

PN ACE-228
100109

**USAID Project on Privatization
of the Russian Electric Power Sector**

**SUMMARY OUTLINES
OF SELECTED ELECTRIC POWER PROJECT AND INVESTMENT CONTRACTS**

**Prepared by
LATHAM & WATKINS**

May, 1995

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AGREEMENT 1

JOINT VENTURE
AGREEMENT

Summary Outline
Prepared by Latham & Watkins
for RAO EES Rossi/USAID Russian Power
Sector Privatization Program

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OUTLINE OF PROPOSED TERMS

- Introduction
- General Formation Provisions
- Capital Contribution
- Issuance of Equity
- Transfer of Equity
- Financial Records
- Distribution of Profits
- Equityholder Meetings
- Board of Directors
- Management
- Dissolution and Liquidation
- Indemnification
- Assignment and Security
- Force Majeure
- Defaults and Termination
- Resolution of Disputes

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SUMMARY OF PROPOSED TERMS

INTRODUCTION

A Joint Venture ("JV") Agreement can be used to create a limited purpose company through which various joint venture participants can pursue the construction or refurbishment of generation facilities or the distribution of electric energy within the Russian Federation. JV participants may include private developers, federal and local government entities, A/O Energos and/or RAO EES Rossi. The JV Agreement sets out business objectives, fixes capital contributions, provides for the allocation of risk between the parties and selects the type of corporate entity to be used. The JV Agreement may also select the jurisdiction in which the JV will be formed or incorporated.

GENERAL FORMATION PROVISIONS

This section may address formalities such as the name, location, scope of business and legal status of the JV. Where foreign investors are involved, they will pay particular attention to the tax and regulatory ramifications of the type of corporate or partnership organization chosen. It is also important to restrict the scope of the JV's activities in order to prevent subsequent disputes over the proper activity of the JV.

CAPITAL CONTRIBUTION

This section may specify the capital contribution, cash or "in-kind," of each JV partner. If a JV partner has negotiated to make an in-kind contribution, this section may fix the value of the property or other contribution to be tendered. This section may also call for mandatory future debt or equity contributions to be made by the partners according to a predetermined formula. Pro rata mandatory contributions are sometimes necessary to preserve the balance of resources contributed by the parties and the voting and control provisions of the JV Agreement.

ISSUANCE OF EQUITY

This section may set forth the type and quantity of equity to be issued and specify the rights and duties of each equityholder. For each type of equity issued, this section may address basic issues such as voting, dividends and registration.

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TRANSFER OF EQUITY

Since the identity of each partner can be essential to the successful operation of the JV, partners should carefully consider the circumstances in which the transfer of equity is permitted. Additionally, foreign investors may insist on a number of limitations

- right of first refusal (gives remaining equityholders the right to acquire the equity of a equityholder that is selling out its position),
- required consent of other equityholders (to the sale of equity),
- share repurchase (provides that the JV itself will buy back equity held by a participant in certain situations),
- "come-along provisions" (require a majority or controlling equityholder that is selling out its position to negotiate the sale of other participants' equity on the same terms), and
- inter-equityholder buy-sell agreements (establishes a procedure for the valuation and sale of equity between participants)

FINANCIAL RECORDS

This section may provide for the preparation of a record of income and expenses, a balance sheet and income tax returns. It may also require the preparation of financial statements according to established accounting principles. Foreign investors in Russian projects typically insist on access to accounting and financial records of the JV at all times as well as the right to monitor the preparation of tax returns. They also usually demand that the accounting records of the JV be kept according to "Generally Accepted Accounting Principles" or "G A A P" in addition to the form required under Russian law.

DISTRIBUTION OF PROFITS

This section may indicate what part of the JV's net income may be used to pay dividends to the partners. Foreign investors will usually demand that certain loans to the JV made by the partners themselves be repaid before dividends to any parties are distributed.

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**EQUITYHOLDER
MEETINGS**

This section sets forth the rules governing general equityholders' meetings. To protect the interests of minority equity holders, certain important actions can be specially designated to require the unanimous or super-majority approval of the equityholders. Examples of such actions include

- amendment of the JV charter,
- authorization of sale of equity,
- changes in equityholder rights generally,
- redemption of equity, and
- reorganization, liquidation or dissolution

This section may also detail procedures for voting by proxy and the mediation of disputes that threaten the operation of the JV

BOARD OF DIRECTORS

This section should govern the creation and functioning of the board of directors and may address several key points, including

- the authority of the board to act on behalf of the equityholders,
- the number of board members,
- the process of nomination and election,
- attendance requirements,
- the frequency of meetings, and
- specific duties of the board (e.g., the preparation of a business plan)

MANAGEMENT

This section should provide for the organization of JV management. Generally, this is accomplished through the establishment of the office of the JV President. Specifically, this section may set forth provisions for the appointment and removal of the President. It may also govern the board of directors' delegation of authority to

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the President Important functions of the President may include

- the management of daily operations,
- the power to act as an agent of the JV,
- the establishment of staff positions and salaries,
- the drafting of in-house regulations, and
- the ability to take other actions necessary for the achievement of the JV's long term objectives, as set forth by the board

**DISSOLUTION AND
LIQUIDATION**

This section should detail the procedure for dissolution and liquidation of the JV This process can be overseen by a liquidation commission elected by the board While the commission may be given discretion to handle a majority of the issues posed by the process of dissolution and liquidation, this section may set out with some specificity the rights of the equityholders with respect to any intellectual property or other assets that the JV may possess As regards intellectual property specifically, this section may address the issue of future use of any trademarks or trade names of the JV

INDEMNIFICATION

Each party should indemnify the other party for all expenses incurred as a result of its negligent acts

**ASSIGNMENT AND
SECURITY**

Neither of the parties nor any partners or shareholders thereof, should be able to transfer its rights under this or any other material agreement

Despite the ban on assignments of the previous paragraph, this section should allow security interests in property in order to finance operations Although the creation of security interests under Russian law is a new phenomenon, this type of arrangement will be necessary to secure necessary commitments from private lenders

FORCE MAJEURE

Neither party should be liable for, or in breach because of, a force

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majeure The performance of the parties may be suspended as long as a force majeure continues

Events constituting a force majeure can be categorized into natural events (such as epidemics), political events within the Russian Federation and political events outside the Russian Federation Political events should include acts of war, invasion and other similar occurrences These categories can be broken down further to illustrate the meaning of force majeure and to include or exclude certain specific events Certain items can be explicitly excluded from the definition of force majeure, including the performance of contractors, non-performance of the facility due to wear, negligence, failure to comply with applicable law and breach or default under other material agreements

This force majeure provision should be similar to those of other relevant project documents to ensure that performance is suspended or excused for all parties simultaneously

Events of nationalization or expropriation by the federal government may be construed as a breach that results in the payment of liquidated damages to the Company

**DEFAULTS AND
TERMINATION**

Events or conditions that constitute a material breach by one of the parties should be listed Such events of default may include abandonment of the facility or the failure of any other material condition This section may also create a period after notice of default in which the defaulting party can cure the default Rights and remedies of the parties upon an event of default, including the right to terminate the agreement, should also be set forth

**RESOLUTION OF
DISPUTES**

Due to the evolving nature of Russian commercial law, the parties are likely to favor commercial arbitration of disputes rather than local court proceedings In this section, both parties agree to submit disputes to commercial arbitration The parties may also select a governing law and forum in accordance with applicable Russian law, bilateral agreements and international arbitration conventions To the extent possible, the choice of law and forum should match the selections made in project documents

