

# Model Project Development Agreement

Government of Nepal  
Ministry of Energy  
Department of Electricity Development

Kathmandu, Nepal  
April, 2010

*Note: This Model Agreement is endorsed and authorized by the Ministry of Energy, Government of Nepal. This model agreement is deemed to be generally sufficient. It may, however, be varied to meet the facts of a particular case as long as the variance complies with this Model Agreement. The Department of Electricity Development may require the Developer to justify any proposed variation from this Model Agreement*

## **PROJECT DEVELOPMENT AGREEMENT**

**THIS PROJECT DEVELOPMENT AGREEMENT** (hereinafter referred to as “the **Agreement**”) is entered into on [insert date] between:

The **Department of Electricity Development**, Ministry of Energy, on behalf of and with the requisite authority of the Government of Nepal, having its administrative office at [SPECIFY], Kathmandu, Nepal (hereinafter referred to as “**GON**”), and

[SPECIFY], a limited liability Company incorporated and registered under the Company Act, 2063 of Nepal, having its registered office at [SPECIFY], Nepal (hereinafter referred to as, the “**Company**”).

(Each of them being singularly referred to as a “**Party**” and collectively referred to as the “**Parties**”).

### **PREAMBLE**

#### **HAVING TAKEN INTO CONSIDERATION THE FOLLOWING:**

- A. The Government of Nepal (GON) desires to promote the development of sustainable hydropower projects on a Build-Own-Operate and Transfer (BOOT) basis under the Hydropower Development Policy, 2058.
- B. In this effort, GON has selected the Company in order to execute the [Specify Project]. A Memorandum of Understanding (MOU) to that effect was concluded on [Specify date] between the Parties in respect to the development of the Project. (if applicable)
- C. GON has (pursuant to the said MOU) granted a Survey License for the Generation and Transmission Line of [SPECIFY] Hydroelectric Project, located at [SPECIFY] to M/s [SPECIFY] upon receiving applications as per Electricity Act, 2049 and Electricity Regulation, 2050.
- D. The Company has agreed to develop the Project on the terms and conditions set forth herein and GON has agreed to support and facilitate the Company to plan, design, construct and commission the [SPECIFY], [Location] to generate electricity and shall own and operate the Power Station and [SPECIFY Transmission Line] before transferring it to GON on the expiry of the Generation License and Transmission License.

**NOW THEREFORE the Parties have agreed as follows:**

**1 GENERAL**

**1.1 Purpose**

This Agreement describes the main activities of the Project and outlines the key roles and responsibilities of the Parties. Each Party shall carry out its obligations under the terms and conditions set out in this Agreement, aimed at the execution of the Project. For the clarity, the Agreement shall be read together with the Annexes, which form an integral part of this Agreement.

**1.2 Definitions**

Wherever used and unless the subject or the context otherwise require, in this agreement, the following terms have the following meanings:

- |                    |  |
|--------------------|--|
| "Agreement"        | means this Project Development Agreement (hereinafter referred to as "PDA") between GON and the Company as amended, modified and supplemented from time to time in accordance with the terms hereof.   |
| "Business Day"     | means any Day on which the offices of GON are open.  |
| "Capacity Royalty" | means the royalty charged on the installed capacity of each generating unit at the Power Station pursuant to Section 10.5 of this Agreement  |
| "Change in Law"    | means the occurrence, after the date of issuance of the Generation License of any of the following events: <ul style="list-style-type: none"><li>a. a change in or repeal of an existing law;</li><li>b. a change in the application or interpretation of an existing law;</li><li>c. any Change in Law, which prohibits or limits the sale and purchase of electricity under this Agreement, including any prohibition or limitation of export of electricity out of Nepal; and</li><li>d. the imposition of a tax on the Company which the Company was not or would not have been obliged to pay as at the date of issuance of the Generation License.</li></ul> |

"Commercial Operation Date(COD)"	means the date specified in a certificate delivered by the Independent Engineer, as defined in the Power Purchase Agreement stating that all Units have satisfied and successfully demonstrated performance in accordance with the requirements of the Project.
"Contractor"	means the Construction Contractor, the O&M Contractor, any other direct contractors and/or any of their direct subcontractors appointed by the Company.
"Court"	means any court, tribunal or other judicial authority of Nepal having jurisdiction over the Company, the Project or any action or transaction contemplated thereby.
"Day"	means the twenty-four (24) hour period beginning at 00:00 hours Nepal Standard Time.
"DER"	means the Detailed Engineering Report of the Project prepared or to be prepared pursuant to the Survey License.
"Design Standards"	means compliance with standards for civil, electrical and mechanical works related to dam safety, design of waterways and power generation facilities including all of the electrical, mechanical and civil works of the Projects in accordance with the applicable version of international standards and International Electrotechnical Commission (IEC). Design standards for other related structures means the relevant standards of GON, or other available international standards.
"Dollar"	means the legal currency of the United States of America.
"EIA/IEE"	means the Environmental Impact Assessment or Initial Environmental Examination, as the case may be, of the Project conducted or the report on which to be prepared as part of the DER in accordance with the Environment Protection Act, 2053; Environment Protection Regulation, 2054; National Environmental Impact Assessment Guidelines, 2050; and other applicable laws, regulations and guidelines made thereunder.
"Energy Royalty"	means the royalty charged on generated electrical energy pursuant to Section 10.5 of this Agreement
"Equity Documents"	means collectively the documents evidencing subscription to the Company's equity capital to the

extent of equity component of cost of the Project.

“Financial Closure Date”	means the date on which the Financing Documents and Equity Documents have become effective, and the Company has access to the funds or financial assistance committed thereunder.
"Financing Documents"	means collectively the documents evidencing Lenders' commitment to finance the debt component of cost of the Project.
"Financing Parties"	means the lenders, export credit agencies, multilateral institutions, equity providers and others providing financing or refinancing to or on behalf of the Company for the development, ownership, operation and maintenance of the Project or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.
“Force Majeure Events”	means any unforeseeable and exceptional events or circumstances affecting the implementation of this Agreement by one or more Parties, which is beyond their control and cannot be overcome despite their reasonable endeavour, within the meaning set forth in Section 20.1
"Foreign Currency"	means any currency other than Nepalese Rupees.
"Foreign Exchange"	means Dollars or, in the case of non-availability of Dollars, any other denomination of currency acceptable to the Company and available to GON.
"Generation License"	means the license for the generation of electricity as amended or supplemented from time to time.
"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 practices in a hydropower project under conditions comparable to those applicable to the Project, consistent with applicable Laws and taking into account factors such as the use of hydroelectric technology and the relative size, performance, age and technology of the physical components of the Project.
"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.

"Government Approval"	means any Authorisation issued or required under any Law by or from GON or any GON Agency in connection with the Project.
"GWh"	means million kilowatt-hours.
"kW"	means kilowatt.
"kWh"	means kilowatt-hour.
"Law"	means any law, legislation, statute, rule, order, regulation, court decision or any interpretation thereof enacted, issued or promulgated in Nepal by any competent authority applicable to the Project.
"Lease Area"	means the area leased or to be leased by GON to the Company for the purposes of the Project pursuant to Section 5.6(a).
"Lenders"	means any lenders, export credit agencies, multilateral institutions and others providing financing or refinancing to or on behalf of the Company for the development, ownership, operation and maintenance of the Project or any portion thereof or any trustee or agent acting on behalf of any of the foregoing.
"MoEn"	means GON's Ministry of Energy
"Month"	means a calendar month according to the Nepali 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.
"MW"	means thousand kilowatt.
"MWh"	means thousand kilowatt-hour.
"Performance Security"	means a bond in the amount pursuant to Section 29.2 hereof in Dollars , which shall be in the form of an unconditional and irrevocable bank guarantee issued by a Nepalese bank or an unconditional and irrevocable bank guarantee of an international bank duly endorsed by a first category Nepalese bank, acceptable to GON.

