

19 September 2014

**GOVERNMENT OF NEPAL, REPRESENTED BY THE INVESTMENT BOARD OF THE
GOVERNMENT OF NEPAL
and**

**GMR UPPER KARNALI HYDROPOWER LIMITED
and**

KARNALI TRANSMISSION COMPANY PRIVATE LIMITED

**Project Development Agreement
Upper Karnali Hydropower Project**



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THIS PROJECT DEVELOPMENT AGREEMENT is entered into on 19 September 2014

BETWEEN:

- (1) **THE GOVERNMENT OF NEPAL** (the "**GON**"), represented by the Investment Board of the Government of Nepal ("**IBN**");
- (2) **GMR UPPER KARNALI HYDROPOWER LIMITED**, a limited liability company incorporated and registered under the Company Act, 2063 (2006) of Nepal, having its registered office at P.O. Box 148, Lalitpur, Chakupat-10, Lalitpur, Nepal (the "**Generation Company**"); and
- (3) **KARNALI TRANSMISSION COMPANY PRIVATE LIMITED**, a limited liability company incorporated and registered under the Company Act, 2063 (2006) of Nepal, having its registered office at P.O. Box 148, Lalitpur, Chakupat-10, Lalitpur, Nepal (the "**Transmission Company**");

Each of GON, the Generation Company and the Transmission Company shall together be referred to as the "**Parties**" and individually as a "**Party**".

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 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 the 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.
- (C) 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.
- (D) Accordingly, GON, by way of a notice dated 18 December 2006, solicited expressions of interest ("**EOI**") through an international competitive bidding process to select a developer for the Project.
- (E) In response to the EOI, the Sponsors submitted their proposal to the GON. The GON, after a careful evaluation of the proposals submitted by various other potential developers, established the Sponsors as the most substantially responsive consortium of developers for the Project.
- (F) The then Ministry of Water Resources, GON was given the responsibility by the Council of Ministers, GON on 30 December 2007 to initiate the procedure for the execution of the Project in accordance with Section 35 of the Electricity Act, 2049 (1992) and accordingly, the then Ministry of Water Resources, GON and the Sponsors entered into a memorandum of understanding dated 24 January 2008 as amended by a supplementary memorandum of understanding on 6 December 2013 (collectively, the "**MOU**"). Under the MOU, it was agreed that the Generation Company shall have the right to manage, implement, develop and execute the Project and in this regard, a detailed project development agreement was required to be executed.
- (G) Pursuant to the terms of the MOU, a joint venture agreement was executed between the





Sponsors and the NEA on 21 February 2008 (the "Original JVA").

- (H) The Generation Survey License was issued by Department of Electricity Development to the Generation Company on 21 May 2008 which was subsequently extended by GON till 18 May 2013. The Generation Company has duly fulfilled all its obligations under the Generation Survey License.
- (I) Within the validity period of the Generation Survey License, the Generation Company submitted an application dated 15 May 2013 (Ref No. GUKHL/IBN/0061/13), in accordance with the Electricity Act, 2049 (1992) and the Electricity Regulations, 2050 (1993), for the Generation License.
- (J) The Ministry of Energy, GON has also granted to the Transmission Company the Transmission Survey License dated 7 July 2010 for transmission of electricity which has been extended up to 6 July 2014. The Transmission Company applied for a further extension of the Transmission Survey License, on 2 July, 2014.
- (K) Clause 33 of the MOU requires execution of a detailed project agreement for the development and operation of the Project. Since the grant of the Survey Licenses, the Companies have undertaken works in relation to the Project, details of which are provided in Schedule 12 (*Details of Work Undertaken in Relation to the Hydro Property*).
- (L) The Investment Board Act, 2068 (2011) ("**IBN Act**") was enacted to create the IBN. The IBN Act and Investment Board Rules, 2069 (2012) ("**IBN Rules**") grant to IBN the authority to implement investment necessary for hydropower generation projects of 500MW and above. Accordingly, by the decision of the IBN Board dated 26 May 2012, the Generation Project was brought under the ambit of IBN. The Government of Nepal (Allocation of Business) Rules, 2069 (2012) further clarify that IBN has the exclusive authority to promote private investments in respect of hydropower projects of 500MW and above.
- (M) 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.
- (N) Section 7(c) of the IBN Act states that IBN may enter into an agreement with an investor on the basis of the terms and conditions approved by the IBN Board. Sections 5 (c) and (f) of the IBN Act also empower the IBN Board to, *inter alia*, conclude an agreement with an investor for, *inter alia*, generation and transmission of electricity.
- (O) The IBN Board by a decision dated 16 April 2013 formed a seven (7) member negotiations committee (the "**PDA Negotiations Committee**") headed by the Chief Executive Officer of IBN to negotiate and conclude this Agreement. The PDA Negotiations Committee and the Parties have been meeting regularly to negotiate and conclude this Agreement.
- (P) The Sponsors and the Generation Company have transferred the rights in relation to the Transmission Line to the Transmission Company. However, the Generation Company shall remain liable to GON in all respects in relation to the development of the Project as a whole in accordance with the terms of this Agreement.
- (Q) (1) The Companies have agreed to develop and execute the Project;
- (2) The GON has agreed to support the Companies in the development of the Project; and
- (3) The Companies have agreed to own and operate the Hydro Property for the Term and shall transfer the Hydro Property and Project Assets to the GON or its nominee in a Good Operating Condition on the Expiry Date, free of charge,

in each case in accordance with this Agreement.





- (R) The IBN Board has approved the execution of this Agreement on 17 September 2014. The Council of Ministers of the GON have approved the execution of this Agreement on 18 September 2014. IBN has the requisite powers and authority to execute this Agreement for and on behalf of the GON and pursuant to such execution by IBN, the GON shall be legally and validly bound by this Agreement.

IT IS AGREED as follows:

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, a 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, a 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 the Generation Company Financial Close, the Companies not commencing construction of the Power Station,

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

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

"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*).

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

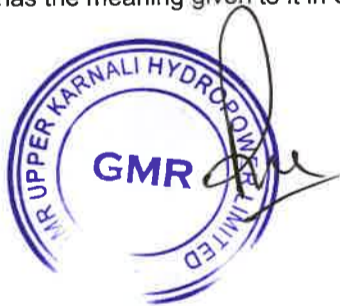
"Agreement Date" means the date on which this Agreement is executed by the Parties.

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

"Approvals Schedule" means Schedule 20 (*Approvals Schedule*) of this Agreement.

"Benefit Sharing" has the meaning given to it in Schedule 15 (*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 in the case of each Company, 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 Rate**" means the relevant Capacity Royalty rate figure contained in the table in Section 11.25.1 (*Royalties Payable to GON*).

"**Capacity Royalty**" means the capacity royalty payable by the Generation Company in accordance with Section 11.25 (*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 as per the Laws of Nepal as of the Agreement Date, or (2) is specifically agreed to by any 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;

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

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

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

"**Company**" means the Generation Company or the Transmission Company (as the context may require) and "**Companies**" shall be construed accordingly.

"**Company Access Infrastructure**" has the meaning given to it in Section 10.11.3 (*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 – Generation Project*).

"**Competitor**" has the meaning given to it in Section 10.1.2 (*Non-discrimination*).

"**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 a Company for the construction of the relevant component of the Hydro Property.

"**Construction Period**" means the period from Generation Company Financial Close until the occurrence of Final COD;

"**Construction Plan**" has the meaning given to it in Section 11.32.8 (*Information sharing*).

"**Contractor**" means Construction Contractor(s), O&M Contractor(s), or any other contractor(s) appointed by a 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.

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

"**Delay Liquidated Damages**" has the meaning given to it in Section 7.3.4 (*Other delays - Companies*).

"**Debt**" has the meaning given to it in Section 11.27 (*Debt: equity ratio*).

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

"**Disaster Management Plan**" means a disaster management plan prepared and/or updated by the Generation Company in accordance with Section 11.29 (*Disaster Management*) and Schedule 13 (*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.

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

"**DPR**" means the detailed project reports for the Project which have been submitted to GON pursuant to the Survey Licenses.

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

"**EIA**" means the environmental impact assessment report for the Generation Project approved by Ministry of Science, Technology and Environment, GON on April 18, 2013 vide Letter No. 069/070.





"**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.

"**Energy Receipts**" has the meaning given to it in Section 11.25.2(B) (*Royalties Payable to GON*).

"**Energy Royalty**" means the energy royalty payable by the Generation Company pursuant to Section 11.25 (*Royalties Payable to GON*).

"**Energy Royalty Rate**" has the meaning given to it in Section 11.25.2(B) (*Royalties Payable to GON*).

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

"**Equity**" has the meaning given to it in Section 11.27 (*Debt: equity ratio*).

"**Expiry Date**" means the last day of the period ending on the twenty fifth (25th) anniversary of the Scheduled COD, as such date may be extended from time to time in accordance with this Agreement.

"**Export Offtaker**" means the purchaser for the proportion of the energy and/or capacity from the Power Station sold by the Generation Company under any Export Power Purchase Agreement.

"**Export Power Purchase Agreement**" or "**Export PPA**" means any long-term (seven (7) years or more) power purchase agreement(s) for the sale of a proportion of the energy and capacity from the Power Station from time to time.

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

"**Final COD**" means the date on which the Hydro Property has achieved commercial operations in accordance with Section 7.1 (*COD*).

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

"**Financial Close**" means either Generation Project Financial Close or Transmission Project Financial Close, as the context may require.

"**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 a Company with any Lender, in connection with the financing (including refinancing) of the Project, as amended from time to time.

"**Financing Plan**" means the Companies' financing plan for the Project, setting out in reasonable detail the amount and form of equity and debt to be contributed by the Shareholders and/or the Sponsors in each Company, the amount of all loans to be provided to each 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 Energy and Power**" has the meaning given to it in Section 11.15.1 (*Operations Procedure Code*).

"**GEL**" means GMR Energy Limited, a company incorporated under the Companies Act, 1956 of the Republic of India, having its registered office at Skip House, 25/1, Museum Road, Bangalore 560 025.





"**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 900MW.

"**Generation Project Area**" has the meaning given to it in Section 6.1.1(A) (*GON rights and obligations*).

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

"**Generation Project Event**" has the meaning given to it in Section 2.2.4 (A) (*The Project*).

"**GIL**" means GMR Infrastructure Limited, a company incorporated under the Companies Act, 1956 of the Republic of India, having its registered office at Skip House, 25/1, Museum Road, Bangalore 560 025.

"**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 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, regional, local or municipal, administrative, executive, legislative, judicial, quasi-judicial, regulatory, agency, instrumentality or authority or body of Nepal.

"**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 Power Pooling Option**" has the meaning given to it in Section 11.15.4 (*GON Power Pooling Option*).

"**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.

"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 each Company to the GON prior to transfer of the relevant part of the Project setting out each 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.

"IBN Act" has the meaning given to it in Recital (L).

"IBN Rules" has the meaning given to it in Recital (L).

"ICC" means the International Chamber of Commerce.

"IEE" means the initial environment examination report for the Transmission Project approved by the relevant GON Instrumentality.

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

"Initial License Term" has the meaning given to it in Section 2.4.3 (*Generation License and Transmission License*).

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

"INR" means the lawful currency of the Republic of India.

"Interim COD" means in respect of each unit (other than the last unit to be commissioned), the date specified in a certificate delivered by the Generation Company certifying that such





a unit has commenced commercial operations in accordance with Good Industry Practice.

"Insurance Policies" has the meaning given to it in paragraph 1 (*Insurance*) of Schedule 6 (*Insurance*).

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

"Irrigation Projects" has the meaning given to it in Section 6.3 (*Downstream Irrigation Projects and other studies*).

"JVA" means the Original JVA, as amended from time to time.

"kW" means kilowatt.

"kWh" means kilowatt hour.

"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 – Generation Project*).

"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 – Generation Project*).

"Land Lease Agreement(s)" means the agreement(s) to be entered into between the relevant 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, byelaws, certificates, decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licenses, and permits of any GON Instrumentality;
- (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) a Company, (ii) a Contractor, Lenders, Shareholders, Sponsors, or (iii) the Project.

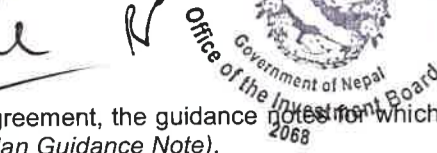
"Lenders" means any lenders, export credit agencies, multilateral institutions, bondholders or other lending agencies whose ordinary course of business is the lending of money, or any trustee or agent acting on behalf of any of the foregoing, in each case, providing financing or refinancing to either of the Companies 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 other 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 Related Party; (iv) Representative of any of the Sponsors, Shareholders or Related Party; 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 15 (*Local Benefit Sharing Plan Guidance Note*).

"Local Community Power" has the meaning given to it in Section 11.8.1 (*Energy to local households*).

"Local Community Power Facility" has the meaning given to it in Section 11.8.1 (*Energy to local households*).

"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).

"MW" means megawatt.

"NEA" means the Nepal Electricity Authority, and shall include its successors and permitted assigns.

"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 16 (*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 17 (*Nepal Industrial Benefits Plan Guidance Note*).

"NPR" means the lawful currency of Nepal.

"OPC" or "Operations Procedure Code" means the operations procedure code for the supply of Free Energy and Power by the Generation Company and to be prepared pursuant to Section 11.15 (*Operations Procedure Code*).

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

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

"Other Planned Projects" has the meaning given to it in Section 6.3.1 (*Downstream Irrigation Projects and other studies*).

"Outstanding Private Land" has the meaning given to it in Section 8.2.5 (*Acquisition of Private Land – Generation Project*).

"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 Security (Signing)" means a performance bond in the amount of NPR four (4) Crores and fifty (50) Lakhs or equivalent amount in INR submitted to the GON by the Generation Company pursuant to Section 3.1.6 (*Companies' Conditions Subsequent*), to be kept valid for the period commencing from such date of delivery until the date falling thirty (30) days after Final COD, and in the form of either:

- (A) an unconditional and irrevocable, payable on-demand bank guarantee issued by a Nepalese bank; or





- (B) an unconditional and irrevocable, payable on-demand bank guarantee of an international bank duly confirmed by a first category Nepalese bank.

"Performance Security (FC)" means a performance bond in the amount of NPR forty (40) Crores and fifty (50) Lakhs or equivalent amount in INR submitted to the GON by the Generation Company pursuant to Section 3.1.7 (*Companies' Conditions Subsequent*), to be kept valid for the period commencing from such date of delivery until the date falling thirty (30) days after Final COD, and in the form of either:

- (A) an unconditional and irrevocable, payable on-demand bank guarantee issued by a Nepalese bank; or
- (B) an unconditional and irrevocable, payable on-demand bank guarantee of an international bank duly confirmed by a first category Nepalese bank.

"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 Generation Company which set out specific social and environmental measures to be undertaken by the Generation Company, in order to enable the Project to be carried out in compliance with the EIA, IEE and 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 Companies' 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 the 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 influence their participation in the negotiation process between the GON





and the Sponsor and any Company or 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, IEE, Resettlement and Rehabilitation Plan or any Supplementary E&S Documents.

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

"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 5.8.4 (*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*) and the Transmission Line specifications set out in Schedule 9 (*Transmission Line Specifications*).

"Qualified Investor" has the meaning given to it in Section 14.3.7 (*Shareholding Restrictions*).

"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 each Company pursuant to the Laws of Nepal and this Agreement in connection with the Project.

"Related Party" means in relation to any Party, any of its Affiliates, or any of their respective Affiliates.

"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 Generation 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 15.5.3 (*Expert determination*).

"Restricted Period" has the meaning given to it in Section 10.1.2 (*Non-discrimination*).





"**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 each 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 each 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, and (C) 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.

"**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 (*ROWs – Transmission Project*).

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

"**Scheduled COD**" means the date falling sixty (60) months after the Generation Project 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: (i) financial markets in Europe, the United States of America, Singapore, Hong Kong, China or India; or (ii) the export power market:

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

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

- (A) GMR Energy Limited, a company incorporated under the Companies Act, 1956 of the Republic of India, having its registered office at Skip House, 25/1, Museum Road, Bangalore 560 025; and
- (B) GMR Infrastructure Limited, a company incorporated under the Companies Act, 1956 of the Republic of India, having its registered office at Skip House, 25/1, Museum Road, Bangalore 560 025; and
- (C) Italian-Thai Development Company limited, a company incorporated under the appropriate laws of Thailand and having its registered office at 2034/132-161 New





Petchburi Road, Bangkok, Huaykwang, Bangkok 10320, Thailand.

"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 MOU until the Agreement Date, the reasonable and prudent costs and expenses of the Companies, Sponsors and Shareholders incurred for the development of the Project, provided that the aggregate of such amount shall not exceed NPR one hundred (100) Crores; and
- (B) from the Agreement Date until the Calculation Date, the reasonable and prudent costs and expenses of the Companies 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 a Company prepares and applies to comply or be consistent with the Performance Standards.

"Survey Licenses" means:

- (A) license number BBB/064/65 B.U.SA.328 issued by the Department of Electricity Development (DoED), Ministry of Energy, GON on 18 May 2008 which permits the Generation Company to conduct surveys, studies and investigations in connection with the production of electricity and associated matters (the **"Generation Survey License"**); and
- (B) license number BBB 066/67 –B. PRA. SHA 119 issued by the Department of Electricity Development (DoED), Ministry of Energy, GON on 7 July 2010 which permits the Transmission Company to conduct studies and investigations in connection with the transmission of electricity and associated matters (the **"Transmission Survey License"**).

"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 10 (*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*).

"**Time-Based Land Acquisition Activities Schedule**" means table number 2 in the Land Acquisition Plan (as set out in Schedule 19 (*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 (*Interpretation*) or a GON Instrumentality.

"**Transaction Documents**" means this Agreement, the JVA and the Land Lease Agreement.

"**Transfer**" has the meaning given to it in Section 14.3 (*Shareholding Restrictions*).

"**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 Companies in accordance with Section 13.4 (*Transfer Price*).

"**Transfer Shares**" means any shares of either Company with voting, economic or rights of management and control, and any securities of either Company that are convertible into such shares at the option of the holder.

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

"**Transferee Qualified Investor**" has the meaning given to it in Section 14.3.5 (*Shareholding Restrictions*).

"**Transferor**" has the meaning given to it in Section 14.3.5 (*Shareholding Restrictions*).

"**Transmission Costs**" has the meaning given to it in Section 11.25.2(B) (*Royalties Payable to GON*).

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

"**Transmission Line**" means the 400kV Double Circuit (D/C) transmission line running from switchyard of the Generation Project to Nepal-India Border which is to be constructed as part of the Project, as more specifically described in Schedule 9 (*Transmission Line Specifications*).

"**Transmission PDA**" has the meaning given to it in Section 2.6.1 (*Project development agreement with the Transmission Company*).

"**Transmission PDA Request**" has the meaning given to it in Section 2.6.1 (*Project development agreement with the Transmission Company*).

"**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.

"**Transmission Project Event**" has the meaning given to it in Section 2.2.4 (B) (*The Project*).

"**Transmission Project Financial Close**" means the satisfaction or waiver of all conditions to initial drawdown under the Financing Documents for the Transmission Project including





contribution of equity and debt by the Shareholders and/or the Sponsors into the Transmission Company pursuant to the requirements of the Financing Documents for the Transmission Project.

"Transmission Tariff" has the meaning given to it in Section 10.14.3 (*Transmission tariff*).

"Uncontracted Power" means that portion of the electrical energy and capacity from the Power Station that has not been contracted on the date on which a written request from GON is received by the Generation Company pursuant to Section 11.16 (*Domestic Commercial Power Purchase Agreement*), excluding Free Energy and Power.

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

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 a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.16 a reference to "day", "month" or "year" shall mean a calendar day, calendar month or calendar year, respectively, pursuant to the Gregorian calendar;
- 1.2.17 a reference to writing or written includes faxes but not e-mails;
- 1.2.18 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
- 1.2.19 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 Generation 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 (other than the Transmission Line) and oversee the development of the Project as a whole;
 - (B) use water from the Karnali River for the Generation Project; and
 - (C) 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 and outside the territorial jurisdiction of Nepal,

in accordance with this Agreement and the Laws of Nepal.

- 2.1.2 to the Transmission Company for the Term, the right to:
- (A) design, engineer, finance, procure, construct, complete, test, commission, develop, insure, own, operate and maintain the Transmission Line; and
 - (B) transmit electrical energy from the Power Station over the Transmission Line in Nepal,

in accordance with this Agreement and the Laws of Nepal.

2.2 The Project

- 2.2.1 Notwithstanding anything to the contrary contained in this Agreement, the Generation Company shall be responsible for and shall, and shall procure that the Transmission Company shall, undertake the Transmission Project in accordance with the Laws of Nepal, the Government Approvals and this Agreement.
- 2.2.2 The Companies shall ensure that the Project is carried out, in each case, in accordance with the (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).
- 2.2.3 In consideration for the GON entering into this Agreement and granting various concessions and other rights to the Companies, the Companies shall transfer the Power Station, the Transmission Line, the balance of the Hydro Property and the Project Assets to the GON or the GON's nominated entity free of charge and free





and clear of all Encumbrances and liabilities (other than the liability 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.

2.2.4 The Parties acknowledge and agree that the Generation Project and the Transmission Project are inter-dependent and one integrated project and as such:

- (A) the occurrence of any GON Force Majeure Event, Change in Law, GON Event of Default or breach of this Agreement by GON affecting only the Generation Project (a "**Generation Project Event**") shall not prejudice the right of the Transmission Company to make any claim against GON for losses or damages suffered in so far as the effects of the Generation Project Event affect the Transmission Company;
- (B) the occurrence of any GON Force Majeure Event, Change in Law, GON Event of Default or breach of this Agreement by GON affecting only the Transmission Project (a "**Transmission Project Event**") shall not prejudice the right of the Generation Company to make any claim against GON for losses or damages suffered in so far as the effects of the Transmission Project Event affect the Generation Company;
- (C) Generation Company shall not be entitled to rely on the Transmission Company's Event of Default, breach of this Agreement or act or omission as an excuse for not performing its obligations pursuant to this Agreement;
- (D) Transmission Company shall not be entitled to rely on the Generation Company's Event of Default, breach of this Agreement or act or omission as an excuse for not performing its obligations pursuant to this Agreement; and
- (E) Where a Company is liable under this Agreement, the Companies shall be jointly and severally liable to GON in respect of any such liability or loss incurred or suffered by GON irrespective of whether such liability or loss is attributable to the Generation Company and/or the Transmission Company.

2.3 Term

2.3.1 The term of this Agreement shall commence on the Agreement Date and shall expire on the twenty fifth (25th) anniversary of the Scheduled COD, unless terminated earlier or extended in accordance with this Agreement (the "**Term**"). Further, the Parties may extend the Term by mutual agreement in writing.

2.4 Generation License and Transmission License

2.4.1 The Generation Company shall apply for the Generation License and the Transmission Company shall apply for the Transmission License, to the relevant GON Instrumentality in accordance with the Laws of Nepal and this Agreement.

2.4.2 If each Company is in compliance with its respective obligations under Section 2.4.1 (*Generation License and Transmission License*), GON shall, in accordance with the Laws of Nepal, procure the issuance of the Generation License to the Generation Company and the Transmission License to the Transmission Company, prior to the Generation Company Financial Close.

2.4.3 Each of the Generation License and the Transmission License shall have an initial term of thirty (30) years ("**Initial License Term**") provided that the Initial License Term shall be co-terminus with the Term and shall automatically expire on the Expiry Date or the Transfer Date, as the case may be. If the Term is extended pursuant to this Agreement then GON shall procure the extension of the Initial License Term accordingly.





2.4.4 Each Company shall comply with the terms of all Government Approvals granted to it.

2.5 **Permitted activities from the Agreement Date**

GON grants to the Companies, from the Agreement Date, the right to undertake the activities set out in Schedule 21 (*Permitted Activities*).

2.6 **Project development agreement with the Transmission Company**

2.6.1 Without prejudice to Section 2.2.1 (*The Project*), if the Lenders to either the Generation Project or the Transmission Project require a separate project development agreement for the Transmission Project ("**Transmission PDA**"), the Companies shall provide a joint written notice to GON to obtain GON's consent to (A) amend this Agreement and (B) execute the Transmission PDA (the "**Transmission PDA Request**").

2.6.2 Within three (3) months of the date of the receipt by GON of the Transmission PDA Request, the Parties shall discuss and: (A) enter into the Transmission PDA (between the GON and the Transmission Company) and any associated arrangement or agreement; and (B) amend this Agreement, provided that such actions do not have an adverse impact on the Project or the rights or obligations of the Parties under this Agreement.

2.6.3 So far as is relevant, the terms and conditions of the Transmission PDA shall be substantially similar to those of this Agreement.