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AGREEMENT 2

IMPLEMENTATION AGREEMENT

Summary Outline
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OUTLINE OF PROPOSED TERMS

- Introduction
- Definitions
- Commencement and Duration
- Implementation of the Project by the Company
- Warranties of the Company
- Grant of Rights to the Company
- Real Property and Access
- Licenses and Consents
- Construction, Operation and Maintenance
- Customs Duties, Import Controls and Taxes
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- Force Majeure
- Defaults and Termination
- Resolution of Disputes

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SUMMARY OF PROPOSED TERMS

INTRODUCTION

The Implementation Agreement ("IA"), otherwise known as the concession agreement, may be entered into between a sovereign entity (e.g., the Russian Federation) and a private developer or owner of privatized facilities (e.g., transmission lines or generation facilities). The sovereign entity generally grants the developer the right to engage in certain activities, such as the generation or transmission of electric power, in exchange for the developer's promise to construct or refurbish needed facilities. It is also conceivable that local government entities within a federation such as the Russian Federation could enter into such an agreement with private developers. In this case, this model document could be altered to reflect the concessions that could be offered by such local government entities. Although agreements with local government entities are unlikely to function as a substitute for agreements with the federal government, developers may derive some additional comfort from such agreements.

DEFINITIONS

For purposes of this summary of proposed terms, the words "Company," "Facility," "Government Entity" and "Power Purchase Agreement" shall have the following definitions:

"Company" shall mean a limited purpose corporation, prospective or existing, established to hold the assets of the Facility, to operate the Facility and to engage in power generation.

"Facility" shall mean any electric power generating, transmission or distribution facility that is the subject of development, construction, improvement or financing by a private developer.

"Government Entity" shall mean the Russian Federation, a regional or local government entity or a "national utility" seeking to promote the construction or refurbishment of electric power sector facilities through the use of a concession agreement (see Introduction).

"Power Purchase Agreement" shall mean an agreement providing for the long-term (e.g., 15-30 years) sale of power by a power-generating facility to a Government Entity or another purchaser of power on the wholesale or retail power market. In the case of transmission or distribution projects, this agreement would provide

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for the long-term sale of such services

**COMMENCEMENT AND
DURATION**

The IA generally remains in effect as long as the Company operates the Facility. The Government Entity may bargain for the ability to terminate the IA upon the expiration or termination of the Power Purchase Agreement. However, project lenders may resist such a position.

**IMPLEMENTATION OF
THE PROJECT BY THE
COMPANY**

The Company generally agrees to design, finance, construct, own, operate and maintain the Facility. If the IA is executed before financial closing, the Company may agree to provide the Government Entity with a monthly report detailing its progress in negotiating of the project agreements until the date of financial closing.

**WARRANTIES OF THE
COMPANY**

The Company generally delivers standard contract warranties relating to its legal status, power to enter into the agreements and good standing under all other contracts that it may be a party to.

**GRANT OF RIGHTS TO
THE COMPANY**

The Government Entity grants to the Company the exclusive right to design, finance, construct, own and operate the Facility until the termination of the IA.

**REAL PROPERTY AND
ACCESS**

In this section, the Government Entity may grant access over real property owned by the Government Entity reasonably necessary to exercise the rights granted in the preceding paragraph. If the site of the Facility is owned by a Government Entity, this section may also grant to the Company adequate rights in the site.

**LICENSES AND
CONSENTS**

The Government Entity may agree to assist the Company in receiving and maintaining government approvals, consents and authorizations, including

- registration of foreign corporations,
- licenses for foreign currency investment use, exchange or transfer,

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- licenses for the import of materials necessary to the Facility,
- immigration and visa applications,
- licenses necessary to supply electricity, and
- environmental approvals

This section may also deal with the necessity of obtaining such approvals, consents and authorizations on the republic, regional and local levels

**CONSTRUCTION,
OPERATION AND
MAINTENANCE**

The Government Entity may ask for the right to consent to the appointment of certain contractors for the construction and operation of the Facility. Future appointments and substitutions may be made subject to the written consent of the Government Entity after proper application by the Company.

**CUSTOMS DUTIES,
IMPORT CONTROLS
AND TAXES**

This section sets forth the understanding of the Company with respect to import duties and restrictions on the materials necessary for the construction and ongoing maintenance of the Facility and on re-export of unused construction and maintenance materials.

This section should also set forth the tax regime within which the Company will operate. In the Russian Federation, one of the principal concerns of the Company is likely to be the tax regime. In order to make the project economically viable, the Company may need to obtain tax concessions. In many instances, the Government Entity will want to offer such concessions to encourage foreign investment. All such incentives may be reflected in this section.

**FOREIGN CURRENCY
EXCHANGE AND
TRANSFER OF FUNDS**

If payments are made in local currency, it is useful to set forth a mechanism for the Company's foreign currency operations, including the purchase of foreign currency, the maintenance of foreign currency bank accounts and the repatriation of foreign currency earnings. It may also provide for the procurement of any necessary approvals from relevant Russian government agencies. In addition, foreign companies may ask for explicit representations of the Government Entity itself with respect to changes in the law and

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applicable rules and regulations

GUARANTEE

The Company may ask that the Government Entity guarantee the payment and other obligations (such as the Power Purchase Agreement) of its agents and the ministries that enter into agreements with the Company. If the Company must rely on the Central Bank, the Company may also request that the Government Entity guarantee the Bank's obligations to the Company. The main purpose of such guarantees is to increase the credit worthiness of various state entities. However, this enhanced protection against default lasts only so long as guarantees remain in force.

**PROVISIONS RELATING
TO LENDERS AND
INVESTORS**

Typically, a large power project will require financing in the form of both equity contributions and bank loans. Banks have a greater incentive to lend funds for construction or refurbishment if a minimum amount of equity is contributed by project sponsors (e.g., equity holders in the Company). The Government Entity can also derive some comfort from the fact that project sponsors have made an equity investment. Before financial closing, the Company should deliver evidence to the Government Entity that equity commitments have been fulfilled.

The Company may require the Government Entity's representation that it will not acquire equity or assets of the Company through nationalization or expropriation. The Company may also require certain other covenants on behalf of the Government Entity (e.g., a pledge of non-discrimination).

INDEMNIFICATION

Each party should indemnify the other party for all expenses incurred as a result of its negligent acts.

**ASSIGNMENT AND
SECURITY**

Neither of the parties nor any partners or shareholders thereof, should be able to transfer its rights under this or any other material agreement.

Despite the ban on assignments of the previous paragraph, this section should allow security interests in property in order to finance operations. Although the creation of security interests under Russian law is a new phenomenon, this type of arrangement

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will be necessary to secure necessary commitments from private lenders

FORCE MAJEURE

Neither party should be liable for, or in breach because of, a force majeure. The performance of the parties may be suspended as long as a force majeure continues. Events constituting a force majeure can be categorized into natural events (such as epidemics), political events within the Russian Federation and political events outside the Russian Federation. Political events should include acts of war, invasion and other similar occurrences. These categories can be broken down further to illustrate the meaning of force majeure and to include or exclude certain specific events.

Certain items can be explicitly excluded from the definition of force majeure, including the performance of contractors, non-performance of the facility due to wear, negligence, failure to comply with applicable law and breach or default under other material agreements.

This force majeure provision should be similar to those of other relevant project documents to ensure that performance is suspended or excused for all parties simultaneously.

Events of nationalization or expropriation by the federal government may be construed as a breach that results in the payment of liquidated damages to the Company.

