



USAID
FROM THE AMERICAN PEOPLE

**HYDRO POWER AND ENERGY
PLANNING PROJECT (HPEP)**

ELECTRICITY SUPPLY AGREEMENT TEMPLATE

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ELECTRICITY SUPPLY AGREEMENT TEMPLTE

USAID HYDRO POWER AND ENERGY PLANNING PROJECT
(HPEP)

CONTRACT NUMBER: AID-OAA-I-13-00018/AID-114-TO-13-00006

DELOITTE CONSULTING LLP

USAID/CAUCASUS OFFICE OF ENERGY AND ENVIRONMENT

FRIDAY, NOVEMBER 25, 2013

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This electricity supply agreement (together with all schedules and appendices attached hereto) is dated as of (month, day and year) (“**Effective Date**”) and is by and between (name of company, type of legal-entity and jurisdiction of organization) having its registered office at _____ (“**Buyer**”) and (name of company, type of legal-entity and jurisdiction of organization) having its registered office at _____ (“**Seller**”) [*regarding the name, number and location of HPP if the Seller is the owner of one or more HPP projects*]

[If the Seller is the owner of one or more HPPs, include the following statements:]

Whereas, the Seller has entered into a Memorandum of Understanding (MOU) with the Government of Georgia in respect of the construction, exploitation and necessary investment for hydro power plant in Georgia and which MOU remains in force;

Whereas, the Seller relies on this Electricity Supply Agreement to raise financing for the construction of the hydro power plant;

[In the alternative, if the Seller is a Consolidator, include the following statement:]

Whereas, the Seller is an experienced wholesale electricity market participant in Georgia and has entered into electricity supply agreements with hydro power plant operators and other agreements in Georgia to purchase sufficient electricity to export to the Buyer under this Agreement;

And

Whereas, the Buyer is an experienced wholesale electricity market participant in (name of country where electricity is being imported);

Whereas, Georgian policy and legislation permits registered electricity market participants to freely export electricity except during three winter months of the year, and Turkish policy and legislation freely permits import of electricity;

Whereas, the Governments of Georgia and Turkey have recently constructed, tested and put into operation an asynchronous 400 kV Interconnection Line between their countries subject to the International Agreement Concerning Cross-Border Electricity Trade Via the Borçka-Akhaltsikhe Interconnection Line and the Interconnection Operation Agreement.

The Parties agree as follows:

1. The following terms and abbreviations shall have the following meaning for the purposes of this Agreement:

"Affiliate" means with respect to a Party, any Entity Controlled, directly or indirectly, by that Party, any Entity that Controls, directly or indirectly that Party or any Entity directly or indirectly under the common Control of a Party;

"Buyer" has the meaning set forth in the Preamble of this Agreement;

"Agreement" – This Agreement, together with all Annexes, dated as of the date first entered above, between the Buyer and Seller, as may be amended from time to time.

- “Applicable Legislation” – The laws and normative acts and regulatory instruments of Georgia, all international agreements and conventions applicable to Georgia, and any administrative-legal and individual administrative or legal acts, effective at any time during the term of this Agreement that are customarily treated in Georgia as having legally binding force, including licenses, orders and instructions of a binding nature issued by the GNERC.
- “Authorizations” – All formal written permits, licenses, authorizations, consents, decrees, waivers, privileges, approvals and filings required to be obtained from or provided by Applicable Legislation for the performance of this Agreement.
- “Business Day” – Any day other than a Saturday or a Sunday that is not a Georgian national holiday or a day on which banks are authorized by law or executive order to be closed in Georgia.
- “Borcka-Akhaltzikhe Interconnection Line” means the 400 kV interconnection line that, pursuant to the Existing Agreements, the governments of the Republic of Turkey and Georgia have agreed to construct between Borcka, Republic of Turkey and Akhaltsikhe, Georgia, being a cross-border electricity transmission interface facility and including the back-to-back station and other facilities described in the Existing Agreements.
- “Commercial Operation” and “Target Commercial Operation Date” have the meanings set forth in Article 7(a)
- "Construction Milestone" has the meaning set forth in Article 7(b)
- “Construction Term Letter of Credit” has the meaning set forth in Article 7(d)
- “Consent” means any written permit, license, authorization, consent, decree, waiver, approval or other filing required to be obtained from or provided by a State Authority.
- “Confidential Information” has the meaning given in Article 56
- “Contract Quantity” – has the meaning set forth in Article 3
- "Contract Capacity" means the capacity agreed between the Parties expressed in MW;
- "Contract Price" has the meaning set forth in Article 17;
- "Control" means ownership of more than fifty per cent (50%) of the voting power of a Party or Entity and "Controlled" or "Controlling" shall be construed accordingly;
- "Control and Profit Transfer Agreement" has the meaning set out in Article 48(a) (Credit Rating);
- "Controlling Party" has the meaning set out in Article 48(a) (Credit Rating);
- "Costs" has the meaning set forth in Article 42(a) (Settlement Amount);
- "Credit Rating" means in respect of an Entity any of the following: (i) the long-term unsecured, unsubordinated (unsupported by third party credit enhancement) public debt rating; (ii) the debt issuer's credit rating; or (iii) the

corporate credit rating given to that entity, in each of cases (i) to (iii) by Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or Moody's Investor Services Inc.;

"Credit Support Documents" may include, without limitation, a parent guarantee, bank guarantee, letter of awareness, letter of credit or any credit support agreement;

"Credit Support Provider" of the Seller shall be _____ and the "Credit Support Provider" of the Buyer shall be _____;

"Cross-Border ETA" means the Intergovernmental Agreement between the Republic of Turkey and Georgia Concerning Cross-Border Electricity Trade Via the Borcka-Akhaltsikhe Interconnection Line, dated January 20th of 2012.

"Damages" has the meaning set forth in Article 44(a) (Exclusion of Liability);

"Due Date" has the meaning set forth in Article 21(Payment);

"Day" – means a calendar day.

"Delivery Point" shall be the point so defined in the Interconnection Operation Agreement Between TEIAS and GSE and EnergoTrans Relating to Asynchronous Operation of the 400 kV Borcka-Akhaltsikhe Interconnection Line.

"Dispatch Licensee" – The Georgian State Electro System, JSC or its legal successor or any other person authorized under Applicable Legislation to dispatch power.

"Due Date" has the meaning set forth in Article 21

"Early Termination" has the meaning set forth in Article 38(a) (Termination for Material Reason);

"Early Termination Date" has the meaning set forth in Article 38 (b) (Termination for Material Reason);

"EBIT" means earnings before interest and taxes which, shall be in respect of the relevant fiscal year, the net revenue of the Relevant Entity before deducting corporate taxes (or any other tax on income or gains in the relevant jurisdiction of the Relevant Entity); plus the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which amounts include debts payable to Affiliates as well as debt instruments to financial institutions) of the Relevant Entity;

"Effective Date" has the meaning set out on the first page of this Agreement;

"Emergency" – A condition or situation that, in the sole but reasonable opinion of the Georgian State Electrosystem, does or is likely materially and adversely to:

- (a) affect the ability of the Georgian State Electrosystem to maintain safe, adequate and continuous electrical service to its customers, having

regard to the then-current standard of electrical service provided to its customers, or

- (b) present a physical threat to persons or property or the security, integrity or reliability of the Georgian Transmission System.

