

29 December 2016

**GOVERNMENT OF NEPAL, REPRESENTED BY THE MINISTRY OF ENERGY,
GOVERNMENT OF NEPAL
and**

NEPAL WATER & ENERGY DEVELOPMENT COMPANY PRIVATE LIMITED

**Project Development Agreement
Upper Trishuli-1 Hydropower Project**

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29 December 2016

**Project Development Agreement
Upper Trishuli-1 Hydropower Project**

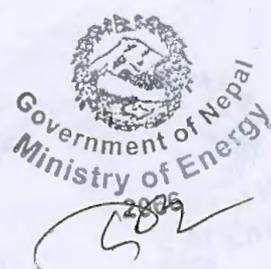
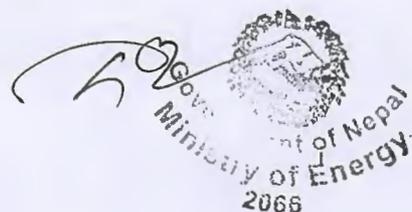


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THIS PROJECT DEVELOPMENT AGREEMENT is entered into on **29 December 2016**

BETWEEN:

- (1) **THE GOVERNMENT OF NEPAL**, represented by the Ministry of Energy of the Government of Nepal having its administrative office at Singh Durbar, Kathmandu, Nepal (the "**GON**"); and
- (2) **NEPAL WATER & ENERGY DEVELOPMENT COMPANY PRIVATE LIMITED**, a limited liability company incorporated and registered under the Company Act, 2053 (1997) of Nepal, having its registered office at Block-B, Four Square Complex, Narayan Chaur, Naxal, Kathmandu, Nepal (the "**Company**").

each of GON and the Company being a "**Party**" and together, the "**Parties**".

RECITALS

- (A) All natural resources (including all water resources) within Nepal are the national wealth of the people of Nepal. Nepal is the sole owner of all natural resources within her territory and has the right to develop, extract and utilize the natural resources in the interest of the people of Nepal.
- (B) The GON has the authority, by virtue of powers conferred to it under Section 35 of the Electricity Act, to conclude contracts with any person or corporate body for generation, transmission and distribution of electricity.
- (C) The GON desires to promote the economic development of Nepal by encouraging and promoting the sustainable development and use of water resources for the generation of electrical energy through private investment in hydroelectric power projects on a build-own-operate-transfer ("**BOOT**") basis. The GON recognises the importance of sustainable development of water resources in Nepal, and the advantages of public-private partnerships where GON can rely on the private sector partner to manage risk, bring expertise and finance the Project and contribute to Nepal's economic and social development.
- (D) The GON has, to that end, sanctioned private participation and investment in power generation plants on a BOOT basis and has developed and is implementing the Hydropower Development Policy 2001 to encourage private investment in cost-effective and environmentally sustainable hydroelectric power projects.
- (E) The Ministry of Energy, GON was given the responsibility by the Council of Ministers, GON on 8 August 2012 to enter into a contract with the Company for the latter to carry out preparatory works, including feasibility and environmental studies, in connection with development of the Upper Trishuli-1 Hydroelectric Project in accordance with Section 35 of the Electricity Act, 2049 (1992) and accordingly, the Ministry of Energy, GON and the Company entered into a contract on 18 October 2012, as amended on (a) 28 November 2013 in accordance with the decision of the Council of Ministers, GON dated 14 November 2013, (b) 25 November 2014 in accordance with the decision of the Council of Ministers, GON dated 16 October 2014, (c) 9 November 2015 in accordance with the decision of the Council of Ministers, GON dated 15 October 2015 and decision of Ministry of Energy, GON dated 29 October 2015, (d) 14 December 2016 in accordance with the decision of Ministry of Energy, GON dated 16 October 2016, and (e) 29 December 2016 in accordance with the decision of Ministry of Energy, GON dated 29 December 2016 (the "**Contract**").
- (F) The Company has duly fulfilled all its obligations under the Contract pursuant to the Electricity Act, 2049 (1992) and the Electricity Regulations, 2050 (1993).
- (G) The GON, by a decision of the GON, Council of Ministers dated 29 November 2016 and decision of GON, Council of Ministers, Finance and Infrastructure Committee dated 12 December 2016 endorsed the execution of and the provisions of this Agreement and the rights being granted to the Company hereunder.

IT IS AGREED as follows:

11/26742180_6 UT 1 Project Development Agreement



1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement, unless the subject or the context otherwise requires, the capitalised terms and phrases shall have the meanings given to them in this Section 1.1 (*Definitions*):

"Abandonment" means, to the extent not caused due to a Force Majeure Event, Change in Law or as otherwise expressly excused under this Agreement:

- (A) at any time, the Company failing to resume and continue the performance of its obligations under this Agreement within sixty (60) days following the cessation of the effects of the relevant Force Majeure Event, Change in Law or other event as expressly excused under this Agreement which prevented, hindered or delayed such performance;
- (B) at any time, the Company notifying GON of its decision to abandon the Project;
- (C) at any time, the cessation or termination of substantially all activities relating to the development, design, engineering, financing, procurement, construction, completion, operation, maintenance and repair of the Hydro Property for a continuous period of ninety (90) days; or
- (D) within ninety (90) days of Financial Close, the Company not commencing construction of the Hydro Property,

and **"Abandoned"** shall be construed accordingly.

"Additional Construction Period" has the meaning given to it in Section 7.2A (*Additional construction period*).

"Additional Generation" has the meaning given to it in Section 6.1.1(D) (*GON rights and obligations*).

"Administrative Costs" has the meaning given to it in Section 8.4.1 (*Land acquisition – general*).

"Affected Party" means the Party adversely affected by a Force Majeure Event in accordance with, and subject to the terms of, Section 12 (*Force Majeure*), provided that in respect of a GON Force Majeure Event, only the Company may be an Affected Party.

"Affiliate" means any person that directly or indirectly, Controls, or is Controlled by, or is under common Control with, another person.

"Agreement Date" means the date on which this Agreement is executed by the Parties.

"Agreement" means this project development agreement (including all the Schedules attached hereto) between the Parties, as amended, modified and supplemented from time to time in accordance with its terms.

"Approvals Schedule" means Schedule 16 (*Approvals Schedule*) of this Agreement.

"Approved Lenders" means any multilateral agency, export credit agency and international development and financial institutions (which shall include any member of the World Bank Group, the Asian Development Bank, European Investment Bank, CDC, DEG, FMO, OPEC Fund for International Development, and Proparco) providing loans, hedging facilities, insurance, guarantees or other financing or refinancing.

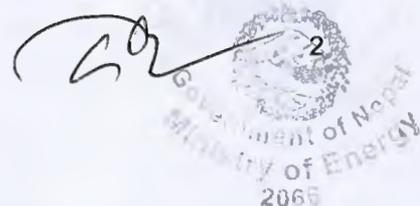
"Benefit Sharing" has the meaning given to it in Schedule 11 (*Local Benefit Sharing Plan – Guidance Note*).

"Big Four" has the meaning given to it in Section 13.6.1 (*Payment of the Transfer Price*).

"Bonus Amount" means such amount as is prescribed by the Electricity Act, 2049 (1992) and Electricity Regulations 2050 (1993).

"Business Day" means any day on which banks in Kathmandu, Nepal are open for general banking business.

"Calculation Date" means the date on which a Termination Notice is issued pursuant to Section 13.3 (*Termination notices*).



"Capacity Royalty" means the capacity royalty payable by the Company in accordance with Section 11.22 (*Royalties Payable to GON*).

"Capacity Royalty Rate" means the relevant annual Capacity Royalty rate figure contained in the table in Section 11.22.1 (*Royalties Payable to GON*).

"Change in Law" means, after the Agreement Date:

- (A) the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application, replacement or modification of any Laws of Nepal by any GON Instrumentality;
- (B) any change in the interpretation of any Laws of Nepal by any GON Instrumentality;
- (C) imposition of any material condition either on re-issuance, replacement, extension, modification, renewal of a Government Approval or a requirement for Government Approvals not required as of the Agreement Date;
- (D) any Government Approval: (i) being revoked, not renewed or ceasing to remain in full force and effect; or (ii) not being re-issued, renewed, extended, replaced or modified upon application; or
- (E) a Change in Tax,

which, in the case of (A), (B), (C) or (E), is more restrictive or onerous than the most restrictive or onerous requirement: (1) in effect pursuant to the Laws of Nepal as of the Agreement Date, or (2) specifically agreed to by the Company in this Agreement or the EIA.

"Change in Tax" means, in each case, after the Agreement Date, the adoption, promulgation, bringing into effect, repeal, amendment, reinterpretation, change or failure in application against the provisions of the relevant legislation, change in interpretation, replacement or modification of any Laws of Nepal relating to any Tax by any GON Instrumentality. For the avoidance of any doubt, **"Change in Tax"** shall not have any application to any Taxes on personal income in Nepal.

"Chilime – Trishuli 3B Transmission Line" means the 220 kv transmission line from Chilime Hub substation to Trishuli 3B Hub substation.

"CIL Compensation Amount" has the meaning given to it in Section 12A.6 (*Relief for Change in Law*).

"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.

"Commercial Operation Date" has the meaning given to it in Section 7.1.3 (*Commissioning, Construction and Commercial Operations Date*).

"Company Conditions Subsequent" means the conditions listed in Section 3.1 (*Company Conditions Subsequent*).

"Company Preliminary Termination Notice" has the meaning given to it in Section 13.2 (*GON Event of Default*).

"Company Access Infrastructure" has the meaning given to it in Section 10.12.3 (*Roads*).

"Company Event of Default" has the meaning given to it in Section 13.1 (*Company Event of Default*).

"Company Land Acquisition Period" has the meaning given to such term in Section 8.2.2 (*Acquisition of Private Land and Private ROWs*).

"Company Shares" means any shares, warrants, rights to invest, equity or other forms of ownership interests or rights (of each class) in the Company's share capital which carry voting rights, economic rights or rights of management or control and **"Company Share"** shall be construed accordingly.



"Confidential Information" means all documents and other forms of information, including oral and electronic communications, disclosed by a Party or its Representatives to the other Party or that Party's Representatives in connection with this Agreement or the Project and expressly or impliedly indicated to be confidential and shall include: (A) this Agreement; (B) the existence and terms of any other agreement, arrangement or document contemplated by this Agreement; and (C) any information developed by the Parties in the course of performing this Agreement.

"Construction Contractors" means the contractor(s) appointed by the Company for the construction of the relevant component of the Hydro Property.

"Construction Period" means the period from Financial Close until the occurrence of Commercial Operation Date.

"Construction Plan" has the meaning given to it in Section 11.26.7 (*Information sharing*).

"Contractor" means Construction Contractor(s), O&M Contractor(s), or any other contractor(s) appointed by the Company for supply of goods or services in connection with the Project, any sub-contractors to any contractor so appointed and any sub-contractor to such sub-contractors.

"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.

"Convertible Foreign Currency" means a foreign currency which has been prescribed by NRB as a convertible foreign currency pursuant to Nepal Rastra Bank Act, 2058 (2002).

"Crore" means ten million (10,000,000) and **"Crores"** shall be construed accordingly.

"Debt" has the meaning given to it in Section 11.24 (*Debt: equity ratio*).

"Deductible" has the meaning given to it in Section 12A.4 (*Change in Law compensation – deductible*).

"Delay Liquidated Damages" has the meaning given to it in Section 7.3 (*Delay Liquidated Damages*).

"Direct Agreement" means the direct agreement to be entered into between the Lenders, the Company and GON in respect of the Project and being substantially in the form set out in Schedule 19 (*Form of Direct Agreement*).

"Disaster Management Plan" means a disaster management plan prepared and/or updated by the Company in accordance with Schedule 18 (*Disaster Management Plan – Guidance Note*).

"Dispute Notice" has the meaning given to it in Section 15.3.1 (*Dispute Notice*).

"Dispute" means any dispute arising out of or in connection with this Agreement including any dispute or difference concerning the existence, interpretation, legality, validity or enforceability of this Agreement or any provision hereof or the performance or obligations of a Party under any provision hereof.

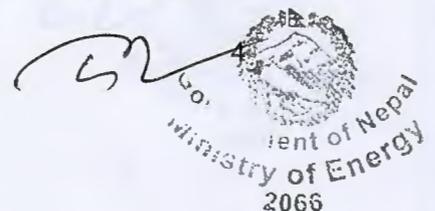
"DOED" means the Government of Nepal, Ministry of Energy, Department of Electricity Development (or any such GON Instrumentality carrying out the duties and functions of DOED).

"Dollar" or **"USD"** means the lawful currency of the United States of America.

"Domestic PPA" means the duly executed power purchase agreement between the Company and NEA with respect to, *inter alia*, the purchase of energy and/or capacity from the Power Station, as amended or restated from time to time in accordance with its terms.

"Domestic PPA Payment Security" means any form of credit enhancement issued for and on behalf of NEA pursuant to the Domestic PPA to cover the whole or any part of NEA's payment obligations thereunder.

"DPR" means the detailed project / engineering report for the Project which has been, or is to be, prepared for the implementation of the Hydro Property pursuant to the provisions of the Generation Survey License and Transmission Survey Licence.



"DSRA" has the meaning given to it in Section 13.5 (*Transfer Price components*).

"EIA" means the environmental impact assessment of the Project approved by the Ministry of Science, Technology and Environment vide their letter dated February 20, 2013 with reference no. 2098.

"Eligible Households" has the meaning given to it in Section 11.8.2 (*Rural Electrification*).

"Encumbrance" means any claim, option, charge (fixed or floating), mortgage, lien, pledge, equity, encumbrance, right to acquire, right of pre-emption, 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 and "Encumbering" shall be construed as the creation of any Encumbrance.

"Energy Receipts" means all revenue received by the Company from all or any part of the Hydro Property, including:

- (A) from the sale of energy or capacity; or
- (B) from reserve related services and/or any ancillary services.

"Energy Royalty" means the energy royalty payable by the Company pursuant to Section 11.22 (*Royalties Payable to GON*).

"Energy Royalty Rate" means the relevant energy royalty rate figure contained in the table in Section 11.22.1 (*Royalties Payable to GON*).

"Energy Start Date" means the date, certified by the Independent Engineer, as the date on which the Company commenced the delivery of electrical energy to NEA under the Domestic PPA (including the delivery of any Testing Output), which date may occur prior to the Commercial Operation Date.

"Event of Default" means GON Event of Default or Company Event of Default, as the case may be.

"Equity" has the meaning given to it in Section 11.24 (*Debt: equity ratio*).

"Expiry Date" means the date falling on the thirty fifth (35th) anniversary of the date of issuance of the Generation License.

"Final Inspection" has the meaning given to it in Schedule 2 (*Project Handover Upon Expiry of the Agreement*).

"Financial Close" means the satisfaction or waiver of all conditions to initial drawdown under the Financing Documents including contribution of equity by the Shareholders and/or the Sponsors into the Company pursuant to the requirements of the Financing Documents.

"Financing Costs" has the meaning given to it in Section 13.5 (*Transfer Price components*).

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

"Financing Plan" means the financing plan for the Project prepared by the Company, setting out in reasonable detail the amount and form of equity and debt to be contributed by the Shareholders and/or the Sponsors in the Company, the amount of all loans to be provided to the Company by the Lenders, the maximum proposed debt and the repayment schedule.

"Force Majeure Event" has the meaning given to it in Section 12.1 (*Definition of Force Majeure Event*).

"Free Electrification Area" has the meaning given to it in Section 11.8.1 (*Rural Electrification*).

"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 freely tradable in the open market that is verified and/or certified for issuance and actually issued 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).

"Generation License" means the generation license required by the Laws of Nepal.

"Generation Project" means the development, design, engineering, financing, procurement, insurance, construction, completion, testing, commissioning, ownership, operation, maintenance, repair and transfer of the Power Station and associated works described in part (C) of the definition of Hydro Property, with a nameplate capacity of 216MW.

"Generation Survey License" means the survey license for generation bearing license number BBB 063/64 B.U.S.A. 0265 issued by the Ministry of Water Resources with covering letter from the Department of Electricity Development dated 13 March 2007 which permits the Company to conduct surveys, studies and investigations in connection with the production of electricity and associates matters.

"GLOF" has the meaning given to it in Section 11.7 (*GLOF*).

"GON Conditions Subsequent" means the conditions listed in Section 3.2 (*GON Conditions Subsequent*).

"GON Covenant" has the meaning given to it in 10.19.1 (*GON Project Covenant*).

"GON Covenant Discharge Date" has the meaning given to it in 10.19.13 (*GON Project Covenant*).

"GON Event of Default" has the meaning given to it in Section 13.2 (*GON Event of Default*).

"GON Force Majeure Event" has the meaning given to it in Section 12.1.3 (*Definition of Force Majeure Event*).

"GON Instrumentality" means any national, federal, regional, local or municipal, administrative, executive, legislative, judicial, quasi-judicial, regulatory, agency, instrumentality or authority or body of Nepal and includes GON and NEA.

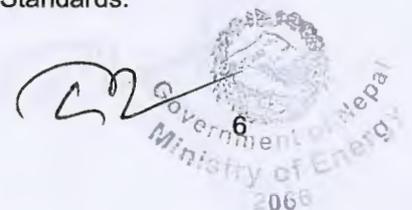
"GON Land" means land comprising part of the Project Area and which is owned by GON or a GON Instrumentality as at the Agreement Date.

"GON Preliminary Termination Notice" has the meaning given to it in Section 13.1 (*Company Event of Default*).

"GON Restoration Costs" has the meaning given to it in Schedule 1 (*Restoration*).

"Good 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 the best practices, methods and standards that are generally accepted internationally for a hydropower project and a transmission line under conditions comparable to those applicable to the Hydro Property, consistent with the Laws of Nepal and taking into account factors such as (A) the use of the latest hydroelectric technology, (B) the relative size, performance, age and technology of the physical components of the Hydro Property, (C) the safe, efficient and economic design, construction, commissioning, operation and maintenance of the Hydro Property and (D) Technical Standards, provided that such best practices, methods and standards shall be adjusted as necessary, to take account of (1) operation and maintenance guidelines recommended by the manufacturers of the relevant plant and equipment, (2) the Laws of Nepal, and (3) the specific conditions in existence in Nepal and in the Project Area from time to time.

"Good Operating Condition" means the condition of the Hydro Property such that the Hydro Property can be operated to the efficiency, maintainability and availability levels which are consistent with those reasonably expected for a similar facility operating in a similar climate and of an equivalent age to the Hydro Property which has been constructed, operated and maintained in accordance with Good Industry Practice and the Technical Standards.



"Government Approvals" means consents, approvals, authorisations, notifications, concessions, acknowledgements, licenses (including the Generation License and Transmission License) and permits of any GON Instrumentality.

"Gross PPA Loss of Revenue" means the loss of any revenues or other amounts which would have been received by the Company under the Domestic PPA but which were not received as a result of:

- (A) the Company or the Hydro Property suffering any adverse impact as a result of a breach by GON of its obligations under Section 6.1.1 (*GON rights and obligations*);
- (B) the occurrence of a GON Force Majeure Event; or
- (C) the occurrence of a Change in Law.

"Handover Expert" has the meaning given to it in Schedule 2 (*Project Handover Upon Expiry of the Agreement*).

"Handover Guarantee" has the meaning given to it in Schedule 2 (*Project Handover Upon Expiry of the Agreement*).

"Handover Period" means the period from the date which is two (2) years prior to the Expiry Date until the Expiry Date.

"Handover Plan" means the plan to be delivered by the Company to GON prior to transfer of the relevant part of the Project setting out the Company's detailed proposals for the transfer of the relevant part of the Hydro Property to GON or the designated GON Instrumentality in accordance with this Agreement, prepared in accordance with the Handover Requirements.

"Handover Requirements" means the handover requirements set out in Schedule 3 (*Handover Requirements – Expiry of the Agreement*).

"Hydro Property" means:

- (A) the Power Station;
- (B) the Transmission Line; and
- (C) all the land and rights of way forming part of the Project Area, 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.

"IDA" means the International Development Association of the World Bank Group.

"IDA Guarantee Agreement" means the agreement between the Company, the Lenders whose loans are guaranteed and the IDA.

"IDA Indemnity Agreement" means the agreement between the GON and IDA whereby the GON counter guarantees the IDA with respect to the IDA Guarantee Agreement.

"IEE" means the Initial Environmental Examination required to be performed pursuant to the Transmission Survey License and the Environment Act, 2053 (1997).

"Independent Engineer" means the independent engineer(s) appointed by the Lenders under the Financing Documents to, *inter alia*, oversee construction, testing and commissioning of the Hydro Property.

"Initial Inspection" has the meaning given to it in Schedule 2 (*Project Handover Upon Expiry of the Agreement*).

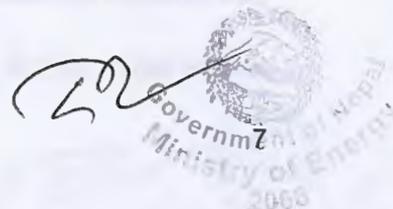
"Initiating Party" has the meaning given to it in Section 15.5.1 (*Expert determination*).

"Insurance Policies" has the meaning given to it in paragraph 1.1 of Schedule 6 (*Insurance*).

"Insurance Proceeds" has the meaning given to it in Section 13.5 (*Transfer Price components*).

"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.

"**Lakh**" means one hundred thousand (100,000) and "Lakhs" shall be construed accordingly.

"**Land Acquisition Application**" has the meaning given to it in Section 8.2.5 (*Acquisition of Private Land and Private ROWs*).

"**Land Acquisition Delay Event**" has the meaning given to it in Section 8.3.1 (*Land Acquisition Delay Events*).

"**Land Acquisition Plan**" has the meaning given to it in Section 8.2.1 (*Acquisition of Private Land and Private ROWs*).

"**Land Lease Agreement(s)**" means the agreement(s) entered and to be entered into between the Company and a GON Instrumentality for the lease of the GON Land.

"**Laws of Nepal**" means:

- (A) the Constitution of Nepal and all Nepalese laws, statutes, bilateral or international treaties, rules, codes, ordinances, regulations, bylaws, certificates, decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licenses, and permits of any GON Instrumentality; and
- (B) judgments, decrees, injunctions, writs, orders or like actions of any GON Instrumentality, court, tribunal or other administrative, judicial or quasi-judicial body or tribunal or agency of competent jurisdiction,

having the force of law in Nepal and in each case that applies to (i) the Company, (ii) a Contractor, Lenders, Shareholders, Sponsors, or (iii) the Project.

"**Lead Sponsor**" means Korea South-East Power Co., Ltd., having its registered office at 123 beon-gil 32, Sadeul-ro, Jinju-si, Gyeongsangnam-do, Korea.

"**Lenders**" means any lenders, export credit agencies, multilateral institutions, bondholders or other lending agencies whose ordinary course of business is the lending of money, or any trustee or agent acting on behalf of any of the foregoing, in each case, providing financing or refinancing to the Company for the Project (or any portion thereof) pursuant to a Financing Document either:

- (A) on a senior and first ranking secured basis ("**Senior Lenders**"); or
- (B) on any basis other than senior and first ranking secured basis ("**Other Lenders**"),

but shall not include: (i) the Shareholders (other than any Shareholder who provide debt as part of their business); (ii) the Sponsors; (iii) any Affiliate of a Sponsor; (iv) Representatives of any of the Sponsors, Shareholders or Affiliates of a Sponsor; and (v) any person providing only working capital facilities.

"**Local Benefit Sharing Plan**" means the local benefit sharing plan prepared and/or updated jointly by the Parties in accordance with this Agreement, the guidance notes for which are set out in Schedule 11 (*Local Benefit Sharing Plan – Guidance Note*).

"**Local Free Power**" has the meaning given to it in Section 11.8.2 (*Rural Electrification*).

"**Lock-in Period**" has the meaning given to it in Section 14.3.2 (*Shareholding Restrictions*).

"**Materials**" means plant, construction and other materials, appliances machinery, equipment, consumables, tools, components required for or in connection with the Project.

"**Municipalities**" has the meaning given to it in the Local Self Governance Act, 2055 (1999) as may be restructured pursuant to the Laws of Nepal.

"**MW**" means megawatt.

"**NEA**" means Nepal Electricity Authority established under the Nepal Electricity Authority Act, 2041 (1984), and shall include its successors and permitted assignees.

"**NEA Payment Exception**" has the meaning given to it in Section 10.19.1 (*GON Project Covenant*).



"Nepal Employment and Skills Training Plan" means the employment and skills training plan prepared and/or updated jointly by the Parties in accordance with this Agreement, the guidance notes for which are set out in Schedule 12 (*Nepal Employment and Skills Training Plan – Guidance Note*).

"Nepal Industrial Benefits Plan" means the industrial benefits plan prepared and/or updated jointly by the Parties in accordance with this Agreement, the guidance notes for which are set out in Schedule 13 (*Nepal Industrial Benefits Plan – Guidance Note*).

"Net PPA Loss of Revenue" means Gross PPA Loss of Revenue adjusted for any royalties that would have been payable on such revenue under this Agreement.

"NPR" means the lawful currency of Nepal.

"NRB" or "Nepal Rastra Bank" means Nepal Rastra Bank established under Nepal Rastra Bank Act, 2058 (2002).

"O&M Contractor" means the contractor(s) engaged in the operation and maintenance of the Hydro Property.

"Original Household" has the meaning given to it in Section 11.8.1 (*Rural Electrification*).

"Other Force Majeure Event" has the meaning given to it in Section 12.1.2 (*Definition of Force Majeure Event*).

"Outstanding Private Land and Private ROWs" has the meaning given to it in Section 8.2.5 (*Acquisition of Private Land and Private ROWs*).

"Outstanding Trade Payments" has the meaning given to it in Section 13.5 (*Transfer Price components*).

"Panel of Experts" has the meaning given to it in Section 15.5 (*Expert determination*).

"Payment Date" has the meaning given to it in Section 13.6.2 (*Payment of the Transfer Price*).

"Performance Securities" means the Performance Security (Signing) and the Performance Security (FC).

"Performance Security (Signing)" means an unconditional and irrevocable, payable on-demand bank guarantee issued by a Nepalese bank or an international bank duly confirmed by a first category Nepalese bank, in the amount of NPR six (6) Crores and twenty-five (25) Lakhs submitted to GON by the Company pursuant to Section 3.1.5 (*Company Conditions Subsequent*), to be kept valid for the period commencing from such date of delivery until the date falling thirty (30) days after the Commercial Operation Date, and being substantially in the form set out in Schedule 20 (*Form of Performance Security*).

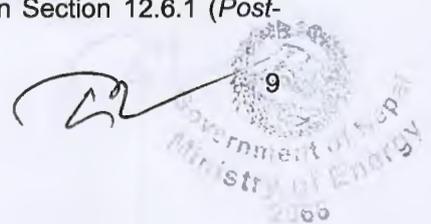
"Performance Security (FC)" means an unconditional and irrevocable, payable on-demand bank guarantee issued by a Nepalese bank or an international bank duly confirmed by a first category Nepalese bank, in the amount of NPR eighteen (18) Crores and seventy-five (75) Lakhs submitted to GON by the Company pursuant to Section 3.1.6 (*Company Conditions Subsequent*), to be kept valid for the period commencing from such date of delivery until the date falling thirty (30) days after the Commercial Operation Date, and being substantially in the form set out in Schedule 20 (*Form of Performance Security*).

"Performance Standards" shall mean the international environment and social sustainability standards determined in accordance with Section 11.4 (*Performance Standards*).

"Plans" means, collectively, (A) the Nepal Employment and Skills Training Plan, (B) the Resettlement and Rehabilitation Plan, (C) the Nepal Industrial Benefits Plan, (D) the Local Benefit Sharing Plan, (E) the Disaster Management Plan and all other plans and action plans developed by the Company (including the Supplementary E&S Documents) which set out specific social and environmental measures to be undertaken by the Company, in order to enable the Project to be carried out in compliance with the EIA and the Performance Standards, as updated, if required, in accordance with this Agreement.

"PMU" has the meaning given to it in Section 4.1 (*PMU*).

"Post-COD Compensation Amount" has the meaning given to it in Section 12.6.1 (*Post-COD GON Force Majeure Event Compensation*).



"Power Station" means the power station including turbines and generators, hydro mechanical equipment including gates, all structural components from head works to tail race, including pen stock, head and tail works, reservoir, diversion tunnel, water spillage ways, generating station, switchyard and other components, other hydro works and all associated works as well as buildings used for offices and housing the operating staff representatives and other associated agencies, the full specifications of which are set out in Schedule 8 (*Power Station Specifications*).

"Pre-COD Compensation Amount" has the meaning given to it in Section 12.5.8 (*Pre-COD GON Force Majeure Event compensation*).

"Preliminary Statement" has the meaning given to it in Schedule 1 (*Restoration*).

"Preliminary Termination Notice" means a Company Preliminary Termination Notice or a GON Preliminary Termination Notice.

"Private Land" means such land forming part of the Project Area that is not, as at the Agreement Date, owned by GON or a Company.

"Prohibited Act" means:

- (A) committing any of the offences: (i) defined as "Improper Conduct" in the Commission for the Investigation of Abuse of Authority Act, 2048 (1991); or (ii) any offence under any Laws of Nepal relating to the prevention of corruption or bribery, in respect of fraudulent acts or in respect of any attempt or conspiracy to defraud; or (iii) offences covered by the Prevention of Corruption Act, 2059 (2002); or
- (B) harming or threatening to harm, directly or indirectly, any person or their property in order to affect the execution or operation of this Agreement or any other document relating to the Project.

"Project" means the development, design, engineering, financing, procurement, insurance, construction, completion, testing, commissioning, ownership, operation, maintenance, repair and transfer of the Hydro Property, and includes the Generation Project and the Transmission Project.

"Project Affected People" means the people affected by the Project as such persons are identified or described in the EIA or the Resettlement and Rehabilitation Plan.

"Project Area" means the geographical area within which the Project shall be developed, constructed and operated and includes the rights of way between the Power Station and the designated substation(s) or connecting point in Nepal over which the Transmission Line shall be constructed, as more fully described in Schedule 7 (*Project description*).

"Project Assets" has the meaning given to it in Section 13.6.7 (*Payment of the Transfer Price*).

"Project Land" means all GON Land, Private Land, Outstanding Private Land and ROWs.

"Project Review Panel" or **"PRP"** means the project review panel appointed pursuant to Section 5.1 (*Appointment of the PRP*) or Section 5.8 (*Tenure*), as the case may be.

"Project Rights" means all rights, title and interest, in and to, the Project.

"PRP Agreements" has the meaning given to in Section 5.1.1 (*Appointment of the PRP*).

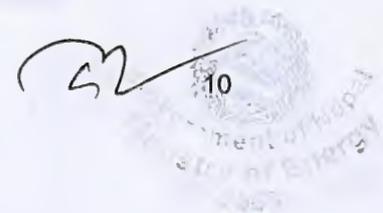
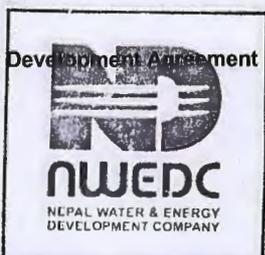
"PRP Costs" has the meaning given to it in Section 5.5.1 (*Costs of the PRP*).

"Project Specifications" means the Power Station specifications set out in Schedule 8 (*Power Station Specifications*).

"Qualified Investor" means a person:

- (A) who is a regulated entity in the jurisdiction of its incorporation and is in the business of banking, insurance, lending or financing projects; or
- (B) who is a regulated entity in the jurisdiction of its incorporation with a credit rating (issued by Standard & Poor, Moody's, Fitch or ICRA) equivalent to or higher than the Sponsors as of the Agreement Date; or

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(C) whose credentials, in the field of hydropower are similar to or better than that of the Sponsor and who GON (on the basis of information provided by the Company) has established (acting reasonably) is unlikely to materially and detrimentally affect the implementation of the Project in accordance with this Agreement,

and in each of the above cases, is a person:

- (i) who is not of a nationality or domicile that is prohibited by the prevailing Laws of Nepal from investing in Nepal; and
- (ii) who is not, in GON's reasonable opinion, a threat to Nepal's national security.

"Records" means the DPR, as-built drawings and audited financial statements and such other documents, information and records which are required to be maintained by the Company pursuant to the Laws of Nepal and this Agreement in connection with the Project.

"Refinancing" means any amendment, variation, novation, supplement or replacement of any Financing Document (other than any subordinated Financing Document) which has the effect of:

- (A) reducing the margin or the effective rate of interest in respect loans provided by the Senior Lenders; or
- (B) changing the date for any payment or repayment of principal or interest in respect of loans provided by the Senior Lenders, other than any change resulting from a waiver request of the Company, provided that such waiver is granted by the Senior Lenders on account of a Force Majeure Event or in respect of such circumstances that would otherwise result in a default by the Company under the Financing Documents.

For the avoidance of doubt, Refinancing shall not include any reduction of interest expressly contemplated in the Financing Documents.

"Relevant GON Compensation Amount" has the meaning given to it in Section 12.7.1 (*Staggered Remedies*).

"Remedial Measures" has the meaning given to it in Schedule 2 (*Project Handover Upon Expiry of the Agreement*).

"Representatives" means officers, directors, employees, advisers, consultants, contractors, subcontractors or agents, as the case may be.

"Resettlement and Rehabilitation Plan" means the plan to be prepared by the Company for resettlement and rehabilitation of the Project Affected People in accordance with this Agreement.

"Responding Party" has the meaning given to it in Section 15.5.1 (*Expert determination*).

"Restoration" has the meaning given to it in Schedule 1 (*Restoration*), and **"Restored"** shall be construed accordingly.

"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 the Restoration.

"Restoration Report" has the meaning given to it in Schedule 1 (*Restoration*).

"Restoration Schedule" means the schedule for the completion of the Restoration prepared by the Company, such schedule to include (A) a period for solicitation of engineering services or other services necessary to effect the Restoration, (B) the negotiation and execution of contract(s) for the services referred to in (A) above, (C) a reasonable period to arrange the financing for the Restoration, and (D) a good faith estimate of the time it shall take to complete the Restoration after financing has been obtained, as such Restoration Schedule may be extended from time to time.

"Revised Financing Document" has the meaning given to it in Section 11.23.5 (*Financing Documents and Financing Plan*).

"ROE" has the meaning given to it in Section 13.5 (*Transfer Price components*).



"**ROW Acquisition Period**" has the meaning given to it in Section 8.1.2 (*GON ROWs – Transmission Project*).

"**ROWs**" has the meaning given to it in Section 8.1.2 (*GON ROWs – Transmission Project*).

"**Rural Electrification Plan**" has the meaning given to it in Section 11.8.5 (*Rural Electrification*).

"**Scheduled COD**" means the date falling sixty (60) months from the date of Financial Close, as such date may be extended in accordance with this Agreement.

"**Severe Market Disruption**" means any occurrence of any material and/or exceptional circumstances in: financial markets in Europe, the United States of America, Singapore, Hong Kong, China, South Korea, India or Nepal which:

- (A) results in the suspension or cessation of substantially all lending activity in the financial markets for hydropower projects similar to the Project;
- (B) materially and adversely affects access by the Company to such financial markets; or
- (C) materially and adversely affects the viability of the Project.

"**Shareholder**" means any person that is, at the relevant time, a shareholder in the Company.

"**SIAC**" means the Singapore International Arbitration Centre.

"**SIAC Rules**" has the meaning given to it in Section 15.6.1 (*Dispute Resolution by Arbitration*).

"**SMD Period**" means the lesser of: (A) six (6) months; and (B) the duration of the Severe Market Disruption.

"**Sponsors**" means Korea South-East Power Co., Ltd., Daelim Industrial Co., Ltd., Kyeryong Construction Industrial Co., Ltd., and Mr. Bkesh Pradhanang.

"**Suitable Mechanism**" means the mechanism to share the Benefits, agreed between the Parties pursuant to Section 6.1.1(D) (*GON rights and obligations*), or as determined by the Panel of Experts pursuant to Section 6.1.1(D) (*GON rights and obligations*) and Section 15.5 (*Expert determination*).

"**Sunk Costs**" means:

- (A) for the period from the date of signing of the Contract until the Agreement Date, the reasonable and prudent costs and expenses of the Company, Sponsors and Shareholders incurred for the purchase of project lands and development of access roads, provided that the aggregate of such amount shall not exceed NPR ninety-one (91) Crores; and
- (B) from the Agreement Date until the Calculation Date, the reasonable and prudent costs and expenses of the Company incurred for the development of the Project (including the cost price of the Project Land) as agreed by the Parties or determined by the Big Four firm appointed in accordance with Schedule 4 (*Termination Plan Upon Early Termination of the Agreement*).

"**Supplementary E&S Documents**" means any supplementary documents that the Company prepares and applies to comply or be consistent with the Performance Standards.

"**Tax**" means any tax, levy, cess, impost, fees, octroi, royalties, duty or other charge of a similar nature by whatever name called in Nepal (including taxes on distributions to shareholders and withholding taxes 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 in Nepal). The term "**Tax**" shall not include any fee or charge payable to a GON Instrumentality as consideration for goods or services which are provided by a GON Instrumentality on a commercial basis.

"**Technical Dispute**" means a Dispute which is specified in this Agreement to be subject to determination by the Panel of Experts, in accordance with Section 15.5 (*Expert determination*).



"Technical Standards" means the standards for civil, electrical and mechanical works, as set out in Schedule 9 (*Technical Standards*), or such other standards, which are generally accepted as Good Industry Practice in the international hydro power generation, construction and transmission industry, as the case may be (provided that such standards shall also take into account the specific conditions in existence in Nepal and at the Project Area from time to time).

"Term" has the meaning given to it in Section 2.3 (*Term*).

"Termination Notice" means a notice delivered by a Party to the other Party pursuant to Section 13.3 (*Termination notices*).

"Testing Output" means any electrical energy delivered by the Company to NEA during the testing and commissioning of the Hydro Property.

"Time-Based Land Acquisition Activities Schedule" means table number 3 in the Land Acquisition Plan (as set out in Schedule 15 (*Land Acquisition Plan (LAP)*)) setting out each Parties responsibilities and obligations in respect of the acquisition of Private Land.

"Third Party" means person as described in Section 1.2.13 (*Definitions and Interpretation*) or a GON Instrumentality.

"Transaction Documents" means this Agreement, the Direct Agreement, the Domestic PPA and the Land Lease Agreement(s).

"Transfer" means any sale, transfer, assignment, change of Control, Encumbering, exchange, sub-contracting, delegation, merger, consolidation, sale of stock, declaration of trust in favour of a third party or declaration as trustee for a third party or any other similar or analogous action.

"Transfer Date" has the meaning given to it in Section 13.6.3 (*Payment of the Transfer Price*).

"Transfer Debt" has the meaning given to it in Section 13.5 (*Transfer Price components*).

"Transfer Equity" has the meaning given to it in Section 13.5 (*Transfer Price components*).

"Transfer Price" means the compensation amount payable by GON to the Company in accordance with Section 13.4 (*Transfer Price*).

"Transfer Tax" has the meaning given to it in Section 13.5 (*Transfer Price components*).

"Transmission License" means the transmission license required by the Laws of Nepal.

"Transmission Survey License" means the survey license for transmission required by the Laws of Nepal.

"Transmission Line" means the 220 kv transmission line running from the UT-1 switchyard at Baluwa Phat, Haku VDC, Rasuwa District to a substation located on the Chilime – Trishuli 3B Transmission Line or another substation or connection point , which is to be constructed as part of the Project.

"Transmission Project" means the development, design, engineering, financing, procurement, insurance, construction, completion, testing, commissioning, ownership, operation, maintenance, repair and transfer of the Transmission Line and associated works described in part (C) of the definition of Hydro Property for evacuation of power from the Generation Project.

"UNFCCC" means the United Nations Framework Convention on Climate Change adopted in New York on 9 May 1992.

"Unit Commissioning Date" means the date, certified by the Independent Engineer, on which a unit comprising the Power Station has passed all the requisite commissioning and performance tests prescribed in the Domestic PPA and has commenced commercial operations, which date may be prior to the Commercial Operation Date.

"Upstream Benefits" has the meaning given to it in Section 6.1.1(D) (*GON rights and obligations*).



"Village Development Committees" has the meaning given to it in the Local Self Governance Act, 2055 (1999) as may be renamed and restructured pursuant to the Laws of Nepal.

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 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 promptly;
- 1.2.6 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;
- 1.2.7 references to performance of an obligation by a Party in "a timely manner" means performance of that obligation so as to allow the other Party a reasonable time within which to perform its obligations under this Agreement;
- 1.2.8 unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- 1.2.9 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;
- 1.2.10 headings are for ease of reference only and do not affect interpretation;
- 1.2.11 the terms "including" and "include" mean including or include (as applicable) without limitation;
- 1.2.12 in interpreting this Agreement, a construction that would promote the purpose or object underlying this Agreement must be preferred;
- 1.2.13 a person includes a natural person, corporation, partnership, firm, limited partnership, joint venture, trust or unincorporated body (whether or not having separate legal personality) and that person's executors, administrators, successors, personal representatives, and permitted assigns and substitutes;
- 1.2.14 the schedules and annexures form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules and annexures;
- 1.2.15 a reference to Schedule 7 (*Project description*), Schedule 8 (*Power Station Specifications*), Schedule 9 (*Technical Standards*), Schedule 10 (*Project Review Panel Scope of Work*), Schedule 14 (*Use of River Water – Water Requirements*) or Schedule 15 (*Land Acquisition Plan*) shall be a reference to such schedule as may be updated from time to time as evidenced by such schedule initialled by an authorised representative of each Party;
- 1.2.16 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.17 a reference to "day", "month" or "year" shall mean a calendar day, calendar month or calendar year, respectively, pursuant to the Gregorian calendar;
- 1.2.18 a reference to writing or written includes faxes but not e-mails;



- 1.2.19 references to a document in agreed form are to that document in the form agreed by the parties and initialled by or on behalf of them for identification; and
- 1.2.20 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

2. CONCESSION, PROJECT AND TERM

2.1 Concession

The GON hereby grants:

2.1.1 to the Company for the Term, the right to:

- (A) design, engineer, finance, procure, construct, complete, test, commission, develop, insure, own, operate and maintain the Hydro Property and oversee the development of the Project as a whole;
- (B) use water from the Trishuli River for the Generation Project;
- (C) transmit electrical energy from the Power Station over the Transmission Line in Nepal; and
- (D) generate electrical energy and make capacity available from the Power Station and sell and supply such electrical energy and make capacity available from the Power Station, within the territorial jurisdiction of Nepal in accordance with the Domestic PPA,

in accordance with this Agreement, the applicable Government Approvals and the Laws of Nepal.

2.2 The Project

2.2.1 The Company shall be responsible for and shall design, engineer, finance, procure, construct, complete, test, commission, develop, insure, own, operate, maintain and transfer the Hydro Property, in each case, in accordance with (i) Laws of Nepal, (ii) Government Approvals, (iii) Good Industry Practice, (iv) Technical Standards, (v) this Agreement, and (vi) to the level of skill, care and diligence (as specified in, and required under, this Agreement).

2.2.2 In consideration for GON entering into this Agreement and granting various concessions and other rights to the Company, the Company shall transfer the Power Station, the Transmission Line, the balance of the Hydro Property and the Project Assets to GON or GON's nominated entity free of charge and free and clear of all Encumbrances and liabilities (other than the liability to creditors contemplated in Section 13.6.7(C) (*Payment of the Transfer Price*) on the Expiry Date in a Good Operating Condition, in accordance with the Handover Plan and this Agreement.

2.3 Term

The term of this Agreement shall commence on the Agreement Date and, subject to Section 13 (*Events of Default and Termination*), expire on the Expiry Date (the "Term"), save where an extension of the Term beyond the Expiry Date is expressly provided for in this Agreement.

2.4 Generation License and Transmission License

2.4.1 The Company shall duly apply for the Generation License to the relevant GON Instrumentality in accordance with the Laws of Nepal and this Agreement within ninety (90) days of the Agreement Date.

2.4.2 The Company shall duly apply for the Transmission Survey License to the relevant GON Instrumentality in accordance with the Laws of Nepal and this Agreement within thirty (30) days of the Agreement Date



- 2.4.3 The Company shall duly apply for the Transmission License to the relevant GON Instrumentality in accordance with the Laws of Nepal and this Agreement within twenty-four (24) months of the Agreement Date
- 2.4.4 If the Company is in compliance with its obligations under Section 2.4.1 (*Generation License and Transmission License*), Section 2.4.2 (*Generation License and Transmission License*) or Section 2.4.3 (*Generation License and Transmission License*) (as the case may be), GON shall, in accordance with the Laws of Nepal and Section 2.4 (*Generation License and Transmission License*), procure the issuance of:
 - (A) the Generation License to the Company within one hundred and twenty (120) days;
 - (B) the Transmission Survey License to the Company within thirty (30) days;
 - (C) the Transmission License to the Company within one hundred and twenty (120) days;

in each case from the date on which the GON has received the Company's application in accordance with Section 2.4.1 (*Generation License and Transmission License*), Section 2.4.2 (*Generation License and Transmission License*) and Section 2.4.3 (*Generation License and Transmission License*) respectively.
- 2.4.5 Each of the Generation License and the Transmission License shall have a term that shall be co-terminus with the Term. If the Term is extended pursuant to this Agreement then GON shall procure the extension of the Term accordingly.
- 2.4.6 The Company shall comply with the terms of all Government Approvals granted to it.

2.5 Permitted activities from the Agreement Date

GON, in addition to the other rights granted by GON under this Agreement, grants to the Company, from the Agreement Date, the right to undertake the activities set out in Schedule 17 (*Permitted Activities*).

3. CONDITIONS SUBSEQUENT

3.1 Company Conditions Subsequent

The Company shall, unless waived in writing by GON or unless prevented due to (A) breach of this Agreement by GON, (B) GON Event of Default, (C) Force Majeure Event or (D) Change in Law:

- 3.1.1 ensure that each Financing Document is approved by (if approval is required) and provided to GON in accordance with Section 11.23 (*Financing Documents and Financing Plan*);
- 3.1.2 no later than thirty (30) days from the Agreement Date, provide or cause to be provided, to GON, a legal opinion from the Company's legal counsel confirming: (A) the Company's capacity and authority to enter into and perform its obligations under this Agreement; (B) that this Agreement is in compliance with the Laws of Nepal; and (C) that the Agreement is legal, valid, binding and enforceable against the Company in accordance with its terms;
- 3.1.3 no later than twenty-four (24) months from the date of the issuance of Generation License, achieve Financial Close, provided however that, such period shall stand extended upon its expiry by a maximum additional period of twelve (12) months if the Company is unable to achieve Financial Close for reasons beyond Company's control despite the Company making diligent and commercially reasonable efforts to achieve Financial Close within such period. The Company shall provide details (in writing) of: (A) such reasons beyond Company's control; (B) Company's diligent and commercially reasonable efforts towards achievement of Financial Close; and (C) Company's indicative plan to achieve Financial Close within the extended twelve (12) month period;



- 3.1.4 no later than thirty (30) days from Financial Close, provide to GON a written confirmation from the Lenders' agent certifying or confirming that Financial Close has occurred;
- 3.1.5 no later than thirty five (35) days from the Agreement Date, provide the Performance Security (Signing) to GON;
- 3.1.6 provide the Performance Security (FC) to GON no later than thirty (30) days from the date of Financial Close;
- 3.1.7 no later than one (1) month from Financial Close, issue "notice to proceed" to the Construction Contractors in respect of the relevant packages, works of which are on the critical path for the purpose of achieving the Commercial Operation Date by the Scheduled COD;
- 3.1.8 no later than two (2) years from the Commercial Operation Date, provide the Handover Plan and operating principles for the Hydro Property to GON;
- 3.1.9 no later than twelve (12) months from the Agreement Date, prepare and submit the Disaster Management Plan in accordance with Section 11.3.3 (*Plans*);
- 3.1.10 no later than six (6) months from the Agreement Date, prepare and submit the Resettlement and Rehabilitation Plan in accordance with Section 11.3.3 (*Plans*); and
- 3.1.11 achieve the Commercial Operation Date no later than the Scheduled COD.

3.2 GON Conditions Subsequent

Unless waived in writing by the Company or unless prevented due to (A) a breach of this Agreement by the Company, (B) Company Event of Default or (C) Other Force Majeure Event, GON shall (or shall procure):

- 3.2.1 no later than the expiry of the period permitted to GON in Section 8 (*Land Acquisition*) (as may be extended as a result of a Land Acquisition Delay Event), lease or transfer (as the case may be) the (A) GON Land, (B) Outstanding Private Land, and (C) ROWs, to the Company, in each case, in accordance with Section 8 (*Land Acquisition*);
- 3.2.2 no later than:
 - (A) thirty (30) days from the Agreement Date, provide or cause to be provided, to the Company, a legal opinion from the Ministry of Law, Justice and Parliamentary Affairs confirming: (1) GON's capacity and authority to enter into and perform its obligations under this Agreement; (2) that this Agreement is in compliance with the Laws of Nepal; and (3) that the Agreement is legal, valid, binding and enforceable against GON in accordance with its terms;
 - (B) thirty (30) days from the date of the Direct Agreement, provide or cause to be provided, to the Company, a legal opinion from the Ministry of Law, Justice and Parliamentary Affairs confirming: (1) GON's capacity and authority to enter into and perform its obligations under the Direct Agreement; (2) that the Direct Agreement is in compliance with the Laws of Nepal; and (3) that the Direct Agreement is legal, valid, binding and enforceable against GON in accordance with its terms;
- 3.2.3 no later than the date specified in Section 10.18 (*Direct Agreement*) provide to the Company the Direct Agreement duly executed by the Ministry of Energy for and on behalf of the GON;
- 3.2.4 procure the issuance of the Generation License and the Transmission License to the Company within the timeframes set out in Section 2.4.4 (*Generation License and Transmission License*);;
- 3.2.5 the executed IDA Indemnity Agreement by the Ministry of Finance;
- 3.2.6 within one (1) year of the Agreement Date:

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(A) exempt the Company from the requirement to pay one hundred per cent (100%) of its assessed income tax for a period of ten (10) years from the Commercial Operation Date; and

(B) exempt the Company from the requirement to pay fifty per cent (50%) of its assessed income tax for the period commencing on the tenth (10th) anniversary of the Commercial Operation Date and ending on the fifteenth (15th) anniversary of the Commercial Operation Date,

provided that the Commercial Operation Date is achieved on or before 12 April 2024.