DEFAULTS AND TERMINATION

Events or conditions that constitute a material breach by one of the parties should be listed. Such events of default may include abandonment of the facility or the failure of any other material condition. This section may also create a period after notice of default in which the defaulting party can cure the default. Rights and remedies of the parties upon an event of default, including the right to terminate the agreement, should also be set forth.

RESOLUTION OF DISPUTES

Due to the evolving nature of Russian commercial law and the current lack of civil statutes or precedent relating to the power industry, the parties are likely to favor commercial arbitration of disputes rather than local court proceedings. In this section, both parties agree to submit disputes to commercial arbitration. The

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parties may also select a governing law and forum in accordance with applicable Russian law, bilateral agreements and international arbitration conventions. To the extent possible, the choice of law and forum should match the selections made in other relevant project documents.

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AGREEMENT 3

POWER PURCHASE AGREEMENT

Summary Outline
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OUTLINE OF PROPOSED TERMS

- Introduction
- Definitions
- Sale and Purchase of Energy and Capacity
- Term
- Pre-operation Period
- Warranties and Covenants
- Operation and Maintenance
- Interconnection
- Metering and Communication
- Compensation, Payment and Billing
- Testing and Capacity Ratings
- Indemnification
- Assignment and Security
- Force Majeure
- Defaults and Termination
- Resolution of Disputes

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SUMMARY OF PROPOSED TERMS

INTRODUCTION

The Power Purchase Agreement ("PPA") is an essential document in the financing of a power project because it represents the primary revenue stream that secures the loan. The Power Purchase Agreement is ordinarily entered into between a power generator and a power purchaser, but can be tailored to effect any long-term power supply relationship. The purchaser is often a government or a publicly-owned or private utility while the generator is usually a limited purpose company created to own generation facilities.

DEFINITIONS

For purposes of this summary of proposed terms, the words "Facility," "Purchaser" and "Seller" shall have the following definitions:

"Facility" shall mean any electric power generation facility.

"Purchaser" shall mean a purchaser of power on the wholesale market (e.g., RAO EES Rossi or an A/O Energo) or the retail market (e.g., large power consumers or municipal resellers).

"Seller" shall mean an entity selling power on the wholesale market (e.g., a generator) or the retail market (e.g., an A/O Energo).

**SALE AND PURCHASE
OF
ENERGY AND
CAPACITY**

This section defines the basic relationship between the Seller and the Purchaser. In return for agreed consideration, the Seller sells and the Purchaser buys the capacity and/or the defined output of the Facility. The purchase of energy and capacity can be addressed in separate sections if the complexity of the deal requires.

TERM

The term of the PPA must be long enough to allow the Seller to obtain bank financing based on the revenue stream created by the PPA. It may be most cost-effective to set the initial term of the contract as close as possible to the life of the Facility. If bidding for the right to supply energy (e.g., on the wholesale market) is competitive, the Purchaser may be able to demand a shorter initial term. However, insistence on a short term contract by the Purchaser may encourage the Seller to "front-end load" its debt.

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service since lenders require that loans be repaid during the period of the PPA. The shorter the initial term of the PPA, the more difficult it will be to obtain financing.

PRE-OPERATION PERIOD

Before the PPA becomes effective, the Seller must obtain all necessary permits, licenses and approvals required by the Russian Federation, regional and local agencies and officials.

Before the PPA becomes effective, the Seller is usually required to deliver certain key documents, including

- a plan or contract for the operation and maintenance of the Facility,
- a fuel supply plan and agreement for the Facility,
- a construction (or refurbishment) plan and contract,
- a start-up and testing schedule and test results, and
- a set of written operating procedures.

The Seller may also be required to provide certain certificates of licensed professional engineers concerning the design, construction and operation of the Facility.

WARRANTIES AND COVENANTS

The Seller delivers the standard contract warranties relating to its legal status, power and authority to enter into all applicable agreements, and good standing under all other contracts to which it may be a party. These warranties are important components of financing documents that must be delivered in order to secure financing from commercial lenders.

The Seller generally agrees to design, finance, construct, own, operate and maintain the Facility in accordance with the PPA and the other agreements. The Seller may also covenant that the Facility will comply with environmental guidelines, meet minimum functional specifications and not adversely affect the Purchaser's voltage level or waveform. In addition, the Seller may covenant to maintain the Facility in accordance with prudent utility practices.

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**OPERATION AND
MAINTENANCE**

This section sets forth the procedure for dispatch of the Facility as capacity becomes available and thereafter according to the Purchaser's dispatch instructions. This section may also provide for scheduled outages and emergency procedures. This also establishes the amount of electricity to be provided on a regular and dispatchable basis.

The Purchaser may insist that the Seller comply with certain minimum fuel supply reserve guidelines to insure operation during fuel supply interruptions. To further insure adequate oversight and efficient operation of the Facility, this section may establish a joint operating committee. To encourage technology transfer, the Purchaser may also require that the Seller recruit and train local personnel to operate the Facility.

The Seller must ordinarily keep complete and accurate records of operation, including an operation log in which it records real and reactive power production.

INTERCONNECTION

This section allocates responsibility for interconnection of the Facility with the existing power grid. Such plans may be detailed in an attached schedule. Common practice is to establish an interconnection point and make each party responsible for interconnection from the grid or the Facility, as applicable, to such point.

**METERING AND
COMMUNICATION**

This section provides for the installation, testing, operation and maintenance of metering systems required to measure the output of the Facility. If the existing metering at the Facility does not meet these requirements, then an agreement may be reached for installation. Required specifications for meters may be set out in an attached schedule. It is recommended that standard meters be installed and maintained in order to ensure accuracy and uniformity between generators. In addition, the Purchaser may require that the Seller install a back-up metering system at its own expense. If the meters are not installed at the interconnection point, this section will need to specify the conversion formulae to adjust measured quantities at the metering point to quantities at the interconnection point. Adjustments may also need to be made for the Facility's own electricity use.

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Due to the lack of telecommunications infrastructure in some parts of the Russian Federation, it may be necessary for the Purchaser to provide for the installation and maintenance of telecommunications equipment required to receive dispatch instructions and for telemetering

**COMPENSATION,
PAYMENT AND BILLING**

This section sets out the compensation to be paid to the Seller and the procedures for billing and payment of amounts due. There are two basic compensation options. First, compensation can be based on separate capacity and energy payments. Alternatively, compensation can be based on a flat fee per kilowatt-hour. Payments may be indexed for such items as inflation, foreign exchange fluctuations and fuel costs. The Seller may ask for a letter of credit to cover electricity sales to the Purchaser. Arrangements as to billing and payment schedules can be based on the current agreements between existing participants in the industry. Payment schedules for capacity and energy may be designated to match the timing of payments by power consumers to the Purchaser. Payments may also be indexed to eliminate inflation risk.

The parties may agree to certain incentive or penalty structures to maximize the benefit of the PPA to both parties. Such incentives can be created through performance bonuses for achievement of certain performance criteria and/or liquidated damages for failure to achieve certain performance thresholds.

**TESTING AND
CAPACITY RATINGS**

The Seller may be required to carry out testing of each unit of the Facility before commissioning to verify compliance with the contracted technical specifications, and to determine, among other things, the available capacity of the Facility (and if necessary, each generating unit). Detailed procedures for testing may be set out in an attached schedule and may cross reference to applicable grid regulations.

INDEMNIFICATION

Each party should indemnify the other party for all expenses incurred as a result of its negligent acts.