"Entity" means an individual, government or state or division thereof, government or state agency, corporation, partnership or such other entity as the context may require;

"Excused Delay" has the meaning set forth in Article 7(b)(iv)

"Expiration Date" has the meaning set forth in Article 37 (Expiration Date);

"Force Majeure" has the meaning set forth in Article 24 (Definition of Force Majeure);

"Funds from Operations" means the amount of cash generated or employed by the Relevant Entity in its operating activities;

"Gains" has the meaning set forth in Article 42(b) (Settlement Amount);

"GSE" means the Georgian State Electro System, JSC or its legal successor or any other person authorized under Applicable Legislation to dispatch power

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electricity utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practices are not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

"GNERC" – The Georgian National Energy and Water Regulatory Commission.

"Laws and Regulations" means the laws and regulations applicable to each respective Party, encompassing Presidential and Governmental decrees, acts, secondary legislation including regulations, ministerial orders, resolutions and rules, and all such other instruments having the legal force.

"Liquidated Damages" has the meaning set forth in Article 7(c)

"Letter of Credit" means an irrevocable standby letter of credit payable on demand in a form and substance satisfactory to the Requesting Party and issued by a financial institution whose Credit Rating is at least the rating specified in Article 48(b) (Credit Rating of a Credit Support Provider that is a Bank);

"Losses" has the meaning set forth in Article 42(c) (Settlement Amount);

"Material Adverse Change" has the meaning set out in Article 48 (Material Adverse Change);

"Material Reason" has the meaning set forth in Article 40 (Definition of Material Reason);

“MO” means Market Operator

“Market Rules” – The Electricity (Capacity) Market Rules, approved by Order No. 77 of the Minister of Energy of Georgia of August 30, 2006.

“Month” – A calendar month beginning at 12.00 midnight on the last Day of the preceding month and ending at 12:00 midnight on the last Day of that month.

“MOU” – Has the meaning given to this term in the Preamble.

"Network Operator" means collectively the relevant transmission providers and network, grid or system operators;

“New Facilities” has the meaning set forth in Article 7(a)

“Notice to Proceed” and “Target Notice to Proceed Date” have the meanings set forth in Article 7(b)(ii)

"Ordinary Termination" has the meaning set forth in Article 37 (Expiration Date);

“Party” means a party to this Agreement.

"Performance Assurance" has the meaning set forth in Article 47 (Performance Assurance);

“Plant” – The [INSERT description (including location) of facility].

“Proposed Hourly Schedule” – Has the meaning set forth in Article 8.

"Relevant Entity" has the meaning set forth in Article 48(a) (Credit Rating);

"Requesting Party" has the meaning set forth in Article 47 (Credit Rating);

“Settlement Period” – one calendar month

"Schedule" shall mean, as applicable, those actions necessary for a Party to effect its respective delivery or acceptance obligations, which may include nominating, scheduling, notifying, requesting and confirming with the other Party, their respective designated agents and authorized representatives, and the TSO, as applicable, the Contract Quantity, Capacity, Delivery Point and any other relevant terms of this contract in accordance with the Market Rules, all applicable rules of the Transmission System, TSO and other customary industry practices and procedures. "Scheduled" and "Scheduling" shall be construed accordingly;

"Settlement Amount" has the meaning set forth in Article 42 (Settlement Amount);

"Specified Indebtedness" means any financial indebtedness (whether present or future, contingent or otherwise, as principal or surety or otherwise) for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions);

"Tangible Net Worth" means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity and any accumulated earnings less any accumulated retained losses and intangible assets including, but limited to, goodwill;

"Target Consents Application Date" has the meaning set forth in Article 7(b)(i)

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority (whether or not for its benefit) in respect of any payment under the Agreement other than a stamp, registration, documentation or similar tax;

"TEİAŞ" means the Turkish Electricity Transmission Corporation or its successor

"Terminating Party" has the meaning set forth in Article 38(a) (Termination for Material Reason);

"Termination Amount" has the meaning set forth in Article 41 (Termination Amount);

"Total Capitalisation" means in respect of the relevant period the sum of Total Debt and all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity;

"Total Debt" means in respect of the relevant period the sum of financial indebtedness for borrowed money (which includes debts payable to affiliated companies as well as debt instruments to financial institutions) of the Relevant Entity;

"TSO" means the Transmission System Operator,

"Transmission System" means a national high voltage electricity transmission system, including all related facilities.

b. Unless the context or express provisions of this Agreement otherwise require, in this Agreement:

- i. the provisions of this Agreement relevant to the Seller apply to both an owner of one or more HPPs and to consolidator traders;
- ii. the headings and paragraph number are for convenience only and do not affect the interpretation of this Agreement;
- iii. a reference to documents or other instruments includes all amendments and replacements thereof and supplements thereto provided that such amendments, supplements and replacements are notified as soon as reasonably possible to each party hereto;
- iv. the singular includes the plural and vice versa;
- v. a reference to person includes any firm, individual, company, corporation, government, state or agent of the state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- vi. a reference to Articles and Appendices shall, unless the context otherwise requires, be construed as a reference to Articles of and Appendices to this Agreement;
- vii. in carrying out their obligations and duties under this Agreement each, party shall have an implied obligation of good faith;

1.0 PRIMARY OBLIGATIONS FOR DELIVERY AND ACCEPTANCE OF ELECTRICITY

2. **Delivery and Acceptance:** the Seller shall Schedule, sell and deliver, or cause to be delivered, and the Buyer shall Schedule, purchase and accept, or cause to be accepted, the Contract Quantity at the Delivery Point; and the Buyer shall pay to the Seller the relevant Contract Price.
3. **Contract Quantity:** The Parties shall agree the Contract Quantity of electricity to be delivered and accepted each Settlement Period under this Agreement as follows:
 - a. The volumes of Contract Quantity, measured in MWh, agreed by the Parties to be delivered and accepted in each Settlement Period over the first twelve calendar months after the Commercial Operations Date under this Agreement are stated in Table 1 of Appendix One. The first month shall be shortened to start from the Commercial Operations Date and end on the last day of the calendar month;
 - b. The maximum capacities of Contract Quantity, measured in MW, planned to be scheduled for each hour of each Settlement Period over the first twelve calendar months after the Commercial Operations Date under this Agreement are stated in Table 1 of Appendix One;
 - c. No later than 30 days before the end of the first annual period in Table 1 of Appendix One and the end of each subsequent year thereafter, the Parties shall agree on the volumes and capacities of the Contract Quantity for each Settlement Period in every annual period for the remainder of the term of this Agreement. The Seller shall complete Tables 2 to 10 in Appendix One and the Parties shall sign each table accordingly.
 - d. Every annual period shall exclude any three calendar months jointly selected by the Parties during the period from 1 October of any year to 31 March of the following year when the Seller shall not export electricity from Georgia.
 - e. The Parties may jointly agree in writing to increase or decrease the volumes or capacities, or both, of the Contract Quantity in any Settlement Period in any year in Appendix One, at any time not less than five days before the Operating Day of that Settlement Period, as follows:
 - i. For hydro power plants with maximum capacity of less than 13 MW by no more than ten percent of the original stated volumes or capacities;
 - ii. For hydro power plants with maximum capacity of between 13 MW and 100 MW by no more than seven percent of the original stated volumes or capacities;
 - iii. For hydro power plants with a maximum capacity greater than 100 MW by no more than five percent of the original stated volumes or capacities;