"Power Station"	means the power station to be constructed as part of the Project including all structures, fixtures, fittings, plant, machinery and equipment associated with the power generation, details of which are set out in Annexure [Specify number] of this Agreement.
"PPA"	means the Power Purchase Agreement between the Company and [SPECIFY] concerning the sale and purchase of electrical power and energy from the Project.
"Project"	means the [SPECIFY] Hydroelectric Project as described in Annexure [Specify number] of this Agreement.
"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 high voltage transmission lines shall be constructed.
"Project Commissioning Date"	means the Unit Delivery Date of the electricity generating unit at the Power Station which is last to commence commercial operation.
"Project Road"	means all roads constructed by the Company within the Project Area.
"Rupees" or "NRs"	means the Nepalese currency.
"Security Package"	means any combination of, but not limited to, the following: <ul style="list-style-type: none"><li>(a) Project Development Agreement;</li><li>(b) Power Purchase Agreement;</li><li>(c) Generation License;</li><li>(d) O&amp;M Agreement, if any;</li><li>(e) Construction Contract;</li><li>(f) Shareholders' Agreement, if any;</li><li>(g) Financing Documents, mortgages and other security documentation;</li><li>(h) Escrow Agreement;</li><li>(i) Insurance Policies; and</li><li>(j) Transmission License</li></ul>

- "Survey License" means the License to conduct survey, study and investigation for the Production of Electricity, License number [SPECIFY] issued by GON on [SPECIFY] and License to conduct study and investigation for Transmission of Electricity, License number [SPECIFY] issued by GON on [SPECIFY] to the [SPECIFY].
- "Tax" means any tax, financial charge, impost, tariff, duty or fee of any kind charged, imposed or levied, directly or indirectly, by any GON Agency in Nepal applicable to the Company or the Project and includes any corporate income tax, value added tax, import duty, withholding tax (whether on dividends, interest payments, fees, equipment rentals or otherwise), property tax, excise duty, export duty, tax on foreign currency loans or foreign exchange transactions, registration or license fee, water tax, or environmental tax or any other non-tax.
- "Transfer Date" means the date following the last date of the validity of the Generation License.
- "Transmission License" means the License for construction of transmission line and transmission of electricity through it as amended or supplemented from time to time.
- "Unit" means any of the electricity generating turbine-generating units incorporated into the Project.
- "Unit Capacity" means, as to any Unit for any period [SPECIFY] MW or such other amount of net electricity generating capacity of such Unit as demonstrated by the performance tests conducted under the PPA for such Unit.
- "Unit Delivery Date" means for each Unit, the date declared by the Company to be the date on which such Unit is available for test generation at the Unit Capacity thereof, as such date is specified in a written notice given at least 15 (Fifteen) days in advance by the Company to [Specify name of Power Purchaser(s)].
- "UNCITRAL" means the United Nations Commission on International Trade Law.
- "Year" means each 12 (Twelve 12) months period commencing on 00:00 midnight on Chaitra end and ending on 00:00 midnight the following Chaitra end.

### **1.3 Interpretation**

In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or a reference to another instrument includes any variation or replacement of either of them;
- (b) 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;
- (c) a reference to statute, regulation, ordinance, code or other law is a reference to a statute, regulation, ordinance, code or other law of Nepal;
- (d) the singular includes the plural and vice versa;
- (e) one gender includes both either genders;
- (f) the word "person" includes a firm, a body corporate, an unincorporated association, a GON Agency ;
- (g) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assignees;
- (h) whenever a party hereto is to provide its consent or perform its duty or exercise its discretion or conduct any act, it shall do so acting reasonably and with due dispatch;
- (i) 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;
- (j) 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;
- (k) headings are for ease of reference only and do not affect interpretation;
- (l) the terms "including" and "include" mean including or include (as applicable) without limitation; and
- (m) in interpreting this Agreement, a construction that would promote the purpose or object underlying this Agreement must be preferred.

#### **1.4 Governing Law**

This Agreement shall be interpreted, construed and governed by the Laws in force in Nepal.

#### **1.5 Scope of Coverage**

- (a) This Agreement applies to all investments by the Company, whether the investment is made before or after the entry into force of this Agreement.
- (b) This Agreement applies to any measure adopted or maintained by a Party before or after the entry into force of this Agreement.
- (c) This Agreement applies to measures taken by GON Agency.
- (d) This Agreement, however, does not create retroactive obligations or responsibilities for the Company. The Company, who is not in compliance with ongoing obligations and responsibilities, shall seek to enter into compliance as soon as possible, and within 90 days of the entry into force of this Agreement.

#### **1.6 Minimum International Standard**

GON shall accord to the Company or its investments treatment in accordance with customary international law, including fair and equitable treatment. It shall accord non-discriminatory treatment with respect to measures it adopts or maintains.

#### **1.7 Transfer of Assets**

GON shall permit all transfers relating to an investment freely and without delay. Such transfers shall include:

- (a) profits, dividends, interest, and other fees and amounts derived from the investment;
- (b) proceeds from the sale of energy all or any part of the investment;
- (c) payments made under a contract entered into by the Company or its investment, including payments made pursuant to a loan agreement; and
- (d) payments arising under any dispute settlement process.

Notwithstanding paragraph (b) and (c), GON may restrict transfers or returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement.

## **1.8 Scope of Project**

The Project shall be executed on the site, which is described in Annexure [Specify number] of this Agreement. The Scope of the Project shall include performance and execution by the Company of all design, engineering, financing, procurement, construction, completion, operation and maintenance of the Project as described in Annexure [Specify number] of this Agreement. It shall include the performance and fulfilment of other obligations by the Company under this Agreement. The Company shall undertake its obligations at its own cost and risk.

## **1.9 Financial Closure**

- a) The Company shall accomplish its Financial Closure within 18 (Eighteen) months, [SPECIFY Financial Closure Date) after the signing of this Agreement. In case of the failure of the the Company to accomlsh Financial Closure within the foregoing date, the Company shall provide to GON detailed reasons within 1 (One) month as to why the target date was not achieved. If GON, acting reasonably, is satisfied with the detailed reasons, then the target date shall be extended further 6 (Six) months.
- b) The Company shall, promptly after Financial Closure, provide GON with evidence that Financial Closure Date has occurred and a copy of each Financing Document.

## **1.10 GON's Initial Obligation**

Subject to and in accordance with the terms and conditions set forth in this Agreement, GON shall grant to the Company:

- (a) All material Government Approvals and permits including the license and authority for Generation and Transmission of Electricity within 45 (Forty five) days upon receipt of a completed application from the Company for the Project; and
- (b) All exclusive rights of access to, use and possession of the Project Area therewith save and except as expressly permitted in the respective Licenses to implement the Project.

## **2 CONDITION PRECEDENT**

The rights and obligations of the Company under this Agreement are subject to the satisfaction in full of the following conditions precedent to be fulfilled on or before Financial Closure Date unless any such condition has been waived as provided elsewhere in this Agreement:

- (1) The Company shall apply for the Generation License within the valid period of the Survey License.

- (2) Certified copies of all Project related agreements including the Financing Documents and Equity Documents have to be delivered by the Company to GON.
- (3) The Company shall promptly notify GON of the PPA after it is finally concluded, providing a copy of each signed PPA. The Company shall promptly notify GON of any variation, modification or replacement to the PPA.
- (4) The Performance Security in full has been provided by the Company to GON in accordance with Section 29.2.
- (5) Certified copies of all resolutions adopted by the Board of Directors of the Company authorizing the execution, delivery and performance by the company have to be delivered by the Company to GON.
- (6) Subject to the provisions of this Agreement, the Company shall have been granted all required permits, approval and licenses in connection with the Project, including right of way from public roads to the site and permission to enter upon and utilize the site for the construction pursuant to and in accordance with this Agreement.

The Company shall make all reasonable endeavours to procure the satisfaction in full of the Conditions Precedent set out in this Section and GON shall make all reasonable endeavours to procure fulfilment of the conditions set forth in Section 1.10.

### **3 DER AND EIA/IEE**

#### **3.1 Detailed Engineering Report (DER)**

The design of the Project is the responsibility of the Company under this Agreement. The design shall be as per Design Standards, including that the Facility should be fit for its purpose in accordance with 'Good Electricity Industry Practice' and carried out to the specified level of skill, care and diligence such that the facility is designed, except the replaceable electrical and mechanical components that undergo wear and tear, to achieve useful life of:

- (i) 100 (One Hundred) years for all civil works creating reservoir such as storage dam spillway, etc., and/or diversion weir/barrage/dam.
- (ii) 50 (Fifty) years for all other civil works.