3.3 Joint obligations and acknowledgements

3.3.1 The Parties shall cooperate with each other to facilitate:

- (A) the timely achievement of Financial Close; and
- (B) the execution of the Domestic PPA on or before the expiry of six (6) months from the Agreement Date or within a reasonable period thereafter.

3.3.2 The GON hereby acknowledges that the Company is exempted from any requirement to pay for ecosystem services to the Ministry of Forest, GON or any other GON Instrumentality in accordance with the decision of the council of ministers noted in recital (G) above.

3.4 Extension of timelines for compliance with Conditions Subsequent

3.4.1 For the avoidance of any doubt, it is clarified that the applicable timelines for satisfaction of the applicable Company Conditions Subsequent by the Company shall stand extended in the following circumstances:

- (A) in case of a Force Majeure Event or Change in Law, in accordance with Section 12 (*Force Majeure*) and Section 12A (*Change in Law*), respectively;
- (B) on a day-for-day basis, if the Company has not been able to satisfy a Company Condition Subsequent due to a breach of this Agreement by GON or a GON Event of Default; or
- (C) if Parties agree (in writing).

3.4.2 For the avoidance of any doubt, it is clarified that the applicable timelines for the satisfaction of the applicable GON Conditions Subsequent by GON shall stand extended in the following circumstances:

- (A) in case of an Other Force Majeure Event, in accordance with Section 12 (*Force Majeure*);
- (B) on a day-for-day basis, if GON has not been able to satisfy the GON Condition Subsequent due to a breach of this Agreement by the Company or a Company Event of Default; or
- (C) if the Parties agree (in writing).

4. PROJECT MONITORING UNIT

4.1 PMU

4.1.1 The GON may delegate the management and administration of this Agreement to a Project Monitoring Unit established by GON ("PMU") to monitor that the Company is carrying out the Project in accordance with this Agreement provided that this shall not result in the Company being subject to any additional obligations that have not been otherwise agreed under this Agreement or any Transaction Document.



- 4.1.2 The Parties acknowledge and agree that the PMU shall only act for and on behalf of GON and that the PMU shall not have any rights that are in addition to the rights of GON or a GON Instrumentality as contained in this Agreement.
- 4.1.3 The Company shall provide all necessary co-operation and assistance to the PMU in accordance with this Agreement.

5. PROJECT REVIEW PANEL

5.1 Appointment of the PRP

- 5.1.1 Subject to this Section 5.1 (*Appointment of the PRP*), GON shall appoint (in consultation with the Company, by executing an agreement with each of the core panel members (the "**PRP Agreements**"), a project review panel comprising of members with sufficient technical and professional skills and qualifications to carry out their respective obligations under this Agreement and the PRP Agreements within the following time periods:
 - (A) the member responsible for engineering geology and geotechnical engineering, within six (6) months of the Agreement Date;
 - (B) the member responsible for general hydropower engineering (with an emphasis on dam safety), within six (6) months of the Agreement Date;
 - (C) the member responsible for environmental benefits, within six (6) months of the Agreement Date; and
 - (D) the member responsible for social and local benefits, within six (6) months of the Agreement Date.
- 5.1.2 GON has the right to change the composition of the PRP by agreement with the Company from time to time in the interest of the Project.
- 5.1.3 If the Parties are unable to agree to the appointment by GON of the PRP by executing the PRP Agreements within the periods referred to in Section 5.1.1 (*Appointment of the PRP*) above, then the Company shall, within ten (10) months of the Agreement Date (or such longer period as otherwise agreed between the Parties) ("**PRP Extension Period**"), submit to GON the names of at least three (3) individuals for each of the posts of the core panel of PRP referred to in Section 5.4.1 (*Composition of the PRP*).
- 5.1.4 The PRP shall not include Related Parties or Representatives of the Company.
- 5.1.5 The GON shall inform the Company in writing within thirty (30) days of the date of receipt of the list referred to in Section 5.1.3 (*Appointment of the PRP*) of the names of the individuals who have been selected by GON from the list submitted by the Company to fill the role of the PRP.
- 5.1.6 Within sixty (60) days of the date on which the Company receive written notice from the GON of its selection, or approval of the project review panel constituted by the Company prior to the Agreement Date, GON shall appoint, by executing the PRP Agreements, such independent consulting individuals as the PRP.
- 5.1.7 Notwithstanding anything to the contrary in this Section 5 (*Appointment of the PRP*), GON may approve (such approval may not unreasonably withheld) a project review panel constituted by the Company prior to the Agreement Date provided that such project review panel has members with sufficient technical and professional skills and qualifications to carry out their respective obligations and become a member of the PRP pursuant to the provisions of this Agreement. The Company shall submit its application to GON to approve the project review panel constituted by it prior to the Agreement Date no later than thirty (30) days of the Agreement Date.

5.2 Duty of care

GON shall use its reasonable endeavours to procure that the PRP members shall owe a joint duty of care to GON and the Company.



5.3 Role of the PRP

- 5.3.1 The terms of reference of the PRP are set out in Schedule 10 (*Project Review Panel Scope of Work*). GON shall procure that such terms of reference of the PRP are included in the PRP Agreements.
- 5.3.2 GON shall make reasonable endeavours to procure that the PRP shall at all times act: (A) in accordance with the PRP Agreements; (B) independently, reasonably and in good faith; and (C) in accordance with Good Industry Practice and the Laws of Nepal, and GON shall use its reasonable endeavours to procure that appropriate provisions in this regard are included in each PRP Agreement.
- 5.3.3 The recommendations made by the PRP in any report or determination are intended to be advisory and not binding in nature.

5.4 Composition of the PRP

- 5.4.1 The PRP shall consist of a core panel comprising of four (4) members collectively having wide & specialized experience in: (A) engineering geology and geotechnical engineering; (B) general hydropower engineering with an emphasis on dam safety aspects; (C) environment benefits; and (D) social and local benefits. If required, the PRP shall, with the prior written approval of the Parties, also consult with specialists in other areas, if required, on a case to case basis.
- 5.4.2 The chairman of the PRP shall be the expert appointed with the expertise referred to in Section 5.4.1(B) (*Composition of the PRP*) above, and shall be appointed by the GON to co-ordinate communications of and with the PRP, to call and chair its meetings, to ensure each member's participation in the PRP and to provide balance to its reviews and recommendations.
- 5.4.3 The composition of the PRP and the areas of expertise which it covers may vary during the duration of their appointment as considered appropriate by GON and the Company by mutual agreement in writing.

5.5 Costs of the PRP

- 5.5.1 Notwithstanding that the PRP Agreements are solely entered into between GON and the relevant PRP, all costs, expenses, fees and charges relating to the appointment and operations of the PRP (including costs, expenses and fees associated with the appointment of any specialists or experts appointed pursuant to Section 5.4.1 (*Composition of the PRP*)) (the "**PRP Costs**") shall be borne by the Company.
- 5.5.2 The Company shall pay to GON the PRP Costs within thirty (30) days of receiving an invoice for such PRP Costs from GON.

5.6 Access

The Company shall:

- 5.6.1 cooperate with the PRP in all matters relating to the Project;
- 5.6.2 subject to compliance with any health and safety requirements, promptly provide such access to the Project Area, the Company' respective premises and any Records, and such office accommodation and other facilities as may reasonably be required by the PRP for the purposes of carrying out its obligations under this Agreement and the PRP Agreements; and
- 5.6.3 inform the PRP of all relevant site regulations with which the PRP must comply.

5.7 Information and access

- 5.7.1 The Parties agree that:
 - (A) all written communications with the PRP shall be copied to each Party;
 - (B) the PRP shall provide its reports and recommendations to each Party; and



(C) each Party shall have the right to access such documents and records of the PRP as such Party may reasonably require in connection with the Project and this Agreement.

5.7.2 GON shall procure that appropriate provisions in this regard are included in the PRP Agreements.

5.8 **Tenure**

5.8.1 The tenure of the PRP shall commence from the date of its appointment up to Financial Close.

5.8.2 Prior to Financial Close, the Parties shall jointly propose to the Lenders that the Lenders should rely on the PRP for their due diligence, investigation and oversight of the Project.

5.8.3 If the Lenders agree to such request of the Company, the tenure of the PRP shall be extended up to six (6) months following the Commercial Operation Date.

5.8.4 If Lenders do not agree with the Parties' proposal and require that a new oversight entity having a role substantially similar to the PRP appointed pursuant to Section 5.1 (*Appointment of the PRP*) should maintain oversight of the Project, then GON shall terminate the appointment of the PRP and upon the appointment of such new oversight body by the Lenders, any references in this Agreement to the PRP shall be deemed to be references to any such oversight body appointed by the Lenders and all the obligations of the Parties vis-à-vis the PRP shall equally apply with respect to such new oversight body (to the extent applicable). The Company shall procure that Lenders appoint the new oversight body acceptable to GON (acting reasonably) to perform the roles and functions of the PRP up to the later of: (A) six (6) months from the Commercial Operation Date; and (B) a date required by the Lenders. The Company shall procure that appropriate provisions in this regard are included in the PRP Agreements.

5.8.5 Subject to Lenders' approval, the Company shall procure that any such new oversight body also owes a duty of care to each Party.

6. **WATER RIGHTS AND OBLIGATIONS**

6.1 **GON rights and obligations**

6.1.1 The GON:

(A) hereby confers on the Company, the right to use for the Project, the flow of the water in the Trishuli River within the Project boundary as identified in Schedule 7 (*Project description*) ("**Generation Project Area**").

(B) shall not, and shall procure that no Third Party in Nepal, in any manner interrupt(s) the continuous availability and use of water in Nepal for generation of power and energy by the Company for the Generation Project as envisaged under this Agreement;

(C) has the right to allow any activity (including a right to utilise water) by any person (including any GON Instrumentality) on the Trishuli River or its tributaries, whether upstream or downstream of the Generation Project Area ("**Other Uses**"), provided that GON shall procure that (1) there is no adverse impact on the Generation Project and (2) any such Other Uses do not impair the flow or availability of water in the Generation Project Area for the Generation Project (including for its operation and use);



- (D) and the Company agree that, in the event it is established that solely due to design and operational parameters of the project immediately upstream of the Power Station on the Trishuli River, there is an increase in the annual power generation of the Power Station greater than P50 levels of generation as set out in Schedule 14 (*Use of River Water - Water Requirements*) ("**Additional Generation**"), the proceeds received by the Company attributable to such Additional Generation ("**Upstream Benefits**"), shall be shared equally between GON and the Company provided that the calculation of GON's share of such Upstream Benefits shall include calculation of the resultant benefits that GON is receiving in the form of increased royalties payable to GON as a result of the Additional Generation.

If GON is of the reasonable opinion that the Company is receiving Upstream Benefits, GON shall give a written notice to the Company requesting the Company to discuss and agree a Suitable Mechanism for such sharing of the Upstream Benefits with GON. If the Company and GON cannot agree whether there is an Upstream Benefit and if so, to the Suitable Mechanism within thirty (30) days of receiving such written notice from GON, either of GON or the Company shall be entitled to refer the matter to the Panel of Experts for determination as a Technical Dispute in accordance with Section 15.5 (*Expert determination*). The Panel of Experts shall have the power to determine whether there is an Upstream Benefit and if so, which of the mechanisms proposed by each Party most closely reflects Parties' intent to share Upstream Benefits pursuant to this Section 6.1.1(D) (*GON rights and obligations*). Parties shall share the Upstream Benefits pursuant to the Suitable Mechanism determined by the Panel of Experts;

- (E) if other than due to natural reasons, the flow or availability of the water at the Generation Project Area gets diverted or is reduced upstream of the Generation Project Area within the territory of Nepal, shall at the request of the Company, undertake such activities and works as may be required to ensure that the Hydro Property is not adversely affected in any manner;
- (F) if due to natural reasons, the flow or availability of the water at the Generation Project Area gets diverted or is reduced upstream of the Generation Project Area within the territory of Nepal, shall allow the Company to undertake and facilitate the undertaking of such activities and works as may be required by the Company to mitigate the impact of such natural event provided that these activities or works do not cause material adverse impact on any other project or are not against the provisions in the EIA unless so permitted by GON;
- (G) shall coordinate between the Company and owners or operators of other projects on the Trishuli River or its tributaries, whether upstream or downstream of the Generation Project Area to ensure that the Project is not adversely impacted on account of such other upstream or downstream projects;
- (H) shall ensure that any release of water from the projects upstream of the Power Station shall be in accordance with Good Industry Practice and such release shall take into account the safety and security features similar to the operations protocol as set out in Schedule 14 (*Use of River Water - Water Requirements*); and
- (I) shall not be liable to Company under this Section 6.1 (*GON rights and obligations*) to the extent the availability or use of water by the Company for the Generation Project is adversely affected due to a natural event or an act of God.



6.1.2 If, due to GON's breach of Section 6.1.1 (*GON rights and obligations*), the Company or the Hydro Property suffer any adverse impact including impairment of the flow or availability of water in the Generation Project Area for the Generation Project or interruption in the availability or use of water by the Company for the Generation Project, GON shall compensate the Company without double recovery for any increase in costs incurred and Net PPA Loss of Revenue suffered by the Company in the following terms. The Company shall provide to GON an itemised invoice (together with full supporting documentation) in this regard. The GON shall, within sixty (60) days of the receipt of an itemised invoice (together with full supporting documentation) from the Company, provide its decision whether to pay the Company in these terms:

- (A) setting-off against the Delay Liquidated Damages amount;
- (B) reducing the Energy Royalty payable by the Company to GON following Commercial Operation Date under Section 11.22 (*Royalties Payable to GON*);
- (C) reducing the Capacity Royalty payable by the Company to GON following Commercial Operation Date under Section 11.22 (*Royalties Payable to GON*); or
- (D) GON putting in place an irrevocable and legally binding exemption (by issuing a notification to this effect in the official Gazette of Nepal or in any other manner permitted under the Laws of Nepal) for the Company from all, or a proportion of, the Taxes which it would otherwise be required to pay under the Laws of Nepal,

until such time that the increase in costs incurred and Net PPA Loss of Revenue are paid.

6.1.3 If the Company is unable to fully recover such increase in costs and/or Net PPA Loss of Revenue suffered within one hundred and twenty (120) days of the date of demand by the Company in accordance with Section 6.1.2 (*GON rights and obligations*), the Company shall be entitled to present to GON an itemised invoice (together with full supporting documentation) for any remaining amount which the Company is entitled to recover from GON under this Section. The GON shall reimburse the Company within ninety (90) days of GON receiving such invoice (together with full supporting documentation). Provided that in the event of non-payment of any undisputed amounts due and payable by the Company to GON under this Agreement, GON shall, at its option, be entitled to set-off such amounts against the amount recoverable from GON under this Section.

6.2 **Company rights and obligations**

6.2.1 The Company undertakes that:

- (A) in undertaking the Project, it shall not impair the use of the Trishuli River for:
 - (1) drinking and cultural uses;
 - (2) existing irrigation, industrial, and recreational uses, in each case, which are identified in the EIA or any Supplementary E&S Documents and provided that where such uses are impaired, such impairment is mitigated (i) in accordance with the EIA or any Supplementary E&S Documents; or (ii) in any other manner acceptable to GON; and
 - (3) the purposes referred to in Section 11.2 (*Environmental, Social, Health and Safety*) and Section 11.3 (*Plans*);
- (B) it shall ensure that the water released from the Power Station is of the same quantity (except the normal allowance for leakage and riparian discharge) as flowing into the reservoir of the Power Station;



- (C) it shall ensure that any release of water from the Power Station shall be in accordance with Good Industry Practice and such release shall take into account the safety and security procedures pursuant to paragraph 5 of operation protocol set out in Schedule 14 (*Use of River Water - Water Requirements*);
- (D) it shall provide information required by GON to coordinate with owners or operators of other projects on the Trishuli River or its tributaries, whether upstream or downstream of the Generation Project Area;
- (E) it shall share its basic engineering design parameters and operating assumptions with GON to enable GON: (1) to coordinate design and operations of other projects on the Trishuli River in order to optimize basin value; or (2) to ensure that such projects are not designed and / or operated in a manner which could adversely affect the Project; and
- (F) it shall ensure at all times when operating the Power Station that such quantum of water which is the greater of (1) ten per cent (10%) of the average monthly minimum of the lean month discharge of the Trishuli River, or (2) the minimum quantity which is stipulated in the EIA, shall be released into the natural watercourse downstream of the dam or the diversion structures, provided that the obligation to release such quantum of water shall not be more than the water flowing into the reservoir of the Power Station.

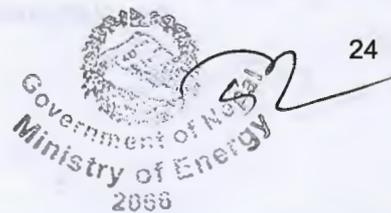
6.2.2 If, due to the Company's breach of Section 6.2.1 (*Company rights and obligations*), GON or any GON Instrumentality: (A) suffers any loss which has not been mitigated by the Company; or (B) incurs any reasonable costs and expenses, the Company shall compensate GON or relevant GON Instrumentality (as the case may be) for any such loss and any costs and expenses as a result of such breach of Section 6.2.1 (*Company rights and obligations*) by the Company.

7. COMMISSIONING, CONSTRUCTION AND COMMERCIAL OPERATIONS DATE

7.1 Commercial Operation Date

- 7.1.1 Without prejudice to Section 2.2 (*The Project*), the Company shall, on or before the Scheduled COD, design, engineer, construct, complete, test and commission the Hydro Property in accordance with this Agreement. GON shall not be entitled to claim Company Event of Default under Section 13.1.3 (*Company Event of Default*) if the certificate referred to in Section 7.1.3 (*Commercial Operation Date*) certifies that the Hydro Property has achieved commercial operations for an aggregate capacity that is not less than 205 MW at Commercial Operation Date provided that the Company shall pay Capacity Royalty on the higher of (A) 216MW and (B) the installed capacity. The Parties agree that the Company is entitled to test and commission on a unit by unit basis and subject to availability of water to demonstrate an aggregate capacity that is not less than 205 MW to achieve Commercial Operation Date.
- 7.1.2 The PMU and the NEA shall be entitled to witness all performance tests conducted by the Company and in this regard the Company shall give GON at least fourteen (14) days' notice of its intention to carry out any such performance test.
- 7.1.3 When the Hydro Property has been commissioned and achieved commercial operations in accordance with this Agreement and the Domestic PPA, the Company shall send a written notification to the GON and the NEA communicate the date of achievement of Commercial Operation Date, which shall be supported by a certificate issued by the Independent Engineer certifying that the Hydro Property has achieved commercial operations in accordance with this Agreement and the Domestic PPA. The date such written notification is issued to the GON and the NEA shall be the "Commercial Operation Date".

7.2 Extra-ordinary delay - construction



- 7.2.1 If at any time prior to the date falling one (1) month prior to the Scheduled COD, in the Company's reasonable opinion, the Commercial Operation Date shall not be achieved by the Scheduled COD as a result of unforeseen acts, events or conditions in the construction of the Hydro Property which: (1) were not caused due to a breach of this Agreement by the Company, a Company Event of Default, a Force Majeure Event or Change in Law; (2) cannot be prevented, avoided or overcome by the Company despite the exercise of diligence; and (3) Company taking all reasonable precautions, due care and measures (including acting in accordance with Good Industry Practice) to prevent, avoid or overcome the effects of such acts, events or conditions, the Company shall issue a written notice to GON with a copy to the PRP requesting for an extension to the Scheduled COD. Such notice shall include full details of the reasons for, and the estimated length of, the extension to the Scheduled COD being requested, an indicative plan to address the acts, events or conditions causing such delay, and shall be accompanied by such evidence as is reasonably required to evidence the requirement for such extension to the Scheduled COD.
- 7.2.2 Within thirty (30) days of receipt of such notice referred to in Section 7.2.1 (*Extra-ordinary delay - construction*), the PRP shall give its written determination in relation to such request for extension to the Scheduled COD confirming whether the conditions for such extension as set out in Section 7.2.1 (*Extra-ordinary delay - construction*) have been met and if the PRP determines that conditions for such extension set out in Section 7.2.1 (*Extra-ordinary delay - construction*) have been met, the duration of such extension and the Scheduled COD shall stand extended accordingly. In the event, any Party disagrees with the PRP's determination under this Section 7.2.2 (*Extra-ordinary delay - construction*) such Party shall have the right to refer the matter to the Panel of Experts for determination as a Technical Dispute in accordance with Section 15.5 (*Expert determination*).

7.2A Additional construction period

If at any time prior to the Commercial Operation Date, the Company determines that the construction of the Hydro Property may require an additional period of six (6) months ("**Additional Construction Period**") pursuant to the Construction Plan or associated matters, the Company shall be entitled to send a written notice to GON notifying GON of its intention to extend the Scheduled COD by such Additional Construction Period and the Scheduled COD shall stand extended by such Additional Construction Period.

7.3 Delay Liquidated Damages

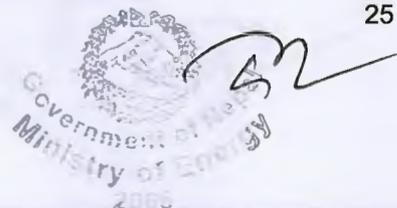
The Company shall pay daily liquidated damages of NPR six thousand (6000) per MW per day (the "**Delay Liquidated Damages**") to GON for each day of delay in achieving the Commercial Operation Date beyond the Scheduled COD, subject to a maximum of twelve (12) months provided that no Delay Liquidated Damages shall be payable if the Power Station has achieved commercial operations for an aggregate capacity of 205MW on or prior to the Scheduled COD. The Delay Liquidated Damages amount shall be payable on a monthly basis and shall be paid within thirty (30) days from the date of invoice received from GON in respect of such Delay Liquidated Damages amount. If any invoice for Delay Liquidated Damages is not paid within such thirty (30) day period, GON shall have the right, without any further notice to the Company, to drawdown on the Performance Securities to the extent any such amount remains unpaid. In the event of non-payment of any of the amounts due and payable by GON to the Company under this Agreement, the Company shall, at its option, be entitled to set-off such amounts against the Delay Liquidated Damages payable by the Company.

7.4 Total extension period under Sections 7.2 (*Extra-ordinary delay - construction*)

For the avoidance of any doubt, the Company may issue more than one extension notice under Section 7.2 (*Extra-ordinary delay - construction*) provided that the aggregate extension period under Section 7.2 (*Extra-ordinary delay - construction*) shall not in aggregate be more than two (2) years.

7.5 Grounds for extensions to the Scheduled COD and the Term – consolidated

7.5.1 For the avoidance of any doubt, it is clarified that the Scheduled COD and the Term (as applicable) shall stand extended in the following circumstances:



- (A) in case of a Force Majeure Event, in accordance with Section 12 (*Force Majeure*));
- (B) in case of a Change in Law, in accordance with Section 12A (*Change in Law*);
- (C) extra-ordinary construction delay, in accordance with Section 7.2 (*Extra-ordinary delay - construction*);
- (D) for Additional Construction Period, in accordance with Section 7.2A (*Additional construction period*);
- (E) in case of a delay in achieving Commercial Operation Date by the then applicable Scheduled COD, by the period in respect of which Delay Liquidated Damages have been set off or paid by the Company in accordance with Section 7.3 (*Delay Liquidated Damages*);
- (F) on a day for day basis where a Land Acquisition Delay Event is subsisting, pursuant to Section 8.3.1(D) (*Land Acquisition Delay Events*);
- (G) on a day-for-day basis, if the Commercial Operation Date has not been achieved by the Scheduled COD due to a breach of this Agreement by GON;
- (H) on a day-for-day basis, if the Commercial Operation Date has not been achieved by the Scheduled COD due to a GON Event of Default; and
- (I) if the Parties agree to such extension in writing.

8. **LAND ACQUISITION**

8.1 **Acquisition of GON Land and GON ROWs**

8.1.1 GON Land – Generation Project

The GON Land shall be leased to the Company under the relevant Land Lease Agreements within 18 months (as extended pursuant to Section 8.1.3 (*Acquisition of GON Land and GON ROWs*)) of the Agreement Date. The GON shall procure that the relevant GON Instrumentalities enter into Land Lease Agreements with Company on the basis of the land lease principles set out in Schedule 5 (*Land Lease Principles*).

8.1.2 GON ROWs – Transmission Project

GON shall within eighteen (18) months from the later of the date on which (1) the IEE is approved, and (2) date of issuance of Transmission License (as extended pursuant to Section 8.1.3 (*Acquisition of GON Land and GON ROWs*)) ("**ROW Acquisition Period**"), acquire (or procure the acquisition of) and transfer or lease (or procure the transfer or lease of) the rights of ways, easement rights and land parcels required for the Transmission Line which form part of GON Land ("**GON ROWs**") to the Company.

8.1.3 To the extent that:

- (A) the Company has not provided necessary and detailed land parcel information: (i) in respect of GON Land as at the Agreement Date pursuant to Section 8.1.1 (*GON Land – Generation Project*); and (ii) in respect of ROWs pursuant to Section 8.1.2 (*GON ROWs – Transmission Project*), at the commencement of the ROW Acquisition Period, to enable GON to acquire any portion of the GON Land or GON ROWs then, in each case, the time period for the acquisition of such portion of the GON Land, Outstanding Private Land and GON ROWs (as applicable), shall stand extended on a day-for-day basis until such time that all such details are provided to GON;



- (B) the Company fails to implement any provision of the Resettlement and Rehabilitation Plan that is required to be implemented prior to the acquisition or transfer of the GON Land, GON ROWs or Outstanding Private Land then, in each case, the time period for the acquisition of such portion of the GON Land, Outstanding Private Land and GON ROWs (as applicable), shall stand extended on a day-for-day basis until such time that the Company has complied with such provisions of the Resettlement and Rehabilitation Plan (as applicable); and
- (C) there are material changes to the GON ROWs from those approved under the IEE, then the Parties shall agree to an extension to the ROW Acquisition Period for the acquisition of such GON ROWs. If Parties are unable to agree to such an extension of the ROW Acquisition Period within a period of thirty (30) days of commencing discussions in relation to the extension of the ROW Acquisition Period, then any Party shall have the right to refer the determination of such an extension to a Panel of Experts in accordance with Section 15.5 (*Expert determination*) as a Technical Dispute.

8.2 Acquisition of Private Land and Private ROWs

- 8.2.1 Schedule 15 (*Land Acquisition Plan*) sets out the plan agreed by the Parties in respect of the acquisition of Private Land (the "**Land Acquisition Plan**"). The Parties acknowledge that the Land Acquisition Plan has been developed to ensure that the land acquisition process for the Project is undertaken in accordance with the Laws of Nepal and this Agreement, including measures to ensure satisfactory and timely resettlement of Project Affected People and payment of appropriate compensation where necessary.
- 8.2.2 The Company shall use commercially reasonable efforts, including complying with the arrangements set out in the Land Acquisition Plan and undertaking all actions that are its responsibility under the Time-Based Land Acquisition Activities Schedule within the time period prescribed therein, to acquire in the name of the Company freehold title to and vacant possession of: (a) Private Land within twelve (12) months of the Agreement Date and (b) and the rights of ways, easement rights and land parcels required for the Transmission Line which form part of Private Land ("**Private ROWs**") within (12) months of the issuance of Transmission License (each a "**Company Land Acquisition Period**").
- 8.2.3 GON shall during each Company Land Acquisition Period undertake all actions that are its responsibility under the Time-Based Land Acquisition Activities Schedule within the time period prescribed therein.
- 8.2.4 If requested by the Company, GON shall use its reasonable endeavours to assist the Company in relation to the negotiations with any third parties to acquire any Private Land and Private ROWs and any other matters set out in the Land Acquisition Plan within the respective Company Land Acquisition Period.
- 8.2.5 If by the end of the respective Company Land Acquisition Period, the Company has not been able to acquire (or enter into appropriate arrangements for the acquisition of) all or any portion of the Private Land and Private ROWs ("**Outstanding Private Land and Private ROWs** ") in accordance with Section 8.2.2 (*Acquisition of Private Land and Private ROWs*), the Company shall request GON (in writing) ("**Land Acquisition Application**") to acquire, or procure the acquisition of, such Outstanding Private Land and Private ROWs. The Land Acquisition Application shall set out in reasonable detail:
 - (A) the steps taken by the Company to comply with its obligations under Sections 8.2.1 (*Acquisition of Private Land and Private ROWs*) and 8.2.2 (*Acquisition of Private Land and Private ROWs*);
 - (B) the reasons why the Company was unable to acquire such Outstanding Private Land and Private ROWs; and



(C) all requisite information required to enable GON to acquire such Outstanding Private Land and Private ROWs.

8.2.6 Upon receipt of the Land Acquisition Application, GON shall use the powers granted to it under the Laws of Nepal, within twelve (12) months of the date of the Land Acquisition Application, to acquire (or procure the acquisition of) and transfer (or procure transfer of), title and vacant possession of the Outstanding Private Land and Private ROWs, to the Company.

8.2.7 In respect of all Project Land (other than GON Land) acquired by GON for the Company pursuant to this Agreement, the Company shall make advance payment as required by GON of amounts set out in Section 8.4.1 (*Land acquisition – general*).

8.3 Land Acquisition Delay Events

8.3.1 Following the occurrence of an event or circumstance or combination of events or circumstances (other than a GON Force Majeure Event or Change in Law) which prevents or delays GON from acquiring, or procuring the acquisition of or lease of (as the case may be), the GON Land, GON ROW, Outstanding Private Land and/or Private ROWs within the timelines stipulated in Sections 8.1.1 (*GON Land – Generation Project*), 8.1.2 (*GON ROWs – Transmission Project*), 8.1.3 (*Acquisition of GON Land and GON ROWs*) and 8.2.6 (*Acquisition of GON Land and GON ROWs*) above (in each case a "Land Acquisition Delay Event"):

(A) in respect of the Outstanding Private Land and Private ROW, the time limit set out in Section 8.2.6 (*Acquisition of Private Land and Private ROWs*) above shall stand extended on a day-for-day basis until such time that the Land Acquisition Delay Event (or its effects) is no longer subsisting, subject to a maximum period of twelve (12) months;

(B) in respect of GON ROWs, the ROW Acquisition Period shall stand extended on a day-for-day basis until such time that the Land Acquisition Delay Event (or its effects) is no longer subsisting, subject to a maximum period of twelve (12) months; and

(C) in respect of GON Land, the time limit set out in Section 8.1.1 (*GON Land – Generation Project*) above shall stand extended on a day-for-day basis until such time that the Land Acquisition Delay Event (or its effects) is no longer subsisting, subject to a maximum period of twelve (12) months; and

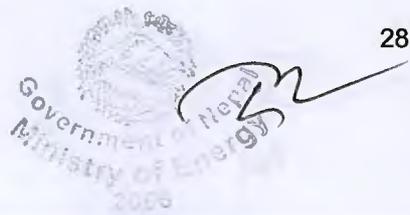
(D) the Scheduled COD and the timeline for achievement of Financial Close by the Company shall stand extended on a day-for-day basis for each day that a Land Acquisition Delay Event (or its effects) is subsisting provided that no such relief shall be granted to the Company to the extent that the Land Acquisition Delay Event is attributable to the breach by the Company of this Agreement or a Company Event of Default.

8.3.2 Where such Land Acquisition Delay Event, or the effects thereof, continues for a period exceeding:

(A) six (6) consecutive months, the Company shall have the right to terminate this Agreement in accordance with Section 13.3 (*Termination notices*); and

(B) three (3) years, GON shall, where the Company has not exercised its rights under Section 8.3.2(A) (*Land Acquisition Delay Events*), have the right to terminate this Agreement in accordance with Section 13.3 (*Termination notices*),

provided that, if the Company determines that any part of the GON Land, GON ROW, Private Land, Outstanding Private Land and Private ROWs that is subject to the Land Acquisition Delay Event is not required for the Project, the Parties shall not have the right to terminate this Agreement pursuant to Section 8.3.2(A) or (B) (*Land Acquisition Delay Events*) above in respect of such part.



8.3.3 GON hereby acknowledges that timely acquisition of Project Land is important for timely achievement of Financial Close for the Company. Notwithstanding the timelines provided above, GON shall use its endeavours to promptly acquire the Project Land for timely construction and implementation of the Project.

8.3.4 Each Party acknowledges and agrees that it shall act reasonably and in good faith while discussing and agreeing to any extension to the timelines under this Section 8 (*Land Acquisition*).

8.4 Land acquisition – general

8.4.1 The Company shall be responsible for meeting all costs and expenses associated with the acquisition and transfer or lease (as the case may be) of:

- (A) Outstanding Private Land and Private ROWs;
- (B) Private Land;
- (C) GON ROWs; and
- (D) GON Land,

in each case, in accordance with Section 8 (*Land Acquisition*). Such costs shall include all reasonable costs and expenses including administrative, management, man-hours, boarding and lodging costs incurred by GON and any GON Instrumentality in complying with the obligations under Section 8 (*Land Acquisition*) ("**Administrative Costs**") provided that such Administrative Costs shall not exceed five per cent (5%) of the aggregate cost of acquiring the Private ROWs, Private Land, GON ROWs and GON Land (excluding the cost of any Private ROWs, Private Land, ROWs and GON Land acquired by the Company as at the Agreement Date).

8.4.2 The Company shall not create or suffer any Encumbrance over the Project Area including transferring any part of the Project Area to a third party, except in favour of Lenders in accordance with Section 14.1.1 (*Assignment and Security - Company*).

8.4.3 On the Expiry Date, the Project Area shall be transferred to GON (or its nominee) free of charge and all Land Lease Agreements shall be surrendered forthwith by the Company. In case of early termination of this Agreement, the Project Area shall be transferred to GON (or its nominee) upon payment of the applicable Transfer Price in accordance with Section 13.6 (*Payment of the Transfer Price*).

8.4.4 At the end of each quarter, the Company shall submit to GON a report setting out in reasonable detail:

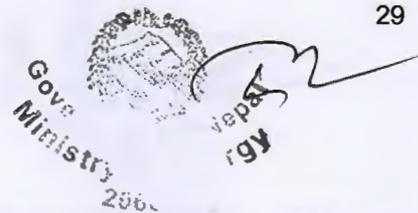
- (A) the steps taken by the Company to comply with its obligations under Section 8.2.2 (*Acquisition of Private Land and Private ROWs*);
- (B) insofar as the Company is aware, the steps taken by GON to comply with its obligations under Section 8.2.3 (*Acquisition of Private Land and Private ROWs*) and 8.2.4 (*Acquisition of Private Land and Private ROWs*); and
- (C) insofar as the Company is aware, the current status of the acquisition and transfer or lease (as the case may be) of (1) Outstanding Private Land and Private ROW, (2) GON ROWs, (3) Private Land, and (4) GON Land.

8.4.5 The Company shall provide any assistance that GON may reasonably request in relation to the compulsory acquisition of Outstanding Private Land and Private ROWs in accordance with Section 8 (*Land Acquisition*).

9. TAXES AND OTHER INCENTIVES

9.1 Compliance with Tax laws

9.1.1 Without prejudice to Section 12A (*Change in Law*), the Company shall comply with all applicable Tax laws.



- 9.1.2 GON shall ensure that the exemption of value added tax and related facilities which would be applicable to the Company under the Laws of Nepal shall be made available to the Company and/or the Contractors at the request of the Company in a timely manner.
- 9.1.3 GON shall ensure that the exemption of customs and import duties and related facilities, which would be applicable to the Company or the Contractors under the Laws of Nepal, shall be made available to the Company and/or the Contractors at the request of the Company in a timely manner.

9.2 Fiscal Incentives

Value Added Tax

- 9.2.1 In consideration of the value added tax that will have been paid by the Company, GON shall, after the Commercial Operation Date, pay the Company a lump sum amount of NPR five (5) million per MW of capacity installed as of the Commercial Operation Date provided that the Commercial Operation Date is achieved on or before 12 April 2024.

Income Tax

- 9.2.2 GON shall exempt the Company from the requirement to pay one hundred per cent (100%) of its assessed income tax for the period of ten (10) years commencing from the Commercial Operation Date, provided that the Commercial Operation Date is achieved by 12 April 2024.
- 9.2.3 GON shall exempt the Company from the requirement to pay fifty per cent (50%) of its assessed income tax for the period commencing on the tenth (10th) anniversary of the Commercial Operation Date and ending on the fifteenth (15th) anniversary of the Commercial Operation Date, provided that the Commercial Operation Date is achieved by 12 April 2024.

9.3 Water Resource Fees/Charges

- 9.3.1 The Parties agree and acknowledge that: (A) in accordance with the Laws of Nepal prevailing as of the Agreement Date, no fees or charges are payable or leviable in respect of use of water from the Trishuli River by the Company for the Project other than as set out in Section 11.22 (*Royalties Payable to GON*); and (B) imposition of any fee or charges or Tax on the Company, for use of water from the Trishuli River for the Project (other than as set out in Section 11.22 (*Royalties Payable to GON*)) shall be deemed to be a Change in Tax.

10. GON OBLIGATIONS AND RESPONSIBILITIES

10.1 Non-discrimination

- 10.1.1 GON shall not take any discriminatory action (as described in Section 10.1.2 (*Non-discrimination*)) which materially and adversely affects the Project or the performance of the Company's obligations or the enjoyment of its rights under this Agreement. Nothing in the foregoing shall apply to any actions taken by GON pursuant to its rights and obligations arising under this Agreement.
- 10.1.2 The use of the term "non-discriminatory" or "discriminatory" in this Agreement is not intended to limit or restrict the ability of GON or any GON Instrumentality to freely agree with, or impose upon, companies and investors involved in other independent power projects different terms from those set out in or imposed pursuant to this Agreement on the basis of a justifiable distinction. It is intended, however, to prohibit the use of governmental authority, for example, to deprive the Company of the benefits of this Agreement by the application of a higher standard to the Company (alone, or together with others in a small class) than to others similarly situated because of, for example, its foreign ownership, or to gain commercial or political advantage.

10.2 Grant of Government Approvals



- 10.2.1 An agreed list of Government Approvals (including anticipated application dates and the approval dates and the names of the relevant GON Instrumentalities), as identified as of the Agreement Date, is set out in the Approvals Schedule. The Parties agree that the Approvals Schedule is not exhaustive.
- 10.2.2 The Company shall make, or cause to be made, to the appropriate GON Instrumentalities, and diligently pursue, applications for the requisite Government Approvals (including any renewals) in a timely manner, that comply with the necessary legal, regulatory and procedural requirements for such Government Approval necessary for the Company to perform its obligations under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, GON shall be under no obligation to grant or renew, or cause any GON Instrumentality to grant or renew, a Government Approval if the applicant has failed to meet any legal, procedural or regulatory requirements for the grant or renewal of such Government Approval.
- 10.2.3 If the Company has complied with its obligations in Section 10.2.2 (*Grant of Government Approvals*) and the relevant Laws of Nepal, GON shall:
- (A) procure that GON Instrumentalities grant relevant Government Approvals in respect of which applications have been made in accordance with Section 10.2.2 (*Grant of Government Approvals*), as follows: (1) Government Approvals listed in the Approvals Schedule, in a timely manner; and (2) any other Government Approvals required in connection with the Project, in a timely manner;
 - (B) Subject to Section 2.4 (*Generation License and Transmission License*), so far as the Company has complied with the relevant Government Approval, procure that all Government Approvals are, upon their expiry, renewed in a timely manner and on substantially similar terms or on terms no less favourable than then existing terms imposed on the Company;
 - (C) ensure that no GON Instrumentality revokes any Government Approval without cause (being a breach of the terms and conditions of such Government Approval);
 - (D) procure that if a Government Approval has been revoked for cause (as described in Section 10.2.3(C) (*Grant of Government Approvals*) above), a further Government Approval is granted by the GON Instrumentality to the Company if the Company provides to the GON Instrumentality evidence to demonstrate that the failure to comply with the Government Approval has been rectified and all applicable fines or penalties have been paid in full; and
 - (E) upon the written request of the Company, use its reasonable efforts to expedite consideration of the application for Government Approvals (including any renewals) made in accordance with Section 10.2.2 (*Grant of Government Approvals*) provided that any request for support under this Section 10.2.3(E) (*Grant of Government Approvals*) shall (to the extent applicable in the circumstances) be accompanied with (1) copies of the application for the Government Approval, (2) information in relation to the issuance or renewal of the Government Approval which was denied, deferred or was not processed in a timely manner without cause (as described in Section 10.2.3(C) (*Grant of Government Approvals*) above) (or despite an application for such Government Approval being made in accordance with Section 10.2.2 (*Grant of Government Approvals*) and (3) steps taken by the Company in obtaining the Government Approval.
- 10.2.4 If requested by the Company, GON shall facilitate discussions between the Company, the Contractors and any GON Instrumentalities (including local bodies such as district and Village Development Committees and Municipalities) in relation to the grant of Government Approvals required for the Project from the relevant GON Instrumentality.

Handwritten initials



10.2.5 The Company shall make or cause to be made, at least monthly prior to the Commercial Operation Date, and at least quarterly thereafter, reports listing its schedule for submitting Government Approval application forms or renewal application forms, the status of any Government Approval applications then outstanding, notifications of the granting or denial of any Government Approval or Government Approval renewal, and notifications of any violations of any Government Approval. Each report shall include copies of all applications and notifications discussed in the report which have not been provided with a previous report. The first section of each report shall also summarize any problems regarding any material Government Approval application that may affect the Company's performance under this Agreement. If there is any lapse of Government Approval, the Company shall submit a report to GON pursuant to this Section 10.2.5 (*Grant of Government Approvals*) within thirty (30) days after becoming aware of such lapse of Government Approval.

10.2.6 GON or any GON Instrumentality may attach such terms and conditions to the issuance or renewal of any of the Government Approvals as are in accordance with the relevant Laws of Nepal, and the attachment of such terms and conditions shall not, without prejudice to the rights of Company under Section 12A (*Change in Law*) and Section 13.2 (*GON Event of Default*), in and of itself constitute a breach of this Agreement by GON, a Force Majeure Event, or a GON Event of Default. The Company shall abide by all such terms and conditions attaching to the Government Approvals. Without prejudice to the rights of the Company under Section 12A (*Change in Law*) and Section 13.2 (*GON Event of Default*), if the Company fails to abide by any term or condition of any Government Approval, then GON or any GON Instrumentality may exercise any power pursuant to the Laws of Nepal or the relevant Government Approval in respect of such failure and such exercise shall not of itself constitute a breach of this Agreement by GON, a Force Majeure Event, or a GON Event of Default.

10.3 Visas

10.3.1 At least sixty (60) days prior to the proposed start date for the employment of any non-Nepalese employee by the Company for whom visas are required, the Company shall provide to GON the following details of the Company's 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 the Ministry of Foreign Affairs in respect of the proposed employee;
- (F) full details of any dependents of such employee;
- (G) evidence of labour market test pursuant to Section 4A of the Labour Act; and
- (H) any other information required by the Laws of Nepal in respect of such employee or its dependents, or in relation to the application.

10.3.2 At least thirty (30) days prior to the proposed start date for the employment of any non-Nepalese employee of the Company for whom visas are required, GON shall cause the relevant GON Instrumentality (acting in accordance with the Laws of Nepal) to issue appropriate visas and permits to such employees and their dependents.

10.4 Communications permits



Upon the Company's compliance with Section 10.2.2 (*Grant of Government Approvals*), GON shall cause the relevant GON Instrumentality to issue the necessary Government Approvals to the Company or its Contractors in a timely manner for:

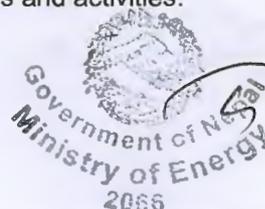
- 10.4.1 the importation, installation and use of appropriate radio communication systems, including satellite communication equipment and "walkie talkies" which are required for the Company or Contractors to maintain communication channels among its Representatives within the Project Area and/or with representatives of third parties in connection with the Project; and
- 10.4.2 such radio communication system which connects directly with either (A) the Nepalese national telecommunications system or (B) any international telecommunications system.

10.5 Explosives

- 10.5.1 Subject to the Company's compliance with Section 10.2.2 (*Grant of Government Approvals*), GON shall procure that any Government Approvals relating to the import, transport, store and use of any explosives as are reasonably required for construction work in connection with the Project are granted to the Company or Contractors in accordance with Section 10.2 (*Grant of Government Approvals*), in each case having a validity period equal to at least one (1) year from the date of its issue, within three (3) months from the date of application made by the Company or its Contractors.
- 10.5.2 Once the Company or its Contractors has obtained the Government Approvals contemplated by Section 10.5.1 (*Explosives*), GON may, with prior written notice of at least thirty (30) days to the Company or its Contractors, as the case may be, temporarily rescind such Government Approvals if GON or the relevant GON Instrumentality determines (acting reasonably) that the explosives have been used in violation of the relevant Government Approvals, provided that GON shall not take any steps towards rescinding such Government Approvals, if the Company or its Contractors, as the case may be, has within the aforementioned thirty (30) day period, rectified its default such that the Company or its Contractors, as the case may be, is in compliance with the terms of the relevant Government Approvals.
- 10.5.3 Immediately upon any temporary rescission of the Government Approvals contemplated by Section 10.5.2 (*Explosives*) above, GON may seize, or cause the relevant GON Instrumentality to seize, and the Company or its Contractors, as the case may be, must surrender, any explosives in the possession of the Company or any of its Representatives.
- 10.5.4 Any temporary rescission of the Government Approvals contemplated by Section 10.5.2 (*Explosives*) above may not extend beyond thirty (30) days following the date of such rescission of the Government Approvals, during which time GON shall investigate, or cause the relevant GON Instrumentality to investigate, whether the explosives were in fact used for any purpose other than in connection with construction work for the Project.
- 10.5.5 If GON or the relevant GON Instrumentality determines that the explosives were used in accordance with the relevant Government Approvals, GON shall immediately reinstate, or cause the relevant GON Instrumentality to reinstate, the Company's or its Contractors, as the case may be, permission to import, transport, store and use the explosives and shall return to the Company or its Contractors, as the case may be, any explosives seized pursuant to Section 10.5.3 (*Explosives*).
- 10.5.6 If GON or the relevant GON Instrumentality (acting reasonably) determines that the explosives were not used in compliance with the relevant Government Approvals, GON may impose such penalties on the Company or its Contractors, as the case may be, for such default as are prescribed under the Laws of Nepal or relevant Government Approval.

10.6 Fuel

- 10.6.1 GON shall use its reasonable endeavours to make available to the Company fuel required for the Project including for maintaining a reasonable inventory of fuel sufficient to carry its reasonably anticipated operations and activities.



- 10.6.2 Where GON is unable to procure the provision of fuel to the Company or its Contractors, as the case may be, in accordance with Section 10.6.1 (*Fuel*), subject to the Company's compliance with Section 10.2.2 (*Grant of Government Approvals*), GON shall procure the issuance to the Company or its Contractors, as the case may be, of the relevant Government Approvals to enable the Company or its Contractors, as the case may be, to import fuel for the Project.
- 10.6.3 GON shall procure that any Government Approvals granted to the Company or its Contractors, as the case may be, for import of fuel is valid until Commercial Operation Date, or is periodically renewed until Commercial Operation Date in a timely manner, in accordance with Section 10.2 (*Grant of Government Approvals*).
- 10.6.4 The Company or its Contractors, as the case may be, shall not be required to pay any Tax for the import of fuel that is not payable by the Nepal Oil Corporation, or pay any applicable Tax at a higher rate than that payable by the Nepal Oil Corporation. Notwithstanding the aforesaid, GON shall not be required to provide the Company with any subsidy in relation to the import of fuel.