4. **Transfer of Rights of Title:** Delivery shall be effected by making available the Contract Quantity at the Contract Capacity at the Delivery Point. Delivery and receipt of the Contract Quantity, and the transfer from Seller to Buyer of all rights to title free and clear of any adverse claims thereto, shall take place at the Delivery Point. Electricity shall be delivered in the current, frequency and voltage applicable at the Delivery Point and in accordance with the standards provided for in the Interconnection Agreement.
5. **Seller and Buyer Risks:** Seller shall bear all risks associated with, and shall be responsible for any costs or charges imposed on or associated with Scheduling, transmission (including transmission losses and construction and maintenance of assets necessary to connect to relevant transmission networks) and delivery of the Contract Quantity up to the Delivery Point. Buyer shall bear all risks associated with, and shall be responsible for any costs or charges imposed on or associated with transmission (including transmission losses and construction and maintenance of assets necessary to connect to relevant transmission networks) and acceptance of, the Contract Quantity at and from the Delivery Point.
6. Each Party shall comply with all relevant legislation, policy and instructions, operating procedures, grid codes, licenses and other governmental authorizations. Each Party shall use reasonable endeavors and act at all times in accordance with the standards of Good Utility Practice, Prudent Electrical Practice and technical limits as may be applicable, in order to ensure delivery and receipt of electricity in accordance with this Agreement.
7. **Seller Facility Development Obligations:** If the Seller intends to supply the Contract Quantity under this Agreement by carrying out the construction, exploitation and necessary investment in an HPP, the following provisions of this Article shall apply:
 - (a) **New Facility Development.** Seller will deliver the Contract Quantities under this Agreement from new hydro generation facilities to be developed by Seller or its Affiliates and contractors ("**New Facilities**"). The New Facilities will be constructed at _____. The New Facilities will be in service, with all required interconnections, arrangements and authorizations necessary to commence delivery of the Contract Quantities, including sufficient capacity allocation on the Borcka-Akhaltsikhe Interconnection Line (such status "**Commercial Operation**") by _____ (the "**Target Commercial Operation Date**"). Seller represents and warrants that it has (i) all necessary rights to real property necessary for development of the New Facilities, (ii) all other necessary consents, authorizations and arrangements, and (iii) has the financial capability to proceed and complete the development of the New Facilities.
 - (b) **Construction Schedule, Milestones.** Seller will develop the New Facility in accordance with the following timetable (each timetable date a "**Construction Milestone**"):
 - (i) Seller expects to complete its submission of application for all remaining authorizations, permits, consents, authorizations,

interconnections and land use rights ("**Consents**") needed to construct and operate the New Facilities by _____, 20__ (the "**Target Consents Application Date**").

- (ii) Seller expects to complete firm equipment orders and authorize its general contractor to mobilize for construction at the site for the New Facility (such events "**Notice to Proceed**") by _____ (the "**Target Notice to Proceed Date**").
 - (iii) Seller expects to achieve Commercial Operation on the Target Commercial Operation Date.
 - (iv) Seller will meet all Construction Milestones unless delayed or prevented by Force Majeure or any other cause beyond Seller's control with the use of commercially reasonable efforts, including any delay on the part of any governmental authority or transmission system operator in the issuance of any Consents (any such cause an "**Excused Delay**"), provided, delay, price increases or non-performance by Seller's equipment vendors, contractors or subcontractors shall not constitute Excused Delay. Each Construction Milestone will be extended Day- for-Day with respect to the effects of any Excused Delay, provided, in the event an Excused Delay does not or is not reasonably expected to cause a Day-for-Day delay in subsequent Construction Milestones, and to the extent any such Excused Delay can be reduced by commercially reasonable efforts of Seller, the extension of such subsequent Construction Milestones shall be a reasonable amount based upon applicable circumstances.
- (c) **Liquidated Damages.** The Parties agree that if Seller fails to meet Construction Milestones, other than as the result of an Excused Delay, Buyer will suffer damages that will be difficult to quantify. Accordingly they have agreed that in such event Seller will pay the liquidated damages amounts set forth below, as damages and not as a penalty. [*Values to be agreed between the Parties based on the reasonably foreseeable damages to be incurred by the Buyer for Seller (HPP) non-performance*]
- (i) In the event Seller fails to complete its submission of applications for all Consents by the Target Consents Application Date, Seller will pay Buyer liquidated damages as follows: in the amount of _____ Dollars (\$____) per Day or portion thereof, commencing the Day immediately following the Target Consents Application Date and continuing until and including the Day on which Seller has completed submission of all applications for the Consents, provided, however, the maximum liquidated damages paid under this subsection shall be _____ Dollars (\$____).
 - (ii) In the event Seller fails to achieve Notice to Proceed by the Target Notice to Proceed Date, Seller will pay Buyer liquidated damages in the amount of _____ Dollars (\$____) per Day or portion thereof, commencing with the Day immediately following the Target

Notice to Proceed Date and continuing until and including the Day on which Notice to Proceed occurs, provided, however, the maximum liquidated damages paid under this subsection shall be _____ Dollars (\$_____).

- (iii) In the event Seller fails to achieve Commercial Operation by the Target Commercial Operation Date, Seller will pay Buyer liquidated damages in the amount of _____ Dollars (\$_____) per Day or portion thereof, commencing with the Day immediately following the Target Commercial Operation Date and continuing until and including the Day on which Commercial Operation occurs, provided, however, the maximum liquidated damages paid under this subsection shall be _____ Dollars (\$_____).

(d) **Construction Term Letter of Credit.** To secure Seller's performance of its obligations to pay liquidated damages hereunder, within fifteen (15) Business Days following the Effective Date, Seller shall provide and maintain a standby letter of credit ("**Construction Term Letter of Credit**") in the amount of _____ Dollars (\$_____).

- (i) In the event Buyer shall make any draw against a Construction Term Letter of Credit for payment of liquidated damages owed by Seller, Seller shall, within five (5) Business Days, cause the Construction Term Letter of Credit to be reinstated to the full amount set forth in Section (d) above, or cause a replacement or supplemental Construction Term Letter of Credit to be provided by a Qualified Issuer for the benefit of Buyer, such that the total credit available shall at all times be not less than the amount set forth in Section (d) above or replace such Letter of Credit as to such amount. Buyer shall be entitled to make a draw or draws upon a Construction Term Letter of Credit upon the occurrence of any Material Reason or Material Adverse Change for a portion of or for the full face amount of such Construction Term Letter of Credit as Buyer shall determine in its sole discretion.
- (ii) Buyer will hold all liquidated damages paid under this Article with respect to Seller's failure to meet the Target Consents Application Date or Target Notice to Proceed Date in escrow, with interest to accrue for Buyer's account. In the event Seller is able to achieve Commercial Operation by the Target Commercial Operation Date notwithstanding such prior unexcused delays, Buyer will refund all previously-paid liquidated damages amounts, without interest. In the event Seller is able to achieve Commercial Operation within forty five (45) Days following the Target Commercial Operation Date, Seller's total liability to Buyer for liquidated damages shall not exceed the maximum amount set forth in subsection (c)(iii) above, and Buyer will refund to Seller any liquidated damages amount in escrow over and above such maximum. In all other events, liquidated damages shall remain with Buyer without repayment or credit to Seller's account for any purpose.

(e) Failure to Timely Reach Consents/Commercial Operation.

- (i) Seller does not obtain all Consents by _____, 20____, or achieve Commercial Operation of the New Facility by _____, 20____, and such failure is the result of Excused Delays, Buyer may, in its sole discretion, upon notice to Seller, terminate the Subject Transaction upon notice to Seller, provided, however, that such circumstances shall not constitute an Event of Default and no Party shall be required to make any Termination Payment.
- (ii) If Seller does not achieve Commercial Operation of the New Facility by the date one hundred eighty (180) Days following the Target Commercial Operation Date, as such may be extended by Excused Delays, Buyer may, in its sole discretion, upon notice to Seller, terminate the Subject Transaction and such failure shall constitute a material reason under Article 40.