#### **3.2 Environmental Impact Assessment (EIA)/Initial Environmental Examination(IEE)**

The EIA/IEE of the Project as a result of infrastructures including, but not limited to, such as access road, power house, embankments, tunnels or canals, headworks, camps, quarries muck disposal, spoil banks, transmission lines and sub-stations shall be conducted and complied with the requirements of applicable Laws and Regulations. Provision shall be made to release such quantum of water which is higher of 10 (Ten) percent of the monthly average discharge of the river or the minimum required as

stipulated in the EIA/IEE report in natural watercourse downstream of the dam or the diversion structures. While preparing EIA/IEE report, the company shall also refer the Guidelines of International Financial Agencies, Donors and Lenders. The executive summary of the EIA/IEE report shall be produced both in English and Nepali languages. The EIA/IEE will be approved by GON, provided such assessment complies with the requirements of applicable Laws and Regulations like Environment Protection Act, 2053; Environment Protection Regulation, 2054 and National Environmental Impact Assessment Guidelines, 2050; other applicable laws, regulations and guidelines made thereunder.

- (a) The approved EIA/IEE Report is to be an integral part of the detailed design, construction, commissioning, operation and maintenance of the Project.
- (b) The Company shall use reasonable endeavours to ensure that the Project is executed with due regard to ecological, environmental and social factors.
- (c) The Company shall comply with and promptly rectify any non-compliance with the environmental, occupational, health and safety requirements detailed in the approved EIA/IEE report.

#### **4 ESTABLISHMENT OF COMMITTEE AND TASK FORCE**

##### **4.1 Establishment of a Project Coordination Committee**

GON shall form a Project Coordination Committee as set forth below to coordinate with concerned agencies, provide facilities and conduct necessary works for the development and operation of the Project.

Minister for Energy	Chairman
Minister of State for Energy	Deputy Chairman
Secretary, Ministry of Energy	Member
Secretary, Ministry of Finance	Member
Secretary, Ministry of Environment	Member
Secretary, Ministry of Home	Member
Secretary, Ministry of Land Reform and Management	Member
Secretary, Ministry of Forest	Member
Secretary, Ministry of Industry	Member
Director General, DoED	Member-Secretary

##### **4.2 Establishment of Project Task Force**

- (a) GON shall establish a Project Task Force (the "Task Force") in accordance with this Section within 30 (Thirty) days from the signing of this Agreement. The working procedures of the Task Force may be prescribed by the committee

established under Section 4.1 of this Agreement and notification to that effect shall be communicated to the Company.

- (b) The Task Force will comprise senior Technical and Professional representatives from relevant ministries of GON and coordinated by Member Secretary of the Project Coordination Committee (Director General, DoED) formed under Section 4.1.
- (c) The main objective of the Task Force is to facilitate and expedite communication and to facilitate and expedite the process for the making of decisions affecting the Project by the relevant ministries, and GON shall ensure that the Task Force meets and performs expeditiously to most effectively achieve the objectives.
- (d) The Company may appoint 1(One) person (and at its discretion, any substitute) as an observer to communicate with and participate in the operations of the Task Force. The observer shall be present at all meetings of the Task Force and the Task Force shall notify the observer (other than in an emergency) at least 7(Seven) days in advance of such meetings.

#### **4.3 Grant of Government Approvals**

Subject to the provisions as mentioned under Section 1.10 of this Agreement, GON shall grant all required Government Approvals to the Company and/or the Company's contractors and sub-contractors (as the case may be) which are required for the Project (including securing tenure or lease for the Project Area) as and when they are necessary or requested by the Company.

#### **4.4 Generation and Transmission License**

- (a) The Generation License will be for a period of 35 (Thirty Five) years for domestic project and 30 (Thirty) years for export oriented project from the date of issuance of the License in accordance with the Electricity Act, 2049 and Electricity Regulations, 2050;
- (b) GON shall confer on the Company through the Generation License the right of the uninterrupted flow of the [Specify] River to the Project. GON shall not issue, and shall ensure that no GON Agency issues, any other License or permit for use of the water in the catchment area that substantially impairs the flow of such water.
- (c) The Transmission License issued to the Company shall be for a period for which the Generation License remains valid.

#### **4.5 Local Government Approvals**

GON shall, if requested by the Company, provide assistance to the Company in its discussions with GON Agencies (including local bodies such as district and village

development committees and municipalities) for obtaining any necessary license, consent, permit, authorization or approval in connection with the Project.

#### **4.6 Communications Permits**

- (a) GON shall, in accordance with prevailing laws, issue necessary permits to the Company to import, install and use suitable radio communication systems including satellite communication equipment and "walkie-talkies" during the construction phase of the Project as well as during regular operations as required to maintain contact internally within the Project as well as externally to existing and future systems.
- (b) Any system connecting with either the national telecommunications system or directly with any international system shall be subject to approval from the Ministry of Communications or any other related GON Agency.

#### **4.7 Explosives**

GON shall assist the Company in making the necessary arrangements under prevailing Laws and Regulation with relevant GON Agencies to obtain permission to import, transport, store and use explosives as are required for the Project construction work at the Project site.

#### **4.8 Security**

The Company shall itself carry out arrangements for the Project Security; and if necessary, upon request from the Company along with special reason, GON will make necessary arrangements for particular type of security during the term of the Generation License. The Company shall bear all the expenses incurred for such security.

### **5 LAND AND WATER**

#### **5.1 Strategic Plan**

- (a) The Company shall develop a strategic plan for land acquisition in compliance with the Land Acquisition Act, 2034, to ensure satisfactory and timely resettlement and compensation where necessary within the Project Area.
- (b) GON will assist (Project Company) with its obligations under Clause (a) above, including negotiation to procure private land and immovable property.

#### **5.2 Acquisition, Compensation and Resettlement**

- (a) The Company shall carry out arrangements to resettle and rehabilitate persons or families to be displaced from personal property and land which is acquired through GON in accordance with prevailing Acts and Regulations.

- (b) For the land and houses directly acquired by the Project Company, it shall be responsible to arrange resettlement and rehabilitation of the people to be displaced. The resettlement and rehabilitation program shall be conducted in an integrated way and comply with provisions of approved EIA/IEE report.
- (c) GON shall provide administrative coordination and assistance needed while implementing the resettlement and rehabilitation program, and the Company shall bear the cost associated with it.
- (d) The resettlement and rehabilitation program shall be prepared in such a way that the living standard and the earnings of the affected persons or families should not be lower than previous to commencement of the Project.
- (e) The Company shall bear all costs associated with resettlement and rehabilitation program of the Project.
- (f) The Company will prepare formal arrangements for resettlement or compensation of persons affected by the Project before construction works the Project begins. Where such resettlement or compensation is not resolved by the Company with such affected persons within reasonable time, GON will, under prevailing Law, compulsorily acquire such land and property as may be required by the Company for the Project and the Company shall pay compensation for the land and property so acquired. The amount of compensation will be determined by the district compensation committee formed according to the Land Acquisition Act, 2034.

### **5.3 Local Share**

The Company, depending upon capacity of the Project, shall allot a maximum 10 (Ten) percent equity share of the Project to the resettled and rehabilitated people, people residing permanently in Village Development Committees or Municipalities of the Project site during initiation of construction activities of the Project, if these peoples so desire .

### **5.4 GLOF Early Warning System**

The company agrees to conduct a study, at its costs, of the potential effects to the Project of a glacier lake outburst flood (“GLOF”), if any. Upon completion of such study, the report shall be submitted to GON and if GON 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 system.

### **5.5 Electrification and Free Energy to Local Residence**

The Company shall carry out electrification of households within a periphery of 500 (Five Hundred) metres from the power house site and dam site. The company shall also be required to supply 20 (Twenty) Units (kWh) of electricity per month for each family residing in the area free of cost.