10.7 Port of entry and transport arrangements

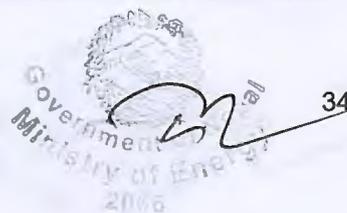
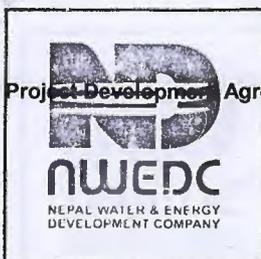
- 10.7.1 The Company shall be responsible for: (A) importing the Materials into Nepal; and (B) transporting such Materials to the Project Area.
- 10.7.2 The GON shall, upon the Company's written request, facilitate:
- (A) the import of Materials required for the Project at the point of entry into Nepal;
 - (B) the transportation of such Materials to the Project Area; and
 - (C) the issuance to the Company and the Contractors, no later than three (3) months from the date of application by the Company, all import licenses for Materials required for the Project provided that GON shall be under no obligation to facilitate the issuance of any such import license if the applicant has failed to meet any requirements for the issue of such import license, or if the Company has failed to comply with Section 10.2.2 (*Grant of Government Approvals*) and other applicable provisions of this Agreement in respect of application for Government Approvals.

10.8 Bank accounts

The GON shall ensure that the Nepal Rastra Bank grants:

- 10.8.1 the Company, its Representatives and the Lenders all necessary Government Approvals for the opening and operation of, and the retention of earnings in, Foreign Currency bank accounts inside Nepal;
- 10.8.2 the Company and its Representatives all necessary Government Approvals to maintain bank accounts outside Nepal;
- 10.8.3 the Company and its Representatives all necessary Government Approvals to transfer funds from the Company's or its Representatives', as the case may be, accounts in Nepal to any accounts maintained outside Nepal as required to fulfil the Company's or its Representatives, as the case may be, obligations related to the Project, including without limitation:
- (A) all accounts required to be maintained under the Financing Documents; or
 - (B) necessary to fulfil the Company's obligations under the insurance policies relating to the Project.

10.9 Currency of Domestic PPA



Subject to NEA and the Company agreeing to enter into the Domestic PPA, the GON confirms that NEA shall enter into the Domestic PPA with the tariff being denominated and payable in Convertible Foreign Currency (being the currency of the foreign loans) in the proportion of the total foreign loans to the overall debt financing of the Project availed to the Company for:

- 10.9.1 a period of ten (10) years from the Commercial Operation Date; or
 - 10.9.2 until the repayment in full of all the foreign loan availed to the Company,
- whichever is earlier.

10.10 Free transfer and repatriation of necessary funds

10.10.1 GON shall, on written request by the Company, provide or procure the availability of all necessary foreign currency at prevailing market rates of exchange. Each person referred to in Section 10.10.2 (*Free transfer and repatriation of necessary funds*) shall be required to obtain approvals for foreign investment, repatriation and loans or repatriation of other funds and financial settlements from the relevant GON Instrumentality in order to enjoy the facilities provided pursuant to this Section 10.10.1 (*Free transfer and repatriation of necessary funds*). Upon receipt of applications made in accordance with Section 10.2.2 (*Grant of Government Approvals*), GON agrees to procure the grant of all such approvals for foreign investment, repatriation and loans or repatriation of other funds and financial settlements from the relevant GON Instrumentality in order for the persons referred to in Section 10.10.2 (*Free transfer and repatriation of necessary funds*) to enjoy the facilities provided pursuant to Sections 10.8 (*Bank accounts*) and this Section 10.10 (*Free transfer and repatriation of necessary funds*).

10.10.2 GON:

- (A) hereby permits, and
- (B) shall ensure without delay, full, timely and unencumbered, transfer and repatriation of all funds and financial settlements in connection with the Project or as contemplated by this Agreement, from NPR to the convertible foreign currencies specified by the Nepal Rastra Bank, including, the Company, Shareholders, Sponsors, Contractors and Lenders respective investments and other monies relating to the Project, whether converted through normal commercial banking channels or through the Nepal Rastra Bank, without delay.

10.10.3 GON shall develop a mechanism with Nepal Rastra Bank to ensure that any approvals required to be obtained from NRB to give effect to such transfer and repatriation, shall be granted to each person referred to in Section 10.10.2 (*Free transfer and repatriation of necessary funds*) in a timely manner

10.10.4 GON shall develop a mechanism that ensures that the DOED issues to the Company a one-time recommendation to permit payments under the contracts entered into by the Company in connection with the Project with the Contractors.

10.11 Site access

10.11.1 GON shall, following the lease, acquisition and/or transfer of the Project Area to the Company in accordance with Section 8 (*Land Acquisition*), in addition to the rights already available to the Company under the Transmission Survey Licenses, promptly, grant, or procure the grant, to the Company and the Contractors of:

- (A) the right to enter the Project Area to carry out such site investigations and other pre-construction activities as the Company may reasonably require in connection with the Project; and
- (B) exclusive rights of access to, and use and possession of, the Project Area.



10.11.2 GON shall, subject to such Government Approvals as required by the Laws of Nepal and the EIA, grant the Company (or procure the grant of) the right to access forest land, riverbeds, river banks and water in the Project Area to:

- (A) construct and use all necessary buildings and other structures, roads, ropeways, rail lines and transmission lines;
- (B) open tunnel adits and dump spoil from tunnels in mutually agreed designated areas;
- (C) lay pipelines to take water from springs without disturbing or adversely affecting any existing users;
- (D) during the Construction Period, open quarries, take out or deposit stone, sand and earth therein; and
- (E) perform any other activity necessary in connection with the Project and the generation of electrical output from the Power Station.

10.11.3 The Company shall not be liable to incur any additional charges other than the charges in connection with the activities permitted pursuant to Section 10.11.2 (*Site access*) provided, however, that the Company shall pay any local taxes as may be required for use of quarries or locally available construction material and charges imposed pursuant to the Forest Act, 2049 (1993) and the Forest Regulations, 2050, with respect to any forest area used by the Company.

10.11.4 The Company may refuse entry to or exclude any person from the Project Area if such refusal or exclusion was necessary or desirable in the interest of safety and security.

10.11.5 The Company shall control access to the requisite portions of 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 (which are not designated as public roads), and shall have the authority to reasonably restrict access and use to personnel authorised by the Company in the interest of safety, security and non-interference with the Project.

10.11.6 The Company shall allow local residents free and unfettered access to the reservoir and its foreshore, other than where such access is reasonably required to be restricted in the interest of safety and security.

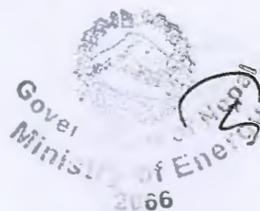
10.11.7 GON shall grant, or shall procure the grant, to the Company and the Contractors, of the requisite Government Approvals granting the right to clear the forests and bushes and excavate (above the surface or underground, as required) for carrying out Project-related investigations and works in accordance with the EIA and Laws of Nepal.

10.11.8 To the extent any forest land is part of the Project Area, the Company shall, in accordance with the provisions of Section 10.2.2 (*Grant of Government Approvals*), apply for the prior necessary Government Approvals from the relevant GON Instrumentalities for construction works within such forest areas in accordance with the Forest Act, 2049 (1993), the Forest Regulations, 2050 and other applicable Laws of Nepal and GON shall within the timelines stipulated under Section 8.1 (*Acquisition of GON Land and GON ROWs*) for grant of GON Land, grant such Government Approvals to the Company. GON shall procure that the relevant GON Instrumentality permits the creation of acceptable security interests by the Company on such forest land in favour of or for the benefit of the Lenders.

10.12 Roads

10.12.1 The GON shall, or shall procure that the relevant GON Instrumentality shall:

- (A) allow the Company or its Contractors, the use of existing public roads, tracks, bridges, tunnels and ropeways in connection with the Project; and



(B) grant all necessary Government Approvals as may be required for the Company to, at its own cost and expense (and at no cost to GON or any other GON Instrumentality), construct, modify, improve and/or strengthen roads, tracks, bridges, tunnels and ropeways, temporarily or permanently, which are required in connection with the Project. Such facilities shall be constructed, and such temporary facilities shall be dismantled and disposed of (except where the Company is notified otherwise by GON), by the Company in accordance with the Laws of Nepal and the relevant Government Approvals at the Company's cost and expense.

10.12.2 The Company shall, at its own cost, repair or cause to be repaired, any damage to any roads, tracks, bridges, tunnels and ropeways caused by the Company's use of such facilities to ensure that any such damaged facilities are returned, subject to reasonable wear and tear, to 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 10.12.2 (Roads).

10.12.3 The Company shall be permitted to construct or strengthen roads, tracks, bridges, tunnels and ropeways in the Project Area as more fully described in Schedule 7 (Project description) ("Company Access Infrastructure") in connection with their use for the Project.

10.12.4 Nothing in this Agreement shall be construed to require GON to incur any costs in ensuring that roads, tracks, bridges, tunnels and ropeways in the Project Area are repaired and re-instated or constructed.

10.12.5 For the avoidance of doubt, individuals, small businesses and members of the local community shall be entitled to use Company Access Infrastructure free of charge, subject to safety and security and relevant Good Industry Practice.

10.12.6 The GON shall facilitate the timely construction of roads, tracks, bridges, tunnels and ropeways in connection with the Project.

10.13 **Safety and Security**

10.13.1 The Company shall be responsible for safety, security and protection of the Hydro Property, Project Area, and Company's Representatives provided that this shall not be construed as derogation from GON's primary responsibility to maintain law and order in the Project Area. The GON shall use its reasonable endeavours to assist the Company in taking steps to secure the Hydro Property and the Project Area.

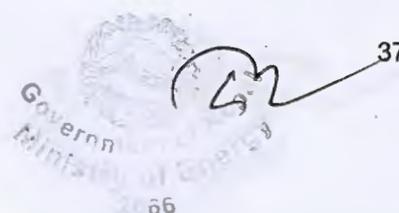
10.13.2 From time to time, the Company may request in writing additional security forces from GON to meet any security requirements. All such additional security forces shall remain under the exclusive control and direction of the relevant GON Instrumentality. As soon as practicable upon the receipt of any written request from the Company to GON, GON shall cause the relevant GON Instrumentality to provide such additional security forces to meet such security requirements for the Hydro Property, Project Area and/or Company's Representatives, for the period requested by the Company.

10.13.3 The Company shall bear all expenses incurred by GON and any GON Instrumentalities in relation to the provision of such additional security forces and the Company shall reimburse such expenses to the relevant GON Instrumentality upon demand from such GON Instrumentality.

10.14 **Transmission Infrastructure**

10.14.1 Subject to Section 10.14.3 (Transmission Infrastructure), the Company shall be responsible for transmission of power from the Power Station to a substation or connection point located on the Chilime – Trishuli 3B Transmission Line.

10.14.2 The Company shall be responsible for the development and operation of the Transmission Line.



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10.14.3 If in the reasonable opinion of the Company and the GON, the Chilime – Trishuli 3B Transmission Line will not be fully functional by the anticipated Commercial Operation Date to evacuate power from the Power Station as required under the Domestic PPA, the Company may elect to construct an alternative transmission line which connects to the Trishuli-3B hub station at Pairebeshi Phat, Manakamana VDC, Nuwakot District, or any other substation or connection point as the Company may reasonably consider appropriate, by written notice to NEA with a copy to the GON at least twenty four (24) months prior to the anticipated Commercial Operation Date. The GON's obligations under this Agreement, including under Section 8 (*Land Acquisition*) and 10 (*GON Obligations and Responsibilities*) shall apply in respect of such alternative transmission line, mutatis mutandis.

10.15 GON's facilitation obligations

GON shall facilitate and cooperate with, or cause the relevant GON Instrumentalities to facilitate and cooperate with (including by providing reasonable administrative support and assistance), the Company in relation to the implementation of the Project and the exercise of the Company's rights and obligations under this Agreement.

10.16 Expropriation

GON shall not, and shall procure that, no GON Instrumentality expropriate, compulsorily acquire, nationalise, or confiscate all or any part of the Project, any assets, rights or other interest of a Company, the Shareholders or the Sponsors.

10.17 Local share

10.17.1 At the option of the Project Affected People, the Company agrees that the Project Affected People:

- (A) required to be resettled and rehabilitated as a result of the Project; and
- (B) who are natural persons and other natural persons residing permanently in the districts of the Project Area at the date on which the construction activities for the Project commence,

shall, directly or indirectly, be sold or issued up to a maximum of ten per cent (10%) of all the Company Shares with the value of each share determined on the basis of the face value of such shares without applying any premium, which shall be exercised and the total value paid in full in the period from the date of Financial Close until the date which is three years after the Financial Close. GON shall work together with the Company to agree on a local share allocation plan and implement such effective mechanisms and processes that is not cumbersome in the ordinary course of business to the Company to give full effect to the transactions envisaged in this Section 10.17.1 (*Local share*). For the avoidance of doubt, the Company shall not be required to issue any Company Shares to the general public.

10.17.2 The Parties agree that it is their common intention that subject to compliance with Company's dividend policy, Laws of Nepal and any obligations under the Financing Documents, at least two-third (2/3rd) of the Distributable Profits shall be paid as dividends to the Shareholders in respect of the shares in each financial year.

10.17.3 For the purposes of Section 10.17.2 (*Local share*), the term "**Distributable Profits**" means such profits of the Company available for distribution by the Company after it has identified (acting prudently) amounts which it considers should be retained in order:

- (A) to meet commitments, contingencies capital and operating maintenance;
- (B) to provide for unforeseen expenditure, reduction in revenue given the nature of the business and unplanned maintenance including setting aside reserves for such purpose pursuant to prudent utility practises, and

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- (C) to develop, implement and operate its business in accordance with the Transaction Documents; and
- (D) to ensure that there is no breach of any covenant or undertaking given by the Company to any Lender under the Financing Documents at the time of the payment of any dividend;
- (E) to maintain the sound financial standing of the Company;
- (F) to ensure that the Company maintains such reasonable and proper reserves for working capital or otherwise as may be required by Applicable Law or as its board of directors may (acting reasonably) consider to be appropriate.

10.18 Direct Agreement

Upon Lenders' and Company's written request, GON shall and shall procure that the relevant GON Instrumentalities shall, at least sixty (60) days prior to the anticipated Financial Close, enter into mutually acceptable direct agreement(s) with Lenders in relation to the Transaction Documents and provide appropriate legal opinions to the Lenders.

10.19 GON Project Covenant

GON NEA Covenant

10.19.1 In consideration of the Company entering into the Domestic PPA and agreeing to undertake the Project, GON hereby:

- (A) irrevocably and unconditionally undertakes to ensure the due and punctual performance of NEA's payment obligations provided that with respect to the Domestic PPA and NEA's payment obligations thereunder, if the Domestic PPA Payment Security has not been fully drawn upon, GON's payment obligations pursuant to the GON Covenant shall be limited to any sums remaining outstanding after payment to the Company under any such Domestic PPA Payment Security (the "**NEA Payment Exception**");
- (B) subject to the NEA Payment Exception, undertakes to pay to the Company any amount that NEA has failed to pay in accordance with the terms of the Domestic PPA and in the currency in which any such obligations have been assumed, including monetary damages that may be assessed or awarded against NEA and that arise out of the failure by NEA to perform its obligations under the Domestic PPA in accordance with the terms thereof;
- (C) Subject to Section 17.3 (*Liability and Indemnification*), indemnifies the Company immediately on demand against any cost, loss or liability suffered by the Company if any obligation of NEA (or anything which would have been an obligation of NEA if not unenforceable, invalid or illegal) under the Domestic PPA is or becomes unenforceable, invalid or illegal, and the amount of the cost, loss or liability shall not exceed the amount which the Company would otherwise have been entitled to recover,

together the ("**GON Covenant**")

10.19.2 Save as expressly provided for otherwise in this Section 10.19 (*GON Project Covenant*), the obligations of GON pursuant to this Section 10.19 (*GON Project Covenant*) shall be absolute and unconditional and shall remain in full force and effect until GON Covenant Discharge Date.

Waiver of Defences



10.19.3 Save as expressly provided for in this Section 10.19 (*GON Project Covenant*), the obligations of GON pursuant to this Section 10.19 (*GON Project Covenant*) shall not be modified or impaired upon (and GON waives any defence to the performance of such obligations based upon) the happening from time to time of any event, including the following:

- (A) the extension of time for payment of any amounts due or of time for performance of any of the covenants, terms, or agreements of any party set forth in the Domestic PPA;
- (B) any waiver, amendment, supplement, extension or restatement of the Domestic PPA;
- (C) the failure, omission, or delay by the Company to enforce, ascertain, or exercise any right, power or remedy under or pursuant to the terms of the Domestic PPA;
- (D) the bankruptcy, insolvency, or other failure or financial disability of NEA or the Company;
- (E) the addition, or partial or entire release, of any guarantor, maker, or other party (including NEA) primarily or secondarily responsible for the performance of any of the covenants, terms, or agreements set forth in the Domestic PPA or by any extension, waiver, amendment, or thing whatsoever that may release or create a defense for a guarantor (other than complete performance in accordance with the terms of the Domestic PPA);
- (F) any failure of NEA to comply with the requirements of any law, regulation or order in any applicable jurisdiction;
- (G) the dissolution, privatisation, reorganisation or any other legal alteration of the legal structure of NEA;
- (H) any change in the legal or constitutional status of NEA;
- (I) any assignment or transfer by the Company of its rights or obligations under the Domestic PPA;
- (J) any invalidity or unenforceability of the Domestic PPA or any of its respective provisions, terms or conditions; and
- (K) any other act, event or omission which, but for this Section might operate to discharge, impair or otherwise affect any of the obligations of GON pursuant to this Section 10.19 (*GON Project Covenant*).

Continuing Obligations

10.19.4 The obligations of GON pursuant to this Section 10.19 (*GON Project Covenant*) shall be continuing obligations and, accordingly, shall, subject to the NEA Payment Exception, extend to cover the balance due to the Company at any time from NEA under the Domestic PPA. No demand made by the Company under the Domestic PPA or hereunder shall prejudice or restrict the right of the Company to make further or other demands.

Effect of Other Security

10.19.5 Subject to the NEA Payment Exception:

- (A) the obligations of GON pursuant to this Section 10.19 (*GON Project Covenant*) shall be in addition to, and not in substitution for or derogation of, any other security that the Company may at any time hold in respect of the obligations of NEA under the Domestic PPA.



- (B) the Company may bring a claim pursuant to and enforce this Section 10.19 (*GON Project Covenant*) notwithstanding that it may hold any other guarantee, lien, performance bond or security of or for the obligations of NEA under the Domestic PPA, or have available to it any other remedy at law or equity.

Preliminary Recourse and Certification

- 10.19.6 Notwithstanding that GON's obligations pursuant to this Section 10.19 (*GON Project Covenant*) are unconditional obligations of GON, before taking steps to enforce this Section 10.19 (*GON Project Covenant*) and demanding payment from GON, the Company agrees to make demand in writing for payment from NEA with a copy of such notice to GON.
- 10.19.7 After thirty (30) calendar days from the date of such notice (or such longer period as may be permitted under the Domestic PPA to cure a payment default by NEA), the Company may notify GON in writing that payment from NEA is past due and make a demand for payment from GON pursuant to this Section 10.19 (*GON Project Covenant*), and GON shall make payment within thirty (30) Business Days after delivery of such notice.
- 10.19.8 Any demand for performance made pursuant to this Section 10.19 (*GON Project Covenant*) shall be made in writing and delivered in accordance with Section 17.11 (*Notices*) and shall be accompanied by a certificate signed by at-least two (2) duly authorised officers of the Company stating that:
- "We hereby certify that (1) Nepal Water & Energy Development Company Private Limited (the "Company") is making this demand on the Government of Nepal (the "GON") in the amount of [Rupees] [Dollars] [insert amount] in accordance with Section 10.19 (GON Project Covenant) of the Project Development Agreement dated _____ between GON and the Company; (2) the amount specified above is due and payable under the Domestic PPA; (3) demand in writing for payment from NEA, has been made not less than thirty (30) Days from the date hereof, with a copy of the notice to GON;(4) such amount, on the date hereof, remains unpaid by NEA; and (5) sums remains outstanding after payment (if any) to the Company under such Domestic Payment Security"*
- 10.19.9 Subject to the NEA Payment Exception and other than the giving of a demand pursuant to Section 10.19.6 (*GON Project Covenant*) above, the Company shall not be obliged before taking steps to claim under or enforce this Section 10.19 (*GON Project Covenant*) to exercise any other remedies that may be available to it under or in respect of the Domestic PPA, or to claim or enforce under any other guarantee, lien, performance bond or security of or for the obligations of NEA under the Domestic PPA, or to initiate proceedings or obtain judgment against NEA..

Default Interest

- 10.19.10 If the Domestic PPA provides that interest will be paid to the Company on any late payments, then GON shall pay any such amounts as part of its obligations pursuant to this Section 10.19 (*GON Project Covenant*). If the Domestic PPA does not include such an interest rate provision, then late payments by GON pursuant to this Section 10.19 (*GON Project Covenant*) shall bear interest at an annual rate equal to two (2%) per cent. per annum above the one-month London interbank offer rate for Dollars.

Subordination

- 10.19.11 Any right that GON may at any time have to be indemnified by NEA or to take benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Company under the Domestic PPA or of any other security taken under or pursuant to the Domestic PPA, or in respect of sums paid out by GON pursuant to this Section 10.19 (*GON Project Covenant*) shall not be exercised by GON until after the GON Covenant Discharge Date.

No Set-off

10.19.12 Save in respect of any undisputed amounts due and payable by the Company to GON under this Agreement, no set-off, counterclaim, reduction, or diminution of any obligation that GON has or may have against the Company nor any right of subrogation that GON has or may have in respect of the rights of the Company shall be available to GON against the Company in connection with any obligation and shall not reduce any obligation of GON to the Company pursuant to this Section 10.19 (*GON Project Covenant*).

Limitations

10.19.13 Notwithstanding anything contained in this Section 10.19 (*GON Project Covenant*) or elsewhere in this Agreement:

- (A) The obligations of GON pursuant to this Section 10.19 (*GON Project Covenant*) shall remain in full force and effect from and after the date hereof until the date on which all of NEA's covenants, terms and agreements set forth in the Domestic PPA shall have been completely discharged and performed (the "**GON Covenant Discharge Date**").
- (B) The Company shall not be entitled to bring any claim against GON pursuant to the GON Covenant after the GON Covenant Discharge Date.

Amendment of Transaction Documents

10.19.14 GON's obligations pursuant to this Section 10.19 (*GON Project Covenant*) shall remain valid and in full force and effect notwithstanding any amendment or modification to the Domestic PPA.

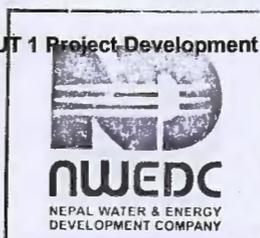
10.19.15 If an amendment or modification is made without the written approval of GON and increases in a material respect the NEA's performance or payment obligations, the Company shall not be entitled to bring a claim against GON pursuant to the GON Covenant to the extent that the claim is in respect of such increase in the NEA's performance or payment obligations.

Tax Gross-up and costs indemnification

10.19.16 In addition to any amount due and payable by GON pursuant to this Section 10.19 (*GON Project Covenant*), GON shall be liable for any Taxes levied or imposed with regard to any payment pursuant to this Section 10.19 (*GON Project Covenant*) unless the payment, if made by the NEA under the Domestic PPA would itself have caused the Company to be subject to Taxes. If under applicable laws GON is unable to pay the Taxes and the Company is required to pay the Taxes, the amount to be paid by GON hereunder shall be increased by an amount sufficient so that such payment, net of the Taxes, would equal the payment the Company would have received if no such Taxes had been due.

10.19.17 Subject to any contrary award made by any tribunal pursuant to Section 15.6 (*Dispute Resolution by Arbitration*), GON shall immediately upon demand pay to the Company, or reimburse the Company for any amount it has paid on account of, the amount of all costs and expenses (including legal fees and other advisors' and consultants' fees (including registration fees) and expenses), taxes (including stamp taxes) and duties incurred by the Company in connection with efforts to enforce its rights pursuant to this Section 10.19 (*GON Project Covenant*) or the Domestic PPA, or the exercise of its rights or powers consequent upon or arising out of the occurrence of any breach or default by the GON or any Government Instrumentality pursuant to this Section 10.19 (*GON Project Covenant*) or the Domestic PPA, on a full indemnity basis.

Direct Referral to Arbitration



10.19.18 Any Dispute between GON and the Company arising pursuant to any claim brought by the Company pursuant to this Section 10.19 (*GON Project Covenant*) shall be deemed to be a non-Technical Dispute and shall be settled by direct reference to a tribunal pursuant to Section 15.6 (*Dispute Resolution by Arbitration*). Furthermore, Section 15.3 (*Dispute Notice*) and Section 15.4 (*Resolution by consultation*) shall not apply any such Dispute.

Miscellaneous

10.19.19 The obligations of GON pursuant to this Section 10.19 (*GON Project Covenant*) shall not affect the validity of any terms of the Domestic PPA.

10.19.20 Any reference in this Section 10.19 (*GON Project Covenant*) to a Government Instrumentality shall include any successors of that Government Instrumentality pursuant to an amalgamation, reconstruction, privatization or any other type or form of reorganisation.

10.19.21 GON agrees that any Change in Law shall not affect the validity and effectiveness of this Section 10.19 (*GON Project Covenant*) and this Section 10.19 (*GON Project Covenant*), of which all terms and conditions shall remain in full force and effect.

11. COMPANY OBLIGATIONS AND RESPONSIBILITIES

11.1 Purpose of the Company

The Company's sole purpose and objective shall be to conduct the Project, the sale of energy, make the capacity (whether deemed or actual) available, operate reserve related services and/or any ancillary services derived from all or any part of the Hydro Property. The Company shall not, except with GON's prior written consent, be or become directly or indirectly engaged, concerned or interested in any other business other than to conduct the Project, the sale of energy, make the capacity (whether deemed or actual) available, operate reserve related services and/or any ancillary services derived from all or any part of the Hydro Property. The Company shall not, during the Term, hold any shares or interest or own or participate in any undertaking other than the Project, except with GON's prior written approval (not to be unreasonably withheld).

11.2 Environmental, Social, Health and Safety

11.2.1 The Company shall comply with the EIA, this Agreement, the Plans and the Performance Standards.

11.2.2 The Parties acknowledge that the EIA has been approved by the Ministry of Science, Technology and Environment, GON on February 20, 2013 vide Letter no. 2098.

11.2.3 The EIA has been prepared in English. The summaries of the EIA are in Nepali and have been provided to GON. Any Supplementary E&S Documents shall be required to be prepared in English and shall be made available to GON.

11.2.4 The Company shall comply with the EIA and shall promptly rectify any non-compliance with the EIA upon notification from GON or the relevant GON Instrumentality of such non-compliance.

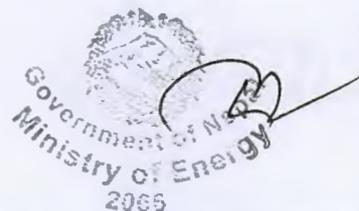
11.3 Plans

11.3.1 The Company shall prepare, implement and comply with the Plans in accordance with the Laws of Nepal, this Agreement and the Performance Standards.

11.3.2 Without prejudice to the generality of Section 11.3.1 (*Plans*), the Company shall, jointly with GON, prepare:

(A) the Local Benefit Sharing Plan, in accordance with the guidance notes set out in Schedule 11 (*Local Benefit Sharing Plan – Guidance Note*);

(B) the Nepal Employment and Skills Training Plan, in accordance with the guidance notes set out in Schedule 12 (*Nepal Employment and Skills Training Plan – Guidance Note*); and



(C) the Nepal Industrial Benefits Plan, in accordance with the guidance notes set out in Schedule 13 (*Nepal Industrial Benefits Plan – Guidance Note*),

within twelve (12) months of the Agreement Date.

11.3.3 Without prejudice to the generality of Section 11.3.1 (*Plans*), the Company shall prepare and submit the following Plans for GON's review and approval:

(A) within six (6) months from the Agreement Date, the Resettlement and Rehabilitation Plan prepared in accordance with one of the performance standards referred to in Section 11.4.1 (*Performance Standards*) such that it is in compliance with the Laws of Nepal and the EIA, and this Agreement; and

(B) within twelve (12) months from the Agreement Date, the Disaster Management Plan in compliance with the Laws of Nepal, this Agreement and in accordance with the guidance notes set out in Schedule 18 (*Disaster Management Plan – Guidance Note*), taking into consideration the different flood eventualities, GLOF (if required by the EIA), and any other natural calamity that could occur at various stages of construction and operation of the Project,

provided however that such Plans shall be updated, revised and finalised prior to achievement of the relevant Financial Close.

11.3.4 GON shall approve the Plans referred to in Section 11.3.3 (*Plans*) provided that the Plans comply with requirements of this Agreement.

11.3.5 The GON shall provide reasonable administrative support and assistance necessary for the Company to carry out its obligations set out in this Section 11.3 (*Plans*) provided that the Company shall comply with and carry out its obligations in this Section 11.3 (*Plans*) at its own cost and expense.

11.4 Performance Standards

11.4.1 No later than six (6) months prior to the anticipated date for Financial Close, the Company shall send a written notice to GON confirming the international social and environmental sustainability standard that they propose to use for the Project from the following:

(A) International Finance Corporation's performance standards on environmental and social sustainability, January 2012;

(B) Asian Development Bank's safeguard policy; or

(C) any other appropriate international social and environmental sustainability standard approved by GON in writing,

(the "**Performance Standards**"), provided that in the absence of any such written notification, reference in this Agreement to the "**Performance Standards**" shall be to the International Finance Corporation's performance standards on environmental and social sustainability.

11.4.2 The Company shall comply with and carry out the Project in accordance with the Performance Standards and shall, in addition to its obligations under Section 11.3 (*Plans*), develop necessary guidelines and plans (including the Supplementary E&S Documents) to ensure compliance with the Performance Standards. The draft Plans shall be prepared considering any one of the performance standard(s) set out in Section 11.4.1 (*Performance Standards*). The Company shall be responsible for the costs of complying with the Performance Standards.

11.5 Arm's length transactions



11.5.1 Except with GON's prior written consent (not to be unreasonably withheld or denied) the Company shall not enter into any agreement, arrangement or transaction with any (1) Affiliates, (2) Sponsors, (3) Shareholders or (4) officers, directors or employees of any of the Affiliates, Sponsors or the Shareholders, except to the extent such agreement, arrangement or transaction is:

- (A) in the ordinary course of business;
- (B) on an arm's length basis; and
- (C) on normal market terms.

11.6 Certain Infrastructure Facilities

11.6.1 The Company shall, before Commercial Operation Date, construct the infrastructure facilities set out in Schedule 11 (*Local Benefit Sharing Plan – Guidance Note*) at its own cost and expense and operate and maintain such facilities during the Term.

11.6.2 The GON shall provide, or procure the provision of, support and assistance to the Company in relation to the construction of such infrastructure facilities.

11.6.3 Subject to valid and justifiable security and operational factors, the Company shall make available to the general public the Company Access Infrastructure, medical and emergency evacuation facilities and education facilities in accordance with the relevant policy of the Company.

11.7 GLOF

Within one (1) Year after the Agreement 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") in accordance with the approved EIA. Upon completion of such study, a full and detailed report shall be submitted to GON. 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 a system in consultation with GON.

11.8 Rural Electrification

11.8.1 No later than the Financial Close, the Company in consultation with GON shall identify each household (an "Original Household") within the geographical area described in Schedule 12 (*Nepal Employment and Skills Training Plan – Guidance Note*) (the "Free Electrification Area").

11.8.2 From and after the Commercial Operation Date, the Company shall supply (at its own cost) twenty (20) kWh of electrical output ("Local Free Power") each Month during the Term without charge to each household within the Free Electrification Area as at the Commercial Operation Date to up to 200% of the number of Original Households identified pursuant to Section 11.8.1 (*Rural Electrification*) (each an "Eligible Household").

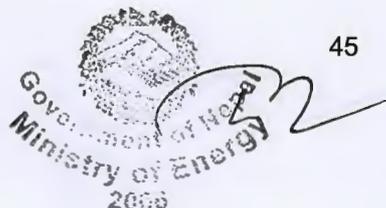
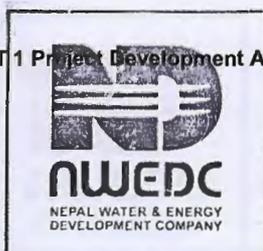
11.8.3 Prior to Commercial Operation Date, the Company shall build the distribution network to supply such Local Free Power to each Eligible Household within the Free Electrification Area in accordance with Section 11.8.1 (*Rural Electrification*).

11.8.4 GON shall be responsible for the operation and maintenance of such distribution network at its sole cost.

11.8.5 GON and the Company shall jointly prepare a plan (the "Rural Electrification Plan"), based on a pre-feasibility study to be carried out by GON and the Company (at the Company's sole cost) to assess the costs and scope of rural electrification in accordance with this Section 11.8 (*Rural Electrification*). The Company shall implement the Rural Electrification Plan.

11.9 Use of Nepali resources; training and development

The Company shall, and shall procure that its Contractors and Representative shall, in connection with the conduct of the Project:



- 11.9.1 maximise the use of Nepali resources and give first consideration and full and fair opportunity to technically and commercially qualified Nepalese citizens and firms provided that in each case, the use of such Nepali resources meet the quality, quantity and availability requirements of the Company and provided further that use of such resources does not have a material and adverse impact on the costs and the timelines for the Project;
- 11.9.2 ensure that its Nepal Industrial Benefits Plan provides for an outreach programme under which the Company engages with Nepali suppliers for Project-related opportunities;
- 11.9.3 comply with the Laws of Nepal including the Labour Act, 2048 and Labour Regulation, 2050;
- 11.9.4 ensure that its Nepal Employment and Skills Training Plan provides for appropriate training of suitable citizens of Nepal for Project-related opportunities;
- 11.9.5 conduct employee training programmes from time to time, including training in each of the skills used in the Project, including management training;
- 11.9.6 comply with the Nepal Employment and Skills Training Plan, Nepal Industrial Benefits Plan and Local Benefit Sharing Plan and ensure that appropriate programmes are designed to assist suitable Nepali citizens, entities, and firms to meet the Project's requirements for goods and services;
- 11.9.7 shall (to the extent applicable) submit reports every six (6) months to GON for the first three (3) years of the Construction Period and every twelve (12) months thereafter, describing in detail (A) its employee training programmes, (B) the implementation of such training programmes, (C) the progress made towards meeting the objectives set forth in this Section 11.9 (*Use of Nepali resources; training and development*) the Nepal Employment and Skills Training Plan, Nepal Industrial Benefits Plan and Local Benefit Sharing Plan.

11.10 Bonus

- 11.10.1 The Company shall set aside the Bonus Amount for contributing towards bonus and welfare funds in each Nepalese fiscal year in accordance with the Electricity Act, 2049 (1992) and Electricity Rules, 2050 (1993).
- 11.10.2 The Company shall distribute the Bonus Amount to its employees in accordance with the Laws of Nepal, provided that the Company shall not be required to pay bonus to any employee which exceeds the aggregate annual salary of such employee in such Nepalese fiscal year.
- 11.10.3 The Company shall deposit to the staff welfare fund any amounts remaining from the Bonus Amount following distribution to the employees in accordance with the Electricity Act, 2049 (1992) and Electricity Rules, 2050 (1993).

11.11 Housing Facilities

- 11.11.1 Where required at the Project site, the Company shall provide accommodation facilities for its workers and staff at its own cost and expense.

11.12 Other responsibilities of the Company

- 11.12.1 The Company shall be responsible for:

- (A) implementing the Project;
- (B) planning, scheduling, monitoring, reporting and cost control in relation to the Project;
- (C) establishing the procedures by which drawings, specifications and technical documents and other Records 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(s) and the O&M Contractor(s) (and any other Contractor(s) required for the Project from time to time);
- (E) arranging financing for the Project;
- (F) supervision and overall management of the Project Area;
- (G) quality assurance;
- (H) obtaining performance guarantees for individual equipment items from the relevant equipment suppliers as is commercially feasible to procure;
- (I) monitoring overall performance of the Project;
- (J) conducting the Project in accordance with the Project Specifications, Technical Standards and Good Industry Practice; and
- (K) liaising with GON in relation to the Project.

11.12.2 The Company:

- (A) accepts that any failure of GON, any GON Instrumentality or the PRP (as the case may be) to object to any Technical Standards, design drawing, specification or technical documents or any change thereto shall not relieve the Company of its obligations and liabilities under this Agreement.
- (B) accepts that no review and examination conducted by GON, any GON Instrumentality or the PRP (as the case may be) with respect to the design of the Hydro Property or Technical Standards used in connection with the Project shall relieve the Company of any of its obligations or liabilities under this Agreement;
- (C) accepts that GON, any GON Instrumentality or the PRP (as the case may be) undertake no responsibility as to the quality of the Project;
- (D) shall in no way represent or imply to any third party that, as a result of any review by GON, any GON Instrumentality or the PRP (as the case may be), GON is responsible for the Project;
- (E) acknowledges that it shall be solely responsible for the Project (including technical feasibility, operational capability and reliability of the Project), in each case in accordance with this Agreement; and
- (F) accepts that the Company shall not carry out any Material Changes to the Hydro Property without GON or the relevant GON Instrumentality's prior written consent. For the purposes of this Section 11.12.2(F) (*Other responsibilities of the Company*), "Material Changes" means any changes to the Hydro Property which in the Company's reasonable opinion, acting in accordance with Good Industry Practice, may have an adverse impact on:
 - (1) the safety or reliability of the Hydro Property;
 - (2) the ability of the Company to generate and make available the energy and/or capacity on the scale envisaged under this Agreement plus, minus five per cent (5%);
 - (3) the ability of the Company to transmit the energy on the scale envisaged under this Agreement plus, minus five per cent (5%);
 - (4) the ability of the Company to comply with its obligations under this Agreement; or
 - (5) the Company's obligations under the EIA, Performance Standards or the Plans (as applicable).

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11.13 Cooperation

11.13.1 The Company shall fully cooperate with GON, GON Instrumentalities and the PRP in accordance with this Agreement and the Laws of Nepal.

11.14 Insurance

11.14.1 The Company, at its sole cost and expense, shall obtain and maintain, or cause to be obtained and maintained, during the Term the policies of insurance set forth in Schedule 6 (*Insurance*) in accordance with the Laws of Nepal, Good Industry Practice and this Agreement with internationally reputable and financially sound insurers approved by the Lenders (the "**Insurance Policies**"); provided, further, that the Company shall not be in breach of its obligations hereunder if and to the extent that any particular insurance is unavailable to it under commercially reasonable terms for reasons other than any negligence or default by, or the condition of, the Hydro Property or the Company.

11.14.2 The coverage required pursuant to Section 11.14 (*Insurance*) and Schedule 6 (*Insurance*) and any "umbrella" or excess coverage shall be "occurrence" form policies. In the event the Company has "claims made" form coverage, the Company must obtain prior approval of all "claims-made" policies from the GON (such approval not to be unreasonably withheld).

11.14.3 The Company shall cause the insurers to provide the following endorsement items in the comprehensive or commercial general liability and, if applicable, umbrella or excess liability policies relating to the ownership, construction, operation and maintenance of the Hydro Property provided pursuant to Section 11.14 (*Insurance*) and Schedule 6 (*Insurance*):

(A) with respect to all insurance covering damage to the Hydro Property, the GON and the NEA shall be named as "Loss Payee" on such policies, such funds to be received and held by the GON or the NEA solely to pay for repair of damage to the Hydro Property. The GON, the NEA, its directors, officers and employees shall be additional insureds under all liability insurance policies with respect to claims arising out of or in connection with this Agreement;

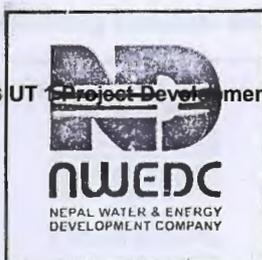
(B) the insurance shall be primary with respect to the interest of the GON, the NEA, its directors, officers, and employees and any other insurance maintained by them is excess and not contributory with such policies;

(C) the following cross liability clause shall be made a part of the policy:

"In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance."

(D) The insurer shall waive all rights of subrogation against the GON, the NEA, its officers, directors and employees; and

(E) Notwithstanding any provision of the policy, the policy may not be cancelled, non-renewed or materially changed by the insurer without giving thirty (30) days, except in the case of non-payment, in which case it shall be ten (10) days, prior written notice to the GON and the NEA. All other terms and conditions of the policy shall remain unchanged.

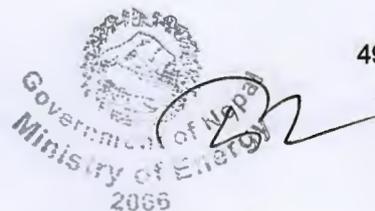


- 11.14.4 The Company shall cause the insurers to provide the endorsements referred to in Section 11.14.3(A), (B), (D) and (E) (*Insurance*) in the fire and perils and machinery breakdown policies covering the Hydro Property as required by Section 11.14 (*Insurance*).
- 11.14.5 The Company shall cause its insurers or agents to provide to the GON and the NEA with certificates of insurance evidencing the policies and endorsements listed above. Failure by the Company to obtain the insurance coverage or certificates of insurance required by this Section 11.14 (*Insurance*) shall not in any way relieve or limit the Company's obligations and liabilities under any provision of this Agreement. If the Company shall fail to procure or maintain any insurance required pursuant to this Section 11.14 (*Insurance*), then the GON and the NEA shall have the right to procure such insurance in accordance with the requirements of Schedule 6 and shall be entitled to offset the premiums paid for such insurance against any amounts owed to the Company pursuant to the terms of this Agreement. The Company shall be named as the Loss payee on any such insurance procured by the GON pursuant to this Section 11.14 (*Insurance*).
- 11.14.6 The Company shall provide the GON and the NEA with copies of any underwriters' reports or other reports received by the Company from any insurer; provided, that the GON shall not disclose such reports to any other Person except as necessary in connection with administration and enforcement of this Agreement or as may be required by any Government Authority and shall use and internally distribute such reports only as necessary in connection with the administration and enforcement of this Agreement.
- 11.14.7 Not later than ten (10) days after the date any of the Insurance Policies are brought into effect, or renewed in accordance with their terms, the Company shall provide GON with evidence of such Insurance Policy in the form of cover notes from the relevant broker or certificates from the insurer, and shall submit copies of all such Insurance Policies to GON within ten (10) days of their issue by insurers. The Company shall annually submit to GON certified copies of the certificates of insurance which it is required to obtain under this Schedule 6 (*Insurance*). Each certificate of insurance shall state that such Insurance Policy has been obtained and is in full force and effect that all premiums on such Insurance Policy are current.
- 11.14.8 In so far as local insurance companies in Nepal have the capacity, the Company shall give preference to insurance companies in Nepal in respect of the provision of insurances for the Hydro Property, subject to Lenders' approval.
- 11.14.9 The Company shall not be entitled to recover any compensation or obtain any monies from GON without first seeking recourse to any relevant insurance policy and to the extent that such compensation or monies are recovered by the Company under such insurance policy.
- 11.14.10 The Company shall be solely responsible for the payment of all premia and deductibles under the policies of insurance maintained pursuant to this Section 11.14 (*Insurance*) and Schedule 6 (*Insurance*).
- 11.14.11 Subject to Lenders' rights or requirements under the Financing Documents, the Company shall: (A) in the first instance, apply the proceeds of any insurance claim in respect of any physical loss or damage to the Hydro Property towards the remedy of such loss or damage; and (B) in the second instance, towards repayment of Transfer Debt and Financing Costs to the Lenders.

11.15 Operation and Maintenance

11.15.1 The Company may engage qualified and experienced O&M Contractor(s) to undertake or collaborate in the operation and maintenance of the Hydro Property provided that prior written notice of the identity of such contractors is given to GON and any applicable GON Instrumentality.

11.16 Operating Manuals and other materials



11.16.1 No later than sixty (60) days prior to Commercial Operation Date, the Company shall develop in accordance with Good Industry Practice, maintenance schedule, procedures and manuals required for the safe and efficient operation and maintenance of the Project. The Company shall update such documents as required from time to time in accordance with Good Industry Practice.

11.17 Handover and Handover Plan

11.17.1 Schedule 2 (*Project Handover Upon Expiry of the Agreement*) and Schedule 3 (*Handover Requirements – Expiry of the Agreement*) shall apply in relation to the transfer of the Power Station, the Transmission Line, balance of the Hydro Property and Project Assets to GON in accordance with this Agreement.

11.17.2 For the avoidance of any doubt, it is clarified that subject to Section 13.4 (*Transfer Price*) and Section 17.8 (*Survival*):

- (A) the Company shall be responsible for its debts, liabilities and obligations in connection with the Project that relate to the period prior to the Expiry Date or the Transfer Date (as the case may be); and
- (B) GON shall be responsible for all debts, liabilities and obligations in connection with the Project that relate to the period after the Expiry Date or the Transfer Date (as the case may be).

11.17.3 The Company shall submit a Handover Plan in respect of the Hydro Property to GON no later than two (2) years after the Commercial Operation Date.

11.17.4 During the Handover Period, GON and the Company shall meet and agree upon the inventories to be transferred to GON with the Hydro Property and the mechanism for such transfer and safety and security arrangements. Following agreement on the inventories, the Company shall exercise the same degree of care regarding the fixtures, fittings, plant, equipment and all improvements therein as it did prior to such agreement.

11.17.5 From the date falling one and a half (1.5) years prior to the date on which the Hydro Property is to be transferred to GON or GON's designee in accordance with Schedule 2 (*Project Handover Upon Expiry of the Agreement*), the Company shall arrange for training if necessary of a sufficient number of staff of GON or any other GON Instrumentality, as nominated by GON to the Company, to enable GON to operate, maintain and manage the Hydro Property to the standards required under this Agreement from the Expiry Date notwithstanding the aforesaid, the primary obligation as to employment of personnel pursuant to transfer of the Project to GON, shall rest with GON.

11.18 Transfer of technology

11.18.1 The Company shall in accordance with the Laws of Nepal, assist in the transfer of technology utilised in connection with the Project to GON or any other GON Instrumentality designated by GON provided that nothing contained in this Section 11.18 (*Transfer of technology*) shall require the Company to violate any applicable intellectual property laws or intellectual property rights of other persons provided that the Company shall so far as reasonably practicable assist GON in obtaining the requisite rights/licenses for the use of such Intellectual Property at GON's cost, should GON choose to take over such intellectual property.

11.18.2 For the purpose of transfer of technology, GON may second a reasonable number of its personnel to the Company or send its representatives to the Company to observe or assist in the conduct of the Project. Such personnel or representatives of GON shall work in association with the Company's technical experts and other employees and Representatives and under their general guidance. The GON shall pay the basic salary and other entitlements of such personnel in accordance with the standard procedures of GON.

11.19 Compliance with Laws of Nepal



The Company shall, and shall use its best endeavours (including by way of incorporation of a similar provision in its contracts with its Contractors) to procure that its Representatives and Contractors shall, comply with the Laws of Nepal. The Company shall perform its obligations and exercise its rights in connection with the Project, this Agreement and the transactions contemplated in this Agreement, in accordance with the Laws of Nepal and all Government Approvals.

11.20 National Security

11.20.1 The Company shall abide by the Laws of Nepal regarding Nepal's national security.

11.20.2 Should GON (acting reasonably) conclude that certain aspects of the Company's activities pose a threat to Nepal's national security, GON may, after:

- (A) giving a written notice to the Company providing details of the Company's activities that pose a threat to Nepal's national security;
- (B) providing the Company with a fair and reasonable opportunity to make representations to GON; and
- (C) providing the Company with an opportunity to remedy or cease such activities,

take such action as may be permitted under the Laws of Nepal.

11.21 Performance Security

11.21.1 The GON shall be entitled to draw upon and retain the Performance Securities if a Company Event of Default has occurred and is not remedied in the period prior to Commercial Operation Date. Subject to this Section 11.21 (*Performance Security*) and Section 7.3 (*Delay Liquidated Damages*), GON shall not have the right to draw upon the Performance Securities for any other reason.

11.21.2 The GON shall, by written notification to the issuer of the Performance Security (Signing), release the Performance Security (Signing) promptly after the occurrence of Commercial Operation Date or such earlier date on which this Agreement is terminated for any reason other than a Company Event of Default.

11.21.3 The GON shall, by written notification to the issuer of the Performance Security (FC), release the Performance Security (FC) promptly after the occurrence of Commercial Operation Date or such earlier date on which this Agreement is terminated for any reason other than a Company Event of Default.

11.22 Royalties Payable to GON

11.22.1 The Company shall pay the following royalties to GON:

From the first Unit Commissioning Date until the fifteenth (15 th) anniversary of the Commercial Operation Date	From the earlier of the Energy Start Date or the Commercial Operation Date until the fifteenth (15 th) anniversary of the Commercial Operation Date	For the period commencing on the day falling immediately after the fifteenth (15 th) anniversary of the Commercial Operation Date and ending on the last day of the Term		
Capacity Royalty Rate (per KW per annum)	Energy Royalty Rate	Capacity Royalty Rate (per KW per annum)	Energy Royalty Rate	Energy Royalty Rate
NPR 200	2% of the Energy Receipts	NPR 1,500	10% of the Energy Receipts	



11.22.2 Calculation of Royalties:

- (A) The Capacity Royalty shall be calculated as follows:

From and after the first Unit Commissioning Date until the Commercial Operation Date: Capacity Royalty Rate multiplied by the total nameplate capacity (in kW) of the relevant unit(s) of the Power Station that have been commissioned.

From and after the Commercial Operation Date: Capacity Royalty Rate multiplied by the total nameplate capacity (in kW) of the Power Station.