ASSIGNMENT AND

Neither of the parties nor any partners or shareholders thereof,

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SECURITY

should be able to transfer its rights under this or any other material agreement

Despite the ban on assignments of the previous paragraph, this section should allow security interests in property in order to finance operations. Although the creation of security interests under Russian law is a new phenomenon, this type of arrangement will be necessary to secure necessary commitments from private lenders

FORCE MAJEURE

Neither party should be liable for, or in breach because of, a force majeure. The performance of the parties may be suspended as long as a force majeure continues

Events constituting a force majeure can be categorized into natural events (such as epidemics), political events within the Russian Federation and political events outside the Russian Federation. Political events should include acts of war, invasion and other similar occurrences. These categories can be broken down further to illustrate the meaning of force majeure and to include or exclude certain specific events

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This force majeure provision should be similar to those of other relevant project documents to ensure that performance is suspended or excused for all parties simultaneously

Events of nationalization or expropriation by the federal government may be construed as a breach that results in the payment of liquidated damages to the Company

**DEFAULTS AND
TERMINATION**

Events or conditions that constitute a material breach by one of the parties should be listed. Such events of default may include abandonment of the facility or the failure of any other material condition. This section may also create a period after notice of default in which the defaulting party can cure the default. Rights

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and remedies of the parties upon an event of default, including the right to terminate the agreement, should also be set forth

**RESOLUTION OF
DISPUTES**

Due to the evolving nature of Russian commercial law and the current lack of civil statutes or precedent relating to the power industry, the parties are likely to favor commercial arbitration of disputes rather than local court proceedings. In this section, both parties agree to submit disputes to commercial arbitration. The parties may also select a governing law and forum in accordance with applicable Russian law, bilateral agreements and international arbitration conventions. To the extent possible, the choice of law and forum should match the selections made in other relevant project documents.

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AGREEMENT 4

FUEL SUPPLY AGREEMENT

Summary Outline
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OUTLINE OF PROPOSED TERMS

- Introduction
- Definitions
- Supply and Transportation of Fuel
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- Facilities to be Provided by the Generator
- Volumes and Offering Procedures
- Pricing
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- Testing
- Metering
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- Force Majeure
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SUMMARY OF PROPOSED TERMS

INTRODUCTION

The Fuel Supply Agreement ("FSA") is a long term contract pursuant to which a fuel supplier sells fuel to an electric power generator. The fuel supplier in the Russian Federation is likely to be a government or publicly-owned entity. The purpose of this agreement is to establish a reliable source of fuel and to spread fuel cost risks between parties. The agreement generally provides for an system of ordering, delivery, metering, payment and dispute resolution to ensure that the fuel supply of the power generation facility remains uninterrupted.

DEFINITIONS

For purposes of this summary of proposed terms, the words "Fuel Supplier", "Generator" and "Power Purchase Agreement" shall have the following definitions:

"Fuel Supplier" shall mean a private or government entity capable of providing for the long-term demand of a generation facility for fuel (e.g., coal, gas or oil).

"Generator" shall mean an independent or government-owned facility engaging in the generation of electric power for wholesale or retail consumption.

"Power Purchase Agreement" shall mean an agreement providing for the long-term (e.g., 15-30 years) sale of power by a power-generating facility to a Government Entity or another purchaser of power on the wholesale or retail power market. In the case of transmission or distribution projects, this agreement would provide for the long-term sale of such services.

**SUPPLY AND
TRANSPORTATION
OF FUEL**

This section sets forth the basic economic relationship of the parties, providing for the purchase by, and sale of fuel to, the Generator. A separate agreement for transportation of the fuel may be advisable. In the alternative, this section may lay out the method of transportation to be used in delivery of the fuel and specify at what point title and risk of loss passes from the Fuel Supplier to the Generator.

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TERM Since the FSA must operate together with the Power Purchase Agreement to enable the Generator to produce power, the initial term of the FSA generally matches the initial term of the Power Purchase Agreement and scheduled renegotiation of the two agreements are held simultaneously. At a minimum, the term of the FSA must be long enough to allow the Generator to obtain third party financing on the strength of a predictable income stream.

FACILITIES TO BE PROVIDED BY THE GENERATOR This section provides for the Generator's design and construction of fuel receiving and storage facilities. Such facilities must be of sufficient size to store required fuel reserves with surplus capacity. The Fuel Supplier may retain the right to consent to the design of receiving and storage facilities.

VOLUMES AND OFFERING PROCEDURES According to this section, a mechanism is established for advance estimation of the amounts of fuel to be delivered pursuant to regularly scheduled fuel supply orders. In addition, it is advised that the Fuel Supplier may seek indemnification for modification or cancellation of orders by the Generator.

PRICING The calculation of fuel price is sometimes complex and may require a detailed attachment. The price may be based on the market fuel price, the method of delivery used and applicable taxes and duties to be borne by the Generator.

INVOICING AND PAYMENTS This section provides for the delivery and payment of invoices. The Fuel Supplier may demand that the Generator maintain a letter of credit in its favor to be drawn upon for the purpose of making payments for the supply and transportation of fuel, taxes, demurrage and liquidated damages. This will insure that the Generator's temporary cash flow shortfalls do not threaten the delivery of fuel for the operation of the facility. Payments may be indexed for such items as inflation, foreign exchange fluctuations and fuel costs.

The parties may agree to an incentive structure to maximize the benefit of the FSA to both parties. Such incentives can be created through performance bonuses for achievement of certain performance criteria and/or liquidated damages for failure to

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achieve certain performance thresholds

TESTING

This section details the procedure for testing fuel in order to ensure compliance with established minimum specifications. It is preferable that the fuel be tested before acceptance by the Generator. This may involve testing before and after physical delivery of the fuel to the Generator's facility. The Fuel Supplier may insist that the Generator agree to accept all fuel that is ordered by the Generator, that is tested and that complies with established minimum specifications.

METERING

In the case of fuel transported by pipeline (e.g., gas or oil), this section delegates responsibility for metering the quantity of fuel delivered to the Generator. The specific method of metering for any particular shipment will depend on the manner of delivery. Whatever the method, the Fuel Supplier usually takes responsibility for performing metering and maintaining metering devices in order to insure accurate and uniform results.

CONSENTS

The Generator and the Fuel Supplier must undertake to obtain all necessary federal, regional and local consents required for the purchase and sale of fuel under the FSA. This section may also provide that the parties will render all necessary assistance to each other in the application process.

MAINTENANCE AND REPAIR

This section provides for a coordinated system of inspection and maintenance for the receiving and storage facilities.

INDEMNIFICATION

Each party should indemnify the other party for all expenses incurred as a result of its negligent acts.

ASSIGNMENT AND SECURITY

Neither of the parties nor any partners or shareholders thereof, should be able to transfer its rights under this or any other material agreement.