2.0 SCHEDULING

8. **Hourly Scheduling:** Subject to the total volume of Contract Quantity and the Transmission Normative Losses, the Parties shall agree on an hourly Schedule for the delivery and acceptance of electricity for every 24-hour calendar day of each Settlement Period. The Seller shall prepare such hourly schedule and send a copy to the Buyer for approval. The Seller shall submit the approved hourly schedule to the Georgian Dispatch Licensee not less than four days before the commencement of the relevant settlement period. The Parties may apply to the Dispatch Licensee to amend an approved schedule not less than two days before the commencement of the relevant settlement period.
9. **Day Ahead Scheduling:** The Parties may amend a 24-hour Schedule no later than 9:30pm on the day before the 24-hour Schedule is due to commence once the relevant Dispatch Licensees and TSO have implemented a system for scheduling transmission and dispatch of electricity exports on a day ahead basis. The Parties are willing to amend the schedule during the calendar day of transmission if such intra-day scheduling is permitted by the Dispatch Licensees and TSOs.
10. The Parties shall comply with the preparation, approval and amendment process to Schedule electricity delivery and acceptance according to the Georgian and Turkish Market Rules.

3.0 METERING AND REPORTING

11. **Metering Equipment:** The Seller shall install, operate and maintain equipment necessary to meter electricity generated and delivered at the bus-bar and other metering points in compliance with Georgian legislation and any agreements the Seller has entered into with the TSO, MO and Dispatch licensee.
12. The Buyer shall install, operate and maintain equipment necessary to meter electricity received and accepted under this Agreement in compliance with

Turkish legislation and any agreements the Buyer has entered into with relevant TSOs, MOs and Dispatch licensees.

13. Each Party shall permit duly authorized representatives of the other Party, and respective Dispatch Licensee, TSO and MO twenty-four hour access to inspect metering equipment and registers under their responsibility.
14. **Receipt-Delivery Statement:** Each Party shall record hourly readings of settlement and technical meters in a register. At the end of each settlement period the Seller shall prepare a delivery and acceptance report (“Receipt-Delivery Act”) stating the volume of electricity delivered and accepted and shall send such report to the Buyer for their approval and signature. The Seller shall submit the executed report to the Dispatch Licensee not later than two days after completion of the relevant settlement period. The Buyer shall submit the report to TEIAS within 3 calendar days of such receipt. Any penalty incurred for late submission of schedules to the Dispatch Licensee will be equally shared between the Parties.
15. **Disputes:** If either Party disputes the report prepared by ESCO (Electricity System Commercial Operator) confirming the volume of electricity generated and delivered to the Delivery Point, such Party may address ESCO for clarifications.
16. **Documentation of Actual Deliveries and Receipts:** Upon reasonable request, a Party shall:
 - a. provide to the other Party documentation in its possession or control that evidences Schedules, quantities, deliveries and receipts of electricity for the purposes of determining the cause of any deviations between scheduled and actual deliveries and receipts of electricity; and
 - b. use its reasonable and diligent efforts to request and acquire from the Transmission System Operator, and shall share with the requesting Party, any additional documentation necessary to reconcile inconsistencies between scheduled and actual flows of electricity.

4.0 PRICING

17. The Contract Price means the price per MWh for electricity delivered and accepted during a particular Settlement Period for which the Buyer shall compensate the Seller according to this Agreement and shall be calculated as follows:

[Price Formula Example Only:

$$G_P + ((T_{FS} - G_P - C_S) / 2)$$

Where:

G_P = Price to be agreed between the Parties per MWh of Contract Quantity for every Settlement Period)

T_{FS} = The Turkish month ahead forward price for one MWh of Base Load Electricity for the particular Settlement Period, established and reported by the Turkish Derivatives Exchange (TURKDEX)

$CS = \text{Average transmission costs per MWh for the Settlement Period} = \frac{\text{Sum of transmission costs}}{\text{Contract Quantity in MWh}} \text{ over the particular Settlement Period}$

Where transmission costs = total transmission, dispatch, allocation fees (including any compensation for transmission losses) incurred by the Seller for the delivery of the Contract Quantity from the hydro plant to the Delivery Point. End Example]

18. The Contract Price shall be denominated in Euro (€) unless otherwise agreed by the Parties and stated in Appendix One.

5.0 INVOICING AND PAYMENT

19. **Invoice:** The Seller shall send an invoice to the Buyer for the total quantities of electricity delivered by the Seller during any Settlement Period, in accordance with the relevant Receipt-Delivery Statement and also in accordance with the Tax Code of Georgia, no later than five days after the end of each Settlement Period.

20. In connection with such invoice the Party may state all amounts then owed between the Parties pursuant to this Agreement including, without limitation, all amounts owed for the purchase and sale of electricity, fees, charges, reimbursements, damages, interest, and other payments or credits owed between the Parties and, if applicable, any net amount due for payment.

21. **Payment:** On or before twenty five (25) calendar days following the end of the settlement period being invoiced or if not a Business Day the immediately following Business Day (the "Due Date"), the Buyer shall pay by wire transfer the amount set forth on such invoice, in the currency specified in Article 18 of this Agreement, to the payment address or bank account of the Seller and the remitter shall pay its own bank charges.

22. **Invoice Amendments:** When and if data becomes available confirming that the actual quantities of electricity delivered and received differs from that set out in the Delivery-Receipt Statement, invoicing and payment will be adjusted to reflect any deviations between the Contract Quantities and actual deliveries.

23. **Disputed Amounts:** If the Buyer, in good faith, disputes the accuracy of an invoice, it shall on or before the Due Date provide a written explanation of the basis for the dispute and shall pay: the undisputed amount invoiced no later than the Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the Seller, be credited or returned to it within ten (10) days of such determination, along with interest accrued, calculated daily at the Interest Rate of 0.075% from, and including, the date such amount was due, to the other Party, but excluding, the date paid or credited.

6.0 NON-PERFORMANCE DUE TO FORCE MAJEURE

24. **Definition of Force Majeure:** for purposes of the Agreement "Force Majeure" means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the "Claiming Party") which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform its delivery or acceptance obligations, including, but without limitation, due to one or more of the following:

- a. Acts of violence, comprising
 - i. War, military action, blockade, mobilization, requisition or embargo;
 - ii. Rebellion, revolution, unrest, military and usurping authority or the civil war;
 - iii. Violation of public order, civil unrest, sabotage;
 - iv. Terrorist acts;
- b. Lightning, fire, explosion, storm, wind, flood, low water, earthquake, thunder and other natural disasters;
- c. TSO, MO, Dispatch Licensee or other competent entity in Georgia or Turkey declares an Emergency Situation during which the Seller is prevented from delivering or the Buyer is prevented from receiving the entire Contract Quantity scheduled for that Settlement period.

25. **Release From Delivery and Acceptance Obligations:** If a Party is fully or partly prevented due to Force Majeure from performing its obligations of delivery or acceptance during one or more Settlement Periods and such Party complies with the requirements of Article 26 (*Notification and Mitigation of Force Majeure*) of this Agreement, no breach or default on the part of the Claiming Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure prevents its performance, No obligation to pay damages pursuant to Articles 28-34 (*Remedies for Failure to Deliver and Accept*) of this Agreement will accrue to the Claiming Party with respect to those quantities not delivered or received.