- (B) The Energy Royalty shall be paid on the basis set out in the table above.

11.22.3 For the avoidance of any doubt, it is clarified that no royalties (whether Energy Royalty or Capacity Royalty) shall be payable in respect of (A) if NEA is in default of its payment obligations under the Domestic PPA; (B) any payments received from GON or NEA in the circumstances described in Section 6.1 (*GON rights and obligations*), 12.7 (*Staggered Remedies*) or 12A.6 (*Change in Law*) or (C) Local Free Power. It is further clarified that in the event of non-payment of any undisputed amounts due and payable by GON to the Company under this Agreement, the Company shall, at its option, be entitled to set-off such amounts against the Capacity Royalty and/or Energy Royalty payable by the Company hereunder.

11.22.4 The Company shall pay to GON the Capacity Royalty and Energy Royalty, payable for a quarter, within thirty (30) days after the end of such quarter.

11.23 Financing Documents and Financing Plan

11.23.1 Within three hundred and sixty five (365) days of the Agreement Date, the Company shall submit the Financing Plan to GON. Within fifteen (15) days of Financial Close, the Company shall submit an updated copy of the Financing Plan to GON.

11.23.2 The Company shall not enter into the Financing Documents on or prior to Financial Close or thereafter until the terms of the Financing Documents have been approved by GON in writing provided that no such approval shall be required (including in respect of any amendment to any Financing Document) if an Approved Lender is a party to any of the Financing Documents or is a mandated lead arranger in respect of the debt arranged for the Project.

11.23.3 Where approval of a Financing Document by GON is required, Section 11.23.4 (*Financing Documents and Financing Plan*) to Section 11.23.12 (*Financing Documents and Financing Plan*) (both inclusive) shall apply.

11.23.4 The Company shall provide to GON a copy of each proposed Financing Document. Within sixty (60) days of receipt of the proposed Financing Document, GON shall either:

- (A) notify the Company in writing that it does not have any comments on the proposed Financing Document; or
- (B) notify the Company in writing of any comments which it may have on the content of the proposed Financing Document and require the Company to make reasonable modifications to the same to ensure that the proposed Financing Document accords with industry/market terms,

provided that, if GON fails to issue any notification within the aforesaid sixty (60) day period it shall be deemed to have no comments to the proposed Financing Document and the Company shall have the right to execute the relevant Financing Document.



- 11.23.5 In the event that GON notifies the Company pursuant to Section 11.23.4(B) (*Financing Documents and Financing Plan*), the Company shall make such reasonable modifications to the proposed Financing Document to address the comments raised by GON in accordance with Section 11.23.4(B) (*Financing Documents and Financing Plan*) and shall re-submit the proposed Financing Document (as amended) to GON ("**Revised Financing Document**").
- 11.23.6 Within 30 days of receipt of the Revised Financing Document, GON shall notify the Company either that it has no further comments thereon or that the amendments made by the Company do not address the issues raised by GON pursuant to Section 11.23.4(B) (*Financing Documents and Financing Plan*) and GON shall with such written notice provide reasonable details of the amendments required to address such issues. If GON fails to notify the Company within the aforesaid period of 30 days, it shall be deemed to have no further comments on the proposed Financing Document and the Company shall have the right to executed the amended Financing Document.
- 11.23.7 If GON notifies the Company of the additional amendments required to address the issues raised pursuant to Section 11.23.6 (*Financing Documents and Financing Plan*), then the procedure referred to in Section 11.23.5 (*Financing Documents and Financing Plan*) shall be repeated until GON either notifies or is deemed to notify the Company that it has no further comments on the Revised Financing Document.
- 11.23.8 Within fifteen (15) days after the execution or amendment (as the case may be) of each Financing Document, the Company shall submit to GON certified copies of such executed or amended Financing Document, as the case may be.
- 11.23.9 Prior to Financial Close, the Company shall deliver to GON a schedule or a copy of the term sheet reflecting the proposed material terms of the Financing Documents, and setting forth a principal repayment schedule, together with the proposed interest rates, maximum principal amounts and any schedules or formulae that shall be included in the Financing Document for the computation of interest rates, break costs (including hedging), fees and charges payable to the Lenders under the Financing Documents, and shall also identify the equity and debt commitments, individually and in total, of each of the Shareholders or the Sponsors (as applicable).
- 11.23.10 The Company shall also provide a hard copy of its financial model in respect of the Project to GON as of Financial Close and any subsequent financial model created during the re-financing of the Company's debt obligations.
- 11.23.11 Where:
- (A) following the execution of a Financing Document, any amendment is proposed by the parties thereto to the relevant Financing Document; and
 - (B) the proposed amendment, if incorporated into the relevant Financing Document, would in the opinion of the Company (acting reasonably), increase or accelerate any of the payment obligations of GON under Section 13.4 (*Transfer Price*) or Section 13.5 (*Transfer Price components*) if incorporated into the Financing Document,
- the Company shall not propose or agree to any such amendment without the prior written consent of GON. GON shall be entitled to withhold such consent in its absolute discretion.
- 11.23.12 No later than thirty (30) days from the execution of each Financing Document or Revised Financing Document, the Company shall provide a copy of such Financing Document to GON.

11.24 Debt: equity ratio

11.24.1 The Company undertakes that the ratio of its Debt to its Equity shall not exceed

- (A) 75:25 at Financial Close; and



(B) 80:20 at all other times after Financial Close.

11.24.2 For the purpose of this Section 11.24 (*Debt: equity ratio*) only,

(A) "**Debt**" shall mean: (i) all such indebtedness, quasi-equity or other instruments that the Lenders permit to be included within the meaning of debt for the purpose of calculating the debt to equity gearing under the Financing Documents; and

(B) "**Equity**" shall mean the amounts that the Lenders permit to be included within the meaning of equity for the purpose of calculating the debt to equity gearing under the Financing Documents including any shareholder loans subordinated to debt.

11.25 Existing facilities

In case any existing facilities (including but not limited to irrigation systems, water supplies, roads, bridges, buildings, communication system(s), power systems and water mills) are adversely affected because of the implementation of the Project, the Company shall be responsible for taking remedial measures to mitigate such adverse effects at its own cost and expense, to the extent required under the EIA, the Performance Standards and any Plans.

11.26 Information sharing

11.26.1 The Company shall provide to GON and if requested, the PRP:

- (A) copies of the Records contemplated in this Section; and
- (B) any other information as may reasonably be required in connection with the Project, including:
 - (1) as soon as reasonably practicable, notification of accidents within the Project Area causing death or serious injury;
 - (2) as soon as reasonably practicable, notification of incidents causing any pollution or other forms of environmental damage;
 - (3) as soon as reasonably practicable, notification of material industrial relations issues; and
 - (4) once a month, notification of material public complaints received.

11.26.2 From and after the Commercial Operation Date, the Company shall submit a report to GON within thirty (30) days of the end of each month setting out, *inter alia*, all Energy Receipts receivable by the Project in respect of the previous month.

11.26.3 The Company shall prepare and maintain Records in accordance with the Laws of Nepal, Good Industry Practice and as required under this Agreement. The Company shall provide the following information and reports to GON:

- (A) its audited financial statements, within six (6) months of the end of each financial year of the Company;
- (B) monthly reports on construction progress;
- (C) such information as required by the Laws of Nepal or any Government Approval;
- (D) occurrence of any emergencies including pollution incidents and strikes;
- (E) any key reports received by the Company from the Independent Engineer in relation to construction, safety and security;
- (F) operation and maintenance schedule; and
- (G) on 1 December of each year, a notice setting out indicative foreign exchange requirements for the next year.



- 11.26.4 At least two (2) years prior to the Expiry Date or on the Transfer Date (as the case may be), the Company shall also deliver or cause to have delivered to GON such operating manuals, operation summaries/transfer notes, design drawings and other information as may reasonably be required for GON or its nominee to operate the Project in accordance with Good Industry Practice.
- 11.26.5 The Company shall, at its own cost and expense, submit to GON three (3) print copies and one (1) electronic copy of:
- (A) the proposed design of the Hydro Property within ninety (90) days of Financial Close; and
 - (B) all "as built" drawings of the Hydro Property within ninety (90) days following Commercial Operation Date, or, if any such "as built" drawing is not available by such date, within ninety (90) days of the date on which such "as built" drawing becomes available but in any event not later than six (6) months after the Commercial Operation Date.
- 11.26.6 Following Commercial Operation Date, the Company shall submit to GON all annual reports required pursuant to the Government Approvals and the Laws of Nepal.
- 11.26.7 The Company shall prepare plans, specifications and a schedule for the implementation of the construction of the Hydro Property and any initial ancillary facilities, which shall include separate plans, specifications and schedules for each such element of the Hydro Property and an integrated schedule for all such construction for GON's information (such plans, specifications and schedules are referred to collectively as the "**Construction Plan**"). The PRP shall be required to provide their recommendations on the Construction Plan. The Company shall deliver the Construction Plan to PRP and GON and shall promptly deliver to PRP and GON any major amendments to the Construction Plan. The Company shall submit, during the Construction Period until the Commercial Operation Date is achieved, a progress report in three copies every six (6) months to GON in accordance with the Electricity Regulations, 2050 (1993).
- 11.26.8 The Company shall submit three (3) copies of its annual reports to GON concerning its production and operation in accordance with the Electricity Regulations, 2050 (1993). Such annual report shall inter alia, include loan repayment progress, operational expenses and all amendments or modifications to the Financing Documents.

11.27 **Access and inspection**

- 11.27.1 The Company shall permit the PRP, GON, GON Instrumentalities or their respective designated representatives to enter, inspect and/or access the Hydro Property and the Project Area at any time:
- (A) during the normal working hours of the Company, for the purpose of verifying the Company's compliance with, or to fulfil its obligations under, this Agreement or the Laws of Nepal;
 - (B) without prior notification, in case of an emergency, accident or threat to the public, health, environment and safety;
 - (C) to access its own or other person's facilities where alternative means of access are not available; or
 - (D) for the purpose of carrying out any activities which they are legally entitled to carry out in the Project Area pursuant to the Laws of Nepal, this Agreement or any Plans,



provided that any person granted such right of access or way shall follow the rules concerning safety, traffic, security and other regulations relating to the Hydro Property and/or Project Area and the performance of the Project prescribed by the Company, which rules shall not be discriminatory in application and provided further that any such visit shall not unreasonably interfere with the Company's performance of the Project.

11.28 Contractors and subcontractors

The Company may enter into contracts with the Contractors in relation to the Project provided that the appointment of any Contractor by the Company or subcontractor by the Contractor shall not relieve the Company of any of its obligations or liability in relation to the Project under this Agreement.

11.29 Independent Engineer

11.29.1 The Company shall procure that Lenders:

- (A) deliver written confirmation to GON of the identity of the Independent Engineer and any subsequent replacement(s) of the Independent Engineer; and
- (B) permit the Independent Engineer to deliver, and the Independent Engineer shall accordingly deliver, the following notifications and certificates to the Parties as required under this Agreement:
 - (1) a certificate of occurrence of the Energy Start Date and each Unit Commissioning Date; and
 - (2) the certificate of the Independent Engineer required pursuant to Section 7.1.3 (*Commercial Operation Date*).

11.29.2 With respect to Section 11.29.1(B) (*Independent Engineer*), where Lenders do not permit such action to be undertaken by the Independent Engineer, the relevant action shall be undertaken by the PMU.

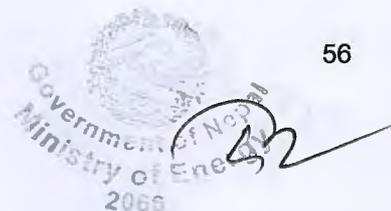
11.30 Anti-Corruption

11.30.1 The Company covenants that (i) with respect to any of the matters which are the subject of this Agreement or in connection with this Agreement and any matters resulting from it, that it and any person acting on its behalf, including owners, stockholders, Shareholders, Sponsors and Representatives, in dealings with the public or government sector, shall not commit any Prohibited Act in relation to the Project and that (ii) neither it nor any of its Representatives, promoters, shareholders, sponsors or subsidiaries has obtained or induced the procurement of this Agreement, any other Transaction Document or any contract, consent, approval, right, interest, privilege or other obligation or benefit related thereto or to the Project from GON or any other GON Instrumentality through any Prohibited Act.

11.30.2 The Company shall incorporate an obligation not to commit a Prohibited Act in its contracts with its Contractors.

11.30.3 The Company undertakes to keep books, accounts and records that properly, fairly and accurately record and report all transactions with respect to the matters which are the subject of this Agreement or in connection with this Agreement and any matters resulting therefrom for a period of at least five (5) years following the period to which they relate. GON shall be entitled, having given reasonable notice, to inspect any such document or where it is otherwise permitted, to inspect such documents in accordance with the Laws of Nepal or any relevant Government Approval or in connection with investigations into any Prohibited Act.

11.30.4 The Company shall design and implement an appropriate anti-bribery and corruption prevention and compliance programme.



11.30.5 The Company undertakes that it and its Representatives shall immediately report to GON, where permitted by the Laws of Nepal, any suspected violations of the Laws of Nepal or conduct of any Prohibited Act in connection with any matters to which this Agreement relates (which includes acts or omissions which may affect the Company).

11.30.6 The Company agrees that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured by the Company making any false declaration, misrepresenting any facts or taking any action likely to defeat the purpose of this Section shall, without prejudice to any other right and remedies available to GON, be voidable and without legal effect at the option of GON provided that this provision shall not apply and no action shall be taken against the Company for any actions of any of its Representatives, employees of itself or its promoters, shareholders, sponsors, or its subsidiaries, which have not been authorised by the Company.

11.31 Carbon and other Environmental Credits

11.31.1 The Company shall have the sole discretion to, or not to, pursue, apply for or obtain any GHG Reduction Benefits that could be generated from the Project, the Project Land or any aspect of the Company's operation.

11.31.2 To the extent any GHG Reduction Benefits are generated by the Company from the Project, GON shall own them as between the Company and GON and save that the Company shall have the exclusive right to market and sell all the GHG Reduction Benefits generated by the Project, the Project Land or any aspect of the Company's operations and to determine the timing and circumstances of doing the same.

11.31.3 If and when any revenues are received from any sale of GHG Reduction Benefits, the revenues less costs and expenses associated with pursuing, applying for, obtaining, marketing and selling such GHG Reduction Benefits shall be distributed to the Parties as follows: (A) fifty per cent (50%) to GON; and (B) fifty per cent (50%) to the Company.

11.32 Refinancing

11.32.1 The Company shall have sole discretion to, or not to, pursue any Refinancing.

11.32.2 The Company shall no later than sixty (60) days before any Refinancing, provide GON with reasonable details of the proposed Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model.

11.32.3 GON and the Company shall negotiate in good faith to agree the basis and method for calculating the net gains from the Refinancing and payment of the GON's share of the net gains from the Refinancing. If the Parties fail to agree the basis and method of calculation of the Refinancing gain or the payment of GON's share, the dispute shall be resolved in accordance with Section 15 (*Law and Dispute Resolution*) as a Technical Dispute.

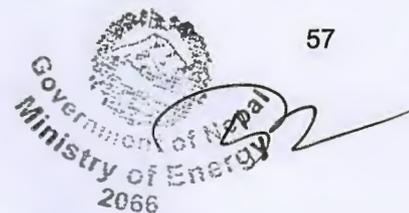
11.32.4 GON shall be entitled to receive a fifty per cent (50%) share of the net gains of a Refinancing, if any.

12. FORCE MAJEURE

12.1 Definition of Force Majeure Event

12.1.1 A "Force Majeure Event" shall mean any circumstance, event or condition (or any combination thereof), or the effects thereof, beyond the reasonable control of the Affected Party, but only if, and to the extent that:

- (A) such circumstance, event or condition (or any combination thereof) or the effects thereof, cannot be prevented, avoided or overcome by the Affected Party despite the exercise of diligence;

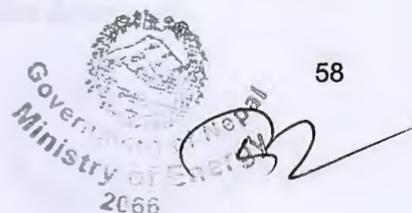


- (B) such circumstance, event or condition (or any combination thereof) or the effects thereof materially and adversely affects the performance by the Affected Party of its obligations under this Agreement;
- (C) the Affected Party has taken all reasonable precautions, due care and measures (including in the case of the Company acting in accordance with Good Industry Practice), to prevent, avoid or overcome the effect of such circumstance, event or condition (or any combination thereof) on its ability to perform its obligations under this Agreement; and
- (D) such circumstance, event or condition (or any combination thereof) has not occurred due to the Affected Party's breach of this Agreement or an Event of Default.

12.1.2 Subject to the exclusions in Section 12.2 (*Exclusions from Force Majeure Events*) and provided that they satisfy the requirements in Section 12.1.1 (*Definition of Force Majeure Event*) above, "Other Force Majeure Events" means all Force Majeure Events other than GON Force Majeure Events, and include (but are not limited to) the following circumstances, events or conditions (or any combination thereof) or the effects thereof:

- (A) drought, earthquake, cloudburst, flood, storm, landslides, mudslides, cyclone, tornado, typhoon, hurricane, volcanic eruption, lightning, or any other act of God;
- (B) geological surprises and unforeseen site conditions;
- (C) fire or explosion;
- (D) an epidemic, plague or quarantine;
- (E) the discovery of any antiquities or other objects or species or cultural and religious items of value at the Project site;
- (F) meteorites, the occurrence of pressure waves caused by aircraft, or other aerial devices travelling at supersonic speeds;
- (G) an air crash, shipwreck, train wreck or failure or delay of transportation;
- (H) any strike, work-to-rule, industrial disputes, lock outs, industrial difficulties, work bans, picketing, go-slow, or analogous labour action that is not a GON Force Majeure Event;
- (I) an act of war (whether declared or undeclared), invasion or armed conflict that is not a GON Force Majeure Event;
- (J) blockade, embargo or closure of borders that is not a GON Force Majeure Event; or
- (K) any radioactive contamination or ionising radiation, toxic or dangerous chemical contamination or biological contamination occurring in nature, 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 persons employed by the Company or engaged by the Company (including the Contractors).

12.1.3 Subject to the exclusions in Section 12.2 (*Exclusions from Force Majeure Events*) and provided that it satisfies the requirements in Section 12.1.1 (*Definition of Force Majeure Event*) above, "GON Force Majeure Event" means the following circumstances, events or conditions (or any combination thereof) or the effects thereof:



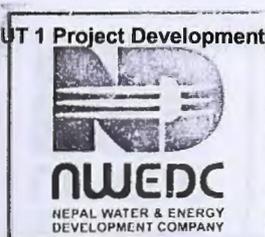
- (A) any strike, work-to-rule, industrial disputes, lock outs, work bans, picketing, go-slow, actions including actions associated with or directed against the Company or Contractors as part of a broader pattern of actions against companies or facilities with foreign ownership or management or analogous labour action, in each case: (1) in existence for a continuous period of twenty-one (21) days; and (2) that is politically motivated or instigated;
- (B) an act of war (whether declared or undeclared), invasion or armed conflict initiated by or against Nepal;
- (C) revolution, exercise of military or usurped power, mutiny, rebellion, state of siege; declaration or maintenance of martial law or national emergency occurring within Nepal;
- (D) any acts of rebellion, riot, civil commotion, insurrection, civil disturbance, civil disobedience or act or campaign of terrorism or political sabotage occurring within Nepal;
- (E) blockade, embargo or closure of international borders of Nepal for more than thirty (30) consecutive days or GON imposing any import restrictions or rationing;
- (F) failure or breakdown of the Nepalese grid system;
- (G) any radioactive contamination or ionising radiation, toxic or dangerous chemical contamination or biological contamination occurring in Nepal 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 a GON Instrumentality or third parties; or
- (H) any event or circumstance of a nature analogous to any of the above,

provided that any event affecting the Contractors which are the same as events specified in Section 12.1.2 (*Definition of Force Majeure Event*) and/or Section 12.1.3 (*Definition of Force Majeure Event*) above, shall fall within the meaning of an "Other Force Majeure Event" or a "GON Force Majeure Event", as the case may be.

12.2 Exclusions from Force Majeure Events

Notwithstanding anything to the contrary in Section 12.1 (*Definition of Force Majeure Event*), Force Majeure Events shall not include the following circumstance, event, or condition (or any combination thereof) or the effects thereof save to the extent such circumstance, event, or condition (or any combination thereof) or the effects thereof is caused by a Force Majeure Event or Change in Law:

- 12.2.1 any strike, work-to-rule, industrial disputes, lock outs, work bans, picketing, go-slow, or analogous labour action solely or primarily by employees of the Affected Party or its Contractors due to or arising from the terms and conditions of employment or working conditions of employees at the Project site or claim for improvement of working conditions, which are reasonable having regard to the hydro power industry in Nepal (regardless of whether there is any political support for such action subsequently);
- 12.2.2 failure to make a payment of money in accordance with a Party's obligations under this Agreement;
- 12.2.3 any failure by the Company or its Contractors to obtain or maintain any Government Approval due to a breach by the Company of this Agreement, Company Event of Default or default by a Contractor;
- 12.2.4 any failure to take into account site conditions which have been identified in the EIA or DPR;
- 12.2.5 any failure in performance by a Contractor or offtaker which results in the failure or inability of the Company to perform its obligations under this Agreement;



- 12.2.6 late delivery of equipment, machinery, works or materials caused by negligent acts or omissions on the part of the Company or any Contractor;
- 12.2.7 mechanical or electrical breakdown or failure of the Materials or works owned or operated by the Affected Party due to the manner in which such Materials or works have been procured, operated, transported or maintained;
- 12.2.8 normal wear and tear in materials and equipment;
- 12.2.9 changes in market conditions, Severe Market Disruption (for the avoidance of any doubt, it is clarified that Severe Market Disruption shall be dealt with in accordance with Section 17.9 (*Severe Market Disruption*)); or
- 12.2.10 lack of funds but not including a lack of funds due to non-availability of cash or facilities to convert currency.

12.3 Obligation to notify

12.3.1 If an Affected Party reasonably considers that a Force Majeure Event has occurred, such Affected Party shall give the other Party a written notice as soon as is reasonably practicable (but in any event no later than fourteen (14) days of becoming aware or when it ought to have been aware of the occurrence of such a Force Majeure Event), of the Force Majeure Event and as soon as is reasonably practicable give a further written notice setting out the following in reasonable detail:

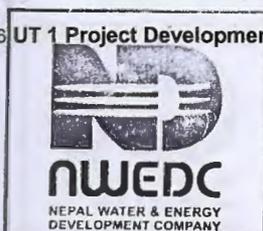
- (A) the information, as is available, to justify the claim;
- (B) a description of the relevant Force Majeure Event;
- (C) the rights or obligations of the Affected Party under this Agreement which have been or shall be, or are likely to be, affected by such Force Majeure Event; and
- (D) an estimate of the expected duration of such Force Majeure Event and remedial steps proposed and an estimate of time required to overcome such Force Majeure Event.

12.3.2 Failure by the Affected Party to give notice of a Force Majeure Event to the other Party within the fourteen (14) day period required by Section 12.3.1 (*Obligation to notify*) above 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 12 (*Force Majeure*) for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If such notice is given within such fourteen (14) day period, the Affected Party shall be excused for such failure or delay from the date of commencement of the relevant Force Majeure Event.

12.3.3 The Affected Party shall provide further information about the Force Majeure Event and adequate opportunity for inspection to the other Party.

12.3.4 In the case of a Force Majeure Event which prevents the Affected Party from performing an obligation under this Agreement, the Affected Party shall provide monthly progress reports to the other Party 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 from the Affected Party in connection with the occurrence of such Force Majeure Event.



12.3.5 Within fourteen (14) days following the cessation of any Force Majeure Event, the Affected Party shall 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.

12.4 Obligation to mitigate

12.4.1 The Affected Party shall use all reasonable endeavours and shall proceed with reasonable diligence to:

(A) 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 insurance or alternate sources of services, equipment and materials, where feasible; and

(B) as soon as reasonably possible, and in accordance with Good Industry Practice, ensure the resumption of normal performance of this Agreement and the Hydro Property 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 12 (*Force Majeure*).

12.4.2 GON, shall provide all such assistance to the Affected Party as is reasonably required in respect of undertaking steps to mitigate the occurrence of any Force Majeure Event in respect of the Project.

12.4.3 The suspension of performance shall be of no greater scope and of no longer duration than until such time as the Force Majeure Event and any effect thereof is remedied.

12.5 Relief during Force Majeure Events

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

Suspension of performance obligations

12.5.1 The Affected Party shall not be liable for any delay or failure in performing its obligations (including payment obligations (subject to the proviso below) arising during the period of occurrence and continuance of a Force Majeure Event or its effects) under this Agreement to the extent that such failure or delay in performance has been caused or contributed to by one or more Force Majeure Events or its or their effects or by any combination thereof. For the avoidance of any doubt, it is clarified that a temporary suspension of the Company's obligation to Capacity Royalty during the continuance of a Force Majeure Event shall not be construed as an exemption from the payment of Capacity Royalty by the Company and the Company shall be required to pay the Capacity Royalty which it was unable to pay on account of a Force Majeure Event after the Company ceases to be adversely affected by such Force Majeure Event;

12.5.2 The obligation of the Company to generate/supply power and the obligation of the Company to transmit power shall be suspended (but only to the extent this is affected by the Force Majeure Event); and

12.5.3 In the event of occurrence of an Other Force Majeure Event which leads to reduction in availability of water for the Project, in addition to the reliefs available to the Affected Party under this Section 12 (*Force Majeure*), GON agrees that, it shall, during the period of six (6) months or the duration of such Other Force Majeure Event (whichever is shorter) seek to agree amendments to this Agreement to the extent appropriate and reasonable.

Extension of time limits and deadlines

12.5.4 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 on a day-for-day basis for as long as the Affected Party is unable to comply, or is delayed in complying, with its obligations in this Agreement because of the occurrence of such a Force Majeure Event;



- 12.5.5 Without prejudice to Section 12.9 (*Termination due to prolonged Force Majeure or Change in Law*), if a GON Force Majeure Event occurs in the period on and from Commercial Operation Date, the Term of this Agreement shall, to the extent GON does not pay full compensation to the Company pursuant to Section 12.7 (*Staggered Remedies*), stand extended at the Company's option for as long as is required for the Company to generate additional revenues equivalent to the amount of compensation not paid by GON;
- 12.5.6 If an Other Force Majeure Event occurs after the Commercial Operation Date, the Term of this Agreement shall stand extended for the period equivalent to the period of continuance of the Other Force Majeure Event;

No relief

- 12.5.7 Provided that no relief shall be granted to the Affected Party pursuant to this Section 12.5 (*Relief during Force Majeure Events*) to the extent that such failure or delay was caused due to the Affected Party's breach of this Agreement or Event of Default;

Pre-COD GON Force Majeure Event compensation

- 12.5.8 Upon the occurrence of a GON Force Majeure Event in the period on and after the Agreement Date until Commercial Operation Date, the Company shall be entitled to recover without double recovery, the costs and expenses reasonably and necessarily incurred by the Company as a result of one or more GON Force Majeure Events:
- (A) in protecting and preserving the Hydro Property against damage or deterioration;
 - (B) in 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) payment obligations accrued under the Financing Documents;
 - (D) increase in the capital cost of the Project;
 - (E) damages and charges paid to off-takers and transmission utilities;
 - (F) operating and maintenance expenditure;
 - (G) in demobilising and, upon resumption of performance, remobilisation of the plant and employees and those of any contractor or subcontractor, including the cost of such employees being kept on standby, pending resumption of the works;
 - (H) in extending the hire period of any plant, equipment, appliances and vehicles, including the additional cost of hire;
 - (I) any additional construction costs which are incurred by the Company and against which the Company has not otherwise been held harmless under any other arrangements; and
 - (J) any additional 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 such further financing,

(the "Pre-COD Compensation Amount").

12.6 Post-COD GON Force Majeure Event Compensation



12.6.1 Upon the occurrence of a GON Force Majeure Event on or after the Commercial Operation Date, for the period during which the GON Force Majeure Event or the effects thereof are outstanding, the Company shall, in addition to any outstanding Pre-COD Compensation Amount remaining unpaid, also be entitled to recover any: (A) costs reasonably and necessarily incurred by the Company; and (B) Net PPA Loss of Revenue (the "**Post-COD Compensation Amount**").

12.7 Staggered Remedies

12.7.1 The Pre-COD Compensation Amount and Post-COD Compensation Amount (as applicable) shall be referred to as the "Relevant GON Compensation Amount". With respect to any Relevant GON Compensation Amount, the Company shall provide GON with a report setting out full details of such additional costs or Net PPA Loss of Revenue, and the steps which the Company has taken to comply with its obligation to mitigate under Section 12.4 (*Obligation to mitigate*), along with an itemised invoice and any other supporting documentation.

12.7.2 The Company shall have the right to recover any Relevant GON Compensation Amount, without double recovery by way of one or more of the following methods. The Company shall provide to GON an itemised invoice (together with full supporting documentation) in this regard. The GON shall, within sixty (60) days of the receipt of an itemised invoice (together with full supporting documentation) from the Company, provide its decision whether to pay the Company in these terms:

- (A) setting-off against the Delay Liquidated Damages amount;
- (B) reducing the Energy Royalty payable by the Company to GON following Commercial Operation Date under Section 11.22 (*Royalties Payable to GON*);
- (C) reducing the Capacity Royalty payable by the Company to GON following Commercial Operation Date under Section 11.22 (*Royalties Payable to GON*); or
- (D) GON putting in place an irrevocable and legally binding exemption (by issuing a notification to this effect in the official Gazette of Nepal or in any other manner permitted under the Laws of Nepal) for the Company from all, or a proportion of, the taxes which it would otherwise be required to pay under the Laws of Nepal,

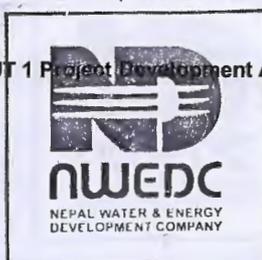
until such time that the Relevant GON Compensation Amount is paid.

Funding of any outstanding compensation – final invoice

12.7.3 If the Company is unable to fully recover: (i) the Pre-COD Compensation Amount; or (ii) the Post-COD Compensation Amount within one hundred and twenty (120) days of the date of demand by the Company in accordance with Section 12.7.2 (*Staggered Remedies*), the Company shall be entitled to present an itemised invoice (together with full supporting documentation) for any remaining amount which the Company is entitled to recover from GON under Section 12.5.8 (*Pre-COD GON Force Majeure Event Compensation*) or 12.6 (*Post-COD GON Force Majeure Event Compensation*) (as applicable). The GON shall reimburse the Company within sixty (60) days of GON receiving such invoice (together with full supporting documentation) provided that in the event of non-payment of any undisputed amounts due and payable by the Company to GON under this Agreement, GON shall, at its option, be entitled to set-off such amounts against the Pre-COD Compensation Amount or the Post COD Compensation Amount, as applicable.

12.8 Restoration due to Force Majeure Events

If the Hydro Property or any part thereof requires Restoration as a result of any Force Majeure Event, Schedule 1 (*Restoration*) shall apply.



12.9 Termination due to prolonged Force Majeure or Change in Law

- 12.9.1 If a GON Force Majeure Event or Change in Law occurs, the effects of which continues for a period exceeding twenty-four (24) consecutive months and the Company notifies GON prior to the expiry of such twenty-four (24) month period that it shall be unable to resume performance within such period, then either GON or the Company may terminate this Agreement in accordance with Section 13.3 (*Termination notices*) provided that the Company shall not be entitled to terminate this Agreement upon the occurrence of a GON Force Majeure Event or Change in Law if GON is complying with its payment obligations under this Agreement.
- 12.9.2 If an Other Force Majeure Event occurs, the effects of which continues for a period exceeding twenty-four (24) consecutive months and the Affected Party notifies the other Party prior to the expiry of such twenty-four (24) month period that it shall be unable to resume performance within such period, then either GON or the Company may terminate this Agreement in accordance with Section 13.3 (*Termination notices*).

12A CHANGE IN LAW

12A.1 Subject to Section 12A.4 (*Change in Law compensation – deductible*), if during the Term of this Agreement a Change in Law occurs the Company shall be entitled to the reliefs described in Section 12A.6 (*Relief for Change in Law*).

12A.2 If after the Agreement Date, there is a Change in Tax which increases:

- (A) the Taxes on distributions or payments to Shareholders, Sponsors or Lenders, including withholding or distribution taxes, to the extent such taxes are not subject to any credit or adjustment in Nepal, including any credit or adjustment against any other tax liability in Nepal which is higher than the Taxes prevailing as of the Agreement Date; or
- (B) the Taxes on Company or the Contractors which cause Company or any Contractor to incur for itself or on behalf of any Contractor, any Tax which is higher than the Taxes prevailing as of the Agreement Date,

then the Company shall be entitled to claim any such additional Tax liability incurred or suffered by the Company, Shareholders, Sponsors, Lenders and Contractors, without double recovery, from GON pursuant to Section 12A.6 (*Relief for Change in Law*).

12A.3 Change in Tax – Clarification

- (A) If the Company is not able to achieve the Commercial Operation Date by 12 April 2024 due to a Force Majeure Event or Change in Law or a GON Event of Default and consequently is not able to avail the exemption from income tax referred to in this Section 9.2 (*Fiscal Incentives*) of this Agreement, a Change in Tax shall be deemed to have occurred, and the Company shall be entitled to claim such additional Tax liability.
- (B) Any increase in the rate of customs duty on import of cement, iron and steel products shall, without prejudice to the Company's right under Section 13.2.5 (*First Degree Change in Law*), constitute a Change in Tax.

12A.4 Change in Law compensation – deductible

12A.4.1 No damages or compensation shall be payable by GON in respect of any Change in Law (and any claim by the Company in this respect shall be deemed invalid) where any action which is undertaken by GON or a GON Instrumentality and is a Change in Law, was taken: (i) to rectify any breach by the Company of this Agreement; or (ii) in response to a petition to any GON Instrumentality by the Company which is acceptable to such GON Instrumentality, and the intended effect of which petition is a Change in Law; or



12A.4.2 GON shall not be liable for a claim from the Company for compensation for increase in costs incurred and/or Net PPA Loss of Revenue suffered due to Change in Law until the amount of all claims for Change in Law, when taken together, exceed NPR two (2) Crores (the "**Deductible**"), in which case, all amounts over and above the Deductible shall be recoverable by the Company as compensation for Change in Law.

12A.5 Obligation to notify

12A.5.1 If the Company considers that a Change in Law has occurred, the Company shall give GON a written notice as soon as is reasonably practicable (but in any event no later than fourteen (14) days of becoming aware of such a Change in Law), and as soon as is reasonably practicable give a further written notice setting out the following in reasonable detail:

- (A) a description of the relevant Change in Law; and
- (B) the rights or obligations of Company under this Agreement which have been or shall be, or are likely to be, affected by such Change in Law; and
- (C) the increase in cost or reduction in revenue expected to be suffered as a result of the Change in Law.

12A.5.2 In case of a Change in Law which prevents the Company from exercising any right or performing an obligation under this Agreement, the Company shall provide GON with such information as GON may reasonably require from Company in connection with the effect of such Change in Law on a Company.

12A.6 Relief for Change in Law

12A.6.1 The time limits and deadlines for the performance by the Company of its obligations under this Agreement which are affected by a Change in Law or its effects shall be extended on a day-for-day basis for as long as the Company is unable to comply, or are delayed in complying, with its obligations in this Agreement because of the occurrence of such a Change in Law (or its effects).

12A.6.2 Without prejudice to Section 12.9.1 (*Termination due to prolonged Force Majeure or Change in Law*), if a Change in Law occurs in the period on and from Commercial Operation Date, the Term of this Agreement shall, to the extent GON does not pay full compensation to the Company pursuant to this Section 12A.6 (*Relief for Change in Law*), stand extended at the Company's option for as long as is required for the Company to generate additional revenues equivalent to the amount of compensation not paid by GON.

12A.6.3 Subject to Section 12A.4 (*Change in Law compensation – deductible*), upon the occurrence of a Change in Law, the Company shall be entitled to recover from GON any: (A) costs reasonably and necessarily incurred by the Company; (B) Net PPA Loss of Revenue; and (C) additional Tax liability referred to in Sections 12A.2 (*Change in Law*) and 12A.3 (*Change in Tax – Clarification*), in each case, as a result of a Change in Law (the "**CIL Compensation Amount**") in accordance with Sections 12A.6.4 to 12A.6.6 (*Relief for Change in Law*) (inclusive).

12A.6.4 The Company shall provide GON with a report setting out full details of such CIL Compensation Amount along with an itemised invoice and any other supporting documentation.

12A.6.5 The Company shall have the right to recover any CIL Compensation Amount, without double recovery, by way of one or more of the following methods. The Company shall provide to GON an itemised invoice (together with full supporting documentation) in this regard. The GON shall, within sixty (60) days of the receipt of an itemised invoice (together with full supporting documentation) from the Company, provide its decision whether to pay the Company in these terms:

- (A) setting-off against the Delay Liquidated Damages amount;



- (B) reducing the Energy Royalty payable by the Company to GON following Commercial Operation Date under Section 11.22 (*Royalties Payable to GON*);
- (C) reducing the Capacity Royalty payable by the Company to GON following Commercial Operation Date under Section 11.22 (*Royalties Payable to GON*); or
- (D) GON putting in place an irrevocable and legally binding exemption (by issuing a notification to this effect in the official Gazette of Nepal or in any other manner permitted under the Laws of Nepal) for the Company from all, or a proportion of, the taxes which it would otherwise be required to pay under the Laws of Nepal,

until such time that the CIL Compensation Amount is paid.

12A.6.6 If the Company is unable to fully recover the CIL Compensation Amount within one hundred and twenty (120) days of the date of demand by the Company in accordance with Section 12A.6.3 (*Relief for Change in Law*), the Company shall be entitled to present to GON an itemised invoice (together with full supporting documentation) for any remaining amount which the Company is entitled to recover from GON under this Section 12A (*Change in Law*). The GON shall reimburse the Company within sixty (60) days of GON receiving such invoice (together with full supporting documentation) provided that in the event of non-payment of any undisputed amounts due and payable by the Company to GON under this Agreement, GON shall, at its option, be entitled to set-off such amounts against the CIL Compensation Amount.

12A.7 Restoration due to Change in Law

If the Hydro Property or any part thereof requires Restoration as a result of a Change in Law, the provisions of Schedule 1 (*Restoration*) shall apply.

12.A.8 Beneficial Change in Law

For the avoidance of doubt, if the events or circumstances referred to in paragraphs (A), (B) or (E) of the definition of Change in Law result in benefit to the Company, the Company shall be entitled to such benefit.

13. EVENTS OF DEFAULT AND TERMINATION

13.1 Company Event of Default

Subject to any Lenders' rights that may exist under the Direct Agreement and Section 17.9 (*Severe Market Disruption*), each of the following events shall be an event of default of the Company (each a "**Company Event of Default**") which if not remedied within the time period permitted (if any) after receipt of written notice from GON giving reasonable details of the breach by the Company and demanding remedy thereof (a "**GON Preliminary Termination Notice**"), shall give rise to the right of GON to terminate this Agreement pursuant to Section 13.3 (*Termination notices*), provided that no such event shall become a Company Event of Default if it results substantially from: (A) a breach of this Agreement by GON or a GON Event of Default; (B) the occurrence of a Force Majeure Event; or (C) Change in Law.

Breach of payment obligations

13.1.1 The occurrence of any breach of any of the payment obligations imposed on the Company under this Agreement that is not remedied within sixty (60) days (or such longer period as otherwise agreed between the Parties) after receipt of a GON Preliminary Termination Notice.

Insolvency events

13.1.2 The occurrence of any of the following events in respect of the Company:

- (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 ninety (90) 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 person not previously approved in writing by GON or any other GON Instrumentality.

Failure to achieve the Commercial Operation Date by the Scheduled COD

13.1.3 Failure to achieve the Commercial Operation Date by the Scheduled COD (as extended in accordance with this Agreement) that is not remedied within one hundred and eighty (180) days (or such longer period as otherwise agreed between the Parties), after receipt of a GON Preliminary Termination Notice.

Failure to deliver the Performance Security or the Handover Guarantee

13.1.4 The failure of the Company to deliver or renew (as the case may be):

- (A) the Performance Securities by the respective due dates in accordance with this Agreement and where such breach is not remedied within sixty (60) days (or such longer period as otherwise agreed between the Parties) after receipt of a GON Preliminary Termination Notice; or
- (B) the Handover Guarantee in accordance with Schedule 2 (*Project Handover Upon Expiry of the Agreement*) and where such breach is not remedied within sixty (60) days (or such longer period as otherwise agreed between the Parties) after receipt of a GON Preliminary Termination Notice.

Abandonment

13.1.5 The Company has Abandoned the Project and where such Abandonment has not been remedied within ninety (90) days (or such longer period as otherwise agreed between the Parties) after receipt of a GON Preliminary Termination Notice.

Breach of Shareholding/Assignment Restriction

13.1.6 The Company is in breach of the provisions of Section 14.1 (*Assignment and Security - Company*) or Section 14.2.1 (*Assignment by GON*) and where such breach is not remedied within 60 days (or such longer period as otherwise agreed between the Parties) after receipt of a GON Preliminary Termination Notice.

Breach of any representations and warranties

13.1.7 Any of the representations or warranties by the Company given in Section 16.2 (*Company representations and warranties*) proving to have been incorrect in any material respect, when made or deemed to have been made, and such failure or incorrect representation or warranty having a material and adverse effect on the Company's ability to perform its obligations under this Agreement or on the obligations or liabilities of GON under this Agreement and where such breach is not remedied within sixty (60) days (or such longer period as otherwise agreed between the Parties) after receipt of a GON Preliminary Termination Notice.

Non-Compliance with order of Expert or Arbitral Tribunal



13.1.8 The Company fails to comply with a final order of the Panel of Expert pursuant to Section 15.5 (*Expert determination*) or a final award of an arbitral tribunal pursuant to Section 15.6 (*Dispute Resolution by Arbitration*) and such non-compliance is not remedied within sixty (60) days (or such longer period as otherwise agreed between the Parties) after receipt of a GON Preliminary Termination Notice.

Non-fulfilment of the Conditions Subsequent

13.1.9 Any Company's Conditions Subsequent remain unfulfilled by the applicable date and such non-compliance is not remedied within one hundred and eighty (180) days (or such longer period as otherwise agreed between the Parties) after receipt of GON Preliminary Termination Notice.

Material breach

13.1.10 Any breach by the Company of any material terms or conditions of this Agreement that is not remedied within one hundred and eighty (180) days (or such longer period as otherwise agreed between the Parties) of the receipt of a GON Preliminary Termination Notice.

Cross-default by the Company

13.1.11 Occurrence of any event of default under the Domestic PPA attributable to the Company or any event of default under any Land Lease Agreement(s) attributable to the Company and where such event of default affects the development, construction or operation of the Project and has not been remedied within the cure or grace period permitted thereunder after issuance by NEA of a notice of intent to terminate pursuant to the Domestic PPA or the Land Lease Agreement(s), as the case may be (or such longer period as otherwise agreed between the Parties) after receipt of a GON Preliminary Termination Notice.

13.2 GON Event of Default

Subject to any Lenders' rights that may exist under any Direct Agreement, each of the following events shall be an event of default of GON (each a "**GON Event of Default**") which, if not remedied within the time permitted (if any) after receipt of written notice from the Company giving reasonable details of the breach by GON and demanding remedy thereof (a "**Company Preliminary Termination Notice**"), shall give rise to the right of the Company to terminate this Agreement pursuant to Section 13.3 (*Termination notices*) provided that no such event shall become a GON Event of Default if it results substantially from: (1) a breach of this Agreement by the Company or a Company Event of Default; or (2) the occurrence of an Other Force Majeure Event:

Payment Default

13.2.1 The occurrence of any breach of any of the payment obligations imposed on GON or any GON Instrumentality under this Agreement that is not remedied within sixty (60) days (or such longer period as otherwise agreed between the Parties) after receipt of a Company Preliminary Termination Notice.

Nationalization etc.

13.2.2 The expropriation, nationalisation or compulsory acquisition by GON or any GON Instrumentality of any constituent element of the Project, the Transaction Documents, the Project operations or any Contractor and where such breach is not remedied within one hundred and twenty (120) days (or such longer period as otherwise agreed between the Parties) after the receipt of a Company Preliminary Termination Notice;

Failure to achieve the Commercial Operation Date by the Scheduled COD

13.2.3 The Project's failure to achieve the Commercial Operation Date by the Scheduled COD (as extended) as a result of a breach of this Agreement by GON which is not remedied within one hundred and eighty (180) days (or such longer period as otherwise agreed between the Parties) after the receipt of a Company Preliminary Termination Notice;



Non-Compliance with order of Expert or Arbitral Tribunal

13.2.4 The GON fails to comply with any final order of the Panel of Expert pursuant to Section 15.5 (*Expert determination*) or a final award of the arbitral tribunal pursuant to Section 15.6 (*Dispute Resolution by Arbitration*) and such non-compliance is not remedied within sixty (60) days (or such longer period as otherwise agreed between the Parties) after receipt of a Company Preliminary Termination Notice.

First Degree Change in Law

13.2.5 Where any Change in Law:

- (A) makes unenforceable, invalid or void, or limits or restricts any material right or performance of any obligation of the Company under this Agreement, the Domestic PPA or any Land Lease Agreement(s); or
- (B) makes it unlawful for or limits or restricts the Company's or any Contractor's right to make or receive any payment (including to its shareholders, Lenders and Contractors), to perform any material obligation or to enjoy or enforce any material right under any Government Approval, this Agreement, the Domestic PPA or any Land Lease Agreement(s), as the case may be);

and where any of the above occurrences has not been remedied within one hundred and eighty (180) days (or such longer period as otherwise agreed between the Parties) after receipt of a Company Preliminary Termination Notice.

Non-fulfilment of the Conditions Subsequent

13.2.6 Any of the GON Conditions Subsequent remain unfulfilled by the applicable date and such non-compliance is not remedied within one hundred and eighty (180) days (or such longer period as otherwise agreed between the Parties) after receipt of a Company Preliminary Termination Notice.

Cross-default by GON

13.2.7 Occurrence of any event of default under the Domestic PPA attributable to the NEA or any event of default under any Land Lease Agreement(s) attributable to a GON Instrumentality and where such event of default affects the development, construction or operation of the Project and has not been remedied within the cure or grace period permitted thereunder after issuance by the Company of a notice of intent to terminate pursuant to the Domestic PPA or the Land Lease Agreement(s), as the case may be (or such longer period as otherwise agreed between the Parties) after receipt of a Company Preliminary Termination Notice.

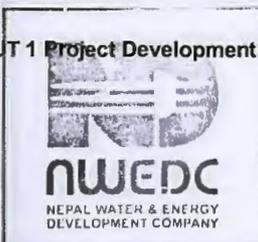
Breach of any representations and warranties

13.2.8 Any of the representations or warranties by GON given in Section 16.1 (*GON Representations and Warranties*) proving to have been incorrect in any material respect, when made or deemed to have been made, and such failure or incorrect representation or warranty having a material and adverse effect on GON's ability to perform its obligations under this Agreement or on the obligations or liabilities of the Company under this Agreement and where such breach is not remedied within sixty (60) days (or such longer period as otherwise agreed between the Parties) after receipt of a Company Preliminary Termination Notice.

Failure to grant or renew any Government Approvals

13.2.9 Any failure of GON or a GON Instrumentality to grant, renew or extend any Government Approval without cause (being a breach of the terms and conditions of such Government Approval) in accordance with Section 10.2 (*Grant of Government Approvals*) and where such failure has not been remedied within one hundred and eighty (180) days (or such longer period as otherwise agreed between the Parties).

Material breach



13.2.10 Any breach by the GON of any material terms or conditions of this Agreement that is not remedied within one hundred and eighty (180) days (or such longer period as otherwise agreed between the Parties) of the receipt of a Company Preliminary Termination Notice.

13.3 Termination notices

13.3.1 Following delivery of the Preliminary Termination Notice, the Party in default may continue to undertake efforts to cure or remedy the Event of Default and if the default is cured or remedied at any time prior to the delivery of a Termination Notice in accordance with this Section 13.3 (*Termination notices*), then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured Event of Default.

13.3.2 If:

- (A) the Company has not cured or remedied the applicable Company Event of Default in accordance with Section 13.1 (*Company Event of Default*) or Section 13.3 (*Termination notices*), or in the case where Section 8.3.2(B) (*Land Acquisition Delay Events*), or Section 12.9.2 (*Termination due to prolonged Force Majeure or Change in Law*) applies, then GON shall be entitled (but not obligated) to terminate this Agreement by giving a final written notice terminating this Agreement.
- (B) If GON has not cured or remedied the applicable GON Event of Default in accordance with Section 13.2 (*GON Event of Default*) or Section 13.3 (*Termination notices*), or in the case where Section 8.3.2(A) (*Land Acquisition Delay Events*), Section 12.9.1 or Section 12.9.2 (*Termination due to prolonged Force Majeure or Change in Law*) applies, then the Company shall be entitled (but not obligated) to terminate this Agreement by giving a final written notice terminating this Agreement, (each a "**Termination Notice**").