Despite the ban on assignments of the previous paragraph, this section should allow security interests in property in order to

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finance operations Although the creation of security interests under Russian law is a new phenomenon, this type of arrangement will be necessary to secure necessary commitments from private lenders

FORCE MAJEURE

Neither party should be liable for, or in breach because of, a force majeure The performance of the parties may be suspended as long as a force majeure continues

Events constituting a force majeure can be categorized into natural events (such as epidemics), political events within the Russian Federation and political events outside the Russian Federation Political events should include acts of war, invasion and other similar occurrences These categories can be broken down further to illustrate the meaning of force majeure and to include or exclude certain specific events

Certain items can be explicitly excluded from the definition of force majeure, including the performance of contractors, non-performance of the facility due to wear, negligence, failure to comply with applicable law and breach or default under other material agreements

This force majeure provision should be similar to those of other relevant project documents to ensure that performance is suspended or excused for all parties simultaneously

Events of nationalization or expropriation by the federal government may be construed as a breach that results in the payment of liquidated damages to the Company

**DEFAULTS AND
TERMINATION**

Events or conditions that constitute a material breach by one of the parties should be listed Such events of default may include abandonment of the facility or the failure of any other material condition This section may also create a period after notice of default in which the defaulting party can cure the default Rights and remedies of the parties upon an event of default, including the right to terminate the agreement, should also be set forth

RESOLUTION OF

Due to the evolving nature of Russian commercial law and the

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DISPUTES

current lack of civil statutes or precedent relating to the power industry, the parties are likely to favor commercial arbitration of disputes rather than local court proceedings. In this section, both parties agree to submit disputes to commercial arbitration. The parties may also select a governing law and forum in accordance with applicable Russian law, bilateral agreements and international arbitration conventions. To the extent possible, the choice of law and forum should match the selections made in other relevant project documents.

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AGREEMENT 5

**ENGINEERING, PROCUREMENT AND
CONSTRUCTION SERVICES
AGREEMENT**

Summary Outline
Prepared by Latham & Watkins
for RAO EES Rossi/USAID Joint Power
Sector Privatization Program

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OUTLINE OF PROPOSED TERMS

- Introduction
- Definitions
- Contractor's Responsibilities
- Selection of Contractors and Vendors
- Owner's Responsibilities
- Review of Work
- Change Orders
- Compensation and Payment
- Warranty
- Insurance
- Suspension, Termination
- Transfer, Title and Completion
- Performance Guarantee, Performance Test and Completion Guarantee
- Indemnification
- Assignment and Security
- Force Majeure
- Defaults and Termination
- Resolution of Disputes

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SUMMARY OF PROPOSED TERMS

INTRODUCTION

The Engineering, Procurement and Construction Services Agreement ("EPC"), as its name implies, provides for the design and construction of generation facilities by outside contractors. This agreement is an indispensable agreement in the financing of new facilities or refurbishment since it helps to ensure that generation facilities are completed and ready to operate according to schedule. Delays in design, construction and refurbishment can be extremely disruptive to project development if risks and incentives are not properly allocated in this agreement.

DEFINITIONS

For purposes of this summary of proposed terms, the words "Contractor" and "Owner" shall have the following definitions:

"Contractor" shall mean the entity contractually engaged through the EPC to perform or oversee the completion of the physical project, whether that entails the construction of new generation capacity or the refurbishment of existing facilities.

"Owner" shall mean the entity (e.g., a limited purpose corporation or a government entity) that holds the financial and physical assets necessary to complete the project during its development.

**CONTRACTOR'S
RESPONSIBILITIES**

This section sets forth discrete elements of the project and details the nature of such work. The Contractor generally agrees to construct the facilities and prepare such items as designs and engineering specifications, a list of necessary personnel, a list of materials and equipment and a plan for management of construction and engineering services. Further, this section may provide that all work will be performed in compliance with local laws, regulations and industry standards. Finally, the Contractor may be required to procure certain licenses to perform the work. The extent of such licensing requirements will depend on future legislation of the Russian Federation.

SELECTION OF

This section may require the Owner's consent to all subcontractors.

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CONTRACTORS AND VENDORS

performing contracts that exceed a certain minimum sum

OWNER'S RESPONSIBILITIES

This section details the specific responsibilities of the Owner necessary to enable the Contractor to accomplish its work. These responsibilities may include

- provision of the site,
- provision of water and power for construction,
- assistance in obtaining government approvals,
- assistance in obtaining technology licenses,
- designation of certain personnel,
- disposal of waste, and
- installation of transmission lines

REVIEW OF WORK

The Owner may have the right to inspect the project from time to time on its own initiative. This may include inspection of plans, drawings, designs and specifications

CHANGE ORDERS

Typically, in the course of the construction of generation facilities, changes are required in scheduling, materials or design. "Change orders" authorizing a change in work affecting the contract price, a deadline, or any other material right or obligation are used to implement such changes. This section may provide that according to a certain procedure, the owner has the right to make change orders. This section may also provide a system for the resolution of disputes arising in connection with change orders

COMPENSATION AND PAYMENT

This section details the Contractor's compensation. The Contractor may be paid on either a fixed price or a cost basis. An appendix may be used to break down expenses wherever possible in order to facilitate later change orders. Responsibility for payment of all taxes related to the contract should be clearly delineated. This

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section may also address the method of payment, providing milestone payments in order to encourage timely completion of the project and ensure that the Contractor does not experience cash flow shortages. Finally, this section may set forth a scheme to reward early completion and penalize late completion of the work.

WARRANTY

The Contractor generally warrants that it is and will be qualified and capable to carry out the work and to complete construction of the facilities. The Contractor may also warrant that the work performed, including design, engineering and construction, will meet or exceed industry standards and contract specifications. This section also sets forth the applicable warranty period and remedies for breach of warranty.

INSURANCE

The Contractor may be required to procure and maintain insurance coverage, including employee liability, general liability, builders' risk and vehicle insurance.

**SUSPENSION,
TERMINATION**

The Owner may have the right to suspend or terminate work under the contract. This clause should provide alternative Contractor compensation in case of such a suspension or termination.

**TRANSFER, TITLE AND
COMPLETION**

This section apportions the risk of loss of improvements before the completion or termination of the contract. Notwithstanding responsibility for risk of loss, transfer of title to materials delivered to the project site should be independently negotiated.

**PERFORMANCE
GUARANTEE,
PERFORMANCE TEST
AND COMPLETION
GUARANTEE**

This section sets forth with specificity the tests to be performed by the parties to determine the technical sufficiency of the project. For example, the Contractor's compensation may be reduced for each kilowatt by which a guaranteed level of output exceeds actual tested output. Tests may also measure other indicia such as heat rate.

The Owner may also require a completion guarantee in the form of a letter of credit, corporate guarantee or other security. Default by the Contractor can have severe consequences for the project, and, therefore, the Owner should be compensated by the Contractor in some circumstances. The Owner may also negotiate the right to

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take over construction of the project in certain situations

INDEMNIFICATION

Each party should indemnify the other party for all expenses incurred as a result of its negligent acts

ASSIGNMENT AND SECURITY

Neither of the parties nor any partners or shareholders thereof, should be able to transfer its rights under this or any other material agreement

Despite the ban on assignments of the previous paragraph, this section should allow security interests in property in order to finance operations. Although the creation of security interests under Russian law is a new phenomenon, this type of arrangement will be necessary to secure necessary commitments from private lenders

FORCE MAJEURE

Neither party should be liable for, or in breach because of, a force majeure. The performance of the parties may be suspended as long as a force majeure continues

Events constituting a force majeure can be categorized into natural events (such as epidemics), political events within the Russian Federation and political events outside the Russian Federation. Political events should include acts of war, invasion and other similar occurrences. These categories can be broken down further to illustrate the meaning of force majeure and to include or exclude certain specific events

Certain items can be explicitly excluded from the definition of force majeure, including the performance of contractors, non-performance of the facility due to wear, negligence, failure to comply with applicable law and breach or default under other material agreements

This force majeure provision should be similar to those of other relevant project documents to ensure that performance is suspended or excused for all parties simultaneously

Events of nationalization or expropriation by the federal government may be construed as a breach that results in the payment of

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liquidated damages to the Company

**DEFAULTS AND
TERMINATION**

Events or conditions that constitute a material breach by one of the parties should be listed. Such events of default may include abandonment of the facility or the failure of any other material condition. This section may also create a period after notice of default in which the defaulting party can cure the default. Rights and remedies of the parties upon an event of default, including the right to terminate the agreement, should also be set forth.

