is attributable to it because of lack of its due diligence in preventing the occurrence of the Political Force Majeure Events as determined by the Compensation Committee of Independent Experts. In case, the GON exercises its due diligence in preventing the Political Force Majeure Events, the GON shall only extend the period of this Agreement as determined by the compensation committee of independent experts.

16.6.2 The Company shall first fund any costs, which it is entitled to recover under Section 16.6.1 through:

- (A) the proceeds which the Company is entitled to claim from the Export Offtaker under the Export Power Purchase Agreement; and
- (B) the proceeds of any insurance policies which have been taken out by the Company, including the proceeds from the insurance policies required by Section 15.14.

16.6.3 In the event that the Company is unable to fully recover such costs through the methods specified in Section 16.6.2, provided that the Company has fully exercised all its rights to claim such costs under the Export Power Purchase Agreement and the applicable insurance policies, the GON shall compensate the Company for such costs which remain outstanding by means of one (1), or a combination of, the following (determined at the sole discretion of the GON):

- (A) reducing the Energy Royalty payable by the Company to the GON following COD under Section 15.22; and/or
- (B) reducing the Capacity Royalty payable by the Company to the GON following COD under Section 15.22; and/or
- (C) reallocating all, or a proportion of, the electrical energy which is to be provided to the GON by the Company free of charge under the Domestic Free Power Purchase Agreement and Section 15.15.

In order to comply with its obligations under Section 16.4 to mitigate the effects of such Political Force Majeure Event, the Company shall sell any additional electrical energy reallocated by the GON under Section 16.6.3 (A) into the market on arm's length commercial terms and at a price which is not less than that being paid under the Export Power Purchase Agreement.

16.7 **Consequences of Political Force Majeure Events following COD**

16.7.1 Upon the occurrence of a Political Force Majeure Event on or after COD, for the period during which the Political Force Majeure Event or the effects thereof are outstanding, the Company shall first fund any costs incurred or loss of revenue through:

- (A) the proceeds which the Company is entitled to claim under the Export Power Purchase Agreement (including under any deemed availability provisions); and
- (B) the proceeds of any insurance policies which have been taken out by the Company, including the proceeds from the insurance policies required by Section 15.15.

16.7.2 In the event that the Company is unable to fully recover such costs or loss of revenue through the methods specified in Section 16.7.1, provided that the Company has fully exercised all its rights to claim such costs or loss of revenue under the Export Power Purchase Agreement and the applicable insurance policies, the GON shall compensate the Company for such costs or loss of revenue which remain outstanding by means of one (1), or a combination of, the following (determined at the sole discretion of the GON):

- (A) reducing the Energy Royalty payable by the Company to the GON following COD under Section 15.22; and/or

- (B) reducing the Capacity Royalty payable by the Company to the GON following COD under Section 15.22; and/or
- (C) reallocating all, or a proportion of, the electrical energy which is to be provided to the GON by the Company free of charge under the Domestic Free Power Purchase Agreement and Section 15.15.

In order to comply with its obligations under Section 16.4 to mitigate the effects of such Political Force Majeure Event, the Company shall sell any additional electrical energy reallocated by the GON under Section 16.7.2(C) into the market on arm's length commercial terms and at a price which is not materially less than that being paid under the Export Power Purchase Agreement.

16.7.3 Notwithstanding anything contained in Section 16.7.2, the GON shall be held liable only to such cost which is attributable to it because of lack of its due diligence in preventing the occurrence of the Political Force Majeure Events as determined by the Compensation Committee of Independent Experts. In case, the GON exercises its due diligence in preventing the Political Force Majeure Events, the GON shall only extend the period of this Agreement as determined by the Compensation Committee of Independent Experts.

16.8 Restoration due to Political Force Majeure Events or Change in Law

In the event that (A) the Hydro Property or any part thereof is adversely affected as a result of a Political Force Majeure Event and is not restored or remedied within thirty (30) Days following the date that the Company becomes aware of such Political Force Majeure Event, or (B) any modification or capital addition is required to be made to the Hydro Property or any part thereof as a result of a Change in Law, the provisions of Part **Error! Reference source not found.** of Schedule 1 shall apply.

16.9 Restoration due to Other Force Majeure Events

In the event that, as a result of an Other Force Majeure Event the Hydro Property or any part thereof is affected and is not restored or remedied within thirty (30) Days following the date that the Company becomes aware of such Other Force Majeure Event, the provisions of Part **Error! Reference source not found.** of Schedule 1 shall apply.

16.10 Termination

In the event of the occurrence of a Force Majeure Event in which that event, or the effects thereof, continues for a period exceeding twenty four (24) consecutive Months or the Affected Party notifies the other Party prior to the expiry of such twenty four (24) Months period that it will be unable to resume performance within such period, either Party may terminate this Agreement in accordance with Section 18.3.1 provided that the Company shall not be entitled to terminate this Agreement on the occurrence of a Political Force Majeure Event should the GON continue to make payments to the Company in accordance with the terms of this Section 16.

17. CHANGE IN LAW

17.1 Change in Law – Remedies

17.1.1 If there is a Change in Law or Change in Tax (other than a Change in Law or Change in Tax leading to termination pursuant to Section **Error! Reference source not found.**) during the period from the Agreement Date to the date falling twenty (20) Years after

COD, the Company shall provide the GON with fully evidenced written notice of the nature and anticipated effect of the material increase in cost, material reduction in revenue, or material delay in schedule, as the case may be, which has arisen as a result of the Change in Law or Change in Tax. Provided that any change in Royalty and income tax shall in no case constitute Change in Law and Change in Tax.