3. **CONDITIONS SUBSEQUENT**

3.1 **Companies' Conditions Subsequent**

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

3.1.1 no later than thirty (30) days from the execution of each Financing Document, provide a copy of such Financing Document to GON;

3.1.2 no later than thirty (30) days from the Agreement Date, provide or cause to be provided, to the GON, a legal opinion from each Company's legal counsel confirming: (A) such 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 each Company in accordance with its terms;

3.1.3 no later than twenty-four (24) months from the Agreement Date, achieve Generation Project Financial Close, provided however that, such period shall stand extended upon its expiry by a maximum additional period of one (1) year if the Companies are unable to achieve Generation Project Financial Close for reasons beyond Companies' control despite the Companies making diligent and commercially reasonable efforts to achieve Generation Project Financial Close within such period. The Companies shall provide details (in writing) of: (A) such reasons beyond Companies' control; (B) Companies' diligent and commercially reasonable efforts towards achievement of Generation Project Financial Close; and (C) Companies' indicative plan to achieve Generation Project Financial Close within the extended one (1) year period;

3.1.4 no later than forty eight (48) months from the Agreement Date, achieve Transmission Project Financial Close, provided however that, such period shall stand extended upon its expiry by a maximum additional period of one (1) year if the Companies are unable to achieve Transmission Project Financial Close for reasons beyond the Companies' control despite the Companies making diligent and commercially reasonable efforts to achieve Transmission Project Financial Close within such





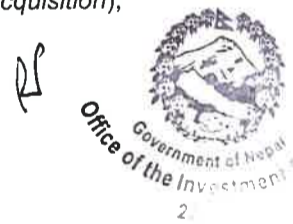
period. The Companies shall provide details (in writing) of: (A) such reasons beyond the Companies' control; (B) the Companies' diligent and commercially reasonable efforts towards achievement of Transmission Project Financial Close; and (C) the Companies' indicative plan to achieve Transmission Project Financial Close within the extended one (1) year period;

- 3.1.5 no later than thirty (30) days from each Financial Close, provide to GON a written confirmation from the Lenders' agent certifying or confirming that the relevant Financial Close has occurred;
- 3.1.6 subject to Section 3.3.2 (*Joint Obligations*), no later than thirty five (35) days from the Agreement Date, provide the Performance Security (Signing) to the GON;
- 3.1.7 no later than thirty (30) days from the date of the Generation Company Financial Close, provide the Performance Security (FC) to GON;
- 3.1.8 no later than one (1) month from the relevant 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 Final COD by the Scheduled COD;
- 3.1.9 no later than one (1) year prior to the Scheduled COD, provide evidence to GON of having made arrangements for the sale of at-least 44% of the energy and capacity from the Power Station under the Export Power Purchase Agreement or over the medium-term and provide a sale plan in respect of the balance of the energy or capacity from the Power Station taking into account the provisions of Sections 11.5 (*Arm's length transactions*) and 11.16 (*Domestic Commercial Power Purchase Agreement*);
- 3.1.10 no later than:
- (i) one (1) year prior to the Scheduled COD, submit to the GON copies of long term open access approvals in accordance with applicable laws of relevant jurisdictions; and
 - (ii) six (6) months prior to the Scheduled COD, submit to the GON copies of connection agreements,
- for the transmission of energy from the Power Station to any off-taker and for the connection of the Power Station with the requisite grids;
- 3.1.11 no later than two (2) years from the Final COD, provide the Handover Plan and operating principles for the Hydro Property to GON;
- 3.1.12 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*) and 11.29 (*Disaster Management Plan*);
- 3.1.13 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*);
- 3.1.14 achieve Final COD no later than the Scheduled COD.

3.2 GON Conditions Subsequent

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

- 3.2.1 no later than the expiry of the Land Acquisition Delay Period prescribed in Section 8 (*Land Acquisition*), lease or transfer (as the case may be) the (A) GON Land, (B) Outstanding Private Land, and (C) ROWs, to the relevant Company, in each case, in accordance with Section 8 (*Land Acquisition*);





- 3.2.2 no later than thirty (30) days from the Agreement Date, provide ~~cause~~ to be provided, to the Companies, a legal opinion from the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs confirming: (A) GON'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 GON in accordance with its terms;
- 3.2.3 no later than one (1) year from the Agreement Date, that a notification is published which exempts the Companies from any requirement to pay for ecosystem services to the Ministry of Forest, GON, which is currently payable as of the Agreement Date; and
- 3.2.4 within one (1) year of the Agreement Date:
- (A) exempt the Generation 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 Final COD, provided that the Final COD is achieved by 16 July 2023; and
 - (B) exempt the Generation 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 Final COD and ending on the fifteenth (15th) anniversary of the Final COD, provided that the Final COD is achieved by 16 July 2023.

3.3 Joint Obligations

- 3.3.1 The Parties shall cooperate with each other to facilitate the timely achievement of Financial Close.
- 3.3.2 Within fourteen (14) Business days of the Agreement Date, the Parties shall use their reasonable endeavours to agree on the form of Performance Security (Signing) and Performance Security (FC).

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 Companies Conditions Subsequent by the Companies 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 Companies have not been able to satisfy the Companies 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 either of the Companies 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 Companies are carrying out the Project in accordance with this Agreement provided that this shall not result in the Companies 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 Companies 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 The Parties shall jointly appoint, 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 (or such longer period as otherwise agreed between the Parties in writing):
- (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; and
 - (C) the member responsible for environment, social and local benefits, within ninety (90) days of the Agreement Date.
- 5.1.2 The Parties have the right to change the composition of the PRP by mutual agreement from time to time in the interest of the Project.
- 5.1.3 If the Parties fail to jointly appoint the PRP by executing the PRP Agreements within the periods referred to in Section 5.1.1 (*Appointment of the PRP*) above, then the Companies shall, within one hundred and twenty (120) days of the applicable time 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 Companies.
- 5.1.5 The GON shall inform the Companies 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 Companies to fill the role of the PRP.
- 5.1.6 Within sixty (60) days of the date on which the Companies receive written notice from the GON of its selection, the Parties shall jointly appoint, by executing the PRP Agreements, such independent consulting individuals as the PRP.

5.2 **Duty of care**

The Companies shall procure that the PRP Agreements provide that the PRP members shall owe a joint duty of care to GON and the Companies.

5.3 **Role of the PRP**





- 5.3.1 The terms of reference of the PRP are set out in Schedule 11 (*Scope of work for the Project Review Panel (PRP)*). The Companies shall procure that such terms of reference of the PRP are included in the PRP Agreements.
- 5.3.2 The Parties shall 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 the Companies shall 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 three (3) members collectively having wide & specialized experience in: (A) engineering geology and geotechnical engineering; (B) general hydropower engineering with an emphasis on dam safety aspects; and (C) environment, 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 A chairman of the PRP, who shall be one of the three (3) members referred to in Section 5.4.1 (*Composition of the PRP*) above, shall be jointly appointed by the Parties 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 Companies by mutual agreement in writing.

5.5 Costs of the PRP

- 5.5.1 Until Generation Company Financial Close, 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 equally by GON and the Companies. After Generation Company Financial Close, the PRP Costs shall be borne solely by the Companies.

5.6 Access

The Companies 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 Companies' 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 The Companies shall procure that appropriate provisions in this regard are included in the PRP Agreements.

5.8 Tenure

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

5.8.2 Prior to Generation Company Financial Close, the Parties shall collectively 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 Companies, the initial tenure of the PRP shall be extended up to six (6) months following the Final COD.

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 should maintain oversight of the Project, then the Parties 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 Companies 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 Final COD; and (B) a date required by the Lenders. The Companies shall procure that appropriate provisions in this regard are included in the PRP Agreements.

5.8.5 Subject to Lenders' approval, the Companies 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 Generation Company, the right to use for the Project, the flow of the water in the Karnali River within the Project boundary as identified in Schedule 7 (*Project Area*) ("**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 Generation 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 Karnali River or its tributaries, whether upstream or downstream of the Generation Project Area ("**Other Uses**"), provided that the 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 Generation 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 Karnali 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 18 (*Use of River Water – Water Requirements*) ("**Additional Generation**"). The proceeds received by the





Generation Company attributable to such Additional Generation ("Upstream Benefits"), shall be shared equally between the GON and the Generation Company provided that the calculation of GON's share of such Upstream Benefits shall include calculation of the benefits that GON is receiving (and the increase in) (i) in the quantum of Free Energy and Power provided to GON or a GON Instrumentality, (ii) value of the free equity provided to the NEA and the dividends payable to the NEA and (iii) in the royalties payable to the GON.

If GON is of the reasonable opinion that the Generation Company is receiving Upstream Benefits, the GON shall give a written notice to the Generation Company requesting the Generation Company to discuss and agree a Suitable Mechanism for such sharing of the Upstream Benefits with GON. If the Generation Company and the GON cannot agree to the Suitable Mechanism within thirty (30) days of receiving such written notice from GON, either of GON or the Generation 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 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 as per 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 in Nepal, shall at the request of the Generation 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 in Nepal, shall allow the Generation Company to undertake and facilitate the undertaking of such activities and works as may be required by the Generation Company to mitigate the impact of such natural event;
- (G) shall coordinate between the Generation Company and owners or operators of other projects on the Karnali 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 18 (*Use of river water – water requirements*); and
- (I) shall not be liable to the Companies under this Section 6 (*Water Rights and Obligations*) to the extent the availability or use of water by the Generation 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 Companies 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 Generation Company for the Generation Project, the GON shall compensate the Companies without





double recovery for any increase in costs incurred and loss of revenue suffered by the Companies as follows, upon receipt by GON of an itemised invoice (together with full supporting documentation) from the Companies in this regard payable within thirty (30) days of its receipt:

- (A) setting-off against the Delay Liquidated Damages amount;
- (B) reducing the Energy Royalty payable by the Generation Company to the GON following Interim COD under Section 11.25 (*Royalties Payable to GON*);
- (C) reducing the Capacity Royalty payable by the Generation Company to the GON following Interim COD under Section 11.25 (*Royalties Payable to GON*);
- (D) assigning all, or a proportion of, the revenues being received by a GON Instrumentality, from the sale of Free Energy and Power in the export market pursuant to Section 11.15 (*Operations Procedure Code*);
- (E) reallocating all, or a proportion of, the Free Energy and Power which the Generation Company shall sell in the export market on an arm's length basis;
- (F) increasing the tariff payable for power purchase under the domestic power supply agreement entered into pursuant to Section 11.16 (*Domestic Commercial Power Purchase Agreement*), if any;
- (G) reallocating all, or a proportion of, the dividends declared and payable to the relevant GON Instrumentality under the JVA; or
- (H) 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 a 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 Companies are compensated for such increase in costs and loss of revenue suffered.

6.1.3 If the Companies are unable to fully recover such increase in costs and loss of revenue suffered within twelve (12) months of the date of demand by the Companies in accordance with Section 6.1.2 (*GON rights and obligations*), the Companies shall be entitled to present to GON an itemised invoice (together with full supporting documentation) for any remaining amount which the Companies are entitled to recover from GON under this Section. 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 a Company to GON under this Agreement, the GON shall, at its option, be entitled to set-off such amounts against the amount recoverable from GON under this Section.

6.2 Companies rights and obligations

6.2.1 The Generation Company undertakes that:

- (A) in undertaking the Project, it shall not impair the use of the Karnali 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 (EIA/IEE) 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 18 (*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 Karnali 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 Karnali 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 Karnali River, and (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. For the avoidance of doubt, it is clarified that such quantity of water that is utilised for the purpose of generation of power at the riparian power generation facility set up by the Generation Company pursuant to Section 11.8 (*Energy to local households*), shall also be included for calculating the minimum discharge of water from the Generation Project.
- 6.2.2 If, due to the Generation Company's breach of Section 6.2.1 (*Companies rights and obligations*), GON or any GON Instrumentality: (A) suffers any loss which has not been mitigated by the Generation Company; or (B) incurs any reasonable costs and expenses, the Generation 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 (*Companies rights and obligations*) by the Generation Company.

6.3 Downstream Irrigation Projects and other studies

- 6.3.1 Within six (6) months from the Agreement Date, the Generation Company shall undertake and conclude a study, under the direction and upon the acceptance of GON, to ascertain the impact on all existing including: (i) Rani-Jamara-Kulariya and associated hydropower scheme, (ii) Rajapur, (iii) Suryapatuwa irrigation projects (the "**Irrigation Projects**") and other projects as set out in the Schedule 22 (*Other Planned Projects*) (the "**Other Planned Projects**") as well as River training works, River banks and settlements.
- 6.3.2 Based on such report and after consulting with the Ministry of Irrigation, the Generation Company shall at its own cost and expense undertake measures and





actions (including a re-regulating dam if feasible) to ensure designed flows of water to the Irrigation Projects including Other Planned Projects and ensure that no negative impacts are incurred on River banks, settlement and existing River training works.

- 6.3.3 The study referred to in Section 6.3.1 (*Downstream Irrigation Projects and other studies*) above, shall be to bring out in detail the impact of peaking operations of the Generation Project on design flows of the aforementioned projects which are existing, under construction and Other Planned Projects as well as river banks, settlement and existing river training works, and accordingly, relevant mitigation measures shall be implemented. The available relevant data as required for the study shall be provided by GON.
- 6.3.4 The study referred to in Section 6.3.1 (*Downstream Irrigation Projects and other studies*) above shall also study the impact of the peaking operations of the Generation Project on tigers in the Bardia national park and dolphins. The study shall be conducted by the Generation Company based on available relevant data provided by GON.

7. COMMISSIONING, CONSTRUCTION AND COMMERCIAL OPERATIONS DATE

7.1 COD

- 7.1.1 Without prejudice to Section 2.2 (*The Project*), (A) the Generation Company shall in respect of the Generation Project and (B) the Transmission Company shall in respect of the Transmission Project, in each case on or before the Scheduled COD, design, engineer, construct, complete, test and commission the Hydro Property in accordance with this Agreement.
- 7.1.2 The Parties agree that the demonstrated capacity of the Hydro Property as at Final COD shall not be less than 855MW. GON shall not be entitled to claim Company Event of Default under Section 13.1.3 (*Company Event of Default*) if the certificates referred to in Section 7.1.4 (*COD*) certify that the Hydro Property has achieved commercial operations for an aggregate capacity that is not less than 855MW as of Final COD.
- 7.1.3 The PMU shall be entitled to witness all performance tests conducted by the Generation Company and in this regard the Generation Company shall give GON at least fourteen (14) days' notice of its intention to carry out any such performance test.
- 7.1.4 The Generation Company shall issue a certificate to the PMU certifying that Interim COD has been achieved when it commences commercial operations in respect of any unit. When all units of the Power Station have commenced commercial operations, the Generation Company shall communicate the date of achievement of Final COD by issuing a certificate to the PMU, which shall be supported by a certificate issued by the Lenders' independent engineer certifying that the Hydro Property has achieved commercial operations.

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 Companies' reasonable opinion, the Final COD 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 any Company, a Company Event of Default or a Force Majeure Event or Change in Law; (2) cannot be prevented, avoided or overcome by the Companies despite the exercise of diligence; and (3) Companies 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 Companies shall jointly write 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 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 Final COD, the Companies determine 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 Companies 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 Other delay – Companies

7.3.1 The Generation Company may by written notice to the GON at any time prior to the date falling one (1) month before the Scheduled COD ("**Other Delay Extension Notice**"), notify the GON that the Final COD shall not be achieved on or before the Scheduled COD.

7.3.2 The Other Delay Extension Notice shall include full details of the reasons for, and the estimated length of, the extension required by the Generation Company to achieve Final COD and an indicative plan to address the events causing such delay.

7.3.3 Upon receipt of the Other Delay Extension Notice by GON, the Scheduled COD shall stand extended for such additional period as requested by the Generation Company subject to a maximum of twelve (12) months.

7.3.4 Subject to Section 7.3.3 (*Other delay – Companies*), the Generation Company shall pay daily liquidated damages of NPR one thousand three hundred and eighty nine (1,389) per MW per day (the "**Delay Liquidated Damages**") to GON for each day of delay beyond the Scheduled COD, for such units of the Generation Project that have not achieved commercial operations by Scheduled COD, up to the date on which such unit achieves commercial operations, 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 855 MW 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 Generation 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 Generation Company under this Agreement, the Generation Company shall, at its option, be entitled to set-off such amounts against





the Delay Liquidated Damages payable by the Generation Company.

7.4 Total extension period under Sections 7.2 (Extra-ordinary delay - construction), Section 7.2A (Additional construction period) and 7.3 (Other delay – Companies)

For the avoidance of any doubt, the Companies may issue more than one extension notice under each of Section 7.2 (Extra-ordinary delay - construction) and Section 7.3 (Other delay – Companies) but only one notice in respect of Section 7.2(A) (Additional construction period) provided that the aggregate extension period under: (A) Section 7.2 (Extra-ordinary delay – construction) shall not in aggregate be more than three (3) years; (B) under Section 7.3 (Other delay – Companies) shall not in aggregate be more than one (1) year; and (C) under Section 7.2(A) (Additional construction period) shall not in aggregate be more than six (6) months. For the avoidance of doubt, the aggregate extension period under Section 7.2 (Extra-ordinary delay - construction), Section 7.3 (Other delay – Companies) and Section 7.2(A) (Additional construction period) shall not exceed four (4) years and six (6) months.

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) other delays attributable to the Companies, in accordance with Section 7.3 (Other delay – Companies);
- (E) for Additional Construction Period, in accordance with Section 7.2A (Additional construction period);
- (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 Final COD 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 Final COD has not been achieved by the Scheduled COD due to a GON Event of Default; and
- (I) if Parties agree (in writing).

8. LAND ACQUISITION

8.1 Acquisition of GON Land and ROWs

8.1.1 GON Land – Generation Project

The GON Land shall be leased to the relevant Company under the relevant Land Lease Agreements within twenty (20) months (as extended pursuant to Section 8.1.3 (Acquisition of GON Land and ROWs)) of the Agreement Date. The GON shall procure that the relevant GON Instrumentalities enter into Land Lease Agreements with the Companies on the basis of the land lease principles set out in Schedule 5 (Land Lease Principles).

8.1.2 ROWs – Transmission Project

GON shall within twenty (20) months from the later of the date on which (1) the IEE





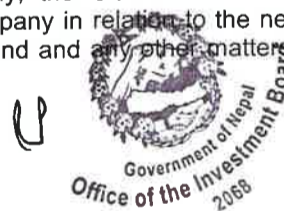
is approved, and (2) the Agreement Date (as extended pursuant to Section 8.1.3 (Acquisition of GON Land and ROWs)) ("**ROW Acquisition Period**"), acquire (or procure the acquisition of) and transfer or lease (or procure the transfer or lease of) the rights of ways, easement rights and land parcels required for the Transmission Line ("**ROWs**") to the Transmission Company.

8.1.3 To the extent that:

- (A) the Companies have 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 (ROWs – Transmission Project), at the commencement of the ROW Acquisition Period, to enable the GON to acquire any portion of the GON Land or ROWs then, in each case, the time period for the acquisition of such portion of the GON Land, Outstanding Private Land and 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 Companies fail 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, 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 ROWs (as applicable), shall stand extended on a day-for-day basis until such time that the Companies have complied with such provisions of the Resettlement and Rehabilitation Plan (as applicable); and
- (C) there are material changes to the 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 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 – Generation Project

- 8.2.1 Schedule 19 (Land Acquisition Plan (LAP)) 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 Generation 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 Generation Company freehold title to and vacant possession of the Private Land within twelve (12) months of the Agreement Date ("**Company Land Acquisition Period**").
- 8.2.3 GON shall during the 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 Generation Company, the GON shall use its reasonable endeavours to assist the Generation Company in relation to the negotiations with any third parties to acquire any Private Land and any other matters set out in the





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Land Acquisition Plan within the Company Land Acquisition Period

8.2.5 If by the end of the Company Land Acquisition Period, the Generation Company has not been able to acquire (or enter into appropriate arrangements for the acquisition of) all or any portion of the Private Land ("**Outstanding Private Land**") in accordance with Section 8.2.2 (*Acquisition of Private Land – Generation Project*), the Generation Company shall request GON (in writing) ("**Land Acquisition Application**") to acquire, or procure the acquisition of, such Outstanding Private Land. The Land Acquisition Application shall set out in reasonable detail:

- (A) the steps taken by the Generation Company to comply with its obligations under Sections 8.2.1 (*Acquisition of Private Land – Generation Project*) and 8.2.2 (*Acquisition of Private Land – Generation Project*);
- (B) the reasons why the Generation Company was unable to acquire such Outstanding Private Land; and
- (C) all requisite information required to enable GON to acquire such Outstanding Private Land.

8.2.6 Upon receipt of the Land Acquisition Application, GON shall use the powers granted to it under the Laws of Nepal, within eight (8) 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, to the Generation Company and the Generation 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 the GON from acquiring, or procuring the acquisition of or lease of (as the case may be), the GON Land, Outstanding Private Land and ROWs within the timelines stipulated in Sections 8.1.1 (*GON Land – Generation Project*), 8.1.2 (*ROWs – Transmission Project*), 8.1.3 (*Acquisition of GON Land and ROWs*) and 8.2.6 (*Acquisition of Private Land – Generation Project*) above (in each case a "**Land Acquisition Delay Event**"):

- (A) in respect of the Outstanding Private Land, the time limit set out in Section 8.2.6 (*Acquisition of Private Land – Generation Project*) above shall stand extended for a reasonable period that the GON and the Companies mutually agree, subject to a maximum period of twelve (12) months;
- (B) in respect of ROWs, the ROW Acquisition Period shall stand extended for a reasonable period that the GON and the Companies mutually agree, 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 for a reasonable period that the Companies and GON mutually agree, subject to a maximum period of twelve (12) months; and
- (D) the Scheduled COD and the timeline for achievement of Financial Close by the Companies shall stand extended on a day-for-day basis for each day that a Land Acquisition Delay Event is subsisting provided that no such relief shall be granted to the Companies to the extent that Land Acquisition Delay Event is attributable to the breach by a 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) four (4) consecutive months, the Companies shall have the right to terminate this Agreement in accordance with Section 13.3 (*Termination notices*); and
- (B) five (5) consecutive years, GON shall, where the Companies have not exercised their 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 Companies determine that any part of the GON Land, Private Land, Outstanding Private Land and 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.

8.3.3 GON hereby acknowledges that timely acquisition of Project Land is important for timely achievement of Financial Close for each 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. 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 Companies 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;
- (B) Private Land;
- (C) 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 Outstanding Private Land, Private Land, ROWs and GON Land.

8.4.2 Neither Company shall 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 - Companies*).

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 Companies. 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 Companies shall submit to the GON a report setting out in reasonable detail:

- (A) the steps taken by the Companies to comply with their obligations under Section 8.2.2 (*Acquisition of Private Land – Generation Project*);
- (B) insofar as the Companies are aware, the steps taken by GON to comply with





its obligations under Section 8.2.3 (*Acquisition of Private Land – Generation Project*) and 8.2.4 (*Acquisition of Private Land – Generation Project*), and

- (C) insofar as the Companies are aware, the current status of the acquisition and transfer or lease (as the case may be) of (1) Outstanding Private Land, (2) ROWs, (3) Private Land, and (4) GON Land.

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

9. TAXES AND OTHER INCENTIVES

9.1 Compliance with Tax laws

9.1.1 Each Company shall comply with applicable Tax laws.

9.2 Fiscal Incentives

9.2.1 In consideration of the value added tax that will have been paid by the Generation Company, GON shall provide the Generation Company a lump sum amount of NPR five (5) million per MW of capacity installed as of the Final COD, after Final COD, provided that the Final COD is achieved by 16 July 2023.

9.2.2 GON shall exempt the Generation Company from paying fifty per cent (50%) of the customs duty as prevailing on the Agreement Date on import of cement, iron and steel products, subject to compliance by the Generation Company of the conditions set out in the Board decision of IBN dated April 26, 2014 (2071/01/13).

9.2.3 GON shall procure that the exemption available to the Generation Company pursuant to Section 9.2.2 (*Fiscal Incentives*) above shall be extended to the Generation Company's Contractors and suppliers for the purposes of the Generation Project.

9.3 Export Sales Tax

9.3.1 The Generation Company shall pay to the GON an export sales tax of point zero zero five per cent (0.005%) of any revenue of the relevant Company accruing from the sale of capacity and energy in the export market.

9.4 Water Resource Fees/Charges

9.4.1 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 Karnali River by the Companies for the Project other than as set out in Section 11.25 (*Royalties Payable to GON*); and (B) imposition of any fee or charges or Tax on the Companies, for use of water from the Karnali River for the Project (other than as set out in Section 11.25 (*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 The GON shall not take any discriminatory action which materially and adversely affects the Project or the performance of the Companies obligations or the enjoyment of the Companies' rights under this Agreement, provided that the foregoing shall not in any way limit or restrict the ability of the 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 rational distinction.





- 10.1.2 The GON shall, until the earlier of:
- (A) the date of Generation Company Financial Close plus ~~five~~ four (54) months; and
 - (B) the date on which the Generation Company has entered into contracts for the sale of at least five hundred and ninety four (594) MW of capacity or equivalent energy from the Hydro Property,

("Restricted Period"), ensure that the Tax incentives granted to any other developer of an export-oriented hydro-electric project in Nepal (a "Competitor"), shall not be such that solely on account of such Tax incentives, the generation costs of the Competitor are substantially less than those of the Generation Company thereby enabling the Competitor to sell electrical energy in the Indian market at a more competitive price than the Generation Company.

- 10.1.3 If GON is in breach of Section 10.1.2 (*Non-discrimination*), GON shall compensate the Companies for the losses suffered by them through the Staggered Remedies pursuant to Section 12.7 (*Staggered Remedies*).

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 Each 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 respective 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 a 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 (B) 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 a 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 the then existing terms imposed on such 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





affected Company if that 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 request of a 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 relevant Company in obtaining the Government Approval.

10.2.4 If requested by a Company, GON shall facilitate discussions between such 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.