## **5.6 In respect of Land and Water**

- (a) If the land is already owned by GON, the land shall be made available on lease, with either a reasonable annual rent or such other rent as may be required by applicable Law, for the period of the Generation License, for land needed for permanent use, or for such shorter period as may be necessary for temporary use.
- (b) In respect of land and water owned by GON, GON shall provide to the Company, its employees, contractors, subcontractors and advisers unrestricted access to forest land, riverbeds, river banks and water, in order to:
  - (i) construct and use all necessary buildings and other structures, roads, ropeways, rail lines and transmission lines;
  - (ii) open tunnel audits and dump spoil from tunnels in mutually agreed designated areas;
  - (iii) lay pipelines to take water from springs;
  - (iv) during the construction period, open quarries, take out or deposit stone, sand and earth thereon; and
  - (v) perform any other activity necessary for the construction, operation and maintenance of the Project and the generation of energy from the Project.

While performing above activities, the Company shall comply with the approved EIA/IEE report.

GON shall not charge any payment other than leasing charge in case of GON owned land for activities permitted pursuant to Section 5.6(b) in respect of the Lease Area, nevertheless, the Company shall pay any charges imposed pursuant to the Forest Act, 2049, and the Forest Regulations, 2050, with respect to any forest area used by the Company. The Company may exclude any person from areas to which the Company has access under this Section, where necessary or desirable in the interest of safety.

## **5.7 Transmission Line**

If GON, pursuant to Section 20 of the Electricity Act, 2049, specifies that the transmission line built and owned by the Company is a national transmission line or part of the national grid of Nepal, then GON or its duly appointed authority shall enter into a separate agreement with the Company with respect to the terms and conditions for the use of such transmission line prior to the time of such action, provided that the Company shall at all times have priority use of such transmission line.

## **5.8 Roads to Project Site**

- (a) GON shall make available to the Company all existing public roads.

- (b) GON shall allow the Company, its employees, contractors, subcontractors and advisers the use of existing public roads for necessary transport in connection with the construction and operation of the Project, including without any cost to GON the right to modify, improve and strengthen roads and bridges, temporarily or permanently, as may be necessary for transport of heavy equipment.
- (c) The Company shall repair or cause to be repaired any damage to existing roads or bridges caused by the Company's use in such manner as to ensure that any such damaged roads or bridges are returned to substantially the same condition they were in immediately prior to such damage. The Company shall use reasonable efforts to minimize the obstruction of traffic during any repair contemplated by this paragraph.
- (d) GON shall allow the Company, its employees, contractors, subcontractors and advisers to construct temporary and permanent roads, tracks, bridges and ropeways as required within the Project Area to permit the mobilization of heavy construction and power equipment. Such facilities shall be constructed, and such temporary facilities shall be dismantled and disposed of, by the Company in accordance with section 24 of the Electricity Act, 2049, the environmental conditions provided in the Generation License and Transmission License and all other applicable environment laws. The Company shall obtain the prior consent of GON for these construction works within forest areas as referred to in the Forest Act, 2049 and the Forest Regulations, 2050.

## **5.9 Project Area**

The Company shall have control over access to the Project sites including the dam or diversion structure, Power Station, reservoir and its foreshore and the use of all Project Roads, with the authority to restrict access and use to personnel authorized by the Company in the interests of safety. The Company shall allow local residents free and unfettered access to the reservoir and its foreshore, other than the area restricted for safety.

## **6 USE OF LOCAL RESOURCES AND SERVICES**

### **6.1 Use of Local Resources, Institutions and Human Resources and National Product and Services**

The Company, as much as possible and to the extent qualified, shall use and maximize the use of, the available local skills and labour crafts, local institutions including, but not limited to, community based organizations, non-governmental organizations, consulting firms, professionals, individuals, contractors, suppliers and national products and services for the development and operation of the Project pursuant to the Labour Act, 2048, and the Labour Regulations, 2050. The Company is entitled to determine all human resource procedures required to administer these services.

## **6.2 Technology and Training**

- (a) Throughout the construction, operation and maintenance of the Project, the Company shall perform the transfer of technology and skills for the purposes of Section 6.8 of the Hydropower Development Policy, 2058, through the systematic job-related training of local personnel engaged by the Company and through the introduction of modern management methods and practices in accordance with prudent utility practice.
- (b) The Company shall employ Nepalese citizens to the extent possible to receive the transfer of technology and skills as referred to in Section 10.2(a) and shall ensure that, to the extent possible, its contractors and subcontractors also employ Nepalese citizens, where qualified.
- (c) The Company acknowledges that the objective of the transfer of technology and skills as referred to in Section 10.2(a) is to build the technical and managerial competence of local personnel, and to establish a system for quality management in hydropower design, construction, operation and maintenance.
- (d) For the purpose of transfer of technology, MoEn/DoED may send on deputation of its 3 (Three) technical personnel to the Company during the construction of the Project. Such personnel shall work in association with Project Company's technical experts and their general guidance. MoEn/DoED shall pay the basic salary and other entitlements to such personnel as per the rules of GON while the Company shall provide hardship and other allowances comparable to the similar allowances to the Project Company's personnel.

## **7 PROCUREMENT AND ENTRY REQUIREMENTS**

### **7.1 Port of Entry and Transport Arrangements**

- (a) GON will facilitate the import of plant, construction materials and equipment required for the Project at the point of entry into Nepal and their transportation to the Project Area.
- (b) GON will issue all necessary import Licenses for plant, construction materials and equipment imported for the purposes of the Project.

### **7.2 Fuel**

In the event of shortage in the supply of fuel during construction of the Project, GON shall use its best endeavours to ensure the supply of fuel during construction of the Project on a priority basis.

### **7.3 Visas**

- (a) GON shall issue appropriate visas and permits in accordance with Applicable Laws to expatriate personnel and their dependents, whom the Company recommends and the GON considers, are needed in Nepal in connection with the Project.
- (b) The Company shall furnish to GON, to the extent possible, prior notifications and details, including timing, job description and qualifications of the personnel to be assigned to the Project.

## **8 INFRASTRUCTURE**

GON will facilitate the construction and operation of the Project, and in particular the following infrastructure requirements, which the Company will construct at its own cost:

- (a) education facilities;
- (b) medical and emergency medical evacuation facilities; and
- (c) a helipad or a landing strip.

## **9 REPATRIATION**

### **9.1 Export (If Applicable)**

The Company intends to export energy generated by the Project to [Specify Name of Country] pursuant to PPAs to be negotiated with [Specify]. In case some portion of energy is sold in Nepal, the GON will provide Foreign Currency exchange facilities in proportion to the investment in foreign currency in the Project.

### **9.2 Foreign Currency and Repatriation**

In accordance with Section 13 of the Electricity Act, 2049, GON will, on request by the Company, provide or will ensure the availability of, all necessary Foreign Currency at prevailing market rates of exchange, and will permit at no charge in accordance with the Foreign Investment and Technology Transfer Act, 2049, the repatriation of monies received from time to time by the Company, from the sale of energy in Nepal.

## **10 TAXES AND ROYALTIES**

### **10.1 Income Tax Exemption**

Full Income Tax for a period of 7 (Seven) years from the COD and thereafter, 50 (Fifty) percent of the Income Tax for additional 3(Three) year shall be waived, provided

however that the project reaches COD before end of Chaitra 2075 BS in accordance with Section 11(3d) of Income Tax Act, 2058.

## **10.2 Tax Depreciation of Project Costs**

- (a) The Company will be entitled to depreciate any item of plant, machinery or equipment procured during the construction period by Reducing Balance Method each year from the date of commissioning of the item over the term of the Generation License and Transmission License.
- (b) The Company may adjust its taxable income by amortising all Project costs and expenses in accordance with Income Tax Act, 2058 (including all costs and expenses incurred in providing the principal features of the Project and interest and finance charges capitalized during the construction period).

## **10.3 Value Added Tax**

- (a) GON shall ensure that the value added tax payable on the Project contract by the Company shall not be levied on the value of the plants, machinery, equipment, and their spare parts and the steel used to fabricate penstock pipes, which will be permanently used in the Project, in accordance with Section 5(3), Schedule 1 (no. 21) and Section 7(2), Schedule 2 (no. 7) of Value Added Tax Act, 2052.
- (b) GON may inspect the inventory records for the goods and materials to satisfy itself that they are being used exclusively for the Project.