- 17.1.2 The written notice shall be accompanied by the certificate of the auditor of the Company setting out full confirmation of the accuracy of the statements prepared by the Company and submitted to the GON.
- 17.1.3 If GON accepts the effect of the Change in Law or Change in Tax as set out in the written notice provided by the Company, the time limits and deadlines for the performance by the Company of its obligations under this Agreement which are affected by such Change in Law or Change in Tax shall be extended for as long as the Company is delayed in complying with its obligations in this Agreement because of the occurrence of such Change in Law or Change in Tax or the effects of such Change in Law or Change in Tax.
- 17.1.4 If GON accepts the effect of the Change in Law or Change in Tax as set out in the written notice provided by the Company, the Company shall first fund any such material increase in costs incurred or material reduction in revenue through:
- (A) the proceeds which the Company is entitled to claim from the Export Offtaker under the Export Power Purchase Agreement; and
 - (B) the proceeds of any insurance policies which have been taken out by the Company, including the proceeds from the insurance policies required by Section 15.14.
- 17.1.5 In the event that the Company is unable to fully recover such material increase in costs incurred or material reduction in revenue through the methods specified in Section 17.1.4, provided that the Company has fully exercised all its rights to claim such costs or loss of revenue under the Export Power Purchase Agreement and the applicable insurance policies, the GON shall compensate the Company for such material increase in costs incurred or material reduction in revenue which remain outstanding by means of one, or a combination of, the following (determined at the sole discretion of the GON):
- (A) reducing the Energy Royalty payable by the Company to the GON under Section 15.22; and/or
 - (B) reducing the Capacity Royalty payable by the Company to the GON under Section 15.22; and/or
 - (C) reallocating all, or a proportion of, the electrical energy which is to be provided to the GON by the Company free of charge under the Domestic Free Power Purchase Agreement and Section 15.15.

The Company shall sell any additional electrical energy reallocated by the GON under Section 17.1.5(C) into the market on arm's length commercial terms and at a price which is not less than that being paid under the Export Power Purchase Agreement.

- 17.1.6 In the event that the Company is unable to fully recover such material increase in costs incurred or material reduction in revenue through the methods specified in Section 17.1.5, provided that the Company has satisfied its obligations under Section 17.1.5 to mitigate the effects of such Change in Law or Change in Tax, GON shall reimburse the Company for any remaining material increase in costs incurred or material reduction in

revenue which it is entitled to recover under this Section 17.1 within sixty(60) Days after presentation to it by the Company of an invoice and full supporting documentation with respect thereto.

- 17.1.7 The Company shall not be entitled to make a claim under Sections 17.1.4, 17.1.5 and 17.1.6 until such point as the total material increase in costs incurred or material reduction in revenue as a result of Changes in Law and/or Changes in Tax have reached an aggregate amount of *[GON to insert amount based on value of Project cost and commercial agreement with the Company]*.
- 17.1.8 The time to be extended and the amount to be compensated as a result of the Change in Law or Change in Tax as specified in Sections 17.1.3, 17.1.5 and 17.1.6 shall be determined by the Compensation Committee of Independent Experts as referred to in Section 16.5.4. If either Party does not accept decision of the Compensation Committee of Independent Experts, such matter may referred to an arbitration in accordance with Section 21.
- 17.1.9 If the GON does not accept the effect of the Change in Law or Change in Tax as set out in the written notice provided by the Company under this Section 17.1, the matter shall be referred to an arbitration for resolution in accordance with Section 21.1. The arbitral tribunal shall make its determination with respect to the effect of the Change in Law or Change in Tax, as the case may be, within thirty (30) Days of such referral.
- 17.1.10 If the arbitral tribunal determines that the effect of the Change in Law or Change in Tax is not as set out in the written notice provided by the Company under this Section 17.1, the time limits and deadlines and/or the costs payable by the GON shall not be revised.
- 17.1.11 If the arbitral tribunal concludes that the effect of the Change in Law or Change in Tax is as set out in the written notice provided by the Company under this Section 17.1, the arbitral tribunal shall determine the extension to the time limits and deadlines for the performance by the Company of its obligations under this Agreement and/or the level of costs reimbursable by the GON to the Company.
- 17.1.12 If the level of costs fixed by the arbitral tribunal is more than *[GON to insert amount based on specifics of each project]*, or the revised timetable fixed by the arbitral tribunal provides for a movement to the timetable set out in the Agreement of more than *[GON to insert time period based on specifics of each project]*, the GON may elect to terminate this Agreement in which case the provisions of Section 18 shall apply.

17.2 **Change in Law in favour of the Company**

In case of increased revenues due to the Change in Law or Change in Tax, the Company shall reimburse to the GON the amount as determined by the Compensation Committee of Independent Experts.

18. **EVENTS OF DEFAULT AND TERMINATION**

18.1 **Company Events of Default**

Subject to any Lenders' rights that may exist under any Lenders' direct agreement, each of the following events shall be an event of default by the Company (each a "**Company Event of Default**") which if not cured within the time permitted (if any), shall give rise to the right of the GON to terminate this Agreement pursuant to Section 18.3, provided that no such event shall become a Company Event of Default if it results substantially from (i) a breach by the GON of the provisions of this Agreement or the occurrence of a GON Event of Default, (ii) the occurrence of a Force Majeure Event; or (iii) a Change in Law or Change in Tax:

- 18.1.1 the occurrence of:
- (A) any breach of any of the payment obligations imposed on the Company pursuant to Section 15.22 that is not remedied within fifteen (15) Days after notice from the GON giving reasonable details of the breach by the Company and demanding remedy thereof; or
 - (B) any other material breach by the Company of any covenant or agreement in this Agreement that is not remedied within sixty (60) Days after notice from the GON giving reasonable details of the breach by the Company and demanding remedy thereof;
- 18.1.2 the occurrence of any of the following events:
- (A) the passing of a resolution by the shareholders of the Company for the winding up of the Company except in the case of a solvent restructuring;
 - (B) the voluntary filing by the Company of a petition of bankruptcy, moratorium, or other similar relief;
 - (C) the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation or other similar proceeding relating to the Company;
 - (D) the appointment of a liquidator, custodian or similar person in a proceeding for the winding up of the Company, which appointment has not been stayed or set aside within sixty (60) Days of such appointment;
 - (E) the making of an order for the winding up or otherwise confirming the bankruptcy or insolvency of the Company, which order has not been set aside or stayed within sixty (60) Days of such making; or
 - (F) the Company entering into any agreement of merger, consolidation or amalgamation with any entity not previously approved in writing by the GON or any other GON Agency;
- 18.1.3 the Project's failure to achieve COD by the Scheduled COD as a result of a default, omission or breach by the Company;
- 18.1.4 the termination of any of the Transaction Documents as a result of a default, omission or breach by the Company;
- 18.1.5 any act or omission by or attributable to the Company which would constitute an event of default giving rise to a right of termination under the terms of the relevant Transaction Document, where the counterparty of such Transaction Document has notified its intention to retain such Transaction Document in force;
- 18.1.6 the occurrence of any material breach by any of the Sponsors of any covenant or agreement in the Sponsor Support Agreement that is not remedied within sixty (60) Days after notice from the GON to the Company and the Sponsors giving reasonable details of the breach by the Sponsors and demanding remedy thereof;
- 18.1.7 the failure of the Company to deliver:
- (A) the Performance Security by the Effective Date in accordance with Section 15.21;
 - (B) the Handover Guarantee in accordance with Schedule 2; and
 - (C) *[Others to be considered on a case-by-case basis]*;

- 18.1.8 the occurrence of any event, condition or circumstance that shall give rise to a right by the GON to draw on the Performance Security or the Handover Guarantee, regardless of whether the GON has actually drawn on any of such securities;
- 18.1.9 the GON has reasonable grounds to believe that any of the following has committed a Prohibited Act in relation to the Project:
 - (A) the Company;
 - (B) any adviser, consultant, expert or other Person appointed or commissioned by the Company in connection with the Project; or
 - (C) any Person to whom the Company has subcontracted or delegated the performance of any activity in connection with the Project; and
- 18.1.10 [*Others to be considered on a case-by-case basis*].

18.2 GON Events of Default

Subject to Lenders' rights that may exist under any Lenders' direct agreement, each of the following events shall constitute a "**GON Event of Default**" which, if not cured within the time permitted (if any), shall give rise to the right of the Company to terminate this Agreement pursuant to Section 18.3, provided that no such event shall become a GON Event of Default if it results substantially from (i) a breach by the Company of the provisions of this Agreement or occurrence of a Company Event of Default, and/or (ii) the occurrence of an Other Force Majeure Event:

- 18.2.1 the occurrence of any material breach by the GON of any material covenant or agreement in this Agreement that is not remedied within sixty (60) Days after written notice to the GON from the Company giving reasonable details of the breach and demanding remedy thereof;
- 18.2.2 the expropriation, nationalisation or compulsory acquisition by GON or any GON Agency of any constituent element of the Project or the operations, provided such element is of a nature such as to materially affect the performance by the Company of its obligations under this Agreement or the exercise of its rights;
- 18.2.3 a Change in Law or Change in Tax that is not remedied within sixty (60) Days after written notice to the GON from the Company giving reasonable details of such Change in Law or Change in Tax and that: (i) makes unenforceable, invalid or void any material obligation of the Company under this Agreement; or (ii) makes it unlawful for the Company or the Contractors to make or receive any payment, to perform any material obligation or enjoy or enforce any material right under any Government Approval or this Agreement;
- 18.2.4 the Project's failure to achieve COD by the Scheduled COD as a result of a default, omission or breach by the GON;
- 18.2.5 the termination of any of the Transaction Documents as a result of a default, omission or breach by the GON;
- 18.2.6 any action or omission by the GON in breach of the Generation Licence or Transmission Licence; and
- 18.2.7 [*Others to be considered on a case-by-case basis*].

18.3 Termination

- 18.3.1 Subject to this Section 18.3 and Section 18.4, either Party shall be entitled to terminate this Agreement by delivery of a Termination Notice to the other Party as follows:

- (A) by the GON to the Company following a Company Event of Default;
 - (B) by the Company to the GON following a GON Event of Default;
 - (C) by either Party to the other Party following a prolonged Other Force Majeure Event pursuant to Section 16.10; and
 - (D) by either Party to the other Party following a prolonged Political Force Majeure Event pursuant to Section 16.10.
- 18.3.2 If a Party has served a Termination Notice in accordance with Section 18.3.1 each Party may exercise any option it has under Section 18.4 by delivering a Notice of Transfer to the other Party within sixty (60) Days after the date of the Termination Notice.
- 18.3.3 If a Party does not exercise its option under Section 18.4 within sixty (60) Days after the date of the Termination Notice,-
- (A) it shall be conclusively presumed to have waived and renounced its rights to require the Company to sell or the GON to purchase, as the case may be, the Hydro Property pursuant to Section 18.4;
 - (B) the Company shall continue to own the Hydro Property and shall be free to sell or transfer it to any third party; and
 - (C) this Agreement shall terminate.
- 18.3.4 Notwithstanding anything contained in Section 18.3.1, if either Party exercises its option under Section 18.4, this Agreement shall remain in effect until the Transfer Date when it shall terminate in accordance with the procedures set out in Schedule 4.
- 18.4 Transfer option**
- Subject to Lenders' rights that may exist under any Lenders' direct agreement, the Parties shall have the following rights to require a sale or purchase (as applicable) of the Hydro Property by delivering a Notice of Transfer to the other Party within sixty (60) Days after delivery of a Termination Notice:
- 18.4.1 if the GON delivers a Termination Notice pursuant to Section 18.3.1(A) as a result of a Company Event of Default, then the Company shall, at the GON's option, transfer to the GON or its designee the Project free of cost in accordance with Schedule 4;
 - 18.4.2 if the Company delivers a Termination Notice pursuant to Section 18.3.1(B) as a result of a GON Event of Default, then the GON shall, at the Company's option, be required to purchase the Hydro Property for the GON Default Purchase Price in accordance with Schedule 4;
 - 18.4.3 if either Party delivers a Termination Notice pursuant to Section 18.3.1(C) as a result of a prolonged Other Force Majeure Event, or a prolonged Political Force Majeure Event that occurred despite the exercise of due diligence by the GON, the Company shall, at the GON's option, transfer the Hydro Property to the GON or its designee free of cost in accordance with Schedule 4;
 - 18.4.4 if either Party delivers a Termination Notice pursuant to Section 18.3.1(D) as a result of a prolonged Political Force Majeure Event other than that referred to in Section 18.4.3, the GON shall, at the Company's option, be required to purchase the Hydro Property for the GON Default Purchase Price in accordance with Schedule 4.

18.5 **Power of Attorney**

The Company agrees to grant to the GON a power of attorney to execute all documents and do all acts as may be necessary or required to effect and complete the transfer of the Project to the GON on the expiry or termination of this Agreement pursuant to its terms.

19. **RIGHTS CUMULATIVE WITH THOSE AT LAW**

The powers, rights and remedies conferred on the Parties herein including the rights of termination, shall, subject to Section [*Insert Reference*], be in addition and without prejudice to all other powers, rights and remedies available to the Parties by the Laws of Nepal.

20. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the Laws of Nepal.

21. **DISPUTE RESOLUTION**

21.1 **Disputes**

Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (a "**Dispute**") shall be resolved in accordance with the procedure set out in this Section 21.

21.2 **Dispute Notice**

21.2.1 A Party who desires to submit a Dispute for resolution shall commence the dispute resolution process by providing the other Party with written notice of the Dispute (a "**Dispute Notice**").

21.2.2 The Dispute Notice shall:

- (A) identify the Parties to the Dispute;
- (B) indicate that a Dispute has arisen;
- (C) contain a brief statement of the nature of the Dispute; and
- (D) request a meeting of directors or senior executives to seek to resolve the Dispute in accordance with Section 21.3.

21.3 **Resolution by Consultation**

Within thirty (30) Days of the service of a Dispute Notice one (1) director or other senior representative of each Party with authority to settle the Dispute shall meet to seek to resolve the Dispute in good faith. If within thirty (30) Days of service of the Dispute Notice no meeting has taken place or the Dispute has not been resolved, either Party shall be entitled to refer the Dispute to be resolved in accordance with Sections 21.4 and 21.5 below.

21.4 **Expert Determination**

21.4.1 In the event that the Parties are unable to resolve a Dispute which is specified in this Agreement to be subject to determination by an expert or is otherwise technical in nature (a "**Technical Dispute**") in accordance with Section 21.3, then the Technical Dispute shall be referred to an expert in accordance with this Section 21.4.

21.4.2 The expert shall have expertise in the area to which such Technical Dispute relates and shall not be an agent, employee, or contractor or a former agent, employee or contractor of any Party involved in the Technical Dispute.

21.4.3 The Party initiating submission of the Technical Dispute (the "**Initiating Party**") to the expert shall provide the other Party (the "**Responding Party**") with a written notice

stating that it is submitting the Technical Dispute to an expert and nominating the person it proposes to be the expert.

- 21.4.4 The Responding Party shall, within seven (7) Days of the date it receives such written notice submitting the Technical Dispute to an expert, notify the Initiating Party whether the expert proposed by the Initiating Party is acceptable. If the Responding Party fails to respond or notifies the Initiating Party that the person is not acceptable, the Parties shall meet and discuss in good faith within a period of ten (10) Days to agree upon a person to be the expert. If the Parties are unable to agree, either Party may request the International Chamber of Commerce ("**ICC**") International Centre for Expertise to select the expert in accordance with the provisions for the appointment of experts under the Rules for Expertise of the ICC.
- 21.4.5 The Initiating Party shall within thirty (30) Days of the appointment of the expert submit to both the expert and the Responding Party written materials setting forth (i) a description of the Technical Dispute, (ii) a statement of the Initiating Party's position, and (iii) copies of documents supporting the Initiating Party's position. Within thirty (30) Days of the date that the Initiating Party has submitted the materials described in the preceding sentence, the Responding Party may submit to the expert (A) a description of the Technical Dispute, (B) a statement of the Responding Party's position, and (C) copies of any documents supporting the Responding party's position. In addition to the material provided to the expert by the Initiating Party, the expert shall consider any such information submitted by the Responding Party within such thirty (30) Day period and, in the expert's discretion, any additional information submitted by either Party at a later date. Any materials submitted by a Party to the expert shall be simultaneously submitted by such Party to the other Party.
- 21.4.6 The expert determination process shall not be an arbitration, and the expert will act as an expert not as an arbitrator.
- 21.4.7 The expert shall be requested to provide a decision within ninety (90) Days of his or her appointment. If the expert fails to issue his or her decision within ninety (90) Days of his or her appointment or is otherwise unable to complete the process, either party may request the ICC International Centre for Expertise to appoint a replacement expert.
- 21.4.8 The determination of the expert shall, in the absence of manifest error or fraud, be binding on the Parties. Such determination shall be final unless it is reversed by the arbitral tribunal as referred to in Section 21.5 following the proceedings initiated by the dissatisfied Party(ies). The dissatisfied Party(ies) shall only be entitled to initiate such proceedings within thirty (30) Days of receiving the determination. All costs incurred by the expert shall be borne by the Parties to the Technical Dispute in equal shares, unless the expert decides otherwise. Each Party shall bear its own costs of participating in the expert determination process, unless the expert decides otherwise.