13.4 Transfer Price

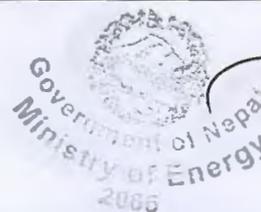
The following table sets out the events giving rise to the termination of this Agreement, the Party that is entitled (but not obligated) to serve a Termination Notice in respect of each such event and the Transfer Price applicable to each such event:

Termination Event	Party that is entitled (but not obligated) to serve the Termination Notice	Transfer Price
Prior to Financial Close:		
Termination of this Agreement pursuant to Section 13.1 (<i>Company Event of Default</i>) due to a Company Event of Default occurring prior to Financial Close	GON	<ul style="list-style-type: none"> • Project Land shall have to be acquired by GON at cost price plus Transfer Taxes • Other Project assets that GON wishes to acquire shall be acquired at a price determined by one of the Big Four accountants.
Termination of this Agreement pursuant to Section 13.2 (<i>GON Event of</i>	Company	Sunk Costs plus Transfer Taxes.



Termination Event	Party that is entitled (but not obligated) to serve the Termination Notice	Transfer Price
Default) due to a GON Event of Default occurring prior to Financial Close		
Termination of this Agreement pursuant to Sections 8.3.2(A) or 8.3.2(B) (Land Acquisition Delay Events) due to a Land Acquisition Delay Event occurring prior to Financial Close	Company pursuant to Section 8.3.2(A) (Land Acquisition Delay Events) GON pursuant to Section 8.3.2(B) (Land Acquisition Delay Events)	Sunk Costs plus Transfer Taxes.
Termination of this Agreement pursuant to Section 12.9.2 (Termination due to prolonged Force Majeure or Change in Law) due to a prolonged Other Force Majeure Event occurring prior to Financial Close	Either of Company or GON	<ul style="list-style-type: none"> Project Land shall have to be acquired by GON at cost price plus Transfer Taxes. Other Project assets that GON wishes to acquire shall be acquired at a price determined by one of the Big Four accountants.
Termination of this Agreement pursuant to Section 12.9.1 (Termination due to prolonged Force Majeure or Change in Law) due to a prolonged GON Force Majeure Event or Change in Law occurring prior to Financial Close	Company or GON	Sunk Costs plus Transfer Taxes.
On or after Financial Close:		
Termination of this Agreement pursuant to Section 13.1 (Company Event of Default) due to a Company Event of Default occurring after Financial Close	GON	Transfer Debt plus Outstanding Trade Payments plus Financing Costs plus Transfer Taxes less Insurance Proceeds and less DSRA.
Termination of this Agreement pursuant to Section 13.2 (GON Event of Default) due to a GON Event of Default occurring after Financial Close	Company	Transfer Debt plus Outstanding Trade Payments plus Financing Costs plus Transfer Equity plus ROE plus Transfer Taxes less Insurance Proceeds and less DSRA.
Termination of this	Company or GON	Transfer Debt plus

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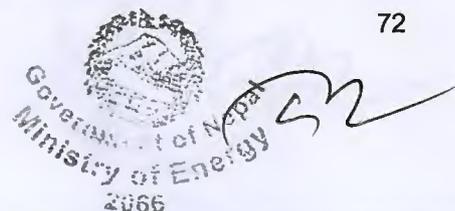
Termination Event	Party that is entitled (but not obligated) to serve the Termination Notice	Transfer Price
Agreement pursuant to Sections 8.3.2(A) or 8.3.2(B) (<i>Land Acquisition Delay Events</i>) due to a Land Acquisition Delay Event occurring after Financial Close		Outstanding Trade Payments plus Financing Costs plus Transfer Equity plus ROE plus Transfer Taxes less Insurance Proceeds and less DSRA.
Termination of this Agreement pursuant to Section 12.9.2 (<i>Termination due to prolonged Force Majeure or Change in Law</i>) due to a prolonged Other Force Majeure Event occurring after Financial Close	Company or GON	Transfer Debt plus Outstanding Trade Payments plus Financing Costs plus Transfer Equity plus Transfer Taxes less Insurance Proceeds and less DSRA.
Termination of this Agreement pursuant to Section 12.9.1 (<i>Termination due to prolonged Force Majeure or Change in Law</i>) due to a prolonged GON Force Majeure Event or Change in Law occurring after Financial Close	Company or GON pursuant to Section 12.9.1 (<i>Termination due to prolonged Force Majeure or Change in Law</i>)	Transfer Debt plus Outstanding Trade Payments plus Financing Costs plus Transfer Equity plus ROE plus Transfer Taxes less Insurance Proceeds and less DSRA.

13.5 **Transfer Price components**

13.5.1 Where, as at the Calculation Date:

Transfer Debt means	Subject to Sections 13.5.3 (<i>Transfer Price components</i>) and 13.5.4 (<i>Transfer Price components</i>), any outstanding Company indebtedness under the Financing Documents owed to the Lenders
Outstanding Trade Payments	Any undisputed sums (other than the Transfer Price) due and owing from GON, NEA or any other GON Instrumentality, as the case may be, to the Company under any Transaction Document as at the Calculation Date.
Financing Costs means	Subject to Sections 13.5.3 (<i>Transfer Price components</i>) and 13.5.4 (<i>Transfer Price components</i>), any outstanding charges payable to the Lenders in accordance with the Financing Documents as a result of the transfer of the Project (including prepayment charges, wind up costs, hedge break costs, outstanding accrued interest charges)
Transfer Equity means	book value of outstanding equity (including shareholder loans)
ROE means	120% of Transfer Equity
Insurance Proceeds means	any insurance proceeds actually received under any insurance policies by the Company

San



DSRA means	any remaining amount held by the Company in a debt service reserve account as established under the Financing Documents.
Transfer Tax means	Any Tax imposed on, applicable to, or withheld from the payment of the Transfer Price or the transfer of the Hydro Property and Project Assets

13.5.2 The Company shall submit to GON, within sixty (60) days of the end of each financial year, a statement setting out the Company's assessment of the Sunk Costs incurred by the Company in the previous financial year. Any such assessment shall be indicative only and not binding on either Party for purposes of calculation of the Transfer Price.

13.5.3 In determining the Transfer Debt and Financing Costs, the Parties agree that:

- (A) the Debt:Equity ratio shall not exceed the ratio set out in Section 11.24 (*Debt: equity ratio*);
- (B) the commissions, costs, fees, rates, interest, charges, premia, prepayment costs, commitment fees, payments and other costs and expenses (by whatever name called) ("**All-in Costs**") payable to Other Lenders shall not be more than 250 basis points above the corresponding All-in Costs payable to the Senior Lenders; and
- (C) any breakage fees (by whatever name called) payable to the Other Lenders shall not be higher than the breakage fees (by whatever name called) payable to the Senior Lenders.

13.5.4 Notwithstanding anything to the contrary contained in this Agreement, if the Company is in breach of:

- (A) Section 13.5.3(B) or (C) (*Transfer Price components*), then GON shall not be liable for the payment of such portion of Financing Costs to any person that GON would otherwise not have been liable for if Company had ensured compliance with Section 13.5.3(B) or (C) (*Transfer Price components*) and the quantum of Financing Costs shall stand reduced accordingly; or
- (B) Section 13.5.3(A) (*Transfer Price components*), then GON shall not be liable for the payment of such portion of Transfer Debt to any person that GON would otherwise not have been liable for if Company had ensured compliance with Section 13.5.3(A) (*Transfer Price components*) and the quantum of Transfer Debt shall stand reduced accordingly.

13.6 Payment of the Transfer Price

13.6.1 Within thirty (30) Business Days from the date of the Termination Notice, the Company shall submit an invoice ("**Termination Invoice**") to GON setting out the Transfer Price owing to the Company pursuant to Section 13.4 (*Transfer Price*). The Termination Invoice shall be accompanied by a certificate from any of Ernst & Young, PricewaterhouseCoopers, KPMG or Deloitte (the "**Big Four**") verifying the calculation of all of the components of the Transfer Price listed in the Termination Invoice.

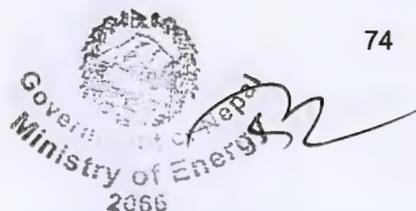
13.6.2 If GON does not dispute the Termination Invoice, GON shall pay Company the amount shown in the Termination Invoice no later than one hundred and eighty (180) days from receipt of the Termination Invoice (the "**Payment Date**"). If GON disputes the Termination Invoice, it shall pay Company, the undisputed amounts under the Termination Invoice within the aforementioned one hundred and eighty (180) day period. Any portion of the Termination Invoice in dispute shall be paid by GON once a final award has been issued in favour of the Company in respect of such disputed amount.



- 13.6.3 On the Payment Date (or in the case of any disputed amount, when a final award in respect of such amount is made in favour of the Company and GON has complied with such an award), the Company shall transfer the Hydro Property and Project Assets to GON, free and clear of all Encumbrances and liabilities, in accordance with Schedule 4 (*Termination Plan Upon Early Termination of the Agreement*) (the "Transfer Date").
- 13.6.4 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the payment of the applicable Transfer Price and any interest thereon pursuant to Section 17.21 (*Default Interest*) by GON to Company (or the Lenders):
- (A) is the sole and exclusive remedy of the Company for termination of this Agreement before the end of the Term and all loss or damage suffered by the Company on account of such early termination of this Agreement;
 - (B) shall constitute full and final settlement of GON's obligations and liabilities on account of such early termination of this Agreement; and
 - (C) the Company shall have no further claim or recourse against GON under this Agreement or otherwise on account of such early termination of this Agreement.
- 13.6.5 If any Transfer Tax is imposed or withheld from payment of the Transfer Price made by GON to Company or the Lenders, then such payment to Company or the Lenders shall be increased by an amount such that Company or the Lenders shall receive the same amount had no such Transfer Tax been increased or withheld.
- 13.6.6 Notwithstanding anything to the contrary in this Agreement, the Company shall not be obliged to transfer the Hydro Property and Project Assets to GON or its designee in accordance with Schedule 4 (*Termination Plan Upon Early Termination of the Agreement*) unless and until the applicable Transfer Price (together with any interest thereon pursuant to Section 17.21 (*Default Interest*)) has been irrevocably and unconditionally paid in full by GON subject to any set-off GON may apply pursuant to the terms of this Agreement.
- 13.6.7 Upon the effectiveness of the Termination Notice in accordance with Section 13.9 (*Effectiveness of Termination Notice*) or on the Expiry Date (as the case may be), all rights granted by GON or any other GON Instrumentality to the Company in relation to the Project and the Hydro Property shall stand revoked. Simultaneously with the transfer of the Hydro Property to GON on the Transfer Date or the Expiry Date (as the case may be), the Company shall also transfer the following to GON or its designee, in each case, free and clear of all Encumbrances and liabilities: (A) Project Rights; (B) Project Area and Project Land; (C) all stocks of spare parts and other consumables relating to the Hydro Property provided that GON takes the liability to the creditors for such stocks of spare parts and other consumables as appearing in the books of the Company; (D) all Records in relation to the Project; (E) at GON's option, any agreements relating to the Project which are valid and subsisting and capable of being transferred to GON or its designee; and (F) the benefit of any warranties given by third parties in respect of any property or assets being transferred to GON or its designee which are valid as at the Transfer Date or the Expiry Date provided that such warranties are capable of being transferred; and (G) all outstanding or unpaid claims under any insurance policies relating to physical loss or damage occurring prior to the Expiry Date or the Transfer Date (as the case may be), save where the loss or damage has been remedied prior to such date at the cost of the Company (collectively, "Project Assets").

13.7 Performance Security

- 13.7.1 If this Agreement is terminated prior to Commercial Operation Date due to a Company Event of Default, Section 11.21 (*Performance Security*) shall apply.
- 13.7.2 If this Agreement is terminated for any reason other than as set out in Section 13.7.1 (*Performance Security*), GON shall return the Performance Security (FC) and Performance Security (Signing) to the Company.



13.8 Arbitration

If any Party disputes the Transfer Price or any interest thereon pursuant to Section 17.21 (*Default Interest*), it shall be entitled to refer such dispute to arbitration in accordance with Section 15.6 (*Dispute Resolution by Arbitration*).

13.9 Effectiveness of Termination Notice

If a Party issues a Termination Notice, such Termination Notice shall not be effective until such time as the applicable Transfer Price and any interest thereon pursuant to Section 17.21 (*Default Interest*), is paid to the Company (or where applicable, the Lenders) in accordance with this Agreement and the Company or the Lenders (as the case may be), have been able to repatriate such Transfer Price and any interest thereon pursuant to Section 17.21 (*Default Interest*). The Company or the Lenders (as the case may be) shall apply to the NRB for repatriation of the Transfer Price within thirty (30) days of receiving such Transfer Price.

13.10 Power of Attorney

The Company agrees to grant to 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 GON or its designee thereof at the expiry of the Term or the Transfer Date, as the case may be, in accordance with this Agreement.

14. ASSIGNMENT, TRANSFER AND CHANGE OF CONTROL**14.1 Assignment and Security - Company**

14.1.1 The GON hereby irrevocably consents to the Transfer of the Company's rights or benefits (but not its obligations) under this Agreement to the Lenders or their agents for the purposes of arranging or re-arranging financing pursuant to the terms of the Financing Documents or any refinancing of the Project (a "**Permitted Transfer**").

14.1.2 Following a Permitted Transfer, the Lenders or their agents shall be vested with all the rights and benefits (but not obligations) Transferred to it by the Company provided that such Transfer shall not increase GON's financial obligations under this Agreement in any respect and any obligations shall remain with the Company.

14.1.3 The Company shall promptly give GON written notice of any Permitted Transfer and GON shall promptly acknowledge in writing such Permitted Transfer.

14.1.4 The Company may Encumber its assets and undertakings including any lease, license or other interest granted by GON pursuant to this Agreement to the Lenders.

14.1.5 Other than as provided in Sections 14.1.1 to 14.1.4 (*Assignment and Security - Company*) (inclusive) above, the Company shall not Transfer its rights, obligations or benefits under (i) this Agreement, (ii) the Project or (iii) the Hydro Property, wholly or partially to any person without first obtaining the prior written consent of GON (such consent not to be unreasonably withheld or denied). Any Transfer in contravention of this Section 14.1 (*Assignment and Security - Company*) shall be void *ab initio*.

14.2 Assignment by GON

14.2.1 The GON may assign any benefits under this Agreement without the prior written consent of the Company, to any GON Instrumentality. The GON shall not assign its obligations under this Agreement to any person or entity, without the prior written consent of the Company. Any assignment in contravention of this Section 14.2 (*Assignment by GON*) shall be void *ab initio*.

14.3 Shareholding Restrictions

14.3.1 Subject to Sections 10.17 (*Local share*), 14.1.1 (*Assignment and Security - Company*) and this Section 14.3 (*Shareholding Restrictions*), the Company shall not (and shall procure that the Lead Sponsor shall not), directly or indirectly, Transfer the Project, the Hydro Property, this Agreement or its benefits, interests, rights and obligations in, under, relating to, or in connection with the Project, the Hydro Property or this Agreement.



- 14.3.2 Between the date falling 6 (six) months after the Agreement Date and the fifth (5th) anniversary of the Commercial Operation Date (the "Lock-in Period") the Company shall procure and ensure that no person other than the Lead Sponsor exercises Control over the Company.
- 14.3.3 Subject to Section 14.3.2 (*Shareholding Restrictions*) and Section 14.3.6 (*Shareholding Restrictions*), the Company shall ensure that the Shareholders are only permitted to transfer and further that the Company shall only issue and allot Company Shares to:
- (A) shareholders who were shareholders of the Company as at the Agreement Date or to whom Company Shares have subsequently been issued, allotted or transferred in accordance with the provisions of this Agreement, any Sponsor or their respective Affiliates;
 - (B) a Qualified Investor;
 - (C) any other person, so long as such transfer, issue or allotment does not result in such person having by itself (or acting in concert with any other person that is not a Qualified Investor or the Lead Sponsor) Control over the Company; or
 - (D) any other person subject to the prior written approval of GON which shall not be unreasonably withheld.
- 14.3.4 Prior to any agreement or arrangement (whether written or otherwise) between any transferring Shareholders, Qualified Investor and/or other person becoming effective, the Company shall provide, or shall procure that the transferors shall provide GON with:
- (A) written notice from the transferors setting out such transferor's intention to transfer all, or any part, of its Company Shares or for the relevant change in Control of the Company; and
 - (B) such information in respect of the transferee that GON reasonably requires in order to ensure compliance by the Company with the provisions of this Section 14.3 (*Shareholding Restrictions*).
- 14.3.5 The Company shall:
- (A) no later than 6 (six) months from the Agreement Date, make appropriate provisions in its constitutional documents to ensure compliance with the provisions of this Section 14 (*Assignment, Transfer and Change of Control*);
 - (B) include appropriate legends on all share certificates evidencing the ownership of Company Shares so as to put prospective purchasers of such Company Shares on notice of the restrictions on Transfers set forth in this Section 14 (*Assignment, Transfer and Change of Control*);
 - (C) not register or give effect to any purported issuance, allotment or Transfer of a Company Share that is in breach of the restrictions set out in this Section 14.3 (*Shareholding Restrictions*); and
 - (D) forthwith notify GON of any proposed change or of any actual direct or indirect Control of the Company.
- 14.3.6 Notwithstanding anything contained elsewhere in this Agreement, no transfer of Company Shares shall be permitted to: (A) a person that is, by virtue of its nationality or domicile prohibited by the prevailing Laws of Nepal from investing in Nepal; or (B) a person who is, in GON's reasonable opinion, a threat to Nepal's national security.
- 14.3.7 Any issuance, allotment or Transfer of Company Shares in breach of the provisions of this Section 14.3 (*Shareholding Restrictions*) shall be void *ab initio*.



14.4 Pledge of Shares in favour of Lenders

GON hereby agrees and confirms that nothing contained in this Agreement shall restrict the Shareholders from Encumbering their Company Shares in favour of the Lenders. GON further agrees and confirms that an enforcement of the pledge by Lenders shall not result in a breach of this Agreement.

15. LAW AND DISPUTE RESOLUTION

15A Laws of Nepal

The Company shall comply with the laws of Nepal.

15.1 Governing Law

This Agreement and any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, validity, termination, interpretation or enforceability shall be governed by and construed in accordance with the laws of England and Wales.

15.2 Dispute Resolution

Any Dispute shall be resolved in accordance with the procedure set out in Sections 15.3 (*Dispute Notice*) to 15.6 (*Dispute Resolution by Arbitration*) (inclusive).

15.3 Dispute Notice

15.3.1 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**").

15.3.2 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 15.4 (*Resolution by consultation*).

15.4 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 GON or the Company shall be entitled to refer the Dispute to be resolved in accordance with Sections 15.5 (*Expert determination*) or 15.6 (*Dispute Resolution by Arbitration*).

15.5 Expert determination

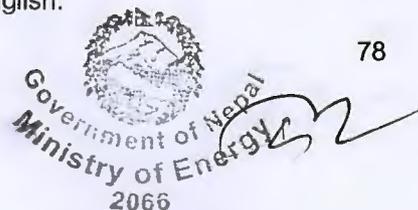
15.5.1 If the Parties are unable to resolve a Technical Dispute in accordance with Section 15.4 (*Resolution by consultation*), then such Technical Dispute shall be referred to and finally resolved by a panel of experts comprising three (3) experts ("**Panel of Experts**") in accordance with this Section 15.5 (*Expert determination*) and the Parties agree to submit the matter to administered expertise proceedings in accordance with the Rules for Expertise of the ICC. The Party initiating submission of the Technical Dispute (the "**Initiating Party**") to the Panel of Experts shall provide the other Party (the "**Responding Party**") with a written notice stating that it is submitting the Technical Dispute to the Panel of Experts.

15.5.2 The experts 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.



- 15.5.3 The GON shall nominate (1) one expert and the Company shall appoint one (1) expert. The two (2) experts nominated by the Parties shall within ten (10) days of the appointment of the second (2nd) expert agree upon a third (3rd) expert who shall act as presiding expert of the Panel of Experts. If no agreement is reached within ten (10) days of the appointment of the second (2nd) expert, either GON or the Company may request the International Centre for Expertise of the ICC to select the third (3rd) expert in accordance with the Rules for Expertise of the ICC.
- 15.5.4 The Parties shall agree with the Panel of Experts on the terms of their appointment. If the Parties are unable to agree on terms of appointment of the Panel of Experts within thirty (30) days of the date of written notice referred to in Section 15.5.1 (*Expert determination*), any Party shall be entitled to request the International Centre for Expertise of the ICC to agree with the Panel of Experts the terms of their appointment in accordance with the Rules for Expertise of the ICC.
- 15.5.5 The Initiating Party shall within thirty (30) days of the appointment of the Panel of Experts submit to the Panel of Experts and the Responding Party written materials setting forth (1) a description of the Technical Dispute, (2) a statement of the Initiating Party's position, and (3) 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 Panel of Experts (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 Panel of Experts by the Initiating Party, the Panel of Experts shall consider any such information submitted by the Responding Party within such thirty (30) day period and, in the Panel of Experts' discretion, any additional information submitted by either GON or Company at a later date. Any materials submitted by a Party to the Panel of Experts shall be simultaneously submitted by such Party to the other Parties.
- 15.5.6 The expert determination process shall not be an arbitration, and the Panel of Experts shall act as experts not as arbitrators. However, the Panel of Experts shall be entitled to obtain such independent professional or technical advice as the Panel of Experts may reasonably require and to obtain any necessary secretarial assistance as is reasonably necessary. The Panel of Experts may in their reasonable discretion determine such other procedures to assist with the conduct of the determination of the Technical Dispute as the Panel of Experts considers just or appropriate. In the absence of the Parties agreeing any amendments to this Agreement or any matter pursuant to this Agreement, if such failure to agree is referable to the Panel of Experts, the Panel of Experts shall have the power to make amendments or its determination as to the other matters pursuant to this Agreement binding on the Parties consistent with any relevant requirements, purposes or restrictions concerning those amendments or matters provided for in this Agreement.
- 15.5.7 The Panel of Experts shall be requested to provide a decision within ninety (90) days of the appointment of the third (3rd) expert. If the Panel of Experts fails to issue its decision within ninety (90) days of the appointment of the third (3rd) expert or is otherwise unable to complete the process, either GON or the Company may, either request the International Centre for Expertise of the ICC to appoint a replacement Panel of Experts, or refer the matter to arbitration pursuant to Section 15.6 (*Dispute Resolution by Arbitration*).
- 15.5.8 The decision of the Panel of Experts shall, in the absence of manifest error or fraud, be final and binding on the Parties. The Panel of Experts shall have the power to award costs as well as interest (subject to Section 17.21.4 (*Default Interest*)) on any sums awarded as it deems appropriate. All costs incurred by the Panel of Experts shall be borne by the Parties to the Technical Dispute in equal shares, unless the Panel of Experts decides otherwise. Each Party shall bear its own costs of participating in the expert determination process, unless the Panel of Experts decides otherwise.
- 15.5.9 The place of the expert determination shall be Singapore, the Republic of Singapore.
- 15.5.10 The language of the expert determination shall be English.

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15.5.11 Each Party shall act reasonably and co-operate to give effect to the provisions of this Section 15.5 (*Expert determination*).

15.6 Dispute Resolution by Arbitration

15.6.1 If the Parties are unable to resolve a non-Technical Dispute in accordance with Section 15.4 (*Resolution by consultation*) or a Technical Dispute is referred to arbitration in accordance with Section 15.5 (*Expert determination*), any such 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 15.6 (*Dispute Resolution by Arbitration*).

15.6.2 The tribunal shall consist of three (3) arbitrators. The GON shall nominate (1) one arbitrator and the Company shall appoint one (1) arbitrator. The two (2) arbitrators nominated by the Parties shall within thirty (30) days of the appointment of the second (2nd) arbitrator agree upon a third (3rd) arbitrator who shall act as presiding arbitrator of the tribunal. If a Party fails to nominate an arbitrator within thirty (30) days after receipt of a Party's nomination of an arbitrator or no agreement is reached within thirty (30) days between the two arbitrators for nomination of a third (3rd) arbitrator, the President of SIAC shall make the relevant appointment.

15.6.3 The seat of the arbitration shall be Singapore, the Republic of Singapore.

15.6.4 The language of the arbitration shall be English.

15.6.5 This arbitration agreement and any dispute or claim arising out of or in connection with this arbitration agreement, including its interpretation, subject matter and formation, shall be governed by and construed in accordance with the laws of England and Wales.

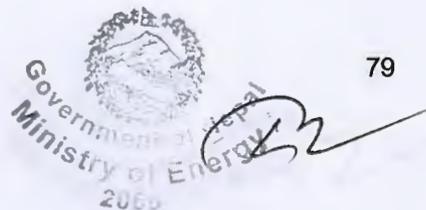
15.7 Waiver of sovereign immunity

15.7.1 The GON hereby irrevocably and unconditionally agrees that it is subject to the jurisdiction of the relevant arbitration tribunal and the courts of any jurisdiction (including Nepal and England) in support of arbitration proceedings (whether before or after any final arbitration award and including a judgment or order in support of any arbitration) with respect to its obligations hereunder, and that the execution, delivery, and performance of this Agreement constitute private and commercial acts of GON.

15.7.2 The GON hereby irrevocably and unconditionally agrees that:

- (A) should any proceedings be brought against GON or its assets, (other than the Protected Assets) in any jurisdiction in connection with this Agreement or any of the transactions contemplated by this Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of GON on behalf of itself or any of its assets (other than the Protected Assets);
- (B) it waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
- (C) it consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including without limitation, the making, enforcement, or execution against or in respect of any of its assets whatsoever (other than the Protected Assets) regardless of the use or intended use of the assets.

15.7.3 For the purposes of this Section 15.7 (*Waiver of sovereign immunity*), "Protected Assets" means:



- (A) aircraft, naval vessels and other defense related assets or assets protected by the diplomatic and consular privileges under the State Immunity Act of England or the Foreign Sovereign Immunities Act of the United States or any analogous legislation
- (B) property forming part of the cultural heritage of GON or part of its archives and not placed or intended to be placed on sale;
- (C) property forming part of an exhibition of objects of a scientific, cultural or historical interest and not placed or intended to be placed on sale; and
- (D) assets that are not owned by or that do not belong to GON.

15.7.4 For the avoidance of doubt, it is clarified that in connection with any claims under or pursuant to this Agreement, the Company shall not be entitled to seek enforcement against any assets that are not owned by GON or that do not belong to GON.

16. REPRESENTATIONS AND WARRANTIES

16.1 GON Representations and Warranties

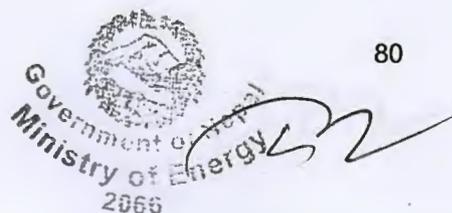
The GON hereby represents and warrants to the Company that:

- 16.1.1 it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- 16.1.2 the execution, delivery and performance of this Agreement by GON has been duly authorised by all requisite action on the part of GON, and shall not violate the Laws of Nepal or any applicable order of any GON Instrumentality;
- 16.1.3 this Agreement constitutes a legal, valid and binding obligation of GON, enforceable against it in accordance with its terms;
- 16.1.4 it has the authority to grant or procure the grant of the approvals, consents, licenses, permissions etc. envisaged in this Agreement;
- 16.1.5 GON shall not take any action that would prevent or interfere with the performance by any Government Instrumentality of any of its obligations under the Transaction Documents; and
- 16.1.6 Save as expressly otherwise provided for under Section 10.19 (*GON Project Covenant*), GON's obligations pursuant to Section 10.19 (*GON Project Covenant*) constitute unconditional obligations of GON, for the performance of which the full faith and credit of GON is pledged.

16.2 Company representations and warranties

The Company hereby represents and warrants to GON that:

- 16.2.1 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;
- 16.2.2 it has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- 16.2.3 the execution, delivery and performance of this Agreement by it:
 - (A) has 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; and
 - (B) shall not violate any provision of the constitutional documents of the Company; and



16.2.4 this Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms.

16.3 **No untrue statements or omissions**

16.3.1 Each Party to this Agreement represents 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.

16.3.2 The representation set out in Section 16.3.1 (*No untrue statements or omissions*) shall be deemed to be repeated on each occasion any such written information is provided by each Party to the other Party.

17. **MISCELLANEOUS**

17.1 **Disclosure of Confidential Information**

17.1.1 All Confidential Information shall be held by each Party and its Representatives in strict confidence and shall not be disclosed (by failure to exercise due care or otherwise by any act or omission) to any third party without obtaining the other Party's prior written consent. However, such prior written consent shall not be required for disclosure by a Party of any Confidential Information:

- (A) to its Representatives, Affiliates and other persons, to the extent required to enable such Party to carry out its obligations under this Agreement or those persons who need to know of such matters for the ordinary business purposes of the Party and who shall in each case be made aware by such Party of its obligations under this Agreement and shall be required by such Party to observe the same confidentiality restrictions on the use of the relevant Confidential Information as are set out in this Agreement;
- (B) where reasonably required by a Party for the purpose of exercising or performing its rights and obligations under this Agreement including in connection with internal government coordination, approvals and other governmental processes;
- (C) where disclosure is made to prospective lenders or investors of the Company or its Shareholders and/or the Sponsors or their Affiliates, and their Representatives (provided such persons are required to comply with the same confidentiality restrictions on the use of the relevant Confidential Information as are set out in this Agreement);
- (D) to the extent required by any Laws of Nepal or laws of any other jurisdiction to which such Party or its Affiliates is subject;
- (E) to the extent required by (1) a GON Instrumentality, or (2) the rules of a recognised stock exchange; or
- (F) to the extent that the relevant Confidential Information is, or was, (1) in the public domain otherwise than by breach of this Agreement by such Party, (2) available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party or (3) available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not prohibited from disclosing such information to the receiving Party.

17.1.2 Nothing contained in this Section 17.1 (*Disclosure of Confidential Information*) shall limit the obligation on the Company to disclose any such Confidential Information to the PRP who may require such Confidential Information in connection with the discharge of its obligations under this Agreement provided that the PRP enters into adequate confidentiality undertakings for the release of such information.



17.1.3 Subject to the provisions of this Section 17.1 (*Disclosure of Confidential Information*) and the Laws of Nepal, each of the Parties shall, within a reasonable period following receipt of a reasonable request, provide the other Party with such information as that Party has available which is, or may be, necessary to enable such other Party to perform its obligations under the Transaction Documents.

17.2 Rights cumulative with those at Law

Subject to Section 15.2 (*Dispute Resolution*), the powers, rights and remedies conferred on the Parties herein, including the rights of termination, shall be in addition and without prejudice to all other powers, rights and remedies available to the Parties in accordance with the Laws of England and Wales.

17.3 Liability and Indemnification

17.3.1 Limitation of liability

- (A) Notwithstanding anything to the contrary contained in this Agreement, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, statute or any other legal theory for any actual or expected:
 - (1) loss of profits that are indirect;
 - (2) loss of revenue, loss of goodwill, loss of opportunity, or loss of business that are indirect (in each case) (which for the avoidance of doubt shall not include Net PPA Loss of Revenue, Energy Royalty or Capacity Royalty recoverable under this Agreement);
 - (3) wasted expenditure including pre-contract expenditure that are indirect (which for the avoidance of doubt shall not include Sunk Costs incurred prior to the Agreement Date);
 - (4) increased costs or expenses that are indirect; or
 - (5) any other special, indirect, consequential, incidental, punitive or exemplary loss or damage of any type including any loss of such nature arising out of any liability of a Party to any other person.
- (B) No Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement, provided, however, that this Section 17.3.1 (*Limitation of liability*) is not intended to constitute a waiver of any rights of any 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.
- (C) The GON shall not be liable to the Company for any loss or liability incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Company arising out of, in connection with, or in relation to, any comment or recommendation of the PRP, whether made in accordance with this Agreement or otherwise.
- (D) Nothing in this Section 17.3.1 (*Limitation of liability*) shall exclude or limit any liability which any Party may have to an individual for the death of, or personal injury sustained by, such individual to the extent such death or personal injury was caused by that Party's or its Representatives' negligence.
- (E) Each part (including a sub-section or part thereof) of this Section 17.3.1 (*Limitation of liability*) shall be construed as a separate and severable contract term, and if one or more parts is held to be invalid, unlawful or otherwise unenforceable, the remaining parts shall remain in full force and effect.



- (F) For the purposes of Sections 17.3.1(A) to (E) (*Limitation of liability*) (inclusive) "liability" means any liability, whether pursuant to a claim for contribution or under statute, tort (including but not limited to liability for negligence), contract or otherwise (save that any exclusions or limitations of liability shall not apply in respect of fraud), and "liable" shall be construed accordingly.

17.3.2 Indemnification

- (A) Subject to Section 17.3.1 (*Limitation of liability*), GON shall indemnify the Company against, and defend and hold the Company and their Representatives harmless from, at all times after the Agreement Date, 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 Representatives, for personal injury or death to persons or damage to property arising out of any negligent act or omission by GON in connection with this Agreement. Notwithstanding the foregoing, indemnification shall not be required to the extent that the Company is reimbursed pursuant to any policy of insurance.
- (B) Subject to Section 17.3.1 (*Limitation of liability*), the Company shall indemnify GON against, and defend and hold GON and its Representatives harmless from, at all times after the Agreement Date, any and all losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, GON, or its Representatives, for personal injury or death to persons or damage to property arising out of any negligent act or omission by the Company or its Representatives in connection with this Agreement. Notwithstanding the foregoing, indemnification shall not be required to the extent that GON is reimbursed pursuant to any policy of insurance.
- (C) The provisions of this Section 17.3.2 (*Indemnification*) shall survive for a period prescribed under the Laws of Nepal 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.

17.3.3 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, license or approval shall not be reimbursed by any Party but shall be the sole responsibility of the non-complying Party.

17.3.4 Notice of proceedings

- (A) 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 17.3.2 (*Indemnification*). 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.
- (B) The delay or failure of such indemnified Party to provide the notice required pursuant to this Section 17.3.4 (*Notice of proceedings*) to the other Party shall not release the other Party from any indemnification obligation which it may have to such indemnified Party except:



- (1) 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
- (2) 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.

17.3.5 Defence of claims

- (A) Upon acknowledging in writing its obligation to indemnify an indemnified Party to the extent required pursuant to this Section 17.3 (*Liability and Indemnification*), the indemnifying Party shall be entitled, at its option (subject to this Section 17.3.5 (*Defence of claims*)), 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 approval of the indemnified Party (acting reasonably).
- (B) Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party to the extent required pursuant to this Section 17.3 (*Liability and Indemnification*), and assumes control of the defence of a claim, suit, action or proceeding in accordance with Section 17.3.5(D) (*Defence of claims*), 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.
- (C) 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 17.3.5(D) (*Defence of claims*), 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.
- (D) Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party pursuant to Section 17.3.5(A) (*Defence of claims*), 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:
 - (1) the employment of legal counsel by such indemnified Party has been authorised in writing by the indemnifying Party;
 - (2) 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;
 - (3) 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



(4) 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 Sections 17.3.5(D)(2) (*Defence of claims*), 17.3.5(D)(3) (*Defence of claims*) or 17.3.5(D)(4) (*Defence of claims*) 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.

17.3.6 Subrogation

Upon payment of any indemnification by a Party pursuant to this Section 17.3 (*Liability and Indemnification*), 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.

17.4 Performance Security genuine pre-estimate of loss

The Parties confirm that any Performance Security retained by GON under this Agreement or any liquidated damages payable under this Agreement by the Company, represents a genuine pre-estimate of GON loss and is not a penalty.

17.5 No double recovery

Each Party agrees that it shall not be entitled to an extension of time or to recover damages or obtain payment, reimbursement, restitution or indemnity more than once in respect of the same shortfall, damage, deficiency, breach or other set of circumstances giving rise to one or more claims.

17.6 Duty to Mitigate

Each Party agrees that it has a duty to mitigate damages and covenants that it shall use commercially reasonable efforts to minimise any losses it may incur as a result of the other Party's performance or non-performance of this Agreement.

17.7 Right to Specific Performance

If any Party fails to perform its obligations under this Agreement, the other Party shall have the right to require specific performance of the obligation not performed.

17.8 Survival



- 17.8.1 If this Agreement expires pursuant to Section 2.3 (*Term*) or is terminated pursuant to Section 13 (*Events of Default and Termination*), each Party's rights and obligations under this Agreement shall, subject to any provision to the contrary, cease immediately on such expiry or termination (as the case may be), other than Sections 10.8 (*Bank accounts*), 10.10 (*Free transfer and repatriation of necessary funds*), Section 10.19 (*GON Project Covenant*), 13.4 (*Transfer Price*), 13.5 (*Transfer Price components*), 13.6 (*Payment of the Transfer Price*), 13.7 (*Performance Security*), 13.8 (*Arbitration*), 13.9 (*Effectiveness of Termination Notice*), 13.10 (*Power of Attorney*), 15 (*Law and Dispute Resolution*), 17.1 (*Disclosure of Confidential Information*), 17.2 (*Rights cumulative with those at Law*), 17.3 (*Liability and Indemnification*), 17.4 (*Performance Security genuine pre-estimate of loss*), 17.5 (*No double recovery*), 17.6 (*Duty to Mitigate*), 17.7 (*Right to Specific Performance*), 17.8 (*Survival*), 17.10 (*Expenses of the Parties*), 17.11 (*Notices*), 17.12 (*Amendments*), 17.13 (*Waiver*), 17.14 (*Further Assurances*), 17.15 (*No Third Parties*), 17.16 (*Entire Agreement*), 17.17 (*Severability*), 17.18 (*Inadequacy of damages*), 17.19 (*Language*), 17.20 (*No partnership or agency*), 17.20 (*Default Interest*) as well as Schedule 2 (*Project Handover Upon Expiry of the Agreement*), Schedule 3 (*Handover Requirements – Expiry of the Agreement*), Schedule 4 (*Termination Plan Upon Early Termination of the Agreement*) and Schedule 5 (*Land Lease Principles*) which shall survive such expiry or termination.
- 17.8.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 17.8.3 Expiry or termination of this Agreement shall not affect the rights and obligations of the Parties accruing before such expiry or termination as the case may be.

17.9 Severe Market Disruption

- 17.9.1 Without prejudice to the rights and remedies of the Company hereunder, if at any time after the Agreement Date, any Severe Market Disruption occurs, then:
- (A) the Company shall immediately provide a written notice to GON setting out the details of such Severe Market Disruption and its impact on the Company; and
 - (B) upon receipt of such written notice from the Company, the Parties shall meet as soon as reasonably practicable to discuss and agree on the remedial measures that Parties may need to take to remedy the adverse consequences of the Severe Market Disruption.
- 17.9.2 GON shall:
- (A) within the SMD Period, seek to agree with the Company amendments to this Agreement to the extent appropriate and reasonable; and
 - (B) during the SMD Period, not exercise its right to terminate or claim compensation or damages under or in accordance with this Agreement and the Company's obligations under this Agreement shall be suspended during such period.
- 17.9.3 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the Company shall only be entitled to give a notice for Severe Market Disruption pursuant to Section 17.9.1(A) (*Severe Market Disruption*) as follows and in no other manner whatsoever:
- (A) for the period commencing from the Agreement Date and ending on the Commercial Operation Date, not more than twice; and
 - (B) for the period commencing on Commercial Operation Date and up to the end of the Term, not more than three times,



provided that the Company shall not issue more than four (4) notices for Severe Market Disruption, in aggregate during the Term of this Agreement.

17.9.4 For the avoidance of any doubt, it is clarified that:

- (A) the aggregate period of standstill over the Term of this Agreement under Section 17.9.2(B) (*Severe Market Disruption*) shall not be more than twenty (20) months; and
- (B) any claims for Severe Market Disruption shall not lead to extension of the Term, unless otherwise agreed between the Parties in writing.

17.10 Expenses of the Parties

Each Party shall bear its own costs and expenses incurred in connection with the negotiation, preparation, execution and registration of this Agreement.

17.11 Notices

17.11.1 Any communication or document given, made or sent by any 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: Government of Nepal
Singha Durbar
Kathmandu
NEPAL

Tel. No.: 977-1-4200269; 977-1- 4200266

Facsimile No. 977-1-4200338

The Company

Nepal Water & Energy Development Company
Private Limited

Address: Block-B, Four Square Complex, Narayan Chaur,
Naxal, Kathmandu

Tel. No.: (977-1) 4412257 / 4412557

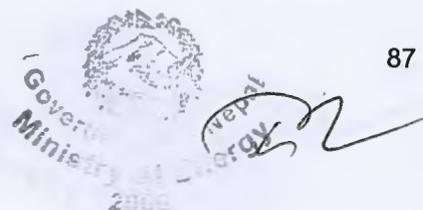
Facsimile No.: (977-1) 4422775

17.11.2 For the avoidance of doubt, notices shall not be sent by electronic mail. However, the Parties may share copies of issued notices by email.

17.11.3 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 17.11.4 (*Notices*) below.

17.11.4 Subject to Section 17.11.5 (*Notices*) 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.



17.11.5 A notice received or deemed to be received in accordance with Section 17.11.4 (*Notices*) 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.

17.11.6 Either Party may change its address by prior notification to the other Party in accordance with this Section 17.11 (*Notices*).

17.12 Amendments

Subject to Section 1.2.15 (*Interpretation*), 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.

17.13 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.

17.14 Further Assurances

At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement, including in relation to obtaining financing for the Project.

17.15 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.

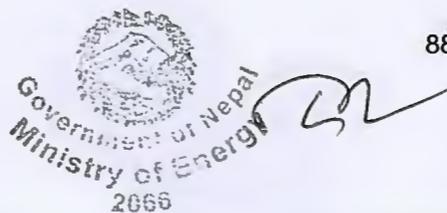
17.16 Entire Agreement

17.16.1 Each of the Parties confirm that this Agreement (and the documents referred to in it) 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.

17.16.2 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 the Transaction Documents; and
- (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.

17.17 Severability



If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal, unenforceable or against public policy, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

17.18 Inadequacy of damages

Without prejudice to any other rights or remedies that the Parties may have, the Company and GON acknowledge and agree that damages alone would not be an adequate remedy for any breach of this Agreement. Accordingly, the Parties shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this Agreement.

17.19 Language

This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language text shall prevail.

17.20 No partnership or agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

17.21 Default Interest

17.21.1 If a Party fails to make any payment due to any other Party under this Agreement by the due date for payment, then, without limiting the other Party's rights under this Agreement, the defaulting Party shall pay default interest on the overdue amount at the rate of:

- (A) in respect of amounts payable in Dollars, four hundred (400) basis points above the weighted average of all prevailing interest rates charged by the Lenders for dollar denominated debt of the Companies; and
- (B) in respect of amounts payable in NPR, four hundred (400) basis points above the weighted average on the lending rates for working capital loans availed by the Companies.

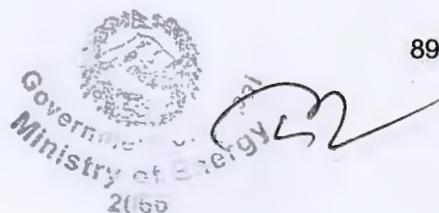
17.21.2 Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount.

17.21.3 With respect to GON's obligation to make payment for breach of Section 6.1.1 (*GON rights and obligations*), the Relevant GON Compensation Amount or the CIL Compensation Amount, such amounts shall be deemed to be due and owing, without prejudice to GON's ability to make payment of such amount on a staggered basis as set out in the relevant provisions of this Agreement or to dispute such payments, from the expiry of thirty (30) days from when first written demand is made by the Company to GON requiring payments of relevant amounts.

17.21.4 In relation to disputed payments, interest under this Section is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date after the dispute is resolved until payment.

17.22 Counterparts

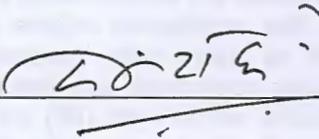
This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

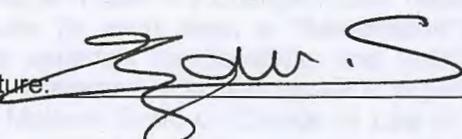


The Parties have entered into this Agreement on the date stated at the beginning of it acting through their duly authorised representatives.

Signed for and on behalf of
GOVERNMENT OF NEPAL, represented by
Ministry of Energy

Witnessed by:

Signature: 

Signature: 

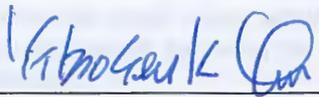
Name: **Dinesh Kumar Ghimire**
Designation: Joint Secretary, Ministry of Energy
Place: Kathmandu, Nepal
Date: 29 December 2016

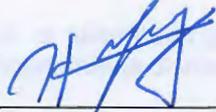
Name: **Sagar Raj Goutam**
Designation: Senior Divisional Engineer, Ministry
of Energy
Place: Kathmandu, Nepal
Date: 29 December 2016



Signed for and on behalf of
**NEPAL WATER & ENERGY DEVELOPMENT
COMPANY PRIVATE LIMITED**

Witnessed by:

Signature: 

Signature: 

Name: **Bo Seuk Yi**
Designation: Chief Executive Officer, NWEDC
Place: Kathmandu, Nepal
Date: 29 December 2016

Name: **Joon Hyung Kim**
Designation: Managerial Director, NWEDC
Place: Kathmandu, Nepal
Date: 29 December 2016







Schedule 1

RESTORATION

1. If the Hydro Property: (A) suffers any damage as a result of a Force Majeure Event; (B) is required to be remedied as a result of a Force Majeure Event; or (C) requires any modification or capital addition as a result of a Force Majeure Event or Change in Law, necessary to return the Hydro Property to its performance capability or its physical state immediately preceding the occurrence of the relevant Force Majeure Event or in case of a Change in Law, necessary to ensure compliance with such Change in Law (in each case, a "**Restoration**"), the Company shall make an initial assessment to ascertain the feasibility and viability of undertaking Restoration and prepare a preliminary statement of its findings within a period of thirty (30) days of the occurrence of the Force Majeure Event or Change in Law or such extended period as the Company may reasonably require but not exceeding ninety (90) days ("**Preliminary Statement**").
2. Upon completion of its initial assessment within the period referred to in paragraph 1 above, the Company shall communicate the following to GON in writing, together with a copy of the Preliminary Statement:
 - (a) description of the relevant Force Majeure Event or Change in Law and impact of the same on the Hydro Property;
 - (b) the Company's decision as to whether or not Restoration is technically and economically feasible and viable;
 - (c) where Restoration is technically and economically feasible and viable:
 - (i) indicative Restoration Schedule; and
 - (ii) indicative Restoration Cost Estimate.
3. The Parties shall meet, within fifteen (15) Business Days or such other period as may be mutually agreed, following the delivery of the Preliminary Statement to discuss the Preliminary Statement.
4. In case of a GON Force Majeure Event or Change in Law, if the Parties disagree as to whether Restoration is technically and economically feasible and viable, any Party shall be entitled to refer such dispute to the Panel of Experts for determination as a Technical Dispute in accordance with Section 15.5 (*Expert determination*). If the Panel of Experts determines that Restoration is technically and economically feasible and viable, then the Company shall effect Restoration, subject to paragraph 7 of this Schedule 1 (*Restoration*).
5. If the Company has (and where paragraph 4 of this Schedule 1 (*Restoration*) applies, the Panel of Experts have), in the Preliminary Statement and after consultation with GON, concluded that Restoration is technically and economically feasible and viable, then promptly and in any case within one hundred and twenty (120) days from the date of such determination by the Company, the Company shall: (i) in case of a GON Force Majeure Event or Change in Law, submit a restoration report ("**Restoration Report**") to the Lenders for consideration and approval with a copy to GON; and (ii) in case of an Other Force Majeure Event, submit a Restoration Report to the Lenders for consideration and approval with a copy to GON, which, in each case, shall consist of:
 - (a) extent of damage to and impact on the Hydro Property;
 - (b) a good faith statement as to Restoration Cost Estimate;
 - (c) Restoration Schedule;
 - (d) details of the insurance proceeds (including the details of the relevant Insurance Policies) that may be recovered including the dates(s) on which such proceeds are estimated to be received, and the particular purposes for which such proceeds are required to be applied;
 - e) proposal for financing of the Restoration Cost Estimate and any special requirements of the Lenders for the Restoration;



- (f) In case of a GON Force Majeure Event or Change in Law, an estimate of the aggregate amounts required to be paid by GON to the Company upfront, in order for the Company to commence and complete Restoration.

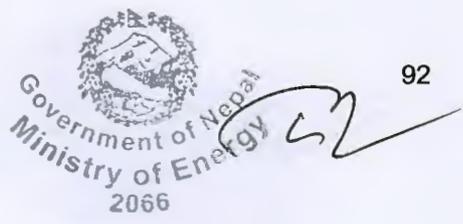
Each Party shall provide to the other Party, such information as such other Party reasonably requires in connection with the Restoration Report or in making a decision as to Restoration.