## **10.4 Customs and Import Duties**

- (a) GON shall provide an exemption from import license fees and value added tax and impose customs duty of 1(One) percent on plant, machinery and equipment including spare parts imported into Nepal for the purpose of the Project (in accordance with Section 12(7) of the Electricity Act, 2049.
- (b) 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 3 (Three) months from the date of Project commissioning, and no import License fees, value added tax or customs duty shall be levied by GON on such items. If required by GON, the Company shall lodge a bank guarantee for this facility for the amount of the import License fees, value added tax and customs duty, GON shall promptly release the bank guarantee on receipt of confirmation that the items have been re-exported.
- (c) 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 Projects and it is agreed that the list may be revised every 6 months, if required.

## 10.5 Royalties Payable to GON

Energy Royalty and Capacity Royalty shall be paid by the Company to GON as set forth below:

Serial No.	Type	Up to 15 years from COD		After 15 years from the date of COD	
		Annual base capacity royalty, per kW	Energy royalty	Annual base capacity royalty, per kW	Energy royalty
1	Export oriented run-of-river Project	Rs. 400/-	7.5%	Rs. 1,800/-	12%
2	Export oriented storage Project	Rs. 500/-	10%	Rs. 2000/-	15%

*Note: Related Chart for royalty payment will be added as per the requirement*

Note:

The following formula shall be used to work out the energy royalty and the capacity royalty:

$$\text{Energy royalty} = (\text{Generated energy} - \text{Self consumption}) \times \text{Average Selling Price} \times \text{Energy Royalty Rate.}$$

$$\text{Capacity royalty} = \frac{\text{Base Capacity Royalty Rate}}{\text{Generation Licensed obtained}} \times (1+0.05)^{(\text{Year of royalty payment} - \text{Year of})} \times \text{Installed capacity (kW)}$$

Royalty payments shall be paid to GON in the currency in which the PPA has been concluded and made as follows:

- i. Capacity Royalty shall be paid quarterly in advance, irrespective of energy generation. The first such quarterly payment shall be paid within 30 (Thirty) days of the first Unit Delivery Date and shall thereafter be continued to be paid on or before the same dates every year throughout the period of Generation License.
- ii. Energy Royalty shall be paid quarterly in arrears on the same date as the Capacity Royalty is paid, other than on the first payment date for the Capacity Royalty.
- iii. Energy Royalty shall be applicable from the Commercial Operation Date (COD).

Energy Royalty shall not be payable by the Company to GON in respect of the energy to be provided by the Company to GON free of charge pursuant to Section 12.1 hereof.

## 10.6 Land Tax

The Company shall pay land tax for any land procured by the Company at the rates prevailing at the time of the issuance of the Generation License.

## **10.7 Bonus and Housing Facilities**

The Company shall allocate 2 (Two) percent of its taxable income in every fiscal year and distribute to its workers and staff as a bonus. However, the distributed bonus shall not exceed the yearly salary paid to the worker/staff. The company shall establish a Staff Welfare Fund and the remainder of the bonus after distributing to its workers and staff shall be deposited in this fund and the Central Welfare Fund in proportion prescribed by the prevailing Labour Act. The Staff Welfare Fund shall be operated with criteria set up by the Project Company.

The Company shall arrange accommodation /facilities to its workers and staff.

## **10.8 Local Taxes**

GON shall assist the Company in discussions with local bodies regarding the payment of local Taxes for local construction materials such as stone, gravel, sand, clay and the like and tolls for all goods, plant, materials and equipment transported to the Project Area in order to ensure that the effect of such Taxes and tolls is fair and equitable.

## **10.9 Registration Fees**

A registration fee of 0.0001(Decimal point Zero Zero Zero One ) percent 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.

# **11 PROJECT DEVELOPMENT**

## **11.1 Responsibilities of the Company**

- (a) The Company will be solely responsible for:
  - i. planning, scheduling, monitoring, reporting and cost control;
  - ii. procedures for drawings, specifications and technical documents to be prepared by contractors, subcontractors, equipment manufacturers and other person;
  - iii. conceptual construction contract packages for turnkey implementation, and project management and administration procedures;
  - iv. arranging financing for the Project;
  - v. site supervision;
  - vi. quality assurance;

- vii. obtaining performance guarantees by equipment suppliers of individual equipment items;
  - viii. monitoring overall performance of the Project; and
  - ix. liaising between GON and the Company's employees, contractors, subcontractors and advisers.
- (b) During construction of the Project, the Company shall submit semi-annual reports to GON in accordance with the Electricity Regulations, 2050 and shall submit progress report at every 3 (Three) months.
- (c) GON shall deal exclusively with the Company in making arrangements for providing all rights granted under this Agreement to the Company's employees, contractors, sub-contractors and advisers

### **11.2 Submission of Documentation**

- (a) The Company shall at its own cost submit 3 (Three) hard copies of the design drawings, construction drawings, as built drawings and other engineering details to GON. In addition, the Company shall provide operation & maintenance manuals and digital copy of 'as built drawings' free of cost.
- (b) Technical and professional officials of GON; any person authorized by the Law; office bearers of any electricity regulatory commission, a panel of experts; personnel of Project Compensation Committee, Project Task Force and Project Coordination Committee may inspect the Project works to satisfy themselves that the work is being performed in accordance with the Generation License, the Transmission License and Good Electricity Industry Practice.
- (c) It is responsibility of the Company to inform GON of any material changes in the design, construction or engineering details within a reasonable time if any such change is made.

### **11.3 GON Assistance and Costs (If Applicable)**

GON agrees to make available to the Company all available documents, data, information and all other reports and papers relevant to the study of the Project including copies of all investigations and studies carried out since the inception of the Project, to enable the Company to use this information in the best interest and exclusively for the survey, investigation, preparation of the DER and development of the Project. The cost and the cost recovery modality by GON of such study reports, documents and the like supplied by GON to the Company shall be mutually agreed at the time of concluding this Agreement.

### **11.4 Insurance**

- (a) The Company shall during construction of the Project maintain appropriate levels of insurance as required for projects of this nature.
- (b) The Company shall be responsible for insuring the Project against all risks (for which insurance is available on reasonable commercial terms) during operation of the Project.
- (c) The Company shall be responsible for developing, monitoring and controlling an insurance program for all insurances required for the Project.
- (d) The Company shall provide GON with copies of all policies of insurance or policy certificates taken out and maintained under this Section 11.4.

## **12 FREE ENERGY AND SALE OF ELECTRICITY ( IF APPLICABLE)**

### **12.1 Power and Energy to GON**

The Company, exporting power and energy outside of Nepal, shall design the Project to enable GON to take a supply of energy, as set forth below in (a) and (b), from the Project into Integrated Nepalese Power System (INPS). The terms and conditions (such as Metering, Schedules, Dispatch, Outages, etc.) of the connection shall be mutually agreed upon in a Separate Agreement which shall form an integral part of this Agreement.

- (a) The Company shall at its own cost deliver [Specify percentage] of power and energy generated from the Power Station free of charge to GON from power house. The switchyard infrastructure for such supply of power and energy to GON shall be constructed, operated and maintained by the developer at free of cost.
- (b) In case GON expresses its desire to purchase electricity from the Company at the time of concluding this Agreement, the Company shall sell GON or its designated agency maximum of 10 (Ten) percent of power and energy generated at the Power Station to meet domestic demand. The Company shall be responsible to deliver the energy from power house. The switchyard infrastructure for such supply of power and energy to GON shall be constructed, operated and maintained by the developer at free of cost.
- (c) Payment

The Company shall be paid for the energy delivered to meet domestic demand pursuant Section 12.1 (b). The price and mode of payment shall be mutually agreed upon at the time of concluding the Separate Agreement as set forth in this Section.

## **13 OPERATION AND MAINTENANCE**

### **13.1 Procedures, Manuals and Reports**

- (a) The Company shall develop, prepare and update as necessary from time to time, procedures, manuals and drawings for the safe and efficient operation and maintenance of the Project.
- (b) The Company shall provide 3 (Three) hard copies of all procedures, manuals and drawings prepared under paragraph (a) to GON within 90 (Ninety) days after Project Commissioning.
- (c) During the operation and maintenance of the Project, the Company shall submit to GON annual reports including audit report and operation and maintenance details in accordance with the Electricity Regulations, 2050.

### **13.2 Power Station Operating Arrangements**

- (a) The Company shall ensure that the Project is developed and operated with Good Electricity Industry Practice.
- (b) The Company may engage substitute qualified entities or organizations to collaborate in the operation and maintenance of the Project with prior notice to GON/ DoED.