10.2.5 Each Company shall make or cause to be made, at least monthly prior to the Interim COD, 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 relevant Company's performance under this Agreement. If there is any lapse of Government Approval, the affected Company shall submit a report to GON pursuant to this Section 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 the Companies under Section 12A (*Change in Law*) and Section 13.2.5 (*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. Each Company shall abide by all such terms and conditions attaching to the Government Approvals. Without prejudice to the rights of the Companies under Section 12A (*Change in Law*) and Section 13.2.5 (*GON Event of Default*), if a 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 a Company for whom visas are required, such Company shall provide to GON the following details of such 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 such Company;
- (D) the proposed employee's qualifications;
- (E) a letter of recommendation from such 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 such Company for whom visas are required, the 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 a 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 such Company 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 such Company to maintain communication channels 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 Company's compliance with Section 10.2.2 (*Grant of Government Approvals*), the 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 Companies 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 Generation Company.

10.5.2 Once the Generation Company has obtained the Government Approvals contemplated by Section 10.5.1 (*Explosives*), the GON may, with prior written notice of at least thirty (30) days to the Generation Company, temporarily rescind such Government Approvals if the GON or the relevant GON Instrumentality determines (acting reasonably) that the explosives have been used in violation of the relevant Government Approvals, provided that the GON shall not take any steps towards rescinding such Government Approvals, if the Generation Company has within the aforementioned thirty (30) day period, rectified its default such that the Generation Company 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 Generation Company must surrender, any explosives in the possession of the Generation 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 Generation Company's permission to import, transport, store and use the explosives and shall return to the Generation Company 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 each Company for such default as are prescribed under the Laws of Nepal or relevant Government Approval.
- 10.6 **Fuel**
- 10.6.1 GON shall procure that the Nepal Oil Corporation (or any other relevant GON Instrumentality) shall, at all times after the Agreement Date, provide the Companies with sufficient fuel required for the Project including for maintaining an inventory of fuel sufficient to carry their reasonably anticipated operations and activities for a period of two (2) months.
- 10.6.2 Where GON is unable to procure the provision of fuel to the Companies in accordance with Section 10.6.1 (*Fuel*), subject to Company's compliance with Section 10.2.2 (*Grant of Government Approvals*), GON shall procure the issuance to the Companies of the relevant Government Approvals to enable the Companies to import fuel for the Project.
- 10.6.3 GON shall procure that any Government Approvals granted to the Companies for import of fuel is valid until Final COD, or is periodically renewed until Final COD in a timely manner, in accordance with Section 10.2 (*Grant of Government Approvals*).
- 10.6.4 The Companies 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 Companies with any subsidy in relation to the import of fuel.
- 10.7 **Port of entry and transport arrangements**
- 10.7.1 The Companies 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 a 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 affected Company and the Contractors, no later than three (3) months from the date of application by the affected Company, all import licenses for Materials required for the Project provided that the 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 any 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

10.8.1 The Companies shall have the right to open, maintain and operate bank accounts outside Nepal or local bank accounts in certain convertible foreign currencies specified by the Nepal Rastra Bank, in accordance with the Laws of Nepal.

10.9 Free transfer and repatriation of necessary funds

10.9.1 In accordance with Section 13 of the Electricity Act, 2049 (1992), GON shall, on written request by a Company, provide or procure the availability of all necessary foreign currency at prevailing market rates of exchange. Each person referred to in Section 10.9.2 (*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 10.9.1 (*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 10.9.2 (*Free transfer and repatriation of necessary funds*) to enjoy the facilities provided pursuant to Sections 10.8 (*Bank accounts*) and 10.9 (*Free transfer and repatriation of necessary funds*).

10.9.2 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, each Company's, Shareholder's, Sponsor's, Contractor's, sub-contractor's and Lender's respective investments and other monies relating to the Project, whether converted through normal commercial banking channels or through the Nepal Rastra Bank, without delay.

10.9.3 GON shall develop a mechanism with Nepal Rastra Bank to facilitate the repatriation process including by providing an annual recommendation to Nepal Rastra Bank for the Project.

10.10 Site access

10.10.1 GON shall, following the lease, acquisition and/or transfer of the Project Area to the Companies in accordance with Section 8 (*Land Acquisition*), in addition to the rights already available to the Companies under the Survey Licenses, promptly, grant, or procure the grant, to the relevant 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 relevant Company may reasonably require in connection with the Project;
- (B) exclusive rights of access to, and use and possession of, the Project Area; and

10.10.2 GON shall, subject to such Government Approvals as required by the Laws of Nepal,





grant the Companies (or procure the grant of) the right ~~2068~~ access forest land, riverbeds, river banks and water in the Project Area to:

- (1) construct and use all necessary buildings and other structures, roads, ropeways, rail lines and transmission lines;
- (2) open tunnel adits and dump spoil from tunnels in mutually agreed designated areas;
- (3) lay pipelines to take water from springs;
- (4) during the Construction Period, open quarries, take out or deposit stone, sand and earth therein; and
- (5) perform any other activity necessary in connection with the Project and the generation of electrical output from the Power Station.

10.10.3 Neither Company shall be liable to incur any additional charges other than the charges in connection with the activities permitted pursuant to Section 10.10.2 (*Site access*) provided, however, that the affected Company shall pay any charges imposed pursuant to the Forest Act, 2049 (1993) and the Forest Regulations, 2050, with respect to any forest area used by such Company.

10.10.4 A 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.

10.10.5 Each 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 each 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 each Company in the interest of safety, security and non-interference with the Project.

10.10.6 Each 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.

10.10.7 GON shall grant, or shall procure the grant, to each Company and the Contractors, 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.

10.10.8 To the extent any forest land is part of the Project Area, the Companies 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 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 Companies on such forest land in favour of or for the benefit of the Lenders.

10.11 Roads

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

- (A) allow the Companies 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 Companies to, at their 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 Companies are notified otherwise by the GON), by the Companies in accordance with the Laws of Nepal and the relevant Government Approvals at the Companies' cost and expense.

- 10.11.2 The Companies shall, at their own cost, repair or cause to be repaired, any damage to any roads, tracks, bridges, tunnels and ropeways caused by the Companies' 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 Companies shall use reasonable efforts to minimise the obstruction of traffic during any repair contemplated by this Section 10.11.2 (Roads).
- 10.11.3 The Companies 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 Area) ("Company Access Infrastructure") in connection with their use for the Project.
- 10.11.4 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.
- 10.11.5 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.
- 10.11.6 The GON shall facilitate the timely construction of roads, tracks, bridges, tunnels and ropeways in connection with the Project.

10.12 Safety and Security

- 10.12.1 The Companies 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 Companies in taking steps to secure the Hydro Property, and Project Area.
- 10.12.2 From time to time, a 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 a 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 a Company.
- 10.12.3 The Company making the relevant request shall bear all expenses incurred by the 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.

10.13 Transmission Infrastructure

- 10.13.1 The Transmission Company shall be responsible for transmission of electrical energy from the Power Station over the Transmission Line in Nepal to the export market. Notwithstanding anything to the contrary contained in this Agreement, the Generation Company shall maintain overall responsibility for the development and operation of the Transmission Line even though the Generation Company has transferred the rights of development and operation of the Transmission Line to the Transmission Company.
- 10.13.2 Subject to Section 10.14 (Transmission Tariff), GON may request the Transmission Company (in writing): (1) to provide open access to other users to enable such other





users to access and use the Transmission Line, when any excess capacity is available; (2) within twelve (12) months of the Agreement Date, to enhance the capacity of the dedicated Transmission Line beyond the planned capacity set out in Schedule 9 (*Transmission Line Specifications*); and/or (3) to interconnect the dedicated Transmission Line with the Nepalese national grid. The Transmission Company may, at its discretion (acting reasonably and in good faith) agree to such request(s) of GON provided that:

- (A) the right of first use of the Transmission Line shall always remain with the Generation Company for evacuation of entire energy output of the Generation Project;
- (B) the Lenders do not object to such arrangements and the reliability standards and technical, operational and safety aspects of the Transmission Line shall not be impaired;
- (C) the Transmission Company can comply with the importing country's electricity grid code after acceding to any such requests;
- (D) the Parties agree on the terms and conditions for such arrangements, including mutually satisfactory compensation arrangements and so long as the relevant third party user agrees to apply for and obtain all approvals required and pay applicable fees for the use of the Transmission Line and other transmission line outside of Nepal and bear the transmission losses;
- (E) payment is made by any user of the Transmission Line to the Transmission Company for the incremental capital costs and sharing of operation and maintenance costs, in accordance with the proposed compensation arrangement to be agreed between the Transmission Company and other users of the Transmission Line;
- (F) letters of credit/bank guarantees in a form, for a value and from a bank acceptable to the Transmission Company is provided to the Transmission Company to secure payment obligations of the third party users of the Transmission Line; and
- (G) the Transmission Company and the third party users of the Transmission Line enter into appropriate transmission service agreements.

10.14 Transmission Tariff

10.14.1 Any transmission service agreements and other arrangements between the Generation Company and the Transmission Company shall be subject to GON's prior written approval, not to be unreasonably withheld.

10.14.2 Any payment from the Generation Company to the Transmission Company with respect to using the Transmission Line to evacuate power from the Power Station shall accrue and be payable only from the date on which testing and commissioning of the Generation Project begins.

10.14.3 The transmission tariff shall allow the Transmission Company to recover capital and operational costs (including a reasonable rate of return on the equity) for the purposes of developing, financing, designing, construction, commissioning, operating and maintaining the Transmission Line and allow for transmission losses (the "Transmission Tariff").

10.14A GON transmission rights

Subject to Section 10.13.2 (A) (*Transmission Infrastructure*), the GON (or a GON Instrumentality) shall have the right to use the Transmission Line for the evacuation of the whole or part of the Free Energy and Power to the export market subject to the following





conditions:

- 10.14A.1 GON (or a GON Instrumentality) pays the Transmission Tariff in respect of the capacity booked on the Transmission Line for the evacuation of such Free Energy and Power;
- 10.14A.2 GON (or a GON Instrumentality) agrees to an arm's length, transmission industry-standard transmission service arrangement with the Transmission Company;
- 10.14A.3 letters of credit/bank guarantees in a form, for a value and from a bank acceptable to the Transmission Company is provided to the Transmission Company to secure payment obligations of GON (or a GON Instrumentality) for the use of the Transmission Line;
- 10.14A.4 the Lenders do not object to such arrangements and the reliability standards and technical, operational and safety aspects of the Transmission Line shall not be impaired; and
- 10.14A.5 the Transmission Company can comply with the importing country's electricity grid code after acceding to any such request.

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), each Company in relation to the implementation of the Project and the exercise of each 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

GON shall have the right, at any time after Final COD, to grant economic interests in NEA's equity interest in the Generation Company, to the Project Affected People and to the persons residing permanently in the districts of the Generation Project.

10.18 Direct Agreements

Upon Lenders' and Companies' 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.

11. COMPANY OBLIGATIONS AND RESPONSIBILITIES

11.1 Purpose of each Company

Each Company's sole purpose and objective shall be to conduct the Project. Each 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 the business of the Project. Neither Company shall, 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 EIA/IEE

11.2.1 Each Company shall comply with the EIA, the IEE, 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 April 18, 2013 vide Letter no.069/070.





- 11.2.3 The Parties acknowledge that the initial environment examination report for the Transmission Project has been submitted to GON vide Letter no. KTCPL/MoEN/0005/14 dated 6 March 2014 and is pending approval as of the Agreement Date. The Parties further acknowledge that GON's approval of the initial environment examination report is subject to, amongst other factors, (A) a re-alignment of the Transmission Line in compliance with the Ministry of Energy's letter dated 28 July 2014 (2071/04/12 BS) requiring that the re-alignment of Transmission Line shall not have an adverse impact on Karnali Chispani reservoir area, the re-regulating dam and other structures of the project, (B) avoiding national parks and protected areas (designated as such as of the Agreement Date) to the extent feasible. The Companies undertake to carry out such re-alignment and submit a revised environment examination report to the GON for approval as soon as reasonably practicable following the Agreement Date.
- 11.2.4 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 only be made available to GON.
- 11.2.5 Each Company shall comply with the EIA and the IEE and shall promptly rectify any non-compliance with such EIA and the IEE (as the case may be) upon notification from GON or the relevant GON Instrumentality of such non-compliance.

11.3 Plans

- 11.3.1 The Generation Company shall prepare, implement and comply with the Plans in accordance with the Laws of Nepal, this Agreement and Performance Standards. For the avoidance of doubt, the Transmission Company shall be required to comply with the Resettlement and Rehabilitation Plan, to the extent applicable to it.
- 11.3.2 Without prejudice to the generality of Section 11.3.1 (*Plans*), the Generation Company shall, jointly with GON, prepare:
- (A) the Local Benefit Sharing Plan, in accordance with the guidance notes set out in Schedule 15 (*Local Benefit Sharing Plan Guidance Note*);
 - (B) the Nepal Employment and Skills Training Plan, in accordance with the guidance notes set out in in Schedule 16 (*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 17 (*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 Generation Company shall prepare and submit the following Plans for the 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 this Agreement; and
 - (B) within twelve (12) months from the Agreement Date, the Disaster Management Plan, such that it is in compliance with the Laws of Nepal, this Agreement and in accordance with the guidance notes set out in Schedule 13 (*Disaster Management 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 each Company to carry out its obligations set out in this Section 11.3 (*Plans*) provided that each 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 Generation Project Financial Close, the Companies shall jointly send a written notice to the 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; or
- (B) Asian Development Bank's safeguard policy.

11.4.2 Notwithstanding anything to the contrary contained in Section 11.4.1 (*Performance Standards*), the Parties may agree (in writing) that the Companies shall apply any other appropriate international social and environmental sustainability standard for the Project.

11.4.3 Each 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 Companies 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) neither Company shall enter into any agreement, arrangement or transaction with any (1) Related Party, (2) Sponsors, (3) Shareholders or (4) officers, directors or employees of any of the Related Party, 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 Generation Company shall, before Final COD, construct the following infrastructure facilities at its own cost and expense and operate and maintain such facilities during the Term:

- (A) education facilities in accordance with the EIA;
- (B) medical and emergency medical evacuation facilities in accordance with the EIA; and
- (C) helipad.





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

11.6.3 Subject to valid and justifiable security and operational factors, the Companies 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 Generation Company.

11.7 GLOF

If required under the EIA, within one (1) Year after the Agreement Date, the Generation 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 the GON. If the GON determines that the installation of an early warning system in respect of a GLOF is required, the Generation Company shall, at its own cost, establish such a system in consultation with the GON.

11.8 Energy to local households

11.8.1 The Generation Company shall, at its own cost, construct and operate at the toe of the dam a power generation facility of approximately 2MW capacity utilising the riparian discharge of the Power Station ("Local Community Power Facility"). Electrical energy from such Local Community Power Facility, net of (A) auxiliary consumption for such Local Community Power Facility and (B) power consumption of the dam complex of the Power Station (provided that such consumption as described in (A) and (B) shall not be more than thirty-three per cent (33%) of the installed capacity of such Local Community Power Facility) shall be made available to GON free of charge at the 33kV outgoing gantry of the switchyard of such Local Community Power Facility ("Local Community Power"). The Generation Company shall ensure that the Local Community Power Facility is synchronised with the transmission and distribution network referred to in Section 11.8.2 (*Energy to local households*) in accordance with the provisions of the NEA grid code.

11.8.2 GON at its own cost shall be responsible for transmission and distribution of Local Community Power from the switchyard described in Section 11.8.1 (*Energy to local households*).

11.8.3 GON may, at its option, delegate the responsibility for operation and maintenance of the transmission and distribution network for transmission and distribution of the Local Community Power to a GON Instrumentality or a local cooperative or local body.

11.8.4 The Generation Company shall ensure that the riparian release from the power station for the Local Community Power does not adversely affect the fish pass as specified in Schedule 8 (*Power Station Specifications*).

11.8.5 GON shall procure that all relevant Government Approvals required in respect of Local Community Power Facility for the Local Community Power are issued to the Generation Company in accordance with Section 10.2 (*Grant of Government Approvals*).

11.9 Use of Nepali resources; training and development

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

11.9.1 maximise use of Nepali resources and give first consideration and full and fair opportunity to technically and commercially qualified Nepalese citizens, materials and firms provided that in each case, the use of such Nepali resources meet the quality, quantity and availability requirements of the Companies 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;

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- 11.9.2 ensure that its Nepal Industrial Benefits Plan provides for an outreach programme under which the Generation 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 the Companies (to the extent applicable) shall 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 Each Company shall set aside the Bonus Amount for contributing towards bonus and welfare funds in each Nepalese fiscal year.
- 11.10.2 Each Company shall distribute the Bonus Amount to its employees in accordance with the Laws of Nepal, provided that neither Company shall 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 Each Company shall deposit 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 Generation Company shall provide accommodation facilities for its workers and staff at its own cost and expense.
- 11.12 **Other responsibilities of the Companies**
- 11.12.1 Each 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);



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- (E) arranging financing for the Project;
- (F) supervision of the Project Area;
- (G) quality assurance;
- (H) obtaining performance guarantees for individual equipment items from the relevant equipment suppliers 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 the GON in relation to the Project.

11.12.2 Each Company:

- (A) accepts that any failure of the 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 any 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 a 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 a 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, "**Material Changes**" means any changes to the Hydro Property which in each Company's reasonable opinion, acting in accordance with Good Industry Practice, may have an adverse impact on:
 - (i) the safety or reliability of the Hydro Property;
 - (ii) the ability of the Generation Company to generate and make available the energy and/or capacity on the scale envisaged under this Agreement plus, minus five per cent (5%);
 - (iii) the ability of the Generation Company to transmit the energy on the scale envisaged under this Agreement plus, minus five per cent (5%);
 - (iv) the ability of a Company to comply with its obligations under this Agreement; or
 - (v) each Company's obligations under the EIA, IEE, Performance



11.13 Cooperation

11.13.1 Each 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 Each Company shall at its own cost and expense: (A) comply with the provisions of Schedule 6 (*Insurance*), including obtaining and maintaining in effect the Insurance Policies for the Project referred to in Schedule 6 (*Insurance*); and (B) comply with the terms and conditions of all such insurance policies.

11.14.2 In so far as local insurance companies in Nepal have the capacity, the Companies shall give preference to insurance companies in Nepal in respect of the provision of insurances for the Project, subject to Lenders' approval.

11.14.3 The Companies 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 Companies under such insurance policy.

11.15 Operations Procedure Code

11.15.1 From the first Interim COD, the Generation Company shall deliver twelve per cent (12%) of the monthly energy and power output generated by the Power Station, net of auxiliary consumption and transformation losses, as measured at the bus-bar ("**Free Energy and Power**") to a designated GON Instrumentality at the outgoing gantry of the switchyard of the Power Station free of cost to GON or any GON Instrumentality. Subject to Section 10.14A (*GON transmission rights*), Section 11.15.4 (*GON Power Pooling Option*) and Section 11.15.5 (*Non-compete*), all costs and expenses incurred by the Companies in respect of Free Energy and Power shall be solely for the Companies' account and GON or any GON Instrumentality shall not be required to make any payment to any Company in respect of Free Energy and Power.

The terms and conditions under which the supply of Free Energy and Power shall take place (including metering, scheduling, dispatch and outages) shall be set out in the OPC. The OPC for scheduling of Free Energy and Power shall be finalized at least six (6) months prior to the first Interim COD collectively by the Generation Company, GON and relevant GON Instrumentality. The scheduling for such Free Energy and Power shall be aligned with the overall Power Station schedule and shall be firmed up in accordance with the final generation schedule issued by the relevant load dispatch centre, in line with the requirements of the Export power offtaker(s) and the grid code applicable to such offtaker. To enable Parties to achieve the aforesaid objective, Generation Company shall, as soon as reasonably practicable, submit to GON: (A) the daily dispatch schedule on an hourly basis; (B) the indicative scheduling of (i) year-ahead energy on a monthly basis, (ii) month-ahead energy on a weekly basis, (iii) week-ahead energy on a daily basis and (iv) day-ahead energy on an hourly basis. The Generation Company shall issue the indicative weekly schedule (including details of outages) on an hourly basis based on the final generation schedule referred to above. The week-ahead schedule shall, to the extent practicable, indicate the times and capacity at which the Power Station shall be dispatched. GON shall be entitled to match its own schedule taking into account the final generation schedule and offtake the Free Energy and Power accordingly.

11.15.2 The switchyard infrastructure for such supply of Free Energy and Power shall be constructed, operated and maintained by the Generation Company at its own cost and expense.



Power marketing

11.15.3 The Generation Company may, at its sole discretion, upon a request made by GON consider to procure that the GON Free Energy and Power is transmitted through the Transmission Line and marketed in India by a technically and commercially capable Affiliate of the Company. The terms of such an arrangement shall be in accordance with the mutual agreement between the GON and the Generation Company, subject to compliance with Section 10.14A (GON transmission rights).

GON Power Pooling Option

11.15.4 Subject to compliance with Section 10.14A (GON transmission rights), GON shall also have the option to sell Free Energy and Power in the export market using the Transmission Line for evacuation of Free Energy and Power to the export market by requesting the Generation Company, at least ninety (90) days in advance, to sell the Free Energy and Power together with the power being sold by the Generation Company in the export market, subject to availability of transmission capacity:

- (A) under such Export Power Purchase Agreement that has been executed after the date on which such option is exercised by GON at the same price, and the Generation Company shall share the revenues so received by the Generation Company under such Export Power Purchase Agreement on a pro rata basis; or
- (B) where the Generation Company sells power on a medium, short term or spot basis, GON Free Energy and Power would be sold as and when such medium, short term or spot sale is undertaken by the Generation Company, and the Generation Company shall share the revenues so received by the Generation Company under the applicable agreement or arrangement on a pro-rata basis in terms of quantity and at the same price.

(collectively the "GON Power Pooling Option")

Provided that in the event GON chooses to exercise the GON Power Pooling Option, GON shall:

- (i) share all costs and charges associated with such transmission, including transmission charges, transmission losses, open access and other regulatory charges and fees, for such power on a pro rata basis; and
- (ii) pay reasonable trading commission to the concerned trading agency, consistent with prevailing market standards.

Non-compete

11.15.5 If GON does not exercise the GON Power Pooling Option, or if no arrangement is entered into pursuant to Section 11.15.3 (Power marketing), GON shall have the right to sell whole or part of Free Energy and Power to any person in the export market provided that GON agrees not to compete with the Generation Company for the sale of Free Energy and Power in the export market.

11.15.6 The mechanism for the implementation of such non-compete principle shall be agreed between the Parties prior to earlier of: (A) fifty-four (54) months after the Agreement Date and; (B) execution of any contract for sale of such Free Energy or Power in the export market between GON and a third party not pursuant to Section 11.15.3 (Power marketing) or Section 11.15.4 (GON Power Pooling Option).

If the Parties cannot agree on the implementation mechanism in accordance with Section 11.15.6 (Non-compete), the determination of a suitable non-compete mechanism shall be referred to the Panel of Experts as a Technical Dispute in accordance with Section 15.5 (Expert determination). The Panel of Experts shall have the power to determine which of the mechanisms proposed by each Party most





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 closely reflects Parties' understanding of : (A) GON not competing with the Generation Company in respect of sale by GON of whole or part of Free Energy and Power in the export market in which the Generation Company is selling or proposing to sell power (or a GON Instrumentality); (B) conditions in the export market and how it operates and (C) providing a fair and reasonable opportunity to GON (or GON Instrumentality) to sell whole or part of Free Energy and Power in the export market without competing with Generation Company; and (D) recognising that GON (or GON Instrumentality) have not and shall not incur any generation costs with respect to Free Energy and Power (but may incur some transmission costs) but that the Generation Company has and shall incur generation costs with respect to energy and/or capacity from the Project (including Free Energy and Power). Parties shall comply with the non-compete mechanism selected by the Panel of Experts.

11.16 Domestic Commercial Power Purchase Agreement

11.16.1 In order to meet domestic demand, GON may request the Generation Company, without limiting the Generation Company's right to market power to third parties, to sell whole or part of Uncontracted Power (in addition to Free Energy and Power).

11.16.2 The Generation Company shall give a written notice to GON when ninety per cent (90%) of the power has been contracted on the first occasion, offering GON the option to purchase the balance Uncontracted Power and the indicative terms on which such purchase can be made (including tariff and payment security mechanism). GON may exercise such an option by making a written request to the Generation Company.

11.16.3 When a notice is issued under Section 11.16.1 (*Domestic Commercial Power Purchase Agreement*) or Section 11.16.2 (*Domestic Commercial Power Purchase Agreement*), GON and the Generation Company shall then diligently and in good faith negotiate and agree on the terms and conditions for such sale within a period of 120 days. The terms and conditions of such sale of Uncontracted Power, including tariff and payment security mechanism shall be mutually agreed in accordance with Parties' commercial considerations. If the GON and the Generation Company are unable to agree on the terms and conditions for such an arrangement within such 120 day period, then the Generation Company shall be entitled to sell such power from the Project in the export market.

11.16.4 The scheduling for any Uncontracted Power purchased by GON or the relevant GON Instrumentality shall be aligned with the overall plant availability schedule that shall be firmed up in accordance with the final generation schedule issued by the relevant load dispatch centre, in line with the requirements of the export offtaker(s).

11.17 Export of Power and Export Power Purchase Agreement

11.17.1 Any arrangements made by the Generation Company for export of power shall comply with the requirements of Section 11.5 (*Arm's length transactions*).