- 6. Once the Lenders have approved the Restoration Report, the Company shall provide the final Restoration Report so approved by the Lenders, including any modifications required by the Lenders, to GON.
- 7. Once the Company and GON have discussed the Restoration Report and made appropriate modifications, if any suggested by GON and acceptable to the Company and Lenders, the Company shall effect the Restoration in accordance with such amended Restoration Schedule and Restoration Report, provided, however, that the Company shall not be obliged to proceed with the Restoration unless:
 - (a) in case Restoration is required as a result of a GON Force Majeure Event or Change in Law, (i) GON shall have agreed to the terms of the Restoration Report, (ii) GON has made payments to the Company of all amounts required to be so paid upfront as required by the Restoration Report, and (iii) GON has made bankable arrangements for the balance amount as required by the Restoration Report and (iv) GON has agreed to provide financing for such Restoration;
 - (b) the Company has secured financing in relation to such Restoration and has obtained prior written consent of the Lenders; and
 - (c) all additional Government Approvals and all renewals of existing Government Approvals in relation to such Restoration have been granted by GON,

- 8. In the event:
 - (a) (i) the Company has, after consultations with GON, concluded that Restoration is not technically and economically feasible and viable or (ii) where paragraph 4 of this Schedule 1 (*Restoration*) applies, the Panel of Experts have determined that Restoration is not technically and economically feasible and viable; or
 - (b) any of the conditions set out in paragraph 7 of this Schedule 1 (*Restoration*) are not fulfilled,

the Company shall be under no obligation to proceed with Restoration and in such case the Parties shall have their respective rights to terminate the Agreement: (i) pursuant to Section 12.9.1 (*Termination due to prolonged Force Majeure or Change in Law*) in case of a GON Force Majeure Event or Change in Law; and (ii) pursuant to Section 12.9.2 (*Termination due to prolonged Force Majeure or Change in Law*) in case of an Other Force Majeure Event.

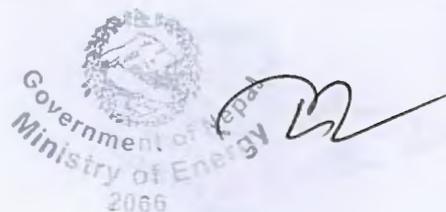
- 9. The Company shall (A) proceed in good faith and diligently to hire the services of an appropriately qualified contractor, to carry out the Restoration; and (B) effect the Restoration in accordance with the Restoration Schedule and Restoration Report, provided that in case of a GON Force Majeure Event or Change in Law, such an obligation shall only apply after the conditions set out in paragraph 7 of this Schedule 1 (*Restoration*) have been satisfied.
- 10. Notwithstanding anything to the contrary contained in this Agreement, if Restoration is required due to:
 - (a) an Other Force Majeure Event, the Company shall be responsible for the costs of effecting such Restoration;



- (b) a GON Force Majeure Event or Change in Law: (i) GON shall be responsible for the actual costs incurred by the Company in effecting such Restoration ("**GON Restoration Costs**"); (ii) the Company shall provide GON with copies of invoices and supporting documentation supporting their claim for GON Restoration Costs; and (iii) if the Company needs to incur any costs and expenses beyond what has been agreed to by the Parties in the Restoration Report pursuant to paragraph 7 of this Schedule 1 (*Restoration*) which they require GON to be responsible for ("**Additional GON Restoration Costs**"), Company shall obtain GON's prior written consent, not to be unreasonably withheld, before incurring such Additional GON Restoration Costs.

11. Notwithstanding anything to the contrary contained in this Agreement, if after the Lenders have been repaid in full and the Company's obligations under the Financing Documents are discharged:

- (a) Restoration is required as a result of an Other Force Majeure Event, the Company's decision as to whether Restoration is technically and economically feasible and viable shall be final and not subject to the Panel of Experts' determination pursuant to Section 15.5 (*Expert determination*) or that of an arbitral tribunal pursuant to Section 15.6 (*Dispute Resolution by Arbitration*); and
- (b) Restoration is required as a result of a GON Force Majeure Event or Change in Law, the Company's decision as to whether Restoration is technically and economically feasible and viable shall be subject to the Panel of Experts' determination pursuant to Section 15.5 (*Expert determination*) and paragraph 4 of this Schedule 1 (*Restoration*).



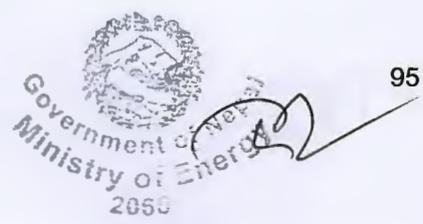
Schedule 2

PROJECT HANDOVER UPON EXPIRY OF THE AGREEMENT

1. From the Expiry Date, all rights granted by GON or any other GON Instrumentality to the Company in relation to the Project and the Hydro Property pursuant to this Agreement shall stand automatically revoked. Simultaneously with the transfer of the Hydro Property to GON, the Company shall also transfer the Project Assets to GON or its designee, in each case, free and clear of all Encumbrances and liabilities (other than liabilities pursuant to Section 13.6.7(C) (*Payment of the Transfer Price*)).
2. The Handover process shall commence at the start of the Handover Period. This shall involve the following broad steps:
 - (a) GON shall appoint a handover expert at its cost (the "**Handover Expert**") acceptable to the Company (acting reasonably), to conduct the Initial Inspection and Final Inspection. The Handover Expert shall be independent and should not have had any material pecuniary relationship with GON for the last one (1) year period. If the Parties fail to agree on the identity of the Handover Expert within ten (10) days following GON's receipt of the Company's notice of objection, then any Party may apply to the International Centre for Expertise of the ICC to appoint a Handover Expert in accordance with the provisions for the appointment of experts under the Rules for Expertise of the ICC.
 - (b) The Handover Expert shall be entitled to have access to the Company's premises and its relevant Records and documents for the purposes of carrying out the Initial Inspection and Final Inspection. The GON shall procure that the Handover Expert takes into account the Handover Requirements.
 - (c) The Parties shall use their best endeavours to procure that the Initial Inspection is completed by the Handover Expert within one hundred and twenty (120) days of the commencement of the Handover Period.
 - (d) The GON shall procure that the Handover Expert shall, within sixty (60) days of completing the Initial Inspection and within thirty (30) days of completing the Final Inspection, submit a report to GON and the Company confirming whether or not the Project is in Good Operating Condition and in line with the Handover Requirements. In the event any Party disagrees with the findings of the Handover Expert, such Party shall be entitled to refer the matter to the Panel of Experts for determination as a Technical Dispute in accordance with Section 15.5 (*Expert determination*).
 - (e) The Handover Expert shall ensure that the normal operations of the Project are not disturbed in any manner during any inspection process.
 - (f) If the Handover Expert concludes that the Hydro Property is not in a Good Operating Condition pursuant to the Initial Inspection report of the Handover Expert, the Parties, along with the Handover Expert (if required by the Parties), shall discuss in good faith the remedial measures, prescribed by the Handover Expert in its reports ("**Remedial Measures**"), to ensure that the Hydro Property is transferred to GON in Good Operating Condition on the Expiry Date. Parties may mutually agree to reject any Remedial Measures prescribed by the Handover Expert. In the event any Party disagrees with the Remedial Measures recommended by the Handover Expert, such Party shall be entitled to refer the matter to the Panel of Experts for determination as a Technical Dispute in accordance with Section 15.5 (*Expert determination*). The Company shall bear the expenses for implementing such Remedial Measures.
 - (g) The Parties shall procure that the Handover Plan is updated by the Handover Expert on the basis of Remedial Measures suggested after the Initial Inspection and carried out as at the time of the Final Inspection.
 - (h) The Company shall, before commencing the implementation of such Remedial Measures, provide a Handover Guarantee to GON, which shall be progressively reduced, in line with the progress in the implementation of such Remedial Measures, once the Handover Expert has verified that the relevant Remedial measures have been implemented.



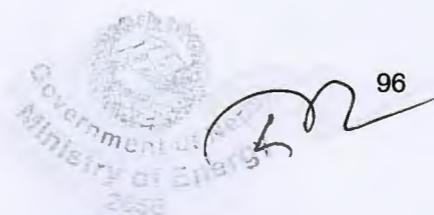
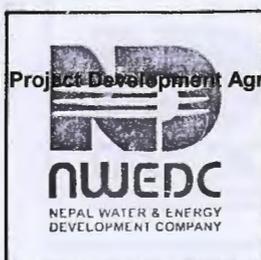
- (i) The Handover Expert shall, three (3) months before the Expiry Date conduct the Final Inspection to verify whether the Remedial Measures have been implemented and submit a Final Inspection report to GON and the Company.
 - (j) In the event that the Handover Expert concludes in the Final Inspection report that the Remedial Measures have not been implemented in accordance with the Initial Inspection Report, the Company shall, at its option, either (A) make a cash payment to GON at least thirty (30) days before the Expiry Date of an amount sufficient for GON to procure implementation of such outstanding Remedial Measures; or (B) implement such outstanding Remedial Measures.
 - (k) The Company shall, at the time of handover, execute and deliver (as appropriate) all such other Records, documents and information as may be reasonably requested by GON or its designee.
3. During the Handover Period:
- (a) the Company shall continue to occupy the Project Area and operate the Hydro Property in accordance with Good Industry Practice; and
 - (b) the Parties shall minimise disruption to the operations performed by the Company.
4. The Company does not and shall not provide any warranty on any account relating to the Hydro Property, after the Expiry Date including without limitation the following:
- (a) Performance, operations, longevity of the Hydro Property after the Expiry Date;
 - (b) conformity with Good Industry Practice, Plans, Laws of Nepal, Technical Specifications or Project Specifications or any other operating parameter or otherwise, in relation to the Project;
 - (c) compliance with standards as to design, construction, implementation, operations etc., agreed under the Agreement or any other contract relating to the Project;
 - (d) technical, manufacturing, workmanship or any other defect of any nature whatsoever of the Hydro Property.
5. GON agrees that GON or GON's designee shall retain all the employees of the Company in service on the existing terms of their employment for a minimum period of three (3) years from the Expiry Date provided that terms of employment of such employees were not changed in the twelve (12) month period commencing prior to the Expiry Date other than in the ordinary course of business, except in cases of superannuation, retirement or voluntary resignation or termination for negligence or misconduct.
6. The Parties shall use their best efforts and act in good faith to cooperate with each other in completing all formalities relating to the overall handover process.
7. For the purpose of this Schedule 2 (*Project Handover Upon Expiry Of The Agreement*), the following terms shall have the following meanings:
- "Initial Inspection"** shall mean a condition survey of the Hydro Property by the Handover Expert to verify if the Hydro Property is in Good Operating Condition.
- "Final Inspection"** shall mean a condition survey of the Hydro Property by the Handover Expert to verify if the Remedial Measures have been implemented.
- "Handover Guarantee"** shall mean an on-demand irrevocable unconditional bank guarantee in a form acceptable to GON to be provided by the Company for an amount commensurate to the reasonable expenses as determined by the Handover Expert required to be incurred to implement Remedial Measures agreed between the Parties to procure that the Hydro Property is in a Good Operating Condition.
- "Handover Period"** shall mean the period commencing from the two (2) years prior to the Expiry Date and expiring on the Expiry Date.



Schedule 3

HANDOVER REQUIREMENTS – EXPIRY OF THE AGREEMENT

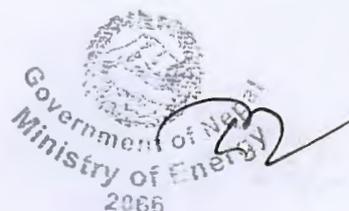
1. Two (2) years after the Commercial Operation Date the Company shall prepare a Handover Plan for the handover of the Hydro Property and submit to GON for approval.
2. This schedule outlines the broad requirements, which shall be implemented to facilitate the handover of the Project to GON, on the Expiry Date. The Handover Plan shall be prepared in accordance with this Schedule 3 (*Handover Requirements – Expiry of the Agreement*).
3. The broad requirements of Handover which shall be incorporated into the Handover Plan shall be as follows:
 - 3.1 **Operating and Maintenance Manuals:** This shall include manuals for all mechanical/electrical and hydro/mechanical equipment throughout the Hydro Property together with maintenance data for all equipment.
 - 3.2 **Equipment Maintenance Schedule:** A schedule of recommended equipment maintenance, overhaul or replacement that is required to be carried out within subsequent three years for maintenance items and up until next overhaul or replacement for major equipment items. This schedule shall be accompanied by estimated cost and comments on procurement for each item.
 - 3.3 **Maintenance Procedure for Civil Works:** Existing maintenance procedures and likely need for maintenance, overhaul or replacement within periods mentioned in paragraph 3.2 above. This shall include procedures for monitoring siltation of the reservoir and records of hydrographic surveys of the reservoir bed and records of measurements of sediment concentration at all points where this is measured. Procedures for regular Dam Safety inspections should also be detailed.
 - 3.4 **Operating Procedures and Records:** Existing operations procedures including predictive maintenance practices, together with a soft copy of operating and predictive maintenance records extended to highlight performance of the equipment and likely need for repair or replacement within the periods mentioned in paragraph 3.2 above.
 - 3.5 **Instrumentation Procedures and Records:** Existing procedures in reading and analysis of instrumentation records and a soft copy of all records accompanied by a commentary on records highlighting potential problem areas or potential need for maintenance.
 - 3.6 **Operating and Maintenance Plan:** This should be mainly based on existing operation and maintenance of all works and equipment throughout the Hydro Property. It should include recommended staffing and required qualifications of staff.
 - 3.7 **Operator Training Plan:** If deemed necessary training to the fresh employee shall be carried out prior to handover.
 - 3.8 **Emergency Preparedness Plan:** This should be an update of the plan prepared prior to completion of construction of the Hydro Property. It should specify the roles of responsible parties when dam failure is considered imminent, or when expected operational flow release threatens downstream life, property, or economic operations that depend on river flow levels. It includes the following items: clear statements on the responsibility for dam operations decision making and for the related emergency communications; maps outlining inundation levels for various emergency conditions; flood warning system characteristics; and procedures for evacuating threatened areas and mobilizing emergency forces and equipment.
 - 3.9 **Spare Part Replenishment:** the Company shall ensure that by the Expiry Date the spare parts for the Hydro Property have been replenished to the level of the initial stock supplied for the Hydro Property at the Commercial Operation Date, as modified by subsequent operational experience.



4. The Handover Expert's Initial Inspection and Final Inspection shall be carried out as far as practicable during maintenance period of the structures, equipment, accessories or as the case may be with prior notice to the Company to ensure that the Hydro Property's operations are not disrupted. However, if such time period is not convenient for the Handover Expert, the Company shall provide a suitable time period to the Handover Expert such that there is minimum disruption to the Project operations. The Initial Inspection shall include the inspection of the major Project components comprising primarily of the following. The Final Inspection shall include the inspection of the same components only to the extent required to verify if the Remedial Measures have been implemented:
- 4.1 **Dams and associated works:** Instrumentation records shall be inspected. Any long term or recent trends shall be noted and the reasons for such trends established. The abutment and downstream areas of the dams shall be inspected for signs of seepage, deterioration or instability. A condition assessment of the upstream face of the dams, including the Dam, shall also be undertaken to the extent that this is possible, for evidence of any deterioration that may potentially increase seepage or may create damage to the body of the structure.
- The grouting and drainage gallery beneath the Dam shall be inspected in conjunction with a review of seepage records from this installation for evidence of damage or deterioration or any other unfavorable trends.
- All accessible parts of the construction diversion works shall be inspected for any evidence of distress or deterioration.
- 4.2 **Spillway surfaces and stilling basin:** Spillway surfaces and the stilling basin downstream of the Dam shall be inspected, to the extent possible, for evidence of any damage, deterioration or accumulation of foreign material which could impair the future performance or residual lifetime of those structures.
- The performance of spillway gates, outlet valves and similar structures shall be fully assessed based on past performance, current condition and anticipated future performance as required under paragraphs 4.5, 4.6 and 4.7 below.
- 4.3 **Reservoir waterways:** A survey of the intake channel and approaches and the Dam outlets and approaches shall be undertaken.
- 4.4 **Concrete structures:** All structural concrete structures shall be inspected: where possible both internally and externally, for evidence of any damage, deterioration or accumulation of foreign material which could impair the future performance or residual lifetime of those structures. For the avoidance of doubt, the requirements for concrete structures shall apply to all Hydro Property elements constructed from concrete including dams, waterway linings, hydraulic structures and buildings.
- 4.5 **Power waterways:** The power waterways shall be dewatered and inspected, during the maintenance of the waterways for evidence of any damage, deterioration or accumulation of foreign material which could impair the future performance or residual lifetime of those structures.
- 4.6 **Steel structures:** Steel structures shall be inspected for evidence of distress, corrosion or deterioration of the surface protection system. For the avoidance of doubt, the requirements for steel structures shall apply to all Hydro Property elements constructed from steel (including stainless steel) including waterway linings, penstocks, manifolds, transmission infrastructures, tanks and buildings.
- 4.7 **Hydro mechanical equipment:** All built-in parts, sealing faces, guides gates, valves, screens and similar components shall be withdrawn from service in rotation and inspected during the maintenance of such equipment for evidence of any damage, deterioration or accumulation of foreign material which could impair the future performance or residual lifetime of those elements.



- 4.8 **Mechanical and electrical plant:** The status or condition of all mechanical and electrical equipment shall be assessed based on past performance, current condition, the future availability of spare parts, and the assumption of continuing normal maintenance. All items of mechanical and electrical nature shall be withdrawn from service in rotation, dewatered, stripped down into component parts and inspected during maintenance period for evidence of any damage, deterioration or accumulation of foreign material which could impair the future performance or residual lifetime of those elements. All parts working under stress shall be closely inspected.
- 4.9 **Transmission infrastructure:** The operation and maintenance records of the Transmission Line and the status of the condition of the accessible components (including switchyard, transmission towers, conductors, substation, and communication lines) shall all be inspected.
- 4.10 **Social and Environmental Audit:** The environmental and social conditions present at the Hydro Property shall be checked in accordance with the EIA, Performance Standards and Supplementary E&S Documents.
- 5. The Initial Inspection report as mentioned in Schedule 2 (*Project Handover Upon Expiry of the Agreement*) shall include:
 - Any Remedial Measures in relation to the Hydro Property, if required, such as in relation to:
 - 5.1.1 Accumulation of foreign material or indications of potential damage, deterioration or failure of any element of the Hydro Property, including a design or construction error or improper operation and maintenance; and
 - 5.1.2 Such accumulation, damage, deterioration or failure has a material negative potential effect on the operability, maintainability or efficiency levels of the Hydro Property, or on the residual lifetime of the Hydro Property, including any potential safety issues; and
 - 5.1.3 The extent of the contamination or impact in environmental and social condition needs in accordance with the EIA and the Performance Standards and Supplementary E&S Documents.
- 6. **Remedial Measures**
 - 6.1 The Company shall implement all remedial measures and shall permit GON to monitor and shall deliver final Handover Plan.



Schedule 4

TERMINATION PLAN UPON EARLY TERMINATION OF THE AGREEMENT

1. APPOINTMENT OF AUDITOR FOR VERIFICATION OF THE TRANSFER PRICE

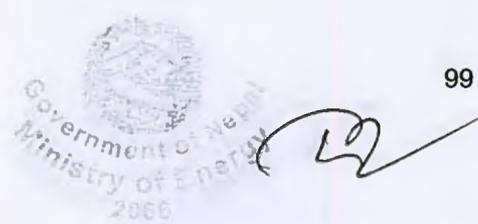
- 1.1 In case of a transfer pursuant to Section 13.6 (*Payment of the Transfer Price*), one of the Big Four shall be appointed for the purpose of verification of the Transfer Price, as follows:
 - 1.1.1 Where a Termination Notice has been issued by the Company, the Company shall be entitled to appoint one of the Big Four as the accountant for verification of calculation of the Transfer Price.
 - 1.1.2 Where a Termination Notice has been issued by GON, GON shall be entitled to appoint one of the Big Four as the accountant for verification of calculation of the Transfer Price.
 - 1.1.3 Where a Termination Notice has been issued by GON pursuant to GON Force Majeure Event or a Land Acquisition Delay Event, the Company shall be entitled to appoint one of the Big Four as the accountant for verification of calculation of the Transfer Price.

2. TERMINATION COMPLETION

- 2.1 The Company shall, no later than the Transfer Date:
 - 2.1.1 execute and deliver to GON or its designee all such agreements, deeds, and documents, including all novations, conveyances, transfers, assignments and other documents, as may be necessary for transfer of the Company's rights, title and interest in respect of such of the Project assets (including Records and insurance claims under the insurance policies of the Company in relation to the Project that are outstanding but remain unpaid and those for which the Company is entitled to make a claim but has not made such claim, as on the Transfer Date) as GON acquires in accordance with Section 13.6 (*Payment of the Transfer Price*);
 - 2.1.2 deliver (as appropriate) such Records and information as may be reasonably requested by GON or its designee.

3. COOPERATION

- 3.1 In respect of handover of the Project, the Company shall use its best efforts and act in good faith to cooperate with GON or any new proposed operator of the Hydro Property that GON may notify to the Company in writing. Such cooperation required of the Company shall include the provision of all Records and other relevant documentation and information held or used by the Company relating to the Hydro Property.
- 3.2 Nothing contained in this Paragraph 3 shall be a pre-condition for payment of the Transfer Price by GON and transfer of the Hydro Property and Project Assets by the Company to GON in accordance with this Agreement.



Schedule 5

LAND LEASE PRINCIPLES

The broad principles for the Land Lease Agreement(s) executed and to be executed for lease of any land and ROWs by GON or any GON Instrumentality (the "Lessor") to the Company (the "Lessee"), shall be as follows:

1. **Term:** the term of the Land Lease Agreement(s) shall be co-terminus with this Agreement.
2. **National importance:** the terms of the Land Lease Agreement(s) shall take into account that the Project is of national importance;
3. **Lease rates:** land lease rates or the formula for determination of such land lease rates shall be fixed for the Term, shall be reasonable and shall reflect the principles and practices adopted by GON Instrumentalities in determining land lease rates for other projects in Nepal as of the Agreement Date;
4. **Mortgage/Security Interest:** The lessee shall be entitled to mortgage its rights and interest on the leased properties to the Lenders and the Lessor shall execute all documents or instruments that may be required in relation to creation of such security interest, including execution of direct agreements, or consents to assignment having provisions which are customary for project financings including provisions such as substitution rights of Lenders, prior notice of termination allowing cure periods to the Lenders and general cooperation.
5. The Lessee shall have the right to vacant and peaceful possession of the leased properties for the Term.
6. **Termination:** The Land Lease Agreement(s) shall not be terminated except: (i) in the event of termination of this Agreement; (ii) for the default of the lessee in payment of annual lease rental, where such default is not cured for a period of sixty (60) days from the date of receipt of notice from the Lessor; (iii) breach of the Land Lease Agreement(s) by GON where such breach affects the development, construction or operation of the Project and is not remedied within sixty (60) days from the date of notice from the Lessee.
7. Upon early termination of the Agreement, the leased land shall be transferred back to GON upon payment of the applicable Transfer Price in accordance with Section 13.6 (*Payment of the Transfer Price*) of the Agreement.



Schedule 6

INSURANCE

The Insurance Policies shall, as a minimum, cover the following:

- (a) the Company's general liability arising out of the operation of the Hydro Property;
- (b) loss, damage or destruction to the Hydro Property and all associated facilities and infrastructure, property and/or assets owned by GON and found within the Project Area, including all permanent structures, buildings, equipment, improvements and other fixtures;
- (c) any other risks that must be compulsorily insured under the Laws of Nepal; and
- (d) such other covers as are specified in the Domestic PPA.

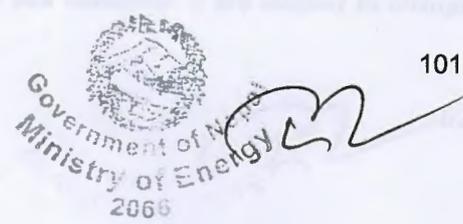


Access

The Project area could be accessed from Kathmandu by following the Prithvi Highway up to Gajure (about 32 km to the west). From Gajure following the F-101 highway towards north-east at about 24 km, into the Bidur Municipality which is the district headquarters of Nuwakot district. From Bidur following the Pasang Lhamu highway of about 13 km to reach the Bellowed Bazar. A motorable gravel road from Bellowed Bazar along the bank of Trishuli River connects Masina Bazar at about 14 km distance where the Powerhouse site is. From Powerhouse site a 15 km long new access road to dam site will be constructed by the Project along the right bank of Trishuli river. Currently there is no any direct motorable access road to the dam site.

The access route of the Project area from Birgunj, the Nepal - India Border is given below:

Figure -172km -> Muzung - 64km -> Panch - 25km -> Dharan - 18km -> Masina (UT-1) 17H site

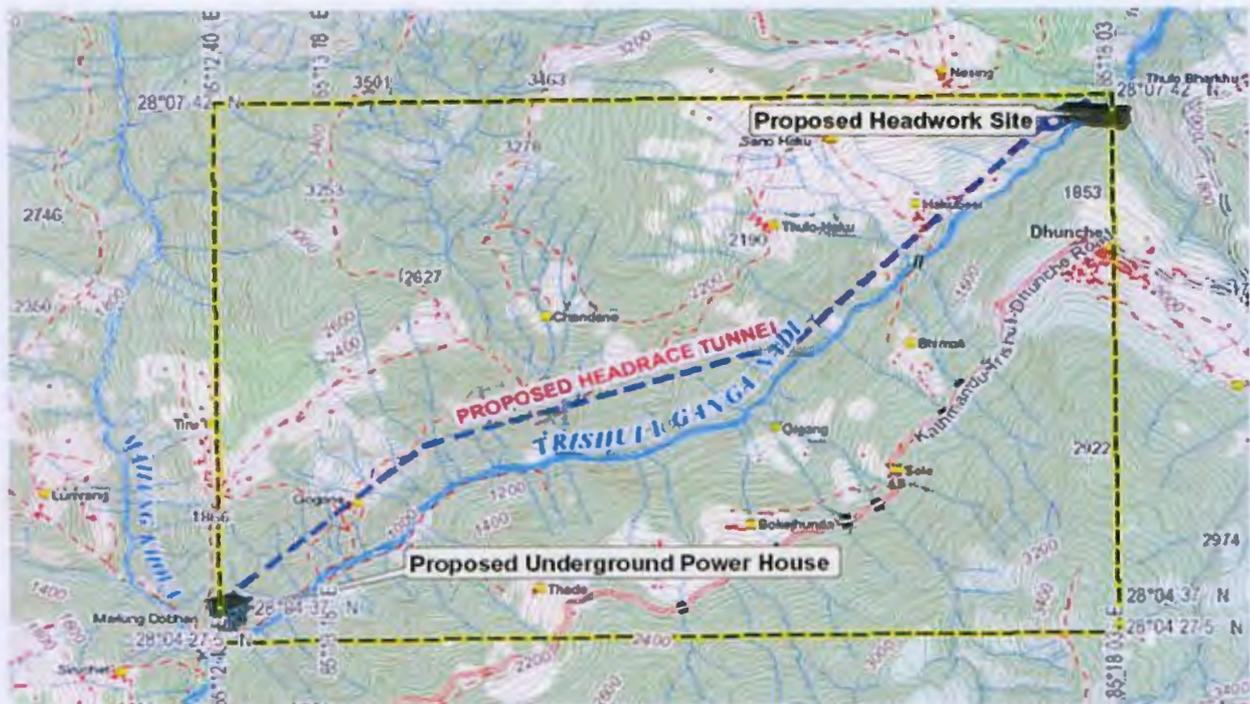


Schedule 7
PROJECT DESCRIPTION¹

1. Location

The Upper Trishuli-1 Project utilizes the water of the Trishuli River. Administratively the Project Area is located in the Haku VDC of Rasuwa District in the Central Development Region of Nepal, while geographically the Project Area lies between longitudes 85°12'40"E and 85°18'03"E and latitudes 28°04'27.50"N and 28°07'42"N. The intake site is located at 280m downstream from the confluence of Bhotekoshi and Trishuli rivers near Dhunche while the powerhouse site locates at 500m upward from Mailun Dobhan at Haku VDC Ward No. 9. The Project site is at about 50km directly North of Kathmandu.

Site Map



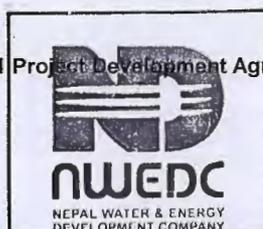
2. Access

The Project area could be accessed from Kathmandu by following the Prithivi-Highway up to Galchhi (about 32 km to the west). From Galchhi following the F069 highway towards northeast at about 24 km, lies the Bidur municipality which is the district headquarter of Nuwakot district. From Bidur following the Pasang-Lhamu highway at about 13 km to north, lies the Betrawati Bazar. A motorable gravel road from Betrawati Bazar along the bank of Trishuli River connects Mailung Bazar at about 14 km distance where the Powerhouse site lies. From Powerhouse site a 11.8km long new access road to dam site will be constructed by the Project along the right bank of Trishuli river. Currently there is no any direct motorable access road to the dam site.

The access route of the Project area from Birgung, the Nepal – India Border is given below:

Birgunj--172km-->Mungling--64km-->Galchhi--39km-->Betrawati--13km-->Mailung (UT-1 PH site)

Note: Project description data and information provided under this Schedule- 7 are subject to change upon the post earthquake design change of the Project.



Government of Nepal
 Ministry of Energy
 2065

UT-1 PH Site-----12km--->Dam site

Galchhi-----46km----->Kathmandu

3. Climate

The altitude of the Project Area ranges from 850m – 1300m. The monthly temperature on June is about 20 ~ 30 °C and on December is 2 ~ 20 °C. During the wet season, the relative humidity and temperature is pretty high and amount of discharge during this season is almost 70 % of the entire discharge volume. Low discharging period is between September to March, and during this season, the temperature is low. From April, the snow from Himalayan starts to melt and gradually the river discharge increases.

4. Topography

The Project Area lies in the higher Himalayan Region and steep high mountains are abundantly present there. The construction site contains V shape canyon and steep hilly area where the surface of rock is exposed. Overall, tough terrain is expected and along the river, limited section is easy slope but the other sections are sharp and steep slope and have narrow ridge. It can be inferred that the geological process leads the factor of unstable slope.

5. Geology

In the project area, the Lesser Himalayan Crystalline rocks are represented by schist unit, gneiss unit and colluvial deposits (talus). In general the foliations of rocks within the project area are dipping toward NE and NW with dip amount of 10 ~ 30 °. Schist unit and gneiss unit are the predominant rock types in the area. Bed rock type of the Powerhouse and Weir sites is schist unit. Schist unit consists of mica schist, quartzitic schist and white to light grey quartzite bands. The gneiss unit is strong and blocky to massive in nature on the surface. The weathering condition of the bedrocks ranges from slightly weathered to moderately weathered.

6. Transmission Infrastructure

Subject to Section 10.14 (*Transmission Infrastructure*), a 220 kV single circuit Transmission Line shall be constructed from UT-1 switchyard to the nearest possible point of NEA's Chilime – Trishuli 3B Transmission line.



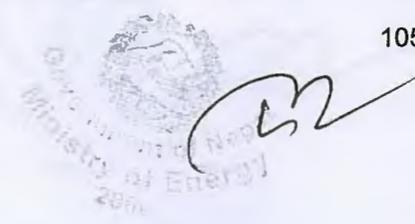
Schedule 8

POWER STATION SPECIFICATIONS²

Classification		Description
Location	River	Trishuli
	District	Rasuwa
	Intake site	Haku village
	Powerhouse site	500 m Upstream of MailunDobhan
Hydrology	Total Area upstream of intake	4,350.88 km ²
	Plant discharge	76 m ³ /s
	Operation water level	El. 1,255.00 m
Diversion Tunnel	Design discharge	1,012.7 m ³ /sec (2 years frequency)
	Type	Modified horseshoe shape
	Diameter	8.0 m x 2EA
	Length	362.5 m, 435.3 m
	Slope	11.173 % → 0.30%, 9.729 % → 0.30 %
	Elevation of inlet portal	El. 1,244.5 m, El. 1,246.5 m
	Elevation of outlet portal	El. 1,229.0 m, El. 1,229.0 m
Upper Cofferdam	Type	Rockfill dam
	Dam crest level	El. 1,260.3 m
	Dam crest width	5 m
	Height	19.3 m
	Slope	1 : 1.5
Lower Cofferdam	Type	Earthfill dam
	Dam crest level	El. 1,239.0 m
	Dam crest width	4 m
	Height	6 m
	Slope	1 : 1.5
Weir	Design Discharge	3,562.6m ³ /s (5,000 years frequency)
	Type	CGD (Concrete Gravity Dam)
	Weir crest elevation	El. 1,259.0 m
	Width	30.85 m
	Length	100.9 m
	Height	32.0 m (Weir structure)
Spillway	Design Discharge	2,554.8m ³ /s (200 years frequency)
	Spillway crest elevation	1,240.0 m

Note: power station specifications provided under this Schedule- 8 are subject to change upon the post earthquake design change of the Project.

Classification		Description
	Operating water level	1,255.0 m
	Size	W 11.0 m X H 16.5 m X 3 EA
	Type	Stilling Basin Type
Intake	Type	Horizontal Bell-mouth
	Intake sill elevation	El. 1247.0 m
	Number of bays	2
	Gate type	Roller gate
	Gate size	W 3.25 m X H 6.5 m X 2 EA
Desander	Type	Underground type
	Particle size	To be trapped 0.2 mm
	Size	W 10.0 m X H 24.03 m X L 115.0 m
	Slope	1 %
	Number of desander	3 EA
Flushing Tunnel	Size	B 3.4 m X H 1.7 m
Headrace Tunnel	Type	Circular shape
	Diameter	6.5 m
	Length	9,714.9 m
	Slope	0.432 %
Surge Tank	Type	Restricted Orifice with Chamber
	Diameter	8.5 m (Circle)
	Orifice diameter	2.0 m (Circle)
	Maximum upsurgng level	El. 1,260.800 m
	Minimum upsurgng level	El. 1,222.598 m
Vertical pressure tunnel	Type	Circular shape
	Diameter	6.5 m
Horizontal pressure tunnel	Type	Circular shape
	Diameter	6.5 m
Penstock	Type	Circular shape
	Diameter	2.8 m ~ 6.5 m
	Length	110.7 m
Powerhouse	Type	Underground Powerhouse
	Length X Width X Height	145.4 m X 18.7 m X 43.9 m
	Number of generating units	3
	Turbine type	Francis (Rotating about Vertical axis)
	Turbine rated capacity	72 MW
	Turbine center line	El. 906.0 m
Tailrace Tunnel	Type	Circular
	Diameter	6.5 m



Classification		Description
	Length	3 lines (L=62.84m), 1 line (L=178.28m)
Power and Energy	Gross head	340.89 m
	Installed capacity	216 MW (+ 10%COL)
	Power Potential (Annual)	1638 GWh

Notwithstanding anything written herein above, the specifications may undergo changes/modifications/improvements, before or during construction, based on actual ground conditions, pre-construction investigations & studies, and/or acceptable suggestions of technical consultants and advisors to the Company.

1.2. *2000 Transmission Design Basis*

The Transmission line design shall be based on following Transmission Design Basis:

Design/Load/Insulating level	100% (UL)
Normal operating level	50% (UL)
Final design	75% (UL)
Insulation level	100% (UL)
Overhead line	100% (UL)

1.3. *Design as per design standards*

Design of the project shall be as per applicable design standards as given in the table below:

Design/Code	Title	Authority
	Design of transmission lines	IEEE, Department of the Interior, Ministry of Industry
	Design of substations	IEEE
EM 1110-2-1411	Standard project procedures	
EM 1110-2-1411	Design procedures	
EM 1110-2-1411	Hydraulic design of transmission works	
EM 1110-2-1411	Hydraulic design of bridges	U.S. Army Corps of Engineers
EM 1110-2-1411	Final procedures	
EM 1110-2-1411	Design of project of transmission lines	
EM 1110-2-1411	Design of project of transmission lines	



Schedule 9

TECHNICAL STANDARDS³

1. CIVIL WORKS

1.1. Scope of works

The main civil structures which are designed in the project as follows;

Weir Site	Powerhouse & Tunnel	Remarks
<ul style="list-style-type: none"> • Diversion facilities • Intake • Diversion weir 	<ul style="list-style-type: none"> • Inlet tunnel • Desander basin, flushing tunnel • Headrace tunnel, • Surge shaft, vertical shaft • Pressure tunnel • Powerhouse cavern, tailrace tunnel 	

1.2. Major fundamental design factors

The Civil structures are designed on a basis of following fundamental design factors.

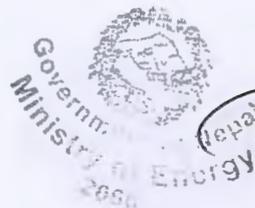
Design flood frequency year for weir	5,000 years
Normal operating level	EL. 1,255 m
Plant discharge	76 m ³ /s
Installed capacity	216 MW
Downstream release flow	10 % of minimum dry season flow or the quantity set out in the EIA, whichever is higher

1.3. Guidelines for major structures

Design of main civil structures is in accordance with following design guideline and technical standards.

Classifications	Title	Remarks
	Design of small dams	U.S. Department of the interior bureau of reclamation
	Design of gravity dams	
	Civil engineering guidelines for planning and designing hydroelectric developments	ASCE
EM 1110-2-1411	Standard project flood determination	U.S Army Corps of Engineers
EM 1110-2-1416	River hydraulics	
EM 1110-2-1602	Hydraulic design of reservoir outlet works	
EM 1110-2-1603	Hydraulic design of spillways	
EM 1110-1-2908	Rock foundations	
EM 1110-2-2100	Stability analysis of concrete structures	
EM 1110-2-2104	Strength design for reinforced-concrete hydraulic structures	

Note: technical standards provided under this Schedule- 9 are subject to change upon the post earthquake design change of the Project.



Classifications	Title	Remarks
EM 1110-2-2200	Gravity dam design	
EM 1110-2-2502	Retaining and flood walls	
EM 1110-1-2907	Rock reinforcement	
EM 1110-2-3506	Grouting technology	
EM 1110-2-2901	Tunnels and shafts in rock	
EM 1110-2-2005	Standard practice for shotcrete	
EM 1110-2-2909	Conduits, culverts and pipes	
EM 1110-2-3001	Planning and design of hydroelectric power plant structures	
EM 1110-2-6053	Earthquake design and evaluation of concrete hydraulic structures	
EM 1110-2-6050	Response spectra and seismic analysis for concrete hydraulic structures	
EM 1110-2-4300	Instrumentation for concrete structures	
ACI 318-11	Building code requirements for structural concrete and commentary	
IS 1786 : 2008	High strength deformed steel bars and wires for concrete reinforcement specification-fourth revision	Indian Standard
IS 456 : 2000	Plain and reinforced concrete code of practice-fourth revision	
HB-17	Standard specifications for highway bridges	AASHTO
	Civil engineering guidelines for planning and designing hydroelectric developments	ASCE/EPRI Guides, 1989

2. Mechanical Works Scope of works

The hydraulic turbines and auxiliaries to be installed in the power station are as follows;
 Vertical shaft, single runner, Francis type turbines completed with governor system, inlet valve, all auxiliary equipment and accessories for their satisfactory running and efficient operation.

2.2. Major fundamental design factors

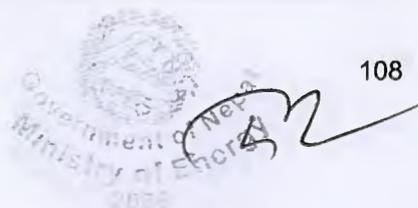
The mechanical structures are designed on a basis of following fundamental design factors.

Maximum static head	349.0 m
Generator output	72,000 kW
Rated water level	EL. 1255.0 m
Turbine centerline	EL. 906.0 m

2.3. Technical standards

For the design of mechanical works, the latest edition and addenda of following publications are used.

- ANSI American National Standards Institute
- ASME American Society of Mechanical Engineers
- ASTM American Society for Testing and Materials
- IEEE Institute of Electrical and Electronic Engineers



- ISA Instrument Society of America
- DIN Deutsche Industries Normen
- IEC International Electro-technical Commission
- ICEA Insulated Cable Engineer's Association
- ISO International Organization for Standardization
- HIS Hydraulic Institute Standards
- ASNT American Society for Non-destructive Testing
- JEC Standards of the Japanese Electro-technical Committee
- JEM Standards of the Japanese Electro-technical Manufacturer's Association
- JIS Japan Industrial Standards
- KS Korean Industrial Standards the Electrical Acts of Korea
- CCH-70.3 Inspection code for steel castings of hydraulic machinery
- NEMA National Electrical Manufacturers Association
- EN European Standard

3. Electrical Works Scope of works

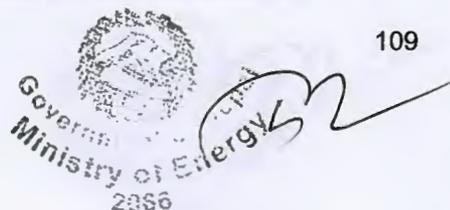
The drawing and capacity calculation for following items are included in electrical works.

- (1) Main transformer
- (2) Power condenser
- (3) UPS
- (4) DC Power System
- (5) Grounding System
- (6) Illumination
- (7) Construction Power System

3.2. Technical standards

Design of electrical works is in accordance with following design guideline and technical standards.

Classifications	Title	Remarks
IEC 34-3	Specific Requirements for Turbine-Type Synchronous Machines	International Electro-Technical Committee
IEC 60092	Electrical Installations in Ships, Part 301 : Equipment-Generators and Motors	
IEC 60034-3	Rotating Electrical Machines-Part 3: Specific Requirements for Cylindrical Rotor Synchronous Machines	
IEC 60545	Guide for Commissioning, Operation and Maintenance of Hydraulic Turbines	
IEC 61362	Guide to Specification of Hydraulic Turbine Control Systems	
ANSI C50.10	Rotating Electrical Machinery-Synchronous Machines	American National Standards Institute



Classifications	Title	Remarks
ANSI C50.12	Requirements for Salient-Pole Synchronous Generators and Generator/Motors for Hydraulic Turbine Application	
ANSI C50.13	Requirements for Cylindrical Rotor Synchronous Generators	
ANSI B30.2.0	Clarification of Overhead and Gantry Cranes	
ANSI/ASME PTC 29	Speed Governing Systems for Hydraulic Turbine Generators Units	
MG 1	Motors and Generators	National Electrical Manufacturers Association
MG5.1	Calculation Equation of Water Turbing Generator GD^2	
IEEE C62.92	IEEE Guide for the Application of Neutral Grounding in Electrical Utility Systems. Part II- Grounding of Synchronous Generator Systems	The Institute of Electrical and Electronics Engineers, Inc
IEEE C37.101	IEEE Guide for Generator Ground Protection	
IEEE 421B	IEEE Standard for High-Potential Test Requirements for Excitation Systems for Synchronous Machines	
IEEE 1095	Guide for installation of Vertical Generators and Generator/Motors for Hydroelectric Applications	
IEEE 1110	Guide for Synchronous Generator Modeling Practices and Applications in Power Systems Stability Analyses	
IEEE C 37.013	AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current Basis	
BS EN 61362	Guide to Specification of Hydro-Turbine Control Systems	British Standards
BS EN 60041	Field Acceptance Tests to Determine the Hydraulic Performance of Hydraulic Turbines. Storage Pumps and Pump-Turbines	
BS EN 60034	Rotating Electrical Machines, Specific Requirements for Turbines-Type Synchronous Machines	
BS 5860	Method for Measuring the Efficiency of Hydraulic Turbines, Storage Pumps and Pump-Turbines (Thermodynamic Method)	
BS 5671	Guide for Commissioning, Operation and Maintenance of Hydraulic Turbines	

4. Architectural Works Scope of works

The design and construction of weir control building, switchyard control building and complex building security building and temporary buildings are included in architectural works.



4.2. Technical standards

Design of architectural works is in accordance with following design guideline and technical standards.

Classifications	Title	Remarks
BS 416	Discharge and ventilating pipes and fittings, sand-cast or spun in cast iron. Specification for spigot and socket systems	British Standards
BS 970	Non-destructive examination of fusion welds. Visual examination	
BS 1474	Specification for wrought aluminium and aluminium alloys for general engineering purposes: bars, extruded round tubes and sections	
BS 3987	Specification for anodic oxidation coatings on wrought aluminium for external architectural applications	
BS EN 1706	Aluminium and aluminium alloys. Castings. Chemical composition and mechanical properties	
BS 952-1	Glass for glazing. Classification	
BS 952-2	Glass for glazing. Terminology for work on glass	
BS 6375-1	Performance of windows and doors. Classification for weathertightness and guidance on selection and specification	
BS 6375-2	Performance of windows and doors. Classification for operation and strength characteristics and guidance on selection and specification	
BS 4315-1	Methods of test for resistance to air and water penetration. Windows and structural gasket glazing systems	
BS 5725-1	Emergency exit devices. Specification for panic bolts and panic latches mechanically operated by a horizontal push-bar	
BS 4360	Specification for weldable structural steels	



Schedule 10

PROJECT REVIEW PANEL SCOPE OF WORK⁴

TECHNICAL TERMS OF REFERENCE

A. Engineering geology and geotechnical engineering Expert**1. INTRODUCTION**

The detailed project report of Upper Trishuli-1 Hydroelectric Project was prepared by Nepal Water & Energy Development Company Pvt. Ltd. (NWEDC) and submitted to Government of Nepal (GON). As a monitoring measure PDA envisages a team of experts as "Project Review Panel (PRP)". The PRP is expected to review the project for the successful design, construction and operation of the said hydroelectric project. Geotechnical engineering is included in the scope of PRP who will review the project including the aspects described in subsequent paragraph and will be associated with the project till the completion of the project execution. The PRP will include both a geotechnical expert and a tunnelling expert, and both are expected to work together where necessary.

The project includes –

- Upstream and downstream cofferdams, designed for a 2 years flood.
- Two diversion tunnels designed as a silt/sand evacuation sluice.
- A concrete dam with 3 Radial gates, with sill at about river bed level, capable of passing the 1/5,000-year flood. Reservoir full supply level is at El. 1255 m.
- One Flap gates is provided to bypass floating debris.
- An intake structure perpendicular to the flow direction, with 2 intakes gates to tranquilizing basin and then after to the intake tunnel.
- 1 Short Intake tunnel discharging to underground 3 chamber desanding basin.
- 1 Long low-pressure headrace tunnel.
- 1 Restricted orifice Surge Tank with a rectangular surge chamber on the top.
- 1 Vertical shaft.
- The concrete-lined vertical shafts trifurcate into 3 high-pressure penstock tunnels.
- 3 Steel-lined penstock tunnels to the powerhouse.
- An underground powerhouse.
- A low-pressure tailrace tunnel.
- An access tunnel to the powerhouse.
- A cable tunnel from powerhouse to the switchyard.
- A single circuit 220 kV TL from UT-1 to the connection point.

The Concrete Gravity Dam/weir has a maximum height of 32.0m and overall length 100.9m. The spillway comprises 3 radial gates each of 11.0m width and 16.5m height. Two rectangular intake gates each of 3.25m width & 6.5m height and two tranquilizing basins each of 14m width & 17m length discharge the water into the 6.5m diameter intake tunnel. A 3 chambered underground desanding basin with 115m effective length connects Intake tunnel with the headrace tunnel. The 6.5m diameter circular headrace tunnel from desander to surge tank has a total length of about 9,715m. The 292m deep circular Vertical Shaft 6.5m diameter has 8.5m diameter restricted orifice Surge Tank on the top. A high pressure Penstock Tunnel connects Vertical Shaft with the underground powerhouse. The penstock tunnel trifurcates to feed the water into the turbines through spherical inlet valves. Water discharged through the turbines are flown to tailrace tunnel through the draft tube gates. Three separate tailrace tunnels are joined at about 55.0m distance from draft tube gates and a single circular tailrace tunnel of 178m length and 6.5m diameter discharges the water back into the Trishuli River.

Note: Data and information provided under this Schedule- 10 are subject to change upon the post earthquake design change of the Project.



2. TECHNICAL ISSUES TO BE ADDRESSED

The key issue to be reviewed at Upper Trishuli-1 Project is the adequacy of investigation and designing of components to address geotechnical aspects including:

1. Review of status on investigation and it's adequacy to ascertain the ground conditions / rock quality with respect to project components.
2. Review of Investigation data, analysis and interpretation.
3. Suggestion of additional investigation deemed to be necessary.
4. Review of potential slides in reservoir areas.
5. Review of rock support measures / design and other support arrangement as envisaged. Suggest alternatives for reducing construction time and cost.
6. Critically examine the foundation design and suggest most optimal treatment methods.
7. Review the design of surface and underground excavations.
8. Suggest instrumentation required for all outdoor and surface work.
9. Review of construction procedures specified in relation foundations and proposed monitoring program.
10. The Expert will help develop and advise on risk management strategy.

Additional factors deemed necessary may also be considered by the Consultant required for the said project.

3. WORK REQUIRED

This section outlines the work that will be performed by the Geotechnical Engineering Consultant.

3.1 Design Review

Review of available investigation data, photographs or test reports. Review documents will be supplied to the Consultant in PDF or electronic editable formats.

Deliverables: None.