**RESOLUTION OF
DISPUTES**

Due to the evolving nature of Russian commercial law and the current lack of civil statutes or precedent relating to the power industry, the parties are likely to favor commercial arbitration of disputes rather than local court proceedings. In this section, both parties agree to submit disputes to commercial arbitration. The parties may also select a governing law and forum in accordance with applicable Russian law, bilateral agreements and international arbitration conventions. To the extent possible, the choice of law and forum should match the selections made in other relevant project documents.

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AGREEMENT 6

OPERATIONS AND MAINTENANCE
AGREEMENT

Summary Outline
Prepared by Latham & Watkins
for RAO EES Rossi/USAID Joint Power
Sector Privatization Program

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Russian Power Sector Privatization Program

OUTLINE OF PROPOSED TERMS

- Introduction
- Definitions
- Scope of Services
- Standard of Performance
- Compliance with Law and Agreements
- Coordination With Power Users
- Payment
- Output Guarantees
- Major Maintenance
- Insurance
- Indemnification
- Assignment and Security
- Force Majeure
- Defaults and Termination
- Resolution of Disputes

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SUMMARY OF PROPOSED TERMS

INTRODUCTION

The Operations and Maintenance ("O&M") Agreement is entered into between a contractor capable of managing, and providing for the upkeep and repair of, generation facilities and a power generation company. The O&M Agreement can be an important part of the financing of independent generation facilities where there is no in-house operations and maintenance expertise. Many operators have developed an excellent reputation for management of generation facilities and their involvement can add credibility to a project.

DEFINITIONS

For purposes of this summary of proposed terms, the words "Operator" and "Owner" shall have the following definitions:

"Operator" shall mean a contractor capable of managing and providing for the upkeep and repair of generation facilities.

"Owner" shall mean a limited purpose corporation or government entity that holds the financial and physical assets of a generation facility.

SCOPE OF SERVICES

This section sets forth with specificity the exact nature of the work to be performed by the Operator. Such work may include the operation and maintenance of the facility, the preparation of materials such as procedures manuals and maintenance schedules, the supervision of subcontractors, and the performance of record-keeping functions. This section may be divided to address responsibilities during each stage of the project's development and operation.

STANDARD OF PERFORMANCE

The parties may agree to minimum performance levels to be achieved by the Operator. The Owner may be allowed to terminate the O&M Contract if such standards are not maintained.

COMPLIANCE WITH LAW AND AGREEMENTS

In this section, the Operator is required to observe all applicable local laws and regulations as well as requirements of the financing.

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and project documents in the operation and management of the project

**COORDINATION WITH
POWER USERS**

This section sets forth the procedures to be used to schedule maintenance outages and to adjust output level to reflect load changes. The Operator must coordinate its operation of the facilities with the instructions of the power purchaser.

PAYMENT

This section details the amount of the Operator's compensation and the mechanism for its payment. It may also address issues raised by local currency restrictions. In the Russian Federation, compensation may be indexed to eliminate inflation risk.

The parties may agree to an incentive structure to maximize the benefit of the O&M Agreement to both parties. Such incentives can be created through performance bonuses for achievement of certain performance criteria.

OUTPUT GUARANTEES

The Operator may be required to pay liquidated damages to the Owner should the facility fail to meet certain performance standards (e.g., the output of the project falls below certain predetermined levels).

MAJOR MAINTENANCE

This section sets forth mechanisms by which the Operator can set aside reserves for and perform major maintenance of the generation and/or transmission facilities.

INSURANCE

The Operator or the Owner must maintain certain types of insurance such as all-risk property, title, comprehensive general liability and business interruption insurance. The Operator may also be insured to guarantee that its performance of the O&M Agreement will not be interrupted by legal claims against it.

INDEMNIFICATION

Each party should indemnify the other party for all expenses incurred as a result of its negligent acts.

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ASSIGNMENT AND SECURITY

Neither of the parties nor any partners or shareholders thereof, should be able to transfer its rights under this or any other material agreement

Despite the ban on assignments of the previous paragraph, this section should allow security interests in property in order to finance operations. Although the creation of security interests under Russian law is a new phenomenon, this type of arrangement will be necessary to secure necessary commitments from private lenders

FORCE MAJEURE

Neither party should be liable for, or in breach because of, a force majeure. The performance of the parties may be suspended as long as a force majeure continues

Events constituting a force majeure can be categorized into natural events (such as epidemics), political events within the Russian Federation and political events outside the Russian Federation. Political events should include acts of war, invasion and other similar occurrences. These categories can be broken down further to illustrate the meaning of force majeure and to include or exclude certain specific events

Certain items can be explicitly excluded from the definition of force majeure, including the performance of contractors, non-performance of the facility due to wear, negligence, failure to comply with applicable law and breach or default under other material agreements

This force majeure provision should be similar to those of other relevant project documents to ensure that performance is suspended or excused for all parties simultaneously

Events of nationalization or expropriation by the federal government may be construed as a breach that results in the payment of liquidated damages to the Company

DEFAULTS AND TERMINATION

Events or conditions that constitute a material breach by one of the parties should be listed. Such events of default may include abandonment of the facility or the failure of any other material condition. This section may also create a period after notice of

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default in which the defaulting party can cure the default. Rights and remedies of the parties upon an event of default, including the right to terminate the agreement, should also be set forth.

**RESOLUTION OF
DISPUTES**

Due to the evolving nature of Russian commercial law and the current lack of civil statutes or precedent relating to the power industry, the parties are likely to favor commercial arbitration of disputes rather than local court proceedings. In this section, both parties agree to submit disputes to commercial arbitration. The parties may also select a governing law and forum in accordance with applicable Russian law, bilateral agreements and international arbitration conventions. To the extent possible, the choice of law and forum should match the selections made in other relevant project documents.

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AGREEMENT 7

TRANSMISSION AGREEMENT

Summary Outline

**Prepared by Latham & Watkins
for RAO EES Rossi/USAID Joint Power
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Russian Power Sector Privatization Program

OUTLINE OF PROPOSED TERMS

- Introduction
- Definitions
- Transmission Services
- Transmission Network
- Interconnection Site
- Special Technical Features
- Operational Aspects of the Interconnection Site
- Safety Rules
- Modification of Transmission Network or Generation Facilities
- Payment
- Metering
- Indemnification
- Assignment and Security
- Force Majeure
- Defaults and Termination
- Resolution of Disputes

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SUMMARY OF PROPOSED TERMS

INTRODUCTION

The Transmission Agreement is usually entered into between the entity that controls a transmission network (in the case of the Russian Federation, RAO EES Rossi) and a generator. The purpose of the Transmission Agreement is to provide for the transmission of power from the generation facilities to local distribution networks or large industrial users. This summary outline may also be modified to serve as a model for transmission contracts between electricity resellers and the entities that control local distribution networks. Although A/O Energos currently perform both local distribution and retail service in the Russian Federation, such contracts may be necessary as electricity market reform is implemented.

DEFINITIONS

For purposes of this summary of proposed terms, the words "Generator" and "Transmission Company" shall have the following definitions:

"Generator" shall mean an entity possessing electric power generation facilities.

"Transmission Company" shall mean the entity (e.g., a limited purpose corporation or a government entity) that holds the physical assets necessary to transmit power at high voltage.

TRANSMISSION SERVICES

The Generator generally agrees to use Transmission Company's transmission services exclusively. Any exception to this condition should be set forth with specificity.