11.17.2 The GON acknowledges and agrees that the Generation Company shall enter into Export Power Purchase Agreements for supply of power from the Project, and the GON shall, subject to the Generation Company's obligations under Section 10.2.2 (*Grant of Government Approvals*), grant Government Approvals as may be required to be provided to each Company or the offtaker(s) under the Export Power Purchase Agreement.

11.18 Operation and Maintenance

11.18.1 Each 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 the GON and any applicable GON Instrumentality.

11.19 Operating Manuals and other materials

11.19.1 No later than sixty (60) days prior to Interim COD, each 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. Each Company shall update such documents as required from time to time in accordance with Good Industry Practice.

11.20 Handover and Handover Plan

11.20.1 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.

11.20.2 For the avoidance of any doubt, it is clarified that subject to Section 17.8 (*Survival*):

(A) the Companies shall be responsible for their 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).

11.20.3 The Companies shall submit a Handover Plan in respect of the Hydro Property to GON no later than two (2) years after the Final COD. The Handover Plan shall be prepared in accordance with the Handover Requirements.

11.20.4 During the Handover Period, GON and each 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, each 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.

11.20.5 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 the GON or the GON's designee in accordance with Schedule 2 (*Project Handover upon Expiry of the Agreement*), each Company shall arrange for training if necessary of a sufficient number of staff of the GON or any other GON Instrumentality, as nominated by the GON to each Company, to enable the 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.

11.21 Transfer of technology

11.21.1 Each 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 the GON provided that nothing contained in this Section shall require any Company to violate any applicable intellectual property laws or intellectual property rights of other persons provided that each 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.

11.21.2 For the purpose of transfer of technology, GON may second a reasonable number





of its personnel to each Company or send its representatives to each Company to observe or assist in the conduct of the Project. Such personnel or representatives of GON shall work in association with each 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 the GON.

11.22 Compliance with Laws of Nepal

Each Party 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. Each Party 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.

11.23 National Security

11.23.1 The Companies shall abide by the Laws of Nepal regarding Nepal's national security.

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

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

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

11.24 Performance Security

11.24.1 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 Final COD. Subject to this Section 11.24 (*Performance Security*) and Section 7.3.4 (*Other Delay – Companies*), GON shall not have the right to draw upon the Performance Securities for any other reason.

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

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

11.25 Royalties Payable to GON

11.25.1 The Generation Company shall pay the following royalties to the GON:

<p>For the period commencing on the first Interim COD and ending on the fifteenth (15th) anniversary of the Final COD</p>	<p>For the period commencing on the day falling immediately after the fifteenth (15th) anniversary of the Final COD and ending on the last day of the Term</p>
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Capacity Royalty Rate (per KW)	Energy Royalty Rate	Capacity Royalty Rate (per KW)	Energy Royalty Rate
NPR 400	7.5%	NPR 1,800	12%

11.25.2 Calculation of Royalties:

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

From and after the first Interim COD till Final COD: Capacity Royalty Rate multiplied by the total nameplate capacity for which Interim COD has been declared (less 12%);

From and after Final COD: Capacity Royalty Rate multiplied by the total nameplate capacity of the Power Station (less 12%).

(B) The Energy Royalty shall be calculated as follows: Energy Royalty Rate multiplied by Energy Receipts

"Energy Royalty Rate" means the relevant Energy Royalty Rate figure contained in the table in Section 11.25.1 (*Royalties Payable to GON*).

"Energy Receipts" means proceeds received from the sale of energy and capacity less, the Transmission Costs incurred by the Generation Company.

"Transmission Costs" means the transmission service charges payable to all intervening transmission system operators, starting from the bus-bar of the Power Station up to the interconnection point with the transmission system of the applicable power off-taker(s) for transmission of energy from the Power Station and allowable transmission losses.

provided that there is no double recovery and that no deductions shall be made by the Companies for charges not incurred by them.

11.25.3 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) technical losses incurred in transmitting energy from the Power Station to the first inter-connection point in India; (B) self/auxiliary consumption; (C) Free Energy and Power; and (D) Local Community 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.

11.25.4 The Generation Company shall pay to GON the royalties payable for a quarter, within thirty (30) days of the end of such quarter.

11.26 Financing Documents and Financing Plan

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

11.26.2 Within fifteen (15) days after the execution or amendment (as the case may be) of each Financing Document, the Companies shall submit to the GON certified copies of such executed or amended Financing Document, as the case may be.

11.26.3 Prior to Financial Close, the Companies 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 maximum principal amounts and interest rate or rates, and any schedules or formulae that shall be included in the Financing Document for the computation of 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. Each Company shall also provide a hard copy of its financial model in respect of the Project to GON as of the relevant Financial Close.

11.27 Debt: equity ratio

11.27.1 Each Company undertakes that the ratio of its Debt to its Equity shall not exceed:

- (A) 75:25 at Financial Close for such Company; and
- (B) 80:20 at all other times (including at the time of funding any cost overruns in relation to the Project).

11.27.2 For the purpose of this Section 11.27 (*Debt: equity ratio*) only,

- (A) "**Debt**" shall mean 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 shareholder loans; 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 but shall exclude any shareholder loans.

11.28 Facilitation fee

In consideration of IBN facilitating the Project and undertaking a number of specific facilitation activities, from the first Interim COD, the Generation Company shall, subject to their being no subsisting GON Event of Default, pay to IBN (or another GON Instrumentality as notified by GON) a facilitation fee of USD fifteen thousand (\$15,000) per Quarter, provided that in no year shall the Generation Company pay to IBN (or another GON Instrumentality as notified by GON) more than USD sixty thousand (\$60,000). The facilitation fee (or any rateable proportion thereof) shall be payable to IBN (or another GON Instrumentality as notified by GON) within thirty (30) days of the end of each quarter.

11.29 Disaster Management

The Generation Company shall prepare the Disaster Management Plan taking into consideration the different flood eventualities, GLOF and any other natural calamity that could occur at various stages of construction and operation of the Project. The Generation Company shall submit a copy of the Disaster Management Plan to GON.

11.30 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 Generation Project, the Companies shall be responsible for taking remedial measures to mitigate such adverse effects at their own cost and expense, to the extent required under the EIA and/or the IEE, the Resettlement and Rehabilitation Plan, the Performance Standards and any Supplementary E&S Documents.

11.31 Metering

11.31.1 The Generation Company shall ensure that the metering system and the check metering system are in compliance with Schedule 14 (*Metering*) at all times. The





Generation Company shall, at its own cost and expense, procure, install, operate and maintain the metering system, the check metering system and switch yard infrastructure required for such supply of Free Energy and Power and Local Community Power to the GON.

11.31.2 The metering system and check metering system shall be sealed, and the seals broken only when the metering system and check metering system are to be inspected and tested or adjusted in accordance with Schedule 14 (*Metering*) or in accordance with the Laws of Nepal.

11.32 Information sharing

11.32.1 Each Company shall provide to GON and if requested, the PRP:

- (A) copies of the Records contemplated in this Section 11.32 (*Information sharing*); 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.

11.32.2 From and after the Interim COD, the Generation Company shall submit a report to the GON within thirty (30) days of the end of each month setting out, inter alia:

- (A) the quantum, and the price of, energy and capacity sold to third parties in the previous month from the Project (other than under the Export Power Purchase Agreement); and
- (B) in each relevant market, the published market price for such energy and capacity, and sale prices actually achieved in respect of such energy and/or capacity.

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

- (A) their respective audited financial statements;
- (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 Companies from the Lenders' 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.





- 11.32.4 The Companies shall provide the following documents to the GON: (A) copies of the executed long-term power purchase agreements within thirty (30) days of execution; (B) copies of the transmission arrangements relating to the sale and purchase or transmission of energy and/or capacity from the Power Station within thirty (30) days of execution; (C) within thirty (30) days of the end of each month, provide copies of the executed short-term, medium-term and spot offtake arrangements executed in the previous month provided that any information identifying the counterparty shall be redacted; (D) if the Export PPA(s) is subject to regulated cost- plus tariff or competitive bid, a notice intimating the proposed execution of such Export PPA(s); (E) if the Export PPA(s) is to be entered into on a negotiated basis and not covered in Section 11.32.4 (D) (*Information sharing*) above, then the key terms of the proposed contract not later than thirty (30) days prior to the intended date of execution of any such agreement.
- 11.32.5 On the Expiry Date or the Transfer Date (as the case may be), each 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.
- 11.32.6 Each Company shall, at its own cost and expense, submit to the 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 within ninety (90) days following Final COD, 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 Final COD.
- 11.32.7 Following Interim COD, each Company shall submit to the GON all annual reports required pursuant to the Government Approvals and the Laws of Nepal.
- 11.32.8 Each 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. Each 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. Each Company shall submit, during the Construction Period until the Final COD is achieved, a progress report in three copies every six (6) months to GON in accordance with the Electricity Regulations, 2050 (1993).
- 11.32.9 Each 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.

11.33 **Access and inspection**

Each 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:

- 11.33.1 during the normal working hours of each Company, for the purpose of verifying each Company's compliance with, or to fulfil their respective obligations under, this Agreement or the Laws of Nepal;





11.33.2 without prior notification, in case of an emergency, accidents or threat to the public, health, environment and safety;

11.33.3 to access their respective or other person's facilities where alternative means of access are not available; or

11.33.4 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 each Company, which rules shall not be discriminatory in application and provided further that any such visit shall not unreasonably interfere with each Company's performance of the Project.

11.34 Contractors and subcontractors

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

11.35 Anti-Corruption

11.35.1 Each 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 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.

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

11.35.3 Each 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.

11.35.4 Each Company shall design and implement an appropriate anti-bribery and corruption prevention and compliance programme.

11.35.5 Each 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 any Company).

11.35.6 Each Company agrees that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured by any Company making any false declaration, misrepresenting any facts or taking any action likely to defeat the purpose of this Section 11.35 (*Anti-Corruption*) 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 such 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 such Company.

11.36 Ecosystem Conservation

The Generation Company shall undertake ecosystem and impacted watershed conservation measures in accordance with the EIA and Supplementary E&S Documents which will be prepared in accordance with any one of the performance standards set out in Section 11.4.1 (*Performance Standards*).

11.37 Environmental Benefits

If the Project becomes eligible to apply for any emission reduction benefits which could be monetised other than the emission reduction benefits available under the "Clean Development Mechanism" and any other similar mechanism under the UNFCCC or its successor mechanisms or dispensations, the Generation Company and GON shall use their reasonable endeavours to obtain and monetise such benefits and mutually agree on a sharing mechanism (net of all costs including incremental capital costs, 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 any 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 (and where the Affected Party is a Company, breach of this Agreement by the other Company or an Event of Default by the other Company).

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 of 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 each Company or persons employed by each Company or engaged by each 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 associated with or directed against any 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 a Company or its Contractors to obtain or maintain any Government Approval due to a breach by a 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, IEE or DPR;
- 12.2.5 any failure in performance by a Contractor or offtaker which results in the failure or inability of any 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 any 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:

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- (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 five (5) 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



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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 **provided however that** the Generation Company's obligation to pay the Capacity Royalty upon occurrence of an Other Force Majeure Event shall forthwith be suspended only where: (a) it has not been commercially feasible for the Companies to obtain insurance to cover the payment of Capacity Royalty during the period of such Other Force Majeure Events; or (b) the Other Force Majeure Event continues for more than three hundred and sixty five (365) days. For the avoidance of doubt, the Generation Company's obligation to pay Capacity Royalty shall be suspended immediately upon occurrence of a GON Force Majeure Event;

12.5.2 The obligation of the Generation Company to generate/supply power and the obligation of the Transmission 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 with the other Parties 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 Final COD, 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 Companies 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 Final COD, the Term of this





Agreement shall stand extended for the period equivalent to the period of continuance of the Other Force Majeure Event or effects thereof.

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 in the case of a Company, a breach of this Agreement by the other Company) or Event of Default (or in the case of a Company, an Event of Default of the other Company);

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 Final COD, each Company shall be entitled to recover without double recovery, the costs and expenses reasonably and necessarily incurred by each Company as a result of one or more GON Force Majeure Events or its or their effects:

- (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 each 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 the offtakers 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 each Company and against which each Company has not otherwise been held harmless under any other arrangements; and
- (J) any additional costs incurred by each 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 Final COD, for the period during which the GON Force Majeure Event or the effects thereof are outstanding, the affected Company shall, in addition to any outstanding Pre-COD Compensation Amount, also be entitled to recover any: (A) costs reasonably and necessarily incurred by each Company; and (B) loss of revenue from sale and transmission of energy and/or capacity to the Companies as a result of one or more GON Force Majeure Events or its or their effects (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, a Company shall provide the GON with a report setting out full details of such additional costs or loss of revenue, and the steps which each 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 Companies shall have the right to recover any Relevant GON Compensation Amount, without double recovery by way of one or more of the following methods upon receipt by GON of an itemised invoice (together with full supporting documentation) from the Companies in this regard payable within thirty (30) days of its receipt:
- (A) setting-off against the Delay Liquidated Damages amount;
 - (B) reducing the Energy Royalty payable by the Generation Company to the GON following Interim COD under Section 11.25 (*Royalties Payable to GON*);
 - (C) reducing the Capacity Royalty payable by the Generation Company to the GON following Interim COD under Section 11.25 (*Royalties Payable to GON*);
 - (D) assigning all, or a proportion of, the revenues being received by a GON Instrumentality, from the sale of Free Energy and Power in the export market pursuant to Section 11.15 (*Operations Procedure Code*);
 - (E) reallocating all, or a proportion of, the Free Energy and Power which the Generation Company shall sell in the export market on an arm's length basis;
 - (F) increasing the tariff payable for power purchase under the domestic power supply agreement entered into pursuant to Section 11.16 (*Domestic Commercial Power Purchase Agreement*), if any;
 - (G) reallocating all, or a proportion of, the dividends declared and payable to the relevant GON Instrumentality under the JVA; or
 - (H) 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 a 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,

(the "**Staggered Remedies**").

Funding of any outstanding compensation – final invoice

- 12.7.3 If the Affected Party is unable to fully recover: (i) the Pre-COD Compensation Amount within six (6) months from the date of demand by the Affected Party; or (ii) the Post-COD Compensation Amount within twelve (12) months of the date of demand by the Affected Party in accordance with Section 12.7.2 (*Staggered Remedies*), such Affected Party 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 (*Relief during Force Majeure Events*) 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 a Company to GON under this Agreement, the 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 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 Companies may terminate this Agreement in accordance with Section 13.3 (*Termination notices*) provided that the Companies shall not be entitled to terminate this Agreement on the occurrence of a GON Force Majeure Event or Change in Law if the GON is complying with its payment obligations.

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 Companies may terminate this Agreement in accordance with Section 13.3 (*Termination notices*) provided that if the Companies give a notice to GON that they intend to not exercise their right to terminate this Agreement and continue with this Agreement, then on receipt of such notice, GON shall be prohibited from terminating this Agreement for a period of a further twenty four (24) months over and above the initial twenty-four (24) month period.

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 Companies 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 the:

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

12A.3 Change in Tax – Clarification

- (A) If the Generation Company is not able to achieve Final COD by 16 July 2023 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





Section 3.2.4 (A) and (B) (*GON Conditions Subsequent*) of this Agreement, a Change in Tax shall be deemed to have occurred, and the Companies shall be entitled to claim such additional Tax liability from the GON pursuant to Section 12A.6 (*Relief for Change in Law*).

- (B) Any increase in the rate of customs duty on import of cement, iron and steel products shall, without prejudice to the Companies' 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 any 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 a Company of this Agreement; or (ii) in response to a petition to any GON Instrumentality by a 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 a Company for compensation for increase in costs incurred and/or loss of revenue suffered due to Change in Law unless 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 affected Company as compensation for Change in Law.

12A.5 Obligation to notify

12A.5.1 If the Companies consider that a Change in Law has occurred, the Companies 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 the Companies 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 Companies from exercising any right or performing an obligation under this Agreement, the Companies shall provide GON with such information as GON may reasonably require from the Companies 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 Companies of their 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 Companies are unable to comply, or are delayed in complying, with their 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 a prolonged Force Majeure or Change in Law*), if a Change in Law occurs in the period on and from Final COD, the Term of this Agreement shall, to the extent GON does not pay full compensation to the Company pursuant to Section 12A.6 (*Relief for Change in Law*), stand extended at the Companies' option for as long as is required for the Companies 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 affected Company shall be entitled to recover from GON any: (A) costs reasonably and necessarily incurred by each Company; (B) loss of revenue to the Companies from sale and transmission of energy and/or capacity; 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 Companies shall provide the 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 Companies shall have the right to recover any CIL Compensation Amount, without double recovery, by way of one or more of the following methods upon receipt by GON of an itemised invoice (together with full supporting documentation) from the Companies in this regard payable within thirty (30) days of its receipt:
- (A) setting-off against the Delay Liquidated Damages amount;
 - (B) reducing the Energy Royalty payable by the Generation Company to the GON following Interim COD under Section 11.25 (*Royalties Payable to GON*);
 - (C) reducing the Capacity Royalty payable by the Generation Company to the GON following Interim COD under Section 11.25 (*Royalties Payable to GON*);
 - (D) assigning all, or a proportion of, the revenues being received by a GON Instrumentality, from the sale of Free Energy and Power in the export market pursuant to Section 11.15 (*Operations Procedure Code*);
 - (E) reallocating all, or a proportion of, the Free Energy and Power which the Generation Company shall sell in the export market on an arm's length basis;
 - (F) increasing the tariff payable for power purchase under the domestic power supply agreement entered into pursuant to Section 11.16 (*Domestic Commercial Power Purchase Agreement*), if any;
 - (G) reallocating all, or a proportion of, the dividends declared and payable to the relevant GON Instrumentality under the JVA; or
 - (H) 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 a 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 Companies are unable to fully recover the CIL Compensation Amount within twelve (12) months of the date of demand by the Companies in accordance with Section 12A.6.3 (*Relief for Change in Law*), the Companies shall be entitled to present to GON an itemised invoice (together with full supporting documentation) for any remaining amount which the Companies are 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 a Company to GON under this Agreement, the 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.

13. EVENTS OF DEFAULT AND TERMINATION

13.1 Company Event of Default

Subject to any Lenders' rights that may exist under any Lenders' direct agreement and Section 17.9 (*Severe Market Disruption*), each of the following events shall be an event of default of a Company (each a "**Company Event of Default**") which if not remedied within the time period permitted (if any) after receipt of written notice from the GON giving reasonable details of the breach by the relevant Company and demanding remedy thereof (a "**GON Preliminary Termination Notice**"), shall give rise to the right of the 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 Either Company's failure to pay any undisputed amount due from it by the due date which 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 a Company:

- (A) the passing of a resolution by the shareholders of a Company for the winding up of a Company except in the case of a solvent restructuring;
- (B) the voluntary filing by a 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 a Company;
- (D) the appointment of a liquidator, custodian or similar person in a proceeding for the winding up of a 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 a Company, which order has not been set aside or stayed within sixty (60) days of such making; or
- (F) a Company entering into any agreement of merger, consolidation or amalgamation with any person not previously approved in writing by the GON or any other GON Instrumentality.

Failure to achieve Final COD by the Scheduled COD

13.1.3 Failure to achieve Final COD 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 a 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 A 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 A Company is in breach of the provisions of Section 14.3 (*Shareholding Restrictions*) or Section 14.1 (*Assignment and Security - Companies*) 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 Land Lease Agreement(s) by the Companies

- 13.1.7 A Company's failure to pay any undisputed amount due from it under any Land Lease Agreement by the due date which 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.

Breach of any representations and warranties

- 13.1.8 Any of the representations or warranties by a 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 either 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

- 13.1.9 A Company fails to comply with a final order of the 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

- 13.1.10 Any Companies' 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.





Supply of Free Energy and Power

13.1.11 The Generation Company is in breach of its obligation to make available Free Energy and Power to the GON or a GON Instrumentality in accordance with Section 11.15.1 to 11.15.3 (inclusive) (*Operations Procedure Code*) of 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.

13.2 GON Event of Default

Subject to any Lenders' rights that may exist under any Lenders direct agreement, each of the following events shall be an event of default 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 Companies giving reasonable details of the breach by the GON and demanding remedy thereof (a "Companies' Preliminary Termination Notice"), shall give rise to the right of the Companies 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 a Company or a Company Event of Default; or (2) the occurrence of an Other Force Majeure Event:

Payment Default

13.2.1 GON's failure to pay any undisputed amount due from it by the due date which is not remedied within sixty (60) days (or such longer period as otherwise agreed between the Parties) after receipt of a Companies' 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 Companies' Preliminary Termination Notice;

Failure to achieve COD by the Scheduled COD

13.2.3 The Project's failure to achieve Final COD 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 Companies' 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 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 Companies' 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 Companies under this Agreement (including the right to sell energy and capacity in the export market and comply with scheduling requirements of any offtaker or load dispatch centre) or any Land Lease Agreement(s); or
 - (B) makes it unlawful for or limits or restricts the Companies' 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 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 Companies' 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 Companies' Preliminary Termination Notice.

Breach of Land Lease Agreement(s) by GON

13.2.7 The GON or a GON Instrumentality is in breach of its obligations under any Land Lease Agreement(s) and where such breach affects the development, construction or operation of the Project and 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.

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 Companies 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).

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) a Company has not cured or remedied the applicable Company Event of Default in accordance with Section 13.1 (*Company Event of Default*) or Section 13.3.1 (*Termination notices*), or in the case where Section 12.9.1 or Section 12.9.2 (*Termination due to prolonged Force Majeure or Change in Law*) applies, then the 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 13.3.1 (*Termination notices*), or in the case where Section 12.9.1 or Section 12.9.2 (*Termination due to prolonged Force Majeure or Change in Law*) applies, then the Companies 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
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 Generation Company 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 Default</i>) due to a GON Event of Default occurring prior to the Generation Company Financial Close	Companies GON pursuant to Section 8.3.2(B) (<i>Land Acquisition Delay Events</i>)	Sunk Costs (which shall include the cost price of Project Land) plus Transfer Taxes.
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 prior to the Generation Company Financial Close	Either of the Companies 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 (<i>Termination due to Prolonged Force</i>	Either of the Companies or GON	Sunk Costs (which shall include the cost price of Project Land) plus Transfer Taxes.



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Termination Event	Party that is entitled (but not obligated) to serve the Termination Notice	Transfer Price
<i>Majeure or Change in Law</i>) due to a prolonged GON Force Majeure Event or Change in Law occurring prior to the Generation Company 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 after Generation Company Financial Close	GON	Transfer Debt plus FC plus Transfer Taxes less Insurance Proceeds and less DSRA.
Termination of this Agreement pursuant to Section 13.2 (<i>GON Event of Default</i>) due to a GON Event of Default occurring after Generation Company Financial Close	Companies GON pursuant to Section 8.3.2 (B) (<i>Land Acquisition Delay Events</i>)	Transfer Debt plus FC 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 Generation Company Financial Close	A Company or GON pursuant to Section 12.9.2 (<i>Termination due to prolonged Force Majeure or Change in Law</i>)	Transfer Debt plus FC 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 Generation Company	A Company or GON pursuant to Section 12.9.1 (<i>Termination due to prolonged Force Majeure or Change in Law</i>)	Transfer Debt plus FC plus Transfer Equity plus ROE plus Transfer Taxes less Insurance Proceeds and less DSRA.





Termination Event	Party that is entitled (but not obligated) to serve the Termination Notice	Transfer Price
Financial Close		

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
FC 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	150% of Transfer Equity
Insurance Proceeds means	any insurance proceeds actually received under any insurance policies by the Companies
DSRA means	any remaining amount held by each 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 Companies shall submit to GON, within sixty (60) days of the end of each financial year, a statement setting out Companies' assessment of the Sunk Costs incurred by the Companies in the previous financial year.

13.5.3 The Companies acknowledge and agree that GON has agreed to include Transfer Debt and FC as a component of the Transfer Price to make the Project bankable. In consideration for allowing Other Lenders to provide financing or refinancing in connection with the Project, Companies shall ensure that:

- (A) 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;
- (B) 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; and
- (C) the Debt:Equity ratio set out in Section 11.27 (*Debt: equity ratio*) is complied with at all times.





13.5.4 Notwithstanding anything to the contrary contained in this Agreement, if the Companies are in breach of:

- (A) Section 13.5.3 (A) or (B) (*Transfer Price components*), then GON shall not be liable for the payment of such portion of FC to any person that GON would otherwise not have been liable for if Companies had ensured compliance with Section 13.5.3 (A) and (B) (*Transfer Price components*) and the quantum of FC shall stand reduced accordingly; or
- (B) Section 13.5.3 (C) (*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 Companies had ensured compliance with Section 13.5.3 (C) (*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 Companies shall submit a joint invoice ("**Termination Invoice**") to GON setting out the Transfer Price owing to the Companies 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 the Companies the amount shown in the Termination Invoice no later than one hundred and eighty (180) Business days from receipt of the Termination Invoice (the "**Payment Date**"). If GON disputes the Termination Invoice, it shall pay the Companies, 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 the GON once any final award has been issued in favour of the Companies.
- 13.6.3 On the Payment Date, the Companies 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 the GON to the Companies (or the Lenders): (A) is the sole and exclusive remedy of the Companies for termination of this Agreement before the Expiry Date and all loss or damage suffered by the Companies 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 Companies 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 made by GON to the Companies or the Lenders, then such payment to the Companies or the Lenders shall be increased by an amount such that the Companies 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 Companies 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 without any set off or deduction (whether





to the Companies or the Lenders, as applicable).