## **14 PROJECT HANDOVER**

The Company shall operate and maintain the Project in accordance with Good Electricity Industry Practice until the expiration of the Generation License and Transmission License. Upon the expiration of this Agreement, the Project (together with all applicable manuals and technical documents, Permits and Project Rights) shall promptly be duly transferred in good running condition to GON or its designee, free of cost and without any liabilities whatsoever to GON, and the Company shall be wound-up and dissolved in accordance with its corporate enabling documentation, including its Articles of Association.

### **14.1 Training Prior to Project Transfer**

Two year prior to the date on which the Project is to be transferred to GON (hereinafter referred to as the “**Transfer Date**”), the Company shall arrange for the training at its own cost, of a sufficient number of staff of GON or designated entity for GON to enable them to operate and maintain the Project and Project Facilities after GON has obtained ownership of the same.

### **14.2 Transfer Free of All Liens**

On the Transfer Date, the Company shall transfer or cause to be transferred the ownership of the Project and Project Facilities to GON (and shall execute such documents as may reasonably be considered necessary to effect such transfer) free from any and all Environmental Liabilities and all Liens and encumbrances other than Permitted Liens and without the payment of any compensation to the Project Company, together with all of its right, title and interest in and to the fixtures, fittings, spare parts, plant and equipment (including test equipment and special tools and vehicles used in plant management and operation) and all improvements comprising the Project.

### **14.3 Operating Manuals and Other Materials**

On the Transfer Date, the Company shall also deliver or cause to be delivered to GON such operating manuals, operation summaries/transfer notes, design drawings, historic operating and maintenance records and other information as may reasonably be required for the operation, maintenance and rehabilitation of the Project and Project Facilities to become the responsibility of GON. The Company shall arrange the maintenance schedule for the Project and Project Facilities so that any and all major overhauls of the Project that are then required to have been performed are completed before the Transfer Date.

## **15 ASSIGNMENT AND MORTGAGE**

### **15.1 Assignment and Mortgage by the Company**

- (a) 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 bank or financial institution (whether domestic or international) providing financing for the Project.
- (b) Upon an assignment or transfer under paragraph (a), 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.
- (c) The Company shall promptly give GON written notice of any assignment or transfer under paragraph (a) and GON shall promptly acknowledge in writing such assignment.

- (d) The Company may mortgage or otherwise give security over its assets and undertaking including any lease, License or other interest granted by GON pursuant of this Agreement to any bank or financial institution (whether domestic or international) providing financing for the Project.

## **15.2 Assignment by GON**

GON may assign or transfer its rights or obligations under this Agreement to any official or entity.

## **16 VALIDITY**

This Agreement becomes effective upon the issuance of the Generation License of the Project and shall terminate on the expiration of the Generation License and the Transmission License unless terminated earlier pursuant to the provisions of this Agreement.

## **17 COMPLIANCE WITH LAW**

The Company and its employees, together with their contractors and sub-contractors involved in the Project shall abide by the Laws of Nepal.

## **18 RESOLUTION OF DISPUTES**

For the purpose of this Section, the term “Dispute” shall mean any dispute, discrepancy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, breach or termination. The Parties shall use their best efforts to resolve any differences of opinion in the interpretation or application of this Agreement in an effective and timely manner.

### **18.1 Dispute Resolution by Consultation**

Should issues remain outstanding, the following procedures shall be adopted to resolve through direct discussions and collaboration between the Parties:

- (a) Each of GON and the Company shall designate in writing to the other Party a representative who shall be authorized to resolve any dispute or difference arising out of this Agreement in an equitable manner.
- (b) The Parties agree to attempt to resolve all disputes or differences promptly, equitably and in a good-faith manner.
- (c) The Parties further agree to provide each other with reasonable access during normal business hours to any and all records, information and data pertaining to any such dispute or difference other than any confidential communications between any Party and its legal advisers or any such records, information or data which any Party has agreed with any third Party to keep confidential.

- (d) If a Party (the "Notifying Party") wishes a dispute or difference under this Agreement to be settled under this Section, it must give the other Party notice of the dispute or difference. Within 15 days of receipt of such notice, the other Party's designated representative must commence discussions with the Notifying Party's designated representative to attempt to resolve the dispute or difference in accordance with paragraph(b)
- (e) If the designated representatives are unable to resolve a dispute under this Agreement within 90 (Ninety) days of the Notifying Party giving a notice under paragraph (d), such dispute shall be referred to arbitration in accordance with Section 18.2.

## **18.2 Dispute Resolution by Arbitration**

- (a) In the event that the parties are unable to resolve any dispute or difference between the Parties pursuant to Section 18.1, then such dispute or difference shall be settled exclusively and finally by arbitration irrespective of the magnitude of the dispute or difference, the amount to which the dispute or difference relates or whether such dispute or difference would otherwise be considered justifiable or suitable for resolution by any court or arbitral tribunal.
- (b) This Agreement and the right and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.
- (c) Arbitration shall be conducted in accordance with the Rules of Arbitration of UNCITRAL as in force at the time of registration of the dispute.
- (d) The Arbitral tribunal shall consist of 3 (Three) arbitrators. Each Party shall appoint one arbitrator for each arbitration, and the third arbitrator shall be appointed by the London Court of International Arbitration ("LCIA") in accordance with the Arbitration Rules of the LCIA. No arbitrator shall be a present employee or agent of, or consultant or counsel to, either Party or any affiliate of either Party.
- (e) Arbitration shall be conducted in Kathmandu, Nepal.
- (f) The language to be used in each arbitration shall be English, and all written documents to be provided in each arbitration shall be in English.
- (g) Any decision or award of an arbitral tribunal appointed pursuant to this Section shall be final and binding upon the Parties. GoN and the Company agrees that a judgment upon any arbitration award may be entered as a judgment in any court of competent jurisdiction.
- (h) The fee of each arbitrator and the cost of the arbitral proceedings shall be borne by the Parties in accordance with the UNCITRAL Rules of Arbitration.

## **19 CONFIDENTIALITY AND INFORMATION**

### **19.1 Disclosure of Confidential Information**

Each Party shall not divulge any trade, commercial or technical secrets or confidential matters, reports, documents, data, information (including the DER) of another Party to any third Party except:

- (i) as required by law;
- (ii) with the consent of such other Party;
- (iii) to such of its officers, employees and those of its related bodies corporate as need to know of such matter for the ordinary business purposes of the Party, provided that it must also use its best endeavors to ensure that all matters divulged are kept confidential;
- (iv) to any of its consultants, banks, financiers, insurers or other advisers; or
- (v) to any accountant or legal adviser;

### **19.2 Provision of Information**

Each of the Parties shall provide to the other Party within a reasonable time of a request 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.

## **20 FORCE MAJEURE**

### **20.1 Definition of Force Majeure Event**

"Force Majeure Event" shall mean an event occurred in Nepal of any Non-Political Event, Indirect Political Event or Political Event as defined hereinafter, which prevent the Party claiming force majeure referred to as the Affected Party from performing its obligations under this Agreement and which act or event (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome by the exercise of due diligence and reasonable efforts, skill and care consistent with Good Electricity Industry Practices, including through expenditure of reasonable sums of money and (iii) has a material adverse effect on the Project. "Force Majeure Events" hereunder shall include each of the following events and circumstances, but only to the extent that each satisfies the above requirements:

- (a) “Non-Political Force Majeure Event” means:
- (i) Acts of God or events including but not limited to fire (to the extent originating from a source external to the site or beyond the design specification for the Construction Works), lightening, earthquake, volcanic eruption, devastating flood and landslide, storm cyclone, tornado, typhoon, hurricane, wildfire, exceptionally adverse weather conditions including severe drought;
  - (ii) epidemic, or plague;
  - (iii) radioactive contamination or ionizing 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;
  - (iv) strikes or boycotts, works stoppage or go-slows (other than those involving primarily Project Company’s own employees or those of any of Project Company’s contractors or sub-contractor or their respective employees/representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a period exceeding a continuous period of 14 (Fourteen) dayss, and
  - (v) any judgment or order of any court of competent jurisdiction or statutory authority in Nepal made in contravention of this Agreement, in any proceedings for reasons other than failure of the Project Company to comply with any applicable law or applicable permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its right under this Agreement by any Government Agency.
- (b) “Indirect Political Force Majeure Event” means, where the Company is the Affected Party, one or more of the following acts or events:
- (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, revolution, riot, insurrection, civil commotion, act of terrorism, military action, blockade, embargo, malicious damage or motivated sabotage;
  - (ii) any public agitation which prevents construction or operation activities of the Project for a period exceeding a continuous period of 14 (Fourteen) dayss.
- (c) “Political Force Majeure Event” means, where the Company is the Affected Party, one or more of the following acts or events:

- (i) nationalization, expropriation or compulsory acquisition of any assets or rights of the Company or its contractors by any Government Agency;
- (ii) unlawful or unauthorized revocation of, or refusal to renew by GON (on terms no less favourable to a Party than those attached to the original Authorisation), any Authorisation required by a Party or its contractors to perform its obligations or exercise its rights under this Agreement or any refusal to grant any such Authorisation; and
- (iii) any other action or inaction on the part of a GON Agency which is directed against the Project.