3.2 Site Visit and Consultations

Visit the project site to obtain a first-hand understanding of the characteristics of the project location and the ground conditions of proposed location of components. Confer with technical personnel associated with the project, including consultants who have prepared or supervised prior reports, to the extent that it is considered convenient. This may include meetings in locations other than Nepal. Prior to leaving Kathmandu, the consultant shall prepare a preliminary report and present an oral dissertation on the issues raised in the preliminary report.

Deliverables: Preliminary report and oral presentation.

3.3 Analysis, Recommendations and Draft Report

After reviewing all the available information, performing the site visit, making the consultations with other technical personnel as necessary, and performing any analytical work considered necessary, the Consultant will prepare a report which outlines the soundness of the project components from geotechnical aspects. This will be formatted as a "stand-alone" report which includes:

- A description of Dam location and power house location
- Proposed foundation treatment and slope stability methodology.
- In conjunction with the tunnel consultant review the support system of underground structures

The report will also include an Executive Summary and may include data, photographs or other information in appendixes. The draft report will be submitted in both PDF and editable format.

Deliverables: Draft report in both PDF and editable format.

3.4 Oral Presentation



The Consultant will prepare and deliver an oral presentation (Power Point) at a time and location to be determined.

Deliverables: Power Point presentation.

3.5 Final Report

Following the oral presentation and receipt of any comments or feedback, the consultant will issue a final version of the report.

Deliverables: Final report in PDF format and editable format.

4. CONSTRUCTION STAGE RESPONSIBILITY (SECOND PHASE)

The consultant will undertake periodic site inspections, usually, but not necessarily accompanied by other consultants on the PRP. It is expected that these inspections will occur about twice annually.

- During each inspection, the Consultant will review any design changes and their geotechnical implication, if any, during the construction of structures. Detailed scope will be finalized subsequently in consultation with GON & NWEDC.
- Review of output of various instruments installed for monitoring of the foundation, underground excavations and excavated slopes in open excavation.

Provide a preliminary report on each site inspection, prior to leaving Kathmandu, and later a final report.



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B. General Hydropower Engineering Expert

1. INTRODUCTION

The detailed project report of Upper Trishuli-1 Hydroelectric Project was prepared by Nepal Water & Energy Development Company Pvt. Ltd. (NWEDC) and submitted to Government of Nepal. As a monitoring measure, PDA envisages a team of experts as "Project Review Panel (PRP)". The PRP is expected to review the project for the successful design, construction and operation of the said hydro project. Geotechnical engineering is included in the scope of PRP who will review the project including the aspects described in subsequent paragraph and will be associated with the project till the completion of the project execution. The PRP will include both a geotechnical expert and a tunneling expert, and both are expected to work together where necessary.

The project includes –

- Upstream and downstream cofferdams, designed for a 2 years flood.
- Two diversion tunnels designed as a silt/sand evacuation sluice.
- A concrete dam with 3 Radial gates, with sill at about river bed level, capable of passing the 1/5,000-year flood. Reservoir full supply level is at El. 1255 m.
- One Flap gates is provided to bypass floating debris.
- An intake structure perpendicular to the flow direction, with 2 intakes gates to tranquilizing basin and then after to the intake tunnel.
- 1 Short Intake tunnel discharging to underground 3 chamber desanding basin.
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- 1 Restricted orifice Surge Tank with a rectangular surge chamber on the top.
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2. TECHNICAL ISSUES TO BE ADDRESSED

The key issue to be reviewed at Upper Trishuli – 1 hydroelectric project is adequacy of investigation and designing of components to address general hydropower engineering aspects including:

1. Review of status on investigation and it's adequacy to ascertain the hydrological analysis & hydraulic design with respect to project components.
2. Review of Investigation data, analysis and interpretation.
3. Suggestion of additional investigation deemed to be necessary.
4. Review of potential high floods, GLOF in relation head-works design.
5. Review of underground/tunnel excavation methods & rock support measures / design and other support arrangement as envisaged. Suggest alternative for time and cost optimization.



6. Critically examine the foundation design and suggest most optimal treatment methods.
7. Review the design of surface and underground excavations.
8. Review the electromechanical equipment selection process & plant optimization study.
9. Review of construction procedures specified in relation foundations and proposed monitoring program.

Additional factors deemed necessary may also be considered by the Consultant required for the said project.

3. WORK REQUIRED

This section outlines the work that will be performed by the General Hydropower Engineering Consultant.

3.1 Design Review

Review of available investigation data, photographs or test reports. Review documents will be supplied to the Consultant in PDF or electronic editable formats.

Deliverables: None.

3.2 Site Visit and Consultations

Visit the project site to obtain a first-hand understanding of the characteristics of the project location and the ground conditions of proposed location of components. Confer with technical personnel associated with the project, including consultants who have prepared or supervised prior reports, to the extent that it is considered convenient. This may include meetings in locations other than Nepal. Prior to leaving Kathmandu, the consultant shall prepare a preliminary report and present an oral dissertation on the issues raised in the preliminary report.

Deliverables: Preliminary report and oral presentation.

3.3 Analysis, Recommendations and Draft Report

After reviewing all the available information, performing the site visit, making the consultations with other technical personnel as necessary, and performing any analytical work considered necessary, the Consultant will prepare a draft report which outlines the soundness of the project components from hydropower engineering aspects. This will be formatted as a "stand-alone" report which includes:

- A description of hydrological analysis, flood frequency analysis, time series flow data & determination of flow duration curve
- A description of Dam location and power house location
- Proposed foundation treatment and slope stability methodology.
- Review of support system of underground structures

The report will also include an Executive Summary and may include data, photographs or other information in appendixes. The draft report will be submitted in both PDF and editable format.

Deliverables: Draft report in both PDF and editable format.

3.4 Oral Presentation

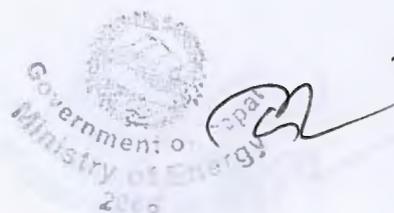
The Consultant will prepare and deliver an oral presentation (Power Point) at a time and location to be determined.

Deliverables: Power Point presentation.

3.5 Final Report

Following the oral presentation and receipt of any comments or feedback, the consultant will issue a final version of the report.

Deliverables: Final report in PDF format and editable format.



C. Environmental benefits Expert

5. INTRODUCTION

The detailed project report of Upper Trishuli-1 Hydroelectric Project was prepared by Nepal Water & Energy Development Company Pvt. Ltd. (NWEDC) and submitted to Government of Nepal. As a monitoring measure, PDA envisages a team of experts as "Project Review Panel (PRP)". The PRP is expected to review the project for the successful design, construction and operation of the said hydro project. Environment, social and local benefits review is included in the scope of PRP who will review the project including the aspects described in subsequent paragraph and will be associated with the project till the completion of the project execution.

The project includes –

- Upstream and downstream cofferdams, designed for a 2 years flood.
- Two diversion tunnels designed as a silt/sand evacuation sluice.
- A concrete dam with 3 Radial gates, with sill at about river bed level, capable of passing the 1/5,000-year flood. Reservoir full supply level is at El. 1255 m.
- One Flap gates is provided to bypass floating debris.
- An intake structure perpendicular to the flow direction, with 2 intakes gates to tranquilizing basin and then after to the intake tunnel.
- 1 Short Intake tunnel discharging to underground 3 chamber desanding basin.
- 1 Long low-pressure headrace tunnel.
- 1 Restricted orifice Surge Tank with a rectangular surge chamber on the top.
- 1 Vertical shaft.
- The concrete-lined vertical shafts trifurcate into 3 high-pressure penstock tunnels.
- 3 Steel-lined penstock tunnels to the powerhouse.
- An underground powerhouse.
- A low-pressure tailrace tunnel.
- An access tunnel to the powerhouse.
- A cable tunnel from powerhouse to the switchyard.
- A single circuit 220 kV TL from UT-1 to the connection point.

The Concrete Gravity Dam/weir has a maximum height of 32.0m and overall length 100.9m. The spillway comprises 3 radial gates each of 11.0m width and 16.5m height. Two rectangular intake gates each of 3.25m width & 6.5m height and two tranquilizing basins each of 14m width & 17m length discharge the water into the 6.5m diameter intake tunnel. A 3 chambered underground desanding basin with 115m effective length connects Intake tunnel with the headrace tunnel. The 6.5m diameter circular headrace tunnel from desander to surge tank has a total length of about 9,715m. The 292m deep circular Vertical Shaft 6.5m diameter has 8.5m diameter restricted orifice Surge Tank on the top. A high pressure Penstock Tunnel connects Vertical Shaft with the underground powerhouse. The penstock tunnel trifurcates to feed the water into the turbines through spherical inlet valves. Water discharged through the turbines are flown to tailrace tunnel through the draft tube gates. Three separate tailrace tunnels are joined at about 55.0m distance from draft tube gates and a single circular tailrace tunnel of 178m length and 6.5m diameter discharges the water back into the Trishuli River.

6. TECHNICAL ISSUES TO BE ADDRESSED

The key issue to be reviewed at Upper Trishuli-1 project is the adequacy of investigation and designing of components to address environmental aspects including:

1. Review of EIA and CIA study reports and it's adequacy to ascertain the Environmental Impact assessment & their mitigation management plans with respect to project components.
2. Review of resources efficiency and pollution prevention practices.
3. Review of Biodiversity Conservation and Sustainable Management of Natural Resources.
4. Additional factors deemed necessary may also be considered by the Consultant required for the said project.

7. WORK REQUIRED



This section outlines the work that will be performed by the Environmental Consultant.

7.1 Document Review

Review of available EIA, CIA & IEE reports. Review documents will be supplied to the Consultant in PDF or electronic editable formats.

Deliverables: None.

7.2 Site Visit and Consultations

Visit the project site to obtain a first-hand understanding of the characteristics of the project location and the environmental conditions of project area. Confer with E & S personnel associated with the project, including consultants who have prepared or supervised prior reports, to the extent that it is considered convenient. This may include meetings in locations other than Nepal.

Deliverables: None.

7.3 Analysis, Recommendations and Draft Report

After reviewing all the available information, performing the site visit, making the consultations with other E & S personnel as necessary, and performing any analytical work considered necessary, the Consultant will prepare a draft report which outlines the soundness of the environmental impact mitigation management plan provisioned in these reports. This will be formatted as a "stand-alone" report which includes:

- A description of environmental impacts on the surrounding environment of the UT-1 Project due to the implementation of the Project.
- Proposed impact mitigation management plan & its implementation modality.
- Review of the organization structure that implements the E & S management plan.

The report will also include an Executive Summary and may include data, photographs or other information in appendixes. The draft report will be submitted in both PDF and editable format.

Deliverables: Draft report in both PDF and editable format.

7.4 Oral Presentation

The Consultant will prepare and deliver an oral presentation (Power Point) at a time and location to be determined.

Deliverables: Power Point presentation.

7.5 Final Report

Following the oral presentation and receipt of any comments or feedback, the consultant will issue a final version of the report.

Deliverables: Final report in PDF format.

8. CONSTRUCTION STAGE RESPONSIBILITY (SECOND PHASE)

- The Consultant will periodically review the change in the Environmental management plan and it's implication, if any, during the construction of structure. Detailed scope will be finalized subsequently in consultation with GON & NWEDC.
- Review of output of the Environmental Management Plan implemented for mitigating the adverse impacts and enhancing the positive impacts while executing the construction activities of UT-1 Project.



D. Social and local benefits Expert

1. INTRODUCTION

The detailed project report of Upper Trishuli-1 Hydroelectric Project was prepared by Nepal Water & Energy Development Company Pvt. Ltd. (NWEDC) and submitted to Government of Nepal. As a monitoring measure, PDA envisages a team of experts as "Project Review Panel (PRP)". The PRP is expected to review the project for the successful design, construction and operation of the said hydro project. Environment, social and local benefits review is included in the scope of PRP who will review the project including the aspects described in subsequent paragraph and will be associated with the project till the completion of the project execution.

The project includes –

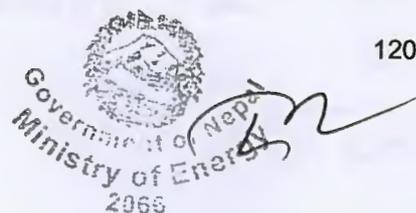
- Upstream and downstream cofferdams, designed for a 2 years flood.
- Two diversion tunnels designed as a silt/sand evacuation sluice.
- A concrete dam with 3 Radial gates, with sill at about river bed level, capable of passing the 1/5,000-year flood. Reservoir full supply level is at El. 1255 m.
- One Flap gates is provided to bypass floating debris.
- An intake structure perpendicular to the flow direction, with 2 intakes gates to tranquilizing basin and then after to the intake tunnel.
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- The concrete-lined vertical shafts trifurcate into 3 high-pressure penstock tunnels.
- 3 Steel-lined penstock tunnels to the powerhouse.
- An underground powerhouse.
- A low-pressure tailrace tunnel.
- An access tunnel to the powerhouse.
- A cable tunnel from powerhouse to the switchyard.
- A single circuit 220 kV TL from UT-1 to the connection point.

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2. TECHNICAL ISSUES TO BE ADDRESSED

The key issue to be reviewed at Upper Trishuli-1 project is the adequacy of investigation and designing of components to address social aspects including:

1. Review of EIA and CIA study reports and it's adequacy to ascertain the Social Impact assessment & their mitigation management plans with respect to project components.
2. Review of labor working conditions and its adequacy.
3. Review of community health, safety and security policies & implementation practices.
4. Review of Land Acquisition and Involuntary Resettlement and Livelihood Restoration Plan.
5. Review the Indigenous People matters, such as: (i) avoidance of any adverse impacts (ii) mechanism the Project has applied to assure Free, Prior and Informed Consent.



- 6. Review of Cultural Heritage, including: (i) mechanism to appropriately identify and avoid impacts over Cultural Heritage, and when avoidance is not feasible, (ii) assess the quality of the expertise hired by the Project.
- 7. Additional factors deemed necessary may also be considered by the Consultant required for the said project.

3. WORK REQUIRED

This section outlines the work that will be performed by the Social Consultant.

3.1 Document Review

Review of available EIA, CIA & IEE reports. Review documents will be supplied to the Consultant in PDF or electronic editable formats.

Deliverables: None.

3.2 Site Visit and Consultations

Visit the project site to obtain a first-hand understanding of the characteristics of the project location and the social conditions of project area. Confer with E & S personnel associated with the project, including consultants who have prepared or supervised prior reports, to the extent that it is considered convenient. This may include meetings in locations other than Nepal.

Deliverables: None.

3.3 Analysis, Recommendations and Draft Report

After reviewing all the available information, performing the site visit, making the consultations with other E & S personnel as necessary, and performing any analytical work considered necessary, the Consultant will prepare a draft report which outlines the soundness of the social impact mitigation management plan provisioned in these reports. This will be formatted as a "stand-alone" report which includes:

- A description of social impacts on the surrounding environment of the UT-1 Project due to the implementation of the Project.
- Proposed impact mitigation management plan & its implementation modality.
- Review of the organization structure that implements the E & S management plan.

The report will also include an Executive Summary and may include data, photographs or other information in appendixes. The draft report will be submitted in both PDF and editable format.

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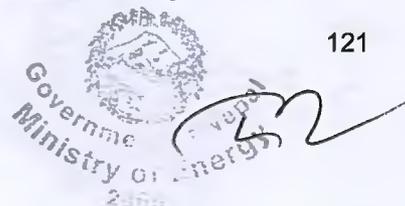
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- The Consultant will periodically review the change in the Social management plan and it's implication, if any, during the construction of structure. Detailed scope will be finalized subsequently in consultation with GON & NWEDC.

Review of output of the Social Management Plan implemented for mitigating the adverse impacts and enhancing the positive impacts while executing the construction activities of UT-1 Project. .



Schedule 11

LOCAL BENEFIT SHARING PLAN – GUIDANCE NOTE

"Benefit Sharing" is the systematic effort of the Company, as well as GON and GON nominated agencies to equitably share benefits of Project with affected communities through benefit sharing mechanisms beyond mandatory mitigation and compensation measures, including but not limited to the enhancement measures detailed in the environmental reports during construction phase, and continued community development activities that benefit the affected communities throughout the concession term.

"Local Benefit Sharing Plan" refers to the plan through which the Company agrees to benefit sharing through local community development activities reflected in the EIA, and that which the Company as a good corporate citizen will continue throughout the concession period by channelling some of the benefits generated by the operation of the Project to the affected communities beyond mitigation and compensation measures.

Some of the benefit sharing mechanisms already agreed between the Company and GON are:

- **Rural electrification:** From and after the Commercial Operation Date, the Company shall make available for use by each Eligible Household within a 500 metre radius of the headworks and the Power Station as at the Commercial Operation Date as identified by the Company and GON (which shall not be more than 200% of the Original Households), twenty (20) kWh of electrical output free of charge each Month during the Term.
- **Industrial and Employment Benefits:** With an objective to encourage full, free and fair access to Nepali individuals and firms to opportunities in employment and supply of quality goods and services, the Company and GON will work together to jointly develop this plan as per the guidance note in Schedule 13 (*Nepal Industrial Benefits Plan – Guidance Note*).

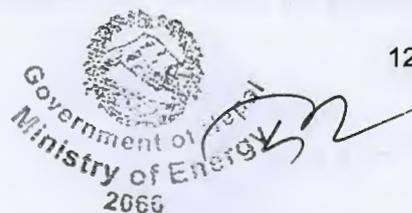
LOCAL BENEFIT SHARING PLAN

In addition to the budget committed in the EIA, the Company shall throughout the Term, support community development of affected communities through benefit sharing activities.

Local community development activities aim to improve the standard of living of the affected communities through livelihood enhancements and support to construction and maintenance of physical infrastructure such as roads, trails, pedestrian bridges, water supply and sanitation schemes, communication infrastructures, community infrastructure development, such as schools, health posts, community centers, women's centers, small enterprise development funds etc. These initiatives should be developed in coordination with local governments to avoid duplication of interventions/support and ensure sustainability of efforts.

The Local Benefit Sharing Plan shall also include a component detailing local community development activities (as committed in GON approved Environment Reports), that includes a detailed breakdown of specific activities, timeline, budget and implementation modalities. This does not preclude the Company from committing additional resources for the above and other benefit sharing activities.

The Company and GON shall as per Section 11.3.2 (*Plans*) jointly prepare the Local Benefit Sharing Plan to be implemented within 12 months from the Agreement Date in accordance with this Schedule.



KEY STEPS TO GUIDE THE DESIGN OF A GOOD COMMUNITY DEVELOPMENT PLAN

A well-designed plan should include:

- Updated information;
- clear objectives;
- carefully defined target population;
- clearly defined responsibility
- implementation and coordination arrangements; and
- implementation activities along with an itemised budget.

Updating of Baseline Information

The baseline data reflected in the environment reports should guide the local community development plan. In case the baseline data collected during the EIA process does not reflect the actual situation of the communities, additional information should be collected to ensure that the concerns of the project communities are reflected in the final Plan.

The baseline information should include:

- **Socio-economic indicators**
Socio-economic status, education level, poverty level, level of public services in the project communities; and social differentiation within communities to identify, indigenous people, vulnerable groups, minority ethnic groups, classes, castes, religious groups and the role of women, for which special provision may have to be made;
- **Institutional capacity at the local level**
Key social institutions and customary systems for decision making, local governance structure, characteristics of social organisation and internal community relations, local institutions (including local government, and conflict resolution mechanisms); Assessment of the adequacy of institutional arrangements and capacity at the local level is critical for the design and implementation of any benefit sharing programme.
- **Natural resource management and land use**
Mapping use of common resources, and reliance of vulnerable communities on use of natural resources.

Engagement and consultation

The Project communities and local governmental organisations have to be consulted during the design of all Plans, as part of the broader stakeholder engagement.

Engagement and consultation are necessary to ensure that the Plans are tailored to the needs of the local people. The Plans should be informed by stakeholder consultation, and should take into account local capacity and affected communities' needs.

The Company will have to develop an overall advocacy and communications strategy with government and local communities.

Full Disclosure

As part of the Company's obligations regarding Disclosure of Information and Consultation, the Company will disclose all Plans in Nepali and English.

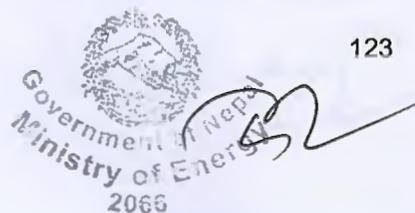
GRIEVANCE MECHANISMS

The Company will set up a grievance mechanism to resolve grievances at the community level as per the EIA.

MONITORING AND REPORTING.

The Company shall submit reports, every six months up to Commercial Operation Date and every 12 months thereafter, to GON describing in detail the activities undertaken under the Plan, the amounts spent on such activities and impact evaluation of such activities.

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Schedule 12

NEPAL EMPLOYMENT AND SKILLS TRAINING PLAN – GUIDANCE NOTE

NEPAL EMPLOYMENT AND SKILLS TRAINING PLAN

The requirements set out in this Schedule are based on the principles of good corporate citizenship, as well as the objective of creating opportunities for employment, training and skills enhancement in project related activities or vocational trainings and other trainings, details of which are set out in this Plan. In addition, this Plan will encourage training and employment of local people in Project related activities, which employment will be commensurate with educational qualifications, relevant skills and experience.

The Nepal Employment and Skills Training Plan is based on the objective of the Government of Nepal that hydro development will act as a stimulus to bring long term sustainable benefits to Nepal and its people, and that one of the key benefits is improved skill development and employment of the Hydro Property affected people.

It is expected that the majority of job requirements can be met by Nepalese, and that the project cycle for hydro projects will enable training to be proceeded sufficiently in advance to enhance employment opportunities for the locals.

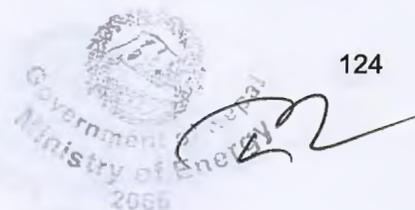
The Company, jointly with GON shall, in accordance with Sections 11.3.2 (*Plans*) and 11.9 (*Use of Nepali resources; training and development*), develop a Nepal Employment and Skills Training Plan within 12 months from the Agreement Date that shall:

- identify expected labour force (Nepali and Non-Nepali) requirements over the Project life cycle by Year and by skill, both directly by the Company and by each of its expected major Contractors.
- identify the expected opportunities for employment and skill development at local levels;
- set out the Company's and the major Contractors' planned measures to recruit and train workers over time;
- contribute to the development of employable skills and human resources

The employment and skills training plan will not restrict itself only to the hydro power related training, but will also comprehensively look into vocational training opportunities e.g. the area- specific farm (agriculture, animal husbandry; small orchards and other farm based allied activities) and non-farm linked training; productivity improvement (knowledge transfer) and self-employment program to provide impetus to the improvement of living standards of locals.

As far as practicable, the Company shall attempt to transfer the skills of skilled and semi-skilled foreign personnel to Nepalese counterparts during the course of Project implementation.

The Company shall submit yearly progress reports to GON on the implementation of this Plan.



Schedule 13

NEPAL INDUSTRIAL BENEFITS PLAN – GUIDANCE NOTE

1. OVERVIEW

The requirements set out in this Schedule are based on the principles of good corporate citizenship, an expectation that access to early information on Project opportunities shall enable Nepal-based firms to gear up to meet the needs for supply of goods and services at competitive prices as per the timelines and quality standards required by the Company. This shall ensure that the Company and Nepali industry and service suppliers can mutually benefit from having a strong competitive supplier sector based in Nepal.

2. REQUIREMENTS

- 2.1 The Company and GON shall jointly prepare a Nepal Industrial Benefits Plan as per Section 11.3.2 (*Plans*) that shall:
- ensure full and fair opportunity of access for Nepal-based suppliers of goods and services to participate in the development of the Project;
 - help in promoting a vibrant, growing, competitive supplier base within Nepal that over the time shall meet higher value-added requirements for goods and services for the Project;
 - encourage initiatives for joint venture and quality improvement measures that shall enhance the ability of Nepal-based suppliers to compete domestically and internationally; and
 - promote safe and healthy working conditions among suppliers of goods and services to the Company and the Project.
- 2.2 The Company and GON shall jointly prepare the full Nepal Industrial Benefits Plan within 12 months from the Agreement Date in accordance with this Schedule.

3. APPLICABILITY

- 3.1 Since there are immediate service requirements and early construction, preliminary Nepal Industrial Benefits Plans should consider the availability of engineering, legal, planning, consulting and construction services, while the detailed design phase shall enable more precision on the specific requirements for goods and services and their timing that would enable Nepal-based suppliers to be accommodated.
- 3.2 Early interaction with Nepal-based suppliers, both existing and potential, is strongly encouraged by GON. All Project phases shall be addressed in procurement plans to afford opportunities for Nepal-based suppliers for goods and services.

4. ELEMENTS

- 4.1 The Industrial benefits Plan shall include the following key elements:
- itemisation and quantification of goods and services required over the Hydro Property life cycle, and plans for sharing this information with potential suppliers well in advance to enable them to compete on a full and fair basis;
 - key measures that shall be followed to help enhance local supplier prospects of business success;
 - designate an Industrial benefits officer, who shall work with domestic suppliers on opportunities to meet mutual needs;
 - interaction with key domestic suppliers to help them understand the timing, quantity and quality requirements for goods and services;
 - support GON initiatives for domestic supplier development activities to enhance upgrading of capabilities and product and services quality and competitiveness;
 - encouraging joint ventures between local and foreign suppliers to enhance knowhow transfer;



- g. proper structuring of procurement packages at a scale to encourage domestic supplier participation, where possible;
- h. providing appropriate feedback where established local suppliers were unsuccessful bidders;
- i. promote local business development and sourcing initiatives;

4.2 Company shall submit yearly reports to GON on the implementation of this Plan.

Provision has been made to release such quantity of water which is greater of (1) 10 percent of the average monthly minimum of the last month discharge of the Tribeni River, or (2) the minimum quantity which is stipulated in the FIA, at the dam site for sustenance of aquatic life downstream.

Operation Protocol

The following safety devices and measures are planned to be selected and implemented in respect of the release of water from the Weir.

1. EDUCATION AND INFORMATION

The Company shall educate and inform the public of the specific hazards existing near the Project Area and of relevant safety rules that should be followed. The Company shall also notify the public by way of placards in public places and advertisements in the media.

2. WARNING DEVICES

Warning devices shall include, without limitation, sirens and warning signs, audible warning devices, lights, beacons and strobe lights.

2.1 DANGER AND CAUTIONARY SIGNAGE

- (i) The Company shall post Danger and Caution signs at critical parts where danger is present for the unsuspecting public. Signs shall be placed so that persons viewing the dangerous area from any direction can see one or more of the signs.
- (ii) The Company shall implement a sign inspection program to ensure that all signs are maintained in good condition. The inspection program shall ensure that signs are inspected after the occurrence of severe weather, flood conditions and at the end of the winter season.

2.2 AUDIBLE DEVICES

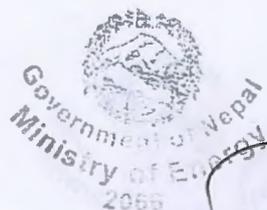
The Company shall deploy audible devices, including sirens, horns, and buzzers to warn of sudden changes in the rate of flow of water in the spillways.

2.3 LIGHTS

As appropriate, the Company shall employ lights in luminous signs and other hazardous areas.

2.4 BEACONS

The Company shall employ beacons and strobe lights near spillway gates at prominent places that ensure wide visibility, and they shall be activated to provide a visual warning when water is being released from the weir.



Schedule 14

USE OF RIVER WATER - WATER REQUIREMENTS

The Project utilizes the flows of the Trishuli River, and consists of a 216 MW hydropower plant comprising of three Francis turbine generating units of 72 MW each. This is a run-of-the-river scheme with design discharge of the project as 76 m³/sec and the gross head being 340.89m. The catchment area intake is 4350.88 km² and the operation water level is 1255.00m.

Provision has been made to release such quantum of water which is greater of (1) 10 percent of the average monthly minimum of the lean month discharge of the Trishuli River, or (2) the minimum quantity which is stipulated in the EIA, at the dam site for sustenance of aquatic life downstream.

Operation Protocol

The following safety devices and measures are planned to be adopted and implemented in respect of the release of water from the Weir.

1. EDUCATION AND INFORMATION

The Company shall educate and inform the public of the specific hazards existing near the Project Area and of relevant safety rules that should be followed. The Company shall also notify the public by way of placards in public places and advertisements in the media.

2. WARNING DEVICES

Warning devices shall include, without limitation, danger and warning signs, audible warning devices, lights, beacons and strobe lights.

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- (i) The Company shall post Danger and Caution signs at critical points where danger is present for the unsuspecting public. Signs shall be placed so that persons entering the dangerous area from any direction can see one or more of the signs.
- (ii) The Company shall implement a sign inspection program to ensure that all signs are maintained in good condition. The inspection program shall ensure that signs are inspected after the occurrence of severe weather, flood conditions and at the end of the winter season.

2.2 AUDIBLE DEVICES

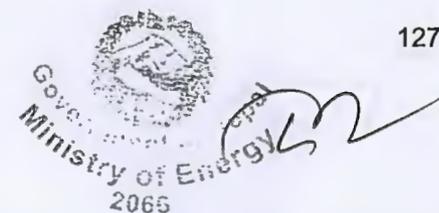
The Company shall deploy audible devices, including sirens, horns and buzzers to warn of sudden changes in the rate of flow of water in the spillways.

2.3 LIGHTS

As appropriate, the Company shall employ lights to illuminate signs and other hazardous areas

2.4 BEACONS

The Company shall deploy beacons and strobe lights near spillway gates at prominent places that ensure wide visibility, and they shall be activated to provide a visual warning when water is being released from the weir.



3. RESTRAINING DEVICES

3.1 FENCES

The Company shall erect fences and guardrails required to prevent public access to hazardous areas.

3.2 GUARDS

Where required, the Company shall post uniformed guards and watchmen in heavily-used public areas to enforce regulations and to warn passers-by.

4. MINING

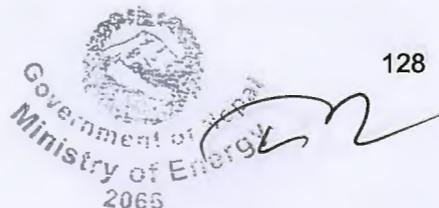
The Company shall inform district administrative bodies, the police and the mining officers in the event that any illegal mining along the river beds are discovered, either up stream or downstream of the dam site. Taking into account the need to ensure Project safety, the Company shall ensure that no mining activities take place near the dam site.

The Company shall continually survey weir water levels, and in the event that the water level becomes dangerous, water shall be released pursuant to the above described safety precautions.

5. GENERATION FACILITIES

Underground power house to accommodate three vertical shaft Francis turbines of each 72 MW operating at a rated net head of 327.44 m & rated speed of 428.6 rpm is proposed on the right bank of Trishuli River;

6. Annual Energy generation from the Power Station (including Local Free Power) is 1638 GWh.



Schedule 15

LAND ACQUISITION PLAN

UPPER TRISHULI-1 HYDROPOWER PROJECT (216 MW)

The 216 MW Upper Trishuli-1 hydroelectric project is a run-of-river scheme. The Project site is located on the Trishuli River in Haku VDC of the Rasuwa District in the Central Development Region of Nepal. The 8.4 km Project transmission line is stretched in the Haku, Dandagaun, and Thulogaun VDCs of Rasuwa District, and in the Manakamana VDC of Nuwakot District. The Project site is located at about 50 km north of Kathmandu.

The Project Area can be accessed from Kathmandu by following the Prithvi-Highway west approximately 32 km to Galchhi; from Galchhi, following the F069 highway northeast approximately 24 km to the Bidur municipality, the district headquarters of Nuwakot district; from Bidur, by following the Pasang-Lhamu highway approximately 13 km north to the Betrawati Bazar; from the Betrawati Bazar, by following a motor vehicle accessible gravel road that runs along the Trishuli River to the Mailung Bazar; and from the Mailung Bazar by following the road approximately 14 km to the Powerhouse Site. The Project will construct a new 11.8 km access road on the right bank of the Trishuli River from the Powerhouse Site to the Dam Site. Currently, there is no motor vehicle access road to the Dam Site.

A brief summary of the total land requirement for the Project, based on the available cadastral maps and approved EIA, is presented in the following table.

Table 1: Land Requirement for the Project

Private (Ha)	Govt./Forest (Ha)	Quarry Area (Optional) Govt./Forest (Ha)	Total Area (Ha)
• 20.5118 ha (Project) 7.424 ha (TL) 27.9358 ha (Total)	80.67 ha (Project) 28.772 ha (TL) 109.442 ha (Total)	•	• 101.1818 ha (Project) 36.196 ha (TL) 137.3778 ha (Total)

Status of Private Land (Non GON Land)

Table 2: Private Land Requirements for the Project

Component	Private Land (Ha)
•Project	• 20.5118 ha (4.9805 ha Pvt., 15.5313 ha Guthi Land)
•Transmission Line	• 7.424 ha
Total	• 27.9358 ha

Identification

1. The Main Project Area touches 3 VDCs: Haku, Dhunche, and Ramche, located in the Rasuwa District.
2. All the relevant cadastral maps were obtained from District Survey Office.
3. The Project layout maps were geo-referenced on the cadastral maps to identify the private land parcels.

4. The details of the Identified land parcels were submitted to District Land Revenue Office to determine the details of land owners.
5. The list of identified land owners provided by District Land Revenue Office was populated for further use.
6. The above-described process will be used to identify the land parcels that will be required for tower location and Rights of Way (ROW) for the transmission line (TL). The TL will pass through 3 VDCs: Haku, Dhunche, and Ramche, located in the Rasuwa District, and 1 VDC (Manakamana) is Nuwakot District.

Company's initiatives on major bottleneck and current status

Verification

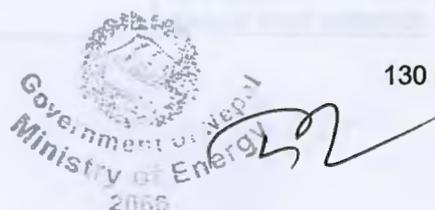
Major Bottlenecks

To date, the most significant bottleneck to Project development has been the land acquisition process in Guthi. Although the land owner of record was Syambhu Ghyang Guthi, several tenants were also occupying and cultivating his land. Then, dual land ownership issues also arose. Some of the tenants had not been issued with their certificates of tenantry by the District Land Revenue Office. Final delivery of the certificates was long-delayed. Upon delivery of the certificates, the Company purchased them.

The Guthi Corporation notified the Company regarding the fees required to convert the agricultural land into infrastructure land. There is no well-defined legal provision regarding such a fee, and to date, the matter is being managed by the Guthi Corporation and the tenant. The Company has already paid out an amount equivalent to the full value of the land in order merely to purchase the tenantry right. The Company will pay the tenantry charge "KUT" each year of the project term. Company is uncomfortable about paying this land conversion fee, as this land will be required for construction of the weir Access Road which will be handed over to the GON after the Commercial Operation Date, That act will convert it into a public road.

On some of the private land, the land ownership certificate was held by the grandfather. This in turn, required dividing into several parts for distribution to the legal recipients. This caused major problems. In some cases, the grandfather was already dead. Before purchasing the land, legal division of property (Ansabanda) has to be carried out by the legal recipient of the property.

The process of leasing Government land proved to be a cumbersome, and required more than six months to accomplish. The Company commenced the land leasing and tree cutting approval process by lodging an application to do so with DOED. That application was, in turn, forwarded by MOE to MOF. It also passed through the Department of Forests, the Department of National Parks, the District Forest Office, and the Langtang National Park (for field clearances). After obtaining field clearances, the application was returned to DOF & MOF. MOF tabled the file for general approval in a Cabinet meeting. Throughout the entire process, the Company shepherded the file from table to table & from person to person.



Current Status Private Land Acquisition

The Company has acquired all of the land that is required to carry out the generation side of the Project. The land required for the Transmission Line (TL) has not yet been acquired. Finally, the permission to construct permanent structures in the Guthi land is also yet to be secured from the Guthi Corporation.

Private Land verification process

1. The list of land owners, together with cadastral maps, was delivered to GON so that it could commence the verification process.
2. The verification of land parcels and landowners was carried out by the District Land Revenue Office, and sent to Department of Land Reforms and Management (DoLRM) for further processing.
3. The DoLRM shall submit the verified list of land parcels and land owners of the District to the Ministry of Land Reforms and Management, together with the lists of land parcels in the Rasuwa and Nuwakot Districts.

Land Acquisition Plan - Implementation Schedule:

1. The land acquisition-related works has already commenced, and shall continue after the Agreement Date.
2. In order to meet the agreed upon timelines, for the first twelve months, land acquisition activities required for the TL (with the exception of the ROWs) shall be carried out by the Company, working with the GON and its instrumentalities. In the event that the process is not completed during that twelve-month period, the GON shall take the responsibility of acquiring and transferring such land to the Company.
3. The land acquisition activity for the TL ROWs shall be carried out by GON for the first twelve months. If GON is unable to conclude the acquisition of TL ROWs during that time, the Company shall assume the responsibility to do so.
4. The list of key activities, along with tentative timelines, estimated based on discussions with various stakeholders, is elaborated in Table 3 below.

Table 3: Time Based Land Acquisition Activities Schedule

S.N.	Activities	Responsibility	Timeline (Tentative)	Remarks
A	Verification, Compilation and Finalization of land parcels affected	Company assisted and facilitated by GON, District Survey Office (DSO) and District Land Revenue Office (DLRO)	90 days	Subject to availability of cadastral maps of Rasuwa & Nuwakot districts by GON and handover to Company including all land details
A.1	Preliminary action requesting to verify land owners to be submitted by Company to	Company assisted and facilitated by GON, District Survey Office (DSO) and District Land	30 days	GON being the central level line agency shall coordinate with district level agencies

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Government
Ministry of Energy
2015
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S.N.	Activities	Responsibility	Timeline (Tentative)	Remarks
	respective district level agencies (DSO, DLRO) with copy to GON	Revenue Office (DLRO)		for facilitating the activity
A.2	Final Verification of land parcels (parcel no./land owners etc) from Cadastral maps, Moths and records of DSO, DLRO	GON/DSO/DLRO	20 days	Company shall provide necessary facilitations
A.3	Preparation of final list of land owners and handover to Company	GON/DSO/DLRO	20 Days	Company to provide necessary facilitations
A.4	Transfer of land to next of kin and updating of land records and Maps	GON/DSO/DLRO	20 Days	Parallel activity
B	Preparation of Resettlement and Rehabilitation Plan	Company	30 Days	Subject to completion of local consultations
B.1	Field Visit for detail social profiling with of affected people, authenticate the land parcels, built structure of individual owners etc.	Company	15 Days	
B.2	Finalisation of Resettlement and Rehabilitation Plan	Company	15 Days	
C	Consensus valuation of assets and land of the affected land owners		30 Days	Subject to acceptance of compensation package by the land owners.
C.1	Discussions with land and asset owners, for finalization of compensation package	Company, Land owners	30 Days	
D	Notification to Affected People on cut off date for non-transfer of land.	District Administration Office	60 Days	Subject to achieving activity No. C
D.1	Minutes of Meeting in consensus with land	Company, Land owners	20 Days	

S.N.	Activities	Responsibility	Timeline (Tentative)	Remarks
	owners			
D.2	Intimate district authority to suspend land transaction of final list of land owners	Company, DAO, DSO, DLRO	40 Days	
E	Complete land transaction Process as per relevant GON norms.	Company Land Owner DAO, DSO, DLRO	150 Days	GON/DSO/DLRO to ensure that GON officials are adequately assigned exclusively for this work; Company to provide necessary facilitations
E.1	Transfer of land to Company – for those land owners whose total land parcels can be transferred at the district	Company, Land owner, DSO, DLRO	60 Days	
E.2	Land parcel division at field – for those land owners whose partial land parcels are affected	Land owner, DSO, DLRO supported by Company	30 Days	
E.3	Transfer of land to Company at district for partial ownership transfer	Land owner, DSO, DLRO supported by Company	60 Days	
E.3.1	Handover of A/C payee cheque to land owners as agreed	Company, Land owners	30 Days	
E.3.2	Land transfer agreement with individual land owners	Company, Land owners	20 Days	
E.3.3	Takeover possession of purchased property	Company	10 Days	
	Total Timelines (in months)		12 Months	

Institutional Arrangement

11/26742180_6 UT 1 Project Development Agreement

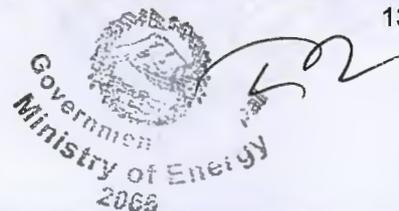



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1. Pursuant to the Agreement, the Company shall have the overall responsibility of implementing the Land Acquisition Plan. The Company shall ensure that the land acquisition process is carried out in a manner such that all the entitlements are distributed to the affected people, and that land transactions are closed pursuant to applicable law. The land acquisition activities will be conducted by distinct units within the Company that have management authority over all of the various aspects of land acquisition, including:
 - a. Physical environment and biological environment;
 - b. Social environment including land acquisition/RAP;
 - c. Environmental enhancement programs; and
 - d. Grievance Management.
2. Apart from the above-described processes, concerned GON authorities at the central and district levels shall also play a central role in facilitating the Project's land acquisition process.
3. The table below defines the key stakeholders and their roles during the Project land acquisition process.

Table 4: Key Stakeholders, Functions and Roles

Key players	Functions/Roles	Remarks
GON, Ministry of Land Reforms and Management, Dept. of Survey, Dept. of Land Reforms and Management, Guthi Corporation	Central / national level policy making including policy reforms for land acquisition/ compensation, resettlement and rehabilitation that are practical and acceptable to the people.	GON to take lead to facilitate and coordinate with line ministries, departments and Guthi Corporation
District Administration Office, District Survey Office, District Land Revenue Office	Coordinate and facilitate with project proponent in verification and final listing of land ownership details, suspension of land transactions after requests is made from project proponent post cut-off date	GON to depute a Land Acquisition Officer from central or district level who shall coordinate with project proponent in all verification works
Company	Planning, supervision and internal monitoring of all social safeguards programs; implementation, supervision and progress reporting of land acquisition works	In close coordination with each Company and District level government agencies.
Company	Day-to-day planning to work proactively on all safeguard related issues in all stages, especially on compensation payment and resettlement activities. Play liaison role between the Hydro Property and DAO, DSO, DLRO, VDC, and affected local people	Company to support carrying out the works and work closely with other actors including local level line agencies
Company	Take lead on all land acquisition works including coordination with local stakeholders, negotiations with local affected people, entitlement distribution and close	Company shall implement and monitor project land acquisition working closely with the PMO and district



Key players	Functions/Roles	Remarks
	all land transactions as per GON	stakeholders
Company	The Company shall work to resolve local level issues on RAP implementation including compensation in close coordination with the Hydro Property and PAF/HHs	Work in close coordination with the concerned GON agencies and stakeholders.

Land Acquisition for ROWs

Both GON Land and Non-GON land will be required for the construction of tower foundations, and for the ROWs for the TL project. The landowners of the private land under the transmission lines shall have restricted use of land (including restriction on building houses and the planting of trees). For that reason, the development of an adequate compensation package is a key element in successfully completing the TL land acquisition process.

Taking into account the problems that have been encountered in other TL projects, it is prudent for GON take primary responsibility for completing the ROW land acquisition process. Toward that end, GON will undertake to complete the land acquisition process for ROWs within the territory of Nepal. The Company shall also use their reasonable endeavours to assist GON on matters related to compulsory acquisition of Non-GON land related to the TL-related aspects of the Project.

The land acquisition process (including both GON land and Private land) related to the TL ROWs shall be carried out pursuant to the terms of the Agreement.



Table 5: Brief Summary of the land requirements of the tower locations & ROW

Total Land Requirement	Area (Ha)
Permanent Land Requirement – Private (Tower location)	0.251
Permanent Land Requirement – Govt. (Tower location)	0.125
Land Under ROW (land use restriction) - Private	6.25
Land Under ROW (land use restriction) - Govt.	26.56

Identification

1. The Company has carried out a cadastral survey of the entire transmission line corridor, and has obtained cadastral maps from respective District Survey Offices.
2. The cadastral maps have been geo-referenced on the topographical maps.
3. The list of private land parcels has been populated and the personal details of private land owners have been obtained from the respective District Land Revenue Offices.
4. The list of land owners and area of land parcels has been identified.

Verification

The process of verifying ROWs of TL is summarized as below:

1. Prepare Land Acquisition Report.
2. Obtain Cadastral map from District survey Office.
3. Superimpose location of the Right of Way in cadastral map.
4. **Identification of land owners**
 - a. Obtain required sheet number from District Survey Department
 - b. Conduct a field visit by surveyor from District survey department
 - c. Obtain field book copy from district survey department (note: to identify the name of the owner (Private/Government), location, area of the land, land type).
 - d. Verify the field book details at Land Revenue Office.
 - e. Prepare final report of TL ROWs.