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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 Companies 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 Expiry Date (as the case may be), the Companies 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 relevant 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 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 Transfer Date (as the case may be), save where the loss or damage has been remedied prior to such date at the cost of a Company (collectively, "**Project Assets**").

13.7 Performance Security

13.7.1 If this Agreement is terminated prior to Final COD due to a Company Event of Default, Section 11.24 (*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*), the GON shall return the Performance Security (FC) and Performance Security (Signing) to the Generation Company.

13.8 Arbitration

13.8.1 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 Companies (or where applicable, the Lenders) in accordance with this Agreement and the Companies 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 Companies or the Lenders (as the case may be) shall apply to the Nepal Rastra Bank for repatriation of the Transfer Price within thirty (30) days of receiving such Transfer Price.

13.10 Power of Attorney

Each Company agrees to grant to the GON a power of attorney to execute all documents and do all acts as may be necessary or required to effect and complete the transfer of the Project to the GON or its designee thereof on the Expiry Date 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 - Companies

14.1.1 The GON hereby irrevocably consents to assignment or other transfer of each Company's rights or benefits (but not its obligations) under this Agreement to any



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Lender or their agents for the purposes of arranging or ~~for~~ arranging financing pursuant to the terms of the Financing Documents or for any refinancing of the Project.

- 14.1.2 Upon an assignment or transfer under Section 14.1.1 (*Assignment and Security - Companies*), the assignee or transferee shall be vested with all the rights and benefits (but not obligations) assigned or transferred to it provided that such assignment or transfer shall not increase the GON's financial obligations under this Agreement.
- 14.1.3 The Companies shall promptly give the GON written notice of any assignment or transfer under Section 14.1.1 (*Assignment and Security - Companies*), and the GON shall promptly acknowledge in writing such assignment.
- 14.1.4 The Companies may mortgage or otherwise give security over its assets and undertakings including any lease, license or other interest granted by the GON pursuant to this Agreement to any Lender providing financing for the Project.
- 14.1.5 Other than as provided in Sections 14.1.1 to 14.1.4 (*Assignment and Security - Companies*) (inclusive) above, neither Company shall assign or otherwise 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 the GON (such consent not to be unreasonably withheld or denied). Any assignment in contravention of this Section 14.1 (*Assignment and Security - Companies*) shall be void ab initio.

14.2 Assignment by GON

The GON may assign any benefits under this Agreement without the prior written consent of the Companies, 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 each 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 14.3.2 (*Shareholding Restrictions*) to 14.3.6 (*Shareholding Restrictions*) below and 14.1.1 (*Assignment and Security - Companies*) above, neither Company shall (and shall procure that the Shareholders, Sponsors and its Affiliates shall not), directly or indirectly, whether by way of merger, consolidation, sale of stock, change of Control or otherwise: (A) sell; (B) assign; (C) transfer; (D) convey; (E) create any Encumbrances; (F) subcontract or delegate (except where expressly permitted or contemplated by this Agreement); (G) declare a trust in favour of a third party or declare itself a trustee for a third party; or (H) otherwise dispose of in any manner, ("**Transfer**") the Project, the Hydro Property, this Agreement or their respective benefits, interests, rights and obligations in, under, relating to, or in connection with the Project, the Hydro Property or this Agreement.

14.3.2 At any time prior to the second (2nd) anniversary of the Final COD (the "**Lock-in Period**") each Company:

- (A) shall not be permitted to issue or allot and the Shareholders and/or the Sponsors shall not be permitted to transfer (or procure or allow the transfer of), directly or indirectly, any equity shares of any Company to any person (including any Qualified Investor); and
- (B) shall procure that the Shareholders and/or the Sponsors shall not transfer (or procure or allow the transfer of), directly or indirectly, any equity shares to any person (including any Qualified Investor),

if in each case, following such issuance, allotment or transfer, the





transferee shall become the legal or beneficial holder of more equity shares in each Company than that held, directly or indirectly, by GEL and GL collectively in each Company, or the transferee shall by itself, have Control over any of the Companies.

- 14.3.3 Subject to Section 14.3.2 (*Shareholding Restrictions*), the Sponsors shall be permitted to transfer their shareholding of equity shares to: (a) any Qualified Investor; (b) any person so long as such transfer would not result in a person (other than a Qualified Investor) having by itself (or acting in concert with any other person that is not a Qualified Investor) Control over any of the Companies; or (c) any person subject to the prior written approval of GON which shall not be unreasonably withheld.
- 14.3.4 Prior to any agreement (whether written or otherwise) between any transferring Sponsors and a Qualified Investor becoming effective, the Companies shall provide, or shall procure that the transferring Sponsors shall provide, the GON with written notice from the transferring Sponsors setting out such Sponsor's intention to transfer all, or any part, of its interest.
- 14.3.5 If any Transfer Shares in any Company are transferred to any Qualified Investor (the "**Transferee Qualified Investor**") by any person (the "**Transferor**"), the Transferor and the relevant Company shall procure that such Transferee Qualified Investor shall not transfer any Transfer Shares in contravention of the provisions of this Section 14.3 (*Shareholding Restrictions*). The provisions of this Section 14.3.5 (*Shareholding Restrictions*) shall mutatis mutandis apply to the subsequent transfer of any shares.
- 14.3.6 Each Company shall:
- (A) make appropriate provisions in its Articles of Association 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 share capital so as to put prospective purchasers of such share capital on notice of the restrictions on share transfers set forth in this Section 14 (*Assignment, Transfer and Change of Control*);
 - (C) not register or give effect to any purported transfer of share capital of the Company that is not in compliance with the restrictions set out in this Section 14.3 (*Shareholding restrictions*); and
 - (D) forthwith notify GON of any proposed change or of any actual Change of Control of a Company from the Sponsors to any other person.
- 14.3.7 For the purposes of this Section, the term "**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 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 date of this Agreement OR a person whose credentials, in the field of hydropower are similar to or better than that of the transferring Sponsor and upon GON being reasonably satisfied that the induction of such investor is unlikely to materially and detrimentally affect the implementation of the Project in accordance with this Agreement; and
 - (B) who is not of a nationality that is prohibited by the prevailing Laws of Nepal from investing in Nepal; and





(C) who is not, in GON's reasonable opinion, a threat to Nepal's national security. 2068

14.3.8 Any transferee of shares in any Company: (A) shall not be of a nationality that is prohibited by the prevailing Laws of Nepal from investing in Nepal; or (B) a person who is, in GON's reasonable opinion, not a threat to Nepal's national security. Any Shareholder shall be entitled to transfer its shares in a Company subject to compliance with Section 14.3 (*Shareholding Restrictions*).

14.4 Pledge of Shares in favour of Lenders

GON hereby agrees and confirms that, nothing contained in this Agreement shall restrict: (A) the Generation Company's shareholders from creating a pledge on its shares in the Generation Company; and (B) the Transmission Company's shareholders from creating a pledge on its shares in the Transmission Company, in favour of Lenders. GON further agrees and confirms that an enforcement of the pledge by Lenders shall not result in a breach of this Agreement.

14.5 Amendment to JVA

The Parties shall procure that the Original JVA is amended by the parties to the Original JVA executing the form of the amendment agreement to the Original JVA as set out in Schedule 23 (Form of JVA Amendment Agreement) is executed within sixty (60) days of the Agreement Date.

15. LAW AND DISPUTE RESOLUTION

15A Laws of Nepal

The Companies shall comply with the laws of Nepal.

15.1 Interpretation of this Agreement

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 Companies 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. For the avoidance of doubt, in case of a dispute involving or affecting both Companies, the Initiating Party or Responding Party (as applicable) shall mean both Companies collectively.
- 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 Companies shall jointly 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 Companies 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 the Companies 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 ~~2068~~ 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 Companies 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.
- 15.5.11 Each Party shall act reasonably and co-operate to give effect to the provisions of this Section.

15.6 Dispute Resolution by Arbitration

- 15.6.1 If the Parties are unable to resolve a non-Technical Dispute in accordance with Section 15.5 (*Expert determination*) or a Technical Dispute is referred to arbitration in accordance with Section 15.6 (*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 Companies shall jointly appoint one (1) arbitrator (unless only one (1) Company is involved in or affected by the Dispute in which case such Company shall appoint the second (2nd) 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 no agreement is reached within thirty (30) days, the Chairman of SIAC shall nominate and appoint a third (3rd) arbitrator to act as presiding arbitrator of the tribunal.
- 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 the GON.

15.7.2 The GON hereby irrevocably and unconditionally agrees that:

- (A) should any proceedings be brought against the 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 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.

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 Companies 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 each 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 the GON has been duly authorised by all requisite action on the part of the GON, and shall not violate the Laws of Nepal or any applicable order of any GON Instrumentality;





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- 16.1.3 this Agreement constitutes a legal, valid and binding obligation of the GON enforceable against it in accordance with its terms; and
- 16.1.4 it has the authority to grant or procure the grant of the approvals, consents, licenses, permissions etc. envisaged in this Agreement.

16.2 Company representations and warranties

Each Company hereby represents and warrants to the 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 as currently conducted;
- 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 such Company, and no other proceedings on the part of such 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 such 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 contained 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 a Company



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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 contained 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, (2) any governmental authority, offtaker or regulator in the export market, or (3) 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 a Company to disclose any such Confidential Information to the PRP who may require such Confidential Information in connection with the discharge of their 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 this Agreement, the Export Power Purchase Agreement or the OPC, as the case may be.

17.2 Rights cumulative with those at Law

Subject to Section 17.2 (*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 Nepal.

17.3 Liability and Indemnification

17.3.1 Limitation of liability

- (A) Notwithstanding anything to the contrary contained in this Agreement, no 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);
 - (3) wasted expenditure including pre-contract expenditure that are indirect;
 - (4) increased costs or expenses that are indirect; or
 - (5) any other special, indirect or consequential, incidental, punitive or exemplary loss or damage of any type including any loss 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 any Company for any loss or liability incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, by any 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):
 - (1) "**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*), the GON shall indemnify the Companies against, and defend and hold the Companies 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, any Company or its Representatives, for personal injury or death to persons or damage to property arising out of any negligent act or omission by the 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*), each Company shall indemnify the GON against, and defend and hold the 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, the 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 the 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 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 a 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 Parties 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*), 10.9 (*Free transfer and repatriation of necessary funds*), 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*), 17.21 (*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 Companies hereunder, if at any time after the Agreement Date, any Severe Market Disruption occurs, then:

- (A) the Companies shall immediately provide a written notice to the GON setting out the details of such Severe Market Disruption and its impact on





the Companies; and

- (B) upon receipt of such written notice from the Companies, 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 other Parties 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 Companies' 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 Companies 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 Final COD, not more than twice; and
- (B) for the period commencing on Final COD and up to the end of the Term, not more than thrice,

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: Investment Board
 Government of Nepal
 International Convention Centre Complex, New
 Baneshwor
 Kathmandu
 Nepal

Tel. No.: 977-1-4475276





Facsimile No.

977-1-4475281

2068

Email:

info@investmentboard.gov.np;

radhesh.pant@investmentboard.gov.np

Generation Company

GMR Upper Karnali Hydropower Limited

Address:

P.O. Box 148, Lalitpur
Chakupat-10, Lalitpur,
Nepal

Tel. No.:

+00-977-1-5260518 /5260259

Facsimile No.:

+00-977-1-5260737

Email:

harvinder.manocha@gmrgroup.in

Transmission Company

Karnali Transmission Company Private Limited

Address:

P.O. Box 148, Lalitpur
Chakupat-10, Lalitpur,
Nepal

Tel. No.:

+00-977-1-5260518 /5260259

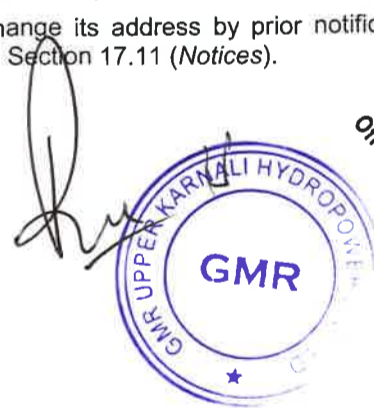
Facsimile No.:

+00-977-1-5260737

Email:

harvinder.manocha@gmrgroup.in

- 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

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 this Agreement or 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 Companies





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 any of 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 of 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 Companies to the 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

[Signature]
Signature: *[Signature]*
Name: Radhesri Pant
Designation: CEO Investment Board
Place: Office of the Investment Board
Government of Nepal
2068

Signed for and on behalf of
GMR UPPER KARNALI HYDROPOWER LIMITED



[Signature]
Signature: *[Signature]*
Name: R. V. SESHAN
Designation: PRESIDENT
Place: HYDRO ENERGY
GMR GROUP

Signed for and on behalf of
KARNALI TRANSMISSION COMPANY
PRIVATE LIMITED



[Signature]
Signature: *[Signature]*
Name: HARINDER MANOCHA
Designation: CHIEF OPERATING OFFICER
Place: GMR GROUP

WITNESS FOR GMR
UPPER KARNALI HYDROPOWER LIMITED

[Signature]
NAME: RAJIB MISRA

WITNESS FOR KARNALI
TRANSMISSION COMPANY PRIVATE LIMITED



[Signature]
NAME: KULMEET K. SHARMA



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 Companies shall make an initial assessment to ascertain the feasibility and viability of undertaking Restoration and prepare a preliminary statement of their 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 Companies may reasonably require ("**Preliminary Statement**").
2. Upon completion of their initial assessment within the period referred to in paragraph 1 above, the Companies 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 Companies' 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 Companies shall effect Restoration, subject to paragraph 7 of this Schedule 1 (*Restoration*).
5. If the Companies have (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 Companies, the Companies 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, 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 Companies upfront, in order for the Companies 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 Companies shall provide the final Restoration Report so approved by the Lenders, including any modifications required by the Lenders, to GON.
7. Once the Companies and GON have discussed the Restoration Report and made appropriate modifications, if any suggested by GON and acceptable to the Companies and Lenders, the Companies shall effect the Restoration in accordance with such amended Restoration Schedule and Restoration Report, provided, however, that the Companies 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 Restoration Report, (ii) GON has made payments to the Companies 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 Companies have secured financing in relation to such Restoration and have 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 Companies have, in the Preliminary Statement and 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 Companies 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 Companies 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 Companies 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 Companies in effecting such Restoration ("**GON Restoration Costs**"); (ii) the Companies shall provide GON with copies of invoices and supporting documentation supporting their claim for GON Restoration Costs; and (iii) if Companies need 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





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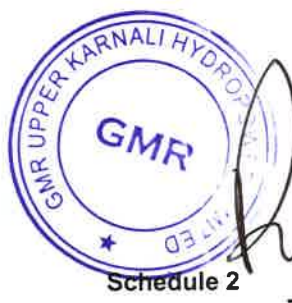
Schedule 1 which they require GON to be responsible for ²⁰⁶⁸ ("Additional GON Restoration Costs"), Companies shall obtain GON's prior written consent, not to be unreasonably withheld before incurring such Additional GON Restoration Costs.

11. Notwithstanding anything to the contrary contained in this Agreement, if after the Lenders have been repaid in full and the Financing Documents cease to remain in full force and effect:
- (a) Restoration is required as a result of an Other Force Majeure Event, the Companies' decision as to whether Restoration is technically and economically feasible and viable shall be final and not subject to an the Panel of Experts' determination pursuant to Section 15.5 (*Expert Determination*) or that of an arbitral tribunal pursuant to Section 15.6 (*Arbitration*); and
 - (b) Restoration is required as a result of a GON Force Majeure Event or Change in Law, the Companies' 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*).



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PROJECT HANDOVER UPON EXPIRY OF THE AGREEMENT 2068

1. On or after the Expiry Date, all rights granted by GON or any other GON Instrumentality to the Companies in relation to the Project and the Hydro Property pursuant to this Agreement may be revoked by GON or any such other GON Instrumentality. Simultaneously with the transfer of the Hydro Property to GON, the Companies 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 as per Section 13.6.7(C) (*Payment of the Transfer Price*)).
2. The Handover process shall commence on a date two (2) years before the Expiry Date ("**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 Companies (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 Companies' 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 Companies' 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 Companies 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 Companies 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.



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- (h) The Companies 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 Companies.
- (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 Companies shall, at their option, either (A) make a cash payment to GON on or 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 Companies 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 Companies 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 Companies.
4. The Companies do 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 Companies 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, 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 a corporate guarantee to be provided by a 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. Provided that in the event the GON has reasonable objections to the issue of a corporate guarantee, the Company shall provide a bank guarantee for such amount.





"Handover Period" shall mean the period commencing from the two (2) years prior to the Expiry Date and ending on the Expiry Date.





Schedule 3



HANDOVER REQUIREMENTS – EXPIRY OF THE AGREEMENT

1. Two (2) years after Final COD the Companies 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, at the end of the Term. The Handover Plan shall be jointly prepared by the Companies and shall be finalised two (2) years after Final COD of the Project in accordance with 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 **Recommended Equipment Maintenance:** 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 **Civil Work:** 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:** As appearing in the Schedule 2 of PDA, the employees of the Hydro Property shall be retained in the project. 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:** Each Company shall ensure that by the end of the Term the spare parts for the Hydro Property have been replenished to the level of the initial stock supplied for the Hydro Property at the Final COD, as modified by subsequent operational experience.
4. The Handover Expert's Initial Inspection and Final Inspection shall be carried out during maintenance period of the structures, equipment, accessories or as the case may be with



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prior notice to the Companies to ensure that the Hydro Property's operations are not disrupted. The (A) Initial Inspection shall include an inspection of the following and (B) Final Inspection shall include an inspection of the following 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 (other than 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.





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4.9 **Transmission Infrastructure:** The operation and maintenance records of the Transmission Line (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 Performance Standards.

5. The Initial Inspection report as mentioned in Schedule 2 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 applicable Performance Standards.

6. **Remedial Measures**

The Companies shall implement all Remedial Measures and shall permit the GON to monitor and shall deliver final Handover Plan.



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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 Companies shall, no later than the Transfer Date:

- 2.1.1 execute and deliver to the 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 a 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 Transfer Price*);
- 2.1.2 deliver (as appropriate) such Records and information as may be reasonably requested by the GON or its designee.

3. COOPERATION

3.1 In respect of handover of the Project, the Companies shall use their 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 Companies in writing. Such cooperation required of the Companies shall include the provision of all Records and other relevant documentation and information held or used by a 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 Companies to GON in accordance with this Agreement.





Schedule 5



LAND LEASE PRINCIPLES

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

- (i) **Term:** The Term of the Land Lease Agreement(s) shall be co-terminus with this Agreement.
- (ii) **National importance:** the terms of the Land Lease Agreement(s) shall take into account that the Project is of national importance;
- (iii) **Lease rates:** that 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;
- (iv) **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 Senior Lenders and general cooperation.
- (v) The Lessee shall have the right to vacant and peaceful possession of the leased properties for the Term.
- (vi) **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.
- (vii) 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 13.4 (*Transfer Price*) of the Agreement.





Schedule 6
INSURANCE



1. **INSURANCE**

- 1.1. The Companies shall at their own cost and expense obtain and maintain in effect for the Term of this Agreement appropriate levels of insurance in accordance with the Laws of Nepal, Good Industry Practice and this Schedule 6 (*Insurance*), with internationally reputable and financially sound insurers approved by the Lenders, (the "**Insurance Policies**").
- 1.2. Without prejudice to paragraph 1.1 above, once the Lenders have been repaid in full and the Financing Documents cease to remain in full force and effect, the Insurance Policies to be maintained by the Companies, shall, as a minimum, cover the following:
 - 1.2.1. a Company's general liability arising out of this Agreement;
 - 1.2.2. loss, damage or destruction to the Hydro Property and all associated facilities and infrastructure, property and/or assets owned by the GON and found within the Project Area, including all permanent structures, buildings, equipment, improvements and other fixtures; and
 - 1.2.3. such other covers as are specified in the Export Power Purchase Agreement.
- 1.3. The Companies shall not be in breach of their obligations hereunder if and to the extent that any Insurance Policy is unavailable to a Company under commercially reasonable terms for reasons other than any breach by a Company or Company Event of Default.
- 1.4. 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 Companies shall provide the 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 the GON within ten (10) days of their issue by insurers.
- 1.5. The Companies shall annually submit to the 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.

2. **MODIFICATIONS OF INSURANCE COVERAGE**

- 2.1. The Companies shall inform GON of any material modifications or cancellation to the Insurance Policies within thirty (30) days of the date of such modification or cancellation.
- 2.2. If at any time a Company fails to purchase and maintain in full force and effect any Insurance Policy required under this Agreement, the GON may purchase and maintain such Insurance Policy and all amounts incurred by the GON in purchasing and maintaining such Insurance Policy shall be reimbursed to GON by the Companies.

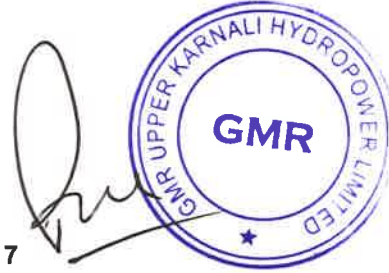
3. **APPLICATION OF INSURANCE PROCEEDS**

Subject to Lenders' rights or requirements under the Financing Documents, the Companies shall: (A) in the first instance, apply the proceeds of any insurance claim in respect of physical loss or damage to the Hydro Property towards the remedy of such loss or damage provided that the Hydro Property can be Restored; and (B) in the second instance, towards repayment of Transfer Debt and FC to the Lenders.





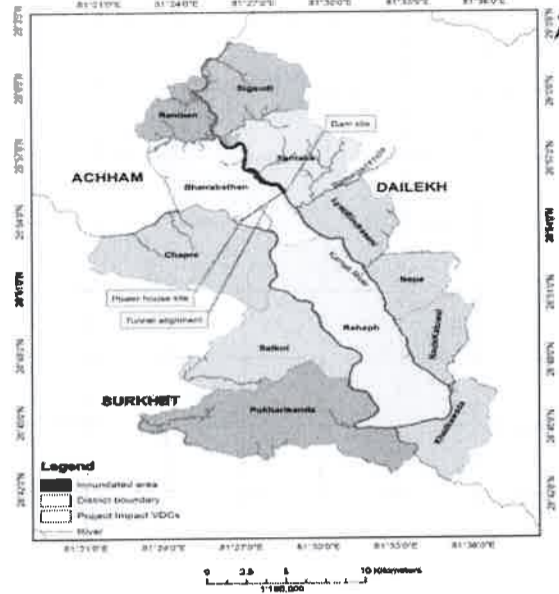
Schedule 7



PROJECT AREA

The 900 MW Upper Karnali Hydroelectric Project is one of Nepal's run-of-river schemes with diurnal peaking capacity. The project site is located on the Karnali river bend forming the boundary of the Mid-Western and Far-Western development regions of Nepal. The project has been conceived to develop the head available between the two arms of the Karnali bend. The project lies in three Districts with 12 Nos. of Affected Village Development Committees (VDCs) of Nepal as listed below along with map

#	Districts	VDCs
1	Surkhet	<ul style="list-style-type: none"> • Pokharikada • Salkot • Chhapre
2	Dailekh	<ul style="list-style-type: none"> • Singaudi • Sattala • Layati Bindrasaini • Nepa • Naule Katuwal • Khadkabada
3	Achham	<ul style="list-style-type: none"> • Bhairabsthan • Rahaph • Raniban



Project Boundaries as per Survey License are as under:

Latitude 28° 42' 00" N to 28° 58' 20" N

Longitude 81° 25' 00" E to 81° 35' 30" E

The layout of the Generation Project has been optimized within the allotted Project boundaries as per the Generation Survey License

The project site is located at about 700 km West of Kathmandu. The main access to the site is along the East-West highway to Kohalpur and then via Surkhet (Birendranagar); 90 km from Kohalpur. Access from Surkhet is via Karnali Rajmarg (Surkhet - Jumla road) which is a fair weather road and is presently being upgraded. The project site is approximately 95 km from Surkhet. Access from India shall primarily be via Nepalgunj - Surkhet at a distance of about 190 km from Nepalgunj by road.