TRANSMISSION NETWORK

The Transmission Company agrees to maintain, plan, operate, develop and make available the transmission system in accordance with specified standards. The Transmission Company and the Generator may also reach an agreement that allocates responsibility for tasks necessary for the operation and maintenance of the transmission interconnections.

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**INTERCONNECTION
SITE**

This section details certain important features of the interconnection site, including

- the location of the interconnection site,
- the type of interconnection,
- a list of interconnection equipment, and
- a schematic diagram of the interconnection site

**SPECIAL TECHNICAL
FEATURES**

This section details certain technical equipment at the interconnection site

- the grid to generating unit intertripping schemes,
- the grid to demand intertripping schemes,
- the grid to directly connected customer intertripping schedule,
- auto-open and auto-close schemes,
- system splitting and islanding schemes,
- protection and control relay settings and fault clearance times, and
- load-shedding and frequency relays

**OPERATIONAL ASPECTS
OF THE
INTERCONNECTION
SITE**

This section addresses certain basic operational agreements of the parties, including

- the Generator's commitment to remain connected to the grid for the duration of the Transmission Agreement,
- the Generator's commitment to disconnect only according to the terms of the Transmission Agreement, and
- agreement as to maximum operational capacity

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SAFETY RULES

The Transmission Company and the Generator must apportion responsibility for the safe operation of the transmission system. This section may also set forth a procedure for power-down in order to avoid injury or damage to the transmission system. To the extent any government approvals of the Transmission Agreement or its safety rules need to be obtained, such approvals may be addressed in this Section. Furthermore, the burden of obtaining such approvals may be allocated to one of the parties.

**MODIFICATION OF
TRANSMISSION
NETWORK OR
GENERATION
FACILITIES**

This section sets forth a procedure for notification by the Generator to the Transmission Company of any modification of generation facilities that will affect transmission services. It may also provide for notification by the Transmission Company to the Generator of modification to the transmission system that will affect service. Finally, this section may provide for changes in transmission fees caused by modifications.

PAYMENT

This section details the Transmission Company's compensation and the mechanism for payment. It may also address issues raised by local currency restrictions. In the Russian Federation, compensation may be indexed to eliminate inflation risk.

The parties may agree to an incentive structure to maximize the benefit of the Transmission Agreement to both parties. Such incentives can be created through performance bonuses for achievement of certain performance criteria and/or liquidated damages for failure to achieve certain performance thresholds.

METERING

One of the parties must agree to install, read and maintain all meters for the purposes of the Transmission Agreement. The Transmission Company may be able to charge the Generator a set fee for such metering services. In this case, the Generator should agree to provide access and not to tamper with the meters.

INDEMNIFICATION

Each party should indemnify the other party for all expenses incurred as a result of its negligent acts.

ASSIGNMENT AND

Neither of the parties nor any partners or shareholders thereof,

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SECURITY

should be able to transfer its rights under this or any other material agreement

Despite the ban on assignments of the previous paragraph, this section should allow security interests in property in order to finance operations. Although the creation of security interests under Russian law is a new phenomenon, this type of arrangement will be necessary to secure necessary commitments from private lenders.

FORCE MAJEURE

Neither party should be liable for, or in breach because of, a force majeure. The performance of the parties may be suspended as long as a force majeure continues.

Events constituting a force majeure can be categorized into natural events (such as epidemics), political events within the Russian Federation and political events outside the Russian Federation. Political events should include acts of war, invasion and other similar occurrences. These categories can be broken down further to illustrate the meaning of force majeure and to include or exclude certain specific events. Certain items can be explicitly excluded from the definition of force majeure, including the performance of contractors, non-performance of the facility due to wear, negligence, failure to comply with applicable law and breach or default under other material agreements.

This force majeure provision should be similar to those of other relevant project documents to ensure that performance is suspended or excused for all parties simultaneously.

Events of nationalization or expropriation by the federal government may be construed as a breach that results in the payment of liquidated damages to the Company.

**DEFAULTS AND
TERMINATION**

Events or conditions that constitute a material breach by one of the parties should be listed. Such events of default may include abandonment of the facility or the failure of any other material condition. This section may also create a period after notice of default in which the defaulting party can cure the default. Rights and remedies of the parties upon an event of default, including the right to terminate the agreement, should also be set forth.

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**RESOLUTION OF
DISPUTES**

Due to the evolving nature of Russian commercial law and the current lack of civil statutes or precedent relating to the power industry, the parties are likely to favor commercial arbitration of disputes rather than local court proceedings. In this section, both parties agree to submit disputes to commercial arbitration. The parties may also select a governing law and forum in accordance with applicable Russian law, bilateral agreements and international arbitration conventions. To the extent possible, the choice of law and forum should match the selections made in other relevant project documents.

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AGREEMENT 8

**EQUITY PURCHASE
AGREEMENT**

Summary Outline
Prepared by Latham & Watkins
for RAO EES Rossi/USAID Russian Power
Sector Privatization Program

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OUTLINE OF PROPOSED TERMS

- Introduction
- Acquisition of Equity
- Representations and Warranties of Selling Equityholders
- Representations and Warranties of Buyer
- Conduct of Corporation Pending Closing
- Obligation of Buyer to Close
- Closing
- Compliance with Securities Laws
- Restrictions on Purchased Equity
- Indemnification
- Assignment
- Force Majeure
- Defaults and Termination
- Resolution of Disputes

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SUMMARY OF PROPOSED TERMS

INTRODUCTION

The Equity Purchase Agreement is used to provide for the sale of shares or other equity of a company (the "Company") held by an equityholder (the "Equityholder") to an entity willing to make an equity investment in the Company (the "Buyer") An equity investment may take the form of a purchase of shares or partnership interests of the Company The Equity Purchase Agreement will be used frequently as privatized entities within the Russian electric power sector develop a need for capital

ACQUISITION OF EQUITY

This provision of the Equity Purchase Agreement sets forth the exact equity to be purchased and the consideration offered by the Buyer for such equity In the case of a purchase of the shares of a joint stock company, this term may also provide for physical delivery of the share certificates, an important issue in the Russian Federation

REPRESENTATIONS AND WARRANTIES OF SELLING EQUITYHOLDERS

Generally, the Equityholder and the Company jointly and severally make representations and warranties that address a number of topics, including outstanding issued equity in the Company or equity that has been authorized for future sale to third parties, restrictions on transfer, subsidiaries, organization and good standing of the Company and other areas that impact either directly or indirectly on the value of the equity being transferred

REPRESENTATIONS AND WARRANTIES OF BUYER

Generally, the Buyer makes appropriate representations and warranties such as the fact that the Buyer is duly authorized to acquire the equity and, in the case of a Buyer that is a legal entity, the fact that the Buyer is duly organized and validly existing

CONDUCT OF CORPORATION PENDING CLOSING

This provision provides that the Company should be operated only in the ordinary course of business until financial closing The Buyer can be given access to corporate books and records to perform due diligence investigations