**20.2 A Force Majeure Event shall not include:**

1. strikes, lock-outs, industrial disputes, industrial difficulties, work bans, blockages, picketing or similar action which is specific to the Project involving employees at the Project relating to Project issues;
2. mechanical or electrical breakdown and failure of equipment despite the compliance by the Affected Party with Good Electricity Industry Practice unless such breakdown or failure has been caused by any one or more of the Force Majeure Events examples of which appear in paragraphs (a) or (b) or (c) of Section 20.1 above;
3. economic hardship or financial inability, including any failure, inability or difficulty in making payment or lack of funding sufficient to meet any payment obligation accrued by withered Party;
4. fluctuations or reductions in demand for the supply including, but not limited to an event or circumstance constituted by, or which is a consequence of reductions in demand for electricity supplied to power purchaser(s);
5. the breach of this Agreement by the Party who is not the Affected Party;
6. the exercise of a right arising because of such a breach;
7. unavailability, late delivery or changes in cost of the machinery, equipment, materials, spare parts or fuel or consumables unless such is itself the direct result of a Force Majeure Event ;
8. delay in the performance of any contractor, sub-contractor or supplier or their agent, unless such delay is itself the direct result of a Force Majeure Event ; and
9. non-performance resulting from normal wear and tear or random flaws in materials and equipment or breakdowns in equipment.

### **20.3 Obligation to Notify**

- (a) 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, in any case within 7 (Seven) days of the date of occurrence of a force majeure event or the date of knowledge thereof give the other Party notice setting out the following in reasonable detail:
  - (i) of that event or circumstance; and
  - (ii) of the rights or obligations of the Affected Party under this Agreement which have been or shall be, or are likely to be, affected by that event or circumstance.
- (b) 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 on the following:
  - (i) the Affected Party's estimate of the likely duration of the Force Majeure Event;
  - (ii) the action taken and the action proposed to be taken by the Affected Party in complying with its obligations under Section 20.3(a);
  - (iii) the cessation of that Force Majeure Event or the successful mitigation or minimization of the effects of that Force Majeure Event; and
  - (iv) any other matter which the other Party may reasonably request in connection with the occurrence of the Force Majeure Event and the matters referred to in this Section.

### **20.4 Effect on Performance of Obligation**

- (a) If a Party (the "Affected Party") is unable wholly or partly:
  - (i) to exercise any right; or
  - (ii) to perform any obligation as required, under this Agreement,

the Affected Party shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such force majeure event the duration so affected shall be extended so as to make the Affected Party able to perform the same as it is affected by that Force Majeure Event.,
- (b) If the occurrence of a Force Majeure Event results in any period of delay in the time planned by the Company for Project Commissioning, or any inability to generate or transmit energy for a period of time after Project Commissioning, then

GON will, upon receipt of an application with supporting evidences by the Company, extend the Generation License and the Transmission License, for a period equal to that period or the aggregate of such periods which in any case shall not exceed 5 (Five) years in total.

## **20.5 Obligation to Mitigate**

- (a) If a Force Majeure Event occurs, the Affected Party shall as soon as practicable after the occurrence of that Force Majeure Event, use reasonable endeavours to:
  - (i) mitigate or limit damage, if any, caused or likely to be caused to the Project facilities as a result of such events to restore such facilities; and
  - (ii) take all remedial measures to minimize any resulting delay in the exercise of the Affected Right or the performance of the Affected Obligation.

The consequence of a failure by the Affected Party to comply with its obligation under this paragraph (a) to minimize delay is limited to a reduction in the period and extent of the extension in accordance with paragraph (b).

- (b) The period of extension under Section 20.4 shall exclude any delay in the exercise of the Affected Right or performance of the Affected Obligation which is attributable to a failure by the Affected Party to comply with paragraph (a).

Furthermore, the extent to which obligations are extended under Section 20.4 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 20.5(a).

- (c) The Affected Party, when able to resume performance of its obligations under this Agreement, shall notify the other Party to that effect in writing and shall promptly resume performance of its obligations.
- (d) The Affected Party shall continue to perform such of its obligations which are not affected by the force majeure event and which are capable of being performed in accordance with the provision of this Agreement.
- (e) Despite anything in this Section to the contrary, an Affected Party shall not be obliged to incur any expenditure insofar as a Force Majeure Event is caused by a breach of this Agreement by the other Party (other than a breach involving a failure to pay any amount under this Agreement).
- (f) The Affected Party shall bear the onus of proving that it has complied with its obligations under paragraph (a).

## **20.6 Compensation Payable during Force Majeure Event**

Upon the occurrence of any Force Majeure Event prior to Financial Closure, the following shall apply:

- (i) There shall be no termination except as provided in Section 20.8 of this Agreement;
- (ii) The date for achieving the Financial Closure shall be extended by the period for which such force majeure shall subsist; and
- (iii) The Parties shall bear their respective costs and no party shall be required to pay to the other party any costs arising out of such Force Majeure Event.

Upon the occurrence of any Force Majeure Event after the Financial Closure, the following shall apply:

- (a) GON shall form a Project Compensation Committee for the purpose of determining the additional time period required to mitigate the effects of Non-Political/Indirect Political Force Majeure Events or compensation amount in the event of Political Force Majeure Event and breach of this Agreement by the Parties. The Parties shall be bound by the decisions of the Committee to compensate the Affected Party pursuant to the paragraphs (b), (c) and (d) of this Section 20.6.
- (b) Where the Force Majeure Event is a Non-Political Force Majeure Event (except for severe drought in which the Project could generate less than 75 (Seventy Five) percent of the deemed electricity generation for a period or periods on account of drought), the Parties shall bear their respective costs and neither Party shall be required to pay to other Party any costs arising out of any such Force Majeure Event. In the event of severe drought in which the Project could generate less than 75 (Seventy Five) percent of the deemed electricity generation for a period or periods on account of drought as set forth in Section 20.1(a), the provisions stipulated in Section 20.6(a) and 20.6(c) shall apply;
- (c) Where Force Majeure Event is Indirect Political Force Majeure Event, event of severe drought in which the Project could generate less than 75 (Seventy Five) percent of the deemed electricity generation for a period or periods on account of drought, or breach of this Agreement by GON, the costs attributable to such Force Majeure Event and directly relating to the Project (the “Force Majeure Costs”) shall be borne by the Company to the extent of the Insurance Claims (Section 11.4 hereof), and to the extent such Force Majeure Costs exceed the Insurance Claims, the Company along with supporting evidences shall apply for the extension of the Licenses (Generation/Transmission). Upon receiving the application, the Committee set forth in Section 20.6 (a) shall assess and evaluate the type, nature, outcome of the event therein from the Force Majeure

Event(s) and determine the additional time required to extend the validity of the License so as to offset the incremental financial liability of the Company. The committee may invite relevant professionals, insurer(s) if deemed necessary while scrutinizing the losses.

- (d) Where the Force Majeure Event is a Direct Political Force Majeure Event, the compensation amount attributable to such Force Majeure Event shall be determined by the Project Compensation Committee as set forth in Section 20.6(a) and the compensation amount shall be paid in three equal instalments by GON within a year. If the GON compensates the company in the event of Direct Political Force Majeure, the Company shall either handover the Project free of all its rights, title and interest without any further liabilities to GON, or continue developing or operating the Project as the case may be in which the compensation amount has been determined.