21.5 **Dispute Resolution by Arbitration**

- 21.5.1 Subject to Sections 21.3 and 21.4, any Dispute shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which rules are deemed to be incorporated by reference in this Section.
- 21.5.2 The tribunal shall consist of three arbitrators. Each Party shall nominate one arbitrator, and the two arbitrators nominated by the Parties shall within thirty (30) Days of the appointment of the second arbitrator agree upon a third arbitrator who shall act as presiding arbitrator of the tribunal. If no agreement is reached within thirty (30) Days,

the Chairman of SIAC shall nominate and appoint a third arbitrator to act as presiding arbitrator of the tribunal.

- 21.5.3 The place of the arbitration shall be Kathmandu, Nepal.
- 21.5.4 The language of the arbitration shall be English.
- 21.5.5 If more than one arbitration is commenced under this Agreement and any Related Agreement and any Party contends that the issues should be heard in one proceeding because two or more arbitrations are substantially related and/or involve the same parties, the Arbitral Tribunal appointed in the first-filed of such proceedings shall have the power to determine whether, in the interests of justice and efficiency, the whole or part of the matters at issue should be consolidated before that Arbitral Tribunal upon such terms or conditions as the Arbitral Tribunal thinks fit.
- 21.5.6 The Parties expressly accept that any Dispute under this Agreement may accordingly be disposed of in the same arbitration proceedings as any other dispute arising under another Related Agreement, even in the presence of parties other than the Parties to this Agreement.
- 21.5.7 The Arbitral Tribunal appointed in respect of any Dispute may, upon the request of a Party to an arbitration commenced under this Agreement or under a Related Agreement, having regard to the stage of the proceedings and other relevant circumstances, join any Party to this Agreement as a party to the arbitration. Any Party so joined to arbitration proceedings may request that the other Party to this Agreement or further parties to any of the Related Agreements be joined to such arbitration proceedings.
- 21.5.8 Each of the Parties to this Agreement hereby consents to be joined to arbitration proceedings in relation to any Dispute under this Agreement or any arbitration arising from a Related Agreement at the request of a party to that arbitration following the initiation of the joinder of parties. The Parties to this Agreement hereby agree that any arbitration proceedings to which any one or more of them may be joined pursuant to this Section shall continue under the same arbitration rules as those under which it was commenced and with the same arbitrators.
- 21.5.9 This Agreement and the right and obligations of the Parties shall remain in full force and effect pending the award in the relevant arbitral proceedings.

21.6 **Waiver of sovereign immunity**

In regard to any arbitration proceedings pursuant to this Agreement and any proceedings to enforce, recognise or execute any arbitral awards rendered by a tribunal constituted pursuant to this Agreement, the GON hereby irrevocably waives any and all claims to immunity from service of process, immunity from the jurisdiction of any court, and immunity of such of its property as is of a commercial nature from execution.

22. LIABILITY AND INDEMNIFICATION

22.1 Limitation of liability

- 22.1.1 Except as specifically provided herein, and to the extent permitted by the Laws of Nepal, neither Party shall be liable to the other in contract, tort, warranty, strict liability, statute or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages.
- 22.1.2 Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement or the Performance Security, provided, however, that this Section 22.1 is not intended to constitute a waiver of any rights of either Party against the other

with regard to matters unrelated to this Agreement or any activity not contemplated by the Transaction Documents or the Financing Documents.

22.2 Indemnification

- 22.2.1 The GON shall indemnify the Company against, and hold the Company and its officers, directors and employees harmless from, at all times after the date hereof, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Company or its officers, directors and employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the GON in connection with this Agreement. Notwithstanding anything contained herein above in this Section 22.2.1, indemnification shall not be required to the extent that the Company is (i) reimbursed pursuant to any policy of insurance or (ii) receives indemnification pursuant to the terms of the Transaction Documents, the Financing Documents or any other agreement.
- 22.2.2 The Company shall indemnify the GON against, and hold the GON and its employees harmless from, at all times after the date hereof, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the GON, or its employees, for personal injury or death to persons or damage to property arising out of any negligent or intentional act or omission by the Company in connection with this Agreement. Notwithstanding anything contained herein above in this Section 22.2.2, indemnification shall not be required to the extent that the GON is reimbursed pursuant to any policy of insurance.
- 22.2.3 In the event injury or damage results from the joint or concurrent negligent or intentional acts or omissions of both the Company and the GON, the Parties shall be deemed to be equally liable for such injury or damages unless it is established that the Parties' relative degree of fault is other than 50/50, in which event each Party shall be liable in proportion to its relative degree of fault.
- 22.2.4 The provisions of this Section 22.2 shall survive for a period of six (6) Years following any expiry or termination of this Agreement with respect to any acts or omissions or claims for indemnification which occurred or arose prior to such expiry or termination.