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OBLIGATION OF BUYER TO CLOSE	The obligation of the Buyer to close the purchase of the equity may be subject to certain conditions, including the condition that the representations and warranties of the Seller are true and accurate as of the time of the closing, delivery of an opinion from legal counsel to Seller, and the Equityholder's performance of all pre-closing obligations
CLOSING	This provision should specify the exact time and place of the financial closing
COMPLIANCE WITH SECURITIES LAWS	The Equityholder certifies that the equity sold has been properly issued and registered and complies with all other applicable securities laws
RESTRICTIONS ON PURCHASED EQUITY	Pursuant to this section, the Equityholder certifies that there are no restrictions on the transfer of the equity (i.e., right of first refusal, company option to repurchase shares, priority return in case of preferred stock, no transfer to competitors, etc.), or alternatively, that all such restrictions have been strictly complied with
INDEMNIFICATION	This provision indemnifies the Buyer against losses based upon the breach of any covenant, warranty, representation or agreement of the Seller. It also indemnifies the Buyer against all liabilities that the Buyer did not explicitly assume. The Equityholder can also be indemnified against losses based upon the breach of any covenant, warranty, representation or agreement of the Buyer and any liability that the Buyer has assumed
ASSIGNMENT	Neither of the parties nor any partners or shareholders thereof, should be able to transfer its rights under this or any other material agreement
FORCE MAJEURE	Neither party should be liable for, or in breach because of, a force majeure. The performance of the parties may be suspended as long as a force majeure continues. Events constituting a force majeure can be categorized into natural events (such as epidemics), political events within the Russian Federation and political events outside the

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Russian Federation Political events should include acts of war, invasion and other similar occurrences These categories can be broken down further to illustrate the meaning of force majeure and to include or exclude certain specific events Certain items can be explicitly excluded from the definition of force majeure, including the performance of contractors, non-performance of the facility due to wear, negligence, failure to comply with applicable law and breach or default under other material agreements

This force majeure provision should be similar to those of other relevant project documents to ensure that performance is suspended or excused for all parties simultaneously

Events of nationalization or expropriation by the federal government may be construed as a breach that results in the payment of liquidated damages to the Company

**DEFAULTS AND
TERMINATION**

Events or conditions that constitute a material breach by one of the parties should be listed Such events of default may include abandonment of the facility or the failure of any other material condition This section may also create a period after notice of default in which the defaulting party can cure the default Rights and remedies of the parties upon an event of default, including the right to terminate the agreement, should also be set forth

**RESOLUTION OF
DISPUTES**

Due to the evolving nature of Russian commercial law and the current lack of civil statutes or precedent relating to the power industry, the Seller is likely to favor commercial arbitration of disputes rather than local court proceedings In this term, both parties agree to submit disputes to commercial arbitration The parties may also select a governing law and forum in accordance with applicable Russian law, bilateral agreements and international arbitration conventions

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AGREEMENT 9

**ASSET PURCHASE
AGREEMENT**

Summary Outline
Prepared by Latham & Watkins
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OUTLINE OF PROPOSED TERMS

- Introduction
- Sale of Assets
- Assumption of Liabilities
- Consideration and Payment
- Closing
- Representations and Warranties of Seller
- Representations and Warranties of Buyer
- Covenants and Agreements
- Conditions Precedent to Obligations of Buyer
- Conditions Precedent to Obligations of Seller
- Indemnification
- Assignment
- Force Majeure
- Defaults and Termination
- Resolution of Disputes

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Russian Power Sector Privatization Program

SUMMARY OF PROPOSED TERMS

INTRODUCTION

The Asset Purchase Agreement is used to effect the transfer of specific assets from one entity (the "Seller") to another entity (the "Buyer"). Such assets may include physical plant and equipment as well as real property. Often, to minimize taxation and to comply with securities regulation, transactions are structured as a sale of assets instead of a sale of equity. A sale of assets has the additional advantage of avoiding the contingent liability that can result from a purchase of equity. For example, an entity interested in acquiring existing generation facilities for refurbishment may limit its exposure to environmental liability by buying the assets of the generation facility instead of the equity of the generation company itself.

SALE OF ASSETS

This section identifies the particular assets to be sold. Such assets may include real and personal property, customer lists, trade names, rights in contracts, books and records, goodwill, intellectual property, databases and inventory.

ASSUMPTION OF LIABILITIES

The parties may create a schedule of all liabilities that the Buyer will assume. The Seller may remain responsible for any liabilities not listed, including (i) liabilities not related to the business, (ii) liabilities relating to employee benefits or severance pay, and (iii) tax liabilities.

CONSIDERATION AND PAYMENT

The purchase price can be broken down into prices for all assets purchased. The value assigned to various assets will have important tax ramifications.

CLOSING

Closing is the point at which legal title to the assets acquired are transferred to the Buyer. After the Asset Purchase Agreement is executed and before the closing, the parties can arrange financing, comply with formalities and perform any necessary investigations. This section also sets the exact time and place of closing.

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REPRESENTATIONS AND WARRANTIES OF SELLER	Standard representations and warranties of the Seller address a number of topics, including the due incorporation and qualification of the Seller, the Seller's authority to execute and perform agreements, the Seller's ownership of the assets purchased and the fact that the assets are not subject to any claims or liens
REPRESENTATIONS AND WARRANTIES OF BUYER	The representations and warranties of the Buyer are less extensive than those of the Seller, and, in the case of a corporate Buyer, generally include references to due incorporation and corporate power. The Buyer's representations and warranties are less extensive because the Buyer generally delivers cash to the Seller upon closing. The Seller generally does not need to be concerned with such things as contingent liability and undisclosed liens
COVENANTS AND AGREEMENTS	This section may provide for the secrecy of confidential information exchanged in the course of the transaction. This allows the Buyer to make a thorough investigation of the assets to be purchased prior to the closing date
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER	This section brings the representations and warranties of the Seller up to the date of the Closing through the use of a "no material adverse change" clause. It may also function as a list of documents that must be delivered before closing, including a bill of sale, copyright assignment, trademark assignment, secretary's certificate and a legal opinion from the Seller's counsel
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER	This section brings the representations and warranties of the Buyer up to the date of the Closing through the use of a "no material adverse change" clause. This section may also require a legal opinion from the Buyer's counsel
INDEMNIFICATION	Each party should indemnify the other party for all expenses incurred as a result of its negligent acts
ASSIGNMENT	Neither of the parties nor any partners or shareholders thereof, should be able to transfer its rights under this or any other material agreement

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FORCE MAJEURE

Neither party should be liable for, or in breach because of, a force majeure. The performance of the parties may be suspended as long as a force majeure continues.

Events constituting a force majeure can be categorized into natural events (such as epidemics), political events within the Russian Federation and political events outside the Russian Federation. Political events should include acts of war, invasion and other similar occurrences. These categories can be broken down further to illustrate the meaning of force majeure and to include or exclude certain specific events. Certain items can be explicitly excluded from the definition of force majeure, including the performance of contractors, non-performance of the facility due to wear, negligence, failure to comply with applicable law and breach or default under other material agreements.

This force majeure provision should be similar to those of other relevant project documents to ensure that performance is suspended or excused for all parties simultaneously.

Events of nationalization or expropriation by the federal government may be construed as a breach that results in the payment of liquidated damages to the Company.

**DEFAULTS AND
TERMINATION**

Events or conditions that constitute a material breach by one of the parties should be listed. Such events of default may include abandonment of the facility or the failure of any other material condition. This section may also create a period after notice of default in which the defaulting party can cure the default. Rights and remedies of the parties upon an event of default, including the right to terminate the agreement, should also be set forth.

**RESOLUTION OF
DISPUTES**

Due to the evolving nature of Russian commercial law and the current lack of civil statutes or precedent relating to the power industry, the parties are likely to favor commercial arbitration of disputes rather than local court proceedings. In this section, both parties agree to submit disputes to commercial arbitration. The parties may also select a governing law and forum in accordance with applicable Russian law, bilateral agreements and international arbitration conventions. To the extent possible, the choice of law

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and forum should match the selections made in other relevant project documents