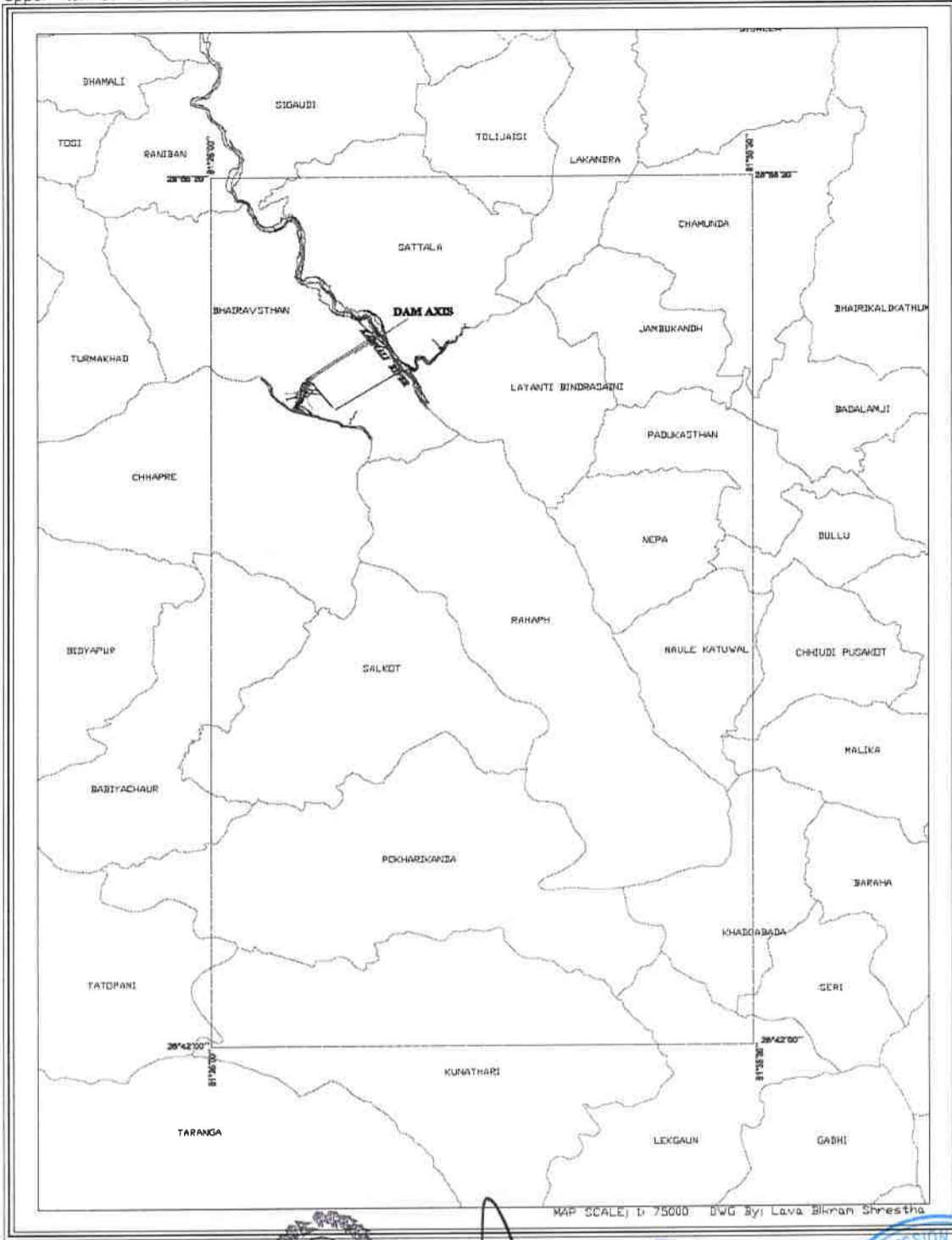




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Upper Karnali HEP 900 MW



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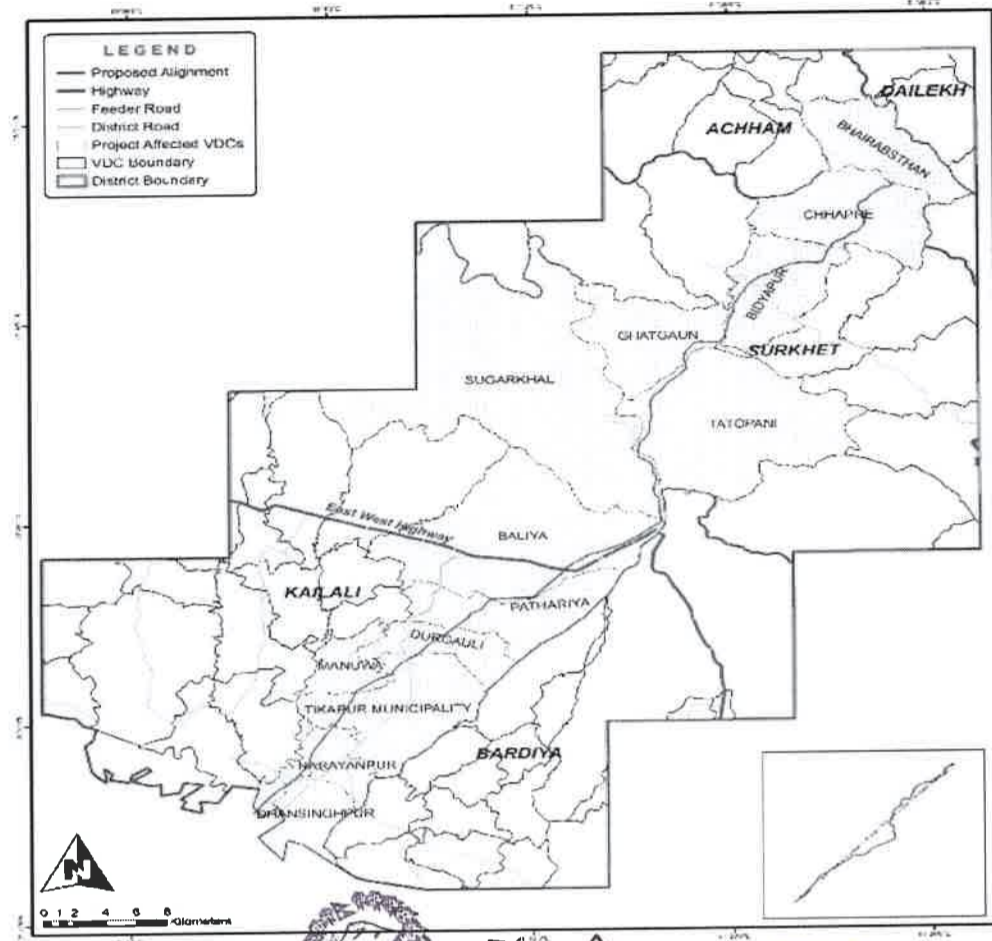
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TRANSMISSION LINE PROJECT AREA:

The existing alignment in DPR submitted to GoN with ROW of 46m along the alignment of Transmission Line will be updated as per revised IEE study.

**UPPER KARNALI 400 kV TRANSMISSION LINE PROJECT
ROUTE ALIGNMENT**



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Schedule 8



POWER STATION SPECIFICATIONS

The Upper Karnali Hydroelectric Project is envisaged to be a run-of-river scheme project with diurnal peaking capacity with the primary purpose of exporting power to India. The project site is located on the Karnali river bend forming the boundary of the Mid-Western and Far-Western development regions of Nepal. The project has been conceived to use the head available between the two arms of the Karnali bend.

The salient features of the Hydro Property are as follows:

- generation of 900 MW of power based on 90% dependable flows under rated discharge of 664.32 m³/s (excluding riparian release) and rated head of 150.11 m;
- diversion tunnel cum sediment diversion tunnel 9m diameter horseshoe shape, 1050 m long;
- 207m long concrete gravity dam, 64m high above the deepest foundation level and 30m high above the river bed level;
- the reservoir extends up to 8.9 km upstream with Full Supply Level (FSL) level at 637 m and Minimum Draw Down Level (MDDL) at 633 m;
- the live storage capacity is 6.66 X 10⁶ m³ between FSL and MDDL;
- the main spillway consists of a gated orifice type spillway with five bays each 11m (w) x 14m (h); there is also an auxiliary overflow spillway consisting of one bay ; 3m (w) x 6m (h);
- a fish pass, 340 m long on the downstream face of the left bank non-overflow blocks;
- an intake structure with four nos. 15m (w) x 11.25m (h) bell mouth openings equipped with trash racks, service gates and stop-logs;
- two head race tunnels, 10m internal diameter and horse shoe shaped; 2.2 km & 2.3 km long respectively;
- four 7.5m diameter Horse-shoe shaped Branch Feeder Tunnels and two 10m diameter Horse-shoe shaped 350m and 340 m Main Feeder Tunnels;
- two Surge shafts of 25m internal diameter 42m high;
- four vertical pressure shafts of 6m diameter; 250m to 275m long; each bifurcating into 2 limbs 4.25m diameter; each nearly 50m long;
- four 20m X 22.8m X 210m dufour shaped desilting chambers;
- two D-shaped Main Silt flushing Tunnels of 3.75m X 4.5m and four 3m X 2m D-shaped main silt flushing tunnels of 3.75m x 4.5m and four 3m x 2m D-shaped branch silt flushing tunnels;
- a surface power house -149m (L) x 23.5m (w) x 45m (h) to accommodate eight vertical shaft Francis turbines of each 112.5 MW (with 10% overload) operating at a rated net head of 150.11m & rated speed of 214.3 rpm on the right bank of Karnali river;
- Annual Energy generation from the Power Station (excluding generation from the Local Community Power Facility) corresponding to 50% Dependability is 4405 Million Units.
- Transformer hall 149m (L) X 13m (w) X 20m (h) on the upstream side of the power house shall house generator transformers which shall step up the generation voltage of 13.8kV to 400kV and 132kV for export power and Free Energy and Power respectively. Gas Insulated switchgear shall be provided to evacuate power;

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- tail pool 36.25m (L) X 149m (W);
- road tunnel to power house complex 7m (W) X 6.8m (h) D-shaped 2.5 km long,
- the Local Community Power Facility at the toe of the dam utilising the riparian discharge of the Power Station is envisaged.

Notwithstanding anything written here in 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 Generation Company



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TRANSMISSION LINE SPECIFICATIONS

400 kV D/C transmission Line from Upper Karnali HE Project to the Bareilly Pooling Station of Power Grid Corporation of India Limited (PGCIL) in Uttar Pradesh, India is envisaged.

Since the line is to be connected to the Indian Grid, the same shall be constructed as per CBIP Manual, IS 5613, Indian Electricity Act and Indian Grid Code along with the standards applicable in Nepal for EHV Lines.

- The connectivity with Indian Grid shall be arranged by the Generator. It is anticipated that the connectivity shall be granted at Bareilly Pooling station of Powergrid in UP, India.
- The scope of the Transco is to develop the portion of transmission line traversing in Nepal.
- From Nepal- India International border the same shall be developed as an extension of ISTS network.

The broad specifications of the Transmission line are as follows, however this can only be finalized after IEE approval (to the extent applicable):-

S.N.	Feature	Description	Remarks
1.	Project District	Surkhet, Achham, Kailali	3 Districts
2.	System Data		
2.1	System nominal voltage kV	400	
2.2	System maximum voltage kV	420	
2.3	System nominal frequency Hz	50	
3.	Line Data:		
3.1	Total Line Length (To be developed by Transco in Nepal)	76 Kms (Appx.)	To be reviewed as per IEE approval
3.2	Structure	Lattice	
3.3	Conductor	Aluminum Conductor Steel reinforced (ACSR) or equivalent	Conductor size to be same as the portion in India
3.4	Earthwire	GSW-7/3.66	
3.5	Insulators	Porcelain/Si. Composite Long rod 120kN/160kN	Based upon final conductor size
4.	Design Data		
4.1	Temperature		
4.1.1	Maximum ambient temperature °C	42.5	
4.1.2	Minimum ambient temperature °C	-2.5	
4.1.3	Maximum temperature of conductor °C	85	
4.1.4	Everyday temperature of conductor °C	32	
4.2	Wind Loads		
4.2.1	Wind pressure on the whole projected area of conductors kg/m ²	As per IS: 802 Part 1 Latest Amendment (WZ-5)	
4.2.2	Wind pressure on p50the whole projected area of steel angle members kg/m ²		
4.2.3	Wind pressure on 1.71 times projected area of steel angle face of		

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S.N.	Feature	Description	Remarks	
	structure kg/m ²			
5	Clearance (minimum) in meter	meter at + 85°C conductor temperature		
5.1	Normal ground for pedestrians only	8.95	Clearances are shown in meters	
5.2	Residential area	9.0		
5.3	Road and streets	9.0		
5.4	Highways	9.5		
5.5	To metal clad or roofed buildings or building or structures upon which a man may stand	7.0		
5.6	Power lines (above or below) Voltage rating of crossing line(kV) (Nominal/Highest) 66/72 132/145 220/245 400/420 800	5.49		
		5.49		
		5.49		
		5.49		
		7.94		
5.7	Telecommunication lines	4.48		
5.8	Railway Tracks	19.3		
6	Phase spacing (Vertical) (mm)	8000		
7	Nominal Span (m)	400		
8	Right of way (m)	46		
9	Shield Angle (DEG)	20		
15.	Substations /Hubs			
	Substation			
	15.1.1	Purpose	Switching	
	15.1.2	Line Bays	2	
15.1	15.1.3	Shunt reactor (> 50 MVAR each at sending end at Switchyard of UKHPP & receiving end at Bareilly Sub-Station, India as per requirement)	2 Nos.	Shall be finalized based upon conductor chosen

Notwithstanding anything written here in above the specifications may undergo changes/modifications/ improvements, before or during construction, based on actual ground conditions, additional studies and/or acceptable suggestions of technical consultants and advisors to the Hydro Property.

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Schedule 10



TECHNICAL STANDARDS

1. **For design and construction of civil works (following Manuals/ Guidelines/Standards as applicable)**
 - a. Manual of Standards and Criteria for Planning Water Resources Projects. Water Resources Series No. 26 - A United Nations Publication
 - b. Civil Engineering Guidelines for Planning and Designing Hydroelectric Development (in five volumes), American Society of Civil Engineers (ASCE), 1989.
 - c. Engineering and Design - Hydropower, Department of the Army Corps of Engineers, USA, 1985.
 - d. United States Bureau of Reclamation (USBR)
 - i. Design of Small Dams, 1987
 - ii. Design Criteria for Concrete Arch and Gravity Dams, 1977
 - iii. Earthquake Engineering for Concrete Dams
 - iv. United States Bureau of Reclamation (USBR) publications including:
 1. Design of Small Dams –
 2. Design of Gravity Dams
 3. Construction and Design
 4. Earthquake Engineering for Concrete Dams.
 - e. International Commission of Large Dams
 - f. BIS – Bureau of Indian Standards
 - g. Any other internationally recognized standards
2. **For geological mapping, laboratory and in situ testing of rocks and soils (following Manuals/ Guidelines/Standards as applicable)**
 - a. International Society for Rock Mechanics. The complete ISRM recommends methods for rock characterization testing and monitoring: also 1976-2006. Ed Ulusay R, Hudson JA, ISRM 2007
 - b. Any subsequent ISRM suggested methods as published in International Journal of Rock Mechanics and Mining Engineering
 - c. Relevant ASTM Standard Test Methods
 - d. BIS – Bureau of Indian Standards
 - e. Any other internationally recognized standards
3. **For rock engineering design for surface and underground excavations (following Manuals/ Guidelines/Standards as applicable)**
 - a. Hoek E, Kaiser PK, Bawden WF. Support of underground excavations in hard rock. Balkema, Rotterdam 1995





- b. Hoek E. Practical rock engineering.
 - c. BIS – Bureau of Indian Standards
 - d. Any other internationally recognized standards.
4. **For tunnel lining design (following Manuals/ Guidelines/Standards as applicable)**
- a. Task Committee on Steel Penstock Design of Pipeline Planning and Design Committee of the Pipeline Division of ASCE. Steel penstocks (2nd Ed).Ed Bambei J, 2012
 - b. The British Tunneling Society and the Institution of Civil Engineers. Tunnel lining design guide. Thomas Telford, London, 2004.
 - c. BIS – Bureau of Indian Standards.
 - d. Any other internationally recognized standards.
5. **For mechanical and electrical engineering (following Manuals/ Guidelines/Standards as applicable)**
- a. Mechanical and Electrical works shall be done to the relevant specification of:
 - i. ANSI (American National Standards Institute)
 - ii. ASME (American Society of Mechanical Engineers)
 - iii. ASTM (American Society of Mechanical Engineers)
 - iv. CCH-70 (Examination of Steel Casting)
 - v. CEA -Hydroelectric Turbine Generator Units, Guide for erection Tolerances and Shift System Alignment
 - vi. CSA (Canadian Standards Association)
 - vii. IEC (International Electro-technical Commission)
 - viii. IEEE (Institute of Electrical and Electronics Engineers)
 - ix. ISO (International Quality Standards)
 - x. NEMA (National Electrical Manufacturers Association)
 - xi. FCC (Federal Communications Commission)
 - xii. BIS – Bureau of Indian Standards.
 - xiii. Any other internationally recognized standards

It should be noted that many of the organizations listed above do not provide standards as such but recommend design methods leaving the final decision to the designer; however if reference is made to such recommendations in any submission, then the PMU shall regard such recommendations as authoritative.

Codes and Standards

Technical specifications of all materials and works used and provided under all design calculations and tests shall be in accordance with the latest edition of the appropriate standards published by the following master list of issuing authorities as applicable or other





equivalent standards and codes.

Abbreviation	Designation
ACI	American Concrete Institute
AES	Atmospheric and Environment Services, Environment Canada
AGMA	American Gear Manufacturers Association
AISC	American Institute of Steel Construction
AISE	Association of Iron and Steel Engineers
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
API	American Petroleum Institute
ASCE	American Society of Civil Engineers
ASTM	American Society for Testing and Materials
ASME	American Society of Mechanical Engineers
AWG	America Wire Gauge
AWS	American Welding Society
AWWA	American Water Works Association
BIS	Bureau of Indian Standards
BSI	British Standards Institution
CEA	Canadian Electrical Association
CGSB	Canadian General Standards Board
CDA	Canadian Dam Association
CSA	Canadian Standards Association
CEMA	Canadian Electrical Manufacturers Association
CMAA	Crane Manufacturers Association of America
CSA	Canadian Standards Association
DIN	Deutsches Institute fur Normung
EIA	Electronic Industries Association
EN	European Standards
FCC	Federal Communications Commission
IEC	International Electro-technical Commission





Abbreviation	Designation
IEEE	Institute of Electrical and Electronics Engineers
IIW	International Institute of Welding
IPCEA	Insulated Power Cable Engineers Association
ISA	Instrument Society of America (Now International society for Automation)
ISO	International Organization for Standardization
JEC	Standards of the Japanese Electro-technical Committee
JEDEC	Joint Electric Device Engineering Council
JIS	Japan Industrial Standards
NEC	National Electrical Code of the U.S.A.
NEMA	National Electrical Manufacturers Association (U.S.A.)
NESC	National Electrical Safety Code of U.S.A.
NFPA	National Fire Protection Association
SAE	Society of Automotive Engineers
SSPC	Steel Structure Painting Council (Now Society for Protective Coating)
TEMA	Tubular Exchangers Manufacturers Association
UL	Underwriters Laboratories, Inc. (U.S.A.)
USBR	United States Bureau of Reclamation
VDE	Verband Deutscher Electroingenieure (German equivalent of IEEE)
VDI	Verein Deutscher Ingenieure (Society of German Engineers)
	Any other International authority as applicable

Within 12 months from the Agreement Date, the Company shall provide to GON a detailed list of standards for the relevant works as specified above. The Company may propose alternative standards in addition to those listed above with justification and reference inputs to PMU for information.





Schedule 11



SCOPE OF WORK FOR THE PROJECT REVIEW PANEL (PRP)

1. Scope of Reviews

Specific subjects on which the PRP are expected to comment are listed below. The PRP should also comment on any other matter which it considers to be important to the successful design, construction and operation of the Hydro Property and to the long-term safety of the dams and appurtenances.

- 1.1 **Engineering Geology:** Quality and sufficiency of geological investigations and interpretation thereof; correctness of geological and hydro-geological models of the regions, reservoir areas and dam-sites; engineering implications with respect to foundation design, stability of natural and excavated slopes; and support of surface and underground excavations.
- 1.2 **Seismic Hazard Assessment:** The identification of sources of seismic activity, the assignment of earthquake magnitudes to each source, and the methodology for determining vibration parameters at the site for maximum credible and design basis earthquakes.
- 1.3 **Hydrology and Sediment Management:** review of hydrological data pertaining to reservoir inflow with particular reference to maximum flood conditions including floods generated by Glacial Lake Outflows (GLOFs). Assess adequacy of spillway facilities, also in light of increasing hydrological variability associated with global warming. Review of operation proposals for reservoir flushing.
- 1.4 **Concrete Dam Design, Construction and Concrete Technology Issues to be considered include:** the adequacy of the field & laboratory investigations & of their interpretation & application to the design appropriateness of aggregate & cementitious materials selected; concrete mix design; design details; adequacy of the foundations & the treatment proposed; construction procedures specified in relation to the dams and foundations, instrumentation of the dams and proposed monitoring program.
- 1.5 **Analysis of Concrete Structures under Seismic Loads:** review of the static and dynamic analyses of the dam sections.
- 1.6 **Rock Mechanics and Geotechnical Engineering:** Review of potential slides in reservoir areas; design of surface and underground excavations.
- 1.7 **Hydraulic Structures Design and Layout:** design and specifications for the spillways, diversion facilities & power tunnels. This shall include hydraulic steel structures such as gates and valves for the control of waterways. Special attention should be given to the layout of the powerhouses in conjunction with the selection of the generating equipment
- 1.8 **Construction of Underground Structures and Hydropower Facilities:** Construction planning, temporary facilities, access to the sites, the master schedule for implementation; construction quality assurance; review during actual construction with a view to making recommendations concerning improvements in construction procedures.
- 1.9 **Mechanical and Electrical Design of Hydro Mechanical Equipment:** Specifications and manufacturers proposals for turbines, motor-generators and mechanical and electrical equipment in the powerhouse and switchyard.
- 1.10 Provide independent advice on both environmental and social aspects of the Project. This includes advising on optimizing alternatives and synergies between engineering/economic and environment/social aspects of the Project.
- 1.11 Review environmental and social impact assessments, environmental management plans and resettlement action plans advise on any modifications required to comply with standards





of international financiers.

- 1.12 Provide support and quality assurance services for the environmental and social studies, analyses, and management plans, including the public consultation and disclosure processes.
- 1.13 Review and comment on local benefit plan and proposed measures for implementation
- 1.14 Continue review and advice during implementation phase.
- 1.15 Such other matters as specified in this Agreement.





Schedule 12



DETAILS OF WORK UNDERTAKEN IN RELATION TO THE HYDRO PROPERTY

GENERATION

1. MOU, JVA, Survey License and capacity optimization

- (a) Memorandum of Understanding (MoU) executed between Ministry of Energy (then Ministry of Water Resources) on 24th January 2008 and the GMR-ITD Consortium.
- (b) Joint Venture Agreement (JVA) executed between Nepal Electricity Authority (NEA) and Sponsors on 21st February 2008.
- (c) Survey License issued for 300 MW capacity project on 18th May 2008 for an initial validity period of 30 months, to the Generation Company.
- (d) Approval for capacity enhancement of Project from 300 MW to 900 MW received on 18th Dec'2009 from DoED.
- (e) Necessary extensions to the validity of Survey License issued by GON, up to First extension of Survey License granted on 23rd Jan 2011 for one year till 19th Nov' 2011.
- (f) Second extension of Survey License granted on 14th Dec' 2011 for one year till 19th Nov' 2012.
- (g) Third extension of Survey License granted on 18th December 2012 for six months till 18th May 2013
- (h) Letter of IBN confirming the decision of IBN Board regarding extension accorded to MoU accorded by it vide its letter dated 14.11.2013, for a period of 18 months from May 18, 2013 onwards.

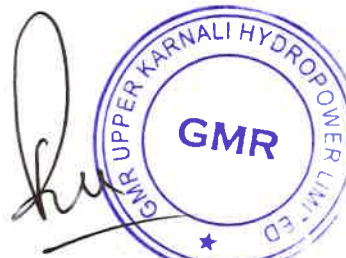
2. Foreign Investment Approval

- (a) Foreign Investment approval obtained from Department of Industries on 28th April 2008 for NPR 50 crores.
- (b) Approval for increment in Authorized capital granted by Investment. Board of Nepal on 31st Dec'2012 from NPR 50 crores to NPR 190 crores.
- (c) Approval for increment in Authorized capital granted by Company Registrar Office, Nepal on 13th August 2013 from NPR 50 crores to NPR 190 crores.
- (d) Nepal Rastra Bank approval for remittance of NPR 190 crores obtained on 16th June 2014
- (e) Approval for opening of Liaison Office in India obtained from IBN on 7th May 2013, and approval on remittance for the same obtained from NRB on 27th Sep' 2013.

3. Detailed Project Report DPR Level Studies

- (a) All topographical Survey and geotechnical investigations completed for preparation of DPR.
- (b) Technical Part of DPR submitted to GON on 5th May'2010.
- (c) Preconstruction Investigations at dam site completed in 2011.
- (d) Hydraulic Model Studies completed by renowned Consultant M/s Sogreah, France. Hydraulic parameters have been confirmed by Model studies.
- (e) Tender level engineering-completed and tender documents are in-a state of readiness.





4. Environmental Impact Assessment Studies

- (a) Approval for ToR and Scoping documents for EIA studies for 900 MW received on 20th Sep' 2010 and further amendment approval received on 17th February 2011.
- (b) Public Hearing conducted successfully at Daab near dam site on 17th June' 2012.
- (c) EIA report submitted to MoSTE on 12th Sep' 2012.
- (d) Environmental clearance for the project granted by MoSTE on 12th April' 2013.

5. Land for Infra Works and Main Works

Infra works

- (a) Cabinet approval for grant of 12.45 Ha Forest Land required for undertaking critical infrastructure works i.e., road tunnel and Steel Bridge received on 16th Feb' 2012.
- (b) MoU for grant of such forest land executed with GON on 20th May' 2013.
- (c) Land demarcation completed and handover completed.
- (d) Process for tree cutting approval is underway.