22.3 Assertion of claims to exceed minimum amount

- 22.3.1 Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification under this Agreement, for any Loss that would otherwise be the subject of indemnification under this Agreement until all Losses of such Party, in the aggregate, during the then-current Year exceed an amount equal to *[GON to insert minimum annual threshold amount for indemnification claims depending on each project and negotiations with the developers. NB: the range in some of the other Projects has been USD10,000 to USD100,000]*, in which event such Party shall be able to recover for all its Losses for such Year.
- 22.3.2 For the purposes of this Section 22.3, a Loss (or claim for indemnification) shall be deemed to arise in the Year the event giving rise to such Loss (or claim for indemnification) occurred, or if the event is continuing in more than one Year, in the Year that such event ends.

22.4 Indemnification for fines and penalties

Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of another Party) for non-compliance with the Laws of Nepal or any applicable consent, permit, licence or approval shall not be reimbursed by any Party but shall be the sole responsibility of the non-complying Party.

22.5 Notice of proceedings

- 22.5.1 Each Party shall promptly notify the other Party of any Loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to Section 22.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss or proceeding and that such Loss or proceeding may give rise to an indemnification, but in any event no later than fourteen (14) Days after the receipt by the Party seeking indemnification of notice of the commencement of any action for which indemnity may be sought.
- 22.5.2 The delay or failure of such indemnified Party to provide the notice required pursuant to this Section 22.5 to the other Party shall not release the other Party from any indemnification obligation which it may have to such indemnified Party except:
- (A) to the extent that such failure or delay materially and adversely affected the indemnifying Party's ability to defend such action or increased the amount of the Loss; and
 - (B) that the indemnifying Party shall not be liable for any costs or expenses of the indemnified Party in the defence of the claim, suit, action or proceeding during such period of failure or delay.

22.6 Defence of claims

- 22.6.1 Upon acknowledging in writing its obligation to indemnify an indemnified Party to the extent required pursuant to this Section 22, the indemnifying Party shall be entitled, at its option (subject to Section 22.6.4), to assume and control the defence of such claim, action, suit or proceeding at its expense with legal counsel of its selection, subject to the prior reasonable approval of the indemnified Party.
- 22.6.2 Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party to the extent required pursuant to this Section 22, and assumes control of the defence of a claim, suit, action or proceeding in accordance with Section 22.6.4, the indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with legal counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the indemnifying Party hereunder.
- 22.6.3 Neither the indemnifying Party nor the indemnified Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other, provided, however, that after agreeing in writing to indemnify the indemnified Party, the indemnifying Party may, subject to Section 22.6.4, settle or compromise any claim without the approval of the indemnified Party. Except where such consent is unreasonably withheld, if a Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other Party, without the prior written consent of the other Party, the other Party shall be excused from any obligation to indemnify the Party making such settlement or compromise in respect of such settlement or compromise.
- 22.6.4 Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party pursuant to Section 22.6.1, the indemnified Party shall have the right to employ its own counsel and such legal counsel may participate in such action, but the fees and expenses of such legal counsel shall be at the expense of such indemnified Party, when and as incurred, unless:

- (A) the employment of legal counsel by such indemnified Party has been authorised in writing by the indemnifying Party;
- (B) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defence of such action;
- (C) the indemnifying Party shall not in fact have employed independent legal counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the indemnified Party; or
- (D) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party that there may be specific defences available to it which are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon the indemnified Party beyond the scope of this Agreement.

If any of Section 22.6.4 (B), (C) or (D) are applicable, then legal counsel for the indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party and the reasonable fees and disbursements of such legal counsel shall constitute reimbursable legal or other expenses hereunder.

22.7 Subrogation

Upon payment of any indemnification by a Party pursuant to Section 22.2, the indemnifying Party, without any further action, shall be subrogated to any and all claims that the indemnified Party may have relating thereto, and such indemnified Party shall at the request and expense of the indemnifying Party cooperate with the indemnifying Party and give at the request and expense of the indemnifying Party such further assurances as are necessary or advisable to enable the indemnifying Party vigorously to pursue such claims.

23. ASSIGNMENT AND SECURITY

23.1 Assignment and mortgage by the Company

- 23.1.1 The Company may for the purposes of arranging or re-arranging financing for the Project, assign or otherwise transfer all or any part of its rights or benefits (but not its obligations) under this Agreement to any Lender or their agents subject to GON's prior written consent (not to be unreasonably withheld).
- 23.1.2 Upon an assignment or transfer under Section 23.1.1, the assignee or transferee shall be vested with all the rights and benefits assigned or transferred to it provided that such assignment or transfer shall not increase GON's financial obligations under this Agreement.
- 23.1.3 The Company shall promptly give the GON written notice of any assignment or transfer under Section 23.1.1 and the GON shall promptly acknowledge in writing such assignment.
- 23.1.4 The Company may mortgage or otherwise give security over its assets and undertaking including any lease, licence or other interest granted by the GON pursuant of this Agreement to any Lender providing financing for the Project.

23.2 **Assignment by GON**

The GON may assign or transfer its rights or obligations under this Agreement to any GON Agency.