26. **Notification and Mitigation of Force Majeure:** The Claiming Party shall as soon as practical after learning of the Force Majeure notify the other Party of the commencement of the Force Majeure and, to the extent then available, provide to it a non-binding estimate of the extent and expected duration of its inability to perform. The Claiming Party shall use all commercially reasonable efforts to mitigate the effects of the Force Majeure and shall, during the continuation of the Force Majeure, provide the other Party with reasonable updates, when and if available, of the extent and expected duration of its inability to perform.

27. **Effects of Force Majeure on Other Party:** In the event, and to the extent, a Seller's delivery obligations are released by Force Majeure, the Buyer's corresponding acceptance and payment obligations shall also be released. In the event and to the extent a Buyer's acceptance obligations are released by Force Majeure, Seller's corresponding delivery obligations shall also be released.

7.0 REMEDIES FOR FAILURE TO DELIVER AND ACCEPT

28. **Failure to Deliver:** To the extent that the Seller fails to deliver the Contract Quantity in whole or in part to the Delivery Point in accordance with the terms of this Agreement and such failure is not excused by an event of Force Majeure or the other Party's non-performance, the Seller shall pay the Buyer as compensation for damages an amount for such quantity of undelivered electricity equal to the product of:

- (a) the amount, if positive, by which the price, if any, at which the Buyer acting in a commercially reasonable manner is or would be able to purchase or otherwise acquire in the market the quantity of undelivered electricity exceeds the Contract Price; and
- (b) the quantity of undelivered electricity.

Such amount shall be increased by any incremental transmission costs and other reasonable and verifiable costs and expenses incurred by the Buyer as a result of the Seller's failure.

29. **Failure to Accept:** To the extent that the Buyer fails in whole or in part to accept the Contract Quantity at the Delivery Point in accordance with the terms of this Agreement and such failure is not excused by an event of Force Majeure or the other Party's non-performance, the Buyer shall pay the Seller as compensation for damages an amount for the quantity of non-accepted electricity equal to the product of:

- (a) the amount, if positive, by which the Contract Price exceeds the market price at which the Seller is or would be able to sell the quantity of non-accepted electricity acting in a commercially reasonable manner; and
- (b) the quantity of unaccepted electricity.

Such amount shall be increased by any incremental transmission costs and other reasonable and verifiable costs and expenses incurred by the Seller as a result of the Buyer's failure.

30. **Amounts Payable:** Amounts that are due according to Article 28 and 29 shall be invoiced and paid in accordance with Article 19 (*Invoicing and Payment*) of this Agreement.

31. **Reimbursement of External Costs:** In the event a Party, at the request of the other Party or to resolve a dispute raised by the other Party, incurs reasonable external expenses in verifying that the other Party has failed to properly perform its obligations under the terms of an Contract, such expenses shall be reimbursed upon demand by the Party that failed to perform.

32. The Seller shall promptly inform the Buyer by telephone and in writing immediately it becomes aware that the Seller will be unable to deliver, for any reason, any quantity of electricity scheduled for delivery to the Buyer.

33. **Suspension of Delivery:** In addition to any other rights or remedies available to the Seller, should the Buyer default on any payment that is due under the Agreement, or should it or its Credit Support Provider fail to provide, replace or

increase the amount of any Performance Assurance required pursuant to this Agreement or any Credit Support Document, the Seller shall be entitled, no earlier than three (3) Business Days after sending a written notice to the Buyer to immediately cease further deliveries of electricity (and be released (and not merely suspended) from its underlying delivery obligations) under this Agreement until such time as the Seller, has received either the required collateral or full payment (including all applicable default interest and expenses) of all outstanding amounts owed to the Seller.

34. In the event of a default or Force Majeure resulting in an interruption to deliveries of the Contract Quantities but not the termination of this Agreement, the Parties shall agree on a revised schedule of deliveries acknowledged in a supplementary covenant to this Agreement, which shall be put into effect upon its registration by the dispatch licensee in due manner.

35. Outages

- a. Not later than 30 days before the Commercial Operation Date and not later than 90 days before the start of each subsequent year, the Seller shall submit to the Buyer an expected schedule of Scheduled Outages for the forthcoming year.
- b. The Seller may not schedule more than a total of 14 days of Scheduled Outages each year; provided that the Seller shall be entitled to schedule a total of 30 days of Scheduled Outages for the performance of a Major Overhaul no more frequently than once during each four (4) year period after the Commencement of Operation date.
- c. If the Company:
 - a. Takes a Scheduled Outage that exceeds the number of days of Scheduled Outage allowed each year under paragraph (b) of this Article; or
 - b. Does not complete a Scheduled Outage within the time required,

It shall be deemed to be a Forced Outage, except the result of Force Majeure.

- d. As the need arises for a Maintenance Outage, the Seller shall advise the Buyer of such need and of the commencement and estimated duration of the works to be carried out and the Buyer shall allow the Seller to schedule such Maintenance Outage at a time and within a period of time reasonable in light of its need for energy from the Facility and the necessity of the Maintenance Outage.
- e. For the avoidance of doubt, the Parties agree that a Maintenance Outage does not include any interruption or reduction of the Facility's generation capacity which is a result of a Force Majeure Event or a condition caused by the TSO or MO or Grid System.

8.0 TERM AND TERMINATION RIGHTS

36. The agreement shall be effective from the date of its registration with the Georgian Dispatch Licensee or its approval by the competent agency of the Government of Turkey, whichever event occurs later. (*currently Minister of Energy and Natural Resources*)

37. **Expiration Date:** This General Agreement will terminate ten (10) years after the date of signature by both Parties (including the day of signature). In the event of such Ordinary Termination, this Agreement shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing under this Agreement prior to the date of the Ordinary Termination are fully performed by both Parties.

38. Termination for Material Reason:

- (a) If a Material Reason (as defined below) with respect to a Party has occurred and is continuing, the other Party (the "Terminating Party") may terminate the Agreement ("Early Termination") by giving the other Party notice. A notice of Early Termination may be given by telephone if that notice is confirmed in writing within two (2) Business Days.
- (b) A notice of Early Termination shall specify the relevant Material Reason for the Early Termination and shall designate a day as an early termination date (the "Early Termination Date"). The Early Termination Date may not be earlier than the day the notice is deemed to have been received under the Agreement nor later than twenty (20) days after such day. With effect from the Early Termination Date all further payments and performance in respect of this Agreement shall be released (and not merely suspended) and existing duties and obligations of the Parties shall be replaced by the obligation of one Party to pay damages for non-fulfillment to the other Party in an amount (if any) calculated in accordance with (the "Termination Amount").
- (c) If notice designating an Early Termination Date is given, the Early Termination Date shall occur on the date so designated even if the applicable Material Reason is no longer continuing. On, or as soon as practicable after, the Early Termination Date, the Terminating Party shall calculate in a commercially reasonable manner, and shall notify the other Party of, the Termination Amount (if any) to be received or paid by it deriving from aggregating all Settlement Amounts as stipulated in (*Calculation of the Termination Amount*).
- (d) The Termination Amount shall be payable by the relevant Party to the other Party within three (3) Business Days of its notification by the Terminating Party.
- (e) The Terminating Party may take into account any Performance Assurance or credit support available pursuant to the Agreement or any Credit Support Document.
- (f) The right to designate an Early Termination Date under this (*Termination for Material Reason*) is in addition to any other remedies available under the Agreement or at law.