Schedule 16

APPROVALS SCHEDULE

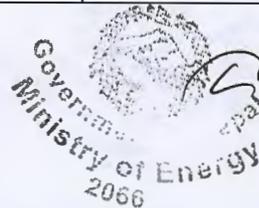
The anticipated Approval Date/Period and non-exhaustive approvals are as follows:

GON Instrumentality	Description	Applicable GON Laws and Regulations	Submission Date	Approval Date/Period
Ministry of Energy/Department of Electricity Development	Issue (a) Generation License; (b) Transmission Survey License; and (c) Transmission License	Electricity Act and Regulations	As per the Agreement	As per the Agreement
Department of Industry/Industrial Promotion Board	Approval on – (a) technical services agreement; (b) management or management support agreement; and (c) any other similar agreements (includes any amendments, renewal).	Foreign Investment and Technology Transfer Act	As and when required	Within 30 (thirty) days of the application
Department of Industry/Security Board of Nepal/Industrial Promotion Board/Nepal Rastra Bank	Approval on – (a) equity investment or additional cash injection; (b) foreign loan; (c) share issue, allotment, transfer and any other similar transactions (includes any relevant agreements, amendments, renewals); (d) foreign bank accounts/offshore accounts/liaison office; and (e) repatriation (includes fees, charges, royalties, dividends, interests, reimbursements, compensations, reinsurance premiums, payments to contractors, consultants and vendors).	Foreign Investment and Technology Transfer Act/Securities Act/ Foreign Exchange (Regulations) Act, and Regulations	As and when required	Within 30 (thirty) days of the application
Department of Electricity Development/Ministry of Energy	Approval on – (a) foreign currency for payment of fees, charges, royalties, reimbursements, compensations, reinsurance premiums, and other repatriations; (b) contractors, consultants and vendors payment (or similar agreements); and (c) others matters referred for	Notices of Nepal Rastra Bank, Directives/Guidelines of the Ministry of Energy	As and when required	Within 30 (thirty) days of the application



GON Instrumentality	Description	Applicable GON Laws and Regulations	Submission Date	Approval Date/Period
	opinion/no objection/ recommendation or for any other similar action by other GON Instrumentalities			
Department of Industry/Department of Electricity Development/ Ministry of Energy/ Ministry of Home Affairs/ Department of Immigration/ Department of Labor	Recommendation for business visa, non tourist visa, other applicable visa and related permits	Foreign Investment and Technology Transfer Act/Labor Act and Regulations/ Immigration Act and Regulations	As and when required	Within 60 (sixty) days of the application
Department of Electricity Development/ Ministry of Energy/ Ministry of Home Affairs/Ministry of Defence/Nepal Army/ Chief District Officer	Import license and necessary permits, approvals and consents (includes amendments, renewals)for explosives required for the project works and access road construction	Explosive Act/Regulations Electricity Act/ Regulations	As and when required	Within 60 (sixty) days of the application
Department of Electricity Development/ Ministry of Energy/ Ministry of Home Affairs/Ministry of Defence/Nepal Army/Armed Police Force	Deployment of Nepal Army/additional police force (includes armed force) for security of the Project		As and when required	Within 30 (thirty) days of the application
Department of Electricity/Ministry of Energy/ Ministry of Finance/Department of Custom	Approval, recommendation, consent and permit for import of construction equipments, vehicles, plants, machineries (on re-export basis) with spare parts or other available facilities for applicable custom duty against bank guarantee and other tax and duty exemption	Finance Act/Customs Act and Regulations/Value Added Tax and Regulations	As and when required	Within 30 (thirty) days of the application
Department of Electricity Development/Ministry of Energy/ Ministry of Finance/ Department of Custom/Inland Revenue Department	Approval, recommendation, consent and permit for import of project construction items (includes machineries, equipments etc.) and tools, raw materials for hydro mechanical equipment, spare parts for exemption of custom duty and VAT	Finance Act/Customs Act and Regulations	As and when required	Within 30 (thirty) days of the application
Office of District	Approval for construction	Local Self	As and	Within 30

Signature



GON Instrumentality	Description	Applicable GON Laws and Regulations	Submission Date	Approval Date/Period
Development Committee	material at site locations	Governance Act/Regulations Acts and Regulations to be enforced for federal structure of government and governance	when required	(thirty) days of the application
Ministry of Commerce and Supplies/relevant GON Instrumentalities	Import license, approval, permit for import of fuel	-	As and when required	Within 30 (thirty) days of the application
Department of Electricity Development/Ministry of Energy/Ministry of Forest/ Department of Forest/Department of National Park and Wildlife Conservation	Government land lease	Forest Act and Forest Rules/ Governance and Economic Reform Action Plan/ Procedure for providing forest land area for other purposes	As per the Agreement	As per the Agreement
Department of Electricity Development/Ministry of Energy/Ministry of Forest/Department of Forest	Tree cutting permission and other related permits, consents and authorizations	Forest Act and Forest Rules/ Governance and Economic Reform Action Plan/ Procedure for providing forest land area for other purposes	As and when required	Within 60 (sixty) days of the application
Office of Langtang National Park	Multiple entry permission to national park and conservation area	Langtang National Park Regulations	As and when required	Within 7 (seven) days of the application
Ministry of Land Reform and Management/Guthi Sansthan	Approval, consent, permit, no objection for use of Guthi land for access road construction and other project works	Guthi Sansthan Act and Regulations	As and when required	Within 30 (thirty) days of the application
Ministry of Land Reform and Management/ Office of Land Reform/Land Revenue Office	Approval, consent, permit and authorization for possession of lands exceeding the land ceiling	Land Act and Regulations/ Land Acquisition Act	As and when required	Within 60 (sixty) days of the application
Office of Company Registrar	Approvals and certifications pursuant to the Company Act	-	As and when required	Within 15 (fifteen) days of the application



Schedule 17

PERMITTED ACTIVITIES

The Company shall be entitled to conduct the following activities in the fulfilling of its obligations under this Agreement:

1. Correspond, collaborate, discuss and interact with administrative bodies (both on the national and local levels), governmental and non-governmental organizations, banks and other financial institutions, consultants and all other stakeholders at the national and local levels;
2. Procure all required authorizations, approvals, permissions, and clearances from administrative bodies at all organizational levels, including without limitation, VDCs, Local, District, and Federal;
3. Open and operate offices, both within and outside of Nepal;
4. In accordance with legal requirements, conduct board meetings, general meetings, and pursuant to board approvals, amend corporate structures and procedures;
5. Attract financing for the Company by way of equity, loans, and other instruments;
6. Have access to the Project Area;
7. Conduct local and foreign recruitment of personnel, and, as required, hire expert consultants;
8. Carry out activities related to corporate and social responsibility (CSR);
9. Disseminate information, interact, and discuss with Project Affected People;
10. Continue to collect rain fall data and sediment and discharge data within the Project Area;
11. Carry out preconstruction investigation works including drilling, geophysical and geotechnical explorations, and conduct drift tunnel works within the Project Area;
12. Carry out preconstruction survey works including, surveys for infrastructural development, roads, camps, colonies, and stores within the Project Area;
13. Conduct tender processes related to preconstruction works;
14. Construct infrastructure works including as required, roads, traffic tunnels, and bridges within the Project Area;
15. Verify lands and forests as a part of the process of final land handover pursuant to GON/Cabinet approval;
16. Acquire private and GON lands required to realize the Project objectives;
17. Pursuant to permits and as required, clear forests for preconstruction and construction works related to infrastructures within the Project Area;
18. Carry out lab testing of relevant samples;
19. Procure licenses related to explosives required to carry out Project excavation works;
20. Conduct tender processes in respect of the main works;
21. Carry out all physical and financial activities required to achieve financial close;
22. Undertake all steps necessary, both with GON administrative bodies and instrumentalities and third parties to complete post PDA obligations by the Company.
23. Undertake all activities required to complete CDM registration with UNFCCC and WCD audit;
24. Apply for, negotiate, and conclude power purchase agreements (PPAs) with relevant entities;
25. Open and operate US Dollar accounts in Nepal and other countries as determined by the Company to be ordinary and necessary to achieve Project objectives;
26. Survey, design, construct, commission, operate and maintain hydroelectric plant and power evacuating transmission & interconnection facilities;
27. Sell the power plant's generated electricity to NEA pursuant to approved tariffs;



- 28. Subject to and in accordance with Section 6 (*Water Rights and Obligations*), enjoy undisturbed use of Trishuli River water for generation of electricity between the river stretch from the weir location to the Tailrace outlet point;
- 29. Move to and fro the Project Area by the personnel of the Company, its shareholders, lenders, consultants, contractors, suppliers, vendors, advisers, panel of experts etc., in connection with the official business related to development, operation & maintenance of the power plant; and
- 30. Apply for, negotiate and conclude the debt financing agreement with any international banks and financial institutions including due diligence appraisal by the lenders.

4. Objectives

The objectives of the Limited Development Plan are stated below:

- Provision of flood relief to the project area
- Safety measures of project area
- Ensuring proper security for the project area

5. Key Features

The features of the project are stated below:

- Flood relief
- Safety measures
- Security measures

6. Responsibilities

The Company shall prepare and submit an emergency management plan 12 months before the start of construction with the local government...

- Provision of training to the project area
- Safety measures
- Security measures

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Schedule 18

DISASTER MANAGEMENT PLAN – GUIDANCE NOTE

Disaster management is a systematic process of using administrative directives, organizations, and operational skills and capacities to implement strategies, policies and improve coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster. The Disaster Management Plan should be holistic in approach, recognizing that environmental risks arise from the complex interaction of environmental hazards and socio-economic vulnerability.

1. Objectives

The objectives of the Disaster Management Plan are listed below:

- Prevention of disasters and their impact on families, infrastructure and environment
- Building resilience of families and communities by reducing their vulnerability and increasing their ability to withstand and minimize the effects of disasters and emergencies by enhancing preparedness
- Providing fast, coordinated, effective and appropriate responses to disasters and emergencies
- Ensuring timely recovery from disasters and complex emergencies, and leaving communities and families in a better position to withstand future hazards.

2. Key Hazards

The hazards for the Project are partly caused by nature and partly manmade, some are avoidable, others not. Some of the hazards outlined below could cause inundation leading to the loss of lives and properties:

- Dam Break
- Earthquakes, causing damage to the dam
- Erosion, Landslides into the reservoir causing overtopping of the dam
- Glacial lake outburst flood, GLOF
- Extraordinary and untimely floods
- Flood emergencies resulting from improper spillway gate operation.

3. Responsibilities

The Company shall prepare and execute an emergency management plan 12 months before reservoir filling in cooperation with the local government responsible for communities likely to be affected by project related emergencies. The plan shall cover the reservoir filling, early operation period and routine operation and maintenance phase. The plan shall provide for the following -

- Provision of warning signs in flood inundation zones previously identified by the Company, areas, for sirens and other alarms when an emergency has occurred or is imminent, for operation of the dam and the spillway in a safe manner for actions to be taken in the event of the occurrence of the key hazards referred to above, and for actions to be taken to mitigate adverse effects if an emergency occurs.
- Notification of previously identified key members of downstream communities with normal responsibility for dealing with civil emergencies. These personnel will be responsible for liaising with potentially affected communities and for organizing evacuation.
- Education and periodic re-education of local communities by the Company in cooperation with the local government.
- Provision of warning signs in flood inundation zones previously identified by the Company, sirens and other alarms when an emergency has occurred or is imminent.
- Coordination with previously identified key members of downstream communities for dealing with civil emergencies. These personnel will be responsible for liaising with potentially affected communities and for organizing evacuation.



- Education and periodic re-education of local communities in cooperation with the local government.

The Company shall have responsibility for implementing the Plan in case of emergency or potential emergency with support from the local Government. The Company will have the responsibility for carrying out remedial works after the emergency in consultation with relevant authorities of the Government.

NON-DIRECT AGREEMENT

PROJECT AGREEMENT

RELATING TO

PROJECT DEVELOPMENT AGREEMENT

(Project)

(Project)

GOVERNMENT OF NEPAL

REPRESENTED BY THE MINISTRY OF ENERGY, GOVERNMENT OF NEPAL

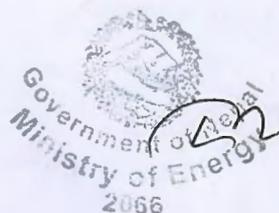
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Schedule 19

FORM OF DIRECT AGREEMENT

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GON DIRECT AGREEMENT

DIRECT AGREEMENT

RELATING TO

PROJECT DEVELOPMENT AGREEMENT

[insert]

between

GOVERNMENT OF NEPAL
REPRESENTED BY THE MINISTRY OF ENERGY, GOVERNMENT OF NEPAL

and

[insert]

and

[BANK]

as Security Trustee

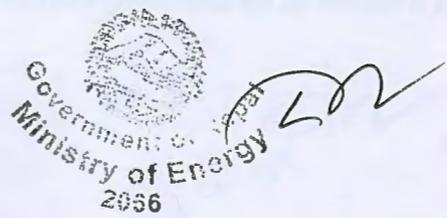
[Date]



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THIS DIRECT AGREEMENT is made on the []

BETWEEN:

1. **THE GOVERNMENT OF NEPAL**, represented by the Ministry of Energy, Government of Nepal, having its administrative office at [insert address], Kathmandu, Nepal (the "**GON**");⁵
2. [insert], a limited liability company incorporated and registered under the Company Act, 2063 (2006) of Nepal, having its registered office at [insert address], Nepal (the "**Company**"); and
3. [Bank] as trustee for and on behalf of the Finance Parties defined below (the "**Security Trustee**"),

each of GON, the Company and the Security Trustee being a "**Party**" and together, the "**Parties**".

RECITALS:

(A) **The Project**

The Company is developing and executing the [describe project] (the "**Project**").

(B) **The Assigned Agreements**

The GON and the Company have entered into:

- (i) the Project Development Agreement dated [•] (the "**Project Development Agreement**"), regarding their respective rights and obligations in relation to the development and execution of the Project, and
- (ii) [insert any other relevant agreement (if any)] (the "[•]"); together with the Project Development Agreement, the "**Assigned Agreements**".

(C) **The Finance Documents**

The Company has entered into the [Common Terms Agreement], the [Facility Agreements] and certain other agreements related thereto, pursuant to which the Finance Parties will make loans and extend other credit to the Company for the purpose of financing the Project and certain related expenses (the "**Finance Documents**").

(D) **Security Deed**

Pursuant to the [relevant security document]⁶ entered into on or about the date of this Direct Agreement between the Company and the Security Trustee (for and on behalf of itself and the other Finance Parties) (the "**Security Deed**"), as security for the Senior Obligations, the Company has assigned all of its rights, title and interest in, to and under, and granted security interests in, the Assigned Agreements and all of its rights to payment under or with respect to the Assigned Agreements and all payments due and to become due to the Company under or with respect to the Assigned Agreements, whether as contractual obligations, damages, indemnity payments or otherwise, to the Security Trustee.

⁵ Note: To be discussed if other entities/agencies to join depending on the counterparties to the Assigned Agreements.

⁶ Note: Identity of the security document pursuant to which the Assigned Agreements will be secured is to



(E) **Condition Precedent**

The [Common Terms Agreement] contemplates the execution, delivery and implementation of this Direct Agreement and it is a condition precedent to the making of advances under the [Facility Agreements] that the GON shall have executed and delivered this Direct Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, each Party agrees as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Direct Agreement:

"Additional Obligor" means any of (a) the Security Trustee, (b) any liquidator, receiver, administrator, custodian or other similar official appointed pursuant to the Security Deed or (c) a company which is controlled by any of the Finance Parties and is authorised to carry on business in Nepal;

"Assumption Date" means the date upon which the Security Trustee gives the relevant Step-in Notice;

"Common Terms Agreement" means [●];

"Connection Agreement" means [●];

"Dispute" means any dispute arising out of or in connection with this Direct Agreement, including any dispute or difference concerning the existence, legality, validity or enforceability of this Direct Agreement or any provision hereof or the performance or obligations of a Party under any provision hereof;

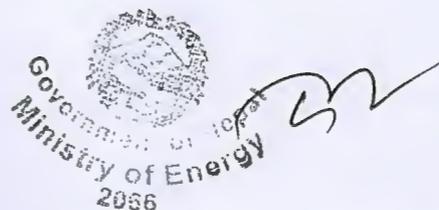
"Effective Date" has the meaning given to it in Clause 7.2 (Novation);

"Enforcement Action" means:

- (a) the taking of any steps to wind up the Company;
- (b) the taking of any steps to appoint a liquidator, receiver, administrator, custodian or other similar official of the Company or any part of its undertaking or assets;
- (c) the taking of any steps to enforce any judgment or order in an amount exceeding [●] (or its equivalent from time to time in other currencies) in relation to any of the Assigned Agreements against the Company or any of its assets that in the opinion of the Security Trustee may have a material adverse effect upon the Finance Parties' interests in the Project under the Finance Documents; or
- (d) the taking of any steps to terminate, cancel or to accept as repudiated any of the Assigned Agreements or to suspend performance of any material obligation under any of the Assigned Agreements or otherwise, subject to subparagraph (c) above, to exercise any remedies granted under any of the Assigned Agreements or under the Laws of Nepal,

and any similar or analogous steps to any of the above;

be confirmed.



"Event of Default" has the meaning ascribed thereto in the [Common Terms Agreement];

"Facilities" means the loan facilities granted to the Company under the Facility Agreements;

"Facility Agreements" means [●];

"Finance Parties" means the banking companies and financial institutions and any of their respective successors, permitted transferees and permitted assignees, which are parties to the Finance Documents, including the Security Trustee.

"Novation Notice" has the meaning given to it in Clause 7.1 (*Proposal for Novation*);

"Power Purchase Agreement" means [●];

"Project" has the meaning given to it in the Preamble;

"Revival Date" has the meaning given to it in Clause 8 (*Revival of Remedies*);

"Security Document" means any document granting any security interest for payment of the Senior Obligations to the Security Trustee as security trustee for the Finance Parties and any direct agreement in relation to the Project;

"Senior Obligations" means all present and future liabilities and obligations of the Company arising under or in relation to the Finance Documents;

"Step-in Notice" means a notice from the Security Trustee to the GON stating that an Additional Obligor is to become a party to the Assigned Agreements on and from the Assumption Date;

"Step-in Period" means the period from and including the Assumption Date to and including the Step-out Date;

"Step-out Date" has the meaning given to it in Clause 6.4 (*Step-out Date*);

"Substitute" has the meaning given to it in Clause 7.1 (*Proposal for Novation*);

"Suspension Period" means the applicable period described in Clause 4.1 (*Suspension Period*); and

"Termination Notice" has the meaning given to it in Clause 4.1 (*Suspension Period*);

"Transfer Certificate" has the meaning given to it in Clause 7.2 (*Novation*);

1.2 Incorporation of definitions

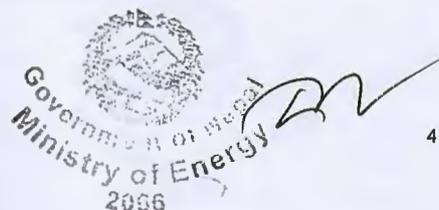
Words and phrases defined and construed in the Project Development Agreement shall have the same meaning and construction in this Direct Agreement unless expressly modified pursuant to the terms hereof, in which event such modified meaning shall prevail.

1.3 Interpretation

Section 1.2 (*Interpretation*) of the Project Development Agreement is incorporated in this Direct Agreement as if set out herein, *mutatis mutandis*.

1.4 Conflict

In the event of any conflict between any provision of this Direct Agreement and any provision of any Assigned Agreement, this Direct Agreement shall prevail.



1.5 **No other liability**

- (a) Nothing herein is intended, nor should be construed, to create or expand any liability on the part of the GON under the Assigned Agreements nor affect any of its rights under the Assigned Agreements, except as may be expressly agreed otherwise in this Direct Agreement
- (b) The rights granted by the GON to the Finance Parties are solely for the benefit of the Finance Parties and shall not accrue to the benefit of the Company.
- (c) No breach by the GON of any obligation to the Finance Parties contained in this Direct Agreement shall create any right or cause of action for the Company, whether as third-party beneficiary or otherwise.

1.6 **Execution as a deed**

It is the intention of the Parties that this Direct Agreement be executed as a deed notwithstanding the fact that a Party may only execute this Direct Agreement under hand.

2. **ASSIGNMENT**

2.1 **Notice of Assignment**

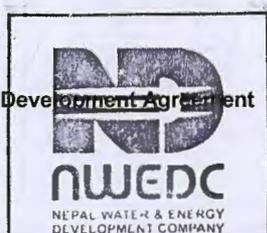
As contemplated by Section 14.1.1 (*Assignment and Security - Company*) of the Project Development Agreement, the Company hereby gives notice to the GON that:

- (a) pursuant to the Security Deed, the Company has assigned by way of security to the Security Trustee all of its rights, title and interest in and to and the benefit of each of the Assigned Agreements (the "**Assignment**");
- (b) pursuant to the Security Deed, the Security Trustee has agreed that, until such time as the Security Trustee notifies the GON that an Event of Default has occurred and is continuing unremedied, the Company may exercise all of its rights under the Assigned Agreements;
- (c) the GON is hereby authorised and instructed to make all payments due or which may become due from it under or arising from the Assigned Agreements to the credit of the account designated [●] (account code [●] customer number [●]) at [Bank] or to such other account (whether inside or outside of Nepal) as the Security Trustee may from time to time direct by notice to the GON; and
- (d) the authority and instruction contained in paragraph (c) above cannot be revoked or varied without the prior written consent of the Security Trustee.

2.2 **Acknowledgement of Assignment**

By execution of this Direct Agreement, the GON hereby:

- (a) acknowledges receipt of the notice of the Assignment provided by the Company pursuant to Clause 2.1 (*Notice of Assignment*) and confirms that:
 - (i) it has not received any other notice relating to the rights, title and interest of the Company in and to any of the Assigned Agreements;
 - (ii) it has not received any notice of, nor has it consented to, any previous assignment, transfer, or other lien by the Company of all or any part of its rights under any of the Assigned Agreements;



- (b) agrees that it will not consent to any further assignment, transfer or lien by the Company under any of the Assigned Agreements;
- (c) consents to the making of the Assignment and to any assignment, transfer or other disposal by the Finance Parties of any of their rights, interests or obligations under the Assigned Agreements or this Direct Agreement;
- (d) confirms that it has no objection to the Financing Plan delivered by the Company to it in accordance with Section 11.23.1 (*Financing Documents and Financing Plan*) of the Project Development Agreement;
- (e) acknowledges and agrees that (i) the Finance Documents constitute the "Financing Documents", (ii) the Finance Parties constitute the "Lenders" and (iii) this Direct Agreement constitutes the "Direct Agreement", in each case as contemplated by the Project Development Agreement and as defined in Section 1.1 (*Definitions*) of the Project Development Agreement;
- (f) undertakes:
 - (i) to deliver to the Security Trustee copies of all material notices and demands delivered by the GON to the Company pursuant to any of the Assigned Agreements;
 - (ii) after the notification by the Security Trustee pursuant to Clause 2.1(b) (*Notice of Assignment*) to accept as valid any notices or demands given or made by the Security Trustee under or pursuant to any of the Assigned Agreements in place of the Company;
 - (iii) after the notification by the Security Trustee pursuant to Clause 2.1(b) (*Notice of Assignment*) to accept exercise of any rights and performance of any of the obligations of the Company under any of the Assigned Agreements which is procured by or on behalf of the Security Trustee as exercise or performance, as applicable, by the Company; and
 - (iv) to pay any amount due from the GON to the Company under any of the Assigned Agreements in accordance with the provisions of Clause 2.1(c) (*Notice of Assignment*);
- (g) acknowledges and agrees that the Security Trustee shall be permitted to enforce the rights granted to the Finance Parties under any of the Assigned Agreements;
- (h) acknowledges and agrees that the Finance Parties (other than the Security Trustee) or any of them, may sell down or otherwise transfer the rights and obligations under the Finance Documents, without the prior approval of the GON, to any other bank or a financial institution;
- (i) save for all rights of set-off and counterclaim expressly provided for in any of the Assigned Agreements, waives all rights of set-off or counterclaim which the GON may have against the Company or any of the Finance Parties in respect of any payments due by the GON under the Assigned Agreements and agrees to make all such payments free and clear of, and without any deduction for or on account of, any such set-off or counterclaim;



- (j) acknowledges and agrees that the Assignment shall not give rise to any duties or obligations whatsoever on the part of any of the Finance Parties (including the Security Trustee) to the GON under this Direct Agreement or the Assigned Agreements, whether in place of the Company or otherwise, except as provided in Clause 6.2(a) (*Rights and Obligations of Additional Obligor*);
- (k) agrees and accepts that, the Security Trustee may disclose to each of the Finance Parties and their advisors such information as it may receive as a party to this Direct Agreement; and
- (l) acknowledges and agrees that, without the prior written consent of the Security Trustee, no rescission or voluntary termination of, or amendment, supplement or other modification to, any of the Assigned Agreements (as the same are in effect on the date hereof) shall be entered into by the GON which affect the interests of the Finance Parties.

2.3 Subordination of Rights to Insurance

The GON acknowledges and agrees that the interest of the GON, NEA, its ministers, directors, officers and employees in and to the insurance maintained by the Company pursuant to Section [11.14 (*Insurance*)] and [Schedule 6 (*Insurance*)] of the Project Development Agreement (except the general liability coverage) is in all respects subordinate to the interests in such insurance of the Finance Parties under the Finance Documents.

3. OBLIGATIONS IN RESPECT OF THE GON COVENANT

3.1 Unconditional Nature of Obligations in respect of the GON Covenant

Without limitation to the terms of Section [10.19 (*GON Project Covenant*)] of the Project Development Agreement, the GON acknowledges and agrees that its obligations under this Direct Agreement and under Section [10.19 (*GON Project Covenant*)] of the Project Development Agreement shall not be affected by:

- (a) the assignment by the Company of its rights, title or interest in the Power Purchase Agreement and Connection Agreement under the [*relevant security document*] or otherwise;
- (b) the exercise by the Security Trustee or any other Finance Party or any of their successors of any of their rights under the Finance Documents;
- (c) the Project Development Agreement, the Power Purchase Agreement or the Connection Agreement being invalid, void, voidable, unenforceable or of no effect under the Laws of Nepal; or
- (d) any other matter or thing which might otherwise entitle the GON to treat its obligations under this Direct Agreement or the Project Development Agreement as void, discharged or cancelled or otherwise no longer binding on it.

3.2 Principal and Independent Obligation

The obligations of the GON under this Direct Agreement are principal and independent obligations and are not ancillary or collateral to any other document, agreement, right or obligation.

4. SUSPENSION

4.1 Suspension Period



The GON undertakes that it shall not take any Enforcement Action until the expiry of a period of 120 days for payment defaults and 180 days for all other defaults, plus (provided that the Finance Parties can show that reasonable continuous efforts are being made to remedy the relevant Company Event of Default) an additional period of 60 days, after the later of:

- (a) the date on which it is entitled to take such Enforcement Action; and
- (b) the date on which a written notice (a "Termination Notice") is given by the GON to the Security Trustee specifying the GON's intention to take such Enforcement Action and the events or circumstances which entitle it to do so,

provided that, if during any Suspension Period, a Step-In Notice has been delivered to the GON and the Security Trustee has commenced proceedings for the enforcement of all or part of the Finance Parties' security pursuant to any Security Document during such period and such proceedings are diligently being pursued, then such period shall be extended until the date on which (i) the Additional Obligor has effectively assumed control of the Project; and (ii) the Additional Obligor is entitled effectively to exercise all of the rights of the Company as provided in Clause 6 (*Step-in and Step-out*).

4.2 Enforcement Action

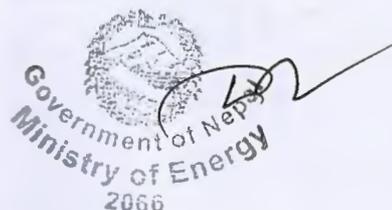
The GON undertakes:

- (a) not to take any Enforcement Action in relation to the relevant event or circumstance if, at the end of the Suspension Period relating thereto:
 - (i) such event or circumstance no longer subsists;
 - (ii) in respect of any breach or default under any of the Assigned Agreements, such breach or default has been remedied or if not capable of remedy, the events or circumstances giving rise to such breach or default are not continuing; and
 - (iii) any damages due and payable to the GON resulting from such breach or default and notified in accordance with Clause 5.1 (*Statement of Outstanding Obligations*) have been paid or a bank guarantee or other assurance of payment satisfactory to the GON, acting reasonably, has been provided in respect of any damages which may become due and payable in respect of such breach or default; and
- (b) to continue to comply with all of its obligations under each of the Assigned Agreements in accordance with the terms thereof during any Suspension Period.

5. OUTSTANDING OBLIGATIONS AND PAYMENTS

5.1 Statement of Outstanding Obligations

- (a) Within 30 days after the date of any Termination Notice issued in connection with a Company Event of Default, the GON shall deliver to the Security Trustee details of:
 - (i) all amounts due and payable to the GON under the Assigned Agreements on or before the date of the Termination Notice but remaining unpaid on such date; and
 - (ii) all outstanding claims by the GON under or pursuant to the Assigned Agreements against the Company whether arising out of or in connection with any breach or default or otherwise specifying:



- (A) the provisions of the Assigned Agreements under or in respect of which such claim arises;
- (B) such information as is available to the GON in relation to the acts or omissions of the Company giving rise to such claim;
- (C) in respect of any breach or default, the steps which the GON considers are required to remedy such breach or default and the time which might reasonably be required to take such steps; and
- (D) the amount of any monetary claim and the basis of calculation thereof.

5.2 Warranty of Accuracy

- (a) The GON warrants to the Security Trustee that any statement submitted by it under Clause 5.1 (*Statement of Outstanding Obligations*) shall be prepared with reasonable skill and care.
- (b) Without prejudice to the warranty set out in Clause 5.2(a) (*Warranty of Accuracy*), the Security Trustee may appoint a firm of independent chartered accountants to verify (at the cost of the Company) any statement submitted by the GON and the GON shall permit such firm to have access to and make copies of all relevant records, documents, data and accounting and other information not subject to legal (including, without a limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

5.3 Conclusive Evidence

Without prejudice to the rights of the GON to pursue any claims against the Company following the Revival Date (if any), no Additional Obligor or Substitute shall have any liability to the GON in respect of any claims by the GON arising before the Assumption Date.

5.4 Transfer of the Complex

- (a) The GON agrees and undertakes that it shall pay the Transfer Price within thirty (30) Business Days following the date of any Termination Notice delivered under Section [13.3.2 (*Termination Notice*)] of the Project Development Agreement and upon such payment the Security Trustee shall thereafter release all security interests it may hold on the Hydro Property and Project Assets and otherwise transfer the Hydro Property and Project Assets in accordance with Schedule [4] to the Project Development Agreement.
- (b) To the extent the provisions of this Clause 5.4 (*Transfer of the Complex*) are inconsistent with the provisions of Section [13 (*Events of Default and Termination*)] or [Schedule 4 (*Termination Plan Upon Early Termination of the Agreement*)] of the Project Development Agreement, the provisions of this Clause 5.4 (*Transfer of the Complex*) shall prevail.

6. STEP-IN AND STEP-OUT

6.1 Step-in Notice

At any time:



- (a) from (and including) the date of the occurrence of an Event of Default (while the same is continuing unremedied or unwaived) to the Revival Date (if any); or
- (b) during any Suspension Period,

the Security Trustee may deliver a Step-in Notice to the GON.

6.2 Rights and Obligations of Additional Obligor

On and from the Assumption Date:

- (a) the Additional Obligor shall become a party to the Assigned Agreements with all of the rights of the Company thereunder and, save as provided in Clause 5.3 (*Conclusive Evidence*), jointly and severally liable with the Company for all of its obligations thereunder whether arising before, on or after the Assumption Date; and
- (b) as between the Company, the GON and the Additional Obligor, only the Additional Obligor shall be authorised to deal with the GON and to exercise the rights of the Company under the Assigned Agreements and the GON shall only be discharged of its obligations under the Assigned Agreements to the extent that such obligations are performed in favour of the Additional Obligor.

6.3 Enforcement Action during Step-In Period

Without prejudice to Clause 4.1 (*Suspension Period*), during the Step-in Period, the GON shall not take any Enforcement Action in respect of events or circumstances arising before the Assumption Date other than:

- (a) in respect of any amount due and payable by the Company as at the Assumption Date if such amount is not paid within 30 days thereafter;
- (b) in respect of any breach or default occurring prior to the Assumption Date if such breach or default is not remedied or cured as soon as reasonably practicable after the Assumption Date taking due account of the nature of the breach or default and the cost required to effect a remedy or cure; or
- (c) in respect of any breach or default occurring prior to the Assumption Date which is not remedied or cured, if amounts (if any) notified to the Security Trustee under Clause 5.1(a) (*Statement of Outstanding Obligations*) as payable to the GON in respect thereof are not paid when due.

6.4 Step-out Date

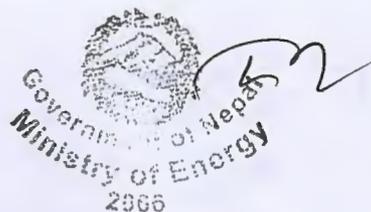
The Additional Obligor may, at any time following the Assumption Date, give the GON notice in writing terminating the Additional Obligor's obligations under the Assigned Agreements as and from a date (the "**Step-out Date**") being a date falling not earlier than 30 days after the date of the notice.

6.5 Release

On and from the earlier of the Step-out Date and the Effective Date, the Additional Obligor shall be released from all obligations under the Assigned Agreements.

7. NOVATION

7.1 Proposal for Novation



At any time:

- (a) from (and including) the date of the occurrence of an Event of Default to the Revival Date (if any);
- (b) during any Suspension Period; or
- (c) during a Step-in Period,

the Security Trustee may give notice (a "**Novation Notice**") to the GON that another person (the "**Substitute**") shall assume the obligations of the Company under the Assigned Agreements and specifying the date on which such assumption is to be effected.

7.2 Novation

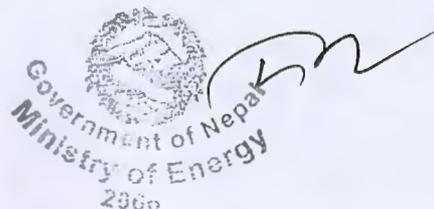
The novation contemplated in the Novation Notice shall be effected by the delivery to the GON of a duly completed and duly executed certificate substantially in the form of Schedule 1 hereto (the "**Transfer Certificate**"), in which event, on the first Business Day after the date of delivery of such Transfer Certificate to the GON (the "**Effective Date**"):

- (a) The Company and the GON shall each be released from further obligations to the other under the Assigned Agreements and their respective rights against each other shall be cancelled (such rights and obligations being referred to in this Clause 7.2 (*Novation*) as "discharged rights and obligations");
- (b) The GON and the Substitute shall each assume obligations towards each other and/or acquire rights (which shall include the rights and obligations of the Company which arose prior to the Effective Date) against each other which differ from such discharged rights and obligations only insofar as the GON and the Substitute have assumed and/or acquired the same in place of the GON and the Company; and
- (c) The GON shall not take any Enforcement Action in respect of events or circumstances arising before the Effective Date other than:
 - (i) in respect of any amount due and payable by the Company at the Effective Date if such amount is not paid within 30 days thereafter;
 - (ii) in respect of any breach or default occurring prior to the Effective Date if such breach or default is not remedied or cured as soon as reasonably practicable after the Effective Date taking into account the nature of such breach or default and the cost required to effect a remedy or cure; or
 - (iii) in respect of any breach or default occurring prior to the Effective Date which cannot be remedied or cured, if amounts (if any) notified to the Security Trustee under Clause 5.1(a) (*Statement of Outstanding Obligations*) as payable to the GON in respect thereof are not paid to the GON when due.

8. REVIVAL OF REMEDIES

If a Termination Notice has been given and:

- (a) either no Step-in Notice has been given or no Novation Notice has been given prior to the expiry of the Suspension Period relative to that Termination Notice; or



- (b) a Step-out Date occurs prior to the expiry of the Suspension Period relating to that Termination Notice,

then the GON, in the case of (a), on and after the expiry of the Suspension Period or, in the case of (b), on and after the Step-out Date (the "**Revival Date**") shall be entitled to:

- (i) act upon any and all grounds for termination in respect of breaches or defaults not remedied or waived available to it in relation to the Assigned Agreements;
- (ii) pursue any and all claims and exercise any and all remedies against the Company; and
- (iii) take any other Enforcement Action.

9. [AMENDMENTS AND CLARIFICATIONS TO THE ASSIGNED AGREEMENTS]

[To be discussed.]

10. REPRESENTATIONS AND WARRANTIES

The GON makes the following representations and warranties, which shall survive the execution and delivery of this Direct Agreement and the Assigned Agreements and the consummation of the transactions contemplated hereby and thereby.

10.1 Authority and Authorisation

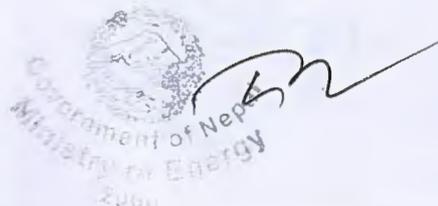
- (a) It has full power and authority to execute and deliver this Direct Agreement and the Assigned Agreements and to perform its obligations hereunder and thereunder;
- (b) the execution, delivery and performance of this Direct Agreement and the Assigned Agreements by the GON has been duly authorised by all requisite action on the part of the GON;
- (c) each of this Direct Agreement and the Assigned Agreements has been duly executed and delivered by the GON; and
- (d) the required obligation, liability and authority assigned to the [GON] will be transferred to the [GON] in case of the GON's dissolution, and the rights of the Company and of the Finance Parties shall not be adversely affected by any such transfer.

10.2 No conflict

None of the execution, delivery or performance by the GON of this Direct Agreement or of the Assigned Agreements, nor its compliance with, or performance of the terms and conditions of, this Direct Agreement or the Assigned Agreements will violate any of the Laws of Nepal.

10.3 Legality, Validity and Enforceability

- (a) Each of this Direct Agreement and the Assigned Agreements is a legal, valid and binding obligation of the GON, enforceable against it in accordance with its terms.
- (b) None of the Assigned Agreements has been amended, supplemented, suspended, novated, extended, restated or otherwise modified except in accordance with their respective terms and the terms of this Direct Agreement and is in full force and effect.



10.4 **Governmental consents**

It has the authority to grant or procure the grant of the approvals, consents, licenses and permissions envisaged in the Assigned Agreements and this Direct Agreement.

10.5 **Litigation**

There are no pending or, to the GON's knowledge, threatened actions, suits, proceedings or investigations of any kind, including arbitration proceedings and actions or proceedings of or before any Governmental Instrumentality, to which it is a party or is subject, or by which it or any of its properties are bound that, if adversely determined to or against the GON, could reasonably be expected to materially and adversely affect its ability to execute and deliver the Assigned Agreements and this Direct Agreement or to perform its obligations thereunder and hereunder.

10.6 **Existing defaults**

It is not, and, to the best of its knowledge, no other party to any Assigned Agreement is, in default under such Assigned Agreement.

10.7 **Conditions**

Any condition to the performance of its obligations under the Assigned Agreements and this Direct Agreement has been satisfied or waived.

11. **NOTICES**

11.1 **In writing**

Any notice to be served pursuant to the provisions of this Direct Agreement shall be (a) made in the English language, (b) made in writing, (c) delivered personally (by hand delivery or courier) to the address of another Party as shown below or to such other address as another Party shall by notice require or sent by facsimile transmission (with receipt of transmission confirmation) to the facsimile number of another Party which is shown below or to such other facsimile number as a Party shall by notice require. Any notice or other communication made by one party to the other Party in accordance with the foregoing provisions of this Clause 11.1 (*In writing*) shall be deemed received by the other Party, if delivered by hand or by courier, on the day on which it is left at that Party's address, or if sent by facsimile transmission, on the next Business Day following the day on which it is sent to that Party's address.

11.2 **Address for service**

The address for service of notices shall be as set out below or such other address as the party on whom the notice is to be served has notified in writing to the party serving the notice.

The Security Trustee:

Fax: []

Attention: []

The GON:

Fax: []

Attention: []



The Company:

Fax: []

Attention: []

12. MISCELLANEOUS

12.1 No assignment

Save as provided below, no party hereto shall assign or transfer any part of its respective rights or obligations under this Direct Agreement without the written consent of the other Parties, provided that the Security Trustee may assign or transfer its rights and obligations to a successor Security Trustee under the [Common Terms Agreement] without the consent of the GON or the Company.

12.2 Further Assurances

- (a) The GON agrees that if the Company is subject to any bankruptcy, liquidation or similar proceedings and any Assigned Agreement is terminated or rejected pursuant thereto, then so long as the Finance Parties or a Substitute shall have succeeded to the rights of the Company under such Assigned Agreement on or before the end of the relevant Suspension Period, the GON shall enter into a new agreement with the Finance Parties or a Substitute, which new agreement shall have a term equal to the balance of the unexpired term of such Assigned Agreement, and all other terms in such new agreement shall be the same terms and conditions as those set forth in such Assigned Agreement (as if such Assigned Agreement had not been so terminated or rejected).
- (b) The GON shall, at the request of the Security Trustee, enter into an agreement in substantially the same terms as this Direct Agreement with any new Finance Parties to the Company or any Substitute or the agent or trustee of such new Finance Parties.

12.3 No waiver

The failure of a Party to enforce an obligation or to exercise any right under this Direct Agreement shall not be considered to be a waiver save when the same has been expressly waived in writing. Any written waiver at any time by a Party of its rights with respect to the non-compliance of the other Party with its obligations under this Direct Agreement or with respect to any other matter arising in connection with this Direct Agreement shall not be deemed a waiver with respect to any subsequent non-compliance or other matter. Except as expressly provided in this Direct Agreement, any delay, short of the statutory period of limitations, in asserting or enforcing any right hereunder shall not be deemed a waiver of such right. The rights and remedies under this Direct Agreement may be exercised as often as necessary and are cumulative and not exclusive of any rights or remedies provided by law.

12.4 Counterparts

This Direct Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

12.5 Continuing nature of obligations



This Direct Agreement shall remain in full force and effect until the date on which all of the Senior Obligations are discharged in full.

12.6 Declaration of Trust

The benefit of this Direct Agreement (including the warranties and undertakings and any sum received by the Security Trustee pursuant to this Direct Agreement) shall be held by the Security Trustee upon and subject to the terms of the [Common Terms Agreement] for the benefit of the Finance Parties as security for the Senior Obligations as defined in the [Common Terms Agreement].

12.7 Entire Agreement

The terms and provisions contained in this Direct Agreement constitute the entire agreement between the GON and the Finance Parties on the matters addressed herein, and supersede all previous communications, representations or agreements, either verbal or written, between the Parties with respect to the subject matter hereof.

12.8 Severability

The validity or enforceability of any provision of this Direct Agreement shall not affect the validity or enforceability of any other provision set forth herein.

12.9 Amendments

No modification of this Direct Agreement shall be valid unless it is in writing and signed by all of the Parties.

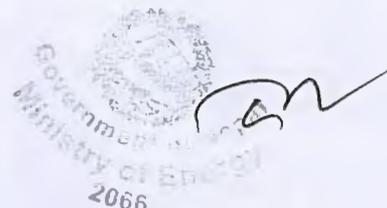
13. GOVERNING LAW, DISPUTES AND JURISDICTION

13.1 Governing Law

This Direct Agreement and all non-contractual or other obligations arising out of or in connection with it are governed and construed in accordance with the laws of England and Wales.

13.2 Arbitration

- (a) Any Dispute between the Parties 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 Clause 13.2 (*Arbitration*).
- (b) The arbitration tribunal (the "**Tribunal**") shall consist of three arbitrators. The appointment of the Tribunal shall be conducted in accordance with the SIAC Rules.
- (c) The seat of the arbitration shall be Singapore, the Republic of Singapore.
- (d) The language of the arbitration shall be English.
- (e) This arbitration agreement and any dispute or claim arising out of or in connection with this arbitration agreement, including its interpretation, subject matter and formation, shall be governed by and construed in accordance with the laws of England and Wales.



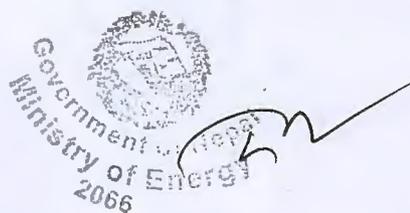
- (f) If more than one arbitration is commenced under this Direct Agreement [and any Assigned Agreement] between: (i) the GON or any GON Agency and (ii) the Security Trustee or the other Finance Parties, and any Party contends that the issues should be heard in one proceeding because two or more arbitrations are substantially related and/or involve the same parties, it may apply to the arbitral tribunal in the first filed of such proceedings, and it must also send such application to all parties to the first filed proceeding and the later proceeding(s).
- (g) The arbitral tribunal appointed in the first filed proceeding 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. Notice of any such determination must be provided to any arbitrators already appointed in relation to the later proceedings and the appointing authority. Any appointment of an arbitrator in relation to the later proceedings before the date of such determination will terminate immediately and the arbitrator will be deemed to be discharged. This termination is without prejudice to the validity of any act done or order made by that arbitrator or by any court in support of that arbitration before that arbitrator's appointment is terminated; his or her entitlement to be paid proper fees and disbursements; and the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.
- (h) The Parties expressly accept that any Dispute under this Direct Agreement may accordingly be disposed of in the same arbitration proceedings as any other dispute arising under [any Assigned Agreement] referred to in Clause 13.2(f) (*Arbitration*).
- (i) The arbitral tribunal appointed in respect of any Dispute may, upon the request of a Party to an arbitration commenced under this Direct Agreement or under [an Assigned Agreement] referred to in Clause 13.2(f) (*Arbitration*), having regard to the stage of the proceedings and other relevant circumstances, join any Party to this Direct Agreement as a party to such arbitration. Any Party so joined to arbitration proceedings may request that the other Party to this Direct Agreement or further parties to [any of the Assigned Agreements] referred to in Clause 13.2(f) (*Arbitration*) be joined to such arbitration proceedings.
- (j) Each of the Parties to this Direct Agreement hereby consents to be [joined] to arbitration proceedings in relation to any Dispute under this Direct Agreement or any arbitration arising from [an Assigned Agreement] referred to in Clause 13.2(f) (*Arbitration*) at the request of a party to that arbitration following the initiation of the joinder of parties.
- (k) This Direct Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in the relevant arbitral proceedings.

13.3 Waiver of sovereign immunity and non-termination/suspension of the New York Convention

- (a) In regard to any arbitration proceedings pursuant to this Direct Agreement and any proceedings to enforce, recognise or execute any arbitral awards rendered by a tribunal constituted pursuant to this Direct 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.



- (b) The GON hereby irrevocably and unconditionally agrees that: (a) should any proceedings be brought against the GON or its assets, other than its aircraft, naval vessels and other defense related assets or assets protected by the diplomatic and consular privileges under the State Immunity Act of England or the Foreign Sovereign Immunities Act of the United States or any analogous legislation (the "Protected Assets") in any jurisdiction in connection with this Direct Agreement or any of the transactions contemplated by this Direct Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of the GON on behalf of itself or any of its assets (other than the Protected Assets); (b) it waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and (c) it consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including without limitation, the making, enforcement, or execution against or in respect of any of its assets whatsoever (other than the Protected Assets) regardless of the use or intended use of the assets.



SCHEDULE 1

FORM OF TRANSFER CERTIFICATE

TO: [GON]

TRANSFER CERTIFICATE

1. Relating to (a) the Project Development Agreement dated [●] (the "**Project Development Agreement**") between the Government of Nepal (the "**GON**"), represented by Ministry of Energy and [●] (the "**Company**") and (b) the [] dated [●] (the "[]"; together with the Project Development Agreement, the "**Assigned Agreements**") between GON and the Company.
2. Terms defined in the Direct Agreement dated [●] between the GON, the Company and [bank] as security trustee (the "**Security Trustee**") (the "**Direct Agreement**") shall, subject to any contrary indication, have the same meaning herein.
3. The Security Trustee requests that [●] (the "**Substitute**") accepts and procures the transfer to the Substitute of all of the rights, title and interest of and all of the obligations of Company under the Assigned Agreements and the Direct Agreement by countersigning and delivering this Transfer Certificate to the GON at its address for the service of notices specified in the Direct Agreement.
4. The Substitute hereby requests the GON to accept this Transfer Certificate as being delivered to the GON pursuant to and for the purposes of Clause 7.2 (*Novation*) of the Direct Agreement so as to take effect in accordance with the terms thereof on the Effective Date or on such later date as may be determined in accordance with the terms thereof.
5. The Substitute represents and warrants that it is has received copies of the Assigned Agreements together with such other information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Security Trustee to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and will not rely on the Security Trustee in relation to its entering into this Transfer Certificate and the Assigned Agreements.
6. The Substitute hereby undertakes with the GON that it will perform in accordance with the terms thereof all obligations of the Company which by the terms of the Assigned Agreements and the Direct Agreement will be assumed by it after delivery of this Transfer Certificate to the GON.
7. The Security Trustee makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Assigned Agreements or any document relating thereto and assumes no responsibility for the performance and observance by any party of any of its obligations under the Assigned Agreements or any document relating thereto and any and all such conditions and warranties whether expressed or implied by law or otherwise are hereby excluded.
8. The Transfer Certificate and the rights and obligations of the parties hereunder and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with the laws of England.

By:

For and on behalf of the Security Trustee



Schedule 20 FORM OF PERFORMANCE SECURITY

Date:

Government of Nepal ("GON")
[Insert address]

Re: Bank Guarantee (Performance Security) No. [●]

We have been informed that **NEPAL WATER & ENERGY DEVELOPMENT COMPANY PRIVATE LIMITED**, a limited liability company incorporated and registered under the Company Act, 2063 (2006) of Nepal, having its registered office at [Insert address], Kathmandu, Nepal (the "**Company**") has entered into a Project Development Agreement on [*] ("**PDA**") with you (GON) for the development, design, engineering, financing, procurement, insurance, construction, completion, testing, commissioning, ownership, operation, maintenance, repair and transfer of the Upper Trishuli Hydropower Project and associated Transmission Line (as more particularly described in the PDA).

In accordance with the terms of the PDA, the Company is required to submit an unconditional and irrevocable, payable on-demand bank guarantee of NPR [*] (Nepalese Rupees [*] only), (the "**Security Amount**") to GON for the due and faithful performance of Company's obligations under the PDA (the "**Performance Security**") and we
Kathmandu, Nepal (the "**Guarantor**") have at the request of the Company agreed to provide such Performance Security, being this Bank Guarantee (Performance Security) No. [●].

On your first written demand, stating that either (a) the Company is in default of its obligations under the PDA, or (b) the Company has not extended or replaced this Performance Security with another performance security issued on the same terms at least fourteen (14) days prior to the End Date (as hereinafter defined), we, the Guarantor as primary obligor hereby expressly, unconditionally and irrevocably undertake to pay to GON, without demur, reservation, protest and any reference to the Company or the PDA the amount specified in such demand, provided that the total of all demands shall not exceed the sum of the Security Amount i.e. NPR.....(Nepalese Rupees.....only). You shall not be required to prove or show grounds for your demand or the sum specified therein. It is clarified further that your demand shall be conclusive evidence to us that such payment is due under the terms of the PDA. It shall not be necessary, and the Guarantor hereby waives any necessity, for GON to proceed against the Company before presenting to the Guarantor its demand under the Performance Security.

The term of this Performance Security shall commence on the date of its issuance and shall expire on the date that is 12 months from such date i.e. (the "**End Date**").

All claims, if any, in respect of this Performance Security must be received by the Guarantor on or before the End Date.

This guarantee is subject to Uniform Rules for Demand Guarantees ICC Publication No. 758, except that the provisions of Article 26 are hereby excluded and shall be governed by and construed in accordance with the Laws of Nepal and will be subject to the jurisdiction of the courts of Nepal.

The Performance Security shall not be affected by any change in the constitution of the Guarantor or of the Company.
Notwithstanding anything contained hereinabove:



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(1) Our liability under this Bank Guarantee shall not exceed the Security Amount i.e. NPR..... (Nepalese Rupees Only)

(2) Any demand may be brought by GON under this Bank Guarantee up to close of business on the End Date. i.e.

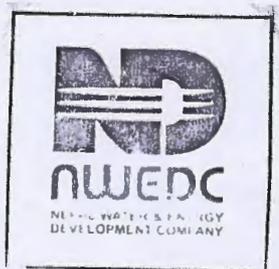
(3) We shall be liable to pay any amount under this Bank Guarantee or part thereof only if we receive a claim or demand in writing within banking hours at our Kathmandu, Nepal or if such branch is not operating, at another branch in Kathmandu, Nepal, on or before the End Date and if no such demand has been received by us by that time and date, all rights to bring any demand under this guarantee will cease.

Notwithstanding anything contained in sub-section (2) and (3) above, all claims made by GON on or before the End Date shall, subject to sub-section (1) above, be honored by the Guarantor where payment in respect of such demands have not been made by the End Date.

This guarantee (or any of its proceeds) is not assignable and is not transferable in whole or in part. Upon payment by the Guarantor in respect of all claims or demands made by GON under this Bank Guarantee on or before the End Date, this guarantee automatically becomes null and void whether or not the original has been returned to us.

[Execution Blocks to be inserted]

Handwritten signature



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Handwritten initials