24. **CHANGE OF CONTROL**

- 24.1.1 The Company shall ensure that the Sponsor(s) do not assign, sell or transfer (whether directly or indirectly) ("**Transfer**") their respective interests in the Company and/or the Project, at any time up to the date falling five (5) Years after the COD.
- 24.1.2 After the period specified in Section 24.1.1, subject to Sections 24.1.3 to 24.1.6 (inclusive), the Sponsor(s) shall be permitted (subject to the GON's consent, not to be unreasonably withheld) to Transfer their respective interests in the Company or the Project to a third party technically, financially and commercially capable of fulfilling (or ensuring that the Company fulfils) its obligations under this Agreement and the Transaction Documents ("**Transferee**").
- 24.1.3 The Company and the Sponsors shall apply to the GON for the GON's consent for such Transfer contemplated in Section 24.1.2 within a period of five (5) Days of parties entering into definitive agreements in connection with such Transfer, together with requisite details of the Transferee.
- 24.1.4 If GON grants its consent, the GON shall be paid fifty percent (50%) of the increase in the equity valuation of the Company compared to the equity valuation based on the original Project cost and debt equity structure of the Project.
- 24.1.5 The GON shall have the right to purchase the Project at the price net of its fifty (50)percent (%) share of the increment and on the terms offered by the Transferee within a period of sixty (60) Days of receiving Company's application noted in Section 23.1.3.
- 24.1.6 If the GON does not purchase the Project within a period of sixty (60) Days or accepts or rejects such Transfer in writing within a period of sixty (60) Days from the date of the application referred to in Section 24.1.3, the GON shall be deemed to have consented to such Transfer.

25. **REFINANCING**

Schedule 28 shall apply.

26. **REPRESENTATIONS AND WARRANTIES**

26.1 **GON representations and warranties**

The GON hereby represents and warrants to the Company that:

- 26.1.1 it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- 26.1.2 the execution, delivery and performance of this Agreement by the GON has been duly authorised by all requisite action on the part of the GON, and will not violate the Laws of Nepal;
- 26.1.3 this Agreement has been duly executed and delivered by the GON; and
- 26.1.4 this Agreement constitutes a legal, valid and binding obligation of the GON, enforceable against it in accordance with its terms subject to general principles of equity.

26.2 **Company representations and warranties**

The Company hereby represents and warrants to the GON that:

- 26.2.1 it is a limited liability company, duly organised and validly existing under the Laws of Nepal, and has all requisite corporate power and authority to carry on its business as currently conducted;
- 26.2.2 it has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- 26.2.3 the execution, delivery and performance of this Agreement by the Company:
- (A) have been duly authorised by all requisite corporate action on the part of the Company, and no other proceedings on the part of the Company or any other Person are necessary for such authorisation;
 - (B) will not violate (i) the Laws of Nepal or any applicable order of any GON Agency or (ii) any provision of the constitutional documents of the Company; and
 - (C) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Company is a party or by which the Company or its property is bound, excluding defaults or violations that would not, individually or in the aggregate, have a material adverse effect on its ability to perform its obligations hereunder;
- 26.2.4 this Agreement has been duly executed and delivered by the Company;
- 26.2.5 this Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganisation, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) to general principles of equity;
- 26.2.6 to the best of its knowledge, after reasonable inquiry, no filing or registration with, no notice to and no permit, authorisation, consent or approval of any Person is required for the execution, delivery or performance of this Agreement by the Company, except for the Government Approvals;
- 26.2.7 the Company is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement;
- 26.2.8 there is no action, suit, proceeding or investigation pending or, to the Company's knowledge, threatened (i) for the dissolution of the Company, or (ii) against the Company, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement;
- 26.2.9 it has:
- (A) thoroughly examined this Agreement, together with all Schedules attached hereto, and become familiar with all their respective terms and provisions;
 - (B) investigated to its satisfaction the Laws of Nepal and it can perform its obligations hereunder in accordance therewith;
 - (C) the experience, resources, qualifications, and capabilities to perform its obligations hereunder; and

(D) made all investigations and inspections that it deems necessary to perform its obligations hereunder;

26.2.10 it, its employees, representatives, agents, advisers, consultants, experts, Contractors or sub-contractors have not committed and will not commit any Prohibited Act in relation to the Project; and

26.2.11 the Plans are fully compliant with the Laws of Nepal and Key Guidelines.

26.3 No untrue statements or omissions

Each Party to this Agreement represents and warrants to the other Party that no written information supplied by it or on its behalf to the other Party relating to the Project or to any transactions contemplated by this Agreement contains any untrue statement or omission in relation to a material fact or the Laws of Nepal.

27. ETHICAL STANDARDS / ANTI-CORRUPTION

The Company shall not, and shall procure that its employees, representatives, agents, advisers, consultants, experts, Contractors or sub-contractors shall not, commit a Prohibited Act.

28. EXPENSES OF THE PARTIES

Unless otherwise specified herein or as otherwise agreed between the Parties, all expenses incurred by or on behalf of either the Company or the GON, including all fees and expenses of agents, representatives, legal counsel, consultants, professional advisers and accountants employed by such Party, in connection with the preparation of this Agreement and the consummation of the transactions contemplated by this Agreement, shall be borne solely by the Party who shall have incurred such expenses, and the other Party shall have no liability in respect thereof.

29. NOTICES

29.1.1 Any communication or document given, made or sent by either Party to the other Party pursuant to this Agreement must be in writing and shall be deemed to have been duly given, made or sent to the Party to which it is addressed at the time of its delivery by mail, facsimile or delivery, at the following addresses;

GON

Address: Ministry of Energy
Singha Durbar
Kathmandu
NEPAL

Facsimile No. 977-1-4211510

Address: Department of Electricity Development
P.O.Box 2507
Bhakti Thapa Marg, Anamnagar
Kathmandu
NEPAL

Facsimile No. 977 1 227 537]

The Company **[Insert name]**

Address: *[Insert address]*

Facsimile No.: *[Insert number]*

- 29.1.2 For the avoidance of doubt, notices shall not be sent by electronic mail.
- 29.1.3 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Section 29.1.4 below.
- 29.1.4 Subject to Section 29.1.5 below, a notice is deemed to be received:
- (A) in the case of a notice left at the address of the addressee, upon delivery at that address;
 - (B) in the case of a posted letter, on the third (3rd) Day after posting or, if posted to or from a place outside Nepal, the seventh (7th) Day after posting; and in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
- 29.1.5 A notice received or deemed to be received in accordance with Section 29.1.4 above on a Day which is not a Business Day or after 5 p.m. on any Business Day, according to local time in the place of receipt, shall be deemed to be received on the next following Business Day.
- 29.1.6 Either Party may change its address by prior notification to the other Party in accordance with this Section 29.