Main works

- (a) Identification for Main Works of the project completed.
- (b) Approval to commence land verification obtained from Investment Board on 11 Mar' 2013.
- (c) Land verification at district level completed for Dailekh district; final report prepared and submission to concerned Ministry/Department underway.
- (d) Land Verification at district level for Achham shall be carried out by district after completion of land parcel registration process is completed by Government of Nepal.
- (e) Land survey and mapping for cadastral maps in Bhairabsthan VDC of Achham

District is completed and land transference, registration process is underway.

6. Explosives License

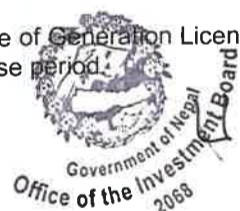
- (a) Explosive License issued on 10th April 2009 by Ministry of Defence for carriage and use of explosives for exploratory drift tunnel.
- (b) Permission to import explosives for pre - infrastructure works granted on 21st Feb' 2013 and subsequent renewal of NOC granted on 27th March 2014 with validity up to 20th Aug' 2014. Further extension granted on 25th August 2014 with validity up to 19th February 2015.
- (c) Case for import of explosives for the Project Main works submitted to IBN on 22nd March 2013. The approval for the same is under process at Ministry/Departments and district authorities.

7. Hydrological and Meteorological studies

- (a) Hydrological studies-for silt and discharge measurement and Meteorological data collection are being carried out since May 2009.

8. Generation License

- (a) Application for issuance of Generation License submitted to GON on 15th May' 2013 within the validity of the Survey License period.





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9. Project Development Agreement

- (a) Draft PDA template issued on 25th June 2010
- (b) First round of negotiation meeting held between 22nd Sep to 26th Sep 2010
- (c) All Project details submitted to GON on 10th July 2011
- (d) Post establishment of Investment Board, new PDA template received on 14th June 2012 from IBN.

10. CSR Activities

- (a) 186 m long Suspended bridge constructed near dam site for the benefits of local people.
- (b) 2 Nos. of Child care centres are operational near the Project Dam site since 2009.
- (c) Health post near dam site established at Ramgadh and operationalized with due approval of District Authority of Government of Nepal.
- (d) 2 Rooms structure constructed and provided to Nepal Telecom for running of the Communication tower at the Project site.
- (e) Vocational training for youth conducted in India has been launched and two batches of trainees 10 each from the Affected VDCs of the Project have undergone this training.
- (f) Other CSR activities like education, health, empowerment, community development and vocational training etc. for the benefits of local people are underway.

11. Other works

- (a) Two bunkers of 25MT and 50 MT capacity established near dam site and at Surkhet respectively.
- (b) Site Establishments at Surkhet at Daab near dam site and at Tallo Balde near Powerhouse and are operational.

TRANSMISSION

1. Survey License, Amendments and Renewals.

- (a) Survey License issued to M/s Karnali Transmission Company Private Limited (KTCPL) on 7th July 2010.
- (b) Amendment to Survey License for final route issued on 18th October 2011.
- (c) Approval for Renewal/Extension of Survey License granted on 18th October 2011 for the validity period up to 6th July 2012.
- (d) Approval for Renewal/Extension of Survey License granted on 19th July 2012 for the validity period up to 6th July 2013.
- (e) Approval for Renewal/Extension of Survey License granted on 23rd July 2013 for the validity period up to 6th July 2014.
- (f) Application for renewal/extension of Survey License submitted on 2nd July 2014 for the validity period up to 6th July 2015.

2. Foreign Investment Approval

- (a) Foreign Investment approval obtained from Department of Industries on 12th April 2010.



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(b) Incorporation of SPV Karnali Transmission Company Private Ltd. from Department of Industries/Company Registrar Office on 27th April 2010.

(c) Approval from Nepal Rastra Bank for remittance of NPR 105 Crore obtained on 25th September 2012.

3. Detailed Project Report DPR Level Studies

(a) Desk study completed for evacuation of power from 900 MW Upper Karnali Hydropower Project.

(b) Load Flow Studies completed by PGCIL, confirming i/c point Bareilly, India

(c) Review of the transmission line alternatives carried out in terms of techno – commercial and environmental perspective.

(d) Preliminary route survey carried out for the alternative alignments as per issued Survey License.

(e) Detail Route Survey including soil resistivity analysis carried out for the final route alignment as per approval from MoEn/DoED.

(f) Technical part of the Detail Project Report submitted to GON on 30th May 2012.

4. Initial Environment Examination (IEE) Studies

(a) Approval of Terms of Reference (ToR) for IEE studies received on 12th July 2012.

(b) Public Notice for IEE studies published on 15th December 2012.

(c) Cadastral Map Survey for the Transmission Line route completed.

(d) IEE Report submitted to GON on 27th October 2013 for approval.

The amended IEE report with incorporation of comments and suggestions from GON submitted to GON for final approval on 6th March 2014.



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Schedule 13



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 complex emergencies by enhancing preparedness
- Providing fast, coordinated, effective and appropriate responses to disasters and complex 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

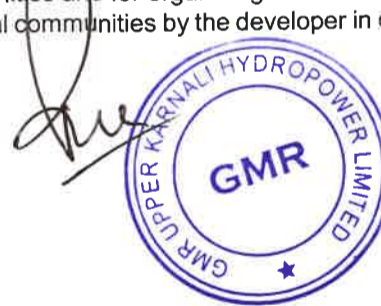
The hazards for the Project are partly caused by nature and partly man-made, some are avoidable, others not. Some of the hazards outlined below could cause inundation leading to the loss of lives and properties. The following are the key hazards for the Project:

- 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
- Emergencies resulting from improper spillway gate operation.

3. Responsibilities

The Generation Company shall have the responsibility for preparing the disaster risk management plan 12 months after the agreement date in consultation with the local government responsible for communities likely to be affected by project related emergencies. The disaster risk management 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 Generation 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 shall be responsible for liaising with potentially affected communities and for organizing evacuation.
- Education and periodic re-education of local communities by the developer in cooperation with the local government.





The Generation Company shall work in coordination with the relevant government authority to implement the plan in case of an emergency or potential emergency that is primarily attributable to the Generation Company. The Generation Company will have the responsibility for carrying out remedial works after such an emergency in consultation with concerned government authority.





Schedule 14

METERING



1. Type of Meters

All meters viz. interface meters, accounting and audit meters shall be of static type.

2. Standards

All meters viz. interface meters, accounting and audit meters shall comply with the relevant standards of BIS or equivalent BS or equivalent International Electro-technical commission (IEC) standards.

For Interface meters:

The interface meters suitable for ABT shall be static type, composite meters, as self-contained devices for measurement of active and reactive energy, and certain other parameters as described in the following paragraphs. The meters shall be suitable for being connected directly to VTs having rated secondary line-to-line voltage of 110 V, and to CTs having a rated secondary current of 1A (Model-A: 3 element 4 wire or Model C: 2 element, 3 wire) or 5A (Model-B: 3 element 4 wire or Model D: 2 element, 3 wire). The reference frequency shall be 50 Hz.

The meter shall have a non-volatile memory in which the following shall be automatically stored:

- Average frequency for each successive 15-minutes block, as a two digit code (00 to 99 for frequency from 49.0 to 51.0 Hz).
- Net Wh transmittal during each successive 15-minutes block, up to second decimal, with plus/minus sign.
- Cumulative Wh transmittal at each midnight, in six digits including one decimal.
- Cumulative VARh transmittal for voltage low condition, at each midnight, in six digits including one decimal.
- Cumulative VARh transmittal for voltage high condition, at each midnight, in six digits including one decimal.
- Date and time blocks of failure of VT supply on any phase, as a star (*) mark

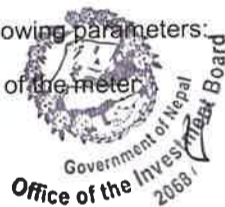
The meters shall store all the above listed data in their memory for a period of at least ten days. The data older than ten days shall get erased automatically. Each meter shall have an optical port on its front for tapping all data stored in its memory using a hand held data collective device.

The active energy (Wh) measured shall be carried out on 3-phase, 4-wire principle, with an accuracy as per class 0.2 S. In model – A and C, the energy shall be computed directly in CT and VT secondary quantities, and indicated in Watt-hours. In model – B and D, the energy display and recording shall be one fifth of Wh computed in CT and VT secondary quantities.

The Var and reactive energy measured shall be carried out on 3-phase, 4-wire principle, with an accuracy as per class 0.2 S. In model – A and C, the Var and VARh computation shall be directly in CT and VT secondary quantities. In model – B and D, the above quantities shall be displayed and recorded as one fifth of those computed in CT and VT secondary quantities.

The meter shall also display following parameters:

- Unique identification number of the meter
- Date



- c. Time
- d. Cumulative Wh register reading
- e. Average frequency of the previous 15-minute block
- f. Net Wh transmittal in the previous 15-minute block with +/- sign
- g. Average percentage voltage
- h. Reactive power with +/- sign
- i. Voltage – high VARh register reading
- j. Voltage-low VARh register reading

The meter shall be totally sealed and temper-proof, with no possibility of any adjustment at site, except for restricted clock correction.

The main meter and Check meters shall be connected to same core of CTs and VTs.

For energy accounting and audit meters:

The energy accounting and audit meter shall be suitable for measurement, recording and display of cumulative active energy with date and time.

The energy accounting and audit meters may also have the facility to measure, record and display one or more of the following parameters depending upon the energy accounting and audit requirement. All parameters excluding instantaneous electrical parameters shall also be stored in memory.

- a. Apparent power
- b. Phase wise KW at peak KVA
- c. Phase wise KVA (Reactive) at peak KVA
- d. Phase wise voltage at peak KVA
- e. Power down time
- f. Average PF
- g. Line Currents
- h. Phase voltage
- i. Date and time
- j. Tamper events

The energy accounting and audit meter shall have data storage capacity for at least 35 days in a non-volatile memory.

Energy accounting and audit meters shall have facility to download the parameters through meter reading instrument as well as remote transmission data over communication network.

3. Location of Installation:

The Location of various meters shall be as follows:



a. Interface Meter:

Main Meter : On all outgoing feeders

Check Meter : On all outgoing feeders

Standby Meter: HV Side of GT & HV side of all Station Auxiliary Transformer

b. Energy Accounting and Audit Meter:

At the point after the generator stator terminal and before tap-off to unit auxiliary transformer

On each incoming feeder of 3.3 kV and above

LV side of each incoming transformer feeder of LV Buses and

On HT motor feeders

4. Accuracy Class:

Interface Meter : 0.2 S

Energy Accounting & Audit Meter : Not inferior to that of 0.2 S (after Generator stator terminal)

Other meters : Not inferior to 1.0S

5. Installation of Meter:

a. The Generation Company shall examine, test and regulate all meters before installation and only correct meters shall be installed.

b. The meters shall be installed at locations, which are easily accessible for installation, testing, commissioning, reading, recording and maintenance.





Schedule 15

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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 Impact Assessment (EIA) 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 shall 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:

- **Royalties:** Following COD, the Company shall pay Capacity and Energy Royalty to GON, of which, as per the Local Self Governance Rules 2050, the project affected districts are entitled to receive 12%, while the affected region shall receive 38% and the Central Government shall receive 50%.
- **Shares:** GON shall, at any time after Final COD, grant economic interests in Nepal Electricity Authority's equity interest in the Generation Company, to the Project Affected People and to the persons residing permanently in the districts of the Generation Project
- **Rural electrification:**
The Generation Company shall, at its own cost, construct and operate at the toe of the dam a power generation facility of approximately 2MW capacity utilising the riparian discharge of the Power Station. Electrical energy from such facility, net of auxiliary consumption for such power generating facility and dam complex of the Power Station shall be made available to GON free of charge at the outgoing Gantry of Switchyard for the local households affected by the generation project.
GON at its own cost shall be responsible for transmission and distribution of such power to local households affected by the generation project.
GON may, at its option, delegate the responsibility for operation and maintenance of the transmission and distribution network for transmission and distribution of the Power to a GON Instrumentality or a local cooperative or local body.
- **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 shall work together to jointly develop these plans as per the guidance notes in Schedule 17 and Schedule 16.

LOCAL BENEFIT SHARING PLAN

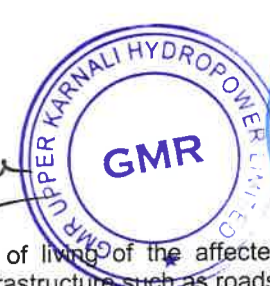
Local Community Development is the systematic effort by the Company, as a part of benefit sharing, to support community development in the project area beyond obligatory mitigation and compensation measures as per the enhancement measures detailed in the EIA Reports during the phase of project construction.

In addition to the budget committed in the EIA, post-COD, and throughout the concession term, the Company, as a good corporate citizen shall support community development of affected communities through benefit sharing activities.





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Local community development activities aim to improve the standard of living of the affected communities through livelihood enhancements and support to physical infrastructure such as roads, trails, pedestrian bridges in each case construction and maintenance, water supply construction and management, communications: mobile phone towers, internet, 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 the GON approved EIA 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 jointly prepare the Local Benefit Sharing Plan to be implemented during the construction phase within 12 months from the date of this Agreement in accordance with this Schedule.

The Local Benefit Sharing Plan for the operation phase shall be developed by the Company based on the needs of the communities and the procedures of this Schedule.

KEY STEPS TO GUIDE THE DESIGN OF A GOOD COMMUNITY DEVELOPMENT

A well-designed plan should include:

- Updated information;
- clear objectives;
- carefully defined target population;
- responsible agencies, as well as implementation arrangements; and
- implementation activities along with an itemised budget.

Updating of Baseline Information

The baseline data reflected in the EIA/IEE/Supplementary E&S Reports should guide the Local Community Development 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.



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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 shall 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 shall disclose all Plans in Nepali and English.

GRIEVANCE MECHANISMS

The Company shall set up a grievance mechanism to resolve grievances at the community level.

MONITORING AND REPORTING

The Generation Company shall submit reports, every six months up to Final COD and every 12 months thereafter, to the GON describing in detail the activities undertaken under the Plan, the amounts spent on such activities and impact evaluation of such activities, where relevant.





Schedule 16



NEPAL EMPLOYMENT AND SKILLS TRAINING PLAN GUIDANCE NOTE

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 shall encourage training and employment of local people in Project related activities, which employment shall 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 shall 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 Generation Company affected people.

It is expected that the majority of job requirements can be met by Nepalese, and that the project cycle for hydro projects shall enable training to be proceeded sufficiently in advance to enhance employment opportunities for the locals.

The GON and each Company in accordance with Section 11.9 (*Use of Nepali resources; training and development*) shall jointly develop a Nepal Employment and Skills Training Plan within 12 months from the date of this Agreement that shall:

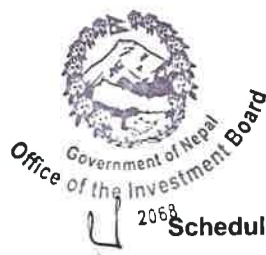
- identify expected labour force (Nepali and Non-Nepali) requirements over the Project life cycle by Year and by skill, both directly by each Generation Company and by each of its expected major Contractors set out each Company's and the major Contractors' planned measures to recruit and train workers over time;
- Identify the expected results for employment and skill development at local levels;
- contribute to the development of employable skills and human resources

This schedule outlines the principal requirements for the Nepal Employment and Skills Training Plan.

The employment and skills training plan shall not restrict itself only to the hydro power related training, but shall also comprehensively look into vocational training area 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.

The Generation Company shall submit yearly progress reports to the GON on the implementation of this Plan.





Schedule 17



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 each Company. This shall ensure that each 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 Companies and GON shall jointly prepare a Nepal Industrial Benefits Plan that shall:

- 2.1.1 ensure full and fair opportunity of access for Nepal-based suppliers of goods and services to meet the requirements of hydro-project developments;
- 2.1.2 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;
- 2.1.3 encourage initiatives for joint venture and quality improvement measures that shall enhance the ability of Nepal-based suppliers to compete domestically and internationally;
- 2.1.4 promote safe and healthy working conditions among suppliers of goods and services to each Company and the Project; and
- 2.1.5 ensure Contractors afford full and fair opportunity for Nepal-based suppliers to access Project requirements for goods and services;

2.2 The Companies and GON shall jointly prepare the full Nepal Industrial Benefits Plan within 12 months from the date of this Agreement in accordance with this Schedule.

3. APPLICABILITY

3.1 The applicability of this Schedule is established during the early planning and engineering phases of the Project.

3.2 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.

3.3 Early interaction with Nepal-based suppliers, both existing and potential, is strongly encouraged by the GON. All Project phases, from planning, regulatory, feasibility, design, construction, operation and maintenance shall be addressed in procurement plans to afford opportunities for Nepal-based suppliers for goods and services.

4. ELEMENTS

4.1 Key elements of this Plan is to provide full and fair access to domestic suppliers of goods and services shall be the following:

- 4.1.1 itemisation and quantification of goods and services required over the Generation Project 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,

- 4.1.2 key measures that shall be followed to help enhance local supplier prospects of business success;
 - 4.1.3 designate an Industrial benefits officer, who shall work with domestic suppliers on opportunities to meet mutual needs;
 - 4.1.4 interaction with key domestic suppliers to help them understand the timing, quantity and quality requirements for goods and services;
 - 4.1.5 support GON initiatives for domestic supplier development activities to enhance upgrading of capabilities and product and services quality and competitiveness;
 - 4.1.6 encouraging joint ventures between local and foreign suppliers to enhance knowhow transfer;
 - 4.1.7 excluding major construction contracts, proper structuring of procurement packages at a scale to encourage domestic supplier participation, where possible;
 - 4.1.8 providing appropriate feedback where established local suppliers were unsuccessful bidders;
 - 4.1.9 promote local business development and sourcing initiatives.
- 4.2 The Generation Company shall submit yearly progress reports to the GON on the implementation of this Plan.





Schedule 18



USE OF RIVER WATER - WATER REQUIREMENTS

The project utilizes the flows of Karnali River and the head available between the two arms of the Karnali bend. The Project envisages generation of 900 MW of power based on 90% dependable flows under rated discharge of 664.32 m³/s (excluding riparian release) and rated head of 150.11 m.

Project is being developed as a run of the river scheme with peaking storage capacity. The live storage capacity is approximately 6.66x10⁶ m³ between Full reservoir level (FRL) and minimum draw down level (MDDL) and is required for diurnal peaking generation.

Provision has been made to release 10% of the average monthly minimum of the lean month's discharge of the Karnali River at the dam site for sustenance of aquatic life. An ecological release (Riparian) of 12 m³/s has been planned to be released continuously (as per approved EIA).

The Project's water requirement is commensurate to 3 to 4 hours peaking at full installed capacity in lean months i.e. for months of Jan to March, 6 to 8 Hours of peaking at full installed capacity in non-monsoon season i.e., from April to May and months of October to December, and generation of full installed capacity during monsoon season i.e., months of June to September, for a 90% dependable flow.

Operation Protocol

Following Safety devices and measures is planned to be adopted for the release of water from the reservoir and tail pool during generation and flood season.

1. EDUCATION AND INFORMATION

The project authorities shall take the initiative to educate and inform the public of the specific hazards near its hydro project and of the general rules that should be followed to be safety conscious. This shall also be done with the help of eye catching hoardings at conspicuous places and advertisements in the media.

2. WARNING DEVICES

Warning devices include such items as danger and warning signs, audible warning devices, lights and illumination, beacons and strobe lights.

2.1 DANGER AND CAUTIONARY SIGNAGE

- (i) To put the danger and cautionary signs at the critical points which are more prominently dangerous for the common unsuspecting public. The signs shall be so located in such manner that persons entering an area from any direction can see one or more of the signs. Moreover, these signs shall be useful for warning the uneducated public.
- (ii) A regular sign inspection program shall be developed and documented to ensure that all signs are maintained in good condition. Particularly importance shall be given to inspect signs after severe weather or flood conditions.

2.2 AUDIBLE DEVICES

Audible devices such as sirens, horns or buzzers shall be used to warn of sudden changes in the rate of flow of water in the spillways. There shall be an advance warning siren 10/15 minutes before the actual release of water from tail pool or the reservoir.

2.3 LIGHTS

Lights can be used, if required, to illuminate signs and other hazardous areas



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2.4 BEACONS

Beacons and strobe lights shall be utilized near spillway gates at prominent places having a wide visibility range and they shall be activated to provide visual warning when water is being released from tail pool and reservoir. Flashing strobe lights can also effectively compliment audible warning systems.

2.5 VERBAL ANNOUNCEMENTS

Recorded or direct verbal warnings can be used through the use of mobile vans specially along national highways and places frequented by tourists.

3. RESTRAINING DEVICES

3.1 FENCES

Fences and Guardrails shall be provided, wherever required, to prevent public access to hazardous areas.

3.2 GUARDS

Uniformed guards and watchmen can be deployed in heavily used public areas to enforce regulations and warning signs.

4. MINING

The project authorities should inform district administration, Police and the mining officers in case of any illegal mining along the river bed up stream as well as downstream of the dam site coming to their notice. Keeping in view of safety of projects, they should ensure that no mining takes place near the dam site

The water levels of the dam reservoirs shall be under continuous surveillance and if the water level is nearing danger mark, release of water shall be made following above mentioned procedure regarding safety precautions.

5. WATER RELEASE PROCEDURE DURING PEAKING GENERATION

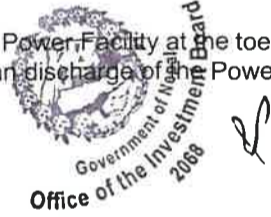
While peaking the power station, the power station shall gradually be brought to full capacity (0 to 900 MW), within a span of 30 minutes. Similar procedure shall be adopted in reverse manner while reducing generation from full load to no load.

6. GENERATION FACILITIES

Surface power house to accommodate eight vertical shaft Francis turbines of each 112.5 MW (with 10% overload) operating at a rated net head of 150.11m & rated speed of 214.3 rpm, of size 149.0m (L) x 23.5m (w) x 45m (h) is proposed on the right bank of Karnali River;

7. Annual Energy generation from the Power Station (excluding generation from Local Community Power Facility) corresponding to 50% Dependability is 4405 MUs.

8. Local Community Power Facility at the toe of the dam of approximately 2MW capacity utilising the riparian discharge of the Power Station is envisaged.



LAND ACQUISITION PLAN (LAP)

UPPER KARNALI HYDROPOWER PROJECT (900 MW)

The 900 MW Upper Karnali Hydroelectric Project is one of Nepal's run-of-river schemes with diurnal peaking capacity. The project site is located on the Karnali river bend forming the boundary of the Mid-Western and Far-Western development regions of Nepal. The project site is located at about 700 km West of Kathmandu. The access to the site from Kohalpur on the East-West Highway up to Surkhet (Birendranagar) is 90 km; further access from Surkhet to the project site via Karnali Rajmarg (Surkhet - Jumla road) which is a fair weather road is approximately 95 km from Surkhet. Access from India shall primarily be via Nepalgunj at a distance of about 190 km by road.

Brief Summary of the Total land requirement of the Hydro Project Identified based on the available Cadastral maps and approved EIA has been tabulated below

Private (Ha)	Govt./Forest (Ha)	Quarry Area (Optional) Govt./Forest (Ha)	Total Area (Ha)
46.85	235.76	28.44	311.05

Status of Private Land (Non GON Land)

Table 1: Private Land Requirements for the Project

District	Private Land (Ha)
Dailekh	20.72
Achham	26.13
Total	46.85

Identification

Dailekh District:-

- All the relevant cadastral maps were obtained from District Survey office.
- Geo-referenced on project layout maps to identify the private land parcels.
- Details of the Identified land parcels were submitted to District Land Revenue Office to provide the details of land owners.
- List of identified land owners provided by District Land Revenue Office was populated for further use.

Achham District:-

- The entire Project land requirement in this District was limited to the Bhairavsthan VDC only.
- **One of the major bottlenecks in identification process** was that the relevant Cadastral Maps, Field Books and Record Register were unavailable with GON:
 - Due to the non-availability of cadastral maps for Bhairavsthan VDC, it was not possible to complete the identification and authentication of the details of the land parcels.
 - At each Company's initiative, few of these relevant Cadastral Maps were traced out with the local communities, who subsequently shared the same with each Company.
 - These cadastral maps were then Geo-referenced to populate the list of land parcels.

After populating the list of land owners, the area of respective land parcels was identified by each Company through community consultations, on the basis of land ownership certificates available with the respective land owners. The authentication of these identified land owners is pending due to yet finalization of the new set of cadastral maps.

Company's initiatives on major bottleneck and current status

- In order to initiate the process for finalization of cadastral maps and conclude the land registration process, each Company came forward with its financial assistance for the Department of Survey.
- The Generation Company deposited NPR 58.8 lacs with Government Revenue account vide letter No. GUKHL/DoS/0135/11 dated 3rd May 2011.
- Thereafter, GON commenced works on finalization of cadastral maps, which is still underway.

Verification

Dailekh District:-

- The list of land owners along with maps was provided to GON to commence the process for verification.
- The verification of land parcels and landowners was done by District Land Revenue Office and sent to Department of Land Reforms and Management for further process.
- The Department of Land Reforms and Management (DoLRM) shall submit the verified list of land parcels and land owners of this District to the Ministry of Land Reforms and Management, jointly with that for the Achham District.