## **20.7 Termination due to Force Majeure Event**

- (a) If a Force Majeure Event occurs which prevents the Affected Party from exercising a material right or performing a material obligation under this Agreement, and that Force Majeure Event likely to continues beyond a period of 24 (Twenty Four) months from the day on which notice was given by the Affected Party under Section 20.3, then, at the expiration of that period, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms.
- (b) If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 24 (Twenty Four) months, be entitled to terminate this Agreement. Provided that GON may at its discretion have the option to terminate this Agreement any time after the occurrence of the Political Force Majeure Event, provided, however, GON shall not be entitled to claim that it has been affected by a Political Force Majeure Event as set forth in Section 20.1(c).
- (c) Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either party including its right to claim and recover any damages or compensations as the case may be and other rights and remedies available under this Agreement and the prevailing laws of Nepal.

## **20.8 TERMINATION NOTICE**

If either Party having become entitled to decide to terminate this Agreement pursuant to the provision of Section 20.7, it shall issue Termination Notice setting out the following:

- (i) sufficient detail of the underlying Force Majeure Event;
- (ii) Termination Date, which shall be a date occurring not earlier than 90 (Ninety) days from the date of Termination Notice;

- (iii) the estimated compensation payment including the details of computation thereof, if the Force Majeure Event is a Direct Political Force Majeure Event; and
- (iv) other relevant information, if any.

## **21 CHANGES IN LAW**

If there is a change in law, which increases or decreases the cost or revenue or net income of the Company in connection with the financing, ownership, operation or maintenance of the Project (including without limitation, any cost in connection with capital expenditures to modify the Project or other conditions affecting the performance by the Company of its obligations under this agreement or any restriction on the ability of the Company to remit funds outside of Nepal) or affects the timing of the incurrence of such costs or receipt of such revenues or net incomes, then the Company shall:

- a) determine the amount of such increase or decrease in costs or revenues or net income or the effect on the timing of the incurrence of such cost or receipt of such revenue or net income;
- b) submit to GON certificate of a statutory auditor setting forth reasonable details the basis of and the calculations for such amounts or such effects; and,
- c) calculate equitable adjustment to the free energy in the case of incremental financial liability to the company and upon receipt of statutory auditor reports, GON may adjust the incremental financial liability in a equitable adjustment to free energy or financially compensate the Company.
- d) in the case of increased revenues due to the change in law, the Company shall reimburse GON the amount as determined by the statutory auditor.

## **22 REPRESENTATIONS AND WARRANTIES**

### **22.1 GON Representations and Warranties**

GON represents and warrants to the Company that:

- (a) it has the power to execute, deliver and perform fully all its obligations under this Agreement and each Government Approval, and that all necessary action has been taken to authorize the execution, delivery and performance by it of this Agreement and each Government Approval;
- (b) the execution, delivery and performance by it of its obligations under this Agreement and each Government Approval is in accordance with existing Law; and

- (c) this Agreement and each Government Approval has been duly issued or executed and delivered on behalf of GON and constitutes a valid obligation of GON, legally binding on it and enforceable in accordance with its terms.

## **22.2 The Company Representations and Warranties**

The Company represents and warrants to GON that:

- (a) it has the power to execute, deliver and perform fully all its obligations under this Agreement and to authorize performance of its liabilities under each Government Approval, and that all necessary action has been taken to authorize such execution, delivery and performance;
- (b) the execution, delivery and performance by it of its obligations under this Agreement and the performance by it of its obligations under each Government Approval is in accordance with existing law; and
- (c) this Agreement has been duly executed and delivered on behalf of the Company and it, and each Government Approval, constitutes a valid obligation of the Company, legally binding on it and enforceable in accordance with its terms.

## **22.3 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 applicable Law.

## **23 ADDITIONAL FOREIGN SHAREHOLDERS**

The Company may, for the purposes of arranging or re-arranging financing for the Project, issue shares to, or otherwise accept equity investments from, additional foreign shareholders providing financing for the Project.

## **24 NOTICES**

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  
Katmandu  
NEPAL

Facsimile No. 977-1-4211510

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

Facsimile No. 977 1 227 537]

The Company

Address:

Facsimile No.:

Either Party may change its address by prior notification to the other Party in accordance with this Section.

## **25 AMENDMENTS**

Where there is an agreement that an amendment is warranted, and where such amendment is considered significant, either Party may provide the proposed amendment for consideration. The provisions of this Agreement may only be amended by the mutual consent of the Parties in writing.

## **26 WAIVER**

A right granted under this Agreement may not be waived, except in writing signed by the Party granting the waiver.

## **27 APPROVALS AND CONSENTS**

GON and the Company must each act reasonably in making a decision or giving or withholding approval or consent under any provision of this Agreement.

## **28 FURTHER ASSURANCES**

- (a) Each Party shall at its own expense do everything reasonably necessary to give effect to this Agreement.
- (b) GON and the Company shall make every effort necessary to obtain benefits from CDM (Clean Development Mechanism), and such benefit, if obtained, shall be shared equally.

## **29 NON REFUNDABLE FEE AND PERFORMANCE SECURITY**

### **29.1 Non-Refundable Fee**

The Company has provided to the Department of Electricity Development a non-refundable fee at the rate of 1,500.00 (One Thousand Five Hundred) Dollars per MW of proposed installed capacity of the Project prior to signing of this Agreement.

### **29.2 Performance Security**

The Company shall provided a Performance Security at the rate of 7000 (Seven Thousand) Dollars per MW of installed capacity of the Project for which capacity the application is submitted for Generation License, prior to the issuance of the Generation License.

Such Performance Security hereof, shall be drawable by GON only if this Agreement shall have been terminated in accordance with Section 29.3 hereof.

### **29.3 Termination of Agreement and Forfeiture of Performance Security**

GON may, in its sole discretion, upon written notice to the Company, terminate this Agreement without further liability to either Party and GON shall have the unconditional right to draw upon the Performance Security by delivering a written notification to the issuer of the Performance Security:

- i. if the Company fails to accomplish Financial Closure pursuant to Section 1.9; or
- ii. if the Company fails to achieve COD within the time period as stipulated in the PPA.

### **29.4 Release of Performance Security**

GON shall, with written notification to the issuer of the Performance Security, release the Performance Security promptly after the Company submits an application with an evidence of occurrence of the COD to release the Performance Security.

## **30 GOOD FAITH**

- a) The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its objectives.
- b) The Parties recognize that circumstances may arise which the provisions of this Agreement may have not foreseen in which event the Parties undertake to consult each other promptly and in good faith in an effort to reach agreement as to what should be done.

- c) The Parties consider the terms of this Agreement to be fair at the date of this Agreement, but if during the term of this Agreement either Party believes that this Agreement has become grossly unfair to that Party, it shall notify the other and the Parties shall use reasonable efforts to agree on such action as may be necessary to remove the cause or causes of the unfairness, but failure to agree shall not be submitted to the dispute resolution procedures set out in Section 22 hereof.

**31 ETHICAL STANDARDS**

In the development of the Project and the conduct of all actions under this Agreement, GON and the Company shall each conduct itself in accordance with the highest ethical standards and observe the spirit of all applicable Laws.

**32 SEVERABILITY**

Any provision of this Agreement which is illegal, void or unenforceable shall be ineffective to the extent only of such illegality, voidness or unenforceability, without invalidating the remaining provisions of this Agreement.

**33 ANNEXURE**

The following Schedules shall be seen to be in conjunction with and to be a part of this Agreement:

- Annexure [Specify Number] : Separate Agreement pursuant to the Section 12.1
- Annexure [Specify Number] : Memorandum of Association of the Company
- Annexure [Specify Number] : Article of Association of the Company

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

\_\_\_\_\_  
 Signed on behalf of  
 Government of Nepal of Nepal  
 (.....)  
 Director General  
 Department of Electricity Development  
 Kathmandu, Nepal

Signed on behalf of  
 The Project Company  
 (.....)

Witnessed by:  
 .....  
 Deputy Director General  
 Department Electricity Development  
 Kathmandu, Nepal

Witnessed by:  
 .....

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