40. **Definition of Material Reason:** The Agreement may be terminated at any time for one or more of the following reasons (each, a "Material Reason"):

- (a) Non Performance: The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Performance Assurance or to perform any other material obligation (other than when such obligation is released pursuant to *(Non-Performance Due to Force Majeure)*):
 - (i) under the Agreement; provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or, in the case of any other failure of performance, such failure is not cured within ten (10) Business Days of a written demand;
 - (ii) under any Credit Support Document (after giving effect to any applicable notice or grace period thereunder); or
 - (iii) under any Performance Assurance in accordance with *(Performance Assurance)*.
- (b) Cross Default and Acceleration:
 - (i) any payment default under any Specified Indebtedness with an aggregate outstanding principal balance equal to three percent (3%) of the Tangible Net Worth of such (aa) Party's, or (bb) such Party's Credit Support Provider (if such Party has a Credit Support Provider) or (cc) such Party's Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party), as the case may be, as of the date of the default, or
 - (ii) the failure of a Party or its Credit Support Provider or Controlling Party to make one or more payments in an aggregate amount (individually or collectively) of not less than the equivalent of _____ [e.g. **One Million Euros**] under such agreements or instruments entered into between such Parties or their Affiliates (after giving effect to any applicable notice requirement or grace period).
- (c) Winding-up/Insolvency/Attachment: A Party or its Credit Support Provider:
 - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
 - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - (iv) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and is not withdrawn, dismissed, discharged, stayed or restrained within 90 days;
 - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

- (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
 - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
 - (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or
 - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this subsection (c).
- (d) **Failure to Deliver or Accept:** the failure of a Party to comply with its obligation to deliver or accept electricity under this Agreement, (other than, when such obligation is released pursuant to *Non-Performance Due to Force Majeure*) for more than seven (7) consecutive days or for more than seven (7) days in aggregate within a period of sixty (60) days.
- (e) **Force Majeure:** A Party is released from its obligations under this Agreement due to Force Majeure for more than thirty (30) consecutive days or for more than sixty (60) days in aggregate within a period of one calendar year.
- (f) **Representation or Warranty:** A representation or warranty when made or repeated or deemed to have been made or repeated by a Party to this Agreement or by its Credit Support Provider in a Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

The above Material Reasons shall constitute the exclusive reasons for Early Termination under this Article.

9.0 CALCULATION OF THE TERMINATION AMOUNT

41. **Termination Amount:** The Terminating Party shall calculate an amount (the "Termination Amount") to be paid in accordance with (*Termination for Material Reasons*) by calculating the sum (whether positive or negative) of all Settlement Amounts for this Agreement plus any or all other amounts payable between the Parties under or in connection with this Agreement.
42. **Settlement Amount:** The "Settlement Amount" shall be the Gains less the aggregate of the Losses and Costs which the Terminating Party incurs as a result of the termination of this Agreement. For the purpose of this provision:
- (a) "Costs" means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Terminating Party entering into new arrangements and all reasonable legal fees, costs and expenses so incurred by the Terminating Party;

- (b) "Gains" means an amount equal to the present value of the economic benefit to the Terminating Party, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner; and
- (c) "Losses" means an amount equal to the present value of the economic loss to the Terminating Party, if any (exclusive of Costs), resulting from its termination of this Agreement, determined in a commercially reasonable manner.

43. In calculating the Settlement Amounts, the Terminating Party may, but is not obliged, to calculate its Gains and Losses as at the Early Termination Date, at its discretion, without entering into any replacement transactions.

10.0 LIMITATION OF LIABILITY

44. Exclusion of Liability:

- (a) Subject to paragraphs (b) and (c), below, and except in respect of any amounts payable under (*Remedies for Failure to Deliver and Accept*) or (*Termination for Material Reason*), a Party and its employees, officers, contractors and/or agents, are not liable to the other Party for any loss, cost, expense or damages ("Damages"), (including, without limitation, any liability due to the irregularities in the supply of electricity under this Agreement) incurred by the other Party under or in connection with the Agreement, except where such Damages are due to gross negligence, intentional default or fraud of a Party or its employees, officers, contractors and/or agents used by such Party in performing its obligations under the Agreement.
- (b) Consequential Damage and Limitation of Liability: Subject to paragraph (c), the liability of a Party under or in connection with this Agreement:
 - (i) does not include liability for any indirect and/or consequential Damages, including, without limitation, loss of profit, goodwill, business opportunity or anticipated saving; and
 - (ii) is limited to an amount equal to the amounts payable for electricity supplied or to be supplied by a Party under this Agreement provided that such limitation shall not apply to payments under (*Remedies for Failure to Deliver and Accept*) and (*Calculation of the Termination Amount*).
- (c) Intentional Default, Fraud and Fundamental Rights: Nothing in the Agreement operates to exclude or limit a Party's liability for:
 - i. intentional default,
 - ii. fraud; or
 - iii. any action which endangers the fundamental legal rights of a Party or which violates a Party's fundamental contractual obligations

45. **Duty to Mitigate Losses:** For the avoidance of doubt, and subject to applicable law, each Party agrees that it has a duty to mitigate its Damages and covenants

that it will use commercially reasonable efforts to minimise any Damages it may incur under or in connection with the Agreement.

11.0 GUARANTEES AND CREDIT SUPPORT

46. **Guarantees and Credit Support** :To address each Party's risk relating to the creditworthiness of the other Party, and to secure the prompt fulfillment of all obligations resulting from this General Agreement and Individual Contracts, the Parties may agree, on or at any time after the Effective Date, or at the time of the concluding of each Individual Contract, upon the circumstances in which Credit Support Documents may be required to be provided for the benefit of a Party, including, the form of Credit Support Documents, the amount of credit support, and the identity of one or more acceptable Credit Support Providers.

12.0 PERFORMANCE ASSURANCE

47. **Right to Require Performance Assurance**: At any time and from time to time, when a Party (the "Requesting Party") believes in good faith that a Material Adverse Change has occurred in respect of the other Party, the Requesting Party shall be entitled to require, by written notice, that the other Party provide to it or increase in amount: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form and amount reasonably acceptable to the Requesting Party (each a "Performance Assurance"). Upon receipt of such written notice, the other Party shall within three (3) Business Days provide to the Requesting Party the Performance Assurance required.

48. **Material Adverse Change**: A Material Adverse Change shall have occurred if anyone or more of following events has occurred and is continuing:

- (a) Credit Rating: If the Credit Rating of an Entity listed in (i)-(iii), each such Entity being a "Relevant Entity" of such Party, is withdrawn or downgraded below the minimum rating of _____:
 - (i) the other Party (unless all of that other Party's financial obligations under the Agreement are fully guaranteed or assured under a Credit Support Document); or
 - (ii) the other Party's Credit Support Provider (other than a bank); or
 - (iii) any Entity who is a party to a control and/or profit transfer agreement with the other Party and such other Party is in relation to such Entity, its subsidiary over which such Entity has control (a "Controlling Party"); or
- (b) Credit Rating of a Credit Support Provider that is a Bank: If the Credit Rating of a bank serving as the other Party's Credit Support Provider is withdrawn or downgraded below the minimum rating of _____; or
- (c) Financial Covenants: Insofar as a Relevant Entity does not have a Credit Rating, if such Relevant Entity does not fulfill any of the following financial

requirements as determined by reference to its most recent financial statement:

- (i) EBIT to Interest: The ratio of EBIT to the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions) for such Relevant Entity in any fiscal year is greater than the ratio of _____;
- (ii) Funds from Operations: The ratio of Funds from Operations to Total Debt for such Relevant Entity in any fiscal year is greater than the ratio of _____; or
- (iii) Total Debt to Total Capitalization: The ratio of Total Debt to Total Capitalization or such Relevant Entity in any fiscal year is less than the ratio of _____; or
- (d) Decline in Tangible Net Worth: If the Tangible Net Worth of a Relevant Entity falls below the amount of _____; or
- (e) Expiry of Performance Assurance or Credit Support Document: If any Performance Assurance or any Credit Support Document expires or terminates with respect to any outstanding obligations of the other Party under the Agreement, or, if a Performance Assurance or Credit Support Document is due to expire or terminate within the period of time of _____ or the failing or ceasing of such Credit Support Document to be in full force or effect for the purpose of the Agreement (in each case other than in accordance with the its terms or the terms of the Agreement) before the satisfaction of all outstanding obligations of such other Party under the Agreement to which such Credit Support Document relates, without the written consent of the Requesting Party.
- (f) Failure of Performance Assurance or Credit Support Document: If any Credit Support Provider or Performance Assurance provider of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Credit Support Document or Performance Assurance provided by it or otherwise fails to comply with or perform its obligations under or in respect of such Credit Support Document or Performance Assurance and such failure is continuing after any applicable grace or cure period; or
- (g) Failure of Control and Profit Transfer Agreement: If any Controlling Party of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Control and Profit Transfer Agreement entered into by it or otherwise fails to comply with or perform its obligations under such Control and Profit Transfer Agreement; or
- (h) Impaired Ability to Perform: If in the reasonable and good Faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under the Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired.

- (i) Amalgamation/Merger: If the other Party or its Credit Support Provider undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes, incorporates, reincorporates, or reconstitutes into or as, another Entity, or another Entity transfers all or substantially all its assets to, or reorganizes, incorporates, reincorporates, or reconstitutes into or as, such other Party or its Credit Support Provider and:
 - (i) the creditworthiness of such Party, its Credit Support Provider or the resulting, surviving, transferee or successor Entity is materially weaker than that of the other Party or such Credit Support Provider, as the case may be, immediately prior to such action;
 - (ii) the resulting, surviving, transferee or successor Entity fails to assume all the obligations of that other Party or such Credit Support Provider under the Agreement or any Credit Support Document to which it or its predecessor was a party by either operation of law or pursuant to an agreement reasonably satisfactory to the Requesting Party; or
 - (iii) the benefits of any Credit Support Document cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting, surviving, transferee or successor Entity of its obligations under the Agreement.

13.0 PROVISION OF FINANCIAL STATEMENTS AND TANGIBLE NET WORTH

49. **Provision of Financial Statements:** if requested by a party, the other Party shall deliver

- (a) within 120 days following the end of each fiscal year, a copy of such other Party's, or for such period the other Party's obligation are supported by a Credit Support Provider or if it is a party to a Control and Profit Transfer Agreement, its Credit Support Provider's or its Controlling Party's, as the case may be, annual report containing audited consolidated financial statements for such fiscal year, and
- (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements; and

50. **Decline in Tangible Net Worth:** as soon as it becomes aware of such decline, each Party shall promptly notify the other Party of the occurrence of a decline in its Tangible Net Worth or the Tangible Net Worth of its Credit Support Provider or Controlling Party, to a level below the amount of _____.

51. **Accounting Principles:** In all cases the financial statements referred to in Article 49 and Article 50 shall be prepared in accordance with generally accepted accounting principles in the relevant jurisdiction.

14.0 ASSIGNMENT

52. **Prohibition:** Neither Party shall be entitled to assign its rights and obligations under the Agreement to a third party without the prior written consent of the other Party. Such consent shall not be unreasonably delayed, refused or withheld.
53. **Assignment to Affiliates:** each Party shall be entitled to assign its rights and obligations under the Agreement without the prior written consent of the other Party to an Affiliate of an equivalent or greater creditworthiness. Such Assignment shall only become effective upon notice being received by the other Party and; provided that any Credit Support Document issued or agreed on behalf of the assigning Party has first been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.
54. Notwithstanding the provisions of Articles 52 and 53, for the purpose of financing the construction, operation and maintenance of the plant, the Seller may assign or create security over its rights and interests under, pursuant to or associated with the agreement, plant, site, moveable and intellectual property of Seller or revenues; provided, however, that the Seller shall not create any such security without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed. Buyer shall execute all such acknowledgments of any security created in accordance with the foregoing sentence as are reasonably requested by the Seller to give effect to the foregoing sentence.
55. Buyer shall use all reasonable efforts to execute, acknowledge and deliver any and all further documents and instruments, and to take any other actions, which may be necessary to satisfy the reasonable requests of any creditors or prospective creditors in connection with the financing or refinancing of the HPP Facility, including executing and delivering to the creditors a consent to assignment (or other form of direct agreement) concerning the HPP Facility between Buyer and the creditors in form and substance satisfactory to the creditors. The foregoing sentence shall not be construed to require the Buyer to execute, acknowledge and deliver any further documents and instruments, or to take any other actions, which are inconsistent with its rights under this Agreement or which are expressly subject to its consent or approval under this Agreement.

15.0 CONFIDENTIALITY

56. **Confidentiality Obligation:** subject to (*Exclusions from Confidential Information*), neither Party shall disclose the terms of an Individual Contract ("Confidential Information") to a third party.
57. **Exclusions from Confidential Information:** Confidential Information shall not include information which:
- (a) is disclosed with the other Party's prior written consent;
 - (b) is disclosed by a Party to the Network Operator, its directors, employees, Affiliates, agents, professional advisers, bank or other financing institution, rating agency or intended assignee;

- (c) is disclosed to comply with any applicable law, regulation, or rule of any exchange, system operator or regulatory body, or in connection with any court or regulatory proceeding; provided that each Party shall, to the extent practicable and permissible under such law, regulation, or rule, use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;
- (d) is in or lawfully comes into the public domain other than by a breach of Article 56 and this Article 57 herein; or
- (e) is disclosed to price reporting agencies or for the calculation of an index provided that such disclosure shall not include the identity of the other Party.

16.0 REPRESENTATIONS AND WARRANTIES

58. Each Party hereby represents and warrants to the other Party upon entering into this Agreement as follows:

- (a) it is an Entity duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization;
- (b) the signing and the entering by it into of this Agreement, any Credit Support Document to which it is a party and the carrying out of the transactions contemplated therein, shall not violate any provision of its constitutional documents;
- (c) it has the power and is authorized to execute, deliver and perform its obligations under this Agreement and any Credit Support Document to which it is a party and has taken all necessary action to authorize that execution, delivery, performance and its entry into this Agreement and its execution, delivery and the performance of the Agreement and any Credit Support Document do not violate or conflict with any other term or condition of any contract to which it is a party or any constitutional document, rule, law or regulation applicable to it;
- (d) no Material Reason for termination as outlined (*Definition of Material Reason*), with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under the Agreement;
- (e) it has all governmental and regulatory authorizations, approvals and consents, and will have entered into all necessary agreements with relevant third parties, necessary for it to legally perform its obligations under the Agreement and any Credit Support Document to which it is party;
- (f) it has negotiated, entered into and executed this Agreement and any Credit Support Document to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (g) it regularly enters into agreements for the trading of electricity as contemplated by the Agreement, and does so on a professional basis in connection with its principal line of business, and may be reasonably

- characterized as a professional market party;
- (h) it is acting for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of the Agreement;
 - (i) the other Party is not acting as its fiduciary or adviser;
 - (j) it is not relying upon any representation made by the other Party other than those expressly set forth in the Agreement or any Credit Support Document to which it is a party;
 - (m) with respect to a Party that is a governmental Entity or public power system, such governmental Entity or public power system represents and warrants to the other Party as follows: (i) all acts necessary for the valid execution, delivery and performance of the Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures have or shall be taken and performed; (ii) entry into and performance of the Agreement by a governmental Entity or public power system are for a proper public purpose within the meaning of relevant constitutional or other governing documents and applicable law; and (iii) the term of the Agreement does not extend beyond any applicable limitation imposed by any relevant constitutional or other governing documents and applicable law; and
 - (n) with respect to a Party, it is not insolvent, and there are no pending or threatened legal or administrative proceedings to which it is a party which to the best of its knowledge would materially adversely affect its ability to perform this Agreement or any Credit Support Document to which it is party, such that it could become insolvent.
 - (o) together with that of its affiliates, including its imports or exports of electricity, its market share of consumption or production does not exceed any maximum level of the total electricity consumed or produced in the relevant national market during any period as may be required in any contract, law or regulation applicable to it.