Achham District:-

- The verification process shall commence once all the cadastral maps relevant for the Project are made available to each Company by GON: completion of the cadastral map survey process is currently underway.

Land Acquisition Plan - Implementation Schedule: Generation Project

The land acquisition related works shall commence after the Agreement Date.

The land acquisition activities shall be carried out by each Company for the first 12 months with the involvement of GON agencies to meet the timelines. In case the process is not concluded within the stipulated 12 months period, GON shall thereafter take the responsibility for acquisition and transfer such land to each Company.

The list of key activities, along with tentative timelines, estimated based on discussions with various stakeholders, is elaborated below.

Table 2: Time Based Land Acquisition Activities Schedule

S.N.	Activities	Responsibility	Timeline (Tentative)	Remarks
A	Verification, Compilation and Finalization of land parcels affected		2.5 Months	Subject to availability of cadastral maps of Bhairavsthan VDC of Achham district by GON and handover to Company including all land details
A.1	Preliminary action requesting to verify	Company assisted and facilitated by GON	40 days	GON being the central level line



S.N.	Activities	Responsibility	Timeline (Tentative)	Remarks
	land owners to be submitted by Company to respective district level agencies (DSO, DLRO) with copy to GON/IBN	GON, District Survey Office (DSO) and District Land Revenue Office (DLRO)		agency shall coordinate with district level agencies for the facilitating 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	30 days	Company shall provide necessary facilitations
A.3	Preparation of final list of land owners and handover to Company	GON/DSO/DLRO	5 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		Parallel activity
B	Preparation of Resettlement and Rehabilitation Plan		6 Months	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	120 days	
B.2	Finalisation of Resettlement and Rehabilitation Plan	Company	60 days	
C	Consensus valuation of assets and land of the affected land owners		2 Months	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	60 days	





S.N.	Activities	Responsibility	Timeline (Tentative)	Remarks
D	Notification to Affected People on cut off date for non-transfer of land.		0.5 Month	Subject to achieving activity No. C
D.1	Minutes of Meeting in consensus with land owners	Company, Land owners	10 days	
D.2	Intimate district authority to suspend land transaction of final list of land owners	Company, DAO, DSO, DLRO	5 days	
E	Complete land transaction Process as per relevant GON norms.		4 Months	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	15 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	45 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		
E.3.2	Land transfer agreement with individual land owners	Company, Land owners		
E.3.3	Takeover possession of purchased property	Company		



S.N.	Activities	Responsibility	Timeline (Tentative)	Remarks
	Total Timelines (in months)		12 Months	

Note: preparation of Resettlement and Rehabilitation Plan shall be conducted simultaneously with the activities as stipulated in S.N. (A, C, D and E) of this schedule.

Institutional Arrangement

The Companies shall have the overall responsibility to implement the Land Acquisition Plan and shall ensure that the land acquisition process is carried out in a well coordinated manner such that all the entitlements are distributed to the affected people and land transactions are closed as per the prevailing laws of GON. These would be undertaken through distinct units within each Company for implementation, supervision and monitoring of measures related to various aspects of land acquisition, for example,

- Physical environment and biological environment,
- Social environment including land acquisition/RAP, and
- Environmental enhancement programs
- Grievance Management

Apart from the above structure, concerned GON authorities at the central and district level shall also have to play a key role to facilitate the land acquisition process for the Project.

The table below defines the key stakeholders with their roles during the land acquisition process for the Hydro Property.

Table 3: 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	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 and departments
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	Company to support carrying out the works and work closely with other actors including local level line agencies



Key players	Functions/Roles	Remarks
	between the Hydro Property and DAO, DSO, DLRO, VDC, and affected local people	
Company	Take lead on all land acquisition works including coordination with local stakeholders, negotiations with local affected people, entitlement distribution and close all land transactions as per GON	Company shall implement and monitor project land acquisition working closely with the PMO and district stakeholders
Company	The Companies 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 Transmission line Project (Rights of Way including Land required for the Tower Foundations for both GON Land and Private Land)

The GON Land and Non GON land is required for the construction of tower foundations as well as Rights of Way (ROW) for the entire corridor of the transmission line project. The landowners of the private land below the transmission lines shall have restricted use of land (restriction on building houses, plantation of trees, etc), as such, the determination of adequate compensation package is a key in overall completion of the land acquisition process for transmission line project.

Keeping in light the problems that are seen in other TL projects, it is prudent that GON take up the responsibility of completing the land acquisition process of the TL Project. In other words, the land acquisition process of the TL Project within the territory of Nepal shall be completed by GON/ GON Agencies. However, the company shall use their reasonable endeavours to assist the GON in relation to compulsory acquisition of Non GON project land for TL Project.

The land acquisition process (GON Land and Private Land) related to Transmission Line Project (ROW and land required for the Tower Foundations) shall be as per the PDA. .

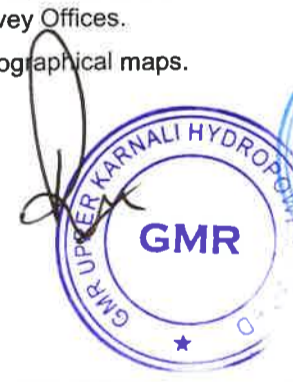
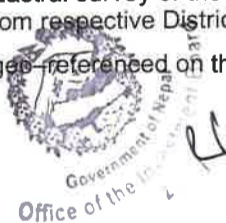
Brief Summary of the land requirements of the TL Project is as below:

Total Land Requirement (ha)	349.28
Permanent Land Requirement – Private (ha)	08.73
Permanent Land Requirement – Govt. (ha)	10.62
Land Under RoW - land use restriction Private (ha)	117.40
Land Under RoW - land use restriction Govt. (ha)	212.53

Transmission line being a linear corridor, post approval of Initial Environment Examination (IEE) Report, during final verification of the transmission line alignment if there may be a significant variation on the land requirement (ROW and land required for the Tower Foundations) as stated above; in such circumstances, both the parties shall mutually agree in writing the course to be taken up and if required, extend such period as mentioned in section 8.1.2 of the PDA document.

Identification

- Each Company has carried out cadastral survey of the entire transmission line corridor and has obtained the cadastral maps from respective District Survey Offices.
- These cadastral maps have been geo-referenced on the topographical maps.





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- The list of private land parcels was populated and the details of private land owners were obtained from the respective District Land Revenue Offices.
- The list of land owners and area of land parcels has been identified.

Verification

- The Initial Environmental Examination (IEE) Report has been submitted to Govt. of Nepal, Ministry of Energy for approval.

The verification process for the GON land shall be initiated after approval of IEE report.



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Schedule 20

APPROVALS SCHEDULE

The description includes a description of the approval and its terms, conditions and justification. Each approval is given a reference title to accompany its description and final approval date.

GENERATION COMPANY

GON Agency	Description	Applicable GON Law and Regulation	Submission Date	Final Approval Date
GON	Memorandum of Understanding signed between GON and GMR – ITD Consortium			24th Jan 2008
GON	Joint Venture Agreement between GMR, ITD and NEA	As per terms stipulated in MoU		21st Feb, 2008
Dol	FDI Approval – NPR 50 Cr.	-	22nd April 2008	28th April 2008
GON	Incorporation of JV Company as GMR Upper Karnali Hydropower Limited	As per terms stipulated in MoU		2nd May 2008
Ministry of Water Resources / Ministry of Energy, Department of Electricity Development	Survey License (B.B.B. 064/65 B.U.SA. 328)	Sub Section (2) of Section, 1 of Electricity Act, 2049 BS and Rule 8 of electricity Rules. 2050 BS	5th May 2008	18th May 2008
	SL Amendment – 1	Electricity Act / Electricity Rule	6th July 2008	22nd July 2008
	SL extension -1	Electricity Act / Electricity Rule	4th Oct 2010-	23rd Jan 2011
	SL extension -2	Electricity Act / Electricity Rule	24th Oct 2011	14th Dec 2011
	SL extension -3 (For 6 months)	Electricity Act / Electricity Rule	30th Oct 2012	18th Dec 2012
GON/IBN	Capital Increment from NPR 50 to NPR 190 Cr.	Company Act - 2063	27th Nov 2012	31st Dec 2012
Ministry of Energy, Department of Electricity Development	Approval for capacity Enhancement from 300 to 900 MW for the Hydro Property	Electricity Act / Electricity Rule	27th Oct 2009	18th Dec 2009
Ministry of Home / Foreign Affairs / Defence including Nepal Army	Explosive License for carriage and use for exploratory drift tunnel	Explosive Act/Regulation	6th January 2009	10th April 2009
MoSTE	Approval of Terms of Reference for EIA study 900 MW project	Environment Protection Act/Regulations	25th January 2010	20th Sept 2010
MoSTE	Approval of Terms of Reference for EIA study 900 MW project	Environment Protection Act/Regulations	8th February 2011	17th Feb 2011

Government of Nepal
Office of the Investment Board



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GON Agency	Description	Applicable GON Law and Regulation	Submission Date	Final Approval Date
	- Amended			
GON/Cabinet of Ministers	Cabinet Approval for diversion of 12.45 ha of forest land for pre-construction infrastructure	Forest Act/Regulation	31 st August 2010	16 th Feb 2012
VDC	NOC from all Project Affected VDCs during EIA study	Environment Protection Act/Regulations	-	Obtained
GON / NRB	Opening of liaison office in India		8 th Nov. 2012	7 th May 2013
CRO	Capital Increment from NPR 50 to NPR 190 Cr.	Companies Act - 2063		13 th August 2013
IBN / GON / NRB / CRO	Capital Increment above 190Cr	Companies Act, 2063	As & when required	To be obtained
MoSTE	Environment Clearances	Environment Protection Act/Regulations	11 th September 2012	12 th April 2013
MoEn / MoFSC /Department of Forest	Forest Agreement for diversion of 12.45 ha of forest land for pre-construction infrastructure	Forest Act/Regulation	31 st August 2010	20 th May 2013
District Forest Office	Approval for Handover of 12.45 Ha. Land for Pre construction works	Forest Act/Regulation	30 th June 2013	Obtained
District Forest Office	Approval for tree cutting of 12.54 Ha. Forest land for Pre construction works	Forest Act/Regulation	30 th June 2013	To be obtained
DDC	Approval for construction of 186 m long suspended bridge	-	-	Achham - 25 th April 2010 Dailekh - 1 st Dec 2009
District Health Office/Regional Health Directorate	Operation of Primary Health Clinic	-	-	Annually being renewed
GON	Generation License Application	Electricity Act / Electricity Rule	15 th May 2013	As per this Agreement
GON/MoHA/MoD/MoFA	Import License for explosives required for Main Works	Explosive Act/Regulation	22 nd March 2013/10 th June 2013	As per this Agreement
GON/MoFSC/DoF/Cabinet/DDC	Govt. Land Verification for main works and associated approvals for possession	Forest Act/Regulation	21 st Jan 2013	As per this Agreement
DoED/MoEn	Detail Project Report	Electricity Act / Electricity Rule	5 th May 2010	
GON	Project Development		Negotiation	

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GON Agency	Description	Applicable GON Law and Regulation	Submission Date	Final Approval Date
	Agreement		s are underway	Mutually agreed
DDC	Approval for use of construction material at site locations	Local Self Governance Act/Rules – 2055/2056		To be obtained
District Health Office/Regional Health Directorate/Dept. of Health Services	Approval of Operation of Hospitals and clinics			To be obtained
VDC	Approval for use of drinking water sources			To be obtained
Department of Roads / District Development Committee	Approval for making any upgradation in the existing Rajmarg			To be obtained
Department of Roads/District Development Committee	Approval of construction and design of Bridge over Karnali river			To be obtained
Ministry of Commerce and Civil Supplies	Approval for Import of Fuel			To be obtained
GON / IBN	All Approvals and clearance for 2 MW plant on riparian flow			To be obtained

TRANSMISSION COMPANY

GON Agency	Description	Applicable GON Law and Regulation	Submission Date	Final Approval Date
Dol/GON	FDI Approval	Investment Board Act/Regulation		12 th April 2010
Dol/CRO	Incorporation of "Karnali Transmission Company Private Limited" (KTCPL)	Company Act/Rules		27 th April 2010
NRB	Approval of Remittance of FDI – 105 Crore			25 th September 2012
GON	Survey License (SL) granted to KTCPL valid until 6 th July 2011	Electricity Act / Electricity Rule		7 th July 2010
MoEn/DoED	Grant of Amendment to SL of KTCPL for the final route	Electricity Act / Electricity Rule		18 st October 2011
	Approval of Renewal/Extension of SL of KTCPL valid until 6 th July 2012	Electricity Act / Electricity Rule		18 th October 2011
	Approval of Renewal/Extension of SL of KTCPL valid until 6 th July 2013	Electricity Act / Electricity Rule		19 th July 2012
	Approval of Electricity Act	Electricity Act		20 th July 2012

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GON Agency	Description	Applicable GON Law and Regulation	Submission Date	Final Approval Date
	Renewal/Extension of SL of KTCPL until 6 th July 2014	/ Electricity Rule		2013
	Application for Renewal/Extension of SL of KTCPL until 6 th July 2015	Electricity Act / Electricity Rule	2 nd July 2014	To be obtained
MoEn/DoED	Submission of the Detailed Project Report to DoED, Govt. of Nepal	Electricity Act / Electricity Rule	30 th May 2012	
MoEn/DoED	Terms of Reference (ToR) submitted to MoEn/DoED for approval	EPA/EPR	20 th November 2011	12 th July 2012
Village Development Committees (VDCs)	NOC from all Project Affected VDCs for IEE studies	EPA/EPR		Obtained
MoEn/DoED	Submission of IEE Report to MoEn/DoED for approval	EPA/EPR	27 th October 2013	
	Submission of Amended IEE report to MoEn/DoED with incorporation of comments for Final Approval	EPA/EPR	6 th March 2014	
IBN / MoEn / DoED	Amendment of Survey License for revised route	EPA/EPR		To be obtained
	Amendment of ToR for revised route	EPA/EPR		To be obtained
	IEE Report Approval	EPA/EPR		To be obtained
GON	Transmission Construction License	Electricity Act / Electricity Rule		To be obtained
GON/MoFSC/DoF/Cabinet	Govt. Land Verification for RoW and Tower and associated approvals for possession	Forest Act/Rules		As per this Agreement
GON/MoLRM/DoS/DoLRM	Non-GON verification for RoW and Towers, Acquisition Process and Approval			as per this Agreement
DDC	Approval for use of construction material at site locations			To be obtained
VDC	Approval for use of drinking water source			To be obtained

NOTE: - This Approvals Schedule is non-exhaustive.



Schedule 21

PERMITTED ACTIVITIES

1. Correspondence, discussions, liaison, interaction with various departments, GON agencies, local bodies, Ministries, GON and other associated consultant and other agencies and stakeholders including Banks etc. at district and centre level.
 2. All approvals and Clearances from VDCs, Districts and Centre level
 3. Operation and running of the offices within and outside Nepal.
 4. Conduction of company's Board meetings as per the requirements and making any amendments in AOA and MOA of the Companies as per the Board Approval.
 5. Access to the Hydro Property site.
 6. Manpower recruitment
 7. Continuation of CSR related activities.
 8. Interactions and discussion with the Project Affected People.
 9. Continuation of Rain fall data collection, sediment and discharge data collection at the Generation Project site.
 10. Continuation of preconstruction investigational works including drilling, geophysical, and geotechnical exploratory drift tunnel works within the Project Area.
 11. Lab testing of the samples
 12. Preconstruction survey works including that for infrastructural development, roads, camps, colonies, stores etc. within the Project Area
 13. Tendering for the preconstruction works
 14. Construction of infrastructure works, for example, roads, traffic tunnel, and a bridge across Karnali River.
 15. Forest land identification and verification works and further taking up the case for the final handover of the land within the GON board approval/Cabinet approval
 16. Land acquisition of private/Government land required for the Companies
 17. Forest clearance for the preconstruction works of road tunnel and bridge within the Project Area.
 18. Infrastructural development at project site including construction of roads, camps, colonies, stores etc. and any upgradation to the existing Rajmarg and Bridges.
 19. Obtaining licenses related to explosives required for the companies Power evacuation arrangement.
 20. Tendering for the Main works.
 21. All works required for the Financing of the Hydro Property
 22. Discussion, negotiations and other related activities with GON and / or GON instrumentalities to complete Post PDA obligations by the Companies.
 23. All activities related to the CDM registration with UNFCC and WCD audit.
 24. All activities related to the Opening of Liaison office in India.
- Handing over / tree cutting approval of the forest land for the preconstruction works of Road tunnel and Bridge.





Schedule 22
OTHER PLANNED PROJECTS

The following are GON's planned projects, having total command area of 15000 ha and required discharge of 42 m³/s, which shall also be considered, in addition to 'Irrigation Projects', during the impact study on downstream irrigation projects.

- i) Bardia Irrigation Project
- ii) Karnali Corridor Lift Irrigation Project

The details of the above-mentioned projects are provided in the table below

S.N.	Project	Command Area (ha)	Discharge Required (m ³ /s)	Districts
1	Bardia Irrigation Project			Bardia (Command Area lying in eastern side of Karnali River and downstream of Chisapani)
	Western Bardia	4700		
	Southern Bardia	7800		
	Total	12500	38	
2.	Karnali Corridor Lift Irrigation Project	2500	4	Kailali, Surkhet (Total Command area terraces are to be provided with lift irrigation in Karnali River corridor upstream of Chisapani)
	TOTAL	15000	42	



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FORM OF JVA AMENDMENT AGREEMENT

THIS AGREEMENT is made on [] 2014 (the "Agreement")

BETWEEN:

- (1) **GMR Energy Limited**, a company incorporated under the laws of India and having its registered office at SKIP House, 25/1, Museum Road, Bangalore-560025, India (hereinafter referred to as "**GEL**", which expression unless, repugnant to or inconsistent with the meaning and context thereof include its successors and permitted assigns);
- (2) **GMR Infrastructure Limited**, a company incorporated under the laws of India and having its registered office at SKIP House, 25/1, Museum Road, Bangalore-560025, India (hereinafter referred to as "**GIL**", which expression unless, repugnant to or inconsistent with the meaning and context thereof include its successors and permitted assigns);
- (3) **Italian-Thai Development Public Company Limited**, a company incorporated and existing under the laws of Thailand and having its registered Office at 2034/132-161, New Petchburi Road, Bang Kapi, HuayKwang, Bangkok 10320, Thailand (hereinafter referred to as "**ITD**", which expression unless, repugnant to or inconsistent with the meaning and context thereof include its respective successors and permitted assigns);
- (4) **GMR Lion Energy Limited**, a company incorporated and existing under the laws of Mauritius and having its registered office at 10 Frere Felix de Valois Street, Port Louis, Mauritius (hereinafter referred to as "**GMR Lion**", which expression unless, repugnant to or inconsistent with the meaning and context thereof include its respective successors and permitted assigns);
- (5) **Nepal Electricity Authority**, an institution established and existing under the Nepal Electricity Authority Act, 2041 and an undertaking of Government of Nepal and has its registered office at Durbar Marg, Kathmandu, Nepal (hereinafter referred to as "**NEA**" which expression shall unless, repugnant to or inconsistent with the meaning and context thereof include its successors and permitted assigns).

WHEREAS:

GEL, GIL, ITD and NEA entered into a joint venture agreement for the development and implementation of the Project in Nepal on 21 February 2008 (the "**Original Agreement**"). The Parties now wish to amend the Original Agreement.

IT IS AGREED as follows:

1. AMENDMENTS

The Original Agreement shall be amended with effect from the date of this Agreement as follows:

1.1 Article 1.1 (Definitions and interpretation) of the Original Agreement shall be amended by deleting the existing definition of "GMR-ITD" and replacing with the following:

"GMR-ITD" shall mean collectively GEL, GIL, GMR Lion and ITD."

1.2 Article 5.1(b)(Funding) of the Original Agreement shall be deleted and replaced with the following:

"Shareholders' loans, including mezzanine financing, redeemable preference shares, debentures or other redeemable or repayable financing instruments ("**Loans**"), provided that:

- (A) the All-In Costs for such Loans shall not exceed 250 basis points over and above the weighted average of All-In Costs charged by Senior Lenders (as defined in the project development agreement entered into between the JVC, Karnali Transmission Company Private Limited and Government of Nepal ("**PDA**")) for provision of debt to the JVC for the Project; and
- (B) the ratio of the JVC's Debt to its Equity shall not exceed:





- i. 75:25 at Financial Close (as defined in the PDA) for the Project for such JVC; and
- ii. 80:20 at all other times (including at the time of funding any cost overruns in relation to the Project).

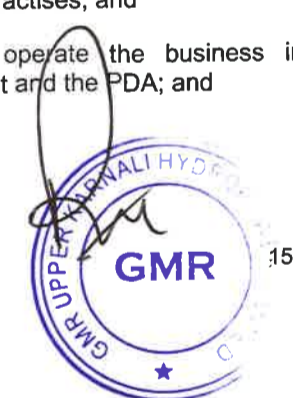
For the purpose of this Article:

- (A) **"Debt"** shall mean 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 for the Project and shareholder loans; and
- (B) **"Equity"** shall mean the amount 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 for the Project but shall exclude any shareholder loans.
- (C) **"All-in Costs"** shall mean the commissions, costs, fees, rates, interest, charges, premia, prepayment costs, commitment fees, payments and other costs and expenses (by whatever name called) but excluding breakage fees (by whatever name called).

1.3 A new Article 6.10 (*Dividends*) shall be inserted as follows:

"6.10 Dividends

- 6.10.1 The Shareholders agree that it is their common intention that subject to compliance with JVC's dividend policy, 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.
- 6.10.2 The Shareholders agree that the amount of dividends to be declared by the Directors, and the amount of dividends to be approved by the Shareholders, shall be determined in a manner consistent with the policy of maximizing the distribution of dividends to the Shareholders and as set out in Section 6.10.3, and the Shareholders shall conduct such acts, and procure that the Directors shall conduct such acts, to ensure that such policy has been fully considered in respect of the amount of dividends declared.
- 6.10.3 The Shareholders agree that whenever the amount of a dividend to be paid falls to be ascertained:
 - (A) the total profits of the JVC available for distribution within the meaning given in the Act (the "Distributable Profits"), shall be determined by the JVC;
 - (B) the JVC shall identify amounts (the "Retained Amounts") which it considers should be retained in order:
 - (1) to meet commitments, contingencies capital and operating maintenance;
 - (2) to provide for unforeseen expenditure, reduction in revenue given the nature of the business and unplanned maintenance including setting aside reserves for such purpose as per prudent utility practises, and
 - (3) to develop, implement and operate the business in accordance with this Agreement and the PDA; and





- (4) to ensure that there is no breach of any covenant or undertaking given by the JVC to any Senior Lender under the Financing Documents at the time of the payment and, in the opinion of the Board, there is not likely to be such a breach within the following 12 months;
 - (5) to maintain the sound financial standing of the JVC;
 - (6) to ensure that the JVC maintains such reasonable and proper reserves for working capital or otherwise as may be required by Applicable Law or as the Board may consider to be appropriate.
- (C) All of the balance (if any) remaining after deducting the Retained Amounts from the Distributable Profits shall be paid to the Shareholders by way of interim or final dividend on the Shares, as the case may be.

6.10.4 The Shareholders further undertake to procure that their Directors, upon a request of any Shareholder, consider whether the Board shall declare or recommend any interim and final dividends.

6.10.5 The Shareholders undertake to exercise the votes attaching to the Shares to approve any recommendations made, in each case in accordance with the principles set out in this Article 6.10.

2. MISCELLANEOUS

2.1 This Agreement is supplemental to, and shall be construed as one with, the Original Agreement. Except as varied by the terms of this Agreement, the Original Agreement will remain in full force and effect and any reference in the Original Agreement to the Agreement will be construed as a reference to the Original Agreement, as amended by this Agreement.

2.2 The provisions of Articles 1 (Definitions and Interpretation) 10 (*Dispute Resolution*) and 11 (*Miscellaneous*) of the Original Agreement shall apply with such changes as are necessary to this Agreement as if expressly set out in this Agreement.

2.3 This Agreement shall be governed by and construed in accordance with the laws of Nepal. This Agreement has been entered into on the date stated at the beginning of this Agreement.

<p>SIGNED for and on behalf of GMR Energy Limited</p> <p>Signature:</p> <p>Name:</p> <p>Designation:</p> <p>Date:</p> <p>Witness name and designation:</p>	<p>SIGNED for and on behalf of GMR Infrastructure Limited</p> <p>Signature:</p> <p>Name:</p> <p>Designation:</p> <p>Date:</p> <p>Witness name and designation:</p>
<p>SIGNED for and on behalf of Italian-Thai Development Public Company Limited</p>	<p>SIGNED for and on behalf of GMR Lion Energy Limited</p>

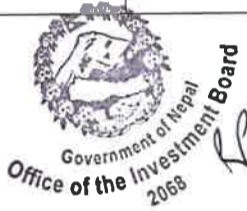




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<p>Signature:</p> <p>Name:</p> <p>Designation:</p> <p>Date:</p> <p>Witness name and designation:</p>	<p>Signature:</p> <p>Name:</p> <p>Designation:</p> <p>Date:</p> <p>Witness name and designation:</p>
<p>SIGNED for and on behalf of Nepal Electricity Authority</p> <p>Signature:</p> <p>Name:</p> <p>Designation:</p> <p>Date:</p> <p>Witness name and designation:</p>	



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