30. AMENDMENTS

No variation or amendment of this Agreement shall be valid or effective unless it is in writing (which, for this purpose, does not include email) and signed by the Parties. The expression "variation" includes any variation, supplement, deletion or replacement, howsoever effected.

31. WAIVER

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

32. FURTHER ASSURANCES

Each Party shall at its own expense do everything reasonably necessary and proper to give effect to this Agreement.

33. NO THIRD PARTIES

This Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, or confer any right of suit or action on any Person not a Party to this Agreement.

34. ENTIRE AGREEMENT

34.1.1 Each of the Parties confirm that this Agreement, the Transaction Documents, the Generation Licence and the Transmission Licence represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

34.1.2 Each Party confirms that:

- (A) in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement or the Transaction Documents;
- (B) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement, are as set out in this Agreement; and
- (C) neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement).

35. INTEREST

Any amounts due but not paid in accordance with this Agreement shall bear interest at the prevailing rate of [*GON to insert relevant index for Nepalese Rupees*] plus [*five percent (5%)*] compounded monthly.

36. SEVERABILITY

Any provision of this Agreement which is held by a court or other competent authority to be invalid, void, unenforceable or against public policy, shall be ineffective to the extent only of such invalidity, voidness or unenforceability, without invalidating the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, acting through their duly authorised representatives, have caused this Agreement to be signed in ten (10) copies in the English language, at The Department of Electricity Development, 576-Bhakti Thapa Sadak (4), Thapagaon, Anamnagar, Kathmandu, Nepal on the date above written.

Signed on behalf of

Signed on behalf of

Government of Nepal

The Company

(.....)

(.....)

Director General
Department of Electricity Development

Kathmandu, Nepal

Witnessed by:

.....

Deputy Director General
Department Electricity Development

Kathmandu, Nepal

Witnessed by:

.....

SCHEDULE 1 – RESTORATION
SCHEDULE 2 – PROJECT HANDOVER

[SCHEDULE 3 – HANDOVER REQUIREMENTS]⁷

⁷**NOTE TO DRAFT:** To be completed by GON's technical advisers.

SCHEDULE 4 – TERMINATION PLAN

SCHEDULE 5 – TRANSFER PRICING

SCHEDULE 6- INSURANCE

SCHEDULE 7-PROJECT AREA

SCHEDULE 8 – POWER STATION SPECIFICATIONS

[SCHEDULE 9 – TRANSMISSION PRINCIPLES, PROVISIONS AND SPECIFICATIONS

SCHEDULE 10 – DESIGN STANDARDS

SCHEDULE 11-SITE REFERENCE CONDITIONS FOR PERFORMANCE TESTS

SCHEDULE 12-METERING SYSTEM

**[SCHEDULE 13 –GUIDELINES FOR THE PREPARATION OF THE LOCAL
PROCUREMENT AND DEVELOPMENT PLAN]**

[SCHEDULE 13-LOCAL PROCUREMENT AND DEVELOPMENT PLAN]

**[SCHEDULE 14 – GUIDELINES FOR THE PREPARATION OF THE EMPLOYMENT
AND SKILLS TRAINING PLAN]**

[SCHEDULE 14 – EMPLOYMENT AND SKILLS TRAINING PLAN]

**[SCHEDULE 15 – GUIDELINES FOR THE PREPARATION OF THE CORPORATE
SOCIAL RESPONSIBILITY PLAN]**

[SCHEDULE 15- CORPORATE SOCIAL RESPONSIBILITY PLAN]

**[SCHEDULE 16-GUIDELINES FOR THE PREPARATION OF THE REHABILITATION
AND RESETTLEMENT PLAN]**

[SCHEDULE 16–REHABILITATION AND RESETTLEMENT PLAN]

[SCHEDULE 17 –NEPAL BENEFITS PLAN]

**[SCHEDULE 17 – GUIDELINES FOR THE PREPARATION OF THE NEPAL BENEFITS
PLAN]**

**[SCHEDULE 18 – GUIDELINES FOR THE PREPARATION OF THE ENVIRONMENT
MANAGEMENT PLAN]**

[SCHEDULE 18- ENVIRONMENT MANAGEMENT PLAN]

[SCHEDULE 19- ENVIRONMENTAL IMPACT ASSESSMENT AND INITIAL ENVIRONMENTAL EXAMINATION]

[SCHEDULE 20 – KEY GUIDELINES]

[SCHEDULE 21–GUIDELINES FOR THE APPROVAL OF THE EXPORT PPA]

**SCHEDULE 22-GOVERNMENT APPROVALS, FORMAT AND INFORMATION AND
FINAL SCHEDULE OF GOVERNMENT APPROVALS**

[SCHEDULE 23 – KEY GUIDELINES]

SCHEDULE 24 – KEY PROJECT DOCUMENTS

SCHEDULE 25 – INTERNAL CORPORATE APPROVALS

SCHEDULE 26 – LIST OF CONSTRUCTION CONTRACTORS

SCHEDULE 27 – TRANSACTION DOCUMENTS

SCHEDULE 28 – REFINANCING

[SCHEDULE 29 PROJECT OVERSIGHT AND DUE DILIGENCE-HOLDING FOR POLICY APPROVAL