17.0 GOVERNING LAW AND ARBITRATION

59. This Agreement shall be governed by the laws of Georgia.

60. The Parties hereto will use their best efforts to settle amicably any dispute, controversy or claim arising out of or in connection with, or the breach, termination, invalidity or interpretation of this Agreement. In this connection, the Parties agree that their respective duly authorized representatives shall regularly meet during the term of this Agreement for the purpose of attempting to settle by amicable agreement any and all Disputes then in existence between them. Any such settlement shall take effect and be final and binding on the Parties only if reduced to writing and signed on behalf of the Parties.

61. Any dispute which cannot be settled amicably within [thirty (30)] days of the dispute arising may be submitted by either Party for binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce within thirty (30) days after receipt by one Party of the other Party's written request to do so. Each Party will appoint one arbitrator and the two appointed arbitrators will appoint a third arbitrator, who shall act as the chairman of the panel. In case the two arbitrators cannot agree on a third arbitrator, the third arbitrator shall be appointed by the International Chamber of Commerce. The venue of arbitration shall be Geneva, Switzerland and the language of arbitration shall be English.

18.0 AMENDMENTS

62. **Amendments:** any amendments or additions to this Agreement shall be made only in writing signed by both Parties. The signed amendments shall be registered with the Dispatch Licensee pursuant to Georgian Law.

63. The Parties may agree to amend any relevant provision of this Agreement if any amendment to the applicable legislation of Georgia regulating the activities of the Seller or amendment to the applicable legislation of Turkey regulating the activities of the Buyer directly causes a change in:

- a. The Contract Price payable by the Buyer for the receipt of electricity; or
- b. The Contract Quantity to be delivered by the Seller to the Buyer; or
- c. Any penalty or compensation payable by one or both Parties; or
- d. Other changes to the terms and conditions for the delivery and receipt of electricity under this Agreement.

64. A Party shall consider in good faith a request from the other Party regarding amendments to this Agreement. Any change in legislation directly affecting this Agreement shall be applicable and in case of conflict with the provisions of this Agreement the provisions of such legislation shall prevail.

19.0 MISCELLANEOUS

65. **Recording Telephone Conversations:** Each Party is entitled to record telephone conversations held in connection with the Agreement and to use the same as evidence. Each Party waives any further notice of such recording and acknowledges that it has obtained all necessary consents of its officers and employees to such recording.

66. **Notices and Communications:** Except as otherwise provided herein, all notices, declarations or invoices sent by one Party to the other shall be in writing and shall be delivered by letter (overnight mail or courier, postage prepaid) or facsimile. Each Party may change its notice information by written notice to the other. Written notices, declarations and invoices shall be deemed received and effective:

- (a) if delivered by hand, on the Business Day delivered or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- (b) if sent by first class post, on the 2nd Business Day after the date of posting, or if sent from one country to another, on the 5th Business Day

- after the day of posting; or
- (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

67. Partial Invalidity: If, at any time, any provision of this General Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this General Agreement or of any Individual Contract, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

68. Notices, Scheduling, Invoices and Payments

Seller	Buyer
Notices and Correspondence Name and Title Address Phone and Email	Notices and Correspondence Name and Title Address Phone and Email
Scheduling Name and Title Address Phone and Email	Scheduling Name and Title Address Phone and Email
Invoices Name and Title Address Phone and Email	Invoices Name and Title Address Phone and Email
Payments Name and Title Address Phone and Email	Payments Name and Title Address Phone and Email

Executed by the duly authorized representative of each Party effective as of the Effective Date.

Name of Party

Name of Party

Name of Signatory/ies

Name of Signatory/ies

Title of Signatory/ies

Title of Signatory/ies

20.0 APPENDIX ONE – CONTRACT QUANTITIES PER TWELVE MONTH PERIODS

1. The Contract Quantities to be delivered and accepted per Settlement Period according to this Agreement from April 1, 2013 through March 31 2014 are provided in Table 1. The Parties may increase or decrease the volume in any Settlement Period by ten percent of the volume stated herein according to Article 3(b) of this Agreement.

Table 1 - Year 1 2013/2014		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

2. The Parties shall agree on the Contract Quantities for each subsequent year during the remainder of the term of this Agreement, 30 days before the end of the last Settlement Period of the previous twelve month period, and shall complete and sign the following tables, accordingly:

Table 2 - Year 2 2014/2015		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

Name of Party

Name of Party

Name of Signatory/ies

Name of Signatory/ies

Title of Signatory/ies

Title of Signatory/ies

Date

Date

Table 3 - Year 2 2015/2016		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

Name of Party

Name of Party

Name of Signatory/ies

Name of Signatory/ies

Title of Signatory/ies

Title of Signatory/ies

Date

Date

Table 4- Year 4 2016/2017		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

Name of Party

Name of Party

Name of Signatory/ies

Name of Signatory/ies

Title of Signatory/ies

Title of Signatory/ies

Date

Date

Table 5 - Year 5 2017/2018		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

Name of Party

Name of Party

Name of Signatory/ies

Name of Signatory/ies

Title of Signatory/ies

Title of Signatory/ies

Date

Date

Table 6 - Year 6 2018/2019		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

Name of Party	Name of Party
Name of Signatory/ies	Name of Signatory/ies
Title of Signatory/ies	Title of Signatory/ies
Date	Date

Table 7 - Year 7 2019/2020		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

Name of Party	Name of Party
Name of Signatory/ies	Name of Signatory/ies
Title of Signatory/ies	Title of Signatory/ies
Date	Date

Table 8 - Year 8 2020/2021		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

Name of Party

Name of Party

Name of Signatory/ies

Name of Signatory/ies

Title of Signatory/ies

Title of Signatory/ies

Date

Date

Table 9 - Year 9 2022/2023		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

Name of Party

Name of Party

Name of Signatory/ies

Name of Signatory/ies

Title of Signatory/ies

Title of Signatory/ies

Date

Date

Table 10 - Year 10 2021/2022		
Month	Volume (MWh)	Maximum Hourly Capacity (MW)
April		
May		
June		
July		
August		
September		
Winter Month 1		
Winter Month 2		
Winter Month 3		
Total:		

Name of Party

Name of Party

Name of Signatory/ies

Name of Signatory/ies

Title of Signatory/ies

Title of Signatory/ies

Date

Date

USAID Hydro Power and Energy Planning Project (USAID-HPEP)

Deloitte Consulting Overseas Projects - HPEP

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